

GOOD GOVERNANCE AND REMEDIES: TAXPAYER RIGHTS IN APPLICATION – TRANSCRIPT OF PANEL DISCUSSION FROM THE 3RD INTERNATIONAL CONFERENCE ON TAXPAYER RIGHTS, 2-4 MAY 2018

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CARA GRIFFITH³: Almost the last panel, but this has been just a fabulous conference.

Thank you all for coming back.

I think I have what may be the easiest job all day with the two folks that are sitting next to me, who don't really need a moderator, but I'm here nonetheless and will contribute what I can. I want to just take a brief moment to thank Nina for putting this conference on, for conceiving of it, for making it a reality, and for doing it year after year after year. But also, a big thankyou to all of you; it really has been inspiring to see what is a worldwide exchange of information. It has been fascinating to sit and listen to the different opinions, to see perspectives from different countries, and really, then, to come together on the common topic of taxpayer rights. So without further ado, what our panel is going to kind of do is take a look back at what has gone on, take a look at each of the panels, and provide some reaction to it and I think that, maybe, at the end of that we will actually get to what would be a model, or at least a pathway towards coming up with a taxpayer bill of rights. So, Pasquale?

PASQUALE PISTONE: Thank you, Cara. I think it's also now my time to thank Nina for bringing us all together. I think I've been the hundredth person to say that, but I am proud of saying that because I cannot recall conferences in which I have been taking so many notes. I have counted the pages of the booklet. I've been taking 32 pages of notes and not just because I want to sound like a nerd, but because I have learned an awful lot. And this is what we can learn from each other when we consider that there are global issues which are being discussed and handled in a different way, especially that there is no overall analysis of those points. As Cara has indicated, we would like to go panel by panel just mentioning some of the issues which could also be food for future thought but also interesting for further activities. The first panel was on the "Multidisciplinary Approach to Good Governance and Legal Remedies", and I think, you know, that this first panel was important for giving us an idea that if we want to talk about trust and we want to talk about a strong interaction with people who are going to be affected by the action of tax authorities, there is a need for a profound understanding of what's going on. So, when Lotta Björklund Larsen was talking about the "acknowledging" perspective, that is really extremely important. If we really want to do good governance, we really need to understand how things work concretely in practice and the persons who are being affected by it.

Of course, it's going to take time. Of course, it's less convenient than going for setting some goals and trying to automatically process those goals. This thorough knowledge is particularly important.

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So there could be issues of effectively achieving the goals, but we think that it's important to stress that if we really want to come up with some quality analysis of good tax governance and we want to come up with something which is not just effective or efficient but it's also qualitatively suitable, then this holistic view of those issues is particularly important. And Nina and I, this year, have wanted to bring together good governance and legal remedies, so this is the overall line of reasoning of this 3rd International Conference on Taxpayers' Rights. Taking into account the rights of taxpayers is, therefore, not to be seen as a possible interference with how tax authorities achieve their goals, but it's enhancing the quality of the way in which tax authorities carry out their job. So, this multidisciplinary approach was really setting the ground for a proper understanding of those issues and perhaps also a proper understanding of why, at a certain moment, taxpayers decide to go one way or not the other. For instance, me as a European, I was puzzled when I heard from Bob Goulder about the Facebook case and the fact that the taxpayer, when it was denied access, then it brought lawsuits in the different court just to try and get access to the IRS Office of Appeals rather than just going to the tax court and seeking justice. But this is important, in my view, in also understanding the differences that are from around the world. I do not know, Nina, if you had some comments on this first panel.

NINA OLSON: So, this panel was actually very important to me just because, to me, you cannot do tax administration without bringing all disciplines that you can toward that issue, and I think Lotta said it really well when she said tax compliance is a relational phenomenon. I thought that that concept was so important. If you don't think about the relationship between the taxpayer and the tax administration then you might as well pack up your baggage and just go home because, you know, that's how taxpayers look at it. And I think sometimes the tax administrations, particularly as we enter an age with reduced budgets and greater automation, it's really easy to walk away from that concept that you are relating to human beings, whether they're organized as entities doing business as an entity or they're individuals relating to their government. We have one court decision in the United States, my favorite about trade or business expenses that notes life in all its fullness is what people bring to taxes and, if we ignore that and we deal with taxpayers not thinking about what they bring to us and how we're trying to influence their behavior, we're not going to have a successful tax administration. We may be able to show that we've closed this many audits or we've collected these many dollars, but it may not be a successful tax administration. And ultimately, in the long run, you will not have a tax base that voluntarily complies. And I think the other thing that really came out to me in the whole discussion was just the use of research., I have a very small research function, but I've been able to reach out to researchers from around the world, really, to benefit from their knowledge and I've tried to bring that home to the IRS. I am constantly amazed in the IRS where people say, "oh yes, we're doing that". And it's like, "no you're not". But I think that this kind of research and sharing this kind of information among all those from different disciplines really helps us go forward.

PASQUALE PISTONE: Yes, Nina. Let me go now to the second panel. And here I would like to bring together some of the points that were mentioned by Ali Noroozi and by Alessandro Baracco. I was very positively impressed when I heard Ali saying, or at least this is what is in my notes, speaking about the tailored compensation [for example, "apology" payments] in case of systemic failures, an immediate termination of audits when no issues arose. Now, if we bring together this in the context that Alessandro Baracco was mentioning of the context of business in times of crisis, this is particularly important, because if there are some system failures and we have a business which is in crisis, the fact that there is an immediate termination of some audits which do not raise an issue automatically sets free some amounts that could otherwise

be frozen for the purpose of giving guarantees. So, an immediate action with respect to issues which can really make the difference; it's really like saving somebody who has a heart attack and avoiding that this person just dies. So, this culture of showing a proactive attitude when tax authorities realize that there is no issue, and also the fact of the stated compensation, in my view, is a particularly good way to avoid that eventuality where the business ends up in a situation in which it cannot survive. So, this is something, in my view, which constitutes a particularly good practice and shows the non-adversarial nature of the relationship between tax authorities and taxpayers, which is something which really characterizes bringing together good governance and legal remedies in line with the rule of law. So, this is one of the many things that I take home from the second panel.

NINA OLSON: Ali brought up the notification of taxpayers where there is an international information exchange, and I am increasingly worried about that and we'll get into that more with the protection of data issue that really took over an entire panel, the "Privacy" panel, but to me, that is just such a critical issue in tax administration. If taxpayers' data is being sent out to countries that have lower protections than the taxpayers' host country, I would take the position that it is not the country's, the host country's, right to waive that protection; that the taxpayer needs to be given notification of that, because that is their identity, and there is nothing more core to an individual's being than their identity, except maybe their central nervous system. That really just resonated with me and I think Karen [Boll] really brought out the changing nature of tax administration. As we have this data exchange, more and more tax administrations are building up their IT function and they're also looking at using Artificial Intelligence, etcetera. Assumptions and rules start getting built into tax procedures that are invisible and often the tax experts are not at the table as those rules are being built, because it is programming and they're not doing the zeros and ones.

They're not doing the logic rules necessarily. And, pretty soon, you have a whole system where you don't know what those rules are doing but you're getting results from those rules. And that goes to, can you then give an explanation to the taxpayer why their return was selected to be held so that you won't get a refund because we suspect you of something, but no one can articulate to you why that refund is being held because it's in a black box. And I think that is profound and we have not dealt with that in any way in tax administration. I've really been trying to think about taxpayer rights in the digital age and I, myself, haven't gotten my head around that, but I think that's a huge issue.

CARA GRIFFITH: I think it is, too. It worries me. I love the concept of what that panel was all about, that the idea that we are so heavily data-driven right now and how do you tie data then into what should be a human process of looking for early warning signs, things like that. It is going to be very difficult and challenging to translate that into Artificial Intelligence and things like that with data.

NINA OLSON: I also think that what Alessandro raised, really trying to talk about taxpayers and use what we've learned from bankruptcy. I guess this is a theme of my comments, we're dealing with human beings here, groups of human beings. One thing that he said was learn from the past but give the taxpayer a chance for the future. Well, that's core for bankruptcy, and it's very hard to bring those concepts into tax administration which is looking at we have to get every last dollar from these people. There is a part of me that's thinking, really? If a taxpayer has been the victim of a disaster, he's been a victim of embezzlement, has had life happen, life in all its fullness, we need procedures that recognize that stuff happens. I could say

it in another way, but we're being taped so I won't, but the point is we need a system to be able to recognize that. In the United States, there is a process called, a procedure called Offer in Compromise, which has been in our law since the 1860s, which enables the Treasury Secretary to compromise a debt to the federal government and, in particular, a tax debt. Now, I know some constitutions say you cannot do that, but this procedure actually is an explicit statutory grant to the Secretary of the Treasury. You can compromise that debt based on a taxpayer's ability to pay. And the way that procedure is worked out is that you look at the taxpayer's ability to pay over a period of time, knowing that they have to be able to pay for their basic living expenses depending on their family size, and their specific circumstances, if they have medical needs or things like that. And when you look at that, then you come up with a number of what you think is the reasonable collection potential, and then the taxpayer can pay that finite number, which may be significantly less than the actual true legal debt, but if you pay that number then that debt is considered off the books and final. Now, there's a catch to that, because it is an agreement between the taxpayer and the IRS, and the catch is that you have to be in compliance with the tax laws over the next five years. If you aren't, then the debt is reinstated at the full amount minus whatever you've paid so far. And the point of that, and I keep trying to explain to the IRS why they should be making these deals because you have a whole analysis of the taxpayer's financial ability and everything like that, is that you are creating a new norm for that taxpayer. By definition, you have a noncompliant taxpayer on the payment side because they have a debt, but over five years, if they have been compliant with all tax laws over five years, then it is very likely that they will be compliant with tax laws on year 6, on year 7, and year 8. And we just did research to show that that is very much true. You have turned a noncompliant taxpayer into a voluntarily compliant taxpayer going forward. And I think there is a lot in that procedure to think about.

How you treat taxpayers, how you stop being judgmental about them, and how you deal with that in a fair and just way that takes into consideration the facts and circumstances of that taxpayer, but also ensures that other people don't feel appalled if you give that particular taxpayer a break, because it's done in a rational way according to procedures and standards.

PASQUALE PISTONE: And this is something which pops up also in other sessions, such as we'll see in a few minutes in a session connected with penalties. But I would like to go to what I called Panel 4. So, the first after lunch I will not be making comments on these sessions, on the presentations and updates, so the "Taxpayers' Rights in the Administrative Phase". And here, I think it was very important to see that we don't just have taxpayers. We have different categories of different taxpayers with different experiences and different problems which have to be taken into account in an assertive structured manner. And this was quite clear when we heard Liselott Kana making her presentation and also the debate that she had with George Pitsilis. But I think it's also important to understand that in the so-called administrative phase, we have some challenges connected with the fact that the potential implication of a notice of payment or an act notified by tax authorities, this act has potentially immediate consequences on the legal sphere of a taxpayer. So it's also important to try and bring together a dialog which precedes the moment of issuing of this act rather than acting at the later moment. So the *audi alteram partem* principle is really important to prevent disputes from arising or mediating them, as in the example of Mexico which has been presented by Edson Uribe just a few minutes ago, and also understanding whether the administrative appeals process or the review process can limit the potential negative implications for the legal sphere of the taxpayer. So, if somebody asks me but do you think that this administrative review is something useful? After this conference, I would still say yes, but it depends on how it works because if, in this process,

there is simply a moment in which tax authorities just reject without giving explanation, then I think that the whole function of this administrative review is deprived of its strong potential. So it's important to give tax authorities the possibility to review what they have issued, but it's also important to use this part in a way that it's in line with the principles and the rule of law without just giving discretionary powers which are not subject to a potential remedy. So, saying no motivation when there is no approval, this is something - or no remedy against notice of deficiency - I mean, all these situations are perhaps critical issues that I take home.

NINA OLSON: I really looked at this panel as, again, an extension of building trust. I mean, Lynne Oats, with her diagram that she ran out of room for with all the different relationships - - again, that relational word, between authorities, between intermediaries, between the agency, you know, etcetera, built into that as well, at any point along the way, trust could be eroded and the system sort of starts falling apart. Liselott was the envy of the world, you know, talking about 85 percent of the taxpayers, you know, having prepopulated returns. And I have to tell you - or not needing a return - that really gave me a pause for the United States because, first of all, I think we did an assessment and out of 150 million individual taxpayers, we believe only 30 million were just salary and interest in dividends. That's partly a function of our Internal Revenue Code where we have brought so many social programs into our code, including the largest anti-poverty program that the federal government runs, namely the Earned Income Tax Credit for families with working children, and so we have 27 million, by definition, low income taxpayers, having to file their return affirmatively to get that credit, which is based on family and where the child resides for more than half the year. In the United States, this is not information that the tax agency would have and if anybody proposed that the IRS regularly keeps track of this information, they would be run out of town on the rails, because the United States people do not want the government to have that information unless we give it to them. And so, —hence you have to file a return with the information, there is also another cultural thing in the United States, every time the United States tries to do something like automate our return-filing process with auto filings or pre-populating of data, because so many of our returns are done by commercial software, the commercial software industry goes up to Congress and seeks legislation preventing the IRS from creating an electronically filed or electronically populated, pre-populated return. And, in fact, the House of Representatives, last month just passed, on a bi-partisan basis, that specific provision. And that's not the first time they've done it. So you see this dynamic in the United States that will really prevent pre-populated returns. The rationale for this, other than the money angle, this is where they make the profit. I have had people say to me, well you can't trust the IRS to prepare your return. If you have an IRS site where a taxpayer goes in and types in their information and then they make a correction, the IRS will know what you corrected and then they will audit you. And I said, well, first of all, they only have a one percent audit rate and we can barely do that, so that's not going to happen. But second, have you ever seen the paper returns that we've got that are filled in with pencil and then people cross them out?

You know, I mean, hello. We see a lot. No, we're not auditing you. But it's that level of distrust that you get in that conversation.

CARA GRIFFITH: It was funny, in this panel, there was so much about trust and the word is not one that we often hear at a lot of tax conferences, but it was repeated over and over and over and really is fundamental to what we're trying to accomplish here.

NINA OLSON: And I think Andy's [Roberson] comment, which led to the discussion this afternoon about the appeals function, trust is core and if you're trying to go to an independent appeals and yet you have the compliance personnel, the auditors, right there while you're trying to have negotiations or you have the IRS lawyers right there while you're trying to have negotiations, and the point of appeals is to make an independent assessment, you know, what I've tried to say to the appeals function in the IRS is if you feel like you need the legal guidance of the office of chief counsel of the IRS then talk to the taxpayer why you think that would be helpful.

You will get to the same place, you will get to the result that you need, but you will get there by building trust with that taxpayer. And if the taxpayer says no way then, I'm sorry, it means trust is out the door and if you force it on them you will just end up in court. You will not get a successful resolution. So, you know, what do you lose by just going the trust route?

PASQUALE PISTONE: And now let me move onto what I call Panel 5, which is "Taxpayer Protection in Cross-Border Taxation". This is an area in which time would never be enough, perhaps. This was the impression that I got because of so many issues that were raised and the fact that there is a whole world to explore. But one of the points that I noted, I mean, they, in fact, addressed topics connected with automatic exchange of information and protection of rights and the specific requests for information, but one of the points that I found particularly interesting is that there are no real rights of defense without the right of access. So, the so-called obvious data. Without an effective right of access, there can be no proper right of defense. And in cross-border situations, this is sometimes particularly problematic, and I think that this is something that should lead us to think about the potential developments also for the future.

Certainly, we also discussed the problems of data protection, and there are big issues connected with the automatic exchange of information and leakage which can take place at any time. We devoted quite some time to discussing the Berlioz case and I assumed that also in the next session, we'll hear some more points on the Berlioz judgment, which is of extreme importance and perceived, I believe, not just by the European Union, as a topic which shows that the effectiveness of the behavior of tax authorities cannot be a good enough reason to make some deals on the protection of fundamental rights of taxpayers, so it's a leading case with a global reach. Several questions were raised and one was how about the authority of Berlioz in a situation involving third countries? My first answer would have been there is no such situation because the court was analyzing the relevance for the EU Charter in a case concerning mutual assistance based on the directive, so implementation of the European Union. However, we should also wonder whether this formal answer would, to some extent, be satisfactory not just as to whether the court would have jurisdiction but, in more general terms, whether there could be some different rights according to whether we are implementing a directive, we are monitoring the protection of fundamental rights and implementing a directive, or not. And this was also something which came up this morning, in a situation involving one single audit which, for some respects, is on VAT, and for some other aspects on the same fact, is on direct taxes and then, you know, the same facts could be a problem for VAT in Europe and then not a problem for direct taxes. So, again, food for thought. And I think that another point that I would like to take home is that because there is no effective protection of rights without a right of access, the person affected can never have a genuine right of review if the requests for information are not disclosed to that person. So, if we have this situation and the taxpayer cannot check what tax authorities, directly or indirectly through a judge, what tax authorities have

been exchanging, then there is no real and effective protection. So, this is what I take home, Nina, from the last panel of yesterday.

NINA OLSON: I think that this issue will come up for the next five conferences, if not more; this is going to be something that we're living with forever and ever and ever now. I just thought, as I was listening to the panel, I was flashing back. Because I am a member of the senior leadership of the IRS and have sat in on all of these meetings of the senior leadership of the IRS for the last 17 years, more than I care to remember. I was on a particular executive steering committee where we talked about cybersecurity and identity assurance and things like that. And there was a discussion of one intergovernmental agreement on exchange of data where one of the senior executives said, well, you know, that country did not meet our standards of cybersecurity and yet, you know, we thought it was important and we did a risk assessment, and we looked at the risks and we looked at what we could do to mediate the risks, and we decided that we could accept the risks of entering into that agreement. And I'm staring at them; that thudding sound was my jaw hitting the table, because those aren't your risks to accept. Those are the risks of the taxpayer. You are accepting risks on behalf of the taxpayer that you don't have to right to accept. Again, that is a taxpayer's identity. And that led me to cribbing something that Ali Noroozi has recommended in one of his reviews, in terms of exchange of information, which I wrote about in the special issue that Tax Analysts published for last the conference. When the IRS enters into these intergovernmental agreements and they have a risk assessment like this, they need to put that out for public notice and comment so that taxpayers of the world know that the United States government or the Internal Revenue Service is thinking about entering into an agreement that has lower security standards than the United States government itself. And so there you have a systemic commenting period and that falls under the Administrative Procedure Act and there are all sorts of things that have to go into that. But then you take it one step further if you do, then, proceed with that, at least with respect to those lower security agreements, if not all agreements, then you have to give the specific taxpayers notice when you're sharing information with that country. And it has to be advance notice, so that they can intervene and say no, you can't do that. Now, I don't know what those legal rights are or what those legal remedies are, and that's something that I'll be thinking about this year, but it really crystallized like, oh, my gosh, this is happening as we speak. So I'll just throw that out there.

CARA GRIFFITH: Several years ago, I did a project looking at the amount of information that is shared between the IRS and U.S. states, and so I did a FOIA request for all of the agreements that the IRS had with any state, whether it was the Department of Revenue, Department of Labor, Department of Motor Vehicles, Department of Transportation, and there were several thousand of these agreements, and I really wonder, after listening yesterday, if taxpayers really truly have any idea how much data about them is shared and with whom it is shared, and likewise sort of wonder if, you know, I don't think there has been any risk assessment whether the Virginia Department of Motor Vehicles has the same level of risk that the IRS does and the answer is probably no. There is a lot that we have to do in this area and that's just within one country, so when you're talking about multiple countries, there is just a lot that we have to do to figure out how is this all going to work as data is increasingly shared among jurisdictions.

PASQUALE PISTONE: Let's move to today, and once more, thanks very much to you for paying attention to the new initiative on the Observatory on Taxpayer Rights. I hope that we can count on many, on the contribution of many of you to make this as good as possible. The

panel on the “Burden of Proof in Tax Treaties”, which from my numbering is Panel 7, gave me also food for thought. I would like to focus in particular on two issues, considering that it's 4:06 and we only have nine more minutes to go. And one of them is to see what we can do if we take into account this global approach, this best practices approach. I would like to refer to the difficulties mentioned by Judge Paige Marvel in respect to the requirements of section - I hope I'm quoting the right number - 7491A2B, and you see this shows what problems we have when rights are in theory but not in practice. And this is an important takeaway also if we bring together case law from Europe and case law from the U.S. So the concern expressed by Paige Marvel, if I correctly interpret it in her presentation, is also something that we have in Europe but then, in Europe, also we say that if we have a right, we have the right to exercise this right at no extra cost and in a way that it is possible. So, any situation in which the exercise of a right becomes more difficult potentially undermines the effectiveness of a right and we have a whole set of case law from the Court of Justice on these issues.

NINA OLSON: I would just say that that statute in the United States is an example of the United States' legislative process and I'm looking around the room to see if Chris Rizek is still here, because he was the attorney advisor representing the Treasury Department during those negotiations, and it started that the idea of shifting the burden of proof on factual issues in cases started with everybody getting outraged about the IRS requiring intrusive documentation at hearings. That's what taxpayers were saying. And then, once you got behind closed doors and started the negotiation and the actual language, then you got to all the little limitations. And the IRS would come up and say, well we can't do this because of whatever, or what about this, or what about this, and so you're basically saying there is this broad grand statement that then gets watered down and watered down and watered down so that it becomes almost impossible to find a case where the BIP's actually shifted, because it's met every single one of those requirements.

PASQUALE PISTONE: So, let's move to Panel 8, on “Penalties Theory and Administration: A Multidisciplinary Analysis”. Here, I actually very much enjoyed the combination of the presentations because, on the one hand, Jacco Wielhouwer was presenting the analysis of issues connected with the possible consequences of somebody violating the laws, and the degree of likelihood of risk that this person may violate again. João Nogueira was presenting a view which was, to some extent, more protective of taxpayers who have been violating rules, and so the fact that if they are meant to be potentially violating again or having those out of the catalog penalties, this is something which can compromise the effectiveness of their rights. But I think some takeaways from that session are also that we have to try to reconcile the deterrents, the effect of deterrents with the principle of proportionality. So, when João said there are countries in which there is only imprisonment as penalty, do we really need to have imprisonment as penalty or can we rather apply monetary penalties in this respect?

So, these are things which we should think about also for the future. And I think that there are many other important points connected with the principle of proportionality arise from the presentation of Eric Lopresti.

NINA OLSON: I really appreciated this panel and I thought Jacco's comments about differentiating, an enforcement and regulatory communication strategy, in that you have to tailor the penalty to the act. And Eric had shown the table from our work on the various offshore voluntary disclosure programs that the IRS has instituted. We've had several comments from the floor about that. I wrote, at one point, that I viewed the application of several of the penalties

that were going on, whether it was the strict liability penalties or even the offshore penalties because they were so disproportionate, as quite possibly a violation of the 8th Amendment of our Constitution, which is a protection against unreasonable fines and seizures, essentially penalties, that it was just getting to the level of outrageousness and shocking the conscience. There was no connection between the actual underlying act and the amount of the penalty.

And, again, that goes back to trust. I can't tell you how many letters I have from taxpayers just saying, I have an account overseas to help my mother stay alive, and it's got over x amount of money, but I've never tried to hide it. I just didn't know I needed to report it and now I'm being treated by my government as a criminal. And when you see those letters you think, well, that's not good for voluntary compliance. And there were so many other ways to address that. But, again, it was lumping everybody into one scenario rather than differentiating and rather than tailoring your approach to the specific circumstances. And I know people say, well, we don't have the resources to do it, and I find that an unbelievably unpersuasive response. We are all resource-challenged, but if you can't look at the taxpayer's specific facts and circumstances, then I don't know what you're in the business of tax administration for. And that's just sort of where I am. There are ways. We're in the 21st century. We can use data. We can use Artificial Intelligence. We can use all sorts of ways to understand circumstances of taxpayers, and then go from there as a baseline, and that we're not doing this is actually a real breach of our social contract with taxpayers.

PASQUALE PISTONE: Taxpayers are persons, not just numbers, so sometimes this is something which is really worrying and, again, this is why it's important not just to talk about effectiveness, but also the existence of a possibility of having a remedy if something goes wrong. I must tell you, Nina, one impression that I got with these skyrocketing penalties that João has been presenting with this research is that there are possibilities for settlements which include a reduction in the applicable penalties. So sometimes, I'm a free thinker, and sometimes I get the impression that these skyrocketing penalties, which can be reduced if you go for settlement, are, to some extent, a way to force you to settle so that there will be a more effective handling of those controversies. But, indeed, you know, a deterrent element must be there. If you do something wrong, you have to pay a consequence for the wrong things that you did. But, at the same time, it's also important that those consequences are, to some extent, related to how harmful your action is for the community and to the risks that you create.

CARA GRIFFITH: And I do worry that a lot of taxpayers don't know they have the option to move into settlement or they think, well, it's much easier, I'll just pay then, you know, what are my options? So I think that there is a lot of education that needs to go on, particularly with low income taxpayers, so they understand what their rights are and what options are available to them.

NINA OLSON: Well, I think that's also true from meeting with small and medium businesses, and also middle-income taxpayers, and that goes to the next panel about the right to an appeal, that those procedures need to be accessible and, if not, then you are going to have taxpayers thinking, "for me to be able to get this independent appeal, I'm going to have to wait a long period of time. It's going to cost me money. It's easier for me to pay this debt. I don't think I owe it, but I'm going to pay it just because I cannot go through this. I cannot have this uncertainty." That's why I was so interested in some of the deadlines for a government response. You know, what South Africa is saying is, okay, if the agency hasn't responded, then it's deemed to have accepted that objection. I found that very fascinating. Now, I don't know

whether that would drive somebody to just give you an automatic response just to stay the 90 days and then you're stuck going to the next level of litigation. I thought that panel was really interesting. I have to tell you, I have envy for Prodecon because of their ability to go to court. I've asked for years for the authority under law to be able to file amicus briefs in our courts on taxpayer rights issues, and there is a legal precedent for an ombudsman to do that in the federal government, and one of these days I may just go ahead and test it, and file an amicus brief, and see what the courts say and see what the Department of Justice says. The media person here is saying I should do this. (laughter).

CARA GRIFFITH: Well, I say that the person that founded Tax Analysts, that was his initial idea, was to bring suits on behalf of the public on tax issues where the public was affected in some way, and we didn't have standing and so we gave that up and became a media company. But there is really something to be said for that, of bringing issues out that have the public interest at heart, but that, you're not going to get a taxpayer to take on.

NINA OLSON: And that actually goes to what we've all talked about, okay you have a charter, you have a taxpayer bill of rights; what's the legal remedy for violations of these things? And one of the things is to get to the courts. Now, I don't know what the courts are going to do when they're confronted with the Taxpayer Bill of Rights of the United States. I don't know what they're going to do in Facebook. But to me, I'm not afraid of that, because if we have a discussion, whether it's in an amicus brief that I file, or it's in a Facebook case, or somebody else files it, and the courts say this has no legal effect. Well, you know what? Then I take that opinion and go to Congress, and I say, you know, you care about this, then you have to write something different from what you've written. And that's helpful. That's not a bad thing. Now, the courts may surprise us and just say, you know there's a statutory remedy here and it is one of the ways that this right that has been given in this other part of the law is actually protected. And that makes the linkage. That shows you the remedy. What is your legal remedy for this high-sounding language? And I think all of that is salutary. There is nothing wrong with that process; in fact, there's everything right with that.

PASQUALE PISTONE: And I think that, from this panel, I also take home the impressive levels of good governance that we have through the action of the ombudsman in Mexico, the Prodecon. Sometimes it's also astonishing that you have some instruments there, but they don't work as effectively as they do in other countries and this is something which shows the importance of building up a system based on good practices. So good practices for which you may have also a legal basis in your system and they say, no, they're not effective in our system. So, looking at what happens in the other countries, you can also make your own system a better one. And this is, for me, a model of tax administration that makes real the promise of taxpayers' rights. We don't have to think that taxpayers' rights are something just for courts. You don't have to go to court for everything, or at least, if you are before a court, there should be ways - and here I want to say that I really find the settlement conference in Canada as a potentially strong element - also if you reach court to try and stop the litigation as soon as possible, because this adversarial vision should, to some extent, be reconciled with the common interest of bringing the good governance and the legal remedies' perspective to a constructive dialog. And I think, you know, that this is what, at the end of this wrap-up - if we can call it this - session, we should consider as something that we have learned.

For sure, I have learned a lot and therefore I'm very grateful to Nina that she considered having IBFD hosting this 3rd Taxpayers' Rights Conference.

NINA OLSON: So, I would just like to close by saying I'm sitting between our sponsor and our host, and I think that this conference would not have been the conference that it is or was - about to be was - without the support and the continuing support of these folks. And so, I'm just so deeply grateful to everybody here.

[Applause]