

GATHERING TAX INFORMATION IN CROSS-BORDER CASES: JOINT TAX AUDITS

Substantive Law:

Taxation linked to matters realised in foreign countries.

Gap between taxation rights and procedural investigation rights of states.

Main issues: Qualification Conflicts and Transfer Pricing.

Procedural Law:

Limited investigation rights in foreign countries.

Different Solutions/Approaches

1. **Extended obligations of documentation for taxpayers** → Contrary to European Law? Limitation of verification by the tax authorities remains. Etc.
2. **Enhanced relationship between taxpayer and tax authorities** → Contrary to Constitutional Law (i.e. right of equal treatment et al.)? Limitation of verification by the authorities remains. Etc.
3. **Classical Exchange of Information (by request and spontaneous)** → Accurate acquisition of relevant data. Slow administration workflow. Requesting state remains passive. Etc.
4. **Automatic Exchange of Information** → Doesn't cover all kinds of information. Potential information overkill. Etc.
5. **Joint Tax Audits** → Go beyond the pure exchange of information. High costs. Compatibility with international and constitutional law? Legal basis? Etc.

Main Objectives of the Thesis

- Analyse the legal basis of the gap between taxation rights and investigation rights from a domestic and an international legal perspective.
- Describe, analyse and evaluate the different approaches to overcome the gap, esp. Joint Tax Audits.
 - Point out the different needs of the tax authorities and the taxpayers with regard to Joint Tax Audits.
 - Find solutions for the remaining legal and practical problems concerning Joint Tax Audits (see "Some Specific Research Questions")

Some Specific Research Questions

- What are the main issues with respect to the gap between taxation rights and procedural investigation rights of the states?
- In which cases does which approach suit the best?
- How do the approaches affect the taxpayers (constitutional) rights?
- Which interest should prevail: The rights of the taxpayer or the interests of the states?
- To what extent does the sub-constitutional, constitutional, European and international framework cover and/or limit the approaches to fulfill the gap?
 - Is a transfer of sovereign rights necessary and possible?
 - Which states procedural law is applicable?
 - How, on which level and to what extent is legal protection guaranteed?

Some Hypotheses

- Both the taxpayers' documentation and the Exchange of Information are limited by practical and legal issues.
- Joint Tax Audits can help to face harmful tax practices.
- Joint Tax Audits can help to accelerate the verification process of the tax base.
- Therefore Joint Tax Audits offer an additional value for both, the tax authorities and the taxpayer.
- Joint Tax Audits need a specific legal framework, which can be established in line with constitutional and international law.
- Tax Authorities need to cooperate and coordinate bi- or multi-nationally to catch up to the multinational entities.