

Tax Controversy

Contributing editor
Richard Jeens



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GETTING THE
DEAL THROUGH

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DEAL THROUGH 

Tax Controversy 2017

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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 (VATA) 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, inheritance and gift taxes as well as certain fees are levied only on the cantonal level and, depending on the applicable cantonal legislation, on the communal level.

The Federal Tax Administration is, in addition to certain political functions and its coordinatory functions vis-à-vis other states in the context of double taxation and information exchange, responsible, for example, for value added tax (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 taxes are, generally, levied by way of a so-called *Selbstveranlagung* (self-assessment) by the taxpayer, that is, the taxpayer declares the taxable objects himself based on his qualification and assessment of the relevant taxable (and tax-exempt) factors. The cantonal and communal 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, in particular 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 March 1 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, in a first step, 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 a 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 and wealth/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 and taxable wealth/capital as well as specifications on 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 and wealth/capital taxes for individuals and (business) entities are, generally, levied based on similar reporting principles: the basis for taxation consist in the annual tax return that, 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 *Verrechnungssteuer*, 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 *Quellensteuer*, 'source tax' (wage withholding tax) mechanism. In certain circumstances, intra-group dividend payments (to entities) may benefit from a *Meldeverfahren* (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 audits.

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 taxable income/profit and wealth/capital is assessed based on a discretionary judgement called *Einschätzung nach pflichtgemäßem Ermessen* by the tax authorities (DBG 130 II). In view of the general burden of proof-rules applicable in taxation matters providing that the tax authorities have to evidence facts leading to (increased) taxation and the taxpayer has to evidence facts from which he 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 judgement.

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

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure?

The tax authorities are, generally, bound to the confidentiality obligation (DBG 110). Confidential information may only be sought based on a legal provision (StHG 39).

A restriction 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 information that falls under a legal confidentiality.

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

The limitation period for the assessment of income/profits tax and wealth/capital tax prescribes after five years (so-called relative limitation) and, in any case, 15 years (so-called absolute limitation) after the tax period (DBG 121 II and StHG 47 II).

The limitation period for the collection and enforcement of income tax, wealth tax and capital tax prescribes after five years (relative limitation) after the assessment has become final (DBG 121 II 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 provide for shorter limitation periods:

- the limitation period for the assessment of withholding tax; and
- stamp duty and VAT prescribes five years after the end of the calendar year during which the taxable event occurred.

The limitation period may, in particular, be interrupted and starts afresh by any action of the tax authorities aiming at the assessment of the tax (VStG 17, StG 30, VATA 42 I). VAT may not be levied (absolute limitation) 10 years after the end of the calendar year during which the taxable event occurred.

The tax administrations are held to review tax returns and declarations/forms within the limitation period whereby the duration of the review may differ from case to case.

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

Against the tax authorities' assessment decision, an internal objection 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 and wealth/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/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, by law, not have to (but, of course, 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 to 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 that may, at a later stage, serve as a basis for the enforcement/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 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 to 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 severe cases or in relapse cases to up to 10,000 Swiss francs (DBG 174 II).

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 case of a minor degree of fault and increased to up to three times the amount of tax for serious cases of fault (DBG 175 III). Criminal prosecution may be waived if the taxpayer undertakes a spontaneous voluntary disclosure (individuals and entities, with further requirements, see DBG 175 III and DBG 181a).

Tax fraud in income/profits and wealth/capital tax matters may be punished with imprisonment for a duration of 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). Tax fraud 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), 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 can be held personally responsible for an offence. It requires a case-by-case analysis to determine whether an incorrect advice 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) 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 the due date and interest. For 2016, 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/judgment on tax evasion or tax fraud or the breach of procedural obligations, the mentioned criminal consequences (penalties, in exceptional cases imprisonment) may apply.

Furthermore, in severe cases of tax fraud within the offender's professional or 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).

The authority performing a tax assessment is entitled to investigate also without the taxpayer's participation or consent. However, third parties do, as opposed to the taxpayer, 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).

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/assistance under tax authorities of all governmental levels is provided for in 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 the official file. The authorities of the federal, cantonal, districts, counties and municipalities grant the authorities responsible for the enforcement of this law all information necessary upon request.

The 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 information exchange in tax matters (in particular the Tax Information Exchange Agreements (TIEA)). The international exchange of information in tax matters is implemented and executed by the Swiss Federal Tax Administration that provides assistance based on foreign requests and may also request information from foreign states' authorities. Switzerland has, today, signed with a number partner countries and the EU agreements on the introduction of the automatic exchange of information (AIA/CRS). The legal basis in Switzerland for the introduction of the AIA, that is, the Mutual Assistance Agreement, the MCAA and the draft Federal Act on the International Automatic Exchange

of Information in Tax Matters, were adopted in the final vote by the Federal Assembly in December 2015. The first data will be collected as of 2017 and it is expected that the first data exchanges will be effectuated as of 2018.

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 a 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 a 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) and business entities (DBG 181a) have the opportunity to file a voluntary disclosure once in their lifetime/existence. The voluntary disclosure/amnesty benefits are only available if the tax authority did not have any 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.

However, supplementary tax and interest rates remain payable. A voluntary disclosure is also available in inheritance cases (to be undertaken by the heirs, DBG 153a) and for assets not included into estate inventories (DBG 178 IV).

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 ten tax periods or, in inheritance cases, three tax periods, plus interest for late payment. Furthermore, the voluntary disclosure prevents from 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 of 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 the enforcement of the tax legislation and 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 and 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 judgement and the right to an effective remedy (EMRK 6 and 13, BV 29).

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 (*unzulässige Steuerabkommen*, an illegal tax agreement).

Further, taxpayers are, according to DBG 114 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 the 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, in a first step, 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/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?

Against the assessment notice, the taxpayer may raise objection within 30 days after notification by the assessment authority (DBG 132). Contestable with the objection are the assessment order, the declaratory order on tax liability/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 reminder fee.

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

The taxpayer may raise complaint by the independent recourse commission against the objection decision from the assessment authority within 30 days after notification in writing (DBG 140). Entitled to raise the complaint are the taxpayer and other individuals, if they 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, 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 independently take procedural steps such as, for example, raising objections. 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 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 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 already during the relevant tax period (cantonal and communal taxes) respectively shortly after the relevant tax period (federal taxes) and, in any case, once they are determined in a tax assessment order. After the payment due date, interest for late payment is levied.

The submission of an objection or complaint does not interrupt the payment timelines and it is, generally, recommended to pay the disputed tax despite of 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 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/administrative fees as well as costs for legal representation) of a dispute are, generally, imposed to the losing party by the court. The costs may be divided between the parties if the dispute leads to a judgement partially in favour of one party (DBG 144).

In specific circumstances, the court may also waive the costs (DBG 144 III).

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 does 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 a certain 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.

It is to be noted that under the Swiss legislation on the professional behaviour of lawyers, it is not permitted for a lawyer to finance a tax dispute indirectly via a 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) judge generally 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 Describe the discovery process for a tax trial.

In the context of a tax trial, the court determines the case's facts ex officio, if necessary or in cases of doubt by use of the various means of evidence available, in particular testimony, documents, inspection, tax authorities' files. The court decides on the means of evidence to be considered in full discretion.

Aside of the court's obligations deriving from its duties to investigate the facts ex officio, the parties involved in the trial (in particular the taxpayer) include their view and evidence in their briefs.

33 What testimony is permitted in a tax trial?

In a tax trial, the facts may be established based on documents, 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 a 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 constraint to accuse himself in criminal proceedings.

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 can represent himself 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.

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 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 has to 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. The tax authorities bear, on the other side, the burden of proof to evidence any facts that lead to the existence or the 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, tax assessment orders may be contested by the taxpayer by *Einsprache* (an objection) in writing to the assessing authority within 30 days after notification of the order. The objection against an assessment based on a discretionary judgement (see question 6) must include evidence showing that the assessment is obviously incorrect (DBG 132 III). 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 *Beschwerde* (complaint) to be 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 a *Sprungrekurs* or *Sprungbeschwerde* (advanced complaint), 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 eg, 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 (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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