



## CENTER FOR TAXPAYER RIGHTS

# International Conference on Taxpayer Rights Access to Justice: Judicial Review & Alternative Dispute Resolution

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MAY 25, 2023 PANEL 1:

A RIGHTS BASED FOUNDATION FOR ACCESS TO JUDICIAL REVIEW

# The connection between access to justice and taxpayer rights

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Panelists will provide a brief statement as to why access to their courts is important to assuring justice and supports taxpayer rights

## Panelists:

- Christian Allen, Judge, Tax Court Chile
- Thomas Andrieu, Conseil d'Etat, France
- Anthony D. Gafoor, Chair/Chief Judge, Tax Appeal Court of Trinidad and Tobago
- TBD, Brazil

Moderator: Diana Leyden, Special Trial Judge, US Tax Court, US

# We will explore 4 broad topics today

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- How do time and other barriers to accessing judicial review impact trust in the independence of the judiciary?
- Why is transparency both at the administrative and judicial levels important and how should the judiciary balance transparency with protecting sensitive taxpayer information?
- Why is the ability of the judiciary to raise new issues (issues not considered at the administrative level) or to consider administrative violations of taxpayer rights important?
- Why are procedures to allow self-represented taxpayers to litigate their cases important and how can judges maintain neutrality while at the same time recognizing challenges faced by self-represented taxpayers?

# Do time and other barriers to accessing judicial review impact trust in the independence of the judiciary?

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## BRAZIL

- Must a taxpayer pay part or all of the tax before appealing an administrative decision to a court?
- How long does a taxpayer have to file an appeal with a court?
- How does the civil law system impact the right of a taxpayer to present evidence?
- What is the typical time before a court renders a decision?

## THOMAS ANDRIEU-FRANCE

- How long does a taxpayer have to appeal to a court? If the taxpayer is pro se can that be extended?
- What is the typical time before a court renders a decision? At what cost to the taxpayer?
- Does the burden of proof weigh too heavily on the taxpayer ?
- Tax litigation without tax assessment as a taxpayer's rights protection mechanism

# Transparency: Does it exist and how to balance it when sensitive information is involved

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## ANTHONY GAFOOR-TRINIDAD AND TOBAGO

- Are tax cases before the judiciary open to the public? Any change during COVID?
- Is a taxpayer required to redact personal identifying information in filings?
- Who has the burden of proof in an appeal from an administrative decision?
- Can a taxpayer ask a judge to consider evidence *in camera*? Can that right be waived?

## CHRISTIAN ALLEN-CHILE

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# Raising new issues and considering violations of taxpayer rights

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ANTHONY GAFOOR-TRINIDAD AND TOBAGO

- What are the restrictions on either the taxpayer or the Revenue Authority raising new issues/tendering additional documents at the judicial level?
- If the Revenue Authority violated a taxpayer's right can that be the basis for the court to decide in favor of the taxpayer? What other consequences may flow from such an action by a State authority?

THOMAS ANDRIEU-FRANCE

- How does a procedural mistake at the administrative level impact a review by the court? *Meyer case*.
- Can a court raise *ex officio* an argument not raised by the taxpayer?
- What are the restrictions on either the taxpayer or the administration in raising new issues at the judicial level?

# Special concerns and issues of self-represented taxpayers

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## BRAZIL

- What percentage of taxpayers proceed to court self-represented?
- Are the procedural rules applied less strictly if a taxpayer is self-represented?
- How does a judge balance informing a self-represented taxpayer about procedure without advocating for the taxpayer on a substantive issue?

## CHRISTIAN ALLEN-CHILE

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## Further Resources

For all *Conseil d'Etat* rulings, see:

<https://www.conseil-etat.fr/arianeweb/#/recherche>

On the consequences of administrative procedural rules violations by the tax administration, see:

- *Conseil d'Etat*, Section, 16 avril 2012, M. et Mme Meyer, n°320912, p.149
- *Conseil d'Etat*, 17 mars 2016, Ministre des finances et des comptes publics c/ M. Monsterleet, n° 381908, p. 75.

On the burden of proof, see: *Conseil d'Etat*, Section, 20 juin 2003, Société Etablissements Lebreton - Comptoir général de peintures et annexes, n° 232832, p. 273.



# Questions?

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