CHAPTER VI

ADMINISTRATIVE RULE-MAKING PROGRAMS

Section A. Character of the Underlying Statute

2.1 Precision of the statute itself

The Code of Income Tax\(^1\) is divided into 437 sections covering about 100 pages with an average of 400 words a printed page. Most but not all substantive tax principles are set out in the Code. Those located outside the code include:

1. Such laws as temporary tax relief measures,\(^2\) or those granting provinces and municipalities a restricted power to tack surcharges on the national income tax,\(^3\)

2. Laws approving international tax treaties,\(^4\) and

3. Royal decrees which particularize on the Code's tax principles, pursuant to a specific delegation of legislative authority in a substantive section of the statute.\(^5\)

The Code of Income Tax is divided into ten parts, each with a varying number of sections totaling 429. Of these, sections 206 through 359 deal primarily with procedural matters.

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\(^1\) The Royal Decree of February 26, 1964, known as the Code of Income Tax, coordinates the reform law of 1962, "the reform of direct taxation" and the "coordinated laws on income tax" put into effect in 1948.

\(^2\) E.g., enactment of July 15, 1959, providing for the partial or total exemption of capital gains to promote investments.

\(^3\) E.g., enactment of July 31, 1963, authorizing municipalities to levy a tax of 5% in addition to the regular corporate tax and/or individual income tax.

\(^4\) E.g., the statute of July 27, 1953, approving the income tax convention between Belgium and the United States, signed at Washington October 28, 1948, as modified and supplemented by the convention of September 9, 1952.

\(^5\) The "reform of direct taxes," November 20, 1962, makes frequent use of this delegation of power. Decrees so issued must be distinguished from regulations bearing upon tax administration in a more precise sense of the term. Regulations of course, are the proper task of the executive power. Belgian Constitution, Section 67.
Despite its length, the statute itself is not expected to provide clear-cut answers to all problems. Every effort is made to be as precise as possible and to set out broad rules with a minimum of deviations. Nevertheless, administrative regulations are necessary to supplement the text of the statute itself and the judiciary also is called upon to settle many interpretative issues. Here, however, it is possible only to illustrate the statutory approach and the variation in the extent to which the statute anticipates with precise language the range of problems, which arise.

Consider first the methods by which it determines the taxable base from professional activity.

Article 43 of the Code provides as follows:

From the gross income of each professional activity are deducted the expenditures [dépenses ou charges] allocable to it.

The next section defines deductible professional expenditures:

Deductible professional expenditures are those the taxpayer proves have been made or supported during the taxable period in order to acquire or preserve the taxable income.

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6 The only problems susceptible of such ready solution would be questions such as those relating to the tax rate for a net income of a given number of francs, or to the final day for submitting a claim.

7 Every other consideration aside, the government, on introducing the bill or in discussing it before Parliament, cannot be expected to forecast all possible future developments in the area expected to be covered by a particular provision.

8 Art. 10, 10, law of November 20, 1962.

9 Art. 11, § 1, law of November 20, 1962.
It still must be determined whether an expenditure is made "in order to acquire or preserve the taxable income." While the statute goes on to enumerate certain deductible items—i.e., rent, heat, utilities for professional premises; wages and fringe benefit costs for employees; "normal" amortization of professional equipment—the list is not conclusive. The tax administration must also permit a deduction for any operational expense reasonably incurred in the course of the taxpayer's business activity. Illustratively, the cost of litigation concerning business would qualify, but not fines or punitive damages.

A second example of the statutory approach involves amortization, as to which the Code contains only two broad provisions. It authorizes "necessary amortization" of material and movable objects used in the business, to the extent such amortization corresponds to real depreciation occurring during the taxable period. Prior to 1963 straight line depreciation was the only authorized method. The officer in charge of the assessing office computed it by category of assets, in agreement with the taxpayer. Beginning in 1963, however, the Code authorized the tax administration, at the request of the taxpayer, to prepare a schedule of amortization charges computed on the declining balance method for assets purchased or constructed from 1963 onward. Clearly, these broad statements of policy do not cover with any precision all amortization problems. While it seems clear that amortization must be based

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10 The items are listed in Art. 45 of the Code, originally enacted as Art. 26, §§ 2 and 4, Coordinated Laws on Income Tax, Regent's Decree of January 28, 1948, which is referred to in Art. 11, § 1, of the law of November 20, 1962.


12 Art. 50, 5° of the Code, Cass. October 26, 1954, p. 1955, 1, 167. That is the reason why some provisions in the Code make some expenditures related to the business activity not deductible, such as—in contrast to the statute in force prior to the law of November 20, 1962—the individual income tax (Art. 50, 3°) or the corporate tax (Art. 109).


14 Under straight line depreciation, the basis is deducted in equal annual installments over the estimated useful life or annual overall percentage.


16 In considering the scope of the amortization problem, it must be recalled that all objects used in any productive capacity are subject to deterioration or obsolescence. This includes not only machinery, industrial buildings, furniture, and office equipment, but also the purchase
on the cost of an investment and not on the cost of replacement, a large area lies open for interpretative administrative regulations. Thus, one looks to royal degrees to find that the declining balance method may be used only in the case of movable assets having a useful life of not less than six and not more than nineteen years. \(^{17}\) Also, they provide that the allowable depreciation percentage is double that used for corresponding assets under the straight line method. Thus, the basis against which that percentage is applied in any given year is said to be the original cost less depreciation taken to date. Further, whichever method is used, the percentage mutually agreed upon can be changed whenever economic contingencies arising from operation so justify.

A third example of the statutory framework concerns valuation of corporate assets. Such valuation is necessary in drawing up a balance sheet and, in Belgium, is an integral step in computing both ordinary gross income and, under certain circumstances, capital gains. \(^{18}\) The Code does not specify a particular method of valuation to the exclusion of all others. \(^{19}\) Initially, it lies within the discretion of the tax administration to determine whether a given valuation is erroneous and serves to avoid tax. Its determination, however, is subject to judicial review. Indeed, such a case can reach the Supreme Court, Cour de Cassation, if a principle is in issue. Illustratively, in one case a corporate taxpayer had paid 3,840 francs per share for stock of another company. At the close of a later year, immediately before the taxable year in question, it entered these shares on its balance sheet at a value of 3,810 francs though the stock at that point was quoted on the market at 1,950. The corporate taxpayer sought to correct the error in the succeeding taxable year by showing a year-end valuation of 1,950, the intention being to take advantage of the earlier year's loss in this later year. To preserve the integrity of the annual

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(footnote continued)

value of a patent, the expenses and premiums paid for issues of stock and bonds, the preliminary expenses in forming a company, and all the other true expense items included in the asset valuations appearing on the balance sheet.

\(^{17}\) Art. 1, § 3, Royal Decree of October 8, 1963.

\(^{18}\) Since the tax reform of November 20, 1962, in certain circumstances, capital gains are subject to a special tax of 15% instead of being subject to the corporate tax of 25%, 30%, or 35%. Code of Income Tax, Art. 93, § 2, 20.

\(^{19}\) The valuation must be reasonable. If there is any overvaluation, the directors are responsible. Art. 62 of the Company Law.
accounting concept, however, the High Court determined that, since no further decline had taken place in the current year, the shares had to be given the same value as that which had been used the close of the preceding year. A final example bearing on the degree of precision found in the statute involves dividends. Although Article 171 of the Code provides that a dividend is taxable when allocated or made payable by the company, it does not specify when a dividend will be deemed "allocated" or "made payable." Ultimately, the courts had to resolve this; logically and consistently they held that a dividend is not earned and the shareholder has no right to it until the general assembly (board of directors) reached a decision as to the company's profit distribution. Then, however, to prevent possible tax evasion, the legislature added a limited exception under which all sums allocated to working partners in private companies are taxable to them as of the last day of the company's fiscal year, whether or not the general assembly had decided to distribute a dividend.

A minority of controversies between taxpayers and the tax administration involve interpretation of the statutory language. The great majority are purely factual, not developing out of any question as to the meaning of the statute, but rather requiring substantiation of amounts, such as gross income, or the exact amount of losses incurred, etc. As explained later, in either type of case, a taxpayer who does not agree with the "tax-paper" from the local assessor's office may file a petition with the regional director. If the petition is rejected, appeal lies to the competent Court of Appeal of which there are three. Decisions of that court can be appealed to the Supreme Court of Cassation, 4 July 1865, P. 1865, I, 1291.

22 Law of April 30, 1958, Art. 2.
23 Illustratively, the deductible trade or business expenses listed in the statute did not include litigation expenses developing out of the conduct of the business. A court decision established that litigation expenses constituted properly deductible expenses. Decision, Cour de Cassation, 4 July 1865, P. 1865, I, 1291.
24 See Chap. VII infra.
25 Court of Appeal for Ghent for decisions of regional directors in the provinces of East Flanders and West Flanders; Court of Appeal for Brussels for decisions of regional directors in the provinces of Antwerp, Brabant, and Hainaut; Court of Appeal for Liège for decisions of regional directors in the provinces of Liège, Limbourg, Namur, and Luxembourg.
Court only with respect to questions of law. Thus the annual number of Supreme Court decisions involving direct taxes, as set forth in the following table, is some indication of the number of important interpretative issues raised each year:

**SUPREME COURT DECISIONS INVOLVING DIRECT TAXES**

<table>
<thead>
<tr>
<th>Judicial Year</th>
<th>Total</th>
<th>Dismissed</th>
<th>Probably Involving Interpretative Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>1957-1958</td>
<td>223</td>
<td>27</td>
<td>196</td>
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<tr>
<td>1958-1959</td>
<td>212</td>
<td>19</td>
<td>193</td>
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<td>1959-1960</td>
<td>196</td>
<td>1</td>
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<td>1960-1961</td>
<td>139</td>
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<td>1961-1962</td>
<td>138</td>
<td>-</td>
<td>138</td>
</tr>
<tr>
<td>1962-1963</td>
<td>134</td>
<td>-</td>
<td>134</td>
</tr>
</tbody>
</table>

Despite the care exercised to draft precise statutes with a minimum of deviations, it is considered likely that interpretative controversies will increase in the immediate future because of the new issues which will arise out of the tax reform law of November 20, 1962, and the related decrees.

2.2 Legislative pre-enactment aids to interpretation

In interpreting the substantive statutory provisions, documents showing the progress of a statute through the legislative process can be of material assistance, particularly where the legislation is complex, as is true of the tax reform law of November 20, 1962. This does not mean that all stages of the legislative process are equally significant in providing helpful background material. Moreover, there will be great variation in the amount of material available. For major tax legislation, such as the 1962 statute, hundreds of printed pages are available.

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26 Illustratively, in the discussions preceding the drafting of that section of the statute allowing deductions from gross income for contributions made to the four universities, the original version allowing such deductions for contributions to institutions of higher learning was rejected as imprecise and the specific names of the several institutions were inserted. Art. 54, § 4, Code of Income Tax.

27 The fact that all Belgian parliamentary documents are printed folio-size in two columns, the Dutch text next to the French, doubles the amount of printed material.

28 The floor debates are printed in the *Annales Parlementaires*, with two series: Chamber of Representatives, *Chambre des représentants*, and Senate, *Senat*. These are edited by the Government as a supplement to the official gazette (*Moniteur Belge*, published at 40-42, rue de Louvain, Brussels 1.)
needed to set out the official documents and records of the
draft of the bill, the introductory comments on the draft, the
committee reports, and the floor debates.\textsuperscript{29} For minor tax
legislation, it is unlikely that helpful floor debate will precede
the vote, for the scope and technical niceties of the proposed
amendment will have been explained sufficiently in the intro-
duction comments and the committee reports.

The Minister of Finance may introduce a draft of a bill
(\textit{projet de loi}) in either the Chamber of Representatives or in
the Senate. All drafts are printed and made available to the
public. After introduction, the bill is turned over to the Com-
mittee on Finance of the house where the draft has been intro-
duced. There the draft is discussed thoroughly, not only by
the committee's regular members but also by members ap-
pointed by the respective houses, the Minister, members of his
staff, and top-level officials of the central administration of
direct taxes. While the committee does not hold formal public
or private hearings, opportunity for comment and criticism is
afforded to representatives of the various private interests
concerned with the proposed legislation.

Amendments to the draft may be proposed by members of
the committee and by the government's representatives. There
must be an individual vote on each proposed amendment, each
section, and the entire bill. A member of the committee—very

\textsuperscript{29} Illustrative of the bulk of such pre-enactment materials is the
amount produced in connection with the legislative progress of the law
of November 20, 1962, the reform of direct taxes. The draft of the
bill (89 articles) with the government's introductory comments covered
190 folio-size printed pages. Chamber of Representatives, Session
1961-1962, Doc. No. 264/1. About 400 amendments were introduced by
the Minister of Finance and by members of the Chamber of Represen-
tatives' Committee on Finance. One hundred and ten were approved.
The report of the Finance Committee itself covered 190 folio-size
printed pages together with the three annexes, each about 100 pages,
containing miscellaneous notes and documents. Chamber of Represen-
tatives, Session 1961-1962, Doc. No. 264/2. The floor debate is re-
corded in 294 folio-size pages of the "Annales Parlementaires." Meet-
ings of June 6, 7, 12, 13, 14, and 15, 1962. When the bill was under
consideration by the Committee on Finance of the Senate, about 200
amendments were proposed. Sixty were adopted. The report com-
The floor debates cover 226 folio-size pages. Meetings of October 2,
3, 4, 10, 11, and 16, 1962. The bill as amended by the Senate was
passed by the Chamber of Representatives on October 31, 1962, after
a two-day debate which was reported in 66 pages of the "Annales
Parlementaires." Meetings of October 30, 31, 1962. It was finally
promulgated on November 20, 1962.
rarely two members—then prepares an explanatory report to accompany the bill. After approval by the committee, the report is turned over to the house of origin as an official record to be printed and made available to the public.

This explanatory report makes every effort to supplement deliberately the text of the statute and hence to resolve in advance possible interpretative questions. For example, when the deduction for child-care expenses was introduced, the report made it clear that the deduction was available only for a child for whom the taxpayer had a legal obligation. It was not available for a child casually sheltered.

The process of justification and explanation takes place in large measure within the committee. Nevertheless, the floor debates (contained verbatim in the official printed record) can be decisive in later resolving an interpretation dispute. For example, it is not uncommon during the debate for the Minister of Finance or the reporter for the committee to answer an interpretative question.

On approval by the house of origin, the bill goes to the other, where the foregoing process is repeated: deliberation in the Finance Committee, report, floor debate, and vote. If the second house amends the bill, as originally submitted, it must be resubmitted to the house of origin. Only after both houses have agreed on the same text of all provisions can the King promulgate and publish the enactment in the official gazette, whereupon it becomes a law.

As noted previously, the statutes are supplemented by the royal decrees. These do not pass through the same process as do the formal enactments. Absence of official pre-enactment aids has led, however, to the use of administrative commentaries to identify the objectives of the degrees and to clarify the meaning of a principle or of a word. But these have less stature than legislative pre-enactment materials explaining a formal statute.

2.3 Standards of construction followed by the judiciary in interpreting the statute

The Belgian constitution provides that only the body holding legislative power can enact taxes. Hence the first question

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30 See note 28 supra.
31 See 2.1 supra.
32 This is explicit in the Constitution of February 7, 1831, Article 110. This is not a mere application of the fundamental rule that all powers are derived from the nation. Constitution, Article 25. Rather,
raised in any substantive controversy pertains to the legality of the principle asserted by the administration, i.e., has it been formulated in a statute or in a decree pursuant to a specific delegation of power.\textsuperscript{33}

Belgian courts cannot hold a statute unconstitutional. Even an unconstitutional law must be applied. The courts, however, are entitled to determine whether any decree of the executive power—whether royal or ministerial—is valid, should the question of such validity arise in any controversy, whether or not taxes are involved. Article 107 of the Constitution specifically provides that courts may not apply any provision of a decree demonstrated to be illegal.

In a tax controversy, unless the statutory language precludes any question as to its clear meaning, the judge first must determine the will of the legislature. The judiciary has no power to create requirements in addition to those prescribed in the literal language of the statute. While gaps in a statute must be filled in, this is the responsibility of the administrative authorities acting pursuant to a request from the government, not a task for the courts.\textsuperscript{34} When the language of a provision is ambiguous or obscure, the judge must try to ascertain the unquestioned common purpose of all who contributed to the making of the law: the government which introduced the bill and both houses of Parliament which discussed it. If, after using all interpretative methods compatible with the principle of legality, the judge is still in doubt as to whether the legislature intended to tax a person in the manner asserted by the administrative agency, the taxpayer must prevail.

(footnote continued)

it is a formal recognition in the written constitution of the principle, "no taxation without legislation," a principle found generally in the origin of all parliamentary democracies.

\textsuperscript{33} Fifty years ago, it was thought that only the legislature itself could formulate substantive tax provisions. This constitutional deterrent to the exercise of power by other than the legislature is no longer enforced so strictly. On several occasions, substantive tax provisions have been formulated by decrees under a specific delegation of power. While some constitutional law experts consider this delegation to be incompatible with the Constitution, Article 110, even an unconstitutional law must be applied by the courts. The Belgian judiciary cannot overturn the work of the legislature. Nevertheless, even in recent years, deviations from the constitutional rule are the exception.

\textsuperscript{34} The Court of Cassation, i.e., the Supreme Court, has so decided on several occasions. See Cass. February 12, 1940, p. 1940, 1, 48; Cass. June 10, 1952, P. 1952, I, 656.
Explanation of the legislative history described above\textsuperscript{35} often reveals the legislative intention. Nevertheless, contradiction is possible, illustratively between the clearly stated text of the statute and, for example, comments made in the course of the floor debate. In such a situation, the text prevails.\textsuperscript{36} From time to time, however, the preliminary materials will show that a given statutory term is used to convey a meaning quite distinct from the meaning conveyed by that word in common usage or in non-tax sections of the Belgian statutes.\textsuperscript{37}

A judge, interpreting a provision of a new tax law, may refer to the pre-enactment reports concerning an earlier statute, now repealed, on the same subject, provided the text in the new statute—as debated in Parliament—and the text in the old one are identical.\textsuperscript{38}

Section B. \textit{The Regulations Program}

2.4 \textit{Types and force of regulations}

The Belgian constitution empowers the King—i.e., the executive—to make necessary regulations and decrees for the enforcement of the laws, an overriding limitation being that the King may not suspend an act of the legislature or create an exemption from its application.\textsuperscript{39}

The tax administration's authority is not limited to issuing procedural instructions. It also issues substantive interpretative regulations without which all too often the law would mean little. However, it is not uncommon for procedural or administrative regulations and interpretative regulations to be commingled in one particular publication, whatever be the form in which it is issued—i.e., ministerial decree, in-service order, or published instruction.

The administration of direct taxes issues many interpretative regulations. Illustratively, the Income Tax Code provides:

\textsuperscript{35} See 2.2 \textit{supra}.

\textsuperscript{36} Court of Appeal Ghent, June 5, 1951, \textit{Rèvue Juridique, Financière et Fiscale} 321 (1951).

\textsuperscript{37} Concerning the sense of the words "suspension of the period of normal legislation," see Cass. February 23, 1955 (Aerts) P. 1955, I, 693.

\textsuperscript{38} Concerning the deduction of professional losses, see Cass. June 15, 1956 (Jockin), P. 1956, I, 1133.

\textsuperscript{39} Constitution, Art. 67.
Deductible professional expenses are those the taxpayer proves to have made or supported during the taxable period in order to acquire or preserve the taxable income.\textsuperscript{40}

The statute itself furnishes a few examples to amplify this bare statement of the rule. To aid both taxpayers and assessing officers, the tax administration goes beyond these, using about 300 pages of 400 words each to comment on the foregoing statutory language and to list those expenses deemed "professional." This type of regulation, issued by the tax authorities without specific legislative delegation, ordinarily contains numerous examples, most of which are drawn from court decisions. When such regulations are challenged before the courts, the first question is to determine whether or not the regulation conforms to the standard of legality, i.e., constitutes a valid interpretation.

A second type of amplifying regulation rests on a specific legislative delegation to the tax administration to exercise legislative authority. Unless the delegated power deals solely with procedural matters, such delegation conflicts with the constitutional provision which restricts establishment of a tax to that body holding legislative power. However, as explained previously, the courts cannot overrule the legislature\textsuperscript{41} and, therefore, do not have the power to rule on the validity of its delegation of legislative power. In consequence, courts have only the power to determine whether the government did or did not exceed the limits of the specific delegation granted by the law. For some time the legislature has turned over to administrative authorities much of its legislative power, including promulgation of substantive tax rules. The pretext is that the legislature is unable to deal in sufficient detail with those particular matters. While this may not be a completely satisfactory explanation, the fact is that the tax reform law of November 20, 1962, contains more such specific delegations than any previous statute. Two delegations drawn from this law will serve to illustrate the scope of such delegations.

As to the first, the general statutory rule is that all business associations, whether corporations or partnerships, are

\textsuperscript{40} Art. 44, §1, of the Code of Income Tax, Art. 11, §1, of the law of November 20, 1962; Art. 26, §1, of the Coordinated Laws of Income Tax. Except insofar as the deduction of taxes is concerned, these provisions are largely identical.

\textsuperscript{41} See 2.3 supra.
subject as entities to the corporate tax.\textsuperscript{42} However, under the new law,\textsuperscript{43} partnerships, \textit{socié\'et\'{e}s en nom collectif}, limited partnerships, \textit{socié\'et\'{e}s en commandite simple}, limited liability companies, \textit{socié\'et\'{e}s de personnes \`a responsabilité limitée}, and cooperatives, may elect—subject to formalities and conditions "to be determined by the King"—to be taxed under the individual income tax, on the basis of the individual members' respective shares in the profits. Under this delegation of power, a royal decree was promulgated\textsuperscript{44} prescribing as formalities and conditions the maximum permissible capital, maximum permissible number of members, and a requirement that all members agree to be so taxed.

The second illustration pertains to the statutory principle that all taxable income, irrespective of its source, is subject to a single global tax.\textsuperscript{45} In general this tax is prepaid through a series of withholding taxes known as \textit{précomptes}, the specific amount of prepayment being dependent on the source from which the income is derived, i.e., whether derived from immovables, movables, or professional activity. However, the reform tax law provides that, as to income from certain sources "the King can renounce" entirely or partially the right to collect the prepayment (the \textit{précompte mobilier}).\textsuperscript{46} In keeping with this delegation of power, royal decrees prescribed the conditions and limits under which income from movable property is exempt from the prepayment otherwise required.\textsuperscript{47}

2.5 Precise purpose of "interpretative" regulations

The tax administration drafts its regulations with great care. While judicial decisions are incorporated, usually as specific illustrations of how the statute is applied in practice, the administration on its own initiative drafts regulations in a deliberate effort to supplement the statute and provide an interpretation in addition to the interpretation set out in the explanatory report. For example, recent legislation extended the

\textsuperscript{42} Art. 94 of the Code (Art. 24, § 1, law of November 20, 1962).
\textsuperscript{43} Art. 95 of the Code (Art. 24, § 2, law of November 20, 1962).
\textsuperscript{44} The royal decree was promulgated November 4, 1963.
\textsuperscript{45} This was one of the basic principles in the tax reform of 1962 as noted in 1.1 \textit{supra}.
\textsuperscript{46} Art. 170 of the Code (Art. 43, § 2, al. 1, law of November 20, 1962).
scope of the existing tax on new building construction. The tax administration prepared a regulation to the effect that the tax would not apply to the homeowner who attached a garage to his house, even though the garage was entirely new.

As noted previously, interpretative and legislative regulations are often commingled in the same document. Moreover, sometimes it is difficult to determine what part of an administrative commentary on a given substantive tax provision interprets it and what part rests on a coordination of that provision with other statutory provisions dealing with the same subject.

In general, there is a great reluctance to rephrase substantive statutory language into lay terms.\textsuperscript{48} Even so, the statutory language is often supplemented by administrative explanation— with examples where feasible\textsuperscript{49}— to provide maximum clarity for laymen as well as for experienced practitioners. Many interpretative difficulties will remain uncovered, however, because they are not likely to be foreseen except where preenactment materials focused attention on and provided solutions for the interpretative problems.\textsuperscript{50} Then, after the statute has been in force for a time, the unanticipated interpretative issues reach the judiciary. Not until a significant number of decisions have been handed down on a particular issue which tend to fix its dimensions, is it likely that the administrative regulations will incorporate the judicial decisions on that issue. Despite this reluctance to incorporate within the regulations the results of judicial decisions, experience shows that administrative commentaries on any particular piece of tax legislation tend to increase and become more detailed throughout the first fifteen or twenty years after enactment. Then follows a period of stability, assuming interim statutory amendments have been relatively few and insignificant.

Since the tax reform law of 1962 became effective for corporations during fiscal 1963 and for individuals during fiscal

\textsuperscript{48} This reluctance stems from the inevitable increase in disputes should a discrepancy appear between the official language of the statute and its rephrasing in an official commentary or instruction manual. The lack of precision in the statutory language itself causes some controversy but, in general, tax practitioners—whether representing the government or a taxpayer—possess adequate acquaintance with the technical terminology of the revenue administration.

\textsuperscript{49} Examples will be issued on occasion even in so-called "black and white" situations.

\textsuperscript{50} See 2.2 \textit{supra}.
1964, it is unlikely that there will be a court of appeals decision on an interpretative issue until early 1966 and yet another year probably will elapse before there is a Court of Cassation decision. In the interim, the official administrative commentaries on the tax reform law consist of a compilation of the text of the statute together with the following:

1. Extracts from the legislative history of the statute—i.e., introductory comment on the bill, reports of the Finance Committees of both houses, floor debate;

2. A paraphrase of the language of the statute, including examples; and

3. Answers given by the Minister of Finance in response to questions posed by members of Parliament with respect to the application of the statute.51

The comparative extent to which a regulation will elaborate on a new, as contrasted with an old, provision of the statute can be shown best by illustration. As previously noted, Article 44 of the Code—an old provision—defines "deductible professional expenses" in broad terms. The relevant commentary in official instructions covers about 300 pages of 400 words each.52 A new provision, Article 98 of the Code,53 subjects to the corporate tax the taxable net profits of a corporation, whether undistributed, distributed to shareholders, or paid to directors and auditors.54 Relevant official administrative regulations dealing with this include only seven pages of about 300 words each, with an annex of seven pages containing examples.

The contrast reflected by that illustration is also apparent from a comparison of the overall magnitude of the regulations dealing with the old and new tax systems. Regulations covering the old, which is still partially in effect,55 fill seven loose-leaf volumes.56 About 3,000 pages deal with the professional tax, 300 with the tax on income from movable property, and 200 with the personal complementary tax. Regulations for the new tax system—i.e., the Law of November 20, 1962—as of

51 See 2.7 infra.
52 See 2.4 supra.
53 Art. 25, law of November 20, 1962.
54 Except for the special allowance to directors having special executive functions in the company.
55 See 2.1 note supra.
56 Loose-leaf volumes are used to facilitate replacement of pages superseded by amendments to the regulations.
June 1, 1964, used only 351 pages to deal with the individual income tax, 150 with the corporate tax, and about 100 with other taxes and miscellaneous provisions. In 1965 the tax administration commenced to publish new, more detailed regulations for the new tax system. Issued in loose-leaf volumes, as of March 1967—and admittedly incomplete—it already covers approximately 4,500 pages of 400 words on each page.

2.6 Manner of processing regulations

Income tax regulations are drafted by the first branch—legislation—of the first division of the central administration of direct taxes. Typically, the officials of that branch will be familiar with the new statute's provisions. Usually they worked on the draft bill at the time of its submission to the legislature and attended the deliberations in both houses of Parliament. And if a commentary is to be prepared on a royal decree, these same officials also will have written that decree.

All persons who work on an income tax regulation belong to the first of the two categories of government officials. However, regulations do pass through several levels. The initial draft customarily is prepared by a junior assistant, after which it is reviewed by a senior officer. Then it must be signed, on behalf of the Minister, by the Director General. In fact, the Minister entrusts to experienced top level officials of the revenue administration full responsibility for classification and coordination of regulations issued by the administration at different times, for cancellation of regulations relating to repealed enactments and decrees, and for preparing the text to be printed. Since there is a continuing amendment of administrative regulations, to take account of important decisions of the courts of appeal and of the Court of Cassation, drafting officials necessarily maintain close contact with officials in charge of the Treasury's litigation. Formal public hearings are not held prior to promulgation of the final version of a regulation. Nevertheless, representatives of industrial federations, chambers of commerce, trade unions, professional groups, etc., normally do communicate their views and observations to the revenue administration prior to the point a regulation is issued. Thus, the legitimate interests of affected groups can be taken into consideration to the extent the interpretation they foster is not incompatible with the legislature's intention.

57 See Chap. V, 1.5 supra.
Typically about two months elapse from the date of enactment to the time an initial commentary is available to taxpayers and to revenue personnel. Under this time schedule, the commentary usually will appear a few weeks before a new law takes effect. The initial commentary, however, is brief, and must later be enlarged upon and amended as new interpretative problems arise.\(^{58}\)

Where a royal decree—because of specific legislative delegation—contains one or more substantive tax provisions, an explanatory comment very often is published in the official gazette on the day of promulgation or within a very few days thereafter.\(^{59}\)

Section C. The Rulings Program

2.7 Formal advance written rulings to taxpayers

With respect to proposed transactions, the Belgian administration of direct taxes has no special program for issuing to taxpayers written advance rulings upon which taxpayers can rely. Since the basic criterion in interpreting the statute is legality, the administration could not legally commit itself in advance to apply the statute in a given way should that interpretation later appear to be erroneous. If a tax official, however highly placed, interprets the statute in a manner later shown to be contrary to the legislative intention—whether that interpretation takes place in oral conference, in a letter to a taxpayer, or in a printed instruction—the administration remains free to change its position.\(^{60}\) Since the courts have held that they are not bound by administrative interpretations,\(^{61}\) the

\(^{58}\)See 2.5 supra.

\(^{59}\)For example, both royal decrees on the prepayment of tax on income from movable property (Précompte mobilier, December 2, 1962) and the complementary prepayment of tax on income from movable property (Complément de précompte mobilier, December 3, 1962) were promulgated in the official Belgian gazette, Moniteur Belge, for December 29, 1962, and were accompanied on that date by an official commentary of about 14 pages, each approximately 500 words. The complementary prepayment has been abolished, effective January 1, 1967, law of July 15, 1966.

\(^{60}\)This is true even of the Director General or the Minister of Finance.

\(^{61}\)Cass. November 22 (Convents), P. 1950, I, 182. Recent decisions, unpublished, of the Courts of Appeal include the following: Liège, March 4, 1959 (Assurance Liègeoise); Brussels, March 15, 1962 (Frère);
revenue administration is unwilling to run the risk of issuing written advance rulings with which the courts might disagree should litigation later arise.

Distinct from a formal rulings program are responses by the Minister of Finance to questions raised by members of both houses of Parliament, who are entitled to interrogate the government on all points of general interest, including the interpretation of a law administered by a particular Minister, such as the Minister of Finance. Question and answer alike are printed in an official periodical, and thus constitute a valuable source of documentation in interpreting the law. Later these answers are inserted in the administrative regulations. However, no Minister will answer a question concerning a particular case in which the taxpayer is mentioned by name. The major purpose of such questioning, especially in tax matters, is to elicit official interpretation of obscure provisions of the law. Further, it should be understood that the answer of a Minister to a parliamentary question is not binding. Like all administrative interpretations, theoretically it can be altered before or after publication if shown to be contrary to the legislature's will.

2.8 Informal technical advice to taxpayers on proposed transactions

Although Belgium has no formal rulings program, officials at all levels are free to give informal advice concerning the tax effects of proposed transactions.

However, a tax officer is not obliged to give such advice. He may conclude the circumstances are such that he should refuse. In such case, the taxpayer is told that no opinion will be issued until the transaction has been consummated, and that its tax effects will be determined when the yearly return is audited. Clearly any request should be refused if the officer believes that the facts have not been completely disclosed or that the prospective transaction involves fraud or tax avoidance.63

(footnote continued)

Liège, November 2, 1963 (Hamels & Louis); Liège, January 20, 1964 (Baguette-Corman); Liège, February 17, 1964 (Transports routiers Veuve Julien Richard et fils).


63 No data is available to show the extent to which the revenue administration is consulted informally as to the tax consequences of proposed transactions.
While it must be emphasized that a taxpayer has no legal right to rely on any informal advice given him, even where it comes from the highest echelon, theory and practice are not precisely identical. Since the officer who answers a taxpayer's question concerning the tax consequences of a proposed transaction is also usually the officer who later will supervise examination of that taxpayer's return, in practice there is a substantial prospect that the advice will turn out to be reliable.

The level at which such informal advice may be given depends primarily on the importance of the prospective transaction and the difficulties it presents. Obviously, if the issue is presented clearly and succinctly, and if no dispute as to interpretation exists, the head of a local assessment office can decide whether such a transaction is subject to taxation. In more complex situations where the interpretation of the statute is less certain, or in situations where it is anticipated that a substantial tax will be involved, the taxpayer or his adviser is likely to deal with higher ranking officials, generally with an inspector general in the central administration or possibly with the Director General himself. Customarily, one or more oral conferences are held with the tax official, but the informal advice so given probably will not be reduced to writing inasmuch as the administration is not in a position to make a binding decision before the transaction has taken place. However, in practice the taxpayer knows that if he shapes the proposed transaction precisely as it was described to the official, he can rely on the advice given to him. The ability of taxpayers to secure these advance statements as to the tax consequences of proposed major transactions tends to decrease the number of interpretative issues which might otherwise arise with respect to completed transactions.

2.9 Technical advice to field offices

Lower officers are free to request the advice of higher echelons when faced with specific situations. The charts in Chapter V, 64 showing the administrative framework at the national, regional, and local levels, indicate that the head of a particular local assessing office decides whether and to what extent an individual or corporation is subject to taxation. Since the activities of the local assessment offices are supervised at the regional level by the so-called inspectors A, officers in charge of the local offices are not only permitted but encouraged

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64 See Chap. V, 1.2, 1.3, and 1.4 supra.
to seek the inspector's advice regarding difficult situations, whether interpretative or factual. Generally, but not necessarily, the taxpayer is informed if such advice is to be sought. Since an oral conference with the higher echelon official is never refused, the taxpayer will have an opportunity to argue his point of view.

In addition to request for advice from the assessing offices to the higher echelons, frequently taxpayers or their advisers request intervention by a higher echelon (by the inspector general, Director General, or by a member of the Finance Minister's cabinet). Such intervention is requested to insure a supplementary and thorough examination of some problem prior to actual assessment.

There are no formal procedural requirements to be met in seeking intervention of a higher echelon, whether the request comes from a taxpayer or the head of a local assessing office. Typically the higher echelon is forwarded the file of the taxpayer, containing his return and all relevant documents. Rarely is the matter handled by telephone; at a minimum, the inspector whose intervention is requested expects to receive a memorandum analyzing the matter in dispute.

While the prime purpose of the foregoing practice is to insure certainty and uniformity in the application of the law, it serves also to decrease litigation. No publication sets forth all advice given by the higher administration echelons at the request of the lower ranking tax officers; however, where such advice is considered to be of general interest, it is inserted in the official printed instructions of the revenue administration which are more fully described below.

2.10 Publication of technical advice given taxpayers and local offices

The revenue administration issues a number of publications for the benefit of taxpayers as well as for the guidance of tax offices. Each appears in both a Dutch and French language edition. While they are distributed to all tax personnel, anyone outside the administration is free to subscribe to them.

The technical advice which is published is not limited to a bare statement of the rule to be applied. It includes not only the justification for the conclusions reached—that is, the

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65 No statistical data are available concerning the number of questions laid before inspectors A by the local assessing offices.

66 No statistics are available to show the actual number of such interventions which take place.
references to the statutes and to the regulations—but also the legal reasoning itself.

The publications fall into four groups. The first includes a text of the basic tax statute accompanied by all royal decrees promulgated either to fill out (in the case of specific legislative delegation) or to enforce the law. As of June 1, 1964, each language edition was set forth in two loose-leaf volumes totaling 600 pages with about 350 words a page.

The second is a loose-leaf coordinator containing important nonstatutory material, including administrative instructions concerning direct taxes. These instructions do include digests of the technical positions taken in response to informal requests for information by taxpayers or by local assessment officers, although the instructions in full are not officially published. The coordinator also contains the legislative history of the statute, public answers made by the Finance Minister to parliamentary questions, and a summary of the decisions handed down by the courts of appeal and the Court of Cassation.

The third, a monthly bulletin, is the most popular publication of the Finance Ministry. It is designed to keep in-service personnel and practitioners up to date, and to that end contains recent laws and decrees, administrative regulations, court decisions, parliamentary questions, statistical surveys, and other data. Each language edition now runs to about 2,500 pages of 400 words a page.

The fourth is published at irregular intervals (usually bi-monthly). It contains the full text of important decisions handed down by the courts of appeal and of the Court of Cassation on direct taxes. Each such publication runs to about 40 pages of 400 words each.

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67 For the length of the instructions dealing with certain portions of the "old" and the "new" statutes, see 2.5 supra.

68 However; most other judicial decisions do not appear in Finance Ministry publications. All decisions of the Court of Cassation are printed, however, in the "Pasicrisie" Part I. See footnote 11 supra.