



## **Observatory on the Protection of Taxpayers' Rights**

Below you will find a report prepared by Katerina Perrou, Doctor at the *University of Athens Law School* and reporter of the OPTR Unit for the Court of Justice of the European Union.

This report contains a summary of court cases before the Inter-American Court of Human Rights, in which issues regarding the practical protection of taxpayers' rights were discussed and decided in 12 relevant areas, identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "The Practical Protection of Taxpayers' Fundamental Rights".

## 2019 Relevant Case Law – European Court of Justice

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
<p><b>MS 25:</b></p> <p>Audits should respect the following principles: (1) proportionality; (2) ne bis in idem (prohibition of double jeopardy); (3) audi alteram partem (right to be heard before any decision is taken); and (4) nemo tenetur se detegere (principle against selfincrimination). Tax notices issued in violation of these principles should be null and void</p>	<p><b>C-363/20</b> <b>MARCAS MC</b></p>	<p><b>5 August 2020</b></p>	<p><b>47</b></p>	<p><b>Proportionality and protection of legitimate expectations in relation to the tax authorities' powers in the ex-post checks on taxpayer returns</b></p>	<p><b>Pending</b></p>	<p><b>Request for a preliminary ruling</b></p>

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<p><b>MS 25:</b></p> <p>Audits should respect the following principles: (i) proportionality; (2) ne bis in idem (prohibition of double jeopardy); (3) audi alteram partem (right to be heard before any decision is taken); and (4) nemo tenetur se detegere (principle against selfincrimination).</p> <p>Tax notices issued in violation of these principles should be null and void</p>	<p><b>C-430/19</b></p> <p><b>C.F (Tax Inspection)</b></p>	<p><b>4 June 2020</b></p>	<p><b>47</b></p>	<p>CF a commercial company governed by Romanian law, was the subject of a tax inspection carried out by the Regional Administration concerning corporation tax and VAT. That tax inspection was suspended for a period of six months, to allow the Regional Directorate-General, which has responsibilities for combating fraud, to conduct an investigation in which the Public Prosecutor attached to the Tribunalul Cluj (Regional Court, Cluj, Romania) participated. The criminal investigation was brought to an end by a decision that no further action should be taken. In its tax inspection report, the Regional Administration stated that the commercial transactions between CF and two of its suppliers were fictitious for the reason that the two suppliers,</p>	<p><b>The general EU law principle of observance of the rights of the defence must be interpreted as meaning that where, in the context of national administrative procedures for inspection and for determining the taxable amount for value added tax purposes, a taxable person has not been allowed access to the information in the administrative file that was taken into consideration when an administrative decision imposing additional tax liabilities on that taxable person was adopted, and where the court hearing the case finds that, in the absence of that irregularity, the outcome of the procedure might have been different, that principle requires that that decision be annulled.</b></p>	<p><b>The right of access to the administrative file is a corollary of the right to be heard before any decision is taken.</b></p>

				<p>micro-enterprises subject to tax at 3% of turnover, while CF was taxed at 16%, did not have the technical or logistical capacity to provide the services for which they had invoiced CF. CF's legal representative was invited to attend the offices of the Regional Administration to take receipt of a copy of the tax inspection report. CF appealed against the tax inspection report and requested access to the full administrative file. It stated that it had not been informed at the time of the tax inspection of the manner in which the criminal investigation might have influenced the inspection carried out by the tax authorities.</p>		
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Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	Decision	Comments
<p><b>MS 67:</b> The requesting state should notify the taxpayer of cross-border requests for information, unless it has specific grounds for considering that this would prejudice the process of investigation. The requested state should inform the taxpayer, unless it has a reasoned request from the requesting state that the taxpayer should not be informed on the grounds that it would prejudice the investigation</p> <p><b>MS 70:</b> If information is sought from third</p>	<p>Joined cases C-245/19 and C-246/19</p> <p><i>Luxembourg v B</i> &amp; <i>Luxembourg v B, C, D, F.C.</i></p>	<p>6 October 2020</p>	<p>47</p>	<p>Following a request of information from the Spanish Tax Authorities, the Luxembourg tax authorities ordered company B to provide information concerning various economic and financial transactions of the taxpayer as well as details of the bank accounts and financial institutions in which cash is deposited. The question that arose was whether B, as a third party</p>	<p>In the context of Directive 2011/16, Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Articles 7 and 8 and Article 52(1) thereof, must be interpreted as:</p> <ul style="list-style-type: none"> <li>- precluding legislation which prevents a person holding information from bringing an action against a decision by which the competent authority of that Member State orders that person to provide it with that information, and as</li> <li>- not precluding such legislation from preventing the taxpayer concerned, in that other Member State, by the investigation giving rise to that request for exchange of information and the third parties concerned by the</li> </ul>	

<p>parties, judicial authorization should be necessary</p>				<p>from which information on the taxpayer is sought, has the right to challenge the decision ordering it to provide the taxpayer related information.</p> <p>The same issue arose with the Bank, to which the Luxembourg tax authorities also issued a decision ordering it to provide information on the same taxpayer but also on other persons that are authorized to carry out transactions on specific bank accounts, etc.</p>	<p>information question bringing against decision.</p> <p>in from actions that</p>	
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				<p>the question that arose was whether the taxpayer himself as well as any other affected third party may challenge such decision ordering a Bank to provide information to the (requested) tax authorities with a view to exchange them with another (the requesting) tax authority in the context of directive 2011/16.</p>		
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## 2019 Relevant AG Opinions – European Court of Justice

Minimum Standard Best Practice	Case	Date	EU Charter Articles	Facts	AG Opinion	Comments
<p>Please indicate here the minimum standard and/or best practice to which the commented decision refers, following the list enclosed with this email.</p> <p>Example:</p> <p><b>MS 28:</b> In application of <i>audi alteram partem</i>, taxpayers should have the right to attend all relevant meetings with tax authorities (assisted by advisers), the right to provide factual information and to present their views before decisions of the tax authorities become final</p>						<p>In providing your comments, please make clear the relationship between the court declaration and the minimum standard/best practice affected by it.</p>