

CHAPTER VIII

RESOLUTION OF INTERPRETATIVE INCOME TAX QUESTIONS BY INDEPENDENT TRIBUNALS

4.1 *Introduction*

As pointed out earlier, a taxpayer must exhaust the administrative processes before he may carry into court a dispute with the tax authorities. The government, however, faced with an adverse administrative appeal decision by the statutorily endowed regional director, does not have the right to carry its case to the courts. The taxpayer alone has this privilege.

The judiciary possess final authority to interpret the tax statute. The Belgian Constitution insures the absolute independence of the tribunal to which the taxpayer has an absolute right to appeal in the event of an adverse decision at the administrative level.

The courts with jurisdiction over tax matters are not specialized courts, limited either to tax litigation or to disputes between administrative agencies and individual citizens. They are courts of general jurisdiction—civil, commercial, criminal, etc.—fully competent also to resolve substantive income tax questions. However, these general courts do have specialized *chambres* for tax matters. To the extent necessary, they will re-examine the regional director's conclusions of fact and of law.

The Belgian judicial organization has no precise counterpart to trial and appellate tribunals. Nevertheless, two levels of competence exist. The Courts of Appeal make findings of fact *de novo*, to which they apply their view of the law. The Court of Cassation, the supreme court to which lies an appeal from the Courts of Appeal, is limited to questions of law.

Section A. *Organization and Procedures:* *Lower Courts*

4.2 *Organization of the lower courts*

Belgium has three Courts of Appeal each with a specified

seat and territorial jurisdiction.¹ A petition for revision of a director's decision must be brought before the Court of Appeal with territorial jurisdiction over the office of the regional director who handed down the decision.

Each Court of Appeal is divided into the number of sections, *Chambres*, reflected in following schedule, the number having been determined on the basis of average workloads:

<i>Court of Appeal</i>	<i>Total Chambres</i>	<i>Taxation Chambres</i>	<i>Total Members (Conseillers)</i>	<i>Taxation (Conseillers)</i>
Ghent	8	1	26	3-4
Brussels	24	3	60	9-12
Liège	12	2	33	6-8

Every case coming before a section is heard at least by three members.

Irrespective of the section of the court of which they are members, all *conseillers* are doctors of law. Generally they have spent ten to twenty years as justices of a district tribunal or as members of a district office of the public prosecutor. As a rule, members of the tax section were not tax specialists prior to appointment, but they normally serve such long terms that they develop a high level of expertise. Whenever a matter of general interest is argued before a Court of Appeal, a member of the Attorney General's staff—usually a deputy attorney general—is present. He submits an advisory opinion in each case.²

Like the *conseillers*, the members of the Attorney General's staff are generalists upon appointment but after advising on hundreds of tax cases they acquire a thorough knowledge of tax law and experience in interpreting the statute.

4.3 *Processing cases through the Court of Appeal*

Should the taxpayer's administrative appeal be decided adversely in whole or in part, he will be so informed by a

¹ The courts at Ghent, Brussels, and Liège exercise jurisdiction, respectively, over (1) West Flanders and East Flanders, (2) Brabant, Antwerp, and Hainaut, and (3) Liège, Limbourg, Namur, and Luxembourg.

² This device of an advisory opinion is a requisite part of Belgian judicial procedure whenever the public interest, *l'ordre public*, is concerned. The office of the attorney general is not involved in the controversy between the parties. Hence, the representative of the attorney general's office, in tax cases the deputy attorney general, has the duty of delivering an impartial opinion which sometimes will favor the Minister of Finance and sometimes the taxpayer, depending upon his estimation of the merits of the case.

registered letter from the regional director. The taxpayer then has forty days within which to file with the appropriate Court of Appeal a new petition, a copy of which is sent to the regional director.³

Neither administrative nor judicial appeal affects the taxpayer's obligation to pay his tax as assessed, nor is the running of interest suspended should the taxpayer delay paying that portion of the tax in dispute.⁴

It is possible to settle cases after invoking the jurisdiction of the Court of Appeal. Where this occurs, the taxpayer officially waives the right to dispute further the regional director's decision. The Court, however, must decide whether it will approve the settlement. Should the Court conclude that the settlement is based on an incorrect interpretation of the statute, it can refuse to permit the petition to be withdrawn and hand down a decision as if no administrative settlement had been made.⁵ Should the Court be satisfied with the settlement, it will recognize withdrawal of the petition by a formal decision. No statistics are available to indicate the frequency with which such administrative settlements are reached.

Once a taxpayer files a petition with a Court of Appeal, the tax administration must defend the case. Communication of the taxpayer's petition to the regional director in effect summons the tax administration to appear before the court. At the hearing the government is represented by a lawyer, a regular practising member of the bar who also holds a permanent appointment from the Minister of Finance to defend the revenue administration in court. These lawyers maintain contact with the fourth division of the central Administration of Direct Taxes, three branches of which handle the work on tax cases, in litigation before the courts.⁶

Contrary to the customary procedure in the civil cases, taxpayers are not required to be represented before a Court of Appeal by a solicitor, *avoué*. Theoretically, any taxpayer may represent himself at such hearings, with or without the

³ Arts. 278-280, Code of Income Tax (Arts. 66 and 67 of the Co-ordinated Laws).

⁴ See Chap. VII, 3.5 *supra*.

⁵ See, for example, Court of Appeal of Brussels, June 27, 1956. (Chevalier pour Despatures), Recueil Special de Jurisprudence, XII, no. 649.

⁶ The personnel of the office for litigated matters belong to the first category of government officials, whose educational background was discussed in Chap. V *supra*.

assistance of a tax expert who may or may not be a member of the bar. In practice, however, the taxpayer is represented by a member of the bar, i.e., by legal counsel authorized to plead before any Belgian tribunal.

The proceedings are formal.⁷ Both facts and legal arguments must be stipulated in writing by taxpayer and tax administration alike. According to the general principle *actori incumbit probatio, sed reus in exceptione fit actor*, proof of facts and legal arguments must be borne by the party invoking them.⁸

Upon receipt of a copy of the petition, the regional director must deposit all documents concerning the dispute, together with a certified copy of his decision, with the Court of Appeal, where the taxpayer is free to examine them.⁹ Should the taxpayer wish to rely on new documents or memoranda not introduced previously when the matter was before the regional director, he must file them at the same office of record where the director, in turn, may examine them. The director then has thirty days in which to respond, by submitting additional documents or memoranda in support of his position.¹⁰ With the court's permission, the taxpayer can reply by filing yet further records, documents, or memoranda.

In the end, both the tax administration and the taxpayer must have submitted formal documents, so-called *conclusions*, setting out their arguments. The view of the Attorney General is also submitted in writing.

There is, however, a typically exercised right to oral argument with respect both to the facts and applicable legal principles. But this is in addition to and not a substitute for the *conclusions*. Further, it is most unusual for the taxpayer himself to be interrogated, for other oral evidence to be introduced, or for witnesses to be used.

The court rarely hands down its decision on the day in which the hearing is completed. The time lag between the close of the hearing and the decision itself ranges from two weeks to two months, depending on the difficulty of the case.

⁷ Art. 287, Code of Income Tax (Art. 67, al. 1, of the Coordinated Laws).

⁸ Except where the advice of the "Fiscal Committee" was in favor of the taxpayer. See Chap. VII, 3.4

⁹ Art. 281, Code of Income Tax (Art. 67, al. 1, of the Coordinated Laws).

¹⁰ Art. 283, Code of Income Tax (Art. 67, al. 1, of the Coordinated Laws).

The Belgian Constitution requires that the decisions of all tribunals be announced in public, but the litigants themselves need not be present. Since the Constitution also requires that decisions include more than the bare judgment, each decision sets out a detailed statement of facts as well as the legal reasoning which led the court to its conclusion.

The schedule which follows indicates the number of cases, involving direct taxes, decided by the Courts of Appeal in recent years:

<i>Judiciary Year</i>	<i>All Courts of Appeal</i>	<i>Individual Courts of Appeal</i>		
		<i>Brussels</i>	<i>Ghent</i>	<i>Liège</i>
1959-60	1,727	1,075	341	311
1960-61	1,537	1,003	329	205
1961-62	1,283	825	260	198
1962-63	1,107	778	166	163

Tax periodicals, whether officially or privately printed, publish only those decisions of the Courts of Appeal which seem of particular importance, either to taxpayers or to revenue officials.¹¹ Illustrative are decisions involving a new application of the statute or interpretations resolving a known disputed point of law.

In theory, except for decisions of the Court of Cassation under special circumstances, decisions of courts do not constitute precedents. In practice, however, it obviously is helpful in tax litigation to refer to comparable decisions by courts with like jurisdiction or, *a fortiori*, by the particular court itself.

Section B. *Organization and Procedures:* *The Court of Cassation*

4.4 *Organization of the Court of Cassation*

The Belgian constitution provides for one Court of Cassation for all Belgium and limits its jurisdiction to questions of

¹¹ See Chap. VI, 2.10 *supra* for a discussion of the official publications issued by the central administration of direct taxes. The most important privately published tax periodicals are *Journal Pratique de Droit Fiscal et Financier*, *Algemeen Fiscaal Tijdschrift*, *Revue Fiscale*, *Revue Pratique des Sociétés Civiles et Commerciales*, *Revue Pratique du Notariat*, *Tijdschrift voor Notarissen*, *Annales du Notariat-et de l'Engistrement*.

law.¹² This tribunal has its seat at Brussels, the national capital.

The Court is divided into two sections, *Chambres*. The first deals with civil and commercial cases, the second *inter alia* with tax cases. The total number of members is twenty-three with eleven or twelve in each section. Five must sit on each case. In every case brought before the *Cour de Cassation*, either the Attorney General himself or his deputy must submit his views.

In general, the members of the Court of Cassation and the members of the office of the attorney general are selected from the members of the Courts of Appeal. The majority of members in that court's second section were not tax specialists prior to their appointment. Knowledge of and experience in the handling of tax problems typically are acquired while serving on the bench.¹³

4.5 Processing a case through the Court of Cassation

There are two important differences between the Court of Cassation and the Courts of Appeal.¹⁴

First, the Court of Cassation's jurisdiction is limited to issues of law. Thus an appeal must be based solely on an alleged misapplication of law, and should it appear that questions of fact or mixed questions of law and fact are involved, the claim is dismissed.

Second, while the taxpayer alone can invoke jurisdiction of a Court of Appeal, both the revenue administration and the taxpayer can invoke the jurisdiction of the Court of Cassation. Should a decision of a Court of Appeal be unfavorable to the government, the Director General of direct taxes, advised by members of the fourth division of the general direction of direct taxes (responsible for litigated matters), decides whether it will be appealed to the Court of Cassation.

An appeal to the Court of Cassation, as was true of an action brought before a Court of Appeal, does not suspend the taxpayer's obligation to pay the tax or the running of interest if the disputed part of the tax has not been paid.

¹² Belgium Constitution, Art. 95.

¹³ Some members of the second section may have been appointed after lengthy service on the tax section of a Court of Appeal.

¹⁴ This is apart from the fact that all tribunals in Belgium are subordinate to the Court of Cassation in the sense that the Court supervises the manner in which the law (used in the broad sense of the

A party who wishes to appeal a Court of Appeal's decision has ninety days after receiving official communication of the decision in which to file a petition and all relevant documents with the Court of Cassation.¹⁵ Within forty days after notification by the Court of Cassation's recorder that a petition has been filed, the defendant must file all documents and memoranda in support of his position. The petitioner is free to inspect these matters.¹⁶

The taxpayer, whether petitioner or defendant, must be represented before the Court by a member of the bar of either the Court of Cassation or a Court of Appeal. Memoranda setting forth the taxpayer's arguments frequently are prepared by the lawyer, a tax specialist, who handled the case before the Court of Appeal.

The government, whether as petitioner or defendant, is *not* represented on appeal by a tax official or by the permanently appointed counsel who handled the case before the Court of Appeal. Instead the government's case is handled by a member of the bar of the Court of Cassation.

Procedure before the Court of Cassation is even more formal than before the Court of Appeal. There is no right to oral argument and all material must be submitted in writing.

Like all decisions of the Court of Cassation, tax decisions set out the legal reasoning which led the court to the result reached. The *Bulletin des arrêts de la Cour de Cassation*¹⁷ publishes all of the court's decisions but decisions of major importance appear also in both official and private legal periodicals.¹⁸

Should the Court of Cassation conclude that the law has been misapplied, it will quash the decision and, because it never finds facts, then send the case to another Court of Appeal. Within thirty days after notice of the decision, the petitioner must bring the case before the particular Court of Appeal specified in the decision.¹⁹

(footnote continued)

word to include implementation of royal and ministerial decrees) is interpreted and the rules of procedure observed.

¹⁵ Art. 289, Code of Income Tax (Art. 67, al. 1, of the Coordinated Laws).

¹⁶ Art. 290, Code of Income Tax (Art. 67, al. 1, of the Coordinated Laws).

¹⁷ The decisions appear in French and in Dutch versions.

¹⁸ Of particular importance are the *Bulletin des contributions* and the *Recueil Special de la Jurisprudence*.

¹⁹ Art. 292, Code of Income Tax (Art. 67, al. 1, of the Coordinated Laws).

This Court of Appeal decides both questions of law and fact. It is not bound by the action of the Court of Cassation, and may apply the statute as it sees fit, completely disregarding the Court of Cassation's decision. Should the second Court of Appeal reach the same conclusion as the first, the petitioner is free to file a second petition with the Court of Cassation using the same legal arguments as in the first.

The Court of Cassation then re-examines the case at a common session of both sections. If the Court of Cassation's second decision is based on the same legal reasoning as the first, the Court of Appeal to which the case is now sent must conform its decision to that handed down by the Court of Cassation.

Subsequently, the Attorney General will call the attention of the Minister of Justice to this situation so that the government can introduce an interpretative bill in Parliament, to prevent further interpretative difficulty with respect to the particular point of law which gave rise to the dispute.²⁰

In general, the Minister of Finance does follow the principle of any case in which the Court of Cassation hands down a decision, but there have been a few exceptions. Also, since there is no opportunity for further appeal, the potential impact of an adverse decision has sometimes led the government to introduce in the Parliament a so-called interpretative bill to nullify or modify the holding of the Court of Cassation.²¹

²⁰In tax matters, recent interpretative laws which do not nullify or modify judicial decisions include the following: Acts of May 24, 1948; May 30, 1949; March 19, 1953; March 18, 1955; March 24, 1959; December 21, 1962; February 13, 1963; March 16, 1964.

²¹Interpretative laws which nullify or modify judicial decisions include the following: Acts of July 13, 1930; April 7, 1936; May 30, 1939; October 28, 1950; June 26, 1957; July 8, 1957; July 13, 1959.