

Legality and predictability of taxation

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The fiscal paradox of the bailiwicks, light taxes combined with unpredictable charges, is the negative image of the modern principle of legality in tax law. The Federal Constitution requires that the general principles of taxation, and in particular the group of taxpayers, the object of the tax and its assessment, be regulated in a formal law (Art. 127 para. 1 Cst.), and it requires that taxation respect the principles of universality, equality of treatment and ability to pay (Art. 127 para. 2 Cst.).¹ The Federal Act on the Harmonization of Direct Taxes of the Cantons and Communes of 1990 sets the framework within which the cantons legislate, and the Ticinese Tax Law (*Legge tributaria*) of 21 June 1994 lays down the cantonal and communal income, wealth, profit and capital taxes.²

The protection of legitimate expectations (Art. 9 Cst.) adds a further element of predictability. Swiss tax practice allows taxpayers to obtain advance rulings from the tax authorities on the tax treatment of specific transactions or structures, which bind the authority as long as the facts presented are accurate and complete and the law has not changed.³ Rulings have been controversial, especially in international contexts. Since 1 January 2017, when the Tax Administrative Assistance Ordinance entered into force, Switzerland has been obliged to exchange information spontaneously with other states on certain rulings, including rulings granted from 1 January 2010 onwards, in line with the OECD standards. Their function nonetheless answers a need that the subjects of the bailiwicks would have recognized: the need to know in advance what the state will demand.

For the practitioner. Clients, especially from Italy, often ask what makes Swiss law "safe". The history of the bailiwicks helps to explain the answer in concrete terms: - judges are salaried, elected or appointed for fixed terms and bound by uniform federal procedural codes (CPC and CrimPC, both in force since 1 January 2011); - fines, monetary penalties and confiscated

assets accrue to the state (Art. 374 SCC), and their division among public bodies follows a statutory key; - taxes require a basis in formal law (Art. 127 para. 1 Cst.), and advance tax rulings can give legal certainty on specific transactions; - FINMA's funding is independent of its enforcement outcomes, and it has no power to impose fines; - municipal tax multipliers are set annually by each commune within the limits of cantonal law and must be checked when advising on residence.

1 Communal autonomy and federal guarantees

The communities of the bailiwicks preserved their autonomy under distant rulers by managing their own property, raising their own taxes and defending their own statutes. The modern Swiss commune continues that tradition within a constitutional framework. The Federal Constitution guarantees communal autonomy in accordance with cantonal law (Art. 50 para. 1 Cst.), and in Ticino each commune fixes its tax multiplier (*moltiplicatore d'imposta*), expressed as a percentage of the cantonal base tax, when its legislative body approves the annual budget and the amount to be covered by taxation under the cantonal Organic Law on Communes (*Legge organica comunale*).⁴ The differences between communal multipliers in Ticino are significant for private clients and companies choosing their place of residence or seat, and Lugano's multiplier is one of the factors that the city uses in its competition with other communes and with other financial centres.

The difference between the modern commune and the old *vicinanza* lies in the guarantees that surround local autonomy. A Ticinese commune's tax decisions are subject to the principle of legality, to equal treatment, to appeal to the cantonal administrative courts and ultimately to the Federal Supreme Court. Its autonomy is protected by the Constitution against encroachment by the canton, but it is also limited by the fundamental rights of its citizens and residents. The inhabitants of the bailiwicks had autonomy without guarantees. The modern system combines both.

2 Notes

1. Federal Constitution (above), Art. 127 paras. 1 and 2, consulted at <https://www.droit-bilingue.ch/de-fr/1/10/101-127-158.html>. ↩
2. Federal Act on the Harmonization of Direct Taxes of the Cantons and Communes of 14 December 1990 (StHG/LHID), SR 642.14, <https://www.droit-bilingue.ch/de-fr/6/64/642.14-index.html>; Legge tributaria of 21 June 1994 (LT) of the Canton of Ticino,

<https://m3.ti.ch/CAN/RLeggi/public/index.php/raccolta-leggi/legge/num/580>. ↩

3. Federal Constitution (above), Art. 9 ("Jede Person hat Anspruch darauf, von den staatlichen Organen ohne Willkür und nach Treu und Glauben behandelt zu werden"), <https://www.droit-bilingue.ch/de-fr/1/10/101-9-13.html>; Federal Act on International Administrative Assistance in Tax Matters of 28 September 2012 (TAAA), SR 651.1, and Ordinance on International Administrative Assistance in Tax Matters of 23 November 2016 (TAAO), SR 651.11, Art. 8 (definition of a ruling), Art. 9 (obligation of spontaneous exchange), Art. 16 (application to rulings granted from 1 January 2010) and Art. 17 (entry into force on 1 January 2017), consulted at <https://www.droit-bilingue.ch/de-fr/6/65/651.11-index.html>. The conditions under which a ruling binds the authority derive from the case law on Art. 9 Cst. ↩
4. Federal Constitution (above), Art. 50 para. 1 ("Die Gemeindeautonomie ist nach Massgabe des kantonalen Rechts gewährleistet"), <https://www.droit-bilingue.ch/de-fr/1/10/101-50-58.html>; Legge organica comunale of 10 March 1987 (LOC), RL 181.100, Art. 13 para. 1 lit. c (the assembly "approva il preventivo del comune e delle aziende comunali e il fabbisogno da coprire con l'imposta; stabilisce inoltre i moltiplicatori d'imposta"), <https://m3.ti.ch/CAN/RLeggi/public/index.php/raccolta-leggi/legge/num/65>. ↩

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