

# General Communication with Tax Authorities in friendly or unfriendly ways

## Tax Commission

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### National Report of Russia

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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 is possible and quite common to sort out some minor tax issues e.g. to conduct a reconciliation between tax records of the tax payer and the Tax Authorities' records. For serious issues it is advisable to engage an independent tax counsel, but some companies employ their own tax specialists.*

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

*N/A*

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

*Communication with the Tax Authorities on general matters is not very well regulated: the communication is initiated by either side by sending an official letter and then, if need be, a meeting may follow.*

*There are special rules of communication where a tax audit was conducted and back taxes assessed. In that case the Tax Authorities provide to the tax payer the tax audit report describing violations revealed, and the tax payer can prepare its objections to the Tax Authorities' findings. After that a formal meeting should take place where the Tax Authority's Head would hear arguments of both state tax auditors and the tax payer before issuing a final decision.*

*The decision may be challenged to the higher Tax Authority by submitting a petition, but no meeting is possible in this case.*

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

*Communication is initiated in a written form, meetings are possible most of the times.*

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

*The behavior has changed dramatically during last couple of years. The new Head of the Federal Tax Service had stated that people should treat the tax office as a service company rather than a state authority. The changes are still being implemented, currently the behavior can be described as cooperative.*

## **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?

*Advance pricing agreements (APA) are possible only for the largest tax payers. Cost is comprised of state duty (approx. EUR 32 000) plus legal fees.*

*All tax payers can apply for a clarification of the tax law to the Ministry of Finance for free.*

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

*Negotiating APA may take up to a year. Clarifications from the Ministry of Finance can be obtained within a couple of month.*

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

*APA is binding and as a result no back taxes can be assessed based on transfer pricing rules.*

*Clarifications from the Ministry of Finance are not binding for the tax payer. However, if the tax payer followed the clarifications back taxes may be assessed, but no penalties and late payment interest would apply.*

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

*Yes, one can rely on APA.*

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

*APA is a binding agreement between the Federal Tax Service and the tax payer on the methods that the tax payer would apply for determination of price of dealings with its related parties.*

*Clarification from the Ministry of Finance is just a non-binding point of view on how a particular provision of the tax law should be interpreted.*

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?

*APA and Clarification from the Ministry of Finance do not require to give up rights or to exchange information.*

*However, there is a procedure called 'horizontal monitoring' under which the Tax Authorities and the tax payer agree that the tax office would have spontaneous access to the tax payer's records and documents, and the Tax Authorities would*

*not conduct tax audits of such tax payers. This procedure is not described in the law being more like a gentlemen's agreement.*

- 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?

*APA's are confidential, only fact of their conclusion may be disclosed.*

*Clarifications from the Ministry of Finance are available in public domain, without details of a particular tax payer that has filed the request for a clarification.*

### **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 litigation is a routine for most of Russian companies. Recently amendments were introduced and almost all the Tax Authorities' decisions should be challenged first in the Higher Tax Authority and only after that in court.*

*Remedies are the same for both administrative and court procedures: invalidation of the decision of the Tax Authorities. As a result, the tax office would have to refund taxes and penalties that had been collected under the decision.*

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

*First the decision should be challenged in the Higher Tax Authority and only then in court.*

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

*Basic costs are legal fees if a company engages a law firm. If a company succeeds in court it can collect legal fees from the Tax Authorities, even though amount of reimbursement may be (and usually is) reduced by the court.*

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

*No, it is not.*

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

*Administrative procedure usually takes 2-3 month, litigation – about a year.*

- 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.)?

*Only a court may freeze the Tax Authority's decision if the decision is being challenged in that court. Usually the court would require a bank guarantee or cash deposit.*

- 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?

*Currently tax criminal cases are initiated only based on a report submitted by the tax authorities to investigative authorities. The report should be submitted if the tax authorities conducted a tax audit, assessed back taxes and the debt was not settled during 2 month.*

- 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)?

*No.*

## **2.4 Sanctions**

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

*3 years.*

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

*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.*

- 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?

*The penalties may be avoided if the tax payer relied on clarifications received from the Ministry of Finance.*

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

*Yes, if the tax payer has overpaid taxes and these taxes have not been reimbursed sanctions may be avoided.*

*Also fines should be reduced for at least 50% if there are mitigating circumstances such as the tax payer acting in a difficult financial situation, external factors negatively affecting the tax payer's activity etc.*

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

*No. Only investigative authorities within a criminal procedure can decide to hold an advisor liable for helping avoid taxes, but it would be quite difficult to prove in court. Therefore, currently tax/criminal responsibility of an advisor is unlikely.*

## **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?

*Information exchange happens under double tax treaties. A local tax authority would send a request for information to the Federal Tax Service. The latter would receive requested information from a foreign authority and share it with the local tax authority.*

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

*So far tax treaties have allowed exchange of information upon request. However, ratification of OECD Convention on Mutual Administrative Assistance in Tax Matters is expected that may serve as a basis for spontaneous/ automatic exchange.*

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

*No, the tax payer is usually confronted with a result of the exchange as evidence.*

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

*No.*