

Tax procedures in Germany Dr. Anette Kugelmüller-Pugh/Bundesfinanzhof

Germany has a **very specialised** tax court system. Tax law in Germany is seen as administrative law. However its cases are not dealt with in the administrative courts but the system provides for highly specialised tax courts. There is a **two tier** system: Germany has tax courts of first instance in each of the German „Länder“ (federal political divisions) and the Federal Tax Court („Bundesfinanzhof“) with its seat in Munich.

If a taxpayer is unhappy with his/her tax assessment he/she can **appeal** it in a first step **directly** at the **Inland Revenue** (within a month of receiving the assessment). At first the department that carried out the tax assessment will get a chance to review its decision. If it does not remedy it has to hand it over to a different department that is specialised in administrative remedies only and has a look at it with a „fresh mind“. The **taxpayer does not have to be represented** for the remedy but can represent him/herself. In Germany the tax has to be paid within four weeks of the assessment regardless of whether the assessment is being appealed against. However in case of an appeal the taxpayer **may request the suspensive effect of the remedy/appeal**. If it's granted then the taxpayer **does not have to pay the tax immediately** but can wait for the outcome of the remedy/appeal. If the administrative remedy procedure remains unsuccessful the taxpayer, within one month of receiving the inland revenue's remedy decision, can launch an **appeal** to the **tax court of first instance in the region where he/she resides**. Once again the **taxpayer does not need representation** for that but can represent him-/herself which gives a fair chance for every taxpayer to be heard with his/her arguments regardless of the personal wealth and means. Within another month the taxpayer has to give grounds for his/hers appeal; if he/she is not represented he/she doesn't have to draft the arguments in a legal way like a lawyer or accountant but has to describe where he/she sees the grounds for the lawsuit in a way a layperson is able to do.

If the taxpayer cannot afford the court fees he/she can **apply for legal aid**. The taxpayer has to prove in a way a layperson is able to that there are grounds for the appeal. In such case the court of first instance will grant legal aid which means that the **taxpayer will not have to pay for the court fees** and can **also be associated with a lawyer/accountant** if he/she would like to.

The competence of the finance court of first instance depends on the seat of the inland revenue branch which is at the **residence of the taxpayer**. Therefore the competent court is usually within an **easy reach** for the taxpayer. The senate at the court of first instance consists of three professional judges and two lay judges (not for day to day work but for decision making upon an oral hearing). The lay judges background is from all different kind of professions and they work for the court on an honorary basis. They are there not necessarily to control whether the professional judges apply the

law correctly but to get a picture of the taxpayer and give their opinion on a more human rather than pure legal basis.

In addition to the taxpayer delivering his/her arguments and the inland revenue delivering the counter-arguments **the court has to identify facts and figures on its own motion**. This includes arguments in favour of the taxpayer. The preparation procedure is very much a written one, with the arguments of the taxpayer and the inland revenue being exchanged back and forth. Therefore both sides are aware **early and in detail** where the **focus of the lawsuit** is. Once the court is of the opinion the preparation procedure is finished the taxpayer has a right to an oral hearing in court. Both parties have to be summoned to oral proceedings with a four week notice. Again **the taxpayer can represent himself/herself during the oral proceedings**. The presiding judge in the hearing, ex officio, has to ensure that the taxpayer formulates his/her motion in a way that he/she is able to achieve **the best outcome for him/her**. If the taxpayer wants to present proof for his/her facts given the court has to examine whether for example a witness has to be heard. Ever since approximately two years ago, as a positive outcome of the pandemic, neither the taxpayer nor the witnesses have to make their way to court in presence any more but can **choose a remote hearing via video stream**. It allows the taxpayer to guide the case from home and **integrate it in his/her daily schedule**. If the taxpayer doesn't want to get involved in oral procedures with the court at all he/she can also renounce their right to an oral hearing and **choose a purely written procedure** which ends in a written judgment by the court and has to observe all arguments of both parties in the written procedure beforehand. If an oral hearing was held after its conclusion the court gives the judgment, either right at the end of the hearing or in a written way within two weeks after the conclusion of the oral hearing. If the legal principles of the case are not yet fully confirmed by the German Federal Tax Court as the last instance the court of first instance, in its judgment, **can permit the appeal to the Federal Tax Court**. As a conclusion an appeal can be directly launched to the Federal Tax Court by either party to the case at first instance – the taxpayer and the inland revenue – within a month of the judgment. If the court of first instance does not allow the appeal in its judgment either party can launch an appeal against the non-admission of the appeal at the German Federal Tax Court also within one month of the judgment at first instance. In such case it is the Federal Tax Court itself that decides whether the case is legally worth an appeal because the legal principles are not clear yet. For both remedies the taxpayer at the Federal Tax Court cannot represent him-/herself but has to be presented by a lawyer/accountant. Once again if he/she cannot afford the appeal (fees at the Federal Tax Court and fees for the legal representation) he/she can **apply for legal aid and also for legal representation** in the same way he/she can do at the court of first instance. The principles for the procedures at the Federal Tax Court resemble to the ones at the court of first instance (e.g. the written exchange of arguments in the preparation procedure, the right to choose a purely written procedure or an oral

hearing via video stream, the duty for the court to examine the whole case ex officio however but without the possibility to worsen the decision of the court of first instance). The appeal at the Federal Tax Court also ends with a written judgment giving the reasons for the decision. The judgment then is final and **binds both parties**. However it can be appealed on violation of fundamental rights at the German Constitutional Court and on violation of European Law at the European Court of Justice.

In my opinion, a highly specialised tax court system works very well in favour of granting taxpayers' rights. The advantages in Germany are:

- specialised professionals within the Inland Revenue and at the courts,
- a remedy system within the Inland Revenue with easy access for the taxpayer (no representation needed) and free of charge,
- the possibility to be granted suspensive effect during the time of remedy/appeal in order not to have to pay the tax immediately,
- an efficient two-tier court system,
- easy appeal by the taxpayer to the tax court of first instance (a court in the vicinity of the taxpayer's residence and self-representation possible),
- the possibility to apply for legal aid and legal representation in both tiers of the two-tier system,
- the duty for the court to find facts and figures on its own motion/ex officio
- the possibility of appealing the judgment of first instance to a highly specialised Federal Tax Court of Appeal with five professional judges
- the direct binding effect of the judgements between the parties > judgment to be applied immediately by the inland revenue

The specialised court system works well in Germany for all kind of taxes and custom charges. However there is one area that doesn't origin in tax law but in social law, however was dealt with by the finance courts for the last 25 years (as it was considered a tax relief for parents): Child benefit. The procedure at the tax courts seemed to be not as suitable for that area of law. The first point was that in tax law all facts have to be considered up to the moment of the final decision by the inland revenue. Social law is more gracious towards their appellants: New facts in favour of the child benefit recipient can be taken into account until the date of the oral hearing at the court of first instance. Furthermore, the principles for child benefit are covered by social law. For tax judges these principles which are widely covered by European Directives on top of national German law were not as familiar

as the principles of tax law. In the social courts it is very common to reach an agreement between the parties so that a judgment is not needed. Child benefit recipients could not take advantage of this practise as finance courts tend to decide by judgment (which already timewise demands a longer procedure). Finally, due to the complexity of tax law, finance courts are used to interpret legal requirements in great detail. Therefore some of the judgments seems to be too complex and therefore almost inapplicable for the child benefit authority. As a result it is currently politically discussed and highly likely that the legal field of child benefit as of 2024 will be taken away from the finance courts and will return to the social courts.

Anette Kugelmüller-Pugh

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