

## **The recent governmental proposals on amendments to the procedure governing direct taxation litigation in the Grand Duchy of Luxembourg**

On 28 March 2023, the Finance Ministry sent Bill No. 8186, the provisions of which are aimed at amending and modernizing certain procedural aspects of direct taxation dispute resolution (the "Bill").

The following amendments merit being emphasized.

### **1) The complaint procedure before the Direct Tax Administration (*Administration des Contributions Directes* or "ACD")**

The Bill provides for a partial overhaul of the procedure for complaints against tax assessment notices (*bulletins d'imposition*) by amending the general taxation law (*Loi générale des impôts "Abgabenordnung"* or "AO"). The contents of the complaint are based on that for an appeal before the Administrative Tribunal.

Thus, paragraph 249 of the AO is amended such that the complaint must include, under penalty of inadmissibility, the following elements:

- The first and last names and address of the claimant;
- Identification of the decision being appealed;
- The purpose of the request;
- A summary explanation of the facts and arguments raised;
- Proof of a special mandate when the representative is not a lawyer; and
- A list of the supporting documents the claimant intends to use.

In that regard, it is worth noting the existence of a judgment<sup>1</sup> recently issued by the Luxembourg District Court holding that

*"[...] The requirement that a complaint against a tax assessment notice issued by the Registration Duties, Estates and VAT Authorities be 'duly motivated' resulting [from Article 76 (3) para. 1 of the VAT law] does not comply with the principles of equivalence and effectiveness resulting from the case law of the Court of Justice of the European Union."*

It is true that this is a VAT ruling, but the judges made a comparison between the provisions currently in force of paragraph 249 of the AO and those of Article 76 (3) para. 1 of the VAT law to decide that

*"In this context, it is clear that the modalities of the recourse that the litigant derives from EU law in the context of the value added tax regime are less favorable than that concerning the similar recourse of a domestic nature in matters of direct taxation."*

This provision will be applicable starting on 1 January 2024 in the event the Bill is adopted.

### **2) The possibility to file a complaint against automatic tax assessment notices**

It is planned to insert into § 232 of the AO a para. 1a which would require that the difference between the income or wealth subject to tax in the case of an automatic tax assessment notice and the actual income or wealth exceeds 10% for the taxpayer to be able to file a claim.

It should be noted that this new provision is intended to comply with the current case law in this area, which would already require a taxpayer to prove that his or her actual income or wealth differs significantly from the automatic taxation. This provision of the Bill aims to quantify this "significant difference" by setting a precise threshold.

---

<sup>1</sup> Luxembourg District Court judgment of 01 February 2023 – No. TAL-2021-02305

This provision will be applicable starting in the 2024 tax year in the event the Bill is adopted.

### **3) Appeal in case of the ACD Director's silence**

The Bill proposes to amend the Law of 7 November 1996 on the organization of administrative tribunals, as amended (*Loi modifiée du 7 novembre 1996 portant organisation des juridictions de l'ordre administratif* or the "**1996 Law**") by establishing a time limit for the appeal before an administrative tribunal in case of the ACD Director's silence with respect to a claim filed by a taxpayer.

Currently, when a taxpayer has not received a response from the ACD Director, within 6 months of filing of the complaint, the taxpayer has the right to file an appeal with the Administrative Tribunal with no time limitation for filing.

The Bill proposes to establish a period of 12 months during which a claimant would have the right to file an appeal with the Administrative Tribunal, in case of the Director's silence.

It is relevant to note that the investigative measures required and ordered by the Director automatically extend the above-mentioned period of 6 months to respect the adversarial process.

This provision will be applicable starting from the date of its publication in the Official Legislative Journal in the event the Bill is adopted.

### **4) Formal hierarchical appeal**

Taxpayers may soon benefit from the new wording of paragraph 3, item 3 of Article 8 of the 1996 Law, which allows the filing of an appeal with the Administrative Tribunal after a period of 6 months of silence from the Director following the filing of a formal hierarchical appeal.

This provision will be applicable starting from the date of its publication in the Official Legislative Journal in the event the Bill is adopted.

### **5) Instalment payment option**

A measure that contributes to calming the relationship between taxpayers and the ACD in the tax collection phase is introduced by the following provision:

At taxpayers' request, the "Receveur" may authorize the payment in instalments of debts due to the ACD, if the collection of the debt would cause that taxpayer considerable hardship and the debt is not jeopardized by the delay in payment.

It should be noted, however, that payment in instalments does not prevent the ACD from asserting its mortgage rights, nor does it suspend the charging of interest on arrears.

This provision will be applicable starting from the date of its publication in the Official Legislative Journal in the event the Bill is adopted.

### **6) Exchange of information between the ACD and the Financial Sector Surveillance Commission (*Commission de Surveillance du Secteur Financier* or "**CSSF**")**

Under certain conditions and upon reasoned requests, the ACD and the CSSF may exchange information, deeds and documents in their possession concerning taxpayers which are entities subject to the CSSF's prudential supervision or for which the CSSF is the competent authority to ensure

compliance with professional obligations relating to the fight against money laundering and terrorist financing.

This provision will be applicable starting from the date of its publication in the Official Legislative Journal in the event the Bill is adopted.

---

**Your contacts:**

- [Alex PHAM](#), Tax Partner, Avocat à la Cour
- [Julien DECHOUX-SCHIRRA](#), Tax Associate, Avocat.