

## Part I: The New World of Tax Transparency – Change of Paradigm?

### Chapter 1: General Report – The Notion and Concept of Tax Transparency

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#### 1.1. Introduction: Change of paradigm?

“Tax transparency” has become a popular buzzword. 10 years ago, hardly anyone spoke or wrote about tax transparency. Was tax transparency inexistent until recently? The answer depends on what one wants to describe by this term. As a term of art, it can be traced back to international exchange of information,<sup>[1]</sup> a topic that was the subject of two EATLP conferences already, namely the Istanbul conference in 2014,<sup>[2]</sup> and the 2009 conference in Santiago de Compostela.<sup>[3]</sup> In the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, it is institutionalized.<sup>[4]</sup> Improving transparency is also one of the core strategies of the OECD in tackling BEPS.<sup>[5]</sup>

The term “tax transparency” might have its origin in recent international cooperation, but it covers a much broader range of topics. From time immemorial, the taxpayer has had to be transparent towards the tax administration with regard to all information required to assess and collect taxes. Ever since, the tax administration would have faced a control problem if it had only relied on the taxpayer himself. The recent boost in cross-border cooperation through automatic exchange of information mainly overcomes the territorial limitations of domestic tax administrations’ reach. Another increasingly popular way to gather information for the purposes of tax enforcement is through recourse to third parties, other branches of administration, courts or other publicly available information. However, all of this has been done in the past as well, although maybe to a lesser extent.

Thus, if taxpayers have always needed to be transparent, is tax transparency just old wine in new wineskins, or are we witnessing a change in paradigm? There are at least three new developments that fundamentally change the quality and understanding of tax transparency:

- Digitalization allows for easy exchange of data and has been essential in adopting automatic international exchange of information. Furthermore, digitalization transforms the utilization of taxpayer data through data analytics, which, at the same time, makes it extremely difficult to stay in control of one’s own data and foresee the effects of their usage by tax administrations.
- In the past, transparency was conceptualized mainly in one direction, namely from the taxpayer towards the tax administration. The tax administration itself often used to be non-transparent – almost arcane. In recent years, investigative journalist networks and non-government organizations have begun to demand explanations. Leaks and tax scandals generate a lot of pressure on the tax administration to provide information on its effectiveness in tackling tax evasion and tax avoidance, as well as on the affairs of individual taxpayers. The long-standing and pivotal principle of tax secrecy is thus challenged by the public interest in information.
- At the same time, tax authorities are discovering public disclosure to be a new instrument for tax enforcement by way of naming and shaming.

Hence, there is a need for discussion about the chances as well as the risks and boundaries of enhanced transparency. The extent of data collection and usage has to be proportional to the tax enforcement. The collection of information by the tax authorities is never a goal in itself, but has to be limited to the extent that the data is indispensable for the collection of taxes legally due. The taxpayer needs to be able to stay in control of his own data. At the same time, public disclosure as a means of accountability of the tax administration and tax enforcement needs to be discussed with an open mind. Possible advantages need to be thoroughly evaluated and balanced against tax secrecy and the right to informational self-determination.

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1. For transparency in the realm of international tax law, see, e.g. J.P. Owens, *Tax Transparency: The “Full Monty”*, 68 Bull. Intl. Taxn. 9, p. 512 (2014), Journals IBFD. Compare with transparency in the regulation of fiscal institutions in A. Turina, “Visible, Though Not Visible in Itself”: Transparency at the Crossroads of International Financial Regulation and International Taxation, 8 World Tax J. 3, sec. 2.2. (2016), Journals IBFD.
  2. See G. Marino (ed.), *New Exchange of Information versus Tax Solutions of Equivalent Effect* (IBFD 2015), Online Books IBFD.
  3. See R. Seer & I. Gabert (eds.), *Mutual Assistance and Information Exchange* (IBFD 2010), Online Books IBFD.
  4. The term “tax transparency” is still mainly used within this meaning in many countries; see, e.g. Romanian national report, sec. 33.1.1.; Belgian national report, sec. 17.1.1.; and Turina, *supra* n. 1, at sec. 3.3.
  5. See OECD, *Explanatory Statement: OECD/G20 Base Erosion and Profit Shifting Project*, pp. 4-5 and 7 et seq. (OECD 2015), International Organizations’ Documentation IBFD.

## **1.2. Notion and concept of tax transparency**

### **1.2.1. A term with heterogeneous meanings**

“Tax transparency” is a fuzzy and dazzling term<sup>[6]</sup> that can be used to describe a heterogeneous bunch of phenomena and related problems. Literature explicitly dealing with tax transparency is still scarce.<sup>[7]</sup> In most countries, tax transparency has not yet been assigned an established meaning.

Literally, transparency describes the characteristic that allows one to look through something. “Transparency” and “transparent taxation” are terms commonly used in business taxation to metaphorically describe the concept of transparent, pass-through entities (partnerships) as opposed to opaque legal entities.<sup>[8]</sup> Different from this, the term “tax transparency” is used in reference to the accessibility of information. As mentioned in the introduction ( see section 1.1. ), with regard to information, the concept of tax transparency has its origin in the international context, which might explain why the English term is often used.

With quite different content, “transparency” is a well-established concept in the information freedom movement.<sup>[9]</sup> Here, it is understood as transparency of governmental institutions, which leads to the claim that any kind of governmentally held information should be freely available and directly accessible to those who will be affected by decisions (and the enforcement thereof) based on this information.<sup>[10]</sup>

Bringing these two strands together, *tax* transparency goes in both directions, covering the transparency of taxpayers as well as that of the tax administration.<sup>[11]</sup> Whilst the taxpayer has always needed to disclose all tax-relevant information to the tax administration, the establishment of transparency of the tax administration is a rather novel claim. Transparency of the tax administration again goes in different directions: (i) towards the respective taxpayers; (ii) towards individualized third parties; and (iii) towards the vast public. In the extreme, tax transparency could be understood as full availability of any information to anybody. A (fully) transparent taxpayer is a taxpayer who is not able to hide any relevant (or maybe even irrelevant) information from the tax authorities. A (fully) transparent tax administration is one from which any taxpayer can, at any moment, access any of the data that the administration holds, as well as information on how the tax law is applied and enforced, not only against the individual taxpayer himself, but also against other taxpayers.

The meaning of “tax transparency” becomes even broader if the concept is not only applied to the taxpayer or the tax administration, but also to tax law. Transparency of the tax system is associated with systematically construed tax laws that avoid inconsistencies. Transparency is thus often used in the debate on the simplification of tax laws.<sup>[12]</sup> However, transparency is not, in itself, a helpful benchmark for discussing the quality of the rules of substantial tax law, but only a by-product and the result of a well-designed tax system. Regardless, there is an important intersection with tax transparency as it is discussed here. Often, tax statutes lacking transparency and suffering from obscure language are understandable (i.e. transparent) only through interpretative guidance<sup>[13]</sup> by the tax administration. Publication and access to these internal documents is an important aspect of tax transparency.

Obviously, “tax transparency”, used in the broad sense discussed here, is a catch-all term. One could question whether there is any merit in discussing a plethora of heterogeneous problems under one common headline. Indeed, to make tax transparency a meaningful instrument for the identification and discussion of a certain type of legal issue, it first needs further differentiation,

6. On the terminological aspects, see Turina, *supra* n. 1, at sec. 1; and R.B. Mitchell, *Sources of Transparency: Information Systems in International Regimes*, 42 Intl. Stud. Q. 1, p. 110 (1998).
7. Though comprehensive, see A-M. Hambre, *Tax Confidentiality: A Comparative Study and Impact Assessment of Global Interest* (Örebro University 2015). See further a Greek monograph using the term “tax transparency” in E. Theocharopoulou, *Tax Transparency and Exchange of Information in times of financial and international economic crisis* (Afoi Kyriakidi Editions S.A. 2016) (available only in Greek). See further Croatian national report, sec. 18.1.1. Only partial aspects, like international exchange of information, are discussed in regard to tax transparency.
8. See, e.g. OECD, *The Application of the OECD Model Tax Convention to Partnerships* (OECD 1999), International Organizations' Documentation IBFD. In the French national report, sec. 22.1.1., this is mentioned as a reason why the term “tax transparency” is normally not used with regard to information.
9. In more detail, see Part III, ch. 7, General Report: *Transparency and Publicity*, sec. 7.3.
10. Turina, *supra* n. 1, at sec. 2.1., referring to a definition given by the United Nations. In respect of the concept of transparency in public administration law, see, e.g. C. Hunold, *Pluralism and Democracy: Toward a Deliberative Theory of Bureaucratic Accountability*, 14 Governance 2, p. 151 (2001); and B. Bugaric, *Openness and Transparency in Public Administration: Challenges for Public Law*, 22 Wis. Intl. L. J. 3, p. 483 (2004), with a focus on the impact that transparency has on the style of administration operations.
11. Explicitly, see Greek national report, sec. 24.1.1.; and Russian national report, sec. 34.1.
12. L.E. Schoueri & M.C. Barbosa, *Transparency: From Tax Secrecy to the Simplicity and Reliability of the Tax System*, 2013 British Tax Rev. 5, p. 677 (2013), citing R.L. Torres, *O princípio da transparência no direito financeiro*, in *Revista de direito da Associação dos Procuradores do novo Estado do Rio de Janeiro*, footnote 8 (Lumen Juris 2001).
13. With regard to this “guidance”, see, in detail on the US practice, D.L. Korb, *The Four R's Revisited: Regulations, Rulings, Reliance, and Retroactivity in the 21st Century: A View From Within*, 46 Duquesne Law Review 3, p. 323 (2008), based on M. Rogovin, *The Four R's: Regulations, Rulings, Reliance, and Retroactivity: A View from Within*, 49 Federal Tax Guide Reports 8 (1965).

which then, in a second step, offers the chance to bundle structurally similar problems. Tax transparency might help conceptualize these issues, juxtapose them with transparency in other fields and develop a coherent legal framework.<sup>[14]</sup>

### 1.2.2. Aims and effects of tax transparency

Tax transparency, in the broad sense, as it is understood here, serves different functions. One has to distinguish between the direct procurement of information and further targets that are pursued by tax transparency, i.e. deterrence, on the one hand, and accountability and trust in the tax administration, on the other hand.

Transparency with regard to the information necessary to assess taxes is an inevitable precondition for the fair and equal application of tax law.<sup>[15]</sup> Equality of enforcement is as important as equality of the tax legislation; thus, transparency of the taxpayer ranks high. Control, but also cost efficiency, explains the interest in involving third parties and other sources, like the Internet, in the collection of information on taxable events. However, there is a fine line between the convenience of information collected without the need for cooperation by the taxpayer – maybe even without his knowledge – and the risk of jeopardizing the mutual trust between the taxpayer and the tax authorities. For this reason, the process of collection and utilization of the collected information needs to be transparent for the taxpayer as well.

Beyond the information directly necessary for applying existing tax laws, tax administrations as well as tax legislators have an interest in understanding complex economic structures and upcoming business models that might lead to new policy considerations and new legislative actions. The recent international push for transparency reflects both (i) the intention to gather plain information on taxable events to tackle tax evasion and tax fraud; and (ii) the collection of information for rather vague tax policy intentions. The latter is especially true for country-by-country reporting (CbCR) and the exchange of information on cross-border tax arrangements.<sup>[16]</sup> The interdependence of transparency and tax evasion is quite direct. Automatic international exchange of information on financial accounts renders tax evasion by not declaring offshore accounts immediately impossible. It is also clear as to which information is needed, i.e. the information necessary to apply the existing tax laws; no more, no less. The function and effect of tax transparency with regard to tax avoidance is of a more complicated nature. Here as well, transparency helps, to a certain extent, gain the facts necessary to apply anti-avoidance rules. However, beyond facilitating the application of existing law, the information leads to moral statements and might later on influence the legislative process. Furthermore, transparency is meant to establish corporate social responsibility in the field of taxation,<sup>[17]</sup> which goes beyond tax compliance.

One important aspect especially of intensified international exchange of information is the deterrence effect. Although it is not clear as to what extent automatically exchanged information is actually viable and can be used as a basis for tax assessments, it certainly creates an atmosphere of surveillance. Disclosure by increasing the risk of detection is, assumingly, a potent enforcement strategy, more effective than high penalties.<sup>[18]</sup> This is why legislators and administrations increasingly employ it strategically. Data leaks and the work of investigative journalist networks contribute to this atmosphere of deterrence.

Transparency of the tax administration serves very different policy aims. In making the application of tax law predictable, it serves the rule of law. Furthermore, it is associated with democratic control of government institutions and their decision-making; visibility is meant to avoid public discontent regarding the perceived ineffectiveness and partiality of the tax administration.<sup>[19]</sup> However, apart from the conflicting taxpayer right to confidentiality, publication to the vast public also requires caution because no matter which data are published, the more complex the facts and the more complicated the applied tax laws are, the more difficult it will be to draw the right conclusions, especially for the public lacking expert tax knowledge.

Whether the recent boost in new transparency legislation is able to achieve its goals needs to be evaluated through empirical studies. The less clear the purpose of the procurement of the information is, the more questionable and harder to prove the effectiveness is. This is the case with regard to the highly controversial CbCR. The problems start with the lack of comparability due to different standards of accounting and calculating corporate profits (i.e. non-transparency). However, even if the results were fully comparable, an immediate conclusion that a certain pattern stems from tax avoidance or “aggressive” tax planning would not be possible. Compared with the potential costs of CbCR, this issue renders the whole measure problematic,<sup>[20]</sup> especially when it comes to public CbCR.

14. The lack of a coherent approach towards transparency is regretted in the Croatian national report, sec. 18.1.1.

15. UK national report, secs. 42.1. and 42.4.1.

16. See Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, OJ L 139/1, International Organizations' Documentation IBFD.

17. Swedish national report, sec. 38.1.1.

18. L. Zelenak, *Tax Enforcement for Gamers: High Penalties or Strict Disclosure Rules?*, 109 Columbia Law Review Sidebar, p. 55 (2009), based on A. Raskolnikov, *Revealing Choices: Using Taxpayer Choice to Target Tax Enforcement*, 109 Colum. L. Rev. 4, p. 689 (2009).

19. J. Blank, *The Timing of Tax Transparency*, 90 Southern California L. Rev. 3, p. 452 (2017). More generally, see Bugarcic, *supra* n. 10, at p. 487 et seq.

20. See M.T. Evers, I. Meier & C. Spengel, *Country-by-Country Reporting: Tension between Transparency and Tax Planning*, ZEW Discussion Paper No. 17-008 (2017), available at <http://hdl.handle.net/10419/149883> (accessed 25 Mar. 2019). See also M.P. Devereux & J. Vella, *Are We Heading towards a Corporate Tax System Fit for the 21st Century?*, 25 Fiscal Studies 4, p. 461 (2014): “The public disclosure route through country-by-country reporting

Due to the fact that most of the measures came into force only recently, it is too early to come to a definite conclusion on their efficiency. Understandably, the national reports do not reflect how the tax administration actually deals with the massive increase in information received through all kinds of disclosure measures.<sup>[21]</sup> However, the drastic increase in collected data raises some suspicion as to whether transparency is about the information as such or about deterrence. This suggests that the international community as well as the national legislators should wait for a better understanding of the measures already adopted instead of continuously adopting new measures, often as a short-sighted response to the pressure of the public opinion.<sup>[22]</sup>

### 1.2.3. Recent developments

#### 1.2.3.1. Differences in tax culture as a starting point

What makes this topic particularly interesting – although also difficult from a comparative perspective – is that it is deeply interrelated with a country's socio-cultural appraisal of transparency, including control of the citizens, on the one hand, and control of the government, on the other hand.

EU directives, OECD actions and multilateral conventions have led to significant alignment in recent developments; however, apart from international obligations, countries still differ a lot in their stance and in the measures undertaken either to establish or to restrict tax transparency. In order to perform an appraisal of the present development, one has to understand where the respective country is coming from.

The starting point in most jurisdictions is one of rather limited transparency. Even though de jure taxpayers have always been required to be fully open with regard to the facts determining tax claims, tax administrations in the past often lacked sufficient control mechanisms. Here, new technical and legal means allow for more transparency, which then leads to the question of whether their use needs to be restricted in order to protect the taxpayers' personal spheres.

Transparency of the tax administration is rather uncharted territory for all countries, except for maybe in Scandinavia. It is predetermined to a lesser extent by international development, and instead is highly intertwined with a society's general level of trust in the public administration and government. Activities at the EU level, namely the publication of the EU blacklist as well as the proposal for public CbCR, might make naming and shaming more popular; however, the discussion in the aftermath of these steps also highlights the different transparency cultures within the European Union.

Some countries, namely the Scandinavian ones, have a long history of tax transparency, while other countries, like Luxembourg and Switzerland, based parts of their national economies on a strict secrecy policy.<sup>[23]</sup> However, also there, as the Swiss example in comparison with Luxembourg shows, the development in the aftermath of international transparency initiatives like FATCA does not necessarily follow the same lines. Switzerland had to bow to international pressure but kept its tradition of strong protection of private secrecy internally (and even strengthened it),<sup>[24]</sup> while Luxembourg tried a real restart with a strong commitment to transparency beyond the immediate international requirements.<sup>[25]</sup>

#### 1.2.3.2. Legislation on tax transparency

There is not one single country without recent significant legislative activity to improve tax transparency. In most countries, the development is very much initiated and influenced by international allegations and recommendations.<sup>[26]</sup> Many countries concluded the FATCA agreement with the US Internal Revenue Service,<sup>[27]</sup> notwithstanding the fact that FATCA can be perceived as an "unfair" act of political coercion by the United States and a severe threat to national privacy standards.<sup>[28]</sup>

Furthermore, EU Member States are legally obligated to transpose the numerous amendments of the Directive on Mutual Assistance<sup>[29]</sup> into national law. Also, the General Data Protection Regulation<sup>[30]</sup> requires new laws to, on the one hand, protect

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is problematic and unlikely to succeed. It would provide information that would be very difficult to interpret. To properly understand why a company pays a certain amount of tax in a particular country, one requires information at a level of detail that runs into confidentiality and competition issues."

21. See, with regard to the risk of "too much disclosure", D.J. Ventry, *Cooperative Tax Regulation*, 41 Connecticut Law Review 2, p. 477 (2008).

Marino, *supra* n. 2, at p. 20 reported some numbers, although they do not allow for any judgement of the efficiency of the new instruments.

22. With regard to the role of the media, see Part III, ch. 7, General Report: *Transparency and Publicity*, sec. 7.4.

23. Explaining major concerns when Luxembourg was forced to abolish its banking secrecy in the aftermath of the US FATCA legislation, see Luxembourg national report, sec. 29.1.2. and Swiss national report, sec. 39.1. With regard to the effects of FATCA, see J. Malherbe, *New EOI vs Tax Solutions of Equivalent Effect*, in Marino, *supra* n. 2, at p. 102; and X. Oberson, *The "Realpolitik" of Tax Solutions of Equivalent Effect: Alternative or Accessory to AEOI?*, in Marino, *supra* n. 2, at p. 123.

24. See Swiss national report, sec. 39.1.

25. E.g. by publishing advance rulings; see Luxembourg national report, secs. 29.1.1. and 29.4.1.

26. On a bandwagoning effect induced by the international campaign, see Croatian national report, sec. 18.1.1.

27. See the US Treasury's overview of the FATCA agreements, available at <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx> (accessed 25 Mar. 2019).

28. See the summary of criticism by Marino, *supra* n. 2, at pp. 26-27.

29. Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64 (2011), EU Law IBFD; Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of



taxpayers' data, and on the other hand, allow them access to their data owned by the tax administration.<sup>[31]</sup> The possible adoption of the proposal for an EU whistle-blower directive<sup>[32]</sup> would cause the need for transposition into national tax laws.

### 1.2.3.3. The role of digitalization

Transparency and digitalization are interrelated in manifold ways. Digitalization can be used as a potent facilitator of transparency. It represents a big chance for fairer and more efficient tax enforcement, on the one hand, but on the other hand, it increases the risk of data abuse and encroachment of taxpayers' privacy.

Even though all countries seemingly have far-reaching initiatives of automatization with regard to the administration and collection of taxes, the differences in the actual implementation are huge. The different pace of digitalization is, to some extent, reflected in different takes on tax transparency.

In most countries, digitalization and automatization of the tax administration lead to far-reaching legal reforms of the tax procedure. Taxpayers are required to file their taxes electronically. Not only the quality, but also the amount of data collected by the tax administration has increased exponentially. This is not necessarily a consequence of digitalization, but it is certainly facilitated by it. Digitalization leads to "datafication".<sup>[33]</sup> Digital data enable the tax administration to run automated risk management systems.<sup>[34]</sup> The bigger the data pool is, the better data analytics based on the combination and correlation of data work.<sup>[35]</sup>

The ongoing digitalization of the tax administration simplifies the replication, retrieval, transfer and storage of data to a previously unknown extent. Data protection laws need to be adapted to this process of digitalization. The traditional tax secrecy approach falls short of the new challenges of big data and requires a systematically new legal framework.<sup>[36]</sup> Tax secrecy mainly hindered tax authorities from freely sharing taxpayer data with other public agencies and protected taxpayers against the disclosure of their data to any other private parties. Digitalization makes data much more prone to abuse because of its easy transferability. Furthermore, tax administrations gain entirely new means by which to use the data internally, not necessarily limited to mere individual tax assessment, but also to gain insights into the effects of tax laws and into the strategic behaviour of taxpayers.

Furthermore, using algorithms and producing tax assessments fully and automatically leads to the question of how transparent this process is, not only for the taxpayer, but also for the tax administration itself, as well as for tax courts controlling these decisions and for national parliaments.

At the same time, digitalization has lots of advantages for the taxpayer because it eases the communication between the tax authorities and the taxpayer and the access to government data.<sup>[37]</sup> New technical means can be used as an effortless medium for the publication of all kinds of administrative releases. In most countries, those means complement classical physical organs of official publication or even render them superfluous.<sup>[38]</sup> Furthermore, the accessibility of the taxpayer's own files is directly related to the state-of-the-art computer systems used by tax administrations.<sup>[39]</sup> By way of the right organization of digital records, it seems possible to overcome capacity constraints, which, in the past, often have been held out for taxpayers' transparency requests.

### 1.2.3.4. Perception of tax transparency

Transparency in general has a very positive connotation. There is hardly any reason one could think of that would justify non-transparency.<sup>[40]</sup>

However, full transparency of the taxpayer also has the dark side of "Big Brother is watching you". Only few fiction novels came so close and so soon to reality as George Orwell's book "Nineteen Eighty-Four". The technical means of permanent surveillance and data tracking by using the Internet and by electronic communication grant totally new possibilities for control over taxpayers.

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information in the field of taxation, OJ L 359; Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 332; Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 146/8; Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities, OJ L 342/1; Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, OJ L 139 (2018), EU Law IBFD.

30. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119/1.

31. See sec. 1.2.

32. EU Commission, *Proposal for a Directive on the protection of persons reporting on breaches of Union law* of 23 April 2018, COM(2018) 218 final. In detail, see ch. 6.

33. Marino, *supra* n. 2, at p. 3.

34. See, e.g. German national report, sec. 23.4.1.1., Greek national report, sec. 24.2.5. and Belgian national report sec. 17.2.5.

35. Spanish national report, sec. 36.2.3.

36. Dutch national report, sec. 30.1.1.

37. See H. Yu & D.G. Robinson, *The New Ambiguity of "Open Government"*, 59 UCLA Law Rev. Disc., p. 193 (2012).

38. French national report, sec. 22.4.1. and Luxembourg national report, sec. 29.4.1.

39. The outdated computer system is mentioned as a reason for poor accessibility of taxpayers' records in the Dutch national report, sec. 30.4.2.

40. For the compelling force of transparency, see Croatian national report, sec. 18.1.1.

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The range of data known by the fiscal authority ranks from family status and religious affiliation to health conditions and business secrets.<sup>[41]</sup> This explains why the position that increased tax transparency is all welcome and should be even further increased and promoted is more and more challenged.

In the democratic rule-of-law states in Europe that some have the privilege of living in, one should not be too concerned about abuse of these (in part, very sensitive) data by the fiscal authorities. However, the potential of abuse is high. The Serbian report gives an alarming example of how tax information can be exploited to lobby against political opponents.<sup>[42]</sup> One should also never forget that the expropriation of the Jews under the NS regime was organized by the fiscal authorities, which held the necessary information.<sup>[43]</sup>

Thus, it is no surprise that with the means increasing, reservations do as well. Recent scandals in the private sector about the abuse of digital data in election campaigns and for all kinds of commercial purposes might have contributed to the fact that in many countries, the pendulum is swinging back. After a period during which increased control of the taxpayer by gathering information, especially through international exchange of information, seemed to be all and only beneficial to fight tax evasion and improve equality in tax collection, now, protection of the taxpayer through guarantees of confidentiality receives growing attention. Despite regional differences, most national reports show increased public awareness in recent years.<sup>[44]</sup> Some countries responded to the concerns with statements on the accountability of the tax administration. In Denmark, for example, as of 2014, an annual Transparency Report is published.<sup>[45]</sup>

In academic writing, on the one hand, one finds strong advocates for a tax secrecy principle,<sup>[46]</sup> accompanied quite recently by principles of data protection.<sup>[47]</sup> On the other hand, there is a growing number of articles exploring the possible benefits of a disclosure policy to improve tax enforcement. In the past, one main argument for tax secrecy was that it was inevitable to make the taxpayer reveal all necessary information to the tax administration because he could trust in the confidential handling of his data.<sup>[48]</sup> This long-standing view is now challenged by the idea that the public eye could exert useful pressure to promote public disclosure.<sup>[49]</sup> Thus, in international academic literature, mandatory disclosure of (some) taxpayers' return information has quite a few advocates.<sup>[50]</sup> Hambre,<sup>[51]</sup> in her inspiring thesis, tried to reconcile tax transparency with tax confidentiality, claiming that both have the common target of protecting the taxpayer and allowing him to establish confidence in the tax authorities.

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41. In more detail, see A-M. Hambre, *Tax Confidentiality: A Legislative Proposal at National Level*, 9 World Tax J. 2, sec. 1. (2017), Journals IBFD.
42. Evidence is given in this regard in the Serbian national report, sec. 35.1.1. See also A.P. Dourado, *Fake Tax Transparency? Leaks and Taxpayer Rights*, 46 Intertax 2, p. 103 (2018).
43. See, e.g. C. Kuller, *Entziehung – Verwaltung – Verwertung: Finanzverwaltung und Judenverfolgung*, in *Die Finanzverwaltung und die Verfolgung der Juden in Bayern* p. 31 et seq. (Hans Günter Hockerts et al. eds., Generaldirektion der Staatlichen Archive Bayerns 2004).
44. E.g. see Danish national report, sec. 20.1.2.; German national report, sec. 23.1.2.; South African national report, sec. 37.1.2.; and Polish national report, sec. 31.1.
45. Danish national report, sec. 20.1.1.
46. J. Blank, *In Defense of Individual Tax Privacy*, 61 Emory Law Journal 2, pp. 265-348 (2011); P. Baker & P. Pistone, *General Report*, in *The practical protection of taxpayers' fundamental rights*, vol. 100B, sec. 3 (IFA Cahiers 2015); and L.C. Barrios Altafulla, *The Line between Tax Secrecy and Tax Transparency*, in *Tax Policy Challenges in the 21st Century*, p. 445 (R. Petrucci & K. Spies eds., Linde 2014). With experimental evidence that public disclosure could lead to more tax evasion, see K. Blaufus et al., *The Effect of Tax Privacy on Tax Compliance – An Experimental Investigation*, 26 European Accounting Review 3, pp. 561-580 (2017).
47. M. Krumm, *Grundfragen des steuerlichen Datenverarbeitungsrechts*, 70 Der Betrieb 38, pp. 2182-2195 (2017); P. Schwartz, *The Future of Tax Privacy*, 61 Natl. Tax Journal 4, pp. 897-898 (2008); and K.A. Houser & D. Sanders, *The Use of Big Data Analytics by the IRS: Efficient Solutions or the End of Privacy as We Know It?*, 19 Vand. J. Ent. & Tech. L. 4, p. 866 et seq. (2017).
48. US: Office of Tax Policy Department of the Treasury, *Report to The Congress on Scope and Use of Taxpayer Confidentiality and Disclosure Provisions* p. 19 (2000), attributing the quote to Secretary of the Treasury Mellon.
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