

## The Fundamental Rights of the Taxpayers within the Framework of Global Fiscal Transparency Policies

**Context** The economic crisis and some tax fraud scandals have created a stronger awareness within the Tax Administrations and the International Organizations to fight against harmful tax practices.

### Measures

- The fiscal transparency and the exchange of information have been found to be most effective way to put a halt to the tax evasion.
- To standardize the patterns of transparency and exchange of information worldwide.
- To make a step further to implement an **Automatic Exchange of Fiscal Information**

### RESEARCH QUESTION

**“Might the new automatic exchange of information policies and models harm certain rights of the taxpayers?”**

### HYPOTHESES

#### Mobile capital forces converge of State tax policies

- States panicked before the economic crisis, fearing not to collect taxes enough due to the current easy with which capital can be moved away from their borders of influence.
- The potential lost of revenue made the States to develop fiscal policies that aim to extend their power for collecting taxes across their borders by exchanging information among them.

➤ **Where are the limits of the enforcement powers of the Revenue bodies?**

➤ **Is that solution proportional?**

#### The Exchange of information may conflict with some Fundamental Freedoms

- The new policies of automatic exchange of information may conflict with the fundamental rights and freedoms of the taxpayers, since the current legislation is still not adapted to the forthcoming changes and challenges
- Domestic legislation might not yet be prepared for the New Automatic Exchange of Information  
(Today's exchange of information is neither automatic nor multilateral)

➤ **Which interest should prevail: the rights of the taxpayers or the interest of the States in facing the harmful tax practices?**

### METHODOLOGICAL ANALYSIS

#### Fiscal Transparency

##### Fiscal Transparency: Key tool to reach the common good.

- The Philosophy behind the Fiscal Transparency seen from the principle of proportionality and subsidiarity.
- Fiscal Transparency Standards and Tax Havens.

➤ **What is expected for a country to be fiscally transparent?**

➤ **Where should be the limits of the Administrations before interfering the sphere of citizen's rights?**

#### Exchange of Information

##### Systematic analysis of the current exchange of information models

- Pros and cons for both States and citizens: States interests vs. Citizens interests.
- Comparison of the policies now in place and the ones planned to be implemented.
- FATCA, TRACE, EU Directives, Rubik...

➤ **Which kind of information might be automatically exchanged?**

➤ **How and for what the receiving State can use that information?**

#### Fundamental Rights

##### Taxpayers rights affected by the fiscal transparency policies

- Which fundamental rights affected.
- Principle of proportionality: Balancing Theory, Conditional relation of precedence. States vs. Taxpayers.
- ECHR & ECJ Case Law.

➤ **How does Exchange of Information affect Human Rights?**

➤ **Priority: to face the tax fraud or the protection of the rights of the taxpayers?**

### OBJECTIVES

**Main Objective:** To discern which fiscal transparency policies would be the most suitable for facing the tax fraud and the harmful tax practices –in terms of tax justice and the duty to contribute– with the minor possible interference and costs on the rights of the taxpayers.

- Point out the limits that should not be overstep by the Tax Authorities to develop a model of fiscal relations able to provide a proportional and fair solution to fill in the legal gaps that are currently present in the international and domestic legislation.
- Systemize the new models of fiscal relations from the perspective of the exchange of information and the Human rights to observe how the fundamental rights can be affected by the automatic exchange of information clause.
- Apply the principle of proportionality to balance the dichotomy States-Taxpayers. Which one should prevail in the current context.