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THE LEGAL SERVICE IN THE MINISTRY OF FINANCE OF ESTONIA

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“Organisation of the legal services of the ministry of finance:
the experience of EU Member States”

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1. GENERAL

Functions of the legal department of ministries of finance (or Treasury) of European countries, distribution of duties among subdivisions of the state institutions, and inside the department and the handling of the day-to-day activities.

There are 11 ministries in Estonia. The area of government of the Ministry of Finance includes co-ordination and implementation of the planning of the budgetary policies of the state, planning and implementation of taxation and customs policies, economic analyses and forecasts, organisation of the real estate policies of the state, proceedings concerning applications for permission to grant state aid and exercise of supervision over the legality and use of state aid, public procurement activities, official statistics, co-ordination of the implementation of the internal control system of the Government and the organisation of internal audit, state accounting, administration of the financial assets and liabilities of the state, foreign aid and loans granted to the state.

The ministry carries that out by preparing draft laws and other legal acts, planning the incomes and costs of the state, organising the implementation of the state budget and planning the economic regulation by the state.

There are 32 departments in the Ministry of Finance in which about 300 people work. The number of departments almost doubled as a result of a structural reform one year ago, at the same time, the number of people per department decreased. As a result of the structural changes, there are no subordinate units anymore, which means that the structure has been simplified. 3 government agencies are within the area of government of the Ministry of Finance:

- 1) *Tax and Customs Board*
- 2) *Statistical Office*
- 3) *Public Procurement Office*

The largest office within the area of government of the Ministry of Finance is the Tax and Customs Board which has approximately 2000 employees. The activity of the smallest office - the Public Procurement Office – will be suspended by the end of the year and its functions will be added to the functions of the ministry.

The Legal Department of the ministry comprises the internal service/supportive structure with the Financial Department and the Administration Department. The Legal Department is subordinate to the Deputy Secretary-General for Internal Services.

Pursuant to the statute of the ministry, the Legal Department advises the ministry and the agencies within its area of governing in legal questions, participates in the development and coordination of the drafts of the legal acts, represents the ministry in judicial authorities and arranges the collection of the proprietary claims of the State. The statute of the department specifies that the main duties of the department are:

- 1) developing and participating in the development of draft acts, contracts under the law of obligations and contracts under the public law including in particular checking whether the drafts in development and other documents are in accordance to the legal acts in force in the Republic of Estonia, giving recommendations for the formalities concerning legal acts and other documents and counselling in legal questions concerning the preparation of drafts and other documents;

- 2) making suggestions in cooperation with the other departments of the ministry about approving or disapproving the drafts of legal acts and other documents which have been presented to the ministry for approval;
- 3) questions concerning study loans secured by the state which are in the competence of the ministry: developing the drafts of legal acts concerning study loans, arranging entering into contracts of arranging study loans with study loan lenders, advising persons and organisations in questions concerning state secured study loan write-offs, repayments and the application of state guarantee, processing the loan documentation of the study loan debtors delivered by the banks for the application of the state guarantee of the study loan;
- 4) counselling the structural units of the ministry in questions concerning public procurements and representing the ministry in reviewing disputes concerning public procurements;
- 5) representing the Republic of Estonia and organising the representation in court, enforcement, liquidation and bankruptcy proceedings and giving legal assessments in relation to that;
- 6) collecting information about summations within the area of government of the ministry, keeping of records and forwarding the information to the Ministry of Justice;
- 7) giving assessments in questions concerning compensation for damage caused by unjust deprivation of liberty by the state;
- 8) Advising the ministry and its area of government in legal questions concerning the area of activity of the ministry.

Seven lawyers and one language editor work in the department with the head of the department. The staff of the department was larger in the past and has been in a consistent decrease. The staff of the department was large in times when the distribution of duties between the main departments and support departments was not yet fully developed. In the past, the legal department has been responsible for the areas of insurance and gambling, the officials of the legal department even engaged in casino and lottery supervision.

Now, every activity related to the supervision and the application of law is transferred to the agencies of the area of the government and the ministry only has the function of developing policies. In turn, the main activity departments or departments of policy (Insurance Policy Department, Tax Policy Department, Customs and Excise Policy Department, Public Procurement and State Aid Department etc) carry out the development of the policies. The development of policy is mainly expressed in the draft acts. That means that the drafts of the laws and regulations are created and prepared in the main departments, where many lawyers, expert in the respective area, work. As the competence and expertise has grown, there has been a specialisation of lawyers and the lawyers, specialised in a certain area, are in the respective departments. For example, the official who develops legal acts concerning insurance or securities does not have to have legal education although he/she may also have it. A large part of the officials who develop tax policies have legal education. People with legal education also work in the State Treasury Department, Public Procurement and State Aid Department, State Assets Department and elsewhere.

The role of the Legal Department is the harmonisation of legislative drafting in different departments and checking whether the legislative drafting is in accordance with the Constitution and the general principles of law and the technical rules. The draft arrives at the

Legal Department for reviewing practically ready, finished in content and form in as much as the Content Department is able to do so. A lawyer from the Legal Department is rarely included in the earlier stage of the development of a legal act. Also, the draft is proof-read in the Legal Department.

The only area that has been left solely to the Legal Department concerns the issues related to the state secured study loans. In the area of study loans we ourselves initiate the changes in the laws and regulations, defend drafts in approval and parliament proceedings, negotiate with banks and student organisations and prepare contracts. It is not in compliance with the general logic of the activity of the ministry, but has remained so due to historical reasons. In the future, the topic of state secured study loans should be transferred completely to the Ministry of Education and Research, which is responsible for the development of the education policy of the state.

All administrative acts prepared in the ministry (except those concerning the personnel), directives of the minister and secretary-general move through or are prepared in the Legal Department.

The Legal Department of the ministry represents the ministry and state in courts, in its area of competence. We represent in civil, administrative and constitutional review court proceedings. Being in the role of the civil claimant in a criminal procedure has rarely occurred. There has always been the principle in the Ministry of Finance that we represent ourselves in courts and we buy the service of a lawyer in very exceptional cases only. In comparison to the other ministries, who rather hire a lawyer, we are distinguished in our ability to represent ourselves in court. We have used the legal aid of a lawyer in the disputes at arbitral tribunals and exceptionally in very complicated or politically sensitive disputes in the Estonian court. If necessary, the lawyer of our department includes a specialist from another department (e.g. money laundering, accounting, financing of the local government) to filing the answer to the court and takes him/her along to the court proceeding.

The number of court disputes, where the Ministry of Finance has to represent the State has steeply declined in the last two years. As of today, disputes concerning the ownership reform and privatisation during the 1990s have practically ended. Also, the disputes concerning the collection of loans, given by the state to the units of local government in the middle of the 1990s, have ended. Today, the main court cases are administrative disputes, where the administrative acts or measures of the Ministry have been contested, or when the Ministry of Finance is included in an administrative proceeding to provide an opinion. In recent years, several disputes concerning the constitutional review have been raised, where some provision of the Tax Act, Public Procurement Act, Accounting Act or Rural Municipality and City Budgets Act is petitioned to be in conflict with the Constitution.

The number of court disputes has decreased to the extent that only one official of the Legal Department deals with the representation in courts full-time.

The main part of our working time is taken by questions about every topic possible from the other structural units of the ministry and governing board. Therefore, our main important function is counselling. We have to know all the topics in the ministry thoroughly so that if the specialist in the area does not find the answers to his or her questions him/herself, he/she can get the answer from us. And finally, we have a “rule” in the ministry that if the problem is not in the area of competence of anyone, then the legal department has to solve it.

We also have internal trainings in legal topics in the ministry. Our language editor carries out language courses.

2. DEVELOPMENT OF THE OPINION OF THE MINISTRY

Procedure of formulating department's position / official opinion on a specific issue. For example: how to solve a problem when employees of the Ministry (in various sections) have diverse positions on a specific issue.

The official opinion of the ministry is formulated when the structural units cooperate. If no common opinion is reached, the final decision will be made by the governing board. The most important topics are discussed in the regular governing board meetings and in political questions the minister definitely has the final word. It has become so that the opinion of the Legal Department is taken into account and is accepted. Pursuant to the main regulation of the department, we have the right to refuse to approve the drafts of legal acts and other documents which are in conflict with the law in force and also to make changes in documents which are legally incorrect. In such situations, we, as a rule, write a dissenting opinion and submit it with the document with which we do not agree to the governing board for a decision.

3. ALTERNATIVE AUTHORITIES FOR SOLVING DISPUTES

How do the parties in dispute apply case-law (court practice) in their pleadings; how are the tax disputes heard; whether there is another remedy (lower resorts, at administration level) to apply prior to initiating legal action, and how do the grievance procedures work.

Court decisions are officially not the source of law since there is no precedent law in Estonia. However, in practice, the decisions of the Supreme Court are considered as precedents since it is clear that the Supreme Court will not make a decision that is in conflict with its earlier decisions. The decisions of the Supreme Court are taken into consideration by the sides of the court dispute and courts of lower instance, the decisions of the Supreme Court are cited when arguing for one's position or substantiating the court decisions. As a rule, the decisions of the courts of lower instances are not used as precedents because the courts of lower instances may make decisions that conflict each other.

There is no authority for solving disputes in tax questions before trial in Estonia. The Administrative Procedure Act provides a general right to file challenges against an administrative act or measure. As a rule, the challenge is filed to an authority that is one step higher than the administrative authority that has issued the act or performed the measures. When provided in law, the challenge is filed to the administrative authority which has issued the act or performed the measures. The Taxation Act provides the following about filing a challenge in tax proceedings:

§ 137. Right to file challenge

(1) If a taxable person or another participant in proceedings finds that the rights of the person have been violated or freedom of the person has been restricted by a tax notice, notice of assessment, liability decision, order or another administrative act issued by a tax authority, the person has the right to apply for the repeal or amendment of the administrative act or for the issue of a new administrative act.

(2) Participants in proceedings also have the right to challenge:

- i. a delay;
- ii. an omission;
- iii. refusal to remove an official or expert;
- iv. the return of an application for the issue of an administrative act;
- v. other measures taken by a tax authority.

(3) A challenge against an administrative act or measure of the Tax and Customs Board shall be filed with the Tax and Customs Board. If the regional structural unit has issued the administrative act of the Tax and Customs Board or performed the transaction in question, the challenge shall be filed to the Tax and Customs Board through the regional centre.

(4) The provisions of this Chapter apply to the adjudication of challenges against administrative acts or measures of tax authorities for local taxes taking account of the specifications provided for in the Local Taxes Act.

The Taxation Act regulates in detail the matters related to the terms for filing challenges, reviewing challenges, and filing appeals.

Also, two authorities for solving disputes before trials act within the area of responsibility of the Ministry of Finance. At the Public Procurement office there is an appeal committee which is regulated by the Public Procurement Act, and at the Estonian Traffic Insurance Foundation, there is an appeal committee which is regulated by the Motor Third Party Liability Insurance Act.

The Public Procurement Act provides that:

§ 117. Appeal of contracting authority's activities

(1) The tenderer, the candidate or the person interested in participation in the procurement procedure which has the possibility to participate in this procurement procedure at the relevant moment (hereinafter the submitter of appeal), may appeal the activity of the contracting authority, if it finds that the violation of this act by the contracting authority violates its rights, by presenting such appeal to the appeal committee (hereinafter the appeal committee) located by the Public Procurement Office.

(2) The appeal may be submitted on the following documents or decisions of the contracting authority:

- i. contract notice;
- ii. tender invitation;
- iii. concession notice;
- iv. periodic indicative notice which starts the procurement procedure;
- v. qualification system notice which starts the procurement procedure;
- vi. invitation to design contest;
- vii. contract documents;
- viii. exclusion of the candidate or tenderer from the procurement procedure;
- ix. qualification and non-qualification of the candidate and tenderer;
- x. declaring the tender suitable;
- xi. rejection of the tender or rejection of all tenders;
- xii. declaring the tender successful;
- xiii. other decision of the contracting authority made in the course of the procurement procedure on the basis of this act which could violate the rights of the appellant.

A state fee has to be paid when filing an appeal to the appeal committee located by the Public Procurement Office. The purpose of forming the committee was to ensure quicker solutions to the relatively large number disputes concerning public procurements than in courts. As stated by the law, currently in force, the appeal committee is the mandatory appeal authority and replaces the court of first instance. It is possible to file an appeal against the decision of the appeal committee directly to the courts of second instance (circuit courts) in a way that the court of first instance is passed over. The aforementioned provision has been declared unconstitutional by the Supreme Court because it deprives people of the right of direct recourse to courts to defend their rights. No-one may be deprived of the right of recourse to the court of first instance. The courts of second instance are allowed to be passed over.

Pursuant to the decision of the Supreme Court, the Public Procurement Act is currently being amended and in relation to the suspension of the activity of the Public Procurement Office, it is planned that the appeal committee located by the Public Procurement Office be moved to the Ministry of Finance.

The Motor Third Party Liability Insurance Act provides the following about the committee for resolution of insurance disputes:

§ 55. Committee for resolution of insurance disputes

(1) The committee for resolution of insurance disputes (hereinafter committee) is an independent institution for the extra-judicial resolution of disputes related to insurance issues. Actions with the committee shall be filed through the Guarantee Fund.

(2) Actions against the activities of an insurer or the Guarantee Fund may be filed with the committee. The committee shall hear an action only if the person against whom the action is filed grants written consent to the hearing of the action by way of proceedings of the committee.

(3) An action shall be heard by the committee consisting of three committee members. The person filing an action and the person against whose activities the action is filed shall both select one committee member from the list of committee members and the two committee members selected shall select the chairman of the committee from among the members of the board of the committee.

(4) The consent provided for in subsection (2) of this section is not necessary for the hearing of a claim filed against an insurer providing obligatory insurance and such insurer is required to participate in the committee proceeding. If the insurer fails to appoint a committee member within seven days after the receipt of the action by the insurer, the chairman of the board of the committee shall appoint the committee member.

(5) The list of committee members (hereinafter list) shall be approved by the Minister of Finance for one calendar year. The list shall consist of up to forty persons. Proposals to enter a person in the list of committee members may be submitted by all persons and state agencies. A candidate for committee member shall submit a written application for entry in the committee list to the committee. A committee formed by the Minister of Finance shall select the suitable candidates from among the candidates presented.

(6) A committee member shall have academic higher education and be proficient in insurance law.

(7) A committee member may apply to the Minister of Finance for deletion from the list at his or her own request.

The committee for resolution of insurance disputes is a voluntary authority for solving disputes and does not replace courts. Dispute is without expenses for the insured person.

4. PROCESS OF DEVELOPING DRAFT ACTS

Procedure of elaborating draft legal acts, including cooperation among subdivisions / sections; procedure of acquiring consent on the draft laws/regulations from other ministries and state agencies.

The proceeding of drafts in government and its previous activities are regulated by the rules and regulations established by the regulation of the Government of the Republic. The requirements for drafts and the explanatory memorandum to draft Acts are provided in the Technical Rules for Drafts of Legislation of General Application which is also established by the regulation of the government. The mandatory composition of the explanatory memorandum gives a general idea about which activities and stages have to be moved

through. In addition to the wording of the provisions, the impacts of the draft act, incomes and cost to the state budget, accordance to the constitution and EU law need to be assessed. The purpose of the draft act has to be brought out in the explanatory memorandum, in case of Draft Act, the necessity of implementing legislation needs to be assessed and the drafts of implementing legislations need to be developed. The Draft Act needs to be linguistically proofread. Interest groups and partners outside state authorities need to be included in developing draft acts. The draft acts of the ministry of Finance are created in cooperation with entrepreneurs, local governments and associations of tax-payers, professional associations and other parties who are affected by the future legislative act.

Before submitting the Draft Act to the Government of the Republic for approval or to the minister for adoption, the draft needs to be approved in other ministries if the draft concerns their area of government or obliges them to perform a duty. The demand for approval concerns the drafts of laws, drafts of decisions of the Parliament, drafts of regulations of government and minister. In practice, most ministries submit all their drafts, also the drafts of the regulations of the minister, which do not concern other ministries, although according to the rules and regulations of the government, the demand for approval with other ministries is extended to other ministries only when the draft concerns the ministries. By reviewing the drafts, ministries sometimes mutually cause quite a huge amount of additional work.

The draft also needs to be approved with the national associations of the local governments if the draft concerns the general interests of the local governments. If necessary, the draft is submitted to other institutions and parties concerned.

The drafts of law, decisions of the Parliament, the regulation of the government and the regulation of the minister are made accessible with all the annexes in the draft approving system *e-õigus* (E-Law) which is managed by the Ministry of Justice, to be approved and the information system sends a message about the submitting of the draft for approval to all ministries, State Chancellery and the national associations of the local governments to their official E-Mail addresses.

The approving person gives an assessment to the draft act and the explanatory memorandum, above all considering their duties and competence. The Ministry of Finance gives an assessment of the costs and incomes arising from the application of the draft and the explanatory memorandum.

The approving person makes the approving letter accessible in E-Law. Like any other correspondence between state authorities, the approval of drafts is carried out paper-free or electronically and digitally signed with an ID-card. Drafts and their explanatory memorandums are submitted to the E-Law information system by ministers. Ministries and the State Chancellery publish the link to the E-Law on the Internet on their websites. The documents submitted to the E-Law are public.

At the E-Law, approval may be asked from a particular ministry or from ministries in general. In all cases, the drafts submitted to the E-Law are accessible to everyone. In general, the approving persons approve the draft or disapprove it with reasons within ten working days, the Ministry of Justice within 15 working days after the draft and its annexes are made available and receiving the message from the E-law. If necessary, the developer of the draft may be asked to extend the term. The term for approving the draft of the regulation of the minister is five working days. As an exception, the Ministry of Finance has the right to extend the term for materials which are submitted to the Government of the Republic to 15 working days.

If the letter about the approval of the draft or reasoned disapproval has not been submitted to the E-Law during the term, and the extension of the term has not been applied for or the application has not been satisfied, the draft is approved by default. If some of the approving persons do not give an approval, then the ministry which developed the draft has to amend the draft and approve it again until all the ministries have given their positive approval. If despite everything, the dissenting opinions in two ministries remain, the draft may be submitted to the government for solution. However, practice shows that government, as a rule, does not discuss drafts, in which the dissenting opinions have not been previously resolved at the level of officials.

In the last part of the explanatory memorandum of the draft, the results of approval have to be described and the reasons for not taking into consideration the comments and petitions which have not been included need to be brought out.

In the Ministry of Finance, all the most important processes of the ministry have been mapped and corresponding rules of procedure have been developed. Among other rules of procedure, there are the rules of procedure for planning the policy of the area which have been certified by the directive of the Secretary-General. As the policies are formalised mainly as legal acts (in addition to development plans), it might be said that those are the rules of procedure for developing the draft acts. The rules of procedure provide in detail and by stages the process of developing the draft in the Ministry of Finance, providing the unit responsible for each stage. The rules of procedure are in agreement with the government rules of regulations and technical rules.

The mandatory stages depend on which category the draft belongs to (law, directive of the government or the minister) and whether it is a draft of an original legal act or an amendment. In general, when developing the draft, preparatory research, ex-ante analyses need to be conducted, background information needs to be gathered, the problem needs to be defined and analysed, the partners and interest groups need to be defined and consulted with. The time schedule for developing the draft act and communication plan and if necessary, the conception of the draft need to be compiled and approved with the governing board of the ministry and the parties outside the ministry. The policy department of the respective area is responsible for all these activities, including other departments (e.g. the Communication Department) if necessary.

The draft act has to be approved with the Legal Department up to three times, depending on the draft. The Legal Department approves the draft before sending it to the ministries for approval, before sending the draft to the Ministry of Justice for approval and before submitting it to the government or minister for passing. Taking into consideration that the Legal Department is responsible for the quality of the legislative drafting, it is always the last department which gives its approval before submitting the draft to the governing board for signing and sending out from the ministry. The Legal Department also coordinates the rules of procedure for developing the sector policy.

With the draft and explanatory memorandum, a verification form, in which the official who created the draft puts the information about the stages which have been completed, moves in the approval circle within the ministry. The creator of the draft has to preserve the correspondence and other evidence. The aforementioned ensures consistency and that the knowledge and experience is preserved in case the official leaves the service.

The application of the rules of procedure is audited by the internal audit department of the ministry at the end of the year who also makes suggestions about improving and amending the procedure rules.

Within the ministry, documents move and approvals are given electronically, similarly to the correspondence between state authorities. The respective document managing software makes that possible.

The inclusion of the public and interest groups is supported by the inclusion web which is managed by the State Chancellery. It is an information system, where draft acts, conceptions, projects of development plans and other documents can be uploaded for public commenting. Currently, the publication of draft acts on the inclusion web is optional for ministries. To raise the importance of inclusion and listening to the opinion of the public and interest groups, the uploading of the draft acts for public commenting is planned to be made mandatory and it is planned that the information systems of the E-Law and the inclusion web be united.

The Ministry of Justice is planning to integrate all information systems that currently work separately, into a united legal information system to make all the legal information available in one location and to raise the legal knowledge of the population. In addition to the aforementioned E-Law and inclusion web, the information system for electronically submitting the materials of the government sittings, the information system enabling to follow the proceedings of the draft acts in the Parliament, the information system for published legislative acts (electronic *Riigi Teataja*), the databases of court decisions, the database of the translations of legislative acts etc., belong here. In this manner, the development of a legal act can be followed in one location, from the beginning to the application and court decisions.

In addition to creating a united legal information system, the development plan of legislative drafting by the Ministry of Justice prescribes for the following years that more importance to the assessment of the impacts related to the drafts will be given. Today, the insufficient pre-assessment of the impacts is the main circumstance that damages the quality of the legal acts. From now on, approximately in two years after the legal act has entered into force, its impacts will be ex-post evaluated. This will provide the information as to whether the draft achieved its initial purposes and resulted in impacts that were wished for.

5. RESPONDING TO INQUIRIES FROM PERSONS

Procedure of dealing with appeals and enquiries of citizens and other persons, who demand prompt reaction from the state authority on a specific issue.

Pursuant to the Response to Memoranda and Requests for Explanations Act, “memorandum” means an address presented by a person whereby he or she:

- 1) makes a proposal to the addressee for the organisation of the work of an agency or body, or direction of the development of an area;
- 2) provides information to the addressee.

A "request for explanation" means an address presented by a person whereby he or she:

- 1) requests information from the addressee, for the provision of which information possessed by the addressee needs to be analysed or synthesised, or additional information needs be collected;
- 2) requests a legal explanation

A government authority is obliged to give explanations free of charge concerning legislation and drafts prepared by such agencies and bodies, legislation which is the basis for operation thereof, and their competence. A response to a memorandum or request for explanation is provided without undue delay but not later than within 30 calendar days after the date of

registration thereof. Under special circumstances, the term may be extended to up to two months depending on the complexity of the response. The person will be informed of the extension of the term for response, and of the reasons for the extension.

Therefore, we are dealing with a request for information when some additional actions need to be undertaken (responding requires analysis of the recorded information, synthesising or gathering additional information and documenting) and the response is not immediately available in a ready form.

Enabling access to the already existing information is regulated by the Public Information Act. Public information is information which has been recorded to any media in any manner and documented and which has been received or created by performing public duties provided by laws or legal acts based on laws.

The access to the public information is granted by the holders of information by complying with a request for information or by disclosing information. Concerning the obligation to disclose information, every state authority is required to maintain a web site and at least disclose the information prescribed by the laws. In addition, all state authorities are required to maintain a public registry of documents. The document registry has to enable full text searching in addition to finding meta-data (sender, heading, time and number of registration). Information, to which access restrictions may be applied by the law: personal data, business secret, tax secret, information about security systems and security measures *etc.* are not subject to publication.

Every person may make a request for information either:

- 1) orally, addressing a holder of information directly or by telephone, or
- 2) in writing, delivering a request for information personally or communicating it by post, fax or electronic mail.

Requests for information are registered and answered in five working days. Anonymous requests and requests which are made orally or electronically and will be immediately replied to need not be registered. The Public Information Act regulates in detail the procedures for replying to requests for information, refusal to reply, forwarding to the right addressee, the obligation to assist persons making requests for information in every way and the covering of expenses related to complying to the request for information. The request for information is complied with at the expense of the replier, the person making the request, is required to pay for making copies from the 21st page.

If the information that is being requested, needs to be created, such requests are deemed to be requests for explanation and will be answered in 30 days.

Requests for information arrive at the general mail of the ministry and at the mailbox of each official. Despite that, standard rules for registration and replying which are based on the rules of procedure of the ministry, are applied to the requests, every official him/herself may disclose information orally or electronically, registering the response in the document registry.

As people very often write directly to the e-mail addresses of the officials, the recognition of a request for information may be a problem. To avoid problems, it is feasible to register the e-mail and also consider whether the answer creates a precedent, may draw the attention of media or may have consequences for the ministry in some other way. If so, then responding at the level of the official should be forgone and the request for information should be submitted to the secretary-general for signing. Differentiation between requests for information and requests for explanation may also be a problem. Namely the assessment and opinions of the ministry are often requested under the guise of a request for information. The rules for responding to requests for information and requests for explanation are different, however,

and when responding to the latter, the official does not have the right to represent the ministry.

Recognising and knowing the difference between requests for explanation and requests for information often requires experience and creativity from the official. Cases when law firms as a part of their professional activities, ask questions under the label of a request for explanation or even a request for information but basically endeavour to solve the case which is being solved by them, are not rare. So it is not unknown for the officials of the ministry to do the work of the law firm free of charge and the representative of the opinion of the ministry becomes an unwilling participant in a dispute, where he/she actually is not a participant in the procedure.

6. APPROVAL OF DRAFT ACTS

Methodology of conducting expertise of draft acts, and the range of draft legal acts subject to compulsory legal expertise within the finance ministry.

As previously discussed, the ministries have to approve the drafts of legal acts, decisions of the Parliament, regulations of the government and minister which concern the area of government of other ministries or oblige them with other ministries. Actually, almost all draft acts are submitted to the E-Law for approval. Occasionally, however, the particular ministry, whose approval is sought, is designated in the transmittal letter.

In the Ministry of Finance, the governing board decides after being briefly acquainted with the draft act, which department needs to be put in charge of the writing of the letter for approval. Also, the governing board may decide which departments need to present their opinion to the person in charge. When the person in charge reading the draft act sees that the draft act concerns the area of responsibility of some other department, he/she asks for the opinion of the department.

The Ministry of Finance has to present their assessment of the questions pertaining to their area of government. First and foremost, the Ministry of Finance assesses the impact of implementing the draft act to the state budget but also, for example, the impact to the tax system, pension system, working procedures of state authorities and doing national statistics. A large number of draft acts are forwarded to the State Budget Department for the approval of the person in charge. Drafts for which no suitable person in charge is found from any department, are forwarded to the Legal Department.

If the draft act does not concern the Ministry of Finance or if we do not have comments about the draft, then we do not compose a response letter during the term and the draft act is considered to be approved by default.

7. TAX DISPUTES

1. Systems of tax appeals in different states; and the role of bodies dealing with tax disputes;
2. Rights and procedural guaranties of taxpayers during litigations;
3. Length of tax proceedings;
4. Fighting repetitive cases;
5. Methods of identification of loopholes in tax legislation.

There are two tax policy departments in the Ministry of Finance, which are engaged in direct and indirect taxes respectively. The Tax Policy Department develops the policies of direct taxes, tax contracts between states, state fees and local taxes and taxation and tax

environment, it prepares the draft acts of the area and tax contracts between states and coordinates the implementation of tax policy. The Customs and Excise Policy Department develops customs policy and the policies of value added tax, excises and other indirect taxes, prepares the draft acts of this area and coordinates the implementation of the draft acts.

A tax authority implements the tax policy and represents the state in tax disputes – the area of activity of the Tax and Customs Board which is within the area of government of the Ministry of Finance manages state incomes, implementing the national tax and customs policies and protecting the society and legal economic activity.

The duties of a tax authority are:

- 1) to verify the correctness of the calculation and payment of taxes and to monitor the payment of taxes and the application of tax incentives in the amount and pursuant to the procedure provided by law;
- 2) to calculate and make an assessment of tax and interest due in the cases provided by law and to return overpaid amounts and amounts to be compensated for;
- 3) to collect tax arrears;
- 4) to impose coercive measures and punishments permitted by law on persons who violate an act concerning a tax.

The legal department of the Tax and Customs Board comprises approximately 70 lawyers. The main duties of the department are:

- 1) proceeding of challenges and resolving complaints;
- 2) representing the Board in liquidation, bankruptcy and court proceedings;
- 3) presenting opinions about draft acts concerning the area of activity of the Board;
- 4) participating in creating contracts;
- 5) legal counselling of other structural units of the Board
- 6) managing of misdemeanour procedures

As representing the state in tax disputes is in the area of competence of a tax authority not the Ministry of Finance, a representative of the tax authority would be a more suitable person to share his/her practical experience.