1.1. Introduction: Change of paradigm?
Tax Transparency has become a popular buzz word today. Ten years ago hardly anyone spoke or wrote about “tax transparency”. Was tax transparency until recently inexistent? The answer depends on what we want to describe by this term. As a term of art it can be traced back to the
international exchange of information\textsuperscript{1}, a topic which was subject of two EATLP conferences already, the Istanbul conference in 2014\textsuperscript{2} and the 2009 conference in Santiago de Compostela\textsuperscript{3}. In the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, it is institutionalized\textsuperscript{4}. Improving transparency is also one of the core strategies of the OECD in tackling Base Erosion and Profit Shifting\textsuperscript{5}.

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 in regard to all information required to assess and collect taxes. And ever since the tax administration would have faced a control problem, if it only relied on the taxpayer himself. The recent boost of trans-border cooperation by automatic exchange of information mainly overcomes the territorial limitation of the domestic tax administration’s outreach. Another increasingly popular way to gather information for purposes of tax enforcement is the recourse to third parties, other branches of administration, courts or other publicly available information. However, all of this has always been done in the past as well, though maybe to a lesser extent.

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

1. Digitalization allows for an easy exchange of data, and has been essential for adopting automatic international exchange of information. Furthermore, digitalization transforms the utilization of taxpayers’ data through data analytics, which at the same time makes it extremely difficult to stay in control of one’s own data and to foresee the effects of their usage by the tax administration.

2. In the past transparency was conceptualized mainly in one direction: 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 NGOs 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 single taxpayers. The longstanding and pivotal principle of tax secrecy is thus challenged by the public interest of information.

3. At the same time tax authorities discover public disclosure as a new instrument of tax enforcement by way of naming & shaming.

\textsuperscript{1} Towards 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; in comparison with transparency in the regulation of fiscal institutions 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.


\textsuperscript{3} EATLP, Mutual Assistance and Information Exchange (R. Seer & I. Gabert eds., IBFD 2010), Vol. 9 EATLP International Tax Series.

\textsuperscript{4} Still in many countries mainly used in this direction, see e.g. Romanian national report, sec. 1.1.; Belgian national report, sec. 1.1., para 2; A. Turina, supra n. 1, at sec. 3.3.

\textsuperscript{5} See OECD, Explanatory Statement: OECD/G20 Base Erosion and Profit Shifting Project, p. 4, 5, 7 et passim (OECD 2015), International Organizations’ Documentation IBFD.
Hence, there is a need for discussion about the chances as well as 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 means of accountability of the tax administration and tax enforcement need to be discussed with an open mind. Possible advantages need to be thoroughly evaluated and balanced against tax secrecy and the right of informational self-determination.

1.2. Notion and concept of tax transparency

1.2.1. A term with heterogeneous meanings

Tax transparency is a fuzzy and dazzling term, which can be used to describe a heterogeneous bunch of phenomena and related problems. Literature explicitly dealing with “tax transparency” is still scarce. In most countries tax transparency has not yet got an established meaning.

Metaphorically, transparency describes a characteristic that allows us to look through something. “Transparency” and “transparent taxation” are terms commonly used in business taxation to describe the concept of transparent pass through entities (partnership) as opposed to opaque legal entities. Different to this the term “tax transparency” is used for the accessibility of information. As said already, in 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 a quite different content, “transparency” is a well-established concept in the information freedom movement. 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 based on this information and their enforcement.

Bringing these two strands together tax transparency goes in both directions, capturing the transparency of taxpayers as well as that of the tax administration. 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 has different directions: towards the respective taxpayer, towards individualized third parties and towards the vast public. In extreme, tax transparency could be understood as full availability of any information for anybody. The (fully) transparent taxpayer is a taxpayer who is not able to hide any relevant, maybe even irrelevant, information from the tax authorities. The (fully) transparent tax administration is one where any taxpayer can at any moment access any of the data the administration holds as well as information on how the tax law is applied and enforced not only against the taxpayer himself but also against other taxpayers.

The meaning of “tax transparency” gets even broader if the concept is not only applied to the taxpayer or the tax administration but also to the 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 simplification of tax laws. However, transparency is not in itself a helpful benchmark for discussing the quality of the rules of substantial tax law, but only a byproduct and the result of a well-designed tax system. Regardless, there is an important intersection to tax transparency as we discuss it here. Often, tax statutes lacking transparency and suffering from obscure language, are understandable (scil. transparent) only through interpretative guidance 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 catchall 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 issues, it first needs further differentiation, which then, in a second step, offers the chance to bundle structurally similar problems. Tax transparency might help to conceptualize these issues, to juxtapose them to transparency in other fields, and to develop a coherent legal framework.

### 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 which are pursued by tax transparency, i.e. deterrence on the one hand, accountability and trust in the tax administration on the other hand.

Transparency in regard to the information necessary to assess taxes is an inevitable precondition for a fair and equal application of tax laws. 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 into the collection of information on taxable events. However, there is a fine line between the

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14. The lack of a coherent approach towards transparency is regretted in the Croatian national report, sec. 1.

convenience of information, collected without the need of cooperation of 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 collecting and utilization of the collected information needs to be at the same time transparent for the taxpayer as well.

Beyond the information directly necessary to apply the existent tax laws, tax administrations as well as tax legislators have an interest in understanding complex economic structures and upcoming business models which might lead to new policy considerations and new legislative actions. The recent international push for transparency reflects both: The intention to gather plain information on taxable events to tackle tax evasion and tax fraud and the collection of information for rather vague tax policy intentions. The latter is especially true for Country-by-Country Reporting and the exchange of information on cross-border tax arrangements. The interdependency between transparency and tax evasion is quite direct. The automatic international exchange of information on financial accounts renders tax evasion by not declaring off-shore accounts immediately impossible. It is also clear what information is needed: the information necessary to apply the existing tax laws, no more, no less. The function and effect of tax transparency in regard to tax avoidance is of a more complicated nature. To a certain extent transparency helps also here to gain the facts necessary to apply anti-avoidance rules. However, beyond facilitating the application of the 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 which goes beyond tax compliance.

One important aspect especially of intensified international exchange of information is the deterrence effect. Although it is not clear to which 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 assumedly a potent enforcement strategy, and more effective than high penalties. 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 laws 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 with the perceived ineffectiveness and partiality of the tax administration. However, apart from the conflicting taxpayer rights of confidentiality, publication towards the vast public also requires caution because no matter what data are published the more complex the facts are and the more complicated the applied tax laws the more difficult it will be to draw the right conclusions, especially for the public lacking expert tax knowledge.

Whether the recent boost of new transparency legislation is able to achieve its goals needs to be evaluated by empirical studies. The effectiveness is the more questionable and harder to

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17 Swedish national report, sec. 1.2.


proof, the less clear the purpose of the procurement of the information is. This is the case in regard to the highly controversial Country-by-Country reporting. The problems start with the lack of comparability due to different standards of accounting and calculating corporate profits (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 especially if it comes to public CbCR.

Due to the fact that most of the measures came into force only recently it is too early to come to a definite appraisal of their efficiency. Understandably, the national reports do not reflect how the tax administration actually deals with the massive increase of received information by all kinds of disclosure measures. 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 answer to the pressure of the public opinion.

1.2.3. Recent developments

1.2.3.1. Differences in the tax culture as starting point

EU directives, OECD actions and multilateral conventions lead to a significant alignment in the recent development, however, apart from the international obligations countries still differ a lot in their stance and in the measures undertaken either to establish or to restrict tax transparency. For an appraisal of the present development one has to understand where the respective country comes from.

The starting point in most jurisdictions is one of a rather limited transparency. Even though de jure taxpayers were always required to be fully open in regard to the facts determining the tax claim, tax administrations in the past were often lacking sufficient control mechanisms. Here, new technical and legal means render more transparency, which then leads to the question whether their use needs to be restricted in order to protect the taxpayer’s personal sphere.

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

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<; See also M.P. Devereux & J. Vella, Are We Heading towards a Corporate Tax System Fit for the 21st Century?, 25 Fiscal Studies 4, pp. 449-475 at p. 461 (2014): “The public disclosure route through country-by-country reporting 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”.


22 In regard to the role of the media see infra. sec. 1.5.3.3.
Some countries, namely the Scandinavian ones have a long history of tax transparency, other countries like Luxembourg or Switzerland based parts of their national economy on a strict secrecy policy. But 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 the international pressure but kept its tradition of strong protection of private secrecy internally, and even strengthened it, while Luxembourg tried a real restart with a strong commitment to transparency beyond the immediate international requirements.

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 the international allegations and recommendations. Many countries concluded FATCA agreements with the IRS, notwithstanding that FATCA is perceived as an “unfair” act of political coercion by the US and a severe threat to national privacy standards.

Furthermore, European Member States are legally obliged to transform the numerous amendments of the directive on mutual assistance into national law. Also the General Data Protection Regulation requires new laws, on the one hand to protect taxpayers’ data, on the other hand to allow them access to their data owned by the tax administration. The possible adoption of the proposal for an EU whistleblower directive would cause the need for transformation into national tax laws.

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23 Explaining major concerns when Luxembourg was in the aftermath of the US FATCA legislation forced to abolish its banking secrecy, see Luxembourg national report, sec. 1.2.; see also Swiss national report, sec. 1.; in regard to the effects of FATCA see already J. Malherbe, New EOI vs Tax Solutions of Equivalent Effect in EATLP, supra n. 2, pp. 89–116, at p. 102 and X. Oberson, The “Realpolitik” of Tax Solutions of Equivalent Effect: Alternative or Accessory to AEOI?, in EATLP, supra. n. 2, pp. 117–132, at p. 123.

24 See Swiss national report, sec. 1.

25 E.g. by publishing advance rulings, see Luxembourg national report, sec. 1.1., 4.1.

26 Croatian national report, sec. 1.


28 Swedish national report, sec. 1.3; Greek national report, sec. 1.2.; see also the summary of criticism by G. Marino, supra. n. 21 at pp. 26–27.


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

31 See supra sec.1.2.

1.2.3.3 The role of digitalization

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

Even though there is not one single country without far-reaching initiatives of automatization in regard to the administration and collection of taxes, differences in the actual implementation are huge. The different pace of digitalization is to some extent reflected in different takes of 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 a necessary consequence of digitalization, but is certainly facilitated by it. Digitalization leads to “datafication”. Digital data enable the tax administration to run automated risk management systems. Data analytics based on combination and correlation of data work the better the bigger the data pool is.

The ongoing digitalization of the tax administration simplifies the replication, retrieval, transfer and storage of data to a hitherto unknown extent. Data protection laws need to be adapted to the digitalization. The traditional tax secrecy approach falls short of the new challenges of Big Data and requires a systematically new legal framework. Tax secrecy mainly hindered tax authorities from freely sharing taxpayer data with other public agencies and protected the taxpayers against disclosure of their data to any other private party. Digitalization makes data much more prone to abuse, because of their easy transferability. Furthermore, tax administrations gain entirely new means to use the data internally, not necessarily limited to the mere individual tax assessment, but also to gain insights into the effect of tax laws and into the strategic behavior of taxpayers.

Furthermore, using algorithms and producing tax assessments fully 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 the parliament.

At the same time, digitalization has also lots of advantages for the taxpayer, because it eases the communication between the tax authorities and the taxpayer and the access to government data. New technical means can be used as an effortless medium for publication of all kinds of administrative releases. In most countries those means complement classical physical organs of official publication or even renders them superfluous. Furthermore the accessibility of the taxpayer’s own files is directly related to the state of art of the computer systems used in the tax administration. By way of the right organization of digital records it seems possible to

33 G. Marino, supra n. 21 at p. 3.
34 See e.g. German national report, 4.1.1
35 Dutch National Report, sec. 1.
37 French national report, sec. 4.1; Luxembourg national report, sec. 4.1.
38 The outdated computer system is mentioned as a reason for poor accessibility of the taxpayer’s records in the Dutch national report, sec. 4.1.
overcome capacity constraints which in the past often have been held out to 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 which would justify non-transparency.39

However, full transparency of the taxpayer also has the dark side of “Big Brother is watching
you”. Only few science fiction novels came so close and so soon to reality as Gorge Orwell’s
‘Nineteen Eighty-Four’. The technical means of permanent surveillance, data tracks by using
the internet and by electronic communication grant totally new possibilities of control over
taxpayers. The range of data known by the fiscal authority ranks from family status, religious
affiliation, health condition to business secrets.40 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 we have the privilege to live in in Europe, we should not
be too concerned of an abuse of these, in parts 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.41 And we should never
forget, that the expropriation of the Jews under the NS regime was organized by the fiscal
authorities which held the necessary information.42

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 by international exchange of information seemed to be all and only
beneficial to fight tax evasion and improve equality of the tax collection, now the protection of
the taxpayer through guarantees of confidentiality receives growing attention. Despite regional
differences, all national reports show an increased public awareness in recent years.43 Some
countries responded to the concerns by statements on the accountability by the tax
administration. In Denmark, for example, since 2014 an annual Transparency Report is
published.44

39  For the compelling force of transparency see Croatian National Report, sec. 1.
40  In more detail see A-M. Hambre, Tax Confidentiality: A Legislative Proposal at National Level, 9 World
Tax J., sec. 1 (2017), Journals IBFD.
41  Evidence given in this regard in the Serbian National Report, sec. 1.; also A.P. Dourado, Fake Tax
42  See e.g. C. Kuller, Entziehung – Verwaltung – Verwertung. Finanzverwaltung und Judenverfolgung in Die
Finanzverwaltung und die Verfolgung der Juden in Bayern (Hans Günter Hockerts et al. eds., General-
direktion der Staatlichen Archive Bayerns 2004), pp. 21–38, at 31 et seq.
43  Danish national report, sec. 1.2.
44  Danish national report, sec. 1.1.
In academic writing, on the one hand one finds strong advocates of a tax secrecy principle, accompanied quite recently by principles of data protection. On the other hand, there is a growing number of articles exploring possible benefits of a disclosure policy to improve tax enforcement. In the past, one main argument for the tax secrecy was that it is inevitable to make the taxpayer reveal all necessary information to the tax administration, because he can trust in the confidential handling of his data. This long standing view is now challenged by the idea that the public eye could exert useful pressure to promote public disclosure. Thus, in the international academic literature mandatory disclosure of (some) taxpayer’s return information has quite a few advocates. Anna-Maria Hambre in her inspiring thesis tried to reconcile tax transparency with tax confidentiality, claiming that both have the common target to protect the taxpayer and allow him to establish confidence in the tax authorities.

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1.5. Transparency of the tax administration

1.5.1. Predictability, control and mutual trust due to accountability

The “key property” of transparency is accessibility of information, however, in regard to the transparency of the tax administration, further distinctions need to be made:

- First, one has to distinguish between information about abstract and general policies of the tax administration and information concerning individual taxpayers.

- Second, a further distinction can be made in regard to the group of people to which the tax administration grants access: This can be only the taxpayer himself, third parties with legitimate interest or the vast majority.

- Finally, it matters whether information is disclosed on request, with a special purpose (e.g. naming & shaming) or whether it is published routinely without any special reason.

The distinction in regard to the purpose and scope of disclosure is helpful to allow a balancing against tax secrecy and confidentiality by the application of the proportionality test.

The extent to which the tax administration opens up towards the taxpayers is an expression of the compliance model a country adheres to; it has an important relational aspect of mutual trust. Transparency empowers the public to control the tax authorities and make them accountable. At the same time, it enables the tax administration to defend itself against accusations of malpractice.

In some countries, the tax administration prefers a rather cooperative style, others act more authoritarian. The different views on how taxes are best enforced are reflected in the way tax authorities communicate with their taxpayers. The tax administration can be either rather arcane or open about their strategies and policies. It is the exception that a tax administration is fairly covert like the Japanese. Most countries have understood the importance of informing and involving the taxpayers. An exceptionally cooperative understanding of paying and collecting taxes appears to be a common feature of the Scandinavian countries. Among these countries, Sweden stands out due to the relationship it maintains between transparency and confidentiality. Whilst in most countries confidentiality and tax secrecy is the rule, disclosure the exception, it seems to be the other way around in Sweden. Official documents – also in the field of taxation – are considered public, and it needs overriding reasons for not disclosing them.

One important contribution to transparency is a clear definition of the conditions of the communication between the tax administration and the taxpayer, which often does not seem to be the case. In this regard Portugal stands out with a comprehensive regulation of how and

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51 A. Turina, supra n. 1 at 378.
52 Swedish national report, sec. 2.8.; South African national report, sec. 1.
53 Japanese national report, sec. 4.1.
54 Also the Netherlands and South Africa publish details on their strategic audit aims and targets, both national reports sec. 4.1.
55 Swedish national report, sec. 2.8.; in detail A.-M. Hambre, supra n. 50 at 122 et seq. with the historic background of the Swedish Freedom of the Press Act from 1766, the worldwide first of its kind.
56 As an important aspect of taxpayer rights see P. Baker & P. Pistone, General Report, IFA Cahiers vol. 100B, 2015, p. 23 et seq.
57 Portuguese national report, sec. 4.2.
under which conditions the taxpayer has access to information owned by the tax administration and how the communication between the tax authorities and the taxpayer should take place.

Letting the public know how the tax administration operates can be seen in an even broader context, reflecting the openness of the government on financing the public sector as well as of public spending in the common interest. Especially in countries which have suffered from corruption, transparency of the tax administration can help to rebuild trust.58

1.5.2. Transparency of the communication between the taxpayer and the tax administration

1.5.2.1. Access to one’s own tax file

In general, there are no valid reasons for denying the taxpayer access to her tax file other than capacity restraints. As Philip Baker and Pasquale Pistone in the IFA General Report on taxpayer rights put it: “perhaps one of the most significant safeguards for taxpayers is the right to access information held about them by the revenue authorities”59. There can be the need to restrict the access in order not to endanger the effectiveness of ongoing audits or criminal investigations or to protect the tax secrecy in regard to other taxpayers60. However, these are exceptional cases.

Thus, one would expect that in exchange for the information the taxpayer is providing, he is granted access to his own data. This is especially important if one takes into account that the tax assessment increasingly relies on data collected from third parties. The taxpayer has a legitimate interest to control whether this information is correct. However, not in all countries tax files are fully accessible.

In most countries the taxpayer has access to basic personal data as well as to the history of taxes paid and taxes due after identification without the need for a special decision of the authorities. Access to further information might depend on the permission of the authorities61. Opposite to this, Germany and Romania62 stick out negatively, because the taxpayer has no formal right to any access to his file. The tax authorities have full discretion and commonly deny the access. In a few other countries the access is conditioned, and only granted under special circumstances.63 Mainly two reasons are given for such restrictive policy: capacity limits and confidentiality because the file might contain information relevant to other taxpayers as well.

The handling and actual accessibility of a taxpayer’s file depends essentially on the degree of digitalization of the tax administration. A well-functioning e-government system allows for an easy and direct digital access without the need for special requests64. Where access is granted, online procedures seem to be state of the art. In only a few jurisdictions like in the

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58 Spanish national report, sec. 1.
60 With the need to mask parts of the file, see French national report, sec. 4.2.
61 E.g. Austria, Belgium, France (all national reports sec. 4.2). In Switzerland, access is granted, but only upon individual request, Swiss national report 4.2.
62 Romanian national report, sec. 4.1.b referring to ECJ, 9 Nov. 2017, Case C-298/16, Ispas, ECLI:EU:C:2017:843.
63 E.g. Luxembourg national report, sec. 4.2., where a right to claim access exists only in case of pending court or assessment procedures, on other cases the access is subject to discretion of the tax office.
64 See French national report, sec. 1.1, Danish national report, sec. 4.2., Russian national report, sec. 4.2.
Netherlands\textsuperscript{65}, lagging behind in their digitalization efforts, taxpayer’s have no immediate access to their (electronic) tax file.

Differences in the extent to which the taxpayer is able to access data\textsuperscript{66} might also depend on the different purposes the tax administration intends to achieve by making the file accessible or not. The chance to trace which taxes are paid and which taxes are due eases the collection procedure and reminds the taxpayer of his duties. Full visibility of any personal data, especially those provided by third parties reflects a concept of a comprehensive control over and protection of personal data. Online accessibility of third party information becomes even more essential, if the taxpayer is not separately notified whenever third parties pass information to the fiscal authorities.\textsuperscript{67} The chance to ascertain the reasons for the decisions of the tax administration goes even further because it facilitates the control of the legality of the tax assessment.

1.5.2.2. Notifications

Whilst in regard to the access to one’s own file the taxpayer himself needs to become active, notifications are more targeted instruments of information, requiring activity by the tax administration. They can be used to inform the taxpayer about special investigation methods, which is especially necessary if the tax administration turns from the regular tax assessment or audit procedure to a criminal investigation. The latter type of notification faces the inherent difficulty of exactly separating the start of a criminal investigation from the regular tax procedure\textsuperscript{68}. Nevertheless, such information is considered inevitable due to the nemo tenetur principle; only very few countries have no notification policy in regard to the start of criminal investigations\textsuperscript{69}.

In regard to other kinds of notifications the variety is large. Rather rare are notifications about information received from third parties\textsuperscript{70}. In some countries the third party itself (notaries, banks etc.) is obliged to inform the taxpayer about data reported to the tax authorities\textsuperscript{71}.

At least in the past, the taxpayer also had a significant interest in knowing whether data were shared with other authorities, namely with foreign tax authorities. Only in some countries the taxpayer is informed when information is requested\textsuperscript{72} from or transferred\textsuperscript{73} to foreign tax authorities. Furthermore, notification can be delayed if the requesting state demonstrates that this would seriously undermine the purpose of the request\textsuperscript{74}. The need for a separate notification might eclipse in the AEOI-world, where exchange of information is the norm, thus, the taxpayer

\textsuperscript{65} Dutch national report, sec. 4.1.
\textsuperscript{66} In detail described in the French national report, sec. 4.2.
\textsuperscript{67} Austrian national report, sec. 4.2.
\textsuperscript{68} Danish national report, sec. 4.3.
\textsuperscript{69} E.g. Russian national report, sec. 4.2.; Greek national report, sec. 4.2.; Romanian national report, sec. 4.2. b).
\textsuperscript{70} Provided for in Luxembourg national report, sec. 4.2.
\textsuperscript{71} French national report, sec. 4.2., Belgian national report, sec. 4.2. para. 56; Spanish national report, sec. 4. Opposite to this in Austria banks are prohibited to inform the taxpayer of requests by the tax administration according to sec. 4 Administrative Assistance Implementing Act (ADG), see Austrian national report, sec. 4.2.
\textsuperscript{72} Austrian national report, sec. 4.2. but not the other way around; Luxembourg national report, sec 4.2., in reaction to ECJ, 16 May 2017, Case C-682/15, Berlioz Investment Fund SA, ECLI:EU:C:2017:373.
\textsuperscript{73} Hungarian national report, sec. 4.2.
\textsuperscript{74} In line with the Common Reporting Standard, OECD/Council of Europe (2011), The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol, para. 180 (2011); mentioned e.g. in the Swiss national report, sec. 4.2.; Portuguese national report, sec. 4.2.
has to expect his tax data to be exchanged. However, also here he has an interest in correcting
mistakes as soon as possible\textsuperscript{75}.

The need for special notification might shrink the easier it is for taxpayers to access their full
tax files, including visibility of third party information and international exchange of
information. However, there is no robust evidence that the notification and access policies are
coordinated.

1.5.3. Transparency through Publication and Disclosure

1.5.3.1. Publication of administrative regulations, advance private rulings and mutual
agreements

Promulgation is one of the most fundamental principles of the rule of law, an indispensable
requirement for the coming into force of any statute. It is essential to make encroachments into
individual rights predictable.

Even though administrative directives and other statements of the fiscal authorities do not have
the legal quality of statutes they also, in an abstract and general way, contain “rules” as to how
the law will be applied. To make the actions of the tax administration predictable they need to
be publicly accessible.

Publication should not be mixed up with binding force\textsuperscript{76}. “Administrative laws” are in general
non-binding. Publication might raise expectations which lead to issues of protection of trust,
but normally the taxpayer cannot claim “application” of these administrative directives\textsuperscript{77}. Nevertheless, publication is of immense importance in terms of providing predictability of the
tax enforcement.

For this reason most of administrative directives, circulars and other interpretation guidelines
are published, even if their immediate purpose is restricted to internal use within the
organization of the tax administration. There are only very few outliers like Serbia and
Croatia\textsuperscript{78}, where administrative circulars and other guidelines are not or at least not
systematically published; Greece only recently adopted a policy of comprehensive publishing
of administrative directives and circulars.\textsuperscript{79} In other countries, where not all administrative
guidelines are published automatically, internal practices are disclosed on request\textsuperscript{80}, which
raises the question on how the taxpayer gets to know that they exist in the first place.

The organ of publication differs. In most countries publication, at least of the most important
directives, is formalized through a special publication organ. However, with the growing

\textsuperscript{75} See the strong plea for transparency and notification in regard to the international exchange of information by
\textsuperscript{76} See Austrian national report, sec. 4.1.1.
\textsuperscript{77} A remarkable exception is France (see French national report, sec. 4.1.), where the taxpayer can claim
application of beneficial administrative interpretation if it has been published in the electronic Official
Bulletin of Public Finance (BOFiP).
\textsuperscript{78} Croatian national report, sec. 4.1.
\textsuperscript{79} See Greek national report, sec 1.
\textsuperscript{80} See Dutch national report, sec. 1. and 4. (WOB-requests).
internet presence of the national tax administrations, in some countries administrative directives are published exclusively online\textsuperscript{81}.

In most cases, especially in mass procedures, the tax administration has itself an interest in letting taxpayers know in advance how statutes will be interpreted to avoid conflicts afterwards. However, some ambivalence cannot be avoided because disclosure of the tax administration’s position in realms prone to tax planning and tax avoidance can also generate tax planning opportunities\textsuperscript{82}. In addition, too much transparency of the actual tax enforcement can, especially if it discloses weaknesses, increase the taxpayers risk appetite of not complying\textsuperscript{83}.

Predictability is also not necessarily wanted if it comes to risk assessment and audit strategies. Especially in regard to risk management general prevention and deterrence depends on audit measures being unpredictable\textsuperscript{84}. Thus, in most countries information on audit strategies is either disclosed only to a very limited extent\textsuperscript{85} or not at all\textsuperscript{86}. In Germany, for example, publication of the risk management strategies is by law prohibited. In other countries, some information is provided, but apparently not on a systematic basis.\textsuperscript{87} If information is published, then on a very high-level basis, e.g. by publishing a list of sectors which are identified as being at high-risk of non-compliance\textsuperscript{88} or – in the case of France\textsuperscript{89} – by a list of tax planning schemes which are under intensified surveillance. Again, some Scandinavian countries seem to be more open than others\textsuperscript{90}.

Whilst circulars are published with only very few exemptions, the picture looks a lot different in regard to the publication of advance individual tax rulings (private letter rulings) and mutual agreements\textsuperscript{91}. Publication would make the decisions of the tax administration comprehensible and would prevent the impression of a lack of fairness\textsuperscript{92}. In regard of advance rulings this is an important prerequisite to protect against competitive disadvantages. Transparency in regard to advance tax rulings also plays an important role in the OECD BEPS initiative against harmful tax competition\textsuperscript{93} as well as in the state aid control of the EU.

\textsuperscript{81} French national report, sec. 4.1., since 2012.
\textsuperscript{82} For this reason the German tax administration does not issue advance rulings on tax planning schemes.
\textsuperscript{84} For this reason Sec. 88 para. 4 of the German Abgabenordnung bars the tax administration from disclosing any information on the risk management system, see German national report, sec. 4.1.1. Even in Sweden’s open access concept, information on audit and control is excluded from the general policy of a full transparent tax administration, see Swedish national report, sec. 2.8.
\textsuperscript{85} See French national report, sec. 4.1.
\textsuperscript{86} Greek national report, sec. 4.1.; Austrian national report, sec. 4.1.3
\textsuperscript{87} See Russian national report, sec. 4.1.
\textsuperscript{88} E.g. South African national report, sec. 4.1.
\textsuperscript{89} French national report, sec. 4.1.
\textsuperscript{90} See the annual publication of the Control Activity Plan in Denmark, Danish national report, sec. 4.1. In Finland information on the risk management process is public on a general level. Details are not disclosed, Finnish national report, sec. 4.1.
\textsuperscript{91} E.g. Belgian national report, sec. 4.1. para 50; Finnish national report, sec. 4.1.
\textsuperscript{92} J. Blank, supra n. 83 at 451.
Despite the special need for transparency in this realm, in general, advance rulings are not published\footnote{E.g. Greek national report, sec. 4.1. with the interesting explanation that tax rulings as such are considered to be not in line with the rule of law. However, this tension exists in general, though not necessarily meaning that these agreements are not concluded. If they are concluded, it would be even more important that the rulings are published to allow control whether they are in breach with mandatory provisions and favor single tax payers over others.}. Only a few countries make all advance tax rulings (private letter rulings) publicly available\footnote{E.g. Polish national report, sec. 4.1.1.; Luxembourg national report, sec. 4.1. (adopted after the LuxLeaks scandal); U.S., D.L. Korb, supra n. 13, at 342 et seq.; see also the detailed comparison of the practice in Australia, Canada, Japan and the US by S. Grotherr & P. Wittenstein, Veröffentlichungspraxis bei verbindlichen Auskünften (Advance Tax Rulings). Darstellung ausgewählter OECD Staaten, IWB 13, pp. 490–498 (2015); S. Grotherr & P. Wittenstein, Veröffentlichungspraxis bei Advance Tax Rulings in den BRICS Staaten, IWB 18, pp. 678–684 (2015).}, others only if they are deemed significant\footnote{Danish national report, sec. 4.1., Spanish national report, sec. 4.}. Some countries know the institute of general binding rulings which then will be published\footnote{South African national report, sec. 4.1. Similar apparently France, French national report, sec. 4.2., where rulings byanonymized publication in the Official Bulletin of Public Finance become binding for all taxpayers.}. It is not entirely clear what keeps most tax administrations from publishing advance tax rulings. On the one side capacity constraints and the tax secrecy could make the case against publication. Even though advance rulings are normally published in anonymized form, it still might be possible to identify the involved taxpayer. On the other side, knowledge about the ruling practice is an essential requirement of fairness with regard to a level playing field of all taxpayers and tax advisors\footnote{As the starting point of the disclosure practice in the U.S. see T.A. Kaye, Tax Transparency: A Tale of Tow Countries, 39 Fordham Int'l L.J. 5, pp. 1153–1200, at 1192-1198 (2016).}, as well as of countries being accused of unfair practices\footnote{See Luxembourg national report, sec. 1.1.}. For this reason, it would be worthwhile to analyze the actual practice and the effects of publication in more depth. Questions arising are concerned with how the distinction is made between rulings published and rulings not published and what content or extract of the ruling is published. The actual design can probably be traced back to the actual purpose: Is the publication rather meant to allow for control of the tax administration or is it supposed to serve as a basis to file requests for similar advance rulings to prevent competitive disadvantages. In the latter case publication might result in a quasi-binding effect. Even though it does usually not render a legally binding commitment of the tax authorities, the prejudicial effect\footnote{See S. Grotherr & P. Wittenstein, supra n. 95 at 498.} constitutes at least the need for sound reasoning if the tax administrations wants to deny the ruling in a parallel case.

Mutual agreements are published to an even lesser extent than advance rulings. Most countries do not provide any information on the outcome of these procedures\footnote{E.g. Austria, Greece, Germany, Russia, Spain, respective reports, sec. 4.1. In Belgium there is an ongoing discussion in regard to the publication of mutual agreements, see Belgian national report, sec. 4.1. para 51.}, publication is a rare exception.\footnote{Irish national report, sec. 4.} Austria publishes answers to questions raised in cross-border cases in an abstract way (Express-Antwort-Service, EAS).\footnote{Austrian national report, sec. 4.1.2.}

Black lists are an interesting instrument to set tax havens under pressure, since no single country nor any international institution has effective legal means to compel autonomous jurisdictions to cooperate or to abstain from their beggar-my-neighbor-policies. Furthermore, black lists warn the taxpayer. Due to unfavorable legal consequences of investments in a listed country
they provide a disincentive for investment in tax havens. Consequences can be intensified investigations in tax audits, the application of CFC regimes or increased (withholding) tax rates. By these disadvantages, being mentioned in a black list hampers the business model of tax havens. In the past, black lists have been rather uncommon. However, they seem to become increasingly popular; quite a few countries have recently adopted black lists. Especially after the list of non-cooperative jurisdictions in taxation matters, published by the Council of the European Union on 5 December 2017, has been criticized for being too liberal and tendentious, because EU Member States were carved out, possible purposes and effects of such lists need to be understood in a more profound way.

1.5.3.2. Disclosure of taxpayer data to third parties and the public

When it comes to the disclosure of data on individual taxpayers one has to distinguish between the disclosure on request, an issue which often comes up in complaints of competitors, but also can be achieved under Freedom of Information Acts, and disclosure to the public without a specific cause.

1.5.3.2.1. On request

A further distinction has to be made between whether a request for information requires documentation of a specific legitimate interest or whether it can be asked without any particular interest, as it is the general rule under Freedom of Information Acts.

Often competitors claim disclosure to enable them to prove competitive disadvantages. In these cases it is debatable whether the requesting person can even be considered to be party of the tax procedure, thus it would not be a “third person”. However, the problem of the correct balance between the position of the competitor claiming a legitimate interest in information and the right to confidentiality and protection of business secrets of the taxpayer occurs here as well.

Furthermore, most countries have adopted Freedom of Information Acts which provide the public with the right to request access to any record held by a public institution. In some countries the right of freedom of information is even enshrined in the constitution. Carve outs are necessary to protect conflicting interests, one of the most prominent example

104 Belgian national report, sec. 4.1. para 52; French national report, sec. 4.1.; Polish national report, sec. 4.2.; Portuguese national report, sec. 4.1.; Russian national report, sec. 4; Spanish national report, sec. 4. List of countries which are relevant for the application of CFC-legislation in Finnish national report, sec. 4.1. or trigger a higher withholding tax in Croatian national report, sec. 4.1.

105 Council, The EU list of non-cooperative jurisdictions for tax purposes, Fise 69 Ecofin 122, 19 March 2018 as amended on 23 January 2018 and 13 March 2018; based on Council Conclusions 14166/16 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes, Official Journal C 461/2, 10 Dec. 2016.

106 See Oxfam, Briefing Note of Nov. 2017: BLACKLIST OR WHITEWASH? Available at: >https://d1tn3vj7xz9fdh.-cloudfront.net/s3fs-public/file_attachments/bn-blacklist-whitewash-tax-havens-eu-281117-en_0.pdf<.

107 See Austrian national report, sec. 4.3.

108 E.g. Greek national report, sec. 4.2; Swiss national report, sec. 4.1.; Portuguese national report, sec. 4.2. See also Council of Europe, Council of Europe Convention on Access to Official Documents, Council of Europe Treaty Series No. 205 (2009).
being the realm of taxation\textsuperscript{109}. All these laws contain exemptions for reasons of confidentiality, some explicitly to protect tax secrecy. For this reason, Freedom of Information Acts generally fail, as soon as a document contains information on individual taxpayers. The actual handling, however, contains some leeway. In some countries requests in the area of taxation based on Freedom of Information Acts are in general rejected or even excluded by law\textsuperscript{110}. In other countries the request is not up-front rejected, but answered after separation of confidential from non-confidential information\textsuperscript{111}, or if such a separation is not possible after balancing the interest of the requesting person and the affected taxpayers\textsuperscript{112}.

As a rare exception, France has a long-standing tradition of a right to access on request information on any other taxpayer in regard to the amount of taxes payed, and in case of corporations also in regard of their taxable income; the inspection of the files has to take place in the premises of the Directorate General of Public Finance. Similarly, in Portugal a statutory right grants access to the files of other taxpayers given a legitimate interest\textsuperscript{113}.

Naturally, in countries where certain taxpayer data are published anyway, namely in Scandinavian countries, there is no need for a right to request access. Thus, France and Portugal represent an intermediate position.

Only few countries allow scientific use of individual taxpayer data\textsuperscript{114}.

\textbf{1.5.3.2.2. Public disclosure: Naming & Shaming}

Whether taxpayer data are made available to the public shows some interdependence with what can be called the “culture of taxation”\textsuperscript{115}. An interesting explanation for different approaches to naming & shaming is given in the Belgium report\textsuperscript{116}, namely that this practice would be more common in Common Law countries and countries with a Protestant tradition.

Apart from this socio-cultural background, there are pros and cons of public disclosure. By publication of taxpayer data the tax administration pursues not only mere information of the public, it is rather discussed as an additional instrument of tax enforcement. In the past one central dogma of tax enforcement was, that the tax secrecy is essential because only the tax secrecy encourages the taxpayer to open up towards the tax administration, reporting all, even the most confidential information if necessary to assess the tax due. This dogma has been challenged by a view which considers the public eye an effective means of control. Thus, if tax secrecy is mainly understood as an instrument of effective tax enforcement it is under pressure.

\textsuperscript{109} E.g. Portuguese national report, sec. 4.3.
\textsuperscript{110} Like in Germany, German national report, sec. 4.3.3.
\textsuperscript{111} Like in Denmark, Danish national report, sec. 4.3.
\textsuperscript{112} Finnish national report, sec. 4.2.
\textsuperscript{113} Portuguese national report, sec. 4.2.
\textsuperscript{114} Detailed on this Dutch national report, sec. 4.1; Further: Finnish national report, sec. 4.2; French national report, sec. 4.3; Hungarian national report, sec. 4.3; South African national report, sec. 4.3; British national report, sec. 4.3.
\textsuperscript{116} Belgian national report, sec. 4.3: para 57.
However, this is certainly a narrow and incomplete view because the tax secrecy is essentially based on constitutional guarantees of informational self-determination. This is reflected in a rather restrained publication policy. Many countries do not at all disclose taxpayer data publicly. Within the group of countries which have a public disclosure policy, taxes and taxpayers covered as well as the scope of information disclosed are diverse, however, always the disclosure is limited to some very basic information, like taxes due or paid, sometimes also taxable income.

Again, the Scandinavian countries peak out because publication of some high-level numbers of every taxpayer appears to be commonly accepted without an explicit deterrence or punitive intention. However, the Finnish report mentions that the practice of publishing the taxable income leads to quite a bit of envy in the society.

Other countries follow a naming & shaming approach and use public disclosure as a disciplinary tool to exert pressure, either to nudge non-compliant taxpayers to pay overdue taxes or in a more positive way to motivate taxpayers to comply. Some countries apply a naming & shaming policy by publishing lists of tax defaulters, some only in regard of corporations, some also include natural persons. Greece, for example, recently published a list with the names of 6,225 taxpayers, corporations and individuals, with high tax debts of over 150,000 Euro. A notification prior to publishment gives the taxpayer the chance to pay and thus to avoid finding his name on the list. Public listing of taxpayers with significant tax debts is more common in countries with severe enforcement issues. Opposite to this, a concept of honoring good taxpayers was applied in Japan, where a list with taxpayers paying extraordinary high amounts of taxes („millionaire taxpayers“) was published since 1947 until it was abolished in 2005, because it led to crimes like kidnapping and robbery. This serves as a very good example of the virtues of tax secrecy.

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117 Belgian national report, sec. 4.3; French national report sec. 4.3; German national report, sec. 4.3; Japanese national report, sec. 4.3; Luxembourg national report, sec. 4.3; Dutch national report, sec. 4.3; Russian national report, sec. 4.3; South African national report, sec. 4.3
118 Finnish national report, sec. 1.1
120 Spain, Portugal, Hungary
121 See Serbian national report, sec. 1.; Croatian, national report, sec. 1. and 4.3.; Hungarian national report, sec. 4.3.; Romanian national report, sec. 4.3.
122 Similar approach in Hungary where a list of trustworthy taxpayers exists, Hungarian national report, sec. 4.3.
123 See also Serbian national report, sec. 1., with interesting insights in the legislative history after inaccurately publishing taxpayer names on a defaulter list, which actually complied.
The information published reflects the sensitivity of the data. For this reason, data on corporate\textsuperscript{125} taxes are more likely to be published than on individuals\textsuperscript{126}, property taxes\textsuperscript{127} more likely than the personal income tax. Also there might be a higher interest of the public and of consumers to be informed about the tax positions of large corporations than of any individual or small business. On the other side, media reports showing very low effective tax rates of big companies have left consumers remarkably unperturbed in their buying behavior\textsuperscript{128}.

In no European country public Country-by-Country Reporting has been adopted so far, in France, due to recent case law, it would even be considered unconstitutional. However, there is a group of countries supporting the EU initiative for a public CbCR\textsuperscript{129}. In most other countries the issue is discussed controversially and the national reporters show quite a bit of constraint towards the EU proposal.\textsuperscript{130}

Some countries have already implemented centralized registers of beneficial ownership, but normally they are not freely accessible\textsuperscript{131}. In France a public register of trusts was considered in breach of the constitution.\textsuperscript{132} Opposite to this, Portugal makes its register publicly available\textsuperscript{133}.

In some countries, information on the recipients of tax subsidies and on tax-exempt entities is also published as part of the general control of subsidies\textsuperscript{134}. In Hungary the respective provision was judicially challenged, but upheld due to the public interest in subsidy control prevailing over the tax secret\textsuperscript{135}.

Given the diversity of public disclosure policies, it would be worthwhile to analyze whether the legislative intention, the scope of published data and the effects of the publication match. It is far from clear, that public disclosure actually enhances tax compliance and enforcement; experimental and empirical studies come to quite heterogeneous results\textsuperscript{136}.

\textsuperscript{125} Danish national report, sec. 1.1 and 4.3, and recently adopted e.g. in Poland, see Polish national report, sec. 4.3.1.
\textsuperscript{126} Data on the individual income tax is published only in Finland, Finnish national report, sec. 1.1. See also the different handling of the publication of court decisions in France, French national report, sec. 4.3., where only the names of natural persons, but not of entities are anonymized. J. Slemrod, T.O. Thoresen and E.E. Bø, supra n. 119, show a significant effect (3% increase) of disclosure at the personal level on tax compliance at the example of Norway.
\textsuperscript{127} Danish national report, sec. 1.1.
\textsuperscript{129} Danish national report, sec. 4.3.; Finnish national report, sec. 1.1.
1.5.3. The role of investigative journalism

Another interesting question is how the recent international trend\textsuperscript{137} of investigative journalism and tax justice NGOs pushes legislators into the direction of a public disclosure policy. There have always been tax scandals revealed by journalists. What is new is that large international journalist networks proceed in a coordinated fashion. The amount\textsuperscript{138} of data collected by these journalist networks received widespread public attention under the names of LuxLeaks\textsuperscript{139}, Panama Papers or Paradise Papers.

Leaving the information of the public to private players can cause severe fairness problems. There is a high chance that journalists will mainly go after particularly prominent taxpayers, well-known consumer companies, celebrities, soccer stars\textsuperscript{140}. Private press does not, at least not only, act in the common interest, but also on behalf of the edition. On the other side, part of the excitement about these papers is that the mass of data collected and analyzed increases the risk of discovery for anybody, especially if these data are shared with the fiscal authorities afterwards.

It is part of a country’s transparency strategy how it deals with this kind of information. A deterrence approach can benefit from the activities of private transparency initiatives\textsuperscript{141}. On the other side, ongoing media leaks can call into question the efficiency of the measures undertaken by the fiscal authorities. Since press investigations normally deal with the past, such conclusions might not reflect the actual status of legislation. Nevertheless, politicians might feel obliged to take further steps, without evaluation what they already achieved through already implemented measures\textsuperscript{142}.

There is no easy answer for how to deal with this development, especially because it is hardly a field for regulation. Freedom of Press prohibits any restrictions, and prevents to request disclosure where the information stems from. Therefore, even though it is quite likely that much of the leaked information is gained by breaching duties of confidentiality and encroaching business secrets, informants do not risk any legal consequences. The governmental reaction, especially if the leaked data are afterwards acquired by the tax authorities, can encourage this type of journalism.

Curbing some of the biased outcome produced by the media’s focus on the rich and popular might be a sufficient justification for introducing a legal obligation for all taxpayers to disclose certain data. Despite the severe concerns in regard to public CbCR, a legal obligation for all companies fulfilling certain requirements to publish tax data could re-establish a level playing field. On the other hand it might even intensify media attention and biased media reports\textsuperscript{143}. Furthermore, tax authorities need leeway to react to media reports through their own public communication strategy. Poland recently adopted an interesting measure, enabling the tax administration to publish certain taxpayer data on a case-by-case basis, if it is necessary to

\textsuperscript{137} In detail see e.g. French national report, sec. 1.1., Serbian national report, sec. 1.
\textsuperscript{138} 11.5 Million documents in case of the Panama Papers, see T.A. Kaye, supra. 98 at 1198.
\textsuperscript{139} In regard to LuxLeaks and the development in the aftermath see T.A. Kaye, supra n. 98, at 1153-1161.
\textsuperscript{140} See J. Blank, supra n. 45 at 316 et seq.
\textsuperscript{141} For the immense impact of media reports on taxpayers’ behaviour see J. Dubin, Criminal Investigation Enforcement Activities and Taxpayer Noncompliance, 35 Pub. Fin. Rev. 4., pp. 500–529, at 502 (2007); J. Blank, supra n. 45 at 315 et seq.
\textsuperscript{142} A.P. Dourado, supra n. 41.
\textsuperscript{143} See this central argument of Joshua Blanks plea for non-disclosure, J. Blank, supra. 45 at 304 et seq., 318.
rectify wrong accusations raised by media reports on purported misconduct of the tax authorities\textsuperscript{144}.

\textsuperscript{144} Polish national report, sec. 4.3.2.