**J. EDGAR MURDOCK INNS OF COURT**

**2022-2023 SEASON**

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**INTERNATIONAL TAX ADMINISTRATIVE SYSTEMS**

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**AUSTRALIA**

1. [**Territorial or worldwide taxing**](https://taxsummaries.pwc.com/germany/individual/taxes-on-personal-income#:~:text=All%20resident%20individuals%20are%20taxed,on%20German%20source%20income%20only.):

All resident individuals and corporations are taxed on their worldwide income. A non-resident individual is liable for Australian income tax only on income (other than interest, royalties, and dividends, which are generally subject to withholding tax [WHT]) derived from sources in Australia, and certain statutory income that is taxable on a basis other than source (*e.g.* certain capital gains). On resident individuals, tax rate currently range from 19% to 45%. The range for non-resident individuals is 32.5% to 45%. Australia has no surtaxes, alternative, or other income taxes on personal income. There are no local taxes on personal income in Australia.

Corporation tax is levied at a uniform rate of 30% on taxable income, except for ‘small or medium business’ companies, which are subject to a reduced tax rate of 25%. The reduced tax rate applies only to those companies that, together with certain 'connected' entities, fall below the aggregated turnover threshold of AUD 50 million.

A new tax and regulatory framework applies from 1 July 2022 to corporate collective investment vehicles (CCIVs). In general terms, a CCIV is new type of a company limited by shares that is used for funds management and for which the tax law applies to ensure that the income and gains of the entity are taxed on a flow-through basis to the investors.

*Franking Credit*. A franking credit, also known as an imputation credit, is a type of tax credit paid by corporations to their shareholders along with their dividend payments. Australia and several other countries allow franking credits as a way to reduce or eliminate double taxation.

Since corporations have already paid taxes on the dividends they distribute to their shareholders, the franking credit allows them to allocate a tax credit to their shareholders. Depending on their tax situation, shareholders might then get a reduction in their income taxes or a tax refund.

**Corporate/Individual**

* 1. [*Voluntary compliance*](https://taxsummaries.pwc.com/germany/individual/tax-administration)*?*
     1. Individuals:

Australia's income tax system works on self-assessment. This means, the Australian Taxation Office (“ATO”) accepts the information the taxpayer gives it is complete and accurate. We will review the information you provide if we have reason to think otherwise. The tax year runs from July 1 to June 30. The income tax return is generally due by the following October 31.

* + 1. [Corporations](https://taxsummaries.pwc.com/germany/corporate/tax-administration):

A corporation (including the head company of a tax consolidated group) lodges/files a tax return under a self-assessment system that allows the ATO to rely on the information stated on the return. Where a corporation is in doubt as to its tax liability regarding a specific item, it can ask the ATO to consider the matter and obtain a binding private ruling.

* 1. *Other methods/procedures for taxing*
     1. No social security taxes, but a levy is imposed on taxable income and reportable fringe benefits of residents for funding a National Health Scheme (Medicare). The Medicare levy is currently 2%. No levy is payable by those with taxable income below the relevant low income thresholds.
     2. Superannuation and retirement taxation
     3. VAT: 10% - shared with states
     4. No inheritance, estate, or gift tax, but special tax rules apply to the transfer of assets to a beneficiary from a deceased estate for capital gains purposes and the transfer of superannuation entitlements to beneficiaries of a deceased person.
     5. Property tax
     6. Excise duties
     7. Stamp duty
     8. Import duties

1. [**Brief overview of taxing authority**](https://www.lexology.com/gtdt/tool/workareas/report/tax-controversy/chapter/germany)

Income taxes on individuals are imposed at the federal level. State governments have not imposed income taxes since World War II. The major sources of state tax revenue are payroll taxes and stamp duties. State governments also impose taxes on land, gambling and motor vehicles. Municipal rates are the sole source of local government tax revenue.

The Australian Taxation Office is the principal taxing authority in Australia

1. **Constitution, Tax code/laws/regulatory and other guidance**
   1. *How each are implemented*

**Constitution.** The Australian Constitution gives the Commonwealth the power to impose taxation and to make laws in respect of taxation.

[**Legislation**](https://www.lexology.com/gtdt/tool/workareas/report/tax-controversy/chapter/germany)**.** The Income Tax Assessment Act of 1997 contains the assessment provisions, while the Income Tax Rates of 1986 contains the rates of taxation imposed by the Government on taxpayers for the relevant financial year. Other laws include: A New Tax System (Goods and Services Tax) Act of 1999; Fringe Benefits Tax Act of 1986; International Tax Agreements Act of 1953; Superannuation Industry (Supervision) Act of 1993; and the Taxation Administration Act of 1953. The

[**Ruling**](https://taxsummaries.pwc.com/germany/corporate/tax-administration). There are regulations, and various administrative public advice and guidance issued ATO.

ATO issues private rulings.

1. **Examination Process**
   1. [*Individuals*](https://taxsummaries.pwc.com/germany/individual/tax-administration):

ATO has a Review Process and an Audit Process. Generally, when ATO identifies a compliance risk, it will review the individuals tax affairs. It may decide to conduct an Audit if it identifies areas of concern that need closer examination.

A standard two-year amendment period generally applies to an individual who does not carry on a business (unless the individual is a small business entity), is not a partner in a partnership, and is not a beneficiary of a trust. Otherwise, a four-year time limit applies for amending an income tax assessment. Where an amended assessment increases the taxpayer's liability to tax, an administrative penalty and interest on any underpaid amounts may be levied in addition to the additional tax liability.

* 1. [*Corporations*](https://taxsummaries.pwc.com/germany/corporate/tax-administration).   
       
     The Australian tax system for companies is based on self-assessment; however, the ATO undertakes ongoing compliance activity to ensure corporations are meeting their tax obligations. The ATO adopts the justified trust concept from the OECD, where it will seek objective evidence that would lead a reasonable person to conclude a particular taxpayer paid the right amount of tax and will tailor its assurance approach based on the unique business profile of a taxpayer. This generally means that the ATO will take a risk-based approach to compliance and audit activities, with efforts generally focused on taxpayers with a higher likelihood of non-compliance and/or higher consequences (generally in dollar terms) of non-compliance. Compliance activities take various forms, including general risk reviews, questionnaires, reviews of specific issues, and audits.

Generally, ATO may amend an assessment within four years after the day of which an assessment is given to a company. Under the self-assessment system, an assessment is deemed to have been given to the company on the day on which it files its tax return. The four-year time limit does not apply when ATO is of the opinion there has been fraud or evasion, or to give effect to a decision on a review or appeal, or as a result of an objection made by the company, or pending a review or appeal. For certain small business entities and, for assessments for income years commencing on or after 1 July 2021, medium business entities (*i.e.* those with aggregated turnover of between AUD 10 million and AUD 50 million), a two-year amendment period applies. A seven-year period of review applies to an assessment to give effect to a transfer pricing adjustment raised for an income year commencing on or after 29 June 2013.

*Significant Global Entities*. The ATO has a 'Top 1000' program that aims to obtain additional evidence to achieve greater assurance that the largest 1,000 public and multinational companies are reporting the right amount of income tax and GST in Australia. This program supports and expands the ATO’s existing compliance approaches. Under the program, ATO teams engage with each taxpayer using tailored compliance approaches to assure they are reporting the right amount of income tax or identify areas of tax risk for further action.

1. **Appeals Consideration or other vehicle(s) to settle/resolve matters short of litigation**
   1. *Independent Review of Position Paper*. Before the ATO makes a final decision, the taxpayer has the opportunity to request an independent review of the statement of audit position. The review is conducted by a senior officer in the ATO’s Law Design and Practice Group who has no involvement in the audit process.
   2. *Administrative Appeals Tribunal*. The Administrative Appeals Tribunal (AAT) conducts independent merits review of administrative decisions made under Commonwealth laws. It reviews decisions made by Australian Government ministers, departments, and agencies and, in limited circumstances, decisions made by state government and non-government bodies.
      1. The AAT was established by the Administrative Appeals Tribunal Act 1975 and commenced operations on 1 July 1976.
      2. The Migration Review Tribunal, Refugee Review Tribunal and Social Security Appeals Tribunal were amalgamated with the AAT on 1 July 2015.
      3. The AAT falls within the portfolio of the Attorney-General.
      4. In July 1986 the Administrative Appeals Tribunal (AAT) assumed the jurisdiction in taxation matters which previously had been exercised by Taxation Boards of Review. Most members of the Boards became members of the Tribunal.
      5. *Appeals from the AAT to the Federal Court are very limited. It must be on a question of law, and not one of fact*.

1. **Courts**
   1. *System/specialized tax courts*

*Federal Court (Single Judge)*. Within the Federal Court of Australia there is the Taxation Natural Practice Area. The Taxation National Practice Area (NPA) includes any proceeding relating to: tax appeals to the Federal Court from decisions pursuant to Part IVC of the Taxation Administration Act 1953 (Taxation Administration Act) that are relevant to decisions made by the ATO.

*b. Appellate review*

*Full Federal Court*. A decision of a single judge Federal Court can be appealed to the Full Federal Court, which has three judges.

*High Court of Australia*. The High Court of Australia is the highest court and the final court of appeal in Australia. It hears matters involving a dispute about the meaning of the Constitution, as well as final appeals in civil and criminal matters from all courts in Australia. Therefore, the ultimate governance of the taxation system is held by the High Court of Australia, as it makes the final decision on the matter of being disputed by the taxpayer and the Government or ATO. Most of the Court’s work relates to the hearing of appeals against decisions of other courts. In the case of taxation, these would be those of the Federal Court. There is no automatic right to have an appeal heard by the High Court, and parties who wish to appeal must persuade the Court in a preliminary hearing that there are special reasons for the appeal to be heard. The taxpayer needs to make an application for ‘special leave’ to appeal to the High Court. It is essentially a gateway / filter (so one or, sometimes, two High Court Judges will hear the ‘special leave’ application). They will decide whether an appeal will advance to the High Court. If it does, then usually the Full Bench of the High Court will hear the appeal (5 ort 7 Judges).

1. **Items of Special Interest**
   1. Australia has a single Administrative Appeals Tribunal for all administrative appeals.
   2. The Significant Global Entities program targets the largest 1,000 public and multinational companies for tax compliance.
   3. If the AOT issues an assessment (including an amended assessment to a taxpayer), the debt arising therein is immediately due and payable. There are provisions in the tax legislation that give the assessment a ’conclusive’ effect – which means that the AOT may immediately sue upon that debt (even if the taxpayer is challenging the underlying basis for the assessment in the AAT or the Federal Court). Further, the general interest charge (“GIC”) compounds daily on any debt unpaid from the time it was raised. Accordingly, if what is being challenged in the AAT or the Federal Court is the amended assessment issued by the AOT, then the debt is usually payable. That said, the AOT and the taxpayer may reach agreement so that the AOT does not enforce the debt while the assessment is being challenged. The GIC still accrues – even if an agreement is reached to not pursue the debt while the challenge is underway – but it is a very large disincentive to do this. The GIC is currently about 12 percent.
   4. Appeals from the AAT to the Federal Court are very limited. It must be on a question of law, and not one of fact.
2. **Resources:**
   1. [Australia Taxation Office Webpage](https://www.ato.gov.au/)
   2. [Australia Administrative Appeals Tribunal Webpage](https://www.fedcourt.gov.au/)
   3. [Federal Court of Australia Webpage](https://www.fedcourt.gov.au/)
   4. [The Institutional Framework of Taxation in Australia](https://tticdn.blob.core.windows.net/tti-files/dmfile/Institutional_Framework_of_Taxation_in_Australia.pdf)
   5. [PWC Worldwide Tax Summaries, Australia](https://taxsummaries.pwc.com/australia)

**BRAZIL**

1. **Territorial or worldwide taxation**
   1. Taxation is worldwide.
   2. The individual rate is 27.5 percent.
   3. The corporate rate is 34 percent.
   4. The federal excise tax is between 5 and 30 percent.
   5. The value added tax is 3.65 or 9.25 percent.
2. **Compliance** 
   1. Individual returns and taxes are due the last working day of April.
   2. Corporate returns are due the last day of July and the final tax payment is due the last working day of the following March. All corporate returns are digitally filed.
3. **Taxing Authority**
   1. The taxing authority comes from the Federal Constitution and the national tax code.
4. **Enforcement**
   1. Collection and enforcement of federal taxes in Brazil is done by the Receita Federal (the Brazilian IRS), an administrative structure within the Ministry of Economy. Different divisions handle individual and corporate taxes.
   2. For most taxes, the taxpayer files a return and submits the amount of taxes considered to be due. The statute of limitations for auditing the taxpayer is five years and begins from either when the taxes were paid or the first day of the calendar year after the tax is due.
   3. Any information that may affect the determination or collection of taxes may be sought from the taxpayer and failure to comply may lead to the imposition of penalties.
   4. There is no legislation governing ADR.
5. **Contesting tax claims**
   1. Taxpayers may bring claims at the administrative or judicial level of review.
   2. There are three levels of administrative review.
      1. The first level involves a decision by the Federal Revenue Chief Officer, and both the taxpayer and the government may appeal the decision.
      2. The second level involves the Tax Administrative Appeals Council, made up of judgment chambers which consist of six members, three appointed by the tax authorities and three by the taxpayers’ associations. A tie is deemed a ruling in favor of the government.
      3. The third level is the Tax Appeals Superior Chamber, which will only hear an appeal if the appealing party can show a conflicting decision was delivered on the same issue by a Tax Administrative Appeals Council. It consists of eight members, four appointed by the tax authorities and four by the taxpayers. Again, a tie is deemed a ruling in favor of the government.
   3. There are three levels of judicial review.
      1. The first-degree court of law, which is a single judge.
      2. The Appeals Court, which is made up of three judges.
      3. The Superior Court of Justice and the Federal Supreme Court. While the Superior Court of Justice will hear any appeal where the underlying decision is claimed to be contrary to law, the Federal Supreme Court will only hear appeals of issues deemed to be of general interest to the country.
      4. Brazilian law does not provide for jury trials in tax matters.

**CANADA**

Canada has 40 million residents living in 10 provinces and 3 territories. The Canadian tax laws are imposed at the federal and provincial governments. Federal taxation is imposed on a worldwide basis. Provincial tax is generally imposed only on income earned in the province.

The federal taxing authority is the Canada Revenue Agency (CRA).  CRA collects taxes for all the provinces, except Quebec and Alberta.

The Income Tax Act provides the rules for taxing individuals and businesses. The Act is updated yearly as part of the budget process. There are other laws that cover other types of taxes on imports, exports, sales, services and property, as well as treaties that govern the taxation of individuals and businesses earning income internationally.

Canada has a self-assessment system where taxpayers file their returns reporting their tax liabilities. Those returns are subject to audit by the CRA and the error in tax is reassessed and penalties are imposed if the error is deliberate.

1. **Canadian Tax Rates.**

Canada’s federal corporate income tax rate is 15% and the provincial rates range from 8% to 15%. The top federal personal income tax rate is 33% and the provincial top rates range from 11.5% to 21.8%.

1. **The Audit Process**

CRA may audit returns up to four years after filed. Audits are conducted for a variety of reasons, e.g., mismatch of information, errors on the return. The audit process is an extensive examination of the return and books and records. CRA also conducts initiatives where it pursues noncompliance in a particular group or area. At the conclusion of the audit the CRA agent issues a notice of assessment or reassessment.

Corporations with gross income over CAD 250 million undergo an annual risk assessment and those with high scores are subject to annual audits. Medium companies (from CAD 20 to 250) are selected based on a screening process and identified risk. Smaller corporations (under CAD 20) are selected randomly based on statistical data and a screening process.

Among the top corporate issues examined are transfer pricing, business restructuring expenses of corporate groups located in more than one country, interest rates paid on offshore loans, guarantee fees, hybrid instruments and debt equity issues, permanent establishment and cash pooling arrangements.

With regard to individuals, the most common issues are income versus capital gains, conversion of dividends to capital gains using derivatives, charitable donations, employment deductions, taxable benefits related to employment, and intergenerational business transfers.

1. **The Appeals Process**

Canada provides an administrative appeal process to taxpayers who disagree with the examination results. If a taxpayer disagrees with the notice of assessment or reassessment, then there is an opportunity for filing an objection. Generally, objections must be received within 90 days of the notice. They are submitted to the Chief of Appeals. The appeal process provides taxpayers with an independent review where taxpayers are able to present information about their objection.

Large corporations (CAD 250 and above) must file detailed objections. The CRA will either confirm, amend or vacate the notice of assessment or reassessment.

1. **The Canadian Tax Court**

Appeals to the Tax Court must be made withing 90 days of the notice of reassessment or notice of confirmation. Taxpayers can choose an informal procedure, which is similar to the “S” case procedure in the US and involves disputes of $25,000 or less. These are less formal and involve mostly unrepresented taxpayers. Even if the claim exceeds that amount, taxpayers may use the informal procedure if they limit their suit to the threshold amount. The form of the appeal to the Tax Court is also more relaxed and need not be on a prescribed form. Unlike the US Tax Court, appeals from the Tax Court may in some circumstances be filed with the Federal Court of Appeals.

The General Procedure is the formal process for appealing a CRA determination. Taxpayers using this procedure must follow court rules in filing their appeal and pay a filing fee that ranges from $250 to $550. The formal proceedings provide discovery and apply the rules of evidence. Most taxpayers who seek a formal procedure are represented by a tax attorney. Tax Court decisions may be appealed to the Federal Court of Appeal and then to the Supreme Court of Canada. The time frame for filing an appeal is 30 days, except that the months of July and August are not counted in the 30-day period.

1. **The Criminal Process**

CRA conducts criminal investigation by referral from civil agents, tips from individuals, other law enforcement leads or public sources such as the media. Some of their high priority focus has been on international tax evasion and organized and promoted tax shelters. CRA conducts joint investigations with other enforcement agencies. Criminal Investigation Program (CIP) uses typical investigative tools for conducting criminal investigations, e.g., search warrants, and interviews. The criminal prosecution is conducted by the Public Prosecution Service of Canada.

1. **Items of Special Interest**
   1. In 1988, the Canadian legislators passed the General Anti-Avoidance Rule (GAAR), which was designed to challenge tax avoidance transactions that meet the letter, but not the spirit of the law. This is similar to the US counterpart, which codified judicial doctrines in IRC section 7701(o). A legislative proposal to modernize GAAR is expected before the end of 2022.
   2. CRA is beefing up its enforcement efforts against abusive tax avoidance schemes that involve foreign partners by increasing personnel and audit activities surrounding high risk multinational corporations and high risk wealthy taxpayers. CRA has created a program to stop organizations that “create and promote tax schemes for the wealthy.” There are 1,100 offshore audits and more than 50 criminal investigations underway. The 2022 federal budget proposes to spend CAD 1.2 billon over 5 years on the expansion of audits of larger entities and non-residents engaged in aggressive tax planning.
   3. Canada is enhancing its mandatory disclosure of reportable transaction entered into after 2021.
   4. Recently-enacted legislation introduces an annual 1% tax, starting in 2022, on the value of non-resident, non-Canadian owned Canadian residential property considered to be vacant or underused.
2. **Resources:**
   1. PWC Worldwide Tax Summaries, Canada   
      <https://taxsummaries.pwc.com/canada>

**CHINA**

Territorial or worldwide taxing: All resident individuals and corporations are taxed on their worldwide income.

There is no local or provincial income tax in China.

**1. INDIVIDUALS**

The Individual Income Tax in China (commonly abbreviated IIT) is administered on a progressive

tax system with tax rates from 3 percent to 45 percent. As of 2019, China taxes individuals who

reside in the country for more than 183 days on worldwide earned income. The system is separate

from the [income tax system of Hong Kong](https://en.wikipedia.org/wiki/Taxation_in_Hong_Kong) and Macau, which are administered independently.

A resident taxpayer who has the obligation to pay taxes in full must pay individual income tax on all

income derived from sources within or outside China. The non-resident taxpayer shall pay individual

income tax only on the income derived or sourced from China.

There is no joint tax return in China. Husbands and wives are assessed and taxed separately.

Tax returns must be filed on a timely basis. Extensions to file may be granted under 'special circumstances' only.

Residents deriving comprehensive income are generally required to file an annual reconciliation tax return in case of the following:

* A resident who derives comprehensive income from two or more sources with an annual amount exceeding the total of the standard basic deduction (i.e. CNY 60,000) and the specific deductions.
* A resident who derives remuneration for labor services, author’s remuneration, and/or royalties and whose annual comprehensive income exceeds the total of the standard basic deduction (i.e., CNY 60,000) and the specific deductions.

Dividend income is generally taxed at 20% unless otherwise provided for in the applicable income tax treaty. Dividend income derived from shares traded on the Shanghai, Shenzhen, and Beijing Stock Exchanges is entitled to 50% or 100% tax reduction, depending on the length of holding.

Capital gains from transfer of shares traded on the Shanghai, Shenzhen, and Beijing Stock Exchanges are generally exempt from IIT. There is no separate capital gains tax in China; capital gains (and losses) of companies generally are combined with other operating income and taxed at the corporate income rate (25%).

Interest on government bonds and finance bonds issued by the Chinese Government, as well as bank deposit interest income, is currently exempt from IIT.

Income of diplomatic representatives, consuls, and other personnel of foreign embassies and consulates is also exempt from IIT.

China's domestic law states that those foreign individuals who stay in China for no more than 90 days within a tax year may be exempted from IIT on their China-sourced employment income provided such income is paid or borne by a non-China entity.

There is no fixed audit cycle in China. Tax audit targets are selected pursuant to certain criteria.

**2. Corporate Tax**

Tax resident enterprises (TREs) are subject to corporate income tax (CIT) on their worldwide income. A non-TRE that has no establishment or place in China is taxed only on its China-source income. A non-TRE with an establishment or place in China shall pay CIT on income derived by such establishment or place from sources in China as well as income derived from outside China that effectively is connected with such establishment or place.

Under the CIT law, the standard tax rate is 25%.

A lower CIT rate is available for the following sectors/industries on a national basis:

* Qualified new/high tech enterprises are eligible for a reduced CIT rate of 15%.
* Encouraged designated key software enterprises and encouraged designated integrated circuits (IC) design enterprises are eligible for a reduced CIT rate of 10% after the first five years of CIT exemption.
* Qualified technology-advanced service enterprises are eligible for a reduced CIT rate of 15%.
* For qualified small and thin-profit enterprises, the annual taxable income up to 1 million yuan renminbi (CNY) (inclusive) is subject to an effective CIT rate of 2.5% from January 1, 2021 to 31 December 31, 2022; where the annual taxable income exceeds CNY 1 million but does not exceed CNY 3 million (inclusive), the amount in excess of CNY 1 million is subject to an effective CIT rate of 5% from January 1, 2022 to December 31, 2024.
* Qualified enterprises engaged in pollution prevention and control are eligible for a reduced preferential CIT rate of 15% from January 1, 2019 to December 31, 2023.

Tax losses can normally be carried forward for a maximum of five years starting from the year subsequent to the year in which the loss was incurred, while carryback of losses is not permitted.

**3**. **Overview and 4. Tax Code/regulatory/guidance**

There are eighteen different kinds of taxes in China, which can be divided into three categories according to their nature. (See Table 2)  
◆ Goods and services taxes, including VAT, Excise Tax, Vehicle Purchase Tax and Customs Duty.  
◆ Income taxes, including Enterprise Income Tax and Individual Income Tax.  
◆ Property and behavior taxes, including Land Appreciation Tax, Real Estate Tax, Urban and Township Land Use Tax, Farmland Occupation Tax, Deed Tax, Resource Tax, Vehicle and Vessel Tax, Stamp Tax, Urban Maintenance and Construction Tax, Tobacco Tax, Vessel Tonnage Tax and Environmental Protection Tax.

The following bodies are responsible for the introduction, implementation, and amendments of all taxation laws in China:

* The National People’s Congress, as well as its standing committee
* The State Council
* State Administration of Taxation
* The Ministry of Finance
* The State Administration of Foreign Exchange
* General Administration of Customs

Tax laws and regulations are enacted by the National People’s Congress. Any new laws enacted by the National People’s Congress are then further supplemented by administrative rules and regulations, which are formulated by the State Council. These rules and regulations provide detail on effective implementation of the enacted tax laws.

The Ministry of Finance and the State Tax Administration are institutions that are authorized to issue tax announcements, formulate departmental rules and provide official commentary that supplement the tax related regulations promulgated by the National People’s Congress and the State Council. These announcements are made to assist with the interpretation and clarification of tax laws and regulations in China.

Certain tax regulations may be formulated at a provincial or municipal level, by the People’s Congress at a provincial level and its standing committee. Any regulations made by the local level government will only be enforceable in the specific region.

**5. Examination Process**

There have been a number of changes to the tax administrative review process in China. Most of these changes stemmed from the introduction of the Enterprise Income Tax Law on December 13, 1981, which significantly changed the China tax system by:

* Broadening the definition of a tax resident.
* Increasing the documentation requirements for transfer pricing.
* Introducing a general anti-avoidance rule.

These changes have had a significant impact on tax litigation in China in both the civil and criminal context.

The most common issue subject to tax litigation in China is tax evasion.

**Assessment, re-assessments and administrative determinations**

The China tax authority is the State Administration of Taxation.

A taxpayer can request the State Administration of Taxation to review its decisions before matters proceed to the tribunal/court.

Generally, all income tax-related disputes stem from the decisions or actions of the tax authority. If a taxpayer wishes to challenge a decision by the tax authority, it can apply to the higher tax authority for reconsideration of the decision. During the period of administrative reconsideration, the taxpayer cannot initiate any administrative litigation. It is not mandatory to seek administrative reconsideration before commencing court proceedings.

The administrative reconsideration must be completed within 60 days from the date the application is accepted. If the taxpayer disagrees with the decision of the higher tax authority, it can begin administrative litigation to challenge this decision. The taxpayer must initiate any administrative litigation within 15 days from the date of the decision of the higher tax authority.

Under earlier versions of the Criminal Law, the minimum amount of tax evaded required for the establishment of a criminal offence was RMB10,000 and equivalent to 10% of the taxpayer's total tax liability. However, this fixed amount did not provide the authorities with the flexibility and discretion required to apply the law evenly across the different regions of China, in which the standard of living can vary significantly.

The current Criminal Law provides a revised standard for criminal tax evasion. To constitute a criminal offense, the base amount of tax evaded by the taxpayer must be both:

* "Relatively high". This is defined as:
  + the amount of tax evaded accounts for over 10% but under 30% of the total tax payable;
  + over RMB10,000 but under RMB100,000; or
  + if he commits tax evasion again after having been subject to administrative sanctions by the tax authorities for tax evasion more than once.
* Equivalent to 10% of the taxpayer's total tax liability.

The new revision provides the authorities with more flexibility to apply the law across different jurisdictions in China.

Therefore, a taxpayer commits a criminal offence if he files a false tax return or fails to file a tax return with the intent of deception or concealment, if the amount of the tax evaded is "relatively high" and accounts for at least 10% of his tax liability. The offence is subject to a maximum term of imprisonment of three years and to a fine.

If the amount of tax evaded is high and accounts for more than 30% of the tax payable, a taxpayer must be sentenced to three to seven years' imprisonment and to a fine.

A person who fails to pay (or fully pay) a tax withheld or collected, and the amount of the tax liability in question is high, must be subject to the same punishment as above. If this breach is committed more than twice but penalty is not yet imposed, the amount involved will be accumulated.

Therefore, the authorities have flexibility to determine when to initiate criminal proceedings regarding tax evasion, but the penalties regarding the offences are stipulated in accordance with the amount of the evasion.

The Criminal Law provides taxpayers with the opportunity to avoid criminal proceedings and additional liability by paying any overdue tax and any relevant penalties associated with the outstanding balance. If, on receiving notice of the overdue tax balance and administrative penalty, the taxpayer satisfies the outstanding balance, then the taxpayer will not face any further criminal proceedings. In particular, section 3 of Amendment (VII) to the Criminal Law provides that if the taxpayer pays the charge on late payment of the overdue tax (after receiving notice from the tax authorities demanding arrears) and is subject to administrative punishment, the taxpayer will not be held criminally liable. The exception to this is where the taxpayer has been subject to criminal punishment for tax evasion in the last five years or has been subject to administrative punishment by the tax authorities two times or more.

The trials can be held in public. However, if the case involves a state secret, personal privacy, business secret and other issues regulated by the law, it cannot be held in public.

If the claimant fails to attend the trial/hearing or leave in the middle of the trial/hearing without the court's approval, it is regarded as a withdrawal of the claim. If the defendant fails to attend the trial/hearing or leave in the middle of the trial/hearing without the court's approval, the judge can order judgment by default.

The role of the judge in civil litigation is to adjudicate the civil claim and is subject to the internal appointment by the court.

A taxpayer can begin proceedings against the tax authority using one of two possible methods:

* **Administrative reconsideration.** The taxpayer can challenge a decision by the tax authority by appealing to the higher tax authority for administrative reconsideration. If the higher tax authority rules in favor of the initial tax authority, the taxpayer can begin administrative proceedings within 15 days of the date of the administrative reconsideration decision.
* **Litigation.** A taxpayer can also begin litigation directly within six months from the date they become aware of the initial administrative decision.

Most cases filed by the taxpayer must be filed in the lower people's court in the district where the relevant tax authority is located. The lower people's courts have jurisdiction over the administrative cases of first instance. However, in certain important or complicated cases, the intermediate court in the jurisdiction will take control over the action in the first instance.

The higher people's courts have jurisdiction as courts of first instance over major and complicated cases that arise in their areas of jurisdiction.

The Supreme People's Court has jurisdiction as the court of first instance over major and complicated cases arising throughout the country.

The execution of the administrative act (that is, payment of the disputed tax) must not be suspended during proceedings, except under any of the following circumstances:

* Where the defendant considers that it is necessary to suspend payment.
* Where the claimant or an interested person applies for suspension of payment and the people's court rules that such payment must be suspended as, in the opinion of the people's court, the execution would cause irremediable losses and the suspension of the act does not harm the national interests and public interests.
* The people's court rules that such payment may severely damage the national interests and public interests.
* Where suspension of execution is required by the provisions of laws or regulations.

If the party concerned is dissatisfied with the ruling on suspension or not suspension, it can apply for reconsideration once.

Once the court receives a claim, the following elements must be examined to determine whether to accept the claim and register the case. The claim must include the following elements: The claimant is the individual, legal entity or other organization who alleges that his legal rights are infringed by the administrative act.

* There is a specific defendant, which must be an administrative agency.
* There are specific claims of litigation and relevant fact.
* The case is within the jurisdiction of the court.

The court then determines whether to accept the claim and file the case in writing within seven days from the date it receives the claim

The initial complaint submitted by the taxpayer must satisfy certain elements before it is accepted and registered with the court.

Additionally, the taxpayer must provide sufficient evidence to establish their claims in accordance with common litigation principles.

Once the taxpayer has met their burden, the burden shifts to the tax authority to demonstrate that the decision being challenged is accurate and must provide relevant support for such decision. However, during the course of litigation, the tax authority must not collect any evidence from the taxpayer or other witnesses.

Throughout the course of the proceedings, the court also has the power to demand additional evidence from either party.

The pre-trial procedure is provided in Article 67 of the Administrative Procedure Law. Generally, there are fewer civil procedural delays and the trial process moves faster compared with many European countries.

Once the court has decided to accept the claim and register the case, it must deliver a copy of the claim and relevant evidence submitted by the taxpayer to the defendant (tax authority) within five days. The tax authority must submit its letter of defense and relevant evidence within 15 days from the date it receives the complaint from the court. The court must deliver the letter of defense and relevant evidence to the claimant within five days of receiving them from the defendant.

The trial is scheduled after the relevant evidence and claims have been delivered to each party with the judgment to follow after. In total, the judgment must be made within six months from the date the case was originally accepted and registered.

There are no disclosure obligations in civil proceedings in China and no detailed rules.

If both parties acknowledge the validity of any documentary evidence during the pre-trial exchange, they will be precluded from objecting to the validity during the hearing.

Similarly, if the defendant is absent from the court hearing, any evidence submitted must not be deemed to be a valid basis for the judgment unless the evidence was submitted and acknowledged during the pre-trial exchange.

In addition to whether certain evidence can serve as the basis of a court's judgment, the court must also consider whether evidence must be kept confidential. Any evidence pertaining to state secrets, business secrets, personal secrets, or other confidential matters cannot be discussed publicly or argued during the hearing.

Parties must also submit the original documents to the court unless:

* It is unreasonably difficult to present the original evidence and the court has approved the submission of a copy in lieu of the original.
* The original document no longer exists and there is evidence to demonstrate that the copy to be submitted is a true and correct copy.

**Elements of a tax trial**

Witnesses of fact give oral evidence and it is not necessary for written evidence to be submitted. The cross-examination is undertaken by the judge and the opposing party.

The rules regarding witnesses for income tax-related matters are provided in the Regulation regarding Some Issues of the Evidence of the Administrative Procedure.

In order to provide the witness evidence, the claimant or defendant must submit the following documents to the court:

* Personal information (including, name, age and address, among others).
* The written statement of the witness, which must be signed by the witness or affixed with personal seal if physical signature is inconvenient to make.
* The written statement of the witness, which must include the date of issuance.
* A copy of identity certificates attached to the witness evidence.

A party that wishes to have a witness testify on its behalf must apply to the court before the deadline for the submission of evidence.

The witness must attend the court hearing in person, except for certain statutory situations provided in Article 41 and the absence is approved by the court.

In certain instances, the claimant (taxpayer) can compel the administrative officer who issued the original decision that is being challenged, to attend the court hearing. For example, the claimant can compel the administrative officer to appear as a witness if the taxpayer is challenging the:

* On-site notes.
* Category or quantity of the detained property.
* Sample or the custodian of the inspected objects.
* Identity of the administrative officer who has conducted the enforcement.

The witness must attend the court hearing and be questioned by the People's Procuratorate and the defendant (taxpayer) and his lawyer. As a result, hearsay evidence is inadmissible.

The rules regarding expert evidence are provided in the Regulation regarding Some Issues of the Evidence of the Administrative Procedure.

Any expert report (appraisal) submitted to court must include the:

* Information of client.
* Items appraised.
* Documents and materials submitted to the appraising agency.
* Basis of the appraisal.
* Applied technique and measure.
* Information of the appraising agency.
* Qualifications of the expert.

The expert report must be signed by the testifying expert and affixed with the appraising agency's seal

The claimant (taxpayer) can submit evidence showing that the appraisal submitted by the defendant was defective. In this case, the claimant can apply to the court for reappraisal before its deadline to submit evidence. Additionally, either party can apply to the court for reappraisal against the expert report, which is issued by the agency designated by the court, under certain situations provided in Article 30. For example, the parties can apply for reappraisal when the claimant has the evidence or reasonable cause to prove that:

* The inspection agency or the inspector is not qualified.
* The inspection procedure is illegal.
* The grounds for the report are not sufficient.
* The report is not qualified as evidence.

While witnesses of fact must appear in order for their testimony to be submitted, an expert witness is only required to attend the court hearing on request by the opposing party. However, the court can exempt an expert from attending the hearing in certain scenarios. For example, the witness cannot be present in the count trial due to the force majeure or the distance to travel to the court is impractical.

Generally, Chinese courts are more focused on documentary evidence than arguments made by lawyers. Therefore, opening and closing arguments do not have as much influence in China compared with other jurisdictions. However, in the event that the documentary evidence is either ambiguous or contested, oral arguments can be instrumental in the court's determination.

There are seven possible outcomes for the administrative decision:

The court can uphold the initial administrative decision as correct and legal.

* If the court determines that the administrative decision is defective, whether in part or in full, it can overturn the administrative decision or the defective element. Additionally, the court can demand that the tax authority issue a new decision to replace the defective decision.
* The court can demand the administrative authority to perform its obligation within a certain time limit.
* The court can rule the administrative act is illegal but not to be annulled under some circumstances, such as where the annulment may seriously damage national and public interests or have no actual influence on the taxpayer.
* The court can rule the administrative act is invalid if such administrative act is performed in significant and obvious illegal circumstances, for example, the executor having no legal capacity as an administrative subject and lack of basis while the taxpayer applies for confirming such administrative actions as invalid.
* The court can rule that an administrative act is illegal or invalid, then order the administrative authority to take remedial measures at the same time. If the taxpayer suffers losses, the court can rule the administrative authority to bear compensation liability.
* While the Administrative Procedure Law and its interpretation do not expressly require that a court state its reasoning when rendering its judgment, reasons for the decision can be stated in the judgment.

The Measures on the Payment of Litigation Costs governs the costs incurred from civil litigation and administrative litigation. The litigation expenses must be borne by the losing party, including any expenses related to expert evidence. In the event of a mixed judgment (that is, when the court partially overturns the administrative decision, these costs can be apportioned subject to the respective responsibility imposed by the court.

**France**

1. [**Territorial or worldwide taxing**](https://taxsummaries.pwc.com/germany/individual/taxes-on-personal-income#:~:text=All%20resident%20individuals%20are%20taxed,on%20German%20source%20income%20only.):

Individuals are subject to worldwide taxation - once a resident in France, individuals pay taxes in France on their worldwide income.

Corporations are taxed on their territorial income – this is applied through a Permanent Establishment (PE) test. The notion of PE refers to “an enterprise exploited in France that can be materialized” in three situations:

* Business activity conducted through an establishment (fixed business installation operating with some degree of autonomy [e.g., a branch, sales office]);
* Business conducted in France by a dependent agent; and
* Existence of a complete commercial cycle in France.

A ruling application can be submitted to the French tax authorities to get confirmation as to whether the presence in France of a foreign corporation is a PE. A resident company is subject to CIT in France on its French-source income. In that respect, income attributable to foreign business activity (if there is no treaty in force between France and the relevant foreign country) or to a foreign PE (if a tax treaty applies) is excluded from the French tax basis. A non-resident company is subject to CIT in France on income attributable to French business activity or to a French PE, as well as on income from real estate located in France.

1. **Corporate/Individual**
   1. *Income Tax Rates*

Individual – Progressive rate system for residents; 30% for non-residents (includes social services tax)

Corporate – now reduced to 25%, regardless of size or structure

* 1. [*Voluntary compliance*](https://taxsummaries.pwc.com/germany/individual/tax-administration)*?*
     1. Individuals:

In 2019, France instituted a Pay as You Earn (PAYE) system for individual income taxes, though this does not apply to self-employment or investment income. In late July or early August, the government sends out a first tax notice to individual. This is basically a summary information return that outlines taxes owed, taxes paid to date, and the anticipated balance of taxes that will be owed for the year.

Then, by May of the next calendar year, every individual should voluntarily complete the Form 2042 main return, but there are multiple forms to be filed for each type of income. Filing is completed online through the France Tax Administration (FTA). Tax refunds aren’t a normal, yearly expectation. However, if an individual has overpaid in taxes by the tenth month of PAYE, they will receive a tax refund after the tax notice is sent.

* + 1. [Corporations](https://taxsummaries.pwc.com/germany/corporate/tax-administration):

Corporate filing is also on a calendar year basis, due in May, but payments are made quarterly. The process is entirely online, provided through the FTA, using an Electronic Data Interchange.

* 1. *Other methods/procedures for taxing*
     1. VAT: 20% - There is no VAT tax return, but regular declarations are required to be made by those collecting VAT.
     2. See “brief overview” section for local taxes.

1. [**Brief overview of taxing authority**](https://www.lexology.com/gtdt/tool/workareas/report/tax-controversy/chapter/germany)
   1. Nationally, the French Tax Administration, or FTA (Republique Francaise; aka “L’Etat” or “the State”) is responsible for collecting taxes.
   2. Local
      1. Professional taxes for self-employed are levied by the State on behalf of local authorities.
      2. There are no taxes at the provincial level, but some taxes are assessed by localities, including property taxes and residence taxes for individuals. There are no corporate income taxes at the local level.
2. **Tax code/laws/regulatory and other guidance**

[**Legislation**](https://www.lexology.com/gtdt/tool/workareas/report/tax-controversy/chapter/germany)**.** The rates and types of taxes are established annually by the French Parliament.

**Case Law.** In the event of a dispute between the taxpayer and the tax administration, the taxpayer may commence an action before the appropriate court for a judicial interpretation of the rules of law at issue; such judicial interpretation is, subject to appeal, definitive and binding as between the tax administration and such taxpayer. Where the tax administration wishes to change its interpretation of a rule of tax law in a manner less favorable to the taxpayer, such change may, in principle, only be applied prospectively.

[**Ruling**](https://taxsummaries.pwc.com/germany/corporate/tax-administration). Most French tax law is established via administrative interpretations. These rulings are issued by the General Tax Divisions of the Ministry of Economy (Direction Générale des Impôts). Administrative interpretations take the form of notes, instructions or circulars. Most are periodically published in the Bulletin Officiel des Impôts (BOI), much like the Internal Revenue Bulletin. *While the interpretations of tax laws contained in these rulings are not binding on the taxpayer, published interpretations (i.e., formal positions) are binding on the tax administration*.

**Advance Ruling**: A taxpayer may also obtain an advance ruling, like a Private Letter Ruling, from the tax administration concerning a contemplated transaction, including PE determinations. To obtain such a ruling and for such ruling to be binding, the request must meet the four following conditions:

1) it must concern the effect, and specifically the tax consequences, of a contract or agreement susceptible of being challenged on the basis of abuse of law,

2) it must be made prior to the signing of the contract or agreement,

3) it must be in writing and signed by at least one of the parties to the contract or agreement or a representative thereof, and

4) it must contain all information necessary to evaluate the actual effect of the transaction, including a clear and complete statement of the envisioned transaction, the exact name and address of each of the parties, a description of the ties already existing between the parties and copies of all documents necessary to conduct such evaluation.

The FTA is required to provide an answer within three months after the receipt of the request.

1. **Examination Process**
   1. [*Individuals*](https://taxsummaries.pwc.com/germany/individual/tax-administration):

For individuals, the audit process is quite simple - When disbursements exceed receipts, the difference is considered hidden income unless the taxpayer responds satisfactorily to a request for clarification or justification. The FTA analyzes the consistency between declared income, the financial situation, and the household's lifestyle.

* 1. [*Corporations*](https://taxsummaries.pwc.com/germany/corporate/tax-administration):  
       
     Once an assessment is notified by the tax inspector and if the taxpayer disagrees with such an assessment, the taxpayer has 30 days to answer (with a possible 30-day extension upon request) and to provide comments to the FTA. Following an exchange of written correspondences between the tax inspector and the taxpayer, either party may submit any disagreement on a factual issue to the departmental or national tax commission. *The decision of this commission is neither binding on the taxpayer nor on the French tax authorities*.

1. **Appeals Consideration or other vehicle(s) to settle/resolve matters short of litigation**

Once an examination is complete, taxpayers have the option to bring an out-of-court appeal and refer the matter to the département tax mediator or the mediator for the economy and finance ministries.

1. **Courts**
   1. *Administrative Courts Structure*

Taxpayers can challenge a decision of the FTA within two months of receipt of the decision.

The courts in France are also divided into two parts - the judicial courts (those dealing with criminal and civil laws), and the administrative courts. Public law is applied in the administrative courts (*tribunaux administratifs*).

The interpretation of tax laws issued either by the Conseil d’Etat (administrative courts), which has jurisdiction over questions related to, inter alia, income tax and value added tax, or the Cour de Cassation (judicial courts), which has jurisdiction over questions related to registration taxes, indirect taxes and wealth taxes, are given great weight. In addition to its power to resolve disputes arising out of the application of tax law, the Conseil d’Etat gives advisory opinions upon draft tax decrees or laws prepared by the Government.

* 1. *Appellate review*

Tax cases are appealed through the same court structure as other cases in France. At the top of the administrative courts rests the Council of State ([Conseil d'Etat](http://www.conseil-etat.fr/)), with 8 courts of appeal (cours administratives d'appel) and 42 tribunaux administratifs.

1. **Items of Special Interest**
   1. For individuals, there is a fine of €15 if a taxpayer fails to file online two years in a row. There is, however, a late filing assessment of 10% (*majoration*).

* 1. For corporations, the FTA is required to transfer to the prosecutor any tax reassessment exceeding the amount of EUR 100,000, provided that said reassessment notably gives rise to the application of a 100% tax penalty, 80% tax penalty, or 40% bad faith penalty in cases where a 40% or 80% tax penalty or a tax fraud proceeding already occurred in the past six years.

1. **Resources:**
   1. PWC Worldwide Tax Summaries, France

<https://taxsummaries.pwc.com/france/>

* 1. Expatica, Finance, Taxes, France

<https://www.expatica.com/fr/finance/taxes/>

* 1. Republique Francaise

[impots.gouv.fr](https://www.impots.gouv.fr/accueil)

**Germany**

1. [**Territorial or worldwide taxing**](https://taxsummaries.pwc.com/germany/individual/taxes-on-personal-income#:~:text=All%20resident%20individuals%20are%20taxed,on%20German%20source%20income%20only.):

All resident individuals and corporations are taxed on their worldwide income. Non-resident individuals are taxed (in the case of investment and employment income by withholding) on German sources only. Corporation tax is levied at a uniform rate of 15% and is then subject to a surcharge of 5.5% (solidarity surcharge). This results in a total tax rate of 15.825%.

1. **Corporate/Individual**
   1. [*Voluntary compliance*](https://taxsummaries.pwc.com/germany/individual/tax-administration)*?*
      1. Individuals:

There is no self-assessment. The tax office issues a final assessment notice after having reviewed the income tax return. A non-resident taxpayer will have to file a return and receive an assessment only if the German income is not subject to wage tax withholding. Where income is subject to wage tax withholding, the income tax liability is normally settled through the withholding system and no returns or assessments are required.

* + 1. [Corporations](https://taxsummaries.pwc.com/germany/corporate/tax-administration):

Returns are filed for each calendar year and reflect the financial statements for the business year ending in that calendar year. Assessments are issued once the tax office has reviewed the return.

* 1. *Other methods/procedures for taxing*
     1. Trade tax: From 8.75% to 20.3%, depending upon the location of the business establishment.
     2. VAT: 19%
     3. Inheritance tax rate: 50%
     4. Gift tax rate: 50%

1. [**Brief overview of taxing authority**](https://www.lexology.com/gtdt/tool/workareas/report/tax-controversy/chapter/germany)

Generally, there is a two-tier structure of German tax administration – federal and state level. The state tax administration is further divided in state-wide authorities and local offices with a further level between state-wide authorities and local tax offices in some states.

The majority of taxes are administered by the state tax administration – either as an agent for the federal administration (e.g., income tax, corporate income tax, value-added tax); in their own right (e.g., gift and inheritance tax, real estate transfer tax); or by assessing the tax basis for the taxes levied by the local municipalities (eg, trade tax).

As a consequence, the local tax office is the primary contact for the taxpayer, although different local tax offices may be competent for different taxes.

1. **Tax code/laws/regulatory and other guidance**
   1. *How each are implemented*

[**Legislation**](https://www.lexology.com/gtdt/tool/workareas/report/tax-controversy/chapter/germany)**.** The Fiscal Code and the Tax Court Code. The Fiscal Code codifies the rules for the administrative taxation procedures (competent tax authority, filing of tax return, tax assessment, tax audit, administrative appeal procedure) while the Tax Court Code provides for the rules for recourse to tax courts.

[**Ruling**](https://taxsummaries.pwc.com/germany/corporate/tax-administration). There are various administrative guidelines, decrees and regulations issued by federal and state tax administrations that are binding for the tax authorities, but not for the taxpayer or courts.

Tax offices are able to issue binding rulings in respect of planned transactions, provided the taxpayer can show a particular interest in the tax consequences of the intended action.

1. **Examination Process**
   1. [*Individuals*](https://taxsummaries.pwc.com/germany/individual/tax-administration):

The supreme tax authority in Germany is the Federal Ministry of Finance (Bundesministerium der Finanzen), whereas the taxpayer usually deals with the local tax offices. Employees are usually not audited as the annual income tax return is already subject to review (all income tax returns are subject to an internal review with the tax authorities before issuing the tax assessment). However, employees with income exceeding EUR 500,000 per year might be subject to additional audits.

* 1. [*Corporations*](https://taxsummaries.pwc.com/germany/corporate/tax-administration).   
       
     Germany relies heavily on tax audits as a means of ensuring taxpayer discipline. Audits of small businesses are carried out on a random basis, although those for larger corporations and for the local subsidiaries of foreign groups tend to be regular. With some district variations, audits are usually conducted at four to five yearly intervals, though not always with equal intensity for the entire period since the auditors’ previous visit.

1. **Appeals Consideration or other vehicle(s) to settle/resolve matters short of litigation**
   1. There is a mandatory internal administrative appeal proceeding within the tax authority. Anyone who claims to be aggrieved by a tax administrative act – in particular, by a tax assessment – can file such administrative appeal within one month after receipt of the relevant notice.
   2. The appeal has to be submitted in written or electronic form or filed orally with the tax office whose administrative act is being disputed. The appeal is decided on by a special appeals department within the tax office which re-examines the matter in its entirety. If the appeals department does not remedy the appeal in full, the taxpayer can contest the decision in court.
   3. The administrative appeal proceeding is however not “alternative” in the sense that the taxpayer can freely decide to use it or not but a mandatory appeal level before the tax assessment can be contested in court.
2. **Courts**
   1. *System/specialized tax courts*

Neither the filing of an out-of-court appeal before the tax authorities nor the filing of legal action before the court suspends an obligation to pay the taxes due under the challenged tax assessment notice. Thus, tax needs to be settled in favor of the tax authorities.

In Germany, the tax courts have jurisdiction to hear tax disputes. There are 18 tax courts in Germany. Each tax court is divided into senates. Each senate consists of three professional judges and, in the oral proceedings, two non-professional (honorary) judges.

* + - Tax courts in Germany are divided into panels called senates. In principle, the senates of the tax courts decide by way of composition of three professional judges and two magistrate judges (ie, laypersons). The magistrate judges do not participate in decisions without oral hearings.
    - The senate may assign the case to one of its (professional) members as a single judge if the case does not present any particular difficulties of fact or law and the case is not of fundamental importance.
    - The tax courts – as is the German court system in general – are non-jury bench trials except for the two magistrate judges.

According to the case law of the Federal Tax Court, the tax authority bears the burden of proof for the existence of the tax claim and the taxpayer for tax-reducing facts.

Decisions of the Court of Justice of the European Union, the Federal Constitutional Court and the Federal Tax Court are generally persuasive for the tax authorities, although they are only bound to such decisions if published in the tax administration’s federal tax gazette; in certain cases, the tax administration might even issue a decree not to apply a specific decision to other cases.

* 1. *Appellate review*

The judgments of the tax court are subject to appeal to the Federal Tax Court. The tax courts are the only instance deciding on the facts of the case. The Federal Tax Court only decides on questions of law on the basis of the facts adopted by the tax court or on the question of procedural defects. Thus, generally, no new facts or evidence can be brought forward at the Federal Tax Court level unless the relevant party successfully argues that the tax court has infringed upon a procedural rule by not hearing or considering the fact or evidence.

1. **Items of Special Interest**
   1. Reliance on advisers does not excuse the taxpayer as any fault by a representative of the taxpayer (including attorneys, accountants or tax advisers) is attributed to the taxpayer.
   2. There is a voluntary disclosure program that protects against criminal liability as long as no notice of a field tax audit or prosecution has been given and the offence has not yet been detected. However, the voluntary disclosure has to meet strict requirements in order to be valid. In particular, it has to be complete meaning that it needs to cover a period of at least 10 years, and the evaded taxes plus interest need to be timely paid upon request.
2. **Resources:**
   1. PWC Worldwide Tax Summaries, Germany <https://taxsummaries.pwc.com/germany>
   2. Lexology, Getting the Deal Through, German, <https://www.lexology.com/gtdt/tool/workareas/report/tax-controversy/chapter/germany>

**INDIA**

1. **Authority for Taxation:** Indian Constitution -> Confers power to central government and state governments to levy taxes
   1. Article 246 of the Constitution distributes legislative powers, including taxation, between Parliament and the State Legislatures; Schedule VII enumerates these subject matters with the use of three lists:
      1. **List I:** where only Parliament is competent to make laws,
      2. **List II:** where only the State Legislatures can make laws, and
      3. **List III:** where both Parliament and the State Legislature can make laws
   2. Article 265 of the Constitution states "No tax shall be levied or collected except by the authority of law” – so all taxes must be backed by accompanying law passed by either Parliament or State Legislature
   3. Some minor taxes are also levied by the local authorities such as the Municipality and the Local Governments.
2. **Major Central Taxes:**
   1. Income Tax (Income Tax Act, 1961 (“ITA”))
   2. Central Goods & Services Tax (CGST)
   3. Customs Duty
   4. Integrated Goods & Services Tax (IGST)
3. **Major State Taxes:**
   1. State Goods & Services Tax (SGST)
   2. Stamp Duty & Registration
4. **Foreign Income:**
   1. *Corporations*:
      1. An Indian company is taxed on its worldwide income
      2. A foreign company is taxed only on income that is received in India, or that accrues or arises, or is deemed to accrue or arise, in India – subject to any favorable tax treaty provisions
   2. *Individuals*:
      1. Indian individuals are taxed on worldwide income
      2. Double taxation avoided through for credit of the lower of the foreign tax or Indian tax either under applicable treaty or Indian law
5. **Direct vs. Indirect Taxes:** The tax structure in India is divided into direct and indirect taxes.
   1. Direct taxes are levied on taxable income earned by individuals and corporate entities, the burden to deposit taxes is on the taxpayers themselves.
   2. Indirect taxes are levied on the sale and provision of goods and services respectively and the burden to collect and deposit taxes is on the sellers instead of the taxpayers directly.
6. **GST Regime:** GST is a comprehensive indirect tax levied on manufacture, sale and consumption of goods as well as services at the national level. It replaced all indirect taxes levied on goods and services by the Central and State Governments.
   1. **CGST and IGST –** collected by Central Government
   2. **SGST –** collected by State Governments
   3. GST regime was implemented from 1st July 2017, and India has adopted the dual GST model in which both the Central Government and States levy taxes
   4. **Benefits:**
      1. Minimal physical interface
      2. Compliance cost reduced due to the unification of Indirect taxes
      3. Serves as check over tax-evasion through a robust IT-based administration
      4. Unified tax-regime for both goods and services
      5. No cascading of taxes
7. **Administrative Procedure:**
   1. *Basics*
      1. Tax year begins on April 1 and ends on March 31
      2. Under the ITA, as per the last available data in 2019, the total number of returns filed was 68.6 million (but total 1.3 billion people), out of which only 0.35 per cent were selected for review. Further, out of these 0.35 per cent of the returns, 0.15 per cent were select for limited scrutiny and the remaining 0.20 per cent were selected for complete scrutiny. Thus, a total of 99.65 per cent of the returns were accepted as is.
   2. *Taxpayer Requirements*
      1. All the taxpayers liable to pay tax under the ITA are required to file an annual income tax return
      2. Individuals with gross total income less than the prescribed threshold (of Rs 10 lakh, which seems to be around $12,000)are exempt from filing a tax return.
      3. There is no difference in indirect tax reporting requirements between a business entity and an individual.
   3. *Review/Audit Procedure*
      1. Tax authorities review the tax return electronically for filing and payment compliance. After review, the tax authorities may select the tax return either for a limited scrutiny - in which the review is limited to specific reasons/issues, or for a detailed scrutiny - in which there is detailed examination or assessment of the issues involved.
         1. **Note:** during detailed scrutiny or assessment, the tax authorities may request the taxpayer to provide books and other related documents such as financial records, vouchers, invoices, agreements, bank statements and any other evidence that the tax officer finds it necessary to examine.
      2. The tax authorities normally conduct the review in the form of a personal appearance of the taxpayer or through an authorized representative appointed by the taxpayer. However, recently, the tax authorities have started conducting these reviews electronically as well.
         1. In the case of an individual taxpayer, tax authorities may interview either the taxpayer or the authorized representative appointed by such taxpayer. In the case of a company or firm, the tax authorities can interview either the employee representing the company or firm or the authorized representative appointed by such company or firm
      3. If taxpayer has not filed a tax return, the tax authorities can make an assessment to the best of their judgment and determine the sum payable by the taxpayer accordingly.
      4. Indirect tax compliances are generally on a self-assessment basis. The tax department usually inspects a taxpayer when a proper officer, not below the rank of Deputy Commissioner, has reason to believe that the taxpayer has suppressed any transaction or escaped any payment of tax.
         1. GST laws prescribe that certain documents be maintained by all taxpayers in order to justify the claim in respective tax returns.
            1. These documents can be asked for by the tax authorities during the review of the tax return, and the taxpayer is under legal obligation to present them.
            2. They include transaction-related documents, bills, vouchers, trial balances, annual financial accounts, agreements, records and books of accounts.
      5. The tax authorities have the power to conduct searches/surveys of any premises or interview any taxpayer or any employee of such taxpayer. The tax authorities also have the power to issue a Show Cause Notice where they are under reasonable belief that the taxpayer has not complied with the provisions of the law.
   4. *Organization*
      1. Taxpayers are classified into different geographic and occupation specific jurisdictions, called ranges. Each range in turn consists of between five and fifteen assessment units, which are either wards or circles.
      2. Each ward corresponds to a specific sub-jurisdiction, and includes all taxpayers from that sub-jurisdiction who declare an annual income below Rs. 200,000 on their tax returns. Those declaring above this level are assigned to a corresponding circle.
      3. Each assessment unit is headed by a single assessment officer (“AO”), aided by a number of support staff, comprising inspectors, clerks, stenographers, tax assistants and notice servers. The system lacks functional specialization altogether, with very substantial discretion awarded to the AO, with minimal levels of hierarchical supervision. For instance the AO is simultaneously responsible for:
         1. collecting and storing filed returns;
         2. pursuing delinquents and taxpayers in arrears;
         3. collecting information concerning potential taxpayers in the relevant jurisdiction via surveys and enquiries;
         4. carrying out a summary assessment of every filed return, which involves a check for arithmetical mistakes or prima facie errors;
         5. selecting 90–120 of the filed returns for scrutiny assessment every year, which involves a detailed audit of the return, where the taxpayer is asked to appear before the AO and furnish supporting evidence;
         6. deciding on levels of penalties of various sorts that will be imposed on the taxpayer, or whether prosecution should be initiated, following discovery of illegitimate inaccuracies, concealment of income, or violations of various kinds (e.g., delays in filing, or failure to deduct income at source from employees, or failure to forward withheld taxes to the tax administration);
   5. *Penalties*
      1. Authorities may assess penalties for failure to produce required docs
      2. Penalties for underreporting of income
      3. May be either fixed amounts or ad valorem on the amount of tax evaded
         1. penalty amount for non-withholding or non-payment of tax withheld is 100 per cent of the amount of tax not withheld or paid
   6. *Criminal Enforcement*
      1. Under ITA, taxpayers may be prosecuted for:
         1. failure to pay tax withheld to the credit of the Central Government;
         2. willful attempt to evade tax, penalties or interest chargeable or imposable;
         3. willful failure to furnish returns of income in due time;
         4. failure to produce accounts and documents before the tax authorities;
         5. willfully made false statements regarding the verification of returns of income filed;
8. **General Anti Avoidance Rule (GAAR)**
   1. GAAR provisions were introduced by the Finance Act, 2017 and have been applicable since April 1, 2017. These provisions empower the tax department to declare an “arrangement”’ or any step entered into by a taxpayer with the main purpose of obtaining tax benefit to be an “Impermissible Avoidance Agreement” (“IAA”), the consequence of which would be denial of tax benefit under the Income-tax Act or under the applicable tax treaty.
      1. Basically a step transaction statute.
   2. For GAAR provisions, an IAA means the main purpose of which is to obtain a tax benefit, and it:
      1. creates rights and obligations not at arm’s length;
      2. results in abuse/misuse of provisions of this Income-tax Act (directly/indirectly);
      3. lacks/is deemed to lack commercial substance, or;
      4. is carried out in a manner that is not ordinarily employed for bona fide purposes.
   3. The following are consequences if an arrangement is regarded as an IAA:
      1. Disregard/re-characterize the arrangement;
      2. Disregard corporate structure;
      3. Deny tax treaty benefit;
      4. Reassign place of residence/situs of assets or transactions;
      5. Reallocate income, expenses, relief etc.; or
      6. Re-characterize equity-debt, income-expense, relief, etc.
9. **Dispute Resolution and Judicial Review:**
10. The second appellate forum is also a quasi-judicial one - the. The next two appellate fora, the High Court and the Supreme Court, are formal civil courts
    1. *Initial Scrutiny* – Tax Officer/Assessing Officer: tax authority, which acts in a quasi-judicial manner acting as both investigator and adjudicator.
    2. *Administrative Review* – Commissioner: a first appellate administrative adjudicator with powers co-extensive and coterminous to the primary tax authority.
    3. *Appellate Review* – Income Tax Appellate Tribunal (ITAT) or Customs Excise and Service Tax Appellate Tribunal (for indirect tax): the appeal is heard in a manner like that of a civil court
       1. Bench consists of a judicial member and an accountant member
    4. *Judicial Review* – High Court: highest courts of appellate jurisdiction in each State and Union territory of India (similar to Circuit Courts) – only for matters involving a substantial question of law; if an issue is related to a question of fact, then the order of the Tribunal is final
       1. Bench consists of two or more judges.
    5. *Ultimate Review* – Supreme Court: highest court in the country - only for matters involving a substantial question of law; order passed by the Supreme Court is final and binding upon both the parties.
       1. Bench consists of two or more judges.
    6. **Note:** no jury trials are available to hear tax disputes.

Sources:

**PWC Tax Summary: India -** <https://taxsummaries.pwc.com/india>

**India’s bold tax reforms 5 years on: Why it may be too soon to celebrate** by Ravi Buddhavarapu - <https://www.cnbc.com/2022/07/25/indias-bold-gst-reform-expands-tax-base-but-too-soon-to-celebrate.html>

**Tax law enforcement in India** by Ajinkya Gunjan Mishra, Lokesh Shah, Shalini Ranjan and Vikrant Maheshwari - <https://www.lexology.com/library/detail.aspx?g=21b6c8a9-8d5f-4157-b07a-d44ddedbe835>

**Tax litigation in India** by Ajinkya Gunjan Mishra, Lokesh Shah, Shalini Ranjan and Vikrant Maheshwari - <https://www.lexology.com/library/detail.aspx?g=5f207f76-2be5-4aa6-ac63-7427fd2e2deb>

**Tax Administration Reform and Taxpayer Compliance in India** by Arindam Das-Gupta, Shanto Ghosh, and Dilip Mookherjee - <https://people.bu.edu/dilipm/publications/DasguptaGhMookITPF.pdf>

**Wikipedia: Taxation in India** - <https://en.wikipedia.org/wiki/Taxation_in_India>

**Japan**

1. [**Territorial or worldwide taxing**](https://taxsummaries.pwc.com/germany/individual/taxes-on-personal-income#:~:text=All%20resident%20individuals%20are%20taxed,on%20German%20source%20income%20only.):

* Permanent resident individuals and corporations are taxed on their worldwide income. The corporate tax rate is graduated, with a top rate of 23.4%. The resident individual tax rate is also graduated, with a top rate of 45% plus a 2.1% surtax.

* Non-permanent resident individuals are taxed (usually by withholding) on Japanese sources only. The non-resident tax rate is a flat 20.42%. A foreign corporation is taxed only on its Japan-source income. A foreign corporation with a permanent establishment in Japan is taxed only on the income attributable to its permanent establishment.

1. **Corporate/Individual**
   1. [*Voluntary compliance*](https://taxsummaries.pwc.com/germany/individual/tax-administration)*?*
      1. Individuals:

All income tax returns are filed on an individual basis in Japan; joint tax returns are not permitted. The National Tax Agency sends a “postcard” that lists earnings, tax owed and tax withheld each year after the close of the taxable (calendar) year. Taxpayers typically agree with the correctness of the assessment; otherwise, you go to the tax office to work out the tax due.

* + 1. [Corporations](https://taxsummaries.pwc.com/germany/corporate/tax-administration):

A corporation files a self-assessment tax return within two months of the close of its annual accounting period. A corporation may receive a one-month extension for specific reasons. If a corporation applies and meets certain conditions, it may file a ‘blue form’ tax return which has certain benefits.

* 1. *Other methods/procedures for taxing*
     1. VAT/Consumption Tax: 10%
     2. Inheritance tax rate: 10-55%
     3. Gift tax rate: 10-55%
     4. Property tax (real property): 1.7% of appraised value
     5. Property tax (depreciable property): 1.4% of cost (after depreciation).
     6. Inhabitant’s tax rate: 10%

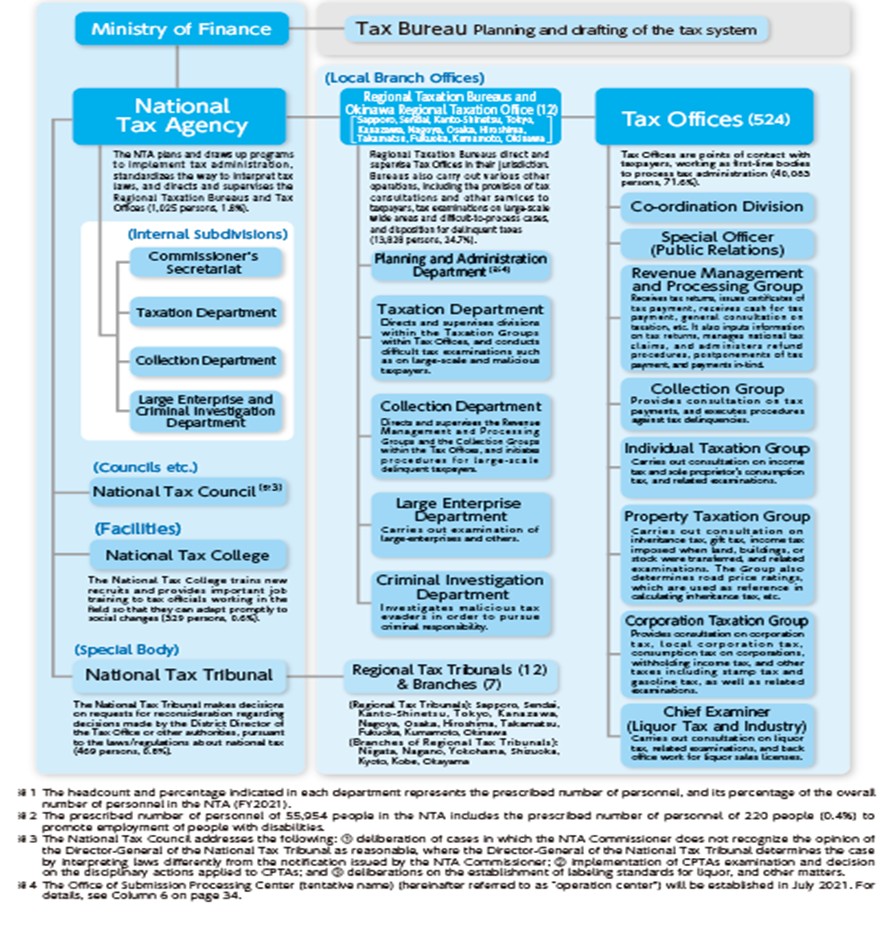
1. [**Brief overview of taxing authority**](https://www.lexology.com/gtdt/tool/workareas/report/tax-controversy/chapter/germany)

Generally, there is a three-tier structure of Japan tax administration – national, regional and local levels. The National Tax Agency (Kokuzeicho) is the Japanese tax authority.

The National Tax Agency (Head Office) includes the Commissioner's Secretariat; the Taxation Department; the Revenue Management and Collection Department; and the Examination and Criminal Investigation Department.

There are 12 Regional Taxation Bureaus which hold the Examination and Criminal Investigation Department and examine large-scale corporation's corporate and consumption taxes and investigates tax evasion cases.

There are 524 Local tax offices which provide front-line administration, and are in charge of assessing and collecting domestic taxes.



1. **Tax code/laws/regulatory and other guidance**
   1. *How each are implemented*

Administrative Appellate Law and Administrative Litigation Law are the general procedural laws governing administrative disputes. Specific rules on national tax disputes are stipulated in General Law of National Taxes Procedure considering the above-mentioned particular characteristics of national taxes.

The Diet (Japan’s legislative body) decides on and passes tax laws.

1. **Examination Process**
   1. [*Individuals*](https://taxsummaries.pwc.com/germany/individual/tax-administration):

Individual tax audits are conducted by the national tax office where the individual resides and cover the previous three to five years. The National Tax Agency confirms compliance by reviewing tax returns and conducting field examinations. If a review reveals a failure to file tax returns or underreporting of the tax amount, the taxpayer is usually contacted by a tax officer and instructed to file a return stating the correct tax amount and paying the unpaid tax (with a penalty, if applicable). In other cases, taxpayers are subject to field examinations that are conducted at their site. Individual tax audits are conducted by the national tax office where the individual resides and cover the previous three to five years.

* 1. [*Corporations*](https://taxsummaries.pwc.com/germany/corporate/tax-administration).   
       
     Generally corporate tax audits are performed in cycles of three to five years’ duration, but may be shortened if matters were previously resolved. An audit may last from a few days to more than a year. If a taxpayer requests a downward correction of tax, an audit will be performed to make sure that the adjustment is correct. Once an on-site audit is complete, a second audit is generally not allowed (though there is no bar if only a “desk audit”) is performed.

The tax agencies are prohibited from intruding on any private premises or auditing any materials without the consent of the taxpayer. However, a taxpayer is punishable by imprisonment for up to one year or a fine of up to ¥500,000 if the

taxpayer fails to provide an answer, provides a false answer or obstructs an audit.

In 2020, field examinations revealed unreported income of ¥299.2 billion in individual income tax and ¥528.6 billion in corporation tax.

1. **Appeals Consideration or other vehicle(s) to settle/resolve matters short of litigation**
   1. The administrative appeal system allows a taxpayer (and other interested parties) to protest against actions by the tax authorities, such as correction, determination and seizure, by filing a protest with an administrative agency and requesting the annulment or amendment of the action concerned. An administrative appeal is filed with the administrative agency that has taken an action. This is called a "request for reinvestigation" and is the first stage of an administrative dispute.
   2. If the taxpayer is not satisfied with the decision made by the administrative agency, he or she may file a "request for reconsideration." Generally, this request is filed with an administrative agency one level higher than the administrative agency that has taken the action pertaining to the original complaint. In the case of national taxes, the request for reconsideration is filed with National Tax Tribunal, established especially for this purpose as an independent body.
2. **Courts**
   1. *System/specialized tax courts*

The National Tax Tribunal is a body that adjudicates on requests for examination in connection with disposition effected under national tax law. The Tribunal was established in 1970 as NTA’s subsidiary organization separate from disposition agencies in charge of national tax collection (National Tax Administration, tax offices, etc.) to ensure that through correct and prompt adjudication taxpayers’ legitimate rights and interests are remedied and tax administration is properly carried out as well.

National Tax Tribunal consists of appeals judges, associate appeals judges, tax tribunal examiners and Management and Co-ordination Office, under the supervision of the President. The President of National Tax Tribunal is appointed by Commissioner of NTA with the approval of Finance Minister.

Taxpayers may not generally file a lawsuit without first making a request for review. Taxpayers may directly file a lawsuit for revocation when a judgement on a request for review has not been made within three months of making the request.

When taxpayers are dissatisfied with a judgement on a request for review, they may file a lawsuit against that judgement. Lawsuits are filed:

* in the district court for the location of the administrative agency imposing a disposition;
* in the district court that has jurisdiction over the high court that has jurisdiction over the location of the general venue of the plaintiff; or
* in the Tokyo District Court.
  1. *Appellate review*

Lawsuits for revocation adopt a three-tiered court system: district court, High Court and the Supreme Court of Japan. The District Court and the High Court involve fact-finding proceedings, while the Supreme Court is a law-interpretation proceeding. When a party is dissatisfied with the judgment of the district court, it may file an appeal to a High Court within two weeks of the receipt of the original of the judgment document.

Each party has the right to file an appeal to the Supreme Court of Japan within two weeks of the receipt of the judgment document only when 'the judgment contains a misconstruction of the Constitution or other violation of the Constitution' or other limited grounds are met. Even without these final grounds for appeal, a party may file a petition for the acceptance of a final appeal when it believes the judgment is inconsistent with precedents and otherwise contains important matters regarding the interpretation of laws, but it is at the Supreme Court of Japan's discretion as to whether to accept it.

1. **Items of Special Interest**
   1. The National Tax Agency has a National Tax College which trains tax officials.
   2. There is no attorney-client privilege in Japan. Therefore, taxpayers may not refuse to respond to a tax audit by using the existence of the attorney–client privilege as an excuse.
   3. Settlements in the course of tax audit procedures are not legally permitted. However, in practice, many cases are solved in a form somewhat close to a settlement, in which filing an amended return regarding part of the tax authorities' claims is conducted instead of a reassessment or determination.
2. **Resources:**
   1. PWC Worldwide Tax Summaries, Japan
   2. Lexology, In review: the tax courts and tribunals in Japan

**MAURITIUS**

1. **INTRODUCTION: THE US CONNECTION**

Mauritius is an island off the Southeast coast of Africa and was colonized, successively by the Dutch, the French and the British. It gained its independence from Britain in 1968. In 1966, the British had expelled approximately 2,000 residents from the Chagos archipelago, which was claimed by Mauritius, in order to lease these islands to the US. The US now maintains an important military base on one of these islands, Diego Garcia. In 2008, the House of Lords reversed a 2000 High Court ruling that the Chagos islanders were entitled to return home. In 2019, the UN International Court of Justice advised that Britain should end its control over the Chagos Islands as soon as possible because they were not lawfully separated from Mauritius before the expulsion of their residents.

1. **OVERVIEW OF TAX ADMINISTRATION**

**General**: Taxation is administered in Mauritius by the MRA (Mauritius Revenue Authority), which presents an inviting website for taxpayer use. See Exhibit “A.”

**Individual Taxation**: An individual is a resident of Mauritius for a tax year in which one of the following is true: (i) the individual is domiciled in Mauritius; (ii) the individual is present in Mauritius in such tax year and the preceding two tax years for an aggregate period of 270 days; or (iii) the individual is present in Mauritius for 183 days of the tax year.

Income tax rates are (i) 10% for income below MUR 700,000; (ii) 12.5% for income between MUR 700,000 and 975,000; and (iii) 15% for income above MUR 975,000. MUR = Mauritian rupee. At present (10/20/2022) $1.00 = MUR 43.50.

There are no local income taxes.

Mauritius employs the PAYE withholding system for wages and salaries, with any needed final adjustment made when the taxpayer files his/her annual return of income. For self-employed individuals, quarterly payments on business income must be made under the “current pay system” (CPS).

Tax relief is available for Mauritian income subject to foreign tax but only to the extent of the Mauritian tax referable to such income.

Mauritius does not have capital gains, inheritance, gift or net worth taxes for individuals

**Corporate Taxation**: A corporation is resident in Mauritius if it is (i) incorporated there or (ii) centrally managed and controlled from there. Mauritius also recognizes “global business companies” (GBC’s), which are offshore companies registered with the Mauritius Registrar of Companies and regulated by the Financial Services Commission (FSC). A GBC is considered “resident” in Mauritius and qualifies for preferential tax treatment of income derived from foreign sources. As a result, the effective income tax rate can be as low as 3%.

Mauritius partnerships (*societies*) are taxed through their members/partners.

Every corporation, whether it pays taxes or not, must file a tax return every year. Every corporation having a gross yearly income exceeding MUR 10 million must participate in the “advanced payment system” (APS) and pay tax on income for the quarter immediately following the end of its accounting year.

1. **TAX ADMINISTRATION AND CONTROVERSIES**

**Tax Audits:** Tax audits occur throughout the year, on a sample basis.

**Statutes of Limitations**: Once taxes are assessed, there is no statute of limitations on their recovery; however, assessments must be made within three (3) years of the current tax year.

**Challenges to Taxes**: A taxpayer may object to an assessment with a designated department of the MRA. A condition to filing the objection is that 10% of the assessed tax must be paid. If the taxpayer prevails, the payment is refunded with interest.

**Assessment Review Committee (ARC**): The ARC reviews tax determinations of the MRA. Such review must be requested by the taxpayer.

**Review by the Mauritius Supreme Court:** Decisions of the ARC are reviewable by the Supreme Court on points of law. The entire amount of the tax determined to be due by the ARC must be paid as a condition to pursuing an appeal.

**Review by the Judicial Committee of the Privy Council**: This entity originated as the highest court of criminal and civil appeal for the British Empire and serves the same purpose for participating Commonwealth countries. The Constitution of Mauritius preserves the right of appeal to the Privy Council. Depending upon the amount in controversy or the nature of the controversy, the appeal can be of right or with leave of court.

**Sources**:

1. MRA website – “Guidelines for Objections and Appeals”;
2. PWC Worldwide Tax Summaries – Mauritius;
3. A. Gopee and P. Tsalikis, “Litigation and Enforcement in Mauritius: Overview”

**UNITED KINGDOM**

**Overview**

The United Kingdom consists of England, Wales, Scotland and Northern Ireland. While England/Wales, Scotland and Northern Ireland have distinct, although similar, legal systems, with different nomenclature for courts, tax administration throughout the United Kingdom is handled by one taxing authority -- His Majesty’s Revenue & Customs (“HMRC”).

**Specific Topics**

1. [**Territorial or worldwide taxing**](about:blank#:~:text=All%20resident%20individuals%20are%20taxed,on%20German%20source%20income%20only.):

Resident and domiciled UK individuals are subject to income tax on a worldwide basis. Non-resident individuals are subject to income tax on UK source income, but not generally capital gains (may be subject to the UK’s Capital Gains Tax). Residents of Scotland and Wales are subject to Scottish and Welsh income tax respectively, which is administered by the HMRC, but may also be subject to UK tax on other income sources.

Resident corporations are subject to corporation tax (income tax) on worldwide profits and gains. A non-resident corporation is generally subject to income tax on UK-sourced income, which includes income from UK permanent establishment, certain income and gains from UK real estate assets, certain UK-source interest and royalties, and gains on assets used for the purpose of the PE trade.

The UK individual income tax rate is a graduated rate based on taxable income. The UK taxes dividends and capital gains separately. Dividends and capital gains being subject to different rates. For tax year 2021/22, the individual income tax rates start at 20%. The UK corporation tax rate is 19% with certain exceptions, including certain oil and extraction profits that are taxed at 30%. Some businesses may also be subject to additional taxes, such as a surtax of 8% for large banking companies and a diverted profits tax (generally 25%) for companies who use arrangements to divert profits to avoid paying UK tax.

1. **Corporate/Individual**
   1. [*Voluntary compliance*](about:blank)*?*
      1. Individuals:

The majority of individual income tax is paid by withholding through the Pay As You Earn (PAYE) system. Under PAYE, applicable tax is deducted from an individual’s wages, pensions or savings. If an individual’s income tax liability is satisfied through the PAYE, then they are not required to make any further filings. If the individual is self-employed, has a complex tax situation or meets certain thresholds then the individual is required to register with the HMRC, file a self-assessment and return for the tax year.

The UK has a fiscal year for individual income tax purposes that begins on April 6th and ends on April 5th of the following year. If an individual is required to file a self-assessment, it is due by October 5th. The due date for the return filing depends upon whether a taxpayer files electronically or utilizes a paper filing. A paper return is due on October 31st while an electronic filing is due on January 31st. All income tax is due by January 31st of the following year.

* + 1. [Corporations](about:blank) – Corporation Tax

Corporation tax returns are generally required to be filed within 12 months after the close of the accounting period and must include a self-assessment. All corporation tax returns are required to be filed on a separate basis, although there are certain rules for income between group members, and returns must be filed electronically.

Large corporations, defined as turnover greater than GBP 200 million or balance sheet assets over GBP 2 billion, must also meet other disclosure requirements. These requirements include notifying HMRC of the identity of the Senior Accounting Officer, who must certify that the corporation’s accounting systems are adequate annually, and publishing a tax risk strategy online. Further, certain transactions must be disclosed to HMRC including uncertain tax treatments meeting the threshold.

* 1. *Other methods/procedures for taxing*

There are many other types of taxes, and duties, imposed by the UK outside of income tax. A few of the more widely applicable or recent taxes are listed below:

* + 1. Value Added Tax (VAT)
    2. Capital Gains Tax (individual)
    3. Inheritance/estate tax (individual)
    4. Council Tax (individual) – local property tax
    5. Business Rates (corporate) – local tax on occupiers of business property
    6. Stamp/Transfer Tax – varies by jurisdiction
    7. Environmental Taxes
    8. Digital Services Tax

1. [**Brief overview of taxing authority**](about:blank)

HMRC is responsible for administering UK tax, payments, and customs. It is a non-ministerial department reporting to the Parliament through the Treasury ministry. The HMRC is primarily overseen by an executive committee and has six commissioners. Per the HMRC 2020-2021 Annual Report, the HMRC is comprised of 4 core customer-focused groups: (1) Customer Strategy and Tax Design, (2) Borders and Trade, (3) Customer Services and (4) Customer Compliance. One of the primary functions of the Customer Compliance group to ensure that taxpayers pay the right amount of tax.

The HMRC is also organized with corporate services divisions that support the four core functions. These groups include the chief people officer group, chief finance officer group, chief digital information officer group, solicitor’s office and legal services, transformation group, and communications.

Although Scotland and Wales may have separate income tax, HMRC is generally responsible for administering and collecting the tax. Local jurisdictions administer the council taxes (property taxes) and business use taxes.

1. **Tax code/laws/regulatory and other guidance**

UK tax law is comprised of multiple pieces of legislation with some of the most significant for income tax purposes being the following: Income Tax (Earnings and Pensions) Act 2003 (ITEPA), the Income (Trading and Other Income) Act 2005 (ITTOIA), Income Tax Act 2007 (ITA), Corporation Tax Act 2009 and Corporation Tax Act 2010. The ITEPA, ITTOIA and ITA are the result of the Tax Law Rewrite Project, which was undertaken beginning in 1996 to simplify UK tax law. Sources of tax administrative provisions include the Taxes Management Act of 1970 and Section 18 of the Finance Act of 1998.

HMRC issues certain administrative guidance including manuals, which outline its interpretation of certain laws but are not binding. In addition, the HMRC has a pre-clearance process for certain transactions and may offer assurances about a tax position.

1. **Examination Process**
   1. [*Individual Income Tax*](about:blank)

HMRC may perform compliance checks on individual income tax returns and must give notice of the inquiry within 12 months of the filing, subject to certain exceptions. During this process, additional information may be requested by HMRC to evaluate issues and HMRC may make determinations regarding the proper tax treatment. Generally, the HRMC is required to make assessments within 4 years following the end of the tax year with certain exceptions. Taxpayers may engage an agent or advisor to assist with the process.

* 1. [*Corporation Tax*](about:blank)

Similarly, HMRC may inquire into corporation tax returns and this process must generally be started within 12 months of the return filing. This process can range from information requests to more detailed challenges to technical positions.

For the largest UK businesses, approximately 2,000 businesses, the HMRC utilizes a risk-based approach to manage tax compliance and enforcement. For these businesses, an HMRC specialist called a customer compliance manager (CCM) is assigned to the company. The CCM role is designed to allow for an in-depth understanding of the business and associated tax risks. The CCM is primarily responsible for evaluating the compliance of all types of taxes (including indirect taxes such as VAT) of the business and may work with HMRC specialists in the various tax areas.

The CCM is also responsible for conducting periodic risk reviews of the business, which results in a risk rating (low, moderate, moderate-high or high risk). During this process, the HMRC may evaluate a variety of factors but generally looks at the complexity of the business, including size and amount of change, as well as behaviors to mitigate any risks such as process and procedures. For these businesses, the assigned risk rating may impact its dealings with HMRC. For example, a low-risk business will generally have a risk review performed every three years and HMRC will typically not challenge its tax returns during that period, although the CCM remains in contact. Comparatively, if a business is determined to be moderate to high risk, then there will be more HMRC interaction with a risk review being conducted at least once a year and filings subject to regular evaluation.

The UK also has a High Risk Corporate Programme designed to resolve significant and complex tax issues for certain large businesses. In this program, HMRC will work directly with the business to resolve tax issues, which includes having discussions with the senior or board level of the business. HMRC determines cases for this program based upon an evaluation of business risk across all taxes.

1. **Appeals Consideration or other vehicle(s) to settle/resolve matters short of litigation**

The HMRC has an administrative appeals process for taxpayers to appeal tax determinations, which varies based upon the type of tax at issue (direct or indirect). In addition, the UK offers the Alternative Dispute Resolution (ADR) program, whereby an independent HMRC mediator will work with the HMRC officer on the case and taxpayer to reach a resolution, and may be requested at various points throughout the examination process. The ADR process does not impact a taxpayer’s ability to request an appeal.

For appeal of direct taxes (*e.g.* income tax), a taxpayer must initially submit an appeal to the HMRC officer assigned to the case. Generally, the appeal request must be made 30 days after issuance of HMRC notification. If this appeal does not impact the outcome, then the taxpayer may request either a case review, which is a review by an unrelated HMRC individual, or appeal to the independent tax tribunal (First Tier Tribunal (Tax Chamber)). For indirect taxes, a taxpayer is not required to request HMRC review, but may request case review or appeal directly to the tribunal.

1. **Court System (Including First Tier Tribunal and Upper Tribunal)**

There are distinct procedures in civil and criminal tax matters. Civil cases as a general matter proceed from review by HMRC to review by a “First Tier Tribunal (Tax Chamber)” (“FTT”) and, possibly, an “Upper Tribunal (Tax and Chancery)” (“Upper Tribunal”).

If a particular statute does not provide a remedy for a taxpayer, the common law may provide direct access to judicial review. The details of such cases will not be discussed here. The below focuses on procedure in England and Wales.

* 1. *Commencement of Tax Dispute*

**Civil:** As noted above, a taxpayer seeking to dispute a tax assessment may request internal review(s) by HMRC. Alternative dispute resolution procedures, including mediation, are also available at this level.

**Criminal**: HMRC has criminal investigatory powers; however certain otherwise criminal cases can be resolved civilly through CIF (civil investigation of fraud) and CDF (contractual disclosure of fraud) procedures. Under CDF, a taxpayer makes disclosure of irregularities, and agrees to pay the tax and HMRC agrees not to pursue criminal proceedings if the taxpayer adheres to the agreement.

* 1. *First Level of Review*

**Civil:** The first level of appeal is to the FTT. Decisions of FTT are made by a judge after a hearing and subject to the FTT’s procedural rules. An FTT decision will be final unless appealed to the Upper Tribunal. As a general matter, there is no assessment of costs unless the case is determined by the FTT to be a “complex case” (difficult legal issues; large sums involved), in which case costs may be assessed by the FTT. There are circumstances under which the disputed tax need not be paid before FTT review (if HMRC consents to the delay or if the tax is “indirect,” such as VAT, or if the case involves a penalty).

**Criminal**: While HMRC may investigate criminal matters, the decision to prosecute them must be made by independent prosecutors in accordance with the Code for Crown Prosecutors, which is a public document setting forth the necessary criteria for prosecuting an offense. Depending upon the seriousness of the offense, the case will be brought in Magistrates’ Court (less serious) or the Crown Court (more serious).

* 1. *Second Level of Review*

**Civil:**  Permission to appeal from an FTT decision to the Upper Tribunal must be granted either by the FTT or the Upper Tribunal itself. Appeal must involve questions of law, not fact; however, this does not exclude appeals involving the adequacy of the facts found to support the legal conclusion.

**Criminal**: A sentence imposed by the Magistrates’ Court may be appealed to the Crown Court, of right. A sentence imposed by the Crown Court may be appealed to the Court of Appeal; however, permission must be obtained from the Court of Appeal or the trial judge must certify that the case is fit for appeal. Trial in the Magistrates’ Court is by the magistrate; trial by jury may had in the Crown Court.

* 1. *Third Level Review*

**Civil:** Appeal from a decision of the Upper Tribunal is to the Court of Appeal, but permission must be obtained from the Upper Tribunal. Permission will not be granted unless there is an important matter of principle or practice involved or if there is some other compelling reason to do so. Any further appeal is to the Supreme Court. In Northern Ireland, the appeal would to its Court of Appeal, and in Scotland, to the Court of Session.

**Criminal**: Appeal from the Court of Appeal is to the Supreme Court.

1. **Items of Special Interest**
   1. The UK takes a risk analysis approach to administering tax of large businesses, which includes a periodic risk assessment that results in a business tax risk rating. The outcome of the risk analysis can impact HMRC’s level of scrutiny and interaction with the business.
   2. In certain circumstances, a taxpayer may not be required to pay any disputed tax before the FTT review, essentially allowing for a pre-payment forum. These situations include if the HMRC consents to the delay, or if the tax is indirect, or if the case involves a penalty.

**Sources:**

1. HMRC website – Income Tax: Introduction/Self-Assessment Tax Returns/Income Tax in Scotland/Income Tax in Wales/Corporation Tax/HMRC’s Compliance Approach for Large Business/The High Risk Corporates Programme/Tax Compliance Risk Management Manual/ Dealing with HMRC/Disagree with a tax decision/Appeal to the tax tribunal/Appeal to the Upper Tribunal (Tax and Chancery)
2. Ipsos MORI on behalf of HM Revenue and Customs Final Report – Review of Rewritten Income Tax Legislation
3. PwC Worldwide Tax Summaries – United Kingdom Individual/Corporate
4. Deloitte International Tax – United Kingdom Highlights 2022
5. HMRC’s Annual Report and Accounts 2020 – 2021: Performance Overview
6. David Harkness and Judith Seldon, “Tax Litigation in the UK (England and Wales): Overview.”