

The Effect of Court Rulings on the Dynamics of the Latvian Tax Law

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This paper is devoted to an important scholarly aspect of law and economics. We refer to the influence of court rulings on the tax law of the Republic of Latvia in relation to the country's integration into the European Union. The authors have proposed the thesis that court rulings can strengthen the foundations of a democratic country in which the rule of law prevails. They also ensure justice, equality, commensurability and other legal principles when it comes to budget and tax laws.

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Introduction

On May 4, 1990, the Supreme Council of the Latvian SSR approved a declaration on the restoration of the independence of the Republic of Latvia.¹ May 4 became a point of reference in terms of the gradual integration of Latvia into the EU.² Latvia signed an association agreement with the EU on June 12, 1995,³ and it began negotiations on admission to the EU on February 15, 2000.⁴ The negotiations were concluded on May 1, 2004, when Latvia became an EU member state.

Integration and joining the EU also meant that Latvia's legal system had to be harmonised with EU requirements. Of significance in this process was (and is) the work of the courts – the field of judicature. Of importance in the improvement of judicature in Latvia were not just local, but also EU and international court rulings. The judicature of the European Court of Human Rights (ECHR) mostly relates to the explanation of fundamental human rights. The European Court of Justice (ECJ) deals with aspects of the unified system of EU law. The Latvian Constitutional Court (ST) and the Senate of the Latvian Supreme Court (ATS) deal with justice, equality, commensurability and other principles in Latvia, not least in terms of aspects of tax law.

Integration into the EU has meant Latvia's participation in new and specific legal relations. In 1963, the ECJ ruled that the European Economic Community would establish a new legal order on the basis of international law. The basic aim was to establish the common market. This was of interest not just to member states, but also to their citizens. In pursuit of this goal, member states have limited their sovereign rights, albeit only in a few areas. Irrespective of the legal acts of member states, the law of the Community creates not just obligations, but also rights for individuals.⁵

EU tax law is based not just on the laws of the EU and its member states, but also on the international obligations of EU member states, as well as the European Convention of Human Rights and Fundamental Freedoms (ECHR).⁶

Unlike accustomed international agreements, the EU's legal system is an inviolable component of the laws of member states. Interpretation of EU law has, in many senses, been left up to the ECJ. In relation to taxes, the ECJ has emphasised this fact several times:

“By contrast with ordinary international treaties, the EEC treaty has created its own legal system which on the entry into force of the treaty became an integral part of the legal systems of the member states and which their courts are bound to apply.”⁷

The functions of public authorities, including the courts, cannot be imagined without the accumulation of state and local government budget finances (hereafter in this text, the state and its local governments are included in the concepts of “the state”, “the budget” or “the national budget”). In other words, the state must be solvent: “[...] Taxes are organised by the state as a prerequisite for society and a component of national policy. Tax revenues represent a substantial share of the overall national budget revenues, ensuring that the state can fulfil its functions [...]”.⁸ This means that tax issues are also national issues. Tax revenues are the main source of financing for state functions and the coverage of relevant expenditures. The proportion of taxes in the national budget is also seen in the area of Latvian national budget revenues.⁹

Taxes represent mandatory budget payments made by individuals, legal entities or entities established contractually. These payments must be made in accordance with the relevant normative acts. In line with the theory of a public contract that was elaborated by Thomas Hobbes (1588–1679¹⁰), John Locke (1632–1704¹¹), and

their followers in more modern times, the state is the result of an agreement (contract) among its residents, and it focuses on collective security (peace), “friendly” rules on life, the right to enjoy the fruits of one’s property, etc.¹²

Because the citizens of Latvia agreed to the establishment and existence of their country, it is their duty to honestly pay the taxes which have been approved by the state. Otherwise the state cannot fulfil its functions (at least to a certain degree), particularly in terms of battling against the shadow economy, corruption, tax evasion, etc. This is particularly important in Latvia, which, after the restoration of independence in 1990 and 1991, chose to join other EU member states in implementing a model of democracy and the rule of law. The existence of a democratic country in which the rule of law prevails cannot be imagined without honest payment of taxes. If taxes are not paid, the state must have ways of collecting back taxes in an effective and legally appropriate way. Of course, tax administration cannot be an arbitrary process which violates the constitutionally guaranteed fundamental rights of individuals¹³ or the legal principles which are rooted in the ideas of natural schools of judicial thought.¹⁴

This paper is devoted to the strengthening of the idea of a democratic country with the rule of law in the area of tax law, including the involvement of court rulings in this process. The authors will focus on an analysis of court rulings which relate to:

- 1) The legal interests of the national budget in collecting tax debts and fines;
- 2) The social guarantees of employees irrespective of whether mandatory social payments have or have not been provided to them in the context of constitutional law;
- 3) Opportunities to waive the application of a part of the individual income tax in the EU;
- 4) Rules concerning the profits and losses (free capital) of EU parent companies and subsidiaries in the economic arena of the EU.

1 Tax debts and punitive fines cannot be evaluated identically when preparing the national budget

As noted before, taxes are of decisive importance in relation to the financial resources of the state. This means that every country must choose a model of taxation which best corresponds to its needs in terms of the ability not only to levy taxes, but also to collect them. Payment of taxes is voluntary (the desirable form) or in a forced way (the undesirable form), and that is a secondary issue. What is essential is to ensure the ability of the state to fulfil its functions. In this regard the authors agree with the claim by Jean Bodin (1530–1596) that “finances are the nervous system of the state.”¹⁵ This suggests that the state has considerable freedom in determining the tax burden. The Latvian Constitutional Court has also ruled several times that the state has considerable freedom in specifying taxes:

*“In determining and implementing tax policies, the state has extensive freedoms. This includes the right to choose the tax rates that are to be applied to categories of persons, as well as the right to specify the details of the relevant regulations. The fundamental property rights of individuals are not violated if the state obliges them to make public and legal payments.”*¹⁶

Although the state is granted a substantial level of freedom in setting tax rates as emanates from issues such as the aforementioned Constitutional Court ruling, the authors would also like to focus the attention of readers on the fact that when it

comes to tax policies, the state is obliged to observe the principle of commensurability. The court ruling explains that this is the payment of taxes “[...] which do not represent an excessive burden on this individual and does not have a fundamental effect on his financial situation.”¹⁷ The ban on excessive burdens must be seen as a violation of commensurability. The principle of commensurability when it comes to taxes was also discussed by one of the greatest thinkers of the age of the Enlightenment, Charles Louis Montesquieu (1689–1755):

“[...] There is nothing which demands that the state demonstrate wisdom and minds which determine the section of [income] which is to be taken from the citizenry and the section that is to be left in its hands.”¹⁸

The issue of commensurability in this case also means that justice must be observed. It is also of essential importance for legislatures to understand the different attitudes which taxpayers have toward the taxation of various properties. Professor Paul Kirchhof has warned of this:

“The citizen is affected in a fiercer way if the tax takes away just a few square metres of land each year [...], as opposed to a situation in which the tax demands a share of income that has just been earned or makes consumption more expensive because of higher prices.”¹⁹

Although the obligation of paying taxes is self-evident on the one hand, the fact is that tax evasion is well known not just in Latvia, but throughout the world. There can be different reasons for this, starting with carelessness and ending with organised attempts to evade taxation. In general terms, people who do not pay their taxes are subject not just to tax debt, but also to late fees (interest on arrears) and punitive fines.²⁰

For a long time, there were debates about whether the state’s attitude toward taxes and late fees on the one hand and the collection of punitive fines in an undisputed procedure on the other hand should be seen as identical matters.

The problem was resolved by the Senate of the Supreme Court in several rulings²¹ which made reference to ECHR rulings in cases such as *Öztürk vs. Germany*,²² *Lauko vs. Slovakia*,²³ *Janosevic vs. Sweden*,²⁴ as well as to the Constitutional Court’s ruling of April 11, 2007, in a case related to whether the second sentence in Section 22.4 of the law on the individual income tax was in line with Section 92 of the Latvian Constitution.²⁵

In its ruling of December 20, 2007, the Supreme Court Senate made reference to the aforementioned ECHR rulings:

“Punitive tax fines can be compared to criminal sanctions in accordance with Section 6 of the European Convention on Human Rights and Fundamental Freedoms (the right to a fair trial). A punitive fine has a different nature and goal than is the case with decisions related to the calculation of tax debt. To wit, it is meant to force taxpayers to fulfil their obligations in the area of taxes and to punish violators of the requirements. The state’s financial interests are of fundamental importance in terms of ensuring the effective functioning of the tax system, but they are not as important when it comes to the collection of punitive fines, because even though tax-related fines can involve substantial sums of money, they are not meant to be a separate source of budget revenues.”²⁶

On the basis of this, the Senate concluded that “[...] the possibility to suspend the implementation of an administrative act must be evaluated differently in relation to (.):

- (1) The decision of tax administrators in relation to the duty of paying taxes, and
- (2) The issue of obligations to pay punitive fines that have been assigned to taxpayers.”²⁷

Section 185.1 of the law on administrative procedure defines this procedure:

*“The submission of an application to a court in relation to the repeal, nullification or voidance of an administrative act shall suspend the implementation of the said administrative act from the date upon which the application is received by the court.”*²⁸

Exceptions related to tax debts (including punitive fines) have been applied in the interests of the national budget and the country’s financing. The exception is that the filing of an appeal related to an administrative act which speaks to uncontested collection of tax debt does not automatically mean that its implementation is halted. The Law on Administrative Procedure was amended on December 18, 2008, to separate opportunities of collecting tax debt from punitive sanctions. Section 185.4.1. was amended to state the following:

*“[An] administrative act obliges one to pay a tax or fee or to make another payment to the state or local government budget, except for punitive payments (cash fines and punitive fines).”*²⁹

That does not mean that punitive fines are not to be collected before the relevant court ruling takes final effect. In *“Janosevic vs. Sweden, the European Court of Human Rights took into account the person’s argument to say that the collection of a punitive fine before the final court ruling might be in violation of the presumption of innocence, and it has ruled that the presumption of innocence does not fundamentally exclude the possibility of collecting taxes or punitive fines immediately.”*³⁰

This suggests that the judicial branch must be sensibly just in providing for a fair trial.³¹ For that reason, *“when ruling on a petition seeking the suspension of an administrative act or an actual activity or the restoration of the operation of an administrative act, the court must take into account whether the operation of the appealed administrative act might cause essential harm or losses with respect to which prevention or compensation would be substantially encumbered or would demand incommensurate resources, also considering whether the appealed administrative act is prima facie unlawful.”*³² *“Therefore justification for suspending the implementation of an administrative act is not the appeal of the administrative act as such, but instead the conclusion that the administrative act might be unlawful (to be nullified or overturned with the expected court ruling).”*³³ Irrespective of whether the legal proceedings lead to a decision that an administrative act or activity is *prima facie* unlawful, the judicature must attach secondary meaning to *prima facie* unlawfulness, and this must be seen as a sensible solution in strengthening the foundations of a democratic state in which the rule of law prevails.

There are several other problems which relate to tax-related punitive fines and their collection in Latvia. Court practice (in cases such as SKK-627/2008³⁴) shows that tax debt which is qualified as tax evasion is a crime in accordance with Section 218 of the Criminal Law, and that means that the relevant punishments are criminal sanctions. In the stated case, the appellate court accepted as evidence an audit report from the Riga regional institution of the State Revenue Service from November 30, 2006, on the subject of unpaid individual income tax in relation to the sale of real estate. Without making any effort to determine the true sum of the tax debt, the subject views of the defendant against the unpaid tax debt, the not yet completed review of the dispute by an administrative court, etc., the appellate court declared to the person to be guilty. Luckily, the Senate of the Supreme Court overturned the appellate court ruling:

*“The sum of the tax to be paid is one of the objective elements of the criminal offence that is enshrined in Section 218.2 of the Criminal Law.”*³⁵ *The appellate court was*

premature in drawing a conclusion about the scope of unpaid taxes, and in arithmetic terms it does not even correspond to the scope indicated in the criminal complaint.”³⁶

This shows that the tax administration process in Latvia does not strictly separate administrative and criminal procedures. On the one hand, normative regulations instruct taxpayers to work together with the tax administration, but on the other hand, the consequence can be (actual) self-incrimination if one “blindly” follows along with judicial and normative ideas.

Thus, for example, Article 32.² of the law on taxes and fees says that taxpayers must, during a specific period of time, informative declarations which are enshrined in that law or in other specific tax laws, or else, at the request of an official from the tax administration, submit additional information which, if not received, makes it impossible or at least hinders the amount of money that is to be contributed to the national budget or the determination of overpaid sums. Such information includes documents which confirm revenues and expenditures related to economic operations, bookkeeping documents, as well as other information that has or could have influenced the calculation and payment of taxes. At first glance, the concept of “other information” can clearly be interpreted very broadly, but that is not the case. The rights of the tax administration are limited, because there are provable links between the (other) information that is demanded and its importance in making tax payments more precise. Of course, if the request for such information or its provision are not directly based on the duties of the taxpayer. It is also true that Article 38 of the Law “On taxes and fees” states that:

“If the taxpayer does not agree to the amount of taxes calculated by the tax administration, then evidence about the amount of paid taxes must be ensured by the taxpayer.”

On May 16, 2011, the Senate of the Supreme Court handed down a ruling on Case No. SKA-123/2011³⁷, arguing that “[...] there is a situation in which there are two simultaneous processes in the administrative procedure institution in relation to the determination of additional fees and punitive fines and the criminal proceedings in which the handler of the process identifies the violation and files charges related to attempts to evade the payment of the same tax with respect to which criminal liability is applied. The two processes have different principles which mostly involve a conflict between the principle of participation which relates to administrative cases (Article 38 of the law on taxes and fees) and the basic principle of criminal procedure – the presumption of innocence which states that no person can be seen as guilty until such time as guilt has been determined in accordance with criminal procedure; all reasonable doubts about guilt which cannot be prevented must be evaluated in favour of the individual who has the right to a defence. This guarantees the right of the individual not to incriminate himself in relation to the violation [...]” The same ruling states that “In practice, there have been cases in which the two processes are separated sufficiently clearly when it comes to audits conducted by the State Revenue Service. In order, however, to declare that a decision on additional taxes or punitive fines is illegal in an administrative case, fundamental violations must be identified. There must be care taken to examine whether the splitting up the processes makes it possible to engage in adequate controls, i.e., to examine fundamental circumstances in the procedure. It is important to ascertain whether the specifications of the person’s legal obligations at the conclusion of the procedure is not based on violations of the aforementioned principles and personal rights.”

ECHR case law is of importance in this regard. In the case of *Funke*, the court ruled that a person has the right to remain silent and not to contribute toward self-incrimination. *“The special features of customs law cannot justify such an infringement of the right of anyone ‘charged with a criminal offence,’ within the autonomous meaning of this expression in Article 6 (art. 6) to remain silent and not to contribute to incriminating himself.”*³⁸ In this specific case, a customs institution had punished the petitioner with the aim of obtaining documents related to the specification of tax payments without being sure that such documents existed and being unwilling or unable to obtain evidence via other resources. That means that the punishment of the individual for tax violations could only be considered as a possibility. Thus the actions of the customs institution forced the petitioner to work with it, thus facilitating his self-incrimination. The ECHR found that this violated Article 6.1 of the European Human Rights Convention.

Conceptually close to the aforementioned incident is the case *J. B. vs. Switzerland*.³⁹ The ECHR ruled in that case that the first issue is the goal with respect to which information has been demanded – making the payable tax sum more precise may lead to the calculation of additional taxes and related late fees or punitive payments (supplementary-tax proceedings). This may also lead to tax-evasion proceedings. Tax evasion is a criminal issue, and it occurs when the law is violated.⁴⁰ An administrative process such as an audit can be transformed into a criminal case. In other words, the final punishment can be compared to a criminal sentence in terms of its weight. Thus, regulations related to Articles 32.² and 38 of the law on taxes and fees can violate Article 6 of the ECHR if the punishment is comparable to a criminal sentence or an audit case is utilised as a foundation to launch criminal proceedings.

At the same time, the full transfer of the duty of proof onto the shoulders of the tax administration would mean a threat against the state’s fiscal interests, because then the taxpayer would no longer have to calculate his taxes, offer additional evidence, co-operate with the tax administration, etc. The authors believe that this requires a sensible balance and commensurability in relations between the interests of society and the national budget on the one hand and the protection of the fundamental rights of the individual on the other hand. In continuing to think about the different views that there are about tax debt and relevant fines, it is necessary to separate the process of determining the basic sum of taxes (tax audits) and the application of punitive fines in this regard.

2 The employee receives social security when entering a labour contract and doing the relevant work

The need for social guarantees was discussed by the Constitutional Court on March 13, 2001, when it handed down a judgment on the issue of whether the first paragraph of the transitional rules of the law on national social security satisfied the requirements of Articles 1 and 109 of the Latvian Constitution, as well as Article 9 and Article 11.1 of the International Pact on Economic, Social and Cultural Rights.⁴¹

Parliament adopted the law on State social security on October 1, 1997.⁴² Article 5.4 of the law states that “[...] *the individual shall receive social security in terms of labour accident insurance, insurance against unemployment, handicap insurance, maternity and childbirth insurance, and parental insurance, the said individual making mandatory payments in relation to the said insurance from the first date when the said individual has taken on the status referred to in the first section of this*

paragraph, except where the person is self-employed. A person shall receive social insurance for a pension only if the mandatory contributions have been made.” The disputed section of the transitional rules said that “[...] between 1 January 1998 and 1 January 2002, social security shall be received by persons with respect to whom mandatory contributions have been made. This requirement shall not apply to persons who are subject to labour accident insurance. On 25 November 1999, the Saeima amended the law on social security to extend the period referred to in Para. 1 of the transitional rules to 1 January 2004.”⁴³

Even without going into legal detail, it can be said that the transitional rules were illegal. It was peculiar that the law split up those employees with respect to whom mandatory contributions had been made and those with respect to whom it was not done. It was no secret to anyone that this situation was not uncommon, particularly in the private sector. This illegal procedure could not be included in a law that was sanctioned by the state. 20 MPs filed a constitutional complaint to argue that the transitional rules violated Article 1⁴⁴ and Article 109⁴⁵ of the Latvian Constitution, as well as Article 9 and Article 11.1 of the International Pact on Economic, Social and Cultural Rights. The petitioners argued that there were some 80,000 employees in Latvia in 1999 with respect to whom employers had not made regular social insurance contributions, and that meant that many workers could not enjoy the social rights that are guaranteed in the Constitution.

The Constitutional Court also referred to social rights in its judgment: “[...] if social rights are included in the fundamental law, then the state may not refuse them. The said rights are not only of a declarative nature.”⁴⁶ The court added that “[...] the right to social protection in Latvia is of constitutional value”⁴⁷ in relation to Article 109 of the Constitution.

Although social rights are seen as a constitutional value, the fact is that their implementation depends on the country’s economic situation and available resources.⁴⁸ Social rights cannot be replaced with social aid,⁴⁹ because the goals of social insurance⁵⁰ and of social aid⁵¹ are not one and the same.

The Constitutional Court went on to rule that the system of social insurance for the employees of domestic employers involves a special situation, because

“1) [...] employers who are employed by an employer who pays domestic taxes [...] are the only persons involved in the state social insurance system who do not have the right to implement their obligations toward the system – making mandatory contributions to the special budget – directly, instead having to rely on the involvement of the employer;

2) [...] by doing their work such individuals create material prerequisites for social insurance. The employer is obliged to calculate the employee’s wage and to ensure that the wage is paid to the employee, also ensuring that the mandatory social insurance contribution is included in the compensation package. In addition to this, contributions from the employee are withheld from payment by the employer and transferred to the special budget in accordance with the terms of the law. The employee cannot influence this procedure, cannot reject the withholding of the contributions, or make the contributions individually. Neither does the law speak to the duty or the opportunity of an insured party to monitor the employer who makes the relevant contributions;

3) [...] where an employer violates the law by not making the mandatory payments, the relevant government institutions are authorised to force the employers to do so. Insured persons who cannot influence the activities of the employer or the

*institution which implements and/or supervises social insurance must not suffer just because other persons have failed to carry out their legal duties or have done so incompletely. Otherwise the mechanism that has been created to pursue constitutional rights would not satisfy its own goal.*⁵²

On the basis of this, the Constitutional Court found that “*as subjects of social insurance relationships, employees have fully carried out their duties at such time as they have begun an employment relationship and begun their work.*”⁵³ The state, in turn, has broad authority and a set of opportunities to collect mandatory social insurance contributions via the involvement of special institutions (particularly the State Revenue Service) or the courts, as well as by filing suit in relation to the debtor’s halting of job relations or the debtor’s insolvency.⁵⁴

The judgment clearly strengthened the legal rights of Latvian employees in regard to social rights, also facilitating a better understanding of the application of the principles of legal reliance and legal security when there are collisions of a legal nature.⁵⁵ That is why the final conclusion of the court that the disputed part of the laws’ transitional rules was unconstitutional in regard to Article 109 of the Constitution was self-evident. It meant that irrespective of whether a domestic employer has or has not made social insurance contributions, the relevant employee has the right to demand social guarantees from the state in accordance with Article 109 of the Constitution, the law on state social insurance, and other relevant normative acts.

3 Residents of other EU member states have the right to individual income tax relief in the member state in which they earn most of their income

The functions of a tax mechanism are manifested via an interaction between the interests of the state and private interests. This applies to harmonised indirect taxes (customs fees, the value added tax, the excise tax), as well as to direct taxes (income taxes, social insurance contributions). The EU does not regulate direct taxes, but the European Court of Justice has ruled that member states must handle this authority in accordance with the laws of the European Communities.⁵⁶ It is also true that the rights and freedoms of taxpayers can be limited on the basis of *significant* public interests.⁵⁷

Given that regulations of direct taxes are possible in the EU, focus must be given to the way in which ideas from the ECJ have been merged into Latvia’s normative acts via the discourse of direct taxes. Thus, for instance, in *Finanzamt Köln-Altstadt vs. Roland Schumacker*⁵⁸, the ECJ found that without taking into consideration the terms of tax conventions concluded among member states on the subject of applying the income tax to individual income, the fact is that the tax laws of all member states must provide non-residents from other member states with the same right to individual income tax reductions that is enjoyed by residents in relation to untaxed minimums, tax relief and untaxed justified expenditures, this provided that the economic situation of the non-resident is similar to that of a resident. The criterion in Latvia for determining the economic situation of non-residents relates to the issue of whether they earn most of their income in Latvia. This served as a basis to amend the law on the individual income tax to say that residents of other EU member states who earn 75% or more of their total income in Latvia are comparable to Latvian residents.⁵⁹ This allows such non-residents to deduct justified expenditures from tax

payments (Article 10 of the law on the individual income tax), ensure the untaxed minimum (Article 12), and receive tax relief (Article 13).

ECJ rulings were also the basis for the creation of a system in the law on the individual income tax which taxes dividends. In *Staatssecretaris van Financiën vs. B.G.M. Verkooijen*, the court ruled that when a shareholder receives dividends from a company registered in another member state, the tax applied to such dividends cannot be higher than is the case with shareholders or holders of capital shares who receive dividends from a company registered in their own country.⁶⁰ A new version of Article 9.1.2. of the law on the individual income tax took effect on May 1, 2004⁶¹ to ensure that taxes related to dividends which Latvian residents receive from companies in other EU member states are the same as in the case of dividends received from companies that are registered in Latvia.⁶²

In the area of donations to public benefit organisations, of importance is the ECJ ruling in *Hein Persche vs. Finanzamt Lüdenscheid*.⁶³ The ruling was merged into Article 20.¹ of the law on the individual income tax, with rules related to public benefit organisations in Latvia being compared to similar organisations, associations, religious organisations or other entities that have been declared of public benefit in other EU or European Economic Zone (EEZ) member states.⁶⁴

4 Not just the profits, but also the losses of a company (or group of companies) can be transferred in the economic space of the European Union

One ECJ ruling which has substantially affected tax law in Latvia is the prejudicial ruling in *Marks & Spencer plc v. David Halsey (Her Majesty's Inspector of Taxes)* on December 13, 2005. The ruling had to do with the rights of a parent company to absorb the losses of a subsidiary.⁶⁵

The M&S case is important in that it represents a conflict between the national budget interests of EU member states in relation to the collection of taxes on the one hand and EU law on the other hand. Direct taxes are the competence of member states, but it is also true that “*the duty for EU tax policy is to ensure that tax regulations are in line with stated goals related to the creation of new jobs, the competitiveness of the EU, the common market, and the free circulation of capital.*”⁶⁶ The ECJ has declared this in several rulings,⁶⁷ including the M&S case:

“*In that regard, it must be borne in mind that, according to settled case-law, although direct taxation falls within competence, Member States must nonetheless exercise that competence consistently with Community law.*”⁶⁸

The authors believe that a precise description of the content of the aforementioned ECJ ruling has been produced by Professor Heinrich Weber-Grellet, who has written that this represents the “silent harmonisation” of direct taxes at the EU level.⁶⁹

In accordance with Paragraphs 43 and 48 of the Treaty of the European Communities (EKL),⁷⁰ EU citizens have the right to engage in business in any member state. This includes opening offices, affiliates or subsidiaries in other member states with the same rights as those which rest with the citizens of the relevant member states. When such enterprises are established in accordance with the relevant member state's normative acts and have a legal address, management structure or major area of business operations in the EU, their legal status is compared to that of individuals (the exception being non-profit enterprises).⁷¹

In the M&S case, the ECJ found that UK norms satisfy requirements related to the freedom of business operations, but it also found that the ban against a non-resident subsidiary to transfer losses to a resident parent company violated EU law (at this level of development):

“The exclusion of such an advantage in respect of the losses incurred by a subsidiary established in another Member States which does not conduct any trading activities in the parent company’s Member State is of such a kind as to hinder the exercise by that parent company of its freedom of establishment by deterring it from setting up subsidiaries in other Member States. It thus constitutes a restriction on freedom of establishment within the meaning of Articles 43 EC and 48 EC, in that it applies different treatment for tax purposes to losses incurred by a non-resident subsidiary” (Para. 33, 34). The court also ruled that lower tax revenues are no excuse for limiting fundamental freedoms (Para. 44).⁷²

The transfer of a company’s losses from one member state to another clearly reduces the budget revenues of the other country. If companies are allowed to choose the country in which losses are to be taken into account, then that may seriously endanger the separation of competences among member states in terms of direct taxes. Even though the ECJ ruled that bans on such transfers are in violation of Articles 43 and 48 of the EKL (offering such opportunities to subsidiaries in the country of residence), it declared to be legitimate limitations on benefits which bar the non-resident subsidiary from transferring losses to a resident parent company until such time as the non-resident subsidiary in the country of residence can take into account the same losses during the next taxation or fiscal year.

The ECJ’s prejudiced decision clearly strengthens the development of integration in the EU, making it easier to circulate profits and losses in the EU economic space, but the truth, according to Webber-Grellet, is that this could also have the opposite effect:

*“Problems in this area of development exist first of all because the European Court of Justice appears to be little interested in national fiscal needs. It does not take territorial principles into account and only supports specifically European practices. Different perspectives (national tax sovereignty on the one hand and a ban on discrimination on the other hand) will inevitably lead to tensions and conflicts. Where the losses of foreigners must be compensated (Marks & Spencer), where foreign shareholders have the right to tax discounts, where national tax advantages are also granted to foreigners, and where the principle of correspondence is not in place, it becomes more difficult for national legislatures to create (implement) a fair tax and social system.”*⁷³

The right to transfer business losses to future taxation or fiscal years must be seen as tax relief which allows companies to even out negative results in terms of taxable revenues with taxable revenues from future periods in time.⁷⁴

Frequently, but not always, the mechanism of transferring losses is linked to duties stated in normative acts related to bookkeeping – the obligation to preserve relevant bookkeeping documents,⁷⁵ or the right of tax administrators to review tax payments in terms of conducting a tax audit for the relevant period.⁷⁶ That is also true in Latvia.

Prior to Latvia’s accession to the EU, the law on the corporate income tax said that the transfer of losses within a group of companies was possible if the process involved residents of the Republic of Latvia *“or residents from countries with which the Republic of Latvia has concluded a convention or agreement on preventing double*

taxation and tax evasion.” When Latvia joined the EU, major amendments to the law were approved, and they took effect on January 1, 2005. The text was supplemented with the words

“[...] *or residents from European Union member states who, in accordance with the prevailing convention on preventing double taxation, is also not recognised as the resident of another country (which is not a member state of the European Union).*”⁷⁷

The definition of the main company and the subsidiary of the company was also expanded to “[...] *include those companies in European Union member states which, for purposes of income taxes and on the basis of a prevailing convention on preventing double taxation, are not recognised as residents of another country (which is not a member state of the European Union).*”⁷⁸

The law on the corporate income tax was amended on December 19, 2006, to state that residents of other EEZ member states are comparable to residents of the EU, and the amendments took effect on January 1, 2007.⁷⁹ The law was also made more precise in terms of the circumstances under which a company is seen as a participant in a group of companies which allow the transfer of losses.⁸⁰

Although in formal terms, Latvian law permits the transfer of losses in a group of companies, the process is considerably cumbersome:

- 1) Income and losses related to the corporate income tax must be calculated in accordance with the requirements of Latvian law;
- 2) Losses can be transferred only if they cannot be taken into account during future taxation periods when specifying taxable revenues in the country of residence and the losses cannot be taken over by another taxpayer in the country of residence;⁸¹
- 3) Companies are participants in a group of companies throughout the entire taxation period during which losses that are to be transferred have occurred, none of the companies is exempt from the payment of the corporate income tax or a comparable tax, the company is not given a reduced tax rate or a tax exemption in accordance with Latvian laws;⁸²
- 4) The law on the corporate income tax was amended again on August 9, 2010 (taking effect on January 1, 2011),⁸³ to reflect the new law on micro-enterprise taxes.⁸⁴ The amendments state that “*a limited liability company which has become a payer of the micro-enterprise in the post-taxation year shall not have the right to transfer losses from the taxation period to another participant in the group.*”⁸⁵ Payers of the micro-enterprise tax pay it on the basis of their revenues, not their profits.

A company’s losses also cannot be transferred to future taxation (fiscal) years if ownership of the company has changed.⁸⁶ In cognisance on the principle of uninterrupted operations, the possibility to transfer losses is preserved, however, if “[...] *the commercial enterprise or co-operative whose ownership has changed shall, for the first five taxation periods after the change in control, preserve its previous basic area of operations, as complying to the basic area of operations of the commercial enterprise or co-operative during the last two taxation periods before the change in ownership.*”⁸⁷

The conclusion must be that at least in formal terms, Latvian laws in the area of the transfer of losses in a group of companies are based on the Marks & Spencer case at the ECJ.

Summary

1. The state's interest in collecting taxes differs from the collection of punitive fines for tax debt. Tax revenues underpin the performance of the state's functions, while punitive fines are aimed at punishing those who violate the law. Therefore a decision on an undisputed halt to tax collections or a rejection of the halt to tax collections vis-a-vis tax debt and punitive fines can differ, as well;
2. Employees of domestic companies are seen as socially insured people at such time as they have entered a labour relationship and have begun to work;
3. The restriction on transferring the losses of a non-resident company to a resident parent company in an EU member state after the subsidiary in the country of residence has exhausted opportunities to take losses into account during future taxation (fiscal) years is in conflict with the freedom of business operations that has been declared by the Treaty of the European Communities;
4. EU residents have the right to individual tax relief in the member state in which most or all of the income is received. In Latvia, a resident of the EU who receives 75% or more of his or her income in the country is compared to a resident of Latvia;
5. EU residents can also receive tax relief for donations or gifts to public benefit organisations in other EU or EEZ member states, just as is the case with donations to analogous organisations in their own country.

Sources

Bibliography

1. *Braun, J.* Einführung in die Rechtsphilosophie. Der Gedanken des Rechts (Introduction to the Philosophy of Law: The Idea of Law). Tübingen: Mohr Siebeck, 2006. ISBN 3-16-148982-9. ISBN-13 978-3-16-148982-2.
2. *Dourado, A. P., da Palma Borges R.* The Acte Clair in EC Direct Tax Law. Amsterdam: IBFD, 2008. ISBN: 978-90-8722-036-5.
3. *Eberts, D., Freija, I., Jarve, K., Jerņeva, J., Lutere-Timmele L. D., Debora, P., Rone, D., Rūķe, I., Vasariņš, N.* Eiropas Savienības tiesību piemērošana: Rokasgrāmata praktizējošiem juristiem. Zinātniskā redaktore Dace L. Lutere-Timmele (The Application of European Union Law: A Handbook for Practicing Attorneys. Lutere-Timmele, D. (ed.)). Rīga: Courthouse Agency (2007). ISBN 978-9984-790-28-2.
4. *Kirchhof, P.* Der sanfte Verlust der Freiheit. Für ein neues Steuerrecht – klar, verständlich, gerecht (The Gentle Loss of Freedom: A New Tax That is Clear, Understandable and Fair). München, Wien: Carl Hansen Verlag (Munich and Vienna: Carl Hansen Publishers), 2004. ISBN 3-446-22689-3.
5. *Ketners, K., Titova, S.* Nodokļu politika Eiropas Savienības vidē (Tax Policies in the European Union). Rīga: Banku augstskola (University College of Banking), 2009. ISBN 978-9984-9985-2-7.
6. *Lazdiņš, J.* Latvijas Republikas tiesību attīstības tendences pēc neatkarības atjaunošanas 1990.–1991. gadā (Trends in the Development of the Law in the Republic of Latvia After the Restoration of Independence in 1990 and 1991), at: *Latvijas Universitātes Žurnāls. Juridiskā zinātne*, No. 1, 2010, pp. 53–80. ISSN 1691-7677. ISBN 978-9984-45-246-3.
7. *Levits, E.* Latvijas tiesību attīstības tendences uz XXI gadsimta sliekšņa (Trends in the Development of Latvian Law on the Threshold of the 21st Century), at: *Latvijas tiesību vēsture (1914–2000)*. Prof. Dr.iur. Dītriha Andreja Lēbera redakcijā. (The History of Latvian Law, 1914–2000. In prof. Dr. iur. Dītriha Andreja Lēbera ed.). Rīga: LU žurnāla "Latvijas vēsture" fonds (LU Latvian History Fund), 2000, pp. 477–506. ISBN 9984-643-14-X.
8. *Medema, St. G., Samuels W. J.* (eds.). The History of Economic Thought: A Reader. London: Routledge, 2003. ISBN 0-425-20550-6.
9. *Nodokļu ceļvedis*. 1. sējums. Likumu "Par nodokļiem un nodevām" un "Par uzņēmumu ienākuma nodokli" komentāri. [B.v.]: Dienas bizness, Deloitte, [b.g.] (Commentary on Tax Law, Vol. 1: The Law on Taxes and Fees and the Law on the Corporate Income Tax. Dienas Bizness and Deloitte & Touche) [last viewed 08.03.2011].

10. *Nodokļu likumu komentāri*. 4. sējums. Likumu “Par iedzīvotāju ienākuma nodokli” un “Par valsts sociālo apdrošināšanu”. [B.v.]: Dienas bizness, Deloitte & Touche, [b.g.] (Commentary on Tax Law, Vol. 4: The Law on the Individual Income Tax and the Law on National Social Insurance. Dienas Bizness and Deloitte & Touche) [last viewed 08.03.2011].
11. *Rüthers, B., Fischer, C.* Rechtstheorie. Begriff, Geltung und Anwendung des Rechts von Professor Dr.iur. Dres. h.c. Berndt Rüthers vormals Richter am Oberlandesgericht und Professor Dr.iur. Christian Fischer unter Mitarbeit von Professor Dr.iur. Axel Birk . 5., überarbeitete Auflage (Legal Theory: The Concept, Scope and Application of the Law by Professor Berndt Rüthers, Formerly a Judge of the Higher Regional Court, and Professor Christian Fischer with the Assistance of Professor Alex Birk, 5th ed.). München: Verlag C.H. Beck München, 2010. ISBN 9783406580659.
12. *Schlosser, H.* Grundzüge der neueren Privatrechtsgeschichte. Rechtentwicklungen im europäischen Kontext. 9., völlig neu bearbeitete und erweiterte Auflage (Key Features in the Recent History of Private Law: Legal Developments in the European Context, 9th ed.). Heidenberg: C.F. Müller Verlag, 2001. ISBN 3-8252-0882-6.
13. *Schön, W.* Tax Competition in Europe. Amsterdam: IBFD, 2003. ISBN 90-76078-55-6.
14. *Vanistendael, F.* EU Freedoms and Taxation. Amsterdam: IBFD, 2006. ISBN 978-90-76078-98-4.
15. *Vildbergs, H. J., G. Feldhüne.* Atsauces Satversmei (Commentary on the Constitution). (references/commentary / annotations to Satversme). Rīga: EuroFaculty, 2003. ISBN 9984-725-82-0.
16. *Wank, R.* Die Auslegung von Gesetzen. 3., neu bearbeitete Auflage (Interpretation of the Law. 3rd ed.). Köln, Berlin, München: Carl Heymans Verlag KG, 2005. ISBN 3-452-25961-7.
17. *Weber-Grellet, H.* Europäisches Steuerrecht (European Tax Law). München: Verlag C. H. Beck, 2005. ISBN 3 340650633X.
18. *Zippelius, R.* Rechtsphilosophie: Ein Studienbuch von Dr. Dr.h.c. Reinhold Zippelius em.o.Professor an der Universität Erlangen-Nürnberg. 4., neubearbeitete Auflage. (Philosophy of Law: A Study Book by Dr. Reinhold Zippelius From the University of Erlangen-Nürnberg. 4th ed.). München: Verlag C. H. Beck, 2003. ISBN 3406506674.
19. *Налоги и налоговое право* (Taxes and Tax Law). Под редакцией кандидата юридических наук А. В. Брызгалина (Edited by the candidate of legal sciences Brizgalina A. V.). Москва: Аналитика – Пресс (Analytics-Press), 1997. ISBN 5-7916-0007-0.
20. *Пушкарева, В. М.* История финансовой мысли и политики налогов (Pushkareva, V. M. The History of Financial Thought and Tax Policy). Москва: Финансы и статистика (Finance and Statistics), 2003. ISBN 5-279-02390-6.

Normative acts

1. 12.06.1995. Eiropas līgums par asociācijas izveidošanu starp Eiropas Kopienām un to Dalībvalstīm, no vienas puses, un Latvijas Republiku, no otras puses. Starptautisks līgums (The association agreement between the European Communities and their Member States and the Republic of Latvia, 12 June 1995). Available: <http://pro.nais.lv/naiser/text.cfm?Key=0240121995061232769> [last viewed 08.07.2011].
2. Eiropas Cilvēktiesību un pamatbrīvību aizsardzības konvencija (The European Convention on Protecting Human Rights and Fundamental Freedoms). Available: http://www.tiesibsargs.lv/lat/tiesibu_akti/eiropas_padomes_dokumenti/?doc=60 [last viewed 15.08.2011].
3. Latvijas Padomju Sociālistiskās Republikas Augstākās Padomes 04.05.1990. Deklarācija “Par Latvijas Republikas neatkarības atjaunošanu” (The declaration of the Supreme Council of the Latvian Soviet Socialist Republic “On the Restoration of the Independence of the Republic of Latvia, 4 May 1990). Available: <http://www.likumi.lv/doc.php?id=75539> [last viewed 08.07.2011].
4. Satversmes Sapulces 15.02.1922. likums “Latvijas Republikas Satversme”, 8. nodaļa (The law of the Constitutional Council of the Republic of Latvia “The Constitution of the Republic of Latvia”, 8th chapter, 15 February 1922). Available: <http://www.likumi.lv/doc.php?id=57980> [last viewed 15.08.2011].
5. Latvijas Republikas Saeimas 14.10.1992. likums “Par grāmatvedību” (The Latvian law on bookkeeping, 14 October 1992). Available: <http://www.likumi.lv/doc.php?id=66460> [last viewed 08.03.2011].
6. Latvijas Republikas Saeimas 11.05.1993. likums “Par iedzīvotāju ienākuma nodokli” (The Latvian law on the individual income tax, 11 May 1993). Available: <http://www.likumi.lv/doc.php?id=56880> [last viewed 27.08.2011].
7. Latvijas Republikas Saeimas 02.02.1995. likums “Par nodokļiem un nodevām” (The Latvian law on taxes and fees, 2 February 1995). Available: <http://www.likumi.lv/doc.php?id=33946> [last viewed 15.07.2011].

8. Latvijas Republikas Saeimas 09.02.1995. likums "Par uzņēmumu ienākuma nodokli" (The Latvian law on the corporate income tax, 9 February 1995). Available: <http://www.likumi.lv/doc.php?id=34094> [last viewed 27.08.2011].
9. Latvijas Republikas Saeimas 01.10.1997. likums "Par valsts sociālo apdrošināšanu" (The Latvian law on social insurance, 1 October 1997). Available: <http://www.likumi.lv/doc.php?id=45466> [last viewed 19.07.2011].
10. Latvijas Republikas Saeimas 17.06.1998. likums "Krimināllikums" (The Latvian Criminal Law, 17 June 1998). Available: <http://www.likumi.lv/doc.php?id=88966> [last viewed 25.08.2011].
11. Latvijas Republikas Saeimas 25.10.2001. likums "Administratīvā procesa likums" (The Latvian law on administrative procedure, 25 October 2001). Available: <http://www.likumi.lv/doc.php?id=55567> [last viewed 20.09.2011].
12. Latvijas Republikas Saeimas 31.10.2002. likums "Sociālo pakalpojumu un sociālās palīdzības likums" (The Latvian law on social services and social aid, 31 October 2002). Available: <http://www.likumi.lv/doc.php?id=68488> [last viewed 03.08.2011].
13. Latvijas Republikas Saeimas 11.12.2003. likums "Grozījumi likumā "Par iedzīvotāju ienākuma nodokli"" (Amendments to the Latvian law on the individual income tax, 11 December 2003). Available: <http://www.likumi.lv/doc.php?id=82463> [last viewed 17.08.2011].
14. Latvijas Republikas Saeimas 20.12.2004. likums "Grozījumi likumā "Par iedzīvotāju ienākuma nodokli"" (Amendments to the Latvian law on the individual income tax, 20 December 2004). Available: <http://www.likumi.lv/doc.php?id=98461> [last viewed 17.08.2011].
15. Latvijas Republikas Saeimas 20.12.2004. likums "Grozījumi likumā "Par uzņēmumu ienākuma nodokli" (Amendments to the Latvian law on the corporate income tax, 12 December 2004). Available: <http://www.likumi.lv/doc.php?id=98462> [last viewed 22.07.2011].
16. Latvijas Republikas Saeimas 19.12.2006. likums "Grozījumi likumā "Par uzņēmumu ienākuma nodokli" (Amendments to the Latvian law on the corporate income tax, 19 December 2006). Available: <http://www.likumi.lv/doc.php?id=150698> [last viewed 25.07.2011].
17. Latvijas Republikas Saeimas 18.12.2008. likums "Grozījumi Administratīvā procesa likumā" (Amendments to the Latvian law on administrative procedure, 1 December 2008). Available: <http://www.likumi.lv/doc.php?id=185916> [last viewed 15.07.2011].
18. Latvijas Republikas Saeimas 01.12.2009. likums "Par valsts budžetu 2010.gadam", 1. pielikums (The Latvian law on the 2010 national budget, 18 December 2009, appendix 1). Available: <http://www.likumi.lv/wwwraksti/2009/200/BILDES/BUDZETS/BUDZETS%20P1.DOC> [last viewed 08.07.2011].
19. Latvijas Republikas Saeimas 01.12.2009. likums "Grozījumi likumā "Par iedzīvotāju ienākuma nodokli" (Amendments to the Latvian law on the individual income tax, 1 December 2009). Available: <http://www.likumi.lv/doc.php?id=202351> [last viewed 11.10.2011].
20. Latvijas Republikas Saeimas 09.08.2010. likums "Mikrouzņēmumu nodokļa likums" (The Latvian law on the micro-enterprise tax, 9 August 2010). Available: <http://www.likumi.lv/doc.php?id=215302> [last viewed 28.07.2011].
21. Latvijas Republikas Saeimas 09.08.2010. likums "Grozījumi likumā "Par uzņēmumu ienākuma nodokli" (Amendments to the Latvian law on the corporate income tax, 9 August 2010). Available: <http://www.likumi.lv/doc.php?id=215306> [last viewed 25.07.2011].
22. Latvijas Republikas Saeimas 20.12.2010. likums "Par valsts budžetu 2011.gadam", 1. pielikums (The Latvian law on the 2011 national budget, 20 December 2010, appendix 1). Available: http://www.likumi.lv/wwwraksti/2011/066/BILDES/L_BUDZETS/BUDZETS%20P1_30.04.DOC [last viewed 08.07.2011].

Case law

The European Court of Human Rights

1. *Öztürk vs. Germany*, No. 8544/79, 21 February 1984. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=%D6zt%FCrk%20%7C%20v.%20%7C%20germany&sessionId=73652165&skin=hudoc-en> [last viewed 15.07.2011].
2. *Funke vs. France*, No. 10828/84, 25 February 1993. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695686&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> [last viewed 25.08.2011].
3. *Lauko vs. Slovakia*, No. 4/1998/907/1119, 2 September 1998. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Lauko%20%7C%20v.%20%7C%20slovakia&sessionId=73652165&skin=hudoc-en> [last viewed 15.07.2011].

4. *J. B. vs. Switzerland*, No. 31827/96, 3 May 2001. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697326&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> [last viewed 26.08.2011].
5. *Janosevic vs. Sweden*, No. 34619/97, 23 July 2002. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=34619/97&sessionId=73649506&skin=hudoc-en> [last viewed 15.07.2011].

The European Court of Justice

6. *NV Angeneme Transport – en Expeditie Onderneming van Gend & Loos*, No. C-26/62, 5 February 1963. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962CJ0026:EN:HTML> [last viewed 15.08.2011].
7. *Flaminio Costa vs. E.N.E.L.*, C-6/64, 15 July 1964. Available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61964CJ0006:EN:HTML> [last viewed 03.08.2011].
8. *G.J.E.J. Wielockx vs. Inspecteur der directe belastingen*, C-80/94, 11 August 1995. Available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61994CJ0080:EN:HTML> [last viewed 07.08.2011].
9. *Futura Participations SA and Singer vs. Administration des contributions*, C-250-95, 15 May 1997. Available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61995CJ0250:EN:HTML> [last viewed 07.08.2011].
10. *Staatssecretaris van Financiën vs. B.G.M Verkooijen*, C-35/98, 6 June 2000. Available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998CJ0035:EN:HTML> [last viewed 07.08.2011].
11. *Imperial Chemical Industries plc (ICI) vs. Kenneth Hall Colmer (Her Majesty's Inspector of Taxes)*, C-264/96, 16 August 1998. Available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996CJ0264:EN:HTML> [last viewed 07.08.2011].
12. *Combined case of Metallgesellschaft Ltd [a.o.], C-410/98 and Hoechst AG and Hoechst (UK) Ltd vs. Commissioners of Inland Revenue and HM Attorney General*, 8 March 2001. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998J0397:LV:HTML> [last viewed 27.07.2011].
13. *Petri Manninen*, C-319/02, 7 September 2004. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002J0319:LV:PDF> [last viewed 28.07.2011].
14. *Finanzamt Köln-Altstadt vs. Roland Schumacker*, C-279/93, 14 February 2005. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61993CJ0279:EN:HTML> [last viewed 07.08.2011].
15. *Marks & Spencer plc vs. David Halsey (Her Majesty's Inspector of Taxes)*, C-446-03, 13 December 2005. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0446:EN:HTML> [last viewed 27.07.2011].
16. *Hein Persche vs. Finanzamt Lüdenscheid*, C-318/07, 27 January 2009. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0318:EN:HTML> [last viewed 15.08.2011].

Constitutional Court of the Republic of Latvia

17. Judgment in Case No. 2000-0109, 13 March 2001. Available: <http://www.satv.tiesas.gov.lv/upload/2000-08-0109.rtf> [last viewed 19.07.2011].
18. Judgment in Case No. 2006-28-01, 11 April 2007. Available: http://ieprikseja.lbas.lv/tiesu%20prakse/satversmes%20tiesas%20spriedumi/2006_28_01.pdf [last viewed 15.07.2011].
19. Judgment in Case No. 2010-25-01, 6 December 2010. Available: http://www.satv.tiesas.gov.lv/upload/spriedums_2010-25-01x7nw.htm [last viewed 14.07.2011].
20. Judgment in Case No. 2010-59-01, 13 April 2011. Available: http://www.satv.tiesas.gov.lv/upload/spriedums_2010-59-01.htm [last viewed 14.07.2011].
21. Judgment in Case No. 2001-02-0106, 26 June 2011. Available: <http://www.satv.tiesas.gov.lv/upload/2001-02-0106.rtf> [last viewed 02.08.2011].

Department of Administrative Cases of the Supreme Court Senate

22. Decision in Case No. SKA-105, 18 May 2004 [not published].
23. Decision in Case No. SKA-172, 3 August 2004 [not published].
24. Decision in Case No. SKA-0715-07, A42168405, 20 December 2007. Available: <http://juridika.tiesas.lv/template/index.php?type=3&id=425&cat=4> [last viewed 15.07.2011].
25. Decision in Case No. SKA-123/2011, 16 March 2011. Available: http://www.tiesas.lv/files/AL/2011/05_2011/16_05_2011/AL_1605_AT_SKA-0123-2011.pdf [last viewed 25.08.2011].

Department of Criminal Cases of the Supreme Court Senate

26. Decision in Case No. SKK-627/2008, 2 December 2008. Available: http://www.at.gov.lv/files/archive/departament2/2007/2008/skk%20627_8_dz.doc [last viewed 15.07.2011].

References

- ¹ Latvijas Padomju Sociālistiskās Republikas Augstākās Padomes 04.05.1990. Deklarācija "Par Latvijas Republikas neatkarības atjaunošanu" (The declaration of the Supreme Council of the Latvian Soviet Socialist Republic "On the Restoration of the Independence of the Republic of Latvia), 4 May 1990). Available: <http://www.likumi.lv/doc.php?id=75539> [last viewed 08.07.2011].
- ² For more on this, see *Lazdiņš, J.* Latvijas Republikas tiesību attīstības tendences pēc neatkarības atjaunošanas 1990.–1991. gadā (Trends in the Development of the Law in the Republic of Latvia After the Restoration of Independence in 1990 and 1991), at: *Latvijas Universitātes Žurnāls. Juridiskā zinātne*, No. 1, 2010, pp. 53–80. ISSN 1691-7677. ISBN 978-9984-45-246-3.
- ³ 12.06.1995. Eiropas līgums par asociācijas izveidošanu starp Eiropas Kopienām un to Dalībvalstīm, no vienas puses, un Latvijas Republiku, no otras puses. Starptautisks līgums (The association agreement between the European Communities and their Member States and the Republic of Latvia, 12 June 1995). Available: <http://pro.nais.lv/naiser/text.cfm?Key=0240121995061232769> [last viewed 08.07.2011].
- ⁴ *Levits, E.* Latvijas tiesību attīstības tendences uz XXI gadsimta sliekšņa (Trends in the Development of Latvian Law on the Threshold of the 21st Century), at: *Latvijas tiesību vēsture (1914–2000)*. Prof. Dr.iur. Dītriha Andreja Lēbera redakcijā (The History of Latvian Law, 1914–2000. In prof. Dr.iur. Dītriha Andreja Lēbera ed.). Rīga: LU žurnāla "Latvijas vēsture" fonds (LU Latvian History Fund), 2000. ISBN 9984-643-14-X. – p. 495.
- ⁵ The European Court of Justice, *NV Angeneme Transport- en Expeditie Onderneming van Gend & Loos*, No. C-26/62, 5 February 1963. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962CJ0026:EN:HTML> [last viewed 15.08.2011].
- ⁶ Eiropas Cilvēktiesību un pamatbrīvību aizsardzības konvencija (The European Convention on Protecting Human Rights and Fundamental Freedoms). Available: http://www.tiesibsargs.lv/lat/tiesibu_akti/eiropas_padomes_dokumenti/?doc=60 [last viewed 15.08.2011].
- ⁷ The European Court of Justice, *Flaminio Costa vs. E.N.E.L.*, C-6/64, 15 July 1964. Available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61964CJ0006:EN:HTML> [last viewed 03.08.2011].
- ⁸ Constitutional court of the Republic of Latvia, Judgment in Case No. 2010-59-01, 13 April 2011. Available: http://www.satv.tiesa.gov.lv/upload/spriedums_2010-59-01.htm [last viewed 14.07.2011].
- ⁹ See, e.g., recent Latvian budgets: Latvijas Republikas Saeimas 01.12.2009. likums "Par valsts budžetu 2010. gadam", 1. pielikums (The Latvian law on the 2010 national budget, 1 December 2009, appendix 1). Available: <http://www.likumi.lv/wwwraksti/2009/200/BILDES/BUDZETS/BUDZETS%20PI.DOC> [last viewed 08.07.2011]; Latvijas Republikas Saeimas 20.12.2010. likums "Par valsts budžetu 2011.gadam", 1. pielikums (The Latvian law on the 2011 national budget, 20 December 2010, appendix 1). Available: http://www.likumi.lv/wwwraksti/2011/066/BILDES/L_BUDZETS/BUDZETS%20P1_30.04.DOC [last viewed 08.07.2011].
- ¹⁰ *Braun, J.* Einführung in die Rechtsphilosophie. Der Gedanken des Rechts (Introduction to the Philosophy of Law: The Idea of Law). Tübingen: Mohr Siebeck, 2006, p. 187. ISBN 3-16-148982-9. ISBN-13 978-3-16-148982-2.
- ¹¹ *Ibid.*, pp. 200, 201.
- ¹² *Ibid.*, pp. 193–200, 207–213. For more, see: *Ketners, K., Titova, S.* Nodokļu politika Eiropas Savienības vidē (Tax Policies in the European Union). Rīga: Banku augstskola (University College of Banking), 2009, pp. 9–11. ISBN 978-9984-9985-2-7.
- ¹³ Satversmes Sapulces 15.02.1922. likums "Latvijas Republikas Satversme", 8. nodaļa. (The law of the Constitutional Council of the Republic of Latvia "The Constitution of the Republic of Latvia", 8th chapter, 15 February 1922). Available: <http://www.likumi.lv/doc.php?id=57980> [last viewed 15.08.2011].
- ¹⁴ For more in this school of thought, see, e.g., *Rüthers, B., Fischer, C.* Rechtstheorie. Begriff, Geltung und Anwendung des Rechts von Professor Dr.iur. Dres. h.c. Bernd Rüthers vormals Richter am Oberlandesgericht und Professor Dr.iur. Christian Fischer unter Mitarbeit von Professor Dr.iur. Axel Birk. 5., überarbeitete Auflage (Legal Theory: The Concept, Scope and Application of the Law by Professor Berndt Rüthers, Formerly a Judge of the Higher Regional Court, and Professor

- Christian Fischer with the Assistance of Professor Alex Birk, 5th ed.). München: Verlag C. H. Beck München, 2010, pp. 272–299, 377–395. ISBN 9783406580659.
- See also – *Schlosser, H.* Grundzüge der neueren Privatrechtsgeschichte. Rechtsentwicklungen im europäischen Kontext. 9., völlig neu bearbeitete und erweiterte Auflage (Key Features in the Recent History of Private Law: Legal Developments in the European Context, 9th ed.). Heidenberg: C. F. Müller Verlag, 2001, pp. 85–110. ISBN 3-8252-0882-6; *Zippelius, R.* Rechtsphilosophie: Ein Studienbuch von Dr. h. c. Reinhold Zippelius em.o. Professor an der Universität Erlangen-Nürnberg. 4., neubearbeitete Auflage. (Philosophy of Law: A Study Book by Dr Reinhold Zippelius From the University of Erlangen-Nürnberg. 4th ed.). München: Verlag C. H. Beck, 2003, pp. 92–100. ISBN 3406506674; *Medema, St. G., Samuels, W. J.* (eds.). The History of Economic Thought: A Reader. London: Routledge, 2003. ISBN 0-425-20550-6 etc.
- ¹⁵ Quoted in *Пушкарёва, В. М.* История финансовой мысли и политики налогов (Pushkareva, V. M. The History of Financial Thought and Tax Policy). Москва: Финансы и статистика (Finance and Statistics), 2003. ISBN 5-279-02390-6.
- ¹⁶ Constitutional court of the Republic of Latvia, Judgment in Case No. 2010-59-01, Paragraph 9. (See also too the judgment of the Constitutional Court, Judgment in Case No. 2010-25-01, 6 December 2010. Available: http://www.satv.tiesas.gov.lv/upload/spriedums_2010-25-01x7nw.htm, Paragraph 10 [last viewed 14.07.2011]: “In evaluating the freedom of activity of the legislature vis-a-vis the setting of a tax rate for a specific object, it must be taken into account that the Constitution has, *expressis verbis*, authorized the legislature to approve the national budget, thus also specifying the state’s revenues and expenditures. Accordingly, the Constitution authorizes the legislature to implement fiscal policies which ensure the revenues which the state needs. The fundamental rights that are enshrined in Section 105 of the Constitution cannot be divorced from the constitutional duty of individuals to pay the taxes which have been approved in accordance with relevant procedures”.
- ¹⁷ Ibid.
- ¹⁸ Quoted in *Налоги и налоговое право* (Taxes and Tax Law). Под редакцией кандидата юридических наук А. В. Бризгалина (Edited by the candidate of legal sciences Brizgalina A.V.). Москва: Аналитика-Пресс (Analytics-Press), 1997, p. 79. ISBN 5-7916-0007-0.
- ¹⁹ “Der Bürger ist härter betroffen, wenn die Steuer ihm jährlich von seinem Grundstück gleichsam einige Quadratmeter wegnimmt [...], als wenn die Steuer einenteil seiner soeben erzielten Einkommens beansprucht oder den Preis für seinen Konsum versteuert“. See *Kirchhof, P.* Der sanfte Verlust der Freiheit. Für ein neues Steuerrecht – klar, verständlich, gerecht (The Gentle Loss of Freedom: A New Tax That is Clear, Understandable and Fair). München, Wien: Carl Hansen Verlag (Munich and Vienna: Carl Hansen Publishers), 2004, p. 63. ISBN 3-446-22689-3.
- ²⁰ See, e.g., Latvijas Republikas Saeimas 02.02.1995. likums “Par nodokļiem un nodevām” (The Latvian law on taxes and fees, 2 February 1995). Available: <http://www.likumi.lv/doc.php?id=33946>. Paragraphs 29, 32 and subsequent paragraphs [last viewed 15.07.2011].
- ²¹ See, e.g., Department of Administrative Cases of the Supreme Court Senate, Decision in Case No. SKA-0715-07, A42168405, 20 December 2007. Available: <http://juridika.tiesas.lv/template/index.php?type=3&id=425&cat=4> [last viewed 15.07.2011]; Decision in Case No. SKA-105, 18 May 2004 [not published]; Decision in Case No. SKA-172, 3 August 2004 [not published] etc.
- ²² European Court of Human Rights, *Öztürk vs. Germany*, No. 8544/79, 21 February 1984. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=%D6zt%FCrk%20%7C%20v.%20%7C%20germany&sessionid=73652165&skin=hudoc-en> [last viewed 15.07.2011].
- ²³ European Court of Human Rights, *Lauko vs. Slovakia*, No. 4/1998/907/1119, 2 September 1998. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Lauko%20%7C%20v.%20%7C%20slovakia&sessionid=73652165&skin=hudoc-en> [last viewed 15.07.2011].
- ²⁴ European Court of Human Rights, *Janosevic vs. Sweden*, No. 34619/97, 23 July 2002. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=34619/97&sessionid=73649506&skin=hudoc-en> [last viewed 15.07.2011].
- ²⁵ The European Court of Human Rights, Judgment in Case No. 2006-28-01, 11 April 2007, Paragraph 13. Available: http://ieprikseja.lbas.lv/tiesu%20prakse/satversmes%20tiesas%20spriedumi/2006_28_01.pdf [last viewed 15.07.2011].
- ²⁶ Department of Administrative Cases of the Supreme Court Senate, Case No. SKA-0715-07, theses (p. 2) and Paragraph 10 of the judgment.
- ²⁷ Ibid.
- ²⁸ Latvijas Republikas Saeimas 25.10.2001. likums “Administratīvā procesa likums”, 185. panta 1. daļa (The Latvian Administrative Procedure Law, 25 October 2001, Article 185.1.). Available: <http://www.likumi.lv/doc.php?id=55567> [last viewed 20.09.2011].

- ²⁹ Latvijas Republikas Saeimas 18.12.2008. likums "Grozījumi Administratīvā procesa likumā" (Amendments to the Latvian Administrative Procedure Law, 18 December 2008). Available: <http://www.likumi.lv/doc.php?id=185916> [last viewed 15.07.2011].
- ³⁰ Department of Administrative Cases of the Supreme Court Senate, Case No. SKA-0715-07, Paragraph 10 of the judgment.
- ³¹ See also Article 92 of the Constitution of the Republic of Latvia:
"Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel."
 See also the judgment of the Constitutional Court on Case No. 2006-28-01 "On the compatibility of the second sentence of Section 22.4 of the Law on the individual income tax to Article 92 of the Constitution of the Republic of Latvia". The court ruled that:
"The principle of justice means that when taking a decision, an institution and a court must focus on achieving a just result, taking into account the rights and judicial interests of parties that are involved in the case"
- ³² Article 185.¹ of the Law on Administrative Procedure.
- ³³ Department of Administrative Cases of the Supreme Court Senate, Case No. SKA-071-15-07, Paragraph 9.
- ³⁴ Department of Criminal Cases of the Supreme Court Senate, Decision in Case No. SKK-627/2008, 2 December 2008. Available: http://www.at.gov.lv/files/archive/department2/2007/2008/skk%20627_8_dz.doc [last viewed 15.07.2011].
- ³⁵ Article 218.2 of the Criminal Law:
"(2) For a person who evades taxes and payments imposed along with taxes or who conceals or reduces income, profits and other items subject to tax, if the said evasion causes large-scale losses to the State or local government, the applicable sentence shall be deprivation of liberty for a term not to exceed five years, or a fine not exceeding one hundred and twenty times the minimum monthly wage, without or without confiscation of property, and with or without deprivation of the right to engage in entrepreneurial activity for a term of not less than two years and not exceeding five years".
- ³⁶ Ibid.
- ³⁷ Department of Administrative Cases of the Supreme Court Senate, Decision in Case No. SKA-123/2011. Available: http://www.tiesas.lv/files/AL/2011/05_2011/16_05_2011/AL_1605_AT_SKA-0123-2011.pdf [last viewed 25.08.2011].
- ³⁸ The European Court of Human Rights, *Funke vs. France*, No. 10828/84, 25 February 1993. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695686&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> [last viewed 25.08.2011].
- ³⁹ The European Court of Human Rights, *J. B. vs. Switzerland*, No. 31827/96, 3 May 2001. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697326&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> [last viewed 26.08.2011].
- ⁴⁰ See Criminal Law of the Republic of Latvia, 17 June 1998, Article 218. Available: <http://www.likumi.lv/doc.php?id=88966> [last viewed 25.08.2011].
- ⁴¹ Constitutional court of the Republic of Latvia, Judgment in Case No. 2000-0109, 13 March 2001. Available: <http://www.satv.tiesas.gov.lv/upload/2000-08-0109.rtf> [last viewed 19.07.2011].
- ⁴² Latvijas Republikas Saeimas 01.10.1997. likums "Par valsts sociālo apdrošināšanu" (The Latvian law on social insurance, 1 October 1997). Available: <http://www.likumi.lv/doc.php?id=45466> [last viewed 19.07.2011].
- ⁴³ Constitutional court of the Republic of Latvia, Judgment on Case No. 2000-08-0109, *op. cit.*, p. 2.
- ⁴⁴ Article 1 of the Constitution: "Latvia is an independent and democratic republic."
- ⁴⁵ Article 109 of the Constitution: "Everyone shall have the right to social guarantees for old age, work disability, unemployment, and other cases determined by law."
- ⁴⁶ Constitutional court of the Republic of Latvia, Judgment on Case No. 2000-08-0109, *op. cit.*, p. 7.
- ⁴⁷ Ibid., pp. 7, 8.
- ⁴⁸ "The social rights to which the disputed legal norm applies relate to a specific area of human rights which is formulated in the constitutional laws of countries and in international human rights documents as overall duties for the state. The regulatory mechanism has been left up to the legislature in each country. The implementation of social rights depends on the country's economic situation and

- available resources.” See Constitutional court of the Republic of Latvia, Judgment in Case No. 2001-02-0106, 26 June 2011. Available: <http://www.satv.tiesa.gov.lv/upload/2001-02-0106.rtf> [last viewed 02.08.2011].
- ⁴⁹ *Vildbergs, H.J., G. Feldhüne*. *Atsauces Satversmei* (Commentary on the Constitution). (references/commentary / annotations to Satversme). Riga: EuroFaculty, 2003, p. 180. ISBN 9984-725-82-0.
- ⁵⁰ Latvijas Republikas Saeimas 01.10.1997. likums “Par valsts sociālo apdrošināšanu” (The Latvian law on social insurance, 1 October 1997).
- ⁵¹ Latvijas Republikas Saeimas 31.10.2002. likums “Sociālo pakalpojumu un sociālās palīdzības likums” (The Latvian law on social services and social aid, 31 October 2002). Available: <http://www.likumi.lv/doc.php?id=68488> [last viewed 03.08.2011].
- ⁵² Constitutional court of the Republic of Latvia, Judgment on Case No. 2000-08-0109, *op.cit.*, pp. 8, 9. See also Latvijas Republikas Saeimas 01.10.1997. likums “Par valsts sociālo apdrošināšanu” (The Latvian law on social insurance, 1 October 1997) – Articles 3.2.2, 12.1, 13.1, 13.2, 21 etc.
- ⁵³ Constitutional court of the Republic of Latvia, Judgment on Case No. 2000-08-0109, *op.cit.*, p. 11.
- ⁵⁴ *Nodokļu likumu komentāri*. 4. sējums. Likumu “Par iedzīvotāju ienākuma nodokli” un “Par valsts sociālo apdrošināšanu”. [B.v.]: Dienas bizness, Deloitte&Touche, [b.g.] (Commentary on Tax Law, Vol. 4: The Law on the Individual Income Tax and the Law on National Social Insurance. Dienas Bizness and Deloitte & Touche) – p. 9.5.4. [last viewed 08.03.2011].
- ⁵⁵ For comparative purposes, e.g., see *Wank, R.* *Die Auslegung von Gesetzen*. 3., neu bearbeitete Auflage (Interpretation of the Law. 3rd ed.). Köln, Berlin, München: Carl Heymans Verlag KG, 2005, p. 127, 128. ISBN 3-452-25961-7.
- ⁵⁶ The European Court of Justice, *Finanzamt Köln-Altstadt vs. Roland Schumacker*, C-279/93, 14 February 2005. Paragraph 16. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61993CJ0279:EN:HTML> [last viewed 07.08.2011]; *G.J.E.J. Wielockx vs. Inspecteur der directe belastingen*, C-80/94, 11 August 1995. [lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61994CJ0080:EN:HTML](http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61994CJ0080:EN:HTML) [last viewed 07.08.2011.]; *Imperial Chemical Industries plc (ICI) vs. Kenneth Hall Colmer (Her Majesty's Inspector of Taxes)*, C-264/96, 16 August 1998. Available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996CJ0264:EN:HTML> [last viewed 07.08.2011].
- ⁵⁷ The European Court of Justice, *Futura Participations SA and Singer vs. Administration des contributions*, C-250-95, 15 May 1997, Paragraph 31. Available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61995CJ0250:EN:HTML> [last viewed 07.08.2011].
- ⁵⁸ The European Court of Justice, Case No. C-279/93.
- ⁵⁹ Latvijas Republikas Saeimas 20.12.2004. likums “Grozījumi likumā “Par iedzīvotāju ienākuma nodokli”” (Amendments to the Latvian law on the individual income tax, 20 December 2004). Available: <http://www.likumi.lv/doc.php?id=98461> [last viewed 17.08.2011].
- ⁶⁰ The European Court of Justice, *Staatssecretaris van Financiën vs. B.G.M Verkooijen*, C-35/98, 6 June 2000. Available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998CJ0035:EN:HTML> [last viewed 07.08.2011]. For more on the topic, see *Schön, W.* *Tax Competition in Europe*. Amsterdam: IBFD, 2003. ISBN 90-76078-55-6.
- ⁶¹ Latvijas Republikas Saeimas 11.12.2003. likums “Grozījumi likumā “Par iedzīvotāju ienākuma nodokli”” (Amendments to the Latvian law on the individual income tax, 11 December 2003). Available: <http://www.likumi.lv/doc.php?id=82463> [last viewed 17.08.2011].
- ⁶² With amendments to the Latvian law on individual income tax abolishing the 2. Paragraph of first part of Article 9 are taxable income (Amendments to the Latvian law on the individual income tax, 1 December 2009. Available: <http://www.likumi.lv/doc.php?id=202351> [last viewed 11.10.2011.]) However this does not constitute any discrimination since resident and non-resident's dividends income is taxable at equal 10 percent rate.
- ⁶³ The European Court of Justice, *Hein Persche vs. Finanzamt Lüdenscheid*, C-318/07, 27 January 2009. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0318:EN:HTML> [last viewed 15.08.2011].
- ⁶⁴ Latvijas Republikas Saeimas 09.02.1995. likums “Par uzņēmumu ienākuma nodokli” (The Latvian law on the corporate income tax, 9 February 1995). Available: <http://www.likumi.lv/doc.php?id=34094> [last viewed 27.08.2011].
- ⁶⁵ The European Court of Justice, *Marks & Spencer plc vs. David Halsey (Her Majesty's Inspector of Taxes)*, C-446-03, 13 December 2005. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0446:EN:HTML> [last viewed 27.07.2011].
- ⁶⁶ *Eberts, D., Freija, I., Jarve, K., Jērņeva, J., Lutere-Timmele L. D., Debora, P., Rone, D., Rūķe, I., Vasariņš, N.* *Eiropas Savienības tiesību piemērošana: Rokasgrāmata praktizējošiem juristiem*. Zinātniskā redaktore Dace L. Lutere-Timmele (The Application of European Union Law: A Handbook for Practicing Attorneys. Lutere-Timmele, D. (ed.)). Riga: Courthouse Agency, 2007, p. 247. ISBN

- 978-9984-790-28-2. For more on the topic, see *Dourado, A. P., da Palma Borges R.* The Acte Clair in EC Direct Tax Law. Amsterdam: IBFD, 2008. ISBN: 978-90-8722-036-5 and *Vanistendael, F.* EU Freedoms and Taxation. Amsterdam: IBFD, 2006. ISBN 978-90-76078-98-4.
- ⁶⁷ See, e.g., The European Court of Justice, *Combined case of Metallgesellschaft Ltd [a.o.], C-410/98* and *Hoechst AG and Hoechst (UK) Ltd vs. Commissioners of Inland Revenue and HM Attorney General*, 8 March 2001. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998J0397:LV:HTML> [last viewed 27.07.2011].
- ⁶⁸ The European Court of Justice, Case No. C-446/03, Paragraph 29.
- ⁶⁹ *Weber-Grellet, H.* Europäisches Steuerrecht (European Tax Law). München: Verlag C.H. Beck, 2005, p. 141. ISBN 3 340650633X.
- ⁷⁰ The relevant articles in the EKL correspond to the treaty before the taking of force of the Lisbon Treaty.
- ⁷¹ See, e.g., The European Court of Justice, Case No. C-446/03, Paragraph 30, 31.
- ⁷² See also The European Court of Justice, *Petri Manninen*, C-319/02, 7 September 2004, Paragraph 49. Available: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002J0319:LV:PDF> [last viewed 28.07.2011].
- ⁷³ "Problematisch ist die Entwicklung vor allem deshalb, weil der EuGH wenig Rücksicht auf die nationalen fiskalischen Bedürfniss zu nehmen scheint, sich ganz augenscheinlich über das Territorialitätssprinzip hinwegsetzt und spezifisch europäisch agiert. Die unterschiedlichen Perspektiven (nationale Steuersouveränität auf der einen Seiten; Diskriminierungsverbote auf der anderen Seite) müssen unweigerlich zu Konflikten und Spannungen führen. Wenn ausländische Verluste verrechnet werden müssen (Marks&Spencer), wenn ausländische Anteilseigner steueranrechnungsberechtigt tsind, wenn nationale Steuervergünstigung auch in Auslandsfällen zu gewähren sind, wenn das Korrespondenzprinzip nicht gilt, wird es dem nationalen Gesetzgeber schwer gemacht, seine eigenen Vorstellungen von einem gerechten Steuer- und Sozialsystem durchzusetzen". See *Weber-Grellet, H.* Europäisches Steuerrecht ... – pp. 141, 142.
- ⁷⁴ Taxpayers in Latvia which pay the corporate income tax have the right to cover losses in a chronological order from the taxable revenues of the next eight taxation periods. In some cases, they can take 10 years to do so (Articles 14.1, 14.2 prim and 14.10 of the law). People who pay the individual income tax can cover losses in a chronological order from the taxable revenues of the next three taxation periods, while those who work in specially supported territories can take six years to do so (Article 14.1 of the law on the corporate income tax and Articles 11.9 and 11.10 of the law on the individual income tax). Those who pay the micro-enterprise tax do not have the right to transfer losses to future taxation periods.
- For the corporate income tax law, see Latvijas Republikas Saeimas 09.02.1995. likums "Par uzņēmumu ienākuma nodokli" (The Latvian law on the corporate income tax, 9 February 1995).
- For the individual income tax law, see Latvijas Republikas Saeimas 11.05.1993. likums "Par iedzīvotāju ienākuma nodokli" (The Latvian law on the individual income tax, 11 May 1993).
- For the law on the micro-enterprise tax, see Latvijas Republikas Saeimas 09.08.2010. likums "Mikrouzņēmumu nodokļa likums" (The Latvian law on the micro-enterprise tax, 9 August 2010). Available: <http://www.likumi.lv/doc.php?id=215302> [last viewed 28.07.2011].
- ⁷⁵ Article 10 of the law on bookkeeping says that copies of annual reports must be preserved until such time as the relevant company is reorganised or shut down. Other documents must be preserved for 5 to 75 years, depending on their category. Documents can be stored in electronic form. For the law on bookkeeping, see Latvijas Republikas Saeimas 14.10.1992. likums "Par grāmatvedību" (The Latvian law on bookkeeping, 14 October 1992). Available: <http://www.likumi.lv/doc.php?id=66460> [last viewed 08.03.2011].
- ⁷⁶ Tax audits in Latvia can be conducted within three years after the payment term begins, as defined by law. For the law on taxes and fees, see Latvijas Republikas Saeimas 02.02.1995. likums "Par nodokļiem un nodevām" (The Latvian law on taxes and fees, 2 February 1995), Article 23.2.
- ⁷⁷ For the amendments, see Latvijas Republikas Saeimas 20.12.2004. likums "Grozījumi likumā "Par uzņēmumu ienākuma nodokli" (Amendments to the Latvian law on the corporate income tax, 12 December 2004). Available: <http://www.likumi.lv/doc.php?id=98462> [last viewed 22.07.2011].
- ⁷⁸ *Nodokļu ceļvedis*. 1. sējums. Likumu "Par nodokļiem un nodevām" un "Par uzņēmumu ienākuma nodokli" komentāri. [B.v.]: Dienas Bizness, Deloitte, [b.g.] (Commentary on Tax Law, Vol. 1: The Law on Taxes and Fees and the Law on the Corporate Income Tax. Dienas Bizness and Deloitte & Touche) [last viewed 08.03.2011] – p. 10.22.9.
- ⁷⁹ Latvijas Republikas Saeimas 19.12.2006. likums "Grozījumi likumā "Par uzņēmumu ienākuma nodokli" (Amendments to the Latvian law on the corporate income tax, 19 December 2006). Available: <http://www.likumi.lv/doc.php?id=150698> [last viewed 25.07.2011].

⁸⁰ Article 14¹.3 (the Latvian law on the corporate income tax):

“For the purposes of this article, the subsidiary of the main company that is a participant in the group of companies is a domestic company or one that is resident in a country with which the Republic of Latvia has concluded a convention or agreement on preventing double taxation and tax evasion, or a resident in another country in the European Economic Zone which, on the basis of a prevailing convention on preventing double taxation is not recognised as a resident of another country (which is not a member state of the European Economic Zone), in which at least 90% of shares belong to:

1) The main company;

2) One or more subsidiaries of the main company;

3) The main company and one or more of its subsidiaries in any combination.”

⁸¹ Article 14¹.6 prim of the Latvian law on the corporate income tax.

⁸² Article 14¹ of the Latvian law on the corporate income tax in whole.

⁸³ Latvijas Republikas Saeimas 09.08.2010. likums “Grozījumi likumā “Par uzņēmumu ienākuma nodokli”” (Amendments to the Latvian law on the corporate income tax, 9 August 2010). Available: <http://www.likumi.lv/doc.php?id=215306> [last viewed 25.07.2011].

⁸⁴ Latvijas Republikas Saeimas 09.08.2010. likums “Mikrouzņēmumu nodokļa likums” (The Latvian law on the micro-enterprise tax, 9 August 2010).

⁸⁵ Article 14¹.7 prim of the Latvian law on the corporate income tax.

⁸⁶ Article 14.2 of the Latvian law on the corporate income tax.

⁸⁷ Article 14.3 of the Latvian law on the corporate income tax.