

Tax litigation – unexploited opportunities

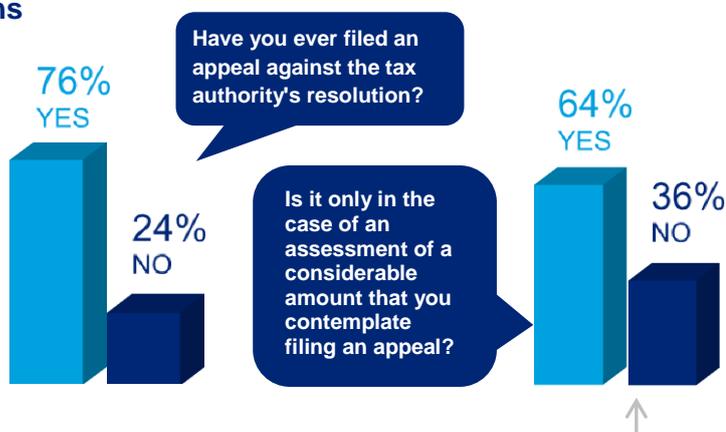
Survey on legal remedies in tax controversies

Today, Hungarian courts hearing public administration cases and the European Court of Justice both play an increasingly important role in establishing legal practice in the field of tax controversies. The appropriate mapping of potential legal remedies is ever more important if taxpayers want to take an effective stand against authority resolutions in contested matters.

Deloitte Hungary conducted a survey among Hungarian medium and large companies regarding legal remedy proceedings launched in tax issues to obtain a clear view of Hungarian legal practice and potential unexploited opportunities.

Appeals against tax authority resolutions

More than two thirds of responding companies have already received tax authority resolutions that **they have found** unlawful and worthy of appeal to the higher tax authority. Even though taxpayers frequently disagree with the tax authority's positions, **most companies only file appeals when the contested values are considerable.**



This is only logical; however, it is worth noting that there is the risk that if the taxpayer refrains from challenging a resolution involving a smaller value, the tax authority **may later conclude a tax audit with findings involving significant amounts on the same legal grounds, and the taxpayer then starts out in a much worse position when contesting the position.**

Judicial review and supervisory procedure

As opposed to filing appeals, companies are more reluctant to pursue other ways of legal remedy, i.e. **judicial reviews and supervisory procedures.** More than half of the respondents have never used any of the above options. As revealed by the survey, this is for the following three reasons: fear of high costs, lack of trust in courts and lack of information.

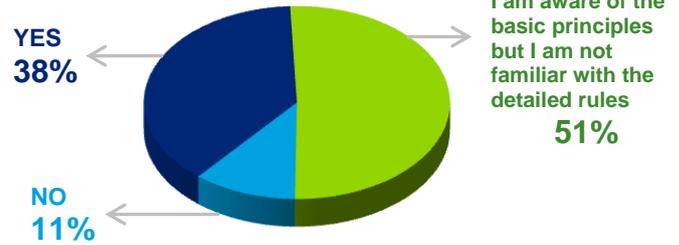


Introducing the option of legal remedy

With a view to successfully fighting authority resolutions, taxpayers must have a clear understanding of potential legal remedies. Even though most companies (78%) are familiar with the basic differences between various legal remedies, **more than half of the respondents (62%) are not sure about the detailed rules** and 11% are uncertain even about the basic provisions. We believe that an exact understanding of the detailed rules is essential for effectively fighting unlawful resolutions, and it is worth focusing on procedural issues (e.g. statute of limitations rules, reasons for exclusion) in addition to the substantive part of the resolutions.

Almost all respondents understand that EU regulations prevail in tax issues, too. However, like above, **only 55% have detailed information** in spite of the fact that recently **Hungarian taxpayers won several important tax cases before the European Court**.

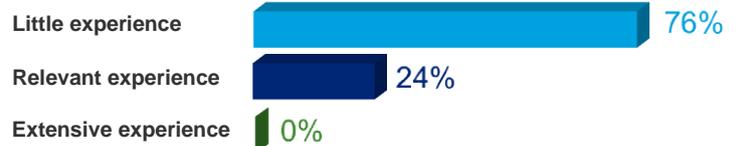
Are you aware of the differences between the various options for legal remedy?



Opinion on the courts

The significance of tax cases is clearly increasing in Hungarian court practice together **with the professional quality of judgments**. Despite the above, taxpayers, having experience with court proceedings, rather **had negative opinions about court expertise in tax issues**: only 24% say that courts are sufficiently experienced and 76% believe they are less experienced. Not one respondent thought that courts had significant experience.

In your opinion, what level of experience do courts have in deciding tax cases?



In spite of the positive tendencies in the expertise of courts, companies do not yet trust that court resolutions will go against authority positions. Our experience, however, shows that such fears are unjustified: contested authority resolutions may efficiently be challenged based on well structured and represented legal arguments. Other concerns are the length of procedures, the required resources and additional costs, which can be greatly reduced e.g. through a success fee arrangement or by engaging an expert who learned about the case already during the administrative phase. Taxpayers are typically not aware of the detailed rules (especially regarding court procedures) even though these are essential. If, however, one disposes of the appropriate technical knowledge and experience, challenging unlawful authority resolutions before the court should be considered; further, authority resolutions should also be reviewed in light of the provisions of EU law.

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