

## **Separation of Powers**

### **■ Questionnaire – Answers of Finland/prof. Marjaana Helminen**

#### **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? YES

1.2. Does your Government draft tax bills proposals and present them to Parliament?  
YES

1.3. In case your answer to 1.1. and 1.2. is positive:

1.3.1 Does your Government usually exercise that competence? YES

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? Changes are possible.

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? Broad income concept with details on certain issues.

2.2. How do you/does the literature in your country evaluate the use of both techniques in tax legislation? The both are necessary.

2.3. Are there independent domestic Courts obliged to control the constitutionality of tax legislation? No.

2.4. Is legal indeterminacy considered to be unconstitutional/ has a tax rule ever been declared unconstitutional due to legal indeterminacy? No

#### **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? The Supreme Administrative Court

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? Yes, the courts.

3.3. Is legal indeterminacy normally fulfilled by regulations, administrative rulings and/or case law? Yes, all this.

3.4. Are administrative rulings binding to the taxpayer and/or the Courts? Binding to the taxpayer but not to 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? Yes, but only if a case is referred to the courts.

4.2. Do your domestic Courts, in their case law, take into account rulings and binding information emerging from your Tax Administration? Yes.

4.3. Does your Tax Administration take into account the domestic courts case law and/or the ECJ case law when applying the law? Yes.

4.4. Is there a principle of reciprocal observation of the interpretation of tax law by the Tax Administration and domestic Courts? Yes.

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

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

#### **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)? Priority order: 1. EC law, 2. Tax Treaties 3. Domestic 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)? According to the Constitution taxes can be based only on Parliamentary laws. Therefore tax treaties are approved by Parliamentary laws.

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? Taxpayers can refer their cases based on tax treaties or EC law to the same courts as the cases based on 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? no
- 1.2. Do tax authorities influence tax legislation to a major degree? yes
- 1.3. Does your Parliament
- a) usually accept the bills provided by tax authorities? yes
  - b) refuse the bills provided by tax authorities?- sometimes
  - c) improve the bills provided by tax authorities? sometimes
- 1.4. Is your Parliament able to discuss the bills thoroughly? yes
- 1.5. Is there sufficient knowledge of tax law in Parliament? no
- 1.6. Are tax rules often so vague, that tax authorities have to fill the gaps themselves by administrative regulations? often
- 1.7. Have tax authorities the competence to typify and fill out the legal gaps without control by the Parliament? sometimes

**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
- 2.3. Are Courts competent to clarify whether a specific written tax rule is compatible with constitutional standards? 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

**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? no

If "no", do the courts follow them in fact? often

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)? sometimes

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? very often

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?

a) Does it accept the (from their point of view) wrong decision? very often

b) Does it try in another similar case to convince the Court to decide in a different way? sometimes

c) Does it try to influence the Parliament to change the law? often

d) Does it make sure that the Internal Revenue Service will not follow this decision in similar cases? never

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

If possible, please add statistics to the answers!