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Germany VIII: Revenue, Costs, Losses and Results

Compiled and ordered notes from interviews including cross-checks with publicly accessible material, prepared for future use. Language check and German quotes translated into English thanks to Dr. Sue Berning.

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1 German Governmental Finance

1.1 The 4 Pillars of German governmental finance

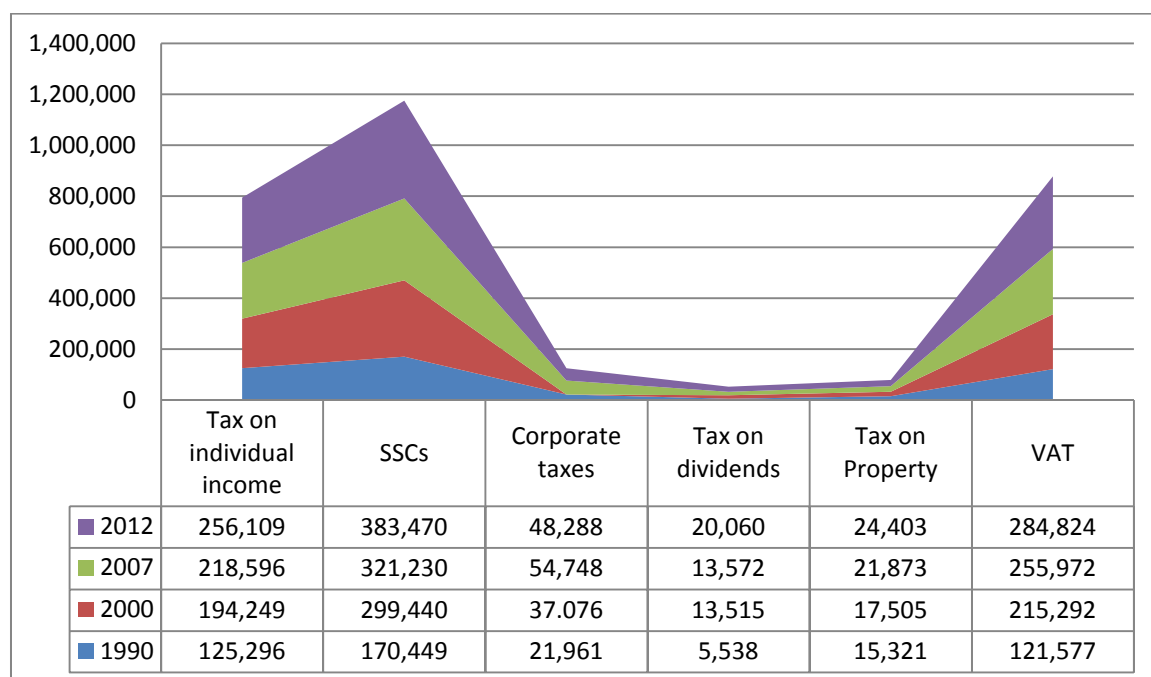
Following OECD categorization, which adds SSCs to governmental finance we arrive at the following: In Germany, the financing of public tasks and expenses for the common good rests on four pillars:

1. Direct Taxes (PIT, CIT)

2. Indirect Taxes (especially VAT)
3. Social security contributions
4. Capital raised at external markets with resulting debt

Pillar 1, 2 and 3 generate real money, with pillar Nr. 3 being by far the largest of positive income with close to EUR 400 billion annually.¹ Public financing trends 1990-2012 within Pillars 1,2 and 3 for selected income categories in Germany, therefore, give the following pictures:

Graphic 1 Development of different categories of revenue (in Million Euro)



Source 1 OECD Revenue Report 2014

Three of the frequently emphasized tendencies are visible:

1. The size of SSCs being the largest post of positive public income
2. The trend from direct/progressive towards indirect taxes
3. The meagre revenue arising from wealth taxes

Pillar Nr. 4, governmental debt, adds the amount of more than EUR 2 trillion to governmental financing, but it costs interest payment and repayment. The justice relevant implication here is: Who profits from that situation, and here we are back to the observation that the increase of public debt is paralleled by the increase of private and corporate wealth and the question, whether a (and if: what) link exists between those two developments (cf., e.g. I/IV/3.4).

1.2 Tax and Social Security Contributions revenue

1.2.1 Overall amount and development

Looking at the timeline, the tax revenue collection (excluding social security revenue) for the whole of Germany is as follows:

¹ In 2010 figures, cf. also below 1.2.1

Table 1 Tax revenue Germany 2006-2014 in EUR 1 million²

Calendar year	Amount in Million Euro	Change compared to previous year
2015	673,261	+4.6%
2014	643,617	+3.9%
2013	619,708	+3.3 %
2012	600,046	+4.7 %
2011	573,351	+8.1 %
2010	530,587	+1.3 %
2009	524,000	-6.6 %
2008	561,182	+4.3 %
2007	538,243	+10.2 %
2006	488,444	+8.0 %

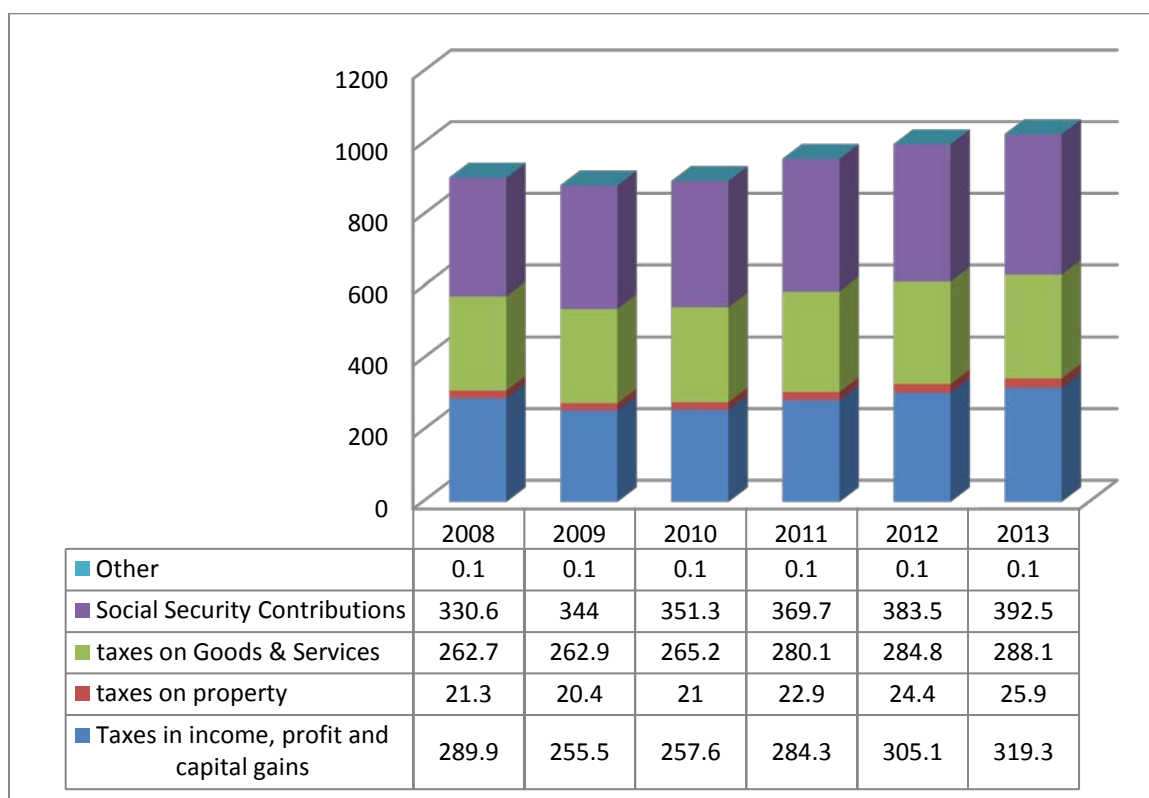
As one can see, the “dip” in tax revenue after the World Financial and Economic Crisis was noticeable, but not a tragedy and the recovery followed quickly. The reason is seen on both reforms in the labour market which make Germany more competitive than others and the economy more resilient in crisis times, but also some state sponsored support for faltering companies who went into short-labour when demand plummeted during the crisis and no adequate work was at hand for full time labour. That way, the time of acute crisis could be bridged and jobs, that generate the most reliable tax revenue, could be saved.

Critics from, e.g. the southern European states, argue that German competitiveness, employment quota, export surplus and the resulting tax revenue is at the cost of other states in the European Union, especially those who are in deep crisis ever since the 2007 World crisis and the subsequent Eurozone Crisis: That way, Germany is forced to pay billions of Euro for stabilizing and “rescuing” those states, which, thus increasing governmental debt in spite of the good overall economic situation. However, this is a complex issue that cannot be deepened here.

Compared with other European countries, there has been an exceptionally stable, even increasing collection of taxes and Social Security Contributions in Germany over the past years, as is shown in the following graphic using the OECD categorization (please note: Wage Tax is included in the category “taxes on income”; wealth taxes under “taxes on property”):

² Retrieved 11 February 2016 from
https://www.destatis.de/DE/ZahlenFakten/Indikatoren/LangeReihen/SteuernFinanzen/Irfin02.html?cms_gtp=152406_list%253D1&https=1

Graphic 2 Overall tax and SSC revenue 2008-2013, in billion Euros

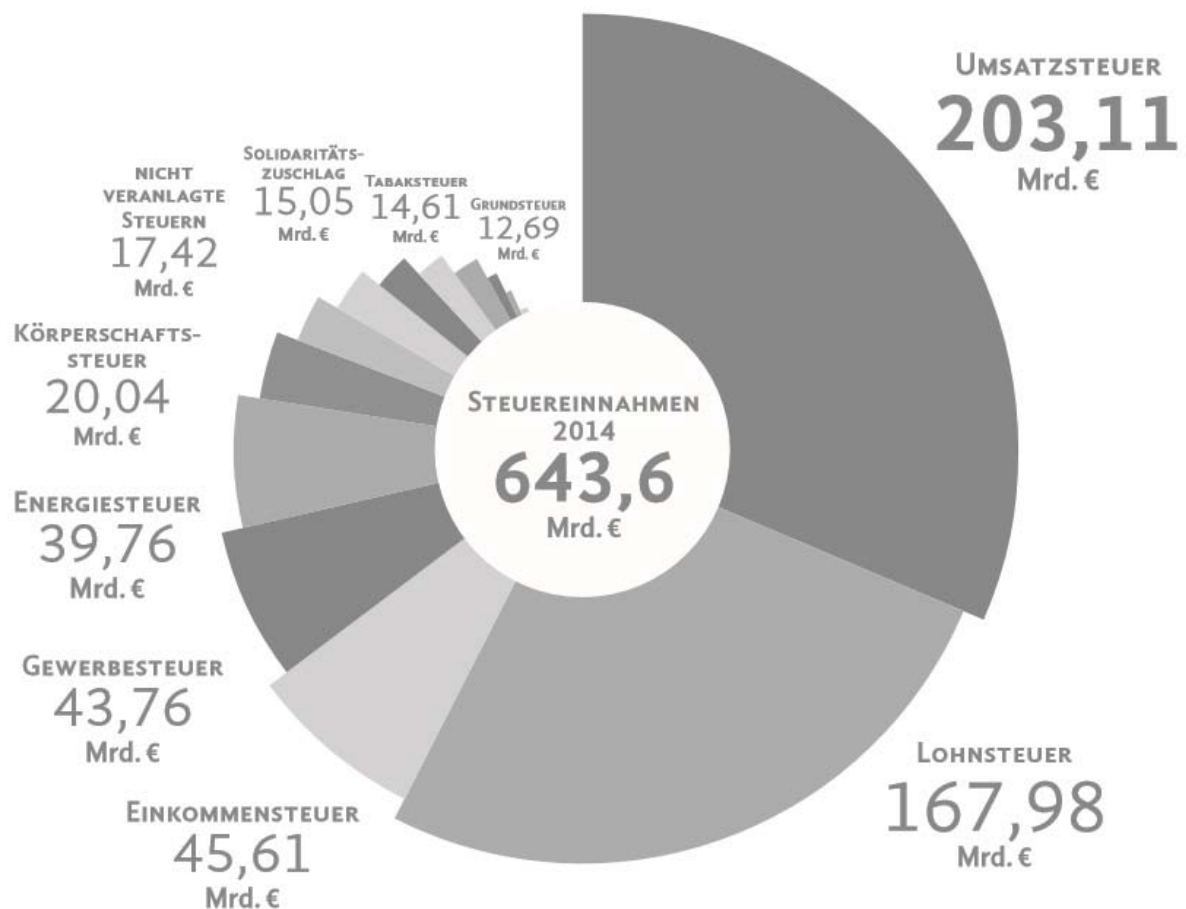


Source 2 OECD Revenue Statistics

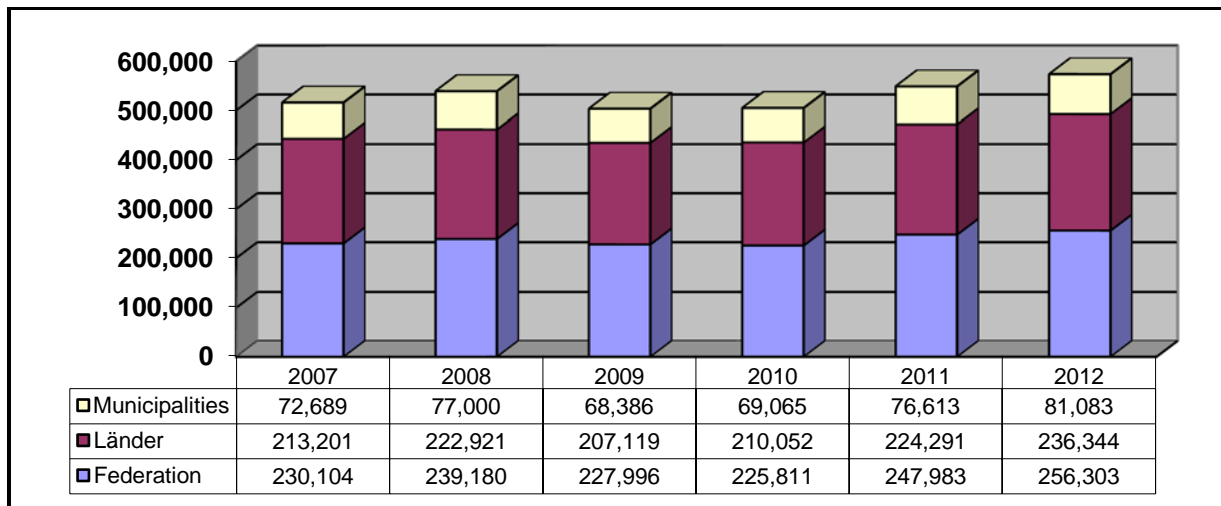
Interesting is a more detailed look on the revenue arising from different tax categories:³

³ http://www.standort38.de/portaldaten/1/Resources/iloadd/582064547267BRB___Selected.jpg

Steuereinnahmen von Bund, Ländern und Gemeinden



As can be seen, the largest category is Turnover Tax/VAT, second Income Tax (if Wage Tax and Income Tax is added it almost equals the amount of Turnover/VAT). The seven largest categories combined amount to EUR 527.68 billion, which is more than 80% of total tax revenue. All this is a clear improvement since 2013, as the following graphics illustrates:



1.2.3 Development of tax revenue Bavaria

It is commonly known that Bavaria, alongside with Baden-Wuerttemberg, is the most prosperous among the German territorial states. Bavaria's prosperity is also reflected in the development of tax revenue.

Here, too, one notes a "dip" in tax revenue after the World Economic and Financial Crisis. Otherwise, the amount of revenue in Bavaria knows only one direction: Solidly upward. In 2014 for the first time beyond EUR 100 billion, namely EUR103.3 billion, and EUR 2015 close to 110 billion. Sadly, detailed figures for Bavaria are only obtainable up to the year 2013. Data for 2014 was no longer available to the researcher, because, according to a mail of the State Office President's secretariat, "the legal provisions changed."

Nevertheless, the following is what is obtainable:

Table 2 Tax revenue in Bavaria⁵

Calendar Year	Total in 1000 Euro	Changes compared to previous year	Change compared to 2006
2015	109,300,000 T€ ⁶		
2014	103,300,000 T€	+5.7% ⁷	
2013	97,711,214 T€	+7.81 %	158.41 %
2012	90,629,028 T€	+5.22 %	146.93 %
2011	86,132,057 T€	+15.38 %	139.63 %
2010	74,651,526 T€	+2.11 %	121.02 %
2009	73,109,876 T€	-0.64 %	118.52 %
2008	73,582,473 T€	+6.88 %	119.29 %
2007	68,845,715 T€	+11.61 %	111.61 %
2006	61,683,769 T€	0.00 %	100.00 %

But even when presenting those impressive results one needs to be prepared to hear the mantra by top civil servants and politicians that two thirds of the amount collected will

⁵ The following detailed data has been retrieved from http://www.finanzamt.bayern.de/LfSt/Ueber_uns/Steueraufkommen/default.php?f=LfSt&c=n&d=x&t=x When checking back on 17 June 2016, the information was no longer available, as was the However the website is no longer active. The more general information is contained in the annual statistical reports.

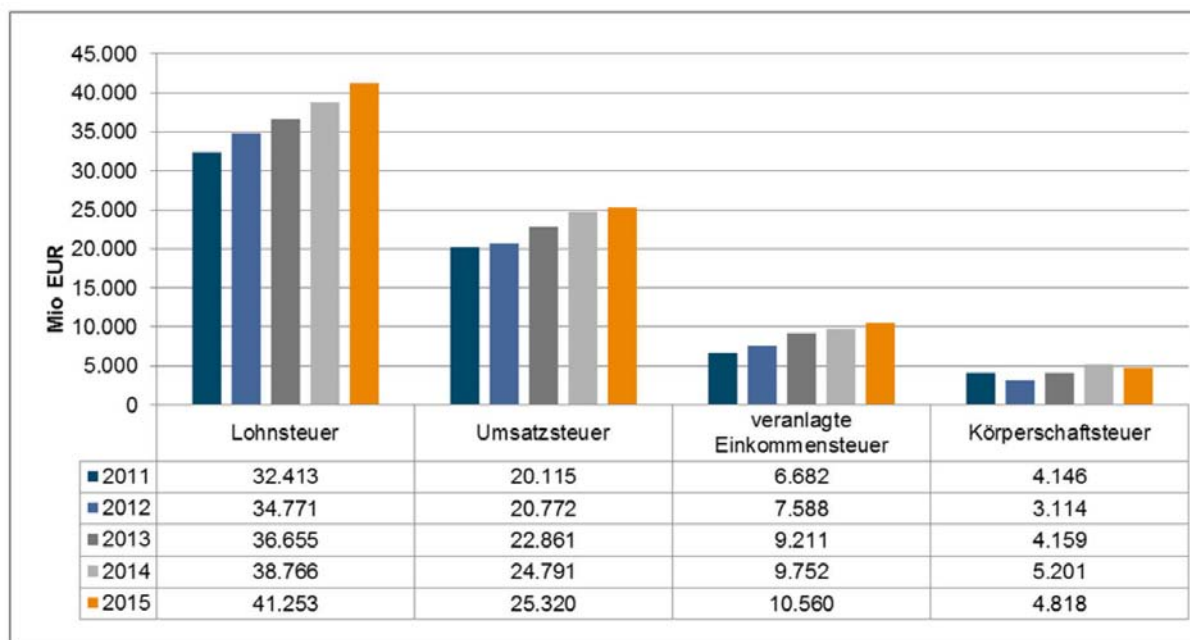
⁶ (Bayerisches Landesamt für Steuern, 2016, p. 34)

⁷ http://www.focus.de/regional/muenchen/steuern-erstmal-ueber-100-milliarden-euro-steuereinnahmen-in-bayern_id_4399133.html

leave Bavaria and be handed over to the federation and other German states, only one third will stay back in Bavaria to make up the states' own budget.⁸

Regarding the largest categories of revenue in Bavaria, the development over the past years is as follows:

Graphic 5 Revenue development in Bavaria, main tax categories 2011-2015



Source 3 (Bayerisches Landesamt für Steuern, 2016, p. 34)

Looking in a more detailed manner at the revenue arising from different categories of taxation, the following picture emerges:⁹

Table 3 Revenue Bavaria, main revenue categories 2013

Steuerart / Type of tax	Betrag 2013 in 1000 Euro / Amount 2013 in 1000 Euro	Anteil am Gesamt- aufkommen / Share of total	Änderung zu 2012 / Change compared to 2012
Lohnsteuer/ Wage Tax	36,655,194 T€	37.51 %	+5.42 %
Veranlagte Einkommensteuer/ Assessed Income Tax	9,211,082 T€	9.43 %	+21.40 %
Nicht veranlagte Steuern vom Ertrag/ not Assessed tax from gains ¹⁰	4,459,295 T€	4.56 %	-11.78 %
Abgeltungsteuer/ Withholding tax ¹¹	1,473,626 T€	1.51 %	+12.31 %
Körperschaftsteuer/ Corporation Tax	4,158,887 T€	4.26 %	+33.54 %
Umsatzsteuer Turnover Tax	22,860,758 T€	23.40 %	+10.06 %
Kraftfahrzeugsteuer	1,495,022 T€	1.53 %	+1.62 %

⁸ For example the President of the Bavarian State Office of Taxes in his Preface to the Jahresbericht 2016 'nur nebenbei: zu zwei Dritteln arbeiten wir für den Bund und die anderen Länder.' (p.4)

⁹ See previous footnote regarding the availability of this statistics.

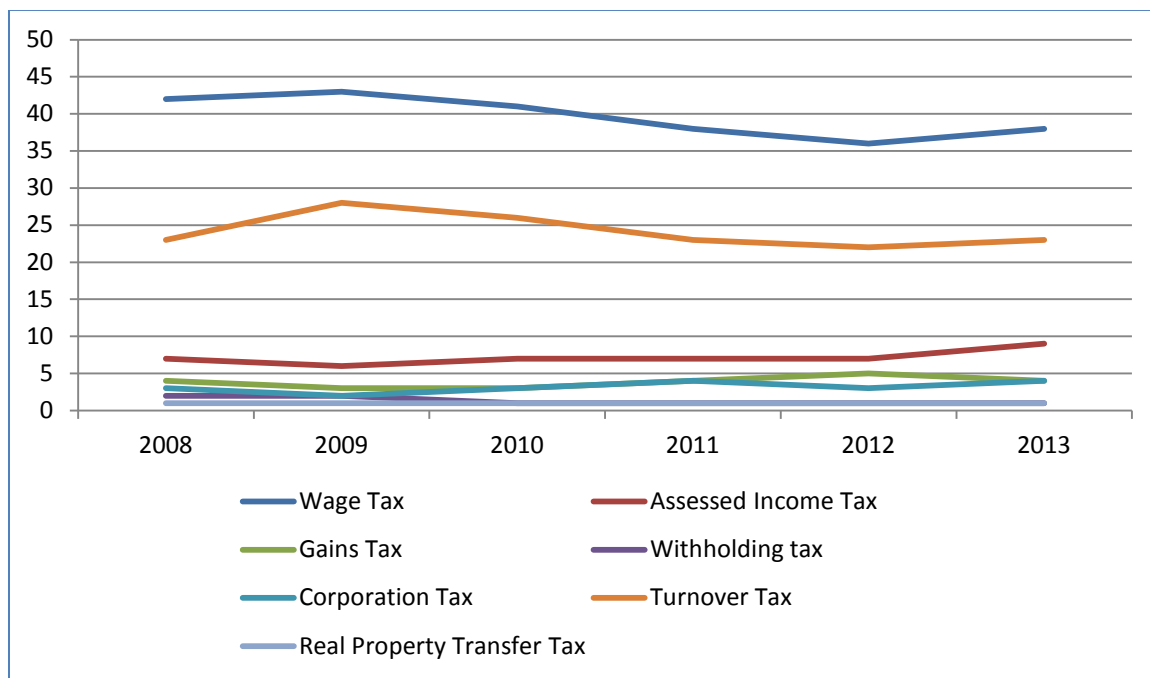
¹⁰ Automatically deducted taxes on gains except tax of interest, which is listed separately, e.g. tax on boni, dividends, capital gains/gains from selling assets...

¹¹ Earlier: Tax on Capital Interest (Zinsabschlagssteuer)

Vehicle Tax			
Grunderwerbsteuer/ Real Property Transfer Tax	1,346,924 T€	1.38 %	+7.55 %
Übrige Steuern Land/ Other State Taxes	1,693,137 T€	1.73 %	+7.53 %
Übrige Steuern Bund/ Other Federal Taxes	14,357,289 T€	14.69 %	+4.65 %
Gesamtaufkommen	97,711,214 T€	100.00 %	+7.81 %

Put into a graphic, the development of revenue arising from the different categories is as follows:

Graphic 6 Revenue by tax categories, in billion Euro

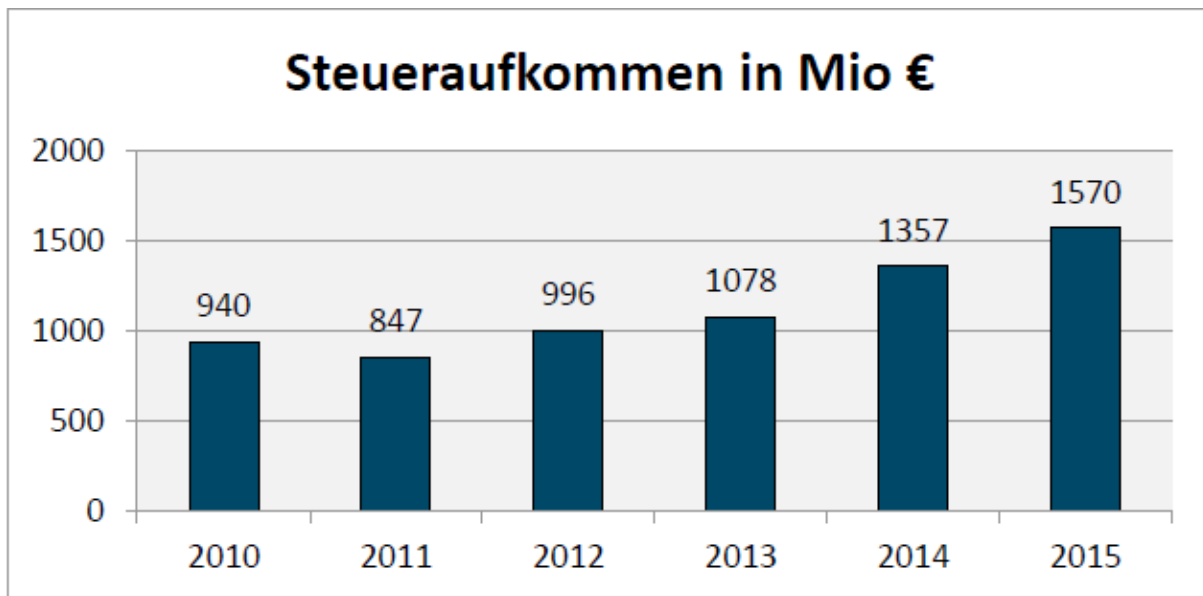


Bavaria confirms general revenue trends in Germany, namely: The largest, but decreasing share of revenue comes from the Wage Tax, i.e. from dependent labour: the overall share in 2008 being 42.36%, in 2013 down to 37.51%. An increasing share of tax is collected from Turnover Tax: in 2008 being 22.78%, in 2013 up to 23.4%.

In spite of Bavaria's booming economy, Corporate Income Tax revenue is comparatively low: in 2008 being 3.93%, in 2013 4.26%.

Revenue arising from taxes on wealth are either not existent or low. Regarding the former, Bavaria, too, does not collect a Wealth Tax. It has been included formally in the statistics up to 2012, but in 2013 it has finally been dropped altogether. Another tax whose revenue is primarily collected from wealthy persons is the Inheritance and Gift Tax. In Bavaria, it makes up about 1% of Bavaria's annual revenue. Given the fact, that in 2013 revenue from Inheritance and Gift tax amounted to a total of EUR 4.6 billion for the whole of Germany, Bavaria nevertheless collected one of the largest share given the fact that this is a state tax and not a federal tax.

Graphic 7 Revenue from Inheritance and Gift Tax in million Euro



Source 4 (Bayerisches Landesamt für Steuern, 2016, p. 87)

1.2.4 Development of tax revenue in Nuremberg

Nuremberg profits also from the popularity and prosperity of Bavaria, though to a lesser extent than Munich. For a long time, Nuremberg was more prosperous than Munich, but changes in industries led to a number of insolvencies and bankruptcies in Nuremberg and the city has struggled to recover since then. Overall revenue, especially in the area of Local Business Tax and other business taxation, is on the rise, which also shows in the increase of revenue:

Table 4 Revenue (Erträge) of Nuremberg (in Million Euro)

Year	2012	2013	2014	2015	2016
Amount	1,450.1	1,512.7	1,574.8	1,637.3	1,797.5

Source 5 <http://www.nuernberg.de/internet/referat2/>

1.3 Conclusion

And yet, facing the increase in tax revenue: Does this mean that everything is fine? Not necessarily, because the statistics have to be seen under two respects: First it has to be taken into account under what circumstances the money has been collected and who carries the burden. When looking at the distribution of tax burden in 1.1 one needs to recall the two observations at the end of GER/V/5.6, namely that the tax “burden sharing” among Germanys taxpayers is clearly to the disadvantage of dependently employed as well as low and middle income households, and not upon the owner of high income as well as private and corporate wealth – as it is elsewhere in the EU. One also has to be mindful of the larger context because here, as elsewhere, applies: Someone’s benefit is another one’s loss. Here one has to be aware of the accusation that Germany’s surplus is resting upon its aggressive export policies as well as its monetary austerity regime which, in the end, damages other states such as the European South.

The second question to be considered is what revenue would be possible under different circumstances, e.g. if adequate personnel for verification and enforcement would be employed.

2 Costs

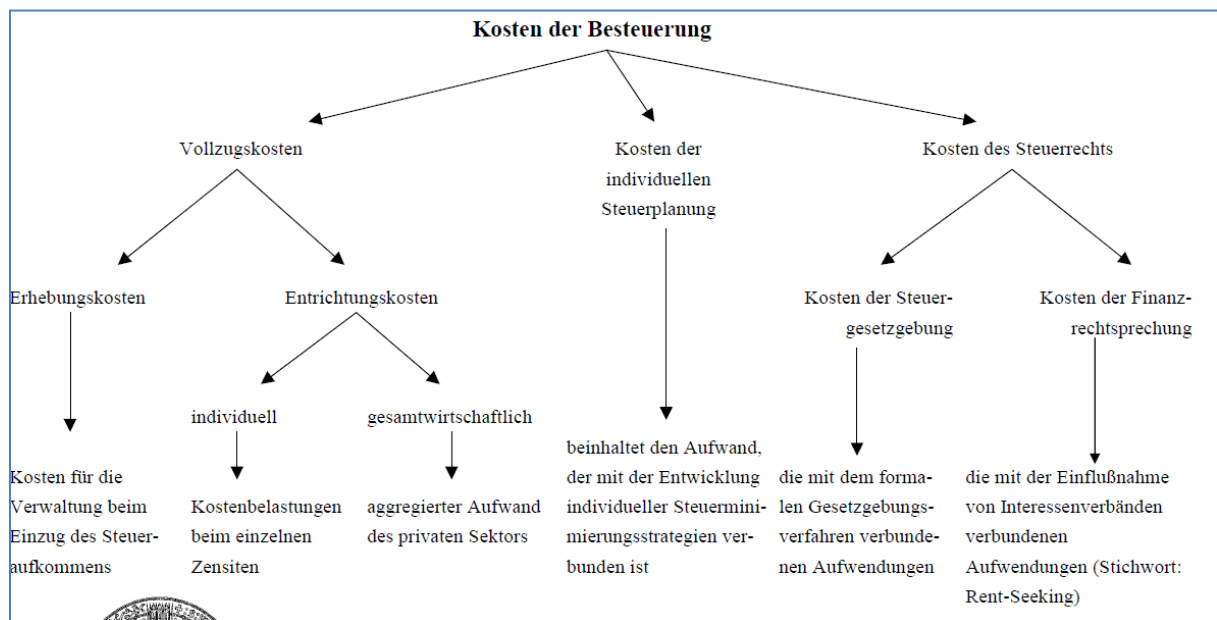
The chapter on costs is divided into the three sections of current direct costs, costs of interest payment and debt repayment followed by the issue of indirect costs as well as future costs.

2.1 Direct costs

2.1.1 The Cost of Taxes

A regularly recurring feature in public discussion is that of direct and indirect costs of taxes. The direct costs are the enforcement costs (Vollzugskosten), which are an addition of compliance and collection costs, i.e. that amount of time and effort on the part of the tax subject, tax advisor and tax administration to establish the tax base, the taxable value of certain items (e.g. business, wealth, inheritance & gift tax) etc.

Graphic 8 Various dimensions of costs of taxation¹²



The indirect costs of taxes are distortion of prices and impact on supply, demand and other market mechanisms, which are more difficult to assess. Here economists fear “deadweight losses” or welfare losses because, e.g. prices increase which are passed on to consumers or investment is rather transferred abroad.

A final category of costs is even more complex because in this case a non-tax purpose shall be achieved with taxation, the so-called extra-fiscal guidance effect (außerfiskalische Lenkungswirkung): Here, costs are imposed for a higher goal which, in the end, may be even beneficial, as in the case of environmental taxes and levies, even though the revenue by this tax or levy might decrease to the extent the primary purpose of the tax or levy is successfully achieved.

¹² P. 14 of Feld, L. (2007) *Steuertechnik und Tariflehre*. Retrieved 17 April 2015 from <http://www.awi.uni-heidelberg.de/fiwi/Lehre/Folien%20Fiwi%20II/Steuertechnik.pdf>

2.1.2 The Cost of Tax Administration

Of major interest for this research are the costs for the administration of individual taxes. Sadly, no contemporary and current figures could be found.

Table 5 Costs of taxation 1984, in percent of its revenue¹³

Kosten der Besteuerung (1984, in % des Aufkommens)			
Steuerart	Erhebung	Entrichtung	Vollzug
Lohnsteuer	1,9	4,3	6,2
Einkommensteuer	5,2	3,8	9,0
Körperschaftsteuer	1,4	2,8	4,2
Umsatzsteuer	1,5	2,4	3,9
Gewerbsteuer	3,1	5,4	8,5
Vermögensteuer	20,0	12,3	32,3
Kfz-Steuer	7,5	0,7	8,2
Grundsteuer	5,5	0,7	6,2
Grunderwerbsteuer	6,8	4,7	11,5
Sonstige Steuern	0,2	1,9	2,1
Insgesamt	2,3	3,3	5,6
Quelle: Rappen, H., Vollzugskosten der Steuererhebung und der Gewährung öffentlicher Transfers, in: RWI-Mitteilungen, Jg. 40 (1989), S. 221-246.			

Another calculation, ten year later, and executed by the RWI for North Rhine Westphalia, is the following (Bundesministerium der Finanzen, 2003).

Graphic 9 Costs of taxation 1995, in percent of its revenue

	Verwaltungskosten ¹		Befolgungskosten ²		Vollzugskosten	
	in Mrd. DM	in % ¹	in Mrd. DM	in % ¹	in Mrd. DM	in % ¹
Umsatzsteuer	1,2	0,5	6,1 ³	2,6	7,6	3,1
Einkommensteuer	7,3	2,2	11,2	3,4	18,7	5,7
Körperschaftsteuer	0,9	5,0	0,9	5,0	1,9	10,5
Gewerbsteuer	0,5	1,2	1,6	3,8	2,1	5,0
Kraftfahrzeugsteuer	0,4	2,9	0,2	1,4	0,6	4,3
Insgesamt	10,3	1,6	20,0	3,1	30,3	4,7
Eigene Berechnungen. – ¹ Abdiskontiert mit dem Tarifindex für Gebietskörperschaften. – ² Opportunitätskostenansatz. – ³ Abdiskontiert mit dem durchschnittlichen Zuwachs der Lieferungen und Leistungen. RWI Essen.						

Source 6 (Bundesministerium der Finanzen, 2003, p. 87)

The administration of profit income (Gewinneinkommen) is, according to the ministry, more expensive than the administration of excess income (Überschusseinkommen), due to the complexity of tax law and verification- and enforcement cost (Bundesministerium der Finanzen, 2003, p. 88).

¹³ P. 15 of Feld, L. (2007) Steuertechnik und Tariflehre. Retrieved 17 April 2015 from <http://www.awi.uni-heidelberg.de/fiwi/Lehre/Folien%20Fiwi%20II/Steuertechnik.pdf>

Some more updated calculations of collection costs exist in the case of individual taxes, e.g. Wealth Tax or Real Property Tax, which will be dealt with in the relevant chapters of GW#.

However: Whatever costs there are it is obvious, that indirect taxes and levies are very cheap to collect, an attractive option in times of tense public budgets, even if it implies that it is the poorer households which are over proportionately hit.

2.1.3 Cost of taxation lower due to computerization?

Another point of discussion is whether computerization and automation of work processes will lower the costs of tax administration. As has been shown in chapter 4, this question is not easy to answer: They make life easier and more complicated at the same time, they might replace more expensive staff by cheaper ones, but at the same time require high costs for external expertise etc. Also experience with increasing computerization in Germany and abroad demonstrates (cf. GER/VI/2.2 and 4.3.9.4) that IT infrastructures as such does not make life easier, if legal and administrative regulations are not accordingly adjusted. Therefore, if in 2017 automatic exchange of information arrives between 44 or more states, it will cause as many problems as it solves. However, as will be seen in the next sub-chapter, costs arising from and related to computers are a minor share of overall tax administration costs.

2.1.4 Cost of Tax Administration – international comparison

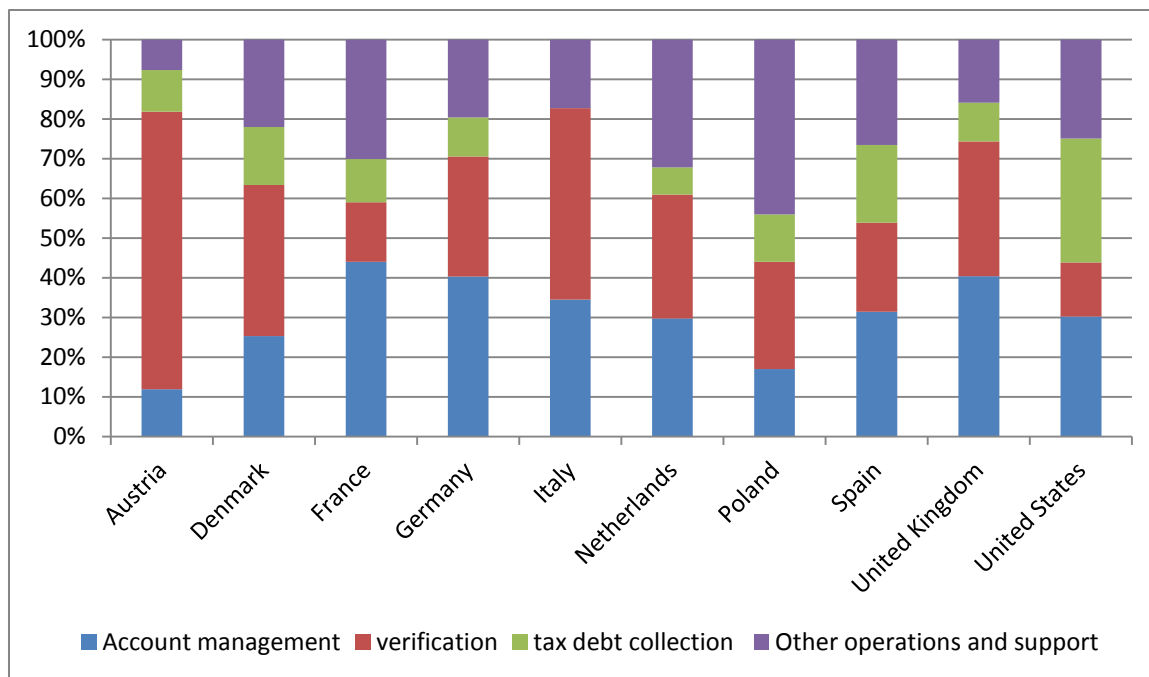
The OECD is examining, comparing and analyzing different tax administrations and compares emphases of tax collection, personnel assignment and costs of tax collection and enforcement. First, however, an explanation of the OECD categorization:

- “Account management” refers to administrating tax declarations and working on tax bills;
- “verifications” are audits, checks at homes and businesses and other investigative activities;
- “tax debt collection” is self explanatory and
- “other tax operations/support” is some “catch all” category for everything which does not fit into the previous categories, including internal services and IT support.

In the 2013 report, the following statistics were of interest; most importantly, the staff usage on major tax functions.

Graphic 10 Staff usage on major tax functions as share of total usage (2011)¹⁴

¹⁴ Italy does not have a tax debt collection unit, which is a privatized service and no longer part of the public administration.



Source 7 (OECD, 2013e, p. 187)

The OECD warns, however, to overemphasize shares and costs because of problems of categorization and comparability for a number of reasons (OECD, 2013e, p. 188).

And yet, there are some basic insights which are comparable, e.g. the costs of salaries for human staff and computer/IT:

Table 10 Percent of costs for personnel and IT in 2011

Country	% of total costs in 2011		Size of local office network	Electronic filing take-up (overall)*	Manual payment methods (i.e. mailed cheques) are used	Data processing centres (DPC)/call centres (CC) are used
	Salary	IT				
Argentina	96.9	0.8	n.a.	✓✓	n.a.	Very limited
Belgium	81.4	6.1	1 182	✓	✓✓	Minor usage
Bulgaria	80.6	2.4	23	✓	n.a.	One small CC
Cyprus	81.8	3.0	15	xx	✓✓	Very minor
France	80.8	3.6	1 500	x	✓✓	Extensive (both)
Germany	81.6	6.5	551	xx	✓	Extensive DPC
Japan	80.7	8.6	524	x	✓	None reported
Luxembourg	82.9	3.6	83	xx	✓✓	DPC only
Malaysia	82.4	2.4	67	✓	✓✓	2 DPC and 2 CC
Poland	81.7	1.6	400	xx	✓✓	Limited
Switzerland	92.6	2.6	-	xx	xx	Nil

* ✓✓ above average ✓ average x below average xx well below average.

Source 8 (OECD, 2013e, p. 177)

Here it is obvious why there is considerable desire on part of tax administration superiors to decrease costs of personnel and replace them as much as possible by electronic and computerized processing.

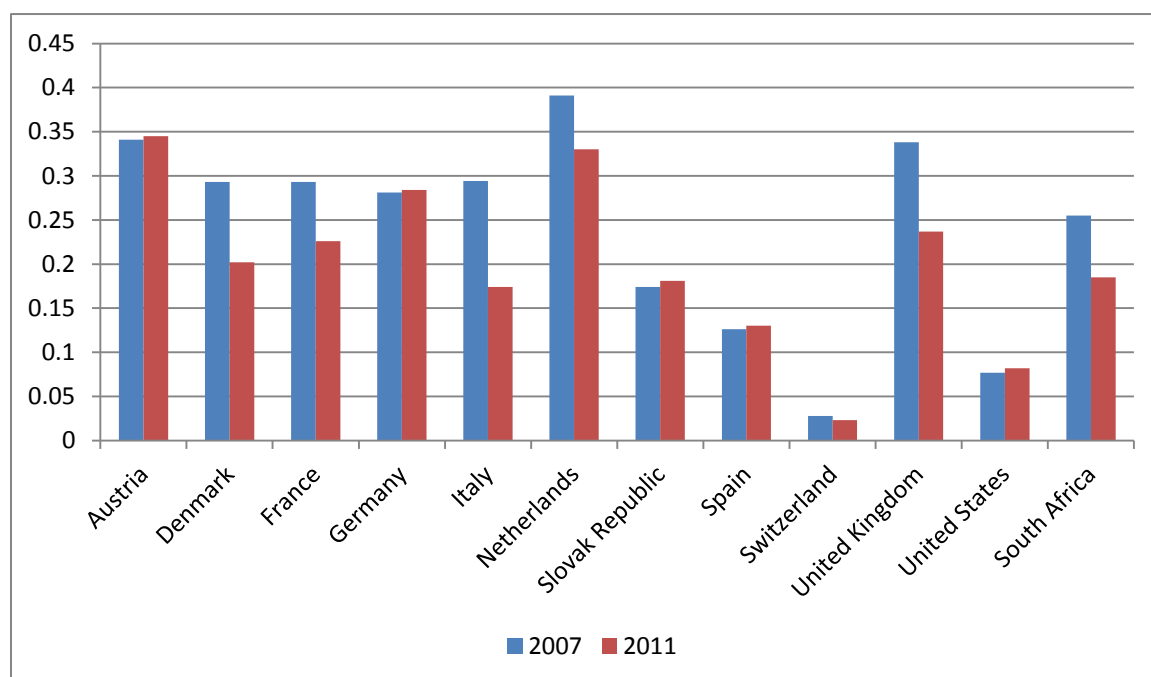
There is, of course, the option to do outsourcing and privatization of services in order to save money and a number of states use this option:

Table 6 Outsourcing of services in tax administration

Nature of work outsourced	Revenue bodies using outsourcing for this work
Collect and process tax payments (e.g. via bank/post office)	Argentina, Australia, Brazil, Bulgaria, Canada, Chile, Colombia, Finland, Greece, Hong Kong, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Latvia, Malaysia, Malta, Mexico, New Zealand, Portugal, Russia, Saudi Arabia, Slovak Rep., South Africa, Spain, Sweden, Turkey, United States
Answering taxpayer inquiries (e.g. call centre operations)	Australia, Belgium, Brazil, China, Colombia, Greece, India, Mexico, New Zealand (peak periods only), Russia (to a Federal public service body), Spain (basic inquiries only), United States
Data processing operations	Brazil, Germany (some regions only), Greece, Denmark, Finland, Iceland, Ireland, Italy, Mexico, Sweden
Enforced collection of tax debts	Australia, Ireland, Italy, Singapore (use of private law firm to initiate civil legal proceedings (against delinquent taxpayers for not paying tax debts. private liquidators are appointed to manage cases for winding-up) and United Kingdom (limited to debts that cannot be collected internally)

Outsourcing and privatization make it difficult to compare the “efficiency and effectiveness” of tax administration and establish some indications of the costs of collection. With great caution, the OECD publishes the following ranking of states but emphasizes that figures cannot be taken as the gospel and that in every single case a closer look is needed:¹⁵

Graphic 12 Administrative costs for tax administration/gross domestic product in percent



Source 9 (OECD, 2013e, p. 181)

2.1.5 The costs of German tax federalism

As might be expected from the examples provided GER/VI, German tax federalism costs a lot of money regarding the execution of tax legislation and it is very likely that a lot of

¹⁵ In Switzerland, for example, only the VAT is administered at the federal level, in the USA equally most of the tax administration is not taking place on the federal, but the national level – in both cases those costs do not figures in the comparison. In Italy, some major costs are not included while in Spain and South Africa customs costs ARE included.

money is being lost because of lack of harmonious and functional cooperation (see example given below in 4.2).

For Germany alone (i.e. not taking into account the 16 states), “guesstimates” in the context of federal reform discussions (*Föderalismuskommissionen* etc.) suggest that a harmonized/centralized tax administration in Germany would generate “synergy” gains in terms, e.g. by reducing duplications, close to EUR 10 billion, and possible the same amount in additional tax revenue due to a more efficient collection of taxes dues.

To the knowledge of the researcher, there are no estimates regarding “efficiency gains” in respect of centralized tax administration in the international context. Here perhaps experiences made by the International Tax Office in Munich could provide such information eventually.

Last not least one should examine whether the recently agreed reform of the Federal Equalization Scheme really put an end to injustices and never-ending discussions and quarrels arising within the context of the Federal Equalization Scheme and/or whether the aspect of centralizing communication and service within this reform will impact upon the (cost) efficiency of tax administration (see GER/VI/3.8.6).

2.1.6 The costs of tax justice

The two following statements illustrate the implications arising in the area tax justice: The first is taken from the conversation with a senior tax administrator in Bavaria. He stated

The German – and accordingly the Bavarian – tax system is just and fair. First of all, because it enables a taxation which does justice to the unique situation of individuals and secondly because roughly 90% of tax income is generated in areas where little cheating is possible, e.g. via indirectly collected taxes. Additionally, this collection is very cheap. This leaves 10%, where cheating is possible and where a lot of effort and manpower has to be invested. When asked whether this ratio is not overoptimistic the assessment was qualified by saying that the “overwhelming majority of tax income” is generated in areas where not much cheating is possible.

The conversation partner ended his explanation that probably a special tax rate for luxury goods needs to be introduced, but then, he felt, tax justice would be as close as it could be achieved under current circumstances.

According to another conversation partner from the assessment department, a critical point is that administration and enforcement of assessed income tax, i.e. that one to be paid by wealthy people, requires ca. 80% of time and effort, while generating only 7% of income.

Whether or not those proportions are correct can be left open. Others confirm that indeed costs of administrating direct taxes are higher than that of indirect tax. Of course, the argue, assessed income tax requires more work than processing tax declarations of dependent labour, for example, because not only the assessment tax inspector is concerned, but also the head of department (because of the amount of taxes normally associated with high incomes) and perhaps tax auditors and other departments relevant to process those declarations.

Yet another conversation partner, this time from the tax auditing department, contradict and differ:

- Administrative costs of wage tax and CIT is cheap, since regarding the latter it is the business who has to do most of the accounting and declaring.
- Regarding PIT, it is indeed costly for the tax administration and each case costs several hundred Euros. And, as the table above (2.11, Costs of administration 1995) illustrates: Indeed the Income tax is rather expensive to collect.

Costs and gains, regarding PIT, are out of proportion, the conclusion is for some, also referring to the EU Commission which allegedly criticized Germany for squandering resources for meagre results, recommending that more revenue should be raised via indirect taxation which is cheap to administer and easy to collect.

This, however, has to be considered in more detail:

2.1.7 Costs of Tax Collection and EU directives

In the 2014 recommendation of the EU Council indeed there are proposals to improve revenue collection via indirect taxation, to decrease high taxes and mandatory social security contribution for the low wage sector and to make tax administration more effective. But two things need to be borne in mind: The question of progressive income tax is not addressed (European Commission, 2014c). And: These are recommendations. Germany is not obliged to follow and implement them. Regarding taxation matter, the EU Commission might have an interest to increase revenue from indirect taxation for the reason alone that large parts of the EU's budget comes from indirect taxation.¹⁶ But the EU Commission has no authority to give any directions upon how member states organize their tax priorities and tax administrations.

This view is shared by conversation partners working at the Federal Ministry of Taxation: How the sharing of authority within the EU is generally organized has been dealt with in the Lisbon Treaty either explicitly or implicitly.¹⁷ Taxation in the Lisbon Treaty has been dealt with mainly in article 113 for indirect taxation and article 115 for "other taxes". Whatever comes from the EU level mandatorily and binding for all requires first unanimity among its 28 member states – which has occurred in some areas, also personal and company tax,¹⁸ but not on a massive case as the taxation of wealthy people would be since no EU member state will let the others reign into their national revenue generation. Next, there might be some sort of pressure arising for members of the Euro Area in case they overstep their Maastricht Criteria, but this most certainly does not apply for Germany and Bavaria.¹⁹ Finally, there are efforts of the EU to establish convergent criteria among member states in order to facilitate comparability among states e.g. for investors or others choosing their place of first residence. But here again: Those are recommendations which are in no way binding upon how member states tax their nationals and organize their tax administration. For that reason: Whatever impression there might be that the European Commission has any influence upon the taxation of anything would should bother with the small print since there is a high likelihood that here a scapegoat is presented for unwillingness to touch the topic in question nationally.

¹⁶ Cf. http://ec.europa.eu/budget/explained/budg_system/financing/fin_en.cfm

¹⁷ Saying: Whatever is NOT dealt with in the Lisbon Treaty remains within the member states competence. Art 5, 2 TFEU

¹⁸ Cf. http://ec.europa.eu/taxation_customs/taxation/gen_info/tax_policy/article_6759_en.htm

¹⁹ Cf. http://en.wikipedia.org/wiki/Euro_convergence_criteria

2.1.8 Conclusion

The same set of arguments as presented above for PIT and CIT applies in the field of combating (aggressive and illicit) tax avoidance and tax evasion: here, too, costs may be high, but the goal, namely investigating and prosecuting tax related offenses, is worth it.

Hence the question is: How do we value tax justice? And then only: What are we willing to pay for it?

Here, again the Federal Constitutional Courts 1991 and 2014 verdicts, the Federal Supreme Court's 2005 ruling and other expert views need to be re-emphasized: (1) Any administrative simplification must not endanger the Principle of Ability to Pay. (2) If Germany wants to keep a complex taxation system, adequate enforcement is key to really secure a fair and just application of its norms, even more: (3) If the laws cannot be enforced, also the material norm loses its importance (see GER/Va/7.1+3).

There are certainly options to save costs, e.g. in the field of computerization and automatization (see GER/Va 7.2). Here, however, it is the view of this research that a skilled and experienced civil servant should not easily be subordinated to a machine and that the state should not delegate sovereign rights to a computer – at least as long as the process is as faulty and deficient as it is right now.

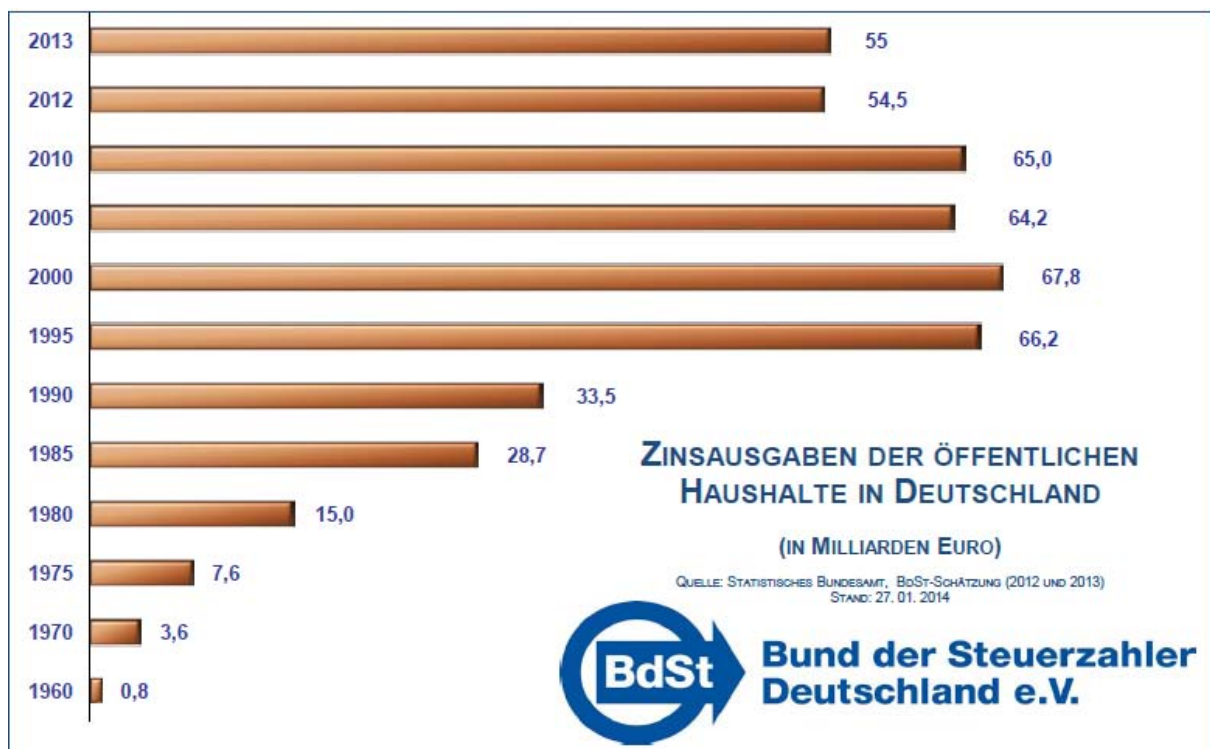
2.2 *Direct costs for serving governmental debt*

2.2.1 Interest

Besides the costs for the collection and administration of taxes, the next post causing costs and losses is the governmental debt burden as presented in GER/IV/2. Public debt on all levels of public administration (federation, states, municipalities and social insurance) in 2014 amounted to EUR 2,049.17 billion, requiring the following amount for interest payments:

Graphic 11 Interest payment of Germany for governmental debt²⁰

²⁰ Retrieved from <http://www.steuerzahler.de/Verschuldung/7688c8973i1p477/>



One has to be aware, however, which amount refers to what authority. In the preceding graphic, the public debt of all levels of government has been added: That way, the figures given here is EUR 54.5 billion for 2012, while another quote refers to EUR 36 billion for debt on the federal level only (Bund Katholischer Unternehmer, 2012, p. 45).

Interesting enough, the amount of payable interest is decreasing. This, however, is not due to a decreasing debt burden but rather due to the attractiveness of German bonds at capital markets. Right now, investors accept even negative interest merely to acquire German bonds, which enables the German treasury to save a lot of money. But here again, the attractiveness of one is the non-attractiveness of others, which is why especially southern European states are complaining about German fiscal and monetary policies which they see is harming them. To illustrate both cases: In June 2016, for example, even interest for 10 year “Bunds” went into the negative. A study by the Leibniz Institute calculated that for this reason Germany did not need to spend up to EUR 100 billion in interest for public debt within 2010 and the first half of 2014. Regarding Greece: Greece has paid already EUR 308 million up to 2011 alone and between 2010-2014 another EUR 360 million.

Admittedly, the financial situation of public households has improved greatly over the past years and for some years in sequence, the federal household was no longer in need to add new debt to the existing burden (black 0). This does not stop, however, the obligation of paying interest and does not yet enable the state to start repayment of debt, thus reducing the debt burden.

It also has to be borne in mind that this situation is due to the excellent economic situation of Germany which is, as some argue, at the expense of other states. It is well conceivable that this situation will revert and the need to take up new debt will come again.

2.2.2 Repayment

The best way to reduce governmental dependency from external finances is the repayment of debt – even though this is on the backburner right now due to the low-interest-period and the fact that German “bunds” are even generating money. This research argues, however, that keeping governmental debt levels as it is, is short-sighted and doubly unfair:

Short sighted, since the interest situation may change back to higher rates again, it is unfair (first) because interest payments prevents money to be spent in areas which would be more urgent and deserving (e.g. on social mobility, migration root causes, integration..). It is unfair (second) due to the fact that future generations are burdened with it if our generation is not able or willing to repay that which they generated. Therefore, this research is very much in favour of repayment.

2.3 Indirect costs

Beyond direct costs, there are indirect costs. They arise from investment which cannot be done because of the lack of revenue, i.e. because of debt service, but also because the principle of “taxing in accordance with the ability to pay” cannot be implemented and enforced adequately. That way, decay and gaps will continue to exist and future costs will therefore be higher.

2.3.1 Decaying infrastructure and public investment

German infrastructure has a backlog of urgent investments and repairs of EUR 120 billion: One third is needed in the construction/maintenance of streets and bridges, one third to go into IT infrastructure, one third into the electricity grid.²¹

Dramatic is the situation with municipalities, where the obligation to cover social welfare costs restricts their ability to invest in infrastructure. However, there are differences between German states and within German states: Municipal/public investments in Bavaria are among the highest in Germany (almost without exceptions).²²

2.3.2 Deficits in public services

Public Services, as opposed to private services, are, in addition to the previous, also investments in personnel such as police, fire brigades, school, Kindergarten, hospitals and care centres for the old.

In order to increase and secure income and social mobility more support for disadvantaged is needed so that the place of birth is no longer determining somebody's place in society. This applies even more in times of refugee migration and integration. This is also seen to be of importance in surveys by the public (Chancengerechtigkeit), cf. E/

Need for publicly sponsored housing (sozialer Wohnungsbau).

²¹ Assessment collected via interviews among German businesses by the Institut für Wirtschaft, Cologne. Results published 6 February 2014. Retrieved from <http://www.iwkoeln.de/de/presse/pressemitteilungen/beitrag/infrastruktur-standortvorteil-mit-pflegebedarf-145130>

²² ‘Die wirtschaftsstarken Länder Bayern und Baden-Württemberg haben mit 469 beziehungsweise 371 Euro pro Einwohner im Jahr 2013 die höchsten Investitionsausgaben.’ In München sogar über 700 Euro. Pressemitteilung des DIW vom 21.10.2015. Retrieved from https://www.diw.de/de/diw_01.c.517464.de/themen_nachrichten/kommunale_infrastruktur_in_deutschland_mus_s_deutlich_gestaerkt_werden.html

Working conditions (understaffing!) and payment in public service is not attractive, i.e. better payment is needed to attract more policemen, nurses, teachers and social worker.

Unforeseen events reveal deficit most clearly, e.g. the terrorist attacks in France or the sudden influx of refugees which is calling for additional staff and public resources.

2.4 Future costs

Beyond the previous there are foreseeable costs arising in the future, e.g. due to climate change, including water shortage, demographic development in poor countries and resulting global instability.

In Germany also higher costs can be expected, also due to demographic development and present insurance deficits, requiring a higher share of costs carried by social welfare.

2.5 Conclusion

Regarding 2.2 and 2.3 one should first of all recall the statement “somebody’s wealth is always matched by somebody’s debt” (cf. GER/IV/2.1.1f.): Here this research stated already that cuts or neglect of investment for the maintenance or development of public goods and services occurs because of the benefit of private and corporate wealth holder who are recipients of interest payments. This is not only a current redistribution from the bottom to top, it is also a crime committed at future generations.

One should be mindful, therefore, not to confuse causes and effects: Public debt, at least to some extent, occurred because mismanagement or behaviour of private and corporate elites necessitated public intervention (see I/IV/5), which is why not “the Greek” or “the poor” are those who need to further be squeezed with continuing austerity measures. Rather, the true opponents are private and corporate wealth holder which should repay what they received rather sooner than later.

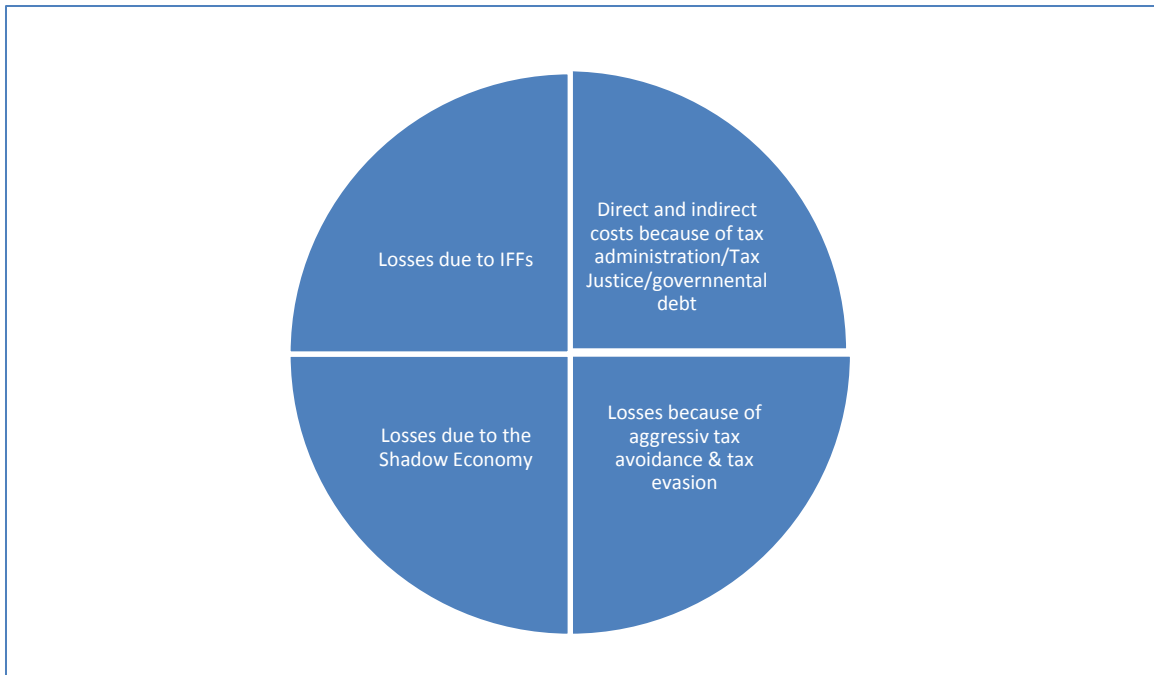
One may, of course, argue that this research overemphasizes the role of public goods and services. Admittedly, almost all of that which has been dealt with above in 2.3 can also be privatized - but then it is no longer accessible for all independently of their income – as has been exemplified already in GER/IV/3.5. It is therefore why this study prefers public financing for public goods:

‘A politics of the common good would take as one of its primary goals the reconstruction of the infrastructure of civic life. Rather than focus on redistribution for the sake of broadening access to private consumption, it would tax the affluent to rebuild public institutions and services so that rich and poor alike would want to take advantage of them.’ (Sandel, 2010, p. 267)

3 “Losses for the common good”

3.1 Conceptual links

As discussed in I/IV/6.2 the term “losses for the common good” is a composite one for this research project and combines factors which in the general discussion are not commonly seen and treated together.



This circle is to be read from the top right in clockwise direction:

First of all and as dealt with in the previous chapter: it consists in the costs of/losses because of tax administration and tax justice, e.g. the fact that the gains of revenue need to be seen in comparison to the costs of collection and losses because there is not adequate staff to follow up defaults or to enforce laws. Here one may also consider losses of foregone “surplus revenue” which is not collected because of the lack of personnel, but regarding this would be stating an overlapping issue with the following three categories:

Second, there are losses because of illicit and aggressive tax avoidance and clearly illegal tax evasion. Here one could also treat other forms of tax related crime, e.g. tax fraud, as does Friedrich Schneider (alternatively this could be done under IFFs).

Third, there are losses due to the avoidance and evasion of tax payment and mandatory Social Security Contributions in the context of the informal/shadow economy.

The fourth category of losses is related to IFFs for two reasons: Illicit, illegal and criminal financial flows, e.g. arising from corruption, trade-misinvoicing, money laundering or trafficking in humans, drugs or weapons, occur outside institutional control and therefore evade taxation. Second, illicit, illegal and criminal flows of money use the same channels and constructions to hide their assets as private and corporate wealth holder do. For that reason it is argued that that, which contains aggressive avoidance and evasion of private and corporate taxes will also assist in combating criminal financial flows.

3.2 Assessing losses for the common good

It has been detailed in I/IV/6.2 how difficult the measurement of IFFs is and how dependent on the underlying concepts, methods and assumptions. Accordingly and also for Germany, the following sources of information are at hand:

3.2.1 Official statistics

That which national and international authorities publish, based on their investigation, prosecution and, if applicable, sentencing. Here, statistics of tax administration, police, customs and jurisdiction need to be mentioned.

Here it is important to consider two things: First, that the extent of damage and punishment normally decreases as a case moves up the prosecution. Second, that those statistics are no chance sample (Zufallsstichprobe), but rather and at best a sample by chance (zufällige Stichprobe), which is, however, not representative.

This limits the value of "guesstimates" building upon those statistics and it was telling that most conversation partners at tax administration, police or customs refused to participate in speculation or even commenting statistical calculation done by academics.

3.2.2 Surveys

Next, there are insights arising from surveys, conducted by drawing (if at all possible) representative samples of the population. Here, of course, the question is whether respondents are honest in their replies both regarding their participation in the Shadow Economy ("Rockwool"-study) and their honesty paying taxes (Wrede & Mangelkramer, 2014). A similar scepticism is justified when it comes to interviews with private, corporate and criminal wealth holder – even though it has been found out that some among the wealthy like to boast about their deeds if anonymity is guaranteed (cf. GW/Introduction#).

3.2.3 Macro-Economic statistics

Finally, there are macro-economical calculations, e.g. based on cash spending or the MIMIC (Multiple Indicators, Multiple Causes) approach (cf. GSE/I#).

3.3 Losses due to tax evasion

Finally, the question: How much revenue is lost? In order to know that one would first need to know how much revenue is "due" for collection – and here the problem starts already since this is not known and, once more, up for guesstimates. Nevertheless, there are indications:

3.3.1 Germany

In a widely read and discussed report about tax avoidance and evasion in Germany by the ZEIT newspaper in February 2014 (ZEIT-Dossier, 2014) one could find the information that according to the German Tax Union (*Deutsche Steuer-Gewerkschaft*) Germany annually loses EUR 160 billion due to legal tax avoidance of corporations and according to the ver.di trade union EUR 50 billion due to illegal tax evasion. An easygoing calculator could conclude therefore, that, if everybody company or individual would pay his or her annual tax, the German tax revenue of EUR 600 billion would increase by another EUR 210 billion.

However: If one looks up the website of the Deutsche Steuer-Gewerkschaft for the number quoted, the number of EUR 160 billion can be found, but it is now said to be the combined amount of (legal) tax avoidance *and* (illegal) tax evasion by individuals and businesses; and as source is given the European Commission.²³ If one continues to seek how

²³ DGST Bundesvorsitzender: Wer an der Einnahmenverwaltung spart, spart fahrlässig an Einnahmen! Press release 2013, August 26). Retrieved from <http://www.dstg.de/archive/152/DSTG->

the European Commission comes to this assessment, one gets lost in the internet, but finds within publications some links of this “guesstimate” to the analysis of Richard Murphy, according to which the states of the European Union loses annually EUR 1 trillion in tax avoidance and evasion, which makes one guess that EUR 160 billion then is the German share in that pie. But, surprise!, those re-quotes are exactly from those who commissioned Murphy originally to conduct his study: Social Democrats.²⁴ Against Murphy’s guesstimate, however, many critical points can be raised, as has been done in I/IV/6.2.2.1, even though both European Parliament and European Commission still operate with and re-quote his figures.

For this reason it is always recommendable to look carefully for sources and select their guesstimates in accordance to the care and transparency of their methodology. Preferable are those given by experts working and publishing in the field for many years and adding their guesstimates. Some estimates follow to illustrate the extent within which losses can be seen:

- Tax evasion because of black labour in the Shadow Economy: 42.6 billion in 2013 (cf. below 3.3.1)
- In a more updated “guesstimate” the Deutsche Steuergewerkschaft assumes that annually the state loses 75 billion Euro due to tax evasion and the shadow economy.²⁵
- Tax avoidance by corporations and businesses: EUR 90 billion annually, cf. below 3.6.2.3
- In summer 2015, the Federal Court of Auditors communicated to the Federal Ministry of Finance, that annually up to EUR 10 billion are being lost because of manipulated cash registers alone, quoting the famous example of an ice cream parlour which alone evaded EUR 1.9 million in taxes.²⁶

On the whole it is surprising that there is very little on part of the government regarding the tax gap in Germany. One would expect some detailed calculation, but for the English term “tax gap” not even an accepted translation exists: If one enters it into translation programs, either “Steuerloch” emerges, mostly linked to individual taxation areas (TNCs, prostitutes...), or the term refers even to gaps in taxation laws (Steuerlücke) which can be exploited for tax avoidance and evasion.²⁷

Bundsvorsitzender%3A+Wer+an+der+Einnahmeverwaltung+spart,+spart+fahrl%C3%A4ssig+an+Einnahmen!.html

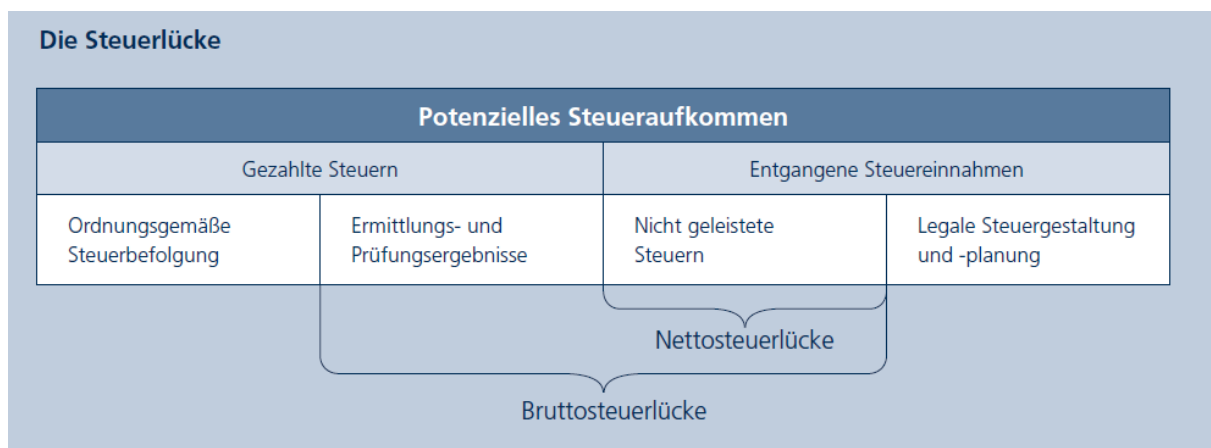
²⁴ Kirschbaum, E. (2013, March 19) German SPD ties itself in knots over tax pledge. In: Reuters. Retrieved from <http://www.reuters.com/article/2013/08/19/us-germany-election-spd-idUSBRE97I0PS20130819>

²⁵ 15 August 2016 on <http://www.dstg.de/ueberuns.html>

²⁶ "Die Steuerausfälle bei bargeldintensiven Unternehmen haben ein erhebliches Ausmaß erreicht. Selbst bei einer Eisdiele stellte ein Finanzamt Steuerhinterziehungen von 1,9 Mio. Euro fest. Die jährlichen Steuerausfälle werden auf bis zu 10 Mrd. Euro geschätzt.“ Quoted in 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>

²⁷ Graphic from Rixen, Th. Seipp, Kl. (2009) Mit mehr Transparenz zu einem gerechteren Steuersystem. Retrieved from <http://library.fes.de/pdf-files/wiso/06535.pdf>

Table 7 Die Steuerlücke



3.3.2 Bavaria

Regarding Bavaria, there are two indicators worthwhile mentioning:

First of all, the surplus revenue collected annually by the tax departments. While there is plenty of discussion surrounding surplus revenue collection in the area of large businesses and millionaires, one should not forget the fact that losses occur also in other areas because of the lack of personnel: Based on the reply of the State Government to the request of a Social Democrat MP trade unionists report, that even unspectacular departments generate considerable amounts of surplus revenue per year and per employee:²⁸

- Department for tax declarations of dependently employed: EUR 125,000
- General Assessment Department: EUR 129,402
- PersG-Bezirke: EUR 198,247

A second list of indicators is obtainable from calculations done by the Bavarian Court of Auditors and published in its Annual Reports. There, they state, among others, that the following improvements are possible, if adequate levels of personnel be at hand:

- Triple digit million figures annually in the area of tax auditing (cf. GER/VI/4.3.3.6)
- Double digit million annually in the area of Unterhaltszahlung (cf. GER/VI/4.3.2.2.3)
- One billion in the area of Turnover Tax (cf. GER/VI/4.3.6.1).

3.4 Losses due to Turnover Tax Fraud

Turnover tax is the largest single tax collected by the German government: in 2013 it was EUR 196,843,171 million, as opposed to the second largest category, wage tax, which amounted to 158,198,079.²⁹ There are no official “guesstimates” concerning the amount of withheld turnover tax because, so the Federal Ministry of Finance, only uncovered cases could enter into statistics. This suggests, at the same time, that the real extent of damage is assumed to be substantial. The IFO Institute published 2007 a figure which is re-quoted on the website of the Federal Ministry of Finance, namely that Germany is losing annually EUR 14-

²⁸ Stupka, W. Mehr Personal bringt nix. In: *Der Wecker* 2010/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

²⁹ Cf. http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Steuern/Steuerschaetzungen_und_Steuereinnahmen/2014-01-31-Steuereinnahmen-Kalenderjahr-2013.pdf?__blob=publicationFile&v=4

15 billion in revenue because of trickery and cheating in this area (Bundesministerium der Finanzen, 2014b). Accordingly, also the current German government stated in its coalition treaty that the area of turnover tax fraud is the biggest and most important area of criminal tax evasion (CDU/CSU/SPD, 2013, p. 58).

Equally concerned is the European Commission, since VAT fraud is a major loss of revenue for all EU member states: Given overall VAT revenue of EUR 904 billion in 2012, a revenue gap of EUR 107 billion is opening for the EU 27 member states.³⁰ In September 2015 the European Commission calculated the size of the VAT Gap for 26 EU member states at EUR 168 billion, for Germany at EUR 24.8 billion.³¹

A German figure: The Federal Central Tax Office quotes on his website a calculation of the IFO Institute according to whom annually EUR 14-15 billion are lost in revenue because of trickery and cheating in the area of Turnover Tax alone.³²

3.5 Losses due to the informal economy

When talking about “losses” due to the informal economy one has to be aware that the role of the informal economy in African states is very different from the Shadow Economy in developed countries – which is why they cannot be compared (cf. SRS and SRE).

3.5.1 Global

Relationship between the formal and informal sector:

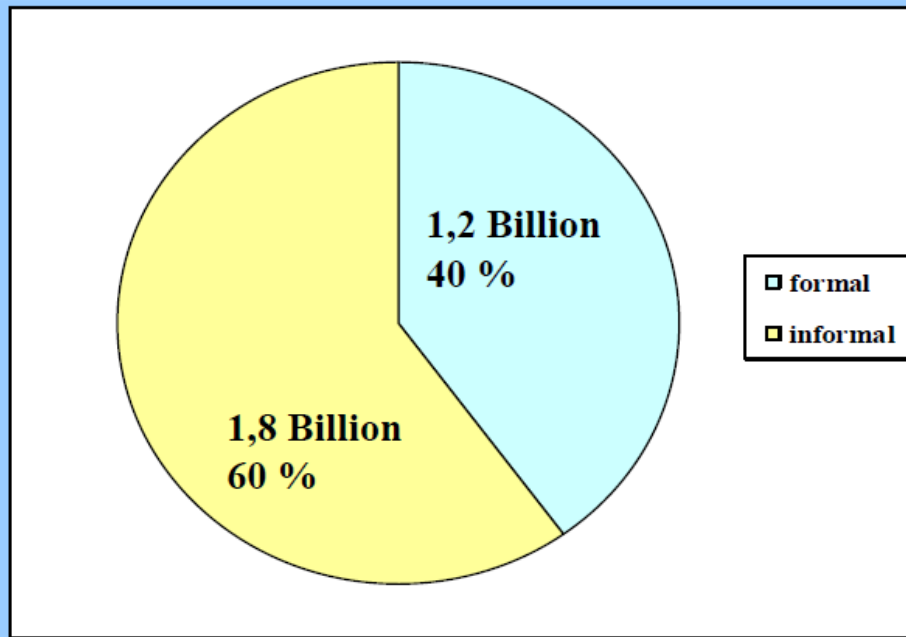
Graphic 13 Global share of formal and informal employment

³⁰ See Executive Summary of European Commission, DG TAXUD (2013) 2012 Update Report to the Study to quantify and analyse the VAT Gap in the EU-27 Member States. Retrieved from http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/vat_gap2012.pdf

³¹ ‘The VAT Gap is an indicator of the effectiveness of VAT 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.’ (Eurodad, 2015a, p. 7+25)

³²

Figur 5.1: Informelle Beschäftigung weltweit im Jahr 2008

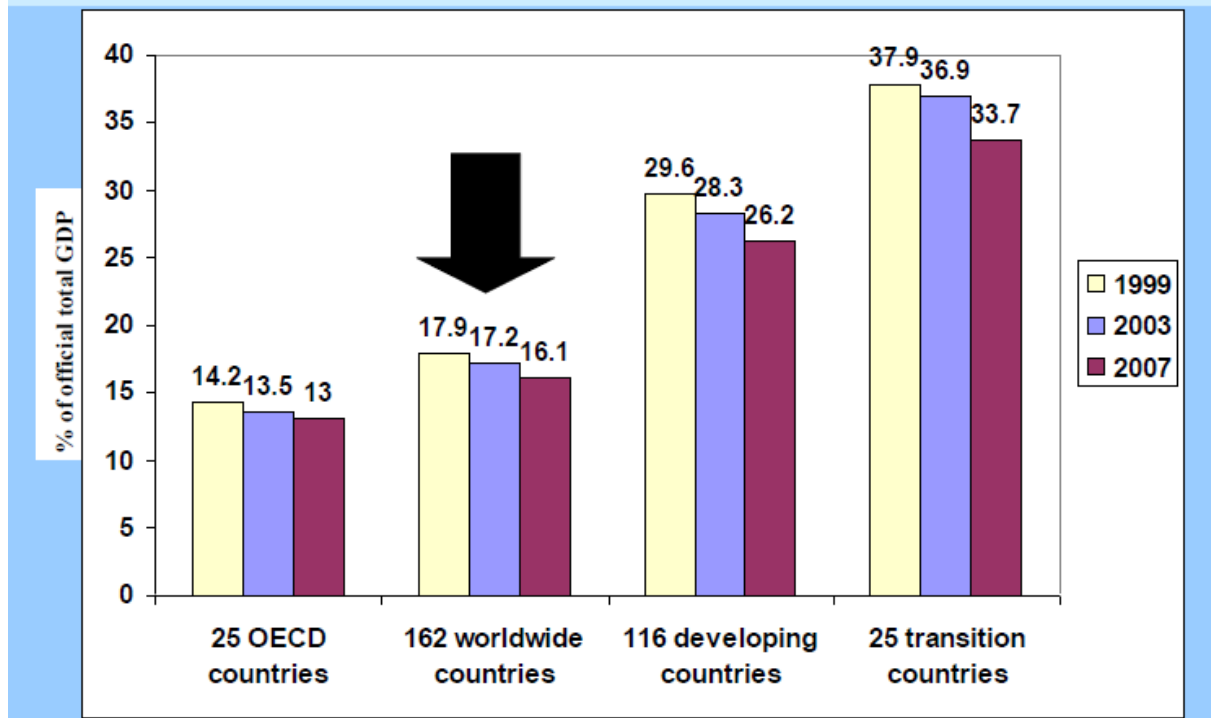


Quelle: OECD Development Centre "Is Informal Normal?" (2009), basierend auf ILO LABORSTA database und ILO Global Employment Trends, 2009.

Source 10 (Schneider, Schattenwirtschaft, Steuerhinterziehung und Schattenarbeitsmärkte in Deutschland sowie in anderen OECD-Staaten: Was wissen wir (nicht)?, 2014a, p. 37)

Graphic 14 Size and Development of Shadow Economies in various countries groups

Figure 5.3: Size and Development of the Shadow Economy of Various Countries Groups (*Weighted Averages (!)*; in percent of official total GDP of the respective Country Group)



Source 11 (Schneider, Schattenwirtschaft, Steuerhinterziehung und Schattenarbeitsmärkte in Deutschland sowie in anderen OECD-Staaten: Was wissen wir (nicht)?, 2014a, p. 39)

Table 8 Share of Informal Employment in Non-Agricultural Employment

Table 5.2: Share of Informal Employment in Total Non-Agricultural Employment by five-year period

<i>Region</i>	Average Share of Informal Employment in % of Total Non Agricultural Employment over			
	1985-89	1990-94	1995-99	2000-07
22 South- and Middle American Countries	32.4	35.4	40.3	50.1
34 Asian Countries	55.9	60.4	65.4	70.2
42 African Countries	40.3	47.1	52.4	60.5
21 Transition Countries	30.9	32.3	35.4	40.2

Source: Own calculations using OECD 2009, pages 34-35; and Charmes (2002, 2007, 2008) for the ILO Women and Men in the Informal Economy, 2002. For the most recent period: Heintz and Chang (2007) for the ILO, and for West Asia: Charmes (2007 and 2008).

Source 12 (Schneider, Schattenwirtschaft, Steuerhinterziehung und Schattenarbeitsmärkte in Deutschland sowie in anderen OECD-Staaten: Was wissen wir (nicht)?, 2014a, p. 40)

Researcher Robert Neuwirth has the opinion that economic growth in Africa is linked to the informal sector, not the formal one. Having lived on dumps of African Megacities he observed that those collecting and recycling garbage generate a lot of value, different from the faltering formal economic sector, thus offering more people a way out of poverty.³³

3.5.2 Germany

Regarding Germany, Friedrich Schneider calculated with his methods explained at GSE/I# the following table to illustrate the size of the major categories of losses within the shadow economy for Germany in 2013. First, the losses in tax payments:

Table 9 Tax losses in Germany due to the Shadow Economy

	Losses due to shadow economy as share of overall tax evasion in money	Losses due to shadow economy as share of overall tax evasion in percent of revenue	Tax evasion in relationship/as share of overall tax revenue
“Black Labour”	42.6 billion	65%	6.9%
“Classic tax evasion”	13.3 billion	20%	2.2%
Tax fraud	9.6 billion	15%	1.6%

Source 13 (Schneider, 2014a)

³³ „Die Schattenwirtschaft wird verachtet als krimineller Schwarzmarkt, dabei ist sie eine Supermacht“, behauptet Robert Neuwirth, ein amerikanischer Autor, der auf der größten Müllkippe Afrikas in der nigerianischen Hauptstadt Lagos steht. Hier wühlen Hunderte Menschen im Abfall einer Millionenstadt nach Verwertbarem. Soll das ein Sinnbild einer ökonomischen Supermacht sein? „Zahlen der Weltbank belegen, dass diese Menschen zusammen zehn Billionen Dollar jährlich erwirtschaften. Wären sie Einwohner eines Landes, wäre es nach den USA die zweitgrößte Volkswirtschaft“, sagt Neuwirth. <http://www.arte.tv/guide/de/048017-000/der-glanz-der-schattenwirtschaft>

Next, the losses due to the fact that the Shadow Economy operates outside the formal economy, i.e. the lack also of investment in the formal economy or even its destructive effect when participation in tender procedures endangers the survival of legitimate businesses. There is at best an indirect benefit for the formal economy when it comes to the spending of money earned within the Shadow Economy or when it comes to the purchasing of goods for labour done in the Shadow Economy, for which then VAT is being paid (unless smuggled goods are being bought which is also possible given the extent of smuggling, trade misinvoicing and mispricing) and/or the size of street markets close to some border areas.

Since there is little knowledge, one can at best guess the damage done when looking at the overall dimension of the Shadow Economy.

Table 10 Size of German Shadow Economy, monetary and in relationship to GDP

Year	Shadow Economy in billion €	Relationship of Shadow Economy to official GDP
1995	241	13,0
1996	258	13,8
1997	275	14,4
1998	281	14,3
1999	302	15,1
2000	322	15,7
2001	330	15,7
2002	350	16,4
2003	370	17,2
2004	356	16,2
2005	346	15,6
2006	346	15,0
2007	349	14,4
2008	347	14,0
2009	352	14,8
2010	348	13,9
2011	344	13,2
2012	343	12,9
2013	341	12,4
2014	339 ^a	12,2 ^a
2015	339 ^a	12,2 ^a

Source 14 (Schneider & Boockmann, 2015, p. 22)

The damage being done in this context is enormous. Mahr has the following example to illustrate simply the loss of the payment of taxes and mandatory Social Security Contributions: Just assume that 1 Schwarzarbeiter works for 2000 hours a year, at a Stundenverrechnungssatz of 20 Euro, without taxes and SSCs being paid for that. This person

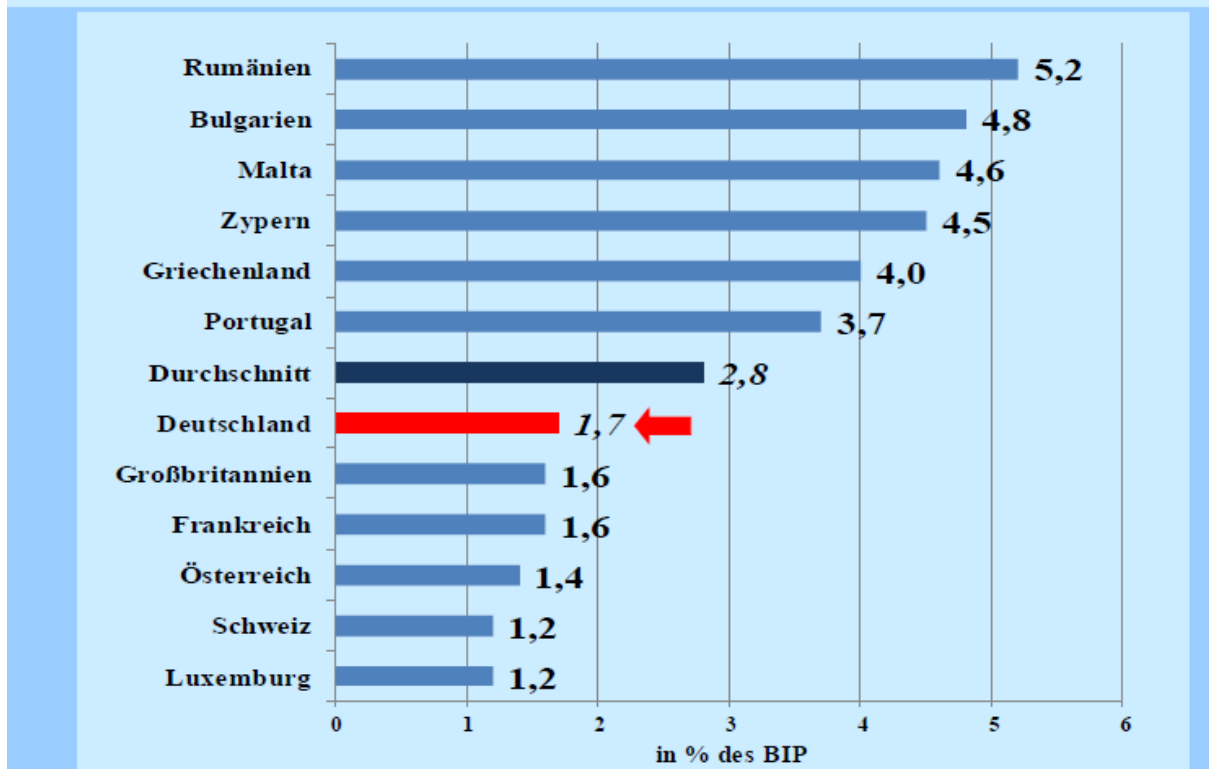
would be paid EUR 40,000 a year without taxes and SSCs being paid for that. If you just assume that there are 100,000 Schwarzarbeiter, you arrive at a turnover of EUR 4 billion already, of which up to EUR 2 billion can be tax-free-profits for those being engaged in the process. (Mahr, 2011, p. 358) And: Mahr is talking merely of construction, where one can safely assume several 100,000 Schwarzarbeiter.

However, construction is only one sector of illegal employment, many more like transportation, food sector, private care etc. needs to be added into the overall assessment! More regarding the different segments and shares of professional areas within the Shadow Economy cf. GSE.

More specifically regarding the extent of tax evasion of Germany in relationship to OECD states, Schneider estimates the following in comparison:

Graphic 15 Tax Evasion in Germany, compared with other European states

Figur 3.4: Ein Vergleich der Steuerhinterziehung einiger europäischer Länder (2010)



Quelle: Eigene Berechnungen (2014) und Schneider und Buehn (2013).

Source 15 (Schneider, 2014a, p. 28)

3.6 Gains and losses due to IFFs

While the previous is clearly associated with costs and losses, IFFs need to be looked upon in a differentiated way since here losses and benefits are not as clearly assignable.

3.6.1 Germany and IFFs

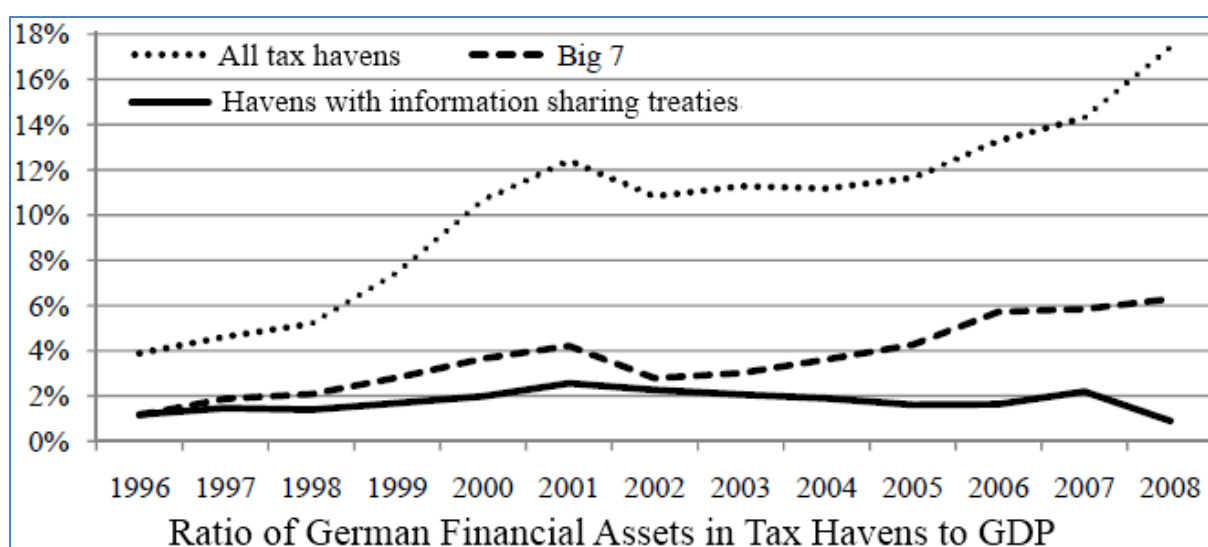
Some topical discussion of IFFs has been done already in GER/VII, e.g. in the chapter on money laundering or tax fraud. In the following, some general overview on IFFs shall be presented, not being divided and sub-structured into individual categories.

3.6.1.1 Outflows

In every country there are illicit financial inflows and outflows. As discussed in I/IV/6.3 by Zucman and others for Europe, there are quite a number of indications that annually billions of Euros of private wealth are transferred out of European countries, e.g. for tax saving purposes. However: While developing countries are under scrutiny from Global Financial Integrity with regularly updated calculation about Illicit Financial Outflows, comparable calculations exist not for Germany. The more widespread discussion here is rather about the amount of assets deposited outside Germany. A frequently quoted and requested number, based on Offshore Leaks material, stems from the German Tax Officials Union, whose chairman calculates that EUR 400 billion of assets are deposited abroad.³⁴

One of the few attempts to establish some figures about outflow and its development over the years is contained in a Working Paper of the Centre for Economic Studies/Institute for Economical Research, by Shafik Hebous: He demonstrates that the ratio of financial assets to German GDP has increased from 4 percent in 1996 to almost 18 percent in 2008, an exact estimate being difficult because many assets held in tax havens are owned by third parties, thus disguising the real ownership³⁵

Graphic 16 Ratio of German Financial Assets in Tax Havens to GDP



A study by the Helvea-Baader Bank group comes, regarding Switzerland, to similar results. When calculating EU Assets in Swiss Banks, there are the following “guesstimates” for selected countries regarding the relationships between declared (i.e. known assets to respective tax authorities) and undeclared assets:³⁶

Table 11 EU Assets in Swiss Banks

Assets in CHFbn	Not declared	Declared	Total	Declared as % of
-----------------	--------------	----------	-------	------------------

³⁴ „Zudem beweise der Datensatz: Es gibt auch in Deutschland einen Geldadel, der sich einfach darum drückt, in Deutschland seine Steuern zu zahlen. Das Volumen unversteuerten Deutschen Geldes im Ausland betrage ca. 400 Milliarden Euro.“ Thomas Eigenthaler (2013, April 10) Pressemeldung. Retrieved from <http://www.dstg.de/archive/52/%E2%80%9EOffshore-Leaks%E2%80%9C3A+DSTG-Chef+Eigenthaler+brandmarkt+Steuerhinterziehung.html>

³⁵ (Hebous, 2011, p. 8f.) Cf. also (Hebous, 2011) pp. 15f. and references there.

³⁶ P. 13 of Helvea (2009) Swiss Banking Secrecy and Taxation. Retrieved from <http://www.safehaven.at/wordpress/cms/wp-content/uploads/2010/03/Helvea-Studie.pdf>

				total
Germany	193.4	87.2	280.6	31%
Italy	185.2	1.9	187.1	1%
France	91.7	2.8	94.6	3%
UK	59.6	24.5	84.2	29%
...				
Total	725.8	137.1	862.9	16%

The Helvea studies points out that the grand total of CHF 862.9 billion is pretty much the same figures which the Swiss National Bank, whose database is used by Gabriel Zucman, reveals regarding custody (fiduciary) accounts.

Of course, the money flowing out can also flow back – under a disguise: As also demonstrated in I/IV/6.3: Regarding the entire EU area, there are EUR 39.1 billion outflows of FDI into Offshore Financial Centres, but an EUR 81.4 billion inflow in FDI to Europe. Given the options available for disguising beneficial Ownership it is even likely that a lot of money is round-tripping that way.

3.6.1.2 Inflows

In I/IV/6.4+5 it has been argued that Europe benefits from IFF inflows from Africa since owner of such illicitly transferred assets prefer places for “productive investment” rather than tax havens where money is just stashed away without generating a lot of interest or other forms for return. On that background it can also be assumed that Germany is an attractive country of destination for IFFs.

Wealth managers admit publicly that Europe is a preferred target for private wealth from insecure and unstable world regions, either people want to bring their assets to safety or because they want to increase their profits (Wealth-X and UBS, 2014, p. 32+44). This applies certainly also for Germany, even though not for money out of Africa. Germany is rather known to be targeted by Organized Crime Groups from Eastern and Southern Europe.

One way to establish the extent of inflow to Germany is to consider the difference between current account (Leistungsbilanz) and financial account (Kapitalbilanz) in the Net International Investment Position of the German Federal Central Bank.³⁷ It is normal that those two corresponding posts do not match, but in some cases the discrepancy is larger than can be explained. Experts argue that especially unrecorded (and at times illicit) financial transfers contribute to an imbalance between those two for individual countries, but also between countries of different world regions. For developing and emerging markets, the financial accounts are normally negative, for developed countries the financial accounts are normally positive. This indicates that there is more capital leaving the first and entering the latter unobserved. On the receiving end, some countries emerge in top positions: Switzerland, the USA, the UK and Germany. The accumulated surplus of the financial account for Germany for the years 1999 to 2012 is EUR 253 billion (Klär, Lindner, & Sehovic, 2013, p. 192).

Obviously, a state as economically prosperous and of the importance of Germany within the Eurozone and European Union and as accessible as it is since border controls to neighbouring countries have been abandoned is an attractive target for illicit financial flows. This is also seen by governmental expert organizations. For example: according to the

³⁷ Here it is also important to distinguish since the label „Exportweltmeister“ may be attributable to the Leistungsbilanz, but not automatically to the Kapitalbilanz.

OECD/IMFs Financial Action Task Force, ‘many indicators suggest that Germany is susceptible to money laundering and terrorist financing including because of its large economy and financial centre, as well as its strategic location in Europe and its strong international linkages’ (Financial Action Task Force, 2010, p. 9). Germany hosts over USD 1.8 Trillion in deposits by non-residents³⁸ and 3,400 financial institutions offer all sorts of services to residents and non-residents alike. The report criticizes Germany for offering too many tax exemptions for non-residents, for lacking sufficient effective tax-information-exchange agreements, for allowing deficits in the use of trusts and foundations as well as a surprising low level of reporting suspicious transactions.

Henn/Mewes/Meinzer report that ”guesstimates“ regarding inflow of illicit and illegal financial flows to Germany range annually between EUR 29 and 57 billion, the difference due to the fact that only little hard facts are known.³⁹

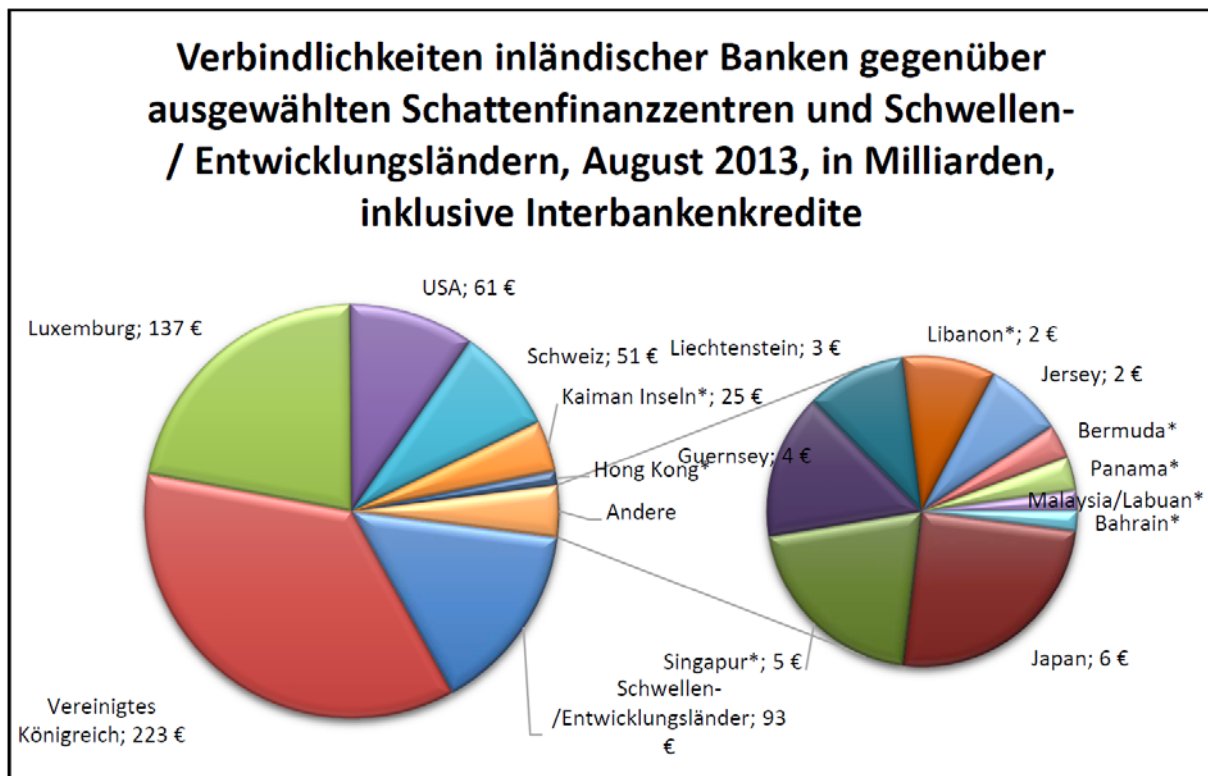
A conversation partner among police confirms publications by UN institutions or academics, that something between merely 0.1-1% of illegal/illicit inflows can be confiscated by police and prosecution.

The topic is elaborated in quite some detail by Meinzer in (2015a) and (2015b). According to studies which he is quoting, 56-76% of money from developing states is heading for developed countries (2015a, p. 48ff.). He is explaining how this is being done and what tricks are used to hide the beneficiary ownership (cf. also GER/VII/4.3 Interbank loans, transitory & corresponding accounts).

³⁸ [p. 18]. According to the NGO GFI, this amount is much lower and was 2008/2009 somewhere between USD 575 and USD 409 billion. However, even then Germany would be the 5th most attractive destination for the deposition of privately held wealth [p. 1 of http://www.gfintegrity.org/storage/gfip/documents/reports/gfi_privatelyheld_web.pdf], which would support TJNs assessment that Germany can be categorized as a Tax Haven.

³⁹ (Henn, Meinzer, & Mewes, 2013, p. 6). Eckwerte: 29 Milliarden in: Brigitte Unger u.a.: The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy, Final Report. Universität Utrecht, Februar 2013, S. 39 (unveröffentlicht). 43-57 Milliarden in: IWF: Germany: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism. IWF Länderbericht Nr. 10/78, März 2010. Washington. www.imf.org/external/pubs/ft/scr/2010/cr1078.pdf. Das Finanzministerium zweifelt Zahlen des IWF an und betonte im Gespräch mit einem der Autoren, der IWF habe die Berechnung seiner Zahlen trotz offizieller Nachfrage nie offengelegt. (Henn, Meinzer, & Mewes, 2013, p. 5f.)

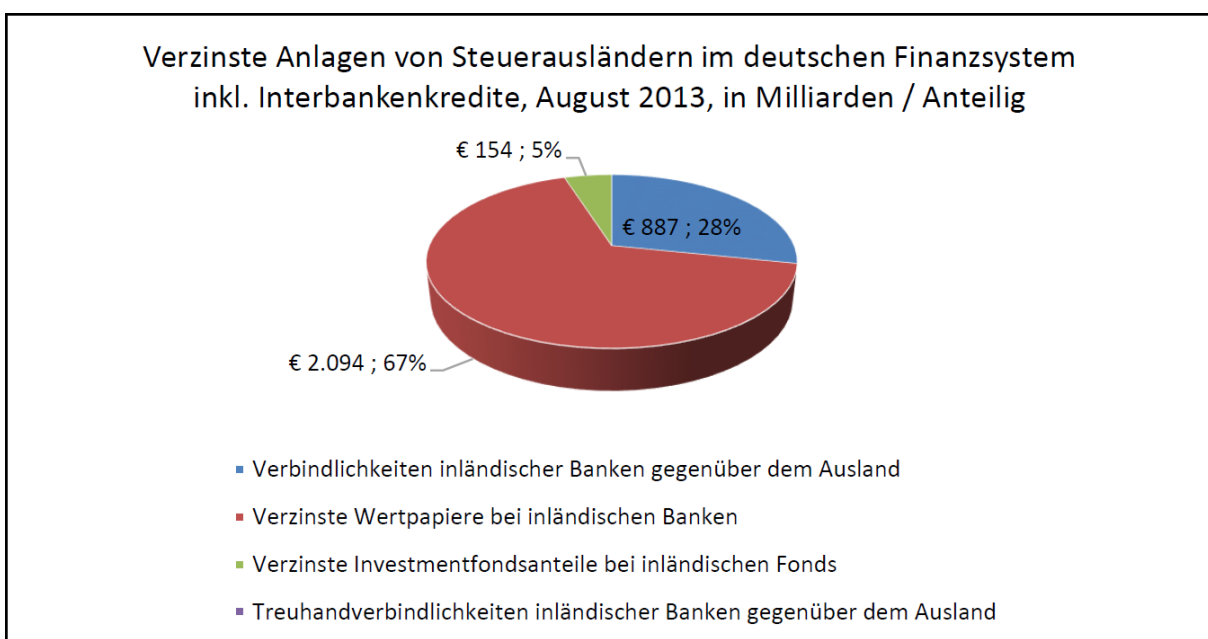
Graphic 17 Liabilities of German banks towards Offshore Financial Centres



Source 16 (Meinzer, 2015b, p. 7)

As can be seen, in August 2013, EUR 92.9 billion Euro from developing and transition countries were deposited on German accounts (2015a, p. 50). He argues, however, that the amount should be much higher since Offshore Constructions are used to hide the origin of funds eventually reaching Germany. A statistics of the German Federal Central Bank reveals that in August 2013 EUR 2,094 billion verzinsliche Wertpapiere were held by non-Germany, sadly, the statistics does not assist in determining its geographical origin.

Graphic 18 Interest generating deposits of non-Germans in Germany



Source 17 (Meinzer, 2015b, p. 10)

Those papers held by non-Germans generate an annual income from interest somewhere between EUR 78-92 billion – tax free. If the Abgeltungsteuer had been collected from those deposits revenue would be EUR 24.32 billion with and 20.65 billion without Interbankenkrediten. On the whole, Meinzer holds, that EUR 328 billion with, EUR 250 billion without Interbankenkredite can be attributed to developing countries, on which in principle between EUR 9.66 billion resp. 7.97 billion in interest are to be paid.

Meinzer raised the question, whether Germany collects Abgeltungsteuer on interests from non-German deposits, with the Secretary of State, Meister, who held against it, without proving his position (Meinzer, 2016a). Requests directed to Dr. Meister on part of this project also remained without an answer which, eventually, suggests that the answer given by a senior civil servant in the tax department is probably correct: Whether or not income from interest is taxed depends on the kind of Double Taxation Agreements between Germany and the nationality of account holder – meaning, that the privileges asserted by Meinzer may well exist (cf. GER/VII/4.3.3).

3.6.1.3 Example “Guesstimate” of money laundering

According to experts, there is a flood of money arising from private, corporate and criminal malpractice circulating the globe and looking for legal investment, as, e.g. Saviano illustrates in his book on the trade of cocaine and the UNDOC tries to illustrate and quantify in its 2011 study on illicit financial flows. (UNDOC, 2011)

Because of its size, its federal structure its legal diversity, Germany is highly attractive for money laundering relevant investments, as a study commissioned by the Federal Ministry for Finance indicates.⁴⁰ Because it has the character of control crime (Kontrollkriminalität), there is a high Dunkelfeld. The researcher examines reports both from the financial and non-financial sector, states the large difference between the financial sector and the DNFBPs and tries to make up the deficit on the latter part by interviews. In result he guesses that instead of ca. 250 reports annually, the number of suspicious transactions in the DNFBPs is as large as the number in the financial sector, namely 18-20,000. Since those are not reported, they are not investigated and prosecuted. Damage linked to those non-reported case should be EUR 30 billion, which brings up the overall damage both from financial and non-financial money laundering activities to EUR 50 or even 100 billion annually (Bussmann, 2015, p. 4).

Against this, however, practitioners are skeptical. One customs official puts it like that:

As a practitioner you cannot help to wonder because there is nothing hands-on that would help to do the work differently/in a better way. This can all be that way or not and the world continues to go on. ‘We do not profit from that. It is known that the problem is big and that we are not adequately equipped and this should be changed. To that extent to which we are better equipped we can give more precise estimates.’⁴¹

⁴⁰ Bussmann, K. (2015, August) Dunkelfeldstudie über den Umfang der Geldwäsche in Deutschland und über Geldwäscherisiken in einzelnen Wirtschaftssektoren. Retrieved from <http://wcms.itz.uni-halle.de/download.php?down=41244&elem=2937177>

⁴¹ Hinsichtlich der Dunkelfeld-Größenschätzungen von Bussmann: ‘Als Praktiker kann man das nur komisch finden, weil es nichts in die Hand gibt, was helfen würde, die Arbeit anders/besser tun zu können. Das kann alles so sein oder auch nicht und die Welt dreht sich weiter. ,davon haben wir keinen praktischen Nutzen. Dass das Problem groß ist und dass wir nicht angemessen ausgestattet ist, ist bekannt und sollte angegangen werden. In dem Maß, wo wir besser ausgestattet sind, können wir auch präzisere Einschätzungen geben.’

Nevertheless: An amount of around EUR 50 billion annually seems to be realistic:

Due to its large financial and banking sector, Germany has for some time been a key location for money-laundering. Rough estimates put the scale of laundered money in Germany within the range of €29 billion to €57 billion annually. News headlines related to German banks and money laundering have been frequent, and 2015 has been no exception. In February, Deutsche Bank was issued with a fine from regulators in South Africa for not complying with anti-money laundering laws. In March just one German bank, Commerzbank, was facing settlements of \$1.45 billion for violations of sanctions and various accusations of money laundering. In June, Deutsche Bank and authorities in the UK and US started an investigation into possible money laundering for Russian clients, which reportedly involved looking into transfers of about \$6 billion over more than a four-year period. (Eurodad, 2015a, p. 63), quoting Markus Henn & al. (2013)

And it should worry everybody that of this amount at best 0.5% can be captured.⁴²

It is, however, a very complex area to investigate, since the link has to be established between any “suspicious behavior” and the underlying criminal deed (Vortat). Since this deed and the act of money laundering is normally separated by time and different persons, the link is difficult to establish as has been illustrated especially by explaining options arising in the Real Estate Sector in GER/VII/5.2.7.

3.6.1.4 Gains and losses

As examined by using the construction sector in GER/VII/5.2.7, Germany may gain and lose at the same time from IFFs: There are gains insofar that there is investment, there are losses due to the destruction of legitimate businesses which are not able to compete with those financed with IFFs. From an ethical point of view, of course, even gains are losses since they are rooted in illegal acts, but from a politicians’ pragmatic point of view this might be seen differently.

3.6.1.5 IFFs from Germany and African governance issues

Money arising from criminal activities, such as drug dealing in Germany can be entered far more easily into the legal financial system in states with weak governance and highly corrupt administrations, e.g. Eastern Europe, Balkans or Africa.

Saviano observes this in western Africa, organized, e.g., by Nigerian gangs, who take advantage of poverty and bad pay: ‘Africa is the absence of rules. The narcos work their way into these enormous vacuums by taking advantage of tottering institutions and ineffective border controls. It’s easy to give birth to a parallel economy, to transform a poor country into an immense warehouse.’ (p.316).

Sadly, there is little about Germany in Savianos book, but quite a number of observations indicate that Germany is part of these destabilizing developments as well.

For conversation partners from police and public prosecutors, one issue stuck out: More important than the attempts to capture IFFs flowing into Germany is the damage done by IFFs flowing out of Germany into developing countries: Since it is comparatively risky to launder IFFs in Germany and invest that money into the local formal economy a lot of criminal proceeds generated in Germany e.g. in the area of drugs, black labour or trafficking

⁴² <http://www.n-tv.de/wirtschaft/Deutschland-versagt-article12722661.html>

is channelled out of Germany via institutions of the informal financial sector into developing countries with weaker governance structures. There this money then is brought into the formal financial system. This, so conversation partner, is one of the explanation why many states in the East (Ukraine!) and Southeast of Germany (Balkan states!) and Africa are not capable to establish good governance structures – including a strong tax administration! – and a strong formal economy: There is simply too much money around to bend laws, buy officials and establish parallel economic structures. One conversation partner at the police puts it as follows:

I was occupied with such money outflows intensely. They provide there for instance instability respectively stability for criminal structures and hence prevent the building of democratic / legal conditions. Currently, even more interesting for you might be the topic of organized African drug dealing. Ostensibly, much money flows to Africa which only benefits very few people and from my point of view also destroys or even prevents from arising solid economic, competitive and political structures. I do not know anyone up to the BKA level who detected just in one case the real process of financial flows of African drug dealers even though this is a current top theme. In a UNODC report some years ago was a nice citation, like the cocaine consumers in western countries are jointly responsible for the destabilizing of whole countries in Western Africa.⁴³

Even worse, they argue: There is no serious interest on part of developed countries to do something effectively about it. This has to do with the level of corruption at the African end, which is openly admitted to exist by African conversation partners from police forces (cf. GER/VII/5.8.8.4). In addition it is indicated that there is no serious national interest to go too deep into this issue since it is too complex, resources are too few and there are political interests to just leave it as it is. Even in the case that civil servants from OECD states are “on loan” to those states with the declared intention to “assist” their administration, there are clashes with other interests, e.g. business interests. This is why effective action at times is prevented or slowed down by interventions of Economic Ministries or Foreign Offices.

All those reasons contribute to the silence surrounding African governance issues: Even though migrants take their life and the fate of their families increasingly into their own hands because they do not see any hope and future in their home countries this is not seen as a symptom of a deeper structural issues of which Germany is part of, but rather the outcome of some individual (household) decision – with the result, that the wrong policies are being promoted.

3.6.2 Illicit financial flows by TNCs

Commercial IFFs are with 65% and more the highest component of IFFs (cf. GER/VII/5.1. However, also tax practices of TNCs are among those areas where one needs to consider particularly close the important distinction and wide spread between the legal, the illegal and the illicit. As Luxemburg Leaks and other data leaks indicated, it is again here

⁴³ Ich habe mich mit den Auswirkungen solcher Geldabflüsse intensiv beschäftigt. Sie sorgen dort beispielsweise für Instabilität bzw. für eine Stabilisierung krimineller Strukturen und verhindern damit auch den Aufbau demokratischer / legalwirtschaftlicher Rahmenbedingungen. Aktuell noch interessanter für Sie wäre vielleicht das Thema organisierter afrikanischer Drogenhandel. Vordergründig fließt da sicherlich viel Geld nach Afrika, das dann dort aber natürlich auch nur sehr wenigen Personen zu Gute kommt und aus meiner Sicht auch gesunde Wirtschafts-, Wettbewerbs- und politische Strukturen zerstört bzw. gar nicht erst aufkommen lässt. Ich kenne bis hoch zum BKA niemand, der auch nur in einem Fall den tatsächlichen Verlauf der Finanzströme afrikanischer Drogenhändler aufgedeckt hat, obwohl diese aktuell ein ganz großes Thema sind. In einem UNODC-Bericht vor ein paar Jahren war ein schönes Zitat, sinngemäß in etwa dass die Kokainkonsumenten in westlichen Ländern mitverantwortlich für die Destabilisierung ganzer Länder in Westafrika sind.

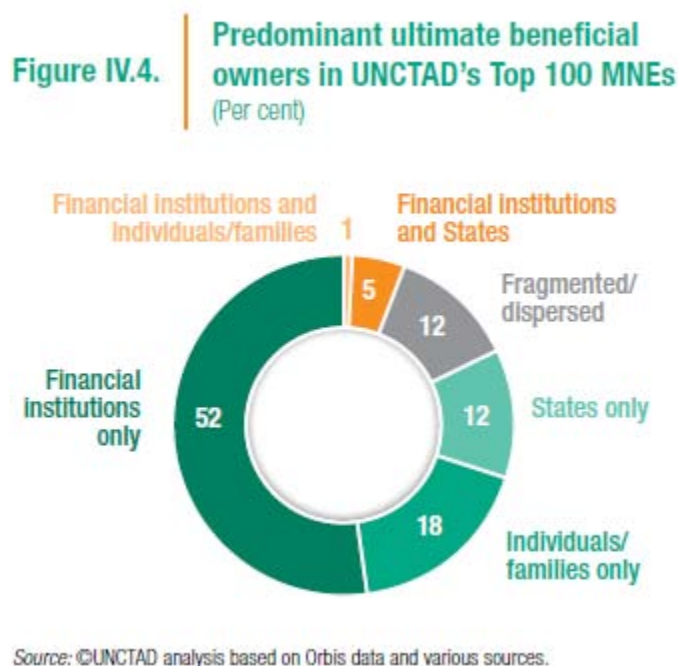
where legal constructs are stretched to the point where their combination or setting turns illicit or illegal. Contributing to the fact is the hop of TNCs and their tax advisors that nobody has the resources to discover it.

3.6.2.1 The need to include them

This research originally excluded TNCs from its focus due to the observation and assumption that already more than enough governments and NGOs focus on their aggressive tax avoidance and evasion. Rather, it was assumed, a focus upon private wealth holder is justified since they are neglected and, so the argument, they are the owner of those TNCs and, therefore, finally responsible for their activities.

However, coming to the conclusion of this project, they slowly but surely moved back on the stage, especially when being aware of the dimension of tax dodging done by TNCs and the spread of direct and/or ultimate ownership. When looking at the UNCTADs 2016 World Investment Report, the following graphic of the world's top 100 TNCs in UNCTADs definition⁴⁴ is striking:

Graphic 19 Ownership of the 100 largest TNCs



Source 18 UNCTAD WIR 2016, p. 131

Over 52% of those TNCs are owned by Financial Institutions only, in contrast to 18% owned by Individuals and families. Sadly, the report does not go into the next layer of size, but one may safely assume, especially when looking back to I/IV/5.3.3, that Financial Institutions are also having a large, if not decisive, share and say in many other lucrative businesses. This, in turn, would need that many decisions are not really taken by moral agents, but once more anonymous institutions without any emotional and responsible attachment to anything except their own interests in profit maximization.

⁴⁴I.e. 'ranked by transnationality, i.e. foreign assets, foreign sales and foreign employment'.

3.6.2.2 Gains for Germany

Beyond that which has been said above about developed countries being among the profiteers of IFFs, Germany is also defending its advantages and privileges in other areas. As is made known since the FFD3 conference, Germany is among those states profiting from the OECDs BEPS and AEOI approach at the expense of developing countries.

Beyond that, Germany's behavior, especially when it comes to transparency and obligations to publish, aroused suspicion among many others. As it is increasingly known and admitted, Germany profits also in other areas from the Status Quo and is, therefore, very reluctant to abandon its advantages:

Europe's Finance Ministers want to take action against the taxation tricks of US corporations. However, Germany does not approve this. The reason is the behavior of their own companies. ... While arguing about taxation tricks of American corporations in Europe, German experts warn of a tight proceeding against companies like [Google](#). "When we start to charge Google or [Apple](#) with a different tax, we open a fiscal policy debate" says Berthold Welling, a tax expert of BDI. "In total, this would not pay off for the German household as other emerging countries like China or India would then raise more claims and want to have much bigger tax portions." Figures from the BDI available at "Welt am Sonntag" confirm that also German companies in relation to sales tend to pay a disproportionally low tax portion abroad. A [Dax](#) company with almost 117.000 employees and sales of around EUR 46 billion employs almost one third of its staff domestically. The sales portion of Germany is just 11 percent. However, around half of all income taxes are paid nationally. Even more striking is it at big family-owned enterprises: A typical enterprise makes only seven percent of its sales in Germany. But the tax portion is 60 percent. Therefore, changes in international taxation can have high costs for the German public purse. Reknown tax experts point to the problems: "Between the EU and the USA smolders a tax war. And Germany stands in a sort of forced partnership with the USA" says Reimar Pinkernell, tax law expert at Flick Gocke Schaumburg office.⁴⁵

3.6.2.3 Losses for Germany

It is widely agreed that base erosion and profit shifting as well as aggressive tax planning strategies are widespread practice. How much it is, is difficult to estimate, because, for example, accounting, balancing and reporting requirements in Germany are less detailed

⁴⁵ „Europas Finanzminister wollen gegen die Steuertricks von US-Konzernen vorgehen. Die Deutschen hingegen halten das für eine schlechte Idee. Grund ist das Verhalten der eigenen Unternehmen....“

Im Streit über die Steuertricks amerikanischer Konzerne in Europa warnen deutsche Experten vor einem harten Vorgehen gegen Firmen wie [Google](#). "Wenn wir damit beginnen, Firmen wie Google oder [Apple](#) anders besteuern zu wollen, machen wir ein steuerpolitisches Fass auf", sagte Berthold Welling, Steuerexperte des Industrieverbandes BDI. "Unterm Strich würde sich das für den deutschen Haushalt nicht rechnen, denn dann werden andere aufstrebende Staaten wie China oder Indien mehr Ansprüche stellen und einen deutlich größeren Steueranteil von deutschen Konzernen haben wollen." Zahlen des BDI, die der "Welt am Sonntag" vorliegen, belegen, dass auch deutsche Unternehmen im Verhältnis zum Umsatz einen eher unterproportionalen Steueranteil im Ausland zahlen. Ein [Dax](#)-Unternehmen mit knapp 117.000 Mitarbeitern und einem Umsatz von gut 46 Milliarden Euro beschäftigt knapp ein Drittel seiner Leute im Inland. Der Umsatzanteil Deutschlands beläuft sich nur auf elf Prozent. Dennoch wird gut die Hälfte aller Ertragsteuern hierzulande gezahlt.

Noch auffälliger ist es bei großen familiengeführten Firmen: Dort macht ein typisches Unternehmen nur sieben Prozent des Umsatzes in Deutschland. Der Steueranteil in Deutschland liegt dagegen bei 60 Prozent. Änderungen in der internationalen Besteuerung könnten daher kostspielig für die deutsche Staatskasse werden. Renommiertere Steuerexperten weisen auf die Probleme hin: "Zwischen der EU und den USA schwelt ein Steuerkrieg. Und Deutschland befindet sich dabei in einer Art Zwangspartnerschaft mit den USA", sagte der Steuerrechtler Reimar Pinkernell von der Kanzlei Flick Gocke Schaumburg. ' In: Dams, J./ Greive, M. (2016, June 19) Warum Deutschland kaum gegen Steuertricks vorgeht. In: Die Welt <http://www.welt.de/wirtschaft/article156333314/Warum-Deutschland-kaum-gegen-Steuertricks-vorgeht.html>

than, e.g. in the United Kingdom, and therefore most figures circulated that way are guesswork. But there are indicators. For example:

- In 2010, Barbados, Bermuda and the British Virgin Islands received more FDIs (combined 5.11%) than Germany (4.77%). At the same time these three jurisdictions made more investment in the world (4.54%) than Germany (4.28%) (OECD, 2013a, p. 17).
- Or looking at FDI positions (stock) held by special purpose entities (SPEs)⁴⁶ In 2011, little Luxembourg's total inward stock investments were USD 1,129 billion, outward stock investments from Luxembourg amounted to USD 2,140 billion, with about USD 1,945 billion being made through SPEs (OECD, 2013a, p. 18).

Henn points out, for example, that for Germany financial losses to the revenue authorities from corporate tax avoidance and tax evasion ranges between 60 and 100 Billion Euro per year. Whatever amount it is, however, one can safely assume that it is a two digit billion Euro sum (Henn, 2013, p. 3).

Bach examined the profits appearing in tax statistics with the amount of probable profits according to an analysis of the National Income and Expenditure Statistics (*Volkswirtschaftliche Gesamtrechnung*) and discovers a “taxation gap” of up to EUR 180 billion annually up to 2008, and afterwards (probably due to the enlargement of the tax base) around EUR 90 billion – in addition to the huge amount of loss carry-forwards of EUR 568 billion (Bach, 2013b, S. 8). Bach argues that the effective tax burden for corporations in Germany is therefore more likely close to 21% than to the nominal 29.4% (Bach, 2013b, S. 12).

One should also consider the injustice of giving rebates to large companies who then have a competitive advantage over SMEs, who work locally, employ more labourer and pay their full taxes. TNCs have the power to negotiate tax deals privileging them more than SMEs, leaving the tax burden for the latter and the individual taxpayer. A former employee of a TNC puts it as follows: ‘If you always listen to the argument: Don’t tax us, we create jobs, we need this for emergencies, we need this for whatever: Eventually you will have to pay them cash simply to stay. But right now, they profit from that which the community provides in services! Let them therefore now pay their share.’ At the same time, TNCs are “free-riding” on that which other taxpayers in the country contribute to infrastructure, education, social security and other assets necessary for doing business (High Level Panel, 2015a, p. 52+59).

Even the G20/OECD admits that BEPS activities including aggressive tax avoidance and harmful tax practices of TNCs amount to tax losses between USD 100 and 240 billion annually for the states of the world – as far as accessible and available data give any realistic insight at all (OECD, 2015d, p. 4).

3.6.2.4 Losses for developed and developing countries

Even though enormous amounts of money may be lost for both developed and developing countries alike, the damage is proportionately harder for developing countries: Because of their lower overall GDP and lower tax quota in relationship to GDP losses for developing countries weigh higher, especially, since in developing countries the lion share of

⁴⁶ Entities with few employees and little presence in the host economy, representing investments and assets in or from other countries.

tax revenue comes from large businesses anyhow (Haldenwang, 2016). This is supported by the following two studies:

For corporate legal and illicit profit shifting, IMF researchers estimate that losses are around 1 percent of GDP for OECD countries and 1.3 percent for developing countries. However, the GDP comparison does not show the full difference in intensity of losses, because developing countries have lower tax revenues in general: often 10–20 percent of GDP, rather than 30 percent or more in OECD countries. The proportion of revenues foregone is therefore substantially greater in comparison: perhaps 6–13 percent of existing tax revenues in developing countries, as opposed to just 2–3 percent in OECD countries. (Crivelli & al., 2015)

A study of Oxford University Centre for Business Taxation concludes that profit relocation and cavity of tax basis could be a bigger problem for developing countries than for developed countries. The study examines panel data of 173 countries over 33 years and employs a new method to quantify the income effect of tax evasion. Income losses are for developing countries through BEPS at 1.3% of GDP, in OECD countries at 1.0% of GDP.⁴⁷

3.6.3 International Developments

Finally, some highlights of the international situation, with a specific focus on Africa due to the partners cooperating in this study.

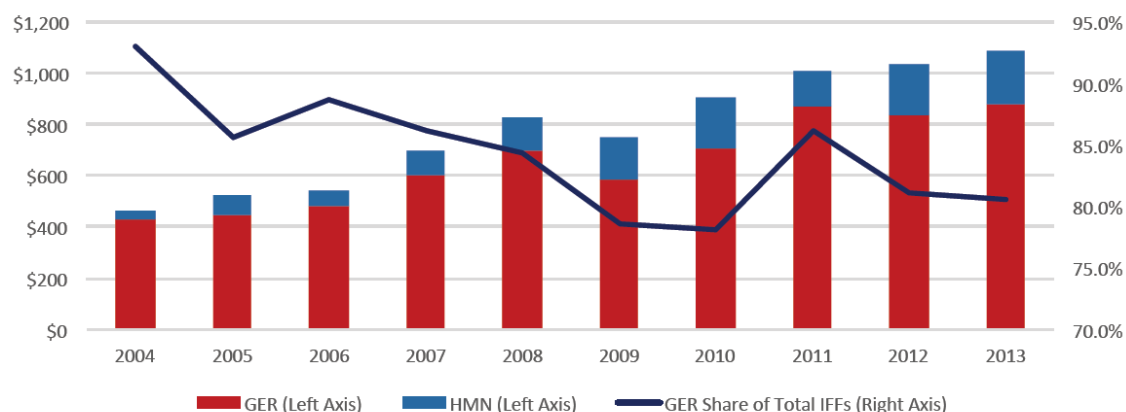
3.6.3.1 The most up-to-date and large picture

GFI updated his findings in December 2015 regarding the IFF impact upon developing countries. The latest “guesstimates” on the dimension of IFFs for the world is that it surpassed 1 trillion USD in 2013. Asia dominates because of China, the country with the largest IFF source country. Developing Europe includes Russia, which at sometimes surpasses China to be the country with the largest IFF source country. Western Hemisphere Countries are dominated by Brazil and Mexico, while Sub-Sahara Africa is dominated by South Africa and Nigeria, the first on rank 7, the latter on rank 10 of the world’s IFF top-10 source countries. (Kar & Spanjers, 2015, p. 6).

The composition of IFFs is changing, as the amount measured with the Trade Misinvoicing and the hot money narrow methods indicate: Even though the HMN amount rises, trade misinvoicing is by far the largest component of IFFs, in 2013 at 83.4%

⁴⁷ Eine Studie des Oxford University Centre for Business Taxation kommt zum Ergebnis, dass Gewinnverlagerung und Aushöhlung der Steuerbasis, für Entwicklungsländer ein größeres Problem als für entwickelte Länder sein könnte. Die Studie untersucht dazu Paneldaten von 173 Ländern über einen Zeitraum von 33 Jahren und wendet eine neue Methode an, um den Einnahmeverlust durch Steuervermeidung zu quantifizieren. Für Entwicklungsländer liegen die Einnahmeverluste durch BEPS bei 1,3 % des BIP, in OECD Ländern bei 1,0 % des BIP. Fuest, Clemens, Riedel, Nadine (2009). Tax evasion, tax avoidance and tax expenditures in developing countries: A review of the literature. Report prepared for the UK Department for International Development (DFID), Oxford. Retrieved from http://r4d.dfid.gov.uk/PDF/Outputs/EcoDev/60670_TaxEvasionReportDFIDFINAL1906.pdf

Chart 6: Share of GER in Total Illicit Financial Outflows, 2004-2013
(in billions of nominal U.S. dollars, or in percent)

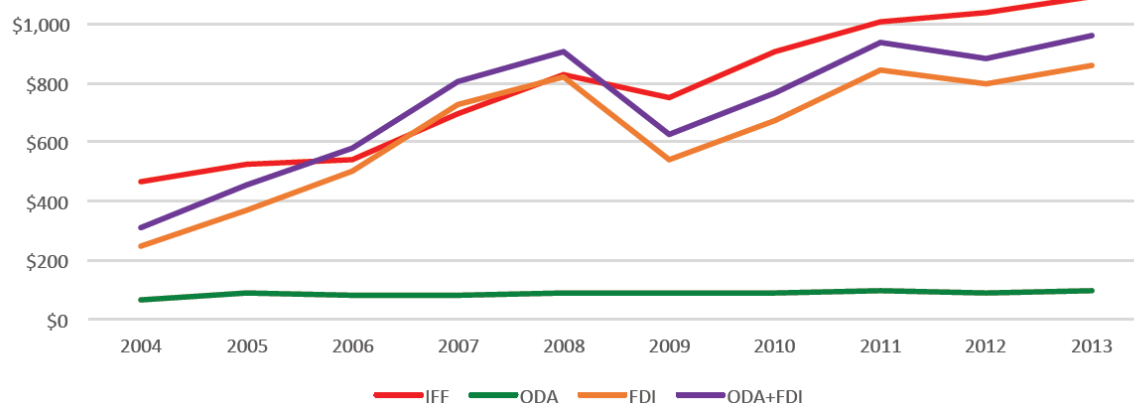


Source 19 (Kar & Spanjers, 2015, p. 10)

On the whole, the share of IFFs as percentage of GDP is decreasing in all developing countries, indicating, that GDP is growing at a faster rate than IFFs (p.12). However, this does not really tell us anything about the persisting size of the problem. And: It is still true to say that IFFs surpass by far the combined inflow of both ODA and FDI:

Graphic 20 Illicit Financial Flows, ODA and FDI 2004-2013

Chart 10. Illicit Financial Flows, Official Development Assistance, and Foreign Direct Investment, 2004-2013
(in billions of nominal U.S. dollars)



Source 20 (Kar & Spanjers, 2015, p. 15)

This means that ,for every development-targeted dollar entering the developing world in 2013, over US\$ 10 existed illicitly.’ (p. 15)

3.6.3.2 Africa: net-creditor to the world?

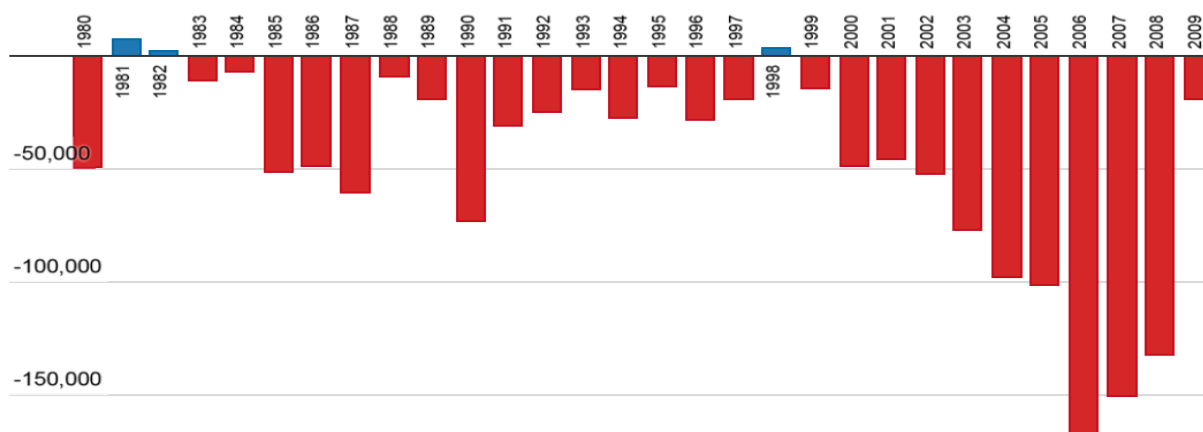
One of the theses of the research project concept certainly holds: Africa does not need ODA. If it were able to catch all that which eludes national governments via IFFs there would be more than enough money to finance public goods and services. ‘A 2013 GFI report found that even after you account for all types of financial flows (both legitimate and illegitimate)—

including investment, remittances, debt forgiveness, and natural resource exports—Africa is a net creditor to the world.⁴⁸

Graphic 21 Financial losses to Africa due to IFFs, 1980-2009

Narrow Net Resource Transfers to Africa, 1980-2009

millions of USD



Created with [Datawrapper](#)

Source: [Global Financial Integrity, C](#)

3.6.3.3 Sub-Sahara Africa

African states except South Africa and Nigeria are not among those states with the biggest IFF outflow, but the relationship between outflow as share of GDP is still the largest for almost all Sub Saharan African states. Even though it is declining here as elsewhere on average, there was a noticeable upsurge in 2013 (Kar & Spanjers, 2015, p. 5f.)

Table 12 Illicit Financial Flows from Developing Countries, by Region, 2004-2013

Table B. Illicit Financial Flows from Developing Countries, by Region, 2004-2013
(in billions of nominal U.S. dollars or average share of total illicit flows)

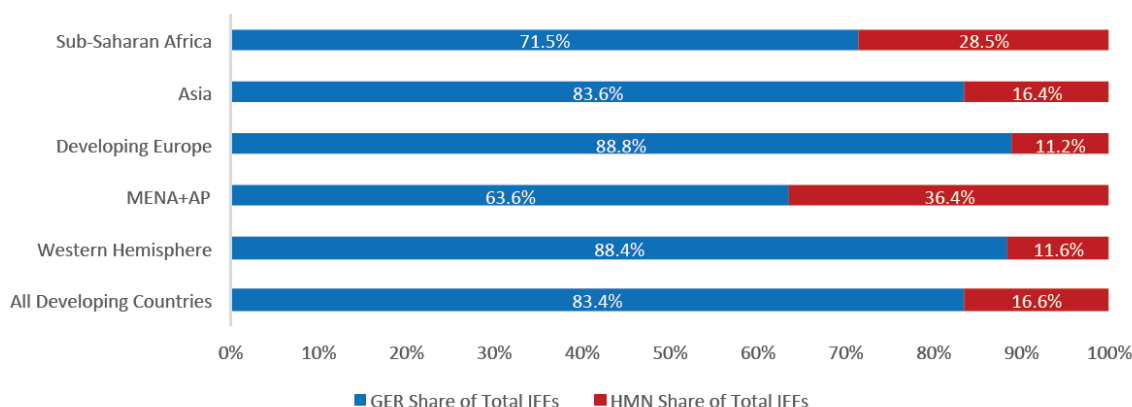
Region	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Cumulative	Average Share
Sub-Saharan Africa	32.5	51.9	56.4	77.0	78.6	85.0	78.0	74.3	66.7	74.6	675.0	8.6%
Asia	174.6	191.9	209.1	236.5	277.5	277.1	381.7	361.1	456.7	482.0	3,048.3	38.8%
Developing Europe	107.3	118.4	133.8	190.6	233.8	204.9	221.8	295.5	242.5	250.4	1,998.9	25.5%
MENA+AP	29.9	31.0	33.3	57.4	80.3	51.9	53.0	81.1	68.2	70.3	556.5	7.1%
Western Hemisphere	120.9	131.4	111.0	137.7	157.8	128.1	172.0	195.8	201.8	212.8	1,569.3	20.0%
All Developing Countries	465.3	524.6	543.5	699.1	828.0	747.0	906.6	1,007.7	1,035.9	1,090.1	7,847.9	.

Source 21 (Kar & Spanjers, 2015, p. 5)

Regarding the composition of trade mispricing and HMN, the share of HMN is second largest in Sub Saharan Africa:

⁴⁸ Retrieved 24 February 2016 from <http://www.gfintegrity.org/issue/illicit-financial-flows/>

Chart 7. Regional Illicit Flows; Shares Related to HMN & GER Components, 2004-2013
(in percent shares over decade)



Source 22 (Kar & Spanjers, 2015, p. 11)

3.6.3.4 Kenya & Zambia

Interesting enough, the situation regarding IFFs is more critical in Zambia than Kenya: While Zambia is on rank 42 of 149 with average IFF of USD 2.885 million, Kenya is on rank 125 with average IFFs of USD 83 million. (Kar & Spanjers, 2015, p. 28)

3.6.3.5 Indirect losses due to IFFs

Finally findings of I/IV/6.4 (“IFFs and Africa’s loss”), shall be re-asserted, especially the indirect damage for African economies because IFF money is neither taxed, nor spent nor re-invested as well as that money which is invested may be invested wrongly since not sound market mechanism such as competitiveness are decisive but “bent” decisions due to bribery and corruption. Those findings are still as valid and important as they were at the time of the Introductions publication in 2015.

3.7 Immeasurable systemic distortion and corruption

Last not least there are losses for the common good due to the systemic distortion of the present financial and Offshore System, which had been mentioned in various places throughout these chapters:

- Distortions due to the priority/mobility of capital over labour.
- Distortions due to profit interests over the requirements of social and ecological justice.
- Distortions due to criminal intentions and acts, misusing legal and technical options provided by the present form of financial globalization.

As Pope Francis (“This Economy Kills”) and John Doe, the Whistleblower of the Panama Paper Leak argued already in GER/VII/2.5.4, there are indications that many illicit, illegal and criminal activities would not be possible without the existence of the global financial institutional system as it has developed since deregulation of the financial sector has started long ago. Down the slope, shadow banks, hedge funds, ITCs and tax haven constructions contributed crisis factors as different the 2007 World Financial and Economic

Crisis and Organized Crime.⁴⁹ This means, on the other hand, as well: Whatever combats illicit financial flows also will benefit the stabilization of the world financial system, dry out Organized Crime AND improve the revenue situation of states!

Certainly: Isolated or national activities cannot achieve much due to the network character of banking sector, which makes it difficult to really cut the decisive head of the Hydra: As long as there is a way out, it will be used by private, corporate and criminal actors. As long as there are constructions to hide money, ownership etc. they will be used. As long as not all states take part in the re-regulation attempt money will simply move on with a mouseclick and the price might be rising. There will always be people willing and able to pay the rising prices for those options and constructions.⁵⁰ One may question the language of Rudolf Elmer, who clearly is upset about what he saw and what was done to him and his family. But there is a plausibility in his description of the formal and informal banking network and none leak after the other illustrates that his description of just one famous Swiss Bank is no isolated case: His detailing how technology assists in transferring money around the globe in a mouseclick and how lax or biased legislation in territories such as the Caymans or Bermuda assists hiding of dubious or criminal money is mirrored and imitated by countless others (Elmer, 2014).

But not just notorious critics of Big Finance or anti-globalization activists, also respectable developmental experts start talking about “systemic backgrounds” and failures when analyzing aggressive tax avoidance and tax evasion, for example the Deutsches Institut für Entwicklungspolitik in a parliamentary hearing.⁵¹ A close reading is recommended since he confined his observation to developing countries, not systemic problems inherent to the present version of capitalism as such. But the debate has started and one can only hope that it will neither be seduced nor quenched by those having an interest to shut it up.

3.8 Conclusion

There is at least some agreement regarding the amount of costs which tax administration does cost and would cost, if circumstances be different. But even the latter is contested, as is shown when discussing the administrative effort required when re-instating the Wealth Tax or having an adequate verification and enforcement system in place towards assets of private and corporate wealth holder.

Regarding IFFs it needs to be emphasized that all which is said here is at best intelligent guesswork. All that can be said with certainty is that we are talking about an awful lot of money which is out of sight and control of the authorities, whose revenue (or, in case of crime, confiscation) would be extremely beneficial for the common good. As is obvious: Damage to developing countries may not be as sizeable as it is for developed countries in absolute terms, but it certainly is in relative terms. This would merit some consideration whenever states negotiate a more fair and just taxation system if they are serious in combating, e.g., social ills of modern times such as mass migration or climate change.

⁴⁹ Hagelüken, A./Wagner, L. (2014, March 21) Das Monster lebt. In: Süddeutsche Zeitung Magazin. Pp. 8-19, quoting a number of experts evaluating the attempts undertaken, and achievements of politics, in the aftermath of the World Financial Crisis.

⁵⁰ Some examples for products and prices in (Elmer, 2014, p. 274f.)

⁵¹ „Aus entwicklungspolitischer Sicht macht es Sinn, Steuervermeidung und –hinterziehung als systemische Phänomene aufzufassen. Damit ist gemeint, dass es sich hier nicht um dysfunktionales Verhalten einzelner Akteure handelt, sondern um Praktiken, die in den nationalen Steuer- und Wirtschaftssystemen und in der Politik strukturell verankert sind.“ (Haldenwang, 2016)

4 Result

4.1 Preliminary effort of summing up

Looking back at the entire project the researcher feels overwhelmed with any effort to sum up important findings. And it should be admitted that time and resources of this project were and are not adequate to live up to the challenge. For that reason, the following can be at best point out some preliminary findings which need verification and consolidation in a discussion process after publication. Since the focus of this project was and is on tax law and tax administration, the focus also of this summing-up shall be primarily on these two areas.

This, still, is extremely complex for somebody who had to start from scratch in 2013. This is noted from conversation partners from the assessment department told the researcher to consider giving up on the research area:

“Do not mind, Mr. Pater, but as an outsider you will never understand the system. But don't care, the same applies for our supervisors. Actually, you can only understand the system and its weakness when you are part of it and have to deal with it.”⁵²

4.2 A multifaceted issue: 2 examples

The practical work of taxation and tax administration in areas relevant to this research highlight serious deficiencies. This shall be illustrated by the example of taxation of capital gains (*Veräußerungsgewinne*), as examined in the Bavarian Courts of Auditors 2015 report. The Court Report gave an example where a tax payer first declared a loss of EUR 396,000 when selling shares which, in the end, after the tax officials' investigations, turned into a handsome profit of EUR 1,380,000, generating EUR 322,000 in tax revenue.⁵³ This example illustrates the following deficiencies:

- Legal deficiencies: When selling shares in companies, proceeds are subject to income tax. A legal requirement of notaries, who execute such transaction, to inform tax authorities, exists only in the area of limited companies, but not in the case of capital companies based on shares (p. 104).
- Incomplete information: Often the (Tax) Identification number is missing, which makes it difficult to see the link between the seller and earner.
- Deficiencies in equipment and interfaces and linkages of the computerization process: Currently, it is not possible to transmit relevant control notices (*Kontrollmitteilung*) from the tax administration office dealing with the business

⁵² „Nehmen Sie mir nicht übel, Herr Pater, aber als Außenstehender werden Sie das System nie verstehen. Aber machen Sie sich nichts draus, das geht unseren Vorgesetzten genauso. Eigentlich kann man das System und seine Schwachstellen nur verstehen, wenn man drinsteckt und damit klarkommen muss.“

⁵³ Ein Steuerpflichtiger hat GmbH-Anteile von nominal 1.071.000 € für 675.000 € veräußert. Rechnerisch ergab sich ein Verlust von 396.000 €. In der Einkommensteuererklärung wurde die Veräußerung nicht erklärt. Die Veranlagungsstelle wurde durch eine Kontrollmitteilung auf diesen Sachverhalt aufmerksam. Dort war vermerkt: „Die von dem Stpl. zu erbringenden Einlagen sind laut Vertrag voll eingezahlt“. Erst nach einer Aufforderung des Finanzamts teilte der Steuerpflichtige mit, dass das Stammkapital zu rd. 95 % auf Kapitalerhöhungen aus Gesellschaftsmitteln beruhte. Die Anschaffungskosten für den veräußerten Anteil betrugen daher nur rd. 55.000 €, nicht 1.071.000 €. Nicht beachtet wurde ferner, dass der Kaufvertrag eine Klausel enthielt, wonach sich der Kaufpreis erhöht, wenn im Folgejahr ein vereinbarter Zielwert überschritten wird. Ein Jahr später ging eine erneute Kontrollmitteilung ein, diesmal von der Betriebsprüfung. Danach ergab sich eine Kaufpreisnachzahlung von über 760.000 € statt 396.000 € Verlust lt. erster Kontrollmitteilung waren am Ende 1.380.000 € als Veräußerungsgewinn anzusetzen. Darauf war nach Teileinkünfteverfahren Einkommensteuer von 322.000 € zu entrichten.“ (Bayerischer Oberster Rechnungshof, 2015, p. 104ff.)

whose shares change ownership, to the tax office dealing with the person who sold those shares (thus obtaining income).

- Deficiencies in staffing: (1) Given the effort it is not surprising that in 30% of all cases checked by the Court no *Kontrollmitteilung* has been forwarded. (2) At times, those receiving income from capital gains do not declare this income which only can be found out if there is time to compare *Kontrollmitteilungen* with data in the tax declaration or if a tax audit is carried out by the tax subject.

This is, however, is just one example from a number of possible cases but it illustrates that the question of tax justice still proves to be elusive in Germany. In this context, the court examined a sample of 222 drawn out of 463 potential cases. In 21% of the checked examples, tax administration corrected information provided by the tax subject (or his lawyer). 190 out of 222 dealt with selling shares in domestic GmbHs, in 12% of those cases the tax subject did not volunteer relevant information. Building upon this, the Courts guesstimate is that revenue losses in this area are in the millions.

The second example is the shift from direct progressive taxation to indirect taxation. Here a number of factors influencing this shift can be stated:

- Globalization and tax competition, combined with the fear that private and corporate wealth holders will move assets or themselves to countries with cheaper tax rates if their tax burden is not lowered.
- Active lobbyism of private and corporate wealth holders, using globalization as pretence to advance their own interests and privileges.
- Outside influences beyond the control of states, and yet requiring state intervention, as it was the case with the World Financial and Economic Crisis.
- Justice considerations: While payment of progressive Income Tax can be lowered by using tax saving models, the payment of indirect taxes is “inescapable.”
- Administrative costs (see especially above 2.1.6): Given the tight fiscal situation of government, cheap collection costs of indirect taxation, compared to high administrative efforts related to progressive taxes, makes indirect taxes favourable. Further, indirect taxes hardly have any appeals when they are remitted to the government.

In both cases costs of tax administration underlie the temptation to move away from the taxation principle “Ability to Pay” to the principle of “Inescapability” which, overall, burdens low and middle income households more than high income households and to invert the relationship between direct and indirect taxation from 60:40 exactly the other way round is not acceptable (see GER/V/7.8). Here the research upholds the question of 2.1.8: “What costs are justifiably spent for securing an equal, fair and just taxation?”

4.3 Simplicity & complexity, in principle & de facto

When looking at the major taxation principles applying from the German Constitution to taxation, the gist of those can be summarized in these three terms: Taxation should reflect the ability to pay, every tax subject should be treated equal and taxation should advance justice in the country.

The examination of tax administration in chapter GER/VI confirms the impression arising also from the discussion in chapter GER/V and GER/Va, namely that private and corporate wealth enjoy privileged attention and treatment – co-responsible being complexity

of legal options, brilliance of (expensive) legal adviser and legal deficits, e.g. the refusal to limit the permissibility of software or increase transparency. Accordingly conversation partner from within and outside tax administration admit that the impression might be justified that the wealthy and corporations “have the system work for their profit”.

However: A taxation system as a whole only works if people have the impression that tax law is applied to all equally. The Federal Constitutional Court requested in 1991 (see GER/VIa/7.3) not only a principal and material equality of tax subjects, (i.e. a principally equal application of laws), but a de facto equal treatment of all tax subjects and a de facto equal enforcement of all laws. If the state is not able to enforce material and de facto equality, because he, e.g., does not undertake enough to combat tax avoidance or evasion, also the material equality of all is in danger. On that background this verdict has not yet implemented – in spite of all assurances given, e.g., in the reply of the Bavarian Ministry of Finance when answering the questionnaire of this research project.

Equally, the “legacy” of the former head of the Federal Court of Auditors, Engels, is ignored who noted that “If Germany keeps its complex taxation system it needs to provide adequate checks and controls to guarantee justice.”⁵⁴

Equally, and looking at GER/VII/5.8 this research concludes that the demands made by the German Superior Court of 2005 (see GER/VIa/7.3) has not been met either.

4.4 Legal deficits

Our examination of deficiencies in tax administration, whose removal would require changes in tax law, include, but are not limited to:

4.4.1 “Acting according to established legal norms”

The most frequent explanation and justification by tax advisors and lawyers and/or private and corporate tax evaders is that they acted “merely” within the framework of that which is circumscribed by established legal norms and social conventions. In order to contain this excuse, a more coordinated national and international effort needs to be undertaken, e.g. by harmonizing legal concepts and laws, followed by an improved administrative cooperation. This, clearly is a matter of priority to be addressed, since it would assist tax officials to combat fraud and enforce existing law (cf. GER/VII/5.8.3).

4.4.2 Transparency

Certainly the largest aspect of injustice in tax administration is the different treatment of recipients of social welfare benefits and dependently employed on one side, and self-employed or private and corporate wealth holders on the other side, even though the extent of revenue loss to the community is widely different:

While there is uproar about fraudulent activities in accessing social benefits at the lower level of society (*Sozialbetrug*), this should be contrasted with the damage done at the upper end of German society, e.g. by tax fraud of all sorts, which ranges between EUR 30 and

⁵⁴ Wenn der Staat ein komplexes Steuersystem will, muss er dafür die Ressourcen in der Finanzverwaltung schaffen. Das hat er aber nicht getan.
<http://www.welt.de/wirtschaft/article125105492/Rechnungshof-ruegt-laxe-Kontrolle-von-Millionaeren.html>

EUR 100 billion annually.⁵⁵ In this case 1 Euro damage due to “Sozialbetrug” stands against 530 Euro damage due to tax fraud.⁵⁶ Or, as Federal Judge Thomas Fischer argues: ‘If 10,000 recipients of Hartz IV receive monthly benefits of EUR 500 without justification, this causes annual losses amounting to EUR 60 million. If 100 capital owners evade EUR 20,000 capital tax every year, this amounts to annual losses of EUR 80 million. Because this is known by all who profit from it and not by those who bear 80 per cent of the tax burden the present system is working. One could change this, but does not do it. This is a decision by the legislator and voters which is difficult to comprehend’ (Fischer, 2014).

The way tax administration works today, however, given the extent of computerized processing of data, transparency is entirely with the recipients of social benefits and dependently employed: According to critics from tax authorities, therefore, dependently employed display a “declaration quota” of around 90%. Their options to cheat are comparatively low, e.g. cheating by travel costs or work related equipment.⁵⁷ The situation is different with wealthy people and businesses and all those who have to establish their income on their own, by going through their balance sheets and books and submit those results to tax administration themselves before they are assessed and taxed by the tax authority: Here the “declaration quota” of potentially taxable income is seen to be around 55%. To be sure: The advantages are here not only with millionaires, but also with craftsmen, taxi-driver or doctors who can (legally) manipulate their bills and receipts when submitting their annual tax declaration or (illegally) do some black labour and cheating that way on taxes and mandatory social security contributions (cf. GSE#).

This indeed is a two class system in tax administration. In order to achieve tax justice, critics argue, a critical check of the books of accounts on the part of authorities would be needed so that any tax cheating and hiding by the self-employed or businesses would amount to be an incalculable risk. This density of checks is, however, not possible. And therefore it may be right to argue that black labour does undermine the state treasury of the much needed revenues. This is, however, particularly true in view of the self-employed and private, corporate and criminal wealth-holder.

4.4.3 Banking secrecy, tax secrecy & Co.

This has to do with the fact that the interests of private and corporate wealth holders are legally and continually protected and therefore privileged by the banking secret. The above mentioned 1991 verdict of the Federal Constitutional Court also contains a treatment of the necessity of the banking secret. The Court detailed, by spelling out developments over time, that this regulation did not always exist, a consequence of either the lack of justification or the insight in its counterproductive effects regarding equal treatment in respect of wealth accumulation. The Court ruled that this regulation is a hindrance to equal and just taxation and requested the government to reform it.

⁵⁵ Depending on who is doing the research and what kind of fraud this study takes into account. The lower range is marked by the figures of 30 Billion Euro (estimate by the German Tax-Trade Union), whereas Hans Berg, an anonymous employee of a state tax authority, puts the annual volume for Germany at 70-100 Billion Euro.

⁵⁶ For this and the previous point: Cf. Pax Christi (ed.) (2011) *Ökonomische Mythen der Gegenwart*. Erstellt von der Kommission Globalisierung und Soziale Gerechtigkeit, November 2011. S. 7

⁵⁷ Tino Ulbrich in (ZEIT-Dossier, 2014). Senior tax officials do not question this critique, but qualify it exactly with the indication that also the labourer is cheating on travel costs or has a side-income in the informal economy. And, of course, there is the wide area of informal labour (cf. # on cheating and # on informal labour)

Übrig geblieben ist von den gesetzgeberischen Neuregelungen die gegenläufige Bestimmung des § 30a AO. Im Ergebnis ist so lediglich ein Hindernis für die Gewährleistung von Gleichheit im steuerlichen Belastungserfolg verfestigt worden. Damit tritt die Verantwortlichkeit des Gesetzgebers für eine erneute Nachbesserung offen zutage.

The review of the law has not yet happened as GER/VI/4.3.10.2 indicates, there are still diverging and contrasting views. Regarding Bavaria, the Union of Bavarian Employees at the Tax administration is in favour of scrapping that paragraph unconditionally.⁵⁸ Equally, the conference of the 16 state Finance Ministers voted for the abolition of this regulation at their meeting on 2 June 2016 (Finanzministerkonferenz, 2016a) and it remains to be seen what eventually will be the outcome of the OECDs BEPS and AEOI initiative.

Clearly, as far as this research project is concerned, reforms are urgently required also regarding the tax secrecy and other personal, data, professional, trade etc. secrets: As has been discussed in GER/VII/5.8.4 it needs to be secured that investigation and prosecution of crime is not obstructed by those secrets.

4.4.4 Burden of proof

Related to the previous is a different standard regarding the burden of proof for recipients of social benefits and dependently employed on the one hand, and private, corporate and criminal wealth holder on the other.

For example in the field of refunds and rebates: While dependently employed need to prove to the tax administration that they are entitled to paybacks, the tax authority has to prove towards self-declaring taxpayers that their tax declaration is incomplete or faulty.

For example “inexplicable assets”: As has been explained in GER/VI/4.3.10.4 and GSE/#, private, corporate and criminal wealth holder are privileged when it comes to the existence of “inexplicable assets”: Here tax administrators have to demonstrate that those assets are irregularly won and obtained while it would make sense to review regulations in such a way that the owners of assets are required to demonstrate that their possessions are legit and licit.

4.4.5 Conclusion

Harmonization of legal categories and norms is priority for fighting tax dodging and the enforcement of existing tax law, since also more personnel on its own cannot achieve much if the legal foundation is not adequately prepared. In the words of a green MP in his statement to this project: there is no need of an International Tax Office if the Netherlands provide legally low tax opportunities to the Munich headquarter of Starbucks.⁵⁹ The same applies for the growing necessity of public transparency of final beneficial ownership of shell companies and other Offshore Constructs.

Regarding improvements in the area of automatic exchange of data some reform seems to be underway in the OECD context. The challenge will be that the conclusive observation, namely that more data as such does not per se contribute to tax justice, will be taken into account. Equally important, therefore, is the creation of an adequate IT infrastructure within Germany and, (for example) data bases for European ownership of

⁵⁸ For the latter cf. bfg Informationen 3/20126 p.10

⁵⁹ Thomas Mütze at <http://www.taxjustice-and-poverty.org/results/germany/resources/fragenkatalog.html>

property or to establish regional (i.e. European) institutions on certain aspects, e.g. fraud investigation.

4.5 Computerization and staff

Increasing computerization is certainly unavoidable, given the advance of computerized processes in all sectors of society. Given the ideal intention of computerization, the assistance of business intelligence software should support tax administrators to (a.) deal with every tax declaration equally and yet (b.) assist tax administrators to distinguish cases with low risk tax avoidance and evasion from those with high risk and hence meriting a more detailed check and examination.

4.5.1 Usefulness and limits of user

The computerization of the taxation system and process also introduces cutting edge technologies in the handling of vast amounts of tax information. Stronger recourse to IT technology is without alternative given its growing use in all segments of administration and even daily life. However: Every computer is as good as the technology and – most of all – its user: Intentional and unintentional inaccuracy in the past, if not recognized, can push results for years in the wrong direction; every tax declaration new the tax subject, the tax consultant and the civil servant can err when entering information into the increasingly complex forms. With wrong or incomplete data, of course, the best and most sophisticated IT technology will fail.

4.5.2 Legal and practical deficits to improve

Deficiencies in the present tax code arise from two ends: First from the legal framework, which permits many computerized programs for tax declarations, which also opens lacunas to manipulate bills and declarations and make it difficult for tax inspectors to detect tax fraud. Other institutional deficiencies arise from the generalized way risk management is undertaken hence has challenges to cope with legal and individual complexity. Consequently, the accuracy of these programs is often far from the anticipated target which results into some tax fraud going unnoticed.

The manner in which computerization of tax processes is being implemented currently in the administrative process endangers tax equality and justice. One semi-official conversation partner from the assessment department seriously doubt whether basic legal principles, especially para. 85 of the Fiscal Code⁶⁰ are ensured both in Bavaria and Germany. If governments plans outlined in GER/VI/7 come through, computerization will proceed rapidly within the next 5-10 years.

4.5.3 Principal limits to computerization

As has been illustrated in 2.1.7 by using the example of self-assessment of “simple cases”, the capacity for exactness so far is pretty low. But how big is the likelihood for improvement? According to experts, there are limits in principle in Germany for any adequate computerized processed tax declarations, caused by a triple complexity in tax law and administration:

- Increasingly complex laws and legal implementation norms,

⁶⁰ § 85 Fiscal Code: The revenue authorities shall assess and levy taxes in a uniform manner in accordance with applicable laws. In particular, they shall ensure that taxes are not understated, or levied unjustly, or that tax refunds and rebates are not granted or denied incorrectly.

- increasingly complex tax situation of individuals and businesses because of increasing options,
- increasingly complex jurisdiction because of the two preceding aspects which in turn provokes new laws etc.

This is a vicious circle and it should be difficult to develop a software which can capture this triple complexity and, at the same time, is able to adjust to constant changes in legislation, administrative regulation and jurisdiction. And even if there is some self-learning mechanism within data mining programs, there are principle limits, too:

In spite of all progress in computerization and “self-learning” (cf. GER/VI/2.2.7): As has been presented in GER/VI/4.3.2.2.5, there are also limits to the computers self-learning ability: It is still true that every computer is only as intelligent as the manufactures have made it and no self-learning can go beyond computation. In the words of a software programming expert: ‘It is the programmer writing the algorithm which the computer then applies. It is therefore not without irony to see that even Computer based models on the behaviour of tax evaders demonstrate: An adequate number of personnel is key for law enforcement.’⁶¹

4.5.4 Importance of intuition

Conversation partners from all departments emphasize that the good tax inspector is one with experience, gut feeling and intuition – similar to police officers and detectives. It is this feeling, which cannot be learned at schools, but only acquired due to experience, which should be the focal point of tax administration at every level. It should also be this experience and intuition which has the final decision over a taxation case, not red flags issued by computerized Risk Management Systems alone. The problem is, of course, that given frequent change of tax inspectors either due to transferrals, age or as a result of anti-corruption measures, also the knowledge of complex financial affairs of corporate and private wealth holder cannot build up which, if somebody is familiar with cases for a number of years can build up this famous “gut feeling”.

4.5.5 Adequate training and adequate staff to check

There are admittedly processes which computers can take from tax inspectors (cf. GER/VI/4.3.2.7.). But a unanimous complaint was that there is neither adequate training nor adequate time to make use from training offers and workshops besides the regular work load, both in the area of IT and in the area of legislation. Senior administrators concede that material legislation will most likely remain complicated or even increase in complexity because “Der materielle Steuergesetzgeber hat eine Entlastung der Verwaltung als Ziel aus dem Auge verloren.” (Bayerisches Landesamt für Steuern, 2015, p. 9) Here improvements are urgent.

Another unanimous issue from conversation partner within the Assessment, Tax Auditing and Tax Fraud Investigation department was that there should be adequate resources to cross-check that which the computer submits AND to follow own intuition in browsing through files. This applies even more since conversation partner emphasize that those cases passed on for further inspection 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.

⁶¹ Llacer, T., Miguel, F. et. al. (2012, December 12) An agent-based model of tax compliance: An application to the Spanish case. Retrieved 17 May 2014 from <http://www.alphagalileo.org/ViewItem.aspx?ItemId=139743&CultureCode=en>

4.5.6 Sovereign activities of state administration

This links to the question whether sovereign acts, specific to a public administration, can be delegated to computerized programs to the extent it is aimed for and already applied in Bavaria (cf. GER/VI/4.3.2.5). This applies in particular to the internal administrative decree that the tax inspector is requested only to follow up risk indications by the computerized process, but not to follow up his/her own intuition and still being responsible for the outcome. The willingness of the tax inspector to act according to his ethos, expertise and experience is prevented by the caseload which tax inspectors have to handle. On the whole, this research joins Schöbel (2008) and his position that tax authorities administrate a public good which cannot be “benchmarked” (cf. GER/VI/3.6.3.2), that the experience of a civil servant cannot be replaced and beaten by computerized risk management, and that contact and dialogue between tax administration/tax inspectors and tax subjects is key to advance tax honesty and compliance. This even more so since an internal study into risk management revealed weak points e.g. in the area of analytics (Bayerisches Landesamt für Steuern, 2015, p. 49f.)

In this context also the question should arise, why the state should not have the right to determine what kind of software is the definitive for submitting the annual tax declaration. It may well be open to businesses and individuals to use whatever software they like, as long as they are obliged to convert everything into a uniform standard, as it is the case in France or as it is the practice for tax consultants. This, we think, is the entitlement of the state vs. the freedom of the markets and the freedom of choice (cf. also 4.8.1).

4.5.7 Conclusion

There are tasks for computers within tax administration which has been admitted by conversation partners in GER/VI/4.3.2.7. It can be guessed, however, that the time saved due to computerized processing once the system is brought to fruition, will still be needed to catch up with legislative developments and to keep abreast with national and international legal application. And most certainly the increasing digitalization in global business, banking and general tax matters also of private individuals and families as well as the upcoming automatic information exchange between almost 100 states will challenge the status and progress in computerization among German tax administration further.

When two practitioner were asked in a semi-official interview what, to their impression, needs to be done in order to achieve more tax justice, the first was very short in his statement: More personnel and less computerization, because experience in dealing with classic paper versions is better for detecting avoidance and evasion than the best computer. The second person agreed and qualified: More personnel and a more pragmatic use of computer, combined with the desire that administrative and political superiors would accept the fundamental limitations of what a computer can do and what it not do.

The goal of simplification in tax administration is to differentiate between various cases of tax declarations with varying intensity of checks: First the tax payer category with whom there are no tax fraud incidences. Next the category with whom are frequent and high incidence rates and hence need a lot of checks. Third the category which has low incidence rates but is within the acceptable range. Those are kept in view and checked more intensively for a while, before they might move again in the first category. There is nothing wrong with this intention, as long as the categorization is on the basis that the tax inspector has the final say and not the computer.

As the Head of the Bavarian Finance Trade Union, Wipijewski, stated, based on the experience of tax inspectors, experience with computerization should sober up the high hopes originally linked with computerization. The need to check and follow-up computerized decisions, the risk to lose revenue suggest in his view that perhaps there is no way that computerization will speed up processing of cases in the foreseeable future and that one should resign oneself to the fact that computers are used best when supporting the qualitative work of inspectors.⁶²

At the same time: As surveys suggest, there is openness in the German public to introduce procedural simplification in the administration of tax law. Since a simplification of tax law is unrealistic to aim for, this should therefore be the way to aim for a reduction of complexity and there is certainly potential to save costs. And clearly, there might be potential to increase options for electronically processed tax declarations (Nehls & Scheffler, 2015). But it will be questioned whether citizens will be entirely happy if their tax declaration is merely processed and decided upon by a computer, without any further human intervention.

Certainly, economy and efficiency issues of tax administration should be one (!) aspect in the debate besides equity and efficiency. And given the astounding progress of computerized assessment, one certainly should be open-minded whether, and how, computers can be “employed” in the area of the “mass processing” of relatively simple cases, as long as the equal and fair treatment can be ensured. One should be even open to the suggestion whether the obligation can be abandoned following which every tax case has to be ticked off by an employee, so that staff can focus on the more complex and more “deserving” cases. Right now, however, given the extent of deficits and the low number of cases drawn by chance this is not a satisfactory prospect when compared to a tax administration equipped with the adequate number of qualified personnel. The equal and fair treatment is for the instilment of tax honesty as important as the efficient detection and investigation of tax fraud and related crimes within global IFFs nationally and internationally.

4.6 Government debt and government staff

4.6.1 Legal norm or political intention?

An important issue regarding the refusal to employ more tax administration staff is governmental debt and restrictions on employing more personnel once a certain quota allocated to the cost of human resource in the public budget has been reached. For Bavaria, this is enshrined in Art. 6b Haushaltsgesetz (“Sperrre frei werdender Stellen ab 2005“). Accordingly, Prime Minister Seehofer confirmed in a speech to parliament in November 2013, that the personnel cost quota in the Bavarian budget is currently at 41% and that in his view it must not rise further. If anyone calls for more personnel in one area he should, at the same time, submit proposals where he wants to cut – for the sake of intergenerational justice.⁶³

Conversation partner across departments emphasize, however, that this is a political declaration, not a legally binding norm, therefore open to interpretation. In times of sudden need (e.g. terrorism) or emotionalized public debate (e.g. regarding children cribs), governments always seem to be very flexible. See, for example, response to the January

⁶² ‘Effizienzgewinne immer schwieriger – Realitätssinn gefragt’. In: BfG Informationen 2015-5, p. 3

⁶³ P. 20 of the Regierungserklärung of 12. November 2013, retrieved from http://www.bayern.de/wp-content/uploads/2014/07/Regierungserkl%C3%A4rung-Bayern.-Die-Zukunft_.pdf

Islamist attacks on Charlie Hebdo in Paris (plus 100 police) or the influx of refugees beginning September (plus 143 teachers).

The governmental watchdogs such as the Courts of Auditors has a differentiated position: When presenting the Annual Report 2015, the president of the Bavarian Court of Auditors gave the percentage of expenditure in the annual state budget for personnel to have been at 41%, the same as the Prime Minister, and the Court of Auditors president agrees with the overall assessment, that the number of personnel is a critical aspect in the budget and needs careful review. In the area of financial administration the Court adjudged the need for additional staffing, and asking to exclude this segment from expenditure cuts.⁶⁴ At the same time, in the 2015 report, the Court recommends cuts in the staffing of the Bavarian Financial Courts due to a decreasing number of cases. This decision has been opposed by the government who defend present staffing levels (Bayerischer Oberster Rechnungshof, 2015, p. 111ff.). As indicated in GER/VI/4.3.8.2, however, this remark has to be seen strictly topical regarding Financial Courts and does not indicate any general turn of the Court of Auditors regarding the amount of adequate personnel in Bavarian tax administration.

When talking to some senior administrators I also quoted a passage from a Tax Justice Network Report from Ghana, saying:

Despite dramatic improvements in tax collection, and the success of Ghanaian tax collection relative to its neighbours, there is little doubt that taxation remains subject to very large leakages. These leakages are more a question of administration than of policy, which is a reflection of the oft-cited claim that in developing countries “tax administration is tax policy”. (TJN-I (2009) Ghana Report, p. 13)

When I pointed out that this scenario can be applied on Bavaria there was no opposition.

4.6.2 Surplus revenue higher than costs?

One key feature in many tax jurisdictions is the fact that civil servants raise more surplus revenue than they cost in terms of salaries, insurance and pension and therefore are profitable for the state to employ.

A note of caution is required, though: Whenever it is pointed out that each tax inspector generates “y Euro surplus revenue” (*Mehrergergebnis*) one has to be aware that this addition to the tax bill is not always paid in reality. While money asked that way from businesses is normally paid, there is little to be expected from individuals or employers if penal aspects come into the picture and culprits prefer going to prison rather than paying their dues.

One should also be aware that only a certain percentage of tax inspectors collecting this surplus revenue and a number of tax inspectors do not. However: such investigative field services could not do their work without in-service personnel. From there follows that the surplus revenue of a tax auditor is not only his achievement, but also the contribution of

⁶⁴ , 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).‘ Pressemitteilung vom 24.3.2015 aus Anlass der Vorstellung des Jahresberichts 2015 des Bayerischen Obersten Rechnungshofs. Retrieved from http://www.orh.bayern.de/media/com_form2content/documents/c6/a398/f37/15-03-24%20MI%20ORH-Bericht%202015.pdf

support staff such as, secretaries etc., which do not generate surplus revenue of their own. In that case, the high average figures would shrink immediately.

If one thing has been made clear in this chapter then it is this: The potential tax revenue is there, but it cannot be collected, mainly due to the shortage of qualified and experienced staff. For that reason I want to conclude with the phrase of one tax practitioner who said that ‘The best Finance Minister for Bavaria would be the president of the Supreme Court of Auditors. If he came into office, tax administration could attain the status which the public expects namely enacting equal and just taxation laws.’

Nobody could convincingly answer the question, why the Ministry of Finance and parliament insist on cutting personnel costs if the supreme watchdog for state spending, namely the Bavarian Court of Auditors asks for more positions, emphasizing that exactly this group of civil servants should be exempt from saving efforts because of the revenue-generating value which can be used for improved spending or reduction of public debt.

4.6.3 Surplus revenue, deterrence, tax honesty

Finance Ministers widespread argument about the declining marginal utility (*sinkender Grenznutzen*)⁶⁵ is true and wrong at the same time: It is true that tax inspectors, are checking more middle sized and small enterprises than large one, generate less taxable surplus. However: If business owner and wealthy people, if everybody would realize a higher risk of inspection due to more staff, this will lower their readiness of tax dodging and increase their willingness to pay their taxes. That way, more staff would result in more deterrence and from there into more tax honesty. This money, of course, will show in the general revenue rather than the surplus revenue statistics and this is all that counts in the end – which is why the larger pictures should be considered rather than the smaller which is merely focused on surplus revenue. Insofar, more randomized inspections would be justified, even though they might not all generate immediately surplus revenue.

The last word shall be left to the tax inspector who emphasized that it is wrong to always calculate the “costs” of tax inspectors” with the marginal utility of potential surplus revenue: Why should a tax auditor not depart without decreeing surplus revenue, but simply saying: Well done! It would greatly improve the acceptance of tax inspectors and improve the relationship between tax subjects and tax administration.

4.6.4 Conclusion

Regarding the argument, that more tax inspectors are not possible due to budgetary constraints or because costs and benefits are not fairly distributed within the federal system it seems, that there are not so many legal, but rather political reasons. The frequently stated suspicion, that for Bavaria also tax administration is an instrument in tax competition finds, of course, no explicit confirmation. Sometimes that, which is NOT said and that, which is (not) done does, however, speak a clear language– both in the case of staffing and in view of Bavaria’s obvious reluctance to participate in the purchase of tax CDs. Given the extent of understaffing in areas which are relevant for investigating and combating Illicit Financial Flows there are indications that these deficits, too, are at least tolerated since, from a short-term perspective, the inflow of money is beneficial for Bavaria.

Both insights emerging from conversations with staff at tax administration and investigative departments and prosecution as well as insights offered via Offshore Leaks,

⁶⁵ Minister of Finance Kurt Faltlhauser in (Adamek & Otto, 2010, p. 83f.)

Luxemburg Leaks, Swiss Leaks and leaked tax-CDs indicate that the extent of cheating is probably larger than commonly assumed, which would further merit more intensive checks and controls, especially with top private and corporate wealth holder whose tax consultants have most options for aggressive tax avoidance and tax evasion than ordinary taxpayers. In other words: If political will could be mobilized, much more revenue could be collected simply by enforcing laws in place and fighting fraud and crime. The choice of options, however, depends on underlying policy priorities which normally do not show openly in the debate.

4.7 Conflicting policy priorities

Depending on the values and norms determining the world view of participants in public debate, different policies and suggestions are being presented. Given the widespread ignorance about conscious and hidden assumptions, there is often neither agreement nor compromise or even the risk that the exchange of position ends without any movement on either side. Some of the most frequently encountered “opposites” in talks conducted during this research are the following:

4.7.1 Market vs. state? Economy vs. Revenue?

Talk of “cost efficiency”, “tax competition”, “customers” and “benchmarking” illustrates that market inspired thinking within the neoliberal paradigm has led to market conformity mentality of key actors, tax administrations included. Streamlining of procedures, computerization and rationalization of personnel is seen by many conversation partners across departments to be an offence against requirements arising from equality, fairness and justice. But: How much is the intrusion of market mechanism into public administration justified? Has democracy conformed to market mechanisms or have market mechanisms been subjected to democracy? Are not market on one side, and state/democracy complementary aspects of a society whose interests are protected by balanced poles? Accordingly, semi-official conversation partner complained that superiors judge administration with inadequate categories: Kienbaum, McKinsey and Andersen can certainly assess and evaluate businesses operating in a flexible-open market environment and then can propose improvements. Tax administration has no flexibility whatsoever since execution here is clearly defined by legal regulations. This research supports Schöbel (2008) and trade unionists in their opinion that “If market comparisons enter tax administrations it is always coming to the comparison of apples with pears.”

A similar and related problem regards the suspicion that Bavaria and other states have biased taxation systems, i.e. that they design and administrated their tax system in a way favourable to businesses and wealthy persons. Here indications are that this is true, less because the offer of explicit tax rulings in favour of businesses and private persons (which has been the case in past decades, but rather in the continuing (intentional?) and obviously inadequate employment of tax inspectors executing tax laws.

A third example where different attitudes show is the treatment of Tax-CDs and investigations arising from that: While North-Rhine Westphalia (red-green) is quick and thorough to investigate all claims, cracking down with harsh sentences and even collecting fines from Swiss Banks, Bavaria is far more reluctant – which nourishes the suspicion that this is because of the desire to protect private and corporate “culprits”. At the same time, Baden-Württemberg (for four years governed green-red) practiced policies which were often surprisingly close to conservative Bavaria, e.g. regarding the Inheritance and Gift Tax and other tax related areas. Here one could deduct that it is not so important what party ideology

comes to government, but whether those in government are attractive enough for lobbyists, “Sachzwänge” and “Realpolitik” – while opposition is the time where parties have time to ponder and meditate again their underlying values (see also 4.7.5).

4.7.2 Trickle Down or solidarity?

Another principle conflict surrounds the question, whether the state should protect entitlements of the strongest (since they generate wealth from which tax is being paid or foundations being set up) or safeguard requirements of solidarity and social justice? This conflict is visible both in the privileged treatment of private and corporate wealth holders and the discussions surrounding the Financial Equalization Mechanism. The answer depends on two assumptions: First, do I have a historic perspective, being aware that the position of the weak and strong may change over time or not? Linked to this may be the question whether those in need today have an alternative at all to reform their administration and spending or whether their room to manoeuvre is so confined by debt and supervisory mechanisms that there is simply no alternative (see GER/VI/3.8)? Interesting enough, this question from a Bavarian perspective towards Berlin or Bremen resembles the question from a German perspective towards Kenya or Zambia. Accordingly, and simply speaking, in both cases financial assistance in rebuilding and equipping tax administration may be a good answer. Second, where are the boundaries of solidarity? Within my own state? My nation? My continent? The world? Clearly a question difficult to answer, even more since wealth nowadays is accumulated not on the spot only, but in global value chains including exploitation and damage to the environment.

Clearly, this underlies tax competition and illustrates tensions arising from the conflict between the local/regional/national common good on the one side, and the global/universal common good on the other (also 4.7.5+6).

4.7.3 Enforcing the law or giving way?

Another argument for lowering legal and administrative standards is that in response to strong standards undesirable collateral damage would occur, e.g. leaving “high tax” areas for low tax areas. This, overall, would damage the community more. This is abandoning the fight before even starting it and proves all those right who in the first place try to damage the community. But here, too, the problem resides in the small perspective and not the grand one: The benefit is only short time for a smaller group, the damage long term for the larger group – and, the longer one waits, the more difficult it gets. This problem, indeed, is real and it should be openly addressed, whereby politicians, being more knowledgeable than ordinary people, would have the ethical obligation to address all facts, not only a selected view. This, of course, is difficult, depending on the degree of “entanglement” between private and corporate wealth holder and other elites in society (see GER/VIa and GW/I).

4.7.4 Lobbyism and oligarchs

In the environment we have right now, lobbyism, “oligarchs” and other powerful interest groups which undermine the authority of state and democracy, by using taxation system to protect and advance their own interests. In 2004 already, the pseudonymous publication of an employee of the tax administration from Lower Saxony describes the situation as follows:

This opens, of course, questions of adequacy and legitimacy, it also opens question whether or not the tax system is still democratically governed or whether it is subject to aggressive lobby groups and oligopolies. Reputable scholars such as Ulrich von Weizsäcker claimed that in Germany business and finance are dominating and controlling politics, whereas the situation

should be the other way round. This makes it attractive for business and lobby groups to no longer bother about parliamentarians, but immediately turn to government, politics and administration to gain advantages. On that background, financial and business groups are interested to keep this ineffective system of 16 states plus federation, because so they can “divide and rule” them all. The business point of view of business is made popular and transported in Think Tanks (e.g. Neue Soziale Marktwirtschaft) and Media who are (Surprise!) depending of business money for advertisements. This, of course, is no problem to be considered for the tax authority or legislator alone, but to the public as a whole. In the words of the protestant theologian Karl Barth: „Wo nicht der Mensch, sondern das zinstragende Kapital der Gegenstand ist, dessen Erhaltung und Mehrung der Sinn und das Ziel der politischen Ordnung ist, da ist der Automatismus schon im Gang, der eines Tages die Menschen zum Töten und Getötet werden auf die Jagd schicken wird.“⁶⁶

These questions are ever more on the public agenda since the publication of Thomas Piketty’s “Capital in the 21st Century”, and another interesting comparison is given by Harald Schumann in his analysis of lobbyism of private and corporate wealth holder surrounding the reform of the Inheritance and Gift Tax: According to him, there is little difference between their behavior and that of Greek and Russian Oligarchs.⁶⁷ Indeed, and as examination in GW will illustrate, we approach an inheritance oligarchy (Stiglitz, 2012) a patrimonial capitalism (Piketty) and economical feudalism (Freeman, 2012).

4.7.5 Tax competition or tax cooperation?

The analysis above has indicated there is a clash of paradigms underlying the different approach of German *Länder* to tax administration and law enforcement: Is tax administration primarily an instrument of raising revenue and creating equal and just checks for all? Or is it an instrument of competition between the states, offering incentives to citizens and businesses to settle here rather than there? In the first the rule of law is priority, in the second rules of free market economy take precedence. In the first, centralisation would be more welcome than in the latter. Of course, there is overlapping in those paradigms and there is no clear cut contradiction between states which can be reduced to this conflict.

A good example for the consequences of tax competition, especially in the area of wealthy persons, are proposals and policies in the discussion surrounding the reforms of the Income, Real Property and Inheritance and Gift tax, where Bavaria partly with, partly without Baden Württemberg, advocates a “Regionalisierung” of this tax (cf. GER/VI/3.2). This, research suggests, would benefit those states already wealthy and disadvantage the others. Here, one should listen to a strict warning of the otherwise frequently quoted former Federal Constitutional Judge Paul Kirchhof, arguing that state competition for taxes is retrogressive, because only that state will win which, eventually, uneconomical tax rates – which will erode the fiscal sovereignty of that state.⁶⁸ Also conversation partners to the project see here a crucial issue which urgently needs addressing:

⁶⁶ Prof. Dr. theol. Karl Barth, Die kirchliche Dogmatik, Band III/4, Zürich 1951, S. 525 quoted in (Berg, 2004)

⁶⁷ Harald Schumann 2015, May 1 Deutschlands Oligarchen genießen Milliardenprivilegien. In: Tagesspiegel. Retrieved from <http://www.tagesspiegel.de/politik/familienunternehmen-deutschlands-oligarchen-geniessen-ein-milliardenprivileg/11709630.html>

⁶⁸ Konkurrenz der Staaten um unternehmerische Ansiedlung und Investitionen ist kein Wettbewerb... Diese Rechtfertigung gilt für den Sport, für politische Wahlen und für den wirtschaftlichen Markt, jedoch nicht für Staaten.... Brot ist käuflich, Recht nicht. ... (D)as Bild vom Steuerwettbewerb (verfehlt) die Wirklichkeit autonomer staatlicher Steuergesetzgebung... 'Wettbewerb' führte in die Selbstaufgabe. Sein Ziel wäre erreicht mit einem Nullaufkommen, dem Tod des Finanzstaates. (Kirchhof, 2011, p. III)

‘To do nothing or little is only benefitting the wrong ones. But here everybody has to overcome his egoism: They have to give and take and in the end all are better off. This applies for the cooperation of the *Länder* in Germany, EU cooperation and global cooperation. The idea, one could profit in this race to the bottom is a delusion, in the end all profit if they do cooperate.’⁶⁹

This scepticism is increasingly shared within the EU, OECD, G20 context and even global Wealth Reports such as Knight Frank (2015, see next chapter). Right now, tax competition is seen to be a major reason behind the inability of states to agree to better and more coordinated enforcement. That is a policy, where all agree that it is harmful and damaging to the community in the long term more than the short term gains could compensate.

Another argument arises from the treatment of Grenz-moral in economically competitive situations: Götz Briefs observed that in economically competitive situations the ethical minimum is under threat if those without ethics and morals undercut standards. Once this happens, all are endangered and the very order of economic production and exchange. Nell-Breuning agrees that anything consciously limiting established standards in order to gain economical advantages destroys not only the foundation of society as far as it is based upon performance and merit, but the foundation of social cohesion as well. He also criticizes the transition of the Welfare State towards a competitive state (Wettbewerbsstaat), where the state is examined only under cost aspects.

Accordingly, the question is why the statement of conversation partners, that a “regionalisation” of the inheritance tax is needed because of the Bavarian competition with Switzerland and Austria, and why not a better cooperation with Austria and Switzerland could equally resolve the problem of taxing inheritances better? Why does it have to be the Court of European Justice closing down the tax haven Klein-Walsertal, which was popular and famous for hiding inheritances up to the suspected amount of EUR 6 billion? Or: Why does Germany refuse cooperation in many good EU initiatives, e.g. regarding transparency of beneficial ownership?

4.7.6 The local and the global

Interesting enough, international competition is often given as a reason to cut taxation with the argument that whatever happens in the international economic system also has repercussions in the domestic economy. With the same argument more cooperation among regional states would be justified. Whenever countries adjust economic tax rates to uneconomic levels in order to have comparative economic advantage, they contribute to the erosion of economic tax rates. . This is why tax avoidance and tax evasion in Nuremberg has global implications: ‘Insofar as Tax Havens permit the elites of society to avoid control by authorities they undermine the very rules, systems and institutions in charge of the common good – and they undermine faith in the rules’ (Wehrheim & Gösele, 2011, p. 12). For this

⁶⁹ The IMF too, is warning that tax competition is damaging the common good and admonishes states that the ‘sum of losses’ due to preferential rates ‘likely exceeds the gains. ... Tax competition can simply result in tax rates’ ending up too low.’ If states continue to compete with each other instead of coordinating their approach, ‘there would ... be a social loss suffered, since effective rates would be below the levels to which a collective decision would have lead. ... (T)he gains from closer cooperation might be considerable ... the fundamental issues should not be ducked.’ (International Monetary Fund, 2013a, p. 33)

reason, trade unionists emphasize that the “war” against tax havens does not only require battling Tax Havens out there, but also getting domestic instruments and resources in place.⁷⁰

What needs to be borne in mind is that a lot of legal and even aggressive tax avoidance is possible as long as there are no uniform standards in a wider context, e.g. at least within the European Union. A conversation partner working at a tax auditing department argues regarding “tax rulings” of Luxemburg that this is not just the problem of Luxemburg, but that tax competition will always exist as long as harmonization in tax laws and rates does not exist.⁷¹ Here the observation of some practitioner is interesting who argue that this kind of egoism is also underlying the German lack of enthusiasm for improved EU tax policies on the EU level: Since Germany is a European net payer, major revenue gains from Germany would have to be transferred to the European Union which is why it is preferable to just treat citizens and businesses in a way that this does not happen (Berg, 2004, p. 7).

While unilateral measures are considered to be counterproductive, there are positive aspects in international tax cooperation even for Global Wealth Reports looking into development aspects. A ‘shift towards increased global cooperation over taxation and transparency, and the sharing of investor details, would see a greater alignment of costs and benefits between wealth-exporting countries and the investment destination countries – which could ultimately support long-term growth in investment.’ (Knight Frank, 2015, p. 39)

4.7.7 Cost efficiency vs. Costs of justice

Even trade unionists concede the need for cost efficiency: ‘Employment of personnel today cannot be done without taking into account economical aspects. Under this premise, however, our Income Tax Law is no longer administrable.’⁷² The question is, of course, what rank in prioritization this aspect obtains? This, in turn, begs two sub-questions: (1.) Whether computerization is indeed the proper answer to this and (2.) is it justified to ask whether law enforcement and tax justice might have a price and whether it is worth paying this price (cf. 2.1.8). With a change of perspective one is able to put this argument in a new context: First, by considering how much revenue is lost annually due to a faulty Risk Management process, i.e. computerization is not at all cost-efficient and more personnel deployment is urgently needed. Secondly, the employment of more civil servants might prove cost efficient, since they would bring more revenue directly (due to increased checks) and indirectly (due to more compliance and tax honesty).⁷³

4.7.8 Taxation and Jobs

A valid question is whether (and how far) taxation may or may not endanger jobs. In this case, certainly, the taxation of investment capital, should be reconsidered in order to protect existing jobs and also to create new jobs. As analysis on the link between taxation and

⁷⁰ „Der „Krieg“ gegen Steuerhinterziehung wird nicht in den Steueroasen gewonnen – die entscheidenden Schlachten sind im Inland zu schlagen.“ Stupka, W. „Steuerkrieg“ in Deutschland. In: *Der Wecker* 2013/07. Retrieved from <http://www.verdi-finanzamt.de/wecker.html>

⁷¹ Einzige mir bekannte Form des „Tax Ruling“ sind die jedermann zugänglichen Gesetze der einzelnen Staaten innerhalb der EU. Wie zu ihrem Thema bereits ausgeführt, sehen diese Gesetze in einzelnen Staaten unterschiedliche Besteuerungsmöglichkeiten vor. So lange auf Ebene der EU keine einheitlichen Standards zur Besteuerung vorliegen, ist deshalb der „Steuerwettbewerb“ der Länder auch vorgegeben.

⁷² „Der Personaleinsatz eines Staates kann heutzutage eben nicht losgelöst von wirtschaftlichen Aspekten betrachtet werden. Unser Einkommenssteuerrecht ist unter diesen Gesichtspunkt aber schlicht nicht mehr verwaltbar.“ „Der Weisheit letzter Schluss? In: *BfG Informationen* 2013/5, p. 26f.

⁷³ „Starke Finanzverwaltung. In: *BfG-Zeitung* 2013/10. Retrieved from <http://www.finanzgewerkschaft.de/bfg-zeitung/>

“business environment” in GER/Va or the de-facto execution of tax auditing of businesses in GER/VI illustrates there is little hard evidence that the present taxation system is endangering jobs – it rather endangers profits which is again a different cup of tea.

Looking into ongoing debates, as will be done later, e.g. regarding the reform of the Inheritance and Gift Tax, the question is whether the alleged intention to protect jobs is not a disguised ploy to protect the assets and interests of private and corporate wealth holders.

4.7.9 Social or Ecological Justice?

Next, there is the tension between social and ecological justice and politics instinctively (or intentionally) jumps for the former rather than the latter, since it provides short-term, quick benefits, even though they might generate damage in the middle or long term. This has been the case after the World Financial and Economic Crisis of 2007/08 when the German government subsidized the replacement of old cars by new ones in order to keep the car industry going. This subsidizing was, however, indiscriminate and at yet it benefitted the environment since new cars are, generally more energy efficient than old cars. This political intervention could have been used far more massively to influence change in the country.

For a taxation system which is not only socially fair, but also advances sustainability, a better balance is needed between labour, capital and environment since everything discussed so far suggests that capital (and therefore wealth) is the overall winner whenever reforms within those three crucial areas are undertaken. For Piketty, this is an even more important area than the extent of public debt:

This is a very important debate for the decades ahead. The public debt (which is much smaller than total private wealth and perhaps not really that difficult to eliminate) is not our major worry. The more urgent need is to increase our educational capital and prevent the degradation of our natural capital. This is a far more serious and difficult challenge, because climate change cannot be eliminated at the stroke of a pen (or with a tax on capital, which comes to the same thing). (Piketty, 2014a, p. 568)

There is no contradiction between social and ecological justice – certainly not in the middle or long term run. However: relevant issues need to be discussed and addressed internationally since environmental damage occurs, as migration, by crossing national borders. Fortunately issues have moved forward in national and international commissions and start to link up with the “good life” or “happiness” discussions. This debate will also be of importance in our discussion of ethical criteria (cf. E#).

4.7.10 Privacy concerns, public interest – including research

It is my opinion as well as those of many conversation partners that double protection of businesses and the wealthy is one too many when compared with the cost-benefit to the common good. As long as tax secrecy is as strictly and comprehensively observed as it is in Germany, more transparency regarding banking data or (public) information regarding beneficial ownership of Offshore Companies is legitimate and even needed given the damage to the community created by tax avoidance, tax evasion and other illicit financial flows. As Algirdas Semeta puts it in the wake of Offshore Leaks: ‘Tax transparency is more important than data privacy.’⁷⁴ This view is similar to that of the Swiss government in its statement

⁷⁴ Semeta, A. (2013, June 5) Offshore Leaks transformed tax policy. Press Release. Retrieved 2015, February 10 from <http://euobserver.com/economic/120382>

responding to the popular request to re-introduce banking secrecy in Switzerland.⁷⁵ Here, however, is an ideal example how plans are linked to persons: As soon as Algirdas Semeta was replaced as Commissioner for Finance by Lord Hill, the tone changed: When EU Commission President Juncker and Commissioner Moscovici proposed in the wake of Luxembourg Leak that Corporations are obliged to publish tax rulings, Lord Hill opposed it heavily citing data protection and privacy concerns.⁷⁶

Last but not least, there are situations which raise questions that there are double standards regarding taxation secrecy. While, for example, in reference to tax secrecy, there are hardly any anonymized information given to anybody outside tax administration, e.g. for academic research, there is cooperation with the private sector in developing or refining risk management or the outsourcing of services to private businesses.

Regarding the field of policy making, the importance of access to (anonymized) tax data for research is of essence for understanding better the development of inequality arising from the development of income and wealth, as has been demonstrated by the research of Bach/Corneo/Steiner (2011) for Germany. The research findings are inline with research from other countries based on tax return data. Transparency here is the first step for a more just taxation. Even more so, any attempt to counter aggressive tax avoidance or tax evasion would justify more transparency on the part of the wealthy and businesses. For these reasons, considerable public interest would overrule privacy concerns of the wealthy few, especially since those concerns are most likely to be adequately safeguarded by tax secrecy and other precautions required on the part of public officials. The fact, that Bach/Corneo/Steiner were granted access to such data-sets is one proof that this kind of research is possible and makes any ongoing refusal to repeat such a research, as is the case in Bavaria, less justifiable.

4.8 The question of federalism and centralism

The fact that a large part of taxes collected at the state level “disappears” to the federation and other German states is a problem which considerably impacts on the willingness and readiness of states to equip its tax administrations with adequate resources. For example as every top civil servant and every Bavarian politician never gets tired to emphasize: Two thirds of the amount collected will leave Bavaria and be handed over to the federation and other German states, only one third will stay back in Bavaria to make up the states’ budget. (Bayerisches Landesamt für Steuern, 2016, p. 4)

As has been discussed in GER/IV and GER/VI, the Financial Equalization Mechanism is an important factor regarding the willingness of states to collect revenue. More aspects of relevance seem to be the following:

4.8.1 Reforms turning into administrative nightmares

Problems in the German taxation system exist in three areas: First, the way tax law is discussed and promulgated, second, how tax law is implemented and administered, third how it is interpreted by courts. Due to the federal structures, federation and states can blockade each other if everybody insist on his advantage: The Chamber of States can initiate laws against the federation (if there is a majority among the 16 states), while the federation in many

⁷⁵Press Release „Bundesrat lehnt Volksinitiative „Ja zum Schutz der Privatsphäre“ ab“ (2015, August 26). Retrieved from <https://www.news.admin.ch/message/index.html?lang=de&msg-id=58462>

⁷⁶EU streitet über Kampf gegen Steuervermeidung (2015, February 09) Retrieved 2015, February 10 from <http://www.finanznachrichten.de/nachrichten-2015-02/32767468-eu-kommission-streitet-ueber-kampf-gegen-steuervermeidung-003.htm>

areas cannot push legal initiatives against the agreement of the states. Courts exist in each state and can come to opposing conclusions; a harmonized interpretation is only achieved after lengthy processes at the federal level or, if German supreme courts pass the case on, at the European level. Given the diversity of influences, conversation partner semi-official from the assessment department argue that each and every reform eventually turns into the worst:

The basic idea of reform and improvements is not always bad and mostly carried with a good intention. But it never stays like that. For example, we might indicate a problem in tax administration and suggest an improvement, contained in one paragraph. It moves up the hierarchy and the amended version, lying at the table of experts representing the 16 *Länder*, is already three paragraphs. Then politicians and legal experts go to work and amend it with qualifications, additions and footnotes. When it comes down to the practitioners again, they do not recognize their original proposal anymore and, worse, once they start applying it, the taxpayer goes to court, asking for exemption or or any other request, which makes it even more complex. This will always be more complex when it gets on the international or even global level. ‘Administrative, political and legal issues mix in taxation and how complex and difficult tax administration is can only be known if one has to practice it on a daily basis.’

Clearly, it would make a lot of sense to move out of this situation, but how?

4.8.2 Pro (more) centralization

A strong argument for more centralization of tax administration are problems and blockades arising from the differences between the 16 *Länder* and their unwillingness (cf. GER/VI/3.2.) or inability to efficiently overcome them, which causes deficits in justice because no equal enforcement of tax laws is given and financial costs and losses.

First of all, important legislative reforms are stalled, e.g. the reform of the Real Estate Tax. It would also close blockades arising from the paradigm of tax competition (e.g. Inheritance & Gift Tax). Federal diversity seems also to be rather an obstacle than an advantage when it comes to harmonizing administration, when looking at the non-availability or loss of relevant information between German states, the slow progress of the joint federal-state working groups or the attempts to develop and install an efficient computerized system for all tax administrations.

This creates an unequal treatment and unjust treatment of citizens in the tax administration of the 16 *Länder* since one and the same law is applied differently in the states.⁷⁷ It also causes efficiency problems and unnecessary costs in administration, e.g. due to the inability to electronically communicate and exchange information across state borders, and enforcement and progress towards cooperation is very slow. Stefan Bach argues that a centralization of tax administration would help saving costs up to EUR 10 billion, and also help remove deficits in controlling self-employed and private wealth holder (Bach, 2016b)

It seems also justified for employers to complain about the many checks by different agencies (cf. GER/VI/4.3.3.6). Rather than risking to check one business several times it might be useful to have a more coordinated, but “widespread” approach.

Another argument for more centralization are opportunities which arise to criminals due to the inadequate cooperation of German states and the need to combat global crime adequately (cf. GER/VII/5.8).

⁷⁷ (Berg, 2004) (Wehrheim & Gösele, 2011)

On that background it is interesting that everywhere, where agencies working in this field were coordinated, the experiences seem to be satisfying, e.g.

- The cooperation of police and tax fraud investigation in North Rhine Westphalia in the Sachgebiet Ermittlungsgruppe Organisierte Kriminalität und Steuerhinterziehung, resulting in EUR 75 million surplus revenue and 16 years imprisonment, currently working on cases amounting to EUR 1 billion damage in tax non-payment.⁷⁸
- The cooperation of FKS and tax fraud investigation in Brandenburg⁷⁹

Centralization would bring German Tax administration back to where it was prior to World War II, when Matthias Erzbergers centralized tax administration for the Weimar Republic also aimed for some sort of tax justice between German regions, at the same time trying to avoid “tax haven like” areas which would naturally attract wealthy people and corporations.⁸⁰

4.8.3 Against (more) centralization

But exactly in the case of fraud detection, practitioners argue against centralisation since, from their experience, in tax fraud and related crime police consider that intuition comes first prior to any investigation using computer. In this regard, local experts are key, hence requiring as much cooperation as possible (cf. GER/VI/4.3.2.2.6). Also, it should be up to local expertise to determine what to check and follow up, which is less well resolved within the structure of the Federal Customs administration.⁸¹

These experts agree, however, that some crimes are only discovered by sophisticated computer software analysis (XPider) which is why from that point of view centralized services seem preferable.

On account of the bad reputation of the taxman, a decentralized tax administration is key to counter such perceptions: It offers easy access to (and enables good relationships between) tax officials, local citizens and local business. Fears that this would imply a higher risk of corruption than a centralized approach with easier option to move people in and out are countered at least from Bavarian conversation partners to this study, both from tax administration and police. While corruption was, is and will be a real problem, they argue, federalism or regionalism is not as important as the general influence of monetary inducements on politicians and administration alike.

4.8.4 In favour of a more efficient coordination

All conversation partner agreed that a more efficient coordination is desirable for Germany and that many, if not most, deficits in tax administration could be resolved that way e.g. by means of working groups such as the AG Kennziffern or Personalbemessung (GER/VI/3.6.3) or the KONSENS project. Deficits seen here are that, for example, the Working group Personalbemessung gives recommendations which then are not binding for the

⁷⁸ https://www.haufe.de/steuern/finanzverwaltung/steuerfahnder-und-polizei-unter-einem-dach-erfolgreich_164_371528.html

⁷⁹ https://www.haufe.de/steuern/finanzverwaltung/finanzkontrolle-schwarzarbeit-und-steuerfahndung_164_368172.html

⁸⁰ Guntram von Schenk (2010) Reichsfinanzreform Matthias Erzbergers 1919/1920. Retrieved from http://www.guntram-von-schenck.de/index_10.php

⁸¹ ‘Every three months they issue a decree and order the checks of taxidriver or restaurants. This is stupid.’

Bavarian government, which in turn leads to an unequal and inefficient application and enforcement of tax laws. Here the question might be asked what the use of enormous cooperative efforts are if they are not binding or left in the end to the discretion of individual governments? On the whole, the defence of the cooperative framework right now seems to be just the most convenient instrument to bargain for (and secure) most profits for ones selfish interests.

4.8.5 Conclusion

Concluding this sub-chapter, the reply is, as often, an “It depends...”. In accordance with the principle of subsidiarity it certainly makes a lot of sense to leave everything on the local and regional level which has to deal directly with local individual and business tax payers. On the other hand, given the loss of revenue due to tax competition arising within the federal German system with all its communication and enforcement deficits outlined above and given in the world as it is, certain tasks need to be more centralized as they are, e.g. in the case of combating effectively certain kinds of tax evasion or illicit financial flows. Depending on the underlying ideology, discussions are very polarized and could use more pragmatism. It is telling that the German Tax Union 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, taking this autonomy away from the state governments and parliaments (Deutsche Steuer-Gewerkschaft, 2015).

In the simple case of a Federal Tax FBI, similar to the Bavarian initiative, experts warn that the enmity between the Bavarian and Federal Finance Minister could bury a good idea: Would there really be no analogous need for an institution in the area of taxation, financial crime, money laundering... as there was in the area of regular crime which eventually lead to the Federal Crime Agency (BKA)? Police specialists argue that basic structures are at hand already within the Federal Customs Administration?⁸²

It could be hoped for that the third Federalism-Commission to reform financial relations between federation and states on the occasion of expiration of the present form of the Equalizing Mechanism will present the necessary opportunity for consideration of a number of proposals addressing Bavaria's complaints.

A major issue will be whether there will be measures to effectively overcome blockades among the German *Länder* and truly improve cooperation. One option could be more competence for the federation, as has been the case in the October agreement on reforming the Financial Equalization Scheme (see 3.8.6). Another option could be decisions by majority by German states, which is not as good as consensus, but still better than a centralized “overruling” by the federal government in the case of no agreement at all.

Given the increasing importance of cross-border movements of private and corporate wealth with taxation problems arising from there, a harmonization of law and legal standards within the EU is certainly important. Equally, both within the EU and beyond, an improved cooperation of tax authorities is needed in order to implement effectively and efficiently existing legislation and to combat tax avoidance and evasion.

This research therefore advocates more centralization in the following areas on the federal level:

⁸² Buckenhofer, F. (2013, May 13) Die Spur des Geldes. In: Süddeutsche Zeitung, Außenansicht, p. 2

- Large Taxpayer Units for private and corporate wealth holder, inside and outside Germany, located at the Federal Central Office for Taxation.
- Centralization is even more justified, if their interests are going beyond national border which is why joint bodies, even institutions, should be considered at least on the European level, e.g. an European “Tax FBI”.
- All authorities involved in the investigation of economic, financial and, therefore, tax related crimes should be centralized in a Federal Financial Police
- On an international level, cooperation should be eased and central databases should be made publicly accessible, e.g. in the area of beneficial ownership of real property and financial assets as well as that, of corporations and all sorts of Offshore Constructs included.

4.9 Normative-moral issues

As indicated in 4.4.1, behaviour and excuses have something to do with generally accepted social norms at a given time and: As 4.7 illustrated, there are many different norms and values behind policies suggested in the public debate and, because of that diversity, agreement or compromise is getting more and more complicated. While these issues will be dealt with primarily in the Ethical Part of this research (especially E/I), some relevant aspects shall be mentioned here:

4.9.1 Tax dodging, morale and limits of enforcement

Something about which employees in tax administration were unanimous is that tax dodging is not something particular to the wealthy, but rather something applying to every level and class of society. In a group talk, conversation partners from senior administration pointed out:

Tax cheating is widespread in society and not limited to the wealthy and corporations, and here lies a major problem of tax injustice regarding all those among the rich and poor, who do pay what is due. The bias towards the cheating of wealthy and corporations is due to the media: Spectacular cases such as Uli Hoeneß or Gunter Sachs are widely publicized and this is taken to be the rule in society, not the exception. The truth is, that quite a number of wealthy persons pay a lot more taxes than due because they accept the necessity, while some among the “small taxpayer” cheat as good as they can, e.g. on travel costs, on declaring material relevant for work or doing informal labour. In all cases this is due to a lack of understanding why taxes are needed and that everybody profits from its payment. Tax compliance, they conclude, is a universal problem, and it might be an interesting idea to ask practitioner for their area how they assess the tax compliance within their field of work, among the different tax classes and groups.

Funny enough, average efforts undertaken to save taxes are in no relation to the benefits: In an (unpublished?) study commissioned by the Federal Ministry of Finance, a research institution calculated that each German invests annually 1,036 Euro for legally 'optimizing' his or her tax bill (measuring the purchase of software, professional advice, books...), but at the same time receives average returns of just 800 Euro.⁸³

Against such widespread offence, administration and investigation is at a loss – especially since the determination between the legal, illicit and illegal requires a lot of effort and time.

⁸³ (Adamek & Otto, 2010, S. 60), Süddeutsche Zeitung (2010, May 10) Mehr als tausend Euro für die Steuererklärung. Retrieved from www.sueddeutsche.de/1.654619

4.9.2 Norms, investigation or leaks prompting tax honesty?

And, here, of course, morale and norms come into play: indeed, there was a time where almost everybody who had some room to manoeuvre with his money and tax declaration was thinking about tax planning, and besides social conversation with relatives and friends, banks were openly active in offering different options, disguised as “Asset Allocation”.⁸⁴

And yet: slowly, but surely, social acceptability is shifting and the question is, whether fear of investigation and sentencing in the wake of some highly publicized cases lies behind that tendency. It is the opinion of this research, however, that it is rather the awareness of potential leaks which prompts people to bring their financial situation back into legality, because without the increasing leaks via CDs and other leaks, neither self-reporting nor those investigations would have occurred in the first place. The ensuing debate about taxation also demonstrated a lot of ignorance about sense and nonsense of taxation and the importance of information.

4.9.3 Honest taxpayer – efficient administration – participation

Scholars argue – researchers and experiments show – that transparent and efficient administration as well as the inclusion of population into decisions relating to the spending of taxes can be useful for society, which makes sense: Also the American Revolution did not reject taxation as such, but taxation without representation. Three examples to illustrate this:

- A very nice and recent example on how democracy is good for taxation issues is the outcome of an expensive development project in the Swiss town of Zurich: The town parliament supported with 100 of 125 votes a twofold development: First a soccer stadium for the local clubs, costing 220 Million SFr, second and linked to it, a municipal housing project for families with children for 103 Million SFr. In a popular vote, however, the local citizens rejected the stadium, saying that there is no need to spend such a lot of money just a football stadium, while they approved with two thirds majority the housing project.⁸⁵ If this were possible in Germany, large prestigious projects which indicate a waste of money would not have been possible to implement in the first place, e.g. the new Airport of Berlin-Brandenburg or the new Central Station of Stuttgart.
- Equally a study conducted by the Institute for applied Economic Research (IAW) into tax morals and tax honesty found that people are more willing to pay taxes if they have the feeling that they can see what for the money is used and spent. Even though respondents in the study guessed that about two thirds would avoid or evade paying taxes, statistics revealed that Germans are pretty honest in what they pay and about OECD average.⁸⁶ For example: a survey revealed that two third of all Germans would be willing to pay more taxes if the money thus collected would be earmarked specifically for combating poverty among children.⁸⁷

⁸⁴ An interesting portrait of an “average citizen” doing tax planning and tax avoidance for about 20-30 years is contained in Dams, J./Seibel, K. (2014, December 11) Eine deutsche Steuersünderin packt aus. In: Die Welt. Retrieved from <http://www.welt.de/wirtschaft/article135249926/Eine-deutsche-Steuersuenderin-packt-aus.html>

⁸⁵ Blick (2013, September 22) Rote Karte für ein reines Fußballstadion der Stadt Zürich. Retrieved from <http://www.blick.ch/id2450718.html>. See also (Merten, 2012, p. 23).

⁸⁶ Informationen zur politischen Bildung 288/2012 S. 43

⁸⁷ Survey conducted by Infratest. Mehr tun gegen Kinderarmut (2014, January 14). In: *Bayerischer Rundfunk*. Retrieved from <http://www.br.de/nachrichten/kinderarmut-infratest-umfrage-steuern-100.html>

- Another popular example is the Italian “Otto Per mille Tax”: Everybody has to pay it, but it is up to them to decide to whom it is dedicated (churches, social assistance or others).⁸⁸ A similar tax also exists in Spain and Hungary.

This kind of participation and freedom of self-determination would possibly increase both tax morale and revenue and would be supported by Benedict XVI, who wrote in *Caritas in veritatem*: ‘One possible approach to development aid would be to apply effectively what is known as fiscal subsidiarity, allowing citizens to decide how to allocate a portion of the taxes they pay to the State. Provided it does not degenerate into the promotion of special interests, this can help to stimulate forms of welfare solidarity from below’ (Nr. 60).

4.9.4 Lack of knowledge

For all those reasons, increasing information and education is called for to explain to people, possibly even as part of school education, the use and usefulness of taxation for the Common Good. Linked to this is also the correction of some stereotypes people have about tax administrations, i.e. that they are thieves and robbers, depriving citizens of their hard earned money.

There is also little knowledge about de facto behaviour of taxpayers and/or social and moral determinants regarding tax compliance, tax avoidance and tax evasion of individual and corporate tax subjects. While there is quite some research in other countries, reliable evidence in Germany is scarce, on account of strict tax secrecy laws and data privacy regulations.⁸⁹ One of the very few academic research projects looking into the question of tax honesty of German citizens tried to establish existing knowledge on this issue among civil servants of tax administrations and developed a questionnaire for an anonymous-empirical survey (Schöbel, 2008). After a pre-test phase, a wider participation of civil servants was refused by the Thuringia Finance Minister by referring to a study in 2001,⁹⁰ whose findings were considered to be adequate and sufficient. Equally, permission for qualitative interviews with civil servants was refused by referring to existing benchmarking procedures such as “leistungsvergleich.de” – which in turn is criticized by tax administration employees (see, e.g., GER/VI/4.3.1.5). Meanwhile more academic and independently based research is underway in this complex area,⁹¹ but conversation partners from those research teams also complain about the prevailing secrecy and lack of trust, openness and cooperation on part of the tax administration.

Given the differences in findings and assessment by independent researchers regarding the views held by senior tax administrators and holder of political offices there is need to find out the cause of the divergence in opinions on the matter.

It is argued by this research that more investment into those two areas would greatly assist both voluntary tax compliance and tax honesty and make tax administration more efficient by enabling civil servants doing a more efficient and more focused job.

⁸⁸ http://en.wikipedia.org/wiki/Eight_per_thousand; <http://de.wikipedia.org/wiki/Mandatssteuer>

⁸⁹ See GER/VI/2.2.2 and 2.2.5 or examples from (Schöbel, 2008, p. 162ff.+219ff.)

⁹⁰ Kienbaum Consulting (2001) Compliance – Eine bürgerorientierte Strategie der Steuerverwaltung.

⁹¹ For example the “Taxation-Social Norms-Compliance” Project of the Friedrich Alexander University Erlangen-Nuremberg, see <http://www.efi.uni-erlangen.org/projects/taxation/>

4.9.5 Reforming punishment, restorative justice

An issue of interest is the following, also brought up by conversation partners from tax administration, e.g. working at assessment: they repeatedly recommended that money spent on more personnel in tax administration and legal prosecution could be recovered by higher fines. This should be applied when financial penalty and fines are preferred over imprisonment, the latter also at the expense of the taxpayer. One of the first and most famous prosecutors of tax evaders, Margrit Lichtinghagen, knew already that that which has the most deterrence effect on tax evaders and simultaneously most beneficial to the community is a monetary penalty and fine. For that reason she offered always the deal that she would not open penal proceedings if the tax evader is willing to pay back the evaded amount plus an additional penalty of twice the evaded amount.⁹²

A hefty fine should be accompanied with the obligation to do social work which would emphasize the damage done to the community and the opportunity to make up for it as is the case with former Top-Manager Thomas Middelhoff, whose sentence for tax evasion includes social work with the handicapped.⁹³ This issue is interesting also because punishment would not only save public expenditure, but also instil a deterrence effect on the tax evader as well. We could also consider some traditional African concepts of Justice, namely retributive/restorative justice. If somebody (intentionally or unintentionally) kills another person, the killer is not locked away, because this would be of no use for, say, the family left behind. Rather he is sentenced to pay compensation and take care of the material upkeep of those he deprived of the bread-winner. In our case the persons found guilty of tax evasion would have to restore to the community that which they deprived.

4.10 Conclusion

This research demonstrates that there is indeed a link between tax justice, poverty and inequality. We stated a variety of reasons, requiring further investigation and discussion:

- Legal reasons, since there are too many loopholes for tax avoidance or too many exemptions and regulations benefitting those who have already (more than) enough, and the shift from direct to indirect taxation, shifting taxation according the Principle of Ability to Pay to the Principle of inescapability, hitting rather low and middle income households.
- Administrative reasons, since there is not adequate staff to administer and enforce tax laws, facing, among other problems, the triple complexity of legislation, individual situations and jurisdiction, differences and divergences arising due to the federal structure of Germany and deficits arising in international cooperation.
- Technical reasons due the inability to make best use of IT assets for many reasons (mistakes in data base, deficits in software....), thus upholding a gap between computerized tax return assessments and physical assessment by a qualified tax administration personnel.
- Ideological reasons, namely the increasing dominance of market thinking in the political and administrative sphere or the preference of short-term, “provincial” thinking rather than middle-long term thinking within the framework of a global network-society, binding states together not only by the flows of money or trade, but also taxation, migration and “terror”.

⁹² A person evading EUR 500,000 would have to pay EUR 1.5 million instead (ZEIT-Dossier, 2014)

⁹³ Thomas Middelhoff wird “Mädchen für alles“ (2016, April 24). In: BILD. Retrieved from <http://www.bild.de/regional/ruhrgebiet/thomas-middelhoff/wird-maedchen-fuer-alles-45517088.bild.html>

All in all, therefore, the improvements have to take place in the following areas:

1. More personnel: Will be able to combat better fraud and to enforce better existing law
2. Legal clarifications and harmonizations nationally and internationally will close legal loopholes and diminish options for Offshore Constructs. Thus it will also make efforts of personnel more effective in combating fraud and enforcing existing laws
3. Legal changes/new laws need to be introduced in order to restore the Principle of Ability to Pay.
4. In international cooperation one need to pay attention also to the interests of developing countries – an essential requirement of the global network society.

The magnitude of this problem cannot solely be resolved by better laws and enforcement alone, it also needs the publication of informative and education materials on taxation so that citizens understand better why taxes are needed. This, however, is a task not only for politicians, but also NGOs and churches alike. What is needed in this context is an awareness raising debate on why taxes are needed, on what they are spent and how taxation compares with commonly recommended alternatives such as Corporate Social Responsibility or foundations. Combined with this would be a debate on values, i.e. what is important to us for a “good life” and “quality of life”: Is it economic growth and the growth of income and wealth going along with it? Or is there more to it?

All this will be taken up in the research parts dealing with private wealth, citizen involvement in the informal economy and the discussion of fundamental ethical issues.

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