

DOCUMENTOS

**A TAX ADMINISTRATION FOR A CONSIDERED
ACTION AT THE COSSROADS OF TIME**

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1. ON THE SUBJECT OF THE NEW CHALLENGES TO ACCEPT

Governments should accept the challenge of promoting a responsible globalization and adopt a new look regarding the issues involved in the taxation of international transactions. Just in the same way as multinationals have achieved a global presence, tax administrations should do it too, respecting jurisdictional limitations¹.

Tax policy can be understood as tax administration, in the sense that the real tax system is not the one set out in the statutes, but the one that is actually implemented². Tax authorities should design appropriate tax policies to ensure that the benefits are maximised and the drawbacks are minimised³.

As it has been said, 'tax is the price we pay for a civilised society'⁴. Concerning the tax burden one has to keep in mind that fairness (or horizontal and vertical equity) is an important attribute of a soundly designed tax system. At this stage, one cannot forget that it is underlying principles that will determine radical change in the future, not the details on which attention is so often focused⁵.

Moreover, tax policy makers must consider the effect of their policies on other countries and the possibility that the other countries will be moved to modify their own laws in response to actions of that State. Representatives of governments could negotiate at least some aspects of the way in which their taxing mechanisms will operate to co-ordinate their respective requirements. From an international point of view, it should be co-operative and overcome the current problems of administrative provisions found in Double Taxation Conventions (non-discrimination, mutual agreement procedure, exchange of information and other kinds of mutual assistance), reinforcing a multilateral approach.

Tax administration should operate to reduce compliance costs. The twin concepts of 'observability' and 'verifiability' are essential to the operation of a tax system. The practical requirements of the two concepts have changed radically over time, and are likely to do so again with innovations in information technology and their implications for payment systems and transactions more generally⁶. The ability of the tax authorities to observe and monitor the tax base will become increasingly influenced by the size and scope of international transactions.

Thus, it would be useful to fix minimum standards for regulation, transparency and co-operation with other jurisdictions, and then avoid large differences among countries with regard to control capacity and also with regard to their willingness to co-operate internationally. In order to get the best administration of all the ones possible, this *leit motive* should be translated into small reachable goals to be achieved continuously. Some of them will be reviewed at the end of this paper.

¹ OWENS, J.: 'Tax Administrations in the New Millennium', *TNI*, vol. 20, n.º 1, 3-1-2000, p. 98.

² CASANEGRA, M.: 'Panel Discussion', in IFA: *Visions of the Tax Systems of the XXIst Century*, Geneva Congress, vol. 21d, Kluwer Law International, The Hague - London - Boston, 1996, p. 87.

³ One of the challenges for the new millennium will be to limit the opportunities for tax arbitrage and tax avoidance created by global asymmetries in the treatment of financial instruments and hybrid entities etc. OWENS, J.: 'Tax Administrations in the New Millennium', *op. cit.*, p. 99. BOUTELLIS, O.: 'Les nouveaux horizons de la politique fiscale dans la société globale de l'information', *Revue de Droit Fiscal*, 16 - 2 - 2000, n.º 7, p. 322. MESSERE, K.: '20th Century taxes and their future', *BIFD*, vol. 54, n.º 1, January 2000, p. 2. CHIA, N. CH.: 'Trends on Tax Structures and Fiscal Policy issues in the new millennium', *ATPB*, vol. 6, n.º 3-4, p. 107.

⁴ OWENS, J.: 'Tax Administrations in the New Millennium', *op. cit.*, p. 105.

⁵ KING, M.: 'Tax Systems in the XXIst Century', *op. cit.*, pp. 53 - 54.

⁶ From an internal perspective, the 'technology' of tax collection includes the ability to observe the tax base of any individual taxpayer and to verify the magnitude of the tax liability in cases of dispute. KING, M.: 'Tax Systems in the XXIst Century', in IFA: *Visions of the Tax Systems of the XXIst Century*, Geneva Congress, vol. 21d, Kluwer Law International, The Hague - London - Boston, 1996, p. 57.



2. DESIRES AND OBVIOUSNESS

One could wish an environment that ensures that countries have true sovereignty over their fiscal destinies and one that encourages an atmosphere in which trust reigns between tax authorities, but in fact we are surrounded by instability, so the design, implementation and administration of appropriate tax policies is of critical importance⁷.

Certain environmental aspects can have good and bad influence on tax administrations. So an adequate tax administration, capable of facing challenges and taking advantage of opportunities must be configured. A realistic, not pessimistic approach is required. Tax administrations have already coped with serious challenges in the past, and it shows how administrative feasibility can be paramount in determining the attractions of a particular tax structure⁸. After a careful inward and outward look, all can be done in due course.

Looking ahead into the future tax model, economies are unlikely to achieve or be in restful equilibrium. Rather, they might form complex patterns at the edge of chaotic economic movements⁹. The theory of complexity says that equilibrium does not exist. Instead, it is necessary to find patterns within or beyond ever-changing phenomena¹⁰. That means that tax administrations suitable in different contexts or tax landscapes will be required.

The process of tax reform is now at its beginning¹¹. But once the tax administrators are involved in this continuous process, things do not come for them as a surprise. At this initial step, in the process of confronting modern international trade and investment realities, there are many factors contributing to complexity and many constant changes in the law.

On the one hand, the level of public expenditures that is deemed to be appropriate can be revised over time. The political debate will never stop. But there is an aspect on which all should agree. For any chosen target level for the provision of public goods and services, the amount of taxes collected should be as small as possible. On the other hand, one dollar of additional taxation costs not only one dollar of forgone private income, but more than one dollar. And in addition to tax level, there is an important twin issue of tax structure.

Nowadays, one can guess some trends: current government programs will not be sustainable –in large part for demographic reasons¹²; there is a world-wide movement to private provision of many other services previously provided by government¹³; decentralisation of governmental func-

⁷ OWENS, J.: 'Tax Administrations in the New Millennium', *op. cit.*, pp. 99, 103. 'Live from Washington - It's the New IRS', *TNI*, vol. 20, n.° 4, p. 374. GOULDER, R.: 'US IRS Officials Address How Restructured Agency will handle International Issues', *TNI*, vol. 20, n.° 11, p. 1181. 'La réforme de l'administration fiscale', *Lamy fiscal*, n.° 346, 11-2-2000, p. 1-2.

⁸ In England, in the 990s the tax system worked because it was possible to observe and record the ownership of land; by the 1890s the tax base was shifting from indirect to direct taxes and the tax system reflected the greater importance of capital as a factor of production; by the 1990s the tax system had to cope with more complex and varied patterns of employment and family structure that had been assumed when many of the taxes were introduced (KING, M.: 'Tax Systems in the XXIst Century', *op. cit.*, p. 57).

⁹ BROWN, R.D.: 'Tax reform and Tax reduction: Let's do the job right', *Canadian Tax Journal*, vol. 47, n.° 2, 1999, p. 182.

¹⁰ SHOME, P.: 'Panel Discussion', in IFA: *Visions of the Tax Systems of the XXIst Century*, Geneva Congress, vol. 21d, Kluwer Law International, The Hague - London - Boston, 1996, pp. 71 -72.

¹¹ KING, M.: 'Tax Systems in the XXIst Century', *op. cit.*, p. 62.

¹² Demographic and economic developments imply a sort of new problems: for instance, in the United States, the 'baby boom' generation that was born beginning just after World War II will reach retirement age beginning in about 2010. In general, there will be enormous difficulties in funding public spending on the elderly (programs for retirement and medical care). In OECD the weighted average of the percentages of population over 60 years of age rises from 18.2 per cent in 1990 to 27.0 per cent in 2020, before peaking at 31.2 per cent in 2050 (Source: World Bank, 1994, Table A.2, pp. 349-353).

¹³ There are two kinds of privatisation: a) some activities are transferred to the private sector, where they are expected to be financially independent, or b) private provision, but continued public finance of activities formerly produced (as well as financed) by government (McLURE, Ch. E.: 'Tax Policies for the XXIst Century', in IFA: *Visions of the Tax Systems of the XXIst Century*, Geneva Congress, vol. 21d, Kluwer Law International, The Hague - London - Boston, 1996, pp. 18 -19).

tions is growing; use of green taxes is being debated and a shift from income-based taxes to consumption-based taxes can be observed¹⁴.

Speaking of economic value –produced and consumed–, it is embedded in bits rather than atoms and has no clear points of fiscal entry and exit¹⁵. As dematerialization occurs, administrative capacity, economic neutrality and equity will all suffer. Therefore, it is important to think first how and why tax administrations might evolve.

Tax authorities will have to engage in greater concentration if they are to accomplish their own domestic objectives. At the end, the dilemma between competition and co-operation appears. As it is already known, it is not just the implementation problem, which bedevils taxation in the international setting –it is competition among national tax authorities–¹⁶.

Whether the tax authorities will be able to respond depends very much on the power of government to regulate. The question of whether it is the taxpayer or the tax authorities who will be the victims or the winners from developments in taxation is an open question¹⁷. Only if one of the leading ideas of administrative performance is a 'closer identification' with the taxpayers, their work together will be satisfactory.

3. A PATH TO ACHIEVE SOME GOALS

Do we want to tax something or nothing? If we cannot tax everything uniformly and consistently, then we are creating all kinds of opportunities for arbitrage, and we are going to end up with less than zero taxation¹⁸.

The more integrated and the more complicated and sophisticated future economic conditions will become, the simpler and more robust the national tax systems must become in order to cope with these more complex economic realities¹⁹. Transparency is all the rage in modern government. Unfortunately, in the field of tax policy the problems are more transparent than the solutions²⁰.

After recognising what cannot be done, therefore it must be set out what can be achieved. In order to facilitate tax administration, more reliance will have to be placed on taxes on transactions,

¹⁴ McLURE, Ch. E.: 'Tax Policies for the XXIst Century', *op. cit.*, p. 9. BIRD, R. M.: 'Rethinking Subnational Taxes: A New Look at Tax Assignment', *TNI*, vol. 20, n.º 19, p. 2069.

¹⁵ Differences between tax rates and the tax base in different countries lead to distortions in the pattern of production or trade. It is harder to determine which country is entitled to collect and enforcement has become more difficult. QUAH, D.T.: 'The Invisible Hand and the Weightless Economy', public lecture to the Centre for Economic Performance, London School of Economics, 1996 (mimeo).

¹⁶ KING, M.: 'Tax Systems in the XXIst Century', *op. cit.*, p. 60 - 62. ZAGARIS, B.: 'The assault on Low Tax Jurisdictions: A call for balance and debate', *TMIJ*, vol. 28, n.º 8, 1999, p. 474. MACLACHLAN, J. E.; CHMIEL, D.: 'The drive against harmful tax competition: the EU Commission's Code of Conduct on Direct taxation and related developments', *Tax Planning International (European Union Focus)*, vol. 2, n.º 2, Jan. 2000, p. 3. BOGENSCHÜTZ, E.: 'Taking advantage of Tax Competition within the Single Market', *Tax Planning International (European Union Focus)*, vol. 1, n.º 3, April 1999, p. 7. GOULDER, R.: 'Primarolo Group's Report Identifies 66 Harmful Tax Regimes', *TNI*, vol. 20, n.º 12, p. 1283. 'Le rapport du groupe de travail pour l'application du Code de conduite en matière de fiscalité des entreprises', *Revue de Droit Fiscal*, n.º 16, 19-4-2000, p. 657. DA EMPOLI, D.: 'Harmful Tax Competition', *Rivista di Diritto Tributario Internazionale*, n.º 3, 1999, p. 319.

¹⁷ KING, M.: 'Panel Discussion', *op. cit.*, p. 89.

¹⁸ McLURE, Ch.: 'Panel Discussion', in IFA: *Visions of the Tax Systems of the XXIst Century*, Geneva Congress, vol. 21d, Kluwer Law International, The Hague - London - Boston, 1996, pp. 89 - 90.

¹⁹ LODIN, S.O.: 'Panel Discussion', in IFA: *Visions of the Tax Systems of the XXIst Century*, Geneva Congress, vol. 21d, Kluwer Law International, The Hague - London - Boston, 1996, p. 88. BROKE, A.: 'Simplification of Tax or I wouldn't Start from Here', *British Tax Review*, 2000, n.º 1, p. 18. CIAT: *Tax simplification*, 20th General Assembly, Papers and Reports, IBFD, Amsterdam, 1988.

²⁰ KING, M.: 'Tax Systems in the XXIst Century', *op. cit.*, p. 63.



withholding at source, and consumption taxes easier to manipulate in a global environment that taxes on income and capital²¹.

A typical economic transaction is where a good or service moves in one direction and the corresponding payment moves in the opposite direction. The tax authorities need to monitor one or other of these movements. Typically, tax systems in developed countries concentrate on monitoring payments. But the provision of goods and services has also been monitored as a check on fraudulent reporting.

The power of dematerialization (with 'digitised goods' or 'biens numérisés' distance and time lose their sense²²) is that since additional sales require no further additional inputs, the possibility of cross-checking between a firm's purchases of inputs and its sale of outputs is broken. Tax assessment becomes more difficult. If a real gross settlements system becomes feasible for transactions by retail customers, it is difficult for the tax authorities to check on reported incomes and expenditures by monitoring data on payments.

Deduction at source could still continue to be a very effective method of tax collection, but the ability to conduct audit trials will become more difficult. The most important property of a tax is that it can be collected, what explains the shift from taxing some theoretical measure of income toward taxing transactions, the question is whether such transactions will be as easily observable in future as they have been to date²³.

Unless international co-operation is forthcoming, the burden of taxation will fall increasingly on labour income and on consumption. This will make it very difficult to impose progressive taxation²⁴.

Developments over the past years have shown that increasing the level of international co-operation between tax administrations has tended to stoke up, rather than damp down the struggle for a bigger slice of the cake in the oven of taxation²⁵. Maintaining an international consensus is the key, for instance, to enable the Internet to develop to its full capacity and, at the same time enabling tax authorities to protect their revenue base²⁶.

There should be a different approach to understand the way in which exercise fiscal sovereignty, through co-operation²⁷. New ways to solve conflicts should be created (such as, a World Tax Organisation or fund²⁸) and in the search of alternative dispute resolution mechanisms, conflicts of qualification or interpretation should be resolved at a predispute stage if possible²⁹. Some international

²¹ CASANEGRA, M.: 'Panel Discussion', *op. cit.*, p. 87.

²² *Lamy Fiscal*, n.º 346, 11 - 2 - 2000, pp. 1 - 2.

²³ KING, M.: 'Tax Systems in the XXIst Century', *op. cit.*, pp. 54 - 55 and 58 - 59. DWYER, T.: 'Electronic Elimination of Financial Taxes: The future Role of the Internet and Electronic Cash', *Australian Tax Forum*, vol. 13, n.º 3, 1997, p. 367. EICKER, K.: 'Tax E-efficient Structures for Electronic Business: the Challenge for Corporate Structures and Business Models', *Intertax*, vol. 20, n.º 3, 2000, p. 120. BOYLE, M. P. e.a.: 'The emerging international tax environment for E-commerce', *TMIJ*, vol. 28, n.º 6, June 11, 1999, p. 357.

²⁴ It is clearly impossible to deal satisfactorily with issues of environmental taxation on a unilateral basis. The same is probably true of the taxation of income from business and capital. McLURE, Ch. E.: 'Tax Policies for the XXIst Century', *op. cit.*, p. 10 and pp. 44-45.

²⁵ RITTER, W.: 'Panel Discussion', in IFA: *Visions of the Tax Systems of the XXIst Century*, Geneva Congress, vol. 21d, Kluwer Law International, The Hague - London - Boston, 1996, pp. 87-88.

²⁶ OWENS, J.: *The Tax Man Cometh to Cyberspace*, Multijurisdictional Taxation of Electronic Commerce, 1997 Spring Symposium, Harvard.

²⁷ GRAU RUIZ, M. A.: 'Mutual Assistance for the Collection of Tax Claims', *Intertax*, vol. 28, n.º 6-7, 2000, p. 241. GRAU RUIZ, M. A.: *La Cooperación Internacional para la Recaudación de tributos: el procedimiento de asistencia mutua*, La Ley, Madrid, 2000. DAVID, J.; OLIVER, B.: 'Tax Sovereignty', *Intertax*, vol. 28, n.º 4, 2000, p. 146. MAUGHAM, J.: 'Europe-wide recoveries', *Tax Planning International (European Union Focus)*, vol. 2, n.º 2, Jan. 2000, p. 13. OECD: *Tax Information Exchange between OECD Member Countries (A Survey on current practices)*, Paris, 1995. TANZI, V.; ZEE, H.H.: 'Taxation in a borderless world: the role of information exchange', LINDENCRONA e.a.: *International Studies in Taxation: Law and Economics*, p. 321.

²⁸ LODIN, S.-O.: 'Symposium Outline', in IFA: *Visions of the Tax Systems of the XXIst Century*, Geneva Congress, vol. 21d, Kluwer Law International, The Hague - London - Boston, 1996, p. 8. LODIN, S. O.: 'What ought to be taxed and what can be taxed: a new international dilemma', *BIFD*, vol. 54, n.º 5, May 2000, p. 210.

²⁹ OWENS, J.: 'Tax Administrations in the New Millennium', *op. cit.*, p. 101.

organisations ought to be reinforced, encouraging participation in the WTO, the IMF and the OECD, or integration in regional economic blocks like Europe, the Americas and APEC.

As previously done with respect to decentralisation and privatisation, administrations should make efforts to increase efficiency by moving decisions closer to those they affect, this implying a change in the behaviour of tax administrators to some extent with a global-regional management philosophy. At the same time, tax administrators and practitioners from many countries should learn to speak a common language in this little place the world has become³⁰.

In addition, tax departments should try to follow the model of customs administrations, to reduce compliance costs should be one of the guiding principles of the tax authorities as well as of the tax legislators in the XXIst Century³¹.

There should be a gradual move to treat tax administrations as financial agents of government with a strong regional presence, being a service provider that attempts to facilitate the voluntary payment of tax by the vast majority of honest taxpayers³².

Some pending tasks for tax administrations could be the following: reviewing inappropriate rules developed in the physical economy, deciding how to share the international tax base, paying attention to MNE and SME, adapting consumption tax systems to cross-border electronic commerce, updating traditional concepts undermined by financial innovations, competing for footloose investment, fighting against tax havens due to easier access, interaction between EU and non-EU systems³³.

One last concern has to be the relationship between taxation and human rights³⁴. We must examine in the operation of administrative provisions, characteristics like certainty, consistent administrative approaches, usefulness of information asked of taxpayers, time employed and so on³⁵. We will not be able to leave the taxpayer caught by the conflicting demands of multiple taxing systems to traditional forms of legal self-defence any more. Because foreign persons cannot vote, they are a tempting target for tax increase proposals, when budget deficit appears³⁶.

Complex tax provisions undermine voluntary compliance and make administration of the tax system more difficult, they also place a premium on tax planning, which results in another tax-related cost for taxpayers and in increased prices for the goods and services offered, thus undermining the competitiveness.

Then, it can be useful to ask the following questions: Do the tax policy benefits achieved by a tax provision outweigh whatever administrative and compliance complexity costs that the provision imposes on the administration and taxpayers? Can the same policy objectives be accomplished with a less complex provision?

Some provisions are explicable primarily by way of reference to administrative realities. National borders generally limit extraordinary powers given. To what extent is it justifiable to define income tax liabilities to reflect these administrative realities?

³⁰ MONTI, M.: 'Panel Discussion', in IFA : *Visions of the Tax Systems of the XXIst Century*, Geneva Congress, vol. 21d, Kluwer Law International, The Hague - London - Boston, 1996, p. 66.

³¹ CASANEGRA, M.: 'Panel Discussion', *op. cit.*, p. 87.

³² OWENS, J.: 'Tax Administrations in the New Millennium', *op. cit.*, p. 105.

³³ OWENS, J.: 'Tax Administrations in the New Millennium', *op. cit.*, p. 97.

³⁴ PEACOCK, J.; FITZPATRICK, F.: 'The Impact of the Human Rights Act 1998 in the Tax Field', *British Tax Review*, n.º 4, 2000, p. 202. KLEEMANS, N.: 'The relationship between the national systems of legal protection of the taxpayer and the European Convention on Human Rights', *ECTR*, vol. 9, n.º 1, 2000. DEAK, D.: 'Right to right tax Laws', *Intertax*, n.º 3, 2000, p. 110.

³⁵ OWENS, J.: 'Tax Administrations in the New Millennium', *op. cit.*, p. 98.

³⁶ GUSTAFSON, CH.e.a.: *Taxation of International Transactions, Materials, Text and Problems*, CCH, Inc., 1997, p. 21.



The Basic World Tax Code reads as follows: 'Power and responsibility are centralised in one official, the Tax Administrator, who we hope will be insulated from the shifting political currents of the day... carrying out of legislative enactments should be free from political whims and caprice. The tax administrator will delegate the performance of particular functions to designated tax officials in the Tax Service, but overall responsibility will remain with the Tax administrator. The Tax Administrator has authority (with the approval of the Executive Power) to organise and reorganise the Tax Service in the most efficient manner. We recommend a functional organisation rather than separating administrative tasks by particular tax or type of taxpayer...

Emphasis must be placed on building and maintaining a blue-ribbon tax administration that will be honest, efficient, fair, and career oriented, and on education –not only education of the tax officers and employees but of the public at large³⁷. A change in the attitude of the public must be brought about: they will pay their taxes because they think that on the whole that the system is fair.

We have heard too much about the compromise between equity and efficiency, but experience has shown sometimes that the much-feared conflict between efficiency and equity could be exaggerated³⁸.

Taxing authorities should proceed in a steady, principled manner to make whatever changes are necessary to existing international tax norms. Starting with modest changes to accommodate the rise of electronic commerce and making more significant changes in the future. Systematic monitoring and assessment of country performance, combining objective oversight and peer review, is a core function of the OECD³⁹.

Regarding to the manner in which government should levy taxes, we must outline namely, equity, efficiency (measured in terms of neutrality and cost of compliance and administration associated with a tax) and simplicity (regarding the obligations a tax imposes on the administration and taxpayers). The present international order is unprincipled, complex, lacks consistency, cannot promote efficiency and is particularly inequitable towards low rate taxpayers. Perhaps this is not surprising taking into account the arbitrary manner in which the international order developed⁴⁰.

To assist in reducing compliance costs, tax departments must focus on the service they can provide to assist taxpayers in meeting their legal tax obligations, viewing taxpayers first as clients, rather than as potential objects of enforcement actions. A modern tax administration needs to be integrated with private information systems, the other information systems of other public programs and the administrations of other related tax systems. But no computer system will either collect taxes or administer customs effectively if the organisation is not committed to these objectives. Tax administrators have to take control of the computer system they need and to use them as an integrated part of the administrative process⁴¹.

The introduction of computerised information systems generally means restructuring administrative systems. Anyway, a strategy for administrative reform which is much broader and more

³⁷ HUSSEY, W.e.a.: *Basic World Tax Code and Commentary*, Tax Analysts, Arlington, 1995, p.29.

³⁸ FORTIN, P.: 'Less taxes and better taxes: principles for tax cuts and tax reform', *Canadian Tax Journal*, vol. 48, n.° 1, 2000, p. 92.

³⁹ OECD : *Sustainable Development: OECD Policy Approaches for the 21st Century*, OECD, Paris, 1997, p. 8. MILLER, R. e.a.: '21st Century Technologies: an overview of the issues', in *OECD : 21st Century Technologies, The Promises and Perils of dynamic future*, OECD, Paris, 1998.

⁴⁰ HARRIS, P. A.: *Corporate/Shareholder Income Taxation and Allocating Taxing Rights between Countries*, IBFD, Amsterdam, 1996, pp. 34 and 491.

⁴¹ The essential ingredients for the successful implementation of modern information technologies into the public sector have been summarised by Peterson, as: Trust, Need, Help and Urgency. First, the decision-maker must trust the proposed solution and those who are going to implement it. Second, the decision-makers must recognise the need for an improvement in the information system. Third, the information technology reforms must provide a solution, which is helpful to the organisation. Finally, the decision-makers must feel that it is urgent that an improvement be made. JENKINS, G.P.: *Information Technology and Innovation in Tax Administration*, Kluwer Law International, London - The Hague - Boston, 1996, p. 12.

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sophisticated than one which simply implements information technology. The choice of this strategy will be critically dependent on the base of knowledge and experience the department has got, the management available to direct the process, and so on.

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