

Comparative Studies of Tax Law Interpretation

Conference: Interpretation of Tax Legislation
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A work in progress



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Congress information

The Project

- Delivery: Anthology
 - 1 general report
 - 5 topical reports
 - Legal theory and the interpretation of tax legislation
 - The permissibility of restrictive and extensive interpretation in tax law
 - The use of analogy in interpretation of tax legislation
 - The role of private law in the interpretation and application of tax legislation
 - The role of administrative practice in tax Law
 - 30 national reports



EATLP 2026

Questionnaire

Interpretation of Tax Legislation

General Reporters: Henrik Skar and Peter Koerver Schmidt¹

As a core topic in our profession, comprehensive reports on legal interpretation can be highly enlightening if they succeed in outlining the critical points and enabling reflection on overarching similarities and differences in mindset across countries. While the topic raises sub-issues that could themselves serve as conference themes, there is significant value in understanding the subject as a whole, fostering fruitful comparisons, enhancing comprehension of how different countries explain and position various subtopics or methodological aspects in relation to one another, and in providing a foundation for future research and deeper insights into this key element of our field.

Given the broad scope, this task naturally requires a high degree of discipline from reporters to avoid becoming bogged down in overly specialized issues. Instead, the focus should be on capturing the main features and presenting them in an engaging and structured manner, within the framework of the questions outlined in the questionnaire.

Ideally, the sections should build upon and complement one another, creating a cohesive and well-structured narrative. We have aimed to design a questionnaire that facilitates this as effectively as possible. However, the structure may feel more intuitive or easier to use for some national reporters than others, depending on their jurisdiction's traditions.

We strongly encourage the use of examples from court cases throughout the reports, but these should typically be presented concisely, highlighting the key points in just a few lines for each case, with the option for additional elaboration in footnotes. Lengthy references to legal provisions relevant to the case are discouraged. In the textbox below, we provide an example of how this can be done, based on a Norwegian Supreme Court decision:

In a 2015 Supreme Court decision (Rt. 2015 p. 982), the taxpayer had mistakenly reported income in the wrong year and was nonetheless taxed on it. When the authorities later taxed the same income in the correct year, they refused to amend the earlier assessment due to expired deadlines. The Supreme Court overruled this, invoking the fundamental principle that the same income cannot be taxed twice.

Main themes of the general report

1. General foundations and features of legal interpretation 
2. Literal Interpretation 
3. Purposive/teleological interpretation 
4. Contextual interpretation 
5. Development trends and distinctive features 

Why study the interpretation of tax law?

- The study of legal interpretation is important in all fields of law
 - Legal scholarship plays an important role
- Interpretation of tax law particularly interesting
 - One of the most complex and technically demanding areas
 - Close connections with economics, accounting, and financial concepts
 - The breadth of the economic domains it regulates
 - Operates in a highly practical setting
 - Built around a voluminous yet closely interconnected body of rules
- Tax law offers a valuable point of reference for the study of legal interpretation more generally

Benefits of a comparative study

- A key means of advancing the understanding of legal interpretation lies in scholarly exchange across legal systems
- Comparative dialogue enables us to engage with alternative approaches, test own assumptions, and refine our own interpretive tools
- Hence: Does not only provide insight into regulatory approaches in other jurisdictions, but may also lead to a deeper understanding of our own legal framework

General features of legal interpretation

(1)

General definitions and functions of legal interpretation

- Widely acknowledged that courts inevitably contribute to shaping the content of the law.
- All jurisdictions acknowledge that interpretation of tax law is not different from other areas, but it has certain characteristics.
- Shared basic understanding of what legal interpretation is, but some associate it mainly with unclear text.
 - Not all reporters view the use of analogy as part of legal interpretation, cf. AUT, POR, ESP. Others frame analogy as a type of interpretation, using words like analogical interpretation, cf. DEN, NOR, SWE.
 - Common law countries like the US and the UK do not even seem to operate with a distinct category called analogy.

General features of legal interpretation

(2)

The legal basis and general boundaries

- How are the principles and methods of legal interpretation anchored or derived, and how do these foundations generally influence the interpretive process?

Legal tradition and case law appear to be important sources for the development and refinement of interpretive rules. In several reports, legal scholarship and legal education are highlighted as significant contributors (notably in Germany and Sweden). Interpretive approaches are furthermore often described as presupposed by constitutional provisions. While a number of countries have articulated interpretive frameworks, these are typically formulated at a high level of abstraction and are vague.

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|--|--|
| Codified through interpretational acts directly applicable to tax law | BUL, LAT, ROM, IRL, TUR, ITA (taxpayer's charter) . |
| Application of interpretive rules from the civil code. | POR, AUT, ESP, SUI, ITA . |
| Purely based on legal tradition (including case law and legal literature) and/or constitutional principles | BEL, CZE, DEN, FRA, GER, NOR, POL, SVK, SWE, UK, US. |

General features of legal interpretation

(3)

Overall structure of the process

- How is the process of interpreting and applying legal rules generally structured, particularly with regard to the sequence and interaction of interpretive methods?

| | | |
|---|--|--|
| Broad consensus that legal interpretation and fact-finding are conceptually distinct components. Legal interpretation typically understood as a holistic process (some emphasize a hierarchy, but...) | | |
| Civil law countries | Interpretation organised around four interpretive canons (some ÷÷) | AUT, FRA, ESP, GER, ÷ITA, LAT, NED, POR, CZE, ÷POL, ÷SER, +SVK, SLO. |
| Common law countries | Interpretation seen as a "single, broad approach" | UK, US. |
| Nordic countries | Broad conception of what counts as relevant legal sources/considerations | DEN, NOR, FIN, ÷SWE. |

General features of legal interpretation (4)

Handling of interpretive doubt

- Does your jurisdiction have a principle for dealing with interpretative doubt?

In jurisdictions that accept such residual uncertainty, the interpretive framework is typically supplemented by an additional mechanism for handling interpretive doubt, most commonly in the form of a principle according to which doubt operates in the taxpayer's favour.

Countries reporting having such a principle (*in dubio pro tributario/contra fiscum*)

POL, BEL, CZE, KOS, NED, SVK, USA.

Countries reporting that no such principle exists

AUT, BUL, CRO, DEN, FRA, GER, JPN, ITA, LAT, NOR, POR, ROM, SRB, SLO, SWE, TUR, UK.

Literal Interpretation (1)

Definition, application, and boundaries

- What is the role of the legislative text itself, and how is literal interpretation defined, applied, and delimited in relation to other methods

All: the linguistic meaning of the legislative text is the starting point of the interpretation.
Central methodological tension: “wording is inseparable from context but often given a distinct status”
Most: “Ordinary language usage”, technical usage, “the structure and whole sentence”, “holistic” but...

| | |
|--|--|
| Departure from the “clear” wording?: Not allowed | BEL, BUL, LAT, POL, SLO, TUR, UKR. |
| Middle position. | CRO, CZE, ESP, FRA, ITA , POR, SER, SLO, SWE. |
| Departure from the “clear” wording?: Allowed. | DEN, GER, IRL, JPN, NOR, SUI, UK. |

Literal Interpretation (2)

Terms from other legal domains, such as private law

- When tax legislation uses terms that have a conceptual foundation in other areas of law, such as private law, what role does their meaning in the original legal context play in the interpretation of tax law?

All reports: Terms originating in other legal domains frequently employed, but not always decisive. Some variation in how private law meanings are methodologically classified (literal vs. contextual) The divergence primarily lies in how the threshold for “departures” is articulated.

The private law meaning as default presumption.

BEL, CRO, DEN, FRA, **ITA** (contested), JPN, KOS, LAT, NOR, POL, POR, ROM, SWE, US.

Reject the private law meaning as default presumption.

AUT, BUL, GER, SLO, UK.

Purposive/teleological interpretation (1)

Definition, application, and boundaries

- How is purposive (or teleological) interpretation understood and applied, and what role does it play in relation to other interpretive methods?

All reports recognize that purpose plays a central role in tax law interpretation.
Differences in approaches to situations involving a conflict between wording and purpose.
Differences in how legislative purpose is understood and how it is weighted against other elements.

| | |
|---|-------------------------------|
| Favor subjective conception of legislative purpose. | DEN, NOR, SWE. |
| No preference | AUT, FRA, GER. |
| Favor objective conception of legislative purpose. | ITA, CZE, POL, KOS, SER, POL. |

Contextual interpretation (1)

Definition, application, and boundaries

- How is contextual interpretation defined and understood, and what role does it play in relation to other interpretive methods?

Centre point: *Systematic interpretation*. All reports recognize that the surrounding legal framework plays a role when interpreting individual tax provisions. The reports provide different examples of how this operates in practice. The reports do show some variation in the extent to which general principles of tax law are said to influence statutory interpretation.

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|---|------------------------------|
| Favor of general tax law principles | AUT, BUL, CRO, POL, ROM. |
| Middle position | ESP, GER, LUX, SLO, SVN, UK. |
| Reject the relevance of such principles in interpretation | CZE, DEN, FIN. |

Contextual interpretation (2)

Significance of Case law

- What is the role of case law in the interpretation of tax legislation in your country?

All reports recognize that case law is relevant in the interpretation of tax law, although the emphasis placed on it varies. A main distinction runs between countries that accept the doctrine of precedent and those that do not; however, differences in practice are often more nuanced and exist along a spectrum:

Countries that recognize the doctrine of precedent

DEN, FIN, IRE, NED, NOR, SWE, UK, US (note, however, that the Nordic countries typically do so to a lesser extent than common law jurisdictions).

Countries that do not recognize the doctrine of precedent

AUS, BEL, BUL, CZE, FRA, GER, ITA, LAT, LUX, POL, SLO, SVK, ESP, SUI, TUR.

Contextual interpretation (3)

Significance of Administrative Practice

- What is the role of administrative practice and guidelines in the interpretation of tax legislation in your country?

There is considerable variation in the extent to which administrative guidelines and administrative practice are described as relevant. Some reports limit their significance insofar as they contain persuasive legal reasoning, while others attribute independent interpretative weight to administrative practice as such. Some accord weight to administrative material primarily through a doctrine of legitimate expectations.

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|--|--|
| In favour of attributing weight to administrative practice or guidelines | CZE, DEN, NOR, SRB, SLO, SWE, UK. |
| Middle position | BEL, FIN, FRA, GER, ITA, JPN, SLO, ESP, SUI. |
| Rejecting the relevance of administrative practice or guidelines | BUL, TUR. |

Preliminary conclusions

- What often appears to be differences between countries may, to a significant extent, reflect differences in terminology and categorisation rather than clear differences in interpretative considerations. However ...
 - Jurisdictions differ in how strongly the statutory wording is perceived to constrain interpretation of tax law. “Textualism vs purposivism”.
 - Different handling of interpretive doubt (in dubio pro tributario).
 - Jurisdictions differ markedly in the weight they accord to preparatory works, as well as to case law and administrative practice in tax law.

Discussion

