

CHAPTER VII

ASSESSMENT, REFUND, AND ADMINISTRATIVE APPEAL PROCEDURES

Section A. *Assessment and Audit Procedures*

3.1 *Introductory note*

The levying of taxes can be divided into three distinct and successive phases: (1) the assessment, i.e., the definition of the exact amount of income or profit subject to taxation under the statute, (2) the computation, i.e., the application of a progressive or proportional rate on the taxable amount, and (3) the collection, i.e., the procedure used to secure payment absent voluntary payment.

Essentially, Belgian assessment and audit procedures are the same for both individual and corporate taxpayers and with two prime exceptions for all types of income. The two special procedures relate to imputed income from immovable property situated in Belgium, the so-called "cadastral income," and to income arising from certain categories of professional activity.

3.2a *Details of the typical assessment and audit procedure*

All individuals (residents as well as nonresidents subject to the nonresident tax),¹ corporations, juridical persons, and unincorporated communities must file an annual return showing taxable income.² In essence, however, this is an information return, for the taxpayer himself does not compute the tax itself. The return, with the attached reports, is supposed to provide such complete information that the assessing official can rely on it to compute the correct tax.

The returns, in the form of questionnaires, are mailed by the Minister of Finance, during the year's first quarter, to all

¹Art. 212 of the Code of Income Tax (Art. 55, §1, Coordinated Laws and Art. 53, 1^o, of the law of November 20, 1962) requires the filing of a return by nonresidents, whether on their entire Belgian income or on remuneration earned in Belgium.

²Art. 218 of the Code of Income Tax (Art. 54, §1, of the Coordinated Laws as amended by Art. 9 of the law of July 13, 1959).

persons subject to taxation.³ Different types of questionnaires are used: (1) for corporations, (2) for wage earners and those individuals whose income is derived from only two or three sources, and (3) for individuals whose income is derived from many sources. These returns are designed to supply the assessing officer with all possible data concerning the taxpayer, his family, his occupational activity, his real and personal property, and related expenditures. In the course of completing a return, a taxpayer or his representative may have to resolve one or more questions of law or mixed questions of law and fact. An officially prepared explanation of the law, covering 8 pages of about 1400 words each, is attached to each questionnaire for the benefit of the declarant who is otherwise legally presumed to know all of the provisions of the tax law.

The statute requires certain supplementary statements to be attached to specified types of returns. Corporation returns must be accompanied by copies of the balance sheet, profit and loss statement, and minutes of the corporation's general meeting where these financial reports were approved.⁴ Returns filed by partnerships must be accompanied by a statement of all amounts paid to the associates on the basis of the company's accounts.⁵ In certain cases individuals also must supply certain documents. Illustratively, when foreign income is declared, the taxpayer must identify its nature and the country of origin.

In addition to the statutorily required supplementary statements the administration is entitled to call for other information it anticipates using during the course of assessment and audit. For example, corporations filing the 1964 return were requested to add copies of about fifteen records or statements. These included (in addition to the documents noted previously) a list of directors, an account of sums paid to directors and to stockholders, a detailed depreciation schedule, and a valuation

³This list is subject to annual revision on the basis of information communicated by the municipal authorities. However, the King is empowered to decide that individuals (not juridical persons) who, on the basis of the return previously filed, appear to earn an income below the taxable limit need not file a new return annually. This decision is subject to revision at any time. Art. 216, al. 1, Coordinated Laws, Art. 53, 2^o, of the law of November 20, 1962, Art. 144 of the Royal Decree of March 4, 1965.

⁴Art. 218, al. 2, of the Code of Income Tax.

⁵Art. 219 of the Code of Income Tax, Art. 54, §2, al. 1, of the Coordinated Laws, Art. 54 of the law of November 20, 1962.

schedule of the stocks and bonds owned by the corporation. Included also in the assessing official's file for each taxpayer is other information drawn from returns filed by yet other taxpayers⁶ or received from other governmental authorities and agencies.⁷

Typically, returns are examined by local assessing offices, though special offices at the local level handle all corporations except very large enterprises which are dealt with by the central administration's own special office for direct taxes.

The assessing office assumes a return to be correct until it determines otherwise.⁸ Its examination involves a verification both of the factual data on the return and attached documents and of the taxpayer's application of the statute in arriving at taxable net income. Any legal evidence, other than a sworn statement, can be utilized in the verification process.⁹

In practice, however, individuals who have returns showing a low income or income from an easily verified source will not have their returns audited except for such returns of this character as are selected for audit on a sampling basis. Individuals whose income is in the neighborhood of 500,000 Belgian francs (\$10,000.00 U.S. dollars) have their returns checked, however easily verifiable the sources. However, if such an individual has a stable income from approximately the same sources year after year, the local assessor tends not to check

⁶ The return of one taxpayer can be an extremely valuable source of information in verifying the return of another. For example, whenever a taxpayer includes within his deductible expenses the interest paid on borrowed money or the fee paid to a professional expert, he must show the name and address of the payee. When this information is placed before the appropriate assessing official, he can readily determine whether the payee has included such payment within his declared income.

⁷ When requested by the revenue administration, governmental, provincial, and municipal authorities (with the exception of the National Institute for Statistics, the Institute for the Study of Economic and Social Problems of the Middle Class, the credit institutions maintained by the government, and the Postal Checks and Clearing Service (Art. 235, § 2, of the Code of Income Tax)) must forward all records which an assessing or collecting official considers necessary for the assessment or collection of taxes. Art. 235, § 1, of the Code of Income Tax (Art. 57, bis § 1, of the Coordinated Laws, Art. 58 of the law of November 20, 1962).

⁸ Art. 245 of the Code of Income Tax (Art. 55, § 1, of the Coordinated Laws, Art. 56, § 1, of the law of November 20, 1962).

⁹ Art. 245 of the Code of Income Tax (Art. 55, § 2, of the Coordinated Laws, Art. 56, § 1, of the law of November 20, 1962).

his return after the first two or three years in the belief that this taxpayer's honesty can be relied upon.

During the examination, the assessor frequently finds himself in disagreement with the taxpayer, either as to the amount of the latter's income or the manner in which the taxpayer resolved a question of law or mixed question of law and fact. Typically, such a taxpayer is called into the office to be questioned in detail. During the course of such a discussion, the taxpayer may submit a statement, attesting to the accuracy of his figures and signed by an accountant belonging to an officially recognized group known as *Institut des reviseurs d'entreprises*.¹⁰ While great weight is attached to such a statement insofar as it relates to the mere accuracy of figures, the statement is not at all conclusive with respect to whether the tax law was properly applied in determining the tax treatment of each item.

The assessor is very likely to request informal advice from the appropriate inspector A or even from the central administration whenever he confronts a new problem regarding proper application of the law to the situation before him, or other issues which emerge from the return of an important company or a return involving a substantial sum of money. It is entirely within his discretion whether he informs the taxpayer that he has requested this advice, but in practice the taxpayer is told.¹¹ The taxpayer is free to request an oral conference. Comparably, and with equal informality, the taxpayer himself may try to resolve the problem in a conference with a higher ranking official and not infrequently he is successful. No statistics are available to show the number of taxpayers who seek such a conference at this level.

In practice, however, both assessor and taxpayer discuss exhaustively every aspect of the tax return. A complicating

¹⁰ There are no so-called chartered or certified public accountants in Belgium. Certain experienced accounting experts of good reputation have been selected by an official group, *Institut des reviseurs d'entreprises*, to act as auditors for corporations whose stocks and bonds are quoted on the stock exchange. In some circumstances, the members of this group have been appointed by the government or by a governmental agency to supervise the application of special regulations dealing with banking, insurance, etc. These appointments, however, do not authorize them to substantiate in any official sense the accuracy of the figures set out in a tax return.

¹¹ There will, however, be relatively few situations where an interpretative question arises under the Belgian statute; its minimal number of deviations and broad statements of policy tend to curtail automatically the number of potential interpretative issues.

factor is the requirement that the assessor complete his work within a given period in a particular year. This may effectively preclude a conference with an official at a higher echelon, for all assessments must be made by the end of the year. Nevertheless, the taxpayer is aware that if he is not fully satisfied with the results of whatever discussions have taken place, appeal to the regional director need cost no more than a postage stamp and is fully available. However, it not infrequently happens that the assessor and the taxpayer are able to reach an agreement as to matters of fact. At this local level, as to which there are no available statistics, there is a good deal of adjustment as to purely factual issues, such as those involving the value of an inventory at the end of the year or the amount of expenses incurred for some clearly business purpose. Illustratively, a taxpayer may claim 25,000 Belgian francs and have records showing expenditures of 15,000 Belgian francs. The assessor may say that from his station in life, it would be reasonable to assume expenditures of 20,000 Belgian francs and both agree as to this figure. The assessor, however, has no power to resolve interpretative issues and he cannot engage in settlement activities. He may only adjust fact questions where substantiation is the major problem.

The taxpayer is not allowed to bypass the detailed discussions with the assessor and go directly to the regional director. However, merely because the taxpayer cannot bypass the assessor prior to assessment, does not affect his right to file a petition with the regional director after assessment.

Certain taxpayers, in the course of the assessing official's interrogation, may assert that they are bound by professional secrecy and unable to communicate what they claim to be privileged information.¹² Under such circumstances, the assessing officer consults a special advisory board, *Comité d'avis*, composed of the president and two members of the local professional or occupational group—lawyers, doctors, notaries—to which the taxpayer belongs. Within ten days after referral, the board must give its opinion as to the taxpayer's probable income.

¹² Art. 458 of the Belgian Penal Code punishes physicians, surgeons, chemists, midwives "and all other persons who have a professional responsibility to keep secrets"—i.e., lawyers, solicitors, notaries, etc.—should they reveal facts of which they have been informed in secrecy unless they must appear as witnesses in court or legally are obliged to reveal them.

While such a board does not consider any question of law and has no power to make a final decision, in effect there is a presumption that its opinion accurately reflects the taxpayer's income.¹³

Should an assessing officer finally decide that a taxpayer has filed an incorrect return, informal interchange of views ends. But before the assessing officer can make a final adjustment to the income as reported, he must send the taxpayer a carefully prepared *rectification*, stating what he believes is the taxpayer's net taxable income. The rectification also requests that the form be returned within twenty days, together with the taxpayer's written objections, if any, to the proposed adjustment.

Until the twenty days have elapsed, no definitive assessment can be made. But if this period goes by without receipt of written objections from the taxpayer, the assessing official is free to act although,¹⁴ for reasonable cause, he may grant the taxpayer a twenty-day extension. Further, the mere fact that the taxpayer does file written objections will not necessarily postpone the assessment. The assessing officer is not required to reconsider arguments previously raised by the taxpayer if he believes the taxpayer's rationale to be in error. He may disregard them and proceed without delay to an assessment. However, on filing his written objections, the taxpayer has a right to request that the case be submitted to an advisory committee, *Commission fiscale*.¹⁵ This request is not automatically granted. It is approved only when the assessing official believes the referral will contribute to a proper determination of the taxpayer's income.

Such committees exist in each locality where there is an assessing office. The chairman is a tax inspector; the other members are private citizens, i.e., are representatives of trade, industrial, agricultural, professional, and wage-earners organizations. Designated by their officially recognized occupational organizations, they are appointed for three-year terms.

¹³ Arts. 254-255 of the Code of Income Tax (Art. 44, § 13, of the Coordinated Laws, Art. 56, § 3, of the law of November 20, 1962).

¹⁴ Art. 251 of the Code of Income Tax (Art. 55, § 12, of the Coordinated Laws, as completed by Art. 56, § 2, of the law of November 20, 1962).

¹⁵ Art. 252 of the Code of Income Tax (Art. 55, § 14, al. 1 to 3, of the Coordinated Laws, as amended by Art. 56, § 4, of the law of November 20, 1962).

Such committees never deal with interpretative issues. As before noted, an assessor can obtain informed advice regarding that type of question from the so-called inspectors A or from the central administration. The advisory committees are competent to deal only with questions of fact. They are expected to answer only one question: Did the taxpayer make realistic estimates of his gross income, professional expenses, etc.?

Once a question is submitted to the fiscal committee, the assessing officer and the taxpayer, or his tax advisor, are requested to forward all notes and documents. In addition, each side is given an opportunity to offer an oral explanation and argument.

In theory, the committee's decision does not bind the assessing official; its sole function is to advise. However, should the assessing officer assess a tax in excess of the amount considered proper by the committee and should the taxpayer subsequently appeal, a legal presumption arises, to the effect that the assessing officer erred and that the committee's finding represents the maximum possible amount of taxable income.¹⁶

Should a taxpayer fail to file a return or to turn over records or data upon request, the assessing officer estimates the tax due. Under such circumstances, the assessing officer need not prove the exact amount of net income he estimates the taxpayer to have received.¹⁷ The taxpayer, however, must prove that he did not earn that income.¹⁸

3.2b *Details of assessment and audit procedure re cadastral income*

As noted above, there is a separate assessment procedure for income from real property located in Belgium. The taxpayer himself neither calculates nor estimates the amount of his so-called cadastral income. This is not an amount actually received by the owner. Instead, taxable income of this type is a presumed income, i.e., cadastral income. The Land Register,

¹⁶ Art. 253 of the Code of Income Tax (Art. 55, §14, al. 4 and 5, of the Coordinated Laws, Art. 56, §4, of the law of November 20, 1962).

¹⁷ Art. 248, §2, of the Code of Income Tax.

¹⁸ Except where the taxpayer can give acceptable reasons why the filing of the return or the answer to questions of the assessing officer have been delayed. Art. 257 of the Code of Income Tax (Art. 56, al. 2, of the Coordinated Laws, as amended by Art. 57, §2, of the law of November 20, 1962).

Administration du cadastre, determines the presumed income from each piece of such real property for a twenty-year period, by estimating the average normal income for one year, deducting a lump sum (one-fourth for buildings and one-tenth for land) for costs, maintenance, and repairs. Except where important changes are made to such property, the amount so determined remains, in principle, fixed for twenty years.

When this determination takes place, each owner is informed officially. Should he disagree with the conclusion of the Land Register, he has thirty days in which to send a letter to the official in that office, complementing his request for review of that estimate with his own proposal as to the net taxable income from the property.¹⁹

If the Land Register officials and the taxpayer cannot agree, the taxpayer-owner may have the property appraised by an independent expert appointed by the Justice of the Peace for the locality where the property is situated. The appraisal procedure provided by statute is followed,²⁰ and once made the expert's appraisal of the cadastral income binds both the taxpayer and the assessing official.

The cadastral income was revised last in 1956-1960.²¹ The next revision occurs in 1975. While the cadastral or presumed income from real property cannot be increased before that year, a supplemental income tax must be paid on the owner's actual net income therefrom to the extent it exceeds 200% of the cadastral income.²² Further, if there is no actual income or if the actual income has declined, an exemption or reduction of tax can be obtained.²³

3.2c *Details of assessment and audit procedure re income arising from certain categories of professional activity*

The legislature recognizes that it is not easy for some taxpayers to determine the precise amount of their occupational net income. In consequence, the tax administration, either at

¹⁹ Arts. 412-415 of the Code of Income Tax (Art. 61, § 1, of the Coordinated Laws).

²⁰ See Arts. 417-428 of the Code of Income Tax (Art. 61, § 1, of the Coordinated Laws, as amended by Art. 10 of the law of July 14, 1955).

²¹ Law of July 14, 1955.

²² Only, however, when the rent paid to the owner can be deducted by the tenant as a professional expense. Art. 7, § 1, 1^o b, of the Code of Income Tax (Art. 4, § 1, of the law of November 20, 1962).

²³ Art. 9, § 1, of the Code of Income Tax (Art. 4, § 2, 2^o and 3^o, of the law of November 1962).

the national or regional level, may reach agreement with occupational associations fixing an estimated base by which the taxable net income of their members will be determined for a period not to exceed three years.²⁴

Some such agreements, as in the case of agriculture, are on a nationwide basis. Others, as in the case of bakers and butchers, are regional in scope, and in these cases the estimated base for occupational income differs from place to place.

Members of an occupational group subject to such an agreement are required, nevertheless, to file an annual return. But instead of listing both the gross income received and deductible expenses, they provide other factual information. Illustratively, in the case of farmers, they state for the given year the area of land cultivated, in the case of butchers or bakers the amount of wares sold. Using this factual data, the net income of such individuals is estimated, in accordance with the agreement reached between their occupational associations and the tax administration.

Foreigners running a business in Belgium also are subject to a system of estimated *minimum* taxable incomes. Since they remain subject to the regular assessment procedure, the estimation arrangement is intended only to assure that they will pay at least some personal or corporate income tax on a minimum base with reference to the number of employees, etc.²⁵

Section B. *Administrative Appeals*

3.3 *Introductory note*

To recapitulate briefly, the process of taxpayer assessment in Belgium places the responsibility for the actual assessment of the income tax on the assessing official, although only after opportunity for an informal exchange of views between the assessing official and the taxpayer and for referrals seeking nonbinding advisory opinions on factual matters from certain consultative boards.

Once the assessment has been made, the taxpayer may appeal the assessing official's decision to a higher level within the tax administration. Should the decision there be unfavorable, he may lay his case before the judiciary.

²⁴ Art. 248, § 1, of the Code of Income Tax (Art. 28, § 1, of the Co-ordinated Laws).

²⁵ Art. 248, § 2, of the Code of Income Tax.

3.4 *Details of the administrative appeal procedure re assessments*

Two situations permit a taxpayer to secure a full administrative review of the facts and of the law relating to any disagreement with the assessor. The first is where tax payments exceed the amount the taxpayer believes to be correct, either because of an excessive withholding of taxes or because of excessive payments of estimated tax. The second is where the assessor, having completed his examination of a taxpayer's return as a prelude to making a regular assessment, does not agree with the taxpayer regarding the amount of tax due, all procedures available to resolve their differences having been utilized without success. The assessing officer then sends a formal notice of his conclusion (the so-called "tax paper") regarding the tax due and directs that payment be made within the legally prescribed period of two months.²⁶

Should the taxpayer disagree with the tax paper—a likely situation since the parties failed to reach agreement earlier—or should he believe that his previous payments exceeded the amount properly owing, he can file a petition with the regional director of direct taxes for his area. This enables him to secure a full administrative review of the case, not only as to questions of fact but interpretative questions of law.

As pointed out earlier, the twelve regional directors of direct taxes perform two functions in the overall tax administration. They constitute the authority to which an appeal is taken after formal assessment, and they supervise all local revenue offices within their respective regions, including the work done by assessing officials.²⁷ In dealing with petitions for review, the directors are assisted by inspectors for litigation matters, whose assistance is necessary because of the large number of petitions filed annually. In many such cases, the taxpayer does not request an oral hearing because of the nature of the alleged error, for example, a claimed miscalculation. However, according to the following table of petitions filed during a recent six-year period, in approximately half the cases there is an oral hearing. But the bulk of the cases, even where there is a hearing and a detailed examination of the taxpayer's contentions, did not involve interpretative

²⁶ Art. 304 of the Code of Income Tax (Art. 53, §1, al. 3 and 4, of the Coordinated Laws, Art. 63 of the law of November 20, 1962).

²⁷ See Chap. I, 1.1 *supra* for discussion of the territorial competence of the twelve regional directors.

issues.²⁸ Rather, they concerned questions of fact such as computation of gross income, the exact amount of business expenditures, losses, etc. Moreover, the petty cadastral property cases—which raise only issues of fact and which involve very small amounts of money—are included in this total.²⁹

PETITIONS FILLED WITH THE REGIONAL DIRECTORS
OF DIRECT TAXES

<i>Year</i>	<i>With Preliminary Examination</i>	<i>Without Preliminary Examination</i>	<i>Total</i>
1958	61,142	56,971	118,113
1959	61,625	61,996	123,621
1960	58,448	67,011	125,459
1961	53,754	58,744	112,498
1962	58,494	60,143	118,637
1963	69,199	66,113	135,312

The procedure governing this administrative appeal is both simple and common to all taxpayers—resident or nonresident, individual or corporate—and for all forms of income tax. To file a petition, the taxpayer need only mail a letter to the appropriate regional director, briefly explaining his objections to the tax as determined by the assessing official or as previously withheld or paid. The director or that inspector for litigation matters who actually subjects the taxpayer's return, together with the attached documents, to a new and thorough examination, possesses all the investigative powers of the original assessing official,³⁰ and in addition he may request any other potentially useful information from banks, other credit institutions, and the postal check and clearing service.

Since the regional director derives his review powers directly from the statute, not from the central tax administration, he is under no legal obligation to consult the central administration prior to making any decision on the taxpayer's petition. In the interest of uniformity, however, in practice the regional

²⁸The fact that a taxpayer can secure an unofficial informal opinion on the tax consequences of his prospective transaction means that if he completes the transaction precisely as he has described it, he will have no problems and hence no interpretative issues will arise.

²⁹The very minimal cost of a petition tends to make many taxpayers think it worth their while to appeal an assessment since they possibly may benefit themselves.

³⁰Art. 275 of the Code of Income Tax (Art. 64 of the law of November 20, 1962).

director does seek the advice of the central administration on encountering an interpretative problem not previously treated in the official regulations or publications of the Finance Ministry.

When the regional director does consult the central administration, he is not required to, but in fact usually does, inform the taxpayer. Whenever the taxpayer knows that such consultation has occurred, he may and usually does request an oral conference with the central administration; such requests are always granted.

There is no opportunity at the regional director's level for settlement in the sense of compromise where interpretation or application of the statute is concerned. There is opportunity only to make corrections. Further, the only possible adjustments relative to issues of fact where proof is unavailable took place at the assessor's level.

The regional director informs the taxpayer of his decision by registered letter.³¹ If he rejected the taxpayer's arguments and dismissed the petition, or concluded that the original assessing official underestimated the taxpayer's income with the consequence that the taxpayer owes more than even the amount shown by the formal assessment, the taxpayer can turn only to the courts for further consideration. Should the regional director sustain the taxpayer, however, the tax administration is bound.

While no definite statistics are available, informed sources believe that about 40 percent of all petitioners at the regional director's level feel that they have secured whatever relief they sought. Of the remaining 60 percent, only a small percentage will carry their cases to the courts. A postage stamp is all that is needed for a petition to the regional director; an action in the Court of Appeal requires a lawyer and entails procedural costs. Thus a taxpayer does not commence a court action for a trivial reason. It must be worth his while. Further, it may happen that a number of petitions filed with regional directors in a given year raises a single issue, e.g., such as one relating to a particular type of professional or commercial activity. Under such circumstances, the trade or professional organization frequently selects the dispute of a single taxpayer to try as a test case and sometimes shoulders the entire financial expense, with everyone involved fully aware of what is happening.

³¹ Art. 276 of the Code of Income Tax (Art. 65, al. 1 of the Coordinated Laws).

In the meantime, instructions from the national office will direct the regional directors to refrain—as they may do, not being under any limit as to time—from handing down a decision on all the other appeals raising the same legal question. Comparably, there is a close enough cross-communication between the regional directors to insure their awareness if a number of taxpayers throughout the country independently file petitions raising a similar legal issue. Under such circumstances, the national office usually selects one petition for litigation and holds back decisions on the others.

Section C. *Extent Administrative Processing of Refund Claims Departs from Administrative Processing of Assessments*

3.5 *Introductory note*

Except in the limited instance described in the next subtopic, the Belgian tax system has no separate procedure for refunds distinct from those which may be paid automatically in connection with the assessment procedure itself. In other words, generally speaking, a taxpayer must raise his objections, if any, in a timely manner during the course of the assessment procedure, and the dispute will be handled in the same manner whether he had paid less or more than the assessment as finally determined. This stems from the fact that the tax return is essentially an information return, the tax on income (as originally stated or as corrected) is calculated and assessed by the administration. Once calculated, the taxpayer receives the so-called tax paper showing the total tax, which must be paid within two months. It is quite possible, however, that some or all of this tax was paid prior to that assessment, because of (1) withholding at the source or (2) voluntary payments of estimated tax which are made in certain cases to avoid supplementary exactions equal to 7.5 percent or 15 percent of the total tax.³² If the amounts paid through either

³²See 3.3 *supra*. No supplement is due if the advance payment is made before July 15 of the year during which the taxable professional income will be earned. A supplementary payment of 7.5% is paid on the corporate or personal income tax, as calculated at the normal rate on the professional part of the total income, if the advance payment is made fifteen days after the closing of the taxpayer's financial year. The supplementary payment is 15% if payment of the tax takes place at the usual time, i.e., at least two months after the tax-paper has

method exceed the assessment fixed by the local office, a refund is in order, but this will be paid automatically. No special refund claim is required.

In other cases, should a taxpayer conclude that the assessment shown in the tax-paper is excessive and file a timely petition for review with the regional director, the full amount of the asserted tax need not be paid while the administrative appeal is pending. While the filing of the petition does not actually suspend the legal obligation to pay the entire assessment within the legally prescribed two-month period, in practice the tax administration will not commence a collection action if, within that two-month period, the taxpayer pays the undisputed portion of the tax.

Should the regional director, after examining the taxpayer's petition, decide in favor of the taxpayer, he will automatically refund overpayments, if any. However, should the taxpayer owe other taxes, the refund will serve instead as a credit against them.

Should the regional director decide against the taxpayer, the previously disputed portion of the assessment as to which payment may have been postponed must now be paid, with interest at six-tenths of one percent per month. However, to induce regional directors to avoid delay in processing administrative appeals, the legislature provided that such interest shall cease to run from a point six months after a petition has been filed to the point when the director's decision is forwarded to the taxpayer.³³

3.6 *Details regarding refund procedure in cases of "material error"*

A taxpayer who fails to contest an assessment by filing a timely petition for review with the regional director may not thereafter secure a re-examination of his return for the purpose of recapturing a claimed overpayment, except on a showing of material error. Such an error, whether discovered by the taxpayer or a revenue official leads automatically, without any formal requirement, to a refund if an overpayment is involved. This is subject, however, to two limitations. Refunds

(footnote continued)

been dispatched. Art. 89 of the Code of Income Tax (Art. 22, § 2, al. 1 to 3, law of November 20, 1962, as amended by Art. 10, law of July 15, 1966).

³³Art. 306 of the Code of Income Tax (Art. 65, al. 2 of the Co-ordinated Laws, Art. 11, law of March 28, 1955).

cannot be made following the lapse of three years from the beginning of the year to which the tax relates. Further, if the taxpayer had filed a timely petition for review of his original assessment to which the claimed overpayment relates, and a final decision on that petition has been handed down, that finally determined assessment cannot be reopened even upon later discovery of a material error.

Subject to those two limitations, the types of error accommodated under this procedure included mathematical mistakes which favored the government (whether made by the taxpayer himself or by a revenue official) or double computations of a taxable term. Also treated as tantamount to material error is the situation where the taxpayer, after the assessment is made, produces new records or facts which for completely valid reasons he was unable to submit prior to assessment. A new legal argument or a change in the administrative or judicial interpretation of the statute will never be considered a "new fact," however.³⁴

³⁴Art. 277 of the Code of Income Tax (Art. 61, §6 of the Coordinated Laws as amended by Art. 2, law of May 30, 1949, Art. 233, law of July 27, 1953, Art. 20, §2, law of March 28, 1955, Art. 2, law of March 24, 1959, and Art. 63, §5, law of November 20, 1962).