

INTERNATIONAL TAXPAYER CONFERENCE ON TAXPAYER RIGHTS

24-25 MAY 2023, SANTIAGO DE CHILE

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

DR. ANETTE KUGELMÜLLER-PUGH, BUNDESFINANZHOF, GERMANY

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Tax Courts in Germany:

- Germany has a very specialised Tax Court system
- „Three-tier“ system:
 - administrative Appeal within the Inland Revenue
 - 18 Tax Courts of first instance (in 16 administrative districts of Germany)
 - Bundesfinanzhof (Court of Appeal and last instance)

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Tax Courts in Germany (cont.):

- Tax Matters (income tax, corporate tax, capital gain tax, inheritance tax, property transfer tax, VAT)
- Custom duty matters
- Child benefit

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Tax Courts in Germany (cont.):

- Advantages of a specialised tax system:
 - specialised professionals at the Inland Revenue and 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,

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Tax Courts in Germany (cont.):

- Advantages of a specialised tax system (cont.):
 - 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 obligation of the court to find facts and figures on its own motion "ex officio",

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Tax Courts in Germany (cont.):

- Advantages of a specialised tax system (cont.):
 - 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,
 - In the majority of cases: the judgment also to be applied to other cases with the identical legal problem (universal impact on all taxpayers for future cases)

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Taxpayers' access to court:

- In general: Tax liability has to be paid by the taxpayer with immediate effect (i.e. within one month of receiving the tax assessment)
 - In case of an appeal: the taxpayer may apply for a suspensive effect of the remedy > if granted, the taxpayer does not have to pay the tax but can wait for the outcome of the appeal
- > The taxpayer has access to the court of first instance either after paying the tax liability or without paying the tax liability but after a successful application for suspensive effect of the appeal

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Underrepresented or other marginalized taxpayers are supported by the following:

- on appeal the court has to inform the taxpayer about a correct application and whether additional information is needed,
- the taxpayer has to deliver the relevant information in a way a layperson is capable of,
- during the procedure: the court has to identify facts and figures on its own motion,

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Underrepresented or other marginalized taxpayers are supported by the following (cont.):

- Taxpayer can choose a fully written procedure (if he or she does not want to attend an oral hearing),
- the presiding judge has to ensure the taxpayer formulates his/her application in the right way/for the best outcome of the case,
- the presiding judge should signalize the taxpayer if the appeal is likely to be unsuccessful and the taxpayer shall withdraw the appeal (court fees will be reduced/halved),
- the presiding judge has to signalize the taxpayer if proof is needed (e.g. a witness to be heard)

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Sanctions of „improper“ conduct by the Inland Revenue:

- Time limitation for Inland Revenue to assess tax: in general 4 years after the taxable incident; 5 years in case of negligent tax evasion; 10 years in case of intentional tax evasion > after time out no assessment possible any more
- Shift of burden of proof: onus on taxpayer for facts in his favour (e.g. deductions or reliefs) <> onus on Inland Revenue for existence of taxable income or if Inland Revenue does not accept the taxpayer's statement > in a follow up appeal court decision on the basis of a reversed burden of proof possible

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Free or low cost representation of the taxpayer:

- Legal aid for taxpayers in need,
- to be granted by the Tax Court of first instance or the Federal Tax Court (depending on where the case is pending),
- if granted > possibility of being associated with a lawyer/accountant; procedure free of charge as a whole (no court fees, no fees for representation)

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Free or low cost representation of the taxpayer (cont.):

- Requirements:
 - application by the taxpayer at the court where case is pending,
 - proof that he/she does not have the necessary income/wealth to cover the legal costs (e.g. certificate of salary payment and monthly expenses),
 - proof of possible positive outcome of the judicial review in the way of a layperson

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Remote access to judicial tribunals:

- waiver of an oral hearing and choice of a fully written procedure (both at Tax Court of first instance and Federal Tax Court) > exchange of arguments in written back and forth; judgment taking into account all presented arguments,
- no waiver of an oral hearing by either party (taxpayer or Inland Revenue) > court can still decide without an oral hearing > presentation of the court's opinion and reasons for the decision > if not satisfied with the decision either party can apply for an oral hearing within 4 weeks after receipt of the judgment

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Remote access to judicial tribunals (cont.):

- In case of an oral hearing (standard):
 - Tax Court of first instance: oral hearing via video stream possible; taxpayer, lawyer/accountant, Inland Revenue and other participating parties (e.g. witnesses, expert witnesses) can conduct the video stream from home or their office <> all judges have to be present at the court building,
 - Federal Tax Court: As of 1st January 2023: Oral hearing via video stream possible; taxpayer, lawyer/accountant, Inland Revenue to conduct from home <> obligation for all 5 judges of the panel to be present at the court building
- > Oral hearing via video stream has become the standard for both the Taxpayer and the Inland Revenue > travelling to the court is now the exception

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Lasting impact of the Covid-19 pandemic on tax matters:

- due to the work circumstances during the pandemic (home office), the digitalisation of all tax court procedures has been introduced faster than originally planned,
- complete electronic files for all tax courts (first instance and Federal Tax Court); Inland Revenue granted a transitional period until 2026
 - > Submission of tax declaration can or has to be done electronically; receipt of tax assessment still in paper

PANEL 2: TAX ISSUES AND COURTS OF DIFFERENT REMIT

Taxpayers' Access to Tax Courts in Germany

Appeal of an initial judicial determination:

- Two-tier court system > decision by Tax Court of first instance to be appealed at the Federal Tax Court,
- Tax Court of first instance either has to allow the appeal in its judgment (e.g. in cases of great importance) or taxpayer/Inland Revenue have to submit an appeal against the non-admission of the appeal to the Federal Tax Court within a month of receipt of the written judgment,
- both parties to the case (taxpayer and Inland Revenue) have the right to appeal ,
- Appeal only on legal grounds <> fact finding exclusively at the Tax Court of first instance

Thank you for your attention!

