

**Dr. Peter Unger**

# **Questionnaire**

## **„Burden of proof in tax proceedings“**

### **- the result -**

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## **Participants**

**Bulgaria, Croatia, Estonia, Greece, Italy,  
Lithuania, Netherlands, Poland, Portugal,  
Slovenia**

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## Strict rules for or free consideration of evidence


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1. In the tax code of your country, are there **strict rules for consideration of evidence**? Or rather is **the principle of free consideration of evidence** established?
2. If there are strict rules of evidence, please define them. If the principle of free consideration of evidence is established, are there any **exceptions or specifics**?

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## Strict rules for or free consideration of evidence


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**Free consideration**

- Austria
- Bulgaria
- Croatia
- Estonia
- Greece
- Lithuania
- Netherlands
- Poland
- Portugal
- Slovenia

**„Strict“ rules**

- Italy  
(expressly exclusion of the testimonial evidence, because of the non-disposable character of the public interest; public documents bearing witness by a public officer form a privileged truth)

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## Anticipatory consideration of evidence

3. Is there a **rule prohibiting anticipatory consideration of evidence** established in your Country?
4. If YES, what are the **consequences for violating this rule**? If NO, under which specific **circumstances** would a petition of evidence **be rejected** and in which specific circumstances could such a petition of evidence **merit consideration** in your country?

## Anticipatory consideration of evidence

### „Prohibition“

- Austria  
(Jurisdiction)
- Lithuania  
(all evidence is to be examined before the issue goes to the tax disput)
- Netherlands  
(principle of listening to both sides)
- Italy (no strict rules, but limited by the rules of judicial proceedings)

### No prohibition

- Bulgaria  
(oral witnesses before the court can be rejected)
- Croatia (no strict rule)
- Estonia (preliminary decision)
- Greece (evidence is in danger to be lost)
- Poland
- Portugal (evidence can be rejected, if it is not necessary for the decision)
- Slovenia

## Equality of the evidence

5. Is there a **principle giving all evidence equal weight** in your country?
6. If YES, are there any **exceptions or specifics**? If NO, how is evidence weighted in your country?

## Equality of the evidence

### Yes

- Austria
- Bulgaria
- Croatia (in its completeness as well as every single piece)
- Greece (proof and counterproof)
- Poland (exceptions: tax registers, official documents)
- Portugal (exception: confession of a fact is a stronger proof than others)
- Slovenia

### No

- Estonia (bank informations and contradictory explanations usually have more weight than a written evidence from the tax payer)
- Lithuania (special rules concerning documents in other laws; witness in a criminal case)
- Netherlands („judge domain“)
- Italy (discretionary appreciation, except public acts and certified private documents which create legal certainty)

## „Assured facts“

7. Are there any types of facts, that need not be supported by evidence in order to be recognized? („assured facts“)
8. If YES, please **name them**. If NO, are some **relaxed methods** available for presenting evidence concerning these facts? List them?


## „Assured facts“

### Yes

- Austria (public information)
- Bulgaria (public information)
- Croatia (official register)
- Estonia (economic principles..)
- Greece (previous court decision)
- Italy (only relevant facts must be supported by evidence)
- Lithuania (Presumptions by law)
- Netherlands (notorious facts)
- Poland (common knowledge)
- Portugal (public information)
- Slovenia (public document)

### No

## Right to be heard after the procedure of taking evidence


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9. Is there a **right to be heard about the result from the procedure of taking evidence** for the tax payers in your country?

10. If YES, what are the **consequences for violating** this right? If NO, does the tax payer have **any other opportunity to dispute separately the results** from the procedure of taking evidence?

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## Right to be heard after the procedure of taking evidence


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<b>Yes</b>	<b>Different</b>
<ul style="list-style-type: none"> <li>▪ Austria (by law)</li> <li>▪ Bulgaria</li> <li>▪ Croatia</li> <li>▪ Estonia</li> <li>▪ Italy</li> <li>▪ Lithuania</li> <li>▪ Poland (by law)</li> <li>▪ Portugal (by law)</li> <li>▪ Slovenia</li> </ul>	<ul style="list-style-type: none"> <li>▪ Greece (under certain circumstances, on request)</li> <li>▪ Netherlands (on request in appeal cases – always in the classical administrativ law)</li> </ul>

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## Burden of proof – taxpayer or tax authority?

11. What **principles of burden of proof** are established in your country? **In what cases** the burden of proof is an **obligation of the tax payers**? Are there any cases of a **reversal of the burden of proof**?

## Burden of proof – taxpayer or tax authority

### Tax authority

- As a principle  
Bulgaria, Lithuania, Poland, Portugal
- Regarding facts establishing the tax  
Croatia, Slovenia
- Regarding facts possessed only by a tax authority  
Estonia
- „who states, proves“  
Netherlands, Greece, Italy, Slovenia, Austria

### Tax payer

- About new facts which were not declared before the authority  
Bulgaria, Austria
- Regarding facts that decrease or abolish the tax  
Croatia, Lithuania, Slovenia, Austria
- Challenging the correctness of an assessment notice  
Estonia, Lithuania
- „who states, proves“  
Netherlands, Greece, Italy, Slovenia, Austria

## Ex officio versus (increased) obligation to co-operate



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12. Is there a principle in your country, that the authorities have **to act in their own motion**? In which specific **circumstances** tax payers have an **increased obligation to co-operate**? What is with facts concerning **EU Member States**? What is with facts concerning **non-EU countries**?

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## Ex officio versus (increased) obligation to co-operate


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<b>Ex officio</b>	<b>Obligation to co-operate</b>
<ul style="list-style-type: none"> <li>▪ As a principle Bulgaria, Croatia, Estonia, Greece, Poland, Portugal, Slovenia, Austria</li> <li>▪ Information exchange with other States Bulgaria, Croatia, Estonia, Greece, Italy, Poland, Slovenia, Austria</li> </ul>	<ul style="list-style-type: none"> <li>▪ all information that are relevant for the proceeding Bulgaria, Estonia, Greece, Italy, Lithuania, Netherlands, Slovenia, Austria</li> <li>▪ Only with the participation of the tax payers the principle of material truth can be established Croatia</li> </ul>

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## Exceeding of deadlines to adduce evidence

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**13.** What are the **consequences** for tax payers **exceeding a deadline to adduce evidence**?

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## Exceeding of deadlines to adduce evidence

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Consequences	No Consequences
<ul style="list-style-type: none"> <li>▪ Croatia (tax payer is committing an offence; tax assessment by the tax authority)</li> <li>▪ Greece (testimonies and documents have to be submitted until one day before the court hearing)</li> <li>▪ Italy, Lithuania, Portugal, Slovenia (no consideration in the subsequent stages)</li> <li>▪ Netherlands (reversal burden of proof)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Bulgaria, Poland, Austria (all facts can be adduced by the taxpayer until the decision of the Court)</li> <li>▪ Estonia, Greece, Italy, Lithuania (convincing reasons for failing to submit evidence may allow new evidence in the court procedure)</li> </ul>

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**Thanks for your attention!**

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