

Chapter 8

Disputes

Dispute prevention and resolution are essential features of tax systems. This chapter explores both issues by looking at dispute prevention strategies, the availability of dispute review mechanisms and tax administrations' performance in relation to disputes.

Introduction

Effective access to processes that allow taxpayers to challenge assessments and decisions are an essential feature of a good tax system. They safeguard taxpayer rights and ensure appropriate checks and balances exist on the exercising of tax powers by administrations. At the same time, tax administrations and taxpayers should strive to work together to prevent disputes from arising in the first place, thus reducing burdens and uncertainty for both parties.

Table 8.1. **Taxpayer’s rights and obligations**

| Right | Obligation |
|-----------------------------------------------|-------------------------------------------------------|
| To be informed, assisted, and heard | To be honest |
| Of appeal | To be co-operative |
| To pay no more than the correct amount of tax | To provide accurate information and documents on time |
| Certainty | To keep records |
| Privacy | To pay taxes on time |
| Confidentiality and secrecy | |

Source: OECD (2019), *Tax Administration 2019: Comparative Information on OECD and other Advanced and Emerging Economies*, <https://doi.org/10.1787/74d162b6-en>

This chapter explores both issues. First, it takes a closer look at the dispute prevention strategies put in place by tax administrations, and second it examines the dispute resolution and review mechanisms in the jurisdictions covered by this report, as well as their performance in this area.

Dispute prevention

Prevention is the best form of dispute resolution, and tax administrations have introduced a variety of approaches to provide clarity and certainty to taxpayers with the aim of reducing compliance costs, particularly in relation to litigation. Additionally, as disputes can be resource intensive processes, fewer disputes will free up resources that can be focussed elsewhere.

A key element in the dispute prevention framework is the provision of guidance and advice to taxpayers. Tax administrations often do this as part of their wider service strategy, and it can include putting information and interactive tools on their website, publishing guidelines and taxpayer information briefs, and carrying out educational and business support initiatives.

In addition, many administrations offer specific dispute prevention mechanisms. For example, as noted in the chapter “Innovations in dispute resolution” in the 2019 edition of this series, the Australian Taxation Office explained their independent review of the technical merits of an audit case prior to the finalisation of the audit. The review aims to encourage earlier engagement to resolve disputes (OECD, 2019^[1]). Initially this service was only available to large businesses with an annual turnover greater than AUD 250 million. However, following a successful pilot it has now been extended to small business taxpayers, i.e. taxpayers in business with income or turnover of less than AUD 10 million (Australian Taxation Office, 2021^[2]).

Rulings

As shown in the 2019 edition of this series (OECD, 2019^[1]), as part of tax administrations' commitment to give taxpayers certainty of treatment, it is now common practice for administrations to set out how they will interpret the laws they administer, and how it will interpret the tax law in particular situations, through rulings:

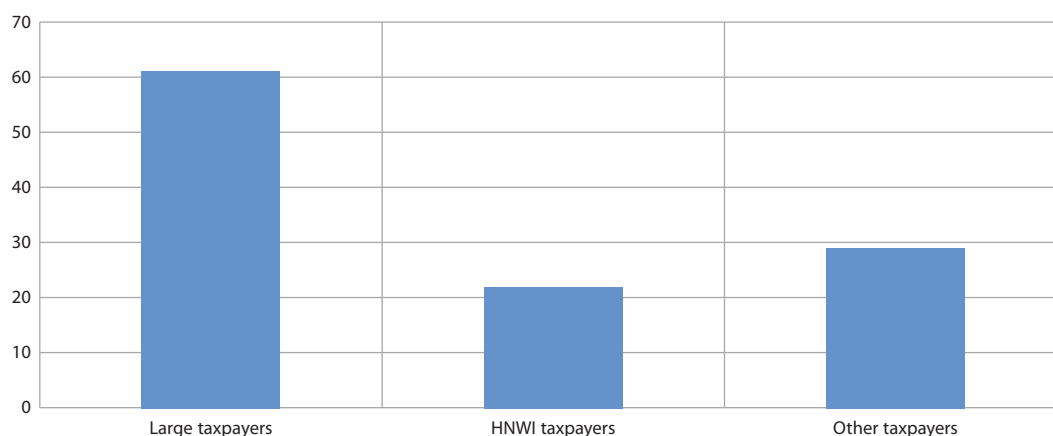
- A **public ruling** is a published statement of how an administration will interpret provisions of the tax law in particular situations. They are generally published to clarify application of the law, especially where a large number of taxpayers may be impacted by particular provisions and/or where a provision has caused confusion or uncertainty. Typically, a public ruling is binding on the tax administration if the ruling applies to the taxpayer and the taxpayer relies upon it.
- A **private ruling** relates to a specific request from a taxpayer (or their tax representative) seeking greater certainty as to how the law would be applied by the tax administration in relation to a proposed or completed transaction(s). The objective of private rulings is to provide additional support and certainty to taxpayers on the tax consequences of more complex transactions.

Co-operative compliance programmes

Over the last few years, there has been an increasing focus on the use of co-operative arrangements to manage compliance and enhance tax certainty. These programmes often involve a more transparent relationship between tax administration and taxpayer, and can involve more proactive approaches to resolving material tax risks. The concept of co-operative compliance has been the subject of several OECD reports, most recently *Co-operative Tax Compliance: Building Better Tax Control Frameworks* (OECD, 2016^[3]).

As the operation of a co-operative compliance programme is resource intensive due to the high level of engagement between tax administration officials and taxpayers, traditionally, those programmes were reserved for large companies. However, technological advancements in risk assessment processes have led to a number of administrations applying this concept to other taxpayer groups (see Figure 8.1).

Figure 8.1. Existence of co-operative compliance approaches for different taxpayer segments, 2019
Percent of administrations that have such approaches



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Source: Table A.49 Cooperative compliance approaches.

International Compliance Assurance Programme

The International Compliance Assurance Programme (ICAP) is a voluntary programme for a multilateral co-operative risk assessment and assurance process. It is designed to provide multinational enterprise groups (MNE groups) with increased tax certainty with respect to certain of their activities and transactions as long as they are willing to engage actively, openly and in a fully transparent manner. ICAP does not provide an MNE group with the legal certainty that may be achieved, for example, through an advance pricing arrangement (APA). However, it does give assurance when tax administrations participating in an MNE group’s risk assessment consider covered risks to be low risk. (OECD, 2021^[4]) As of April 2021, twenty jurisdictions participate in ICAP.¹

Joint audits

Another tool that can assist in preventing disputes is a joint audit where officials from two or more administrations join to form a single audit team which will examine issues or transactions of taxpayer(s) with cross-border business activities and in which the jurisdictions have a common or complementary interest. By collaborating it may be possible for the participating tax administrations to detect and address differences or potential disputes at an early stage. (OECD, 2019^[5])

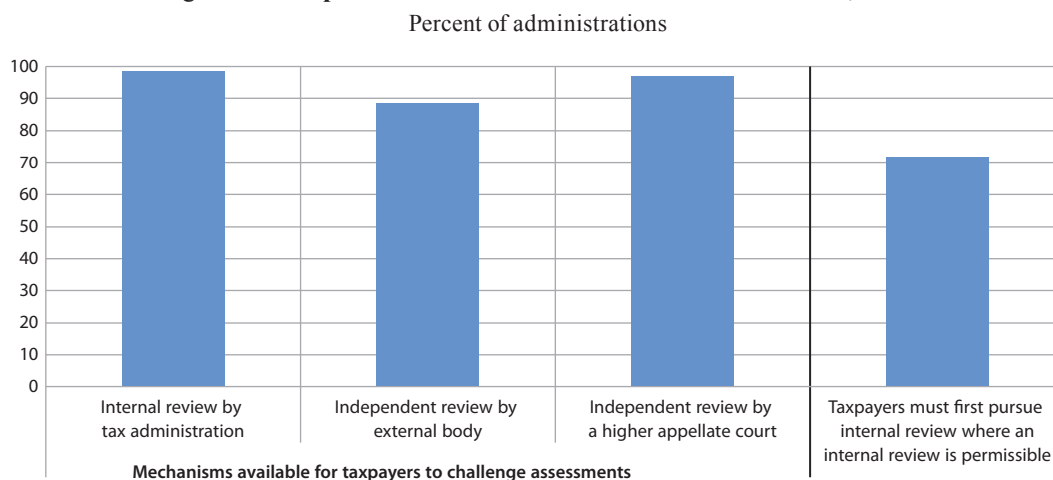
Box 8.1. United States: Dispute prevention measures

On 16 November 2020, the competent authorities of the United States and Mexico announced that they had renewed their prior co-ordination agreement that provides tax certainty for over six hundred multinational groups with “maquiladoras” – Mexican subsidiaries providing contract manufacturing and assembly functions for U.S. principals. Under this renewed Qualified Maquiladora Approach Agreement (“QMA”), double taxation is prevented if the Mexican taxpayer enters into a unilateral advance pricing agreement (“APA”) with Mexico’s Large Taxpayer Division (Administración General de Grandes Contribuyentes) under terms negotiated in advance between the U.S. and Mexican competent authorities. The competent authorities also announced that they are actively working to extend the QMA framework, with the aid of recently issued OECD guidance (issued 18 December 2020), to provide tax certainty for tax years impacted by current economic, commercial and public health conditions.

Source: United States – Internal Revenue Service (2021).

Dispute resolution review mechanisms

All 59 jurisdictions provide taxpayers with the right to challenge assessments. Almost all administrations report having an internal review mechanism in place, and a large majority of administrations provide taxpayers with the option to seek an independent review by an external body, which can help improve legal certainty for taxpayers. For those administrations that offer both review mechanisms, approximately 70% require taxpayers to seek an internal review before their case can be reviewed by an external body. (See Figure 8.2.)

Figure 8.2. **Dispute resolution: Available review mechanisms, 2019**

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Source: Table A.37 Dispute resolution: Review procedures.

Box 8.2. Resolving international tax disputes: Mutual agreement procedures

Double taxation of the same transaction or income can have significant economic impacts. Tax treaties, also known as double taxation agreements, usually aim to remove double taxation, by setting out mutually agreed rules on the allocation of taxing rights for taxpayers resident in the signatory countries. They can also provide mechanisms to help prevent tax non-compliance.

Given the complexity of these situations, the parties may disagree on the application or interpretation of those rules. To respond to these situations, the vast majority of tax treaties have a formal process for dispute resolution through a mutual agreement procedure (MAP). Such a procedure is set out in Article 25 of the OECD Model Tax Convention, which is used by most countries as the framework for their tax treaties. MAP is critical component in ensuring the effective working of tax treaties, and in helping to reduce double taxation.

Source: OECD (2017), “Improving mutual agreement procedures”, in *Tax Administration 2017: Comparative Information on OECD and Other Advanced and Emerging Economies*, https://doi.org/10.1787/tax_admin-2017-18-en.

Performance in dispute resolution

While tax administrations cannot generally control the timing of judicial processes, many of them are working on improving dispute resolution processes to make them quicker. The Brazilian example included in Box 8.3. illustrates how technological advancements offer new possibilities for tax administrations to identify similar cases or to understand likely outcomes of disputes; and the examples from Georgia and India show how digitalisation can support the dispute function (see Box 8.3).

Making effective adjustments to dispute resolution processes requires sound reporting and monitoring mechanisms. It is encouraging to see that since the 2015 TAS report, many administrations have been active in improving the level of management information available, and as a result, this report contains performance information from approximately 90% of administrations.

Box 8.3. Country examples: E-dispute resolution

Brazil: Artificial Intelligence in tax dispute resolution

In order to expedite tax dispute resolutions, the Brazilian Tax Administration is working to employ artificial intelligence in this process. With machine-learning algorithms, it is possible to automatically read the taxpayers allegations, compare it with a knowledge base of previous resolutions, cluster similar allegations and also propose, in natural language, the most likely outcome.

Georgia: E-hearing of tax disputes

During the pandemic the Georgia Revenue Service (GRS) introduced remote, electronic tax dispute hearings. Taxpayers were offered the chance to have a remote hearing for their ongoing disputes. This option was further embedded when taxpayers had the possibility to indicate in advance their willingness to participate in a remote hearing for new dispute resolution proceedings.

The solution ensures the business continuity of tax administration processes, the safety of involved parties during the pandemic, as well saving the time and financial resources of the taxpayers. Central to effective implementation was to ensure a smooth, efficient and effective system also taking into account concerns and requirements relating to data protection and confidentiality. GRS decided to build a system using a video-conferencing platform that allowed taxpayers to connect both via computer as well as phone. Taxpayers receive reminders of hearings through their personalised web pages as well as via SMS, which also provides detailed instructions on how to use the platform.

Table 8.2 shows the take up of e-hearings in Georgia, and the GRS expect the take up to grow as taxpayers become more accustomed to the e-hearing service. The e-hearing system has now been incorporated into the tax code of Georgia, meaning it will be maintained after pandemic is over.

Table 8.2. Georgia: Evolution of the use of e-hearing of tax disputes

| | May 2020 | June 2020 | August 2020 | November 2020 | December 2020 |
|----------------------------------------------------------------|-------------|--------------|----------------|------------------|------------------|
| Number of cases to be heard | 11 | 14 | 8 | 236 | 235 |
| Number of cases where taxpayers agreed to go through e-hearing | 8 | 13 | 6 | 151 | 130 |

Source: Georgia Revenue Service (2021).

India: Faceless Appeal Scheme

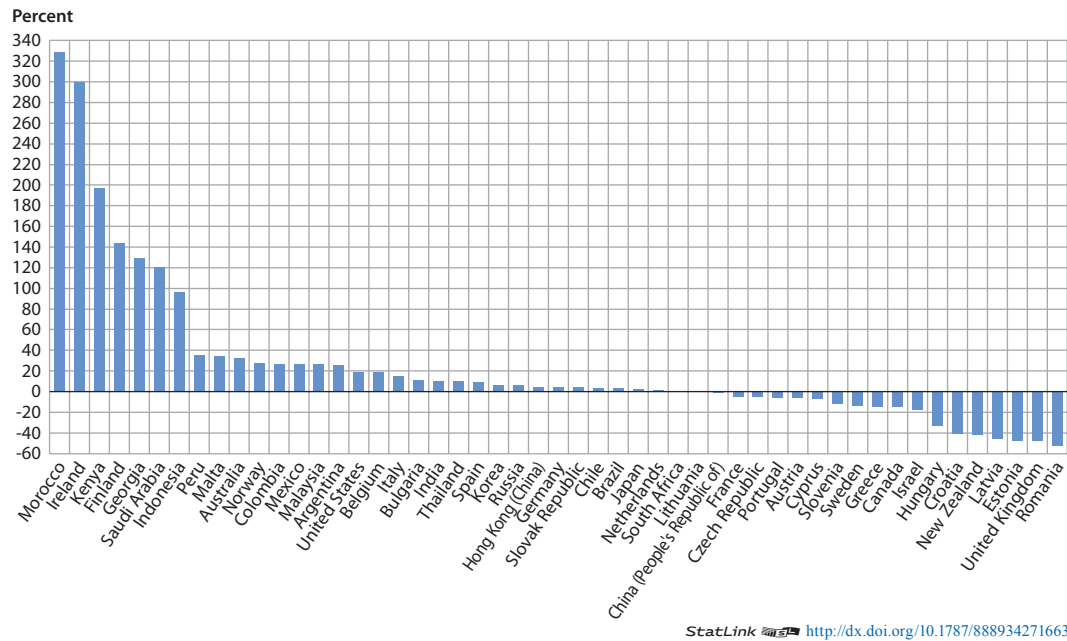
In 2020, the government of India launched the Faceless Appeal Scheme. This scheme introduces remote filing and hearing of the income tax appeals, and dispenses of the need for the taxpayer to appear in person before the Commissioner of Income Tax (Appeal).

The taxpayer has to supply their supporting material online, through the e-filing portal, and their appeal is heard through the central online Appeal Centre, which is a single point of contact between appellants and the government. Through this scheme, India will deliver greater efficiency, transparency and accountability for both taxpayers and the appeal body.

Sources: Federal Revenue Service of Brazil (2021), Georgia Revenue Service (2021) and India – Income Tax Department (2021).

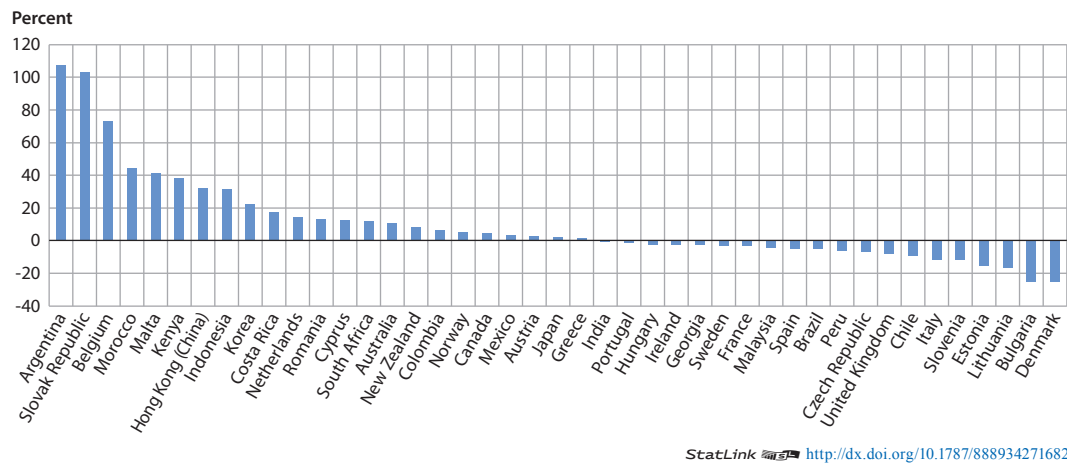
Figures 8.3 and 8.4. show the change between 2018 and 2019 in the number of review cases on hand at fiscal year-end, for both internal and external reviews. What is interesting to note are the significant increases in the number of review cases reported by a few jurisdictions.

Figure 8.3. Internal review procedures: Change between 2018 and 2019 in the number of cases at fiscal year-end



Source: Table A.38 Dispute resolution: Number of cases.

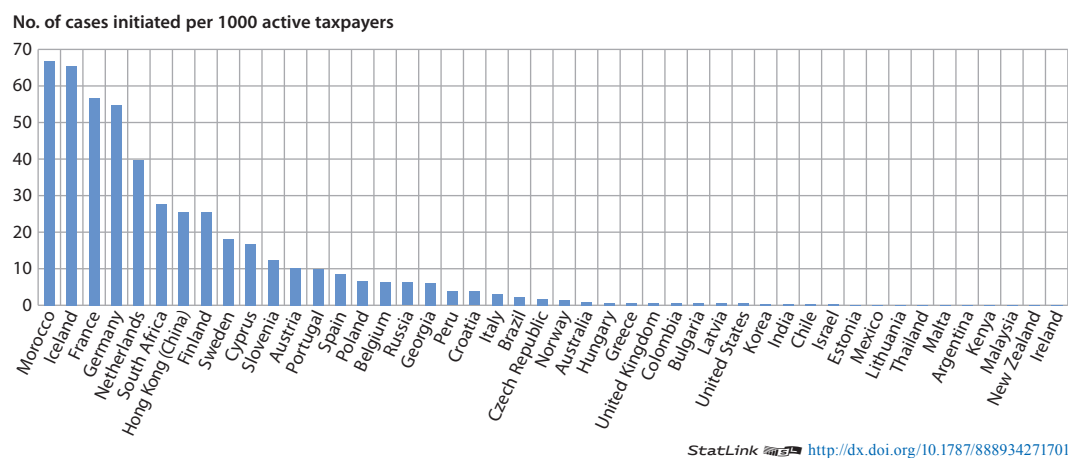
Figure 8.4. Independent review by external bodies: Change between 2018 and 2019 in the number of cases at fiscal year-end



Source: Table A.38 Dispute resolution: Number of cases.

At the same time, it should be pointed out that the volume of cases per jurisdiction varies significantly. For example, Table A.38 shows that Ireland has a very small number of cases under internal review procedure and the 300% increase of cases on hand is actually an increase from one case at the end of 2018 to four cases at the end of 2019. This becomes more evident when looking at Figure 8.5, which highlights the wide differences between jurisdictions in the use of internal review procedures.

Figure 8.5. Number of internal review cases initiated per 1 000 active PIT and CIT taxpayers, 2019

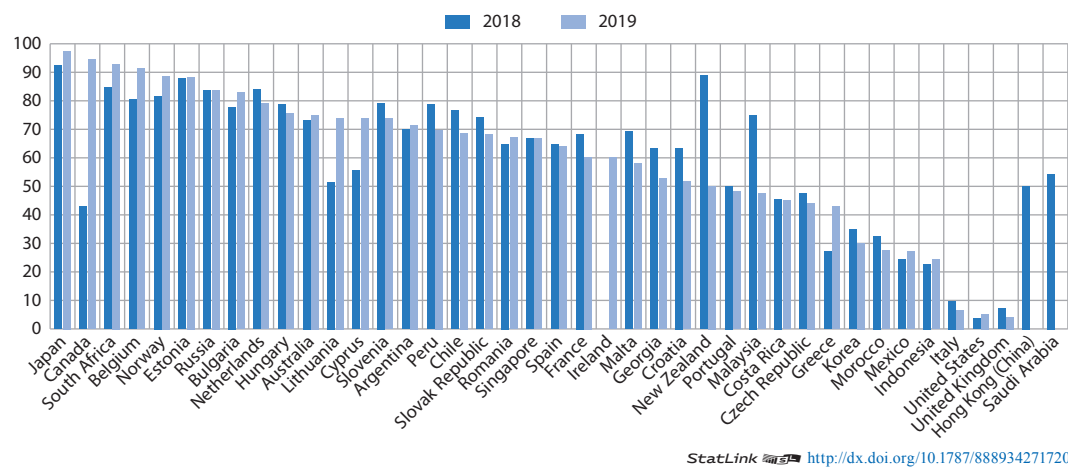


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Note: For Iceland and Poland the data relates to the year 2018.

Source: Table D.24 Administrative review cases & litigation.

Figure 8.6. Percentage of cases resolved in favour of the administration



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Note: Cases resolved in favour of the administration means those cases where the administration has been successful in more than 50% of the issues contested in each case. For France, the number of cases resolved in favour of the administration includes all decisions totally or partially favourable to the administration. For Korea, the number of cases resolved in favour of the administration refers to decisions where all issues were ruled in favour of the tax administration.

Source: Table D.24 Administrative review cases & litigation.

Different interpretations of tax law by taxpayers and the tax administration are a normal part of tax administration, and it is not uncommon for these differences to become subject to litigation, once the internal and external review procedures have been exhausted. Whilst tax administrations report that most disputes are resolved without the need for litigation, Figure 8.6. reports the performance of administrations for cases decided upon by the courts. This shows that there is little variation between 2018 and 2019, although for some jurisdictions the number of cases decided is very low, meaning results can fluctuate significantly between years.

Note

1. See www.oecd.org/tax/forum-on-tax-administration/international-compliance-assurance-programme.htm (accessed on 29 April 2021).

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From:

Tax Administration 2021

Comparative Information on OECD and other Advanced and Emerging Economies

Access the complete publication at:

<https://doi.org/10.1787/cef472b9-en>

Please cite this chapter as:

OECD (2021), "Disputes: 0", in *Tax Administration 2021: Comparative Information on OECD and other Advanced and Emerging Economies*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/87e9b8f2-en>

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