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Germany VI: Tax administration

Compiled and ordered notes from interviews including cross-checks with publicly accessible material, prepared for future use. Language checks thanks to Andrew Simpasa SJ.

Table of Content

Table of Content	2
Register of graphics	7
Register of tables	7
1 Basics	9
1.1 Legal basis and administrative structure in Germany	9
1.1.1 Federal Customs administration	9
1.2 Parameters of tax administration	10
1.3 Procedural explanations.....	10
1.3.1 Income from wage and capital.....	10
1.3.2 Self-employed, “millionaires” and businesses.....	11
1.4 Research focus	11
2 Critical administrative issues within the national context	12
2.1 Shortage of (qualified) personnel	12
2.1.1 Less personnel, more work	12
2.1.1.1 The problem of Tax CDs and self-reporting.....	13
2.1.2 Deficits in training	14
2.1.3 Benchmarking: Quantity vs. quality?	14
2.1.4 Sickness and payment	15
2.1.5 Image factors.....	15
2.1.5.1 Tag der Steuergerechtigkeit	15
2.1.5.2 Tag des Steuerzahlers	16
2.1.6 Recruitment in an ageing society.....	16
2.1.7 Migration to the private sector.....	17
2.1.8 Self-Assessment (Selbstveranlagung).....	17
2.2 “Colleague Computer”	18
2.2.1 Reasons behind computerization	18
2.2.2 Business Intelligence, Computer Forensics, Machine Learning.....	18
2.2.3 Private sector - public service – personal privacy	19
2.2.4 Electronic processing of tax declaration.....	19
2.2.4.1 Faults in the process of data transfer	19
2.2.4.2 Faults during processing	20
2.2.4.3 Citizens hesitancy to use it.....	20
2.2.5 Computerized Risk Management.....	20
2.2.5.1 Why Risk Management in tax administration?.....	20
2.2.5.2 How does it work?	21
2.2.5.3 Faults in the “process of processing”	21

2.2.5.4	The impossibility of follow-ups.....	22
2.2.6	Future IT related taxation problems.....	22
2.2.6.1	Big Data and the upcoming automatic information exchange.....	22
2.2.6.2	Business to consumer transactions	22
2.2.6.3	Reduction of global trade.....	22
2.2.7	Limits to computerized IT?.....	23
2.2.8	Replacement of personnel?.....	23
2.2.8.1	A field experiment in Lower-Saxony	23
2.2.9	Conclusion	24
2.3	Insufficient checks with businesses.....	25
2.3.1	Background	25
2.3.2	Wage Tax Inspection	28
2.3.3	Tax Auditing	29
2.4	Insufficient checks on wealthy people.....	29
2.5	Insufficient checks on self-employed	31
2.6	Insufficient checks on fraud with turnover tax/VAT.....	31
2.6.1	What are we talking about	31
2.6.2	Manipulated cash-register.....	31
2.6.3	E-Commerce based fiscal problems	32
2.6.4	Computer based fraud.....	32
2.6.5	Fraud with faked bills	32
2.6.6	Fraud with cash payments.....	32
2.6.7	Gaps in legal regulation and administrative cooperation.....	33
2.6.8	Position of the Court of Auditors and Performance Commissioner	33
2.6.9	Discussion.....	34
2.6.10	Conclusion	35
2.6.11	Possible solutions.....	35
2.6.11.1	Securing electronic cash registers against manipulation	35
2.6.11.2	Reforming punishment	36
2.6.11.3	Electronic billing and payments	36
2.6.11.4	Big Data software	36
2.7	Insufficient resources and tools	36
3	Problems due to federal structure and differences	37
3.1	Principal legal and administrative issues.....	37
3.2	Political and legal competition	37
3.3	Varying levels of personnel.....	38
3.3.1	How many should there be?.....	38

3.3.2	How many are there?	39
3.4	Triple justice issue	42
3.5	Data exchange.....	43
3.6	Efforts to improve collaboration.....	43
3.6.1	Option and obstacle for centralization	43
3.6.2	Centralization.....	44
3.6.2.1	The Federal Central Tax Office	44
3.6.2.2	A Federal Tax FBI?	44
3.6.3	Coordination	44
3.6.3.1	Common targets for national cooperation	45
3.6.3.2	Benchmarking among different states	45
3.6.4	Computerization.....	46
3.7	Problems resulting from the “debt brake”	48
3.8	The (State) Financial Equalization Scheme.....	48
3.8.1	The problems	49
3.8.2	A question of political culture?.....	50
3.8.3	Debt Brake and Stability Council	50
3.8.4	Discussion.....	51
3.8.5	Conclusion 1	52
3.8.6	Conclusion 2	52
3.9	The (Communal) Financial Equalization Scheme.....	53
3.10	Tax evasion, Tax CDs and self-reporting	53
3.11	Conclusion	53
4	Tax administration in Bavaria.....	54
4.1	Legal basis and administrative structure	54
4.1.1	Tax rulings	55
4.2	The context: Booming Bavaria.....	56
4.3	Critical administrative issues within the Bavarian context	56
4.3.1	Shortage of (qualified) personnel	56
4.3.1.1	Causes and consequences of cuts in personnel.....	57
4.3.1.2	How many should there be and are there?.....	57
4.3.1.2.1	Bavaria in comparison with other states	59
4.3.1.2.2	Discussion.....	60
4.3.1.3	Less personnel, more work	61
4.3.1.3.1	The problem of Tax-CDs and self-reporting	61
4.3.1.4	Deficits in legal and IT training.....	63
4.3.1.5	Benchmarking: Quantity vs. Quality?	65

4.3.1.6	Job satisfaction/Promotion/Payment.....	67
4.3.1.7	Working overtime	68
4.3.1.8	Sickness	68
4.3.1.9	Image factor within	71
4.3.1.10	Staff assignment for political reasons	71
4.3.1.11	Image factor outside.....	72
4.3.1.11.1	Tag der Steuergerechtigkeit	72
4.3.1.12	The role of superiors	73
4.3.1.13	Position of the Bavarian Court of Auditors	74
4.3.1.14	Ageing, recruitment and dispute surrounding recruitment	74
4.3.1.15	Conclusion	76
4.3.2	“Colleague Computer”	77
4.3.2.1	Causes, status and plans of computerization	77
4.3.2.2	Risk Management, Risk Filter and “Nichtaufgriffsgrenze”	78
4.3.2.2.1	The ideal	78
4.3.2.2.2	The problem of entering information.....	78
4.3.2.2.3	The advantage of paper	79
4.3.2.2.4	Risk filter and required checks	80
4.3.2.2.5	“Wave Through Days”	81
4.3.2.2.6	Adjusting filters and limits to self-learning	82
4.3.2.2.7	Latest developments	82
4.3.2.2.8	Combining computerized and personalized checks	83
4.3.2.3	Departmental views of computerization	83
4.3.2.3.1	State Office of Taxes	83
4.3.2.3.2	Assessment Department.....	84
4.3.2.3.3	Tax auditors	86
4.3.2.3.4	Tax fraud department.....	87
4.3.2.3.5	Personalräte.....	88
4.3.2.4	Does the tax administration need own experts?.....	88
4.3.2.5	Discussion	89
4.3.2.6	Justice issues: Leaving the state to computer	90
4.3.2.7	Conclusion	91
4.3.3	Insufficient checks with corporations and businesses	94
4.3.3.1	The situation	94
4.3.3.2	Experience with the E-Bilanz	97
4.3.3.3	Wage Tax inspectors.....	97
4.3.3.4	Tax auditors	98

4.3.3.5	Internationales Steuerzentrum, Auslandsprüfung.....	100
4.3.3.6	Discussion: Law enforcement, interference in business and jobs ...	101
4.3.3.7	Justice Issue: Law enforcement and jobs.....	104
4.3.3.8	Conclusion	105
4.3.4	Insufficient checks with “taxpayer of considerable income”	106
4.3.4.1	The situation	106
4.3.4.2	Legal issues.....	108
4.3.4.3	Risk Management and Personnel.....	108
4.3.4.4	Income from capital gains and rent.....	110
4.3.4.5	No tax declaration and the need to assess tax duties	110
4.3.4.6	Discussion.....	111
4.3.4.7	Justice issues: Indirect rather than direct taxation	112
4.3.4.8	Conclusion	113
4.3.5	Insufficient checks on the self-employed	114
4.3.6	Insufficient combating of turnover tax fraud.....	115
4.3.6.1	General shortcomings and problems.....	115
4.3.6.2	Clearing of newly established businesses.....	117
4.3.6.3	Manipulated Cash register	117
4.3.6.4	Fraud with faked bills	117
4.3.6.5	Fraud with cash payments.....	118
4.3.6.6	International dimension	118
4.3.7	Tax fraud investigation	118
4.3.7.1	The strongest weapon of tax administration.....	118
4.3.7.2	The Tax FBI.....	119
4.3.7.3	Cooperation with tax auditors, staff shortage	120
4.3.7.4	Cooperation with other states and prosecution services	121
4.3.8	The end of the taxation process	121
4.3.8.1	Tendency with administrative appeals.....	122
4.3.8.2	Fines, court proceedings, penalties, enforcement	122
4.3.8.3	Delays, requests for waiving, deferment, non-payment	126
4.3.8.4	Alternative settlements	130
4.3.8.5	Justice issues	131
4.3.8.6	Conclusion	132
4.3.9	Enforcement problems due to federal structure and differences	132
4.3.10	Enforcement problems due to insufficient resources and tools	132
4.3.10.1	Offices, equipment, cars and other necessities	133
4.3.10.2	Banking secret, tax secret	133

4.3.10.3	International cooperation	135
4.3.10.4	Reversing burden of proof, freezing assets.....	136
4.3.10.5	Electronic billing and payments	137
5	The municipality of Nuremberg.....	137
5.1	Legal basis, administrative structure, revenue collection.....	138
5.2	Nuremberg views on governmental revenue	138
6	State options to combat tax crimes, ethical implications	139
6.1	Purchase of Tax CDs	139
6.2	Privileged Self-reporting	140
6.3	Useless legal agreements	141
6.4	Naming & shaming.....	142
6.5	Whistleblower and paid informants.....	143
6.6	Conclusion	143
7	The law to modernize tax administration.....	144
7.1	The plan	144
7.2	Comments.....	146
8	Bibliography	146

Register of graphics

Graphic 1	Generated surplus regarding the size of businesses (2013).....	28
Graphic 2	Development German GNP and staff of staffing of tax administrations	39
Graphic 3	Number of businesses per tax auditor	40
Graphic 4	Number of tax fraud auditors per million Euro GNP	41
Graphic 5	Checks of millionaires	42
Graphic 6	Sample structure of a Bavarian Tax Office	55
Graphic 7	Average absence in days due to sickness, civil servants Bavaria.....	69
Graphic 8	Increase in the number of corporations in Bavaria..... Fehler! Textmarke nicht definiert.	
Graphic 9	Increase in the number of corporations in Bavaria.....	94
Graphic 10	Revenue collected from corporations in Bavaria (in billion Euro)	94
Graphic 11	Surplus Revenue and diminishing of losses 2012-2015.....	100
Graphic 12	Initiation of legal proceedings	123
Graphic 13	Resolved cases to approach chosen	125
Graphic 14	Evaded and avoided tax in Bavaria	126
Graphic 15	Delay in payment in Bavaria, in EUR 1 million	127
Graphic 16	Enforcement cases of defaulted tax	128
Graphic 17	Applications for waiving and deferment	130
Graphic 18	Amount of waiving and deferment at the end of the year (in EUR 1,000)	130

Register of tables

Table 1	Classification of business sizes in Germany	25
Table 2	Business checks in absolute numbers and percent of the total in 2012.....	26

Table 3 Business checks in absolute numbers and percent of the total in 2014.....	26
Table 4 Frequency of average checks of businesses in Germany	27
Table 5 Density of average checks of businesses in Germany	27
Table 6 Percentage of tax revenue which goes into the Financial Equalization Scheme	49
Table 7 Personnel in Bavarian tax administration: Should-be state and actual state	58
Table 8 The "should be" staffing of Bavarian and Nuremberg Assessment Departments.....	58
Table 9 De facto staffing of Bavarian and Nuremberg Assessment Departments	58
Table 10 Development in staffing of investigative departments.....	59
Table 11 Ranking the personnel situation in Bavaria in comparison with other <i>Länder</i>	59
Table 12 Tax surplus revenue (<i>steuerliches Mehrergebnis</i>) collected per tax auditors	60
Table 13 Caseload per employee and per year in different departments	61
Table 14 Number of self-reporting in Bavaria	62
Table 15 Average absence in days due to sickness, civil servants Bavarian tax administration	69
Table 16 Number of businesses for checking	95
Table 17 Frequency of inspections (in year)	96
Table 18 Surplus revenue arising from checks of businesses in Bavaria 2009-2013	96
Table 19 Surplus revenue generated by the Lohnsteuer-Außenprüfung 2009-2013.....	98
Table 20 Average Surplus revenue in 2008, according to size of business and resources spent	102
Table 21 Checks of "Millionaires" 2009-2013	107
Table 22 Development of Checks regarding Millionaires and others 2012-2015	107
Table 23 Tax assessments set for those not submitting tax declarations for 3 years or more	111
Table 24 Surplus revenue of turnover tax fraud inspections.....	115
Table 25 Percentage of checks in relation to companies potentially up for checks	116
Table 26 Surplus revenue due to the tax fraud investigation department	119
Table 27 Result of Tax Fraud Investigators in Munich and elsewhere in Bavaria	119

1 Basics

1.1 Legal basis and administrative structure in Germany

As explained in G/V/1, the competence for formulation of tax laws is largely at the federal level, while individual states implement tax policies. Equally, there are taxes whose revenue belongs to one of the three levels of government (federal, state or municipal), and there are taxes whose revenue is shared among the three level of government (*Gemeinschaftssteuern*).

Vice versa, the competence for administrating and enforcement of tax policy and laws is within the mandate of the 16 German states and their respective tax offices. The Federal Ministry of Finance explains the German system as follows: ‘The federal revenue administration is largely responsible for customs, excise duties regulated by federal statutes, and motor vehicle, insurance and fire protection tax; the other taxes are administered by the *Länder* acting as agents of the Federation (in case of shared taxes) or in their own right (e.g. in the case of Inheritance Tax)’ (Federal Ministry of Finance, 2011, p. 23). Other federal tasks, e.g. located with the Central Office of Taxes (*Bundeszentralamt für Steuern*) have subsidiary functions for the states, at times even getting assigned personnel from states offices (cf. 3.4.2.1). Similarly, state offices collect ‘certain municipal taxes unless the *Länder* have tasked municipalities with administering the latter’ (Federal Ministry of Finance, 2011, p. 25). Accordingly, the German *Länder* and their tax offices are central elements in administering and enforcing tax laws in Germany: Through their local tax offices, they collect taxes for the federal, state and municipal level and, in a “subsidiary manner” even for the churches (the so-called Church Tax).

There may be differences in the names or structural departmental organization of the 16 state tax administration offices, but the major structure is common to all. At the same time, every tax office has General Assessment Departments, Tax Auditor, Turnover Tax or Tax Fraud Investigation Departments. Since the main focus of this study is the state of Bavaria, a more detailed presentation of its tax authority, its head office and branch offices, is given below, in 4.1.

1.1.1 Federal Customs administration

The Federal Customs administration is a very special case insofar it is outside the federal-state competition in the field of taxation, that will be described further down in (3). The Federal Customs administration is subject to the Federal Ministry of Finance and has a clearly organized, hierarchical structure into 5 Bezirkszollämter, 43 Main Customs Authorities and numerous local branches. It also has some specialized branches, e.g. for checking on prohibited imports and exports and/or the investigation in some forms of Organized Crime and related crimes such as money laundering or the smuggling of drugs and cigarettes. It employs about 39,000 civil servants. Since controls aiming for reducing the size of the informal economy will be dealt with in-depth in part GSE of this research, here some information regarding the other tasks.

The Federal Customs administration collects, as the name suggests, first of all customs and excise (in 2015 EUR 5.2 billion), secondly certain taxes, most importantly consumer taxes (e.g. energy (EUR 39.6 billion or tobacco (EUR 14.9 billion)) and VAT on imported

goods (EUR 50.9 billion) etc. This amounted in 2015 EUR 132.6 billion, which is about half of all taxes the federate level proper is annually entitled to receive.¹

1.2 Parameters of tax administration

The extent of debt at the three levels of government and the necessity to save at public spending (cf. GER/IV/3) also impacts upon the staffing levels of tax authorities. This is of particular interest and concern since it is the tax administration which collects revenue for government in the first place. For Germany, two issues are of particular concern:

First the attempt, to counterbalance the need of saving personnel through the introduction of computerized processes within administration. A basic conflict emerges regarding the reliability of those computerized processes and whether this system of a “mixed” tax administration is living up to the important principles of equal treatment and justice.

The second aspect is the different levels of staffing of tax administration within the 16 German states. Here, the key between staff and cases varies in absolute numbers (i.e. between citizens and tax officials in general), but also relative regarding the different departments (i.e. assessment, tax auditors, tax fraud investigation...). The question arises whether, given the existing variations, there is a uniform, equal and fair treatment of private and corporate tax subjects.

A third aspect arises from the varying attractiveness of German states for private and corporate residents. Here Bavaria is in a particular situation due to a massive influx (cf. below 4.2.). Here an important question will be whether this influx is (partly) caused by tax policies and tax administration and whether (or to what extent) this influx impacts on the quality of tax administration.

1.3 Procedural explanations

For non-Germans the question will be how taxation related processes operate in Germany. Two important procedures have to be mentioned:

1.3.1 Income from wage and capital

Taxes on income from dependent labour (and related mandatory social security contribution) and income from capital are collected at “source”, i.e. they are collected by automatic deduction from where the taxable event occurs. In the case of wage, the employer transfers tax directly to the tax authority, in the case of capital this obligation falls on the banking institution. This is made possible due to the automated systems of payments by way of use of ICTs.

Computerization is most progressed with dependently employed, who make up the vast majority of annual tax declarations. First, computerization supports the electronic submission of tax declarations instead of an earlier paper based version (ELSTER). Second computerization enables the collection, sorting and transmission of important tax related information: Basic data such as taxation category, size of household, information regarding income from wage, capital and insurance, tax reliefs and rebates etc. are transmitted automatically to the tax administration, and is, if the tax subject applies for it, in turn transmitted to the tax subject via the Vorausgefüllte Steuererklärung.

¹ (Zollverwaltung, 2016a, p. 7), see also „Der Zoll, Daten und Fakten im Überblick“ (2015, March).

Third, computerized Risk Management checks whether the tax information submitted is consistent or not. If it is, the tax declaration is accepted. If there are deviations from the ordinary which could be expected on grounds of the statistical average within a given taxpayer's category, the computer program issues an alert which an individual tax inspector has to follow up and clarify. Once issues are raised by the computerized checks and balances are resolved, a decision is made. It is important to note that despite the highest levels of computerization in the processing of taxes, a total computerization of the system is not tenable. It tries to group individual tax declarations according to common features which then simplifies and standardizes the processing of the tax declarations. That way, the system is offering checks and balances while at the same time providing vital information for tax decisions purposes to the tax inspector. Nevertheless, it is still the tax inspector who has a say in what to do.

In the case of automatically collected tax from dependently employed and income from capital, tax payers only subsequently submit their tax declaration in the fiscal year. There are various reasons for making these Annual Tax Returns. For dependently employed, the primary reason could be in order to get refunds, For persons and corporations, earning income from capital gains, the primary motifs of making annual returns, other than being statutory, it is beneficial in order to get rebates and refunds.

1.3.2 Self-employed, “millionaires” and businesses

In the case of self-employed people and wealthy people “millionaires”, the tax automation system less applies as they have to elaborate their annual tax declaration and submit it to the tax office. They receive their tax bill only after an assessment of their return is made.

Submitted tax declarations first go to the Assessment department, where submitted tax information and data is subjected to a computerized Risk Management (cf. 2.2.5). Parallel to this internal procedure, the tax auditing department is the field-service complement of the business taxation system. Tax auditors go out to businesses, check their books and accounts on the spot, compare (1.) their findings with the tax declaration and (2.) look for any deviations from the submitted return and industry averages.

For businesses exists since 2012 also an electronic procedure, the E-Bilanz system.

1.4 Research focus

Following the research focus explained in GER/II/3, the course and structure of this research part is confined to the following:

- First, general and critical issues will be presented which are discussed for the whole of Germany, i.e. in the national context (chapter 2).
- The next main chapter deals with issues arising particularly from the federal structure of tax revenue collection and administration, i.e. the cooperation of the federation with the 16 states and the cooperation among the 16 states that make up the Germany Federation (chapter 3).
- A major emphasis lies on the chapter examining the tax administration of one German state, namely Bavaria (chapter 4)

Since tax collection and related administration for Nuremberg, the focus municipality of this research, is mostly done by the state tax authorities, Nuremberg's situation is only briefly touched in chapter 5.

The remaining chapters in this part deal with the end of the taxation procedures (6), state options to combat tax avoidance and evasion (6) and a major reform under way (7).

2 Critical administrative issues within the national context

2.1 Shortage of (qualified) personnel

Europewide, governments cut down on personnel employed in the public sector and often this was justified with the need to save costs due to austerity. From this tendency, also tax administrations were not exempted: Since 2008 at least 56,865 jobs in various EU tax administrations were cut. In contrast only 6 out of 28 EU states, recruited additional staff in their respective tax administration, among them Luxemburg. At the same time, growth and BIP resumed, and complexity and volume of tax issues is still rising anyway.

2.1.1 Less personnel, more work

There is widespread concern that the number of employees employed by tax administrations is no longer adequate and sufficient to perform their mandate satisfactorily. This view is not only voiced by trade unionists but also by the public watchdogs of public administration, namely the Courts of Auditors or the corresponding Federal Performance Commissioner. At the latest since the latter's 2006 report it is publicly known, that tax offices are understaffed and overworked, with the result that their standards of efficiency is orientated towards the quantitative handling of tax declarations than a qualitative examination (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2006, p. 38ff.).

In a sample of 21 (regional/local) tax authorities, the case load varied from 972 tax declarations per employee per year to 2,270 cases, which averages to 1,750 cases per employee per year. For simple cases, e.g. tax declarations of labourers, the average time, employees were able to spend on each case, was 16.968 minutes (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2006, p. 13ff.+53). And a tax fraud investigator adds: 'In the whole of Germany, we are 2750 investigators, whereas officially there are 5000 positions which could be filled. Hence we are 40% understaffed which disables us to follow up everything relevant, but concentrate on the most important.' (ZEIT-Dossier, 2014).

While new laws created new tasks and responsibilities for an additional more than 6,000 civil servants, none of these positions have been created and actually staffed.² Equally, if jobs in some institutions were saved due to the transfer of tasks to tax administration, jobs did not move along with those tasks.

Finally one has to bear in mind that tax inspectors have to do an enormous amount of administrative work along with each case which cannot, due to tax secrecy regulations, be delegated to other administrative staff. Tax officials declared in a survey that they spend 60%-70% of their working time on issues indirectly concerned with their core business (data processing, seminars, giving information to caller, statistics...) and only 40%-30% to the proper examination and processing of tax declarations, an information which is repeatedly heard also from conversation partners working at the tax auditing department.

² For these figures: (Berg, 2004, p. 6).

2.1.1.1 The problem of Tax CDs and self-reporting

A special case arising over the past years due to the purchase of CDs with leaked bank data or widely publicized legal proceeding of tax evader is the increase of self-reporting.

North Rhine-Westphalia is leading the purchasing of tax CDs. Whereas other German states are more reluctant, the Social Democratic (SPD)-Green governed state is adamant in using all means for investigating and prosecuting those accused of “systematische Ausplündern der Allgemeinheit.” Since 2010, NRS collected with investigating tax evasion EUR 2.3 billion: 1.25 because of self-reporting, ERU 400 million because of investigation and sanctions, EUR 650 million fines against banks.³

Data on CDs does not only implicate German banks and their subsidiaries in other countries of aiding and abetting tax evasion (cf. GER/VII/3+4), it also uncovers how Germans themselves (perhaps aided and abetted by aggressive marketing of foreign banks or their tax advisors) used the services of banks abroad for tax evasion – as has been shown with the Luxemburg Caisse d’Epargne, the largest leaked data set so far.⁴

Another boost occurred when North Rhine Westphalia purchased another CD in October 2015 for EUR 5 million and rumour spread that this CD does not merely contain a wealth of new data on tax evaders, but also proof of bank involvement in Cum-Ex-Trade cheating.⁵

Self-reporting is a special procedure with which a long time tax evader can clear his/her conscience and it (surprisingly) is also on the increase in the context of information the state purchased leaked data on CDs. If s/he wants to have a clean slate, he goes to the authorities, declares that which he has evaded over the past five years (for tax evasion which is older a limitation of liability (*Festsetzungsverjährung*) applies).⁶ This is a special procedure with which a long time tax evader may make amends and rectify his or her tax delinquency status to being tax compliant. If s/he wants to have a clean slate, he goes to the authorities, declares that which he has evaded over the past five years. Provided the self-reporting is comprehensive and without any mistake, there is no additional punishment to be meted out only if the total value of evasion is less than EUR 25,000.

In 2014, 38,587 people made use of this moratorium as opposed to 24,000 in 2013. Most of them came from Baden-Wuerttemberg (9,038), followed by North Rhine-Westphalia (7,551) followed on rank three by Bavaria (5,927). In 2014 alone EUR 1.32 billion was collected, based upon these declarations, the amount being likely to rise further when the end-of-year balance-sheets will be finalized and published. Altogether, since 2010, the state is estimated to have collected between EUR 3.2 and EUR 10 billion, the problem being, that there is no unified statistic for all German states!

³ Leyendecker, H./Ott Kl. (2016, October 4) Alte Selbstanzeigen liefern Spuren zu neuen Steuerhinterziehern. In: SZ. Retrieved from <http://www.sueddeutsche.de/wirtschaft/steuerhinterziehung-alte-selbstanzeigen-liefern-spuren-zu-neuen-steuerhinterziehern-1.3188274>

⁴ Quotes in this paragraph from Leyendecker, H./Ott, Kl. (2015, November 9) Steuerrazzia: 120 Durchsuchungen diese Woche. In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/wirtschaft/luxemburger-bank-bcee-steuerrazzia-durchsuchungen-diese-woche-1.2728430>

⁵ <http://www.tagesspiegel.de/politik/milliardengeschaeft-zu-lasten-des-fiskus-steuer-cd-lasst-banken-zittern/12525620.html>

⁶ <http://www.steuerdelikt.de/selbstanzeige/82-selbstanzeige-und-verjaehrung>

Looking at the data, however, Meinzer holds the opinion that only small and medium wealth holders make self-declarations while the larger private and corporate wealth holders are indifferent.⁷

While everybody thought that self-reporting will plummet in 2015 because of the new and stiffer conditions, this does not seem to be the case: Statistics in the first half of 2015 reveal that tax self-reporting were at 10,512 still higher than in 2011 and 2012 together. And still the top-three states are the same: NRW, Baden-Wuerttemberg and Bavaria.⁸

Legal experts suspect that this trend will continue ahead of the intended implementation of the automatic information exchange in 2017. Another factor that promoted tax self-reporting is when the Swiss Tax Administration started publishing names of suspected tax offenders with names online, among them German nationals. Despite the fact that German politicians criticized the publications as a violation of privacy regulations, they nevertheless stated that they are obliged to follow up the publications.⁹

2.1.2 Deficits in training

Besides an increasing workload there is the need for each tax inspector to keep up with changes in new laws and new regulations of how to apply these laws. Such workshops and trainings are important not only because of the already complex tax law:

- According to conversation partners, changes in laws, regulations are occurring faster than the ability of tax inspectors to be abreast of the changes (cf. GER/Va/1+2)
- Knowledge of legal context alone is not sufficient. As to a conversation partner working at a large corporation, tax personnel do not always combine understanding of legal background and business practice, which is particularly damaging in the case of Transnational Corporations with international business links. Here, expert knowledge of complex legal and business practices is essential. Of course, relevant documents must be provided in German upon inspection, but not all documents (and not every time the most relevant documents are submitted)
- Ambiguities in laws, legal concepts and regulations deter a thorough examination and hence tax officers generally have a cursory consideration of the documents or just wave them through

In addition one has to bear in mind that computerization and automation of tax processing does require staff development and training over and above the routine workload.

2.1.3 Benchmarking: Quantity vs. quality?

Pressure upon civil servants is increasing further due to benchmarking efforts. Their goal is to increase efficiency and at the same time to apply uniform standards so that a qualitative comparison between different German states may be possible (cf. 4.3.1.5). This emphasis on standardized treatment, too, is indirectly promoting quantitative case processing rather than qualitative examination, e.g., the amount of surplus revenue as measure for

⁷ „Die geschätzte Höhe der Hinterziehungssumme für die Fälle mit Strafzuschlag beruht auf den Daten aus S. 7 der BT-Drucksache 18/3242 (s.o.), sowie auf dem für die Jahre 2011-2013 gültigen Strafzuschlag in Höhe von 5% der Hinterziehungssumme. (Meinzer, 2015b, p. 4)

⁸ HYPERLINK "<http://www.welt.de/print/wams/article144979322/Angst-vor-den-Fahndern.html>"

⁹ „Die Klarnamenliste der Steuersünder“ (2015, May 25). In: BILD, retrieved 26 May 2015 from <http://www.bild.de/geld/wirtschaft/schweiz/darum-stellt-die-schweiz-erstmal-klarnamen-von-steuersuendern-ins-netz-41086408.bild.html>

quality. The Federal Performance Commissioner supports those who see an emerging violation of the principle of equality which they feel are obliged to uphold. There is no adequate examination of each case on grounds of merit, but mostly cursory and sometimes even by randomized selection (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2006, p. 35+41ff.).

2.1.4 Sickness and payment

Pressure from workload and unhappy clients is exerting occupational stress on tax inspectors. It is said that work satisfaction is decreasing, the number of work related stress is rising (Kraft, 2013).

In addition, employees of the tax administration receive a comparatively modest salary (i.e. compared with those of equal qualifications working in the private sector or self-employed). Some of them therefore have secondary jobs after work such as cleaning or restaurant work, so that they can meet the cost of living (ZEIT-Dossier, 2014). This applies especially if they have to work and live in areas where costs of living are high, e.g. Munich or comparable places. Even tax consultants agree that employees of the tax administration are underpaid when looking at their studies and qualifications and when compared with those with similar qualifications (e.g. leading employees in businesses or tax consultants) (Lechner, 2014, p. 51)

2.1.5 Image factors

Tax officials suffer from and complain about their bad image in public: While they try their best to do justice to each citizen and to collect money which is needed for public goods such as roads and other essential services they are seen as sinister robbers, depriving the honest citizen of hard earned income. According to them, nothing adequate is done by politicians, superior or media to explain their job to the public or reveal misdeeds and crime towards the community in newspapers or other reports to the public. Is it not understandable, it is asked, that no intelligent person in its own senses is finding this job attractive and worthwhile?

Clearly, the nationwide discussion about tax justice in the wake of Offshore Leaks and widely publicized cases such as Uli Hoeneß or Alice Schwarzer corrected the image of tax administration since it is seen that the culprits are not those uncovering and prosecuting it but rather those committing these crimes in the first place. However, conversation partners working in tax administration also admonish: 'It is one thing to have a better reputation, but it is another to get more resources and better instruments to do the job. And here, nothing at all has improved yet.'

2.1.5.1 Tag der Steuergerechtigkeit

On 30 September 2015, for the first time, the Deutsche Steuergewerkschaft organized the Tag der Steuergerechtigkeit in the attempt to sensitize the public towards the value of taxes and tax administration on the one hand, and injustices on part of tax administration on the other. Both nationally and in 11 federal states, public awareness activities and with media advertisements were held to sensitize the public to existing injustices and deficits in the German taxation system. A 9-page handout highlighted the following areas (Deutsche Steuergewerkschaft, 2015)

- Deficits due to the Financial Equalization Scheme
- Deficits due to lacking federal influence in state execution of tax administration
- Deficits in personal resources

- Deficits in the checks of businesses and millionaires
 - Unfair privilege with income arising from capital
 - Problems arising from cash payments and the informal economy
 - Deficits in the IT area
 - Deficits arising from the complexity of tax laws
 - Deficits in the area of turnover tax fraud
- Deficits in the taxation of businesses due to loopholes and tax rulings

2016, the Day of Tax Justice was repeated and starts to develop into a tradition.

2.1.5.2 *Tag des Steuerzahlers*

Different from that is the “Day of the Taxpayer”, which is annually calculated by the Federation of Taxpayers (Bund der Steuerzahler). It should signify the time within which the honest German is working for the state and from when onwards he will earn money for himself. Right now, the “Day of the Taxpayer” is somewhere in July. The calculation has, however, some faults. For example, basis for comparison is the National Income and not the (which includes indirect taxes) and not Net National Income which takes this into account and would move the Day of the Taxpayer into June. It also includes Social Security Contributions which, after all, is not “work for the state” but “work for one’s own insurance”. If this would be corrected, the Day of Taxpayer would move to April. If, finally, would be considered that taxes fund our common good and, basically, only wasteful spending would be the extent of “deprivation” of taxpayers hard earning money, the Day of Taxpayer, at least for Germany, would be in January (Bach, 2016b)

2.1.6 Recruitment in an ageing society

All this is fatal as far as the need to recruit new personnel is concerned: Given demographic developments, the number of young is decreasing and the likelihood of them to choose a job with such a bad image, pay and work satisfaction rates is slim. Tax expert Stefan Flamm of the Auditing Department of TNCs laments: ‘Were in earlier times good legal experts attracted to tax administration and spent a lot of thoughts on how a balanced taxation could protect both interests of the state and business nowadays man tax experts are experts in tax avoidance. The good and very good legal graduates are attracted by the internationally operating tax lawyer companies where they earn the tenfold paid in tax administration.’ (ZEIT-Dossier, 2014)

There is already a lack of personnel, as long as no remedial action is undertaken through replacement of separated employees on account of retirement, there won’t be young people being inducted which hence lead to revenue and services deteriorating further.

For these reasons the situation in entire public service is a ticking time bomb:¹⁰ Currently there is a deficit of 100,000 civil servants, over the next 20 years about 56% of the presently employed (ca. 700,000) will retire. This will impact on tax justice. Already customs cannot enforce around 1 million administrative orders, forfeiting EUR 1.5 billion –which could be used for investing in human resource requirements and hence stem the increasing manpower deficits. All this comes in addition to experienced tax officials who change side from tax administration to the (better paying) private sector and trainees for a job in tax

¹⁰ For the following: Stahl, St. (2014, March 31) Tarifkonflikt: Das Stiefkind Öffentlicher Dienst. In: *Augsburger Allgemeine*. Retrieved from <http://www.augsburger-allgemeine.de/politik/Tarifkonflikt-Das-Stiefkind-Oeffentlicher-Dienst-id29373802.html>

administration who change into private sector after completing their training (cf. GER/VII/5.6.2Technical!). All of those need replacement as well.

2.1.7 Migration to the private sector

Another challenge arises from the free labour migration of trained tax inspectors from tax administration to the private sector which offers competitive wages. For instance one particular case comes to mind in this regard. Even though this “haemorrhage” seems to be comparatively low when comparing it with the overall number of employees one should be alarmed about this kind of “transfer of knowledge”. One of Germany’s major banks hired a former tax fraud investigator, Reinhard Henkel, who had investigated the same bank into its illicit financial transactions and yet the bank hired him as their “consultant” (cf. GER/VII/3.31). Meinzer (2015d:10) investigated the following figures and it is interesting to see that Bavaria is clearly leading the charts with an average 6 p.a. ahead of Baden-Wuerttemberg, which is closer to an average 5. It needs to be borne in mind, that, in case a civil servant considers such a change of sides, he is in risk to his pension claims (he might be asked to forfeit them before being released from his position as civil servant – and this is one of the lucrative perks in German civil service.

2.1.8 Self-Assessment (Selbstveranlagung)

In times of rising workload and ageing personnel there are, of course, other mechanisms of reducing the tax workload of tax officers. One such ingenious mechanism is the Self-Assessment of tax payers, i.e. that the tax payer calculates and reports his tax duty to the tax administration and who subsequently checks the assessment form or return for completeness and adequacy. Right now, there are elements of self-reporting in the areas of wage tax and turnover tax, it is under discussion in the area of corporations.

How likely is, however, an implementation in the foreseeable future? Here, an anonymized sample drawn from tax returns provided by the Bavarian Tax administration was the basis for academics to assess whether the plans of the Rhineland-Palatinate Ministry of Finance can be implemented or not. Result: Even if confined to the simplest-possible cases applies: If the intentions are implemented 1:1, only 0.38 of all cases qualify for self-assessment (Nehls & Scheffler, 2015, p. 913). This low quota can be increased up to 13.4% if concessions are made in various areas on the expanse of exactness and at the risk of tax losses is rising. If besides dependently employed those operating businesses are included in the sample (Gewerbetreibende), the percentage of those qualifying for self-assessment rises to 1%, which is still pretty low. Here, too, the quota can be increased if concessions are made, up to 14.76% but here, probably, too, the risk of losses will rise.

While there is a lot of sympathy for this method on the part of hard stretched administrations and tax consultants, there is also resistance on part of those who fear that this will only increase cheating: Discoveries of the last years, especially in the context of tax CDs and the subsequent wave of self-reporting and the amount of surplus revenue discovered by tax auditors and other branches of tax administration suggest that self-assessment will only encourage tax subject to explore their options to reduce the tax burden, relying on the fact that the then further reduced tax administration will not be able to check adequately and discover their “optimization”.

Suspicion is rising specifically regarding the self-assessment of corporations in the context that the Federal Ministry of Finance cooperates on that with KPMG, one of the Big

Four auditing companies. They, however, will most likely gain a lucrative new field of business if they were given even more possibilities to influence tax behaviour of corporations.

It is even more ironic that finance ministers suggest that if self-assessment is introduced that costs arising from contracting tax consultants have to be deducted from the tax bill. Right now, even the federation of tax consultants is sceptical whether current plans are ready for implementation.¹¹

2.2 “Colleague Computer”

2.2.1 Reasons behind computerization

To conversation partners among tax consultants, there are a number of (public and/or hidden) reasons for tax administrations to push for increasing computerization. For example

- Tax administration has to follow the general trend to use computer and computer based processes for trading, payment, sales and transfer mechanisms in private and corporate life.
- Those instruments not only used to make business and individual lives more efficient and convenient, but also to dodge and cheat on tax payment. Here fraud and tax evasion needs to be countered with own measures of fraud detection.
- Tax administrations have to make up for already missing staff, and at the same time
- they want to prepare the way for more savings in the field of personnel both by needing less civil servants and by using people on a lower pay grade to do more jobs.
- They hope to speed up the processing of tax declarations.

Senior tax administrators hope to preserve both equality and justice: Computerization will speed up processing and at the same time guarantee equal treatment of every tax declaration, disregarding the fact whether it is a person working in a low pay sector or a millionaire. And because Computer speeds up processing, more time is available for those tax declarations that merit closer attention by the inspector, either because the computer alerted to something worth checking or because checks are called for by the normal rota of checks.

2.2.2 Business Intelligence, Computer Forensics, Machine Learning

Central here are the concepts of Business Intelligence, Computer Forensics and Machine Learning:

- Business Intelligence examines and describes areas such as Big Data, Data Warehousing, Data Mining, Risk Analysis and Management, Fraud Detection Software etc.,
- Computer Forensic is the science which tries to detect manipulation of data within a given data processing system, e.g. by using Phantomware and Zapper. This is of relevance when it comes to tax fraud investigation and the informal economy.
- Machine Learning concerns the development and application of algorithms which should actually do the job and, ideally, learn from the search it conducts – this concept

¹¹ Schäfers, M. (2013, March 11) Muss der Bürger künftig seine Steuerlast selbst errechnen? In: FAZ. Retrieved from <http://www.faz.net/aktuell/wirtschaft/recht-steuern/selbstveranlagung-muss-der-buerger-kuenftig-seine-steuerlast-selbst-errechnen-12109664.html> Deutscher Steuerberater-Verband (2014, April 17) Rheinland-Pfälzischer Vorschläge zur AN Selbstveranlagung: Zukunftsmusik? Press Release, retrieved from <http://www.dstv.de/interessenvertretung/steuern/steuern-aktuell/tb-043-14-me-selbstveranlagung-an-rheinland-pfalz>

is crucial when it comes to understand the limits in principle, distinguishing that which computers can do and what not.

2.2.3 Private sector - public service – personal privacy

Looking into this field one is surprised how many private businesses are engaged.. This should alert everybody to a very important fact: This is a trillion dollar business with lots of money to earn. Indeed, IBM, for example, published its latest Fraud Detection Software, based on Big Data and Analytics, in March 2014,¹² it first emphasized that this new software cost IBM US\$ 24 billion to develop, bringing together expertise arising from 500 fraud consulting experts and 290 patents. At the same time, underlined the importance of this software to all potential purchasers with the following “guesstimates”:

- In 2012, US\$ 21 billion annually in damage occurred because of identity fraud, affecting 12 million individuals
- US\$ 3.5 trillion of revenue is not collected because of fraud and financial crime
- US\$ 4.7 billion is the market volume for anti-fraud solution in 2014, rising fast.

Not surprisingly therefore, also German software companies such as SAP are involved in tax fraud detection and enforcement software programs.¹³

It may be asked: If amounts of that kind are at stake: Why does the state not engage and utilize fraud detection software? For two reasons: First, there is not enough staff already. Second, and here software experts are very outspoken: The problem with computerization is that the best people do not go to the tax authority due to bad payment.

The engagement of private businesses in the field of tax administration software should also raise privacy concerns: These programs will only operate if experts are closely involved with real work procedures. This involves access to private tax data, which in turn is under special data protection. The question is whether existing safeguards misuse can be excluded, an important question in a time when private industry itself is heavily involved in “data mining”.

2.2.4 Electronic processing of tax declaration

2.2.4.1 *Faults in the process of data transfer*

Regarding the automatic transfer of personal data, mistakes may start right at the outset: Mistakes occur since some exchange mechanisms are faulty (i.e. amounts are declared twice or not at all) or that changes should be considered, e.g. due to sickness, change of job/employer, which is not done and which is why the automatically transmitted data diverges from that which is contained in the tax declaration.

The system is intransparent: Some information go to the tax authority and the “customer” (e.g. from banks) other information go only to the tax authority but not to the “customer”, who has to inquire explicitly in order to get information. But also information going to the tax administration is at times incomplete or faulty so that the civil servant has to

¹² IBM Launches New Software and Consulting Services to Help Organizations Tackle \$3.5 Trillion Lost Annually to Fraud and Financial Crime. Press Release of 2014, March 20. Retrieved from <http://www-03.ibm.com/press/us/en/pressrelease/43459.wss#release>

¹³ Spezialanwendungen unterstützen Jagd nach Steuersündern. (2010, September 30) Retrieved from eGovernment-computing. <http://www.egovernment-computing.de/fachanwendungen/articles/284244/>

struggle with it or asking for help at the institution transferring the data – which is at times difficult and time-consuming.

2.2.4.2 Faults during processing

Next, mistakes can occur if the software needs to be changed, e.g. if new laws or application rules of laws need to be coded into processing rules. In this case, new rules can interfere with existing rules (so-called “regression”), what should be avoided by test programmes checking whether the system is running without mistakes. This is also tried to exclude by the very way such systems are developed: The SCRUM method develops complex system in stages, and after each stage there is feedback by users whether the system works adequate to the complexity and expectations at hand. Experts concede, however, that cases may be so unique that even the most sophisticated system cannot do justice to everything and detect or interpret deviations correctly. Certainly, at a basic level the system is very reliable and if asked whether the system is trustworthy experts would trust it as much as they would trust a human tax inspector.

2.2.4.3 Citizens hesitancy to use it

There is also some hesitancy on part of the citizens to use voluntarily the offered electronic forms for transmitting their data to tax authorities: In 2005, only 12% of Germanys 30 Million Income Tax Declarations were handed in electronically and required a lot of work for checking and processing by the tax authorities (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2006, p. 92f.). Reasons for those hesitant are: fear of data safety and data protection reasons, simplicity of work with paper printout instead of new, unfamiliar and complex requirements of online.

This has changed: By now, around 20 million tax declarations are submitted via internet, which is 69% of all those which are due (Bayerisches Landesamt für Steuern, 2016, p. 136). The Annual report of the Bavarian Tax Administration admits, however, that even in 2014 there are still reluctant employees who refuse to enter this electronic processing (Bayerisches Landesamt für Steuern, 2014, p. 24).

Whatever: There is a firm intention by the Federal Ministry of Finance and other Supreme State Tax Authorities to advance electronic processing of tax administration. A lot of resources are invested and some progress is being achieved.

2.2.5 Computerized Risk Management

2.2.5.1 Why Risk Management in tax administration?

From all elements listed above among Business Intelligence, of major importance for European tax administration is Risk Analysis and Risk Management. A guide produced by the EU Directorate on Taxation and elaborated by a multi-country working group describes its goals to be the following.

- achieve equal treatment of the taxpayers;
- focus the burden of audit to non-compliant taxpayers;
- best use of the available human, financial and technical resources;
- increase the level of voluntary compliance of taxpayers;
- adjust available resources to the levels of risks;
- weigh the possibilities that a compliant taxpayer could become noncompliant.

Tax administration was an obvious candidate for the introduction of electronic data processing since it has to do with a huge amount of data which cry out for standardization.

For example, even though each individual or business is unique, there are certain recurring patterns in their tax declaration which repeat each other. These patterns can be identified and standard averages and deviations from the average can be described as rules and exceptions. That way it is a triple processing, combining analytics, statistics and more complex rules which will be applied to each individual tax declaration (Schüller, 2013, p. 22)

Risk Management is now part of German tax administration due to the KONSENS effort which aims for unified standards in processing tax declarations in all 16 German states. According to (Schüller, 2013, p. 23), it is playing an increasingly important role in

- Processing cases of dependently employed
- Detecting fraud with Turnover Tax
- Selecting cases for a Turnover Tax Special Investigation
- Assisting in the processing of cases of profit earnings
- Selecting cases for checks by tax auditors

2.2.5.2 How does it work?

The goal is to establish an increasing number of rules for the processing of tax-declaration and to succeed in specifying and sophisticating those rules as much as possible, so that an automated, and yet differentiated system of processing is possible. Regarding individual tax declarations, this is possible since information provided there contain some recurring stereotypes, but also signals if something exceptional pops up. Either these signals are extraordinary and call for investigation, or those signal continue to recur, then it might make sense to contain those, too, in a computerized rule in order to similar pattern also elsewhere.

Regarding businesses, the situation is similar: information provided in submitted tax declarations are compared with data at hand which is considered to be typical for the kind of business category: Each business category has an index number (*Kennziffer*). The *Kennziffer* denotes the business and criteria specifically and typically for this business category. In other words: If you are “window cleaner”, your criteria diverge from a “window builder”. That which is seen to be “typical” by tax administration within a business category is established in a specific procedure: Some tax auditors go out and scrutinize in detail some exemplarily businesses within each sector under examination with a so-called “*Richtsatzprüfung*”. Once average values exist for this sector, it is applied both in in-service and field-service checks. The typically is now compared with actual profits, acquisitions, spending, depreciation and losses of the business under examination. If a marked deviation triggers an “initial suspicion” (*Anfangsverdacht*) anywhere along the lines of checks, a more careful investigation will follow.

2.2.5.3 Faults in the “process of processing”

In real life, however, hopes have been disappointed with the results to a larger or smaller extent. First of all, computerized checks are at times unable to detect trickery and cheating. Even in the case of tax declaration of dependently employed, which is the easiest category of taxation for this kind of processing, mistakes occur: The Federal Performance Commissioner criticized in 2006 the extent to which the software is unable to detect manipulations and trickery when it comes to examining information with which a reduction of the tax rate is asked for (*Werbungskosten*). Here a fault rate of 34-100% is possible and any tax based on these mechanized findings can be faulty as well. For example, if somebody declares to buy a PC in one year, he can repeat “buying” one every following year. The computer would not discover any “abnormal deviation” from the rule. Or: All receipts for

donations beneath EUR 200 are ignored by the computers Risk Filter System. If somebody hands in a large number of such receipts they qualify unchecked for large rebates – and this year after year.

Equally, the Federal Court of Auditors criticizes the efficiency of the computerized risk management system and its adequacy to assist tax inspectors to administrate complex tax issues. In its Annual Report 2012, the Court mentions two examples:

- Insufficient discovery of incomplete data regarding income from rent (Bundesrechnungshof, 2012a, p. 56)
- Insufficient checks in the declaration of relevant information needed to establish dues in Income Tax. (Bundesrechnungshof, 2012a, p. 322)

2.2.5.4 The impossibility of follow-ups

A second obstacle in the way to achieving satisfactory results is the inability of staff to adequately and consistently follow up risk indications from the computerized checks. A second obstacle in the way to achieving satisfactory results is the inability of staff to adequately and consistently follow up risk indications from the computerized checks. For this, for example, the tax official would need to look into the documentation (Belege) attached to each tax case, independently whether the documentation is electronic or on paper. This is time consuming as such, provided, the documentation is at all at hand: The plans to modernize taxation procedure wants to replace the Vorlagepflicht with Vorhaltepflicht, meaning, that the tax subject is no longer obliged to hand in all relevant documentation, but to keep everything at home and send it in if the tax inspector wants to see it. This, practitioners and trade unionists argue, will have two results: Either there are delays and more work because the tax inspector has to ask for documentation and probably will have to ask several times until the papers needed are on his desk, or ways will be sought that no checks will be done anymore.

Equally problematic is that the computerized checks are given priority by superiors of tax officials, i.e. the most important “tool” of tax inspectors, namely their “gut feeling”, has no chance anymore to be developed and applied.

2.2.6 Future IT related taxation problems

2.2.6.1 Big Data and the upcoming automatic information exchange

Another area of concern should be the upcoming automatic information exchange between almost 100 states: According to plan, the data will be transmitted to the Bundeszentralamt für Steuern and from there forwarded to the state tax offices. The first question here is, whether server capacity will live up to the processing of data. If the German IT network is not up for the challenge, as it is right now given the regional fragmentation of tax administration (cf. 3.4.4), this would be an embarrassment for Germany.

2.2.6.2 Business to consumer transactions

A second “Hard to tax” area is, according to the IMF (2015a) and besides HNWI, the area of direct business to consumer transactions, especially if they are organized via e-commerce and internet which leads, in the end, to a non-payment of VAT. In Germany, conversation partner admit that the problematic is rather new and that not everybody has adequate experiences – or, that they are reluctant to talk since there is also the impression that authorities are pretty helpless.

2.2.6.3 Reduction of global trade

So far the global value chain rested on production in low-wage countries, transport and subsequent assemblage in higher wage countries. Due to digitalization, for example, some

items can now be produced with 3-D-printer so that no longer this division of work holds, the need of transportation decreases and no longer import and export duties are called for.

2.2.7 Limits to computerized IT?

In March 2016 news emerged that for the first time a Google-Computer defeated a human Go-Game-Champion. This is remarkable, since different from Chess, the game of Go requires more than logical calculation but rather, elements of intuition. This is in addition to successes which computers had in 2011 when winning the quiz show “Jeopardy” or the release of the intelligent Bot Tay with Microsoft. Is there, indeed, proof that computers eventually will be self-learning computers in the foreseeable future, also able to process tax declarations as intelligently and as good as personnel?

Experts still doubt it for several reasons: First, those computers were unique constructions and therefore not able to process thousands and millions of complex cases. Second, there seem to be both technical and structural limits to expanding speed and complexity of computerized processes

For those reasons, there seem to be no alternative to experienced personnel in tax administration – provided that they are well trained, meaning, that trainees are not merely thrown into new jobs, but indeed introduced well into the complexities of tax administration by experienced colleagues so that they are able to develop the gut feeling which so far makes humans superior to machines.

2.2.8 Replacement of personnel?

Suspicious that perfection of IT processing will eventually replace experienced staff, thus saving costs in tax administration, have been fuelled by a “Discussion paper” by the Federal Ministry of Finance (Bundesministerium der Finanzen, 2014c). Here it explains in chapter 4 how changes in the law need to be phrased that at least parts of tax declarations can be automatically processed and no longer require (extensive) personal attention by a civil servant. Never mind the following: This discussion paper turned into law, see below (7)

2.2.8.1 A field experiment in Lower-Saxony

A very rare pilot experiment, satisfying critical qualitative standards of social research, has been initiated in the tax administration of Lower-Saxony 2000-2003. Similar to the benchmarking process (cf. 2.1.3) it was aiming to understand better the working of tax administration, its interaction with taxpayer and trying to identify areas for improvement.

Different from benchmarking projects it provided control-groups, thus permitting comparisons and conclusions not just regarding the outcome, but also the process leading to outcomes. For this research project, most importantly findings of one group is of interest, namely the one dealing with the question whether computerized processes, criteria based on departmental selection or the “gut feeling” of experienced civil servants is more successful in identifying and dealing with high-risk tax cases. The result is very clear: In all categories of examination and evaluation, the gut feeling of tax inspectors prevailed, exceeding by far results obtained via the other two approaches.

The experiments suggest that tax administration is far beyond the execution of standardized and stereotyped rules, but to an eminent degree dependent on human experience and dialogue. The outcome suggests that the experience gained in dealing both with high-risk cases and customers resulted in a self-learn process whose insights immediately fed back into

the administrative process as such, therefore improving process and outcome (Schöbel, 2008, p. 260f.).

2.2.9 Conclusion

One important goal of computerization was and is to increase options to check “deserving” cases thoroughly, wasting less time on those which are correct. This goal does not seem to be tenable. In 2007, at best 10% of the cases were processed by the computer without any checks and assessment by the Tax Inspector.¹⁴ Whether the situation has improved ever since is disputed, while politicians and representatives of the tax administration take a more optimistic stance, practitioners and trade unionists a more sceptical stance. In the end, of course, it is always argued that the advancement of computerization is “without alternative” and that this is also the goal of the legislation regarding the “modernization of tax administration” (see at end of this part), which aims to a fully computerized processing of up to 25% of “simple cases” up to 2022.¹⁵

On the whole, practitioners argue, ‘computerization is only helpful in simple cases ... but German tax law is not simple. We see that the machine produces mistake after mistake but we do not have time to follow those up. This is extremely frustrating’, says Stefanie Vogel in (ZEIT-Dossier, 2014). It is very important to see that Vogel states a problem of principle: While many senior tax officials argue that the problems of risk management will be amended eventually and the accuracy of the system improved, Vogel argues that first a simplification of the law is required before law and machine match each other.

Beyond that, there are still many technical problems to be resolved before a unified IT based exchange of information between state tax authorities and local finance offices and data processing will be possible in the first place: So far, there is no vision of a working “E-File” for each tax subject or no way of electronic entering, transmitting and processing of control notices (Kontrollmitteilungen). Another problem will be the different standards of existing files. Ahead of machine-processing they would have to be brought up to a common standard – all to be done in addition to existing workload.

Equally sceptical regarding hopes of senior administrators are computer experts, because according to them there are clear limits to that which machine learning can achieve

Not surprisingly, also the Federal Performance Commissioner concludes, the hope, that electronically processed tax declaration provides indeed more equality and justice, is often disappointed.¹⁶ Saying this, neither the Federal Performance Commissioner nor the Federal Court of Auditors do reject computerized treatment of tax declaration as such. They emphasize, however, that this will work only if the tax law is thoroughly simplified¹⁷ which is totally in line with Vogel’s argument and almost all tax practitioners with whom interviews were conducted.

If computerized assessment is continued on the level as it is right now, there will be the risk that, in spite of all good intentions, equality and fairness in taxation is not secured. The Federal Performance Commissioner states, that in earlier time the quantitative workload

¹⁴ In: Weigel, W. Vom Alltag eines DUNAN Liberos. In: *Der Wecker* 2007/4. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

¹⁵ See prefaces of (Bayerisches Landesamt für Steuern, 2016)

¹⁶ See (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2006, p. 38ff+97f)

¹⁷ (Bundesrechnungshof, 2012a, p. 332)

only temporarily obstructed equal treatment, computerized treatment nowadays risks to undermine equality permanently.¹⁸ This is confirmed by tax practitioner who complain that they are often more busy with checking and entering data than devoting time to legal questions pertaining to the accuracy of the tax declaration on their table – a waste of potential and training.¹⁹

2.3 Insufficient checks with businesses

Checks on businesses, including corporations, are done by the tax auditing department. However, this department is also in charge for checking “persons with considerable income”, i.e. “Millionaires”, which is why those are included in the relevant statistics.

2.3.1 Background

In Germany, the frequency and intensity of checks depends on the size of the business. In Germany (and the European Union) exist several criteria for the classification of smallest (*kst=kleinst*), small (*K=klein*), medium (*M=Mittel*) and large (*G=Groß*) businesses. The category of “smallest businesses” is special insofar they are not dealt with by tax auditing department and are at times categorized as being “not relevant for checks”. For this paper, therefore, the following classification of the Federal Ministry of Finance is adopted which is given in order to ensure a uniform execution of tax laws. It follows some norms applicable for the year 2016 (NB: This list is not comprehensive!).

Table 1 Classification of business sizes in Germany²⁰

Kind of business	Characteristics in Euro	G-businesses above	M-businesses above	K-businesses above
Trading Company	Turnover Taxable profit	8,000,000 310,000	1,000,000 62,000	190,000 40,000
Manufacturing	Turnover Taxable profit	4,800,000 280,000	560,000 62,000	190,000 40,000
Self employed	Turnover Taxable profit	5,200,000 650,000	840,000 150,000	190,000 40,000
Banks	Turnover Taxable profit	160,000,000 620,000	39,000,000 210,000	12,000,000 52,000
Agriculture & Forestry	Turnover Taxable profit	300,000 170,000	130,000 70,000	55,000 40,000
Cases of considerable income	Positive income, not net-balanced with negative income	500,000		

¹⁸ ‘Special report of 17 January 2012

<http://www.bundesrechnungshof.de/de/veroeffentlichungen/sonderberichte/2012-sonderbericht-vollzug-der-steuergesetze-insbesondere-im-arbeitnehmerbereich/view>

¹⁹ Scholz, Chr. Was ist der Veranlagung noch zuzumuten? In: *Der Wecker* 2010/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

²⁰ BMF Schreiben „Einordnung in Größenklassen gem. § 3 BpO 2000; Festlegung neuer Abgrenzungsmerkmale zum 1. Januar 2016“ Retrieved from http://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Weitere_Steuertemen/Betriebspruefung/2015-06-09-einordnung-in-groessenklassen-2016.pdf?__blob=publicationFile&v=1

The number of businesses is constantly on the increase: Large businesses from 191,638 (2010) to 196,402 (2014) and middle sized businesses from 799,135 (2010) to 820,778 (2014) (Deutsche Steuer-Gewerkschaft, 2015).

However: Resulting from the discrepancy between the increasing workload and shortage of staff, the number of overall checks in relation to those entities qualifying potentially for checks is wanting. In 2012 the numbers are as follows:

Table 2 Business checks in absolute numbers and percent of the total in 2012²¹

Category	Total number	Of which have been checked	
		Number	Share
Großbetriebe (G)	191 335	41 365	21,6 %
Mittelbetriebe (M)	799 135	52 544	6,6 %
Kleinbetriebe (K)	1 189 727	38 950	3,3 %
Kleinstbetriebe (Kst)	6 391 015	62 832	1,0 %
Summe	8 571 212	195 691	2,3 %
bedeutende Einkünfte (bE)	15 281	1 984	13,0 %
Verlustzuweisungsgesellschaften (VZG) und Bauherrengemeinschaften (BHG)	15 581	1 472	9,4 %

In 2014, the numbers are as follows (sadly without the post “bedeutende Einkünfte”) indicating a slight worsening of the situation:

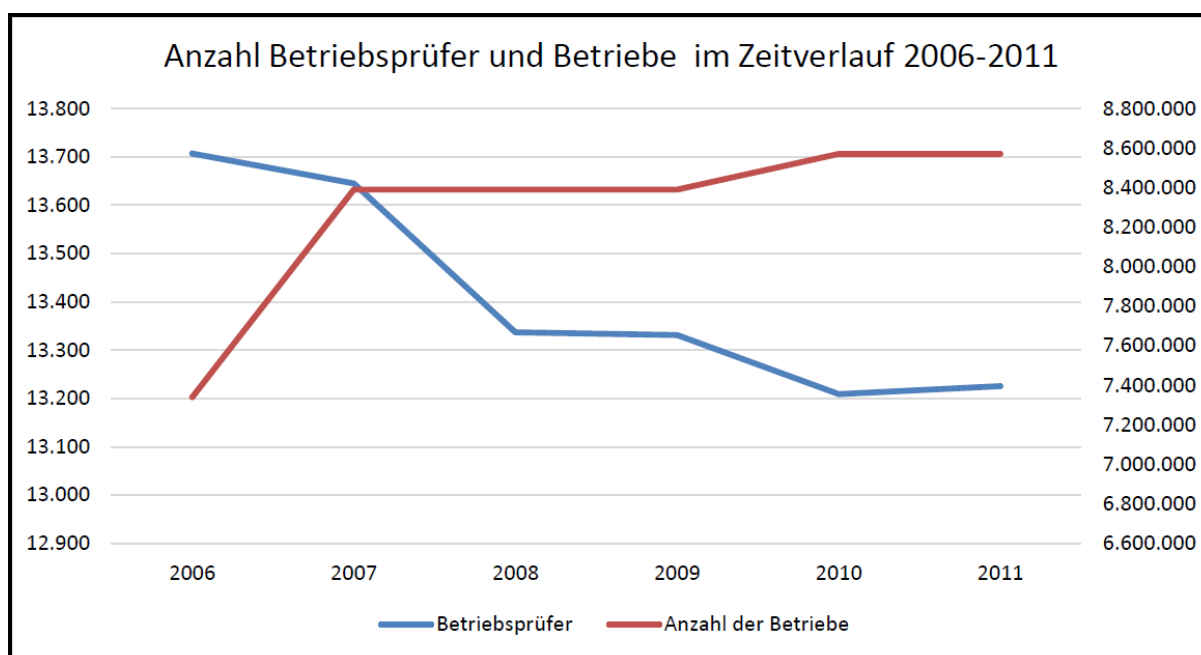
Table 3 Business checks in absolute numbers and percent of the total in 2014²²

Größenklasse	gesamt	darunter geprüft	
	Anzahl	Anzahl	Anteil
Großbetriebe (G)	196 402	42 229	21,5 %
Mittelbetriebe (M)	820 778	53 006	6,5 %
Kleinbetriebe (K)	1 214 853	38 791	3,2 %
Kleinstbetriebe (Kst)	5 688 385	58 715	1,0 %
Summe	7 920 418	192 741	2,4 %

On this background, the development in terms of personnel (tax auditors) is as follows:

²¹Numbers based on (Bundesministerium der Finanzen, 2013b) and Bigalke, S. (2013, August 27) Jeder Betriebsprüfer bringt 1,4 Millionen Euro. In: *Süddeutsche Zeitung*. Retrieved from <http://sz.de/1.1756314>.

²² <http://www.bundesfinanzministerium.de/Content/DE/Monatsberichte/2015/10/Inhalte/Kapitel-3-Analysen/3-1-ergebnisse-der-steuerlichen-betriebspruefung-2014.html#doc50780bodyText2>



Source 1 (Meinzer, 2015d)

This, naturally, leads to deficits: In the Mid-1990s, the federation and the *Länder* agreed that the frequency of checks should be as follows: Large businesses every 3 years, medium sized businesses every 10 years, small businesses every 20 years (Dettmer & Reiermann, 2013). This is almost nowhere the case. The real time frequency of business on site tax verification is as follows:

Table 4 Frequency of average checks of businesses in Germany

Category	Large business	Medium business	Small business	Smallest business
Frequency in years	4.63	15.21	30.54	101.71

Source 2 (Bundesministerium der Finanzen, 2013b)

At each check, the inspector checks on average the last 3.3 years at large businesses, and the last 2.9 years at smallest businesses. This timeframe and the frequency of checks results in the overall “density” of checks (*Prüfungsdichte*), i.e. the percentage of years which are checked on average within each category of businesses.

Table 5 Density of average checks of businesses in Germany

Category	Checked	Not checked
Large business	72%	28%
Medium business	19.8%	80.2%
Small business	9.7%	90.3%
Smallest business	2.9%	97.1%

Source 3 (Bundesministerium der Finanzen, 2013b)

This indicates, that even within the largest and best checked category of businesses, on average 28% of business years are not checked at all. This is important because the prosecution of most offences is time-barred (*verjährt*) after a period between 4-10 years. This means: Both the frequency and density of checks for small and medium enterprises is such,

that, if there is cheating, the likelihood that this will neither be discovered nor prosecuted at all, is high.

These deficits in frequency and density are even more surprising if one considers the average outcome. In Germany, on average, business tax inspectors collected surplus revenue of EUR 19 billion in 2012 which is, divided among the 13,271 business tax inspectors, EUR 1.43 million whose salary is about EUR 75,000 on average.

Federal statistics reveals also, how the surplus revenue is divided among the various categories;

Graphic 1 Generated surplus regarding the size of businesses (2014)²³



This statistic at first sight justifies the Bavarian argument that it is more or less adequate to focus on those businesses where the big money can be found while it would not be cost-efficient to spend highly paid expertise on medium and small enterprises. This argument merits further consideration which will be given later, e.g. in 4.3.3.6+7.

While it is standard in many countries to centralize tax administrative issues of large businesses in so-called Large Taxpayer Units, this is rare in Germany. State responsibility stands in the way of centralized checks on the federal level, and of 16 German states only three states have this kind of unit, namely Hamburg, Bremen and Baden-Wuerttemberg. In North Rhine Westphalia and Lower Saxony at least some aspects regarding large taxpayers are centralized (Meinzer, 2015a, p. 149).

2.3.2 Wage Tax Inspection

The Federal Court of Auditors states a deficit due to the decreasing checks by special Wage Tax inspectors whose task is to find out whether the employer deducts correctly the wage tax of employees and remits the taxes to the tax office. Here, the number of checks went

²³ <http://www.bundesfinanzministerium.de/Content/DE/Monatsberichte/2015/10/Inhalte/Kapitel-3-Analysen/3-1-ergebnisse-der-steuerlichen-betriebspruefung-2014.html#doc50780bodyText2>

down from 7.1% (2005) to 5.4% (2010). Surplus revenue following these controls went down from EUR 911 million to EUR 787 million in the same time, (Bundesrechnungshof, 2012a, p. 346ff.)

2.3.3 Tax Auditing

The Federal Performance Commissioner complained in 2006 about the nationwide lack of tax auditors competent enough to check businesses and corporations (p. 75). Both the Commissioner and the federal Ministry of Finance agree that this situation is untenable and needs to be addressed by employing more personnel.

2.4 Insufficient checks on wealthy people

The statistics on the tax auditing department above (2.3.1) reveals that in Germany in 2012 13% of all wealthy households have been checked.

In its 2006 report,²⁴ the Court of Auditors acknowledges that given a national average of 15% checks there are differences among the *Länder* who are in charge of these visits. In some *Länder* 60% of millionaires are inspected annually, in others only 10%, in some years checks occur almost annually in other every 30 years. A more coherent and consequential control of the tax declarations made by millionaires would be an important contribution to tax justice, so claims the Federal Court of Auditors. The Court argues that inspectors discovered faults in 80% of all cases checked. This is why each visit results on average in a surplus of tax revenue of EUR 135,000. In principle, there should be “generally” and “regularly” visits by tax officials, because some of their wealth originates not only from salaried employment but also income from capital or rent. Therefore, only a thorough examination of books, bills and accounts would enable an adequate assessment of tax liabilities by the authorities. This is time consuming, especially that there is no obligation to collect and keep proper documentation.

In specific and more detailed reports, the Federal Performance Commissioner or the Federal Court of Auditors highlighted the following concerns;

- Income from agriculture and forestry: In a special investigation, the Court of Auditors judges the present system of simplified taxation for some businesses to be unfair because it does not capture the amount of taxes which could be due.²⁵
- Income from rent: The Federal Court of Auditors noted that the computerized risk assessment regarding income from rent is faulty and may result in the loss of income tax. (Bundesrechnungshof, 2012a, p. 339ff+344ff)
- Income from capital: The Federal Performance Commissioner noted that there were challenges on assessment and verification of income from capital due to the banking secret. Efforts to make this category of income more transparent had (up to 2005) little effect (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2006, p. 114ff.)
- Income specifically arising from interest on loans. Normally, tax on income arising from capital interest is 25%. If, however, wealthy people offer a private loan to people close to them, income from that interest should be taxed with the regular income tax rate of 45%. Equally, the full tax should be paid, if the lender of a loan to a company

²⁴ (Bundesrechnungshof, 2006, p. 38+213ff.) and Aloys Altmann in (ZEIT-Dossier, 2014)

²⁵ Sonderbericht zur Gewinnermittlung nach Durchschnittssätzen aus land- und forstwirtschaftlichen Einkünften, 17.1.2013 <http://www.bundesrechnungshof.de/de/veroeffentlichungen/sonderberichte/2012-sonderbericht-gewinnermittlung-nach-durchschnittssaetzen-bei-land-und-forstwirtschaftlichen-einkuenften-ss-13a-einkommensteuergesetz/view>

owns at the same time shares in that company of 10% or more (Bundesrechnungshof, 2013, p. 330).

When the second reform of federalism after unification was completed, federal institutions, most notably the Federal Central Office of Taxes received more competence for investigating and prosecuting TNCs and millionaires. However, the Court of Auditors concluded in 2011 that this institution does not use its newly ascribed powers: Between 2006 and 2011, just 3 inspections took place, all at the same company. One problem is most likely that the institution does not have a database which would be essential to prepare and plan checks: All those data is still with the individual *Länder* and no common data pool could be agreed upon until the present day. (Dettmer & Reiermann, 2013)

The above mentioned differences in checks of millionaires is even more interesting when looking at another statistics: Wealthy people do not have to fear too many checks by the very tax authorities in two of those states, where most of them live, namely Hamburg (35 millionaires out of 100,000 citizens) and Bavaria (20 out of 100,000). While in Hamburg 5% of them were checked in 2009, Bavaria ranks lower third of the statistic together with Brandenburg a quota of ca. 18%. Saxony and Baden-Wuerttemberg rank best with a quota of 37.9%. Baden-Wuerttemberg needs to be commended since it is the state with the third largest number of millionaires (12 out of 100,000). However: Over the years 2005-2009 the quota of checks with millionaires in Baden-Wuerttemberg has been declining from previously 45%. One is tempted to suspect that both this development and the frequency of checks by Hamburg, Bavaria and Baden-Wuerttemberg has been initiated intentionally by a conservative-liberal government which traditionally is benevolent on the taxation of wealthy people and businesses. But clearly, spokesmen of the respective government reject outright that there are political interests behind these quota and that tax laws are applied equally and justly in all countries. And: Clearly, Hamburg, Bavaria and Baden-Wuerttemberg have other attractive features to settle there. Nevertheless: non-government experts, including former employers of tax administrations, sustain their suspicion of political intent and given the amount of taxable wealth and the complexity of tax law applicable for the wealthy the likelihood cannot be excluded that the administration of tax law is one major aspect among the calculation where one chooses to have ones primary domicile.²⁶

A more current figure was published in February 2015: Hessen claimed to do the most checks on Millionaires, namely 22.1% every year.²⁷

Meinzer (2015a, p. 159) reveals that German governments want to “embellish” the rates of checks with a statistical trick: From now on, income from capital, which is subject to the Abgeltungssteuer, shall be excluded from the calculation of “excess income”, which is standard for the “millionaire” definition of EUR 500,000. And: The level of EUR 500,000 needs to be maintained for two of three years, while so far one year was sufficient.

(Schöbel, 2016a, p. 118f.) contains further information about checks on millionaires by the Court of Auditors in Rheinland-Palatinate and Lower Saxony. In Lower Saxony, annual losses in this segment, both regarding checks of private persons and checks in the

²⁶ (Schick, 2011) and Hulverscheid, Cl. (2011, March, 4) Millionäre bevorzugt. In: *Süddeutsche Zeitung*. Retrieved from <http://sz.de/1.1067693>

²⁷ Press Release (2015, February 25) GRÜNE: Hessen prüft Millionäre öfter als jedes andere Bundesland. Retrieved 26 February 2015 from <http://landespresseportal.de/hessen/item/25196-kampf-gegen-steuerhinterziehung-gr%C3%BCne-hessen-pr%C3%BCft-million%C3%A4re-%C3%B6fter-als-jedes-andere-bundesland.html>

context of business auditing, lead to EUR 250 million in annual losses. Interesting enough, both Courts of Auditors recommend that exactly in this segment the extent of computerized checks should be pushed back and the “human factor” and investigation, the “Bauchgefühl”, should get priority.

2.5 Insufficient checks on self-employed

In this context, the Federal Court of Auditors considers another group to be insufficiently checked, even though a lot of surplus revenue might be collected there, namely some of the category of self-employed. Privileges are twofold: Some have to pay business tax, such as butcher and baker, others don't, even though they also have a similar business structure, e.g. doctors, lawyers, architects. And: both use and profit from the infrastructure provided by municipalities who own the revenue arising from this tax. However: All those are good clientele of Liberal Democrats which is why this was not changed under the previous federal CDU/FDP government. More checks would be worthwhile regarding turnover tax obligations with doctors and related medical institutions: Whatever doctors do regarding medical necessities, they are exempt from turnover tax obligations. If, however, they offer services in the cosmetic area (whitening of teeth, breast enlargement, removal of tattoos...) they are obliged to pay turnover tax. Here, however, tax offices lack information of what they do and how to categorize that what they do, which is why taxes are not being paid. (Bundesrechnungshof, 2013, p. 326ff.).

2.6 Insufficient checks on fraud with turnover tax/VAT

2.6.1 What are we talking about

A tax fraud investigator joked semi-officially: ‘If you rob a bank you very like get little money but risk heavy prosecution and punishment. If you want to be a millionaire fast without a lot of risk: Turnover Tax Fraud would be the thing to do.’ Indeed: here is a field where billions of Euro in revenue are lost every year (cf. GER/VIII/3.4).

To understand this is important for the following reason: Turnover tax is the largest single tax collected by the government: In 2011 it generated EUR 102.4 billion, while in the budget of 2014 EUR 109.4 billion are calculated.²⁸ At the same time, especially due to complex international cross border regulations, it is an area for great cheating and losses, because fraud in this area is comparatively easy and lucrative.

2.6.2 Manipulated cash-register

In Germany, about 2.5 million electronic cash-registers are being employed, which opens many ways for cheating. An easy way to cheat exists, for example, in restaurants: Those are obliged to calculate and print bills from an electronic cash-register. There are, however, still cases, where guests receive hand-written bills after a meal, and this amount may, or may not, typed into the cash register afterwards. Or: Every electronic cash-register machine comes with a “trainings key” (*Blindkellner*), simply, because staff needs to practice with the cash register machine before using it in serious. Whenever the training key is activated, the cash register is not registering anything. Tax fraud investigators in Nuremberg found out when checking restaurants, that all too often trainings keys were in cash register machines, even though employed staff were on their job already for many years. Or: Electronic cash registered can be manipulated in a way that every day 20 beer are deducted from the end-of-day balance. If 25 beers are sold, only 5 show up. There are small programs

²⁸ (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2013, p. 5+318f.)

such as ERASER, FIXER, or SNEAKER who manipulate daily turnover – according to reports those programs are easily available even from manufacturer of electronic cash registers. In order to avoid detection, businesses at times have to change electronic registers frequently since other storage safeties would otherwise reveal the fraud. But this is still cheaper than being detected at the occasion of a tax auditors visit.²⁹ This kind of manipulation exists in restaurants, shops, taxis. This problem is also part of a discussion sparked off by a recent report of the Court of Auditors (cf. below 2.6.8).

2.6.3 E-Commerce based fiscal problems

➔ See also Business to consumer (BTC) transactions

2.6.4 Computer based fraud

There are many ways to manipulate accounting and balance sheets and other instruments which are supposed to document commercial activities of individuals and businesses, which are necessary for tax authorities to determine the amount of taxes due. That way, billions of Euros in revenue elude taxation authorities annually. In a more complex fraud, Phantomware and Zapper can manipulate payments in a way that it is extremely difficult to reconstruct that which has been going on – for example, programs can be used at the end of year balance to launder money. Given the usual workload, tax auditors only check details if suspicion starts growing when they check the books. For example, if they compare the number of purchased aluminium boxes in which fast food is sold with the number of declared sales of take-away fast food and it does not match. The reason: Consumed food on the premises is taxed 7%, take-away food is taxed 19%.³⁰

2.6.5 Fraud with faked bills

See 4.3.6.5

2.6.6 Fraud with cash payments

In Germany, different from some other countries, cash payments are considered normal and acceptable in contrast with other jurisdictions that encourage electronic transfers and other cashless payments e.g. by billing, credit or bank cards. This applies for daily life, but also business routines. Given all this, experts ask: Is it really acceptable that in some economical sectors cash payments are permitted even though they amount to more than EUR 100,000? The Dossier in Die Zeit (2014) on civil servants working in tax administration gave some examples for the size of cheating in this area:

- A tax fraud investigator from Berlin reports: One can buy buckets of empty invoices complete with original signatures, the company owner just fills in what he allegedly ordered/paid and inserts the amount of money.
- Another reported case from Berlin tells of drunks and drug addicts who were brought in from Poland and who were paid for opening up dummy companies by providing their names and addresses.

²⁹ Szent-Ivanyi, T. (2015, August 23) Wie Firmen ihre Kassen manipulieren. In: Frankfurter Rundschau. Retrieved from <http://www.fr-online.de/wirtschaft/steuerhinterziehung-wie-firmen-ihre-kassen-manipulieren-,1472780,31535960.html>

³⁰ See also (Lechner, 2014, p. 12ff.) and (OECD, 2013d, p. 14) also Ainsworth, R. (2012, February 22) Zappers & Phantom-Ware: A Global Demand For Tax Fraud Technology. Retrieved from <http://taxblog.com/rainsworth/zappers-phantom-ware-a-global-demand-for-tax-fraud-technology/> and (OECD, 2013d)

- Tax fraud investigators in Nuremberg investigated in 2014 faked bills amounting to EUR 100 Million, for the whole of Bavaria the volume is about EUR 300 million, the estimated damage for Bavarian tax revenue is assessed to be ten times as high every year
- All this cannot be checked due to the lack of personnel; the money thus generated can be paid to illegal migrants, black labour or spent on projects in the shadow economy.³¹

With faked bills like that it is easy to cheat on Turnover Tax, Income- and Wage Tax as well as on the payments for mandatory social security contributions. As a solution experts recommend two strategies: First, whenever new businesses are established one should check whether there is more behind registration than a letterbox, i.e. rooms, staff, production, established proceedings. Only if these basic requirements are fulfilled, a tax number should be awarded. Second, cash payments should be permitted only up to EUR 1000, thus establishing comparable standards towards individuals: In the case of the latter, only those “household services”, e.g. for paying cleaning women, qualify for tax deduction when the payment has been done electronically and can be documented. Neither this requirement, nor any ceiling for cash payments exists with businesses. Tax fraud investigators happen to find bills paid with cash amounting to tens of thousands Euros.

2.6.7 Gaps in legal regulation and administrative cooperation

Tax evasion in respect of VAT is possible due to lack of coordination and different VAT rates across different tax jurisdictions and lack of coordination of international tax laws.. It may well be that German businesspeople have to pay taxes and levies which do not apply for the same product sold by a non-German producer. From that is only a short way to the systematical exploitation of VAT gaps between states via Carrousel Fraud or trade mispricing (cf. GER/VII/5.5).

2.6.8 Position of the Court of Auditors and Performance Commissioner

This problem is known and in the focus of both the Federal Performance Commissioner and the Federal Court of Auditors. As early as 2003, the Court of Auditor urged government to pay attention in the field where many billion Euro of cash exchange hands,³² and as early as the 2006 report of the Federal Court of Auditors it was known, for example, that there are not enough tax investigators specialised in this kind of fraud so that annually only 2% of all businesses receive a visit by tax inspectors and auditors. This results, on average, in one inspection every 50 years; but again there are large differences among the German states: In some states, one inspection occurs on average every 35 years, in others every 77 years, the largest control gap being in those countries with most businesses. On average, each inspection results in a revenue surplus of EUR 15,389 (Bundesrechnungshof, 2006, p. 201f).

In a special 2013 Report, the Federal Performance Commissioner complains that many recommendations given previously by him and the Federal Court of Auditors have not yet been implemented, e.g. improvement in data collection and processing between the federal and state level, staffing and other resources. He also criticizes that assurances for imminent

³¹ See also Informal labour in chap V, (Dettmer & Reiermann, 2013, p. 78), (ZEIT-Dossier, 2014) and Stupka, W. „Steuerkrieg“ in Deutschland. In: *Der Wecker* 2013/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

³² Bemerkungen 2003, S. 198
<http://www.bundesrechnungshof.de/de/veroeffentlichungen/bemerkungen-jahresberichte/2003/2003-bemerkungen-gesamtbericht-pdf>

improvement given by the Federal Ministry of Finance are not satisfactory (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2013, p. 22ff.). This seems to have repeated itself in 2015, when the dpa got hold of a more updated report.³³

The irony is that this kind of fraud is (on the one hand) made possible by complicated European legislation and at the same time any solutions are hampered by EU legislation and “national egoism” blocking any changes. Germany is at the same time most affected by this problem since it is the EU's largest exporting nation.

2.6.9 Discussion

A major contested issue is the question, whether the VAT-Gap is due to exemptions or compliance and enforcement. If it is due to exemptions, then, perhaps, policy responses would be preferable than enforcement mechanisms. Here the EU analysis into the reasons for the VAT-gap is illuminating. The EU assumes that the VAT-gap is result of a Policy gap, which in turn is decomposed into a rate gap and an exemption gap. The Rates Gap ‘represents the potential revenue loss due to the existence of reduced rates, whereas the Exemptions Gap represents the potential revenue loss due to the existence of exempted supplies of goods and services’ (European Commission, TAXUD, 2015, p. 20). As to the latter, the Commission states that a number of goods and services are not taxable at all:

- Imputed rents of houses, which do not involve any monetary transactions at all
- Public goods and services which are part of government (just imagine to put VAT on police or primary education)
- Financial services which to tax are exempt from national government and parliaments due to art 135 of the VAT directive).

If one deducts all those non-taxable payments from the Exemptions gap, the difference will be the “Actionable Exemptions Gap”, i.e. the exemptions upon which government and parliament can realistically act upon. What is left after those deductions as Actionable Exemption Gap is, however, a much smaller amount than the Rates Gap. Therefore the Commission finally concludes that ‘in the balance of considerations, for most of the EU-26 countries a better functioning collection system has to remain a priority for public action.’ (European Commission, TAXUD, 2015, p. 25) and that, for that reason, more needs to be invested into ‘enforcement and compliance measures, as it provides an estimate of revenue loss due to fraud and evasion, tax avoidance, bankruptcies, financial insolvencies as well as miscalculations’ (p. 7)

On that background, and given the amount of money which is avoided and evaded here, it is a bit surprising, how few inspectors are employed in this field. According to conversation partner from a public prosecutors department, however, there is a simple solution to it: The investigators have to be paid by the state tax administrations, the lions share of revenue belongs to the federation (cf. GER/V/1) – which is why states are rather interested to invest in inspectors working in areas where generated revenue remains within the state who is also paying the bills – one more indicator how counter-productive the decentralized German tax system can be.

³³ Kampf gegen Betrug an der Ladenkasse wird massiv verschärft. (2015, June 25). In: Die Zeit. Retrieved from <http://www.zeit.de/news/2015-06/25/steuern-steuerbetrug-an-ladenkassen-soll-massiv-bekaempft-werden-25143208>

2.6.10 Conclusion

If the additional EUR 168 billion VAT could have been collected for the EU (or the EUR 24.8 billion for Germany) annually, a lot of money for the “rescuing” of Greece’s economy or handling the refugee influx would have been available. Likewise, resources needed for modernizing public infrastructure would have been at the disposal of the government. While Commissioner Moscovici emphasizes that this topic is on top of his Brussels department, the simple case of manipulated cash registers in Germany illustrates how difficult improvements will be: Here, state ministers want to push ahead with a solution which the Federal Minister blocks by referring to the need of a EU harmonized approach.³⁴

2.6.11 Possible solutions

➔ Entweder zu Consumption tax oder informal economy oder zu solution chapter

2.6.11.1 *Securing electronic cash registers against manipulation*

The German State Finance Ministers at their meeting in July 2015 agreed in principle to secure electronic cash register machines to thwart manipulation. The machines have an operating software and program INSIKA (INtegrierte SIcherheitslösung für messwertverarbeitende KAssensysteme). Here, the blockade between Federal level and state level works the other way round: Finance Minister Schäuble blocks this solution for three reasons: Here, the blockade between Federal level and state level works the other way round: Finance Minister Schäuble blocks this solution for three reasons: High costs for those having to implement the system, the need for a ‘harmonized approach’ at EU level and the refusal to accept one system only. Furthermore, the Minister doubts whether the “guesstimate” of EUR 10 billion per year is correct. Minister Schäuble prefers a “Technologieoffene Lösung” which guarantees that all entries in the register are conclusive, i.e. that post-hoc changes done with a Zapper program can be made visible and manipulation is thus excluded. Also the AISEC approach should be considered, which is already implemented at Casinos. There are other solutions in other countries, e.g. the Fiskalspeicher in Belgium, an obligation for documentation in Italy, a Registrierkassensicherheitsverordnung in France and Austria.

Against this, representatives of the German states argue that indeed new cash registers are expensive and may cost up to EUR 5000 each. It is also possible, however, to upgrade existing registers for EUR 150 only. Regarding EU regulation there is the old problem that no uniform solution is foreseeable, therefore an interim solution might be better than just doing nothing. Finally: INSIKA does not mean a monopoly for one producer only: The INSIKA system could be used and integrated in a variety of brand so that competition and freedom of choice is still secured.³⁵

³⁴ Commission presses Member States on VAT revenue collection. Press Release 2015, September 4, retrieved from http://europa.eu/rapid/press-release_IP-15-5592_en.htm#_ftn1. ARD-KONTRASTE: Bundesrechnungshof schätzt Steuerhinterziehung durch manipulierte Ladenkassen auf 10 Milliarden Euro.. Press Release 2015 July 27). Retrieved 3 September 2015 from <http://www.presseportal.de/pm/110520/3082870>

³⁵ ARD-KONTRASTE: Bundesrechnungshof schätzt Steuerhinterziehung durch manipulierte Ladenkassen auf 10 Milliarden Euro.. Press Release 2015 July 27). Retrieved 3 September 2015 from <http://www.presseportal.de/pm/110520/3082870> Szent-Ivanyi, T. (2015, August 23) Wie Firmen ihre Kassen manipulieren. In: Frankfurter Rundschau. Retrieved from <http://www.fr-online.de/wirtschaft/steuerhinterziehung-wie-firmen-ihre-kassen-manipulieren-.1472780.31535960.html> and Finanzminister gegen Steuerbetrug mit manipulierten Ladenkassen (2015, September 1). In: Die Welt. Retrieved from <http://www.welt.de/regionales/hessen/article145858691/Finanzminister-gegen-Steuerbetrug-mit-manipulierten-Ladenkassen.html> Schäuble will Löschen sichtbar machen (2015, November 10) Press Release by Apotheke-Adhoc, Retrieved from <http://www.apotheke-adhoc.de/nachrichten/politik/nachricht-detail-politik/steuerhinterziehung-bmf-will-geloeschtes-sichtbar-machen/>

On 13 July 2016, draft legislation was passed by cabinet to counter those problems. Core content in § 146a+b AO:

- It asks shop-owner to equip their electronic cash-registers with software securing their register against manipulation until 1 January 2019
- Where this is not possible, to purchase a new cash-register
- It gives tax auditors more rights to check the de facto usage of cash registers
- Stiffer penalties even if only an intention to cheat can be determined.

2.6.11.2 Reforming punishment

Not only tax evader, also those assisting them with manipulating software face should face increasing punishment – see Finanzgericht Rheinland-Pfalz³⁶

2.6.11.3 Electronic billing and payments

One way to both counter fraud with turnover tax and lower the extent of damage occurring in the informal economy would be an electronic billing system as it is standard already between EU states. Here probably a push towards transparency would occur, followed by a dramatic increase in revenue comparable to the tax CDs.

A similar proposal comes from the trade unions: Since the informal economy is largely fuelled by cash-payments they want to permit only cash payments up to a sum of EUR 1000. Everything beyond should have to be billed and paid electronically (Dettmer & Reiermann, 2013).

2.6.11.4 Big Data software

One way to discover complex fraud with computer software (cf. 2.6.3.) is to apply even more complex software. Hence, computer-forensic software which is increasingly used in Germany's tax authorities on the state level.³⁷ But: Here is also a rare case where some centralization has taken place: A software operated by the Federal Central Tax Office (XPider) is supporting and servicing all 16 *Länder* to discover Turnover Tax Fraud in the internet.

Equally, the database Atlas, located at the Federal Customs administration, has a promising record when it comes to analysing import expenditure and sales figures, reconstructing manipulations, omissions and faults in accounting costs. Given the fact of increasing digitalization of international business transaction, major dragnet investigations (Rasterfahndung) by tax or customs authorities might have a point.³⁸

2.7 Insufficient resources and tools

When all sorts of tax scandals emerged in the wake of Offshore Leaks and the evaluation of Tax CDs, German tax administration and its employees received more benevolent attention by media and public alike. Journalists doing investigative work were shocked to see under which circumstances those civil servants have to work, whose task it is to collect the revenues for sustenance of public administration. Clearly,

³⁶ Hersteller einer Manipulationssoftware haftet für hinterzogene Steuern (2015, February 6) Online Resource „Anwalt.de“. Retrieved from http://www.anwalt.de/rechtstipps/hersteller-einer-manipulationssoftware-haftet-fuer-hinterzogene-steuern_066644.html

³⁷ See: http://en.wikipedia.org/wiki/Computer_forensics and Steuerfahnder jagen Steuersünder mit forensischer Software. (2013, May 7) Retrieved from eGovernment-computing, <http://www.egovernment-computing.de/fachanwendungen/articles/404009/>

³⁸ ‘ Ramthun, Chr. (2015, May 21) Mit Big Data auf Steuerfang. In: Wirtschaftswoche. Retrieved 30 May 2015 from <http://www.wiwo.de/politik/deutschland/fiskus-4-0-mit-big-data-auf-steuerfang/11770850.html>

circumstances vary from *Land to Land* – and yet there are common features which highlight one thing: ‘Tax offices pay special attention that there is no waste of taxpayers’ money.’ (Conradi, 2013). In many states and municipalities the working conditions in tax administrations are appalling:

- The offices are rundown and dark, all too often the last renovation or paint happened years ago so that mould and fungi are growing where moisture seeps through leaking roofs and windows.
- All too often office equipment is 20 or 30 years old.
- Some tax administrations lack an adequate car pool for their inspectors. They have to borrow cars from other administrative bodies or hire vehicles, all of which costs expensive work time which would be needed elsewhere
- Tax auditors are not adequately equipped with laptops or smartphones, which would be an important since not everything can be printed out and carried around when doing an inspection. (ZEIT-Dossier, 2014)
- The most curious case was told by an private IT consultant who was called to train tax officials in using complex software: One of tax administrations top people had no working computer mouse: It was not possible to double-click, which required a combined pointing and pushing the return key, slowing down work speed considerably. When asked why no new mouse was available it was argued that this would be too complicated a procedure (applying, approving, waiting...) so that it is easier to just arrange oneself with the faulty exemplar.

3 Problems due to federal structure and differences

The complicated structure of German tax administration with its shared responsibilities between federation and states and between states has repercussions on the cooperation of tax administration and tax law enforcement.

3.1 Principal legal and administrative issues

As has been explained in GER/V/1, tax legislation is formulated and decided at the federal level. However, there are variations in the implementation of federal legislation at state level, which is problematic. But there is room to manoeuvre for municipalities and there is the tendency of states to enter into competition with each other.

The main problem is that administration and enforcement can vary considerably, which is dependent on personnel and staff levels. Finally, there are areas where public servants are permitted to act following their own competence and discretion (*Ermessensspielraum*).

3.2 Political and legal competition

There are elements of competition within the German tax system, arising from the semi-autonomy of the individual states comprising the German Federation. For many years, it has been known that municipalities in their attempt to attract businesses design lucrative and Local Business Taxation (Gewerbesteuer) and Corporation Income Tax. Well known is, for example, the competition between Frankfurt and Eschborn or München and Grünau, another case hitting the headlines was Monheim in North Rhine Westphalia, most recently on 24 October with the headline “Deutschlands dreisteste Steueroase”.³⁹ This kind of competition

³⁹ (Meinzer, 2015a, p. 144ff.), Frigelj, K. (2015, February 2) Der gefährlich erfolgreiche Magier von Monheim. In: Die Welt. Retrieved from <http://www.welt.de/politik/deutschland/article137046512/Der->

always attracts businesses on the expense of all other municipalities which, accordingly lack revenue for financing their services. At the same time, “successful” municipalities such as Monheim oppose by appealing to courts paying solidarity contributions for a financial equalization scheme among municipalities – a parallel to the situation of German states.

On the level of states, also attempts to increase competition by acquiring more “tax autonomy” are on the increase – most importantly initiated by the two wealthiest German states, Baden Wuerttemberg and Bavaria. There is, for example, the paper “Mehr Steuerautonomie für die Länder“ from fall 2014, in which the Finance Ministers request more freedom for raising Income Tax and Real Estate Tax.⁴⁰ At the same time they oppose a more centralized German tax administration system. The reason: increasing competition leads to more transparency leads to more revenue for all and would decrease Bavarias and Baden Wuerttembergs obligations to pay into the Financial Equalization scheme between German states. A similar alliance between those two states came into being after the Federal Constitutional Court requested a reform of Inheritance Tax and both states fought for far-reaching exemptions for business owners. At the same time, the Bavarian minister called for a “Regionalisierung” of the Inheritance Tax among the German states. Little surprising, those initiatives are immediately welcomed by business friendly institutions, e.g. the Institut der Deutschen Wirtschaft.⁴¹

Regional suggestion are still en vogue: When Minister Söder presented his reform ideas called “Bayern Tarif” in July 2016, his package had a volume of EUR 10 billion, but his suggestions were, measured in regard of positions held elsewhere, e.g. among the federal government, non-controversial.⁴²

3.3 Varying levels of personnel

In 2014, it was estimated that there were 110,000 employees working in German tax administration, an exact figure is difficult to obtain due to state responsibility for tax administration, i.e. there is no centralized statistics on the federal level (Deutsche Steuer-Gewerkschaft, 2015).

3.3.1 How many should there be?

Regarding staffing, there are attempts to establish a unified standard for Germany: The working group “Personalbemessung”,⁴³ which is composed of members from the federal institutions and all German states, tries to establish the number of staff which would be adequate to deal with laws and tasks at hand. The working group is doing it, for example, by evaluating the number of cases or time needed to process those cases etc. Out of this evaluation work the group concludes a figure giving the number of personnel needed in each state (*Personalbedarf*) and communicates this figure to the individual *Länder*. However, the

[gefaehrlich-erfolgreiche-Magier-von-Monheim.html](http://www.wiwo.de/finanzen/steuern-recht/steuern-deutschlands-dreisteste-steueroase/14712816-all.html) Fischer, K. (2016, October 24) Deutschlands dreisteste Steueroase. In: Wirtschaftswoche. Retrieved from <http://www.wiwo.de/finanzen/steuern-recht/steuern-deutschlands-dreisteste-steueroase/14712816-all.html>

⁴⁰ Hengst, B. (2014, September 25) Bayern und Baden-Württemberg fordern mehr Steuerautonomie. In: Der Spiegel. Retrieved from <http://www.spiegel.de/politik/deutschland/bayern-und-baden-wuerttemberg-fordern-mehr-steuerautonomie-fuer-laender-a-993596.html>

⁴¹ Schäfer, Th. (2015, September 25) Steuerautonomie auch für finanzschwache Länder attraktiv. Retrieved from <http://www.iwkoeln.de/infodienste/iw-nachrichten/beitrag/steuersystem-steuerautonomie-auch-fuer-finanzschwache-bundeslaender-attraktiv-186211>

⁴² Wilsdorff, A. (2016, July 21). Ein Tarif für Bayern. In: BR. Retrieved from <http://www.br.de/nachrichten/steuer-bayern-konzept-csu-100.html>

⁴³ This term can be circumscribed best as “establishing the number of personnel needed”

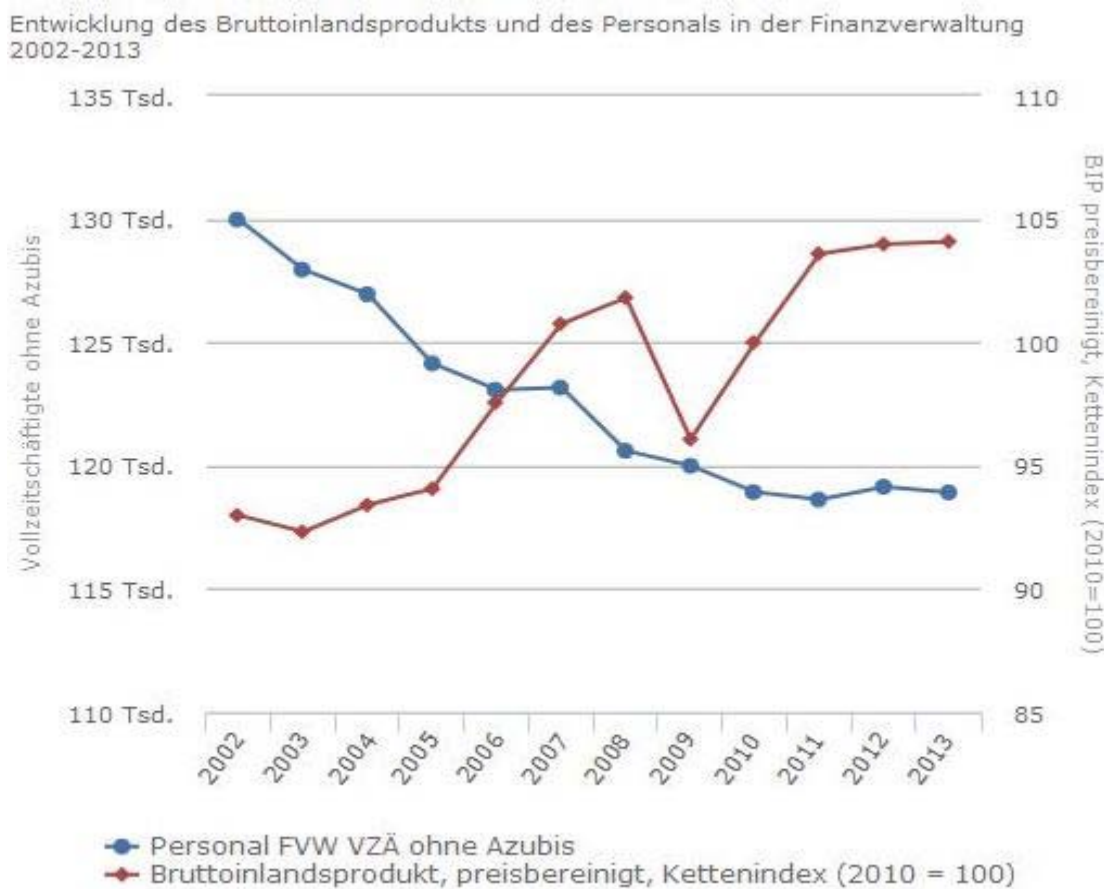
figure given has the character of recommendation, i.e. they give a frame within which the respective states can operate, having even the option to qualify and modify the recommended figure in “accordance to their specifics in tax administration”. (Bayerischer Oberster Rechnungshof, 2012, p. 51).

3.3.2 How many are there?

There are some surveys trying to shed some light into the resource needs of German tax administrations. However: Since tax administration is largely the responsibility of individual German States it is difficult to get a statistically unified picture of the state of affairs. The number of employees and how they are assigned to various tasks within the respective administrations are a well kept secret. In one case, the green MP Gerhard Schick applied a trick: he asked MP-colleagues in 11 German state parliaments to launch a written request with their respective state government. In such a situation, the state government has to release numbers for their own administration which then could be compared in a synthesizing paper (Schick, 2011).

More updated are numbers in the book of Meinzer (2015a: 152ff.) He got hold of a confidential report a “Mehrjahresvergleich” for the years 2006-2011 of the working group AG Datenanalyse der Finanzministerien. First about the interrelationship between rising GNP and sinking tax administration staff:

Graphic 2 Development German GNP and staff of staffing of tax administrations

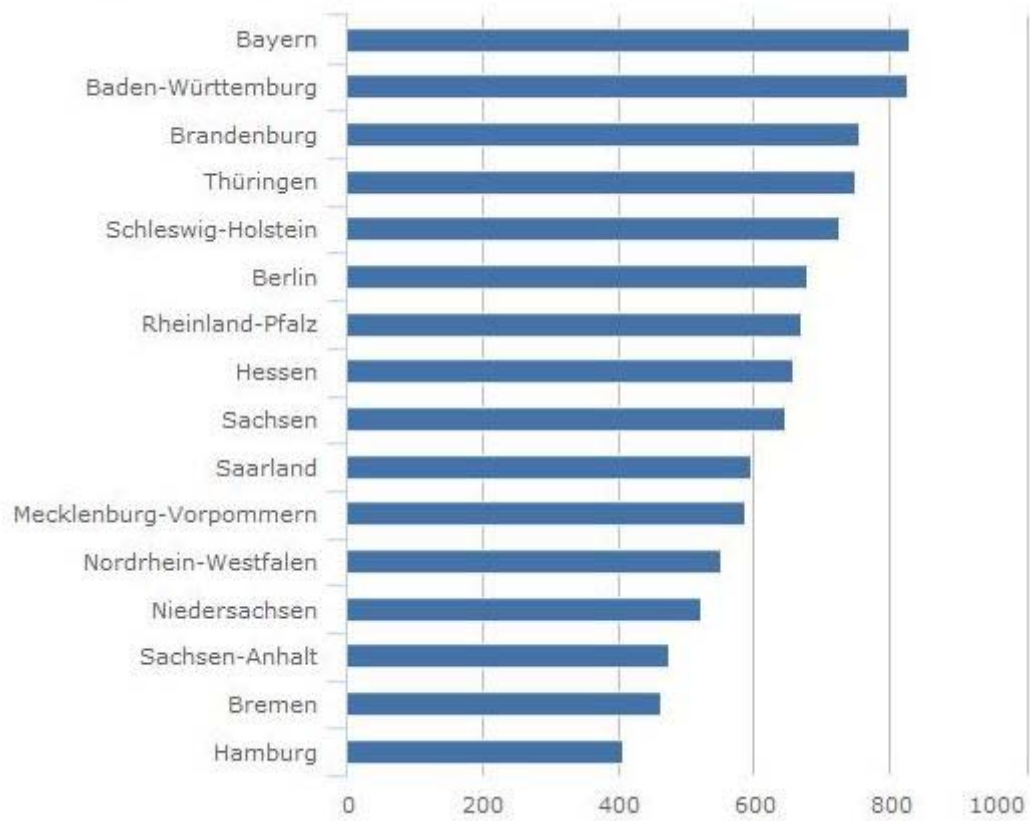


This tendency is remarkable for two reasons: First, because with growing international connection taxation issues are growing in complexity, which would call for more staff to keep up with those developments in order to exploit the opening potential for revenue.

The lack of resources is also reflected if one looks upon the number of businesses per inspector in various tax administrations:

Graphic 3 Number of businesses per tax auditor

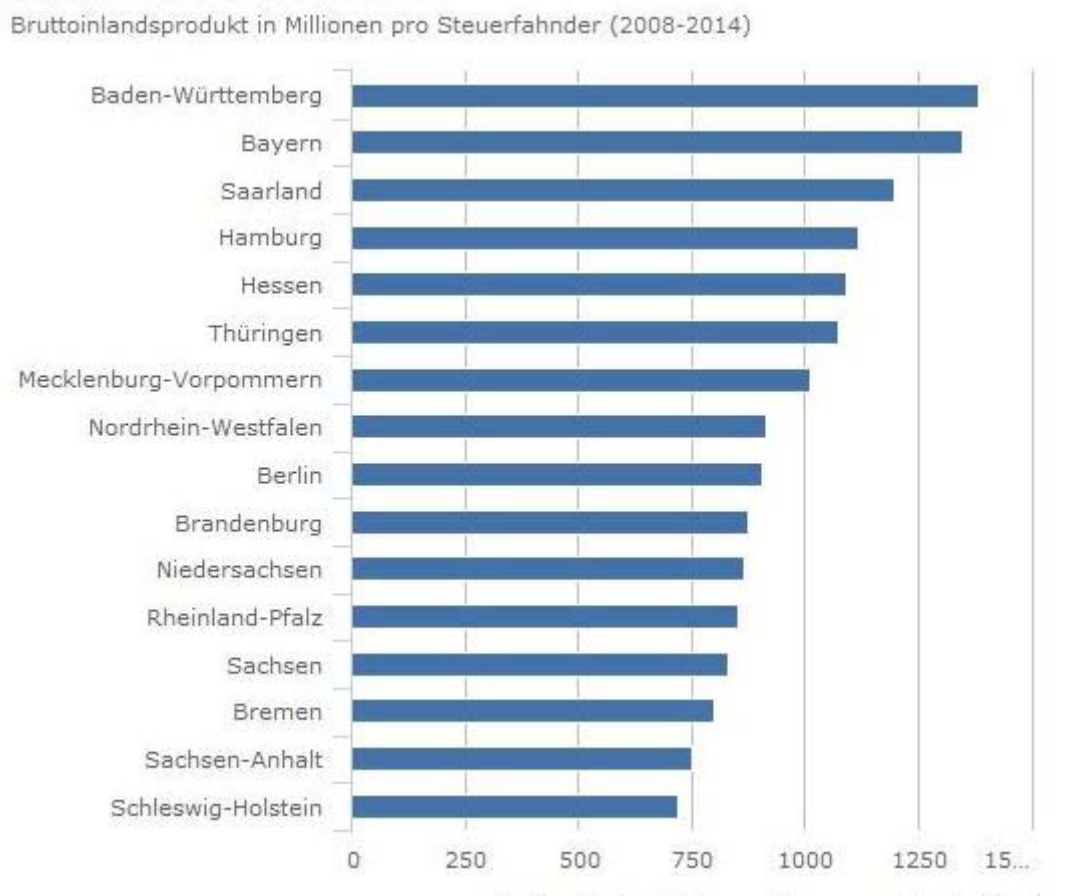
Betriebe pro Betriebsprüfer (2011)



Source 4 (Meinzer, 2015d)

A variation of the preceding graphic is the number of tax fraud investigators per million Euro GNP:

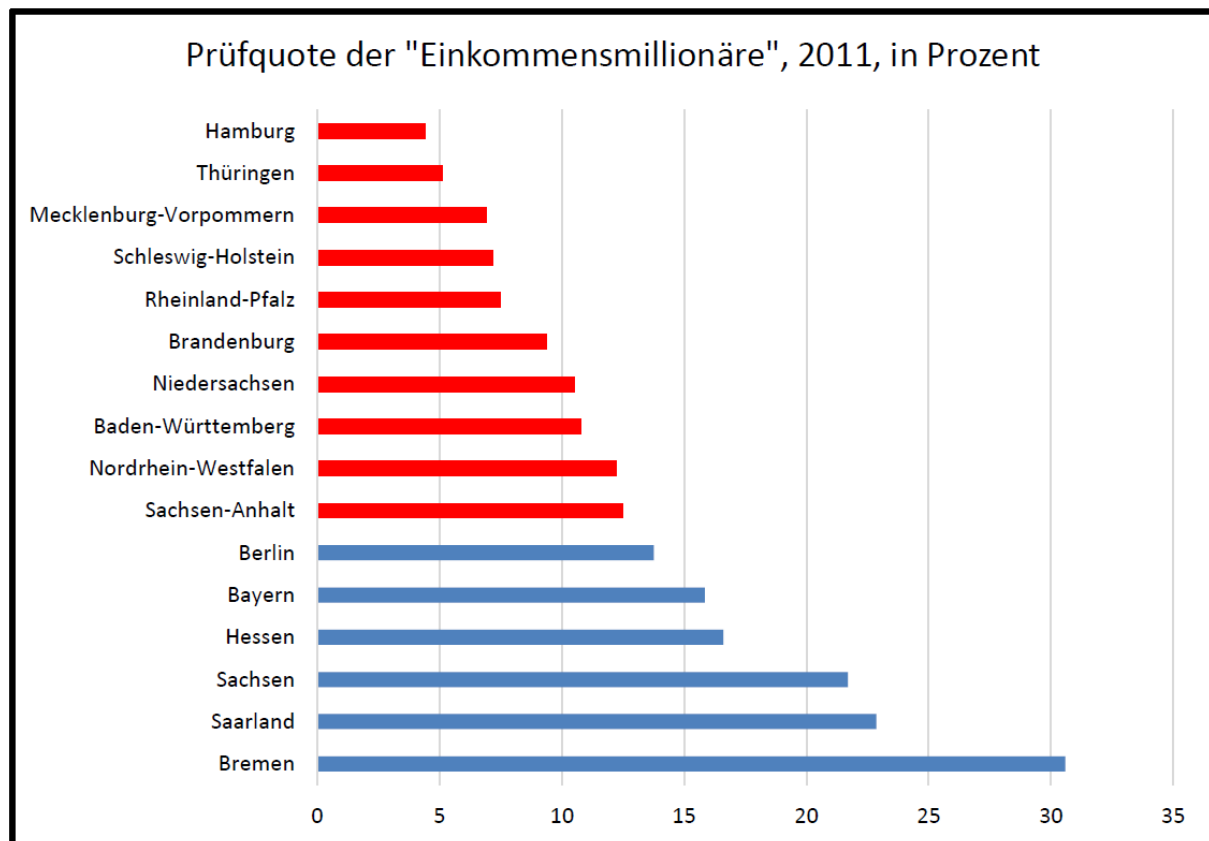
Graphic 4 Number of tax fraud auditors per million Euro GNP



Source 5 (Meinzer, 2015d)

And finally the ranking regarding the checks on millionaires – here, the colours illustrate that Bavaria (for once) at least in 2011 is above the German average and not beneath.

Graphic 5 Checks of millionaires



Source 6 (Meinzer, 2015d)

3.4 Triple justice issue

In general and average, the German Tax Union estimates, staff level are 15-20% beneath the Sollgröße and, accordingly, 15-20,000 staff should be employed in addition to the 110,000 already employed. Given the costs of EUR 70,000 on average for skilled tax administrators and surplus revenue by many of those, the cost-benefit analysis is in favour of recruitment of additional staff. Not only tax fraud investigators and tax auditors collect surplus revenue, also co-operators in assessment and enforcement/execution, so the Tax Union, contribute to the collection of hundreds of thousands, outranking their own costs. The present varying level of personnel contain several injustices: First: States shoulder in the present system the costs of increasing personnel without necessarily benefitting of their investment since money is going to the federation or into the Federal Equalization Scheme who benefit without contributing to the costs. Second: also the non-investment creates injustice, because the collection of less revenue will also deprive the federation of resources (due to the minor share in income tax and turnover tax) and municipalities (minor share in Income Tax, Local Business Tax), which then is missing for them in dealing with tasks within their respective responsibility (e.g. Development Aid for the federation, Social Welfare for municipalities). The third injustice occurs when it comes to the equal administration of taxation laws: While every dependently employed is checked twice (by Risk Management System and, at least potentially, by a civil servant) the growing gaps when it comes to checks of businesses and millionaires violate against the principle of equal treatment. This is why the Deutsche Steuergewerkschaft argues that the federal government should not merely be in charge of tax legislation, but also of determining the level of personnel required to implement those laws, by overriding the autonomy of the state governments and parliaments in such state specific affairs (Deutsche Steuer-Gewerkschaft, 2015).

3.5 Data exchange

A second major problem in the cooperation of tax administrations in Germany are legal and IT related obstacles regarding the effective exchange of relevant data, both between federal agencies and the *Länder*, between the *Länder* and, at times, even within states.

While it is everyday routine for police, namely checking whether somebody is under scrutiny in another German *Land*, this is neither permitted nor possible for employees of the tax administration. Until the present day, the lack of a unified electronic data processing and data exchange system between the federation and the 16 states is a huge loss of efficiency. Even today it is all too often the case that, if a citizen moves, the tax administration has to print out the tax file from the computer, mail it to the new tax office, where the data has to be entered manually into another system. Alternatively a complex converting process of data is required first. (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2006, p. 84ff.).

In some areas tax inspectors use programs which are available on the market and which are largely compatible across the *Länder*. For example: tax auditors widely use the software program “Idea”, which is at least one uniform system. Tax fraud investigators use much more complex software(s) e.g.: North Rhine-Westphalia uses the program ProSID, Hessen uses Globus, Lower Saxony Access ForensicToolkit, Bavaria EASyS.

‘Regarding investigative tools’, one practitioner is quoted, ‘we are still living in the 1970s’. Or, more elegantly: ‘We are chasing Ferraris with bicycles.’⁴⁴ And another confirms ‘We may work in Bavaria, colleagues may work in NRW on the same case and we do not know about it.’

3.6 Efforts to improve collaboration

Given the lack of cooperation among states there are concerted efforts to address this issue. The basic options are between “centralization” and “coordination”.

3.6.1 Option and obstacle for centralization

Because of existing ‘institutionalized competition’, attempts fail to centralize certain tasks within Germany between states in order to increase efficiency in cases involving corporations or individuals with a registered residence in several states or even international tasks by increasing resources and delegating responsibilities for the federal level. And this in spite of the option opened in Art 108 para. 4 Basic Law which permits for certain areas of tax administration and enforcement:

Where and to the extent that execution of the tax laws will be substantially facilitated or improved thereby, a federal law requiring the consent of the Bundesrat may provide for collaboration between federal and Land revenue... or for the administration of other taxes by federal revenue authorities.

Here are three snags: First, we talk about “collaboration”, not “centralization”. Second: Such collaboration is only a potential option (“may”, not “must”), if tax collection is ‘substantially facilitated or improved’. But: How to quantify “substantially”? And: How much “substantially” for whom? Thirdly: In order to implement collaboration, both the federal parliament AND the chamber of states have to agree to this effort, which is extremely difficult to obtain.

⁴⁴ Werner Stupka, Bavarian Tax Fraud investigator, Nuremberg, in (ZEIT-Dossier, 2014).

3.6.2 Centralization

3.6.2.1 The Federal Central Tax Office

There is already a Federal Tax Office in Germany, but only in two cases the *Länder* were prepared to hand over responsibility from the State level to the federation: In the case of Insurance Tax and Fire Protection Tax. Another service located at the Federal Central Tax Office is the support of *Länder* with the XPider Software to detect and combat Turnover Tax Fraud in the internet.

Staff of the Bundeszentralamt is entitled to participate in tax audits conducted with corporations on the state level which amounts to the participation in 1%-3% of annual tax audits. Meinzer 2015a: 162 quotes from a 2014 report by the Federal Court of Auditors that those participants discovered a number of mistakes and omissions during those audits to the disadvantage of federal revenue. The problem is, however, that tax auditors from the Bundeszentralamt do not have competence in all relevant areas towards their state colleagues which means that those discoveries are more likely to be neglected. Given the fact that those federal tax auditors discovered tax surcharges of EUR 5.1 Billion (in addition to that discovered by their state counterparts), a participation of federal auditors in all checks of all large businesses could amount to as much as EUR 19 billion or more per year. In theory, staff of the Bundeszentralamt could also act in two other areas: First, it could initiate tax audits if it came to the view that specific cases are deserving. In order to do this, however, staff would need information which, so far, are held by the German states who, so far, refuse to share them with their federal colleagues. Second, staff could also check wealthy individuals following § 19 FVG, but those rights are hardly executed.

The problem is, as always, staffing: in case certain tasks are transferred to, and are coordinated at, the Federal Central Tax Office, either the state tax offices have to provide personnel, or the *Länder* have to cover the costs. In this case, naturally, the states tend to keep personal and financial resources rather within their own domain. There are, of course, plans to increase staff at the Bundeszentralamt – but plans to increase federal tax auditors to 500 stretch up to 2023 (Meinzer 2015a: 165).

3.6.2.2 A Federal Tax FBI?

Similar deliberations are behind blockades regarding the periodically returning question whether the federal level should have a Tax FBI in analogy to Bavaria.⁴⁵ The very “inventor” of this idea, the Bavarian Finance Minister Söder, rejects this idea and is supported by Bavarian Trade Unionists. They, too, think that centralization is not as necessary as the establishment of national standards in cooperation, especially data exchange and point to the US FBI as a model which is also a decentralized authority in many places, even abroad, and yet very effective.⁴⁶

3.6.3 Coordination

For these reasons, the dominant approach so far is in the area of coordination and the standardization of procedural administrative structures and policies.

⁴⁵ Schäuble will deutsches Steuer-FBI. (2013, April 11). In: *Süddeutsche Zeitung*. Retrieved from <http://sz.de/1.1646120>

⁴⁶ Söder lehnt Steuer-FBI in Deutschland ab. (2013, April 6). In: *DAPD*. Retrieved from http://www.t-online.de/regionales/id_62860502/soeder-lehnt-steuer-fbi-in-deutschland-ab.html

3.6.3.1 Common targets for national cooperation

According to the first paragraph of article 21a of the Financial Administration Law the federation can negotiate common standards and targets (*Zielvereinbarungen*) which then apply to all if ‘the majority does not object’. This sounds simpler than the constitutional requirement that both chambers of parliament have to agree, but since every state is jealously guarding its privileges the hurdle is still high. So far, however, conversation partners working in different departments of tax administration complain, this instrument has mainly be used to agree on quantitative standards (e.g. number of checks), but not on qualitative standards (e.g. density and intensity of checks).

There is slow progress, though: since 1997 there existed nationwide common rules of procedure for tax offices,⁴⁷ and working groups aim for even more harmonization. The first working group, assessing the number of needed personnel (*Personalbemessung*) has been discussed already. The task of another working group is to identify and establish criteria (*Kernkennzahlen*) which should allow for a comparison of achievement in the application and execution of laws which eventually shall result into a common reporting system. This attempt is still in the piloting phase. It started 2009 with the federal government and the states of Bavaria, Hamburg and North Rhine-Westphalia, it was expanded 2011 by including Baden-Württemberg and Mecklenburg-Vorpommern and shall incorporate gradually more states. So far, it is working well, but how practical and how successful it is remains to be seen, especially when more states will participate in the mechanism.

3.6.3.2 Benchmarking among different states

Also German *Länder* can establish among each other controlling and benchmarking processes. So it happened between six German states with the help of the Bertelsmann Foundation, namely Bavaria, Mecklenburg-Vorpommern, Rhineland-Palatinate, Saxony, Saxony-Anhalt and Thuringia. They cooperate in a project which should enable controlling, benchmarking and comparison among the participating tax authorities. The evaluation areas are the following four: Job accomplishment, satisfaction of customers, satisfaction of tax officials, and requirements of cost efficiency. This procedure, which results in an annual or even monthly report comparing the achievements of the tax administrations in individual departments and/or those states, shall also increase competition between different tax administration, thus generating more motivation of its employers, thus generating more revenue. At the same time, the satisfaction of both employees and customer should safeguard a good work environment for all.⁴⁸

Trade Unionists and others are very critical towards this approach. Conversation partners from different departments of tax administration used almost identical imagery to illustrate the problem. The first: ‘What is the point to compare apples with pears. Of course, both are fruits, but here it stops.’ The second: ‘How can I compare Ferraris with farm horses: Some are fast, others work slow and thoroughly.’ The latter comparison refers back to the problem presented above (2.1.3), namely whether quantity (and the speed and number with which tax declarations are processed) or quality (the amount of surcharge revenue) should be the yardstick of administrative efficiency. Accordingly, conversation partners continue that this kind of comparison and benchmarking is in favour of those who are happy to just enter data into computer forms, leave many, if not most, decisions to the computer and are therefore able to close a large number of cases fast - while others who want to do a good job and trust more in their own judgement than in mechanised and standardized comparison are slow. And:

⁴⁷ GNOFÄ regulations (Grundsätze zur Neuorganisation der Finanzämter und zur Neuordnung des Besteuerungsverfahrens), see (Bundesbeauftragter für Wirtschaftlichkeit in der Verwaltung, 2006)

⁴⁸ www.leistungsvergleich.de

This benchmarking only covers a share of the tax inspectors work, namely the case itself (*Veranlagung*)– not the accompanying work (*veranlagungsbegleitende Arbeit*) which is linked to the case such as entering data, assessing the computers assessment, checking submitted material, adding information about legal remedies, filing the case etc. While traditionally this work makes up 60% of the regular job, the assessment itself merely 40%, computerized benchmarking is covering only the latter 40%.⁴⁹

Also of interest and importance is the evaluation of this benchmarking project by (Schöbel, 2008, p. 225ff.), who agrees largely with conversation partners quoted above. (Schöbel, 2016a, p. 117) indicates additionally that the Leistungsvergleich-Bilanz only indicates absolute results, but says nothing about the extensivity and intensity of checks, i.e. the potential available with which to uncover even more surplus revenue.

3.6.4 Computerization

Given the coordination framework, progress regarding unified standards in computerization and data processing is slow, even though the importance of computer based tax administration in fraud detection and the enforcement of tax laws has been recognized very early by federation and states. The earliest attempt to develop and introduce a unified and computerized data processing for all tax German administration, FISCUS, started in 1992. It took ten years until it was realized that this approach was doomed to fail – having cost EUR 400 million along the way.

Soon afterwards, in 2004, Bavaria started work on an own software program (EOSS)⁵⁰ together with some *Länder* in East Germany. With treaties in the years 2005, 2007 and 2008, the other states attempted to get Bavaria back on board and decided to take EOSS as the new platform on which to build a new and unified software program for tax administrations in all Germany with the name KONSENS.⁵¹ The goals are said to be the following (Finanzverwaltung der Länder und des Bundes, 2011, p. 7):

- More efficiency in tax administration
- Safeguarding an equal taxation
- Improved service for citizens and business
- Improved exchange of information and risk management across state borders
- Improved combating of tax fraud
- More E-Government, less paper
- Administration which is both cost efficient and employee-friendly.

Within KONSENS the idea is to take the EOSS as platform and expand it gradually with other well working programs in various areas of tax administration. According to the plan, a more coherent, ideally unified administration and processing of tax issues is attempted in 11 areas of different complexity (Finanzverwaltung der Länder und des Bundes, 2011, pp. 12-16). Work only in some areas is progressed in a way that testing phases or cooperation could be started already. One important step is the introduction of GINSTER-Master (Grundinformationsdienst Steuer), which contains the most important data of each tax subjects in a central storages system which can be accessed and changed by the individual tax administration employee. Other ones will be

⁴⁹ Bergmann, H. „Konkursfall“ Veranlagung. In: *Der Wecker* 2007/4. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

⁵⁰ EOSS=Evolutionär Orientierte Steuersoftware. See (Bayerisches Landesamt für Steuern, 2013).

⁵¹ KONSENS= Koordinierte neue Softwareentwicklung der Steuerverwaltung.

- the transformation of the Bavarian AUSTER system into the federal accessible PERLE system.⁵²
- The introduction of GeCo (Gesamtfall Controlling), which shall ensure the cooperation of different KONSENS modules with each other (Bayerisches Landesamt für Steuern, 2016, p. 20)
- Equally the sharing and transfer of tax case files between different German tax administrations started in December 2015 in a first step to approach computerized processing of tax files within the KONSENS network (Bayerisches Landesamt für Steuern, 2016, p. 21)

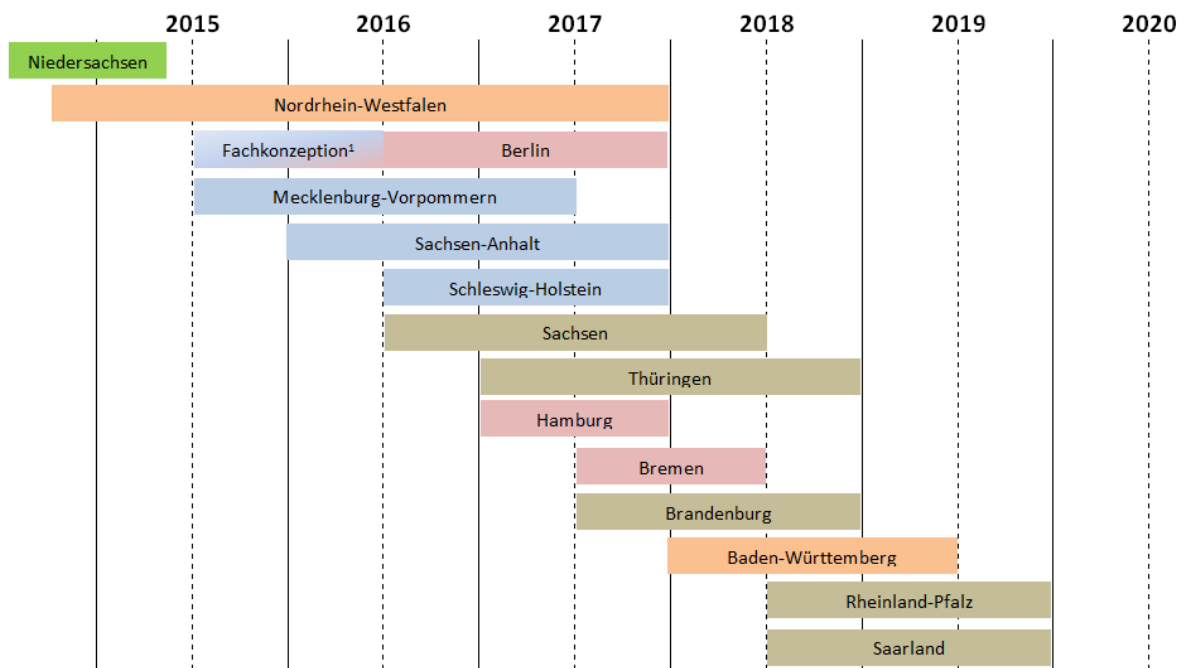
Major delays are due to the fact that definitive implementation requires agreement between all 16 *Länder*. And: In the process of development each *Land* wants to have cherished practices and principles to be included in the unified software which makes the development, testing and implementation extremely complex.

However, conversation partners in tax administration and on the ministerial level admit that one of the advantage of the many systems is that tests are possible and comparisons, so that that, which eventually is chosen and implemented for all, has been tested in practice and therefore has less snags than systems imported from outside without testing it adequately prior to introduction. This makes delays worth its while.

Risk Management has been introduced already in all German states and the Risk Filter are a federal instrument applied by all German states. However, there are still some items which individual states want to have included in the risk filter program, which then either requires again lengthy negotiations or the inclusion in the risk filters only of one state, which then threatens the uniformity and equality of processing Accordingly, the “harmonization of computerized systems” will proceed. If all goes to plan a unified system will be in place just in time when the planned law regarding the modernization of the tax administration system will need it, namely around 2020.

⁵² AUtomationsunterSTützung Erbschaft- und Schenkungsteuer, Programm für die ERbschafts- und Schenkungsteuerstelle. (Bayerisches Landesamt für Steuern, 2015, p. 124)

Geplante Zeitschiene



¹Vorlaufende, konzeptionelle Tätigkeiten für alle Stadtstaaten (BE, HB und HH)

Source 7 (Bayerisches Landesamt für Steuern, 2016, p. 136)

Tax consultants, by the way, use uniform computer software (DATEV) successfully already for years....

3.7 Problems resulting from the “debt brake”

Improvements of cooperation are also hampered by the need of both Federation and *Länder* to cut public spending due to debts and the institutionalized debt brake (cf. GER/IV/3.4): Civil servants’ pension benefits are a large cost factor, therefore this is a welcome area for saving money either by cutting positions or not refilling vacated positions.

According to conversation partners from different departments, those necessities also impede the employment even of those tax inspectors generating much more than they would cost the taxpayer, for example tax fraud investigators (*Steuerfahnder*) or tax auditors (*Betriebsprüfer*). It is largely agreed that those generate much more revenue for the state than they cost in terms of salary and pensions. Estimates here vary: Some argue that each of those generates up to EUR 1.5 Million per year. If this were the case, then people employed on the 3,000 vacant posts could generate up to EUR 4.5 Billion more each year (Adamek & Otto, 2010, p. 83f.). Other estimates are lower and range between EUR 400,000 and EUR 1,000,000 (Bayerischer Oberster Rechnungshof, 2012, p. 60).

Meaning: Due to legal constraints *Länder* are no longer able to employ the very people which might be able to fill the treasury. But there is another problem, putting a question mark behind high surplus revenue of certain tax inspectors: The Financial Equalization Scheme, which has been introduced already in GER/III/2.5.

3.8 The (State) Financial Equalization Scheme

The Financial (or Fiscal) Equalization Scheme is an important instrument to safeguard “comparable living conditions” within Germany. Germany is not the only country having

such schemes: Similar arrangements exist in Canada, Switzerland, Australia and, to degrees, the United States. (Bönke, Jochimsen, & et.al., 2013).

3.8.1 The problems

The system in its present form was contested right from the beginning. First an example of arguments in favour: Take a corporation which has production lines all over Germany: Here it is unfair if only the German state collects revenue where the headquarters of the corporation is located. An argument against such a mechanism is that this obstructs tax competition of the states among each other and punishes those unwilling to approach reforms and improve efficiency.

Due to the ways the systems work, wealthy states such as Bavaria, Baden-Württemberg and Hessen, where at the same time the most wealthy people live, have little motivation to increase revenue collection because more revenue would only increase the amount of money which they would have to transfer to the poorer German states, while they themselves would be left with the costs for paying additional personnel, their insurance and pensions. Equally, it is said, poorer states see no need to invest in more tax officials: The more they raise on their own, the less they receive from this Equalizing Mechanism.

The situation is, of course, more complex, as the following demonstrates: The following table shows the percentage of money which a state has to give away after he has collected it, meaning: Of EUR 1 million raised in Wage Tax or Corporation Tax, the indicated amount goes into the equalizing mechanism and merely the difference to 100% remains with the state who collected the money:

Table 6 Percentage of tax revenue which goes into the Financial Equalization Scheme⁵³

State	Wage Tax	Corporation Tax
Bayern	72.65	79.01
Baden-Württemberg	71.63	77.49
Berlin	90.92	96.90
Hamburg	68.64	93.74
North Rhine-Westphalia	62.15	68.90
Saxony	86.72	91.96
Schleswig-Holstein	87.24	92.84

Here, obviously, not Bavaria is suffering most from the existing system, but Berlin or Schleswig-Holstein! But even Schleswig-Holstein follows the “Bavarian argument”, namely, that it is not worth employing more tax auditors. Given the fact, that in their case only 8-13% of generated surplus remains within the state, an additional business tax inspector of Schleswig would only then cover his costs if he is able to generate a surplus revenue of EUR 3.2 million annually – which is possible once and a while, but not likely on a regular basis.⁵⁴ Therefore, at first sight, it seems for both wealthy and poor states more profitable to leave things as they are and be lenient on the wealthy and businesses instead: The latter create jobs, those earning (big) money are kept in the state contribute to state income by the way of paying turnover and consumer tax which is very cheap to collect and administer and difficult to avoid or evade. But only at first sight, because the poorer states, after all, receive money

⁵³ Institut für Wirtschaftsforschung Halle (Hg.) (2013) *Wirtschaft im Wandel*, Jahrgang 19(5) pp.91-95. Retrieved from <http://www.iwh-halle.de/d/publik/wiwa/5-13-4.pdf>

⁵⁴ See <http://www.landtag.ltsh.de/infothek/wahl18/drucks/1500/drucksache-18-1570.pdf>

back from the scheme so the real losses are only with the donor states, and with donor states still a substantial amount is remaining which is not paid into the equalization scheme.

The present system of equalization mechanism comes to an end in 2019 and is up for re-negotiation. If the situation is renegotiated, also the question will arise whether the financial situation of the municipalities needs to be included in the *Länderfinanzausgleich*: The southern *Länder* reject this, because: If this is the case, the southern states have to pay even more since the more wealthy municipalities are all in the south of Germany.

3.8.2 A question of political culture?

Parallel to the existence of the Financial Equalization scheme is the discussion whether “conservative” or “social democrat” states cultivate different approaches to taxation, especially in the field of businesses. Newspaper clippings from the 1980s illustrate, that even in those days there were conflicts between the (black) states Baden-Wuerttemberg and Bavaria on the one side, and the (red) North Rhine Westphalia (NRW) on the other. In 1983 the Spiegel Magazine reported that NRW stopped the expansion of its tax auditor departments because NRW attracted the reputation of a “negative tax haven” which one better avoids. At the same time, the Baden Wuerttemberg prime minister is on record by saying that he explicitly asks tax auditors to treat businesses “moderately” in order to keep money inside the state which otherwise has to be given away into the Financial Equalization Scheme.⁵⁵ Similar his then-colleague, the Bavarian Prime Minister Franz-Josef Strauß, who justified the large gaps between checks of businesses with their need to survive the tax man: How many of those, he asks can only remain in business because the tax man does not know all about their income?⁵⁶

Such generalization were alive even in 2013, when the head of the German Tax Union, Eigenthaler, asserted that CDU/CSU governed states are more lax on account of politically inclined principles when it comes to checking businesses. A major reason here, also in his view, being the Financial Equalization Scheme. Politics, he argues determines the amount of tax revenue simply by deciding how much tax inspectors it wants to employ.⁵⁷

However: The discussion surrounding the Inheritance Tax Reform illustrates that this simplistic thinking is no longer true: Right now, the Bavarian resistance (which was to be expected) against the plans of the Federal Finance Minister finds support once more by Baden-Wuerttemberg, which is now, however, governed by a green Prime Minister, supported by a Social Democrat coalition partner...

3.8.3 Debt Brake and Stability Council

Due to the Debt Brake clause in the German Constitution (see GER/IV/3.4) Federation and State established the “Stability Council” whose task is to monitor the financial situation in German states with the goal to (a.) establish whether their budgets are sustainable and (b.) recognize early if there are risks of “emergency”.⁵⁸ After screening the financial situation of German states it has been stated that the states of Berlin, Bremen, Saarland and Schleswig-

⁵⁵ „Erfolg durch Zufall“ (1983, September 12). In: Der Spiegel 37/1983. Retrieved 27 May 2015 from <http://www.spiegel.de/spiegel/print/d-14019807.html>

⁵⁶ Eglau, O. (1985, March 1) Tiger ohne Zähne. In: Die Zeit. Retrieved 27 May 2015 from <http://www.zeit.de/1985/10/tiger-ohne-zaehne/komplettansicht>

⁵⁷ „CDU-Länder sind bei Steuerprüfungen weniger streng.“ In: Focus. Retrieved 27 May 2015 from http://www.focus.de/finanzen/steuern/cdu-laender-besonders-kritisiert-steuerexperte-beklagt-laxe-pruefungen-der-bundeslaender_aid_952680.html

⁵⁸ http://www.stabilitaetsrat.de/EN/Home/home_node.html

Holstein have such a state of emergency already, while the budgets of the federation and other German states are judged to be sound. Those states now receive specific aid, but are also supervised in their spending decisions whether “structural” and other reforms are being implemented to regain a balanced budget. Here, of course, spending on tax administration could figures, but is normally discarded because it would first spending on personnel before raising any money. And: It would not really make sense to beef up tax administration is specifically those states if nothing would be undertaking in other states since then indeed domestic migration of residences and headquarters could be the result.

3.8.4 Discussion

It is impossible for a non-expert to have a categorical position on a subject matter where even the most experienced jurists and numerous politicians hold divergent views. Only some observations are given on part of this project:

First: the impression created and sustained in the public discussion by the wealthy states is misleading, namely, that for them there is only outflow. There is, admittedly, net-outflow, but still they, too, receive money back – just not as much as the poorer states.

Second: would it be worthwhile for the wealthy states nevertheless to beef up their tax enforcement system? Yes, for the following reasons:

- National laws are there to be executed equally and fair.
- Not all revenue goes to the Equalization Scheme. Revenue in certain areas, e.g. Local Business Tax revenue stays within the state, more exactly, with the respective municipality where it is collected.
- Wealthy states would profit from more controls because, even though their share of money is lower than that of the poor, the money coming with this lower share would be relatively higher.
- There are ways and means out of the problem that wealthy states pay the bill of the officials and others merely receive the fruit of their labour. There acceptable proposals for compromises, for example, that of the money collected each state first can hold back that which he needs for paying his tax inspectors and their pensions.
- Similar ways could be found for the federation to compensate states for the costs of collecting taxes of which the federation profits to a large share (e.g. Turnover Tax). Why should the federation not, as churches do, contribute to the costs as churches do to the tax administration for the collection service regarding the church tax?

The most important perspective is whether somebody has a historic point of view or merely looks at the present situation:

- With a historic perspective one would know that net payer and receiver have changed over time. Those who are wealthy now have been in need of support earlier. North Rhine-Westphalia “oscillated” between receiving and paying state, and Bavaria was net-receiver up to 1986 – only then it turned into a “net-payer”.
- If merely looking at the present situations, it is true that that perhaps some of the poorer states should have done more in the past to have a consolidated household. There are situation beyond the control of individual states, nevertheless calling for governmental financing. From there follows that there is not much poorer states can do right now in order to reform themselves. Even if you implement reforms you need

financial room to manoeuvre which is not given due to debts and debt brake mechanism.

3.8.5 Conclusion 1

The conflicts surrounding reforms of the current Financial Equalization Scheme illustrate as well how different conclusions arise when the underlying paradigm is that of cooperation or competition: One group of states is in favour of cooperation and argues that primarily the law needs to be observed and to be directly enforced by applying the principles of equality and justice. States in favour of competition pursue indirect goals, namely, by application of tax related policy attract private and corporate wealth inside their respective state, thus profiting indirectly by raising tax from jobs created or consumer tax.

The present situation in Germany, as far as tax administration is concerned, creates three problems: First, it violates the principle of equal taxation and it is unfair that tax enforcement depends on the country where private or corporate wealth-holder decide to live. This implies both the obligation to apply tax laws equally all over Germany and the law to pay into the Equalization scheme as it is defined right now. It is a categorical confusion to reject the application of the law with financial reasons and it is undemocratic. Therefore, secondly, the present situation violates the principle of solidarity among German States. Thirdly, it is creating unfair advantages for the wealthy states by creating by lenient tax enforcement an even more attractive environment for businesses and the wealthy.

Perhaps, however, a more acceptable compromise for public discussion would be the re-framing of the question: Wealthy states should, rather than transferring cash to the poorer states, pay tax officials for them? Then the money could be raised on their own territory. This would generate enough revenue to eventually pay back the money initially paid to improve tax administration in the poor states, and it would level tax enforcement standards all over Germany so that it would no longer be attractive to look for a low tax region or a low tax enforcement region.

3.8.6 Conclusion 2

On 14th October 2016, three days ahead of publication of these chapters, the federal government and the 16 German states found “basic” agreement on a reform of the Financial Equalization scheme, expiring in 2019. For that reason a reform was urgently needed, hopefully also drawing some lessons from that which had been written previously in this chapter. Due to a larger share of the Federation (which will have to pay an additional EUR 9.5 billion) the transfers between the German states will change and decrease. On the horizontal level, assignment of money among the states from Turnover Tax revenue will occur in relation to their “financial potency” (Finanzkraft), on the vertical level the federation will assign more money to those states in special need (see 3.8.3). Bavaria, for example, will have to pay EUR 1.4 billion less than before. In return for the increased financial contribution the federation wants to have a stronger say in tasks formally within the competence of states, e.g. spending on motorways and a unified IT system, the latter which also might impact on the computerization of financial administrations. Many important decisions were given in forms of “declarations” (Absichtserklärungen) and need to be spelled out in detail (including, e.g., important questions whether the contribution of the federation is static (i.e. always constant) or dynamic (i.e. varying according to tax revenue)), hence it remains to be seen how exactly

things will change in this very important and very contested system of solidarity. The agreement will also require changes in the constitution.⁵⁹

3.9 The (Communal) Financial Equalization Scheme

As the State Financial Equalization Scheme between the *Länder*, there is a Financial Equalization Scheme within states, between municipalities. It is regulated within the states and within state legislation and enacts solidarity between stronger and weaker regions within the German *Länder*. It is also here, where state legislation, administration and jurisdiction can curb excessive competition between municipalities (see above, 3.2).

3.10 Tax evasion, Tax CDs and self-reporting

Regarding the purchasing of “tax-CDs” and resulting investigations and self-reporting, German states have no unanimous and common position. While North-Rhine Westphalia is spearheading the efforts of purchasing, investigation and prosecution Bavaria is far more reluctant. This has also financial implications:

First of all, proceedings from self-reporting remain with the state towards they have been declared. Beyond that, proceeds from legal proceedings remain with the state conducting it. Arising from tax CD data and the questioning of self-declaring citizens, NRW has collected already EUR 586 million in fines and settlements from Swiss Banks alone by June 2015 – hundreds more are likely to follow.

The problem for other German states is that, as soon as a fine/settlement has been found in one German state, the door for investigations by other German states is closed. If, for example, at a later stage Saxony would be interested in finding out more about the role of a Swiss Bank in tax evasion of one of its citizens, the case would have been settled already.⁶⁰

While there is an obvious monetary advantage for NRW being as quick as they are in investigation and prosecution, the question remains valid whether the apparent Bavarian calculation of not being too tough on private and corporate wealth provides a more lasting indirect advantage.

3.11 Conclusion

Above (2.2.7) it was argued that the current status of computerization in tax administration, due to its level of mistakes, endangers equality and fairness in tax administration.

Regarding the data exchange and cooperation between German states it is noted that here, too, a lot needs to be done as long as not even electronic communication is secured and working and paper printouts are still more important than E-mails. There is no point of having decentralized tax administrations with all the emerging “local adjustments” if subsequently up to 50 federal-state-coordination groups try to “harmonize” uniform application and coordinated administration.

⁵⁹ Böcking, D. (2016, October 14) Geberländer gibt's nicht mehr. In: Spiegel online. Retrieved from <http://www.spiegel.de/wirtschaft/soziales/laenderfinanzausgleich-was-die-einigung-zwischen-bund-und-laendern-bedeutet-a-1116732.html>

⁶⁰ Alich, H. et al. (2015, June 16) Millionen-Bußgelder bleiben in NRW. In: Handelsblatt. Retrieved 18 June 2015 from <http://www.handelsblatt.com/finanzen/steuern-recht/steuern/selbstanzeigen-wegen-steuerhinterziehung-millionen-bussgelder-bleiben-in-nrw/11926174.html>

Personal and financial resources as well as the question of decision making authority so far prevent progress within the “Centralization” paradigm, but the question remains whether there could be some sort of improvement or compromise. Regarding computerization one has to be aware that even a better IT infrastructure does not profit anybody if no legal foundation or personal motivation exists permitting data exchange between authorities.

The large differences revealed in the survey among 11 states support, in combination with the complexity of legal norms (cf. GER/Va), that first of all there is doubt whether an equal treatment of every taxpayer in Germany is safeguarded. Secondly the suspicion seems to be very justified that there are political and economical interests behind these developments, which will be discussed later in more detail.

The personnel situation suggests that the amount of revenue collected can be influenced by more inspectors – the question will be to see where the point is that more inspectors cost more than they collect, but given the current situation, there seems to be plenty of room for improvement.

4 Tax administration in Bavaria

4.1 Legal basis and administrative structure

Following the “division of competence and labour” among federal and state structures, we now approach one representative institution and core element of German tax administration. In Bavaria, state tax administration is structured upon three levels: On top is the Bavarian State Ministry of Finance, the middle level is the State Office of Taxes (*Landesamt für Steuern*) with its two offices in Munich and Nuremberg, at the bottom are 76 local *Finanzämter* (Tax Offices) with an additional 25 branch offices.

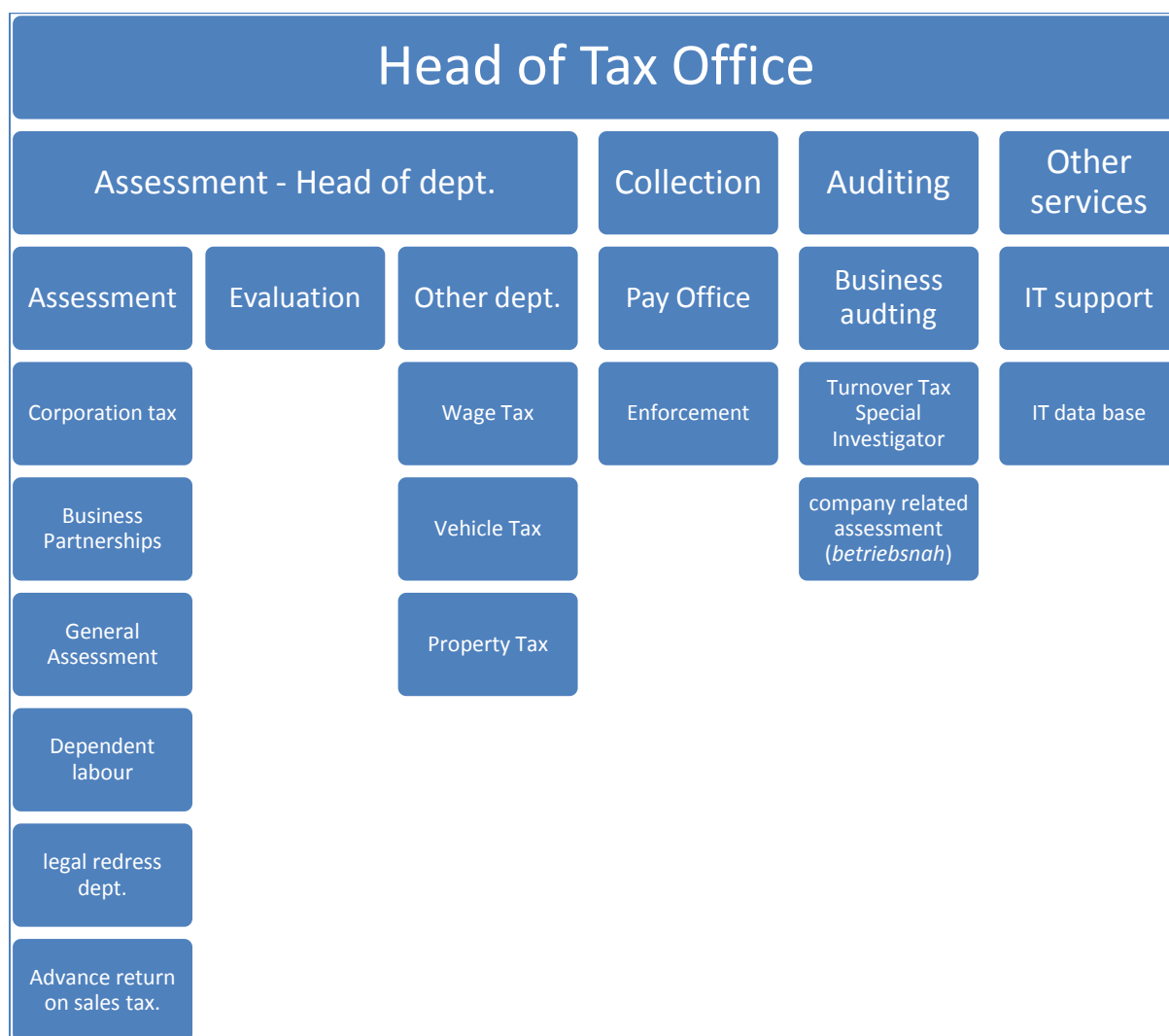
The State Office of Taxes and its local offices and branches is in charge of all administrative and practical matters related to taxation: the collection of taxes, the enforcement of tax laws and the prosecution of tax evasion and tax fraud. It exists in its present form since 2005, when it was merged from the previous two *Oberfinanzdirektionen* (Superior Directorate of Finance) in Munich and Nuremberg. The State Office is, as the name indicates, a state institution, whereas the previous institutions were part of the Federal Agency of Customs.⁶¹

Just to illustrate the basic structure of a small Bavarian Tax Authority, the following diagram of the Tax Office in Cham, Northeast of Bavaria, might be helpful:⁶²

⁶¹ Bayerisches Landesamt für Steuern (2011) Das Bayerische Landesamt für Steuern und seine Dienstgebäude. München. p. 14.

⁶² Retrieved from https://www.finanzamt.bayern.de/Cham/Ueber_uns/Organigramm/default.php?f=Cham&c=n&d=x&t=x

Graphic 6 Sample structure of a Bavarian Tax Office



Obviously, tax administration authorities in larger cities are much more complex, but the essentials are the same. For further information: Organograms in German language for the Bavarian State Ministry of Finance, the State Office of Taxes as well as one large tax office are available on the project website.

4.1.1 Tax rulings

Due to the federal structure and the wide freedom state tax administrations have in conducting their business, Meinzer (2015a: 176ff.) argues that there are German states offering tax rulings to businesses in the attempt to attract their headquarters to be registered within their jurisdiction – one of the elements of tax-competition between German states. Meinzer mentions 4 legally existent options, namely Advance Pricing Agreements (APAs), tatsächliche Verständigung (TV), Verbindliche Auskunft (VA) und Verbindliche Zusage (VZ). Complex affairs in business dealings are regularly uncovered when tax auditors check the books of a business, and those agreements are the consequence of subsequent arrangements between the business and the tax authority in charge which then, due to the federal structure of Germany, are not communicated to the Federal Tax Office which should be informed as the central coordinating and registering agency for Germany. Meinzer quotes Michael Hendricks of a prominent tax lawyers' agency that these practices are indeed practiced in several German states. At the same time, not a single German state is mentioned

in Meinzers book because there are no hard facts to publish, which once more is due to the tax secrecy which covers all tax relevant issues.

Relevant questions directed to conversation partners of this research, whether they could confirm those rumours, were answered negatively.

Bavaria is, however suspected to be one of those states since it would blend in with other privileged treatments and the overburdenedness of the German tax auditors and subsequent tax administrative departments.

4.2 The context: Booming Bavaria

Bavaria has been registering high economic and social growth as manifested by various socio-economic indicators (cf. GER/III/1.2). Accordingly, the number of cases to be taken care by an employee in the assessment department rose at 38%, in the department dealing with corporations at 46%, in the department dealing with non-incorporated business by 18%. 2009-2013, the number of income tax cases rose 5% to 4.5 million, of turnover tax cases 14.6% to 1.2 million, of local business tax cases 17% to 570,000.

Regarding businesses, there is also an increase in complexity: Bavaria has a comparatively high share of exports: 52% of what is produced in Bavaria is exported and sold abroad. ‘Companies in Bavaria in 2013 once again set a new record in foreign trade. The value of goods exported amounted to nearly 168 billion euros - that is 2% more than the previous year. Of German exports overall, 15.3% originated in Bavaria. Overall trading volume also set a new record, totalling 313.9 billion euros.’

All this is not mirrored by the development in personnel in tax administration, neither in number adequate staffing of relevant departments: If one follows the statistics of the Bavarian Tax Union (which is in its numbers close to that of the Bavarian Court of Auditors), the Bavarian Tax Administration employs in 2014 14,793 people, so is this figure 350 positions lower than in 2003. The discrepancy of that figure to the one stated above referring to statistics of the Bayerische Landesamt indicates right from the outset the importance of whom one approaches for information! In either way: Facing the increase not only in the number of cases, but also complexity increased, e.g. checking transnational connections of private and corporate wealth holder and businesses, both figures seem to be comparatively low.⁶³

4.3 Critical administrative issues within the Bavarian context

4.3.1 Shortage of (qualified) personnel

Following the chapter-sub-structure developed and applied for the national German context above (2 and 3.2), critical administrative issues and problems in Bavaria related to the administration, collection and enforcement of tax laws are (almost) similar. Regarding the sources used in the following one should notice how many figures used in this sub-chapters are not taken from querulous welfare organisations or trade unions, but highly official from

⁶³ See „Produktivität sehr wohl gesteuert. Und wie“. In: bfg-Informationen 2015/6, p. 1f.; Brochure „Bavarias Foreign Trade“ 2014, published by the Bavarian State Ministry for Economics and the iHK. Retrieved from <http://www.auwi-bayern.de/awp/inhalte/Arbeitshilfen/Bayern-Statistik.html>; and Bayerns Exportquote auf Allzeithoch. (2014, July 28). In: Bayerischer Rundfunk. Retrieved from <http://www.br.de/nachrichten/industriebericht-bayern-wirtschaft-100.html>

public institutions, most importantly the financial watchdog of government, namely the Bavarian Supreme Court of Auditors, the Bavarian government or parliament.

4.3.1.1 *Causes and consequences of cuts in personnel*

A first wave of downsizing labour cost through retrenchment of labour in Bavarian administration started 1998, after the consulting agency Arthur Andersen recommended “rationalization”, given the following reasons: Administration proper should be separated from Service towards the public, administrative procedures should be “optimized” and computerization should replace employees. This led to the “rationalization” of 900 jobs until 2004.⁶⁴ A second wave followed in 2004 when the 42-hour work-week was introduced. At the same time, recruitment numbers dropped.

This staff shortage resulted in downsizing, closing and merging of departments and offices. Reductions and closure was tried to be balanced by re-assignments, e.g. tax inspectors from the assessment department in tax office A were moved into the tax auditing department in office B. This, however, was and is not easy and led to the situation that some tax offices and departments were overstaffed, others were understaffed.

Yet another result of rationalization and especially computerization was that new qualifications were asked for. In some areas it led to a reduction of highly qualified positions by opening new positions requiring low qualifications. For example: In the context of computerization, highly qualified personnel was gradually replaced by DUNAN⁶⁵-personnel, whose task is preparing forms for computerized processing preceding the final assessment by the tax inspector in charge. In other areas, more and higher qualifications were called for due to computerization. And where no new personnel could be found or financed, the need arose to qualify existing personnel not just in the continually changing legal areas, but also in computerizations – all in addition to already existing workload.

4.3.1.2 *How many should there be and are there?*

The working group “*Personalbemessung*” (cf. 3.3.1) stated 2010 for Bavaria the need of 3,069 additional tax inspectors. Since recommendations of this working group are non-binding, the Bavarian administration did not implement the recommendation. Bavarian practice is *Personalverteilungsberechnung* (i.e. how many inspectors are potentially or de facto at hand and how they could best be distributed and employed). The outcome of this procedure is the *Zuteilungssoll*, i.e. the specific number of how open positions in the various departments should be assigned and filled. The *Ist-Besetzung*, the number of people de facto employed, is always lower because, e.g., some position cannot be filled due to the absence of qualified personnel, other positions opening up due to transfer, sickness or retirement cannot be filled immediately because transfers from one department to the others are not that easy.

Now: How many employees are there and how many should be there – here it depends once more whom one asks: According to the State Office, in 2014 19,036 civil servants are employed (which amounts to 16,261.80 MAK), but in its head office and local branch offices (Bayerisches Landesamt für Steuern, 2015, p. 53). For the same year, the Bayerische Finanzgewerkschaft counts 14,793, which is close to the Bayerische Oberster Rechnungshof whose figures for the 1st January 2014 is given with 14,791 – only for the tax offices proper, not for the superior administrative structures such as the State Office.

⁶⁴ See <http://www.welt.de/print-wams/article600282/Die-Unehrlichen-profitieren.html>

⁶⁵ Dateneingabe Unterstützung im Arbeitnehmerbereich. See also Weigel, W. Vom Alltag eines DUNAN Liberos. In: *Der Wecker* 2007/4. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

From that, discrepancies between the “should” and the “de facto” is as follows:

Table 7 Personnel in Bavarian tax administration: Should-be state and actual state

	1 Jan. 2010	1 Jan. 2011	1 Jan. 2012	1 Jan. 2013	1 Jan. 2014
Actual number	14,769	14,554	14,549	14,633	14,791
Should-be number	16,300	16,457	16,477	16,477	16,600
Shortage in numbers	1,531	1,903	1,928	1,844	1,809
Shortage in %	9.4	11.6	11,7	11,2	10,9

Source 8 (Bayerischer Oberster Rechnungshof, 2014, p. 25)

Admittedly, there are regional and local differences in understaffing. In the research relevant district of Middle Franconia, all tax authorities of the district are understaffed at the rate of 9.6%. Locally, the range is encompassed by the small tax authority of Hilpoltstein with its 16.7% overstaffing on one end, and the tax authority of Erlangen with its 12.97% understaffing. Understaffing by the three large Nuremberg tax authorities lies within the range of 10%.⁶⁶

According to conversation partners working in the assessment department, the assessment department is the one suffering most under the discrepancy between staffing on the one side and workload and pressure on the other. Here, the discrepancy between “should be”, “de facto” and the development of workload in Bavaria in general and Nuremberg in particular is as follows:

Table 8 The "should be" staffing of Bavarian and Nuremberg Assessment Departments⁶⁷

	2004	2005	2010	2012	2013
Bavaria	5,072.25	5,403.72	5,594.48	5,729.78	5,783.77
Nuremberg North	68.69	74.41	77.34	78.32	76.92
Nuremberg Central	30.9	33.41	34.58	36.73	36.98
Nuremberg South	99.09	106.33	109.49	111.45	110.58

Table 9 De facto staffing of Bavarian and Nuremberg Assessment Departments

	2004	2005	2010	2012	2014
Bavaria	4,985.31	5,012.05	5,165.92	5,230.15	5,371.48
Nuremberg North	67.51	62.57	69.72	70.82	70.65
Nuremberg Central	30.73	33.25	33.3	33.2	35.91
Nuremberg South	94.15	90.97	97.15	98.16	102.65

⁶⁶ Antwort der Staatsregierung zur Anfrage der Abgeordneten Inge Aures, SPD, zum Plenum vom 25.2.2014.

⁶⁷ All figures are taken from the reply of the State Minister for Finance, Markus Söder, to the written question of Inge Aures, MdL, transmitted in May 2014 and published as *Landtag* document 17/2019

Understaffing, however, leads to delays in the processing of tax declarations. The official statistics of the Annual Reports of the State Office of Taxation states that the time needed to work on cases is on average in all areas around 50 days or more, leading to an ever growing backlog (Bayerisches Landesamt für Steuern, 2014, p. 36f.). This, however, seems to be cosmetic. Conversation partner from the assessment department argue, referring to official statistics, that processing of tax declarations now lies at times at 6 to 9 months or more, which leads to complaints by citizens, which increases the workload even more since one has to answer the phone, deal with complaints etc.

However: not only the Assessment Department, also other departments suffer from understaffing. It follows an overview regarding the investigative departments, i.e. those whose task is the combating of tax avoidance and evasion:

Table 10 Development in staffing of investigative departments

Personalentwicklung in den Prüfungsdiensten (VZK)					Tabelle 15
Stichtag (01.01.)	2010	2011	2012	2013	2014
Betriebsprüfung					
Zuteilungssoll	2.127,5	2.200,0	2.200,0	2.200,0	2.200,0
Ist-Besetzung	1.825,7	1.791,3	1.759,0	1.757,8	1.871,6
Unterbesetzung	301,8	408,7	441,0	442,2	328,4
Unterbesetzung in %	14,2	18,6	20,0	20,1	14,9
Steuerfahndung					
Zuteilungssoll	400,0	420,0	420,0	420,0	430,0
Ist-Besetzung	339,6	335,9	335,4	347,0	334,1
Unterbesetzung	60,4	84,1	84,6	73,0	95,9
Unterbesetzung in %	15,1	20,0	20,1	17,4	22,3
Umsatzsteuer-Sonderprüfung					
Zuteilungssoll	292,0	290,7	290,7	290,7	290,7
Ist-Besetzung	244,8	239,4	238,9	237,0	263,5
Unterbesetzung	47,2	51,3	51,8	53,7	27,2
Unterbesetzung in %	16,2	17,6	17,8	18,5	9,4
Lohnsteuer-Außenprüfung					
Zuteilungssoll	378,5	378,5	378,5	378,5	378,5
Ist-Besetzung	308,3	295,8	280,4	275,9	279,2
Unterbesetzung	70,2	82,7	98,1	102,6	99,3
Unterbesetzung in %	18,5	21,8	25,9	27,1	26,2

Source 9 (Bayerischer Oberster Rechnungshof, 2014, p. 27)

4.3.1.2.1 Bavaria in comparison with other states

How does Bavaria perform within the German context: Here, both the Court of Auditors and the State Ministry of Finance admit, when asked about staffing and performance of the Bavarian Tax Administration as compared to other German states, that there are deficiencies:

Table 11 Ranking the personnel situation in Bavaria in comparison with other Länder

Comparison	Ranking 2009	Ranking 2010	Ranking 2011	Ranking 2012
Personnel in relation to population	14	14	14	13
Personnel in relation to cases of income and corporation tax	16	16	16	15
Tax Auditors in relation to number of businesses	11	16	16	16

Turnover Tax Special Investigators in relation to businesses	15	16	16	16
Relation between should-be-state and actual state in the area of tax fraud investigation	16	16	15	15

Source 10 (Bayerischer Oberster Rechnungshof, 2014, p. 25)

4.3.1.2.2 Discussion

The government takes different courses of defending the situation.

First of all, the Bavarian State Ministry of argues that the Bavarian tax administration is more efficient than the ones in other states which might be better staffed. For that reason, they argue, staffing alone does not seem to be the only or even decisive point. And they prove it with the following statistics regarding the surplus revenue of tax auditors:

Table 12 Tax surplus revenue (*steuerliches Mehrergebnis*) collected per tax auditors

	2006	2007	2008	2009
Bavaria	2,105,389 €	1,795,257 €	1,400,111 €	2,244,426 €
Federal average	1,206,879 €	1,217,652 €	1,335,265 €	Not available

Source 11 Bavarian State Parliament, Parliament Document 16/4680

Second, there are also good reasons for the discrepancy between should-be and de-facto staffing figures. For example, that there are positions occupied by trainees, they are kept free for people on (maternity-/sick) leave, it is not possible to fill them adequately due to budget constraints etc.

Third, the birth-strong years are up for retirement and those retiring are no longer replaced in equal numbers since it is said that with the withdrawal of those strong years also the number of applications will be decreasing.

Finally, the government emphasizes, they are doing a lot to improve the situation (cf. below 4.3.1.14)

Critics are not that easily satisfied. According to the latest figures asked for by the opposition from government at the beginning of 2014, the situation is as follows: Of 16,600 available positions in Bavarian tax administration, only 14,791 were occupied at the on 31st December 2013, i.e. 1,809 positions are still open, which amounts to a quota of 11.6%. The opposition argues that, if re-staffing continues at that pace it will take another 58 years until the should-be number of employment will be reached.⁶⁸

De-facto, the development is as follows: At the end of the 2015/2016 budget, the deficit could be reduced by 400 personnel so that the should-be number is “only” 1,500 personnel beneath the actual staff level – while the caseload number continues to increase annually by 2%.⁶⁹

⁶⁸ See Bavarian State Parliament, Parliament Document Drs. 17/1394 from 2 April 2014. Retrieved from https://www.bayern.landtag.de/www/ElanTextAblage_WP17/Drucksachen/Basisdrucksachen/0000001000/0000001084.pdf

⁶⁹ „Steuereinnahmen wachsen epochal – unsere Arbeit aber auch“. In bfg Informationen 2016/6-7, p. 3

4.3.1.3 Less personnel, more work

It may be correct that, as the government assumes, the birth-strong years are slowly up for retirement and that for that demographic reason alone a decrease in caseload is to be expected and a decrease in staff-number is justified. This ignores, however, the fact of people moving to Bavaria due to its attractiveness as a state to work and to do business in. On that background, conversation partner from different departments and institutions state a constant increase in workload over the past years.

The following table gives an overview of case-load development in the areas of incorporated and non-incorporated businesses, general assessment and the assessment of dependently employed:

Table 13 Caseload per employee and per year in different departments

Veranlagung	2003	2004	2005	2006	2007	2008
KöSt	426	421	419	414	432	466
PersGes.	242	243	250	257	273	294
AVSt	679	685	705	699	696	713
AN-Bereich	2.227	2.113	2.126	2.125	2.165	2.147
Veranlagung	2009	2010	2011	2012	2013	
KöSt	497	516	551	581	585	
PersGes.	308	321	344	352	354	
AVSt	749	772	797	811	798	
AN-Bereich	2.152	2.101	2.109	2.017	2.104	

Source 12 (Bavarian Parliament Drs. 17/4312, 2014)

While the case number in General Assessment and the assessment of dependently employed is rising more slowly or stagnating at a high level which is nevertheless clearly above the national average (cf. 2.1.1.), the case number in the business department is rising even steeper and absolutely out of proportion.

4.3.1.3.1 The problem of Tax-CDs and self-reporting

One has also to be aware that tasks emerge which have not and cannot be foreseen by anybody, but need to be done. A major point of unplanned extra-work are self-reporting arising from tax CDs and the prosecution of prominent tax evader.

Generally, Bavaria as a state does not purchase those CDs itself, but it shares in the costs of those tax authorities who do purchase these CDs. In June 2012, however, the Bavarian Minister of Finance, Markus Söder, stated that Bavaria ceases his participation in these deals. As a reason he gave the imminent passage of the Swiss German taxation treaty which was heavily contested among experts and public. This in turn provoked public protest for two reasons:

First, it became public that Bavaria profited quite a bit both of the revenue generated when prosecuting tax offenders contained on the CDs and the wave of self-reporting in the wake of those CDs: In 2014, 38,587 people made use of this instrument, a number considerable up from the 24,000 in 2013. Most of them came from Baden-Wuerttemberg (9,038), followed by North Rhine-Westphalia (7,551) followed on rank three by Bavaria

(5,927). Accordingly it can be expected that Bavaria gets its share of revenue which amounted in 2014 alone to EUR 1.32 billion, additionally to those EUR 3.5 billion which have been collected 2010-2013.⁷⁰

Second, because Bavarias own Union of Tax Officials criticized this abstention heavily. Its chairman, Josef Bugiel, argued that by abstaining the Bavarian government would de facto encourage tax evasion. In April 2013 Bavaria suddenly agreed to continue its participation in the tax CDs purchase. The official reason given was that the red-green majority in the chamber of states “killed” the Swiss German taxation treaty. Others argue, however, that it was no longer popular and possible to defend the Bavarian abstention, given the collected money and the number of high profile tax offenders which were exposed in the context. After all, in fall 2013 were elections to the state parliament....⁷¹

Another major impact to “motivate” people in Bavaria to consider self-reporting was the widespread discussion of the trial of Uli Hoeneß. The overall numbers are not huge at first sight. The overall numbers are not huge at first sight. There are diverging numbers regarding self-reporting in Bavaria: Relatively low are those published by the Bavarian Parliament:

Table 14 Number of self-reporting in Bavaria⁷²

	2010	2011	2012	2013
Zahl der Selbstanzeigen im Zusammenhang mit Geldanlagen in der Schweiz	3.884	508	1.038	3.973

Source 13 (Bavarian Parliament Drs. 17/2380, 2014)

Considerably higher are those published in the Jahresbericht 2014 of the State Tax Office who set the mark for 2012 close to 6,000, for 2013 close to 9500 and for 2014 even at close to 16,000, which is difficult to comprehend without any explanation (which, on the other hand cannot be obtained) (Bayerisches Landesamt für Steuern, 2015, p. 96).

And there are surprising moments: In one case a retired old lady, who so far did not pay more than EUR 500 tax, suddenly declared that she “found” some shares in a closet and delivered for further proceedings two big folder along with EUR 1 million payment upon account (*Abschlagzahlung*).

The workload is such, so conversation partners from different departments of tax administration report, that Bavarian tax authorities are largely unable to cope with this new

⁷⁰ Greive, M. (2015, January 12) 40,000 Steuerhinterzieher zeigten sich 2013 selbst an. In: Die Welt. Retrieved from <http://www.welt.de/wirtschaft/article136278913/40-000-Steuerhinterzieher-zeigten-sich-2014-selbst-an.html>. 60 Prozent mehr Selbstanzeigen. (2015, January 2). In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/geld/steuerhinterziehung-prozent-mehr-selbstanzeigen-1.2290107> and Hulverscheid, Cl. (2 January 2014) Mehr Härte gegen Steuerhinterzieher. In: Süddeutsche Zeitung. Retrieved from <http://sz.de/1.1854292>. Schlötterer 2013, Kapitel “Die soziale Gerechtigkeit”, Ursache 4

⁷¹ Josef Bugiels quote in German: „Josef Bugiel, Chef der bayerischen Finanzgewerkschaft, hat für Söders Kurswechsel kein Verständnis. Informationen über Steuerhinterzieher nicht zu nutzen, komme "Strafvereitelung im Dienst" gleich, sagte er.“ Szymanski, M. (2012, October 17) Was Bayern durch den Ankauf von Steuer-CDs verdient. In: Süddeutsche Zeitung. Retrieved from <http://sz.de/1.1497763>; Bayern will bei Steuer-CDs doch mitzahlen. (2013, April 26). In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/politik/steuerhinterziehung-bayern-will-bei-steuer-cds-dochmitzahlen-1.1659920>

⁷² Those are only the figures from Switzerland! See below 6.2 for total figures in 2014 which is solidly above 5000

workload – with financial repercussions: Deposits requires and made by self-declared culprits are just lying idly on accounts because the case linked to it cannot be processed.

Attempts to draw a balance for Bavaria were undertaken, but inconclusive. A journalist from the public Bavarian Broadcast⁷³ tried to get some facts and figures but noted that there are no statistics or otherwise hard facts on:

- How many Bavarians were contained on tax CDs and against how many people investigation and prosecution were initiated.
- What the result of those investigations and prosecutions.
- How much money resulted from those investigations and prosecutions.

The chairman of the Bavarian Tax Union, Wipijewski, estimates that there were about 20,000 cases; and there are at least some indications regarding the outcome of self-reporting resulting in the context of tax CDs: In 2014 there were EUR 190 million, in the first half of 2015 there were EUR 90 million Euros. Wipijewski also admits, however, that less promising cases are discarded fast due to the lack of personnel which, consequently, might result in losses. A case of major public interest was the one dealing with tax evasion of billionaire Curt Engelhorn's daughters, amounting to EUR 135 million (cf. 4.3.8.2 und GER/Via/4.5.11).

4.3.1.4 Deficits in legal and IT training

It has already been mentioned in 2.1.2 and (GER/Va) elsewhere that staff needs to spend working time on keeping abreast of changes in laws, regulations and court sentences. There are certainly training seminars on offer on part of the State Office of Taxes. In 2014, for example, 24,640 participants were counted in all sorts of legal and IT related workshops which were partly centralized (outside) or decentralized (inside the own tax office) and offered training on SAP Software as well as Turnover Tax processing (Bayerisches Landesamt für Steuern, 2015, p. 57f.). However: People also need to have time to prepare, attend and evaluate those offers besides their workload, and this is a problem deterring many conversation partners across the departments to attend those workshops, but rather, trying to get by with handbooks and colleagues on the spot.

Conversation partners among the operative staff reported as example that he received a computer file containing the “practitioners handbook” (*Anwendungsbestimmungen*) of over 300 pages with the prohibition to print it out for two reasons: First, it would be too costly, secondly, it would be outdated soon since a revision of the book was already under way. Trade Unionists complain that many documents needed for daily work exist only online which is difficult to search: It is not only because documents are long, but because related documents contain relevant information, too, which results that information needed to answer one question may add up to hundreds or more pages. Of course, there is also the Administrations Information System (*Amtliches Informationssystem* (AIS)), an online database for internal administrative publications. This, however, is rather complicated to use. For example: Once they enter the term “Arbeitsplatz” (“work station”, an important term when it comes to obtaining refunds for using private work stations for business purposes), ten references pop up, but not quotes, rather entire documents containing the term, so that each document has to be searched in turn.⁷⁴

⁷³ Böhne, K. (2015, August 18). Ankauf von Steuer-CDs: Was haben sie dem Freistaat gebracht? In: Bayerischer Rundfunk, retrieved from <http://www.br.de/nachrichten/steuer-cd-104.html>

⁷⁴ Fulda, D. Unbewältigbar. In: *Der Wecker* 2011/04. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

Another deficit is seen when it comes to introduce new apprentices, coming from school, into the complexities of real life cases. There are, of course, programs in school, training young apprentices. But training there has disadvantages for several reasons. First, trainees are not made familiar with good and typical examples and cases arising in daily work. Those cannot be provided due to tax secrecy. School training consists rather in too many exotic cases rather than in the transferral of basic systemic knowledge and skills for everyday work. It is difficult to get practitioner in school to formulate tasks or even teach and those who do teach lack pedagogical skills. One sometimes wonders whether external experts could change that, but here one thinks that financial incentives are too low for those who are good, and practitioner hardly volunteer since it would need to be done in addition to their workload.

Since school training is poor, people have to learn with ongoing cases once they are assigned to a job after school: A manual in the left, tax declaration in the right, computer in front. If there is no experienced colleague assisting with the “Verkennzifferung”, it is often left to trial and error. Certainly, eventually the computer accepts the case, but this learning is difficult, especially, since the next case is different again and the tedious procedure starts again.

This is the more ideal situation because trainees have at least some time which they can devote to this learning. Operative staff has to do all that besides the regular workload.

But: there is an even more important area where tax inspectors are challenged and it is exactly the area where superiors hope that “salvation” is coming from: Computerization. Before somebody is able to reap fruit from computerization, s/he has to learn how to use it and handle complexity. After all, even computerized programs change regularly in the attempt to catch up with changes in laws and regulations. As one semi-official conversation partner from the assessment department puts it half serious, half jokingly: “If you start the computer in the morning – if it starts at all, that is – you don’t know what has been changed overnight and when processing this or that tax declaration you have to make sure that you apply the correct law which was applying when the declaration was written.”

Even those involved in developing tax administration software insist that the system is as good as practitioners feedback was incorporated in the development of the system and as good as training on the system and supervision is provided for the process of daily work. But how are people qualified to cope with this situation?

There could be improvements. Computerization is, after all, the area, where both young and old could complement each other. After all, the training of computer skills overburdens especially the middle aged and older. They are told and ordered to use computer programs and they do not have time to learn and exercise adequately. There are, of course, wonderful workshops, but you cannot go there because of the workload. Here it would be much easier if young and old were together since the young know the computer and the old know how to handle problems when completing the forms. Here the generations could complement each other, but the Assessment Departments, where computerization of work processes is very comprehensive and advanced, is unpopular and the young are distributed to other departments.

Another training deficit arises when it comes to the handing over of positions which, ideally, would require some overlapping of the old and new incumbent so that training in legal and IT skills could be passed on. This is not possible with present personnel levels. Right now, the previous job holder is in retirement before the new person arrives. If s/he

arrives, s/he finds a pile of work and has to delve right into it. This is recipe for making mistakes due to the lack of knowledge, especially more complex cases in business. One should not underestimate the potential which lies in practical skills which can be handed over from experienced colleagues to new trainees. This is much more important than all textbook or, as it is, computer handbooks. 'With an adequate amount of adequately qualified personnel fried ducks would just fly into our mouths.'

Other suggestions to preserve the experience of the old via WIKI style is not the same and costs more time for writing and searching than it actually does help to solve problems.

4.3.1.5 *Benchmarking: Quantity vs. Quality?*

As for Germany as a whole, Bavarian conversation partners complain about the impossibility to treat each tax declaration thoroughly and adequately. They also agree to earlier quotes (e.g. 2.1.3) that benchmarking efforts, aiming for a comparability of tax administrations, compare the incomparable and by that worsen the situation by favouring quantity rather than quality:

To start with the **tax auditing department** which is in the comfortable situation that they can bring the number of checks in accordance with their staffing: even here, conversation partners detail, things are geared to quantity rather than quality under the given system regulating promotions: The work of each employee is evaluated in a three year rhythm under a system of credits and quotas: Credits are awarded for the work of the employee, and quotas come in because the possibility of promotions is pre-defined by the ministry, regarding the financial budget situation. Hence there are normally less options for promotions than people qualifying for it in principle. Here the system of credits comes in: How an individual employee, how a team, how a department and how a tax office performs depends on the number of credits which they can collect during the year. Normally an inspector gets a mixture of cases which can either be decided in the office (i.e. checking documents handed in) or outside the office (i.e. going into businesses or homes to check on the spot). The credit system reflects the complexity of cases, i.e. one credit for small, 2 for medium, 3 for large and 4 for very large businesses. Equally, the time available for these inspections is assigned: 5-7 days for a small, double for a medium, double for a large, double for a very large enterprise. Because one has to acquire a certain amount of credits in order to qualify for promotion there is competition among colleagues since everybody aims for large and lucrative cases: dealing thoroughly with small businesses is not as "profitable" as large corporations. In other words: If one is unlucky enough not to get assignment of a large corporation which is worth – say – ten credits, s/he has to check 5 small businesses in the same period of time – and to do this is only possible if one cuts down on time and attention which means a de-facto option for quantity instead of quality.

Across departments, however, is agreement, that the situation is worst in the **Assessment Department**, where the increase in cases is felt most immediately since everybody HAS to get an assessment at the end of the year because as long as they are employed in their job, nobody else will do their work, among others for tax secrecy reasons: When asked about the minimum time spent on tax cases, conversation admitted a range from between 3 minutes to 26 minutes per case. This at first contradicts the statement of the Bavarian Supreme Court of Auditors of the *Nichtaufgriffsgrenze*, i.e. that cases below a certain level are not examined at all, which would result in a considerable loss of revenue.⁷⁵

⁷⁵ 'Da die Arbeitsmenge vom Finanzamt nicht steuerbar ist, müssen bei weniger Personal Abstriche bei der Bearbeitungsintensität gemacht werden, um die zeitlichen Vorgaben einzuhalten. Der Ort, aber auch die Geschäftsprüfung des Landesamtes für Steuern, hat bei Prüfungen festgestellt, dass einige Finanzämter sog.

Conversation partner, however, point to the obvious: What can you really check within 3 minutes? To work under these circumstances offends against the principles of equality and fairness since it is simply impossible to check everything adequately. Everybody pretends to do it and whenever a risk indication needs to be checked somebody write “This has been followed up” or “Everything is OK”, but these are just words to satisfy internal quality controls and superiors. Of course, cutting checks short in many cases leaves some room for checking the more serious cases. At least. But nobody is happy about this situation.

According to conversation partner, work pressure in the Assessment Department is increased by internal controlling in the context of benchmarking. It is operating by chance selection and results are anonymous. In other words one cannot deduce anything about individual employees, but about the performance of the department, which results to the same because collective pressure is exerted towards everybody. Here, too, the situation in the Assessment Department is special since other departments do not have such controlling procedures, e.g. Turnover Tax department.

On the whole, the workload has its impact on working hours, free time, private life, holidays and sickness, which will be exemplified below (4.3.1.8).

There are, however, diverging opinions who question the statement, that quantity is more important than quality: In their view, it is surplus revenue which is in focus, not statistics: Earlier, when there were sufficient employees, each tax declaration was done according to law and norms to the best knowledge and conscience of the civil servant. And if the tax declaration was alright and no surplus revenue could justifiably collected: Fine. But increasingly the pressure rose to focus only upon those companies who promised, after some superficial first computerized examinations, surplus revenue. They joke about the “Gartenzaunprinzip” (GardenFence Principle) because of the symbol “#” which precedes the imposed surplus decision of tax auditor. Hence there is a competition not so much of quantity, but surplus revenue: Whoever gets more surplus revenue as a tax inspector, as a department, as a tax office – they perform well. If there is a check without surplus revenue (*Nullfall*), it is not liked because it spoils the statistics of “average surplus revenue per inspector” or “per case”.

These differences in assessment could be due to the fact that conversation partner work in different departments and attain different positions in the hierarchy.

A critical view of benchmarking and internal controlling has the Bavarian Court of Auditors. In its 2014 report it criticizes the State Offices attempt to present the decrease of checks and controls as great success. The Court of Auditor states that some cases have been excluded by the state offices (which distorts the findings) and on the whole the evaluations system of this internal controlling is not transparent. The Court asks for more transparency and improvement.⁷⁶

„Nichtaufgriffsgrenzen“ festgelegt haben. Sachverhalte mit steuerlichen Auswirkungen im drei- bis vierstelligen Euro-Bereich wurden dadurch nicht mehr geprüft. Dies führt nicht nur im Hinblick auf die Vielzahl der Fälle im Veranlagungsbereich zu erheblichen Steuerausfällen. auch das IT-unterstützte Risikomanagementsystem, das auf der Überprüfung risikobehafteter Fälle aufbaut, wird dadurch unterlaufen. Dies führt langfristig zu Fehlsteuerungen bei der Risikobewertung und weiteren Steuerausfällen über die ungeprüften Veranlagungen hinaus.“ (Bayerischer Oberster Rechnungshof, 2012, p. 55)

⁷⁶ Regarding the processing of tax declarations of dependently employed, the State Office states a decrease in the quota of deviation from 20.3 to 15.6% for 2012 which reflects, so the court, only part of the picture. (Bayerischer Oberster Rechnungshof, 2014, p. 98)

4.3.1.6 Job satisfaction/Promotion/Payment

The mentioning of competition within the tax auditors department leads to the question of job satisfaction, which is low in all (!) departments. A survey among tax administration employees in 2010 revealed that job satisfaction and happiness sank. Main reason given was the increase in workload. The “grade” passed here by the employees worsened from 3.46 in 2005 to 3.68 in 2010 (Bayerischer Oberster Rechnungshof, 2012, p. 56).

One general reason for this situation is, among others, that many promotions (which go along with increase in payment) are on hold because of the need of household consolidation even though employees would qualify for it due to the completed collection of required credits. This has a direct impact, i.e. people are dissatisfied that they do not get their upgrades, but it also has an indirect impact: The working atmosphere within departments is spoilt since colleagues are changing into tough competitor for scarce resources.

Admittedly, the budget 2013/2014 brought some relief (850 positions were upgraded), likewise the budget 2015/2016 (300 positions were upgraded) as well as in the option to dish out additional premium payment linked to performance.⁷⁷ It remains doubtful whether this can adequately scale down competition and re-establish cooperation instead.

But, there are differences across the departments: A lot of dissatisfaction is related to the computerization of work, which in the eyes of many degrades human competence and experience. Not surprisingly, job satisfaction is highest where the computer is a means of assistance and not the boss. In other words: Job satisfaction is high where people can be detective, implement experience and gut feeling, i.e. in the tax auditor and tax fraud department. It is low with civil servants who are just entering data in machines and execute its output, i.e. the assessment department.⁷⁸

As far as payment is concerned, there are additional problems worth mentioning and typical for Bavaria, especially Munich and placements there.

According to conversation partners, a transmission belt worker at the BMW car factory in Munich earns (gross) twice as much as a middle-rank civil servant of the tax authority and the costs of living especially in Munich are high, which is why hardly anybody wants to live and work there for longer.⁷⁹ At the same time, other forms of subsidies, which were designed to make life more affordable, were cancelled, e.g. subsidized housing for civil servants which were exempt from the competition for higher rents on the housing market. Here, promises were given to reinstate those benefits, but not yet implemented.

There are two consequences to it: First, it is deterring for young people: For many, their first placement would be Munich (where, after all, is most of the work) but since payment is too meagre the temptation is considerable to go into private sector in the first place. From that follows: A large share of those going to Munich are from areas other than Munich and immediate surroundings, which is why they are, at best, to remain in Munich as

⁷⁷ (Bayerisches Landesamt für Steuern, 2015, p. 8) Bugiel, J. Einkommensrunde 2013 wird schwierig. In: *BfG Informationen* 2013/1, Retrieved from <http://www.finanngewerkschaft.de/bfg-zeitung/>

⁷⁸ Bergmann, H. „Konkursfall“ Veranlagung. In: *Der Wecker* 2007/4. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

⁷⁹ Supplement payment for those living in metropolitan regions or those doing field work have not been increased and loose proportionally in value since rent and costs of living are rising. Bugiel, J. Spitzenplätze. In: *BfG Informationen* 2013/1, Retrieved from <http://www.finanngewerkschaft.de/bfg-zeitung/>

long as needed before they apply for relocation to their region of origin, where comparatively few cases, at the same time generating comparatively fewer revenue, are located. This in turn impacts on the quality of case management: The often mentioned superiority of “gut feeling” in experienced tax officials also depends on their knowledge of “their” cases. If there is high fluctuation, this feeling cannot develop over time (see 4.3.3.8)

Conversation partner from tax employee unions suppose that politicians would only act on those issues if people would rather leave their jobs than moving to and working in Munich in large numbers. This, however, does not happen – yet. Similar difficulties are reported from conversation partners in other professions in the civil service, leading to the fact that some low-pay jobs have to be relocated to places far away from Munich or cancelled altogether, which, for example makes investigative and surveillance activities more difficult due to the lack of adequate staff levels.

4.3.1.7 Working overtime

On this background, one is surprised to read the statistic regarding average monthly overtime per employee working in the Bavarian tax authorities, published by the State Ministry of Finance in response to the question of a State MP.⁸⁰ For Nuremberg, for example, the situation is as follows:

- Nuremberg North: 1 hour 4 minutes
- Nuremberg South: 0
- Nuremberg Central: 1 hour 45 minutes.

These very comfortable indicators can be explained as follows: If one looks into the footnote, the Ministry counts only overtime which has been decreed and approved by superiors in accordance to paragraph 87, section 2 Bavarian Civil Servants Code (BayBG). This is a widespread practice with police, but rather the exception than the rule in tax administration:⁸¹ The rule is that tax inspectors can organize their workload flexibly, i.e. they can arrive late and go late, or come early and leave early – more important is that they shoulder their workload. In this process they are permitted to collect up to 40 hours overwork on an “overtime account” which can be counterbalanced by free time,⁸² but not more. This means: If at a deadline a tax inspector has 400 hours overtime on his account, he can move on with 40 hours into a new collection cycle, the remaining 360 hours backlog from the previous cycle are cancelled. The correct question by the parliamentarian should have been, therefore, to ask not only for overtime in accordance to paragraph 87 but to ask also for overtime collected on individual overtime accounts.

4.3.1.8 Sickness

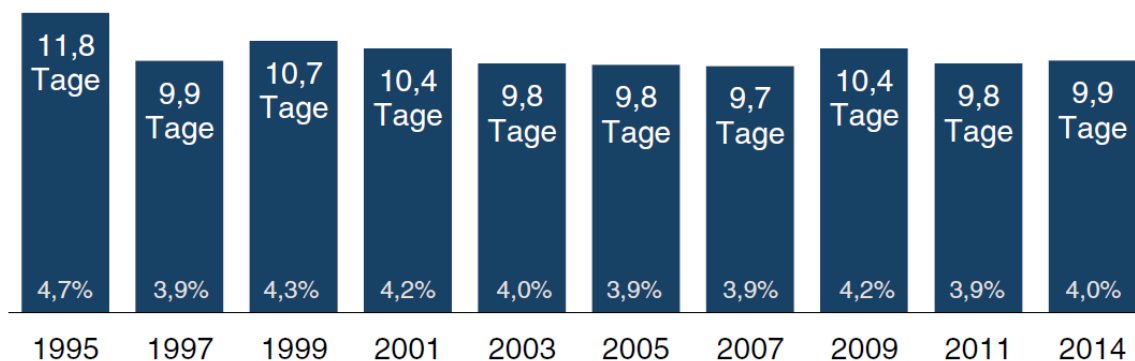
Worrying is the amount of sickness related absences which is in 2009 at the average of 13.4 days annually and thus the highest ever since 1997.⁸³ It is also interesting to compare the “Report of Absences due to Sickness” (*Fehlzeitenbericht*) of the Ministry of Finance, covering the overall status of all employees in Bavaria, with the specific situation of employees in tax administration: The report gives the following picture for Bavaria:

⁸⁰ Antwort vom 5.5.2014 auf die Schriftliche Anfrage von Inge Aures, MdL, betreffend „Personalsituation in bayerischen Finanzämtern.“

⁸¹ In tax administration, a relevant job category to which this rule applies are caretaker and maintenance worker, but not tax inspectors of the Assessment Department.

⁸² Maximally 24 days per year.

⁸³ Fehlzeitenbericht 2009, highest level since 1997. In: *Der Wecker* 2011/4, retrieved from <http://www.verdi-finanzamt.de/wecker.html>

Graphic 7 Average absence in days due to sickness, civil servants Bavaria⁸⁴

This may be a nice average, but the situation in tax administration alone is by far more dramatic: It follows specific information relating to employees in the three tax offices of Nuremberg together with the average of Bavarian tax administration:⁸⁵

Table 15 Average absence in days due to sickness, civil servants Bavarian tax administration

	2003	2005	2007	2009	2011	2013
North	11.63	12.74	10.21	15	12.81	13.51
South	15.49	15.43	12.9	15.68	13.95	13.66
Central	16.01	16.9	14.25	13.77	15.2	12.2
Bavarian average	---	12.96	12.18	13.13	13.25	12.09

The average rate of sickness among employees of the three Nuremberg tax administration offices is noticeably higher than the average among Bavarian civil servants generally. And: If one looks up the entire statistics one can even discover average figures beyond 20 days and as high as 27.62 days (Kronach).

Information about categories of sicknesses, e.g. the share of burnout or related psychic sicknesses, were not available. On part of the government, they avoid the question by pointing to data protection and privacy issues. They merely quote that, according to health insurer, psychic sicknesses are advancing and they admit, that this will probably also be reflected when looking at the cause of sicknesses among employees of the state of Bavaria.⁸⁶ However, trade unions and others in charge of the wellbeing of employees of the tax administration confirm that here lies a major problem.⁸⁷ This is indirectly admitted, when the State Office of Taxes established for the first time a “Centre for Psycho-Social Counselling” in 2014, which should provide guidance for employees, but also superiors (Bayerisches Landesamt für Steuern, 2015, p. 62). In an interview the person in charge admitted that the

⁸⁴Page 6 of Bayerisches SM der Finanzen, für Landesentwicklung und Heimat (2015, Juli) Fehlzeiten der Beschäftigten im Freistaat Bayern 2014. Retrieved from http://www.stmf.bayern.de/oeffentlicher_dienst/fehlzeitenbericht/ Due to extensive institutional reforms in 2013, the two-year-period was extended one year from 2011 to 2014.

⁸⁵ Antwort des Bayerischen Staatsministerium für Finanzen vom 30.6.2014 auf die schriftliche Anfrage von Inge Aures betreffend „Krankenstand in den Bayerischen Finanzämtern“

⁸⁶ Page 8f. of Bayerisches SM der Finanzen, für Landesentwicklung und Heimat (2015, Juli) Fehlzeiten der Beschäftigten im Freistaat Bayern 2014. Retrieved from http://www.stmf.bayern.de/oeffentlicher_dienst/fehlzeitenbericht/

⁸⁷ BfG Informationen 2014/8-9, pp. 20f.

number of psychological sicknesses is rising relative to other sicknesses. This, he argues, could also be due to less inhibition to report this kind of sicknesses since taboos surrounding those sicknesses are gradually falling. He also questioned that overwork and challenges posed to elderly due to the pace of changes, e.g. in electronic data processing, make things worse, since he from his point of view only deals with those cases, which is not representative for the workforce. He would be in favour, however, of doing internal research into this problem which, adequate data security precautions provided, should be possible in his view. This could assist, he argues, to develop preventive measures.⁸⁸

Given the ageing personnel of course the number of sick days is rising, especially once the age is above 50 individually and among tax administration employees in general. Group leader both from the assessment and tax auditing departments hold the opinion that the question, whether there are rather physiological and psychological reasons, is irrelevant, because factors and symptoms are interrelated. When asked for the reasons of this alarming development, work pressure given first, followed by the stupendous character of the work. When I asked semi-officially one senior local administrator whether in his view the roof of his tax authority is burning he replied: "It is burnt down already", adding that his most competent people are sick and no longer want to return to work because they cannot cope anymore. Sickness and the prevention of sickness therefore also plays an increasing role in the work of trade unions and personnel representatives.⁸⁹

But as it is with job satisfaction it is with Health: there are marked differences from department to department: The extent of sickness among tax auditors, for example, is comparatively low. A conversation partner from the tax auditing department explains as follows: Their job also holds a huge amount of pressure and stress, but it is challenging and interesting and, after all, worthwhile which gives a positive motivation. But even here, conversation partner admit that they find a notable increase in long term sicknesses.

Worst is the situation in the assessment department for the reason detailed in 4.3.1.5: Because every tax inspector HAS to manage his workload, people work overtime and don't go to vacation. Even if they go to vacation, they return to the office every now and again to work on the backlog. The thought of returning from vacation and finding a backlog of three or four straight weeks is too overwhelming. For that reason people also delay sick-leaves and work too long so that their complaints, if they eventually break down, takes them out even longer. Consequently, sick leave in those departments is very high, both for physiological, stress related complaints and for psychological complaints. In some tax offices, up to 15% of the staff is on sick leave more than six weeks within a quarter of a year. Conversation partner from the assessment department argue: if everybody in their department would work 40 hours a day, five days a week and go to vacation their allotted time, the quality rating of their department or office would go down, which would make them look bad. For that reason, everybody is racing as much as possible to keep up with target figures.

To change the situation, civil servants of all departments would have to cooperate together, but this kind of solidarity will not be found. Also: There are internal differences among the employees. Those programming the risk management filters, for example, think that problems in implementation are merely due to the departments and not to their computers. Another problem is seen in the fact that there are two trade unions one of which is

⁸⁸ Gespräch mit Dip. Psych. Egid-Quirin Roth. In: BfG Informationen 2015/12, pp. 10-14

⁸⁹ Report from the Tax Office Weiden. In: BfG Informationen 2013/7. In:

<http://www.finanzgewerkschaft.de/bfg-zeitung/>

more cautious in criticizing than the other. In this case the leadership argues: First find agreement among yourselves.

By the way: The State Office of Taxes also runs a health program for its employees, whose participation is voluntary. It includes options like Karate, gymnastics for the back, Pilates, Yoga, mobile massaging or cycling. The budget for this program is in 2014 EUR 23,384 only, peanuts compared with the more than EUR 100 billion revenue collected in 2015 (Bayerisches Landesamt für Steuern, 2015, p. 28f.)

4.3.1.9 Image factor within

In 4.3.1.1 it has already been mentioned that one practice to bridge gaps and improve staffing are personnel transfers between different departments, e.g. from Assessment to Tax Auditing and vice versa. However, there are departments where civil servants and new recruits prefer to move and others which they try to avoid.

Why work in the Assessment Department is unpopular should be obvious by now. Another unpopular department is the Turnover Tax department, because this, too, is a lot of work behind closed doors out of public knowledge. It is unspectacular and boring, involving a lot of computing and desk work. In this department, the public does not realize that personnel is missing since the computer does most of the work. But: Millions and billions of Euros in taxes are not cashed in because personnel cannot check that which needs to be checked after the computerized analysis puts out its risk assessment..

Different from that, field services such as tax auditors have the image of investigative excitement and young trainees try to obtain an assignment to those rather than the others.

4.3.1.10 Staff assignment for political reasons

The situation is worsened because of public perception, which in turn impacts on political decisions: Assignments to the Assessment department are not popular with public and electorate, because ordinary citizen associates this department with their own tax bill rather with fraud combating. In other words: The electorate would see a stronger staffing there to be a declaration of war against the “small and honest citizen” rather than an assignment to the tax auditing and tax fraud department who are known to go after the big fish only.

Which is why all graduates 2013 the 240 available trainees at the end of their studies were all assigned to the investigative departments: 160 to Tax auditing, 30 to tax fraud investigation and 30 to other investigative services. None went to General Assessment or Turnover Tax Investigation.⁹⁰

Politicians know that and for popularity reasons they tend to act counterproductively when one beholds the larger picture: When, after a media hype, the Bavarian Finance Minister suddenly announces under great acclaim a Bavarian Tax FBI, this is not staffed by new people, but by re-assignment already existing jobs, while at the same time spending not enough care to refill those vacated positions.

Acting like this is, according to conversation partners from various departments, cutting the branch on which you sit since competent internal service and assessment departments are basic also for business tax inspectors. Effective field services require effective internal services as a basis. If, e.g., documentation and basic filing can no longer be

⁹⁰ See Bayern ist keine Steueroase. Press Release from 8 July 2013 Retrieved from: <http://www.finanzgewerkschaft.de/news/allgemeine-news/bayern-ist-keine-steueroase/>

done, field service lacks efficiency. And: Internal service department would give graduates from school a good and comprehensive overview about how the system works – but this is not seen or supported by superiors.

Apparently, this will be different in 2014 when the larger share of new people (130 MAK) will go into assessment and only 60 MAK into tax auditing.⁹¹

This kind of “shifting around” of personnel according to changing political priorities and not according to necessities resembles developments in other areas of administration, e.g. policing (cf. GER/VII/5.8)

4.3.1.11 Image factor outside

Bavarian conversation partner, e.g. from the tax auditing department, confirm views in chapter 2.1.5 that they suffer under their widespread negative reputation in public. This has improved somehow over the past months’ public discussion because of the many tax scandals. Here, some tax officials are seen to be the one fighting against the damage done by the wealthy and greedy. But here, too, the profit is spread differently: The modern Robin Hoods are rather tax auditors and tax fraud investigators, while co-operators of the Assessment Departments, i.e. those in charge of the annual tax bill for the ordinary citizen, is still rather resented. Politicians know that, which is why they only come out in support of the former, not of the latter.

Generally, employees miss public support of their work by their political superiors and criticize their reluctance, saying: It is not popular to support tax administration. Even though we are the engine for the community and our revenue first and foremost enables whatever the state is able to do, our superiors do not want to come out in favour of us.

Conversation partner point to the situation in other countries: In Belgium, for example, the state produces and broadcasts image movies for both tax honesty, the tax authority and purpose of tax collection and spending. This is what they would also like for Germany.

It might be a slight comfort for tax officials to know that at least a considerable number of tax consultants hold their professionalism and devotion to the job in high esteem. According to them, there is rather a partnership between many members of the tax authority than a conflict and whatever workshops or trainings they obtain from them is highly appreciated.

The lack of recognition is acknowledged as problematic by the leadership as well. In its foreword to the Annual Report the Head of the State Office of Taxes mentions positively that in a ‘great tax case’ (leaving open whether he alludes to Uli Hoeneß or not) a tax fraud investigator received public acclaim and admitted that he would wish for a more frequent applause for the hard work of the authority by others (Bayerisches Landesamt für Steuern, 2014, p. 3). Also in Bavaria it is seen that this negative image impacts on recruitment. This is tried to overcome with “Recruiting Movies” which are shown on Websites, trade fairs, in schools and via Social Media, e.g. YouTube.⁹²

4.3.1.11.1 Tag der Steuergerechtigkeit

The chairman of the Bavarian Tax Union, Wipijewski, published on 20 September 2015 a rousing statement regarding the need of taxation to fund common tasks and bitterly

⁹¹ BfG Informationen 2014/8-9, p.4

⁹² http://www.finanзамt.bayern.de/Informationen/Job_und_Karriere/Wir_bilden_aus/default.php

complains about injustices, starting with the taxation of wealth, the privileging of capital, injustices in the process of inheritances and gifts and the missing Financial Transaction Tax. He points out that rebates for corporation in the process of inheritances of annually EUR 7.9 billion surpass revenue from the Inheritance Tax of EUR 5 billion, being the largest post of public subvention. All this combined with the lack of personnel and transparency as well as the deficit to tax individuals and corporations according to their ability to perform. The press release of Wipijewski was seconded by press releases of opposition parties of the Bavarian parliament, supporting the trade unions call for more personnel in these times of crises, especially due to the refugee influx.

Also in Bavaria, the Union repeated the Day in 2016

4.3.1.12 The role of superiors

Conversation partner see generally a key role with superiors (both political and non-political). While the political superiors have been dealt with already, now the focus shall be on internal leadership and superiors. This is a sensitive topic and, regarding satisfaction, there is a larger satisfaction with those within a tax office, the Head of the respective office included, and a major dissatisfaction with superior bodies, starting with the State Tax Office.

Up to the position of a Head of Department job applicants are called for with open bids and transparent selection procedures. But from the position of a Head of the local Tax Office and upwards the Minister of Finance decides about those who get the job. If then somebody suspects that things went foul can call upon courts to review such appointments, which is sometimes done and, if done, which is sometimes successful, i.e. the Minister has to withdraw his appointee and has to appoint somebody else. Of course, as a rule, it might help in Bavaria if one has the right party membership card. In a group discussions with members of different departments recall a number of senior civil servants who credibly claim not to be member in the ruling party, i.e. where the appointment apparently has been primarily based on merit and other credentials. Regarding non-political superiors, conversation partner argue that, and a rule of thumb, it is those who are closest to daily routine are most open for complaints and in their willingness to carry them upward in the hierarchy.

Here lies a problem related to the appointment to superiors: While it was normal in earlier time that superiors were appointed as they rose through the rank and files it is now more common that a law degree and theoretical expertise in administrative efficiency which are important criteria for leading positions. The need for more jurists is conceded by senior tax officials who justify this with increasing legal complexity of tax issues and therefore the need of legal competence to evaluate risk analyses, plan inspections and judge contested cases.

This in turn is criticized by employees in the departments. According to them, tax administration is seen to be of such complexity, that it is difficult for those “higher up”, who have no practical experience, to really understand its complexity in the daily grind. Institutionalized dialogue, e.g. via personnel representatives and trade unionists, is not seen to be adequate to transmit problems from those working at the treadmill. This results that many resign by saying: there is no point in arguing and complaining, which leaves few trying to get through with their views of that which is practical and not-practical, both regarding current directives and reform attempts. Those, eventually, are seen as the “usual few” whose opinion can be, since isolated, neglected. A very practical proposal by some was the desire to see some of those at the top to do some exposure or insertion in department in order to get a feeling for the real complexity of work. The following publicly quoted passage is one which I

heard frequently from my conversation partners in a similar manner: ‘Sometimes I think it would be good if a few of our chiefs would be foot soldiers. Then a number of regulations and benchmarking would be off the table.’⁹³

Last not least: When asked a former employee of the tax administration how he assesses the importance of membership in the ruling party he agreed that beginning at a certain position membership in the CSU is certainly helps to get a job. Accordingly, reports are rare, but still too frequent, according to which staff gets, ahead of checks of business or wealthy people, a hint “from above” not to check on this business or than person too carefully, even though no reasons are given. Here conversation partners feel obstructed in doing that which they are obliged to do by the law and that they are being told to violate the oath which the swore to serve the community. It is here, where overlapping exists between the administrative and political elite which is a particular problem in Bavaria, as will be shown in G/VIa.

4.3.1.13 Position of the Bavarian Court of Auditors

Given the strained situation, it is interesting to see that the governments’ supreme watchdog on spending repeatedly argues for an improved situation in terms of personnel.

In its 2012 report it says: The Court explicitly states that cuts exactly in tax administration do not serve the purpose of budget consolidation and needs to be exempted.⁹⁴ Building upon the 2012 report, the Bavarian parliament supports this analysis in a resolution from 23 May 2012 (Parliament Document 16/12598 Nr. 2 b).

In its 2013 report, it says that the mere acceptance of recommendations by the Bavarian Court of Auditors could generated surplus revenue of EUR 200 million by facing additional costs of EUR 30 million. Incalculable are the beneficial effects due to an increase of deterrence, which would greatly increase tax honesty (Bayerischer Oberster Rechnungshof, 2013, p. 86). The Court spells this out when examining the tax auditing department-

And the 2014 report explicitly tells the government that the solution is not shifting personnel around to places where there is the greatest need. Doing this, government is saving in the wrong places since more personnel in tax administration would generate more taxes than this additional personnel would cost.

Der ORH hält es für erforderlich, den Personalmangel in den Finanzämtern entschiedener anzugehen und die Besetzung der offenen Stellen weiter voranzutreiben. Nach Auffassung des ORH hilft es nicht weiter, Personal dahin umzuschichten, wo gerade der größte Mangel herrscht. hier wird an der falschen Stelle gespart. Mit mehr Mitarbeitern würden weitaus mehr Steuern eingenommen, als das zusätzliche Personal kosten würde. (Bayerischer Oberster Rechnungshof, 2014, p. 26f.).

4.3.1.14 Ageing, recruitment and dispute surrounding recruitment

As in Germany, also in Bavaria a number of employees are up for retirement and, therefore, replacement. Surprisingly, exact numbers are not known. Only informally, numbers

⁹³ ,Manchmal glaube ich, es wäre gut, ein paar von den Häuptlingen wären mal Indianer und würden selbst Hand anlegen. Dann wäre manche Dienstanweisung, mancher Leistungsvergleich, gleich vom Tisch.‘ Scholz, Chr. Was ist der Veranlagung noch zuzumuten? In: *Der Wecker* 2010/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

⁹⁴ (Bayerischer Oberster Rechnungshof, 2012, p. 61) .The Court stands by its recommendation, see: , Für einen kleinen Teil sei sogar der ORH mitverantwortlich, denn er habe immer wieder zusätzliche Stellen für die Finanzämter gefordert (vgl. z.B. ORH-Bericht 2012 TNr. 12).‘

could be obtained because a certain flexibility makes planning difficult: ‘2017 998 employees will leave, 2018 1089, 2019 967, 2020 812. Afterwards between 750 and 850 annually. If some decide to work longer the gap may be pushed ahead. If some go earlier, even accepting losses in salary, the gap comes early.’

Following the Court of Auditors position, the Bavarian State Ministry of Finance did indeed improve the situation: It reported to both Court of Auditors and Parliament, that, in the budget of 2009/2010, 500 new jobs were created in tax administration with the result that, for the first time since 2006, the total number of employees went de facto up 105. And: The household 2013/2014 provides funds for 200 more positions. In 2015, more options are being employed: First of all, obligations to fulfil quotas for cutting personnel are being postponed several years up to 2022, and additionally, temporary jobs are created in order to bridge temporary gaps. The Nachtragshaushalt 2016 provides for 200 of those “kw” (künftig wieder wegfallende) positions. Remarkably, however, in interviews the government operates with far more impressive figures. In an interview preceding state election in 2013, Minister of Finance Söder argues that the two increases in 2009/2010 and 2013/2014 sum up to 1,300 positions for civil servants and trainees. Right now, 2,000 trainees are in formation, and the plan is to employ an additional 800 new for both 2013 and 2014.⁹⁵ Also the Nachtragshaushalt 2014 permitted 125 new positions. (Bayerisches Landesamt für Steuern, 2014, p. 8)

Critics call this mathematics misleading by pointing the fact that these figures do not reflect a de-facto and real increase in personnel and a decrease in shortage, but contain largely replacement of those who leave the service due to sickness and retirement. This, however, conversation partners from trade unions is, at least happening and here the Finance Minister is doing what he promises. But this, of course, does not make up for the increase in workload. Also the number of 2,000 trainees needs to be seen differentiated since trainees can also be trained on new positions (*Planstellen*) replacing civil servants who appear elsewhere (again) in the statistics. Another problem with trainees is that they need to be trained for up to five years before they can effectively go to work.. If we are talking about a real increase in numbers, the figures of the Court of Auditors (i.e. 500 in 2009/2010 and 200 in 2013/2014) are closer to the truth. And regarding the 2,000 trainees currently in the Herrsching School of Administration: It is indeed true, that the number of trainees increased from 250 annually to 1000 annually. This number does not say anything about the output of those classes, because there is an alarmingly high failure rate among those trainees which cannot really be explained and where tax union wants to look into the causes: Rumour has it that the high rate of exam failure is also dictated by the desire to sort out a certain percentage early so that they must not be employed. ‘That’s also a way to save costs on personnel!’, cynics comment.

And indeed: The only certain promise the political leadership has for employees in the tax administration is that from now (2013) on every retiring civil servant will be replaced by a trainee⁹⁶ a link which is emphasized also in the annual report 2014 when the reference to high trainee numbers is quoted to mitigate fears relating to the admission that the Bavarian Tax Administration will lose ca. 50 percent of its personnel due to retirement over the next 15 years (Bayerisches Landesamt für Steuern, 2015, p. 8).

⁹⁵ Erhebliche Stellenmehrung in Aussicht gestellt. In: BfG Informationen 2015/8-9. Retrieved from [http://www.finanzgewerkschaft.de/bfg-zeitung/Landtagswahl extra](http://www.finanzgewerkschaft.de/bfg-zeitung/Landtagswahl%20extra). In: *Der Wecker* 2013/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

⁹⁶ Jüptner, R. auf Klausurtagung. In: *BfG Informationen* 2013/1, Retrieved from <http://www.finanzgewerkschaft.de/bfg-zeitung/>

For this and more reasons, the Court of Auditors is not entirely happy with the governments report, also, because in the near future a considerable number of qualified personnel will retire and therefore new gaps among the ranks will be opened. The Court promises, therefore, recurring examinations of developments in this sector for the future (Bayerischer Oberster Rechnungshof, 2013a).

On the whole: discussing adequately the plans of staffing in the Bavarian administration would be a time consuming full-time job because the positions of government and trade unions seem to talk about separate worlds (cf. for an illustration GER/II/8.4). It seems to be obvious for the researcher, that whatever improvements are planned and discussed here, they are in no way enough to cope with existing backlogs and shortages.

How easy and pragmatic it could be is demonstrated by the Bavarian federation of tax consultants: While government is proud to say in view of the 2013/2014 budget: ‘Derzeit befinden sich fast 2000 Kräfte in Ausbildung – eine Rekordzahl!’ (and trade union representatives caution that not all of them will finish training in the first place), the federation of tax consultants in Bavaria took in 3,439 trainees for formation.⁹⁷

4.3.1.15 Conclusion

The position of employees in Bavarian tax administration is extremely strained: Legal reforms are transferring additional tasks to the administration without increasing adequately the number of worker, a development in addition to more people and businesses moving to Bavaria and additional cases due to tax CD leaks. Legal reforms are complex and it is difficult to keep up with them, likewise the introduction of new IT modules and programs which first need to be understood, and next a lot of data has to be transferred from paper into the computer and hiccups within the system due to faulty data process. Add to this the training of new colleagues to the job and, of course, the regular workload. All this, especially the switch from traditional tax returns proceeding to new electronic methods and the additional work-time linked to it makes people deeply unhappy. Clearly, senior administrators are admitting that the situation is tense and not satisfying, but emphasize that all this is mainly a transitional period of work while at the end, once IT resources are equipped and running, more time is given back to employees to do their proper tasks. This is seen already in the Jahresbericht 2014 when stating that the average time spent on – e.g. – the income declaration of dependently employed decreased from 54 (2014) to 46.1 (2015) days. However: One could also bring counter-examples, for example the processing of self-declared tax declarations in the department of General Assessment: Here, the average time spent on processing those declarations increased from 65.3 (2014) to 66.6 days in 2015. Here the paper explains the development with increasing caseload and the fact that computerized processing does not yet unfold its advantages.⁹⁸ One suspicion could also be, of course, that self-declared tax declarations do not lend themselves to computerized processing and/or contain the risk of more mistakes which need to be followed-up?

⁹⁷ Minister Söder quoted in Landtagswahl extra. In: *Der Wecker* 2013/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html> . And: Jahresbericht der Bundessteuerberaterkammer 2013, p.37. Retrieved from https://www.bstbk.de/export/sites/standard/de/ressourcen/Dokumente/04_presse/publikationen/01_presse/02_jahresbericht/Jahresbericht_2013.pdf.

⁹⁸ „Ich bin nur noch damit beschäftigt, den Fall in die Maschine zu bringen, ich komme nicht zu meiner eigentlichen Arbeit.“ Quote of an unhappy employee, brought by Tax Office Vice President König in its Foreword (Bayerisches Landesamt für Steuern, 2015, p. 6). And: Defense of transitory extra work by Dr. Habammer, bringing in the end large relief: (Bayerisches Landesamt für Steuern, 2015, p. 34+37+41)

4.3.2 “Colleague Computer”

4.3.2.1 *Causes, status and plans of computerization*

According to conversations partners from Trade Unions, the Bavarian government is facing the following questions: How can we save on personnel costs, keep the number of personnel low and yet still collect requisite taxes or how can we replace highly qualified (i.e. expensive) civil servants by lower qualified (cheaper) employees and at the same time guarantee an equal and just processing of tax declarations. And: for the Bavarian government, computerization is seen to be the answer.

The Bavarian government is rejecting the view that the prime purpose of computerization is making staff redundant. Rather, Secretary of State Pschierer is emphasizing: the prime goal is to make employed staff more efficient, to abolish the practice of waving through tax declarations by checking every declaration following the principles of equality and justice.⁹⁹

This is confirmed at the level of senior administration. By now, there seems to be some realistic position in the assessment of what IT can do and its limitations.. In recent years, there was no talk that computer can replace employees but rather that it is aimed for, that computerization supports those employed in best possible ways in what they are doing.¹⁰⁰

On the whole it is difficult to assess the linkage between job reduction and computerization. The question resembles the puzzle whether the hen was before the egg or vice versa: Is there less staff because computerization permits this or was computerization required to bridge the gaps which opened due to staff reductions? This question is certainly more complex than a simple answer can cover.

As has been explained in 2.2 and 3.6, Bavaria invested a lot and invested successfully into computer software and electronic data processing and is at the forefront of the attempt to establish with KONSENS a nationwide unified program for all tax administrations in the Federal Republic of Germany. Within the KONSENS effort, Bavaria is both in the Steering Group and participates in six of the 11 sectoral working groups (Finanzverwaltung der Länder und des Bundes, 2011).

Regarding computerization of tax administration, Bavaria is seen to be on the leading edge in Germany. For example: Essential for the success of computerization is the availability of services. Here it is conceded even by trade unionists that Bavarian server time is close to 100% availability (95% in 2013), but a crucial problem is the availability of information elsewhere in Germany, where server (and accordingly information) are not available, delaying the processing of files and cases unduly.¹⁰¹

⁹⁹ Bergmann, J. Veranlagung “brennt“. In: *Der Wecker* 2009/12. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

¹⁰⁰ „Die EDV wird nie den Menschen ersetzen, aber es ist auch richtig, dass ohne entsprechenden EDV-Einsatz das Arbeiten nicht mehr vorstellbar ist. Deshalb ist es wichtig, eine optimale IT Unterstützung zu haben. Dabei geht es nicht nur um PC und Drucker oder Bildschirme, sondern um performante Systeme und moderne Verfahren. Unser Ziel ist hierbei aber nicht, fehlendes Personal zu ersetzen, sondern es dem vorhandenen zu ermöglichen, die tägliche Arbeit verrichten zu können. Ich denke, deshalb können wir froh sein, dass das hierfür notwendige Geld zur Verfügung gestellt wird. Ziel muss es sein, möglichst viele Routinefälle vom Bearbeiter weg zu bringen und von der Maschine erledigen zu lassen. Das ist aber nicht nur eine technische Herausforderung.“ The Vice-President of the State Office of Taxes, in charge of IT, König. In: *BfG Informationen* 2014/1, p. 9

¹⁰¹ ‘EDV im Brennpunkt’. In: *BfG Informationen* 2014/1, p. 1f.

Bavaria is investing a lot in the attempt to increase the number of electronically submitted tax declaration which then could be processed electronically. The attempt proves successful, as the following graphics illustrates: The number of electronic income tax declarations rose from 14 % in 2004 to 45% in 2012; 32% of those could be processed without any additional paperwork (Bayerisches Landesamt für Steuern, 2013, p. 109f.). Even though hesitancy on part of the population towards this increasing electronic processing is also considerable in Bavaria, the trend indicates a success story. However, there is room for improvement, which is why thoughts are circulating whether the use of electronic forms via the ELSTER system should be made mandatory, overriding hesitancy on part of citizens.

Next, the Vorausgefüllte Steuererklärung is offered to tax subjects and tax consultants as an option to faster work on their tax declarations and, at the same time, secure tax secrecy and accuracy. In November, the number of people using it passed beyond 1 million, in February 2015 the number increased to 1.366 million (Bayerisches Landesamt für Steuern, 2015, p. 112).

The best computerized system, however, is only as good as the data base is, and here the problem starts: So far, conversation partners from administrative departments and trade unionists argue that too many mistakes are within the data base which are in need to be sorted out and corrected manually, which is an enormous additional work without having additional personnel.¹⁰²

4.3.2.2 Risk Management, Risk Filter and “Nichtaufgriffsgrenze”

Since Risk Management is an important aspect of processing tax declarations, by now applied all over Germany, first a look at the reliability of this “flagship” of computerized tax administration.

4.3.2.2.1 The ideal

For the State Office of Taxation, computerized Risk Management as explained in 2.2.5 is adequate at least in the field of dependently employed tax declarations. It is seen to be a gain for equal and just treatment since it is able to separate those cases which do not require extensive checks from those who do require these checks.¹⁰³

Risk filter should ideally be able to find mistakes and omissions in the tax declaration, the computerized processing shall be combined with the subjective assessment of the tax inspector regarding the case at hand, i.e. whether the person is a reliable taxpayer or not. Depending on both factors, the case will receive a grade permitting a more generous and more expeditious examination in the years to come, which again should assist tax inspectors to concentrate on cases really meriting examination. New issues emerging with the taxpayer will be indicated nevertheless, and after four years the case will fall back to a regular examination just to check whether it still merits privileged treatment.

4.3.2.2.2 The problem of entering information

Trade unionists argue at times, things could be faster and better without computer than with it given the way in which things operate today: In early times, they received a tax

¹⁰² In: BfG Informationen 2015, 8-9

¹⁰³ Ministry representative in: Bergmann, H. „Die Arbeitsbelastung in der Veranlagung ist dramatisch“. In: *Der Wecker* 2012/12. Retrieved from <http://www.verdi-finanzamt.de/wecker.html> See also Civil servant of the Ministry of Finance. Quoted in: Bergmann, J. Veranlagung “brennt“. In: *Der Wecker* 2009/12. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

declaration on paper and could easily spot where there were “out of the ordinary” entries and act accordingly. Now, tax declarations are already to a large extent entered electronically, or they will be scanned, or they will be entered into electronic forms by employees.

Disadvantage number one: Scanning is not very reliable . Disadvantage number two: The documents are getting more and more detailed, because the computer, in order to work precise, requires detailed operating figures (*Kennzahlen*) which he then compares. For example: When there was in early times one post saying “work related expenses” it needs now to be spelled out into “business related journeys”, “office related expenses”, “business related acquisition of material” etc. All this makes a tax declaration more and more complicated and it is no longer possible for the tax official to have the entire document in front, but only segments shown on the screen which is difficult to work with.

Entering information adequately is not easy, and because the qualification of some of those doing it is not much above a super-market cashier they are disliked by tax inspectors: They are suspected to commit a lot of mistakes which is why this system won't work satisfactorily.

It is also easy to cheat in the field of turnover tax – and difficult to discover. Here data protection issues, federalism are in the way of potentially possible efficiency. For example, if a person enters by error or intent the wrong number signifying the business where the taxed subject is active and if this number is accepted unchecked into the computerized process, a lot of profit can be gained: The computer checks information only by submitting typical data related to the business. In one case, a person entered the number of “window dealer“ instead of “window cleaner” and was taxed wrongly for a long time – the error being discovered only by chance.

4.3.2.2.3 The advantage of paper

Conversation partner from various departments emphasize the importance of printed paper in front of them, enabling them to discover deviation and (likelihood of) avoidance and evasion (for examples see auditors, fraud, millionaires). Here an additional problem is that electronic tax declarations have a different makeup from earlier forms. Those followed common standards and every tax declaration looked alike, which made it easier to browse through. An experienced inspector could discover in the individual positions deviations alerting him to something worth checking. Today, only offer consolidated figures are shown on the screen, but not individual entries where discovery of deviation would be most easy to detect.

The original idea was that the electronic declaration would look exactly/similar to the paper version, but this is not the case. In order to discover avoidance or evasion, tax inspectors would have to print out electronic declarations or ask back to the tax subject or his lawyer for the submission of missing information – both creating extra works and delay which is not popular. The problem is here as generally, that the experience and the developed gut feeling of longtime employees is in danger of getting lost since it is no longer required to apply it to cases and leave the decision to computers.

This finds support in a comment to be found in a publication by trade unionists, using as example the form to be used when informing the assessment department of “excess income”, the “Anlage EÜR”: It is conceded that this electronic form contains some useful

features for computerized comparison, but ‘it is not useful to check value bases or even to prepare checks by tax auditors.’¹⁰⁴

4.3.2.2.4 Risk filter and required checks

So far, after some years of experimentation, the number of autoprocessed cases (*Autofallquote*) is still too low and not suitable to relieve tax inspectors from work pressure. This applies even in the area of processing cases of dependently employed.

Right now, if existing risk filters are too tight and produce too many alerts requiring checks in too many cases, administration takes the view that this is a transitional problem. Therefore they rather choose the option to adjust the risk filter (so that the computer waves through more deviations) than employing more tax inspectors which would be able to deal with the findings of the computer based analysis. For an intermediate period of time, conversation partner from various departments agree, this is the only solution possible, since new personnel first has to be trained. The danger here is, however, if due to changes to the Risk Filter the workload is getting better, one might conclude that the problem is resolved. This is wrong, because changes to make Risk Filters more generous imply the potential loss of thousands, millions or more Euro losses in tax revenue.

The various areas where Risk Management is employed are under regular surveillance by the Bavarian Court of Auditors, who annually lists weak points in the system:

In its 2013 report they focused on support payments (*Unterhaltszahlungen*), which are tax deductible up to an allowance of EUR 8004 annually. Whether or not allowances are correctly declared is checked by the computerized Risk Management System. A sample revealed that 47% of the computerized decisions were faulty (61% of the cases were payment went abroad, in 31 % of the cases where payment remained in Germany). The Bavarian Court of Auditors complains that this rate of mistakes is too high, especially since one faulty decision affects also decisions in coming years and that in one year alone tax losses amounting to double digit million Euros were lost. (Bayerischer Oberster Rechnungshof, 2013, p. 75ff.)

In its 2014 Report the Court of Auditor took a sample of tax declarations from dependently employed after they were processed by Risk Management and tax inspectors. The court found out that in 44% of cases risk indications have either been ignored or not adequately checked, leading to a minus of EUR 18 million. The court suggests a whole series of improvement (more training, supervision, controlling...), interestingly enough he does not call for more qualified staff (Bayerischer Oberster Rechnungshof, 2014, p. 97ff.)

The 2015 report criticizes two issues: First, the gaps which at times exist between tax and social security contributions de facto transferred by employer to the relevant institutions on the one hand, and the (larger) amount which employer certify as being transferred to their employed, who then in turn hand in this certification (*Bescheinigung*) to tax offices for refunds. In a sample taken from the years 2008-2011, the court found that those differences were not followed up at all or were not followed up adequately. In 2011, for example, 44% of cases identified were not checked. The Court did not quantify the damage arising here but suspects that it will go into the millions. The Court concedes that this difference might result from errors, insists, however, given the amount of potential revenue losses (since revenue

¹⁰⁴ ‘Die Anlage EÜR mag für das maschinelle Risikomanagement geeignet sein, für die Überprüfung von Wertansätzen oder gar für die Vorbereitung einer Außenprüfung genügen die Sammeldaten unter einzelnen Kennziffern in keinsten Weise.’ „Papierlos in die Zukunft!“ In: *BfG Informationen* 2013/5, p. 62.

here is the largest post revenue from income), a more thorough examination and improvements in computer software since, so far, only three tax offices are in possession of a piloting software which should improve the situation (Bayerischer Oberster Rechnungshof, 2015, p. 97ff).

On the whole, this situation recommends that in the middle and long run, one should adjust rather personnel to the computers capacities and efficiency, not in principle the computer to the personnel – otherwise too many hints will be missed, quality goes down and long-term deficits will increase.

4.3.2.2.5 “Wave Through Days”

There is vivid controversy about the existence of “Wave through Days” in Bavaria. The opinion depends first on the level of conversation partner in tax administration and second from how one defines “Waving through”. First of all, senior administrators reject the notion that there are any Wave Through Days in Bavaria and emphasize that every tax declaration is checked. This is certainly true if one is satisfied if “examination” refers to a quick check by a computerized system and a few minute follow-up by the tax inspector. The more relevant question is, however: How is the Risk filter defined, i.e. simply said what does the computer reject in a tax declaration because he assumes dishonesty, faults or deviation from the norm to be expected? And here it all depends of software programming, i.e. what is the computer able to recognize? And what kind of faults and deviation does he admonish and what does he ignore because of irrelevance, recommending not to follow it up (*Nichtaufgriffsgrenze*). According to those criteria, and here are practitioners agree unanimously, there are of course as many Wave trough Days in Bavaria as elsewhere in the republic.¹⁰⁵

Risks implied in the official and unofficial definition of *Nichtaufgriffsgrenzen* has been examined in more detail by the Court of Auditors in 2016, looking at the processing of Rentenbezugsmitteilungen (RBMs), cf. 4.3.2.3.2. Here, first of all, apparently there was agreement among the Federal Ministry of Finance and the 16 State Tax Offices to exempt all cases worth less of 200 Euro surplus payments from computerized checks, and additional to exempt cases below a revenue potential of 500-1000 Euro from further checks by tax officials, the reason being that otherwise the processing of tax declaration would no longer be possible due to the excessive workload. As to the latter, the State Tax Office denies to have proposed this threshold to lower level tax administrations and that it were rather those local offices taking that decision. Independent from the question who did it, the Court of Auditors criticizes that those practices violate the equal treatment of taxpayers and bear the risk that too much revenue is simply forfeited and this given the fact that the population segment receiving rent and pension is increasing over the next years. The Court therefore asked, and the government promised, to improve on this issue (Bayerischer Oberster Rechnungshof, 2016, p. 135ff.). However: it was left open how this can be done without employing more personnel – one guess being, of course, that plans to further computerize the processing of tax declarations might be the way out. Given all that is known so far about computerized tax processing, however, would suggest that the risk of revenue loss is not removed by that plan.

According to conversation partners among tax consultants, the situation is worse than even the Court of Auditor assumes: In some areas, the threshold for *Nichtaufgriff* is at times even higher than that which the Court stated in his report. This in turn would consolidate the

¹⁰⁵ A public statement on this issue is: Bergmann, J. Veranlagung “brennt“. In: *Der Wecker* 2009/12. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

risk that a lot of potential revenue gets lost. This would certainly support Court of Auditors assessment that computers are not able to replace personnel (Bayerischer Oberster Rechnungshof, 2012, p. 59), even more if it is true that computerized risk management causes higher losses in revenue as wave-through days do.

4.3.2.2.6 Adjusting filters and limits to self-learning

The big question is whether (and how far) those problems can be minimized or even excluded in future, as it is the hope of superior tax administrators (Schüller, 2013, p. 30). Experts comment as follows: Data-mining tools can be of help in two ways. If those tools analyze quantity and quality of those “red flags” with which Risk Management refers cases to tax inspectors for examination, those tools can propose two ways forward: First, they can propose new automation rules which from its implementation onwards will include these problems in computerized risk management. Or they can propose guidelines on how tax inspectors in general can handle this and similar cases when need continues to check on it manually. There are, however, limits to “self-learning” of data mining programs: Whatever improvement to computerized Risk Management is possible is limited to “local optimization”, i.e. optimizing within a given set of rules. The computer will never be able to see the entire picture and develop or deduct rules and solutions from there – this will be always left to the human expert. To put it differently: Computers are good at analyzing data, but not in comprehending the essentials. In the words of one researcher, who also worked that field: ‘You can type a joke into a computer and he can find out a lot about the words. But he will never be able to laugh, that way missing the most important part of our work!’ In yet other words: there is self-learning within certain parameters, but it stops if input from the programmer stops coming in. It is here, where the importance of “gut feeling” comes in, which is further detailed below in 4.3.2.3.).

4.3.2.2.7 Latest developments

The latest status is the attempt that in the course of the Modernisierung des Steuerverfahrens – Program (Bundesregierung, 2015b) as many tax declarations as possible are processed automatically (vollmaschinelle Bearbeitung). For that purpose, by now, version 2.0 of the RMS software is installed. Three elements of its functioning are known by now:

First of all, arising from the previous history, the computerized system categorizes every taxpayer into a risk category depending how reliable and honest he was in the past. From that, four categories will be established of which category 1 signals least, category 4 highest likelihood of cheating and the latter signals the cases which the employee has to check himself. Category 4 cases will also be forwarded for manual checks again automatically in the year(s) to come. Cases in category 1-3 are checked less and no mistakes in one year increase the likelihood (or danger) that they slip manual check also the following years.

Second there is the plan that those whose income is above EUR 500,000 will be checked more closely than those beneath – which would be a good thing to happen.

Third, the program looks whether there anything regarding expenses and deductions is different from the years before. Here, however, one computer registered could mean that it will be accepted also in the years to come since it is not a deviation from the previous

In order to preserve fairness, also a chance sample of tax declarations is picked by the computer and submitted for manual processing by the tax official. Here, right now the target is 2%, but it is still disputed how large the sample of chance submitted tax declarations will be.

4.3.2.2.8 Combining computerized and personalized checks

It is not possible for tax inspectors to fulfil adequately the obligations of checks required by the Risk Management System given the limited time frame they have for processing each case. For that reason, at best a sample check is possible before one needs to move on to the next case. Hence there is no gain of time, but rather a lack of carefulness and attention which each case merits.

The Court of Auditors also sees the need to stick to a combination of computerized and personal processing due to the complexity of a number of cases: 2009, and again 2014, the Court criticizes that in spite of the electronic processing of tax declarations (*E-Bilanz*) Personengesellschaften (unincorporated businesses) in the form of partnerships and of more than 10 partners are still required to hand in paper documents. The Court also criticized that processing is still so complex that more checks are not redundant, but urgently needed. (Bayerischer Oberster Rechnungshof, 2014, p. 93ff.). This view is shared by the Federation of tax Consultants and the Head of the Bavarian Finance Trade Union (cf. 4.3.2.5).

There are some tax offices in Bavaria experimenting specifically with a combination of computerized Risk Management and subjective assessment of tax inspectors in order to increase the number of those cases which can be processed automatically and thus allows tax inspectors time to concentrate upon those cases who merit examination.

One conversation partner is even more radical in his proposal: To him the present system requires too much personnel working superficially on too many cases. Why not, he is asking, considering a change to the US mode, which is both indicator and chance-sample based, thus enabling more thorough controls of a smaller number by, at the same time, obtaining a higher degree of deterrence, that way increasing tax honesty.

4.3.2.3 Departmental views of computerization

Considerations follow regarding specific aspects from different perspectives and sectors of tax administration:

4.3.2.3.1 State Office of Taxes

Even the State Ministry of Finance and the State Office of Taxation admit that computerization as such is not a success story alone and that the hopes of some might have been too high when envisaging its introduction. This is confirmed when reading the 2012 Annual Report of The State Office of Taxes: The report mentions the need to introduce “annually” new programs and to update existing programs, that those programs are “very complex” due to the complexity of underlying legal norms and that there are “mistakes” in the system – even after a piloting phase to test systems (Bayerisches Landesamt für Steuern, 2013, p. 27).

Equally the president of the State Office admits the need for both improvements and more staff: It would make little sense that electronically filled out forms need to be printed out by employees first before they can be processed and he also admits that Risk Management has its limits. Computerization of tax administration should not be a burden to its employees which is why he pledged that the number of cases which employees have to cross-check will have to decrease.

The most interesting contributions here were the prefaces by Mr. König and Dr. Habammer in the Jahresbericht 2014, who both admitted the difficulties in the operations of the system, the extra work for learning operations, extra work of entering data, extra work for

training others and who still upheld optimism that eventually all this will save time. In the prefaces it was mentioned that tax administration is the only public authority making use of computers and IT to a comparable extent. Why this is the case was not explained. Further down, a study was mentioned which has been commissioned by the State Tax Office. (Bayerisches Landesamt für Steuern, 2015, p. 49f.) Information about the outcome was pretty scarce. It was admitted that, in comparison with other states of Europe, Germany is the only country applying automated data processing of tax declaration and that there are admittedly some deficits regarding analytical tools and insights regarding the mass of data.

The scarcity of data prompted to a mail both to the State Office and some informal conversation partners within the departments. The reply by the State Office was extremely short and banal. Other conversation partners admitted the existence of the study, but denied (credibly) knowledge of its content and promised to find out more.

4.3.2.3.2 Assessment Department

The situation of the assessment department is crucial. All tax declarations, not only those of the dependently employed, but also from businesses and millionaires, are processed here. If, therefore, some suspicion is raised here, there is an additional chance that the case is going to investigative departments.

Even in the Assessment Department, dissatisfaction with computerization is not in principle, but qualified. If certain conditions could be met, satisfaction here could increase.

A first criticism is of a more general kind and not necessarily linked to computerization. Here it is argued that if new tasks are assigned to the department they need also new staff. Only then the workload can be processed adequately. This complaint normally refers to the transferral of ELStAM tasks to the Assessment Department, even though they did not even get part of the staff which could be saved at the registration office which previously was in charge. The Bavarian Court of Auditors also examined an additional workload to tax administrations in its 2016 report when examining the Rentenbezugsmitteilungs(RBM)-verfahren which should secure the taxation of income from rent and pensions: Here the workload required the processing of an additional 4.1 million RBMs in 2005, a number which rose to over 5 million in 2013. Clearly, this additional workload could not be processed without concessions. Here, the State Tax Office pre-processed those RBMs after arrival before forwarding them to the local tax offices. The State Office gave as guideline that only those cases should be checked manually if a tax surplus payment of beyond 200 Euro annually could be expected. All those below should be ignored. The Court of Auditors found out that already the pre-processing of the State Tax Office was faulty in 33% of all samples, resulting in a potential of loss of revenue. Beyond processing, checks should only be conducted in cases where revenue collection of more than 500 or 1000 Euro could be expected. Again, those below should be ignored. Here again, the entire sample suffered since there were already faults in the pre-procession by the State Tax Office. The Court of Auditors came to the conclusion that this system did not only risk a high loss of revenue, but also a violation of the principle of equal treatment (Gleichmäßigkeit) which is required in accordance to § 85 AO. (Bayerischer Oberster Rechnungshof, 2016, p. 131ff.)

A second criticism refers to adequate training and transition times, which is needed to familiarize oneself with new tools and situations. Certainly, there are piloting test phases and projects, but given the complexity of affairs it would be prudent to have a second testphase within the entire system before it is implemented in serious. This would give more time to detect weak points and more time to learn and practice it.

Regarding reliability of computerized case assessment, the often-quoted reference number is from 2007 and refers to the processing of the simplest category of tax declarations, namely that of dependently employed. Here it was said that computerized assessment is adequate and correct in 25-30% of all cases, while an additional 15-20% can be worked upon in a fast track procedure by the tax inspector. The remaining cases would still require careful treatment.¹⁰⁶ Conversation partners from the assessment department are more sceptical given their daily work experience: In one case the conversation partner supported largely the official estimate by saying: “Yes, as a rule of thumb, the official has to devote 60% of his time to process tax declarations and 40% on checking on problems arising from them.” He added, however, that, if the manpower in a department is running at 60% only because urgently needed people are not at hand (cf. 4.3.1.2+3), the caseload is higher than the average caseload should be. The increasing caseload (since all cases needs to be processed) has as consequence that fewer checks are being done and more computer-generated mistakes simply slip through. Another conversation partner sets the quota much lower: According to his experience, merely about 10% of all tax declarations can be processed without being checked, while all others raise alarm of some sort or the other and need follow up. Here the effort varies from 5 minutes at the lower end, two weeks on the higher end. . All this, however, is even more optimistic than the head of the Bavarian Finance Trade Union, Wipijewski, states publicly when he asserts that 95% of all processed declarations require follow ups (cf. 4.3.2.5).

Conversation partner across departments emphasize the importance and superiority of “gut feeling” over number crunching computer. Gut feeling, however, is something, which needs to be taught and grow: A tax inspector (a.) needs experience and (b.) time to apply his experience. In principle he is still permitted to check declarations after the computer rendered its verdict, but given the caseload he rarely has capacities to do it. *If, however, he has some suspicion and can pass on the case with his suspicion to the tax auditor it is a widespread experience that those cases normally generate more surplus revenue than cases which are merely passed on by the computer for inspection.* Given the directives by superiors to tax inspectors, that they have to follow up only that which the computer indicates, is also comforting: This permits the tax inspector to leave the case at that and not bother an own double check. If later some discovery is that something has been missed, the tax inspector will not be blamed if he acted according to the directive. But it is a pity if experience gets lost and therefore knowledge and surplus revenue. Right now, there are still a number of experienced tax inspectors around who are able to cross-check tax declarations even if the computer has decided already. This gut feeling and experience is in danger to get lost. This means that in future maybe tax declarations are indeed processed according to the rules and norms by young, inexperienced inspectors, but no longer that will be discovered what now regularly is discovered.

The assessment of practitioners is supported by academic research: Enrico Schöbel of Leipzig University evaluated data from Assessment departments and emphasizes the parallelisms between the gut feeling of policemen and that of a tax inspector: It is due to experience storing information via unknown processes in the deep-conscious of a person which tells a civil servant whether something is wrong here and needs closer inspection. With tax inspectors, the chance of developing the gut feeling for something to be wrong is even more likely than with police: Tax inspectors have a long term relationship to their cases and they can compare their cases with related and similar ones, while police have to develop

¹⁰⁶ Weigel, W. Vom Alltag eines DUNAN Liberos. In: *Der Wecker* 2007/4. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

profiles of suspect from scratch in each case. Clearly, the anti-corruption regulation guidelines in Bavaria, implying rotating of cases, destroys this kind of emerging knowledge. But 7 years working at a file will still give a better insight in the situation than the best computer can ever calculate. According to Schöbel it is important to listen to this experience because it is an important contribution to treat tax-payer fairly: Tax morale in Germany is relatively high. If tax payer are wrongly accused that they are cheating because (e.g.) their tax declaration was examined with the wrong methods this would impact negatively upon tax honesty – exactly the opposite which is aimed to achieve via computerization of tax administration. The problem of this study is: Its database is from an empirical project done by the Lower Saxony Tax Authority in 2003, long before automated Risk Management came to full fruition. However, conversation partners to this study confirm its findings even today, 12 years later, including the comparison with police methods.

The best view, suitable to sum up the position of what can be said on part of the Assessment Department has been concluded by a senior member this department semi-officially, namely: There are indeed and admittedly some things computer can do better than people, i.e. comparing numbers. Take, for example, the comparison between what employers report to the tax office with the notes employers give in terms of attestation to their employees for their tax declaration: If discrepancies arise here you can work on it from the desk in the office by phone and there is no need to go out. However, the machine cannot really understand why numbers diverge from each other. There is an explanation given by the taxpayer, the machine ignores it and the tax inspector has to check it. So not much time can saved here. It comes down again and again to the simple fact that the machine does not have intuition and the problem with the present system is that a tax inspector cannot exercise his intuition and experience.

4.3.2.3.3 Tax auditors

Tax auditors see most of all the potential inherent in computerization to manipulate tax base and prohibit tax auditors from finding out. In turn this means that computer skills are without alternatives for tax administration as well, since otherwise they cannot discover nor cope with developments.

Here the problem are not small and medium businesses are limited since they have not enough resources for own software and own specialists which is key for manipulation. They rather use companies and standards like DATEV. The problem are the bigger companies and the more complex a business in its diversification of products and branches is the more complex the accounting software, the more the opportunities for manipulation it. Given the existence of Phantomware and Zapper-programs, manipulation today is not merely possible within the annual accounts. It is also possible to manipulate backwards with a mouseclick and make numbers match in retrospect. At first sight, every business accounts look nice. Whether something is wrong or not can only found out by experience and gut feeling: Only if this feeling rises alarm, a thorough, skill-based examination will start in the first place. In a semi-official interview, a tax auditor explained that he starts his checks by asking questions such as: “Where would the owner have chances for trickery?” “How would I do it if I were in his place” “Where are unusual figures, different from other businesses, different from this business in earlier years, mismatches...?”). Having asked such guiding questions, he has a feeling where to start taking samples and making comparisons. Here computerization is at best support, but not a real assistance for work since issues at hand are too complex. If things are really getting tough, because a business is also active abroad, additional support and expertise can be called in from the Overseas-Department.

A major problem in Germany is seen to be the number of software which can be used by those who can afford them to do their books. While there is in France one software for the balance of workers' salaries, in Germany around 300 are on the market. If in Germany a tax auditor visits a business, he first needs to convert their accounting into a program which then can be read and operated by the tax administrations risk analysis software. This is sometimes not possible to a satisfying extend.¹⁰⁷ For that reason, there should be a legal requirement for using unified technical/software standards doing these accounts, i.e. not just prescribing what needs to be done for proper accounting, but also, how and with what unified standards it must be done. Right now, only the first is prescribed, which leaves still enough room for individual "design".

4.3.2.3.4 Tax fraud department

From the view of tax fraud investigators, the value of computerization must not be overemphasized – not even high-tech software, as was explained in a semi-official interview.

First of all, the other side, those whom they chase, is always ahead: They scan every newly passed laws, look for loopholes, they develop a software, they check and employ it, they use it for accounting or tax declarations. When the tax declaration comes to the Assessment Department or if the tax auditor goes for checking, perhaps 3-5 years have passed already. Then it depends, when the problem is identified and verified. Then we evaluate it, teach colleagues about it, start looking for it systematically: By then up to 8 years may be gone, and if in cases, where the manipulated software has been employed, the business is bankrupt of the owner has disappeared we cannot prosecute the case.

For this reason, secondly, it is their experience that in most cases not computer software finds the problem, but the skilled and suspicious inspector or tax auditor and fraud investigator which only then enables us to adapt or apply our computerized search programs.

Therefore and thirdly, one needs to see the difference between administrative and police work: In the latter field one has to recall the importance of (paid) informants, whistleblower and "Commissioner Chance", all of which assist much more in detecting fraud than the best software of all. For all these simple reasons and in spite of computerization, more investigators are needed to look more intensively into more tax declarations and businesses are much more important to increase the likelihood and speed of discovery than investment into more software. Computers are a valuable asset to support detectives and investigators but they will never replace them. 'I always tell young apprentices: Of course you can take the electronic account of a business and evaluate it using all means available for automated checks. But much better is to ask for 5 folder of receipts and just browse through them leisurely, but attentive. Having done that you will have a feeling whether the person giving you the electronic account is careful, scrupulous, sloppy or whether you sense criminal energy and intention. And: Only then you know whether it is really necessary to spent time on the electronic account!'

Bavarian partner deny even a pressing need to coordinate the diverging investigative programs for tax fraud investigators in Germany. The summary of lengthy explanations by one conversation partner from the tax fraud department reads as follows:

Yes, there is a variety of programs in Germany. In Bavaria it is EASyS. Gradually, all relevant authorities are linked, e.g. police, finance administration, prosecution. But there are still limits

¹⁰⁷ The lack of „Importschnittstellen“

of what anybody can see since, e.g. tax secrecy and other stipulations of data protection still apply. Exchange with other *Länder* is via phone and mail, but this is OK because especially in the field of fraud investigation the mere look at data is not helpful: You need to interpret it. I realize it when I need information about a case and look into the computer file accessible in Bavaria: I hardly understand a bit. I need to call the civil servant familiar with the case who knows the person and can give me a story. Similarly: If I investigate something in Gelsenkirchen, the civil servant there knows circumstantial items which are not in the computer. Equally, if he investigates here we can tell him whether houses in X street indeed contain Y company and whether there are indications that it is a shell company. If we had a unified data base, I could get access and look at data, but in order to understand and interpret it I would still have to travel there and look, which wastes all the time I had saved when looking directly into the Gelsenkirchen data base. Reversely: Exchange of information to the colleague may take time, but his knowledge on the spot saves me a long journey.

4.3.2.3.5 Personalräte

Regarding the study commissioned by the leadership of the State Tax Office (cf. 4.3.2.3.1), representatives of employees were puzzled since they were kept in the dark about it. When asking around, they admitted, that they only knew about the fact of the study, but not about its content. Efforts to obtain a copy were delayed to the point that the request eventually was forgotten – as mails to researcher explained with regret.

4.3.2.4 Does the tax administration need own experts?

Computerization is as good as the people are who do the programming of software. Given the complexity of German tax law and the problems regarding administration and enforcement: Does the public tax administration need own experts or is it not better to purchase or lease expert software?

Arguments in favour are: Only if you have worked at a tax fraud department or at tax auditing you know, what software needs to find out for you if you check a business account. Commercial programmers, who have no practical skills can't do it. And: They could not be supplied with criteria and facts to improve their understanding due to tax secrecy related issues. For that reasons they need to train and employ own people. What is possible is that you purchase commercial software and only modify and operate it so that you save some costs – what has happened, for example, in the case of Idea and EASyS.

Others reject this view and do not think that tax secrecy is a reason since quite a number of algorithms of the Risk Management are known outside anyhow. For sake of comparison, they think that also the producer of Atomic Power Plant does not develop all the relevant software with own experts. They rather invest in nuclear engineers, which is their core competence. They certainly also buy or lease software from professional producers and at best modify it to their use, but do not develop everything from scratch.

Both experts from within tax administration and outside expert who cooperated with tax administrations own IT experts emphasize that there are qualified people working in relevant departments, even though payment is worse than in the private sector. As to the case of payment some senior administrators among conversation partners do not see an obstacle due to the high motivation of tax officials in their job. According to their opinion, they do have good people and train them and they can see that after completion they do not go into private sector. In the words of a senior member of the tax fraud investigators department: 'There are people believing in what they do and money is not all there is.' And private sector observers added that for some family life, and therefore less working hours and more free time, is more important than money which is why public service is still attractive. Other

conversation partner, also from senior management, admit, however, that tax administration has a problem here since at times working hours are also long and then payment as compensation comes in as an important factor. The same applies for experts in the area of transfer payment, where tax administration has to compete for the same persons as the Big 4.

4.3.2.5 Discussion

In the overall evaluation, the Bavarian Court of Auditor agrees with Trade Unionists in many areas. The **Court of Auditors**, for example, stated in its 2012 report that computerization is only a minor relief for personnel working in tax administration because findings based on computerization need cross checking and verification in order to avoid mistakes (Bayerischer Oberster Rechnungshof, 2012, p. 55f.). And the 2013 report took the view that it is not recognizable if (and when) computerization can be an adequate replacement for experienced staff (p. 85), that there are too many mistakes in electronic processing (p.76) which then staff is unable to follow up (p.86), which is a violation of every principle which should be applied to the treatment of tax related issues.

Trade Unionists agree by saying that a working Risk Management is certainly better than Wave-Through-Weeks, but only if it works accurately and properly and really supports or even relieves employees from tedious work.¹⁰⁸ However, the Bavarian Finance Trade Union demanded at its annual meeting in November 2013 that computerization must not and cannot be an excuse for not employing more personnel in the tax administration. Heavily applauded by the attending civil servants, the Trade Union Chairman argued that computerization in its present status is more of a burden than a relief.¹⁰⁹ This view has been upheld two years later: In the editorial of the May 2015 edition, Chairman Wipijewski explained that scanning is not reliable and that to his experience 95% of all tax declarations continue to require attention of the tax inspector, which is a percentage even worse than said in informal talks with conversation partners. Wipijewski appeals for a new sense of realism, that there are no foreseeable efficiency gains by computerization, but rather losses of tax revenue if optimism towards computerization on the political level will be upheld uncritically and ignoring the facts of practical day to day work.¹¹⁰

Trade Unionists fear a number of negative consequences arising from an uncritical continuation of risk management:¹¹¹

- Abandonment of a fair and equal examination of cases: If risk filter are re-programmed in such a generous way that the likelihood increases that a number of tax declarations sails through unchecked it would result in the abandonment of the principle of equal treatment of all tax declarations
- Pressure of superiors to achieve a high *Autofallquote*: The might be the temptation of superiors to pressurize his employees to award the highest quota more often than justified in order to improve statistics. It remains to be seen whether this can be counter-balanced by internal controlling.

¹⁰⁸ Bergmann, J. Veranlagung "brennt". In: *Der Wecker* 2009/12. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

¹⁰⁹ Eisele, M., Munich, „Expedition ins Land ELStAM“ and Niefnecker, A., Nuremberg, „Zwei Tage im Finanzamt“. (2012, March). In: *Wecker*. Journal by ver.di for employees in the Bavarian Tax Administration. p. 3f. Retrieved from <http://www.verdi-finanzamt.de/wecker0312.pdf>

¹¹⁰ Effizienzgewinn immer schwieriger. In: *BfG-Informationen* 2015-5, p. 3

¹¹¹ For the following: „Am Schreibtisch überwiegt die Skepsis“. Das Verfahren „RMS Datenblatt“ vor dem Flächendeckenden Einsatz. In: *BfG Informationen* 2015-3, pp. 18ff.

- Loss of expert knowledge: Given the high fluctuation of tax inspectors, knowledge regarding cases and taxpayers will be lost.
- If this model proves to be seemingly successful, even though it may be achieved by intentionally high numbers of *Autofallquoten* and without being justified, it might tempt administration to dismiss tax inspectors with the risk, that even less employees will be around to detect cheating and follow up suspicious indicators – a vicious downward spiral.

The **tax consultants federation** sees that the time saved via computerization is eaten up by the increasing number of tax declarations in Bavaria, the complexity of cases, new tasks etc. Not surprising that tax inspectors are increasingly under pressure and increasingly unfriendly and uncooperative since they lack time to listen to arguments and see valid points. This unfriendliness and lack of cooperation is seen to be another reason why the number of appeals and court redress is rising.

4.3.2.6 *Justice issues: Leaving the state to computer*

A major problem in the discussion is the question whether it is permissible to give computerized processing so much power in an administrative activity – this causes constitutional problems. Right now, there are two problematic elements in the process: First the guidance of tax inspectors by their superiors to focus upon that which the computer indicates for checking and to abstain from own checks, second, the inability of tax inspectors due to inadequate staff levels to exercise their own options for checking in the first place and/or to follow risk indications signalled by the computer in an adequate way.

Even in the ideal way, i.e. continually improved risk filter combined with subjective assessment, the present model does not work satisfactorily, for two reasons: Limits to the accuracy of computerized programs with the risk, that many mistakes or omissions are not accurately recognized and revenue is lost. This is made worse due to the lack of time on part of the inspector to detect avoidance and evasion, and even more, to follow up adequately that which requires checking.

Here, legal clarity is aimed for in order to replace the general obligation of tax officials to check each and every tax declaration (*Amtsermittlungsgrundsatz*) by a more efficient and economic proceeding: Via a reform of para 88+89 AO it shall be stated that the computer will select those cases which will be up for a personal check by the tax official, all others then will be fully processed and decided by the computer. This would imply that in the case of fully computerized decisions the finance authority no longer has the duty to counsel and advise the tax subject on fiscal matter. This provides *Rechtssicherheit* for civil servants, but is it good for the tax subject? Tax consultants are sceptical whether tax subjects then are able to handle their tax declarations correctly and demand the publication of the risk filters programming, which is, of course, out of question. Also experts dealing with constitutional law are sceptical if the tax subject has not even the option to call for a personal check. Here one way out could be the option to tick a box requesting such a check. Here, however, the result could be that, in the end, no improvement to the work load will happen since everybody will tick this box just to be on the safe side.

Another aspect is seen in the situation, that those who are better off can be advised by tax consultants and lawyers. Here some conversation partner from tax administration suspect that tax advisors and lawyers know about programming and working of Risk Filter. They therefore are able to advise their clients in a way that they can adjust their tax declaration in a way that the Risk Filter will not recognize their cheating. Tax consultants are able, they argue,

to compare computer-processed tax declarations of several clients and, from that comparison, are able to deduct how the risk management computer is working. ‘Tax consultants know more about our cases than we do’, was mentioned several times, , an allegation which is shared publicly by trade unionists (Conradi, 2013).

This assessment is rejected by tax consultants: Their work-pressure and caseload is equal to that of tax inspectors, they face similar problems given the need to constantly adjust to changes and they cannot dismiss and engage clients so that they fit their workload. For that reason, they don’t have time to compare cases. Of course, one could commission a research project to find out, but here data protection, obligations of tax secrecy and professional standards prevent this from happening. On the contrary, they argue, that a greater familiarity with the Risk Management System could assist them in preparing tax declarations in a way which is in conformity with law and procedures, hence contributing to a more equal and just taxation of people. After all, they, too, are obliged to care for an adequate taxation and therefore a positive compliance factor. For that reason, a positive inclusion of tax consultants into programming of Risk Filters would be a contribution to lower the work burden upon tax inspectors (Drüen, 2013).

The view of this research project is: Looking at the cold-bloodedness with which the Big 4 misuse their inside knowledge about tax laws for advising clients regarding tax saving options, such encouraging aggressive tax avoidance (see GER/VII/2.3), it seems to be a reasonable assumption that at least some part of the tax consulting profession would mis-use any knowledge about the ways, risk management is operating. Profits are simply too high and temptation too big.

4.3.2.7 Conclusion

It is important to note that nobody rejects computerization as a matter of principal. Everybody sees it as an unavoidable development with which tax administration has to familiarize itself and which can be of support. Regarding “faultiness” of the systems, there is also agreement that not everything is due to technical deficits: Every computer is as good as those programming it and every computer is dependent on the data which is fed into it and here mistakes are possible in all submissions and feeds by tax subjects, tax consultants and tax administration employees. Worse: not only current data is important. Differing results are also possible if somewhere in the past wrong data is included, influencing processing during time.

Most importantly remains the question whether computerization creates extra-work and problems only temporarily (which therefore does not really require more personnel) or whether complexity of programs, procedures and object matter still requires more personnel. And, linked with that, is the question of quality and reliability of the programs:

Here it is still held that programming and re-programming risk filters is seen to be more dangerous than wave-through days in earlier times. Semi-official practitioners agree totally with the assessment of the Federal Auditors Court given above for checks on dependently employed (2.2.5.3), namely that the computer-based “risk management” is, on the long run, more dangerous as far as revenue are concerned as simple “wave-through” days. Also public statements of the Chairman of the Bavarian Finance Trade Union about mistakes of computerization and the need for follow-ups should raise alarm (4.3.2.5.). And: If this is the case with simple tax declarations, the likelihood, that risk management is incapable to handle complex cases, is even higher. The following public statements make the point: ‘The

sun is shining nice and bright – just close the case – it should be right’.¹¹² At the price to loose revenue.

Tax inspectors in all departments are bothered by serious questions arising in the area of law, work ethics and daily toil: Legally, they are obliged to examine each case more or less thoroughly. If they would do everything which the computer tells them to do after a first computerized check, they are no longer able to do everything in a thorough manner, only for the price of lowering standards of checks to an extent that equal treatment is no longer the case. Linked to this is another problem, namely that in the case of inadequate verification options there will be a tension between the judgment of a machine (which shall be binding for that which is followed up by the civil servant on the one hand), and the final responsibility of the tax inspector for the decision which he signs with his name by that expressing again the responsibility for the administrative act which de facto has been executed by the computer. Equally uneasy they are if they ignore the machine judgement and follow instead (unauthorized) their gut feeling, only pretending to check on other items as required. But as the sub-chapters detailing views from the Assessment Department, the Tax auditor Department and the Tax Fraud Investigation Department (4.3.2.3.2.+3.+4) made it clear, “gut feeling” is still essential for the adequate processing of tax declarations, especially for detecting avoidance and evasion – that which tax inspectors see as an essential part of their legal obligation and work ethos and task as civil servant.

A common complaint in all departments is that the introduction of computer requires a lot of additional work along the regular work and that more piloting and training would be nice. At first sight, this is a passing burden. One has to remember, however, that in almost no case hopes and expectations in computerization were fulfilled immediately, i.e. the likelihood is considerable, that those transition processes will remain an additional burden for some foreseeable future (until systems finally work the way they are hoped to do). This is even more likely given the fact that computerized processes need adjustment in case of malfunction or in case new laws and regulations need to be incorporated in the processing.

Other problems arise from the variety of software whose use is permitted in Germany and which is one weak point enabling avoidance, evasion and the detection of it. Here tax auditors recommend, the legislator could limit options similar to France (which is rejected by politicians due to the free choice among market options) or better equip relevant departments with personnel, having adequate time to handle this variety.

Concluding, therefore, the following questions can be answered:

1. Does computerization make the work of tax officials more efficient and easier?

Yes and No: It saves certainly time in processing tax declarations, preparing cases for investigation and evaluating their results.

On the other hand it also creates a lot of work which has not been there before, e.g. due to complex technical requirements and many risk indicators identified by the computer which would have immediately discovered to be irrelevant and discarded if an experienced

¹¹² „Die Sonne scheint zum Fenster rein – haks ab, es wird schon richtig sein“ „Der Beamte trägt für die Rechtmäßigkeit seiner dienstlichen Handlungen die volle persönliche Verantwortung.“ Bergmann, H. „Konkursfall“ Veranlagung. In: *Der Wecker* 2007/4. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

tax inspector would have worked with paper forms. For any tax inspectors working in the field, improvement in data bases would be helpful, e.g.

- a working centralization of computer services and data bases.
- better access and search programs regarding fast changing national and international laws, their regulation of application by administration and legal interpretation by courts for employees of tax administration.
- Search engines could be improved: Right now, they are such that it is a matter of chance whether one finds something worthwhile. If you enter “Hauptstraße”, it might find what you look for. If you enter “Hauptstr.” Or “Hauptstrasse” the computer fails.

2. Does computerization save costs?

Yes and No: It saves costs in certain categories, e.g. for some jobs personnel with lower skills can be employed (e.g. DUNAN people¹¹³) whose number eventually can even be reduced: Once a case is entered into the system it only requires maintenance which saves a lot of time. Conversation partners at the tax consultants federations counter, however, that computerization requires higher qualification, which at least among tax consultants kept savings and higher spending on balance. Here, too, the allegation needs to be seen that computerized risk management is, in the end, more costly than wave-through-weeks.

3. Does computerization replace personnel?

On the whole clearly: No. This might be the case eventually in the Assessment department, if computerized Risk Management works well, but certainly not in the tax auditors and tax fraud department. New software programs also cannot replace whistleblower, (paid) informants or skilled and experienced investigators. Saying that, of course, personnel also has to be able to work under certain conditions in order to “develop” the famous “gut feeling” which makes them superior to computer: Here, of course, also deficits need to be mentioned. For example: Civil servants have to develop these skills and this experience first, and on the way errors are not included. A major deficit is that, at least in Bavaria, tax officials in those areas where most businesses need to be checked rarely have the chance to “familiarize” themselves with certain businesses, their history and their development – which, at the same time is essential for getting the “feeling” for the case. Especially in Munich, where most cases are located, the quantity of cases and the fact, that a lot of personnel works there temporarily before they want to go back to their home region, prevents this “feeling” to grow. All that meaning: More personnel is not per se an alternative for IT, see also problems especially arising in the context of Munich (4.3.1.6).

4. Does computerization contribute to a more equal and more just taxation system?

Yes and No and it depends: Conversation partner agree generally that, if computerized Risk Management is working well, it might well contribute to a more equal and more just taxation system. Right now, however, with all the mistakes inherent of the system, this is not the case and too many cases only receive superficial treatment. This, in their view, is the beginning of the abandonment of § 85 Fiscal Code which requires this equal and adequate treatment – a goal admitted by superiors in Bavaria, pointing to a reform paper developed by the Federal Government and the tax administrations for North Rhine Westphalia (red/green)

¹¹³ Dateneingabe Unterstützung im Arbeitnehmerbereich; ebenso Fahndungshelfer.

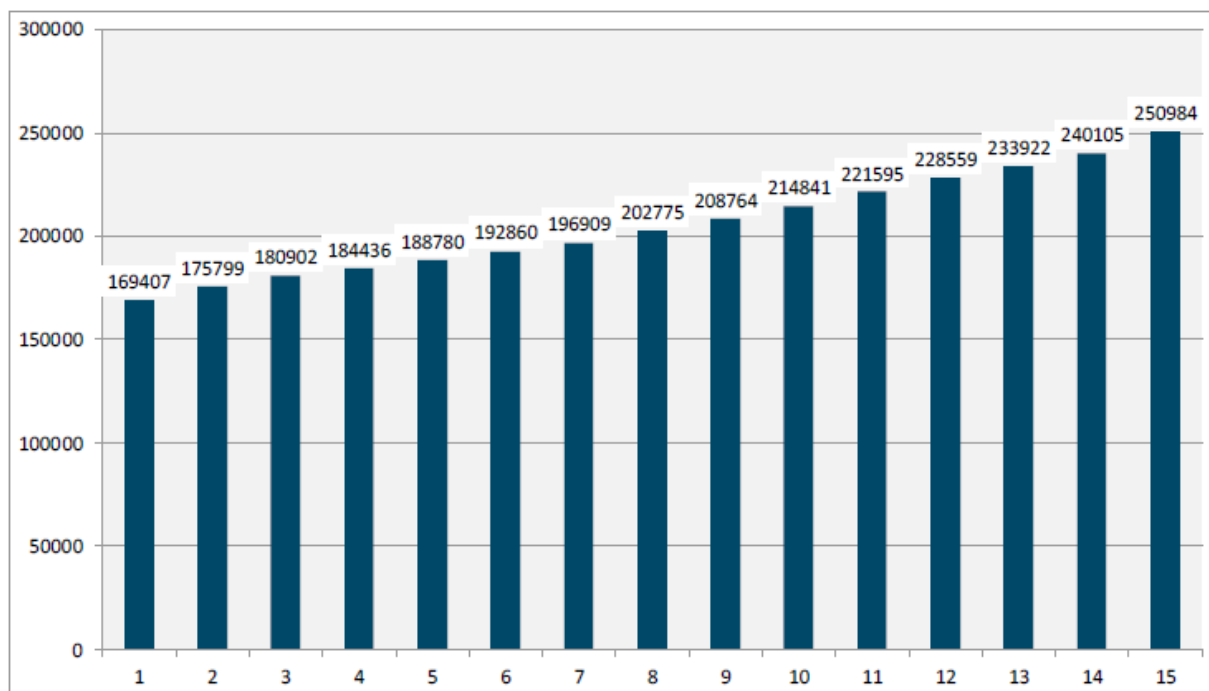
and Bavaria (conservative).¹¹⁴ Another justice issue is the different transparency between dependently employed and those dependent from social benefits on the one hand, and the intransparency of self-employed, businesses and the wealthy on the other side. This imbalance could be improved in two ways: First, really effective computerization with comprehensive transparency and automatic data transfer to tax authorities as it is the case in other states, e.g. Netherlands or Scandinavia. Or: More tax inspectors which are available for checks.

4.3.3 Insufficient checks with corporations and businesses

4.3.3.1 The situation

In 4.2 it has been said that Bavaria is very attractive for businesses and corporations, which is why the number of corporations and businesses is (uninterrupted by the World Financial and Economic Crisis) on the increase. At the same time, tax revenue is oscillating, reflecting the impacts of crises (e.g. the dot.com crisis 2000 or the 2007/2008 crisis) and the changes in taxation law (e.g. in Corporation Tax showing in 2009):

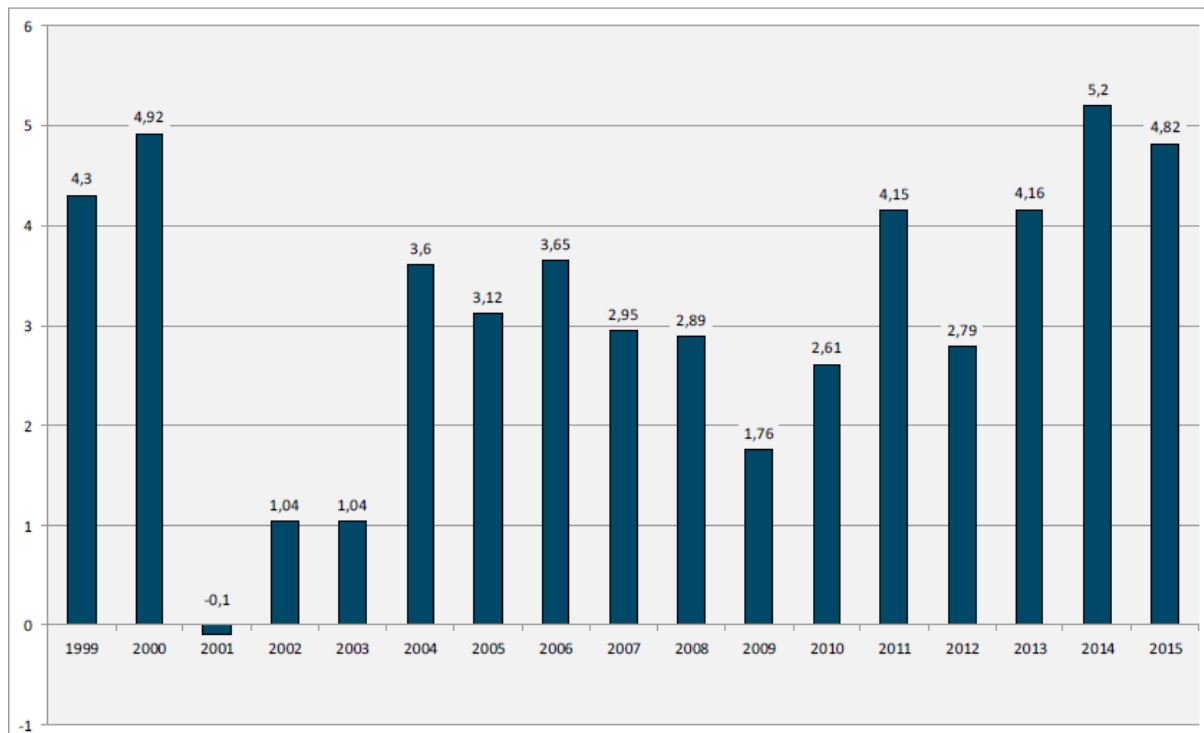
Graphic 8 Increase in the number of corporations in Bavaria



Source 14 (Bayerisches Landesamt für Steuern, 2016, p. 74)

Graphic 9 Revenue collected from corporations in Bavaria (in billion Euro)

¹¹⁴ (Bayerisches Landesamt für Steuern, 2015, p. 9)



Source 15 (Bayerisches Landesamt für Steuern, 2016, p. 76)

Since 2014, and even though declining in 2015, Bavarian collection of corporation tax makes up 25% of Germany's total revenue arising from Corporate Income Tax. The only deplorable fact is, according to the State Tax Office, that Bavaria has to pass on EUR 255 million to other German states via the Financial Equalization Scheme (Bayerisches Landesamt für Steuern, 2015, p. 64f.). And yet, one has to bear in mind that all this increase is particularly delightful, because 'this revenue was generated at a tax rate of 15%; the last time revenue that high was collected, in the years 1999 and 2000, the tax rate was 40% and 30%' (Bayerisches Landesamt für Steuern, 2014, p. 60).

This looks impressive, but there is another way to look at it. First of all it is necessary to note that corporations is just one category of business forms, which is why the total number of businesses, including unincorporated partnerships or Ltd, is much higher. They, too, are within the responsibility of the Tax Audit Department, as are the Millionaires. Bavaria, of course, uses the same categorization for grouping G, M and K businesses as the entire of Germany following the Federal Ministries categorization given above in 2.3.1

Table 16 Number of businesses for checking

Prüfungsturnus	2004 bis 2006	2007 bis 2009	2010 bis 2013
vorhandene Großbetriebe	30.161	31.442	35.337
geprüfte Großbetriebe	21.323	21.673	21.216
Quote	70,7%	68,9%	60,0%
vorhandene Mittelbetriebe	145.294	141.115	151.519
geprüfte Mittelbetriebe	30.005	28.651	23.585
Quote	20,7%	20,3%	15,6%
vorhandene Kleinbetriebe	189.876	191.296	203.219
geprüfte Kleinbetriebe	19.601	19.645	15.503
Quote	10,3%	10,3%	7,6%
vorhandene Kleinstbetriebe	887.817	1.112.723	1.169.532
geprüfte Kleinstbetriebe	16.725	23.962	20.968
Quote	1,9%	2,2%	1,8%

Source 16 (Bavarian Parliament Drs. 17/4312, 2014)

Facing this situation are less just about 2000 tax auditors, handling 25,000 checks in 2014. Surplus revenue in 2014 was at EUR 3,039,449,524, a slight up from 2013 (EUR 2.645 billion) (Bayerisches Landesamt für Steuern, 2015, p. 85ff.).

In a different department, 258 more tax auditors (down from 272.37 in 2013) were employed which were in charge for checking on small businesses, conducting 4,280 (down from 4,307 in 2013) external checks and collecting EUR 122.9 million surplus revenue (up from EUR 107.2 million in 2013) – here, however, the discrepancy between potential objects for controls and tax auditors available is even more striking (Bayerisches Landesamt für Steuern, 2015, p. 87f.).

Given the shortage of personnel and the complexity of tasks for them, the frequency of controls of businesses and corporations is worrying: While controls with large corporations are – even though decreasing in frequency – pretty regular, the situation regarding small and medium businesses is alarming:

Table 17 Frequency of inspections (in year)

	2009	2010	2011	2012	2013	Target
Large businesses	4.5	5.0	4.9	5.12	5.12	4
Medium businesses	15.1	16.1	9.9	22.19	22.19	8.4-10.5
Small businesses	29.9	37.1	40.8	40.26	47.4	14.4-20

Source 17 (Bayerischer Oberster Rechnungshof, 2013, p. 84) (Bavarian Parliament Drs. 17/2380, 2014)

In spite of that, a lot of surplus revenue is generated:

Table 18 Surplus revenue arising from checks of businesses in Bavaria 2009-2013

Mehrergebnis in €	2009	2010	2011	2012	2013
Großbetriebe	2.283.726.329	2.284.704.195	2.153.924.859	4.066.344.981	2.008.244.843
Mittelbetriebe	201.196.684	214.942.412	254.510.317	163.088.104	201.569.628
Kleinbetriebe	99.006.115	86.301.241	92.126.188	106.647.004	78.416.784
Kleinstbetriebe	105.085.917	132.089.911	121.401.004	94.061.717	115.126.254
Fälle mit besonderen Einkünften, Verlustzuweisungsgesellschaften, Bauherrengemeinschaften und Sonstige	1.842.454.261	1.027.829.504	162.984.687	624.283.946	317.961.862

durchschnittliches Mehrergebnis in €	2009	2010	2011	2012	2013
Großbetriebe	329.162	321.563	298.576	589.582	277.344
Mittelbetriebe	21.500	23.491	33.453	23.889	28.294
Kleinbetriebe	15.465	15.763	18.496	21.127	17.543
Kleinstbetriebe	13.577	18.107	17.564	13.912	18.210
Fälle mit besonderen Einkünften, Verlustzuweisungsgesellschaften, Bauherrengemeinschaften und Sonstige	1.043.292	608.183	93.187	312.611	143.679

Source 18 (Bavarian Parliament Drs. 17/2380, 2014)

There is not merely a considerable discrepancy between the number of corporations and the processing of tax declarations (Erledigungsquote 45.5 % (2013), 45.4 (2014)), also the length of procedure is growing: The average length of time needed to process a case is quite high with 71.4 days (2013) and 69.4 days (2014). In all innocence, the Jahresbericht writes: ‘Die Stagnation der Erledigungsquote... ist durch die weiter ansteigende Zahl der zu veranlagenden Fälle verursacht. Hierauf haben die Körperschaftsteuerstellen keinen Einfluss. Neben dem weiterhin populären Wirtschaftsstandort Bayern ist die steigende Anzahl bei Neugründungen im Bereich der Kapitalgesellschaften ein Hauptfaktor für die Zunahme der zu veranlagenden Fälle‘ (Bayerisches Landesamt für Steuern, 2015, p. 47)

For the time being the obvious can be stated: tax administration is unable to keep step with the economic development.

4.3.3.2 Experience with the E-Bilanz

Since E-Bilanzen are now required for corporations and businesses they start flooding in – 177,599 in 2014. The Jahresbericht 2014 argues that the system is running according to expectation. A problem is that only the minimum of required information is submitted, which was not adequate for assessment and consequently lead to additional inquiries and, accordingly, delays in processing. In cooperation with the chamber of tax consultants, the tax administration tries to convince businesses to submit not merely the minimum, but all (or more) they had submitted earlier, when there was still the requirement of submitted papers. In 2014, only “plausibility” was checked, while Risk Management System Rules have already been developed, but not yet released (Bayerisches Landesamt für Steuern, 2015, p. 49). Conversation partners admit, however, that paper would still be the better solution, but the problem for tax administration is to calculate emphasis since there is too much work to be done. Hence in the areas of E-Bilanz they operate with scores in order to distinguish those worthy of in-depth checks and those not.

4.3.3.3 Wage Tax inspectors

Specific inspectors go out to businesses, checking books on the spot in order to find out whether employer collect and transfer correctly their employees’ Wage Tax and social security contributions. As the following table demonstrates, revenue generated by those inspections is rising considerably over the years:

Table 19 Surplus revenue generated by the Lohnsteuer-Außenprüfung 2009-2013

Mehrergebnis in €	2009	2010	2011	2012	2013
Betriebe mit 500 und mehr Arbeitnehmern	26.398.487	26.888.812	98.671.623	67.625.833	78.690.356
Betriebe mit 100 bis 499 Arbeitnehmern	22.979.425	24.343.338	19.954.453	21.252.894	29.785.278
Betriebe mit 20 bis 99 Arbeitnehmern	25.388.584	23.179.156	23.251.880	20.326.671	27.544.515
Betriebe mit weniger als 20 Arbeitnehmern	24.586.178	22.990.554	19.043.897	22.528.571	30.475.654
insgesamt	99.352.674	97.401.860	160.921.853	131.733.969	166.495.803

Mehrergebnis je Prüfung in €	2009	2010	2011	2012	2013
Betriebe mit 500 und mehr Arbeitnehmern	74.153	70.947	301.748	204.927	229.418
Betriebe mit 100 bis 499 Arbeitnehmern	16.103	17.717	15.060	16.348	23.564
Betriebe mit 20 bis 99 Arbeitnehmern	5.102	5.113	5.414	5.162	7.002
Betriebe mit weniger als 20 Arbeitnehmern	2.178	2.160	2.028	2.692	3.857
insgesamt	5.505	5.753	10.493	9.453	12.385

Source 19 (Bavarian Parliament Drs. 17/2380, 2014)

This department, however, is at 26.2% the one most severely understaffed in the Bavarian Tax administration (cf. 4.3.1.2). The situation is most dramatic in Munich with the highest density of businesses and some of Bavaria's largest and – due to legal form and extent of business – most complex businesses. In 2012, inspectors are only able to cover 1% of businesses, in 2014 12,475 employers out of 405,256 were checked, generating surplus revenue of EUR 218,724,785.¹¹⁵ The Court of Auditors is equally unhappy and indicates that around EUR 30-40 Million surplus revenue result from employers living in the region of Munich alone. The Court of Auditor points out that each inspector working in this area in Munich generates on average annual surplus revenue of EUR 570,000, the annual average surplus elsewhere in Bavaria being EUR 280,000 (Bayerischer Oberster Rechnungshof, 2013, p. 80) which is why, the Court here supports the calls of trade unionists, that more inspectors should be employed.

The talk I had in the course of the research with the head of such a department in a rural area, can be summarized as follows:

The main problem in his view is the lack of qualified and experienced employees. Over the past 10 years, the number of inspectors in one department went down half, the average age is well above 50 and many are up for retirement. Still, the work in his region is manageable, but he knows from colleagues in the towns (Augsburg, München, Nürnberg) that they are stretched to the very limit of that which is possible. Important would be a good transition from the old experienced hands to the young, which is, given the number of vacancies, not realistic. If lucky, only businesses above 100 employees can be checked regularly and without any gaps (every 4 years), the many below has much larger rates, which is a pity since even in small businesses per visit EUR 4-10,000 surplus revenue are possible. 'The money lies in the street and we don't have enough employees to pick it up.'

This category of checks is a rather easy one to do. More difficult is the work of tax auditors proper:

4.3.3.4 Tax auditors

Once a tax auditor has been assigned to cases, he has to read through already existing files and documentation, especially the most current processed file by the Assessment Department. Building on that he identifies with his superior the areas of interest for inspection. When visiting the business (or person, if it is a millionaire), his checks are theoretically limited to those pre-agreed issues. If something new emerges in the course of his

¹¹⁵ Klein aber Oho. In: Der Wecker 2013/14, p. 6f. and (Bayerisches Landesamt für Steuern, 2015, p.

inspection, he first has to cross-check again with his superior before following up the issue – but all this has to take place within the time-limit allotted to the case. For that reason, a comprehensive and adequate inspection is neither possible nor aimed for since the tax inspector does not want to risk lagging behind in his own collection of credits which are awarded due to the number of cases checked and not for the surplus revenue collected – one more confirmation that this pushes the system towards quantity rather than quality.

There are fundamental problems in checking businesses independently of their size, as the following summary illustrates which has been taken during a semi-official talk with two tax auditors:

We cannot check everything, and this is not our task in accordance even when reading § 85 Fiscal Code. We do have to confine ourselves to samples otherwise we wouldn't come to an end at all. The big problem is: Software, especially the one used in G businesses can easily be manipulated. And: We can only check what the business presents to us. Of course, if we smell something fishy and we start asking questions they also have to offer information which we ask for. But: First of all we have to get an initial suspicion which is getting increasingly difficult. And: Whenever we finish checking a business we do not know whether we have been cheated. But all too often we have the vision of the gleaming business owner and his tax advisor rejoicing "They didn't find it!" This job is on one side exciting. We are doing it in the awareness of contributing to tax justice, meaning, that also the big ones have to pay their dues and that the bill is not merely borne by the small ones. On the other hand, this job is impossible: You have to know your laws and applications, i.e. which law is the valid version applying to what part of the account, you have to be eloquent and smart, you have to have skills like a policeman and a criminal at the same time, you have to be tough and resilient, you have to be an excellent software expert knowing how to cheat. And: One needs to be aware of the disbalance in resources: It's you against an army of experts and it is true what has been said in the newspaper: We are chasing Ferraris with bicycles. If the final conference on the inspection is on, then it is you, perhaps one from the Overseas-Department and your boss against the business owner and 15 accountants and lawyers. Quite out of proportion and a bit like David and Goliath. If the surcharge of your result is high, for example millions of Euro, it is a very tough fight you have to stand through. A business tax inspector has to be a bit like Superman.

Tax auditors are largely dependent on the benevolence of the business itself, i.e. what data is provided to him for examination. Sometime it takes time until the auditor realizes that something is missing and then it is difficult for him to ask for it and obtain it. Here lawyers of businesses have many ways to delay such requests due to the lack of clear legal provision for his request, or because data is processed abroad (e.g. accounts are done in India). That way, it takes a lot of time which is something a tax auditor does not have – given the time tight time frames within which he has to do his work. Here it should be made unequivocally clear and legally possible that tax auditors are entitled to obtain that which he wants and needs for doing his job.

It is only natural to assume that the temptation of employers of smallest, small and medium enterprises to cheat on the tax bill is considerable if the likelihood of an inspection is somewhere between 10 and 40 years only. Here, some tax auditors concede that these long intervals can be justified for two reasons. First, because the effort of checks and its outcome is often out of proportion. Second, because the situation of especially small businesses are very precarious which is why the tax auditor has to walk a thin line between the letter of the law and that which makes more sense, also financially and in terms of taxation, in the medium and longer run. For example:

- If a business cannot afford to pay the full dues of his tax bill leniency might be sensible: It would enable the business to survive and employ people than to insist on the full payment of taxes.
- A similar argument is given when an inspection finds out that a business employs informal labour, thus avoiding the payment of tariff wage and/or social security contributions.
- Then the question of neutralization: One could, for example, in one year state the requirement to pay more taxes because of non-declared procurement of material. This, however, would be entered as a loss-carryforward in the following year so that tax surplus revenue and loss would neutralize itself within two years.

This difficult discernment even applies in the situation of obvious tax evasion: Here to, the price of “merciless” enforcement could result in the loss of jobs. It could be, of course, that only a minimal number of tax auditors have this understanding, or that they only voiced it in the protected situation of the interview situation. Independently from that and for the reasons given, it would make more sense to focus on medium sized and big businesses where effort and result are in a better proportion.

A final problem is trans-border investigation. Here one should pay more attention that good national legal stipulations are not neutralized by international law or bi-lateral treaties. And, of course, the case of Joint Audits.

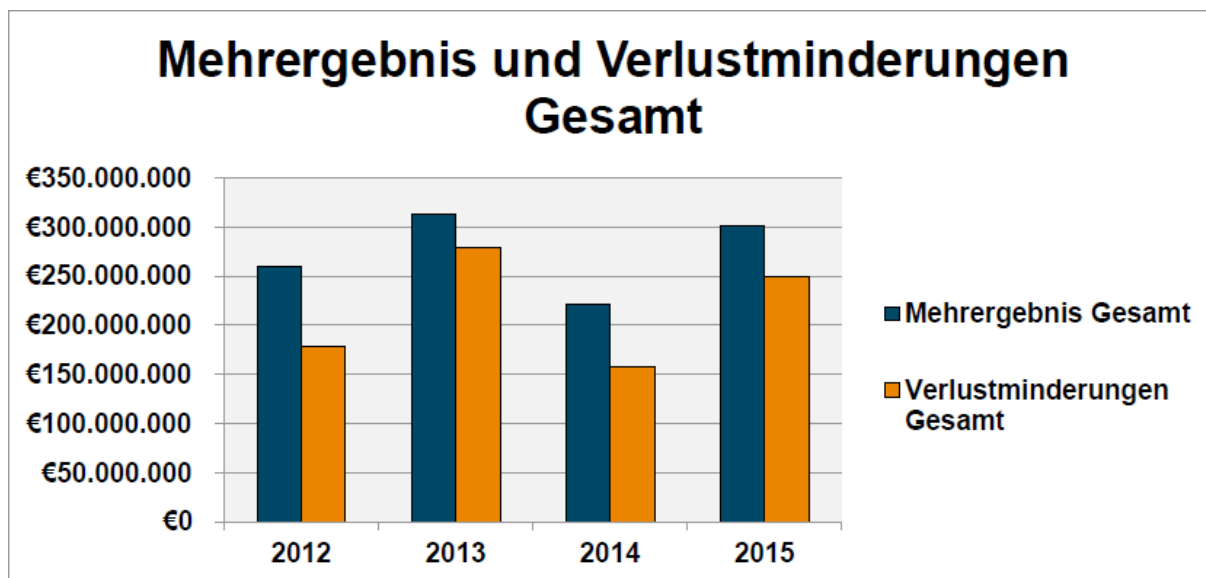
4.3.3.5 Internationales Steuerzentrum, Auslandsprüfung

While Bavaria has no specialized Large Taxpayer Unit which is specifically competent to process tax declarations of businesses and corporations, there are two approaches to check businesses and corporations which are internationally active: Auslandsfachprüfung and the Internationale Steuerzentrum. The Jahresberichte did not say how many people are working there, only that its number has been increase by 15 tax auditors and that there are more to come.

The Auslandsfachprüfung worked upon 662 cases in 2014 (2013: 570). They collected EUR 220.92 million (2013: 313.74). On average, this amounted to EUR 373,184 Euro surplus revenue per case. However, it has conducted merely 20 Joint Audits since 2013 (!) (Bayerisches Landesamt für Steuern, 2016, p. 116).

This engagement of an annual average reporting of cases between 550-650 resulted in both surplus revenue and avoidance of losses:

Graphic 10 Surplus Revenue and diminishing of losses 2012-2015



Source 20 (Bayerisches Landesamt für Steuern, 2016, p. 118).

Equally impressive is the average surplus revenue per case checked, which is around EUR 500,000.

The IStZ is an innovative approach to international tax administration and enforcement: the Internationale Steuerzentrum set up by the Bavarian government in 2013. Here, expert teams will cooperate with tax administrations of other European states, e.g. Italy, Netherlands, Croatia. The, too, are engaged in Joint Audits in case a business has branches in both signatory states. Obviously, those co-operations avoid delays arising from language barriers or the exchange of written communication and it makes it more difficult for businesses to understate or “forget” to declare profits and business dealings and makes it more difficult to (mis)use loopholes for tax avoidance. For businesses are also advantages: If problems are discovered, that way Verständigungsverfahren can be avoided or sped up.

This centre is unique and in its first year it generated already EUR 117 million in surplus-earnings. Since this IStZ is a very new innovation, it needs some time to evaluate its advantages more clearly but it is certainly an adequate approach to international tax administration. It fits neatly into the EU twinning project which links established EU tax administrations with those in EU accession candidate states, aiming to improve their administration to EU standard. A conversation partner having worked at a large corporation suggest, this would also be an excellent improvement when dealing with TNCs operative outside Europe, e.g. in Africa.

Here also joint seminars and workshop are being organized on the federal level, e.g. the Federal Central Tax Office.

However, given the amount of internationally active businesses, which is quite considerable (cf. above 4.2), the question arises whether the resources invested here are in relationship to the potential which could be gained.

4.3.3.6 Discussion: Law enforcement, interference in business and jobs

There is disagreement among experts whether large, medium or small enterprises cheat most. The former head of a tax department of a big Transnational Enterprise argues that large corporations do no longer manipulate their books because there are too many who would know and therefore increase the chance of whistleblower. Manipulation is probably

only worthwhile for small and small medium sized enterprises) With this view, tax auditors totally disagree by emphasizing that it is especially large companies, their tax lawyers and specialists who try to avoid and evade taxes by using software, even though they concede that they rather focus on that which is legally possible.

The truth is, probably, in the middle. As a **police specialist** on money laundering argues: It is not about categories of companies, it is about criminal energy with people. And those you can find in small, medium and large companies.

All this would advocate a rather chance orientated approach where nobody knows who is going to be hit next and has to be counting on checks at any time. Many conversation partners from the **tax auditing and wage tax department** would prefer an even, chance based presence all over the district, just to give everybody the feeling that the taxman is watching – this increases taxpayers honesty greatly and it would increase revenue if it is not counted in the statistics of the tax office. But exactly because of this and because statistics are so important to justify own resources, superiors tend to ignore this deterrence effect and nobody is able or wants to see the big picture.

There are two more arguments against this limitation. First, conversation partners from the tax auditing department and trade unions report that especially the category of smallest businesses is one where a lot of fraud is going on by using simple tricks. For example, small and smallest businesses are dissolved after some years and re-opened by using a different name. Since, other than in the Netherlands, there is no “welcome-check” immediately after establishment, the likelihood of controls is further lowered (Lechner, 2014, p. 47) – even more reason for not excluding those businesses from routine checks. All this will be of importance in the In-Depth chapter on the informal economy.

Others state that one does not know in advance what those additional inspectors would generate. Basically, they estimate, only 10% of all checks are without any fault. In 90% something is found, but, of course sometimes it is a small thing, at other times it is big – the likelihood to hit something is large, especially right now where business owner can just do things with a considerable likelihood of (not) being discovered. Would they check, of course their surplus revenue would go down if honesty suddenly would increase. At the same time tax revenue would increase through the legal channels which would generate more surplus revenue than a lot of new staff could generate.

Saying this they support the calculation done by the **trade unions** regarding prospective revenue arising from more checks with middle sized and small businesses: They agree that the checking of big business brings biggest money, but there is still a lot of money in other areas as well because according to practitioners findings also small and medium sized businesses pursue increasingly ‘aggressive tax planning’, thus evading and avoiding tax and causing damage:

Table 20 Average Surplus revenue in 2008, according to size of business and resources spent¹¹⁶

Size	Surplus revenue (€ per day)	Share of total surplus	Share of resources spent
Large	14,093	71.6%	41.8%
Medium	2,382	28.4%	58.2%

¹¹⁶ Stupka, W. Mehr Personal bringt nix. In: *Der Wecker* 2010/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

Small	2,016		
Smallest	2,958		

This statistic proves according to the trade unions that those who are checked the least rely that there will be no check and all which encourages that they pay tax not in accordance with the law but according to their extent of goodwill. Based on these figures, Werner Stupka calculates that an employment of the needed 800 tax inspectors and tax fraud investigators could result in an additional EUR 544 million in the areas of business checks alone.

The **Bavarian Court of Auditors** also supports those conclusions since he unambiguously calls for a substantial increase in checks in all categories of enterprises. In its 2012 report the court details that even checking small businesses generates more revenue than an inspector costs (Bayerischer Oberster Rechnungshof, 2012, p. 60). Even more detailed and outspoken the court argues in its 2013 report: The Court criticizes that, while the number of businesses went up 7% from 2007, the number of tax auditors here went down 10%. 442 vacancies are not filled which is 20% of auditors potentially available.¹¹⁷ While the working group “Personalbemessung” recommended 2010 for Bavaria in the field of business tax inspectors 3,069 people, the Bavarian government provides in his budget potentially for 2,200 people, on 1 January 2012 de facto 1,758 tax inspectors were employed. (Bayerischer Oberster Rechnungshof, 2013, p. 82f.). Due to the lack of personnel, the Court of Auditor complains, the state loses EUR 24,000 for every medium sized business not inspected, and EUR 16,000 for every small business not checked. Each inspector on duty collects an annual surplus of EUR 543,000 in Munich and EUR 405,000 elsewhere in Bavaria (Bayerischer Oberster Rechnungshof, 2013, p. 84f.). Annually, therefore, Bavaria could gain about EUR 200 Million tax revenue while only having to pay around EUR 30 million for the additional 442 inspectors. Losses are even worse, the Court argues since the obvious lack of deterrence probably encourages businesses to cheat with their tax bill which results in lower revenue. (Bayerischer Oberster Rechnungshof, 2013, p. 86).

As is to be expected, the **State Office of Taxes** does not share the urgency and need of more personnel and is more optimistic than the Court of Auditors and trade unions that the Bavarian tax administration is doing its possible which is, at the same time, its best. By that, they do not point to the frequency of checks but the solid surplus revenue (*Mehrergebnis*) which could be generated in the field of checking businesses in 2012, namely EUR 4,987,087,901 (up from EUR 2,714,037,701 in 2011) (Bayerisches Landesamt für Steuern, 2013, p. 82). The Office admits furthermore, that in certain areas numbers of controls are decreasing, which means, when put differently, that an increase in personnel would be desirable (Bayerisches Landesamt für Steuern, 2013, p. 83). But apart from that, a senior tax official points out that the density of controls of businesses is higher than prima facie thought since Wage Tax Inspections, Overseas Department Inspections and Turnover Fraud Inspections are executed parallel to visits of the tax auditors, a position which is shared by conversation partners at Customs and tax consultants. The latter complain since they see in some cases an unjustified permanency of checks which prevents especially owner of medium sized business, who don't have adequate employees to deal with tax inspectors, from doing their proper job: Doing business and employing people.

This position is shared by the **tax consultants** who also think that the Bavarian approach is pretty rough and tough. ‘They do not agree to put up payment but want the tax

¹¹⁷ From the press-summary of the Jahresbericht 2013, retrieved from http://www.orh.bayern.de/files/Jahresberichte/2013/13-03-19_Kurzzusammenfassung_ORH-Bericht_2013.pdf

being paid instantly and completely. Which is why some companies go bust.’ This applies in particular in the case of small and medium sized businesses which ‘can only survive if they employ people off the books and without paying taxes and social security contributions. If we would act in accordance to our books those would go bankrupt and jobs would be lost.’ [] But: tax consultants are no homogeneous group. You will also find other positions, e.g., even though tax advisors normally argue in the interest of their clients, they admit that visits by tax auditors every ten years or more are too long which will cost the state billions of Euro in revenue (Lechner, 2014, p. 47).

4.3.3.7 *Justice Issue: Law enforcement and jobs*

Tax auditors think that their work contributes to tax justice. They prove that the tax burden is not left to the ordinary citizen but that the state has an eye on the big offender and does not permit them anything too crooked. But there is room for improvement. The biggest problem being the many ambiguities in the law, i.e. the many loopholes which are legal. All this could be addressed either with a simplification of the law, or clarification as to what legal options are legitimate, illicit or even illegal. Clear rules, simple to apply. But they are doubtful that this will come any day soon, and even if it comes the problem will continue: In the words of one semi-official conversation partner from the tax auditing department: ‘The drive to cheat on taxes is stronger than the sexual drive – what can you do against that?’

This observation can be confirmed by the many case-stories which Lechner brings in his book: independently how the law is or will be formulated, a large number of tricks and strategies listed in this illustrative book would nevertheless be tried to the damage of the community and common good. Lechner's book equally illustrates the large range of professions involved in tax dodging (doctors, entrepreneurs, real estate agents, translators, even tax advisors...), revealing ignorance, disrespect or even contempt both for the work of the tax administration and for the state in which they live and the services which this state provides or secures. These experiences, so Lechner, also challenge the ethics of tax advisors who, in a number of cases, come in conflict with respecting the law on the one side, and serving the best interest of their customer on the other. Here, he reveals some of them do not shy away from breaking the law (p. 82ff.).

Even more important for tax justice would be a comprehensive and thorough law enforcement would be called for.

At the same time it is obvious, that there is no willingness on part of the Bavarian government to increase the number of tax auditors (or other departments of tax administration) as substantially as it is called for. And here a central issue behind the Bavarian Tax Policy is emerging: The allegation that there is a hidden political agenda behind the Bavarian shortness of staff: In 1984 already, then Prime Minister Franz Josef Strauß wanted to reduce the number of tax inspectors for small and medium enterprises with the argument: ‘Many of those are only able to remain in business because not all of their income is made public’ (Schlötterer, 2013, p. 84), insofar this kind of employment policy could be considered as ‘political protectionism by understaffing tax authorities’ (Schlötterer, 2013, p. 217ff.). This position is reflected in statements like the following by the present Minister of Finance, Markus Söder, who argues ‘There is no use if I place 2 tax auditors behind each small business.’¹¹⁸

¹¹⁸ „Es bringt ja nichts, zu jeder Ich-AG zwei Steuerprüfer zu schicken“. Quoted in: *Der Wecker* 2013/07 Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

From the same year is a CSU Position ahead of the 2013 elections to the State Parliament who emphasized that first priority out of justice towards future generations remains the avoidance and repayment of public debt. One instrument to facilitate this is a “sustainable employment policy”. How much beyond that changes in public employment are possible ‘is dependent from the economic development and resulting tax revenue.’ Here again one discovers the “hen and the egg” dilemma: Some argue, we have to wait for more revenue in order to employ staff, others counter that one has to employ more staff in order to increase revenue.¹¹⁹

Indeed: jobs are a very important issue which merits consideration. The difficult issue is to balance the value of equal law enforcement towards all on the one hand, and the question of necessary or politically motivated concessions in the frequency and density of checks if there is the likelihood that jobs might be in danger, taking into account, that such law enforcement would have other, positive side effects which in turn would increase the attractiveness of a state for investment. Regarding the latter, the question might be justifiably ask whether Bavaria applies some preferential tax rulings or economically motivated policies in relationship to other German states as Luxemburg undercut competition with other EU states via tax rulings, as revealed in Luxemburg Leaks.

Here several, also semi-official, conversation partners from the tax auditing and tax fraud investigative department emphasize that one has to distinguish from the (de facto) concessionary treatment of some businesses in the course of checks, and other, more widely defined political goals. Regarding the former, they admit that this concessionary treatment exists in individual cases. They equally emphasize, however, that in any case concessions in the “Zuschätzungs”-process are singular cases which cannot be generalized into a general political recommendation or even policy. There were admittedly politically motivated tax rulings in the sense of both preferential treatment of cronies and friends and political interfering in the enforcement of tax law in earlier years, as Schlötterer documents by using the example of the Nuremberg Diehl family (cf. GER/VIa/4.6.2). This, however, is no longer the case because the present Bavarian leadership could neither dare nor risk to interfere this way anymore due to more resistance by tax administrators on the one side, and the media on the other. This leaves open, however, the other issues, whether the employment and personnel policy of the state, i.e. the reluctance to employ adequate staff numbers, might be politically motivated. The same conversation partner also admit that the present legal differences in tax law and tax law enforcement both within Germany and the European Union states open up many ways to legally optimize the tax burden independently from the fact whether jobs are concerned or not. If, therefore, this tax avoidance shall be curtailed, first and foremost a harmonization of legal standards is called for. It is widely accepted among conversation partners from within and outside tax administration that Bavaria indeed promotes economically orientated goals with its tax policy and thus creates circumstances which are not identical, but similarly attractive as explicit tax rulings. An important element of this policy is the inadequate staffing and otherwise existing constraints (e.g. the downplaying of gut feeling as opposed to computerized risk management) of tax administration and tax law enforcement.

4.3.3.8 Conclusion

Both conversation partners who have worked in the tax departments of businesses, trade unionists and tax practitioners agree that not even large businesses are adequately checked: First of all, not even G businesses are not comprehensively checked, since checks of G3 businesses are not as regularly and intensive as those with G1 and G2 businesses.

¹¹⁹ In: *BfG Informationen* 2013/7, Retrieved from <http://www.finanzgewerkschaft.de/bfg-zeitung/>

Secondly, given the magnitude of cheating and manipulating possible for large businesses on the one hand, the dependency of tax inspectors from what is shown to them and the timeframe given for checks is a mismatch. That way, checks and results even with large companies are reduced to chance and luck and cannot really claim the attribute to be comprehensive and thorough. A third problem is that it is challenging to offer attractive employment opportunities to qualified personnel, e.g. in the field of transfer pricing, where tax administration has to compete with the Big 4 for the same absolvents of universities. All this suggests that all those are right who claim that a lot of tax revenue in the field of businesses is not collected in Bavaria.

Beyond that, conversation partners from businesses as well as tax auditing departments agree that one should not only check on large businesses, but also on middle size and smaller ones for three reasons:

- They, too, explore options of tax avoidance and evasion more and more aggressively. If they get away with it, they have an unfair advantage in competition against others. Therefore: Market economy in order to work needs tax enforcement.
- And: If, and as long as, Germany affords itself a complex tax law opening up many legal ways to ‘optimize’ tax they also need to provide experts checking and saying: This is OK, this is not.
- Finally, one should take into account that a more frequent inspection has a deterring effect because trickery is more risky, thus tax honesty is “encouraged”

The discernment of whether tough tax laws and law enforcement should be done even if it will cost jobs is clearly a difficult discernment to apply. But is this really an adequate reason to loosen the rule of law by risking that equal law enforcement is no longer guaranteed? Would it not be better to apply checks and controls evenly so that tax honesty is encouraged? If avoidance and evasion is detected there is still time to find some arrangements which does not necessarily endangers (all) jobs. Because indeed, even cases of tax evasion might have a contextual background where those in charge and responsibility cannot be blamed and once more a case-to-case treatment is needed. Therefore at times compromises need to be looked for and, if goodwill prevails on all parts, can be found for the common good and the best of all involved (Lechner, 2014, p. 75ff+104ff.).

On the whole, the political trend is not moving towards law enforcement, but towards more freedom for businesses. A major change will occur if the current German government implements one of its proposals, namely opening the way for corporations to hand in self-declared tax declarations (CDU/CSU/SPD, 2013, p. 64). Since outdoor services are seriously understaffed, experts fear that this will invite increasingly businesses to cheat on their tax bills since the frequency of checks especially among medium, small and smallest businesses will not be increased at the same time.

4.3.4 Insufficient checks with “taxpayer of considerable income”

4.3.4.1 The situation

Wealthy people in Bavaria are not called “(Income) Millionaires”, but “Taxpayer with considerable income”, i.e. income above EUR 500,000, arising from all categories of income. On the whole, the Bavarian statistics is as follows:

Table 21 Checks of “Millionaires” 2009-2013¹²⁰

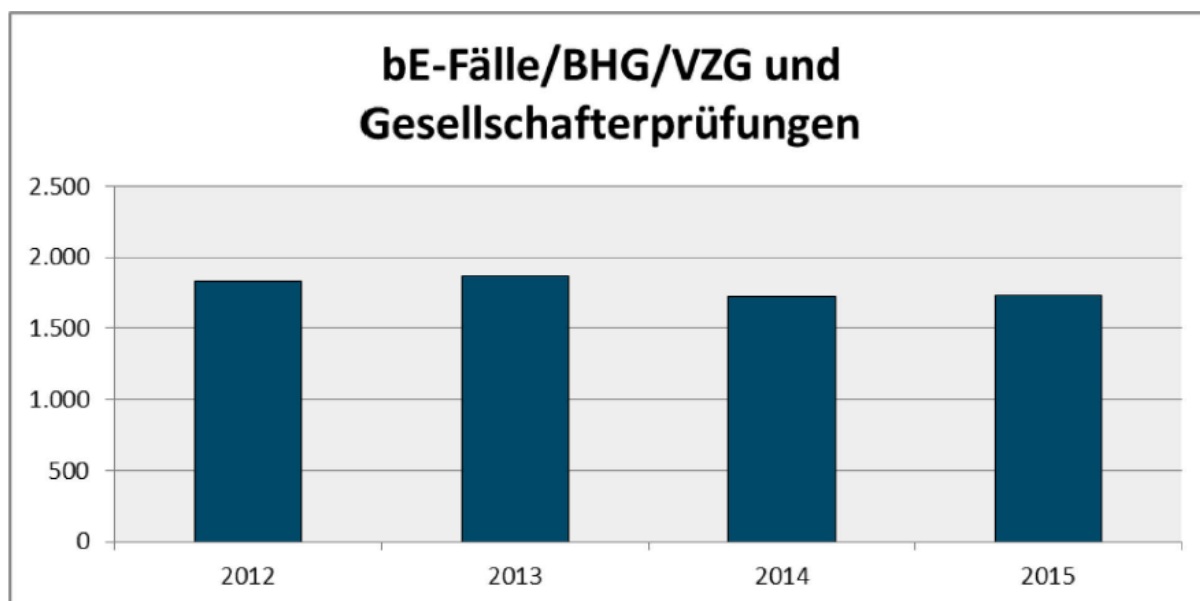
	2009	2010	2011	2012	2013
Zahl der Fälle mit besonderen Einkünften	2.564	2.707	2.707	2.707	2.517
Prüfungsquote i. v. H.	18	17	16	17	14
Prüfungsquote bezogen auf den üblichen 3-jährigen Prüfungsturnus i. v. H.	55	50	50	50	42
Mehrergebnis in €	69.570.882	160.083.325	67.804.153	142.188.399	97.269.036

Source 21 (Bavarian Parliament Drs. 17/2380, 2014)

This is a consolidated figure from checks by tax auditors (2,334) and the Betriebsnahe Veranlagung (183), the latter only checking smaller businesses and individual items and is not as comprehensive as a specific check by auditors.

For later years, no detailed statistics on that could be obtained since the checks of millionaires are hidden in the category “bE-Fälle/BHG/VZG und Gesellschafterprüfungen”. Here, the Yearbook 2016 offers the following figure giving 1720 checks for 2014 and 1735 checks for 2015.

Table 22 Development of Checks regarding Millionaires and others 2012-2015



Source 22 (Bayerisches Landesamt für Steuern, 2016, p. 99f.)

The overall surplus revenue from these checks were EUR 3,225,456,893 in 2015 surplus revenue, compared to EUR 3,039,449,534 in 2014.

¹²⁰ Wie hoch ist die Zahl sowie die tatsächliche und angestrebte Prüfungsquote der Außenprüfungen von Einkommensmillionären, jeweils für die Jahre 2009 bis 2013, und wie stellte sich hier das Mehrergebnis dar (auch im Verhältnis zu den ursprünglich festgesetzten Steuern)?

In principle, all income-millionaires should be checked continuously and without interruption. After the Federal Courts of Auditors critique of checks in this area, Bavaria tried to improve the situation. Among other, millionaires are now ranked like “G3” businesses and it is attempted to align the frequency of checks with G3 businesses

In many cases those people are connected with large businesses, e.g. as a partner in unincorporated businesses or partner/shareholder in incorporated businesses. They are then checked by tax auditors looking into the business as well. Those cases are not listed in the statistics registering checks of millionaires. The problem is that tax auditors only check the income arising from that business, but not income arising from the other seven categories of income. Only if something suspicious is arising, the tax auditor might report this to the tax office and an additional “small inspection” (Betriebsnahe Veranlagung) might check the private books.

Not every income-millionaire is equally worth checking. If, therefore, a check following the “G3” rhythm results in nothing remarkable, checks of this household will be suspended when the next round of checks arises. If yet another check results in nothing remarkable, the suspension will increase. That way, the periods of checks might increase considerable and/or be confined to checks of the tax declaration and its attached documentation by internal assessment services.

4.3.4.2 Legal issues

A major problem here is that with the suspension of the Wealth Tax by the Federal Constitutional Court it is much more difficult to know what those people possess in the first place. Due to that law there was a legal obligation of those people to declare their various categories of possession and income, e.g. real estate, income from rent, dividends etc. Income from capital (interest) also does no longer need to be declared since it is automatically deducted by the banks. Therefore it is no longer subject to income taxation and must not be declared towards the tax authorities, unless the person chooses to do it – as will be explained in more detail in the In-Depth study on German wealth. Because of these two changes tax authorities depend in their assessment on the self-reporting of wealthy and random checks which, as can be guessed, cannot be done due to the lack of personnel.

According to semi-official and informal conversation partners, the requirement to tax honesty exists nevertheless for all tax subjects equally. Whether or not the duty to declare comprehensively contained in the Wealth Tax will be re-instituted or not does not make that much difference. This optimism is contradicted by others – both semi-officially and informally – who admit that in a number of cases they are unaware and ignorant that the person, whose declaration is in front of them, is in fact a millionaire. Only after checks this “mistake” might be corrected and the taxation be adjusted.

4.3.4.3 Risk Management and Personnel

Semi-officially, practitioner of the local tax administration see problems when it comes to wealthy people: Millionaires are only checked if they are recognized and correctly grouped as such, sometime they are not in the proper tax class and nobody realizes their wealth, because, perhaps, it is not obvious that they have a whole bunch of different categories of income, e.g. but from property, agriculture and forestry, rent, or interest from capital. There is a lot depending on the tax honesty of millionaires. But, if they or their lawyers submit something which looks good and there is no suspicion about anything, the declaration flies through. The best would be to have adequate personnel which is familiar with the case and related cases so that his gut feeling would alarm him to “now, is this possible”?

Or “why does A declare this while this guy does not” or “Why is he paying the intermediation fee (*Vermittlungsgebühr*) to this company?”

Here again we have the problem of the prioritization of risk management systems at the expense of experience. When the tax declaration arrives, data will be entered in the risk management system – here equal treatment exists between millionaires and their cleaning woman. If the computer detects something incoherent, he gives an alert which the tax inspector then might follow-up or even pass on to the tax auditing department. If the computer does not indicate anything, in most cases that is it, since official policy is that tax inspectors are only obliged to follow what the computer indicates. In earlier times, when the tax declaration still existed in paper form, the (experienced) tax inspector could, by just browsing through, get some “gut feeling” prompting him to look here and there more carefully. The tax inspector can do this even today, but in most cases time and resources are missing. Additionally to the workload, there is something comforting in the direction to follow only that which the computer indicates: More is not required, and if later it is detected that something has not been discovered the tax inspector will not be blamed because he followed orders. This, however, does not serve the common good: It is a rule of thumb that all cases which the assessment department forwards to tax auditors for examination will bring more surplus revenue than those which the computer forwards to the tax auditing department.

Regarding the electronic tax declaration, there are problems in evaluating data. In earlier times, there were common standards and every tax declaration looked alike. The original idea was that the electronic declaration would look exactly/similar to the paper version, but this is not the case. Today, there are too many softwares available for doing tax declarations and tax inspectors have problems to find relevant data given the variety of display, in spite of all standardization efforts, as conversation partners assure (similar tax auditing 4.3.2.3.3). In addition, tax advisors and tax subjects may erroneously or intentionally enter information in inadequate places or incomplete and it is then up to the tax inspector to find that out. Next there are too many consolidated entries and no longer individual positions listed. In earlier times, an experienced inspector could discover in the individual positions deviations alerting him to something worth checking. The consolidated net-position nowadays contains less information. In many cases, the tax inspector has to ask back to tax subjects or lawyer which causes as much (or even more) work as the previous proceeding. The problem is here as generally, that the experience and the developed gut feeling of longtime employees is in danger of getting lost since it is no longer required to apply it to cases and leave the decision to computers (cf. 4.3.2.3.5)

Another problem with wealthy people is that they own wealth and generate income outside their residence and local tax office. Here tax inspectors have to rely that *Kontrollmitteilungen* or *Veräußerungsanzeigen* are generated and communicated correctly by those tax offices where income was generated. This is not always the case, either because information is incomplete, e.g. because notaries public transmit only partial information, or because tax officials enter information incorrectly or do not transmit it, which then is missing for adequate taxation. “Any electronic process is as good as those who program it or are directed or trained to use it”..

The key issue for combining equal and just treatment is still personnel: If the tax inspector has time, he can cross-check even if the computer has rendered his verdict already. If the tax auditor gets the case referred to his desk, he may be able to take it up, if the workload which he has already via the regular distribution and assignment procedures permits

it. And, of course, the time available also determines how thorough a case can be checked and whether there is a chance that an initial suspicion can arise.

4.3.4.4 Income from capital gains and rent

In its 2015 report, the Bavarian Court of Auditors reported deficits from its checks regarding income from capital gains (cf. GER/VIII/4.2) and from the second highest category of income, namely from rent and lease. Here a number of factors contribute for less revenue than the dues should be: incomplete documentation on part of the taxed subjects, inadequate first assessment of the property's value, inadequate follow-up if questions arise, fast changes in the market-value of property, especially around Munich and other Bavarian cities. The risk-management relevant factor lies right in the beginning: If there are mistakes made in the original assessment of property value, the risk management on its own is not able to recognize faults later on its own and that way one deficit is handed down the years. Here, up to EUR 100 million are likely to be evaded for the state of Bavaria as a whole, but the court states differences regarding the individual tax offices: In some offices, inadequacies occurred in 13% of all cases, in some it were as many as 56%. The Court requests therefore, that especially in Munich every three years all cases worth EUR 500,000 and more should be re-assessed (Bayerischer Oberster Rechnungshof, 2015, p. 100ff.)

4.3.4.5 No tax declaration and the need to assess tax duties

The 2016 Report of the Bavarian Court of Auditors (p. 136ff.) had a passage of non-submitted tax-declarations, also from those having high income from gains (Gewinneinkommen)¹²¹ – and this several years in sequence. If a tax subject fails to submit his tax declaration up to the end of May there are ways to remind him and even impose fines and fees. But the court found out that in a sample he drew for 2008-2012 there are still 6.2% of those being obliged to submit a tax declaration who fail to do so even several years (up to 5-10 years) in sequence. If a person does not submit a tax declaration his tax duties are assessed, based on the last submitted tax declaration.

To start with: Of 138,800 checked cases, there were 56,000 cases which did not submit either before or after warnings and fines a tax declaration. Their assessed tax duty amounted to EUR 292 million and two thirds of this amount had to be paid by only 7000 tax subjects with assessed annual tax duties of EUR 10,000 and more. In 33.558 cases, no declaration had been submitted for 3 or more years, requiring an assessment procedures several times in sequence. Among those were 12.5% of annual tax duties of EUR 10,000 and more, resulting in tax payments of EUR 101 million.

¹²¹ Gewinneinkommen (Gains-Income): Income for self-employed, income from business, income from agriculture & forestry

Table 23 Tax assessments set for those not submitting tax declarations for 3 years or more

Dauerschätzungsfälle			Tabelle 41
Festgesetzte ESt je Schätzung	Fallzahl	Anteil in %	Summe der festgesetzten ESt pro Veranlagungszeitraum
0 €	3.103	9,3	0 €
1 bis 1.000 €	9.374	27,9	3.944.842 €
über 1.000 bis 5.000 €	12.350	36,8	31.508.268 €
über 5.000 bis 10.000 €	4.537	13,5	31.978.739 €
über 10.000 bis 25.000 €	3.131	9,3	47.317.724 €
über 25.000 bis 50.000 €	780	2,3	26.048.053 €
über 50.000 €	283	0,9	28.649.735 €
Gesamt	33.558	100,0	169.447.361 €

Source 23 (Bayerischer Oberster Rechnungshof, 2016, p. 138)

Obviously: An assessment is getting shakier depending on the amount of years which transpire since the last assessment. The likelihood that sources of income are not known or not properly assessed is increasing. Beyond that the Court of Auditors is noticing that the assessment is not being done at the upper possible limit, but at times even lower than contained in the last tax declaration. Obviously, the means of punishment, fees and fines are not adequate to prompt people to submit their tax declaration comprehensively and on time. Even worse: Any guesstimate based assessment is linked to verification but in no case any verification had been undertaken by tax auditors or others.

For the sake of illustration: For having to pay EUR 50,000 one has to earn around EUR 140,000 annually! And: The revenue paid by two of those will pay comfortably the employment of a new tax auditor whose salary is around EUR 70,000 annually.¹²²

4.3.4.6 Discussion

Not only officials in the assessment department, also tax auditors may be unable to behold the entire pictures. Tax auditors, for example, have no adequate eye on millionaires since they are checking capital companies and corporations, but they are not able to follow up who eventually receives the proceeds going into funds, trusts or foundations since this would be, especially due to their time constraints, outside their capacity or even their proper responsibility. Another problem is that in routine checks it is not easy to separate private wealth from corporate wealth in a given business. Here one first trusts that which the millionaire or his lawyer submits

Checking millionaires requires enormous technical skills from co-operators in the Assessment department: The forms relevant are extremely complicated as are the practical checkups related to information contained on them (Anlage Kapitalvermögen/Anlage KAP and Anlage Auslandsvermögen (Anlage AUS)).¹²³ In addition, trusts and foundations are used in a way which was not foreseen by the lawgiver by hiding wealth. Because of the complexities and efforts linked to it, they probably refused to “sanitize” the damage which

¹²² Bei 140,000 Euro Einkommen werden 50,405 Euro Einkommensteuer fällig. Dazu käme dann noch Soli und Kirchensteuer <http://www.zinsen-berechnen.de/einkommensteuerrechner.php>

¹²³ See also Scholz, Chr. Was ist der Veranlagung noch zuzumuten? In: *Der Wecker* 2010/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

Karl Diehl caused with his tax evading during lifetime when establishing his estate after death and taxing this properly.

As long as there is no transparency, purchased CDs are very valuable instruments. In one case the name of a harmless lady was discovered on the CD of Credit Suisse. She was paying tax for income from dependent labour and was in possession of a house. When countered with the allegation that tax authorities know about her income abroad she first denied, then asked for time to think, then declared income from capital not only with Credit Suisse, but also in Austria.

Ideal would be some centralized service in certain area. For example, to find out via Grundbucheintragen, how much real property Mr. XY is owning somewhere in Germany. Even more ideal would be if such a centralized service would be accessible even within the EU, so that the flat in Vienna and the seaside resort in Spain would show as well. Even better would be a service, where you enter "Mr. XY" and all comes out: How much he earns from labour, how much houses and real estate he owns in Austria, about his Yacht at Grand Caymans and his income from Capital in Luxembourg.

4.3.4.7 Justice issues: Indirect rather than direct taxation

Tax practitioners state a number of injustices in the taxing of wealthy people. On a matter of principle, and outside the competence of Bavaria, the privileging of that source of wealth where wealthy people receive most of income: income from capital. Conversation partners both from tax administration and tax consultants agree that a major injustice resides in the 25% flat tax, i.e. the Final Withholding Tax (*Abgeltungssteuer*). This is far too profitable for wealthy people. In his view it would be fairer to tax this category of income progressively as all other sorts of income and protect the worse off by tax rebates (*Freibetrag*). However: Potential fraud in this area could only be countered if the Banking Secrecy would be abolished and a clearer view on money flows could be obtained.

The other point is the admitted leniency of Bavaria towards jobs (cf. 4.3.3.6+7) and wealthy people. The idea behind is that it is on the whole better for state revenue to have many businesses and wealthy people living in a state than scaring them with high taxation or efficient tax enforcement. Most outspoken was a senior administrator in tax administration who: 'It is better to have a lean, but efficient tax administration and many millionaires and businesses than many tax officials and few millionaires and businesses.'

There is a big point to it: Wealthy people are business owner, businesses create jobs, jobs diminish the need for social transfers and at the same time all are consumers spending a lot of money on VAT. It is here, too, where the eagerness comes in to replace the cumbersome administration of a progressive Income Tax by an easily collectible Turnover and Consumer Tax.

Here also the behaviour regarding the purchase of Tax CDs makes sense, where Bavaria on the one hand refuses to buy CDs on its own, but participates in the costs of other German states. That way, the government can credibly demonstrate that it is not taking part in hunting the wealthy tax evader but leaves this dirty work to others, most importantly North Rhine-Westphalia and it cashes in the benefits without adequately sharing in the burden. Given the attitude of its own civil servants (cf. 6.1) certainly more open engagement for tax justice would be most desirable.

But there are issues regarding Bavaria itself: Journalists argue that, according to a confidential report, Bavarian Tax Authorities admit that income millionaires especially in Munich and Starnberg (i.e. those towns where most millionaires live) have no need to fear visits from tax inspectors since the responsible tax authorities are seriously understaffed. The tax authority Munich alone would need 60 more tax inspectors in order to do their job properly and adequately. According to yet more internal sources, media report, this lenient approach is politically backed in order to make Bavaria an attractive place for Millionaires to live. This suspicion is confirmed by unionized tax inspectors: They admit that Bavaria has such a high number of businesses (“Just look at the addresses of major DAX corporations”) and millionaires not just because the country is beautiful. But, of course, nobody will ever admit that the political leadership wants tax administration to be lenient on private and corporate wealth.

In informal conversation, senior tax administrators even admit that this policy is very beneficial. According to them, the idea behind is indeed that it is on the whole better for state revenue to have many businesses and wealthy people living in a state than scaring them with high taxation or efficient tax enforcement. Most outspoken was a senior administrator in tax administration who: ‘It is better to have a lean, but efficient tax administration and many millionaires and businesses than many tax officials and few millionaires and businesses.’

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4.3.4.8 Conclusion

How important the question of transparency regarding private wealth holder is, illustrates the problem to establish their numbers in the first place: There are conflicting information regarding the number of millionaires. For 2013, the Ministry of Finance tells parliament the number of 2,517 persons having an annual income beyond EUR 500,000. However: Are those numbers realistic at all?

- For 2007, the State Office of Statistics revealed, based on tax data, that Bavaria is home to 3,472 persons having an annual income of EUR 1 million (!) or more.¹²⁴
- For 2010, the number declined moderately to 3,132, the reason being the World Financial Crisis and the introduction of the Withholding Tax on capital income.¹²⁵
- For 2013, the Frank Knight Wealth report counts 1,113 UHNWIs, i.e. people with a disposable income of EUR 30 million and more, in Munich alone (p. 30).
- For 2013, the Wealth-X/UBS report reveals 1,805 UHNWIs for Munich alone (p.45).

Given the small “dip” of millionaires after the World Financial and Economic Crisis and the large number of UNHWIs in Munich alone it is most unlikely that the number of UNHWIs plus “simple” millionaires in Bavaria is indeed correctly rendered by the 2013 figure given above by the Bavarian government!

¹²⁴ „2007 lebten 3 472 „Einkommens-Millionäre“ in Bayern, deren Gesamtbetrag der Einkünfte jeweils mindestens eine Million Euro betrug.“ From: 3472 Einkommens-Millionäre in Bayern.
https://www.statistik.bayern.de/presse/archiv/2011/175_2011.php

¹²⁵ Oberbayern hat die meisten Reiche. (2014, July 20) In: Süddeutsche Zeitung. Retrieved from
<http://www.sueddeutsche.de/bayern/reichen-statistik-oberbayern-hat-die-meisten-millionaere-1.2053129>

The main problem is according to conversation partners from the tax fraud department, that these figures are based upon self-disclosure by tax subjects, i.e. only those are counted as “millionaires” who declare an excess income (Überschusseinkommen) of more than EUR 500,000. There are cases, however, when this fact is only revealed at the visit of a tax auditor, which results in the “upgrade” of the previously non-income-millionaire in this august category. This does also mean, however, that those, who do not declare comprehensively their income, may go undetected for a long time. This is why conversation partner at tax authorities admit that the higher numbers, based upon banking data, might be more accurate since banks are privileged to information which tax authorities do not possess due to the lack of transparency.

Three specific indicators are even published officially, illustrating that it would be profitable to check millionaires more often and in more depth:

- Checks of those people resulted in 2008 in a surplus of EUR 12,580 per day, which is close to that which can be retrieved from big businesses.¹²⁶ Internal statistics for 2013 reveal that the average surplus for the 317 checked cases is EUR 310,000.
- Annually, losses of revenue occur in double digit million figures because tax declarations of wealthy people are incomplete and subsidies are not taken into account (Bayerischer Oberster Rechnungshof, 2012, p. 62ff)
- The Bavarian Court of Auditor, in his 2014 report, criticized that tax authorities check insufficiently what happens with proceedings of sold companies, real property or other possessions. If proceeds go to their owner, they are subject to income tax. As a rule, tax authorities rely on information given to them by taxed subject and are not adequately staffed to check those information. Here the Court recommends more checks, but leaves open whether therefore more personnel should be employed (Bayerischer Oberster Rechnungshof, 2014, p. 105ff.)

4.3.5 Insufficient checks on the self-employed

In 2016, the Court of Auditors checked on doctors, their (non-)declaration of turnover-tax and the tax administrations’ efforts to verify submitted data (pp. 145ff.). The problem here is that doctors provide two services: clients linked to direct medical conditions are not subject to turnover, clients requiring non-medical treatment but cosmetic services such as bleaching of teeth, removing of tattoos etc. are liable to turnover-tax payments. If doctors do not provide services of the latter category, the tax administration does not expect a turnover-tax declaration and does not assess respective liabilities. Of 265 doctors checked, only 129 doctors declared turnover-tax relevant data, and in the latter case it was not always ensured that those declarations were adequate. Beyond that, the Court notes that even if tax officials checked on the books, they did not inform themselves in advance adequately, e.g. by browsing a website, whether the doctor was offering tax relevant services. Or: if they were on-site and found a laboratory with two technicians employed by a declared, tax relevant annual turnover of EUR 6,000 or 8,000 only, no further questions were asked, e.g. how those technicians could be paid when so little money is earned. Or: Even if acquisitions of gold were documented for dentists, no checks on turnover-tax paid were undertaken.

¹²⁶ Stupka, W. Mehr Personal bringt nix. In: *Der Wecker* 2010/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

4.3.6 Insufficient combating of turnover tax fraud

4.3.6.1 General shortcomings and problems

A tax fraud investigator joked ‘If you rob a bank you are very likely to pilfer less money but risk heavy prosecution and punishment. However, if you want to be a millionaire in the short term and without the risk of prosecution engage in Turnover Tax Fraud.’ Indeed: The Bavarian Court of Auditors estimates that fraud costs the German state something of a double digit billion Euro figures, Bavaria alone is estimated to lose around EUR 1 billion in tax evasion and tax avoidance. The Court states that this tax is particularly suited for fraud and gives a number of examples, starting with the number of new businesses which is established every year: in 2009 and 2010, the number of businesses rose 5% every year, in 2011 comprising an overall number 1.1 million businesses liable to pay turnover tax. Here it can be assumed that a number of those are merely established for the purpose of fraud. In order to distinguish the good from the bad here, especially in a region with a robust economy as Bavaria, not only a sophisticated IT system is needed, but also an adequate number of checks and controls, e.g. inspectors undertaking on site industry tax audits (Bayerischer Oberster Rechnungshof, 2011, p. 87ff). Regarding results of the 2011 audit and evaluating the government’s response to its recommendation, the Court of Auditors is dissatisfied in the final comment in February 2013, promising, to devote this area more attention in future.¹²⁷

But there are more areas suitable for fraud:

As detailed above (4.3.2.2.2), an intentional or mistaken entry mistake in the computerized forms and systems may cause miscalculation of the tax burden.

Other options to cheat are because of the difficulties to verify provided information due to lacking information from elsewhere. One conversation partner working as a turnover tax special investigator offers the following example:

Assume a person opens a business, buys a Mercedes as business relevant car and asks for a tax refund. If the car costs EUR 100,000 this is almost EUR 20,000. If the car is bought abroad, it is easy to check since between EU states electronic bills are standard and I can cross check whether the car really has been bought in Innsbruck. This is different within Bavaria or Germany – here I have to ask colleagues by writing. Within Bavaria this can be done within two days, between German states it takes longer. Computerized exchange of data between tax offices is difficult on account of privacy data protection rights: Because of tax secrecy reasons, for turnover tax there are very few computers accessible because they are particularly well protected. And yet: He does not really see a point why it is impossible that within Germany the same standards could apply as in the trans-border dealings with other EU states. Additionally electronic billing could seriously combat cheating linked to the informal economy.

Annually, turnover tax special inspectors collect hundreds of million Euro extra-revenue, also in Bavaria:

Table 24 Surplus revenue of turnover tax fraud inspections

	2013	2014	2015
Mehrsteuern insgesamt	359.647.828 €	795.938.192 €	232.374.258 €

¹²⁷ <https://www.orh.bayern.de/images/files/Jahresberichte/2011/Landtag/11-18.pdf>

Source 24 (Bayerisches Landesamt für Steuern, 2016, p. 85)

In 2014, the amount of surplus revenue rose 91% and almost doubled. Why it then dropped that drastically was not explained in the Yearbook 2016.

In Bavaria, as in Germany, the department checking on turnover fraud is seriously understaffed with merely 224 inspectors in 2014, a slight increase from 207 in 2013. Given the importance of this tax for revenue, the amount of surplus revenue and the steeply rising number of businesses in Bavaria, the number of 11,645 checks in 2013 and 11,437 checks in 2014 is astounding (Bayerisches Landesamt für Steuern, 2015, p. 74). The following table illustrates that the density of checks is around or beneath 1% of all businesses there are:

Table 25 Percentage of checks in relation to companies potentially up for checks

	2009	2010	2011	2012	2013
Prüfungsquote in %	1,27	1,12	1,02	0,92	0,89
Mehrergebnis je Prüfung in €	38.743	29.716	41.374	29.137	34.190

Source 25 (Bavarian Parliament Drs. 17/2380, 2014)

This is heavily criticized by the Supreme Court of Auditors: 185 officers are missing, of existing job vacancies 51 (17%) cannot be filled. Checks in Bavaria are below the federal average (Bayerischer Oberster Rechnungshof, 2012, p. 58). This might be due to the low popularity of the department within tax administration (cf. 4.3.1.9), but the deficit is embarrassing for three reasons:

First, since revenue in the area of Turnover Tax is considerable also in Bavaria, second, since the Minister of Finance is aware that checks in this area are particularly difficult and time consuming, one case requiring up to 10,000 individual checks, third, since deficits in the area of business checks were excused by pointing to the fact that turnover fraud examinations would be executed parallel (cf. 4.3.3.4).

The lack of personnel in this department is not publicly known for several reasons:

- The department is working out of public sight and scrutiny, it is rather invisible. While the General Assessment has to process and write individual tax bills, they just process numbers in back rooms.
- There is no public statistic on turnover fraud. The most prominently quoted statistics, for example, is done by the IFO institute and not by public authorities.
- Finally, these departments are not subject to any benchmarking or controlling, which exists in other departments, e.g. those dealing with Income Tax.

The lack of a public discussion will probably prevent an adequate increase of staff in the foreseeable future. Perhaps more stories like the following should be made known: A lot of work in this department is done with computers, but here, as in other departments, every now and again risk indicators are coming up which need a follow-up by personnel. Due to the lack of personnel it cannot be followed up which might cause six digit losses even in single cases. The following summary originates from a conversation with a person working in the Turnover Tax Department:

In one case he came across a fitness studio company which did not implement a change in law, namely: Only massages prescribed by physicians for medical reasons are VAT exempted while other massages, e.g. for wellness-reasons, are now subject to VAT. This company failed to pay VAT for these services and the loss was beyond EUR 1 million. When he went to his

superior and asking for permission to follow this up it was rejected. He protested by saying 'But here the money is lying in the street and we have just to collect it!' The reply was 'Leave it, we don't have the manpower to collect it and continue with your work here.' We waste billions! The money lies in the streets and we are not permitted to collect it.

4.3.6.2 Clearing of newly established businesses

As explained in 2.6 a number of businesses are established with the prime purpose to facilitate turnover tax fraud. In order to combat this, also the Bavarian Tax administration established a clearing place, checking which of applications to open a business should be granted and which should be refused. In 2013, 134,244 applications were handed in of which only 14,037 were rejected, against which 24 launched an appeal (Bayerisches Landesamt für Steuern, 2014, p. 68). Data for 2014 were not available because of a computer fault in the process of changing the system of recording and documentation. (Bayerisches Landesamt für Steuern, 2015, p. 75).

4.3.6.3 Manipulated Cash register

A popular and hard-to-check way to cheat on VAT payments is via manipulated cash registers (cf. 2.6.2), which can amount to considerable sums of money. In May 2016, for example, an Augsburg owner of a Pizzeria was sentenced to 2.5 years prison and EUR 100,000 payment for evading EUR 780,000 taxes that way.¹²⁸ Examples like this make it credible that here every year a multi-billion amount of taxes are evaded.

4.3.6.4 Fraud with faked bills

A complex and under the given situation very difficult to uncover trick is the cheating with faked bills. These bills enable firms to claim refunds from the tax authority with which they can pay black labour. The point is that those firms are set up specifically for the reason to produce such faked bills and when a tax authority realizes the fraud potential and starts investigation this firm suddenly closes down and the owner disappears. "Guesstimates" reckon that annually 3.000 firms of that kind are set up and disappear in Germany and the damage done by these constructions ranks in Bavaria at EUR 300 million annually, damage done in Germany can be as high as EUR 17 billion.¹²⁹

The problem is that uncovering this kind of fraud requires in many cases intensive investigation and it would require an efficient cooperation of information across the border of German states – which does not happen to an adequate extent. This is why many tax fraud investigators no longer enter into investigating this fraud anymore. There is another justice problem in this area: While the "ordinary taxpayer" is required to present a written bill when he wants to have a tax rebate for some kind of eligible "household service", companies are not required to present this kind of bill, but can still do cash payments to a large extent – which opens the link to the area of money laundering.¹³⁰

¹²⁸ Richter, P. (2016, May 3) Steuerbetrug mit manipulierter Kasse: Pizzeria-Chef muss ins Gefängnis. In: Augsburger Allgemeine. Retrieved from <http://www.augsburger-allgemeine.de/augsburg-land/Steuerbetrug-mit-manipulierter-Kasse-Pizzeria-Chef-muss-ins-Gefangnis-id37664507.html>

¹²⁹ A recent example is the case of a Landshut construction business owner, whose friend set up such a "billing company" in Berlin and, for participating in this fraud, received 10% of the proceeds. That way and between 2010 and 2012, EUR 550.000 in Local Business tax, Income Tax and Solidarity Surcharge were evaded. In: Tempel, F. (2016, September 13) Steuerhinterziehung im großen Stil. In: SZ. Retrieved from <http://www.sueddeutsche.de/muenchen/erding/wirtschaftskammer-landshut-steuerhinterziehung-im-grossen-stil-1.3160006>

¹³⁰ Stupka, W. „Steuerkrieg“ in Deutschland. In: Der Wecker 2013/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

This kind of fraud also works inside Germany, first, because of the lacking information flow between German states, but even within a given state. In one case a business man from Passau was sentenced to four years three months imprisonment because he succeeded in obtaining EUR 2 million refunds of turnover tax because of faked bills.

4.3.6.5 Fraud with cash payments

The (Bayerischer Oberster Rechnungshof, 2016) contains two chapters with relevance into the checks of turnover tax payments: First, cheating at the level of self-employed doctors, second cheating on the level of “cash intensive businesses” (pp. 141ff.). Here once more the deficit in inspectors showed: The frequency of checks in the sample drawn was 40.6 years for small, and 22.4 years for medium sized businesses. Did a check take part, in 40% of those checked the turnover had to be corrected upwards for EUR 50,000 and more. To do this was difficult since books and other documentation was deficient.

The Court advocates several strategies: First, more requirements for documentation and checks not only for discovering cheating, but also for the sake of prevention (p. 143). Second, the introduction of fraud-proof software for cash registers, be it INSIKA or something related. Here the government objected the introduction of one software only on grounds of free competition among those offering such systems (p. 145).

4.3.6.6 International dimension

In this field, too, cross-border investigations are required and cause problems, not the least because of different tax avoidance and evasion options within the European Community – as the case involving 3000 trucks full of beer illustrates which, coming from Luxembourg, allegedly went to Germany, and ended up in Great Britain, whose Beer Tax is much higher.¹³¹ Another case is the Missing-Trader-Fraud of Islamists to finance the “economic jihad” (cf. GER/VII/5.5.3).

4.3.7 Tax fraud investigation

4.3.7.1 The strongest weapon of tax administration

The department of tax fraud detection is the chief agency in tax law enforcement. They are not police, but have police like tasks and rights and cooperate in investigation and prosecution closely with police and the public prosecutor. They receive their cases from other tax administration departments, other public institutions, by registration of (anonymous) charges, e.g. by neighbours, colleagues, etc. or by “Commissioner Chance”, e.g. if they find out by chance that in a divorce process one partner fights for funds hidden in a tax haven.¹³² The agency undertakes a detailed investigation of undeclared income and its possible sources. However, it is also alert enough to discontinue investigations that are without merit e.g., a case is obviously unfounded or can be dealt with by another appropriate department. Important is not the size of the matter, e.g. the amount of money. Rather the criminal intention recognizable and therefore subject to penal law. For example, if a business man because of ignorance in the complexity of law does something which is subject to penal sanctions this is one affair; if a group spends 5 years preparation to construct carousel fraud, this is their case. Even though there are standardized investigative methods, each case needs to be examined in its own worth and context. This is also determining the importance of computer and electronic data-processing: It is a valuable instrument of assistance, but not a replacement of the

¹³¹Press Release of the Public Prosecutor Hof from 27 June 2016., retrieved from <https://www.justiz.bayern.de/sta/sta/ho/presse/archiv/2016/05324/index.php>.

¹³²Legal framework § 116 AO, as to anonymous charges and the importance of Commissioners Chance also (Wehrheim & Gösele, 2011)

experienced civil servant. The semi-official view is: ‘In this field you need detectives, not software specialists. Those can be called if needed to assist us, but they will never be able to replace us.’

The variety of issues is also reflected in the spectrum of results by the tax fraud department:

Table 26 Surplus revenue due to the tax fraud investigation department

	2009	2010	2011	2012	2013
vorläufiges Ergebnis (= erprüftes Ergebnis) in Mio. €	399,8	421,5	543,7	317,4	407,4
pro Fall in Tausend €	274	286	450	188	254
bestandskräftiges Ergeb- nis in Mio. €	203,3	217,9	375,6	260,5	330,9
pro Fall in Tausend €	125	143	225	140	240
bestandskräftiges Mehrer- gebnis nach Steuerarten (in Mio. €)					
Umsatzsteuer	100,8	75,9	142,8	132,2	227,4
Einkommensteuer	60,4	83,1	140,7	66,6	51,4
Körperschaftsteuer	8,2	20,5	8,2	9,6	6,2
Lohnsteuer	9,8	13,8	7,2	22,5	7,6
Gewerbesteuer	13,4	14,0	18,8	17,1	7,9
Vermögensteuer	0,6	0,5	0,1	0,4	6,8
sonstige Steuern	10,1	10,1	57,8	12,1	23,6

Source 26 (Bavarian Parliament Drs. 17/2380, 2014)

Interesting enough is that the highest surplus revenue comes with turnover tax fraud, which indicates once more the importance of this area for further personnel, even though there is little talk of this department if compared with that which is going on regarding to assessment, tax auditing or tax fraud.

In its 2016 annual report the Bavarian Court of Auditors illustrates first the gap between reports and actual investigations: Of 119,000 reports between 2006-2015, only in 13,200 cases investigations were started, resulting in EUR 3.4 billion surplus revenue. Interesting enough, there is a notable gap between results in Munich and elsewhere in Bavaria:

Table 27 Result of Tax Fraud Investigators in Munich and elsewhere in Bavaria

	Munich	Rest of Bavaria
Result per case	452,000 Euro	161,000 Euro
Result per tax fraud investigator	2.2 million Euro	830,000 Euro

Source 27 (Bayerischer Oberster Rechnungshof, 2016, p. 149)

4.3.7.2 The Tax FBI

Conversation partner from the Tax Fraud Department were those who complained least about understaffing. Not surprising, since in the wake of the Offshore Leaks Scandal, the Bavarian Minister of Finance admitted the need for tougher prosecution of tax culprits promised under

great applause to set up a “Bavarian Tax-FBI” or, more accurately, the SKS and the SZS.¹³³ Regarding the latter, it is still under “construction” because its tasks are highly diverse and complex at the same time, and yet it generated already an eight-digit surplus revenue by the end of 2014 (Bayerisches Landesamt für Steuern, 2015, p. 108f.). How complex the tasks at hand are is illustrated by the fact that 15 additional staff were assigned after suspicions hardened that islamistic terror groups fund themselves by means of Carrousel Fraud (cf. GER/VII/5.5). And: It is also this unit which is in charge for sifting through the PanamaPapers material in order to find links leading to Bavaria, e.g. regarding the 129 Offshore Companies which are known to be registered via Mossack & Fonseca by the BayLB daughter BanqueLB Lux.¹³⁴

But in the course of setting it up one could note something which had been mentioned already above (4.3.1.10): The minister primarily achieved his goal by withdrawing personnel from other departments and renaming of already existing units. In the moment, of course, such transferrals are justified since new personnel needs to be trained first before it can be used in such specialized operations, but it would, of course need the replacement and training of new personnel in those departments where the specialists were taken from to make up adequately for losses there. It needs to be borne in mind that the work done in those departments is contributing to the success of such highly popular and publicized units: They are giving those hints which can then being followed up by the tax fraud inspectors.

Tax fraud specialists seem to be the most happy employees in Bavarian tax administration and well set up for future tasks: Beyond those transferral from other departments they even received new assignments, namely in two shifts of 13 trainees each. More would not be possible since they need to be familiarized with and trained on the job.

4.3.7.3 Cooperation with tax auditors, staff shortage

Of the 119,000 suspicion-reports to tax fraud investigators in the years 2006-2015, only 2% came from tax auditors, which, in the eyes of the Bavarian Court of Auditors is not enough, considering, that those two percent of all cases resulted in surplus revenue of EUR 452 million and surplus revenue per case was on average EUR 90,000 higher than in cases reported by others. Bavarian tax auditors report on average 0.4-0.7 cases per year to the tax fraud investigation department.¹³⁵ This supports complaints that other departments are understaffed and uninformed about their options in case of an initial suspicion is arising.

The court of auditors was also checking on how eager tax fraud investigators were to hand on cases to other departments, i.e. evading the obligation to continue some more

¹³³ SKS (Sonderkommission Schwerer Steuerbetrug) is responsible for money laundering, the SZS (Sondereinheit zentrale Steueraufsicht) for fighting turnover tax fraud. Söder in : *Der Wecker* 2012/12. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>. For the criticism: Halbleib: Söder hält an seinem Etikettenschwindel mit einem bayerischen 'Steuer-FBI' fest. SPD Bavaria, Press Release of 7 April 2013. Retrieved from <http://www.spd-landtag.de/pdf/pm15744.pdf>. Stupka, W. “Steuer-FBI”-Brauchen wir das? In: *Der Wecker* 2013/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html> sowie „Söder will Steuerbetrug effektiver bekämpfen“. In: *BfG Informationen* 2013/3, p.38

¹³⁴ <http://www.sueddeutsche.de/bayern/bayernlb-vorstufe-zum-steuerparadies-1.2936948>

¹³⁵ „Nur 2 % der Meldungen erfolgten durch Betriebsprüfer. Fahndungen, die aufgrund dieser Meldungen erfolgten, führten zu steuerlichen Mehrergebnissen von 452 Mio. € Das Mehrergebnis pro Prüfungsfall ist um durchschnittlich 90.000 € höher als bei den übrigen Meldungen.“

Die Meldequote der Betriebsprüfung aufgrund eines strafrechtlichen Anfangsverdachts war gering. Betriebsprüfer meldeten der Steuerfahndungsstelle in den Jahren 2006 bis 2014 im Durchschnitt 1,5 Prüfungsfälle. Im wirtschaftsstarken Großraum München wurde weniger als ein Fall pro Betriebsprüfer gemeldet. Die Bandbreite der Meldungen lag - je Steuerfahndungsstelle - bei 0,7 bis 4,0 Meldungen pro Prüfer. (Bayerischer Oberster Rechnungshof, 2016, p. 150)

thorough investigation. In 41% of all cases the court complaints that those hand-ons were premature and would have merited more checks. The tax fraud investigators justified themselves with a shortage of capacities. The Bavarian government conceded to the court of auditors that the cooperation between tax auditing department and tax fraud investigation indeed needs to be improved.

4.3.7.4 Cooperation with other states and prosecution services

Bavarian Tax fraud inspectors deal with about 5,000 cases every year, both inside Bavaria (one third of cases) and providing assistance to colleagues in other German states (two third of cases).

Their work results in court sentences, sending culprits away to an accumulated 300-400 years of prison sentences every year, results in surplus payments between EUR 220-550 million (2014 being the lowest, 2011 the highest) and in penalty payments of on average less than EUR 10 million a year (Bayerisches Landesamt für Steuern, 2015, p. 94f.)

Self-reporting, the existing option to avoid penal investigation and prosecution results in much higher surplus payments, and self-reporting have to be processed by the staff of the assessment departments in addition to their regular workload, which certainly puts those in a severe disadvantage compared with the well equipped tax fraud inspectors. On the other hand, of course, self declarations would not result at all if people would not fear that tax fraud inspection eventually will also look into their case.

The (relatively) low figure as far as prison sentences, surplus and penal payments are concerned is also due to the high standards of proof required in legal proceedings (cf. (GER/VII/5.8.9.3 und GSE#).

Conversation partners from the tax fraud investigators department state that in the course of prosecution, the public prosecution department, which takes up the results of the tax fraud inspectors and brings it to public prosecution, is a bottleneck. This department is seriously understaffed, and there are cases when investigation is de facto “outsourced” to (private) companies, as has been the case in the case of Ferrostaal (cf. GER/IX). In addition prosecutors change frequently, because many cases are dealt with by beginners ahead of their further career as a judge. Here, they hand over their findings, they get their search warrant, evaluate their findings, hand it over, more investigation is called for, perhaps even involving issues abroad in complex tax cases... Along that way, prosecutors can change several times which causes delays especially in complex cases since you staff first has to find their way into the case again and again. At times these delays endanger investigation, prosecution and sentencing – the most prominent, but not only, case being that of the Engelhorn sisters. This is why personnel at the tax fraud department is only half of the success of prosecuting tax evader, practitioner emphasize.¹³⁶ This view is largely confirmed by conversation partners from the prosecutors department.

4.3.8 The end of the taxation process

Having gone through the procedure from the beginning (submitting a tax declaration), its processing in General Assessment, the work of field departments, we now approach the closure of the taxation process which is either (non-)payment of whatever is due, or appeal-procedures against the tax authorities’ decision.

¹³⁶ Zu Gast bei der Steuerfahndung: „Arbeit für die Katz?“ In: Der Wecker 2013/14, p. 3f.

4.3.8.1 *Tendency with administrative appeals*

The first option to object against a tax bill is to lodge an administrative appeal with the local tax authority. Here, the number is high, but not alarming, 2011-2015 oscillating between 580,000 and 700,000 a year and there is a good chance that the complaints are successful (cf. GER/Va/6.5).

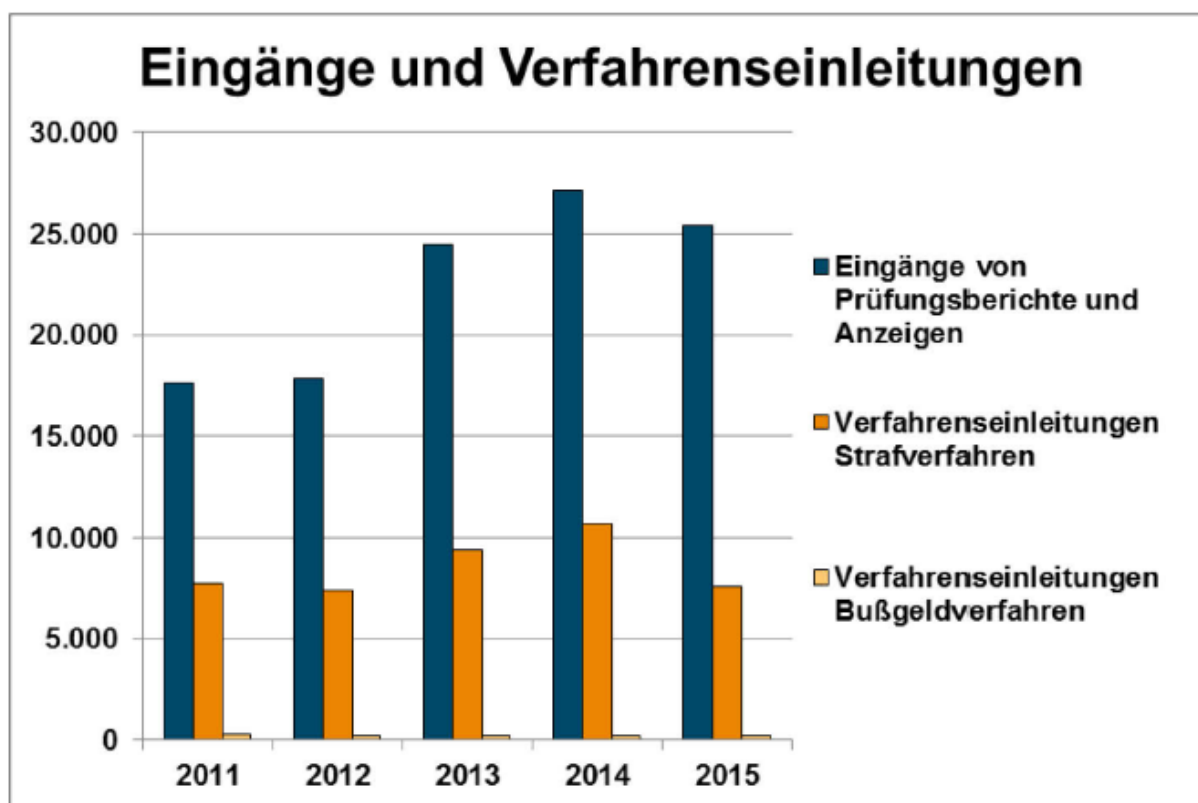
The Court of Auditors criticizes, however, that a number of appeals are not expeditiously dealt with by the administration: Some appeals are as old as 1997. The administration defends itself by arguing that a number of cases or related issues are pending in the courts of law and cannot be dealt with before a final decision and verdict is reached. The Court reminds in his turn that a number of issues might be irrelevant due to statutory limitation (*Verjährungsfrist*). Therefore, the Court suggests, to deal at least with those parts of appeal whose contested amount is as high as the risk of non-payment in the case of delays. Replying to this, the Court reminds of the fact that issues can be investigated with ever greater difficulty the more time elapses (Bayerischer Oberster Rechnungshof, 2015, p. 104ff.)

4.3.8.2 *Fines, court proceedings, penalties, enforcement*

One possibility to close a case of tax irregularity ahead of legal prosecution is the option for tax auditors to suggest to the business owner (or millionaire) to pay a fine which he himself calculates after checking the books (*Steuerschätzung*). Since the alternative being that thorough scrutiny and possible prosecution would follow, such a suggestion is often accepted and is then forwarded to the department in charge of administrative fines. This department has the option to investigate the case and may come to three resolutions: (1) The case is of minor importance and is not prosecuted further. (2) The case exceeds a certain amount and proceedings against “careless tax avoidance” (*leichtfertige Steuerverkürzung*) will be initiated. (3) The case indicates serious tax evasion and is marked for deeper investigation.

However, as can be seen: there is a much higher number of cases forwarded to the relevant department by others (dark blue) than eventually is forwarded by it to other departments for further prosecution or own processing and decision:

Graphic 11 Initiation of legal proceedings



Source 28 (Bayerisches Landesamt für Steuern, 2016, p. 111)

This, too, has to do with a lack of staff: As Lechner reports: the average caseload of civil servants working in the department of administrative fines is around 300 annually. Of those 40-50 are processed, decided or forwarded, the other cases expire due to deadlines (Lechner, 2014, p. 29). But the buck does not stop there and the second bottleneck approaches:

Given the complexity of tax law, the high fluctuation and tight staffing of the departments of public prosecution and the high threshold provided by the burden of proof in legal proceedings the number of convictions is meagre. In a number of cases a verdict is too difficult to arrive at and a courtroom agreement (*Verständigung*) or another form of settlement (*Einstellung*) is sought in order to close the case. Here one needs to distinguish carefully: All this is not an “informal agreement” (*informelle Absprache*), which tries to settle a case before it even comes to court and leaves, e.g., open the question whether tax evasion took place or not. This has been criticized by the Federal Constitutional Court: The norms of penal law must not be part of such informal deals, even though it is conceded that the guilt or the extent of guilt is difficult to prove which is quite frequent in economic, financial and tax matters.¹³⁷ In case of a *Verständigung*, based upon para 257c StPO the guilt of the accused has been established and he is sentenced to be guilty and there is only an agreement regarding the ceiling of punishment, while an *Einstellung gegen Auflagen*, based upon para 153a StPO the procedure as such is terminated before a conclusion about guilt or innocence has been reached. This instrument is used if the establishment of guilt indeed is difficult and there is likelihood that lengthy procedures will nevertheless lead to nothing.

¹³⁷ Hipp, D. (2013, March 19) Verfassungsgericht zu Deals im Strafprozess: Blamage für die Justiz. In: Spiegel online. Retrieved from <http://www.spiegel.de/panorama/justiz/verfassungsgericht-zu-deals-im-strafprozess-analyse-zum-urteil-a-889800.html>

Recent prominent cases in this context are

- The case of Bernie Ecclestone was eingestellt following para 153a in spite of months of investigations and courtroom hearing and a payment of EUR 100 million was agreed upon. Since this arrangement follows lengthy procedures there is talk that Ecclestone is able to buy his way out of prison – different from Uli Hoeness who went to prison for tax evasion.¹³⁸
- The case of the two daughters of billionaire Curt Engelhorn, accused to have evaded EUR 80 million in taxes because they did not declare gifts from their father for which Inheritance and Gift Tax had been due. The tax damage altogether is estimated somewhere between EUR 135 million (Augsburger Allgemeine) and EUR 440 million (Süddeutsche Zeitung), some of which is already subject to time limitation. In a tatsächliche Verständigung, Strafbefehle of EUR 2.1 million each are accepted and EUR 100 million repayments are being done. This case is one of many who blew only after tax CD leaked data to the authorities and brought them to the discovery of a complex scheme of trusts and funds hiding financial transfers and flows. As media reported, tax fraud investigators counted a tax evasion amounting to EUR 440 million, which is far more than has been part of the tatsächliche Verständigung. There are three reasons for the lower amount: First, some components of the deed were time barred due to the elapsed time, second, proof was difficult to collect because of the complex system of trust and foundation ownership, third, the Bavarian state did not want to risk a legal procedure due to fear of millions of Euro costs for the process.¹³⁹
- Franz Josef Weigl from Pöttmes, near Augsburg, has been sentenced to 2.5 years in prison and a EUR 7000 for 2 fraudulent bankruptcies and the evasion of turnover tax in 13 cases. The sentencing on 15 July 2014 was the result of a tatsächliche Verständigung, but instead of accepting it, Weigls lawyers appealed to the BGH who cancelled the sentence by arguing that the tax evasion issues are not substantiated enough for the BGH to verify the sentence, hence a new legal proceeding is needed. Media reports do not detail why in this case a tatsächliche Verständigung was looked for in the first place.¹⁴⁰

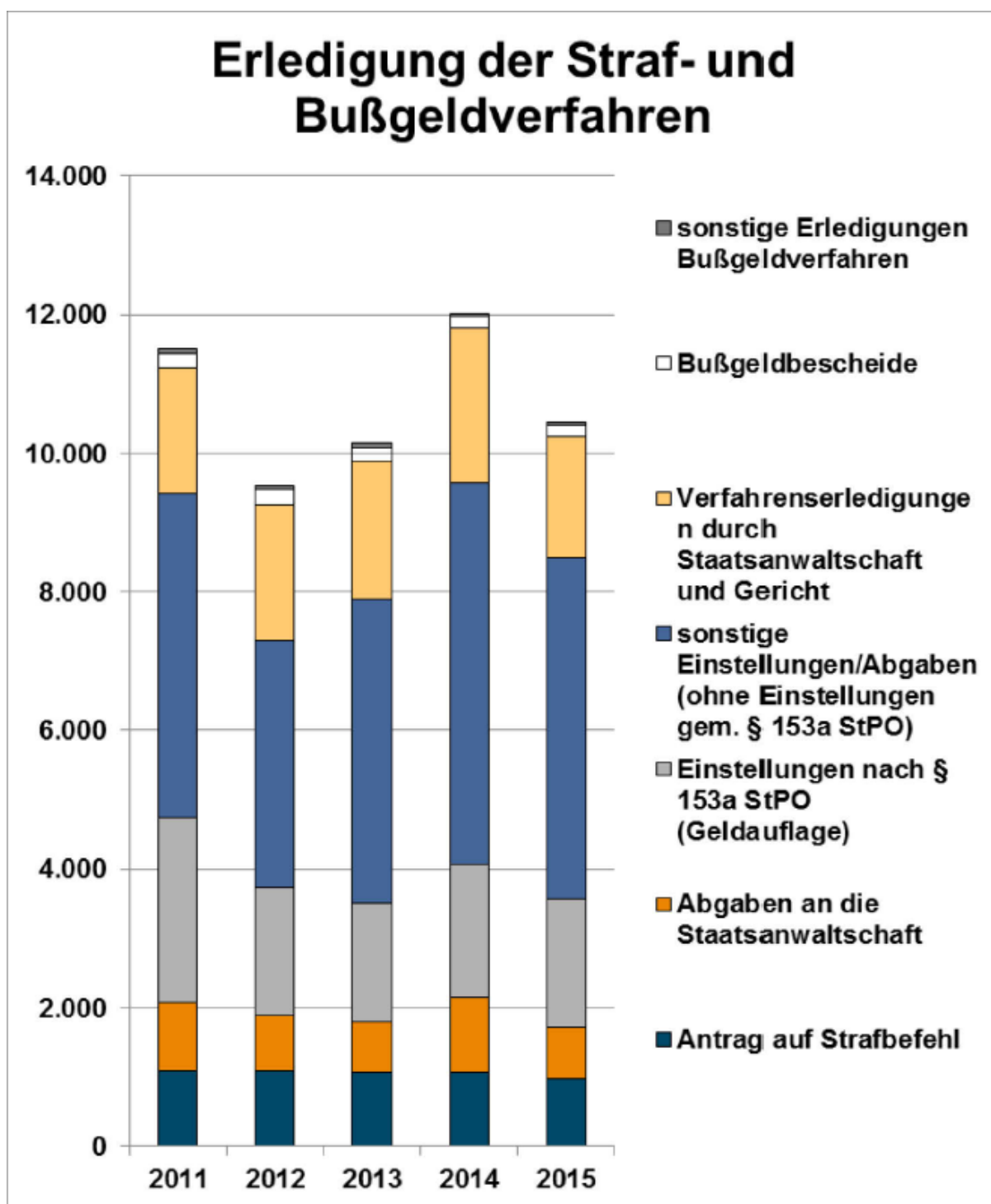
Not surprisingly, therefore, in the following graphics where the two columns “settlement” is the largest category of resolved cases:

¹³⁸ See Diekmann, Fl. (2014, August 4) 08/15 Gesetz rettet Milliardär Ecclestone. In: Spiegel online. Retrieved from <http://www.spiegel.de/wirtschaft/soziales/ecclestone-prozess-normalbuerger-gesetz-rettet-formel-1-chef-a-984392.html>

¹³⁹ Richter, P. (2016, January 23) Haben zwei Millionärs-Töchter 80 Millionen Euro hinterzogen? In: Augsburger Allgemeine. Retrieved from <http://www.augsburger-allgemeine.de/bayern/Haben-zwei-Millionaers-Toechter-80-Millionen-Euro-hinterzogen-id36690557.html>. Hall, A. (2016, January 29) Milliardärsfamilie Engelhorn einigt sich mit Finanzbehörden. In: Legal Tribune Online. Retrieved from <http://www.lto.de/recht/kanzleien-unternehmen/k/engelhorn-poellath-verdacht-steuerhinterziehung/> Mayr, St. (2016, January 30) Strafbefehl gegen Milliardärstöchter. In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/bayern/augsburg-milliardaerstoechter-sollen-millionen-an-steuern-hinterzogen-haben-1.2838348>

¹⁴⁰ Neuer Prozess gegen Pöttmeser Unternehmer. (2016, February 3) In: Donaukurier. Retrieved from <http://www.donaukurier.de/nachrichten/bayern/Poettmes-Neuer-Prozess-gegen-Poettmeser-Unternehmer;art155371,3177397>

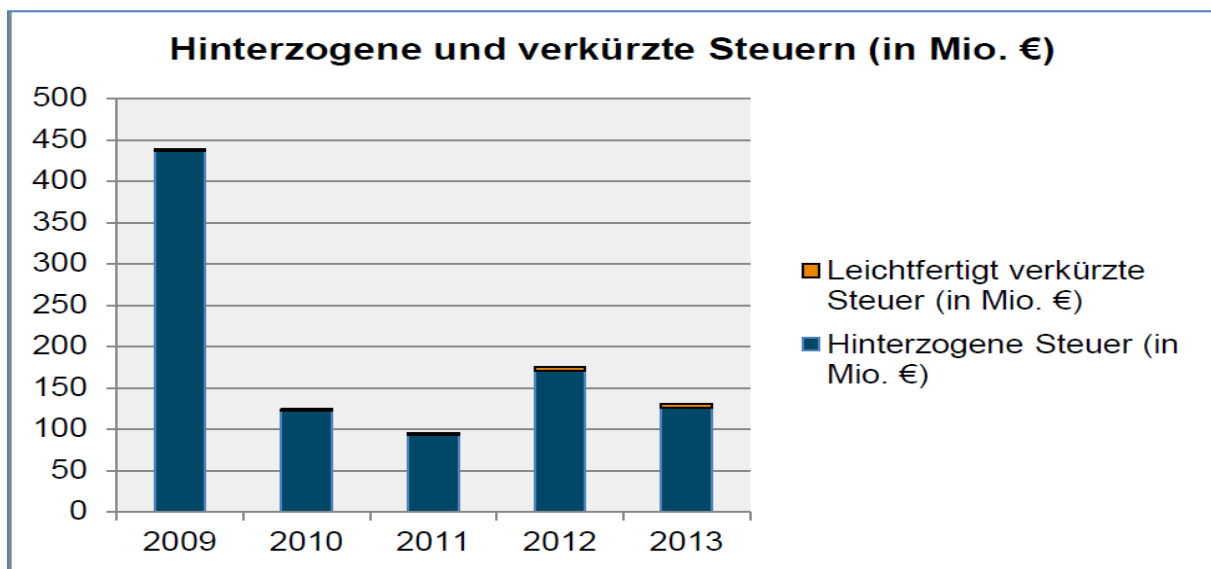
Graphic 12 Resolved cases to approach chosen



Source 29 (Bayerisches Landesamt für Steuern, 2016, p. 109)

Due to all these difficulties the officially established amount of evaded and avoided tax in Bavaria is very low:

Graphic 13 Evaded and avoided tax in Bavaria



Source 30 (Bayerisches Landesamt für Steuern, 2014, p. 90)

Interesting enough: This statistics is missing in the Jahresberichten 2015 and 2016 without any explanation. Given the described problems and the overall amount of tax revenue in Bavaria, however, it can be safely assumed that the amount of aggressively avoided and evaded taxes is much higher and that more revenue could be generated if an adequate level of personnel were at hand.

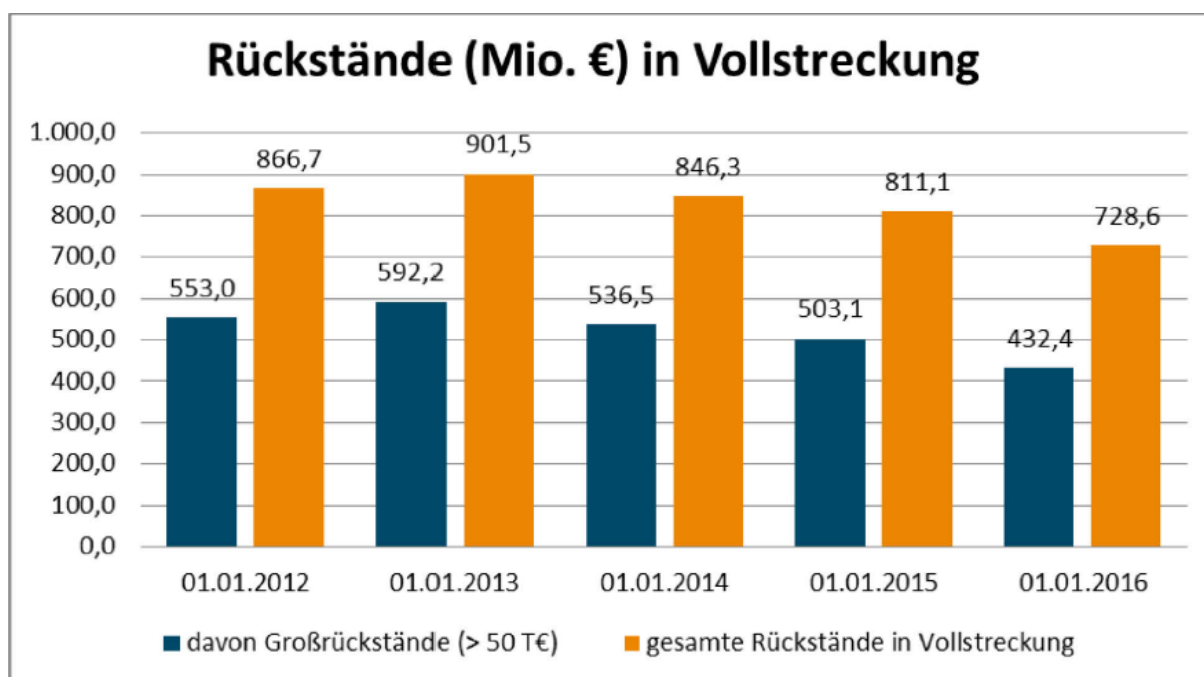
A final interesting point: While the Bavarian Court of Auditors is a big advocate regarding the necessity to employ more staff at tax administration offices, it takes a different view regarding the Financial Courts. Financial Courts are, in Bavaria, assigned to the Ministry of Finance rather than, as in other states, to the Ministry of Justice. Here, the Bavarian Court of Auditors states that the number of cases has decreased continually in Bavaria since 2013 and recommends cuts in personnel and “streamlining” of procedures by fusing the two Financial Courts of Munich and Nuremberg into one court for the entire state. In its reply to the courts suggestions, the government defends both the status quo in staff levels and the two locations of two courts (Bayerischer Oberster Rechnungshof, 2015, p. 111ff.). The question is, however, how much of this decrease of cases is due to the problems in the prosecutions department and the high level of proof in tax evasion cases, something which could also resolved by legal reforms and not necessarily by cutting personnel

And: In a letter to the researcher, the president of the Bavarian Court of Auditors emphasized, however, that this remark has to be seen topically and that it does not indicate any shift or new trend in judging the level of adequate staffing in Bavarian Tax administration as such.

4.3.8.3 Delays, requests for waiving, deferment, non-payment

Given the fact that both businesses and private households may get into financially difficult situations due to tax (surplus) payments, there are accordingly delays in payment, requests for waiving or deferment of payment or outright non-payment, the latter triggering off enforcement. The next graphic illustrates that annually around EUR 900 million payments are delayed.

Graphic 14 Delay in payment in Bavaria, in EUR 1 million

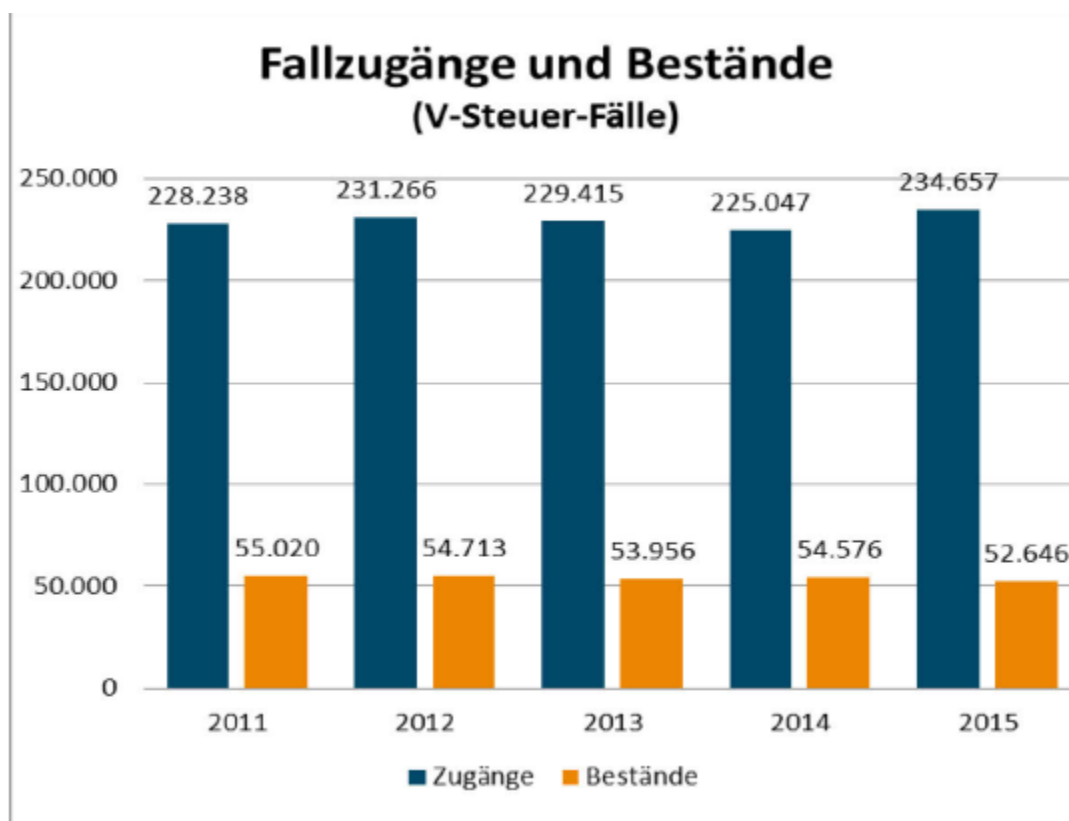


Source 31 (Bayerisches Landesamt für Steuern, 2016, p. 110)

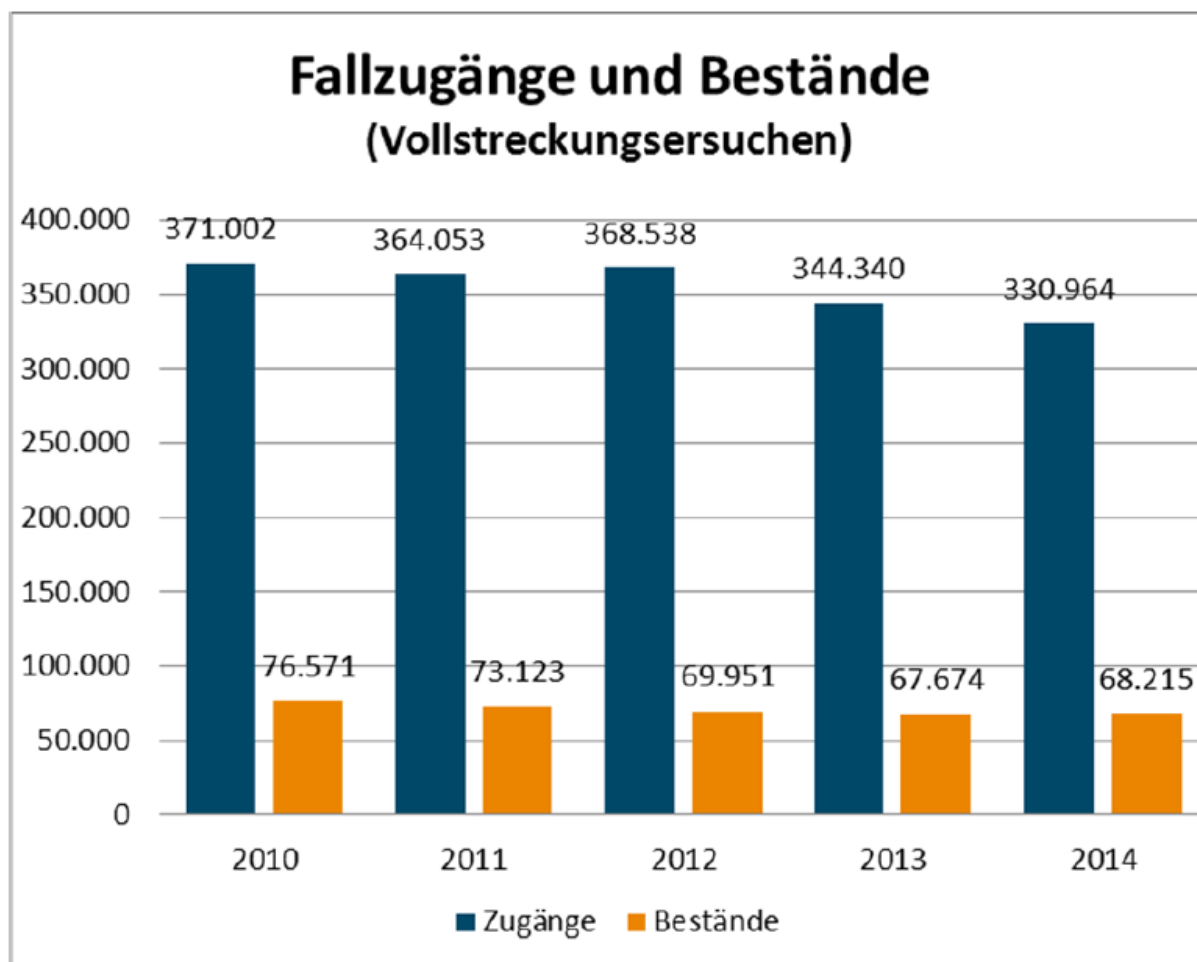
The tax authority emphasizes, however, that two thirds of the amount of delays is due to delays of few large taxpayers (blue column) defaulting more than EUR 50,000 in taxes each. However, the number of those large taxpayers is merely 5% of total number delays, i.e. the remaining one third of defaulted payments is spread among 95% of the remaining cases. Here it would be interesting to know how many among those belong to the lowest decile of the income scale.

Regarding enforcement of defaulted taxes, one has to distinguish in those cases originating in Bavaria (yellow) and those cases, where the Bavarian administration was asked to assist tax authorities from other German states (blue):

Graphic 15 Enforcement cases of defaulted tax



Source 32 (Bayerisches Landesamt für Steuern, 2016, p. 111)

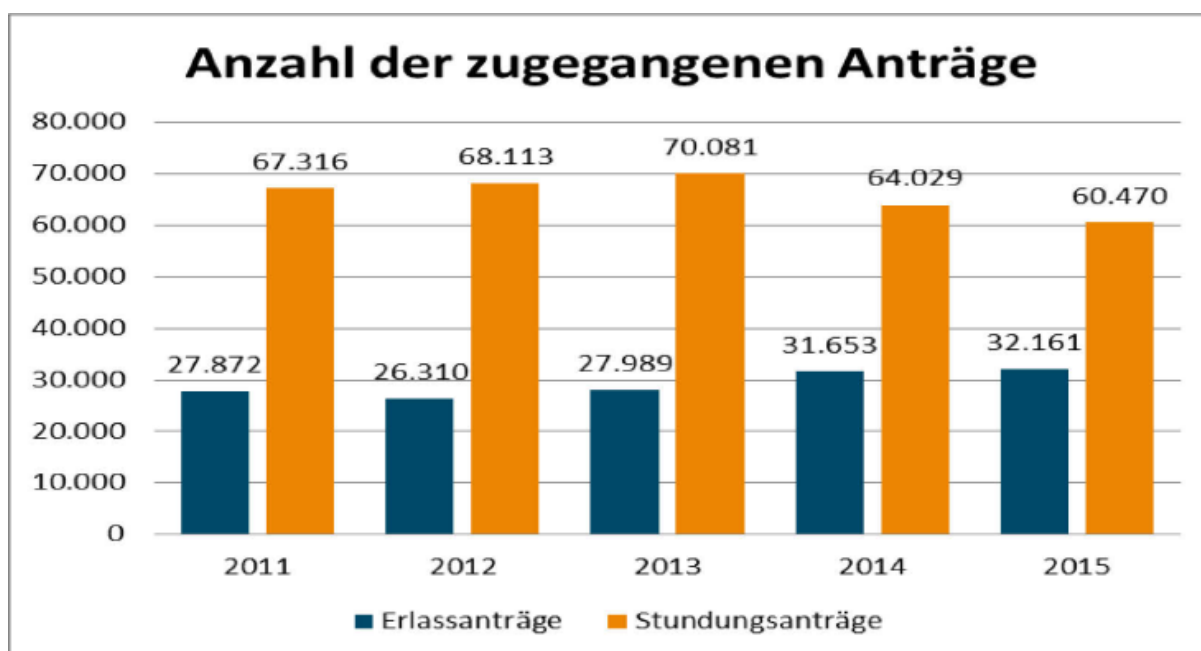


Source 33(Bayerisches Landesamt für Steuern, 2015, p. 98f.)

Out of the enforcement of Bavarian cases, authorities generate annually almost EUR 1 billion revenue (Bayerisches Landesamt für Steuern, 2015, p. 100).

In the final category are those applications asking for waiving (blue) or deferment (yellow):

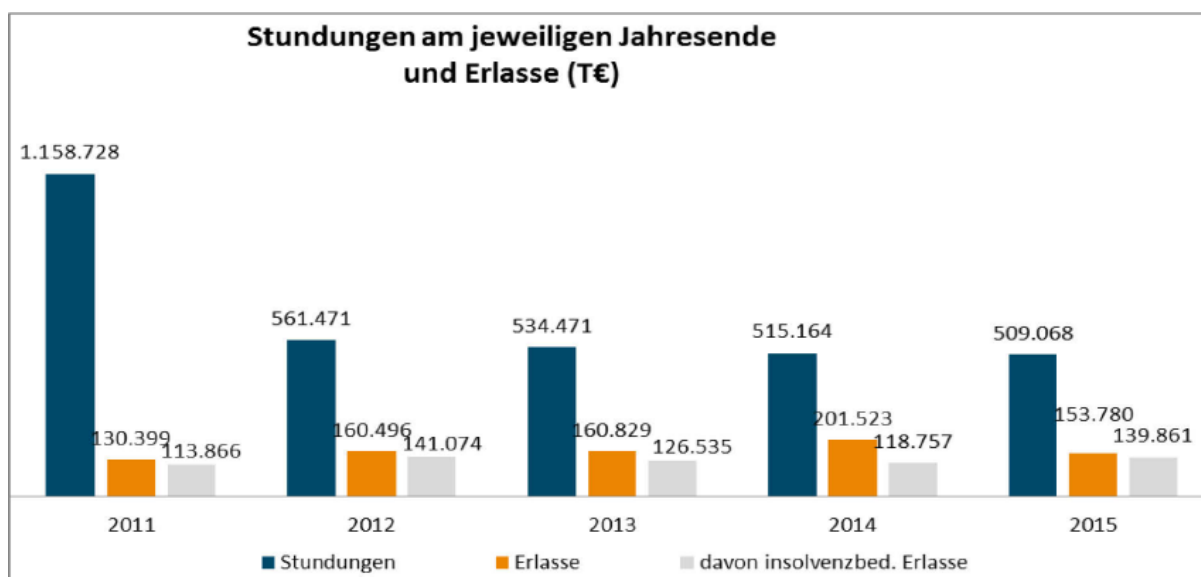
Graphic 16 Applications for waiving and deferment



Source 34 (Bayerisches Landesamt für Steuern, 2016, p. 114)

Given those application, the final graphic illustrates how many of those are granted and what the amount is which accordingly is deferred (blue) and waived (yellow), in addition to the latter the share is given of how much money has been waived due to business insolvency (grey):

Graphic 17 Amount of waiving and deferment at the end of the year (in EUR 1,000)



Source 35 (Bayerisches Landesamt für Steuern, 2016, p. 114)

4.3.8.4 Alternative settlements

Besides the mentioned „Steuerschätzung“ and court settlements (cf. 1.3.3 and 4.3.7.4) there are “amicable settlements” with tax subjects or tax consultants, if consideration suggest to do so. E.g., if a present problem should not obstruct long-term relationships or if a settlement is too complex to be settled in a clear and unambiguous way (cf. also (Schöbel, 2008, p. 213). The question here, too, is, whether those settlements are not beneath that which could or should be due (cf. also (Meinzer, 2015a, p. 202ff.)

4.3.8.5 *Justice issues*

A big problem is that there are no reliable statistics when it comes to the number and status of tax related crimes at German/Bavarian courts and there is equal lack of transparency regarding the amount of sentences, settlements and the explanatory statements why the respective instruments were chosen. Meinzer (2015a: 186ff.) explains these issues in his book in some detail. All this is due to the importance of the tax secret, which justifies the exclusion of publicity both during and after legal prosecution and proceedings. It is up to the courts to decree the exclusion of the public, but in most cases this is granted once one party to the proceedings applies to it (ibid. p. 188f.)

Even if there are indications for acts punishable in accordance with the penal code, there exist ways and means to avoid legal proceeding: A Einstellung gegen Strafbefehl (§ 407 StPO) is possible if a prison sentence beneath 1 year is likely, a Einstellung gegen Geldauflage (§ 153a StPO) is possible if there is no likelihood of imprisonment. The maximum of Geldauflage are 360 (or 780)¹⁴¹ Tagessätze whose maximum is that which the person concerned earns, but nothing beyond EUR 30,000 per day. This would amount to a maximum punishment of EUR 10.8 resp. 21.6 million, which is little if one considers that Bernie Ecclestone was willing to offer EUR 100 million to a Munich Court for a settlement in his case, preventing “dirty details” from being published.¹⁴² Both court sentences, but also reasons for those settlements are not published by the courts for the sake individual interests worthwhile of protection (schutzwürdige Interessen).

Such settlements contain the risk, however, that crimes behind that which is under investigation are not uncovered because investigation is not conducted to the point when all facts are on the table, e.g. if there is organized conspiracy and cooperation to evade tax or related crimes such as corruption, bribery, money laundering... or who was involved in tax evasion, e.g. on parts of tax consultants and banks. Because in Germany there is no public admitted both during court proceedings and afterwards when verdicts and settlements are held under lock and key, the likelihood that unjustified deals are ever discovered remains low.

Here shines once more the tension between the individual interests worthwhile of protection on the one side and the public/common interest and/or the interest of society to investigate and punish crimes on the other. While Algirdas Semeta in tax related cases argued that the public interest is to be judged higher than the individual interest, and while the federal parliament in earlier times argued that the public interest to investigate crimes prevails over the tax secrecy, in legal prosecution and justice administration little can be discovered of these attitudes. It would be certainly in the public interest to investigate large tax cases as good as possible, and to publish at last those verdicts where a sentence could be reached and those arguments backing up why deals were arranged instead a prosecution.

All this nourishes in public the suspicion that justice is not blind, but treats indeed those who are wealthy and well connected more than those whose crimes are a pittance compared to the amount and crimes at stake once a six digit figures of tax evasion is on the table. The suspicion is that of course those cases are complex and difficult to investigate and of course there is a lack of staff and personnel, but that there are also political reasons to not prosecute large investigations into tax related crimes – at least not those whose connection to the ruling elite is close enough to exert pressure upon the state prosecution via the Prosecutor Generals office which is attached to the Ministry of Justice (cf. also GER/VIa/4.3+4)

¹⁴¹ Bei Gesamtstrafenzumessung (Meinzer, 2015a, p. 206f.)

¹⁴² See above 4.3.8.2

Here Meinzer points to the US where such investigations are conducted quite aggressively and lead in the case of UBS to high settlements for the benefit of the public (Meinzer, 2015a, p. 212f.) which lead to an increased willingness of other Swiss banks to cooperate with US administrative bodies from now on. One could safely assume that also in Germany some cases being thoroughly investigated and brought to court will increase the willingness of direct and indirect culprits to increase their willingness to cooperate, as the (legally sanctioned) practice of using information from tax-CDs increased the number of self-reporting, i.e. some exemplarily prosecutions might be enough to lift prosecution of tax related crimes to another level of seriousness.

4.3.8.6 Conclusion

The low number regarding how few cases of tax evasion and tax avoidance are brought to court indicates that there are probably many resources lacking in uncovering cases and bringing it into a form which makes it likely that public prosecution has a chance to be successful.

Another interesting feature is the considerable number of payment delays of larger businesses and the considerable number asking for deferment and waiving of payment: It could be one consequence arising from the assessment that any prosecution, which is too tough, endangers jobs and, on balance, jobs are considered to be more important.

On the whole, this sub-chapter, too, substantiates the argument that more personnel is likely to generate more revenue (as did e.g. 4.3.7.2). It also illustrates that staff situation in related departments, e.g. police or public prosecution, is of importance.

4.3.9 Enforcement problems due to federal structure and differences

Given the challenges of tax cooperation within the Germany federal system stated in chapter 3 of this study and the fact that tax authorities indeed need to cooperate with departments in other states, e.g. in the case of businesses with several branches or tax fraud investigation, it was interesting to hear that the majority of Bavarian conversation partners did not mention the federal structure of tax administration to be a major cause of tax injustice. Even though they admit that there are a lot of problems e.g. in data exchange, differences in work processes and equipment, they mostly agreed those problem do not automatically call for more centralization. They pointed out, for example, that within the present structure the stronger states can support the weaker states as is already the case by providing IT support. And things are improving: if, for example, large businesses are concerned, the main tax auditing inspection is at the headquarters of a company, but business tax inspectors at branch offices may assist the main inspection team.

The outstanding question is whether the speed of reforms and the progress achieved is proportionate to the needs and whether a centralized option could speed up this process.

4.3.10 Enforcement problems due to insufficient resources and tools

Of course, a number of suggestions and recommendations aimed at improved tax administration and enforcement as made by conversation partners. And: the desires are not too different from those voiced by tax administrators elsewhere in Germany.

4.3.10.1 Offices, equipment, cars and other necessities

The complaint at the federal level (2.7.) is echoed in talks with Bavarian conversation partners, e.g. regarding office equipment, computers and the building-condition in which offices and houses are. One example which has been published in the trade-union journal “Der Wecker” refers to a needed building in Munich for 3,000 employees of the Munich tax authority. After the need has been established, an architect was found, the choice between different options was taken in 2008. Then delays started due to financial and political reasons. When the authority in charge of health argued that the old building causes health hazards to the employees it was considered to hire office space rather than starting in serious to build a new building. However: Given the level of rents in Munich, hiring office space very quickly would have been much more expensive. Because of delays, renovation work had to start in the old building, which also cost money. Even though by now it has been decided to erect a new building, it is still open when it can be used.¹⁴³

4.3.10.2 Banking secret, tax secret

Bavarian practitioner would welcome a loosening of the banking secret. Both in the field of checks on millionaires and businesses, conversation partners identify banking secrecy (*Bankgeheimnis*) as a key element privileging (some of the) wealthy and businesses. Foundation of banking secrecy banning tax authorities of snooping around on individual occasions or even on a regular basis is §30a AO which has been introduced into tax law only after the Second World War.¹⁴⁴ Given the restrictions imposed by §30 AO, tax officials complain that given the widespread cooperation of tax authorities within the EU or the emerging common reporting standards on the level of OECD, German tax administration is more informed about regarding income and wealth in other EU countries than domestically: Here, §30a AO still restricts tax administration from accessing easily information stored e.g. at the BAFIN.¹⁴⁵

It follows a selection of statements, mostly from conversation partners from the tax auditing department:

The abolition of the Banking Secrecy for the tax authorities would, so the opinion, not damage the interests of the tax subject due to the very strict and well protected tax secrecy in Germany. Such an access would not, of course, solve all problems. But if tax auditors (and not only tax fraud investigators) had also access to bank accounts, this would be more complicated for the culprits to hide assets– an assessment which is supported by tax fraud investigators since it would make investigations more speedy and efficient.

Technically, this would be possible since a lot of data is already stored at the federal BAFIN and could be accessed here. In December 2003 the law to advance tax honesty was passed, which also had the intention to make money laundering and the financing of terrorism more difficult. Banks were obliged to report basic information, namely the name of account holder, address, the kind of account and the account number. It enables authorities to find out whether a certain person did declare all accounts in its ownership. It did NOT admit to information regarding the amount deposited and account movements. Originally, the relevant IT system was devised to process 2,000 requests per day, but two years afterwards the number of requests superseded already 50,000 and was overburdened. Theoretically, the system

¹⁴³ Dullinger, A., Weiß, D. Wie gewonnen, so zerronnen oder der Umgang mit Steuergeldern. In: *Der Wecker* 2012/12. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

¹⁴⁴ Summary of history in verdict of Federal Constitutional Court BVerfG-Urteil vom 27.6.1991 (2 BvR 1493/89) BStBl. 1991 II S. 654, see GER/Va/7.3

¹⁴⁵ For the latter see bfg Informationen 3/20126 p.10

should be able to process 60-80 million account requests, a considerable share of Germany's more than 500 million accounts.¹⁴⁶ However, there are other information in 2013, declaring that annually (!) only 70,000 to 100,000 requests were directed towards the BAFIN.¹⁴⁷

The mere option alone that banking data could be accessed in principle would certainly increase tax honesty greatly. Right now, however, tax auditors only get access to banking data if he opens a penal investigation on a person/business. It is not enough that there is a well-founded suspicion (*Anfangsverdacht*). And then he only has access to the data at a given point of time. If he wants to see account movements and money flows he first needs a court decision. In the USA, the tax authorities have access to these data.

More transparency regarding bank accounts would also be helpful to follow up illegal employment and the damage done here by cheating on both tax and social security contributions: In some rare cases one can detect black labour when material procurement expenses are much higher than regular turnover would suggest or as it is in comparable companies. In other cases, when material is procured by customers and the company only provides labour it is much more difficult. Here it would be helpful if the banking secrecy could be abolished so that a clearer view on money flows could be obtained by the tax inspector.

The request to abolish banking secrecy is not supported by a group of senior tax administrators: Just obtaining more information does not really help if one is not able to detect suspicious pattern in the first place because of the mass of data obtained that way. And: It is already legally possible to get insight into bank accounts and money flows under the present legal framework, if there is suspicion arising from the inspection. And here the threshold for permission to look into bank accounts does not always need to satisfy high threshold set by penal law (*Anfangsverdacht*) which would bring the tax investigator into the game.

This position was opposed in confidential talks not only by tax administration practitioner, but also by their own superior, insider from corporations or even a former Minister of Justice and Member of a Finance Court

Another problem is seen when it comes to evaluate data contained on tax data CDs and investigations arising from evaluating self-reporting, e.g. in how far banks and employees of banks cooperated with tax evader and aided and abetted tax evasion. Here it seems that banks also abroad continue to act illegally and cooperation between German states would be important to find out about the extent and damage done. The problem is that once more that (some) of the 16 German states are blocking progress. The reason: Tax secrecy.¹⁴⁸

Everybody is now waiting for the implementation of the OECD's automatic data exchange initiative which shall be starting by 2017. Tax practitioners are sceptical whether there is political will to implement it in a quick, comprehensive, "easy to apply" and efficient

¹⁴⁶ Kontenabrufverfahren startet wegen Serverproblemen als Provisorium (2005, March 31). In: Heiser. Retrieved 23 May 2015 from <http://www.heise.de/newsticker/meldung/Kontenabrufverfahren-startet-wegen-Softwareproblemen-als-Provisorium-Update-148995.html>

¹⁴⁷ Jahberg, H. (2013, November 26). Mehr als 100 000 Kontenabfragen durch Behörden. In: Tagesspiegel. Accessed 23 May 2015 from <http://www.tagesspiegel.de/wirtschaft/datenschnueffelei-mehr-als-100-000-kontenabfragen-von-behoerden/9132174.html>

¹⁴⁸ Leyendecker, H. (2015, August 9) Überraschend viele Selbstanzeigen. In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/geld/steuerhinterziehung-in-deutschland-ueberraschend-viele-schwarzgeld-selbstanzeigen-1.2600898>

way. Their scepticism is nourished by past experience and the knowledge of powerful interest groups opposing it: When, for example, tax inspectors asked to be permitted random checks on accounts, many protests occurred, lead by the Federation of Taxpayers. But this was a very moderate request. In the Netherlands, for example, a look into bank accounts and movements of money are normal standard and contribute to the assessment of tax officials whether a case is worth checking or not.

Only Schlötterer rather advocates the loosening of tax secrecy instead of banking secrecy for the reason that the federal parliament originally did not intend to place tax secrecy above the task of authorities to investigate and prosecute criminal acts.¹⁴⁹

4.3.10.3 International cooperation

Also Bavarian tax officials have to fight international border and barriers in a world which is increasingly borderless for the wealthy and businesses. Here communication among tax authorities is lagging behind and seriously wanting. In the word of a tax auditor: “At the international border everything stops”.

In some areas there are no legal provisions for effective cooperation. For example: Germany concluded treaties with more than 20 secrecy jurisdictions, but up to the present day the Federal Ministries for Finance and Justice could not agree a coordinate way on how to ask for and exchange information. The Bavarian authorities therefore advised their employees to forsake information requests until this problem has been resolved.

A big problem are legal ambiguities in international treaties which are difficult for the practitioner to overcome. For example, in the area of double taxation treaties may contain clauses which can be interpreted in various ways. Which is why the company under investigation can tell the German tax authority this, authorities in other states that, and there is no easy way to judge between them. Some assistance here can be obtained from the Overseas Taxation Department, but what would be needed is an automatic exchange of data and an efficient cooperation between tax authorities. Once more one should remember that those companies can pay the best tax specialists (“The Big 4”) to create the best tax designs for the corporation and that even the well equipped and efficient Bavarian tax authorities are quantitative and qualitative inferior to this army.

In other areas are good legal national provisions; but its enforcement is hampered by the way international cooperation is organized. For example: paragraph 90 Fiscal Code, and in addition some BMF letters, regulate the options available for the tax auditor if he suspects cheating in the area of transfer pricing, i.e. requirements of documenting prices shall prevent profit shifting. To establish, whether profit shifting takes place or not is, however, still not easy. A major problem here is that whenever Germany wants to collect more tax, another state will be left with less, which again will be objected by that state. To settle those conflicts there is an established interstate-mechanism, but: Such a settlement takes a long time and it needs special precautions that the case under discussion does not become time-barred. The

¹⁴⁹ Göhler für die Bundesregierung in 14. Sitzung des Sonderausschuss für Strafrechtsreform am 25.9. 1973, auch NJW: Interessenkonflikt zwischen Steuergeheimnis und grundsätzlichem Auftrag der Behörden, Sachverhalte aufzuklären, ist zu Gunsten einer wirksamen Strafrechtspflege aufzulösen. Steuergeheimnis ist auch durchbrochen wenn es um die Feststellung der wirtschaftlichen Situation der Leute geht. Dann könne man auch Interessenkonflikte zwischen Steuergeheimnis und Strafrechtspflege entsprechend auflösen. Bundesrat und Finanzausschuss waren gegen Lockerung des Steuergeheimnisses, welches Regierung eigentlich vorgesehen hatte (§ 161 Abs. 2StPO). Jetzige Fassung trat 1975 in Kraft. (siehe Göhler)

possibility to freeze assets until the dispute is settled exists not in ordinary tax auditing, but only, if tax fraud investigators suspect a case of tax evasion.

In other areas there are improvements, but it takes a long time for them to arrive at the level of practitioner. The so called “Swedish Initiative”, for example, which paved the way for data exchange upon request, was introduced on the European level in 2006, it was ratified by Germany only 2012. The *Anwendungsbestimmungen*, i.e. how (and via which chain of communication) it is possible for the tax fraud investigator of Nuremberg to ask his colleague in Rotterdam to assist him in his investigation, are being published only on 1 April 2014. It took that long because German tax secrecy and data protection standards had to be incorporated in the international implementation. In other words: The German standards required protection also in international cooperation, e.g. when passing on German data into states where protection was at a lower level. Here German legislator and administrators needed assurance that in case of conflicting laws the German standard was secured and no confidentiality was violated. Here, however, conversation partner admit that such a lengthy implementation is worth it since superior values are concerned. In the words of a semi-official conversation partner from the tax fraud department: ‘It’s the Swedish initiative, but no German would like to have Swedish tax transparency.’.

But even if this Swedish Initiative is now in operation, deficits remain: Since there are no channels for direct and automatic communication, the option to be informed even when pre-investigations are initiated does not exist – which would be important since if that way investigations in France would raise a red flag of alarm it would signal automatically to the German colleague to pay attention to this name and company as well. Informal communication among colleagues could be improved beneath the formal requests which are still dominating the cooperation of tax authorities in Europe. Therefore: If acceptable data protection standards could be found for the entire EU, data exchange both automatic and upon request could speed up considerably.

Due to the Internationale Steuerzentrum (cf. above 4.3.3.5) and legal arrangements with the Czech Republic there is improved cooperation between Bavaria and the Czech Republic, Austria, Croatia, Italy and the Netherlands – at times even Joint Audits (Bayerisches Landesamt für Steuern, 2015, p. 102f.). The latter, also in the eyes of conversation partners working at large corporations, a very adequate way to check on aggressive tax avoidance and tax evasion by TNCs and should also be considered in partnerships outside Europe. This kind of “real cooperation” is, however, rather the exception than the rule. Equally questionable is the low number of “Joint Audits”, a strong contrast to the international engagement of Bavarian businesses.

It remains to be seen how all those current initiatives will develop eventually and whether they will improve cooperation not only per declaration of intent, but in reality.

4.3.10.4 Reversing burden of proof, freezing assets

Less unanimity exists in the question of reversing the burden of proof and freezing assets in case of suspecting tax evasion. When talking semi-officially to two experts from the tax fraud department, both had different views on that:

The first expert argued that this is not necessary since the citizen is obliged to cooperate with the authorities in the area of taxation anyhow. And if states accuses somebody he shall have the burden to prove it. His colleague argued differently, starting with a look at money laundering: According to him it would be helpful as proceedings in Italy or the

Netherlands demonstrate. If in an investigation there is money which is unaccounted for and only the usual explanation are there (present, gain in lottery, inheritance, found...) the state should have the law to get hold of it by freezing it. If there are good reasons for owning this money, it can be proven. If not-there is a problem and the seizure is justified.

Interesting enough, when the first expert listened to the explanation of his colleague he conceded that the reversal of proof would indeed make sense for money laundering investigation.

Also publicly experts see it to be desirable that of undeclared assets at least half falls to the state – something which will not happen as long as the burden of proof remains with the authorities.¹⁵⁰

4.3.10.5 Electronic billing and payments

One way to both counter fraud with turnover tax and lower the extent of damage occurring in the informal economy would be an electronic billing system as it is standard already between EU states. Here probably a push towards transparency would occur, followed by a dramatic increase in revenue comparable to the tax CDs.

A similar proposal comes from the trade unions: Since the informal economy is largely fuelled by cash-payments they want to permit only cash payments up to a sum of EUR 1,000. Everything beyond should have to be billed and paid electronically. (Dettmer & Reiermann, 2013).

5 The municipality of Nuremberg

Since the German taxation system needs to be considered at all three levels (Federal, State and municipal) the municipality of choice is Nuremberg, where the author of this study has his residence. Certainly, the state capital of Munich would have been even more ideal because Munich and surroundings are economical boom areas and has one of the highest turnover in business and the highest density of millionaires. The Munich tax office is by far the largest in terms of personnel and income. All this indicates at the same time, however, that Munich is so special that it is untypical and exceptional. Nuremberg, instead, is far more typical as far the situation is among ordinary Bavarian municipalities.

Nuremberg is the second largest city of Bavaria. It is located in the northern part which consists in the three districts of lower, middle and upper Franconia. The town itself has close to half a million inhabitants, but the metropolitan area of which Nuremberg is the centre houses over 1.2 million inhabitants. Nuremberg houses one of the two seats of the State Tax Authorities, has three tax offices and is an important centre for police and jurisdiction.¹⁵¹ Nuremberg is dominated by the Social Democrats who are the largest party in the municipal council and provide the Lord Mayor (*Oberbürgermeister*), his deputy mayor and the municipal treasurer. The government of Nuremberg is, as most of the other major towns in Bavaria (including the capital Munich!), dominated by opposition parties (SPD, Green Party, Free Party), which is in contrast to the state government, where the CSU rules with absolute (!) majority.

¹⁵⁰ Zu Gast bei der Steuerfahndung: „Arbeit für die Katz?“ In: Der Wecker 2013/14, p. 3f.

¹⁵¹ For more information see <http://simple.wikipedia.org/wiki/Nuremberg> and the English Website of the city http://www.nuernberg.de/internet/portal_e/index.html

5.1 Legal basis, administrative structure, revenue collection

Building upon that which has been said about characteristics of German taxation in (GER/V/1) and above in (1), municipalities in Germany are financed by

- shares in joint taxes (i.e. taxes raising revenue both for federation, state and municipality, e.g. shares of the Income Tax or Flat Rate Withholding Tax) which are regularly collected by the state tax authority,
- own taxes (e.g. Trade and Property Tax, Dog Tax) whose collection is delegated to the state tax authority,
- levies and charges for services rendered (e.g. for waste disposal or street cleaning) which are collected by municipal bodies and
- money transfers coming from the State within which the municipality is located, similarly to the equalization scheme among German states.

The state-operated tax authorities in Munich and Nuremberg are the largest in Bavaria. For comparisons sake: Munich has one single big tax office, employing ca. 3000 civil servants (measured in MAKs) who collected in 2014 EUR 31,098.90 million. Nuremberg has three tax offices: Nuremberg Central, North and South. Those three offices employ 796.17 people (measured in MAKs) and collected in 2014 EUR 5,001.17 million revenue (Bayerisches Landesamt für Steuern, 2015, p. 168ff.). Due to reorganisation program of Bavarian Tax Offices (“Bring jobs to people”), a number of employees will have to leave Nuremberg to other locations in the foreseeable future (Bayerisches Landesamt für Steuern, 2015, p. 3f.).

Because of the German structure of tax law and tax administration, this money does not remain in Munich and Nuremberg, but is distributed according the complicated keys and quotas described in GER/V/1 and GER/VIII/1.2.2.

The financial situation of municipalities is, however, seen to be improving: The Tax Revenue Assessing Councils (Arbeitskreis Steuerschätzung) prognosis is that revenue arising from Local Business Tax, the most yielding municipal tax, will increase 17.5% between 2013-2019 (Bayerisches Landesamt für Steuern, 2015, p. 69).

5.2 Nuremberg views on governmental revenue

Taxation issues and its local implication are discussed in Nuremberg as in any other municipal society, both on the municipal-political level, among NGOs and in the media. For example:

In 2009 already,¹⁵² Werner Stupka of ver.di, the Trade Union also representing civil servants, criticized that due to the lack of personnel in the tax administration Nuremberg loses annually EUR 9 million in taxes from companies and corporations, which would amount to the district of Middle-Franconia to EUR 135 million. The loss arises in the following categories: Corporation tax (38.2%), Local Business Tax (22.8%), turnover tax (9.5%) and income tax (22.6%). This shortage arises due to the lack of personnel. While there should be 414 tax auditors (*Betriebsprüfer*) in Middle Franconia, there are de facto only 295. And as to tax fraud investigators (*Steuerfahnder*): Here there should be 92.5, while there are de facto merely 72.

¹⁵² If not indicated otherwise, this sub-chapter is based on Reitzner, H.P. (1009, September 15) Betriebsprüfer fehlen – ein Skandal. In: *Nürnberger Nachrichten*. Retrieved from <http://www.nordbayern.de/nuernberger-nachrichten/nuernberg/betriebsprufer-fehlen-ein-skandal-1.574994>

The critique of Trade Unionist Stupka is echoed by the municipal treasurer Harald Riedel: He, too, launched a complaint with the State Office of Taxation that Nuremberg does not receive sufficient tax inspectors. Riedel wrote a flaming protest to the editor of the Bavarian State Newspaper because of an article published there: In that article the author criticizes that there are *too many* tax checks and controls in Bavaria and that any increase, as demanded by SPD politicians, would give the impression that all business and citizens are generally suspected of tax trickery. Riedel, himself SPD, rejects this impression and asked for correction. The editor of the State Newspapers expresses understanding for Riedels protest but defends itself that the article only reflects the opinion of its readership from small and medium enterprises.

Treasurer Riedel thinks that higher taxes (or a different composition of taxes or a different share of municipalities in the shared taxes) are justified, but he sees little willingness on the federal and state political level to act accordingly. For that reason, Riedel appeals to wealthy heirs to donate some per mille of their inheritance to finance public tasks. He calculates that, if 1% of that which is passed on annually would be donated to the municipality, Nuremberg would collect an additional EUR 300 million over 10 years. Put into a fund at 4% interest would generate an annual extra of EUR 12 million for the municipality to spend.¹⁵³

6 State options to combat tax crimes, ethical implications

Before considering this chapter in detail one has to state that tax evasion is a crime, not just a trivial offence (*Kavaliersdelikt*) or administrative offence (Ordnungswidrigkeit). Its criminal nature is stated in paras 369 and 370 of the Fiscal Code, even ‘perpetration is punishable’ (para 370.2). The question of this chapter is whether the state is entitled to combat this crime by using, aiding, abetting or tolerating other crimes.

6.1 Purchase of Tax CDs

A special focus in the German tax justice debate was and is the ongoing purchase of CDs on which employees of firms in Liechtenstein, Switzerland, Luxembourg etc. stored data of German citizens using services of the institutions where they are employed and where they suspect tax evasion. Of particular importance was and is Switzerland, where Germans are suspected to have deposited financial assets between EUR 130 and 180 Billion out of reach of the German tax authorities. These CDs were offered to German authorities and in most cases, if information proved reliable, purchased for a 6 digit amount of tax payers’ money.

Even though it is correct that Bavaria refused purchasing tax CDs itself, they shoulder their share of the costs. This restraint might surprise since a substantial number of voluntary declarations occur in Bavaria: of the 25,000 declarations in 2013, 3900 came from Bavaria which puts Bavaria on rank three behind Baden-Württemberg and the much larger North Rhine-Westphalia.¹⁵⁴

The question asked here is whether the state is permitted (whether it is acceptable/legitimate/justified) to serve the common good by using illegally produced means. One group of politicians points out that they only react to an illegal deed committed before,

¹⁵³ Staat, Stadt, Stiftungen – einige Reflexionen und Thesen. (2013, September 27). Speech, retrieved from http://www.nuernberg.de/imperia/md/stadtfinanzen/dokumente/forum4_1_riedel_staat_stadt_stiftungen.pdf

¹⁵⁴ Hulverscheid, Cl. (2 January 2014) Mehr Härte gegen Steuerhinterzieher. In: *Süddeutsche Zeitung*. Retrieved from <http://sz.de/1.1854292>. Schlötterer 2013, Kapitel “Die soziale Gerechtigkeit”, Ursache 4

namely tax evasion. Chancellor Merkel, for example, is an advocate of this practice for exactly that reason. Others argue against by pointing out that especially the state must uphold legality: Whoever handles and deals with stolen goods is an accomplice of thieves; whoever condones the breach of highly private data is of the same quality of those who invade this sphere of privacy.¹⁵⁵

Whereas politicians point out that they only react to an illegal deed committed before, namely tax evasion, others argue that even then the state must uphold legality because, once this road is trodden there might be no stopping anymore. Tax honesty, critics argue, is also influenced by trust and good faith in honesty of institutions and authorities (Merten, 2012, p. 32). The German Federal Constitutional Court, in his decision Az. 2 BvR 2101/09 of November 2010, declared the purchase of these CDs as being 'lawful'. A similar view took the European Court of Human Rights whose seven judges unanimously argued that the purchase of data from illegal sources does not offend against Article 8 European Human Rights Convention and the Right to Respect of privacy and family life.¹⁵⁶

Here, however, gaps remain: Whenever German authorities receive knowledge about tax evasion involving Switzerland via leaked CDs, Swiss Authorities refuse to co-operate, as was the case with billionaire Curt Engelhorn and his daughters in Augsburg.

In the consequence, revenue authorities got a manifold payback not only because the information enabled tax inspectors, tax fraud investigators and prosecutors to identify and punish tax evader, but also, because many citizen, out of alarm because of the sudden risk of being exposed, offered a voluntary self-reporting of their financial situation in the effort to avoid legal punishment by rather paying their due and some fine.

6.2 *Privileged Self-reporting*

Tax evasion in Germany is the only crime which can be cleared off by self-reporting or where at least punishment can be mitigated (cf. para 371 Fiscal Code). Rules upon self-reporting have been toughened by the present federal government (e.g. increasing the limitation of liability from five to ten years), but still it is an amicable solution to this problem, especially since there is no compensation if tax evasion went on for a longer time than 10 years.

In principle and according to the majority of politicians, the privileged treatment in case of self-reporting shall not be abolished because the fear of being contained on the data CDs, more and more people resort to self-reporting which brings billions of Euros in repayments of and fines for evaded taxes to the treasury. Statistics prove this point: While it seems that so far no person made known to authorities for being a tax evader (e.g. via leaked CDs) has been sentenced and punished, billions have been paid to treasures via the option of self-reporting. More specifically: If one compares the modest figures given above (4.3.8.2),

¹⁵⁵ Angela Merkel: "Vom Ziel her sollten wir, wenn diese Daten relevant sind, auch in den Besitz dieser Daten kommen", sagte Merkel an diesem Montag in Berlin. Jeder vernünftige Mensch wisse, dass [Steuerhinterziehung](#) geahndet werden müsse." Wolfgang Kauder: "Diebstahl bleibt Diebstahl. Mit Dieben sollte sich der Staat nicht gemein machen." These and a range of other positions are contained in Angela Merkel will die Steuersünder kennen. (2010, May 17). In: Süddeutsche Zeitung. Received from <http://www.sueddeutsche.de/politik/schweiz-kauf-der-steuer-cd-angela-merkel-will-die-steuersuender-kennen-1.59944>

¹⁵⁶ Eisenring, Chr. (2016, October 6). In: Neue Zürcher Zeitung. Retrieved from <http://www.nzz.ch/wirtschaft/wirtschaftspolitik/urteil-des-europaeischen-gerichtshofs-fuer-menschenrechte-deutschland-darf-gestohlene-bankdaten-nutzen-ld.120791>

resulting from successful prosecuting tax evasion in Germany, there is a manifold to be gained via self-reporting. According to a survey of the *Süddeutsche Zeitung*, the purchase of CDs resulted in 25,000 voluntary declarations in 2013, a threefold increase compared with 2012. Since 2010 60,000 tax payers acted likewise, which resulted in surplus tax repayments of around EUR 3.5 billion.

This revenue is also the reason why both the federal finance ministers and all key stakeholders within the *Länder* (except Brandenburg) agree to keep this option open rather than abolish it,¹⁵⁷ and also practitioners in the tax administration agree that this is the more practical way: in the case of self-reporting, citizens are obliged to cooperate with authorities. If in a penal proceeding all the proof would have to be investigated and presented to the courts by the tax administration and tax fraud administration it would be near to impossible to do so. It probably would not be adequate to satisfy legal proof and a court arrangement is more likely than sentencing.

But there is another problem: It is one thing to toughen the law, it is another to provide tax administration to adequately check on the submitted self-reporting. As has been discussed in the case of Bavaria (4.3.1.3.1), the real problem is the impossibility of the Assessment department to check the submitted documents adequately because checks need to be done with existing staffing levels and in addition to the already existing load of work. On the other hand the legislator determined that, only if the submitted declaration is entirely correct, the exemption from penalty applies – which broke Uli Hoeneß' neck since his self-reporting was faulty and brought him into prison. Such adequate checks are impossible not only in Bavaria, but also in neighbouring Baden-Wuerttemberg.¹⁵⁸ For that reason: This instrument seems to provide no satisfactory justice since the self-declarer has a high chance to slip through.

6.3 Useless legal agreements

One may further question legal agreements between the German government and other governments, if they are inefficient and/or too lenient on culprits. For example: The German government refused to include one single Tax Haven with name on its Blacklist, reveals the ministry of finance replying to a question asked by an MP of the Green Party. The reason given: As long as those administrations are willing to talk and to negotiate it is not permissible to label them derogatively as tax haven.¹⁵⁹

Another attempt of the German government to dry out tax evasion in Switzerland was the negotiation and conclusion of a bilateral tax agreement with the Swiss government. A major achievement of that agreement had been that all non taxed German assets would have been taxed retroactively with a flat tax and that Swiss Banks make sure that gains from capital income will be taxed in future. However, the undertaking was that was that the names of tax offenders would still remain secret. This caused public dissatisfaction in German. Whereas German politicians argued that for them a little sparrow in hand is preferable to the dove on

¹⁵⁷ Bohsem, G. (2014, February 6) "Lieber volle Kassen als volle Gefängnisse". In: *Süddeutsche Zeitung*, retrieved from <http://sz.de/1.1880943>

¹⁵⁸ Die Steuergewerkschaft ist nun endlich auch aufgewacht und hat sich an die Presse gewandt: "Gmünder Tagespost" vom 22. 08. 2014: "Beim Innendienst ist die Grenze der Belastbarkeit längst überschritten. [Zumindest] in einigen Finanzämtern in Grenznähe [zur Schweiz, wo natürlich besonders viele Fälle eingehen] können Selbstanzeigen nicht mehr ordentlich bearbeitet werden. Ein Herr Höneß würde in Baden-Württemberg nicht unbedingt hinter Gitter sitzen. Denn aus der Personalnot heraus können nicht alle Selbstanzeigen wegen Steuerhinterziehung auf ihren Wahrheitsgehalt hin überprüft werden."

¹⁵⁹ Schick Anfrage, Antwort Koschyk 21.6.2013 . <http://www.noz.de/deutschland-welt/politik/artikel/203014/bundesregierung-verneint-steueroasen>

the roof, critics warned that this still amounts in rewarding dishonesty and legalizing assets acquired by fraud and other illegal activities. It was interesting to note, that among those being critical were not just the “usual suspects” such as attac, but also lawyers specialized to defend tax evaders (Conradi & Ott, 2013). They wanted the names of tax offenders public and a thorough persecution of all offences as well as retroactive payment of all dues and fines instead. Due to the majority of opposition parties in the second German Chamber, the Council of States, and the federal government suffered defeat on the motion with the treaty in 2012. Germany could not ratify this tax agreement which therefore could not come into force.

In other cases national legal provisions are not adequately covered by international provisions, or international provisions are in conflict with national provisions, which create problems by the regulation of their practical implementation (*Durchführungs- or Anwendungsbestimmungen*).

6.4 Naming & shaming

Germans are not that used to the practice of “Naming & Shaming” as it is, for example, the case on tax defaulters in the United Kingdom.¹⁶⁰ Privacy in Germany is highly valued. Accordingly there was a heated discussion whether it is alright to just publish the name of tax offenders the way it was done by Offshore Leaks and cooperating media. On the other hand, it might be a way forward, taking into account research by Martin Nowak (Nowak, 2011): He found that the desire of a good reputation as somebody to cooperate with others for the sake of the community is a major force in evolution and might therefore also be an untapped resource to increase altruistic cooperation in the face of challenges such as demographic development or climate change.

A simple message has ... emerged from my research on the Tragedy of the Commons. Whenever individual behavior is relevant to the public good, it should itself be made public to help avert tragedy. Advertising is critical. When playing a public goods game, others have to know that you are doing your bit for the world. Only then can an individual's regard for his or her own reputation be fully exploited. (p.218)

Clearly this kind of advertising is done with great pomp and splendor by companies, advertising their major achievements in the field of Corporate Social Responsibility or the UN sponsored Global Compact. It is often seen that this is rather a partial engagement (e.g. done in the west, but not elsewhere in the world) or mere propaganda than adequate, binding, transparent and verifiable engagement. Here deficits need to made public equally, e.g. by media or NGOs.

My work on cooperation highlights which kinds of behavior are important for human evolution and success in daily life. We have five mechanisms that can work separately and together to help everyone to get along. What is remarkable is that from an analytical, quantitative and mathematical basis I can come up with ideas that should seem as familiar to secular ethicists as they are to followers of religions. (p. 272)

Probably there was a good deal of naming and shaming at work when names emerged in the wake of the purchase of tax CDs and subsequent self-reporting. The German public is surprised and shocked about the number of people implicated and the list reads like and the excerpt of the Who's Who of German elite: Uli Hoeneß - president of 1. FC Bavaria Munich,

¹⁶⁰ Her Majesty's Revenue & Customs administration: Publishing details of deliberate tax defaulters. Retrieved from <http://www.hmrc.gov.uk/defaulters/>

Alice Schwarzer - feminist activist, Helmut Linssen – treasurer of the CDU, Theo Sommer - editor of the ZEIT newspaper, André Schmitz - Secretary of State, Berlin etc.

6.5 Whistleblower and paid informants

Many successes in the case of uncovering bribing, fraud, corruption and tax evasion could not be done without the assistance of Whistle-blowers, who often breach laws and professional ethics because of their (alleged) intention to promote the common good. It is obvious that the debate about tax justice during the past years would have been probably non-existent without leaked tax CDs, Offshore Leaks or individuals such as Rudolf Elmer or Wilhelm Schlötterer. And: Without those debates, no self-reporting to the known extent would have occurred and tax secrecy, tax havens and other practices would continue to exist unabated. In spite of all support for tax evaders such as Michael Schumacher or Uli Hoeneß, the public woke up towards the damage which this practice afflicts to the community and the burden, which “ordinary taxpayer”, especially those whose tax is automatically deducted, have to shoulder because others evade or avoid their share.

Whether the financial sector can be accused of systemic corruption, as Rudolf Elmer does, namely a secret cooperation and coverage of economical, financial and political elites who misuse law and law administration in their favour, might be questioned. There are, however, indications enough to suggest, that those who seriously want to elicit shadowy practices are seriously disadvantaged as compared to those who actually do it. Here one has seriously to consider whether it is not time for considering similar protection mechanisms such as witness protection programs for those willing to leave Organized Crime or Witness Protection for those who want to testify against criminal practices of their employer (e.g. legal proceeding against Peter Amrein in New York only possible after an insider was willing to testify as a witness (Schumann, 2014))

But exactly here conversation partner from tax authorities argue that due to the German sensitivity towards data protection in the wake of the NSA spying perhaps whistleblowers and even paid informants are the only possible compromise between the protection of culprits on the one hand, and total transparency of everybody on the other hand.

6.6 Conclusion

Especially the privilege of self-reporting is highly offensive to people with a high respect for the law. Federal Judge Thomas Fischer in his contribution to the ZEIT newspaper argues:

‘Those who are endangered complain about the violation of the tax secret as if it is a human right to keep crimes secret... One should differentiate: There is the tax secret, and it is violated now and again. ... One should point, however, to the scandal namely, the crime of tax evasion. The seal of tax secret is protecting – perhaps – the guilty of the tax evader. But it has not been devised to protect him and to veil his crimes in secrecy. It has been devised to protect all taxpayers from unveiling, via financial details of his life, all details of their private life or their business connections. For every dependently employed, who reveals rebates to his employer, the risk of violation of tax secrecy is more substantial than for a tax evader, whose secret account is revealed on a tax data CD. ... Tax honesty is not achieved by rewarding behavior which is expected from the majority of citizens. The only successful method is the massive increase of the risk of exposure. Thus works penal law.’ (Fischer, 2014).

Conversely, any ethical conduct would be without compromise at all, i.e. no purchase of CDs AND no privileged treatment for self-reporting. This would make it clearer that at

least the state respects the rule of law without any compromise at all(including privacy concerns), but that tax evasion is a crime committed against the community: Whoever does it, militates against the good of the community by subverting the resources needed for the development of the community. This would make penal law against tax evasion very effective, because then no longer would tax evasion be the only crime not being prosecuted and punished at any rate. Because of the criterion of the “Unity and coherence of legal hierarchy” (*Einheitlichkeit der Rechtsordnung*) alone this removal would be justified.

The argument of the finance ministers, that a full treasury is preferable as opposed to full prisons, which would cost the taxpayer even more, is true and logical. The biggest problem with self-reporting is that stiffening the law is not enough, if at the same time the administration does not have adequate personnel to apply the new and tough regulations. This is neither the case in Bavaria nor in Baden-Württemberg, as has been illustrated in the relevant chapters above.

However, the goal of tax law enforcement could also be achieved if more tax fraud investigators are employed. The potential of prosecution is increased – and, most importantly – the environment in which they work is reformed accordingly. Unethical practices could be abandoned in the moment when automatized information exchange, revelation of beneficiary owner of trusts and foundations, company to company reporting and other instruments in which effectively illicit financial flows are institutionalized – as well as a reformed penalty system.(cf. GER/VIII/4.9.3). This more pragmatic approach is succinctly reflected in the words of the former Head of the Deutsche Steuergewerkschaft, Ondraczek, in a private conversation: ‘Of course does the tax secrecy apply – but only to those who are tax honest.’

More regarding the presented options will also be discussed in later chapters explicitly treating tax evasion, corruption/bribery and money laundering in GER/VII.

7 The law to modernize tax administration

7.1 The plan

Major changes in German’s tax administration are anticipated from the process initiated by the cabinet in December 2015, namely the Law for the Modernization of Tax Administration (Bundesregierung, 2015b). The 149 page document attempts to implement the following goals (cf. pp. 57ff.):

1. To adjust tax administration to the requirements arising from digitalization and computerization. Here the draft admits that the satisfaction of the population with e-government options is below the levels of satisfaction which exists towards other government services and aims for improvements.
2. To adjust tax administration to the challenges posed by globalization. Here the draft mentions explicit complexities arising from international businesses or the possession of wealth assets abroad.
3. To adjust tax administration to demographic changes. Here the need arises from an ageing and decrease in population, which implies a decrease in qualified employees which entails the need for a more effective organization of work, which needs more use of IT options. The draft states in categorical terms that the reduction of personnel levels is not the goal of this law.

In order to implement those goals, one major change is needed: economic efficiency (Wirtschaftlichkeit) and purpose-orientation (Zweckmäßigkeit) needs to become guiding principles of tax administration, besides proportionality (Verhältnismäßigkeit), equability (Gleichmäßigkeit) and lawfulness (Rechtmäßigkeit). Adding those guiding principles will ensure that the application of those two principles in tax administration is seen to be a legitimate and justifiable criterion of tax administration. Government is confident that the lawful-constitutional core of tax administration will not be violated by the addition of those two guiding principles because they are introduced by clear legal proceedings.¹⁶¹

It attempts to implement those goals by achieving the following objectives

The major reform concerns the complete computerized processing of those tax declarations which qualify for full computerized processing. For this, changes in § 88 AO are essential (cf. pp.60ff.). That way, personnel resources can be focused on those cases which deserve personal attention while clearing away those cases that deem to require this attention not or to a drastically reduced extent only. Electronically provided tax declaration would be processed by computerized Risk Management. In the event that there is nothing noted by the computer, the chance is considerable that it is the computer who will also pass the tax statement/bill (Steuerbescheid).¹⁶² In case the computer notes variances that deserve attention and accordingly issues such alerts, the tax inspector then has to take on the case and process it manually. Accuracy of RMS is secured by computerized risk parameters, which designed on insights from experience (fallgruppenspezifisch gebündelte Risikoparameter). Often these are premised on constant review of RMS, by randomized sample verification of the RMS process and outcomes.. Even though these fully computerized checks are permitted, a certain quota of randomized specific samples should be drawn and processed by tax inspectors to quality assure the RMS through randomized checks and balances.

Also regarding external checks with tax subjects and businesses RMS will have priority in selecting “worthy cases” (cf. § 88 Abs.6 AO)

Another major change is the abandonment of the requirement that all relevant papers have to be sent alongside the tax declaration to tax administration (Belegvorlagepflicht). Rather, tax payers have the freedom to keep tax documents and should produce them only on request by tax inspectors. (Belegvorhaltepflicht).

The introduction of a uniform Schnittstelle for the Lohnsteuer-Außenprüfung is welcomed by tax practitioner since it will save conversion time and secure fault-free data reading and processing (p.2)

Additional recommended improvements include the ELStAM and ELSTER program and the general reduction of paperwork by actively promoting an increased use of electronic communication.

The law would require changes in 20 individual laws.

Cabinet passed this law on 15 December 2015 and forwarded it to the relevant federal and state bodies.

¹⁶¹ Is there a circularity in the argument??

¹⁶² See para 153 AO „ausschließlich automatisiert erlassener und korrigierter Steuerbescheid“

The Federal Chamber of States dealt with the law on 29 January 2016 and did not suggest major changes. One proposal was to extend the obligation for keeping papers relevant papers for any given tax administration for two years instead of one.

Federal Parliament passed the package on 12 May, the Chamber of States for good on 17 June 2016. It is hoped to come into force at 1 January 2017. The implementation of everything could take up to 2022.

7.2 Comments

First of all it has to be noted how fast and smooth the package sailed from government through parliament and through the Chamber of States and how little changes had been introduced along the way.

As admitted above (4.3.1.6+4.3.2.7), an increase of computerization is seen to be unavoidable due to the complexity of calculations needed in complex cases and due to the need to have a comprehensive “memory” in situations, where no proper handovers can be organized or in principle staff is changing often. There are even suggestions to find a better combination between computerized risk management, chance-samples and decreasing, but skilled staff developing more time on few cases rather than little time on all (4.3.2.2.8).

The package seems to be overoptimistic in its ambitions since a number of mistakes, admitted in this research, are hoped to be amended until everything is in place. Here, however, right now things as simple as the proof that an Email has reached its addressee do not exist.

Beyond that the question remains how the principle of economic effectiveness relates to the principles of equal treatment and justice.

Finally one may question the appropriateness to “delegate” decisions of this complexity and magnitude to computerized processing.

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