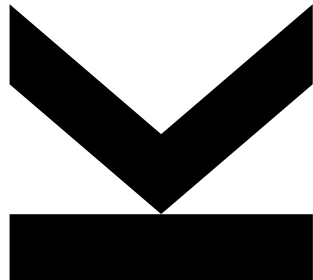# JKU

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THE *WYNNE*-SITUATION FROM AN AUSTRIAN PERSPECTIVE

BACKGROUND

■ Political debate about strengthening the fiscal autonomy of Austria's federal provinces ("Bundesländer")

■ If realized:

– Problems discussed in the US Supreme Court's decision in *Wynne* and at European level would gain importance within Austria

– Relevant legal framework of Austria's constitutional law?

– Art. 4 Federal Constitution Act (B-VG)

– Sec. 8 para. 4 Fiscal Constitution Act (F-VG)

– Sec. 7 para. 4 Fiscal Constitution Act (F-VG)

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ART. 4 FEDERAL CONSTITUTION ACT (B-VG)

(1) The federal territory is a uniform currency, economic and customs area.

(2) Intermediate customs barriers or other traffic restrictions may not be established within federal territory.

(1) Das Bundesgebiet bildet ein einheitliches Währungs-, Wirtschafts- und Zollgebiet.

(2) Innerhalb des Bundes dürfen Zwischenzolllinien oder sonstige Verkehrsbeschränkungen nicht errichtet werden.

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SEC. 8 PARA. 4 FISCAL CONSTITUTION ACT (F-VG)

⋮

   (4) Province (municipality) taxes, which infringe the unity of the currency, economic and customs area or which would be equal in their impact to intermediate customs or other traffic restrictions, may not be levied [...].

⋮

   (4) Abgaben der Länder (Gemeinden), die die Einheit des Währungs-, Wirtschafts- und Zollgebietes verletzen oder in ihrer Wirkung Zwischenzöllen oder sonstigen Verkehrsbeschränkungen gleichkommen, dürfen nicht erhoben werden [...].

⋮

SEC. 7 PARA. 4 FISCAL CONSTITUTION ACT (F-VG)

⋮

(4) Besides, the federal legislator can enact provisions with regard to province (municipality) taxes to avoid double taxation or other excessive burdens, [...] to avoid complications of the traffic or the economic relations [...] between the provinces and provincial regions [...].

⋮

(4) Im übrigen kann die Bundesgesetzgebung hinsichtlich der Landes(Gemeinde)abgaben Bestimmungen zur Verhinderung von Doppelbesteuerungen oder sonstigen übermäßigen Belastungen, [...] zur Verhinderung von Erschwerungen des Verkehres oder der wirtschaftlichen Beziehungen [...] zwischen den Ländern und Landesteilen [...] treffen [...].

⋮

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CONSEQUENCES

■ Unconstitutional (art. 4 Federal Constitution Act and sec. 8 para. 4 Fiscal Constitution Act):

   – Traffic restrictions (require a higher interference level than the situations addressed by sec. 7 para. 4 Fiscal Constitution Act)

■ Not per se unconstitutional, unless otherwise stipulated by federal provisions (sec. 7 para. 4 Fiscal Constitution Act):

   – Double taxation

   – Other excessive burdens

   – Complications of the traffic

   – Complications of the economic relations between the provinces and provincial regions

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CONCLUSIONS

■ The Austrian Constitution does not protect interstate commerce from discrimination as strict as the United States Constitution:

- United States Constitution ("Dormant Commerce Clause")
  - demands absolute competitive neutrality
  - forbids any encouragement of in-state commerce at the expense of interstate commerce
- Austrian Constitution
  - does not forbid all kinds of discriminations of interstate commerce per se, but only such significant discriminations, which are to be qualified as "traffic restrictions" (art. 4 Federal Constitution Act and sec. 8 para. 4 Fiscal Constitution Act)
  - minor obstacles are permissible, unless otherwise stipulated by federal provisions (sec. 7 para. 4 Fiscal Constitution Act)

■ Does the Internal Consistency Test (ICT) work in Austria? Yes and no!

- Yes: Internal consistent province taxes and municipality taxes are constitutional
- No: Internal inconsistent province taxes and municipality taxes are not per se unconstitutional, because not all kinds of discriminations are forbidden

■ Like in the United States double taxation within Austria is not (per se) inadmissible

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THANK YOU!

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