

Tax controversy series

Administrative Tribunal - Judgment on administrative claim qualification

On 9 July 2025, the Luxembourg Administrative Tribunal (*Tribunal administratif*, 9 juillet 2025, n° 49156) (the “Administrative Tribunal” or the “Tribunal”) took position on whether a request filed by a taxpayer to the Director of the Luxembourg direct tax authorities (“LTA”) should qualify as an administrative claim (*réclamation* – as per § 228 of the General Tax Law (*Abgabenordnung*, “AO”)) or as a rectification (*demande de redressement* – as per § 94 AO). This decision clarifies the formal requirements that the former must meet to be recognized as such and, if challenged, to grant the taxpayer the right to appeal before the Tribunal.



Summary of the case

On 14 July 2021, provisional tax assessments⁽¹⁾ (issued based on §100a AO) for financial year 2019 were issued by the LTA and sent to the taxpayer. However, upon receipt, the taxpayer reached out to the tax office to inform it that it had realized that the annual accounts on the basis of which its 2019 tax return had been prepared did not accurately reflect the economic reality. In a letter dated 24 August 2021 (the “2021 letter”), the taxpayer therefore informed the tax office that it would file a new set of accounts shortly and that an amended tax return for 2019 would be prepared accordingly.

The revised form 500 was submitted on 11 November 2021; however, it was not accepted by the tax office, due to late filing.

In an email dated 1 December 2021, the taxpayer contested the decision, asserting that the tax office had been informed since August of that year that the annual accounts for financial year 2019 were incorrect – and consequently, so was the tax return – and that it intended to adjust both documents.

Being given the same negative answer as before, the taxpayer filed a formal hierarchical appeal (which, although not specified, we assume was unsuccessful) and later lodged an appeal with the Administrative Tribunal.

Decision of the Tribunal

The judges did not directly address the main point of contention between the taxpayer and the LTA, namely whether the revised return filed by the former should be accepted by the LTA or not. Instead, the Administrative Tribunal focused on the preliminary issue concerning its jurisdiction to resolve the dispute.

In this context, the judges emphasized that, per the combined provisions of § 228 AO and Article 8(3), point 1 of the law of 7 November 1996, a taxpayer is entitled to appeal to the Tribunal only after review and decision from the Director of the LTA regarding a claim related to tax assessments as per established case law⁽²⁾. Thus, the taxpayer argued that an administrative claim as per § 228 AO had effectively been filed on 26 August 2021. In contrast, the LTA contended that the 2021 letter should instead qualify as a rectification as defined by §94 AO.

The Administrative Tribunal made a clear distinction between the two procedures, which lies in the objective they respectively pursue. In principle, an administrative claim is meant for a taxpayer to request the revision of its tax situation in its entirety while a rectification is a legal remedy which should be relied on to address a specific and precise taxation issue.

In line with the consistent position upheld by the administrative jurisdictions, the Tribunal reaffirmed that §249 AO⁽³⁾ should be interpreted as imposing only minimal formal requirements. However, it also clarified that, even though minimal, these requirements should not be overlooked. Regardless of any specific formalities being required for this purpose, legally or in practice, the Administrative Tribunal underscored that the taxpayer should act diligently when formulating its request, to ensure that the individual or body which receives it may actually be in a position to accurately classify it as an administrative claim or as a rectification and (in the case of the administrative claim) subsequently refer it appropriately to the Director.

In that regard, the request should indicate:

- The person or the body to whom it is addressed (i.e., to the tax office for a rectification or to the Director for an administrative claim);
- That the taxpayer does not agree with the tax treatment applied by the tax office and that it is therefore requesting a reassessment of its tax situation. The judges further emphasized that it should be up to the taxpayer to make it clear whether it requests the review of its entire tax situation (for an administrative claim) or only a specific aspect (for a rectification), keeping in mind that the former option could potentially lead to a reassessment that is detrimental to them (i.e., *in pejus* reassessment).

This last point could explain why the Tribunal immediately added that, in case of doubt, there should be no presumption that the taxpayer intended to file a claim. In case of uncertainty, the general approach followed by the tax office should be to interpret the submitted request.

The main aspects of this methodology, highlighted by the Tribunal, may be summarized as follows:

- Little importance should be given to the wording used (or the absence of particular terminology i.e., such as “claim”), although it may constitute an indicator;
- Rather, the LTA should ascertain the substance and the objective that the taxpayer aims to achieve and to identify the appropriate legal avenue for that purpose. To determine the intent of the taxpayer,

the request should notably be considered with the general context surrounding its submission and in light of the documentation and appendices provided as attachments.

Having clarified those concepts, the Tribunal noted that, in the case under review, the 2021 letter, while referring to specific tax assessments, did not convey any contestation from the taxpayer. Instead, it merely stated that the annual accounts on which the litigious tax return was based did not accurately reflect the economic reality and that they would be rectified shortly.

In other words, the judges considered that it was not apparent from the 2021 letter that the taxpayer considered it had been treated unfairly by the tax office and that it was contesting the initial assessment of its tax situation. Merely indicating that the set of financial statements it provided were inaccurate was insufficient to deduce that the taxpayer’s true intention was to challenge the entire tax assessment. Rather, the Tribunal interpreted it as a means for the taxpayer to inform the tax office that an amended tax return would be subsequently filed.

Given that the taxpayer should have explained how the initial tax assessment resulted in adverse tax consequences and observing that the revised return was ultimately filed approximately six months after the issuance of the challenged tax assessments, the judges confirmed the position sustained by the LTA and denied the qualification of the 2021 letter as an administrative claim.

Finally, the Tribunal mentioned that, even if §252 (1) AO requires the Director of the LTA to verify whether a claim has been filed, it is established based on the case law that the Director has exclusive authority to decide whether a document submitted by a taxpayer qualifies as a claim under §249 AO. In the present case, the Tribunal considered that the tax authorities were right to conclude that there could have been no doubt for the tax office as to the nature of the disputed document (2021 letter) as the latter was not characterized by ambiguous terms (as explained above).

Consequently, due to the absence of any claim – a mandatory requirement for the right of recourse with the Administrative Tribunal – the appeal was deemed inadmissible.

Key takeaways

This decision is interesting as it addresses a recurring taxpayer misunderstanding regarding administrative claims. The administrative jurisdictions have consistently ruled, including in the present case, that the formal requirements of such procedures should be minimal, provided that the taxpayer has made it clear that it considers its tax situation to have been incorrectly assessed, that this assessment has triggered adverse consequences, and that it is seeking a review of its tax situation as a result⁽⁴⁾.

In their approach, the judges seem to take into account the fact that not all taxpayers were accompanied in their dealings with the LTA. Therefore, the absence or incorrect use of specific terminology should, in principle, not be detrimental or serve as a basis for the LTA to reject a claim. Instead, the rationale followed by the administrative jurisdictions should be to dis-

cern the objective pursued by the taxpayer in order to infer the procedure they have (or should have) undertaken.

Having said that, this open approach should not encourage taxpayers to take the process lightly as it could result in their request being perceived as a rectification if deemed more aligned with the taxpayer’s attitude and objectives (as interpreted), which would ultimately entail entirely different consequences. In the case at hand, this notably precluded the taxpayer from further appealing the decision of the LTA. It is thus essential for taxpayers to act diligently from the outset, especially since administrative claims must typically be submitted within a short timeframe (i.e., three months from the issuance of the challenged tax assessments), which the taxpayer failed to respect as the amended return complementing the alleged claim was ultimately filed several months after the deadline.

In that regard, in one of our previous articles⁽⁵⁾, we noted that one of the consequences of the minimal formal requirements associated with administrative claims is that taxpayers should have the option to provide additional documents at a later stage, as long as the Director has not yet finalized the review of the claim. In that case, the judges accepted that the amended return was electronically filed months after the administrative claim was submitted (and, in that context, more than three months after the issuance of the challenged tax assessments).

In the present case, without contradicting their previous position, the judges conversely upheld the LTA’s decision to reject the amended tax return filed by the taxpayer more than three months after the issuance of the tax assessment. Since no administrative claim could be recognized, the same leniency for a revised return to be submitted well after the legal deadline could not be applied.

It is clear from this decision that while the LTA take into account (or are expected to take into account) the fact that not all taxpayers are tax experts, the latter still face risks if they choose to engage with the LTA without any assistance. Given that it can sometimes be difficult to pinpoint the specific aspects on which the LTA grant leniency, we would recommend that taxpayers err on the safe side and seek assistance as a matter of course.

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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 five year period which starts running on 1 January following the year during which the tax liability arose.

2) Tribunal administratif, 6 août 1997, n° 9574.

3) Unofficial English translation by the authors – §249: “(1) Legal remedies may be submitted in writing or recorded in the minutes. It is sufficient for the document to document who has filed the legal remedy. Filing by email is permitted. An incorrect designation of the legal remedy does not invalidate it.

(2) A legal remedy is considered filed if it is evident from the document or the declaration that the declarant feels adversely affected by the decision and requests its reassessment.”

4) For instance, Administrative Tribunal, 5 February 2025, n°47856
5) E. Lebas and V. Plateau, “Administrative Tribunal: Judgment clarifying interesting tax procedural aspects”, AGEFI Luxembourg, March 2025, Page 38.



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