

Tax Controversy

Contributing editor
Richard Jeens



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GETTING THE
DEAL THROUGH

GETTING THE
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Tax Controversy 2018

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Overview

1 What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

The relevant legislation is the Luxembourg Tax Law (LTL), which is compiled in seven volumes and provides common rules for determining the taxable basis and the applicable procedural regulations.

The rules governing tax compliance procedures, tax recovery and tax controversies are not compiled in one single volume. Tax compliance relating to direct tax matters is governed by provisions inspired by Germany, whereas indirect taxes, namely registration duties as well as value added tax (VAT) have their own tax proceedings.

The LTL is enacted by Luxembourg's parliament and is enforced by the Luxembourg Tax Authority (LTA) and Luxembourg courts.

The LTA must apply the LTL in accordance with the provisions of other binding rules deriving from:

- the Constitution;
- double tax treaties signed by Luxembourg that are currently in force;
- EU directives that have been duly implemented into Luxembourg legislation;
- the European Convention on Human Rights; and
- the Treaty on the Functioning of the European Union.

Additionally, the LTA generally issues circulars and administrative notes that ensure a uniform interpretation of the LTL. Such circulars and guidelines are published on the LTA website and also have a legally binding effect for the LTA and taxpayers.

Moreover, taxpayers may apply for advance tax clearances on the application of certain provisions of the tax law or on the application of transfer pricing principles to their personal situation. Such rulings and advance pricing agreements (APA), which must be addressed in writing to the competent tax service, are binding for the LTA if approved.

Finally, the LTA and tax courts generally and extensively refer to German case law.

2 What is the relevant tax authority and how is it organised?

The LTA is headed by the Ministry of Finance.

The administration in charge of direct tax matters is organised on a four-tier structure:

I Direction

- director;
- division of legislation;
- division of economic matters;
- division of litigation;
- division of international relationships;
- division of exchange of information;
- inspectorate responsible for taxation services;
- inspectorate responsible for tax collection services;
- division of IT;
- division of valuations of immovable properties;
- division of general matters;
- division of legal matters;

- division responsible for withholding tax on interest and exchange of information;
- division responsible for withholding tax on remunerations; and
- division responsible for tax audits.

II Taxation services

- service responsible for the calculation of income tax on individuals;
- service responsible for the calculation of income tax on corporations;
- service responsible for the calculation of withholding tax on remunerations;
- service responsible for the valuation of immovable properties; and
- service responsible for the calculation of withholding tax on interest.

III Tax audit service

IV Tax collection service

The administration in charge of indirect taxes is organised as follows:

I Direction

- director;
- division 1 – general matters;
- division 2 – VAT and taxes on insurance;
- division 3 – other taxes on legal movement of goods; and
- division 4 – domains.

II Taxation services

- service responsible for VAT and taxes on insurance;
- service responsible for registration duties and collection of taxes;
- service responsible for mortgages;
- inspectorate; and
- anti-fraud service.

Enforcement

3 How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

The LTA has the power to perform tax audits on the basis of documents and on-the-spot audits for all taxpayers.

In practice, particularly in the case of audits of corporate income tax returns, the LTA will generally issue provisional tax assessments that are solely based on the filed tax returns, without carrying out any prior review of the latter. At a later stage and within the legal statute of limitations, the LTA may review the provisional tax assessments further to the tax return's verification.

Tax returns related to personal income tax or to indirect tax are directly subject to a final tax assessment after the competent tax inspector has verified the tax return. Such tax assessment must be issued within the legal statute of limitations.

The tax inspector must follow a certain order when conducting his or her investigations. First, he or she must request additional information on the facts and numbers reported in the tax returns. Second, if the requested information is deemed insufficient, he or she may require

copies of the related legal documents. Third, he or she may require from the taxpayer an explanation as to why a certain tax treatment is applied in the tax return.

The tax inspector will only be allowed to require additional information from third parties if the information obtained from the above steps is deemed insufficient and the taxpayer does not provide useful explanations. Upon request from the tax inspector, the taxpayer (or the third party) is legally obliged to provide all clarifications and documents required as long as such information is relevant to review the tax return.

Exceptionally, if the off-site check is inconclusive, the inspector may conduct an on-site tax audit, which generally takes place at the residence or at the professional address of the taxpayer. Based on the 2016 annual report of the LTA, 33 on-site tax return reviews were performed leading to an additional collection of taxes amounting to more than €2.6 million.

The duration of the review varies and can take up to several months depending on several elements (eg, the level of detail provided in the tax return, the size of the business, the cooperation of the taxpayer in providing the required information, etc).

4 Are different types of taxpayers subjected to different reporting requirements? Can they be subjected to different types of review?

Taxpayers are either business entities or individuals. The rules that apply to the review of their tax returns are generally similar; however, some differences exist and are mainly related to the determination of their taxable basis and the applicable tax rate, as described below.

Contrary to the tax rate applicable to businesses, which is fixed and the same for all types of business taxpayers, the tax rates applicable to individuals are progressive and take into account the taxpayer's personal situation, such as marital status, the minimum essential income, and so on.

The official deadlines for filing personal income tax returns, corporate income tax returns and VAT returns are set on different dates.

Personal income tax returns can be electronically filed. VAT returns must be electronically filed. Corporate income tax returns are currently filed either electronically or by post. Electronic filing should become mandatory in 2018 for corporate income tax returns 2017. Other tax returns are currently filed by post.

The taxable basis of business taxpayers of a certain size, which are required to prepare annual financial statements, is based on their accounting results after adjustments for tax purposes. Duly approved financial statements are part of the tax return and must be enclosed therein. Individuals are taxed on their income after deduction of certain expenses specifically determined by the LTL.

In practice, tax audits on individuals are generally shorter and less complicated unless the individual carries out an undisclosed activity or is suspected of tax fraud.

5 What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer's employees? If so, are there any restrictions?

The LTA is entitled to request any information that is deemed necessary to review the tax return.

The information requested includes copies of contracts, legal documents supporting entries included in financial statements, copies of the transfer pricing report supporting a remuneration earned by the taxpayer, general ledger, invoices, bank statements, receipts, copies of tax returns filed abroad by a foreign subsidiary or by a foreign branch held by the taxpayer, copies of residence certificates confirming the fiscal residency of a related party, etc.

Tax returns are mainly reviewed by referring to the required documentation; however, the LTA may interview a taxpayer or the representative of a business taxpayer. Both are allowed to be assisted by their counsel.

If the LTA does not receive adequate answers from the taxpayer, it may request information from third parties at the taxpayer's cost.

6 What actions may the agencies take if the taxpayer does not provide the required information?

The LTA may force the taxpayer to cooperate by sending document requests, summons or imposing a financial penalty. It may also issue an estimated tax assessment as a last resort.

7 How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

As taxpayers are obliged to cooperate with the LTA and to provide it with all relevant information related to their tax affairs (including information related to third parties), the LTA is legally subject to professional secrecy (ie, it is in principle not allowed to disclose any information received, including commercial and business secrets). Breach of professional secrecy by a tax inspector may entail criminal charges against the LTA.

However, the LTA is allowed to disclose information regarding taxpayers to other Luxembourg public authorities as well as foreign tax authorities (eg, within the context of the implementation of the EU directive on administrative cooperation in the field of taxation) and to criminal prosecutors (eg, within the context of a criminal proceeding).

8 What limitation period applies to the review of tax returns?

The statute of limitations expires on 31 December of the fifth year following the fiscal year concerned (eg, the prescription period for taxes of the 2010 fiscal year ends on 31 December 2015).

The limitation does not apply when it comes to confirming the amount of tax losses carried forward (ie, the tax inspector can review these tax losses at any time, when they are needed to effectively offset taxable income).

In some cases, the statute of limitations can either be interrupted (eg, upon renunciation by the taxpayer) or be extended from five years to 10 years (eg, if the tax returns are not filed or are incomplete).

9 Describe any alternative dispute resolution (ADR) or settlement options available?

In order to avoid having the LTA challenge the filing of a tax return, taxpayers may either file a ruling with the LTA to agree upfront on the tax treatment applicable to their specific case or file an advance pricing agreement with the LTA to agree on the applicable arm's-length margin for transfer-pricing purposes.

Upon agreement, the ruling or the advance pricing agreement is not transferable ipso facto to other cases and is binding for the LTA for five fiscal years (unless one of the key characteristics of the transaction is modified in the meantime). However, the decision of the LTA will no longer be enforceable if the legal provision or the administrative practice on which it was based is modified.

An appeal mechanism is also available within the tax administration (see question 25).

10 How may the tax authority collect overdue tax payments following a tax review?

Following a tax review, the tax inspector will issue a tax assessment confirming the amount of tax due. This amount is payable within one month from the date of notification to the taxpayer.

Under certain conditions, the taxpayer may apply to pay in instalments or to postpone payment.

If the taxpayer does not pay within one month and has not concluded any payment arrangement with the LTA, the latter will initially issue an order to pay within five working days followed by a second order sent via a bailiff if the first order does not produce the expected results. In the absence of payment following both orders, the LTA will issue a summons to pay within a certain period by which it will inform the taxpayer of its intention to pursue the payment of the outstanding tax (and related interest) by any legal means. Such legal means include the seizure and realisation of a taxpayer's movable assets, receivables, immovable assets and seizure of amounts owed to the taxpayer by third parties (eg, an employer, a notary or banks).

For corporate taxpayers, the LTA may also request the court to declare a company bankrupt for default in payment. In this case, the

bankruptcy trustee may realise the assets of the taxpayer in order to satisfy the payment obligations.

11 In what circumstances may the tax authority impose penalties?

The LTA may impose penalties if tax returns are not filed, not filed on time, deliberately incomplete or incorrect, or if the tax is not paid on time.

12 How are penalties calculated?

The LTA may charge:

- additional tax (eg, 10 per cent of tax due);
- a fixed fine (up to to €25,000); or
- a variable fine (ie, the fine's amount increases with respect to the period the tax return remains unfiled).

If the taxpayer refuses to file a tax return, the LTA may issue a tax assessment based on their estimate of the tax due.

13 What defences are available if penalties are imposed?

If the delay in filing a tax return is due to force majeure, the taxpayer can send a letter to the LTA explaining the objective reasons that prevented its timely filing. If the arguments of the taxpayer are accepted, the fine will be cancelled.

Moreover, where penalties are calculated on the amount of assessed tax, any reduction of such tax will result in cancellation of the excessive penalty.

14 In what circumstances may the tax authority collect interest and how is it calculated?

The LTA may charge interest for late payment of tax due. Interest for late payment is assessed at 0.6 per cent per month starting after the expiration of the month in which the relevant tax should have been paid.

In case of payment in instalments, interest for late payment is assessed at 0.1 to 0.2 per cent per month.

15 Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

If, as a result of a tax review, the LTA discovers that substantial amounts were not declared on purpose by way of intentional false declarations or accounting misrepresentation (eg, if the accounts are falsified, resulting in the omission of substantial taxable amounts or in deduction of substantial expenses, or if the supporting legal documents are missing or have been falsified), they may suspect and file a criminal case for tax fraud (or an attempt to commit tax fraud). The penalty related to the latter could be imprisonment or a monetary fine up to 10 times the amount of tax due. These consequences apply for all types of taxpayers (business entities, individuals and directors).

16 What is the recent enforcement record of the authorities?

Based on the 2016 annual report of the LTA, the percentage of claims increased by 18 per cent in 2015, whereas the percentage of disputes solved through the administrative procedures decreased.

Year	Claims filed with the LTA	Claims solved upon decision of the LTA	Claims filed with the Administrative Tribunal	
			Without decision from the LTA	After decision of the LTA
2010	778	596	13	106
2011	875	429	21	51
2012	957	556	15	66
2013	1,083	665	20	84
2014	1,124	783	19	83
2015	1,316	742	26	95
2016	1,222	914	30	113

Third parties and other authorities

17 Can a tax authority involve or investigate third parties as part of the authority's review of a taxpayer's returns?

The LTA is entitled to request information on a taxpayer from third parties if the justifications provided by the taxpayer are insufficient to review the tax return. In principle, only documents and information that are relevant to review the tax return may be requested from third parties by the LTA. Additionally, the right of the LTA to request information may be limited by professional confidentiality applicable to certain third parties (eg, employees of the central service of statistics or STATEC).

As for banks, Luxembourg has entered a world of total fiscal transparency. Since 1 January 2015, banks have started to automatically communicate interest income received by non-residents of EU member states to the related tax authorities. As stated under OECD agreements, the main scope of the application of automatic exchange has been extended to other income. Since 2016, the Common Reporting Standard (CRS) invites member states to oblige their financial institutions (banks, insurance companies, investment funds, etc) to provide information on the account holders and on economic beneficial owners of certain entities to the local tax authorities in view of an automatic exchange between the latter and the tax authorities of the taxpayer's country of residence. The information exchanged includes dividends, capital gains earned directly or indirectly, income from certain insurance products, bank account balances, and any other income relating to assets held in bank accounts. In addition, the exchange is no longer limited to EU countries but applies to all the jurisdictions which have committed to automatically exchanging similar information..

18 Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries?

Tax authorities can exchange information with any other local authority. Some information is automatically disclosed to the LTA (eg, income from employment as declared for social security).

Since 1 January 2015, Luxembourg has automatically exchanged information with EU member state tax authorities based on the Law of 21 June 2005 (implementing EU Directive No. 2003/48/CE) as regards interest paid to individual residents in another EU country and based on the Law of 23 December 2005.

Luxembourg has transposed article 8 of EU Directive No. 2011/16/EU of 15 February 2011 on administrative cooperation in tax matters into its domestic law.

Since 29 March 2013, Luxembourg law has introduced mandatory and automatic exchange of information on the following types of income: wages, pensions and directors' fees.

Luxembourg has also entered into a Foreign Account Tax Compliance Act (FATCA) agreement with the US according to which Luxembourg's financial institutions are required to provide the LTA with information regarding the accounts held by US citizens and US tax residents. The information will be forwarded to the US tax authorities (Law of 24 July 2015).

Based on the law on automatic exchange of information (published on 24 December 2015) and entered into force on 1 January 2016 that implements EU Council Directive No. 2014/107/EU amending Directive No. 2011/16/EU and introducing the OECD's common reporting standard (CRS), Luxembourg reporting financial institutions must exchange information not only on US persons (for FATCA purposes), but also on certain individuals and certain entities resident in EU member states or in certain third countries.

The law dated 23 July 2016 (amending and supplementing the Law of 29 March 2013) extends measures related to mandatory automatic exchange of information to explicitly include cross-border rulings and APA issued by the LTA. Therefore, cross-border rulings and APA issued, amended or renewed after 31 December 2016 (as well as existing cross-border rulings and APA issued, amended or renewed in the period commencing five years before 1 January 2017) are automatically exchanged with other EU member state tax authorities and with the European Commission.

Most double tax treaties are also a legal source of exchange of information between countries, based on the provisions of administrative assistance included therein.

Another source of exchange of information on VAT is EU regulation No. 218/92/EEC of 27 January 1992 modified by regulation No. 1798/2003/EC of the EU Council of 7 October 2003.

Special procedures

19 Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

In case of financial or other hardship, the LTA may authorise payment in instalments at the taxpayer's request. Interest for late payment may in this case be adapted to the financial situation of the taxpayer.

The LTA may also postpone, in full or in part, the payment of tax if its immediate payment will irremediably compromise the financial situation of the taxpayer and provided that the financial difficulties are not due to the taxpayer's negligence. In this case, the LTA will generally require sufficient guarantees to protect their interest.

The LTA or the judge may also fully or partially waive the tax debt and related penalties if the collection of such amounts is unreasonably inequitable for the taxpayer. Based on the LTA's 2016 annual report, 322 requests were filed in this respect in that year; of which, 245 have received a decision from the head of the tax administration.

20 Are there any voluntary disclosure or amnesty programmes?

As from 1 January 2016 and for a limited period of two years, Luxembourg introduced a voluntary disclosure programme for individuals and corporate entities allowing them to declare any income that was not declared since 2006, provided that such income falls within the following categories of offences: voluntary or involuntary tax fraud or tax scam (the programme does not apply if the income falls within the scope of anti-money laundering or anti-terrorism regulations; in this case, the offence will be reported to the Public Prosecutor for a sentence). The sanctions in case of disclosure are limited to the payment of taxes due, with an additional 20 per cent increase if the corrective tax returns are filed in 2017.

Rights of taxpayers

21 What rules are in place to protect taxpayers?

The LTL provides for certain rules in order to protect taxpayers.

For instance, the LTA is obliged to inform taxpayers that they intend to deviate from tax returns. Taxpayers must have the opportunity to defend the position taken in their tax returns before the LTA issues its tax bulletin.

Upon communication of the tax bulletin, the taxpayer can file a claim against it within three months from the date of notification.

The LTA must apply the principles of objectivity and proportionality when reviewing the tax returns.

22 How can taxpayers obtain information from the tax authority? What information can taxpayers request?

The LTL provides that the taxpayer is entitled to receive all information and documents that have led to the determination of their taxable basis, except for documents that may affect the tax situation of a third party, which must remain protected by fiscal secrecy. The information can either be automatically sent to the taxpayer or at the taxpayer's request.

23 Is the tax authority subject to non-judicial oversight?

The Law of 22 August 2003 organises the tasks of a mediator who is placed under the supervision of parliament. Any taxpayer (ie, an individual or a company via its legal representatives) who believes that, on the occasion of a personal conflict with the LTA, the latter did not act according to their mission as a public institution, or contravened conventions, laws or regulations, may bring the matter to the attention of the mediator either by way of a written or oral statement.

The mediator analyses the claims formulated by the taxpayer, investigates and proposes recommendations to the tax service concerned if the mediator concludes that the complaint is admissible.

Upon execution of the recommendations, the LTA must inform the mediator. If the LTA does not apply the recommendations, the mediator is entitled to publish the recommendations.

If a complaint is rejected, the mediator must inform the taxpayer by post and justify his or her decision.

Based on the LTA's 2016 annual report, 52 claims were filed via the mediator in that year.

Court actions

24 Which courts have jurisdiction to hear tax disputes?

In principle, the courts that are competent for disputes related to direct tax (eg, personal tax, corporate income tax, municipal business tax, net wealth tax) are administrative courts. There is no specific court structure for tax disputes.

Claims are initially heard by the Administrative Tribunal, which is therefore the tribunal of first instance.

An appeal against the decision of the Administrative Tribunal will be heard by the Administrative Court, which is the court of appeal. Such appeal may be based on an error in the application of the law or of a procedure.

Disputes related to indirect tax (eg, VAT, subscription tax) are heard by civil courts.

25 How can tax disputes be brought before the courts?

In general, as regards direct taxes, there are two stages for filing a tax appeal. The taxpayer is obliged to file a formal claim with the LTA prior to filing a claim with the judge (ie, the claim to the court will not be valid in the absence of a prerequisite claim to the LTA).

The formal claim to the LTA must be filed within three months of the notification of the tax assessment; it must be sent to the head of the tax service that has issued the disputed tax bulletin. The inspector-in-chief will automatically review the overall tax position of the taxpayer (and not only the disputed points) and is expected to provide his or her decision within three months.

Based on the LTA's 2016 annual report, 1,226 claims were filed in that year, of which 914 have received a decision from the LTA's head.

If the LTA's decision is not (completely) satisfactory, the taxpayer can bring the dispute to the Administrative Tribunal within three months from the notification of the decision of the LTA.

Six months after the filing of a formal claim, and if the LTA did not reply, the taxpayer is allowed to bring the dispute to the Administrative Tribunal at any time after the expiration of the above six months. Based on the LTA's 2016 annual report, 143 claims were filed with the Administrative Tribunal in that year, of which 30 did not receive a LTA decision.

As mentioned above, an appeal against the judgment of the Administrative Tribunal can be lodged with the Administrative Court. Exceptionally, upon request, claims against administrative fines imposed by the LTA based on the laws on international exchange of information can be directly brought by the taxpayer to the Administrative Tribunal.

With respect to indirect taxes, filing a formal claim with the LTA is not a prerequisite (ie, the taxpayer is allowed to file a claim with the court and another claim with the LTA simultaneously, alternatively or consecutively).

In both cases, the filing of a claim with the LTA does not preclude the payment of the contested tax.

26 Can tax claims affecting multiple tax returns or taxpayers be brought together?

Tax claims affecting multiple tax returns of the same taxpayer can be brought to the court either by the taxpayer or by the LTA.

Luxembourg law does not contain provisions related to class actions. However, joint actions are allowed if all the claimants have an interest pertaining to the same claim.

27 Must the taxpayer pay the amounts in dispute into court before bringing a claim?

If the taxpayer does not agree with the tax determined by the LTA, he or she must nevertheless pay the amounts due within the established deadline and then file a claim with the LTA. If the LTA's decision is unsatisfactory, he or she may file a complaint with the Administrative Tribunal. However, the trial does not suspend the taxpayer's obligation to pay the disputed tax. The LTA may continue to pursue payment of tax even if the trial is pending.

Under certain circumstances, the payment of tax may be suspended upon the taxpayer's request provided that, based on the arguments

presented by the taxpayer, the judge deems that the taxpayer's chances of winning the case against the LTA are significantly high and that it is possible to prove that the immediate payment of tax will result in the taxpayer's unreasonable and irremediable financial distress.

If, at the closing of the trial, the decision of the judge is unfavourable to the taxpayer, the tax and interest for late payment will be retroactively due (ie, including for the period when the payment of tax was suspended).

28 To what extent can the costs of a dispute be recovered?

The costs of the legal procedure are generally borne by the party that has lost the case (ie, the judge will oblige the taxpayer to pay the costs for legal proceedings if the decision was favourable to the LTA and vice versa). The judge may allocate a portion of fees to each party if his or her decision is only partly favourable to each of them.

In principle, each party must pay the cost for hiring a representative (eg, a lawyer).

29 Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

Third-party litigation funding and insurance legal protection for the cost of a tax dispute are not prohibited.

30 Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

In general, the decisions of the fiscal court are made by a panel of three judges. There are no jury trials to hear tax disputes.

31 What are the usual time frames for tax trials?

Tax trial decisions may take between six and 24 months to be delivered depending on the complexity of the case. An appeal may take up to 24 additional months approximately.

32 What are the requirements concerning disclosure or a duty to present information for trial?

There is a set of rules that determines how discovery must be handled. The written part of the procedure comprises:

- the lodging of the application and of the defence carried out by the tax payer;
- the lodging of the LTA's formal response letter carried out by the LTA (*mémoire en réplique*);
- the filing of a rejoinder by the taxpayer; and
- the lodging of the LTA's second formal response letter carried out by the LTA.

For all of the above steps, both parties must also exchange any information or document which support their respective cases.

At trial, both parties may ask questions of the other party in order to clarify certain points included in the formal letters.

33 What evidence is permitted in a tax trial?

Any type of evidence is in principle acceptable, including testimony by the taxpayer or by a court-appointed expert. The choice of the most appropriate means of evidence lies with the judge. In straightforward cases, only written evidence (eg, paperwork, accounts, invoices, contracts) is generally used. Documents used as evidence must be translated into French, German or Luxembourgish.

34 Who can represent taxpayers in a tax trial? Who represents the tax authority?

In the proceedings before the tribunal of first instance, taxpayers are allowed to either represent themselves or to appoint a representative provided that the latter performs a regulated profession (an attorney, a certified accountant or a certified auditor).

In proceedings before the court of appeal, taxpayers must be represented by an attorney.

The LTA is represented by the government's representative.

Update and trends

On 14 December 2016, parliament passed a law which makes a distinction between three types of tax fraud (simple tax fraud, aggravated tax fraud and tax swindle) and introduces tax swindle and aggravated tax fraud to the list of primary offences in the criminal code.

The law confirms that a tax fraud is considered as aggravated if the unpaid tax exceeds a certain amount (or a certain percentage) and is punishable by imprisonment for up to three years combined with a cash penalty (minimum €25,000 and maximum six times the amount of unpaid taxes or of unduly reimbursed taxes).

Tax swindle is an offence that requires, in addition to the aggravated tax fraud elements, a systematic use of fraudulent schemes designed to misrepresent the facts to the LTA, and must relate to very substantial amounts. Tax swindle is punishable by a maximum five-year imprisonment and a fine (of minimum €25,000 and maximum 10 times the amount of unpaid taxes or of unduly reimbursed taxes).

As regards judicial assistance in international criminal matters, the law provides that the Luxembourg State Attorney General can refuse to provide assistance to the requesting foreign authorities in case the request for assistance is exclusively related to criminal tax offences by virtue of Luxembourg law. No appeal may be lodged against the decision of the Luxembourg State Attorney General in this respect.

These measures are applicable to criminal tax offences committed as from 1 January 2017.

35 Are tax trial proceedings public?

In general, tax trial proceedings are pleaded in public. The parties or their representatives are allowed to present their arguments orally. The representative of the government must further give his or her conclusions, which are publicly read before the judges' deliberation. Deliberations are not held in public and the documents pertaining to the case are not available to the public, although the final decision of the tribunal may be further read in a public hearing.

36 Who has the burden of proof in a tax trial?

The guiding principles governing the burden of proof in tax matters are not fundamentally different from those applicable in general; each party must prove the facts being presented.

Indeed, the general rule is that the LTA has the burden of proving facts that trigger or that increase the taxable basis, whereas the taxpayer has the burden of proving facts that reduce or that cancel tax liability. In other words, the burden of proof of taxable income belongs to the LTA, while that relating to deductible expenses is to be made by the taxpayer.

However, the situation is different in the field of criminal tax law where the burden of proof remains in all cases in the hands of the LTA.

It should be noted that, within the context of a review of a tax return and if the LTA is doubtful about the accuracy of the facts and figures declared by the taxpayer, they are entitled to require additional information and the law provides that the taxpayer must mandatorily justify any points that seem doubtful to the LTA.

It is up to the LTA to prove that the procedure applied to the taxpayer has respected all the legal requirements (eg, the LTA must prove that it has diligently requested the tax return before issuing an ex officio tax assessment).

37 Describe the case management process for a tax trial.

The taxpayer must file a duly-justified written complaint with the Administrative Tribunal within three months following the notification of the decision of the LTA. The tribunal will immediately send a copy of the complaint to the LTA, which is thus deemed to be duly notified.

Upon receipt of a copy of the claim, the LTA will send a copy of the taxpayer's file to the Administrative Tribunal in order for the taxpayer to have access to all information contained in his or her tax file.

The representative of the LTA must lodge its defence in writing within three months.

After the tribunal has received the written defence of the defendant, a copy will be sent to the taxpayer, who may reply in writing to the defence within one month.

A copy of the plaintiff's brief will be sent to the representative of the defendant, who in turn has an opportunity to reply within one month.

Briefs that are produced after the expiry of the time limit required by the tribunal are generally not analysed by the judge.

In some cases, the judge can exceptionally extend the time limits for the above exchanges of briefs upon duly justified written request.

38 Can a court decision be appealed? If so, on what basis?

Any judgment of the Administrative Tribunal (in its capacity of tribunal of first instance) may be appealed to the Administrative Court. The appeal may be based either on the facts or on errors of law and of procedure.

The appeal must be filed within 40 days following the communication of the decision of the tribunal of first instance. Such delay cannot be extended. The taxpayer must be represented by a lawyer when appealing against the judgment of the tribunal of first instance. The LTA must be represented either by a representative of the government or by a lawyer. The decision-making powers of the Administrative Court are similar to those of the Administrative Tribunal.

The decision of the Administrative Court is final (ie, it may not be challenged before a court of cassation).

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