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The Scrutiny of Legislative Proposals and the Organization of Administrative Procedures for Complaints raised by Taxpayers in Germany

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Scrutiny of legislative proposals(1)

- Preparation of Federal Government draft legislation
 - Initiation of the legislative process
 - About 80% of bills are drawn up by Federal Government
 - The role of Federal Chancellor and Federal Ministries
 - Chancellor determines „General Guidelines of Policy“
 - Federal Ministries responsible for policy development and drafting of legislative proposals within these limits („principle of departmental autonomy“)




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Scrutiny of legislative proposals(2)

- **Law drafting procedures**
 - **No special legal drafting divisions in the ministries**
 - **Joint Rules of Procedure of the Federal Ministries**
 - Qualitative requirements for legislative proposals
 - Procedural rules stating which agency is to be involved during the process of preparing new legislation; inter alia
 - Other Federal Ministries concerned by draft bill
 - Länder (Federal States) and associations of local authorities
 - Federal Ministry of the Interior
 - National Regulatory Control Council
 - Federal Ministry of Finance
 - Federal Ministry of Justice



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Scrutiny of legislative proposals(3)

- Tools when preparing new draft legislation
 - Guidelines for Drafting Legal Provisions and Administrative Regulations
 - Handbook on Formal Requirements for Drafting Legislations
 - Recommendations of the Federal Ministry of Justice
 - „Checklists“ regarding structure of draft bills and content of explanatory memorandum as laid down in the Joint Rules of Procedure



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Scrutiny of legislative proposals(4)

- **Regulatory Impact Assessment**
 - **National Regulatory Control Council (since 2006)**
 - Ex ante assessment of administrative costs caused by new information obligations
 - **Financial impacts of draft legislation**
 - Impacts on public budgetary income and expenditure must be calculated or even estimated by lead ministry in consultation with the Federal Ministry of Finance
 - Presentation of financial impacts must include
 - Budgetary expenditure, implementation costs, other costs (e.g. costs to the economy, social security systems etc.), administrative costs
 - Statements how additional expenditure or reduced revenues can be compensated for



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Scrutiny of legislative proposals(5)

- All Federal Government draft legislation is reviewed for compliance with current law
 - Vertical legal scrutiny (Basic Law, EU Law, international law)
 - Horizontal legal scrutiny (other laws, clear references etc.)
 - Compliance with formal drafting requirements
- Review is carried out by some 30 counterpart divisions („mirror units“) and some cross-sectoral divisions in the Federal Ministry of Justice
- Tools for the legal scrutiny include:
 - Web-based legal information systems (juris); the parliament's public database; organs for promulgation; Handbook on Formal Requirements for Drafting Legislation


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Scrutiny of legislative proposals(6)



- **Parliamentary Consideration of Draft Legislation**
 - Review of a legislative proposal takes place in the permanent committees and parliamentary working groups
 - As a result of collaboration between governing and opposition parliamentary groups most draft bills will be revised -> amendments to be drafted by lead ministry
 - Bills are debated three times in the plenary of the Bundestag
 - Consent of the Bundesrat (if required)
 - Entry into force after promulgation


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Administrative procedures for complaints raised by taxpayers (1)



- **Organisational structure of German tax administration**
 - Decentralised administration structure
 - The administration of joint taxes (i.e. income tax, corporation tax, VAT) is done by the Länder (Federal States) on behalf of the Bund (Federation)
 - Three-level-structure in Saxony-Anhalt
 - Ministry of Finance of Saxony-Anhalt
 - Regional Finance Office
 - Currently 20 tax offices


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Administrative procedures for complaints raised by taxpayers (2)



Authority	Assignment of Duties
Ministry of Finance of the State of Saxony-Anhalt	Administering all state income and expenditure; compiling the annual budget; providing medium-term financial planning; credit management; tax policy and regulation at state level; supervision of the state's real estate and property management
Regional Finance Office	Supervision of uniform application of tax law in tax offices; services (data processing centre, online information service, human resources management, training, financial services (e.g. remuneration, central cash office))
Tax Offices	Operative business of taxation


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Administrative procedures for complaints raised by taxpayers (3)



- **Objection procedure**
 - Taxpayer has to lodge an objection against his tax assessment notice within a month after receipt
 - Tax assessment will be reviewed by the tax officer based on information provided by taxpayer
 - Depending on the findings of the first review
 - Amendment of the tax assessment; or
 - Referral of the taxpayer's objection to the internal Department of Dispute Resolution
 - Second review of the tax assessment with regard to legality and expediency of the act


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Administrative Procedures for Complaints raised by Taxpayers (4)



- Department for Dispute Resolution will issue a formal objection decision, if it cannot allow the objection
 - Decision resembles a decision of a court (summary of the facts, statement of legal justifications)
 - Instructions concerning legal remedies must be attached to decision
- Tools for administrative review
 - Rules of procedure for the settlement of objections set out in the Fiscal Code and guidelines issued by the Superior Finance Office
 - Directives regarding the interpretation of tax provisions
 - Web-based legal information services (e.g. juris)
 - Pronouncements of the fiscal courts


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Administrative procedures for complaints raised by taxpayers (5)



- Objection procedure serves as an internal control mechanism allowing the tax office to review its decision prior to a legal proceeding before the fiscal court
- Objection procedure is compulsory before a taxpayer can take legal action
 - „Filter effect“ for fiscal courts
- Objection procedure is free of charge for both parties


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Administrative procedures for complaints raised by taxpayers (6)



- **Appeal at the Fiscal Court**
 - Period for filing a suit at fiscal court is one month after receipt of the objection decision
 - Defendant is the tax office who issued the challenged tax assessment
 - No obligation for either party to be represented by an attorney at law or tax counselor; the tax office is represented by the Department of Dispute Resolution
 - Fiscal court examines the facts ex officio
 - Judicial procedure is subject to costs


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Administrative procedures for complaints raised by taxpayers (7)



- **Appeal at the Federal Fiscal Court (appellate court)**
 - Appeal for reversal can be lodged if the fiscal court has granted leave to appeal in its judgment
 - Appeal is to be allowed
 - In legal matters of fundamental importance; or
 - If development of law or safeguarding of a uniform interpretation of law call for a decision of the Federal Fiscal Court; and/or
 - A mistake in procedure has been made by the fiscal court.
 - Only about 5 % of the fiscal courts judgments are being arraigned before the Federal Fiscal Court


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Administrative procedures for complaints raised by taxpayers (8)

- **Representation**
 - Taxpayer has to be represented by an attorney of law or tax counselor
 - Tax office can be represented by one of its civil servants provided that he or she holds a degree of law
 - In cases of fundamental importance Federal Ministry of Finance is entitled to represent tax office
- **Pronouncements of the Federal Fiscal Court**
 - can only bind the respective parties, however
 - contribute to the interpretation and development of law and
 - may trigger new administrative guidelines or legislation

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Thank you for your kind attention!

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