

Alternative dispute resolution in administrative matters – report by the Swedish Supreme Administrative Court

The Supreme Administrative court sees no reason to define alternative procedures differently to what has been proposed for the purpose of this questionnaire.

Introductory remarks

As will be evident from this report there is only one alternative dispute resolution mechanism within the field of administrative law. This single mechanism is exclusively concerned with taxation and to a large extent involves the Supreme Administrative Court. This is the reason why we have decided to structure our answer as a brief description of this procedure, rather than providing an answer to each of the questions in the questionnaire. We hope that our answer still will be helpful.

Alternative dispute resolution outside the scope of administrative law

Before going into the details of this specific procedure, it could briefly be mentioned that in Sweden there are various alternative methods for resolving disputes outside the area of administrative law. Many of these are entirely extrajudicial. Nevertheless, there are also dispute resolution mechanisms that have extrajudicial features, but are a purely procedural part of the general court's examination of a dispute (conciliation and mediation).

An important statutory procedure takes place at the National Board for Consumer Complaints. The National Board only examines disputes between businesses and consumers at the request of the consumer. The procedure, which also covers cross-border disputes, is written and free of charge to the parties. Deci-

sions by the National Board for Consumer Complaints take the form of recommendations to the parties on the way in which their dispute should be resolved.

For certain types of disputes there is a possibility of mediation. That is the case in employment disputes, tenancy disputes, disputes involving tenant-owners, rental disputes, copyright disputes and disagreements between spouses.

In several sectors, private initiatives have set up special boards. This is common in, for example, the insurance sector. The fields of activity of the various boards may vary somewhat, but in general it can be said that their function is often to work towards a flexible and impartial resolution of disputes between, for instance, an insurance company and a policyholder. Several boards in the insurance sector also have the task of working towards a uniform resolution of insurance cases, which reduces the number of disputes that arise. The boards have been formed primarily under agreements between different companies, but are fully independent of their instigators. The boards concentrate mainly on disputes between businesses and consumers.

Larger insurance companies often also have their own customer ombudsmen, who policyholders may contact if they are not satisfied with the company's decision on the settlement of a claim. The customer ombudsman is appointed by the company, but performs his duties independently of it.

An alternative dispute resolution mechanism for certain taxation issues

The only procedure, that could qualify as alternative, in regards to administrative matters, and as such connected to the Supreme Administrative Court, is the possibility for a taxpayer to ask for a binding advance tax decision from the Council for Advance Tax Decisions on the tax consequences of a planned transaction.

The purpose of the Council, a specially established independent authority, is to safeguard legal security by giving the taxpayer the possibility to know the tax consequences of a planned transaction that require a new or complex interpretation of a tax provision.

Following the application by the taxpayer, the Swedish Tax Agency is invited to participate as the other party before the Council. This is consequently an adver-

sarial procedure, i.e. what could possibly be described as a sort of trial in advance.

There is no guaranteed right for an applicant to obtain an advance tax decision. Issuing such a decision must be appropriate and expedient. The Council has a wide discretion in determining whether or not it is appropriate to issue an advance tax decision. It is very important that the envisaged facts are clearly stated in the application. A decision by the Council not to deliver an advance decision cannot be appealed.

The Council cannot ask for a preliminary ruling from the Court of Justice of the European Union (ECJ). It must, therefore, observe EU law but lacks the possibility to receive guidance on unclear EU law issues.

Both the taxpayer and the Swedish Tax Agency may appeal an advance decision directly to the Supreme Administrative Court. The Swedish Tax Agency may appeal even if its position was supported by the Council. The background to this is that the Swedish Tax Agency should be able to obtain a strong precedent from the Supreme Administrative Court.

The Supreme Administrative Court normally considers a case on its merits only after the Court has granted the appellant leave to appeal. In this special procedure no leave to appeal is necessary and the Supreme Administrative Court decides all such cases with priority.

The Court may dismiss an advance decision. The Court has a wide margin in this regard. The most common ground for this is that the Court does not find the facts referred to by the taxpayer to be clear enough. The Court annually dismisses approximately 20% of the appealed tax decisions.

The ordinary procedural rules apply to appeals against advance decisions. The Court therefore adjudicates the case from all relevant aspects. It can, for example, uphold the outcome, but correct the reasoning given by the Council.

The Court, on appeal, is of course competent to refer questions to the ECJ for a preliminary ruling in advance tax ruling cases.

Advance tax decisions have become very significant in generating precedents, not least because it opens a possibility to issue precedents regarding newly enacted tax acts.

The advance tax decision mechanism was introduced in Sweden around 60 years ago. At that time, no one had expected the institution to assume such great importance as a precedent-generating activity. The primary purpose was to provide the taxpayer with an opportunity to obtain a binding ruling and, therefore, legal certainty. The initial intention of the legislator was that the Swedish Tax Agency would supply the ruling, as in other countries. However, during the preparation of the proposal, it transpired that the relevant body should work in a “court-like way” with an adversarial procedure and that it should be possible to appeal the ruling directly to the Supreme Administrative Court.

However, the Court, on appeal, is competent to ask preliminary questions of the ECJ in advance tax ruling cases.