

ECONOMIC COMMISSION FOR AFRICA

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CODIFICATION OF TAX LAWS

Outline

- I. Introduction
- II. Definition of "tax laws"
- III. Codification
- IV. Possible mechanism for codification of statutes
- V. Administrative rulings
- VI. Efficiency and time saving
- VII. Centralization

Prepared by:
J. Van Hoorn Jr.
Director
International Bureau of Fiscal
Documentation
Amsterdam, The Netherlands, in 1965
consultant to ECA

I. Introduction

For a proper imposition of taxes a few basic requirements must be fulfilled. First of all, it is necessary that the taxing statutes are clear as regards their wording and their scope. Secondly, new legislation, including amendments, must be well prepared; a Bill submitted to Parliament must be accompanied by an Explanatory Note in which the Government sets out the reasons and purposes for the proposed measures. Whatever changes Parliament wishes to make in the Bill must be published, with the reasons for such proposed changes, and when such proposed changes are adopted, a revised Bill must be printed and circulated, unless the enactment takes place very soon. Thirdly, amendments of existing laws should be incorporated into the original text so that both the Tax Administration and the taxpayers can easily refer to the law as it stands at any given moment.

II. Definition of "tax laws"

No legislation can ever hope to draft laws which are clear under all circumstances or which are easily applicable after a certain period of time. This holds time in particular for tax statutes because taxes are imposed on a large number of activities (or the results thereof) occurring in economic life which is subject to continuous change.

For a proper imposition of tax it is indispensable that the Tax Administration dispose of the possibility to issue regulations and rulings clarifying those points of the law which are not absolutely clear or which can no longer be applied. Such regulations and rulings may be binding as having force of law, or they may have the character of a unilateral (i.e. administrative) interpretation of one of the parties concerned. Sometimes the statute expressly refers to regulations to be issued by the executive, i.e. the Tax Administration.

Both the Tax Administration and the taxpayers (and their advisers) are entitled to know exactly what the legal position of a certain measure is. It is therefore necessary to clearly distinguish between laws and binding regulations (to be taken into account by the Courts) and unilateral interpretative rulings etc. issued by the Administration (which may be disregarded by the courts and which can be repealed or modified without any prior notification).

Where administrative interpretations are generally accepted (even though they may not entirely be in accordance with the statute), it may be desirable to enact them as amendments to the original statute, for which the normal legislative procedure will be necessary.

III. Codification

Under the Constitution of most countries, taxes can only be levied on the basis of a previously published statute. It is therefore necessary - also for practical purposes - that every new or amending statute be published in such a manner that it is generally available to the public. This publication is also a prerequisite of equal tax treatment, which is an additional requirement under most Constitutions.

Changing economic, social or political circumstances may make it necessary to amend tax statutes rather frequently. The question as to how often such

amendments should, or should not, take place cannot be answered in a general manner, because this depends on the situation in each particular country, although a certain stability would benefit both the Tax Administration as the taxpayers and, in general, the national economy as a whole. Even if amendments are published, those who are required to apply the law in practice, may have difficulty in finding what the applicable law at a given moment is after several amendments have been enacted over a period of a number of years.

It is therefore desirable if not indispensable that not only the amending statutes be published, but also the amended statute as a whole. This need not be done every year, but, depending on the number and the importance of the amendments, at least every two or three years. Those provisions which have been amended should be followed by a note giving the legislative history of such provisions.

The same would apply to those regulations which are generally binding, and to rulings and other documents issued by the Tax Administration which are of general significance and do not only refer to a specific (and therefore probably non-recurring) situation or set of facts. Any difference as to the legal binding force should be clearly indicated.

IV. Possible mechanism for codification of statutes

Any new or amending tax statute is generally prepared by a legislative section of the Ministry of Finance. It is possible to oblige this section to publish - within a given period of time - a revised (i.e. amended) version of the statute. This might be done in such a manner that a special parliamentary committee approves such a version. Another possibility would be that such a committee would have the right to publish a (binding) updated version if the Ministry fails to do so within the time allotted to it. Or, if it so fails, Parliament might refuse to consider any further amending Bills, if only because it cannot be supposed to approve a Bill without having the full text which is the very subject of the amendment.

A similar procedure could be followed in respect of generally binding regulations.

V. Administrative ruling

With respect to administrative rulings a very simple loose-leaf system could be set up which would make quick references easy.

Each ruling should be numbered and filed according to this number. For the use of the Tax Administration and the Public, each ruling should contain a reference preceding its title to the relevant section, sub-section, paragraph etc. of the statute to which it refers. If the sheets on which the rulings are printed (or stencilled) are punched and appropriate folders are made available, they can be filed in these folders by the users according to the sections etc. of the statutes. Where a ruling is superseded by a subsequent ruling, two sets of documents should be issued, one containing the new ruling, the other containing a special reference (with the section number) that ruling No. so and so dated then and then has been superseded by the new ruling.

VI. Efficiency and time saving

The codification mechanism for the statutes and the simple loose-leaf system for rulings cannot fail to facilitate the work of the Tax Administration itself. It will also result in a smaller number of disputes with taxpayers, disputes which are generally time consuming and prevent the tax officials from doing more important things. Especially those countries which are faced with lack of personnel in their tax administration would greatly benefit from a system of codification of both the statutes and regulations, and their administrative rulings.

VII. Centralization

It may well be that in some countries for the time being the preparation of a proper codification system would create problems of available personnel.

Given the fact that the increasing internationalization of the taxation is a phenomenon of modern times and that, therefore, it would be advantageous for countries, or groups of countries to be well informed of each others' tax laws, it might be advisable for them to set up an international tax codification secretariat which would take care of the technicalities referred to in sections IV and V supra. It would also be feasible that an existing organization be assigned to take care of these matters. If invited to do so, the International Bureau of Fiscal Documentation in Amsterdam would be prepared to consider such invitation, when a certain assistance could be given by the various countries involved.

This assistance would simply have to consist of two things: on the one hand, each country should undertake to send all material (statutes, regulations, rulings) by airmail to the Bureau; on the other hand, each Tax Administration would have to clearly indicate the number of the section etc. to which a particular ruling refers.

The Bureau would then - against reimbursement of its expenses - undertake the obligation to publish the material properly and send the desired number of copies to each participating country.

This latter suggestion and the preceding remarks may be subject for personal discussion during the conference to be held at Addis Ababa in October, 1973.

Amsterdam, June 1973.