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Das Steuerrecht im Lichte der organisationsrechtlichen Kompetenz der Länder im Hochschulrecht : steuerrechtliche Lenkungswirkungen am Beispiel der Hochschulmedizin

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Abstract

This article examines the influence of tax law on legislative powers of the Länder in the field of university law. Universities and particularly the respective faculties of medicine are undergoing constant reforms, targeting the separation and legal independence as well as the privatisation of its facilities (e.g. university hospitals). Legally, the power to legislate university law lies solely with the Länder, while the federal government is charged with the responsibility for tax law. In practice, however, structural reforms are always influenced to a considerable degree by tax law provisions. For example, bearing in mind the principle of fair competition between private enterprises and the state, academic collaborations in the field of medicine are subject to taxation, basically ignoring the fact that universities are entitled to academic freedom and are therefore granted tax privileges under German tax law on all expenses incurred in scientific activity. Consequently, the questions arise whether or not the federal government deliberately uses tax legislation as an instrument to influence areas of

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Länder legislation, notably university law, whether or not this kind of 'indirect' legislation is permitted under the German Constitution (Grundgesetz) and whether or not there are any limits to this practice. These issues must be addressed in the light of recent constitutional reforms of German federalism, which granted the Länder sole legislative power over universities, introduced the 'principle of favourable conduct between universities and Länder' and the principle that the legislative body, to whom a overall concept is assigned should have priority in taking all major decisions. This careful balance must not be compromised by undue influences of tax legislation.
(HRK / Abstract übernommen)