

Separation of Powers

-- Answer --

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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?

No. tax authorities may not provide the draft bills. However, the carrier officers of tax authorities explain them to Parliament, when the Government (i.e. the Cabinet) needs assistance to explain them to Parliament.

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

It is no issue that tax authorities do not provide the draft bills directly to Parliament.

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?

Article 84 of Japan Constitution requires the legal definite provisions and concepts in tax matters. Japanese domestic tax legislation relatively clear, when defining the tax object, tax subject and/or tax base, leaving a small margin for discretion. On the other hand, there are many Statutory Instruments (i.e. cabinet orders and regulation of finance) which describe very detailed provisions and compensate for indeterminate concepts.

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

Some of the literatures in Japan criticize the volume of administrative notices, circulars and rulings in tax matters...

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

No, there is any Constitutional Court in Japan. However, the Supreme Court may 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?

Yes. The Supreme court has declared unconstitutional due to legal indeterminacy in a few cases.

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 Court, especially the Supreme Court has such power.

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?

There is a constitutional basis exclusively for the domestic Courts

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

The secondary statutory (especially regulations of finance) shall fulfill normally the legal indeterminacy. However, administrative rulings and case law can be employed to fulfill the indeterminacy, and case law mightier than administrative rulings.

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

No, they have basically no binding power. However the Courts respect them on applying the rule of anti-discrimination.

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?

In practice, Japanese domestic courts take into account administrative rulings and information. However, administrative rulings are basically no law.

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, Japanese Tax Administration shall take into account the domestic courts case law typically. However it issues its own ruling when it will avoid accepting the case law fully.

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

Yes and no.

Basically there is a principle of reciprocal observation of the interpretation of tax law by the Tax Administration and domestic Courts. However, the taxes acts will be made in Parliaments at the end of March, and will be in force from the beginning of every year. We are discussing the issues regarding such a principle of reciprocal observation.

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?

Typically, it does not. However, it exceptionally will find a path to escape way.

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)?

There is a set of rules in the specific Act (see Hou-Rei).

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)?

Constitution >= tax treaties and other treaties > secondary statutory (i.e. cabinet orders > regulations of ministries) > soft law

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?

Yes, the taxpayer has access to different legal remedies under the domestic tax 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

No. Japanese Parliament can not control the secondary statutory and the administrative rulings. However, I propose a draft to control the secondary statutory in Parliaments.

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

Yes, they can give indirectly influence Parliament through the cabinet, which submit normally the bills to Parliaments.

1.3. Does your Parliament a) usually accept the bills provided by tax authorities?

yes – no

No.

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

sometimes - often

No. tax authorities may not submit the bills to Parliament.

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

sometimes – often

Parliament has sometimes improved the bills provided by the Cabinet.

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

Yes, some experts of tax matters have knowledge of tax laws enough since they are like lobbyist.

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

Yes, often.

1.7. Have tax authorities the competence to typify and fill out the legal gaps without control by the Parliament? never - sometimes - often

Yes, they have. Parliament has no power to control the legal gaps in the tax law without remaking law.

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, independent Courts are entitled to control legislation; however there is no normen control lawsuit. In addition, there is no specified Tax Courts.

2.2. If “yes”, do they control tax legislation: 0 ex ante or 0 ex post?

Both. However, the courts do not make any decision ex post, when the decision might cause budge problem.

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. However, the courts shall point out that violence in the case.

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

Basically, no.

If "no", do the courts follow them in fact? never - sometimes – often - very often
However they are used to follow them until 2000. Today, the courts do not them without reason. The judge of the Courts becomes to have better knowledge of tax laws because of our tax education.

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

No, when the tax administration could not accepted first and instance Court decisions on tax cases, then it often goes to the high court

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

When that final judicial decision refers to the Supreme Court decision, the tax administration shall follow it. If not so, the administration can defend against many similar cases suited by a lot of taxpayers and the Court may bind one suite (Klage) with many taxpayers.

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 judges are so wise that they avoid making wrong and too expensive decisions.

It means that taxpayers might defeat in such cases.

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

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

see the next c).

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

Yes, it happens often. Moreover, before making decision, it tries to influence the parliament to change the law and or to remake its own regulations. Then, the courts might make a decision which follows the new law or and regulations. It is criticized.

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

never - sometimes - often - very often

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 - sometimes - often - very often

Never. Basically, all of the decisions shall be disclosed.

If possible, please add statistics to the answers!

Unknown.