

PANORAMIC

# TAX CONTROVERSY

Switzerland



LEXOLOGY

# Tax Controversy

Contributing Editors

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## OVERVIEW

### Legislation

**What is the relevant legislation relating to tax administration and controversies? Aside from legislation, are there other binding rules for taxpayers and the tax authority?**

Legislation governing tax administration (including non-judicial tax-assessment procedures) is generally included in the material tax legislation at the federal and/or cantonal level.

These are, at the federal level:

- the Federal Direct Tax Act (DBG) which regulates chiefly personal/corporate income taxes as well as wealth and capital taxes, as well as wage source withholding taxes;
- the Federal Act on Withholding Taxes, which regulates Swiss withholding taxes;
- the Federal Act on Stamp Duties, which regulates federal securities issue and transfer taxes; and
- the Federal Act on Value Added Tax, which deals with value added tax (VAT).

At the cantonal level, tax provisions are generally the cantonal tax code (which deals with cantonal direct taxes) as well as, in certain cases, the cantonal act on inheritance and gift taxes.

In addition, there might be a number of cantonal or Municipal tax provisions that are relevant to tax administration.

Further materially relevant rules relating to tax administration can further be found in federal, cantonal and communal ordinances 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 or cantonal guidelines).

Legislation governing tax controversies, including non-judicial tax objection procedures, is based on the legal foundations as set out above.

The legislation for judicial (appeal) proceedings is partially also rooted in the material tax acts at federal and cantonal levels. In addition, there are specific federal procedural laws federal (eg, the federal Act on Administrative Procedure, the federal Act on the federal Administrative Court and the federal Act on the federal Supreme Court), as well as the cantonal procedural laws. With regard to the international exchange of financial information, the federal Act on Automatic Exchange of Information and the federal Act on Administrative Assistance in Tax Matters contain important procedural elements.

This chapter mainly focuses on income, wealth, corporate income and capital taxes governed by the DBG unless otherwise mentioned.

Legislation governing tax administration (including non-judicial tax-assessment procedures) as well as material tax law is based on the Swiss Federal Constitution and cantonal legislation.

**Law stated - 1 July 2024**

## Relevant authority

### 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.

- The cantonal tax administrations are generally responsible for the assessment (and, depending on the canton, the collection of) cantonal taxes, some federal taxes (ie, direct taxes) as well as, depending on the canton, certain municipal taxes. certain (mainly: direct) taxes for the federal government, cantons and Municipalities.
- In addition to certain political functions and its coordinating functions with regard to other Nations in the context of double taxation and information exchange, the federal tax administration is responsible for the assessment of VAT (except on imports), federal withholding taxes and federal stamp duties. Furthermore, it supervises the cantonal tax authorities in their assessments of Federal direct taxes. Customs duties and import VAT are administered by the Federal Customs Administration.
- Social security contributions are administered by separate, often cantonal, authorities, under supervision (for Federally regulated social securities) of the Federal authority for social security.

To give an order of magnitude, the Swiss Federal Tax Administration (FTA) employs a total of around 1,100 employees, amounting to approximately 1,000 full-time equivalents, which has been slightly decreasing since 2018. 41.2 per cent of the FTA employees are women. Approximately 73 per cent of the FTA employees are German-speaking, 22 per cent French-speaking and 5 per cent Italian-speaking.

**Law stated - 1 July 2024**

## ENFORCEMENT

### Verification of compliance with tax laws

#### How does the tax authority verify compliance with the tax laws? Does this vary for different taxpayers or taxes?

Most Swiss direct taxes (such as income and corporate income taxes) are levied in a so-called 'mixed-assessment' procedure. That is, taxpayers receive tax returns with a deadline to file them. They are then responsible to file the return and to declare the taxable objects themselves based on their qualification and assessment of the relevant taxable (and tax-exempt) factors, and the tax authorities subsequently verify the information submitted in the individual's or entity's tax return form (namely, compliance with the tax laws and practice) and determine the amount of tax in the assessment decision in each case. The tax authorities' review of submitted forms is, particularly for entities, supplemented by recurring and non-recurring (namely, extraordinary) audits performed by the tax authorities or a mandated service provider on-site.

On the other hand, most taxes levied by the FTA (such as the federal withholding tax) and social security contributions are levied on the basis of a self-assessment procedure. This

means that the taxpayer is responsible to know when and if a tax declaration and payment is necessary. In order to verify compliance, the FTA generally audits taxpayers at irregular intervals. This means that multiple open tax years are reviewed at the premises of the taxpayer or their accountant by one or more officers of the FTA.

Law stated - 1 July 2024

### Tax return review procedure and limitation periods

#### What is the typical procedure for the tax authority to review a tax return and how long does the review last? What limitation periods apply?

In a typical procedure for direct taxes, after its submission, the tax return is summarily reviewed for formal compliance (timeliness, signatures, completeness of annexes etc). 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 elements, 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.

The legislation on limitations periods is quite complex and depends on whether a failure to pay tax constitutes an (administrative or criminal) offense at the same time, which is generally the case. Generally speaking, the limitations period is 10 years for direct taxes and five to seven years for taxes assessed at the federal level and social security contributions (with some exceptions and specificities).

The taxation of certain capital income streams (mostly dividends) for individuals and entities is, further, 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*, a source tax (wage withholding tax) mechanism. In certain circumstances, intra-group dividend payments (to entities) may benefit from a notice procedure (- *Meldeverfahren*) 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.

Law stated - 1 July 2024

### Tax authority requests for information



## 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 duty to cooperate in the tax assessment, the taxpayer is obliged to do everything possible to allow for a complete and correct assessment. The tax authority may, in this context, request written or oral (interview) information from the taxpayer. The most important obligation to cooperate is the submission of the tax return. In addition, in certain cantons, employers are required to directly submit salary certificates to the tax authorities.

The assessment authorities may, further:

- call experts;
- conduct visual inspections; and
- review accounts and receipts on the spot by way of auditing.

In this context, Swiss law provides that companies and entrepreneurs must keep their books and records available for at least 10 years for Federal income tax) and up to 20 years for VAT.

Generally speaking, in an administrative (non-criminal) Swiss tax procedure there is no right for the tax authority to interview a taxpayer's employees nor to generally interview witnesses.

**Law stated - 1 July 2024**

## Taxpayer failure to provide information

### What actions may the tax authority take if the taxpayer does not provide the required information?

If the taxpayer does not provide the required documents or information, the tax authority may infer facts to the detriment of the taxpayer and determine the taxable basis based on a discretionary judgment called '*Einschätzung nach pflichtgemäßem Ermessen*', '*Taxation par appreciation*', '*Tassazione per apprezzamento*'.

In addition, tax authorities may request assistance from other authorities and, in certain cases, even request documents and information from third parties. Finally, in specific cases where criminal offenses have been committed, the tax authorities may also resort to further investigative tools such as house inspections, seizure of bank records etc. This specific kind of cases is quite rare in practice (approximately 6-12 cases per year).

Further, the failure to meet the obligations to deliver certificates, provide information and meet reporting obligations may be punished with administrative and/or criminal penalties.

**Law stated - 1 July 2024**

## Protecting commercial information

### 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 lawful and equal taxation. Further, 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. Confidential information may only be sought based on a legal provision. Certain cantonal tax legislation provides 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.

**Law stated - 1 July 2024**

## Alternative dispute resolution

### What (if any) alternative dispute resolution (ADR) or settlement options are available?

An internal objection against the tax authorities' assessment decision may be raised by the taxpayer in writing within 30 days. The objection is treated by the same tax authority.

Swiss domestic tax legislation does not provide for formalised ADR procedures. Settlements with regard to taxable income, profits, wealth and capital are not permitted under Swiss law. 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.

Once the case is pending in front of a judicial instance, in principle it is not possible for the parties (ie, taxpayer and tax authority) to settle the dispute, as the power to decide the matter is vested in the court and not the tax authority. Nevertheless, in various Cantonal jurisdictions such a settlement will be recognised by the courts. Therefore, it is not infrequent that settlement negotiations be opened with tax authorities even after lodging a judicial appeal.

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

**Law stated - 1 July 2024**

## Collecting overdue payments

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

Tax debts accrue interest from the time they are ordinarily due (which may be different depending on the tax in question and the jurisdiction). This represents an incentive for the taxpayer to (provisionally) pay even a disputed tax.

Generally speaking, no debt collection measures may be initiated by tax authorities before the assessment procedure (and any subsequent litigation) is concluded and the tax assessment is final. As an exception to this principle, securing measures may be taken if there are indicia that point towards an endangerment of debt collection.

Once the tax assessment is final, tax authorities generally issue a final reminder. If this is unsuccessful, formal debt collection is initiated against the taxpayer by way of a regular debt enforcement procedure for overdue taxes and accrued interest for late payment. 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 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, formal arrest, the refusal of deletion from the commercial registry of a liquidating entity from the commercial register and land register blockings. 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.

**Law stated - 1 July 2024**

## **Penalties - scope of application**

### **In what circumstances may the tax authority impose penalties?**

There are a number of administrative tax offenses for which the tax authority may impose penalties. The most important tax offence is tax evasion (and attempted tax evasion), which occurs if the taxpayer willingly or negligently causes the taxation to be incomplete. It should be added that in 'mixed assessment' procedures (ie, in most taxes administered by cantonal tax authorities) tax evasion charges may be prevented by fully disclosing any doubtful elements in the tax return. This means that a position may be taken in the tax return that is in contrast with the practice of the tax authority without risk of penalties as long as all the relevant facts that may lead to a different appreciation by the tax authority are adequately disclosed. This does not apply to taxes subject to 'self-assessment' procedures.

The most frequent cases of tax evasion in the corporate area are cases involving SME and hidden dividend distributions (eg, payments made by companies for the private benefit of the shareholder). For individuals, non-declaration of bank accounts or of foreign real estate as well as non-declared household employees are probably the most common cases of tax evasion.

Further offences with practical relevance are procedural offenses (such as failure to submit a tax return, to timely pay, or to meet other procedural obligations).

It should also be noted that participation (aiding and/or instigating) to another person's tax offence (typically tax evasion) is also separately punished.

In addition, there are criminal offenses in tax matters that potentially carry prison sentences. Such offenses are, eg, tax fraud (ie, tax evasion by use of falsified documents), smuggling and tax-related money laundering. Statistically speaking, it should be noted that these criminal offenses are very rare.

Law stated - 1 July 2024

## Penalties – calculation

### How are penalties calculated?

According to Swiss criminal legislation principles, as a general rule, punishment is measured according to the degree of fault of the perpetrator. The competent authority, in this context, takes into account the individual circumstances and the effect of punishment on the defendant's life.

These principles generally apply also to tax penalties. Nevertheless, in most offenses, the amount of the penalty is tied much closer to the amount of taxes at stake (eg, in tax evasion cases), which then may be adjusted depending on personal circumstances.

More in detail, the penalties for income taxes (Federal level) are structured as follows:

- 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 up to 10,000 Swiss francs. Similar provisions are provided for taxes collected by the FTA and in customs matters.
- 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. Similar provisions are provided for taxes collected by the FTA and in customs matters.

Criminal prosecution may be waived if the taxpayer has spontaneously declared the tax offence before the authorities were aware of the case. It should be noted that the scope for voluntary disclosure has somewhat narrowed, particularly for individuals, since the introduction of the automatic exchange of information.

Law stated - 1 July 2024

## Penalties – defences

### What defences are available if penalties are imposed?

Under Swiss law, the requirement for criminal penalties are:

- That the objective pre-requisites for a penalty be fulfilled;
- that the offence be carried out intentionally or (in some cases) negligently;
- that the offence be illegal.
-

In tax cases this is almost always the case as it is difficult to imagine an offence being justified (typical justifications are acting for legitimate defence, acting in the public interest, duress);

- that the action be culpable.
- Culpability may be diminished or excluded in case there is reduced or lacking criminal responsibility. Culpability is regularly considered given in tax cases and it is exceedingly rare that it be disputed. It requires a case-by-case analysis to determine whether incorrect advice may, therefore, serve as a justification for the offender.

**Law stated - 1 July 2024**

### **Collecting and calculating interest**

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

Interest is payable if taxes are not paid within the deadlines set forth in tax legislation or provided in a formal order of the tax authorities. Generally speaking, subsequent litigation of the case does not interrupt the accrual of interest.

The interest on all federal taxes for 2024 is 4.75 per cent.

The Cantons determine the applicable default interest rates for Cantonal taxes in their own legislation, typically on an annual basis.

**Law stated - 1 July 2024**

### **Criminal consequences**

#### **Can criminal consequences arise as a result of tax non-compliance? Are these different for different types of taxpayers?**

Certain tax offences constitute criminal offences in the sense that they are considered felonies or misdemeanours and carry a registration in the criminal record. However, even tax penalties from lesser cases may result in a criminal record if the penalty is at least 5,000 Swiss francs.

Criminal offenses in tax matters are, eg, tax fraud (ie, tax evasion by use of falsified documents), smuggling and tax-related money laundering.

Tax fraud for direct taxes may be punished with imprisonment for up to three years or with a fine. Conditional imprisonment may be combined with a fine of up to 10,000 Swiss francs. Tax fraud in indirect taxes and customs matters is generally sanctioned with imprisonment for up to three years or fines up to 30,000 Swiss francs or, in aggravated cases, with imprisonment for up to five years combined with a fine, or a fine only. The penalty for tax fraud may be cumulated with the penalty for tax evasion. It should be noted that from a statistical perspective the mentioned offenses are very rare.

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

**Law stated - 1 July 2024**

## **Tax avoidance**

### **Are there specific rules or provisions regarding perceived tax avoidance?**

In Swiss practice, the distinction between tax avoidance and tax evasion is generally strict. Tax avoidance consists in the use of generally legal means to reduce taxation, whereas tax evasion is the (intentional or negligent) underreporting/underpayment of due taxes. For direct taxes, an aggressive tax planning may be found to be tax avoidance and thus not accepted by tax authorities. However, if the planning is sufficiently disclosed, no penalties may be assessed. For taxes subject to 'self-assessment' procedures, formally any tax avoidance may be considered as tax evasion. Nevertheless, in practice borderline cases where tax authority and taxpayer have different views and the tax authorities prevail rarely lead to additional penalties for the taxpayer.

**Law stated - 1 July 2024**

## **Enforcement record**

### **What is the recent enforcement record of the authorities?**

Criminal proceedings at the cantonal level concerning federal (direct) taxes are reported by the cantonal authorities to the FTA. The latest figures for 2023 include 5,869 enforcement cases by cantonal authorities reported to the FTA, leading to supplementary taxes and penalties of 392.5 million Swiss francs. Approximately 94 per cent of the cases concerned individuals. In cases of serious direct tax offences, the SFTA investigates the case directly with a specialised division. In 2023, 10 new cases were opened and 12 were closed.

There were approximately 14,000 VAT audits during the 2023 tax year, bringing in a supplementary 245 million Swiss francs in revenue for the Swiss Confederation and 72 million Swiss francs in reimbursements. The VAT audits resulted in approximately 12,000 'simple' administrative sanctions (penalties of approximately 12 million Swiss francs) and 61 criminal decisions (resulting in penalties for 0.4 million Swiss francs).

In addition to VAT audits, the federal tax administration also conducted audits in other federal *Verrechnungssteuer* matters (Federal withholding taxation mechanism) in approximately 1,200 companies on site, an additional approximately 10,000 balance sheet checks, bringing in additional revenue of 192 million Swiss francs for the 2021 tax year.

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

**Law stated - 1 July 2024**

## THIRD PARTIES AND OTHER AUTHORITIES

### Third-party involvement with tax reviews

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

Certain third parties (such as employers, partners in partnerships, but not, generally, banks) have attestation, information and notification obligations towards the taxpayer (eg, employer's salary certificate). These third parties may be compelled by the tax authority to deliver these pieces of information directly to the tax authority if the taxpayer fails to cooperate.

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 with the tax authority in the evaluation of facts.

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

**Law stated - 1 July 2024**

### Cooperation with other authorities

#### 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 differ depending on the scope:

- Within the country, the different tax authorities generally have an obligation to assist each other in fulfilling their tasks: they provide the necessary information to other tax authorities and grant them access to the official file. Also, non-tax authorities (eg, social security, criminal or immigration authorities) must generally provide full assistance to tax authorities. In certain cantons, public officials further have a duty to report any tax wrongdoings to the competent tax authority.
- International assistance in tax matters, from a Swiss domestic perspective, is governed by the Federal Act on Administrative Assistance in Tax Matters. This 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 (FTA), which provides assistance based on foreign requests and may also request information from foreign states' authorities. In 2023, the FTA received 8,530 requests for exchange of information and sent 75 requests.

Further to the exchange of information upon request, Switzerland has signed agreements with a number of partner countries and the European Union on the introduction of the

automatic exchange of information (AEOI) and the Common Reporting Standard). The legal bases in Switzerland for the introduction of the AEOI, that is, the Mutual Assistance Agreement, the Multilateral Competent Authority Agreement and the Federal Act on the International Automatic Exchange of Information in Tax Matters, were adopted by the Federal Assembly in December 2015. Further, the FTA has issued a guideline on a standard for the AEOI on financial accounts. A number of bilateral treaties and the agreement between Switzerland and the European Union, 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 to exchange it in 2018. Switzerland has signed (and is expected to sign further) AEOI agreements with other countries. 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. Further, Switzerland has agreed to exchange certain information that substantiates a suspicion that a taxpayer obtained an undue tax reduction. In addition, Swiss banks exchange information with the US Department of Justice (DoJ) based on FATCA-Agreements. On 27 June 2024 a new FATCA-Agreement was signed between the US and Swiss authorities which provides for a change from so-called 'Model 2' to 'Model 1'. The consequence is that after the implementation of the new model (expected from 1 January 2027), the exchange of information will be take place reciprocally and between tax authorities (instead as between the Swiss banks and the US DoJ).

In September 2023 the FTA exchanged information about bank accounts (AEOI) with a total of 104 partner states (up five from last year), stemming from approximately 9,000 registered reporting Swiss financial institutions (unchanged from the previous year). A total of approximately 3.6 million bank accounts have been sent to foreign tax authorities and around 3.4 million have been sent from foreign tax authorities to the FTA.

In recent years, the number of transfer pricing-related cases has started to increase, in particular in relation to advance pricing agreements as well as mutual agreement procedures. This will have to be kept in mind going forward as this increases in relevance, in particular for large multinational enterprises.

**Law stated - 1 July 2024**

## FINANCIAL OR OTHER HARDSHIP

### **Voluntary disclosure and amnesties**

#### **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. This does not apply to taxes levied in enforcement procedures or 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. Extensions of payment deadlines were frequently used within the context of the Covid-19 pandemic but any special legislation has since been repealed.



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

**Law stated - 1 July 2024**

## **Voluntary disclosure and amnesties**

### **Are there any voluntary disclosure or amnesty programmes?**

There are a number of statutory voluntary disclosure programs, with slightly different requirements depending on the tax.

For direct taxes individuals and business entities 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. The application of the mentioned requirements can be rather complex when multiple persons are concerned by a tax offence and intend to file a voluntary disclosure. Generally speaking, a coordination of the various disclosures is necessary.

As the main consequence 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. Further, voluntary disclosure prevents criminal proceedings for related criminal offences (eg, falsification of documents or accounts). Since the introduction of the automatic exchange of information, the scope to achieve a voluntary disclosure without penalties has narrowed, particularly where bank accounts abroad have to be declared retroactively, as such accounts are typically deemed to be known to tax authorities already. However, it is still recommended that taxpayers approach the tax authorities proactively to be eligible to benefit from penalty reductions.

Similar programs are available also for other taxes, namely for taxes administered by the Swiss Federal Tax Administration. Among these, VAT is the only tax that allows multiple voluntary disclosures (ie, there is no 'once in a lifetime' requirement).

An amnesty procedure, similar to voluntary disclosure is also available in inheritance cases (to be undertaken by the heirs) and for assets not included in estate inventories. Within such a procedure, not only no penalties will be imposed (this would only be possible for any surviving participant to the offense in any case as death constitutes a blocking factor for criminal prosecution), but the heirs will be required to pay the taxes due for (only) the three tax years prior to the year of demise of the (former) taxpayer and the year of the demise of the (former) taxpayer.

To put in perspective, there have been a total of approximately 130,000 voluntary disclosures during the past 10 years and approximately 65 per cent of those have been done prior to the introduction of the automatic exchange of information in 2018 (due to the impossibility of doing it afterwards because the administration is assumed to already be aware of the existence of undeclared bank accounts). In 2023, voluntary disclosures were 5,144 (down from 8,480 in 2022).

**Law stated - 1 July 2024**

## RIGHTS OF TAXPAYERS

### Rules protecting taxpayers

#### What rules are in place to protect taxpayers when dealing with the tax authority?

Aside from the legal remedies that the taxpayer may raise with the assessing tax authority or with competent courts, 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. Further, 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.

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 and the right to an effective remedy.

Law stated - 1 July 2024

### Requesting information from tax authority

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

Information can be received from the tax authorities in two ways:

- Taxpayers may seek an advance 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. To give an idea of the quantities involved, the Federal Tax Administration processes approximately 6,000 ruling requests (only in *Verrechnungssteuer* and value added tax matters) each year, of which around 91 per cent are answered within 30 days. There are no numbers available for cantonal tax authorities but based on the competences assigned to them, the number of ruling requests treated by all cantons most likely exceeds by far the number of ruling requests treated by the Federal Tax Administration, as they are the competent authority in most cases, such as, for example, corporate income tax aspects around corporate restructurings and reorganisations, lump-sum taxation, taxation of employee participation plans, taxation of trusts and other foreign structures.

Taxpayers may generally inspect their file and documents relating to it held by the tax authority. Spouses taxed jointly are also entitled to inspect the other spouse's files for the tax years for which they are taxed jointly. 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.

**Law stated - 1 July 2024**

## **Oversight of tax authority governance**

### **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, further, supervised by the Federal Tax Administration.

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

**Law stated - 1 July 2024**

## **COURT PROCEEDINGS**

## **Competent courts**

### **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.

At the cantonal level, for subsequent court proceedings, the cantons are obliged by federal legislation to provide at least one judicial court instance for tax disputes (eg, the tax recourse court or tax recourse commission). The cantons may provide for a second judicial court instance in tax matters and some do – typically a division of the cantonal administrative court.

On the federal level, the Federal Supreme Court has jurisdiction for tax matters, whereby the Federal Administrative Court is interposed for certain tax-related matters with regard to international administrative assistance or taxes levied at a federal level (eg, value added tax (VAT), stamp duties and withholding taxes).

**Law stated - 1 July 2024**

## **Lodging a claim**

### **How can tax disputes be brought before the courts?**

Swiss tax legislation provides for a multi-layered court system as follows:

- The taxpayer may raise an objection against the assessment notice, typically within 30 days after notification by the assessment authority. The objection is submitted

to the tax assessment authority itself and may contest the assessment order, the 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 by the taxpayer. In the objection, the objector has a claim to unlimited review of the assessment decision and the annulment of reported deficiencies. It is free of charge but may also lead to a reformation in peius (namely, not only not following the taxpayer's request but even worsening the taxpayer's position vis-à-vis the first decision). However, 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 and, in certain cases, the cantonal tax administration for federal direct taxes and the Swiss Federal Tax Administration, may raise an appeal to the independent (first or second) judicial instance against the objection decision from the assessment authority within 30 days after notification in writing. 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 certain cases, the objection procedure to the tax authority may be skipped and an appeal to the competent court may be filed directly.

Objections and appeals must be submitted in writing. There is no minimum threshold amount for claims. Frequently, depending on the tax involved, there are minimum requirements in terms of reasoning of the objection or appeal that typically increase for higher instances.

**Law stated - 1 July 2024**

### **Combination of claims**

#### **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. However, in practice, procedures relating to tax claims from one year or from multiple tax periods are regularly combined either ex officio or upon request. Furthermore, as regards direct taxes, proceedings regarding the same tax year relating to cantonal and federal taxes, respectively, are usually combined in one single appeals proceeding.

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 on the other spouse. In principle, communities of heirs are, under Swiss legislation, not taxed jointly, but every heir's share of 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.

Law stated - 1 July 2024

### **Pre-claim payments**

#### **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 income, wealth, corporate income and capital taxes, and shortly after the relevant tax period for Federal income and corporate income 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 timelines and it is generally recommended to pay the disputed tax, despite court proceedings, to avoid interest charges for late payment if the proceedings are not successful. However, payment of the assessed tax is not formally required in order to dispute the assessments in court. Overpaid taxes are refundable or credited in favour of the taxpayer if the tax is reassessed, for example, after a court decision.

Law stated - 1 July 2024

### **Cost recovery**

#### **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. The applicable federal or cantonal legislation may allow the court to require procedural costs to be paid in advance, for example, by the claimant or by the taxpayer, to accept the case for trial. In specific circumstances, the court may also waive the costs. However, as regards the costs for legal representation, it should be noted that even in case of a successful outcome of an appeal, the reimbursement awarded by courts is generally lower than the actual costs incurred by the taxpayer.

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

Law stated - 1 July 2024

### **Third-party funding**

#### **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 of tax disputes may be covered by legal protection insurance concluded by a certain number of Swiss resident taxpayers. However, the scope of coverage of such legal protection insurance 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 registered attorney-at-law to finance a tax dispute indirectly via purely success-based compensation.

**Law stated - 1 July 2024**

### **Availability of jury trials**

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

Swiss courts usually sit as a panel of three or five judges, depending on the applicable federal or cantonal legislation. Swiss legislation does not provide for jury trials.

**Law stated - 1 July 2024**

### **Time frames**

**What are the usual time frames for tax hearings?**

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

**Law stated - 1 July 2024**

### **Disclosure requirements**

**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, 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 income and corporate income 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 office-holders of a legal entity. Further, the same provisions oblige individuals to provide statements of their securities, outstanding loans and their debt. Legal entities and self-employed individuals must file their balance sheet and profit and loss statements. Legal entities have an obligation

to show the development of their equity, including capital contribution reserves. Every taxpayer has the duty to file a tax return.

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. They must provide a statement of all relevant transactions to the Swiss VAT authority within 60 days after the end of each declaration period.

Income from Swiss sources that is subject to the Swiss withholding tax must be declared in the Swiss resident income-recipient's tax return as income to be eligible for a refund of the withholding tax. Taxpayers are entitled to inspect the files they have submitted to the tax authorities or have signed regarding the tax authorities. The right to inspect files will normally be granted only once fact-finding has been completed by the tax authorities and if no private or public interests are opposed.

In general, during a 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.

**Law stated - 1 July 2024**

## **Permitted evidence**

### **What evidence is permitted in tax hearings?**

In a tax trial, the facts may be established based on documents, written or oral information provided by the taxpayer, information from third parties, visual inspections and reports. Tax trials in Switzerland are generally conducted entirely in writing. Testimonial evidence is generally not permissible or not accepted by Swiss courts in tax cases.

Hearings and testimonial evidence may be available in criminal tax proceedings.

According to the federal legislation 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 constrained to accuse him or herself in criminal proceedings.

**Law stated - 1 July 2024**

## **Permitted representation**

### **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 appeals procedures, with regard to 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, and it is customary and advisable to be represented, at least for complex cases, by a professional. For most criminal proceedings, if the defendant elects to be assisted he or she must mandate an attorney-at-law admitted to a cantonal bar. In certain (more serious) criminal proceedings, assistance by an admitted attorney-at-law is mandatory.

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. State aid, however, generally is restricted to individuals.

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 or assisted by the prosecutor.

**Law stated - 1 July 2024**

## **Publicity of proceedings**

### **Are tax hearings public?**

Tax assessment and tax objection procedures are non-public procedures. Cantonal legislation governs the publicity of appeals procedures to the cantonal judicial instances and hearings (which are very infrequent) are generally public. Oral hearings in appeals 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 and are generally public.

**Law stated - 1 July 2024**

## **Burden of proof**

### **Who has the burden of proof in tax hearings?**

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, the taxpayer bears the burden of proof for any circumstances that aim to reduce the taxpayer's tax burden (e.g., income tax deductions). 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.

**Law stated - 1 July 2024**

## **Case management process**

### **What is the case management process for a tax hearing?**



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

**Law stated - 1 July 2024**

## Appeal

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

Swiss tax legislation provides for a multi-layered court system.

The decision rendered by a cantonal judicial instance may be challenged by the taxpayer or the cantonal tax authorities by a complaint to a further cantonal judicial instance (typically an administrative court), if provided by cantonal legislation. The appeal is subject to fees in accordance with the applicable cantonal legislation and must fulfil the same formal requirements as a complaint filed to the cantonal judicial instance. Proceedings before the cantonal court are often subject to a ban on bringing new facts and evidence.

The decision rendered by the (sole) cantonal judicial instance or, if applicable, the higher cantonal judicial instance may be challenged by the taxpayer or the cantonal tax authorities by an appeal in administrative matters to the Federal Supreme Court. The appeal is subject to fees in accordance with the applicable federal legislation. There are strict rules about substantiation requirements for appeal submissions to the Federal Supreme Court. The Federal Supreme Court generally does not decide on the facts and circumstances but rules on errors of law. Proceedings are subject to a ban on bringing new facts and evidence.

At the federal level, judgements of the Federal Administrative Court may in most cases be appealed to the Federal Supreme Court. Also in this case the strict rules about substantiation and new facts and evidence apply.

**Law stated - 1 July 2024**

## UPDATE AND TRENDS

### Key developments of the past year

**What are the current trends in enforcement of tax controversies? What are the current concerns of the authorities and taxpayers in relation to the enforcement and handling of tax controversies and are these likely to change? Are there proposals to change the relevant legislation or other rules?**

General trends

The past few years have shown an increasing trend towards tax litigation. Whereas tax litigation historically was an ultima ratio measure for many taxpayers and also the authorities, the number of cases where opposing views are not settled between taxpayers and the tax authorities in the course of the tax assessment procedure but are brought before courts has increased.

The following trends can be seen:

- since the introduction of the automatic exchange of information as well as increased use of administrative assistance clauses in double tax treaties, the enhanced transparency in cross-border situations increases the tax authorities' opportunities and possibilities to enforce taxpayers' filing and taxation obligations;
- in view of the considerable expenses incurred by the Swiss federal, cantonal and municipal governments in the context of the Covid-19 pandemic, a trend towards an increase in efforts to levy and collect taxes more aggressively by the Swiss tax authorities can be observed and is expected to continue; and
- the Federal Act on Tax Reform and AHV Financing entered into force on 1 January 2020. With the implementation of the reform, controversies and tax litigation may increase, particularly in the context of corporate taxation;
- similarly, Switzerland has implemented the 'Pillar Two' of the OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS) (Global Anti-Base Erosion Model Rules, Global Minimum Tax for multinational enterprises with a turnover of more than €750 million) starting from 1 January 2024. Also in this case, increased controversies and tax litigation in the context of implementation of the reform may be expected.

Further to the increasing trend towards litigation in tax matters, social security authorities also pursue the respective contribution duties in an increasing number of cases.

#### Electronic procedures for tax matters

The Swiss Federal Council has decided to implement an electronic procedure for tax matters in November 2021, which regulates electronic procedures in all tax areas. This act provides for the possibility for the Federal Council to compel companies to communicate electronically with the Federal Tax Administration and makes it mandatory for the cantons to provide for an electronic procedure in addition to the written procedure. A staggered entry into force is foreseen for the implementation of the law, with the last elements of the reform entering into force on 1 January 2024. However, at the present stage, only the electronic filing of tax returns seems to have been implemented, whereas electronic proceedings for objections and appeals are mostly still unavailable at the cantonal level. Electronic proceedings have been available for federal courts (ie, the Federal Administrative Court and the Federal Supreme Court) since 2007 and their use has increased dramatically in past years.

#### Federal Supreme Court: transfer of tax justice from Lausanne to Lucerne

The introduction of the Federal Supreme Court Act in 2007 was intended to relieve the burden on the Federal Supreme Court. Since then, however, the number of cases has continued to rise significantly. For this reason, the Federal Supreme Court has decided to undertake internal reorganisation measures in the area of taxes and fees.

Since 1 January 2023, tax appeals (with the notable exception of cases in the field of administrative assistance in tax matters) are no longer handled by the Second Court of Public

Law in Lausanne, but in Lucerne by the former Second Court of Social Law, which became the Third Court of Public Law on 1 January 2023.

Industry experts see this change as a positive change as it has allowed the court to have a more specialised section with experts in the field – it remains, however, to be seen whether this will have an impact on the very low success rate in the case of appeals by taxpayers to the Federal court.

**Law stated - 1 July 2024**