
UN-ATAF Workshop on Transfer Pricing
Administrative Aspects and Recent Developments

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THE IMPORTANCE OF DISPUTE RESOLUTION

Dispute resolution is essential to the effective functioning of a tax administration

Tax administrations serve to collect tax revenue. To do so
they must be able to resolve disputes.

DISPUTE AVOIDANCE AND RESOLUTION

(2) Available 5 methods of Dispute Avoidance and Dispute Resolution 85 and Section 27 and 29

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DISPUTE AVOIDANCE PROCEDURES

Dispute Avoidance

Clear legislative guidance on transfer pricing can help avoid unexpected taxpayer behavior and disputes from arising

Advance rulings such as Advance Pricing Agreements (“APAs”) may be helpful in avoiding transfer pricing disputes

Cooperative relationship programs (also called “enhanced compliance”) between taxpayers and tax administrations may assist in avoiding disputes on transfer pricing. These programs serve to improve the discussions and reporting relationships between taxpayers and tax authorities

Joint or simultaneous audits may assist with avoiding extended disputes and double taxation, as well as the envisage having two or more tax authorities reviewing a taxpayer’s cross-border transactions at the same time.

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Audit settlement

Upon audit of a MNC’s filed tax return tax inspectors may ask questions and provide a deadline for receiving information

Based on information not received the tax inspector may propose an adjustment (i.e. deny a deductible expense or increase taxable income)

When a tax adjustment is proposed there may be room for discussing the interpretation of the facts and an additional opportunity for taxpayer to provide information to substantiate the correctness of the filed return

The responsible tax inspector may have discretionary authority to review the additional information received to finalize the proposed adjustment in order to conclude or “settle” the matter. This may differ in case the rationale for the adjustment has been coordinated with and approved by an administrative specialist unit for strategic and consistency reasons.

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DOMESTIC DISPUTE RESOLUTION

Audit settlement : benefits

> settling a dispute at the audit level has certain advantages'

Real time's , ift solution of the dispute(

Avoidance of escalation of the issue audited and further tie&up
of government resources(

Confidentialit& of the process. >ettlement information can have
great competitive impact* therefore it is material to protect
taxpa&er information from being disclosed further(

A settlement ma& offer potential flexibilit& in ho , to characteri=e
and allocate the income adjustment(

>ettlement discussions ma& also allo , for an opportunit& to
build & improve the ongoing relationship , ith taxpa&er* and build
trust.

DOMESTIC DISPUTE RESOLUTION

Administrative - ' ;ection<Appeal4 Disadvantages

The process may be subject to political sensitivity depending on the place of the administrative objection/Appeals unit in the Revenue Authority office (or outside of that department) and hierarchy. The objection/appeals filing and experience can negatively influence the positions taken by the tax inspector/audit team and their approach during audits.

The process usually does not provide for resolution of the same issue in later years and as such does not help improve/change taxpayer behavior for later years as regards the same issue.

The outcome of the administrative procedure does not in itself provide for relief of double taxation for the taxpayer. The taxpayer may also seek for additional relief after the outcome of the procedure.

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DOMESTIC DISPUTE RESOLUTION

5 mediation

Some countries still offer an administrative dispute resolution procedure for audit adjustments that operates by way of mediation. If available, the procedure is usually conducted by an entire and independent division of the revenue authorities.

It may be available/accessible as early as at the time a dispute arises during an audit but also after an objection is filed or, while a judicial process is pending. Availability is dependent on both parties (tax inspector and taxpayer) being open to subject the dispute to mediation. The procedure is conducted by trained and professional mediators that usually are government-employed.

Dispute resolution may be achieved by focusing on other than technical issues, in particular, when there are relationship challenges that lead to an escalating dispute between the tax inspector and taxpayer, i.e. lack of trust, which influences the audit process.

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Domestic judicial procedure

The issue under dispute may be submitted to an independent court of law, for adjudication.

The decision from the government's side to have a case go to court often rests with someone higher in ranking than the tax inspector/assessing officer. Similarly, at taxpayer level, the decision to litigate a matter is often made by someone higher in ranking than the local tax director.

The court may be a specialist taxation court or a general court depending on the country and type of adjustment assessed. This is a relevant aspect to consider before the decision is made to litigate.

Court procedures may require a filing fee and may require that only specialists (lawyers) admitted to the bar and/or spe



Arbitration



Domestic rulings

Taxpayers may in certain jurisdictions request a written statement or opinion or ruling from the tax authorities about the tax implications of a transaction in advance of the transaction taking place and in advance of the tax return being filed to get certainty as to the tax consequences.

Generally such rulings are addressed to a particular taxpayer only and do not grant rights to other taxpayers not covered by the ruling.

The ruling is usually applicable to specific facts and if those facts change the ruling may no longer apply. Rulings may be granted for a specific time period and taxpayers generally cannot obtain any rights and protection from the ruling after that time period has run.

Rulings may not be available, especially with respect to politically sensitive

• cooperative • compliance programs

Based on the discussions with the tax authorities' taxpayers, in general, no, that the tax inspector position is and, that issues, will be scrutinized during audit.

