



# USAID'S LEADERSHIP IN PUBLIC FINANCIAL MANAGEMENT

## **Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean**

### **Chapter 11. Objections and Appeals**

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# Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean

## Chapter 11. Objections and Appeals

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## List of Acronyms and Abbreviations

Acronym	Definition
CIAT	Inter-American Center of Tax Administrations
CRA	Canada Revenue Agency
GST	Goods and services tax (Canada)
IRS	Internal Revenue Service (United States)
LAC	Latin America and the Caribbean
OECD	Organisation for Economic Co-operation and Development
PAYE	Pay as you earn
TIN	Taxpayer identification number
VAT	Value added tax

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# Chapter 11. Objections and Appeals

This chapter examines the conditions necessary for an effective appeals system that encourages trust in the tax system and, thus, creates a better investment climate. It also examines related problems and, in particular, the concerns of small and medium taxpayers, who often face the most pronounced impediments during appeals, such as prohibitive expense and general lack of access to the appeals process.

In general, there are two scenarios that provide the taxpayer with an option to appeal. First, modern tax systems rely on taxpayers to self-assess their tax liability and file a tax return. Upon receipt of filing, the tax administration may subject the return to a review. The administration may review the information in the tax return and the supporting documentation and often measures the return against various risk factors. Reviews can vary. In larger, automated tax administrations, this may be a fully automated review. In smaller, less sophisticated tax administrations, the review may be a desk audit. Independent of the type of review, the general practice at the completion of the review is to issue an "assessment" based on review findings. This assessment can accept the taxpayer's self-assessed liability as filed or can vary the declared liability either upward or downward. The taxpayer receives a notice from the tax administration that informs the taxpayer of his or her right to object to the findings of the assessment.

A second scenario that may trigger a taxpayer appeal is in response to the findings of a tax audit. Tax laws provide the tax administration with the legal right to audit a taxpayer. When the audit is finalized, the taxpayer is notified of the audit decision. This notification is an assessment (in some countries termed a re-assessment) and, again, the taxpayer is provided with the opportunity to dispute the findings.

In either of the above circumstances, a taxpayer may opt to appeal if the taxpayer is not satisfied with the explanations of the assessment, if the taxpayer's request for an adjustment has not led to a satisfactory outcome, or if the interpretation of the law is disputable. If the taxpayer opts to appeal, generally, the taxpayer will first file an objection with the tax administration. In many tax jurisdictions, this objection process is mandatory. That is, unless the tax administration provides a waiver, the taxpayer cannot bypass this step and proceed directly to the courts. If the taxpayer's objection is unsuccessful, the taxpayer may proceed to filing an appeal with the courts.

On the surface, it may appear that taxpayer appeals are a relatively straightforward topic. A review of literature, however, reveals relatively little written about tax appeals, other than an acknowledgement that there is a process that usually begins with an internal activity ('objection' or 'administrative appeal') that may subsequently escalate to the courts ('formal appeal' or 'judicial review'). Similarly, it is difficult to find examples of appropriate performance measures for the appeal process, as many countries do not have detailed statistics or performance standards for taxpayer appeals. Thus, it is appropriate to preface this chapter with a general outline of the various themes that are usually encountered when discussing what an appropriate taxpayer appeals system should embody.

## *Independence*

A country's citizens look to the judicial system, including the sometimes quasi-judicial tax appeals system, to provide protection for their rights and to ensure that actions that are taken by the State are lawful. The General Assembly of the United Nations on 29th November 1985, endorsed "Basic Principles of the Independence of the Judiciary," wherein:

*"The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."*

Both the authority and legitimacy of the courts depend on the perceptions of the users of the courts. The users (public) must respect the work of the court and must be able to trust that the decisions of the court are arrived at through the application of the highest professional standard, which includes the appointment, without confrontation and disputes, of judges, whose integrity and competence are above question.

At the first level<sup>1</sup> of a tax appeals system, the taxpayer's case is usually reviewed either by the tax administration or by a special legislatively sanctioned body within the tax structure (i.e., the body may be internal, but separately reporting to either the head of the tax administration or the Minister of Finance). Under this arrangement, the taxpayer may not consider the process to be very credible.<sup>2</sup>

One of the most common complaints from taxpayers about the first stage of the appeals process is that the tax administration is not capable of a detached and objective review of any objection.<sup>3</sup> Often, persons assigned to review taxpayer objections are regular tax employees who are assigned temporarily to this task. Tax employees reviewing objections may perceive the possibility that finding in favor of the taxpayer could adversely affect their career prospects. Taxpayers may perceive that disclosing their grounds for an appeal at this stage unfairly allows the tax administration to prepare their rebuttal to the taxpayer's case.

At the first level of the appeals process, where the taxpayer's case is reviewed internally by the tax administration, the taxpayer must have confidence that the appeal is being reviewed impartially and objectively. However, most tax administrations tend to staff this process with former mid- to senior-level tax auditors. In these cases, it is important to be aware of the audit mindset (where there is suspicion of the taxpayer) that these auditors have developed during their career and which may cloud

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<sup>1</sup> For the purpose of clarity, the first level of a taxpayer appeal, which is at the tax administration level, will be referred to as an "objection" while those appeals that utilize the courts, including a special tax court, will be referred to as an "appeal."

<sup>2</sup> Taxpayer perceptions are important and, even when the facts support the staff handling the objection is genuinely impartial, objective, and negotiating in good faith, the taxpayer may have the perception that the situation is otherwise

<sup>3</sup> Tax administrations with limited resources often attach relatively little priority to developing a robust taxpayer appeals program, especially where past or current practice is to evaluate tax administration performance largely on revenue.

their perceptions and fact finding in the appeals process. Additionally, having worked in the audit section, the reviewer is often familiar with the auditor, who originated the assessment, and may be less willing to challenge a colleague. Furthermore, many tax administrations rotate their staff through the appeals function since there is often no career path strictly within appeals, and some tax organizations may tend to regard this as a "dead-end" job. Thus, a person serving in the appeals function may view making decisions that are favorable to the taxpayer as a career threatening move.

Taxpayer concerns about credibility also apply to the second level of a tax appeals system. In cases where countries have a special 'tax court,' taxpayers may question the court's independence, particularly if the court's members are former tax administration officials. If, on the other hand, appeals are heard in the general system, the taxpayer may question whether the judiciary has the competence to review highly technical tax arguments and issues (e.g., transfer pricing cases, the composition of taxable income, or audit techniques that are appropriate to establish a tax liability, etc.).

### *Attracting the Best*

Training of tax administration staff, who handle appeals, is also an issue. In many instances, staff assigned to the appeals function receives little or no training. Having served as a good auditor who raised many assessments does not necessarily qualify staff to review taxpayer objections, especially if he/she is not provided with training.

The traditional method of finding suitable candidates for the courts has been to attract leading members of the bar for judicial appointments or, sometimes in the case of specialized tax courts, to appoint former tax officials. In many countries, an escalating disparity between judicial remuneration and the earnings of successful lawyers and businessmen makes it difficult to find experts who are willing to be appointed.

### *Timeliness*

In many countries, it can take years for the judicial system to hear an appeal in the court. Even at the first level of the appeals process, objecting to the tax administration can take several years. This is an especially important issue. In cases involving value added tax (VAT), for example, with the passing of each month, the potential liability for tax on each transaction, plus interest and penalties, is a major uncertainty for businesses.

While undue haste would be counterproductive, neither taxpayers nor the tax administration benefit from the uncertainty inherent in an overly long dispute process. The length of time to settle an appeal can also adversely affect the financial health of a taxpayer. Where an adverse decision is finally rendered, the penalty and interest that has compounded on any unpaid tax over the intervening years can be excessive. Conversely, in a country that is experiencing high inflation, the financial effect of the assessment on unpaid tax can be diminished if the appeal process can be dragged-out.



## *Expense*

Appeals can be expensive for both the tax administration and the taxpayer. In addition to staff time, the costs of litigation borne by the administration can be substantial. Often, taxpayers cannot represent themselves and must hire legal counsel. Sometimes, court rules do not allow taxpayers to represent themselves. Even when they do, the courts may hold the taxpayer to the same standard as they would hold legal representation. For small and medium taxpayers, in addition to the prohibitive expense of hiring legal counsel, there is also the cost of the time that these taxpayers spend away from their business.

## *Access*

Taxpayers, and particularly small and medium ones, may have limited access to the appeals process. For example, even at the first level of the process, hearings may be held only in the capital city, which may be far-removed from the taxpayer<sup>4</sup>. Additionally, hearing times may be inconvenient and costly to the taxpayer. Meetings may be scheduled without enough advance notice or they may be scheduled at mid-week or mid-day, which are often inconvenient times for small and medium taxpayers. Meetings may also be re-scheduled at the last moment, imposing further expense on small and medium taxpayers that they cannot afford.

## *Encouraging Appeals vs. Revenue Flows*

Many countries have recognized that it can take an excessive amount of time for a case to make its way through the appeals system. Previously, most tax laws required the tax under dispute to be paid in full before an appeal was considered. Many argued that this was excessive and imposed a financial burden on the taxpayer. As a result, many countries removed the requirement to pay the tax under appeal. This, unfortunately, had an unintended effect. In jurisdictions where filing an appeal automatically suspends collection action by the tax administration against the amount of tax under appeal, taxpayers can use the appeals process to thwart legitimate tax arrears collection actions. In addition, taxpayers can file appeals in order to buy time to remove assets from the reach of the tax authorities. As discussed below, a requirement to post suitable security when filing an appeal is an accepted general practice.

### **11.1. Leading Practice**

The following figure provides general, high level guidance on an appropriate appeal system. These and other pertinent topics are detailed below.

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<sup>4</sup> As a leading practice, Chapter 4 cites the need for tax administrations to provide adequate coverage and services by requiring technical staff to travel periodically from central office locations to remote areas to hear taxpayer objections, appeals, provide taxpayer education sessions, etc. The discussion on 'mediation' below also addresses service in remote areas.

**Figure 11.1. Leading practice with respect to appeals<sup>5</sup>**

**Independence of appeals officers and bodies:** A precondition of any credible appeals system is the independence of the appeals bodies. This may be difficult to achieve when the appeals are heard within the tax authority.

**Adherence to the principles of natural justice:** The legal principle of "hear the other party" is the bedrock of the principle of natural justice.

**Reasonable preconditions for filing an appeal:** In some countries, taxpayers are expected to pay some or all of the disputed tax in advance. Where this is not required, taxpayers are required to pay the tax amount, along with market rates of interest, if they lose their appeals.

**Time-bound appeals process:** The appeals process must be time-bound, thus resulting in the speedy resolution of appeals.

**Progressive selection:** The tax appeals system must result in the effective resolution of the majority of cases at the lowest levels of the dispute resolution structure.

### 11.1.1. Appeal Grounds and Documentation

Tax jurisdictions typically require that appeals be made in writing, first, to either the head of the tax administration or a special and distinct body within the tax administration, as discussed below. These first level appeals are commonly referred to as "objections" or "administrative appeals". Common practice allows any person to file an objection on behalf of a taxpayer. This could include a spouse, family member, friend, representative, accountant, lawyer, employee, etc., as long as they are authorized by the taxpayer to represent them. The appeal should include the detailed grounds for the objection. For example, it is not sufficient to state that the grounds for the objection are because the tax is unfair.

The following information is generally included in an objection by the taxpayer:

- Taxpayer name and address;
- Telephone number(s), where the taxpayer can be contacted during the day;
- The representative name (if applicable);
- Telephone number(s), where the representative can be contacted;
- The date of the assessment notice;
- The assessment notice reference number (if applicable);
- The tax type assessed (VAT, personal income tax, etc.);
- The tax period of the assessment;
- Taxpayer identification number (TIN);
- The relevant facts and reasons for the objection; and
- Copies of all documents that support the objection.

The taxpayer is required to sign and date the objection. An authorized officer must sign an objection made by a corporation.

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<sup>5</sup> World Bank (2011), p. 90.

### 11.1.2. Appeal Process

The process for the first level of appeal – the 'objection' or 'administrative appeal' – varies. Generally, however, and as above, an appeal would be addressed to either the head of the tax administration or a special and distinct body within the tax administration. In most small administrations, there is a person or persons dedicated to reviewing taxpayer appeals and advising the head of the tax administration of their findings. Larger organizations will have a separate, often legislated, organization mandated to review appeals. In many countries, the sole person who has the legal power to issue a decision as a result of an appeal is the Minister of Finance, or the person to whom the Minister has delegated this authority.

The first stage of the appeals process should likely be conducted within the tax administration or by a body perceived by taxpayers as closely aligned with the tax administration:

- This is cheaper than setting up an entirely separate body;
- Objections being scrutinized at this level can serve a quality control<sup>6</sup> function, where at least the most blatantly incorrect assessments should be immediately detected and overturned;
- A reasonably well-functioning objections process leads to relatively timely settlements, without resorting to a protracted and expensive dispute in the courts;
- Objections at the first stage are relatively informal and accessible at minimal cost. This is especially important in the case of small and medium taxpayers; and
- Access to objections can be further strengthened for small and medium taxpayers by utilizing the existing network of tax offices, and objections can be resolved at the local tax office level.

The review of the objection must be impartial (and must appear to be impartial), objective, and timely. Importantly, the basis upon which appeals officers grant or deny decisions must clearly be set out in publically available documentation. This documentation should clearly indicate that the primary factor governing the decision is the assessment itself and that the review is based on ascertainable facts supported by proper evidence. The documentation should also note whether the assessment is in accordance with the law and any relevant administrative policy.

As noted previously, there is a lack of available statistical information regarding objections and appeals in most countries. Procedures vary and it is therefore difficult to determine a norm or average. However, if the objection process is functioning well, a general guide would be for the majority of cases to be resolved at the first level of appeal.<sup>7</sup> It should be noted, however, that even if the number of cases

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<sup>6</sup> When measuring the performance of a tax administration, frequent measures are: (1) the number of tax assessments and (2) the monetary value of assessed taxes. When measuring performance, there is a tendency for the organization to focus resources on what is being measured. Sometimes, the focus may not be on the quality of the assessment, but rather on raising an assessment in order to meet statistical requirement, even though the validity of the assessment may be questionable. Other times, auditors may simply make assessments without taking the time to resolve questionable "gray area" transactions, as they are under pressure to process a target amount of revenue per audit day expended.

<sup>7</sup> For example, in Canada, about 95 percent of cases are resolved at this level. Jaglowitz (1999), p. 2. Canada, however, may be unique. Authors of other chapters of this product have suggested 80 percent.

proceeding to court is low, this does not necessarily signify that the first level appeals process is satisfactory. It is possible that taxpayers whose objections are overruled may well have a strong case, but lack the will, finances, or courage to pursue their case at the next level in the process.

If the taxpayer's objection is unsuccessful, the taxpayer can then resort to the courts for judicial review ('formal appeal'). The judicial review process varies by country. In an attempt to remove tax cases from the often slow progress of the general courts, some countries have established special tax courts,<sup>8</sup> where the judges have expertise in tax matters. In addition, to make the system more accessible to small and medium taxpayers, who often cannot afford legal counsel, the tax court may also have an informal procedure that allows taxpayers to represent themselves or to be represented by an agent. This informal procedure should be intended to enhance access to the court for taxpayers, where the amounts at issue are small. In contrast to the general procedure, there may be no mandatory forms, filing fees, and the legal and technical rules of evidence may not apply. Some countries have established tax tribunals to hear unresolved disputes between taxpayers and the tax administration, as less expensive, pre-formal court forums. For example, in 2009, the U.K. established a First-tier Tribunal (Tax) Chamber to hear appeals for direct or indirect taxes not resolved by Her Majesty's Revenue and Customs. Tax tribunals may be viewed more favorably by taxpayers to settle tax disputes because of: 1) their independence from the tax administration; 2) the ability to challenge an assessment without pre-payment of the tax (although posting a bond may be required); 3) the expertise of the judges, who are trained on and hear only tax cases; and (4) efficiency and cost savings, with informal procedures as the norm, as explained above. Cases that can best be resolved in tax tribunal forums are those where different interpretation of facts by the tax administration and the taxpayer is the main focus of the tax dispute. If the taxpayer's case is denied by the tax court or tribunal, recourse can be sought at another more senior court(s). As the case progresses through the legal system, it becomes increasingly formal, expensive,<sup>9</sup> complex, time consuming, and legally burdensome.

Complex tax appeals, such as cases where the tax dispute is centered on different interpretations of tax law by the tax administration and the taxpayer, should be resolved in formal court proceedings. In addition, appeals by large taxpayers should be resolved in accordance with a formal process that is better suited to complex cases that involve sophisticated taxpayers and significant amounts and/or principles.

#### **Box 11.1. Objection and appeals statistics in Canada**

In Canada, 95 percent of cases are resolved at the first level of appeal. Of the remaining 5 percent of cases that proceeded to the tax court:

- 34 percent of the assessments were confirmed without change;
- 19 percent were allowed in part;
- 27 percent were found in favor of the taxpayer; and

<sup>8</sup> The same OECD survey of the 41 countries responding, 21 countries indicated they have a specialized court to deal with tax issues.

<sup>9</sup> Some countries allow costs to be awarded by the courts. For small and medium taxpayers, the specter of costs being awarded to the government in the event of an adverse decision can be a large financial risk that acts as a deterrent to appealing, especially if the potential costs outweigh the tax under appeal.

- 20 percent were considered invalid or requested compassionate relief from interest and penalties.

Significantly, of all the appeals filed with the tax court:

- 22 percent were settled before going to trial; and
- About 35 percent were abandoned by the taxpayer or were dismissed.

Of the remaining 42 percent of cases where the tax court rendered a judgment, less than 10 percent were subsequently appealed to a higher court. Thus, as a percentage of all appeals first filed with the tax administration in Canada, less than one half of one percent of objections result in a case being appealed beyond the tax court. It is also noteworthy that, during the intervening two decades since these statistics were first compiled, the picture has remained relatively unchanged,<sup>10</sup> as reported in a May 2012 evaluation of tax appeals by the Canada Revenue Agency (CRA).

### 11.1.3. Tax Litigation

After exhausting the objection or administrative appeal option, the taxpayer may commence an action in court. At this point, the legal department of the tax administration should become involved and should obtain the case file from the appeals division. The legal department's first task is to collect information about the case, including:

- The taxpayer's name, name of business (if a legal entity), and address;
- Taxpayer identification number;
- Extension of filing information, such as the date on which an extension was requested and granted;
- The due date for return, after extension;
- Assessment information, such as the amount of the assessment, the assessed amount in dispute, the date of notice of the assessment, the individual who issued the notice of assessment, and the tax year(s)/period(s) at issue;
- Administrative appeal information, such as the date of the initial appeal, the date of the subsequent appeal, the amount in dispute (which may differ from the amount of the assessment), and the decision, including the amount and date; and
- Information about the court hearing proceedings, such as court hearing dates.

Once this information is obtained, senior counsel will assign the case to a staff member who will review and evaluate the merits of the case and make a decision on how to proceed. The vast majority of cases will involve taxpayers appealing adverse decisions issued at the administrative appeals level. However, while unlikely, it is possible that the tax administration may also appeal an adverse decision issued at the administrative level.

The review and evaluation should include the following steps:

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<sup>10</sup> Canada Revenue Agency (n.d.), section 5.1.2, para. 5. "27% of the decisions were in favor of the taxpayer and 26% in favor of the CRA. An additional 17% were partially agreed upon between the CRA and the taxpayer. The remaining 30% were dismissed because the taxpayer did not meet the timeline to file a notice of objection (11%) or the notice of objection was considered invalid for other reasons (19%)."

- Review the appeal to verify that it is complete and accurate;
- Determine whether the date that the taxpayer filed the legal action is within any statute of limitations. This date would also determine the time in which the tax administration must file a response;
- Determine whether the action was filed in the court with jurisdiction to hear the matter;
- If the taxpayer attempts to file a complaint that is not timely or attempts to file the complaint in a court that does not have jurisdiction to hear the case, the court should not accept the taxpayer's complaint. If the court erroneously accepted the complaint, then the legal division's attorney must draft and file a motion to dismiss the case;
- Review the case to identify contested issues; and
- Research the issues, including:
  - Identifying and reviewing provisions in the law, regulations, instructions, guides, manuals, circulars, bulletins and other sources in existence at the time under appeal, plus subsequent legal amendments, to verify that no provisions apply retroactively to the period under dispute;
  - Identifying and reviewing articles in other laws that may affect the issues being contested;
  - Reviewing any administrative pronouncements and prior decisions on the issues; and
  - Reviewing any case law relevant to the issues.

The assigned staff member's decision on how to proceed, along with the basis for the decision, should be submitted to the senior legal counsel for approval. The recommended course of action should consider:

- Whether the case is important enough to go to court to get clarification of a "grey" area of the law and whether the case based on the facts is strong enough to contest as an adverse decision may place the tax administration in a more difficult position. There may be a need to get input from the Ministry of Finance on whether, from a tax policy and political perspective, the case should be contested in court;
- The amount of money at issue;
- The number or potential taxpayers who may be affected by the decision;
- The likelihood that the tax administration will prevail; and
- The benefits that may result from a favorable decision, as a function of the time expended on the case.

At the conclusion of the case, including all appeals, the assigned staff member who prepared the case must complete a case summary report. The purpose of the report is to ensure that the legal division is optimizing its limited resources. Frequently contested issues may signal a need for legislative amendments or additional clarification in instructions to the taxpayer.

#### 11.1.4. Taxpayer Access to Information

Tax administrations, as part of their obligation to provide sufficient information to enable taxpayers to self-assess and comply with the tax law, should also provide clear guidance on taxpayer rights when they disagree with an assessment. This includes providing both a synopsis of the appeal process to gain general understanding, as well as detailed procedures, time limitations, and how to make a request for an extension of time to file an appeal. A common practice is a leaflet is provided to taxpayers either at the beginning of an audit or it is attached to the assessment notice to explain their rights. In addition to a leaflet the assessment notice may also direct the taxpayer to the tax administration's website where there is extensive information.

It is important that the tax administration keep the taxpayer informed of the status of their objection. The tax administration should also be required to disclose the information on which it relied in arriving at the assessment under dispute. To facilitate the open exchange of information, tax administrations, on request, will normally provide the taxpayer with the copies of documents in their possession related to the issues in dispute. These documents can include:

- The taxpayer's tax returns;
- Reports prepared by the tax auditor to support the assessment;
- Working papers prepared by the auditor that are relevant to the issues under dispute;
- Records of discussions between an appeals officer and an auditor regarding the assessment;
- Copies of court decisions and relevant sections of legislation relied on by the auditor to support the assessment;
- Scientific, appraisal, and valuation reports relied on by an auditor to determine the assessment; and
- Information obtained from third parties with whom the taxpayer is doing business, such as sales invoices, purchase orders, and cancelled checks.

What is not available to the taxpayer is confidential or sensitive information regarding other individuals and businesses. Most tax laws have stringent provisions regarding confidentiality, and the taxpayer cannot receive information concerning other parties, such as:

- Personal information relating to another person;
- Information from a third party obtained on the expectation that the information would remain confidential;
- Information subject to solicitor/client privilege, such as legal opinions and referrals for legal opinions, including the submissions made in support of the referral;
- Documentation related to an ongoing investigation;
- Confidential information obtained from other government departments and treaty partners; and
- Audit techniques, limits, tolerances, and specific tests, the disclosure of which could prejudice the results or future use.

### 11.1.5. Mediation and Compromise Settlements

The design of the dispute resolution process should be client-focused, and the system must give taxpayers the feeling that they are being treated fairly and impartially. Besides the issue of impartiality, poor communication by the appeals officer can leave the taxpayer dissatisfied in the event that the tax administration disallows an objection. For example, the decision to deny an objection may be ambiguous or not explained to the taxpayer in sufficient detail.

Unlike the normal legal system, where case law and precedents are referred to and where taxpayers in similar circumstances are, or should be treated the same, the outcome under mediation may well differ from case to case because of the personalities of the players involved and the existence of any aggravating or mitigating circumstances. This could be mitigated by drafting specific instructions or criteria, along with authorization as to what would be permitted to offer or accept in a situation of any given sort. To ensure the quality of the mediation process, rather than employing a decentralized system involving various small tax offices, one option to consider is mediation placed at the head office level, with specialists ensuring uniformity in the application of the law and any applicable policies pertaining to small and medium taxpayers. With this option, appeals specialists would travel to various small tax offices, which would remove the need for taxpayers to travel.

The skill of the mediator in tax law is crucial, since to the untrained eye almost all cases can seem to be in the tax administration's favor. The tax administration should train mediation specialists, who would be fully authorized to mediate sessions, while also being responsible to apply applicable tax policies. These specialists could also either travel to various smaller tax offices or, where there is sufficient work, be stationed at these offices<sup>11</sup>. This would remove the need for taxpayers and their representatives to travel.

The skill of the mediator in rephrasing and restating the appeals officer's explanations for the disallowance of a taxpayer's objection may change a taxpayer's perception of unfairness or injustice. It is on this premise that, if taxpayers believe that the system treats them with fairness and impartiality, they will be satisfied with the system regardless of whether the objection is resolved their favor or not. Furthermore, this process of restatement may assist appeals officers in seeing the taxpayer's point of view.

A mediation component should follow the initial negotiations between the appeals officers and small and medium taxpayers. Mediation should be available to small and medium taxpayers if they request it. The emphasis in a mediation should be on qualitative rather than quantitative considerations (i.e., the purpose of mediation is to provide taxpayers with the best possible opportunity to get fair, objective, and impartial treatment and to facilitate administrative efficiency). Mediation is a simple and cost-effective method to resolve disputes for small and medium taxpayers, where the principles involved may not necessarily be complex. During this process, taxpayers may be able to deduce on their own that they have, in fact, been treated fairly and that they have little or no chance of success in court. The

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<sup>11</sup> Although centralized mediation is preferred, some jurisdictions and tax administrations are just too large.



process should be able to quickly identify and settle cases, in which the tax administration may have been overly zealous in assessing "grey areas," which may be quickly reduced or removed from the assessment. In addition, frivolous taxpayer objections can be identified quickly with the result that additional tax administration resources are not wasted.

As previously stated, mediation should be available only to small and medium taxpayers. Cases where mediation may be unsuitable are large taxpayers, since they have financial resources and access to the necessary expertise. Cases that involve an investigation for criminal tax evasion should also be excluded from mediation.

If current law has provisions that allow compromise settlements,<sup>12</sup> in the case of small taxpayers, the mediation approach would take a more prominent role in settling taxpayer objections. Compromise settlements, as previously noted, have some significant downside risks. In addition to superseding the power of the court, they may also allow abuse and corruption.

#### **11.1.6. Costs**

In any tax appeal, the costs of litigation borne by the government can be substantial. It would be reasonable to assume that, if cases can be diverted from litigation, there will be realizable savings. Similarly, if taxpayers were able to resolve their disputes satisfactorily out of court, they would also have savings. Furthermore, if a system can be devised where decisions are timelier, there may be greater taxpayer satisfaction with the tax system, which could conceivably translate into better compliance. Additionally, tax revenues, where the case is settled in favor of the government, will flow more quickly into the treasury. The question is whether a process can be devised that would provide a greater opportunity for agreeable settlements before the matter is taken to court, and secondly, whether in devising such a process either the tax administration or the Minister should be able to negotiate the settlement of an assessment.

In some cases, a settlement should be negotiated. First, there is an emphasis on simplifying the tax system for small and medium taxpayers, because many tax regimes are admittedly too complex to be fully understood, except by professionals who specialize in tax. Small and medium taxpayers generally do not employ such tax experts, as they are costly. As previously discussed, this same problem exists with preparing an objection or an appeal. For small and medium taxpayers, who are usually hands-on and deeply involved in the daily operations of their business, the cost of preparing an appeal includes the time taken out from running their business. In addition, the financial cost of hiring experts can be

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<sup>12</sup> A compromise settlement must have a legal basis in the tax law. It allows the tax administration to settle a tax debt for less than the full amount owed. Generally, if a taxpayer cannot pay the full tax liability, or doing so creates a financial hardship the debt may be reduced after the tax administration considers the unique set of facts and circumstances of the taxpayer including: 1) the taxpayer's ability to pay; 2) the taxpayer's income; 3) the taxpayer's expenses; and 4) the ability of the taxpayer to borrow. In these cases the tax administration has the legal ability to make an offer to settle the tax debt for the most that can be expected that could be collected within a reasonable period of time. In an OECD survey, 18 of 41 countries responding indicated that they can negotiate a risk-based settlement. (OECD (2009), p. 147). In this survey, some countries noted that they have the ability to determine their likelihood of success in court and make risk-based settlements with the taxpayer.

prohibitive. The appeal system is complex and can be bewildering to anyone who does not have both a tax and legal background. Although the tax, penalty, and interest assessed may be technically correct, often the penalties and compounding interest can quickly cause the amount to become unaffordable, especially for small businesses. In addition, since word travels quickly in business circles, placing a small business in financial difficulty can be detrimental to the current or future business relationships and success of the business. This is all the more reason for taxpayers to remain or, as a stop-filer, disappear in the underground economy.

A country's financial laws<sup>13</sup> usually allow for a remission of penalty, interest, and even tax under defined circumstances, usually relating to taxpayer hardship, but this can be a long process and there is no certainty that a remission will be granted. Some countries, such as Canada, also have a legislated "fairness" policy, which can be applied where any or all interest or penalty owed by a taxpayer can be cancelled because of a delay or an error by the tax administration, circumstances beyond the control of the taxpayer, or the taxpayer's inability to pay. In many countries, there is ability to write-off tax, penalty, and interest, if these are considered as uncollectible.

Modern tax laws are very specific with regard to the powers of the Minister and generally do not provide for the exercise of any discretion<sup>14</sup> when it comes to assessing tax legally imposed, nor does most tax legislation allow discretion to reduce an amount of tax when it comes to collecting tax that is legally due. Another possible impediment to achieving a negotiated settlement is that many tax laws do not include the possibility of a third party determining the taxpayer's liability. There are only two parties with such power: the tax administration exercising the delegated authority of the Minister and a court of competent jurisdiction. Tax laws generally do not allow another party, such as a neutral arbitrator any authority to negotiate a settlement. To add an arbitration level to the appeals resolution process would require substantial legal changes in many countries and, more importantly, could render the courts redundant, which is not a desirable outcome. Finally, in countries where institutions are weak and corruption can be problematic, adding powers to negotiate the amount of tax payable on an

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<sup>13</sup> Tax administrations usually have a mechanism whereby they can take a common sense approach to dealing with taxpayers who, because of personal hardship and/or circumstances beyond their control, cannot comply with the requirement to file and /or pay their taxes on a timely basis.

There are instances where, although an amount may be legally due, the collection of tax, interest, and /or penalty can be uneconomical, against common sense, or promote the perception that the application of the law is unfair. The most common circumstance for requests for relief from penalties are acts of God, such as earthquakes, floods, tornadoes, and hurricanes. Other common requests for relief from penalties are due to family related responsibilities.

It varies from country to country who has the authority to provide relief from a penalty, interest or even tax. Depending on country's legal system, the authority could be vested with the Minister of Finance or the Cabinet and, in some instances, it is delegated to the head of the tax administration.

Usually relief is through a remission which is a defined legal process that results in forgiving an amount of tax, penalty, or interest that a taxpayer would otherwise be liable to pay. A remission can be retroactive and cover an amount the taxpayer has already paid which will result in a refund. Most countries require the taxpayer to request the remission in writing, usually stating the reasons, to initiate the remission process.

<sup>14</sup> Tax reform programs usually have three core elements: i) a shift away from reliance on trade taxes, and the introduction of a broad-based VAT; ii) simplified tax design, including abolition of some taxes, simplification of others, reducing the number of different tax rates, widening the tax net, and reducing high tax rates; and iii) giving less discretion to tax officials and generally improving tax administration.

assessment can be courting disaster. What would be appropriate is to supplement the already existing appeals process within the tax administration with a mediation process specifically designed for small and medium taxpayers.

### 11.1.7. Payment of an Assessment

Depending on the country and the situation, a taxpayer may or may not be required to pay all or part of the tax amount in dispute before an objection or an appeal can be resolved. To deter frivolous appeals, although this is not the prevalent practice, paying a deposit should be considered leading practice, except, again, in cases of financial hardship for the taxpayer. As the time frame for lodging the objection is longer than the time frame for paying the assessment, the taxpayer should pay<sup>15</sup> the assessment on or before the due date, even if they are going to lodge an objection. Otherwise, or in cases where the deposit is smaller than the total amount of tax, unpaid interest should continue to accrue on the unpaid amount.<sup>16</sup>

Most VAT laws regard VAT as an amount that is held by the taxpayer (tax collector) in trust for the government. Similarly, withholding tax on employees (PAYE) is also regarded as a "trust fund." Since these taxes are government money that the taxpayer is collecting on behalf of the government, most tax laws require that either any outstanding tax liability (VAT and PAYE) be fully paid or the taxpayer provide suitable security before any appeal can be accepted. Generally, tax laws vary as to whether any tax or deposit is required during an appeal related to other taxes, since these taxes are not trust funds. To prevent frivolous appeals, especially where large sums are involved, some countries require a payment of 50 percent of the tax assessed. Other countries, especially for individuals, do not require any payment to be made when the taxpayer files an appeal. It is common practice that once an appeal has been accepted, any collection action against the taxpayer for the amount under appeal is suspended until the appeal has been decided unless there is a risk that the taxpayer will be unable to pay or that the taxpayer will flee the country.

In the case of small and medium taxpayers, provided an appropriate system can be devised to fast-track objections as suggested herein, the advance payment of the full amount of taxes in dispute should be waived as long as the taxpayer continues to file tax returns and all other payments remain on time.

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<sup>15</sup> In the OECD survey, 25 of the 41 countries responding indicated that, where a case is under administrative review, the countries can collect the disputed tax, although in Cyprus this only applies in the case of certain direct taxes. This compares with cases under court review where 33 of 41 countries can, albeit in some cases only in certain circumstances, collect the disputed tax.

<sup>16</sup> Under the legislation, the Canadian tax authorities cannot start legal action to collect income taxes owed until 90 days after it sends a notice of assessment. It will hold off collection action if the taxpayer is contesting the assessment through the Agency's internal appeal process or through the Tax Court of Canada, except for large corporations who are required to pay at least 50 percent of the tax in dispute. Furthermore, this restriction does not apply for amounts that are considered to be trust fund taxes, such as GST (VAT) or employee withholding (PAYE).

### 11.1.8. Objection Time Frame

Normally, the time to file an objection ranges from 21 days to 90 days after the date of assessment,<sup>17</sup> and the appeal must be filed in the manner described in the tax law. Sometimes, there is legal latitude to accept an objection after the time has elapsed, if there are reasonable grounds for the delay; however, an extension is not granted automatically. Often, the taxpayer must make a request in writing, outlining the full facts and circumstances of why they need an extension. The head of the tax administration and/or head of appeals must be satisfied that the particular circumstances made it unreasonable to expect the taxpayer to file the objection within the allotted time.

### 11.1.9. Taxpayer Perception

The tax administration should make an effort to gauge taxpayers' perception of the objections and appeals process. The first step should be to ask taxpayers, through a survey or questionnaire instrument, their perceptions on whether they receive impartial, timely, and objective treatment. For example, a questionnaire could ask, among other things, whether the tax officer has impartially considered the taxpayer's objections to an assessment and whether the tax administration's position was clearly explained. The questions could also help identify and assess legal issues so as to ensure that sufficient information is made available to reach a more accurate or reasonable decision. The tax administration should take appropriate actions if taxpayers are found to have widely negative perceptions of the process.

### 11.1.10. Understanding the Taxpayer Appeals System

The following are some fundamental statistics that will assist in determining the "health" of the appeal system.

The tables below are a recommended starting point for gathering relevant information about appeals at the objection stage within the tax administration, as well as subsequent appeals at each level in the courts. Significantly, the OECD has noted that appeals data received from countries vary widely, and there are a large number of gaps in the data which suggests weaknesses in the operational performance data collected by many tax administrations. The OECD has observed that few countries have performance standards for administrative review of their appeals processes, despite the fact that is an integral part of the tax administration's role.

**Figure 11.2. Information for a review of the appeals system**

Tax Appeals	Year			Year			Year		
	%	No.	Amount	%	No.	Amount	%	No.	Amount
Opening inventory as of (Date)									

<sup>17</sup> According to an OECD survey, the time period in which taxpayers can appeal to administrative review varies widely between countries. The minimum time reported was 8 days, and the maximum 5 years. OECD (January 2009), p. 147.

Tax Appeals	Year			Year			Year		
	%	No.	Amount	%	No.	Amount	%	No.	Amount
Appeals Submitted									
Appeals Decided									
Ending Inventory as of (Date)									
% small & medium taxpayers									
% in favor of taxpayer									
% in favor of small & medium taxpayers									
% partially accepted									
Average time to finalize objection									

In addition to the above statistics, it will often prove beneficial to examine the outcome of taxpayer objections. This classification of objections may assist in identifying other weaknesses that could be addressed, for example, by taxpayer services. A table similar to the following may be helpful.

**Figure 11.3. A review of the outcome of appeals**

Classification of Taxpayer Objections	
Types	Definitions
Agreement - allowed in full	The objector is in agreement with the tax administration's decision to allow everything that was requested in the taxpayer's objection.
Agreement - allowed in part	The objector is in agreement that the tax administration will allow only a portion of what was requested in the taxpayer's objection.
Confirmed with agreement	The full amount of the assessment is confirmed with the taxpayer's explicit agreement.
Upward with agreement	The decision is made by the appeals officer to increase the tax assessment with the taxpayer's agreement.
Confirmed without agreement	The full assessment is confirmed without the taxpayer's agreement. Usually, the taxpayer has expressed disagreement to the Appeals officer.
Allowed in part without agreement	The decision is made by the appeals officer to allow part of the objection. The taxpayer does not agree with the adjusted amounts.
Upward without agreement	The decision is made by the appeals officer to increase the tax assessment without the taxpayer's agreement.
Late filed objection	The objection case is closed because it was not filed within the specified time frame.

Classification of Taxpayer Objections	
Types	Definitions
Invalid – other	Used when a case is closed for a reason that does not fall under any other code.

### 11.2. Common Trends

Many of the challenges faced by tax administrations with respect to appeals are related to offering quality services to small and medium taxpayers. For example:

- These taxpayers are numerous and diverse;
- They typically have general poor knowledge of tax laws and are often not aware of any subtle complexities;
- They may not be aware of their tax obligations;
- They tend to be less sophisticated, with accounting systems that are very basic, records that are handwritten, etc.;
- They often have limited computer access and skills; thus, they require costly face-to-face services and more extensive support through printed brochures and leaflets; and
- They are a "revolving clientele," because of their short business life cycle, which demands ongoing effort to educate newcomers.

**Box 11.2. Objection and appeals by small and medium taxpayers in Canada**

Canada’s taxpayer information programs are equal to, if not better than, those of other countries. All forms are available on the website, as are clear instructions, guides, and other publications that explain the application of the various tax laws. There is a telephone information system, where tax officers can quickly answer most tax questions. Interactive tax software is widely available – some without charge. There are also videos and outreach programs to assist taxpayers. In an attempt to assist small and medium taxpayers who disagreed with decisions by the tax administration at the objection level in the appeals process, the tax court introduced an informal process, relaxing the normal court rules and making it easy, in theory, for taxpayers to represent themselves.

Yet with all this information and assistance available to taxpayers, in a recent case, the Chief Justice felt compelled to write:<sup>18</sup>

*The vast majority of informal appellants in this Court act for themselves or are represented by persons without any legal background. This, the Tax Court has in common with all other Canadian courts. Employees of the Tax Court try to assist the appellants and prospective appellants in getting their appeal to trial. The Court has produced a video describing the conduct of an appeal. Judges try to help the taxpayers subject to their limits of judicial impartiality.*

*Nevertheless, taxpayers and their lay representatives are often intimidated by the process and are unable to fully prosecute [defend] the appeals. This is what happened here.*

<sup>18</sup> Canadian Chamber of Commerce (2012), para. 5.

*... A need for taxpayers to be better prepared for their appeals before this Court is obvious. Legal Aid programs must consider extending their assistance to taxpayers, notwithstanding current budgeting issues. Dealing with a government bureaucracy, the CRA, for example, and then with a court is very stressful, even on the most experienced persons. Unjust tax assessments may cause strain on the family relationship and ought to be challenged with public support when appropriate.*

Many countries have not attempted to introduce an informal appeals process and still require taxpayers to seek the assistance of a lawyer to represent them in court. At the same time, many countries may not have as robust a taxpayer service program, both of which are impediments to small and medium businesses. The Canadian "experiment," although enabling small and medium taxpayers to represent themselves, has been less than satisfactory.

To put the plight of small and medium taxpayers in perspective, in Canada in 2005,<sup>19</sup> some 60 percent of income tax cases, 30 percent of GST (VAT), and 75 percent of cases involving other taxes before the tax court were self-represented.

The Canadian tax court concluded that the same challenges are present when considering the ability of small and medium taxpayers to mount an informed and credible objection/appeal in a system that is unfamiliar and sometimes intimidating.

The following is a discussion of these and similar issues and trends in tax administrations that attempt to resolve these challenges.

### 11.2.1. Timeliness

A major point of contention for taxpayers is timeliness. In many countries official or informal surveys cite protracted delays<sup>20</sup> at the objection stage as an impediment to businesses and an especially burdensome problem for small and medium businesses.

#### Box 11.3. Timeliness of appeals in Canada<sup>21</sup>

In the early 1990's, Canada had an average elapsed time to finalize an appeal of approximately 100 days. Averages were, however, deceiving since it took an average of 77 days for the simplest case to almost 400 days for the complex cases. During a review by the Canadian Auditor General, it was also found that the statistics regarding elapsed days were deficient since the statistics failed to account for pending objections, which formed over half the inventory of appeals. Pending objections are those cases that are set aside to await the outcome of a similar dispute. In this situation, taxpayers had the option of either having their case dealt with as part of a group of similar cases and placed in pending inventory or pursuing it in the courts on an individual basis.

Statistics showed that it took on average over 800 days for the completion of pending objections from the date they were received from the taxpayer and that over one quarter of these objections had been in process for more than three years.

<sup>19</sup> Gallant (2005), p. 337.

<sup>20</sup> For example, in a report on the administration of sales taxes in the State of Arizona, the Auditor General found that the average time taken to reach a hearing decision was 14.4 months. (Office of the Auditor General of the State of Arizona (1981), p. 13)

<sup>21</sup> Office of the Auditor General of Canada (1992), para. 21.40.

Problems with the timeliness of appeal resolutions have resulted in some countries imposing stricter time limitations on the tax administration to resolve appeals. Some countries, in addition to imposing time limits to decide an objection, have also imposed penalties on the tax administration. For example, where an objection is not decided within the specified time, the matter under objection is automatically found in favor of the taxpayer. It is then up to the tax administration to weigh the cost of litigation and the likelihood of success against the potential revenue as a business decision. Importantly, in countries where the judicial system refers to precedence, a default cannot be cited as a precedent; therefore, other taxpayers in similar circumstances may not rely on a default decision as being applicable to their circumstance. Some countries have even considered that where there is a default judgment in favor of the taxpayer that the tax in dispute or a portion be withheld from the tax administration's budget to "encourage" them to be more efficient. This solution is not recommended since it can result in insufficient operational funds for the tax administration, which can have unintended consequences.

### **11.2.2. Tax Ombudsman**

The independence, objectivity, and impartiality of the tax administration, as previously discussed, is somewhat questionable, since the first level of appeal is generally staffed by seasoned tax auditors, who are selected from the general ranks of the tax administration and bring their "audit mindset" to the job. In addition, taxpayer perceptions are important and, even if the tax administration staff handling the objection is genuinely impartial, objective, and negotiating in good faith, the taxpayer may feel otherwise. The taxpayer does not have a choice in whether or not to pay tax – it is compulsory and, at the assessing and collection level, it can be confrontational. This can "cloud" a taxpayer's perception of whether the treatment during an appeal will be fair and impartial.

There is a need for a third party to act as a referee, since the tax administration and the taxpayer may not be able to deal with each other in an impartial, objective, and calm manner. This referee would act as a buffer between the taxpayer and the appeals officer to create an atmosphere for meaningful discussions. An appropriate referee must be chosen. Tax legislation is complex and the neutral third party must know the tax law at issue, so as to be able to identify issues and subtly steer the meeting towards areas on which consensus can be reached. This knowledge of the applicable tax law is an absolute requirement, since achieving any settlement that is outside the law is of no value to the taxpayer and would only aggravate the situation. Since this is a mediation as opposed to arbitration, the mediator should also be able provide the taxpayer, if requested, with an opinion as to the merits of the cases presented by both sides. This opinion would be particularly valuable to the small and medium taxpayer, who may have neither counsel nor an informed opinion of his/her chances in court. The taxpayer is essentially the exclusive beneficiary of getting the mediator's opinion on the case, since tax officials have access to legal advice and government legal counsel.

There are two approaches to mediation. There can be an "in-house" mediator, who is part of the taxpayer objection process within the tax administration. Alternately, many countries have already established special bodies, such as an ombudsman office, to investigate public complaints concerning



government agencies. In some OECD countries, a dedicated tax ombudsman<sup>22</sup> has been established to investigate complaints concerning the tax administration.

Generally, the ombudsman only has the authority to investigate service-related complaints, which may include:

- Mistakes, which refer to misunderstandings, omissions, or oversights;
- Undue delays;
- Poor or misleading information;
- Unfair treatment; and
- Staff behavior.

As a result of any investigation, the ombudsman can suggest that the tax administration:

- Give further reasons for a decision;
- Correct a misunderstanding, omission, or oversight;
- Offer an apology;
- Change a policy or procedure;
- Make changes to systems or applications;
- Review its service standards; or
- Consider further staff training.

It is suggested that countries that do not already have an ombudsman give serious consideration to establishing one. In addition, the role of the ombudsman should be expanded to include mediation and, where necessary at the conclusion of mediation, an assistance role, such as guiding a taxpayer in applying for a remission of tax, penalty, and interest in cases of hardship.

### 11.3. Tax Administration Maturity

#### *Objections and Appeals: Maturity Level 1*

Key word: "Informal"

- The right of the taxpayer to object at the tax administration level is loosely provided for in the law or secondary legislation or by a tradition of appealing to the tax administration to review an assessment.
- Objections are handled in an ad hoc manner without clearly defined procedures. There are no standard forms or accepted time to object or respond. The processes for handling the objection, if published, are vague.

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<sup>22</sup> In the United Kingdom, the Adjudicator's Office investigates complaints and helps to resolve complaints from individuals and businesses that remain unhappy about the way their affairs have been handled. In the United States, the Taxpayer Advocate Service is an independent organization within the Internal Revenue Service (IRS) that assists taxpayers who are experiencing economic hardship, whose problem has not been resolved through normal IRS channels, or in cases where an IRS system or procedure may not be working as it was intended.

- The taxpayer is not advised if the objection takes longer than anticipated to review. The tax administration does not inform the taxpayer if a decision is subject to further appeal rights.
- The objection, when received, is not communicated to collection staff, and the objection does not stop collection action.
- Objections are reviewed by a committee of high-level managers and tend to involve the same persons that originally handled the case.
- The process for submitting objections is not automated (i.e., through the web), and neither is the objection process work flow.

### *Objections and Appeals: Maturity Level 2*

Key word: "Legislated"

- The right of the taxpayer to object is defined in the law or secondary legislation, but it is not clear which decisions of the tax administration are subject to reconsideration. The mechanism for submitting an objection is not clear either.
- Objections are handled in an ad hoc manner without clearly defined procedures. There are standard forms and time to object requirements, but no clear time to respond requirements and published processes for handling objections are vague. The process for allowing an extension to the time to object is not clear.
- There are procedures for handling objections, but a lack of detailed guidance, such as detailed internal operating manuals regarding, for example, the calculation of elapsed time to respond to an appeal where the taxpayer has been requested to provide additional documentation and whether the time to respond to an appeal is suspended during this response period.
- The taxpayer is not advised if the objection takes longer than anticipated to review. The tax administration does not inform the taxpayer if a decision is not subject to further appeal.
- The objection when received is not communicated to collection staff, and the objection does not stop collection action.
- Objections are reviewed by a committee of high-level managers and tend to involve the persons that originally handled the case. There is limited automation of the submission of objections (i.e., through the web) and/or the objection process work flow.

### *Objections and Appeals: Maturity Level 3*

Key word: "Institutionalized"

- The right of the taxpayer to object is defined in the law or secondary legislation and, although the mechanism for objection is clear, it is not clear which decisions of the tax administration are subject to reconsideration.
- There are clearly defined and sometimes publicized procedures for handling objections. These include standard forms, an established time to object, an established time to respond, processes for submitting and handling objections, and rules for allowing an extension of time to object.

- Procedures may lack certain provisions, such as requirements for the material that should be reviewed (including original case files, objection submissions, and the law) and precise specifications of when legal services staff or the taxpayer should be involved.
- The taxpayer is not advised if the objection takes longer than anticipated to review. The tax administration informs the taxpayer of their further appeal rights should they disagree with the decision.
- Although an objections stops collection action, the communications between the objecting taxpayer and collections staff of the tax administration are not clearly defined.
- Objections are handled by internal experts. There are no clear internal requirements to use staff that was not involved in the original case. Although clearly defined, procedures for objections differ across types of decisions and/or taxes.
- Although the taxpayer may be able to submit objections electronically, the objection process work flow is not automated.

#### *Objections and Appeals: Maturity Level 4*

Key word: "Streamlined"

- The right of the taxpayer to object is clearly defined in the law or secondary legislation. All tax administration decisions of fact or law are subject to reconsideration, perhaps with very few exceptions, such as a binding ruling.
- There are clearly defined and publicized procedures for handling objections. These include standard forms, an established time to object, an established time to respond, defined processes for submitting and handling objections, and rules for allowing an extension of time to object.
- Procedures require that the tax administration inform taxpayers of incomplete or invalid forms (such forms are not simply ignored); allow the tax administration to request additional information from taxpayers; require the review of key data (including original case files, objection submissions, and the law); allow for meetings between the tax administration and the taxpayer; and allow for the withdrawal of objections (including the tax administration's request that the taxpayer withdraw).
- Procedures exist to allow the taxpayer complete access to information in their tax file (except third-party information and other information barred by statute).
- The taxpayer is advised if the objection takes longer than anticipated to review. The tax administration informs the taxpayer if a decision is not subject to further objection.
- Procedures require that objections be handled by independent internal reviewers, who are experts on the topic, but who were not involved in the original case.
- The procedures for objections are the same across all types of tax administration decisions and/or types of taxes. All decisions, which are the result of objections, are subject to an appeal.
- The taxpayer can submit objections electronically. The objection process work flow is automated (e.g., collectors are automatically notified of objections).

## 11.4. Latin America and the Caribbean

There is little data on appeals, save for information on the general appeals process, around the world and in Latin America and the Caribbean (LAC). According to a CIAT study,<sup>23</sup> the tax laws in LAC countries usually regulate the general appeals process, and all administrative actions that impose obligations or deny taxpayer rights can be appealed, although the appeals path and processes vary. All national laws provide such mechanisms either through the tax administrations, special tax courts, or the courts of justice.

### Box 11.4. The appeal process in Latin America and the Caribbean<sup>24</sup>

**Barbados:** Taxpayers may object to their assessments by written notice or online, and the objection must be submitted within 21 days of the date of the notice of assessment. The objections are reviewed by the Department and "Notices of Re-assessment or Settled Assessment" are issued to the taxpayer. If the taxpayer is still dissatisfied, he or she may submit an appeal to an appeals board or directly to the Supreme Court.

**Guatemala:** Guatemala does not have specialized tax courts, and appeals may be filed by taxpayers or their representatives only with the tax administration (Superintendencia de Administración Tributaria).

**Panama:** Law No. 8 from 2010 created the Tax Administrative Court. The court is an independent executive, specialized, and impartial body which will have competence, in general terms, to acknowledge and resolve administrative appeals against decisions issued by the tax administration (Dirección Generales de Ingresos) and provincial revenue administrations nationwide, including claims for refunds of national taxes, with some exceptions (e.g., customs and some other cases).

**Peru:** Pursuant to the provisions of the tax code from 1999 and amending laws, the taxpayer may file appeals requesting the reversal of decisions before the tax administration, followed by an appeal before the Fiscal Court. The resolution of the Fiscal Court is the final administrative recourse, but it can be contested before the Judicial Branch. The Fiscal Court is a body attached to the Ministry of Economy and Finance, which has deciding powers and self-sufficiency in the performance of its specific functions, while depending on the Ministry for administrative support.

**Trinidad:** The Inland Revenue Division has a period of six years within which to assess the return of the taxpayer, and can issue an assessment of tax liability or refund to the taxpayer. If the taxpayer disputes the assessment, he/she has 15 days to lodge an objection to the Inland Revenue Department, requesting that the assessment be revised. There is no fee to query a tax assessment and request a re-assessment. The Objection Section of the Department has up to two years to respond to an objection under current legislation for income and corporation tax. If the taxpayer is not satisfied with the results of the re-assessment, he/she may appeal to the Tax Appeal Court. The Tax Appeal Court is an independent separate agency for the resolution of tax disputes between taxpayers and the tax authority. It is a self-managed public body with administrative, functional, and technical self-sufficiency, and has jurisdictional competency in the whole national territory. Its financial allocation is determined by an allocation from the central government.

According to the same survey, appeals often result in delays in collections, as many taxpayers abuse appeal rights to delay collections unnecessarily. Recently, there has been a decrease in the number of appeals in LAC countries, except for in Brazil and Nicaragua, although it is not clear whether this is due to changes in tax administration procedures or to lack of control. At the same time, data from the CIAT

<sup>23</sup> Inter-American Center of Tax Administrations (CIAT) et al. (2012), sections 4.3 – 5.7.

<sup>24</sup> Information from CIAT (<http://www.ciat.org/index.php/en/products-and-services/ciatdata/>).

study show an increase in the percentage of unresolved cases. A few countries are noteworthy for their relatively long resolution processes, specifically Colombia (15 years<sup>25</sup>) and Brazil (12 years).

#### Box 11.5. The appeals process in Brazil

Until 2009, Brazil did not have an administrative process to settle tax disputes and relied on formal judicial proceedings. The Brazilian court system had a backlog of tax cases. Approximately 2.5 million tax cases represented BR 600 billion in unpaid taxes, nearly a third of Brazil's 2008 gross domestic product. An additional 1.8 million taxpayer disputes had yet to reach the judicial stage. The average tax dispute took twelve years to work its way through the Brazilian court system.<sup>26</sup>

Currently, the taxpayer can appeal before the Administrative Tax Appeals Board. Administrative revision panels are highly specialized in tax matters, and appeals can take three to five years to conclude. At this level, however, 75 percent of the tax assessed is maintained.<sup>27</sup> Further, decisions are non-binding and may be challenged by the tax administration on the same issue. At the judicial litigation level, there are two levels of estate/federal courts and a superior courts level, where there is a requirement to post a guarantee in order to litigate the tax debt. It could take up to anywhere from three to ten years for the courts to settle the matter.

The author's personal experience is that LAC countries provide for appeals, but many fail to define an administrative appeals system. The laws instead leave the definition of the administrative appeals process to the tax administration, without adequate assurances that objections will be dealt with in a timely manner. This is a noteworthy problem in the LAC region, where the appeals system is used by the taxpayer – usually by large taxpayers – to delay the legitimate collection of taxes. This means that LAC countries should require some form of deposit/payment or explore penalties for unjustified appeals. Appeal procedures are available, even in the most rudimentary tax administrations, but may be vague and, in a lot of countries, internal and not available to the public. These procedures usually cover the content that a taxpayer must include in an appeal, but usually do not require a specific form.<sup>28</sup> As with all other tax administration functions, LAC countries differ in their ability to handle objections and appeals effectively. However, based on the information in this section, LAC countries should be placed in the third level of the maturity model with respect to appeals.

### 11.5. Key Benchmarks and Guidelines

While there is limited information and data on different countries' approach to appeals, the best source of guidance is statistics collected by the OECD.<sup>29</sup> Even in the OECD, however, countries vary widely on many benchmarks related to appeals.<sup>30</sup> The following, thus, are qualitative key guidelines to the proper functioning of appeals.

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<sup>25</sup> Inter-American Center of Tax Administrations (CIAT) et al. (2012), section 5.7.

<sup>26</sup> Korb et al. (2009), para. 2.

<sup>27</sup> KPMG (n.d.), para. 16.

<sup>28</sup> It should be noted that this is the case even in some developed countries, such as Australia (until recently) and Canada (still the case with the Goods and Services Tax).

<sup>29</sup> OECD (January 2009), p. 147.

<sup>30</sup> The objection and judicial appeal period vary between 1 month and 6 months (with exceptions). A third of OECD countries allow risk based settlements and a third have a specialized tax court. It should be noted, however, that most OECD countries allow collection during the objection and during the judicial appeal.

- There should be a separate and independent body to handle the first level of tax objections at the tax administration level. Appeals officers must be able to act independently of the tax administration, both in appearance and fact;
- The process and procedures must provide the taxpayer with adequate time and opportunity to present their case; however, the appeals process at each level should be time-bound to provide an expedient resolution;
- Any preconditions for filing an objection with the tax administration and a subsequent appeal with the court must be reasonable. In the case of small taxpayers, filing fees, if any, must be reasonable and proportionate and should take into account whether taxpayers are expected to pay in advance some or all the disputed tax. Where taxpayers lose their appeal, the outstanding tax they are required to pay should be subject to reasonable rates of interest;
- There should be a penalty to discourage frivolous appeals that are found to be without merit and were intended to delay the legitimate collection of taxes;
- Special assistance should be available to small and medium taxpayers to assist them in preparing an appeal and, where possible, "relaxed" rules should apply in situations where taxpayers represent themselves;
- The large majority of appeals should be resolved at the first level of a taxpayer objection<sup>31</sup>;
- The tax appeals system should be managed through an electronic office where comprehensive information concerning appeals is available, appeals can be submitted electronically, and the taxpayer can, where practical, submit documents and monitor the progress of their appeal; and
- There should be a system of advance tax rulings to provide taxpayers with certainty on how a transaction will be treated for tax purposes in the future. This will often resolve any areas that could be assessed and lead to an appeal.

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<sup>31</sup> 80 percent may be appropriate, as suggested above.

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