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**CO-OPERATIVE COMPLIANCE FRAMEWORK FROM THE
PERSPECTIVE OF THE RULE-OF-LAW**

Master's thesis

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I declare that I have compiled the paper independently
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ABSTRACT

This research studies the OECD recommended framework of Co-operative Compliance from the perspective of the rule-of-law. The aim for this research is to examine specific legal principles and Finnish domestic tax legislation that determines the procedure of tax assessment and tax control methods as well as administrative law from the perspective of the definition of the administrative matter. In addition, also the act that determines the activities of a Finnish tax authority is evaluated.

The main method used for this research is legal-logic and the research is performed as a desk research. Research method requires working with academic sources referring to the Co-operative Compliance framework, legal principles, definition and meaning of the soft law as well as procedures and activities performed by the tax administration. Finnish tax legislation is studied and evaluated from the perspective of the hypothesis and research questions presented. Research seeks to either confirm or abolish the hypothesis that tax authority's optional tax control method, that is based on voluntary cooperation, should be directly regulated by the law. Author applies the method of an action research as the author has been able to observe the development and implementation of the framework in Finland.

The conclusion made in the research emphasize that the Co-operative Compliance framework itself does not violate the rule-of-law. Tax matters handled and taxes assessed follow the procedure determined by the Finnish tax legislation i.e. the large taxpayers enrolled in the framework are treated by following the principles of taxation as any other taxpayer in Finland.

Keywords: tax law, rule-of-law, legal principles, tax authority, co-operative compliance

INTRODUCTION

Scope and focus of the research

The focus of the research is a specific framework called Co-operative Compliance which may not be directly regulated¹ by the law and can be considered as a soft law². While author refers to "may not", the fact is, that at least two countries³ have regulated the Co-operative Compliance framework by local legislation and few are reviewing the option of implementing the framework in the law⁴. Regulating the Co-operative Compliance framework can be seen to be in contradictory with the fact that the framework should be considered as soft law as it is based on a recommendation given by the Organization for Economic Co-operation and Development (hereinafter OECD).

Co-operative Compliance could be understood as an arrangement between parties, who in the perspective of the framework, are the tax authority and large taxpayer and where the parties apply certain principles to manage the tax matters while aiming the legal certainty and predictability.

Author has chosen to study this topic for several reason. Most relevant reason is the fact that author herself has been responsible of developing and implementing the Co-operative Compliance framework in Finland within the Finnish Tax Administration. In addition, author is also involved in international development of the framework, currently mainly within the Nordic countries.

¹ By referring to direct regulation, author intends that some obligation or right has been determined on a level of paragraph in a specific act. From general perspective, author is well aware of the fact, that nevertheless the exact wording in a specific paragraph, it more or less may leave room for interpretation.

² By referring to soft law, author intends that something should be considered merely as a recommendation or interpretation of the law. Oxford Bibliographies determines the term soft law as follows: "*The generic term soft law covers wide range of instruments of different nature and functions that make it very difficult to contain in within a single formula. Its only common feature is that it is in written form, but the other characteristics are variable and negotiable and they constitute an "infinite variety". So the term encompasses soft rules that are included in treaties, nonbinding or voluntary resolutions, recommendations, codes of conduct, and standards*". <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0040.xml>.

³ Such countries are Italy and Kazakhstan.

⁴ Based on author's own knowledge while working with the colleagues from other jurisdictions.

The questions the author arises for this research are the same questions author has been presented for example by the local actors⁵ in Finland, colleagues from other jurisdictions and by researchers that study the topic of Co-operative Compliance in Europe. Author's own conclusion during discussions with local actors and colleagues from other jurisdictions has been that Co-operative Compliance as a framework would not need a specific regulation for tax authority to be able to apply the framework. Author has also concluded that the framework would not violate the basic principles of taxation as it has been applied by the recommendation given by the OECD i.e. applied for large taxpayers and the framework should understood as a more specific approach to enhance the trust based relationship between the parties involved.

The scope of this research is to examine the basis of the principles and legislation determined for tax authority's tax control methods, procedures and actions while adding the perspective of voluntary based co-operation tax control method called Co-operative Compliance framework. Co-operative Compliance is a relationship that favors collaboration over confrontation and is anchored more on mutual trust than on enforceable obligations⁶. The framework, or approach to be specific, was formerly called enhanced relationship. Its starting point is a mutual understanding of each party's needs and aspirations, the development of the tools and techniques most appropriate for achieving these, and a path to implementing what needs to be done. Fundamental, to the long-term success of the enhanced relationship is the establishment and maintenance of trust amongst all the parties⁷.

Within this research the author has taken a rather wide interpretation for the meaning of the tax control methods. In other words, author has chosen to include several different procedural activities as well as services provided under the term of tax control methods. It should be specified that in this research such methods referred are guidance and advice, assessment of taxes and tax audit as well as the framework itself.

From the perspective of principles, author reviews and studies the basic principles in the context of taxation. Such principles are the rule-of-law, legal certainty and predictability, neutrality and

⁵ By local actors (hereinafter stakeholders) author references the representatives of the businesses such as tax advisors, tax lawyers and consultants acting in Finland. By author's own experience it should be mentioned that businesses themselves have not been keen on the legislative basis for the program as widely as stakeholders mentioned.

⁶ Study into the Role of Tax Intermediaries, (2008) OECD Publishing, p 39.

⁷ Study into the Role of Tax Intermediaries, Working Paper 6 - The Enhanced Relationship, July 2007, p 3. Available in the internet: <https://www.oecd.org/tax/administration/39003880.pdf> (visited 4th of May 2019)

equality and protection of legitimate expectations i.e. protection of trust. In addition, author studies the context of the soft law and its relation with the hard law. From the perspective of legislation, author reviews and studies the Finnish constitution law, administrative law and the act on Finnish Tax Administration.

From the author's perspective, the topic of the research itself is wide and therefore the focus of the hypothesis and research questions presented have been narrowed. It should be noted that within this research author has not taken into consideration whether there would be any direct or indirect references to public-private partnership. Author has strictly narrowed the research into studying the legislative basis of the Finnish domestic law. Author does not study the international binding legislative basis, such as e.g. Treaty on the Functioning of the European Union (hereinafter TFEU) or its correlation with the domestic law. In current climate and by author's own experience author finds that it would be necessary and some research has already been published⁸. Some international references are made but the references are made to the soft law. Nevertheless some additional references might have been made, this study should be considered as a study of the legal text and its interpretation that is only focused to study the Finnish legislative basis from the perspective of the Co-operative Compliance framework.

Hypothesis and research questions

Given to the scope and focus of this research, following hypothesis is set: When tax administration practices optional tax control method based on voluntary co-operation, such method has to be directly regulated by the law. In other words, Co-operative Compliance framework has to be regulated by the law. As author already mentioned, only few jurisdictions have actually regulated the framework within domestic legislation. Nevertheless, it can be stated that the question of the legal basis for the framework is slowly but firmly getting more attention as the framework continues to spread internationally⁹. Many researchers have raised the same question within their research work and time will tell whether the question of legal basis arises more heavily which, for author's own perspective, also may increase the public interest for the framework.

⁸ Please see an article published by British Tax Review in 2017 that discusses on TFEU State Aid regulation and its reference to Co-operative Compliance framework. (Szudoczky, Rita, Majdanska, Alicia, Designing Co-operative Compliance Programmes: Lessons from the EU State Aid Rules for Tax Administrations).

⁹ Most recent addition to the jurisdictions is France by the announcement made by OECD on 14th of March 2019. For further information, please see <http://www.oecd.org/tax/oecd-welcomes-the-launch-of-co-operative-tax-compliance-programme-in-france.htm> (visited 19th of March 2019).

In order to explore the hypothesis, following research questions are set:

- 1) What kind of practice has been established regarding optional tax control methods?
- 2) Are tax control methods applied by an authority regulated clearly in the legislation?
- 3) Does the current regulation and situation leave room for such interpretation that may affect the legal certainty and predictability from the perspective of a taxpayer that justifies the need to regulate the Co-operative Compliance framework by law?

Methods and sources

This research is legal-dogmatic and will be mainly performed as a historical literature analysis based on desk research. Chosen research method required working with the legislation, literature i.e. interpretation of the legislation and articles available from different databases¹⁰. In other words, working with literature, articles and other research performed prior to this research. Current research will be based on qualitative materials.

Author has chosen this research method because in the study of law, interpretation of the legislation bears the most significant role. Interpretation may already exist in the rulings or praxis but interpretation may also be subjective to so called build a case to support the statement presented. Therefore, author has chosen deductive approach for the research. By deductive approach author presents a hypothesis, which is based on existing tax legislation. As the deductive approach may be seen as an approach based on logic, this approach should suit for this research.

In addition to the main desk research, the author employs action research. Action research is designed to apply strategies in order to generate knowledge and designing actions in which experts and stakeholders work together creating joint learning processes¹¹. The outcome of such research leads to improved processes that enhance the current procedures. The author is directly familiar with the processes and the application of the existing tax legislation. By conducting this research the author therefore can directly draw on the experience to combine it with the knowledge gained out of the desk research in order to improve existing business proceedings.

¹⁰ Databases referred here are mainly article available from HeinOnline and Westlaw. Some specific articles from other sources have also been used. Please see the list of references.

¹¹ Greenwood, D. J, Levin, M. (2007). *Introduction to Action Research: Social Research for Social Change*. s.l.: Sage Publication, p 7.

Author would like to point out that this research should not be understood as a sociological research. Nevertheless author may at some point refer to such research, author will not elaborate e.g. on effect of the framework's behavioral matters i.e. potential effects on tax behavior. Instead author may elaborate on the matter when it has relevant input from the perspective of the actual research. As already mentioned, somewhat problematic part of this topic that author had chosen, is the fact that topic itself has not yet been widely researched. By the topic author refers Co-operative Compliance framework in general, not specifically the approach author is taking in this research.

The academic sources referred in this study are mainly academic articles that focus on the Co-operative Compliance framework and previous research performed as well as principles of tax legislation and activities of a tax authority. Some of the articles used for this research focus on the perspective of risk management performed by the tax authorities. This will be briefly discussed during this research as the main focus will remain the legislative basis and the principles of the taxation and the possible direct or indirect connection to the Co-operative Compliance framework from the perspective of the rule-of-law.

The legislative sources in this study are Finnish domestic tax legislation that determines the administrative activities, procedures and activities of a Finnish Tax Administration. Legislation itself served as an important ground base for this research and with the assistance of the literature and articles used for this research, assist to the interpretation of the findings and possible recommendations made. Legislation referred is Finnish constitution law, Finnish administrative law and special act on Finnish Tax Administration's activities i.e. tax authority's obligations and rights.

Other sources used for this study are supporting the research by elaborating the principles of taxation and administrative activities. Author refers to Lauri Soikkeli's *Luottamuksensuoja verotuksessa - soveltaminen oikeuskäytännön valossa* (in English *Protection of legitimate expectations - applying from the perspective of legal praxis*) and Kristiina Äimä's *Veroprosessioikeus* (Tax process law) and Olli Mäenpää's *Hallintolaki ja hyvän hallinnon takeet* (Administrative law and basis of a good government).

It should be mentioned that while author introduces the Finnish model on the framework, there may not exist previous academic research and the elaboration will be based on author's own

experience and knowledge of the matter. Taking into account that this study is academic research, author has pursued to the most objective outcome as possible.

Structure of the study

To be able to study the presented scope and research questions, this study has been divided into two chapters.

In the first chapter author introduces the Co-operative Compliance framework, its meaning, goals and procedural aspects within the framework. This introduction is relevant due the study performed in chapter two as in that chapter the hypothesis presented gets either validated or abolished. In this chapter author also elaborates on the research questions of what kind of praxis has been established regarding optional tax control methods.

In the second chapter author studies the legal basis for the actions to performed by the Finnish tax authority. This is relevant due the fact and from the perspective of voluntary co-operation between private actor and public actor. It is necessary to point out the basis for the actions tax authority can perform as the principles of the law and legislation itself are set out to determine the bounds for such actions. Author pursues to elaborate on the relevant principles such as rule-of-law, predictability and legal certainty. It is most self-evident that when elaborating on the principles mentioned, the constitutional principles need to be studied as well. Such principles are equality and neutrality. Also in the second chapter author analyzes the Co-operative Compliance framework from the perspective of its legal basis and especially from the perspective of the rule-of-law. In this chapter author also elaborates on the research question are the tax control methods applied by and authority regulated clearly in the legislation and whether the current regulation and situation leave room for such interpretation that may affect the legal certainty and predictability from the perspective of a taxpayer that justifies the need to regulate the Co-operative Compliance framework by law.

1. CO-OPERATIVE COMPLIANCE FRAMEWORK AS AN ALTERNATIVE METHOD OF TAX CONTROL

1.1. Author's experience on Co-operative Compliance framework

In this chapter author introduces the Co-operative Compliance framework that has been established and implemented globally through-out different continents. The framework may be introduced locally by different terms and titles¹² but the underline goals and aims are the same as the recommendation given by the OECD.

Author has familiarized herself with several different designs of the Co-operative Compliance framework and established an understanding that the actual approach as well as the practical actions and steps taken within the framework may vary. In addition, there are also significant differences who are the subjects of the framework. For example in the Netherlands the approach of Co-operative Compliance framework is applied to large taxpayers' i.e. multinational enterprises as well as to small and medium enterprises. In United Kingdom all the large taxpayers are approached with the Co-operative Compliance framework. Nevertheless the differences apply, the aim is mutual: to receive the most adequate and correct tax-related information from the taxpayer, to focus to preliminary activities such as handling the mattes pre-emptively or at least in real-time instead of tax control methods that focus on past, such as tax audit, and to endorse more in-depth relationship between the tax authority and taxpayer¹³.

Author discusses on the Co-operative Compliance framework in general and emphasizes on the framework established and implemented in Finland. As a result of the previously stated, author sees it relevant to point out that majority of the section 1.4 is based on author's own knowledge and experience with the Finnish framework of Co-operative Compliance.

¹² Co-operative Compliance may also be referred as horizontal monitoring, compliance assurance process and enhanced relationship depending on the level of the implementation and depending also on the fact that whether the local implementation is based on the Dutch approach directly or the more developed approaches of enhanced relationship and co-operative compliance.

¹³ Piiskoppel, K. (2017). Konserniverokeskuksen työkalut 2/3: Syvennetty asiakasyhteistyö. - *Verotus*. Vol. 4, p 455.

1.2. Tax authorities' changing role

In the past tax authorities have embraced the organizational identity of a command-and-control operational system to accomplish the task necessary. The functionality of this approach may not be taken seriously. Paying taxes is contestable in terms of how much should be paid, how it should be collected, how it should be enforced and how it serves the public interest¹⁴. Modern public administration is governed by the principles of openness, good governance and legal certainty. The principle of openness suggest that public administration is expected to be open to democratic values and to support the participation of citizens in the management of public matters. The idea of good governance can be tracked to the requirement that public administration need to be transparent¹⁵.

As the transparency has been a rather relevant point of discussion throughout current decade, the taxpayers' may be concerned that the tax authorities are still not asked commit to it and the same time the taxpayers' are expected to be transparent about their matters. Many taxpayers feel they have a positive relationship with the tax authorities, but they also feel that tax authorities may assume the taxpayer to be non-compliant¹⁶. From author's own perspective, transparency should be a two-way street. Nevertheless, it has been shown in practice, from the perspective of Co-operative Compliance, that the tax authority has a significant role on building the trust between the parties and that could be established through transparency.

The theory of a responsive regulation seeks to select an enforcement strategy that reflects the behavior of the taxpayer and works on a basis that most taxpayers voluntarily comply with the tax system. The theory of a responsive regulation is visualized as a pyramid; the compliant taxpayers are at the base of the pyramid when the non-compliant taxpayers are at the top. Middle space is largely occupied by the taxpayers that wish to be broadly compliant, but who might need assistance or persuasion to comply¹⁷. It has been argued that the weakness of the model is that it predicts a level of compliance that is inconsistent with what is observed¹⁸. Nevertheless the criticism, author finds that the theory of a responsive regulation suits rather well into the framework of Co-operative

¹⁴ Braithwaite, V. (2007). Responsive Regulation and Taxation: Introduction. - *Law & Policy*, Vol. 29, No. 1, p 4.

¹⁵ Deak, D. (2008). Neutrality and Legal Certainty in Tax Law. - *Acta Juridica Hungaria*, Vol. 49, No. 2, p 184.

¹⁶ Gilleard, M. (2013). Stepping out of the Shadows: Enhancing Taxpayer-Authority Relationship. - *International Tax Review*, Vol. 24, No. 3, p 17.

¹⁷ Freedman, J. (2011). Responsive Regulation, Risk, and Rules: Applying the Theory of Tax Practice. - *U.B.C. Law Review*, Vol. 44, No. 3, p 630.

¹⁸ Whait, B.R. (2012). From Responsive Regulation to Dynamic Participation: a New Model for Voluntary Tax Compliance. - *Australian Tax Forum*, Vol. 27, No. 1, p 112.

Compliance. As the OECD recommendation seeks to apply the approach for large taxpayer, author is in a belief that most of the large taxpayers would, by the theory mentioned, belong the base of the pyramid as the expectances for such taxpayers could be considered significant. In other words, it should be expected for large taxpayers to be compliant and therefore suitable candidates for Co-operative Compliance approach.

1.3. OECD recommendations for large taxpayers and multinationals

Co-operative Compliance is a specific framework recommended by the OECD's Forum of Tax Administrations (hereinafter FTA) for tax authorities working together in a co-operation with a large taxpayer. Co-operative Compliance frameworks have been implemented in various forms in almost 30 jurisdictions worldwide. Among Finland, total of 12 European Union countries have introduced the Co-operative Compliance frameworks including e.g. Denmark, Italy, Ireland and the Netherlands. The Dutch version of the framework is the one with the most wide spread and well-known framework as it has been established already in 2005¹⁹.

Co-operative Compliance was first introduced by the FTA while publishing the study called Study into the Role of Tax Intermediaries (hereinafter the 2008 study). The 2008 study went further than its title suggests in attempting to form the basis for an agreed approach to the management of tax risk by tax authorities. The OECD study team considered the tripartite relationship between the tax authorities, taxpayers' and tax advisers²⁰. The study encouraged the tax administrations to establish a relationship with the large corporate taxpayers that is based on trust, co-operation and mutual understanding. This co-operation was then called enhanced relationship²¹. The study team suggested that tax authorities should use a risk-based approach to direct attention to taxpayers' and tax advisors who are unwilling to engage in mutually beneficial relationships²². Currently the tax authorities use risk-based techniques to concentrate their supervisory activities on taxpayers with relatively higher risk profile, while those taxpayers that are considered as low risk, are subject to a lighter monitoring. Tax authorities pay an attention to the tax operating models of the companies

¹⁹ Szudoczky, Rita, Majdanska, Alicia, (2017). Designing Co-operative Compliance Programmes: Lessons from the EU State Aid Rules for Tax Administrations. - *British Tax Review*, Vol. 2, p 205.

²⁰ Freedman, J., Loomer, G., Vella, J., (2009). Corporate Tax Risk and Tax Avoidance: New Approaches. - *British Tax Review*, Vol.1, p 75.

²¹ Co-operative Compliance: A Framework - From Enhanced Relationship to Co-operative Compliance, (2013) OECD Publishing, p 3.

²² Freedman, Loomer, Vella (2009), *supra nota* 20, p 76.

that are referred as Tax Compliance Framework (hereinafter TCF)²³. The TCF is a significant part of working within Co-operative Compliance framework as it sets out the base principles of large taxpayer's internal controls and monitoring activities related to those controls.

As the recommended approach was set to be risk-based, a question of good corporate governance arises within the framework. From authors own perspective, the corporate governance plays a significant role in Co-operative Compliance. Corporate governance focuses on the way in which the company's board oversees the running of a company by its managers and how board members are in turn accountable to shareholders of the company in terms on safeguarding of assets and profitability of the company. Good corporate governance is a robust and effective system on company's internal controls, addressing financial, operational and compliance risks. Board of directors may not be giving the tax the attention it deserves as most of the boards view the tax as a technical matter for the tax department. Proper and effective management of tax compliance risks of a company should be at the interest of the board from the perspective of tax governance²⁴.

The 2008 study addressed the topic of aggressive tax planning and analyzed the tripartite relationship between different actors in the field. The study spelt out how more co-operative relationships based on co-operation and trust could be established. The study also made recommendation accordingly i.e. that kind of relationship between the parties mentioned earlier should be look into to establish locally. The 2008 study determined pillars that should be considered as basis for the relationship. From the large taxpayer's perspective, the tax administration should demonstrate understanding based on commercial awareness, impartiality, proportionality, openness through disclosure and transparency and responsiveness. From the tax administration perspective, taxpayers should receive disclosure and transparency in dealing with the tax matters in question²⁵. These can be considered obligatory i.e. taxpayer should be ready to discuss its tax position and disclose all facts relevant to the tax assessment²⁶.

While taking a wider and historical perspective of the relationship between the tax authority and taxpayer, it can be stated that tax authorities have for decades worked in the same way as they have

²³ De Widt, D., Oats, L. (2017). Risk Assessment in a Co-operative Compliance Context: A Dutch-UK Comparison. - *British Tax Review*, Vol. 2, p 230.

²⁴ Leng, M. (2012). Increased Focus on Tax Governance. - *International Tax Review*, Vol. 23, No. 7, p 54.

²⁵ Co-operative Compliance: A Framework - From Enhanced Relationship to Co-operative Compliance, (2013) OECD Publishing, p 15.

²⁶ Majdanska, A., Leigh Pemberton, J., (2019). Different Treatment, Same Outcome: Reconciling Co-operative Compliance with the Principle of Legal Equality. - *Journal of Tax Administration*, Vol. 5, No. 1, p 114.

selected individual cases for auditing and handled these cases from the perspective of distrust. With this strategy the parties have played the game of hide and seek whilst taxpayers may have not disclosed any additional information than the strictly requested one and the information requested by the law. Tax audits are also considered rather time-consuming and may not always be effective as they do not address the causes of the non-compliance of the taxpayer and are there for not solving the actual problem. OECD advocated the notion of compliance risk management where tax authorities combine various elements of regulatory strategies to manage tax compliance risks. Different developments and increasing focus on advise and persuade strategies have led to the development of co-operative compliance strategies that are directed to large taxpayers²⁷.

Due the complexity and scale of the large taxpayers' affairs, tax compliance for large businesses usually demands a different management approach than the tax compliance of small and medium-sized businesses²⁸. Collaborative working may save tax authorities time, resources and money while the large taxpayers are expected to be more transparent about their tax affairs²⁹. Tax authorities' welcome greater voluntary disclosure from taxpayers; a more transparent relationship with increased real-time information which enables to lessen the burden on resources. For taxpayers the attraction lies in having a tax returns signed off earlier and with an assurance that the tax authority will consider filed issues resolved³⁰.

Co-operative Compliance framework seeks to increase the trust between the taxpayer and the tax authority. Tax payments are assumed to be influenced to be influenced by trust and power of authorities; if both trust and power are at minimum level, tax payments are assumed to be low i.e. taxpayers are expected to act in a way that leads into maximizing the profits and evading taxes. If trust in authorities increases, taxpayers' tax payments are assumed to increase. It has been studied that trust in tax authorities is positively related to tax compliance. Mutual trust between the parties lead to synergistic tax climate. In such case the tax authority trusts that taxpayers' pay the taxes and therefore the authorities treat them with courtesy and respect. In turn, the taxpayers' trust that authorities provide them good services thus they pay their fair share of taxes³¹. This is a relevant

²⁷ Van del Hel-van Dijk, L., Sigle, M. (2015). Managing Compliance Risks of Large Businesses: A Review of the Underlying Assumptions of Co-operative Compliance Strategies. - *eJournal of Tax Research*, Vol. 13, No. 3, p 766-767.

²⁸ Majdanska, Leigh Pemberton (2019), *supra nota* 26, p 112.

²⁹ Dalton, J. (2013). Cooperative Compliance Must Weather Storm. - *International Tax Review*, Vol. 24, No. 6.

³⁰ Dalton, J. (2013). Preparing for Enhanced Relationship Tax Compliance. - *International Tax Review*, Vol. 24, No. 3, p 21.

³¹ Wahl, I., Kastlunger, B., Kirchler, E. (2010). Trust in Authorities and Power to Enforce Tax Compliance: An Empirical Analysis of the Slippery Slope Framework - *Law & Policy*, Vol. 32, No. 4, p 387-388.

note from the perspective of the fundamental aim for Co-operative Compliance - justified trust between the parties should be established for to be able to operate within the framework.

The Co-operative Compliance is based on a voluntariness which means that the large taxpayer does not have an obligation to participate in the framework. Instead it should be seen as an opportunity offered by the tax authority and eligible candidate meeting high behavioral standards. If pressure would be exercised by the tax authorities, in the broadest sense, the relationship would automatically become obligatory and should be regulated by the law³².

Nevertheless the framework has been spread globally, from author's perspective rather quickly, there are still questions and problems that several jurisdictions have raised. One of the questions and problems arisen is the legality of the framework and until now these questions have mainly been raised on domestic level. Nevertheless, there are currently some hints that may lead into looking the question of the legislative basis to international level.

Suggestions have been made that whilst the framework spreads more and more international way of seeking legal certainty and predictability for large taxpayer's tax matters, the need cross-border co-operation may become relevant. In practice this would lead into establishing a co-operation that involves one or more jurisdictions. The OECD defines multilateral Co-operative Compliance as an arrangement between a taxpayer and two or more revenue tax authorities in which all parties agree to apply the principles of Co-operative Compliance to the management of the tax issues that are of common interest to all the parties. It aims to seek practical certainty and to reduce the compliance burden associated with international dealing³³.

Multilateral developments can be noticed also from the other perspective of the tax control as the complexity of multinationals' tax affairs mean that there is a premium on tax information. Initiatives have been established that aim for increasing co-operation and more coordinated actions between tax authorities by joint tax audits³⁴. Author points out that from the perspective of applying the Co-operative Compliance framework, the actual audit activities should not become

³² Bronzewska, K., (2016). Cooperative Compliance: A New Approach to Managing Taxpayer Relations. - *IBFD Doctoral Series*, Vol. 38, p 348.

³³ Lambooij, M. (2013). Multilateral Cooperative Compliance: The Next Step - *International Tax Review*, Vol. 24, No. 8, 46-47

³⁴ Gilleard, M. (2011). Joint Audits Show Promise of Better Compliance. - *International Tax Review*, Vol. 22, No. 5, p 10.

relevant when the principles and the rules of the framework apply, especially in practical level. Nevertheless, tax authority, as a representative of a government and with a right to utilize public power, can not determine by decision that tax audit as a control method would not be applicable for single taxpayer. That would be considered unlawful by overstepping the regulation that regulates the activities of an authority.

1.4. Co-operative Compliance framework in Finland

Co-operative Compliance as a framework has not been implemented into Finnish tax legislation. This means that the current legislation does not regulate the framework itself. Instead the tax legislation regulates the activities of a tax authority i.e. what kind of tax control methods are applicable as well as the rights and obligations of an authority and the taxpayer. As there does not exist direct regulation for the framework, applying the approach is voluntary for both parties.

Co-operative Compliance framework model was officially introduced in Finland in 2016 by Finnish Tax Administration's Large Taxpayers' Office (hereinafter Finnish LTO). Prior to the official introduction, a pilot project was valid throughout 2012-2015. During the pilot period Finnish LTO built the ground basis for the framework by adopting the model the Netherland's tax authorities had established, called Horizontal Monitoring. Total of five large taxpayers³⁵ were involved during the phase of a pilot project and have had a significant impact on the Co-operative Compliance framework applied today.

The ambiguous goal for the pilot project was to find out whether this specific framework as an approach would:

- 1) enhance the dialogue between the tax authority and the large taxpayer;
- 2) enhance the correctness of the declarations and returns filed by the large taxpayer;
- 3) decrease the administrative burden for both parties and
- 4) decrease the compliance costs for the large taxpayer.

³⁵ Finnish LTO's considers large taxpayers to be such corporations or single companies that meet the following criteria: corporation's or company's turnover is at least 100meur and it has international business activities. In addition, all the listed corporations and corporations business activities are in the field of finance or insurance are considered large taxpayers. For further information: https://www.vero.fi/yritykset-ja-yhteisot/tietoa-yritysverotuksesta/konserniverokeskuksessa_hoidetaan_suome/ (visited 2nd of February 2019).

In addition, the goal was to establish a Co-operative Compliance framework that can be operated by Finnish tax legislation and that suits Finnish business environment in general.

Finnish Co-operative Compliance framework has since the pilot project emphasized either real-time or pre-emptive processing of the tax matters presented by either party. This means that the taxpayer is expected to raise the internal tax questions and matters to be handled and tax authority is expected to give its interpretation of the matter as early stage as possible. The real-time or pre-emptive processing of the tax matter does not require that the actual tax matter has yet actualized. The tax matters that are raised can be in connection with large taxpayer's aim to perform an activity that may have tax consequences. Therefore, the tax matter to be handled either in real-time or pre-emptively can be a rather preliminary plan presented by the taxpayer and while the taxpayer receives tax authority's interpretation of that plan from the perspective of taxation, the taxpayer may change the planned activities based on the interpretation given.

Predictability is considered to be the most important aspect in taxation and large taxpayers would like to exclude the possibilities for surprises. It has been found that the Co-operative Compliance framework can offer improved predictability to companies. In addition, all the methods that decrease tax disputes are seen desirable as unpredictability should be avoided. There are multiple reasons for choosing the approach of the framework. One of the categorizations presented by an independent researches was that 1) tax administration as an aid to the companies; 2) restoring the public confidence in corporate taxation; 3) benefits to the tax administration and 4) international aspects. It can also be seen as a use of limited resources for more efficient manner³⁶.

Co-operative Compliance framework in Finland consists three stages of a process. Firstly, the discussions and negotiations with the large taxpayer are held on a subject whether the large taxpayer would be interested to join the framework. It should be mentioned that at current stage of the framework, tax authority commonly approaches the large taxpayer nevertheless the taxpayers has a possibility to approach the tax authority with the same agenda. Should the large taxpayer be interested to enroll to the framework, that acceptance is not considered legally binding as there are no current formal regulation for the framework. Second stage of the process is called compliance scan which seeks to review the large taxpayers internal controls that are directly or indirectly in

³⁶ Potka-Soininen, T., Pellinen, J., Kettunen, J. (2018), Enhanced Customer Cooperation: Experiences with cooperative compliance in Finland. - *FairTax Working Paper Series*, No. 19, p 13.

connection to the taxation in general and the information that the taxpayer is legally obligated to inform to the authority³⁷ (further elaboration of the process in section 1.4.1.). Second stage of the process ends with the signing of the memorandum of understanding. This will be considered as a full acceptance into entering to the framework but should not be - once again - considered as a legally binding acceptance (see section 1.4.2.). Third, and final, stage of the process is based on the on-going dialogue between the tax authority and large taxpayer. In practice this stage consist handling the large taxpayer's tax matters pre-emptively or at least in real-time (see section 1.4.3.) and both parties may raise the questions to be handled. It could be mentioned that the final stage of the process should be considered valid until further notice. Nevertheless, the possibility to exit the Co-operative Compliance framework is a possibility and could be requested by both parties³⁸.

1.4.1. Compliance scan seeks to review the internal controls related to taxation

The co-operation between tax authority and taxpayer begins with a process called compliance scan. This is a specific process that reviews the taxpayer internal processes that have either direct or indirect connection with the taxation in general and more specifically the information provided to tax authority that is regulated by the tax law.

During the compliance scan the taxpayers internal processes related to taxation are reviewed by tax types. Nevertheless, it is worth a mention that only the tax types³⁹ that taxes are assessed and collected by Finnish LTO, are reviewed. The process of compliance scan can be narrowed down to a one question that Finnish LTO presents to the large taxpayer: how do the large taxpayer insure that the information related to taxation, that large taxpayers is obligated to declare to the tax authority, is correct.

Processes are reviewed by a Finnish LTO's tax advisors and tax auditors. During the process Finnish LTO's personnel works in co-operation with the personnel of the large taxpayer that are

³⁷ By this author refers to the taxpayers obligations to provide the necessary information related or regarding its taxation to the tax authority e.g. by obligatory returns and declarations and possible enclosures as well as information based on tax authority's inquire. In addition, the reference can also be made to such documentation that the taxpayer is obligated to compose and to keep updated, such as documentation regarding taxpayer's transfer pricing matters.

³⁸ In addition, author would like to point out that such scenario has not yet actualized but yet can not be abolished as a possibility as the framework is voluntary and not regulated by the law.

³⁹ Finnish LTO is obligated to assess and collect the large taxpayer's corporate income tax, value added tax, payroll tax (i.e. employer's obligations), transfer tax, insurance tax and tax-at-source tax. Other taxes, such as e.g. real-estate tax or individual taxes of a physical person, are assessed and collected by another unit within Finnish Tax Administration.

responsible of the corporation's matters related to accounting, payroll and tax management. The process of compliance scan is currently highly manual. The process begins with presenting questionnaires by tax types and continues with interviewing the large taxpayer's personnel. Also the information that supports the better knowledge of the corporation's business activities is reviewed. In some cases accounting material might be needed for to be able to determine the audit trail⁴⁰. In the most common cases audit trail becomes relevant when reviewing the process of value added taxes or excise taxes or in a situation where the information given by the large taxpayer's personnel is contradictory.

It should be highlighted that taxpayer do not have an actual obligation to provide the supporting material or information. As the co-operation is voluntary-based, the taxpayer does have an opportunity to decline the request for additional and supporting materials and even knowledge.

It should be pointed out that compliance scan should not be considered as a tax audit. Tax audit is a process specifically determined tax control procedure by tax legislation in acts on tax assessment⁴¹. Compliance scan is not determined as a tax control process in Finnish tax assessment regulations.

It is possible to compare the approach to be similar to internal audit. Internal audit, which should not be confused to external audit⁴² that is regulated by the law, seeks to ensure good corporate governance and evaluate the corporation's effectiveness in risk management and its control. There does not exist a specific regulation for internal audit. Instead there is the Committee of Sponsoring Organizations' (hereinafter COSO) that has introduced its framework for enterprise risk management, internal control and fraud deterrence⁴³. Author is under assumption that COSO should be considered as an international organization that have outlined specific framework regarding internal audit that nevertheless should not be considered compulsory and instead should be understood as recommended framework.

⁴⁰ By referring to audit trail author means that every accounting entry made need to be done in a way that it can be trailed to financial statements of the corporation.

⁴¹ Author would like to point out, that in Finland, two separate acts of tax assessment are applied. There is act for assessment of income tax, both corporate and individual, and there exist act for self-assessed taxes such as e.g. value-added tax and preliminary taxation (e.g. payroll tax).

⁴² External audit seeks to control (audit) the corporation's books and financial reports of specific accounting period. The activities to be performed by external audit have been regulated by specific act (Finnish Auditing Act 1136/1997).

⁴³ Please see <https://www.coso.org/Pages/aboutus.aspx> (visited 17th of February 2019). COSO's activities, framework and goals have been introduced more specifically on their website www.coso.org.

1.4.2. Memorandum of understanding

All co-operative approaches operate within the boundaries of law regulations. Mostly the jurisdictions that have implemented the approach of the Co-operative Compliance framework have not needed to formalize the the approach and change the existing laws and regulations. Instead, majority of jurisdictions have formalized the Co-operative Compliance approach in some kind of agreement between the tax authority and taxpayer⁴⁴. In Finnish version of the Co-operative Compliance framework the memorandum of understanding will be signed between the parties after successfully ending the process of compliance scan.

Memorandum of understanding will be signed between the large taxpayer and Finnish LTO after the process of compliance scan has been finalized. By signing the memorandum both parties agree e.g. on the following:

- 1) to achieve more effective and successful way for operating and handling the tax matters;
- 2) aim for actual insight and understanding of relevant events, changes in tax legislation and its interpretations;
- 3) more efficient process to increase legal certainty and predictability and
- 4) decrease the administrative burden.

Signing the memorandum represents the fact that parties are willing to apply the basic principles of the co-operation. Parties are expected to base their relationship on trust, mutual understanding and transparency and the rights and obligations that are pursuant to legislation and regulations are and will remain applicable without limitation. This means that the co-operation itself can not affect the rights and obligations existing nevertheless signing the memorandum.

The memorandum of understanding is signed by both parties and by the person that has a legal right to sign behalf of the corporation (large taxpayer) and tax authority (Finnish LTO). The memorandum does not have a date for validity. This means that the signed memorandum is valid until further notice. Should neither party wish to abolish the co-operation, a discussion of such action to be taken is expected to be arranged beforehand.

⁴⁴ Co-operative Compliance: A Framework - From Enhanced Relationship to Co-operative Compliance, (2013) OECD Publishing, p 30.

From judicial perspective and by author's own interpretation, it should be noted that memorandum of understanding should not be considered as a legally binding document. The memorandum does not have the actual legal force and the regulations of the private law, such as for example Finnish contract law, can not be applied for this co-operation based relationship between the parties. Instead the memorandum can be compared with any other nonbinding documents, such as e.g. the so called letter of intent. These kind of non-binding documents usually serve as a method to ensure that the key aspects are clear and the parties have common understanding⁴⁵.

1.4.3. Business as usual - a part of a framework that seeks legal certainty and predictability based on on-going dialogue

After the compliance scan process is finalized and the tax authority and taxpayer have signed the memorandum of understanding, the co-operation between the parties continues in business as usual basis. As mentioned earlier, the co-operation is valid until further notice. This means that there does not exist an expiring date for the co-operation.

From practical perspective, this the phase of a process that may have many variations. One common feature though does exist - parties are expected to arise tax matters and questions from both sides at the earliest stage as possible. It should be highlighted that there is no actual legally binding requirement towards the taxpayer for such action as the co-operation is voluntary. Also, the matters to be handled may consist rather delicate information⁴⁶ and therefore the expectancy for preliminary handling, or at least real-time, may not execute in all matters.

When referring to the obligations arising directly from the law, such as different kind of declaring obligations, the aim is that such declarations will be examined before the actual filing. By performing such preliminary actions it would be possible to enhance the process of the technical handling of the return⁴⁷. In addition, it would be possible to exclude time-consuming process of requiring additional information by the written and formal request presented by the tax authority.

⁴⁵ Guzman, Andrew T., Meyer, Timothy L., (2010), *International Soft Law*. - *Journal of Legal Analysis*, Vol. 2, No. 1, p 176.

⁴⁶ From author's perspective, delicate information can be such information that has relevance for e.g. taxpayer's business activities, legal structure or employees. In practice such situation may occur for example during mergers and acquisitions.

⁴⁷ Piiskoppel (2017), *supra nota* 13, p 460.

1.5. Guidance given within Co-operative Compliance framework

During the co-operation, large taxpayer may ask for guidance and advice regarding its tax matters⁴⁸. Large taxpayer may present its request by a formal request for advance ruling⁴⁹, which is applicable for an appeal, or by an in-formal request. In case of an in-formal request, the tax matter and the guidance given will be handled as a pre-emptive discussion and should the matter require written guidance, a memorandum will be drafted and guidance given.

Pre-emptive discussion is fairly new procedure that has been implemented into Finnish LTO's tax control procedures in early 2016 and into Finnish Tax Administration Corporate Taxation Unit as of 2019. The aim for pre-emptive discussion is to clarify the tax matter in question and to single out possible tax risks. The goal is to advise the taxpayer at the earliest possible stage which would enhance the predictability and legal certainty as well as decrease administrative burden. For Finnish Tax Administration, the pre-emptive discussion also aims to have an influence on taxpayer's tax behavior⁵⁰.

The guidance given has the same strength of the protection of the legitimate expectations nevertheless the process chosen. It might be stated that during the in-formal process of the pre-emptive discussion, the large taxpayer chooses the level of the protection. When the taxpayer provides specific facts and outlined plan, the protection of trust could be considered high. When the taxpayer provides rather preliminary plan and the facts have not yet been confirmed, the protection of trust would not apply.

The difference between the two processes is that the advance ruling is applicable for an appeal i.e. should the large taxpayer disagree with the outcome, taxpayer can appeal on the ruling given. The process of advance ruling is determined by Finnish tax law as well as the process for an appeal. The memorandum of a matter that has been handled through a process of pre-emptive discussion,

⁴⁸ At this point of the research, the author does not elaborate on the specifics, meaning and the legislative basis of the guidance and advice. For more specific elaboration on tax authority's obligation to give guidance and advice to the taxpayer, please see chapter 2 in this research.

⁴⁹ Taxpayer may request for an advance ruling in matters of e.g. income taxation, value added taxation and preliminary taxation (i.e. employer's obligations). Both legal and physical person may apply for advance ruling, but only to a matter of their own taxation.

⁵⁰ Please see more information e.g. on https://www.vero.fi/yritykset-ja-yhteisot/tietoa-yritysverotuksesta/konserniverokeskuksessa_hoidetaan_suome/pre-emptive-discussion-and-cross-border-dialogue/ (visited 24th of February 2019).

is not applicable for an appeal as the process itself is not formally determined by the Finnish tax law.

1.6. Tax control within Co-operative Compliance framework

Co-operative Compliance framework does not affect parties' rights and obligations and the principles of taxation have to be applied. Therefore, also other tax control procedures and its fiscal consequences may become applicable, if relevant, and tax authority can apply such control methods. Should such scenario become relevant, the large taxpayer does not receive any benefits by the fact that the taxpayer is enrolled to the framework. From the perspective of the rights and obligations, which are based on the principles of taxation, applying the approach of the Co-operative Compliance framework can not provide benefits for the large taxpayer involved nor can applying the approach put the taxpayer into less beneficial situation than the other taxpayers. From the perspective of the tax authority, tax authority can not restrict its normal actions, including the tax control methods, because of the Co-operative Compliance. In other words, Finnish tax legislation, from the perspective of taxation, requires equality nevertheless approach of the Co-operative Compliance is applied or not.

Tax control procedures such tax assessment, re-assessment of taxation and tax audit in addition with possible neglect payments and tax increase are possible procedures also within the Co-operative Compliance framework. From the perspective of tax audit, the taxpayer is obligated to present its accounting material, notes and all other material relevant to its business activities that is necessary for the taxpayers tax assessment or re-assessment⁵¹. Nevertheless the Co-operative Compliance framework would be applied, the Finnish tax authority can not limit its rights and obligations to not to perform tax audit, if such tax control method would be considered relevant.

Tax authority has a right to re-assess the taxpayer's tax assessment for both in the advantage and disadvantage of the taxpayer. Re-assessment may become relevant in a situation where a fault has been discovered after the actual tax assessment has been performed⁵². Even though the large taxpayer's involvement within the framework, the tax authority may re-assess the taxation of the large taxpayer e.g. in a case of a fault. Nevertheless, the taxpayer has an equal right to apply for a

⁵¹ Laki verotusmenettelystä 14.1§, laki oma-aloitteisten verojen verotusmenettelystä 24.1§

⁵² Laki verotusmenettelystä 54-56§, laki oma-aloitteisten verojen verotusmenettelystä 40-41§

re-assessment of its taxation. In both perspectives, the re-assessment of the taxation must be made within the time limits pursuant to the tax legislation.

1.7. Conclusions on the optional tax control methods applicable and applied by the Finnish tax authority

Finnish Tax Administration's Large Taxpayers' Office has chosen to look into new improved ways to provide legal certainty and predictability for its taxpayers. Co-operative Compliance framework can be considered one method to enhance the previously mentioned principles of taxation towards the taxpayer and the framework itself should be understood as an umbrella that covers for multiple traditional and newer tax control methods.

Traditional methods of tax control are generally understood as tax assessment procedure and tax audit. Both of these traditional tax control methods are applied when the actual transactions made by the taxpayer have already taken place. Therefore it can be stated that both of the methods look into past activities of the taxpayer. In such cases the legal certainty and predictability within traditional tax control methods is based on tax legislation and legal praxis applied by the tax authority. In other words, legal certainty and predictability is provided by the law itself as well as the interpretation of the law that is applicable when the nature of the tax matter have enough similarities. In other hand, when the legal wording of the tax law leaves room for interpretation i.e. the law does not strictly meet the clarity requirement and the tax matter is lacking a interpretation as well as legal praxis, the principles of legal certainty and predictability may not apply. Applying for advance ruling may not be applicable as the tax matter to be ruled by the tax authority should be focused to the future transaction or activities.

Co-operative Compliance framework should be considered as a newer tax control method that seeks into providing legal certainty and predictability before the actual transactions or activities of the large taxpayer take place. The framework seeks to increase the trust between the parties while taking other than traditional approach towards tax control and tax compliance. It is expected that the administrative burden will be decreased from the perspective of both parties as the tax matters are handled based on flexibility, real-time and pre-emptively.

Handling the tax matters preferably pre-emptively and at least in real-time can be somewhat considered a new tax control method. In addition to the applying the legal principles, this approach also seeks into influencing the large taxpayer's tax behavior.

The annual tax returns of corporate income tax are reviewed prior the large taxpayer actually files the return. These reviews are performed as a regular meeting between the parties. The aim for the pre-filing review is to single out possible matters that would require additional inquiries and written correspondence between the parties. Due the pre-filing review, the tax authority has a possibility to present questions to increase its understanding of the matters to be declared. The large taxpayer has a same possibility as well as possibility to make corrections, if necessary, prior the actual filing. In addition, the pre-filing review of the annual tax return should decrease the administrative burden for both parties. Reviewing the annual tax returns beforehand is a new tax control method that has not been applied prior to the Co-operative Compliance framework.

The Finnish approach of the framework includes three stages - the negotiations, the compliance scan and the on-going co-operation after signing the memorandum of understanding. The compliance scan as a process is a significant change from the perspective of tax authority's activities. Instead of reviewing the business transactions and accounting materials of the large taxpayer, the compliance scan seeks into reviewing the internal controls related to taxation. The Finnish version of the framework does not include heavy system audit approach that would seek into reviewing the large taxpayers accounting related system as a whole. Some review might become applicable, especially in such tax types that have significant relevance and direct relation with the taxes collected. Such tax types are value added tax and payroll tax. Nonetheless, author would suggest that the reviewing process in such cases should not be considered as full system audit and are merely applicable as a supporting role within the compliance scan process. Reviewing the audit trail has been a part of tax audits but the Co-operative Compliance framework seeks into looking more in-depth within the processes than just audit trail based on accounting entries.

As the basis for providing the efficient processing of the large taxpayer's tax matters is based on the on-going dialogue between the tax authority and the taxpayer, tax authority expects the taxpayer to bring forward the tax matters accordingly, i.e. before the transactions or activities take place. Though, it is important to mention that the large taxpayer does not have an obligation to meet the expectation. By this author refers that applying the Co-operative Compliance

framework, the framework itself does not widen nor narrow the rights and obligations that are pursuant to legislation and applying the framework is not obligatory for the parties.

Nevertheless the framework seeks into handling the tax matter pre-emptively, the traditional tax control methods are still applicable. Tax authority can not rule out one control method on behalf or another. Does this decrease the attractiveness of the framework? By author's own practical experience so far the answer would be that it would not but theoretically the possibility does exist.

While referring to the first research question, i.e. what kind of practice has been established regarding optional tax control methods, it can be stated that Co-operative Compliance framework established and applied today by the Finnish tax authority, is an optional tax control method. The framework itself consist several newer approaches that have not been applied before (e.g. compliance scan and pre-review of the tax return) or have been applied in some level (e.g. pre-emptive discussion versus guidance and advice). Nevertheless, for to be able to either confirm or to abolish the hypothesis of this research, the second and third question must be studied.

2. CO-OPERATIVE COMPLIANCE AND THE INTERPRETATION OF THE RULE-OF-LAW

2.1. Author's forewords into legislative basis for tax authority's activities

In this chapter author elaborates on the legislative basis for the actions performed by a tax authority. By actions author refers to guidance and advice as well as tax control procedures that tax authority is obligated to either provide or perform to taxpayers and which are determined by the legislation or other regulation equal to law. Basis for the tax law are the general principles of the tax law which are led from the constitutional legislation. Such principles have been elaborated in this chapter.

Author may refer this as so-called hard law, a term widely used when comparing the law to another form of somewhat compulsory not yet obligatory form of regulation. In addition to hard law, author elaborates on so-called soft law that from author's own perspective is in some way competing with the hard law and might be questioned whether the soft law is actually becoming a hard law as well. Academics find, as later discussed in this thesis, defining the soft law rather difficult and drawing the line between actually compulsory and optional compulsory becoming rather thin.

2.2. General principles in tax law

2.2.1. The tax systems relation with the principles of taxation

Tax systems do not operate in isolation from those in other jurisdictions, indeed interactions between different sets of rules is becoming important in a globalized world⁵³. Nevertheless, there do exist principles of tax law that could be considered internationally relevant even when the legislations themselves vary. General principles in the tax law are such principles that should provide certainty and clarity into taxation in general. They are a fundamental part of the tax law that must be followed *per se* and are not optional.

⁵³ Oats, L., Sadler, P. (2011). A Conceptual Map of Tax Rule Change. - *Australian Tax Forum*, Vol. 26, No. 2, p 116.

General principles may compete with one another. At such situation it becomes crucial to weight the principles. In taxation for example rule-of-law and principle for equality may compete with one another. Same situation may arise between the protection of legitimate expectations, rule-of-law and equality. The principles in tax law may also be aims that must be reached through different stages⁵⁴.

From legal perspective, the tax law is only one of the many aspects in legislative base that governs the activities of a government actors and the relationship between the government and citizen. Nevertheless, tax law has become one of the most important points of interaction between the parties. Therefore, tax law should be viewed in the context rather than independent group of norms⁵⁵.

Taxpayers' rights can be exercised effectively in a well-established system of tax law. It is important to look for the quality of the tax legislation i.e. know about the conditions in which the tax law can be considered as ideal. Tax law should rest on a sound normative basis⁵⁶. In addition, it has been studied that when the taxpayer and the tax authority effectively work within the tax system, it could be stated that voluntary compliance can be increased when certain actions take place from both sides⁵⁷.

As the Co-operative Compliance framework should not affect the rights and obligations of the parties, the principles of taxation should not be questioned as the legislation applies as such. Nevertheless, author finds it interesting that some of the jurisdictions have already implemented the framework into their domestic legislation and some may evaluate the necessity of such action. Author finds that the reasoning and the need for domestic implementation is something that could be researched in the future as it arises a question whether the normative basis of such jurisdictions, which implemented the framework into the legislations, was not clear enough and left room for too wide interpretation for the governing the activities of tax authority or whether the reasoning was supported by the business environment rather than the system itself.

⁵⁴ Äimä, K. (2011). *Veroprosessioikeus*. Helsinki: WSOY Pro, p 21.

⁵⁵ Schwarz, J. (2009). Rights and powers: protecting the legitimate interests of taxpayers. - *British Tax Review*, Vol 3, p 306.

⁵⁶ Deak (2008), *supra nota* 15, p 177.

⁵⁷ Owens, J. (1990). Taxpayers' Rights and Obligations. - *Intertax*, Vol. 18, No. 11, p 569.

2.2.2. The rule-of-law

In a democratic system, the general rule-of-law has special claim to preference since it is the normal product of that branch of government most responsive to the people. Statutes that are seen as establishing rules of inadequate clarity or precision are criticized as undemocratic and even unconstitutional because they leave too much to be decided⁵⁸. The rule-of-law is considered to include also the requirement of precision. This means that the legislator is obligated to determine the legal provisions clear and precise⁵⁹. Nevertheless, from the perspective on interpretation, the legislation can not be as strict that interpretation of the law would be unnecessary⁶⁰. One example of the interpretative provision is the protection of legitimate expectations⁶¹. Nevertheless room for the interpretation should exist, the interpretation should be *e contrario*. In addition, when matter should be unclear, the resolution of the interpretation should be for the benefit of the taxpayer⁶². The rule-of-law is guiding not only for the constitutional order in general, but also for the organization of public administration in particular. It would not be possible to respect the principle of democracy when the rule-of-law is not observed⁶³.

In addition, as stated e.g. by European Court of Human Rights, the law must be adequately accessible: the citizens must be able to have an indication that is adequate in the circumstances of legal rules applicable and also, a norm can not be regarded as a "law" unless it is formulated with sufficient precision to enable citizen to regulate his conduct⁶⁴. The rule-of-law has a direct connection also with a qualities of a good tax system, such as predictability and legal certainty. The rule-of-law must be applied both in the legislation determining the substance of the tax as well as the legislation determining the assessment of taxation⁶⁵.

Finnish constitution law determines the rights for a state and municipalities. The state tax is governed by an act, which shall contain provisions on the grounds for a tax liability and the amount

⁵⁸ Scalia, A. (1989). The Rule of Law as a Law of Rules. - *The University of Chicago Law Review*, Vol. 54, No. 4, p 1176.

⁵⁹ Soikkeli, L. (2004). *Luottamuksensuoja verotuksessa - soveltaminen oikeuskäytännön valossa*. s.l.: WSOY Lakitieto, p 33.

⁶⁰ Malmgren, M. (2018). Legaliteettiperiaate verolainsäädännön tulkinnaassa. - *Verotus*, Vol. 3, p 283.

⁶¹ Please see further elaboration of this principle in section 2.2.5.

⁶² Juusela, J. (2018). Legaliteettiperiaate vero-oikeudessa. - *Defensor Legis*, Vol. 4, p 450.

⁶³ Deak (2008), *supra nota* 15, p 187.

⁶⁴ Schwarz (2009), *supra nota* 55, p 309. The reference was made to EHCR case *Sunday Times vs United Kingdom*. Nevertheless United Kingdom belongs to a legal family where there does not exist a specific constitution and legislative basis is highly determined by case law, author finds, that the outcome and the statement made by ECHR has determined the requirement for rule-of-law quite well and in emphasize the importance of clarity requirement.

⁶⁵ Malmgren (2018), *supra nota* 60, p 282.

of the tax, as well as the legal remedies available to the persons or entities liable to taxation⁶⁶. The municipalities have the right to levy municipal tax. Provisions on the general principles governing tax liability and the grounds for the tax as well as on the legal remedies available to the persons or entities liable to taxation are laid down by and act⁶⁷.

Most of the provisions stated in Finnish constitution law have at least indirect significance from the perspective of taxation⁶⁸. The principle of the rule of law is one of the leading principles in the tax legislation that obligates both the legislator and the applier of the law⁶⁹.

By the Finnish constitution law, the exercise of public powers shall be based on an act⁷⁰. In all public activity, the law shall be strictly observed. From the perspective of taxation, all the activities performed by Finnish Tax Administration have to be based on law and should be reviewed strictly. The reference to the "act" should be understood widely as the reference covers the legal system as a whole⁷¹. Public powers should always lean to the exact legislative basis. Administrative representative of the public powers can not obligate or restrict the private actor unless the representative can directly or indirectly prove the legislative basis of such actions. Nor can the representative extend its competence in case the regulation itself is interpretative⁷².

2.2.3. Legal certainty and predictability expected by the taxpayers

In Europe the modern concept of the certainty in law is based on the German doctrine and jurisprudence. At the core of this concept is the personal freedom to decide and develop oneself, amongst other things, by the predictability of the whole legal framework. This framework makes it possible and facilitates personal choice and realization of decisions and projects. The overriding objective is the right of personal freedom: the freedom of a person to decide and act for himself by making a decision on the basis of a certain calculations and expectations while taking into

⁶⁶ Suomen perustuslaki 81.1§

⁶⁷ Suomen perustuslaki 121.3§

⁶⁸ Myrsky, M. (2005). Perustuslain merkityksestä verotuksen kannalta. - *Verotus*, Vol. 1, p 27.

⁶⁹ Soikkeli (2004), *supra nota* 59, p.

⁷⁰ Suomen perustuslaki 2.3§

⁷¹ Äimä (2011), *supra nota* 54, p 67.

⁷² Myrsky (2005), *supra nota* 68, p 29. See also Finnish Supreme Administrative Court's decisions KHO 1978 A I and KHO 1978 B I 51.

account the legal context⁷³. Legal certainty has been linked with formal equality and the consistent application of rules⁷⁴.

Legal certainty and predictability are ensured by the rule-of-law. It is expected to tax authority to provide legal certainty and predictability for the taxpayer. In general, the legal certainty and predictability are crucial for any taxpayer and its future activities. By this author refers that when taxpayer is planning a specific action to be performed in the future, e.g. directly related to business activities of a legal person, there may exist several outcomes of the taxation for that specific action. Therefore, the taxpayer is obligated to make a choice with the information available i.e. with the facts presented and the law as well as its interpretations. Nevertheless, executing the legal certainty and predictability may also be viewed from the perspective of the past. By this author refers to the right to appeal.

There may exist risk factors for legal certainty and predictability to be actualized. Such risk factors can be changes in legislation that either have direct or indirect effect on taxation. Also a legal praxis, specifically the legal praxis applied by a tax authority⁷⁵, can arise a risk factor in case the legal praxis would need adjustment.

Author finds that in the context of Co-operative Compliance framework and from a practical point of view, the principles of legal certainty and predictability should primarily be actualized through the tax matters to be handled i.e. specific tax questions to be presented and interpretation to be given. In addition, it is also possible to take another perspective. Legal certainty and predictability should actualize also in a situation where possible adjustment to legal praxis become relevant. In such case, and yet again from a practical perspective, this would require the tax authority to properly inform the taxpayers of such adjustment to be made. Author finds it relevant to point out that in such case, the information regarding adjustments made to legal praxis would need to be accessible to all the taxpayers, not just the taxpayers enrolled to Co-operative Compliance approach.

⁷³ Popelier, P. (2000). Legal Certainty and Principles of Proper Law Making. - *European Journal of Law Freedom*, Vol. 2, No. 3, p 327.

⁷⁴ Reynolds, P. (2011). Legitimate expectations and the protection of trust in public officials. - *Public Law*, Vol. 2011, 330-352 (page 336)

⁷⁵ It is though worth a mention that the tax authority's change in tax praxis is generally highly motivated by the outcome of the court's legal praxis. Nevertheless the tax authority does have a right to interpret the law stated by the government, any significant changes in tax praxis are still motivated by the decisions made by the courts and especially by the supreme administrative court.

2.2.4. Equality and neutrality within the Co-operative Compliance framework

The principle of equality determines that all persons are equal from the perspective of the law⁷⁶. By the principle of neutrality, the authority must act fair and take into consideration the aimed outcome before any actions are pursued⁷⁷.

The principle of equality requires that tax authority treats all the persons liable to pay taxes and the persons that are the tax recipients equally⁷⁸. In other words, the authority may not, by its own actions, cause a situation where the interpretation of the law benefits one person but does not benefit the other.

From the procedural perspective, the requirement for equal treatment expects that all the persons who may interact with the authority, should be secured with equal possibilities to deal with their matters and to enforce their rights. The significance of the equal treatment is emphasized when the authority uses consideration that is targeted to legal position or possibilities for actions. In such situation the authority must carefully consider that the persons interacting with the authority have equal rights to receive clarification of their rights and obligations. All substance matters that are weighted should be consistent in a way that the facts presented are treated equally also from the perspective of interpretation of the law. In other words, should there exists a similar substance matters with similar facts, the interpretation of the law should apply equally⁷⁹.

The principle of neutrality requires the authority to base its procedures and actions objectively. The actions and procedures perform can not be based on inappropriate or otherwise unfamiliar basis. Such basis can for example be aiming for personal gain or aiming for financial gains on behalf of the governmental organization. All the decision-making activities, its outcome and activities in general must be impartial and explained objectively⁸⁰.

⁷⁶ Suomen perustuslaki 6.1§

⁷⁷ Hallintolaki 6§

⁷⁸ The persons liable to pay taxes are both legal and physical persons. The tax recipients are considered to be the e.g. state, municipalities and churches.

⁷⁹ Hallituksen esitys Eduskunnalle hallintolaiksi ja laiksi hallintokäyttölain muuttamisesta. HE 72/2002.

⁸⁰ Hallituksen esitys Eduskunnalle hallintolaiksi ja laiksi hallintokäyttölain muuttamisesta. HE 72/2002.

Author finds that in the context of Co-operative Compliance framework the question of equality and neutrality may arise from the perspective of whether the large taxpayers enrolled in the approach would be treated in a manner that puts such taxpayers in a more beneficial situation than the other taxpayers. This question may occur for example through the fact that the framework does include a process of compliance scan which is not applied for other taxpayers in a same form. As the principle of equality requires the tax authority to treat all the taxpayers equally nonetheless the procedures applied, author would argue that the framework itself would not violate the principle even though the framework provides more in-depth relationship for both parties.

2.2.5. Taxpayer's protection of legitimate expectations

Protection of legitimate expectations is a principle that defines a protection of trust towards taxpayer. Author finds this principle as one of the most significant principles of taxation that every legal and physical person should be aware about in order to protect ones individual rights when interacting with the representative of the government.

The principle of protection of legitimate expectations can be viewed from two perspectives; the taxpayer's and tax recipients. From the taxpayer's perspective the protection of the legitimate expectation requires that tax authority can not perform such actions towards the taxpayer that can affect the protection of trust. From practical perspective, when tax authority has assessed the taxpayer's taxation that later appears to be faulty, the tax authority can not at such situation re-assess the tax decision to be unfavorable to taxpayer. From the tax recipients perspective the protection of the legitimate expectations intends that the tax recipient shall carry the financial risk of such unfavorable tax assessment⁸¹.

As determined in the law, the protection of legitimate expectations can be applied, if the following requirements shall apply at the same time:

- 1) The matter is interpretative or unclear;
- 2) Taxpayer has acted in *bona fide* and
- 3) The taxpayer's act is based on the legal praxis applied or by the guidance given by the authority⁸².

⁸¹ Verotuksen toimittamisen periaatteita. A28/200/2015. Verohallinto. Available in the internet: <https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/49044/verotuksen-toimittamisen-periaatteit3/> (visited 31st of January 2019).

⁸² Laki verotusmenettelystä 26.2§, laki oma-aloitteisten verojen verotusmenettelystä 6§

When the matter is considered to be interpretative it generally means that there exists a loophole in the legislation or the legal provision is not clear enough⁸³. Then, when the matter is considered to be unclear, the facts i.e. the legal aspects are considered unclear and such facts can not be clarified or clarification is not available⁸⁴.

Matter of determining whether a taxpayer has acted in *bona fide* may be difficult to prove. Acting in *bona fide* usually requires, or expects, that the taxpayer has had an opportunity to familiarize himself with the matters of taxation. In other words, taxpayer has exercised his obligation to clarify the matter⁸⁵. In addition, from the perspective of tax authority, it is also determined that applying the acting in *bona fide* requires that taxpayer has acted by the rulings and guidance given by the tax authority and the taxpayer himself has not given the tax authority wrongful, unclear, insufficient or misleading information regarding the basis of such facts that affect the assessment of his taxation⁸⁶.

The third requirement for applying the protection of the legitimate expectations is that the taxpayer has acted by the guidance given by the tax authority or the taxpayer's act is based on the legal praxis of the authority. In practice, it might be hard to separate the tax authority's guidance and legal praxis. Therefore, any kind of public statement, that is made by tax authority, should be considered as guidance and legal praxis. Public statements can cover e.g. tax authority's special guidance lines given as more in-depth guidance published at the tax authority's webpage, handbooks and course material. In addition, taxpayer's trust the interpretations that the tax authority may give during the processes of tax audits and visits at the tax office⁸⁷.

Author finds that in the context of Co-operative Compliance framework, the protection of legitimate expectations is directly applied through the activities performed by the tax authority.

⁸³ Soikkeli (2004), *supra nota* 59, p 31. Soikkeli has also listed rather widely what can be considered interpretative and what is not. With several references that Soikkeli has made, author will streamline the outcome as follows: interpretative matter can be e.g. most of the matters regarding income and business taxation and matter that are not interpretative are such matter that have been defined with precision e.g. depreciation percentages in corporate income tax law.

⁸⁴ *Ibid.*, p 33. Soikkeli has elaborated that unclear matters can be e.g. valuation matters and such matters that burden of proof lies on.

⁸⁵ *Ibid.*, p 34.

⁸⁶ Luottamuksensuoja verotusmenettelyssä. 569/38/2000. Verohallinto. Available in the internet: https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/47866/luottamuksensuojasta_verotusmenettelyssa/ (visited 2nd of March 2019).

⁸⁷ Soikkeli (2004), *supra nota* 59, p 36.

From the practical perspective, the principle is applied by the tax assessment performed and guidance given as well as by giving advance rulings. In addition, it is worth to mention that the tax authority expects the large taxpayers enrolled to framework to act in *bona fide* as the approach is based on applying the basic principles of trust, transparency and mutual understanding. Should it become later on to be discovered that the taxpayer has neglected the basic principles by acting *mala fide*, it may lead into other procedures including exiting the Co-operative Compliance framework and in relations to single tax matter, sanctioning may become applicable. Author would also mention that the framework itself does not enhance the protection of trust. The protection of trust is achieved through single tax matters.

2.3. Administrative activities from the perspective of services provided by the tax authority and authority's obligation to provide guidance

Basis for administrative activities is that all the actions performed and methods applied have to be regulated by the law when the actor is governmental authority. Principles for good government are based on the general principles presented previously. The principles for good government should directly guide the activities of the public actor such as tax authority⁸⁸.

Finnish administrative act determines that authority has to treat the persons equally and use its power only by the accepted and according with the law. The activities performed by the authority have to be fair and *pro rata* with the goal to be achieved. Activities have to protect the legitimate expectations based the legal system⁸⁹. Errands and processing handling has to be arrange so, that the person receives the services accordingly and authority can perform its activities productively⁹⁰. Authority must, by the power given, provide guidance and reply to the questions and inquires related to processing the administrative matter⁹¹. In addition, it should be mentioned that the general ground for the good governance should be understood as minimum requirements⁹².

The central part of Finnish administrative law is the administration of the administrative matter. This generally is understood as such actions of an authority that lead into administrative decision.

⁸⁸ Hallintolaki 2§

⁸⁹ Hallintolaki 6§

⁹⁰ Hallintolaki 7§

⁹¹ Hallintolaki 8.1 §

⁹² Mäenpää, O. (2003). *Hallintolaki ja hyvän hallinnon takeet*. s.l.: Edita Publishing, p 29.

As this sort of activity is directed to rights, benefits and obligations of another party, it is possible to refer to parties that matters are administrated. The definition of an administrative matter has not been restricted in the administrative law and such need has not been seen relevant⁹³. Therefore it has been interpreted that there does not exist a specific need to discuss whether the administrative matter should be considered as a service to be executed by the authority or other kind of administrative activity, e.g. handling the exact administrative matter that leads into formal administrative decision⁹⁴.

The principle for authority to provide service is directly directed to the relationship between the parties which basis is the authorities' activities. This principle is applicable for all the administrative activities to be performed and all the services provided by an authority⁹⁵. The quality requirement is a part of the principle and it has been stated that authority should arrange its services taking into account flexibility and positivity of the services⁹⁶. In other words, also the needs of a recipient party should be taken into account by the authority.

Authority's obligation to provide guidance should be comprehended all activities that are subject to handle the administrative matter. In other words, the authority must provide guidance e.g. on how the administrative matter should be initiated and how the matter should be proceeded⁹⁷. Guidance means indicating the acts that the recipient should perform in the future and leading the recipient in a specific direction. However, whether or not to follow the guidance is up to the discretion of the recipient. The name given to guidance is not uniform; it is called guidance, advice, recommendation and instruction. Administrative guidance can be divided into advisory guidance and regulatory guidance. Advisory guidance means administrative guidance that is given for the personal benefit of the recipient. Regulatory guidance is administrative guidance which is given for the public benefit. General rule though is that regulatory guidance is a guidance based on official authority and advisory guidance is guidance based on request. Nevertheless the both variations are administrative guidance, there is a difference between. As stated previously, advisory guidance is given for personal benefit and therefore the decision whether to follow the guidance is a matter of the recipient. Regulatory guidance in other hand, is given to public benefit and the

⁹³ *Ibid.*, p 34-35.

⁹⁴ *Ibid.*, p 36.

⁹⁵ *Ibid.*, p 98.

⁹⁶ *Ibid.*, p 100.

⁹⁷ *Ibid.*, p 175.

recipient can not be allowed to dismiss it at his own will⁹⁸. Nevertheless, it should be stated that the guidance to be given can not exceed the limit where authority should be obligated to study the optimal choice or calculate the most financially beneficial or least restrictive option⁹⁹.

In Finland the Ministry of Finance controls the activities performed by Finnish Tax Administration. The rights and obligations towards Finnish Tax Administration are regulated by a special act. By the act, Finnish Tax Administration's activities are to levy taxation, perform tax control as well as to collect and account the taxes and fees. Finnish Tax Administration is also obligated to advance correct and uniform taxation and well as to develop Tax Administration's capabilities to provide service¹⁰⁰. The procedures and activities performed by the Finnish Tax Administration has developed in a way that there has been a transition from regional activities towards taxpayer-based activities. Such transition actually meet the challenges that have risen from the need of productivity, economy and effectivity. In practice, the taxpayer-based activities are realized in a way where the activities performed by the authority are allocated as a responsibility of a one organizational unit¹⁰¹.

OECD recommendation regarding Co-operative Compliance determines that applying the framework should not result in a different or more favorable outcome for the taxpayer and that the issues of equality before the law should not be raised as the payable tax for the large taxpayer should be the same as it would be based on an enquiry approach or more traditionally, the audit approach¹⁰². Nevertheless, it has been argued that tax authority may step out of its own line whilst negotiating an approach to a tax problem with private sector representative, in this case the large taxpayer. This would mean that there exists a possibility that the tax authority steps outside its statutory powers, adopt erroneous interpretation of the law or otherwise behave in manner contrary to the principles of reasoning¹⁰³. From the perspective of Finnish legislation, author would argue otherwise.

⁹⁸ Yamanouchi, K. (1974). Administrative Guidance and the Rule of Law. - *Law in Japan*. Vol 7, p 22-23.

⁹⁹ Mäenpää (2003), *supra nota* 92, p 176.

¹⁰⁰ Laki Verohallinnosta (11.6.2010/503) 2§

¹⁰¹ Hallituksen esitys Eduskunnalle laista Verohallinnosta sekä siihen liittyväksi lainsäädännöksi. HE 288/2009.

¹⁰² Co-operative Compliance: A Framework - From Enhanced Relationship to Co-operative Compliance, (2013) OECD Publishing, p 45-46.

¹⁰³ De Gogan, D. (2015). A Changing Role for the Administrative Law of Taxation. - *Social and Legal Studies*, Vol. 24, No. 2, p 259.

As previously mentioned, handling the administrative matter could be interpreted widely. Therefore administrative matter should be considered also a service provided by the authority. In this sense, the Co-operative Compliance framework should be considered an enhanced form of service that is provided to specific taxpayers that meet the recommendation given by the OECD. The framework itself should not lead into a situation where the parties are negotiating the outcome of a single tax matter. Handling the tax matters in real-time or pre-emptively is one of the components of the enhanced service. Nevertheless handling the tax matters rapidly due the co-operative way of working with the large taxpayer, the tax authority can not exceed its rights and obligations. Therefore, even when the approach aims for effectivity, that can not be granted if the cost of such action would lead into violating the rights and obligations.

2.4. The concept of a soft law and its relation to hard law

Defining the soft law's meaning and describing its content has been difficult throughout the times. On one hand, if taking the strict approach, soft law is not law at all as the traditional approach may not support it from the perspective of the nature of the law that requires that law is obligatory. On the other hand, anything that is considered law-like, can be described as a form of soft law e.g. written documents that are signed by the states and decisions of international tribunals. It is possible to define soft law as a nonbinding rule or instrument that interpret or inform the understanding of a binding legal rules or represent promises that in turn create expectations about future conduct. Legal texts may often be imprecise and ambiguous. Interpretations of these legally binding obligations can themselves be binding. At the same time interpretations can be nonbinding i.e. they have legal effect only because they shape the underlying binding rule¹⁰⁴. If adopting this perspective, the recommendations given by international organizations could be categorized as soft law.

In the other hand, it has been argued that soft law is not in itself defined and can not be defended in the context of international law. It has been studied that the norms and instruments of soft law can be broken into three groups. The first group will consist on non-binding decisions of international organizations. Such non-binding decision can be e.g. programs, declarations and guidelines. The second category will consist on non-binding agreements that can be either bilateral or multilateral. Such non-binding agreements may be e.g. declarations of intent and

¹⁰⁴ Guzman, Meyer (2010), *supra nota* 45, p 172.

recommendations that are adopted by international conferences. The third category consist recommendations given by non-governmental organizations¹⁰⁵.

As the concept of soft law has been a matter of a debate for quite some time, it might be reasonable to take a look why the debate altogether even exists. The answer may be that subjects of international legal relations are dissatisfied of the conservative orientation of the treaties and customs that are traditionally considered the sources of international law. The establishing process of e.g. treaties can be rather difficult and formalized. Also the fact that official sources are typically lacking a flexibility and operational adaptability that may not suit the changing circumstances and the pace of today's world. For government it may be more common to work with legally binding obligations which carry with them also restrictions on sovereignty and which can lead into formal sanctions when obligations are not fulfilled. Nevertheless, it could be stated that formal regulation may not be able to provide comprehensive coverage for the whole range of diverse international interactions that need to be regulated¹⁰⁶.

As the definition of the soft law can be debatable, it might be possible to divide the elements of the context of the soft law. Legal doctrine points to three core elements of soft law. First, the concept refers to "rule of conduct" or "commitments". Second element would be that these rules or commitments are laid down in instruments which do not have legally binding force. Third, rules of the soft law aim to some practical effect or impact on behavior. Therefore, even when the soft law lack a possibility for legal sanctions, it may produce legal effect. Nevertheless, even though there is possibilities to conceptually divide the soft law from hard law, in practice it is not that clear as there may be little difference between e.g. guidelines may take the form of a softer legislation¹⁰⁷.

From author's own perspective, OECD guidelines are a good example of a soft law that challenges the boundaries of the hard law. The OECD guidelines are most commonly a multilaterally agreed code of responsible business conduct that governments have committed to promote and the guidelines aim to promote the positive contributions towards e.g. economic progress. OECD

¹⁰⁵ Blutman, L. (2010). In the Trap of a Legal Metaphor: International Soft Law. - *International and Comparative Law Quarterly*, Vol. 59, No. 3, p 606-608.

¹⁰⁶ Demin, A.V. (2018). Soft Law Concept in Globalized World: Issues and Prospects. - *Pravo. Zhurnal Vysshey shkoly ekonomiki*, Vol. 4, p 52.

¹⁰⁷ Gribnau, H. (2008). Soft Law and Taxation: EU and International Aspects. - *Legisprudence*. Vol. 2, No. 2, p 95-96.

guidelines are a prime example of a code of conduct that includes some provisions that are mandatory and some provisions are voluntary¹⁰⁸.

When approaching the soft law and hard law from a perspective of strict interpretation, it could be stated that soft law is just addition to hard law - the actual legal norms. Based on strict interpretation it could be possible to come into a conclusion that soft law is not mandatory and applying is purely based on a decision of a single taxpayer. Taxpayer would have full right to decline to apply the soft law e.g. in a form of recommendation given by international organization, where in this research it would mean that large taxpayer may not be willing to apply the OECD recommendation of the Co-operative Compliance framework. When again turning the tables around and applying the wide interpretation, it could be stated that the line between legal norms and soft law is becoming very fine. This would mean that the single taxpayer might feel an obligation to meet the some-level standards given in a form recommendation. The obligation itself could be arisen through several perspectives yet they might have one common feature - the climate. By this author refers that the taxpayer may feel a need to apply the recommendation because of request of the board. There may also be somewhat social or political pressure to apply the recommendation. In the case of the large taxpayers, such taxpayers are usually in a loop of a public interest i.e. while establishing a status of a large taxpayer, the society may expect greater goods, also in a form of a transparency and especially from the perspective of this research, the tax transparency¹⁰⁹. As studying the wider interpretation would require also research of the tax behavior and its analysis, author will not elaborate on a matter. Instead the aim for the previous comparison was to set out a point and somewhat come into a conclusion that the line between written legal norm and recommendation given by a international organization, such as OECD, can be very fine which may set under a loop the actual power of the written legal norm which, of course, varies nationally while the recommendation given by OECD does not directly consider the national laws nor legal families behind the national laws.

¹⁰⁸ Van Der Zee, Eva, (2013), Incorporating the OECD Guidelines in International Investment Agreements: Turning a Soft Law Obligation into Hard Law. - *Legal Issues of Economy*, Vol. 33.

¹⁰⁹ By tax transparency the author refers to the fact that large taxpayers and multinational enterprises may expose information of their tax liability globally and/or nationally country by county. Variations may apply so therefore there may exist wide range of reporting standards. In the most common form this may be presented in large taxpayer's annual reports or as a separate report that exposes the tax footprint i.e. how much taxes have been carried out. In Finland the tax information is generally subject to secrecy and regulated by the act of public disclosure and confidentiality of tax information. Nevertheless the information is subject to secrecy, author has experienced during last few years that large taxpayers have, at the so-called national tax day (annually on the 1st of November), publicly stated how much taxes they have carried out for the society by imposing the information for example in social media. From the perspective of tax behavior, author finds this kind of behavior rather interesting while at the same time this sort of behavior emphasizes the focus of the tax climate in current decade which is transparency.

2.5. Conclusions on the legislative perspective of the Co-operative Compliance framework

Author has previously categorized the tax control methods into the traditional and new tax control methods. The traditional tax control methods such as tax assessment, re-assessment and tax audit have been directly regulated by the tax legislation. This means that by specific regulations the taxpayer has an obligation to file the necessary information of its taxation and business activities to tax authority and the tax authority has an obligation to assess the taxation of the taxpayer. In addition, both parties have a right to re-assess the taxation within specific time limit stated by the act of tax assessment.

From the perspective of the taxpayer, the taxpayer must apply for the re-assessment within three year period after the original assessment was performed. The tax authority has a right to re-assess the taxpayer taxation without specific application and by its own initiative that must of course meet the requirements set for such action. Also when the re-assessment takes place by tax authority's initiative, the re-assessment must be made within the time limit mentioned earlier. New tax control method of Co-operative Compliance framework is not regulated in Finnish legislation. At this point it would be beneficial to look into the different process stages as well as approaches within the framework.

Compliance scan as a process itself has not been determined by the tax assessment regulation nor other regulation directly regulating the taxation. In addition, the level of formalization of the process is also something that continues to develop. In other words, there is a specific framework developed for the compliance scan process yet as there framework is still under the development process in a way, it may lack a strictness of a developed framework and does leave room for interpretation.

The compliance scan seeks into reviewing the large taxpayer's internal processes from the perspective of taxation. Therefore the closest relation and comparison for compliance scan process can be made by comparing the compliance scan process with internal audit process. It should be mentioned that internal audit is not compulsory for the businesses compared e.g. to external control. Nevertheless, internal audit does follow the framework developed by the COSO. Should that be enough to full comparison to be stated? Author finds that it would be possible to argue that COSO given recommendation would be equal to OECD given recommendation. They both fall

into category of recommendations given by the international organization and therefore could be considered soft law.

From author's own perspective the questionable part of this would be that the compliance scan process is not standardized process internationally. As mentioned during this research, there are multiple ways to preform Co-operative Compliance framework and the compliance scan process that has been elaborated in this research only applies in Finland as it has been developed and implemented by the Finnish Tax Administration. Nevertheless, Finnish Tax Administration does have a right by the law determining the activities of a tax authority to seek into new ways and methods to improve its services towards to the taxpayer. In other hand, seeking new ways and methods to enhance the taxpayer-services may not automatically determine that the methods found are obligatory for either party to apply. Therefore, such new ways and methods are not directly regulated by the law.

Compliance scan process ends with Finnish Tax Administration and large taxpayer signing the memorandum of mutual understanding. As mentioned earlier in section 1.4.2., memorandum of understanding should not be considered legally binding contract or any other kind of legally binding form of a document. The signing of a memorandum of understanding is not exactly a process stage developed solely by the Finnish Tax Administration. Instead it follows the Dutch version of the framework as the Dutch version of the framework was the basis for the practical development of the Finnish model of the framework. Author is under assumption that the OECD recommendation itself does not include signing the memorandum of understanding or any other kind on letter of intent. Instead it is a phase of a process developed by different jurisdictions to set out the aims and rules in a written form.

It goes without saying that signing the memorandum of understanding has not been legally formalized in Finnish law. Therefore, while studying this from the legislative perspective, applying the rules set out in memorandum of understating is solely upon to the will of the parties. Should there exists any kind of neglecting regarding what has been agreed on from the perspective of the co-operation and framework itself, either side of the parties can not be held against for violating the rules agreed on and therefore also the sanctioning is not applicable. As a clarification, sanctioning by the Finnish law is applicable when there is a question of a tax matter that has faced a neglecting, not the framework itself.

Guidance given within the Co-operative Compliance framework is based on either the general guidance-giving obligation determined by the Finnish administrative law or by the regulation that determines the procedure of advance ruling. Advance ruling is applicable form of guidance in a situation where the tax matter in question is interpretative from the perspective of tax law as well as legal praxis and the same tax matter is not in a process of on-going tax assessment. This is a formalized process to be handled in written form that requires the taxpayer to file an application and include all the necessary details about the tax matter and define the tax matter into a specific question or multiple questions. Tax authority can decline the application and therefore a guarantee of whether the tax matter can be handled by advance ruling process is not given. Nevertheless, the tax authority does have an obligation to guide the taxpayer as the interpretation of the so called guidance paragraph¹¹⁰ should be understood widely. In other words, the general guidance can consist the regular guidance the taxpayer is able to receive by visiting the tax office, by phone and in some cases, also by pre-emptive discussion. Author finds that legal praxis and the interpretation of the mentioned paragraph is rather clear when referring the tax office visit and guidance given by the service lines for guidance by the tax authority. Instead, the newer method of guidance i.e. pre-emptive discussion, which is a somewhat lighter version of the advance ruling, may be interpretable. By this the author does not refer whether the guidance-paragraph would not be applicable as during this research is became clear that the Finnish administrative law regulation regarding guidance and handling the administrative matter should be understood widely from the perspective of the law. Instead the author refers to the fact that the advice and guidance given as an outcome of the pre-emptive discussion is not an appealable formal tax decision¹¹¹. Instead the outcome of the pre-emptive discussion is an interpretation given by the tax authority. The interpretation is given in a written form of memorandum and it does provide the taxpayer the legal certainty and predictability. Nevertheless, when the tax matter handled by the pre-emptive discussion leads into a formal tax decision, that decision is appealable. Also, as the pre-emptive discussion should be considered rather new method to provide guidance, it lacks legal praxis from the perspective of process law when e.g. there does exists legal praxis from the procedural perspective on a guidance given by the service line for guidance by the tax authority.

¹¹⁰ By this author refers to the Finnish administrative law 8.1§ but as well to 7§, which regulates the principles for good governance to be applied by all the authorities having a mandate to act on behalf of the government and use public power.

¹¹¹ As a clarification, author would like to elaborate that formal tax decision can e.g. be the annual tax decision or the advance ruling given.

Whether referring to the traditional or newer tax control methods, from the perspective of the taxpayer, there may not be significance in a certain method itself as the significance lies on whether the taxpayer is able to apply the principles of taxation and does the method provide legal certainty and predictability. Taxpayer should be able to trust the guidance and advice given by the representative of the government i.e. by the Finnish tax authority. Protection of legitimate expectations i.e. the protection of trust, enables the taxpayer to act based on guidance and advice received and should the tax authority later on for some specific reason find that the guidance given was not correct and should not be applied, the taxpayer is protected while acted based on the detailed information given to the tax authority and the guidance given by the tax authority.

While referring to the second research question, i.e. are tax control methods applied by an authority clearly regulated in the legislation, it can be concluded that the traditional tax control methods have been regulated by the legislation as there exists a regulation for tax assessment procedure, applying for an advance ruling as well as for tax audit. The newer methods are not regulated or have been regulated in a way that can be interpreted as an indirect way of regulation. By the indirectness author refers to the guidance which is regulated by Finnish administrative law and by a specific paragraph as well as by good governance regulation, but the legal basis mentioned may leave room for interpretation while the guidance is given in a form of pre-emptive discussion. Nevertheless, while reviewing the possible elements within the Co-operative Compliance framework i.e. starting from general guidance into more heavier methods of tax control such as tax audit, most of the tax control methods are regulated by the tax law. Hence, the compliance scan as a process is not. Even though stating the previous, author finds that the lack of exact regulation for compliance scan should not affect the framework as applying the framework altogether is based on voluntary co-operation agreed upon the large taxpayer and Finnish tax authority.

From the perspective of general principles in the tax law, this research focused on the rule-of-law, legal certainty and predictability. Other principles such as equality and neutrality as well as protection of the legitimate expectations were in a supporting role of this research.

While analyzing the new tax control methods and their applicability, author finds that the Co-operative Compliance framework does not affect the requirement for equal and neutral treatment of the taxpayers. It should be considered as a fact that in Finland the framework is applied only for large taxpayers. This may, and actually has, risen a questions whether the framework violates the requirement for equal and neutral treatment.

The requirement for equal treatment is a requirement towards the tax authority to treat all the persons that are liable to pay taxes in Finland to be treated equally in front of the law. Neutrality requires the tax authority to act in a fair way towards all the persons liable to pay taxes. For tax authority it is crucial to apply the principles whilst handling the administrative matter i.e. tax matter of a specific taxpayer. The principles should be therefore interpreted in a way that the procedures applied by the tax authority are transparent, clear and regulated by the law. From the perspective of a single tax matter, the interpretation made by the tax authority must be in accordance with the law and applied to also in a case where another taxpayer's tax matter with equally comparative facts would be assessed accordingly. In other words, two taxpayers who have a same tax matter in question should be assessed in that specific tax matter equally.

It is possible to argue that Co-operative Compliance framework should be applicable approach to all the taxpayers as several jurisdictions have chosen to widen the interpretation of the framework itself also to high net worth individuals and small and medium sized companies. Nevertheless, author would like to point out that originally the framework has been established especially for large taxpayers as their need for tax authority's services could be considered to be more demanding and the OECD recommendation clearly states the approach to be applied towards the large taxpayers. As an interpretation and from the perspective of this research, author finds that applying the Co-operative Compliance framework only to the large taxpayer's in Finland does not violate the principles mentioned and applying the framework only to the large taxpayers should be understood as customer-based approach by Finnish Tax Administration's Large Taxpayers' Office.

The protection of legitimate expectation is a protection of trust towards single taxpayer and its tax matter. In other words, tax authority binds itself by the advice, guidance or advance ruling given to a specific tax matter. From the perspective of Co-operative Compliance framework, author finds that applying the protection of trust is not affected by the framework itself as the protection of trust is directly targeted towards the taxpayer's tax matter. Author finds that interpretation presented is also supported by the conclusion made and described while analyzing the principles of equal and neutral treatment of a taxpayer.

The protection of trust is directly affected by the tax matter itself and by the rule-of-law, should there be a room for interpretation of the tax matter, the interpretation of the tax matter itself can not put one taxpayer to a more beneficial situation than the another taxpayer. Of course it should

be expected that the law itself is considered to be clear and precise, but the tax practice that is affected by the legal praxis developed by the appeal process and finalized by a court decision may conclude into interpretations for the legal provisions determined in the tax legislation.

While analyzing the legal certainty and predictability, author has already referred to the importance of these principles multiple times during this research. The mentioned principles are ensured by the rule-of-law and are expected by the taxpayer that the principles are followed by the tax authority. The rule-of-law must be strictly observed and all the activities the tax authority performs, must be in accordance with the law. From the perspective of the Co-operative Compliance framework, author finds that the framework itself does not violate the rule-of-law. Nevertheless the framework has not been directly regulated by the Finnish tax legislation, the framework is applied on voluntary co-operation i.e. none of the large taxpayers enrolled to the framework under obligation or by a formal request by the Finnish Tax Administration's Large Taxpayers' Office. When the Co-operative Compliance framework is applied, the tax matters to be handled under the framework meet the same procedures as the taxpayers that have not enrolled to the framework. The tax matters that are being handled and assessed receive the same protection of trust as the tax matters handled and assessed for the taxpayers that are not enrolled. Interpretation of the tax law follows the same procedures determined by the tax assessment acts whether the taxpayers in involved in the framework or not. Tax authority does not limit its rights and obligations to perform tax control when practicing the approach of a Co-operative Compliance.

While referring the third and final research question, i.e. does the current regulation and situation leave room for such interpretation that may affect the legal certainty and predictability from the perspective of a taxpayer that justifies the need to regulate the Co-operative Compliance framework by law, it can be concluded that the Co-operative Compliance framework itself does not leave room for additional interpretation for applying the mentioned principles of taxation. Author has come to this conclusion after analyzing the principles in the tax law and finds that when handling the tax matters and assessing the taxation of a taxpayer as well as while Finnish Tax Administration's Large Taxpayers' Office is not excluding one tax control method on behalf of another tax control method, the rule-of-law shall not be violated by applying the Co-operative Compliance framework in general.

CONCLUSION

The aim for the research was to study the rule-of-law from the perspective of Co-operative Compliance framework that could be categorized as a soft law based recommendation given by the OECD to enhance the tax compliance of a large taxpayer as well as improve the relationship and dialogue between the large taxpayer and tax authority.

The research included studying the most significant legal principles as well as Finnish legislation. In addition, the Co-operative Compliance framework was both studied from the perspective of the recommendation given and from the perspective of the Finnish version of the framework implemented and modified to suit the Finnish legislation as well as business environment. The principles and actual legislation should be considered as hard law and binding towards the ones applying the law. The recommendation given by the OECD should be understood as soft law which is not binding regulation and instead an optional version open to interpretations in some level.

For to be able to perform the research, a hypothesis was set. Hypothesis stated that when the tax administration practices optional tax control method that is based on voluntary co-operation, such method has to be directly regulated by the law. To be able to test the hypothesis, three research questions were determined and answered during the research.

The first question sought to answer what kind of practice has been established as optional tax control methods by Finnish tax authority. Author found that nevertheless the Co-operative Compliance should be considered as an umbrella covering multiple both traditional and newer tax control methods, the framework can be considered as an established optional tax control method as a whole. The outcome of the this research question was supported by the fact that the compliance scan process can directly be interpreted as a new tax control method within the framework.

The second research question sought to answer whether the tax control methods applied by an authority are regulated clearly in the legislation. Author found that traditional tax control methods are regulated within the tax legislation. Finnish tax legislation does determine the tax assessment

procedure, the advance ruling procedure as well as tax audit. Instead from the perspective of preemptive discussion author found that it may not be directly regulated by the Finnish administrative law but the wide interpretation of the so called guidance-giving paragraph may include this method as well. Author found that the compliance scan as a tax control method is not regulated by the law. While evaluating the framework as a whole, author found that the previously mentioned fact should not affect applying the approach as participation in the Co-operative compliance is voluntary for the large taxpayer. Nevertheless, this does not exclude the fact that the lack of regulation does exist when applying the strict approach of legal interpretation.

The third question sought to answer whether the current regulation and situation leave room for such interpretation that could affect the legal principles of legal certainty and predictability from the perspective of the taxpayer that justifies the need to regulate the Co-operative Compliance framework by law. Author found that the Co-operative Compliance framework itself does not leave room for such interpretations that would violate the legal principles in tax law.

The main result, and as a conclusion made based on the research performed, is that after studying the research questions presented, author is able to abolish the hypothesis set for this research. In other words, author finds that it is not necessary to regulate the Co-operative Compliance framework in the Finnish tax legislation. The framework is a recommended approach for large taxpayers and should be considered as a soft law also from the perspective of the Finnish framework. Author was not able to find specific reasons that would support the need for defining the framework in legislative basis. Finnish Tax Administration has a right by the act governing its activities to seek new methods to enhance its services towards taxpayers. Interpretation of that specific regulation also supported the fact that applied and procedural activities are regulated in the tax legislation and followed accordingly.

By the conclusion of this research, author does support the idea that Co-operative Compliance framework should be voluntary, both to the tax authorities to implement and apply and large taxpayers to participate. Nevertheless, author supports the finding that the activities performed within the framework would be researched more widely. Author especially suggests that the process of compliance scan would need a further research as the approach has similarities to internal audit process which is not obligatory for the businesses and is based on a recommendation of another international organization.

KOKKUVÕTE

CO-OPERATIVE COMPLIANCE TULENEVALT ÕIGUSRIIGI PÕHIMÕTETEST

Kirsti Piiskoppel

Käesoleva magistritöö uurimisprobleemiks oli uurida Soome maksuameti poolt maksukohustuslastele rakendatava Co-operative Compliance nimelise meetodi kui raamistiku õiguslikku alust õigusriigi põhimõtete vaatenurgast. Autor uuris erinevaid elemente raamistikus, mis sisaldas nii traditsionaalseid kui ka uuemad meetmeid, mida maksuhaldur täna rakendab.

Co-operative Compliance kui raamistiku näol on tegemist maksuhalduri ja maksukohustuslase vaba tahte alusel rakendatava koostöövormiga. Nimetatud koostöövorm sisaldab mh. maksukohustuslase eelnõustamist (pre-emptive discussion) ja compliance scan nimelist maksukohustuslase protsesside kontrollimist. Lisaks eeltoodule rakenduvad selles protsessis tavapärased maksuõiguslikud toimingud ehk maksuhaldur määrab maksu määra ning omab õigust sooritada erinevaid tagaisulatuvaid kontrole maksukohustuslase osas. Autor tõlgendas uurimustöö käigus analüüsitud meetmeid laiaulatuslikult ning nimetas kõiki uurimustöös käsitletud meetmeid maksukontrollimeetmeteks.

Uurimustöö eesmärgiks oli selgitada välja, kas OECD soovitudele põhinev meetod peaks Soome Vabariigi õiguse põhimõtete tagamiseks olema õiguskorras eraldi reguleeritud. OECD soovitudele põhinev meetod on suunatud äriühingutele, keda nimetatakse suurteks maksumaksjateks (multinational enterprises, large taxpayers).

Uurimustöö puhul oli tegemist õigusdogmaatilise uurimisega ja uurimist teostati põhinedes andmete kogumisele ning kogutud andmete ajaloolisele analüüsile. Valitud meetod eeldas töötlemist õiguskorraga ning õiguskorrale põhinevale tõlgendustele ehk õiguskirjandusele ning akadeemilistele artiklitele. Tegemist oli kvalitatiivsete materjalidega, mis põhinesid õigusprintsipiidele, maksuhalduri tegevusele õiguste ja kohustuste vaatenurgast ning Co-operative Compliance framework-ile. Osaliselt põhines sooritatud uurimustöö autori enda teadmiste, mis tulenevad valdkondlikust töökogemusest.

Uurimustöö käigus esitati hüpotees, mille kohaselt autor väitis, et juhul, kui maksuhaldur rakendab alternatiivset vabal tahtel põhinevat maksukontrollimeetmet, tuleb see meede otseselt seadusega reguleerida. Hüpooteesi testimiseks seadis autor kolm uurimisküsimust.

Esimese uurimisküsimuse eesmärgiks oli leida milliseid alternatiivseid kontrollimeetmeid Soome maksuamet on loonud. Autor leidis, et Co-operative Compliance-t tuleks vaadelda kui raamistikku, mis sisaldab mitmeid erinevaid maksuhalduri poolt sooritatud tegevusi. Uueks kontrollimeetmeks nimetas autor siiski compliance scan nimelist protsessi, mille eesmärgiks on välja selgitada maksukohustuslase sisesed protsessid, millel on otsene või väline suhe maksustamisega ning maksuhaldurile edastatava informatsiooniga.

Teise uurimisküsimuse eesmärgiks oli välja selgitada, kas maksuhalduri rakendatavad kontrollimeetmed on selgelt reguleeritud õiguskorras. Autor leidis, et tavapärased meetmed, milleks on näiteks maksukohustuslase nõustamine, maksustamine (maksu määramine) ning maksuauditi sooritamine, on reguleeritud õiguskorras. Uuemate meetodite osas leidis autor, et olemasoleva õiguskorra kitsa tõlgenduse korral pole compliance scan protsess ning maksukohustuslase eelnõustamine otseselt õigusaktidega reguleeritud.

Kolmas uurimisküsimuse otsis vastust küsimusele, kas kehtiv õiguskord ja praktika jätab ruumi sellisele seaduse tõlgendamisele, mis rikub omakorda õiguskindluse ja prognoositavuse põhimõtteid maksukohustuslase perspektiivist ning mis eeldaks raamistiku reguleerimist seadusega. Siinkohal leidis autor, et Co-operative Compliance kui raamistik iseenesest nimetatud põhimõtteid ei riku. Lisaks leidis autor, et uurimustöö käigus ei selgunud selliseid asjaolusid, mis toetaksid vajadust raamistikku seadusega reguleerida. Co-operative Compliance raamistiku puhul on tegemist rahvusvahelise organisatsiooni soovitusena pakkuda suurtele maksumaksjatele tavapärasest erinevat teenust, mille aluseks on osapoolte ühine arusaam koostöö sisust, reeglitest ning mis põhineb osapoolte vahelisel usaldusel.

Uurimistöö tulemusena selgus, et seatud hüpotees ei leidnud kinnitust. Autor leidis, et Co-operative Compliance raamistikku ei ole vajalik reguleerida Soome Vabariigi õiguskorras olenemata faktist. Tegemist on soovitusliku ja vabal tahtel põhineva koostöövormiga ning kehtiva haldusõiguse raamistikus on maksuhalduril õigus rakendada erinevaid meetmeid ka teenuse pakkumise osas.

Uurimustöö tulemusena tegi autor järelduse, et uuemate kontrollmeetmete osas võib olla vajalik nende õiguslike aluste täpsem uurimine, sh. ennekõike compliance scan-protsessi osas.

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