

Der Bundesfinanzhof

The Federal Supreme Finance Court

(English Edition)



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I. Introduction

The Federal Supreme Finance Court is one of the five highest courts of justice of the Federation. It is the court of last resort in tax and customs matters, with the exception of criminal cases relating to such matters, which are dealt with by the ordinarily competent jurisdictions in criminal matters (in the last resort by the Federal Court). Formally the decisions of the Federal Supreme Finance Court concern only specific cases and are in principle binding only on the parties involved in the proceedings in question. Nevertheless the legal principles laid down in a specific case have a bearing on identical or similar cases and have repercussions for the taxation of numerous citizens. In addition, revenue authorities apply most of the decisions of the Federal Supreme Finance Court.

The task of the Federal Supreme Finance Court is not only to interpret the tax laws and to give a meaning to undefined legal terms but also to develop the law by giving logical effect to its purpose (Article 11 (4) of the Code of Procedure for Fiscal Courts). Furthermore the Federal Supreme Finance Court has to ascertain that the individual tax law is in conformity with constitutional law. If the Federal Supreme Finance Court holds a tax law to be in breach of constitutional law, it has to stay the proceedings and to ask for a decision by the Federal Constitutional Court (Article 100 (1) of the Basic Law). The legal protection of last instance given by the Federal Supreme Finance Court is of special significance since taxation of income earned by the citizens has become one of the most intensive sovereign intrusions upon the citizens' freedom in view of the level of tax burden in a modern state. Contrary to other sovereign measures like military service, imposition of fines, fine procedures, coercive police measures and criminal prosecution which affect citizens only in exceptional cases, this intrusion affects the whole citizen's working life. It is therefore of great importance that the intrusion of the state is in line with the law and controlled by an independent jurisdiction. In the field of taxation the state founded on the rule of law as laid down in the Basic Law has to pass an important test.

One of the corner stones of taxation according to the rule of law is the principle of taxation in conformity with laws (see Section 3 (1) of the Fiscal Code). It is based on the principle of democracy. It is for the people, represented by the parliament to decide through legislation by which taxes it is burdened. In past times, the so-called reserve of parliament was designed to restrict the fiscal greed of princes and monarchs by the participation of the estates and middle class in the levying of taxes. In the modern parliamentary democratic system, this protection has lost its effectiveness to a large extent. Nowadays, parliament itself represents the central power of the state. It is the driving force behind public services of the state and for levying taxes and has become the counterpart of the taxpayer. At stake is political power bolstered by having money of others at disposal and thus the possibility of making election promises and of satisfying the interests of factions having a big influence. In addition, parliamentary control is often replaced by decisions taken by parties or coalition bodies, so-called heavyweight rounds ("Elefantenrunden") or other informal discussion groups and especially by the technical advice of the Federal Ministry of Finance.

There is an inherent danger that political positions of parties and factional interests ignore public welfare and make tax law more complicated than necessary. The effects are multifaceted: for the majority of tax payers it is impossible to penetrate the current tax law. Only those tax payers who can afford expert advice are blessed by the increasing confusion. But even tax experts are not able to master the complicated tax law to its full extent and to reliably predict its future developments. Those who are required to make decisions on investments cannot rely on the existing rules for the future. Most of the tax payers regard tax law not as law but as an intrusion of the state. This is why broad swathes of the population do their utmost to evade this intrusion (often by tax avoidance and black market labor).

For decades all professionals concerned with tax law have been criticising these undesirable developments. Meanwhile this criticism has to be considered as part of the public opinion. Out of it, specific tasks

arise for the fiscal jurisdiction: first of all, the Federal Supreme Finance Court has to take care not to make tax law even more complicated by its own jurisprudence. Furthermore the Court has to perform the task to ascertain whether tax provisions conform with constitutional law. The examination becomes more important if the tax legislator does not accomplish his task of creating laws which are user-friendly.

In the jurisprudence of the Federal Supreme Finance Court, constitutional issues are becoming more and more important as tax payers more often than formerly challenge tax laws as not being in conformity with constitutional law. Compared to previous times references to the Federal Constitutional Court for a ruling on the conformity of tax provisions with the Basic Law are not rare any more.

II. The history of the Federal Supreme Finance Court

1. The period up to 1918 From the end of the 15th century, the Supreme Court of the Holy Roman Empire had been empowered to settle disputes concerning the first general Imperial tax.

In the course of the constitutional changes after the dissolution of the Holy Roman Empire in 1806 there was a gradual trend towards the separate development of ordinary and administrative jurisdiction, which in most countries resulted in the administrative courts being vested with general powers to adjudicate on tax matters. Since that time, too, there were endeavours to establish independent fiscal jurisdiction.

It was not until the mid-nineteenth century, in the state of Baden, that laws were passed establishing jurisdiction on tax matters. These were the laws adopted in 1848 governing the drawing up of land registers and the establishment of tax assizes, which were intended as appeal authorities independent of the revenue administration and passing judgment as courts of last resort in tax proceedings.

During the second half of the nineteenth century, the idea that courts should be empowered to monitor the activity of the revenue administration came to the fore in almost all the German states. Administrative courts (or higher administrative courts) were set up to adjudicate as the supreme authority on all administrative disputes, and by extension on all tax matters, which at that time were largely under the jurisdiction of the constituent states (or "Länder") of the Reich. However, the Supreme Court of the Reich was the court of last resort for matters concerning taxes levied under the inheritance tax law, the stamp tax law and the law on passenger and goods transport taxes. With regard to other important taxes, namely the defence contribution, the war taxes and the property dues, laying down rules on judicial supervision was assigned to the Land legislators. Consequently, the power to adjudicate on tax matters was vested partly in the administrative courts of the Länder and partly in the Reich Supreme

Court. The provision of judicial relief in tax cases thus lacked consistency and clarity.

2. Establishment of the Reich Supreme Finance Court During the first World War the demands on the resources of the Reich called for a substantial increase in tax revenue, met partly by the imposition of a general indirect tax, the turnover tax, which was introduced in 1916 initially in the form of a stamp tax on supplies of goods. It was above all this increase in the Reich's sources of tax revenue that emphasised the need for a supreme court whose decisions would ensure that important tax laws were applied consistently throughout the territory of the Reich. The law of 26 July 1918 establishing the Reich Supreme Finance Court, equal in every respect to the Supreme Court, was thus adopted while the German Reich was still under imperial rule.

As of 1 October 1918, the Reich Supreme Finance Court was charged with adjudicating as supreme tribunal and decision-making body on turnover tax matters as well as on other Reich levies, namely the defence contribution, property taxes, war taxes, inheritance tax, transactions taxes and the coal tax. Customs duties and excise taxes, however, did not at that time come within its jurisdiction.

The Reich Supreme Finance Court that came into force in 1919 established the subordinate fiscal courts, whose members were guaranteed judicial independence, as a substructure for the Reich Supreme Finance Court. These courts, however, had administrative duties to fulfil in addition to their jurisdictional function. They also remained an element of the organisational structure of the Land tax offices.

The designation of the Reich Supreme Finance Court ("Reichsfinanzhof") was selected by the legislators of the Reich in preference to "Reichssteuengerichtshof" because of its "better and fuller sound". The word "fiscal" ("Finanz") was used to indicate that matters relating not only to taxes but also to other dues and levies could be brought before the court. The designation did not include the term

"Gericht" (court of law) because the Reich Supreme Finance Court (in the same way as the Federal Supreme Finance Court up to 1963) was obliged to deliver expert opinions independent of two-party litigation when called upon to do so by the Chancellor or the supreme fiscal authorities of the Reich.

Berlin, Munich, Stuttgart, Leipzig and Strasbourg were under consideration as the seat of the Court. The final decision was taken in favour of Munich.

Two senates were set up within the Reich Supreme Finance Court on 12 October 1918. Gustav Jahn, formerly Under-Secretary of State at the Reich Treasury, was appointed President of the Court and Presiding Judge of the Second Senate. Four additional senates were set up between 1920 and 1922. The First Senate dealt mainly with corporate taxation cases, the Second Senate with transactions taxes, the Third Senate with valuations and property taxes and the Fifth Senate with turnover tax, while the Fourth and Sixth Senates came to handle income tax and trade tax cases respectively.

**We, Wilhelm,
by the Grace of God
Emperor of Germany,
King of Prussia, etc. etc.,**

do hereby declare and make known that We have been graciously pleased to appoint in the name of the Reich H.E. Gustav Rudolf Jahn, Under-Secretary of State at the Reich Treasury, as Imperial President of the Reich Supreme Finance Court.

This is decreed in the assurance that Gustav Rudolf Jahn, henceforth President of the Reich Supreme Finance Court, shall continue in steadfast loyalty towards Us and shall discharge the duties of his office with unflagging zeal, for which he shall enjoy Our most gracious protection of the rights appertaining to such office.

We have in Our own hand executed this Certificate of Appointment and have caused the Imperial Seal to be affixed thereto.

Given at General Headquarters this 14th day of September, 1918.

Appointment
of
H.E. Gustav Rudolf Jahn,
Under-Secretary of State at the Reich Treasury,
as Imperial President of the Reich Supreme Finance Court.

Wir Wilhelm,
von Gottes Gnaden
Deutscher Kaiser, König von Preußen etc.

tun kund und fügen hiermit zu wissen, daß Wir im Namen des Reichs Allergnädigst geruht haben, den Unterstaatssekretär im Reichsschatzamt, Wirklichen Geheimen Rat Gustav Rudolf Jahn zum Kaiserlichen Präsidenten des Reichsfinanzhofs zu ernennen.

Es ist dies in dem Vertrauen geschehen, daß der nunmehrige Präsident des Reichsfinanzhofs Jahn Uns in unverbrüchlicher Treue ergeben sein und die Pflichten seines Amtes mit stets regem Eifer erfüllen werde, wogegen er sich Unseres Allerhöchsten Schutzes bei den mit seinem Amte verbundenen Rechten zu erfreuen haben soll.

Urkundlich haben Wir diese Bestallung Allerhöchstselbst vollzogen und mit dem Kaiserlichen Insiegel versehen lassen.

Gegeben Großes Hauptquartier, den 14. September 1918.

Bestallung

als

Kaiserlicher Präsident des Reichsfinanzhofs
für den

Unterstaatssekretär im Reichsschatzamt,
Wirklichen Geheimen Rat Gustav Rudolf Jahn.



Wilhelm
7/14

Zur R. Aufg. - Ct. A. B. 1503.

Gustav Rudolf Jahn

3. The period from 1933 to 1945 During this time the set-up of the Reich Supreme Finance Court remained unchanged. Its status as one of the pillars of an independent judiciary, however, was subjected to constant erosion. In a speech delivered to the Reich Supreme Finance Court on 13 April 1935, State Secretary Reinhard contended that the Court had to function as a mere adjunct of the Reich Minister of Finance in interpreting tax legislation and in developing tax law in general according to the principles of National Socialist ideology. Despite this, it proved possible to achieve in practice a broad measure of objectivity in the Court's rulings. Therefore, most of the judgments of this time period contain legal terms of pure tax law that still have significance. Some decisions, especially against Jewish citizens and religious organisations – most of them taken by the Fourth Senate – were imbued with the ideology of the National Socialists and not in line with the function of a court established in a state founded on the rule of law. So that these dark aspects in the history of tax courts are not forgotten in the daily work of the Court a bronze plaque serves as a reminder. It is an exhortation to the today's judges to be aware of the responsibility in a state founded on the rule of law.

In one instance, the Nazi regime influenced the composition of the Court in an obviously unlawful way by ousting its former President, Prof. Dr Dorn. The collapse of the German Reich on 8 May 1945 also marks the end of the history of the Reich Supreme Finance Court.

4. The Presidents of the Reich Supreme Finance Court These were as follows:

J a h n, Gustav

Wirklicher Geheimer Rat	from	1.10.1918	to	31.12.1930
Prof. Dr D o r n, Jul. Herbert	from	22.1.1931	to	31.12.1933
Dr K l o ß, Richard	from	1.1.1934	to	1.12.1934
Dr M i r r e, Ludwig	from	1.4.1935	to	April 1945

5. The Supreme Fiscal Court The idea of an independent supreme court to adjudicate in cases relating to taxes survived the second World War. The Free State of Bavaria carried on the tradition of the former Reich Supreme Finance Court, adopting its organisation in the form of a Supreme Fiscal Court to give rulings only on those taxes for which Bavaria was responsible and which came under its territorial jurisdiction. In this way the pre-conditions were created to re-establish a supreme court for tax and customs matters.

The former Senate President at the Reich Supreme Finance Court, Dr Heinrich Schmittmann, was appointed President of the Supreme Fiscal Court as early as 25 June 1945. The Court was officially recognised in 1947 as the supreme court for tax cases for the whole of the American zone.

Up to that time there had been no supreme fiscal court operative in the French and British zones. In the latter, the task of handling appeals had been assigned to what was then the head office of the revenue administration.

6. Establishment of the Federal Supreme Finance Court The founding of the Federal Republic of Germany once again created the conditions for setting up a supreme court for tax cases responsible for the whole country.

Article 108 (6) of the Basic Law (or Constitution) of the Federal Republic of Germany requires the jurisdiction of fiscal courts to be uniformly regulated by federal legislation. As this process was bound to require a considerable length of time, among others because the jurisdiction of Land fiscal courts was a matter for the Länder, the law of 25 June 1950 relating only to the Federal Supreme Finance Court was adopted as an advance measure. Under this law, the Federal Supreme Finance Court took up its activities as of 1 October 1950. It was thus established as the first of the highest courts of justice of the Federation referred to in Article 95 of the Basic Law.

It was designated "Bundesfinanzhof" (Federal Supreme Finance Court) following the former designation "Reichsfinanzhof" (Reich Supreme Finance Court). The seat of the court remained in Munich, where "a suitable building with the necessary installations and an excellently equipped library" was available. After the accession of the new Länder in 1990 the location remained unchanged. Contrary to the other highest courts of justice for which a move to the new Länder has been discussed and in some cases realized (Federal Administrative Court and Federal Labor Court), it was clear at a very early stage that the Federal Supreme Finance Court would stay in Munich. That is where the highest German court for tax and customs matters has always been located.

Up to 1970, the Federal Supreme Finance Court came under the responsibility of the Federal Ministry of Finance, which not infrequently laid its rulings open to the (doubtless unwarranted) charge of being "in-house jurisdiction". Since then, together with the Federal High Court and the Federal Administrative Court, it has been assigned to the responsibility of the Federal Ministry of Justice (while the Federal Labor Court come under the Federal Ministry of Economy und Labor and the Federal Social Court under the Federal Ministry of Health and Social Security).

7. The Presidents of the Federal Supreme Finance Court

Dr S c h m i t t m a n n, Heinrich	from	21.10.1950	to	30.4.1951
Dr M ü l l e r, Hans	from	1.5.1951	to	31.12.1954
Dr H e s s d ö r f e r, Ludwig	from	1.3.1955	to	31.1.1962
Dr h.c. M e r s m a n n, Wolfgang	from	21.5.1962	to	30.6.1970
Prof. Dr v o n W a l l i s, Hugo	from	1.7.1970	to	30.4.1978
Prof. Dr L i s t, Heinrich	from	1.5.1978	to	31.3.1983
Prof. Dr K l e i n, Franz	from	1.4.1983	to	30.9.1994
Prof. Dr O f f e r h a u s, Klaus	from	1.10.1994	to	31.10.1999
Dr E b l i n g, Iris	from	5.11.1999	to	31.5.2005

Dr h. c. S p i n d l e r, Wolfgang from 1.6.2005 to 31.3.2011
Prof. Dr h. c. Mellinghoff,
Rudolf as of 31.10.2011

III. The structure of fiscal jurisdiction

1. The arrangement of courts in the Federal Republic of Germany

In accordance with the principle of the separation of powers as expressed in Article 20 (2) of the Basic Law, state authority is exercised by special organs of legislation (the legislature), of executive power (the executive) and of jurisdiction (the judiciary). The significance of this principle lies in the division of political authority, the interaction of the three branches of state authority and the resulting brake applied to government activity.

According to Article 19 (4) of the Basic Law, every citizen whose right is violated by public authority has the right to appeal to the "third" branch of state authority. The jurisdiction is represented in accordance with Article 92 of the Basic Law by the Federal Constitutional Court (in Karlsruhe), by the federal courts provided for in the Basic Law and by the courts of the Länder. According to Article 95 (1) of the Basic Law the Federation has established five highest courts of justice: the Federal Court of Justice (in Karlsruhe), the Federal Administrative Court (in Leipzig), the Federal Supreme Finance Court (in Munich), the Federal Labor Court (in Erfurt) and the Federal Social Court (in Kassel). These courts of last resort are responsible for the interpretation and application of the so-called elementary law which is to be distinguished from constitutional law. The competence to decide upon constitutional law lies with the Federal Constitutional Court.

Administrative jurisdiction (the exercise of jurisdiction in disputes under public law other than constitutional law) is thus subdivided in the Federal Republic of Germany into (general) administrative, social and fiscal jurisdiction. General administrative jurisdiction is exercised by the administrative courts, social jurisdiction by the social courts and fiscal jurisdiction by the fiscal courts. The courts of last resort are, respectively, the Federal Administrative Court, the Federal Social Court and the Federal Supreme Finance Court.

The Federal Constitutional Court is not an additional appellate instance as is, for example, the Supreme Court in the U.S.A. The Federal Constitutional Court is not the court of last resort in fiscal jurisdiction when fiscal court decisions are being examined on the basis of appeals on constitutional issues. In this respect, it is responsible only for ascertaining whether court decisions conform to constitutional law.

2. Fiscal jurisdiction Contrary to the Federal Supreme Finance Court, which was already founded in 1950, the development of fiscal courts went in several steps. The aim laid down in Article 108 (6) of the Basic Law was achieved in 1966 when the Code of Procedure for Fiscal Courts came into force.

The organisation of courts and the procedures of the fiscal jurisdiction are laid down in the Code of Procedure for Fiscal Courts. According to Section 1 of this code the fiscal jurisdiction is discharged by independent administrative courts, which are separate from administrative bodies. This means that recourse to fiscal jurisdiction may be had

1. in public-law disputes concerning fiscal charges, where such charges are governed by federal legislation and administered by revenue authorities of the Federation or of a Land;
2. in public-law disputes concerning the execution of administrative acts in matters other than those referred to in (1) above, where such acts are to be executed by revenue authorities of the Federation or of a Land and no other legal process is expressly provided;
3. in public-law disputes and disputes on professional activities concerning matters arising from the Law on Tax Consultancy;
4. in public-law disputes other than those referred to in (1) to (3) above, where federal or Land law places such disputes under the jurisdiction of the fiscal courts.

Public-law disputes which the law does not assign to the fiscal courts come under the jurisdiction of the (general) administrative courts. Consequently, these courts deal in particular with cases relating to local authority taxes (e.g. dog tax, entertainment tax, trade tax) and in some instances also in church taxes. As a general rule, it may be stated that fiscal jurisdiction is obliged to furnish judicial relief to any person whose rights are violated by acts of the revenue authorities (in particular the tax offices and main customs offices) in tax, customs or fiscal monopoly matters.

Unlike the other branches of jurisdiction, fiscal jurisdiction has only a two-tier structure. Whereas at Land level general administrative jurisdiction comprises administrative courts with higher administrative courts of appeal as the second instance and social jurisdiction comprises social courts with higher social courts of appeal as the second instance, fiscal jurisdiction comprises only the fiscal courts as higher courts at Land level and at federal level the Federal Supreme Finance Court (Section 2 of the Code of Procedure for Fiscal Courts). Therefore fiscal courts are at the same level as courts of the second instance at Land level.

Citizens are generally entitled to lodge complaints or objections against acts of the revenue authorities. Decisions on such remedies are taken by the authorities concerned (tax offices, main customs offices). An action before the fiscal court cannot be instituted until these prior administrative proceedings have been concluded. Under certain conditions fiscal court decisions may be appealed to the Federal Supreme Finance Court (see below V.)

In order to ensure a high degree of objectivity fiscal jurisdiction is exercised by independent judges in accordance with the Law on the German Judiciary. At the same time, the separation of administrative and judicial authorities restricts fiscal jurisdiction to verifying the application of the law. Where revenue authorities are permitted to take discretionary decisions (for instance, whether a tax should be repaid on the grounds of fairness or whether they hold the employer or the employee liable for

wages tax that has not been withheld), the fiscal court is in general entitled only to examine whether the contested discretionary decisions is the result of the authorities' having overstepped or wrongly used their powers of discretion. The function of fiscal courts is thus confined to ascertaining whether acts of the authorities in a given case are lawful, but not whether they are expedient. They are not entitled to replace the discretion of the administrative authority by their own discretion.

In the Federal Republic there are 18 fiscal courts currently employing about 600 full-time judges. Every federal Land has at least one fiscal court. Fiscal courts are installed in the Land of Baden-Württemberg (with the seat in Stuttgart and external senates in Karlsruhe and Freiburg), in Berlin and the Land of Brandenburg (with the seat in Cottbus), in Bremen, Düsseldorf, Hamburg, in the Land of Hesse (in Kassel), in Cologne, in the Land of Mecklenburg-West Pomerania (in Greifswald), Munich (with senates in Augsburg), Münster, in the Land of Lower Saxony (in Hanover), in Nuremberg, in the Land of Rhineland-Palatinate (in Neustadt an der Weinstraße), in the Saarland (in Saarbrücken), in the Land of Saxony-Anhalt (in Dessau), in the Land of Saxony (Leipzig), in the Land of Schleswig-Holstein (in Kiel) and in the Land of Thuringia (in Gotha).

The fiscal courts adjudicate through their senates, generally sitting with three full-time and two honorary judges. The honorary judges are not involved in decisions taken outside court proceedings or in summary rulings. Cases in which the legal issues are not of fundamental significance and which pose no special problems of factual or legal nature may be assigned to a judge sitting alone (Sections 6 and 79a (3 and 4) of the Code of Procedure for Fiscal Courts).

About 70,000 cases are now pending before Fiscal Courts throughout the Federal Republic. Some 50,000 - 60,000 new cases are brought each year, while about the same number of cases are settled. In general, 4 to 5 per cent of the cases dealt with by the fiscal courts are appealed to the Federal Supreme Finance Court.

IV. The organisation of the Federal Supreme Finance Court

1. The individual senates Eleven senates are currently installed at the Federal Supreme Finance Court, each comprising a Senate President (Presiding Judge at the Federal Supreme Finance Court) and generally four or five judges (Judge at the Federal Supreme Finance Court). The Federal Supreme Finance Court has a total of 60 judges.

In accordance with the Law on the German Judiciary and in common with all other judges in the Federal Republic of Germany, judges at the Federal Supreme Finance Court are independent and bound only by the provisions of the law. Consequently, judges elected and appointed to office at the Federal Supreme Finance Court cannot be dismissed (as can the holder of a governmental or other political office), nor can they be transferred without their consent to another post in the official interest (as can a German civil servant). Of great importance is the fact that judges are not subject to official instructions on the fulfilment of the duties connected with their appointment.

Decisions are taken by the senates of the Federal Supreme Finance Court sitting with five judges (the presiding judge and four others), and with three judges in the case of decisions taken outside court proceedings.

Within the senates, the cases are, under Section 21g of the Law on the Constitution of Courts allocated by an order of all judges of the senate in question. Made before the beginning of any year, the order sets out the principles according to which the members of the senate are to be involved in the proceedings. The order can be amended only in cases of extensive work load, insufficient work load, change or permanent absence of a member of the senate.

The responsibility of the particular senates and the number and names of judges are fixed by the annual organisation plan of the Court which is

adopted by the Presiding Board (see also XII.1.a). The organisation plan for each year is open to inspection at the Federal Supreme Finance Court and is also published in the Federal Gazette, in tax journals and on the website of the Federal Supreme Finance Court ("www.bundesfinanzhof.de").

The general areas of responsibility assigned to each senate are as follows:

First Senate: Corporation tax; income tax, particularly where questions of limited tax liability, the Law on External Tax Relations or the interpretation of double taxation agreements are at issue; capital transactions tax and church tax.

Second Senate: Assessed valuation; inheritance (gift) tax; real estate transactions tax; real estate tax and other transactions taxes; motor vehicle tax.

Third Senate: Income tax in relation to personal income from trade or business; income tax on income from independent personal services of natural persons; partnership income from independent personal services; issues in relation to the basic scale of income tax including legal issues in relation to unconstitutional excessive taxation; family burden sharing, child benefits; investment grants.

Fourth Senate: Income tax on income from agriculture and forestry of natural persons; partnership income from trade and business, agriculture and forestry.

Fifth Senate: Turnover tax; corporation tax and trade tax (tax exemption); family burden sharing, child benefits.

Sixth Senate: Income tax on income from dependent personal services; wages tax; income tax in relation to exceptional financial burdens.

Seventh Senate: Customs duties, excise taxes and matters concerning EC market organisations; law relating to fiscal charges in general; issues relating to the law on tax consultancy.

Eighth Senate: Income tax on income from independent personal services of natural persons; partnership income from independent personal services; income from the investment of capital.

Ninth Senate: Income tax on income from rentals and royalties; home grants; other income from private sale transactions, incidental services and parliamentary grant; limited offsetting of losses under Section 2 (3) of the Income Tax Law; loss deduction under Section 10 d of the Income Tax Law.

Tenth Senate: Income tax on personal income from trade and business; other income from recurring earnings and pension plan contracts; special expenses in form of pensions and permanent burdens; pension plan allowance; housebuilding premiums; saving premiums.

Eleventh Senate: Turnover tax; family burden sharing, child benefits.

2. The Large Senate Both on procedural and on legal issues (and in the latter case in particular with regard to income tax where eight of the eleven senates are responsible for), individual senates may find differently on one and the same point of law. It may be, for example, that one senate has already ruled that regulatory fines are not deductible as business expenses, while another senate before which the same issue is pending would prefer to find in favour of tax deductibility. In such case, the senate wishing to deviate from a previous ruling by another senate on a point of law must enquire whether that senate wishes to adhere to its previous ruling. If it does, then the senate wishing to impose a new ruling must bring the matter before the Large Senate (Section 11 of the Code of Procedure for Fiscal Courts). Where a senate's findings do not deviate from those of another senate, it may nonetheless request a decision by the Large Senate on a basic legal issue

if it regards this as necessary to update the law or to ensure consistency of jurisdiction.

According to Section 11 (5) of the Code of Procedure for Fiscal Courts the Large Senate sits with a bench comprising the President of the Federal Supreme Finance Court and one judge from each of the senates not chaired by the President. The Large Senate of the Federal Supreme Finance Court has eleven members.

The Large Senate rules only on the legal issue submitted to it. Its ruling on the issue submitted is binding on the submitting senate.

3. The Joint Senate of the Supreme Federal Courts If a senate of the Federal Supreme Finance Court intends to depart from the ruling of another supreme federal court (cf. III.1.) on a point of law, the need to maintain consistency of jurisdiction will require that senate to bring the matter before the Joint Senate of the Supreme Federal Courts (located in Karlsruhe). The Joint Senate of the Supreme Federal Courts sits with a bench comprising the Presidents of the highest courts of justice, the Senate Presidents of the senates involved and one other member of these senates. Procedure in the Joint Senate is governed by the Law to Preserve Consistency of Jurisdiction in the Supreme Federal Courts.

V. Procedure at the Federal Supreme Finance Court

Since 1966 the procedure in fiscal jurisdiction is governed by the Code of Procedure for Fiscal Courts. In part, this law makes reference to principles laid down in the Code of Civil Procedure. In as far as the code does not contain procedural provisions, the Law on the Constitution of Courts is applicable and in the case that the basic differences between both kinds of procedure do not exclude the application of the Code of Civil Procedures this, too, has to be applied. Several different kinds of remedies are available in the Federal Supreme Finance Court: action for review (revision), appeals against denial of leave to appeal, objection and other applications.

1. The individual remedies

a) Revision

If the fiscal court has granted leave to appeal from its judgment the parties can lodge directly an appeal to the Federal Supreme Finance Court.

Rulings by the Federal Supreme Finance Court on the correct application of federal law by the fiscal court are made on revision, i.e. an appeal on a point of law from the judgment of a fiscal court. In this respect, therefore, the Federal Supreme Finance Court finds only on the law, and with a few exceptions is not called upon to establish and assess facts. This is the task of the subordinate fiscal courts. In general the facts established are binding for the Federal Supreme Finance Court. Therefore the fiscal courts have to ascertain the precise facts of a case, for example whether and to whom a business enterprise has actually made certain payments. The Federal Supreme Finance Court rules only on the assessment of the case by the fiscal court, i.e. whether such payments are to be regarded as business expenses and may in consequence be applied to reducing taxable profits.

The Federal Supreme Finance Court decides on appeals by passing judgment, unless the case is inadmissible (because of failure to comply with legal formalities). In such case, the Court will give a ruling instead of passing judgment. Exceptionally, a ruling may also be given on an ill-founded appeal (see also VII.2.).

b) Appeals against denial of leave to appeal

If the fiscal court does not grant leave to appeal from its judgment, a so-called "appeal against denial of leave to appeal" may be lodged under which leave to appeal from a fiscal court judgment will be granted by the Federal Supreme Finance Court. According to Section 115 (2) of the Code of Procedure for Fiscal Courts leave to appeal has to be granted provided that:

1. the case at issue is of fundamental legal significance, or
2. the decisions of the Federal Supreme Finance Court are necessary to develop the law or to ensure consistency of jurisprudence, or
3. an error of procedure has been asserted and the appealed decision may be founded on that error.

Lodging his appeal the applicant has to substantiate that the preconditions for a leave to appeal are fulfilled. It is not sufficient to claim that the judgment of the fiscal court is false.

In the case that the Federal Supreme Finance Court grants leave to appeal, the procedure will be continued as an action for review (revision).

c) Objections

Appeals from fiscal court decisions of non-judgment status may be lodged with the Federal Supreme Finance Court in the form of

objections. Excluded are a number of decisions, e.g. procedural orders rejecting an application (to hear a witness, to exclude a judge from the proceeding or to grant legal aid). Orders concerning interim relief measures can be appealed provided that the fiscal court has granted leave to appeal.

In such cases the Federal Supreme Finance Court is responsible both for establishing facts and for adjudicating on points of law. Its decision will be given in the form of a ruling.

d) Applications

Proceedings other than the above-mentioned appeals may also be instituted before the Federal Supreme Finance Court by applications, for instance applications to grant legal aid for a remedy to be brought before the Federal Supreme Finance Court or - in the case of a remedy already brought before the Court - applications to grant interim relief by suspending the collection of tax or by issuing interim orders. Here, too, the Federal Supreme Finance Court gives its decision in the form of a ruling.

2. Compulsory representation A special rule of procedure to follow before the Federal Supreme Finance Court is the compulsory representation. As a general rule, appeals to the Federal Supreme Finance Court must be lodged and substantiated by a lawyer, a tax consultant or a certified public accountant, authorized representative in tax matters, European lawyer in practice or a sworn auditor or a company acting accordingly (Section 3 Nr. 2 and 3 of the Law on Tax consultancy). An exception is made for public authorities, which may opt to be represented by a public service official or employee qualified to hold judicial office.

3. Parties to the proceedings Party to proceedings on actions for review (revision) and appeals against denial of leave to appeal can only be the party who has brought an action before the Federal Supreme

Finance Court. In these proceedings, the tax payer is generally the applicant and the revenue authority is the respondent.

Parties to proceedings before the Federal Supreme Finance Court can be the applicant as well as the respondent in the action depending on the outcome of the action.

	Appeals lodged	
	by taxpayers:	by the revenue authorities:
1990	3 368	616
1995	3 149	425
2000	2 977	426
2005	2 981	422
2006	2 922	464
2007	2 912	389
2008	3 394	395
2009	3 029	401
2010	2 767	408
2011	3 000	337
2012	3 016	419
2013	3 069	442
2014	2 736	423
2015	2 632	366

Thus appeals lodged by the revenue authorities during this period account for 11 to 16 per cent of total appeals.

Furthermore, the Federal Ministry of Finance can become a party to proceedings by intervening in them (Section 122 of the Code of Procedure for Fiscal Courts). In this procedure the authority is given the possibility of defending the interests in the outcome of the proceedings

which go beyond the particular case at hand and to put forward its point of view.

VI. How cases are handled at the Federal Supreme Finance Court

1. Registration and preliminary handling A new case brought before the Federal Supreme Finance Court is first registered by the office of the senate responsible (IV.1.). It is given a case number, for example "V R 28/06". This case number denotes that the case is pending before the Fifth Senate (V) of the Federal Supreme Finance Court, that it is a revision case (R) and that it has been registered as the 28th revision case before the Fifth Senate in 2006.

The letter "B" (in place of "R") in the case number denotes a complaint case and the letter "S" all other cases (applications) (see also V.).

The senate office confirms the reception of the documents and allocates the case number to the parties; at the same time it collects a fee that is levied for the proceedings if it is the taxpayer who has launched them. Later on the fee is accounted for if the taxpayer has been successful.

The senate office sends each party the pleadings of the other party, requesting comments from both sides. Even at this early stage in the proceedings, the Senate President will work to ensure that formal defects are eliminated, pertinent submissions filed and unclear submissions clarified (Section 76 of the Code of Procedure for Fiscal Courts). When no further comment is to be expected from either party, according to the organisation plan of the senate the Senate President appoints a judge to report on each case and a second judge as co-reporter.

2. Preparation of proceedings On the basis of this documentation, the reporting judge prepares a report containing a statement of the facts of the case, an account of proceedings to date and a substantiated proposal for the Court's decision. The co-reporter comments on this report. Taking the relevant jurisprudence and

literature into account, the report gives a comprehensive overview of the case. As a rule the report has a greater volume than the final decision. In the case of differences between the opinion of the co-reporter and the opinion expressed in the report, the reporter gets back the file for information. By order of the Senate President, the case is put on the agenda of the next session of the senate in question. The sessions are held as a rule once a week on the days appointed for each senate.

3. Deliberation and voting In the session the members of the senate deliberate and vote on the case on the basis of the report and the co-reporter's comments (not generally in the form of court proceedings). The deliberations are chaired by the Senate President. In the voting the reporter votes first, followed by the co-reporter. Then the younger judge votes before the elder one. The last senate member to vote is the President himself. Deliberation and voting are secret and thus may not be subsequently reported.

The judges outvoted on any one decision are obliged to sign that decision as well as the judges who voted in favour of it. It is not possible for a dissenting opinion to be appended to a decision, as practiced at the Federal Constitutional Court.

4. Decisions

a) As a rule, the Federal Supreme Finance Court comes to a decision on judgment cases (substantive decisions on appeals) on the strength of court proceedings. However, the Court may also dispense with such proceedings and give its decision in a so-called summary ruling or, with the consent of the parties, in an immediate judgment.

If the parties do not dispense with a hearing the Federal Supreme Finance Court does not institute such proceedings but gives a summary ruling beforehand. In the case that the parties do not lodge an appeal for a hearing within a time period of one month the summary ruling will take effect as a non-appealable judgment and the proceedings are concluded. In the case that a party lodges an application for a hearing,

the court deliberates and votes again and gives a non-appealable judgment. In such case the Court may refrain in its judgment from giving a renewed statement of facts and reasons for the decision, provided that it follows the reasons given in the summary ruling and makes note of this in its judgment. However it is very rare that the Court makes use of this possibility.

In fact, only about 8 to 12 per cent of all appeal cases are now decided on the basis of court proceedings; in the remainder, the parties either dispense with such proceedings from the outset or do not lodge an appropriate application once a summary ruling has been given.



Court room in the Federal Supreme Finance Court

b) Where decisions are given in the form of rulings proper (mostly objections or inadmissible appeal cases, cf. V.1.), a decision by the Federal Supreme Finance Court is not conditional upon court

proceedings. However, there have been rare instances of court proceedings being conducted in such cases.

c) Taking all the decisions given by the Federal Supreme Finance Court (judgments, summary rulings and rulings proper) it will generally be found that only 3 to 5 per cent of cases are decided on the basis of court proceedings.

Number of cases in which court proceedings were instituted

1990	=	138 cases
1995	=	131 cases
2000	=	90 cases
2001	=	105 cases
2002	=	95 cases
2003	=	84 cases
2004	=	101 cases
2005	=	92 cases
2006	=	136 cases
2007	=	131 cases
2008	=	180 cases
2009	=	160 cases
2010	=	221 cases
2011	=	208 cases
2012	=	170 cases
2013	=	183 cases
2014	=	208 cases
2015	=	218 cases

5. Announcements of the decisions Decisions that are given without court proceedings (judgments after the parties dispensed with court proceedings, summary rulings, orders) are delivered to the parties in writing.

Since there is no possibility to appeal against the decisions they come into force at the time of delivery. If an oral hearing has taken place the decision (usually in the form of a judgment as a rule) can be pronounced at the end of the hearing or later on in a so-called pronouncement hearing by reading the operative part of the judgment. The judgment takes effect at the time of pronouncement. Afterwards, the complete judgment is delivered to the parties.

It is however open to the senate to take the decision not to hand down the judgment immediately after the hearing but to deliver the decision in writing. This way of proceeding is the most common one after a hearing. In this case, there is an obligation to deposit the operative part of the judgment within two weeks after the hearing at the office of the senate (see XI. 2) in order to give the parties the opportunity of obtaining information (e. g. by calling in) about the outcome of the case.

VII. The workload of the Federal Supreme Finance Court

Settlement and duration of cases There are currently some 3,000 cases pending before the Federal Supreme Finance Court. Each year about 3,000 new cases are brought before the Court, while about the same number of cases are settled.

	New cases registered	Cases settled	Number of cases as at rear
1990	3 984	3 955	4 472
1995	3 574	3 574	3 465
2000	3 403	3 325	2 873
2001	3 423	3 225	3 071
2002	3 512	3 425	3 158
2003	3 669	3 596	3 231
2004	3 461	3 663	3 029
2005	3 403	3 652	2 779
2006	3 386	3 468	2 697
2007	3 301	3 514	2 484
2008	3 394	3 494	2 384
2009	3 430	3 364	2 450
2010	3 175	3 438	2 187
2011	3 000	3 004	2 183
2012	3 016	2 962	2 237
2013	3 069	3 046	2 259
2014	2 736	3 049	1 946
2015	2 632	2 721	1 857

The average duration of proceedings before the Federal Supreme Finance Court is only 11 months. But this relatively short average period is attributable above all to the fact that a big share of cases is disposed of by orders (objections, appeals against denial of leave to appeal, inadmissible appeals) that are in general less time consuming to handle. In contrast the average duration of appeals is 21 months. In special cases this time period can be even longer, especially in cases in which the decision depends on the outcome of proceedings before the Large Senate of the Federal Supreme Finance Court, the Federal Constitutional Court or the European Court of Justice. Since taxpayers first have to lodge administrative proceedings and proceedings before the subordinate fiscal courts often long time periods elapse between the assessment procedure at the tax office and the end of the proceedings before the Federal Supreme Finance Court.

VIII. Significance of Federal Supreme Finance Court decisions; their publication

1. Adjudication on specific cases For the parties involved in a specific case, a decision by the Federal Supreme Finance Court settles the point of law at issue finally and conclusively. It is in principle binding only on the parties to the proceedings in question and on the facts of the case, e.g. kind of tax, year in question, asserted tax relief (cf. Section 110 (1) of the Code of Procedure for Fiscal Courts).

2. Leading decisions A further task, indeed the principal task, of a court of last resort is to formulate general principles on the interpretation and application of law and to ensure uniform application of the law. Furthermore the task of the court is to develop the law. Many decisions of the Federal Supreme Finance Court are of fundamental legal significance.

Only the parties are bound by the decision. However, practitioners regularly seek to apply the findings of the highest courts in similar cases. This practice is confirmed by the fact that the revenue administration inserts many of the rulings of the Federal Supreme Finance Court in tax directives that are binding on the tax offices.

Sometimes, the revenue administration issues "non-application decrees". In other words, the administration stipulates that a ruling by the Federal Supreme Finance Court must not be applied except in the specific case in which it was given. In these cases the revenue administration has the intention to put forward its legal arguments in a new proceeding in order to give the Federal Supreme Finance Court the possibility to rethink its jurisprudence. If its renewed decision is the same as that reached in the first proceedings, the ruling thus reinforced will in general be applied by the revenue administration in all parallel cases.

It may happen that the Federal Ministry of Finance attempts to influence the legislator. By amending the tax law in question the Ministry corrects the jurisprudence that is regarded as not acceptable (so-called Non Application Law).

3. Publication The decisions of the Federal Supreme Finance Court are published in different ways.

a) Decisions bound for publication

When a decision is given, therefore, the senate will discuss whether it should be cleared for publication. The publication depends on the significance of the ruling.

When the responsible reporting judges have rendered the decisions anonymous by deleting, in conformity with tax secrecy requirements, all pointers to the identity of the taxpayer in question and a head note has been added as a brief statement of the essential content, the decisions are published in a compendium (the "BFHE") issued by the judges of the Federal Supreme Finance Court and designated in part as official. The Federal Supreme Finance Court continues the numbering of the volumes starting with volume 55 following the last volume of the Reich Supreme Finance Court. Up to date more than 200 volumes have been published in total.

The decisions designated for publication are not only printed in the "BFHE". About 95 per cent of the Federal Supreme Finance Court decisions published in the "BFHE" are reprinted in Part II of the Federal Tax Gazette, which is issued by the Federal Ministry of Finance and is available to all officials in the revenue administration. The Federal Supreme Finance Court decisions not reprinted here are mostly those relating to customs and market organisation law. The decisions which the revenue administration is not (yet) willing to apply are either published not at all or only after a longer period of time (often together with "non-application-decrees") in the Federal Tax Gazette.

There are in addition a number of specialist publications in which Federal Supreme Finance Court decisions are also cited either in full or in abbreviated form.

Since 1 December 2000, every Wednesday the full text of the most recent decisions designated for publication by the senates can be accessed on the Internet site of the Federal Supreme Finance Court.

The Federal Supreme Finance Court regularly designates some 9 to 13 per cent of its decisions for publication.

b) Decisions not bound for publication

Evidently, the bulk of the Federal Supreme Finance Court decisions is not published. This is justified because many decisions reflect no fundamentally innovative approach and are notable only for their findings on the specific case. Today, these decisions are also published. The reason is that there is a practical need to make available to the public as many decisions of the Federal Supreme Finance Court as possible including those that are not designated for publication. In fact only decisions that do not merit documentation because they reflect no significant approach are not published.

From 1981 onwards, all the decisions given by the Federal Supreme Finance Court that merit documentation have been stored in JURIS (the Federal government's legal information system). In addition since 1985 there exists the so-called official collection of the decisions given by the Federal Supreme Finance Court issued by its judges – BFH/NV (together with a CD-ROM and Internet search facilities). Tax consultants have also built up their own databases (e.g. DATEV, Lexinform) that contain the decisions of the Federal Supreme Finance Court. As a consequence there are manifold possibilities of getting access to all decisions that merit documentation.

c) Pending proceedings

Since 1996 the Federal Supreme Finance Court has been publishing pending cases on which the Court is expected to give a ruling. The legal issues of the case in question and the date of the decision of the subordinate fiscal court can be gathered from monthly updated overviews. Today these lists are available on the Court's Internet site (the users have also the possibility of making searches of this) and in the JURIS-database. In addition, these lists are published in the specialist press.

The significance of the so-called list of pending cases for tax payers and for tax offices is the possibility that under certain circumstances the definite assessment of a tax case is postponed if the same legal problem is of importance for a pending case before the Federal Supreme Finance Court. In cases in which the conformity with constitutional law or with European law is in issue, the tax office has the possibility of assessing the tax temporarily (Section 165 (1) of the Fiscal Code). Where a final tax assessment has been made by the tax office and the tax payer has lodged an administrative appeal against this decision the administrative proceedings are stayed if the same legal issue is relevant in a case pending before the Federal Supreme Finance Court or another highest court, the European Court of Justice or the Federal Constitutional Court (Section 363 (2) of the Fiscal Code). As long as these highest courts have not given a decision the fiscal court is in a position to stay the proceedings or to decide to let the matter rest.

IX. Press and public relations

Besides specialist public, the general public, too, has an interest in being informed about proceedings before the Federal Supreme Finance Court and their outcome, particularly in view of the fact that tax law affects the entire working population and entitles the authorities to intervene in taxpayers' management of their affairs. As proceedings before the Federal Supreme Finance Court are often test cases, everyone should have the opportunity to be informed by the press about upcoming proceedings and decisions given, where these are of general significance. Therefore everyone involved in a specific case is entitled to get copies of decisions.

1. Press releases The public is thus entitled to be informed on fiscal court proceedings, and to provide such information the Federal Supreme Finance Court informs about forthcoming decisions on particularly significant points of tax law and the date of court proceedings at which such issues are likely to be deliberated. Besides this, press releases on decisions designated for publication that are of special importance and general interest are sent by e-mail to almost 350 addresses. The purpose of these press releases is primarily to provide those taxpayers who have no tax advisers, and are thus unlikely to learn of new developments from other sources, with information on current trends in fiscal jurisdiction. The press releases can be found on the website of the Federal Supreme Finance Court (s. IX.3.).

2. Annual reports and press conferences In addition to its press releases, the Federal Supreme Finance Court issues an annual report for the press. Besides statistical data on the activities of the Federal Supreme Finance Court, these reports furnish information on the most important decisions taken by the Federal Supreme Finance Court during the year under review, on incoming important appeals and on important decisions to be taken in the near future. The Federal Supreme Finance

Court holds yearly a press conference at which its activities are presented on the basis of the annual report.

3. Internet Since 1 December 2000 the Federal Supreme Finance Court has presented itself on its own Internet website ("www.bundesfinanzhof.de" and "www.bfh.bund.de").

Senat	Entsch.-datum	Aktenzeichen	
6. Senat	5.9.2006	VI R 41/02	Zur Bewertung geldwerter Vorteile bei sog. Jahreswagen siehe auch: Pressemitteilung Nr. 51/06 vom 11.10.2006
4. Senat	31.8.2006	IV R 26/05	Zum Umfang einer Ansparrücklage für Tiere des Anlagevermögens
4. Senat	31.8.2006	IV R 53/04	Erhöhung eines Betriebsaufgabegewinns durch Zahlungen auf Grund einer Nachforderungsklausel - Fehlen von Entscheidungsgründen
2. Senat	23.8.2006	II R 16/06	Zeitpunkt der Ausführung einer mittelbaren Grundstücksschenkung siehe auch: Pressemitteilung Nr. 47/06 vom 4.10.2006
2. Senat	23.8.2006	II R 41/05	Eigentumszuweisung an einen durch Zustimmungserklärung nach § 52 Abs. 1 FlurbG begünstigten Dritten grunderwerbsteuerpflichtig
7. Senat	21.8.2006	VII B 333/05	Keine Änderung der kraftfahrzeugsteuerrechtlichen Maßgeblichkeit des Begriffes des PKW infolge der Aufhebung des § 23 Abs. 6a StVZO und damit der Gewichtsbesteuerung von sog. Kombinationsfahrzeugen mit einem zulässigen Gesamtgewicht von mehr als 2,8 t siehe auch: Pressemitteilung Nr. 42/06 vom 13.9.2006
5. Senat	10.8.2006	V R 38/05	Steuersatz für die Abgabe von Mittagessen in Schulen siehe auch: Pressemitteilung Nr. 53/06 vom 11.10.2006

Research for decisions on the website of the Court

Every Wednesday the most recent decisions designated for publication as well as all press releases of the Federal Supreme Finance Court and information about oral hearings can be accessed via the website. In addition there is the possibility of searching for older decisions published on the Internet as well as the list of pending cases. Also available to Internet users are the annual reports of the Federal Supreme Finance Court and information about the history, the organisation, the annual

organisation plan, the procedures at the highest German tax court and the structure of the fiscal jurisdiction.

X. Reference and research services

The work of the judges at the Federal Supreme Finance Court is fully supported by a reference and research staff.

1. Legal secretaries As a rule, one (legal) research assistant is assigned to each senate at the Federal Supreme Finance Court. These will be less-senior fiscal judges or administrative-grade officials of the revenue administration. They are seconded to the Federal Supreme Finance Court, generally for a period of four years.

In order to support the judges the legal secretaries prepare studies and specialist reports on specific cases. Many of the present judges at the Federal Supreme Finance Court have been legal secretaries at this Court (some of them at the Federal Constitutional Court or at the Federal Administrative Court).



Rear facade of the Federal Supreme Finance Court

2. The department for documentation and information In order to discharge their duty of ensuring the consistent interpretation of law and to avoid divergences in the jurisprudence of the Federal Supreme Finance Court as well as divergences between the jurisprudence of the Court and that of other highest Federal Courts (III.1.) the judges need possibilities of gathering information. At first the task of the department for documentation and information was to provide information that is necessary for the judges' work. In doing so the department for documentation and information reviewed, evaluated and briefly reported on the jurisprudence of the Federal Supreme Finance Court and as far as it seemed to be relevant, the jurisprudence of other courts and views expressed in periodicals. In addition, the department carried out research for the judges on specific legal problems. From that time, there exist extensive card files in which the decisions of the Federal Supreme Finance Court given before 1980 and not designated for publication can be found. Meanwhile the activities of the documentation staff centres on making tax and customs law related documents accessible and preparing them to be stored in the JURIS-database.

The scope of documentation in detail:

- jurisprudence of the Federal Supreme Finance Court and the subordinate fiscal courts in form of head notes or "orientation clauses". Of decisions of the Federal Supreme Finance Court, the full text is generally available; regarding the decisions of the subordinate fiscal courts the full text of most of the cases is available;
- jurisprudence of the European Court of Justice and the Court of First Instance in form of head notes and "orientation clauses";
- relevant tax literature in form of short summaries of its contents;
- pending cases before the Federal Supreme Finance Court on which the Court is expected to rule; in addition pending cases before the Federal Constitutional Court, the European Court of Justice and the Court of

First Instance as far as these cases are relevant for the jurisprudence of the Federal Supreme Finance Court.

Documentation work is carried out by qualified documentalists – executive-grade officials in the revenue administration – and clerical staff working as assistant documentalists; in total 20 persons.

The equipment of nearly all workplaces of the judges at the Federal Supreme Finance Court enables them to conduct searches by themselves using JURIS or other databases. Furthermore judges can get support from qualified documentalists.

There are no signs that the flood of information relating to tax law is abating. On the contrary it will steadily rise. Therefore activities are being progressively extended in order to make use of developments in electronic data processing for the purpose of documenting and providing information. Without these technologies it would not be possible to guarantee a comprehensive and user-oriented support of the judges' work.

3. The Reference library The jurisprudence, all the more so that of a highest Federal Court, is dependent on a well equipped library. The reference library of the Court satisfies this requirement.

The library contains about 200 000 volumes that are concerned with tax and customs law. Besides this main emphasis extensive literature is also kept on civil, business and commercial law, public and constitutional law and the various laws pertaining to judicial procedure. As the successor of the library of the Reich Supreme Finance Court, the reference library has an important stock of old publications.

The library of the Federal Supreme Finance Court is probably the best-equipped library on tax and customs law in Germany.

The total stock, increasing by about 3,000 to 4,000 volumes a year, is held in different places in the building. About 28,000 volumes are housed in a reading room accommodating 14 workplaces. It holds the current and most frequently consulted literature. The rest of the stock is held available in stacks, five consultation rooms, libraries of the judges, senate offices, the department for documentation and information and the internal administration.

It is mainly judges who make use of the reference library. But parties to proceedings and their counsel as well as judges and officials of other courts and authorities are also given the run of the library. Furthermore, academics (especially doctoral graduates and post-doctoral students) have access to the library.



Interior of the new library

At present the stock of the library is registered and electronically stored. Already today it is possible to conduct searches using PCs and the so-called OPAC system (at the judges' own workplaces) in order to find literature published before 1981. For other documents, use of the old card files is necessary.

Since the Federal Supreme Finance Court is a member of the association of the Bavarian libraries, the stock can be found in the catalogue of this association. Due to this fact searches can be conducted from outside the Federal Supreme Finance Court using its "Internet-OPAC".

Besides books and magazines the library offers a larger number of electronic media such as CD-ROM databases and Internet connections.

In total 19 persons headed by a director are carrying out the work to be done in the library. They order and buy new publications, sort and catalogue the stock, conduct searches, give information in the reading room, complete loose-leaf editions and carry out bookbinding work in the Court's bindery. Funds budgeted for library facilities amount to some EUR 280,000 a year.

XI. The administration of the Court

In looking at the task and the functioning of the highest German Fiscal Court, priority has to be given to its jurisprudence and the work of the judges. However, the jurisprudence of a highest Federal Court requires an effective, well organised and functioning internal administration. Generally the expression "administration of a court" is used to describe the work at the Court that is not the judges' work. However, while this negative definition seems to be obvious, it is not precise. The definition is aimed at defining the scope of judicial independence.

In a wider sense, the tasks of the decision making bodies like the Presiding Council or the Judges' Council also belong to the internal administration of the Court. A good approximation of a correct definition of the activities of the internal administration of the Court would be one encompassing all duties that are not part of the jurisprudence of the Court itself but are merely directly or indirectly related to it.

The activities of the 60 judges require a personnel base just over twice the size of the judicial staff. These are 66 officials, 11 legal secretaries, 56 salaried employees (office and clerical staff, drivers and cleaning staff).

1. Internal administration of the Federal Supreme Finance Court The internal administration is responsible for the entire organisation of the court sessions. In addition its task is to handle all personnel affairs in the non judicial area and to provide materials. The administration has a budget of about EUR 12,5 million a year to manage the budget funds required for personnel and non-personnel costs. Expenditure of EUR 11,6 million alone is accounted for by personnel costs.

Parts of the internal administration are a printing-shop, the janitor service and the messenger service. The messengers are responsible for

transporting files, books and periodicals and are in attendance at sessions and court proceedings.

2. Senate offices As already mentioned (VI.1.), regularly each senate is provided with an administrative office, staffed with one executive-grade and one clerical-grade official. In order to ensure an effective working process, to get a regular work load and to make a stand-in easier two or three senate offices together with typists are brought together in so-called service units. The officials must have a well-founded knowledge of tax and customs law and are thus recruited from the revenue administrations of the Länder or from the customs administration. The activities of the senate offices and the typists are supported by modern information technology.

The staff of the administrative offices carry out the tasks of authenticating officials and assist the Senate President and the judges in performing their judicial functions in the conduct of proceedings. The principal tasks of an authenticating official include recording applications, issuing notice of proceedings and procuring the service of documents, distributing copies of decisions, carrying out the inspection of files. The duties of the administrative office also include keeping files and records, preparing orders for the formal course of proceedings, distributing the documents for the senate meetings, ascertaining the admissibility of an appeal especially the periods for appeal, computing taxes. The administrative offices are further charged with the formal verification of legal provisions invoked in senate decisions and of all other citations.

Finally the duties of the administrative offices also include gathering and recording data of the senate in question to be presented in the monthly and yearly statistics of the Court.

3. Central cost department and its official in charge Costs (fees and expenses) are levied for proceedings before the Federal Supreme Finance Court under the Law on Court Fees and fixed by the central

cost department. Fees are graded in accordance with the amount in dispute, i.e. the difference between the tax assessed by the revenue authorities and that envisaged by the taxpayer. For example, if a tradesman contends that additional business expenses of 30,000 EUR must be taken into account, the value in dispute will not be 30,000 EUR but will be determined by the potential reduction in corporate income tax of the taxpayer that would result from the business expenses being allowed as fully deductible. Given a top marginal tax rate of 45 per cent, this would amount in the case in question to not more than 13,500 EUR. As the defeated party to appeal proceedings with a value in dispute of 13,500 EUR the taxpayer would generally have to pay costs of 1,210 EUR. As a rule, he would also have to pay the costs of proceedings before the subordinate fiscal court and the fees and expenses of the person representing him. Court fees are collected by the Federal Cash Office in Weiden acting as cashier for the Federal Supreme Finance Court, and are enforced by the court-fee collection department at the Federal Agency for Justice in Bonn.

Besides the investigation of costs fixed by the central cost department the official in charge of the Federal Supreme Finance Court is representing the State in cases in which the tax payer has lodged an appeal (so-called Erinnerung) against the invoice fixing the costs levied for proceedings before the Court. Revenue from court fees and expenses amount to some 2 million EUR each year.

4. Presiding judge Tasks related to judicial administration are assigned to a presiding judge at the Federal Supreme Finance Court. This judge is responsible in particular for handling the business of the Presiding Board, for certain personnel matters, for the preparation and passing on of opinions submitted to other supreme federal courts, the legislative bodies and the Federal Constitutional Court, and for general legal issues concerning the Federal Supreme Finance Court. The presiding judge is assisted by staff officials.

5. Press office The Press office provides the media with information on proceedings that are pending before the Federal Supreme Finance Court and on decisions of the Court. This office also issues press releases and assists in preparing the annual reports of the Federal Supreme Finance Court (cf. IX.). In addition it takes from a special enterprise press reports on the Federal Supreme Finance Court and its decisions and on other relevant tax issues and distributes them to the members of the Federal Supreme Finance Court.

The Press office is headed by a judge at the Federal Supreme Finance Court with a staff of two: one executive-grade official and one salaried employee.

6. Information technology The use of modern and powerful data processing systems is becoming more and more significant to the activities of a highest court. Responsible for planning, installing and developing of these systems, the training of their users and assisting the staff of the Federal Supreme Finance Court is the information technology department staffed with qualified administrative employees, programmers and computer scientists. All the workplaces of the judges, legal secretaries and other staff of the Court are equipped with computers and screens that are throughout the building connected via a central processor (the so-called Intranet). Due to this fact it is possible to obtain access to the documents and data stored in the Court and to exchange them from any workplace in the Court. Besides it is possible to use external data bases (JURIS cf. X.2.; OPAC cf. X.3.). Furthermore most of the workplaces are equipped with Internet access.

XII. Statutory bodies and staff representations at the Federal Supreme Finance Court

The Federal Supreme Finance Court has the following bodies and staff representations as prescribed by law.

1. Judicial staff

a) The **Presiding Board** of the Federal Supreme Finance Court is a body of judges set up in accordance with the Law on the Constitution of Courts. According to Section 21a of the Law on the Constitution of Courts it consists of the President and eight elected judges. The judges sitting on the Presiding Board are elected for a four-year term of office by all the judicial members of the Federal Supreme Finance Court. The Board decides on the staffing and the area of responsibility of the individual senates (cf. IV.1.).

b) The **Presiding Council** is a special representative body through which the judicial staff is involved in the appointment of judges to the Federal Supreme Finance Court. As provided in Section 55 of the Law on the German Judiciary, the Presiding Council must be heard before the election of a judge (see also XIII.) and before the appointment of a judge as Presiding Judge in a senate.

The Presiding Council is made up of the President and Vice-President of the Federal Supreme Finance Court and three other members (Section 54 of the Law on the German Judiciary). One of these three members is elected from among the judges on the Presiding Board; the other two are elected by the Judges' Assembly. The period of the Presiding Council is four years.

c) The **Judges' Council** must be consulted on matters pertaining to the general and welfare interests of the staff. The Judges' Council is made up

of three judges elected for a four-year term of office by the Judges' Assembly.

d) In order to elect the members of the Judges' Council and the Presiding Council a **Judges' Assembly** has to be convened. If it is necessary an extraordinary Judges' Assembly may also be convened.

2. Non-judicial staff

a) Non-judicial staff at the Federal Supreme Finance Court are represented by the **Staff Council**, consisting of four representatives of the contingent of officials and three of salaried employees.

The Staff Council is involved in matters relating to the general and welfare interests of the non-judicial staff. It has the right to a say on the appointment of officials and on the employment of salaried staff, on the promotion of officials, on the grading and upgrading of salaried staff as well as on dismissals. The Staff Council reports to the Staff Assembly that must be held every year.

b) Staff at the Federal Supreme Finance Court coming under the Law relating to Severely Disabled Persons elect for a four-year term of office a representative whose task it is to look after their interests and to assist and advise them. This representative has to be heard in all staff matters concerning a severely disabled member of staff or the severely disabled staff as a group.

3. Gender Equality Ombudsman In accordance with the Federal Law on Gender Equality the ombudsman is involved in all administrative measures concerning issues of equality between women and men, compatibility of family and profession and improvement of the career opportunities of women working at the Federal Supreme Finance Court.

XIII. Appointment of judges

Statutory basis for the appointment of judges to the Federal Supreme Finance Court is the Law on the Election of Judges of 25 August 1950. Under this law, judges are appointed to the Federal Supreme Finance Court, as to all other supreme courts, by an electoral committee for judges. The committee is made up of the sixteen Land ministers responsible for fiscal jurisdiction and sixteen elected members nominated by the Bundestag. For the appointment of judges to the Federal Supreme Finance Court, and also for the appointment of judges to the Federal Constitutional Court and to the Federal Administrative Court, the committee is chaired by the Federal Minister of Justice, who has no vote but may exercise a veto.

Those, who are proposed for appointment as judges and elected by the committee for appointment as judges at the Federal Supreme Finance Court must be qualified to hold judicial office, may not be younger than thirty-five and must be German nationals. Only the Federal Minister of Justice and the members of the electoral committee have the right to propose a candidate. Though not expressly stipulated, it is expected that candidates have a special knowledge of tax and customs law.

Most of the proposed have a background in fiscal jurisdiction or fiscal administration or have been active in other branches of the judiciary. Practising lawyers or university professors are extremely seldom nominated as candidates.

Before the election proper, the Presiding Council (XII.1.b) must submit in writing a reasoned statement on the personal and professional qualifications of the candidate for office, derived from employment records, personal interviews and other sources. However, the electoral committee is not bound to follow these conclusions. In secret election it selects by simple majority.

In appointing judges, attention is also given to ensuring that the individual federal Länder are represented approximately in accordance with their size (cf. Article 36 (1) of the Basic Law).

XIV. The premises of the Federal Supreme Finance Court

The Federal Supreme Finance Court occupies a spacious building in Munich-Bogenhausen, listed for preservation and situated in parklike grounds covering some 18,000 square metres. The Reich Supreme Finance Court, too, was a previous occupier.



Front view of the Federal Supreme Finance Court

Originally in the 15th century on this site there was a estate that was a fief of the monastery of Freising. In 1630, the family of the person to whom the monastery had granted the farmyard in fee bought a part of the grounds and erected a "brick-built house". It was the first stately

home in Bogenhausen. In 1683 the owner of the building changed on inheritance. In 1803 the then Bavarian Minister of State and Conference Maximilian von Montgelas bought the estate.

The so-called pact of Bogenhausen was signed in 1805 in his summer house Bogenhausen. By this treaty, the alliance between Bavaria and France against Bavaria's former allies Austria and Russia was established. Thanks to this pact the troops of Napoleon were in a position to march into Bavaria. In return Bavaria was allowed to round off its territory and elector Max IV Joseph von Bayern became king. As soon as 1813, preparations were made for changing sides again on the estate of Minister Montgelas. Field marshal Prince Wrede received the order to enter into a new treaty with the Habsburgs.

After the death of Montgelas in 1838, the estate was sold to the Duke Max in Bayern. In the course of time the castle and annexes fell into disrepair.

Finally the estate (including the flanking triangle as far as the Herkomer square) was converted by Professor Fleischer, artist and colour manufacturer, to serve as a residence and provide rooms for receptions. The unfinished building dates from the years 1909 to 1910. In the course of 1910, work on the building had to be stopped because Professor Fleischer was in financial difficulties; what remained became known as "the ruined place of Bogenhausen".

In early 1919 the German Reich purchased the site and the unfinished building through the agency of the Bavarian Ministry of Finance, having ascertained that it would be suitable to accommodate the Reich Supreme Finance Court. According to the art deco plans of architect von Perignon the actual construction work was taken up in 1921 and was not finished until 1924. However, two senates of the Reich Supreme Finance Court were able to move into makeshift quarters in the building early in 1923. The Court as a whole was able to start work on 15 September 1923, though the formal transfer of the building did not take place until 3 January 1924. Before moving into "the Fleischer-Schlößchen", the Reich Supreme Finance Court had been housed in rented premises in the Barerstraße in Munich.

After the second World War, in which the building suffered some bomb damage to its northern front, the Supreme Fiscal Court was installed. At the same time, other parts of the premises were occupied by offices of the American forces, a Munich tax office, the Bavarian Higher Administrative Court and the Bavarian Statistical Office. Once these occupiers had left, the premises were taken over by the Munich Fiscal Court, which remained in residence from 1951 to 1956. It was not until March 1956 that the Federal Supreme Finance Court was able to take up work as the sole occupier of its official premises.



Stairwell at the Federal Supreme Finance Court

In 1972/73, the former panelled reading-room in the first floor library was converted into a second chamber for court proceedings. The library (cf. X.3.) was accommodated in a newly-built ground-floor extension.



Interior of the old library

Almost exactly 20 years after this development, additional room had to be made. Due to the lack of space the department for documentation and information as well as a few of the judges and legal secretaries had to be accommodated in rented premises in the vicinity of the Federal Supreme Finance Court. Above the single-storey library, two additional storeys were "suspended" on a steel frame construction (the statics did not permit a direct construction on top of the library). The new extension is linked to the original building by a glass-covered passageway. From the end of 1995, the entire staff of the Federal Supreme Finance Court has been accommodated in a single building complex.

To a large extent, the rooms at the Federal Supreme Finance Court are equipped with paintings and sculptures made available on loan by the Bavarian State Art Collection and the Federal Interior Ministry. Besides old masters, especially in the form of portraits and landscapes dating

from the 18th and 19th century there are many contemporary works of art.