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On the Role of Tax Appeal Committees in Protecting Taxpayer Rights : Between Effectiveness and Restriction

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Abstract:

The taxpayer's appeal to the tax appeal committees is the optional means or mechanism that he can resort to in order to obtain his right, provided that he fulfills the mandatory initial administrative appeal route by way of a complaint before the same tax administration that established the tax, and before submitting any appeal before the competent judicial authority. The role of the appeal committees in obtaining the taxpayer's rights cannot be denied, given their organic and functional independence from the tax administration. However, this independence may be marred by restrictions and inhibitions of the element of effectiveness, either through the administrative composition on the one hand, or by considering the opinions that they issue, as they are not absolutely binding on the tax administration on the other hand.

Keywords: Appeals committees; protection; taxpayer; effectiveness; restriction.

Introduction

The tax administration, after determining the tax base, relies on the collection license to collect taxes, various rights and fees, and even all forms and types of contributions, incomes and proceeds for the benefit of the state, which are established under the annual and corrective finance laws¹. Without it, the collection loses the principle of legitimacy that grants it an objective and procedural license to collect the rights of the public treasury within a legislative and regulatory framework². By determining the tax base, the taxpayer pays what he owes within the framework of the debt relationship that connects him to the tax administration in order to achieve the public interest.

However, disputes may arise in order to reach solutions³ regarding the tax base or collection related to an error in the tax base or calculation, or with the intention of benefiting from a right resulting from a legislative or regulatory provision⁴. Hence, it is necessary to submit an initial complaint regarding taxes, fees, rights, and fines to the provincial director of taxes, the head of the tax center, or the head of the local tax center in whose jurisdiction the tax is imposed, in accordance with the formal and substantive conditions stipulated by the provisions of the Tax Procedures Law (and in its articles 71 and following). Once the mandatory complaint before the administration that established the tax has met the legal conditions, it is registered, and a receipt is given to the taxpayer who submitted the complaint or protest, so that he benefits accordingly from the legal postponement of payment of the disputed amount after submitting an application

accompanying the appeal, in addition to providing real guarantees to ensure the collection of the rights contested in accordance with the rules of the Tax Procedures Law.

As a natural consequence of the above, the administration decides on the disputed appeal by rejecting it completely or partially, or by fully accepting the taxpayer's request. If the latter is not satisfied with the decision taken, he can resort to the competent appeal committees on a voluntary basis, unlike the complaint, which is mandatory⁵ to resolve the dispute that takes place between the tax administration and the taxpayer as a result of an error in the calculation or in the base, for example⁶.

Granting taxpayers the ability to raise their disputes before committees (without the administration) has led to an imbalance in the legal positions of the two disputing parties, because the taxpayer is devoid of any authority other than the rights provided to him by law, unlike the administration, which has sufficient powers and privileges to perform its duties⁷. Based on this, the Algerian legislator tried to support the element of trust between the taxpayer and the tax administration authority within an administrative stage prior to the judicial stage⁸.

From this point, the importance of appealing to committees emerges, given the assumption that they enjoy organizational and functional independence from the tax administration. This means that this appeal route was not created arbitrarily, but rather has an importance through which the taxpayer can put an end to the dispute between him and the administration⁹. From this perspective, we decided to pose the following question : **To what extent are tax appeal committees organizationally and functionally independent from the tax administration, given that they are alternative protective mechanisms for settling tax disputes that arise between the administration and the taxpayer?**

Answering this question requires highlighting the organic independence of the tax appeal committees (**The first topic**), and then explaining the functional independence of the tax appeal committees (**The second topic**).

THE FIRST TOPIC : Highlighting the Organic Independence of Tax Appeal Committees

The Algerian legislator organized the appeal before the committees in accordance with the legal texts, namely Articles 80 to 81 bis of the Tax Procedures Law. These committees now exist at three levels : provincial, regional, and central, in accordance with the Finance Laws, especially for the year 2016¹⁰. Therefore, it is necessary to determine their composition (**First requirement**) and

then to address the criteria and foundations for distributing jurisdiction among them (**Second requirement**).

First Requirement : Determining the human composition of the appeals committees

The Tax Procedures Law organized the formation of tax appeal committees in accordance with the requirements of Article 81 bis thereof, and brought together within its composition several activities belonging to different and multiple administrations that are independent in the performance of their functions from the tax administration. This will not be achieved except by involving representatives of taxpayers in a number close to the number of representatives of the administrations, while excluding representatives of the tax administration¹¹. This is what we analyze and study by determining the formation of the committees at the local level (**First section**), the regional level (**Second section**), and the central level (**Third section**).

First Section : Local Tax Appeals Committee

By examining the content of Article 80 bis of Law No. 01-21 amended and supplemented, it becomes clear to us that the appeals committee is formed at the local level for direct taxes and the tax on turnover from seven members in addition to the president who holds the status of auditor. Its members are : a member of the Provincial People's Assembly, a representative of the Directorate of Trade and another of the Directorate of Industry in the province, a representative of the National Chamber of Auditors, representatives of the national chambers of industry and trade located in the province, the provincial director of taxes, or the director of the tax center or the director of the local tax center.

Following this human panel before which the taxpayer presents the dispute, we offer the following observations :

- The presence of an auditor at the head of the committee supports and strengthens the taxpayer's rights, given their technical and professional expertise in tax accounting matters¹².
- The presence of an elected representative from the provincial council ensures that appeals before the committee are effective, thus contributing to the committee's overall effectiveness¹³.

Despite the aforementioned observations that serve the interests of the weaker party, it is undeniable that it suffers from some shortcomings that would limit the effectiveness of the appeal and weaken it accordingly, whether in terms of the composition, which is predominantly administrative in nature, as most of

the members are representatives of the administration, which leads to considering its nature as purely administrative¹⁴, or that among its members we find a representative of the tax administration. This works to stir the feeling of the continuation of the dispute before the administration that established the tax for the taxpayer, as he cannot withdraw from his initial decision resulting from the mandatory prior complaint¹⁵, given that the chairmanship of the committee is by an expert accountant who is specialized but far from specialization in the legal subject¹⁶.

Given that these justifications and arguments limit the role of the provincial committee, the taxpayer inevitably follows the path of judicial appeal directly after the mandatory complaint is filed without going through the administrative appeal, especially since it is an optional appeal procedure, not mandatory, meaning that it is not decisive and essential in the tax dispute¹⁷.

Second Section : Regional Tax Appeals Committee

The Regional Appeals Committee is formed in accordance with the text of the second paragraph of Article 81 bis of Law No. 01-21 amended and supplemented, from : an accounting expert as chairman, the regional director of taxes, a member representing merchants, a member from the regional directorate of the treasury, one representative of trade, another representative of industry, a representative of the Algerian Chamber of Commerce and Industry and another from the Chamber of Agriculture, a representative of the National Classification of Accounting Experts, and finally a tax advisor.

Commenting on this composition, it is concluded that there are representatives of the taxpayer who serve the private interest of the taxpayer, including the president and the advisor, while the rest of the members belong to different departments that represent the public interest. This is understood to mean that the legislator is moving towards achieving, supporting and strengthening this direction. What should be noted in this regard is the similarity of the composition of the local committee with the regional tax committee in terms of its representation, so that it proceeds in favour of the tax administration in this manner, which leads to taxpayers refraining from following this part of the non-binding appeal¹⁸.

Third Section : Central Appeals Committee

This committee is located at the Ministry of Finance level, specifically within the General Directorate of Taxes. It deals with direct taxes, the tax on turnover, fuel fees and levies¹⁹. It consists of the Minister of Finance as chairman, a

representative from the Ministry of Justice, Trade, Industry, and also the Ministry of Fuel, as well as a representative from the National Accounting Council, a member from the Ministry of Agriculture, Industry, and Trade, and finally the Director of Major Enterprises.

But it is noteworthy that such figures who make up the appeals committee at the central level are among the most prominent figures in the state, which makes them fair to the complainant if they see that he has been wronged before he goes to the judicial authority²⁰. On the other hand, we note that most of the members are from the central administration, in addition to the committee being completely devoid of representatives of those obligated to pay the tax, which will reinforce the weakness of the role of this committee in the possibility of fairness to the taxpayer if he actually has grounds for his appeal²¹.

Hence, the judiciary remains a safety valve for the taxpayer, given that it is based on extensive guarantees for the benefit of the taxpayer in the face of the tax administration, embodying the principle of the impartiality of the judge, confrontation, and defense²².

Second Requirement : Addressing the basis for distributing jurisdiction among tax appeal committees

The legislator has established two bases or criteria for the committees to carry out their tasks related to deciding on appeals submitted to them by the taxpayer after the submission of a dispute complaint. These bases are highlighted in the financial basis (**First section**) and the formal basis (**Second section**).

First Section : Financial basis

Based on the existence of committees at three levels, we will work to clarify how powers are distributed among them, starting from this point of view, as follows :

A- Regarding the lower committee at the local level in the state, it is responsible for giving its opinion regarding the appeal related to outstanding tax issues between the two parties (the taxpayer and the administration) in the event that the total amounts in dispute of rights and fines are less than or equal to twenty million dinars (20,000,000 DZD), provided that the administration has decided on them by an administrative decision of rejection, whether total or partial.

B- Regarding the committee at the regional level, it also issues an opinion, but only in applications whose amounts are limited to between (20,000,000 DZD and more) and seventy million dinars (less than or equal to 70,000,000 DZD), for

which the tax administration has issued an administrative decision of absolute or relative rejection.

Second Section : Qualitative basis

The basic or qualitative or organic standard refers to the legal entities that can file an appeal with the Central Committee. In embodiment of this, we find that the Algerian legislator has designated companies or groups that are active in the hydrocarbons sector to present their dispute to this committee, as it is affiliated with the Directorate of Large Enterprises located at the level of the Ministry of Finance in the capital, Algiers, as the place for filing tax declarations, whether regarding existence or income, as well as everything related to tax collection²³.

It should be noted that most, if not all, oil companies operate in southern Algeria (the Sahara), which will make it difficult for taxpayers to attend the Central Appeals Committee sessions²⁴, unlike the tax declaration and collection process carried out by the taxpayer according to the digital system launched by the Ministry of Finance, the "Your Tax" system²⁵. This centralized and traditional procedure for reviewing taxpayer appeals has the drawback of wasting time and money and burdening the appellants. This necessitates finding a way for taxpayers to attend the committee sessions to review their cases, thus upholding the principles of due process and the right to a fair hearing, confrontation and defense²⁶.

SECOND TOPIC : Functional Independence of Tax Appeal Committees

To determine the degree of independence of the appeals committees from a functional standpoint, we must analyze the nature of the decisions issued by these committees, considering the extent of their binding nature in relation to the tax administration. The latter has been authorized by the Algerian legislator to carry out its tasks, enjoying numerous privileges and exceptional powers, in view of the powers granted by law to the weaker party²⁷. This is in order to confirm the effectiveness of this aspect of the dispute as an alternative way to settle the dispute before resorting to the judiciary in a voluntary, non-mandatory manner.

Therefore, if we want to measure the degree of effectiveness of appeals before the tax committees, it must first be based on the extent of the binding nature of the opinions of the appeals committees²⁸ (**First requirement**). Moreover, the legislator has also declared the legal nature of the work of the committees as merely an opinion that is not binding and does not have the character of a binding administrative decision²⁹ (**Second requirement**).

First Requirement : The binding force of the opinions of the appeals committees

It should be noted that the Algerian legislator mixes the terms "opinion" and "decision" in the wording of his legal texts, which may result from the work of the appeals committees. According to Article 81, paragraphs three and four of the amended and supplemented Tax Procedures Law, we find that he adopts the term "opinion" (First section), while he adopts the term "decision" (Second section).

First Section : Lack of binding force, opinion

The legislator adopted the term "opinion" regarding the results reached by the appeals committees in performing their duties by bringing the viewpoints of the two disputing parties closer together, which is the most important guarantee of all, given that the complaint is considered to be both a party and a judge at the same time. It should be noted that this guarantee was wasted by making the legal nature of its work empty of its content, on the one hand, and on the other hand, given that those opinions do not have any legal value, and therefore have no authority against the tax administration, especially since these opinions are communicated to the taxpayer by the committee³⁰, and then the administration takes it upon itself to communicate to him the opinion that agrees with it as well³¹.

From here we can consider this optional procedure to be of no benefit, and therefore it has no effectiveness, as long as the Algerian legislator has classified it as merely an opinion, which is a negative feature added to the composition of these committees, which do not do justice to the taxpayer, given that they are of a purely administrative nature, especially the central ones³².

Second Section : Validating the opinion with the approval of the tax authority

The tax administration gives the opinion issued by the committee the character of an administrative decision. The provincial director of taxes or the director of large institutions are the ones who approve the opinions issued by the committees by means of approval decisions and notify the taxpayer of them. Accordingly, the content of the opinion belongs to the committee, while its form and appearance are attributed to the tax administration³³. Since the Algerian legislator did not recognize the tax appeal committees as having a legal personality, one of the effects of which is the right to litigation, meaning that they sue and are sued³⁴, the taxpayer or the tax administration cannot file a lawsuit against the opinions issued by them. This raises real problems in terms of their having the capacity to litigate.

In addition, the third paragraph of Article 81 of the Tax Procedures Law states that the provincial director of taxes or the director of major institutions is the one who issues the decision that agrees with the opinion of the committees and then informs the taxpayer of it, which leads to the conclusion that the tax administration issues the decision that agrees with the opinion of the committee and not that is identical to it, given the possibility of it issuing a reasoned decision that includes rejecting that opinion in the case of an explicit violation of a legislative or regulatory text³⁵, which gives it the green light for the possibility of its error or arbitrariness accordingly, and thus makes the rights of the taxpayer at their lowest levels and without real protective measures³⁶.

Second Requirement : The extent to which decisions of appeal committees are binding on the tax administration

The opinion does not have the character of being binding in the face of the tax administration, unlike the decision which is considered binding in the face of the person against whom it was issued, with the possibility of appealing it before the competent judicial authority. The Algerian legislator proceeded, considering whether the decisions of the committees are binding or not in the face of the administration, in a way in which he moves from relative bindingness (**First section**) to emptying those opinions of any legal value (**Second section**), thus making the role of the committee without any benefit from it, as in this way it leads to taxpayers refraining from resorting to it as an alternative way that does not bear fruit.

First Section : The principle of relative bindingness of appeals committee decisions through the administration's suspension of the implementation of the opinion

Returning to the rules of the Tax Procedures Law, specifically paragraph four of Article 81, we find that if a committee's opinion lacks a legal basis, the tax administration is responsible for suspending its implementation. This body (the administration) then files an appeal against the opinion with the administrative court. In addition to the theoretical framework, practical application is necessary to assess the binding nature of the opinions issued by the appeals committees and to determine the effectiveness of the appeal process. For example, when the State Council ruled on the tax directorate's appeal, it issued a decision stating, among other things, that while the law empowers the tax directorate to suspend the implementation of a committee's decision and file a lawsuit accordingly, the tax director's appeal lacked any legal basis, and therefore, the taxes could not be annulled on that basis³⁷.

He also followed the same approach in another decision³⁸, in which he explicitly acknowledged the rejection of the lawsuit filed by the tax administration for lack of grounds, given that the tax administration did not clarify or explain the violation committed by the committee. Accordingly, the State Council rejected that lawsuit for lack of grounds. Thus, we find that the judiciary is working to extend its control over the tax administration by deciding whether its appeal for annulment is grounds or not. In this latter case, the committee's decision becomes binding on the tax administration and the taxpayer, which works to support and enhance the degree of the committee's independence in facing the administration³⁹.

Second Section : Absence of the bindingness of the decisions of the appeals committees on the administration for issuing a dissenting opinion

The legislator moved from a state of relative obligation for the decisions of the committee to a state of zero obligation through the provision of Article 81, paragraph 4 of the Tax Procedures Law after its amendment by the Finance Law for the year 2016⁴⁰, which makes the role of the committees as an alternative way to settle the dispute amicably between the taxpayer and the tax administration without legal value, as the legislator went on the basis of the above that the opinions of the committees are considered valid except for those that violate the provisions of the legal and regulatory texts and the administration works to issue a decision of rejection regarding them, as violating the law means: **"explicit deletion of a legal text or the absence of a legal basis for imposing the tax such as: granting an exemption not stipulated by law or an exemption from a burden that is not exempt or justified"**.⁴¹

The legislator intended by the dissenting opinion that which was issued in favour of the taxpayer, even if it was not explicitly stated in the text, but it is understood from it in practice and in reality. Therefore, the committees will not decide anything new, but the situation will remain as it was before resorting to them⁴². This is understood to mean that the tax administration can declare the opinion to be contrary to the legal and regulatory texts in any case, which allows it to be arbitrary towards the taxpayer, especially in the case of canceling the disputed amount partially or completely, so that the administration works to issue the decision that is in accordance with the opinion issued by the concerned committee in the case that it does not explicitly contradict the legislative texts, and in the opposite case it does not cancel the opinion, but rather issues a decision regarding it to reject it and informs the taxpayer of it.

This is what the State Council adopted in its decision⁴³, as it stated in its reasoning that the dispute concerns the extent of the provincial director of taxes' right to cancel the decision of the appeals committee, and it is established in law that the administration has the right to suspend the opinion of the committee and not cancel the decision automatically.

It actually happened that the provincial director of taxes issued a decision related to canceling the opinion of the appeals committee, and on that basis the State Council issued a ruling stating that the administration had exceeded its powers and consequently violated what was stated in Article 80, paragraph 4 of the amended and supplemented Tax Procedures Law, and it also confirmed that the Algerian legislator authorized it to suspend its implementation and challenge its legitimacy before the competent judicial authority.

It is noted that the taxpayer's following of this optional path is not useful as long as the law has made an exception to the rule, granting it as a way for the administration to exercise a supervisory role over its work, which enables it to be arbitrary, especially in cases where the committee opposes its initial decision that includes total or partial rejection. In this way, the taxpayer does not find a way to achieve his demands, as the committee's opinion can be disregarded by the tax administration authority.

Conclusion

It is no secret that tax committees are an optional administrative mechanism for appeal by a taxpayer who is not satisfied with the decision issued by the tax administration related to the basis or collection of taxes. Through studying the role of these committees and the extent of their organizational and functional independence, we have reached several **results, the most important of which are :**

- The presence of tax appeal committees at three levels – provincial, regional, and central – distances the administration from the citizen rather than bringing it closer, in addition to burdening taxpayers, especially since making the appeal before the committees an optional procedure rather than a mandatory one, unlike the initial complaint, which is a visa to move to the next stages represented by the tax appeal committees or the competent judicial authority.
- Highlighting the limited independence of tax appeal committees from the tax administration through the representation of the administration, represented by the provincial director of taxes at the provincial committee level, the regional director of taxes at the regional committee level, and the director of large

institutions at the central committee level, where the taxpayer feels that he is still arguing before the tax administration and not before a neutral and independent body, on the one hand, in addition to the fact that most of the members belong to different administrations, which makes the law move in the direction of protecting the public interest and giving it great importance compared to the private interest of the taxpayer, on the other hand.

- The distribution of jurisdiction between the appeals committees according to the financial and organizational basis has made the hydrocarbons-affiliated companies appeal to the central committee in a traditional manner, not based on the tax declaration and payment which are done according to a digital system, but rather the taxpayer must be present when his requests related to total or partial rejection are studied by the tax administration, in order to embody the principles of face-to-face and defense, not to mention the presence of the committees at the level of the tax administrations, which restricts and weakens their independence.

- Granting the tax administration the power to suspend the implementation of the opinion of the party reduces its independence and the effectiveness of its role, as this leads to taxpayers refraining from resorting to it, knowing that the move from relative obligation to its absolute elimination leads us to move backwards regarding the guarantees of the taxpayer in dispute with the administration.

In light of these results, we offer the following recommendations :

- The need to create committees at the municipal and state levels and to maintain the presence of the central committee, as it is affiliated with the Directorate of Large Institutions located at the Ministry of Finance in the capital within the General Directorate of Taxes. This is approximately for the administration to be from the citizen and not the other way around.

- Noting that the membership of the provincial director of taxes, the regional director of taxes, and the director of large institutions should be as experts and not representatives as members within the human composition of the committees, in order to achieve the effectiveness of the principle of the independence of the committees from the tax administration.

- It would be preferable if the legislator introduced the issue of organizing meetings and sessions of appeal committees at the state level on a permanent basis, since the presence of the committees within the tax administration makes the taxpayer who is appealing feel that he is still appealing to the administration, which will make the degree of independence of the committees limited, weak and ineffective.

- The need to alleviate the burden on companies in the field of petroleum products, which the legislator has designated to submit their appeal to the Central Committee, by granting them the possibility of attending its sessions remotely in a digital format, in light of the tremendous technological development taking place.

- The Algerian legislator should be alerted to grant the appeals committees a real role by issuing decisions that have binding force against the tax administration and the taxpayer without giving the administration an interventionist role, which will enhance its independence. The legislator has two solutions : either to abolish the committees from the tax legislative system or to give them full authority to perform their tasks in order to achieve their organic and functional independence, so that they can achieve the expected role.

Footnotes:

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- ¹⁴- Zanati Farida, Op.cit. p.111.
- ¹⁵- Azouah Fatima, Op.cit. p.126.
- ¹⁶- Kouidimi Mohamed Amine, Boudiaf Samia, Op.cit. p.69.
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- ¹⁹- For further details, see :
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- ³⁴- See Articles 49 and 50 of Order n° 75-58 of September 26, 1975, containing the Civil Code, as amended and supplemented, General Secretariat of the Government. Available on : www.joradp.dz
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