

Separation of Powers

-- Questionnaire --

1. Relationship between the Parliament and the Tax Authorities: The influence of the tax authorities on tax legislation

- 1.1. Does your Government have legislative competence on tax matters?
- 1.2. Does your Government draft tax bills proposals and present them to Parliament?
- 1.3. In case your answer to 1.1. and 1.2. is positive:
 - 1.3.1 Does your Government usually exercise that competence?
 - 1.3.2 Does your Parliament passively accept the draft bills provided by tax authorities or does it discuss them in detail and introduce changes to them?
- 1.4. How does the literature in your country and your domestic Courts interpret the situation as you described it in 1.3. ?

2. The meaning of legal indeterminacy in tax matters

- 2.1. Is your domestic tax legislation vague, when defining the tax object, tax subject and/or tax base, leaving a large margin for discretion, or, is it, on the contrary, very detailed, avoiding indeterminate concepts?
- 2.2. How do you/does the literature in your country evaluate the use of both techniques in tax legislation?
- 2.3. Are there independent domestic Courts obliged to control the constitutionality of tax legislation?
- 2.4. Is legal indeterminacy considered to be unconstitutional/ has a tax rule ever been declared unconstitutional due to legal indeterminacy?

3. The consequences of legal indeterminacy in tax matters

- 3.1. In case of legal indeterminacy not considered to be unconstitutional, who has the final word regarding the interpretation of the rule – the tax authorities or the domestic Courts?
- 3.2. Is there a constitutional basis for either the tax authorities or the domestic Courts having the final word on interpretation of indeterminate legal rules?
- 3.3. Is legal indeterminacy normally fulfilled by regulations, administrative rulings and/or case law?
- 3.4. Are administrative rulings binding to the taxpayer and/or the Courts?

4. Relationship between the Tax Administration and the Domestic Tax Courts:

- 4.1. Do your domestic Courts control application of tax law by your Tax Administration?
- 4.2. Do your domestic Courts, in their case law, take into account rulings and binding information emerging from your Tax Administration?
- 4.3. Does your Tax Administration take into account the domestic courts case law and/or the ECJ case law when applying the law?
- 4.4. Is there a principle of reciprocal observation of the interpretation of tax law by the Tax Administration and domestic Courts?

4.5. Is your Tax Administration legally bound to the decisions of supreme courts and/or the ECJ?

4.6. Does your Tax Administration circumvent your domestic courts' case law?

5. Relationship between different legal sources (legal pluralism):

5.1. How do your Parliament, Tax Administration and Courts react before the different legal sources in tax matters (tax treaties and other treaties, EC Treaty, secondary law and soft law)?

5.2. How is the hierarchy of different tax legal sources recognized by the constitution and the different domestic powers (Parliament, Tax Administration and Courts)?

5.3. Does the taxpayer have access to different legal remedies that assure him/her effective protection of his/her rights granted by tax treaties, EC law and domestic law, or are those legal remedies in fact limited to protection of rights granted by domestic law?

II

Please answer the following questionnaire, which aims at confirming your answers in I

1. Relationship between the Parliament and the Tax Authorities: The influence of the tax authorities on tax legislation

1.1. Does your Parliament control tax authorities in an efficient way? yes – no

The tax administration authorities are subject to the constitution and the laws passed by Parliament. They are controlled by the courts. The tax policy and legislative authority, the department of Finance, are subject to the constitution and control by Parliament and the courts.

1.2. Do tax authorities influence tax legislation to a major degree? yes - no

The Department of Finance has ultimate authority for developing tax policy and creating tax legislation. The tax administration, or CRA, undoubtedly has very significant influence on amendments to tax legislation to ensure that administration, collection and enforcement is effective to carry out the governments intended tax policy.

1.3. Does your Parliament a) usually accept the bills provided by tax authorities? yes – no

Yes. Defeat of a tax bill results in the government falling, requiring a new national election.

b) refuse the bills provided by tax authorities? never - sometimes - often

There are a number of instances, the most recent in December 2008, where a minority government was faced with defeat in Parliament of a tax bill. The government avoided defeat by proroguing Parliament and returning with a less partisan budget.

c) improve the bills provided by tax authorities? never -
sometimes – often

Sometimes, and usually at the stage of committee scrutiny by the Standing Committee on Finance.

1.4. Is your Parliament able to discuss the bills thoroughly? yes – no
Yes

1.5. Is there sufficient knowledge of tax law in Parliament? yes – no
No, but the Standing Committee on Finance conducts a detailed, informed study and reports to Parliament.

1.6. Are tax rules often so vague, that tax authorities have to fill the gaps themselves by administrative regulations? never - sometimes – often
No. Canada's tax law is very detailed and technical, and is supplemented with even more specific regulations. Canada does not recognize administrative interpretations as binding. The tax authorities do publish their interpretations and assessing practices, but these are not binding on either the authorities or the taxpayer.

1.7. Have tax authorities the competence to typify and fill out the legal gaps without control by the Parliament? never - sometimes – often
Never. They have only the ability to apply an interpretation, which may or may not be accepted by the courts.

2. Relationship between the Parliament and the Domestic Tax Courts

2.1. Are there independent (Tax) Courts in your country entitled to control legislation?
Yes.

2.2. If “yes”, do they control tax legislation: 0 ex ante or 0 ex post?
Ex post, but it is conceivable that a constitutional challenge could be brought before legislation is adopted.

2.3. Are Courts competent to clarify whether a specific written tax rule is compatible with constitutional standards? yes – no Yes

2.4. If a high Court is convinced that a specific tax law violates constitutional standards, is the court in this case allowed to ignore the law? yes - no

Yes. It does not have to be a high court, just one that has authority to apply law to adjudicate a dispute.

3. Relationship between the Tax Administration and the Domestic Tax Courts

3. 1. Are there independent (Tax) Courts in your country, obliged to control your Tax Administration? Yes

3.2. Are your domestic Courts bound to administrative regulations/orders/rulings, which are issued by tax authorities? yes – no **No**

If "no", do the courts follow them in fact? never - sometimes – often - very often
Sometimes, provided the court believes the tax authorities' administrative position accords with the law.

3.3. Are first instance Court decisions on a tax case, normally accepted by the Tax Administration (i.e. do they not try to appeal against the decision)? never - sometimes - often - very often
Appeals are common, by both taxpayers and the tax administration. They are more common in important cases where large sums are in issue.

Please report statistics if available!

3.4. Is a final judicial decision on a single tax case, followed by the Tax Administration not only in this case but also in all other similar cases? never - sometimes - often - very often
The common law system of stare decisis means that lower courts must follow higher courts' rulings unless the case can be distinguished. The tax authorities are bound by rulings of the courts, but may seek to refine the ruling in a first case by bringing a similar case hoping to distinguish it from the first case.

3.5. How does the Tax Administration react when it is convinced that the final judicial decision is wrong or not "acceptable" because, e.g., it is too expensive for the public?

The Tax Administration would propose to the Department of Finance that it introduce a legislative amendment that would assure the tax administration's preferred interpretation or tax result would apply in future cases. Where a ruling does not accord with government policy, the Department of Finance may move very quickly to introduce amendments to prevent undue advantage being taken of an unanticipated ruling. Occasionally the tax authorities (CRA) will indicate that it does "not accept" a ruling without appealing it, or considers that it should be confined to the specific facts of the case. This is simply an indication of an intention to challenge in the future, but does not bind the taxpayer or a future court.

a) Does it accept the (from their point of view) wrong decision? never - sometimes - often - very often

Very often; occasionally the tax authorities indicate that they do not accept a decision. They are nevertheless bound by it.

b) Does it try in another similar case to convince the Court to decide in a different way? never - sometimes - often - very often **Often.**

c) Does it try to influence the Parliament to change the law? never - sometimes - often - very often **Often – but through submissions to the Department of Finance, that then presents proposed legislative amendments to Parliament.**

d) Does it make sure that the Internal Revenue Service will not follow this decision in similar cases?

never - sometimes - often - very often **(Not sure how to apply this; the tax authorities are the CRA, the equivalent of the US IRS.)**

e) Does it try “to hide” such a decision, e.g., not publishing the decision with the result that the Internal Revenue Service does not know this decision? never - sometimes - often - very often

Judicial decisions are published by the courts and cannot be hidden. The decisions of the CRA, which is the Canadian equivalent of the IRS are always subject to judicial appeal.

If possible, please add statistics to the answers!