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The legal remedies in the German tax system

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- Judicial system in Germany: five branches
 - ordinary = general civil + criminal
 - labor
 - general administrative
 - social security
 - fiscal (finance) = tax + customs
- Each branch independent with a supreme federal court on top (e.g. Federal Fiscal Court in Munich, "Bundesfinanzhof")
- Most branches: three instances, however fiscal branch: only two instances
- for 16 states: 18 first instance Fiscal Courts ("Finanzgericht")
- administrative phase (in local tax office)
 - tax assessment (administrative act)
 - tax payer may protest within 1 month (objection, "Einspruch")
 - decision on protest taken by same tax office, but specialized department
 - entire review
 - no independence, subject to instructions of ministry of treasury
 - no fees, no reimbursement of costs e. g. for tax adviser
 - not considered court / judicial branch / litigation yet
- first instance Fiscal Court
 - action to be filed one month after serving of decision on protest
 - parties: tax payer (private person or company) vs local tax department
 - representation for claimant possible, but not compulsory
 - attorney-at-law ("Rechtsanwalt"), possibly with formally recognized tax specialization ("Fachanwalt für Steuerrecht")
 - tax adviser (tax consultant) ("Steuerberater")
 - chartered accountant ("Wirtschaftsprüfer")
 - tax office represented by a civil servant
 - tax office has to submit all the relevant files
 - court divided into departments called "senates", each with one presiding judge and associate judges
 - distribution of cases according to "distribution of duties plan" (!) (specialization on matters or local distribution)
 - one judge appointed reporter, often preliminary hearing
 - decision making:
 - simple cases: reporter becomes single judge (!)
 - complex cases: 3 professional judges + 2 lay assessors
 - final hearing by decision making judges, if not waived by parties

- first instance (continued)
 - hearing in public, unless tax payer asks to close the court
 - court plays active role
 - explores facts, takes evidence; not limited to what parties present
 - facts include foreign legal provisions if relevant
 - discusses facts and legal issues with the parties during hearing can make suggestion to settle the case (!)
 - judgment:
 - mostly modification of tax assessment (altering amount), sometimes reversal
 - delivered in writing and signed
 - single majority
 - no dissenting opinions allowed
 - publication in anonymous form and on discretion of the judges
 - independence of the judiciary, no instructions for procedure or decision
 - court fees if case lost, reimbursement of costs if case won
 - duration of proceedings vary depending on court, department, judge, complexity of case, settlement or judgment; between 3 months and 5 years, with an average around maybe one year

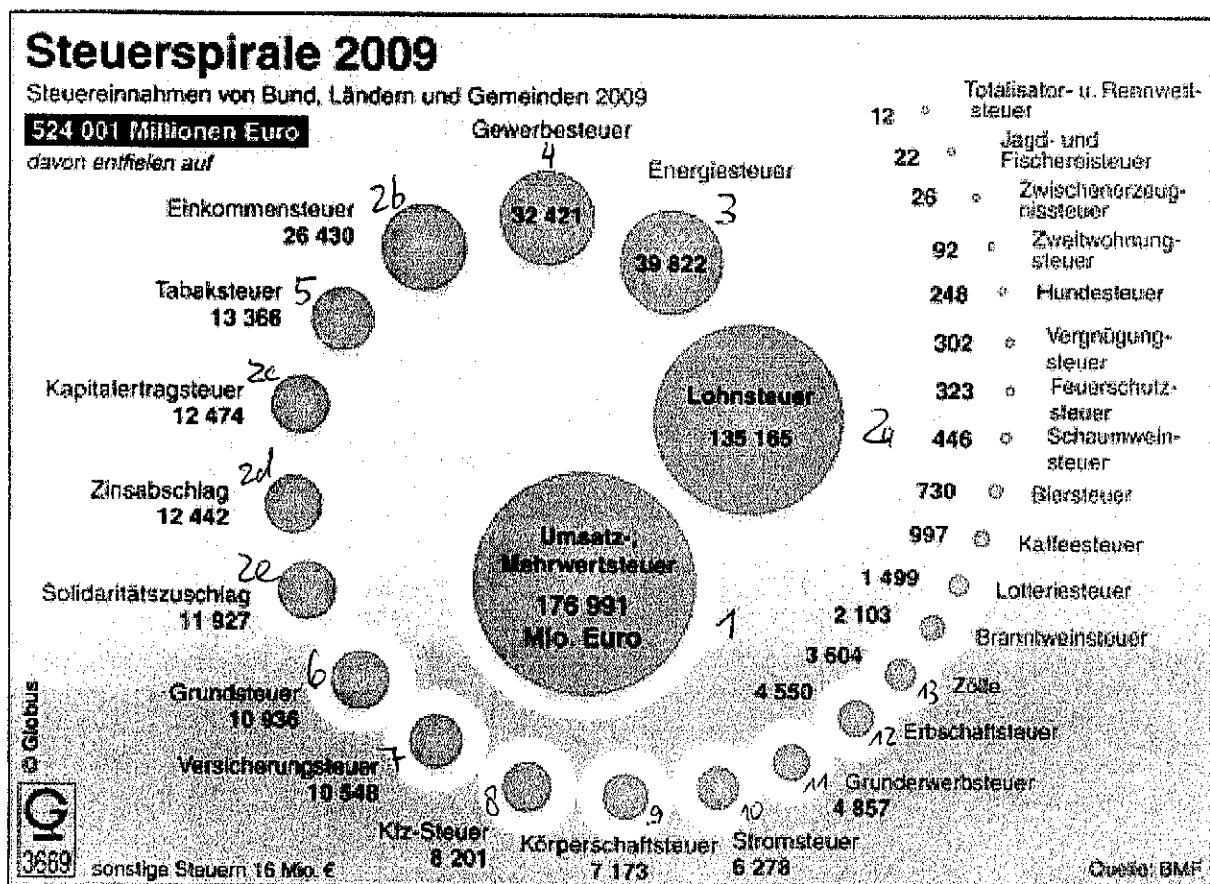
- appeal to Federal Fiscal Court:
 - tomorrow Dr. Schallmoser

- provisional legal protection proceedings
 - without hearing, based on documentation presented by parties
 - petition for suspension of enforcement (stay of execution) (if not granted by tax department, as tax collection is not suspended neither by administrative protest nor by filing action to the court !)
 - petition for temporary injunction

- motion for preliminary ruling to European Court of Justice possible if European Union law applies, but not compulsory for first instance
- duty to produce the matter to Federal Constitutional Court if applicable law is unconstitutional

Types of cases and subjects:

- amount in dispute: between a few hundred € to several million €
- age of cases at time of filing complaint: between 2 years and 20 years, average around 4-5 years (reasons: procedure with tax authority: taxable event – bookkeeping and balances – tax declaration – tax assessment – fiscal tax audit – filing of an objection – ruling on an objection)
- tax law: typically quick changes in legislation
 - problem for tax advisers: retroactive effect
- Rising influence of European Union law (directives and regulations of EU Council and Commission for VAT, custom duties and excise duties; anti-discrimination rules in EU Treaty for international income tax cases)



1 VAT

2a wage tax

3 energy tax

4 (municipal) commercial earnings tax

2b income tax

5 tobacco tax

2c withholding tax (on dividends)

2d withholding tax (on interests)

2e solidarity surtax

6 real-estate tax

7 insurance tax (similar to VAT)

8 motor vehicle tax

9 corporate tax

10 electricity tax

11 real-estate transaction tax

12 inheritance tax (death tax)

13 customs duty

Types of cases and subjects (continued)

- I. Income / Corporate Tax
 1. Expenses (proof? related to earnings or to private sphere?)
 2. with corporations: Disguised Paying out of Profits
 3. Losses: commerciality? profits intended? (e.g. real estate)
 4. for commercial earnings tax: business, trade and industry vs. liberal profession / free lance work
 5. rare: Earnings liable to taxation? (e .g. tips)
 6. Appraisal Cases (if bookkeeping / documentation deemed insufficient)
 7. International Cases (e. g. DTA)
- II. VAT
 1. Exceptions (e. g. medical services, lotteries) and Waiver of Exceptions (let out houses)
 2. Transitory Items
 3. International Cases: location of services?
 4. Tax Fraud by fictitious transactions (VAT merry-go-round contracts)
- III. Procedural Law
 1. Reinstate cases after lapse of a deadline
 2. Fault for delayed fact declaration
 3. Limitation of actions and Administrative Finality
- IV. Liability of a third person (e.g. executive director of a Ltd. in case of insolvency)

Facts and Figures GERMANY

Germany:	
inhabitants:	81.8 million
judges:	20,100
of which fiscal branch	600 (3%)
attorneys-at-law	153,000
of which tax experts	4,500 (3%)
certified tax advisers	75,300
certified accountants	13,600