



Managing tax disputes in an increasingly aggressive enforcement landscape

Global Tax & Legal Webcast Series



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Introduction



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Introduction



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Administration

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- Polling questions will appear as we proceed through the presentation.
- As mentioned, in order to receive the certificate of attendance, we require participants to take part in at least five of the six polling questions.
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Regional Perspectives





Europe



Audrey-Laure Ilouz
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A tax dispute landscape focusing on fight against “fraud and avoidance”

Key priority in many countries

- Pressure from Public opinion
- No favourable treatment compared to small-medium sized enterprises
- State’s Announcements
- High fiscal pressure due to the COVID-19 pandemic
- Tax scandals
- Cross border arrangements are scrutinized but also VAT

Ad hoc procedures put in place

- High Penalties
- Extended statute of limitations
- The increased reporting obligations to disclose cross border transactions
- The UK Fraud Investigation Service (working with the tax inspectors)
- UK Forensic methods
- Tax raids

Collaboration between Tax Authorities

- Intensive exchanges of information between Tax Authorities
- Dishonesty/Misrepresentation acknowledged by HMRC as a result of exchange of information with foreign tax authorities
- Increasing number of Joint Tax Audits

Impact on procedures

- No access to MAP
- Increasing number of cases where German Tax Authorities deny the access to MAP
- Difference views on value contribution/DEMPE activities leading to unreasonable claims in tax audits
- Reassessments made public
- Increased Court litigations

European trend to link tax disputes with criminal procedures

France

- Automatic transfer to Public prosecutor based on the level of penalties since 2019
- Criminal cases multiplied by 2 in 2019/2020
- Distinct procedure instructed by the criminal tax team
- Importance of internal risk management procedure

UK

- Pressure on criminal convictions
- 100 criminal prosecutions in 2020
- Corporate criminal offense

Germany

- Increased tax fraud investigations (VAT but also TP)
- Sometimes used to increase pressure on taxpayer to achieve deals
- Establishing a Tax CMS offers some protection

Netherlands

- Criminal investigations in the hands of a special police unit for financial crimes

Italy

- New causes of corporate criminal liability since 2019 and 2020
- New rules on Corporate Criminal Liability for tax crimes
- Implementation of adequate systems and controls



ASPAC: Australia, Malaysia, Singapore, Japan



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Australia: Tax crime enforcement

J5: Joint Chiefs of Global Tax Enforcement: International tax crime and money laundering, including cryptocurrency threats and those who undertake, enable or facilitate global tax evasion.

Serious Financial Crime Taskforce:


- ATO-led joint-agency taskforce (including ATO, AFP, ACIC, AUSTRAC, CDPP)
- Taskforce extended for 4 years from FY20 via \$182 million Australian Dollars (AUD) in funding
 - **Current focus:**
 - *tech-enabled crime affecting tax and superannuation systems*
 - *offshore tax evasion*
 - *illegal phoenix activity*
 - *serious financial crime affecting ATO-administered COVID stimulus measures*
- Since formation in July 2015, the taskforce has:
 - *completed over 1000 audits, led to convictions, raised ~AUD\$1billion in tax.*
- Unsurprising decline in less complex tax crime prosecutions in FY20, but average over last 5 years of 35 prosecutions per year.

Australia: Legislative & other enforcement developments

Legislative developments continue to emerge in Australia — particularly in relation to general and specific anti-avoidance rules:

- Part IVA — General Anti-Avoidance Rule
- Multinational Anti-Avoidance Law — 2016
- Diverted Profits Tax — 2017
- Hybrid mis-match legislation — 2018

Non-legislative developments:

- Information gathering: strong challenges in relation to claims of legal professional privilege and scope of documents provided, ATO expectations heightened.
- Combined Assurance Review processes  Highly targeted, sharply focused audits.
- Promoter penalty litigation

Malaysia/Japan/Singapore

| | |
|------------------|--|
| Singapore | <ul style="list-style-type: none">— Increased scrutiny of tax avoidance arrangements by the Inland Revenue Authority of Singapore (IRAS).— Legislative change provides that the Comptroller must disregard or vary a tax avoidance arrangement and to make an adjustment to counteract any tax advantage (previous version indicated Comptroller may do this).— New provision imposes a surcharge equal to 50 percent of the amount of additional income tax imposed by the Comptroller as a result of the adjustments made to counteract the tax avoidance arrangement. |
| Japan | <ul style="list-style-type: none">— Major organizational changes within the Tokyo, Osaka and Nagoya regional tax bureaus.— Transfer pricing (TP) issues previously examined separately by a special TP division, however now the NTA has formed a new examination division that targets both domestic and international tax issues including transfer pricing. Anecdotal reports of adoption of more aggressive approaches. |
| Malaysia | <ul style="list-style-type: none">— Inland Revenue Board of Malaysia reportedly reopening cases for audit/investigation in spite of amnesty from 3 years ago that promised that such cases would not be reopened.— Increased frequency and some duplication of tax audits and investigations (by different IRBM branches).— Very rigid and pro-IBRM law interpretation being reported, with some positions adopted at odds with decision made by the Malaysian courts. |



LATAM: Brazil, Argentina and Mexico



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Brazil

- Brazilian federal law (n.9.249/95) provides that, in case the taxpayer settles a tax charge, authorities can't pursue an accusation of tax crimes.
- Brazilian tax authorities have historically tried to frame any tax infraction as a tax crime as a strategy to force taxpayers to settle a case.
- Brazilian Supreme Court issued a binding precedent (n. 24) ruling that any investigation of a potential tax crime can only start after the conclusion of the administrative dispute resolution proceeding.
- A federal law was enacted (n.12.350/10) providing the same rule of binding precedent n. 24.
- Currently, for complex tax cases, tax authorities try to frame it as irregular tax planning, comprised by simulated transactions or with an avoidance intent, which can lead to criminal charges if not dismissed by the administrative courts.
- A recent decision from the Supreme Court (RHC 163334) ruled that the intentional lack of collection of the ICMS (state VAT) should be considered a tax crime.
- As a consequence of the decision, tax authorities at state level are increasing their notifications for the investigation of tax crime.

Argentina and Mexico

- Due to the lack of clear provisions regarding tax crimes, Argentinian tax authorities tends to present criminal charges for all cases that exceeds 15,000 United States Dollars (USD).
- In Mexico, although there is a provision that allows tax authorities to frame as organized crime cases in which two or more people repeatedly and continuously carry out acts tending to evade taxes for an amount greater than 7.5 million pesos (USD 350,000), tax authorities don't apply it in regular basis, except for very specific and high profile cases.



Canada



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Canada actions and activity

Additional funding provided to the Canada Revenue Agency and possible new legislation forthcoming:

“...to allow the CRA to fund new initiatives and extend existing programs targeting international tax evasion and aggressive tax avoidance. Specifically, the CRA will hire additional offshore-focused auditors to focus on individuals who avoid taxes by hiding income and assets offshore, enhance the audit function targeting higher-risk tax filings, including those of high-net worth individuals, and strengthen its ability to fight tax crimes such as money laundering and terrorist financing by upgrading tools and increasing international cooperation...”

“For too long, certain individuals and businesses have been able to create increasingly complex structures in order to artificially lower their tax obligations in a manner that does not serve an economic purpose, including by shifting profits offshore and creating artificial tax deductions. To address this, the government will launch consultations in the coming months on the modernization of Canada’s anti-avoidance rules, in particular the General Anti Avoidance Rule. It is essential to the integrity of the tax system that our anti-avoidance rules be updated so they are sufficiently robust for tax authorities and courts to address this sophisticated and aggressive tax planning.”

Canada actions and activity

Areas of focus for compliance activities:

- Combatting tax crimes
- Reporting suspected tax cheating in Canada
- Offshore Tax Informant Program
- Voluntary Disclosures Program
- Business audits
- Letter writing campaigns
- Collections
- Electronic Funds Transfer Reporting
- Offshoring Canadian Taxes
- Compliance in the sharing economy
- Compliance in the real estate sector
- Incentive income
- Industry Campaign Approach
- Digital Currency



Managing difficult examinations and queries from the tax authorities



Managing difficult tax authority exams

- Understand where you are in the process (e.g. planning, risk assessment, information gathering, technical analysis)
- Ask for the exam/audit plan, scope — years and issues under review
- Ask for all the information the tax authority has about you
- Understand tax authority “drivers” and tax authority governance structure
- Manage deadlines and understand consequences for non-responsiveness
- Ensure consistent data and messaging to your tax authority (expect data to be shared)
- Position issues as factual and/or timing — generally easier to resolve
- Look for tax authority precedents applicable to your case
- Appreciate if the particular subject matter is part of a broader tax authority mandate/project
- Pursue other tax authority routes depending upon nature of item, e.g. technical issue/service matter
- Understand “settlement” options and how to negotiated present reasonable settlements including global settlements
- Consider what future course the file may take and what options are available — second review, alternative dispute resolution, domestic appeals, litigation, competent authority
- Consider future dispute prevention routes — Rulings, Advance Pricing Arrangements, and Other



Questions?

Contact us



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