



International Fiscal Association

LUXEMBOURG BRANCH REPORT

SUBJECT 2: PRACTICAL PROTECTION OF TAXPAYER'S RIGHTS

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Introduction

- Scope of the Report: Protection of taxpayers rights in practice in Luxembourg
- Aim of the Report: allow the GR to identify (i) international best practices and (ii) international minimum standards regarding the protection of taxpayers' rights
- Content: limited to direct taxation (excl. VAT, registration duties ...)
- Structure: less structured / no questionnaire / only an analytical guideline:
 1. Identifying taxpayers and issuing tax returns
 2. Issuing tax assessments
 3. Confidentiality
 4. Normal audits
 5. More intensive audits
 6. Review and appeal
 7. Criminal and administrative sanctions
 8. Enforcement of taxes
 9. Cross border procedures
 10. Legislation
 11. Revenue practice and guidance
 12. Institutional framework for protecting taxpayer's rights

Introduction

Outline of the Luxembourg Report:

(I) Non-contentious proceedings

1. Identifying taxpayers and issuing tax returns
2. Legislation, revenue practice and guidance
3. Issuing tax assessments
4. Confidentiality
5. Tax audits

(II) Contentious proceedings

1. Review and appeal (incl. institutional framework for protecting taxpayer's rights)
2. Enforcement of taxes

Not included:

1. Criminal and administrative sanctions
2. Cross border procedures

1. TAXPAYER'S RIGHTS IN THE NON-CONTENTIOUS PROCEEDINGS

1.1. Identifying taxpayers and issuing tax returns

- Resident taxpayers other than individuals, pursuing a commercial or agricultural enterprise, as well as an independent activity:
 - have to inform the tax authorities of any event that submits them to tax, as well as of any event that changes or terminates their tax liability (within 2 weeks from the commencement of their activity)
 - a short questionnaire requesting the necessary information for the tax assessment is sent to the taxpayer

- Luxembourg resident and non-resident individual employees working in Luxembourg for a Luxembourg employer:
 - usually identified through the mandatory registration by the employer to the national health care system
 - income tax card is sent to the taxpayer, which is submitted to the employer for the correct withholding of income tax

- Luxembourg resident individuals other than employees:
 - are obliged to register with the tax authorities within 2 weeks as from the commencement of their activity

- Non-resident individuals may only be subject to tax in Luxembourg on their Luxembourg-source income, which is taxed either
 - through a withholding tax to be levied by the Luxembourg resident payor or
 - through assessment by the spontaneous filing of a tax return by the non-resident taxpayer

- The taxpayer is invited to check that all relevant information (e.g. tax identification number, competent taxation office) is correct and may communicate his comments or remarks to the tax authorities
- Once registered, the taxpayers are annually summoned to file their income tax return
- Tax return forms available on the tax authorities web-sites
- The taxation offices do not complete tax returns and may not advise taxpayers on their personal situation. However, assistance as to the practical modalities on how to complete a tax return are given. Taxpayers may easily communicate with the tax authorities, be it by phone or by mail or even during an appointment
- Taxpayers have the right to amend their tax return after filing until the tax assessment notice has been issued by the taxation office.
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- Thereafter, they may request the taxation office to amend the assessment notice or file a complaint requesting the head of the tax authorities to amend the tax assessment notice within an internal review procedure → both need to be made within the delay of foreclosure (3 months as from the notification of the tax assessment notice)

1.2. Legislation, revenue practice and guidance

- Tax laws, regulations, circulars and other documents are publicly available at the tax authorities' website and taxpayer may subscribe (free of charge) to an e-newsletter
- An online governmental platform (www.guichet.lu) provides significant information on taxpayer's obligations, administrative procedures and contacts with the administrations
- Certain requests and tax filings may be made online, through a secured server
- New bills, including tax bills, are subject to a public consultation of the professional bodies concerned and the relevant information is publicly made available on the website of the Luxembourg Parliament (*Chambre des députés*) and the relevant governmental administrations
- The Luxembourg State Council (*Conseil d'Etat*) is further requested to comment the bill and, as the case may be, the Constitutional Court may check compliance with the Constitution

1.3. Issuing tax assessments

- The collection of income taxes in Luxembourg is based on a reporting system, whereby the taxpayer completes a tax return subject to the verification of the taxation office (*système de la déclaration contrôlée*)
- the verification of the taxation office must be objective and impartial, as well as in favor and disfavor of the taxpayer
- The taxation office has a genuine obligation to inform the taxpayer when there is a significant deviation between what has been declared and what is finally assessed – Limit: no general advisory mission
- In case of real doubts regarding the tax return, the verification process by taxation office has to follow a strict chronological order:
 - a dialogue with the taxpayer;
 - a request of the communication of the relevant supporting documents;
 - only if the latter fails to be conclusive: a request of a justification
 - If all fails: taxation on the basis of an estimation (*taxation d'office*)
- The taxation office has to observe the following principles throughout the verification process :
 - The fundamental principle of “*audiatur et altera pars*” (if not respected, the taxation office’s notice is voidable)
 - The principle of proportionality
- The tax assessment notice (*bulletin d'impôt*) has to observe several formal conditions
 - the violation of any of these conditions has as a consequence that the foreclosure delay to appeal against the tax assessment notice does not apply
- Once the tax assessment notice has been issued, the tax authorities may only amend it in limited cases which are provided by the AO (new facts within the statute of limitation)
- Exception: self-assessment procedure

1.4. Confidentiality

- very strict fiscal secrecy that prohibits them to disclose any information regarding a taxpayer to third parties
- Inherent to a tax return and verification system: not only to protect the taxpayers' personal confidentiality but primarily to guarantee the public interest of raising taxes in general
- The fiscal secrecy applies to:
 - all civil servants of the tax authorities;
 - any person who is not a public official but who collaborates with the tax authorities within the exercise of the public service;
 - members of the administrative courts dealing with tax cases
- The fiscal secrecy is enforceable against:
 - Government
 - Parliament
 - Courts
- The obligation to observe the fiscal secrecy covers all information gathered by the tax authorities when assessing, verifying or recovering any taxes
- Necessary infrastructure at the tax authorities'
- The violation of the fiscal secrecy is punishable by a fine or a prison sentence of up to 6 months to 5 years + exclusion from public service for up to 5 years
- The fiscal secrecy is a general principle that may only be set aside in very limited cases (authorization by the taxpayer, legal exception, request from the mediator)

1.5. Tax audits

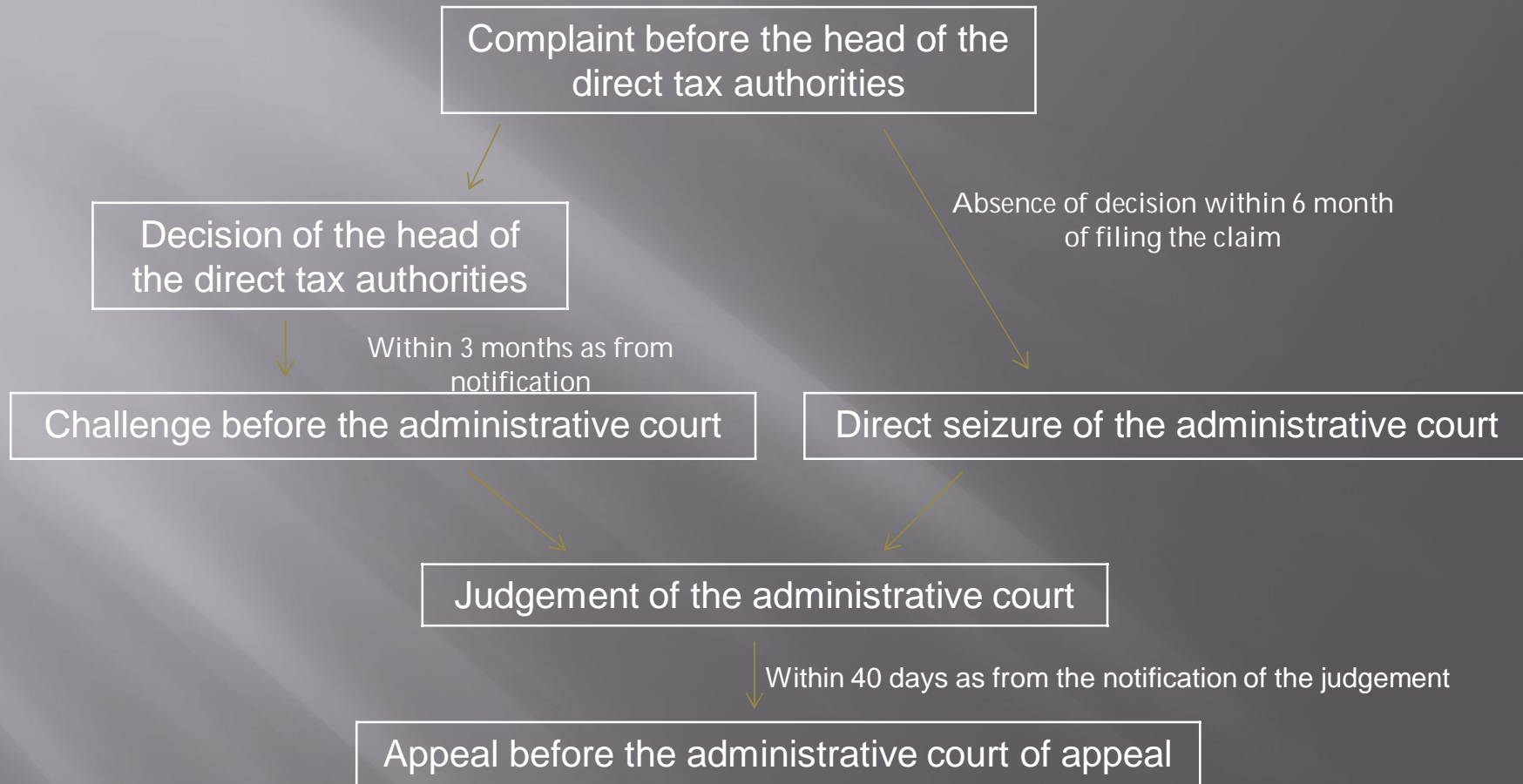
- The verification of the accuracy of the tax return is made internally by the tax authorities without further reaching out to the taxpayer
- In case of reasonable doubts: the tax authorities are allowed to proceed to an in-depth revision of the financial documents of the taxpayer
 - carried out by a specific division of the tax authorities (*service de révision*) within the premises of the taxpayer during the ordinary business operating hours
- The revision may take place prior to the issuance of the tax assessment notice or thereafter
 - if irregularities are discovered, they may constitute new facts that justify the issuance of a new rectified tax assessment notice
 - if the financial documents are irregular or non-existing, the tax assessment may be made on the basis of an estimation
- A tax audit is only admissible to the extent it is used exclusively to analyze the particular tax situation of the taxpayer whose situation is verified and not to collect information on the financial situation of other taxpayers
- Applicable principles:
 - the fundamental principle of “*audiatur et altera pars*”,
 - the principles of legality, proportionality and utility
- ▣ The tax audits may only be performed within the statute of limitation:
 - generally 5 years after the end of the year in the course of which the tax claim is established;
 - 10 years in case no tax return has been filed or the tax return filed was not correct or incomplete

2. 2. TAXPAYER'S RIGHTS IN THE CONTENTIOUS PROCEEDINGS

2.1. Review and appeal

- Division between administrative (eg direct taxes) and judicial courts (eg indirect taxes, recovery of taxes)
- Direct taxes: mandatory but extrajudicial administrative act: taxpayers who wish to contest their tax assessments must first lodge a complaint before the head of the direct tax authorities, who is then obliged to review the tax assessment from both a formal and factual perspective
 - Seizure not very formalistic: claim within 3 months of the notification, no representative necessary, French/German/English is accepted
- The decision of the head of the direct tax authorities may be challenged before the administrative court (*Tribunal administratif*) within 3 months as from its notification (in case of an absent of any decision within 6 months of the filing of the claim, the taxpayer may directly seize the administrative court and request the voidance of the tax assessment notice)
 - the State is represented by a governmental delegate (*délégué du Gouvernement*)
 - the taxpayer may appear in person, through a lawyer, a chartered accountant (*expert-comptable*) or an auditor (*réviseur d'entreprise*)
- The judgment of the administrative court is subject to an appeal before the administrative court of appeal (*Cour administrative*) within 40 days as from the notification of the judgment - no further appeal is possible
 - the taxpayer has to be represented by a lawyer admitted before the courts of appeal (*avocat à la Cour*)
- As an alternative, the taxpayer has also the possibility to seize the mediator (Ombudsman) in order to settle a dispute with the tax authorities
- In general, the request of an internal overview or the seizure of the administrative court or the seizure of the mediator do not suspend the obligation to pay the tax claimed by the tax authorities

2.1. Review and appeal



→ As an alternative, the taxpayer has also the possibility to seize the mediator (Ombudsman) in order to settle a dispute with the tax authorities

→ does not suspend the obligation to pay the tax claimed by the tax authorities

2.2. Enforcement of taxes

- Tax assessments are only enforceable against the taxpayer once they have been duly notified
 - if the tax assessment notice has been duly notified, the taxpayer is obliged to pay the tax determined by the tax authorities, usually within 1 month as from the notification of the tax assessment notice
- A mandatory act prior to any judicial proceedings: if no payment occurs after reminders have been sent out, a summon (*contrainte*) is issued which allows the tax authorities to execute the tax assessment notice under several conditions:
 - the tax claim must be liquid, certain and due
 - the summon must observe certain formalities
 - only the head of the direct tax authorities may issue the summon
- In case the settlement does not occur after the notification of the summon:
 - a payment order (*commandement de payer*) is notified to the taxpayer to settle the tax debt within the next 24 hours
 - upon the expiration of such delay, the tax authorities are authorized to proceed to seizure measures
- The taxpayer may intervene throughout the aforementioned process by requesting
 - payment delays (*délais de paiement*)
 - a suspension of the execution (*sursis d'exécution*) of the tax assessment notices
 - an equitable waiver (*remise gracieuse*) of the tax liability

CONCLUSION

- The tax procedure is characterized by a constant dialogue between the taxpayer and the tax authorities in order



to protect the taxpayer's rights



to safeguard the Treasury's interest

- Courts are the ultimate safeguard of taxpayer's rights