

Table of contents

Detailed

Preface	27
List of authors	29
Abbreviations	33
List of Tables	39
 Part 1	
General Report	
<i>Hans Gribnau and Melvin Pauwels</i>	41
1.1. Introduction	41
1.2. Terminology	42
1.2.1. Introduction	42
1.2.2. Retroactive vs. retrospective	42
1.2.3. Retrospectivity	44
1.2.4. 'Comparison moment'	45
1.2.5. 'Tax period-related concept' or 'taxable event-related concept' of retroactivity	46
1.2.6. Interpretative statutes	47
1.2.7. Validation statutes	49
1.2.8. The relevance of the character of the statute concerned: procedural or substantive	50
1.3. Ex ante evaluation of retroactivity	51
1.3.1. Limitations to retroactivity of tax statutes	51
1.3.2. Transition policy	53
1.3.3. Ex ante control by an independent body	54
1.4. Use of retroactivity in legislative practice	55
1.4.1. 'Legislation by press release'	55
1.4.2. Kinds of situation	56
1.4.3. Retroactive period further back than the date of announcement	57
1.4.4. Pending legal proceedings	58
1.4.4.1. <i>Influence of retroactive tax statutes</i>	58
1.4.4.2. <i>Pending legal proceedings excluded from application of retroactivity?</i>	58
1.4.5. Retroactivity favourable to taxpayers	59

1.5.	Ex post evaluation of retroactivity; case law on retroactivity	59
1.5.1.	Introduction	59
1.5.2.	Possibilities and limitations to test retroactivity	60
1.5.3.	Standards applied when testing retroactivity	62
1.5.4.	Final observations	66
1.6.	Views in the literature	67
1.6.1.	Opinions regarding retroactivity	67
1.6.2.	Debate on law and economics view on transitional law	67
	Part 2	69
	Special Topics	69
2.1.	Legal Certainty: A matter of principle	69
	<i>Hans Gribnau</i>	69
2.1.1.	Introduction	69
2.1.2.	The rule of law	71
2.1.3.	Formal conceptions of the rule of law	72
2.1.3.1.	<i>The rule of rules</i>	72
2.1.3.2.	<i>Law is a knife</i>	74
2.1.4.	Substantive conceptions of the rule of law	75
2.1.4.1.	<i>Law as command versus tacit reciprocity</i>	75
2.1.4.2.	<i>Law and legal principles</i>	77
2.1.5.	Legal certainty	80
2.1.6.	Aspects of legal certainty	83
2.1.6.1.	<i>Introduction</i>	83
2.1.6.2.	<i>Generality</i>	84
2.1.6.3.	<i>Promulgation</i>	85
2.1.6.4.	<i>Non-retroactivity</i>	86
2.1.6.5.	<i>Clarity</i>	87
2.1.6.6.	<i>Non-contradiction</i>	88
2.1.6.7.	<i>Compliability</i>	90
2.1.6.8.	<i>Constancy</i>	90
2.1.7.	Taking legal certainty seriously	91
2.1.8.	Conclusion	93
2.2.	Retroactive and retrospective tax legislation: a principle-based approach; a theory of 'priority principles of transitional law' and 'the method of the catalogue of circumstances'	
	<i>Melvin Pauwels</i>	95
2.2.1.	Introduction	95
2.2.2.	Overview	96
2.2.3.	Theoretical framework: a principle-based approach	96
2.2.3.1.	<i>Introduction</i>	96
2.2.3.2.	<i>From Radbruch to Dworkin and Alexy</i>	97
2.2.3.3.	<i>The case of retroactivity and retrospectivity: a balancing act</i>	99
2.2.4.	Retroactivity and retrospectivity in view of legal certainty	99
2.2.4.1.	<i>Introduction</i>	99
2.2.4.2.	<i>The concept of legal certainty: an aspects concept</i>	100
2.2.4.3.	<i>Retroactivity in view of legal certainty</i>	101

2.2.4.4.	<i>Immediate effect without grandfathering (retrospectivity) , in view of legal certainty</i>	101
2.2.4.5.	<i>The difference between retroactivity and retrospectivity: only gradual</i>	102
2.2.5.	<i>Principles of transitional law: priority principles</i>	102
2.2.5.1.	<i>Introduction: research question</i>	102
2.2.5.2.	<i>Framework for transitional law: principle of legal certainty, the objective of the law, and principle of equality</i>	103
2.2.5.3.	<i>The principles of transitional law should be conceptualized as 'priority principles'</i>	104
2.2.6.	<i>Legitimate expectations? An approach based on 'the method of the catalogue of circumstances'</i>	105
2.2.6.1.	<i>Introduction: the problem and research question</i>	105
2.2.6.2.	<i>An initial theoretical framework to approach the concept 'legitimate expectations'</i>	106
2.2.6.3.	<i>Method of priority rules?</i>	107
2.2.6.4.	<i>Method of the catalogue of circumstances</i>	108
2.2.6.5.	<i>The interaction between the method of the catalogue of circumstances and the priority principles of transition</i>	109
2.2.7.	<i>The catalogue of circumstances for making of transition law</i>	109
2.2.7.1.	<i>The contents of the catalogue of circumstances</i>	109
2.2.7.2.	<i>Two circumstances discussed</i>	112
2.2.8.	<i>Conclusion</i>	115
2.3.	Retroactive interpretative statutes and validation statutes in tax law: an assessment in the light of legal certainty, separation of powers, and the right to a fair trial	
	<i>Bruno Peeters and Patricia Popelier</i>	117
2.3.1.	<i>Introduction</i>	117
2.3.2.	<i>Definition of interpretative statutes and validation statutes</i>	117
2.3.2.1.	<i>Interpretative statutes</i>	117
2.3.2.2.	<i>Validation statutes</i>	118
2.3.3.	<i>Interpretative and validation statutes: what they have in common</i>	119
2.3.3.1.	<i>In general</i>	119
2.3.3.2.	<i>Characteristics</i>	119
2.3.3.3.	<i>Constitutional questions</i>	120
a.	<i>In general</i>	120
b.	<i>Legal certainty and legitimate expectations</i>	120
c.	<i>Separation of powers</i>	121
d.	<i>The right of access to the court</i>	123
2.3.4.	<i>Evaluation</i>	123
2.3.4.1.	<i>In general</i>	123
2.3.4.2.	<i>Interpretative statutes</i>	124
2.3.4.3.	<i>Validation statutes</i>	125
2.3.5.	<i>Conclusion</i>	127

2.4. Legislation ‘by’ press release: the role of announcements in the debate about retroactive tax legislation	
<i>Johanna Hey</i>	129
2.4.1. What is meant by the term ‘legislation by press release’?	129
2.4.2. Interdependency between the distinction between retroactivity and retrospectivity and the announcement	130
2.4.3. What is meant by ‘press release’?	130
2.4.4. Role of Publication	131
2.4.5. The need for justification of retroactive enforcement until announcement	132
2.4.6. The weighting process	133
2.4.6.1. <i>Quality of the announcement</i>	133
a. Categorization by originator and content	133
b. Relevance of possible adjustments of behaviour to the changed legal circumstances	134
c. Announcements in connection with a change in the case law	135
2.4.6.2. <i>Reasons for the retroactivity</i>	135
2.5. The law and economics approaches to retroactive tax legislation	139
<i>Charlotte Crane</i>	139
2.5.1. Introduction	139
2.5.2. The cost of inducing desired behaviour in the presence of risk of change	141
2.5.3. Kaplow’s generalized expansion on Graetz	143
2.5.4. The equation of market risk with risk of legislative change	143
2.5.5. The ‘heroic’ assumption of desirable legislative change	144
2.5.6. The incentives of the legislature and the possibility of opportunistic behaviour	145
2.5.7. One size fits all?	146
2.5.8. Conclusion	147
2.5.9. Postscript: optimal tax theory: the other law and economics-derived argument for retroactive taxes	148
2.5.10. Annex – Bibliography	148
2.6. It’s the outcomes, not the rules: transition issues in the process of tax reform	
<i>Henk Vording, Koos Boer and Allard Lubbers</i>	151
2.6.1. Introduction	151
2.6.2. A shift from a pure income tax to a pure consumption tax	152
2.6.2.1. <i>The models of income tax and consumption tax</i>	152
2.6.2.2. <i>The transition issue: Double taxation of existing wealth</i>	154
2.6.2.3. <i>Summary</i>	155
2.6.3. The real world issue: hybrid taxes, hybrid tax reforms	155
2.6.3.1. <i>In general</i>	155
2.6.3.2. <i>The hybrid income/consumption tax as the relevant starting point</i>	156
2.6.3.3. <i>Successful tax reform requires political tradeoffs</i>	157

2.6.4.	The political conceptualization of transition issues	158
2.6.4.1.	<i>Reasonable outcomes as a norm?</i>	158
2.6.4.2.	<i>The political process of defining transition issues</i>	159
2.6.4.3.	<i>Reasonable outcomes: a restriction on political decision-making?</i>	160
2.6.5.	Conclusion	161

Part 3

National reports 163

3.1.	Questionnaire <i>Hans Gribnau and Melvin Pauwels</i>	163
3.1.1.	Preliminary general remarks	163
3.1.2.	On terminology	164
3.1.3.	Ex ante evaluation of retroactivity	166
3.1.4.	Use of retroactivity in legislative practice	167
3.1.5.	Ex post evaluation of retroactivity (in case law)	168
3.1.6.	Retroactivity of case law	169
3.1.7.	Views in the literature	169
3.1.7.1.	<i>In general</i>	169
3.1.7.2.	<i>The law and economics view</i>	169
3.2.	Austria <i>Tina Ehrke-Rabel</i>	171
3.2.1.	On terminology	171
3.2.1.1.	<i>Distinction between retroactivity and retrospectivity</i>	171
3.2.1.2.	<i>Relevance of tax period</i>	171
3.2.1.3.	<i>Interpretative statutes</i>	171
3.2.1.4.	<i>Validation statutes</i>	172
3.2.1.5.	<i>Comparison moment</i>	172
3.2.1.6.	<i>Concept of retrospectivity</i>	172
3.2.1.7.	<i>Distinction between substantive and procedural statutes</i>	172
3.2.2.	Ex ante evaluation of retroactivity	173
3.2.2.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>	173
3.2.2.2.	<i>Transition policy of government</i>	173
3.2.2.3.	<i>Ex ante control by an independent body</i>	173
3.2.3.	Use of retroactivity in legislative practice	173
3.2.3.1.	<i>'Legislating by press release</i>	173
3.2.3.2.	<i>Retroactive effect further back than first announcement</i>	173
3.2.3.3.	<i>Pending legal proceedings</i>	174
3.2.3.4.	<i>Favourable retroactivity</i>	174
3.2.4.	Ex post evaluation of retroactivity (in case law)	174
3.2.4.1.	<i>Testing against the Constitution and legal principles</i>	174
3.2.4.2.	<i>Examination method</i>	174
3.2.4.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	174
3.2.4.4.	<i>Two cases in which the Austrian Constitutional Court considered a retroactive legal statute to infringe the principle of equality</i>	174
3.2.5.	Retroactivity of case law	175
3.2.6.	Views in the literature	175
3.2.6.1.	<i>Opinions regarding retroactivity</i>	175
3.2.6.2.	<i>Debate on law and economics view on transitional law</i>	176

3.3.	Belgium	Bruno Peeters and Ethel Puncher	177
3.3.1.	Terminology		177
3.3.1.1.	<i>Distinction between 'retroactivity' and 'retrospectivity'</i>		177
3.3.1.2.	<i>Relevance of tax period</i>		178
3.3.1.3.	<i>Interpretative statutes</i>		179
3.3.1.4.	<i>Validation statutes</i>		180
3.3.1.5.	<i>Comparison moment</i>		181
3.3.1.6.	<i>Concept of retrospectivity</i>		181
3.3.1.7.	<i>Distinction between substantive and procedural statutes</i>		182
	a. With respect to the impact of a statute having immediate effect		182
	b. Rules considered to be procedural rules		182
3.3.2.	Ex ante evaluation of retroactivity		182
3.3.2.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>		182
3.3.2.2.	<i>Transition policy of government</i>		183
3.3.2.3.	<i>Ex ante control by an independent body</i>		184
	a. Advisory bodies such as the Council of State		184
	b. Rules to review retroactivity		184
	c. Rules to review favourable retroactivity		184
3.3.3.	Use of retroactivity in legislative practice		185
3.3.3.1.	<i>'Legislating by press release'</i>		185
3.3.3.2.	<i>Pending legal proceedings</i>		186
3.3.3.3.	<i>Favourable retroactivity</i>		187
3.3.4.	Ex-post evaluation of retroactivity (in case law)		187
3.3.4.1.	<i>Testing against the Constitution and legal principles</i>		187
3.3.4.2.	<i>Examination method</i>		188
3.3.4.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>		188
3.3.4.4.	<i>Examination method for testing against the principle of legal certainty</i>		189
3.3.5.	Retroactivity of case law		189
3.3.5.1.	<i>Temporal effect of judicial change of course</i>		189
3.3.6.	Views in the literature		190
3.3.6.1.	<i>Opinions regarding retroactivity</i>		190
3.3.6.2.	<i>Debate on legal and economic view of transitional law</i>		190
3.4.	Canada	Geoffrey Loomer	193
3.4.1.	Introduction		193
3.4.2.	Terminology		193
3.4.2.1.	<i>Distinction between 'retroactivity' and 'retrospectivity'</i>		193
3.4.2.2.	<i>Conceptual variations</i>		194
	a. In general		194
	b. Clear distinction between 'retroactivity' and 'retrospectivity'?		196
	c. Relevance of tax period		196
3.4.2.3.	<i>Interpretative statutes</i>		196
	a. Phenomenon of 'interpretative statutes' explicitly known?		196
3.4.2.4.	<i>Validation statutes</i>		197
	a. Phenomenon of 'validation statutes' known?		197
3.4.2.5.	<i>Comparison moment</i>		198

3.4.2.6.	<i>Concept of retrospectivity</i>	198
a.	Definition of retrospectivity	198
b.	Examples of retrospectivity	198
3.4.2.7.	<i>Distinction between substantive and procedural statutes</i>	199
a.	With respect to the impact of a statute having immediate effect	199
b.	Rules considered procedural rules	199
3.4.3.	Ex ante evaluation of retroactivity	200
3.4.3.1.	<i>In general</i>	200
3.4.3.2.	<i>Constitutional limitations to retroactivity of tax statutes</i>	200
3.4.3.3.	<i>Transition policy of government</i>	201
3.4.3.4.	<i>Ex ante control by an independent body</i>	202
3.4.4.	Use of retroactivity in legislative practice	202
3.4.4.1.	<i>In general</i>	202
3.4.4.2.	<i>'Legislating by press release'</i>	202
a.	In general	202
b.	Use of 'legislating by press release'	202
c.	Kind of situations	203
3.4.4.3.	<i>Retroactive effect further back than first announcement</i>	203
3.4.4.4.	<i>Pending legal proceedings</i>	203
a.	Influence of retroactive tax statutes	203
b.	Pending legal proceedings excluded from application of retroactivity?	204
3.4.4.5.	<i>Favourable retroactivity</i>	204
3.4.5.	Ex post evaluation of retroactivity (in case law)	205
3.4.5.1.	<i>In general</i>	205
3.4.5.2.	<i>Testing against the Constitution and legal principles</i>	205
3.4.5.3.	<i>Examination method</i>	207
3.4.5.4.	<i>Testing against Article 1 of the First Protocol ECHR</i>	207
3.4.5.5.	<i>Examination method for testing against principle of legal certainty</i>	207
3.4.5.6.	<i>Interpretations by courts to avoid retroactivity</i>	207
3.4.5.7.	<i>Reasons for lack of judicial limits to retroactivity</i>	208
3.4.6.	Retroactivity of case law	208
3.4.6.1.	<i>Temporal effect of judicial change of course</i>	208
3.4.7.	Views in the literature	209
3.4.7.1.	<i>Opinions regarding retroactivity</i>	209
3.4.7.2.	<i>Debate on law and economics view on transition law</i>	209
3.5.	Denmark Aage Michelsen and Jacob Graff Nielsen	211
3.5.1.	Terminology	211
3.5.1.1.	<i>Distinction between retroactivity and retrospectivity</i>	211
3.5.1.2.	<i>Conceptual variations</i>	212
a.	In general	212
b.	Clear distinction between 'retroactivity' and 'retrospectivity'?	212
c.	Relevance of tax period	213
3.5.1.3.	<i>Interpretative statutes</i>	213
a.	Phenomenon of 'interpretative statutes' explicitly known?	213
3.5.1.4.	<i>Validation statutes</i>	214
a.	Phenomenon of 'validation statutes' known?	214

3.5.1.5.	<i>Comparison moment</i>	214
3.5.1.6.	<i>Concept of retrospectivity</i>	215
a.	<i>Definition of retrospectivity</i>	215
b.	<i>Examples of retrospectivity</i>	216
3.5.1.7.	<i>Distinction between substantive and procedural statutes</i>	216
a.	<i>With respect to the impact of a statute having immediate effect</i>	216
b.	<i>Rules considered procedural rules</i>	216
3.5.2.	<i>Ex ante evaluation of retroactivity</i>	217
3.5.2.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>	217
3.5.2.2.	<i>Transition policy of government</i>	217
a.	<i>Is there a tax transition policy of government?</i>	217
b.	<i>Transition policy laid down in a document or an Act</i>	217
c.	<i>Transition policy with respect to retroactivity and grandfathering</i>	217
d.	<i>Transition policy and favourable retroactive effect</i>	218
3.5.2.3.	<i>Ex ante control by an independent body</i>	218
3.5.3.	<i>Use of retroactivity in legislative practice</i>	218
3.5.3.1.	<i>Legislating by press release</i>	218
a.	<i>Use of 'legislating by press release'</i>	218
b.	<i>Types of situations</i>	218
3.5.3.2.	<i>Retroactive effect further back than first announcement</i>	219
a.	<i>In general</i>	219
b.	<i>Influence of retroactive tax statutes</i>	219
c.	<i>Pending legal proceedings excluded from application retroactivity?</i>	219
3.5.3.3.	<i>Favourable retroactivity</i>	219
3.5.4.	<i>Ex post evaluation of retroactivity (in case law)</i>	219
3.5.4.1.	<i>Testing against the Constitution and legal principles</i>	219
3.5.4.2.	<i>Examination method</i>	220
3.5.4.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	220
3.5.4.4.	<i>Examination method for testing against principle of legal certainty</i>	220
3.5.4.5.	<i>Interpretations by courts to avoid retroactivity</i>	221
3.5.4.6.	<i>Reasons for lack of judicial limits to retroactivity</i>	221
3.5.5.	<i>Retroactivity of case law</i>	221
3.5.5.1.	<i>In general</i>	221
3.5.5.2.	<i>Temporal effect of judicial change of course</i>	221
3.5.6.	<i>Views in the literature</i>	222
3.5.6.1.	<i>Opinions regarding retroactivity</i>	222
3.5.6.2.	<i>Debate on law and economics view on transitional law</i>	222
3.6.	Finland Jukka Mähönen	223
3.6.1.	<i>Terminology</i>	223
3.6.1.1.	<i>Distinction between retroactivity and retrospectivity</i>	223
3.6.1.2.	<i>Relevance of tax period</i>	223
3.6.1.3.	<i>Interpretative statutes</i>	223
3.6.1.4.	<i>Validation statutes</i>	223
3.6.1.5.	<i>Comparison moment</i>	224
3.6.1.6.	<i>Concept of retrospectivity</i>	224
3.6.1.7.	<i>Distinction between substantive and procedural statutes</i>	224

3.6.2.	Ex ante evaluation of retroactivity	224
3.6.2.1.	<i>Constitutional limitations to the retroactivity of tax statutes</i>	224
3.6.2.2.	<i>Transition policy of government</i>	225
3.6.2.3.	<i>Ex ante control by an independent body</i>	225
3.6.3.	Use of retroactivity in legislative practice	225
3.6.3.1.	<i>Legislating by press release</i>	225
3.6.3.2.	<i>Retroactive effect further back than first announcement</i>	225
3.6.3.3.	<i>Pending legal proceedings</i>	226
3.6.3.4.	<i>Favourable retroactivity</i>	226
3.6.4.	Ex post evaluation of retroactivity (in case law)	226
3.6.4.1.	<i>Testing against the Constitution and legal principles</i>	226
3.6.4.2.	<i>Examination method</i>	226
3.6.4.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	226
3.6.4.4.	<i>Examination method for testing against principle of legal certainty</i>	227
3.6.4.5.	<i>Interpretations by courts to avoid retroactivity</i>	227
3.6.4.6.	<i>Reasons for lack of judicial limits to retroactivity</i>	227
3.6.5.	Retroactivity of case law	227
3.6.6.	Views in the literature	227
3.6.6.1.	<i>Opinions regarding retroactivity</i>	227
3.6.6.2.	<i>Debate on law and economics view on transitional law</i>	227
3.7.	France Emmanuel de Crouy-Chanel	229
3.7.1.	Terminology	229
3.7.1.1.	<i>Distinction between 'retroactivity' and 'retrospectivity'</i>	229
3.7.1.2.	<i>Relevance of tax period</i>	229
3.7.1.3.	<i>Interpretative statutes</i>	229
3.7.1.4.	<i>Validation statutes</i>	230
3.7.1.5.	<i>Comparison moment</i>	230
3.7.1.6.	<i>Concept of retrospectivity</i>	231
3.7.1.7.	<i>Distinction between substantive and procedural statutes</i>	231
3.7.2.	Ex ante evaluation of retroactivity	231
3.7.2.1.	<i>In general</i>	231
3.7.2.2.	<i>Transition policy of government</i>	232
3.7.3.	Use of retroactivity in legislative practice	233
3.7.3.1.	<i>Legislating by press release</i>	233
3.7.3.2.	<i>Retroactive effect further back than first announcement</i>	233
3.7.3.3.	<i>Pending legal proceedings</i>	233
3.7.3.4.	<i>Favourable retroactivity</i>	233
3.7.4.	Ex post evaluation of retroactivity (in case law)	234
3.7.4.1.	<i>Testing against the Constitution and legal principles</i>	234
3.7.4.2.	<i>Examination method</i>	234
3.7.4.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	234
3.7.4.4.	<i>Examination method for testing against principle of legal certainty</i>	234
3.7.4.5.	<i>Interpretations by courts to avoid retroactivity</i>	235
3.7.5.	Retroactivity of case law	235
3.7.5.1.	<i>Temporal effect of judicial change of course</i>	235
3.7.6.	Views in the literature	235
3.7.6.1.	<i>Opinions regarding retroactivity</i>	235
3.7.6.2.	<i>Debate on law and economics view on transitional law</i>	235

3.8.	Germany	Johanna Hey	237
3.8.1.	Introduction		237
3.8.2.	Terminology in Germany		237
3.8.2.1.	<i>Distinction between retroactivity and retrospectivity</i>		237
3.8.2.2.	<i>The relevance of the tax period for the distinction between retroactivity and retrospectivity</i>		239
3.8.2.3.	<i>Interpretative statutes: legislative purpose of clarification</i>		240
3.8.2.4.	<i>'Validation Statutes' ('Nichtanwendungsgesetze')</i>		241
3.8.2.5.	<i>Relation between the date of publication and the date of entry into force</i>		242
3.8.2.6.	<i>Concept of retrospectivity</i>		243
3.8.2.7.	<i>No categorical distinction between substantive and procedural statutes</i>		243
3.8.3.	Ex ante evaluation of retroactivity		244
3.8.3.1.	<i>Constitutional limitations to retroactivity of tax laws</i>		244
3.8.3.2.	<i>Transition policy of the legislator</i>		244
3.8.3.3.	<i>No ex ante control by an independent body</i>		245
3.8.4.	Use of retroactivity in legislative practice		245
3.8.4.1.	<i>The role of adoption of the bill in parliament</i>		245
3.8.4.2.	<i>Retroactive application from first announcement</i>		246
3.8.4.3.	<i>Retroactivity and pending cases</i>		247
3.8.4.4.	<i>Retroactivity in favour of the taxpayer</i>		247
3.8.5.	Ex post evaluation of retroactivity		247
3.8.5.1.	<i>Control by the Constitutional Court</i>		247
3.8.5.2.	<i>Standards applied to retroactive/retrospective tax statutes by courts</i>		248
3.8.5.3.	<i>Test of retroactivity against Article 1 of the First Protocol to the European Convention of Human Rights (ECHR)</i>		249
3.8.5.4.	<i>Retroactivity of Acts of Parliament and subordinate legislation</i>		249
3.8.5.5.	<i>Avoiding unconstitutional retroactivity by interpretation</i>		250
3.8.5.6.	<i>Self-discipline of the legislator</i>		250
3.8.6.	Retroactivity of Case Law		250
3.8.6.1.	<i>Transition practice of the Supreme Tax Court in cases of a change of the existing case law</i>		250
3.8.7.	Views in the literature		251
3.8.7.1.	<i>Main views in the literature</i>		251
3.8.7.2.	<i>Influence of the law and economics view</i>		252
3.8.8.	Annex I		253
3.9.	Greece	Eleni Theocharopoulou, Konstantinos Remelis, Panagiotis G. Melissinos	255
3.9.1.	Introduction		255
3.9.2.	Terminology		256
3.9.2.1.	<i>Distinction between retroactivity and retrospectivity</i>		256
a.	<i>Conceptual variations</i>		256
b.	<i>Clear distinction between 'retroactivity' and 'retrospectivity'?</i>		258
3.9.2.2.	<i>Relevance of tax period</i>		258
3.9.2.3.	<i>Interpretative statutes</i>		258
a.	<i>Phenomenon of 'interpretative statutes' explicitly known?</i>		258

3.9.2.4.	<i>Validation statutes</i>	260
a.	Phenomenon of 'validation statutes' known?	260
3.9.2.5.	<i>Comparison moment</i>	262
3.9.2.6.	<i>Concept of retrospectivity</i>	263
a.	Definition of retrospectivity	263
b.	Examples of retrospectivity	264
3.9.2.7.	<i>Distinction between substantive and procedural statutes</i>	264
a.	With respect to the impact of a statute having immediate effect	265
b.	Rules considered to be procedural rules	268
3.9.3.	<i>Ex ante evaluation of retroactivity</i>	270
3.9.3.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>	270
3.9.3.2.	<i>Transition policy of government</i>	271
3.9.3.3.	<i>Ex ante control by an independent body</i>	272
a.	Advisory body such as the Council of State	272
b.	Rules to review retroactivity, grandfathering or favourable retroactivity	272
3.9.4.	<i>Use of retroactivity in legislative practice</i>	272
3.9.4.1.	<i>'Legislating by press release'</i>	272
3.9.4.2.	<i>Retroactive effect further back than first announcement</i>	272
3.9.4.3.	<i>Pending legal proceedings</i>	273
a.	Influence of retroactive tax statutes	273
b.	Pending legal proceedings excluded from application retroactivity?	274
3.9.4.4.	<i>Favourable retroactivity</i>	274
3.9.5.	<i>Ex post evaluation of retroactivity (in case law)</i>	275
3.9.5.1.	<i>Testing against the Constitution and legal principles</i>	276
3.9.5.2.	<i>Examination method</i>	278
3.9.5.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	283
3.9.5.4.	<i>Examination method for testing against principle of legal certainty</i>	283
3.9.5.5.	<i>Interpretations by courts to avoid retroactivity</i>	284
3.9.5.6.	<i>Reasons for lack of judicial limits to retroactivity</i>	285
3.9.6.	<i>Retroactivity of case law</i>	285
3.9.7.	<i>Views in the literature</i>	286
3.9.7.1.	<i>Opinions regarding retroactivity</i>	286
3.9.7.2.	<i>Debate on law and economics view on transitional law</i>	287
3.10.	Hungary Daniel Deak	289
3.10.1.	<i>Introduction</i>	289
3.10.2.	<i>On terminology</i>	290
3.10.2.1.	<i>In general</i>	290
3.10.2.2.	<i>Legal discourse</i>	291
3.10.2.3.	<i>Statutes applying to a previous year (actual retroactivity) and statutes applying as from the beginning of the current year (de facto retroactivity)</i>	291
3.10.2.4.	<i>Interpretative statutes</i>	292
3.10.2.5.	<i>Validation statutes</i>	293
3.10.2.6.	<i>Effective date preceding the date of entry into force</i>	293
3.10.2.7.	<i>Retrospective legislation (material retroactivity)</i>	293
3.10.2.8.	<i>Statutes having an immediate effect in the areas of substantive and procedural tax law</i>	294

3.10.3.	Ex ante evaluation of retroactivity	295
3.10.3.1.	<i>Legal basis for retroactivity</i>	295
3.10.3.2.	<i>Transition policy</i>	295
3.10.4.	Use of retroactivity in legislative practice	296
3.10.4.1.	<i>'Legislating by press'</i>	296
3.10.4.2.	<i>Pending substantive tax law cases excluded from retroactive legislation</i>	296
3.10.4.3.	<i>Grant of retroactive effect to tax statutes that are favourable for taxpayers</i>	296
3.10.5.	Ex post evaluation of retroactivity	296
3.10.5.1.	<i>Testing by courts of the retroactivity of a tax statute for compatibility with the Constitution</i>	296
3.10.5.2.	<i>Testing by courts of the retroactivity of a tax statute against Article 1 of the First Protocol ECHR</i>	297
3.10.6.	Retroactivity of case law	297
3.10.6.1.	<i>Abandonment by the Supreme Court of the existing case law and formulation by the Court of a new general rule</i>	297
3.10.7.	Views in the literature	298
3.10.7.1.	<i>Background study on the Hungarian Constitutional Court's practice on retrospective and retroactive legislation with particular regard to tax cases</i>	298
a.	<i>A history of the restrictive approach to retroactive legislation</i>	298
3.10.7.2.	<i>Retrospective and retroactive legislation</i>	299
3.10.7.3.	<i>Failure to explore the lack of retrospective legislation due to the failure to discover the lack of real change in the law</i>	302
3.10.7.4.	<i>Repeal of existing laws with retroactive effect</i>	303
3.10.7.5.	<i>Relevance of the practice of the ECtHR and the ECJ on retroactive legislation to Hungarian law</i>	305
3.11.	Italy Fabrizio Amatucci	309
3.11.1.	Terminology	309
3.11.1.1.	<i>Distinction between retroactivity and retrospectivity</i>	309
a.	<i>In general</i>	309
b.	<i>Conceptual distinction between a statute that applies to a previous year (actual retroactivity) and a statute that applies as from the beginning of the current year (de facto retroactivity)</i>	309
3.11.1.2.	<i>Relevance of tax period</i>	310
a.	<i>Phenomenon of 'interpretative statutes explicitly known'?</i>	310
b.	<i>Legal basis for interpretative statutes and special term for this kind of retroactivity</i>	310
3.11.1.3.	<i>Standards used for characterization as 'interpretative statute'</i>	310
3.11.1.4.	<i>Validation statutes</i>	310
a.	<i>Phenomenon of interpretative statutes explicitly known?</i>	310
b.	<i>Standards used for characterization as 'validation statute'</i>	310
c.	<i>Difference between a 'validation statute' and 'interpretative statute'</i>	310

3.11.1.5.	<i>Moment of entry into force</i>	311
3.11.1.6.	<i>Concept of retrospectivity</i>	311
a.	<i>In general</i>	311
b.	<i>Examples of situations that would be regarded as retrospective and not retrospective</i>	311
3.11.1.7.	<i>Distinction between substantive statutes and procedural statutes: the impact of immediate effect</i>	311
a.	<i>In general</i>	311
b.	<i>Rules considered procedural rules</i>	312
3.11.2.	<i>Ex ante evaluation of retroactivity</i>	312
3.11.2.1.	<i>Constitutional limitations to tax retroactivity</i>	312
3.11.2.2.	<i>Tax transition policy of government</i>	313
3.11.2.3.	<i>Ex ante control by an independent body</i>	313
a.	<i>Advisory body such as Council of State</i>	313
3.11.3.	<i>Use of retroactivity in legislative practice</i>	313
3.11.3.1.	<i>Use of legislating by press release</i>	313
3.11.3.2.	<i>Pending legal proceedings excluded from the application of retroactive statute?</i>	313
3.11.3.3.	<i>Favourable retroactivity</i>	313
3.11.4.	<i>Ex post evaluation of retroactivity (in case law)</i>	314
3.11.4.1.	<i>Testing against the Constitution and legal principles</i>	314
3.11.4.2.	<i>Examination method when courts rule retroactivity incompatible</i>	314
3.11.4.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	315
3.11.4.4.	<i>Examination method for testing retroactivity of subordinate legislation against legal certainty</i>	315
3.11.4.5.	<i>Interpretations by courts to avoid retroactivity</i>	315
3.11.4.6.	<i>Reasons for lack of judicial limits to retroactivity</i>	315
3.11.5.	<i>Retroactivity of case law</i>	315
3.11.5.1.	<i>Temporal effect of judicial changes by courts</i>	315
3.11.6.	<i>Views in the literature</i>	315
3.11.6.1.	<i>Opinions regarding retroactivity</i>	315
3.11.6.2.	<i>Debates on law and economics view on transitional tax law</i>	316
3.12.	Luxembourg <i>Alain Steichen</i>	317
3.12.1.	<i>Terminology</i>	317
3.12.1.1.	<i>Distinction between retroactivity and retrospectivity</i>	317
a.	<i>Conceptual variations</i>	317
b.	<i>Clear distinction between 'retroactivity' and 'retrospectivity'?</i>	317
3.12.1.2.	<i>Relevance of tax period</i>	317
3.12.1.3.	<i>Interpretative statutes</i>	317
a.	<i>Phenomenon of 'interpretative statutes' explicitly known?</i>	317
b.	<i>Legal basis for 'interpretative statutes'</i>	317
c.	<i>Special term for 'interpretative statutes'</i>	317
d.	<i>Standards used for qualification as 'interpretative statutes'</i>	317
3.12.1.4.	<i>Validation statutes</i>	318
3.12.1.5.	<i>Comparison moment</i>	318
3.12.1.6.	<i>Concept of retrospectivity</i>	318
3.12.1.7.	<i>Distinction between substantive and procedural statutes</i>	318

3.12.2.	Ex ante evaluation of retroactivity	318
3.12.2.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>	318
3.12.2.2.	<i>Transition policy of government</i>	318
a.	Is there a tax transitional policy of government?	318
b.	Transition policy and favourable retroactive effect	318
3.12.2.3.	<i>Ex ante control by an independent body</i>	319
a.	Advisory body such as Council of State	319
b.	Rules to review retroactivity	319
3.12.3.	Use of retroactivity in legislative practice	319
3.12.3.1.	<i>Legislating by press release</i>	319
a.	In general	319
b.	Use of 'legislating by press release'	319
3.12.3.2.	<i>Retroactive effect further back than first announcement</i>	319
3.12.3.3.	<i>Pending legal proceedings – influence of retroactive tax statutes</i>	319
3.12.4.	Ex post evaluation of retroactivity (in case law)	319
3.12.4.1.	<i>Testing against the Constitution and legal principles</i>	319
3.12.4.2.	<i>Testing against Article 1 of the First Protocol ECHR</i>	319
3.12.4.3.	<i>Examination method for testing against principle of legal certainty</i>	319
3.12.5.	Retroactivity of case law	320
3.12.6.	Views in the literature	320
3.12.6.1.	<i>Opinions regarding retroactivity</i>	320
3.12.6.2.	<i>Debate on law and economics view on transition law</i>	320
3.13.	Netherlands Hans Gribnau and Melvin Pauwels	321
3.13.1.	Terminology	321
3.13.1.1.	<i>Distinction between retroactivity and retrospectivity</i>	321
3.13.1.2.	<i>Relevance of tax period</i>	322
3.13.1.3.	<i>Interpretative statutes</i>	322
3.13.1.4.	<i>Validation statutes</i>	322
3.13.1.5.	<i>Comparison moment</i>	322
3.13.1.6.	<i>Concept of retrospectivity</i>	323
3.13.1.7.	<i>Distinction between substantive and procedural statutes</i>	323
3.13.2.	<i>Ex ante</i> evaluation of retroactivity	323
3.13.2.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>	323
3.13.2.2.	<i>Transition policy of government</i>	324
3.13.2.3.	<i>Ex ante control by an independent body</i>	326
3.13.3.	Use of retroactivity in legislative practice	327
3.13.3.1.	<i>Legislating by press release</i>	327
3.13.3.2.	<i>Retroactive effect further back than first announcement</i>	328
3.13.3.3.	<i>Pending legal proceedings</i>	329
3.13.3.4.	<i>Favourable retroactivity</i>	329
3.13.4.	<i>Ex post</i> evaluation of retroactivity (in case law)	330
3.13.4.1.	<i>Testing against the Constitution and legal principles</i>	330
3.13.4.2.	<i>Examination method</i>	331
3.13.4.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	331
3.13.4.4.	<i>Examination method for testing against principle of legal certainty</i>	332
3.13.4.5.	<i>Interpretations by courts to avoid retroactivity</i>	333
3.13.4.6.	<i>Reasons for lack of judicial limits to retroactivity</i>	333
3.13.5.	Retroactivity of case law	334

3.13.6.	Views in the literature	334
3.13.6.1.	<i>Opinions regarding retroactivity</i>	334
3.13.6.2.	<i>Debate on law and economics view on transitional law</i>	335
3.14.	Poland <i>Piotr Karwat</i>	337
3.14.1.	Terminology	337
3.14.1.1.	<i>Distinction between retroactivity and retrospectivity</i>	337
a.	Conceptual variations	337
b.	Clear distinction between 'retroactivity' and 'retrospectivity'?	337
3.14.1.2.	<i>Relevance of tax period</i>	337
3.14.1.3.	<i>Interpretative statutes</i>	338
a.	Phenomenon of 'interpretative statutes' explicitly known?	338
3.14.1.4.	<i>Validation statutes</i>	338
a.	Phenomenon of 'validation statutes' known?	338
3.14.1.5.	<i>Comparison moment</i>	339
3.14.1.6.	<i>Concept of retrospectivity</i>	339
a.	Definition of retrospectivity	339
b.	Examples of retrospectivity	340
3.14.1.7.	<i>Distinction between substantive and procedural statutes</i>	341
3.14.2.	Ex ante evaluation of retroactivity	341
3.14.2.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>	341
3.14.2.2.	<i>Transition policy of government</i>	341
3.14.2.3.	<i>Ex ante control by an independent body</i>	342
3.14.3.	Use of retroactivity in legislative practice	342
3.14.3.1.	<i>Legislating by press release</i>	342
3.14.3.2.	<i>Retroactive effect further back than first announcement</i>	342
3.14.3.3.	<i>Pending legal proceedings</i>	342
3.14.3.4.	<i>Favourable retroactivity</i>	343
3.14.4.	<i>Ex post</i> evaluation of retroactivity (in case law)	343
3.14.5.	Retroactivity of case law	344
3.14.5.1.	<i>Temporal effect of judicial change of course</i>	344
3.15.	Portugal <i>Glória Teixeira</i>	345
3.15.1.	Terminology	345
3.15.1.1.	<i>Distinction between retroactivity and retrospectivity</i>	345
a.	In general	345
b.	Conceptual variations	346
c.	Distinction between substantive and procedural statutes	347
3.15.2.	Ex ante evaluation of retroactivity	348
3.15.3.	Use of retroactivity in legislative practice	349
3.15.4.	Ex post evaluation of retroactivity (in case law)	349
3.15.5.	Retroactivity of case law	350
3.15.6.	Views in the literature	350
3.16.	Spain <i>Pedro M. Herrera and Ana Belén Macho</i>	351
3.16.1.	Terminology	351
3.16.1.1.	<i>Distinction between 'retroactivity' and 'retrospectivity'</i>	351
3.16.1.2.	<i>Relevance of tax period</i>	351
3.16.1.3.	<i>Interpretative statutes</i>	352

3.16.1.4.	<i>Validation statutes</i>	352
3.16.1.5.	<i>Comparison moment</i>	352
3.16.1.6.	<i>Concept of retrospectivity</i>	352
3.16.1.7.	<i>Distinction between substantive and procedural statutes</i>	352
a.	With respect to the impact of a statute having immediate effect	352
b.	Rules considered procedural rules	352
3.16.2.	<i>Ex ante evaluation of retroactivity</i>	353
3.16.2.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>	353
3.16.2.2.	<i>Transitional policy of government</i>	353
3.16.2.3.	<i>Ex ante control by an independent body</i>	353
3.16.3.	<i>Use of retroactivity in legislative practice</i>	353
3.16.3.1.	<i>Legislating by press release</i>	353
3.16.3.2.	<i>Retroactive effect further back than first announcement</i>	353
3.16.3.3.	<i>Pending legal proceedings</i>	353
3.16.3.4.	<i>Favourable retroactivity</i>	353
3.16.4.	<i>Ex post evaluation of retroactivity (in case law)</i>	354
3.16.5.	<i>Retroactivity of case law</i>	354
3.16.5.1.	<i>Temporal effect of judicial change of course</i>	354
3.16.6.	<i>Views in the literature</i>	355
3.16.6.1.	<i>Opinions regarding retroactivity</i>	355
3.16.6.2.	<i>Debate on law and economics view on transitional law</i>	355
3.17.	Sweden <i>Katarina Fast, Peter Melz and Anders Hultqvist</i>	357
3.17.1.	<i>General introduction</i>	357
3.17.2.	<i>Terminology</i>	359
3.17.2.1.	<i>Distinction between retroactivity and retrospectivity</i>	359
a.	In general	359
b.	Conceptual variations	359
c.	Clear distinction between retroactivity and retrospectivity	360
3.17.2.2.	<i>Relevance of tax period</i>	360
3.17.2.3.	<i>Interpretative statutes</i>	361
3.17.2.4.	<i>Validation statutes</i>	361
3.17.2.5.	<i>Comparison moment</i>	361
3.17.2.6.	<i>Concept of retrospectivity</i>	361
a.	Definition of retrospectivity	361
b.	Examples of retrospectivity	361
3.17.2.7.	<i>Distinction between substantive and procedural statutes</i>	362
a.	In general	362
b.	With respect to the impact of a statute having immediate effect	362
c.	Rules considered procedural rules	362
3.17.3.	<i>Ex ante evaluation of retroactivity</i>	362
3.17.3.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>	362
3.17.3.2.	<i>Transitional policy of government</i>	364
a.	Is there a transitional policy of government?	364
b.	Transitional policy laid down in a document or an act	365
c.	Transitional policy with respect to retroactivity and grandfathering	365
d.	Transitional policy and favourable retroactive effect	365

3.17.3.3.	<i>Ex ante control by an independent body</i>	365
a.	Advisory body such as Council of State	365
b.	Rules to review retroactivity	365
c.	Rules to review grandfathering	366
d.	Rules to review favourable retroactivity	366
3.17.4.	Use of retroactivity in legislative practice	366
3.17.4.1.	<i>Legislating by press release?</i>	366
3.17.4.2.	<i>Retroactive effect further back than first announcement</i>	367
3.17.4.3.	<i>Pending legal proceedings</i>	367
3.17.4.4.	<i>Favourable retroactivity</i>	367
3.17.5.	Ex post evaluation of retroactivity (in case law)	368
3.17.5.1.	<i>Testing against the Constitution and legal principles</i>	368
3.17.5.2.	<i>Examination method</i>	368
3.17.5.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	369
3.17.5.4.	<i>Examination method for testing against principle of legal certainty</i>	369
3.17.5.5.	<i>Interpretations by courts to avoid retroactivity</i>	370
3.17.5.6.	<i>Reasons for lack of judicial limits to retroactivity</i>	370
3.17.6.	Retroactivity of case law	370
3.17.6.1.	<i>Temporal effect of judicial change of course</i>	370
3.17.7.	Views in the literature	371
3.17.7.1.	<i>Opinions regarding retroactivity</i>	371
3.17.7.2.	<i>Debate on law and economics view on transitional law</i>	371
3.18.	Turkey Billur Yalti	373
3.18.1.	Terminology	373
3.18.1.1.	<i>Distinction between 'retroactivity' and 'retrospectivity'</i>	373
3.18.1.2.	<i>Relevance of tax period</i>	374
3.18.1.3.	<i>Interpretative statutes</i>	375
3.18.1.4.	<i>Validation statutes</i>	375
3.18.1.5.	<i>Comparison moment</i>	375
3.18.1.6.	<i>Concept of retrospectivity</i>	376
3.18.1.7.	<i>Distinction between substantive and procedural statutes</i>	377
3.18.2.	Ex ante evaluation of retroactivity	378
3.18.2.1.	<i>Constitutional limitations to retroactivity of tax statutes</i>	378
3.18.2.2.	<i>Transitional policy of the government</i>	379
3.18.2.3.	<i>Ex ante control by an independent body</i>	379
3.18.3.	Use of retroactivity in legislative practice	379
3.18.3.1.	<i>Legislating by press release</i>	379
3.18.3.2.	<i>Legislative practice</i>	379
3.18.3.3.	<i>Pending legal proceedings</i>	379
3.18.3.4.	<i>Favourable retroactivity</i>	379
a.	Favourable retroactivity in respect of taxes	379
b.	Favourable retroactivity in respect of criminal sanctions and tax penalties	380
3.18.4.	Ex post evaluation of retroactivity (in case law)	381
3.18.4.1.	<i>Testing against the Constitution and legal principles</i>	381
3.18.4.2.	<i>Examination method</i>	381
3.18.4.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	383
3.18.4.4.	<i>Examination method for testing against principle of legal certainty</i>	384

3.18.5. Retroactivity of case law	384
3.18.6. Views in the literature	385
3.18.7. Annex – Bibliography	386
3.19. United Kingdom David Williams	389
3.19.1. Terminology	389
3.19.1.1. <i>Distinction between retroactivity and retrospectivity</i>	389
3.19.1.2. <i>Relevance of tax period</i>	390
3.19.1.3. <i>Interpretative statutes</i>	390
a. Phenomenon of ‘interpretative statutes’ explicitly known?	390
b. Legal basis for ‘interpretative statutes’	391
3.19.1.4. <i>Validation statutes</i>	391
3.19.1.5. <i>Comparison moment</i>	392
3.19.1.6. <i>Concept of retrospectivity</i>	392
3.19.1.7. <i>Distinction between substantive and procedural statutes</i>	394
3.19.2. Ex ante evaluation of retroactivity	394
3.19.2.1. <i>Constitutional limitations to retroactivity of tax statutes</i>	394
3.19.2.2. <i>Transition policy of government</i>	395
3.19.2.3. <i>Ex ante control by an independent body</i>	395
3.19.3. Use of retroactivity in legislative practice	395
3.19.3.1. <i>‘Legislating by press release’</i>	395
3.19.3.2. <i>Retroactive effect further back than first announcement</i>	395
3.19.3.3. <i>Pending legal proceedings</i>	395
3.19.3.4. <i>Favourable retroactivity</i>	395
3.19.4. Ex post evaluation of retroactivity (in case law)	396
3.19.4.1. <i>Testing against the Constitution and legal principles</i>	396
3.19.4.2. <i>Examination method</i>	396
3.19.4.3. <i>Testing against Article 1 of the First Protocol ECHR</i>	396
3.19.4.4. <i>Examination method for testing against principle of legal certainty</i>	397
3.19.4.5. <i>Interpretations by courts to avoid retroactivity</i>	397
3.19.4.6. <i>Reasons for lack of judicial limits to retroactivity</i>	397
3.19.5. Retroactivity of case law	398
3.19.5.1. <i>Temporal effect of judicial change of course</i>	398
3.19.6. Views in the literature	398
3.19.6.1. <i>Opinions regarding retroactivity</i>	398
3.19.6.2. <i>Debate on law and economics view on transitional law</i>	399
3.20. United States Charlotte Crane	401
3.20.1. Introduction	401
3.20.2. Terminology	402
3.20.2.1. <i>Retroactivity and retrospectivity</i>	402
3.20.2.2. <i>Relevance of the tax period</i>	403
3.20.2.3. <i>Interpretive statutes</i>	404
3.20.2.4. <i>Validation statutes</i>	406
3.20.2.5. <i>Comparison moment</i>	407
3.20.2.6. <i>Concept of retrospectivity</i>	408
3.20.2.7. <i>Distinctions between substantive and procedural statutes</i>	409
3.20.3. Ex ante evaluation of retroactivity	410
3.20.3.1. <i>Constitutional limitations</i>	410
3.20.3.2. <i>Transition policy of government</i>	410

3.20.3.3.	<i>Transition policy and favourable retroactive treatment</i>	411
3.20.3.4.	<i>Ex ante control by an independent body</i>	411
3.20.4.	<i>Use of retroactivity in legislative practice</i>	411
3.20.4.1.	<i>Legislating by press release</i>	411
3.20.4.2.	<i>Retroactive effect further back than first announcement</i>	412
3.20.4.3.	<i>Pending legal proceedings</i>	413
3.20.4.4.	<i>Favourable retroactivity</i>	413
3.20.5.	<i>Ex post evaluation of retroactivity (in case law)</i>	413
3.20.5.1.	<i>Testing against the Constitution and legal principles</i>	413
3.20.5.2.	<i>Examination method. Restraints on retroactivity based on the federal Constitution</i>	413
a.	<i>In general</i>	413
b.	<i>Federal constitutional limitations on Congressional acts: simple retroactivity</i>	414
c.	<i>Federal constitutional limitations on Congressional action: invalidations and cures</i>	416
d.	<i>Federal constitutional limitations on Congressional action: alteration of tax consequences in breach of contract</i>	416
e.	<i>Federal constitutional limitations on state legislative actions: simple retroactivity</i>	416
f.	<i>Federal constitutional limitations on state legislative actions: ineffective cures</i>	417
g.	<i>Federal constitutional limitations on state legislative actions: alteration of tax consequences in breach of contract</i>	417
3.20.5.3.	<i>Testing against Article 1 of the First Protocol ECHR</i>	420
3.20.5.4.	<i>method for testing against principle of legal certainty</i>	420
3.20.5.5.	<i>Interpretations by courts to avoid retroactivity</i>	420
3.20.5.6.	<i>Reasons for lack of judicial limits to retroactivity</i>	421
3.20.6.	<i>Retroactivity of case law</i>	421
3.20.7.	<i>Views in the literature</i>	422
3.20.7.1.	<i>Opinions regarding retroactivity</i>	422
3.20.7.2.	<i>Debate on law and economics view</i>	424