

GETTING THE
DEAL THROUGH 

Tax Controversy 2019

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Slaughter and May

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Preface

Tax Controversy 2019

Sixth edition

Getting the Deal Through is delighted to publish the sixth edition of *Tax Controversy*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Belgium, Korea and Malta.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Richard Jeens of Slaughter and May, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
August 2018

Switzerland

Ruth Bloch-Riemer

Bär & Karrer Ltd

Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

Taxation is based on the Swiss Federal Constitution, the relevant Swiss federal laws – eg, the Federal Direct Tax Act (DBG), the Federal Act on Tax Harmonisation (StHG), the Federal Act on Withholding Taxes (VStG), the Federal Act on Stamp Duties (StG), the Federal Act on Value Added Tax (MWSTG) and the Federal Act on Administrative Procedure (VwVG) – cantonal legislation, federal, cantonal and communal ordinances, international agreements (eg, double taxation agreements) and, in practice, the federal and cantonal judicial authorities' and federal and cantonal tax authorities' published practice (eg, Federal Tax Administration's circular letters, Federal Tax Conference's publications, cantonal guidelines).

2 What is the relevant tax authority and how is it organised?

The administration of taxation in Switzerland is divided between the Federal Tax Administration, the 26 cantonal tax administrations and the communal tax authorities. Social security contributions are administered by separate, typically cantonal, authorities.

The cantonal tax administrations are responsible for the correct and uniform assessment and the collection of the taxes for the federal government, cantons and municipalities. In addition, they carry out the federal and cantonal tax laws. Real estate capital gains taxes, property transfer taxes, and inheritance and gift taxes, as well as certain fees, are levied only at the cantonal level and, depending on the applicable cantonal legislation, at the communal level.

The Federal Tax Administration is, in addition to certain political functions and its coordinating role vis-à-vis other states in the context of double taxation and information exchange, responsible, for example, for VAT, withholding taxation, federal stamp duties and the military service exemption tax, and has supervisory duties with regard to the application of the DBG and the StHG. Customs duties are administered by the Federal Customs Administration.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

Federal, cantonal and communal taxes are, generally, levied by way of self-assessment by the taxpayer; that is, taxpayers declare the taxable objects themselves based on their qualification and assessment of the relevant taxable (and tax-exempt) factors. The tax authorities subsequently verify compliance with the tax laws and practice after submission of an individual's or entity's annual tax return or other declaration. The tax authorities' review of submitted forms is, particularly for entities, supplemented by recurring and non-recurring (ie, extraordinary) audits performed by the tax authorities or a mandated service provider on-site.

Cantons invoice the cantonal and municipal taxes as well as the federal income taxes usually in several provisional instalments. The due date for cantonal and communal taxes is determined by the

respective cantonal legislation. The due date for direct federal taxes is normally 1 March of the year following the tax year. In case of late payment, interest for late payment will accrue.

If taxes are not paid, the taxpayer is first reminded to pay the outstanding amounts. If the reminder is unsuccessful, debt-enforcement measures may be undertaken by the tax authorities.

In a typical procedure, after submission of the tax return, the tax return is reviewed preliminarily to verify its timely submission, the existence of the required signatures and completeness. The tax return is recorded in the electronic assessment system and, subsequently, its content is verified. If necessary, the tax authority may undertake further investigations, whereby the authorities determine on a case-by-case basis which information is required for correct and complete taxation. If the information provided by the taxpayer is deemed incomplete, the authorities may request information from the taxpayer and from third parties (eg, employers).

If such further investigations do not lead to satisfactory results, the tax authorities take a discretionary assessment by deciding unilaterally on the taxable income, profits, wealth and capital. The tax authorities' assessment is brought to the taxpayer's attention by way of a formally issued tax assessment order including the applicable taxable income, profits, wealth and capital as well as specifying the available legal remedies.

The duration of a tax return's review differs depending on the authorities' internal organisation and workload. A duration of two to three years for more complex cases may not be excluded; in principle, the tax authorities are only bound by the limitation periods.

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Income, profit, wealth and capital taxes for individuals and (business) entities are generally levied based on similar reporting principles: the basis for taxation consists in the annual tax return, which, for entities, is based on their annual accounts. The tax return is accompanied by side forms that may vary depending on the taxpayer's situation and activities:

- detail forms for real estate (individuals and entities);
- professional activities (individuals); and
- specific accounting topics for entities (eg, depreciation and amortisation overviews, base cost overviews, capital contribution reserves).

In addition to the tax return and accompanying forms, entities are typically subject to recurring and non-recurring tax audits by the competent tax authorities, mostly performed on-site.

The taxation of certain capital income streams (mostly dividends) for individuals and entities is, furthermore, secured via a federal withholding taxation mechanism. Further income streams paid to individuals (eg, wages for certain resident aliens, payments to foreign resident wage recipients, board fee or pension recipients) are secured through a 'source tax' (wage withholding tax) mechanism. In certain circumstances, intra-group dividend payments (to entities) may benefit from a notice procedure instead of the regular tax payment. Compliance with the respective legislation and practice is typically also monitored by the competent authorities by recurring and non-recurring audits.

VAT and customs duties as well as social security contributions are levied in accordance with specific reporting forms and procedures, and compliance with the respective legislation and practice is typically also monitored by the competent authorities by recurring and non-recurring audits.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

Under the taxpayer's general requirement of cooperation, the taxpayer is obliged to do everything possible to allow for a complete and correct assessment (DBG 126 and StHG 42 I). Information may, in this context, be requested in written or oral (interview) form. The most important obligation to cooperate is the submission of the tax return.

The assessment authorities may, furthermore, call experts, conduct visual inspection and review accounts and receipts on the spot by way of auditing.

6 What actions may the agencies take if the taxpayer does not provide the required information?

If the taxpayer does not provide the required documents or information, his or her taxable income, profit, wealth and capital are assessed based on a discretionary judgment by the tax authorities (DBG 130 II). In view of the general burden-of-proof rules applicable in taxation matters which provide that the tax authorities must support facts leading to (increased) taxation, and the taxpayer must support facts from which he or she derives a claim for a reduction of the tax burden (eg, deductions), the tax authorities typically only consider certain minimum deductions provided for by the law (eg, social deductions for children) in the context of their discretionary judgment.

Furthermore, the failure to meet the obligations to deliver certificates, provide information and meet reporting obligations may be punished with penalties.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

An important restriction for tax authorities to enforce the disclosure of commercial information is set by the principle of proportionality. There is a balancing of interests between the protection of professional secrecy and the public interest in setting into effect a lawful and equal taxation. Furthermore, from the perspective of reasonableness, it is permissible in particular to refuse to provide specific information (eg, client names within the framework of the taxation of an attorney) that falls under legal confidentiality.

The tax authorities are, generally, bound to the confidentiality obligation (DBG 110 I and StHG 39 I). Confidential information may only be sought based on a legal provision (DBG 110 II and StHG 39 I). Certain cantonal tax legislations provide for the possibility for interested persons to obtain, under specific circumstances, information on the tax factors of taxpayers resident in the respective canton. Such information rights can, to a large degree, be countered by the taxpayer by a formal data-blocking request.

8 What limitation period applies to the review of tax returns?

The limitation period for the assessment of tax on income, profits, wealth and capital is five years ('relative limitation') and, in any case, 15 years ('absolute limitation') after the tax period (DBG 120 and StHG 47 I).

The limitation period for the collection and enforcement of income tax, wealth tax and capital tax is five years (relative limitation) after the assessment has become final (DBG 121 I and StHG 47 II) and 10 years (absolute limitation) after the tax has been legally established (DBG 121 III and StHG 47 II).

Legislation for other federal taxes provides for shorter limitation periods:

- the limitation period for the assessment of withholding tax; and
- the limitation period for stamp duty and VAT is five years after the end of the calendar year during which the taxable event occurred (VStG 17, StG 30, MWSTG 42).

The limitation period may, in particular, be interrupted and started afresh by any action of the tax authorities aimed at the assessment of the tax. VAT may not be levied 10 years (absolute limitation) after the end of the calendar year during which the taxable event occurred (MWSTG 42 VI).

The tax administrations are held to review tax returns, declarations and forms within the limitation period, whereby the duration of the review may differ from case to case. Currently, a motion is pending in the Swiss parliament that aims to harmonise the rules regarding the limitation period for withholding tax, stamp duty and VAT.

9 Describe any alternative dispute resolution (ADR) or settlement options available?

An internal objection against the tax authorities' assessment decision may be raised by the taxpayer in writing within 30 days (DBG 132 I and StHG 48 I). The objection is treated by the same tax authority.

Swiss domestic tax legislation does not provide for alternative dispute resolution procedures. Settlements with regard to the taxable income, profits, wealth and capital are not permitted under Swiss law (see question 22); settlements may, however, be reached with the tax authorities with regard to the payment of taxes duly assessed and, in certain cases, in the context of a withdrawal of an objection.

Most of the Swiss double taxation agreements contain ADR mechanisms (competent authorities' agreement and mutual understanding procedures). Certain Swiss double taxation agreements contain arbitration clauses.

10 How may the tax authority collect overdue tax payments following a tax review?

After an unsuccessful reminder, the formal prosecution is initiated against the taxpayer by way of a regular debt enforcement procedure for overdue taxes and accrued interest for late payment (DBG 165). In this context, the final tax assessment is equal to an enforceable judgment so that the preliminary debt-enforcement procedures (eg, formal last invitation to pay) do not, by law, have to (but may out of courtesy) be undertaken by the tax authorities. Taxes related to real estate (eg, cantonal real estate capital gains taxes) are typically secured by a legal pledge that allows for a direct enforcement of the claim by way of a realisation of the pledge.

Further to formal debt-enforcement measures, tax claims may be secured by pledges or guarantees (DBG 169, 173), formal arrest (DBG 170), the refusal of radiation of a liquidating entity from the commercial register (DBG 171) and land register blockings (DBG 172). These measures should secure the taxpayer's Swiss assets, which may at a later stage serve as a basis for the enforcement and collection of the tax and interest claims.

11 In what circumstances may the tax authority impose penalties?

Penalties may be imposed in cases of tax evasion (DBG 175, StHG 56) and tax fraud (DBG 186, StHG 59), but also for breach of procedural obligations (DBG 174, StHG 55, eg, failure to submit a tax return or meet declaration obligations).

12 How are penalties calculated?

According to Swiss criminal legislation's principles, as a general rule, punishment is measured according to the degree of fault of the perpetrator. The court, in this context, takes into account the individual circumstances and the effect of punishment on the defendant's life. Penalties and fines in taxation cases are calculated according to the personal and economic circumstances of the offender at the time of the judgment; in particular by the income and wealth, living expenses, any possible family and support obligations and the subsistence level. Similar criteria are applied for fines imposed on entities.

According to legislation, fines for the breach of procedural obligations may amount to up to 1,000 Swiss francs in several cases or in relapse cases to up to 10,000 Swiss francs (DBG 174 II, StHG 55).

In cases of tax evasion, the fine is, in principle, equal to the amount of tax evaded. It can be reduced to a third in cases of a minor degree of fault (mostly negligence) and increased to up to three times the amount of tax for serious cases of fault (DBG 175 II, StHG 56 I). Criminal prosecution may be waived if the taxpayer undertakes a spontaneous

voluntary disclosure (individuals and entities, with further requirements, see DBG 175 III, StHG 56 Ibis and DBG 181a, StHG 57b).

Tax fraud in income, profits, wealth and capital tax matters may be punished with imprisonment for up to three years or with a fine. A conditional imprisonment may, as of 1 January 2017, be combined with a fine of up to 10,000 Swiss francs (DBG 186 I, StHG 59 I). Tax fraud in federal tax matters ('Abgabebetrag', eg, VAT, withholding taxes and stamp duties) under the Criminal Code for Administrative Matters (VStR) is generally sanctioned with imprisonment for up to one year or fines up to 30,000 Swiss francs (VStR 14 II), with aggravation to imprisonment for up to five years combined with a fine, or a fine only (VStR 14 IV).

13 What defences are available if penalties are imposed?

Under Swiss law, the offender may be punished only if and insofar as he or she can be held personally responsible for an offence. It requires a case-by-case analysis to determine whether incorrect advice by the authorities may, therefore, serve as a justification for the offender.

14 In what circumstances may the tax authority collect interest and how is it calculated?

Interest is payable if taxes are levied retroactively (DBG 151 I, StHG 53 I) and if taxes are not paid within the deadlines set forth in tax legislation or provided in a formal order of the tax authorities (DBG 164 I).

The interest is fixed annually in the Federal Department of Finance's regulations on refund and late payment interest. For 2018, the interest rate amounts to 3 per cent a year. The obligation to pay interest starts 30 days after delivery of the definitive or provisional invoice or 30 days after the initial due date by procedure of supplementary tax.

The cantons determine their applicable default interest rates on an annual basis.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

If a tax review leads to an enforceable decision or judgment on tax evasion or tax fraud or the breach of procedural obligations, the mentioned criminal consequences (penalties and, in exceptional cases, imprisonment; see question 12) may apply.

Furthermore, in severe cases of tax fraud within the offender's professional or, in severe cases, non-professional context, a ban to perform professional activities, typically in sectors exposed to financial topics, may be issued for a limited or unlimited period of time.

16 What is the recent enforcement record of the authorities?

In Switzerland, no official figures are published with regard to enforcement records of the authorities. Generally, the cantonal tax administrations handle each year between 4,000 and 6,000 procedures for tax evasion (including voluntary disclosure cases).

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

Third parties have certain attestation, information and notification obligations (DBG 127-129, StHG 43-45).

The authority performing a tax assessment is also entitled to investigate without the taxpayer's participation or consent. However, third parties, as opposed to the taxpayer, do not have a general obligation to cooperate in the evaluation of facts. Their obligations are therefore limited to the obligations contained in DBG 127-129.

In case of refusal to provide the requested certificate or information, the third party may, after a reminder, be fined for violation of procedural obligations (DBG 174, StHG 55).

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Cooperation and assistance with tax authorities of all governmental levels is provided for in article 44 of the Swiss Federal Constitution and, for example, DBG 111 et seq. The authorities implementing and enforcing the tax and further legislation assist each other in fulfilling of

their tasks: they provide the necessary information to the tax authorities and other federal authorities, the cantons, districts, counties and municipalities and allow them to access official records. The federal authorities and the authorities of the cantons, districts, counties and municipalities grant the authorities responsible for the enforcement of this law all information necessary upon request.

International assistance in tax matters is, from a Swiss domestic perspective, governed by the Federal Act on Administrative Assistance in Tax Matters (StAHiG). The StAHiG provides the regulations for the implementation of international administrative assistance in tax matters under the double-taxation agreements and other international agreements concluded by Switzerland that provide for specific information exchange upon request in tax matters (in particular the Tax Information Exchange Agreements). The international exchange of information in tax matters is implemented and executed by the Swiss Federal Tax Administration, which provides assistance based on foreign requests and may also request information from foreign states' authorities.

Further to the exchange of information upon request, Switzerland has signed agreements with a number of partner countries and the EU on the introduction of the automatic exchange of information (AEOI). The legal basis in Switzerland for the introduction of the AEOI, that is, the Mutual Assistance Agreement, the MCAA and the Federal Act on the International Automatic Exchange of Information in Tax Matters, were adopted by the Federal Assembly in December 2015.

A number of bilateral treaties and the agreement between Switzerland and the EU, as well as the Swiss domestic legislation on the AEOI, entered into force on 1 January 2017. Based on the treaties and the Swiss implementing legislation, Switzerland began to collect data in respect of financial assets and will begin to exchange it from 2018. Switzerland has signed and is expected to sign further AEOI agreements with other countries, which, subject to ratification, will become effective on 1 January 2018 or at a later date. An updated list of the AEOI agreements negotiated or signed by Switzerland can be found on the website of the State Secretariat for International Financial Matters. Furthermore, Switzerland agreed to exchange certain information, which substantiates the suspicion that a taxpayer obtained an undue tax reduction. The Swiss Federal Tax Authority transmitted in the first half of 2018 a total of 82 spontaneous notifications regarding tax rulings to 41 different states.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

If it can be demonstrated that the payment of the tax will lead to great hardship for a taxpayer as a result of an emergency or exceptional situation, the tax imposed may be waived fully or partially (DBG 167). This does not apply to taxes levied in retroactive taxation procedures and to penalties.

If the timely payment of taxes, interest and costs or penalties for a transgression causes considerable hardship for the taxpayer, the competent authority may extend the payment deadline or grant payment in instalments upon the taxpayer's request. The granting of payment facilities may be subject to reasonable securitisation (DBG 166).

Requests for tax abatement and tax payment deferral must be placed in writing with the competent authorities.

20 Are there any voluntary disclosure or amnesty programmes?

Individuals (DBG 175 III, StHG 56 Ibis) and business entities (DBG 181a, StHG 57b) have the opportunity to file a voluntary disclosure once in their lifetime or existence. The voluntary disclosure and amnesty benefits are only available if the tax authority had no knowledge of the offence, the taxpayer fully supports the administration in determining the correct tax and, in the end, pays all outstanding taxes and interest.

Voluntary disclosure is also available in inheritance cases (to be undertaken by the heirs, DBG 153a, StHG 53a) and for assets not included in estate inventories (DBG 178 IV, StHG 56 V).

As the main feature in voluntary disclosure proceedings, no penalties will be imposed on the taxpayer, but the taxpayer will only be required to retroactively pay the taxes due for 10 tax periods or, in inheritance cases, three tax periods, plus interest for late payment. Furthermore, the voluntary disclosure prevents criminal

proceedings for related criminal offences (eg, falsification of documents or accounts).

Rights of taxpayers

21 What rules are in place to protect taxpayers?

Aside from the remedies the taxpayer may raise vis-à-vis court or within the assessing tax authorities, the taxpayer is protected by the general procedural rules for administrative procedures, in particular, the secrecy obligation of persons and authorities entrusted with enforcing the tax legislation, and the right to refuse insight into official files to third parties.

To protect the taxpayer in the context of the assessment and enforcement of taxes, Swiss tax legislation is governed by the investigation principle, the requirement for the authorities to determine the relevant facts, the application of law ex officio, the principle of proportionality and the taxpayer's right to be heard. Furthermore, orders must be provided with a right of appeal and the taxpayer's rights to contest the order must be formally stated on the order.

Also Swiss tax legislation, particularly in the criminal law context, is based on the taxpayer's right to equal and fair treatment in the process, the right to a fair hearing, the right to legal aid and judgment, the right to refuse self incrimination (*nemo tenetur*) and the right to an effective remedy (articles 6 and 13 of the European Human Rights Convention and article 29 of the federal constitution of Switzerland).

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

Taxpayers may seek a tax ruling from the competent tax authorities. In the tax ruling, the competent tax authority provides binding information on the tax treatment of the described fact patterns according to the applicable legislation. Tax ruling requests should be submitted in writing and must be submitted and typically confirmed by the tax authorities in advance, that is, before the described facts materialise. Tax rulings must not include agreements with the tax authorities on tax treatment if a case of the treatment contradicts the legal provisions: an illegal tax agreement.

Further, taxpayers are, according to DBG 114 I and StHG 41 I, entitled to inspect the files they have submitted to the tax authorities or they have signed vis-à-vis the tax authorities. Spouses taxed jointly are also entitled to inspect the other spouse's files. In certain cases, heirs have the right to inspect the decedent's files with the tax authorities. The right to inspect files will normally be granted only once the fact finding has been completed by the tax authorities and if no private or public interests are opposed.

23 Is the tax authority subject to non-judicial oversight?

The cantonal tax authorities are under administrative oversight in accordance with the respective cantonal legislation. For the application of federal legislation, the cantonal tax authorities are, furthermore, supervised by the Federal Tax Administration.

The Federal Tax Administration is supervised by the Federal Department of Finance.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

Tax disputes are initially treated within the assessing tax authority in the course of the objection procedure (see question 38). For subsequent court proceedings, the cantons are obliged by federal legislation to provide at least one court body for tax disputes (typically the tax recourse court or tax recourse commission (DBG 140 et seq). The cantons may provide for a second independent court instance in tax matters, typically a division of the cantonal administrative court (DBG 145).

On the federal level, the Federal Supreme Court has jurisdiction for tax matters (DBG 146), whereby the Federal Administrative Court is interposed for certain tax-related matters (eg, international administrative assistance in taxation matters).

25 How can tax disputes be brought before the courts?

The taxpayer may raise an objection against the assessment notice within 30 days after notification by the assessment authority (DBG 132, StHG 48). The objection may contest the assessment order, the

Update and trends

There has been an increasing trend towards tax litigation in the past few years. Whereas tax litigation historically was an 'ultima ratio' measure for many taxpayers and also the authorities, the number of cases that are brought before courts has increased. Previously, more issues had been settled between the taxpayers and the tax authorities in the course of the tax assessment procedure.

Further recent developments are caused by the introduction of the automatic exchange of information and, with this, increased transparency in cross-border situations. The enhanced transparency increases the tax authorities' opportunities to enforce the taxpayers' filing and taxation obligations and led to an increasing number of voluntary disclosures.

declaratory order on tax liability and exemption, the audit decision, the supplementary tax order, the decision regarding a fine, the liability order, the decision regarding a pledge, the decision regarding the recovery of paid tax amounts, the decision of the reimbursement of real estate gains tax, the decision concerning the refund of withholding tax, tax at source and the order concerning a reminder fee.

The objection may be submitted according to DBG 132 I and StHG 48 I by the taxpayer. But the legitimacy goes even further and applies to all those persons who have been assessed with the assessment order for the tax in question.

The taxpayer may raise a complaint by the independent recourse commission against the objection decision from the assessment authority within 30 days after notification in writing (DBG 140, StHG 50). Those entitled to raise the complaint are the taxpayer and other individuals who are affected by the respective order and have a legitimate interest in the annulment.

In the objection, the objector has a claim to unlimited review of the assessment decision and the annulment of reported deficiencies. Objections and complaints must be submitted in writing. There is no minimum threshold amount for claims.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Under Swiss legislation, tax claims affecting multiple tax periods are, at least formally, not combined in administrative and court proceedings.

According to DBG 9 I and StHG 3 III, spouses and minor children are taxed jointly so that tax claims brought forward by the tax authorities are formally addressed to both spouses. However, any spouse is entitled to take procedural steps, such as raising objections, independently. The objection raised by one spouse also takes effect for the other spouse.

In principle, communities of heirs are, under Swiss legislation, not taxed jointly, but every heir's share to the estate is allocated to his or her own taxation sphere as of the decedent's demise. If heirs are, nevertheless, affected jointly by a taxation (eg, for the decedent's taxation until his or her demise or for real estate held jointly), the heirs are also entitled to raise objections individually, but with effect also for the other heirs.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Tax amounts become due during the relevant tax period for cantonal and communal taxes, and shortly after the relevant tax period for federal taxes, and, in any case, once they are determined in a tax assessment order. Interest for late payment is levied after the payment due date. The submission of an objection or complaint does not interrupt the payment time lines and it is generally recommended to pay the disputed tax, despite court proceedings, in order to avoid interest charges for late payment in case the proceedings are not successful. Overpaid taxes are refundable or credited in favour of the taxpayer, usually bearing a refund interest, if the tax is reassessed, for example, after a court decision.

28 To what extent can the costs of a dispute be recovered?

The costs (procedural costs and administrative fees as well as costs for legal representation) of a dispute are, generally, imposed on the losing party by the court and, in certain circumstances, by the tax authorities.

The costs may be divided between the parties if the dispute leads to a judgment partially in favour of one party (DBG 144). For procedures at the cantonal level, the respective cantonal legislation applies. The applicable cantonal legislation may allow the court to require procedural costs to be paid in advance, for example, by the claimant or by the taxpayer, in order to accept the case for trial. In specific circumstances, the court may also waive the costs (DBG 144 III).

A final cost assignment issued by a court is, generally, enforceable by means of ordinary debt-enforcement procedures.

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

Swiss legislation and practice do not contain any restrictions with regard to process financing via insurance solutions or third-party funding. The cost for tax disputes may be covered by legal protection insurances concluded by an increasing number of Swiss resident taxpayers. However, the scope of coverage of such legal protection insurances is to be reviewed on a case-by-case basis to determine whether tax disputes are included or explicitly excluded from coverage.

Under the Swiss legislation on the professional behaviour of lawyers, it is not permitted for a lawyer to finance a tax dispute indirectly via purely success-based compensation.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

Swiss administrative courts (eg, the Federal Administrative Court and the Federal Supreme Court) usually sit as a panel of three or five judges. The cantonal legislations are relevant for the composition of the cantonal courts. Swiss legislation does not provide for jury trials.

31 What are the usual time frames for tax trials?

The duration of a tax trial varies depending on the court and the complexity of the dispute in question.

32 What are the requirements concerning disclosure or a duty to present information for trial?

The taxpayer is obliged to do everything possible to allow for a complete and correct assessment (DBG 126 and StHG 42 I, see also question 5) generally during the assessment procedure but de facto also in court. Information may, in this context, be requested in written or oral (interview) form. In accordance with general criminal law principles, no taxpayer may be constrained to accuse him or herself in criminal proceedings.

Within the tax assessment procedure, the law specifically mentions the obligation of employees to file their payroll accounting and account statements regarding any payments received as directors or other official administrative organs of a legal entity (DBG 125 I). Furthermore, the same provisions oblige individuals to provide statements of their securities, outstanding loans and their debt (DBG 125 I c). Legal entities and self-employed individuals must file their balance sheet and P&L

statements (DBG 125 II). Legal entities have an obligation to show the development of their equity, including capital contribution reserves (DBG 125 III).

Every taxpayer has the duty to file a tax return (DBG 124). Taxpayers who are subject to Swiss VAT must keep records of all relevant transactions and store bills and accounts for such transactions for up to 20 years (MWSTG 70). They must provide a statement of all relevant transactions to the Swiss VAT authority within 60 days after the end of each declaration period (MWSTG 71). Income from Swiss sources, which is subject to the Swiss withholding tax, must be declared in the Swiss resident income-recipient's tax return as income in order to be eligible for a refund of the withholding tax (VStG 23). Taxpayers are, according to DBG 114 I, entitled to inspect the files they have submitted to the tax authorities or have signed vis-à-vis the tax authorities (see question 22). The right to inspect files will normally be granted only once the fact-finding has been completed by the tax authorities and if no private or public interests are opposed.

In general, during trial but also in the course of the assessment procedure, the burden of proof for tax-increasing assertions is upon the tax authorities. However, if there is a lack of proof caused by the taxpayer's insufficient cooperation, natural assumptions are put in place. Such assumptions shift the burden of proof to the taxpayer. Furthermore, the taxpayer has the burden of proof for assertions reducing his or her tax burden.

33 What evidence is permitted in a tax trial?

In a tax trial, the facts may be established based on documents, written or oral information provided by the taxpayer, information or testimony from third parties, visual inspections and reports (DBG 123 II).

According to the federal legislation on administrative proceedings and on criminal proceedings generally, everybody is obliged to give testimony. However, exceptions apply in certain cases for professional secrecy holders (these, typically, are required to seek a suspension of their professional secrecy for the proceedings). Furthermore, no one may be forced to incriminate him or herself in criminal proceedings (*nemo tenetur*).

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

Under Swiss legislation, tax procedures and trials are not restricted by the requirement of professional representation of the taxpayer. The taxpayer may represent him or herself in the tax assessment, objection and complaint procedure, vis-à-vis the authorities and in court (including the Federal Supreme Court). Any party to an assessment, objection or complaint procedure may, however, be represented by a person capable of acting in the process (DBG 117), and it is customary and advisable to be represented, at least for complex cases, by a professional. For certain criminal proceedings, the defendant is obliged to be professionally represented.

State aid to cover the procedural and representation costs will be granted based on constitutional grounds if a party does not have the necessary resources and its legal request does not appear unsuccessful.



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Depending on the complexity and exposure of the case in question, the tax authorities represent themselves in tax proceedings before the courts or mandate external specialists. In criminal proceedings, the tax authorities are, typically, represented by the prosecutor.

35 Are tax trial proceedings public?

Tax assessment and tax objection procedures as well as complaint proceedings to the cantonal recourse commission are non-public procedures. Cantonal legislation governs the publicity of complaint procedures to a second cantonal instance (see question 38).

Oral hearings in complaint procedures on the level of the Federal Supreme Court are public unless the specific interests of the taxpayer would be offended.

Trial proceedings in criminal matters (eg, in the context of alleged tax fraud) are governed by the federal criminal procedure legislation (DBG 188 II) and are generally public.

36 Who has the burden of proof in a tax trial?

In accordance with the general principles as set out in the Swiss Civil Code and as applied also in tax matters, any party must prove the existence of a fact from which it derives a claim or right in its favour. In consequence, in taxation matters, for any circumstances that aim to reduce the taxpayer's tax burden (eg, income tax deductions), the taxpayer bears the burden of proof. Conversely, the tax authorities bear the burden of proof regarding any facts that lead to the existence or increase of a taxpayer's tax burden.

37 Describe the case management process for a tax trial.

Swiss legislation and practice do not provide for specific case-management rules in tax trials. Tax trials are governed by the applicable procedural legislation.

38 Can a court decision be appealed? If so, on what basis?

According to DBG 132 and StHG 48, tax assessment orders may be contested by the taxpayer by an objection in writing to the assessing authority within 30 days after notification of the order. An objection against an assessment based on a discretionary judgment (see question 6) must include evidence showing that the assessment is obviously incorrect (DBG 132 III, StHG 48 II). The objection procedure is free of charge for the taxpayer.

According to DBG 140, the tax authorities' decision in the objection procedure can be contested by a complaint raised by the taxpayer in writing to the respective cantonal recourse commission within 30 days after notification of the decision. Exceptionally, and if all the involved parties agree, an objection may also be treated directly as an advanced complaint, according to DBG 132 II. The complaint is subject to fees in accordance with the applicable cantonal legislation. The complaint must include a request and the relevant facts and must specify the relevant evidence and include or at least specify in detail the relevant evidence material (documentation). The complaint may concern all aspects of the contested decision and the previous procedure.

The decision rendered by the recourse commission may be challenged by the taxpayer or the cantonal tax authorities by a complaint to a further, independent cantonal court (typically the administrative court, for example, in the canton of Zurich) in accordance with DBG 145. The complaint is subject to fees in accordance with the applicable cantonal legislation.

The decision rendered by the recourse commission or, if applicable, the further cantonal court may be challenged by the taxpayer or the cantonal tax authorities by a complaint in administrative matters to the Federal Supreme Court (DBG 146). The complaint is subject to fees in accordance with the applicable federal legislation.

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