

Übersetzung durch den Sprachendienst des Bundesministeriums der Finanzen.
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The Fiscal Code of Germany*

Fiscal Code of Germany in the version promulgated on 1 October 2002 (Federal Law Gazette [Bundesgesetzblatt] I p. 3866; 2003 I p. 61), last amended by Article 9 of the Ordinance of 8 December 2010 (Federal Law Gazette I p. 1768)

* Note: This text is provided by the Language Service of the German Federal Ministry of Finance in collaboration with the Directorate-General for Taxes and is intended to serve communicative rather than legal purposes.

First Part Introductory regulations

First Chapter Scope of application

Section 1 Scope

(1) This Code shall apply to all taxes, including the tax rebates¹ governed by German federal law or the law of the European Communities insofar as these are administered by the revenue authorities of the Federation or of the *Länder*. It may only be applied subject to the law of the European Communities.

(2) The following provisions of this Code shall apply accordingly to impersonal taxes to the extent that their administration has been assigned to the municipalities:

1. the provisions of the First, Second and Fourth Chapter of the First Part (Scope of application, Tax definitions, Tax secrecy),
2. the provisions of the Second Part (Legal provisions on tax liability),
3. the provisions of the Third Part except sections 82 to 84 (General rules of procedure),
4. the provisions of the Fourth Part (Executing the taxation procedure),
5. the provisions of the Fifth Part (Levy procedure),
6. sections 351, 361(1), second sentence, and 361(3),
7. the provisions of the Eighth Part (Provisions on criminal penalties and administrative fines, criminal and administrative fine proceedings).

(3) Subject to the law of the European Communities, the provisions of this Code shall be applied *mutatis mutandis* to ancillary tax payments. However, the third to sixth chapters of the Fourth Part shall only apply to the extent that this is specifically provided for.

¹⁾ *Steuervergütung*, i.e., the repayment by the state of tax to the person who paid the tax but was not liable for the tax in the first place. This is to be distinguished from the German term *Steuererstattung* (tax refund), which is the repayment of the tax by the state to the person who both owned and paid the tax in the first place.

Section 2 Primacy of international agreements

(1) Agreements on taxation concluded with other countries within the meaning of Article 59(2), first sentence, shall take precedence over tax legislation insofar as they have become directly applicable domestic law.

(2) To ensure the equality of tax treatment and to avoid double taxation or double non-taxation, the Federal Ministry of Finance shall be authorised with the consent of the

Bundesrat to issue ordinances on the implementation of arrangements reached by way of consultation. Arrangements reached by way of consultation under the first sentence above shall mean mutual agreements between the competent authorities of the contracting states to a double taxation agreement with the aim of determining the details of the implementation of such an agreement, and especially to resolve difficulties or doubts as to the interpretation or application of the respective agreement.

Second Chapter Tax definitions

Section 3 Taxes, ancillary tax payments

(1) Taxes shall mean payments of money, other than payments made in consideration of the performance of a particular activity, which are collected by a public body for the purpose of raising revenue and imposed by the body on all persons to whom the characteristics on which the law bases liability for payment apply; the raising of revenue may be a secondary objective.

(2) Impersonal taxes shall mean real property tax and trade tax.

(3) Import and export duties pursuant to Article 4 numbers 10 and 11 of the Customs Code shall be taxes within the meaning of this Code.

(4) Ancillary tax payments shall mean fees for delay (section 146(2b)), late-filing penalties (section 152), surcharges pursuant to section 162(4), interest (sections 233 to 237), late-payment penalties (section 240), coercive fines (section 329) and costs (sections 89, 178, 178a and sections 337 to 345) as well as interest within the meaning of the Customs Code and late-filing fees under section 22a(5) of the Income Tax Act.

(5) Revenue from interest on import and export duties within the meaning of Article 4 numbers 10 and 11 of the Customs Code shall accrue to the Federation. Revenue from all other interest shall accrue to the political subdivision authorised to levy the corresponding tax. Revenue from costs within the meaning of section 89 shall accrue to the political subdivision whose authority is responsible for issuing the advance ruling. One half of the revenue from costs within the meaning of section 178a shall accrue to the Federation, the other half to the administering political subdivisions. All other ancillary tax payments shall accrue to the administering political subdivisions.

Section 4 Law

Law shall mean every legal norm.

Section 5 Discretion

Where the revenue authority is authorised to use its discretion it shall do so in compliance with the purpose of the authorisation and shall respect the statutory restrictions on such discretion.

Section 6 Authorities, revenue authorities

(1) Authority shall mean every body performing tasks of public administration.

(2) For the purposes of this Code, revenue authorities shall mean the following federal revenue authorities and revenue authorities of the *Länder* referred to in the Fiscal Administration Act:

1. as highest authorities, the Federal Ministry of Finance and the highest authorities of the *Länder* responsible for revenue administration,
2. as higher federal authorities, the Federal Spirits Monopoly Administration and the Federal Central Tax Office,

3. as higher authorities of the *Länder*, data processing centres,
4. as intermediate authorities, the federal finance offices, the regional finance offices and Customs Criminological Office,
 - 4a. the revenue authorities of the *Länder* established in lieu of a regional finance office in accordance with the Fiscal Administration Act or with the legislation of the *Länder*,
5. as local authorities, the main customs offices including their agencies, the customs investigation offices, the tax offices and the special revenue authorities of the *Länder*,
6. child benefit disbursement offices,
7. the central agency within the meaning of section 81 of the Income Tax Act, and
8. the German Pension Insurance Institute for Miners, Railway and Maritime Workers, Cottbus administration office (section 40a(6) of the Income Tax Act).

Section 7 Public officials

Public official shall mean any person who, under German law,

1. is a civil servant or judge (section 11(1) number 3 of the Criminal Code),
2. holds any other office under public law, or
3. has otherwise been appointed to exercise functions of the public administration at an authority or other office or on their behalf.

Section 8 Residence

Persons shall be resident at the place at which they maintain a dwelling under circumstances from which it may be inferred that they will maintain and use such dwelling.

Section 9 Habitual abode

Persons shall have their habitual abode at the place at which they are present under circumstances indicating that their stay at that place or in that area is not merely temporary. An unbroken stay of not less than six months' duration shall be invariably and from the beginning of such stay regarded as an habitual abode in the territory of application of this Code; brief interruptions shall be excepted. The second sentence shall not apply where the stay is undertaken exclusively for visiting, recuperation, curative or similar private purposes and does not last more than one year.

Section 10 Business management

Business management shall mean the centre of commercial executive management.

Section 11 Registered office

Corporations, associations of persons or conglomerations of assets shall have their registered office at the place which is determined by law, articles of partnership, statutes, acts of foundation or similar provisions.

Section 12 Permanent establishment

Permanent establishment shall mean any fixed place of business or facility serving the business of an enterprise. In particular, the following shall be considered permanent establishments:

1. the place of business management,
2. branches,
3. offices,
4. factories or workshops,
5. warehouses,
6. purchasing offices or sales outlets,
7. mines, quarries or other stationary, moving or floating facilities for the exploitation of natural resources,
8. building sites or constructions or installation projects, including those moving or floating, where
 - a) an individual building site or construction or installation project, or
 - b) one of several coexistent building sites or constructions or installation projects, or
 - c) a number of immediately successive building sites or constructions or installation projects

last(s) more than six months.

Section 13 Permanent representative

Permanent representative shall mean any person who conducts the business of an enterprise in a sustained manner and, in so doing, is subject to its instructions. In particular, permanent representative shall mean any person who, in a sustained manner, on behalf of an enterprise,

1. concludes or brokers contracts or solicits orders, or
2. maintains a stock of goods or merchandise and makes deliveries from this stock.

Section 14 Economic activity

Economic activity shall mean an independent sustainable activity from which revenue or other economic benefits are derived and which comprises more than mere asset management. The intention to realise a profit shall not be required. As a rule, an activity shall be deemed to constitute asset management where assets are utilised, e.g., by investing capital assets to earn interest or by renting or leasing immovable property.

Section 15 Relatives

(1) Relatives shall mean:

1. fiancé(e)s,
2. spouses,
3. relations by blood or by marriage in direct line,

4. siblings,
 5. children of siblings,
 6. spouses of siblings, and siblings of spouses,
 7. siblings of the parents,
 8. persons who are related to each other like parents and children through a permanent foster relationship involving a common household (foster parents and foster children).
- (2) The persons referred to in subsection (1) above shall also be relatives where,
1. in the case of numbers 2, 3 and 6, the marriage establishing the relationship no longer exists,
 2. in the case of numbers 3 to 7, the relationship by blood or by marriage has been terminated due to adoption as a child,
 3. in the case of number 8, the common household no longer exists, provided that the persons continue to be related to each other like parents and children.

Third Chapter Competence of the revenue authorities

Section 16 Subject-matter jurisdiction

Unless otherwise stipulated, the subject-matter jurisdiction of the revenue authorities shall be determined pursuant to the Fiscal Administration Act.

Section 17 Local jurisdiction

Unless otherwise stipulated, local jurisdiction shall be determined by the following provisions.

Section 18 Separate determination

(1) The following shall have local jurisdiction with regard to separate determination pursuant to section 180:

1. in the case of agricultural and forestry undertakings, real property, business premises and mineral exploitation rights, the tax office in whose district the undertaking, real property, business premises or mineral exploitation right is located or, if the undertaking, real property, business premises or mineral exploitation right extends over the districts of several tax offices, the tax office in whose district the most valuable part is located (tax office of location),
2. in the case of commercial undertakings whose business management is located within the territory of application of this Code, the tax office in whose district the business management is located, in the case of commercial undertakings whose business management is not located within the territory of application of this Code, the tax office in whose district a permanent establishment – in the case of several permanent establishments, the economically most important one – is maintained (tax office of the undertaking),
3. in the case of income from independent personal services, the tax office from whose district the activity is predominantly performed,
4. in the case of several persons participating in income other than income from agriculture or forestry, commercial undertakings or independent personal services

determined separately pursuant to section 180(1) number 2(a), the tax office in whose district this income is managed or, where this cannot be determined within the territory of application of this Code, the tax office in whose district the most valuable part of the assets yielding the shared income is located. This shall also apply *mutatis mutandis* in the case of separate determination pursuant to section 180(1) number 3 or section 180(2).

(2) Where separate determination is to be conducted with regard to several taxpayers and local jurisdiction cannot be determined pursuant to subsection (1) above, every tax office which, pursuant to sections 19 or 20, is responsible for taxes on income and on capital of a taxpayer to whom a share of the object of determination is attributable shall have local jurisdiction. Where because of an ordinance pursuant to section 17(2), third and fourth sentence, of the Fiscal Administration Act this tax office does not have subject-matter jurisdiction with regard to separate determination, the tax office with subject-matter jurisdiction shall take its place.

Section 19 **Taxes on the income and capital of natural persons**

(1) The tax office in whose district a natural person is resident or, in the absence of a residence, has his habitual abode shall have local jurisdiction over the taxation of the person's income and capital (tax office of residence). In the case of multiple residences within the territory of application of this Code, the residence at which the taxpayer is predominantly present shall be decisive; in the case of multiple residences of a married taxpayer not permanently separated from his spouse, the residence at which the family is predominantly present shall be decisive. With regard to persons subject to unlimited tax liability pursuant to section 1(2) of the Income Tax Act and section 1(2) of the Capital Tax Act, local jurisdiction shall lie with the tax office in whose district the paying public fund is located; the same shall apply in the cases referred to in section 1(3) of the Income Tax Act with regard to persons fulfilling the requirements of section 1(2), first sentence, numbers 1 and 2 of the Income Tax Act, as well as in the cases referred to in section 1a(2) of the Income Tax Act.

(2) Where the requirements referred to in subsection (1) above are not fulfilled, local jurisdiction shall lie with the tax office in whose district the assets of the taxpayer are located, and where this applies to several tax offices, the tax office in whose district the most valuable part of the assets is located. Where the taxpayer does not have any assets within the territory of application of this Code, the tax office in whose district the activity is or has been predominantly performed or exploited within the territory of application of this Code shall have local jurisdiction.

(3) Notwithstanding the provisions of subsection (1) above, where there are several tax offices in the municipality of residence and where a taxpayer with income from agriculture or forestry, a commercial undertaking or professional services performs this activity within the municipality of residence but in the district of a tax office other than the tax office of residence, the first tax office shall be responsible where it would have been competent for the separate determination of this income pursuant to section 18(1) numbers 1, 2 or 3. In applying the first sentence of this subsection, income from profit shares shall be taken into account only where it is the sole income of the taxpayer within the meaning of the first sentence.

(4) In applying subsection (3) above, taxpayers who must be or may be assessed jointly shall be treated as if their income were derived by a single taxpayer.

(5) The governments of the *Länder* may stipulate by way of ordinance that an area comprising several municipalities shall be considered a municipality of residence within the meaning of subsection (3) above insofar as this seems appropriate considering the economic situation, transport infrastructure, the structure of administrative authorities or other local needs. The government of a *Land* may delegate these powers to the highest authority of this *Land* responsible for revenue administration.

(6) In order to guarantee the taxation of persons subject to limited tax liability pursuant to section 1(4) of the Income Tax Act and deriving income within the meaning of section 49(1) numbers 7 and 10 of the Income Tax Act, the Federal Ministry of Finance may, by way of ordinance and with the consent of the Bundesrat, transfer to a revenue authority local jurisdiction with regard to the territory of application of this Code. The first sentence above shall also apply where an application pursuant to section 1(3) of the Income Tax Act is made.

Section 20

Taxes on the income and capital of corporations, associations of persons and conglomerations of assets

(1) Local jurisdiction over the taxation of the income and capital of corporations, associations of persons and conglomerations of assets shall lie with the tax office in whose district the business management is located.

(2) Where the business management is not located within the territory of application of this Code or where the place of business management cannot be determined, the tax office in whose district the taxpayer has its registered office shall have local jurisdiction.

(3) Where neither the business management nor the registered office is located within the territory of application of this Code, local jurisdiction shall lie with the tax office in whose district assets of the taxpayer are located and, if this applies to several tax offices, the tax office in whose district the most valuable part of the assets is located.

(4) Where neither the business management nor the registered office or assets of the taxpayer are located within the territory of application of this Code, the tax office in whose district the activity is or has been predominantly performed or exploited within the territory of application of this Code shall have local jurisdiction.

Section 20a

Taxes on income in the case of construction services

(1) Notwithstanding the provisions of sections 19 and 20, jurisdiction with regard to the taxation of enterprises providing construction services within the meaning of section 48(1), third sentence, of the Income Tax Act shall lie with the tax office responsible for the taxation of the corresponding turnover pursuant to section 21(1) if the trader's residence or the enterprise's business management or registered office is not located within the territory of application of this Code. Notwithstanding sections 38 to 42f of the Income Tax Act, this shall also apply with regard to tax deduction on wages.

(2) Where workers are provided for temporary employment by foreign suppliers pursuant to section 38(1), first sentence, number 2 of the Income Tax Act, the tax office responsible for the taxation of the corresponding turnover pursuant to section 21(1) shall be responsible for administering wages tax. The first sentence shall only apply where the person hired out is employed in the construction industry.

(3) Notwithstanding the provisions of section 19, the Federal Ministry of Finance may, by way of ordinance and with the consent of the Bundesrat, transfer to a tax office local jurisdiction for the territory of application of this Code over the taxation of persons employed in Germany by enterprises within the meaning of subsection (1) or (2) above.

Section 21

Turnover tax

(1) The tax office in whose district the trader entirely or predominantly operates his enterprise in the territory of application of this Code shall have jurisdiction over turnover tax, excluding import turnover tax. In order to ensure taxation, the Federal Ministry of Finance may, by way of ordinance and with the consent of the Bundesrat, transfer to a revenue authority local jurisdiction for the territory of application of this Code with regard to traders whose residence, registered office or business management is not located within the territory of application of this Code.

(2) The tax office responsible for the taxation of income (sections 19 and 20) shall have jurisdiction over the turnover tax of persons who are not traders; in the cases referred to in section 180(1) number 2(a), the tax office responsible for separate determination (section 18) shall also be responsible for turnover tax.

Section 22

Impersonal taxes

(1) Local jurisdiction over the assessment and apportionment of basic impersonal tax amounts² shall lie with the tax office of location (section 18(1) number 1) in the case of real property tax, and with the tax office of the undertaking (section 18(1) number 2) in the case of trade tax. Notwithstanding the provisions of the first sentence of this subsection, jurisdiction over the assessment and apportionment of basic trade tax amounts in the case of enterprises providing construction services within the meaning of section 48(1), third sentence, of the Income Tax Act shall lie with the tax office responsible for the taxation of the corresponding turnover pursuant to section 21(1), provided that the trader's residence or the enterprise's business management or registered office is located outside the territory of application of this Code.

(2) Where the tax offices are responsible for assessing, levying and recovering impersonal taxes, local jurisdiction shall lie with the tax office to whose district the municipality authorised to apply the municipal multiplier belongs. Where a municipality authorised to apply the municipal multiplier belongs to the districts of several tax offices, local jurisdiction shall lie with the tax office which is or would be responsible pursuant to subsection (1) above if only the parts of the enterprise, real property or business premises located in the municipality authorised to apply the municipal multiplier were present in the territory of application of this Code.

(3) Subsection (2) above shall apply *mutatis mutandis* where a *Land* is entitled to the tax revenue from impersonal taxes pursuant to Article 106(6), third sentence, of the Basic Law.

² *Steuermessbetrag*, calculated by applying multiplier (*Steuermesszahl*) to value of object to be taxed (property-*Grundsteuer*; earnings-*Gewerbsteuer*). The basic impersonal tax amount is then multiplied by the municipal multiplier (*Hebesatz*) to give the *Grundsteuer* or *Gewerbsteuer*

Section 23

Import and export duties, excise duties

(1) Local jurisdiction over import and export duties within the meaning of Article 4 numbers 10 and 11 of the Customs Code and over excise duties shall lie with the main customs office in whose district the matter to which the respective law attaches the duty occurs.

(2) Local jurisdiction shall further lie with the main customs office from whose district the taxpayer operates his enterprise. Where the enterprise is operated from a location outside the territory of application of this Code, jurisdiction shall lie with the main customs office in whose district the trader entirely or predominantly carries out his transactions in the territory of application of this Code.

(3) Where import and export duties within the meaning of Article 4 numbers 10 and 11 of the Customs Code and excise duties are due in connection with a tax crime or tax offence, local jurisdiction shall lie with the main customs office responsible for the crime or offence.

Section 24

Surrogate competence

Where local jurisdiction cannot be derived from other provisions, the revenue authority in whose district the matter requiring the official act arises shall be responsible.

Section 25

Multiple local jurisdiction

Where several revenue authorities have jurisdiction, the revenue authority which was first charged with the matter shall decide unless the revenue authorities responsible agree on another revenue authority responsible or the common supervisory authority responsible

determines that another revenue authority with local jurisdiction should decide. In the absence of a common supervisory authority, the supervisory authorities responsible shall reach a joint decision.

Section 26 **Transfer of jurisdiction**

Where local jurisdiction is transferred from one revenue authority to another due to a change in the circumstances establishing such jurisdiction, the transfer of jurisdiction shall occur as soon as one of the two revenue authorities becomes aware of this. The hitherto responsible revenue authority may continue with an administrative procedure where this serves to ensure that the procedure is carried out simply and appropriately while protecting the interests of the participants, and provided that the newly responsible revenue authority agrees. There shall be no transfer of jurisdiction pursuant to the first sentence above as long as

1. a decision has not yet been taken on an insolvency petition,
2. open insolvency proceedings have not yet been cancelled, or
3. an unincorporated company or a legal person is undergoing liquidation.

Section 27 **Agreed jurisdiction**

In mutual agreement with the revenue authority which has local jurisdiction pursuant to the provisions of the tax laws, a different revenue authority may assume responsibility for taxation, provided that the person concerned agrees. One of the revenue authorities referred to in the first sentence of this section may ask the person concerned to declare his approval within a reasonable period of time. Approval shall be deemed to have been given if the person concerned does not object within this period of time. The person concerned shall be explicitly advised of the consequences of remaining silent.

Section 28 **Disputed jurisdiction**

(1) Where several revenue authorities consider themselves to have jurisdiction or not to have jurisdiction, or where jurisdiction is doubtful for other reasons, the common supervisory authority responsible shall decide on local jurisdiction. Section 25, second sentence, shall apply accordingly.

(2) Section 5(1) number 7 of the Fiscal Administration Act shall remain unaffected.

Section 29 **Imminent danger**

In the case of imminent danger, local jurisdiction for non-deferrable measures shall lie with any revenue authority in whose district the matter requiring the official act arises. The authority otherwise locally responsible shall be informed without undue delay.

Fourth Chapter **Tax secrecy**

Section 30 **Tax secrecy**

(1) Public officials shall be obliged to observe tax secrecy.

(2) Public officials shall be in breach of tax secrecy if they

1. disclose or make use of, without authorisation, circumstances of a third person which have become known to them
 - a) in an administrative procedure, an auditing procedure or in judicial proceedings in tax matters,

b) in criminal proceedings for tax crimes or in administrative fine proceedings for tax offences,

c) for other reasons from notification by a revenue authority or from the statutory submission of a tax assessment notice or a certification of findings made in the course of taxation,

or

2. disclose or make use of, without authorisation, a corporate or commercial secret which has become known to them in a procedure as designated under number 1 above,

or

3. electronically retrieve, without authorisation, data protected pursuant to number 1 or 2 above which have been stored in a file for a procedure as designated under number 1 above.

(3) The following shall be deemed to be of equivalent status to public officials:

1. persons under special obligations to the civil service (section 11(1) number 4 of the Criminal Code),

1a. the persons designated in section 193(2) of the Act on the Constitution of Courts,

2. officially consulted experts,

3. holders of offices of the churches and other religious communities being public-law entities.

(4) Disclosure of information obtained pursuant to subsection (2) above shall be permissible, insofar as

1. it serves the implementation of a procedure within the meaning of subsection (2) number 1(a) and (b) above,

2. it is expressly permitted by law,

3. the persons concerned give their consent,

4. it serves the implementation of criminal proceedings for a crime other than a tax crime, and such information

a) was obtained in the course of proceedings for tax crimes or tax offences; however, this shall not apply in relation to facts which a taxpayer has disclosed while unaware of the instigation of the criminal proceedings or the administrative fine proceedings or which have already become known in the course of taxation before the instigation of such proceedings, or

b) was obtained in the absence of any tax liability or by waiver of a right to withhold information,

5. there is a compelling public interest in such disclosure; such compelling public interest shall be deemed to exist in particular where

a) crimes and wilful serious offences against life and limb or against the State and its institutions are being or are to be prosecuted,

b) economic crimes are being or are to be prosecuted, and which in view of the method of their perpetration or the extent of the damage caused by them are

likely to disrupt substantially the economic order or to undermine substantially general confidence in the integrity of business dealings or the orderly functioning of authorities and public institutions, or

c) disclosure is necessary to correct publicly disseminated incorrect facts which are likely to undermine substantially confidence in the administration; such decision shall be taken by the highest revenue authority responsible in mutual agreement with Federal Ministry of Finance; the taxpayer is to be heard before correction of the facts.

(5) Wilfully false statements by the person concerned may be disclosed to the law enforcement authorities.

(6) The electronic retrieval of data which have been stored for a procedure as designated under subsection (2) number 1 above shall be permissible only insofar as it serves the implementation of a procedure within the meaning of subsection (2) number 1(a) and (b) above or the permissible transmission of data. To protect tax secrecy, the Federal Ministry of Finance may stipulate, by way of ordinance and subject to the consent of the Bundesrat, which technical and organisational measures are to be adopted to preclude the unauthorised retrieval of data. In particular, it may set out detailed rules on the type of data, the retrieval of which is permissible, and on the group of public officials entitled to retrieve such data. Ordinances shall not require the agreement of the Bundesrat where they concern import/export duties and excise duties, with the exception of beer duty.

Section 30a

Protection of bank customers

(1) In determining the facts of a case (section 88) the revenue authorities shall take special account of the confidential relationship between credit institutions and their customers.

(2) The revenue authorities may not require credit institutions to submit non-recurrent or regular notifications with regard to accounts of specific types or specific amounts for general supervisory purposes.

(3) Deposit accounts or securities accounts in relation to which an identity check pursuant to section 154(2) has been carried out may not on occasion of the external audit of a credit institution be identified or copied for the purpose of verifying correct payment of taxes. No tax-audit tracer notes shall be prepared in respect of such accounts.

(4) The numbers of deposit and securities accounts which taxpayers hold at credit institutions shall not be required in tax return forms, unless tax-reducing expenses or benefits are being claimed or it is required for the settlement of payment transactions with the tax office.

(5) Requests for information addressed to credit institutions shall be governed by section 93. Where the identity of a taxpayer is known and neither proceedings for a tax crime nor for a tax offence have been instigated against such person, a credit institution shall, even in proceedings pursuant to the first sentence of section 208(1), only be requested to furnish information and documents when a request for information addressed to the taxpayer does not or is not likely to produce any results.

Section 31

Disclosure of the bases of taxation

(1) The revenue authorities shall be obliged to disclose to public-law entities, including religious communities which are public-law entities, bases of taxation, basic impersonal tax amounts and other tax amounts for the purpose of assessing such levies connected with these bases of taxation, basic impersonal tax amounts or other tax amounts. The obligation to disclose shall not apply insofar as this would involve a disproportionate amount of time and effort. Upon request, the revenue authorities may disclose to public-law entities the names and addresses of their members who are obliged, in principle, to pay levies within the meaning of the first sentence above as well as the duties assessed by the revenue authority with regard to the entity, insofar as knowledge of these data is necessary for the discharge of

public tasks falling within the entity's responsibility and such disclosure is not outweighed by protectable interests of the person concerned.

(2) The revenue authorities shall be obliged to disclose the circumstances of the persons concerned which are protected under section 30 to the statutory social insurance institutions, the Federal Employment Agency and the Artists' Social Fund, insofar as knowledge of these circumstances is necessary to determine the insurance obligation or to assess contributions, including the insurance contributions of artists, or where the person concerned submits an application for disclosure. The obligation to disclose shall not apply to the extent that this would involve a disproportionate amount of time and effort.

(3) The names and addresses of owners of real property which have become known through the administration of real property tax and which are protected under section 30 may be used by the authorities responsible for administering real property tax for the administration of other fiscal charges and for the discharge of other public tasks or may be disclosed by those authorities on request to the responsible courts, authorities or legal persons under public law, unless such use or disclosure is outweighed by protectable interests of the person concerned.

Section 31a

Disclosure for the purpose of countering unlawful employment and the misappropriation of benefits

(1) Disclosure of the circumstances of the person concerned which are protected under section 30 shall be permissible insofar as this is necessary

1. to implement criminal proceedings, administrative fine proceedings or any other court or administrative proceedings with the aim of

a) countering unlawful employment or illegal work, or

b) deciding whether

aa) a licence under the Temporary Employment Act should be issued, withdrawn or revoked, or

bb) benefits paid from public funds should be approved, granted, recovered, refunded, continued to be granted or allowed to be retained,

or

2. to assert a claim for repayment of benefits paid from public funds.

(2) In the cases referred to in subsection (1) above, the revenue authorities shall be obliged to disclose to the competent body the facts required in each case. In the cases referred to in subsection (1) numbers 1(b) and 2 above, information shall also be disclosed upon application by the person concerned. The obligation to disclose referred to in the first and second sentence of this subsection shall not apply insofar as this would involve a disproportionate amount of time and effort.

Section 31b

Disclosure for the purpose of countering money laundering and terrorist financing

The disclosure of the circumstances of the person concerned which are protected under section 30 shall be permissible insofar as it serves the implementation of criminal proceedings for a crime under section 261 of the Criminal Code, the countering of terrorist financing within the meaning of section 1(2) of the Money Laundering Act or the implementation of administrative fine proceedings within the meaning of section 17 of the Money Laundering Act against obligated parties within the meaning of section 2(1) numbers 9 to 12 of the Money Laundering Act. The revenue authorities shall without undue delay notify the competent law enforcement authorities of facts suggesting that a crime under section 261 of the Criminal Code or terrorist financing within the meaning of section 1(2) of

the Money Laundering Act has been or will be committed or attempted, with a copy to the Federal Criminal Police Office – Financial Intelligence Unit. The competent administrative authority shall be notified without delay of facts suggesting that an administrative offence within the meaning of section 17 of the Money Laundering Act was or will be committed by an obligated party within the meaning of section 2(1) numbers 9 to 12 of the Money Laundering Act.

Fifth Chapter Limited liability of public officials

Section 32 Limited liability of public officials

Where a breach of official duty by a public official results in

1. a tax or ancillary tax payment not being assessed, levied or recovered at all or on time, or the amount assessed, levied or recovered being too low, or
2. a tax refund or tax rebate being incorrectly granted, or
3. a basis of taxation or a tax share not being assessed at all or on time or the amount assessed being too low,

the public official may be held liable only if the breach of official duty is punishable by law.

Second Part Legal provisions on tax liability

First Chapter Taxpayer

Section 33 Taxpayer

(1) Taxpayer shall mean any person who owes a tax, is liable for a tax, who is obliged to withhold and give to revenue authorities a tax which is due for account of a third party, to file a tax return, to provide collateral, to keep accounts and records or to discharge other obligations imposed by the tax laws.

(2) Taxpayer shall not mean a person who is obliged with regard to tax matters of a third person to provide information, to produce documents, to submit an expert opinion or to authorise entry to properties, business premises and offices.

Section 34 Obligations of legal representatives and asset managers

(1) The legal representatives of natural and legal persons, and the managing directors of associations of persons and conglomerations of assets without legal capacity shall fulfil the tax obligations of these entities. In particular, they shall ensure that taxes are paid from the funds they manage.

(2) To the extent that associations of persons without legal capacity do not have a managing director, their members or partners shall fulfil the duties within the meaning of subsection (1) above. Any member or partner may be held liable by the revenue authority. The first and second sentences above shall apply to conglomerations of assets without legal capacity subject to the proviso that the persons entitled to the assets fulfil the tax obligations.

(3) Where persons other than the owners of the assets or their legal representatives are responsible for asset management, the asset managers shall, within their management competence, have the obligations referred to in subsection (1) above.

Section 35 Obligations of the person with power of disposal

Persons with power of disposal acting on their own behalf or on behalf of a third party shall have the obligations of a legal representative (section 34(1)) to the extent that they are able to fulfil them *de jure* and *de facto*.

Section 36

Termination of the authority to represent

Termination of the authority to represent or of the power of disposal shall not affect the obligations pursuant to sections 34 and 35 to the extent that these apply to the period in which the authority to represent or the power of disposal was valid and that the person obliged is able to fulfil them.

Second Chapter

Tax debtor-creditor relationship³

³⁾ *Steuerschuldverhältnis*, i.e., the legal relationship between the person owing the tax and the entity to which it accrues (state).

Section 37

Claims arising from the tax debtor-creditor relationship

(1) Claims arising from the tax debtor-creditor relationship shall be the tax claim, the tax rebate claim, the liability claim, the claim to an ancillary tax payment, the refund claim pursuant to subsection (2) below and the tax refund claims set out in individual tax laws.

(2) Where a tax, a tax rebate, a liability amount or an ancillary tax payment was paid or repaid in the absence of legal grounds, the person on whose account the payment was made shall be entitled to a refund from the recipient of the amount paid or repaid. This shall also apply where the legal grounds for the payment or repayment are subsequently abolished. In the case of cession, pledging or seizure, the claim may also be asserted against the person ceding, the pledger or the execution debtor.

Section 38

Arising of claims from the tax debtor-creditor relationship

Claims shall arise from the tax debtor-creditor relationship as soon as the matter to which the law attaches liability for payment has occurred.

Section 39

Attribution

(1) Economic goods shall be attributable to the owner.

(2) Notwithstanding the provisions of subsection (1) above, the following provisions shall apply:

1. Where a person other than the owner exercises effective control over an economic good in such a way that he can, as a rule, economically exclude the owner from affecting the economic good during the normal period of its useful life, the economic good shall be attributable to this person. In the case of fiduciary relationships, the economic goods shall be attributable to the beneficiary, in the case of transferred ownerships for security purposes to the security provider, and in the case of proprietary possessions to the proprietary possessor.

2. Economic goods to which several persons are jointly entitled shall be attributable proportionally to the participants insofar as taxation requires separate attribution.

Section 40

Actions contrary to law or public policy

It shall be immaterial for taxation when an action that is completely or partly taxable violates a statutory regulation or prohibition or is contrary to public policy.

Section 41
Invalid legal transactions

(1) Where a legal transaction is or becomes invalid this shall be immaterial for taxation to the extent that and as long as the persons involved nevertheless allow the economic outcome of this legal transaction to occur and to remain. This shall not apply where the tax laws provide otherwise.

(2) Fictitious transactions and actions shall be immaterial for taxation. Where a fictitious transaction conceals another legal transaction, the concealed legal transaction shall be decisive for taxation.

Section 42
Abuse of tax planning schemes

(1) It shall not be possible to circumvent tax legislation by abusing legal options for tax planning schemes. Where the element of an individual tax law's provision to prevent circumventions of tax has been fulfilled, the legal consequences shall be determined pursuant to that provision. Where this is not the case, the tax claim shall in the event of an abuse within the meaning of subsection (2) below arise in the same manner as it arises through the use of legal options appropriate to the economic transactions concerned.

(2) An abuse shall be deemed to exist where an inappropriate legal option is selected which, in comparison with an appropriate option, leads to tax advantages unintended by law for the taxpayer or a third party. This shall not apply where the taxpayer provides evidence of non-tax reasons for the selected option which are relevant when viewed from an overall perspective.

Section 43
Tax debtor, creditor of a tax rebate

Tax legislation shall stipulate the tax debtor or creditor of a tax rebate. It shall also stipulate whether a third party is to pay the tax for account of the tax debtor.

Section 44
Joint and several debtors

(1) Persons who concurrently owe or are liable for the same obligation arising from the tax debtor-creditor relationship or who must be assessed jointly shall be joint and several debtors. Unless otherwise stipulated, each joint and several debtor shall owe the entire obligation.

(2) Fulfilment by a joint and several debtor shall also take effect for the other debtors. The same shall apply to the set-off and any securities provided. Other facts shall only take effect for and against the joint and several debtor personally affected by them. The provisions of sections 268 to 280 with regard to the limitation of enforcement in the case of joint assessment shall remain unaffected.

Section 45
Universal succession

(1) In the case of universal succession the debts and receivables arising from the tax debtor-creditor relationship shall pass to the legal successor. However, in the case of succession by inheritance this shall not apply to coercive fines.

(2) Heirs shall be liable for debts payable from the estate pursuant to the provisions of civil law with regard to the heir's liability for obligations of the estate. Provisions creating a tax liability of the heirs shall remain unaffected.

Section 46
Cession, pledging, seizure

(1) Entitlements to the refund of taxes, liability amounts, ancillary tax payments and tax rebates may be ceded, pledged and seized.

(2) However, the act of cession shall take effect only once the creditor declares it after the claim has arisen to the competent revenue authority in the form set out in subsection (3) below.

(3) The act of cession shall be notified to the competent revenue authority on an officially prescribed form, indicating the person ceding, the beneficiary of cession, the nature and amount of the entitlement ceded and the reason for cession. The notification shall be signed by the person ceding and the beneficiary of cession.

(4) The commercial acquisition of claims to refunds or rebates for the purpose of collection or other liquidation for own account shall not be permissible. This shall not apply in the case of cession for security purposes. Only enterprises authorised to conduct bank business shall be entitled to commercially acquire or collect claims ceded for security purposes.

(5) Where the act of cession has been notified to the revenue authority, the person ceding and the beneficiary of cession shall be obliged to accept the validity of the notified cession in relation to the revenue authority even if such cession does not occur or is ineffective or is void due to contravention of subsection (4) above.

(6) An attachment and transfer order or an attachment and sequestration order may not be issued before the claim has arisen. Any attachment and transfer orders or attachment and sequestration orders obtained in breach of this prohibition shall be void. The provisions of subsections (2) to (5) above shall be applied *mutatis mutandis* to pledging.

(7) In the case of attachments of claims to refunds or rebates, the revenue authority which decided or must decide on the claim shall be deemed to be the third party debtor within the meaning of sections 829 and 845 of the Code of Civil Procedure.

Section 47 Expiration

Claims arising from the tax debtor-creditor relationship shall expire, in particular, through payment (sections 224, 224a and 225), set-off (section 226), remission (sections 163 and 227), termination of a limitation period (sections 169 to 171 and 228 to 232) and due to fulfilment of the condition where claims are subject to a condition subsequent.

Section 48 Payment by third parties, liability of third parties

(1) Payments to the revenue authority arising from the tax debtor-creditor relationship may also be effected by third parties.

(2) Third parties may contractually agree to guarantee payments within the meaning of subsection (1) above.

Section 49 Missing persons

When a person is missing and presumed dead, the day at the close of which the decision on the declaration of death of the missing person becomes final and incontestable shall be deemed the day of death for taxation purposes.

Section 50 Expiration and unconditionality of excise duty, transfer of the conditional excise duty debt

(1) Where a tax privilege is granted pursuant to excise duty laws and subject to the condition that goods liable to excise duty must be used for a special purpose, the duty shall expire completely or partly in accordance with the relief as soon as the condition is fulfilled or where the goods perish without the tax having previously become unconditional.

(2) The conditional tax debt shall be transferred to the eligible acquirer if the goods are passed on to him for the intended purpose by the tax debtor before the condition has been fulfilled.

(3) The duty shall become unconditional

1. where the goods are used contrary to the intended purpose or cannot be used anymore for this purpose. Where it is impossible to determine the whereabouts of the goods, they shall be considered as not having been used for the intended purpose, unless the beneficiary provides evidence to the contrary,
2. in other cases stipulated by law.

Third Chapter Tax-privileged purposes

Section 51 General

(1) The following provisions shall apply where the Code grants tax privileges to a corporation on account of its serving directly and exclusively public-benefit, charitable or religious purposes (tax-privileged purposes). A corporation shall be understood to mean a corporation, association of persons or conglomeration of assets within the meaning of the Corporation Tax Act. Functional subdivisions (departments) of corporations shall not be treated as independent taxable entities.

(2) Where the tax-privileged purposes are achieved abroad, the tax privilege shall be conditional upon natural persons who have their residence or their habitual abode within the territory of the application of this Code being advanced or the activity of the corporation, alongside achieving the tax-privileged purposes, also being able to contribute to the reputation of the Federal Republic of Germany abroad.

(3) A tax privilege shall furthermore require that the corporation does not, pursuant to its statutes and in its actual management, advance efforts within the meaning of section 4 of the Federal Constitution Protection Act and does not contravene the concept of international understanding. In the case of corporations which are listed in the Federation's or a *Land's* report on the protection of the constitution as an extremist organisation, it shall be refutably assumed that the conditions of the first sentence above are not fulfilled. The revenue authority shall inform the authority responsible for the protection of the constitution of facts substantiating the suspicion that efforts within the meaning of section 4 of the Federal Constitution Protection Act or contraventions of the concept of international understanding.

Section 52 Public-benefit purposes

(1) A corporation shall serve public-benefit purposes if its activity is dedicated to the altruistic advancement of the general public in material, spiritual or moral respects. It shall not be deemed an advancement of the general public if the group of persons benefiting from such advancement is circumscribed, for instance by membership of a family or the workforce of an enterprise, or can never be other than small as a result of its definition, especially in terms of geographical or professional attributes. Advancement of the general public may not be contended merely because a corporation allocates its funds to a public-law entity.

(2) Subject to the provisions of subsection (1) above, the following shall be recognised as advancement of the general public:

1. the advancement of science and research;
2. the advancement of religion;
3. the advancement of public health and of public hygiene, in particular the prevention and control of communicable diseases, also by hospitals within the meaning of section 67, and of epizootic diseases;
4. the advancement of assistance to young and old people;
5. the advancement of art and culture;
6. the advancement of the protection and preservation of historical monuments;

7. the advancement of upbringing, adult education and vocational training including assistance for students;
8. the advancement of nature conservation and of landscape management within the meaning of the Federal Nature Conservation Act and the nature conservation acts of the *Länder*, of environmental protection, of coastal defence and of flood defence;
9. the advancement of public welfare, in particular of the purposes of the officially recognised voluntary welfare associations (section 23 of the Turnover Tax Implementing Ordinance), their subsidiary associations and their affiliated organisations and institutions;
10. the advancement of relief for people persecuted on political, racial or religious grounds, for refugees, expellees, ethnic German repatriates who migrated to the Germany between 1950 and 1 January 1993, ethnic German repatriates migrating to Germany after 1 January 1993, war victims, dependents of deceased war victims, war disabled and prisoners of war, civilian war disabled and people with disabilities as well as relief for victims of crime; the advancement of the commemoration of persecutees, war and disaster victims; the advancement of the tracing service for missing persons;
11. the advancement of life saving;
12. the advancement of fire prevention, occupational health and safety, disaster control and civil defence as well as of accident prevention;
13. the advancement of internationalism, of tolerance in all areas of culture and of the concept of international understanding;
14. the advancement of the protection of animals;
15. the advancement of development cooperation;
16. the advancement of consumer counselling and consumer protection;
17. the advancement of welfare for prisoners and former prisoners;
18. the advancement of equal rights for women and men;
19. the advancement of the protection of marriage and the family;
20. the advancement of crime prevention;
21. the advancement of sport (chess shall be considered to be a sport);
22. the advancement of local heritage and traditions;
23. the advancement of animal husbandry, of plant cultivation, of allotment gardening, of traditional customs including regional carnival, of the welfare of servicemen and reservists, of amateur radio, of aeromodelling and of dog sports;
24. the general advancement of democratic government in the territory of application of this Code; this shall not include endeavours which are solely in pursuit of specific individual interests of a civic nature or which are restricted to the local-government level;
25. the advancement of active citizenship in support of public-benefit, charitable or religious purposes.

To the extent that the purpose pursued by the corporation does not fall under the first sentence above, but the general public is correspondingly advanced altruistically in material, spiritual or moral aspects, this purpose may be declared as being for the public benefit. The highest revenue authorities of the *Länder* shall each designate a revenue authority within the

meaning of the Fiscal Administration Act which is responsible for decisions pursuant to the second sentence above.

Section 53 **Charitable purposes**

A corporation shall serve charitable purposes if its activity is dedicated to altruistic support for persons

1. who on account of their physical, mental or emotional state are dependent upon the help of others, or
2. whose means are not greater than four times the standard rate of social welfare assistance as defined in section 28 of the Social Security Code, Book XII; in the case of a single person or head of household, five times the standard rate shall apply instead of four times. This shall not apply to persons whose assets are sufficient to effect a lasting improvement in their upkeep and who may reasonably be expected to use those assets for such purpose. In the case of persons whose financial circumstances have been transformed by special reasons into a state of need, the means or assets may exceed the stated limits. Means for the purposes of this provision shall be
 - a) income as defined in section 2(1) of the Income Tax Act, and
 - b) other means destined or suited to the provision of subsistence which the single person or head of household and other members of the household have at their disposal. The means shall not include social welfare payments and maintenance payments pursuant to the Social Security Code, Book II, and payments up to the level of social welfare to persons who, in the absence of such maintenance, would be entitled to draw social welfare or receive maintenance payments pursuant to the Social Security Code, Book II. Maintenance entitlements shall be taken into account.

Section 54 **Religious purposes**

- (1) A corporation shall serve religious purposes if its activity is dedicated to the altruistic advancement of a religious community which is a public-law entity.
- (2) These purposes shall include, in particular, building, decorating and maintaining houses of worship and religious community centres, conducting religious services, training priests, providing religious teaching, conducting burials and safeguarding the remembrance of the dead, also administering church assets, remunerating members of the clergy, church officials and servants of the church, and providing old-age and disability pensions for these persons and their dependants.

Section 55 **Altruistic activity**

- (1) Advancement or support shall be provided altruistically if it does not primarily serve the corporation's own economic purposes, for instance commercial or other gainful purposes, and the following requirements are met:
 1. The funds of the corporation may be used only for the purposes set out in the statutes. Members or partners (members for the purposes of these provisions) may receive neither profit shares nor in their capacity as members any other allocations from the funds of the corporation. The corporation may use its funds neither for the direct nor for the indirect advancement or support of political parties.
 2. On termination of their membership or on dissolution or liquidation of the corporation, members may not receive more than their paid-up capital shares and the fair market value of their contributions in kind.

3. The corporation may not provide a benefit for any person by means of expenditure unrelated to the purpose of the corporation or disproportionately high remuneration.

4. Where the corporation is dissolved or liquidated or where its former purpose ceases to apply, the assets of the corporation in excess of the members' paid-up capital shares and the fair market value of their contributions in kind may be used only for tax-privileged purposes (dedication of assets). This requirement shall also be met if the assets are to be assigned to another tax-privileged corporation or to a legal person under public law for tax-privileged purposes.

5. The corporation shall in principle use its funds promptly for the tax-privileged purposes set out in its statutes. The use of funds for the acquisition or manufacture of assets serving the purposes set out in the statutes shall also constitute an appropriate use. Funds shall be deemed to have been used promptly where they are used for the tax-privileged purposes set out in the statutes no later than in the calendar or financial year following their accrual.

(2) In calculating the fair market value (subsection (1) numbers 2 and 4 above) the circumstances prevailing at the time at which the contributions in kind were made shall apply.

(3) The provisions relating to the members of the corporation (subsection (1) numbers 1, 2 and 4 above) shall apply in the case of foundations to the donors and their heirs, and, in the case of undertakings of a commercial nature of legal persons under public law, shall apply *mutatis mutandis* to the corporation with the proviso that for assets withdrawn at book value from business capital pursuant to section 6(1) number 4, fourth sentence, of the Income Tax Act the book value of the withdrawal replaces the fair market value.

Section 56 Exclusivity

Exclusivity shall be deemed to exist if the sole pursuit of a corporation is the tax-privileged purposes set out in the statutes.

Section 57 Directness

(1) A corporation shall pursue the tax-privileged purposes set out in the statutes directly if the corporation itself achieves these purposes. This may also be achieved by aides if, in terms of the circumstances of the case, in particular in terms of the legal and actual relationship between the corporation and the aide, the activity of the aide is to be regarded as activity by the corporation itself.

(2) A corporation in which tax-privileged corporations are combined shall be deemed equivalent to a corporation directly pursuing tax-privileged purposes.

Section 58 Activities having no detrimental effect on tax privilege

Tax-privileged status shall not be precluded by

1. a corporation procuring funds for the achievement of the tax-privileged purposes of another corporation or for the achievement of tax-privileged purposes by a legal person under public law; the procurement of funds for a private corporation subject to unlimited tax liability shall be conditional upon that corporation itself having tax-privileged status,

2. a corporation assigning part of its funds to another tax-privileged corporation or to a legal person under public law to be used for tax-privileged purposes,

3. a corporation making available its workforce to other persons, enterprises, organisations or a legal person under public law for tax-privileged purposes,

4. a corporation making available premises belonging to it to another tax-privileged corporation or a legal person under public law to be used for tax-privileged purposes,
5. a foundation using a part not exceeding one third of its income for the appropriate upkeep of the donor and his or her near relatives, to maintain their graves and to honour their memory,
6. a corporation transferring all or part of its funds to a reserve, provided that this is necessary to enable it to conduct the sustained pursuit of the tax-privileged purposes set out in the statutes,
7.
 - a) a corporation transferring to a voluntary reserve not more than one third of the excess of revenue over asset management expenses and additionally not more than ten per cent of its other funds destined for prompt use pursuant to section 55(1) number 5,
 - b) a corporation accumulating or using in the year of accrual funds to acquire partnership rights to maintain the percentage share of investments in incorporated companies; these amounts shall be credited to the reserves permissible in the same year or in future in accordance with a) above,
8. a corporation holding social events which are of secondary significance in comparison with its tax-privileged activity,
9. a sports association promoting paid in addition to unpaid sporting activities,
10. a foundation set up by a political subdivision making grants to commercial undertakings to achieve its tax-privileged purposes,
11. a corporation transferring the following funds to its assets:
 - a) donations by reason of death if the decedent did not stipulate use for the current expenditure of the corporation,
 - b) donations which the donor expressly states are to be used to equip the corporation with assets or to increase the assets,
 - c) donations received in response to an appeal by the corporation if it is evident from the appeal that donations are solicited to increase the assets,
 - d) donations in kind which by their nature form part of the assets,
12. a foundation transferring to its assets in whole or in part in the year of its establishment and in the two following calendar years surpluses from the management of assets and gains from economic activities (section 14).

Section 59

Preconditions for tax privileges

Tax privileges shall be granted if it is stated in the statutes, the act of foundation or other articles of association (statutes for the purposes of these provisions) the purpose the corporation pursues, that this purpose fulfils the requirements of sections 52 to 55 and that it is pursued exclusively and directly; actual management activity must conform to these statute provisions.

Section 60

Requirements to be met by the statutes

(1) The purposes set out in the statutes and the means by which they are to be achieved shall be so precisely defined as to ensure that it can be ascertained on the basis of the

statutes whether the preconditions for tax privileges have been fulfilled. The statutes shall contain the criteria referred to in Annex 1.

(2) The statutes shall conform to the prescribed requirements, in respect of corporation tax and trade tax, during the entire assessment period, and, in respect of other taxes, at the time the tax liability arises.

Section 61

Dedication of assets in the statutes

(1) A sufficient dedication of assets for tax purposes (section 55(1) number 4) shall be deemed to exist if the purpose for which the assets are to be used if the corporation is dissolved or liquidated or if its former purpose ceases to apply is so precisely defined in the statutes as to ensure that it can be ascertained on the basis of the statutes whether such purpose is tax-privileged.

(2) (rescinded)

(3) If the provision on the dedication of assets is subsequently amended so that it no longer conforms to the requirements of section 55(1) number 4 it shall be deemed from the outset to have been insufficient for tax purposes. Section 175(1), first sentence, number 2 shall be applied with the proviso that tax assessment notices may be issued, cancelled or amended insofar as they relate to taxes which have arisen within the ten calendar years preceding the amendment of the provision on the dedication of assets.

Section 62

(rescinded)

Section 63

Requirements to be met by actual management activity

(1) The actual management of the corporation shall be directed towards the exclusive and direct achievement of the tax-privileged purposes and shall conform to the provisions on the requirements for tax privileges contained in the statutes.

(2) Section 60(2) shall apply *mutatis mutandis* in respect of the actual management activity and section 61(3) in respect of a breach of the stipulated dedication of assets.

(3) The corporation shall show by way of orderly records of its revenue and expenditure that the actual management activity conforms to the provisions of subsection (1) above.

(4) If the corporation has collected funds without the requirements of section 58 numbers 6 and 7 having been met, the tax office may set the corporation a time limit for the use of the funds. The actual management activity shall be deemed to conform with the provisions of subsection (1) above if the corporation uses the funds for tax-privileged purposes within such time limit.

Section 64

Taxable economic activities

(1) If the law precludes tax privileges to the extent that an economic activity (section 14) is carried on, the corporation shall forfeit the tax privilege for the bases of taxation (income, turnover, assets) attributable to such economic activity insofar as the economic activity is not a dedicated activity (sections 65 to 68).

(2) If the corporation carries on several economic activities which are not dedicated activities (sections 65 to 68), these shall be treated as a single economic activity.

(3) The bases of taxation attributable to economic activities which are not dedicated activities shall not be subject to corporation tax and trade tax if the total annual income including turnover tax from these economic activities does not exceed 35,000 euros.

(4) The subdivision of a corporation into several independent corporations for the purpose of benefiting more than once from the tax privilege pursuant to subsection (3) above shall constitute an abuse of legal options for tax planning schemes within the meaning of section 42.

(5) Surpluses subject to corporation tax and trade tax realised from the liquidation of used materials obtained free of charge, unless realised by a selling agency permanently maintained for that purpose, may be estimated up to the level of the conventional net profit in the respective branch of business.

(6) In the case of the following taxable economic activities, taxation may be based on a profit of 15 per cent of income:

1. publicity for enterprises undertaken in connection with tax-privileged activity including dedicated activities,
2. totalisator operations,
3. second fractionation stage of the blood donor services.

Section 65 Dedicated activity

A dedicated activity shall be deemed to exist where

1. the overall design of the economic activity is directed towards achieving the tax-privileged purposes of the corporation as set out in the statutes,
2. such purposes can be achieved only by way of such activities, and
3. the economic activity does not enter into competition with non-privileged activities of the same or similar type to a greater extent than necessary for achieving the tax-privileged purposes.

Section 66 Welfare

(1) A welfare institution shall carry on a dedicated activity if it is especially directed towards serving the persons designated in section 53.

(2) Welfare shall be the organised care of distressed or endangered fellow humans undertaken not for gain but for the public benefit. Such care may extend to ensuring health, moral, educational or economic welfare and may serve preventive or remedial purposes.

(3) A welfare institution shall be especially directed towards serving the persons designated in section 53 if such persons benefit from at least two thirds of its disbursements and other services. Section 67 shall apply in the case of hospitals.

Section 67 Hospitals

(1) A hospital covered by the Hospital Fees Act or the Federal Ordinance on Hospital and Nursing Charges shall carry on dedicated activity if not less than 40 per cent of hospital days or calculation days each year is attributable to patients for whom only rates for general hospital services are charged (section 7 of the Hospital Fees Act, section 10 of the Federal Ordinance on Hospital and Nursing Charges).

(2) A hospital not covered by the Hospital Fees Act or the Federal Ordinance on Hospital and Nursing Charges shall carry on dedicated activity if not less than 40 per cent of hospital days or calculation days each year is attributable to patients for whom no higher charge for hospital services is made than that referred to in subsection (1) above.

Section 67a Sporting events

(1) Sporting events conducted by a sports association shall constitute dedicated activity if the total annual income including turnover tax does not exceed 35,000 euros. The sale of food and drinks and the publicity measures shall not form part of the sporting events.

(2) Up to the time at which the corporation tax assessment notice becomes unappealable, the sports association may declare to the tax office that it waives the application of the first

sentence of subsection (1) above. This declaration shall be binding upon the sports association for not less than five assessment periods.

(3) Where the application of the first sentence of subsection (1) above is waived, sporting events conducted by a sports association shall constitute dedicated activity if

1. no members of the association taking part receive from the association or from a third party remuneration or other benefits for their sporting activity or for the use of their persons, their names, their pictures or their sporting activity for publicity purposes apart from an expense allowance, and

2. no other sportspersons taking part receive from the association or from a third party in collaboration with the association remuneration or other benefits for taking part in the event apart from an expense allowance.

Other sporting events shall constitute a taxable economic activity. This shall not preclude tax privileges if the remuneration or other benefits are paid exclusively from economic activities which are not dedicated activities, or by third parties.

Section 68 **Specific dedicated activities**

The following shall also constitute dedicated activities:

1.
 - a) old people's homes, old people's residential and nursing homes, convalescent homes and services for the provision of meals if especially directed towards serving the persons designated in section 53 (section 66(3)),
 - b) kindergartens, residential homes for children, young persons and students, temporary hostels for schoolchildren in rural areas and youth hostels,
2.
 - a) agricultural and horticultural undertakings serving to ensure the self-sufficiency of corporations and hence the proper nutrition of and adequate provision for institutional residents,
 - b) other organisations necessary for the self-sufficiency of corporations such as joinery and metalworking shops,

if the supplies and other services provided by such organisations to third parties do not exceed 20 per cent of the total of supplies and other services provided by the undertaking, including those provided to the corporation itself,
3.
 - a) workshops for the disabled which are eligible for aid in accordance with the provisions of the Social Security Code, Book III, and which provide employment for persons who on account of their disabilities are unable to obtain work in the general labour market;
 - b) organisations providing employment and work therapy where disabled persons undergo treatment on account of a doctor's indication and without having an employment relationship with the supporting institution of the therapeutic facility in order to rebuild basic physical or psychological functions with the aim of reintegrating such persons into everyday life or of developing, advancing and training the specific skills and abilities necessary for participating in working life, and
 - c) integrative projects within the meaning of section 132(1) of the Social Security Code, Book IX, if not less than 40 per cent of the employees are

particularly affected, severely disabled persons within the meaning of section 132(1) of the Social Security Code, Book IX,

4. organisations maintained to provide welfare for the blind and for physically disabled persons,
5. organisations for foster care and voluntary upbringing assistance,
6. lotteries and raffles approved by the authorities responsible if the net return is directly and exclusively used to advance public-benefit, charitable or religious purposes,
7. cultural institutions such as museums and theatres and cultural events such as concerts and art exhibitions; this shall not include the sale of food and drink,
8. adult education centres and other institutions insofar as they themselves conduct lectures, courses and other events of an academic or instructional nature; this shall also apply to the extent that the institutions themselves provide board and accommodation for persons attending such events,
9. scientific and research institutions whose supporting institution is funded predominantly by allocations from the public sector or from third parties or from asset management. Contract research shall also serve science and research purposes. Activities restricted to the application of established scientific knowledge, the assumption of project sponsoring and economic activities not linked to research shall not constitute dedicated activity.

Fourth Chapter Liability

Section 69

Liability of the representative

The persons referred to in sections 34 and 35 shall be liable where claims arising from the tax debtor-creditor relationship (section 37) are not determined or satisfied or not determined or satisfied in time due to a breach of the duties imposed on them, wilfully or through gross negligence, or where, as a result, tax rebates or refunds are paid in the absence of legal grounds. This liability shall also include any late-payment penalties payable as a result of the breach of duty.

Section 70

Liability of the person represented

(1) Where, in fulfilling their duties, the persons referred to in sections 34 and 35 evade taxes or understate taxes through gross negligence or are involved in tax evasion and, as a result, owe taxes or become liable, the persons represented, unless they are tax debtors, shall be liable for the taxes understated due to the crime and for the tax advantages wrongfully granted.

(2) Subsection (1) above shall not be applied to crimes committed by legal representatives of individuals if the individual's wealth has not increased as a result of the crime committed by the representative. The same shall apply where the persons represented carefully selected and supervised the person who evaded taxes or understated taxes through gross negligence.

Section 71

Liability of tax evaders and persons receiving, holding or selling goods obtained by tax evasion

Whoever evades taxes or receives, holds or sells goods obtained by tax evasion or participates in such crime shall be liable for the taxes understated, the tax advantages wrongfully granted and the interest due in accordance with section 235 of this Code.

Section 72

Liability for breaches of the obligation on the authenticity of accounts

Whoever contravenes the provisions of section 154(3) wilfully or due to gross negligence shall be liable to the extent that this contravention is detrimental to the realisation of claims arising from the tax debtor-creditor relationship.

Section 73

Liability in the case of fiscal unity⁴

A controlled company shall be liable for such taxes payable by the controlling company for which their fiscal unity is of relevance with regard to tax purposes. Entitlements to the reimbursement of tax rebates shall be equivalent to these taxes.

⁴ *Organschaft*, i.e., the German system under which a company with its own legal personality (*Organgesellschaft*) is controlled by another company (*Organträger*) and dependent upon the latter financially, economically and operationally. Both companies are treated as one for tax purposes.

Section 74

Liability of the owner of objects

(1) Where objects serving the purposes of an enterprise are not owned by the trader but by a person holding a substantial interest in the enterprise, the owner of the objects shall be liable with such objects for those taxes payable by the enterprise where tax liability is based on operation of the enterprise. However, this liability shall only extend to those taxes which became chargeable while the substantial interest existed. Entitlements to the reimbursement of tax rebates shall be equivalent to these taxes.

(2) Persons shall be deemed to hold a substantial interest in the enterprise if they directly or indirectly hold an interest of more than a quarter of the share or nominal capital or of the assets of the enterprise. Persons exercising a controlling influence on the enterprise and contributing by their behaviour to the non-payment of taxes due within the meaning of the first sentence of subsection (1) above shall also be deemed to hold a substantial interest.

Section 75

Liability of the acquirer of a business

(1) Where ownership of an enterprise or a business managed separately within an enterprise structure is transferred as a whole, the acquirer shall be liable for taxes where tax liability is based on operation of the enterprise, and for tax-deductible amounts, provided that the taxes have arisen after the beginning of the last calendar year before the transfer and that they are assessed or declared before expiry of one year after registration of the business by the acquirer. Liability shall be limited to the assets acquired. Entitlements to the reimbursement of tax rebates shall be equivalent to taxes.

(2) Subsection (1) above shall not apply to acquisitions from an insolvency estate or to acquisitions in enforcement proceedings.

Section 76

Liability in rem

(1) Goods liable to excise, import or export duty shall serve as a guarantee for the taxes due on those goods (liability *in rem*), irrespective of any third-party rights.

(2) Unless otherwise stipulated, liability *in rem* shall arise for goods subject to excise, import or export duty upon their entry into the territory of application of this Code, for goods subject to excise duty also upon their production or manufacture.

(3) As long as the tax has not been paid, the revenue authority may seize the goods. Seizure of the goods may also be effected by prohibiting the person with custody of the goods from disposing of them.

(4) Liability *in rem* shall expire as soon as the tax debt expires. It shall also expire as soon as the seizure is lifted or the goods are released for home use with the consent of the revenue authority.

(5) The liability *in rem* shall not be enforced if the authorised person has lost the goods, if the goods subject to excise duty are taken into a manufacturing business or if the goods subject to import or export duty are assigned a customs-approved treatment or use.

Section 77

Obligation to tolerate

(1) Whoever is legally obliged to pay a tax out of funds they manage shall to this extent be obliged to tolerate enforcement against these assets.

(2) The owner of real property shall tolerate execution against this property on account of a tax based on real property as a public charge. Whoever is registered as owner in the Land Register shall be deemed to be the owner as far as the revenue authority is concerned. The right of the unregistered owner to raise the objections against the public charge to which he is entitled shall remain unaffected.

Third Part

General rules of procedure

First Chapter

Procedural principles

1st Subchapter

Participation in the proceedings

Section 78

Participants

Participants shall be

1. those making and opposing an application,
2. those to whom the revenue authority intends to direct or has directed the administrative act,
3. those with whom the revenue authority intends to conclude or has concluded a contract under public law.

Section 79

Capacity to act

(1) The following shall be capable of acting in administrative proceedings:

1. natural persons capable of contracting under civil law,
2. natural persons whose capacity to contract is limited under civil law, to the extent that they are recognised with regard to the subject matter of the proceedings as being capable of contracting under civil law or capable of acting under public law,
3. legal persons, associations and conglomerations of assets represented by their legal representatives or specially appointed individuals,
4. authorities represented by their heads, or representatives or persons appointed by them.

(2) Where there is a reservation of consent pursuant to section 1903 of the Civil Code regarding the subject-matter of the proceedings, a person with capacity to contract under the care of a custodian shall be deemed capable of acting in administrative proceedings only insofar as he may act, under the provisions of civil law, without the consent of the custodian, or he is recognised as being capable of acting under the provisions of public law.

(3) Sections 53 and 55 of the Code of Civil Procedure shall apply accordingly.

Section 80

Authorised representatives and advisers

(1) A participant may cause himself to be represented by a person authorised for that purpose. The authorisation shall empower the person to whom it is given to take all actions related to the administrative proceedings except where its terms indicate otherwise; it shall not confer on those to whom it is granted the right to receive tax refunds or tax rebates. The authorised representative shall provide written evidence of his authorisation upon request. Any revocation of authorisation shall only take effect with respect to the authority when it is received by it.

(2) Authorisation shall be cancelled neither by the death of the person granting such authorisation, nor by a change in his capacity to act or in his legal representation; when however appearing in administrative proceedings on behalf of the legal successor, the authorised representative shall upon request furnish written evidence of his authorisation.

(3) Where a person is appointed to act as authorised representative in proceedings, he shall be the person with whom the authority deals. The authority may approach the actual participant to the extent that he is obliged to cooperate. Where the revenue authority does approach the participant, the authorised representative is to be informed.

(4) A participant may appear in negotiations and discussions with an adviser. Any points made by the adviser shall be deemed to have been put by the participant except where the latter contradicts them without undue delay.

(5) Authorised representatives and advisers shall be rejected where they provide professional assistance in tax matters without due authorisation; this shall not apply to notaries and patent agents.

(6) Authorised representatives and advisers may be refused permission to make submissions if they are unsuitable to do so; they may be refused permission to make a verbal submission only if they are not capable of appropriate submission. This shall not apply to natural persons referred to in section 3 number 1 and section 4 numbers 1 and 2 of the Tax Consultancy Act.

(7) Authorised representatives and advisers whose authority to provide professional assistance in tax matters is governed by section 3 number 4 of the Tax Consultancy Act may be rejected if they are not suitably qualified to provide professional assistance in tax matters. The revenue authority may request the authorised representatives and advisers referred to in the first sentence above to produce evidence of their suitable qualifications. Authorised representatives or advisers shall be presumed to be suitably qualified where they are

1. natural persons who exercise in another country a profession similar in terms of training and powers to the professions referred to in section 3 number 1 of the Tax Consultancy Act and if the conditions for the pursuit of the profession essentially satisfy the requirements of the Tax Consultancy Act;

2. associations having board members, managing directors, personally liable partners, members or other shareholders, the majority of whom exercise in another country a profession similar in terms of training and powers to the professions referred to in section 3 number 1 of the Tax Consultancy Act and who, in addition, essentially fulfil the requirements for the pursuit of the professional activity as laid down in the Tax Consultancy Act.

(8) Refusal of permission under subsections (5) and (6) above shall also be made known to the participant whose authorised representative or adviser is refused permission. Acts relating to the proceedings undertaken by the authorised representative or adviser after such refusal of permission shall be invalid.

Section 81

Official appointment of a representative

(1) Where no representative is appointed, the custodianship court shall, at the request of the revenue authority, appoint a suitable representative

1. for a participant whose identity is unknown,

2. for an absent participant whose abode is unknown or who is prevented from looking after his affairs,
3. for a participant without abode within the territory of application of this Code who fails to comply with the revenue authority's request to nominate a representative within the period set,
4. for a participant who, as a result of mental illness or physical, mental or emotional disability, is not capable of taking part personally in the administrative process,
5. with respect to ownerless items to which the proceedings refer, in order to protect the rights and obligations arising in relation to such items.

(2) Competency over the appointment of the representative shall lie with the custodianship court in the cases referred to in subsection (1) number 4 above and, in the case of a participant not of full age, with the family court, in whose district the participant has his habitual abode (section 272(1) number 2 of the Act on the Procedure in Family Matters and in Matters of Non-Contentious Jurisdiction); in all other respects, the competent court shall be that in whose district the revenue authority making the request is located.

(3) The representative shall be entitled to claim from the legal entity of the revenue authority requesting his appointment a reasonable remuneration and refund of his cash outlay. The revenue authority may require the person represented to refund its expenses. It shall determine the amount of remuneration and ascertain the amount of expenditure and costs.

(4) In the cases referred to in subsection (1) number 4 above, the appointment and office of representative shall be governed by the provisions on custody; in all other respects, the provisions on tutelage shall apply accordingly.

2nd Subchapter

Exclusion and rejection of public officials and other persons

Section 82

Persons excluded

(1) The following persons may not act on behalf of a revenue authority in administrative proceedings:

1. whoever is himself a participant,
2. whoever is a relative (section 15) of a participant,
3. whoever by virtue of a law or authorisation represents a participant in general or in the specific administrative proceedings,
4. whoever is a relative (section 15) of a person who provides assistance in tax matters to a participant in the proceedings,
5. whoever is employed by a participant and receives remuneration from him, or is active on his board of management, supervisory board or similar body; this shall not apply to a person whose employing body is a participant,
6. whoever, outside his official capacity, has furnished an opinion or otherwise been active in the matter.

Anyone who may benefit or suffer a disadvantage directly as a result of the action or the decision shall be deemed equal to the participant. This shall not apply when the benefit or disadvantage is based only on the fact that someone belongs to an occupational group or segment of the population whose joint interests are affected by the matter.

(2) Whoever is excluded under subsection (1) above may undertake non-deferrable measures in cases of imminent danger.

(3) Where a member of a committee considers himself to be excluded, or where there is doubt as to whether the provisions of subsection (1) above apply, the chairman of the

committee shall be informed. The committee shall decide on the matter of exclusion. The person concerned shall not participate in the decision. The excluded member may not attend further discussions or be present when decisions are taken.

Section 83
Fear of bias

- (1) Where grounds exist to justify suspicions against the impartiality of the public official, or if a participant maintains that such grounds exist, the public official shall inform the head of the authority or the person appointed by him and shall at his request refrain from participating. Where the fear of bias relates to the head of the authority, the supervisory authority shall issue this order to the extent that the head of the authority does not refrain from participating of his own accord.
- (2) Section 82(3) shall apply *mutatis mutandis* to members of a committee.

Section 84
Rejection of members of a committee

Any participant may reject a member of a committee participating in administrative proceedings who is not entitled to take part in the administrative proceedings (section 82) or against whom there is a fear of bias (section 83). A rejection made before the oral hearing shall be explained in writing or for record. The explanation shall not be permissible if the participant has attended the oral hearing without asserting the reason for rejection known to him. The decision on the rejection shall be governed by section 82(3), second to fourth sentences. The decision on the motion for rejection may only be contested jointly with the decision concluding the proceedings before the committee.

3rd Subchapter
Taxation principles, evidence

I. General

Section 85
Taxation principles

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.

Section 86
Commencement of proceedings

The revenue authority shall decide at its duty-bound discretion whether and when it instigates administrative proceedings. This shall not apply when the revenue authority by law

1. must act *ex officio* or upon application,
2. may only act upon application and no such application is submitted.

Section 87
Official language

- (1) The official language shall be German.
- (2) Where applications are made to a revenue authority in a foreign language, or petitions, records, documents, certificates or other documents are filed in a foreign language, the revenue authority may require that a translation be provided without undue delay. In justified cases, the revenue authority may require submission of a notarised translation or a translation by a publicly authorised or sworn interpreter or translator. Where the required translation is not furnished without undue delay, the revenue authority may itself arrange for a translation at the expense of the participant. Where the revenue authority has availed itself

of the services of interpreters or translators, these shall receive remuneration in corresponding application of the Judicial Remuneration and Compensation Act.

(3) Where a notice, application or statement of intent is made with the intention of fixing a period within which the revenue authority is to act in a certain manner, and where these are received in a foreign language, the period shall commence only at that point in time at which a translation is available to the revenue authority.

(4) Where a notice, application or statement of intent received in a foreign language is made with the intention of fixing a period for a participant vis-à-vis the revenue authority, of enforcing a claim under public law or requiring the fulfilment of an action, the notice, application or statement of intent shall be deemed to have been received on the date of their receipt by the revenue authority, where at the revenue authority's request a translation is provided within a suitable period to be fixed by the revenue authority. Otherwise, the moment of receipt of the translation shall be deemed definitive, unless international agreements provide otherwise. Reference shall be made to such legal consequence when the period is being fixed.

Section 87a

Electronic communication

(1) The transmission of electronic documents shall be permissible provided that the recipient provides this possibility. An electronic document shall be deemed as having been received as soon as the intended receiving entity has recorded it in a format which is capable of being processed by the addressee. Where the revenue authority transmits information which is subject to tax secrecy, the information shall be encrypted using an appropriate technique.

(2) Where an electronic document transmitted to the revenue authority is not suitable for processing by it, it shall inform the sender without undue delay, stating the technical specifications that apply. Where a recipient claims that he is unable to process the electronic document transmitted by the revenue authority, it shall send it to him anew in a suitable electronic format or as a written document.

(3) Where it is stipulated by law that applications, declarations or communications to the revenue authorities be in written form, this may be replaced by electronic form unless otherwise required by law. In this event, the electronic document shall bear a qualified electronic signature in accordance with the Electronic Signature Act. Signing with a pseudonym shall not be permissible.

(4) Where it is stipulated by law that administrative acts or other measures of the revenue authorities be in written form, this may be replaced by electronic form unless otherwise required by law. In this event, the electronic document shall bear a qualified electronic signature in accordance with the Electronic Signature Act. The first sentence above shall apply to minutes to be drawn up by the revenue authority only to the extent expressly permitted by law.

(5) Where an electronic document constitutes an item of evidence, the evidence shall be deemed as having been furnished by submitting or transmitting the file; if neither the taxpayer nor the revenue authority is in possession of the file, section 97(1) and (3) shall apply accordingly. The apparent authenticity, as verified pursuant to the Electronic Signature Act, of a document transmitted with a qualified electronic signature in accordance with the Electronic Signature Act may only be called into question by way of facts which lead to serious doubt as to whether the document was transmitted in keeping with the will of the owner of the signature key.

(6) In the cases referred to in subsections (3) and (4) above, the Federal Ministry of Finance may permit by way of ordinance with the consent of the Bundesrat that, in addition to the qualified electronic signature, another secure method which guarantees the authenticity and the integrity of the transmitted electronic document may be used up to 31 December 2011. Agreement by the Bundesrat shall not be required to the extent that excise duties with the exception of beer duty are concerned. The use of the other secure method shall be evaluated.

Section 88

Principle of investigation

(1) The revenue authority shall determine the facts of the case *ex officio*. It shall determine the type and scope of the investigation; it shall not be bound by the participants' submissions and motions to admit evidence. The extent of this obligation shall be determined by the circumstances of the individual case.

(2) The revenue authority shall take account of all circumstances of importance in an individual case, including those favourable to the participants.

(3) To ensure the uniform and lawful assessment and levying of taxes, the Federal Ministry of Finance may stipulate, by way of ordinance and subject to the consent of the Bundesrat, requirements regarding the type and scope of the investigations in the case of the use of automated mechanisms. Consent from the Bundesrat shall not be required to the extent that excise duties with the exception of beer duty are concerned.

Section 88a

Collection of protected data

To the extent required to ensure the uniform assessment and levying of taxes, the revenue authorities may collect and use in files or records data protected under section 30, including for future proceedings within the meaning of section 30(2) numbers 1(a) and (b), in particular to obtain comparable values. Use of the data shall only be permissible for proceedings within the meaning of section 30(2) numbers 1(a) and (b).

Section 89

Guidance, information

(1) The revenue authority shall solicit the filing of statements, the submission of applications or the correction of statements or applications when it is clear that these were not filed or submitted, or filed or submitted incorrectly, due to an error or a lack of knowledge. It shall, where necessary, give information regarding the rights and duties of participants in the administrative proceedings.

(2) The tax offices and the Federal Central Tax Office may upon application provide advance ruling on the treatment for tax purposes of precisely defined, as yet unrealised circumstances where this is of special interest in light of the significant tax implications. The revenue authority which would be the authority with local jurisdiction were the underlying circumstances referred to in the request to be realised shall be responsible for issuing the advance ruling. Where no revenue authority has jurisdiction under sections 18 to 21 for the applicant at the time the application is filed, jurisdiction shall lie with the Federal Central Tax Office for taxes administered by the revenue authorities of the Länder on behalf of the Federation, notwithstanding the second sentence above; in this case, the advance ruling shall also bind the revenue authority which is responsible at the time the underlying circumstances referred to in the ruling are realised. The Federal Ministry of Finance shall be authorised to stipulate, by way of ordinance issued with the approval of the Bundesrat, more precise conditions on the form of, content of and conditions for the application for advance ruling, and on the scope of its binding effect.

(3) Fees pursuant to subsections (4) and (5) below shall be charged for processing applications for advance ruling pursuant to subsection (2) above. The fee shall be payable by the applicant within one month of notification of assessment of the fee. The revenue authority may delay its decision on the application until the fee has been paid. Where an application for advance ruling is withdrawn before the revenue authority's decision is issued, the fee may be reduced.

(4) Fees shall be calculated on the basis of the value the advance ruling represents for the applicant (value of the object). The applicant should state the value of the object and the circumstances relevant to its determination in his application for advance ruling. Fees are to be calculated by the revenue authority on the basis of the value of the object as declared by the applicant insofar as this does not lead to an obviously incorrect resultant amount. Where the value of the object cannot be determined even by way of estimate, a time-related fee

shall be charged; this shall be 50 euros per half hour or portion thereof, the minimum charge being 100 euros.

(5) Where fees are based on the value of the object, the fee shall be determined in corresponding application of section 34 of the Court Fees Act. The value of the object shall be at least 5,000 euros.

Section 90

Obligation of participants to cooperate

(1) Participants shall be obliged to cooperate with the authorities in establishing the facts of the case. They shall discharge this obligation in particular by the full and truthful disclosure of the facts relevant for taxation and by indicating any evidence known to them. The extent of this obligation shall be determined by the circumstances of the individual case.

(2) Where circumstances relating to transactions effected outside the territory of application of this Code are to be established and subjected to the provisions of tax law, the participants shall clarify these circumstances and procure the necessary evidence. In doing so, they shall exhaust all legal and practical means available to them. Where there are objectively recognisable indications to assume that the taxpayer has business relations with financial institutions in a state or territory with which there is no agreement to provide information in accordance with Article 26 of the OECD Model Tax Convention on Income and on Capital in the version of 2005, or the state or the territory does not provide information to a comparable extent or is not willing to engage in a corresponding provision of information, the taxpayer shall at the revenue authority's request make a sworn statement affirming the correctness and completeness of the details provided by him and authorise the revenue authority to assert on his behalf, both in and out of court, the possible entitlement to information against the credit institutions named by the revenue authority; the sworn statement may not be compelled pursuant to section 328. A participant may not plead inability to clarify circumstances or to submit evidence when he, depending on the case, could, in structuring his circumstances, have afforded himself or have himself given the opportunity to do so.

(3) Where circumstances relate to transactions having a bearing on another country, the taxpayer shall keep records on the nature and content of his business relations with associated persons within the meaning of section 1(2) of the Foreign Tax Act. The obligation to keep records shall also extend to the economic and legal basis of any agreement on prices and other terms of business complying with the arm's-length principle with associated persons. In the case of exceptional business transactions, records shall be prepared without delay. The obligation to keep records shall apply accordingly to taxpayers who, for the purposes of domestic taxation, are obliged to allocate profits between their domestic enterprise and its foreign permanent establishment or to determine the profit of the domestic permanent establishment of their foreign enterprise. In order to ensure the uniform application of the law, the Federal Ministry of Finance shall be empowered with the consent of the Bundesrat by way of ordinance to determine the nature, content and extent of the records to be kept. The revenue authority should require the submission of records only for the purposes of conducting an external audit. Such submission shall be governed by section 97 with the proviso that subsection (2) of this provision shall not apply. It shall be done on request within a period of 60 days. Where records of exceptional business transactions are to be submitted, the period shall be 30 days. The period for submission may be extended in substantiated individual cases.

Section 91

Hearing participants

(1) Before an administrative act affecting the rights of a participant may be issued, he should be given the opportunity of commenting on the facts relevant to the decision. This shall apply particularly where there is to be a significant departure from the facts declared in the tax return to the detriment of the taxpayer.

(2) The hearing may be dispensed with when not required by the circumstances of an individual case, in particular when

1. an immediate decision appears necessary because of imminent danger or in the public interest,
2. the hearing would jeopardise the observance of a time limit vital to the decision,
3. there is not to be a divergence to a participant's disadvantage from the actual details he provided in an application or statement,
4. the revenue authority intends to issue a general order or similar administrative acts in large numbers or administrative acts using automated systems,
5. measures of enforcement are to be taken.

(3) The hearing shall not be conducted when there is an overriding public interest in the hearing not taking place.

Section 92 Evidence

The revenue authority shall use such evidence as it deems necessary at its duty-bound discretion to ascertain the facts of the case. In particular it may

1. gather information of all kinds from the participants and other persons,
2. consult experts,
3. procure certificates and files,
4. carry out inspections.

II. Evidence through information and expert opinion

Section 93

Obligation of the participants and other persons to provide information

(1) The participants and other persons shall provide the revenue authority with the information needed to ascertain facts which are of significance for taxation. This shall also apply to associations without legal capacity, conglomerations of assets, authorities and commercial enterprises of public-law entities. Persons other than the participants should be required to provide information only if clarification of the matter by the participants does not or is not likely to produce any results.

(2) The request for information shall indicate the matter about which information is to be provided and whether the information is required for the taxation of the person obliged to provide information or for the taxation of other persons. Requests for information shall be submitted in writing if the person obliged to provide information so requests.

(3) Information shall be provided truthfully and to the best of the knowledge and belief of the person obliged to provide information. Persons obliged to provide information who are unable to do so from memory shall consult the accounts, records, business documents and other documentation available to them and shall where necessary take notes from such documentation.

(4) The person obliged to provide information may do so in writing, electronically, orally or by telephone. The revenue authority may require information to be provided in writing if this is expedient for the matter in question.

(5) The revenue authority may stipulate that the person obliged to provide information does so on official premises in the form of an oral statement. They shall be entitled to do so in particular if information in writing has been demanded but not provided or if information provided in writing has not served to clarify the matter. The first sentence of subsection (2) above shall apply accordingly.

(6) Upon application by the person obliged to provide information, a written record shall be prepared of the oral statement made on official premises. This record shall include the names of persons present, the place, the date and the essential content of the information. It

should be signed by the public official to whom the oral statement is made and by the person obliged to provide information. A copy of the record shall be supplied to the participants.

(7) An automated retrieval of account details pursuant to section 93b shall only be permissible insofar as

1. the taxpayer applies for a tax assessment pursuant to section 32d(6) of the Income Tax Act, or
2. the investment income in the cases outlined in section 2(5b), second sentence, of the Income Tax Act are to be included

and the retrieval in these cases is necessary for the assessment of income tax or is necessary

3. for determining income pursuant to sections 20 and 23(1) of the Income Tax Act in assessment periods up to and including 2008, or
 4. for levying taxes regulated by federal law
- or
5. the taxpayer agrees.

In these cases the revenue authority or, in the cases outlined in section 1(2), the municipality, may submit a request to the Federal Central Tax Office asking it to retrieve from the credit institutions individual data contained in the files that are to be maintained under section 93b(1); in the cases outlined in the first sentence, numbers 1 to 4 above a request for retrieval may be made only where a request for information addressed to the taxpayer did not or is not likely to produce any results.

(8) The authorities responsible for administering

1. the basic allowance for jobseekers pursuant to the Social Security Code, Book II,
2. social welfare assistance pursuant to the Social Security Code, Book XII,
3. the promotion of education pursuant to the Federal Training Promotion Act,
4. the promotion of training for career advancement pursuant to the Upgrading Training Assistance Act, and
5. housing benefit pursuant to the Housing Benefit Act

may submit a request to the Federal Central Tax Office asking it to retrieve from the credit institutions the data referred to in section 93b(1) to the extent that this is necessary to verify fulfilment of eligibility conditions for claims and a previous request for information addressed to the persons concerned did not or is not likely to produce any results. Submission of a request for retrieval to the Federal Central Tax Office regarding the data referred to in section 93b(1) shall be permissible for other purposes only to the extent that this is expressly permitted by a federal law.

(9) Prior to submission of a request for retrieval pursuant to subsections (7) or (8) above, the person concerned shall be advised that account data may be retrieved; this may also be achieved by express information to this effect on official forms and in guidance notes. Once an account data retrieval has been conducted, the requesting party shall notify the person concerned that the retrieval has been conducted. Advice pursuant to the first half-sentence of the first sentence above and notification pursuant to the second sentence above shall not be provided to the extent that

1. they would endanger the proper discharge of the duties falling within the jurisdiction of the requesting party,

2. they would endanger public security or order or would otherwise result in disadvantages to the Federation or a *Land*, or
3. the fact that account data is retrieved must be kept secret pursuant to a legal provision or by its very nature, in particular owing to the overriding justified interests of a third party

and the interests of the person concerned must therefore be overridden; section 19(5) and (6) of the Federal Data Protection Act as published on 14 January 2003 (Federal Law Gazette I, p. 66), which was most recently amended by Article 1 of the Act of 22 August 2006 (Federal Law Gazette I, p. 1970), in the respective applicable version, shall apply accordingly unless otherwise stipulated by law.

(10) A request for retrieval pursuant to subsections (7) or (8) above and the result thereof shall be documented by the requesting party.

Section 93a

General obligation to disclose information

(1) To ensure taxation (section 85), the Federal Government may, by way of ordinance with the consent of the Bundesrat, oblige authorities and other public offices to inform the revenue authorities of –

1. administrative acts which result in a denial or reduction of tax privileges or permit those affected by the act to realise taxable income,
2. subsidies and similar incentive measures, and
3. indications of illegal work, of unauthorised provision of workers for temporary employment, or of unauthorised employment of non-nationals.

It may also be determined by way of ordinance that recipients of payments by authorities and other public offices as well as by public service broadcasters shall, with a view to facilitating the discharge of their record keeping and returns obligations, be informed of the total amount of the annual payments and of the revenue authorities' opinion as to the tax liabilities thus incurred; the competent revenue authority shall be informed of the recipient, the legal basis and the amount and timing of the payment. The obligations of the authorities, other public offices and the public service broadcasters to submit notifications, details and information and to provide mutual assistance on the basis of other provisions shall remain unaffected.

(2) Debt administrations, credit institutions, commercial enterprises of legal persons under public law within the meaning of the Corporation Tax Act, public joint ventures without sovereign jurisdiction, professional chambers and insurance companies shall be exempt from the obligation to disclose information.

(3) The ordinance shall state more precisely the entities providing the information, the obligation to notify the persons concerned, the information to be provided and the revenue authorities responsible for accepting receipt of the communication as well as provide for the scope, date and procedure of the communication. The ordinance may provide for exceptions to the obligation to disclose information, in particular in cases of minor tax importance.

Section 93b

Automated access to account details

(1) The data file which credit institutions are required to maintain under section 24c(1) of the Banking Act shall also be maintained for the purposes of retrievals pursuant to section 93(7) and (8).

(2) On request, the Federal Central Tax Office may in the cases outlined in section 93(7) and (8) retrieve from the credit institutions by automated search procedure individual data from the files to be maintained in accordance with subsection (1) above and transmit them to the requesting party.

(3) The requesting party shall be responsible for the permissibility of such data retrieval and transmission.

(4) Section 24c(1), second to sixth sentences, and 24c(4) to (8) of the Banking Act shall apply accordingly.

Section 94

Examination under oath

(1) Where the revenue authority considers it advisable in view of the importance of the evidence, or in order to ensure that the truth is told, that a person other than one of the participants swear an oath, the revenue authority may issue a request for examination under oath to the fiscal court within whose jurisdiction the person who is to take the oath resides or has his abode. Where the person who is to take the oath does not reside or has no abode within the jurisdiction of a fiscal court or of an especially established senate, the request for examination under oath may also be made to the local court responsible.

(2) The revenue authority shall specify the subject-matter of the examination and the names and addresses of the participants in its request. The court shall inform the participants and the requesting revenue authority of the relevant dates. The participants and the requesting revenue authority shall have the right to ask questions during the examination.

(3) The court shall decide as to the lawfulness of a refusal to give evidence or to take the oath.

Section 95

Sworn statement

(1) The revenue authority may require the participant to make a sworn statement to confirm the correctness of his account. A sworn statement should only be required where other means of establishing the truth are not available, have failed to produce any results or would require a disproportionate effort. A sworn statement may not be required of persons who are incapable of taking an oath pursuant to section 393 of the Code of Civil Procedure.

(2) The sworn statement shall be recorded in writing by the revenue authority. Persons authorised to make such a recording shall be the head of the authority, his permanent deputy and members of the civil service qualified to exercise the functions of a judge or who fulfil the requirements of section 110, first sentence, of the German Judiciary Act. The head of the authority or his permanent deputy may authorise in writing other members of the civil service to act generally in this capacity or for individual cases.

(3) The details, the correctness of which is to be confirmed, shall be recorded in writing and notified to the participant at least one week prior to the recording of the statement. The sworn statement shall consist in the participant's repeating the facts previously stated by him and making the following declaration: "I do solemnly affirm that to the best of my knowledge I have told nothing but the truth and have concealed nothing." Authorised representatives and advisers of the participant shall be entitled take part in the recording of the sworn statement.

(4) Prior to the recording of the sworn statement, the participant shall be advised of the meaning of the sworn statement and the consequences under criminal law of making an incorrect or incomplete statement. The fact that this has been done shall be included in the written record.

(5) The written record shall in addition contain the names of those present and the place and date of the record. The written record shall be read to the participant making the statement for his approval, or, upon request, shall be made available for him to inspect. The fact that this has been done shall be recorded and signed by the participant. The written record shall then be signed by the public official who received the sworn statement and by the recording clerk.

(6) Sworn statements may not be enforced pursuant to section 328 below.

Section 96

Enlistment of experts

(1) The revenue authority shall determine whether an expert shall be enlisted. Except in cases of imminent danger, the revenue authority shall inform the participants beforehand of who it intends to enlist as expert.

(2) An expert may be rejected by the participants for fear of bias where grounds exist to justify doubts as to his impartiality, or where it is feared that his work may infringe trade or business secrets or be prejudicial to the business activities of a participant. Notification of the rejection shall be asserted to the revenue authority without undue delay after the appointment of the expert has been communicated, or, at the latest, within two weeks and shall be accompanied by substantiation of the reasons for rejection. After that date, rejection shall only be permissible where it can be established credibly that the grounds for rejection could not have been asserted previously. The revenue authority which has appointed or intends to appoint the expert shall decide on the rejection. The motion for rejection shall not have the effect of delaying proceedings.

(3) The person appointed as an expert shall comply with the appointment if he has been publicly appointed to render opinions of the required kind, or if he publicly and commercially practices the science, art, or trade, the knowledge of which is a prerequisite for rendering an opinion, or if he has been publicly appointed or authorised to practice such profession. Whoever has informed the revenue authority of his willingness to furnish an opinion shall also be obliged to do so.

(4) Experts may refuse to furnish an opinion for fear of bias, indicating the reasons.

(5) Members of the civil service shall be called in as experts only if they have received the authorisation required under civil service law.

(6) Experts shall be alerted to the provisions on the protection of tax secrecy.

(7) Opinions shall routinely be furnished in writing. Oral opinions may also be permitted. Expert opinions may only be required to be supported by an administration of oath if the revenue authority considers this advisable in view of the importance of the expert opinion. Where the expert has previously taken an oath regarding the rendering of opinions of the required kind, a reference to the oath previously taken shall be sufficient; such reference may also be made in a written opinion. Otherwise, section 94 shall apply *mutatis mutandis* to the administration of the oath.

III. Documentary evidence and evidence by inspection

Section 97

Presentation of documents

(1) The revenue authority may request the participants and other persons to present accounts, records, business documents and other deeds and documents for inspection and examination. In this respect, the revenue authority shall indicate whether the documents are sought for the purpose of taxing the person required to present the documentation or for the purpose of taxing other persons. Section 93(1), second sentence, shall apply accordingly.

(2) Presentation of accounts, records, business documents and other deeds and documents shall as a rule only be requested if the person required to present the documentation has failed to furnish the information, if the information is insufficient, or if there are concerns as to the correctness of the information. These restrictions shall not apply to the participant where the participant claims tax benefits or where the revenue authority does not wish to conduct an external audit or, given the considerable tax implications, deems this necessary for an early resolution of the issue.

(3) The revenue authority may demand that the documentation referred to in subsection (1) above be presented on official premises or may inspect it at the premises of the person obliged to present the documentation if the latter has agreed to this or if the documents are unsuited for submission on official premises. Section 147(5) shall apply accordingly.

Section 98

Carrying out inspections

(1) Where the revenue authority carries out an inspection, the result shall be included in the records.

(2) Experts may be called in when the inspection is being carried out.

Section 99

Entry onto property and premises

(1) Public officials entrusted by the revenue authority with carrying out the inspection and experts called in pursuant to sections 96 and 98 above shall be authorised to enter during regular business and working hours properties, premises, ships, enclosed operating facilities and similar facilities, to the extent necessary in order to reach findings in the interest of taxation. The persons affected should be given sufficient advance notice. Living quarters may only be entered against the wishes of the occupier where this serves to avert acute dangers to public security and order.

(2) Measures pursuant to subsection (1) above may not be imposed for the purpose of searching for unknown objects.

Section 100

Presentation of valuables

(1) The participant and other persons shall on request present to the revenue authority valuables (money, securities, precious objects) to the extent necessary in the interest of taxation to establish their nature and value. Section 98(2) shall be applied.

(2) Presentation of valuables may not be ordered for the purpose of searching for unknown objects.

IV. Right of refusal to give information and to present documents

Section 101

Relatives' right of refusal to give evidence and to take an oath

(1) Relatives (section 15) of a participant may refuse to provide information unless they are themselves obliged to provide information on their personal tax affairs as participants or required to fulfil an obligation to provide information for a participant. Relatives shall be advised of their right to withhold information. It shall be mentioned in the record that such advice was provided.

(2) The persons referred to in subsection (1) above shall also have the right to refuse to support the information they provided by a sworn statement. The second and third sentences of subsection (1) above shall apply accordingly.

Section 102

Right to withhold information to protect certain professional secrets

(1) Other persons who may also refuse to provide information shall be:

1. clergymen, with regard to information that was entrusted to them or became known to them in their capacity as spiritual advisors,
2. members of the Bundestag, of a parliament of a *Land* or a second chamber, with regard to persons who in their capacity as members of these bodies confided to them facts or to whom they confided facts in this capacity, as well as to the facts themselves.
3.
 - a) defence counsels,
 - b) solicitors, patent agents, notaries, tax consultants, auditors, tax representatives, certified accountants,
 - c) doctors, dentists, psychological psychotherapists, psychotherapists specialising in the treatment of children and juveniles, pharmacists and midwives, with regard to information entrusted to them or which became known to them in their professional capacity,

4. persons who are or were professionally involved in the preparation, production or dissemination of periodically printed matter or radio broadcasts with regard to the author, contributor or source of contributions and documentation and with regard to information received by them in their professional capacity insofar as this concerns contributions, documentation and information for the editorial element of their activity; section 160 shall remain unaffected.

(2) The persons specified in subsection (1) numbers 1 to 3 above shall be deemed equal to their assistants and to persons who take part in the professional activity in preparation for the profession. The persons specified in subsection (1) numbers 1 to 3 above shall decide whether these assistants should exercise their right to refuse to give information, unless such a decision cannot be effected within a foreseeable period.

(3) The persons specified in subsection (1) number 3 above may not refuse to give information if they have been released from their obligation of secrecy. Such release from the obligation of secrecy shall also apply to the assistants.

(4) The statutory notification duties applying to notaries and the obligations to disclose information applying to the persons referred to in subsection (1) number 3(b) above pursuant to the Interest Information Ordinance of 26 January 2004 (Federal Law Gazette I, p. 128), which was most recently amended by Article 4(28) of the Act of 22 September 2005 (Federal Law Gazette I, p. 2809), in the respective applicable version, shall remain unaffected. Where notification duties apply, notaries shall also be obliged to furnish documents and further information.

Section 103

Right to withhold information for fear of prosecution for a crime or offence

Persons who are neither participants nor obliged to provide information for a participant may refuse to answer any questions the reply to which would subject them, or one of the relatives specified in section 15 above, to the risk of criminal prosecution or proceedings under the Act on Administrative Offences. They shall be advised of their right to withhold information. It shall be mentioned in the record that such advice was provided.

Section 104

Refusal to render opinion and to present documents

(1) To the extent that the disclosure of information may be refused, the rendering of opinion and the presentation of documents or valuables may be refused as well. Section 102(4), second sentence, shall remain unaffected.

(2) The presentation of documents and valuables which are kept for the participant may not be refused where the participant would be obliged to submit them, if held in his custody. Business records and other records kept for the participant shall also count as documents which are stored for him.

Section 105

Relationship between duty of public entities to present information and documents and their duty of secrecy

(1) The duty of secrecy imposed on authorities and other public entities, including the Bundesbank, state banks and debt administrations, as well as the organs and officials thereof, shall not apply with respect to their duty to present information and documents to the revenue authorities.

(2) Subsection (1) above shall not apply where authorities and the persons entrusted with postal services are obliged by law to respect the privacy of correspondence, posts and telecommunications.

Section 106

Limitation on the duty to present information and documents in the case of adverse effects on the public interest

It shall not be permissible to request that information or documents be furnished where the competent highest federal authority or the competent highest authority of a *Land* has stated that presenting such information or documents would result in serious disadvantages to the Federation or to a *Land*.

V. Compensation of persons obliged to provide information and experts

Section 107

Compensation of persons obliged to provide information and experts

Persons obliged to provide information and experts consulted by the revenue authority for the purposes of evidence shall, upon application, be compensated or remunerated in corresponding application of the Judicial Remuneration and Compensation Act. This shall not apply to participants or persons obliged to fulfil an obligation to provide information for a participant.

4th Subchapter

Time limits, deadlines, restitutio in integrum

Section 108

Time limits and deadlines

- (1) Sections 187 to 193 of the Civil Code shall apply accordingly to the calculation of time limits and the setting of deadlines inasmuch as subsections (2) to (5) below do not provide otherwise.
- (2) A time period set by an authority shall commence on the date following disclosure of the period except where the person concerned is informed otherwise.
- (3) Where the time limit would otherwise end on a Sunday, an official holiday or a Saturday, the time period shall end at the close of the next working day.
- (4) Where an authority has to fulfil a task only for a given period, this period shall end at the close of the last day thereof, even where this is a Sunday, an official holiday or a Saturday.
- (5) A deadline fixed by an authority shall be observed even if it falls on a Sunday, an official holiday or a Saturday.
- (6) Where a time limit is expressed in hours, Sundays, official holidays and Saturdays shall be included.

Section 109

Extension of time limits

- (1) Time limits for the filing of tax returns and time limits fixed by a revenue authority may be extended. Where such time limits have already expired, they may be extended retrospectively, particularly if it would be inequitable to allow the legal consequences resulting from expiration of the time limit to stand.
- (2) The revenue authority may make the extension of the time limit dependent upon the provision of collateral, or else combine it with a collateral clause under section 120.

Section 110

Restitutio in integrum

- (1) Where a person has through no fault of his own been prevented from observing a statutory time limit, he shall, upon application, be granted *restitutio in integrum*. The fault of a representative shall be deemed to be that of the person he represents.
- (2) The application shall be made within one month of the removal of the obstacle. The facts justifying the application are to be established credibly when the application is made or during the proceedings connected with the application. The neglected action shall be subsequently effected within the application period. Where this is done, *restitutio in integrum* may be granted even without application.
- (3) No application for *restitutio in integrum* may be filed and the neglected action cannot be subsequently effected following the expiration of one year from the end of the unobserved

time limit, except where it was impossible for this to be done within the period of a year for reasons of *force majeure*.

(4) The application for *restitutio in integrum* shall be decided upon by the revenue authority responsible for deciding on the matter of the neglected action.

5th Subchapter Legal and administrative assistance

Section 111 Administrative assistance obligations

(1) All courts and authorities shall be obliged to provide such administrative assistance as is necessary to execute the taxation process. Section 102 shall remain unaffected.

(2) It shall not be deemed administrative assistance when

1. authorities assist each other in the context of a relationship in which one is bound by the instructions of the other,
2. assistance consists in actions which already fall under the remit of the requested authority.

(3) This provision shall not apply to debt administrations, credit institutions and commercial enterprises of public-law entities.

(5) With respect to customs administration, the obligation to provide administrative assistance shall also apply to those enterprises serving public transport or the public movement of goods which have been specially appointed as auxiliary customs bodies by the Federal Ministry of Finance, and to the staff thereof.

(5) Sections 105 and 106 shall be applied accordingly.

Section 112 Preconditions for and limitations to administrative assistance

(1) A revenue authority may request administrative assistance in particular when

1. for legal reasons, it cannot itself perform the official act,
2. for practical reasons, especially for lack of personnel or equipment needed to perform the official act, it cannot itself perform the official act,
3. to carry out its tasks, it requires knowledge of facts which are unknown to it and which it cannot itself establish,
4. to carry out its tasks, it requires documents or other evidence in the possession of the requested authority,
5. it could only perform the official act at substantially greater expense than the requested authority.

(2) The requested authority may not provide assistance when it is unable to do so for legal reasons.

(3) The requested authority need not provide assistance when

1. another authority can provide the same assistance with much greater ease or at much less expense,
2. it could only provide such assistance at disproportionately great expense,
3. taking into account the tasks of the requesting revenue authority, such assistance would, as a result of its scope, seriously endanger the requested authority's capacity to meet its own duties.

(4) The requested authority may not refuse assistance on the grounds that it considers the request inappropriate for reasons other than those given in subsection (3) above, or that it considers the measures to be realised by the administrative assistance inappropriate.

(5) Where the requested authority does not consider itself obliged to provide assistance, it shall inform the requesting revenue authority accordingly. If the latter insists that administrative assistance be provided, the decision as to whether or not an obligation to furnish such assistance exists shall be taken by the responsible common supervisory authority or, where no such authority exists, the supervisory authority with subject-matter jurisdiction over the requested authority.

Section 113 **Selecting an authority**

Where there is more than one potential provider of administrative assistance, assistance shall where possible be requested of an authority of the lowest administrative level of the administrative branch to which the requesting revenue authority belongs.

Section 114 **Implementation of administrative assistance**

(1) The permissibility of the measure to be realised by administrative assistance shall be governed by the laws applying to the requesting revenue authority, the implementation of administrative assistance by the laws applying to the requested authority.

(2) The requesting revenue authority shall bear responsibility vis-à-vis the requested authority for the legality of the measure to be taken. The requested authority shall be responsible for implementing the administrative assistance.

Section 115 **Costs of administrative assistance**

(1) The requesting revenue authority shall not be required to pay the requested authority an administrative fee for the provision of assistance. Where, in individual cases, expenses exceed 25 euros, these shall be refunded to the requested authority upon request. Where authorities of the same legal entity assist each other, no expenses shall be reimbursed.

(2) Where in implementing administrative assistance the requested authority performs an official act for which a fee must be paid, it shall be entitled to any costs caused for this purpose by a third party (administrative fees, usage charges and expenses).

Section 116 **Reporting tax crimes**

(1) Courts and the authorities of the Federation, the *Länder* and municipal institutions of public administrations which are not revenue authorities must notify the Federal Central Tax Office or, to the extent known, the revenue authorities responsible for the criminal tax proceedings, of facts that have become known to them in the course of exercise of their office and that suggest that a tax crime has been committed. Unless it is clear that the revenue authorities responsible for the criminal tax proceedings have already been informed directly, the Federal Central Tax Office shall inform them of these facts. The revenue authorities responsible for the criminal tax proceedings, excluding the authorities of the federal customs administration, shall transmit the notification to the Federal Central Tax Office unless it is clear that the latter has already been informed directly.

(2) Section 105(2) shall apply accordingly.

Section 117 **International legal and administrative assistance in tax matters**

(1) The revenue authorities may avail themselves of international legal and administrative assistance subject to the provisions of German law.

(2) The revenue authorities may provide international legal and administrative assistance on the basis of nationally applicable international agreements, nationally applicable legal instruments of the European Communities and the EC Mutual Assistance Act.

(3) The revenue authorities may at their duty-bound discretion provide international legal and administrative assistance upon request in other cases where

1. reciprocity is assured,
2. the requesting state guarantees that the information and the documents supplied will be used only for the purposes of its taxation or criminal tax procedure (including offence proceedings) and that the information and the documents supplied will be disclosed only to such persons, authorities or courts as are concerned with the processing of the tax case or the prosecution of the tax crime;
3. the requesting state guarantees that it is prepared to avoid any double taxation on income, capital gains and assets by way of mutual agreement procedure through the appropriate adjustment of the basis of taxation, and
4. compliance with the request is not detrimental to the sovereignty, security, public order or other essential interests of the Federation or its political subdivisions and there is no danger of the person concerned in Germany incurring damage incompatible with the purpose of the legal and administrative assistance in the event that a trade, industrial, commercial or professional secret or a business process which is to be communicated on the basis of the request is disclosed.

To the extent that international legal and administrative assistance concerns taxes administered by the revenue authorities of the *Länder*, the Federal Ministry of Finance shall take a decision in mutual agreement with the competent highest authority of that *Land*.

(4) When implementing legal and administrative assistance, the powers of the revenue authorities and the rights and obligations of the participants and other persons shall be based on the provisions applying to taxes as defined in section 1(1). Section 114 shall apply accordingly. Section 91 shall apply accordingly with regard to domestic participants where information and documents are transmitted; notwithstanding section 91(1), domestic participants shall invariably be heard where legal and administrative assistance concerns taxes administered by the revenue authorities of the *Länder*, unless turnover tax is concerned or exceptional circumstances within the meaning of section 91(2) or (3) exist.

(5) For the purposes of promoting international cooperation, the Federal Ministry of Finance shall be authorised, by way of ordinance with the consent of the Bundesrat, to enact international agreements on mutual legal and administrative assistance in customs matters if the obligations thus assumed do not go beyond the scope of the international legal and administrative assistance permissible under this Code.

Second Chapter Administrative acts

Section 118

Definition of administrative act

An administrative act shall be any order, decision or other sovereign measure taken by an authority to regulate an individual case in the sphere of public law and intended to have a direct, external legal effect. A general order shall be an administrative act directed towards a group of people defined or definable on the basis of general characteristics or relating to the public law character of a matter or its use by the public at large.

Section 119

Clarity and form of an administrative act

- (1) An administrative act shall be sufficiently definite and precise in content.
- (2) An administrative act may be issued in written, electronic, oral or other form. An oral administrative act shall be confirmed in writing when there is a legitimate interest that this should be done and the person concerned requests this without undue delay.

(3) A written or electronic administrative act shall indicate the issuing authority. Furthermore, it shall contain the signature or name of the head of the authority, his deputy or the person appointed by him; this provision shall not apply to administrative acts issued using a standard form or with the aide of automated mechanisms. Where the law requires that an administrative act be in writing, the issuing authority shall be indicated on the qualified certificate underlying the electronic signature or on an associated qualified attribute certificate in the case of electronic administrative acts.

Section 120

Collateral clauses on administrative acts

(1) An administrative act to which a claim exists may be accompanied by a collateral clause only when this is permitted by law or when it is designed to ensure that the legal requirements for the administrative act are fulfilled.

(2) Notwithstanding the provisions of subsection (1) above, an administrative act may be issued in duty-bound discretion with:

1. a provision to the effect that a privilege or burden shall begin or end on a certain date or shall apply for a certain period (time limit),
 2. a provision to the effect that the commencement or ending of a privilege or burden shall depend upon a future occurrence which is uncertain (condition),
 3. a reservation of revocation,
- or be combined with
4. a provision requiring the beneficiary to perform, tolerate or omit to do a certain action (obligation),
 5. a reservation to the effect that an obligation may be subsequently introduced, amended or supplemented.

(3) A collateral clause may not counteract the purpose of the administrative act.

Section 121

Reasons for an administrative act

(1) A written or electronic administrative act, as well as an administrative act confirmed in writing or electronically, shall be accompanied by a statement of reasons where this is necessary for its comprehension.

(2) No statement of reasons shall be required:

1. where the revenue authority grants an application or acts upon a declaration and the administrative act does not infringe upon the rights of another,
2. where the person for whom the administrative act is intended or who is affected by it is already acquainted with the opinion of the revenue authority as to the material and legal positions or is able to comprehend such without difficulty,
3. where the revenue authority issues similar administrative acts in large number or with the help of automated mechanisms and individual cases do not merit a statement of reasons,
4. where this derives from a legal provision,
5. where a general order is publicly disclosed.

Section 122

Disclosure of an administrative act

(1) An administrative act shall be disclosed to the person for whom it is intended or who is affected thereby. Section 34(2) shall be applied accordingly. The administrative act may also be disclosed to authorised representatives.

(2) A written administrative act sent by post shall be deemed as disclosed

1. on the third day after posting if posted to an address within Germany,
2. one month after posting if posted to an address outside Germany,

except where it was not received or was received at a later date; in case of doubt the authority shall prove receipt of the administrative act and the date of receipt.

(2a) An administrative act sent electronically shall be deemed as disclosed on the third day after sending except where it was not received or was received at a later date; in case of doubt the authority shall prove receipt of the administrative act and the date of receipt.

(3) An administrative act may be publicly disclosed where this is permitted by law. A general order may be publicly disclosed even where it is inappropriate to disclose it to those concerned.

(4) The public disclosure of an administrative act shall be effected by advertising the enacting terms in accordance with local custom. Such disclosure shall state where the administrative act and its statement of reasons may be inspected. The administrative act shall be deemed to have been disclosed two weeks after the date of advertising in accordance with local custom. A general order may fix a different day for this purpose but in no case may this be earlier than the date following advertisement.

(5) An administrative act shall be served where this is required by law or administrative decision. The Act on the Administrative Service of Documents shall apply to the service of administrative acts.

(6) The disclosure of an administrative act to a participant with simultaneous effect for and against other participants shall be permissible to the extent that the participants have agreed to this; these participants may subsequently request to receive a copy of the administrative act.

(7) Where administrative acts concern a married couple or a married couple and their children or single parents and their children, it shall suffice for disclosure to all concerned where one copy is served to their joint address. Administrative acts shall be disclosed individually to the participants where they have so requested or where the revenue authority is aware that serious differences of opinion exist between them.

Section 123

Appointment of an authorised recipient

A participant with no residence or habitual abode, registered office or business management in Germany shall on request give to the revenue authority the name of an authorised recipient in Germany within a reasonable period. Should he fail to do so, any document sent to him shall be deemed as having been received one month after its posting, and a document transmitted electronically shall be regarded as having been received on the third day after its transmission. This shall not apply if it is established that the document or the electronic document did not reach the recipient at all or reached him at a later date. The participant shall be informed of the legal consequences of the omission.

Section 124

Validity of an administrative act

(1) An administrative act shall take effect vis-à-vis the person for whom it is intended or who is affected thereby at the moment it is disclosed to him. The administrative act shall apply in accordance with its content as disclosed.

(2) An administrative act shall remain in effect for as long as it is not withdrawn, revoked, otherwise cancelled or expires through the passage of time or for any other reason.

(3) An invalid administrative act shall have no effect.

Section 125

Invalidity of an administrative act

- (1) An administrative act shall be invalid where it is very gravely erroneous and this is apparent when all relevant circumstances are duly considered.
- (2) Regardless of the conditions laid down in subsection (1) above, an administrative act shall be invalid if:
1. it is issued in written or electronic form but fails to indicate the issuing revenue authority,
 2. no person can comply with it for practical reasons,
 3. it requires an illegal act to be committed, by virtue of which the conditions for a criminal offence or an administrative offence are fulfilled,
 4. it is contrary to public policy.
- (3) An administrative act shall not be invalid merely because:
1. provisions on local jurisdiction have not been observed,
 2. a person excluded under section 82(1), first sentence, numbers 2 to 6 and section 82(1), second sentence, is involved,
 3. a committee required by law to cooperate in the issue of the administrative act did not or was unable to take the prescribed decision,
 4. the cooperation required by law of another authority did not occur.
- (4) Where the invalidity applies only to part of the administrative act, it shall be deemed invalid in its entirety if the invalid part is so essential that the revenue authority would not have issued the administrative act without it.
- (5) The revenue authority may at any time ascertain invalidity *ex officio*; it must be ascertained upon application when the applicant has a legitimate interest in such.

Section 126

Remedying errors in procedure and form

- (1) An infringement of the regulations governing procedure or form which does not render the administrative act invalid under section 125 shall be ignored when
1. an application necessary to issue the administrative act is made subsequently,
 2. a necessary statement of reasons is provided subsequently,
 3. a necessary hearing of a participant is held subsequently,
 4. a decision of a committee whose cooperation is required to issue the administrative act is taken subsequently,
 5. the necessary participation of another authority is obtained subsequently.
- (2) Actions referred to in subsection (1) numbers 2 to 5 above may be carried out subsequently up until the trial court proceedings of a fiscal court matter have been concluded.
- (3) Where an administrative act lacks the necessary statement of reasons or has been issued without the necessary hearing of a participant so that the administrative act was unable to be contested in time, failure to observe the period for objection shall not be considered a fault. The decisive event for *restitutio in integrum* under section 110(2) shall be deemed to occur when the procedural action which was omitted is subsequently undertaken.

Section 127

Consequences of errors in procedure and form

A claim for the cancellation of an administrative act which is not invalid under section 125 may not be made solely on the grounds that the act came into being in breach of provisions governing procedure, form or local jurisdiction if no other decision could have been taken in the matter.

Section 128

Reinterpretation of an erroneous administrative act

- (1) An erroneous administrative act may be reinterpreted into another administrative act where it has the same aim, could have been issued legitimately by the issuing revenue authority using the same procedures and forms, and where the requirements for its issue are fulfilled.
- (2) Subsection (1) above shall not apply where the administrative act into which the erroneous administrative act is to be reinterpreted would contradict the clearly recognisable intention of the issuing revenue authority or where its legal consequences would be less favourable for the person affected than those of the erroneous administrative act. Furthermore, reinterpretation shall not be permissible where the withdrawal of the administrative act would not be allowable.
- (3) A decision which can only be issued as being bound by law may not be reinterpreted into a discretionary decision.
- (4) Section 91 shall be applied accordingly.

Section 129

Obvious errors in issuing an administrative act

The revenue authority may at any time correct typographical mistakes, errors in calculation and similar obvious errors which have occurred in issuing an administrative act. Corrections shall be made where the participant has a legitimate interest in such. Where adjustment to a administrative act issued in writing is sought, the revenue authority shall be entitled to request submission of the document which is to be corrected.

Section 130

Withdrawal of an unlawful administrative act

- (1) An unlawful administrative act may, even after it has become incontestable, be withdrawn wholly or in part with *ex nunc* or retrospective effect.
- (2) An administrative act which gives rise to a right or a substantial advantage in legal terms or confirms such a right or advantage (beneficial administrative act) may only be withdrawn where
 1. it has been issued by an authority without the requisite subject-matter jurisdiction,
 2. it has been effected by iniquitous means such as deceit, threat or bribery,
 3. the beneficiary obtained the administrative act by providing information which was essentially incorrect or incomplete,
 4. the beneficiary was aware of its illegality, or was unaware of this due to gross negligence.
- (3) Where the revenue authority learns of facts which justify the withdrawal of an unlawful beneficial administrative act, the withdrawal shall be permissible only within one year of the date of gaining such knowledge. This shall not apply in the case of subsection (2) number 2 above.
- (4) Once the administrative act has become incontestable, the decision concerning withdrawal shall be taken by the revenue authority responsible under the provisions regarding local jurisdiction; this shall also apply where the administrative act to be withdrawn has been issued by another revenue authority; section 26, second sentence, shall remain unaffected.

Section 131

Revocation of a lawful administrative act

(1) A lawful, non-beneficial administrative act may, even after it has become incontestable, be revoked wholly or in part with *ex nunc* effect, except where an administrative act of like content would have to be issued or where revocation is impermissible for other reasons.

(2) A lawful, beneficial administrative act may, even when it has become incontestable, be revoked in whole or in part with *ex nunc* effect only when

1. revocation is permitted by law or a right of revocation is reserved in the administrative act itself,
2. the administrative act is combined with an obligation with which the beneficiary has not complied with at all or in time,
3. the revenue authority would be entitled, as a result of subsequent changes in circumstances, not to issue the administrative act and if failure to revoke it would endanger the public interest.

Section 130(3) shall apply accordingly.

(3) The revoked administrative act shall become null and void with the entry into force of the revocation, provided that the revenue authority has not determined a later date.

(4) Once the administrative act has become incontestable, decisions as to revocation shall be taken by the revenue authority responsible under the provisions regarding local jurisdiction; this shall also apply where the administrative act to be revoked has been issued by another revenue authority.

Section 132

Withdrawal, revocation, cancellation and amendment in legal remedy proceedings

The provisions on withdrawal, revocation, cancellation and amendment of administrative acts shall also apply during objection proceedings and proceedings before the fiscal courts.

Section 130(2) and (3) and section 131(2) and (3) shall not prevent withdrawal and revocation during the objection proceeding, or during the proceedings before a fiscal court, of a beneficial administrative act that has been contested by a third party to the extent that this remedies the objection or appeal.

Section 133

Return of documents and other items

Where an administrative act has been incontestably revoked or withdrawn, or where it is not or no longer in effect for other reasons, the revenue authority may require such documents or items as have been distributed as a result of the administrative act, and which serve to prove the rights deriving from the administrative act or its exercise, to be returned. The holder and, where this person is not the owner, also the owner of these documents or items shall be obliged to return them. However, the holder or owner may require that the documents or items be handed back to him once the revenue authority has marked them as invalid; this shall not apply to items for which such a marking is impossible or cannot be made with the necessary degree of visibility or permanence.

Fourth Part

Executing the taxation procedure

First Chapter

Recording taxpayer data

1st Subchapter

Data relating to civil status and operations

Section 134

Data relating to civil status and operations

(1) For the purposes of recording details on persons and enterprises which are subject to taxation, the municipalities may collect data relating to civil status and operations for the revenue authorities. To this end, the municipalities shall have the powers set out in sections 328 to 335.

(2) The collection of details relating to civil status shall not apply to those members of the Federal Armed Forces, the federal police and the police who are housed in official quarters and have no other accommodation.

(3) The governments of the *Länder* shall determine by way of ordinance the timing of data collection. They may limit the scope of the collection (section 135) to certain municipalities and certain details. The governments of the *Länder* may delegate these powers to the highest revenue authorities by way of ordinance.

(4) The municipalities may link for their own purposes special surveys with the collection of data relating to civil status and operations where a legal basis for these surveys exists. The second sentence of subsection (1) above shall not apply to such surveys.

Section 135

The obligation to cooperate in the collection of data relating to civil status and operations

(1) The real estate owners shall be obliged to provide assistance in the collection of data relating to civil status and operations. In particular, they shall indicate the persons who have accommodation, living quarters, a permanent establishment, storage facilities or other business premises on the property.

(2) The occupants of the accommodation and the sublessees shall provide on official forms, in relation to themselves and to the persons belonging to their household, the information needed for the collection of data relating to civil status and operations, especially that pertaining to name, marital status, date and place of birth, religion, residence, gainful occupation or employment, and permanent establishments.

(3) The proprietors of permanent establishments, storage facilities or other business premises shall provide in relation to the operations carried on in these rooms the information needed for the collection of data relating to operations and required by the official forms, especially that pertaining to the nature and size of the operations and to the proprietor of the operations.

Section 136

Notification of changes in data relating to civil status

The authorities for registering inhabitants shall notify the competent tax office of any changes to the details under section 135 of which they have become aware pursuant to the registration provisions of the *Länder*.

2nd Subchapter

Duties of disclosure

Section 137

The recording for tax purposes of corporations, associations and conglomerations of assets

(1) Taxpayers who are not natural persons shall be obliged to notify the tax office responsible under section 20 and the municipalities responsible for levying impersonal taxes of the circumstances which have a bearing on registration for tax purposes, especially establishment, attainment of legal capacity, change of legal form, transfer of place of business management or registered office, and dissolution.

(2) Disclosure of these reportable events shall be made within one month of their occurrence.

Section 138

Reporting gainful occupation

(1) Whoever opens an agricultural and forestry undertaking, a commercial operation or a permanent establishment shall notify the municipality in which this business or permanent establishment is located of such on an officially prescribed form; the municipality shall inform without undue delay the tax office responsible under section 22(1) of the content of the notification. Where responsibility for determining the impersonal taxes has not been conferred on the municipalities, the tax office responsible under section 22(2) shall take the place of the municipality. Whoever takes up the provision of professional services shall notify the tax office responsible under section 19 of such. The same shall apply with regard to the relocation and the relinquishment of a business, a permanent establishment or professional services.

(1b) In order to simplify the taxation procedure, the Federal Ministry of Finance may determine, via ordinance and with the consent of the Bundesrat, that traders within the meaning of section 2 of the Turnover Tax Act shall, on occasion of commencing a professional or commercial activity, in addition to the notifications pursuant to subsections (1) and (1a) above, also provide information to the revenue authority on the legal and actual circumstances which are of relevance to taxation using an officially prescribed data set via remote data transmission. The preconditions under which an electronic transmission may be waived may be stipulated in the ordinance. Section 150(6), third and fourth sentences, shall apply accordingly.

(1a) Traders within the meaning of section 2 of the Turnover Tax Act may also fulfil their reporting obligations under subsection (1) above electronically at the revenue authority responsible for turnover tax.

(2) Taxpayers with residence, habitual abode, place of business management or registered office within the territory of application of this Code shall inform the tax office responsible pursuant to sections 18 to 20 on an officially prescribed form of:

1. the founding and acquisition of businesses and permanent establishments abroad,
2. holdings, or their relinquishment or changes therein, in foreign unincorporated companies,
3. the acquisition of holdings in a corporation, association of persons or conglomeration of assets within the meaning of section 2(1) of the Corporation Tax Act where this means that the holding reaches at least 10 per cent directly or at least 25 per cent indirectly of the capital or assets of the corporation, association of persons or conglomeration of assets, or when the sum of the costs of acquisitions of all holdings exceeds 150,000 euros.

(3) Disclosure of these reportable events shall be made within one month of their occurrence.

Section 139

Registering operations in certain cases

(1) Whoever seeks to acquire or manufacture goods, the acquisition, manufacture, removal from the manufacturing business or consumption within the manufacturing business of which entails a liability for tax on consumption, shall register this with the competent revenue authority before operations are commenced. The same shall apply to whoever wishes to operate an enterprise to which special taxes on transactions apply.

(2) Conditions with respect to the timing, the form and the content of the registration may be determined by way of ordinance. The ordinance shall be issued by the Federal Government where taxes on transactions are concerned, and by the Federal Ministry of Finance in other respects. An ordinance issued by the Federal Ministry of Finance shall require the consent of the Bundesrat only to the extent that it concerns beer duty.

3rd Subchapter Identifying tag

Section 139a
Identifying tag

(1) For the purposes of unambiguous identification in the taxation procedure, the Federal Central Tax Office shall issue each taxpayer with a uniform and permanent means of recognition (identifying tag), which shall be indicated on applications, declarations or notifications addressed to revenue authorities. It shall consist of a series of digits that may not be constructed or derived from other data relating to the taxpayer; the final digit shall be a check digit. Natural persons shall receive an identification number, economic actors a business identification number. The taxpayer shall be informed without undue delay that he or she has been assigned an identifying tag.

(2) A taxpayer for the purposes of this subchapter shall mean anyone who is liable for tax under a tax law.

(3) Economic actors for the purposes of this subchapter shall mean:

1. natural persons who are economically active,
2. legal persons,
3. associations of persons.

Section 139b
Identification number

(1) A natural person may not receive more than one identification number. An identification number may only be issued once.

(2) The revenue authorities may only collect and use the identification number to the extent that this is necessary for them to fulfil their legal duties or a legal provision expressly allows or orders the collection or use of the identification number. Other public or non-public offices may

1. only collect or use the identification number to the extent that this is necessary to allow data to be transmitted between them and the revenue authorities, or a legal provision expressly allows or orders the collection and use of the identification number,
2. organise their data according to the identification number or make them accessible only to the extent that this is necessary for the regular transmission of data between them and the revenue authorities.

Contract terms and declarations of consent which are designed to enable the collection or use of the identification number which is impermissible under the above conditions shall be deemed invalid.

(3) The Federal Central Tax Office shall save with regard to natural persons the following data:

1. identification number,
2. business identification number,
3. surname,
4. previous names,
5. first names,
6. doctor title,
7. (rescinded)
8. date and place of birth,
9. sex,
10. current or last known address,

11. competent revenue authorities,
12. bans on transmission pursuant to the Registration Law Framework Act and the *Länder* legislation on registration.
13. date of death.

(4) The data listed in subsection (3) above shall be saved in order to

1. ensure that a person has been issued with one identification number only, and that an identification number is not issued more than once,
2. determine the identification number of a taxpayer,
3. distinguish which revenue authorities are responsible for a taxpayer,
4. be able to transfer to the competent offices data which, pursuant to supranational or international law, are to be received,
5. enable the revenue authorities to discharge their statutory responsibilities.

(5) The data listed in subsection (3) above may be used only for the purposes named in subsection (4) above. Bans on transmission under the Registration Law Framework Act and the *Länder* legislation on registration shall be observed and likewise be transmitted in the case of a permissible transmission of data. The third party to whom the data are transmitted shall likewise observe the bans on transmission.

(6) For the purposes of issuing an identification number for the first time, the registration authorities shall transmit to the Federal Central Tax Office the following data for each resident registered with them as having sole residence or main residence in their jurisdiction:

1. surname,
2. previous names,
3. first names,
4. doctor title,
5. (rescinded)
6. date and place of birth,
7. sex,
8. current address of the sole residence or main residence.
9. day of moving into and out of the residence,
10. bans on transmission pursuant to the Registration Law Framework Act and the *Länder* legislation on registration

To this end, the registration authorities shall issue each resident registered as having a sole residence or main residence in their jurisdiction with a provisional recognition tag. They shall transmit this together with the data pursuant to the first sentence above to the Federal Central Tax Office. The data pursuant to the first sentence above shall be transmitted from the date on which the identifying tag has been introduced, which time shall be determined by way of ordinance by the Federal Ministry of Finance on the basis of Article 97(5), first sentence, of the Introductory Act to the Fiscal Code. The Federal Central Tax Office shall inform the competent registration authority of the identification number issued to the taxpayer, quoting the provisional recognition tag, for the purposes of having this saved in the register, and shall subsequently delete the provisional recognition tag. The data pursuant to the first sentence, number 9, above shall be deleted at the latest upon expiration of calendar month following the transmission by the registration authorities.

(7) Where data relating to a birth as well as data relating to a person for whom hitherto no identification number has been issued is saved, the registration authorities shall transmit to the Federal Central Tax Office the data pursuant to subsection (6), first sentence, above for the purposes of allocating the identification number. Subsection (6), second to sixth sentences, above shall apply accordingly.

(8) The registration authority shall notify the Federal Central Tax Office of changes to the data referred to in subsection (6), first sentence, numbers 1 to 10, above as well as the day of death in the event of a death, indicating the identification number or, where this has not yet been allocated, the provisional recognition tag.

(9) The Federal Central Tax Office shall inform the registration authorities where it has specific reason to suspect the incorrectness of the data transmitted to it by the registration authorities.

Section 139c

Business identification number

(1) The business identification number shall be issued upon request of the competent revenue authority. It shall begin with the letters "DE". A business identification number may only be issued once.

(2) The revenue authorities may collect and use the business identification number only to the extent that this is necessary for them to fulfil their legal duties or a legal provision expressly allows or orders this. Other public and non-public offices may collect or use the business identification number only to the extent that this is necessary to allow them to fulfil their duties or their business purposes or for the transmission of data between them and the revenue authorities. To the extent that the business identification number replaces other numbers, legal provisions which govern transmission by the revenue authorities to other authorities shall remain unaffected.

(3) The Federal Central Tax Office shall save with regard to natural persons who are economically active the following data:

1. business identification number,
2. identification number,
3. company (sections 17 *et seqq* of the Commercial Code) or name of the enterprise,
4. former company names or names of the enterprise,
5. legal form
6. industry branch number,
7. official municipal code,
8. address of the enterprise, registered office,
9. entry in the register of companies (court of registration, date and number of entry),
10. date on which operations were opened or time of commencement of activity,
11. date on which operations were terminated or time of ceasing of activity,
12. competent revenue authorities.

(4) The Federal Central Tax Office shall save with regard to legal persons the following data:

1. business identification number,
2. identifying tags of the legal representatives,

3. company (sections 17 *et seqq* of the Commercial Code),
4. former company names,
5. legal form
6. industry branch number,
7. official municipal code,
8. registered office pursuant to section 11, especially place of business management,
9. date of the act of foundation of enterprise,
10. entry in the register of companies, cooperatives or associations (court of registration, date and number of entry),
11. date on which operations were opened or time of commencement of activity,
12. date on which operations were terminated or time of ceasing of activity,
13. date of liquidation,
14. data of removal from register,
15. associated enterprises,
16. competent revenue authorities.

(5) The Federal Central Tax Office shall save with regard to associations of persons the following data:

1. business identification number,
2. identifying tags of the legal representatives,
3. identifying tags of the participants,
4. company (sections 17 *et seqq* of the Commercial Code), or name of the association of persons,
5. former company names or names of the association of persons,
6. legal form
7. industry branch number,
8. official municipal code,
9. registered office pursuant to section 11, especially place of business management,
10. date of the articles of partnership,
11. entry in the register of companies or partnerships (court of registration, date and number of entry),
12. date on which operations were opened or time of commencement of activity,
13. date on which operations were terminated or time of ceasing of activity,
14. date of liquidation,
15. date of termination,

16. data of removal from register,
 17. associated enterprises,
 18. competent revenue authorities.
- (6) The data indicated in subsections (3) to (5) above shall be saved in order to
1. ensure that a business identification number already issued is not used again for another economic actor,
 2. determine the business identification number issued for an economic actor,
 3. distinguish which revenue authorities are responsible,
 4. allow the transfer to the competent offices of data which, pursuant to supranational or international law, are to be received,
 5. enable the revenue authorities to discharge their statutory responsibilities.
- (7) The data listed in subsection (3) above may be used only for the purposes named in subsection (6) above unless a legal provision expressly provides for another use.

Section 139d

Authorisation to issue ordinances

The Federal Government shall determine with the consent of the Bundesrat by way of ordinance:

1. organisational and technical measures to ensure tax secrecy, especially to prevent unauthorised access to data protected by section 30,
2. guidelines on the issue of identification numbers pursuant to section 139b and the business identification numbers pursuant to section 139c,
3. time limits upon whose expiration the data saved pursuant to sections 139b and 139c shall be deleted, and
4. the form of and the process of data transfer pursuant to section 139b(6) to (9).

Second Chapter

Obligations to cooperate

1st Subchapter

The keeping of accounts and records

Section 140

Account-keeping and recording obligations deriving from other laws

Whoever is obliged under laws other than tax laws to keep accounts and records of relevance for taxation shall be obliged to fulfil the obligations imposed by such other laws in the interests of taxation as well.

Section 141

The obligation of certain taxpayers to keep accounts

- (1) Commercial traders and farmers and foresters who, according to the information of the revenue authority, had had for the respective business
1. transactions, including tax-free transactions but excluding transactions pursuant to section 4 numbers 8 to 10 of the Turnover Tax Act, exceeding 500,000 euros in the calendar year, or
 2. (rescinded)

3. agricultural or forest land which they managed themselves and whose economic value (section 46 of the Valuation Act) exceeds 25,000 euros, or
4. a profit from commercial operations of more than 50,000 euros in the financial year, or
5. a profit from agricultural or forestry undertakings of more than 50,000 euros in the calendar year

shall be obliged with respect to these operations to keep accounts and on the basis of annual inventories to draw up reports even if they are not required to keep accounts by section 140. Sections 238, 240, 241, 242(1) and sections 243 to 256 of the Commercial Code shall apply *mutatis mutandis* inasmuch as the tax laws do not provide otherwise. In applying number 3 above, the economic value of all areas managed by the farmer or forester shall be decisive, irrespective of whether he owns them or not. With respect to farmers and foresters who are obliged under numbers 1, 3 or 5 above to keep accounts, stock-taking measures need not apply to standing timber.

(2) The obligation under subsection (1) above shall be fulfilled from the beginning of the financial year following disclosure of the notice through which the revenue authority indicated the beginning of this obligation. The obligation shall end with the close of the financial year following the financial year in which the revenue authority determines that the conditions under subsection (1) above no longer exist.

(3) The obligation to keep accounts shall be transferred to any person who takes over management of the entire operations as owner or beneficial owner. An indication pursuant to subsection (2) above advertising the beginning of the obligation to keep accounts shall not be required.

(4) Subsection (1) number 5 above in its current version shall be applied to profit beginning in the calendar year 1980.

Section 142

Supplementary provisions for farmers and foresters

Farmers and foresters who are obliged by section 141(1) numbers 1, 3 or 5 to keep accounts shall maintain a list of crops in addition to their annual inventory and the annual reports. The list of crops shall show the types of produce with which the self-managed land was cultivated in the foregoing financial year.

Section 143

Recording the receipt of goods

(1) Commercial traders shall record the receipt of goods separately.

(2) All goods, including the raw materials, works-in-progress, auxiliary materials and ingredients that the trader acquires as part of his commercial operations for further sale or for consumption, whether for a charge or free of charge, for his own account or for the account of others, shall be recorded; this shall also apply where the goods are to be processed or treated before their further sale or consumption. Goods which in keeping with the nature of the business are usually acquired for the business for further sale or for consumption shall be recorded even where they are used for purposes other than those of the business.

(3) The records shall contain the following information:

1. the day of receipt of the goods or the date of the invoice,
2. the name or the company and the address of the supplier,
3. the usual trade description of the good,
4. the price of the good,
5. a reference to the receipt.

Section 144 **Recording the exit of goods**

(1) Commercial traders who in keeping with the nature of their commercial business supply on a regular basis other commercial traders with goods for further sale or consumption as auxiliary material shall record separately the exit of goods recognisably destined for this purpose.

(2) The trader shall also record all goods which he

1. delivers on invoice (on credit, on account or by way of offset), by way of exchange or free of charge, or
2. against cash payment where, because of the amount ordered, the good is sold at a price below the normal price for consumers.

This shall not apply where the good is recognisably not destined for further commercial use.

(3) The records shall contain the following information:

1. the day of exit of the goods or the date of the invoice,
2. the name or the company and the address of the customer,
3. the usual trade description of the good,
4. the price of the good,
5. a reference to the receipt.

(4) The trader shall issue for the exit of every good named in subsections (1) and (2) above a receipt which contains the details listed in subsection (3) above as well as his name or the company and his address. This shall not apply to the extent that, pursuant to section 14(5) of the Turnover Tax Act, a credit note is used in place of an invoice or simplifications are granted in accordance with section 14(6) of the Turnover Tax Act.

(5) Subsections (1) to (4) above shall apply also with respect to farmers and foresters who are required by section 141 to keep accounts.

Section 145 **General specifications relating to the keeping of accounts and records**

(1) The accounts shall be kept in such a manner as to allow a competent third party to gain an overview of the business transactions and the enterprise's state of affairs within a reasonable period of time. The business transactions shall be traceable with respect to their origin and course.

(2) Records shall be kept such that the taxation purpose which they are intended to serve can be met.

Section 146 **Formal rules on the keeping of accounts and record**

(1) Accounts and records otherwise required shall be kept in a complete, correct, timely and orderly manner. Cash receipts and payments shall be recorded on a daily basis.

(2) Accounts and records otherwise required shall be kept and stored within the territory of application of this Code. This shall not apply to the extent that for permanent establishments outside the territory of application of this Code local provisions provide for an obligation to keep accounts and records and this obligation is met. In such a case, as well as in the case of controlled companies outside the territory of application of this Code, the results of the foreign accounts shall be incorporated into the accounts of the German enterprise insofar as they are of relevance for taxation. In this regard, any adjustments required in order to satisfy the tax provisions within the territory of application of this Code shall be undertaken and identified as such.

(2a) Notwithstanding the provisions of subsection (2), first sentence, above, the competent revenue authority may upon written application by the taxpayer authorise the keeping and

storage of electronic accounts and other necessary electronic records or parts thereof outside the territory of application of this Code. The preconditions shall be that

1. the taxpayer informs the competent revenue authority of the location of the data-processing system and, where commissioning a third party, provides the name and address thereof,
2. the taxpayer has properly complied with his duties arising from sections 90, 93, 97, 140 to 147 and 200(1) and (2),
3. the access to data pursuant to section 147(6) is possible in full, and
4. taxation is not hampered hereby.

Where the revenue authority becomes aware of circumstances leading to the hampering of taxation, it shall revoke the authorisation and require the retransfer without undue delay of the electronic accounts and other necessary electronic records to the territory of application of this Code. The competent revenue authority shall be informed without undue delay of a change in the circumstances specified under the second sentence, number 1 above.

(2b) A fee for delay of 2,500 euros to 250,000 euros may be set where the taxpayer fails to comply with the request to retransfer his electronic accounts or his duties pursuant to subsection (2a), fourth sentence, above to afford the access to data pursuant to section 147(6), to provide information or to submit requested documents within the meaning of section 200(1) in the course of an external audit within a reasonable period of time allowed to him for that purpose following notification by the competent revenue authority or he has transferred his electronic bookkeeping abroad without authorisation from the competent revenue authority.

(3) The entries and records otherwise required shall be made in a modern language. Where a language other than German is used, the revenue authority may require translations. Where abbreviations, figures, letters or symbols are used, each of their meanings shall be clearly defined.

(4) An entry or record may not be changed in such a manner as to render the original content no longer determinable. Furthermore, changes may not be made if their nature renders it uncertain as to whether they were made at the time of original entry or at a later stage.

(5) The accounts and the records otherwise required may also consist in the orderly filing of vouchers or may be kept on data-storage devices to the extent that these forms of book-keeping including the method used to this end are consistent with the principles of orderly accounting; with respect to records which are to be made solely on the basis of tax laws, the permissibility of the method employed shall be determined on the basis of the purpose which the records are intended to serve for taxation. Where accounts and the records otherwise required are kept on data-storage devices, it shall be ensured, in particular, that, during the storage period, the data are accessible at any time and can be rendered readable without undue delay. This shall also apply with respect to the powers of the revenue authority pursuant to section 147(6). Subsections (1) to (4) above shall apply *mutatis mutandis*.

(6) These formal rules shall also apply where the trader keeps accounts and records of relevance for taxation without being obliged to do so.

Section 147

Formal rules on the storage of documents

(1) The following documents shall be stored separately:

1. accounts and records, inventories, annual reports, situation reports, the opening balance sheet as well as the operating instructions and other organisational documents needed for their comprehension,
2. the trade or business letters received,

3. reproductions of trade or business letters sent,
4. accounting records,
- 4a. documents which are to be attached to a customs declaration made by means of a data-processing technique pursuant to Article 77(1) in conjunction with Article 62(2) of the Customs Code, to the extent that the customs authorities elect not to have them submitted in accordance with Article 77(2), first sentence, of the Customs Code or have returned them following their submission,
5. other documents to the extent that these are of relevance for taxation.

(2) With the exception of the annual reports, the opening balance sheet and the documents pursuant to subsection (1) number 4a above, the documents listed under subsection (1) above may be stored as reproductions on picture-storage devices or on other data-storage devices where this is commensurate with the principles of orderly accounting and it is ensured that the reproductions or the data

1. correspond visually to the trade and business letters received and the accounting records and correspond in terms of content to the other documents when they are rendered readable,
2. may, at any time during the storage period, be accessed, can be rendered readable without undue delay and can be processed automatically.

(3) The documents indicated in subsection (1) numbers 1, 4 and 4a above shall be stored for a period of ten years, the other documents indicated in subsection (1) above for six years, provided that other tax laws do not permit shorter storage periods. Shorter storage periods provided by non-tax laws shall have no effect on the period set out in the first sentence above. However, the period of storage shall not expire to the extent that and as long as the documents are of relevance for taxes for which the period for assessment has not yet expired; section 169(2), second sentence, shall not apply.

(4) The storage period shall begin upon the end of the calendar year in which the last entry was made in the accounts, the inventory, the opening balance sheet, the annual report or the situation report drawn up, the trade or business letter received or sent, the accounting record created, the record made or the other documents created.

(5) Whoever submits storable documents in the form of a reproduction on a picture-storage device or other data-storage devices shall be required, at his own expense, to make available any auxiliary aids needed to render the documents readable; should the revenue authority so desire, he shall at his own expense print out without undue delay all or part of the documents or furnish reproductions which are readable without auxiliary aids.

(6) Where the documents under subsection (1) above have been created with the aid of a data-processing system, the revenue authority shall be entitled within the context of an external audit to view the saved data and to use the data-processing system to examine these documents. It may also in the course of an external audit demand that the data are automatically processed to its specifications or the saved documents and records are made available to it on machine-readable data-storage devices. The costs shall be borne by the taxpayer.

Section 148

The authorisation of simplifications

The revenue authorities may in individual cases or for certain groups of cases authorise simplifications where adherence to the accounting, recording and storage duties set out in the tax laws causes undue hardship and where taxation is not hampered by the simplifications. Simplifications pursuant to the first sentence above may be authorised retroactively. The authorisation may be revoked.

2nd Subchapter Tax returns

Section 149 Submission of tax returns

(1) The tax laws shall determine the persons obliged to submit a tax return. Any person invited by the revenue authority to submit a tax return shall also be required to do so. The invitation may be issued by way of public notification. The obligation to submit a tax return shall remain even where the revenue authority has estimated the basis of taxation (section 162).

(2) Unless otherwise stipulated in the tax laws, tax returns relating to a calendar year or a legally determined period shall be submitted at the latest five months after expiration of such. For taxpayers who calculate profit from agricultural and forestry activity from a financial year which deviates from the calendar year, the period shall not end before expiration of the third month following the end of the financial year which began in the calendar year.

Section 150 Format and content of tax returns

(1) Tax returns shall be submitted on officially prescribed forms where an oral tax return is not permitted. Section 87a shall apply only to the extent that, on the basis of a law or an ordinance issued pursuant to subsection (6) below, the tax return may be transmitted by means of a machine-readable data-storage device or via remote data transmission. The taxpayer shall calculate the tax in the tax return himself where this is required by law (self-assessed tax return).

(2) The information contained in the tax returns shall be the truth to the best of the declarant's knowledge and belief. This shall be confirmed in writing where the form so requires.

(3) Where the tax laws require the taxpayer to sign the tax return personally, signature by an authorised party shall be permissible only where the taxpayer's physical or mental health or his extended absence prevents him from signing. A personal signature may be subsequently required where such hindrance ceases to exist.

(4) The tax returns shall be accompanied by the documents required by the tax laws. Third parties shall be obliged to issue any certificates required for this purpose.

(5) The tax return form may include questions which are necessary to supplement the taxation documents for statistical purposes pursuant to the Tax Statistics Act. Furthermore, the revenue authorities shall be entitled to require from taxpayers information needed to implement the Federal Training Promotion Act. In verifying the information, the revenue authorities shall have the same powers as those when clarifying circumstances of relevance for taxation.

(6) In order to facilitate and simplify the automated taxation procedure, the Federal Ministry of Finance may decide by means of ordinance in agreement with the Bundesrat that tax returns or other data necessary for the taxation procedure may be transmitted, wholly or partly, by machine-readable data-storage devices or via remote data transfer. Agreement by the Bundesrat shall not be required to the extent that excise duties with the exception of beer duty are concerned. The following in particular may be determined:

1. the preconditions to be met before the procedure may be applied,
2. details regarding the format, content, processing and securing of the transmittable data,
3. the nature of the data transmission,
4. jurisdiction for accepting receipt of the transmittable data,

5. the obligations of third parties to cooperate and their liability for taxes understated or tax advantages obtained as a result of the data being incorrectly collected, processed or transmitted,

6. the scope and the form of the taxpayer's special declaration obligations needed for this procedure.

In setting out provisions for the transmission of data, reference may be made in the ordinance to publications by expert bodies; in this regard, the date of the publication, the reference source and an office where the publication is securely archived shall be indicated.

(7) Where the tax laws require the taxpayer to transmit the tax return using an officially prescribed data set via remote data transmission, the data set shall bear a qualified electronic signature pursuant to the Electronic Signature Act. In order to facilitate and simplify the automated taxation procedure, the Federal Ministry of Finance may by means of ordinance with the consent of the Bundesrat stipulate

1. details regarding the format, content, processing and securing of the transmittable data,

2. the nature of the data transmission,

3. jurisdiction for accepting receipt of the transmittable data,

4. the obligations of third parties to cooperate and their liability for taxes understated or tax advantages obtained as a result of the data being incorrectly collected, processed or transmitted,

5. the scope and the form of the taxpayer's special declaration obligations needed for this procedure

as well as permit

6. in consultation with the Federal Ministry of the Interior, another secure method which guarantees the authenticity and integrity of the transmitted electronic document in place of the qualified electronic signature, and

7. exceptions to the obligation to use a qualified electronic signature or another secure method pursuant to number 6 above

Consent from the Bundesrat shall not be required to the extent that excise duties with the exception of beer duty are concerned. In setting out provisions for the transmission of data, reference may be made in the ordinance to publications by expert bodies; in this regard, the date of the publication, the reference source and an office where the publication is securely archived shall be indicated.

(8) Where the tax laws require that the revenue authority may, upon application to avoid undue hardship, waive a transmission of the tax return using an officially prescribed data set via remote data transmission, such an application shall be complied with where a submission of the return using an officially prescribed data set via remote data transmission is economically or personally unreasonable for the taxpayer. This shall in particular be the case where the creation of the technical means for a remote data transmission of the officially prescribed data set would be possible only at considerable financial expense or where taxpayer's individual knowledge and skills mean he is unable or not fully able to use the means of remote data transmission.

Section 151

Recording tax returns at the offices of the authorities

Tax returns which are to be submitted in writing may be declared for record at the offices of the revenue authority responsible where the personal circumstances of the taxpayer are such that he cannot be expected to provide the returns in writing, especially where he is not

in a position to meet legal requirements to calculate the tax himself or have it calculated by a third party.

Section 152 **Late-filing penalty**

(1) A late-filing penalty may be set against anyone failing to meet his obligation to submit a tax return at all or on time. The late-filing penalty shall not be set where such failure appears excusable. Default by a legal representative or an aide⁵ shall be deemed equal to personal default.

(2) The late-filing penalty may not exceed 10 per cent of the assessed tax or of the assessed basic amount and shall be no more than 25,000 euros. In assessing the late-filing penalty, in addition to its purpose of obliging taxpayers to submit their tax returns on time, the length of time by which the deadline has been exceeded, the amount of the payment claim arising from the tax assessment, the benefits gained from the delayed submission of the tax return and the degree of fault and the economic position of the taxpayer shall be taken into consideration.

(3) As a rule, the late-filing penalty shall be assessed concurrently with the tax or the basic impersonal tax amount.

(4) Subsections (1) to (3) above shall apply with respect to tax returns for tax bases which have to be determined separately subject to the proviso that, in applying the first sentence of subsection (2) above, the taxation effects are to be estimated.

(5) The Federal Ministry of Finance may, in agreement with the Bundesrat, issue general administrative provisions on the late-filing penalty, especially with regard to its assessment in the automated taxation procedure. It may also determine the conditions under which the assessment of a late-filing penalty should be refrained from. The general administrative provisions shall not require consent by the Bundesrat where they concern import/export duties and excise duties.

⁵⁾ *Erfüllungshelfen*, i.e., person who assists the taxpayer in meeting his tax obligations

Section 153 **Correction of returns**

(1) Where a taxpayer subsequently realises before the period for assessment has elapsed

1. that a return submitted by him or for him is incorrect or incomplete and that this can lead or has already led to an understatement of tax, or
2. that a tax amount payable by way of tax mark or tax stamp was not paid in the correct amount,

he shall be obliged to indicate such without undue delay, and to effect the necessary corrections. This obligation shall also concern the taxpayer's universal successor and the persons acting for the universal successor or the taxpayer pursuant to sections 34 and 35.

(2) The notification obligation shall further apply where the conditions for tax exemption, tax reduction or other tax privileges subsequently cease to exist, whether in full or in part.

(3) Whoever wishes to use goods for which a tax privilege has been allowed subject to a condition in a manner which does not correspond to this condition shall be obliged to advise the revenue authority of such in advance.

3rd Subchapter **Authenticity of accounts**

Section 154 **Authenticity of accounts**

(1) No one may under a false or fictitious name, for himself or for a third party, open an account or cause entries to be made in an account, give into safe custody or pledge valuables (money, securities, precious objects) or rent a safety deposit box.

(2) Whoever keeps accounts, holds valuables in safe custody or as a pledge or rents out safety deposit boxes shall make certain before doing so of the identity and the address of the authorised drawer and shall record the relevant particulars in suitable form, in the case of an account in the account itself. They shall ensure that they are able at all times to furnish information on the accounts or safety deposit boxes over which a person is authorised to dispose.

(3) In the event of contravention of subsection (1) above, credit balances, valuables and the contents of safety deposit boxes may be returned only with the consent of the tax office responsible for assessing the authorised drawer for income and corporation tax.

Third Chapter Assessment and determination procedures

1st Subchapter Tax assessment

I. General provisions

Section 155 Assessment of taxes

(1) Unless otherwise prescribed, the taxes shall be assessed by the revenue authority by way of tax assessment notice. The tax assessment notice shall be the administrative act disclosed pursuant to section 122(1). This shall also apply with respect to the complete or partial exemption from a tax and for the dismissal of an application for tax assessment.

(2) A tax assessment notice may be issued even where a basic assessment notice has not yet been issued.

(3) Where several taxpayers owe the tax as joint and several debtors, consolidated tax assessment notices may be issued against them. Administrative acts on ancillary tax payments or other claims to which this Code applies may be issued against one or more taxpayers in combination with consolidated tax assessment notices. This shall also apply where the legal relationship between the taxpayers is such that assessed taxes, ancillary tax payments or other claims are not to be borne by all participants.

(4) The provisions applicable to tax assessment shall be applied *mutatis mutandis* with respect to the assessment of a tax rebate.

Section 156 Refraining from tax assessment

(1) In order to simplify administration, the Federal Ministry of Finance may prescribe by way of ordinance that taxes and ancillary tax payments shall not be assessed where the amount to be assessed is unlikely to exceed a certain amount to be determined by this ordinance; the amount to be determined shall not exceed 10 euros. The ordinance shall not require the agreement of the Bundesrat where it concerns import/export duties and excise duties, with the exception of beer duty.

(2) The assessment of taxes and ancillary tax payments may be refrained from where it is clear that collection will not lead to the desired result or where the costs of collection, including assessment, are not proportionate to the amount.

Section 157 Form and content of tax assessment notices

(1) Tax assessment notices shall be issued in writing unless otherwise stipulated. Written tax assessment notices shall identify the type and amount of the assessed tax and indicate the person owing the tax. Furthermore, they shall be accompanied by advice indicating which legal remedy is permissible, the time period for submitting such remedy, and the authority to which this remedy is to be submitted.

(2) The determination of the basis of taxation shall constitute a part of the tax assessment notice not separately contestable by legal remedy where the tax basis is not determined separately.

Section 158
Validity of accounts

The accounts and records of the taxpayer which correspond to the provisions of sections 140 to 148 shall serve as the basis for taxation to the extent that the individual circumstances give no reason to object to their formal correctness.

Section 159
Proof of fiduciary status

(1) Whoever claims to own or possess rights in his name or items in his possession merely as trustee, representative of a third party, or pledgee shall be required upon request to prove to whom the rights or items belong; failure to do so shall result in their being routinely attributed to him. This shall not have the effect of restricting the right of the revenue authority to investigate the matter.

(2) Section 102 shall remain unaffected.

Section 160
Naming creditors and the recipients of payments

(1) Debts and other burdens, business expenditure, income-related expenses and other expenses shall as a matter of routine not be considered for tax purposes where the taxpayer does not meet the demands of the revenue authority to provide precise details of the names of the creditors or recipients. The right of the revenue authority to investigate the matter shall remain unaffected.

(2) Section 102 shall remain unaffected.

Section 161
Inventory shortfalls

Where, within the context of a prescribed or officially conducted inventory, shortfalls are determined with respect to goods subject to excise duty, it shall be assumed that an excise duty has arisen with respect to the missing goods or that a conditional excise duty has become unconditional where it cannot be established credibly that the missing goods are the result of circumstances for which tax would not have to be paid and which do not cause a conditional tax to become unconditional. In case of doubt, the tax shall be deemed to have arisen or become unconditional at the point in time at which the inventory is carried out.

Section 162
Estimating the basis of taxation

(1) Where the revenue authority cannot determine or calculate the basis of taxation, the revenue authority shall estimate it. All circumstances which have an impact on the estimate shall be taken into account.

(2) An estimate shall be undertaken in particular where the taxpayer is not willing to provide sufficient explanation regarding his details or refuses to give further information or a sworn statement or breaches his obligation to cooperate pursuant to section 90(2). The same shall apply where the taxpayer cannot provide accounts or records which he is obliged under tax laws to keep, where the accounts or the records cannot be used as a basis for taxation pursuant to section 158 or where there are factual indications of the incorrectness or incompleteness of the details provided by the taxpayer on taxable income or business asset increases and the taxpayer fails to give his consent pursuant to section 93(7), first sentence, number 5. Where the taxpayer contravenes his obligation to cooperate under section 90(2), third sentence, it shall be refutably assumed that taxable income in states or territories within the meaning of section 90(2), third sentence exists or is higher than the income declared.

(3) Where a taxpayer contravenes his obligation to cooperate under section 90(3) by not submitting the records or where records submitted are essentially of no use or where it is

determined that the taxpayer has not drawn up records within the meaning of section 90(3), third sentence, in a timely manner, it shall be refutably assumed that his income which is subject to tax in Germany and whose determination the records within the meaning of section 90(3) serve is higher than the income he declared. Where in such cases the revenue authority must conduct an estimate and where this income can only be determined within a certain scale, especially only on the basis of price ranges, this scale may be fully exhausted to the detriment of the taxpayer. Where despite the submission of usable records by the taxpayer there are indications that his income would, taking into account the arm's length approach, be higher than the income declared on the basis of the records, and where corresponding doubts cannot be clarified on account of this because a foreign associated person does not fulfil his obligation to cooperate pursuant to section 90(2) or his obligation to provide information pursuant to section 93(1), the second sentence above shall be applied accordingly.

(4) Where a taxpayer does not submit records within the meaning of section 90(3), or where submitted records are essentially of no use, a surcharge of 5,000 euros shall be set. The surcharge shall be at least 5 per cent and at most 10 per cent of the additional income that arises from the correction after applying subsection (3) above where this leads to a surcharge of more than 5,000 euros. Where there is a delay in submitting usable records, the surcharge may total up to 1,000,000 euros, and shall be at least 100 euros for each full day beyond the date of the deadline. Where the revenue authorities are allowed discretion with respect to the extent of the surcharge, in addition to its purpose of obliging the taxpayer to draw up and submit in a timely manner the records within the meaning of section 90(3), the benefit gained by the taxpayer and, in the case of delayed submission, the length of time by which the deadline has been exceeded shall be taken into account. No surcharge shall be set where non-fulfilment of the obligations under section 90(3) appears excusable or where default is only minor. Default by a legal representative or aide shall be deemed equal to personal default. The surcharge shall be set as a matter of routine once the external audit has been completed.

(5) In the cases outlined in section 155(2), the basis of taxation to be assessed in a basic assessment notice may be estimated.

Section 163

Divergent assessment of taxes on equitable grounds

Taxes may be assessed at a lower amount and individual bases of taxation which increase the tax may be ignored in assessing the tax where the levy of the tax would be inequitable depending on the individual case. With the consent of the taxpayer, it shall be permissible with regard to taxes on income for individual bases of taxation, where these increase the tax, to be taken into account at a later point in time and, where they reduce the tax, to be taken into account at an earlier point in time when assessing the tax. The decision on the divergent assessment can be issued in conjunction with the assessment of taxes.

Section 164

Tax assessment subject to re-examination

(1) As long as the tax case has not been subject to a final audit, taxes may be assessed generally or in individual cases on a provisional basis subject to re-examination without justification being required. Assessment of a prepayment shall always be a tax assessment subject to re-examination.

(2) The tax assessment may be cancelled or amended for as long as the proviso remains in effect. The taxpayer may apply for the cancellation or amendment of the tax assessment at any time. However, the relevant decision may be deferred until a final audit of the tax case, which shall be undertaken within a suitable timeframe.

(3) The proviso of re-examination may be cancelled at any time. The cancellation shall be equivalent to a tax assessment not subject to re-examination; section 157(1), first and third sentences, shall apply *mutatis mutandis*. The proviso shall be withdrawn where, following an external audit, no changes arise vis-à-vis the tax assessment subject to re-examination.

(4) The proviso of re-examination shall no longer apply where the period for assessment expires. Section 169(2), second sentence, and section 171(7), (8) and (10) shall not be applied.

Section 165

Provisional assessment of taxes, suspension of tax assessment

(1) A tax may be assessed provisionally where there is uncertainty as to whether the prerequisites required for the tax to come into effect have been met. This provision shall also be applied where

1. there is uncertainty as to whether and when agreements with other states on taxation (section 2) which have a positive effect for the taxpayer come into effect with respect to the assessment of taxes,
2. the Federal Constitutional Court has determined the incompatibility of a tax law with the Basic Law of Germany and the legislator is obliged to make new provisions,
3. the compatibility of a tax law with primary law is the subject of proceedings before the Court of Justice of the European Communities, the Federal Constitutional Court or a highest federal court, or
4. the interpretation of a tax law is the subject of proceedings before the Federal Fiscal Court.

The scope of and reason for the provisional character shall be indicated. Given the preconditions of the first and second sentences above, the tax assessment can also be suspended against or without provision of collateral.

(2) The revenue authority may cancel or amend a tax assessment to the extent that it has assessed the tax on a provisional basis. When the uncertainty has been removed, a provisional assessment of taxes shall be cancelled, amended or declared final; any suspended assessment of taxes shall be subsequently continued. In the cases outlined in subsection (1), second sentence, number 4 above, the uncertainty shall cease as soon as it clear that the principles of the ruling of the Federal Fiscal Court are to be applied in general above and beyond the individual case ruled on. In the cases outlined in subsection (1), second sentence, above a provisional assessment of taxes pursuant to the second sentence above shall be declared final only upon application by the taxpayer when it cannot be cancelled or amended.

(3) The provisional assessment of taxes may be issued in conjunction with a tax assessment subject to re-examination.

Section 166

Third party effects of the tax assessment

Where the tax has been incontestably assessed with respect to the taxpayer, in addition to a universal successor, anyone who would have been in a position to contest the assessment notice issued against the taxpayer as his representative, authorised nominee or by virtue of his own rights shall also be obliged to accept the validity of this.

Section 167

Self-assessed tax return, use of tax marks or tax stamps

(1) Where a tax has to be self-assessed as a result of a statutory obligation (section 150(1), third sentence), an assessment of the tax pursuant to section 155 shall be required only where the assessment leads to a divergent tax or the persons owing the tax or liability do not submit the self-assessed tax return. The first sentence above shall apply *mutatis mutandis* where because of a statutory obligation the tax is to be paid by applying tax marks or tax stamps. Where following an external audit within the meaning of section 193(2) number 1 the person owing the tax or liability recognises in writing his obligation to pay, such recognition shall be deemed equal to a self-assessed tax return.

(2) Self-assessed tax returns shall also be deemed to have been submitted on time when they are received by the responsible payments office with the time period allowed. This shall not apply to import/export duties and excise duties.

Section 168

Effects of a self-assessed tax return

A self-assessed tax return shall be deemed equivalent to a tax assessment subject to re-examination. Where the self-assessed tax return results in a reduction in the tax payable up to that point or to a tax rebate, the first sentence above shall apply only when the revenue authority agrees. The agreement shall not require a particular form.

II. Period of limitation for the assessment

Section 169

Period for assessment

(1) A tax assessment and its cancellation or amendment shall be no longer permissible once the period for assessment has expired. This shall also apply with respect to corrections relating to obvious errors pursuant to section 129. The deadline shall be deemed to have been met where, before the period for assessment has expired,

1. the tax assessment notice has left the domain of the revenue authority responsible for assessing the tax, or
2. in the case of public service, notification is advertised or disclosed pursuant to section 10(2), first sentence, of the Act on the Administrative Service of Documents.

(2) The period for assessment shall be:

1. one year
for excise duties and excise duty rebates,
2. four years

for taxes and tax rebates which are not taxes or tax rebates within the meaning of number 1 above or import or export duties within the meaning of Article 4 numbers 10 and 11 of the Customs Code.

The period for assessment shall be ten years where taxes have been evaded and five years where they have been understated through gross negligence. This shall also apply where the tax evasion or the tax understatement through gross negligence has not been committed by the tax debtor or a person of whose services he avails himself to meet his tax obligations, unless the tax debtor shows that his wealth has not increased as a result of the act and that this act was not brought about by his omission to take the due precautions necessary to prevent an understatement of tax.

Section 170

Beginning of the period for assessment

(1) The period for assessment shall begin upon expiration of the calendar year in which the tax has arisen or a conditional tax has become unconditional.

(2) Notwithstanding the provisions of subsection (1) above, the period for assessment shall begin

1. where a tax return or a self-assessed tax return is to be submitted or a notice posted, upon expiration of the calendar year in which the tax return, the self-assessed tax return or the notice is submitted, at the latest however upon expiration of the third calendar year following the calendar year in which the tax has arisen, unless subsection (1) above prescribes that the period for assessment shall begin later,

2. where a tax that is to be paid by way of tax marks or tax stamps, upon expiration of the calendar year in which tax marks or tax stamps have been used for the tax case, at the latest however upon expiration of the third calendar year following the calendar year in which the tax marks or tax stamps should have been used.

This shall not apply to excise duties, excluding energy tax on natural gas and electricity duty.

(3) Where a tax or tax rebate is assessed upon application only, the period for the cancellation or amendment of this assessment or its correction pursuant to section 129 shall not begin before expiration of the calendar year in which the application is made.

(4) Where by application to capital tax or real property tax of subsection (2) number 1 above the date of commencement of the period for assessment is postponed, the date of commencement of the period for assessment for the subsequent calendar years of the main assessment period shall be postponed by the same amount of time.

(5) The period for assessment pursuant to subsection (1) or (2) above with respect to inheritance tax (gift tax) shall not begin

1. for acquisition by reason of death, before expiration of the calendar year in which the transferee has become aware of the transfer,

2. for endowment, before expiration of the calendar year in which the endower has died or the revenue authority has become aware of the endowment executed,

3. for transfer of property for particular purpose between living persons, before expiration of the calendar year in which the obligation has been met.

(6) In the case of securities tax, the period for assessment shall not begin before expiration of the calendar year in which the bill of exchange has fallen due.

Section 171

Suspension of expiration

(1) The period for assessment shall not expire for as long as the tax assessment cannot be undertaken within the last six months of the period as a result of *force majeure*.

(2) Where an obvious error has occurred in issuing a tax assessment notice, the period for assessment shall not terminate before expiration of one year following notification of this tax assessment notice.

(3) Where an application for tax assessment, or cancellation of or amendment to a tax assessment, or its correction pursuant to section 129, is made outside of objection or legal proceedings, the period for assessment shall not expire before an incontestable decision has been reached on the application.

(3a) Where a tax assessment notice is contested by way of objection or legal proceedings, the period for assessment shall not expire before an incontestable decision has been reached on the legal remedy; this shall also apply where the action is first brought when the period for assessment has expired. The expiration of the period for assessment shall be suspended with regard to the entire tax claim; this shall not apply where the legal remedy is impermissible. In the cases of sections 100(1), first sentence, 100(2), second sentence, 100(3), first sentence, and 101 of the Code of Procedure for Fiscal Courts, a decision on the legal remedy shall become incontestable only once a tax assessment notice issued on the basis of the aforementioned provisions has become incontestable.

(4) Where an external audit is commenced before the period for assessment has expired or where its commencement is postponed upon application by the taxpayer, the period for assessment of the taxes in relation to which the external audit has been initiated or, in the case of a postponed audit, is to be initiated, shall not expire before the tax assessment notices to be issued on the basis of the external audit have become incontestable or before three months have expired following disclosure of the notification pursuant to section 202(1), third sentence. This shall not apply where an external audit is interrupted immediately after its commencement for a period of more than six months for reasons for which the revenue authority bears responsibility. The period for assessment shall end at the latest when the

periods named in section 169(2) have ended since expiration of the calendar year in which the final meeting has taken place or, in the absence of such, since expiration of the calendar year in which the last investigations as part of the external audit have taken place; a suspension of expiration pursuant to other provisions shall remain unaffected.

(5) Where the customs investigation offices or the offices of the revenue authorities of a *Land* charged with tax investigations begin the process of calculating the bases of taxation for the taxpayer before expiration of the period for assessment, the period for assessment shall not expire before the tax assessment notices to be issued on the basis of the calculations have become incontestable; subsection (4), second sentence, above shall apply *mutatis mutandis*. The same shall apply where the taxpayer has been informed before expiration of the period for assessment of the initiation of criminal tax proceedings or administrative fine proceedings as a result of a tax offence; section 169(1), third sentence, shall apply *mutatis mutandis*.

(6) Where an external audit of the taxpayer cannot be carried out in the territory of application of this Code, the expiration of the period for assessment shall also be suspended by other investigative actions within the meaning of section 92 until the tax assessment notices issued on the basis of these investigations have become incontestable. The suspension of expiration shall only then become effective, however, where the taxpayer has been informed of the commencement of investigations under the first sentence above before the period for assessment has expired; section 169(1), third sentence, shall apply *mutatis mutandis*.

(7) In the cases mentioned in section 169(2), second sentence, the period for assessment shall not end before the period of limitation for prosecution of the tax crime or tax offence has become time-barred.

(8) Where pursuant to section 165 the assessment of a tax has been suspended or the tax has been provisionally assessed, the period for assessment shall not end before expiration of one year after the uncertainty has been removed and the revenue authority has been informed of such. In the cases referred to in section 165(1), second sentence, the period for assessment shall not end before expiration of two years after the uncertainty has been removed and the revenue authority has been informed of such.

(9) Where the taxpayer posts notification pursuant to sections 153, 371 and 378(3) before the period for assessment has expired, the period for assessment shall not end before expiration of one year following receipt of the notification.

(10) To the extent that a notice of determination, a basic impersonal tax assessment notice or another administrative measure is binding (basic assessment notice) for the assessment of a tax, the period for assessment shall not end before expiration of two years following notification of the basic assessment notice. Where the expiration of the period for assessment with respect to the part of the tax for which the basic assessment notice is not binding is suspended pursuant to subsection (4) above, the period for assessment for the part of the tax for which the basic assessment notice is binding shall not end before expiration of the period suspended pursuant to subsection (4) above.

(11) Where a person incapable of contracting or with limited ability to contract has no legal representative, the period for assessment shall not end before expiration of six months after the point in time at which the person acquires unlimited ability to contract or the lack of representation is remedied. The shall also apply to the extent that a custodian has been appointed for a person and reservation of consent pursuant to section 1903 of the Civil Code has been ordered, but the custodian has died or in some other manner is no longer available or is prevented from representing the person on legal grounds.

(12) Where a tax is imposed on an inheritance, the period for assessment shall not end before expiration of six months after the point in time at which the inheritance is assumed by the heir or bankruptcy proceedings have been initiated with respect to the inheritance, or from which the tax can be assessed against a representative.

(13) Where, before expiration of the period for assessment, a tax which has not yet been assessed is registered in bankruptcy proceedings, the period for assessment shall not end before expiration of three months after the bankruptcy proceedings have been concluded.

(14) The period for assessment for a tax claim shall not end for as long as the period of limitations for an associated refund claim pursuant to section 37(2) has not become time-barred (section 228).

III. Finality

Section 172

Cancelling and amending tax assessment notices

(1) A tax assessment notice, to the extent that it has not been issued provisionally or subject to re-examination, may only be cancelled or amended

1. where it concerns excise duties,
2. where it concerns taxes other than import and export duties within the meaning of Article 4 numbers 10 and 11 of the Customs Code or excise duties,
 - a) provided that the taxpayer agrees or the essence of his application is met; however, this shall apply to the benefit of the taxpayer only to the extent that he has agreed or submitted the application before the period for objection has expired or to the extent that the revenue authority remedies an objection or legal proceedings,
 - b) to the extent that it has been issued by an authority which is not responsible,
 - c) to the extent that it has been effected by dishonest means such as deceit, threat or bribery,
 - d) to the extent that this is otherwise permitted by law; sections 130 and 131 shall not apply.

This shall also apply where the tax assessment notice has been confirmed or amended by a ruling on an objection. 2(a) of the first sentence above shall equally be applied in the cases mentioned in the second sentence above where the taxpayer has agreed or submitted the application before the period for legal proceedings has expired; declarations and evidence which pursuant to section 364b(2) were not admitted in the objection ruling shall not be taken into account thereby.

(2) Subsection (1) above shall also apply to an administrative act with which an application for a tax assessment notice to be issued, cancelled or amended has been rejected in full or in part.

(3) Pending applications for cancellation or amendment of a tax assessment that are made outside of objection or legal proceedings which concern a legal issue ruled on by the Court of the European Communities, the Federal Constitutional Court or the Federal Fiscal Court and which cannot be met following the conclusion of the proceedings before these courts may be rejected by way of a general order. Section 367(2b), second to sixth sentences, shall apply accordingly.

Section 173

Cancelling or amending tax assessment notices as a result of new facts or evidence

(1) Tax assessment notices shall be cancelled or amended

1. where facts or evidence which lead to a higher tax are subsequently ascertained,
2. where facts or evidence which lead to a lower tax are subsequently ascertained and the fact that these facts or evidence are only ascertained subsequently is not due to grave negligence on the part of the taxpayer. Negligence shall be inconsequential where

the facts or evidence have a direct or indirect connection to the facts or evidence within the meaning of number 1 above.

(2) Notwithstanding the provisions of subsection (1) above, tax assessment notices, to the extent that they have been issued on the basis of an external audit, may be cancelled or amended only where taxes have been evaded or understated through gross negligence. This shall also apply where notification pursuant to section 202(1), third sentence, has been issued.

Section 174

Conflicting tax assessments

(1) Where a particular circumstance has been taken into account to the benefit of one or more taxpayers in several tax assessment notices although it should only have been taken into account once, the incorrect tax assessment notice shall be cancelled or amended upon application. Where the period for assessment for this tax assessment has already expired, the application may still be made for up to a year after the last of the tax assessments in question has become incontestable. Where the application is made on time, there shall be no deadline imposed for the cancellation or amendment of the tax assessment notice.

(2) Subsection (1) above shall apply *mutatis mutandis* where a particular circumstance has been taken into account more than once to the benefit of one or more taxpayers in an incompatible manner; an application shall not be required. However, it shall be possible to correct the incorrect tax assessment notice only where the circumstance was taken into account on the basis of an application or declaration by the taxpayer.

(3) Where it is obvious that a particular circumstance has not been taken into account in a tax assessment notice because it was assumed that it is to be taken into account in another tax assessment notice and where this assumption transpires to be incorrect, the tax assessment which did not take the circumstance into account may be subsequently carried out, cancelled or amended. The subsequent carrying out, cancellation or amendment shall be permissible only until the period for assessment which applies to the other tax assessment expires.

(4) Where as a result of incorrect appraisal of a particular circumstance a tax assessment notice has been issued which, as the result of an appeal or otherwise upon application by the taxpayer, is cancelled or amended by the revenue authority to his benefit, the proper taxation implications of the circumstance may subsequently be effected by issuing or amending a tax assessment notice. This shall also apply where the tax assessment notice is cancelled or amended by the court. The expiration of the period for assessment shall be inconsequential where the taxation implications are effected within one year following cancellation or amendment of the incorrect tax assessment notice. This shall apply solely under the conditions outlined in subsection (3), first sentence, above where the period for assessment had already expired when the tax assessment notice which has been subsequently cancelled or amended was issued.

(5) Subsection (4) above shall apply with respect to third parties where they were involved in the proceedings which led to the incorrect tax assessment notice being cancelled or amended. Their enlistment in or summons to these proceedings shall be permissible.

Section 175

Cancelling or amending tax assessment notice in special cases

(1) A tax assessment notice shall be issued, cancelled or amended

1. to the extent that a basic assessment notice (section 171(10)) which has a binding effect on this tax assessment notice is issued, cancelled or amended,

2. to the extent that an event which entails tax implications on periods already elapsed occurs (event with retroactive effect).

In the cases mentioned in the first sentence, number 2, above the period for assessment shall begin upon expiration of the calendar year in which the event occurs.

(2) The cessation of a precondition bestowing a tax privilege shall also be deemed to be an event with retroactive effect where it is legally determined that this precondition must be met for a certain amount of time or where an administrative act has determined that it forms the basis for granting the tax privilege. The subsequent issue or submission of a certification or confirmation shall not be deemed to be an event with retroactive effect.

Section 175a

The implementation of mutual agreement understandings

A tax assessment notice shall be issued, cancelled or amended where this is required in order to implement a mutual agreement understanding or an arbitral award pursuant to an agreement within the meaning of section 2. The period for assessment shall not end before expiration of one year after the mutual agreement understanding or arbitral award has come into effect.

Section 176

Protection of confidence in cancelling and amending tax notices of assessment

(1) Where a tax assessment notice is cancelled or amended, the following may not be taken into account if it is to the taxpayer's disadvantage:

1. the Federal Constitutional Court determines the invalidity of a law upon which the tax assessment was based,
2. a highest federal court does not apply a provision, upon which the tax assessment was based, because it holds it to be unconstitutional,
3. a ruling of a highest federal court, which was applied by the revenue authority in the tax assessment, has changed.

Where the court rulings up to that point had already been taken into account in a tax return or self-assessed tax return without this having been recognisable by the revenue authority, number 3 above shall apply only where it can be assumed that the revenue authority would have applied the standing case law had they been aware of the circumstances.

(2) Where a tax assessment notice is cancelled or amended, it may not be taken into account if it is to the taxpayer's disadvantage that a general administrative provision of the Federal Government, a highest federal authority or a highest authority of a *Land* has been classified by a highest federal court as being incompatible with current law.

Section 177

Correction of material errors

(1) Where the conditions for cancelling or amending a tax assessment notice to the taxpayer's disadvantage exist, those material errors which are not the cause of the cancellation or amendment shall be corrected to the taxpayer's advantage or disadvantage insofar as the amendment is sufficient.

(2) Where the conditions for cancelling or amending a tax assessment notice to the taxpayer's advantage exist, those material errors which are not the cause of the cancellation or amendment shall be corrected to taxpayer's advantage or disadvantage insofar as the amendment is sufficient.

(3) Material errors within the meaning of subsections (1) and (2) above shall be all errors, including obvious errors within the meaning of section 129, which lead to the assessment of a tax which deviates from the tax which arose by application of law.

(4) Section 164(2), section 165(2) and section 176 shall remain unaffected.

IV. Costs

Section 178

Costs of making special use of the customs authorities

(1) The authorities of the federal customs administration and the authorities to whom execution of the tasks of the federal customs administration has been transferred may

charge fees and demand that expenses are refunded in the case of a special use or service (official act for which fee must be paid).

(2) A special use or service within the meaning of subsection (1) above shall mean, in particular,

1. official acts carried out outside of the place of work and outside of office hours, to the extent that these are not fiscal supervision measures,
2. official acts which make the execution of duties more difficult because, according to the application, they are to be carried out at a specific time,
3. the inspection of goods where
 - a) this is the result of an application to have binding tariff information issued, or a tax rebate or other privileges granted, or
 - b) in the course of official inspections, details or objections of the person with power of disposal turn out to be incorrect or unfounded, or
 - c) the inspected goods do not meet the required standards,
4. monitoring measures in businesses and with regard to transactions, where such measures are in response to contraventions of the ordinances issued to secure the tax revenue,
5. official monitoring and accompaniment of means of transportation or goods,
6. the safekeeping of non-Community goods,
7. written work (drafting correspondence, transcripts and copies) carried out upon application,
8. the destruction of goods carried out in an official capacity or upon application.

(3) The Federal Ministry of Finance shall be entitled to set out more precisely by way of ordinance not requiring the approval of the Bundesrat the official acts for which a fee can be charged, to measure and set a flat rate for the costs to be charged on the basis of the average administrative effort they require and to define conditions under which all or some of these costs may not be levied because they are negligible, they will cause undue hardship or for other similar reasons.

(4) The provisions which apply to excise duties shall be applied accordingly to the assessment of the costs. Sections 18 to 22 of the Administrative Costs Act shall not apply to these costs.

Section 178a

Costs of making special use of the revenue authorities

(1) The Federal Central Tax Office shall charge fees for processing applications for the implementation of a procedure of mutual understanding pursuant to an agreement within the meaning of section 2 with a view to the consensual taxation of as yet unrealised transactions of the taxpayer with related persons within the meaning of section 1 of the Foreign Tax Act or with a view to the future consensual distribution of profits between a domestic enterprise and its foreign permanent establishment or with a view to the future consensual determination of profits of a domestic permanent establishment of a foreign enterprise (advance pricing agreement procedure), which fees shall be determined by the Federal Central Tax Office before the advance pricing agreement procedure is opened. This procedure shall be opened by the first written correspondence sent to the other country. Where an application has as its goal an advance pricing agreement procedure with several states, a fee shall be determined and charged for each procedure. The advanced pricing agreement procedure shall not be opened before the assessment of fees has become

incontestable and the fee has been paid; where an application for a lower fee pursuant to subsection (4) below has been made, the decision relating to this must also first be uncontested.

(2) The fee shall be 20,000 euros (basic fee) for each application within the meaning of subsection (1) above; an application of a parent company within the meaning of section 14(1) of the Corporation Tax Act which includes the corresponding transactions of its controlled companies shall be deemed to be one application. Where a person who has already entered a mutual agreement understanding applies for an extension to the period of validity, the fee shall be 15,000 euros (extension fee). Where the applicant amends his application before a decision has been taken on the original application or where he applies for an amendment to the mutual agreement understanding while it is ongoing, an additional fee of 10,000 euros shall be levied for each amendment (amendment fee); this shall not apply where the amendment has been ordered by the Federal Central Tax Office or by the other state.

(3) Where the total value of the transactions covered by the advance pricing agreement procedure are not likely to exceed the amounts given in section 6(2), first sentence, of the Ordinance of 13 November 2003 on Recording Profit Allocations (Federal Law Gazette I, p. 2296), the basic fee shall be 10,000 euros, the extension fee 7,500 euros and the amendment fee 5,000 euros.

(4) The Federal Central Tax Office may reduce the fees under subsection (2) or (3) above upon application where their payment means unreasonable hardship for the taxpayer and the Federal Central Tax Office determines that the revenue authorities have a particular interest in the implementation of the advance pricing agreement procedure. The application shall be submitted before the advance pricing agreement procedure is opened; any application submitted at a later stage shall not be permissible.

(5) Where the application is withdrawn or rejected, or where the advance pricing agreement procedure fails, the uncontested fee set shall not be refunded.

2nd Subchapter

Separate determination of the bases of taxation, assessment of basic impersonal tax amounts

I. Separate determination

Section 179

Determination of bases of taxation

(1) Notwithstanding the provisions of section 157(2), the bases of taxation shall be determined separately by way of notice of determination where this is provided for in this Code or otherwise in the tax laws.

(2) A notice of determination shall be issued against the taxpayer to whom the object of the determination is attributable for taxation. Separate determination shall be undertaken uniformly against several participants where this is required by statute or where the object of the determination is attributable to several persons. Where one of these persons participates in the object of the determination solely via another person, a special separate determination may be undertaken.

(3) Where a determination which should have been made does not appear in a notice of determination, it shall be included in an additional notice.

Section 180

Separate determination of bases of taxation

(1) The following, in particular, shall be determined separately:

1. the assessed values in accordance with the Valuation Act,
- 2.

- a) income which is subject to income tax and corporation tax, and other related bases of taxation where several persons have a share in the income and the income is attributable for tax purposes to these persons,
- b) in cases other than those mentioned in a) above, income from agriculture and forestry, from a commercial operation, or from professional services, where, given the situation at the end of the period for determining profit, the tax office responsible for separate determination is not also responsible for taxes on income,

3. the value of economic goods subject to capital tax (sections 114 to 117a of the Valuation Act) and the value of debts and other deductions (section 118 of the Valuation Act), where the economic goods, debts and other deductions are attributable to several persons and such determination is relevant for taxation.

(2) In order to ensure that the law is applied uniformly to similar situations, and in order to simplify the taxation procedure, the Federal Ministry of Finance may determine, via ordinance and with the consent of the Bundesrat, that bases of taxation may be determined separately and, for several persons, uniformly in cases other than those mentioned in subsection (1) above. This may set out, in particular, the following:

- 1. the object and scope of the separate determination,
- 2. the conditions necessary for the determination procedure,
- 3. the local jurisdiction of the revenue authorities,
- 4. the participants in the determination procedure (procedure participants) and the scope of their obligations and rights for taxation purposes, including the representation of participants by other participants,
- 5. the disclosure of administrative acts to procedure participants and persons authorised to take receipt of such,
- 6. the permissibility, scope and implementation of external audits to calculate the bases of taxation.

The Federal Ministry of Finance may, via ordinance and with the consent of the Bundesrat, order that bases of taxation which only have an effect at a later stage are determined separately and, for several persons, uniformly in order to ensure correct taxation at a later date; the second sentence above shall apply accordingly. The ordinances shall not require the agreement of the Bundesrat where they concern import/export duties and excise duties, with the exception of beer duty.

(3) Subsection (1) number 2(a) above shall not apply where

- 1. only one of the persons with a share in the income is subject to income tax or corporation tax within the territory of application of this Code, or
- 2. the case is one of negligible importance, especially because the extent of the amount determined and its allocation have been established. This shall also apply *mutatis mutandis* to the cases under subsection (1) numbers 2(b) and 3 above.

The tax office pursuant to section 18(1) number 4 may determine by way of notice that a separate determination shall not be undertaken. The notice shall count as a tax assessment notice.

(4) Subsection (1) number 2(a) above shall further not apply for work cooperatives whose sole purpose is to fulfil a single contract for work or contract for performance of work.

(5) Subsection (1) number 2, subsection (2) and subsection (3) above shall be applied accordingly where

1. the income excluded from the tax base pursuant to an agreement for the avoidance of double taxation is relevant in assessing the tax of the participants, or
2. tax-deductible amounts and corporation tax are to be credited against the assessed tax.

Section 181

Procedural rules for separate determination, determination period, obligation to submit return

(1) The provisions on executing the taxation procedure shall apply *mutatis mutandis* to separate determination. The declaration for separate determination shall be a tax return within the meaning of section 179(2) number 1. Where a declaration for separate determination pursuant to section 180(2) is submitted without a corresponding request by the revenue authority to do so, section 170(3) shall apply *mutatis mutandis*.

(2) Anyone to whom the object of the determination is wholly or partially attributable shall be obliged to submit a declaration for separate determination. The following, in particular, shall be obliged to submit a declaration:

1. in the cases referred to in section 180(1) number 2(a), every participant in the determination to whom a share in the income subject to income tax or corporation tax is attributable,
2. in the cases referred to in section 180(1) number 2(b), the trader,
3. in the cases referred to in section 180(1) number 3, every participant in the determination to whom a share in the economic goods, debts or other deductions is attributable,
4. in the cases referred to in section 180(1) numbers 2(a) and 3, the persons described in section 34.

Where a person obliged to submit a declaration for separate determination has already done so, other participants shall be exempt from the obligation to submit a declaration.

(2a) The declaration for separate determination pursuant to section 180(1) number 2 shall be transmitted using an officially prescribed data set via remote data transmission. Upon application the revenue authority may, to avoid undue hardship, waive electronic transmission; in this case, the declaration for separate determination shall be submitted on an officially prescribed form and personally signed by the person obliged to submit a declaration.

(3) The period within which the separate determination of assessed values is to be undertaken (determination period) shall begin upon expiration of the calendar year at whose beginning the main determination, the updating, the subsequent determination or the cancellation of an assessed value is to be carried out. Where a declaration for the separate determination of the assessed value is to be submitted, the determination period shall begin upon expiration of the calendar year in which the declaration is submitted, but no later than upon expiration of the third calendar year following the calendar year at the beginning of which the determination of the assessed value is to be carried out or cancelled. Where the beginning of the determination period pursuant to the second sentence above is postponed, the beginning of the determination period shall be postponed by the same amount of time for the other determination dates of the main determination period.

(4) In the cases mentioned in subsection (3) above, the determination period shall not begin before expiration of the calendar year at the beginning of which the assessed value is to be applied for tax purposes for the first time.

(5) Separate determination may also be undertaken following the expiration of the determination period to which it applies in as much as the separate determination is of relevance for a tax assessment for which the period of assessment has not yet expired at the time the separate determination is made; section 171(10) shall not be taken into account.

Reference shall be made to such in the notice of determination. Section 169(1), third sentence, shall apply *mutatis mutandis*.

Section 182

Effects of separate determination

(1) Notices of determination, even when they are not yet incontestable, shall be binding for other notices of determination, for basic impersonal tax amount notices, for tax assessment notices and for self-assessed tax returns (follow-up notices) to the extent that the determinations made in the notices of determination are of importance for these follow-up notices. In the case of determinations pursuant to section 180(5) number 2, the first sentence shall apply accordingly to administrative acts which concern the realisation of claims arising from the tax debtor-creditor relationship; where a notice of determination pursuant to section 180(5) number 2 is issued, cancelled or amended, any administrative act for which this notice of determination has a binding effect shall be corrected in corresponding application of section 175(1), first sentence, number 1.

(2) A notice of determination on an assessed value (section 180(1) number 1) shall also have effect for legal successors to whom after the determination has been carried out the object of the determination is transferred, with corresponding tax implications. However, where legal succession takes place before the notice of determination has been issued, the notice shall have effect for the legal successor only where it is disclosed to him. The first and second sentences above shall apply accordingly to separate and separate and uniform determinations of the bases of taxation which only have an effect at a later date pursuant to the Ordinance of 19 December 1986 on the separate determination of bases of taxation pursuant to section 180(2) of the Fiscal Code (Federal Law Gazette I, p. 2663).

(3) Where a separate determination is carried out uniformly against several participants (section 179(2), second sentence) and where the inclusion in the notice of determination of one of the participants is incorrect as legal succession has already occurred, this may be corrected by way of special notice against the legal successor.

Section 183

Authorised recipients in the case of uniform determination

(1) Where a notice of determination is directed against several persons who are involved in the object of the determination as partners or co-owners of a community (participant in the determination), these should appoint a common recipient authorised to take receipt of all administrative acts and notifications connected with the determination procedure and any subsequent objection proceedings. In the absence of a common authorised recipient, a person entitled to represent the partnership or participants in the determination or to manage the object of the determination shall be the authorised recipient. Where this is not the case, the revenue authority may demand that participants appoint an authorised recipient within a certain reasonable period. To this end, a participant shall be proposed and reference shall be made to the fact that he will be notified of the administrative acts and notifications named in the first sentence above with effect for and against all participants, to the extent that no other authorised recipient is appointed. In notifying the authorised recipient, reference shall be made to the fact that notification is done with effect for and against all participants in the determination.

(2) Subsection (1) above shall not be applied where the revenue authority is aware that the partnership or community no longer exists, that a participant is no longer part of the partnership or community, or that serious differences of opinion exist between the participants. Where pursuant to the first sentence above individual notification is necessary, the participant shall be informed of the object of the determination, the bases of taxation concerning all participants, his share, the number of participants and the bases of taxation concerning him personally. Where he has a legitimate interest, the participant shall be informed of the entire contents of the notice of determination.

(3) Where an authorised recipient pursuant to subsection (1), first sentence, above exists, notices of determination may be made known to him even with effect for a participant named

in subsection (2), first sentence, above to the extent that and provided that this participant or the authorised recipient has not objected. Any revocation of the authorisation shall take effect in relation to the revenue authority only once the revenue authority has received it.
(4) Where an economic entity is attributed to a married couple or a married couple and their children or single parents and their children and where the participants have not appointed a common authorised recipient, the provisions of section 122(7) on consolidated notices shall apply accordingly with regard to the disclosure of notices of determination on the assessed value.

II. The assessment of basic impersonal tax amounts

Section 184

The assessment of basic impersonal tax amounts

(1) Basic impersonal tax amounts which are to be calculated pursuant to the tax laws shall be assessed by way of basic impersonal tax assessment notice. The assessment of basic impersonal tax amounts shall also constitute a decision on the personal and material tax liability. The provisions on executing the taxation procedure shall be applied *mutatis mutandis*. In addition, section 182(1) and, for basic real property tax assessment notices, section 182(2) and section 183 shall be applied *mutatis mutandis*.

(2) The power to assess basic impersonal tax amounts shall also include the power to execute measures pursuant to section 163, first sentence, to the extent that instructions for such measures have been set out in a general administrative provision of the Federal Government or of a highest revenue authority of a *Land*. To the extent that a measure pursuant to section 163, second sentence, influences the commercial revenue as a basis for assessing the tax on income, it shall also have effect on the trade income as a basis for assessing the basic trade tax amount.

(3) The revenue authorities shall notify the content of the basic impersonal tax assessment notice and the measures taken pursuant to subsection (2) above to the municipalities charged with assessing the tax (issuing the impersonal tax assessment notice).

3rd Subchapter

Apportionment and allocation

Section 185

Validity of the general provisions

The provisions which apply to the basic impersonal tax amounts shall be applied accordingly to the apportionment of basic impersonal tax amounts as provided for in the tax laws unless otherwise stipulated in the following.

Section 186

Participants

The following shall participate in the apportionment procedure:

1. the taxpayer,
2. the taxing entities to which a share of the basic impersonal tax amount has been allocated or which claim a share. Where the taxing entity is not obliged to assess the tax, the authority responsible for assessing the tax shall take its place.

Section 187

Inspection of files

The participating taxing entities may demand from the competent revenue authority information regarding the basis of apportionment and may have its public officials inspect the records relating to the apportionment.

Section 188

Notice of apportionment

(1) A notice on the apportionment (apportionment notice) shall be issued in writing and made known to the participants where it affects them.

(2) The apportionment notice shall state the extent of the basic impersonal tax amount to be apportioned and shall determine the shares to be allocated to the participating taxing entities. Furthermore, it shall provide details of the basis of apportionment.

Section 189

Amendment to the apportionment

Where a taxing entity's claim to a share of the basic impersonal tax amount has not been taken into account and has not been rejected, the apportionment shall be amended or subsequently undertaken *ex officio* or upon application. Where the existing apportionment notice relating to taxing entities that have already participated in the apportionment procedure has become incontestable, only those amendments which result from the subsequent inclusion of the taxing entities that have hitherto been overlooked may be undertaken when amending the apportionment. The apportionment shall not be amended or subsequently undertaken where one year has passed since the basic impersonal tax assessment notice became incontestable unless the taxing entity overlooked had applied before the year has expired for the amendment to be subsequently undertaken or amended.

Section 190

Allocation procedure

Where the full extent of a basic impersonal tax amount is to be allocated to one taxing entity but there is disagreement as to which taxing entity is entitled to the basic impersonal tax amount, the revenue authority shall reach a decision by way of allocation notice upon application by a participant. The provisions which apply to the apportionment procedure shall be applied accordingly.

4th Subchapter Liability

Section 191

Notices of liability, notices of compulsory tolerance

(1) A claim may be made by way of notice of liability against a person who is legally liable for a tax (liable person) or by way of notice of compulsory tolerance against whoever is legally obliged to tolerate enforcement. Contestations relating to claims from the tax debtor-creditor relationship which are not part of insolvency proceedings shall be made by way of notice of compulsory tolerance provided that they are not to be made by way of plea as provided for in section 9 of the Act on Contesting Transactions of a Debtor Not Included in Insolvency Proceedings; in calculating deadlines pursuant to sections 3 and 4 of said Act, the issue of a notice of compulsory tolerance shall be deemed equal to a judicial act allowing contestability pursuant to section 7(1) of the Act. The notices shall be issued in writing.

(2) Before a notice of liability is issued against a lawyer, a patent agent, a notary, a tax consultant, a tax representative, an auditor or a certified accountant on account of an action within the meaning of section 69 carried out in the exercise of his profession, the revenue authority shall allow the responsible professional organisation the opportunity to present aspects which from its perspective are of relevance to the decision.

(3) The provisions on the period for assessment shall be applied accordingly to the issue of notices of liability. The period for assessment shall be four years in the cases referred to in section 70, ten years regarding tax evasion, five years regarding tax understatement through gross negligence, and in the cases referred to in section 71, 10 years. The period for assessment shall begin upon expiration of the calendar year in which the matter to which the law attaches the consequence of liability arose. Where the tax for which liability is borne has not yet been assessed, the period for assessment for the notice of liability shall not end before expiration of the period for assessment which applies to the assessment of taxes; where this is not the case, section 171(10) shall apply *mutatis mutandis*. In the cases

referred to in sections 73 and 74, the period for assessment shall not end before the period of limitations for tax assessed against the tax debtor has become time-barred (section 228).

(4) Where the tax laws do not provide for the liability, a notice of liability may be issued as long as the liability claims are not yet time-barred pursuant to the laws relevant to them.

(5) A notice of liability may no longer be issued

1. insofar as the tax has not been assessed against the tax debtor and, because the period for assessment has expired, can no longer be assessed,
2. insofar as the tax assessed against the tax debtor is time-barred or the tax debt has been remitted.

This shall not apply where the liability is based on the fact that the person owing the liability has committed tax evasion or has received, held or sold property obtained by tax evasion.

Section 192 Contractual liability

Whoever promises on the basis of a contract to assume responsibility for the tax of another may be required to do so only in accordance with the provisions of civil law.

Fourth Chapter External audit

1st Subchapter General provisions

Section 193 Permissibility of an external audit

(1) An external audit shall be permissible with respect to taxpayers who maintain a commercial operation or agricultural and forestry undertaking or who provide professional services, and with respect to taxpayers within the meaning of section 147a.

(2) With respect to taxpayers other than those described in subsection (1) above, an external audit shall be permissible

1. to the extent that it concerns the obligation of this taxpayer for account of another to pay taxes or to withhold or give to revenue authorities taxes which are due,
2. where there is a need to clarify the circumstances relevant for taxation and, due to the nature and scope of the circumstances to be examined, it is impractical to conduct an examination at the offices of the competent authority, or
3. where a taxpayer fails to comply with his obligation to cooperate under section 90(2), third sentence.

Section 194 Scope of an external audit

(1) The external audit shall serve to identify the taxpayer's circumstances for tax purposes. It may cover one or more types of tax, one or more taxation periods or be limited to certain aspects. The external audit of an unincorporated company shall cover the partners' circumstances for tax purposes to the extent that these are of importance with respect to the uniform determinations to be examined. The tax circumstances of other persons may also be examined to the extent that the taxpayer was or is obliged for account of these persons to pay taxes or withhold and give to revenue authorities taxes which are due; this shall also apply where any tax deficiencies are to be enforced against the other persons.

(2) The tax circumstances of partners and members as well as of members of supervisory bodies may, in addition to the cases governed by subsection (1) above, be included in the external audit to be conducted at a partnership where this serves the purpose of the audit in individual cases.

(3) Where due to an external audit circumstances of persons other than those named in subsection (1) above are determined, the evaluation of these findings shall be permissible to the extent that knowledge of such is of relevance for the taxation of these other persons or the findings concern an impermissible provision of assistance in tax matters.

Section 195 Jurisdiction

External audits shall be conducted by the revenue authorities responsible for the taxation. These may charge other revenue authorities with the external audit. The appointed revenue authority may undertake the tax assessment and issue binding commitments (sections 204 to 207) in the name of the competent revenue authority.

Section 196 Audit order

The revenue authority shall determine the scope of the external audit in an audit order to be issued in written form with advice on applicable legal remedies (section 356).

Section 197 Disclosure of the audit order

(1) The audit order as well as the likely starting date of the audit and the names of the auditors shall be disclosed to the taxpayer in relation to whom the external audit is to be conducted a reasonable amount of time before the audit begins where this does not endanger the purpose of the audit. The taxpayer may elect not to have the deadline enforced. Where pursuant to section 194(2) the audit is to cover the tax circumstances of partners and members as well as members of supervisory bodies, the audit order shall also be disclosed to these persons.

(2) Upon application by the taxpayer, the starting date of the external audit shall be postponed to another date where important reasons for this can be established credibly.

Section 198 Identification duty, start of external audit

The auditors shall identify themselves without undue delay upon arrival at the premises. The date and time of the commencement of the external audit shall be recorded.

Section 199 Audit principles

(1) The external auditor shall examine the actual and legal circumstances which are decisive for the tax obligation and for measuring the tax (bases of taxation), regardless of whether these are to the taxpayer's advantage or disadvantage.

(2) The taxpayer shall be informed during the external audit of the facts determined and the possible tax implications where this does not impede the purpose and course of the audit.

Section 200 Obligations of the taxpayer to cooperate

(1) The taxpayer shall be obliged to cooperate in determining the circumstances that may be relevant for taxation. In particular, he shall provide information, submit for perusal and examination records, accounts, business documents and other deeds, provide the explanations needed to understand the records and support the revenue authority in executing its powers pursuant to section 147(6). Where the taxpayer or persons appointed by him are not able to give information, or where the information is not sufficient to clarify the situation or where information provided by the taxpayer is not likely to lead to results, the external auditor may request information from other persons belonging to the business. Section 93(2), second sentence, and section 97(2) shall not apply.

(2) The taxpayer shall submit the documents named in subsection (1) above on his business premises or, where there is no office suitable for conducting the external audit available, on his living premises or at the offices of the competent authority. A room or workstation

suitable for conducting the audit as well as the necessary aids shall be provided free of charge.

(3) The external audit shall be conducted during normal business or working hours. The auditors shall be entitled to enter and inspect sites and business premises. The owner of the business or his representative should be enlisted in the inspection of the premises.

Section 201 **Final meeting**

(1) A meeting shall be held on the results of the external audit (final meeting) unless the external audit leads to no changes to the bases of taxation or the taxpayer elects to forgo such a meeting. During the final meeting, disputed issues in particular as well as a legal assessment of the audit findings and their tax implications shall be discussed.

(2) Where the possibility exists that, on the basis of the audit findings, criminal or administrative fine proceedings are to be conducted, the taxpayer should be advised that a separate procedure will be conducted to assess the possibility of criminal or administrative fine proceedings.

Section 202 **Content and disclosure of audit report**

(1) A written report (audit report) shall be drawn up showing the result of the external audit. The audit report shall present in actual and legal terms the audit findings which are significant for taxation as well as the changes to the bases for taxation. Where the external audit does not lead to any changes to the bases for taxation, it shall be sufficient to disclose this to the taxpayer in writing.

(2) The revenue authority shall, upon application, supply the taxpayer with a copy of the audit report before it is evaluated and allow him opportunity to comment on it within a reasonable period of time.

Section 203 **Shortened external audit**

(1) The revenue authority may conduct a shortened external audit of taxpayers in respect of whom it regards an external audit in frequent intervals unnecessary in the particular circumstances. The audit shall be restricted to the essential bases of taxation.

(2) The taxpayer shall be informed before the audit is concluded of the extent of any likely deviations from the tax returns or tax assessments. The main audit findings of relevance for tax purposes shall be presented in writing to the taxpayer at the latest with the tax assessment notices. Sections 201(1) and 202(2) shall not apply.

2nd Subchapter **Binding commitments on the basis of an external audit**

Section 204 **Preconditions for a binding commitment**

Once an external audit has been concluded, the revenue authority should, upon application, make a binding commitment to the taxpayer as to how circumstances which were audited for the past and which are contained in the audit report shall be treated for tax purposes in future where knowledge of such future tax treatment is important for the business activity of the taxpayer.

Section 205 **Format of a binding commitment**

(1) The binding commitment shall be issued in writing and shall be indicated as binding.

(2) The binding commitment shall contain:

1. the underlying circumstances for the binding commitment; in this regard, reference may be made to the circumstances described in the audit report,

2. the decision on the application and the main reasons for this,
3. information as to the taxes and period to which the binding commitment applies.

Section 206
Binding effect

- (1) The binding commitment shall be binding in terms of taxation where circumstances which match those underlying the binding commitment arise at a later date.
- (2) Subsection (1) above shall not apply where, to the applicant's disadvantage, the binding commitment contravenes existing law.

Section 207
Expiry, cancellation and amendment of the binding commitment

- (1) The binding commitment shall expire when the legal provisions on which the decision is based are changed.
- (2) The revenue authority may cancel or amend the binding commitment with *ex nunc* effect.
- (3) The retroactive cancellation or amendment of a binding commitment shall only be permissible where the taxpayer agrees or where the conditions set out in section 130(2) numbers 1 or 2 are met.

Fifth Chapter
Tax investigation (customs investigation)

Section 208
Tax investigation (customs investigation)

- (1) The tax investigation (customs investigation) authorities shall be charged with
 1. investigating tax crimes and tax offences,
 2. determining the bases of taxation in the cases named in number 1 above,
 3. uncovering and investigating unknown tax cases.

The offices of the revenue authorities of a *Land* charged with tax investigations and the customs investigation offices shall have, in addition to the powers granted under section 404, second sentence, first half-sentence, the powers of investigation at the disposal of the tax offices (main customs offices). In the cases of numbers 2 and 3 above, the restrictions set out in section 93(1), third sentence, section 93(2), second sentence, section 97(2) and section 97(3) shall not apply; section 200(1), first and second sentences, section 200(2) and section 200(3), first and second sentences, shall apply *mutatis mutandis*, section 393(1) shall remain unaffected.

(2) Notwithstanding subsection (1) above, the offices of the revenue authorities of a *Land* charged with tax investigations and the customs investigations offices shall be responsible for

1. tax investigations, including external audits upon request by the competent revenue authority,
 2. the other tasks entrusted to them within the scope of the jurisdiction of the revenue authorities.
- (3) The tasks and powers of the tax offices (main customs offices) shall remain unaffected.

Sixth Chapter
Fiscal supervision in special cases

Section 209
Object of fiscal supervision

- (1) The movement of goods over the border and in the free zones and free warehouses as well as the production and manufacture, storage, transport and commercial use of goods

subject to excise duty and the trade of goods subject to excise duty shall be subject to customs supervision (fiscal supervision).

(2) Also subject to fiscal supervision shall be:

1. the shipping, export, storage, use, destruction, refinement, conversion and other processing or treatment of goods in an excise duty procedure,

2. the manufacture and export of goods, for which a remission, refund or rebate of excise duty is claimed.

(3) Other activities shall be subject to fiscal supervision where this is required by law.

Section 210

Powers of the revenue authorities

(1) The public officials charged by the revenue authority with fiscal supervision shall be entitled to enter during office and working hours property and premises of persons who exercise an independent commercial or professional activity, and to whom a matter subject to fiscal supervision is attributable, for the purpose of carrying out inspections or of reaching findings which could have a significant bearing on taxation (search).

(2) Furthermore, property and premises of persons to whom a matter subject to fiscal supervision is attributable shall be subject to search, without restriction as to time, where there is good reason based on facts to assume that smuggled goods or goods subject to excise duties but not properly taxed are located there or that provisions and orders, the observance of which is to be ensured by fiscal supervision, are being breached there. In cases of imminent danger the searching of living and business premises shall be permissible even without a court order.

(3) The public officials charged by the revenue authority with fiscal supervision shall be further entitled within the context of controls restricted by time and place to stop ships and other vehicles which seem to serve commercial purposes based on their outward appearance. The persons affected shall be obliged to provide proof of their identity and details of the goods being carried; they shall be obliged in particular to show consignment notes and other transport documents, including those of a non-tax nature. Where this or other facts give rise to the belief that goods subject to excise duties are being carried, the public officials may examine these goods and reach findings which may have a bearing on the taxation of these goods. The persons affected shall be obliged to provide details of the origin of the goods subject to excise duty, to tolerate the fact that samples may be taken without compensation and to provide the necessary assistance.

(4) An external audit pursuant to section 193 may be initiated without the need for a prior order (section 196) where reason to do so arises as a result of findings made when exercising fiscal supervision. The transition to an external audit shall be indicated in writing.

(5) Where it becomes necessary to carry out a search on the premises of the Federal Armed Forces or an institution or facility of the Federal Armed Forces not open to the public, a request shall be submitted to the commanding office of the Federal Armed Forces to carry it out. The revenue authority shall be entitled to participate. A request shall not be necessary where the search is to be carried out in quarters exclusively inhabited by persons other than soldiers.

Section 211

Obligations of the persons affected

(1) Whoever is affected by fiscal supervision measures shall be obliged to provide the public officials on demand with records, accounts, business documents and other deeds relating to the matter subject to fiscal supervision and to the procurement and sale of goods subject to excise duty, with information and with the assistance otherwise needed to exercise fiscal supervision. Section 200(2), second sentence, shall apply *mutatis mutandis*.

(2) The obligations pursuant to subsection (1) above shall also apply where, within the context of a legally prescribed *ex post* taxation of goods subject to excise duty, the persons

to whom and the extent to which goods subject to *ex post* taxation were delivered is to be determined in a business or enterprise subject to the fiscal supervision.

(3) Measures which serve to prevent or hamper the exercise of fiscal supervision shall be impermissible.

Section 212

Implementation provisions

(1) The Federal Ministry of Finance may, by way of ordinance defining more precisely the obligations to be fulfilled within the context of fiscal supervision, order that

1. certain actions may only be carried out on premises registered with the revenue authority or whose use for such purpose has been specially approved by the revenue authority,
2. premises, vehicles, equipment, vessels and conduits, which serve or may serve the manufacture, processing, refinement, storage, transport or measurement of taxable goods are to be set up, arranged, labelled or officially sealed in a particular manner at the cost of the owner of the business,
3. goods subject to monitoring are treated, labelled, stored, packaged, dispatched or used in a particular manner,
4. the trade of taxable goods is specially monitored where the trader is also the manufacturer of the goods,
5. records are to be kept in a particular manner and the inventory is to be determined for business processes and for taxable goods and for the input materials, production materials, auxiliary materials and intermediary products used to manufacture them,
6. accounts, records and other documents are to be stored in a particular manner,
7. processes and measures in businesses and enterprises which are of relevance for taxation are to be reported to the revenue authority,
8. gratuitous samples may be taken or gratuitous examples submitted of taxable goods, of goods in relation to which the remission, refund or rebate of excise duties is claimed, of material used in the manufacture these goods, and of their packaging.

(2) The ordinance shall not require the consent of the Bundesrat, except where it concerns beer duty.

Section 213

Special supervisory measures

Businesses or enterprises whose owners or executives have been finally and incontestably convicted of tax evasion, attempted tax evasion or participation in such an act may be subjected at their own costs to special supervisory measure where this is needed to ensure effective fiscal supervision. In particular, additional records and disclosure obligations, measures to ensure that premises, containers and equipment are safely sealed and other similar measures may be prescribed.

Section 214

Representatives

Whoever in order to meet taxation obligations arising from a matter subject to fiscal supervision allows himself to be represented by a member of his business or enterprise charged with meeting these obligations shall require the consent of the revenue authority. This shall not apply to representation in matters of import duties within the meaning of Article 4 number 10 of the Customs Code and section 1(1), third sentence, of the Customs

Administration Act in conjunction with the receipt of a customs-approved treatment or use of a good within the meaning of Article 4 number 15 of the Customs Code.

Section 215
Seizure during supervision

(1) The revenue authority may secure by way of removal, placement under seal or prohibition on disposal

1. goods subject to excise duty which a public official finds
 - a) in manufacturing businesses or on other premises which should have been registered with the revenue authority but were not,
 - b) in trade without the goods being packaged, denoted or labelled in accordance with the tax laws or without the prescribed tax marks,
2. goods which are found in proximity to the border or in regions subject to border surveillance, where these are neither obviously Community goods nor appear to have been released for free circulation,
3. the items and material used to enclose the goods named in numbers 1 and 2 above,
4. equipment which is designed to manufacture goods subject to excise duty and which is located in a manufacturing business not registered with the revenue authority.

It shall also be permissible to secure the items where they were initially confiscated in the course of criminal proceedings and then made available to the revenue authority.

(2) The act of securing the items shall be recorded in writing. The act of securing the items shall be disclosed to the persons affected (owners, possessors) to the extent that these are known.

Section 216
Transfer to federal ownership

(1) Items secured pursuant to section 215 shall be transferred to federal ownership provided that they are not confiscated pursuant to section 375(2). This shall apply to found items only to the extent that no ownership claims are enforced.

(2) The persons affected shall be informed of the transfer of secured items to federal ownership. Where it is not known who the affected person is, section 10(2) of the Act on the Administrative Service of Documents shall apply *mutatis mutandis*.

(3) The transfer of ownership shall take effect as soon as the administrative act issued by the revenue authority has become incontestable. Subject to the first sentence above, ownership of items connected to the ground and land shall be deemed transferred once they have been detached. Third-party rights relating to a secured item shall remain. However, the expiration of these rights may be ordered where the third party has contributed, through gross negligence, to the items transferred to federal ownership being secured or where he has acquired his rights to the item in knowledge of the circumstances which led to the item being secured.

(4) Secured items may be sold before they have been transferred to federal ownership where there is a danger of decay or considerable loss in value or where their storage, maintenance or preservation is accompanied by disproportionately high costs or difficulties; to this end, items which are attached to the ground or land may be detached from these. The proceeds of sale shall take the place of the item. The emergency sale of these items shall be conducted in accordance with the provisions of this Code on the realisation of attached items. The persons concerned are to be heard before the sale is ordered. They shall be informed of the order and the time and place of the sale where possible.

(5) Secured items or items already transferred to federal ownership shall be returned where the circumstances which led to their securing are not attributable to the owner or where

transfer to federal ownership would seem to result in undue hardship for the persons affected. Third parties acting in good faith whose rights have been cancelled or impeded by the transfer to federal ownership shall be adequately compensated for such from the proceeds of the realisation of the item. In other respects, compensation may be granted where the refusal of such would mean undue hardship.

Section 217
Tax aides

In order to determine facts which have a bearing on customs or excise duties, the revenue authority may appoint as tax aides persons who themselves are not affected by the outcome of such findings.

Fifth Part
Levy procedure

First Chapter
Realisation, maturity and expiration of claims arising from the tax debtor-creditor relationship

1st Subchapter
Realisation and maturity of claims arising from the tax debtor-creditor relationship

Section 218
Realisation of claims from the tax debtor-creditor relationship

(1) The tax assessment notices, tax rebate notices, the notices of liability and the administrative acts through which ancillary tax payments are assessed shall form the basis for realising claims arising from the tax debtor-creditor relationship (section 37); where late-payment penalties are concerned, mere fulfilment of the legal stipulations shall be enough (section 240). Self-assessed tax returns (section 168) shall be deemed equivalent to the tax assessment notices.

(2) The revenue authority shall decide by way of administrative act on disputes concerning the realisation of claims within the meaning of subsection (1) above. This shall also apply where the dispute concerns a refund claim (section 37(2)).

Section 219
Requirement to pay in the case of notices of liability

Unless otherwise stipulated, a person owing a liability may only be required to pay where enforcement against the tax debtor's movable property was not successful or it can be assumed that enforcement would not lead to the desired result. This restriction shall not apply where the liability is based on the person owing the liability having committed tax evasion or having received, held or sold goods obtained by tax evasion or being legally obliged to withhold and give to revenue authorities taxes which are due or to pay them at the expense of another.

Section 220
Maturity

(1) The due date for payment of claims arising from the tax debtor-creditor relationship shall be based on the provisions of the tax laws.

(2) Where the due date is not governed by a particular legal provision, the claim shall be due on the date on which it arises unless a deadline for payment has been granted in the case of a demand for payment required pursuant to section 254. Where in the cases described in the first sentence above the claim results from the assessment of claims arising from the tax debtor-creditor relationship, the amount shall not fall due before the assessment has been disclosed.

Section 221
Other maturity

Where a taxpayer has failed several times to pay an excise duty or turnover tax on time, the revenue authority may demand payment of the tax by a date before the legal due date but after the tax has arisen, to be determined by the revenue authority. The same shall apply where there is good reason to assume that the receipt of an excise duty or the turnover tax is at risk; collateral may also be demanded in lieu of bringing the due date forward. It shall be permissible to bring the due date forward in the cases described in the first sentence above only where the taxpayer has been informed of such in the event of his renewed failure to pay the tax on time.

Section 222 Deferment

The revenue authorities may defer in full or in part claims from the tax debtor-creditor relationship where their collection at due date would result in considerable hardship for the debtor and the claim would not appear to be endangered by the deferment. The deferment may be granted as a rule only upon application and provision of collateral. Tax claims against the tax debtor may not be deferred where a third party (party obliged to pay the tax) has to pay the tax, in particular to withhold and give to the revenue authorities the tax which is due, for account of the tax debtor. The deferment of the liability claim against the party obliged to pay the tax shall be excluded where it has withheld tax-deductible amounts or taken receipt of amounts which contain a tax.

Section 223 Postponed payment⁶

In the case of import/export duties and excise duties, payment of due amounts may be postponed upon application by the tax debtor and provision of collateral to the extent that this is provided for in the tax laws.

⁶ *Zahlungsaufschub*, i.e., the possibility of transferring the tax burden onto another before payment of the tax is due, for example, by selling on a good. This is contrast to a deferment (*Stundung*), under which, although payment is also delayed, it is nevertheless required at a later date from the same person

2nd Subchapter Payment, set-off and remission

Section 224 Place of payment, date of payment

(1) Payments to the revenue authorities shall be made to the cash office responsible. Payments beyond the premises of the cash office may be surrendered only to a public official who is specially authorised to accept such payment and who can provide identification to verify such.

(2) Payment shall be deemed as having been effected:

1. on the day it is received, where a means of payment is surrendered or transferred, or three days after the day it is received where a cheque is handed over or sent,
2. on the day the amount is credited to the revenue authority, where money is transferred to or paid into an account of the revenue authority, and where payment is made via payment slip or postal order,
3. on the due date of payment, where direct debit is authorised.

(3) Revenue authority payments shall be made via non-cash instruments. The Federal Ministry of Finance and the highest authorities of the *Länder* responsible for the revenue administration may allow exceptions for their subordinate bodies. The day of payment shall be, in the case of bank transfer or payment order, the third day after the order is handed in or sent to the credit institution or, where the amount is not to be debited immediately, the third day after it is debited.

(4) The responsible cash office may be closed for the surrender of payment against receipt. Subsection (2) number 1 above shall apply accordingly where, in the event of closed premises pursuant to the first sentence above, one or more branch offices of the Bundesbank, or, where these do not exist where the cash office is located, one or more credit institutions, are authorised to accept payment against receipt for the cash office.

Section 224a

Objects of art in lieu of payment

(1) Where a taxpayer owes inheritance tax or capital tax, it shall be possible to transfer ownership of objects of art, art collections, scientific collections, libraries, manuscripts and archives in lieu of payment and by way of contract under public law to the *Land* which is entitled to the tax revenue, provided that it is in the public interest to acquire such items due to their artistic, historical or academic importance. The transfer of ownership pursuant to the first sentence above shall not count as alienation within the meaning of section 13(1) number 2, second sentence, of the Inheritance Tax Act.

(2) Contracts pursuant to subsection (1) above shall be in written form; contracts in electronic form shall not be permitted. The taxpayer shall address the contractual offer to the revenue authority with local jurisdiction. Responsibility for concluding the contract shall rest with the highest revenue authority of the *Land* which is entitled to the tax revenue. The contract shall enter into force only after the highest authority of a *Land* responsible for cultural affairs has given its consent; this consent shall be secured by the highest revenue authority.

(3) Where a contract comes into effect, the tax debt shall be cancelled to the amount of the sum agreed in the contract on the day ownership is transferred to the *Land* which is entitled to the tax revenue.

(4) The tax claim may be deferred pursuant to section 222 for as long as it is uncertain whether a contract will come into force. Where a contract comes into force, there shall be no deferment interest rates levied for the period in which the claim was deferred.

Section 225

Order of amortisation

(1) Where a taxpayer owes several amounts and, in the case of voluntary payment, the amount paid is not sufficient to amortise all debts, the debt which the taxpayer designates when making the payment shall be amortised.

(2) Where the taxpayer does not designate a debt, but makes voluntary payment which does not cover all debts, administrative penalties shall be paid first, followed, in this order, by coercive fines, tax-deductible amounts, the other taxes, costs, late-filing penalties, interest and late-payment penalties. Within this order, the individual debts shall be arranged according to their maturities; the revenue authority shall determine the order of amortisation for amounts falling due simultaneously and with regard to late-payment penalties.

(3) Where payment is forced by administrative decision (section 249) and the amount available is insufficient to amortise all debts for which enforcement was imposed or the collateral realised, the revenue authority shall determine the order of amortisation.

Section 226

Set-off

(1) Unless otherwise stipulated, the provisions of civil law shall apply *mutatis mutandis* with regard to using both claims from the tax debtor-creditor relationship and counterclaims to set off claims.

(2) Claims arising from the tax debtor-creditor relationship may not be used as set-off where they have lapsed through limitation or the expiry of a period of exclusion.

(3) Taxpayers may set off claims arising from the tax debtor-creditor relationship only with counterclaims which are uncontested and have been established as final and incontestable.

(4) The political subdivision that administers the tax shall also be deemed to be creditor or debtor of a claim from the tax debtor-creditor relationship with respect to any set-off.

Section 227
Remission

The revenue authorities may remit in full or in part claims arising from the tax debtor-creditor relationship where their collection would be unreasonable given the circumstances; under the same conditions, amounts already paid may be refunded or credited.

3rd Subchapter
Lapse of right to enforce payment of overdue tax

Section 228
Object of the limitation, limitation period

Claims arising from the tax debtor-creditor relationship shall be subject to a special limitation period on the payment of overdue tax. The limitation period shall be five years.

Section 229
Beginning of limitation period

(1) The limitation period shall begin upon expiration of the calendar year in which the claim first fell due. However, it shall not begin before expiration of the calendar year in which the assessment, from which the claim arises, of a claim arising from the tax debtor-creditor relationship, or its cancellation, amendment or correction pursuant to section 129 has come into effect; a self-assessed tax return shall be deemed equivalent to an assessment of taxes.
(2) Where a notice of liability has been issued without an order to pay, the period of limitation shall begin upon expiration of the calendar year in which the notice of liability has come into effect.

Section 230
Suspension of limitation period

The period of limitation shall be suspended as long as the claim cannot be pursued as a result of *force majeure* within the final six months of the period of limitation.

Section 231
Interruption of limitation period

(1) The period of limitation shall be interrupted through written enforcement of the claim, through postponement of payment, through deferment, through suspension of implementation, through suspension of the obligation of a customs duty debtor to pay the duty, through provision of collateral, through delay of enforcement, through an enforcement measure, through registration in insolvency proceedings, through inclusion in an insolvency plan or a judicial debt clearance plan, through inclusion in proceedings whose objective is the discharge for the debtor of residual debt, and through investigations of the revenue authority into the residence or abode of the person obliged to pay. Section 169(1), third sentence, shall apply *mutatis mutandis*.
(2) The interruption of the period of limitation through postponement of payment, through deferment, through suspension of implementation, through suspension of the obligation of a customs duty debtor to pay the duty, through provision of collateral, through delay of enforcement, through an enforcement measure which leads to a security right of an execution creditor, a judgement creditor's mortgage or any other preferential right of satisfaction, through registration in insolvency proceedings, through inclusion in an insolvency plan or a judicial debt clearance plan, or through inclusion in proceedings whose objective is the discharge for the debtor of residual debt shall continue until the postponement of payment, the deferment, the suspension of implementation, the suspension of the obligation of a customs duty debtor to pay the debt or the delay of enforcement has ended, the collateral, the security right of an execution creditor, the judgement creditor's mortgage or any other preferential right of satisfaction is rescinded, the insolvency proceedings have concluded, the insolvency plan or the judicial debt clearance plan has been fulfilled or has lapsed, the discharge of residual debt has come into effect or the proceedings which have as their objective the discharge of residual debt have been

terminated prematurely. Where a claim is enforced against the revenue authority, the resulting interruption of the period of limitation shall not end before a final and incontestable decision has been reached on the claim.

(3) A new period of limitation shall begin upon expiration of the calendar year in which the interruption has ended.

(4) The period of limitation shall only be interrupted with regard to the amount to which the interrupting action relates.

Section 232

Effect of limitation period

The claim arising from the tax debtor-creditor relationship and the dependent interest shall be rescinded upon expiration of the limitation period.

Second Chapter

Interest accrual, late-payment penalties

1st Subchapter

Interest accrual

Section 233

General

Interest shall be charged on claims arising from the tax debtor-creditor relationship (section 37) only to the extent that this is legally prescribed. Interest shall not be charged on claims to ancillary tax payments (section 3(4)) and the corresponding refund claims.

Section 233a

Interest accrual on tax deficiencies and tax refunds

(1) Where the assessment of income, corporation, capital, turnover or trade tax leads to a differential within the meaning of subsection (3) below, interest shall be charged on this differential. This shall not apply to the assessment of prepayments and tax-deductible amounts.

(2) The period of interest accrual shall begin 15 months after expiration of the calendar year in which the tax has arisen. With respect to income and corporation tax, it shall begin 21 months after this date where the income from agricultural and forestry undertakings is more than other income when the tax is first assessed. It shall end on expiration of the day on which the tax assessment comes into effect.

(2a) Notwithstanding subsection (2), first and second sentences, above, where the tax assessment is based on an event with retroactive effect (section 175(1), first sentence, number 2 and section 175(2)) or a loss deduction pursuant to section 10d(1) of the Income Tax Act, the period of interest accrual shall begin 15 months after expiration of the calendar year in which the event with retroactive effect occurred or the loss was incurred.

(3) The assessed tax minus the tax-deductible amounts to be credited, the corporation tax to be credited and the prepayments assessed up to the beginning of the period of interest accrual (differential) shall form the basis for calculating the interest. With respect to capital tax, the assessed tax minus the assessed prepayments or the annual tax assessed to date shall form the basis of the differential for calculating the interest. Interest shall be charged on a differential in the taxpayer's favour only up to an amount equal to the amount to be refunded; interest shall begin to accrue at the earliest on the day of payment.

(4) The assessment of interest should be issued in conjunction with the tax assessment.

(5) Where the tax assessment is cancelled, amended or corrected pursuant to section 129, any previous assessment of interest shall be amended; the same shall apply where the crediting of tax amounts is withdrawn, revoked or corrected pursuant to section 129. The differential between the assessed tax and the previously assessed tax, both reduced by the tax-deductible amounts to be credited and the corporation tax to be credited, shall form the basis for calculating interest. The resulting interest amount shall be supplemented by the assessable interest up to this point; where the differential is in the taxpayer's favour,

assessed interest shall be added to this amount. In other respects, subsection (3), third sentence, above shall apply accordingly.

(6) Subsections (1) to (5) above shall apply accordingly to the annual adjustment of wages tax.

(7) In applying subsection (2a) above, subsections (3) and (5) above shall apply under the proviso that the differential is to be divided into sub-differentials, each sub-differential being comprised of sub-amounts with the same starting date for the accrual of interest; interest shall be calculated for each sub-differential separately and in the chronological order of the sub-differentials, beginning with the interest on the sub-differential with the earliest commencement date of interest accrual. Where a sub-differential in the taxpayer's favour results, assessed interest shall be charged on this amount at the earliest from the beginning of the decisive period of interest accrual for this sub-differential; interest for the period up to the beginning of this sub-differential's period of interest accrual shall remain permanently. This shall also apply where, previously within the same interest calculation, interest had been calculated on a sub-differential in the taxpayer's favour.

Section 234

Interest during deferment

(1) Interest shall be levied for the period for which a deferment of claims arising from the tax debtor-creditor relationship is granted. Where upon expiration of the deferment the tax assessment notice is cancelled, amended or corrected pursuant to section 129, the interest accrued up to this time shall remain unaffected.

(2) Interest may be waived in full or in part where its collection would be unreasonable in individual cases.

(3) Interest amounts pursuant to section 233a which have been assessed for the same period shall be credited.

Section 235

Interest accrual on evaded taxes

(1) Interest shall be charged on evaded taxes. The debtor of the interest shall be the person to whose advantage the taxes have been evaded. Where the tax evasion is committed by a person other than the tax debtor failing to fulfil his obligation to give withheld taxes to the revenue authority or to pay taxes imposed on another, this person shall be the debtor of the interest.

(2) The period of interest accrual shall begin upon occurrence of the understating of the taxes or attainment of the tax advantage unless the evaded amounts would have fallen due at a later date had the taxes not been evaded. In this case, the later point in time shall be decisive.

(3) The period of accrual of interest shall end upon payment of the evaded taxes. Interest pursuant to this provision shall not be levied in a period to which a late-payment penalty applies or for which the payment is deferred or implementation suspended. Where upon conclusion of the period of interest accrual the tax assessment notice is cancelled, amended or corrected pursuant to section 129, the interest accrued up to this time shall remain unaffected.

(4) Interest amounts pursuant to section 233a which have been assessed for the same period shall be credited.

Section 236

Interest on refund amounts during legal proceedings

(1) Subject to the provisions of subsection (3) below, where an assessed tax is reduced or a tax rebate granted by final and incontestable judicial ruling or as a result of such a ruling, interest shall accrue on the amount to be refunded or rebated from the day proceedings are instigated to the day of payment. Where the amount to be refunded is paid only after legal proceedings have been instigated, interest shall begin to accrue from the day of payment.

(2) Subsection (1) above shall be applied accordingly where

1. the legal dispute is settled by cancellation of or amendment to the administrative act being disputed or by issue of the administrative act being requested, or
 2. a final and incontestable judicial ruling or an incontestable administrative act through which the dispute is settled leads
 - a) to the reduction of the tax assessed in a follow-up notice,
 - b) to the reduction of trade tax following amendment to the basic trade tax amount.
- (3) Interest shall not be charged on an amount to be refunded or rebated where the participant has been ordered to pay the costs of legal remedy pursuant to section 137, first sentence, of the Code of Procedure for Fiscal Courts.
- (4) Interest amounts pursuant to section 233a which have been assessed for the same period shall be credited.
- (5) A notice of interest amounts shall not be cancelled or amended when the tax assessment notice is cancelled, amended or corrected pursuant to section 129 following conclusion of the legal remedy proceedings.

Section 237

Interest while implementation is suspended

- (1) Where an objection or an action for rescission against a tax assessment notice, a self-assessed tax return or an administrative act which cancels or amends a tax rebate notice, or against an objection ruling on one of these administrative acts, has not led to the desired result and can no longer be appealed, interest shall be charged on the owed amount with respect to which implementation of the disputed administrative act was suspended. The first sentence above shall apply accordingly where implementation of a follow-up notice has been suspended following the submission of a formal out-of-court or court appeal against a basic assessment notice (section 171(10)) or an appeals ruling on a basic assessment notice.
- (2) Interest shall be levied from the day of receipt of the out-of-court appeal at the authority whose administrative act is being challenged or from the day of instigation of judicial proceedings to the day on which the suspension of implementation ends. Where implementation is suspended only once the out-of-court appeal has been received or the proceedings instigated, interest shall be charged starting on the day on which the suspension of implementation comes into effect.
- (3) Subsections (1) and (2) above shall be applied accordingly where implementation of a basic trade tax assessment notice or trade tax assessment notice is suspended following suspension of the implementation of an income tax assessment notice, a corporation tax assessment notice or a notice of determination.
- (4) Section 234(2) and (3) shall apply accordingly.
- (5) A notice of interest amounts shall not be cancelled or amended when the tax assessment notice is cancelled, amended or corrected pursuant to section 129 following conclusion of the legal remedy proceedings.

Section 238

Amount and calculation of interest

- (1) The interest shall be one half per cent for every month. It shall be payable only for full months from the day of commencement of the accrual period; uncompleted months shall not be included. Where the claim on which interest is chargeable is settled by set-off, the day on which the debt of the person seeking set-off becomes due shall be deemed to be the day of payment.
- (2) In calculating interest, the amount on which interest is chargeable shall be rounded down for every type of tax to the next figure divisible by 50 euros.

Section 239

Interest assessment

(1) The provisions applying with respect to taxes shall be applied accordingly to interest, with the period for assessment consisting of one year, however. The period for assessment shall begin:

1. in the cases described in section 233a, upon expiration of the calendar year in which the tax was assessed, cancelled, amended or corrected pursuant to section 129,
2. in the cases described in section 234, upon expiration of the calendar year in which the deferment has ended,
3. in the cases described in section 235, upon expiration of the calendar year in which the assessment of the evaded taxes has become final and incontestable, but not before expiration of the calendar year in which criminal proceedings initiated have been closed and can no longer be appealed,
4. in the cases described in section 236, upon expiration of the calendar year in which the tax has been refunded or the tax rebate paid out,
5. in the cases described in section 237, upon expiration of the calendar year in which an objection or action for rescission has not led to the desired result and can no longer be appealed.

The period for assessment for the cases described in section 233a shall not expire for as long as the tax assessment, its cancellation, its amendment or its correction pursuant to section 129 is still permissible.

(2) Interest shall be rounded to the full euro in the taxpayer's favour. It shall be assessed only where it amounts to at least 10 euros.

2nd Subchapter Late-payment penalties

Section 240 Late-payment penalties

(1) Where a tax is not paid by the end of the due date, a late-payment penalty of 1 per cent of the rounded tax amount in arrears shall be payable for each month of default; the amount shall be rounded down to the nearest amount divisible by 50 euros. The same shall apply to repayable tax rebates and debts from liability to the extent that the liability extends to taxes and repayable tax rebates. Default pursuant to the first sentence above shall not be deemed to have occurred before the tax has been assessed or declared. Where the assessment of a tax or tax rebate is cancelled, amended or corrected pursuant to section 129, the late-payment penalties effected up to this point shall remain unaffected; the same shall apply where a notice of liability is withdrawn, revoked or corrected pursuant to section 129. Where the claim is settled by set-off, the late-payment penalties which have accrued up to the due date of the debt of the person seeking set-off shall remain unaffected.

(2) Late-payment penalties shall not arise with regard to ancillary tax payments.

(3) No late-payment penalty shall be levied for defaults of up to three days. This shall not apply to payments pursuant to section 224(2) number 1.

(4) In cases of joint and several debt, late-payment penalties shall arise with respect to each joint and several debtor in default. However, the total value of the late-payment penalties to be paid shall not be higher than that had the default occurred on the part of one joint and several debtor only.

Third Chapter Provision of collateral

Section 241 Nature of collateral

(1) Whoever is required under the tax laws to provide collateral may do so:

1. by depositing with the competent revenue authority means of payment in circulation in the territory of application of this Code,
 2. by pledging the securities named in subsection (2) below and which are entrusted for custody by the person obliged to provide the collateral to the Bundesbank or a credit institution which is licensed to operate a security deposit business, provided that no other rights take priority over the pledgee's right. The liability of securities for amounts owing to the custodian for their custody and administration shall remain unaffected. The pledging of securities shall be deemed equivalent to the pledging of shares in a collective securities holding pursuant to section 6 of the Securities Deposit Act as published in the revised version in the Federal Law Gazette, Part III, number 4130-1, as amended by Article 1 of the Act of 17 July 1985 (Federal Law Gazette I, p. 1507),
 3. by pledging savings, accompanied by the surrender of the savings bank book, in a credit institution which is licensed to operate a deposit-taking business within the territory of application of this Code, provided that no other rights take priority over the pledgee's right,
 4. by pledging receivables which are entered in a debt register of the Federation, or a special fund of the Federation or a *Land*, provided that no other rights take priority over the pledgee's right,
 5. by creating
 - a) first mortgages, land charges or annuity charges on real property or hereditary building rights which are situated within the territory of application of this Code,
 - b) first maritime mortgages on ships, ships under construction or floating docks which are entered in a register of ships or ship construction register kept within the territory of application of this Code,
 6. by pledging receivables for which a first ordinary mortgage on real property or hereditary building rights situated within the territory of application of this Code exists, or by pledging first land charges or annuity charges on real property or hereditary building rights situated within the territory of application of this Code, where no priority rights to these receivables, land charges or annuity charges exist,
 7. by way of debt commitment, guarantee or liability under bills of exchange provided by a suitable tax guarantor (section 244).
- (2) Securities within the meaning of subsection (1) number 2 above shall be
1. bonds issued by the Federation, a special fund of the Federation, a *Land*, a municipality or an association of municipalities,
 2. bonds of international facilities to which the Federation has transferred sovereign rights, where they are licensed to trade on official bourses within the territory of application of this Code,
 3. bonds issued by the Deutsche Genossenschaftsbank, the Deutsche Siedlungs- und Landesrentenbank, the Deutsche Ausgleichsbank, the Kreditanstalt für Wiederaufbau and the Landwirtschaftliche Rentenbank,
 4. *Pfandbriefs*, municipal bonds and related bonds,
 5. Bonds, the interest and redemption of which are guaranteed by the Federation or by a *Land*.

(3) A bonded warehouse of taxable goods shall be deemed to be adequate collateral for the tax imposed thereon.

Section 242

The effect of depositing means of payment

Means of payment which are deposited pursuant to section 241(1) number 1 shall become the property of the political subdivision to which the revenue authority with which they were deposited belongs. No interest shall be charged on the claim for repayment. Upon deposit, the political subdivision whose claim is to be secured by the deposit shall acquire a lien on the claim to reimbursement of the deposited means of payment.

Section 243

Pledging securities

The provision of collateral by pledging securities pursuant to section 241(1) number 2 shall be permissible only where the custodian assumes responsibility for guaranteeing the securities' marketability. Assuming this responsibility shall include liability for ensuring that

1. the right of reclaim of the depositor is not restricted by judicial bans and confiscation,
2. that the entrusted securities are not registered as stolen or lost in the collective lists of called-up securities and are neither subject to payment blocks nor have been called in for cancellation or cancelled.
3. that the securities are registered to the bearer, or, in the event that they are non-negotiable, bear a blank endorsement and are otherwise not blocked, and that the interest coupons and the renewal coupons are enclosed with the securities.

Section 244

Suitable tax guarantors

(1) Debt commitments and guarantees pursuant to the Civil Code as well as liabilities under bills of exchange set out in Articles 28 or 78 of the Bills of Exchange Act shall be deemed suitable as collateral only where these have been provided or entered into by persons who

1. possess sufficient assets to cover the extent of the collateral to be provided, and
2. have their general or an agreed jurisdiction within the territory of application of this Code.

Guarantees shall include the waiver of the defence of unexhausted remedies pursuant to section 771 of the Civil Code. Debt commitments and guarantee declarations shall be issued in writing; electronic versions shall not be permitted. The guarantor and the secured party may not provide reciprocal collateral for each other, nor may they be economically related. The Federal Ministry of Finance shall decide on the acceptance of guarantee declarations in procedures pursuant to the A.T.A Convention of 6 December 1961 (Federal Law Gazette II 1965, p. 948) and those pursuant to the T.I.R. Convention of 14 November 1975 (Federal Law Gazette II 1979, p. 445) in their respective versions in force. The Federal Finance Office (Northern Region) shall decide on the acceptance of declarations on individual guarantees in the form of guarantee vouchers pursuant to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) 2913/92 establishing the Community Customs Code (OJ L 253, p. 1) and the Convention of 20 May 1987 on a common transit procedure (OJ L 226, p. 2) in their respective versions in force.

(2) The federal finance office may authorise credit institutions and insurance companies providing collateral for others on a commercial basis to act in general as tax guarantor where they are licensed to operate within the territory of application of this Code. The federal finance office in whose district the registered office of the enterprise is situated shall be

responsible for the authorisation. For foreign enterprises with a branch office within the territory of application of this Code, jurisdiction shall be according to the location of the branch office, where there are several branch offices, the location of the economically most significant branch office shall be decisive; where there is no branch office, the federal finance office in whose district a guarantee is to be assumed for the first time shall be responsible. A maximum amount (guarantee amount) shall be set when issuing authorisation. The total amount assumed by the tax guarantor from debt commitments, guarantees and liabilities under bills of exchange with respect to the revenue administration may not exceed the guarantee amount.

Section 245

Other items as collateral

The revenue authority may at its own discretion accept as collateral items other than those described in section 241. Preference shall be given to assets which offer enhanced security or which upon the onset of even extraordinary circumstances can be realised without considerable difficulty and within a suitable timeframe.

Section 246

Acceptance value

The revenue authority shall determine at its own discretion the values at which objects may be accepted as collateral. However, the acceptance value may not exceed the expected proceeds of realisation minus the costs of realisation. It may not be below the values named in section 234(3), section 236 and section 237, first sentence, of the Civil Code for objects described in section 241(1) numbers 2 and 4 and for movable items which are accepted as collateral pursuant to section 245.

Section 247

The exchange of collateral

Whoever has provided collateral pursuant to sections 241 to 245 shall be entitled to replace the collateral or part of the collateral with other suitable collateral pursuant to sections 241 to 244.

Section 248

Obligation to provide additional collateral

Collateral shall be supplemented, or other collateral provided, where collateral already provided becomes inadequate.

Sixth Part

Enforcement

First Chapter

General provisions

Section 249

Enforcement authorities

(1) The revenue authorities may, by administrative decision, enforce administrative acts ordering a monetary payment, other performance, tolerance or omission of a particular action. This shall also apply to self-assessed tax returns (section 168). Enforcement authorities shall mean the tax offices and the main customs offices; section 328(1), third sentence, shall remain unaffected.

(2) For the purposes of preparing enforcement, the revenue authorities may determine the financial circumstances and income of the judgement debtor. The revenue authority may use information known to it, protected pursuant to section 30, which they are entitled to utilise in enforcing taxes and ancillary tax payments, for enforcement owing to monetary payments other than taxes and ancillary tax payments.

Section 250
Request for recovery

(1) Insofar as one enforcement authority carries out enforcement measures at the request of another enforcement authority, the requested enforcement authority shall take the place of the other enforcement authority. The requesting enforcement authority shall remain responsible for the enforceability of the claim.

(2) Where the requested enforcement authority does not believe it has jurisdiction or believes the action requested of it is impermissible, it shall inform the requesting enforcement authority of its reservations. Where the requesting authority insists that the request be carried out and the requested authority declines, the supervisory authority of the requested authority shall decide.

Section 251
Enforceable administrative acts

(1) Administrative acts may be enforced insofar as the implementation thereof is not suspended or the implementation is not blocked through the submission of an appeal (section 361; section 69 of the Code of Procedure for Fiscal Courts). Import and export duty assessment notices may furthermore only be enforced insofar as the customs debtor's obligation to pay duty is not suspended (Article 222(2) of the Customs Code).

(2) The provisions of the Insolvency Code as well as section 79(2) of the Federal Constitutional Court Act shall remain unaffected. The revenue authority shall, in the cases referred to in section 201(2), sections 257 and 308(1) of the Insolvency Code, be entitled to carry out enforcement measures against the debtor by administrative decision.

(3) Where the revenue authority asserts a claim arising from the tax debtor-creditor relationship as a creditor's claim in insolvency proceedings, the revenue authority shall, where necessary, establish the creditor's claim by virtue of written administrative act.

Section 252
Judgement creditor

In the enforcement proceedings, the body to which the enforcement authority belongs shall be the creditor for the claims to be enforced.

Section 253
Judgement debtor

The judgement debtor shall be the person against whom enforcement proceedings are directed pursuant to section 249.

Section 254
Preconditions for commencing with enforcement

(1) Unless otherwise stipulated, enforcement may only commence if payment is due and a demand for payment or tolerance or omission of an action (demand for payment) has been issued to the judgement debtor and at least one week has elapsed since issue of the request. The demand for payment may be issued in combination with the administrative act to be enforced. A demand for payment shall also be necessary where the administrative act also takes effect against the judgement debtor without him having been notified. Insofar as the judgement debtor has not made a payment owed by him on the basis of a self-assessed tax return, a demand for payment shall not be required.

(2) A demand for payment of a late-payment penalty and interest shall not be required where they are recovered together with the tax. This shall apply *mutatis mutandis* to the enforcement costs where they are recovered together with the principal claim.

Section 255
Enforcement against legal persons under public law

(1) Enforcement against the Federation or a *Land* shall not be permissible. In other respects, enforcement against legal persons under public law who are subject to state supervision shall only be permissible with the approval of the relevant supervisory authority. The

supervisory authority shall determine the time of the enforcement and the assets upon which enforcement may be levied.

(2) The limitations of subsection (1) above shall not apply to public credit institutions.

Section 256

Objections to enforcement

Objections to the administrative act to be enforced shall be raised outside of the enforcement proceedings using the legal remedies permitted for this purpose.

Section 257

Stay and limitation of enforcement

(1) Enforcement shall be stayed or limited as soon as

1. the preconditions for enforcement set out in section 251(1) no longer apply,
2. the administrative act which serves as the basis for enforcement is cancelled,
3. the claim to payment has expired,
4. the payment has been deferred.

(2) In the cases referred to in subsection (1) numbers 2 and 3 above enforcement measures that have already been undertaken shall be cancelled. Where the administrative act has been cancelled by a court decision, this shall only apply insofar as the decision has become incontestable and there is no need to issue a new administrative act as a result of the decision. In other respects, the enforcement measures shall remain in place insofar as their cancellation has not been expressly ordered.

Section 258

Temporary stay or limitation of enforcement

Insofar as enforcement proves inequitable in individual cases, the enforcement authority may temporarily stay or limit enforcement or cancel an enforcement measure.

Second Chapter

Enforcement owing to monetary claims

1st Subchapter

General provisions

Section 259

Formal reminder

A formal reminder instructing payment within one week should generally be sent to the judgement debtor before the commencement of enforcement. A postal cash on delivery order shall also be deemed to be a reminder. A formal reminder shall not be required where the judgement debtor receives a reminder of the payment before the due date. General payment reminders may also take the form of a public notice.

Section 260

Statement of the reason for the indebtedness

The enforcement order or the attachment order shall state the reason for which the monetary amounts to be recovered are owed.

Section 261

Write-off

Claims arising from the tax debtor-creditor relationship may be written off where it is clear that collection will not lead to the desired result or where the costs of collection are not in proportion to the amount.

Section 262

Third party rights

(1) Where a third party asserts that he has a right blocking the sale of the object of enforcement or objections are raised pursuant to sections 772 to 774 of the Code of Civil Procedure, the objection to the enforcement shall, where necessary, be raised by bringing an action before the ordinary courts. A third party shall also be deemed to be a person who is obliged to tolerate enforcement against an asset managed by him where he asserts that objects belonging to him are affected by the enforcement. The rights blocking the sale shall be determined by civil law.

(2) Sections 769 and 770 of the Code of Civil Procedure shall apply with respect to the stay of enforcement and the cancellation of enforcement measures.

(3) The action shall only be brought before the court in whose district the enforcement takes place. Where the action is brought against the body to which the enforcement authority belongs and against the judgement debtor, they shall be deemed to be joined parties.

Section 263

Enforcement against spouses

The provisions of sections 739, 740, 741, 743, 744a and 745 of the Code of Civil Procedure shall be applied accordingly to enforcement against spouses.

Section 264

Enforcement against the usufructuary

The provision of section 737 of the Code of Civil Procedure shall be applied accordingly to enforcement against properties subject to the usufruct of an asset.

Section 265

Enforcement against heirs

The provisions of sections 1958, 1960(3) and section 1961 of the Civil Code and sections 747, 748, 778, 779, and 781 to 784 of the Code of Civil Procedure shall be applied accordingly to enforcement against heirs.

Section 266

Other cases of limited liability

The provisions of sections 781 to 784 of the Code of Civil Procedure shall be applied accordingly to the limited liability arising pursuant to section 1489 of the Civil Code, the provision of section 781 of the Code of Civil Procedure shall be applied to the limited liability arising pursuant to sections 1480, 1504 and 2187 of the Civil Code.

Section 267

Enforcement proceedings against associations of persons without legal capacity

An enforceable administrative act against association of persons shall suffice for enforcement against their assets where they are associations of persons without legal capacity and are taxable as such. This shall apply accordingly to special-purpose funds and other taxable entities similar to a legal person.

2nd Subchapter

Apportionment of a joint and several obligation

Section 268

General

Where persons are joint and several debtors because they have been jointly assessed for an income tax or capital tax, each of them may apply for enforcement of this tax to be limited respectively to the amount resulting in accordance with sections 269 to 278 where taxes are apportioned.

Section 269

Application

(1) The application shall be lodged in writing to, or declared for record at, the tax office responsible for the taxation of income or capital at the time of submitting the application.

(2) The application may be made at the earliest following notification of the demand for payment. An application shall be no longer permissible once tax arrears have been paid in full. The application shall contain all the information required to apportion the tax insofar as this information is not contained in the tax return.

Section 270

General apportionment formula

Tax arrears shall be apportioned in proportion to the amounts which would result from separate assessment in accordance with section 26a of the Income Tax Act and sections 271 to 276. The actual and legal findings used for the tax assessment in the case of joint assessment shall be decisive insofar as the application of the provisions on separate assessment does not lead to deviations.

Section 271

Apportionment formula for capital tax

Capital tax shall be apportioned as follows:

1. Subject to the deviations in numbers 2 and 3 below, the provisions of the Valuation Act and the Capital Tax Act as used as the basis for joint assessment shall be assumed in calculating the assets and the capital tax of the individual joint and several debtor.
2. A spouse's economic assets which in the case of joint assessment were attributed to the other spouse as agricultural and forestry assets or as business assets shall be treated as own agricultural or forestry assets or own business assets.
3. Debts which are not economically related to particular economic assets allocated to a joint and several debtor shall be deducted in equal shares from the individual joint and several debtors, insofar as it is not possible to establish a particular debtor.

Section 272

Apportionment formula for prepayments

(1) Prepayments outstanding shall be apportioned in proportion to the amounts which would result from a separate assessment of the prepayments. An application for appointment of prepayments shall simultaneously be deemed to be an application for apportionment of additional prepayments falling due in the same assessment period and of any final payment. A final apportionment shall be conducted once the assessment has been performed. The total tax minus the amounts which have not been included in the apportionment of the prepayments shall be apportioned. In doing so, every joint and several debtor shall be credited with the amounts paid by him towards the apportioned prepayments. Where this results in overpayment compared to the amount of apportionment, the amount overpaid shall be refunded.

(2) Where the prepayments are apportioned only once assessment has taken place, the apportionment formula applicable for the assessed tax shall be used.

Section 273

Apportionment formula for tax deficiencies

(1) Where the amendment of a tax assessment or its correction pursuant to section 129 leads to a tax deficiency, the tax arrears arising from the deficiency shall be apportioned in proportion to the excess amounts which result from a comparison of the corrected separate assessment with the earlier separate assessments.

(2) The apportionment formula referred to in subsection (1) above shall not be applied where the tax hitherto assessed has not yet been repaid.

Section 274

Special apportionment formula

Notwithstanding the provisions of sections 270 to 273, the tax arrears may be apportioned according to a formula jointly proposed by the joint and several debtors, if repayment is guaranteed. The joint proposal shall be lodged in writing or declared for record; it shall be signed by all joint and several debtors.

Section 275
Rounding down

The amount to be apportioned shall be rounded down to the full euro. The calculated, apportioned amounts shall be rounded up or down to the nearest amount divisible by 10 cents such that their total corresponds to the amount serving as the basis for the apportionment.

Section 276
Tax arrears, instigation of enforcement

(1) Where the application is lodged with the revenue authority prior to the instigation of enforcement, the tax due at the time of receipt of the application for apportionment shall be apportioned.

(2) Where the application is lodged after the instigation of enforcement, the tax due at the time of instigating the enforcement, on account of which enforcement action is being undertaken, shall be apportioned.

(3) Tax-deductible amounts and separately assessed prepayments shall also be included in the apportionment even where they have been paid prior to the application being lodged.

(4) Tax arrears shall also include late-payment penalties, interest and late-filing penalties.

(5) The enforcement shall be deemed as instigated upon issue of the notice of arrears.

(6) Payments which have been made by a joint and several debtor, in the cases of subsection (1) above, after submission of the application, in the cases of subsection (2) above, after the instigation of enforcement, or which pursuant to subsection (3) above are to be included in the apportionment, shall be credited to the debtor who made the payments or for whom the payments have been made. Where, in doing so, this results in an overpayment compared with the amount of apportionment, the overpayment shall be refunded.

Section 277
Enforcement

As long as no incontestable decision has been taken regarding the application for the limitation of the enforcement, enforcement measures may only be implemented to the extent that this is necessary to secure the claim.

Section 278
Limitation of enforcement

(1) Following apportionment, the enforcement may only be implemented in accordance with the amounts attributable to the individual debtors.

(2) Where assets are given to a tax debtor free of charge by a person assessed with him during or after the assessment period for which tax arrears still exist, tax may, until the expiration of the tenth calendar month from the date of the issuance of the apportionment notice, be claimed from the recipient above and beyond the amount resulting pursuant to subsection (1) above up to the fair market value of this donation in kind. This shall not apply to common occasional gifts.

Section 279
Form and content of the apportionment notice

(1) Following the instigation of enforcement, a uniform decision on the application for the limitation of enforcement shall be taken with respect to the parties involved by way of written notice (apportionment notice). However, a decision shall not be required where no enforcement measures are instigated or enforcement measures already instigated are re-suspended.

(2) The apportionment notice shall indicate the amount of the proportional tax payable by each joint and several debtor; it shall be accompanied by advice indicating which legal remedy is permissible, and the time period within which and the authority to which this remedy must be submitted. The notice should further include:

1. the amount of the tax to be apportioned,
2. the point in time decisive for the calculation of the tax arrears,
3. the extent of the bases of taxation which have been attributed to the individual joint and several debtors where there is divergence from the information provided by the joint and several debtors,
4. the amount of the tax payable by the individual joint and several debtors in the case of separate assessment (section 270),
5. the amounts to be credited against the joint and several debtor's apportioned tax.

Section 280

Amendments to the apportionment notice

(1) Except in the cases referred to in section 129, the apportionment notice may only be amended where

1. it subsequently becomes known that the apportionment is based on incorrect information and the tax arrears could not be recovered in whole or in part as a result of incorrect apportionment,
2. the tax arrears increase or decrease through the cancellation or amendment of the tax assessment or its correction pursuant to section 129.

(2) After the termination of enforcement, an amendment to the apportionment notice or the correction thereof pursuant to section 129 shall no longer be permissible.

3rd Subchapter

Enforcement against movable assets

I. General

Section 281

Attachment

- (1) Enforcement against movable assets shall be effected by attachment.
- (2) Attachment may not be expanded further than is necessary to cover the monetary amounts to be recovered and the costs of enforcement.
- (3) The attachment shall not be made where an excess over the cost of the enforcement cannot be expected from the realisation of the attachable objects.

Section 282

Effect of the attachment

- (1) Attachment shall result in the body to which the enforcement authority belongs acquiring a lien on the attached object.
- (2) The lien shall grant the body in proportion to other creditors the same rights as a lien within the meaning of the Civil Code; liens and preferential rights which are not treated as equivalent to this lien in insolvency proceedings shall have priority.
- (3) A lien imposed on the basis of a previous attachment shall have priority over a lien imposed on the basis of a later attachment.

Section 283

Exclusion of warranty claims

Where an object is sold as a result of the attachment, the buyer shall not be entitled to assert warranty claims for a defect of title or for a defect in the items sold.

Section 284
Sworn statement of assets

(1) On demand, the judgement debtor shall present to the enforcement authority an inventory of his assets and specify the reason and evidence for his receivables where

1. the enforcement against the movable assets has not resulted in payment in full,
2. it is to be presumed that enforcement against movable assets will not result in payment in full,
3. the judgement debtor has refused the search (section 287) or
4. the enforcement officer has repeatedly been unsuccessful in encountering the judgement debtor at his living quarters or business premises after having given notice of the enforcement once at least two weeks in advance; this shall not apply where the judgement debtor provides sufficient justification for his absence and credibly establishes the reason.

(2) The inventory of assets shall also indicate

1. the disposals for a consideration by the debtor to a related person (section 138 of the Insolvency Code) in the last two years prior to the first deadline scheduled for the provision of a sworn statement of assets,
2. the services provided free of charge by the debtor in the last four years prior to the first deadline scheduled for the provision of a sworn statement of assets insofar as they were not related to common occasional gifts of a low value.

The inventory of assets need not include items not subject to attachment pursuant to section 811(1), numbers 1 and 2 of the Code of Civil Procedure unless an attachment in exchange may be considered.

(3) The judgement debtor shall make a sworn statement to be recorded in writing to the effect that he has provided the information requested from him correctly and completely to the best of his knowledge and belief. The enforcement authority may waive the administration of the sworn statement of assets.

(4) A judgement debtor who has provided the sworn statement of assets contained in this provision or in section 807 of the Code of Civil Procedure shall, where the provision of a sworn statement of assets has not yet been deleted on the register of debtors (section 915 of the Code of Civil Procedure), be obliged in the first three years following his original sworn statement to provide another sworn statement of assets only where it is to be presumed that he has later acquired assets or an existing employment relationship with him has been dissolved. The preconditions stated in subsection (1) above shall no longer be necessary. The enforcement authority shall establish *ex officio* whether the registry of debtors contains an entry showing that the judgement debtor provided a sworn statement of assets within the last three years.

(5) The enforcement authority in whose district the judgement debtor's residence or abode is located shall be responsible for administering the sworn statement of assets. Where these preconditions are not met at the enforcement authority which is pursuing the enforcement, the revenue authority may administer the sworn statement of assets if the judgement debtor is prepared to provide the sworn statement.

(6) The invitation to the appointment to provide a sworn statement of assets shall be served on the judgement debtor himself. Where an appeal has been lodged and substantiated against the order to provide a sworn statement of assets, the judgement debtor shall only be obliged to provide a sworn statement of assets after the decision regarding the appeal

becomes incontestable. This shall not apply where and insofar as the objections have already been rejected incontestably in a previous case.

(7) After the sworn statement of assets has been provided, the enforcement authority shall inform the local court responsible pursuant to section 899(1) of the Code of Civil Procedure of the surname, first name, date of birth and address of the judgement debtor as well as the date of the provision of the sworn statement of assets for the purposes of entry into the register of debtors and shall transmit a certified copy of the inventory of assets. Sections 915a to 915h of the Code of Civil Procedure shall be applied.

(8) Where the judgement debtor fails to present himself without sufficient justification on the date scheduled for the provision of the sworn statement of assets before the enforcement authority described in subsection (5), first sentence, above or where he refuses without reason to present the inventory of assets or provide a sworn statement of assets, the enforcement authority pursuing enforcement may request the local court responsible pursuant to section 899(1) of the Code of Civil Procedure to order arrest so as to force the provision of the sworn statement of assets. Sections 901, 902, 904 to 906, 909(1), second sentence, 909(2), 910 and 913 to 915h of the Code of Civil Procedure shall be applied *mutatis mutandis*. A bailiff shall conduct the arrest of the judgement debtor. Section 292 shall apply *mutatis mutandis*. Following the arrest of the judgement debtor, the sworn statement of assets may be administered by the bailiff responsible pursuant to section 902 of the Code of Civil Procedure where the seat of the enforcement authority described in subsection (5) above is not located in the district of the local court responsible for the bailiff or where it is not possible for the enforcement authority to administer the sworn statement of assets. Subsection (3), second sentence, above shall apply accordingly.

(9) The decision of the local court rejecting the request of the enforcement authority for an order for arrest shall be subject to the appeal procedure pursuant to sections 567 to 577 of the Code of Civil Procedure.

II. Enforcement against items

Section 285 Enforcement officer

(1) The enforcement authority shall effect enforcement against movable items through enforcement officers.

(2) The enforcement officer shall be empowered to conduct enforcement against the judgement debtor and third parties by means of written or electronic order from the enforcement authority; the order shall be presented on demand.

Section 286 Enforcement against items

(1) The enforcement officer shall attach items in the possession of the judgement debtor by seizing them.

(2) Items other than money, valuables and securities shall be left in the possession of the judgement debtor where this does not jeopardise satisfaction of the claim. Where the items remain in the possession of the judgement debtor, attachment shall only take effect where it is made apparent by affixing seals or some other means.

(3) The enforcement officer shall inform the judgement debtor of the attachment.

(4) These provisions shall also apply to the attachment of items in the possession of a third party who is prepared to return them.

Section 287 Powers of the enforcement officer

(1) The enforcement officer shall have the power to search the judgement debtor's living quarters and business premises as well as containers where the purpose of the enforcement so requires.

(2) The enforcement officer shall be authorised to have locked doors and containers opened.

(3) Where the enforcement officer meets with resistance, he may use force and request the support of police officers for this purpose.

(4) Without his consent, the judgement debtor's living quarters and business premises may only be searched on the basis of a court order. This shall not apply where obtaining the order would jeopardise the success of the search. The local court in whose district the search is to be undertaken shall be responsible for the court order for the search.

(5) Where the judgement debtor agrees to the search or an order against the judgement debtor has been issued pursuant to subsection (4), first sentence, above or is unnecessary pursuant to subsection (4), second sentence, above, persons who share custody of the judgement debtor's living quarters or business premises shall tolerate the search. Undue hardship for the joint custodians shall be avoided.

(6) The order pursuant to subsection (4) above shall be presented during enforcement.

Section 288

Enlistment of witnesses

Where an act of enforcement is met with resistance or where neither the judgement debtor nor a person belonging to his family or employed by him is present during an act of enforcement in the living quarters or business premises, the enforcement officer shall enlist two adults or an officer of the municipality or police as witnesses.

Section 289

Period of enforcement

(1) An act of enforcement may be conducted at night (section 758a(4), second sentence, of the Code of Civil Procedure) as well as on Sundays and officially recognised general public holidays only with the written or electronic permission of the enforcement authority.

(2) The permission shall be presented on demand during the act of enforcement.

Section 290

Enforcement officer's requests and notifications

The requests and other notifications constituting part of the acts of enforcement shall be issued verbally by the enforcement officer and recorded in full; where they cannot be issued verbally, the enforcement authority shall send the person to whom the summons or notification is to be presented a copy of the written record.

Section 291

Record

(1) The enforcement officer shall keep a record to every act of enforcement.

(2) The record shall contain:

1. the place and time of recording,
2. the object of the act of enforcement, with a brief description of the measures,
3. the names of the persons with whom negotiations have been held,
4. the signatures of the persons and the note that a signature was provided after the record was read out or presented for inspection and after approval,
5. the signature of the enforcement officer.

(3) Where it is not possible to satisfy one of the requirements pursuant to subsection (2) number 4 above, the reason shall be stated.

(4) The record may also be produced electronically. Subsection (2) numbers 4 and 5 above as well as section 87a(4), second sentence, shall not apply.

Section 292

Averting attachment

(1) The judgement debtor may only avert attachment where he pays the due amount to the enforcement officer or demonstrates that he has been granted a period of grace for payment or that the debt has expired.

(2) Subsection (1) above shall apply accordingly where the judgement debtor presents a ruling demonstrating the impermissibility of the attachment to be undertaken or where he presents post office or bank receipts demonstrating that he has paid in the amount owed.

Section 293

Liens and preferential rights of third parties

(1) A third party not in possession of the item may not raise an objection to the attachment of an item on the basis of a lien or preferential right. He may, however, demand preferential satisfaction from the proceeds, irrespective of whether his receivable is due or not.

(2) The ordinary court in whose district attachment has been made shall have sole responsibility for a claim for preferential satisfaction. Where the action is brought against a body to which the enforcement authority belongs and against the judgement debtor, they shall be deemed to be joined parties.

Section 294

Unpicked crops

(1) Crops not yet separated from the ground may be attached as long as they have not been seized through enforcement against immovable assets. They may not be attached earlier than one month prior to the usual time of ripening.

(2) A creditor who has a right to satisfaction from the real property may appeal pursuant to section 262 against the attachment where a claim that has priority during enforcement against the real property is not being attached.

Section 295

Exemption of items from attachment

Sections 811 to 812 and 813(1) to (3) of the Code of Civil Procedure as well as the prohibitions and restrictions under other statutory provisions on the attachment of items shall apply accordingly. The enforcement authority shall take the place of the court with jurisdiction over enforcement.

Section 296

Realisation

(1) Upon written order of the enforcement authority, the attached items shall be sold at public auction. A public auction shall mean

1. the on-site auction, or
2. the universally accessible Internet auction via the platform www.zoll-auktion.de.

The auction shall normally be conducted by the enforcement officer. Section 292 shall apply accordingly.

(2) In the case of the attachment of money, its removal shall count as payment by the debtor.

Section 297

Suspension of realisation

The enforcement authority may temporarily suspend the realisation of attached items by decreeing payment deadlines where immediate realisation would be unreasonable.

Section 298

Auction

(1) The attached items may not be auctioned before one week has expired since attachment insofar as the judgement debtor has not declared that he agrees to an earlier auction or this is necessary to avert the threat of a considerable loss in value or to avoid disproportionate costs of lengthy storage.

(2) The date and location of the auction shall be publicly announced; a general description of the items to be auctioned shall be provided in the process. At the request of the enforcement authority, an officer of the municipality or a police officer shall attend the auction. The first and second sentences above shall not apply to an auction pursuant to section 296(1), second sentence, number 2.

(3) Section 1239(1), first sentence, of the Civil Code shall apply accordingly; in the case of the on-site auction (section 296(1), second sentence, number 1), section 1239(2) of the Civil Code shall be applied accordingly as well.

Section 299 Knockdown

(1) In the case of the on-site auction (section 296(1), second sentence, number 1), the knock-down to the highest bidder should be preceded by three calls. In the case of an Internet auction (section 296(1), second sentence, number 2), the knockdown shall be awarded to the person who has made the highest bid at the end of the auction, unless the auction is terminated prematurely; this person shall be informed of the acceptance of the bid. Section 156 of the Civil Code shall apply accordingly.

(2) The called item may only be handed over against payment in cash. In the case of an Internet auction, the called item may also be handed over if the payment is credited to the account of the revenue authority. Where the called item is sent, the handing over shall be regarded as being effected upon surrender to the person designated to carry out the dispatch.

(3) Where the highest bidder has not demanded the handing over against payment of the sale price at the time specified in the auction rules or, in the absence of such a provision, before the end of the auction session, the item shall be otherwise auctioned. The highest bidder shall not be allowed to place another bid; he shall be liable for the shortfall in proceeds, he shall have no claim on the additional proceeds.

(4) Where the knockdown is awarded to the creditor, he shall be freed from the obligation to pay in cash insofar as the proceeds, following the deduction of the costs of enforcement, are to be used to satisfy his claim. Insofar as the creditor is freed from the obligation to make a payment in cash, the amount shall be deemed to be paid from the debtor to the creditor.

Section 300 Lowest bid

(1) The knockdown may only be awarded for a bid of at least half of the usual sale value of the item (lowest bid). The usual sale value and the lowest bid should be published at the auction.

(2) Where no knockdown is awarded because a bid matching the lowest bid has not been offered, the lien shall remain. The enforcement authority may set a new auction date at any time or order the realisation by other means pursuant to section 305 of the attached item. Where realisation by other means is ordered, subsection (1) above shall apply accordingly.

(3) Items made of gold or silver may not be knocked down at less than their gold or silver value. If no adequate bid for the knockdown is made, the item may be sold privately at the order of the enforcement authority. The sale price may not go below the gold or silver value and half of the usual sale value.

Section 301 Ceasing the auction

(1) The auction shall be ceased as soon as the proceeds are sufficient to cover the amounts to be recovered including the costs of enforcement.

(2) Receipt of the proceeds by the auctioning official shall be deemed to be payment by the judgement debtor unless the proceeds are deposited (section 308(4)). In the case of an Internet auction, receipt of the proceeds on the account of the revenue authority shall be deemed to be payment within the meaning of the first sentence above.

Section 302
Securities

Attached securities with a stock exchange or market price shall be sold privately at the daily price; other securities shall be auctioned according to the general provisions.

Section 303
Registered securities

Where an attached security is registered, the enforcement authority shall be entitled to effect the transfer of the security to the name of the purchaser or, where a bearer security that has been transferred is involved, the re-conversion into a bearer security, and to submit the necessary declaration in place of the judgement debtor.

Section 304
Auctioning unpicked crops

Attached crops which have not yet been separated from the ground may only be auctioned after they have ripened. The enforcement officer shall have the crops harvested if he does not auction them before they are picked.

Section 305
Realisation in special circumstances

Upon application by the judgement debtor or for special reasons of expediency, the enforcement authority may order an attached item to be realised in a manner or at a place other than that set out in the sections above or that the item be auctioned by a person other than the enforcement officer.

Section 306
Enforcement against spare aircraft parts

- (1) Section 100 of the Act Governing Rights in Aircraft shall apply to enforcement against spare parts to which a registered lien on an aircraft extends pursuant to section 71 of the Act Governing Rights in Aircraft; the enforcement officer shall take the place of the bailiff.
- (2) Subsection (1) above shall apply to enforcement against spare parts to which the right in a foreign aircraft extends, subject to the proviso that the provisions of section 106(1), number 2, and 106(4) of the Act Governing Rights in Aircraft shall be taken into account.

Section 307
Subordinate attachment

- (1) For the purposes of attaching items that have already been attached, it shall be sufficient for the enforcement officer to make a declaration, of which a written record is to be made, that he is attaching the item for the receivable to be described. The judgement debtor shall be informed of the additional attachment.
- (2) Where the first attachment is effected for another enforcement authority or made by a bailiff, this enforcement authority or the bailiff shall be sent a copy of the written record. The same obligation shall apply to a bailiff who attaches items which have already been attached on behalf of an enforcement authority.

Section 308
Realisation in the case of multiple attachment

- (1) Where the item is subject to several attachments by enforcement officers or by enforcement officers and bailiffs, jurisdiction for the auction shall be based on the first attachment only.
- (2) Where a creditor conducts the auction, the auction shall be conducted for all creditors involved.
- (3) The proceeds shall be distributed according to the order of the attachments or according to an alternative agreement of the creditors involved.
- (4) Where the proceeds are insufficient to cover the receivables, and a creditor for whom the second or a later attachment was effected demands, without the agreement of the other

creditors involved, distribution other than according to the order of the attachments, the local court in whose district the attachment is effected shall be notified of the situation and the proceeds deposited. The notification shall be accompanied by the documentation relating to the proceedings. Sections 873 to 882 of the Code of Civil Procedure shall apply to the proceedings for the distribution.

(5) Where attachments are effected simultaneously for various creditors, the provisions of subsections (2) to (4) above shall apply subject to the proviso that the proceeds are distributed in proportion to the receivables.

III. Enforcement against receivables and other property rights

Section 309

Attachment of a monetary claim

(1) Where a monetary claim is to be attached, the enforcement authority shall issue a written prohibition to the third party debtor against making payments to the judgement debtor, and shall order the judgement debtor in writing to refrain from every disposition over the receivable, especially the sequestration of the receivable (attachment order). This may not be done in electronic form.

(2) The attachment shall be effected where the attachment order is served on the third party debtor. The attachment order to be served on the third party debtor should describe the monetary amount to be recovered only by providing a figure without stating the types of tax and the periods for which it is owed. The debtor shall be informed of service.

Effective from 1 July 2010

(3) In the case of the attachment of a credit balance on the judgement debtor's account at a credit institution, section 833a of the Code of Civil Procedure shall apply accordingly. Section 833a(2), first sentence, number 2 and the third sentence of the Code of Civil Procedure shall apply subject to the proviso that applications are to be submitted to the competent court of enforcement pursuant to section 828(2) of the Code of Civil Procedure.

Effective from 1 January 2012

(3) In the case of the attachment of a credit balance on the judgement debtor's account at a credit institution, sections 833a and 850I of the Code of Civil Procedure shall apply accordingly. Section 850I of the Code of Civil Procedure shall apply subject to the proviso that applications are to be submitted to the competent court of enforcement pursuant to section 828(2) of the Code of Civil Procedure.

Section 310

Attachment of a receivable secured by a mortgage

(1) In order to attach a receivable for which a mortgage exists, the mortgage certificate shall be handed over to the enforcement authority in addition to the attachment order. Surrender shall be deemed to have been effected when the enforcement officer removes the certificate. Where the mortgage certificate cannot be issued, the attachment shall be entered in the Land Register; the entry shall, by reason of the attachment order, be made at the request of the enforcement authority.

(2) Where the attachment order is served on the third party debtor prior to surrender of the mortgage certificate or entry of the attachment, the attachment shall be regarded as being effected against the third party debtor upon service.

(3) These provisions shall not apply insofar as claims to ancillary payments described in section 1159 of the Civil Code are being attached. The same shall apply for a debt-securing mortgage in the case of section 1187 of the Civil Code to the attachment of the main receivable.

Section 311

Attachment of a receivable secured by a ship mortgage or registered lien on an aircraft

- (1) The attachment of a receivable for which a ship mortgage exists shall be entered into the ship register or ship construction register.
- (2) The attachment of a receivable for which a registered lien on an aircraft exists shall be entered into the register for liens on aircraft.
- (3) The attachment pursuant to subsections (1) and (2) above shall, by reason of the attachment order, be entered at the request of the enforcement authority. Section 310(2) shall apply accordingly.
- (4) Subsections (1) to (3) above shall not be applied insofar as the attachment of claims for payments described in section 53 of the Act on Rights in Registered Ships and Ships under Construction and section 53 of the Act Governing Rights in Aircraft are involved. The same shall apply where, in the case of a ship mortgage, the main receivable is attached for a receivable from a debenture to the bearer, from a bill of exchange or on another instrument transferred by endorsement.
- (5) Section 106(1), number 3, and 106(5) of the Act Governing Rights in Aircraft shall apply to the attachment of receivables for which a right in a foreign aircraft exists.

Section 312

Attachment of a receivable from endorsable instruments

Receivables from bills of exchange and other instruments which can be transferred by endorsement shall be attached by the enforcement officer taking possession of them.

Section 313

Attachment of regular earnings

- (1) A lien which is acquired through the attachment of a salary claim or the attachment of a similar existent receivable against regular earnings shall also extend to amounts that fall due at a later point in time.
- (2) The attachment of an official salary shall also cover the income which the judgement debtor draws when moved to another post, when awarded a new post or in the case of salary increase. This shall not apply in the case of a change of employer.
- (3) Where the employment relationship ends and the judgement debtor and third party debtor establish such a relationship anew within nine months, the attachment shall extend to the receivable arising from the new employment relationship.

Section 314

Sequestration order

- (1) The enforcement authority shall order the sequestration of the attached receivable. Section 309(2) shall apply accordingly.
- (2) The sequestration order may be issued in combination with the attachment order.
- (3) Where the order is for the sequestration of an attached account balance, held at a financial institution, of the judgement debtor who is a natural person, section 385(3), second sentence, of the Code of Civil Procedure shall apply accordingly.
Effective from 1 July 2010
- (4) Where the order is for the sequestration of attached non-recurring remuneration of a judgement debtor who is a natural person for personally rendered work or services or other income which is not wages, section 835(4) of the Code of Civil Procedure shall apply accordingly.

Section 315

Effect of the sequestration order

- (1) The sequestration order shall replace the judgement debtor's formal declarations upon which, under civil law, the entitlement to sequester depends. It shall also suffice in the case of a receivable for which a mortgage, ship mortgage, or a registered lien on an aircraft exists. To the benefit of a third party debtor, a sequestration order unjustly issued shall be considered legal vis-à-vis the judgement debtor until the order is cancelled and the third party debtor is informed hereof.

(2) The judgement debtor shall be obliged to provide the information required to assert the receivable and to return the available documents regarding the receivable. Where the judgement debtor fails to provide information, he shall be obliged at the enforcement authority's request to have this information recorded and to make a sworn statement about the information he has provided. The enforcement authority may amend the sworn statement of assets according to the situation. Section 284(5), (6), (8) and (9) shall apply *mutatis mutandis*. The enforcement authority may have the documents removed by the enforcement officer or force their return pursuant to sections 328 to 335.

(3) Where it is not possible to locate the documents, the judgement debtor shall, upon request by the enforcement authority, make a sworn statement, to be recorded in writing, that he is not in possession of the documents nor does he know where these documents are. Subsection (2), third and fourth sentences, above shall apply accordingly.

(4) Where a third party is in possession of the document, the enforcement authority may also assert the judgement debtor's claim for return.

Section 316

Third party debtor's obligation to submit a declaration

(1) At the request of the enforcement authority, the third party debtor shall declare the following to the authority within two weeks, calculated from service of the attachment order:

1. whether and to what extent he recognises the receivable as justified and is prepared to pay,
2. whether other persons have claims against the receivable and what these claims are,
3. whether the receivable has already been attached for other creditors, and on account of which claims,

Effective from 1 July 2010

4. *whether, with regard to the account of which the credit balance has been attached, an attachment has been cancelled pursuant to section 833a(2) of the Code of Civil Procedure, or the exemption of the credit balance from attachment has been ordered, within the last twelve months, and*

5. *whether the account of which the credit balance has been attached is an account with protection from attachment within the meaning of section 850k(7) of the Code of Civil Procedure.*

The third party debtor's declaration regarding number 1 above shall not be considered an acknowledgement of debt.

Section 316(1), first sentence, number 4 effective from 1 January 2012

4. *whether, with regard to the account of which the credit balance has been attached, the exemption of the credit balance from attachment has been ordered pursuant to section 850l of the Code of Civil Procedure within the last twelve months, and*

(2) The request to submit this declaration may be included in the attachment order. The third party debtor shall be liable to the enforcement authority for the damage incurred from the failure to fulfil his obligation. The third party debtor may be encouraged to submit the declaration through a coercive fine; section 334 shall not be applied.

(3) Sections 841 to 843 of the Code of Civil Procedure shall be applied.

Section 317

Other form of realisation

Where the attached receivable is conditional or aged or the sequestration thereof difficult, the enforcement authority may order that it be realised by other means; section 315(1) shall

apply accordingly. The judgement debtor must be heard beforehand insofar as an announcement outside the territory of application of the law or a public announcement is not required.

Section 318

Claims for the return or transfer of items

- (1) Apart from sections 309 to 317, the provisions below shall apply to the enforcement against claims for the return or transfer of items.
- (2) When attaching a claim concerning a moveable item, the enforcement authority shall order that the item be returned to the enforcement officer. The item shall be disposed of in the same way as an attached item.
- (3) When attaching a claim concerning rights to an immovable item, the enforcement authority shall order that the item be returned to a trustee which the local court *lex rei sitae* appoints upon application by the enforcement authority. Where the claim is directed towards the transfer of ownership, the item shall be conveyed to the trustee as representative of the judgement debtor. Upon transfer of ownership to the judgement debtor, the body to which the enforcement authority belongs shall obtain a debt-securing mortgage for the receivable. The trustee shall approve the registration of the debt-securing mortgage. Enforcement against the item returned shall, according to the provisions on enforcement, be effected against the rights to an immovable item.
- (4) Subsection (3) above shall apply accordingly where the claim concerns a ship registered in the ship register, a ship under construction or floating dock registered in the ship register or that may be registered in this register, or an aircraft registered in the aircraft register or, following deletion in the aircraft register, is still registered in the register for liens on aircraft.
- (5) The trustee shall be granted compensation upon application. The compensation may not exceed the remuneration to be set according to the Ordinance on Official Receivers.

Section 319

Exemption of receivables from attachment

Prohibitions and restrictions under sections 850 to 852 of the Code of Civil Procedure as well as other legal provisions on the attachment of receivables and claims shall apply *mutatis mutandis*.

Section 320

Multiple attachment of a receivable

- (1) Where a receivable is attached by multiple enforcement authorities or by an enforcement authority and a court, sections 853 to 856 of the Code of Civil Procedure and section 99(1), first sentence, of the Act Governing Rights in Aircraft shall be applied accordingly.
- (2) Where there is no local court with jurisdiction pursuant to sections 853 and 854 of the Code of Civil Procedure, deposit shall be lodged with the local court in whose district the enforcement authority to first have its attachment order served on the third party debtor is located.

Section 321

Enforcement against other property rights

- (1) The above provisions shall apply accordingly to enforcement against other property rights which are not the subject of enforcement against immovable assets.
- (2) Where there is no third party debtor, attachment shall be effected where the order to refrain from every disposition over the right is served on the judgement debtor.
- (3) An inalienable right, unless otherwise stipulated, shall be attachable to the extent that the exercise of the right may be entrusted to another person.
- (4) The enforcement authority may, in the case of enforcement against inalienable rights, the exercise of which may be entrusted to another person, issue special orders and, in the case of enforcement against usufructs in particular, order administration; in this case, attachment

shall be effected by surrendering the item to be used to the administrator insofar as it has not already been effected through service of the attachment order.

(5) Where disposal of the right is permissible, the enforcement authority may order the disposal.

(6) The provisions on enforcement against a receivable for which a mortgage exists shall apply to enforcement against land charges or an annuity charge.

(7) Sections 858 to 863 of the Code of Civil Procedure shall apply *mutatis mutandis*.

4th Subchapter Enforcement against immovable assets

Section 322 Procedure⁷

(1) Apart from real properties, enforcement against immovable assets shall also apply to the entitlements for which the provisions relating to real properties apply, to the ships registered in the ship register, to the ships under construction and floating docks registered in the ship register or which can be registered in this register, as well as to aircraft registered in the aircraft register or, following deletion in the aircraft register, are still registered in the register for liens on aircraft. The provisions in force for compulsory judicial execution, namely sections 864 to 871 of the Code of Civil Procedure and the Act on Compulsory Sale by Public Auction and Compulsory Receivership, shall be applied with respect to the enforcement. In the case of deferral or suspension of implementation, a debt-securing mortgage registered by means of enforcement shall however only then pass to the owner pursuant to section 868 of the Code of Civil Procedure, and a ship's mortgage or a registered lien on an aircraft shall however only then expire pursuant to section 870a(3) of the Code of Civil Procedure as well as section 99(1) of the Act Governing Rights in Aircraft, where the cancellation of enforcement measures is ordered at the same time.

(2) Section 171 of the Act on Compulsory Sale by Public Auction and Compulsory Receivership shall apply to enforcement against foreign ships; section 106(1) and (2) of the Act Governing Rights in Aircraft as well as sections 171h to 171n of the Act on Compulsory Sale by Public Auction and Compulsory Receivership shall apply to enforcement against foreign aircraft.

(3) The enforcement authority shall submit the creditor's applications necessary for enforcement against the immovable assets. The enforcement authorities shall confirm in the process that the legal prerequisites for enforcement exist. These matters shall not be subject to the judgement of the enforcement court or the land registry office. Applications to register a debt-securing mortgage, a ship's mortgage or a registered lien on an aircraft shall be requests within the meaning of section 38 of the Land Register Code and section 45 of the Code of the Register of Ships.

(4) The enforcement authority should only apply for compulsory sale by public auction or compulsory receivership where it is determined that the monetary amount cannot be recovered through enforcement against the movable assets.

(5) Insofar as the claim to be enforced, in accordance with 10(1) number 3 of the Act on Compulsory Sale by Public Auction and Compulsory Receivership, takes priority over the rights to the real property, a debt-securing mortgage may be registered in the Land Register under the condition precedent that the preferential right ceases.

⁷⁾ Note: With regard to the application of the provision in the acceding part of Germany, insofar as reference is made to the provisions in force and other provisions for judicial enforcement, the reservation provisions stipulated in the Unification Treaty in conjunction with Article 1 of the Unification Act (Federal Law Gazette II p. 885, Federal Tax Gazette I p. 654) must be observed (cf. in particular Annex I, Chapter III, A, Section III numbers 5 (on the Code of Civil Procedure), 15 (on the Act on Compulsory Sale by Public Auction and Compulsory Receivership), 28 (on general measures), B, section III numbers 1 (on the Land Register Code) and 6 (on the Code of the Register of Ships).

Section 323 Enforcement against the legal successor

Where a debt-securing mortgage, a ship's mortgage or a registered lien on an aircraft has been registered pursuant to section 322, a notice of compulsory tolerance shall only then be required for the purposes of a compulsory sale by public auction on the basis of this right if, following registration of this right, there has been a change of ownership. The first sentence shall apply *mutatis mutandis* to the compulsory receivership of a debt-securing mortgage registered pursuant to section 322.

5th Subchapter **Freezing injunction/arrest of the debtor**

Section 324 **Freezing injunction**

(1) To safeguard the enforcement of monetary claims pursuant to sections 249 to 323, the revenue authority responsible for assessing tax may order movable or immovable assets to be frozen where there are reasons to fear that recovery will otherwise be thwarted or seriously hindered. The authorities may also order a freezing injunction where the receivable has not yet been determined in monetary terms or when it is provisory or aged. The freezing injunction order shall state a monetary amount, the deposit of which will have the effect of suspending the freezing injunction and cancelling any freezing injunction carried out.

(2) The freezing injunction order shall be served. It shall state its reasons and be signed by the ordering official. This may not be done in electronic form.

(3) The implementation of the freezing injunction order shall be impermissible where one month has passed since the day on which it was signed. Implementation shall also be permissible prior to the service on the debtor subject to the freezing injunction, however, it shall have no effect where the order is not served within one week of implementation and within one month of signature. Section 169(1), third sentence, shall apply accordingly in the case of service abroad and of public service. Sections 930 to 932 of the Code of Civil Procedure as well as section 99(2) and section 106(1), 106(3) and 106(5) of the Act Governing Rights in Aircraft shall apply accordingly to the implementation of the freezing injunction; the enforcement authority shall take the place of the court ordering the freezing injunction and the court of enforcement, the enforcement officer shall take the place of the bailiff. Insofar as reference is made to the provisions on attachment, the corresponding provisions of this Code shall be applied.

Section 325 **Cancellation of the freezing injunction**

The freezing injunction order shall be cancelled where, after it has been issued, circumstances come to light suggesting that the freezing injunction order may no longer be justified.

Section 326 **Arrest of the debtor**

(1) Upon application by the revenue authority responsible for the tax assessment, the local court may order the arrest of the debtor where this is necessary to secure enforcement against the assets of the liable party. The local court in whose district the revenue authority has its seat or where the liable party is located shall be responsible.

(2) The revenue authority responsible for the tax assessment shall state in the application the nature and amount of the claim as well as the facts leading to the arrest.

(3) Sections 128(4) and sections 922 to 925, 927, 929, 933, 934(1), (3), and (4) of the Code of Civil Procedure shall apply *mutatis mutandis* to the order, implementation and cancellation of the arrest. Section 911 of the Code of Civil Procedure shall not be applied.

(4) The provisions of the Code of Civil Procedure shall apply to service of the order.

6th Subchapter **Realisation of collateral**

Section 327
Realisation of collateral

Where monetary claims enforceable through the administrative procedure (section 251) are not met at maturity, the enforcement authority may satisfy the claims from the collateral it has obtained to guarantee these claims. The collateral shall be realised according to the provisions of this chapter. Collateral may only then be realised where the judgement debtor has been informed of the intention of realising the collateral and at least one week has passed since this has been disclosed.

Third Chapter
Enforcement other than of monetary claims

1st Subchapter
Enforcement owing to actions, tolerance or omissions

Section 328
Coercive measures

- (1) An administrative act that is directed at the performance of an action or at the tolerance or omission of an action may be enforced using coercive measures (coercive fine, substitutive execution, direct enforcement). Section 336 shall apply to forcing the provision of collateral. The authority issuing the administrative act shall be the enforcement authority.
- (2) The coercive measure least detrimental to the liable party and to the public shall be determined. The coercive measure shall be proportionate to its purpose.

Section 329
Coercive fine

No individual coercive fine may exceed 25,000 euros.

Section 330
Substitutive execution

Where the obligation to perform an action which may be undertaken by another party is not fulfilled, the enforcement authority may commission another party to undertake the action at the liable party's expense.

Section 331
Direct enforcement

Where the coercive fine or substitutive execution do not attain the objective or where they are not appropriate, the revenue authority may force the liable party to perform, tolerate or omit to do an action, or to perform the action itself.

Section 332
Giving warning of coercive measures

- (1) Warning of the coercive measure shall be issued in writing. Where there are grounds to fear that, in so doing, the forced implementation of the administrative act to be implemented will be thwarted, it shall be sufficient to issue an oral warning of the coercive measure or issue a warning by other necessary means conducive to the situation. An appropriate deadline shall be set for the discharge of the obligation.
- (2) The warning may be issued in combination with the administrative act instructing the performance, tolerance or omission of an action. The warning shall refer to a particular coercive measure and shall be issued separately for each obligation. Warning shall be given of the specific amount of the coercive fine.
- (3) A renewed warning for the same obligation shall be permissible only then where the coercive measure first threatened is unsuccessful. Where the liable party is required to tolerate or omit to do an act, it shall be permissible to give warning of a coercive measure for each instance of an offence.
- (4) Where the performance of an action is to be conducted by substitutive execution, the warning shall contain a provisional estimate of the amount of the cost.

Section 333

Determining the coercive measures

Where the obligation is not fulfilled within the deadline set out in the warning or the liable party acts in breach of the obligation, the revenue authority shall determine the coercive measure.

Section 334

Substitutive coercive detention

(1) Where a stipulated coercive fine cannot be recovered from a natural person, the local court may, upon application by the revenue authority, order substitute coercive detention after hearing the liable party if reference had been made to this in warning of the coercive fine. Where the local court orders substitutive coercive detention, the court shall issue an arrest warrant in which the applying authority, liable party and the reason for the arrest shall be stated.

(2) The local court shall rule at its duty-bound discretion by way of decision. The local court in whose district the liable party is resident or, in the absence of a residence, has his habitual abode, shall have local jurisdiction. The decision of the local court shall be subject to the appeal procedure pursuant to sections 567 to 577 of the Code of Civil Procedure.

(3) Substitutive coercive detention shall be for a minimum of one day and a maximum of two weeks. The implementation of the substitutive coercive detention shall be determined pursuant to sections 904 to 906, 909 and 910 of the Code of Civil Procedure and sections 171 to 175 of the Prison Act.

(4) Where the claim to the coercive fine becomes time-barred, the detention may no longer be enforced.

Section 335

Termination of the coercive procedure

Where the obligation is fulfilled following determination of the coercive measure, enforcement shall be stayed.

2nd Subchapter

Forcing provision of collateral

Section 336

Forcing provision of collateral

(1) Where the obligation to provide collateral is not fulfilled, the revenue authority may attach eligible collateral.

(2) The act of forcing provision of collateral shall be preceded by a written warning. Sections 262 to 323 shall be applied accordingly.

Fourth Chapter

Costs

Section 337

Costs of enforcement

(1) Costs (fees and expenses) shall be levied during the enforcement procedure. The judgement debtor shall be liable for these costs.

(2) No costs shall be levied for the dunning procedure. However, the judgement debtor shall bear the costs incurred for a postal cash on delivery order (section 259, second sentence).

Section 338

Types of fees

Fees for attachment (section 339), confiscation (section 340) and realisation (section 341) shall be levied as part of the enforcement proceedings.

Section 339

Attachment fee

(1) An attachment fee shall be levied for the attachment of movable items, for animals, for crops not yet separated from the ground, for receivables and for other property rights.

(2) The fee shall be incurred:

1. as soon as the enforcement officer has undertaken steps to carry out the enforcement order,
2. upon service of the order through which a receivable or another property right is to be attached.

(3) The fee shall be 20 euros.

(4) The fee shall also be levied where

1. attachment is averted by payment to the enforcement officer,
2. payment is made by some other means after the enforcement officer has been in situ,
3. an attempt at attachment has not led to the desired result because no attachable objects were uncovered, or
4. attachment in the cases of section 281(3) of this Code as well as sections 812 and 851b(1) of the Code of Civil Procedure does not occur.

Where the attachment is averted by other means, no fee shall be levied.

Section 340 Confiscation fee

(1) A confiscation fee shall be charged for the confiscation of movable items including documents in the cases of sections 310, 315(2), fifth sentence, sections 318, 321, 331 and 336. This shall also apply where the judgement debtor voluntarily pays the enforcement officer present to undertake the enforcement.

(2) Section 339(2) number 1 shall be applied accordingly.

(3) The amount of the confiscation fee shall be 20 euros. The fee shall also be levied where the items described in subsection (1) above cannot be uncovered.

Section 341 Realisation fee

(1) A realisation fee shall be levied for auction by public sale and realisation by other means of objects.

(2) The fee shall be incurred as soon as the enforcement officer or another agent has undertaken steps to carry out the enforcement order.

(3) The fee shall be 40 euros.

(4) Where realisation is averted (section 296(1), fourth sentence), a fee of 20 euros shall be levied.

Section 342 Plurality of debtors

(1) Where enforcement is undertaken against several debtors, the fees shall be levied on each judgement debtor, even where the enforcement officer performs several acts of enforcement on the same occasion.

(2) Where enforcement is undertaken against joint and several debtors for a joint debt on the same occasion, the fees for attachment, confiscation and realisation shall only be levied once. The persons described in the first sentence above shall be liable for the fees as joint and several debtors.

Section 343 (rescinded)

Section 344 Expenses

(1) The following shall be levied as expenses:

1. clerical expenses for copies to be issued or sent via fax in a non-official capacity; the clerical expenses for each page irrespective of the means of production shall be 0.50 euros. Where electronically stored files are released in place of copies, expenses shall be 2.50 euros per file,
2. fees for postal and telecommunication services excluding fees for local area telephone services,
3. fees for service by the postal service with notice of receipt; where service is undertaken by the authority (section 5 of the Act on the Administrative Service of Documents), a fee of 7.50 euros shall be charged,
4. costs incurred through public notification,
5. the amounts to be paid to persons called upon to open doors and containers as well as to those called upon to search the judgement debtors,
6. costs for the movement, storage and supervision of attached items, costs of harvesting attached crops and costs for the storage, feeding, care and movement of attached animals,
7. amounts that, in corresponding application of the Judicial Remuneration and Compensation Act, are to be paid to court experts (section 107) as well as amounts to be paid to the trustees (section 318(5)),
- 7a. costs charged by a credit institution because a judgement debtor's cheque was not cashed,
- 7b. costs for transferring a registered security or for the reinstatement of a bearer instrument,
8. other amounts to be paid to third parties because of enforcement measures, especially amounts paid to agents and aides during substitutive execution or in the case of direct enforcement, and other costs incurred by carrying out direct enforcement or applying substitutive coercive detention.

(2) Taxes which the revenue authority owes because of enforcement measures shall be levied as expenses.

(3) Where items or animals which have been attached in the case of several judgement debtors are collected and realised in a single procedure, the expenses arising in this procedure shall be divided between the judgement debtors involved. The special circumstances involved in individual cases, above all the value, amount and weight of the objects, shall be taken into account in the process.

Section 345

Travel expenses and expense allowances

In the enforcement procedure, the judgement debtor shall not be required to refund the enforcement officer's travel expenses and the expenses which can be reimbursed through expense allowances.

Section 346

Incorrect treatment of items, period for assessment

(1) Costs which would not have been incurred were items treated correctly shall not be levied.

(2) The period for the calculation of the costs and for the cancellation or amendment of the calculation of the costs shall be one year. It shall begin upon expiration of the calendar year in which the costs arose. An application for cancellation or amendment filed before the expiration of the period may also be met after the period has expired.

Seventh Part
Out-of-court proceedings for legal remedy

First Chapter
Admissibility

Section 347
Admissibility of the objection

(1) Objection to administrative acts

1. in fiscal matters to which this Code applies,
2. in procedures to enforce administrative acts in matters other than those described under number 1 above, insofar as the administrative acts are to be enforced by revenue authorities of the Federation or revenue authorities of the *Länder* pursuant to the provisions of this Code,
3. in public law and occupational law matters to which this Code applies pursuant to section 164a of the Tax Consultancy Act,
4. in other matters administered by the revenue authorities, insofar as the provisions on out-of-court legal remedies have been or are declared applicable by law,

shall be admissible as a means of legal remedy. An objection shall be furthermore admissible where it is asserted that in the matters described in the first sentence above no ruling has been made on an application by the appellant for the issue of an administrative act without notification of a sufficient reason within an appropriate time limit.

(2) Fiscal matters shall mean all matters connected to the administration of taxes including tax refunds or matters otherwise connected with the application of tax and excise provisions by the revenue authorities, including measures of the revenue authorities of the Federation to ensure adherence to prohibitions and restrictions in respect of the cross-border flow of goods; matters concerning the administration of fiscal monopolies shall be deemed equal to fiscal matters.

(3) The regulations of the Seventh Part shall not apply to criminal and administrative fine proceedings.

Section 348
Exclusion of the objection

It shall not be permissible to object

1. to objection rulings (section 367),
2. to failure to rule on the objection,
3. to administrative acts of the highest revenue authorities of the Federation and the *Länder*, apart from where an act stipulates objection proceedings,
4. to rulings in matters contained in the second and sixth chapter of the second part of the Tax Consulting Act,
5. (rescinded)
6. in the cases described in section 172(3).

**Section 349
(rescinded)**

**Section 350
Gravamen**

Only the party asserting to have been aggrieved by an administrative act or the omission thereof shall be authorised to lodge an objection.

Section 351

Binding effect of other administrative acts

(1) Unless the provisions on the cancellation or amendment of administrative acts provide otherwise, administrative acts amending incontestable administrative acts may be challenged only to the extent that the amendment suffices.

(2) Rulings on a basic assessment notice (section 171(10)) may be challenged only by contesting this notice and not by contesting the follow-up notice.

Section 352

Authority to object in the case of uniform determination

(1) The following may lodge an objection against notices on the uniform and separate determination of the bases of taxation:

1. managing directors appointed as representatives or, where such are not available, the agent authorised to object within the meaning of subsection (2) below,
2. where persons in number 1 above are not available, every partner, co-owners or persons jointly entitled against whom a notice of determination has been issued or would have to be issued,
3. even where persons in number 1 above are available, former partners, co-owners or persons jointly entitled against whom a notice of determination has been issued or would have to be issued,
4. insofar as it involves the question of who has a holding in the amount determined and how this amount is divided between the individual participants involved, everyone who is affected by the corresponding findings,
5. insofar as it involves a matter of personal concern to a participant, everyone who is affected by the corresponding findings.

(2) The person authorised to object within the meaning of subsection (1) number 1 above shall be the common authorised recipient within the meaning of section 183(1), first sentence, or section 6(1), first sentence, of the Ordinance of 19 December 1986 on the separate determination of bases of taxation pursuant to section 180(2) of the Fiscal Code (Federal Law Gazette I, p. 2663). Where the persons involved in the determination have not appointed a common authorised recipient, the person authorised to object within the meaning of subsection (1) number 1 above shall be the nominal authorised recipient pursuant to section 183(1), second sentence, or the authorised recipient appointed by the revenue authority pursuant to section 183(1), third to fifth sentences, or pursuant to section 6(1), third to fifth sentences, of the Ordinance on the separate determination of bases of taxation pursuant to section 180(2) of the Fiscal Code; this shall not apply to persons involved in the determination who raise an objection with the revenue authority against the authorised recipient's authority to object. The first and second sentences above shall only apply where the participants in the determination declaration or in the call for the appointment of an authorised recipient have been advised of the authorised recipient's authority to object.

Section 353

Legal successor's authority to object

Where a notice of determination, a basic real property tax assessment notice or an apportionment and allocation notice with respect to a basic real property tax amount has an impact on the legal successor without him having been informed of this (section 182(2), section 184(1), fourth sentence, sections 185 and 190), the legal successor may lodge an objection only within the relevant period for objection applicable to the legal predecessor.

Section 354

Waiver of objection

(1) The submission of an objection may be waived following issue of the administrative act. The waiver may also be made when submitting a self-assessed tax return in the event that the tax assessed does not deviate from that in the self-assessed tax return. The waiver shall render objection impermissible.

(1a) Insofar as bases for taxation may be of significance for a mutual agreement procedure or arbitration pursuant to an agreement within the meaning of section 2, entitlement to lodge an objection may be waived. The basis of taxation to which the waiver shall apply shall be described precisely.

(2) The waiver shall be made to the revenue authority responsible in writing or declared for record; it may not contain any further declarations. Where the invalidity of the waiver is subsequently asserted, section 110(3) shall apply *mutatis mutandis*.

Second Chapter

Procedural rules

Section 355

Period for objection

(1) Objection pursuant to section 347(1), first sentence, shall be lodged within one month of notice of the administrative act. An objection against a self-assessed tax return shall be lodged within one month of the revenue authority receiving the self-assessed tax return, in the cases of section 168, second sentence, within one month of disclosure of the agreement.

(2) No time period shall apply to the objection pursuant to section 347(1), second sentence.

Section 356

Advice on applicable legal remedies

(1) Where an administrative act is issued in writing or in electronic form, the time period for lodging an objection shall only begin once the participant has been advised in the manner used for the administrative act about the objection and the revenue authority where it must be lodged, the seat of the revenue authority and the period to be observed.

(2) Where the advice has not been imparted or have been imparted incorrectly, the submission of an objection shall only be permissible within one year of notice of the administrative act, unless the submission before the end of the year was not possible on account of *force majeure* or advice was provided in writing or electronically that there was no case for objection. Section 110(2) shall apply *mutatis mutandis* for the instance of *force majeure*.

Section 357

Submission of the objection

(1) The objection must be lodged in writing or declared for record. It shall be sufficient where the appellant can be identified from the document. Submission via telegram shall be permissible. Incorrect designation of the objection shall not adversely affect it.

(2) The objection shall be lodged with the authority whose administrative act is being disputed or to which the application for an administrative act to be issued was submitted. An objection against the determination of bases of taxation or against the assessment of a basic impersonal tax amount may also be entered with the authority responsible for issuing the tax assessment notice. An objection directed against an administrative act which the authority issued for the revenue authority responsible on the basis of a legal provision may also be entered with the revenue authority responsible. Lodging a written objection with another

authority shall have no adverse effects where the objection is transmitted within the period for objection set by one of the authorities to which it may be submitted pursuant to the first to third sentences above.

(3) The administrative act against which the objection is directed should be stated when submitting the objection. The extent to which an administrative act is being challenged and its cancellation applied for should be indicated. Furthermore, both the facts justifying the objection and the evidence should be cited.

Section 358

Verification of the requirements for permissibility

The revenue authority appointed to rule on the objection shall verify whether the objection is permissible and, in particular, has been submitted in the prescribed form and within the prescribed deadline. Where any one of these requirements is not met, the objection shall be rejected as impermissible.

Section 359

Participants

The participants in the procedure shall be:

1. whoever has submitted the objection (appellant),
2. whoever has been enlisted in the procedure.

Section 360

Enlistment of others in the proceedings

(1) The revenue authority appointed to rule on the objection may enlist other persons, ex officio or upon application, whose legal interests, pursuant to the tax laws, will be affected by the ruling, including, in particular, those who, pursuant to the tax laws, are also liable in addition to the taxpayer. Prior to the enlistment of others, the person who submitted the objection shall be heard.

(2) Where a fiscal charge is administered for another entity entitled to the fiscal charge, this entity may not be enlisted merely because its interests, as the entity entitled to the fiscal charge, will be affected by the ruling.

(3) Where third parties are involved in the contentious legal relationship in such a way that a ruling can only be taken in a uniform manner in relation to them as well, they shall be enlisted in the proceedings. This shall not apply for persons jointly entitled who, pursuant to section 352, are not authorised to submit an objection.

(4) Whoever is enlisted in the proceedings may assert the same rights as the person who has submitted the objection.

(5) Where pursuant to subsection (3) above more than 50 persons are candidates for enlistment, the revenue authority may decree that only those persons who apply for enlistment within a particular period shall be enlisted. Individual notification of the decree may be waived where the decree is published in the electronic Federal Gazette and is furthermore published in the daily newspapers which are disseminated in the area in which the ruling is likely to have an effect. The deadline shall be at least three months from the date of publication in the electronic Federal Gazette. The publication in the daily newspapers shall state the date upon which the deadline expires. Section 110 shall apply accordingly with respect to *restitutio in integrum* where a time limit has not been complied with. The revenue authority should enlist persons who will be evidently affected to a particular degree by the ruling including, even without an application being made for such.

Section 361

Suspension of implementation

(1) Subject to the provisions of subsection (4) below, the submission of an objection shall not have the effect of blocking implementation of the disputed administrative act, especially

where the levy of a fiscal charge is concerned. The same shall apply when contesting basic assessment notices for the follow-up notices based thereon.

(2) The revenue authority which issued the disputed administrative act may suspend implementation in whole or in part; section 367(1), second sentence, shall apply *mutatis mutandis*. Upon application, suspension should be granted where serious doubts exist as to the legality of the administrative act being disputed or where implementation would result for the person affected in unreasonable hardship not required by overriding public interests. Where the administrative act has already been implemented, the suspension of implementation shall be replaced by the cancellation of the implementation. In the case of tax assessment notices, the suspension and the cancellation of implementation shall be limited to the assessed tax reduced by the tax-deductible amounts to be credited, by the corporation tax to be credited and by the prepayments assessed; this shall not apply where the suspension or the cancellation of implementation appears to be necessary in order to prevent substantial disadvantages. Suspension may be made dependent upon provision of collateral.

(3) Insofar as the implementation of a basic assessment notice is suspended, the implementation of a follow-up notice shall also be suspended. The issue of a follow-up notice shall remain permissible. In the case of the suspension of a follow-up notice, a ruling shall be made on the provision of collateral, unless the provision of collateral was specifically excluded when suspending the implementation of the basic assessment notice.

(4) The submission of an objection against the prohibition of the operation of a trade or business or the exercise of an occupation or profession shall have the effect of blocking implementation of the disputed administrative act. The revenue authority which issued the administrative act may eliminate the blocking effect in whole or in part by specific order where the revenue authority deems this necessary in the public interest; the revenue authority shall substantiate the argument for the public interest in writing. Section 367(1), second sentence, shall apply *mutatis mutandis*.

(5) Rejection of the suspension of the implementation may only be referred to the court pursuant to section 69(3) and (5), third sentence, of Code of Procedure for Fiscal Courts.

Section 362

Withdrawal of the objection

(1) An objection may be withdrawn up until the point at which notification is given of the ruling. Section 357(1) and (2) shall apply *mutatis mutandis*.

(1a) Insofar as bases of taxation may be of significance for a mutual agreement procedure or arbitration pursuant to an agreement within the meaning of section 2, the objection against this may be withdrawn subject to limitations. Section 354(1a), second sentence, shall apply accordingly.

(2) The withdrawal shall result in the forfeiture of the objection submitted. Where the invalidity of the withdrawal is subsequently asserted, section 110(3) shall apply *mutatis mutandis*.

Section 363

Suspending and adjourning the proceedings

(1) Where the ruling depends in whole or in part on the existence or non-existence of a legal relationship which is the object of a pending legal dispute or which must be determined by a court or an administrative authority, the revenue authority may suspend the ruling until the other legal dispute is resolved or until the court or administrative authority has ruled.

(2) The revenue authority may, with the consent of the appellant, adjourn the proceedings where this appears appropriate on important grounds. Where proceedings are pending at the European Court of Justice, the Federal Constitutional Court or a highest federal court with respect to the constitutionality of a legal norm or to a legal question, and where the objection is based upon this, the appeals proceedings shall be adjourned to this extent; this shall not apply insofar as, pursuant to section 165(1), second sentence, number 3 or 4, the tax has been provisionally assessed. With the consent of the highest revenue authority, it may be

decreed, through a general order to be publicly disclosed, for groups of similar cases that appeals procedures are also adjourned to this extent in cases other than those contained in the first and second sentences above. The appeals procedure shall be resumed where the appellant lodges an application for such or the revenue authority informs the appellant of such.

(3) Where an application for the suspension or adjournment of proceedings is rejected or the suspension or adjournment of proceedings revoked, the unlawfulness of the rejection or revocation may only be asserted by court action against the objection ruling.

Section 364

Disclosure of the taxation documents

The participants shall, insofar as this has not yet occurred, be informed of the taxation documents upon application or, where the grounds of the objection give cause for such, *ex officio*.

Section 364a

Discussion of the current and legal status

(1) Upon application by the appellant, the revenue authority should discuss the current and legal status before issuing an objection ruling. Further participants may be invited where the revenue authority believes this to be expedient. The revenue authority may invite the appellant, even without his having applied for such, and other participants to a discussion.

(2) The revenue authority may elect not to hold a discussion with more than ten participants. Where the participants appoint a common representative within an appropriate deadline set by the revenue authority, the current and legal status should be discussed with him.

(3) The participants may elect to be represented by an authorised representative. They may also be invited to the discussion in person where the revenue authority believes this to be expedient.

(4) Attendance may not be forced pursuant to section 328.

Section 364b

Determination of deadlines

(1) The revenue authority may set deadlines for the appellant

1. to state the facts through the consideration or non-consideration of which he feels aggrieved,

2. to clarify specific matters requiring clarification,

3. to specify evidence or to present documents insofar he is obliged to do this.

(2) Declarations and evidence provided only after the deadline set pursuant to subsection (1) above has expired shall not be taken into consideration. Section 367(2), second sentence, shall remain unaffected. Section 110 shall apply accordingly where the deadline is exceeded.

(3) Upon setting the deadline, the appellant shall be advised of the legal consequences pursuant to subsection (2) above.

Section 365

Application of procedural rules

(1) The provisions applying to the issue of the disputed or desired administrative act shall furthermore apply *mutatis mutandis* to the proceedings regarding the objection.

(2) In the cases described in section 93(5), 96(7), second sentence, and sections 98 to 100, the participants and their authorised representatives and advisors (section 80) shall be given the opportunity to participate in the taking of evidence.

(3) Where the contested administrative act is amended or replaced, the new administrative act shall become the subject-matter of the appeals procedure. The first sentence above shall apply accordingly where

1. an administrative act is corrected pursuant to section 129, or
2. an administrative act replaces a disputed, invalid administrative act.

Section 366

Form, content and publication of the objection ruling

The objection ruling shall be issued in writing, shall be substantiated, shall contain advice on applicable legal remedies and shall be disclosed to the participants.

Section 367

Objection ruling

- (1) The revenue authority which has issued the administrative act shall take a decision on the objection by means of an objection ruling. Where another revenue authority has subsequently become responsible for a tax case, this revenue authority shall make the ruling; section 26, second sentence, shall remain unaffected.
- (2) The revenue authority ruling on the objection shall re-examine the matter in its entirety. The administrative act may also be amended to the detriment of the appellant where he has been instructed of the possibility of a detrimental ruling stating the reasons and he has been given the opportunity to comment on this. An objection ruling shall only be required to the extent that the revenue authority does not remedy the objection.
 - (2a) The revenue authority may rule on parts of the objection in advance where this is expedient. In this ruling, the revenue authority shall determine which parts are not to become final and incontestable.
 - (2b) Pending objections which affect a crucial legal issue ruled on by the Court of Justice of the European Communities, the Federal Constitutional Court, or the Federal Fiscal Court and which cannot be remedied before these courts following the outcome of the proceedings may only be withdrawn by way of general order. The highest revenue authority shall have subject-matter jurisdiction over the issue of the general order. The general order shall be published in the Federal Tax Gazette and on the website of the Federal Ministry of Finance. The general order shall be deemed as having been disclosed on the day following publication of the Federal Tax Gazette in which it is published. Notwithstanding section 47(1) of the Code of Procedure for Fiscal Courts, the deadline for court action shall end after the expiry of one year following the day of publication. Section 63(1) number 1 of the Code of Procedure for Fiscal Courts shall also apply insofar as an objection is rejected by a general order pursuant to the first sentence above.
- (3) Where the objection is directed against an administrative act which an authority issued for the revenue authority responsible on the basis of a legal provision, the revenue authority responsible shall rule on the objection. The authority acting for the revenue authority responsible shall also be authorised to remedy the objection.

Section 368

(rescinded)

Eighth Part

Provisions relating to crimes and administrative fines, criminal and administrative fine proceedings

First Chapter

Provisions on crimes

Section 369

Tax crimes

- (1) The following shall be tax crimes (customs crimes):
 1. acts which are punishable under the tax laws,
 2. the illegal import, export or transit of goods,

3. the forging of revenue stamps or acts preparatory thereto, insofar as the act relates to tax stamps,

4. aiding and abetting a person who has committed an act under numbers 1 to 3 above.

(2) Tax crimes shall be subject to the general provisions of criminal law unless otherwise provided for by the tax laws' provisions on crime.⁸

⁸⁾ Cf. Annex I, Chapter III C of the Unification Treaty in conjunction with Article 1 of the Unification Treaty Act (Federal Law Gazette II, p. 885, 954; Federal Tax Gazette I, p. 654).

Section 370 **Tax evasion**

(1) A penalty of up to five years' imprisonment or a monetary fine shall be imposed on whoever

1. furnishes the revenue authorities or other authorities with incorrect or incomplete particulars concerning matters of substantial significance for taxation,

2. fails to inform the revenue authorities of facts of substantial significance for taxation when obliged to do so, or

3. fails to use revenue stamps or revenue stamping machines when obliged to do so

and as a result understates taxes or derives unwarranted tax advantages for himself or for another person.

(2) Attempted perpetration shall be punishable.

(3) In particularly serious cases, a penalty of between six months and ten years' imprisonment shall be imposed. A case shall generally be deemed to be particularly serious where the perpetrator

1. deliberately understates taxes on a large scale or derives unwarranted tax advantages,

2. abuses his authority or position as a public official,

3. solicits the assistance of a public official who abuses his authority or position,

4. repeatedly understates taxes or derives unwarranted tax advantages by using falsified or forged documents, or

5. as a member of a group formed for the purpose of repeatedly committing acts pursuant to subsection (1) above, understates turnover taxes or excise duties or derives unwarranted turnover tax or excise duty advantages.

(4) Taxes shall be deemed to have been understated in particular where they are not assessed at all, in full or in time; this shall also apply even where the tax has been assessed provisionally or assessed subject to re-examination or where a self-assessed tax return is deemed to be equal to a tax assessment subject to re-examination. Tax advantages shall also include tax rebates; unwarranted tax advantages shall be deemed derived to the extent that these are wrongfully granted or retained. The conditions of the first and second sentences above shall also be fulfilled where the tax to which the act relates could have been reduced for other reasons or the tax advantage could have been claimed for other reasons.

(5) The act may also be committed in relation to goods whose importation, exportation or transit are banned.

(6) Subsections (1) to (5) above shall apply even where the act relates to import or export duties which are administered by another Member State of the European Communities or to

which a Member State of the European Free Trade Association or a country associated therewith is entitled. The same shall apply where the act relates to turnover taxes or harmonised excise duties on goods designated in Article 3(1) of Council Directive 92/12/EEC of 25 February 1992 (OJ L 76, p. 1) which are administered by another Member State of the European Communities.

(7) Irrespective of the *lex loci delicti*, the provisions of subsections (1) to (6) above shall also apply to acts committed outside the territory of application of this Code.

Section 370a (rescinded)

Section 371

Voluntary disclosure of tax evasion

(1) Whoever in the cases of section 370 corrects or supplements incorrect or incomplete particulars held by the revenue authority or furnishes previously omitted particulars shall be exempt from punishment in respect of such incorrect, incomplete or omitted particulars.

(2) Exemption from punishment shall not apply where

1. before the correction, supplementation or subsequent furnishing of omitted particulars
 - a) a public official at the revenue authority has already appeared for the purpose of carrying out a tax audit or of investigating a tax crime or a tax offence, or
 - b) the perpetrator or his representative has been notified of the initiation of criminal proceedings or proceedings for the imposition of administrative fines resulting from the act, or
2. the act had been already fully or partially detected at the time of the correction, supplementation or subsequent furnishing of omitted particulars and the perpetrator was aware of this or should have expected this upon due consideration of the facts of the case.

(3) Where tax has already been understated or tax advantages have already been derived, any person involved in this act shall be exempt from punishment only insofar as he pays the taxes which were evaded to his benefit within the reasonable period of time allowed to him for that purpose.

(4) Where the notification provided for in section 153 is punctually and duly filed, a third party who omitted to make the statements referred to in section 153 or who made such statements incorrectly or incompletely shall not be prosecuted unless he or his representative was previously notified of the initiation of criminal or administrative fine proceedings resulting from the act. Subsection (3) above shall apply accordingly where the third party has acted to his own benefit.

Section 372

Illegal import, export, or transit of goods

(1) Whoever imports, exports or transports goods in violation of a prohibition shall be deemed to have illegally imported, exported or transported goods.

(2) The perpetrator shall be punished pursuant to section 370(1) and (2) where the act is not subject to punishment or a monetary fine as a violation of import, export, or transit prohibitions pursuant to other provisions.

Section 373

Professional, violent or organised smuggling

(1) Whoever evades import or export duties on a commercial basis or who illegally imports, exports or transports goods on a commercial basis in contravention of monopoly regulations

shall be subject to imprisonment of from six months up to 10 years. In less serious cases, the penalty shall be imprisonment for up to five years or a monetary fine.

(2) Punishment shall also be imposed on whoever

1. evades import or export duties or illegally imports, exports or transports goods, and in committing these acts he or another participant carries a firearm,
2. evades import or export duties or illegally imports, exports or transports goods, and in committing these acts he or another participant carries with him a weapon or some other tool or means to prevent or overcome the resistance of another person by violence or by the threat of violence, or
3. as a member of a group formed for the purpose of repeatedly evading import or export duties or of illegally importing, exporting or transporting goods, commits such an act.

(3) Attempted perpetration shall be punishable.

(4) Section 370(6), first sentence, and (7) shall apply accordingly.

Section 374

Receiving, holding or selling goods obtained by tax evasion

(1) Whoever purchases or otherwise acquires for himself or for a third party, or sells, or helps to sell with the aim of enriching himself or a third party products or goods in connection with which excise duties or import duties and export duties within the meaning of Article 4 numbers 10 and 11 of the Customs Code have been evaded or the illegal import, export or transit of goods pursuant to section 372(2) and section 373 has been committed, shall be punishable by imprisonment for up to five years or a monetary fine.

(2) Where the perpetrator acts commercially or as a member of a group formed for the purpose of repeatedly committing crimes pursuant to subsection (1) above, a penalty of between six months and ten years' imprisonment shall be imposed. In less serious cases, the penalty shall be imprisonment for up to five years or a monetary fine.

(3) Attempted perpetration shall be punishable.

(4) Section 370(6), first sentence, and (7) shall apply accordingly.

Section 375

Incidental consequences

(1) In addition to at least one year's imprisonment for

1. tax evasion,
2. illegally importing, exporting or transporting goods pursuant to section 372(2), section 373,
3. receiving, holding or selling goods obtained by tax evasion, or
4. aiding and abetting a person who has committed an act under numbers 1 to 3 above,

the court may disqualify someone from holding public office and acquiring rights from public elections (section 45(2) of the Criminal Code).

(2) Where tax has been evaded, goods illegally imported, exported or transported pursuant to section 372(2), section 373 or goods acquired by tax evasion received, held or sold,

1. the produce, goods and other items to which the evasion of excise duties or import and export duties within the meaning of Article 4 numbers 10 and 11 of the Customs Code, the illegal import, export or transport of goods, or the receiving, holding or selling of goods obtained by tax evasion, relate, and
2. the means of transport used in the act,

may be confiscated. Section 74a of the Criminal Code shall be applied.

Section 376

Limitation period for prosecution

- (1) In the cases of particularly serious tax evasion referred to in section 370(3), second sentence, numbers 1 to 5, the limitation period shall be 10 years.
- (2) The limitation period for the prosecution of a tax crime shall also be interrupted where the accused is notified of the initiation of proceedings for the imposition of administrative fines or this notification is ordered.

Second Chapter

Provisions on administrative fines

Section 377

Tax offences⁹

- (1) Tax offences (customs offences) shall be offences which under the tax laws may be punished by monetary fine.
- (2) The provisions of the first part of the Act on Administrative Offences shall apply for tax offences insofar as the tax law provisions on administrative fines do not provide otherwise.

⁹ Cf. Annex I, Chapter III C, Section III, number 4 of the Unification Treaty in conjunction with Article 1 of the Unification Treaty Act (Federal Law Gazette II, p. 885, 957; Federal Tax Gazette I, p. 654).

Section 378

Understatement of tax through gross negligence

- (1) Whoever as a taxpayer or a person looking after the affairs of a taxpayer commits one of the acts described in section 370(1) through gross negligence shall be deemed to have committed an offence. Section 370(4) to (7) shall apply accordingly.
- (2) The offence may be punished with a monetary fine of up to fifty thousand euros.
- (3) A monetary fine shall not be set insofar as the perpetrator corrects or supplements incorrect or incomplete particulars held by the revenue authority or furnishes previously omitted particulars before he or his representative has been informed of the initiation of criminal or administrative fine proceedings resulting from the act. Section 371(3) and (4) shall apply accordingly.

Section 379

General minor tax fraud

- (1) An offence shall be deemed to be committed by whoever intentionally or through gross negligence
 1. fails to comply at all, in full or in time with the obligation to disclose pursuant to section 138(2),
 - 1a. contrary to section 144(1) or (2), first sentence, in conjunction with subsection (5) respectively, does not, not correctly or not fully prepare a record,
 2. places documents into circulation for a fee or
 3. fails to record or to have recorded, or incorrectly records or has recorded, transactions or business activity which according to the law have to be entered in the accounts or otherwise recorded

and in so doing enables taxes to be understated or unwarranted tax advantages to be derived. The first sentence, number 1 above shall also apply where import or export duties which are administered by another Member State of the European Communities or to which a State, which on the basis of an association agreement or preferential agreement grants preferential treatment to goods deriving from the European Communities, is entitled can be understated; section 370(7) shall apply accordingly. The same shall apply where the act

relates to turnover taxes which are administered by another Member State of the European Communities.

(2) An offence shall be deemed to be committed by whoever intentionally or through gross negligence

1. fails to comply at all, in full or in time with the obligation to disclose pursuant to section 138(2),
2. breaches the obligation regarding the authenticity of accounts pursuant to section 154(1).

(3) An offence shall be deemed to be committed by whoever intentionally or through negligence contravenes a condition pursuant to section 120(2) number 4 to which an administrative act has been attached for the purposes of special fiscal supervision (sections 209 to 217).

(4) The offence may be punished with a monetary fine of up to five thousand euros where the action cannot be punished pursuant to 378.

Section 380

Endangerment of withholding taxes

(1) An offence shall be deemed to be committed by whoever intentionally or through gross negligence fails to comply at all, in full or on time his obligation to withhold or give to revenue authorities tax-deductible amounts which are due.

(2) The offence may be punished with a monetary fine of up to twenty-five thousand euros where the action cannot be punished pursuant to section 378.

Section 381

Endangerment of excise tax

(1) An offence shall be deemed to be committed by whoever intentionally or through gross negligence contravenes the provisions of the excise laws or the ordinances issued in connection therewith

1. on the obligations regarding the preparation, safeguarding or subsequent auditing of taxation,
2. on the packaging and labelling of products subject to excise duty or goods containing such products, or on the restrictions on trade or use for such products or goods, or
3. on the use of untaxed goods in free ports

insofar as the excise laws or the ordinances issued in connection therewith refer to this provision on fines for a particular element.

(2) The offence may be punished with a monetary fine of up to five thousand euros where the action cannot be punished pursuant to section 378.

Section 382

Endangerment of import and export duties

(1) An offence shall be deemed to be committed by whoever, as the liable party or the person looking after the affairs of a liable party, intentionally or through negligence contravenes customs regulations, the ordinances issued in connection therewith or the Council Regulations or the Regulations of the Commission of the European Communities which apply

1. to the recording by customs of the movement of goods across the frontiers of the customs territory of the European Communities as well as across the free zone borders,

2. to the placement of goods under a customs procedure and the implementation thereof or to obtaining another customs-approved treatment or use of goods,

3. to the free zones, areas in proximity to the border as well as the territories subject to border surveillance

insofar as the customs regulations, the ordinances issued in connection therewith or issued on the basis of subsection (4) below refer to this provision on fines for a particular element.

(2) Subsection (1) above shall also be applied where the customs regulations and the ordinances issued in connection therewith apply *mutatis mutandis* to excise duties.

(3) The offence may be punished with a monetary fine of up to five thousand euros where the action cannot be punished pursuant to section 378.

(4) The Federal Ministry of Finance may, by means of ordinances, specify the elements of the regulations of the Council of the European Union or of the Commission of the European Communities which may be punished pursuant to subsections (1) to (3) above as offences subject to a monetary fine insofar as this is necessary for the implementation of these laws and the elements concern obligations regarding the provision, exhibition, storage or treatment of goods, the submission of declarations or notifications, the keeping of written records as well as the completion or presentation of customs documents or the inclusion of notes in such documents.

Section 383

Unauthorised acquisition of claims to a tax refund and rebate

(1) An offence shall be deemed to be committed by whoever, in breach of section 46(4), first sentence, acquires claims to refunds or rebates.

(2) The offence may be punished with a monetary fine of up to fifty thousand euros.

Section 383a

Illicit use of the identifying tag pursuant to section 139a

(1) An offence shall be deemed to be committed by whoever, as a non-public entity, intentionally or through gross negligence in breach of section 139b(2), second sentence, number 1, and section 139c(2), second sentence, collects or uses the identification number pursuant to section 139b or the business identification number pursuant to section 139c(3) for purposes other than those permitted, or who, in breach of section 139b(2), second sentence, number 2, organises his files using the identification number or makes his files accessible for purposes other than those permitted.

(2) The offence may be punished with a monetary fine of up to ten thousand euros.

Section 384

Limitation period for prosecution

The period of limitation for the prosecution of tax offences pursuant to sections 378 to 380 shall become time-barred after five years.

Third Chapter

Criminal proceedings

1st Subchapter

General provisions

Section 385

Validity of procedural rules

(1) Unless otherwise specified in the following provisions, criminal proceedings for tax crimes shall be governed by the general laws on criminal proceedings, namely the Code of Criminal Procedure, the Act on the Constitution of Courts and the Juvenile Courts Act.

(2) With the exception of section 386(2) as well as sections 399 to 401, the provisions of this chapter applicable to tax crimes shall be applied accordingly where there is suspicion of a crime aimed at obtaining pecuniary benefits by misrepresenting facts of significance for

taxation to the revenue authority or another authority and no law regarding tax crimes is infringed.

Section 386

Jurisdiction of the revenue authority in the case of tax crimes¹⁰

(1) Where a tax crime is suspected, the revenue authority shall investigate the facts of the case. The revenue authority within the meaning of this chapter shall be the main customs office, the tax office, the Federal Central Tax Office and the child benefits disbursement office.

(2) The revenue authority shall conduct the investigation independently within the limits laid down in section 399(1) and the sections 400 and 401 where the act

1. is exclusively a tax crime, or
2. simultaneously contravenes other criminal laws and their contravention concern church taxes or other public-law levies linked to bases of assessment, basic impersonal tax amounts or tax amounts.

(3) Subsection (2) above shall not apply as soon as an arrest warrant or a remand to a psychiatric hospital centre is issued against the accused for the act.

(4) The revenue authority may hand the criminal matter over to the public prosecutor's office at any time. The public prosecutor's office may take over the criminal matter at any time. In both cases, the public prosecutor's office may, with the mutual agreement of the revenue authority, return the criminal matter to the revenue authority.

¹⁰⁾ For subsidy fraud, see section 264 of the Criminal Code.

Section 387

Revenue authority with subject-matter jurisdiction

(1) The revenue authority administering the tax concerned shall have subject-matter jurisdiction.

(2) Jurisdiction pursuant to subsection (1) above may be transferred by way of ordinance to one revenue authority for an area covered by several revenue authorities, insofar as this appears appropriate considering the economic situation or transport infrastructure, the structure of the administrative authorities and other local needs. The ordinance shall be issued by the government of a *Land* to the extent that the revenue authority is an authority of the *Land*, and in all other cases by the Federal Ministry of Finance. An ordinance issued by the Federal Ministry of Finance shall not require the consent of the Bundesrat. The government of a *Land* may delegate the powers to the highest authority of the *Land* responsible for the revenue administration.

Section 388

Revenue authority with local jurisdiction

(1) The revenue authority with local jurisdiction shall be the revenue authority

1. in whose district the tax crime was committed or detected,
2. which is responsible for the fiscal matters at the time of initiating the criminal proceedings, or
3. in whose district the accused has his residence at the time of initiating the criminal proceedings.

(2) Where the residence of the accused changes following the initiation of criminal proceedings, the revenue authority in whose district the new residence is located shall also have local jurisdiction. The same shall apply where the revenue authority's jurisdiction for fiscal matters changes.

(3) Where the accused does not have his residence within the territory of application of this Code, jurisdiction shall be determined by the habitual abode as well.

Section 389
Related criminal matters

In the case of related criminal matters, which would, pursuant to section 388, individually fall within the jurisdiction of several revenue authorities, each of these revenue authorities shall be competent. Section 3 of the Code of Civil Procedure shall apply accordingly.

Section 390
Multiple jurisdiction

(1) Where, pursuant to sections 387 to 389, several revenue authorities have jurisdiction, the revenue authority which first initiated criminal proceedings regarding the act shall be given precedence.

(2) At the request of this revenue authority, another revenue authority responsible shall take over the criminal matter where this appears expedient for the investigations. In cases of doubt, the authority to which the requested revenue authority is subordinate shall decide.

Section 391
Competent court

(1) Where the local court has subject-matter jurisdiction, the local court in whose district the *Land* court has its seat shall have local jurisdiction. Irrespective of a wider provision pursuant to section 58(1) of the Act on the Constitution of Courts, this shall apply in preparatory proceedings only with regard to the consent of the court pursuant to section 153(1) and section 153a(1) of the Code of Criminal Procedure.

(2) Notwithstanding subsection (1), first sentence, above, the government of a *Land* may, by way of ordinance, determine jurisdiction insofar as this appears appropriate considering the economic situation or transport infrastructure, the structure of the administrative authorities and other local needs. The government of a *Land* may transfer this power to the justice authorities of the *Land*.

(3) Criminal proceedings for tax crimes should be allocated to a particular department at a local court.

(4) Subsections (1) to (3) above shall also apply where the proceedings do not only concern tax crimes; they shall apply, however, neither where the same action represents a crime pursuant to the Narcotics Act, nor to tax crimes which concern motor vehicle tax.

Section 392
Defence

(1) Notwithstanding section 138(1) of the Code of Criminal Procedure, tax consultants, tax representatives, auditors and certified accountants may also be appointed to the defence insofar as the revenue authority conducts the criminal proceedings independently; in all other cases, they may lead the defence only together with lawyer or teacher of law at a German institution of higher education within the meaning of the Framework Act for Higher Education who is qualified to exercise the functions of a judge.

(2) Section 138(2) of the Code of Criminal Procedure shall remain unaffected.

Section 393
Relationship between criminal proceedings and the taxation procedure

(1) The rights and obligations of the taxpayers and of the revenue authority in the taxation procedure and in criminal proceedings shall be determined by the regulations which apply to the proceedings in the particular case. In the taxation procedure, however, coercive measures (section 328) against the taxpayer shall be impermissible where this would force him to incriminate himself in a tax crime or tax offence which he committed. This shall invariably apply where criminal proceedings have been initiated against him for such an act. The taxpayer shall be advised of this as necessary.

(2) Where during criminal proceedings the public prosecutor's office or the court learns from the tax records of facts or evidence which the taxpayer, in compliance with his obligations under tax law, revealed to the revenue authority before the initiation of criminal proceedings

or in ignorance of the initiation of criminal proceedings, this knowledge may not be used against him for the prosecution of an act that is not a tax crime. This shall not apply to crimes for the prosecution of which there is a compelling public interest (section 30(4) number 5).
(3) Findings which the revenue authority or the public prosecutor's office lawfully gained in the course of criminal investigations may be used in the taxation procedure. This shall also apply with respect to findings subject to the privacy of correspondence, posts and telecommunications to the extent that the revenue authority legally obtained them within in the course of their own criminal investigations or to the extent that information may be issued to the revenue authorities pursuant to the provisions of the Code of Criminal Procedure.

Section 394

Transfer of ownership

Where an unknown person, who was caught in the act of committing a tax crime but escaped, has left items behind and these items are seized or otherwise secured because it is possible to confiscate them, they shall become the property of the State after one year has elapsed if the owner of the items is unknown and the revenue authority has announced the impending loss of the property by means of a public notice. Section 10(2), first sentence, of the Act on the Administrative Service of Documents shall be applied subject to the condition that an announcement of the notice pursuant to the first sentence above has been published. The period shall begin with the displaying of the announcement.

Section 395

Revenue authority's power to inspect files

The revenue authority shall be authorised to inspect the files which are available to the court or which would have to be presented to the court in the case of charges being brought, as well as inspect confiscated or secured objects. The files shall be sent to the revenue authority upon application for inspection.

Section 396

Suspending proceedings

(1) Where whether the act can be adjudged to constitute tax evasion depends on whether a tax claim exists, whether taxes have been understated or whether unwarranted tax advantages have been derived, the criminal proceedings shall be suspended until the taxation procedure is concluded and can no longer be appealed.

(2) During investigations, the public prosecutor's office shall rule on the suspension; in the proceedings once public charges have been brought, the court dealing with the matter shall rule on the suspension.

(3) The limitation shall be adjourned while the proceedings are suspended.

2nd Subchapter

Investigation

I. General

Section 397

Initiating criminal proceedings

(1) Criminal proceedings shall be deemed to have been initiated as soon as the revenue authority, the police, the public prosecutor's office, one of its investigators or the judge in a criminal court adopts a measure, the purpose of which is identifiably to institute criminal action against somebody for a tax crime.

(2) The measure and the time at which it was taken shall be entered in the records without undue delay.

(3) The accused shall be informed of the initiation of criminal proceedings at the latest when he is called upon to reveal facts or supply documents which are related to the crime of which he is suspected.

Section 398

Stay on the grounds of insignificance

The public prosecutor's office may refrain, even without the consent of the court responsible for opening the main proceedings, from prosecuting tax evasion where only a minor understatement of tax has occurred or where only minor tax advantages have been derived, if the perpetrator's degree of guilt is slight and there is no public interest in the prosecution. This shall apply accordingly to proceedings brought for the receipt, holding or sale of goods obtained by tax evasion pursuant to section 374 and for aiding and abetting a person who has committed one of the acts under section 375(1) numbers 1 to 3.

II. Revenue authority procedure in the case of tax crimes

Section 399

Revenue authority's rights and obligations

(1) Where the revenue authority conducts the investigation independently pursuant to section 386(2), the revenue authority shall have the same rights and obligations as the public prosecutor's office has in an investigation.

(2) Where a revenue authority has been given jurisdiction pursuant to section 387(2) for an area covered by several revenue authorities, the right and obligation of these revenue authorities to investigate the facts where a tax crime is suspected and to issue all non-deferrable orders to avoid obfuscation of the case shall remain unaffected. They may order confiscation, emergency sales, searches, inspections and other measures in accordance with the regulations of the Code of Criminal Procedure applying to the public prosecution office's investigators.

Section 400

Application for the order of summary punishment

Where the results of the investigations provide sufficient grounds to bring a public charge, the revenue authority shall apply to the judge to issue an order of summary punishment where the criminal matter appears suited to treatment in summary proceedings without trial; where this is not so, the revenue authority shall give the files to the public prosecutor's office.

Section 401

Application for order of incidental consequences in independent proceedings¹¹

The revenue authority may submit the application to allow it to order sequestration or expiry independently or to set a monetary fine against a legal person or an association of persons independently (sections 440, 442(1), section 444(3) of the Code of Criminal Procedure).

¹¹⁾ See sections 431 – 436, 439 of the Code of Criminal Procedure and sections 73 – 73d of the Criminal Code

III. Role of the revenue authority in public prosecutor proceedings

Section 402

General rights and obligations of the revenue authority

(1) Where the public prosecutor's office conducts the investigation, the revenue authority which would otherwise have had jurisdiction shall have the same rights and obligations as the police authorities under the Code of Criminal Procedure as well as the powers pursuant to section 399(2), second sentence.

(2) Where a revenue authority has been transferred pursuant to section 387(2) jurisdiction for an area covered by several revenue authorities, subsection (1) above shall apply for each of these revenue authorities.

Section 403

Participation of the revenue authority

(1) Where the public prosecutor's office or the police authorities conduct investigations concerning tax crimes, the revenue authority which would otherwise have had jurisdiction shall be entitled to participate. The revenue authority should be informed in good time of the

place and time of the investigative actions. The representative of the revenue authority shall be permitted to pose questions to the accused persons, witnesses and experts.

(2) Subsection (1) above shall apply *mutatis mutandis* to court hearings at which the public prosecutor's officer is also permitted to attend.

(3) The revenue authority which would otherwise have had jurisdiction shall be informed of the charge and the application for the order of summary punishment.

(4) Where the public prosecutor's office considers staying the proceedings, it shall consult the revenue authority that would otherwise have had jurisdiction.

IV. Tax and customs investigation

Section 404

Tax and customs investigation

The Customs Investigation Offices and the agencies of the revenue authorities of the *Länder* which are responsible for tax investigation as well as their officials shall, in criminal proceedings for tax crimes, have the same rights and obligations as the police authorities and officers according to the regulations of the Code of Criminal Procedure. The agencies described in the first sentence above shall have the powers pursuant to section 399(2), second sentence, as well as the power to examine the papers of those affected by the search (section 110(1) of the Code of Criminal Procedure); their officers shall be investigators of the public prosecutor's office.

V. Reimbursement for witnesses and experts

Section 405

Reimbursement for witnesses and experts

Where the revenue authority consults witnesses and experts for the purposes of evidence, these shall be compensated or remunerated in corresponding application of the Judicial Remuneration and Compensation Act. This shall also apply in the cases set out in section 404.

3rd Subchapter

Judicial proceedings

Section 406

Cooperation of the revenue authority in summary proceedings and in independent proceedings

(1) Where the revenue authority has applied for an order of summary punishment to be issued, the revenue authority shall have the rights and obligations of the public prosecutor's office as long as no date for a trial is appointed pursuant to section 408(3), second sentence, of the Code of Criminal Procedure, and no objection has been lodged against the order of summary punishment.

(2) Where the revenue authority has submitted an application to allow it to order sequestration or expiry independently or to set a monetary fine against a legal person or an association of persons independently (section 401), the revenue authority shall exercise the rights and obligations of the public prosecutor's office as long as oral hearings are not applied for, or ordered by the court.

Section 407

Participation of the revenue authority in other cases

(1) The court shall allow the revenue authority opportunity to present aspects which, from its perspective, are of relevance to the decision. This shall also apply where the court considers staying the proceedings. The revenue authority shall be informed of the date of the trial and the date of the hearing by a commissioned or requested judge (sections 223 and 233 of the Code of Criminal Procedure). Upon request, the revenue authority's representative shall be allowed to speak during the trial. The representative shall be allowed to pose questions to the defendants, witnesses and experts.

(2) The revenue authority shall be informed of the ruling and other decisions closing the proceedings.

4th Subchapter Costs of the proceedings

Section 408 Costs of the proceedings¹²

In criminal proceedings for a tax crime, necessary expenses of a participant within the meaning of section 464a(2) number 2 of the Code of Criminal Procedure shall include the legal fees and expenses for a tax consultant, tax representative, auditor or certified accountant. Where there are no legal provisions on fees and expenses, they may be reimbursed up to the amount of the legal fees and expenses of a lawyer.

¹²⁾ See section 91(2) of the Code of Civil Procedure.

Fourth Chapter Administrative fine proceedings

Section 409 Competent administrative authority

In the case of tax offences, the competent administrative authority within the meaning of section 36(1) number 1 of the Act on Administrative Offences shall be the revenue authority with subject-matter jurisdiction pursuant to section 387(1). Section 387(2) shall apply accordingly.

Section 410 Supplementary provisions on administrative fine proceedings

(1) Apart from the procedural provisions, the provisions of the Act on Administrative Offences shall apply accordingly to administrative fine proceedings:

1. sections 388 to 390 on the jurisdiction of the revenue authority,
2. section 391 on the jurisdiction of the court,
3. section 392 on the defence,
4. section 393 on the relationship between criminal proceedings and the taxation procedure,
5. section 396 on the suspension of proceedings,
6. section 397 on the initiation of criminal proceedings,
7. section 399(2) on the rights and obligations of the revenue authority,
8. sections 402, 403(1), (3) and (4) on the role of the revenue authority in the public prosecutor proceedings,
9. section 404, first sentence and the first half-sentence of the second sentence on tax and customs investigation,
10. section 405 on compensation for witnesses and experts,
11. section 407 on the participation of the revenue authorities and
12. section 408 on the costs of proceedings.

(2) Where the revenue authority prosecutes a tax crime connected with a tax offence (section 42(1), second sentence, of the Act on Administrative Offences), the revenue

authority may, in the cases of section 400, apply to extend the order of summary punishment to the tax offence.

Section 411

Administrative fine procedures against lawyers, tax consultants, tax representatives, auditors or certified accountants

Before an administrative fine notice is issued against a lawyer, tax consultant, tax representative, auditor or certified accountant for a tax offence which he committed in the exercise of his profession in advising on tax matters, the revenue authority shall allow the competent professional organisation the opportunity to present aspects which, from its perspective, are of relevance to the decision.

Section 412

Service, enforcement, costs

(1) Notwithstanding section 51(1), first sentence, of the Act on Administrative Offences, the provisions of the Act on the Administrative Service of Documents shall also apply to the method of service of documents even where a revenue authority of the *Länder* has issued the notice. Section 51(1), second sentence, and section 51(2) to (5) of the Act on Administrative Offences shall remain unaffected.

(2) Notwithstanding section 90(1) and (4), section 108(2) of the Act on Administrative Offences, the provisions of the Sixth Part of this Code shall apply to the enforcement of revenue authority notices in administrative fine proceedings. The remaining provisions of the ninth chapter of the Second Part of the Act on Administrative Offences shall remain unaffected.

(3) Section 107(4) of the Act on Administrative Offences shall also apply to the costs of the administrative fine procedure even where a revenue authority of the *Länder* has issued the administrative fine notice; in place of section 19 of the Administrative Costs Act, section 227 and section 261 of this Code shall apply.

Ninth Part

Final provisions

Section 413

Restriction of basic rights

The basic rights to physical integrity and freedom of the person (Article 2(2) of the Basic Law), the privacy of correspondence, posts and telecommunications (Article 10 of the Basic Law) and the inviolability of the home (Article 13 of the Basic Law) shall be restricted in accordance with this Code.

Section 414

(obsolete)

Section 415

Entry into force¹³

(1) This Code shall enter into force on 1 January 1977 unless the following subsections stipulate otherwise.

(2) Section 19(5), section 117(5), section 134(3), section 139(2), section 150(6), section 156(1), section 178(3), section 212, section 382(4), section 387(2) and section 391(2) shall enter into force on the day after its promulgation¹⁴.

(3) Sections 52 and 55 shall be applied for the first time from 1 January 1984.

¹³ The Introductory Act to the Fiscal Code contains further provisions.

¹⁴ Day of promulgation: 23 March 1976.