

14th IATJ ASSEMBLY

Paris, France

September 14, 2024

COURT MANAGEMENT

THE PANELISTS

- Akin Ajibola – Nigeria
- Mats Anderson – Sweden
- Anthony Gafoor – Trinidad Tobago
- Anette Kugelmüller-Pugh – Germany
- L. Paige Marvel – United States (Chair)

PANEL AGENDA

- I. Structure of each panelist's national tax court system
- II. Management of the Court as an Institution – In general
- III. Opinions and Decisions by Judges/Panels
- IV. Examples of Mgt. Challenges – Self-Represented TPs
- V. Examples of Mgt. Challenges – Large Complicated Cases
- VI. Unique Court Mgt. Issues, Challenges, and Special Features not covered already
- VII. Questions and Comments from the Audience

Organization of Slide Deck

- I. Introduction to the Panel and Panelists
- II. Slides by Country Arranged alphabetically
 - A. Germany
 - B. Nigeria
 - C. Sweden
 - D. Trinidad Tobago
 - E. United States

Court Management

Germany

Court Management

IATJ-Assembly 2024, Paris

Dr. Anette Kugelmüller-Pugh, Bundesfinanzhof, Germany

I. National Tax Court System in Germany

- Two tier structure:
 - ❖ 18 Courts of first instance in different parts of Germany; facts and points of law; professional judges and lay judges
 - ❖ Bundesfinanzhof (Federal Tax Court) in Munich as court of appeal; points of law only; specialised senates; professional judges only

II. Management of the Court as an Institution – In General

a. Operational Management – Who runs the Court?

- President of the Court: head of the court; representative role > external representation of the court
- Vice President: representative of the President; internal head of the court; head of H & R
- One presiding judge per senate

II. Management of the Court as an Institution – In General

a. Operational Management – Who runs the Court?

- Head of the administration (non-judicial):
 - ❖ Head of several departments (H&R, writing office, documentation, IT, press and public relations etc.)
 - ❖ Head of clerks: One service unit for two senates; four clerks per service unit; handling of the judicial side (incoming and outgoing cases; communication with the parties; communication with the judges; technical preparation of hearings)

II. Management of the Court as an Institution – In General

a. Operational Management – Who runs the Court?

- Court committees:
 - ❖ Presidium of the Court (§ 21a Judicial Constitution Act): President and another 8 judges as members; elected by fellow judges for 4 years; composition of the senates and distribution of cases
 - ❖ Presidential Council (§§ 54 and 55 German Judges' Act): President, Vice-President; 3 other judges as members; elected for 4 years; hearing before election of judges and nomination of presiding judges

II. Management of the Court as an Institution – In General

a. Operational Management – Who runs the Court?

- Court committees:
 - ❖ Judicial Council: 3 judges as members; elected for 4 years; in charge of general and social business of judges
 - ❖ Meeting of the judges: once per year; in charge of electing the members of the presidential and the judicial council
 - ❖ Staff Council: representation of the non-judicial court staff
 - ❖ Representation for disabled judges and disabled non-judicial court staff
 - ❖ Gender Equality Officer

II. Management of the Court as an Institution – In General

b. Management, Assignment and Calendaring of Cases and Motions

- i. How are cases and motions managed and assigned for disposition?
- Service units and clerks: electronic reception of cases; responsibility of each senate; communication with the presiding judge of the panel; exchange of written (electronic) communication with the parties; preparing the case to be assigned to a reporting judge

II. Management of the Court as an Institution – In General

b. Management, Assignment and Calendaring of Cases and Motions

ii. What factors determine the selection of or assignment to a judge?

- Reporting and co-reporting judge for each case
- Strict distribution according to a (technical) plan of distribution of cases for a whole calendar year
- Set up of plan of distribution before the start of a calendar year
(Obligation by Art. 101 German Constitution: Parties must know beforehand which judge to decide on their case)

II. Management of the Court as an Institution – In General

b. Management, Assignment and Calendaring of Cases and Motions

- iii. If the court system assigns to single judges or a panel, how is that decision made and why?
 - In general cases supposed to be heard by the full panel/senate
 - Federal Tax Court: In general no assignment of cases to a single judge (except for small cases re court costs)

II. Management of the Court as an Institution – In General

b. Management, Assignment and Calendaring of Cases and Motions

- iii. If the court system assigns to single judges or a panel, how is that decision made and why?
 - Tax Courts of First Instance: § 6 German Procedural Code: A case may be assigned to a single judge if
 - ❖ the matter does not present any particular difficulties of a factual or legal nature and
 - ❖ the case is not of fundamental importance
 - ❖ a written decision by the fully panel to transfer the case to the single judge is obligatory

II. Management of the Court as an Institution – In General

b. Management, Assignment and Calendaring of Cases and Motions

- iii. If the court system assigns to single judges or a panel, how is that decision made and why?
 - Tax Courts of First Instance: § 6 German Procedural Code:
 - ❖ No assignment to a single judge in general if the case was already heard by the full panel
 - ❖ Possibility of reassignment in case of a change in the process situation
 - ❖ No re-reassignment to a single judge afterwards

II. Management of the Court as an Institution – In General

b. Management, Assignment and Calendaring of Cases and Motions

iv. What features of this process are most effective in helping the court manage its case inventory?

- After assignment the single judge is „the master of the case“:
- ❖ Decision on whether to pursue in written or schedule a mediation meeting
- ❖ Scheduling of oral hearing
- ❖ Writing and announcement of judgment

III. Opinions and Decisions by Judges/Panels

- a. How is consistency and uniformity achieved?
 - Federal Tax Court: Cases are in general assigned to the full panel
 - ❖ 5 professional judges for appeals
 - ❖ 3 professional judges for non-appeal complaints
 - ❖ Preparation of a written report by the reporting judge on each case and a co-report by the co-reporting judge
 - ❖ Insuring that the proposed decision is in accordance with the jurisdiction of the court/panel/senate (e.g. citing of previous decisions in the report and judgment later on)

III. Opinions and Decisions by Judges/Panels

- a. How is consistency and uniformity achieved?
 - Federal Tax Court: Cases are in general assigned to the full panel
 - ❖ Each case to be discussed in long and full before oral hearing, usually 2 weeks before the oral hearing
 - ❖ If the topic touches the responsibility of another panel/senate: informal contact with the other panel to try to harmonise the jurisdiction; or formal approach: Grand Chamber of the Federal Fiscal Court (§ 11 Court Procedure Code), President of the court and another 10 judges as members; formal binding decision on the point of law

III. Opinions and Decisions by Judges/Panels

b. Is forum or judge shopping an issue in your court?

- Neither forum nor judge shopping is possible in German Tax Law

IV. Examples of Management Challenges – Self-Represented Taxpayers

a. Case Filing by Self-Represented Taxpayers

- Federal Fiscal Court:
 - ❖ In general no self-representation possible (§ 62 IV Court Procedure Code); representation by lawyer or accountant obligatory
 - ❖ Self-representation possible when applying for legal aid; if legal aid is granted the taxpayer will have his representative (either self-chosen or assigned by the court) paid for too

IV. Examples of Management Challenges – Self-Represented Taxpayers

a. Case Filing by Self-Represented Taxpayers

- Tax Courts of First Instance:
 - ❖ Self-Representation possible at any stage of the procedure (filing of the lawsuit, communication with the court, attendance in oral hearing)
 - ❖ Self-represented taxpayer has to file claim electronically; help granted by the clerk
 - ❖ Content of the claim: self-represented taxpayer has to present his/her arguments in a way a lay person is able to

IV. Examples of Management Challenges – Self-Represented Taxpayers

a. Case Preparation and Trial including Self-Represented Taxpayers

- Tax Courts of First Instance:
 - ❖ Sufficient, if taxpayer briefly names his/her argument and encloses the final administrative decision by the Inland Revenue he/she is appealing against
 - ❖ Court in general has to find facts and points of law ex officio > both arguments in favour of and against the taxpayer and the Inland Revenue
 - ❖ Guidance through the whole process (e.g. formulating the correct appeal that covers maximum rights for the taxpayer; how to conduct him-/herself during the oral hearing; notice of a waiver to an oral hearing)

V. Examples of Management Challenges – Large Complicated Cases

a. Tools developed to assist the Court and Litigants

- No special tools for large/complicated cases/cases with similar issues
- Every case, regardless of its size and the amount of tax involved, is in general treated in the same way (application process; exchange of written opinions amongst the parties to the case; preparation of report and co-report; scheduling of an oral hearing)
- In general the processing of cases in a chronological order is advised to keep the duration of proceedings fair and equal to all taxpayers
- Every judge has an inventory/mixture of smaller and larger/numerous cases and has to time-manage them in the best way

V. Examples of Management Challenges – Large Complicated Cases

b. Problems encountered in resolving large numbers of cases with special issues

- During the process of application and assignment of cases to the reporting judge, the clerk as well as the judges to the panel/senate try to identify cases with similar issues
- Cases with similar issues ideally to be worked on, heard, and decided upon together (ideally assigned to the same pair of reporting/co-reporting judge to keep the workload efficient; chronological order may be broken up)
- Difficulties in drafting the judgment: Ensuring that the same wording/formulation is used in all judgments whilst being tailored to the specific case/taxpayer > team work of judges and clerk

VI. Unique Court Management Issues, Challenges and Special Features not covered already

- Specific assignment of incoming cases to a judge by a technical system in place before each calendar year
- ❖ Pro: Meet the constitutional criteria of codifying which judge will decide a specific case; fair, foreseeable and equal system for all taxpayers > no „judge shopping“ possible
- ❖ Contra: Inflexibility; static system in place for the whole calendar year; no possibility to react during the year if one panel/senate has a lot more incoming cases than other panels > different workload amongst judges and varying duration of procedure as unavoidable consequences

Court Management

Nigeria

IATJ 14th Assembly

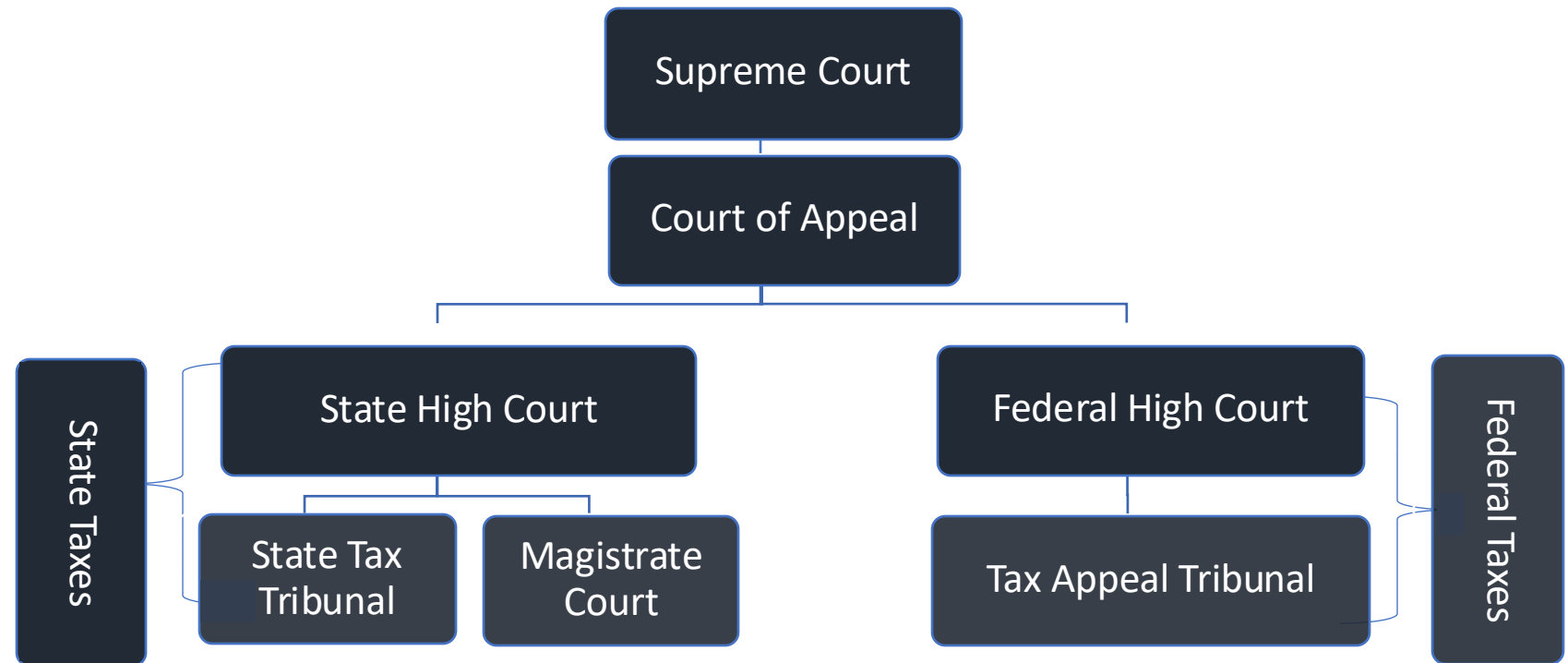
Paris, France



Akinmade Ajibola
Chairman, Tax Appeal Tribunal, Nigeria

Structure of national tax court system

NIGERIA



II. Management of the Court

a. Operational Management – Who runs the Court?

Tax Appeal Tribunal Chairman of Zone is judicial Head of Zone

Federal High Court – Chief Judge

Court of Appeal – President

Supreme Court – Chief Justice who is overall head of the judiciary.

II. Management of the Court

How are cases and motions managed and assigned for disposition?

b. Management, Assignment, and Calendaring of Cases and Motions

Tax Appeal Tribunal - Cases are filed at the zone in which the dispute arose. Motions can be held in Chambers or in open Tribunal during a hearing date. Chairman is in charge of his Tribunal's calendar for cases and motions.

Other Courts

Case allocation is administrative and is usually as directed by the Head of Court or as may be delegated to any designated Administrative judge.

Federal High Court – Chief Judge/Administrative judge distributes cases to judges

Court of Appeal – President of Court of Appeal/Administrative judge - composes panel

Supreme Court – Chief Justice of Nigeria, who is overall head of the judiciary – composes panel

II. Management of the Court

ii. What factors determine the selection of or assignment to a judge?

In TAT the cases are heard by full panel of five or minimum of three Tax Commissioners

In regular courts cases are allocated to specific judges by the head of the court or the administrative judge of each court in the relevant judicial division of the court. Allocations are often made based on the following considerations, to wit: (i) the subject matter of the suits; (ii) the complexity of the matters vis-à-vis the experience of the judges; and (iii) the number of cases already assigned to a particular judge.

II. Management of the Court

iii. If the court system assigns to single judges or to a panel, how is that decision made and why?

TAT – Panel of 3 or 5. Decisions are to be either unanimous and if so must be stated, if not it can be with a majority and the Chairman has a casting vote. No dissenting opinions are permitted.

Federal High Court – Single judge

Court of Appeal – Panel of 3. Majority decision

Supreme Court – Panel of 5 to determine most matters and panel of 7 member for constitutional matters. Majority decision

II. Management of the Court

iv. What features of this process are most effective in helping the Court manage its case inventory?

Having to get a consensus is more time consuming. Sometimes individual Commissioner or judge will prepare a draft and the rest will concur or argue against. The Chairman will finalise the judgment

III. Opinions and Decisions by Judges/Panels

- a. How is consistency and uniformity achieved?**
 - Tax Appeal Tribunal – decisions are taken by a minimum of five-member panel of tax commissioners. regular retreats to discuss contemporary issues. Judgments are compiled. Law Reports

III. Opinions and Decisions by Judges/Panels

b. Is forum or judge shopping an issue in your court? If so, what does your court do to minimize or eliminate it?

- Tax Appeal Tribunal - Forum shopping is an issue because jurisdiction include is vested in the Tribunal and also in the regular courts (e.g. Federal High Courts). Taxpayer can decide which he chooses, but judgment of the FHC is that the TAT should be first instance.
- Court shopping is not an issue for the Tax Appeal Tribunal as there is only one court for each zone of the Tribunal

IV. Management Challenges – Self-Represented Taxpayers

- a. Case Filing by Self- Represented Taxpayers (for example, how is it done? What has your court done to simplify and improve this process?, etc.)**

Case filing process is the same for both self-represented taxpayer and represented taxpayer. But Tribunal can relax rules.

IV. Management Challenges – Self-Represented Taxpayers

The TAT Rules provide:

- **ORDER XXV—Miscellaneous**

1. While considering an appeal, the Tribunal may not be confined to the issues raised in the appeal, but may have the power to consider any matter arising out of or relevant to the appeal :

Provided that both parties to the appeal shall be given an opportunity to be heard on such matters raised.

- **Power of the Tribunal to consider issues suo motu.**

2. The Tribunal shall at any stage of proceedings, issue such directions or orders as it may consider appropriate to meet the justice of the case and, in so doing, shall place emphasis on substance rather than form.

- **ORDER XXVI—Irregularities**

1. An irregularity resulting from failure to comply with the provisions of these Rules or any direction issued by the Tribunal before a decision is given or an error of a clerical nature shall not of itself render the proceedings void.

2. The Tribunal may, upon the irregularity being brought to its attention, give such directions as it deems fit to cure the irregularity before delivering its decision.

IV. Examples of Management Challenges – Self-Represented Taxpayers

- b. **Case Preparation and Trial (for example, what things has your court done to help self-represented taxpayers and the Court submit a proper record)**
- The Rules have introduced pre-trial conferences where the Tribunal can review the process filed by the parties and give directions and time to cure any defects. The Rules provide as follows
- **ORDER XVII—Hearing**
 - 1. *The Tribunal shall have the power to conduct its proceedings in a manner it deems fit to ensure speedy dispensation of justice.*
 - 2. *The Tribunal shall have the powers to conduct a pre-trial conference for the purpose of narrowing down the issues before trial and facilitate settlement.*

V. Examples of Management Challenges – Large Complicated Cases

a. Tools developed to assist the Court and Litigants

- **ORDER XV—Documents Only Procedure**

1. At any time before the commencement of trial, the Parties may make application for the Documents Only Procedure as in Form TAT 6 in the determination of the appeal and by so doing agree for the appeal to be decided by such procedure.

- E filing
- Virtual hearings
- Consolidation of cases
- Order accelerated hearing of cases.

V. Examples of Management Challenges – Large Complicated Cases

b. Problems encountered in resolving large numbers of cases with similar issues

Two or more proceedings may be consolidated. The civil procedure rules of most courts typically provide that the court may, upon application, consolidate several actions pending before it where it appears that the issues in the suits are the same and may be properly tried and determined at the same time. The order to consolidate may be made where more than one action is pending between: (i) the same claimant and defendant; (ii) the same claimant and different defendants; (iii) different claimants and the same defendants; or (iv) different claimants and different defendants, where the right to relief claimed in each independent action is borne out of the same or series of transactions, provided that where the same claimant brings an action against different defendants, the actions will not be consolidated without the consent of all parties unless the issues to be tried are identical.

V. Examples of Management Challenges – Large Complicated Cases

b. Problems encountered in resolving large numbers of cases with similar issues

TAT Rules provide for Case Stated procedure but only available to the tax authority or where a person requests the tax authority to do so and they agree to bring a case.

ORDER XV – Case Stated Procedure

4. Notwithstanding the provisions of these Rules, the Service on its own initiative or upon the request of any person directly affected by a decision of the Service may refer any question as to the interpretation of tax laws listed in the Act or reserve any question of law for the consideration of the Tribunal in accordance with Form TAT 7.

VI. Unique Court Management Issues, Challenges, and Special Features not covered already

TAT Chairman superintends over panel and can manage his cases, sitting periods and case scheduling as he deems fit.

VII. Questions and Comments from the Audience.



Court Management

Sweden

Court Management – Sweden

Mats Anderson



HÖGSTA FÖRVALTNINGSDOMSTOLEN
SVERIGES DOMSTOLAR

The General Courts in Sweden

General Courts

General
Administrative
Courts

The Supreme
Court

The Supreme
Administrative
Court

Courts of
Appeal

Administrative
Courts of
Appeal

District Courts

Administrative
Courts

The Supreme Administrative Court and the lower administrative courts

The Supreme Administrative Court



4 administrative courts of appeal



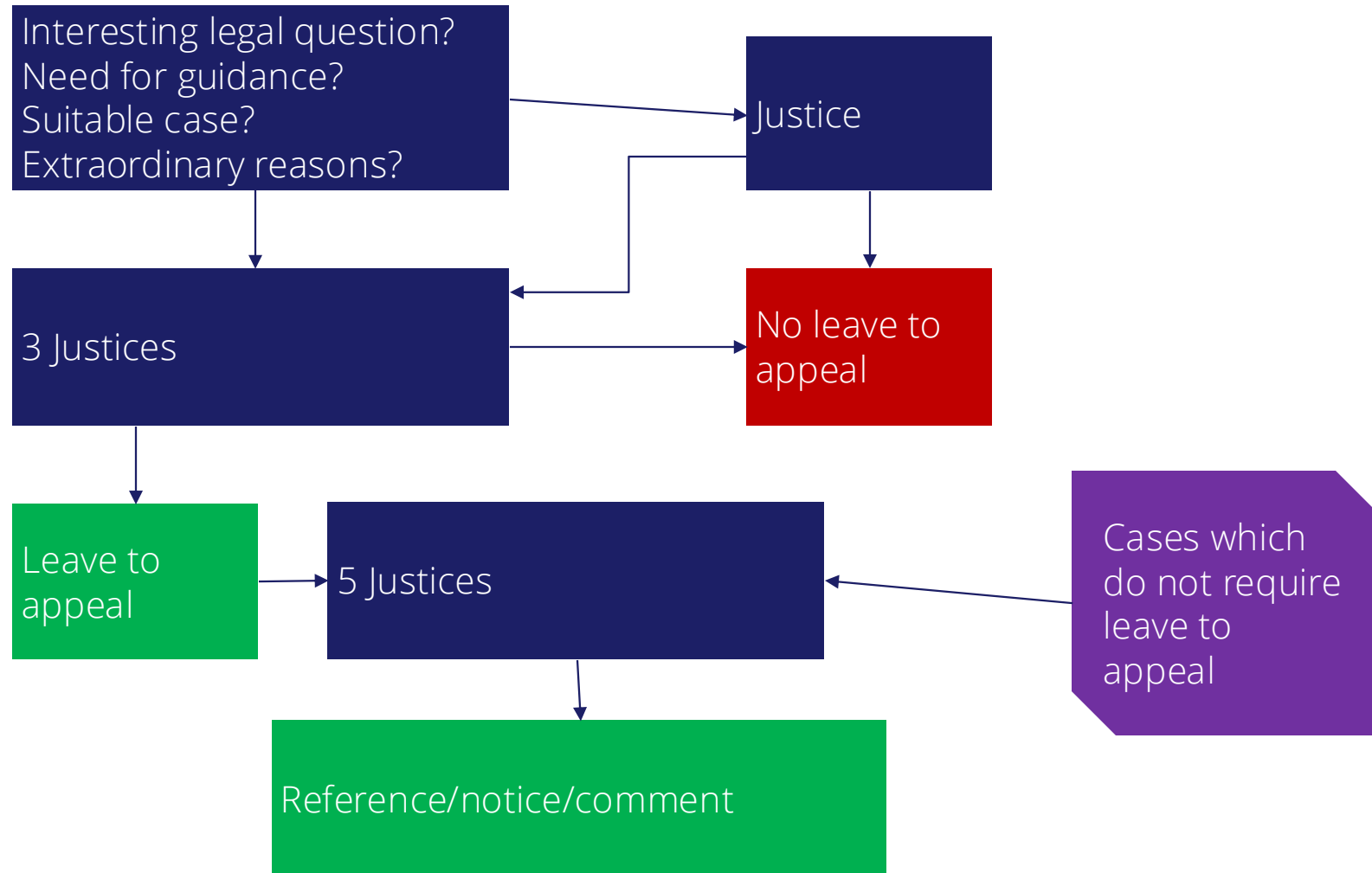
12 administrative courts

Leave to appeal

- Leave to appeal is required in nine out of ten of the approximately 7,500 cases which reach the Supreme Administrative Court each year
- Leave to appeal is granted in less than 2% of the cases

How precedents are made

Leave to appeal may only be granted if there is a need for precedent (or for extraordinary reasons)



**Advance tax rulings
do not require leave
to appeal**

The Swedish Tax
Agency

The Supreme
Administrative
Court

The Board for
Advance Tax
Rulings

Taxpayer

Justice and President of the Supreme Administrative Court,
Chair of First Chamber

First Chamber

Justices

Second Chamber
Chair of Chamber

Justices -----

Administrative Director

Administrative Junior Judges

Communication Officer

Drafting Division 1
Head of Drafting
Division -----

Judge Referees
Drafting Law Clerks
Court Clerks

Drafting Division 2
Head of Drafting
Division -----

Judge Referees
Drafting Law Clerks
Court Clerks

Drafting Division 4
Head of Drafting
Division -----

Judge Referees
Drafting Law Clerks
Court Clerks

Administrative
Division
Head of -----

Administration
Librarian
Archivists
Archives Officer
Accounts/Salary
Administrator
Administrative Officers
Operations Managers

Procedure (generally applicable)

- The procedure is in principal in writing
- Unconditional right to oral hearing in certain cases (such as tax penalty cases)
- No rules on how taxpayers should be represented
- The tax court has an obligation to guide the parties

Court Management

Trinidad Tobago

COURT MANAGEMENT: THE TAX APPEAL COURT OF TRINIDAD AND TOBAGO (SUPERIOR COURT OF RECORD)

The Tax Appeal Court of Trinidad and Tobago is a specialized superior court of record, tasked with adjudicating disputes related to taxation. As a superior court, its decisions have significant legal weight and can set precedents that impact future cases. This court is a critical component of the Trinidadian legal system, ensuring fairness and consistency in the application of tax laws.

Established within the broader judicial framework, the Tax Appeal Court plays a key role in safeguarding the interests of both taxpayers and the government. The court's decisions help to clarify and interpret tax legislation, promoting transparency and accountability in the tax system. This court is not only a judicial body, but also a vital institution that contributes to the overall stability and development of the country's economy.

Dr. Anthony Gafoor, Chair and Chief Judge





Civil Court Hierarchy of Trinidad & Tobago

1

1. Caribbean Court of Justice (CCJ)

The CCJ is the highest court in the Caribbean. It is the final court of appeal for Trinidad & Tobago. The CCJ hears appeals from the Court of Appeal.

2

2. Judicial Committee of the Privy Council (JCPC)

The JCPC is the highest court of appeal for Trinidad & Tobago. It is also the highest court of appeal for other Caribbean countries. However, Trinidad & Tobago is currently in the process of transitioning from the JCPC to the CCJ.

3

3. Court of Appeal

The Court of Appeal is the second highest court in Trinidad & Tobago. It hears appeals from the High Court. The Court of Appeal is comprised of the Chief Justice and other Justices of Appeal. It deals with both civil and criminal matters.

4

4. High Court/Tax Appeal Court

The High Court is the main trial court in Trinidad & Tobago. The High Court deals with a wide variety of civil and criminal matters. The Tax Appeal Court exercises all the powers of the High Court.

Court Management Structure



Chief Judge

The Chief Judge leads the Tax Appeal Court. He is responsible for policy decisions and managing the court. The Chief Judge acts in consultation with the Registrar, who is also the Accounting Officer.



Registrar

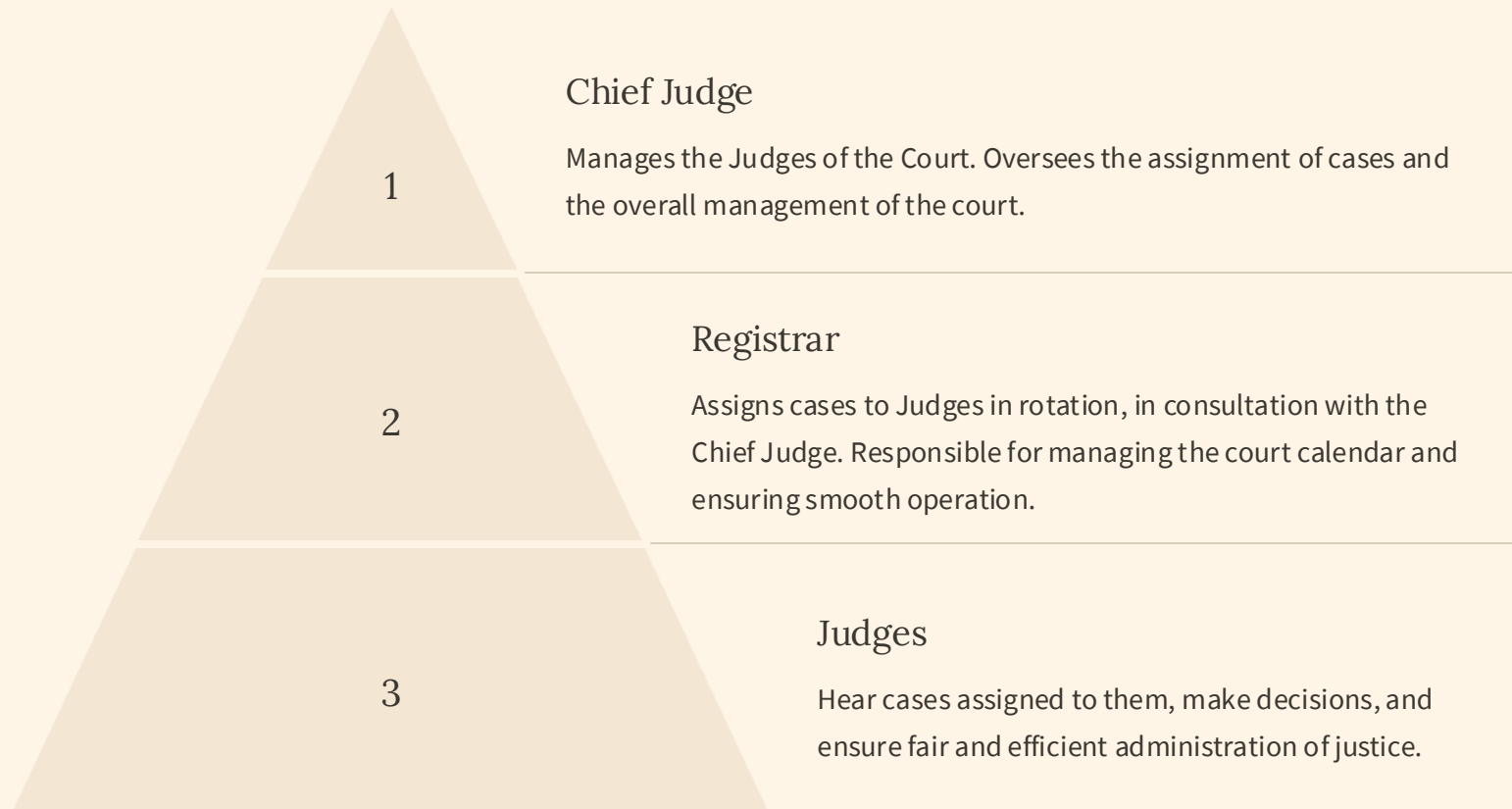
The Registrar of the Tax Appeal Court oversees administrative functions, including finances, information technology, and recording hearings. The Registrar represents the court before the Public Accounts Committee of Parliament.



Administrative Team

The Registrar is assisted by a team of professionals who manage the daily operations of the court. This team is responsible for tasks such as accounting, information technology, and recording hearings.

Case Management Process



Cases are assigned to Judges in a systematic manner to ensure fairness and impartiality. The Registrar, in consultation with the Chief Judge, plays a key role in this process. They consider factors such as the nature of the case, the expertise of the Judge, and the availability of the Judge to ensure an appropriate allocation.

The Chief Judge may also assign Judges to cases directly, especially if there are concerns about potential conflicts of interest. Counsel may also bring concerns about conflicts of interest to the attention of the Bench, ensuring impartiality and integrity in the judicial process.

Consistency in Decisions

Unanimity and Uniformity

The High Court of Trinidad and Tobago aims for consistent and uniform decisions. To achieve this goal, the Court prioritizes unanimity. Judges will discuss and amend draft decisions collaboratively. This collaborative process helps to ensure that the final decision reflects a collective understanding and interpretation of the law. The Court acknowledges that a dissenting opinion may be filed, reflecting a different judicial perspective.

Chief Judge's Role

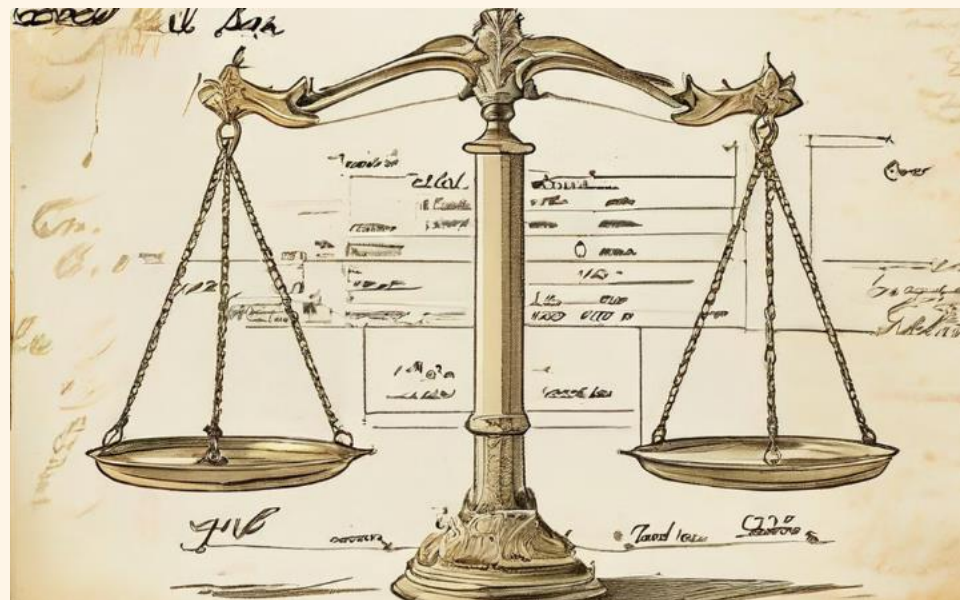
The Chief Judge plays a pivotal role in ensuring consistency in decisions. The Chief Judge has the authority to determine which judge will prepare a draft decision, reflecting the Chief Judge's assessment of expertise and workload. Ultimately, the Chief Judge determines the final decision of the Court. The Chief Judge's authority extends even to situations where there are dissenting opinions, ultimately deciding what constitutes the official decision of the Court.

Forum Shopping Issues



Dual Jurisdiction

While the Tax Appeal Court handles tax-related appeals, some issues involving constitutional challenges or judicial reviews are dealt with in the general civil court. This dual jurisdiction can lead to strategic filing decisions by parties.



Forum Shopping Concerns

Forum shopping arises when parties attempt to select the court they believe will provide the most favorable outcome. The Tax Appeal Court's structure, dealing specifically with tax matters, may attract parties hoping for a more favorable ruling.



Self-Represented Taxpayers

Procedural Guidance

Self-represented litigants (SRLs) can navigate the court process independently. The Court provides procedural guidance through practice directions, brochures, and Registrar assistance. The Revenue authorities may also provide information and engage with SRLs.

Independent Counsel

While the Court and Revenue authorities offer support, SRLs are advised to seek independent legal counsel. This ensures access to professional expertise and comprehensive legal representation. SRLs should understand the complexities of the legal system and the importance of skilled legal representation.

Corporate Entities

Corporate entities, due to their complex legal structures, are required to appear in court through qualified legal counsel. This ensures appropriate representation and adherence to legal regulations governing corporate entities in court proceedings.

Bipartisan Hearings

The Court allows bipartisan hearings to amend pleadings, even if SRLs subsequently engage legal counsel. This ensures fair and equitable proceedings, allowing both parties to present their arguments and ensure a proper legal outcome.

Case Preparation Resources

1

1. Subscription Database

The Court offers a subscription database accessible to all users for a fee. This comprehensive resource provides access to relevant legal documents, case histories, and legal precedents. Users can leverage this information to prepare their cases effectively.

3

3. Court Bulletins

The Court Library prepares bulletins highlighting significant cases, disseminated to all stakeholders. These bulletins provide timely updates on legal developments and critical decisions, empowering users to stay informed and prepare their cases effectively.

2

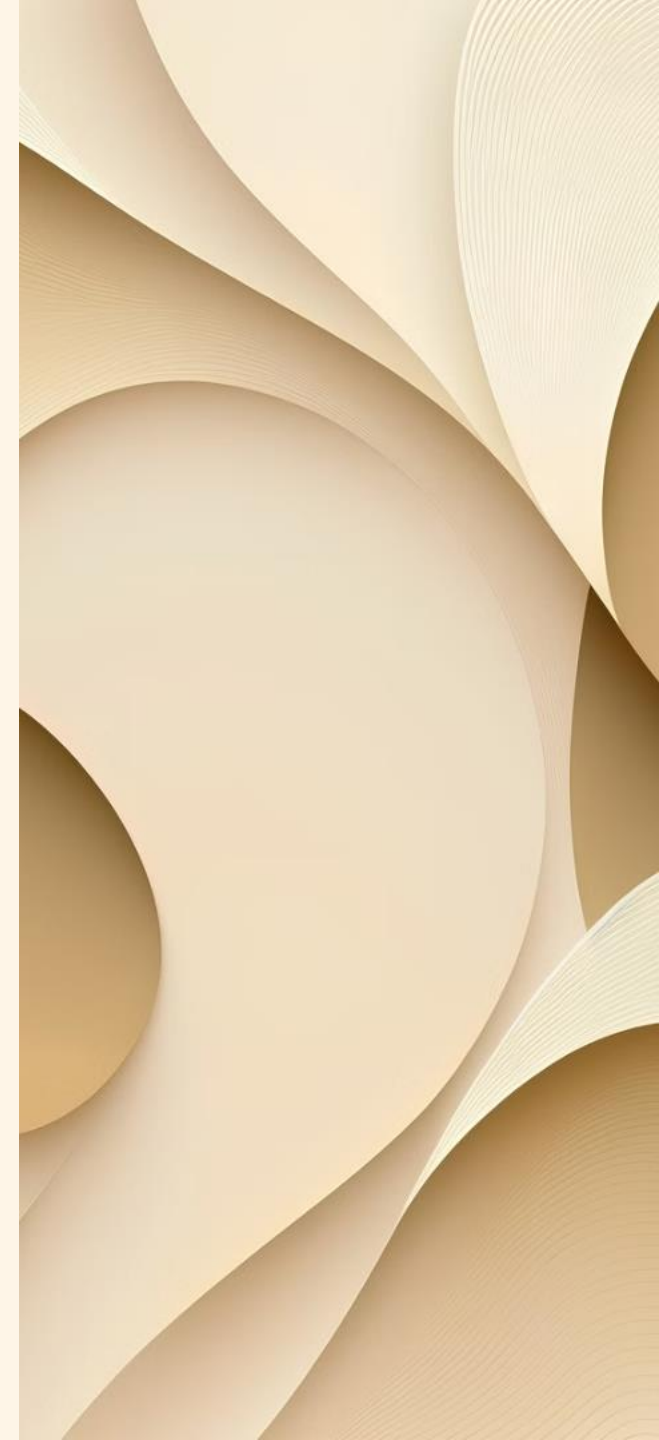
2. Anonymized Law Reports

The Court publishes anonymized law reports to ensure public access to judicial decisions. These reports offer valuable insights into legal interpretations and precedents. The reports are accessible to anyone, providing transparency and promoting legal understanding.

4

4. Case-Specific Guidance

The Court may draw attention to relevant decisions during oral or written submissions. This ensures that parties are aware of pertinent legal interpretations and precedents relevant to their specific case, facilitating informed decision-making and case preparation.



Managing Complicated Cases

Streamlining Case Management

The Tax Appeal Court of Trinidad and Tobago actively manages its caseload by adhering to the Court's Act and Rules. The Court employs a robust database to track and manage cases. These tools ensure the efficient and effective handling of complex litigation, particularly cases that may involve extensive documentation and multiple parties.

Leveraging Resources

The Court utilizes various resources to assist in case management, including legal precedents from other Commonwealth jurisdictions. These resources are valuable in providing guidance and precedent for judges and legal professionals in handling complex cases. The Court also relies on its Practice Directions, which serve as a supplement to the Court's Act and Rules to provide clarity on procedural matters.

Resolving Similar Issues



Case Consolidation

The Court consolidates cases with similar issues for efficiency. This streamlines the process by combining hearings and rulings. It helps to reduce the burden on the Court and ensures consistency in decision-making.



Discussions and Agreements

The Court encourages out-of-court discussions and encourages parties to reach partial agreements. This helps to resolve disputes amicably and reduce the need for formal litigation. This can save time and resources for both parties and the Court.



Lead Case Determination

Parties can identify issues that would benefit from a lead case determination. The Court may choose to focus on specific issues in a lead case, providing guidance for similar cases. This avoids unnecessary litigation and ensures consistent legal interpretations.



Unique Court Management Issues, Challenges, and Special Features not covered already

Cross-Referencing Rules

The Court is bound by its own Act and Rules. However, it can also rely on the general Civil Proceedings Rules to determine a matter. The Court can also encourage parties to adhere to the general rules, especially when it comes to costs.

Enforcement Challenges

The Court faces challenges in enforcing its decisions. There have been instances where parties have not complied with court orders. In such cases, the Taxpayer can bring the matter back before the Court.

Contempt Proceedings

Non-compliance with court orders can lead to contempt proceedings. The Court can also award statutory interest to the Taxpayer in these situations. These actions are crucial for upholding the rule of law and ensuring compliance with court decisions.

Judgment Review

After delivering a judgment, the Court may schedule a review date. The purpose of the review is to ensure that the Court's decisions have been implemented. These reviews serve as a mechanism for monitoring compliance and addressing any potential issues that may arise.

Court Management

United States

United States Tax Litigation – In General

66

- ▶ In the United States, a tax case may be brought and tried in 3 different courts – the United States Tax Court, the United States Claim Court, and the United States district courts
- ▶ In order to litigate a tax case in the Claims Court or one of the geographically based district courts, a taxpayer must pay the disputed liability and file a claim for refund before filing suit

United States Tax Litigation – in General (cont.)

- ▶ In the Tax Court, a taxpayer may file suit to contest a tax liability without paying first
- ▶ Probably for that reason, the Tax Court hears the vast majority (over 90-95%) of all tax disputes filed in U.S. courts
- ▶ For this reason, these slides will focus on Tax Court litigation

UNITED STATES TAX COURT

68

- ▶ The United States Tax Court is an Article I court that began life as an executive agency, the Board of Tax Appeals, in 1924
- ▶ It hears the vast majority of tax cases decided by the Federal courts
- ▶ It is the only Federal court where the taxpayer does not have to pay to play, i.e., to pay the tax liability before litigating it
- ▶ It is a specialized court that hears only tax cases and cases related to tax
- ▶ Unlike the generalist judges on the district courts and the Claims Court, Tax Court judges have substantially greater tax expertise
- ▶ The Tax Court “is not an agency of, and shall be independent of, the executive branch of the Government.” IRC sec. 7441

UNITED STATES TAX COURT

69

- ▶ The United States Tax Court is an Article I court that began life as an executive agency, the Board of Tax Appeals, in 1924
- ▶ It hears the vast majority of tax cases decided by the Federal courts
- ▶ It is the only Federal court where the taxpayer does not have to pay to play, i.e., to pay the tax liability before litigating it
- ▶ It is a specialized court that hears only tax cases and cases related to tax
- ▶ Unlike the generalist judges on the district courts and the Claims Court, Tax Court judges have substantially greater tax expertise
- ▶ The Tax Court “is not an agency of, and shall be independent of, the executive branch of the Government.” IRC sec. 7441

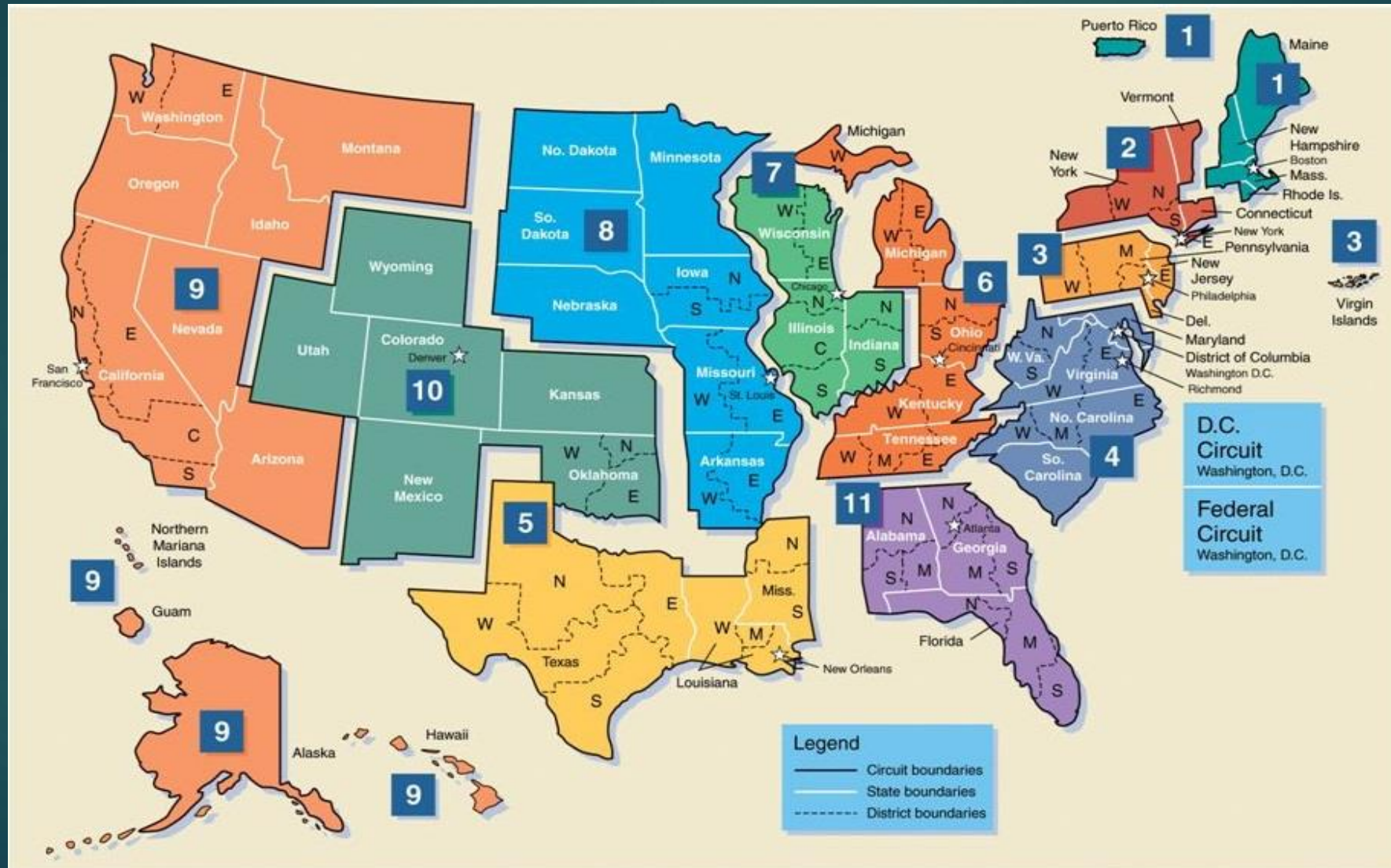
UNITED STATES TAX COURT – JURISDICTION

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- ▶ The Tax Court's jurisdiction is statutorily based
- ▶ Its jurisdiction includes:
 - ▶ Income, estate, gift, and certain excise tax deficiency cases
 - ▶ Declaratory judgment authority
 - ▶ Partnership litigation
 - ▶ Interest abatement actions
 - ▶ Collection due process cases
 - ▶ Whistleblower cases
 - ▶ Section 6015 relief cases

Map of U.S. Courts of Appeals

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UNITED STATES TAX COURT – APPELLATE REVIEW

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- ▶ The Tax Court's opinions are reviewed by the Courts of Appeals for every circuit except the Federal Circuit [IRC sec. 7482(a)(1)]
- ▶ The Tax Court's opinions may also be reviewed, if certiorari is granted, by the United States Supreme Court
- ▶ Certain interlocutory orders may be appealed [IRC sec. 7482(a)(2)]
- ▶ Venue for appellate purposes is determined under IRC sec. 7482(b)
 - ▶ Venue for an individual taxpayer is the circuit where the legal residence of the taxpayer is located
 - ▶ Venue for a corporation is the circuit where the principal place of business or principal office or agency of the corporation is located

Management of the Tax Court as an Institution – In General

- ▶ Operational Management – Who Runs the Court?
 - ▶ The Tax Court is managed by a Chief Judge, who has broad authority to establish operational policies for the Court.
 - ▶ The Chief Judge, with the assistance of the Clerk of the Court and his/her staff, issues trial calendars, assigns judges to trial sessions, assigns motions and cases that require special handling, and coordinates Court Conference matters.
 - ▶ The Chief Judge also assigns judges and staff to various Court committees, which assist the Chief Judge in various matter.

Court Management – Case Management, Assignment & Calendering

- ▶ As a general rule, cases are calendered for trial in a city that the taxpayer selects when the taxpayer files a petition.
- ▶ Calendars are cut for each city and cases are usually assigned to calendars on a first in, first out basis.
- ▶ Regular and hybrid trial sessions are organized into three “terms” – fall (Sept. - Dec.), winter (Jan. – Mar.), and spring (April – June). A judge is assigned to each trial session by the Chief Judge on the basis of a judge’s preference, seniority, and other factors.

Court Management –Assignment and Calendering (cont.)

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- ▶ Some cases and motions are assigned directly to a judge by the Chief Judge because they require special handling. Once the motion or case is assigned, the judge decides when and how the case or motion will be decide.
- ▶ A judge may set a special trial session or hearing in an assigned case.
- ▶ Assignments are generally made without regard to any specialty or experience that a judge may have.

Court management – Assignment and Calendaring (cont.)

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- ▶ Although the Chief Judge has statutory authority to assign a case or cases to a panel or division of judges, it has rarely if ever been done.
- ▶ The Chief Judge may refer the opinion/decision in a case to the Court Conference for its consideration and vote.

Opinion and Decisions by Judges

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- ▶ Consistency and uniformity in the opinions/decision of the Tax Court are achieved in various ways:
 - ▶ The Chief Judge with the assistance of the Court's legal staff read every opinion before it is released, and offers comments, suggestions, etc.
 - ▶ The Chief Judge may refer an opinion to the Court Conference for full discussion and a vote.
 - ▶ The judges apply the stare decisis doctrine.

Forum or Judge Shopping

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- ▶ Generally, not an issue in the Tax Court
- ▶ However, certain judges like to return to certain cities to hold trial session and a litigant may be able to do limited judge shopping by guessing at those preferences
- ▶ The Chief Judge can control this to some degree by making sure that a judge does not return to a requested city if another judge who has not been there recently requests it.

Management Challenges – Self-represented Taxpayers

- ▶ Approximately 70-80% of all litigants in the Tax Court are self-represented.
- ▶ The Court works with low income taxpayer clinics (LITCs) to provide attorneys at trial sessions who are available to consult and even represent taxpayers.
- ▶ The Court has also implemented a case filing and management database, affectionately called DAWSON, which can be used by self-represented taxpayers and is very user-friendly.

Self-represented Taxpayers (cont.)

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- ▶ The Court has also developed forms, tools, videos, instructional guides and other materials to educate taxpayers on how to prepare their cases for trial, etc.
- ▶ The Court, by statute, is authorized to use a simpler trial process in cases where the amount at issue is less than \$50,000, if the taxpayer elects it and is willing to forego appeal rights.
- ▶ Finally, the judges are very skilled at assisting self-represented taxpayers.

Court Management – Large, Complicated Cases

- ▶ A taxpayer may request that a case be specially assigned to a judge for case management and for trial.
- ▶ In addition, the Chief Judge may assign challenging cases to judges to manage and try.
- ▶ A judge may also encounter cases on a regular or hybrid trial session that need more work or require longer trials and retain jurisdiction over them.

Large Complicated Cases (cont.)

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- ▶ Presently, the Court has a large number of cases in the following areas:
 - ▶ Conservation easement
 - ▶ Microcaptive insurance
 - ▶ Whistleblower

The Court is tracking cases in these categories and may use various techniques to assist in their management. Those techniques may include trial of one or more lead cases with stipulations to be bound, etc.

Unique Court Management Issues, Challenges, etc.

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- ▶ Annual Budget Submission to U.S. Congress
- ▶ Vacancies and New Judges
- ▶ Space and Staffing Issues