

# Tax Procedures

2019 EATLP Main Topic (General Reporter: Pasquale Pistone, Italy)

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Besides establishing who pays taxes and in what circumstances they are due (so-called material, or substantive tax law), tax systems include specific legal rules, better known as tax procedures (or procedural tax law), that determine how taxes should be levied, audited and collected.

Procedural rules give tax authorities powers that are instrumental to the exercise of taxing sovereignty. The object and purpose of tax procedural rules is twofold: on the one hand, they secure that tax authorities exercise their powers in compliance with the rule of law; on the other hand, they lay down the rules on the rights and obligations of the parties involved, securing effective protection and enforcement before the judiciary.

Tax procedures have a significant impact on the determination of the actual legal boundaries of taxation and raise complex issues that are of particular interest also from a comparative, supranational and international tax law perspective. Scholars devote considerable attention to such issues in each country, but tax procedures are more rarely the object of discussion in international scientific fora, including EATLP.

There are various reasons for having tax procedures as the 2019 EATLP main topic.

Whilst endorsing national procedural autonomy, the CJEU limits its application through the principles of equivalence with rules applicable in purely domestic situations and effectiveness in the protection of rights. By doing so, the CJEU pursues the establishment of a common minimum standard for securing compliance with the rule of law and the protection of rights under European Union law in line with the different national legal traditions. Until present, there is no systematic analysis of such criteria and their implications in tax matters across the European Union.

Seen from the perspective of the protection of rights, tax procedures may differ as to how a given controversy reaches the judiciary. Whilst the levying and collection of taxes may immediately affect taxpayers, in some countries such powers may be the object of administrative revisions that postpone the actual protection by the judiciary. This may raise an issue of the time for justice and the effective protection of the right to fair trial in the so-called administrative part of tax procedures.

Furthermore, legal globalisation steers national experiences towards comparison, which singles out best practices and pursues objective standards of good tax governance. Comparative tax legal analysis thus helps identifying the positive rules that best achieve these results and enhance the effective protection of rights, required under supranational law of the European Union, leading to a possible voluntary adaptation of national tax procedures to the best practices identified.

Separate specific issues arise in tax procedures with a cross-border element and in cross-border tax procedures. Significant problems arise in connection with administrative procedures, better known as mutual agreement procedures, which bring together competent tax authorities of two or more Contracting States on a given case or interpretative issues. Among others, the modality in which such procedures operate raises issues as to whether they comply with the equivalent standards of purely domestic tax procedures. Issues of equivalence also arise in connection with tax procedures involving a cross-border element, also when litigated before the judiciary. Issues also arise in respect of arbitration, raising the question as to whether there is a deviation from the so-called natural

judge theory in the absence of a single tax court with international jurisdiction on cross-border tax controversies.

The goal of the 2019 EATLP main topic is to provide a comprehensive analysis of such issues and put forward best practices and a minimum standard for the effective protection of rights throughout administrative and judicial tax procedures.

For this purpose, EATLP national reports will provide relevant information on selected critical issues of tax procedures, which the general report will then elaborate with a view to achieving significant scientific results with the support of topical reports, that also address the interpretation and application of supranational and international law applicable to tax matters.

We hereby establish a working group on tax procedures for discussing critical issues, which deserve attention in the framework of the 2019 EATLP Congress main topic. The admission to the working group is subject to an expression of interest by 31 January 2018 and the analysis of the relevant critical issues will take place via email until 8 April 2018. Expressions of interest should be sent via email to [thomas.chaperot@cms-fl.com](mailto:thomas.chaperot@cms-fl.com) and [p.pistone@ibfd.org](mailto:p.pistone@ibfd.org).

The general reporter will make an initial selection of issues, which he will present at a conference held presumably on 27 April 2018 at the University of Rijeka (Croatia). He will then submit the final guidelines for approval to the EATLP Academic Committee meeting, to be held in Zurich on 7 June 2018.

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Pasquale Pistone