IN-DEPTH

Tax Disputes And Litigation

BELGIUM

LEXOLOGY

Tax Disputes and Litigation

EDITION 13

Contributing Editors

Reinout de Boer and **Michael Molenaars**

Stibbe

In-Depth: Tax Disputes and Litigation (formerly The Tax Disputes and Litigation Review) is a practical overview of the common issues that give rise to tax disputes in key jurisdictions, the procedures for resolving those disputes, and the powers and approach of local tax authorities. With a focus on recent developments, it offers insights into the process, timescale and cost of resolving complex difficulties when they arise across multiple jurisdictions.

Generated: May 28, 2025

Belgium

Caroline Docclo
Loyens & Loeff

Summary

Introduction

Belgian tax procedures vary slightly depending on the type of tax. However, a common feature of Belgian tax procedures is that there is no fee or cost due to the tax authorities or to the courts. The taxpayer may defend itself before the tax authorities and the courts, and thereby avoid paying fees to counsel.

Tax procedures may be slow. The tax authorities may revisit taxpayers' files after several years, administrative appeals may take several months and many courts are under-resourced. Nevertheless, most misunderstandings are swiftly settled at the stage of an administrative procedure organised as a series of open discussions where the taxpayer has access to the tax authorities' files.

Special services have been organised within the tax authorities to serve as intermediaries between taxpayers and the services in charge of assessing taxes. The Ruling Commission was created to prevent disputes, while the Tax Conciliation Service was created to assist taxpayers in tax disputes.

Commencing disputes

Audit of the taxpayer's situation

Most taxes are assessed on the basis of tax returns filed by taxpayers.[1] In the absence of a timely return, the taxpayer must demonstrate the exact amount of income (Article 352 of the Income Tax Code 1992 (CIR92)). Furthermore, proportional surtaxes apply (Article 444 CIR92). In addition, a taxpayer subject to corporate tax is taxed on a minimum tax base of €49,300. If the infringement is repeated, the latter amount may be increased up to €98,600 (Article 342 CIR92).

Tax disputes most often commence with a review of tax returns. Any means of evidence, including minutes drawn up by the tax authorities' agents[2] but excluding an oath, may be used (Article 340 CIR92).

The tax authorities may investigate the taxpayer's situation for a period of three years (or four years in the absence of a timely tax return) from the beginning of the assessment year (Article 333 CIR92).[3] The tax authorities are allowed to review during six years semi-complex tax returns (which is the case when the taxpayer:

1. files transfer pricing reports;
2. reports payment to noncooperative countries or low tax jurisdictions;
3. has cross-border arrangements under Directive 2011/16/EU on Administrative Cooperation (DAC); and
4. requests a withholding tax relief based on a double tax treaty, the Parent-Subsidiary Directive or the Interest-Royalty Directive or the foreign tax credit).

They are allowed to review complex tax returns for 10 years (which is the case when the taxpayer is involved in hybrid structures, CFCs or structures subject to the Cayman tax). A bill is pending that is expected to merge the concepts of complex and semi-complex tax returns and provide that the tax authorities may investigate those returns for four years. The rule will apply with retroactive effect back to assessment year 2023.

The investigation period is suspended pending the review of a complaint filed during this period for six months at a maximum. Furthermore, the investigations may be conducted for 10 years, provided that the authorities first notify the taxpayer in writing about their presumption of a fraud, based on indicia, related to the period under examination (Article 333 CIR92). The taxpayer must also be notified when the authorities request information from other persons.[4] However, the consultation of databanks does not qualify as an investigation.[5] Such a notification is not requested when the investigations are conducted to satisfy a foreign country's request for exchange of information (Article 333 CIR92).

A bill is pending that is expected to restate the old rule according to which the investigation period is limited to seven years in cases of fraud and the tax authorities must notify only indicia of fraud.

If the authorities receive information from a foreign country under an exchange of information instrument, they are allowed to further investigate for the purposes of establishing that the taxpayer omitted to report income that should have been reported within the five-year period before the year during which the information from the foreign country has been made available to them (seven years in cases of fraud).[6] They may do so for two years after the day on which they receive the information from abroad (Article 333/2 CIR92).

The tax authorities are also allowed a one-year extension to investigate on withholding tax on income from movable property or on pay as you earn (PAYE) from the time an investigation shows that the taxpayer misapplied that tax once over the previous five years (Article 333/3 CIR92).

If a taxpayer files a complaint against a tax bill, the tax authorities may also conduct further investigations for the purposes of deciding on the taxpayer's grievances (Article 374 CIR92).

Investigations may thus be conducted long after the 10-year period during which taxpayers must keep their books (Article 315 CIR92).

The tax authorities may request that the taxpayer show them any document necessary to determine its tax liability (Article 315 CIR1992). The tax authorities may require the taxpayer to supply information within one month; they may allow a time extension (Article 316 CIR92). Taxpayers who keep data in a computerised system must deliver such information in the form that the tax authorities require (Article 315 *bis* CIR92).[7]

The tax authorities may also access the premises where the taxpayer conducts a business during business hours (Article 319 CIR92). The right to access the premises cannot lead to a raid.[8] Nightly access to premises used as an abode requires the authorisation of a judge (Article 319 CIR92).[9]

The tax authorities may keep the taxpayer's books and documents that they deem necessary to determine the amount of taxable income. They are not allowed to take books that are not closed (Article 315 *ter* CIR92).

Information obtained on the audit of a taxpayer may be used for the purpose of taxing other taxpayers (Article 317 CIR92).[10] The tax authorities may also request from any taxpayer information deemed necessary to determine the tax liability of any other taxpayer (Article 322 CIR92). They may require bulk information on transactions of persons and groups of persons directly or indirectly involved in such transactions (Article 323 CIR92). The tax authorities may request a judge to impose a civil fine on a person who does not cooperate with their investigations (Article 381 CIR92).

Investigations may be conducted upon request of another country's tax authorities, pursuant to a treaty or DAC.[11]

In principle, information requested by or provided to foreign countries is not disclosed to the taxpayer before the investigation by the foreign country is closed (Article 337/1 CIR92).

If investigations show the existence of the preparation of fraudulent mechanisms, the tax authorities may request to see the records of a bank (Article 318 CIR92). They may also request information from a bank with the purpose of taxing targeted customers if they identify signs of fraud or intend to impose a tax based on signs of wealth, unless the taxpayer (who must be informed of the intent to proceed with bank investigations) provides the requested information within one month.[12]

For the purposes of satisfying a request from another country, the tax authorities may investigate banks' files, provided they notify the taxpayer within 90 days after the exchange of information unless the other country explicitly requests not to inform the taxpayer or if the other country demonstrates that it has already notified the taxpayer (Article 333/1 CIR92).[13]

In criminal matters, pieces of evidence obtained irregularly cannot be set aside unless the irregularity affects the reliability of the evidence or the right to a fair trial or if compelling formalities have been disregarded (Article 32 of the Criminal Procedure Code). The Supreme Court has expanded this rule to pieces of evidence obtained by the tax authorities and used to establish a tax.[14]

Debates prior to assessment

If the tax authorities intend to adjust the taxpayer's liability, they must send it a notice of deficiency (Articles 346 and 351 CIR92). The notice of deficiency, which is an invitation to discussion, must mention all the elements on which the intended adjustment is based. No tax can be imposed on elements other than those in the notice.[15]

The taxpayer is allowed one month to answer the notice of deficiency (this is not applicable in respect of withholding taxes or if the rights of the Treasury are jeopardised). The one-month period starts running from the third working day following the sending of the notice of deficiency.[16] The tax cannot be assessed before the end of this one-month period, unless the taxpayer responds before the end of this period.[17]

Before assessing the tax, the tax authorities must reply to the arguments of the taxpayer (notification of assessment)[18] (Articles 346 and 352 *bis* CIR92). Although the assessment must be justified by elements mentioned in the notice of deficiency, the tax authorities may still change their legal analysis of the same elements. They may also use the same

reasons in the notification of assessment as in the notice of deficiency if the taxpayer does not submit new arguments.[19]

Despite the taxpayer's disagreement, the tax may be assessed and established as a debt.-[20]

Limitations on assessment

When the taxpayer files an accurate tax return in a timely manner, the tax must be assessed before 30 June of the year following the assessment year or six months after the filing of the tax return, whichever is later (Articles 353 and 359 CIR92).

However, if the tax authorities determine that the amount of tax due is higher than the amount resulting from the items reported in the return,[21] the tax may be assessed within three years of the beginning of the assessment year.[22] If the taxpayer fails to file its return in a timely manner, the tax may be assessed within four years. The assessment period may be suspended for six months at a maximum if the taxpayer files a complaint within that period (Article 354 CIR92).

The limitation period is extended to six years if the taxpayer files a semi-complex tax return and 10 years if the taxpayer files a complex tax return (see heading 'Debates prior to assessment') or in the case of fraud (Article 354 CIR92).[23] If the authorities do not need to further investigate, they are not required to previously notify the taxpayer signs of fraud. The tax may be assessed within the 10-year period even if the authorities did not first make use of the initial three or four-year period.

A bill is pending that is expected to reduce the assessment period to four years regarding complex tax returns and seven years for fraud, with effect from assessment year 2023.

The tax may be assessed beyond the above-mentioned limitations in the following circumstances (Article 358 CIR92):

1. withholding tax on movable property income and PAYE unpaid or lately reported during the five preceding years may be assessed during the year following the statement of the infringement;[24]
2. if it appears from information received from a foreign country bound by an agreement on the exchange of information, or from further investigation led by the Belgian authorities, that items of income have not been reported when they should have been during one of the five years (or seven years in case of fraud) preceding the year during which the information passed on by the foreign authorities is received by the Belgian authorities, the tax on such income may be assessed during 24 months after the exchange of information took place;[25]
3. if a judicial procedure shows that items of income should have been reported within the five years before the year of the commencement of the proceedings, the tax may be assessed on such income during the 12 months after a court decision on the case has become final;[26]
4. when evidence shows that income should have been reported during the five years before the year during which the evidence became known to the tax authorities, the tax on that income may still be assessed during the 12 months following the time that the authorities obtained the information; and

5. taxes that appear to be due after a mutual agreement procedure or an arbitration procedure may be assessed within the 12-month period following the closure of the procedure.

There is no time limit for adjusting the value of understated assets or overstated liabilities: they are deemed to be income of the year under examination unless the taxpayer demonstrates that they have already been taken into account to determine its tax situation (Article 361 CIR92).[27]

The tax authorities may challenge the amount of deductible previous losses when they are used to offset taxable income. This means that they can challenge the profits and burdens of previous years that resulted in the losses carried over, regardless of the year to which they relate.[28] Conversely, the taxpayer is allowed to request a revision of elements of previous years carried forward to the relevant year.[29]

If the tax director invalidates a tax bill further to a complaint filed by the taxpayer (see below) on grounds other than the statute of limitations, the tax authorities may assess an alternative tax computed on the same items as those on which the invalid tax had been computed within three months after the tax director's decision becomes final (Article 355 CIR92).

Limitations on collection

The Treasury is time barred if it does not collect taxes within five years after those taxes become undisputedly due. Statute of limitation is interrupted by the taxpayer's acknowledgement of its tax debt or by a writ of summons served by a bailiff or registered mail (Articles 23 and 24 of the Recovery Code).

Statute of limitations on collection is suspended pending an administrative appeal or a petition filed by the taxpayer (Article 25 of the Recovery Code).[30]

Tax complaints

The taxpayer may bring a complaint against a tax bill before the tax director. The complaint is an administrative appeal against the tax and is a prerequisite before bringing the dispute before a court (Article 1385 *undecies* of the Judicial Code).

The complaint must be filed within one year and three working days of the tax bill being sent (Article 371 CIR1992). The stamp of the post office on a registered mail is deemed to be the date of application.

If the complaint is filed in a timely manner, the collection of the contested amount of tax is restricted for the period during which the proceeding is pending (Article 61 of the Recovery Code). Despite the fact that the taxpayer may retain the payment of the contested tax, it will owe interest on the amount due if it is unsuccessful. If the taxpayer pays the tax assessed (or if the authorities use a tax refund to offset the contested tax) and if it wins the case, interest will be paid to it provided that the taxpayer served a summons (Article 418 CIR92). The legal annual interest rate in tax matters in favour of the Treasury and currently applicable is 4 per cent, while interest in favour of the taxpayer and currently applicable is

2 per cent (Article 414 CIR92 and Article 2 of the Act of 5 May 1865 on interest-bearing loans).

Before making a decision, the tax director must invite the taxpayer to argue orally the points therein, and to consult the tax authorities' file, if the request is made in the complaint. The tax director's decision is expected within six months of the filing of the complaint, or nine months in the absence of a tax return filed in a timely manner or in assimilated circumstances. An additional four-month period is allowed for the tax director if the taxpayer seeks the Tax Conciliation Service's assistance. Usually, tax directors take much longer than these periods to review a file; they may even take several years. In the absence of a decision within these periods, the taxpayer may bring the case before a court (Article 1385 *undecies* of the Judicial Code). In the absence of a decision six months after the filing of the complaint, late interest stops running on the disputed tax debt until the tax director's decision is made or the case is brought before a court (Article 414 CIR92).

Tax directors cannot impose additional tax or use relief to offset any new deficiency that they may find (Article 375 CIR92). Nevertheless, tax directors' interpretation of the facts presented by the tax inspector may support the assessment, provided that they do not make the taxpayer's situation worse.[31] However, the fact that a taxpayer has filed a complaint does not hamper the tax authorities from further investigating the taxpayer's situation and adjusting its tax liability within the time limits mentioned above (see heading 'Limitations on assessment').

A complaint against tax assessed on the basis of contested elements amounts to a complaint against any tax assessed on the basis of the same elements (Article 367 CIR92). If the complaint relates to the deduction of expenses made during a given taxable period, and such expenses cannot be fully deducted from the profit of that taxable period, the complaint also affects the taxes relating to subsequent periods during which the excess of these expenses have been deducted.[32]

An additional tax assessed after an adjustment of the taxable basis (understated or hidden items of income) is never considered as assessed on the same elements as those considered when determining the initial tax bill before adjustment. If the taxpayer is time-barred to complain against the initial tax bill, it cannot rely on a complaint against the additional tax bill to obtain the invalidation of the initial one. However, it may criticise elements considered when computing the initial tax bill to obtain the rescission of the additional tax bill.[33]

If the tax authorities base an additional tax for an assessment year on elements that have already been taxed in another assessment year, the taxpayer may file a complaint against the previous tax bill based on the same elements within one year and three working days of the sending of the additional tax bill (Article 373 CIR92).

The taxpayer may request the tax director to revisit his decision regarding the complaint within three months after it has been made, provided that the taxpayer does not bring the case before a court before making this request. The tax director's decision on the complaint or on the application for revision becomes final if the taxpayer does not bring the case before the court within three months and three days (Article 375 CIR92; see heading 'Petition before the tribunal').

Tax rescission

The tax director may also rescind surtaxes resulting from clerical errors or misunderstandings of facts, double taxation or evidence that could not be invoked in a timely fashion for reasons beyond the taxpayer's power, provided that the surtaxes are brought to the director's attention within five years from 1 January of the year during which the tax has been assessed, and no decision has yet been made on a complaint against the contested surtax (Article 376 CIR92).[34]

An error that results from a standpoint of the taxpayer when filing in the tax return is not a clerical error.[35] When the reported profit appears from the financial statements, the taxpayer cannot amend the results of a choice it made when establishing those statements, as opposed to an erroneous recording of a transaction.[36]

New legislation or case law cannot be viewed as new circumstances that may lead to rescission.[37] However, if the Constitutional Court holds that a tax law provision conflicts with the Constitution, the taxpayer may request that a tax imposed by virtue of such a provision be rescinded even if the Constitutional Court's decision has been officially released within the six-month period allowed to file a complaint and the taxpayer omitted to file a complaint in a timely manner (see heading 'Preliminary rulings').[38]

The tax authorities admit that a ruling of the European Court of Justice (ECJ) stating that Belgian law conflicts with EU Law may also lead to rescission.

If a Belgian legal provision is annulled by the Constitutional Court, the taxpayer may file a complaint against a tax imposed pursuant to the annulled provision even if ordinary time limits have expired.

The tax director may also rescind surtaxes that appear on the occasion of a mutual agreement procedure organised under a double tax treaty, a procedure provided by the European Arbitration Convention of 23 July 1990, or the Arbitration Directive (Article 376 CIR92).

A decision to rescind a tax need not be reasoned (Article 376 *ter* CIR92).

The courts and tribunals

Petition before the tribunal

If the taxpayer is not satisfied with the tax director's decision, it may file a petition before the court of first instance (the tribunal) within three months and three days after the decision has been sent. The petition must address the validity of the tax bill and not the validity of the director's decision.[39] The director's decision is irrevocable if the taxpayer does not timely file a petition against it.[40]

If the tax director fails to render their decision within the periods mentioned under the header 'Tax complaints', the taxpayer may bring its case before the tribunal.

If the director annuls or rescinds the tax for any reason, a petition aiming at a revision of the reasons for the annulment or rescission is not admissible; the only purpose of a petition is the annulment or rescission of the tax.[41]

A tax petition is not admitted if the administrative procedure has not been exhausted when such a procedure is organised by law.[42] When the law does not provide for any preliminary administrative review, the taxpayer may submit its case directly to the tribunal.[43] For example, if the taxpayer fears the threat of an illegal assessment, it may protest to the tribunal, and request urgent and preliminary measures to avoid further damage.

Tax cases are handled by independent judges specialising in tax matters.[44] Ordinarily, tax cases are submitted to a chamber of one judge. Only in very specific circumstances may a case call for a chamber of three judges.

In general, the Treasury is represented by the tax director who decided on the complaint, or their delegate. In specific circumstances, the Treasury appoints attorneys-at-law, which may mean additional costs for the unsuccessful taxpayer (see heading 'Costs').

The parties usually submit a schedule to the court stating the dates on which they will file their briefs of arguments, and request a date for the oral submissions. Because a number of tax courts are under-resourced, hearings may be severely delayed.

The ordinary rules allow the taxpayer to present new claims in its brief of arguments, provided that they are supported by the facts stated in the initial petition. If the taxpayer has extensively described the facts in its petition, it may use them as the basis for grievances that were not submitted at the time of filing the original petition but that have since become apparent to the taxpayer on reviewing the tax authorities' arguments and supporting documents.

The tribunal decides on the merits of the case, having regard to the formal and substantive aspects of the assessment. Because tax law is a matter of public policy, the tribunal must decide on the basis of not only the grounds alleged by the parties but also the grounds that it finds relevant, provided that it invites the parties to discuss those grounds.[45] The tribunal is not bound by the brief of arguments of the parties, but it cannot grant a party more than has been claimed.

The tribunal's decision may be contested before the court of appeal. Appeals must be lodged within one month after the contested judgment has been served by a bailiff.[46]

If the tribunal decides to annul the tax bill wholly or partly for a reason other than the statute of limitations, the case remains pending before the court for an additional six-month period, during which the tax authorities may submit to the tribunal an alternative assessment based on all or part of the same elements as the annulled tax. In such cases, the parties' right to appeal against the tribunal's decision is suspended. If the tax authorities submit an alternative assessment, the deadline to lodge an appeal against the tribunal's decision starts running from the time the decision on the alternative assessment is served (Article 356 CIR92).[47] However, a taxpayer may lodge an appeal before the end of the six-month waiting period and it will be admissible.[48] The alternative assessment is allowed to the tax authorities provided that the court did not decide on the statute of limitation or the taxable basis when dismissing the case of the tax authorities.[49]

The tax authorities are not allowed to submit an alternative assessment if the tax director fails to decide on the complaint before the taxpayer brings the case before the tribunal.

Right to appeal

The court of appeal has full jurisdiction and it must revisit the case. The procedural steps are the same as those before the tribunal.

Unless the First President of the court of appeal decides otherwise in specific circumstances, the taxpayer is heard by a single judge.

The tribunal's decision is suspended during the appeal procedure and the period during which an appeal can be lodged (Article 377 CIR92).

Appeal on a point of law

The court of appeal decision may be challenged before the Supreme Court, but only on the grounds that the decision would conflict with the law or that it would infringe an essential procedural requirement. In order to leave little room for discussion before the Supreme Court, courts of appeal prefer to reason their opinion based on their finding of the facts.

If the Supreme Court quashes the court of appeal decision, the case will be submitted to another court of appeal or another chamber of the same court of appeal, which will have jurisdiction only to the extent to which the dictum of the earlier decision has been invalidated and the court of appeal to which the case is referred must settle the case in line with the Supreme Court's dictum.[50]

Preliminary rulings

Tribunals, courts of appeals and the Supreme Court may refer tax issues for a preliminary ruling before the Constitutional Court or the ECJ.

The Belgian Constitution provides that a tax can only be levied and exemption can only be granted by an act of parliament ('no taxation without representation'). The Constitutional Court has repeatedly held that the power to decide on the principle of a tax and its essential elements belongs to the legislature.[51] However, a taxpayer may invoke a rule that supersedes an act, such as the Constitution, European legislation and the ECHR. A taxpayer may even seek the annulment of an act that conflicts with the Constitution before the Constitutional Court within six months of the official publication of the act.

Ordinary courts and tribunals are willing to discuss the compliance of a Belgian act with superior international rules and to set aside a non-complying act. They must refer the issue of the compliance of an act with the Constitution to the Constitutional Court (and they do) before setting aside the application of a legal provision on the ground that it is conflicting with the Constitution. However, Belgian judges do not always refer challenging cases to the ECJ, and decide themselves whether a contested Belgian provision complies with EU law.[52]

When a Belgian tax provision is held to be contrary to a superior rule by the Constitutional Court or the ECJ, the tax authorities often defer to the case law by way of circulars before the invalidated provision is amended by the legislature, and even invite the taxpayers to behave as if such a provision had been amended.[53]

Penalties and remedies

Administrative penalties

If income of at least €2,500 is not timely reported, the tax authorities may impose proportional surtaxes depending on the type of infringement and increasing in the event of reoffence (Article 444 CIR92). The surtaxes range from 10 to 200 per cent. An infringement is repeated only if notice of a first infringement has already been given before the subsequent infringement is committed (Article 229 AR/CIR92). If the taxpayer correctly files four returns in a row, previous infringements are ignored (Articles 227 and 228 AR/CIR92). As a rule, the aggregate amount of tax and surtaxes cannot exceed the amount of unreported income or lately reported income (Article 444 CIR92).[54] The tax authorities must restate the facts that justify the penalty, its legal ground and the justification of the amount of the penalty.[55]

The amount of income added to the taxable basis of a corporate taxpayer further to a notice of deficiency giving rise to a 10 per cent penalty cannot be offset by deductions ordinarily available such as carried over losses, etc. (Article 206/3 CIR92).[56] This rule as applied by the Treasury severely affects enterprises facing difficulties.

A bill is pending that envisages a presumption that the taxpayer commits the first infringement bona fide, and that no penalty should apply in this case.

In certain circumstances, a specific tax rate (100 or 50 per cent) applies to hidden earnings and insufficiently documented expenses made by companies and not-for-profit organisations ('hidden fees') (Articles 219, 225, 246 and 247 CIR92).

Any understatement of income tax may also give rise to administrative fines of up to €1,250. A fine of €12,500 applies in case of bad faith or wilful attempt to evade tax and the same amount may be doubled if the taxpayer reoffends. Infringements to reporting obligations related to transfer pricing may trigger a penalty from €1,250 to €25,000. A flat penalty of €6,250 applies if the taxpayer omits to report information relating to the 'Cayman Tax'. Infringements to the reporting obligations provided by DAC6 may give rise to administrative fines from €5,000 to €100,000 (Article 445 CIR92).

Criminal penalties

In addition to administrative penalties, the law provides for criminal penalties, which are applied by the courts. Besides imprisonment, a taxpayer who has committed fraud or forgery may be sentenced to a fine of up to €4 million (Articles 449, 450 and 457 CIR92).

The tax authorities may bring civil actions before criminal judges to obtain the payment of outstanding taxes (Article 300 CIR92). If the Public Prosecutor prosecutes a tax offence before the criminal judge, the latter has jurisdiction to decide on the civil aspects of the case (and a procedure commenced before a tax court ends) even if the criminal prosecutions are dismissed (Article 4 *bis* of the Preliminary Title of the Criminal Procedure Code).

Tax claims

Recovering overpaid tax

Refund of taxes and interest

As a general rule, interest on refunds due to the taxpayer accrues from the month commencing after the taxpayer has served a summons to the tax authorities (Article 418 CIR92). Interest is calculated at the legal rate on the amount of overpayment. The legal annual interest rate in tax matters in favour of the taxpayer is currently 2 per cent (Article 414 CIR92 and Article 2 of the Act of 5 May1865 on interest-bearing loans). Interest capitalisation is disallowed (Article 2 of the Act of 1865).

In certain circumstances, refundable amounts are credited against other outstanding amounts instead of being paid in cash. Refundable amounts may also be used to offset tax liabilities other than income tax. When a taxpayer is allowed a refund of taxes, this refund may also be used by the authorities to offset outstanding debts of the same taxpayer in relation to social security authorities or other Belgian governmental bodies (Article 334 of the Act of 27 December 2004).

Withholding tax on movable property income or professional income and early payments of tax are creditable against the final tax calculated upon assessment, and the excess is refundable. The final tax should be assessed by 30 June of the year following the assessment year or six months after the timely filing of the tax return. If the tax bill announces a refund, interest accrues in favour of the taxpayer from the third month after the period of limitations on assessment has run at the earliest, until the date of payment (Articles 359, 353 and 419 CIR92).

With respect to withholding tax, the beneficiary of the income or the debtor is entitled to claim a refund of the withholding tax in the absence of a timely assessment, or if the tax was unduly withheld (Com CIR92, 366/3).[57] Unless the tax authorities have made use of the contested withholding tax to offset a tax debt, the period allowed to the taxpayer to claim the refund of unduly paid withholding tax is five years from 1 January of the year during which the withholding was paid to the Treasury (Article 368 CIR92).[58] If the claim for a refund is filed by the beneficiary of the income, interest accrues in its favour. However, if the debtor of the income claims the refund of the tax that it spontaneously withheld at source, no interest accrues (Article 419 CIR1992).[59] In specific circumstances, the law excludes interest accrual on refundable amounts. Nevertheless, interest should accrue where withholding tax has not been credited as a result of a mistake by the tax authorities, such as a delay in the assessment of final tax.[60]

Challenging administrative decisions

A tax director's decision on a complaint or a request for rescission may be challenged before a court[61] (see heading 'Petition before the tribunal').

Claimants

Tax complaints and appeals must be filed by the taxpayer on whom the tax is imposed.[62] A tax imposed on a taxpayer cannot be challenged by another person, unless that person

has succeeded to the taxpayer's rights and liabilities. For example, in the case of a merger or a split-up, the company that inherits the liabilities of the absorbed or split company is entitled to file a complaint or an appeal against the tax bill assessed in the name of the latter. A company validly acts through its directors or managers appointed according to company law.

If a company is wound up, the person appointed as a liquidator is entitled to act in this capacity.[63] The liquidator is also allowed to file a complaint in the name of the company whose liquidation is closed. Bankrupt companies are validly represented by the administrator in the insolvency.

A proxy holder may file a complaint in the name of a taxpayer. Tax consultants may act as proxy holders when filing a complaint, but they are not authorised to represent their customers before the courts. The tax authorities acknowledge that attorneys-at-law represent their clients when filing a complaint, as well as before the courts, and do not need to prove it (ComIR92, 366/9).[64]

Costs

Duty for listing a case

Petitions and further appeals in tax matters are exempt from taxes.

Indemnities

A fixed indemnity is due to the winner from the defeated party, to wholly or partly cover the fees due from the winner to its attorney (Article 1022 of the Judicial Code); this prevents the winner from requesting indemnity in excess of the legally fixed amount. The indemnity is only due to a winner assisted by an attorney. The tax authorities are also liable for indemnity when they lose their cases.[65] This indemnity is liquidated by the court based on tables. The regular indemnity ranges from €225 to €22,500 when the amount at stake is above €1 million.

Alternative dispute resolution

Tax rulings

An advance ruling is an administrative decision by which the tax authorities determine how the legislation in force will apply to a situation or a transaction that has not yet triggered fiscal consequences. The Ruling Commission may therefore not intrude in tax disputes but a ruling may prevent disputes. The federal tax authorities release advance rulings on any question relating to a tax they are in charge of, except questions relating to collection or proceedings. As a rule, the tax authorities cannot deliver a ruling regarding transactions with a low-tax country that does not cooperate according to the standards of the OECD, or transactions that have no economic substance in Belgium. Advance rulings are effective

for five years unless the taxpayer demonstrates that a longer validity period is appropriate. In addition, the ruling is cancelled when:

1. its requirements are not satisfied;
2. the taxpayer has not provided an accurate description of the envisaged situation;
3. the legislation on which the ruling relied (including Belgian and EU law and treaties) is modified; or
4. it appears that the ruling conflicts with Belgian, EU law or treaties.

The Ruling Commission allows taxpayers (represented by a counsel) to file a preliminary request on a no-name basis. If it finds that it may satisfy the taxpayer's request, it invites the taxpayer to file a formal request. If it considers that it cannot satisfy the taxpayer based on the preliminary request, the taxpayer may simply not continue the procedure. To prevent tax inspectors from challenging rulings, a protocol was arranged between the departments of the tax authorities in 2010.

Tax Conciliation Service

A taxpayer who files a complaint or a request for rescission may apply for conciliation (Article 376 *quinquies* CIR92). The Tax Conciliation Service serves as an interface between taxpayers and the federal tax authorities. Although it belongs to the tax authorities, it is independent from other services. By the same token, it has no authority to give instructions to other services but it may guide the debates. It may also decline a request for conciliation. The conciliation procedure is inadmissible or is terminated if the taxpayer brings the case before a court (Article 376 *quinquies* CIR92).

International mutual agreement or arbitration procedures

International mutual agreement or arbitration procedures are provided by numerous double tax treaties signed by Belgium.

Belgium is also a party to the European Arbitration Convention of 23 July 1990[66] and implemented the Arbitration Directive.[67]

The Multilateral Instrument is in force in Belgium and may apply regardless of the tax period concerned. Belgium has adopted its arbitration provisions. Belgium prefers the baseball procedure (in which the arbitrators choose between the 'last best offer' of the parties) but remains open to a reasoned opinion procedure.

Anti-avoidance

According to the Constitution, no tax can be levied unless the legislature so provides. A taxpayer may choose to organise its transactions in a manner that triggers little taxation. The taxpayer must, however, accept all the consequences of its acts. The tax authorities must set aside disguised transactions and adhere to the legal reality created by the taxpayers.[68] Sham is a fraud.

The tax authorities may also ignore transactions conducted by a taxpayer that infringe a non-tax legal provision of public policy if its intent is to defeat or evade tax.[69] However, the tax authorities cannot rely on the economic reality to adjust the situation of a taxpayer.

In 2012, Article 344(1) CIR92 introduced the concept of abuse of tax law. It still reads as follows:

> The tax authorities may disregard the legal act or a series of legal acts composing the same transaction if the tax authorities demonstrate by presumptions (or otherwise) and in the light of objective circumstances that tax abuse has been committed. There is tax abuse when the taxpayer realises by its legal act or series of legal acts, one of the following transactions: a transaction allowing it to escape the application of a provision of the Income Tax Code or the decrees implementing that code, in violation of the goals of such a provision; or a transaction allowing it to claim a tax benefit provided by a provision of the Income Tax Code or the decrees implementing that code, while the grant of such a benefit would be conflicting with the goals of such a provision and the main purpose of that transaction is the grant of such a benefit.

This provision does not conflict with the constitutional principle according to which no tax can be levied in the absence of clear legislation if the tax authorities demonstrate the purpose of the legislature when asserting that a taxpayer acted in a manner that they view as an abuse.[70] If the tax authorities are able to demonstrate that both the objective and subjective criteria of an abuse are met, the onus is on the taxpayer to demonstrate that the choice of its legal act or series of legal acts is justified by motives other than the avoidance of income tax. If the taxpayer fails, the taxable base and the computation of the tax are restored in such a manner that the transaction is subject to a levy complying with the demonstrated goals of the law, as if the abuse never took place.

Belgium implemented the Anti-Tax Avoidance Directive (ATAD). It considered that Article 344(1) CIR92 did not need to be modified to comply with the ATAD. It implemented other provisions of the ATAD, although such implementation may overlap pre-existing domestic provisions, such as the early CFC rules.[71]

Double taxation treaties

Belgium has around 100 double taxation treaties in force. Taxpayers may initiate in Belgium the mutual agreement procedure provided by double taxation treaties, and rely on the assistance of the central tax authorities to challenge a foreign tax (see heading 'International mutual agreement or arbitration procedures').

When interpreting a double taxation treaty, the Belgian tax authorities rely on the OECD Commentary on the Model, unless Belgium has made reservations on the Model or its Commentary. The Belgian tax authorities use the ambulatory method of interpretation. They even refer to the latest version of the OECD Commentary when it can be reconciled with the text of the relevant treaty and specific commentaries made on this treaty. However,

because the text supersedes teleological interpretation, the preamble imposed by the Multilateral Instrument is not expected to modify the interpretation of material provisions included in treaties.

The Multilateral Instrument is expected to amend the numerous double tax treaties signed by Belgium in the past that do not provide for a corresponding adjustment when a treaty partner increases the profits of an enterprise based on a provision similar to Article 9 of the OECD Model Convention.

Year in review

The Act of 20 November 2022 significantly extended the investigation and assessment periods with effect from assessment year 2023. A bill is expected to reduce those periods again with effect since assessment year 2023, meaning that most of the extensions provided for in the Act of 2022 will have no effect.

Outlook and conclusions

Procedural delays are considerable. Reasons for such delays include:

1. a shortage of judges;
2. the recent reform of the courts' structures; and
3. the time needed by the central tax authorities to issue clear instructions to tax inspectors.

Endnotes

1 Income tax returns must be filed within the six-month period following the closing of the relevant period. The calendar year is the relevant period for determining liability for individual tax. The fiscal year to which the annual financial statements of companies and other separate legal entities relate corresponds to the period over which their liability to corporate tax or to not-for-profit organisation tax is determined. ^ Back to section

2 The minutes of a VAT audit may be used to build presumptions for income tax purposes (see Cass., 21 June 2012). ^ Back to section

3 The assessment year is the year during which the tax situation of the taxpayer is determined. This is the current calendar year with respect to withholding taxes; the year following the relevant period with respect to individual tax; and the year during which the fiscal year ends if it ends before 31 December, or the year thereafter if the fiscal year ends on 31 December. ^ Back to section

4 Cass., 20 May 2016. ^ Back to section

5 Cass., 12 February 2016. ^ Back to section

6 Income wrongly reported as exempt is akin to unreported income (Cass., 24 March 2023; Cass., 30 November 2023). ^ Back to section

7 This also applies to information kept abroad. ^ Back to section

8 Const. Court, 12 October 2017. ^ Back to section

9 See Const. Court, 27 June 2019. ^ Back to section

10 As an exception to this rule, information collected in a bank's books when examining that bank's tax situation must not be used to tax that bank's customers, unless a fraud mechanism is detected (Article 318 CIR92). ^ Back to section

11 Constitutional Court annulled the implementation of DAC 6 insofar as attorneys-at-law cannot invoke the client-attorney privilege (Const. Court, 15 September 2022; Const. Court, 11 January 2024). ^ Back to section

12 Banks must spontaneously provide information on their customers' accounts to the National Bank. The tax authorities may also have access to this information. The tax authorities may also have access to the UBO register (Article 322 CIR92). ^ Back to section

13 For the purposes of DAC, the tax authorities have access to information covered by the Money Laundering Directive (Article 338 *ter* CIR92). ^ Back to section

14 Cass. 22 May 2015; Cass., 4 November 2016; Cass., 10 February 2017; Cass., 18 January 2018; see also the bill of 23 June 2022, Doc, *House*, 55 2783/001. ^ Back to section

15 There is no threshold amount or *de minimis* rule. The tax authorities may adjust the taxpayer's tax situation even if no supplement of tax is at stake for the period under examination (e.g., adjustment of operating losses or excess dividends-received deduction available for carry-forward). ^ Back to section

16 The reply is timely filed if it is sent by registered mail within the one-month period (Const. Court, 25 June 2020). ^ Back to section

17 Const. Court, 28 June 2012. ^ Back to section

18 A mere unsigned note is not akin to a notification of assessment (Cass., 5 January 2017). ^ Back to section

19 See Cass., 21 November 2013. ^ Back to section

20 See Cass., 18 October 2012. ^ Back to section

21 The tax authorities are not requested to demonstrate that the tax return is not correct (Cass., 20 February 2014; Cass., 2 December 2016). ^ Back to section

22 A tax that is computed on the basis of the tax return must be assessed according to Articles 353 and 359 CIR92 even if the authorities later determine a deficiency within the time limit of Article 354 CIR92 (Cass., 17 November 2016). ^ Back to section

23 Fraud is not necessarily a wilful attempt to defeat or evade tax. It may consist of an attempt to unduly obtain an advantage or to harm (Cass., 7 December 2023). The additional tax must be based on income eluded with a fraudulent purpose (Cass., 24 March 2023). ^ Back to section

24 The time extension is not subject to investigations with third persons (Cass., 17 June 2016). ^ Back to section

25 Income wrongly reported as exempt is assimilated to unreported income (Cass., 24 March 2023; Cass., 30 November 2023). ^ Back to section

26 The Supreme Court held that the same provision allowed the tax authorities to tax, during the additional 12-month period, income that has not been reported after the commencement of the proceeding (Cass., 17 October 2013). It also held that a decision to discontinue prosecutions is not a decision ending the procedure in the meaning of Article 358 CIR1992 (Cass., 23 February 2018). ^ Back to section

27 The principle that items of income earned during a given period must be taxed separately with the other income of the same period is set aside by Article 361 CIR92 (Const. Court, 7 July 2011). ^ Back to section

28 Cass., 12 September 1991; Cass., 14 March 2014; see also Const. Court, 20 November 2008. ^ Back to section

29 Cass., 18 June 1963; Com.I.R. 92, 23/490. ^ Back to section

30 See also Cass., 22 September 2011; Cass., 2 March 2017; Circ. 2024/C/11 of 5 February 2024. ^ Back to section

31 The tax director is not required to apply article 6(1) of the ECHR because the tax director is not an independent jurisdiction (Cass., 29 September 2017). ^ Back to section

32 Cass., 21 September 2012. ^ Back to section

33 Cass., 11 May 1965. ^ Back to section

34 A tax on tax may be viewed as double taxation (Cass., 2 January 2017). ^ Back to section

35 See Cass., 19 January 2012. Back to section

36 Cass., 10 March 2016. Back to section

37 A decision of the Council of State cannot justify a rescission (Cass., 21 December 2017). See also Const. Court, 26 November 2020. A circular acknowledging that a provision is conflicting with the non-discrimination principle cannot justify a rescission (Cont. Court, 13 October 2022). Back to section

38 Minister of Finance may make a general decision on all tax complaints based on a conflict of a provision of the CIR92 with the Constitution if the Constitutional Court dismisses a request for annulment of that provision. The decision of the Minister is gazetted (Article 376 *bis* CIR92). Back to section

39 Cass., 11 May 2018. Back to section

40 Cass., 21 September 2012. Back to section

41 Cass., 31 January 2014. Back to section

42 Cass., 25 January 2018; see, however, ECJ 8 March 2001, *Metalgesellschaft, Hoechst* (C-397/98). Back to section

43 See Cass., 9 February 2018; see also Cass., 5 May 2018. Back to section

44 If the Public Prosecutor prosecutes a tax offence before the criminal judge, the latter has jurisdiction to decide on the civil aspects of the case (and a procedure commenced before a tax court ends) even if the criminal prosecutions are dismissed (Article 4 *bis* of the Preliminary Title of the Criminal Procedure Code). Back to section

45 Cass., 21 April 2022. Back to section

46 An appeal against a decision to which the taxpayer previously bowed is not admissible, even if the decision has never been served (Cass., 30 June 2016). Back to section

47 The alternative tax may be linked to an assessment year other than the assessment year to which the annulled tax was related (Cass., 17 October 2013). Back to section

48 Cass., 30 March 2017. Back to section

49 Cass., 5 May 2017. Back to section

50 Article 1,110 of the Judicial Code. Back to section

51 The tax authorities and the courts are not allowed to relieve a taxpayer of its liability as stated by the law. As a consequence, an agreement between the tax authorities and the taxpayer cannot be binding if it settles a legal issue. A taxpayer cannot rely on its legitimate expectations if its understanding of its tax situation deviates from the law. Even bona fide does not help (Cass., 14 June 1999; Cass., 20 November 2006; however, see Cass., 21 April 2022). ^ Back to section

52 The Constitutional Court and the Supreme Court omitted to submit to the ECJ the issue of the euro-compatibility of the fiscal deduction of antitrust fines imposed by the European Commission (Const. Court, 161/2012, 20 December 2012, Cass., 4 December 2020). ^ Back to section

53 On the issue of whether an alternative rule may replace an invalidated legal provision, see Cass., 4 September 2015. ^ Back to section

54 The Constitutional Court held that the judge is able to grant relief (Const. Court, 27 March 2014). ^ Back to section

55 Cass., 19 October 2012. ^ Back to section

56 The same denial of loss deduction applies to profits assessed in the absence of a timely filed return. ^ Back to section

57 The complaint against a tax unduly withheld is admissible even if the taxpayer does not report the income in its tax return (Cass., 14 January 2016). ^ Back to section

58 Under certain circumstances, the employer may not have to pay the PAYE withheld to the Treasury. The employer has three years to claim the refund of the PAYE unduly paid to the Treasury (Article 368/1 CIR1992). ^ Back to section

59 See Cass., 24 October 1996. ^ Back to section

60 Const. Court, 21 February 2008. ^ Back to section

61 A tax director's decision on a request to revisit a decision on a tax complaint may also be challenged before a court (see heading 'Tax complaints'). ^ Back to section

62 However, tax claims and appeals against withholding taxes may be filed either by the taxpayer who earned the income on which the tax has been unduly withheld or by the debtor of income who unduly withheld taxes on such income. ^ Back to section

63 The tax on the profits of a wound-up company may be assessed under the name of the liquidator (Article 357 CIR1997; see also Circular 2019/C/122 of 18 November 2019). If a taxpayer liable for corporate tax is dissolved and its directors, managers or liquidators do not reserve the moneys to satisfy the Treasury, they may be sued for five years after the publication of the closing of the liquidation (Cass., 12 February 2016; 21 September 2017). ^ Back to section

64 However, see Cass., 12 February 2016. ^ Back to section

65 Const. Court, 21 May 2015. ^ Back to section

66 Convention 90/436/EEC. ^ Back to section

67 Directive (EU) 2017/1852; Federal Act of 2 May 2019. ^ Back to section

68 Cass., 6 June 1961; 29 January 1988; 22 March 1990; 4 January 1991; see also Cass., 22 May 2020. ^ Back to section

69 Cass., 5 March 1999; 16 October 2009. ^ Back to section

70 Const. Court, 30 October 2013; see also Cass., 25 November 2021 and Cass., 30 November 2023. ^ Back to section

71 New CFC rules have been introduced by the Act of 21 December 2023. ^ Back to section

LOYENS & LOEFF
Law & Tax

Caroline Docclo caroline.docclo@loyensloeff.com

Loyens & Loeff