2nd Joint Seminar
Tax Havens in the Age of Global Standards
a comparative analysis between Germany and Italy

Scuola di Polizia Tributaria
Guardia di Finanza

THE EXCHANGE OF INFORMATION

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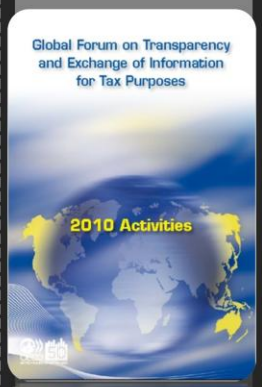
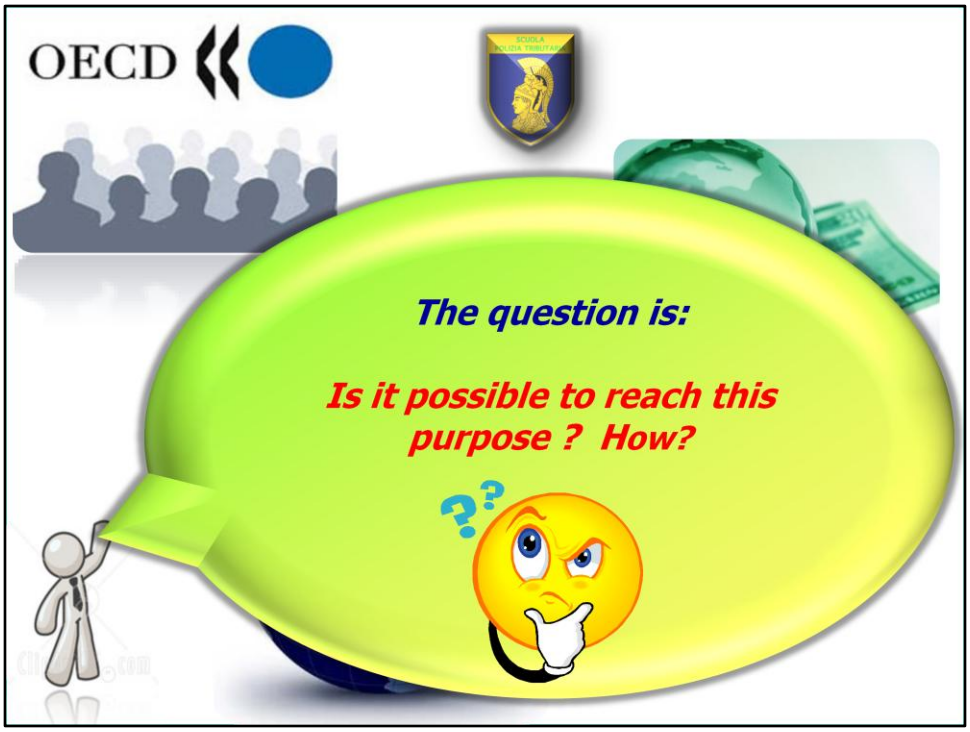


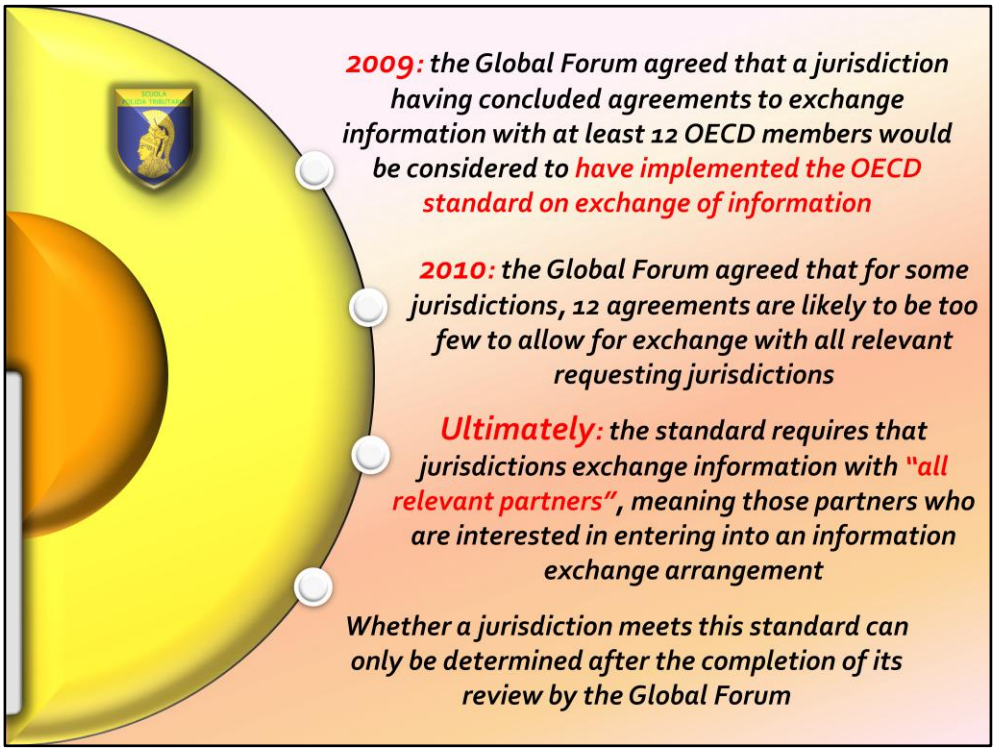
The Global Forum

Last year Mr. Mike Rawstron - Chair of the Global Forum declared that *THE ERA OF BANK SECRECY IS OVER AND TAX FRAUD AND EVASION HAVE NO PLACE IN TODAY'S WORLD*.

This is not only a question of securing government revenues but of ensuring the fairness of tax systems and that taxpayers pay the right amount of tax where tax is due. In our global environment, international cooperation is paramount to achieving this goal.

Reflecting this, the Global Forum was restructured to make it a more effective and open body and it has become, with more than 90 members, the largest international organization dealing with tax transparency. Since its Mexico meeting in September 2009, the Global Forum has responded to the challenges arising from this new international environment, in particular the G20 calls for a rapid and effective implementation of the standards of transparency and exchange of information.


OECD
The question is:
Is it possible to reach this purpose ? How?



In 2009, as a part of a staged process, the Global Forum agreed that a jurisdiction having concluded agreements (or that has in place unilateral mechanism) to exchange information with at least 12 OECD members would be considered to have substantially implemented the OECD standard on exchange of information.
In 2010, the Global Forum agreed in its *Terms of reference* that for some jurisdictions, 12 agreements are likely to be too few to allow for exchange with all relevant requesting jurisdictions.
Ultimately, the standard requires that jurisdictions exchange information with "all relevant partners", meaning those partners who are interested in entering into an information exchange arrangement. Whether a jurisdiction meets this standard can only be determined after the completion of its review by the Global Forum.

1. Existence of mechanisms for exchange of information upon request.
2. Exchange of information for purposes of domestic tax law in both criminal and civil matters.
3. No restrictions of information exchange caused by application of dual criminality principle or domestic tax interest requirement.
4. Respect for safeguards and limitations.
5. Strict confidentiality rules for information exchanged.
6. Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request.

Model Agreement on Exchange of Information on Tax Matters (TIEA)


Purpose

The purpose of the Model Agreement on Exchange of Information on Tax Matters (the Model TIEA) is to promote international co-operation in tax matters through exchange of information.

It was developed by the OECD Global Forum Working Group on Effective Exchange of Information.

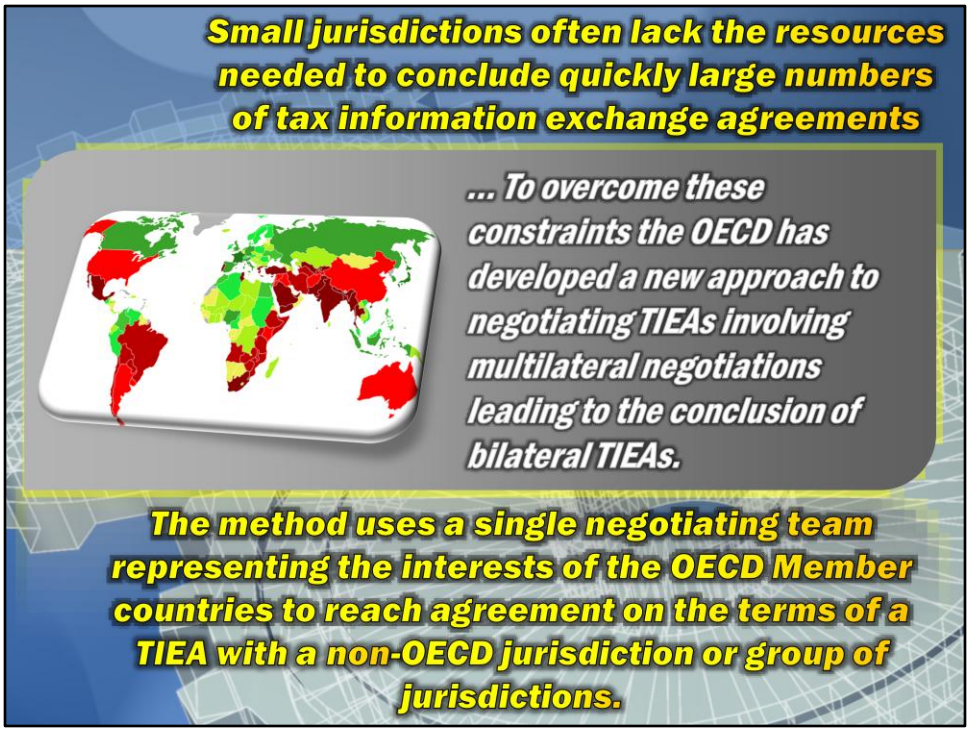
This Forum includes representatives from OECD member countries as well as delegates from many tax havens and secrecy jurisdictions (i.e. Aruba, Bermuda, Bahrain, Cayman Islands, Cyprus, Isle of Man, Malta, Mauritius, the Netherlands Antilles, the Seychelles and San Marino).

TIEAs are intended for use with countries for which a Double Taxation Agreement (DTA) is not considered appropriate, mainly because they have no, or low, taxes on income or profits. While TIEAs are much narrower in scope than DTAs, they are more detailed than DTAs on the subject of information exchange.

As a stand-alone agreement, the Model TIEA contains, over about 20-30 pages, the legal framework for the exchange of information, the rules and the procedures for how such information exchange is to occur. For example, the Model TIEA spells out clearly the conditions that a country must satisfy when requesting information. In addition, the Model TIEA contains provisions for tax examinations abroad, rules dealing with costs and has definitional provisions that are particular to the exchange of information context.

Under Article 26 of the Model Tax Convention many of these issues are dealt with in the commentary to that article. To date the Model TIEA has been the basis for more than 300 tax information exchange agreements and dozens more are under negotiation.

The pilot projects



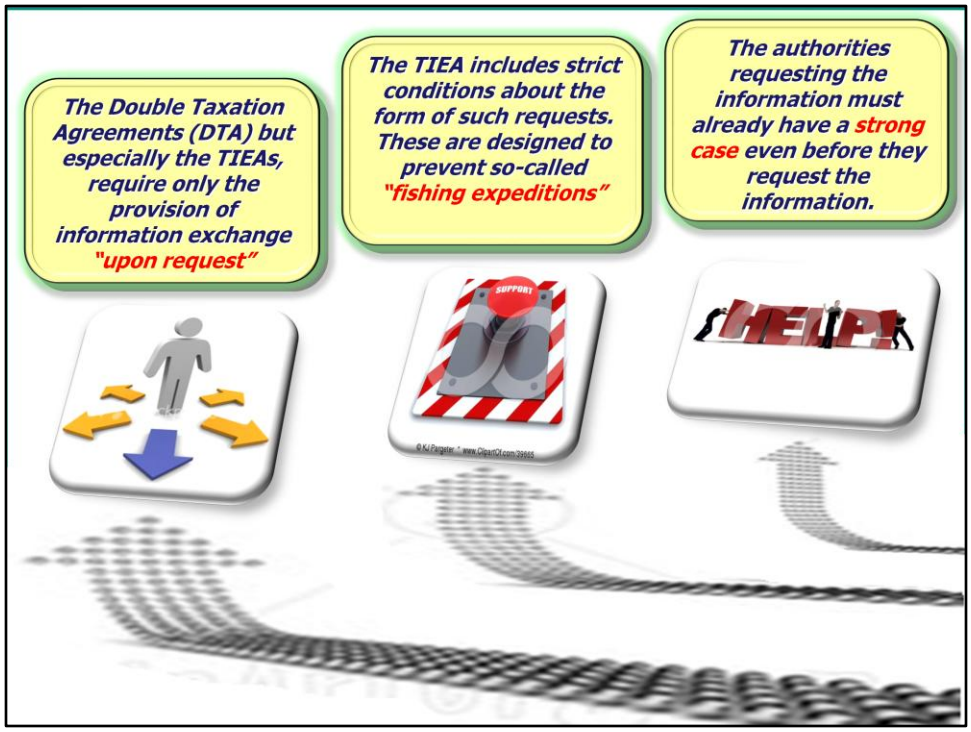
Small jurisdictions often lack the resources needed to conclude quickly large numbers of tax information exchange agreements (TIEAs) . Even larger jurisdictions may be unable to devote the resources necessary to negotiate TIEAs with small and geographically distant partners. Developing countries face similar resource constraints. To overcome these constraints the OECD has developed a new approach to negotiating TIEAs involving multilateral negotiations leading to the conclusion of bilateral TIEAs.

Modelled on a similar approach developed by the Nordic economies, the method uses a single negotiating team representing the interests of the OECD Member countries to reach agreement on the terms of a TIEA with a non-OECD jurisdiction or group of jurisdictions. Once agreed, each of the OECD Member countries signs a separate bilateral agreement with the non-OECD jurisdiction.

Many non-OECD jurisdictions expressed interest in the initiative and it was launched in 2009 with the creation of three pilot projects:

- the Southern Caribbean Project, coordinated by the Netherlands;
- the Northern Caribbean Project, coordinated by the United Kingdom;
- the Pacific Project, coordinated by the OECD Secretariat.

No automatic information exchange ...



Both of the bilateral treaty provisions, the Double Taxation Agreements (DTA) but especially the TIEAs, require only the provision of information exchange "upon request".

The TIEA includes strict conditions about the form of such requests. These are designed to prevent so-called "fishing expeditions". So a request does not mean a brief email containing the name and identifying information of the individual concerned. Instead, a detailed case must be made, with the criteria set out in a lengthy legal document.

In effect, this means that the authorities requesting the information must already have a strong case even before they request the information. So it is not possible to follow up a suspicion without already having significant evidence.

This sets the bar very high indeed for tax authorities wanting to make a request. The legal technicalities provide ample opportunities to hinder and block requests for information. Well-resourced law and accountancy firms proliferate in secrecy jurisdictions, ready to take full advantage of every legal technicality.

They can also use their good connections with the local officials, since there is little incentive for secrecy jurisdictions to stick properly will to their obligations under TIEAs. The evidence so far is that TIEAs have produced little more than a trickle of information. For instance, the TIEA between the US and Jersey – two of the biggest players in the offshore system - was used only four times in 2008.

Conducting simultaneous tax examinations (STE)

When to consider a "STE"

Simultaneous tax examinations can be used to determine a taxpayer's correct liability and to facilitate an exchange of information in several cases ...

Simultaneous tax examinations will be conducted separately within the framework of national law and practice by tax administration officials of each country using the available exchange of information provisions.

A simultaneous tax examination is an arrangement by two or more countries to examine simultaneously and independently, each on its territory, the tax affairs of taxpayers (or a taxpayer) in which they have a common or related interest with a view to exchanging any relevant information which they so obtain.

When to consider a simultaneous tax examination.

Simultaneous tax examinations can be used to determine a taxpayer's correct liability and to facilitate an exchange of information in cases where, *inter alia*:

1. apparent tax avoidance techniques or patterns involving substance versus form transactions, controlled financing schemes, price manipulations, cost allocations or tax shelters are suspected;
2. unreported income, and tax evasion involving money laundering, kickbacks, bribes, illegal payments, etc. is suspected;
3. tax avoidance or evasion schemes involving low tax jurisdictions are suspected;
4. consumption tax risks (triangular delivery operations, reverse charges etc) are identified;
5. costs are shared or charged and profits are allocated between taxpayers in different taxing jurisdictions or more generally transfer pricing issues are involved;
6. multinational business practices, complex transactions, examination issues and non-compliance trends are identified that may be particular to an industry or group of industries;
7. profit allocation methods in special fields such as global trading and new financial instruments are used.

Simultaneous tax examinations will be conducted separately within the framework of national law and practice by tax administration officials of each country using the available exchange of information provisions.

The simultaneous tax examinations coordinator has overall management and co-ordination of the tax administration's simultaneous tax examination compliance program. For practical purposes and where possible, the simultaneous tax examinations coordinator should be properly authorized or delegated to exchange information as a competent authority.

Designated Representatives

Designated representatives have responsibility for all practical aspects of the simultaneous tax examination case being conducted,

Simultaneous Tax Examination Auditors ("Auditors")

Simultaneous tax examination auditors are responsible for conducting the simultaneous audit in accordance with the case plan developed by their team leader (i.e. their designated representative), including identifying, compiling and analyzing relevant information, interviewing taxpayers and their representatives, taking minutes of meetings and assisting with the preparation of the final report.

Computer Services Coordinator (Optional)

The computer services coordinator is responsible for planning and coordinating the computer aspects of the simultaneous tax examination. Appendix C of the *Guidelines for Inter-Nordic Simultaneous Audits* provides a full description of the functions of computer services coordinators and the Working Model for Computerized Auditing.


Italy: a short review


Italy is committed to the OECD standards of transparency and exchange of information ...
It has substantially implemented the OECD standard on exchange of information and ...
... has agreements with 86 countries that provide for exchange of information to the OECD standard

Exchanging Information

Italy is committed to the OECD standards of transparency and exchange of information and has substantially implemented the OECD standard on exchange of information.

Exchanging Information

Italy has agreements with 86 countries that provide for exchange of information to the OECD standard. In addition, Italy is able to exchange information in tax matters consistent with EU law. Italy has also ratified the European Convention on Mutual Assistance in Criminal Matters including the fiscal protocol, and is party to a number of bilateral legal assistance arrangements. Italy is also party to, and has ratified, the OECD Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.

Relationship between exchange of tax information and criminal tax proceedings.

Tax criminal rules are acknowledged to be an integral part of criminal law and not of tax law. Thus the tax criminal enforcement is assumed and probated with reference to the code of criminal procedure that doesn't accept arguing from analogy.

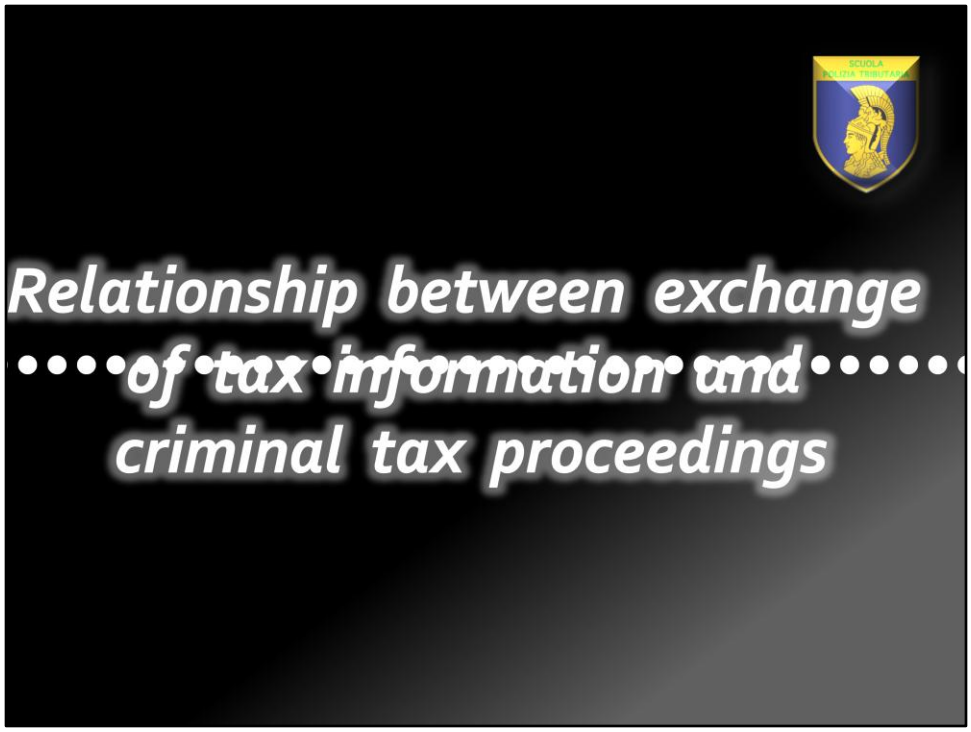
The criminal tax code is in principle a closed system. However in the area of criminal tax law, as well as in all the other areas of international law studies, globalization and the liberalization of economic activity have accelerated the process of globalization of tax rules.

It often happens that infringements of tax rules - incorrect behavior that may result in pecuniary administrative sanctions - are relevant for tax crime too when especially the amount evades is considerable.

As a result, when both civil and penal rules are to apply the first step is to analyze the relationships between the two systems (criminal procedure and tax law) in order to point out, if necessary, the main mutual exchanges of concepts.

These relationships arise interesting and complex questions from the theoretical point of view, but also in practice, especially in procedural flaws of acts. With regard to this, we should also consider that, criminal proceedings, as well as the administrative ones, watch over different interests and therefore, infringements of these two systems of rules do have different effects.

Moreover, if information is obtained during one of these two proceedings, then, it may be transferred into the other - under particular circumstances - depending on whether it deals with crimes such as money-laundering, organized crime, drug traffic, currency regulations violations. In actual fact, such information can be employed for tax assessing as well as for criminal liability. For instance, a transaction or a delivery may become the object of a tax penalty and at the same time of a laundering crime, and so be considered as a legal offence.


Relationship between exchange
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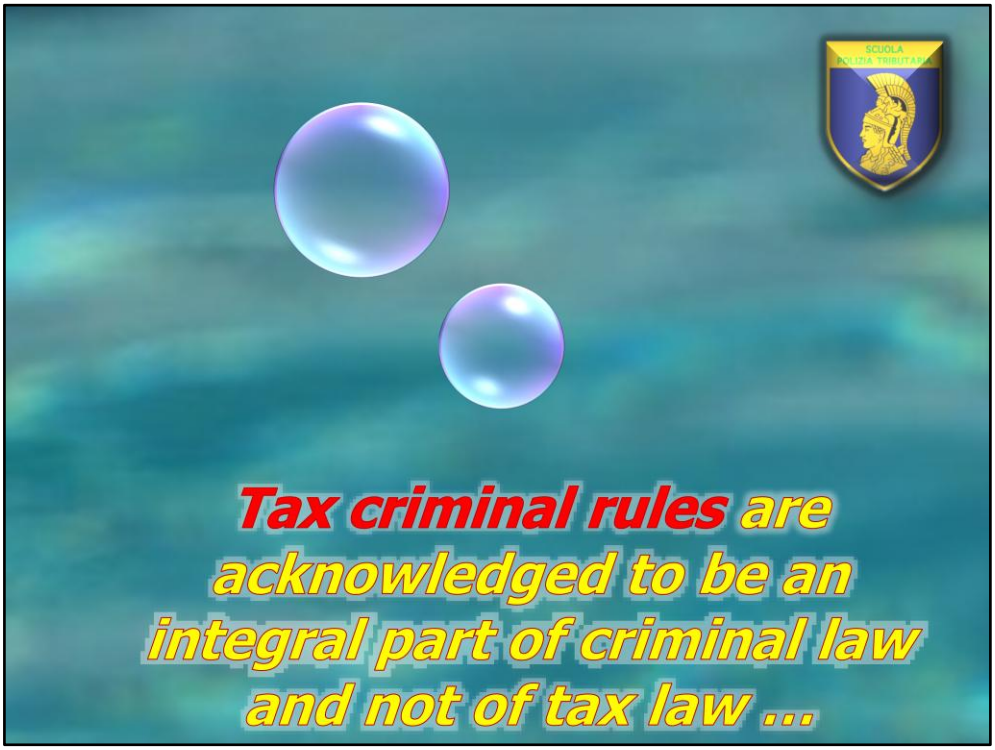

Finally, the exchange of tax information is expected getting more and more decisive in the prevention and in the fight against international economic organized crime when overall these are carry out with complaisance of low tax countries.

As a result, the relation between such provisions of law and international rules within constitutional law is today considered a relevant matter of study.


However in the area of criminal tax law, globalization of economic activity have accelerated the globalization of tax rules
Often, infringements of tax rules are relevant for tax crime too, especially when the amount is considerable
If information is obtained during one of these two proceedings, then, it may be transferred into the other
The exchange of tax information is expected to become decisive in the prevention and fight against international economic organized crime


Bank
Fiscale
Access to Bank Information

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To ask financial information concerning a taxable person is not limited anymore to specific cases

A direct access is limited to cases in which the requested information are not given in time or they are not correct

The banking secrecy in the field of taxation doesn't exist anymore


THE
FORMAL
GUARANTEES

For what concerns the use of bank or financial information as evidence in fiscal cases, in the Italian legal system the banking secrecy in the field of taxation doesn't exist anymore.

The possibility to ask to the bank financial information concerning a taxable person is not limited anymore to specific cases. The possibility of a direct access is limited to those cases in which the requested information are not given in time or if there is a suspicious that they are not completely correct.

For what concerns the formal guarantees, it is provided that:

1. the access has to be previously authorized by the Direzione Regionale delle Entrate (the regional Italian Inland Revenue) or the Guardia di Finanza Police Corp;
2. all activities have to be done at the presence of the bank manager;
3. all cautions to preserve the right of privacy have to be taken. The Bank must inform its client that a procedure concerning him or her has been started. Because of the silence of the law, it seems that the client doesn't have the right to take part in the procedure, but he/she is often invited to participate in it.

Mr. Mike Rawstron

Chair of the Global Forum

It is not only a question of securing government, but of ensuring the fairness of tax systems and that taxpayers pay the right amount of tax.

International cooperation is paramount to achieving this goal


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CASERM
Thanks for your kind attention