Editor: Pasquale Pistone

TAX PROCEDURES

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Tax Procedures

Why this book?
Tax procedures comprise all actions for collecting taxes according to the law. The exercise of powers by tax authorities in relation to tax procedures is subject to review and judicial appeals to protect taxpayers' rights.

This book supports a unitary study of tax procedures reflecting the links between their administrative and judicial phases. The comparative analysis reveals best practices and core principles shared by various countries. It also exposes inconsistencies, disparities and critical areas arising in the practice of tax procedures. This raises the question of the legitimacy of national procedural autonomy in tax matters across the European Union. The book puts forward a case for establishing a common framework for tax procedures that enhances those procedures in domestic and cross-border situations. The book takes a systematic approach to analysing tax procedures. The three core parts of this important work consist of general reports, topical reports and national reports.

Highlights:
- Comprehensive analysis of all relevant tax procedure issues in light of comparative, international and EU law
- The result of a collaboration with renowned academics as part of a three-year project
- Interesting discussion of the legitimacy of national procedural autonomy and the case for a shared tax procedures framework

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Preface

Tax law determines when taxes are due, in what circumstances and by whom (so-called "material" or "substantive" tax law), but also how such taxes are levied, i.e. the assessment, audit and collection of taxes, including their administrative and judicial review (so-called "formal" or "procedural" tax law).

These rules constitute the object of tax procedures and are instrumental to the material exercise of tax sovereignty, which tax authorities must carry out in compliance with the requirements of the rule of law and subject to the scrutiny of the judiciary.[1]

The mechanisms for the administrative and judicial review of acts issued by tax authorities in the framework of tax procedures create an inextricable link between the former (so-called "administrative tax procedures") and the latter (also known as "judicial tax procedures"). For this reason, it is methodologically appropriate to bundle their analysis together within a broad notion of tax procedures, even if, in most tax systems, they are two worlds apart.[2] Tax procedures also regulate the concrete application of sanctions applicable in connection with a violation of material tax law.[3]

The need for a comprehensive notion of tax procedures reflects the importance of an overall dogmatic comparative assessment of their impact on the exercise of taxing powers. Such analysis should assess whether and to what extent the protection of the right to a fair trial should also cover those parts of tax procedures that do not take place before the judiciary, but are able to produce an impact on it. This research project is part of a broader research

1. In some countries, the administrative phase of tax procedures is also known as "tax administration".
2. In various countries, such as Croatia, Luxembourg, Poland, Spain and Switzerland, even if there is no official definition, tax procedures end with the acts issued by the tax authorities and the completion of the administrative phase. Greece follows the same concept based on an official definition, and Ukraine with a listing of tax procedures, though without an official definition. In other countries, two different terms indicate the administrative and judicial phases of tax procedures. This is, for instance, the case of the Czech Republic, Italy (*procedimento* and *processo tributario*) and Russia (i.e. *процедуры*, transliterated as *prozedury*, generally used in the plural, and *процесс*, transliterated as *prozess*, also used in the singular).
3. However, tax sanctions have already been the object of analysis in the framework of an EATLP Congress. *See* R. Seer & A.L. Wilms (eds.), *Surcharges and Penalties in Tax Law* (IBFD 2016), Books IBFD. For this reason, they are, in principle, carved out from the scope of this book, although it will occasionally single out specific issues affecting them.

agenda[4] that aims to overcome the limited attention devoted to procedural tax issues by tax scholars, which have addressed them in each country, mainly within the domestic circle.[5]

Comparative analysis helps single out best practices and put forward solutions to all types of critical issues that may arise within tax systems. It also contributes to steering the convergence of tax procedures within the European Union, where national procedural autonomy operates subject to the limits established by the principles of equivalence and effectiveness in legal protection.

This book is the outcome of a 3-year research project involving a large number of tax researchers under the auspices of the European Association of Tax Law Professors. The main goal of this research project is to provide a systematic analysis of tax procedures, addressing all relevant issues and taking into account the diversity that such procedures may present in different positive legal environments. It supplements related studies and activities addressing the critical issues of legal remedies in tax matters.

After the preliminary formulation of the research questions and outline in 2017, a dedicated working group[6] singled out critical national issues and

4. The research consists of various pillars, including the research conducted by P. Pistone & P. Baker, *The practical protection of taxpayers' rights – General Report* (Cahiers de droit fiscal international vol. 100B, IFA 2015) and the (fact-finding) project monitoring the developments concerning the protection of taxpayers' rights, conducted in the framework of the IBFD Observatory on the Protection of Taxpayers' Rights (OPTR). Other relevant research includes the annual topical conferences organized by N. Olson on the Protection of Taxpayers' Rights and the research activity of the Study Group of the International Law Association (ILA) on The Protection of Taxpayers' Rights as Non-State Actors, to be presented at the August 2020 ILA Biennial Conference in Kyoto, Japan.

5. The main exceptions are studies on cross-border tax dispute settlement, such as in the case of mutual assistance, the mutual agreement procedure and tax arbitration.

6. The working group involved 39 blocks of contributions prepared by EATLP members from 18 countries, out of the 61 EATLP members who initially expressed interest in participating. The contributions by the members of the working group singled out relevant judicial and administrative practices. The General Report includes a selection of those contributions. The authors of those contributions are Tina Ehrke-Rabel (*Austria*), Luc de Broe, Luc Vanheiswijck and Filip Debelva (*Belgium*), Luk Vandenberghe and Ilse de Troyer (*Belgium*), Humberto Ávila and Daniela Gueiros Dias (*Brazil*), Luis E. Schoueri and Clara Gomes Moreira (*Brazil*), Natasa žunić-Kovačević (*Croatia*), Michal Radvan (*Czech Republic*), Juha Lindgren (*Finland*), Georges Cavalier (*France*), Emmanuel De Crouy-Chanel (*France*), István Simon (*Hungary*), Fabrizio Amatucci (*Italy*), Gianluigi Bizioli (*Italy*), Pietro Boria (*Italy*), Andrea Carinci (*Italy*), Alberto Comelli (*Italy*), Franco Fichera, Maria Cecilia Fregni and Valeria Mastroiacovo (*Italy*), Giuseppe Marino and Silvia Sut (*Italy*), Mario Miscali (*Italy*), Claudio Sacchetto (*Italy*), Pietro Selicato (*Italy*), Robert Attard (*Malta*), Gerard Meussen and Diana van Hout (*the Netherlands*), Nina Aguiar

good practices in terms of tax procedures. This content enriched the final outline, upon which, 23 national reporters elaborated an in-depth analysis of relevant issues of tax procedures, addressing them in line with the conceptual categories developed by scholars and the administrative and judicial practices of each country. Topical reports address some of the common critical issues highlighted by national reports and the areas of tax procedures that still require attention.

The General Report combines all of these materials, together with the author's view and the specific comments made by the selected guest speakers[7] and the participants in the EATLP congress held in Madrid on 7 June 2019.

The General Report, contained in chapter 1 of this book, broadly has the same structure and pattern of the national reports contained in chapters 7-29. Such structure addresses general and specific issues of tax procedures. The first two sections focus on the legal framework of tax procedures and the principles that govern them. The remaining three sections analyse the acts issued by tax authorities, their judicial review and the cross-border aspects of tax procedures. It ends with some concluding remarks in the final section. However, the General Report and national reports differ in some subsections. This difference may arise with regard to the level of detail in the respective analysis and, in some cases, with regard to the use of a slightly different terminology, which reflects that in common use within the national communities. The editor has decided to maintain such differences, integrating them, in some instances, with dedicated editors' notes (in square brackets in some footnotes), which facilitate the readers' understanding.

(*Portugal*), Gloria Teixeira et al. (*Portugal*), Dejan Popović (*Serbia*), Yolanda Martinez Muñoz (*Spain*), Carlos Palao Taboada (*Spain*), José Andrés Rozas Valdés (*Spain*), Ana Maria Pita Grandal and Carmen Ruiz Hidalgo (*Spain*), Eleonor Kristoffersson (*Sweden*), Börje Leidhammar (*Sweden*), Funda Başaran Yavaşlar (*Turkey*), Nihal Saban (*Turkey*), Danylo Getmantsev (*Ukraine*) and Leandra Lederman and Henry Ordower (*United* States).

7. The guest speakers, representing the views of practical and theoretical international renowned tax and non-tax experts on tax and procedural issues, were Luis-Maria Diez-Picazo (*Spain*), Nina Olson (*United States*), Georgios Pitsilis (*Greece*), Juliane Kokott (*Germany/Court of Justice of the European Union*), João Félix Pinto Nogueira (*Portugal*) and Sandra Knaepen (*Belgium/OECD*). A study, largely based on the presentation at the EATLP Madrid Congress, was published by J. Kokott, *Fact and Law-Finding Issues in the Preliminary Ruling and Infringement Procedures before the ECJ in Tax Matters*, 2 Intl. Tax Stud. 5 (2019), Journal Articles & Papers IBFD.

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Amsterdam, 16 October 2019
Pasquale Pistone

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Chapter 1

General Report

Pasquale Pistone

1.1. The legal framework

1.1.1. Concept

Tax procedures consist of a series of actions through which states assess and collect the taxes that they are entitled to levy in the exercise of their tax sovereignty. Etymologically, the Latin word *procedere* has an intrinsic dynamic nuance resulting from the combination of the Latin verb *cedere*[1] with the prefix "pro-", which expresses the idea of going forward.[2]

The series of actions undertaken in the framework of tax procedures involve private parties (such as taxpayer(s) and some third parties) together with public parties (namely tax authorities), which may issue various types of procedural acts (or even fail to do so). Such acts[3] (or the failure to issue them) have an impact on the tax obligations of the private parties – which, for this reason, are also called the "affected persons" – in connection with the levying of taxes. The legal issues arising in the framework of tax procedures not only relate to the validity of the acts issued by tax authorities, but also to their impact on the obligations of the private parties. For this reason, in line with the rule of law, a modern vision of tax procedures requires them to reconcile the interest of revenue collection with the protection of the legal sphere of persons affected by the issued acts.[4]

1. Among its various meanings, this Latin verb expresses the concept of going, passing and making way for something.
2. According to the French national report, the adoption of this expression is in line with a late 16th-century definition (*see* sec. 13.1.1. of the French national report).
3. In line with the common terminology in several countries, this general report may use the word "act" to indicate the documents formally issued by tax authorities in the framework of action that involves concretely exercising taxing powers in respect of specific situations. Tax procedures include various acts with various functions. However, especially from ch. 3 onwards, this general report will also use the expression "tax notice" as a synonym for an act issued by tax authorities and addressed to the affected parties.
4. In light of an analysis of tax procedures from the perspective of French scholars and judicial practice, ch. 2 of this book concludes that administrative and judicial tax

Consequently, even if the issuance of acts is a prerogative of tax authorities, the effective participation of the affected persons in tax procedures is necessary at all times in order to secure the exercise of taxing powers in line with the effective protection of the rights of such persons.

This has two further key corollaries. The first and most direct one is that the failure to secure this participation can give rise to breaches of fundamental rights in connection with the activities exercised by tax authorities. The second corollary is that when the acts issued by tax authorities are the immediate object of judicial review, the judiciary should also have the power to state on the rights connected with the underlying tax obligations when the affected persons so request.

The comparative analysis carried out in the framework of this general report shows that this is not always the case. In a large number of countries,[5] the judicial assessment of the rights affected by the acts issued by tax authorities only comes at a later moment than that at which the administrative and judicial reviews confirm the validity of such acts.[6] The administrative[7] and judicial phases of tax procedures closely interact, since the judicial phase can remove the effects produced by the administrative one but is not a necessary component of tax procedures and only operates upon the request of the affected persons.

The administrative phase often culminates in the issuance of specific acts targeting the assessment and collection of taxes.

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procedures have different functions, but this should not prevent the unitary assessment of their impact on the exercise of taxing powers and the protection of rights of the affected persons.

5. See the national reports of Belgium (ch. 8), Croatia (ch. 10), Czech Republic (ch. 11), France (ch. 13), Hungary (ch. 16), Poland (ch. 21), Russia (ch. 23), Spain (ch. 24), Sweden (ch. 25), Switzerland (ch. 26) and Turkey (ch. 27).

6. This system establishes an obligation of prior exhaustion of administrative reviews in order to access the judiciary. In principle, this mechanism should allow the administrative review to operate as a filter in order to avoid too many cases reaching the judiciary. However, in practice, this filter does not always work, especially when (as in the case of, for instance, Croatia) administrative reviews end up being decided in favour of the tax authorities in an overwhelming majority of cases. *See further* on this in ch. 4, in which the author advocates for the parallel operation of such activities, leaving it up to the affected persons to decide which way to proceed towards obtaining the effective protection of their rights.

7. Not all legal systems share the notion of administrative law as a body of law that regulates the activities of the government. Nevertheless, this report adopts the expression "administrative phase", which best describes the activity of tax authorities, consisting of concretely managing (and thus, administering) the exercise of taxing powers in respect of specific situations concerning taxpayers, subject to judicial review.

In some cases, this phase may not result in the issuance of any act by tax authorities for the purpose of auditing and/or requesting an additional payment of tax. This occurs when tax authorities consider that the private parties have duly fulfilled their obligation to assess and pay taxes due or when tax authorities fail to exercise their power to audit and collect taxes in a timely manner.

In other cases, tax authorities may have to address the refund of taxes that were either undue (*ex ante* or *ex tunc*) or paid in excess. In such context, the administrative phase operates in a reversed scenario, in which the activity of tax authorities involves assessing the entitlement of taxpayers to a credit from the state and its actual payment.

The judicial phase involves a review of the validity of the acts issued by tax authorities in line with the rule of law, but may also ascertain the failure to issue them and the rights that arise for the affected persons in either context.

Despite such different functions, the two phases of tax procedures share the common goal of securing the concrete exercise of taxing powers in line with the rule of law. For this reason, from a methodological perspective, it is submitted that the study of tax procedures does not address the issues of each phase in isolation, but has a comprehensive nature, taking into account their respective specific issues, as well as how they interact.

Therefore, insofar as there is a right to a fair trial applicable to tax matters, there may be no right to fair judicial tax procedures without a right to administrative tax procedures.

The administrative phase operates in different ways across the different tax systems and in respect of different types of taxes. Modern tax systems frequently leave the primary tax assessment and collection in the hands of private parties (taxpayers or third parties), thus making the administrative phase start with the documents submitted by them rather than with the action of the tax authorities.

In such a context, the role of tax authorities is to focus on auditing the results of tax returns and supervising the actual payment of taxes. For such purposes, tax authorities can issue dedicated acts. In the current scenario, nothing prevents the issuance of several procedural acts, also in respect of the same taxpayer. The most typical example of this kind, recorded across the national reports, is when tax authorities first issue a tax notice in the framework of an audit and then a second one for tax collection. In such

circumstances, even if the tax collection notice normally follows the tax audit one, there can be situations in which the former can produce its effects even before the latter has become final, thus almost operating in parallel.

The acts issued by tax authorities have the power of completing the administrative phase of tax procedures, giving rise to *res decisa*, i.e. a final administrative act. Since all acts issued by tax authorities that are capable of directly affecting the legal sphere of their addressees are appealable, *res decisa* is either the consequence of the deliberate decision not to appeal against an act or an indirect consequence of the failure of the affected person to activate the judicial remedies against the acts issued by tax authorities in a timely manner.

The completion of the administrative phase may be the starting point of the judicial one, which continues the procedure before a different power of the state in order to secure an impartial review of the acts issued by tax authorities (or the failure to issue them).

Despite the obvious logical priority of the administrative over the judicial phase, nothing prevents them from running in parallel. This may, for instance, occur when the affected person appeals a tax notice, questioning its validity, but the tax authorities keep executing the act to collect the tax.

Nothing would prevent having several judicial appendices of acts issued during the administrative phase of a single tax procedure. This may occur when the affected persons file two separate judicial appeals that not only question the validity and content of the act issued by the tax authorities, but also request the judiciary to suspend the execution. Furthermore, there can also be the same type of judicial appeal filed by the same affected person in respect of two different acts issued by tax authorities, such as in respect of audits and the collection of tax.

In general, the judicial phase starts with a specific formal request for justice by the affected persons, who have legitimation to file an appeal. The appeal sets the boundaries of the matters falling within the jurisdiction to adjudicate and indicates the specific grounds for invoking the intervention of the judiciary. Once the judicial phase has started, it is normally for the judiciary to determine the final content of the act, originally issued by the tax

authorities, that applies to all parties. This final judicial decision produces *res judicata*, which cannot be the object of further appeals.[8]

The rights and obligations of private and public parties in tax procedures present special features in cross-border tax disputes. Such disputes arise between states but affect private parties. Even if the latter enjoy legal remedies in each state, they may not just be the object of the cross-border dispute, but should be seen as the holders of rights also in the framework of the special cross-border procedures – such as (mainly) mutual agreement and a sui generis type of arbitration – used for settling such disputes.[9]

In principle, the analysis of tax procedures in the cross-border context should preserve the right to equivalent legal protection in line with the requirements established by the rule of law. In practice, this is often very difficult to achieve, especially if one considers that each state has its system of legal remedies, that there is no international tax court with jurisdiction to adjudicate the cross-border tax dispute and that, seen from the perspective of the affected persons, activating two legal remedies in parallel may not be as good.[10]

1.1.2. Boundaries

As indicated earlier, the author suggests adopting a wide definition of the boundaries of tax procedures, which includes both their administrative and judicial phases.

Some countries include an official definition of tax procedures in their primary[11] or secondary[12] sources of law and establish precise boundaries for such procedures. Many others do not, however, thus leaving the definition and boundaries of tax procedures up to legal interpretation, but in some cases, comprehensive rules on tax procedures are included.[13]

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8. However, legal interpretation in some countries, such as Italy, does not exclude that tax authorities may amend their acts to the benefit of the affected persons also in the presence of *res judicata* (*see* the national report of Italy (ch. 17)).
9. Such disputes will be the object of dedicated analysis in the framework of sec. 1.5.
10. This can lead, in cross-border situations, to the phenomenon of double justice (*see* sec. 1.5.).
11. *See* the national reports of Brazil (ch. 9), Greece (ch. 15), Hungary (ch. 16), Poland (ch. 21), Portugal (ch. 22) and Ukraine (ch. 28).
12. *See* the national report of Spain (ch. 24).
13. *See*, for instance, the national reports of Greece (ch. 15) and Sweden (ch. 25). The French tax system includes a comprehensive and specific set of rules concerning the administrative phase of tax procedures (*Livre des Procédures Fiscales*).

The differentiation between material and formal law acknowledged in the legal systems of various countries with a European continental legal tradition produces some implications also for the rules that govern tax procedures (procedural or formal tax law) and their relation to those that regulate the exercise of taxing powers (substantive or material tax law).[14]

The main implication is that, insofar as tax procedures are an expression of formal law,[15] they are instrumental to the concrete exercise of taxing powers, as established by substantive tax law. This context affects the interpretation of the procedural tax rules.

Rules on tax procedures generally escape the limits of retroactivity and retrospectivity, as established for substantive tax rules.[16] However, other limits apply to procedural tax rules in order to secure the effective protection of taxpayers' fundamental rights and avoid that tax authorities exercise their powers arbitrarily.

Further difficulties can arise in countries that apply the *tempus regit actum* principle to tax procedures, which applies the law in force at the time of issuing of the act of each procedure. This is, for instance, the case for changes to the rules on the burden of proof, which are, in some countries, included among the rules on tax procedures,[17] and in others are also[18] (sometimes mainly)[19] regulated in the framework of material law.

This type of issue arises in a broader number of borderline situations, such as for the reaction to tax avoidance or the statute-on-limitation rules, proving that it is, in fact, difficult to draw a precise dividing line between substantive and procedural tax law. In some systems, the law itself makes this choice by deciding whether or not to bundle these rules with tax procedures.[20]

14. *See* the national report of Brazil (ch. 9).
15. In Russia, only judicial tax procedures are traditionally considered a part of formal law, with the administrative procedures instead bundled together with substantive rules within the framework of material law.
16. *See* H. Gribnau & M.R.T. Pauwels, *Retroactivity - General Report*, 2010 EATLP Leuven Congress, p. 41 et seq. (IBFD 2013).
17. Sec. 9.1. of the Brazilian national report indicates that critical issues may arise in this context for changes that increase the powers of tax authorities as to the determination of the taxable base and the methods for tax auditing.
18. *See* the national report of Sweden (ch. 25).
19. *See* the national report of Portugal (ch. 22).
20. In Greece, all such rules are included, together with all other procedural tax rules, in the Code of Tax Procedures. Similarly, the Spanish General Tax Law (*Ley General*

In line with the broad boundaries for the definition of tax procedures, they should also cover the rules concerning the application of tax sanctions and penalties, since the object and purpose of such rules is intrinsically connected with the violation of tax law.[21]

1.1.3. Types

The classification of tax procedures helps one understand their specific context and improves legal interpretation in line with their actual object and purpose.

The author proposes to conduct this classification according to two main criteria, namely the function and object of tax procedures.

The first criterion relies on the different function of administrative and judicial tax procedures and also reflects the two main phases of tax procedures, as indicated in section 1.1.1.

Administrative and judicial procedures share the common goal of securing the collection of taxes in a way that reflects the correct application of the law to the specific situation of a given taxpayer.

Within such a framework, administrative tax procedures pursue this goal using the interaction between tax authorities and taxpayer(s). This requires neither a previous tax assessment in order to start tax collection, which can operate through withholding taxes levied by third parties or voluntary payments by the taxpayer themselves, nor the issuance of any act by tax authorities, who may limit their intervention in connection with tax audits and further activities in the framework of forcible tax collection.

Judicial tax procedures pursue the same goal with an impartial review by a different branch of the *trias politica*, which makes sure that the acts issued within the framework of the administrative phase conform to the requirements established by law.[22] In this sense, judicial tax procedures presup-

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Tributaria) bundles those rules with all the other rules on procedures. In Sweden, they are part of procedural tax law, even if, in some circumstances, rules on the burden of proof are bundled together with substantive tax law.

21. *See*, in this sense, the national reports of France (ch. 13) and Germany (ch. 14).

22. The powers of the tax authorities in Turkey go beyond the administration of taxes in the framework of tax procedures. This peculiar inconsistency with *trias politica* has its legal basis in art. 257 of the Procedural Tax Law, which allows the Ministry of Finance to issue General Communiqués. Despite not being expressly authorized by the Turkish

pose the administrative ones, of which they constitute a possible extension operating upon the initiative of the affected person(s).

Two critical issues arise at the intersection between the two different phases of procedures.

First, several tax systems require the prior exhaustion of administrative procedures in order for the judicial ones to start. The author questions whether this is adequate to fulfil the goals of the expedient handling of tax procedures, also considering that the existence of a single act (or, in some cases, even the failure to issue one) is per se sufficient to allow the judiciary to exercise its reviewing function. The author suggests that administrative reviews should instead run in parallel with judicial procedures or as an alternative to them, left to the choice of the taxpayer.[23]

Second, various tax systems include several administrative review instances, which, in essence, postulates that some tax authorities are reviewing the work done by other tax authorities of the same country. This mechanism either duplicates the function exercised by the latter tax authorities or by the judiciary, ignoring the circumstance that the latter is simply better off performing this function alone.

The traditional and official justification of this duplication is that administrative review operates as a filter, avoiding that incorrect acts reach the judiciary. In fact, this filter often does not work and ends up generating a proliferation of instances[24] that increases the time to reach justice and imposes limits on it that are incompatible with the fundamental right to have controversies settled within a reasonable time.[25]

Constitution, the Turkish Constitutional Court (*see* TR: Constitutional Court, 5 Oct. 1991, E. 1990/29, K. 1991/37; TR: Constitutional Court, 15 Oct. 1991, E. 1990/29, K. 1991/37; TR: Constitutional Court, 13 Jan. 2011, E. 2009/21, K. 2011/16; TR: Constitutional Court, 8 Dec. 2015, E. 2014/87, K. 2015/112; TR: Constitutional Court, 7 Sept. 2016, E. 2016/124, K. 2016/155; and TR: Constitutional Court, 14 Sept. 2017, *Ali Rıza Zümbül*, Individual App. Case No: 2014/2328) has found it compatible with the principle of legality for being related to technical issues, securing the public receivables, preventing the loss of tax revenue and tax evasion and securing legal certainty to the advantage of taxpayers. Similar problems de facto arise in Croatia with the issuance of opinions.

23. Further on this, *see* sec. 1.4.

24. In some tax systems, such as that of Spain, an exact calculation of all the instances of administrative and judicial review through which acts issued by the tax authorities have to go in order to complete the actual procedure depends on the type of tax.

25. IT: ECJ, 29 Mar. 2012, Case C-500/10, *Ufficio IVA di Piacenza v. Belvedere Costruzioni Srl*, para. 25 (Case Law IBFD) shows that the right to obtain justice in reasonable time is an essential component of the rights to a fair trial and the protection of legal certainty, which prevail over the actual content of the dispute.

These critical remarks do not affect the goal of having judicial tax procedures as a possible extension of tax procedures. On the one hand, the supplementary function of judicial tax procedures implies that they should only address cases in which tax authorities and affected persons do not succeed in determining the correct application of the law.[26] On the other hand, tax systems should not discourage access to judicial review.[27]

The second criterion takes into account the object of the tax procedure and raises issues from two different perspectives.

First, despite the significant convergence of the procedures applicable in respect of the different types of taxes,[28] only a few countries apply one single type of procedure to all taxes,[29] but often with specific rules that apply in only some circumstances.[30] Procedural differences are, in some cases, a relic of old traditions,[31] and in others a natural consequence of the various ways of assessing taxes or other relevant factors.[32] This general report favours their possible convergence in the future, at least to the extent that the comparative legal analysis shows that their assessment and collection can technically operate similarly. Furthermore, inside the European Union, this may be particularly useful in largely harmonized areas of tax law, such as VAT, excise duties and customs.[33]

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26. This supplementary function does not always properly work in tax matters, especially in countries (such as Italy and Spain) where there are very high volumes of tax litigation until the highest judicial instances as compared to those of many others.
27. This is the case when the tax system considerably reduces sanctions in cases of agreements between the tax authorities and the taxpayer. The reduction would, on the one hand, reduce the punitive effects that should arise in the case of violations, and on the other hand, encourage taxpayers not to raise potential critical issues concerning the act issued by the tax authorities, since the taxpayers would end up risking paying significantly more if their objections were ill-founded.
28. Even though some countries keep tax assessments in the hands of the tax authorities (at least for some of the existing taxes), for most types of taxes, it is now most common to involve the affected persons in tax assessments, limiting the role of tax authorities in auditing.
29. This is more frequently the case of countries with a general tax law, such as Germany, Poland, Russia and Spain, or with a general procedural tax law, such as Greece and Hungary.
30. *See* the national reports of the Czech Republic (ch. 11), Finland (ch. 12), France (ch. 13), Greece (ch. 15), Norway (ch. 20), Sweden (ch. 25) and Ukraine (ch. 28).
31. *See* the national reports of Belgium (ch. 8) and Luxembourg (ch. 18). In Italy and the United Kingdom, essentially the same administrative tax procedures apply, but under legislatively separated sets of rules.
32. *See* the national report of Switzerland (ch. 26).
33. In principle, the author acknowledges the principle of national procedural autonomy, subject to the limits of effectiveness and equivalence. The issuance of common procedural rules, for instance, on VAT matters, could facilitate the operation of joint audits, enhance

Second, different procedural rules can apply to sanctions and penalties, as compared to those related to the assessment of the liability to tax and the existence of the violation, which generates the obligation to pay such sanctions and penalties. Various systems include special procedural rules – in this case, also considering that the failure to pay tax may present a double offence for the legal system, namely that of affecting the interest to collect taxes and of violating the law, which may also raise issues of *ne bis vexari*.[34]

1.2. The legal principles of tax procedures

1.2.1. The sources of legal principles

1.2.1.1. Classification of sources and main sources of legal principles

Besides reflecting the principles of taxation, the legal principles of tax procedures prevent arbitrariness and preserve the consistency of the exercise of taxing powers with the requirements of the rule of law.[35]

The rule of law is, unquestionably, the main legal principle applicable to tax procedures and the minimum common denominator for all of them. In line with the maxim *ubi ius, ibi remedium*, the rule of law is necessarily bundled with the right to legal protection, which gives the affected persons legal remedies against any possible violation.

The legal principles of tax procedures postulate the formal compliance of acts issued by tax authorities with the requirements established by law, but also make sure that the actual levying of tax corresponds to the tax policy choices of each legislator and the underlying substantive principles of taxation within each system.

For this reason, the substantive principles are mainly confined within their positive dimension in each country. By contrast, the procedural principles have a universal vocation, which the author intends to address across their

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the homogeneous protection of rights throughout the entire territory of the European Union and improve the reaction to critical issues, such as the fight against abusive and fraudulent practices.

34. *See further* sec. 1.2.2.

35. Getmantsev, in the Ukrainian national report, sec. 28.2., indicates that "the principles of taxation … must comply with the principles of tax law and provide the necessary prerequisites for the formation and approval of the principles of tax law".

main sources in search of a common dimension, or at least common standards. In most legal systems, the legal principles of tax procedures have three main sources,[36] namely (i) national constitutions; (ii) the internationally accepted legal principles; and (iii) for EU Member States,[37] the supranational law of the European Union.

In common law countries, judicial interpretation is the source of legal principles or, more frequently, the recognition of their meaning and scope with regard to specific areas within the legal system. This is even more so the case for countries, such as the United Kingdom, that lack a written national constitution.

Additional sources of legal principles, hereby indicated as ancillary sources, exist in various legal systems and often have the function of implementing the main principles of tax procedures.[38]

National constitutions, even when unwritten,[39] play a central role in establishing the foundational legal principles of tax procedures and the framework within which the law may regulate the relations between the state and the taxpayers. In such context, the principle of equality of arms is gaining momentum within tax procedures across the reported countries.[40] However, the need to protect the interest of the community in tax procedures often counterbalances this principle and allows the more limited application of this principle in line with the standards of the right to effective defence against any measure that can adversely affect the legal sphere of a person and, therefore, ends up coming very close to the core values of the right to legal protection.

36. Belgium also acknowledges the relevance of unwritten constitutional principles against which it is possible to test the validity of legal acts. The Belgian national reporters consider them an open-ended category (*see* section 8.2.1.), derived from the constitutional system in its entirety. Luxembourg adopts a similar approach, insofar as it considers the general principles of administrative law the source of legal principles applicable to tax procedures. *See further* section 18.2.2. of the Luxembourg national report.

37. Contracting states of the European Economic Area (EEA) Agreement are bound to comply with EU law under the conditions indicated in the agreement.

38. Further on this, *see* sec. 1.2.1.2.

39. The United Kingdom is the most notable example of a country without a written constitution.

40. The German national report (ch. 14) refers to the position held in DE: Constitutional Court, 27 June 1991, 2 BvR 1493/89; and DE: Constitutional Court, 9 Mar. 2004, 2 BvL 17/02, according to which the exercise of taxing powers by the German tax authorities must secure equality of taxation through equality of the tax burden.

Tax law traditionally addresses the right to legal protection only in connection with the protection of taxpayers' rights. However, it is equally important for tax procedures, since the essence of the rule of law goes beyond the issuance of formally correct acts and also requires the granting of actionable rights to the persons affected by such acts. Taxpayers are not "children of a lesser God", but holders of actual rights in the framework of tax procedures, just like all other persons, also towards their community.[41]

The rule of law and the right to legal protection should therefore be adopted as the legal principles of tax law that establish a global minimum standard for tax procedures. Sometimes, the rule of law and the right to legal protection are unbundled in national legislation that more precisely regulates them.[42] This unbundled dimension is visible at the constitutional level in Brazil and Portugal, the constitutions of which contain the most analytical lists of such principles.[43]

The implications of a common dimension for the sources of legal principles applicable to tax procedures can even go as far as questioning the validity of constitutional principles and their interpretation. Even if not universally codified, the silent presence of the rule of law and the right to legal protection permeates the legal interpretation of the various countries, also in purely domestic situations, showing, in fact – albeit in different ways, according to the monistic and dualistic legal systems – their intrinsically more authoritative legal status, which they derive from their international validity.[44] These dynamics are gaining momentum in the era of global tax law, which shows a growing attitude of the national judiciaries to look beyond the positive boundaries of legal principles and compare them with internationally accepted standards and interpretations.[45]

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41. In this sense, as indicated in P. Baker & P. Pistone, *General Report*, p. 45 (IFA 2015 Basel Congress, The Practical Protection of Taxpayers' Rights), the compensation of damages for the violation of the fundamental rights of taxpayers is not as good as their *ex ante* protection.
42. *See* the national reports of Hungary (ch. 16), Portugal (ch. 22) and Switzerland (ch. 26).
43. *See* the national report of Brazil (ch. 9).
44. The French Constitutional Court often invokes the 1789 Declaration on the Man and the Citizens in its interpretation of the constitutional principles, having remarkable influence on the international standards of the protection of fundamental rights.
45. The author perceives, in this context, an ever-increasing impact of such standards and interpretation on the national dimensions of the principles affecting tax procedures, which flourishes through some form of unwritten principles that secure flexible consistency with common constitutional traditions across national borders. In the European Union, the common constitutional tradition has a specific legal value, based on art. 6(3) of the Treaty on European Union and art. 52(3) of the EU Charter of Fundamental Rights (EU Charter).

The rule of law and the right to legal protection in tax procedures share a broadly common dimension under the European Convention on Human Rights (ECHR) and the EU legal order.[46]

The ECHR is the most prominent example of codification of the internationally accepted legal principles affecting tax procedures and includes two relevant provisions, namely article 6 on the right to a fair trial[47] and article 4 of the Seventh ECHR Protocol[48] on the right not to be tried or punished twice.

Since such provisions define the boundaries within which the right to legal protection operates, they should be regarded as the main sources of legal principles applicable to tax procedures in Europe. However, the issue arises as to what procedures fall within the scope of such provisions.

The wording of article 6 of the ECHR allows its application to tax procedures to the extent that they affect the determination of criminal penalties (understood in line with the criteria spelled out by the European Court on Human Rights in the *Engel* case)[49] and the procedural rules applicable in such context.[50] Although in the *Ferrazzini* judgment,[51] the European Court of Human Rights left broad discretionary power to the legislator to intervene

46. In line with art. 52 of the EU Charter, the European Convention of Human Rights (ECHR) establishes the minimum standards of legal protection within the European Union without preventing the European Union from applying higher standards.
47. Further regional conventions contain provisions on the right to a fair trial and are capable of achieving equivalent levels of influence on the principles that govern tax procedures across the world. In particular, *see* the Inter-American Convention on Human Rights (Inter-American Convention), adopted in Costa Rica on 22 November 1969, and the African Convention on Human and Peoples' Rights (African Convention), adopted in Banjul on 27 June 1981. Art. 8 of the Inter-American Convention addresses the right to a fair trial in a way that is substantially similar to that in the corresponding provision of the ECHR, but also expressly refers to "the determination of his rights and obligations …of a … fiscal, or any other nature". This facilitates a broad application to all tax procedures of the principles contained therein. Art. 7 of the African Convention includes a reference to fundamental rights and is formulated in a broader way that allows for its application to tax procedures.
48. The Seventh Protocol to the ECHR was signed in Strasbourg on 22 November 1984 and entered into force on 1 November 1988. This Protocol binds a large number of countries, including all EU Member States (except for the United Kingdom), EEA member countries, Russia, Switzerland, Turkey and many others.
49. *See* NL: European Court of Human Rights (ECtHR), 8 June 1976, *Engel v. Netherlands*, Applications 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72, which adopts a broad notion of the category of criminal offences, taking into account their classification under national law, together with the nature of the offence and the severity of the punishment. *See further* sec. 3.2. of this book.
50. *See further* sec. 3.2. of this book.
51. *See* IT: ECtHR, 12 July 2001, *Ferrazzini v. Italy*, Application 44759/98.

in such matters, later case law has circumscribed the effects of this judgment to preserve the rule of law, especially in procedural matters.[52] This is in line with the author's view that some leeway must be recognized with regard to the choices of national legislators in respect of the substantive tax issues, but not to the choices concerning procedural issues.

The wording used in article 6 of the ECHR frames this right within the boundaries of a fair trial and would not necessarily apply to the administrative phase of tax procedures. However, the interpretation by the European Court of Human Rights on tax matters has endorsed the application of the right to a fair trial also to some activities that precede the actual litigation before the judiciary.[53] The author particularly welcomes this reasoning, which constitutes the starting point for recognizing that, due to the connection between the administrative and judicial tax procedures, in this context, there can be no right to a fair trial (i.e. judicial tax procedures) without a right to fair administrative tax procedures.[54]

Article 4 of the Seventh ECHR Protocol gives the prohibition of double jeopardy a broad scope with regard to criminal offences, which prevents the opening of a second proceeding in the presence of a final conviction without preventing the right to reopen cases in the presence of new relevant facts. The connection with the right to a fair trial produces various repercussions at the level of interpretation, such as the notion of criminal offences, but cannot prevent the running of parallel procedures until either of them gives rise to *res judicata*.

Criminal tax offences are the source of a two-sided danger for the legal system, both from the perspective of the failed collection of tax and the noxious effects produced by the serious violations of legal rules. For this reason, in most legal systems, such offences can be the object of a general (criminal) and a specific (tax) procedure, which often run in parallel and expose the affected persons to an obligation to defend themselves twice.

Further critical issues arise from the perspective of article 4 of the Seventh ECHR Protocol when legal systems apply administrative and criminal sanctions in respect of the same type of tax offence. The European Court of

52. *See* RU: ECtHR, 31 July 2014, *Yukos v. Russia*, Application 14902/04.
53. *See* FR: ECtHR, 21 Feb. 2008, *Ravon v. France*, Application 18497/03; and CH: ECtHR, 24 Nov. 2003, *Imbrioscia v. Switzerland*, Application 13972/88. In SE: ECtHR, 23 July 2002, *Janosevic v. Sweden*, Application 34619/97, the ECtHR included the time of issuing the audit report in the calculation of the duration of the procedure.
54. In this sense, *see also* German national report, sec. 14.2.3.1.

Human Rights has taken different views on the application of this right, showing stronger protection of the procedural[55] limb of this right as compared to the substantive one.[56]

In the European Union, supranational law prevails over the national law of the Member States from domestic and treaty sources. For this reason, it is a particularly authoritative source of legal principles applicable to tax procedures. Several core principles of EU law are contained in the EU Charter of Fundamental Rights (EU Charter), which has binding value since the entry into force of the Treaty of Lisbon.

The EU Charter is not the immediate source of EU law principles, but has a mere declaratory nature in respect of their existence. Consequently, the existence of legal principles included in the EU Charter is unquestionable, but nothing prevents legal principles of EU law from going beyond their positive dimension within the EU Charter or having additional principles to those contained in the EU Charter.

While the right to legal protection is enshrined in various provisions of the EU Charter, it contains no express general provision recognizing the existence of the rule of law. However, article 2 of the Treaty on European Union (TEU) specifically acknowledges that the rule of law is one of the founding principles of the EU legal system.

The Court of Justice of the European Union (ECJ) has repeatedly affirmed that the rule of law and the right to legal protection are the cornerstones of the EU legal system. In particular, it stated long ago that the rule of law implies that "neither Member States [of the European Union] nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty".[57] Settled ECJ case law holds that the right to an effective legal remedy gives EU nationals the right to invoke legal protection in respect of each measure

55. GR: ECtHR, 30 Apr. 2015, *Kapetanios and Others v. Greece*, Applications 3453/12, 42941/12 and 9028/13.
56. In NO: ECtHR, 15 Nov. 2016, *A and B v. Norway*, Applications 24130/11 and 29578/11, it was admitted that administrative and criminal sanctions may apply in respect of the same offence, if they work in harmony. The French *Conseil Constitutionnel* (Constitutional Court) reached a similar conclusion on the basis of the different nature of the two sanctions and to the extent that the combined effect of both sanctions would not exceed the upper threshold of the higher sanction. *See* FR: Constitutional Court, 24 June 2016, n. 2016-545 QPC, *M. Alec W. et a.*
57. FR: ECJ, 23 Apr. 1986, Case C-294/83, *Les Verts*, para. 23.

adversely affecting them[58] and that this right applies to EU law provisions with direct effect and insofar as the situation falls within the scope of EU law.[59] However, it is generally held that EU law directly gives applicable rights only insofar as the relevant infringements fall within its scope. This has, so far, significantly reduced the development of legal protection in the field of direct taxes.[60]

Articles 41 and 42 of the EU Charter, addressed to EU institutions, as well as further provisions contained in the EU Charter, clearly reflect this pattern.[61] In particular, the formulation of article 41 clearly reflects the joined functioning of the rule of law and of the right to legal remedies, since it identifies them as components of the right to good administration, which should be the cornerstone of procedures handled by EU institutions and by Member States when implementing EU law.[62] This is also visible in article 42, which enshrines the right of access to the documents of EU institutions, supplementing the requirements established in article 41(2)(b).

In line with such vision, the content of articles 41 and 42 is to be determined in line with the content of article 47 (on the right to an effective remedy and a fair trial), of article 48 (on the presumption of innocence and the right to defence) and article 50 (on the right not to be tried or punished twice in criminal proceedings for the same offence).

58. PO: ECJ, 18 Dec. 2008, Case C-349/07, *Sopropé– Organizações de Calçado Lda v. Fazenda Pública*, para. 36, Case Law IBFD.
59. Id., at para. 34.
60. However, Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute settlement mechanisms in the European Union, OJ L 265/1 (2017), Primary Sources IBFD [hereinafter Tax Dispute Resolution Directive] can open new avenues for the application of the principles of EU law under the jurisdiction of the Court of Justice of the European union (ECJ), also in direct tax matters. On this, *see* J. Kokott, *Taxpayers' Rights*, sec. 3., 60 Eur. Taxn. 1 (2020), Journal Articles & Papers IBFD. This matter is being explored in the framework of the research project of the Study Group of the International Law Association on International Taxation. The report will be presented to the public at the International Law Association (ILA) conference to be held in August 2020.
61. Besides the clauses having a direct impact on tax procedures, art. 49 of the EU Charter addresses the prohibition of double jeopardy from the perspective of *ne bis puniri* and the need for sanctions to be proportionate to the actual offences.
62. Art. 41(1) of the EU Charter presents the right to good administration as an entitlement to have one's affairs handled by EU institutions impartially, fairly and within a reasonable time. Art. 41(2) adds further meaning to this by including (i) the right to be heard; (ii) access to relevant files; and (iii) the right to have confidentiality protected. The interaction of art. 41(1) and (2) with art. 47 of the EU Charter shows the link between the rights affecting tax procedures and the remedies available under EU law to secure their effective protection.

The content of the legal principles of supranational law of the European Union applicable to tax procedures shows a strong resemblance to that of the principles contained in the EC HR.[63] This similarity affects almost all the provisions enshrined in the EU Charter, which often share a common core and present either some stronger levels of protection or a more streamlined framework as compared to the conditions included in the ECHR. This scenario prevents significant discrepancies from arising and steers the standards of legal protection applicable to tax procedures towards convergence.

Article 52(3) of the EU Charter further helps this convergence by indicating that the meaning and scope of the rights enshrined in the Charter shall be the same as under the ECHR, to the extent that their wording is similar. This provision limits the incidence of potential different standards of protection between the two sources of legal principles, also taking into account that the second sentence of article 52(3) expressly allows EU law to adopt higher standards of protection than those that apply under the ECHR.

Until the accession of the European Union to the legal system of the ECHR,[64] conflicts between those two sources of legal principles applicable to tax procedures may still arise. This may occur in connection with different standards of interpretation,[65] especially when the ECJ addresses one issue in the absence of any interpretation by the European Court of Human Rights and the latter, in a subsequent judgment, takes a different position.

63. This book will address this more in detail in specific operational contexts (*see* chs. 3-5).

64. The ECJ has expressed its opposition to the European Union's accession to the European Convention on Human Rights, arguing that this could prevent the ECJ from securing the correct interpretation of its case law. *See* ECJ, 18 Dec. 2014, Opinion 2/13.

65. For example, this may have occurred in respect of the position held by, on the one hand, the ECtHR in NO: ECtHR, 15 Nov. 2016, Applications 24130/11 and 29578/11, *A and B v. Norway* and, on the other hand the ECJ in ECJ: SE: ECJ, 26 Feb. 2013, Case C-617/10, *Åklagaren v. Hans Åkerberg Fransson*, Case Law IBFD. Even if, in principle, it is possible that this different view can be reconciled with the existence of higher standards of protection in the European Union, in the later *Menci* case (IT: ECJ, 20 Mar. 2018, Case C-524/15, *Criminal proceedings against Luca Menci, intervening parties: Procura della Repubblica*, Case Law IBFD), the position taken by the ECJ was closer to that adopted by the ECtHR. Considering that both ECJ judgments originate from preliminary ruling procedures, the factual pattern may have played an important role in determining the different conclusions reached by the ECJ. The author finds it important to achieve clarity in this respect, also taking into account that meanwhile, national courts already struggle to reconcile the positions held by the ECJ in *Åkerberg Fransson* and by the ECtHR in *A and B v. Norway*. *See* IT: *Corte Costituzionale* [Constitutional Court], 24 Jan. 2018, Case 43/2018; and MT: Constitutional Court, 29 May 2015, Case 33/2013/1, *Angelo Zahra*.

The judicial dialogue between the courts in Luxembourg (ECJ) and Strasbourg (European Court of Human Rights) in fact takes place without any formal legal cooperation framework and in a context in which either court has to secure the correct interpretation and application of its law, often being required to address the interpretative issue in respect of a narrow framework. In the EU legal system, this is due to the fact that most ECJ judgments relate to preliminary ruling procedures, in which the national court normally establishes the boundaries of the required interpretation of EU law.[66]

EU law also includes a clause for facilitating its interaction with legal principles contained in national constitutions. Article 52(4) of the EU Charter indicates that, in the presence of fundamental rights shared with "the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions". The wording of this clause differs from that of article 52(3) of the EU Charter, but still establishes an obligation to reconcile the interpretation of the supranational dimension of legal principles with the corresponding national interpretations if shared by the various Member States. This obligation reflects the content of article 6(3) of the TEU, according to which the common constitutional tradition forms part of the general principles of EU law and is, perhaps, the most important positive expression of the doctrine of constitutional pluralism, which shares the foundational legal values of modern civilized societies with a view to steering them towards global convergence.[67]

Despite the existence of such clauses, the interaction of legal principles across the three main sources of law (i.e. the ECHR, EU law and the national constitutional principles) often raises critical issues that lack a common positive framework under public international law and that national constitutions address in different ways. The national reporters recorded significant discrepancies in the positive dimension of legal principles applicable to tax procedures and their interpretation. Later in this general report,[68] the author will address such issues to set the ground for identifying best practice and possible solutions.

66. The Sixteenth Protocol to the European Convention on Human Rights, adopted on 28 June 2013 and in force since 1 August 2018 in 10 states, allows national courts of last instance to apply a similar mechanism. This will enhance the correct interpretation of the ECHR, overcoming the need for *res judicata*, but can raise issues in the presence of double or triple referrals by the national courts to the ECJ, ECtHR and domestic constitutional courts.
67. *See* M. Poiares Maduro, *Contrapunctual Law: Europe's Constitutional Pluralism in Action*, in *Sovereignty in Transition,* pp. 501-537 (N. Walker ed., Hart Publishers 2003).
68. *See* sec. 1.2.2.

1.2.1.2. Ancillary sources of legal principles

Ancillary sources of legal principles have the function of implementing said principles in the specific framework of tax procedures as contained in national constitutions. This also means that the number of legal principles applicable to tax procedures significantly grows,[69] as indicated by the national reports, which shows differences as to the boundaries of such principles but, in essence, reflects a common core.

At present, various ancillary sources of legal principles applicable to tax procedures exist.

Following the model introduced in 1919 in Germany with the *Reichsabgabenordnung* (Imperial General Tax Law), several countries of European continental legal tradition include a general tax law.[70] The purpose of this measure is to provide for a comprehensive legal framework of the formal and material rules applicable to taxation, also including those applicable to tax procedures. The General Tax Law operates as a gateway to tax law. In its presence, the tax system defines the conditions under which general legal principles and rules established elsewhere within the legal system apply to tax matters.

In the absence of a General Tax Law, the application of general legal principles to tax matters is possible without limitations and is subject to interpretation by the judiciary in the framework of the so-called "unitary nature" of the legal system. However, some countries do not have a comprehensive General Tax Law, but rather have laws that implement the constitutional principles in tax matters. These laws do not exclude the application of general principles for issues that they do not expressly regulate, and they admit the said principles to the extent that they are compatible with such laws.[71]

Countries lacking a General Tax Law sometimes apply a similar type of framework law solely to tax procedures. The purpose of such law is to determine a comprehensive regulatory framework for tax procedures that

69. The common core reflects the instrumental nature of the powers of tax authorities to levy taxes in conformity with the requirements established by law and the specific legal remedies that the affected persons may activate. However, their actual content elaborates on principles such as impartiality, equality of arms, good governance and many others indicated in the national reports. *See further* sec. 1.2.2.

70. *See* the national reports of Germany (ch. 14), Luxembourg (ch. 18) (which still preserves the validity of the German *Abgabenordnung* (General Tax Law), as amended in 1931 and 1934), Portugal (ch. 22), Spain (ch. 24) and Ukraine (ch. 28).

71. *See* the national report of Italy (ch. 17).

will, accordingly, limit the application of non-tax-specific procedural rules.[72] Tax procedural laws can be limited to either the administrative or the judicial phases, or they can apply to both. In some countries, the principles applicable to judicial tax procedures match those applicable to other judicial procedures, also considering that there is, in fact, no separate system for judicial tax procedures, which are adjudicated by administrative justice.[73]

Taxpayers' bills of rights (TBoRs) generally include substantive and procedural provisions applicable to tax matters. The legal value of TBoRs can vary across the positive systems from being merely declaratory to constitutive. When declaratory, their role is similar to that which the EU Charter plays within the supranational legal system of the European Union. When constitutive, they supplement national constitutions, bringing them within a more specific framework for their application to tax matters and implementing them as an ancillary source of legal principles. The latter situation is particularly important when the number of relevant principles contained in the constitution is very limited.[74] In both cases, TBoRs are laws containing general principles of the tax system. Therefore, the application of the provisions contained in TBoRs should generally not be subject to the ordinary application of *lex posterior*.

The application of *lex posterior* is a more complex issue in common law countries, considering that judicial interpretation is, in fact, the source of most principles, including those applicable to tax procedures, as well as that it can easily change over time. In such a context, *lex posterior* allows later judge-made law to replace the law that loses authority in line with the evolution of legal thinking. In common law countries, like the United Kingdom, which lacks a written constitution, this can sometimes determine more frequent exposure to changes in the principles of tax procedures, at least to the extent that they are not formalized into statutes. This is, perhaps, the reason that justifies the need for issuing statutory law in this field, as it occurs in several common law countries, including the United Kingdom, where it has exponentially grown throughout the years.

72. *See* the national reports of France (ch. 13), Poland (ch. 21) and Sweden (ch. 25).
73. *See* the national reports of Croatia (ch. 10), Finland (ch. 12) and Hungary (ch. 16).
74. In the United States, the Taxpayers' Bill of Rights has played a particularly important role in tax procedures since its introduction, leading to a considerable increase in the effective protection of taxpayers' rights in this context. *See further* P. Baker & P. Pistone, *IBFD Observatory on the Practical Protection of Taxpayers' Rights: Annual Report 2018*, pp. 189-192 (IBFD 2019).

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