

General Communication with Tax Authorities in friendly or unfriendly ways

Tax Commission – of course...!

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National Report of Liechtenstein

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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. 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.

The General Reporters would like to thank you all in advance for your contributions and are already very interested in the results of this year's annual congress session of the AIJA Tax Commission.

2. Questionnaire

Note: General assumption is discussions with the tax authorities regarding (corporate) income tax or indirect taxes. If a difference would apply in the treatment between either of these, please indicate in your report. Also, if there are different levels of tax authorities for different taxes or issues, please mark that in your report.

2.1 Communication general

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?

A direct contact with the Tax Authorities is possible and in unclear cases highly advisable.

- b. If not, does the communication only take place via tax counsels?

The communication with the Tax Authorities is not only possible via tax counsels. However, depending on the complexity of the case or question it is advisable to mandate a tax counsel or a lawyer to communicate with the Tax Authorities.

The Tax Authorities can ask for a local representative in Liechtenstein if the tax payer is not resident of Liechtenstein.

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

Generally the Tax Authorities are cooperative and looking for amicable solutions. They are also helpful in providing the tax payers with useful answer for possible questions.

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

Meetings with the Tax Authority are possible.

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

It very much depends on the matter. However, generally the behaviour of the Tax Authorities can be described as customer-oriented. However, if it comes to the application of binding legal requests the Tax Authority can also show a very dominant approach (e.g. in information requests from other states).

2.2 Agreements between tax payers and tax authority

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

Tax rulings are possible in Liechtenstein though due to the very favorable tax situation in Liechtenstein tax rulings are not necessary to be achieved too often.

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

It depends on the respective case and the persons dealing with it. A good consultant for sure is helpful.

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

Such tax rulings are to be seen as contracts between the respective tax payer and the Tax Authority and, thus, binding for the parties.

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

See above.

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

Tax rulings are to be seen as contracts between the respective tax payer and the Tax Authority.

- 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?

This depends on the respective case. However, in general such tax rulings should result in a win-win situation for both the tax payer as well as the Tax Authority.

- 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?

In general such documents are confidential.

2.3 Remedies against decisions of the Tax Authorities

- a. Is it common that one has to litigate if a decision has been made by the Tax Authorities and which remedies do exist?

Tax payers are entitled to file an objection against decisions of the Tax Authority. In case of an objection the Tax Authority has to reexamine the matter and may amend the original decision if the Tax Authority comes to the conclusion that the objection was legitimate.

Once the Tax Authority has reexamined the matter it has to render a decision. This decision may be appealed against by the tax payers and the National Tax Commission has to decide if the decision of the Tax Authority was correct or not.

Finally, the decision of the National Tax Commission may also be appealed against by the tax payers at the Administrative High Court.

As Liechtenstein is in a customs union with Switzerland for VAT matters objections against decisions of the Administrative High Court for VAT matters may be appealed at the Swiss Federal Court.

- b. Is there the possibility of addressing a court or is this an administrative proceeding?

The remedy proceeding against decisions from the Tax Authority is an administrative proceeding but if a decision has to be rendered by the Administrative High Court such decision in the administrative proceeding is a decision of a court.

- c. Which costs are to be expected in such a case?

The costs of the proceeding are moderate and are depending on the tax demand.

However, if the tax payer is represented by a lawyer, the lawyer's costs will not be reimbursed, even if the taxpayer wins the case.

- d. Is it compulsory to have a lawyer in case of any remedy?

No, it is not compulsory to have a lawyer in case of any remedy. However, as tax questions are often complicated it is advisable to mandate a lawyer or a tax counsel to file the remedies.

- e. What timeframe can be expected in case of a remedy/litigation?

It is not possible to tell an exact timeframe for a remedy against decisions of the Tax Authority. The timeframe is highly influenced by the complexity of the matter and the workload of the different authorities that are dealing with the matter.

- 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.)?

Remedies against decisions of the Tax Authority have a suspending effect. In such case the tax authority will not require guarantees.

- 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?

The Tax Authority will submit a report to the public prosecutor if they discover a possible tax fraud.

Other tax offences such as violation of procedural obligations will be prosecuted by the Tax Authority.

- h. Is it possible to include a clause in an agreement to automatically amend this agreement in accordance with the outcome of a discussion or litigation with the tax authority (e.g. if an “at arms length payment” is not accepted as such by the tax authority or if interests are held to be dividends or a loan is seen to be a gift)?

In Liechtenstein parties are free to include whatever clauses into their contracts as long as they do not contravene the law or are against bonos mores. Thus, such a clause could be included in the contract.

2.4 Sanctions

- a. What is the statute of limitations for tax related matters?

For violation of procedural obligations (like omitting to render the tax return on time the statute of limitations is one year.

For tax evasion and tax fraud the statute of limitations amounts to five years.

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

In case of violation of procedural obligations fines may be imposed of up to CHF 1000.00 (in VAT matters and serious cases or in the event of a repeat offence up to CHF 10'000.00)

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.

In case of tax fraud (= tax evasion with forgery of documents) the threat of punishment is imprisonment for up to six months or a monetary penalty up to 360 penalty units (depending on monetary situation of the offender). In case of tax fraud in a VAT matter the threat of punishment is imprisonment for up to one year or a monetary penalty of up to 360 penalty units.

- 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?

For penalties as a result of trespassing administrative tax provisions it makes no difference if the tax payer was in good faith or not (like not handing in the tax return on time). However, also in such cases the tax authority has a certain discretion regarding the imposition of tax penalties. In case of criminal tax matters like tax fraud it will make a difference in court if the tax payer can prove his good faith.

- d. Is it possible to regularize your tax situation with reduced or no fines/sanctions?

This will depend on the respective case.

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

Yes, they may be held responsible.

2.5 Tax information exchange

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

To date there is no tax information exchange agreement between the EU or OECD and Liechtenstein. However, it is planned to enter into an agreement with the EU regarding the automatic exchange of tax information.

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

Liechtenstein has several tax treaties with other countries regarding the exchange of information. In these cases Liechtenstein does exchange tax information upon request. Until today no automatic tax exchange is in force.

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

In general, tax payers have to be informed about a tax information exchange proceeding in Liechtenstein and it is possible to file objections against information exchange decisions. However, Liechtenstein is to change the law regarding tax information exchange and it is planned that in special cases tax information can be exchanged without notification of the tax payer.

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

Yes, see above.