

Judicial Protection in Tax Matters in Germany

Dr. Ulrich Schallmoser, Richter am Bundesfinanzhof

1. Administrative review

- Written remedy („Einspruch“) within one month from the date on which the decision entered into effect
- Decision (free of charge) by tax inspector or separate review department

2. First instance review by a state tax court

- a) Hearing or written decision by one professional judge or a full senate (three professional judges and two lay judges)
- b) Obligation to investigate the facts of the case
- c) Representation is not compulsory; procedure subject to judicial costs

3. Second instance review by the Supreme Tax Court

- a) Appeal from state tax court decisions (in case of fundamental legal significance or if the case law or the consistency of the jurisdiction make a decision by the Federal Fiscal Court necessary or a procedure error has been asserted, on which the appealed judgment might be based)
 - Representation compulsory; procedure subject to judicial costs
 - No fact-finding; *de jure* review only
 - Oral proceedings or, under the agreement of the parties, written decision by five professional judges
- b) Appeal against denial of admission
 - Representation compulsory
 - Written decision by three professional judges

4. Constitutional Complaint to the Federal Constitutional Court

Federal Constitutional Court can declare a legal regulation „null and void“ or „unconstitutional“

5. Court of Justice of the European Union

Interpretation of EU law in the context of a „Preliminary Ruling Procedure“