

PROCEDURAL JUSTICE: EXAMINING TAX DISPUTE RESOLUTION PROCESSES IN RUSSIA AND SINGAPORE

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Abstract

Tax disputes are a common feature of the modern business environment, whether in Russia, Singapore, or the tax system of any other country. This is particularly the case for business taxpayers and more so for those at the larger end of the spectrum. The Russian tax system allows a taxpayer who is dissatisfied with a tax assessment to formally object to the tax authority. However, lodging an objection with the tax authority is the first mandatory step in the tax dispute resolution process. The Singaporean tax system operates in a broadly similar fashion. In other words, in Russia and Singapore, a taxpayer is only able to legally appeal an adverse decision to either the tribunal or the court after filing a formal objection with the tax authority which undergoes an internal administrative review. Thus, it can be argued that taxpayers are unable to choose the most convenient and effective option for the protection of their rights. Similar tax dispute resolution systems operate in many other countries. This article identifies a set of criteria, or “qualities” that might be expected in any administrative system of tax dispute resolution, and then uses these criteria to address the question of how well the Russian and Singaporean systems fare against these benchmarks. Based on this analysis, the article then provides general recommendations on how access to procedural justice for taxpayers might be improved.

Keywords: Procedural Justice, Tax Disputes Resolution, Administrative Disputes Resolution, Alternative Tax Disputes Resolution, Russia, Singapore.

1. INTRODUCTION

Tax disputes are a common and unavoidable feature of the modern commercial environment, whether in Russia or Singapore (the two countries that are the subject of this article), or in the tax systems of many other countries. When tax disputes occur, it frequently implies that there is a certain degree of asymmetry between the taxpayer and the tax authority in terms of resources and power. Accordingly, the existence of an effective tax dispute resolution system is seen as essential if a fair, competent, and independent determination of such disagreements is to be made. According to Alink and van Kommer (2011), “a proper tax appeals system should be based on a legal framework, is easily accessible to taxpayers and has transparent administrative procedures guaranteeing independent decision-making processes, including provisions ensuring that decisions are promptly acted upon” (p. 332).

If taxpayers have inadequate access to independent and impartial forums for resolving tax disputes with tax authorities, it may adversely affect their views on procedural justice (Murphy, 2004). In the context of tax, procedural justice can be viewed as access to a fair, objective, and

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independent system of dispute resolution (Tran-Nam & Walpole, 2012). The principle that procedural justice is absolutely necessary for effective dispute resolution is well-established (see, for example, Howieson, 2002; Lind & Tyler, 1988; Tyler, 1994). Additionally, if the tax system does not provide taxpayers with adequate access to procedural justice, it may negatively affect their level of voluntary tax compliance, something which is necessary for the functioning of an effective tax system (Murphy, 2005). Hence, it is important to determine whether any barriers to procedural justice exist and to identify how these barriers might be reduced or eliminated.

The Russian Tax Code provides the principal legislative basis for a taxpayer wishing to object to a tax authority's decision/assessment. Until recently, taxpayers were able to appeal tax authorities' decisions and the actions (or inactions) of tax authorities' officials via either administrative or judicial procedures. Thus, taxpayers were able to choose the most convenient and effective options for the protection of their rights. However, the Russian Ministry of Finance has implemented a mandatory tax dispute resolution process, facilitated by the Federal Tax Service (FTS), for all types of tax dispute. One of the major reasons for the introduction of such a process is an intention to reduce tax-related litigation. The relevant legislation was enacted to apply from January 2014 and ensures that taxpayers are not able to appeal to the Arbitrazh (commercial) courts to resolve their tax disputes with tax authorities without passing this mandatory stage.

Similarly, Singapore's tax system also allows a taxpayer who is dissatisfied with a tax assessment to lodge a notice of objection to the Internal Revenue Authority of Singapore (IRAS).³ If a taxpayer does not agree with an assessment raised by the IRAS, a "notice of objection" must be filed with the IRAS. If a taxpayer wishes to appeal the decision of the IRAS, there are two options—to apply to the Board of Review⁴ or to appeal to the court.⁵ However, the first mandatory step in the tax dispute resolution process is to make an objection to the IRAS. In other words, a taxpayer is only able to legally appeal an adverse decision to either the Board of Review or the court once they have filed a formal objection to the IRAS's decision and their case has then undergone an internal administrative review.

Theoretically, both the Russian and the Singaporean tax dispute resolution systems provide access to effective and impartial tax dispute resolution procedures but, in practice, accessibility to these procedures may be problematic as a result of a number of factors. Although the Singaporean tax dispute resolution system is well-established, it has been criticised for being slow.⁶ The Russian system of tax dispute procedures is less well-developed, and has been criticised for its lack of accessibility and lack of independence.

The development of the Russian internal administrative dispute resolution procedures has certain parallels with that of the IRAS's review processes. The Russian administrative tax dispute resolution reform was conducted in 2014 and some important changes have also been made to the administrative procedures in Singapore in order to accelerate the consideration of

³ Reference to the IRAS in this paper covers the Comptroller of Income Tax, the Comptroller of Goods and Services Tax, and the Commissioner of Stamp Duties.

⁴ Singapore has three Boards of Review for tax matters: the Goods and Services Tax Board of Review, the Income Tax Board of Review, and the Valuation Review Board.

⁵ Income Tax Act ss. 76(2) and (3).

⁶ Generally, the IRAS completes the review within six months from the date of the taxpayer's last correspondence (IRAS, 2019b). However, the taxpayer is required to pay the tax assessed within one month after the date of service of the notice of assessment even if a notice of objection has been lodged (Income Tax Act s.85(1)).

taxpayers' objections. Accordingly, it may prove to be useful to compare and contrast the tax dispute resolution processes in Russia and Singapore, specifically focussing on administrative dispute resolution within the tax authorities in both countries. Using these systems as points of reference, this article develops a set of criteria, or "qualities", that might be expected in any administrative system of tax dispute resolution, and then uses these criteria in order to address the question of how well the Russian and Singaporean systems fare against these benchmarks. Based on this analysis, the article then provides general recommendations as to how access to procedural justice for taxpayers in both countries might be improved.

This section of the article has provided the introductory context and background. Sections two and three discuss, in more detail, the administrative and judicial tax dispute resolution procedures in Russia and Singapore respectively. Section four compares the administrative dispute resolution procedures of the two countries in order to identify appropriate criteria by which to evaluate the ability of each country to provide procedural justice for its taxpayers. In the final section of the paper, conclusions are drawn and recommendations to improve the systems are provided.

2. ADMINISTRATIVE AND JUDICIAL APPROACHES TO TAX DISPUTES RESOLUTION IN RUSSIA

Administrative Procedures for Tax Dispute Resolution in Russia

The Russian Federation's FTS is the executive authority responsible for all state revenue-related matters, including administrative tax dispute resolution. Russian taxpayers are able to apply to the FTS for protection of their rights and legitimate interests relating to tax matters through formal administrative procedures. Under such administrative procedures, an appeal or objection needs to be lodged with either the tax authority that issued the decision being appealed or to a superior level within the tax authority, depending on the matter under dispute. Russian taxpayers do not have access to a formal forum for tax dispute resolution that is comparable to the Boards of Review in Singapore. Hence the administrative tax appeal procedure in Russia involves only the review of objections by the FTS, making it effectively an internal FTS review process.

Previously, in addition to this possibility of internal administrative review, all acts of the FTS were capable of being appealed by taxpayers directly to a court. However, in 2009, a mandatory administrative review stage was introduced,⁷ although at that stage it was only relevant for those decisions of the FTS which were based on the outcomes of tax audits undertaken on selected taxpayers.⁸ This mandatory administrative procedure required that, after completion of a tax audit, a taxpayer could lodge an objection to the branch of the FTS that had conducted the audit.⁹ If the objection was not resolved, the taxpayer could then appeal the decision to a superior level within the tax authority.¹⁰ Only after completion of these administrative stages could an audited taxpayer challenge the FTS's decision in a court. From 1 January 2014, this

⁷ Tax Code of Russian Federation art.101.2.

⁸ According to the Federal Law N 137-FZ *On Amendments to Part One and Part Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation in Connection with the Implementation of Measures to Improve Tax Administration*, which applies from 1 January 2009, taxpayers lost their right to appeal simultaneously to tax and judicial authorities in certain cases.

⁹ Federal Tax Service of Russian Federation, *Settlement of tax disputes out-of-court*, (in Russian) (accessed 02 Oct. 2020).

¹⁰ *Ibid.*

mandatory administrative process of tax dispute resolution applied to all taxpayers—not just those subject to audits.¹¹ Therefore, a taxpayer must file an objection with the FTS and wait for a formal objection decision before applying to a court, or the court will not consider the case.

Generally, the administrative appeal procedure provides a simplified process for appeals or objection considerations.¹² If a taxpayer lodges an appeal with the FTS, the Tax Code provides two channels for such administrative processes: the taxpayer must use either a formal appeal procedure or a general objection procedure. Selection of the appropriate procedure (appeal or objection) depends on whether a contested decision/assessment has entered into force at the point of application or not.¹³ If the decision that is being contested has not yet entered into force, the appeal procedure may be used. If it has already entered into force, the taxpayer is obliged to follow the objection procedure.

Under the appeal procedure, an objection to the decision relating to the imposition of tax liability has to be filed within 30 days from the date of delivery of the FTS's decision to the taxpayer or their representative. The FTS is then required to make a decision within 30 days from receipt of the appeal.¹⁴ In exceptional cases, this period may be extended for a further 30 days but, in such a case, the taxpayer must be notified. For all other categories of appeal relating to decisions that have not yet entered into force, a fast-track appeal process is available. This provides that a decision is to be made in 15 days, with the possibility of extension for a further 15 days. Once the appeal has been lodged, the initial decision will not normally take effect until the appeal has been reconsidered and formally decided by the FTS.¹⁵ During the appeal period, the FTS essentially reviews all of the material relevant to the case and reconsiders its decision.

The FTS is entitled to reject an appeal for a variety of reasons, including: the taxpayer having missed the deadline for filing the appeal; a lack of substance in terms of the subject of the appeal; the appeal having been lodged by a person without the authority to act on behalf of the taxpayer;¹⁶ the existence of documented information confirming that an objection based on the same facts has been lodged with a higher tax authority; and a court decision on the issues contained in the objection having come into force.¹⁷ If the appeal is rejected, the applicant must be informed within eight business days from the date of its receipt. However, the rejection of an appeal for one of these reasons does not exclude the right of the applicant to refile the appeal within the prescribed time limits.

Where decisions taken by the FTS have already entered into force, the appeal is also lodged with the FTS, but only the general objection procedure can be utilised in such a case.¹⁸ The general objection procedure requires a taxpayer to lodge an appeal or objection within one year of the date when they knew, or should have known, about the adverse decision.¹⁹ The FTS, in turn, is then required to make a decision on such an objection within one month from the date of its receipt.²⁰ The general objection procedure is a more formal process than the appeal

¹¹ Federal Law 153-FZ, *On Amendments to Part I of the Tax Code of the Russian Federation*, 2 July 2013.

¹² Tax Code Russian Federation, chapters 19-20.

¹³ A decision made by a tax authority enters into force one month from the date of delivery of such a decision to the taxpayer or the taxpayer's representative.

¹⁴ Tax Code of Russian Federation art.101.

¹⁵ Tax Code of Russian Federation art.141.

¹⁶ Tax Code of Russian Federation s.26.

¹⁷ Tax Code of Russian Federation art.139.

¹⁸ Tax Code of Russian Federation art.101.2.

¹⁹ Tax Code of Russian Federation art.101.

²⁰ Tax Code of Russian Federation art.140 para 3.

procedure; for example, the FTS may require the taxpayer to provide proof of the conditions on which the taxpayer bases any claims in relation to the calculation of the disputed taxes. Following its consideration of an objection, the FTS can change the decision of the tax official who issued the contested decision entirely or in part, and can also issue a new decision.²¹

If the taxpayer appeals only part of the FTS decision, the Arbitrazh Court likewise assesses the legitimacy of the decision only in part. In contrast, the FTS is not bound by the arguments of the taxpayer contained in the objection and has the right to examine the case completely, regardless of whether all or part of it has been appealed by the taxpayer. However, the Supreme Arbitrazh Court²² has somewhat limited the power of the FTS in respect of appeals. Specifically, the Supreme Arbitrazh Court decree²³ states that when the FTS makes a decision on the objection, it may not make a decision that exacerbates the position of the taxpayer; otherwise, taxpayers might well be discouraged from using their rights of appeal. Nonetheless, the FTS is not precluded from conducting an additional tax audit based on any information discovered through the appeal process.²⁴

According to the FTS, the administrative procedure for dispute resolution allows the tax audit department²⁵ to improve the quality of tax administration, to ensure that a uniform approach is taken to the implementation of control measures, to review the quality of tax audits, and to avoid systematic violations which lead to a reduction in tax disputes.²⁶ From the taxpayers' perspective, the FTS administrative procedures for tax dispute resolution has certain advantages. For example, it provides taxpayers with a simplified procedure for filing an objection, has no specific requirements for the form and content of objections, and the reasons for which objections can be rejected are limited. Furthermore, the FTS has introduced a comprehensive online service—"Learn about the complaint"—which provides necessary information about the progress and results of an appeal, including the date of receipt and allocated reference number; the date by which the appeal must be considered; information about any extension in respect of the consideration of the application; treatment status (pending, decision made); and information about the result of the consideration of the application.

Additionally, the protection of taxpayer rights under the administrative appeals procedure involves minimal costs. An appeal under the administrative process is free of charge, whereas lodging a judicial appeal entails the payment of stamp duty.²⁷ Moreover, an objection can be finalised more quickly under the administrative appeals procedure than via the judicial

²¹ Federal Tax Service of Russian Federation, *Settlement of tax disputes out-of-court*, (in Russian) (accessed 02 Jul. 2020).

²² However, it should be noted that, on November 21, 2013, the State Duma of the Russian Federation adopted a bill on the merger of the Supreme Arbitration Court and the Supreme Court. Therefore, the Supreme Arbitrazh Court ceased to exist from 6 August 2014.

²³ Supreme Arbitrazh Court of Russian Federation decree N 5172/09, 28/07/2009.

²⁴ Tax Code of Russian Federation art.89 para.10.

²⁵ The Federal Tax Service of Russian Federation recently established tax audit departments in order to increase the effectiveness of the administrative dispute resolution process. As stated in the Regulation of the Federal Tax Service Number MM-9-3/63, the establishment of a tax audit department within the system of tax authorities was part of a general state policy that aimed to reduce the number of disputes involving government officials in the Arbitrazh Courts.

²⁶ Federal Tax Service of Russian Federation supra n 22.

²⁷ Tax Code of Russian Federation art.333.21. Currently, stamp duty is 300 roubles (£2.90) for individuals and 3,000 roubles (£28.80) for companies.

processes.²⁸ However, there are certain structural defects associated with the administrative dispute resolution procedures. These are considered in more detail in Section 4.

Judicial Procedures for Tax Dispute Resolution in Russia

Judicial procedures for tax dispute resolution provide Russian taxpayers with a vital recourse for the protection of their legitimate rights and interests. The Arbitrazh Court system specifically deals with commercial and administrative disputes, including tax-related cases.

The procedural principles of the Arbitrazh Courts are based on the civil law system's judicial doctrines. The Arbitrazh Procedural Code of the Russian Federation regulates proceedings conducted by the Arbitrazh Courts. The legal basis for an appeal to the Arbitrazh Courts is contained in a number of legislative acts and, in particular, in article 22 of the Arbitrazh Procedural Code.²⁹ The Arbitrazh Court system is divided into the Courts of the First Instance, the Courts of Appellate, the Federal Arbitrazh Courts (Cassation Courts), and the Supreme Arbitrazh Court. Legal proceedings beginning in the Arbitrazh Court of First Instance may be appealed to the appellate court and then to the Federal Arbitrazh Court. Finally, the Supreme Arbitrazh Court hears some cases under its supervising jurisdiction.³⁰ However, due to judicial reform, the Supreme Arbitrazh Court has been eliminated. Instead, a new Supreme Court, that merged the leadership of the Russian Arbitrazh Courts with the regular courts, was created in August, 2014.

Taxpayers have direct access to a court: there is no obligation to file a lawsuit with the help of a counsel or a solicitor. A Court of the First Instance starts proceedings when a claim is filed. The plaintiff is required to deliver a copy of the statement of claim and all supporting documents to each party by registered mail. In contrast to the informal administrative process, a judicial claim must contain the grounds for the appeal, the evidence, and relevant documents supporting the plaintiff's case.³¹

The Arbitrazh Courts do not normally modify a decision made by the FTS³² and if the taxpayer appeals only part of the decision, the court likewise assesses the legitimacy of the decision only in part. In contrast, the FTS is not bound by the arguments of the taxpayer contained in the objection and has the right to examine the case completely, regardless of whether all or part of it has been appealed by the taxpayer. However, the Supreme Arbitrazh Court³³ somewhat limited the power of the FTS in respect of appeals. Specifically, the Supreme Arbitrazh Court decree³⁴ states that when the FTS makes a decision on the objection, it may not make a decision that worsens the position of the taxpayer;³⁵ otherwise, taxpayers might well be discouraged from using their rights of appeal.

²⁸ The consideration of an objection via the administrative process is carried out within one month of the date of the objection receipt (Tax Code of Russian Federation art.140, para.3). The Arbitrazh Courts, on the other hand, consider cases within three months of the date on which the claim is filed. This includes a period of preparation in respect of the case for trial and the decision (Arbitrazh Procedural Code of Russian Federation art.152, para.1).

²⁹ Arbitrazh Procedural Code of Russian Federation art.22.

³⁰ Arbitrazh Court of Russian Federation, *The Structure of the Arbitrazh Courts of the Russian Federation*, (in Russian) (accessed 20 Jul. 2020).

³¹ Arbitrazh Procedural Code of Russian Federation, Chapter 7.

³² Instead, the arbitration courts can overturn the FTS's decisions.

³³ *Supra*, n.22.

³⁴ Supreme Arbitrazh Court of Russian Federation decree N 5172/09, 28/07/2009.

³⁵ For example, the FTS's decision on the objection cannot increase the penalty previously imposed.

Russian Arbitrazh Courts tend to deal with cases relatively quickly.³⁶ Generally, the Arbitrazh Court proceedings, from the Courts of the First Instance to the last instance, take a little over a year to complete.³⁷ Judicial decisions which come into effect are binding for all state authorities, local governments, public officers, individuals, and companies without exception and are subject to rigorous adherence in all territories of the Russian Federation. Criminal, administrative, and other types of liability may be imposed if judicial acts are not fulfilled.³⁸ The resolution of tax disputes is generally more formal and time consuming under these judicial procedures, yet many Russian taxpayers used to prefer such court trials rather than the administrative resolution processes discussed earlier.

3. ADMINISTRATIVE AND JUDICIAL APPROACHES TO TAX DISPUTES RESOLUTION IN SINGAPORE

The Administrative Approach to Tax Disputes Resolution in Singapore

The IRAS is the executive tax authority responsible for state revenue-related matters, including administrative tax dispute resolution, in Singapore. Singaporean taxpayers are able to apply to the IRAS for protection of their rights and legitimate interests relating to tax matters through formal administrative procedures. In Singapore, litigating tax matters in the courts is a last resort. The procedures and timelines related to tax disputes are clearly set out in the applicable legislations.³⁹ As in the case of the Russian administrative tax dispute resolution reform conducted in 2014, some important changes have been made to Singapore's administrative procedures. For example, in order to accelerate the consideration of taxpayers' objections, the IRAS made a number of amendments to the administrative tax dispute resolution procedures which came into effect on 1 January 2014 (see IRAS, 2019b).

Under the Income Tax Act, the Comptroller of Income Tax (CIT) can raise assessments based on the information provided by taxpayers or, in the absence of such information, to the best of their judgment. Thus, a taxpayer may not agree with the IRAS's assessment. In such a case, the taxpayer must file a "notice of objection" with the IRAS (IRAS, 2019b).⁴⁰ The tax dispute resolution process generally involves a number of stages; objection, review, litigation, and finalisation (IRAS, 2019b).

The IRAS determines the amount of income tax due based on the income tax return lodged by the taxpayer. A notice of assessment, which may include a letter or a tax calculation from the IRAS explaining the tax adjustments made, is issued to the taxpayer. According to section 76(2A) of the Income Tax Act, a taxpayer has the right to object to an amended assessment. However, the objection "should be limited to the amendment or any information related to the amendment" (IRAS, 2019b, p.4). That is, if an item of assessment has been finalised previously and there was no valid objection filed in relation to it, the IRAS will not reconsider that item (IRAS, 2019b). Taxpayers may object to tax assessments made by the IRAS within two months of the date on which the notice of assessment was served (IRAS, 2019b). However, this

³⁶ See, for example: Yakovlev (2008); Interview with Anton Aleksandrovich Ivanov, Chairman of the Supreme Arbitrazh Court of Russian Federation, "The results and perspectives of the Arbitrazh proceedings in the Russian Federation" (2008) (in Russian) (accessed 19 Jul. 2020).

³⁷ Ibid.

³⁸ Arbitrazh Procedural Code of Russian Federation art.334.

³⁹ Income Tax Act (Cap 134), Goods and Services Tax Act (Cap 117A) (GST Act) and Stamp Duties Act (Cap 312).

⁴⁰ Income Tax Act s. 76(2).

timeframe only applies to notices of assessment issued on or after 1 January 2014.⁴¹ Importantly, the notice of objection must contain specific grounds for objection or it can be rejected (IRAS, 2019b). The notice of objection can also be rejected if the taxpayer does not provide the necessary information and/or does not reply to the IRAS's requests, or the objection has not been lodged within the two-month timeframe. The IRAS encourages taxpayers to use e-Services in order to file objections "by logging into *myTax Portal* and selecting Revise/Object to Assessment" (IRAS, 2019b, p. 5).

Once a valid notice of objection has been filed, the IRAS will review the submitted information. It may require additional information and, if so, will generally expect the taxpayer to respond to its request within two months (IRAS, 2019b). Importantly, there is no prescribed time limit within which the IRAS must make a decision. Generally, taxpayers' objections are reviewed within six months from the date of receipt of the taxpayer's last correspondence (IRAS, 2019b). However, in some complex cases, consideration of the objection may take longer (IRAS, 2019b). In such a case, the IRAS would advise the taxpayer about the status of the review and the expected date of completion (IRAS, 2019b). The IRAS may refuse to review an objection if the taxpayer fails to provide the requested information within two years of the date on which the notice of objection was received (IRAS, 2019b).

When the review is complete, the IRAS will provide the taxpayer with written details of the reasons for its decision (IRAS, 2019b). The "taxpayer is expected to reply in writing within three months from the date of" this letter (IRAS, 2019b, p. 8). If the taxpayer agrees with the IRAS's decision, the assessment will be considered to be final (IRAS, 2019b). Conversely, the IRAS will issue a notice of refusal to amend the decision if an agreement with the taxpayer has not been reached (IRAS, 2019). Where the IRAS disallows an objection, a taxpayer may, within 30 days of receipt of the decision notice, apply to the appropriate Board of Review for a review (IRAS, 2019b). It is worth noting that the IRAS tends to be responsive to engaging in negotiations with taxpayers in order to reach a compromise that is acceptable for both parties (Yap, 2017). However, the IRAS does not tend to focus on mediation or alternative dispute resolution (ADR) processes.⁴² A taxpayer who does not want to lodge a formal objection may apply to the IRAS for an advance ruling on the tax treatment of a specific transaction or arrangement based on the current tax legislation, but a fee would apply in such a case.⁴³ The ruling is legally binding for the IRAS, although the taxpayer is not obliged to follow the ruling (IRAS, 2013).

Judicial Approaches to Tax Disputes Resolution in Singapore

Once the notice of refusal to amend has been issued, a taxpayer can choose to accept the IRAS's decision or to lodge an appeal with the appropriate Board of Review.⁴⁴ The appeal must be lodged within 30 days of the date of the notice of refusal to amend.⁴⁵ Singapore has three Boards of Review for tax matters; the Goods and Services Tax Board of Review, the Income Tax Board of Review, and the Valuation Review Board.⁴⁶ That is, if the taxpayer is dissatisfied

⁴¹ Income Tax Act s. 76(3). For notices of assessment issued before 1 January 2014, a notice of objection must have been filed within 30 days from the date of service of notice of assessment.

⁴² This point is discussed in section 4.

⁴³ Income Tax Act s.108.

⁴⁴ Income Tax (Board of Review) (Appeals Procedure) Regulations 1990.

⁴⁵ Income Tax Act s. 79(1).

⁴⁶ Income Tax Act (c 134) 2014, s 78; Income Tax (Board of Review) (Appeals Procedure).

with a decision made by the IRAS that relates to Goods and Services Tax (GST), they should lodge their appeal with the Goods and Services Tax Board of Review, while they should appeal to the Income Tax Board of Review if the dispute is related to income tax. The Valuation Review Board is empowered to hear appeals relating to property tax matters. However, a taxpayer who is dissatisfied with a decision made by the IRAS in respect of stamp duties can lodge an appeal directly with the High Court.⁴⁷

The Boards of Review act as quasi-judicial bodies that are similar to, for example, Australia's Administrative Appeals Tribunal. The Boards of Review can ask relevant persons to give evidence and/or produce documents, and have the power to award costs. The Boards of Review's decisions are final if no question of law is involved.

A decision made by the Income Tax Board of Review may only be appealed to the High Court by a taxpayer or the IRAS if the matter involves a question of law, or of law and facts, and the amount of tax disputed exceeds S\$200.⁴⁸ Similarly, there is no unrestricted right of appeal to the High Court in respect of a decision made by the Goods and Services Tax Board. Such a decision may only be appealed if the issue in dispute is a question of law, or law and facts, and the amount of tax disputed exceeds S\$500.⁴⁹ Thus, there is no right to appeal to the High Court in respect of decisions made by the Boards of Review with regard to finding of facts.

The specific appeals procedures for the High Court are set out in Order 55 of the Rules of Court. Generally, a High Court case is heard and determined by a single judge.⁵⁰ The High Court may reaffirm, vary, or annul the decisions made by a Board of Review and may also make other orders.⁵¹ An additional avenue via which a decision made by the IRAS or a Board of Review may be challenged is the judicial review. The judicial review is concerned with the process and the scope rather than the merits of the decision (Thio, 1999). Generally, a judicial review would focus on procedural irregularity, unreasonableness, or illegality of a decision (Thio, 1999). However, in order to apply for a judicial review, the taxpayer must first obtain leave from the High Court.

Finally, if either party is dissatisfied with the High Court's decision, they may choose to lodge an appeal with the Court of Appeal. The Court of Appeal is presided over by three judges, who will consider the appeal and make an appropriate decision.⁵² Like the High Court, the Court of Appeal considers the matter afresh.⁵³ Generally, a taxpayer or their representative may appear before a Board of Review. However, a taxpayer must be legally represented for hearings before the High Court and the Court of Appeal unless that taxpayer is willing to conduct the hearing in person. The decisions of the Court of Appeal are final.

Regulations 1990; Goods and Services Tax Act (c 117a), s 50(10); Goods and Services Tax (Board of Review) Regulations 1993; Property Tax Act (c 254), s 68; and Valuation Review Board (Appeals Procedure) Regulations 1990.

⁴⁷ Stamp Duties Act s. 40.

⁴⁸ Income Tax Act s. 81(2).

⁴⁹ Goods & Services Tax Act s. 54(2).

⁵⁰ Order 55 Rule 2 of the Rules of Court.

⁵¹ Income Tax Act s.81(4); Goods & Services Tax Act s. 54(4).

⁵² Supreme Court of Judicature Act s. 29A.

⁵³ Order 57 of the Rules of Court.

4. CRITERIA AND EVALUATION

The preceding review of the principal administrative components of the tax dispute resolution processes in Russia and Singapore suggest that there are a number of criteria, or “qualities”, that are critical if any such system is to furnish the sort of procedural justice that taxpayers are entitled to expect.⁵⁴ At a very minimum, the internal administrative component of a tax dispute resolution process should have the following attributes:

- Independence – it should include an objective review of the case, independent of the revenue officers who made the initial decision.
- Competence – each objection should be dealt with by revenue officers with competence in the relevant field and who are able to provide high-quality and consistent outcomes based upon the merits of each case.
- Flexibility – the process should be sufficiently flexible to accommodate alternative tax dispute resolution methods or to be able to expedite transmission away from the hands of the revenue authority and to a higher administrative or judicial authority.
- Effectiveness – the process should be conducted, and each outcome delivered, in a timely, cost-effective, and transparent fashion.

The internal review processes of the Russian and Singaporean systems are now evaluated against each of these four criteria with a view to identifying how they are performing and how each country’s system might be improved.

Independence

Under the Russian administrative appeal procedure, taxpayers’ disputes are generally considered by a superior level tax authority.⁵⁵ However, before the appeal is passed “up the chain”, all materials related to the appeal are prepared by the tax officer who made the initial decision. Furthermore, all appeals are handled by a legal department⁵⁶ which is responsible for consideration of appeal cases and the preparation of decisions. The decision about the disputed issue is then formulated before an appeal commission (normally consisting of a legal department representative, other officers who have expertise relating to the subject of the appeal, and the head or deputy head of the tax authority) considers the case (Artemyeva, 2012). In addition, an appeal commission often includes the officer who was initially involved in the tax dispute (Artemyeva, 2012).

A further example of the lack of independence or impartiality/objectivity under the Russian administrative appeal procedure is that large business taxpayers often experience considerable difficulties in obtaining significant Value Added Tax (VAT) refunds (for example, after the construction of a new plant) as a result of the common perception by FTS officers that when a taxpayer is in such a situation, it is a sign that they are participating in a tax minimisation scheme (Batanov, 2013). As a result, large businesses’ VAT-related appeals commonly give rise to court proceedings. Some commentators, criticising the administrative appeal procedures, point to a lack of independence on behalf of tax officers, which they believe arises

⁵⁴ For a detailed discussion of the tax dispute system design principles, see, for example: Jone (2017); Jone (2018); Mookhey (2013).

⁵⁵ For example, Moscow is divided into 12 administrative districts (okrug). There are several tax inspectorates in each district and the superior tax authority for all district inspectorates is the Office of the Federal Tax Service for Moscow.

⁵⁶ All Russian tax inspectorates have internal legal departments and appeal commissions.

as a result of the constant pressure that these officers are under to accomplish predetermined revenue collection targets by any means (Batanov, 2013).

In Singapore, the tax officer responsible for the original tax assessment or a closely interrelated officer may be involved in the consideration of the taxpayers' objections and settlements, and this is specifically the case in the early stages of the process (Quah, 2020). Therefore, some concerns relating to the lack of objectivity of the IRAS internal review procedure can be raised. Generally, the tax officer may seek advice on the settlement of the dispute, but such advice is obtained internally. Since the IRAS does not use formal mediation, a neutral third-party mediator is not involved in the dispute settlement (Quah, 2020). Thus, the IRAS review is a purely internal process that may not be able to facilitate a desirable level of independence in dispute resolutions. In this light, it is beneficial for Singaporean taxpayers to be able to appeal to the Boards of Review. However, it should be noted that members of the Boards of Review are appointed by the Minister for Finance.⁵⁷ Thus, similar concerns related to independence and the perceptions of the Boards' members can be raised with regard to appeals considered by the Boards of Review.

As a result of these shortcomings, it appears that the objection procedures in Russia and Singapore may not always facilitate an independent consideration of tax disputes, and that the attribute of independence may not always be achieved in these countries.

Competence

As a result of the internal review processes in Russia, there are some concerns about the quality of tax dispute resolution outcomes. According to some experts, the tax authorities tend to miss some provisions of the law and jurisprudence when considering appeals and eventually dismiss taxpayers' objections on spurious grounds (Chernik, 2012). In other words, one of the principal reasons for the high number of tax-related cases that taxpayers elected to take directly to the Arbitrazh Courts in the period prior to the introduction of the mandatory administrative review in 2014 was that tax officials were perceived to be both inefficient and incompetent when dealing with taxpayers' objections and appeals (Chernik, 2012; Vasilyeva, 2012).

The introduction of the mandatory administrative procedures for appeals in 2014 has, however, had some positive effects. According to some observers, it has helped to improve the quality of the decisions made by the tax authorities (Chernik, 2012). Arguably, these effects are primarily the result of the fact that when reviews are conducted by officers who are higher up the ranks of the revenue authority, obvious mistakes and miscalculations made at subordinate levels are filtered out. However, complicated tax disputes relating to tax benefits or VAT refunds are often still resolved by way of judicial procedures rather than at the administrative level (Chernik, 2012). In such a situation, the mandatory administrative procedure for dispute resolution can be an obstacle that delays the accomplishment of taxpayer's legitimate interests. Nonetheless, the number of appeals resolved by the courts has fallen by 15 to 20% per year.⁵⁸ Importantly, the share of tax-related cases resolved by courts in favour of the tax authorities was 80% in 2019, compared to 41% in 2010.⁵⁹ It should be noted that, for the tax authority, the reduction in the number of appeals to the court is an indicator of the effectiveness of the process. This is not necessarily the case from the taxpayer's point of view as, for example,

⁵⁷ Income Tax Act s. 78(14).

⁵⁸ Federal Arbitrazh Courts of the Russian Federation. Statistical data. http://arbitr.ru/statisticheskie_dannie/ (in Russian) (accessed 2 Jun. 2021).

⁵⁹ FTS. *Results of pre-trial settlement of tax disputes for 2019*. (in Russian) (accessed 22 Jul. 2020).

litigation involves legal costs and can take several months. In addition, if a case has the potential to affect the established practice of the FTS, a team of lawyers and tax officers will represent the FTS in the court. These can be tax auditors of all levels, starting with those who conducted the audit, and lawyers from the regional or central office. At the same time, taxpayers may not be able to defend their rights because not all companies can afford the services of a tax lawyer. It can be argued that these factors, among others, have contributed to the reduction in the number of court cases and the increase in the number of decisions made that are in favour of the FTS.

In Singapore, as in Russia, a tax officer must follow the tax authority's interpretation of law as expressed in rulings and guidelines (Quah, 2020). This approach provides consistency, although it may have a significant impact on the flexibility of tax officers and negotiated settlements. Tax officers who focus on the IRAS's views and publications may be reluctant to consider those of other authorities that clearly express a contrary position. It has also been suggested that the IRAS's objection process is simply an internal review and is far from being independent (Quah, 2020). Indeed, it is argued, the objection officer should consider the dispute in line with the law, rather than in line with IRAS policies and interpretations. However, on average, the number of tax disputes considered by the Boards of Review and the courts in Singapore remains constantly low. For example, there were only 12 tax-related cases reported in 2017 (Tan & Ying, 2018). While this is twice the number reported in 2016 (Tan & Ying, 2018), the average number of cases is still very low, indicating that the IRAS's administrative dispute resolution process is successfully reducing the number of court cases that take place.

In short, neither country fares perfectly well in terms of this criterion. It should be noted that the IRAS has an established dispute resolution system that successfully limits related litigation. Perhaps one of the first steps required in order to improve the competence and efficiency of the administrative dispute resolution process in Russia and Singapore is the introduction of operational internal audit mechanisms which would be independent of the revenue officer(s) involved in a tax dispute.

Flexibility

In Russia, the implementation of the new mandatory procedure for administrative review means that the option to apply directly to the Arbitrazh Court, thus bypassing the FTS's objection procedure, is eliminated. However, the Russian FTS is trying to address issues that emanate from this lack of flexibility. The newly introduced mandatory administrative review procedure therefore involves a number of relevant innovations. In particular, a fast-track procedure (15 days instead of 30 days under the present law) for decision-making in respect of objections of a non-normative nature⁶⁰ has been introduced.⁶¹ In addition, the time limit for filing an appeal relevant to decisions which have not yet entered into force has been extended from ten days to a month, allowing the taxpayer time to prepare a proper and well-motivated appeal.⁶²

⁶⁰ Acts of a non-normative nature include various documents issued by the FTS, such as requests, resolutions, letters, etc. The formal decision based on the results of a tax audit is a normative document.

⁶¹ Federal Tax Service of Russian Federation *supra* n 22.

⁶² *Ibid.*

The Russian tax officials believe that the new law and procedures provide the real possibility of resolving disputes at the pre-trial stage.⁶³ However, an unresolved issue is that the legislator tries to present these mandatory administrative procedures as a form of out of court settlement. The fundamental difference is that, under an out of court settlement, the dispute is resolved via third-party mediation. Nevertheless, it should be noted that the FTS has become more inclined to settle tax disputes. For example, revenues from settlements with taxpayers has grown significantly, amounting to 4.2 billion roubles in 2019.⁶⁴ These approaches have undeniably provided some extra flexibility to taxpayers. Unfortunately, there is currently no focus on ADR in Russian governmental bodies. Moreover, as mentioned previously, ADR procedures are novel in Russia and, so far, the FTS has focussed on internal review rather than on any alternative methods for resolving disputes. As a result of all of this, Russian taxpayers are further limited in terms of flexibility, as they have no capacity to seek ADR forums.

The IRAS, meanwhile, has a reasonable track record in terms of the flexibility of its approach to internal review. However, there are some concerns about the capability of its internal review process to move rapidly to external administrative or judicial review where it is evident that it is not possible to make progress by way of internal review. According to Allen Tan of Baker & McKenzie, “the IRAS has shown itself to be amenable” to discussions with taxpayers “in a bid to obtain a compromise favourable to both parties, and to avoid unnecessary tax litigation” (“How To Avoid A Tax Dispute In Singapore”, 2012). There is no formal approach to commence negotiations and either party may start such discussion (“How To Avoid A Tax Dispute In Singapore”, 2012).

Importantly, the Singapore authorities recently signed the United Nations’ Convention on International Settlement Agreements Resulting from Mediation, also known as the “Singapore Convention on Mediation” (Quah, 2020). However, the IRAS is somewhat hesitant to embrace mediation or a formal ADR process for tax disputes resolution. According to Quah (2020), its reluctance to implement ADR procedures may be explained by the fact that “the IRAS may not see the cost benefits of mediation as it is already extremely efficient in collecting its taxes” (para. 26). The IRAS is progressively increasing the amount of tax revenue collected; for example, in 2018/19, S\$52.4bn (£28.2bn) was collected (IRAS, 2019a). In addition, the IRAS has audited 10,301 cases and recouped about S\$389m (£209.4m) in taxes and penalties in the same financial year (IRAS, 2019a, 8.12). That might provide a significant deterrent to changing an already effective system. This is unfortunate, as the implementation of ADR procedures could provide taxpayers with the opportunity to settle disputes earlier and with the assistance of a third party which could, in turn, enhance procedural justice principles (van Hout, 2018).

Moreover, as noted above, less progress has been made in relation to the capacity of the internal review system to operate effectively and with sufficient flexibility where an obvious impasse has been reached. There is no legislated time limit within which the IRAS must make a decision (IRAS, 2019b). A review of the taxpayer’s objection that lasts for six months or more diminishes the effectiveness of such an option and, thus, it does not fare well in terms of flexibility. It may be argued that the taxpayer should have the option to bypass the IRAS’s objection process and apply directly to the Boards of Review or, in complex cases, the court. A fast-track process to external review should be made available for complex cases. This would allow for an objection decision to be expedited where resolution of the dispute at the objection

⁶³ *Federal Tax Service proposes to expand the scope of the special rules of procedure for mandatory pre-trial appeal.* (27) Russian business newspaper 856, 24 July 2012.

⁶⁴ Federal Tax Service of Russian Federation supra n 22.

stage is unlikely. An obvious criticism of this proposal is that it would not be easy to establish a borderline between simple and complex cases on a legislative level.

Effectiveness

Effectiveness, as noted above, relates to the capacity of the administrative review system to operate in a timely, cost-effective, and transparent fashion. According to the Russian Ministry of Finance, the introduction of the mandatory administrative review stage for all tax disputes provides a faster and less expensive way by which to resolve tax disputes and to reduce the number of tax cases resolved in the Arbitrazh Courts (“Sergey Arakelov: Every year there are less and less conflicts with taxpayers”, 2012). Furthermore, the Ministry of Finance suggested that the introduction of mandatory administrative dispute resolution procedures for all types will enhance the ability of taxpayers to exercise their rights and legitimate interests (“Sergey Arakelov: Every year there are less and less conflicts with taxpayers”, 2012). In other words, the aims of the Ministry of Finance are similar to those of the IRAS; both focus on the reduction of tax-related litigation. The recent evidence is quite encouraging, as the amount of tax-related litigation taking place has notably reduced. The number of tax cases going to the Arbitrazh Courts in 2009, when the mandatory administrative review process was introduced on a limited basis, was 87,900.⁶⁵ The number of such cases has decreased significantly since then, falling from 53,000 in 2013 to about 11,000 cases in 2019.⁶⁶

Singapore has fared reasonably well in terms of cost-effectiveness, but has not always done as well on the timeline front. More particularly, the IRAS has been criticised for delays in respect of its decision-making process when handling objections. The fact that there is no mandatory time limit for the consideration of the taxpayers’ objections is concerning. While the majority of the objections are resolved by the IRAS within six months, the consideration period for some cases is significantly longer than that. Notwithstanding such concerns, the IRAS’s intentions to resolve disputes at an early stage and to avoid litigation are evident. Although certain issues still exist with regard to the effectiveness of the IRAS’s dispute resolution system, most tax disputes in Singapore are resolved via these administrative procedures, and only a miniscule number of disputed cases are appealed to the Boards of Review and the Court.

Therefore, one may argue that, despite having certain drawbacks, the Singaporean administrative tax dispute resolution system is a reasonably effective operative mechanism, providing taxpayers with a relatively efficient forum for the resolution of tax-related disputes. The Russian administrative tax dispute resolution system has also made significant progress in terms of reducing litigation. This decrease is positive when disputes are resolved more efficiently and taxpayers are satisfied with the results. Unfortunately, this is not always the case in Russia where, in some cases, taxpayers cannot protect their rights due to the factors previously discussed.

5. CONCLUSIONS

The Russian government has established a kind of “filter” in the form of a mandatory administrative procedure for all tax disputes. It may be argued that the FTS has tried to increase the quality of the decisions made and has also managed to decrease the significant number of

⁶⁵ *Summary of the Arbitrazh Courts of the Russian Federation Decisions Concerning Cases involving Tax Authorities.* (in Russian) (accessed on 08 Jul. 2020).

⁶⁶ *Summary statistical information on the activities of federal arbitration courts for 2019.* (in Russian) (accessed on 08 Jul 2020).

losses that it previously suffered in the courts. However, as a result of this new mandatory process, taxpayers' access to justice has been further limited.

The Singaporean experience, where mandatory internal administrative review has been a key feature of the system for many years, suggests that internal review per se may not be enough to ensure a workable system. The system must: have a certain degree of objectivity and independence; be able to provide consistent, high-quality decisions based upon the merits of each case and not the partiality of the institution; provide flexibility in its approach; and be effective, in the sense of being timely, cost-effective, and transparent. The Singaporean system does not always achieve all of these goals, but it performs sufficiently well with regard to some of them so as not to cause undue concern on an ongoing basis.

The tax disputes administration system in Russia is still at an early stage of development, and it may not yet be the case that the necessary qualities of a fully functioning administrative review system are fully in place. In the light of this, the prompt introduction of ADR and/or mediation procedures would help to promote procedural justice for taxpayers. Moreover, the Russian government might wish to consider introducing a flexible forum for tax dispute resolution—similar to the Singaporean Boards of Review—that is able to provide a merits-based review of the FTS decisions. This may be particularly important in the light of the recent constraints on access to judicial tax dispute resolution.

Overall, and despite the infancy of the Russian system, the administrative tax dispute resolution practices in both Russia and Singapore face similar problems relating to the competency of the officers involved in the process and, as a result, the quality of the tax authorities' decisions. It is clearly the case that Russia could benefit from studying some of the practices and processes adopted in Singapore in this sphere. However, the IRAS may also be able to learn from some of the approaches taken by the Russian FTS. In particular, the IRAS—an organisation often accused of being tardy in its decision-making—could consider introducing fast-track procedures, such as the FTS's 15+15 days process. The introduction of ADR and/or mediation procedures would also benefit the Singaporean system and help to promote procedural justice for taxpayers.

If Russia and Singapore were to take the measures discussed, it would certainly not fix all of the problems related to the tax disputes resolution via internal review processes that exist in each nation. However, it may go some way to ensuring that the principles of procedural justice continue to be available in both countries.

BIBLIOGRAPHY

- Alink, M., & van Kommer, V. (2011). *Handbook on tax administration*. Amsterdam, The Netherlands: International Bureau of Fiscal Development.
- Artemyeva, Y. A. (2012). Features of proceedings on taxpayers complaints. *Theory and Practice of Social Development*, 2012(4).
- Batanov, E. (2013). The truth about pre-trial settlement of tax disputes. *Corporate Lawyer*, 4, 44-49.
- Chernik, I. (2012). *Pre-trial settlement of tax disputes*. Moscow, Russia: Nalogovyj Vestnik.

- Guglyuvatyy, E., & Evans, C. (2015). Administrative approaches to tax dispute resolution: Alternative perspectives from Australia and Russia. *Journal of Comparative Law*, 10(2), 365-383.
- Howieson, J. (2002). Procedural justice in mediation: An empirical study and a practical example. *ADR Bulletin*, 5(7), 109-111.
- How to avoid a tax dispute in Singapore. (2012, September 5). *International Tax Review*. <https://www.internationaltaxreview.com/article/b1fbsb30ycgr40/how-to-avoid-a-tax-dispute-in-singapore>
- Inland Revenue Authority of Singapore. (2013). *IRAS e-tax guide – GST: Advance ruling system* (3rd ed.). Singapore: IRAS.
- Inland Revenue Authority of Singapore. (2019a). *IRAS annual report: FY2018/19*. Singapore: IRAS.
- Inland Revenue Authority of Singapore (2019b). *IRAS e-tax guide: Corporate income tax – Objection and appeal process* (2nd ed). Singapore: IRAS.
- Jone, M. (2017). What can the United Kingdom’s tax dispute resolution system learn from Australia? An evaluation and recommendations from a dispute systems design perspective. *Australian Tax Forum*, 32(1), 59-94.
- Jone, M. (2018). A dispute systems design evaluation of the tax dispute resolution system in the United States and possible recommendations from Australia. *eJournal of Tax Research*, 16(1), 56-86.
- Lind, E. A., & Tyler, T. R. (1988). *The social psychology of procedural justice*. New York, NY: Plenum Press.
- Mookhey, S. (2013). Tax disputes system design. *eJournal of Tax Research*, 11(1), 79-96.
- Murphy, K. (2004). *Procedural justice and tax compliance* (ANU Centre for Tax System Integrity, Working Paper No. 56). Canberra, Australia: Centre for Tax System Integrity, Research School of Social Sciences, Australian National University.
- Murphy, K. (2005). *Regulating more effectively: The relationship between procedural justice, legitimacy and tax non-compliance* (ANU Centre for Tax System Integrity, Working Paper No. 71). Canberra, Australia: Centre for Tax System Integrity, Research School of Social Sciences, Australian National University.
- Quah, D. (2020). Mediating tax disputes in Singapore. *SAL Practitioner*, 9.
- Sergey Arakelov: Every year there are less and less conflicts with taxpayers. (2012, 11 July). *RBK Daily*. <https://www.nalog.gov.ru/rn77/news/smi/3951915/>
- Tan, A., & Ying, N. C. (2018). *Client alert: Review of 2017 Singapore tax controversies: Disputes on income tax, GST, stamp duty and more*. Singapore: Baker McKenzie, Wong & Leow.
- “The results and perspectives of the Arbitrazh proceedings in the Russian Federation”. (2008, December). *Consultant Plus*. <http://www.consultant.ru/>
- Thio, L.-A. (1999). Law and the administrative state. In K. Tan (Ed.), *Singapore Legal System* (2nd ed., pp.160-229). Singapore: Singapore University Press.
- Tran-Nam, B., & Walpole, M. (2012) Access to tax justice: How costs influence dispute resolution choices. *Journal of Judicial Administration*, 22(1), 3-28.

- Tyler, T. R. (1994). Psychological models of the justice motive: Antecedents of distributive and procedural justice. *Journal of Personality and Social Psychology*, 67(5), 850-863.
- van Hout, M. B. A. (2018). Is mediation the panacea to the profusion of tax disputes? *World Tax Journal*, 10(1), 43-97.
- Vasilyeva, J. (2012, January 31). Reconciling taxes with no trial. *Rossiskaya Gazeta*.
<https://rg.ru/2012/01/31/nalogi-site.html>
- Yakovlev, A. A. (2008). Legal institutions in Russia in 2000-2007 years: A view from the business side. *Social Sciences and the Present*, 4, 21-37.
- Yap, J. (2017). Singapore. In S. Whitehead (Ed.), *The tax disputes and litigation review* (5th ed., pp. 300-312). London, England: Law Business Research Ltd.