

Co-operative Tax Compliance: Legislation and Practice in Austria

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Rome, December 2016

I. Legal framework and practice of tax assessment and tax audit



- Tax procedure as set out in the law follows the traditional command and control approach
- Electronic filing of (highly standardized) tax returns and notification of assessment electronically as a rule
- Friendly attitude of the tax administration?
 - taxpayer called „client“
 - „fair play approach“

I. Legal framework and practice of tax assessment and tax audit



- **„quasi“ self-assessment**
 - Major part of tax returns is assessed without preliminary thorough control by the tax authorities
- **Revision of primary assessment**
 - possible up to ten years after the occurrence of the taxable event, at least within six years
- **Low rates of tax audits**

I. Legal framework and practice of tax assessment and tax audit



- **Time as an impediment for effective control**
- **Penalties**
 - nearly no surcharges, but penalties fixed according to the requirements of Art 6 of the Human Rights Convention
 - evaded tax under EUR 100.000 → administrative penalty
 - Evaded tax above EUR 100.000 → criminal prosecution
 - generous self-disclosure rules

I. Legal framework and practice of tax assessment and tax audit



- **Tax rulings and tax agreements**
 - tax agreements considered to be contrary to the constitution if addressing the tax itself and if not provided by law → no formal agreements and no alternative dispute resolution provided by law
 - binding tax rulings only to a very small extent (with regard to restructurings, transfer prices and grouping schemes in CIT)

Austrian Ministry of Finance



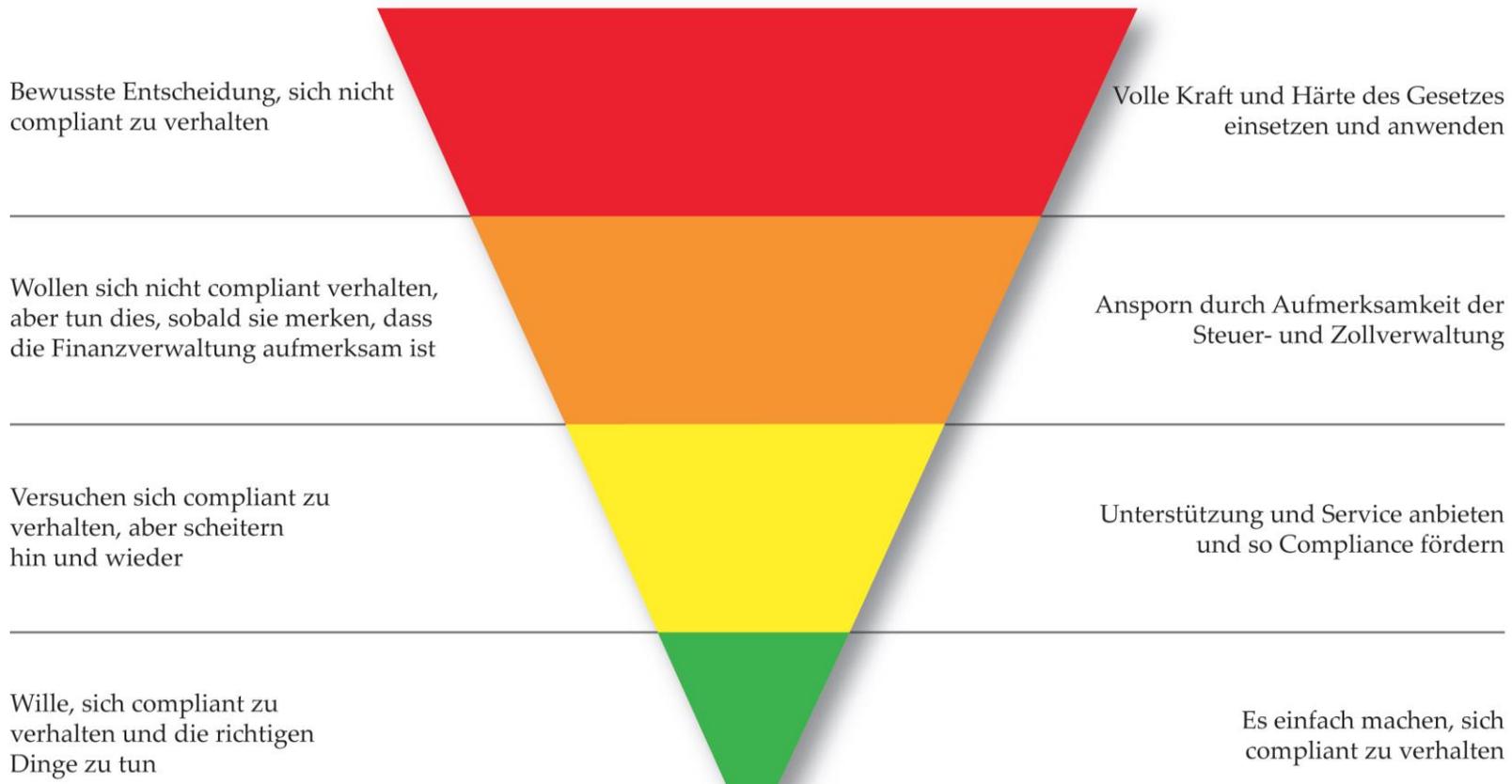
FAIRPLAY

Fairness zahlt sich aus.

once upon a time ...

FAIR

Fairness zahlt sich aus.

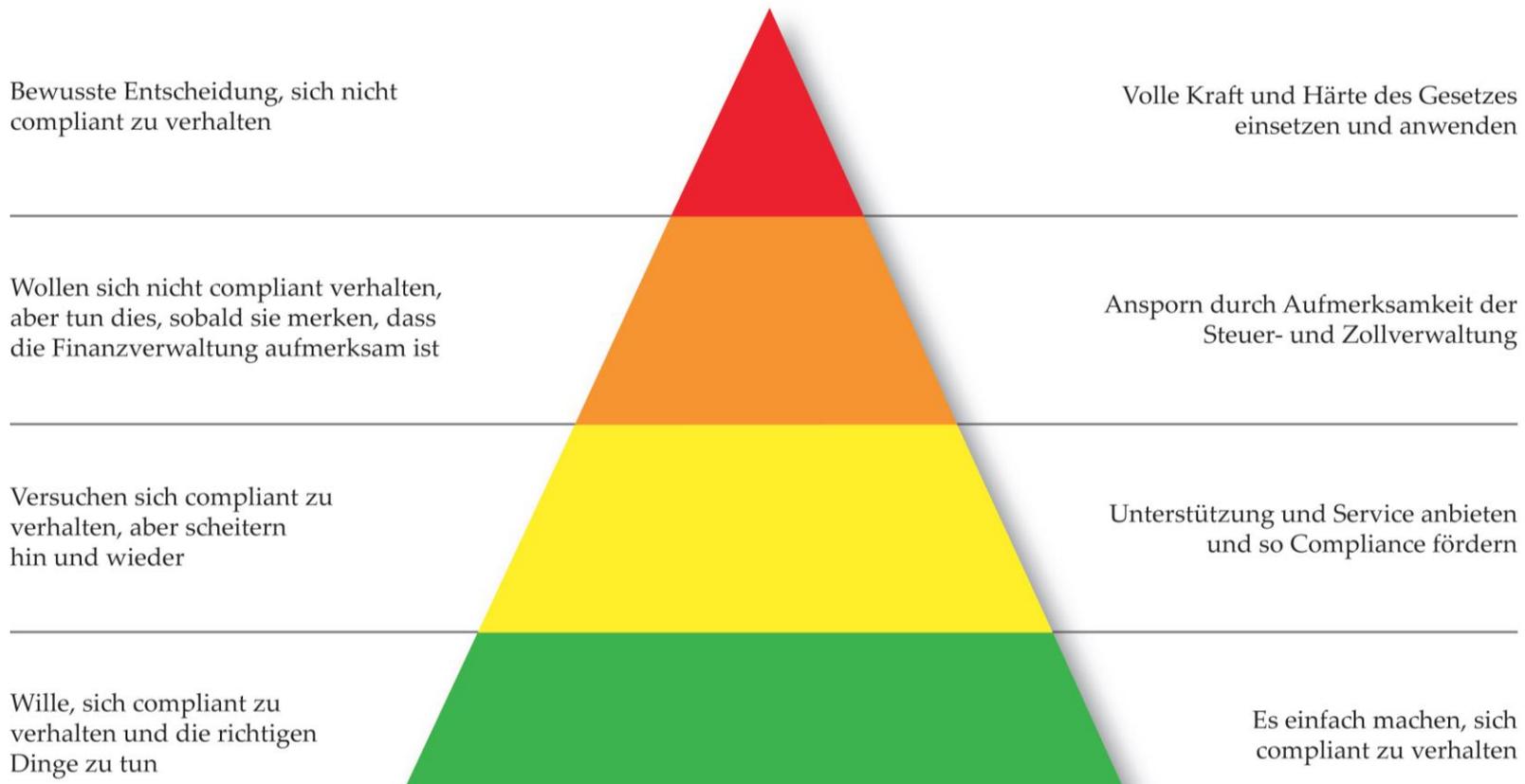


source: Austrian Ministry of Finance

today

FAIR

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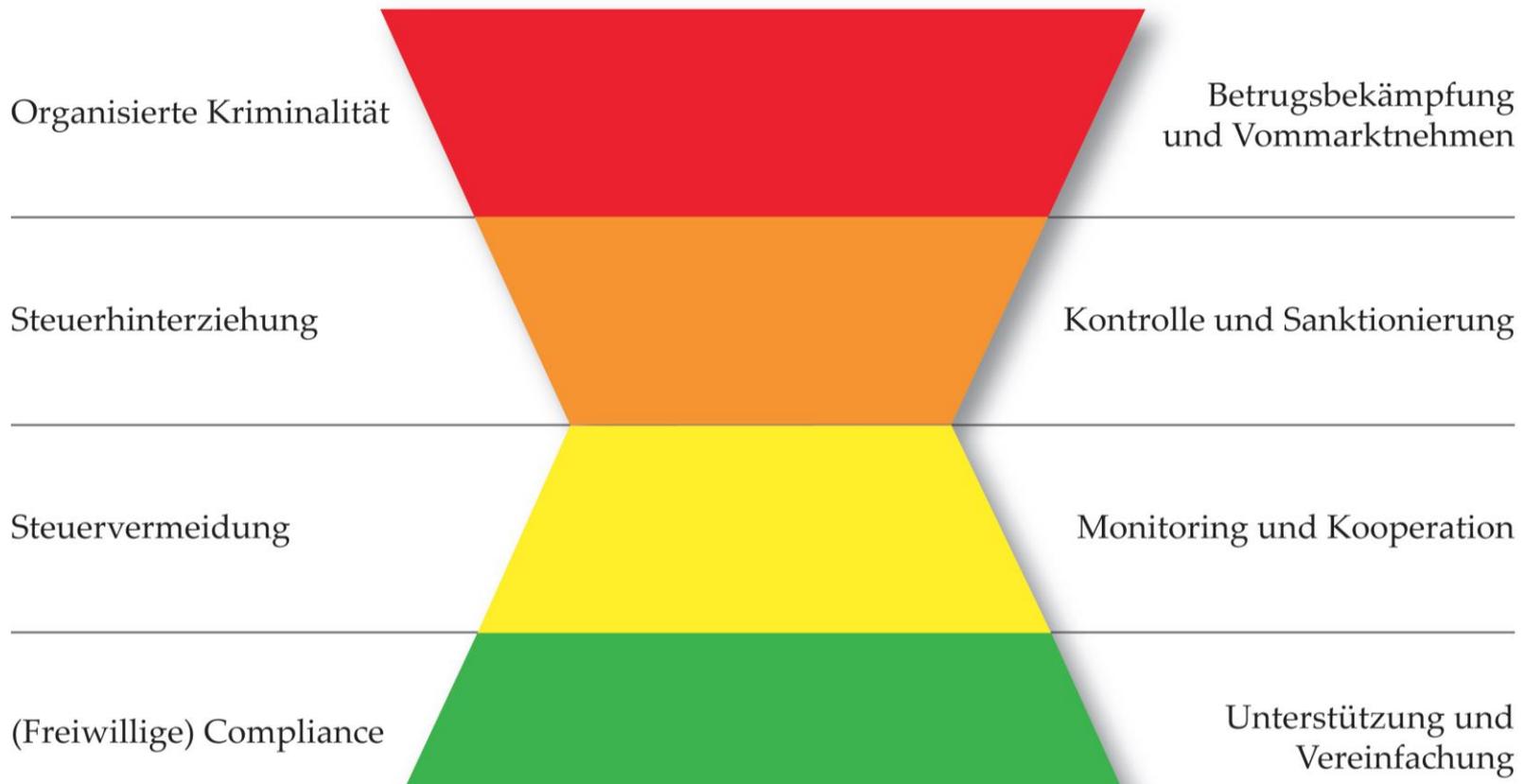


source: Austrian Ministry of Finance

in the future

FAIR

Fairness zahlt sich aus.



source: Austrian Ministry of Finance

II. Horizontal Monitoring

The Austrian experience



- **Facts**

- pilot from 2011 to 2016
- Companies with a turnover above 40 million EUR were admitted
- 17 companies with 249 tax ID numbers in total

II. Horizontal Monitoring

The Austrian experience



- **Purpose**

- Explore new methods of collaboration among big taxpayers and the tax authority
- Based on mutual trust, openness and transparency

II. Horizontal Monitoring

The Austrian experience



- **Regulatory Framework**

- no changes to the legislation
- no specific regulatory framework at all
- the only “formal” source is a “living paper” on HM called “handbook of HM” and issued by the Ministry of Finance and regularly revised

II. Horizontal Monitoring

The Austrian experience



- **Functioning**

- Starting point

- “deliberate declaration” between the taxpayer and the tax authority where the taxpayer commits himself to “specifically comply with his obligations to co-operate and disclose all tax-relevant circumstances and to agree on a tax control system, whereas the tax administration comitts herself to timely act.”
 - So-called “Memorandum of Understanding”

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The Austrian experience



- **Functioning**

- Starting point

- “The declaration to participate in the HM does not any rights or duties for either the tax payer or the tax administration
 - However, the Ministry of Finance does not assume that any ex-post tax audits will take place nor will there be any appeals by the taxpayers involved in HM

II. Horizontal Monitoring

The Austrian experience



- **Functioning**

- First workshop, where the stakeholders get to know each other
- Quarterly meetings of the stakeholders with the main objective to further develop the tax control system

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- **Tax control system**
 - developed co-operatively
 - documentation of
 - structure of internal organisation
 - decisionmaking
 - responsibilities
 - certain documents such as an overview of the returns filed or the legal remedies raised
 - identification of tax risks

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The Austrian experience



- **Obligation to prior notice**
 - certain events need to be actively reported to the tax administration
 - certain transactions need to be reported before their conclusions in order to align the tax administrations and the taxpayers view on its implications with regard to taxation

II. Horizontal Monitoring

The Austrian experience



- **Practical Experience**

- Conclusions of the evaluating committee

- HM an appropriate tool to enhance tax compliance
 - HM increases legal certainty and planning certainty
 - HM eases timely and correct collection of a major part of the overall tax revenue
 - HM is likely to reduce compliance costs
 - in the mid-term HM will shift public resources to risk-taxpayers
 - HM needs further training of all stakeholders in order to be successful
 - HM brings added value to companies and accordingly increases Austria's competitiveness

II. Horizontal Monitoring

The Austrian experience



- **Practical Experience**

- Recommendations of the evaluating committee
 - increase transparency by targeted information of the public
 - create clarity with regard to the criteria for admission, the requirements to the TCF and the requirements of documentation
 - increase acceptance within the tax authority
 - additional training of all tax officers involved in HM

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The Austrian experience



- **Practical Experience**

- Taxpayers seem
 - to require more transparency on the criteria for admission
 - more certainty about legal foundation
- Ministry of Finance and its advisors in the evaluation process seem
 - not to see any need for legal amendments
 - although they stress that the question of legal foundation was to be postponed
- Although the pilot seems to have ended this year, it seems that it will not be stopped (one company was even admitted for HM only recently)

II. Horizontal Monitoring

The Austrian experience



- **Future perspectives**
 - It seems to be the objective to move from a pilot to a regular tool
 - It is unclear whether there is a will to create specific legal foundations

III. Conclusion

- The Austrian tax procedure as it stands now does not contain any rules allowing interactions between the taxpayer and the tax administration on an equal footing
- As long as the tax administration does not issue formal notices there is no legal certainty for the taxpayer
- If HM keeps being a non regulated tool, the principles of equality and legality will be put at serious risk

Thank you very much for your attention!

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