

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 it submits Tax bills to the parliament. In case of secondary legislations (tax regulations): the minister of finance has to have a specific authorization within the tax ordinance to issue regulations. The regulations have to be approved by one of the parliament's committees, usually the finance committee.

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? Not at all. The Parliament discuss it during three rounds of voting, in addition to the committee's deliberations

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? There are both some vague tax legislations and some very detailed containing specific provisions.

2.2. How do you/does the literature in your country evaluate the use of both techniques in tax legislation? Usually this mix practice is acceptable since it is very pragmatic and efficient.

2.3. Are there independent domestic Courts obliged to control the constitutionality of tax legislation? Yes the taxpayers' appeals go directly to the district courts. An appeal on the district courts' decisions goes to the State Supreme Court.

2.4. Is legal indeterminacy considered to be unconstitutional/ has a tax rule ever been declared unconstitutional due to legal indeterminacy? Not by definition! / There have been several cases where the Supreme Court has considered such possibility (e.g., violation of the equal treatment rule) but has decided to refrain, since it reached the conclusion that the violation was justified and well balanced under the specific circumstances.

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.

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

3.3. Is legal indeterminacy normally fulfilled by regulations, administrative rulings and/or case law? All three of them, together with a professional/academic literature.

3.4. Are administrative rulings binding on the taxpayer and/or the Courts? No. They are binding the tax authority itself, but not always.

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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? 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? Only the domestic courts case law; Not the ECJ, since my country is not a member of the EU.

4.4. Is there a principle of reciprocal observation of the interpretation of tax law by the Tax Administration and domestic Courts? I am not sure the question is clear: the tax administration is bound by the courts. The courts are not bound by the tax administration's decisions or rulings.

4.5. Is your Tax Administration legally bound to the decisions of supreme courts and/or the ECJ? Yes and not, see answer to question 4.3.

4.6. Does your Tax Administration circumvent your domestic courts' case law? No.

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 domestic tax system is bound by bi-literal tax treaties; it is not bound by the EC treaty.

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)? 1. Parliament 2. Courts. 3. Tax administration, all are subject to constitutional judicial review.

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 have access to different legal remedies provided by the domestic law and by bi-literal tax treaties, not by the EC 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: Yes

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1.2. Do tax authorities influence tax legislation to a major degree? yes - no Yes, they usually initiate tax bills

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

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

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

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1.4. Is your Parliament able to discuss the bills thoroughly? yes - no Yes, usually

1.5. Is there sufficient knowledge of tax law in Parliament? yes - no No

1.6. Are tax rules often so vague, that tax authorities have to fill the gaps themselves by administrative regulations? never - sometimes - often: often

Comment [AP1]: I would delete the word "unclear", as a very detailed rule may also be unclear.

1.7. Have tax authorities the competence to typify and fill out the legal gaps without control by the Parliament? never - sometimes - often Never by regulation; very often by "tax directives" aimed for the self use of the tax administration.

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 - 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

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

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: often

Please report statistics if available! N.A.

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; always

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?

It initiates a bill presented to the Parliament.

a) Does it accept the (from their point of view) wrong decision? never - sometimes - often - very often As long as the final court's decision is not affected by a new law – always.

b) Does it try in another similar case to convince the Court to decide in a different way? never - sometimes - often - very often often, to slightly similar cases. Never in identical or very similar cases

c) Does it try to influence the Parliament to change the law? never - sometimes - often - very often often

d) Does it make sure that the Internal Revenue Service will not follow this decision in similar cases? Never, if the decision is of the Supreme Court. In rare cases when the decision is of a district court and there was no appeal it will do it in order to bring the issue to the Supreme Court final decision.
never - sometimes - often - very often

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 Never.

If possible, please add statistics to the answers! N.A.