



Fighting Transnational Crimes and Protection of Human Rights Regarding Taxation Matters

Pasquale PISTONE

Full Professor of Tax Law, Department of
Economic and Statistical Sciences, University of Salerno

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Translation by Armando Antonio Ferrara and Elio Annunziata – EUWEB Secretariat



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1. Introduction

- Fundamental rights of the taxpayer as human rights
- Limited development of customary international law regarding tax matters
- Applicability of human rights conventions to tax law
- Tripartite classification of rights: formal, material and related to sanctions
- International tax conventions and non-state actors in international law
- Application of general principles of law to taxation matters

2. Collective interests and individual rights in tax matters

- Form and substance of tax sovereignty in the era of international tax coordination
- Tax crimes (e.g. tax fraud) and protection of collective interests in taxation matters at both national and supranational level
- Non-tax crimes (e.g. money laundering) and interaction with taxation matters (Italy: Art. 648-ter – confiscation and interpretation by Cass., II sez. pen. 2.3.2022, n. 7503)
- Need for a balance between the protection of collective interests and protection of the fundamental rights of taxpayers
- Fiscal interest no longer justifies compression of the fundamental rights of taxpayers and other private parties (Kokott-Pistone 2022)
- Application of the general principles of law recognised by civilized nations to taxation matters:
 1. Rule of Law
 2. Equity and Fairness

3. Critical issues for the protection of human rights in the event of tax offences

- Article 25 DAC - Sanctions must be "*effective, proportionate and dissuasive*". See CJEU, Greek Maize (C-68/88) and Taricco I (C-105/14)
- Proportionality and effects of further negative tax consequences equivalent to sanctions (*sanzioni improprie*) – CJEU Finanzamt M (C-596/21)
- *Bona fide* protection and tax fraud: "*the person knew or should have reasonably known*"
- Criminal sanctions, administrative sanctions, surcharges and default interests: an uncertain framework for the prohibition of *bis in idem* in taxation matters
- Application of the principle of proportionality to taxation
- Tax crimes include not-harm related omissive offences
- Relevance of the subjective element also in tax crimes

4. The EU Charter of Fundamental Rights and tax offences

- Declaratory value of EU Charter and relevance of the General Principles of EU Law
- Osmosis with the European Convention on Human Rights
- Peculiarity of taxation matters: intermittent link to EU Law
- Interpretation of the concept of “serious penalties imposed” and lack of EU law protection
- Tripartite classification of fundamental rights in taxation matters and repercussions on different categories of violations
- The uncertain position of national case law on the right to adversarial procedure (*audi et alteram partem*) in administrative tax procedures
- Right to an effective judicial remedy

5. Conclusions

- The protection of collective interests in taxation matters cannot undermine the effective protection of taxpayers' fundamental rights
- The Rule of Law requires respect for the fundamental principles of legal protection in respect of criminal offences even in taxation matters
- As non-State actor of international law the taxpayer has the right to effective protection of his rights even if he commits criminal offences
- The EU levels of protection of taxpayers' fundamental rights do not always apply to taxation matters

Thanks for your attention!

Email: ppistone@unisa.it; p.pistone@ibfd.org; pasquale.pistone@wu.ac.at