

## **The Federal Supreme Finance Court**

The Federal Supreme Finance Court is the Court of last resort within the German jurisdiction over tax and customs matters. It is one of the five Federal Supreme Courts, established according to Article 95 of the Basic Law and has its seat in Munich. The Federal Supreme Finance Court predominantly adjudicates in legal remedy procedures upon the legality of assessments of taxes and duties, furthermore about child allowance, investment allowance and certain concerns regarding the professional law for tax consultants. The main task of the Federal Supreme Finance Court is to ensure the consistency of both, application and execution of law by the interpretation of the law. In addition to this, the case law of the Federal Supreme Finance Court contributes to the development of tax law in conformity with the Basic Law.

Oftentimes, the jurisdiction of the Federal Supreme Finance Court has considerable effects on the legal practice of the fiscal administration and, as a consequence also has extensive impact on the federal budget. The Federal Supreme Finance Court only adjudicates on the correct application of law in concrete individual cases. Although its decisions can only bind the respective parties, they are still authoritative for the taxation of other tax paying citizens where the same facts of case apply. This follows from the fact that the judgment's and decision's essence regularly flows into the treasury regulations and other administration guidelines, which are being adhered to by the legal practice and fiscal authorities.

## **The Fiscal Jurisdiction**

The Fiscal Courts of the Länder and the Federal Supreme Finance Court have the jurisdiction over all matters of fiscal law, excluding administrative fines and criminal law cases. They stand independently and coequally beside the courts of law (civil and criminal matters), the administrative, the labor and the social courts. Unlike the other jurisdictions, the fiscal jurisdiction is characterized by a simple two-tier structure. Courts of first instance are the Fiscal Courts of the Länder ranking equally with the higher regional courts; the Federal Supreme Finance Court is the court of appeal as Federal Supreme Court in tax and customs matters. The organization and government of the Court and the legal procedure are essentially regulated by the Code of Procedure for Fiscal Courts.

The citizen can raise objections against tax returns and administrative acts. If the fiscal authority is not willing to allow the objection, it has to reject it by a written decision. After this extra judicial preliminary proceedings action can be taken before the Fiscal Court.

18 Fiscal Courts altogether generally adjudicate in a composition of three professional and two honorary judges. The honorary judges do not assist in court orders decided outside oral proceedings. Certain cases, ruled by the law, can be decided by judges sitting alone.

In about 5 % of the cases the judgments of the Fiscal Courts are appealed to the Federal Supreme Finance Court. Against its decisions, the constitutional complaint, which can only be based on breaches of constitutional law, can be raised before the Federal Constitutional Court.

### **The Organization**

The Federal Supreme Finance Court has established eleven senates with a total of 61 judges. Regularly each senate is staffed with a presiding judge and four judges. In cases of adjudication, the senates decide by five judges, decisions outside the oral proceedings are being taken by the presiding judge and two other judges.

The area of jurisdiction of each senate and the judges assigned to it, are set out in a schedule of responsibilities, which is annually resolved by the Presiding Board of the Court.

At the Federal Supreme Finance Court a Large Senate has been established. Its members are the Court's President and one judge of each senate not chaired by the President. The Large Senate decides in those cases in which one senate wants to deviate from the adjudication of another. Furthermore, cases of fundamental importance can be brought before the Large Senate.

### **The Proceedings**

The Federal Supreme Finance Court reviews the Fiscal Courts' judgments regarding the legitimate application of federal law, in exceptional cases also of the law of the Länder. As an appellate court it exclusively decides upon points of law;

the finding of the facts concerning the merits of a case has to be made by the Fiscal Courts. Generally, their findings of facts are binding upon the Federal Supreme Finance Court. It has to refer the case back to the Fiscal Court, if this court did not ascertain all the essential facts concerning the merits of the case.

The appeal on a point of law before the Federal Supreme Finance Court can only be raised by the parties, if the Fiscal Court or - following an appeal against denial of leave to appeal - the Federal Supreme Finance Court has granted leave to appeal.

Leave to appeal on a point of law can only be granted if

- the case is of fundamental legal significance or
- the case law or the consistency of the jurisdiction make a decision by the Federal Supreme Finance Court necessary or
- a procedure error has been asserted, on which the appealed judgment might be based.

Against decisions of the Fiscal Courts, which are not judgments, an objection to the Federal Supreme Finance Court might be admissible under certain tight legal requirements.

Before the Federal Supreme Finance Court representation is compulsory, e.g. the tax payer has to file and constitute remedies through a procurator, who according to the law on tax consultancy is authorized for businesslike support in tax matters.

The Federal Supreme Finance Court has to decide upon the appeal based on the oral proceedings; however in an overwhelming number of cases though, under the agreement of the parties, the decision is taken without oral proceedings.

### **The Publication of Decisions**

The Federal Supreme Finance Court's decisions are published on a regular basis. According to their importance a distinction is being drawn between so-called P-decisions (designated to be officially published) and those decisions, designated not to be officially published (so called UP-decisions).

Leading decisions are officially published; they are all printed in the Official Collection of the Federal Supreme Finance Court (the "BFHE" collection) as well as in the general Federal Tax Journal Part II, edited by the Federal Minister of Finance. The P-decisions are also available on the Federal Supreme Finance Court's homepage.

## **The Personnel**

The judges at the Federal Supreme Finance Court are professional judges. They are being elected by an electoral committee for judges, to which 16 Ministers of the Länder (the Minister of Finance for Bavaria and the Ministers of Justice for the other Länder) as well as 16 internally appointed members of parliament belong.

The temporarily assigned learned assistants (generally about eleven) are being allotted to certain senates. They support the judges in their tasks.

The senate-offices register the incoming cases, administrate the files, handle the exchange of the written pleadings and submissions and further the procedures on behalf of the judges. They are responsible for summons, services of process and the executed copies of judgments.

The administration department of the Federal Supreme Finance Court is in particular responsible for the organization of the Court's operations, the budget and the handling of human resource affairs. It is being supported by the cost department, which levies the procedural costs, furthermore by the typists, the court officers and the custodians.

The personnel in the library attend to about 200,000 works and hence for the most comprehensive German collection of reference books and journals in the field of tax and customs law.

The department for documentation and information analyses the adjudication of the Federal Supreme Finance Court and the Fiscal Courts as well as reference literature and processes them for the juris database. It researches judicial decisions and literature for the judges.

The IT department installs and attends to the comprehensive and constantly growing data processing systems of the Federal Supreme Finance Court.

The press office issues press releases, allocates the Federal Supreme Finance Court's judgments on the internet, compiles the annual reports of the Federal Supreme Finance Court and advises expert visitor groups.

## **The Building**

The so-called "Fleischer-Schlößchen" in Munich-Bogenhausen is the official residence of the Federal Supreme Finance Court. The classicistic mastery edifice was conceptualized as a residential and entertainment house by the painter Ernst Philipp Fleischer, but has only ever been completed as carcass.

In 1919 the German Reich bought the park-like property with the "Bogenhausen castle-ruin" and finished and enlarged it to be the official residence of the Fiscal Court of the German Reich established the year before. The Federal Supreme Finance Court has taken up work there in October 1950. In order to change the appearance of the building being scheduled as an ancient monument as little as possible, every necessary enlargement has been executed in the backyard. During the years 1972/73 the single-floored library was built. Since 1995 a modern two-story addition dangles from steel beams above the library, mirroring the back side of the historic old building.

The Federal Supreme Finance Court is surrounded by a park, which was given back its original guise after the construction of an underground car park.

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