



ECONOMIC CHALLENGES OF THE EUROPEAN UNION. HOW WILL THE NEW FISCAL INTEGRATION AFFECT TO THE AUTONOMOUS REGIONS?

REFLECTIONS ON A FUTURE CATALAN TAX AGENCY

Heribert Padrol
2012



The purpose of this document is to do an exercise about how could be set the action of the Catalan Tax Agency if, in the future, it would assume the management of all taxes paid in Catalonia.

So, let's consider which might be the guidelines of the Catalan Agency on the assumption that the goal of the so-called fiscal pact, or other political scenario incorporates a full Catalan tax authority, met with success.

Should be remembered in this introduction that what is intended by the fiscal pact is the achievement of Catalonia's full powers in management on regulations and taxes generated within its territory.

It is not discussed in this paper the rule capacity or its limits that this should respect if achieved (taxes harmonized at European level, state aid regime as a limitation on legislative power, etc.).

As mentioned at the beginning of the document, the analysis focuses on the management of taxes paid in this country. We must try to determine what is done right by the Tax Agency of the State and, therefore, it shouldn't be changed, as well as highlighting which areas of improvement are and in which areas it should innovate or develop over the current model used by the Spanish State.

To perform this analysis, we take into consideration the different areas where the performance of the Tax Agency is projected. These are:

- The struggle against tax fraud.
- The achievement of an adequate level of legal certainty taxes for citizens and businesses.
- Assistance at taxpayer in the voluntary fulfillment of their tax obligations and, in general, in relation to the different steps that individuals and businesses must meet towards the tax authorities.

We must ask whether the assumption by the Catalan Tax Agency of the management of all taxes paid in Catalonia could improve the efficiency of the public function in any of the three areas mentioned.

And we have to ask whether the current level of services given by the state could be affected adversely.

What are the impacts of the change that could lead the fiscal pact to the development of public tax in this country?

Regarding the struggle against fiscal fraud

The essential objective of the tax authorities of any democratic State is to ensure voluntary fulfillment with tax obligations, focusing its efforts on the discovery and regulation of tax violations, so, to combat tax evasion and the black economy.

This objective is fundamental in any democratic society and socially cohesive, has taken even more importance, if possible, in the current economic crisis and tensions in some countries to balance and strengthen their public accounts. Also, please note that high levels of black economy means a serious obstacle when necessary to maintain and increase social cohesion.

In a study by professors Lars P. Feld and Friedrich Schneider on the black economy in 21 countries of the OECD, launched in January 2010, it was estimated that in 2007 the black economy in Spain represented 19.3% of GDP, far from other economies such as the U.S. (7.2%), Switzerland (8.2%) and Austria (9.4%). The black economy in Germany was, according to this study, 14.6% of GDP, significantly lower, than the shadow economy in Spain.

In a recent European Commission communication of 27 June 2012, that proposes a joint state-wide, European and international series of measures aimed at preventing and combating fraud and tax evasion, communication that will see again later on, it also refers to estimates of shadow economy in the European Union. The arithmetic average in 2011 stood at 19.2% of GDP, and Spain remains in this average, not far from Italy (19.4%) but far from states such as Sweden (14.7%), Denmark (13.7%), Finland (13.7%), Germany (13.5%) and France (11%); are located at the ends Bulgaria (32.3%) and Austria (7.9%).

This information shows that there is a significant room for improvement in the struggle against the black economy. Also keep in mind, however, that it is not possible to achieve the complete elimination of this problem and that to achieve positive results in this task is not easy and requires a combination of measures considered and well targeted.

However, while admitting the difficulty of this task, it is clear that there are several research projects to improve and bring it to the level of other states around us.

To make such an approach to this possible areas for



improvement, it can be interesting to reflect upon. In this regard, remember that the Tax State Agency was a pioneer in the application of computing technology in the management of taxes, both in terms of assisting taxpayers and fighting tax fraud. But this historical success, that must be maintained, also has conditioned its performance in subsequent years.

Thus, the Tax State Agency is very efficient, although with some excesses that we will discuss later, in control taxation of individuals and businesses that are within the “system” and in relation to the data inside the system. The crossings of computer data, coupled with the very important and extensive system of information obligations by individuals who prevails in Spain, makes that the control of people claiming or receiving income subject to withholding or some type of information required by a third party, is very efficient.

But the problem is what remains outside the system, and it will be necessary to see future estimations of the degree of black economy in the State to see if the current crisis environment makes that unfortunately it may up end increasing.

Therefore, to reduce this high level of black economy, we must work in a different way, while carrying out the control of the people and companies that are in the system and in relation to the data stating.

However, it is needed to extend the lines of research. In this regard, it is interesting to note that some states around us have drawn up lists of tax practices that are considered prohibited and are made public. And some of these states (UK, Netherlands, Canada, among others) have gone further, and this list of prohibited practices has resulted in what is known as stratification of taxpayers.

This administrative practice is to provide the opportunity for certain required taxpayers (mainly companies) to agree with the government's commitment not to engage in practices considered (with detailed explanation) as prohibited. In return, companies that accept this commitment come into a group that would be subject to “soft” tax checks. This, in principle, would leave free resources to increase the struggle against the black economy. Obviously, the breach of this undertaking by companies would result in serious disciplinary consequences.

What you can also find with this work of stratification is that “good” taxpayers collaborated in a directly or indirectly way in the collective goal of combating the black economy.

In this regard, companies that accept this commitment of not to engage in prohibited practices may be also useful partner for the Tax Administration, sharing with this Agency the knowledge of pretended businesses agents using the illegal tax savings to maximize their operating margins.

It is clear that, many times, companies that are in the system and who pay their taxes are those that can know, for example, which agents or alleged agents working in their sectors systematically are failing to pay, for example, value added taxes and certain excise taxes.

It is needed to remember that formal companies are directly affected by these fraudulent practices since suffering unfair competition generated by these.

We must insist that such reflection is not a defense of “betrayal”, just like that, as a means to combat tax evasion.

What is suggested as a reflection is an evolution in the sense that in some states around us is occurring; evolution is the line that who expressly accept some relational rules with the Administration (absolute respect to the list of prohibited practices) will not require as much attention from tax authorities, resulting in release of funds by the government, and may occasionally collaborate on identifying companies that regularly practice tax evasion and, therefore, are negatively impacting the field of public revenue, social cohesion and the need for fair competition in the production and distribution of goods and services.

It should not infer from this discussion that the State Tax Agency does not develop merit actions in relation to the discovery of non-compliance and the tax adjustment; this would be a simplistic view not adjusted to reality.

In this regard, it is noteworthy that in recent years has been greatly intensified cooperation between tax authorities of different states of the European Union, mainly in relation to the fight against the so-called “Carousel Fraud” in the field of value added tax. This fraud tries to exploit that the different properties that can be the subject of Intra-Community delivery, go out of the country of origin without the corresponding Value Added Tax (VAT) in order to be paid in the state of destination.

The fraud is the fact that the goods are only leaving the territory formally -in our case, from Spain-, but in truth they are sold in the same Spain, with a reduction in price caused by the lack of income VAT. It is a type of fraud in which the collaboration between different tax administrations of the European Union is clear needed.

The participation of the State Tax Agency in such projects has been broadly positive and appropriate.

But the role of the Catalan Tax Agency can be as efficient as the State. It is needed to have the appropriate channels of collaboration with the rest of the State and other tax authorities, and there is no reason to believe that this necessary collaboration would finish or would be less intense if the work developed, in our country, by the Catalan Tax Agency and not the Spanish.

In this area may be interesting to comment the recent communication by the European Commission of June 27th which, as noted above, proposes a joint state-wide, European and international package of measures aimed at preventing and combating fraud and tax evasion.

This communication is part of the mandate of the ECOFIN March 2012, who requested to the Commission the development of measures to combat fraud and tax evasion that could contribute to the formulation of more robust legal tax in terms of tax compliance and tax collection levels, as indispensable accompaniment of fiscal consolidation measures, necessary and inevitable in current time.

Somehow, the Commission and the ECOFIN are taking a more active role with regard to income tax, expanding, therefore, the work in the area of spending (austerity measures and budget balance).

In this context, the ECOFIN and now the Commission consider appropriate to articulate a "coordinated approach" on the implementation of new measures against fraud and tax evasion, given the existing levels of black economy in the EU and internationally.

The main ideas of these documents by the Commission are:

1. In a very short time will be proposed concrete steps on anti-fraud policy coordination to be taken at national, international and community level, although the generally action plan must be adopted in December 2012.
2. The measures will affect both people with large fortunes and companies working in the country and across borders.
3. Measures will be articulated at both regulations (national, international and European Union) and through new administrative practices (international tax cooperation, Euro Treasury regarding to direct taxes) and soft-law (expanding the scope of the 1997 Code of Conduct for Business Taxation, who has managed the dismantling of more than a

hundred measures and tax practices classified as harmful).

4. The measures will affect tax fraud, tax evasion and also, should be noted, the non double taxation (international tax arbitrage).
5. The measures will be screened on purely internal operations, European Community and international, with particular attention to relations with Switzerland, Liechtenstein, San Marino, Monaco and Andorra.

Some specific measures on which the Commission is currently working are:

- Amendment of Savings Directive and agreements on equivalent measures with third countries (Switzerland, etc.), in order to extend the automatic exchange of information and eliminate the "gaps" that currently exist in relation to its operating level (structured products, insurance, lodging entities that obscure the beneficial owner).
- Strengthening of administrative cooperation in the European Union: maximizing automatic exchanges, more access to databases of different State taxes Euro Treasury working in the field of direct and not only indirect taxation. In particular, it is referred to an "Early Warning System" in the field of direct taxation, in the sense that tax authorities periodically would exchange aggressive or suspicious tax practices who have been detected. This is what is known as Sharing the Black-box.
- Coordination of international tax ID.
 - Redefining the scope of the 19997 Code of conduct on business taxation, expanding its scope and its projection in third countries (Switzerland).
 - Measures to avoid the non double taxation and the fiscal aggressive planning in the way of the recent proposals of the OECD. In particular, it is proposed to create mechanisms that force the tax authorities to communicate any tax advantage not clearly deduced from the laws that regulate it and that makes difficulty to fit the purpose of the regulations. It may be an interesting approach to fraud prevention.
 - Establishment of a lowest common with regard to penalties and sanctions for the tax or tax penalty.
 - Coordinated action at EU level concerning tax havens.



- Coordination to improve the systems of tracking the flow of capital to companies and financial centers located outside the European Union (Singapore, Hong Kong, Cayman Islands, for example).

It seems, therefore, that the Commission did not want to waste time to gain ground in the tax area via the joint of coordination measures in the area of fraud and tax evasion (including non double taxation and aggressive tax planning), with all that this entails from the perspective of the States (additional limitations on their tax power and improving of their fiscal oversight policies) and taxpayers (more fiscal control on domestic and cross-border operations, and new limits on tax planning).

And nothing prevents or suggests that a Catalan Tax Agency would be less efficient, with full management responsibilities for taxes paid in Catalonia, than the State Agency under this coordinated action plan that will promote and implement in the coming years.

An appropriate collaboration with the rest of the tax authorities of the State, as well as those of other States, should allow the discovery and tax regulation breaches did not lose effectiveness in the areas where the degree of efficiency is high.

In this regard, it would be convenient that between the State Tax Authority and the Catalan Tax Authority, would be a proper connection of computer databases to prevent that due to lack of information, it would lose effective the planning inspection activities and, generally, the tax control.

In any case, despite the work of outstanding the collaboration of the State Agency carried out within the framework of the struggle in the field of EU against the carousel fraud, it should be remembered that the room for improvement in reducing the Black economy is still very high in Spain, so, the full assumption by the Catalan civil service tax in our country is an opportunity to improve the efficiency in the area of the struggle against tax fraud, without losing functionality in the areas where the evaluation of the work done is positive.

In the area of improving the legal taxation of individuals and businesses

We often hear comments believing that the management of state taxes by the Spanish Tax Agency is a guarantee of

legal certainty and uniformity in the application of taxes throughout Spain (with excluding the regional Basque and Navarre leasehold).

To assess whether this statement is accurate and well founded, it should be a full reflection.

As mentioned earlier, the primary objective of any democratic State Tax Authorities is to ensure voluntary compliance with tax obligations, and direct their efforts to discover and rectify breaches tax.

Despite the evidence of what has just been said, it is also broad consensus that exists on the need for this task is done scrupulously respecting the principle of legal security of individuals, whether citizens or companies. Raise the banner of the fight against tax fraud should not be allowed to generate situations of uncertainty for individuals.

A situation of legal uncertainty is obviously negative from the point of view of the balance of rights and responsibilities between government and citizens in a democratic society, but also the legal uncertainty in taxation may affect the appeal of a particular country or State may have for international investments. Taking into consideration the strong competition between member states of the European Union to attract investment to their territories, the lack of legal certainty becomes a negative factor for the competitiveness of a country.

In this sense, it is difficult to objectively measure the degree of legal certainty in taxation of a State, but in spite of this difficulty, it is clear that many people, organizations and associations are manifested in recent years in a very negative way with respect to the degree of respect to the Tax State gives to the principle of legal certainty.

Regardless of these opinions stated, there are a number of objective facts that make clear that the respect to this principle is far from optimal. In this regard:

It is not unusual that the General Management of Taxation (DGT) of Ministry of Finance, management center who has given the ability to interpret tax regulations with binding (DGT interprets and the Tax Agency implements), changes of opinion about one aspect.

The problem, when it occurs, is the fact that it is common that the Tax Agency applies the new criteria retroactively, so there is a breach of the principle of legitimate expectations of citizens in government, a principle recognized and firmly settled in the jurisprudence of the Supreme Court.

It is true that if there is a disagreement between individuals and the Tax Administration, the first always have the possibility to appeal against the decision affecting them before the courts.

It should be remembered, however, that to file an appeal against a settlement of Treasury must pay or present a guarantee (in general) to avoid running the heritage from who has appealed.

And also remember that a dispute of this nature can have a duration of more than ten years.

- It is not unusual that the Tax Agency breaks the binding resolutions – They are binding to the Agency, precisely- of the General Management of Taxation.
- The Tax Agency does not consider itself bound by its own previous statements, this is absolutely normal.

In addition to the situations described, there is an objective fact that is a real obstacle to the legal tax. We refer to the system that provides Spanish law to obtain a declaration from the Administration in relation to a particular situation: taxation of business operation or of an investment made by a citizen, for example.

This system consists of the opportunity to submit a query to the General Management of Taxation, and the law stipulates that the Administration must respond within a maximum of six months. The answers to questions are (Article 89 of the General Tax Law) binding to the same tax authorities.

The problem is that the period of six months, is often not respected, and sometimes there are questions that are answered within one year, or later, or never.

However, the period that individuals or businesses have to make decisions about, for example, how pays a corporate merger, are not so long, and the situation generated is that, although willing to know the opinion of the Administration on a particular tax effect, you can not do it in good time. This is worrisome and has given rise to a sense of insecurity.

To avoid this situation persists, it would be necessary that the future Catalan Tax Agency evolved over than what is usual today in the State Agency; evolution in the sense of targeting efforts to discover breaches tax rather than to consider interpretive discussions with individuals and companies already declaring their income and assets, applying and respecting the principle of legitimate expectations of citizens in government.

Obviously, this development should not be a retreat in the struggle not only against tax fraud, but also in relation to the regulation and limitation of arbitration practices and tax evasion.

To give force to this necessary evolution, it can be useful to introduce in the legislation a state law similar to Article 16.4 of the General Tax Law 13/2000, in the Community of Navarra, which provides that “in case of doubt in the interpretation of the tax law will be applied to the most favorable criterion to the required taxpayer. “

It is also recommended to improve the technique in taxation legislation and try to avoid indeterminate legal concepts.

It would also be positive, without abandoning the system of consultations, that the future Catalan Tax Agency published previously and in a stable way a relation of practices and behaviors considered as violations of tax rules. This relation, which should be necessarily very broad and detailed, should clarify the position and the principles applied in the context of future tax checks and inspections.

The fiscal pact may be, therefore, an opportunity to make a leap forward to make legal certainty and avoid tax disputes, legal certainty that should also be linked to the stability of the tax law, excluding drastic changes non predictable without large transitory provisions and the establishment of extensive periods of *vacatio legis*, reflected and publicly debated.

A future Catalan Tax Agency that manages all taxes paid in Catalonia is not, therefore, a threat to the principle of legal certainty in the relations of citizens and businesses with the tax authorities. In fact, as mentioned before, is an opportunity to overcome the difficult situation currently happening in this field by the State Agency.

And it must be stressed that improving the current situation is necessary both from a strictly democratic point of view (the general principle of legal certainty) and to strengthen the competitiveness of our country.

Finally, just remember that this aggressive interpretation by the State agency has not helped to restore the high level of underground economy in Spain.

The struggle against fraud and tax evasion should be strong, but you cannot reduce the overall level of legal certainty. Both objectives are fundamental and necessarily compatible in a democratic society.

In relation to the assistance to the taxpayer

In this area, it must be said that currently there is a great collaboration between the Central Administration and the Generalitat, shown, for example, in the joint effort done when the Tax returns campaigns.

There is no doubt that the level of quality of the service that the State Tax agency has reached in this area is very high and valued by citizens.

This is an area where the task of a future Catalan Tax Agency should change less, in fact, the assistance to the taxpayer that is given nowadays is not necessarily be damaged in a fiscal pact stage.

Conclusion

The management of the taxes generated in our country by the Government of Catalonia can be an opportunity to set up a civil administration to develop the most appropriate tax function with respect for the principle of legal certainty and legitimate expectations in the administration, so that improved efficiency in the struggle against fraud and tax evasion and maintain an appropriate level of assistance to taxpayers in voluntary compliance with its obligations.