



Decree-Law No. 433/99
of 26th October

TRANSLATOR'S REMARKS

I am pleased to submit for publication on Portal das Finanças the translation of the articles relating to a significant part of the Code of Tax Procedure and Proceedings (CPPT), specifically those listed below, which refer to the ways of protection of the taxpayer before the Portuguese Tax Administration.

TITLE	CHAPTER	ARTICLES	TOPIC
I	II	10 ¹	Competences of the Tax Administration
I	II	37	Insufficient communication or notification
II	V	66/67	Hierarchical appeals
II	VI	68/77-B	Administrative claim procedure
II	VIII	95-A/95-C	Procedure for correcting errors of the Tax Administration
III	I	96/98	Nature and form of tax court proceedings
III	II	99/134	Procedure for judicial review
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I would like to contextualize this work, as well as to express gratitude to all those who helped me to carry out this project.

I have a degree in Specialized Translation awarded by Instituto Superior de Contabilidade e Administração do Porto, since 1998. Later, in 2000 I joined the Tax and Customs Authority as an assistant tax administration technician. In 2010, I completed the postgraduate studies in Law at the Lisbon School of Law of Universidade Católica Portuguesa.

In 2012 I moved to the Directorate for Tax Credit Management, where I was asked to work in a English language version of the *CPPT*, a request made constantly by foreign economic agents operating on the Portuguese market and by the partners of Portugal in the European Union.

As soon as I started this work, I experienced some difficulties, such as the complexity of legal language and the absence of a consensual glossary, which could be helpful in the choice of the correct terminology. The search for internal and external review of the texts produced was also a challenge.

In order to acquire skills and contacts for the continuation of the work, in 2015 I sign up for the master's degree on Multilingual Translation and Communication at Universidade do Minho, pursuing the goal of translating the *CPPT*, with appropriate academic supervision, as the master's thesis. I managed to accomplish my intent in February of 2018, with the public oral defense of the thesis and the conclusion of the master's degree.

The choice of Universidade do Minho has proved to be the best one, because the Master's Director believed in the project from the beginning and it was possible to create a partnership between Institute of Arts and Humanities (ILCH), the School of Law of Universidade do Minho (EDUM), the Directorate-General for Translation (DGT) and the Tax and Customs Authority (TA) to carry out this work.

¹ - Articles 10 and 37 are not directly related to the theme. They were translated because they contain terminology used throughout the document and their translation was considered important.

Considering it was not possible to translate the whole code during the time available for finishing the Master's thesis, I chose the part that would perhaps be more interesting to foreign people, in particular the articles relating to the ways of protection of the taxpayer before the Portuguese tax authorities.

The work was carried out as if it was a traineeship in translation in TA, under the direction of Dr. Manuel Cecílio, at the time the Deputy Director-General of the Planning, Organization and Communication Area. I had the honor of being guided by Professor Fernando Ferreira Alves, distinguished translator and professor of ILCH and Professor Joaquim Freitas da Rocha, Director of the Master's Tax and Fiscal Law of EDUM, a key reference in tax procedure in the Portuguese legal landscape.

In a second stage, all the translation was reviewed by Dr. Hilário Fontes, translator of the DGT's Portuguese Language Department and by his colleague from the English Language Department. In addition to the revision work, Dr. Hilário Fontes provided the CAT Tool used in the Portuguese delegation, the DGT-OmegaT, and gave me full support in the use of the tool.

In short, the translation I am presenting here for publication on *Portal das Finanças* was carried out by me and reviewed by the master's degree supervisors and, afterwards, by the above-mentioned translators of DGT.

I hope that the disclosure of this significant part of the CPPT in English could be useful to everyone interested. However, I would like to point out the purely informative nature of the texts that are now published. For the purposes of litigation it is necessary that experts in tax procedure, operating on the Portuguese market, to be consulted. Any doubts about Law interpretation must be presented to TA through e-balcão, a service available on *Portal das Finanças*.

I would like to thank all the participants in this work, such as the Director of the Master's Degree, Professor Filomena Louro, the Master's degree supervisors, the DGT's translators and also Dr. Manuel Cecílio, who accepted without reservation the participation of the TA in this project.

I would also thank Dr. Fernando Carvalho, Director of Communication, Promotion and Compliance Support, with whom I worked in the production of contents in English and, who generously, promoted the publication of this work on *Portal das Finanças*.

Porto, 20 January 2020
Anabela Ribeiro

SECTION III Competence

Article 10 Competences of the Tax Administration

1 – The Tax Administration services shall:

- a) Assess and collect or cooperate in the collection of taxes in accordance with tax laws;
- b) Carry out ex officio reviews of taxing acts;
- c) Decide on applications, claims and hierarchical appeals submitted by taxpayers;
- d) Grant exemptions or other tax benefits and carry out other administrative acts in tax matters, as provided for by the applicable law;
- e) Receive and refer via electronic means to the competent tax court applications initiating proceedings in claims for judicial review and apply the provisions of Articles 111 and 112;
- f) Initiate tax enforcement procedures and carry out the corresponding acts, except those provided for in paragraph 1 of Article 151 of this Code;
- g) Collect the costs of proceedings and ensure their legally prescribed destination;
- h) Take steps ordered or requested by tax courts;
- i) Meet requests for assistance;
- j) Carry out all other acts attributed by law.

2 – Without prejudice to any legal provisions, specifically in proceedings connected with parafiscal charges and in those connected with large taxpayers, the competence for proceedings shall belong to the local Tax Administration bodies of the taxpayer's domicile or head office, location of property or of tax assessment.

3 – Without prejudice to any legal provisions regarding proceedings concerning large taxpayers, in the absence of local Tax Administration bodies, the competence shall belong to the regional Tax Administration bodies of the taxpayer's domicile or head office, location of property or of tax assessment.

4 – If there are no regional Tax Administration bodies, the competences granted by this Code to such bodies shall rest with the most senior tax director or person to whom such competence is delegated.

5 – Unless expressly provided otherwise, the competence of the service shall be determined at the beginning of the proceedings, regardless of subsequent changes.

Article 37 Insufficient communication or notification

1 – In tax matters, if the communication of a decision does not have the legally required reasoning, statement of remedies against the notified act or other requirements imposed by tax laws, the interested party shall be entitled, within 30 days or any shorter deadline, to submit an administrative claim, an appeal, a call for judicial review or any other admissible judicial proceedings, demand a notification containing the missing elements or the issue of a certificate containing the missing elements, at no charge.

2 – If the interested party makes use of the option granted in the preceding paragraph, the period for submitting an administrative claim, an appeal, a call for judicial review or any other admissible judicial proceedings begins to run from the notification or from the delivery of the requested certificate.

3 – Proof of the filing of the request provided for in paragraph 1 may be the duplicate thereof, with the record of entry in the service that sent the notification or the communication or any other authentic document.

4 – If the court declares that an appeal against a notified act is not admissible, the appropriate remedy may still be sought within 30 days of the final and unappealable court decision (res judicata).

CHAPTER V Hierarchical appeals

Article 66 Lodging a hierarchical appeal

1 – Without prejudice to the principle of the two-stage decision procedure, decisions taken by Tax Administration bodies are open to hierarchical appeal.

2 – Hierarchical appeals shall be addressed to the highest superior of the body responsible for the taxing act, and shall be lodged before the author of the appealed act within 30 days of notification thereof.

3 – Hierarchical appeals shall be forwarded to the superior, along with the taxing act file, or, when they have no suspensive effect, with an extract of it, within 15 days, except in case of total revocation of the act as provided for in the following paragraph.

4 – The author of the contested act may revoke the whole or part of it within the period referred to in the preceding paragraph.

5 – Hierarchical appeals shall be decided upon within no more than 60 days.

Article 67 Hierarchical appeal. Connection with the judicial appeal

1 – Unless otherwise specified in tax laws, hierarchical appeals are optional and have no suspensive effect.

2 – If a hierarchical appeal has suspensive effect in accordance with the law, the suspension shall only apply to the contested part of the decision.

3 – Without prejudice to the provisions of paragraph 1, judicial appeals against acts of the Tax Administration carried out during customs clearance concerning decisions on the tariff classification of prohibited and restricted imports shall be preceded by a hierarchical appeal, and the provisions of Article 77-A, with any necessary adaptations thereto, shall apply.

CHAPTER VI Administrative claim procedure

Article 68 Administrative claim procedure

1 – The administrative claim procedure aims at the annulment of the whole or part of taxing acts on the initiative of the taxpayer, including, in accordance with the law, substitutes and liable persons.

2 – An administrative claim may not be filed when a request for judicial review on the same grounds has been lodged.

Article 69 Fundamental rules

The following rules are fundamental in the administrative claim procedure:

- a) Simplicity of terms and brevity in decisions;

- b) Exemption of essential formalities;
- c) Nonexistence of *res judicata*;
- d) Exemption from costs;
- e) Limitation of evidence to documents and official elements available to the services, without prejudice to the right of the administrative body to order complementary measures considered crucial to the determination of the material truth;
- f) The administrative claim has a suspensive effect when an appropriate guarantee is provided in accordance with this Code.

Article 70

Submission, grounds and time-limit for administrative claims

- 1 – An administrative claim may be submitted on the same grounds provided for a judicial review and shall be lodged within 120 days after the facts referred to in Article 102, paragraph 1.
- 2 – (Repealed)
- 3 – (Repealed)
- 4 – If a supervening document or judicial decision, or any other fact could not be raised within the period specified in the first paragraph, the deadline shall run from the date on which it became possible for the complainant to obtain the document or to be aware of a fact.
- 5 – If the grounds for an administrative claim are comprised in a public document or in a judicial decision, the deadline determined in the preceding paragraph shall be suspended between the request and the issuing of the document and between the initiation and the decision of the corresponding legal action.
- 6 – Administrative claims shall be submitted in writing to the local tax office of the domicile or head office of the taxpayer, of the location of property or of tax assessment. They may also be submitted orally and be laid in written form at the local service in case of manifest simplicity.
- 7 – Administrative claims may also be sent by electronic data transmission, as defined by ordinance of the Minister of Finance.

Article 71

Combination of claims

- 1 – It is possible to combine claims in a single administrative claim, in the terms laid down for the judicial review, except when the administrative body considers that prompt decision making will be negatively impacted and states reasons for this.
- 2 – (Repealed)

Article 72

Coalition of complainants

- 1 – An administrative claim may be submitted in coalition, in the terms laid down for the judicial review, except when the administrative body considers that prompt decision making will be negatively impacted and states reasons for this.
- 2 – (Repealed)

Article 73

Competence to initiate proceedings and carry out investigations

- 1 – Unless otherwise provided by law, administrative claims shall be addressed to the regional tax body and, whenever necessary, the local tax office of the domicile or head office of the taxpayer, the location of property or of tax assessment.

2 – The local tax body shall initiate the proceedings, gather all available information within no more than 90 days and draw up a reasoned draft decision.

3 – There shall be no investigation when the entity mentioned in the preceding paragraph has access to all the information needed for the decision.

4 – (Repealed)

5 – (Repealed)

6 – (Repealed)

7 – The provisions of this Article shall not apply to administrative claims based on the tariff classification, origin or customs value of goods.

Article 74 Collective redress

1 – In case there are grounds for a combination of claims or for a coalition of claimants in accordance with Articles 71 and 72 and the procedure is at the same stage, the interested parties may apply for their claims to be joined to the claim which was lodged first.

2 – Collective redress shall be available only when prompt decision making will not be negatively impacted.

Article 75 Competent entity to decide

1 – Unless otherwise provided by law, the competent entity to decide upon administrative claims is the director of the regional tax body of the taxpayer's domicile or head office, location of property or of tax assessment, or, in the absence of a regional tax body, the most senior tax director.

2 – (Repealed)

3 – The director of the regional tax body of the area of the enforcement body is competent to decide on administrative claims submitted in the context of secondary liability for enforcement purposes.

4 – The competence referred to in the preceding paragraphs may be delegated by the most senior tax director, the head of the directorate or the director of the regional tax body to qualified officials or to the managers of the local tax bodies. In the latter case, the draft decision shall be drawn up by the one holding the next lower level in the hierarchy thereof.

5 – The provisions of this Article shall not apply to administrative claims based on the tariff classification, origin or customs value of goods.

Article 76 Hierarchical appeal. Connection with the judicial appeal

1 – If the whole or part of an administrative claim is rejected, a hierarchical appeal may be lodged within the period specified in paragraph 2 of Article 66, with the effects provided for in paragraph 1 of Article 67.

2 – A decision on a hierarchical appeal may be contested via judicial appeal, unless an application for judicial review on the same subject has already been lodged.

Article 77 Tax increase

1 – When an administrative claim is not a condition for judicial review and there are no reasonable grounds for it, the competent entity for the decision shall apply a graded surcharge of up to 5% of

the value of the application, which will be assessed in addition, as costs, by the local tax body of the domicile or head office of the complainant, location of property, or of tax assessment.

2 – When an administrative claim is a condition for lodging a judicial review, the surcharge shall only be due if the judicial review brought by the complainant is rejected.

3 – The surcharge may be challenged through an autonomous judicial review lodged on the grounds of an unfair decision.

Article 77-A

Administrative claim concerning the tariff classification, origin or customs value of goods

1 – An administrative claim of acts of assessment based on the tariff classification, origin or customs value of goods shall be lodged with the local tax body responsible for the act of assessment and sent to the most senior tax director for decision.

2 – During the investigation procedure the competent local tax body shall, when appropriate, attach samples collected and the reports of any checks, audits or inspections relied upon for the assessment.

3 – After the investigation, the file shall be forwarded within 15 days to the competent central service in matters of tariff classification, origin or customs value, and this service shall supplement the examination of the file with any necessary further investigation and prepare a reasoned draft decision.

Article 77-B

Connection with the judicial review

The judicial review of acts of assessment based on the tariff classification, origin or customs value of goods shall be carried out in accordance with Article 133-A.

CHAPTER VIII

Procedure for correcting errors of the Tax Administration

Article 95-A

Procedure for correcting errors of the Tax Administration

1 – This chapter establishes the rules for correcting errors by simplified means, with a view to correcting material or manifest errors of the Tax Administration in tax proceedings or during the tax enforcement procedure.

2 – Material or manifest errors are those resulting from the failure of Tax Administration computerized systems, as well as unambiguous errors in calculation, clerical mistakes, inaccuracies, or errors committed inadvertently.

3 – This procedure is characterized by the waiving of essential procedural requirements and simplicity.

4 – The initiation of proceedings shall not affect the use within the statutory deadline of any means concerning the procedure or the proceedings, based on the unlawfulness of the assessment or on the chargeability of a debt.

Article 95-B

Legitimacy, deadline and information about the application

1 – For the purposes of initiation of the proceedings regulated in this chapter, taxpayers or holders of any legitimate interests may petition the most senior tax director to correct errors which have adversely affected their interests.

2 – A request for correction of errors shall be submitted within 10 days of the actual

acknowledgement by taxpayers of the act adversely affecting their interests.

3 – The request referred to in the preceding paragraphs may be submitted verbally or in writing to any Tax Administration office.

4 – If the request is made verbally, it shall be set out in writing by the Tax Administration office where it has been submitted.

Article 95-C Competence

1 – A decision on requests for correction of errors shall be taken by the most senior tax director or by any other qualified official to whom such competence has been delegated.

2 – A decision on such requests shall be assessed by the organisational unit designated by the most senior tax director.

3 – A decision on the request must be reached in no more than 15 days.

4 – The investigation shall be brief and the services called upon to cooperate shall give priority to requests from the organisational unit referred to in paragraph 2.

5 – If the request is grounded on the unlawfulness of the assessment, the non-chargeability of the debt or any other plea for which there is a specific procedure provided for in law, the taxpayer shall be invited to take the appropriate alternative procedure.

6 – A decision on a request shall be notified to the taxpayer in person or by ordinary mail.

7 – The rejection of the request shall not be subject to a prior hearing.

TITLE III Tax court proceedings

CHAPTER I General provisions

SECTION I Nature and form of tax court proceedings

Article 96 Subject

1 – The purpose of tax court proceedings is to ensure the full and effective protection in good time of rights and interests protected by law in tax matters.

2 – To accomplish the function assigned in the preceding paragraph in good time, tax court proceedings may not last more than two years in total from the starting date until the judicial decision is given in first instance, putting an end to them.

3 – The period referred to in the preceding paragraph shall be 90 days for the proceedings mentioned in sub-paragraphs g), i), j), l) and m) of the following Article.

Article 97 Tax court proceedings

1 – Tax court proceedings comprise the following:

- a) Judicial review of tax assessment, including parafiscal charges and acts of self-assessment, withholding of tax and payment on account;
- b) Judicial review of the setting of the taxable base not entailing the assessment of any tax;
- c) Judicial review of the rejection of all or part of administrative claims challenging taxing acts;

- d) Judicial review of administrative acts in tax matters concerning the legality of the assessment;
- e) Judicial review of a tax increase provided for by law when the claim or the appeal are lodged without any reasonable grounds;
- f) Judicial review of acts setting the value of assets;
- g) Judicial review of protective measures taken by the Tax Administration;
- h) Actions for recognition of a right or an interest in tax matters;
- i) Protective measures of a judicial nature;
- j) Ancillary means for seeking access to administrative files and documents and the issuing of certificates;
- l) Early production of evidence;
- m) Order of mandamus;
- n) Appeal against acts carried out during tax enforcement, in the local tax office or in court, when the case is immediately referred to the court or joined thereto;
- o) Opposition, objection by a third party and other preliminary issues, as well as complaints against decisions taken in the scrutiny and grading of credits;
- p) Administrative action, namely for the condemnation to adopt an administrative act legally due, concerning administrative acts of total or partial rejection or withdrawal of exemptions or other tax benefits, which are granted by the Tax Administration, as well as for the contestation or condemnation to adopt an administrative act legally due concerning other administrative acts in tax matters not related to the legality of the assessment and also for the contestation or condemnation to issue administrative rules in tax matters;
- q) Other procedural means provided for in law.

2 – The administrative action shall be regulated by the procedural rules in administrative courts.

3 – The following issues are also regulated by the procedural rules in administrative courts:

- a) Protective measures of a judicial nature in favour of the taxpayer or other tax demanded parties, though the suspensive effect of acts of assessment can only be obtained upon the provision of a guarantee or its waiver as provided in the tax rules.
- b) The conflicts of jurisdiction between tax courts and administrative courts and between bodies of tax administration of the central government, of the regional governments and of the local municipalities.

4 – The procedural acts, including the acts of the parties performed mandatorily in writing, the notifications between representatives, between them and the attorney of the national treasury, and the notifications to the attorneys of the national treasury and to the Public Prosecution, as well as the conduction of tax court proceedings, are carried out in the same terms of the procedures of the administrative courts, namely as described in Articles 24 and 25 of Code of Procedure in Administrative Courts.

5 – In disputes related to tax enforcement the provisions of the preceding paragraph apply only after the case records are received in court.

Article 97-A Value of claims

1 – The following values shall be considered for the purpose of calculation of any costs provided for in law, for acts in tax courts:

- a) In case of judicial review of the assessment, the sum of which annulment is requested;
- b) In case of judicial review of the act establishing the assessment base, the disputed sum;
- c) In case of judicial review of the fixation of the value of assets, the disputed sum;

- d) In a judicial appeal against the total or partial rejection or withdrawal of exemptions or other tax benefits, the sum of the exemption or benefit.
- e) In disputes related to enforcement, the value of the initial or remaining debt, when there is a partial annulment, except in cases of compensation, seizure or sale of assets or rights; in those cases it matches the value, if lower than the initial debt.

2 – (Repealed)

3 – When there is a request for collective redress of judicial reviews or enforcements, the sum shall correspond to the sum of the requests.

SECTION II

Nullities in tax court proceedings

Article 98

Irremediable nullities

1 – In tax court proceedings the following nullities are considered irremediable:

- a) Ineffectiveness of the application;
- b) Lack of official information about ex officio matters in the proceedings;
- c) Failure to notify interested parties of an order admitting the appeal if no submissions are made.

2 – The nullities mentioned in the preceding paragraph may be declared ex officio or stated at any time until the final and non-appealable decision (res judicata).

3 – Nullity of acts shall imply the annulment of further proceedings that are absolutely dependent on those acts. Useful information gathered during the investigation must always be taken into account.

4 – In case of error in the form of the procedure, it shall be converted into the appropriate one, in accordance with law.

5 – Without prejudice to other cases of regularization of applications, these may be corrected, at the court's request, if there is a mistake in the identification of the author of the contested act unless the mistake is inexcusable.

CHAPTER II

Procedure for judicial review

SECTION I

General provisions

Article 99

Grounds for judicial review

Any illegality shall be considered grounds for judicial review, and in particular:

- a) Error in the qualification and quantification of income, profits, value of assets and other chargeable events;
- b) Lack of jurisdiction;
- c) Absence or defect in grounds required by law;
- d) Disregard of other legal requirements.

Article 100

Doubts about the chargeable event and use of indirect methods

- 1 – Whenever the evidence produced leads to a well-founded doubt about the existence and quantification of the chargeable event, the contested act shall be annulled.
- 2 – When taxable income is quantified by indirect methods there shall be no reasonable doubt for the purposes of the preceding paragraph if the grounds for the application of indirect methods consists in refusal to show accounting or bookkeeping and other documents required by law, non-existence or unawareness of their existence, for falsification, concealment or destruction of documents required by law even if taxpayers claim these are the results of an accident.
- 3 – The provisions of the preceding paragraph shall not affect the possibility of the claimant evincing error or manifesting excess in the quantified taxable base in the event of judicial review.

Article 101

Subsidiary defect plea

Claimants may allege defects in contested acts citing a relationship of subsidiarity.

SECTION II

Initial application

Article 102

Judicial review. Deadline for submission

- 1 – A plea for judicial review shall be lodged within three months after the following events:
 - a) End of the period for voluntary payment of taxes legally notified to the taxpayer;
 - b) Notification of the remaining taxing acts, even when they do not generate an assessment ;
 - c) Summons of the persons secondarily liable in a tax enforcement procedure;
 - d) Presumption of tacit rejection;
 - e) Notification of remaining acts which may be subject to an autonomous judicial review according to this Code;
 - f) Acknowledgement of acts detrimental to legally protected interests not included in the preceding sub-paragraphs.
- 2 – (Repealed)
- 3 – If the ground invoked is nullity, a plea for judicial review may be lodged at any time.
- 4 – The provisions of this Article do not compromise other special terms determined in this Code or in the other tax laws.

Article 103

Submission. Place. Suspensive effect

- 1 – Applications shall be lodged in the tax court with jurisdiction or in the local tax office where the act has been carried out or where it is considered to have been carried out according to the law.
- 2 – For the purposes of the preceding paragraph, taxing acts are always considered to be carried out in the area of the taxpayer's domicile or head office, location of property or of tax assessment.
- 3 – If the application is lodged with a local tax office, this service shall forward it to the tax court with jurisdiction within five days after payment of the court fee.
- 4 – A judicial review has a suspensive effect when an appropriate guarantee is provided in accordance with this Code.

5 – If a guarantee was provided according to Article 69, sub-paragraph f), it shall be maintained regardless of the request or order, without prejudice to a notification for its increase.

6 – The application may be submitted to any entity mentioned in paragraph 1 by registered mail, in which case the date of the procedural act shall be the effective date of mail registration.

Article 104

Combination of claims and coalition of claimants

1 – A judicial review admits the combination of claims, even when referring to different acts, as well as the coalition of claimants, provided that the following conditions are met:

- a) The claims must have the same procedural form; and
- b) Its preliminary assessment must be based on the same grounds in fact or in the same audit report of tax inspectorate, or when they are likely to be decided based on the application of the same rules to factual situations of the same type.

2 – The combination of claims and the coalition of claimants described in the preceding paragraph are also accepted when the claims concern to different taxes, provided that they have the same nature, according to the classification of paragraph 2 of article 3 of the General Tax Law.

3 – When the territorial jurisdiction of the claims comprising the combination determines the assessment by different courts, the author has free option to select any of them to bring the action, nevertheless if there is a relation of dependence or subsidiarity among the claims comprising the combination, the action must be brought to the court with jurisdiction to assess the main claim.

Article 105

Selection of procedures with priority progress and collective redress

1 – When, in the same court, are instituted more than 10 procedures, or brought appeals against more than 10 decisions, relating to different tax acts, though the tax is the same, allege the same defects, and are likely to be decided based on the application of the same rules to factual situations of the same type, the president of the court, after hearing the parties, shall order the progress of only one of them, suspending the procedures of the others, according to the administrative procedural law.

2 – Without prejudice to other cases of collective redress as provided for in law and should the judge consider that there is no detriment to the subsequent course of proceedings, cases of judicial review may be joined to the one which was initiated first if this is at the same stage and if any of the circumstances mentioned in the preceding Article occurs.

Article 106

Tacit rejection

An administrative claim is assumed to be rejected for the purposes of judicial review after the end of the period set for the decision by the competent body.

Article 107

Application addressed to the delegator or subdelegator

The tacit rejection of an application or request addressed to the delegator or subdelegator shall be attributable, for the purposes of judicial review, to the delegate or subdelegate, even when

such applications or requests have not been sent to him. The corresponding date of entry is valid for the purposes of the preceding Article.

Article 108 Requirements of applications

- 1 – An application for judicial review shall be addressed to the judge of the competent court, identifying the contested act and the entity that adopted it and setting out the facts and legal reasons on which the application is based.
- 2 – The application shall indicate the value of the claim or how it is meant to be determined by the relevant Tax Administration offices.
- 3 – The claimant shall join to the application the documents available, shall also call the witnesses and request other evidence which is not dependent on supervening events.

Article 109 Expenditure incurred in the production of evidence

- 1 – Expenditure incurred in the production of evidence is met by the person putting it forward, and if this is the complainant, a deposit covering such costs shall be lodged.
- 2 – Failure to pay charges amounts to failure to comply with a procedural requirement by a claimant, except when the judge states the reasons why such a measure is fundamental for the decision on a claim.

SECTION III Counterstatement

Article 110 Counterstatement

- 1 – After receiving the application, the judge orders the notification of the attorney of the national treasury so that he may contest and request production of additional evidence, within three months, without prejudice to the provisions of the final part of Article 112, paragraph 5.
- 2 – The judge may invite the claimant to remedy any failure or irregularity, within a given period of time.
- 3 – The attorney of the national treasury shall, within three days, request the administrative file from the local tax body of the location of property or of tax assessment. This does not affect the counterstatement period provided for in the first paragraph.
- 4 – For all legal purposes, the attorney of the national treasury shall send to the court, via electronic means, the counterstatement along with the administrative file sent to him by the tax services.
- 5 – The judge may, at any time, order the forwarding of the administrative file by the local tax office, via electronic means, even when there is no counterstatement by the attorney of the national treasury.
- 6 – The absence of a counterstatement does not represent an admission of the facts enunciated by the claimant.
- 7 – The judge shall freely assess the absence of a detailed counterstatement of the facts.

Article 111 Organisation of the administrative file

- 1 – The local tax body of the location of property or of tax assessment shall organise the file and forward it to the attorney of the national treasury, within 30 days from his request, without prejudice to the provisions of the following Article.

2 – The body mentioned in the preceding paragraph shall prepare the file with the following elements:

- a) Information by the tax inspectorate about the facts considered relevant;
- b) Information supplied by the Tax Administration services about the official data concerning the contested tax and about the remaining subject matter of the request;
- c) Other available documents considered to be relevant for the court decision, including the administrative claim procedure against the same act, when already decided.

3 – If an administrative claim against the same taxing act has been lodged before receipt of the application for judicial review, this claim must be attached to the judicial review as it is and it shall be considered, for all intents and purposes, within the scope of the judicial review proceedings.

4 – If, after receipt of the application for judicial review, an administrative claim is lodged against the same taxing act but invoking different grounds, it must be attached to the judicial review and it shall be considered, for all intents and purposes, within the scope of the judicial review proceedings.

5 – The provisions of paragraphs 3 and 4 also apply, mutatis mutandis, in the event of a hierarchical appeal against the decision on the administrative claim under Article 76.

SECTION IV

Initial decision on the application

Article 112

Revocation of the contested act

1 – If the amount of the claim does not exceed the limit laid down for the tax court of first instance, the competence to revoke the whole or part of the contested act lies with the director of the regional tax body within the period provided for in paragraph 1 of the preceding Article.

2 – If the amount of the claim exceeds the limit laid down for the tax court of first instance, the competence to revoke the whole or part of the contested act lies with the most senior tax director within the period provided for in paragraph 1 of the preceding Article.

3 – If the contested act is revoked in part, the revoking authority shall, within 3 days, notify the claimant to state his position on the decision within 10 days. The proceedings shall continue if the claimant does not react or states that he maintains the claim.

4 – A total revocation of the contested act shall be notified within 3 days to the attorney of the national treasury, who shall terminate the proceedings.

5 – A partial revocation of the contested act shall be notified to the attorney of the national treasury, along with the forwarding of the administrative file, within 3 days of the receipt of the claimant's statement mentioned in paragraph 3 or after the end of the period provided for in the same paragraph. In the latter case, the deadline for contesting a decision shall be 30 days from notification.

6 – The competent authority may delegate the powers provided for in this Article to any manager or qualified official of the Tax Administration.

Article 113

Initial decision on the application

1 – Once the position taken by the attorney of the national treasury is received or the period set out for receiving this position expires, and after reassessment by the Public Prosecution, the judge shall decide immediately on the application if it is a matter of law alone or, if it refers to a matter of law and of fact, if all necessary information is available.

2 – Without prejudice to the provisions of the preceding paragraph, if the attorney of the national treasury raises an objection against a decision on the application, the claimant shall be heard.

SECTION V Investigation

Article 114 Measures of inquiry

If the judge does not take an immediate decision on the application, he shall order the necessary measures of inquiry for production of evidence to be submitted to the court. In accordance with the principle of full assistance to the judge.

Article 115 Means of evidence

- 1 – Common evidence is admitted.
- 2 – Official information shall only have evidential value when duly substantiated, according to objective criteria.
- 3 – The content of official information shall always be notified to the claimant as soon as it is attached to the case-file.
- 4 – The authenticity of any document must be contested within 10 days of its submission or attachment to the case-file. The same period applies to requests for comparison with the original of the certificate or of the copy with the certificate from which it was extracted.

Article 116 Technical advice. Expert report

- 1 – If the judge considers that the opinion of specialists is necessary, an expert report shall be admitted in the judicial review procedure.
- 2 – The expertise shall be ordered by the judge, on his own motion or at the request of the claimant or of the attorney of the national treasury, made, respectively, in the application or in the counterstatement.
- 3 – The expertise may also be requested within 20 days of notification of the official information, if applicable.
- 4 – The expert report mentioned in the preceding paragraphs shall be governed by the provisions of the Code of Civil Procedure.
- 5 – The court shall advance the payment for the expenses of the measures of inquiry which were not requested by the claimant. These costs shall be added to the final settlement of costs.
- 6 – The claimant shall meet the costs for the measures of inquiry requested by him and the judge shall determine the amount of those expenses to be included in the final settlement of costs.

Article 117 Judicial review based on a mere error in calculating the taxable base or in the requirements for applying indirect methods

- 1 – Unless a simplified tax regime applies or a hierarchical appeal with suspensive effect of the assessment is lodged against the decision, the judicial review of the taxing acts based on error in calculating the taxable base or in the requirements for using indirect methods shall depend on the prior request for review of the taxable base.

2 – In the application for a judicial review the claimant shall identify the error or other illegality on which he founds his application and shall submit any expert advice he considers necessary as well as request any inquiry measures.

3 – In his submission to the court, the attorney of the national treasury shall, in his turn, attach the expert opinions he considers essential to the assessment of the contested act and request other inquiry measures, if necessary.

4 – The judge may, at his discretion, on his own motion or at the request of the interested parties, order the hearing of the experts who signed the technical opinions mentioned in the preceding paragraphs, request clarification of their positions from the claimant or the attorney of the national treasury and order further measures of inquiry.

Article 118

Witnesses

1 – The number of witnesses to be heard may not exceed 3 for each fact nor 10 for each taxing act contested.

2 – Statements shall be made in an inter partes hearing and shall be recorded whenever technical means are available. It is incumbent on the judge to draw up a written record that must be included in the minutes, when it is not possible to record them.

3 – In setting the date for the hearing the judge must apply the provisions of Article 155 of the Code of Civil Procedure.

4 – The absence of a witness, the attorney of the national treasury or a lawyer shall not be deemed to be grounds for postponing the hearing.

5 – The claimant and the attorney of the national treasury may directly question the witnesses.

Article 119

Statement of the witnesses

1 – Witnesses living within the tax court jurisdiction area shall be notified by registered letter, while any other witnesses shall be called by the party which indicated them, unless their notification is required for good reasons.

2 – The return of the letter convening a witness shall be notified to the party which indicated it, but it does not give rise to a new notification unless there is an error on the part of the court. Otherwise, calling a witness is the responsibility of the party.

3 – The claimant and the attorney of the national treasury may request that witnesses residing outside the tax court jurisdiction area be heard in accordance with the following paragraph.

4 – The witnesses to be heard according to the preceding paragraph shall be called by the party who indicated them and shall be heard by teleconference recorded in the tax court of their domicile. They shall be identified by an official of the court where the statement is made.

5 – The witnesses provided for in paragraph 3 and other witnesses shall be heard in the same hearing unless an overwhelming reason justifies scheduling the hearing on another date.

Article 120

Notification for pleadings

1 – When evidence which was not in the administrative file is produced, or whenever the court considers it necessary, the interested parties shall be notified to submit written pleadings, within the same period, which will be of 10 to 30 days as determined by the judge.

2 – Notwithstanding the provisions of the preceding paragraph, the parties are entitled to waive the allegations period.

Article 121 Public prosecutor's opinion

1 – After pleadings are submitted or the deadline therefor has expired and before a court decision is given, the judge shall refer the case to the public prosecution service, which will have the opportunity to take an express position on questions of legality raised during the proceedings or to raise other questions according to its legal competences.

2 – The claimant and the attorney of the national treasury shall be heard if the public prosecution service raises a question that prevents a decision on the claim.

SECTION VI Judicial decision

Article 122 Closing of the case records. Judicial decision

1 – Afterwards the case records shall be closed and the judge shall render a judicial decision.

2 – If the claim is unsuccessful or partially unsuccessful, the claimant initiating the claim shall be ordered to pay the costs and may also be ordered to pay a monetary penalty for vexatious litigation.

Article 122-A Extended composition of the court and advance determination of the Supreme Administrative Court

When a new point of law which raises serious problems of assessment to the tax court of first instance and considering it might be raised again in other disputes, the president of the court may, on his own motion or at the request of the trial judge, order a trial in extended composition of the court or the advance determination of the Supreme Administrative Court, according to article 93 of the Code of Procedure of the Administrative Courts.

Article 123 Judicial decision. Subject

1 – The judicial decision shall identify the interested parties and the issues under litigation, summarize the plaintiff's claim and his pleas in law, as well as the opinion of the attorney of the national treasury and of the public prosecution, and shall establish the questions which will be ascertained in court.

2 – The judge shall also differentiate between what has been proven and what is not proven, stating the reasons for his decision.

Article 124 Order to examine defects in the judicial decision

1 – In the judicial decision, the court shall as a matter of priority examine the defects leading to the declaration of non-existence or nullity of the contested act and, subsequently, the defects leading to its annulment.

2 – The defects in the groups mentioned below shall be examined in the following order:

- a) For the first group, the defects whose substance determines, at the discretion of the court, a more stable or effective protection of the interests of the offended party;
- b) For the second group, the order indicated by the claimant, whenever he establishes a

relation of subsidiarity between them and provided that no other defects are pleaded by the Public Prosecution or, in all other cases, the order laid down in the preceding sub-paragraph.

Article 125 Grounds for nullity of the judicial decision

1 – The grounds for nullity of the judicial decision shall include the absence of signature by the judge, the omission of the grounds in fact and law for the decision, the absence of connexion between the grounds and the decision, the lack of pronouncement on questions that must be examined by the judge or pronouncement on questions that he must not examine.

2 – The absence of signature by the judge may be remedied on his own initiative or at the request of the interested parties, while it is still possible to obtain it. The judge shall state the date of signature.

Article 126 Notification of the judicial decision

The judicial decision shall be notified within 10 days to the Public Prosecution, to the claimant and to the attorney of the national treasury.

SECTION VII Preliminary issues

Article 127 Preliminary issues

1 – The following preliminary issues shall be admissible in the judicial review procedure:

- a) Assistance;
- b) Establishment of rights;
- c) Legal aid.

2 – The deadline for responding to preliminary issues is 15 days.

3 – It is mandatory for the Public Prosecution to give an opinion before the decision on the preliminary issue discussed therein takes place.

Article 128 Processing and decision on preliminary issues

Preliminary issues shall be processed and decided upon according to the Code of Civil Procedure in all matters not provided for in this Code.

Article 129 Assistance Issue

1 – Assistance is admissible in judicial review proceedings under the following circumstances:

- a) Involvement of the substitute in the judicial review proceedings lodged by the substituted and vice-versa;
- b) Involvement of the secondary liable party in the judicial review proceedings initiated by the taxpayer.

2 – The judicial decision shall produce a res judicata to the assistant in relation to the subject of the judicial review.

Article 130 Admissibility of the establishment of rights

Establishment of rights shall be admitted if, during the tax court proceedings, the claimant dies and his successor wishes to assert his own procedural position.

SECTION VIII Judicial review of the acts of self-assessment, tax substitution, payments on account and acts of assessment based on the tariff classification, origin or customs value of goods.

Article 131 Judicial review in case of self-assessment

1 – In case of error in the self-assessment, the judicial review shall be preceded by an administrative claim addressed to the director of the regional tax body within 2 years of the submission of the tax return.

2 – (Repealed)

3 – If matters of law alone are to be examined and the self-assessment was carried out according to the general guidelines issued by the Tax Administration, an administrative claim as provided for in paragraph 1 shall not be required.

Article 132 Judicial review in case of amounts withheld at source

1 – Withholding at source is open to judicial review by the substitute when the amount of tax paid exceeds that withheld.

2 – Excess tax paid shall be deducted in subsequent payments of the same nature to be made in the year of undue payment.

3 – Should the correction mentioned in the preceding paragraph not be possible, the substitute intending to lodge an application for judicial review shall submit an administrative claim to the competent regional tax body within 2 years from the end of the period mentioned in the preceding paragraph.

4 – The provisions of the preceding paragraph shall apply to a judicial review contesting the tax withheld at source lodged by the substituted unless the withholding was carried out as a mere payment on account towards the final amount of tax due.

5 – (Repealed)

6 – The provisions of paragraph 3 of the preceding Article shall apply to the judicial review of the withholding at source.

Article 133 Judicial review in case of payment on account

1 – Payment on account is open to judicial review on the basis of an error of assessment of the preconditions for its very existence or its quantification, when determined by the Tax Administration.

2 – The judicial review of payment on account shall be preceded by an administrative claim to the appropriate local tax body within 30 days from the date the undue payment was made.

3 – If the administrative claim is expressly rejected, the taxpayer may, within 30 days, submit an

application for judicial review of the act in the same terms as the act of assessment.

4 – If the administrative claim is not rejected within 90 days from submission, it shall be considered tacitly accepted.

Article 133-A

Judicial review based on the tariff classification, origin or customs value of goods

The judicial review of acts of assessment based on the tariff classification, origin or customs value of goods is dependent on a prior administrative claim as provided for in this Code.

Article 134

Purpose of the judicial review

1 – Acts establishing the value of assets may be contested, on grounds of illegality, within three months of their notification to the taxpayer.

2 – In addition to disregard for legal formalities, an error of fact or law in the establishment of asset values is also grounds for illegality.

3 – Any inaccuracies in the registration of real estate taxable value may be subject to judicial review within 30 days provided that the taxpayer has previously requested the correction to the competent entity and the latter has rejected the application or has not answered within 90 days.

4 – The provisions of Article 111, paragraph 3 shall apply to the judicial review referred to in the preceding paragraph.

5 – A request for correction of the registration according to the preceding paragraph may be submitted at any time.

6 – The period for judicial review mentioned in paragraph 3 shall begin after notification of refusal or after the end of the period for examination of the request.

7 – The judicial review referred to in this Article has no suspensive effect and may only occur after the means provided for in the evaluation procedure have been exhausted.

CHAPTER III

Preventive and restraining orders

SECTION I

General provisions

Article 135

Protective measures

1 – In tax court proceedings the following unsorted protective measures are allowed in favour of the Tax Administration:

- a) Attachment;
- b) Judicial listing of assets as debt security.

2 – Judicial reviews of acts of sequestration of assets, if allowed by tax legislation, and of other protective measures taken by the Tax Administration in accordance with the law shall be guided by the provisions of this chapter.

SECTION II Attachment

Article 136 Attachment terms

1 – The attorney of the national treasury may request the attachment of assets of tax debtors or persons jointly or secondarily liable when the following circumstances occur simultaneously:

- a) There is a justified concern that the guarantee of recovery of tax credits will diminish;
- b) The tax has been assessed or is in the course of assessment.

2 – For periodic taxes the tax shall be considered to be in the assessment stage after the end of the calendar year or other taxation period to which the income relates.

3 – In single-incidence taxes, the tax is considered to be in the assessment stage after the occurrence of the chargeable event.

4 – The attorney of the national treasury shall set out the facts demonstrating the tax or its probable existence and the grounds for the concern that the guarantee of recovery of tax credits will diminish and also list the assets to be seized, with the corresponding information for such attachment.

5 – The circumstances referred to in sub-paragraph 1 -a) shall be inferred in case of debts arising from taxes which the debtor or the responsible person is required to withhold or to recover from third parties and which have not been paid within the statutory time limits.

Article 137 Expiry

1 – The attachment shall expire on payment of the debt, or when, during the assessment of the tax or taxes it is intended to guarantee, it is ascertained that there shall be no taxing act until the end of the year following the one of the seizure, and also, if, at any time, a guarantee is provided in accordance with this Code.

2 – The attachment shall also expire if ordered during a tax audit procedure and the audited entity is not notified of the audit report within 90 days from the date when it was ordered unless, after the end of that period, the deadline for the tax audit has not passed due to the legal extension of the statutory period. In that case the attachment expires at the end of this last statutory period.

3 – The attachment shall also expire if it exceeds the amount necessary to guarantee the tax, plus compensatory interests assessed and all other costs concerning the following six months.

Article 138 Competence to order an attachment

The competence to order an attachment lies with the tax court of first instance of the area of the debtor's domicile or head office.

Article 139 Attachment regime

The provisions of the Code of Civil Procedure shall apply to all matters regarding the attachment regime not specifically regulated in this section.

SECTION III Judicial listing of assets as debt security

Article 140 Requirements for judicial listing

If there is a justified concern that assets or of documents connected with tax obligations may be lost or dissipated, the attorney of the national treasury may request that these are the subject of a judicial listing.

Article 141 Competence for judicial listing

The competence in the judicial listing procedure lies with the tax court of first instance of the area of residence, head office or permanent establishment of the taxpayer.

Article 142 Judicial listing regime

The provisions of the Code of Civil Procedure shall apply to all matters regarding the judicial listing regime not specifically regulated in this section.

SECTION IV Sequestration of assets

Article 143 Judicial review of sequestration of assets

- 1 – A judicial review of sequestration of assets by the Tax Administration shall be admitted within 15 days after the infringement was recorded.
- 2 – A judicial review of the sequestration of assets shall always be considered a matter of urgency, thus taking precedence over any other measures related to any other non-urgent judicial act.
- 3 – A judicial review shall be decided by the tax court of first instance of the area where the sequestration was carried out.
- 4 – Legitimacy for seeking a judicial review as provided for in this Article lies with the owner or the holder of the sequestered assets.
- 5 – Whenever tax laws demand that sequestration acts be notified to the persons referred to in the preceding paragraph, the deadline for seeking a judicial review starts from that notification.
- 6 – If a tax offence procedure is pending, the court decision on the judicial review of the sequestration act shall be considered *res judicata*. The release of any assets and means of transportation shall become definitive, regardless of any additional decision concerning fines.
- 7 – Payment of the tax by the taxpayer during a judicial review terminates the procedure.

SECTION V Judicial review of the protective measures taken by the Tax Administration

Article 144 Judicial review of the protective measures taken by the Tax Administration

- 1 – Without prejudice to the provisions of the preceding Article, protective measures taken

by the Tax Administration may be contested within 15 days after being taken or after being acknowledged by the interested party, whichever is later, if they are challenged as being unlawful.

2 – A judicial review shall be lodged in the tax court of first instance of the area of the Tax Administration office which took the protective measure.

3 – A judicial review of protective measures shall always be considered a matter of urgency, thus taking precedence over any other measures related to any other non-urgent judicial act.

4 – In the request, the taxpayer shall present the reasons in fact and law justifying the annulment of the whole or part of the protective measure.

5 – Before a decision is taken, the Tax Administration must be heard on the necessity and the lawfulness of a protective measure.

6 – A judicial review of protective measures taken by the Tax Administration shall have no suspensive effects, but the Tax Administration shall abstain from engaging in acts which may compromise the practical effects of the procedure.

CHAPTER V Ancillary procedural means

Article 146 Ancillary procedural means

1 – In addition to the means set out in the following Article, tax court proceedings shall admit ancillary procedural means of seeking access to documents and issuing of certificates, early production of evidence and enforcement of decisions. All these acts shall be governed by the legal rules on the procedure in administrative courts.

2 – The period for spontaneous enforcement of judicial decisions of tax courts shall start from the date of the final and non-appealable decision (*res judicata*).

3 – The tax court of first instance shall be responsible for assessing any question arising from this Article.

Article 146-A Special procedure for exemption from the duty of bank secrecy

1 – The special procedure for exemption from the duty of bank secrecy shall apply to situations where law grants the Tax Administration access to bank information for tax purposes.

2 – The special procedure mentioned in the preceding paragraph shall take one of the following forms:

- a) An appeal lodged by the taxpayer;
- b) (Repealed)

Article 146-B Procedure for the appeal lodged by the taxpayer

1 – Any taxpayer intending to appeal a decision granting the Tax Administration direct access to his bank information shall justify briefly the reasons for his disagreement in a request submitted to the tax court of first instance of the area of his tax domicile.

2 – The application referred to in the preceding paragraph shall be submitted within 10 days from the date on which the taxpayer was notified of the decision, regardless of any suspensive effect conferred by law to that decision.

3 – The application referred to in the preceding paragraph does not have to comply with any special formalities and does not have to be endorsed by a lawyer. All evidence, which shall be solely documentary, must be attached thereto.

4 – The Director-General of Taxes or the Director-General of Customs and Excise Duties shall be notified so as to oppose enforcement, if they see fit, within 10 days. All evidence shall be attached to the opposition file.

5 – The rules set forth in the preceding paragraphs shall apply, mutatis mutandis, to appeals under Article 89-A of the General Tax Law.

Article 146-C

Procedure for requesting an authorization from the Tax Administration

(Repealed)

Article 146-D

Urgent procedure

1 – The procedure referred to in Article 146-B shall be conducted as an urgent procedure.

2 – A court decision shall be given within three months from the date of submission of the request.

SECTION VI

Preliminary issues and judicial reviews

Article 166

Preliminary issues and judicial reviews

1 – The following preliminary issues shall be admitted in the tax enforcement procedure:

- a) Objection by a third party;
- b) Establishment of succession rights;
- c) Legal aid.

2 – Article 115, paragraph 4, shall apply to the challenging of the authenticity of any document.

Article 167

Objection by a third party

When not rejected outright, an objection by a third party shall, in the part not governed by this Code, be governed by the provisions applicable to the opposition to enforcement.

Article 168

Establishment of succession rights

1 – In case of death of the debtor against whom enforcement is sought, the identification of the respective heirs shall be added to the file, in accordance with Article 155, paragraph 3.

2 – The provisions of the preceding paragraph shall apply to the establishment of succession rights for the objector and the complainant creditor.

SUB-SECTION III Objection by a third party

Article 237

Purpose of the objection by a third party. Applicable provisions

1 – If an attachment, seizure or any other act ordered by a court for the sequestration or the supply of assets compromises the possession or any other right held by a third party which is incompatible with the conduct of the procedure or its scope, the aggrieved party may assert his right through an objection by a third party.

2 – An objection by a third party shall be lodged before the tax enforcement body.

3 – An objection by a third party has to be submitted within 30 days from the day on which the act which compromised the possession or the right was carried out or from the day on which the objector acknowledged the impairment, but never after the assets have been sold.

Article 238

Effectiveness of the *res judicata*

The decision on the substance of the case given in the objection by a third party constitutes *res judicata* in the tax enforcement procedure as far as the existence of and entitlement to the rights claimed by the objector and by the respondent are concerned.