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Legal Tax Culture from an Institutional Perspective: A Starting Point for Comparative Research regarding Sweden and China

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Abstract

In comparative research, legal culture is often used as an explaining factor for identified similarities and differences. Hence, it is important that we seek to understand the legal culture of foreign countries. At a macro level, previous comparative studies have focused on legal families, traditions and patterns. The starting point in this article is the Western and Far Eastern legal culture, proceeding to the legal tax culture of Sweden and China in regard of their institutional structure (legislative-, executive- and judiciary branches). In Sweden, the legal tax culture is dominated by legality and the separation of functions, as well as the separation of law, morality and politics. In China, law, morality and politics are strongly connected. These different views are reflected in legislative and executive processes as well as in the means used to resolute conflicts.

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1 Introduction – Setting the Scene

1.1 Purpose and Choice of Jurisdictions

Culture appears fundamental – a kind of lens through which all aspects of law must be perceived, or a gateway of understanding through which every comparatist must pass to have any genuine access to the meaning of foreign law.¹

From a comparative perspective, the Kingdom of Sweden (Sweden) and the People’s Republic of China (PRC, China) belong to different legal families,² with different traditions³ and different patterns.⁴ Yet, the two countries do share a history dating back to the eighteenth century. Today, China is the world’s leading economy and an important trading and business partner of Sweden.⁵ Many Swedish companies are investing in the Chinese market, resulting in a significant number of employees being posted to China.

The legal cultures of these two ‘radically’⁶ different countries need to be understood in order to be able to apply the relevant laws, correctly identify problems and suggest improvements in this cross-border trade and business. Their different understandings of the fundamental concept ‘rule of law’ have been analysed in earlier

¹ R. Cotterrell, ‘Comparative Law and Legal Culture’ in: Reimann & Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (online publication 2019), Abstract.

² René David would have categorized them as belonging to the civil law family and the socialist law family, respectively. Zweigert and Kötz would have categorized them as belonging to the Nordic legal family and the family of the Far East. See K. Zweigert & H. Kötz, *An Introduction to Comparative Law* (Oxford, 1998).

³ H.P. Glenn, *Legal Traditions of the World* (Oxford University Press, 2014) on the civil law tradition and the Confucian legal tradition.

⁴ U. Mattei, ‘Three Patterns of Law: Taxonomy and Change in the World’s Legal Systems’, (1997) 45 *American Journal of Comparative Law*, 16–44.

⁵ The allocation of global influence is changing and the rise of China has to be considered according to M.A. Livingston, *Tax and Culture: Convergence, Divergence, and the Future of Tax Law* (Cambridge, 2020) 10.

⁶ U. Mattei (n 4) 7. On ‘radically’ different legal systems and the concept of understanding, see S. Seppänen, ‘After Difference: A Meta-Comparative Study of Chinese Encounters with Foreign Comparative Law’, *The American Journal of Comparative Law*, Vol. 68, Issue 1, 186-221.

contributions.⁷ The purpose of this article is to create a better understanding of the legal tax culture in Sweden and China, taking the institutional structures into account. It lays a foundation on which further comparative studies can be based.⁸

It is commonly held that law as such is part of culture.⁹ Conversely, culture is part of law, especially if by law one means not only black letter law but also legal discourse (how law is practised and how lawyers talk and think about the law).¹⁰ ‘Legal culture’ means various things to various scholars.¹¹ However, the term often refers to factors that lie outside the formal legal system (the surface layer) but are still closely connected to and influencing the legal system, such as concepts and legal methods and other ‘silent knowledge’ or ways of thinking about the law (mentalité).¹² According to Tuori, on the one hand, there is also a third subsurface layer in addition to the surface layer and legal culture. This subsurface layer includes different legal principles and theories such as the rule of law and democracy.¹³ Modéer, on the other hand, includes the subsurface layer and the important legal principles in legal cul-

⁷ See K. Cejje, ‘Rule of Law: A Fundamental Concept Without a Coherent Meaning – Analysis of the Swedish and Chinese Understandings’, *EJCL* 9 (2022) 287-320; K. Cejje, ‘Understanding Sweden and China from a legal historical, political and economic perspective – a brief overview’, Uppsala Faculty of Law, WP 2021:4.

⁸ On comparative tax scholarship and its purpose, see K. Brooks, ‘A Hitchhiker’s Guide To Comparative Tax Scholarship’, *Florida Tax Review*, Vol. 24, No. 1, 2020. This contribution would fall into Brooks first taxonomy, doctrinal comparative (tax) scholarship.

⁹ L. Rosen, *Law as Culture – An Invitation* (Princeton University Press, 2008) 6.

¹⁰ M. van Hoecke & M. Warrington, ‘Legal cultures, legal paradigms and legal doctrine: towards a new model for comparative law’ (1999) 47 *Int’l & Comp. L.Q.* 495 at 502; K. Cejje, *Inkomstskatter och socialavgifter – två metoder att beskatta löneinkomster* (Norstedts Juridik, 2020) 36-38, EM. Svensson, ‘De lege interpretata – om behovet av metodologisk reflektion’, *Juridisk Publikation Jubileumsnummer* (2014) 211–226.

¹¹ R. Cotterrell, (n 1) 710-730. For an overview of previous research, see M.A. Livingston, (n 5) 5-7, S. Hua, *Chinese legal culture and constitutional order* (Routledge, 2019) 8-13.

¹² S. Koch, ‘The Outset – How to Learn Sailing the Ocean of Legal Cultures’, in: S. Koch & J. Öyrehagen Sunde (eds.) *Comparative Legal Cultures* (Fagbokforlaget, 2020) 17. Put differently, law in books, law in action and law in minds; see for example R. Cotterrell with reference to William Ewald (n 11) 721.

¹³ K. Tuori, *Ratio and Voluntas – The Tension between Reason and Will in Law* (Routledge, 2016) 23; S. Koch, ‘Managing the Unmanageable – An Essay Concerning Legal Culture as an Analytical Tool’ in: S. Koch & J. Öyrehagen Sunde (eds.) (n12) 29, describes this as different levels of the sea. J. Bell, ‘Legal Research and the Distinctiveness of Comparative Law’ in: M. van Hoecke (ed.), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford, Hart Publishing 2011) 169 in regard to the importance to understand the society and not only the legal system.

ture.¹⁴ For the purpose of this article, there is no need to get involved in this argument. All that is needed is to establish that legal culture is wider than the formal legal system, and that it is important to understand legal culture if one wants to understand and apply the laws of a country. In addition to the underlying legal thinking (or legal philosophy) and legal methods, some scholars also include the legal setting (e.g. legislatures and judicial organizations) in legal culture.¹⁵ Legal culture in a wide sense may also include the societal culture to which it belongs, such as the legal history and the political and economic system of a country (sometimes referred to as external legal culture factors¹⁶). These external aspects of societal culture have been dealt with in previous research and fall outside the scope of this article.¹⁷

In this article and a forthcoming article, two main parts of legal culture will be discussed, mainly inspired by Koch & Öyrehagen Sunde: the institutional part and the intellectual part.¹⁸ This first article considers the system within which black letter law is made, applied (the legislative, executive, and judiciary context) and taught, i.e. *the institutional structure*. The second article covers other aspects of law, such as important legal principles, underlying schools of thought, attitudes, and general consciousness or experience, referred to as *the intellectual structure*. Although legal culture tends to be stable, it does change, albeit slowly.¹⁹

¹⁴ See for example K.Å. Modéer, 'Optimala rättskulturer? Om modernitet och kontinuitet i nationella och globala rättsliga kulturer', *JT* 1999/2000, 84–85.

¹⁵ See S. Hua (n 11) 8 with references.

¹⁶ J. Öyrehagen Sunde, 'Managing the Unmanageable – An Essay Concerning Legal Culture as an Analytical Tool', in: S. Koch & J. Öyrehagen Sunde (eds.) (n 12) 38.

¹⁷ K. Cejic (n 7, 2021).

¹⁸ Livingston and Koch & Öyrehagen Sunde discuss these two parts as attitudes/intellectual structure and institutions/institutional structures. The Swedish scholar Frändberg discusses similar issues and explains the legal order as standing on two legs. M.A Livingston (n 5); S. Koch (n 12) 38 and Å. Frändberg, *Rättsordningens idé – en antologi i allmän rättslära* (Iustus 2005). The biggest difference in comparison to Livingston is found in the scope of the attitudes. Livingstone uses an anthropological approach and focus on behavior (tax compliance) and attitudes towards taxation. The Chinese scholar Fan Zhongxin calls these the material and mental aspects of legal culture, see F. Zhongxin, 'Major Concerns and Wisdom of the Chinese Legal Culture' (2013) 1 *China Legal Sci* 4.

¹⁹ M. van Hoecke & M. Warrington (n 10) 514, present this as six points covering the hard core of shared understanding (paradigm); J. Husa, *A New Introduction to Comparative Law* (Bloomsbury, 2015) 229; S. Koch (n 12) 29.

Legal tax culture is understood as ‘consisting of the beliefs and practices that are shared by tax practitioners and policymakers in a given society that provide the background or context in which tax decisions are made.’²⁰ In this paper, Western and Far Eastern legal culture are introduced at a macrolevel (section 1.4) before turning to legal tax culture of Sweden and China.²¹ Finally, Western and Far Eastern legal culture are briefly compared in terms of the specific cultures of Sweden and China, focusing on legal tax culture.

1.2 Methodology, Perspectives and Delimitations

This article adopts a dogmatic approach including some comparative elements in that aspects of comparison are highlighted when possible. The goal is to search for and try to understand, the legal tax culture as it presents itself in the two countries by systematizing prior research and applying it to a new context.

While it can be difficult to understand foreign cultures, the task is not impossible, according to the opinion of this author, as long as one is transparent and aware of the possible depth of the study carried out.²² It is also helpful to approach the task with a genuinely open mindset and a *curiosity* about the *other*. Thus, the author does not claim to present *the* correct understanding of the legal tax culture of China, but rather to show how it is perceived and understood from the perspective of a European scholar.²³

²⁰ M. Livingston, ‘From Mumbai to Shanghai, with a Side Trip to Washington: China, India, and the Future of Progressive Taxation in an Asian-Led World’, *Theoretical Inquiries in Law* 11(2) (2010) 547.

²¹ In previous research, macro-comparisons have been conducted with emphasis on families (e.g., Zweigert & Kötz), traditions (e.g., Glenn), patterns (e.g., Mattei) and cultures (e.g., Husa).

²² Admittedly, the author strongly relates to the sheer exhaustion mentioned by Livingston in this regard (n 20) 546.

²³ The question of whether a European scholar can conduct comparative studies with the Far East has been discussed in previous research. See M. van Hoecke & M. Warrington (n 10) 508; Michael Bogdan, *Komparativ Rättskunskap* (Norstedts Juridik, 2003) 60; J. Husa (n 19) 162; T. Ruskola, ‘Legal Orientalism’, *Michigan Law Review*, Oct., 2002, Vol. 101, No 1, 179-234 at 184. See also A.Y.H Chen, ‘China’s Long March towards Rule of Law or China’s Turn against Law?’, *The Chinese Journal of Comparative Law*, 2016,4,1-35, at 3 f.

A major problem in this reconstruction is the immense speed at which China has developed in recent decades. Accordingly, this author has systematically noted the date of publication of research materials, all of which were published prior to December 2022. Due to language barriers, only sources published in English and Swedish have been used. The reader is asked to keep these perspectives and limitations in mind when reading this contribution.

1.3 Outline

As mentioned above, this article can be read in conjunction with the forthcoming article on intellectual structure; however, it also stands on its own. The outline of the section on institutional structure follows the classic division into legislative, executive, and judiciary powers. In addition, a note on legal education (legal professionalization) is included since it will contribute to a better understanding of the conflict resolution mechanisms discussed.

The final section of the article contains a few comments regarding the legal tax cultures of Sweden and China in comparison to the Western and Far Eastern legal cultures described in next section.

1.4 A Note on Western and Far Eastern Legal Culture

Western legal culture is characterized by *individualism* and *rationalism*. Simply put, individualism means that great importance is attached to the autonomy and liberty of the individual. The person is at the centre, and so are the concepts of rights and social equality. Rationalism refers to a belief that reason is the main source of knowledge and the justification for actions. In this culture, law is seen as the rationalization of social relationships and the means to organize society.²⁴ Legalism, means that decision-making based on law is a core value and that morality, law and politics are separate.²⁵

²⁴ M. van Hoecke & M. Warrington (n 10) 503-505 and 515. In relation to European legal culture, Cotterrell calls this personalism and intellectualism (n 11) 714; H.P. Glenn (n 3) 144-155.

²⁵ R. Cotterrell (n 11) 714. See also Mattei's patterns below and (n 4).

In addition, the law is the most important vehicle for resolving disputes.²⁶

The main *legal sources* are legislation, case law and legal doctrine. The importance of the legal sources, however, differs between the jurisdictions of, say, common law and civil law. Another difference between the two main systems within Western legal culture is held to be that common law seeks to solve legal problems whereas civil law seeks to build learned conceptual systems.²⁷

Many Western legal systems would fall into the pattern, which Mattei calls the rule of professional law. The core features of these systems are the *separation of law and politics* and the *separation of law and religion* (secularization). The separation of law and politics means that politicians are not allowed to influence court proceedings; that is, court decisions are based on law, not on politics. Furthermore, the rulers as well as the ruled are subject to the law (equality and non-discrimination). In contrast, Mattei presents two other patterns of law: political law and traditional law.²⁸

In contrast to Western individualism, the Far East values a collectivistic approach that subordinates the individual to the community.²⁹ This collectivistic approach can be traced back to Confucian theory, which does not give the individual any rights but only duties or obligations. The fulfilment of personal life is the fulfilment of one's role. The Confucian *li* is flexible and is interpreted in ways that will achieve harmony in society. For example, it is more important to reinforce the norms mutually than to engage in dispute about their content.³⁰ The prevention of losing face (such as failing

²⁶ U. Mattei (n 4) 25 with reference to Schleisinger.

²⁷ For similarities and differences between common law and civil law, see J. Husa (n 19) 211-215.

²⁸ U. Mattei (n 4) 23-27.

²⁹ M. van Hoecke & M. Warrington (n 10) 505-507. One should notice that similar to 'West', 'East' has different legal systems, for an overview of different socialist legal systems see for example W.E. Butler, 'Comparative law and socialist legal systems: Dilemmas of classification', 75-104, in: M. Dahlberg (ed.) *de lege – Law and society: Contributions by the honorary doctors, Faculty of Law*, (Uppsala, 2019).

³⁰ H.P. Glenn (n 3) 328 f.; Y. Feng, 'Legal Culture in China: A Comparison to Western Law', *Yearbook, Wellington Faculty of Law* (2009), 117-120; P. Cassel, 'East Asian Legal Traditions', (2015) *International Encyclopedia of the Social & Behavioral Sciences*, 2nd edition, Vol. 6.

in social harmony, or not showing respect) is connected to these Confucian thoughts.³¹

Confucianism is based on a hierarchy in which the emperor is the apex and every human being has his or her place in life. The emperor should rule with virtue,³² wisdom and love. In addition, loyalty, indulgency (self-control) and sonal reverence (filial piety) are important. Confucianism is based on moral judgement rather than law, believing that people are fundamentally good but can be improved even more through learning (education).³³ The Confucian tradition and its importance is debated among Chinese scholars, most of whom regard it negatively.³⁴ However, it seems that the Chinese Communist Party (CCP) and its leaders embrace the tradition and support the establishing of Confucius Institutes around the world.

In terms of Mattei's patterns of law, Far Eastern legal systems influenced by Confucian tradition fall under the rubric of traditional law. While institutions rooted in traditional law may resemble those of the West, they function in a different way.³⁵ The role of lawyers is less important than in the West and conflicts are often solved by other means (e.g., mediation). Family groups and the hierarchical structures of society are often more important than the individual and egalitarian organizations.³⁶

2 Institutional Structures

2.1 Introduction

The purpose of this section is to describe and briefly compare the institutional structures of the two countries. This includes the legislative branch (norm production), the executive branch (legal educa-

³¹ T. Lagerqvist & U. Ohrling, *Quotations from a China Practice*, (Mannhemier Swartling Advokatbyrå, 2011) 47-49.

³² The virtues are benevolence, righteousness, propriety, wisdom and fidelity.

³³ On Confucianism, see, for example, H.P. Glenn (n 3) 319-360; C. Wang & N.H. Madson, *Inside China's Legal System* (Woodhead Publishing, 2013) 27-30.

³⁴ A.H.Y Chen, 'Toward a Legal Enlightenment: Discussion in Contemporary China on the Rule of Law' (1999) 17 *UCLA Pac Basin LJ*, p. 130 with references.

³⁵ U. Mattei (n 4) 39.

³⁶ U. Mattei (n 4) 39.

tion, the role of the tax agencies) and the judicative branch (conflict resolution).³⁷

2.2 Norm Production – Law in Books?

2.2.1 Constitutions and a note on controlling functions

The constitutions of both Sweden and China are the starting point for their law-making. Accordingly, this section provides a brief orientation to the relevant constitutions. In addition, there is a note on controlling functions to illustrate aspects of the culture.

Sweden has four fundamental constitutional laws, of which the only one relevant to this paper is the Instrument of Government (IG),³⁸ which dates back to 1634, although there have been a few additions and changes since that time. The last IG dates from 1974, but was fully reviewed in 2010.³⁹ From a comparative perspective, it is interesting to note that none of the changes to the IG were made due to foreign or domestic crises.⁴⁰ Any change to the Swedish constitutions requires two identical decisions made by Parliament. Additionally, to protect democracy there has to be a parliamentary election between the two decisions. The rule of law requires that all rules or powers derive from enacted or established law. This is especially true when it comes to taxation, and the expression ‘no taxation without representation’ is a key tenet in Sweden, as in many other Western democracies.⁴¹

³⁷ Resolving disputes and providing fair trials are other important parts of the rule of law and require the presence of an institutionalized independent police force, prosecutors, and a judiciary. These aspects, however, fall outside the scope of this article.

³⁸ *Regeringsformen*, the Instrument of Government (IG); *Tryckfrihetsförordningen*, the Freedom of Press Act (FPA), *Yttrandefrihetsgrundlagen*, the Fundamental Law on Freedom of Expression (FLFE) and *Successionförordning*, the Act of Succession (AS).

³⁹ H. Jemsten, *Kommentar till Regeringsformen* (Karnov, JUNO) (accessed 12 December 2022).

⁴⁰ F. Sterzel, ‘Sverige’in: A. Jonsson Cornell (ed.), *Komparativ konstitutionell rätt* (Iustus, 2020).

⁴¹ P. Pistone, et al., *Fundamentals of taxation: An introduction to tax policy, tax law and tax administration*, (IBFD, 2019) p. 33 and K. Fast Lappalainen, P. Melz and M. Zamboni, ‘Sweden’, p. 633 ff. in: P. Essers (ed.) *History and Taxation, the Dialectical Relationship between Taxation and the Political Balance of Power*, 2021 EATLP Congress Antwerp 3-4 June 2021 (IBFD 2022).

Legal Tax Culture from an Institutional Perspective: A Starting Point for Comparative Research regarding Sweden and China

The Chinese Constitution (1982),⁴² referred to as the CC, is regarded as the 'highest' law of the land, followed by laws, regulations, administrative rules, local rules (also referred to as autonomous rules) and informal rules. It can be hard to know what de facto influence the CC has in China. A widespread opinion is that it is a document of politics.⁴³ After the fall of Soviet Union (1991), the leaders of China were in shock. However, they decided to move forward in two specific ways: (1) restructuring the Stalinist system characterized by public ownership of the means of production and planning, and (2) opening China up to the outside world. Accordingly, four amendments were made to the CC. Economic reforms were made in 1988, 1993, 1999 and 2004. Rule according to the law was introduced in 1999,⁴⁴ and human rights in 2004.⁴⁵ In 2018, a fifth amendment removed term limits for the president and vice president. Xi Jinping can now stay in power for an unlimited time.⁴⁶ Hua, who analyses the Chinese constitutional legal order in relation to Chinese legal culture, has identified four characteristics throughout the history of the CC: pragmatism, instrumentalism, statism and favouritism.⁴⁷ Pragmatism refers to law in use, that is, the law should strengthen the state so that it can protect its people effectively. Instrumentalism refers to the law as an instrument of state power (a tool). Statism means that regardless of the ruler, the law should serve the purposes of the state. Favouritism can be identified in Confucian thinking where, for example, men are held in higher esteem and are more important than women. Furthermore,

⁴² The constitution referred to in this article was published 20 November 2019, [Constitution of the People's Republic of China \(npc.gov.cn\)](http://www.npc.gov.cn).

⁴³ P. Sevastik, 'Folkrepubliken Kina', in: A. Jonsson Cornell (n 40) 323. In addition, it has been held that the Party constitution is more important than the Constitution of the PRC; see S. Hua (n 11) 122.

⁴⁴ Article 5 para 1 CC introduced the concept of rule of law. In regard to rule of law and China, see K. Blasek, *Rule of Law in China, A Comparative Approach* (Springer, 2015) 9; R. Peerenboom, *China's Long March Toward Rule of Law* (Cambridge University Press, 2002); R. Peerenboom, 'Varieties of rule of law – An introduction and provisional conclusion' in: R. Peerenboom, (ed) *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.* (Taylor & Francis Group, 2004) 1; J. Husa, 'Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law', *The Chinese Journal of Comparative Law* (2018) Vol. 6 No. 2; M. Salter, 'The Liberal Rule-of-law as a Critical Yardstick for China? Explaining Some Contradictions', *Global Journal of Comparative Law* 5 (2016) 5-44.

⁴⁵ S. Hua (n 11) 104–117.

⁴⁶ S. Hua (n 11) 121. K. Brown, *Nya Kina* (Pagina 2018).

⁴⁷ S. Hua (n 11) 19-25 and 122.

rights are not unconditional; they are granted by the state and can therefore be taken away by the state.

The Swedish constitution (IG) prescribes several different control functions such as the Committee on the Constitution, whose task is to review ministers' performance of their duties and prosecute them if necessary. Parliament can also file no-confidence motions against ministers.⁴⁸ There is also a specific authority to review the work of the state (the Swedish National Audit Office, *Riksrevisionen*). In addition, there are six so-called Ombudsmen (*ombudmän*) whose main task is to ensure that the state is performing its work in accordance with the law.⁴⁹

According to the CC, the Commissions of Supervision are the supervisory organs of the state. They exist on both the national and local levels. The National Commission of Supervision is responsible to the National People's Congress (NPC) and its Standing Committee (NPCSC). In addition, article 127 of the Constitution states that the 'commissions of supervision shall, in accordance with law, independently exercise supervisory power, and shall not be subject to interference from any administrative organ, social organization or individual.'⁵⁰ There are similar articles in relation to other actors.⁵¹

2.2.2 The process of tax lawmaking

There is a strong separation of *functions* between the legislative power, the executive power and the judiciary power in Sweden, as in many other parliamentary states. By contrast, there is a division of *duties* in China, meaning that the three functions just mentioned

⁴⁸ In June 2021, Prime Minister Löfven was ousted in a non-confidence vote in parliament. After a few turbulent weeks, Löfven was re-elected as Prime Minister.

⁴⁹ The ombudsmen are the Parliamentary Ombudsmen (*Justitieombudsmannen (JO)*), the Chancellor of Justice (*Justitekanslern (JK)*), the Consumer Ombudsman (*Konsumentombudsmannen (KO)*), the Equality Ombudsman (*Diskrimineringsombudsmannen (DO)*), the Ombudsman for Children in Sweden (*Barnombudsmannen (BO)*), and the Child and Pupil Ombudsman (*Barn- och elevombudsmannen (BEO)*).

⁵⁰ Article 123-127 CC.

⁵¹ See, for example, Article 136 about the procuratorates.

are not held by one group but are divided among many.⁵² In this section, the legislative process of tax law-making will be discussed. According to Chapter 8 § 1 IG, Parliament is the legislator in Sweden and enacts *laws*. In addition, the Government can enact *regulations*. These two organs may delegate the power to enact *regulations*, *instructions* or *guidelines* to other authorities or to municipalities. Who may enact different regulations or instructions and in which areas is regulated by Chapter 8 IG. Chapter 8 § 2 IG states that laws imposing a duty on individuals or that affect an individual's economic relations (e.g. income taxes) have to be in written form. While chapter 8 § 3 IG states that Parliament may authorize the Government to enact some rules, paragraph 2 specifies that when it comes to taxes, only customs tariffs on goods can be delegated. Parliament must enact all other taxes by law. According to Chapter 8 § 9 IG, decisions about fees and taxes in regard to traffic may be delegated to municipalities, which can also set municipal tax rates.⁵³

The initiative for a new law or a change in a law usually comes from the Government in the form of a proposal, from a member of Parliament (in the form of a motion) or from the EU. A committee consisting of legal experts and government officials is often assigned to work on proposed legislation, and their work usually results in a proposal for a new law or an amendment to an existing law. Their proposal is then referred to various universities and organizations for further scrutiny. The opinion of the Council on Legislation (*Lagrådet*) is often also requested. All this work and the collected opinions are then published in a government bill that is sent to Parliament for a decision on whether to enact the law. The government bill is regarded as preparatory work for the legislation and is public.⁵⁴ The preparatory work is often used as a tool of interpretation.

The Income Tax Act (ITA) from 2000 will be used as an example of legislation. It deals with taxation of income derived from em-

⁵² K. Blasek (n 44) 25. For an analysis of the Chinese legislative framework in regard to tax matters, see L. Riccardi, *Introduction to Chinese Fiscal System* (Springer, 2018) 7-20; J. Dong, 'An Introduction to Chinese Legal Culture', in: S. Koch & J. Öyrehagen Sunde (eds.) (n 12) 757-770.

⁵³ Chapter 14 § 4 IG.

⁵⁴ [Beslut om lagar - Riksdagen](#) (accessed 26 January 2021). In Swedish see also A. Hultqvist, et al., *Skattelagstiftning, Att lagstifta om skatt* (Norstedts Juridik, 2014).

ployment, business and capital, and covers 300 pages. Prior to the year 2000, these rules were divided into thirty-five different laws, of which the main ones were the municipal income tax law from 1928 and the state income tax law from 1947. Even though the ITA is basically a merger of other laws, the preparatory work consists of 1807 pages.⁵⁵ The ITA is updated several times a year. In addition, there are special tax acts applicable to cross-border situations. Furthermore, other acts regulate the tax administration and how the taxes are to be levied.

The Swedish Ministry for Foreign Affairs negotiates tax treaties. Since Sweden is a dualistic country, tax treaties must be incorporated into domestic law by Parliament to come into force. Sweden is a member of the EU, and primary and secondary EU law also affects domestic legislation. Although most tax laws are not harmonized within the EU, taxes are not allowed to be in conflict with free movement or state aid provisions in the TFEU.⁵⁶

The Swedish Tax Agency (SKV) issues a number of legal guidelines (*rättslig vägledning mm*), regulations (*skrivelser*) and position statements (*ställningstaganden*) that are all easily accessible on the SKV's website. While these guidelines and statements are *not* legally binding, they are very useful since they show the position taken by the agency and the way it interprets the tax laws. In the literature, it is argued that these publications have de facto impact as legal sources.⁵⁷

To be able to discuss the power to become a lawmaker from a Chinese perspective, one needs to know what is regarded as law. In China, the term *fa* (law) has a generic meaning and a specific meaning. The *specific meaning* refers to an act promulgated by the NPC. The *generic meaning* refers to document that has the force of law because it is promulgated by a body other than the NPC with law-

⁵⁵ Prop. 1999/2000:2 Inkomstskattelagen del 1-3.

⁵⁶ Treaty on the Functioning of the European Union, see also M. Berglund & K. Cejic, *Basics of International Taxation – from a Methodological Point of View* (Iustus, 2018) 76-134.

⁵⁷ See R. Pålsson, 'Skatteverkets styr signaler – en ny blomma i regelrabatten', *SkatteNytt*, 2006, 401-418 who explains the plurality in the documentation published by SKV. See also R. Pålsson, *Riksskatteverkets rekommendationer: allmänna råd och andra uttalanden på skatteområdet* (Iustus, 1995).

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making power.⁵⁸ This section will identify these different ‘laws’ as well as who the lawmaker is. The starting point is taken in the CC and the Law on Legislation (LL).⁵⁹ As with Sweden, the making of tax law will be used as an example.⁶⁰

According to Article 5 CC, China shall practise law-based governance and build a socialist state under the rule of law. No laws should be in conflict with the Constitution. Regarding the legislative process in China, laws (*fa lii*) are enacted by the NPC and NPCSC.⁶¹ The NPC consists of over 3000 persons and meets only once a year for a period of approximately two weeks. It is responsible for criminal law, civil law, state institutional law and other basic law (article 62 CC). The NPCSC is responsible for enacting and amending other laws (Acts, Regulations and Decisions).⁶² In 1985, the NPC gave blank permission to the State Council (SC) to make rules or regulation related to ‘reform of the economic system and opening to foreign countries’. This mandate is understood to include tax legislation and tax policymaking (often referred to as regulations).⁶³ Furthermore, it is stressed that the Constitution itself does not contemplate the centralization of taxing power.⁶⁴

Due to economic developments and reforms of the Chinese legal system, the idea of *taxation by law* has evolved. In the literature it has been held that the notion of taxation by law is not comparable

⁵⁸ W. Cui, ‘What is the ‘Law’ in Chinese Tax Administration’, *Asian Pacific Law Review*, Vol 19 No 1 (2011) 75, J. Li, *International Taxation in China: A Contextualized Analysis*, (IBFD, 2016) p. 29.

⁵⁹ Legislation Law of the People’s Republic of China, passed 15 March 2000, translation retrieved from the PRC Central Government Official Web portal on February 19, 2003 (retrieved 2 June 2021). Another official document in this regard is section II on legislation and legal system with Chinese characteristics in the white paper published on China’s rule of law on 28 February 2008. Furthermore, sometimes the law on Administration is discussed in this context.

⁶⁰ See also K. Cejje, ‘Polycentri i skatterättens källor – utifrån en kinesisk kontext’, in: N. Dimitrievski, et al., *Festskrift till Robert Pålsson* (Iustus, 2022) 81–94.

⁶¹ Article 58 CC. For an analysis of the legislative system in relation to rule of law, see R. Peerenboom (n 44, 2002), 239-279.

⁶² Article 67 CC.

⁶³ This delegation has been discussed by scholars, see W. Cui, ‘The Rule of Law in Chinese Tax Administration’ in C. Evans, et al., (eds.), *The Delicate Balance: Tax, Discretion and the Rule of Law*, (IBFD, 2011) 182 f. with further references. See also K. Blasek (n 44) 28-29 who states that the SC is a powerful legislator in practice, referring to it as the ‘real legislator of China’.

⁶⁴ *Ibid.*

to the similar notion in Western countries, mainly due to the problem of a non-independent judiciary and ad hoc influences in the work of the institutions when it comes to applying the law.⁶⁵ Pursuant to decisions of the NPC and NPCSC, the President may promulgate laws (article 80). Beside the laws promulgated by the NPC and NPCSC and the regulations enacted by the SC, administrative rules are widely used as a source of law, at least in the area of taxation (see below).

Article 1 LL states; '[t]his Law is enacted in accordance with the Constitution in order to standardize lawmaking activities, to perfect state legislative institution, to establish and perfect our socialist legal system with Chinese characteristics, to safeguard and develop socialist democracy, to promote the governance of the country through legal mechanisms, and to build a socialist country under the rule of law.' Furthermore, LL states the scope of the law-making authority and the law-making process of the NPC and the NPCSC. In the literature, it is held that the LL is not relevant in the context of taxes.⁶⁶ However, the LL has played an important role in deciding which documents are to be covered by the generic meaning of 'law' (i.e. the force of law).⁶⁷ In Article 2 LL, one can identify several legal sources having the force of law. All rules having the force of law have the following common features:⁶⁸

1. A limitation on retroactivity.⁶⁹
2. A requirement of the solicitation of public input.⁷⁰

⁶⁵ J. Li (n 58) 30 ff.

⁶⁶ W. Cui (n 58) 90. However, art. 8(viii) LL says that only national law may be enacted in respect of matters relating to the fundamental economic system and basic fiscal, tax, customs, financial and foreign trade systems.

⁶⁷ W. Cui (n 58) 77 with reference to A.Y.H. Chen, *An Introduction to the Legal System of the People's Republic of China* (Hong Kong, Lexis-Nexis, 3rd ed., 2004) chapter 6.

⁶⁸ See further W. Cui (n 58) 77-81; W. Cui (n 63) 180-181.

⁶⁹ However, an exception exists 'where a special provision is made in order to better protect the rights and interests of citizens, legal persons and other organisations', Art. 84 LL. Prior to 2010, retroactivity in application of circulars issued by the MOF and the STA was rather common. W. Cui (n 58) 79.

⁷⁰ However, it seems as if there are no remedies or consequences for the absence of sufficient solicitation, see W. Cui (n 63) 180. Furthermore, what is meant by solicitation is not completely clear. Nonetheless, since 2010 the SC requires that drafts be published., W. Cui (n 58) 80.

3. An extensive procedure for their adoption as law (which, for example, includes their being signed by the head of the agency).⁷¹
4. A possibility to challenge the laws for being inconsistent with rules of higher authority through non-judicial procedures.

Previous research on the legislative process has concluded that, in addition to the laws passed by the NPC and the NPCSC and the regulations passed by the SC, administrative/ministerial rules are issued by the Ministry of Finance (MOF) and the State Taxation Administration (STA).⁷² The competences delegated to the SC and STA/MOF are found in article 71 LL and articles 89–90 CC.

When dealing with Chinese legal sources and tax law, the publications put out by the STA or jointly by the STA and MOF need to be given extra attention. In the literature, this issue has been described as the problem of ‘lawlessness in tax rulemaking’.⁷³ In the IBFD database of primary sources of law in China, there are 1477 publications (compared to 75 for Sweden, primarily EU documents). These publications are often labelled as announcements, circulars, or notices, and are published by the STA or the STA and MOF jointly. It is not entirely clear whether these are legally binding (law) or merely clarify the opinion of the STA.⁷⁴

In 2009–2010 the STA issued a publication (ministerial regulation) clarifying some aspects in this regard, referred to as the New Measures.⁷⁵ In legal doctrine, the New Measures have been held to be quite progressive and viewed as a promise to introduce more clarity and transparency to the rulemaking activities of tax agencies across China. From this author’s perspective, the claims about transparency and clarity are hard to reconcile with the fact that the

⁷¹ W. Cui (n 58) 80–81.

⁷² J. Li (n 58) 31.

⁷³ See W. Cui (n 58) 82–83.

⁷⁴ W. Cui (n 63) 182–184; W. Cui (n 58) 83–89.

⁷⁵ SAT Ling No 20, SAT, Administrative Measures for the Formulation of Tax Regulatory Documents 2009. Prior 2019, the official name in English for STA was State Administration of taxation (SAT). See J. Li (n 58) 32–35; W. Cui (n 63) 184–185; W. Cui (n 58) 91–93.

New Measures have resulted in 5000–6000 new sources of law across China.⁷⁶

The New Measures were issued because the STA as well as a minority of legal scholars found the LL defective.⁷⁷ It is now possible to tell whether a rule is intended to have the force of law simply by seeing whether it fulfils the following four criteria found in the New Measures:⁷⁸

1. Published in a timely manner as a Public Announcement/STA Bulletin (*gonggao*).
2. Not retroactively applicable.⁷⁹
3. Preceded by a review procedure and signed-off by the legal department of the agency.
4. A taxpayer can apply for a review of the document if he/she finds it to be inconsistent with national or local statutes.

In contrast to the common features mentioned above in regard to the LL, the New Measures do not require solicitation of public input. It can thus be concluded that publications by the STA or jointly by the STA and MOF may be either *ministerial rules* (administrative rules) with the force of law or *informal rules* that do not have the force of law.⁸⁰ Informal rules issued by the STA, opinions and replies are therefore not legally binding on the taxpayer. However, in practice it is held that they are in effect binding, basically due to the lack of statutory interpretation power by the courts, since the courts usually defer to the views of the tax authority.⁸¹ Their purpose, however, is to improve consistent interpretation of national laws.

In addition to state management, the Party is interesting in lawmaking and building a rule of law country (Article 5 CC). The CCP

⁷⁶ See W. Cui (n 63) 185 where an illustrative example is given: There are more than 2800 counties in China, most of which have two tax agencies (Local Bureau and State Tax Bureau).

⁷⁷ W. Cui (n 63) 184.

⁷⁸ W. Cui (n 63) 184-185; W. Cui (n 58) 91-93, J. Li (n 58) 32 ff. In addition to these criteria mentioned a ministerial rule should also, as I understand it, be enacted to implement the tax statutes or decision and orders of the SC (arts. 74-77 LL).

⁷⁹ An exception is found here similar to the one in LL (n 69).

⁸⁰ J. Li (n 58) 32-35.

⁸¹ J. Li (n 58) 34.

spent the 4th Plenum of the 18th Central Committee of the CCP (2014) on the rule of law. As a result, public opinion, feedback, evaluations, research and debates have been introduced into the legislative process. In addition, specialists are sometimes invited to act as legislative advisers and to participate in the consultation system.⁸² After the plenary session in 2014, comprehensive legislative development took place. For example, in earlier years only three of China's eighteen existing taxes were levied through legislation. However, in 2014 it was settled that only law should govern the establishment of any category of tax, determination of tax rates, tax collection administration, and other basic taxation rules.⁸³

Finally, compared to the 300 pages of the Swedish income tax law, the Chinese Individual Income Tax Law and the Enterprise Income Tax Law are each only 10 to 15 pages long. Chinese laws are often set out in broad terms and do not contain the details commonly found in Western law. Tax treaties are negotiated and concluded by the SC and approved (or revoked) by the NPCSC.⁸⁴

Taxes are administrated by the STA and the General Administration of Customs (GAC). The STA sets the general guidelines; however, the actual collection of taxes is divided between local STA offices and the local tax offices of the local government. The STA has the power to issue rules and take measures, which leads to inconsistent application of tax law across the country.

This brief overview shows that the legislative process is conducted by several different state organs in China. In addition, the one who has enacted the law, regulation or rule has the power to interpret it. This interpretation is often regarded as law.⁸⁵

⁸² S. Zhang, 'Legislative Development in China in 2015', *The Chinese Journal of Comparative Law* (2016) 4, 347-370, 366f.; R. Peerenboom, 'Fly High the Banner of Socialist Rule of Law with Chinese Characteristics! What Does the 4th Plenum Decision Mean for Legal Reforms in China?', *Hague J Rule Law* (2015) 7:49-74, 63-66.

⁸³ S. Zhang (n 82) 348. A measure of public participation did exist prior to 2014. For example, when the individual income tax law was changed in 2011, over 80,000 people submitted more than 237,000 comments on the draft. However, it is not clear whether these comments had any impact, *see* R. Peerenboom (n 82) 64.

⁸⁴ J. Li, 'China', in Hugh J. Ault, Brian J. Arnold, Graeme S. Cooper (eds.) *Comparative Income Taxation: A Structural Analysis* (Wolters Kluwer, 2020) 66.

⁸⁵ D. Qiu, 'Interpretation of Tax Law in China: Moving Towards the Rule of Law?', *HKLJ* 44(2) 2014, 589-620

China is a huge country with one central government and several thousand local governments on four different levels: provincial, municipal/prefectural, counties/district, and township.⁸⁶ The power to introduce taxes is vested in the central government;⁸⁷ however, local governments are allowed to specify tax rates and offer local tax incentives.⁸⁸ As mentioned above, it is also the local authorities that collect the taxes.

In China, the tax legislation takes the form of (1) law, passed by the NPC or the NPCSC, (2) regulations passed by the SC and (3) administrative rules issued by the STA⁸⁹ or MOF.⁹⁰

The existence of multiple, parallel legislators results in many parallel laws, rules, regulation, and circulars, which leads to polycentricity, complexity and inconsistency. In summary, the framework of rules on tax lawmaking is not very clear. However, several 'legitimate' forms of delegation do exist. Furthermore, there is no joint publication of all relevant rules or case law, which complicates the interpretation, application and possibility of complying with the laws.⁹¹

2.3 The Executive Branch - Law in Practice

2.3.1 Legal education and different legal professions

The legal profession is assumed to be necessary to achieve congruence between law in books and law in practice.⁹² An independent legal profession is also a key part of the rule of law, for example, in regard to the existence of an independent judiciary.⁹³ Legal education is important since this is assumed to be the entry point to the legal profession. It can be argued that that legal education and the

⁸⁶ W. Cui, 'Fiscal Federalism in Chinese Taxation', *WTJ* 2011:3, 458 ff.

⁸⁷ W. Cui (n 86) 455

⁸⁸ J. Li (n 58) 29.

⁸⁹ The STA is required to go through a public consultation process when enacting administrative rules and sometimes has to provide explanatory notes.

⁹⁰ Non-binding rules are often referred to as informal rules.

⁹¹ J. Li, 'Teaching Taxation Law in China', *BFIT* (2008) 185-186.

⁹² R. Peerenboom (n 44, 2002) 343.

⁹³ *Ibid.*

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legal profession are part of legal culture, since the legal profession interprets and applies the rules. This section will focus on legal studies and the legal profession itself.

In Sweden, lawyers must have legal training. There are seven universities in Sweden that train law students, as well as other educational institutions that include law as a main area of study. Uppsala University, the oldest university in the Nordic countries, has been teaching law since 1477. Universities are governed by the state and the studies are free of charge.⁹⁴ The law curriculum includes the skills needed to practise law, independent decision-making, and legal methodology.⁹⁵ Law degrees in Sweden include mandatory courses in tax law.⁹⁶

After completing their studies in law (4.5 years), approximately 500 new lawyers each year spend a two-year period as clerks in court. However, most lawyers work for different authorities or for privately held companies. Some become barristers (*advokat*) and others prosecutors or judges. To become a barrister and a member of the bar association, one has to work at a law firm for at least three years, take additional courses and pass an exam. One also needs to be found suitable for the work and to be working according to legal ethics. It takes approximately ten years (in addition to the 4.5 years of university studies) to become a judge in Sweden. By comparison, one can become a judge in China after two years. To become a judge of the Supreme Court of China (SPC), three years of practice are required,⁹⁷ compared to 20 to 25 years of practice required to become a judge at the Supreme Administrative Court of Sweden (SAC).

Practising law in China, that is being a Chinese lawyer, is different from being a Swedish lawyer.⁹⁸ The first modern law school in Chi-

⁹⁴ For a brief note on the policy behind the Swedish education system, see S. Steinmo, *The Evolution of Modern States: Sweden, Japan, and the United State* (Cambridge, 2010) 70-74.

⁹⁵ Examensordningen för juristexamen enligt högskoleförordningen (1993:100), bilaga 2, J. Ebbesson & J. van der Sluijs, "Större perspektiv och kritiskt förhållningssätt i juristutbildningen", *JT* (2018) no 3, 111.

⁹⁶ See J. Li (n 91) 188-189 about different Chinese tax law courses.

⁹⁷ J. Dong (n 52) 777.

⁹⁸ For an overview, R. Peerenboom (n 44, 2002) 343-393

na was founded in 1907.⁹⁹ For a period during the Cultural Revolution, the education system was more or less put on hold. All colleges and universities remained closed until 1970 or 1972.¹⁰⁰ In traditional Chinese legal education, the focus was on lectures rather than discussion, and on doctrines and concepts rather than the development of analytical skills.¹⁰¹ However, to better meet the needs for practising law, more attention is now being paid to case studies.¹⁰² Not only has the content of legal education changed, but there are now more law students. In 2008 there were 634 law schools in China with an annual undergraduate intake of 100,000 students compared to 138,000 in 2013. There are sixteen mandatory courses, but no tax law requirement within the Chinese 4-year LLB programme.¹⁰³

In 1996, China passed a Lawyers Law with the overarching purpose of improving the legal profession.¹⁰⁴ The Lawyers Law regulates lawyers, their behaviour and the penalties for malpractice. It has been criticized as inconsistent; for example, it specifies that lawyers should be independent but at the same time insists that they should accept the insight of the government. In 2004, it was specified that the requirement to practise law was a four-year degree in law and passing a national examination.¹⁰⁵ In addition, the Minister of Justice has enacted a requirement that lawyers can only receive a licence to practise law if they swear to uphold the leadership of the CCP and the socialist system.¹⁰⁶

⁹⁹ There was also legal education in ancient China. See J. Dong (n 52) 774.

¹⁰⁰ STINT, Country Report – China, CR 2021:4, 4.

¹⁰¹ J. Dong (n 52). 775.

¹⁰² C. Wang & N.H. Madson (n 33) 124-125. Clinical legal educational programs were introduced early in 2000, see J. Dong (n 52) 776 f.

¹⁰³ A.Y.H Chen (n 23) 25-26. If one looks at overall university education, China has the largest university system in the world with over 8 million students graduating annually, a number expected to rise by 300 % by 2030. See STINT (n 100) 9.

¹⁰⁴ The law was amended in 2007.

¹⁰⁵ P. Sevastik (n 43) 317 f.; R. Peerenboom, 'Competing conceptions of rule of law' in: R. Peerenboom (ed.) (n 44, 2004) 113; R. Peerenboom (n 44, 2002), 349. Similar statement is made by J. Dong (n 52) 776-778.

¹⁰⁶ C. Wang & N.H. Madson (n 33) 130.

In 1979, there were only nineteen lawyers registered in Beijing and a few hundred in the rest of China.¹⁰⁷ By 2020, there were 423,758 lawyers. Studies at a Chinese university are not free. In 2008, the annual tuition at a state-owned university was about USD 500.¹⁰⁸ China has the greatest number of outbound international students in the world, and is the third largest receiver of inbound international students.¹⁰⁹

Being a tax lawyer is regarded as a high-status job in Sweden. In China, tax law is often left in the hands of economists. Tax policy in Sweden is discussed by both tax lawyers and economists. In China, non-lawyers dominate tax policy, and accounting firms are more influential than law firms at the personal level regarding tax law.¹¹⁰ From an overall perspective, lawyers tend to focus on fairness and equity, whereas economists focus on efficiency, which may explain why nondemocratic states are reluctant to allow a large number of foreign-trained lawyers to practise law.¹¹¹

2.3.2 The role of the tax administration agencies

This section deals with the role of tax agencies and the question of advanced rulings. In section 2.1.2, the role of the Chinese STA as a legislator was highlighted.

The Swedish tax agency (*Skatteverket, SKV*) is an independent authority in Sweden. Up until 2003, the Tax Agency consisted of a state authority (*Riksskatteverket*) and ten regional authorities (*skattemyndigheter*). However, in 2004 they all merged into one tax authority, the SKV, in order to ensure equal interpretation and application of the law throughout the country.

The SKV is an administrative organization applying the laws in individual cases and levying taxes. In addition, it maintains the population register and the marriage register, conducts estate in-

¹⁰⁷ C. Wang & N.H. Madson (n 33) 122. Other figures states that there were 1700 lawyers in 1913, 10,000 in 1935, a few thousand in 1978, and 110,000 in 1998, see R. Peerenboom (n 44, 2002), 346 and 361-362.

¹⁰⁸ J. Li (n 91) 187.

¹⁰⁹ STINT (n 100) 4.

¹¹⁰ M.A Livingston (n 5) 41.

¹¹¹ Ibid, and p. 44 more specifically about China.

ventories and investigates tax abuse and financial crimes. It employs both economists and lawyers. It is the most popular of the approximately 200 Swedish authorities because it is easily accessible, offers a high level of service, and has competent employees.¹¹² As regards tax culture, the SKV's vision statement reads: 'Together we make society possible'. Accordingly, it strives for simplicity, correctness and safety¹¹³ and makes a point of referring to taxpayers (individuals, companies and organizations) as customers.¹¹⁴ SKV publishes a lot of information on its webpage and holds courses for its customers in order to enable everyone to work correctly from the beginning. This is also in line with the organisation's previous vision statement (2000): 'The right tax in the right way.'¹¹⁵ The work at SKV is highly digitalized and the tax returns for individuals are largely pre-printed. In many cases, one's income tax return can be submitted by accepting it on one's smartphone. In international comparisons, the tax administration is regarded as unusually efficient, the tax morale of taxpayers is high, and there are low levels of tax evasion.¹¹⁶

The organization of the tax administration in China has similar levels to the government and the court system. This means that (at least, prior 2018¹¹⁷) the STA had direct leadership of state tax bureaus (STBs) at the provincial, municipal and district/county level. The STBs were under vertical control by the higher-level of STB (e.g. provincial under the STA, and municipal under the provincial level). The local tax administration had offices and bureaus (LTBs) parallel to the structure of the STB. The provincial LTB was under the dual leadership of the STA and the provincial STB. Similarly, the lower-level LTBs were under the dual leadership of the higher-

¹¹² [Skatteverket modernaste myndigheten | Publikt](#) (accessed 10 February 2021).

¹¹³ Skatteverket, 'Verksamhetsplan för Skatteverket 2021 och framåt', dnr 8-653932 (2020) 3.

¹¹⁴ Ibid, p. 14. See also M.A Livingston (n 5) 74-78 on the tax culture of the Nordic tax agencies.

¹¹⁵ See also A. Stridh & L. Wittberg, *From feared tax collector to popular service agency* (Strömbergs Distribution, 2015).

¹¹⁶ M.A Livingston (n 5) 75. See also L. Björklund Larsen, *A Fair Share of Tax: A Fiscal Anthropology of Contemporary Sweden* (Linköping, 2018). She uses reciprocity as an explaining factor for tax compliance in Sweden.

¹¹⁷ An article from 2020 mentions that the LTBs and STBs were merged and are now referred to as tax offices. See M. Ołowska, P. Peshori and S. Lan, 'The Digitalization of Tax Administration in China (People's Rep.), India and Korea (Rep.) in the Fourth Industrial Revolution', *Bulletin for International Taxation*, August 2020 466.

level LTB and the corresponding local government (STB). The division of functions between the STBs and LTBs was somewhat confusing and overlapping. The tax administration system is huge, and in 2015 employed almost 800,000 people.¹¹⁸ Today it appears that the STBs and LTBs have been merged and are referred to as tax offices in Chinese literature.¹¹⁹ How this has been done and the impact is unclear to this author.

The STA¹²⁰ has a somewhat different mission to its Swedish counterpart. The STA drafts tax laws, regulations and implementing rules, provides advice on the making of tax policies, makes joint efforts with the MOF to report and instruct about implementation measures, implements reforms, conducts international tax exchanges, collaborations and negotiations,¹²¹ and drafts plans for tax revenue.¹²² Like the Swedish Tax Agency (SKV), it also interprets tax laws in the process of enforcement. However, the STA and the local authorities have somewhat different functions: the STA sets the general administrative guidelines, but the collection of taxes is divided between local STA offices and local government tax offices.¹²³

Tax returns and individual taxpayers are handled by tax offices (previously the state tax administration – STBs) and the local tax administration (LTBs). In fact, each taxpayer has direct contact with an in-charge tax authority (often the basic level of the STB or an LTB) or an in-charge tax official. This relationship reflects the Confucian view of the relationship between a father and son. The in-charge tax authority or official provides the taxpayer with information about the law, policies, procedures, obligations and tax collection. Taxpayers rely heavily on the tax authorities, value the relationship highly, and often avoid incidents that might make the tax officials ‘lose face’. However, in recent years the parent-child rela-

¹¹⁸ J. Li (n 58) 42, 44-45.

¹¹⁹ M. Ołowska, P. Peshori and S. Lan (n 117) 466.

¹²⁰ Prior to 2019, the name was State Administration of Taxation (SAT).

¹²¹ This also means that the STA is the competent authority under a double tax agreement. See J. Li (n 58) 43-44.

¹²² The STA consists of eighteen departments and has twelve key responsibilities. For a complete list of responsibilities, see [What We Do \(chinatax.gov.cn\)](http://chinatax.gov.cn) (accessed 11 June 2021).

¹²³ J. Li (n 91) 184–185.

tionship may to some extent have been replaced by a more collaborative relationship.¹²⁴ In this context, it may also be mentioned that the lack of transparency and the bargaining process between the taxpayer and the tax official casts doubt on the legality of the process.¹²⁵ In recent years, digitalization has made an impact on tax administration in China, Action plans for ‘Internet + tax’ have been introduced, as well as a ‘Golden Tax System’ and several tax compliance measures.¹²⁶

In Sweden the SKV applies and interprets tax legislation, as well as collecting and administering taxes, but in China interpretative power belongs to the rule-maker, that is the STA. This means that tax officials at tax offices cannot interpret the law, but merely apply it. This raises concerns, at least from a Western law perspective, since in most tax law cases interpretation and application go hand in hand. To overcome the problem, the STA sometimes publishes examples from other tax agencies and commentaries on new legislation. In addition, local agencies can ask the STA for instructions and guidance (*qingshi*). The STA may answer either with an opinion (generally binding) or a reply (binding in the specific case).¹²⁷ In conclusion, this means that the STA sets guidelines, drafts tax legislation and formulates implementation procedures in conjunction with the MOF,¹²⁸ while the tax offices (previously the STBs and LTBs) collect the taxes.

2.3.3 Advance rulings in tax matters

The Board of Advance Tax Rulings (the Board) has an important position in Swedish tax law.¹²⁹ It is not a court,¹³⁰ but it gives advance tax rulings in direct and indirect tax law situations in response to an application filed by a taxpayer. The rulings are legally

¹²⁴ J. Li (n 58) 47-49.

¹²⁵ D. Qiu (n 85) 613.

¹²⁶ M. Olowka, P. Peshori and S. Lan (n 117) 466-468.

¹²⁷ D. Qiu (n 85) 611 ff.

¹²⁸ C. Devonshire-Ellis, et al. *The China Tax Guide* (Springer, 2011) 2.

¹²⁹ R. Persson Österman, *Förhandsbesked i skattefrågor* (Iustus, 2013). See also the law, SE: Lagen (1998:189) om förhandsbesked i skattefrågor.

¹³⁰ From an EU perspective, it should be noted that the Board is not considered a court, and cannot ask for a preliminary ruling by the CJEU according to the Courts case law. CJEU 12 Nov. 1988, *Victoria Film A/S v. Skatteverket*, C-134/97, EU:C:1998:535.

binding for the applicant. The Board is organised under the Ministry of Finance.

An application is filed with the Board by a taxpayer who desires advance certainty on how a transaction or situation will be treated. SKV participates as the opposing party before the Board. The proceeding is regarded as a 'trial in advance', where no evidence is dealt with. The SKV itself may also apply for an advance ruling in some situations, although this option is seldom used. The Board has wide discretion in determining in which cases to issue an advance ruling. The facts need to be clear. Either SKV or the taxpayer may appeal the ruling to the SAC. To make sure that the SAC can fulfil its role as a generator of precedents, the SKV can also appeal cases in which the SKV and the Board support the outcome. The SAC annuls approximately 20 % of the appealed tax rulings.¹³¹ Furthermore, the advance rulings, which are published on the Board's website, are very important as an instrument in developing tax law application.¹³²

In 2012, the Chinese STA issued a Notice (no 14) on rulings for specific tax cases.¹³³ Pursuant to this Notice, an upper-level tax bureau could give a ruling on the application of tax law and regulations to a specific taxpayer and situation on the request of a lower-level tax bureau. However, this ruling was only applicable to the specific taxpayer and was not a precedent for other taxpayers. There was discussion about whether Notice 14 de facto gave taxpayers the option to ask for an advance ruling. Most practitioners, however, interpreted the Notice as merely clarifying the procedure for the existing practice of upper-level tax bureaus giving guidance to lower-level bureaus.¹³⁴

In Chinese literature, there have been discussions about whether there is an advance ruling system in China or not. In 2014 it was concluded that it might be possible for some large companies to

¹³¹ R. Persson Österman (n 129) 63.

¹³² www.skatterattsnamnden.se.

¹³³ Working Guidelines on Rulings for Specific Tax Cass, Guo Shui Fa [2012]. No 14 entered into force 1 March 2012.

¹³⁴ J. Liu, 'China (People's Rep.) – Seeking Certainty – Advance Ruling Practices', *Asia-Pacific Tax Bulletin*, 2014 (volume 20), No. 2, 123-124.

get advance rulings by the STA, but this was only available to select enterprises.¹³⁵

2.4 Conflict Resolution

2.4.1 The tax administration

In Sweden all taxpayers have the option to request a reassessment of any tax issue. This must be done within six years from the year concerned. The request must be presented to the SKV.

In China, there are two kinds of tax disputes; administrative review and administrative litigation. Although these may seem similar to the reassessment and court procedures in Sweden, a closer look shows that they are very different.¹³⁶ The administrative review system is decentralized and the respondent is the agency that made the disputed decision. An application must be filed within 60 days from the date of the decision. Normally, an administrative review panel assesses the case in written form. Before the panel has decided, the applicant and the respondent may resolve the conflict by reconciliation or mediation.¹³⁷

There is also fiscal and tax administrative public interest litigation, in which the people's procuratorates can file a lawsuit against the fiscal and tax authority when the tax authorities do not levy taxes according to the law, resulting in a loss of a state's taxes.¹³⁸ By contrast, in Sweden the Ombudsmen (*Justitieombudsman, Justitiekanslern*) are the supervising authorities and civil servants tasked with ensuring that the authorities and their staff comply with the laws and other statutes governing their actions.

2.4.2 The court systems

There are two different types of court proceedings in Sweden, one involving civil courts and the other administrative courts. The ad-

¹³⁵ Ibid.

¹³⁶ J. Li (n 58) 57-62.

¹³⁷ Ibid. 57-60.

¹³⁸ For a more detailed description and examples from case law, see C. Jingxian and s. Yi, 'China (People's rep.) Fiscal and Tax Administrative Public Interest Litigation in China', *Asia-Pacific Tax Bulletin*, 2020 (vol. 26) No 1.

ministrative courts (which handle tax and social security law proceedings) have three levels: The Administrative Court, the Administrative Court of Appeal, and the Supreme Administrative Court (SAC).¹³⁹ There are twelve Administrative Courts and four Administrative Courts of Appeal in Sweden, based on geographical regions. A president (*lagman*) leads each court. According to the Constitution, the courts are fully independent and neither Parliament nor any authority may influence justice.¹⁴⁰ This principle, as mentioned above, covers all executive agencies, including tax officers.

Justice in China is upheld throughout the People's Courts of the Republic of China, the People's Procurators, and the Ministry of Public Security. There are four levels of courts in China: The Supreme People's Court (SPC), the High People's Court (HPC) at the provincial level, the Intermediate People's Court (IPC) at the municipal level, and the Basic People's Court (BPC)¹⁴¹ in urban districts and rural areas. In addition, there are local tribunals in towns and villages.¹⁴² There are 31 HPCs, 406 IPCs, 3000 BPCs, and 20,000 tribunals in China. Parallel to the local people's courts, there are special people's courts.¹⁴³ The SPC is also above the special people's courts. In 2014, plans were announced to establish transregional courts (circuit courts). In 2018, six circuit courts were established, handling 17,000 cases, which is an indication of the speed with which China is developing. Each court is led by a president and structured in different divisions. The NPC and NPCSC supervise the SPC.¹⁴⁴ The SPC can review all decisions made by lower courts and has jurisdiction over the special courts.¹⁴⁵ Higher-level courts are responsible for supervising lower-level courts. However, in practice lower-level courts are seeking instructions from higher courts less and less often.¹⁴⁶

¹³⁹ The Court was established in 1909 (Kungliga majestäts regeringsrätt), renamed in 1974 (Regeringsrätten) and once again in 2011 (Högsta förvaltningsdomstolen). Nowadays the name of the court indicates its independence.

¹⁴⁰ See Chapter 11 IG on Administration of justice.

¹⁴¹ Sometime referred to as the Grass-Roots People's Courts.

¹⁴² J. Dong (n 52) 747-748.

¹⁴³ For example, railway and transport courts, military courts, forestry courts and maritime courts. J. Dong (n 52) 748.

¹⁴⁴ J. Husa (n 19) 140.

¹⁴⁵ J. Dong (n 52) 749.

¹⁴⁶ R. Peerenboom (n 44, 2002) 315.

The proceedings at the administrative courts in Sweden are in most cases based on a written proceeding.¹⁴⁷ A review permit (*prövningstillstånd*) is needed for adjudication by the SAC. This permit is given only if the SAC's ruling may be important as a precedent (approximately 2 % of the requested review permits are granted). The SAC deals with disputes between the state and a person (natural or legal). Approximately 40 % of the cases concern tax issues.

The SAC also adjudicates appeals against advance tax rulings issued by the Board of Advance Tax Rulings without a review permit.¹⁴⁸ It reviews all facts and legal grounds relevant to a case. This means that the SAC can base its rulings on legal grounds not relied on by the parties.¹⁴⁹

In China, cases are usually heard by a collegiate panel consisting of three judges. A simple majority is used and minority opinions are allowed and published. A single judge can hear simple cases or economic cases. A court of appeal can decide not to grant leave to appeal if it finds a court session unnecessary. However, if leave to appeal is granted, the court will review the case with a public trial considering both facts and law.¹⁵⁰ A case can only be heard twice in China, that is, by two courts.

In administrative litigation the court has no jurisdiction to assess complaints against administrative regulations, ministerial rules or informal rules issued by the SC or SAT/MOF. The taxpayer can only apply for reconsideration of an administrative decision on the basis of the standard of correctness, meaning that the court must consider whether the tax agency has applied the law and correctly followed the legal procedure.¹⁵¹ Very few tax administrative litigations are handled by the courts.¹⁵²

¹⁴⁷ 9 § Administrative Court Procedure Act (*förvaltningsprocesslag* (1971:291)).

¹⁴⁸ For a description of the SAC and its adjudicating in tax matters, see R. Persson Österman, 'The Swedish Supreme Administrative Court: Adjudicating in Tax Matters', *BFIT*, January/February (2016) 59-64.

¹⁴⁹ Law on Administrative Judicial Procedure (n 147) and R. Persson Österman (n 148) 61.

¹⁵⁰ J. Dong (n 52) 752-755.

¹⁵¹ See J. Li (n 58) 60-62.

¹⁵² See C. Jingxian, 'China (People's Rep.) The Present State and Future Prospects of China's International Tax Administrative Litigation System' *Asia-Pacific Tax Bulletin*, 2019 (vol 25) No 6, sec. 2.2.

In Sweden, being a judge is one of the five most respected professions.¹⁵³ Judges are appointed permanently and their salary is paid by the state.¹⁵⁴ Since 2010, appointments are made after the person has applied for a position and are based on objective factors such as merit and competence. A specific board (Judges Proposals Board) handles the proceedings.¹⁵⁵ Several judges have worked within government service as legal counsellors (civil servants) or professors of law.¹⁵⁶

According to China's Constitution, courts are to be independent and subject only to the law (article 131).¹⁵⁷ However, it appears that Chinese judges are not in a position to judge independently. Four factors contribute to this situation: First, the NPC may interfere since it supervises the courts. Second, the courts and judges are dependent on the corresponding level of government. Third, the prosecutors supervise the courts and can file appeals against final court decisions. Fourth, *guanxi* and personal interests often compromise the fairness of courts. In contrast to Swedish judges, Chinese judges are not very well paid.¹⁵⁸

In addition, judges in the PRC, in contrast to Swedish judges, do not have life tenure and can be dismissed for any reason (e.g. incompetence, political considerations, or participating in gatherings).¹⁵⁹ The Party approves the judges, and Party organs set general

¹⁵³ Various investigations indicate that doctors, CEOs, barristers, professors, and judges are the five top positions. [Jobben med högst status i Sverige | Randstad](#) (accessed 29 January 2021).

¹⁵⁴ The average salary for a judge is 64,000 SEK in comparison to the average salary overall in Sweden of 35,300 SEK. The salary at the SAC is higher.

¹⁵⁵ See the Act on appointment of judges (*lag (2010:1390) om utnämning av ordinarie domare*).

¹⁵⁶ R. Persson Österman (n 148) 60. For an in-depth analysis of the role of the Swedish judge, see O. Ställvik, *Domarrollen – Rättsregler, yrkeskultur och ideal* (Uppsala Universitet, 2009).

¹⁵⁷ On the independence, authority and competence of the judiciary, see R. Peerenboom (n 44, 2002) 298-342. In addition, the Judge Law (1995) states that the judges have the right to be free from external interference in their work.

¹⁵⁸ K. Blasek (n 44) 68-69; R. Peerenboom (n 44, 2002) on different aspects of influence: the Party 302-309, the People's Congress 309-310, the local government 310-312 and the procuracy, public security and police 312-314. On the non-independence of the judiciary, see also C. Wang and N.H. Madson (n 33) 69-74; R. Peerenboom (n 105) 112-113.

¹⁵⁹ R. Peerenboom (n 44, 2002) 294.

policies for the courts. Government interference occurs on a regular basis. Many believe that the major problems in regard to the Chinese judiciary include the limited competence of judges, their lack of independence, and corruption. In 2000, only 19 % of the presidents and vice presidents of the BPCs had a four-year bachelor degree (not necessarily in law). Even though the Judges Law requires a national examination to become a judge, these examinations are set by each court and are much easier than the national examination to become a lawyer. Lawyers thus look down on judges as ill-trained government officials. Judicial examinations for judges were made national in 2001.¹⁶⁰

The lack of trust in the courts arises because government officials do not respect them as independent institutions and do not always comply with their decisions. Prior to 2014, judges were appointed for political reasons and loyalty to the CCP.¹⁶¹ The Plenum Decision (2014) emphasized the trial as the centre of the litigation process, clarified evidentiary rules, and identified the need to improve the appeal process and ensure the finality of judgments, as well as improve enforcement by drafting a law on coercive enforcement. Promotion of judges was also made more merit-based. Supreme and high court judges are now to be selected from lower-level judges. In addition, the Decision calls for more transparency in the judiciary, procurators and police.¹⁶² It is, however, difficult to establish an independent judiciary since it requires not only confident judges but also adequate resources and a legal culture where judges are respected and people comply with court rulings.¹⁶³

By contrast, the judiciary in Sweden is very independent. Unlike Chinese judges, Swedish judges are well paid and hold positions that last until they choose to retire. Any lawyer is free to apply for a vacant position as a judge.

As already mentioned, the judicial system in China is not independent of the Party. For example, it is the CCP that selects judges. It is even held that the purpose of the courts is to support the party's

¹⁶⁰ R. Peerenboom (n 44, 2002) 290-291. According to C. Wang & N.H. Madson (n 33) this was strengthened even more in 2011.

¹⁶¹ K. Blasek (n 44) 71.

¹⁶² R. Peerenboom (n 82) 68-71.

¹⁶³ On the difficulties of independency, see R. Peerenboom (n 44, 2002) 289 ff.

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rule (safeguard the system of dictatorship of the proletariat and maintain the socialist legal system and public order).¹⁶⁴ It has been argued that the heavy interference by the CCP leads to weak implementation and law enforcement, which are regarded as some of the biggest defects in China's legal system.¹⁶⁵

However, in the literature, it is argued that judicial independence is a poor indicator of the capacity of courts to effectively resolve commercial disputes and that judicial power is a more accurate measure.¹⁶⁶ In the 35 years from 1978 to 2013, the number of cases closed at all levels of courts increased 20-fold, to over 14 million cases decided by 189,000 judges in 2013.

Previous research indicates that the lack of independence in China is not the only challenge to the judiciary. In 2002 it was said that the judiciary suffered from various technical shortcomings as well as from inadequate power and authority within the constitutional structure.¹⁶⁷

Furthermore, the Chinese justice system is sometimes in conflict with that of other countries and foreign nationals are sometimes subjected to threats and various forms of pressure. Even in the 2020s, there are still cases of forced public confessions and cases where Chinese agents have arrested both nationals and non-nationals. From a Western perspective, China does not fully respect international agreements on consular access.¹⁶⁸

In both Sweden and China, there are no stare decisions in case law. However, the Swedish SAC does adjudicate cases, and its case law is often regarded as a source of law when determining similar cases.

¹⁶⁴ C. Wang & N.H. Madson (n 33) 79; B. Ahl, 'Why do Judges Cite the Party? References to Party Ideology in Chinese Court Decisions', *China An International Journal*, Vol 18, No. 2 May 2020, 175-185.

¹⁶⁵ K. Zou, 'Rule of Law and Legal Reforms in China: An Editorial Note', *Global Journal of Comparative law* 5 (2016) 4.

¹⁶⁶ See further J. Gillespie, 'Rethinking the Role of Judicial Independence in Socialist-Transforming East Asia' (2007) 56 *Int'l & Compl LQ* 837. The main focus is on Vietnam; however, several arguments are also valid in regard to China.

¹⁶⁷ R. Peerenboom (n 44, 2002) 281. Complaints were raised about fees and the delay in completing cases.

¹⁶⁸ Government Communication (n) 4. In the World Justice Project (WJP) Rule of Law Index 2020 (online), China scores very low in this regard.

The case law of the SAC is published on their webpage as well as in an annual publication. Several cases are commented on and critiqued by legal scholars in various journals.¹⁶⁹ Judicial interpretations are not enforceable in China; however, the SPC does publish interpretations or guiding cases (*sifa jieshi*), which are nationally enforceable.¹⁷⁰ These are published in the SPC gazette and its subsidiary newspaper.

2.4.3 Other means of conflict resolution

In Sweden, an arbitration proceeding is an alternative to going to court. Unlike court proceedings, arbitration is not public and is therefore preferred when trade secrets are involved. The process is also faster than going to court; however, it is much less common than court proceedings. Arbitration is not used between the Tax Agency and taxpayers, but only between business partners.

China has a history of mediation.¹⁷¹ In addition to the 14 million cases handled by the courts, 8 million cases are mediated. An online platform for mediation and dispute resolution was launched in 2017.¹⁷² Earlier (in 2002) it was suggested that the many cases of mediation and arbitration could be explained by the prevalence of judicial corruption.¹⁷³ Another explanation could possibly be Confucian tradition and the importance of not losing face in China.

3 Concluding Remarks

Before one can interpret and apply the law in any jurisdiction, it is vitally important to understand the prevailing legal culture. Simply put, legal culture can be divided into two parts, the institutional structure (material) and the intellectual structure (mental). This article has described the institutional structure and briefly compared two jurisdictions, Sweden and China.

¹⁶⁹ All cases from the SAC and the CJEU relating to tax matters are commented on each year in the tax law journal *SkatteNytt*.

¹⁷⁰ [Legal Research Guide: China | Law Library of Congress \(loc.gov\)](#) (accessed 10 May 2021).

¹⁷¹ Mediation is also possible in tax matters.

¹⁷² J. Dong (n 52) 756-757.

¹⁷³ R. Peerenboom (n 44, 2002) 296.

Section 1.4 dealt with Western and Far Eastern legal culture. The institutional structure in Western jurisdictions separates law, morality and politics, and law is an important vehicle for resolving disputes. Far Eastern culture does not make this separation, and conflicts are either not acknowledged (to avoid making someone losing face) or are solved through mediation or dispute resolution rather than in court.

The Swedish and Chinese legal cultures clearly reflect their roots in Western and Far Eastern legal culture, respectively. For example, Chinese legal culture consists of both *li* (rites, habits, moral rules) and *fa* (law, statutes), and thus combines law and ethics. In fact, the moral rules are more important than the positive law.¹⁷⁴

The legal systems of both countries are primarily based on the model of civil law.¹⁷⁵ However, in recent decades Sweden has been influenced by the common law system of the EU and the case law of the European Court of Justice. In both Sweden and China, the constitution is the highest law, and is updated on a regular basis. However, it seems that changes to the Swedish constitution are regulated by more formal rules than changes to the CC.

The brief overview presented in section 2.2 may have created the impression that the legislative processes of the two countries are similar. After all, rules on lawmaking are found in the constitutions of both countries. However, my conclusion is that the differences are greater than the similarities. One main reason for this is the diversity of legislators in China. There are numerous examples of government agencies or local legislatures in China using administrative rules or local laws to change or override higher-level laws, a practice that can lead to chaos and encourage lawlessness.¹⁷⁶ It has also been held that the principle of legality is absent in China.¹⁷⁷ This assertion can to some extent be supported by the fact that

¹⁷⁴ M Jian, 'Chinese Legal Culture: in a Western Scholar's Eyes' (2002) 4 J Hist Int'l L 171.

¹⁷⁵ In regard to China, see [Legal Research Guide: China | Law Library of Congress \(loc.gov\)](#) (accessed 10 May 2021).

¹⁷⁶ Y. Guanghua, *The Roles of Law and Politics in China's Development* (Springer, 2014) 159.

¹⁷⁷ F. Vanistendael, 'China: Taxation, Tax Avoidance and the Rule of Law', *Asia-Pacific Tax Bulletin* May/June (2010) 211

Chinese legal doctrine does not put much emphasis on legality issues when discussing the rule of law.¹⁷⁸ There are also historical explanations for the initially slow progress of legal reforms in China, for formal law has historically enjoyed less favour than informal means of resolving disputes.¹⁷⁹ The literature has concluded that China has undoubtedly made progress in establishing a legal system with the purpose of meeting the requirements of the thin rule of law. However, in 2002 the legal system was not yet thought to have achieved this.¹⁸⁰ Simply transplanting institutions, principles of interpretation and mechanisms for law-making is not enough because of the fundamental differences in philosophical traditions and political powers.¹⁸¹ Furthermore, there is a high degree of inconsistency between lower and superior legislation in China.¹⁸²

In Sweden, the initiative for lawmaking can come from various institutions. However, the law is always enacted by Parliament using a similar process, regardless of whether it is tax law or any other law (e.g. family law or criminal law).

While the law-making process in China in 2002 still lacked transparency and opportunities for public participation, there had been some improvements since 1978.¹⁸³ The lack of greater progress was explained in terms of lack of practical experience and competence of drafters of the law.¹⁸⁴ But there have been further improvements since 2014. Sweden, by contrast, has a long history of transparency in law-making, as well as in all public organizations.¹⁸⁵

It is important that the law does not only resolve disputes between citizens or between the government and citizens but also holds the executive branch responsible to the law. Judges, tax agencies, police

¹⁷⁸ See for example K. Blasek (n 44), K. Cejic (n 7, 2022) with further references.

¹⁷⁹ R. Peerenboom (n 44, 2004) 42.

¹⁸⁰ R. Peerenboom (n 44, 2002) 268 compared to R. Peerenboom (n 105) 114.

¹⁸¹ R. Peerenboom (n 105) 114.

¹⁸² R. Peerenboom (n 105) 112; R. Peerenboom (n 44, 2002) 241.

¹⁸³ R. Peerenboom (n 44, 2002) 242-245.

¹⁸⁴ R. Peerenboom (n 44, 2002) 249. The Cultural Revolution resulting in a lack of lawyers can also explain this, however, the supply of lawyers has improved.

¹⁸⁵ The principle of access to public documentation is found in the Constitution, Freedom of Press Act, Chapter 2. However, tax confidentiality does also exist, see A.M. Hamre, *Tax Confidentiality: A Comparative Study and Impact Assessment of Global Interest* (Örebro University 2015).

officers and prosecutors must interpret and apply the law to everyone in accordance with its terms and without bias or outside influence.¹⁸⁶

Section 2.3.1 identified some differences and similarities in regard to legal education, which can be seen as the starting point of an institutional tax culture. Being a tax lawyer in Sweden is a high-status job, whereas in China tax law is often practised by economists.

The biggest difference in the tax agencies of the two countries is probably the legislative power of the STA in comparison to the SKV, which merely interprets and applies the law. However, this difference may be smaller than appears at first glance if one considers the de facto effect of SKV's publications.¹⁸⁷

When it comes to conflict resolution, Swedes seem to be more eager to go to court to solve tax law disputes than Chinese people. This difference may partially be explained by the patterns of law identified by Mattei. Swedes are generally individualistic and realistic and regard the law as having a conflict-solving function. In addition, the courts and the SKV are independent from politics and are not corrupt. By contrast, Chinese taxpayers are reluctant to litigate against the tax agency,¹⁸⁸ in part because they attach a higher value to harmony in society¹⁸⁹ and do not want to cause others to lose face. These beliefs are deeply imbedded in the national culture and will, of course, also affect the legal tax culture of each country.

Judges in Sweden are very highly respected. They are independent, well paid and appointed until retirement. The opposite holds true for judges in China. This too may contribute to the preference for mediation and arbitration as tools for conflict resolution rather than court proceedings.

¹⁸⁶ See also P. Pistone, et al. (n 41) 42.

¹⁸⁷ See at footnote 57.

¹⁸⁸ J. Li (n 58) 69.

¹⁸⁹ It has even been held that the objective of a harmonious society is de facto the goal of the rule of law and ritual, see F. Zhongxin (n 18) 10.

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To sum up, the institutional structures of Sweden and China are deeply influenced by very different ideas. Their divergent views on the rule of law (the law-state thinking in Sweden and the socialist rule of law with Chinese characteristics in China) are only one example of deep differences in regards to other important ideals and ways of thinking about justice.

