

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?

Yes, one part of the legislative competence is reserved to the government (constitution art. 34 & 37). This legislation is codified on “code general des impôts” annexes 1 to 4.

“code general des impôts” and its annexes are available on the website

www.legifrance.gouv.fr

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

Yes. Due to art. 40 of the Constitution, only the government is allowed to present draft tax bills proposals. The members of the Parliament are allowed to present bills proposals only if respecting strict conditions (it never happens in practice).

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?

Parliament tries to discuss the draft bills in detail, however the delays are very tighten (Constitution art. 47). Therefore, and also due to the absence of rights of the Parliament in the legislative process, the changes are very few.

1.4. How does the literature in your country and your domestic Courts interpret the situation as you described it in 1.3. ?

As this situation is due to the Constitution, Domestic Courts may not interpret it badly. A small part of the literature is criticizing this situation.

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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?

The French tax Legislation is voluntary vague, and never defines tax objects and tax subjects. For example, there is no legislative definition of the word:

“revenue”, “wages”, “benefits”

Therefore, the legislation leaves to the administration a large margin for discretion.

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

The French literature does not officially contest this mean to proceed.

2.3. Are there independent domestic Courts obliged to control the constitutionality of tax legislation?

French constitutional Court (Conseil Constitutionnel) is obliged to control the constitutionality of tax legislation only if it is seized by members of the parliament, The Prime Minister or the President of the Republic before the law is promulgated (ex ante). After that, the Constitutional Court is not allowed to control the constitutionality of the legislation (ex post).

Tax Courts are never allowed to control the constitutionality of any legislation. We can notice that the French Constitution is currently being modified on these subjects.

2.4. Is legal indeterminacy considered to be unconstitutional/ has a tax rule ever been declared unconstitutional due to legal indeterminacy?

No, it never happened.

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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 domestic courts have. They may sometimes be influenced by the official and published interpretation of the Rule by the Tax authorities.

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?

No. There is only a jurisprudential basis.

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

Yes. The administrative rulings play a great role in France. They are quantitatively important, and are published in order to help the taxpayer to understand the law. Case law is also important in the French law tradition, especially in tax law (case law fixed great principles).

3.4. Are administrative rulings binding to the taxpayer and/or the Courts?

The administrative rulings are binding neither the taxpayer nor the court. However they are binding the administration, but only if the taxpayer requests it (Livre des procédures fiscales art L80A).

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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

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

Never

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. The French Tax central Administration publishes instructions concerning important cases in order to allow the local administrations to respect them and to inform the taxpayers.

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

Not officially.

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

The French Administration is legally (in fact by case law) bound to the decisions of both jurisdictions (supreme courts and ECJ).

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

No.

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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)?

The Parliament is now accepting the existence of different legal sources.

Those sources are prioritized (hierarchy) by the Constitution and the jurisprudence. For example, the constitution organizes the superiority of the tax treaties and of EC law (EC Treaty and secondary law) over the French law.

In case of conflict between those sources, the national courts apply EC or internal law instead of the French law.

According to the *Gilly*, *Saint-Gobain ZN*, *Bouanich* and *Denkavit* cases, French courts recognize the superiority of the EC law over the tax treaties.

The hierarchy of the sources is then the following:

- EC Treaty
- EC Secondary law
- International and tax treaties
- Domestic Law

It is to notice that the French Parliament transposes EC secondary law with a lot of delay (not only in the field of taxation).

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)?

The hierarchy of different tax legal sources is partly recognized by the constitution, and partly recognized by the Case Law.

- The constitution recognizes the superiority of International Tax Treaties and of EC law over domestic law
- The Case Law recognizes the superiority of EC law over International Tax Treaties
- The Case Law recognizes the superiority of EC law, International Tax Treaties and national legislation over administrative regulations and administrative rulings.

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?

The French taxpayers have access to all different legal remedies that assure them effective protection of their rights granted by tax treaties, EC law and 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? **never**

c) improve the bills provided by tax authorities? **sometimes**

1.4. Is your Parliament able to discuss the bills thoroughly? **no**

1.5. Is there sufficient knowledge of tax law in Parliament? **Yes**

1.6. Are tax rules often so vague, that tax authorities have to fill the gaps themselves by administrative regulations? **Often (in fact: always)**

1.7. Have tax authorities the competence to typify and fill out the legal gaps without control by the Parliament? **often**

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** (not tax courts, but constitutional court)

2.2. If “yes”, do they control tax legislation:

ex ante: yes

ex post: not yet

2.3. Are Courts competent to clarify whether a specific written tax rule is compatible with constitutional standards? **Not always**

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? **no**

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? **sometimes**

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**

No official statistics are available. But the observation of case law and the reading of the case reviews give a good indication of it.

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**

No official statistics are available. But the observation of case law and the reading of the administration’s publications give a good indication of it.