

OVERVIEW OF GLOBAL TRENDS IN THE PROTECTION OF TAXPAYERS» RIGHTS BY 2019, ACCORDING TO THE IBFD OBSERVATORY FOR THE PROTECTION OF TAXPAYERS» RIGHTS (PART 2)

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Título

Visión general de las tendencias globales en la protección práctica de los derechos de los contribuyentes para 2019, según el Observatorio para la Protección de los Derechos de los Contribuyentes del IBFD (Parte 2)

Resumen

El artículo describe las tendencias mundiales en la protección práctica de los derechos de los contribuyentes en lo tocante a (i) confidencialidad de la información del contribuyente en manos de la Administración Tributaria (ii) procedimientos tributarios, tanto administrativos como jurisdiccionales (iii) medios de impugnación; (iv) sanciones penales y administrativas (v) ejecución forzosa de créditos tributarios, y (vi) situaciones transfronterizas, en lo relativo a las salvaguardas para los contribuyentes en el intercambio de información, con base en los datos del Anuario 2019 del Observatorio para la Protección de los Derechos de los Contribuyentes del Buró Internacional de Documentación Fiscal (IBFD, por sus siglas en inglés).

Palabras clave

Derechos de los contribuyentes, confidencialidad, procedimientos tributarios, situaciones transfronterizas, reporte obligatorio de mecanismos transfronterizos, intercambio de información, derecho al debido proceso, derecho a la defensa, *habeas data*, proporcionalidad, no autoinculpación, *non bis in idem*, simplificación de procedimientos, regularización voluntaria, ejecución forzosa.

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Abstract

The article describes the global trends in the practical protection of taxpayers» rights with respect to (i) confidentiality of taxpayer information held by the Tax Administration (ii) tax proceedings, both administrative and jurisdictional (iii) means of challenge; (iv) criminal and administrative sanctions (v) enforcement of tax credits, and (vi) cross-border situations, as regards safeguards for taxpayers in the exchange of information, based on data from Yearbook 2019 of the Observatory for the Protection of Taxpayers» Rights of the International Bureau of Fiscal Documentation (IBFD).

Keywords

Taxpayers» rights, confidentiality, tax procedures, cross-border situations, mandatory reporting of cross-border mechanisms, exchange of information, right to *due process*, right to defense, *habeas data*, proportionality, non-self-incrimination, *non bis in idem*, simplification of procedures, voluntary regularization, enforcement.

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4. Criminal and administrative sanctions

This is undoubtedly one of the areas in which there have been the greatest reportable developments in the practical protection of taxpayers» rights during 2019.

4.1. Increased judicial attention

Within the framework of the general trend towards the expansion of the sanctioning powers of the Tax Administrations, as the spearhead of the fight against tax evasion and avoidance (Weffe, Taxpayers» Rights in the Expanding Universe of Criminal and Administrative Sanctions: A Fundamental Rights Approach to Punitive Tax Law Following the OECD/G20 Base Erosion and Profit Shifting Project, 2020). The growing attention of the courts to the problems associated with the imposition of criminal and administrative sanctions is noteworthy (The IBFD Yearbook on Taxpayers» Rights 2019 - Carlos E. Weffe, 2020).

In fact, 85.71% of the decisions of the European Court of Human Rights that were reported to the OPTR touch, in one way or another, on the interaction between the exercise of *ius puniendi* in tax matters and the basic rights and guarantees of taxpayers. The same occurs in 50% of the cases of inadmissibility and 42.86% of the cases reported to the aforementioned Court (IBFD Observatory on the Protection of Taxpayers» Rights, 2020). For its part, 60% of the decisions reported to the OPTR of the Court of Justice of the European Union also address the issue of taxpayers» rights in the context of the imposition of criminal and administrative sanctions (IBFD Observatory on the Protection of Taxpayers» Rights, 2020). However, neither of the two decisions of the Inter-American Court of Human Rights that were reported to the OPTR touches on the subject, an issue that can be justified by the very low incidence of matters of tax nature that are discussed before this supranational forum (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

4.2. *Nemo tenetur se ipsum accusare*, or the right not to self incriminate in the tax sanctioning procedure

With regard to the actual penalty procedure, the guarantee of non-self-incrimination seems to receive more protection than that received in the ordinary administrative tax procedure. In fact, according to the OPTR data, it is possible to note a slight increase in the number of countries surveyed that apply—at least formally—the *nemo tenetur* in sanctioning procedures: 54% of the countries surveyed, slightly more than the 52% that reported such behavior in 2018. A greater upward trend is recorded with respect to the countries that claim to safeguard *nemo tenetur* through an incidence in the administrative tax procedure aimed at identifying the existence of well-founded indications from which

the taxpayer's sanctioning responsibility could be derived in 53% of the countries surveyed, a substantial increase with respect to the 39% of countries that claimed to have implemented these procedures in 2018. In this regard, it was recorded that the parliamentary Ombudsman in Denmark clarified the best practices applicable to an *ex officio* determination case linked to the so-called *Panama Papers*, which is likely to have effects in the future (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

However, as noted in section 3.1., *nemo tenetur* is subject to threats that move countries» practice away from minimum standards in this area. As previously indicated, the principle is not recognized in China and is not respected in Mexico; 74% of the countries surveyed do not apply any restriction in the use of the information obtained in the inspection procedure for the subsequent determination of the criminal or administrative responsibilities of the taxpayer, directly affecting the effective validity of the principle. On the other hand, in a significant decrease, 37% of the countries surveyed (compared to 57% in 2018) do not allow the taxpayer to invoke the guarantee of non-self-incrimination to refuse to provide accounting information in the context of intensive audits; and 40% of the countries surveyed warn taxpayers of their right to remain silent, in the style of the so-called «Miranda warnings» (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

4.3. Non bis in idem, or prohibition of double jeopardy

A similar reduction in the relevant scope of protection of taxpayers» rights seems to be noted with regard to the guarantee of *non bis in idem*, or in other words, the prohibition of double jeopardy for sanctioning purposes (Weffe, Taxpayers» Rights in the Expanding Universe of Criminal and Administrative Sanctions: A Fundamental Rights Approach to Punitive Tax Law Following the OECD/G20 Base Erosion and Profit Shifting Project, 2020).

Indeed, a lower degree of comparative protection has been reported in Bosnia and Herzegovina, Brazil, Italy, Mexico and Peru, while a higher degree of protection was reported for Belgium, Colombia and Spain. Overall, 54% of the countries surveyed, compared to 28% in 2018, do not apply the principle in the context of tax procedures, which is certainly a worrying sign.

Even worst, where the principle is recognized, this does not prevent the establishment of parallel procedures in respect of the same facts in 58% of the countries surveyed (IBFD Observatory on the Protection of Taxpayers» Rights, 2020) possibly following the jurisprudence established by the decision of the European Court of Human Rights in the case *A & B v. Norway* (ECHR - Grand Chamber, 2016), according to which a «mere proportionality» approach to the *non bis in idem* problem is enshrined (Weffe, Taxpayers» Rights in the Expanding Universe of Criminal and Administrative Sanctions: A Fundamental Rights Approach to Punitive Tax Law Following the OECD/G20 Base Erosion and Profit Shifting Project, 2020). This is because the double prosecution is only mitigated, as long as the application of multiple sanctions «intimately connected in time and space» does not constitute an «excessive burden» for the taxpayer and,

consequently, one can speak of sanctions that are proportionate to the magnitude of the damage caused by the wrongful act (Bahçeci & Ovalioğlu, 2018).

This is the basis of the recent legislative amendment in Belgium, through which a consultation mechanism was put in place between the tax administration and the Public Prosecutor's Office for reference of tax investigations that may lead to criminal liability, so that, at the time of the decision, the criminal court must take into account the administrative sanctions imposed for the quantification of the penalty applicable for the commission of a tax offence (Desterbeck, 2019), or from the recent jurisprudence of the Italian Supreme Court (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

Also in case law, a «restricted» interpretation of *non bis in idem* is shown in Switzerland, and the Brazilian Supreme Court held that the recurrent failure to pay indirect taxes, even when the debts are recognized by the taxpayer, qualifies as a tax offense. On the other hand, new tax crimes were typified in Mexico, qualifying some forms of tax crimes (specifically, from the marketing of false tax receipts) as organized crime, and thus reducing the taxpayer's margin of defense from the procedural point of view (Weffe, *Derechos del contribuyente vs. expansión sancionadora. Una aproximación garantista al Derecho Tributario Sancador post-BEPS*, 2019). In Slovenia, *non bis in idem* is expressed as avoided through *ex officio* re-opening of administrative procedures, in a practice similar to that of Uruguay, discussed in section 3.1.2. (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

On a positive note, several cassation claims have been admitted in Spain, with the aim of determining the possible violation of *non bis in idem* on the basis of the alleged accessory nature of the issuers of invoices in the tax offences or crimes of the recipients of these documents. Additionally, the Spanish Supreme Court annulled rules that allowed the tax authority to require a criminal investigation once the tax determination has been notified or the tax penalty has been imposed, insofar as the same conduct was concurrently subject to criminal and administrative sanctioning procedures (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

4.4. Voluntary regularization schemes

It is equally positive to report the upward trend in voluntary regularization regimes in 2019, in line with the minimum standards and best practices of the OPTR in this regard.

According to these practical benchmarks, voluntary regularization regimes should lead to a reduction of applicable sanctions, a trend that was closely followed in 2019 by Colombia, Mauritius and Russia (IBFD Observatory on the Protection of Taxpayers» Rights, 2020). The first of these countries established a regularization «tax» for those taxpayers who had failed to declare tax assets or obligations, instead of attributing criminal responsibility for these causes. In Mauritius, two new voluntary regularization schemes were introduced in the 2019 Budgetary Act, covering small and medium enterprises and assets located

abroad, respectively. In Russia, the Supreme Court ruled that taxpayers involved in attempted tax offences would not be punished in cases of voluntary withdrawal (The IBFD Yearbook on Taxpayers» Rights 2019 - Carlos E. Weffe, 2020).

However, Brazil, Italy, Mexico, and Peru reported a departure from the best practice identified by the OPTR, according to which sanctions should not be increased solely to serve as a coercive mechanism for taxpayers to enter into voluntary regularization regimes. In particular, the Netherlands abolished its voluntary regularization regime for income tax cases caused by portfolios of savings and investments held in the Netherlands, and in relation to enrichment obtained through «substantial interest», from 1 January 2020 (The IBFD Yearbook on Taxpayers» Rights 2019 - Carlos E. Weffe, 2020).

5. Enforcement of tax credits

With regard to this point, it is clear that the enforceability and possibility of execution of administrative acts of a tax nature, although relevant to the satisfaction of the public interest committed to efficient tax collection, cannot be placed before aspects of the essential core of citizens» rights, no longer as taxpayers but as human beings.

Thus, it is an obvious minimum estándar that tax collection cannot affect the taxpayer's subsistence minimum, an area in which the United States reported progress: in that country, legal and administrative regulations were issued to protect taxpayers who have economic difficulties derived from tax collection if they are at or below 200% of the federal poverty line, or when the taxpayer receives some specific categories of government assistance (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

Similarly, the executive seizure of assets or bank accounts requires prior judicial authorization, an issue that was reported to be reversed in 2019 in Canada, Cyprus, Italy, Mexico and Peru, in a sense identical to that analyzed in section 3.2.2. In fact, in 74% of the countries surveyed, prior judicial authorization is not required to proceed with the executive seizure of the taxpayer's assets to ensure the collection of the tax already determined, either administratively or judicially; there are cases, such as Mexico, where no judicial authorization is required for the freezing of bank accounts or the seizure of assets (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

As best practice, the OPTR recommends that partial debt relief, or structured deferred payment plans, should serve as mechanisms to avoid taxpayer bankruptcy. In this regard, the Italian judiciary endorsed the partial payment of tax obligations as part of a proposal to avoid taxpayer bankruptcy, fully in line with best practice, and in Serbia, the possibility of deferred payments and grace periods in the event of restructuring or reorganization were provided for under the Bankruptcy Act (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

6. Cross-border situations

Since the beginning of its activities, the OPTR has been reporting a trend towards a decline in the practical protection of taxpayers» rights in cross-border situations (IBFD Observatory on the Protection of Taxpayers» Rights, 2018). The non-existence of supranational mechanisms for the resolution of tax disputes, so that it is the States –and their interests– that determine the outcome of potential overlaps in the exercise of tax power by countries in cross-border situations, without adequate guarantees of taxpayer participation and defense in these scenarios and despite the existence of friendly settlement procedures, according to Article 25 of the OECD Model Tax Convention on Income and on Capital (OECD, 2017), as well as binding arbitration under Articles 18.1 and 19.1 of the Multilateral Convention to implement tax treaty measures to prevent the erosion of tax bases and the transfer of profits (OECD, 2016) is a circumstance that can affect this result (IBFD Observatory on the Protection of Taxpayers» Rights, 2020). Obviously, the situation is one of diminishing taxpayers» rights.

6.1. Right to be informed in advance of the exchange of information

As a general rule, any citizen potentially affected by a State claim limiting rights must be informed of that claim and guaranteed the existence and effectiveness of means of defence against such an action (Weffe, *The Right to Be Informed: The Parallel between Criminal Law and Tax Law, with Special Emphasis on Cross-Border Situations*, 2017). This includes, of course, the exchange of information between tax administrations, as well as any other type of procedure aimed at establishing and assessing taxable events, in any context (Fraga-Pittaluga, 1998).

However, the general rule is that of the exchange of information between tax administrations without prior notification to the taxpayer, seriously limiting the taxpayer's possibility of defending himself against the claims of the Tax Administration (The IBFD Yearbook on Taxpayers» Rights – Philip Baker, 2020). This is in fact the case in 81% of the countries surveyed in 2019, an increase of 7% over the countries committed to this practice in 2018. The above figure rises to 85% of the countries surveyed in the case of exchanges of information where documents and other evidence of the completion of the extraterritorial taxable event are provided to third parties (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

The need for taxpayer participation in the exchange of information is evident when, in addition to the above, one takes into account the peremptory nature of the application of safeguards to the confidentiality of the information handled through this procedure, in the same sense as discussed in section 2. Especially in cases such as the security breach of the Bulgarian Tax Administration's databases June 2019, in which the data of more than 5 million taxpayers were compromised, including information that had been provided to Bulgaria through the automatic exchange of information (The IBFD Yearbook on Taxpayers» Rights - Philip Baker, 2020).

It is not all bad: preliminary decisions by the Luxembourg Administrative Court raise the question of the compatibility of the taxpayer's lack of access to these procedures with Article 47 of the Charter of Fundamental Rights of the European Union (European Union, 2000) insofar as this affects the taxpayer's right to be informed (IBFD Observatory on the Protection of Taxpayers» Rights, 2020). Progress has also been made in the European Union, in the light of the case law of the Grand Chamber of the Court of Justice in the *Berlioz* case (TJUE - Grand Chamber, 2017) according to which, in connection with the exchange of information on request, the taxpayer is entitled to have the grounds for the request and the documents supplied by the requesting country examined by a court in the requested country (The IBFD Yearbook on Taxpayers» Rights - Philip Baker, 2020).

6.2. Automatic exchange of information

In the view of the OPTR, the impossibility of receiving information through automatic exchange is a minimum estándar for the State that is not in a position to provide independent and verifiable evidence that it meets high standards of data protection (IBFD Observatory on the Protection of Taxpayers» Rights, 2018). This was not the case for Bosnia and Herzegovina, Brazil, Canada, Mexico, Slovenia and Uruguay in 2019, according to information provided to the OPTR (IBFD Observatory on the Protection of Taxpayers» Rights, 2020). However, as Baker points out, the automatic exchange of information with Bulgaria was immediately suspended after the security breach of their databases on 5 June 2019, as described in section 6.1. (The IBFD Yearbook on Taxpayers» Rights - Philip Baker, 2020).

6.3. Other guarantees related to the exchange of information

Considering that the taxpayer is neither informed of the information request nor of its results, unless the information obtained is directly used in the *ex officio* determination of the tax, a better practice would be that the investigation work by the Administration, committed –in safeguarding the public interest– to the search for the material truth regarding the facts submitted for its examination (Fraga-Pittaluga, 1998), it should also aim at obtaining evidence that would favour the position of the taxpayer, as pointed out by the OPTR (IBFD Observatory on the Protection of Taxpayers» Rights, 2018).

However, this is not the case in practice, where unfortunately setbacks are reported in Bosnia and Herzegovina, Canada, Cyprus and Mexico. Among these cases, the new Croatian legislation on administrative cooperation, enacted in 2019, does not include any provision regarding the right of the taxpayer to request information that favors him in the context of the exchange between tax administrations. The situation reaches the point of eliminating the right to be informed in countries where this right was previously provided for, under pressure from bodies such as the OECD Global Forum on Transparency and

Exchange of Information. China and Luxembourg joined this trend in 2019 (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

On a positive note, some tax treaties have incorporated provisions establishing specific conditions for data protection in the exchange of information, as reported in the case of Croatia, Peru and Sweden, and not that of Bosnia and Herzegovina (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

6.4. Mutual agreement procedures (Article 25 OECD Model)

With respect to the mutual agreement procedure provided for in tax conventions that follow, as a general rule, the reference in Article 25 of the OECD Model (OECD, 2017) it should be noted as positive news that, gradually, greater participation of taxpayers has been ensured in procedures that, by their nature, involve only States parties to the convention in question. In this regard, the OPTR notes that the entry into force of Council Directive (EU) 2017/1852 of 10 October 2017, on the mechanisms for the resolution of tax disputes in the European Union (European Union, 2017) appears to be a light at the end of the tunnel, in terms of greater protection of the right of taxpayers to participate in the mutual agreement procedure (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

7. Conclusions

As the OPTR states, 2019 was a year of ups and downs in the practical protection of taxpayers» rights (IBFD Observatory on the Protection of Taxpayers» Rights, 2020).

From the data and statistics provided by the OPTR in its annual report for 2019, it is possible to deduce, in general terms, the following trends in the practical protection of taxpayers» rights at the global level

- The tax administrations are tending massively to digitize their processes, especially: (i) for the identification and registration of taxpayers (area 1 of the OPTR); (ii) for the storage and safeguarding of taxpayer information (area 3 of the OPTR); (iii) for the filing and processing of second degree tax administrative procedures (area 6 of the OPTR); and (iv) for the massive and automatic exchange of information among tax administrations (area 9 of the OPTR).
- In general terms, the digitalization means greater protection of taxpayer information in the hands of the Tax Administration. It is worth noting the increase in the efforts of the States to limit access to this information only to officials specifically responsible for the inspection and control of the taxpayer and the encryption of the respective databases, as well as for the performance of access audits.

- The implementation of mandatory reporting rules for potentially «aggressive» tax schemes by tax intermediaries, in light of the recommendations of the OECD Final Report on the subject (OECD, 2016), has highlighted the dialectic tension between the public interest committed to the provision of early information on taxpayers» tax plans by the Tax Administration, to close the gaps in the tax system and to shield its tax policy, with the limiting effects that such a practice has on the rights of taxpayers to economic freedom, to legal counsel and to legitimate expectations, as well as on the rights of tax advisors to economic freedom (Čičin-English, 2019).
- Indeed, the assumption of greater transparency as a paradigm of the tax systems has generated significant State pressure to reduce the scope of professional secrecy, to the point that the OPTR has said that this guarantee «*is under siege*». The rules on mandatory reporting of potentially «aggressive» tax schemes have significantly limited tax advice in general, which directly affects the privilege of privacy of communications between the taxpayer and his or her tax advisors and, consequently, have correlatively decreased the level of compliance with minimum standards in this area.
- A similar reduction in the overall scope of guarantees should be reported with respect to tax inspection and control procedures, whose fundamental principles have seen a reduction in their scope of application to such procedures. In this regard, empirical evidence points to a global trend towards expansion of the investigative powers of tax administrations.
- Indeed, with respect to proportionality, there is a trend towards the admission of information requests that are irrelevant for the determination of the tax by the Tax Administration.
- With regard to the guarantee of *ne bis vexari*, there is a progressive trend towards admitting the existence of multiple procedures with respect to the same facts in the head of the taxpayer, to the point that only 1 out of 4 countries surveyed by the OPTR limits the frequency of audits carried out on the same taxpayer.
- The possibility of defense through the *audi alteram partem* principle is affected by the trend, also on the rise, of allowing the Tax Administration to request information from third parties without prior notification to the taxpayer, subsequently limiting its defense possibilities.
- This becomes even more important when one considers that, in the case of intensive audits, the carrying out of strict administrative interventions, such as the inspection of the taxpayer's premises, is not in practice subject to judicial authorization. This is even more so in the case of requests to financial institutions for the taxpayer's banking information, as it seems to be commonplace that banking secrecy is «*dead*».
- In addition to the above, there is a tendency to reduce the scope of the right to non-self-incrimination, although formally the *nemo tenetur* is recognized in most countries surveyed by the OPTR. Generally speaking, there is a predisposition not to apply the principle in practice, limiting it

only to criminal investigations, in a context where the limits of communicability of evidence between the administrative record and the criminal process tend to be diffused, and only a quarter of the countries surveyed set limits to such communicability.

- The prior exhaustion of administrative remedies continues to be a major obstacle to access to judicial remedies, and thus to effective judicial protection. More than half of the countries surveyed by the OPTR have this requirement in place, which delays the time for the taxpayer to become certain of his tax position and unduly increases the costs of his defense, considering that in some countries the decision of administrative appeals is limited to the uncritical confirmation of the tax objections contained in the first-degree tax assessment acts.
- The expansion of the power of the tax administrations has also reached the penalty procedures. This justifies, in parallel, the greater jurisprudential attention to this topic, to the point that most of the decisions of supranational courts reported to the OPTR deal with it in one way or another.
- In line with the trend observed in tax procedures in the strict sense, the safeguard of non-self-incrimination also appears to be under threat in the area of tax penalty procedures, judging the statistical data collected by the OPTR. Although *nemo tenetur* is formally recognized in most of the surveyed countries, and in a significant number of surveyed countries the communicability of evidence between administrative and sanctioning procedures is formally guaranteed through incidences of determination of the existence of indications of possible tax offences or infractions, the principle is subject to threats that move the practice of countries away from minimum standards in the matter: 3 out of 4 countries do not apply any restriction in practice in the use of the information obtained in the inspection procedure for the determination of criminal or tax liability.
- The same can be said of the *non bis in idem* safeguard. More than half of the countries surveyed by the OPTR do not apply the principle in the context of tax procedures and, in those countries where it is formally applied, its enshrinement does not prevent the establishment of parallel procedures in respect of the same facts in 58% of the countries surveyed. This behavior is probably due to the «mere proportionality» approach to the principle, based on the jurisprudence of the European Court of Human Rights.
- On a positive note, the regimes of voluntary regularization, expressions of the principles of opportunity and minimum intervention of the punitive law –and, as such, criteria of rationalization of the State punitive intervention– show an upward trend in 2019. Through this route, several legal systems have integrated these regimes as ways of favoring voluntary compliance and, consequently, reducing the penalties applicable for the eventual commission of tax infractions or crimes.

- The forced execution of tax credits also suffered ups and downs during 2019. On the one hand, concrete relief actions were verified for taxpayers in economic difficulties, through deferral actions and agreements for the payment by installments of the taxes owed. Similar measures were reported to prevent corporate bankruptcies for tax reasons. On the other hand, reproducing the general trend discussed in section 3.2.2., there is evidence of a relaxation of the judicial authorizations to proceed with the issuance of executive measures on assets owned by the taxpayer, thus allowing a greater margin of action to the tax administrations in this regard.
- The strong limitation to the rights and guarantees of the taxpayer in cross-border situations remains a global trend in 2019. In general terms, the taxpayer does not have any participation in the exchange of information between tax administrations, which is based on the fact that, as a general rule, the taxpayer's right to be informed of the exchange of information, whether automatic or on request, is not recognized, thus deferring the possibility for the taxpayer to be aware of the administrative action potentially limiting his rights and to have the time and the means to exercise his defense—especially, the control of the evidence thus obtained—to the moment in which the information exchanged has had full evidentiary effects, and the act of taxation contained in the determination has taken place.
- The above is maximized when the right of the taxpayer to demand the protection of his privacy is taken into account, through the confidential treatment of the information obtained through the exchange of information, as evidenced by the leakage of information from more than 5 million taxpayers, held by the Bulgarian Tax Administration. Predictions of massive data theft in the near future, enhanced by the COVID-19 pandemic, raise doubts about the potential impact that such a situation would have on the information held by tax administrations, especially in the context of automatic information exchange (The IBFD Yearbook on Taxpayers» Rights - Philip Baker, 2020).
- For its part, in cross-border situations there is a progressive trend towards allowing greater taxpayer participation in tax dispute settlement procedures between States, i.e., the mutual agreement procedure of tax treaties and binding arbitration, which should certainly be noted as a positive development.

As a final conclusion, it is appropriate to quote Philip Baker's words: in the context of taxpayers» rights, the granting of greater powers to tax administrations must be accompanied by the clear and effective safeguard of taxpayers» rights (The IBFD Yearbook on Taxpayers» Rights - Philip Baker, 2020). Such protections must be effectively implemented in practice, which—definitely—is feasible through the establishment and implementation of minimum standards and best practices, which guide the administrative action in the exercise of its fiscal powers with the balance and respect for the citizens» rights that the exercise of any public power measure in the Rule of Law demands.

This is the mission and the usefulness of the work carried out by the Observatory for the Protection of Taxpayers» Rights of the IBFD, to whose follow-up we invite the reader.

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