



Taxpayers' Rights and Responsibilities in the Era of Automatic Exchange of Information

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Some principle points

- ▶ **Do we need Automatic Exchange of Information?**
 - ▶ YES

- ▶ **BUT do the instruments facilitating Automatic Exchange of Information provide sufficient guarantees and ensure the protection of taxpayer right?**

- ▶ **Art 26 OECD / UN Model Convention equivalent**

- ▶ **Art 6 Convention on Mutual Administrative Assistance in Tax Matters**
 - ▶ With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by the Convention.
 - ▶ NOTE: Possibility of internal laws permitting notification of the taxpayer only noted for exchange by request or spontaneous exchange

- ▶ **Additional agreement needed to determine data to be exchanged and procedure to be followed**



What is being exchanged?

- ▶ **Financial information**
- ▶ **Country-by-Country Reports**
- ▶ **Advance rulings (albeit labelled as “compulsory spontaneous exchange)**
- ▶ **EU Member States have additional disclosures**

What is the issue?

Government perspective:

- ▶ **Surely if you have nothing to hide, you have nothing to fear from (automatic) information exchange?**
- ▶ **Those who fear information exchange clearly have something to hide (evasion or avoidance) with respect to their tax liabilities**
- ▶ **What do taxpayers fear – information is protected by the secrecy standards of the revenue authorities?**

Taxpayer perspective:

- ▶ **The BIG ISSUE: Secrecy of taxpayer information**
 - ▶ Fear of improper use
 - ▶ Errors in data transmitted (*Aloe Vera* case)
 - ▶ “Out-of-context” data
 - ▶ Fear of inadequate protection
 - ▶ Leaks e.g. UK (2007); Greece (2012/2013); USA
 - ▶ Cyberattacks
 - ▶ Taxpayer profiling (based on religious, cultural etc. bases)
 - ▶ Fear of other consequences
 - ▶ High crime jurisdictions (kidnapping, theft)
 - ▶ Jurisdictions with less transparency (envy or embarrassment)

Taxpayer risks:

- ▶ **Unnecessary disputes**
- ▶ **Lack of sanctions against governments for inappropriate disclosures**
- ▶ **Exclusion from the process to interrogate the information to be exchanged or, in most cases, to be informed**
- ▶ **Are all “persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes [...], or the oversight of the above” subject to equivalent secrecy?**
- ▶ **Risk of violation of human rights e.g. transmission of data to country where use may lead to death penalty?**

The delicate balance

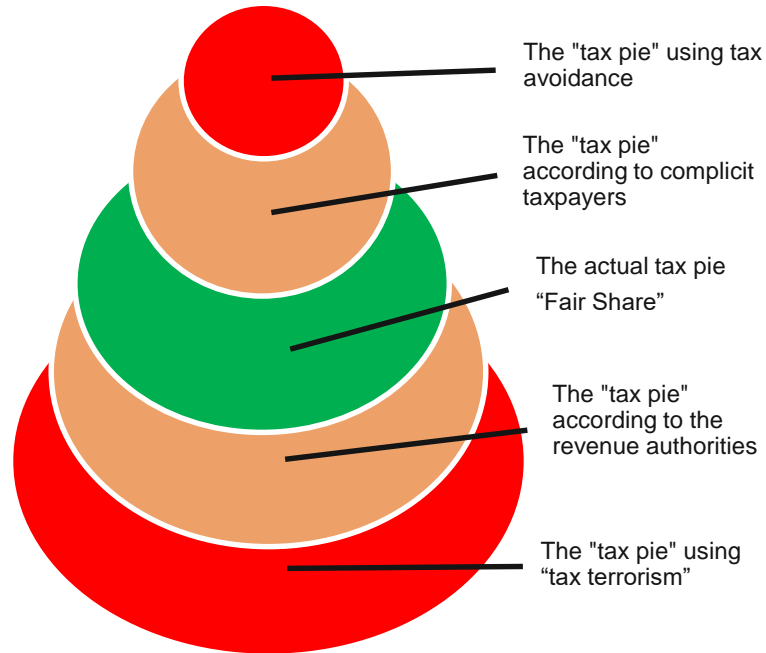
Revenue Authorities

Taxpayers

Lax laws



Abuse of law



Draconian powers / abuse of power



Violation of taxpayer rights

- ▶ **What are the best practices with respect to protection of taxpayer rights for information exchanges?**
 - ▶ 2015 IFA Subject 2 Report
 - ▶ 12 areas within which minimum standards and best practices are found
 - ▶ Based on country experience from 41 national reports
 - ▶ Report concerned the practical protection of taxpayer rights with section 9 on cross-border procedures

▶ **Minimum Standards**

- ▶ Notify the taxpayer of cross-border requests for information, except in specific (limited) circumstances

- ▶ Judicial authorisation for third party information

- ▶ No right to information unless received data subject to high standards of data protection

- ▶ Taxpayer participation in Mutual Agreement Procedures

▶ Best Practice

- ▶ The taxpayer informed before cross-border request for information
- ▶ Requested state to supply information that assists the taxpayer
- ▶ Tax treaties to set specific conditions for exchange of information
- ▶ The taxpayer given access to information received by the requesting state
- ▶ Information not supplied where the originating cause was stolen or illegally obtained information
- ▶ Requesting state should confirm confidentiality to the requested state

▶ **Best Practice**

- ▶ Specifically for AEOI of financial information – taxpayer to be notified of proposed exchange to timeously exercise data protection rights

- ▶ Taxpayers should be able to request initiation of MAP

▶ EoIR

- ▶ Requesting state considers rights before request
- ▶ Requested state to consider rights impacted during information gathering
- ▶ Requesting state has to protect rights on receipt of information

▶ AEoI

- ▶ Gathering state to consider rights impacted during information gathering
- ▶ Gathering state to consider safeguards for transmission of data and safeguards in receiving state
- ▶ Receiving state to consider safeguards for protection of data (and taxpayer rights)
- ▶ Receiving state to address right of access for taxpayer

- ▶ Safeguards critical for large quantities of personal data:
 - ▶ the processing of those data,
 - ▶ transmission to other countries
 - ▶ retention limitations.
- ▶ Significant attention for these data protection issues?
- ▶ **Questions:**
 - ▶ Will a taxpayer be entitled to have access to any information provided by way of AEOL in order to correct any inaccuracies?
 - ▶ Will there be time limits for which the recipient state may retain the data supplied?
 - ▶ Will there be controls on the use that may be made of data?

- ▶ **Do the Common Reporting Standards meet these identified best practices?**
 - ▶ The Common Reporting Standard (CRS) ensures the respect of confidentiality and data protection (Section 5 and the representations in the fourth clause of the preamble of the MCAA)
 - ▶ Section 7 of the MCAA also specifies that non-compliance in relation to confidentiality and data safeguards can lead to the suspension of the exchange of information
 - ▶ The CRS (including the confidentiality and data safeguards elements) is based on FATCA

- ▶ **Do the Common Reporting Standards meet these identified best practices?**
 - ▶ Considering the importance of confidentiality in the AEOI process, a preliminary assessment of confidentiality measures of all jurisdictions that have committed to AEOI is a priority for the Global Forum
 - ▶ The confidentiality assessments are done by an expert panel of 12 experts in collaboration with the Global Forum Secretariat
 - ▶ Will build on assessments done for the purposes of FATCA, rely on peer inputs and outcomes will be available for Global Forum members. Ongoing monitoring also built in.

- ▶ **Missing taxpayer rights directly in CRS?**
 - ▶ Access for the taxpayer to view and correct information in either jurisdiction
 - ▶ No clear limitations on the period the data may be retained
 - ▶ CRS does not cover use of the data and its limitations, but other exchange instruments or the domestic law may
 - ▶ Penalties and sanctions for failure to protect data (but no remedy for the taxpayer for consequence of such data breach)

Are developing countries all ready?

- ▶ **Often NO**

- ▶ **Key challenges faced by developing countries in implementing AEOI**
 - ▶ the urgency of other basic domestic reforms;
 - ▶ high costs of information technology infrastructure;
 - ▶ human resources needs for analysing and using received data efficiently;
 - ▶ difficulty of making legislative changes; and
 - ▶ limited awareness of exchange of information practices (especially amongst low income countries, many of which are not Global Forum members and have not yet committed to or been assisted in meeting the standard on EOI on Request).

Are developing countries all ready?

- ▶ **Need to assess readiness of developing countries for implementing AEOI**
 - ▶ legal and practical frameworks to ensure that confidentiality and data protection standards are met
 - ▶ Capacity building and training needed

- ▶ **<http://www.oecd.org/tax/transparency/global-forum-AEOI-roadmap-for-developing-countries.pdf>**

- ▶ **IBFD Observatory on the Protection of Taxpayer Rights (OPTR)**
 - ▶ Launched on 4 May 2018
 - ▶ Goals
 - ▶ Raise awareness of linkage between Human Rights and Taxation
 - ▶ Create a database of minimum standards and best practices for the protection of taxpayer's rights
 - ▶ Organize seminars, conferences and reports
 - ▶ Additional purpose
 - ▶ Support constructive dialogue between taxpayers and tax authorities

- ▶ **IBFD Observatory on the Protection of Taxpayer Rights (OPTR)**
 - ▶ Relevance for the World
 - ▶ LEARN from comparative experience
 - ▶ CONTRIBUTE to the OPTR through submission of national reports
 - ▶ TEACH other countries of your jurisdictions experience
 - ▶ GAIN ASSISTANCE in the development of this area
 - ▶ How to help
 - ▶ Multiple reporters from each jurisdiction representing academics, judiciary, tax ombudsmen, tax authorities, practitioners
 - ▶ Ensure a balanced report



IBFD Observatory on the Protection of Taxpayer Rights

- ▶ **IBFD Observatory on the Protection of Taxpayer Rights (OPTR)**
- ▶ **FIND OUT MORE**
- ▶ **www.ibfd.org/Academic/Observatory-Protection-Taxpayers-Rights**

Future concerns (immediate and longer term)

- ▶ **Is data protection progressing at the same pace as digital collection?**
- ▶ **Data in context – does the data automatically exchanged provide the whole picture – does it facilitate immediate assessment – where are we headed?**
- ▶ **CbC Reporting – weighting of factors – tax liability ends larger than “fair” whole**
- ▶ **Access and ability to use data – share of the tax pie between revenue authorities – “he who claims it first, wins”**
- ▶ **Use of data by foreign revenue authorities and implications for “no taxation without representation”**
- ▶ **Confidentiality concerns where data processed by Artificial Intelligence**
- ▶ **Access to justice – already skewed – further skewed by further digitization?**



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Thank you!