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-tear“ 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
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-tear” 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 tears of the two-tear system,
  
  - the obligation of the court to find facts and figures on its own motion “ex officio”,

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)
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
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,
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)
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
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-tear 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!