Limitations of transparency and protection of the tax payer

Tax secrecy

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Overview

1. Some comparative remarks
2. The Secrecy Matrix
3. Assessment
Comparative remarks (I)

- Persons covered
  - Two approaches:
    - Enumarative definition (e.g. Austria)
    - All-encompassing definition (e.g. Belgium)
Comparative remarks (II)

• What information is protected/published?
  ➢ Personal information obtained/received in the exercise of a public duty
  ➢ Some exceptions from the tax secrecy seem necessary:
    o exchange between authorities (incl. courts)
    o information about tax exempt entities,
    o higher public interests,
    o publicly available information,
    o to the spouse,
    o consent of the tax payer,
    o tax authority can publish information in order to challenge facts published by the tax payer,
    o rather different approaches regarding the publication of taxable income and wealth (see next slide)
Comparative remarks (III)

<table>
<thead>
<tr>
<th>Full disclosure*</th>
<th>Tax payer list or public access to taxpayer information</th>
<th>List of defaulters / specific list is published</th>
<th>Tax payer information remains secret**</th>
</tr>
</thead>
<tbody>
<tr>
<td>n/a</td>
<td>Finland</td>
<td>Spain</td>
<td>Germany</td>
</tr>
<tr>
<td></td>
<td>Sweden</td>
<td>Ireland</td>
<td>Belgium</td>
</tr>
<tr>
<td></td>
<td>Some Swiss cantons</td>
<td>Poland</td>
<td>Greece</td>
</tr>
</tbody>
</table>

* I.e. all tax related data is publicly available (e.g. tax return, correspondence between the authorities and the taxpayer, etc.)

** Some states might, however, know a broad variety of exceptions (see previous slide)
The Secrecy Matrix

Pros

Private interests
- Right to privacy
- Protection from criminal activities

Public interests
- Assessment through full disclosure

Cons

- Policy assessment
- Achieve equal treatment
- Freedom of expression
- Assessment through public pressure

Achieve equal treatment

Policy assessment

Protection from criminal activities

Right to privacy
Assessment (I)

How should we balance these arguments?

- Legal guidance can be derived from decisions of the ECHR (and other courts)
  - See e.g. Satakunnan Markkinaporssi Oy and ano. v. Finland (app no 931/13) or Othymia Investments BV v Netherlands (app no 75292/10)
Assessment (II)

- Impacted by cultural differences (see the Swedish example)
- Different justifications between tax payers (e.g. publicly traded companies and SMEs)
- The applicable secrecy standard might change over time (see the example of the United States in the beginning of 20th century)
- Cost/benefit analysis might be different in each individual case
- Anonymous tax payer data must be published or at least open for research – society has to understand the impact of a tax policies – no disadvantages