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Masters' thesis:

Imposing tax liability through tax inspection

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I. INTRODUCTION

Tax inspection (Inspection) is a procedure conducted by the State Tax Service (STS) of the Republic of Armenia (RA).[1] As a rule, Inspection is initiated by the decree issued by the head of the STS.[2] According to Article 3 of the Law of the RA on Organizing and Conducting Inspections (Inspections Law) the legitimate goals of the Inspection are:

- To check the "trustworthiness" of the taxpayer's reports in the field of taxpayer's activity presented to state bodies
- To exercise state control over fulfillment of requirements of RA laws and legal acts and
- To protect property rights of the business entity.

The Inspection may result in the STS adopting an act ("Act") in case violations are found, or make a protocol, if no violations are found.[3] The form, content and problems connected with Act are discussed below. The focus of this paper is on the process through which the Act that imposes tax liability on a taxpayer is adopted at the conclusion of Inspection.

Tax liability of a taxpayer imposed by the STS's Act may consist of the amount of unpaid tax, some percent of this amount as a penalty (according to breach), and/or daily fines from the date of "evasion" to the date of payment.[4] When the STS compels the taxpayer to pay the unpaid tax, it aims to recover the budget "losses". But when the STS imposes penalties and daily fines, it is purely punitive in nature aiming to punish and deter the taxpayer from future violations.

The process of imposing tax liability on a taxpayer by the Act is the most critical stage of Inspection, because it may affect the taxpayer's property rights or the state (or community) budget. An important actor in the tax liability process is the STS, because it initiates the Inspection and

[1] The authority to conduct inspections is delegated to the STS by the Law of the RA on Organization and Conduct of Inspections, adopted by the National Assembly of the RA on 17 May 2000, Article 2
[2] *Id.* Article 3(2)
[3] *Id.* Article 6
[4] Law of the RA on Taxes, adopted by the National Assembly of the RA on 14 April 1997, Article 23-28

imposes tax liability on a taxpayer, if it finds that the taxpayer is in breach of tax law. Whether the unpaid taxes will be returned to state or community budget heavily depends on the legality of actions during Inspection conducted by STS inspectors. In case STS decided to impose liability on a taxpayer, the latter also becomes involved in the process. Tax liability may seriously affect the property rights of the taxpayer.

Although the two main actors of the tax liability procedure are the STS and the taxpayer, there may be other, indirect actors, such as the public, as a group of taxpayers and the courts, deciding tax liability cases. A question may arise: what are the interests of the public, if any, when the STS decides to impose a tax liability on a taxpayer in the form of a fine specified by the Act? Inspection Law, adopted by the representatives of the People of the RA, authorized the STS to collect the unpaid taxes from a taxpayer and impose fines for the breach of tax law. The collected taxes and penalties are entered into the budget and spent for the needs of the public. Thus, because the public wants the STS to find the tax "evaders" and recover the "losses" of the budget by imposing tax liability on them, which is later spent for the public's needs, the public also becomes an actor with its expectations from the tax liability procedure. Not only individual taxpayer, but also the public as a whole, as a group of taxpayers, expect the STS to act lawfully and support its decision on imposing tax liability with lawfully obtained evidence, because the larger part of the public that earns some kind of profit consists of taxpayers.

In addition, when a dispute on tax liability between the taxpayer and the STS reaches the court, the judiciary also becomes actor of tax liability procedure. In this case, the court is the final decision-maker, and therefore, the most important actor.

In general, the legality of the Act can be measured by asking whether the procedure of the whole Inspection was fair, or whether the Inspection was conducted in accordance with the Constitution, Inspection Law and the Law on the fundamentals of administrative activity and administrative proceedings (LFAAAP). In particular, the Act must contain relevant reasons, the evidence

supporting it must be admissible and the Act should not be based on solely self-incriminatory statements of the inspected taxpayer, given that the burden of proof rests upon the STS.
Thus, in this paper I shall discuss the process of imposing tax liability on a taxpayer through Inspection, focusing on some problems of admissibility of evidence supporting the imposition of tax liability, usage of self-incriminatory statements of taxpayer against the taxpayer, as well as overall justification of the Act by the STS.

II. ARMENIAN LEGAL FRAMEWORK AND IMPLICATIONS

Relevant Law

The procedural rules for imposition of tax liability through adoption of the Act are mainly laid down in the Inspection law. Certain procedural guarantees are also laid down in the Law on Taxes. As the imposition of tax liability through Inspection is an administrative proceeding and the Act is an administrative act, the LFAAAP relevant provisions are also applicable to the whole process of Inspection, and in particular, the rules regarding preparation and adoption of the Act, evidence and burden of proof.[5]

Case Studies

A typical problem in the process of adopting an Act, which imposes tax liability on a taxpayer by the STS is the shifting of the burden of proof from the STS to the taxpayer. In the case of K.

[5] See certain pieces of relevant legislation in Appendix 1

Nalbandyan,[6] who was accused of conducting illegal business activity (without registration), the STS conducted Inspection and imposed fine on K. Nalbandyan by adopting Act. One of the grounds for which STS held Mr. Nalbandyan liable was that the latter did not present certain documents to the STS, which would prove that Mr. Nalbandyan had not conducted illegal business activity. Mr. Nalbandyan won the case in the Economic Court (EC) of the RA. STS appealed the judgment in the Court of Cassation (CC) of the RA. In its decision the CC mentioned that the fact that K. Nalbandyan did not present certain documents to the STS to prove its position may not be a ground imposing fine on a citizen, because the STS did not prove the fact that K. Nalbandyan conducted illegal activity. The CC also asserted that under Article 43 of the LFAAAP STS bore the burden of proof, not K. Nalbandyan, and it could apply to relevant agencies and gather the information it needed for imposing fine on K. Nalbandyan.

Another important and problematic aspect of imposition of liability by the STS is the usage of inadmissible and unlawfully obtained evidence in support of the Act. As was mentioned above, the Act must contain "reference to relevant documents". This requirement of the Inspection law enables the reviewing court to be aware of those documents that were examined by the STS, and check whether these documents were lawfully obtained and whether they may lead to imposition of fine on a taxpayer. In the case of "Printinfo" LLC,[7] the STS adopted an Act that imposed a fine on the latter, which contained reference to the "internal accounting documents" seized by the STS from the office of Printinfo LLC. In fact, those documents served as an evidentiary basis for the STS in imposing tax liability on Printinfo LLC. According to the Inspection law, when seizing documents the STS must copy them, put its official seal on them and leave one copy with the inspected taxpayer.[8] In addition, STS must prepare a protocol on seized documents, which shall contain the date of their return, and a copy of the protocol must be left with the inspected

[6] STS v. K. Nalbandyan, Court of Cassation, 28 September 2006
[7] STS v. "Printinfo" LLC, Court of Cassation, 26 October 2006
[8] Article 7(f), Inspection Law

taxpayer.[9] The CC dismissed STS's complaint and upheld the judgment of the EC reasoning that the fact that STS did not prepare any protocol on seizing the internal accounting documents, did not put its seal and did not give the copies of seized documents means that the evidence (internal accounting documents) was obtained illegally. So, the breach of procedure for obtaining evidence by the STS led to the dismissal of STS's case in the CC of the RA.

Another interesting case on admissibility of evidence and burden of proof in tax liability procedure was the case of Hovhannisyan.[10] Based on the information received by the State Customs Committee (SCC), the STS accused Mr. Hovhannisyan of illegal business activity (without registration) for importing 2500kg of mandarins into RA; according to STS, 2500kg of mandarins was a "commercial quantity", and therefore, the quantity itself meant that Mr. Hovhannisyan had intention to conduct business activity and gain profit, but did not have proper registration as a business entity. Although Mr. Hovhannisyan stated that he imported the mandarins in order to disseminate it among his relatives and friends, STS still fined him stating that he could not prove the fact that he disseminated mandarins among his relatives and friends. The CC dismissed STS action and upheld the EC judgment in favor of Mr. Hovhannisyan, reasoning that STS did not prove that Mr. Hovhannisyan in fact conducted business activity and the quantity of import of mandarin alone cannot serve as a basis for imposing tax liability on a person. So, the only evidence that STS had – information received from SCC on import of goods – without any other evidence of illegal activity is insufficient for holding a person liable. Moreover, by its decision CC again affirmed its position, which derives from Armenian administrative law (LFAAAP, Article 43), that the STS cannot base its Act imposing liability solely on the ground that the taxpayer could not prove its "innocence". In other words, burden of proof rests upon the STS, not the taxpayer.

[9] *Id.* Article 8(2)
[10] STS v. G. Hovhannisyan, Court of Cassation, 26 October 2006

In another case, STS v. Cardinal International LLC,[11] the STS used self-incriminatory statements taken from the director of Cardinal against Cardinal when imposing huge fines on it for breaching tax law. The director of Cardinal presented "explanations" to the STS while the latter was conducting Inspection in its office, where he admitted (confessed) that Cardinal had conducted the illegalities of which STS was accusing it. Later, in its Act, as well as during administrative hearings and court litigation, STS heavily relied on this explanations as a proof of breaches by Cardinal and as a basis for liability. EC upheld Cardinal's claims against STS and invalidated the Act, but the CC reversed this judgment. One of the arguments of the CC for reversing the EC's judgment was that the director of Cardinal LLC admitted the facts of wrongdoings by Cardinal in his explanation given to the STS. Unfortunately, this decision may serve a precedent for the STS to "compel" taxpayers to confess in the form of an "explanation", and then use this against them during administrative hearings and courts litigations.

Step-by-Step Analysis of the Transaction

At the end of Inspection, tax officers of the STS prepare the Act against a taxpayer, in case violations are found. The Act must contain the description of violations, the requirements of legal norms, which were not complied with, exact time of violations, reference to relevant documents, and the relevant legal grounds for imposing liability.[12]

"Description of violations" means that the STS officers must describe those violations in the Act, which were detected by the officers during Inspection, for which the liability is imposed. Description of violations is the factual basis for imposing the liability; a factual "story" written by the STS that describes in details what, how and when the taxpayer conducted.

[11] STS V. Cardinal International LLC, Court of Cassation, 26 September 2006
[12] Inspection Law, Article 6

Then, STS officers must clearly state in the Act the “legal norms” that cover the “factual description”. The “legal norms” requirement of the Act intends to show what provisions of law prohibited the conduct of the taxpayer mentioned in the “factual description”.

Statement of the “exact time of violations” means that the violations detected by the STS officers cannot be beyond the date mentioned in the decree issued by the head of the STS authorizing STS officers to inspect the particular taxpayer. The above-mentioned decree always specifies “from-to” dates, which is subject to inspection. So, STS officers cannot inspect beyond the dates mentioned in the decree.

In many cases, STS officers find violations of law just by checking legal and accounting documents of the taxpayer. So, in the Act they are required to give “reference to relevant documents” of the taxpayer, which contained such a violation of law that can be used as a basis for imposing tax liability.

Another crucial aspect in the process of preparation of the Act against a taxpayer is the statement of the legal “grounds for imposing liability” in the Act. This step is different from the statement of “legal rules” violated. “Legal norms” are those rules of conduct that a particular taxpayer must follow in a relevant situation, whereas legal “grounds for imposing liability” are those legal norms that prescribe certain measure of liability for a taxpayer for noncompliance with mandatory rules of conduct.

According to Article 6 of the Inspection law, the final Act must also contain explanations (special opinion) of the representatives of the taxpayer, number of copies of the Act and a serial number. There must be two copies of the Act, one of which is to be given to the head of the inspected entity or another substituting official within three days of its adoption. Disagreement between the inspected taxpayer and inspecting officers, if any, must be mentioned in the Act. In case the head of the taxpayer’s representative refuses to sign the Act, STS officers make a note of it in the Act.

In some cases the STS fails to describe the factual side of violations in sufficient detail. Serious accusations of the STS may be limited to a few lines of description in the Act. By reading such an Act the reader may hardly understand what exactly, when and in what manner the particular taxpayer conducted. In the case of Cardinal, which was accused of serious tax violations, the "description of violations" section contained only a few lines, organized in general terms, which Cardinal successfully argued against STS in the EC, but lost in the CC. Besides Article 6 of the Inspection law, Article 57 of the LFAAAP also obliges STS to mention "all substantial factual grounds" for adopting the Act. "All substantial factual grounds" should be interpreted to mean those factual grounds, which are important for imposing tax liability on a taxpayer.

STS may abuse its power of demanding an explanation from the taxpayer's officers under Article 7(b) of the Inspection law. If the STS has no other evidence, or the existing evidence is weak, it may use self-incriminatory explanations of the taxpayer against a taxpayer for imposing liability on the latter. Generally, the executive directors do not possess technical knowledge in accounting, so when they write an explanation on the demand of the STS, it can easily be used against the taxpayer later. Considering that giving an explanation to the STS is the obligation of the taxpayer, what can be the result of refusing to give any explanation to the STS? RA legislation does not have any norm prescribing liability for such a refusal. Therefore, taxpayer company's officers can refuse to comply with the demand of the STS to give explanations.

In "Goog and Ar" LLC case,[13] as in the "Mandarin" case above, the LLC was fined on the sole ground of information received from a 3rd party (RA Police), although STS's Inspection did not reveal or confirm any violations. This is a problem of using "insufficient" evidentiary basis for imposing liability. 3rd party information may serve as a basis for starting an Inspection, which may or may not reveal or confirm information on violations, but alone should not serve as a ground for imposing tax liability.

[13] "Goog and Ar" LLC v. STS, administrative litigation in the STS appeals board, December 2006

Articles 18 and 19 of the Law on Taxes bar the STS to impose tax liability on a taxpayer, if the information that serves as a ground for liability is obtained illegally, and if the taxpayer did not have access to this information and expressed its opinion on it.[14]

III. INTERNATIONAL BEST PRACTICE

The purpose of this part of the Paper is to analyze RA legislation and practice on the imposition of tax liability in light of US tax inspection legislation, as well as US Supreme Court (SC), US Tax Court (TC) and European Court of Human Rights (ECHR) case law.

US Legislation and Case law

Burden of Proof

As mentioned above in Part II, the burden of proof always rests upon the STS in tax liability procedure, i.e. the STS must prove that a particular taxpayer's conduct amounts to violation of tax law and therefore it must be held liable.[15] During court litigation, when a litigant taxpayer challenges the Act in court against the STS, or STS applies to the court seeking a decision compelling the taxpayer to pay the amount of money imposed, the STS again bears the burden of proving that the adopted Act is lawful.[16]

[14] See Appendix 1
[15] See Article 43 of the LFAAAP, case law of the CC analyzed above
[16] See Chapter 26, Code of Civil Procedure, RA

In this respect, there are some similarities and differences between the US and RA laws and practice. US Internal Revenue Code (IRC) prescribes that "…the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title".[17] For example, the TC ruled that the "…Commissioner's burden of production under section 7491(c) is to produce evidence that it is appropriate to impose the relevant penalty, addition to tax, or additional amount.[18]". "Once the Commissioner has done so, the burden of proof is upon the taxpayer to establish reasonable cause and good faith."[19]

Another provision on burden of proof prescribes that in general, during litigation in the US TC, "[t]he burden of proof shall be upon the petitioner, except as otherwise provided by statute or determined by the Court; and except that, in respect of any new matter, increases in deficiency, and affirmative defenses, pleaded in the answer, it shall be upon the respondent."[20]

In addition to the legislation above, the US Supreme Court (SC) case law in the area of tax liability clarifies those instances where the burden of proof rests upon the taxpayer and where the burden of proof shifts to the Internal Revenue Service (IRS). For instance, in an old, but frequently cited US SC case, *Welch v Helvering*[21], the Commissioner of IRS found that the taxpayer (the petitioner in the SC) could not deduct certain amounts of money as expenses and had to pay the taxes. In the opinion of the Court, delivered by famous Justice Cardozo, Commissioner's "…ruling has the support of a presumption of correctness, and the petitioner has the burden of proving it to be

[17] U.S.C. Title 26, Subtitle F, Chapter 76, Subchapter E, Section 7491(c)
[18] Swain v. Commissioner, 118 T.C. 358, 363 (2002)
[19] Higbee v. Commissioner, 116 T.C. 438, 446 (2001)
[20] IRS Code, Title 26 Appendix, Title XIV (Trials), Rule 142(a)
[21] WELCH v. HELVERING, 290 U.S. 111 (1933)

wrong".[22] In other words, when the Commissioner finds a taxpayer liable, and the latter does not present credible evidence proving otherwise, the court will uphold the Commissioner's ruling.

In another recent case, *Crane v. Commissioner of IRS* the TC stated that the petitioners did not establish that "… the burden of proof should shift to respondent. Petitioners, therefore, bear the burden of proving that respondent's determination in the notice of deficiency is erroneous."[23], referring to Rule 142(a) and *Welch v. Helvering*.

It is obvious, that in each case US courts decide the issue whether the burden of proof is on the taxpayer or on the IRS, and then proceeds to decide on the substantive liability issues, whereas the case law from the Armenian EC and CC categorically recognizes that the STS will always bear the burden of proof.

Evidence and Self-incrimination in Tax Liability Proceedings

With respect to the admissibility of evidence and possibilities of self-incriminating practices in administrative hearings "…the crucial question often is whether, after hearsay or other 'tainted' evidence has been received, …agency heads should rely on this evidence in reaching their decisions".[24] In case the tax officers "heavily" rely on the self-incriminatory statements obtained from the taxpayer, this may affect the freedom from self-incrimination in the process of imposing tax liability. This raises another question: is the freedom from self-incrimination applicable only to criminal proceedings, or also to administrative proceedings, such as tax liability? The answer to this question may be a topic of another comprehensive research, but it must be mentioned that in the US, where the freedom from self-incrimination is guaranteed by the Fifth Amendment, "[t]o receive Fifth Amendment protection, a communication must be coerced and must be testimonial in

[22] *Id.*

[23] CRANE v. COMMISSIONER OF INTERNAL REVENUE, US T.C. Summary Opinion 2007-108, Docket NO. 9402-05S. Filed June 25, 2007.

[24] (G. & L.) Admin. Law 3rd Ed. NS, 266 p.

nature" .[25] In Armenia the STS has the right "…to demand… explanations…"[26] from the inspected taxpayer. The taxpayer may produce self-incriminatory explanations admitting certain wrongdoings (like in *Cardinal* case above). However, the Constitution of the RA prescribes that "[n]o one is obliged to testify against him…".[27] The problem here is that some lawyers may perceive "testimony" as a purely criminal matter, therefore the constitutional freedom from self-incrimination does not relate to administrative/tax liability proceedings. This is a too narrow and formalistic interpretation and can be refuted by the following argument, which is based on the case law of the ECHR analyzed below; if the STS imposes tax liability on a taxpayer, heavily relying on the self-incriminatory explanations of the liable taxpayer, it may refer the case to the bodies of criminal prosecution, if the amount of unpaid tax exceeds a certain threshold. In this case, if the taxpayer is also held criminally liable, it means that the self-incriminating explanations obtained to impose tax liability were also used against a taxpayer to impose criminal liability. Therefore, explanations may be admissible evidence in imposing tax liability, but the freedom from self-incrimination clause should be interpreted to forbid usage of such explanations as the main evidence supporting the imposition of liability. To refuse this would create a dangerous situation, where STS inspectors and prosecuting bodies cooperate to "construct" tax and criminal cases together, the former conducting inspection and collecting "confessions" in the form of explanations, and the latter instituting criminal proceedings based on these "collections", as was claimed to have been done in the UK in the *Sounders v UK* case below. Moreover, there must also be an obligation on the STS to inform the inspected taxpayer in writing that the explanation can also be used against him in further criminal proceedings. Eventually, as was mentioned above, although the taxpayer is obligated to produce the explanation on demand of the STS, the taxpayer's officers in Armenia must be aware that he or she may still refuse to give explanation to

[25] *Id.* at 138
[26] Inspection Law, Article 7(b)
[27] Article 22(1)

the STS during inspection because there is no sanction for a taxpayer refusing to comply with such demand of the STS.

ECHR Case Law

The ECHR also has case law concerning safeguards in tax liability procedure; in particular, concerning usage of self-incriminating statements obtained by inspectors and later used in criminal proceedings. The landmark case in the field is the Saunders v UK.[28] Although the case concerns the right to remain silent (freedom from self-incrimination) in a criminal proceeding, it is also relevant to the right to remain silent in administrative proceedings between inspectors and taxpayers. Mr. Saunders was a director of a UK company, where the UK Trade minister appointed inspectors to conduct inspection. During inspection inspectors questioned Mr. Saunders. Later, transcripts of his answers were transferred to prosecuting bodies, which used the transcripts against Saunders in order to prove his guilt in commercial fraud. Mr. Saunders was convicted, but he won the case in the ECHR on the claim of breach of Article 6(1) of the European Convention on Human Rights (Convention), which guarantees fair trial, which includes the right to remain silent. Concerning the transcripts obtained by inspectors and later used by the prosecutor the ECHR held that "…the transcripts of the applicant's answers, whether directly self-incriminating or not, were used in the course of the proceedings in a manner which sought to incriminate the applicant."[29] The ECHR found breach of the right to fair trial on this ground.

Saunders judgment may be a good "textbook" for STS inspectors for improving their practice in demanding "explanations" from the taxpayer and later using these documents against the same taxpayer, or submitting them to prosecuting bodies for initiating criminal proceedings. The issues regarding reforms/improvements is discussed below in more detail.

[28] SAUNDERS V UNITED KINGDOM, Judgment of the ECHR, 17 December 1996
[29] *Id.* para. 72

IV. REFORM

The analysis above made it obvious that there are no serious problems or gaps in the tax inspection legislation of the RA. Irrespective of this fact, the system does not work well. So, what are the reasons? Two improvements in the process of imposing tax liability are proposed below within the framework of this research.

The first is the improvement in regard to obtaining and usage of self-incriminatory "explanations" by the STS for the purpose of imposing tax liability on a taxpayer, as well as supporting prosecuting bodies in initiating criminal cases. As was mentioned above, the power of the STS inspectors to demand explanations is prescribed by Article 7(b) of the Inspection Law. Logically, if the STS has the power to demand explanations from a taxpayer, the latter has an obligation to provide it, otherwise the power of the STS would be illusory. However, this implied obligation of the taxpayer is not "backed" by any sanction in case of noncompliance, which in fact makes the STS's power to demand explanations illusory. Moreover, under Article … of the Inspection Law the taxpayer has a right to present explanations.

One fact is that many taxpayers voluntarily present explanations to the STS, which is later used as evidence for imposing tax liability, and, in some cases, for initiating criminal proceedings. Another fact worth mentioning is the Article 42(1) of the LFAAAP that lists explanation among evidences in administrative proceedings. The main problem here is the weight given to the explanation as evidentiary document, as well as, most importantly, lack of any safeguards for the taxpayer when it produces self-incriminatory explanations to the STS.

In order to address the above-mentioned problem the following solutions may be suitable:

a. National Assembly of the RA amends the Inspection Law by imposing obligation on the STS to *inform the taxpayer's officers in writing* that anything mentioned in the explanation can later be used against the taxpayer for imposing tax liability, and that the taxpayer has a right to remain silent (does not provide any explanation). In this regard, the National Assembly should abolish the power of the STS to demand explanations; it must be the right of the taxpayer to give or refuse giving any explanations to the STS
b. Alternatively, the judiciary, and the CC in particular, may interpret the term "explanation" mentioned in the Inspection law so that it affords all the Constitutional guarantees prescribed for "testimony". In other words, extend the freedom from self-incrimination clause to "explanations" produced by the taxpayer during imposition of tax liability process.
c. Eventually, if none of the above-mentioned is done, within the existing legislation, the taxpayers must be informed that *they can always refuse* to give any explanation to the STS, if they wish so, because STS does not have the power to compel the taxpayer to give explanation; there is no sanction for refusal. This task is on the community of lawyers of the RA, and on advocates in particular, to carry out.

The second reason explaining why we have reasonable Inspection legislation, but bad practice, is the lack of legal training among STS inspectors. There is no requirement that an inspector have a legal education. Some of them may have education in economics and/or specialized in accounting. These skills may be useful, even indispensable, for calculating tax obligations of an inspected taxpayer, however, these skills may be useless for adopting lawful and reasoned Act, which is necessary for imposing tax liability. In other words, the inspector may perfectly do extremely complex calculations of the taxpayer's tax obligations in the Act, but later may face invalidation of

this Act during court litigations (as we saw in part II. of this paper) simply because those well calculated tax obligations imposed on a taxpayer are not justified, or supported by inadmissible or unlawfully obtained evidence, self-incriminatory statements, or the Act contains other errors for which it can be invalidated.

Therefore, STS inspectors need serious and continuing legal education in the field of administrative law. Particularly, trainings in the field of ECHR relevant case law, adoption of administrative acts, administrative evidence, freedom from self-incrimination clause of the Constitution, burden of proof in administrative proceedings and others, might improve the tax Inspection procedure in general, and the process of imposition of tax liability through Inspection, in particular.

APPENDIX 1.

Law on Taxes

"During control of calculation and collection of taxes the information about taxpayer obtained in breach of the law shall not be a basis for calculating tax obligations and imposing tax liability on a taxpayer"[30].

"No information may be a basis for calculating tax obligations and imposing tax liability on a taxpayer, unless the taxpayer had access to this information and gave explanations on the latter[31]."

LFAAAP

"In the relationship between person and the administrative body the burden of proof shall rest upon:

a) the person with respect to factual circumstances favorable for him, if any,
b) administrative body with respect factual circumstances unfavorable for a person, if any[32]."

"In an administrative proceeding administrative body shall consider as evidence explanations, testimony, expert opinions, documents, materials, and other things, as well as those circumstances, which the body considers useful and necessary for discovering and assessing factual circumstances of the case[33]."

Inspections Law

[30] Article 18
[31] *Id.* Article 19
[32] Article 43
[33] *Id.* Article 42

"Officials carrying out inspection have right:

…b) To demand documents, data and other information, explanations, certificates that have direct relevance to the inspection carried out within the scope of their competence…"[34]

"Officials of business entity shall have right:

…c) To present explanations, clarifications, sue solicitations, appeal actions of officials in due course of law"[35]

Constitution

"No one shall be obliged to testify about himself/herself, his/her spouse or close relatives. The law may prescribe other cases of release from the obligation to testify."[36]

[34] Article 7(b)
[35] *Id.* Article 9(c)
[36] Article 22(1)