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The Weakening of Taxpayer Rights in the Exchange of Information between Tax Authorities

Gianluca Selicato
PhD habil., Associate Professor, Department of Law, University of Bari Aldo Moro, correspondence address: Piazza Cesare Battisti, 1, 70121 Bari, Italy; e-mail: gianluca.selicato@uniba.it

https://orcid.org/0000-0001-5174-0613

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Abstract: Developments in international legislation and the growing digitalization of tax law support the advancement of global networks between tax authorities. We are witnessing an integration of databases that will lead to increasingly intense coordination of the fight against tax evasion at a supranational level. As in social networks and digital commerce, databases are gradually enriched, contain progressively precise information on the individual taxpayer and use common languages that allow for automated exchanges of information. While waiting for the creation of a global database – not conditioned by the constraints of reciprocity and abstractly usable by all authorized entities who need it – the first risks of limitation of the taxpayer's rights are emerging. In fact, these phenomena have dark sides that are starting to emerge in use, at a national level and with respect to individual taxpayers, of interpolated databases. Moreover, a growing amount of information flows from heterogeneous and increasingly widespread sources, sometimes not protected by the requirements of professionalism, legality and public trust since data collection and entry can be delegated to economic entities, intermediaries and consultants. The absence of an authority responsible for the unitary management of global databases and for the resolution of their conflicts, the slow and timid affirmation (only in some national systems) of the taxpayer's right of access to information concerning them, the difficult configuration of the faculty to request the correction of erroneous data and of the specular public power to remove

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the reported inaccuracies, weaken the system of protections gradually erected to protect the taxpayer's position. In this way, the coordination of national systems that contemporary tax law creates is strongly unbalanced on the side of the protection of tax interests. International and European tax law should instead provide greater guarantees in favor of the taxpayers, defending their right to fair taxation.

1. Opportunities and Risks of the Automated and Mandatory Exchange of Information between Tax Authorities: Introductory Notes

The European legal harmonization in tax assessment procedures has been significantly advanced by the requirement to share information held by national tax authorities and the ongoing expansion of their databases. These phenomena are significantly bolstered by advancements in international tax law, particularly the BEPS project, as well as the rapid proliferation of artificial intelligence in this field.[1] The legal framework of collaboration between EU member states is currently underpinned by the developments in the Council Directive 2011/16/EU (on administrative cooperation in the field of taxation), which establishes all the necessary procedures and provides the structure for a secure platform for the cooperation between European tax authorities.[2]

The basis of the contemporary dialogue is the Common Reporting Standard,[3] a codification adopted in July 2014 by a growing number of

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1 For more details, see: Dennis Weber, *The Implications of Online Platforms and Technology on Taxation* (Amsterdam: IBFD, 2023); Lorenzo Del Federico and Franco Paparella, eds., *Diritto tributario digitale* (Pisa: Pacini, 2023); Roberto Cordeiro Guerra and Stefano Dorigo, eds., *Fiscalità dell'economia digitale* (Pisa: Pacini, 2022); Błażej Kuźniacki et al., "Requirements for Tax XAI Under Constitutional Principles and Human Rights," in *Explainable and Transparent AI and Multi-Agent Systems*, eds. Davide Calvaresi et al., EXTRAAMAS 2022, Lecture Notes in Computer Science, vol. 13283 (Berlin: Springer, Cham, 2022), https://doi.org/10.1007/978-3-031-15565-9_14.

2 Cf.: Roberto Cordeiro Guerra, Stefano Dorigo, and Antonio Viotto, *L'attuazione della DAC 6 nell'ordinamento italiano. Profili teorici e prospettive future* (Torino: Giappichelli, 2023), 229.

3 It is based on the Model Competent Authority Agreement (CAA) drafted by the OCSE to disseminate financial data pursuant to Article 26 of the Double Taxation Agreement and Article 6 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which has significantly promoted the automated exchange of such information. For further details, refer to the Automatic Exchange of Information (AEOI) Portal (https://www.oecd.org/tax/automatic-exchange/), which provides updated information on the work of the Global Forum

financial institutions (now over 110) for communication with the respective authorities and the automated exchange of information on financial accounts. Thanks to a common language, the information flows between the different jurisdictions adhering to the agreements become fully usable, also for tax purposes.[4] Furthermore, the control of taxpayers and their economic activities increasingly involves new technologies, and the interoperability of databases favors the integration of knowledge at a European (but also global) level, supporting action to combat tax malpractice more effectively but not always sufficiently attentive to taxpayers' rights.

The role of the taxpayers and their consultants has also changed profoundly in a short time since rather than passively undergoing the control (as happened until recently), they actively participate in it. For example, those who carry out online commercial transactions and those who make use of tax planning tools in cross-border operations must carry out a self-check of the dangerousness and/or opacity of their tax behavior and are today burdened by preventive communication obligations, which constitute a real own advance disclosure of their tax structures.

The increasingly widespread feeling is that privacy, confidentiality in the consultancy field and even professional secrecy – the latter within the limits that CUGE has taken care to specify[5] – are giving way to a new model

on Transparency and Exchange of Information for Tax Purposes in the automatic exchange of information. For further reading, see also: Pasquale Pistone, *Diritto tributario internazionale* (Torino: Giappichelli, 2024), 303; Michael Lang et al., *The OECD Multilateral Instrument for Tax Treaties. Analysis and Effects* (Alphen aan den Rijn: Kluwer Law International, 2018); Stefano Dorigo, "L'impatto della Convenzione multilaterale BEPS sul sistema dei trattati contro le doppie imposizioni," *Rivista Trimestrale Diritto Tributario*, no. 3–4 (2018): 559.

4 About the Common Reporting Standard and more generally on international tax coordination projects, see: Pistone, *Diritto tributario internazionale*, 30–2. For further reading, see also: Pietro Mastellone, "Lo scambio di informazioni tra amministrazioni finanziarie," in *Diritto tributario internazionale*, ed. Roberto Cordeiro Guerra (Milano: Wolters Kluwer, 2016), 249; Stefano Dorigo, "L'ordinamento italiano e la cooperazione fiscale internazionale," in *Principi di diritto tributario europeo e internazionale*, ed. Claudio Sacchetto (Torino: Giappichelli, 2016), 155; Giuseppe Corasaniti, "Lo scambio di informazioni tra presupposti internazionalistici e prospettive applicative," *Corriere tributario*, no. 18 (2015): 1361.

5 Cf. CJEU Judgment of 8 December 2022 (Orde van Vlaamse Balies and Others, Case C-694/20, ECLI:EU:C:2022:963), which highlighted the conflict between the right to confidentiality protected by Article 7 of the Charter of Nice and Directive 2018/822/EU (DAC 6), where the latter establishes the obligation for intermediaries of a cross-border arrangement (or for professionals who nonetheless become aware of it in the exercise of their professional

of socio-economic relations that make verifiable *ex ante* rather than *ex post*, the facts and acts likely to generate taxable income or, at least, to evade or defuse control systems. These are the connotations of a more evolved concept of tax compliance, now referring to the preventive phase, to the monitoring of individual conduct and therefore prior and functional to the triggering of specific control actions, which reduces the cognitive "sphere of shadow" of the tax authorities and which considers the "transparency" of tax conduct the fundamental value of the relationship between taxpayers and the tax authorities.

Compared to the past, including recent years, information systems now extend beyond merely collecting data for regulatory bodies upon request. Today, they continuously process, cross-reference, and exchange data with other authorities to conduct automated risk analyses.[6] These systems are designed to promptly identify anomalies that may trigger verification activities, reflecting a growing response to widespread concerns about tax malpractice.

2. Strengthening of Control Activities vs Weakening of Taxpayer Guarantees

Positively observing these developments reveals an exponential increase in the volume of information available to tax authorities, along with a proliferation of data sources and continuous reprocessing. This is progressively supported by artificial intelligence, which enhances risk analysis and predictive research concerning tax-related issues. However, these advancements also

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duties) bound by professional secrecy, to inform any "other intermediary" or, in the absence thereof, the "relevant taxpayer" that they cannot fulfill this obligation. For a commentary on the judgment, see: Natalìa Cecconi, "DAC 6: obbligo di notifica degli intermediari e tutela del segreto professionale dopo la pronuncia CGUE dell'8 dicembre 2022," *Tax news*, accessed February 14, 2023, https://www.taxnews.it/Article/Archive/index_html?ida=594&idn=36&idi=-1&idu=-1. For further insights into DAC 6 and the underlying philosophy of the new early disclosure models, see: Gianluca Selicato, "Le comunicazioni preventive secondo la Direttiva 822/2018/ EU: dalla "collaborazione incentivata" agli "obblighi di disclosure," *Rassegna tributaria* (2019): 121.

[6] Cf.: Jian Ruan et al., "Identifying Suspicious Groups of Affiliated-Transaction-Based Tax Evasion in Big Data," *Information Sciences* 477 (March 2019): 508–32, https://doi.org/10.1016/j.ins.2018.11.008; Walter Didimo et al., "Combining Network Visualization and Data Mining for Tax Risk Assessment," *IEEE Access* 8 (2020): 16073–83. https://doi.org/10.1109/access.2020.2967974.

raise concerns about the quality and reliability of the data collected by tax authorities. There are growing fears regarding the effectiveness of taxpayers' rights to access this data and to seek correction of any inaccuracies affecting them. In practice, procedural protections for taxpayers are notably lacking in both international and European law. However, the risks associated with new data acquisition systems for tax purposes should place the taxpayers' right to fair cross-border tax proceedings at the forefront of contemporary international discussions.

The transition to an increasingly widespread database supply system, consistent with the logic of the sharing economy, assigns the burden of communicating to subjects outside the public administration, potentially lacking specific skills or an adequate level of professionalism. Analytical information on third parties (e.g. their users, suppliers and intermediaries) could immediately affect their tax monitoring and risk analyses. For example, the reporting obligations imposed by Council Directive 2021/514/EU (so-called DAC 7), inspired by the Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy published by the OECD on July 3, 2020, places the burden on operators of electronic platforms. They mainly concern income from employment and pension payments, compensation, insurance products, as well as income from property, real estate, and financial leasing fees. The level of detail of the information is particularly high, as can be seen in the case of properties put up for income for which the platform manager is required to communicate the address of the "advertised property", its cadastral data, the total consideration paid or credited during each quarter, any fees, commissions or taxes withheld or charged by the intermediary every quarter and the number of days of rental.

Consider, once again, the requirements imposed by the European Directive 2023/2226/EU (so-called DAC 8), in line with the OECD initiative on the reporting framework for crypto assets, imposes on providers of services for virtual currencies, including those issued in a decentralized way, stable coins (including electronic money tokens) and non-fungible tokens (NFTs).[7] Addressing partly new institutions and payment instruments and

[7] On this subject, cf.: Loredana Carpentieri, "Le criptovalute dall'anarchia alle necessità delle regole," *Rivista di Diritto Tributario*, accessed February 13, 2024, https://www.

subject to continuous transformations that highlight the limits of traditional control systems, the OECD Crypto-Asset Reporting Framework (so-called C.A.R.F.),[8] coordinated by the G20, once again aims at automatic exchange and mandatory information acquired by operators in a particularly dynamic sector, following coordination of national strategies and legislation through regulatory schemes and good practices which have required an update of the CRS. Although it is not at all simple to describe the physiognomy of digital financial markets and even to identify each operator, it is clear that, even in this case, the network of subjects required to transfer information to the tax authorities is destined to expand and include intermediaries who may not be familiar with the standards nor adequately organized to ensure the rigor of data processing in the tax field.

Naturally, these sources of science, which may in some cases prove to be imprecise and which the taxpayer may have an interest in verifying, are added to the more reliable ones that the national tax registers and control authorities acquire and process continuously or during verification, implementing increasingly rich databases and of which contemporary regulations aim to ensure growing interoperability.

Precisely as a result of this integration, which is added to the OECD orientation in favor of strengthening the mandatory and automated exchange of the information in question, it may happen that the jurisdiction within which the data is acquired or processed is not the same of residence of the taxpayers and that the national rules that drive these processes do not ensure a system of guarantees adequate to the expectations or legal standards to which they are accustomed. In other words, if, on the one hand, the OECD countries converge on the objective of acquiring and exchanging increasingly timely and abundant in every sector of the economy and finance, to the point of configuring the creation of a global database "open" to the national authorities – although without a body responsible for its management – on

rivistadirittotributario.it/2024/02/13/le-criptovalute-dallanarchia-alle-necessita-delle-regole/; Stefano Capaccioli, *Fisco digitale. Cripto-attività, protezione dei dati, controlli algoritmici* (Torino: Giappichelli, 2023).

[8] "Tax Transparency and International Co-operation," OECD, accessed June 8, 2023, https://www.oecd.org/en/topics/policy-issues/tax-transparency-and-international-co-operation.html.

the other hand, taxpayers could ignore the methods of acquisition and verification of data concerning them or, at least, part of them.

This happens because harmonization and coordination are achieved only on the side of the collection and exchange of information and, therefore, under the aegis of fiscal interest, but not also on that of the rights and guarantees of taxpayers, which instead remains assigned to the protection of national law or, at most, of European law.

3. The Urgency of Ensuring Legal Protection of the Taxpayer in a Supranational Context

In international law, the taxpayers' protections in the tax assessment procedure seem to be secondary compared to the concerted global efforts to address fiscal malpractice. The effort to seek legally binding protection of rights susceptible to being damaged by the use of digital technologies and the massive exchange of information leads far back in time and, more precisely, to Article 12 of the Universal Declaration of Human Rights of 1948, according to which: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."[9] This principle, disruptive and innovative after the Second World War, slowly radiated into national and European legal systems[10] in times in which there was no awareness of the complexity of subsequent developments in legal relations nor of the impact of digitalization on ever-increasing societies and economies more globalized.

In the following years, however, the international community did not shine its attention and rigor on these issues, to the point that only in some soft law acts did consideration of some taxpayers' rights emerge as owners

9 The statement was reiterated and updated in Article 17 of the International Covenant on Civil and Political Rights, signed in New York on December 16, 1966, which states: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

10 The Strasbourg Convention (Convention 108 of 28 January 1981 of the Council of Europe) on the protection of individuals regarding the automatic processing of personal data constitutes an initial bulwark of guarantees inspired by the Universal Declaration of Human Rights.

of the data processed.[11] For example, *Guidelines for the Regulation of Computerized Personal Data Files*, adopted by the United Nations General Assembly with resolution 44/132 of 15 December 1989, or the subsequent works and resolutions of the *Global Privacy Assembly*[12] on the access by public authorities to confidential data held by private entities, as well as calls from the G20 and the OECD to ensure adequate protection of personal data when using contemporary databases.[13]

In any case, these recommendations generally concern the need to ensure proportionality between the reasons that support public authorities' access to personal data and private databases and the protection of the fundamental freedoms of the individual without directly addressing tax relations.[14] Precisely for this reason, the OECD models and guidelines present serious gaps in terms of taxpayer guarantees, both in the phase of acquiring tax information concerning him and in their subsequent processing. Also, on the side of the right to consult such information, which constitutes the second critical aspect that we set out to investigate, international law appears insensitive to the needs and guarantees of the taxpayers given that the system of rules, recommendations, guidelines and models mentioned above completely ignores the importance of their right of access to the wealth of information concerning them.

Therefore, taxes and the continuous evolution of the procedural schemes do not receive particular consideration, generating gaps in protection that are only partially filled by European law[15] and by the important

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11 Regarding this issue, cf. Lorenzo Del Federico, "Agreements, Arbitration and Protection of the Taxpayer in the Evolution of International Tax Law," *Rivista di Diritto Tributario internazionale*, no. 1 (2020): 51.

12 https://globalprivacyassembly.org.

13 Cf. Lorenzo Del Federico and Francesco Montanari, "OECD Approach on Digital Transformation of Tax Administrations and New Taxpayers' Rights," *Rivista di Diritto Tributario Internazionale*, no. 2 (2021): 7.

14 On these matters, see: Veronika Wöhrer, *Data Protection and Taxpayers' Rights: Challenges Created by Automatic Exchange of Information* (Amsterdam: IBFD, 2018), https://doi.org/10.59403/2tc43v0.

15 Cf. Lorenzo Del Federico, "OECD Approach on Digital Transformation of Tax Administrations and New Taxpayer's Rights," in *Digital Transformation of Tax Administrations in the European Union*, eds. Alvaro Antón Antón and Cristina García-Herrera Blanco (Madrid: Instituto de Estudios Fiscales, 2023), 153; Giuseppe Pitruzzella, "Dati Fiscali e Diritti Fondamentali," *Diritto Pratico Tributario Internazionale*, no. 2 (2022): 666.

contribution that the Court of Justice ensures in implementing its principles.

Given that even from a European perspective, the phenomenon of big data and their growing use by the authorities have been examined mostly in relation to data protection, it cannot be denied that the peculiarities of the tax procedure, at least in EU jurisprudence, have received greater consideration.[16] For example, the Berlioz Judgment of the Grand Chamber of the Court of Justice filed on May 16, 2017 in case C-682/15 recognized the fundamental rights enforceable by the taxpayer (and, in particular, that established in Article 47 of the Charter of Fundamental Rights) in the process of exchange of information between tax authorities, even when it reverberates in the sphere of the individual.[17] Moreover, the État luxembourgeois ruling, again by the Grand Chamber of the Court of Justice, filed on October 6, 2020 in joined cases C-245/19 and C-246/19, recognized the right to directly challenge the international tax investigation only to the formal recipients of information requests.[18]

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16 Cf. Philip Baker and Pasquale Pistone, "BEPS Action 16: The Taxpayers' Right to an Effective Legal Remedy Under European Law in Cross-Border Situations," *European Court Tax Review* 25, no. 5–6 (2016): 340; Angelo Contrino, "Banche Dati Tributarie, Scambio di Informazioni fra Autorità Fiscali e 'Protezione dei Dati Personali': Quali Diritti e Tutele per i Contribuenti?," *Rivista di Diritto Tributario on line*, accessed May 29, 2019, https://www.rivistadirittotributario.it/wp-content/uploads/2019/05/Banche-dati-tributarie.pdf.

17 Cf. Antonio Perrone, "DAC 6, Efficacia dell'Accertamento Tributario e Trasparenza: Fino a Che Punto Sono Legittimi i Doveri di Disclosure?," *Studi Tributari Europei*, no. 1 (2020): 16; the author values the contribution of the judgment to the affirmation of the principle of "proportionality" in the relationship between taxpayer rights and duties, specifically in "understanding the nature of the rights of individuals affected by the disclosure of information (whether provided by the taxpayer directly or by a third party) and the nature of the legal interest of the State in obtaining such information, with the aim of properly balancing the rights of the former with the interests of the latter."

18 For an examination of the judicial decision, refer to Luca Costanzo, who highlights that the ruling does not sufficiently clarify the validity criterion for evidence requests established by Directive DAC 1 (the so-called "foreseeable relevance"), thereby allowing the collection of data that is not directly pertinent to the tax dispute (Luca Costanzo, "La tutela dei diritti del contribuente al crocevia tra cooperazione amministrativa e integrazione eurotributaria," *Rivista di Diritto Tributario*, accessed December 2, 2020, https://www.rivistadirittotributario.it/wp-content/uploads/2020/12/Costanzo.pdf). For further discussion of the same ruling, see also: Chiara Francioso, "Tutela giurisdizionale e 'prevedibile pertinenza' delle informazioni nella cooperazione amministrativa fiscale europea," *Tax news*, accessed October 14, 2021, https://www.taxnews.it/Article/Archive/index_html?ida=466&idn=33&idi=-1&idu=-1.

The European Court of Human Rights, however, in the most recent ruling of 9 March 2023, pronounced on the L.B. case against Hungary (n. 36345/2016), censored the online publication of a list of tax evaders prepared by the Hungarian financial administration, complaining about the lack of balance in national legislation between measures to combat tax evasion and the right to respect for the taxpayer's private and family life.[19]

If it is true that these provisions constitute an important safeguard of the taxpayer's rights, it is also true that they confirm the difficulty of invoking the same rules and principles in tax matters that European law offers for the general protection of personal data. We are referring to the 2000 EU Charter of Fundamental Rights, which, thanks to the 2009 Treaty of Lisbon, has now assumed a binding value similar to that of the Treaties (see Article 6 of the TEU). Article 8 establishes that: "Everyone has the right to the protection of personal data concerning him or her." Additionally, "such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law." Therefore, underlining the importance of a right of access, which, however, continues to suffer significant limitations for the taxpayer, the law adds that: "Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified." Finally, it assigns control by an independent authority to verify compliance with these rules.

The time seems ripe to decide how these precepts can be translated into direct and immediate guarantees in the regulation of tax relations, within broader reasoning on the urgency of adopting, at least at the European level, a Charter of Taxpayers' Rights attentive to the issues and the peculiarities of "digital tax law".[20] Yet, despite the Court of Justice's invitation to consider

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[19] On the prior ruling of the same European Court of Human Rights, with the judgment of 12 January 2021, also concerning the case L.B. v. Hungary, albeit case no. 26345/2016, cf. Alessandro Marinello, "Pubblicazione di Dati Personali dei Contribuenti e Rispetto della Vita Privata secondo la Corte EDU: La Difficile Ricerca di un Equilibrio tra Interesse Fiscale e Diritto alla Riservatezza," *Rivista di Diritto Tributario* 32, no. 1 (2022): 12.

[20] The efforts in this area are outdated and only partially effective. In February 2013, the European Commission initiated a public consultation on the development of a European taxpayer code, focusing on taxpayers' rights and obligations as well as the powers of tax administrations. Following this public consultation, at the end of November 2016, the European Commission published the "Guidelines for a Model European Taxpayer Code",

the protection of the taxpayer in the automated exchange of information in unitary, advanced and concrete terms, the greater consideration that, in terms of positive law, intra-EU administrative cooperation receives remains evident, favored by the incessant maintenance and integration of Directive No 2011/16/EU of 15 February 2011 (so-called DAC 1). However, the protection of the taxpayer is completely fragmented and without a defined framework of rules, although it should pervade the developments of the EU regulation of the acquisition and exchange of information of a fiscal nature.[21]

4. Conclusions

This distinct consideration, which, in international law even more than in European law, assumes administrative cooperation with respect to the protection of taxpayers in the phase of collection and use of their information, determines consequences of considerable importance on a practical level.

It is difficult to avoid, for example, the physiological temporal delay between the moment in which the authorities acquire the data relating to the taxpayer and the moment in which this information becomes verifiable by the interested party, even to ascertain its completeness and integrity, authenticity and fairness. In the absence of a universal mechanism that allows the taxpayers to be aware of the acquisition of their data and to request any correction, in fact, the first moment in which they will be able to physically know and verify the contents of the databases will be the one in which the information will be used against them in the procedure for implementing the levy regulated by national law. So that, in the event that

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a non-binding document addressed to member states. Although the European response to a global issue remains inadequate, it is to be hoped that the intention to achieve European codification can be further developed and adapted to emerging issues in digital tax law.

21 In the article of Angelo Contrino, "Spinte evolutive (sul piano sovranazionale) e involutive (a livello interno) in tema di bilanciamento fra diritto alla protezione dei dati dei contribuenti ed esigenze di contrasto dell'evasione fiscal," (*Rivista di Diritto Tributario* (October 2023), accessed October 23, 2023, https://www.rivistadirittotributario.it/2023/10/03/spinte-evolutive-sul-piano-sovranazionale-e-involutive-a-livello-interno-in-tema-di-bilanciamento-fra-diritto-alla-protezione-dei-dati-dei-contribuenti-ed-esigenze-di-contrasto-dellevasio/) in which the author provides a thorough analysis of the most recent judicial developments concerning taxpayer data protection and the balancing of this need with the objective of combating tax avoidance.

said information is not referred to in the act or measure in question, but also in the case in which the same remains “latent” as it is used to feed mere risk analyses or other officious checks whose results are not communicated to the taxpayer, a grey area will emerge which is ill-suited to the climate of growing transparency and tax compliance which pervades the most recent developments in national legislation.

The legitimate interest of the taxpayer in demanding the correction of the error, in these hypotheses, could be confined to a mere expectation of protection without concrete legal protection in international law, as there are no superordinate bodies capable of ensuring access to information at universal nor suitable institutions to allow the effective removal of the error contained in the databases, not even in the face of a reasoned request from the interested party. Furthermore, even on a practical level, error correction presents new problems that deserve greater consideration in the developments of the subject and in international guidelines. The main difference compared to the traditional methods of processing information by the tax authorities consists, in fact, in the transition underway from national databases, governed by professional managers and involving a network of responsibilities also in relation to the correctness of the data stored, for example, one based on databases that feed each other or that are more simply replicated but which, however, are not automatically interfering. In other words, nothing guarantees that the correction of the data at a national level will produce direct effects (also) in the distinct jurisdiction, which has, in any case, stored the same data within its own IT systems. Furthermore, there are no legal constraints of a supranational nature aimed at ensuring the adequate “maintenance” of digital infrastructures, nor subjects authorized to access databases established within different jurisdictions in order to monitor, according to shared criteria, the quality and coincidence of stored information.

Apart from the hypothesis, which appears remote outside the Euro-unitary perimeter, of a direct sharing of the databases, the picture does not seem destined to improve even as a result of the possible acquisition of the data within specific “blocks” pertaining to a “distributed” system of validation and guarantee of the preservation of its integrity. We are referring to the blockchain, which is also starting to be talked about in the tax

sector[22] but whose critical profile, from the perspective of this investigation, would remain the preclusion of unilateral corrections of any errors.

Given the "headless" nature of the global information system, which contemplates minimal margins of interoperability of the databases, the tax authority of the relevant national legal system thus remains the sole safeguard of the taxpayer's guarantees, albeit within the limits of their legal protection in domestic law. However, it acts as a mere vehicle for access to the more or less effective defenses that each system provides against the illegitimate acquisition, possession and processing of personal information, as the conditions for achieving a more noble and appropriate coordination between the authorities are not yet in sight, national, whose urgency is also felt.

The amorphous and partly spontaneous models of databases formed in recent years, therefore, encounter the further limit of the absence of direction and networks of roles and responsibilities in the management of data whose sources, as has been said, should at least be verified. And it is not even said that the solution of "sterilization" of the anomalous data (e.g. the erroneous communication concerning rent for an apartment managed through an electronic platform) in the procedural stage constitutes an adequate remedy for the reasonable claims of impartiality and non-discrimination of the taxpayer. The scrutiny of the administrative action should, in fact, go as far as the phases prior to that of its actual use in consultation with the taxpayer and also address the non-participatory activities that take place in its analysis and processing for monitoring purposes and, above all, impulse and direction of subsequent checks.

The strategic activity of risk analysis, which increasingly uses artificial intelligence, can also lead to altered and even discriminatory results

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22 On this topic, see: Andrea Quattrocchi, "Le potenzialità applicative della blockchain e dei database condivisi nell'attuazione della norma tributaria," in *Rivista di Diritto Tributario*, accessed November 22, 2022, https://www.rivistadirittotributario.it/wp-content/uploads/2022/11/Quattrocchi.pdf. The author explains the features of blockchain, noting that each participant in the "chain" acts as a "node" with a "public and a private key," which allows them to conduct transactions using a "distributed" and "non-centralized" validation system, in contrast to conventional systems that require a certifying authority. Moreover – and this is particularly relevant to our discussion – "once recorded, transactions – stored in 'blocks' utilizing multiple public ledgers – cannot be altered by any single participant, necessitating the involvement of all parties for any modification."

whenever there is an error or incompleteness in the data used by the algorithms. But even in the cases in which such data is complete and correct, it is not at all certain that the national tax authority is able to provide sufficient information to ensure a critical examination of the genesis, legitimate acquisition and authenticity of the information processed, especially in the cases in which the same was acquired in a different jurisdiction. Nor can it be taken for granted – and indeed, on the contrary, it seems unlikely – that the official who speaks with the taxpayer (perhaps in the intra-procedural cross-examination) has sufficient elements to illustrate the logic underlying the artificial intelligence algorithms, also for the objective difficulty in reconstructing, a posteriori, the path followed with probabilistic analysis methods.

The set of these questions and doubts identifies the tip of an iceberg of emerging legal issues to which each system will need to offer adequate answers, with the risk of a fragmentation of the taxpayers' rights (even of the same taxpayer, where exposed to the contextual and parallel assessment action within two or more different jurisdictions) which would instead encounter a barrier in the affirmation of a more defined and satisfying procedural dimension of international tax law. Instead, this profile of supranational tax law currently appears confined to the prevention of international double taxation, to the interference caused by adjustments to transfer prices and to the related juridical disputes,[23] with a concerted effort between the tax authorities appearing completely unbalanced on the interest side tax and action to combat the erosion of tax bases.[24]

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[23] For a detailed discussion on this topic, see: Del Federico, "Agreements, Arbitration and Protection," 51.

[24] For a contemporary investigation into these issues, see: Chistian Califano, *L'arbitrato e gli strumenti di risoluzione delle controversie nel diritto tributario* (Milano: Giuffrè, 2024).

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