

Accessing Tax Courts

The Example of France

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Two requirements that need to be reconciled

■ On the one hand:

The exercise of an essential right (the right to an effective remedy before a tribunal), which is legally protected at the highest level, in a field (tax matters) where the right of oversight of citizens is considered as one of the basement of democratic control

■ On the other hand:

The strong need to limit access to courts given the very large number of decisions made and the very large number of people concerned

Mass administrative activity

Risk of court congestion or even court paralysis, which would hurdle the exercise of any right at all

The parameters which will make the access to tax courts easy or difficult

■ Are there any steps that have to be completed before the case is taken before tax courts?

Is a pre-litigation phase compulsory?

■ How strong are the requirements upon the tax payer in front of tax courts?

Is it compulsory to resort to a lawyer or to pay stamp duties? Is there a special formalism set for the claim?

■ Which type of judge will the tax payer access?

A panel of judges or a single judge? A judge working to give a motivated or a non-motivated judgement?

■ Which type of acts and rules may be challenged in front of tax courts?

Pre-Litigation Procedure

- Prior administrative claim is mandatory if the tax payer wants to contest a tax adjustment or ask for a tax restitution

- But the ability to submit a prior administrative claim is widely open

 - Long delay: 2 years at least and 3 years at most after the moment when the payment of the tax was made compulsory

 - Reopening of the delay incase of an « event » that can call into question the principle of tax submission or the amount of tax charged on the tax payer

 - Very limited formalism: no obligation to resort to a lawyer, claim presented as a simple letter

- Except that no group claim is accepted

 - The prior administrative claim had to be individual, except very special cases

Light Regulations in First Instance

- No stamp duties

Removed in 2003. Set back in 2011 (35 euros). Removed again in 2014.

- No compulsory recourse to a lawyer

- No particular formalism

No recourse to a court bailiff

Claim written on plain paper, sent by the post

Five copies of the claim and the copy of the decision rejecting the prior administrative claim

- No single judge

Claim examined by a panel of judges, except very special cases. Judgements are motivated.

Stronger Requirements in Appeal and in front of the Conseil d'Etat

- In appeal:

 - Obligation to resort to a lawyer for the tax payer, not for the administration

- In front of the Conseil d'Etat:

 - Obligation to resort to a lawyer who is especially entitled to plead in front of Supreme Courts (Conseil d'Etat and Cour de cassation)

 - Filtering of claims through a procedure restraining the access to the panels of judges who deliberate with the view to render a motivated judgement

- Progressive tightening of the requirements upon the tax payer when the degree of jurisdiction gets higher

A wide array of acts and rules which might be challenged

- In the framework of claims directed against individual decisions rejecting a prior administrative claim, it is possible to challenge the law which provides a legal basis to the individual decision which is at stake:

In the light of the Constitution, and if the challenge is serious, the question will be transmitted to the Constitutional Court (Conseil constitutionnel)

In the light of international treaties

- It is also possible to challenge the regulatory acts adopted by the administration as such, independently of any action aiming at getting the discharge or the restitution of a tax

Appeal on grounds of “ultra vires”. The Conseil d’Etat will judge in first and last resort. No lawyer required.

May be directed against administrative tax doctrine and regulatory texts taken for the application of tax law