



# TAX LITIGATION IN PORTUGAL

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# TAX LITIGATION IN PORTUGAL

- COURTS
- PARTIES
- PROCEEDINGS / PROCEDURE



# COURTS

Ljubljana 2008

European Judicial Control Over Tax Authorities' Cases

# PORTUGUESE CONSTITUTION (art. 209)

## *Categories of Courts:*

- Constitutional Court
- Supreme Court of Justice  
**1st and 2nd instance courts of law**
- Supreme Administrative Court  
**1st and 2nd instance courts**
- Audit Court

# Administrative and Tax Courts (art 212)

- Supreme Administrative Court

- Courts of 2nd instance

- Courts of 1st instance

*Courts  
of  
Appeal*

*Settle disputes arising from  
administrative and tax legal relations*



# PARTIES

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# PARTIES

- Tax Administration

- **Tax Authorities**

- **Minister of Finance / State Secretary for Tax Affairs**
- **Tax Director - General**
- **Costums Director - General**

- **Social Security Authorities**

- **Local Authorities**

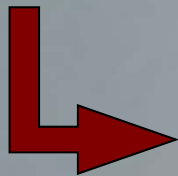
(municipal council)

- Taxpayers

# PARTIES

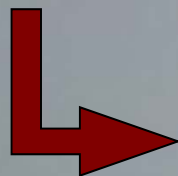
## Representation in court:

### Tax Authorities



*- Officers with a law degree*

### Taxpayers



*- By themselves (< 9.352,5€)*

*- Through a lawyer (> 9.352,5€)*



# PARTIES

## Some Principles / Rights:

- Access to justice /legal aid
- Decision within a reasonable time
- Equal treatment → Equality of arms  
→ Judicial fees (≠before 2004)

# PARTIES

## Taxpayers

### Generally:

No obligation to exhaust the administrative remedies before court intervention

*“final decision”*

*“affect rights or protective interests*

### Exceptions:

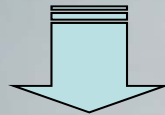
Ex: Property evaluation / 2nd evaluation must be required

# PARTIES

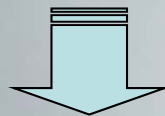
## Taxpayers

### “Claim for refund of tax”

- *no obligation to pay the tax before court intervention*



***TAX foreclosure***



***Bank guarantee / Mortgage / Bond***



PROCEEDINGS

PROCEDURES

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# PROCEEDINGS

- TAX JUDICIAL PROCEEDINGS
  - **Claim for refund of tax**
  - **Objection to tax foreclosure**
  - **Objection / claim against tax fines**
  - **Interim measures / conservatory acts**
  - **Annulment of sale**
  - **Enforcement of judgements**
  - ...

# PROCEEDINGS

## **Claim for refund of tax**

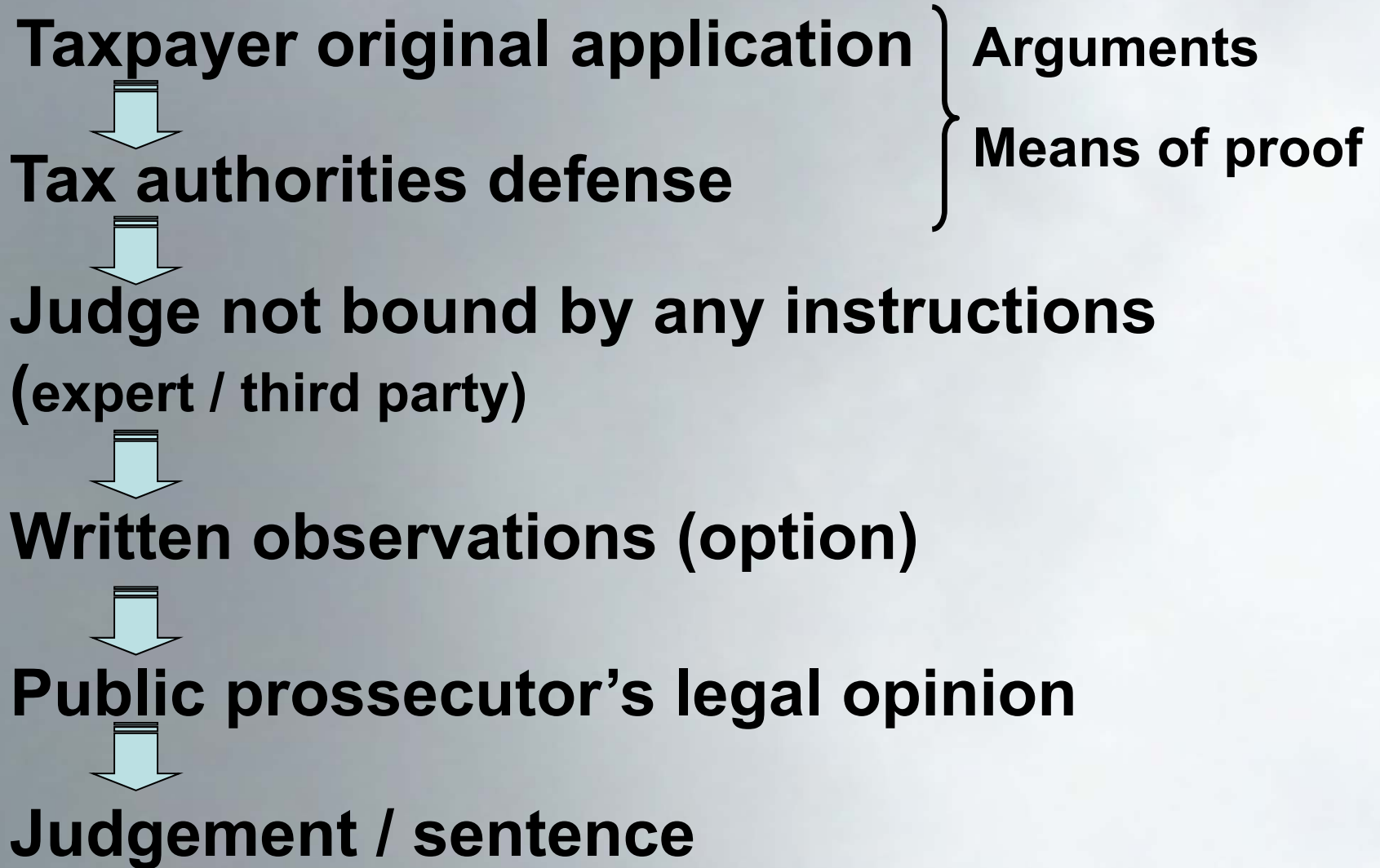
- **Based in any illegaty**
  - **European law**
  - **Constitutional law**
  - **National tax law**
- **Request: declaration of invalidity**

# PROCEEDINGS

## **Objection to tax foreclosure**

- **Based in:**
  - **Exemption from liability (managers)**
  - **Double tax collection**
  - **Inexigible debt**
  - **Statute – barred debt**
  - **...**
- **Request: cancellation of tax foreclosure**

# PROCEDURE





Economic  
Financial  
Pressures

↓  
Increase  
Tax  
Collection



"Tax Machine"  
Aggressive  
Developed  
Efficient

Tax  
Litigation

Tax Courts

*Pending cases*

*Decisions in a  
reasonable time*

# SUGGESTIONS *on the table*

↪ **Encourage case solving solutions within tax authorities**

↪ **Create Arbitration centres**

↪ **In certain issues admit an amicable settlement of proceedings**

↪ **Recrute specialized law clerks to work among the judges/courts**

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