

International Association of Tax Judges



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Case Load Control in Switzerland

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Swiss Federal Administrative Court (SFAC)

Section I, Chamber 2 = 1st instance court in tax matters

- First instance court in tax and customs matters and in administrative assistance in tax matters (and pension fund law)
- Last instance when deciding on deferral and remittal of taxes and customs duties
- 7 judges with 490 FTE, 11 court clerks with 910 FTE
- Working in German, French and Italian
- Procedure only in writing, hearings are very, very exceptional
- 30.6.2016: 265 pending cases
- 1.1.2016 – 30.6.2016 221 decisions
- Tendency of increasing number of entries

(2015 267, 2016 6 NAs, 221) International Association of Tax Judges – 7th Assembly

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Objection procedure taxes

Taxes handled by cantonal tax administrations and Federal Tax Administration

- Free administrative procedure: „Einspracheverfahren“ within the same level
- Against all tax assessment and other administrative decisions
- Complete legal review of the case by legal department of the tax office (same level of tax administration)
- Decision for or against taxpayer („reformatio in peius“)
- suspensive effect

No objection procedure in cases of heavy traffic duty.

Leap appeal to court if first decision is motivated extensively.

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Corresponding procedure in customs

Applies to custom duties and all taxes handled by Federal Customs Administration

- Applies to customs duties, tobacco tax, tax on alcohol, tax on mineral oil etc.
- Administrative appeal procedure: „Beschwerdeverfahren“ to the next higher authority within the Customs Administration
- Possible against all customs resp. tax assessments and other administrative decisions
- Complete factual, legal and distretionary review of the case
- Decision for or against taxpayer („reformatio in peius“) possible
- Suspensive effect

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Court fees

- Fees predominately according to the amount in dispute.
- Discretionary power of judge within the limits fixed in the APA
- In extraordinary cases up to the double.
- Simple fee between CHF 200 and CHF 50.000

Amount in dispute in CHF	Fee for appeal in CHF
1.500	500
50.000	4'250
500.000	12'500

- Advance payment in the amount of estimated costs
- Upon withdrawal of the claim: CHF 300.--
- Costs of proceedings borne by unsuccessful party
- Legal aid if party is needy and procedure is not unwinnable.

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Legal representation costs

- Not mandatory, representatives do not have to be lawyers
- Fee for necessary activities of the representative, based on hours worked
- Calculation based on „Honorarnote“ or on „rule of thumb“ of 1.5 times court fee

- Basic fees for lawyers:

Value of lawsuit in CHF	Fee in CHF
1.500	Appr. 750
50.000	Appr. 6.375
500.000	Appr. 18.750

- Right to legal counsel if party is needy and procedure is not unwinnable and the complexity of the case requires representation.

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Simplified procedures for petty/inadmissible/manifestly (un)founded cases

- Procedure is the same whether or not party is represented.
- Procedure does not depend on the value in dispute (no special procedure for petty cases)
- Single judge (instead of 3 judges) for procedures which become groundless and for manifestly unfounded cases (not for manifestly founded cases)

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Minimum financial interest thresholds

- None for an appeal in max and customs matters
- SFC knows minimum financial thresholds in civil, but not in public matters (CHF 15'000 for labour and tenancy law, CHF 30'000 for the rest).

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Funnel mechanism

- SFAC is not bound by facts determined by the tax administration (full cognition as to facts, application of law and discretionary power).
Project of change of procedural rules: abolition of examination of discretionary power. The parties can be heard with new facts.
- Federal Supreme Court (SFSC) is bound by facts determined by the court of first instance except for manifestly incorrect facts or if there is a violation federal law, international law, cantonal constitutional law, law on voting rights of citizens or intercantonal law. The parties cannot be heard with new facts.

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Leave to appeal to Federal Supreme Court

Principle: No limits to appeal to FSC in tax and customs cases

Exemption:

Possibility of non-admission in cases of administrative assistance in tax matters: appeal only admitted by SFC if:

- ✓ Fundamental significance of legal question
- ✓ Especially significant case, such as
 - ❖ substantial procedural violation
 - ❖ Massive insufficiencies of procedure abroad
- High formal and contextual requirements
- If admitted: full review of the judgment of the SFAC

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Special organization to handle case load in administrative assistance procedures (1)

1. Preliminary procedure: No assignment of a case when entering the court directly to a judge („Instruktionsrichter“), but only to a clerk. So-called „Browse through stage”: Check

- Whether formal requirements given
- no procedural requests
- list of legal questions raised
- Aptitude to be treated as a leading case

2. Appointing of the leading cases

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Special organization to handle case load in administrative assistance procedures (2)

3. Deciding the leading case by 5 judges (at that time no appeal possible)
4. Informing of all parties of procedures in which the same questions were raised as in the leading case on such decision. Time limit to declare intention to continue or to withdraw. If withdrawn assignment to a single judge and lower court fee.
5. Rest of cases assigned to an “Instruktionsrichter” and to the two other judges and treated in the normal procedure.

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Special organization to handle case load in administrative assistance procedures (3)

Changes in applying the procedure to the upcoming waves

- Expecting some 10'000 final decisions of the FTA; explosion of number of pending cases.
- Administrative Talks with AFC:
 - Leading case system already at that level
 - Repartition between the languages
- Adaptation of organization:
 - Clerks work also in other languages
 - Procedural requests only treated in advance if they would not become unnecessary by a decision

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Project EQUITAF (1)

How to attribute human resources equitably to the different courts?

Project 1: registration of all work done in a computer system during four month; reasons for failing:

- Too short period
- Refusal to participate of a considerable number of judges
- Unequal reporting
- No consensus on the comparability of the results among the different courts

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Project EQUITAF (2)

How to attribute human resources equitably to the different courts?

Project 2:

- August 2016: Decision on the basic structure by the court direction
- September to November 2016: Categorizing the cases of the last three years by working groups of of each court per matter into five categories:
 - Minimum work
 - Few work
 - Standard work
 - Much work
 - Outlier

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Project EQUITAF (3)

- December/January 2017: Critical debate of the results within the courts
- February 2017: Critical debate of the results among the working groups of different courts
- March 2017: Decision of the provisional standard results by the court direction
- March 2017 to March 2018: Trial period of one year to verify the provisional standards
- March 2018: Adjustments to the provisional standards
- July 2018: Start of the definitive use of the standards

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Project EQUITAF (4)

Critics:

- Is the work of the different courts comparable at all
- No discussion on the efficiency of hours worked as basis for the standards
- No discussion on quality standards as to the decisions
- Lack of confidence into other courts and judges
- Lack of flexibility of judges to change court if necessary