Administrative Tribunal: Judgment clarifying interesting tax procedural aspects

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On 5 February 2025, the Luxembourg administrative Tribunal (*Tribunal administratif, 5 février 2024, n°47856*) (the "administrative Tribunal" or the "Tribunal") reclarified certain procedural aspects regarding the filing of administrative claims on a provisional tax assessment[1] issued by the Luxembourg tax authorities ("LTA").

Summary of the case

In the case at hand, a corporate taxpayer filed its 2016 tax return for which the LTA issued provisional tax assessments based on §100a of the Luxembourg General Tax Law[2] (*Abgabenordnung*, "**AO**") a few years later, in June 2021.

Upon receiving them, the taxpayer realized that it had used the wrong data in its tax return (i.e., by definition, the provisional tax assessments accurately reflected the information the taxpayer had provided in its tax return), and therefore decided to file a first administrative claim (*réclamation*) on 6 July 2021 with the Director of the LTA to contest those tax assessments.

A second claim against the tax assessments was submitted shortly after on 22 July 2021, probably due to some procedural aspects in the context of the opening of the liquidation of the company. It is unclear whether a rectified tax return was also attached to this second claim. Finally, the rectified tax return was electronically filed months later, in October 2021. In the absence of a response from the Director, the taxpayer lodged an appeal with the administrative Tribunal.

Judgment of the Tribunal

The first part of the judgment was dedicated to addressing tax procedural matters, namely the verification of the validity of the administrative claim and the existence and validity of the rectified tax return, while the second part was more oriented towards tax technical aspects as the Tribunal focused on analyzing whether the initial tax return was indeed inaccurate and therefore whether the filing of a rectified return could be justified.

The present article only concerns itself with analyzing the procedural tax aspects developed in the judgment and subsequently discussing the practical implications they may entail.

Regarding the existence of a rectified tax return to support the claim

The LTA first challenged the validity of the second administrative claim, filed on 22 July 2021, on the grounds that it did not include any rectified tax return.

The Tribunal sided with the LTA and confirmed that the mere mention of the rectified tax return in the list of appendices of the claim is not sufficient to prove that the said document was actually attached. Likewise, the administrative stamp affixed upon receipt of the claim should not be interpreted as an acknowledgment from the LTA that all the documents allegedly attached to the claim were indeed submitted.

That said, the judges nonetheless recalled that the AO does not prescribe any specific formal requirements for a claim to be admissible. In this regard, the Tribunal maintained that §249(4) AO[3] should be understood as setting minimal formal conditions, specifically that the written claim **should indicate the taxpayer's disagreement and request for a reassessment of its situation**. Supporting documents, however, do not have to be submitted concomitantly with the claim itself; they may be provided at a later point in time, as long as the Director has not yet completed his review of the claim.

Noting in the case at hand that while the administrative claim had been filed in July 2021, a rectified tax return had subsequently been electronically filed in October 2021, the judges concluded that, given the silence from the Director, such a return could effectively be considered a supporting document in the claim.

Regarding the validity of the rectified tax return

The Tribunal then tackled the dispute over the validity of the rectified tax return electronically filed in October which, according to the LTA, was not signed by an authorized person.

Despite the lack of clear indications regarding the signatory – since the signature was handwritten without specifying the name and surname of its author – the judges analyzed the documents provided by the parties to verify his identity, and ultimately confirmed that the signatory had indeed been delegated the power to sign documents to be submitted to the LTA.

Regarding the possibility of filing a claim against provisional tax assessments

Finally, the judges examined whether taxpayers could contest tax assessments issued under §100a AO through the filing of a claim with the Director, despite the fact that they were in line with the tax return filed.

In that regard, the LTA sustained that, in so far as such assessments were automatically issued – hence *presumably* in line with the initially filed tax return – they could still potentially give rise to a subsequent deeper review by the tax office, in accordance with §100a (2) AO. In their view, the Director should therefore not be allowed to take a position in place of the tax office.

The judges, however, rejected this reasoning, invoking §243 (1) AO[4] which provides that once a claim has been filed to the Director, the latter is required to conduct a full reassessment of the taxpayer's situation *ex officio* and determine its tax liability in place of the tax office.

The above legal basis is further combined with the consistent position of the administrative jurisdictions[5], reaffirmed by the judges in the case at hand, which is to consider that any tax assessments, whether provisional or final, could be challenged by the taxpayer by way of an administrative claim. Essentially, the administrative jurisdictions rule that given the absence of any explicit provisions under §100a AO that would limit taxpayers' right of appeal, the broadest possible interpretation should be adopted. Namely, to recognize unrestricted access to the appeal remedies provided under §228 AO, including the possibility of filing an administrative claim.

Takeaways

The case under review is interesting as it clarifies several key procedural aspects.

On the one hand, the complexity of tax procedure – generally (and rightly) considered to be a challenging exercise – should not be underestimated, as it not only requires adequate documentation and arguments to potentially make the Director reconsider one's tax situation, but must also be prepared in a timely manner. In this respect, the 3-month deadline for an appeal has consistently been strictly applied by both the LTA and the administrative jurisdictions alike. As a result, taxpayers that fail to meet such a deadline will in most cases irremediably lose their right to appeal against a tax assessment.

In the case at hand, the discussions surrounding the handwritten signature of the rectified tax return, the identification of its author, and the confirmation of that person's capacity to validly sign the tax return, also highlight the importance of formal aspects in procedural matters and the attention to detail required in this respect (e.g., signatories must be clearly identified by their name to avoid any issue, etc.).

On the other hand, the Tribunal's judgment somewhat mitigates certain aspects of the strictness of the procedure (provided that the formal aspects are met and in particular the aforementioned 3-month deadline is respected) as the judges confirmed that a taxpayer is not legally required to submit its claim in a specific format – the only requirements are that it must be:
1. a written document;
2. sufficiently explicit to clearly indicate that the taxpayer disagrees with the assessment of its situation and requests for it to be reassessed.

The judge also reaffirmed that a taxpayer may still have the option to provide additional documents at a later stage, after the submission of the claim (even months later, as in the present case), provided that the Director has not yet finalized his review. In this respect, it may be worth noting that the Director's silence effectively resulted in granting the taxpayer the right to indefinitely supplement or amend its claim, thereby reestablishing a certain balance between the parties (*égalité des armes*).

Finally, the judgment of 5 February 2025 looks very interesting and positive for taxpayers in that it is a case of the filing of a rectified tax return within the 3 months following provisional tax assessments issued by the LTA subsequent to the filing of an initial tax return. Experience shows that it is often upon receiving tax assessments (whether provisional or final) that unexpected outcomes or tax burdens, arising from mistakes either in the annual accounts or in the tax return itself, are identified. The LTA have sometimes seemed reluctant to accept rectified tax returns in this context – though filed in accordance with the above principles – particularly when they result in a lower tax liability for the taxpayer concerned. While we may strongly encourage taxpayers to try to identify potential mistakes at an early stage and in any case before a (first) tax return is filed, it is reassuring to see that ultimately mistakes can be corrected if done within the appropriate timescales and with the necessary formal elements respected – and that judges should uphold the rights of taxpayers in this context.

1) *Provisional tax assessments issued based on §100a AO are generated automatically, as they merely reproduce the information provided in the corresponding tax returns. They also leave the door open for the tax office to audit, and potentially challenge, the submitted tax returns within a 5-year which starts running on the 1st January which follows the year during which the tax liability arose.*
2) Unofficial English translation by the authors: "*The tax office may, subject to subsequent review, assess the tax on the basis of the tax return alone, without having to indicate the grounds (…)*"
3) Unofficial English translation by the authors: "*When filing the administrative claim, the decision against which the legal remedy is directed should be specified. It should also be indicated to what extent the decision is being challenged and its annulment is being requested. Furthermore, the facts serving as justification and the evidence should be presented.*"
4) Unofficial English translation by the authors: "*Insofar as the appellate authorities are responsible for reviewing factual circumstances, they are required to investigate the facts ex officio.*"
5) Cour administrative, 9 août 2017, n°38981C