

8th

INTERNATIONAL CONFERENCE ON TAXPAYER RIGHTS

Access to Justice:
Judicial Review &
Alternative Dispute Resolution

24 - 26 May 2023 | Santiago, Chile & Live-streamed

Convenor | Center for Taxpayer Rights

Host | Centro de Estudios Tributarios, Universidad de Chile

Technical Advisor | International Bureau of Fiscal Documentation

With participation by member Courts and Judges of the
International Association of Tax Judges (IATJ)

Planning Committee:

Nina E. Olson, Center for Taxpayer Rights, United States

Hon. Peter J. Panuthos, United States Tax Court, United States

Pasquale Pistone, IBFD, The Netherlands

Gonzalo Polanco, Universidad de Chile, Chile

Miguel Zamora, Wise Tax, Chile

Sponsors:

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International Fiscal Association - USA & Chile Branches

KPMG - Chile

Tax Analysts

8th International Conference on Taxpayer Rights

Access to Justice: Judicial Review & Alternative Dispute Resolution

Wednesday, 24 May 2023 (all times in Chilean time)

13:00 to 14:30

Judges' Roundtable: Self-Represented Taxpayers - The Judicial Response: This workshop will focus on the judicial response to the large number of self-represented taxpayers who seek judicial review. Most of such litigants are low-income taxpayers who can't afford lawyer fees. The panel will discuss the role of Judges in responding to self-represented taxpayers and why self-represented taxpayers do not always take advantage of offers of free assistance. The panel will also consider ways in which respective Courts can work with clinical and pro bono programs as well as other organizations to further encourage self-represented taxpayers to accept help. The overriding goal is to improve access to justice for such litigants.

Moderator: Peter Panuthos, Special Trial Judge, United States Tax Court, United States

Panelists:

Akinmade Ajibola, Chairman, Tax Appeal Tribunal, South West, Nigeria

Raúl C. Cancio Fernández, Legal Adviser to the Supreme Court, Spain

Diana Leyden, Special Trial Judge, United States Tax Court, United States

15:00 to 16:30

Taxpayer Advocate/Ombuds/Tax Clinic Workshop: Dispute Resolution: This workshop and roundtable discussion will focus on how taxpayer advocates/ombuds and tax clinics can assist in dispute resolution and help ensure that historically unrepresented taxpayers have access to judicial review. Tax clinics, especially those serving low income taxpayers, play an important role in providing pro bono representation of low income taxpayers before the courts, filing amicus briefs, and participating in innovative approaches to dispute resolution such as "settlement days." The workshop will also be an opportunity for ombuds and clinicians to network and learn from one another as well as for persons interested in establishing a taxpayer advocate/ombuds office or tax clinic program to learn from existing programs.

Moderator: Nina E. Olson, Executive Director, Center for Taxpayer Rights, United States

Panelists:

Daniel Alberto Acevedo, former Taxpayer Advocate, Direccion de Impuestos y Aduanas Nacionales (DION), Colombia

Iván del Río, Acting Taxpayer Ombuds, Dedecon, Chile

Sergio Endress, Assistant Professor, Tax Clinic, University of Chile, Chile

Susan Morgenstern, Senior Attorney, Center for Taxpayer Rights, United States

Thabo Legwaila, Acting Tax Ombud, South Africa

19.30 to 21.00

Opening Reception (courtesy of Caplin & Drysdale)

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Access to Justice: Judicial Review & Alternative Dispute Resolution

Thursday, 25 May 2023 (CL)

9:00 to 9:30

Welcome & Introductory Remarks

9:30 to 11:00

Panel I. A rights-based foundation for access to judicial review. This panel will explore the principles underlying access to judicial review, including the balance between the collective interest in promptly obtaining revenue necessary for public goods and the individual's right not to be deprived of property in violation of the rule of law coupled with the right to a fair trial. Topics will include exhaustion of administrative remedies and the requirement to pay-first-and-claim-later (solve et repete); transparency and access to court records; the role of the judge in the courtroom, especially when taxpayers are un- or under-represented; in camera or private hearings; and the ability of courts to address a violation of taxpayer rights during the administrative process preceding judicial review.

Moderator: Diana Leyden, Special Trial Judge, United States Tax Court, United States

Panelists:

Christian Allen, Judge, Tax Court, Chile

Thomas Andrieu, Conseil d'Etat, France

Anthony D. Gafoor, Chair, Tax Appeal Court of Trinidad and Tobago, Trinidad

Luís Flávio Neto, Tax Partner, KLA Lawyers, Brazil

11:00 to 11:30

Break

11:30 to 13:00

Panel 2: Tax issues and courts of different remit. Tax issues can arise and be litigated in different judicial fora – specialized courts, administrative courts, or general courts. Are outcomes different because of the distinction between common law and civil law jurisdictions? Each court brings its own perspective and philosophy of the law, including the application of equity and the balance between collective and individual rights discussed in Panel 1. Specialized tax courts develop procedures specifically designed for tax cases whereas the procedures of general administrative courts may not be well-suited for tax disputes. On the other hand, specialized tax courts may reinforce tax exceptionalism, where tax law is treated differently from other areas of law, and thus may afford taxpayers less legal protections. Using case studies of different courts, this panel will discuss the implications of these differences when tax issues are brought before different tribunals.

Moderator: Leslie Book, Professor, Villanova University Law School, United States

Panelists:

Jennifer Davies, Judge, Federal Court of Australia, Australia

Maria Silva Gallinato, Tribunal Constitucional, Chile

Anette Kugelmüller-Pugh, Judge, Bundesfinanzhof, Germany

Julio R. Piza Rodriguez, Justice, Supreme Administrative Court, Colombia (invited)

13:00 to 14:00

Lunch

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Thursday, 25 May 2023 (cont'd)

14:00 to 15:30

Panel 3: *Judicial review of tax matters in non-tax norms and fora.* This panel is a continuation of Panel 2 and looks at how tax issues may be addressed in light of general principles of law, or of non-tax norms, especially insofar as tax systems do not include rules that expressly prevent or limit this. In some areas of the world judicial interpretation of non-tax norms and principles might prove quite far-reaching. Similar issues can arise in international fora, such as in connection with the application of bilateral investment treaties, when assessing the implications of principles - such as fair and equitable treatment, or the rule of law – for matters of taxation. This panel will discuss those matters with a view to achieving common ground that could guide judicial review of tax matters throughout the world and secure a consistent outcome for legal interpretation in tax matters, regardless of the fora in which they arise.

Moderator: Fernando Serrano Antón, Full Professor of Tax Law, Complutense University, Spain

Panelists:

Sandra Benedetto, PriceWaterhouse Coopers, Chile

Yariv Brauner, Professor, Levin College of Law, University of Florida, United States

Pasquale Pistone, International Bureau of Fiscal Documentation, The Netherlands

Cristian Vistoso, DS Avocats, Chile

15:30 to 16:00

Break

16:00 to 17:30

Panel 4: *Barriers to Access to or Deprivation of Judicial Review.* Taxpayers may not be able to access judicial review if they cannot afford representation or court filing fees and costs; where payment and collection of tax is not suspended pending the litigation; where the losing party must reimburse costs; where procedures are excessively formal; where the length of time for scheduling a hearing or rendering a decision is indeterminate or lengthy; or where the decisions are made without the taxpayer participating in or even observing the hearing (“audi et alteram partem” or “let the other side be heard as well”). On the other hand, some important issues may escape judicial review and precedent-setting case law because the government settles individual cases so as not to bring the issue to trial, or the parties achieve an amicable settlement. This panel will explore how different countries have attempted to mitigate the effect of these challenges.

Moderator: Peter Panuthos, Special Trial Judge, United States Tax Court, United States

Panelists:

Akinmade Ajibola, Chairman, Tax Appeal Tribunal, South West, Nigeria

Mary Gillum, Director, Tennessee Taxpayer Project, Legal Aid Society of Middle Tennessee and the Cumberland, United States

Christophe Waerzeggers, International Monetary Fund, United States

20:00 to 22:00

Reception & Dinner

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Friday, 26 May 2023 (CL)

9:00 to 10:30

Panel 5: *Judicial review of cross-border tax disputes.* Cross-border tax disputes will increase with the growth in procedures of administrative cooperation between tax authorities, including the ones concerning exchange of information, assistance in recovery of taxes and MAPs with their possible continuation in the form of tax arbitration. This panel will examine how taxpayers can obtain access to justice and an effective legal remedy where two states have different approaches and requirements for obtaining judicial review of the matter. Being forced to raise the same issue before courts of two different States is an unsatisfactory approach to the problem. This panel will search for possible criteria that secure a single effective judicial remedy and/or developing common elements that could be used by Courts in addressing interpretative issues raised by cross-border tax disputes. The experiences of the European Union in the Berlioz (mutual assistance on exchange of information with judicial review in the State supplying the information) and the Heavyinstall (single judicial review in State requesting assistance in the recovery of taxes with mutual recognition of judgment) cases present potential approaches, which could be further explored with a view to identifying some mechanism, acceptable to all parties, to handle such disputes.

Moderator: Manuel Alcalde, Carey Law Firm, Chile

Panelists:

Philip Baker, Q.C., Field Tax Chamber; Visiting Lecturer, Oxford University, United Kingdom
Liselott Kana, Co-Chair, United Nations Committee of Experts on International Cooperation in Tax Matters; Internal Revenue Service, Chile

Katerina Perrou, Post-Doctoral Researcher and Lecturer in Tax Law, National and Kapodistrian University of Athens; Legal Counsel to the Governor of the IAPR, Greece

Luis Salinas, Creel, García-Cuéllar; Aiza y Enríques, S.C., Mexico

10:30 to 11:00

Break

11:00 to 12:30

**IBFD Observatory on the Protection of Taxpayer Rights/
Current Developments in Case Law**

Panelists:

Philip Baker, Q.C., Field Tax Chamber; Visiting Lecturer, Oxford University, United Kingdom
Pasquale Pistone, Academic Chairman, International Bureau of Fiscal Documentation, The Netherlands
Hugo Hurtado, Deloitte - Chile, Chile

Katerina Perrou, Post-Doctoral Researcher and Lecturer in Tax Law, National and Kapodistrian University of Athens; Legal Counsel to the Governor of the IAPR, Greece

Zhanna Ziering, Moore Law Firm, United States

12:30 to 13:30

Lunch

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Friday, 26 May 2023 (CL) (cont'd.)

13:30 to 15:00

Panel 6: *Alternative dispute resolution and judicial review.* Alternative dispute resolution (ADR) mechanisms including mediation and arbitration may occur before or after the commencement of litigation. Whether mandated or consensual, there are many reasons why taxpayers and tax agencies may seek ADR, including avoiding the cost, length, and publicity of a public trial or hearing. For ADR to be effective, however, taxpayers and tax agencies must operate in an environment of mutual trust. This panel will explore different approaches to ADR and how trusted third party mediators can best be utilized to minimize misunderstanding and miscommunication in order to achieve clarification and resolution of issues.

Moderator: Andres Martinez, KPMG, Chile

Panelists:

Lewis Carluzzo, Chief Special Trial Judge, United States Tax Court, United States

Tânia Carvalhais Pereira, Professor, Catholic University of Portugal; Head of Tax, Center for Administrative and Tax Arbitration (CAAD), Portugal

Andrew Roberson, KPMG, United States

15:00 to 15:30

Break

15:30 to 16:30

Roundtable Discussion: *Taxpayer Rights and Access to Judicial Review*

Moderator: Christopher Rizek, Caplin & Drysdale, United States

Panelists:

Nina E. Olson, Center for Taxpayer Rights, United States

Peter Panuthos, Special Trial Judge, United States Tax Court, United States

Gonzalo Polanco, Institute of Economics and Business, University of Chile, Chile

Miguel Zamora, Wise Tax, Chile

16:30

Adjourn!

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Thank you for your interest in the 8th International Conference on Taxpayer Rights. Please let us know what you think about the conference, and what subjects you would like to have covered in future conferences. You can reach us at the Center for Taxpayer Rights at info@taxpayer-rights.org. To learn more about the Center for Taxpayer Rights, go to www.taxpayer-rights.org. There you can subscribe to the Taxpayer Rights Digest and sign up for updates about future conferences.

We'd love to hear from you, and if you'd like to submit an item of interest for the Digest, please contact Nina Olson at neo@taxpayer-rights.org.

**SAVE
THE
DATE**

9th International Conference on Taxpayer Rights
Framing a Digital Taxpayer Bill of Rights
4 - 6 June 2024, University of Antwerp, Belgium
