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**The legal mechanisms for the protection of taxpayers' rights in Armenia: the  
process of discussing and solving tax disputes between taxpayers and tax  
authorities as a mechanism for exercising taxpayers' rights**

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# **The legal mechanisms for the protection of taxpayers' rights in Armenia: the process of discussing and solving tax disputes between taxpayers and tax authorities as a mechanism for exercising taxpayers' rights**

## **Introduction**

Taxpayers are the essential segment of any society, especially those whose state budget is mostly comprised of taxes. Due to taxpayers it becomes possible to exercise internal and foreign policy, governments are being able to realize various programs for the state. Thus the protection of taxpayers' rights is one of the important problems of any government. This is why most of advanced tax authorities, while formulating their strategic programs, take into consideration the factor of taxpayers, their visions are based on the interests of taxpayers. The result is satisfied taxpayers, on one hand, whose rights are protected, who accept tax authorities first of all as partners for their business and on the other hand, high level of self assessment, compliance.

The problem of the protection of taxpayers' rights is actual for the government of the Republic of Armenia. State Revenue Committee of the government of RA (hereinafter SRC) is forming its tax and customs policy aimed at giving high quality services to taxpayers and making easier the life of taxpayers. Anyway, there are still many problems with the protection of taxpayers' rights. As there is the notion for tax authorities to do tax plans, i.e. to collect taxes in certain amounts and time, to fill the budget, to tax everything which is possible (lawful), this arises dissatisfaction among taxpayers, whose rights are often violated. There is fear among taxpayers who await from tax authorities to fine them at any time.

The purpose of this paper is to find out the legal mechanisms existing both in Armenia and in advanced tax systems protecting taxpayers' rights, the comparison of these mechanisms, what changes can be made to improve the issue within the tax system of Armenia.

Generally the protection of taxpayers' rights is exercised in two aspects. The first one is the protection by tax authorities (by the state), how tax authorities protect taxpayers' rights, by what legal mechanisms they enhance taxpayers to exercise their rights, in other words what obligation they create for themselves for the interests, the protection of taxpayers' rights. And the other aspect, which is based on the first one, is how taxpayers are able to protect their rights. The first aspect is the rights of taxpayers codified by jurisdiction (the rights to be informed, assisted, heard, etc, these are obligations of the tax authorities) and the second aspect is the taxpayers' right to appeal, how it is likely for the taxpayers that their tax complaints will be solved for the sake of their interests.

Thus, the first part of the paper explores the legal mechanisms protecting taxpayers' rights within the tax system of Armenia and OECD member states, the comparison of these systems, the second part concentrates particularly on the right of taxpayers to appeal, what legal mechanisms or instances exist within the tax system of Armenia, whether they are effective as compared to international best practice. Based on the discussed issues and revealed problems, in the conclusion part I will summarize the main problems connected generally with the protection of taxpayers' rights and the process of tax dispute resolution, and based on that, make suggestions both concerning making amendments in field legislation and implementing new institutions that will possibly make the tax resolution process more efficient and impartial and, as a result, give strong protection to taxpayers' rights.

## **The protection of taxpayers' rights within the tax system of Armenia**

The process of discussing taxpayers' appeals is one of the mechanisms by which tax authorities provide bases for the protection of taxpayers' rights. In any democratic society taxpayers have a number of basic rights as well as obligations in relation to their Government and its agencies. Revenue collecting authorities are not an exception, and most countries have legislation governing taxpayer's rights and obligations in relation to taxation.

In general, the rights and obligations of taxpayers are codified by the RA Law "On Taxes" and by the RA Law "On organizing and exercising inspections in the Republic of Armenia", which stipulate particularly taxpayers' rights during inspections (these are rights of technical characteristic). Article 14 of the RA Law "On Taxes" provides: The taxpayer has the right.

1. to get acquainted with the acts of inspection of his activity
2. to submit explanatory notes concerning the calculation and payment of taxes and the results of inspections to the Tax Inspectorate
3. to complain against the activities of the Tax Inspectorate officials, according to the procedure established by the law
4. to apply for obtaining a tax privilege in accordance with the established procedure – in cases provided by the law on certain types of tax.

Article 15 of the same law provides the obligations of taxpayers.

Generally the rights and obligations of taxpayers are not equal. The tax system of RA requires more than it actually gives. Those rights of taxpayers are natural rights provided by the Constitution (for example, human's right to privacy, to get legal assistance, etc), by tax legislation, as there is separate provision in the RA Law "On Taxes" which stipulates that there must be privileges for taxpayers (it is important to mention that even the provision of the RA Law "On Taxes", stipulating that there can be privileges for taxpayers determined by laws of separate taxes, it works only in limited cases, when, based on political needs, some privileges are determined for certain number of taxpayers – for example, encouraging foreign investments, while those

taxpayers who have serious difficulties with paying taxes, are denied of getting tax incentives to overcome business (financial) difficulties). These rights actually repeat other provisions of tax legislation and do not give strong protection of taxpayers' rights. On the other hand the provision on the taxpayers' obligations is certain and comprehensive. In this context the rights and obligations of taxpayers are not equal. This becomes more obvious while comparing the rights and obligations of taxpayers within RA tax system with those of the OECD member states. Generally there exist two models of good taxation, advanced tax administration, those are OECD-Organization of Economic Cooperation and Development, and United Nation' models. Here will be discussed particularly OECD models, as RA tax system has chosen the way of integrating to the OECD system. This is connected with the OECD's mission to give technical assistance to the Commonwealth of Independent States (CIS). Armenia, as one of the member-state of CIS, is included in several programs organized by OECD, especially the one for overcoming corruption. There is RA Government Resolution No. N1272-N "On the Program of the RA Anticorruption Strategy and Actions for 2009-2012", 08 Oct. 2009, which include the actions to be done in several systems (including tax and customs systems) to minimize corruption. These actions are OECD's recommendations as well. Thus Armenia, when making reforms particularly in tax system, takes into consideration OECD models of reforms.

The OECD's member states' tax systems provide the following basic rights of taxpayers:

- the right to be informed, assisted and heard
- the right to appeal
- the right to pay not more than the correct amount of tax
- the right to certainty
- the right to privacy
- the right to confidentiality and secrecy

These basic rights also imply basic obligations. There is a set of behavioral norms expected of taxpayers by Governments. These expected behavioral norms are so fundamental in the successful

operation of taxation systems that they are legal requirements in many, if not all, countries.<sup>1</sup> Without this balance of taxpayers' rights and obligations, taxation systems could not function effectively and efficiently. These taxpayers' obligations are:

- the obligation to be honest
- the obligation to be co-operative
- the obligation to provide accurate information and documents on time
- the obligation to keep records
- the obligation to pay taxes on time<sup>2</sup>

The rights and obligations of taxpayers are provided on each stage in the taxpayer's self-assessment process, starting from filing tax returns to the tax authorities up to paying due taxes. RA laws on separate taxes stipulate that taxpayers and in certain cases tax agents (հարկային գործակալ) on their own assess and pay due taxes (the RA Law "On Profit Tax" requires taxpayers to inform tax authorities about the methods of accounting taxpayers have chosen for tax calculation), the control over the tax assessment and payment process is organized by tax and/or customs authorities<sup>3</sup> who are to help (to protect taxpayers' rights) taxpayers in this process. Many OECD member states include the rights and responsibilities of taxpayers in their mission statements, making them the core of tax administration.

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<sup>1</sup> "Principles of Good Tax Administration – Practice Note", OECD's Center for Tax Policy and Administration, 2 May, 2001.

<sup>2</sup> "Taxpayers' rights and obligations - A survey of the legal situation in OECD countries", approved by OECD Council.

<sup>3</sup> RA Law No. HO-107, "On Taxes", adopted 04 Apr. 1997, Article 6, 17.

*a. Comparison of the rights and obligations of both taxpayers and tax authorities provided by RA and OECD tax systems.*

**1. Taxpayers' rights**

*a) The right to be informed, assisted and heard (OECD model)*- Taxpayers are entitled to have up-to-date information on the operation of the tax system and the way in which their tax is assessed. They are also entitled to be informed of their rights, including their right to appeal. All taxpayers can expect that the information provided to them should reflect the complexity of the tax situation, thereby enabling them to understand their tax affairs better. The authorities may use a variety of means to fulfill this obligation: information pamphlets, taxpayers' charters, the telephone oral statements, video guides, etc.

The RA Law "On taxes" provides taxpayers with the right to get acquainted with the inspection acts related to their activities, if considering this as taxpayer's right to be informed, this is not complete and does not give necessary protection to the taxpayer, because in most of cases of tax inspection, the tax inspectors are prohibited to give the orders for inspection to taxpayers, for example Article 3, part 3 of the RA Law "On Organizing and exercising inspections in Republic of Armenia" stipulates that the copy of the order for inspection is to be handed to the taxpayer 3 days before starting the inspection, except the inspections for cash register machine use, gambling, etc. This means that taxpayers can not always exercise their right to get acquainted with the acts of the inspection of his/her activity.

There is a provision in the Article 10 of the RA Law "On Tax Service", the obligations of Tax Service, which provides the obligation of tax authorities to inform taxpayers on the existing tax laws, giving clarifications to the taxpayers on the provisions of tax legislation.

There is no provision on taxpayers' right to be assisted in RA tax legislation.

Thus there is no sufficient legal codification of taxpayers' right to be informed, assisted and heard in RA tax legislation.



Thus it is necessary to make changes in RA Law on Taxes stipulating that the tax authorities properly notify taxpayers about existing tax arrears. The policy behind this is to inform taxpayers on time to perform their rights and obligations because many taxpayers, especially small ones, who do not hire accountants, are not competent and often do not know what tax obligations they have (besides tax laws are changed quite frequently and it becomes impossible for taxpayers to know all the changes and pending liabilities). Thus, here comes the obligation of tax authorities to notify taxpayers of existing tax arrears. As a result taxpayer being informed about his responsibility to perform tax obligations and the responsibility means for not performing them, will be eager to pay taxes on time and avoid undesirable consequences- fines and penalties.

**b) *The right to appeal (OECD model)*** – the right to appeal against any decision of the tax authorities applies to all taxpayers and to almost all decisions made by the tax authorities, that anyhow concern taxpayers and yield tax obligations for them.

The RA Law “On Taxes” provides taxpayer with the right to appeal against the activities of tax authorities. Besides Article 10 of the RA Law “On Tax Service” provides for Tax Service’s obligations to discuss in defined time period the taxpayer’s appeal against tax authority or tax servants’ actions or inactions and inform the taxpayer on the made decisions.

Generally RA tax legislation codifies taxpayers’ right to appeal against the actions of tax authorities, but the existing mechanisms by which this right is “exercised”, are not effective. This will be discussed later in the part related to tax appeals discussion.

**c) *The right to pay not more than the correct amount of tax (OECD model)*** – taxpayers should pay not more than is required by the tax legislation, taking into account their personal circumstances and income, i.e. taxes must be proportional to the income of taxpayers. It is acceptable to reduce tax liability by legitimate tax planning, governments make a distinction between this form of tax planning which is legal (actually taxpayers, using the gaps in laws, get the possibility to reduce taxes legally) and forms of tax minimization (avoiding, not paying due taxes) which clearly goes against the legislation and is in essence tax evasion. Taxpayers are also entitled

to a reasonable measure of assistance from the tax authorities so that they receive all the benefits and deductions to which they are entitled, this is when tax authorities have the obligation to inform taxpayer that the latter has overpayments which he/she can reduce (հաշվանցել) from his/her other tax liabilities.

There is no provision in RA tax legislation on this right of taxpayers. There are lots of difficulties related to the problem of being refunded for the overpayments. The government is often reluctant to pay back overpayments and the fines (the Article 33 of RA Law “On Taxes” stipulates that in cases when after 90 days from the period determined by law tax authorities do not refund taxpayers’ overpayments, fines are calculated on not refunded sum for each day starting from 91<sup>st</sup> day). Thus legislative provisions defining fines for tax arrears (both of taxpayers’ due taxes, and tax refunds from tax authorities) are not proportional, because as accordingly Articles 23 and 33 of the RA Law “On Taxes” provide, that taxpayers are fined for each day of late payment, while tax authorities have 90 days discretion not to refund tax overpayments.

**d) *The right to certainty (OECD model)*** – taxpayers have a right to the highest degree of certainty as to the tax consequences of their actions. Taxpayers should be able to anticipate the consequences of their ordinary personal and business affairs.

There is no provision of this right in RA tax legislation. Tax laws must be certain so that taxpayers could know what tax liabilities they will have when starting their business. Whilst there are changes in tax legislation yielding new obligations for taxpayers so frequently that taxpayers can hardly comply with and get acquainted with all of them. Besides some laws on separate taxes (RA Law “On Profit Tax”) demand taxpayers to make initial payments of taxes even before getting the income. Taxpayers are required to make these initial payments before getting the income, to forecast their income and in case when at the final calculation of the taxes, the actually made payments are less, taxpayers are being fined for the difference.

**e) *The right to privacy (OECD model)*** – all taxpayers have the right to expect that the tax authorities will not intrude unnecessarily upon their privacy. In practice, this is interpreted as

avoiding unreasonable searches of their premises and requests for information which is not relevant for determining the correct amount of tax due. In all countries very strict rules apply to the entry into a person's dwelling or business premises by a tax official in the course of a tax investigation and on obtaining information from third parties. In some countries visits to a taxpayer require the consent of the taxpayer; in the majority of countries a signed warrant is generally required to enter the premise of a taxpayer who objects to the visit by the tax authority. Similarly, strict rules apply to obtaining information from third parties on the affairs of a taxpayer. There is no provision in RA laws which prohibit tax authorities' entrance to taxpayers' premises. Instead with the order of the head of Tax Authority tax inspectors can enter and make inspections in taxpayers' premises, to check all the documents and other assets of taxpayer.

*f) The right to confidentiality and secrecy (OECD model)* – another basic taxpayers' right is that the information available to the tax authorities on taxpayer's affairs is confidential and will only be used for the purposes specified in tax legislation. Tax legislation usually imposes very heavy penalties on tax officials who misuse confidential information, and the confidentiality rules that apply to tax authorities are far stricter than those applying to other state bodies.

Article 10 of the RA Law "On Tax Service" defines that tax authorities must keep tax secrets and disclose those to other state bodies in the cases provided by law. Actually, there is protection of tax secrets by law, which cannot be used unnecessarily and disclose to other state bodies by law. Thus there is protection of taxpayers' confidentiality and even tax authorities hardly disclose information about taxpayers to third parties. This is done only in cases determined by law, for example disclosing taxpayer's information when there is court order.

## **2. Taxpayers' obligations**

*a) Obligation to be honest (OECD model)* – taxpayer honesty, i.e. fulfilling their tax obligations, is fundamental to the operation of any tax system and all systems have investigatory powers with penalties and sanctions for dishonest taxpayers, who do not comply with laws. Accordingly taxpayers should always exercise reasonable care and diligence in attempting to honestly comply

with their tax obligations. Anyway, the exercise of penalties and sanctions by tax authorities should take into account any evidence as to the reasons for non-compliance. The reasons can be complex tax requirements, ignorance by taxpayers of their tax obligations or there can be objective conditions preventing taxpayers in fulfilling their tax obligations. OECD tax systems take into consideration the factors influencing taxpayers' compliance and thus make differentiated approach in cases of tax evasion (ignorance of laws) and tax avoidance (legal tax planning).

Article 15 of the RA Law "On Taxes" provides that taxpayers must keep financial records, accountings on their activities, file returns, declarations to tax authorities on time and pay due taxes on time. Armenian tax legislation does not consider diversified approach to tax evasion and avoidance and there are same penalties for both of these cases. While there should be differentiation between tax evasion and tax avoidance, as the first one is illegal, when taxpayers knowingly break the law and do not perform their obligations determined by law, thus there should be strict punishment for this, and the second one is when taxpayers plan their business activity so that to pay less taxes not violating law (for example when they split their business for the purpose not to pay VAT). The differentiated approach is necessary for aiding those taxpayers who do not perform their tax obligations because of having real business difficulties, while in RA both those taxpayers who knowingly evade from taxes and the ones with real business difficulties are punished equally.

***b) The obligation to provide accurate information and documents on time (OECD model)*** – all tax systems use information provided by taxpayers to identify the taxpayer and their addresses and to account taxes paid or payable. Filing particular documents on time enable taxes to be properly recorded and debits or credits to be issued. Thus taxpayers should provide accurate information to tax authorities in accordance with the laws of relevant taxing jurisdictions. Taxpayers having difficulty in complying with this obligation should be encouraged to discuss their circumstances with their revenue authority, as it may be possible to allow additional time in some cases.

The same obligation is provided in the RA Law “On taxes”, i.e. taxpayers must in determined time period provide tax authorities (electronically) tax records, calculations, other documents and information.

*c) The obligation to keep records (OECD model)* – to provide accurate information to the revenue authority taxpayers should keep timely records of their financial transactions. Such records also allow the revenue authority to verify whether the information provided by a taxpayer is accurate. The benefit of record keeping is that it assists taxpayers with their financial planning and decision making, increasing their likelihood of success. Some tax authorities assist small and medium business taxpayers by providing specific guidance and software to help them comply.

RA tax legislation also provides the obligation of taxpayers to keep records of their financial transaction, but there is tax incentive to small taxpayers who are not required to keep accounting and financial records.

*d) the obligation to pay taxes on time (OECD model)* – all tax systems require taxpayers to pay their taxes on time. Taxpayers who are having difficulties in complying with this obligation should be encouraged to discuss their circumstances with their revenue authority as it may be possible to allow time for payment in some cases or in installments.

The RA Law “On Taxes” stipulates taxpayers obligation to pay taxes and advance payments on time according. RA tax legislation does not consider the possibility of paying taxes on some other time for taxpayers having difficulties to pay taxes.

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Tax law provisions on taxpayer rights are intended to provide wide protection of taxpayer rights in complying with tax laws and in dealing with state tax authorities. Thus the legal mechanisms which are not only just codified in legislation but work in essence, not only enable taxpayers to effectively protect their rights from the arbitrariness of state authorities, but also aid the process of taxpayers’ self-assessment and compliance with their obligations, because in case when the rights

of taxpayers are efficiently protected by state, the latter are more willing to fulfill their obligations towards the state.

***b. The protection of taxpayers' rights within the tax system of the USA***

Inland Revenue Service of the USA (hereinafter IRS) is striving to ensure that all taxpayer contacts are conducted in a courteous, respectful manner. The most important consideration for the IRS in these contacts is the protection of taxpayers' rights. The IRS has taken a set of actions in written rules, in policies, in training, in guidance and in evaluations, to ensure taxpayers' rights are protected. All IRS employees who have contact with taxpayers are trained in IRS's commitment to the fair and impartial treatment towards taxpayers.

Revenue officers and agents are evaluated on a variety of job standards that include customer relations. These standards require agents to perform their duties in a "courteous, firm and professional manner". In addition, these standards require agents to ensure that they clearly explain to taxpayers their rights under tax laws. USA tax law guarantees taxpayers' right to privacy and confidentiality, to professional and courteous service, to representation, to help from the Problem Resolution Office and to administrative and judicial review. Taxpayers who have encountered difficulties resolving problems through normal IRS channels may receive assistance from the Problem Resolution Office. If the IRS has not resolved a problem within a reasonable amount of time, or after a couple of inquiries by the taxpayer, the problem qualifies for the Problem Resolution Office handling. There is also Taxpayer's Advocate (Taxpayer ombudsman) within the USA tax system, the working conditions and relationships of which are stipulated in the Taxpayer Bill of rights<sup>4</sup>. Taxpayer Bill of Rights provides the Taxpayer Advocate with broader authority to take action for taxpayers with potential significant hardship conditions created by tax administration.

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<sup>4</sup> Taxpayer Bill of Rights, Document 7394 (Rev. 08-96), Catalog Number 10590R.

USA tax jurisdiction also provides that taxpayers can make sound recordings of any meetings with examination, appeal or collection personnel. Taxpayers are responsible for paying only the correct amount of tax due under the law – not more, not less. If a taxpayer cannot pay all of his tax when it is due, he may be allowed to make installment payments (dividing the whole sum of due taxes into portions to be paid at extended periods). The IRS will waive penalties when allowed by law if the taxpayer shows he acted reasonably and in good faith or relied on the incorrect advice of an IRS employee. The interest will be waived if it is the result of certain errors or delays caused by an IRS employee. As already discussed there are no provisions in RA tax legislation on the taxpayers rights to make sound recordings, to have the penalties waived if the latter are the results of tax authority's actions. The training, the policies and the procedures that the IRS performs contribute to ensuring that taxpayers are treated with respect and dignity, and that their rights are protected, guaranteed by law.

## **The process of discussing and solving tax disputes between taxpayers and tax authorities**

Many of the different departments within tax authority (generally throughout the world) are responsible for making decisions concerning the application of tax laws to various taxpayer issues. In some cases, agreement on these decisions or determinations, cannot be reached. In other words, the taxpayer does not agree with the determination. This is where Appeal process comes in. Appeals must be independent of tax authority's any other offices and serves as an informal administrative forum for any taxpayer who disagrees with tax authority's decisions. Appeals provide a venue where disagreements concerning the application of tax laws can be resolved on a fair and impartial basis for both the taxpayer and the government. The mission of Appeals is to settle tax disagreements without having to go to the Courts.

Within RA tax system, when there is disagreement with the tax authority's decisions, taxpayers can bring the complaint to court, but generally there is a procedure (customary) that requires tax disputes to be

discussed initially at tax authorities and in case when there is still disagreement, the disputes are brought to court. The policy behind this is that tax authorities are more competent on certain tax issues, besides, it reduces administrative costs and time for taxpayers<sup>5</sup>.

Within the RA tax system the process of discussing taxpayers' appeals is regulated by the RA Law "On Taxes" and other legislative acts. Particularly Article 36 of the law stipulates: "The activities of Tax Inspectorate officials may be appealed within 30 days to the Tax Inspectorate body, to which they are directly subordinate. The appeals shall be considered and decisions on them shall be made by the Tax Inspectorate body not later than within 30 days after receiving the appeal. The decisions may be appealed to the higher body of the Tax Inspectorate (i.e the headquarter) or to the court within one month after the day when the appealing person receives a copy of the decision.

Taxpayer or his representative may participate in the consideration process of the appeal.

The appeals against activities of the Tax Inspectorate officials (tax inspectors) related to imposition of administrative penalties shall be executed in accordance with the legislation of the RA Law "On administrative violations".

The law imposes limitations on taxpayers' right to go straightforward to independent judicial instances, because as according to the letter of the law taxpayers are to bring their appeals initially to regional Tax Inspectorate, after being dissatisfied with the latter's decision, go to the headquarter. Both the regional bodies and the headquarter are the parts of the same state body - SRC, which handles the disputes based on their decisions, in other words they are to discuss their own decisions. This automatically brings to the problem that the decisions of Appeals Commission are potentially not independent and thus not completely objective. Taking into consideration that tax authorities always have the problem of collecting taxes in determined amount, they are more possible to make decisions on tax appeals not for the benefits of taxpayers, as there is actually the possibility to have the collected taxes reduced.

The appeals filed to SRC, headquarter, are considered within 15 days starting from the day the complaint is filed, by the Appeals Commission, a permanent body of the SRC and the procedures for its activity are regulated by the SRC Chairman's order. The Commission consists of 8 members and the chairman, all of

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<sup>5</sup> RA Law No. HO-107 "On Taxes", adopted 04 Apr. 1997, Article 36, RA Law HO-407-N "On Tax Service", adopted 03 July 2002, Article 43<sup>1</sup>.



them are SRC officials.<sup>6</sup> The number of tax appeals during 2010 discussed by the Appeals Commission of the SRC was 154, of which 28 were satisfied, 4 - partly satisfied, 119 - rejected, 3 - dismissed<sup>7</sup>.

The Commission handles various appeals concerning tax and adjacent legislation (for example RA Law “On Mandatory Social Contributions”).

In cases when the taxpayers’ appeals are rejected or partly satisfied, these appeals are then referred to the Appeals Council formulated within the Ministry of finance.<sup>8</sup> Within 1 day after the decision the Appeals Commission sends its decision, the complaint and all the materials concerning the complaint to the Appeals Council. The Council consists of 8 members and the chairman, they are representatives from the Ministry of Finance and the SRC (the members of the SRC’s Appeals Commission). The Appeals Council makes conclusion within 2 working days on the complaint which is then sent to the SRC’s Appeals Commission. In case when the latter has objections on the Appeals Council’s conclusion, the package on the complaint is discussed with the Prime Minister of Armenia. Then the SRC’s Appeals Commission makes final decision on the complaint and sends the copies to the taxpayer.

Though taxpayers have the discretion to go to the court, practically this is not done, there is a requirement to exhaust all the existing administrative remedies before going to court, that tax appeals be firstly discussed by the SRC and after be brought to the court. As the statistic shows in most of the cases after having the appeal discussed by the SRC, taxpayers rarely go to court. The number of cases brought to court was even reduced when the Appeals Council was formulated within the Ministry of Finance, as the rejected and partly satisfied appeals now are to be discussed

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<sup>6</sup> The SRC’s Chairman order N 07-N. “On the working procedures of Appeals Commission of SRC’s tax body”, 06 June 2008.

<sup>7</sup> Annual report of State Revenue Committee’s activity of 2010.

<sup>8</sup> The RA Government Resolution N1361-N “On Formulating Appeals Council and determining the procedures for considering the decisions of Tax and Customs Appeals Commissions”, 21 Oct. 2010.

there. And after all these discussions taxpayers opt to pay but not go to court as they have already spent time and resources. Even the case when the appeals are discussed by two executive bodies, does not contribute to due process and make the process of discussing and solving taxpayers' appeals objective and impartial. These are first of all executive bodies. The tax policy maker is the Ministry of Finance and that policy is exercised by the SRC. These are the governmental bodies to formulate the budget. The Ministry of finance plans the revenues, and the SRC is to collect the planned revenues. These bodies always have the problem of collecting exact amount of revenues, and tax appeals are directly connected with the budget's tax revenues. All these aspects influence the process of tax dispute resolution. In the result both executive bodies are less eager to make decisions in favor of taxpayers. The structure of both the Appeals Council and the Commission, which involves members only from the Ministry of Finance and SRC, is the proof for this statement. The statistics illustrates that most of the cases dissatisfied or partly satisfied by appeals Commission when brought to courts are changed or nullified. There are no members from other governmental and civil society institutions, which would create checks and balances in the process of discussing taxpayers' appeals. To insure the impartiality of the Appeals Commission's activity, it is necessary to involve professionals from legal social organizations, independent accounting organizations. This will make possible to have control over the dispute resolution process by civil society representatives, making it fair, reducing corruption risks and abuses.

The protection of taxpayers' right to appeal in RA is on low level because of (besides the aforementioned aspects) lack of publicity, particularly the decisions of Appeals Commission are not published. Though the sessions of Appeals Commission are open, there has been no case of media coverage of the process, of the decisions of the Appeals Commission, which would contribute to transparency of the dispute resolution process (this is because the Appeals Commission does not allow any third party to be present (not participate) during the sessions). Thus the restriction for illustrating the process should be eliminated so that media could illustrate it at least from time to time.

There is another serious problem connected with tax appeals. When filing a complaint to tax authorities, the taxpayer's obligation to pay taxes due, is not frozen, i.e. despite the fact that taxpayer is appealing the decisions of tax authorities stating certain amount of taxes to be paid, he must pay the amount of taxes he does not agree with, and if taxpayer does not pay these taxes (even when the dispute is on process) he will be fined for not or late payments. This violates taxpayer's right to appeal and to get fair decision on his problem. He is to pay taxes, to exercise the decisions of tax inspectorate, with which he does not agree. And here taxpayers having fear to get fines and penalties, have to abide by the disputed decisions of tax inspectors, even if the decision is still in the process of discussion. This fact is interpreted by tax authorities as taxpayer by this admits his obligation to pay the taxes, which he disputes – thinking that if taxpayer pays the disputed tax, by this he admits his “fault”. Thus it will be important to regulate the problem in the legislation, making necessary changes in the RA Law “On Taxes” stipulating, that when taxpayers appeal the activities, the decisions of tax bodies to Appeals Commission, the calculation of the taxes payable and exercise of fines and penalties will be suspended until the final decision of the Appeals Commission.

To illustrate the process of considering tax appeals, it will be important to bring one of the cases discussed by the SRC's Appeals Commission.

**The decision N 52/2, 27.12.2010 of the Appeals Commission of the SRC.**

On 27.12.2010 Appeals Commission discussed the complaint of „Mariam & Tigran” LLC (hereinafter the company), which was to nullify the act of inspection №1307872, 28.22.2010 by Spandaryan Tax Inspectorate of SRC.

The background of the above mentioned case is as follows: By order №1307872 as of 22.11.2010 issued by the SRC's chairman an inspection of the accuracy of using cash register machines in the aforementioned company has been launched on 28.11.2010. In the inspection act there was particularly written on 14:30 28.11.2010 in the store, belonging to the company, the rules for using cash register machines were violated. There was a purchase of 5000AMD in the store which was

not registered by the cash register machine and the receipt for the purchase was not given. The requirements of the RA Government's Resolution №1325-N as of 26.08.2004 were violated, which resulted in imposing fine of 150000 according to RA law on using cash register machines (Article 11 point 2 part 1).

The company has stated in the complaint that the inspection was organized with violation of requirements of the Article 3 of RA Law on organizing and exercising inspections in Republic of Armenia and to conceal these violations the tax inspectors had falsified official documents. On 28.11.2010 three men entered the store among them the workers of the store could recognize only N.K. as he was the tax inspector of the region of the store. Entering the store they started to write something without showing any documents, orders, N.K. required to take out of the cash register machine its "Z" account (this is data on the transactions registered via cash register machine), after they stated that the rules of using cash register machines were violated and without forming any document, they left. The head of the company met in the store with N.K. on 29.11.2010, the latter brought with him documents and required the head of the company to sign them.

One of the documents was the inspection act with no writing on it. On the question of the head of the company given to N.K. why he had not given the order the day before, the latter could not answer and again required to sign the act. The head of the company wrote his opinion on the act and signed putting the date of 29.11.2010. N.K. was very angry with the fact, he made threatening statements and left without giving the copies of the order and inspection act.

On 01.12.2010 the company received the documents by post. One of the documents was the letter from the chief of Spandaryan Tax Inspectorate Avetiyan, stating that the documents were being posted to the head of the company because he had refused to sign and get them. The statements were not true, as the head of the company has signed but did not get them. The other document was the order at the end of which was added: "on 28.11.2010 the order was given to the head of the company, who refused to sign and get the copy of it". The head of the company stated during

the discussion that the writing on the order was made after he had signed it and demanded to organize handwriting examination.

The third document was the order of SRC's temporary chairman A. Afrikyan, stating the names of the tax inspectors who were to work on 27 and 28 of November (generally every inspection is conducted by the initial order of the head of tax authority). Among the stated tax inspectors N.K. was missing which means that the latter's actions were illegal, as only inspectors mentioned on SRC's chairman's order can do inspections. The document where the head of the company had written his opinion was missing.

Taking into consideration the aforementioned the head of the company asks to nullify the results of the inspection and make inspectors responsible for forger.

The Appeals Commission decided the following: during the inspection the inspectors recorded violation of the requirements of RA Governments 26.08.2004 №1325-N decision on the exploitation rules of cash register machines (point 19, a) and b) subpoints) stating that the person responsible for using cash register machines must enter the sum to the cash register machine, print it and while getting the money from the buyer hand the check to him with the purchased good. On the bases of the aforementioned, the SRC's Appeals Commission decided to affirm the inspection act on fining the company 150.000 AMD.

Thus, the complaint of the company was rejected. The Appeals Commission made the decision in favor of tax authorities, violating the rights of the complainant, neglecting the range of the violations done by the tax inspectorates. Actually this is the general picture for most of the tax dispute resolution cases, because it is difficult for tax authorities to make decisions in favor of taxpayers by which collected revenues may be reduced.

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In the USA there is a Tax Appeals Commission within each state. This is an independent agency, consisting of three full-time commissioners who are nominated by the Government, with the advice and consent of the Senate, for six-year terms. Every two years one of the commissioners is

appointed to the office of Chairman by the Government. This ensures the commission's adhesion to the principle of providing taxpayers with fair, impartial and thorough consideration of every tax appeal.

## **Conclusion**

The purpose of this paper was to describe the level of the protection of taxpayers' rights by legislative mechanisms (tax authorities) and by taxpayers themselves. The comparison made between the Armenian and OECD models of the protection of taxpayers' rights was made to illustrate the similarities and differences between these two systems, whether the rights and obligations are equal (in other words whether demanding from taxpayers (creating obligations) tax authorities enable taxpayers with necessary tools (codifying rights) to fulfill these obligations), what drawbacks exist in the aspect of the protection of taxpayers' rights within the Armenian tax system and what should be done to improve it. The second part of the paper focused on tax dispute resolution process as one of the mechanisms for taxpayers to protect their rights from the arbitrariness of tax authorities.

As the OECD models show, tax authorities are to provide necessary legislative protection for taxpayers, considering and fairly resolving tax disputes, so that taxpayers be sure that their problems with tax authorities will be solved objectively. The relationships between taxpayers and tax authorities must be based on partnership principle. Regarding these aspects, RA tax system has several problems, which were mentioned above. This is mostly connected with the problem that tax authorities have to fill the state budget. Thus, they are focusing on not to give but obtain as much as possible. Besides, the culture is often obstacle for the taxpayer - tax authority partnership, as tax authorities never trust taxpayers, as potential violators and taxpayers recognize tax authorities first of all as punishing authority but not partners. Anyway good protection of taxpayers' rights and partnership between taxpayers and tax authorities are bases for advanced

revenue collection. Thus tax authorities should take actions in order to protect taxpayers' rights and to increase the trust among taxpayers towards tax authorities. For this, in addition to aforementioned suggestions, it will be necessary:

- to equalize the legislative codification of taxpayers' rights and obligations, so that tax authorities give taxpayers as much as they require;
- there should be codification of taxpayers' rights to be informed about their tax obligations in case when there are tax arrears, while currently taxpayers are being informed of their due taxes after some period of time when there have been several fines on those arrears;
- tax authorities via campaigns, media, booklets and other methods should inform taxpayers when there are changes in tax laws, especially of those that imply essential tax obligations;
- to make differentiation between tax violators, those who knowingly violate tax laws, and those with real financial difficulties to perform their tax obligations, thus defining diversified sanctions for above mentioned cases;
- to improve the process of tax refunds, so that fines for tax authorities, when they delay refunds for overpayments, be equal as for taxpayers (fines be calculated not after 91<sup>st</sup> day but for every delayed day);
- tax obligations should be frozen during the tax appeals resolution period;
- to improve appeal mechanisms, increasing the level of objectivity of tax dispute resolution process. For this purpose there should be representatives from civil organizations in the Appeals Commission and Appeals Council for creating checks and balances. The representatives can be from those organizations that deal with the rights of consumers, entrepreneurs, etc (for example, the association of accountants and auditors of Armenia, the Chamber of Advocates, etc);

- to create the institute of tax intermediary<sup>9</sup> (tax advocate) as reconciling tool between taxpayers and tax authorities, helping taxpayers with complex tax matters. Tax intermediaries may be banks, accounting, legal firms, etc. Their services may be compensated (paid) by taxpayers. Tax intermediaries will:

- ✓ advise taxpayers on tax legislation issues, being more competent and aware of frequent changes on tax laws, they can provide information to taxpayers on legislative changes,
- ✓ provide taxpayers various services, starting from filling tax returns up to financial accounting,
- ✓ minimize contacts between taxpayers and tax authorities thus reducing corruption risks,
- ✓ assist tax authorities in providing feedback to taxpayers,
- ✓ represent taxpayers interests during tax dispute resolution process.

Thus, as international practice shows, advanced tax authorities base their policy on the principle of protecting taxpayers' rights, realizing that taxpayers are key in exercising one of their main tasks, i.e. to collect revenues, thus the protection of taxpayers' rights is first of all for the benefits of tax authorities. Even if there is no legislative codification of taxpayers' rights, many tax systems strictly adhere to the principle of giving services to taxpayers, protecting their rights and interests.

The Armenian tax system has many achievements since its creation (in 1991). After the collapse of USSR, Armenia formulated tax system from nothing (there had been no tax system for 70 years). Today tax authority takes actions to provide need-based service to taxpayers. Anyway, it has a set of drawbacks (as mentioned above) which should be addressed in order to provide wide protection for taxpayers' rights thus insuring more results.

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<sup>9</sup> There already exists the institute of customs broker, Article 68 of the RA Customs Code (HO-83 adopted, 06 July, 2000) codifies the relationships of custom broker as intermediary between entrepreneurs and customs authorities.



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