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Tax Secrecy and Tax Transparency

The Relevance of Confidentiality in Tax Law

Part 1

PL ACADEMIC RESEARCH

General Report

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1. Policy issues, historical development, general legal framework[1]

1.1. General issues

The levying of taxes is essential to fund the activities of a state and is therefore regarded as a matter directly affecting the general interest of a community. However, it also directly touches upon the private sphere of taxpayers, producing an impact on their property and basic rights. From a tax policy perspective, a general trend may be seen across tax systems, namely the fact that a broad framework of cooperation between taxpayers and the tax authorities preserves the effective levying of taxes without harming basic rights of taxpayers - two otherwise conflicting interests.

Our work focuses on areas where frictions arise between taxpayers and the tax authorities as to how such cooperation is concretely implemented. In particular, the emphasis is put on the right to preserve confidentiality in the treatment of tax-relevant information in a way that does not harm the effective levying of taxes. Tax literature and practice have mainly addressed such issues in domestic scenarios, reaching different balances between the conflicting interests across the various tax systems. Significant discrepancies can be recorded from a comparative tax law perspective, ranging from a fairly intensive protection of tax secrecy to a dimension in which the interest in collecting taxes puts taxpayers' rights in the background. When starting this research project we assumed that such areas were either left in a limbo, where the exercise of fiscal supervision was rather deficient, or addressed in a way that significantly compressed taxpayers' rights. In some cases this deficiency is enhanced in cross-border situations.

Our study has therefore put together reporters from a fairly high number of countries (37 countries) in order to:

- identify the differences and similarities;
- give suggestions on best practices; and
- analyse the cross-border dimension of the problem.

The information collected about transparency and secrecy is used in order to understand the differences and similarities. The ultimate goal is to produce an innovative mapping of the existing situation, highlighting best practices and deficiencies on the basis of empirical data.

1 We would like to thank Prof. Dr Joakim Nergelius and Prof. Dr Annina H Persson, both at Örebro University, Sweden, for their comments on and proofreading of this general report.

Considering the developments in international tax cooperation in the field of mutual assistance that have taken place since the G7 Lyon Summit 1996 as well as the ones that have been announced and yet to come, our research has called on a team of selected tax experts to work with a view to setting the standards for best practices occurring in cross-border situations, on how to protect confidentiality in tax matters without harming the war against aggressive tax planning, tax evasion and tax avoidance in the era of global fiscal transparency.

For quite a few years, bank secrecy is no longer a valid grounds for tax authorities to refuse the exchange of information and within only a short period of time a significant number of tax treaties have been adapted to the new standard, showing a gradual shift from bilateralism to a single multilateral standard that is implemented through bilateral treaties, but also (taking into account, in particular, the Council of Europe Multilateral Treaty) directly through a multilateral instrument. The multilateral dimension of fiscal transparency is gradually shifting tax systems around the world towards automatic exchange of information in tax matters, which is making significant progress in some regions, such as for instance in the European Union. However, the developments in mutual assistance through FATCA and IGAs (intergovernmental agreements) are also significantly contributing to shifting the rest of the world in the same direction.

Stronger powers for tax authorities must be combined with a stronger protection of taxpayers' rights, since the taxpayer may not just be the object of mutual assistance on information concerning him, but should also receive an effective and timely protection of his/her/its right to confidentiality. In other words, besides the right for tax authorities to exchange information, there must be a subjective dimension for the person whose information is being exchanged.

Accordingly, on the one hand, we plead for the efficiency of a tax system in cross-border situations to be equivalent to the one that such tax systems secure domestically, but, on the other hand, we think that the efficiency of a tax system, from a tax policy perspective, should be measured by also taking into account a set of rules that achieves the goal of securing effective tax collection without compromising the basic rights of persons that are directly concerned by a cross-border exchange of information. The Charter on Fundamental Rights of the European Union[2] perceives this policy issue and has turned it into a component of Article 41 for relations of taxpayers with the institutions of the Union, affording a constructive example of a practice that could apply in the future on a broader territorial, subjective and objective basis.[3]

In general, we propose submit a standard for best practices that should not just produce repercussions on fact-finding for tax purposes in cross-border situations,

2 OJ 30.3.2010, C 83/02.

3 Article 41 protects the right to a good administration. This article provides that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the European Union.

but rather on a broader basis, thus also affecting purely internal situations. The idea is not so much to turn all procedural law around the world into a harmonized domain, since this would be virtually utopian, but rather to indicate what best practices and minimum standards of protection are and let countries develop their own national policy in accordance with them along the line of a soft-law influence. Soft law, i.e. non-binding norms that states voluntarily decide to comply with, has succeeded in aggregating national tax policies to a significant extent. This is clearly visible in the field of harmful tax competition, but many additional examples exist and could lead to the conclusion that the form of tax sovereignty remains at the national level, but its substance is being gradually emptied, since all states are very much concerned by the need to have a sound tax system, which is no worse off than that applicable in other systems. This watch-your neighbour scenario is particularly important in order to understand the potential developments that may affect secrecy and the protection of confidentiality in tax matters.

Within such a framework, different information has been collected from OECD and developing countries as to the standards of global fiscal transparency and their sustainability, also taking into account the fact that the latter countries have a more general problem of capacity building and usually dispose of a more limited amount of financial resources available for this type of activity.

1.2. Confidentiality and secrecy in tax matters

In principle, the boundaries between tax secrecy and tax confidentiality can be drawn by indicating that the former concerns the limits to the gathering of tax information, while the latter relates to keeping access to it limited. Therefore, insofar as one considers confidentiality as being in fact conceptually a restricted access to sensitive information, the issue arises in tax matters whether the protection of confidentiality implies a right to claim that such information remains in principle secret.

Whether and to what extent confidentiality is an actual right in tax matters is a more complex question than it appears at first sight, especially if one takes into account the current differences existing across all tax systems reported on in this book. Most countries report that tax authorities are in principle required to keep information confidential. Our national reporters indicate a significant difference across countries as to the general idea of transparency of tax information, ranging from countries that allow it on a general basis and up to the point of allowing publication of tax-relevant information, to countries that strongly protect confidentiality and including countries that allow for public access to tax information in the presence of a proven interest in transparency of the activities of the tax authorities.

The US report is particularly clear in showing how much the pendulum has been swinging from the protection of tax confidentiality to its opposite over the past decades, reflecting or perhaps anticipating a global trend. The German report

shows that the existing provisions find their roots in the protection secured by the 1851 Prussian Income Tax Code. Also in New Zealand the protection of confidentiality in tax matters is being secured on the basis of statutes that date back to the nineteenth century. Likewise, in many other countries there is a general obligation of tax authorities to keep gathered tax information confidential except in cases where the law allows for its disclosure.

In some countries, such as for instance Sweden, there is no requirement to keep gathered tax information confidential. A similar pattern may be noted in Finland, where the selling of tax information has even been made available via text message[4], in the Czech Republic, where the Ministry of Finance has published corporate tax returns, and even in Italy, which acknowledges a right to confidentiality, but in fact made information regarding taxpayers' income available on the website of tax authorities on 30 April 2009. In Australia, there is no general right to privacy, thus highlighting framing the issue of public tax information being available just as all other in general and of exceptions being based on specific grounds.

On the one hand, this situation seems to respond to the kind of logic that you pay taxes if your neighbour does as well[5]; however, on the other hand, as in the case of China, it could also apply to the idea of naming-and-shaming the tax evaders, thus provoking a moral reaction among all other taxpayers. Both have some merit, even if the latter requires being handled with care, especially until a judicial instance has intervened. This conclusion should, however, not undermine the importance of countering money laundering along the FATF standards and it must be interpreted in a way that means that fraudsters are given no shelter for their activities. From the latter perspective we understand that even in the countries reported on in this book, such as Liechtenstein and Switzerland, which protect confidentiality in a stronger way, the right to such protection should not lead to mixing it with a more general right to anonymity, which is, as such, on the one hand not indispensable to protect confidentiality and, on the other hand, also undesirable[6]. Nevertheless, in our view one should consider that the protection of basic rights of taxpayers has some merit. With a view to outlining the path to building up a best practice, we think that the case law of Belgium and Switzerland, analysed in parallel with the provisions existing in the constitutions of these countries and the right to privacy

4 The Finnish reporters illustrate this issue by reference to the *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy* and Satamedia Oy, which was the object of a judgment by the European Court of Justice (Case C-73/07).

5 Between 1906 and 1917, public information on revenue was available and allowed each person to request the payment of higher taxes for other taxpayers in the presence of appropriate evidence of tax evasion.

6 For a critical overview of the implications of Rubik agreements and the protection of anonymity see further P. Pistone,'Exchange of Information and Rubik Agreements: the Perspective of an EU Academic', *Bulletin for International Taxation,* Vol. 67, No. 4/5 (2013), pp. 216-225.

under human rights, should be seriously taken into account at the international level[7]. This is perceived as a global issue even in the light of regional Charters of Human Rights, as one can clearly see from the Brazilian and Colombian reports.

Besides the numerous differences existing across national borders and despite the more intensive protection under some tax systems, there is a fairly broad consensus as to the fact that at present no general right to keep confidentiality in tax-relevant information exists at the worldwide level. This leads us to conclude that the protection of tax confidentiality is to be perceived as an important value within a tax system, but not as a generally protected human right.

In other words, for the purpose of building up a best practice worldwide, we submit that tax information is not *per se* to be kept as confidential, but should be protected from becoming publicly available information when there are good reasons to do so. In such cases, the protection should be effective, except when the directly affected taxpayer decides otherwise. The latter case occurs through voluntary disclosure of data, which also includes situations in which the taxpayer may decide to give an *ex ante* access to files concerning his activity along what is known as the model of horizontal monitoring, which is being quite successfully implemented in, among other states, the Netherlands. Horizontal monitoring could constitute an interesting feature for steering the cooperation between taxpayers and tax authorities towards a constructive dimension[8]. Theoretically, this model could enhance the effectiveness of enforcement in developing countries, since it would steer tax authorities towards a clear understanding of taxpayers' activities and data. However, one should not underestimate the extremely high potential of leakage that exists in such countries and which in fact suggests being a bit more cautious in this respect.

Leakage of tax information is, however, perceived more in general as one of the major threats when it comes to protection of confidential tax information[9]. No matter what level of protection of confidentiality exists within a given tax system, the failure to secure information being kept within a tight compartment in the hands of tax authorities of one or more states makes the entire system vulnerable to the detriment of rights of taxpayers. In such circumstances *ex post* protection would be

7 This issue will be the object of one of the two main topics of the General Congress of the International Fiscal Association, to be held in 2015.

8 From the Netherlands report we learn that taxpayers enrolling for enhanced relationships obtain a waiver from tax penalties and the certainty of not being subject to further tax auditing. We consider both as important components of a successful (win-win) relation between tax authorities and taxpayers, since the former prevent possible abusive practices, thus obtaining tax compliance without undergoing an ex-post auditing, and the latter achieves certainty of his rights.

9 Unintended leakage is a serious concern throughout the world. A good example of this type of problems is provided by the *Aloe Vera Inc. vs. United States* case, concerning the improperly disclosed tax information to the Japanese national tax authorities during the course of a joint investigation with the US.

meaningless, or at least unable to make up for the damage caused. This leads us to say that the protection of the right to confidentiality needs an immediate protection in order to be effective.

The absence of a general right to protect confidentiality in tax matters and the importance of an effective right to protection in cases where confidentiality matters, are, in our view, to be regarded as the components of a potentially applicable best practice at the worldwide level.

Tax systems may differ, also in the near future, as to the level at which they require the protection of confidentiality, but they should not do so as to the need for an effective and timely protection of what should not become publicly available. We believe that the roadmap to building up a worldwide convergence on a common standard could be along the lines of a categorization that takes into account the potential damage that can arise from disclosure of tax information. This common standard could follow the pattern outlined by the Swedish national report, which differentiates among the three following categories, i.e. cases with a straight requirement of damage, other cases in which a reversed burden of proof as to the existence of damage is required and cases of absolute secrecy.

2. Collection of data

2.1. Filing tax returns and supply of tax-relevant information by the taxpayer or third parties

Self-assessment on the basis of tax returns periodically filed by taxpayers is the standard for collection of tax-relevant information throughout the world. Besides some marginal differences, the national reports show a degree of structural homogeneity that makes further remarks rather redundant. This mechanism in fact puts the bulk of fact-finding in the hands of taxpayers, who inform the Revenue office at the time of filing the tax return and pay taxes in accordance to their own assessment. Potential breaches of tax secrecy therefore arise as to the collection of data to a much more minor extent than they would otherwise do if taxpayers were to assess taxes directly and are mainly confined to cases in which problems arise in respect of pathologies of rules for tax assessment.

The procedures for self-assessment of taxes vary according to the national tax systems involved. However, there is a growing trend in favour of e-filing of tax returns, in particular within OECD countries[10], and in the use of pre-filled-in tax

10 According to the national reports for Spain and Estonia, 90% and 94% of all tax declarations, respectively, were filed electronically. In the Czech Republic, e-filing has reached 100% in the field of value-added tax. E-filing of tax returns is also available in further countries, including Austria, Chile, Germany, Italy, Liechtenstein, the Netherlands, New Zealand, Poland, South Korea, Israel and Turkey, as the corresponding national reports indicate.

returns. Additional relevant issues arise as to tax-relevant information that third parties are obliged to supply to tax authorities, or voluntary transmission to them by means of denunciations, or otherwise.

E-filing of tax returns gives tax authorities a higher degree of flexibility and increases their ability to refund unduly paid taxes. Furthermore, it significantly contributes to streamlining information gathering and facilitates, also in a cross-border context, the electronic supply of that information in conformity with the conditions set by Article 26 OECD and equivalent provisions. Accordingly, we can consider e-filing as the starting point for e-sharing of tax information among tax authorities at different levels in a given country, but also across borders. Additional issues arise as to the use of e-filed tax returns within auditing procedures, as we will indicate in a separate point in this section.

Pre-filled-in e-returns by tax authorities are less diffused and often limited to individuals, whose situation for tax purposes is often easier for the tax authorities to reconstruct on the basis of income partly taxed through taxes withheld at source. Some countries, such as for instance the USA, show resistance to this type of assessment of taxes, but other countries, as the Australian report indicates, consider it as a highly successful practice in terms of preventing tax non-compliance[11]. In such cases, tax authorities indicate the tax due on the basis of information available, which taxpayers endorse and thus consider binding for the purpose of determining the payment of tax. The monitoring of taxpayers required by this procedure leads to a limited additional breach in the private sphere of taxpayers, since the information gathering is often based on the outcome of taxes withheld by third parties at source. From a policy perspective, this procedure has various merits, including that of significantly streamlining tax collection. However, potentially critical issues arise when pre-filled-in tax returns are based on additional sources of information.

Additional filing obligations are generally set on third parties in situations that indicate the availability of tax-relevant information to them. The existence of such obligations in fact creates an additional burden for those persons. Usually tax systems justify this with a view to allowing tax authorities to cross check that information with the data supplied (or not supplied) by taxpayers.

There seems to be a growing trend worldwide to lay information-reporting obligations on third parties. The Portuguese report indicates that financial intermediaries are obliged to report on all transactions entered into by taxpayers with entities resident in targeted foreign jurisdictions, usually including countries or territories lacking an exchange-of-information clause in the treaty (or in the complete absence of a tax treaty)[12]. Argentina requires third parties to supply information concerning relevant utility consumption (i.e. telephone, power, water and gas supply, etc.), pri-

11 Pre-filled-in tax returns are also available in further countries, including Estonia, the Netherlands, Spain and the United Kingdom.

12 This type of information requirement can also be noted in several other countries reported on in this book.

vate educational establishments and credit/debit cardholders to national tax authorities, with a view to allowing the latter to cross-check that information with the standards of living of taxpayers seen from filed tax returns. Extensive authority of the tax administration to collect information from third parties is also indicated in the Israeli report.

Another good example of additional reporting obligations put on third parties can be what is known as the qualified-intermediary scheme, which originates from unilateral rules introduced in the USA and which has spread as best practice throughout a large number of countries. As the Panamanian report indicates, peer reviewing for global fiscal transparency purposes has contributed to this phenomenon.

We expect this process to be further enhanced in the framework of FATCA rules. On the one hand, there are grounds to regard information-supplying by third parties as a good way to enhance the effectiveness of tax auditing; however, on the other hand, such obligations in fact create an additional burden, also in terms of compliance, that outsources pre-auditing scouting activities without remunerating the suppliers on a fair basis[13]. This is perhaps not too much of a problem in terms of tax secrecy, but perhaps not a minor issue in terms of a tax policy that reconciles the goals of effective fiscal supervision with those of a fair reporting requirement.

Voluntary supply of tax-relevant information by third parties also implies a potential breach of tax secrecy, since tax authorities request confidential information concerning the taxpayer without his consent being needed. Some reports focus on the special features and conditions that such phenomena, usually related to situations in which there are suspicions of tax evasion or fraud, may take. For instance, in Argentina and Italy, anyone (usually without the right to maintain anonymity) has the right to denounce a taxpayer before the tax authorities whenever information in his possession shows the likely existence of a clear breach of a tax obligation.

A separate phenomenon, but still belonging to this cluster of breach of tax secrecy by third parties, arises in the case of information stolen from banks by their employees and purchased by tax authorities of the state of residence of a taxpayer. The additional problem arising in this situation, better known within the international tax community as whistle-blowing, as compared to the phenomenon of voluntary denunciation, is that here confidential information is the object of an actual transaction between an individual who had illicitly obtained it and a state[14]. Concretely, this issue involved Liechtenstein and Swiss banks with France and, especially, Germany.

13 The German report indicates that a fair compensation is available for information supplied by third parties.

14 Issues concerning the sharing of this information with other states will be addressed in separate sections of this report.

A conflicting view usually arises from the perspective of the state of residence and the state where such information was illicitly obtained. French courts put the emphasis of the right of tax authorities to collect data from third parties to the extent that the authorities are unaware of the illegal source through which such information was acquired. The German report adds that no crime is committed by tax officials in handling this information. From the opposite perspective, the Swiss report indicates that the crime is committed by the employees for the breach of the obligation to keep such information secret in compliance with the applicable law.

The critical issues for tax secrecy and the handling of confidential information arising from such a context make it difficult for the general reporters to make a straightforward assessment of the problem that could represent a potentially best practice to be followed. In principle, stealing information is a matter that undermines legal certainty and, when such information is confidential, a violation of the right to privacy. Due to such features, it should as such be countered by all legal systems, including from the perspective of collecting relevant data for tax authorities to counter undesirable phenomena such as tax evasion and fraud.

We believe that the progress made by global fiscal transparency should indicate the right way for tax authorities to obtain information concerning taxpayers, once having carried out the normal fact-finding and auditing procedures. This does not mean, however, that persons should be deprived of the right to denounce a taxpayer to the tax authorities, in particular in cases whenever, on the basis of information available to them, a crime may potentially have occurred. This input should, in our view, be the starting point for tax authorities to carry out fact-finding procedures, which could eventually make use of specific requests for information to their counterparts in the relevant state. Fact gathering from third parties should be used in a way that does not make the supply of tax-relevant information too burdensome for them, or when this may be justified for the sole reason that it eases the activities that tax authorities themselves have to carry out.

2.2. Tax auditing

Tax auditing raises various issues from the perspective both of tax secrecy and tax confidentiality. Such issues involve the access by tax authorities to confidential information concerning the taxpayer, also when available to third parties or supplied by them.

Problems of tax secrecy usually arise as to how tax authorities carry out additional fact-finding activities to cross check information supplied through self-assessment by the taxpayer. Problems of tax confidentiality involve the handling of such information, also taking into account the obligation for tax officials not to disclose it in cases other than the ones indicated by the law.

For the purpose of collecting information additional to that supplied by the taxpayer, tax auditing can rely on inspections at premises where relevant information

is held, but also lay down obligations - on the taxpayer or third parties - to supply such information. Both problems should be framed within the generally accepted duty of loyal cooperation with tax authorities during auditing procedures, governed by the principle of proportionality, whose relevance is generally acknowledged in countries reported on in this book. This principle can also be invoked to prevent tax authorities from asking for information that is already available to them (but would be more difficult to gather) or to intrude in the private sphere of taxpayers to an unnecessary extent. Furthermore, this principle is important for both tax authorities and taxpayers with a view to steering auditing procedures, data collection and their use towards effective tax compliance and the levying of taxes in conformity with the facts that have concretely occurred. The latter goal can also justify possible co-operation between tax authorities and taxpayers on a common understanding of such facts that can preventively settle a tax dispute before it reaches a judicial instance.

Specific issues concerning information collected from the taxpayer and third parties are now analysed separately, taking into account the critical points arising from the national reports.

Auditing of the taxpayer can imply requests to appear before tax authorities or inspections at places where relevant information is kept and may also include access to documents. In all such cases, there is a general awareness of the impact that such activities - which by their own nature are instrumental to tax auditing – have on tax secrecy.

Problems of compatibility with the protection of human rights can arise from various perspectives during auditing, ranging from the protection of privacy under the principle of proportionality, to the impact that it may have on the right to fair trial[15] on the basis of the *nemo tenetur in se ipsum accusare* principle[16]. A problem of compatibility with the latter principle may arise to the extent that, as the Italian report indicates, any document not shown upon request of the tax authorities during auditing procedures may not be used by taxpayers during tax litigation before judicial instances.

In general, one should question, as the German tax literature does[17], whether the taxpayer has the right to be informed about the preliminary steps in tax auditing

15 On the application of the right to fair trial in tax procedures see G. Maisto, 'The Impact of the European Convention on Human Rights on Tax Procedures and Sanctions with Special Reference to Tax Treaties and the EU Arbitration Convention', in: G. Kofler, M. Maduro, P. Pistone (eds.), *Human Rights and Taxation in Europe and the World,* (Amsterdam: IBFD Publications, 2012) pp. 376-381.

16 On the impact of this right on tax procedures see A.P. Dourado, A. Silva Dias, 'Information Duties, Aggressive Tax Planning and *nemo tenetur se ipsum accusare* in the light of Art. 6(1) of ECHR', in: G. Kofler, M. Maduro, P. Pistone (eds.), *Human Rights and Taxation in Europe and the World,* (Amsterdam: IBFD Publications, 2012), pp. 144 et seq.

17 See the German report.

procedures. The existence of such a right could prove particularly important for the taxpayer in order to prepare the exercise of his/her/its right to defence, which can prove particularly complex especially in cases of contradictory evidence from third parties.

Data collected indicating abnormal or unusual situations of taxpayers as compared to the standard can be a useful tool to allow tax authorities to select among taxpayers that should be audited. Israel and Italy make frequent use of such tools, which can enhance the chances that tax auditing will be successful. Such tools are in some cases used as the legal basis to justify access to information on taxpayers' bank accounts, with a view to reconciling their standards of living with the income declared[18]. Furthermore, the issue arises as to whether a potential reversal of the burden of proof on the taxpayer could be justified in the absence of an additional collection of data by tax authorities. Furthermore, one may question, more in general and also from the principle of proportionality, whether access to bank information should constitute a primary source of information for tax authorities or, by contrast, it should be a tool that tax authorities should use to the extent that some tainted situations will arise from inspections and auditing activities.

The precautions taken by some countries for tax authorities to request access to bank information are interesting. A good example is included in the Canadian report, which indicates that so-called John Doe information requests (i.e. targeted at a group of taxpayers, rather than a single one) to third parties are allowed but only following the specific authorization of a judicial instance. Likewise, the Estonian report indicates that, in compliance with the principle of proportionality, tax authorities should try to obtain information from the taxpayer before addressing the same request to third parties[19].

This leads us to think about what the role of information requests to third parties within tax auditing procedures can be. On the one hand, the point can be made that information requests to third parties are normal within such procedures, but, on the other hand, the opposite view can be taken, as corresponding to a sound policy and protection of tax secrecy in compliance with the principle of proportionality, based on the consideration that such requests should always be preceded by a prior auditing activity that shows the need to activate such a fact-gathering tool.

2.3. Breaches of tax confidentiality by civil servants

Most national reports clearly indicate that there are clear and strict rules to prevent whistle blowing or improper use of collected tax information by tax officials, and breach of these rules leads in most cases to a criminal sanctions. However, the Ital-

18 This phenomenon can also be seen in other countries, such as for instance in Argentina and Brazil.

19 Similar rules can be found in several other countries, including in particular the Netherlands.

ian national reporter indicates that instead of sanctions, a system of internal authorization procedures could be enacted, with a view to determining what information that can be disclosed.

3. Specific relationships

After completing the analysis of tax secrecy from the perspective of tax authorities collecting data from the taxpayer and third parties, the focus is now shifted towards specific relationships involving respectively (i) banks and financial intermediaries; (ii) attorney and tax advisors privilege and (iii) further third parties, including, for instance, guardians and trustees in bankruptcy procedures, journalists, clergy, medical staff, etc.

These specific issues are now being analysed from the perspective of the supplier, adding some more points to the ones that were already the object of discussion in section II.

3.1. Information supplied by banks and financial intermediaries

In addition to the obligation to request identification requirements for anti-money laundering purposes, which in almost all reported countries can be disclosed to tax authorities, either automatically or in the presence of tainted situations, national reports show a very clear trend toward considering that banks and financial intermediaries are obliged to give tax authorities any tax-relevant information concerning taxpayers just as much as other third parties would do. In some countries, this is the outcome of reforms carried out over the past decade[20], or in connection with changes requested by peer reviewing for global fiscal transparency[21] or in connection with the conditions set by European Union law[22].

Some countries do not follow this general trend, as a consequence of the relevance of either banking secrecy or of rules that limit the cases in which banks and financial intermediaries are obliged to supply information to tax authorities. The most notable example of the absence of an obligation to supply such information is Liechtenstein and Switzerland, which include a fairly general right for banks to object to transmission of data in cases other than tax fraud[23], which is combined with

20 See, for instance, China.

21 An example of this kind is Chile.

22 This is the example of Belgium and Luxembourg. Belgium acknowledges a right to keep information reserved, but no bank secrecy has ever existed in strict terms, as instead was the case in Luxembourg.

23 Similar rules initially existed in Belgian tax procedures. However, such rules, as the Belgian national report indicates, have been softened, excluding that supply of information may be objected to in cases of tax evasion.

a strong protection of taxpayers' rights[24] that can even go as far as to objections to disclosure[25]. Panama has changed its rules in recent years, but the national reporter still recorded the fact that tax authorities in fact seldom use their powers to compel the supply of information by banks and financial intermediaries.

Furthermore, in the presence of special international tax treaties concluded by Switzerland - better known as Rubik Agreements - and also applicable in the relations between Austria and Liechtenstein, special limits for banks with regard to the supply of bank information can in fact arise as a consequence of the applicable mechanisms for collecting taxes, despite the fact that ordinary tax treaty clauses are unaffected by such agreements[26].

In all other countries there seems to be a distinction between the ones that allow for an automatic access to bank information and thus set a general obligation to supply it[27], those which in a *de facto* equivalent situation provide for an easy waiver for secrecy[28] and those which allow for success in the presence of specific conditions[29]. The former category can present situations in which banks and tax authorities in fact move in the direction of a system of data sharing, which is what FATCA rules are trying to implement directly or through IGAs at the international level. The implications of the introduction of FATCA rules can be very far-reaching, since they can also further ease access to bank information for tax authorities of the country of residence of the bank or financial intermediaries.

This evolution can take place directly or indirectly, according to whether or not IGAs exist. In the affirmative, this situation can produce some repercussions in the European Union on supplies of information concerning tax authorities of other Member States, taking into account the Union preference clause contained in the new EU Directive on exchange of information. From the negative perspective, one may wonder whether, if financial intermediaries agree to submit tax-relevant information to tax authorities of other countries, there would be no reason why they would not do so to their own state of residence.

Eventually, based on the information contained in national reports, we could group the types of supply of information by banks and financial intermediaries into

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24 Besides the countries indicated in the text, Hungary as well acknowledges the right of taxpayers to be informed about the supply of information by banks to tax authorities.

25 This right exists also in other jurisdictions, such as, for instance, China.

26 See further P. Pistone.,'Exchange of Information and Rubik Agreements: the Perspective of an EU Academic', *Bulletin for International Taxation,* Vol. 67, No. 4/5 (2013), pp. 216-225, on the potential frustration of exchange of information and the structural exposure to a higher recurrence of fishing expeditions.

27 This is the case of Germany, India, the Netherlands, Romania and Turkey, among other countries.

28 See Colombia, Greece, Israel and Italy, in the presence of conditions set by law and of the necessary authorizations.

29 See Brazil, which allows for supply of information by banks only when tax authorities prove that it is in fact indispensable.