



Are tax payer's rights protected and enforcable?

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Current tax environment

Laws constituting rights and obligations are fundamentals of a well organized state. To exist state needs funding. Funding of a state has to take into account interests that create tax basis. This creates a relation between tax payer's rights and obligations.

Fight against harmful tax competition and aggressive tax planning is nothing new. Currently aggressive tax planning is the key interest area and is taken into political discussions through OECD's BEPS project and EU's parallel work against base erosion and profit shifting., though perhaps using different methods.

As taxes are set high on the agenda and have political pressure, projects have resulted in a high number of new recommendations and rules. Important method has been granting tax authorities new powers and tools.

Important question therefore is what is the role of tax payer's rights in this environment?

Tax payer's rights post BEPS

Brezinski defines tax payer's rights as legal situation of a person having the ability to demand to be treated in a manner which will improve –objectively or subjectively- his position in a society, economy or law.

Tax payer's rights have been in focus during last decades parallel to fight against aggressive tax planning. Protecting tax payer's rights can be in harmony with state's interest. Tax payer's rights improve compliance and creates trust towards tax administration.

Taxation is consequence of financial activities resulting in a sensitive balance between fiscal powers and tax payer's freedoms. The more purely fiscal aspects drive tax legislation or administration, the more it impacts negatively financial activities.

In BEPS and ATAD tax payer's rights are sett aside and fiscal interests have been emphasised. The balance between activity and consequence is not respected due to urgency. This may result in use of anti avoidance rules, not repsecting principle of proportionality

Research method

Research is carried out partly based on legal dogmatic and partly using comparable law methods. Comparison is focused on tax payer's freedom rights compared to fiscal interests of state.

Tax payer's freedom rights are restricted by taxation. I target to find a balance between these two by comparing fiscal interest and freedom rights, legal principles and administrative rules.

Conclusions so far

Regulatory environment is becoming more complex creating challenges for tax payer's right to organize his or her operations. In countries without constitutional court tax payer has very limited possibilities to enforce his or her rights in case they are infringed. EU law has created an important enforcement tool in these cases.

Constitutions protect fundamental rights, to certain extent even tax payer's rights. To respect these rights in preparatory work is crucial to understand actual impact. Many of the new ATAD and BEPS rules are presented with very limited impact analysis. Different countries use newly created measures in the name of prohibiting aggressive tax planning, but actually are setting tax originated requirements for business. Is this within the authorities of tax administration?

Tax payer's transparency in increased by different means. This increases tax authorities powers, but decreases tax payer's trust to administration. Trust, certainty and clarity are important factors for tax payer's fundamental rights. Increasing also tax administration's transparency would improve all these components; administrative processes would improve in quality.

Question of tax payer's rights could be stated as "how does a sustainable tax system look like?"

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