



Legal Reasoning



The Panel

- Chair: Malcolm Gammie (UK First-tier & Upper Tribunals)
- Panel:
 - Emmanuelle Cortot-Boucher (Conseil d'Etat, France)
 - Peter Darak (Curia, Hungary)
 - EuiYoung Lee (High Court, Korea)
 - Vesa-Pekka Nuotio (Supreme Administrative Court, Finland)

The Courts and Tribunals dealing with tax disputes – United Kingdom

- England and Wales:
 - First-tier Tribunal (Tax Chamber) – all taxes and NICs – Judge + lay member
 - Upper Tribunal (Tax & Chancery) – all taxes and NICs – 2 Judges
 - High Court (Administrative Division)/Upper Tribunal (judicial review)
 - Court of Appeal (Civil Division)
- Scotland:
 - As above but Court of Session above UT
- Northern Ireland:
 - As above but NI Court of Appeal above UT
- United Kingdom
 - Supreme Court for appeals from Court of Appeal, Court of Session and NI Court of Appeal

The Courts and Tribunals dealing with tax disputes - France

- First-instance administrative courts
- Administrative courts of appeal
- Conseil d'Etat
 - All direct and indirect taxes including local taxes and social security but not wealth tax or customs duties
 - Some original, first instance jurisdiction
 - All cases, large or small

The Courts and Tribunals dealing with tax disputes - Hungary

- 8 Administrative regional courts
 - Not exclusively tax
 - All central and local taxes, direct and indirect and social security
 - All cases, large or small
- Curia of Hungary (supreme judicial body)

The Courts and Tribunals dealing with tax disputes - Korea

- Administrative Appeals Board (formal review prior to any tax appeal)
- Tax Tribunal
- Administrative Court or administrative division in the District Court
 - All taxes, direct or indirect, central or local
 - Different chambers and judicial composition depending upon size and nature of the case
- Civil Division of the District Court
 - unjust enrichment cases – tax repayment
- High Court
- Supreme Court

The Courts and Tribunals dealing with tax disputes - Finland

- Board of Adjustments
 - Administrative body
 - Includes representatives of Revenue and tax practitioners
 - Divided into 'departments' some of which have specific duties, such as all VAT cases
- 7 Regional Administrative Courts
 - Appeals from Board of Adjustments
 - Appeals against advance rulings
 - All VAT and Customs Duty appeals heard in Helsinki
- Supreme Administrative Court


The Nature of FTT Proceedings – United Kingdom

- Oral proceedings but with provision for some small disputes to be dealt with 'on the papers'
- Adversarial with both parties usually present and represented but with provision to hear case in the absence of a party
- Burden of proof generally on the taxpayer
- Documentary and witness evidence received to establish the facts, with cross-examination of witnesses by the other party
- Expert evidence of technical matters (including foreign law) may be submitted
- FTT main fact finding tribunal; higher appeals only on the law



The Nature of Proceedings – France

- Inquisitorial proceedings, with written arguments submitted by each party
- Final summing up at an audience when “the investigation is closed”
- The judge may put questions to the parties at an “investigation in court” if the written submissions are unclear on the facts
- The burden of proof may be on either party according to the circumstances of the case




The Nature of Proceedings – Hungary

- Generally there is no oral hearing and cases are decided on the papers, but the parties have a right to an oral hearing and the court can choose to hold one
- Legal representation is required in the Curia
- Parties submit written arguments and are entitled to respond in writing but within strict time limits
- The facts must be determined by the lower administrative court
- The burden of proof may be on either party depending upon the circumstances



The Nature of Proceedings – Korea

- ▶ Adversarial proceedings with oral hearings (except in Supreme Court)
- ▶ Taxpayers usually represented
- ▶ Written arguments and documents to be supplied
- ▶ Witness evidence may be given with cross-examination
- ▶ Burden of proof generally on the Revenue authority but taxpayer may have to prove facts



The Nature of Proceedings – Finland

- ▶ Appeals are, as a main rule, on the papers and without an oral hearing
- ▶ If there is an oral hearing, the taxpayer may be represented
- ▶ Appellant files details of the appeal and reasoning for amendment
 - ▶ Evidence may be appended
- ▶ The other party will respond in writing and there may be further exchanges of written materials
- ▶ Burden of proof will fall on party most capable of providing the evidence

Legal Reasoning – United Kingdom

- Interpretation of legislative language and application of the facts to the legislation
- Basic approach to give legislation a purposive construction and to take a realistic view of the facts
- Detailed rules of statutory construction
- Limited ability to look at background material and Parliamentary material
 - Parliament's intention is expressed in the language that it has used, properly construed
- Higher court precedent is binding and must be followed unless e.g. case can be distinguished on the facts

Legal Reasoning – France


- The Conseil d'Etat starts with the decision of the administrative court of appeal, accepts its facts and tests its legal reasoning
- The Conseil d'Etat may look at precedents and apply them if convincing, but otherwise may adopt a new interpretation of the law
- Do the facts established by the administrative court fall within the scope of the law or not?
- The scope of the law – the categories of people, places and things to which it applies – is distinguished from the conditions of the law
- If the parties do not dispute whether a condition of the law is fulfilled, the judge must assume that it is fulfilled

Legal Reasoning – Hungary

- The starting point is the legal language and teleological construction in accordance with the aims of the law and consistent with the Fundamental Law
- Previous judicial decisions are not binding as such but may be authoritative
- Curia 'decisions in principle' and lower court 'rulings in principle' generally binding, subject to review by a uniformity panel

Legal Reasoning – Korea

- Generally concerns the interpretation of the legislative language or the Treaty
- Judges begin with the text, any specific definition of particular terms, other relevant legislation, the ordinary meaning of words and the context
- The organisation of provisions or relationship between provisions and context may be important
- The purpose or object of an enactment is considered
- The Revenue's interpretation is not decisive
- The official Parliamentary record can be referred to in identifying the legislative purpose
- Prior decisions may have precedential value and are usually followed although not formally binding



Legal Reasoning – Finland

- Starting point is the legislative language
- Preparatory materials may be referred to
- Previous decisions may be referred to and Supreme Court decisions followed unless the facts are sufficiently different
- Authoritative legal texts may be referred to as guidance (although not usually mentioned in decisions)
- EU law takes precedence over domestic legislation
- Treaties takes precedence over domestic legislation