



Observatory on the Protection of Taxpayers' Rights

Below you will find a questionnaire filled in by Aleksander Pevec, Attorney at Odvetnik Aleksander Pevec and OPTR National Reporter of Slovenia.

Mr. Pevec would like to thank Mr. Grum, deputy Director General of the Financial Administration for his precious help.

This set of questionnaires comprise the National Reporter's assessment on the country practice during 2018 in the protection of taxpayers' rights (Questionnaire # 1), and the level of fulfilment of the minimum standards and best practices on the practical protection of taxpayers' rights identified by Prof. Dr. Philip Baker and Prof. Dr. Pasquale Pistone at the 2015 IFA Congress on "*The Practical Protection of Taxpayers' Fundamental Rights*" (Questionnaire # 2). These questionnaires were filled in considering the following parameters:

1. *For Questionnaire # 1*, an assertive assessment (yes/no) was required on the effective implementation in domestic law of 82 legal safeguards, guarantees and procedures relevant in 12 specific areas for the practical protection of taxpayers' rights, as identified by Baker & Pistone in 2015. This line of questioning aims to get an overview of the state of protection of taxpayers' rights in the country in 2018.
2. *For Questionnaire # 2*, an impartial, non-judgmental evaluation was required on the developments, either of improvement or of decline, in the level of realisation of 57 minimum standards and 44 best practices, distributed into 87 benchmarks for the practical protection of taxpayers' rights. In this regard, a summary of events occurred in 2018 (legislation enacted, administrative rulings, circulars, case law, tax administration practices), that serve as grounds for each particular assessment, was also required.

1. IDENTIFYING TAXPAYERS and ISSUING TAX RETURNS

1.1. Do taxpayers have the right to see the information held about them by the tax authority ?

Normally, this is the case. Art. 78 of the Financial Administration Act enables taxpayers to have access to all data stored by the administration except the data on some internal information held for implementing purposes (operative information).

On the other hand, if there is a financial investigation (if there are reasonable grounds to suspect that there has been a serious breach of tax law), upon conclusion of this investigation the administration would prepare a report with relevant findings that could be used in the subsequent tax audit (Art. 100 of the Financial Administration Act). The taxpayer would normally have access to this report if a tax audit takes place. He would in principle be denied the access to prior information that led to this report – this relates to those internal measures mentioned above. This issue is disputed among tax law scholars.

1.2. If yes, can they request the correction of errors in that information ?

Principally, it is in the interest of the tax administration itself to have correct data on its taxpayers. Art. 55 of the Financial Administration Act, on the other hand, even obliges every taxpayer to demand such a correction. Therefore, there is no reason for opposing entering the correct data.

1.3. In your country, is there a system of "cooperative compliance" / "enhanced relationship" which applies to some taxpayers only ?

There is such a system. It has been introduced in 2011 and is modelled according to the Dutch law. At first, only a handful of state owned enterprises participated in that scheme. Subsequently, more and more other taxpayers voluntarily joined it and the legislator decided to regulate this matter.

1.4. If yes, are there rules or procedures in place to ensure this system is available to all eligible taxpayers on a non-preferential/non-discriminatory/non-arbitrary basis ?

Art. 99 of the Financial Administration Act lays down detailed conditions for acquiring this status and also stipulates when it is revoked.

A taxpayer may acquire it under the following conditions:

- he or she is obliged to conduct a commercial audit of financial statements meaning it applies to larger business entities;
- there are sufficient internal controls within the enterprise that accordingly reduce the risk of non-compliance;
- the management board signs a declaration with the obligation to regularly inform the tax administration on all circumstances that might affect this risk;
- in the last three years the members of the management board has not been convicted for a tax fraud or penalized with the administrative penalties in the field of taxation;
- that according to the financial administration's data for the last three years there are grounds to believe that the taxpayer would fulfill its obligations due to this special status;
- that the taxpayer has been operating as a business entity for the period of at least three years.

This status shall be revoked if:

- the taxpayer fails to inform the administration about the relevant circumstances regarding the risk of non-compliance;
- if the administration is not given access to all informations regarding internal controls;

- if those internal controls have not been established;
- if the taxpayer doesn't follow the recommendations by the administration regarding those internal controls.

1.5. Is it possible in your country for taxpayers to communicate electronically with the tax authority ?

It is not only possible for every taxpayer to communicate electronically with the administration. For specific categories, mainly business entities, there is an explicit obligation to communicate electronically according to Art. 85.a of the Tax Procedure Act. Further, there is a specific cash registers regulation dealing with verification of invoicing regarding cash payments for all business.

1.6. If yes, are there systems in place to prevent unauthorised access to the channel of communication ?

There is a system using technical standards as described below.

1.7. Are there special arrangements for individuals who face particular difficulties (e.g. the disabled, the elderly, other special cases) to receive assistance in complying with their tax obligations ?

There are no special arrangements. Nevertheless, there is a general principle of assistance to the taxpayer in administrative procedural law in Art. 7 of the Tax Procedure Act that would direct the administration to at least do their best to assist those taxpayers.

2. The ISSUE of TAX ASSESSMENTS

2.1. If a systematic error in the assessment of tax comes to light (e.g. the tax authority loses a tax case and it is clear that tax has been collected on a wrong basis), does the tax authority act ex officio to notify all affected taxpayers and arrange repayments to them ?

This issue of ex officio remedy of final tax assessments due to a systemic mistake has been opened a decade ago. At that time a major procedural reform involving the so-called indicative calculations took place which were regarded as a major simplification for individual taxpayers. All residents would automatically receive from the administration indicative calculations and were obliged to object within a period for appeal if those calculations were false.

If a particular taxpayer did not object his indicative calculation the latter would be deemed a final tax assessment decision. In practice, the vast majority of taxpayers do not control their indicative calculations since they rely on the data collected by the administration. At that time, a systemic malfunction of the information system (incorrect algorithms for calculation of taxes) of the state pension fund was discovered and became a hotly debated topic since a large number of these indicative calculations was false. At first, the reaction of the tax authority was that the finality of those decisions could not be remedied. This provoked the minister of public administration dr. Gregor Virant to openly point out to the provisions of procedural law which, if properly interpreted, could allow for such ex officio remedy (this are Art. 90 of the Tax Procedural Act regarding the administration of the first instance and Art. 88 of the same act regarding the administration of the second instance.).

This good practice has been soon accepted by the tax administration itself in the following years, in particular, regarding land duties which the administration collects on behalf of local communities, whereby mistakes are quite common. This should demonstrate that in Slovenia there is a system for the tax service to automatically correct its own unnecessary mistakes.

In 2017, however, the Supreme Court in the case Nr. X Ips 471/2014 from 13 April 2017 dealt with the issue of the very same Art. 90 regarding the administration's non-compliance with the VAT jurisprudence of the CJEU. The taxpayer invoked the so-called Kühne & Heitz doctrine of the CJEU. The Supreme Court even openly agreed with the taxpayer that he was deprived of the loyal application of the EU law. It also agreed with the taxpayer that the wording of the said provision of Art. 90 would, in principle, even allow for such a correction of manifestly incorrect tax assessment to be performed ex officio. So why was then the taxpayer deprived of the loyal application of the EU law ?

The reasoning of the Supreme Court was very short. It rejected the appeal by stating that such a remedy, when correcting breaches of material tax law, would run contrary to the principles of tax law because there would be the same administration of the first instance that would correct its own mistakes. There was no analysis of the legislative history, the existing practice as well as no comparative analysis which would clearly show remarkable similarity of Art. 90 with the corresponding provision of the Dutch Algemene wet inzake rijksbelastingen (Art. 65 of the AWR) which regulates the remedy of 'ambtshalve vermindering'. Furthermore, under explicit provisions of articles 242 and 243 of the General Administrative Procedure Act the very same administration of the first instance is even explicitly required to amend its own decision within the internal appellate procedure if it finds the appeal to be justified.

This means that the administration continues to remedy its own mistakes by using this same provision but only in favour of some taxpayers (land duties).

This example demonstrates that it is within the judiciary where the rules of the game are being decisively defined. The proper functioning of tax courts is therefore of an utmost importance to secure the practical protection of taxpayer's rights. If there is a convincing dogmatic clarity in jurisprudence that clarity (quality of law) would sooner or later trickle down to the administration making the whole system not just fairer but also more efficient (the so-called Priest-Klein hypothesis). We deal with this problem in a separate appendix to this report.

2.2. Does a dialogue take place in your country between the taxpayer and the tax authority before the issue of an assessment in order to reach an agreed assessment ?

Normally, this would be the case, particularly, if the taxpayer is represented by a professional.

2.3. If yes, can the taxpayer request a meeting with the tax officer ?

This should not present a particular problem since the taxpayer has the undisputed right to assess the dossier of the proceedings during official hours. Normally, there is always an opportunity to meet with the relevant tax official. In practice, when there are significant proceedings it would occasionally be even possible to arrange a meeting with the director of a particular tax (financial) office.

3. CONFIDENTIALITY

3.1. Is information held by your tax authority automatically encrypted ?

Yes, the taxpayer data is stored and automatically encrypted in relational database systems. The Slovenian tax authority uses different versions of Oracle, MSSQL and SAP Hana RDBMS (relational database management system).

The employees can access the data through a graphic user interface, direct querying the database access is not enabled.

3.2. Is access to information held by the tax authority about a specific taxpayer accessible only to the tax official(s) dealing with that taxpayer's affairs ?

Access to certain types of taxpayer data is limited through an authorisation system. Each employee that accesses the data needs to have a legal base (a case he is working on) for the access to be justified.

All the activities of employees within the information system are logged by an audit trail. This trail is supervised regularly by the tax authority officials according to its Act on audit trail supervision. The audit trail results are also regularly supervised by the Information commissioner.

3.3. If yes, must the tax official identify himself/herself before accessing information held about a specific taxpayer ?

Yes, every employee must identify himself when accessing the information system through its authentication system, and user rights are assigned through an authorization system.

3.4. Is access to information held about a taxpayer audited internally to check if there has been any unauthorised access to that information ?

All the activities of employees within the information system are logged by an audit trail. This trail is supervised regularly by the tax authority officials according to its Act on audit trail supervision. The audit trail results are also regularly supervised by the Information commissioner.

3.5. Are there examples of tax officials who have been criminally prosecuted in the last decade for unauthorised access to taxpayers' data ?

No such examples are known to the authors of this report. There have been some instances when some details from the tax proceedings regarding some politicians were leaked to the public. Understandably, those individuals were offended and promised to apply necessary legal measures. To our knowledge, no criminal charges have ever been brought against anybody. Perhaps one of the reasons lies in the courts' decisions being publicized which enables the general public to identify those individuals anyway. On the other hand, if the taxpayer publicly disputes actions of the tax authority the latter is authorised to publicly reply to those accusations.

3.6. Is information about the tax liability of specific taxpayers publicly available in your country ?

The Slovenian tax system itself is based on the principle of tax secrecy. On the other hand, the law provides for some exceptions in particular when the taxpayer publicly criticizes the tax authority which in turn replies to these accusations. In one of the most notorious cases, this even happened live in a TV show when a particular tax advisor himself publicly disclosed his case and the official of the administration was present.

3.7. Is "naming and shaming" of non-compliant taxpayers practised in your country ?

During the last global financial crisis the Parliament enacted amendments to the tax legislation enabling the tax administration to publicly disclose names and tax debt due of the taxpayers, whose tax debt exceeds 5.000 EUR and whose tax debt is due for more than 90 days.

In the past, FURS also published more than 100 cases of tax avoidance (tax audit decisions), whereby those decisions were anonymised. One could, however, identify individual taxpayers from the facts of the particular case. This practice appeared dubious and was later omitted.

3.8. Is there a system in your country by which the courts may authorise the public disclosure of information held by the tax authority about specific taxpayers (e.g. habeas data or freedom of information) ?

There is the Act on the Access to Information of Public Character which obliges state organs to decide on demands, mostly by journalists, for public access to specific information. The same act provides for various exceptions. Tax secrecy is among them.

There is a specific Office of the Information Commissioner established under this act which serves both as an advisory body for public entities as well as the controlling instance. If her decisions are disputed it is up to the administrative court to decide finally on the matter. To our knowledge there has not yet been a case where somebody would demand the disclosure of the tax secrecy.

3.9. Is there a system of protection of legally privileged communications between the taxpayer and its advisers ?

Art. 6 of the Bar Act explicitly guarantees the so-called legal professional privilege without any restrictions. The same would apply for the medical profession. When in 2011 the General Tax Office was planning to extensive audit of legal offices (attorneys) it consulted the Information Commissioner mentioned above which published an opinion confirming that position. The director general of the financial administration then issued a corresponding guidance for the inspectors.

3.10. If yes, does this extend to advisors other than those who are legally qualified (e.g. accountants, tax advisors) ?

Unfortunately, the tax advisory profession is not regulated. On the other hand, there were opinions by some legal scholars regarding the rather vague provision of the Civil Procedure Act regarding the right of the witness to rely on her professional secrecy. According to this interpretation professional secrecy also applies to the tax advisory profession. In practice, however, the administration would normally not act hard-handedly and would avoid any unnecessary confrontation with tax advisors when doing tax audits.

On the other hand, there were cases when such information was provided by the police who obtained it during searches within their criminal investigation. The notorious case of the Supreme court Nr. X Ips 298/2015 involving tax avoidance dealt, among other matters, with the issue of legal professional privilege involving emails between the Magic circle law firm from London and Slovenian tax advisors. The police found no basis for further criminal charges but decided this might be of some interest to the tax authority. Those emails ended in the tax audit dossier. The taxpayer relied on the CJEU precedent in the famous case Akzo-Nobel, C-550/07P from 18 September 2010. Both administrative courts avoided direct confrontation with the CJEU by arguing that the taxpayer should have invoked the professional secrecy more specifically explaining in detail why those emails concerning the British and Dutch attorneys should be excluded. The case is currently pending before the Constitutional court.

The current proposal of the amended Tax Procedure Act implementing the Directive 2018/822/EU (DAC6) from 25 May 2018 explicitly makes a difference between regulated and unregulated professions, whereby only the former are exonerated from the reporting obligation regarding

potentially aggressive tax schemes..

4. NORMAL AUDITS

4.1. Does the principle audi alteram partem apply in the tax audit process (i.e. does the taxpayer have to be notified of all decisions taken in the process and have the right to object and be heard before the decision is finalised) ?

This principle does apply. However, it has been somehow limited in the last years by the Tax Procedure Act which enables tax inspectors to exceptionally finish the proceedings without having final hearing with the taxpayer.

Also the amended Art. 140 of the Tax Procedure Act allows the inspector to take into account taxpayer's statements about new facts and evidence only insofar as the latter has not been able to submit those statements earlier. This provision which emulates similar provisions regarding legal remedies might be disputed on grounds of dubious constitutionality in the future.

4.2. Are there time limits applicable to the conduct of a normal audit in your country (e.g. The audit must be concluded within so many months) ?

There are time limits but with extensive exceptions.

4.3. If yes, what is the normal limit in months ?

Art. 141 of the Tax Procedure Act explicitly limits tax audits to 6 months, except in the following cases:

- the audit relates to several associated/connected taxpayers;
- the taxpayer is obliged to commercial audits;
- when indirect methods of tax assessment are applied;
- if the taxpayer fails to properly cooperate with the tax inspector (does not submit the relevant documentations or fails to answer questions);
- when there are simultaneous tax audits in several member states of the EU.

This means that those widely conceived exceptions make the general rule practically insignificant. Due to the established practice of the administrative courts any breach of these rules by the financial administration is immaterial meaning that it does not make the tax assessment invalid on that ground alone.

4.4. Does the taxpayer have the right to be represented by a person of its choice in the audit process ?

Yes. There are no limitations except the knowledge of the official language. Where e-communication with the tax is prescribed for some categories of taxpayers according to Art. 85.a of the Tax Procedure Act the representative must also communicate accordingly.

4.5. May the opinion of independent experts be used in the audit process ?

If the taxpayer submits an independent opinion the tax inspector would normally take the position on the issue. However, he is not obliged to do so due to the established jurisprudence of the administrative courts.

Another issue is translation of documents in foreign languages. Art. 249.c of the Tax Procedure Act

only exceptionally (if there are good reasons) allows for official translation to be provided. In practice there were cases when, for instance, the German administration would send to their Slovenian counterpart documents in German which the Slovenian tax inspector would be unable to properly understand which ended up in the tax being assessed incorrectly.

4.6. Does the taxpayer have the right to receive a full report on the conclusions of the audit at the end of the process ?

Yes, the taxpayer is entitled to receive a detailed report. Otherwise, legal remedies would be deprived of any substance. In practice, these reports are very extensive – in some cases they would amount to several hundred pages.

This, on the other hand, may have a side effect that the administrative court would later just refer to this report in camera without holding a hearing – a practice which is enabled by the provision of articles 59 and 71 of the Judicial Review Act – a problem described below.

4.7. Does the principle of ne bis in idem apply to tax audits (i.e. that the taxpayer can only receive one audit in respect of the same taxable period) ?

There is always the possibility to re-open the procedure on grounds of new facts and evidence according to Art. 89 of the Tax Procedure Act. The same right to demand the tax proceedings or even judicial review proceedings to be re-opened is also given to the taxpayer. However, the administrative jurisprudence is very benevolent to the tax authority and, on the other hand, extremely restrictive when it comes to the taxpayers' demands in that regard which again opens up the issue of equality of arms.

Further, this opens up the issue of the same transaction being differently assessed regarding various taxpayers. Legally, there are grounds to re-open all of the relevant proceedings. In practice, however, there have been problems in that respect which the administrative jurisprudence unfortunately failed to address – it would not recognize the necessary legal interest for other taxpayers to participate in the first taxpayer's proceeding. The Constitutional Court addressed this issue with the decision Nr. Up-788/14 from 16 October 2016. In an act of defiance the Supreme court later repudiated to follow this constitutional decision in a subsequent judgement Nr. X Ips 298/2015 in 2017. The issue landed again before the Constitutional court where it is currently pending.

4.8. If yes, does this mean only one audit per tax year ?

Larger enterprises which fall under the Specialised financial (i.e. tax) office are regularly audited in a manner that there are no unaudited periods between the two subsequent audits (each audit may relate to several tax years).

Other taxpayers would only exceptionally be audited at all. Furthermore, there are significant differences among various local tax (financial) offices in that respect which could even open the issue of equality before the law.

4.9. Are there limits to the frequency of audits of the same taxpayer (e.g. in respect to different periods or different taxes) ?

No, there are not. As mentioned, this frequency varies among various local tax (financial) offices which might have some objective explanation due to the fact that the ratio of employees versus the number of taxpayers within the given tax (financial) office jurisdiction varies considerably. Given

that generally there are approximately 300-400 vacant tax inspector post to be filled it is practically impossible for the administration to guarantee equality of treatment of all taxpayers in that regard.

4.10. Does the taxpayer have the right to request an audit (e.g. if the taxpayer wishes to get finality of taxation for a particular year) ?

Legally, no such right is explicitly recognized. However, there were occasionally such cases in the past. Today, it is far more likely that a taxpayer would try to discuss the issue by appearing before her tax (financial) office. Non-complicated matters would normally be resolved in this rather informal way.

5. MORE INTENSIVE AUDITS

5.1. Is authorisation by courts always needed before the tax authority may enter and search premises ?

The financial administration can enter business premises without a prior court order (Art. 22 of the Financial Administration Act). Legally, it could also enter the premises with the assistance of the police in case of non-compliance.

One could say that the tax authority rather seldom uses this prerogative. If there is a lack of cooperation on the side of the taxpayer, the tax authority would normally apply indirect methods of tax assessment and possibly refer the issue to the special unit in charge of administrative penalties.

5.2. May the tax authority enter and search the dwelling places of individuals ?

No, the constitution prohibits any entrance of dwelling places without prior court order. In practice, the tax authority would not even seek to obtain such an order but would prefer other measures instead.

However, if the taxpayer has registered his business activity at the address of the dwelling that protection does not apply anymore (Art. 137 of the Tax Procedure Act, Art. 22 of the Financial Administration Act). So far, the Constitutional court has not yet ruled on these legislative provisions.

5.3. Is there a procedure in place to ensure that legally privileged material is not taken in the course of a search ?

There is no legislative procedural provision in place in the Tax Procedure Act. However, there is a constitutional jurisprudence that prohibits this (decision Nr. U-I-115/14, Up-218/14 from 21 January 2016 - the case dealt with police investigation (searches) of legal firms, whereby the Bar lodged the appeal).

The financial administration usually doesn't search any premises. On the other hand, this is a common practice for the police. If a taxpayer is properly represented during the criminal investigation (search) the police would normally pay attention to defence attorney's arguments or at least contact the prosecutor or the investigative judge for further direction.

5.4. Is a court order required before the tax authority can use interception of communication (e.g. Telephone tapping or access to electronic communications) ?

Given that the financial administration itself doesn't conduct tapping of communications it is the regulation of the police that matters.

The above mentioned constitutional precedent from 21 January 2016 explicitly states the conditions to access the information obtained during the search that might be protected by the legal privilege. Once the police is given this information, however, there are no obstacles to pass it further to the financial administration.

Regarding all other (legally unprotected) information there is also some sort of judicial control since sooner or later the criminal court would decide on its legality.

The question raised in the case before the Supreme Court Nr. X Ips 298/2015 (the police found the emails between the taxpayer, its Slovenian tax advisors and foreign attorneys irrelevant for its own use but nevertheless potentially useful for the tax authority which proceeded with tax audit) was decided contrary to the jurisprudence of the CJEU in case of Akzo Nobel, C-550/07P from 14 September 2010. The issue is now pending before the Constitutional Court - although for mainly other reasons.

5.5. Is the principle of nemo tenetur applied in tax investigations (i.e. the principle against the self-incrimination) ?

This issue is dangerously underregulated. Following the ECtHR (case Funke v. France) and Constitutional court's jurisprudence there is a breach of human rights and due process if the taxpayer is obliged to incriminate himself against his will. Nevertheless, the notorious Istrabenz case described below shows that regular courts (both criminal and administrative) have too often serious difficulties in following the jurisprudence of the ECtHR and the Constitutional court. Another reason that a special appendix has been added to this report.

5.6. If yes, is there a restriction on the use of information supplied by the taxpayer in a subsequent penalty procedure/criminal procedure ?

There is no such prohibition. On the contrary, the law requires from all state organs to inform and then cooperate with the police if they find grounds that a crime has been committed.

5.7. If yes to nemo tenetur, can the taxpayer raise this principle to refuse to supply basic accounting information to the tax authority ?

There is no nemo tenetur principle privilege in the Tax Procedure Act. Therefore, it is up to the tax inspectors to follow the jurisprudence of the ECtHR and the Constitutional court in order to avoid violations of human rights in that respect.

Fortunately, there is an internal centralized system of dealing with criminal complaints within the administration. If the taxpayer brings about the issue of the nemo tenetur principle one could reasonably expect that this issue would be considered before any criminal complaint to the police. Nevertheless, one cannot rule out individual criminal complaints by local offices might be sent to the police. In that case it is then up to the criminal justice system to deal with this problem.

5.8. Is there a procedure applied in your country to identify a point in time during an investigation when it becomes likely that the taxpayer may be liable for a penalty or a criminal charge, and from that time onwards the taxpayer's right not to self-incrimination is recognised ?

There is an established jurisprudence of the ECtHR (case Funke v. France) which shall also be applied in Slovenia. According to the explicit provision of Art. 18 of the Criminal Procedure Act all

evidence, directly or indirectly (the so-called poison fruits' doctrine) obtained by the violation of human rights, should be excluded from the criminal dossier. Unfortunately, there are no specific provisions in the Tax Procedure Act in that respect regarding tax dossiers.

5.9. If yes, is there a requirement to give the taxpayer a warning that the taxpayer can rely on the right of non-self-incrimination ?

Unfortunately, the Tax Procedure Act does not provide explicitly for such a "Miranda warning". Therefore, it is up to the tax inspector to apply the principles of the ECHR (ECtHR case *Funke v. France*) and the Constitution.

In practice, however, one can even observe the unfortunate opposite approach. Given the fact that Criminal Procedure Act obliges the police to issue this "Miranda-type warning" to the suspect prior to any interrogation, there were publicized ideas by a prominent prosecutor that the tax authority should actually complement the work of the police and the prosecutors by collecting data from the suspects that the police itself would otherwise be deprived of.

One such occasion was the notorious Istrabenz case which involved stock options sold to companies connected to the Istrabenz management. Parallel tax and criminal proceedings took place. Judicial review by the administrative courts confirmed the position of the tax authority that there was a sham transaction. The prosecutor, on the other hand, took the position that there was no sham transaction but nevertheless a misuse of company's assets. The tax authorities took some pride in their cooperation with the police and even held a press conference. The prosecutor publicly acknowledged their valuable contribution to the criminal investigation. However, when this issue was opened in lieu with the ECtHR jurisprudence (the *Funke* case-line), the criminal court of first instance ignored it. Later on, the High Court of Ljubljana, dealing with the appeal, decided that this contribution by the tax administration was irrelevant and therefore no exclusion of evidence should be applied (judgements Nr. Kp 58294/2010 from 12 April 2017). The issue is yet to be decided by the Supreme Court (penal section).

Afterwards there were no more cases of such notoriety. The approach of both the police and the tax authority has become more reserved. However, given the fact that some cooperation between the tax authority and the police or prosecutorial service is provided for in the law (joint investigation teams) one could reasonably conclude that the current tax procedural law is underregulated in this respect.

6. REVIEW and APPEALS

6.1. Is there a procedure for an internal review of an assessment/decision before the taxpayer appeals to the judiciary ?

Yes. The access to court is conditioned by first applying for internal review before the Ministry of Finance (the so-called administrative appeal).

6.2. Are there any arrangements for alternative dispute resolution (e.g. mediation or arbitration) before a tax case proceeds to the judiciary ?

There are no such arrangements. Nevertheless, this idea has been publicly presented.

6.3. Is it necessary for the taxpayer to bring his case first before an administrative court to quash the assessment/decision, before the case can proceed to a judicial hearing ?

Since the question explicitly relates to a judicial hearing there is much to be reported about.

Administrative court is the one that deals with judicial review in tax matters. This court should regularly hold hearings as a general rule. In practice, however, this seldom happens since the rule intended as an exception which allows for in camera proceedings has been applied to almost all tax cases. Recently, there were two important ECtHR judgements (Mirovni inštitut and Pro plus) which found a violation of the Convention due to no hearing being held within judicial review.

Both those judgements were received in a rather scandalous manner in Slovenia. The Administrative Court, following the Mirovni inštitut vs. Slovenia judgement, informed the press that it has always been allowed to avoid holding a hearing by the provision of the art. 59 of the Judicial Review Act which was initially intended to be an exception to the general rule. It appeared as though the very substance of the ECtHR's decision had been ignored. The Supreme Court went even further. On 24 October 2018, following the Pro plus judgement, it issued a press release stating that it will only accept those ECtHR judgements that are "legally convincing". The immediate public outrage was such that this press release was soon revoked and the president of the Supreme court, after meeting the president of the state, issued his reassurance that this was just a misunderstanding and nothing more.

In case of administrative penalties there is a specific legal remedy (claim for court's protection, zahteva za sodno varstvo) which is dealt with before local courts (okrajna sodišča). Rarely they hold hearings.

Criminal matters are brought before district courts (okrožna sodišča) where there is always a public hearing. This opens up the issue of their tax expertise. In case the defendant has sufficient tax expertise, perhaps provided for by an expert, this might turn the tide meaning an acquittal.

6.4. Are there time limits applicable for a tax case to complete the judicial appeal process ?

There are no time limits prescribed by law. Normally, judicial review in tax cases would be completed within 12-18 months.

6.5. If yes, what is the normal time it takes for a tax case to be concluded on appeal ?

Since 14 September 2017 when the amendments to the Civil Procedure Act gave ground for permitted revision/cassation to all tax cases which considerably reduced the burden upon the Supreme Court, most of tax cases would be decided within 12 months.

6.6. Does the taxpayer have to pay some/all the tax before an appeal can be made (i.e. solve et repete) ?

The tax debt becomes enforceable after 30 days following the delivery of the decision of the first instance to the taxpayer. The law enables collection of this debt but does not demand from the taxpayer to pay it in order to obtain the right to appeal which is protected under Art. 25 of the Constitution.

6.7. If yes, are there exceptions recognised where the taxpayer does not need to pay before appealing (i.e. can obtain an interim suspension of the tax debt) ?

In theory, the tax authority is authorised to grant such privilege in cases where the appeal is deemed to have decent possibility of success. In practice, however, this never happens.

6.8. Does the taxpayer need permission to appeal to the first instance tribunal ?

The taxpayer has the constitutional right to demand judicial review under articles 23 and 157 of the constitution. Therefore, no such permission is needed.

6.9. Does the taxpayer need permission to appeal to the second or higher instance tribunals ?

Normally, the taxpayer shall always first lodge a specific claim to be allowed to lodge a cassation (revision) against the judgement of the first instance (it is called a system of permitted revision). Prior to 14 September 2017 when the legal amendments to the civil Procedure Act in relation to the Judicial Review Act became applicable, in cases where the value at stake exceeded 20.000 EUR, such permission was not needed. This claim is lodged with the Supreme Court and must contain important legal questions for the court if the proposal is accepted. Only after receiving such permission can the taxpayer lodge the revision (cassation).

There are still rare examples of cases where such permission is not necessary. For instance, if the taxpayer wants to re-open the proceedings before the court of first instance, which is not granted, such a decision could be appealed without specific permission.

6.10 Is there a system for the simplified resolution of tax disputes (e.g. by a determination on the file, or by a filing) ?

No such simplified system exists. In practice, however, administrative appeals are always dealt with in that matter. The same could generally be said of the judicial review proceedings.

6.11. Is the principle audi alteram partem (i.e. each party has a right to a hearing) applied in all tax appeals ?

During the internal administrative appeals phase a hearing would be possible only if the authority of the second instance decides to hold one which in practice never happens.

The administrative court should in principle hold hearings under Art. 59 of the Judicial Review Act. However, this seldom happens since the court extensively applies exceptions provided for in the same provision which has already been recognised as a violation of human right by the ECtHR in case *Mirovni inštitut v. Slovenia* as already described above.

6.12. Does the loser have to pay the costs in a tax appeal ?

Generally, this is the case. The taxpayer must pay a minor fee to have access to the court – 148 EUR in the proceeding before the Administrative Court and 164 EUR to lodge a cassation before the Supreme Court. If the taxpayer loses the case the tax authority, represented by the Ministry of Finance, cannot claim any additional costs regarding its representation.

If, however, the taxpayer is successful, those court fees are refundable. The taxpayer, represented by an attorney, can also claim her costs which are legally limited, however, to a symbolic amount of 350 EUR (in case of a hearing 450 EUR) plus the VAT for the representative for the court of first instance. The amount is even smaller if the taxpayer is not represented by an attorney (80 EUR). In the proceedings before the Supreme court the taxpayer, if successful, would get a refundation of 450 EUR. It is apparent that this reimbursement only partially offsets the actual legal costs that the taxpayer had to endure.

6.13. If yes, are there situations recognised where the loser does not need to pay the costs (e.g.

because of the conduct of the other party) ?

Since 14 September 2017 there is formally such a provision in the Civil Procedure Act which could also apply to judicial review proceedings in tax matters. Nevertheless, it is difficult to imagine such situations in tax cases where procedural costs are refunded in the above-described limited manner.

6.14. Are judgments of tax tribunals published ?

The judge rapporteur decides whether a particular judgement would be published or not. Almost every Supreme Court's judgement is published.

6.15. If yes, can the taxpayer preserve its anonymity in the judgement ?

Anonymity is provided for all, not just tax, judgements. However, in some cases it is possible to identify the particular publicly known taxpayer from the facts of the case.

6.16 If there is usually a public hearing, can the taxpayer request a hearing in camera (i.e. not in public) to preserve secrecy/confidentiality) ?

Judicial review cases are never publicly heard. On the contrary, for the criminal cases a public hearing is a norm. There are possible exceptions that allow the presiding judge some discretion in that regard. In practice, however, those exceptions are never applied for criminal tax cases.

7. CRIMINAL and ADMINISTRATIVE SANCTIONS

7.1. Does the principle ne bis in idem apply in your country to prevent either (a) the imposition of a tax penalty and the tax liability; (b) the imposition of more than one tax penalty for the same conduct; (c) the imposition of a tax penalty and a criminal liability ?

Technically, one could conclude that this principle does not even apply to any of those situations.

Nevertheless, due to the jurisprudence of the ECtHR (case *Zolotoukhine v. Russia*) and the CJEU (case *Akeberg Fransson*) this principle applies regarding administrative penalties and criminal liability for the same conduct even though Art. 56 of the Penal code explicitly allows such cumulation. However, this line of jurisprudence might very well get reversed in the future since it appears to be too wide (the criterion of *idem* is *idem factum*).

It can also be said that in practice, as a general rule, the same conduct would be penalized with only one administrative penalty.

7.2. If ne bis in idem is recognised, does this prevent two parallel sets of court proceedings arising from the same factual circumstances (e.g. a tax court and a criminal court) ?

No since the tax court (administrative court, *upravno sodišče*) deals with tax matters only. It does not rule on any administrative penalties. The local court (*okrajno sodišče*) would deal with administrative penalties and the local or district court (*okrožno sodišče*) with criminal charges. Therefore, two sets of proceedings before two different courts are possible (theoretically even three proceedings could not be ruled out).

7.3. If the taxpayer makes a voluntary disclosure of a tax liability, can this result in a reduced or a zero penalty ?

This remains a rather controversial issue. In 2006 the new Tax Procedure Act in Art. 396 introduced voluntary disclosure which explicitly exonerates the taxpayer of his liability for administrative offence and penalty. However, it did not explicitly state that the criminal liability would also be excluded. The reason for this lies in the field of competence of various governmental departments as well as in reluctance of the criminal law doctrine to accept criminal law norms promulgated through a basically non-criminal law legislation. The Tax Procedure Act which falls within the competence of the Ministry of Finance can, according to this dogmatic view, contain administrative penalty provisions. Criminal law provisions, on the other hand, could only be enacted in the Penal code which falls under competence of the Ministry of Justice. Since the Penal code was not amended in 2006 and subsequently when this code was amended in 2008 but without an explicit provision regarding voluntary disclosure, the issue remains controversial.

Nevertheless, it can be concluded from the constitutional provisions on the rule of law (Art. 2) and principle of nemo tenetur (Art. 29) that any indictment following voluntary disclosure would be in breach with basic constitutional principles. In practice, in all those years the tax authority has never sent a criminal complaint to the state prosecutor's office. Speaking with one of the most prominent prosecutors a few years ago, any such complaint would probably be either summarily dismissed or there would have to be a procedural way to invoke constitutional review of those provisions since the prosecutor general can demand constitutional review from the Constitutional court.

8. ENFORCEMENT of TAXES

8.1. Does the taxpayer have the right to request a deferred payment of taxes or a payment in instalments (perhaps with a guarantee) ?

There are special commissions at every tax office that decide on such applications on a monthly basis. Art. 103 of the Tax Procedure Act regulates this matter.

In case the taxpayer provides a sufficient guarantee as defined in Art. 117 of the Act, such deferral is always granted for a period of up to 24 months.

8.2. Is a court order always necessary before the tax authorities can access a taxpayer's bank account or other assets ?

Slovenia is among those countries where no court order is required from the administration to access a particular bank account. They also need no particular explanation to be presented to a relevant bank. The administration would normally only cite the provision of the law and receive all data with respect to a particular account.

9. CROSS-BORDER PROCEDURES

9.1. Does the taxpayer have the right to be informed before information relating to him is exchanged in response to a specific request ?

No. The Tax Procedure Act extensively regulates international exchange of information in articles 213 to 255.1. Unfortunately, there are no explicit provisions regarding the right to be informed. With the exception of the CbCR provided for in the Directive 2016/881/EU which actually regulates the taxpayer's reporting obligations there are no provisions for a taxpayer to be informed of this exchange.

It could nevertheless be possible that the administration asks the taxpayer for some specific explanation in other cases thereby disclosing that exchange of information is taking place.

9.2. Does the taxpayer have the right to be informed before information is sought from third parties in response to a specific request for exchange of information ?

No.

9.3. If no to either of the previous two questions, did your country previously recognise the right of taxpayers to be informed and was such right removed in the context of the peer review by the Forum on Transparency and Exchange of Information ?

No. No such right had ever existed prior to this initiative.

9.4. Does the taxpayer have the right to be heard by the tax authority before the exchange of information relating to him with another country ?

No such right exists.

9.5. Does the taxpayer have the right to challenge before the judiciary the exchange of information relating to him with another country ?

Theoretically, if she is aware of it she might lodge an appeal with the administrative court demanding such exchange be forbidden since Art. 157 of the Constitution provides for the so-called subsidiar judicial review confronting not decisions but factual handling of the administration that violates constitutional rights. However, with no information on exchange available to the taxpayer this remains on paper only.

9.6. Does the taxpayer have the right to see any information received from another country that relates to him ?

Normally, if there is a subsequent tax audit such information would be part of the dossier of the said tax audit (therefore accessible to the taxpayer).

9.7. Does the taxpayer have the right in all cases to require a mutual agreement procedure is initiated ?

Generally, the taxpayer has such a right under relevant DTC provisions. In practice, however, this right has been of a rather limited value since only a handful of applications lodged before the Ministry of Finance would proceed from the administrative (administrative procedure before the ministry involving the taxpayer) to the MAP phase (dealings between the representatives of two or more countries involved without the taxpayer's participation) .

Actually, the real reason why this specific remedy under DTCs has become so popular, even though only a handful of applications end in the MAP phase, lies with the low confidence in the administrative justice system in Slovenia. Those 4 or 5 individuals at the ministry are viewed as far more competent to deal with cross-border tax matters.

On the other hand, there is no guarantee that a proposal would proceed into the MAP phase and no guarantee that the two states would even reach an agreement. Ideally, there would be a system of parallel MAP and judicial proceedings giving the taxpayer more security and the possibility to receive the most advantageous solution. The administrative courts are strongly opposed to any such parallelism since it would expose their judgements to foreign comparison.

Currently, there is a proposal to amend several articles of the Tax Procedure Act in order to implement the Directive 2017/1852/EU which would also have implications for court proceedings. Unfortunately, the proposal follows the existing jurisprudence and intends to prohibit the parallelism of these two proceedings.

9.8. Does the taxpayer have a right to see the communication exchanged in the context of a mutual agreement procedure ?

There is no such right. If a mutual agreement has been reached, a written joint statement by both representatives is produced which then finds its way to another administrative procedural phase where the administration issues a decision to implement the said agreement. At that point the taxpayer has the right to participate in the proceedings and can be informed about the dossier containing this joint statement (and perhaps even some prior communications between the countries).

10. LEGISLATION

10.1. Is there a procedure in your country for public consultation before adopting of all (or most) tax legislation ?

The government would normally hold a public consultation prior to the proposal of an act is sent to the Parliament. However, once a proposals has been drafted in detail it is very difficult, although not impossible, to influence the government in that regard (speaking from personal experience).

10.2. Is a tax legislation subject to constitutional review which can strike down unconstitutional laws ?

Yes. Art. 160 of the Constitution explicitly allows for constitutional review of any legislation. In practice, however, the ordinary taxpayer must first go on a long march through institutions and can only demand such a review together with a constitutional complaint against the Supreme Court's decision.

On the other hand, there is a list of privileged claimants in Art. 23.a of the Constitutional Court Act who can approach the Constitutional Court directly. These are generally : the parliament, the government, the president of the republic and the ombudsman. In a more limited manner the information commissioner, the prosecutor general, the central bank, local councils and trade unions can also demand that review if a particular act relates to their interests.

10.3. Is there a prohibition on retrospective tax legislation in your country ?

Yes. Art. 155 of the Constitution explicitly codifies the general prohibiton of retrospective legislation. Perhaps the most famous constitutional case regarded the anulation of the so-called 'Lex Kramar' act in decision nr. U-I-98/07 from 12 November 2013. It related to excessive 'golden parachute' remuneration of some managers in some state owned companies that subsequently provoked the legislator to retroactively tax this kind of income with a punishing tax rate. The constitutional court anuled that act.

10.4. If no, are there restrictions on the adoption of retrospective tax legislation in your country ?

11. REVENUE PRACTICE and GUIDANCE

11.1. Does the tax authority in your country publish guidance (e.g. Revenue manuals,

circulars, etc) as to how it applies your tax law ?

Yes. Both tax authorities, the financial administration (FURS) and the Ministry of Finance, regularly publish official explanations, guidance and similar brochures. Legally, they are binding for the tax authority but not for the courts which can depart from those legal positions.

11.2. If yes, can taxpayers acting in good faith rely on that published guidance (i.e. Protection of legitimate expectations) ?

This is another very controversial topic. In theory, after accession to the European union there have been explicit legal provisions in favour of this principle (for instance, in the custom's code). In practice, however, every invocation of this principle would meet no success before administrative courts.

On the other hand, there was a rare example a decade ago when the court did apply this principle. Five shareholders of a company received dividends in 2003 relating to company's profits that had been generated over the period of several years. They relied on the published guidance from 2002 that was in favour of applying the so-called anti-bunching provision of the Income Tax Act (the received amount would be taxed with a moderated tax rate because that income would be deemed to originate from several years). After the administration subsequently changed its position and refused to apply this provision in 2003 and their internal appeals remained unsuccessful they appealed to the Administrative court.

The leading tax judge who was even related to one of the appellants and her colleague drafted decisions for all five appellants and pressured the remaining 3 judges to decide in favour of the taxpayers and annul the administration's decisions (judgement Nr. U 1771/2005 from 11 december and four other judgements). This means that all five appellants received practically identical decisions. To make the matter worse they were very poorly reasoned (no constitutional theory was used which made the judgements appear to be manifestly contra legem). The Ministry of Finance was appalled . Given the fact that no appeal was possible for the ministry under the new Judicial Review Act that came into force on 1 January 2007 the Supreme Court could only dismiss those remedies as not allowed with its decision Nr. X Ips 287/2007 from 18 April 2007. However, it stated that the judgement of the court of the first instance should not bind the administration at all because it was manifestly illegal. The same judicial review repeated itself again in 2009. This time the court altered the tax decisions and assessed the tax itself. This outrageous episode has probably had a much wider effect. From then no taxpayer could ever successfully rely on this principle.

11.3. Does your country have a generalised system of advanced rulings available to all taxpayers ?

There is a generalised system of advanced rulings regulated in Art. 14 of the Tax Procedure Act. In practice, however, this system has not been brought to fruition as is the case in some other countries.

11.4. If yes, is it legally binding ?

This binding force exists rather on paper only since Art. 14 allows the administration various grounds to deny such a ruling in the first place. Even if a taxpayer pays the necessary duty and obtains the ruling there are wide possibilities for the administration to revoke it.

In practice, there have been cases where the tax authority subsequently repudiated the ruling stating mala fide omissions on behalf of the tax payer who supposedly misrepresented the facts of the case. The law explicitly allows to revoke the ruling in such a case. It seems as though the

administration generally prefers long-term commitments (enhanced cooperation described above) to one-off events (advanced rulings dealing with a single transaction).

Besides, more informal and cost effective ways to apply for information are used by the taxpayers who are generally entitled to ask questions relating to implementation of the law. Those FAQ situations are publicly available on internet and free of charge. Therefore, a taxpayer would normally prefer this more informal approach that nevertheless produces similar effects as the formalized procedure of general rulings.

11.5. If a binding rule is refused, does the taxpayer have a right to appeal ?

No such legal remedy exists.

12. INSTITUTIONAL FRAMEWORK for PROTECTING TAXPAYERS' RIGHTS

12.1. Is there a taxpayers' charter or taxpayers' bill of rights in your country ?

There is no such explicit charter in the field of taxation.

The Tax Procedure Act in its initial provisions lists some principles which could represent the most basic rights of a taxpayer. There is also an unpublished internal document (guidance) within the financial administration that compiles those basic rights.

12.2. If yes, are its provisions legally effective ?

12.3. Is there a tax ombudsman/taxpayer's advocate/equivalent position in your country ?

There is a general ombudsman established under the Constitution which could deal with tax matters, too. However, that seldom happens.

12.4. If yes, can the ombudsman intervene in an on-going dispute between the taxpayer and the tax authority (before it goes to court) ?

Formally, he has the authority to demand explanation from tax authorities regarding treatment of the particular taxpayer. Even some pressure groups would engage this institution in order to make a public impact. Besides, it is among privileged claimants to demand constitutional review of statutes – in the last three decades Income Tax Act has been reviewed in that manner on several occasions.