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# Tax controversy survey:

Procedures and issues for selected countries - 3rd edition

October 2016



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Tax controversy lawyers with Norton Rose Fulbright around the globe have prepared a third annual survey of certain tax controversy procedures and issues referenced below for Australia, Canada, France, Germany, Italy, The Netherlands, Poland, South Africa, the United Kingdom, and the United States.

While each tax controversy will involve unique circumstances, this survey serves as a reference tool for tax executives at multinational companies. It will be an evolving tool, and we plan to add additional countries in future surveys. If you would like additional information, please feel free to contact any of the lawyers listed on the back of this survey.

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## Examinations

In each country, an administrative agency or department conducts examinations of taxpayers. Such agencies or departments generally have broad investigative powers, such as the power to access documents and witnesses. Commonly faced issues vary from one jurisdiction to the next, but transfer pricing and cross border transactions are common issues. The extent to which a taxpayer can recover its costs of contesting administrative proceedings varies widely between jurisdictions.

| Country   | Nature of Examination Function   | Issues Commonly Faced  | Recovery of Administrative Contest Costs   |
|-----------|--|--|--|
| Australia | <p>Australian Taxation Office (ATO):</p> <ul style="list-style-type: none"> <li>• Administrative agency</li> <li>• Broad investigatory powers including access to documents</li> <li>• Does not have adjudicatory powers</li> </ul>      | <ul style="list-style-type: none"> <li>• Taxation of trusts</li> <li>• Deductibility of outgoings/prior year losses</li> <li>• Transfer pricing</li> <li>• Anti-avoidance</li> <li>• GST</li> <li>• ATO exercise of information gathering power</li> <li>• Penalties/Interest</li> </ul> | <ul style="list-style-type: none"> <li>• No recovery unless matter goes to court or tribunal and a costs order is made in favor of taxpayer</li> <li>• Typically costs order enables recovery of about 50%-70% of costs</li> </ul> |
| Canada    | <ul style="list-style-type: none"> <li>• Canada Revenue Agency (CRA) has broad powers to access documents and information</li> <li>• Important discovery powers</li> </ul>   | <ul style="list-style-type: none"> <li>• Income or capital</li> <li>• Valuations</li> <li>• Anti-avoidance</li> <li>• Transfer pricing</li> </ul>  | <ul style="list-style-type: none"> <li>• Part-party</li> <li>• Court discretion</li> <li>• Expert fees</li> <li>• All reasonable disbursements</li> </ul>  |
| France    | <ul style="list-style-type: none"> <li>• French tax authorities (FTA) have important powers to open audits and inquiries, to access documents and information</li> <li>• FTA do not have adjudicatory powers</li> </ul>                  | <ul style="list-style-type: none"> <li>• R&amp;D tax credits</li> <li>• VAT</li> <li>• Cross border transactions</li> <li>• Transfer Pricing</li> <li>• CFC legislation</li> <li>• Anti-avoidance rules</li> <li>• Thin capitalization rules</li> <li>• Loss deduction</li> </ul>        | <ul style="list-style-type: none"> <li>• No recovery unless matter goes to court or tribunal and a costs order is granted by the judge in favor of taxpayer</li> <li>• The amount recovered is generally low</li> </ul>            |
| Germany   | <p>Tax Audits:</p> <ul style="list-style-type: none"> <li>• Department of tax authorities</li> <li>• Broad powers to summons documents and testimonies</li> <li>• No independent agency; acts for the tax authorities</li> </ul>         | <ul style="list-style-type: none"> <li>• Transfer Pricing</li> <li>• CFC legislation</li> <li>• Thin capitalization rules</li> <li>• Loss deduction</li> <li>• Hidden dividend distributions</li> <li>• Transfer of intangible assets</li> <li>• Deduction of expenses</li> </ul>        | <ul style="list-style-type: none"> <li>• Administrative cost recovery, if successful tax proceeding and positive costs ruling by tax court</li> <li>• Costs capped to regular fee on the basis of statutory regulation</li> </ul>  |
| Italy     | <p>Agenzia delle Entrate is entitled to:</p> <ul style="list-style-type: none"> <li>• Exert on the taxpayers through accesses, inspections and verifications</li> <li>• Address requests to the taxpayer and to third parties</li> </ul> | <ul style="list-style-type: none"> <li>• Relocation abroad of non Italian entities</li> <li>• Tax avoidance/“<i>abuso del diritto</i>”</li> <li>• Cross border transactions</li> <li>• Tax compliance of individuals concerning foreign assets</li> </ul>                                | <ul style="list-style-type: none"> <li>• No provision in this respect</li> </ul>   |



| Country         | Nature of Examination Function  | Issues Commonly Faced   | Recovery of Administrative Contest Costs   |
|-----------------|---|---|--|
| The Netherlands | <p>Dutch Tax Authorities (DTA):</p> <ul style="list-style-type: none"> <li>• Administrative agency</li> <li>• Power to perform audits and obtain documents</li> </ul> <p>Financial Fraud Unit (FFU):</p> <ul style="list-style-type: none"> <li>• Fraud investigation</li> <li>• Broad investigation power</li> </ul> | <ul style="list-style-type: none"> <li>• Interest deductibility</li> <li>• VAT</li> <li>• Payroll tax</li> <li>• Transfer pricing</li> <li>• Substance</li> <li>• Penalties</li> <li>• Exchange of information</li> <li>• Individual's foreign assets/ foreign trusts</li> </ul>              | <ul style="list-style-type: none"> <li>• Reasonable cost recovery if the taxpayer's position wholly/ partially upholds</li> <li>• Timely request by taxpayer</li> <li>• Legal Costs Decree; a fixed amount per step in the proceedings</li> </ul>          |
| Poland          | <p>Tax Administration (Tax Offices and Tax Chambers) and Fiscal Control (including Fiscal Intelligent Service) have broad powers to access documents and information</p>  | <ul style="list-style-type: none"> <li>• VAT issues, VAT fraud</li> <li>• Payroll tax issues</li> <li>• Transfer pricing issues</li> <li>• Deduction of expenses</li> <li>• Thin capitalization rules</li> <li>• Loss deduction</li> <li>• WHT on interest and royalties</li> </ul>           | <ul style="list-style-type: none"> <li>• Only upon (timely) request by the taxpayer</li> <li>• Only certain types of a taxpayer's expenses can be reimbursed</li> </ul>  |
| South Africa    | <p>South African Revenue Service (SARS):</p> <ul style="list-style-type: none"> <li>• Administrative agency</li> <li>• Wide powers to request or search for and seize material, interview persons</li> <li>• Limited adjudicatory powers</li> </ul>   | <ul style="list-style-type: none"> <li>• Debt versus equity</li> <li>• Transfer pricing</li> <li>• Research credits</li> <li>• Simulated transactions</li> </ul>  | <ul style="list-style-type: none"> <li>• Not unless an order is made in an appeal to the tax court</li> </ul>  |
| UK              | <ul style="list-style-type: none"> <li>• HM Revenue &amp; Customs (HMRC) can open an enquiry into a tax return, and may require adjustments to be made</li> <li>• A taxpayer that disagrees may appeal to the Tax Tribunal</li> </ul>   | <ul style="list-style-type: none"> <li>• Challenges to tax planning</li> <li>• Deductibility of various expenses</li> <li>• VAT issues</li> <li>• Administrative failures</li> </ul>  | <ul style="list-style-type: none"> <li>• Costs of the enquiry are for the taxpayer's account</li> <li>• In some circumstances some costs of litigation may be recovered if matters proceed to court or the Tax Tribunal</li> </ul>                         |
| US              | <p>Internal Revenue Service (IRS):</p> <ul style="list-style-type: none"> <li>• Administrative agency</li> <li>• Broad powers to summons documents and testimony</li> <li>• Generally does not have adjudicatory powers</li> </ul>  | <ul style="list-style-type: none"> <li>• Debt versus equity</li> <li>• Transfer pricing</li> <li>• Foreign tax credit</li> <li>• Research credit</li> <li>• Worthless stock, bad debt</li> <li>• Economic substance, substance over form</li> <li>• Valuation</li> <li>• Penalties</li> </ul> | <ul style="list-style-type: none"> <li>• Net worth requirements: \$2,000,000 for individuals \$7,000,000 for entities</li> <li>• Cannot protract proceedings</li> <li>• "Reasonable" costs</li> <li>• \$200 per hour cap currently (exceptions)</li> </ul> |

## Collection of information

Most departments or agencies have broad administrative powers to request documents and conduct interviews of witnesses. Typically, the department or agency can obtain judicial enforcement of its information request and/or utilize discovery in litigation. Most departments or agencies can issue a request, summons or subpoena to a third party to gather information, administratively and/or in litigation.

| Country   | Administrative Collection of Information From Taxpayer  | Judicial Collection of Information From Taxpayer   | Collection of Information From Third Parties   |
|-----------|---|--|--|
| Australia | <ul style="list-style-type: none"> <li>• Notice compelling production of documents</li> <li>• Notice compelling attendance to give evidence</li> <li>• Failure to provide information/documents can result in action by ATO/FIRB</li> </ul>     | <ul style="list-style-type: none"> <li>• In litigation, ATO can use the discovery process to obtain documents</li> </ul>   | <ul style="list-style-type: none"> <li>• In litigation, ATO may use subpoenas or other third party production mechanisms</li> <li>• ATO may issue same notices as can be issued to taxpayer</li> </ul>         |
| Canada    | <ul style="list-style-type: none"> <li>• Audits</li> <li>• Requirements very broad</li> <li>• Includes foreign-based documents.</li> </ul>  | <ul style="list-style-type: none"> <li>• Judicially authorized search and seizures</li> <li>• Courts can enforce requirements</li> <li>• In litigation, CRA can use discovery and request full disclosure.</li> </ul>                        | <ul style="list-style-type: none"> <li>• CRA can issue requirement to third party, including foreign based documents</li> <li>• Third party may be examined for discovery (with leave)</li> </ul>              |
| France    | <ul style="list-style-type: none"> <li>• Informal information requests</li> <li>• Audits</li> <li>• Requirements can be very broad</li> </ul>   | <ul style="list-style-type: none"> <li>• Judicially authorized search and seizures</li> <li>• In litigation, the Court can request documents and information from the taxpayer</li> </ul>  | <ul style="list-style-type: none"> <li>• FTA have a right to request information to check a taxpayer's position</li> <li>• Judicially authorized search and seizures may extend to third parties</li> </ul>    |
| Germany   | <ul style="list-style-type: none"> <li>• Broad information duties by taxpayer</li> <li>• Tax authorities usually request documents and statements by taxpayer</li> <li>• Increased duties by taxpayer in case of international cases</li> </ul> | <ul style="list-style-type: none"> <li>• Tax authorities can enforce compliance with information duties</li> <li>• In proceeding tax court can request documents and information</li> <li>• Exclusion of facts, if filed too late</li> </ul> | <ul style="list-style-type: none"> <li>• Tax authorities may request information, if necessary and request with taxpayer had not been successful</li> </ul>  |
| Italy     | <ul style="list-style-type: none"> <li>• Tax or other public database</li> <li>• Information acquired directly (also through assessment activity) or indirectly</li> <li>• Formal document request</li> <li>• Summons for documents</li> </ul>  | <p>Agenzia delle Entrate cannot enforce summons but, in case of refusal, the taxpayer loses the right to avail of certain options envisaged in his favor</p>   | <ul style="list-style-type: none"> <li>• Annual and infra-annual transfer of information from financial institutions to feed the Tax Database</li> <li>• Agenzia delle Entrate may summon taxpayers</li> </ul> |

| Country         | Administrative Collection of Information From Taxpayer   | Judicial Collection of Information From Taxpayer  | Collection of Information From Third Parties  |
|-----------------|--|---|---|
| The Netherlands | <ul style="list-style-type: none"> <li>• Audits</li> <li>• Information decisions</li> <li>• Certain companies need to substantiate transaction's arm's-length nature</li> <li>• Certain companies need to confirm compliance with substance</li> </ul>     | <ul style="list-style-type: none"> <li>• Information decision objection eligible</li> <li>• Burden of proof to taxpayer if non-compliance</li> <li>• DTA can enforce information through civil court</li> <li>• FFU may use search &amp; seizure</li> </ul> | <ul style="list-style-type: none"> <li>• The DTA may perform a third party audit at third party obliged to keep records</li> <li>• In tax fraud situations the FFU may use search &amp; seizure with third parties</li> </ul>                 |
| Poland          | <ul style="list-style-type: none"> <li>• Broad information duties by taxpayer</li> <li>• Tax authorities usually request documents and statements by taxpayer</li> <li>• Audits</li> <li>• Standard Audit File for tax purposes</li> </ul>                 | <ul style="list-style-type: none"> <li>• Tax authorities may ask for information and documents during the tax audit/tax proceeding</li> <li>• Fiscal Intelligent Service may use search and seizure under judicial control</li> </ul>                       | Tax authorities and Fiscal Control may perform a third party audit and may request a documents and information from third party   |
| South Africa    | <ul style="list-style-type: none"> <li>• Request relevant material</li> <li>• Conduct interviews</li> <li>• Hold inquiries</li> <li>• Conduct audits or criminal investigations</li> </ul>   | <ul style="list-style-type: none"> <li>• Search and seizure</li> <li>• In litigation before the tax board or tax court SARS may use discovery</li> </ul>  | In litigation before the tax board or tax court SARS may subpoena witnesses and documents   |
| UK              | <ul style="list-style-type: none"> <li>• Informal information request first</li> <li>• By notice, HMRC can require information to check a taxpayer's position. No judicial approval of notice is required (but may be sought)</li> </ul>                   | <ul style="list-style-type: none"> <li>• Tax Tribunal may approve an information notice</li> <li>• In litigation, parties must disclose relevant documents, including those adverse to their case</li> </ul>  | <ul style="list-style-type: none"> <li>• HMRC can give notice to third parties requiring information to check a taxpayer's position</li> <li>• Such notice must generally first be approved by the Tax Tribunal</li> </ul>                    |
| US              | <ul style="list-style-type: none"> <li>• Information Document Requests</li> <li>• Summons for documents or testimony</li> <li>• Summons power is broad - "may be relevant"</li> <li>• "Formal document request" for foreign based documentation</li> </ul> | <ul style="list-style-type: none"> <li>• IRS can enforce summons</li> <li>• Taxpayer can seek to quash summons</li> <li>• Court can enforce "formal document request" - exclude evidence</li> <li>• In litigation, IRS may use discovery</li> </ul>         | <p>IRS may summon:</p> <ul style="list-style-type: none"> <li>• US persons</li> <li>• Foreign-owned US taxpayer or foreign taxpayer with US business as agent for related foreign party</li> </ul> <p>In litigation, IRS may use subpoena</p> |

## Dispute resolution - administrative

The availability of dispute resolution during an examination varies widely between jurisdictions. However, most jurisdictions provide administrative appeal procedures and/or alternative dispute resolution at the conclusion of an examination. Moreover, most jurisdictions provide alternative dispute resolution or judicial review with respect to the results of an administrative appeal.

| Country   | During Examination   | Administrative Review of Examination Results  | Post Administrative Review (General)  |
|-----------|--|---|---|
| Australia | <ul style="list-style-type: none"> <li>• ATO encourages alternative dispute resolution (ADR) including independent review and early neutral evaluation</li> </ul>  | <ul style="list-style-type: none"> <li>• Taxpayer can object against ATO assessment within 60 days</li> <li>• ATO must determine objection within 60 days</li> <li>• Increasing use of ADR</li> </ul>                   | Application to Administrative Appeals Tribunal (AAT) or Federal Court for review of ATO decision  |
| Canada    | <ul style="list-style-type: none"> <li>• Draft assessment submitted at the end of examination</li> <li>• Settlement often negotiated then</li> <li>• Settlement must be principled</li> </ul>  | <ul style="list-style-type: none"> <li>• Independent review by Appeals following notice of objection</li> <li>• More than 70% of cases settled</li> </ul>   | Mediation process available   |
| France    | <ul style="list-style-type: none"> <li>• A reassessment proposition followed by a confirmation by the field auditor</li> <li>• No obligation to negotiate with the taxpayers</li> </ul>  | <ul style="list-style-type: none"> <li>• Taxpayer can challenge the FTA reassessment before higher tax officials</li> <li>• Independent panel committees may be competent to review certain tax reassessment</li> </ul> | Taxpayer can file claim against appeal decision either before the administrative court or the judicial court (regarding net wealth tax and stamp duties)                        |
| Germany   | <ul style="list-style-type: none"> <li>• Conclusion of tax contract or settlement agreement not possible</li> <li>• Mutual agreement re facts possible at all proceeding stages</li> <li>• No time limit for termination of tax audit</li> </ul> | <ul style="list-style-type: none"> <li>• Taxpayer files appeal and (usually) reasons</li> <li>• Appeal is dealt by separate section of tax office</li> <li>• No costs incurred for appeal by tax authorities</li> </ul> | <ul style="list-style-type: none"> <li>• Taxpayer can file claim against appeal decision</li> <li>• No mutual settlement possible (decision by tax court obligatory)</li> </ul> |
| Italy     | None   | Taxpayer may submit its own comments and remarks to the tax assessment within 60 days from the delivery of the Verification Notice  | Self- defense: Agenzia delle Entrate corrects its own errors either on request of the taxpayer or on its own initiative also in case of lack of appeal to the Tax Commission    |



| Country         | During Examination  | Administrative Review of Examination Results   | Post Administrative Review (General)  |
|-----------------|---|--|---|
| The Netherlands | <ul style="list-style-type: none"> <li>• Collaboration DTA/taxpayer, information gathering, correspondence, meeting</li> <li>• Taxpayer can give opinion about outcome before additional assessments/penalties are imposed</li> </ul>                   | <ul style="list-style-type: none"> <li>• Objection filed within 6 weeks</li> <li>• Objection dealt by other person of DTA for fair review</li> <li>• Taxpayer is entitled to hearing prior to final decision</li> <li>• Mediation available</li> </ul>   | <ul style="list-style-type: none"> <li>• Appeal filed within 6 weeks with district court</li> <li>• Court decision can be appealed with High Court and Supreme Court</li> <li>• May conclude settlement agreement during procedure</li> </ul>         |
| Poland          | There are no dispute resolution procedures available to a taxpayer while the taxpayer is under examination  | <ul style="list-style-type: none"> <li>• Taxpayer files appeal from decision issued by Tax Office after tax proceeding</li> <li>• Appeal is dealt by Tax Chambers</li> <li>• No costs incurred for appeal by tax authorities</li> </ul>  | Taxpayer can file claim against appeal decision to the Administrative Court   |
| South Africa    | There are no dispute resolution procedures available to a taxpayer while the taxpayer is under examination  | <p>Objection:</p> <ul style="list-style-type: none"> <li>• Taxpayer files objection</li> <li>• Considered by SARS official</li> <li>• ADR if parties agree</li> </ul> <p>Appeal to tax board:</p> <ul style="list-style-type: none"> <li>• Taxpayer files notice of appeal</li> <li>• Independent members</li> </ul> | <p>ADR:</p> <ul style="list-style-type: none"> <li>• Agreed between SARS and the taxpayer</li> <li>• Appoint a facilitator (SARS official or third party) to mediate</li> </ul>   |
| UK              | <ul style="list-style-type: none"> <li>• Can last indefinitely</li> <li>• Emphasis on collaboration between HMRC and taxpayer, information gathering, correspondence and meeting</li> <li>• HMRC bound by policy in considering settlement</li> </ul>   | <ul style="list-style-type: none"> <li>• Taxpayers can request a review by an independent HMRC officer</li> <li>• Following enquiry, a Closure Notice is issued</li> </ul>   | <ul style="list-style-type: none"> <li>• Potential for ADR (although usually during enquiry process)—HMRC policy can limit scope of settlement</li> <li>• Closure Notice can be appealed to the Tax Tribunal</li> </ul>                               |
| US              | <p>Fast Track Settlement:</p> <ul style="list-style-type: none"> <li>• IRS Appeals division employee mediates</li> <li>• Resolve large cases within 120 days, smaller cases within 60</li> <li>• Taxpayer retains traditional Appeals rights</li> </ul> | <p>Review by IRS Appeals:</p> <ul style="list-style-type: none"> <li>• Taxpayer files detailed protest</li> <li>• Appeals is independent division of IRS</li> <li>• Appeals may not communicate ex parte with others in IRS</li> </ul>   | <p>Mediation:</p> <ul style="list-style-type: none"> <li>• To resolve remaining issues</li> <li>• IRS Appeals mediator, or also, at taxpayer's expense, a third party co-mediator</li> </ul> <p>Arbitration program eliminated due to lack of use</p> |

## Transfer pricing

There is a great deal of variation between jurisdictions in their approach to transfer pricing, although there are ongoing efforts by the OECD to develop consistent “BEPS” approaches. Some apply the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. While competent authority is typically available, in some jurisdictions it is not commonly employed. The availability and application of correlative adjustments varies widely between jurisdictions.

| Country   | Transfer Pricing Issues   | Competent Authority Proceedings   | Correlative Adjustments  |
|-----------|---|---|--|
| Australia | <ul style="list-style-type: none"> <li>• Self-assessment regime</li> <li>• Transfer pricing legislation aligned to OECD standards</li> <li>• Contemporaneous documentation required to avoid penalties</li> </ul>           | <ul style="list-style-type: none"> <li>• Very long process</li> <li>• Used increasingly, as transfer pricing adjustments become more common</li> <li>• Advance pricing agreements possible</li> </ul> | <ul style="list-style-type: none"> <li>• ATO has power to make consequential adjustment to tax position of entity or another entity where “fair and reasonable” to do so</li> </ul>  |
| Canada    | <ul style="list-style-type: none"> <li>• Key issues: inter-company pricing of inventory, services</li> <li>• CRA applies OECD guidelines</li> </ul>   | <ul style="list-style-type: none"> <li>• Very long process</li> <li>• Relief where double taxation arises</li> <li>• Choice: competent authority or objection</li> </ul>                              | None   |
| France    | <ul style="list-style-type: none"> <li>• Transfer pricing legislation aligned to OECD standards</li> <li>• Mandatory documentation is filed each year and upon FTA’s request</li> </ul>                                     | Advanced Pricing Agreement possible   | Correlative adjustments are subject to prior claim   |
| Germany   | <p>Key issues:</p> <ul style="list-style-type: none"> <li>• Intercompany pricing of inventory, services, intangibles</li> <li>• Cost sharing agreement</li> <li>• Compliance with transfer pricing documentation</li> </ul> | Advanced Pricing Agreement possible   | <ul style="list-style-type: none"> <li>• Correlative allocations to other group entities</li> <li>• Formal note to tax office of group entity</li> <li>• Allocation must be reflected in group member’s documentation</li> </ul> |
| Italy     | <ul style="list-style-type: none"> <li>• Agenzia delle Entrate applies OECD guidelines</li> <li>• Also, domestic transfer pricing is verified and detected</li> </ul>   | “International tax ruling” procedure might be activated to agree on mutual transfer pricing level for the following four tax years  | None   |

| Country         | Transfer Pricing Issues   | Competent Authority Proceedings   | Correlative Adjustments   |
|-----------------|---|---|---|
| The Netherlands | <ul style="list-style-type: none"> <li>• Non-arm's length loans and guarantees under scrutiny</li> <li>• Transfer prices in line with function/risk profile (substance)</li> <li>• Economic ownership</li> <li>• Cost sharing agreements</li> </ul> | <ul style="list-style-type: none"> <li>• Uni- and multilateral Advance Pricing Agreement available from DTA</li> <li>• Informal no-names basis discussion with DTA possible</li> <li>• MAP available</li> </ul>                         | Compensating adjustments and secondary adjustments possible in case of transfer pricing adjustments   |
| Poland          | Transfer pricing legislation aligned to OECD standards  | Advanced Pricing Agreement possible   | May be made   |
| South Africa    | <ul style="list-style-type: none"> <li>• Secondary adjustments currently a deemed loan, but changing to a deemed dividend</li> <li>• Arm's length pricing</li> <li>• No safe harbours</li> </ul>  | <ul style="list-style-type: none"> <li>• Taxpayer may approach competent authority where adjustments not in accordance with double taxation agreement</li> <li>• May obtain domestic credits where no DTA relief available</li> </ul>   | <ul style="list-style-type: none"> <li>• Returns to be submitted with arm's length treatment already included</li> <li>• Further adjustments made in assessment by SARS</li> <li>• Taxed as deemed loan, changing to deemed dividend</li> </ul> |
| UK              | <ul style="list-style-type: none"> <li>• Business restructurings</li> <li>• Financial transactions, including reinsurance</li> </ul>  | Available but not used that frequently  | May be made   |
| US              | <ul style="list-style-type: none"> <li>• Key issues – intercompany pricing of inventory, services, intangibles</li> <li>• Cost sharing agreements used to reduce valuation risk</li> <li>• IRS follows Transfer Pricing Audit Roadmap</li> </ul>    | <ul style="list-style-type: none"> <li>• Seek relief when disputes cause tax adjustments to affiliates</li> <li>• Often obtains some double tax relief</li> <li>• Need to exhaust remedies to obtain a US foreign tax credit</li> </ul> | <ul style="list-style-type: none"> <li>• IRS makes correlative allocations to other group members</li> <li>• IRS furnishes written statement of allocation</li> <li>• Allocation must be reflected in other members' documentation</li> </ul>   |

## Civil and criminal penalties

While precise amounts of penalties vary, most jurisdictions impose substantial civil penalties for cases involving grossly negligent, willful or fraudulent conduct. Most jurisdictions impose significant prison sentences and/or fines for criminal violations. General and/or specific voluntary disclosure programs are, or are planned to be, available in all jurisdictions.

| Country   | Civil Penalties  | Criminal Penalties   | Tax Amnesty Programs  |
|-----------|--|--|---|
| Australia | <ul style="list-style-type: none"> <li>False or misleading statement - 75% of shortfall</li> <li>Tax avoidance scheme – 50% of shortfall</li> <li>Adopting position not reasonably arguable – 25% of shortfall</li> </ul>  | <ul style="list-style-type: none"> <li>False or misleading statements – up to A\$9,000 + treble tax avoided</li> <li>Failure to provide tax return or information – up to 2 years prison + A\$9,000</li> </ul>                         | <ul style="list-style-type: none"> <li>Remission of penalties/interest for voluntary disclosure prior to amended assessment being issued by ATO</li> <li>Tax amnesty programs occur on an ad hoc basis but are unusual</li> </ul>           |
| Canada    | <ul style="list-style-type: none"> <li>50% if gross negligence</li> <li>Planner’s total gross entitlement if misrepresentation</li> <li>Failure to disclose foreign assets (5%)</li> </ul>   | <p>Making false statements, destroying documents, evading payment of taxes: fine of 200% and 2 years in prison</p>   | <ul style="list-style-type: none"> <li>Voluntary disclosure program</li> <li>Cannot be under investigation</li> <li>Must be complete and verifiable</li> </ul>  |
| France    | <ul style="list-style-type: none"> <li>Interest (0.4% per month)</li> <li>Penalties:                             <ul style="list-style-type: none"> <li>10% for small infractions</li> <li>40% in case of intentional non-compliance</li> <li>80% in case of abuse of law or fraudulent actions</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>Tax fraud or accounting fraud: up to 5 years prison and €500,000 to €2,000,000 fine</li> <li>Opposition to a tax audit: up to 6 months prison and up to €25,000 fine</li> </ul>                 | <ul style="list-style-type: none"> <li>Individuals: remission of penalties/interest for voluntary disclosure (and no criminal suit)</li> <li>Undeclared offshore accounts</li> <li>Detailed requirements</li> </ul>                         |
| Germany   | <ul style="list-style-type: none"> <li>Interest (0.5% per month); interest run begins after expiry of 15 months from tax due date</li> <li>Late payment fine (1% of tax amount for each month, the tax is not duly paid)</li> </ul>  | <ul style="list-style-type: none"> <li>Tax fraud – up to 5 years prison (10 years in serious case) or fine</li> <li>Tax evasion – up to €50,000 fine</li> <li>False documentation of bills and receipts – up to €5,000 fine</li> </ul> | <p>Voluntary self-disclosure:</p> <ul style="list-style-type: none"> <li>Detailed requirements</li> <li>Impossible, if tax office is already aware of facts</li> <li>At least 10% penalty on tax evasion amount, if &gt; €50,000</li> </ul> |
| Italy     | <ul style="list-style-type: none"> <li>3/15% (or 6/30% in case of black list countries) failure to declare foreign assets</li> <li>100/200% false tax return</li> <li>120/240% non submitted tax return</li> <li>30% lack of payment</li> </ul>  | <ul style="list-style-type: none"> <li>Tax evasion – up to 6 years prison</li> <li>False or non submitted tax return – up to 3 years prison</li> <li>Lack of payment of VAT or withholding taxes – up to 2 years prison</li> </ul>     | <p>Offshore Voluntary Disclosure Program currently under discussion in Parliament with detailed requirements.</p>   |



| Country         | Civil Penalties  | Criminal Penalties   | Tax Amnesty Programs  |
|-----------------|--|--|---|
| The Netherlands | <ul style="list-style-type: none"> <li>• Default penalty in case of ordinary negligence; max. €5,278</li> <li>• Negligence penalty (gross negligence/intent) up to 100% (some income tax matters 300%) of (additional) tax</li> </ul>    | <ul style="list-style-type: none"> <li>• Tax fraud max. 4 years prison or max. €20,500 penalty</li> <li>• And can result in conviction for money laundering and/or forgery of documents; confiscation possible if convicted</li> </ul>       | <ul style="list-style-type: none"> <li>• No penalty if within 2 years corrected return is filed</li> <li>• The penalty may be limited if after 2 years a corrected and amended tax return is filed voluntarily</li> </ul>   |
| Poland          | <ul style="list-style-type: none"> <li>• The late payment of tax is subject to interest</li> <li>• At present, standard interest rate equals 8%</li> </ul>   | Various offenses, including evasion and fraud; up to 5 years prison (depending on the nature of the offense, intent, amount involved) and fine up to approx. €3900000  | Voluntary disclosure - is only effective against the fiscal penal liability if it is submitted before the tax authority will gain knowledge about the prohibited act  |
| South Africa    | <ul style="list-style-type: none"> <li>• Various penalties for non-compliance with tax laws or non-payment of tax</li> <li>• Penalties for gross negligence and intentional tax evasion range from 100 – 200%</li> </ul>                 | <ul style="list-style-type: none"> <li>• Non-compliance with tax laws, secrecy provisions, filing a return without authority – 2 years prison, R80 000 fine</li> <li>• Tax evasion – 5 years prison, R200 000 fine</li> </ul>                | <ul style="list-style-type: none"> <li>• Voluntary disclosure program:</li> <li>• Eligible before investigation commences/after investigation has commenced but not concluded, subject to exceptions</li> <li>• Detailed requirements</li> </ul>  |
| UK              | <ul style="list-style-type: none"> <li>• Failures; a one-off fine or daily flat-rate penalty (may be waived)</li> <li>• Culpable penalties; up to 150% of tax or up to 200% if matters involve certain offshore jurisdictions</li> </ul> | Various offenses, including evasion and fraud; up to 7 – 10 years' prison (depending on the nature of the offense, intent and amount involved)   | HMRC run specific campaigns (including disclosure programs) related to specific industries or risk areas (such as offshore income and assets)   |
| US              | <ul style="list-style-type: none"> <li>• 20% accuracy-related penalty (40% if gross misvaluation, which can include transfer pricing errors)</li> <li>• 75% civil fraud</li> <li>• Failure to declare foreign account: 50%</li> </ul>    | <ul style="list-style-type: none"> <li>• Tax evasion – 5 years prison, \$500,000 fine</li> <li>• False tax return – 3 years prison, \$500,000 fine</li> <li>• Failure to declare foreign account – 5 years prison, \$250,000 fine</li> </ul> | <p>General Voluntary Disclosure Program:</p> <ul style="list-style-type: none"> <li>• Cannot be under investigation</li> </ul> <p>Offshore Voluntary Disclosure Program:</p> <ul style="list-style-type: none"> <li>• Undeclared foreign accounts</li> <li>• Detailed requirements</li> </ul> |

## Judicial challenges

All jurisdictions provide for judicial review of at least some determinations by the tax agency or department. Settlement procedures, such as direct negotiation between the parties or alternative dispute resolution, are common. In all jurisdictions, a taxpayer may recover some portion of the costs of a successful judicial challenge.

| Country   | Actions Subject to Judicial Review   | Settlement Procedures/Options  | Recovery of Judicial Challenge Costs   |
|-----------|--|--|--|
| Australia | <ul style="list-style-type: none"> <li>• ATO disallows objection against tax assessment e.g. for inclusion of income or denial of deduction</li> <li>• ATO denies refund claim</li> </ul>                      | <ul style="list-style-type: none"> <li>• ATO encourages alternative dispute resolution (ADR) such as “independent review,” “early neutral evaluation,” conciliation and mediation</li> </ul> | <ul style="list-style-type: none"> <li>• No recovery unless matter goes to court or tribunal and costs order is made in favor of taxpayer</li> <li>• Typically a costs order will enable recovery of about 50%-70% of costs</li> </ul> |
| Canada    | <ul style="list-style-type: none"> <li>• Minister’s refusal to grant interest or penalty relief or extension</li> <li>• Rectification orders</li> <li>• Minister’s refusal to register a charity</li> </ul>    | <ul style="list-style-type: none"> <li>• At all levels of process</li> <li>• Negotiation with Justice lawyer</li> <li>• Settlement conference sponsored by Courts</li> </ul>                 | <ul style="list-style-type: none"> <li>• Costs to successful litigant</li> <li>• Can be solicitor-client if settlement proposal rejected</li> </ul>  |
| France    | FTA’s decision which dismisses the tax claim (or FTA’s silence within a 6 months period) either before the Administrative Court or the Judicial Court  | At all levels of process   | Same requirements as for administrative costs  |
| Germany   | <ul style="list-style-type: none"> <li>• Final decisions of tax office (eg appeal decision)</li> <li>• Ascertainment of legal position</li> <li>• Commitment of tax office to an action or omission</li> </ul> | <ul style="list-style-type: none"> <li>• Tax court decision</li> <li>• Revision against legal errors of tax court decision or unclear legal questions</li> </ul>                             | Same requirements as for administrative costs  |
| Italy     | All the tax notices issued by Agenzia delle Entrate  | <ul style="list-style-type: none"> <li>• Verification with acceptance (composition)</li> <li>• Tax mediation</li> <li>• Judicial conciliation</li> </ul>                                     | In general it is granted in case of win but the actual recovery is very low (symbolic)   |

| Country         | Actions Subject to Judicial Review   | Settlement Procedures/Options  | Recovery of Judicial Challenge Costs   |
|-----------------|--|--|--|
| The Netherlands | All (formal) decisions by the DTA  | <ul style="list-style-type: none"> <li>• Tax court decision</li> <li>• Amical settlement</li> </ul>  | <ul style="list-style-type: none"> <li>• Reasonable cost recovery if taxpayer's position wholly/partially upholds</li> <li>• Timely request by taxpayer</li> <li>• Legal Costs Decree; a fixed amount per step in the proceedings</li> </ul> |
| Poland          | Final decisions of tax authorities   | <ul style="list-style-type: none"> <li>• During court proceeding the Administrative Court verifies whether tax authorities obeyed legal provisions during tax audit/ tax proceeding</li> <li>• No mediation/negotiation</li> </ul>     | <ul style="list-style-type: none"> <li>• In general it is granted in case of win but the actual recovery is very low</li> <li>• Only upon (timely) request by the taxpayer</li> </ul>  |
| South Africa    | <ul style="list-style-type: none"> <li>• SARS disallows taxpayer's objection</li> <li>• Decision of tax board</li> <li>• No decision by tax board in 60 days</li> <li>• Common law or administrative grounds of review</li> <li>• Imposition of a penalty</li> </ul> | <ul style="list-style-type: none"> <li>• SARS may allow if taxpayer requests mediation in notice of appeal</li> <li>• All courts: negotiate with other party within dispute settlement guidelines</li> </ul>                           | <ul style="list-style-type: none"> <li>• Successful party can recover costs in High Court and Tax Court</li> </ul>   |
| UK              | <ul style="list-style-type: none"> <li>• Closure Notice may be appealed to the Tax Tribunal</li> <li>• The way in which HMRC acts or makes decisions may also be open to challenge by taxpayers in the administrative court</li> </ul>                               | <ul style="list-style-type: none"> <li>• The Tax Tribunal will consider and decide the case</li> <li>• The decision of the Tax Tribunal may be appealed on points of law to higher courts</li> </ul>                                   | <ul style="list-style-type: none"> <li>• Taxpayers should not expect to recover all costs</li> <li>• May recover some costs in the Tax Tribunal, and costs on appeal will generally follow the decision of the court</li> </ul>              |
| US              | <ul style="list-style-type: none"> <li>• IRS issues notice of deficiency</li> <li>• IRS denies refund claim</li> <li>• IRS denies collection relief (if no prior opportunity to dispute)</li> <li>• IRS denies whistleblower claim</li> </ul>                        | <ul style="list-style-type: none"> <li>• Tax Court (deficiency cases): consideration by IRS Appeals</li> <li>• All courts: negotiate with government lawyer</li> <li>• All courts: court-sponsored mediation or arbitration</li> </ul> | <p>Same requirements as for administrative costs, plus:</p> <ul style="list-style-type: none"> <li>• Must exhaust administrative remedies</li> <li>• Can recover costs if judgment does not exceed amount of qualified offer</li> </ul>      |

## Privilege protection for information

All jurisdictions provide a privilege for communications between an attorney and client for the purpose of securing or giving legal advice, and the privilege can be waived. The availability of other privileges, such as a tax advisor or accountant privilege or a litigation or work product privilege, varies widely between jurisdictions.

| Country         | Tax Advisor Privilege  | Attorney/Solicitor Privilege  | Other Privileges  |
|-----------------|--|---|---|
| Australia       | ATO has an “accountant’s concession” – ATO will not seek access to certain documents except for fraud or evasion or documents relating to transaction implementation | <ul style="list-style-type: none"> <li>• Restricted to legal practitioners</li> <li>• Protects communications with dominant purpose of giving or receiving legal advice</li> <li>• Can be waived so great care must be taken</li> </ul> | <ul style="list-style-type: none"> <li>• Legal professional privilege extends to confidential communications for main purpose of provision of legal advice or use in litigation/ expected litigation</li> </ul> |
| Canada          | None   | <ul style="list-style-type: none"> <li>• Attorney-client privilege</li> <li>• None for accountants unless as agent or client of lawyer</li> </ul>   | Common interest privilege   |
| France          | None   | <ul style="list-style-type: none"> <li>• Attorney-client privilege</li> <li>• Protects communication between attorney and client</li> <li>• Can be waived only by the client</li> </ul>   | Legal professional privilege extends to confidential communications for provision of legal advice or use in (expected) litigation and to correspondences between lawyers  |
| Germany         | Tax advisor privilege, similar to attorney client privilege  | <ul style="list-style-type: none"> <li>• Protects communication between attorney and client</li> <li>• Right to refuse to give evidence</li> <li>• Can be waived by client</li> </ul>   | None  |
| Italy           | None   | Ordinary privilege can be waived  | None  |
| The Netherlands | (Informal) legal privilege; on the basis of case law/ fair play principle clients do not need to disclose the advice of a tax advisor in an audit procedure          | <ul style="list-style-type: none"> <li>• Full attorney-client privilege</li> <li>• Only attorneys may plea in the Supreme Court tax cases; not required for district court or high court cases</li> </ul>                               | None  |



| Country      | Tax Advisor Privilege   | Attorney/Solicitor Privilege  | Other Privileges   |
|--------------|---|---|--|
| Poland       | Tax advisor privilege, similar to attorney client privilege   | Attorney-client privilege: <ul style="list-style-type: none"> <li>• Terrorism and anti-money laundering exceptions</li> <li>• Can be waived by the court in a limited circumstances</li> </ul>                                    | None   |
| South Africa | None  | Attorney-client privilege: <ul style="list-style-type: none"> <li>• Protects communications between client and attorney for purpose of securing legal advice</li> <li>• Crime-fraud exception</li> <li>• Can be waived</li> </ul> | Litigation privilege: <ul style="list-style-type: none"> <li>• Protects communications and materials prepared in anticipation of litigation by party or representative</li> <li>• Can be waived</li> </ul>                                       |
| UK           | No specific tax advisor privilege (but in extremely limited circumstances HMRC are prevented from requiring a tax advisor to produce tax working papers)  | Legal advice privilege protects confidential communications between lawyers and their clients made for the dominant purpose of seeking or giving legal advice   | Litigation privilege protects confidential communications between lawyers and clients (or a third party), made for or used in connection with actual or pending litigation   |
| US           | Federal tax practitioner privilege. Similar to attorney-client privilege, but major exceptions such as: <ul style="list-style-type: none"> <li>• Criminal tax matters</li> <li>• Promotion of tax shelters</li> </ul> | Attorney-client privilege: <ul style="list-style-type: none"> <li>• Protects communications between client and attorney for purpose of securing legal advice</li> <li>• Crime-fraud exception</li> <li>• Can be waived</li> </ul> | Work product privilege: <ul style="list-style-type: none"> <li>• Protects materials prepared in anticipation of litigation by party or representative</li> <li>• Unless other party shows substantial need</li> <li>• Harder to waive</li> </ul> |

## Statutes of limitations

Specific periods of limitation vary between jurisdictions. Civil periods of limitation are typically a few years, unless fraud is involved, in which case the periods often are much longer or unlimited. Periods of limitation for criminal violations often are also much longer or unlimited.

| Country   | Assessments   | Refunds  | Criminal Tax Matters   |
|-----------|---|--|--|
| Australia | <ul style="list-style-type: none"> <li>• Self-assessment by lodging return</li> <li>• Audit and re-assess: 2 years (individual/small business), 4 years (others), unlimited (fraud), generally 7 years for transfer pricing</li> </ul>            | ATO may re-assess at request of taxpayer within 2 years (individuals and small business entities) or 4 years (all other taxpayers) or unlimited (fraud or evasion)                 | Unlimited period for fraud/ evasion  |
| Canada    | <ul style="list-style-type: none"> <li>• 3 years from original assessment (individual and private corporations)</li> <li>• 4 years for public corporations</li> <li>• 3 year extension for non-resident</li> </ul>                                | None   | No limitation for tax evasion  |
| France    | <ul style="list-style-type: none"> <li>• 3 years from the end of the calendar year in which the tax is owed (6 years regarding net wealth tax)</li> <li>• Specific provisions for local taxes</li> </ul>  | <ul style="list-style-type: none"> <li>• 2 years from the end of the calendar year in which the tax was paid or assessed</li> <li>• Specific provisions for local taxes</li> </ul> | 10 years for certain cases of tax evasion and tax fraud  |
| Germany   | <ul style="list-style-type: none"> <li>• 4 years from end of return filing year</li> <li>• Expiry of limitation can be hindered</li> <li>• If no return filed, limitation starts 3 years from tax due date and tax estimation any time</li> </ul> | 5 years from the end of the calendar year in which the refund claim becomes due  | <ul style="list-style-type: none"> <li>• 5 years for tax evasion</li> <li>• 10 years for tax fraud</li> </ul>  |
| Italy     | <ul style="list-style-type: none"> <li>• 4 years</li> <li>• If no return filed, 5 years</li> </ul>  | Refunds are paid upon request within: <ul style="list-style-type: none"> <li>• 48 months, for income taxes</li> <li>• 3 years for indirect taxes</li> </ul>                        | <ul style="list-style-type: none"> <li>• 8 years in case of challenge of a tax crime or “black list countries”</li> <li>• If no return filed 10 years in case of challenge of a tax crime or “black list countries”</li> </ul> |

| Country         | Assessments  | Refunds  | Criminal Tax Matters  |
|-----------------|--|--|---|
| The Netherlands | <ul style="list-style-type: none"> <li>• Generally 5 years</li> <li>• 12 years in cases where foreign assets are involved</li> </ul>   | <ul style="list-style-type: none"> <li>• If appealed in time</li> <li>• Ex officio reduction possible thereafter; no time limitation the law. Policy based an ex officio reduction is only granted for the past 5 years</li> </ul>   | 12 years for criminal tax matters   |
| Poland          | 5 years from the end of calendar year when tax becomes due (in practice 6 years)   | <ul style="list-style-type: none"> <li>• Claim for refund may be made until the expiry of the limitation period</li> <li>• As a rule, refund of overpayment is paid within 30 days or 3 months</li> </ul>                            | <ul style="list-style-type: none"> <li>• 10 years/5 years/1 year depends on the type of crime and type of punishment</li> <li>• Fiscal crime is not punishable provided that tax liability expires</li> </ul>   |
| South Africa    | <ul style="list-style-type: none"> <li>• 3 years from original assessment</li> <li>• 5 years if self-assessed or no return received or required</li> <li>• Fraud or negligent misrepresentation, no prescription</li> </ul>  | <ul style="list-style-type: none"> <li>• 3 years from the date of assessment by SARS</li> <li>• 5 years in the case of self-assessment</li> <li>• Erroneous refunds regarded as an outstanding tax debt</li> </ul>                   | <ul style="list-style-type: none"> <li>• 20 years from the time the <i>offense</i> was committed unless otherwise specified</li> </ul>  |
| UK              | Generally 4 years, increasing to 6 years for careless conduct by a taxpayer, or 20 years in the case of a deliberate act by a taxpayer resulting in lost tax   | In limited circumstances, claims for relief for overpaid tax may be made not more than 4 years after the end of the relevant accounting period   | Generally no specific time limitations for criminal tax matters   |
| US              | <ul style="list-style-type: none"> <li>• 3 years from filing of return</li> <li>• 6 years, if greater than 25% omission of income</li> <li>• If no return filed, IRS may assess at any time</li> <li>• If fraud, any time</li> <li>• Agreement may extend</li> </ul> | <ul style="list-style-type: none"> <li>• Generally, later of 3 years from filing of return or 2 years from when tax paid</li> <li>• If the former, may only recover amounts paid within preceding 3 years plus extensions</li> </ul> | <ul style="list-style-type: none"> <li>• 5 or 6 years for felonies</li> <li>• 10 years if bank involved</li> <li>• Measured from last affirmative act of evasion or overt act in furtherance of conspiracy</li> <li>• 3 years for misdemeanors</li> </ul> |

## Interest

Current interest rates vary greatly between jurisdictions, from as low as 1.5% to as high as almost 10%. The various jurisdictions do not follow a consistent pattern regarding interest on deficiencies or underpayments versus interest on refunds. Most jurisdictions do not have special rules for determining different underpayment interest rates for specified types of underpayments (such as the United States' special rule providing a higher interest rate for large corporate underpayments).

| Country         | Deficiencies (In General)  | Special Rules With Respect to Certain Deficiencies   | Refunds   |
|-----------------|--|--|---|
| Australia       | <ul style="list-style-type: none"> <li>Rates determined quarterly</li> <li>Underpayment: base rate + 3% (currently 4.76%)</li> <li>Late payment: base rate + 7% (currently 8.76%)</li> </ul> | None   | <ul style="list-style-type: none"> <li>Base rate (currently 1.76%)</li> </ul>   |
| Canada          | Determined quarterly – currently 5%. Not deductible  | None   | Interest applicable (may be part of negotiation)  |
| France          | 0.4% per month (i.e. 4,8% per annum)   | None   | 0.4% per month (i.e. 4,8% per annum)  |
| Germany         | <ul style="list-style-type: none"> <li>0.5% per month (i.e. 6% per annum)</li> <li>Interest expenses not deductible for income tax purposes</li> </ul>                                       | <ul style="list-style-type: none"> <li>Tax evasion amounts subject to regular interest rate (i.e. 0.5% per month)</li> <li>Interest run may begin earlier</li> </ul> | <ul style="list-style-type: none"> <li>0.5% per month (i.e. 6% per annum)</li> <li>Refunds taxable for income tax purposes</li> </ul>   |
| Italy           | Interests on arrears due at 5,14% on an annual basis starting from the enrolment of the sums on the register (“iscrizione a ruolo”)  | None   | 6% on a semi annual basis starting from the following semi annual period from the undue payment   |
| The Netherlands | 8% per annum for underpaid corporate income tax and 4% for other taxes.  | None   | <ul style="list-style-type: none"> <li>Interest on overpaid tax: 4%/annum and 8%/annum for underpaid corporate tax (2016)</li> <li>Certain conditions for a refund apply</li> <li>Interest on overdue tax 4%</li> </ul> |



| Country      | Deficiencies (In General)  | Special Rules With Respect to Certain Deficiencies   | Refunds  |
|--------------|--|--|--|
| Poland       | The standard interest rate equals 200% of the standard Lombard loan interest rate increased by 2 percentage points (at present, it equals 8%)                        | Increased interest is applicable where the authorities discover outstanding VAT payments/excise duty payments while carrying tax audit (150% of a standard interest rate)  | The same as in case of deficiencies  |
| South Africa | <ul style="list-style-type: none"> <li>• Interest on tax debts is currently 9% but depends on when debt became due</li> <li>• In SARS interest rate table</li> </ul> | <ul style="list-style-type: none"> <li>• In SARS interest rate table</li> </ul>  | <ul style="list-style-type: none"> <li>• Interest on refunds now 9%, depends on when debt became due</li> <li>• Interest on overpayment of provisional tax now 5%, depends on the period</li> <li>• In SARS interest rate table</li> </ul> |
| UK           | The interest rate on late paid taxes is usually pegged to be a few basis points above prevailing interest rates  | Differing deficiencies are dealt with by way of penalties, rather than different interest rates  | The repayment interest rate is usually pegged to be a few basis points above prevailing interest rates   |
| US           | <ul style="list-style-type: none"> <li>• Federal short-term rate plus 3%</li> <li>• Rate currently is 4%</li> </ul>  | <p>“Hot” Interest:</p> <ul style="list-style-type: none"> <li>• Corporate underpayments greater than \$100,000</li> <li>• Federal short-term rate plus 5%</li> <li>• Begins running 30 days after first letter proposing deficiency</li> </ul> | <ul style="list-style-type: none"> <li>• For corporations, federal short-term rate plus 2% (.5% to extent overpayment exceeds \$10,000)</li> <li>• For all others, federal short-term rate plus 3%; rate currently is 4%</li> </ul>        |

## Reconciliation of laws/applications of doctrines

Most jurisdictions have statutory and judicial anti-avoidance rules targeting transactions that are dominated by tax avoidance purposes or that lack economic substance. Rules applying substance over form are also common. In most jurisdictions, tax laws may be challenged as contravening constitutional or EU law, but the frequency of such challenges varies.

| Country   | Anti-avoidance Statutes   | Anti-avoidance Judicial Doctrines  | Compliance of Tax Laws with EU Law/Constitutional Law   |
|-----------|---|--|---|
| Australia | <ul style="list-style-type: none"> <li>• General anti-avoidance rules: ATO can apply to transaction with sole/dominant purpose to obtain tax benefit</li> <li>• Specific anti-avoidance rules, including for multinationals</li> </ul>                          | <ul style="list-style-type: none"> <li>• Sham transactions: form of transaction can be disregarded if parties intend that form is disguise for some other transaction</li> <li>• Whether transaction has legal effect</li> </ul> | Often constitutional challenges to imposition of new tax and those challenges usually fail  |
| Canada    | General anti-avoidance rule: requires tax benefit, avoidance transaction and abuse  | Judicial doctrines: sham, ineffective or incomplete transaction, substance over form   | On rare occasions: <i>Charter</i> challenge (infringement of human rights)  |
| France    | <ul style="list-style-type: none"> <li>• FTA office can disregard and re-qualify transactions that lack economic substance</li> <li>• Substance over form</li> <li>• Many special anti-avoidance provisions</li> </ul>  | Same principles as for tax offices apply for tax courts  | A number of challenges to tax law have been made on the basis of breaches of EU freedoms or Constitutional law (occasionally on the basis of the Human Rights Act)  |
| Germany   | <ul style="list-style-type: none"> <li>• Tax office can disregard and re-qualify transactions that lack economic substance</li> <li>• Substance over form</li> <li>• Many special anti-avoidance provisions</li> </ul>  | Same principles as for tax offices apply for tax courts  | <ul style="list-style-type: none"> <li>• Challenges to tax laws frequent</li> <li>• Many court proceedings in relation to the compliance of tax laws with German Constitutional law and EU law</li> </ul> |
| Italy     | <ul style="list-style-type: none"> <li>• Substance over form approach of the tax assessment disregarding the legal form of the transactions</li> <li>• Need to demonstrate a non fiscal interest supporting the transaction and its tax consequences</li> </ul> | The “ <i>abuso del diritto</i> ” doctrine starting from the ECJ decisions in 2008 has been strongly developed by the domestic tax courts irrespective to any provisions inserted into the legislative framework                  | Corporate taxation ( <i>i.e.</i> the treatment of the dividends) are strongly affected by the EU tax provisions   |

| Country         | Anti-avoidance Statutes   | Anti-avoidance Judicial Doctrines  | Compliance of Tax Laws with EU Law/Constitutional Law  |
|-----------------|---|--|--|
| The Netherlands | <ul style="list-style-type: none"> <li>Targeted anti-abuse provisions are included in various tax laws</li> <li>In the General tax act is a general anti-avoidance clause although this is in practice never invoked</li> </ul>       | <ul style="list-style-type: none"> <li>Abuse of law (<i>Fraus legis</i>) doctrine allows the DTA to disregard a transaction</li> <li>For the VAT the EU ‘abuse of law’ regime can apply</li> </ul>                             | <ul style="list-style-type: none"> <li>Courts are not allowed to test against the constitution</li> <li>Numerous proceedings in relation to compliance of tax laws with EU law and the ECHR (especially penalties)</li> </ul>              |
| Poland          | <ul style="list-style-type: none"> <li>General anti-abuse rule implemented in 2016 to tackle abusive arrangements</li> <li>Numerous targeted anti-avoidance rules</li> </ul>  | No specific judicial doctrine (other than in VAT matters, where EU ‘abuse of law’ regime can apply)  | <ul style="list-style-type: none"> <li>Challenges to tax laws frequent</li> <li>Many court proceedings in relation to the compliance of tax laws with Polish Constitutional law and EU law</li> </ul>                                      |
| South Africa    | SARS can disregard, combine, re-characterize steps of an avoidance arrangement (transactions not normally employed for <i>bona fide</i> purposes, lacking commercial substance)   | <ul style="list-style-type: none"> <li>Substance-over-form: Courts can treat transactions in accordance with their substance rather than form</li> </ul>   | <ul style="list-style-type: none"> <li>Challenges to tax laws rare</li> <li>Tax Administration Act – unconstitutional retrospective imposition of penalties</li> </ul>   |
| UK              | <ul style="list-style-type: none"> <li>General anti-abuse rule to tackle abusive arrangements</li> <li>Numerous targeted anti-avoidance rules, particularly looking at the objects or purposes of parties to a transaction</li> </ul> | No specific judicial doctrine (other than in VAT matters, where EU ‘abuse of law’ regime can apply; however, legislation is interpreted purposively)   | <ul style="list-style-type: none"> <li>A number of challenges to tax law have been made on the basis of breaches of EU freedoms</li> <li>Challenges are occasionally made on the basis of the Human Rights Act</li> </ul>                  |
| US              | <ul style="list-style-type: none"> <li>IRS can disregard transactions that lack economic substance</li> <li>Partnership anti-abuse regulations: IRS can recast transactions to be consistent with intent of statutes</li> </ul>       | <ul style="list-style-type: none"> <li>Substance-over-form: Courts can treat transactions in accordance with their substance rather than form</li> <li>Step transaction: Courts can collapse steps of a transaction</li> </ul> | <ul style="list-style-type: none"> <li>Challenges to tax laws rare</li> <li>Affordable Care Act – constitutional exercise of taxing power</li> <li>Defense of Marriage Act – unconstitutional, including as applied to tax laws</li> </ul> |

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