

## CHAPTER XI

### ASSESSMENT, REFUND, AND ADMINISTRATIVE APPEAL PROCEDURES

#### Section A. *Assessment and Audit Procedures*

##### 3.1 *Introductory note*

French income tax law relies on two procedures to make final assessments. The first begins with an annual declaration of *actual* income by all taxpayers not in receipt of certain types of income. The tax administration retains the right to verify and where necessary correct these declarations. The second, applicable only to small enterprises, the professions, and agricultural pursuits, is designed to minimize the burden both of record keeping by the taxpayer and of verification by the tax administration. It relies ultimately on estimates of income. Estimates may also be used where the external evidence of the taxpayer's wealth varies substantially from his declaration.

##### 3.2a *Details of assessment and audit procedures re actual income*

Every taxpayer, whether individual or corporate, submits annually on appropriate forms furnished by the administration, a declaration of income.<sup>1</sup> The head of the household includes any income received by his wife and dependent children. The declaration includes taxpayer identification data<sup>2</sup> as well as information identifying each source of income.<sup>3</sup> Where an individual, carrying on an industrial, commercial, or professional activity, must or chooses to be assessed on the basis of actual

---

<sup>1</sup> Most taxpayers must submit their returns by February 28. However, taxpayers with income derived from industrial, commercial, or professional activities need not submit their returns until March 31 if such are based on actual profits.

<sup>2</sup> Address, date and place of birth, nationality, social security identification number, as well as the names and dates of births of dependent children.

<sup>3</sup> Where wages are listed as a source of income, the name and address of the employer must be shown. Where there is income from real property, the address of each piece of real estate must be given and the gross as well as the net rents.

rather than estimated profits,<sup>4</sup> the return must be accompanied by sufficient documentation to establish the net profit. This documentation includes profit and loss statement, a balance sheet, and a detailed abstract of the depreciation schedule and of inventories on hand. Individual taxpayers, who must or choose to be taxed on the basis of actual profits, calculate the total amount of taxable income but not the tax itself.<sup>5</sup> The assessor will do the latter. Corporate taxpayers, however, not only calculate the total amount of taxable income but also the tax, forwarding with the return whatever tax may be due.<sup>6</sup>

Declarations, upon receipt by the appropriate local office,<sup>7</sup> are classified on the basis of taxpayer files, arranged according to street addresses in the cities and by alphabetical order in little communes. These files, one for each taxpayer,<sup>8</sup> contain all the information which has been built up over the years concerning his affairs, this being derived in part from his annual declarations and in part from outside sources.<sup>9</sup>

---

<sup>4</sup> See 3.2b *infra*.

<sup>5</sup> Thus there is a significant spread between the time the taxpayer files his return and the time he is notified of the amount owed. The administration must verify statements on his return, as well as check it for mathematical accuracy. Upon discovery of an error, the taxpayer will be notified, and further delay ensues, until he responds. Thus, commencement of the collection process, preceded by completion of the tax roll, does not begin until early autumn and the tax itself will not be paid before the end of the year. Because of this delay, individual taxpayers, whose tax is on an income for the preceding year exceeding 200 francs, must pay two installments during that year, each amounting to one-third of the preceding year's tax. When the final assessment is made for that year, only the balance will remain due.

<sup>6</sup> In actuality, any corporation will have been making quarterly payments throughout a given year, covering the taxes for that year, the several installments each amounting to one-fifth of the total taxes paid in the preceding year. Adjustments in the event of decreased income may be made. However, should the tax owed prove to exceed the payments, a penalty for late payment is imposed.

<sup>7</sup> Each is dated by the mail room (and an acknowledgment sent out) to avoid disputes over the application of the penalty for late filing.

<sup>8</sup> Each local office, as pointed out in Chap. IX, is charged with a particular geographic section. If the taxpayer moves to another geographical area, the file is forwarded to the local office bearing responsibility for that area.

<sup>9</sup> The local office uses other official sources to make sure its files include every taxpayer. For example, all inhabitants of each commune pay an annual local tax, and this requires an annual listing of all residents. In cities with populations in excess of 9,000 there is an annual census, each landowner being required to declare the names of his tenants. Identification of the landowners presents no problem because there is a cadastral survey.

Once received and classified, the declarations are divided, those showing income in excess of 25,000 francs being placed in a separate category. This group is processed first. File sheets (constituting the original of the assessment role) are set up, with the taxpayers' names appearing horizontally at right angles to vertical columns showing dependents, type of income, etc.<sup>10</sup> Once the declarations are checked for mathematical accuracy and the entries on the assessment roll are completed, the declarations themselves are placed in the taxpayers' files, to be fully examined for verification at a later date. The sheets are forwarded<sup>11</sup> to the office of the departmental Director which calculates the tax<sup>12</sup> and prepares the notices to be sent out to the collectors for each geographic district.<sup>13</sup> The collector, the official personally responsible

---

<sup>10</sup> The file of the taxpayer actually is made up of a permanent file and annual sub-files. The permanent file contains, *inter alia*, data bearing on his income from land (i.e., reports on the purchase and sale of real property, location of his real property, cadastral identification of real property and buildings thereon, if any), from industrial and commercial activity (including, if incorporated, articles of association and other relevant data), from choses in action, from stocks and bonds, and other reports showing the opening and closing of bank accounts (forwarded by the depository banks), purchase of automobiles (forwarded by the office handling registration of vehicles), contract of marriage, declaration of succession, and the declaration of capital in 1945 for the assessment of the national solidarity tax. The annual files are prepared on a yearly basis and include only documents relating to that year: the declaration of income with supplementary statements relating to income from land or to industrial and commercial profits, and also statements supplied by others, i.e., by payors regarding wages, fees for professional services, pension payments, and dividends.

<sup>11</sup> Income is broken down according to its source, i.e., income from real property, wages, stocks and bonds.

<sup>12</sup> The local offices are not able to prepare and forward all the assessment roll sheets simultaneously. Hence, the sheets concerning those taxpayers declaring income in excess of 25,000 francs are forwarded in order of their preparation to the office of the departmental Director by April 30. Later sets of sheets are dispatched to the departmental Director's office by May 20, June 20, and July 20.

<sup>13</sup> Some effort is being made, on an experimental basis, to utilize a central computing system to handle tax calculation and notification. Under this proposed system, the local office would prepare a report for each taxpayer which would serve as the basis for preparation of perforated cards. However, the bulk of tax calculation is still carried on in the traditional manner. Under the generally prevailing method, when the assessment roll sheets arrive at the departmental Director's office, the portion of the sheet showing the names and addresses of the taxpayers is detached. The sheets, now devoid of any

for the collection of taxes on the rolls sent to him, then addresses the notices to the taxpayers, and thereby fixes the future date when tax payments will be deemed overdue.<sup>14</sup>

At some point subsequent to the transmittal of the assessment roll sheets to the office of the departmental Director, the local office verifies or audits the taxpayers' declarations, either at the local tax office or at the taxpayer's place of business.

In the course of this verification or audit, the inspector has full authority to make such adjustments as he feels desirable, including the correction of errors of fact or law in the government's position. In addition, he may conclude, as to all-yes-or-all-no questions of law, that it would be preferable to reach an accord with the taxpayer rather than pursue the matter through the higher administrative levels or even the courts. Accordingly, and to the end of attempting to reach an agreement, he may propose a settlement based on the relative merits of the positions of the two parties. Should the taxpayer agree, the settlement will be made and will bind both parties. Such a settlement can include either the trading or the splitting of issues. The inspector at this early stage—and at all subsequent stages—has the full power to reach a binding settlement. In complex or important situations, he may discuss the matter on an informal basis with his supervisor, but the authority and the responsibility are his alone.

Where the examination is confined to the local office, documents in the taxpayer's file furnish the prime, though not the only, informative source against which the declaration is tested. These will assist the inspector in verifying the dependents claimed,<sup>15</sup>

---

(footnote continued)

identifying data, are sent out to individuals (not full-time employees of the tax administration but retired individuals or housewives who seek to supplement their incomes) who perform in their homes the work of tax calculation, on a piece-work basis. These taxers, working under the supervision of the tax administration, use tables which permit a ready calculation of the amount of tax with reference to the number of dependents, thus reducing the possibility of error. After the taxers have completed their calculations, the sheets are returned to the departmental Director's office where the names of the taxpayers are paired up with the sheets showing their income and their total tax.

<sup>14</sup>Once the assessment roll sheets are signed by the departmental Director, they become enforceable. These rolls also are sent out to the collectors for each geographic district.

<sup>15</sup>Since the local office has sent the first of these assessment roll sheets to the office of the departmental Director by April 30, theoretically a tax roll should be established by May 31, with the tax payable by June 30. To take account, however, of the fact that delays in

the income listed,<sup>16</sup> and the deductions taken.<sup>17</sup> A quick check also is made to determine if the total income tends to correspond to the general manner of life led by the taxpayer,<sup>18</sup> and to his capital investments, transfers, and debts incurred or repaid.<sup>19</sup> Data on documents relating to his local taxes is scanned to see, for example, if the taxpayer is maintaining a secondary residence.<sup>20</sup>

Should the inspector ascertain a discrepancy between the income declared and the results of his general audit, he either can request an explanation from the taxpayer or arrange for a field audit which would be undertaken by personnel at varying levels depending upon the nature and size of the business. The local inspector himself would handle it if the individual has

---

(footnote continued)

tax calculation do occur, a tax penalty of 10% becomes operative for communes with more than 3,000 inhabitants only after the fifteenth day of the third month following issuance of the notices, that is, at the earliest, after September 16—and for other communes the penalty is imposed at the earliest after October 31.

<sup>16</sup>The list of dependents claimed is compared with prior declarations. In the event of a discrepancy, the examining official may request an explanation from the taxpayer or check the local census.

<sup>17</sup>Where income from real estate appears, the listing in the declaration for each piece of property will be compared with the filed documents described in note 10 *supra*. With respect to wages and salaries, the amounts shown by the taxpayer will be compared with the amount reported by his employer or employers, which report is due by January 31 of the year following receipt. Should the taxpayer's declaration include income from industrial and/or commercial profits or profits from professional activity, the detailed explanations which accompany the return itself will be examined but the profit reported also will be compared with official tables setting out typical profit levels for the several types of enterprise. Where income from stocks or bonds is listed, the sums will be compared with lists turned over by the banks which have acted as transfer agents in paying corporate dividends or interest.

<sup>18</sup>For example, where the taxpayer lists deductions for items such as alimony, arrearages of rent, interest on indebtedness, the name and address of each beneficiary is set out on the return. Should the beneficiary live in another district, a report on the deduction will be sent to that district's local office, and if there is a discrepancy this will be reported back.

<sup>19</sup>Particularly in a small community, the inspector will have personal knowledge of most taxpayers, and can determine readily if their general level of living corresponds to the income declared.

<sup>20</sup>Taking due account of declarations made in previous years, and of reports filed by third parties relating to purchases of real estate, stock subscriptions, payment of high premiums for life insurance, etc.

only a small industrial or commercial enterprise. Medium-sized enterprises are audited, however, by inspectors who are trained for this purpose, work under the authority of a principal inspector, and have responsibility for a territory covering several departments. Because of limited personnel resources, small and medium-sized enterprises are only audited when the declaration itself or reports derived from third parties suggest that income has been either inadequately documented or incorrectly reported. In contrast, large enterprises are audited on a more systematic basis. For this purpose, a director of verification supervises units, competent for all France, which specialize in the different major types of economic activity.

Should either the office or field audit indicate that the declaration was incorrect, the inspector will notify the taxpayer in writing of the proposed change and the underlying rationale. The taxpayer has thirty days in which to accept the proposal or express dissatisfaction, making a counter-proposal. Such differences are resolved by an informal, simplified procedure in the case of taxpayers whose turnover is below a certain minimum<sup>21</sup> and whose good faith is not in question.<sup>22</sup> A more rigid procedure is used, however, where the apparent discrepancy involves a larger enterprise which has been audited by a specialized verification unit.

In either case—that is, whether the simplified or more rigid procedure is employed—the inspector has full authority to attempt to reach a settlement with the taxpayer. As was the situation which existed during the original field or office audit, this power in the inspector includes that of splitting or trading issues of law on a basis responsive to the competing strengths and weaknesses of the two parties.

The verification unit inspectors prepare reports reflecting details revealed by the audit and the methods utilized to ascertain these details. To the proposed correction, which is explained in full, the unit's examiner adds his opinion regarding

---

<sup>21</sup> Taxpayers who possess a residence are subject to a local tax, *contribution mobilière*. There is a strong incentive to avoid, if possible, reporting a second residence as this is subject to the same tax. However, should a taxpayer establish a second residence within a district other than the district where his domicile is located, the district of his domicile will be notified of the secondary residence.

<sup>22</sup> The use of the simplified procedure is limited to taxpayers whose annual turnover is less than 600,000 francs where derived from a sales enterprise and 150,000 francs where derived from performance of services.

the good faith of the taxpayer and the penalties that might be applicable. This report is reviewed by the head of the unit who may return it to the examiner with a recommendation for further investigation of insufficiently explored areas or that certain claims be abandoned.

Once the report is accepted by the unit's head,<sup>23</sup> the taxpayer is sent a statement of the proposed changes. The taxpayer, who is entitled to be represented by two counselors of his own choice (lawyer, chartered accountant, tax advisor), has a right to request a conference to discuss the proposed changes with the head of the unit,<sup>24</sup> and that conference may result in an accord. Again that accord may and usually does represent a settlement between the two parties or it may lead to the withdrawal of an issue by either party.

If agreement is reached, whether based on the tax administration's proposals, the taxpayer's proposals, or a compromise figure, the verification unit sends to the office of the departmental Director the information necessary for the tax roll to be completed.

Should no accord be reached, either the tax administration or the taxpayer can request that the dispute be submitted to the departmental Commission for its opinion—a procedure to be discussed later.<sup>25</sup>

### 3.2b *Details of assessment and audit procedure re estimated income*

Assessments on three types of income, and also in the case of one type of taxpayer, are based on estimates. These estimates, as to income from small industrial or commercial enterprises or from the liberal professions, are made individually for each recipient. Income from agriculture, on the other hand, is geared to averages based on collective data. However, in any of these cases, the taxpayer may request that assessment be based upon the income actually received, and the

---

<sup>23</sup>To use this simplified procedure, certain conditions must be fulfilled: (1) The taxpayer's books must have been verified, (2) this verification must not have revealed any absence of good faith, (3) the taxpayer himself must have requested expressly the use of the simplified procedure, and (4) the taxpayer must agree to pay within 15 days the amount of whatever tax may be held due with the addition of interest, computed at the rate of 0.75% per month for the period of the delay.

<sup>24</sup>This conference has no legal basis. However, it is used frequently to facilitate communication between the tax administration and taxpayers.

<sup>25</sup>See 3.4a *infra*.

tax administration will honor the request. In practice such a request is made by those taxpayers who may have suffered a substantial loss or who have had markedly lower incomes than typical for taxpayers comparably situated. Otherwise, it tends to be to the advantage of eligible taxpayers to utilize the estimated income procedure. Finally, taxpayers whose standard of living suggests an income in excess of the amount declared are subject, individually, to an assessment based upon the exterior signs of wealth. The table on page        shows that the overwhelming percentage of those taxpayers who are free to have their income assessed on the basis of an estimate chose to have such an estimated assessment.

The estimated assessment procedure does not extend to income derived from companies with capital stock or to partnerships. It is limited to individually-owned commercial and industrial enterprises whose annual turnover is 400,000 francs or less if derived from selling goods or furnishing lodging, or is 100,000 francs or less if from rendition of services.<sup>26</sup>

A qualifying taxpayer whose assessment will be based on an estimate, must submit before the close of the year a declaration setting forth certain information as to that year. The required information relates not only to business matters—i.e., amount of purchases, of sales, stock on hand, number of employees and wages paid, rent paid—but also to his standard of living including, for example, any purchases of automobiles.

The local inspector has access not only to the individual taxpayer's file (of substantial importance in facilitating an accurate appraisal of the taxpayer's standard of living),<sup>27</sup> but also to certain data supplied by the Director General of Taxes: monographs dealing with a variety of occupations<sup>28</sup> and indications of general economic activity. In addition, a given declaration is compared with those of other taxpayers engaged in similar activity. Using all available information, and taking particular account of the taxpayer's level of living, the inspector

---

<sup>26</sup>Since January 1, 1966, the figures have been increased to 500,000 and 125,000 respectively.

<sup>27</sup>Where the inspector is dealing with a rural or semi-rural area, his actual knowledge of the manner of life of its inhabitants will be extremely helpful.

<sup>28</sup>In addition, the offices of the departmental Directors, with the cooperation of agents charged with inquiry into certain occupations, have prepared surveys which indicate for certain retail establishments the norms of purchases from wholesale suppliers and the habitual profit margins of the retail establishments.

## 1964 Statistics Pertaining to Taxpayers Assessed under an Estimate of Income

Income source	Total number of individuals or enterprises deriving income from a particular source	Total number of taxpayers	Number of taxpayers with assessment based upon		Percent of taxpayers assessed by estimate
			Actual income	Estimated income	
Industrial or commercial activity					
- entrepreneurs able to choose between actual or estimated assessment	1,635,000	1,635,000	90,000	1,545,000	93.00%
- entrepreneurs required to have assessment based on actual income	135,000	135,000	135,000		-0-
- corporations	188,000	188,000	188,000		-0-
Agricultural establishments	2,000,000 <sup>1</sup>	424,955 <sup>1</sup>	3,955	421,000	99.30%
Non-commercial professions	298,500	287,400	63,400	224,000	77.94%

<sup>1</sup> While there are approximately 2,000,000 agricultural establishments, less than 500,000 have income sufficiently high to fall within the scope of the tax statute.

will propose an estimated figure, representing the profits that "enterprise can normally produce."

The taxpayer has twenty days to consider this proposed figure. If he accepts it, either directly or by not answering the inspector's letter, the estimate cannot be challenged by the tax administration for the next two years,<sup>29</sup> unless it develops that the taxpayer furnished incorrect information.

The taxpayer, however, is free to protest the assessment. Should he protest, the dispute will be forwarded to the departmental Commission, which will fix the estimate. The figure so fixed becomes binding upon the tax administration, but the taxpayer is again free to protest, this time to the departmental Director of Taxes.<sup>30</sup>

While it is recognized that taxpayers who elect to use the estimate-based assessment are not bound to maintain full sets of regular books, any taxpayer who protests either the inspector's or the Commission's estimate should be prepared to furnish sufficient data to permit an estimate of the normal income his enterprise produces.<sup>31</sup>

The taxpayer using the estimated assessment procedure thus can meet his tax obligation with a minimum of record-keeping. The tax administration also derives an advantage: It need not devote the man-hours otherwise necessary to make complete audits. Indeed, estimate-based assessments have proved to be higher than assessments based on statements of actual income. In the latter case, the administration has experienced real difficulty in proving profit concealment by petty tradesmen or small individually-operated service enterprises.

Whereas estimated assessments are used with respect to income derived from individually owned commercial and industrial enterprises only if annual turnover is below a certain level,<sup>32</sup> they are used in the case of individuals deriving income from a liberal profession—i.e., doctors, lawyers, chartered

---

<sup>29</sup>In practice, once the estimate is fixed, it will be renewed by tacit agreement for subsequent biennial periods as long as the turnover remains below the upper limit for this type of assessment and as long as neither the inspector nor the taxpayer gives notice of termination.

<sup>30</sup>See 3.4a *infra*.

<sup>31</sup>Thus, at the least, such taxpayers should maintain a register of purchases supported by the invoices. Where the enterprise performs services, a book of original entries should be maintained, setting out the day-by-day receipts.

<sup>32</sup>It should be repeated that use of the estimate-based assessment is optional.

accountants, architects, etc., without reference to a monetary ceiling, though here there is an annual estimate.

While the procedures in the two cases are otherwise similar,<sup>33</sup> there is a significant difference in the degree to which the estimates will approach true income. An inspector typically has a substantial number of small tradesmen and petty service enterprises within his area of responsibility; just as typically he has only a limited number of professional men. Thus it is more difficult to prepare estimates by comparing, say, a limited number of doctors. Moreover, decentralization of the tax administration places many young and inexperienced inspectors in local offices, and they often find it difficult to discuss an estimated assessment with an established professional man who is a long-time resident of the community. Further, the nature of professional activities vary and this leads to marked inequities in assessment. Illustratively, a relatively accurate estimate can be made in the case of an attorney who derives the bulk of his income from fees paid by industrial or commercial concerns, for the latter concerns will have reported the payments. By contrast, where an attorney's practice is primarily with individuals who pay him in cash, it is very difficult for the inspector to even approach an accurate figure.<sup>34</sup> This contrast exists also in the case of doctors, though in a somewhat different form. Estimates will be fairly accurate in the case of physicians paid primarily from social security funds, whereas physicians in private practice, who receive their fees in cash, can be quite confident their income will be underestimated. This fact has caused many doctors to avoid the social-security type of practice, with the result that social security beneficiaries could not obtain adequate care. And in consequence, pressure was put on the tax administration to insure a less accurate estimate of the income derived by these physicians.

---

<sup>33</sup>One difference is that in the case of the income from a liberal profession, the estimate must be filed by February 1, of each year. Also, it should be noted that if a dispute is forwarded to a departmental Commission, the Commission's membership will be geared to the particular professional activity of the individual taxpayer.

<sup>34</sup>It is probable that in the situation where a lawyer has a medium-sized practice, the inspector can make a reasonably accurate estimate, aided by some appreciation of his general level of living. Where, however, an outstanding lawyer is able to command high fees from private persons, even an estimate based upon exterior signs of wealth is likely to lead to an underestimate of his actual income.

The foregoing factors have led to marked differences in the accuracy of estimates and, in turn, this has created dissatisfaction among professionals who compare their respective estimates. Such inequities are tolerated both because of the legislature's unwillingness to require such professional people to keep an accurate and full set of books<sup>35</sup> and because of the tax administration's utter inability to audit the accounts of every professional man in France.

Unlike the other types of income subject to an estimated assessment, agricultural income is estimated,<sup>36</sup> not on an individual basis, but rather by reference to averages geared to collective data, these averages then being applied to the units a given taxpayer has under cultivation.<sup>37</sup>

These averages are calculated by the departmental Commission, on the basis of its knowledge of actual conditions and in light of certain information made available by the Director General of Taxes<sup>38</sup> and the office of the departmental Director.<sup>39</sup> The averages, however, are based on a medium-sized farm, theoretically typical of the region. Consequently,

---

<sup>35</sup>Notaries are required to keep a full set of books. Chartered accountants, lawyers, architects, doctors, etc., are not.

<sup>36</sup>While the use of the estimate-based assessment is optional for those deriving income from agricultural operations, in exceptional cases, the administration has the right to deny the use of the estimate and require the use of the actual income as the basis for assessment.

<sup>37</sup>The units under cultivation may be calculated in terms of the land itself or in the terms of the use made of the land. Thus, where land is used for a specialized purpose—viticulture, orchards, apiculture, poultry-raising—assessment will be based on the amount of wine or the number of fruit trees, beehives, or laying hens. Where the land is used for more general agriculture, assessment will be based on the hectare, i.e., 2.47 acres.

<sup>38</sup>The Office of the Director General of Taxes prepares a general study of the agricultural situation at the national level based on the different agricultural products. Taken into account are a number of factors including yield, prices in comparison with preceding years. This study is transmitted to the offices of the departmental directors.

<sup>39</sup>The office of each departmental Director uses as a base the data forwarded by the office of the Director General of Taxes. See note 38 *supra*. Information peculiar to the region or to the agricultural portions of the department is assembled. This is forwarded to the departmental Commission, together with some proposals of a medium income which will serve to fix the assessable income of all the agricultural enterprises of the department.

the more productive agricultural operations are under-assessed.<sup>40</sup>

Once the formulae for assessment—one for each type of agricultural activity—have been computed by the departmental Commission,<sup>41</sup> the list of agricultural enterprises, showing the acreage of each and the specific type or types of agricultural activity engaged in, is posted publicly for fifteen days. During that time, a taxpayer who disagrees with the classification of his property in terms of the activity carried on, can lodge a protest with the departmental Commission,<sup>42</sup> not with the tax administration.<sup>43</sup>

Finally, any taxpayer may be assessed on the basis of an estimate where the exterior signs of his wealth indicate a gross under-declaration. Before making such an assessment, the inspector requests the taxpayer to supply on a form certain facts relevant to his standard of living. The data relates, *inter alia*, to the rental value of his home or homes, the number of

---

<sup>40</sup> Understandably, the owners of the more productive—because larger and efficiently managed—agricultural enterprises are staunch defenders of this system of collective assessment. Moreover, these same men tend to be the directors of the agricultural organizations which enables them to wield considerable influence. In 1959, the government proposed a bill which would have changed the method of assessment for agricultural operations, abolishing the existing system of the unitary profit per hectare and establishing an individual estimate for the largest farms, about 30,000 in number. The agricultural organizations were successful in persuading the Parliament to reject the government bill.

<sup>41</sup> Where the agricultural land is utilized in some manner not provided for by the typical categories, thus rendering unusable the unitary profit per hectare computation, the income from the land will be assessed by reference to the cadastral income. This determination is made by the local inspector with the concurrence of the communal commission for direct taxes. This local group, in addition to its responsibility relative to this type of assessment, also assists the inspector in the assessment of local taxes (i.e., occupancy tax, assessment of improved or unimproved real estate) and expresses its opinion on the lists of those in the commune liable to pay income tax.

<sup>42</sup> See 3.4a *infra*.

<sup>43</sup> Should a particular farmer have sustained loss of anticipated harvest by reason of hail, ice, flood, etc., he can petition the tax administration—accompanied by an attestation from the mayor—to be allowed to deduct the amount of his loss from the estimated profits from his agricultural operations. This is the only situation in which the owner of an agricultural operation enters into direct communication with the tax administration.

domestics employed, his cars, boats, etc., to each of which *standard* amounts of income are applied by the inspector.<sup>44</sup>

These standard scales are then used, together with other available information, to calculate the assessment. The taxpayer has twenty days in which to protest. A taxpayer might counter, for example, with proof, that a portion of his apparent income actually represented capital gains—not includible within assessable income, or other tax-exempt income, such as interest on treasury bonds, pensions for war victims, etc.

In making estimated assessments on the basis of exterior signs of wealth, the inspector himself is subject to certain limitations. First, this method is not used when upon application of the standard scales the estimated income is 15,000 francs or less. Second, in practice, this method is used only when there is substantial discrepancy between the taxpayer's declared income and his general level of living. While not a rule of law, this method is used only where an estimate based on the level of living equals or exceeds 130 percent of declared income. Third, the administration deems the method inappropriate in cases where the taxpayer's income is composed in major part of sums paid by others—i.e., wages and salaries, fees for professional services, etc. In these cases, the administration focuses directly on the income itself. Also, the fact that such a taxpayer's income tax assessment is *otherwise* based on an estimate will not warrant a reduction by reference to a lower estimate geared to his external signs of wealth.

## Section B. *Administrative Appeals*

### 3.3 *Introductory note*

As indicated in the preceding section, there are two types of income tax assessment in France: one utilizing a declaration of actual income by the taxpayer, the other an estimated assessment. In either case, i.e., should the taxpayer disagree with the result of a post-declaration audit by a tax agent or with an inspector's estimate of his income, he may carry the dispute first, to the departmental Commission, though this is not indispensable to a further appeal.

The form of the Commission's response will vary, depending on the type of income tax assessment. If the taxpayer had

---

<sup>44</sup> The taxpayer cannot contest the figures set out in the scale though it is proper for him to show that one of the elements is not applicable to him, for example, that he has no domestic servants.

filed a declaration of actual income, the Commission will render an *opinion* on the particular issue in dispute, provided it involves only a question of fact. The Commission has no power to rule on questions of law. If the taxpayer's original assessment had been based on an estimate of income derived from a sole proprietorship or from a liberal profession, the Commission will render a *decision*, fixing the total amount of estimated income. Whether a decision or an opinion has been rendered, however, a taxpayer is free to appeal further to the departmental Director.

For reasons later described, a taxpayer whose estimated income was derived from agricultural activity may not contest his assessment before the Commission. In effect, the previously described averages employed in making those estimates may be tested only by the tax administration or by an organization of farmers, but before a forum distinct from the Commission.

Finally, where the administration believes that a contract or other legal act conceals a legal deceit for which a heavy fine might be imposed, it may first refer the case to a yet different body, the Consultative Committee and if successful there, later avoid bearing the burden of proof should actual litigation ensue.

### 3.4a *Details of administrative appeals to a departmental Commission*

The departmental Commission for each department is presided over by the Counselor of the Administrative Tribunal,<sup>45</sup> that is, by a judge, not by an official of the tax administration. In addition, there are three tax administration<sup>46</sup> and four taxpayer representatives,<sup>47</sup> all appointed for renewable terms of

---

<sup>45</sup> This judge is nominated by the Minister of the Interior, not by the tax authorities.

<sup>46</sup> The secretaryship of the Commission is held by an inspector of taxes assigned to the office of the departmental Director.

<sup>47</sup> The general pattern of these departmental commissions (four taxpayer representatives and four members of the tax administration) has remained constant for some time, though recent modifications have reduced the weight accorded the views of tax administration members.

Prior to 1954, the tax administration members were headed by the departmental Director of Taxes who held the chairmanship. While the views of a majority of the eight members theoretically determined the Commission's decisions, the Director or his delegate, in effect, cast an extra vote in case of a tie, a not infrequently occurring circumstance. Thus, much to the dissatisfaction of taxpayer organizations, the tax administration, in practice, always had the last word.

one year. While the proceedings must be treated in confidence, there are few qualification requirements for membership on the commission. A member must be a French national, at least twenty-five years of age, possess civil rights, and must not have suffered a conviction for tax fraud. In general, a taxpayer whose case is to be heard is entitled to have four taxpayer representatives: in the case of professional men, these are drawn from their own professions; in the case of those engaged in trade (including manufacturing and the service occupations) representatives are appointed by the local business groups; in the case of handicraft-artisans by their special organizations. Agricultural groups likewise appoint their own representatives. To this end, each major occupational or professional group designates a number of such representatives to serve, as need be, on the departmental Commission.<sup>48</sup>

Some indication of the annual number of cases laid before the departmental Commission can be gained from the following figures pertaining to 1964.

<i>Source of income</i>	<i>Assessment based on Real income</i>	<i>Estimated income</i>	<i>Total number of cases</i>
Industrial or commercial activity	257	1,347	1,604
Agricultural establishments	7	-0-	7
Liberal (non-commercial) professions	19	997	<u>1,016</u>
Total			2,627

(footnote continued)

In 1954, these voting practices were altered. In the event of a tie vote, a deadlock ensued, requiring the matter to be referred to a departmental committee of arbitration. This committee was made up of five members. The chairman was a Counselor of the Administrative Tribunal (outside the tax administration), and of the other four members, two were members of the civil service and two represented taxpayers.

Another modification in 1959 abolished the committee of arbitration and instituted the present system.

<sup>48</sup>The following four major occupational groups designate representatives to sit on departmental Commissions:

- (1) Departmental chambers of commerce, for cases involving industrial or commercial profits;
- (2) Guild chambers of trade, for cases involving artisans;
- (3) Federations of the agricultural syndicates (half drawn from rural proprietors and half from farm operators), for cases involving agricultural enterprises; and

Where the taxpayer has filed a declaration of actual income, but disagrees with the inspector's proposed increase, either side may request the Commission's opinion regarding questions of fact. In such event, the inspector forwards to the Commission the taxpayer's complete assessment file, together with a report summarizing all relevant information, including some indication of the amount the taxpayer previously was disposed to accept and, as to each point in dispute, the respective positions of the two parties. At least ten days before the hearing, the taxpayer is reminded that he may present his case orally or by written statement. Also, he is advised of the contents of any documents in his in-service file on which the inspector relies in sustaining his position and, as to documents and data the inspector submits relating to the income of comparable third parties, the taxpayer is informed of the names of the persons or corporations involved, but not their actual incomes. The intention is to enable the taxpayer to "assure himself that the points of comparison submitted by the administration completely take into account enterprises the activity of which is comparable to his own."

Though the taxpayer does not bear the burden of proof in the strict sense, he must provide the Commission with all items—accounts, etc.—essential to its proper resolution of the dispute. In presenting his case, he may be assisted by two persons, a lawyer and an accountant, or qualified agents.

Even though the Commission is presided over by a judge, the proceedings are very informal. If the taxpayer elects to make an oral presentation, it is for him to decide whether he will or will not present a written brief. After hearing both sides, the Commission issues an opinion which is communicated to the taxpayer. Neither he nor the inspector is bound, however, to accept the Commission's findings. The taxpayer may file a further appeal with the departmental Director. But should either the taxpayer or inspector pursue the matter into the actual litigation stage, by appealing to the administrative tribunal, the party which did not accept the Commission's findings will bear the burden of proof.

---

(footnote continued)

- (4) Three professional organizations representing, respectively, physicians, dentist-surgeons, and lawyers. In the case of other liberal professions, if there is no taxpayer representative engaged in the profession of the taxpayer in question, he can demand that one Commission member be replaced by a representative of the professional organization to which he belongs.

If a taxpayer who filed a declaration of actual income is accused by the administration of having entered into a contract or other transaction to conceal a legal deceit for which a heavy fine may be imposed,<sup>49</sup> the administration has the alternative of referring the case in the first instance to a yet different body, the Consultative Committee, headed by a judge of the highest administrative court, the *Conseil d'Etat*, assisted by three additional members: the Director General of Taxes and two members designated by the Minister of Finance, one a judge of the highest civil court, *Cour de Cassation*, the other a professor of law, usually the Dean of the Faculty of Law of Paris. If the administration exercises this option and prevails before the Consultative Committee, its recourse to the Committee will have served the purpose of shifting the burden of proof to the taxpayer if he later appeals to the judiciary.<sup>50</sup> But the administration is not bound by the Committee's findings; it too can appeal to the judiciary. But in such case, it bears the burden of proof to the extent its assessment exceeds that fixed by the Committee.

Consider now those taxpayers whose assessment was based originally on an estimate to which they have taken an exception. As to them, the regular departmental Commission's procedures will vary, depending on the source of the estimated income.

One set of procedures, applicable to income from small sole proprietorships and from the liberal professions, is similar to that described above. Here, however, the Commission will render a decision fixing the total estimated income. Also, typically the sole proprietor will attempt to show the amount his business normally can produce, whereas a taxpayer associated with a liberal profession will focus on the income actually received for the year in question. Finally, the taxpayer can appeal further to the departmental Director, but an inspector who takes exception to the Commission's findings must then enter the litigation stage, by taking the case to the administrative tribunal.

Where the original estimated assessment related to agricultural income, the Commission's role is quite different from that described above. This is the same Commission which earlier established the collective estimates which fixed the

---

<sup>49</sup> Should a legal deceit be disclosed at any time, it will give rise to a fine equal to double the tax actually due.

<sup>50</sup> Absent resort to this body, the administration would continue to carry the burden of proof.

average profit for each particular type of agricultural activity. And that average was applied automatically by the inspector to each taxpayer engaged in agricultural activity, with deviations responsive only to the number of units a taxpayer had under cultivation. If the Commission's determination of the average was unsatisfactory to a particular taxpayer or to an inspector, neither can appeal directly. If appeal is taken, it must be by the departmental Director of Taxes or by the President of the Departmental Federation—an organization of farmers. The appeal goes to the Central Commission, a body with nationwide jurisdiction.

The Central Commission has three justices<sup>51</sup> and four consultants (two senior civil servants from the office of the Director-General of Taxes, one senior civil servant from the Ministry of Agriculture, and two representatives designated by the National Federation—the previously mentioned organization of farmers). However, the justices alone hand down a binding decision determining the averages to be employed. Their decision can be appealed only to the Council of State and on only one very limited ground, that the action taken was *ultra vires*.

### 3.4b *Administrative appeals to the departmental Director: Recours contentieux*

Whether or not a taxpayer has appealed his case to a departmental Commission, he may not carry the dispute (tax penalty) to the judiciary (administrative tribunal) until he has laid it before the departmental Director unless the tax was assessed by a specialized office, in which case it is laid before the director of that office. Not until the taxpayer's claim has been rejected in whole or in part—or not acted upon within the six-months' time limit—may he turn to the judiciary.

Like the inspector, the departmental Director has full authority to reach a settlement on issues of law as well as, of course, the authority to correct errors of either fact or law in the government's position. This settlement may take place as a consequence of an oral conference with the departmental Director granted at the taxpayer's request, which permits a further exploration of all outstanding issues.

Such claims must be presented within a fixed time limit, which begins when the tax roll is placed in collection and ends

---

<sup>51</sup> Of the three justices, one is drawn from each of the following categories: a Counselor of State who is the chairman, a Counselor of the Court of Cassation, a Master Counselor of the State Audit Court, *Cour des Comptes*.

on December 31 of the calendar year following such date. Certain other formal requirements are also imposed.<sup>52</sup> The contested tax must be identified; the assessment notice or copy thereof must be attached; the grounds upon which the taxpayer relies must be fully explained; and the claim must be signed by the taxpayer or by his duly authorized attorney or agent.<sup>53</sup>

Where the taxpayer's claim raises a question of law, the petition should cite the relevant legal provisions and set forth the interpretation on which the taxpayer rests his claim. In support of that interpretation, the petition may cite not only judicial decisions but also ministerial statements or even administrative instructions.

Where the claim relates to a question of fact, the petition should set forth all supporting circumstances and offer to provide proof of the facts alleged. All types of evidence, other than witnesses, can be used.

The petition may include also a request that actual payment of the contested tax be postponed, but unless future payment is sufficiently guaranteed, the request can be refused. This refusal can be contested, however, by means of the *référé fiscal*—an emergency procedure lodging summary jurisdiction over urgent tax matters in a single judge of the administrative tribunal, as designated by its president.

Claims received by the departmental Director, if free of defects in form, are sent back to the inspector who fixed the initial assessment. The inspector, after assuring himself that the formal requirements have been met, then examines the petition to determine if it correctly states the law and the facts. This includes a check of the statutes and regulations, and where time permits, the case law. At his discretion, he may contact the taxpayer for additional information, and the taxpayer himself may request the opportunity to explain his position.

The inspector then makes whatever adjustments he deems warranted, and send his conclusions, together with the taxpayer's file, back to the departmental Director.

The Director now examines the petition, file, and the inspector's report and may accord a hearing to the taxpayer. If

---

<sup>52</sup> Where a defect is considered correctable (e.g., failure to attach the required notice of assessment or set out the taxpayer's conclusions and supporting arguments), the taxpayer will be notified and given 20 days in which to make necessary corrections. If not corrected within the time limit, the petition will be rejected.

<sup>53</sup> For a corporation, any salaried employee who has received a commission from the board can sign such a claim.

he finds the inspector's conclusions inadequately supported or believes an inadequate examination was made, he will return the file and require additional verification. He may not, however, require the inspector to alter his conclusions.

The departmental Director is expected to act within six months, but if additional time is necessary, the taxpayer will be so informed prior to the expiration of that period, and will be advised also regarding the probable additional time required. This cannot exceed three months.

Where a claim is rejected in whole or in part, the Director explains the reason for his conclusion, though his decision on the matter is not final. The dispute may be carried to the judiciary (administrative tribunal), the Director's action having been an indispensable prerequisite. About 365,000 such claims reach this office annually, though many involve very simple questions, such as dependency deductions for children.

### 3.4c *Administrative appeals to the departmental Director: Recours gracieux*

In addition to claims for tax reduction on legal grounds, taxpayers may petition the tax administration either to reduce tax penalties or to forgive or lower properly determined assessments which the petitioner cannot pay because of poverty or financial embarrassment.

The administration itself has complete jurisdiction over these *recours gracieux* petitions; the administrative proceedings are not a preliminary in any sense to a judicial stage. No time limit is imposed and the signature of the petitioning taxpayer is the prime formal requirement.

The taxpayer submits his petition to the office of the departmental Director who forwards it to the inspector who originally made the assessment. The inspector contacts the collection office to determine the likelihood of collecting the tax due, and then attempts to make a general estimate of the total situation, including an appraisal of the taxpayer's sincerity and honesty.

In the case of individuals, he will focus primarily on the taxpayer's actual resources and present financial condition.<sup>54</sup> In the case of business enterprises, he also will be concerned

---

<sup>54</sup> I.e., on the actual acuteness of the taxpayer's alleged financial stringency or poverty, taking due account of his age, profession, family situation, burdens, amount of income, exterior signs of wealth, etc.

with its competitive status, the liquidity of its resources, and the attitude of its other creditors.<sup>55</sup> After all relevant information has been collected, the inspector will draft his report and submit his conclusions.

Decisional jurisdiction for *recours gracieux* petitions depends upon the amount of tax involved. Where 50,000 francs or less, it rests with the departmental Director of Taxes. Where more than 50,000 francs but less than 150,000 francs, jurisdiction lies with the Director General of Taxes subject to concurrence by the Council of Administration—a body made up of the heads of the several offices. In all other cases, decision rests with the Minister of Finance who normally follows the opinion of his Committee of Remission and Settlements.

Where jurisdiction rests in the first instance with the department Director, appeal can be made to the Director General. Should new facts develop, even after the Director General or the Minister of Finance has handed down a decision, a petition can be laid before the same authorities to obtain a better informed decision. However, no reason need be cited for any decision nor can a decision be challenged in the courts.

Approximately 120,000 *recours gracieux* petitions are filed annually with the departmental Directors. Only a relatively small percentage—in 1961, only 199 cases—is appealed from the departmental Director to the Director General.

### Section C. *Administrative Processing of Refund Claims*

The French tax system does not have a special procedure for reimbursement of excessive tax payments. Where such payments have been made, the claim and reimbursement are handled in connection with the assessment procedures previously described. If the claim is justified, reimbursement is made without any additional formalities. Further, any administrative appeal regarding such a claim actually involves an appeal to contest the assessment itself. Such must be undertaken in a timely manner in accordance with previously described procedures.

---

<sup>55</sup> Should the petition be for a reduction in a tax penalty, the inspector also takes account of the reason for the penalty: whether for late filing or late payment, failure to make a declaration, etc.