Three different notions of privacy:

1. **Tort privacy**: Cooley (1888); Warren and Brandeis (1890): the right to be let alone
2. **Constitutional privacy**: Griswold v. Connecticut: the ability to engage in certain conduct free from governmental regulation
3. **Westin (1967); Miller (1971) – Informational privacy**: the claim of individuals, groups of institutions to determine for themselves when, how and to what extent information about them is communicated to others.

4. Comparison: US – privacy as an aspect of liberty; EU – privacy an aspect of dignity

5. Research questions:
   - Do individuals have the right to keep confidential the information concerning their income expenditures, investments and wealth? **Financial privacy**
   - Does the right to privacy have the same scope of protection in taxation and non-tax content?
   - Thresholds for limiting right of **financial privacy**

### FATCA main issues:

1. What’s the real aim of FATCA? Strengthen the fight against tax evasion or enforcement of citizenship-based taxation?
2. Extraterritoriality – does Congress have jurisdiction to impose reporting requirement on foreign banks?
3. Absence of reciprocity both political and technical
   - Result = the US is the 3rd world’s most non-transparent jurisdiction for hosting financial activities shrouded in secrecy according to the 2015 Financial Secrecy Index of Tax Justice Network
4. Privacy: interaction of FATCA provisions with data protection rules of directive 95/46/EC
   - Legal basis
   - Purpose limitation – Will competent authorities use the received information for other purposes?
   - Necessity and proportionality – Are the required personal data the minimum necessary to meet the goals?
   - Data retention
   - Is the data subject’s consent freely given and unambiguous with a 30% WHT penalty?
     - Right to access and rectify the data
5. Research questions
   - Does the US FATCA guarantee EU privacy standards for exchange of information?
   - Which are the possible solutions against the US unilateralism behind FATCA?
   - Does Cases C-293/12 and C-594/12 (data retention invalid) C-362/14 (safe harbour agreement between US and EU is invalid) have any affect on FATCA?

### Solutions proposed so far:

2. Implementation of same country exemption (Allison Christians)
3. Abandonment of imposition of income tax based on citizenship and institution of a new system for taxing individuals based solely on residence (Avi-Yonah, Blum and Singer)
   - Number of Americans renouncing their US citizenships hits all-time high: up 25% from 2014, 560% from Bush administration high
4. Time to re-evaluate the benefits principle? (Avi-Yonah)
   - Can current issues be solved if we tax passive investment income primarily at source and active income primarily at residence?
   - Evaluation of Avi-Yonah’s proposal through empirical data