

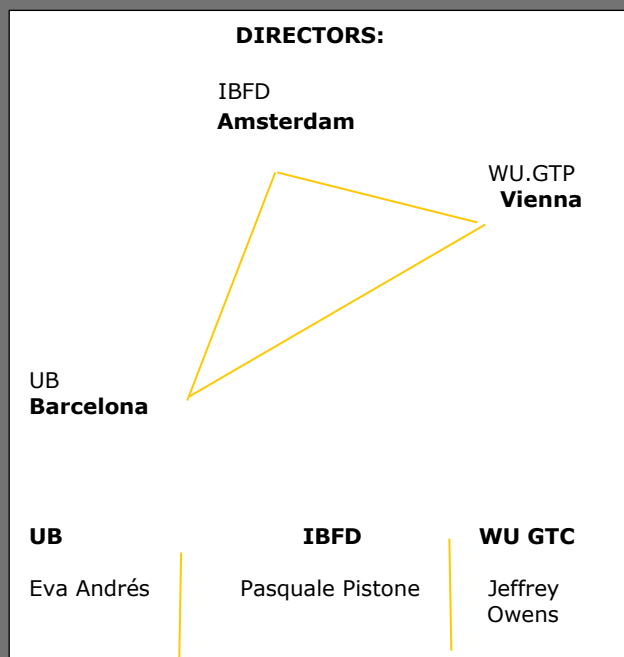
2017



# International Congress 2017

International Administrative Cooperation in  
tax matters and tax Governance

## CHRONICLE



**DER2015-68768-P.** International Administrative Co-Operation in Tax  
Matters and ADR of Transnational Tax Disputes and Models for an  
Institutional Architecture from a European Perspective “**MINISTERIO  
DE ECONOMÍA Y COMPETITIVIDAD DE ESPAÑA**” (EUDISCOOP)  
**2016-2020**

**EUDISCOOP PROJECT/DER2015-68768-P****PARTNERSHIP INSTITUTIONS:**

- **INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION:** P. Pistone (Academic Director)
- **WU GLOBAL TAX POLICY CENTER:** Jeffrey Owens (Director)
- **CONFÉDÉRATION FISCAL EUROPÉENNE (CFE):** Piergiorgio Valente (President)
- **ASOCIACIÓN ESPAÑOLA DE ASESORES FISCALES:** Jordi Baqués (Delegated by Catalonia)
- **TRANSJUS** Research Institute of UB. Dir. Julio Ponce

**PARTNERSHIP MEMBERS:**

- **Pasquale Pistone** (IBFD & Università Federico II. Napoli)
- **Piergiorgio Valente** (CFE & Link Campus University)
- **Philip Baker** (University of London)
- **Isabel Espejo** (†) [in memoriam] (Agencia Tributaria Española)
- **Rita de la Feria** (University of Leeds)
- **Joao Félix Pinto Nogueira** (IBFD)
- **Irma Mosquera** (IBFD & The Hague University of applied Sciences)
- **Stella Raventós** (Confédération Fiscal Européenne & AEDAF)
- **Peter Hongler** (University of Zurich/IBFD)
- **Andrés Sánchez Pedroche** (Universidad a distancia de Madrid)
- **Alessandro Turina** (University Bocconi of Milano)
- **Carlos María López Espadafor** (University of Jaen)
- **Diana Van Hout** (University of Tilburg/IBFD)
- **Santiago Ibañez Marsilla** (University of Valencia)
- **Pietro Mastelone** (Università degli Studi di Firenze)
- **Ricardo García** (IBFD)

**ASSOCIATED PROJECTS:**

- Flexible Multi-tier Dispute Resolution in International Tax Disputes. Directors: Jan de Goede and Diana Van Hout (IBFD)
- CertificaRSE project (Universidad Complutense de Madrid). Principal Investigator: Amparo Grau Ruiz
- International Project MCB 7053- Estado e Economia no Brasil (Mackency University). P.I.: Felipe Chiarello de Souza Pinto
- International Project FONDECYT 1140290. P.I.: Patricio Masbernat
- Transjus. Dir.: J. Ponce (UB)

**PRINCIPAL INVESTIGATOR:** Eva Andrés Aucejo



Barcelona, 26<sup>th</sup> January 2017  
 "Salón de grados". Faculty of Law. University of Barcelona  
 Avenida Diagonal 684, 08034 –Barcelona

## PROGRAM

### 09.00 - 09:30. WELCOME AND OPENING SPEECH:

**ORIOL ESCARDÍBUL.** *Vicerector d'Economia.* University of Barcelona (institutional)

**PIERGIORGIO VALENTE:** "Tax Policy in the EU. Key role for Tax Advisors"

**XAVIER PONS I RAFOLS.** Dean of the Faculty of Law. University of Barcelona (institutional)

### 09.30 - 11.00. PANEL 1.

#### THE ROLE OF THE AGENTS ON ADMINISTRATIVE COOPERATION IN TAX MATTERS

**THOMAS NEALE:** The role of the European Union in the Framework of the International Administrative Cooperation in tax matters

**PHILIP BAKER:** Role and responsibilities of agents in protecting taxpayers under automatic exchange of information

**PAUL VAN DER SMITTE:** Exchange of information and tax collection

**EVA ANDRÉS AUCEJO:** Towards an International Administrative Code in Tax Matters. The role of the Agents on Administrative Cooperation in Tax Matters (EU; OECD, US, ...).

**AMPARO GRAU RUIZ:** Role of the United Nations on International Administrative Cooperation in Tax Matters and Tax Governance

**Moderator: STELLA RAVENTÓS CALVO**

### 11.30 - 13.30. PANEL 2:

#### INTERNATIONAL ADMINISTRATIVE COOPERATION AND TAX GOVERNANCE: CONCEPTS, PRINCIPLES, SOURCES AND COSTS

**RITA DE LA FERIA:** International Administrative Cooperation in VAT

**ALESSANDRO TURINA:** The "Variable Geometry" of the Costs of Exchange of Information. Different Approaches for Different Institutional Dynamics

**PETER HONGLER:** *Is there a Global Fiscal Constitution*

**CARLOS LÓPEZ ESPADAFOR:** El principio de generalidad en la cooperación administrativa y asistencia mutua en materia fiscal

**Moderator: ANDRÉS SÁNCHEZ PEDROCHE**

### 13:00-15:00 PANEL 3

#### CONCERNS AND LIMITATIONS: THE TAXPAYERS' RIGHTS

**PASQUALE PISTONE:** Taxpayers' Rights in the Proposed Tax Arbitration Directive and the Pending Berlioz case.

**PHILIP BAKER:** Privacy protection and data protection in automatic exchange of information.

**PIETRO MASTELLONE:** Exchange of information and the protection of taxpayers' rights. A comparative overview. Falciani list and the issues of the taxpayers' rights regarding illegally obtained information.

**IRMA MOSQUERA:** Salvaguardas para el intercambio de información automático en países en desarrollo

**LUIS VIÑUALES:** "Fishing expeditions" and rights of tax payers regarding mutual administrative assistance on tax matters

**Moderator: IRMA MOSQUERA**

**17:00-18:00 CLOSURE** (Elena de las Moreras. Agencia Tributaria de España & Eva Andrés Aucejo) & Homage Act (tribute in memory of Isabel Espejo Poyato)

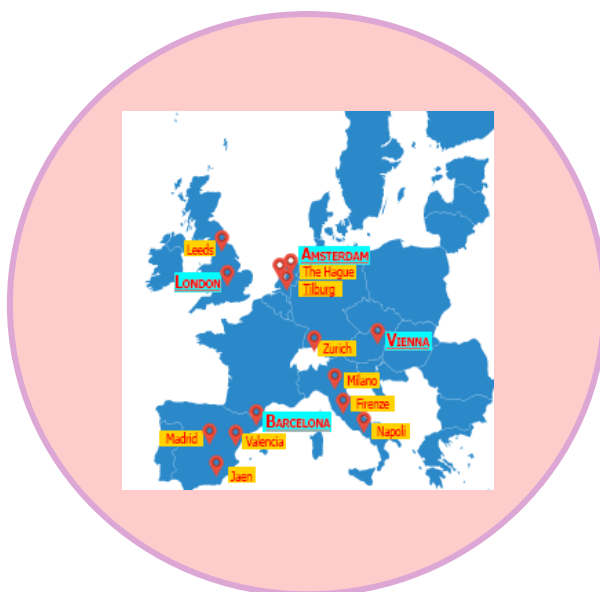
## INTERNATIONAL CONGRESS 2017:

**International Administrative Cooperation  
in Tax Matters and Tax Governance**

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**Barcelona, Thursday 26<sup>th</sup> 2017**

“Salón de grados”. Faculty of Law . University of Barcelona  
Avenida Diagonal 684, 08034 –Barcelona



On the 26<sup>th</sup> of January 2017, the International Congress ***International Administrative Cooperation in Tax Matters and Tax Governance*** took place at the Faculty of Law of the University of Barcelona. The subject of the congress was the role of the main institutions, organizations and governments like OECD, EU, USA, UN, etc. in international relations on administrative cooperation regarding tax Administration, as well as analysing the main trends in international tax matters.

Furthermore, on the 27<sup>th</sup> of January of 2017, a round table conference was held to discuss the future of international relations on administrative cooperation in tax matters, given the new political scenario resulting from Brexit and from President Trump. ORGANISES: EUDISCOOP Project 2016/2019.

The Congress was directed by the following researchers: Eva Andrés, Professor at the University of Barcelona; Parquale Pistone, Academic Director of *International Bureau of Fiscal Documentation* (IBFD); and Jeffrey Owens, ex-President of OECD (2001-2012) and Director of the *WU Global Tax Policy Center* of Vienna.

Important personalities responsible for International and European Institutions also participated in the Congress. Among them was the President of the *Confédération Fiscale Européenne*, Piergiorgio Valente; the Academic Director of *IBFD* Pasquale Pistone; the person in charge of the Direct Tax Policy & Cooperation (*Taxud*); D. Thomas Neale, Philip Baker; *Professor of Tax Law, University of London* (Field Court Tax Chambers) and Rita de la Feria, a reputed expert in VAT and professor of the University of Leeds.

The Congress was organised to commemorate the first year of work of the *International Administrative Cooperation in tax matters and ADR of transnational Tax Disputes. Models for an Institutional Architecture from a European Perspective* Project (EUDISCOOP 2016-2019, IP: E. Andrés). The following partner institutions collaborated with the project: - WU Global Tax Policy Centre (Vienna); - International Bureau of Fiscal Documentarion (Amsterdam); - Confédération Fiscale Européenne (Brussels); - *Asociación Española de Asesores Fiscales* and the Transjus Institute of the University of Barcelona.

***International Congress: International Administrative Cooperation in Tax Matters and Tax Governance.***  
***26<sup>th</sup> of January 2017***

The program of the conferences, given by internationally relevant Tax Law personalities, was scheduled as follows:

- ***Introductory Panel.*** Presentation of the Congress by Oriol Escardíbul, Piergiorgio Valente and Xavier Pons I Rafols.
- ***Panel I (9:30-11:30). The Role of the Agents on Administrative Cooperation in Tax Matters (OCDE, UE, EEUU, ONU, CIAT).*** Moderated by Stella Raventós Calvo, recognised expert in the field of international tax matters, chair of the *Confédération Fiscale Européenne* and partner of ECIJA. Members of the panel included Thomas Neale, Paul Van der Smitte, Philip Baker, Amparo Grau Ruiz and Eva Andrés Aucejo.
- ***Panel II (11:30-13:30). International Administrative Cooperation and Tax Governance: Concepts, Principles, Sources and Costs.*** Moderated by Andrés Sánchez Pedroche, *ex Rector* of the *Universidad a distancia de Madrid* and Professor of Tax Law. Members of the panel included Rita de la Feria, Alessandro Turina, Peter Hongler and Carlos L. Espadafor.
- ***Panel III (15:00-17:00). Concerns and Limitations: The Taxpayers' Rights.*** Moderated by Irma Johanna Mosquera, former professor at “The Hague University of Applied Sciences” and reputed member of IBFD. Pasquale Pistone, Philip Baker, Pietro Mastellone, Luis Viñuales Sebastián, and the moderator Irma Mosquera participated in the discussion.

***Round Table conference: 27<sup>th</sup> of January of 2017***

On the second day, an international round table conference was held on the issue of the new trends and challenges for International Tax Cooperation under the new political scenario: UNITED STATES (PRESIDENT TRUMP) & UNITED KINGDOM (BREXIT) The members of the EUDISCOOP Project 2016/2019, together with other authors, participated.

Initial lectures were given by professors Pistone, de la Feria and Andres. Following these initial lectures, researchers of the EUDISCOOP project discussed the topics in an open table. Among the many ideas reviewed the assistants could hear about the shifting to protectionism and bilateralism, the reduction of tax sovereignty, the tax havens, the lack of taxation of high-tech corporation or the problems for the legitimacy of International cooperation in tax matters for developing countries.

***10.30-12:00. Round table of the Members of the EUDISCOOP Project 2016/2019:***

1st session: **Pietro Mastellone.** Università degli Studi di Firenze ; 2nd session: **Álex Ibáñez Ortega** (University of Barcelona); 3rd session: **Peter Hongler** (University of Zurich/ IBFD); 4th session: **Irma Mosquera** (IBFD); 5<sup>th</sup> session: **Amparo Grau Ruiz.** Professor of Tax Law. Universidad Complutense de Madrid. Conclusive remarks made by Professor **Eva Andrés.**

The lectures of the distinguished speakers discussed the main trends in international administrative tax cooperation and tax governance, including the role of the participant agents, and the impact on taxpayer's rights in light of an automated international exchange of information. Several alternatives and solutions for the present problems were offered as well as different points of view on the international reality of tax matters.

The conference hall was totally full and the audience fully engaged in the discussion, elements that provided evidence of the interest of the topics and the quality of the presenters, with a remarkable international presence.

### **Introductory Panel.**

Firstly, the Dean of the Faculty of Law Xavier Pons i Rafols opened the Congress reaffirming the important role of the university and expressing his gratitude for the contribution of the partners. Subsequently, Piergiorgio Valente (President of the *Confédération Fiscale Européenne* and Professor in Link Campus University) illustrated the challenges of international tax matters, like tax evasion and the new scenario caused by Brexit and the Trump presidency. He opted for the improvement of the traditional system with more global cohesion to face those challenges. Finally, the Vice-Chancellor of *economy* of UB, Oriol Escardibul emphasised the contribution of events like the one being held for academic progress and as a tool to spread knowledge.

#### **PANEL 1.**

**THE ROLE OF THE AGENTS ON ADMINISTRATIVE COOPERATION IN TAX MATTERS [El papel de los agentes internacionales de la cooperación administrativa en materia tributaria (OCDE, UE, EEUU, ONU, CIAT)]**

Before the lectures started, the moderator Stella Raventós Calvo gave a brilliant introduction about the roles of the agents and the complexity of the issue, especially in the new global situation.

**Stella Raventós-Calvo** (Attorney and Partner of Tax at ECIJA) counts with more than 25 years of professional experience advising on projects related to taxation of companies as well as institutional and private investors, on the design of international tax strategies. Stella Raventós-Calvo has been first vice-president of the Spanish Association of Tax Advisers, whose International Committee she coordinates currently. She presides, in addition, in the *Confédération Fiscale Européenne (CFE)*, a work group, comprised of some of the most renowned specialists from each country, dedicated to the study of the case-law in the direct tax field of the EU Court of Justice.

- **Thomas Neale.** Head of Unit: Direct Tax Policy & Cooperation : Dir D — Direct taxation, Tax coordination, Economic analysis and Evaluation : DG TAXUD — Directorate-General for Taxation and Customs Union. He worked in the European Commission for 20 years as Head of Unit of Direct Tax Policy & Cooperation. He currently collaborates with TAXUD.

The conference of Thomas Neale focused on the role of the European Union – mainly of the European Commission- in the framework of international administrative cooperation on tax matters. He mentioned five key points: the European Commission, the European Parliament, the OECD Convention, country to country reports and the recent changes in the field (particularly the Directives 2011/16/EU, 2014/107/EU, 2015/2376/EU & 2016/2256/EU).

He made a claim was for more transparency in taxation in the European context and a more fluent relations with the OECD. He analysed the interaction among Member States, international organizations and the

European Commission, proposing common legislation and negotiations in the framework of a qualified majority decision making process.



- **Paul Van der Smitte** (Professor of IBFD). Coordinator in-dept study of the concept payment thinking (Guidance Note) at OECD Tax Debt Management Network. He has worked as inspector, auditor and speaker at different universities, collaborating also with the Dutch Tax Administration (Central Liaison Office of the Netherlands Tax and Customs Administration).

Member of the Program Board of the Tax Academy (Masterclass International Recovery) Netherlands Tax and Customs Administration; Legal and Strategic Advisor Central Liaison Office NTCA Netherlands Tax and Customs Administration - Central Liaison Office; Specialist international law Central Liaison Office Netherlands Tax and Customs Administration. Member of delegations of the NTCA visiting other countries Netherlands Tax and Customs Administration

Van der Smitte analysed the role of the States. He has stressed that the model in which tax collection has been regarded as a matter of little importance must be updated. Tax collection is far from being automatic and its instruments are not binding like those of the automatic exchange of information. Therefore, his speech was based on this key phase of the tax cycle. The importance of a common strategy was underlined since there are huge differences across countries and this generates uncertainty and revenue losses. To face this, the so-called *payment thinking* was defended.

- **Philip Baker:** Senior Visiting Fellow at the Institute of Advanced Legal Studies, University of London. He took silk in 2002. He specialises primarily in international aspects of taxation, which covers both corporate and private client matters. He has a particular interest in taxation and the European Convention on Human Rights, and is the author of a book on Double Taxation Conventions. He has appeared in cases before courts and tribunals at virtually every level from the Special Commissioners (now the Tax Tribunal) to the House of Lords, Privy Council and European Court of Justice. He is a former member of the Council of the Chartered Institute of Taxation, and remains a member of several committees of the CIOT and of the International Tax Sub-Committee of the Law Society. He is a member of the UK Committee of the International Fiscal Association and a member of the Permanent Scientific Committee of IFA.

His speech focused on the role and responsibilities of the agents in the protection of taxpayers' rights in the automatic exchange of information system. The lecture started with some definitions of concepts which are important for this issue.

Who are the agents and what are their responsibilities, there is quite a lot of parties involved in the process of getting financial information from financial institutions. We have to identify who is a data controller which is the natural or legal person which determines the purposes and means of the processing of personal data. Different agents participating AEOI (Automatic Exchange of Information) were introduced: *financial institutions, sending revenue authorities, receiving revenue authorities, OECD, Clearing House* and overseeing authorities.

Subsequently, he analysed the legal framework for the international protection of taxpayers' rights. Particularly highlighted were the leaks of information. They cannot be ignored since they are frequent in real life (due to mistakes, corruption or organised crime networks). To deal with their occurrence a right for compensation and a criminal liability must be considered.

- **Amparo Grau Ruiz:** Professor of the *Universidad Complutense de Madrid*, with an outstanding career as a researcher. She has a brilliant CV as a researcher with numerous publications addressing diverse topics; from International Tax Law to different topics (Social responsibility of organizations; Environmental taxation; Fiscal Federalism; Financing for Development, ...). Director of some competitive Projects.

Her speech discussed the role of the United Nations in international administrative cooperation and governance on tax matters.

She has explained that UN was created with a purpose and it is not only a matter of money. The point is that we should look further the tax work, and that is to find stability goals not only to recap money. We are



in a moment when we must cooperate but the most important we have to know is that we need to cooperate. When we begin cooperating we are coordinating law, many institutions are trying to have cooperation rules. In this context, we have to make an overview of what has been happening to the UN. Professor Grau thinks that the problem of incentives is that they are not only the base of taxes but we have to look if those incentives are suitable for our necessities, the necessities of today.

The benefits of the United Nations in global regulation is that is universal and with competition which pulls UN to go farer in his regulation. The point is that the UN tries to prove an intergovernmental forum inviting private sectors to participate in his work. Tax is a part of economic and affects social development so tax systems are looking for increasing and they are also to persuade some goals. The gap here is that the participation of international countries must be somehow filled in. The UN asked the regional conditions to support, if we look at tax cooperation we see that there have been some declarations about that aspects as the Addis Ababa Action Agenda of the tax international conferencing. So, the discussion is on how to improve the role of the UN.

She highlighted the need for broadening the goals of international tax policies to include sustainability, social responsibility and environmental protection. Tax governance for her is part of global economic governance. However, the UN lacks the resources needed to play a central role and they have found some 'obstacles' like governmental grouping. However, its position is being reaffirmed, using instruments like ECOSOC (the main organisation of the UN for economic governance), a Committee of experts, or different reports.

- **Eva Andrés Aucejo** (Economy and Business Sciences Degree and Law Degree): Professor at the University of Barcelona with an outstanding career as a researcher. She has a brilliant CV as a researcher with numerous publications regarding Corporate taxation, Comparative Tax Law, Accounting and Taxation, ADR in tax matters, Exchange of Information, treaties interpretation, Financial tax water system in the EU, etc. Principal investigator of the EUDISCOOP- PROJECT International Cooperation in Tax Matters and ADR on trans-border fiscal issues.

Professor Eva Andrés began her speech informing of the non-existence of a general Code on international administrative cooperation in tax matters (in accordance with the opinion of celebrated authors) and she explained the consequences resulting from the lack of an International Tax Code. Hence, she defended the goal of an international tax code that encodes the duty of cooperation between tax authorities in the world and the necessary relationship among Tax Administrations worldwide from a wide perspective of Tax Governance. To achieve it, she analysed the following sections: **a)** The role of the agents in the international framework. She clarified who each of the main agents are and the role of these various agents within the international framework, which include international institutions (OECD, EU, UN, CIAT.... ) as well as countries (particularly US with FATCA). **b)** Analysis of the regulatory instruments created by each of the different institutions or countries (as is the case of the United States), in order to provide the duties or rules on international cooperation in tax matters. **c)** Overlapping areas and loopholes which exist therefore to the separate regulations of these institutions. **d)** Standardisation of procedures for exchange of tax information, mutual assistance and other cooperation activities. The necessity to develop common procedural standards and compatible information and communication technology, and **e)** The costs: who pays the costs and what kind of costs must be paid. For these reasons, she highlighted the opportunity to create an International Code with the following Chapters:

**Chapter I.** About the relations among different Tax Administration worldwide. **Chapter II.** Relations of cooperation between Tax Administrations and taxpayers. **Chapter III.** System of conflict resolution in cross-border tax matters: conventional and alternative systems. **She made a proposal regarding the creation of an International Body to resolve cross-border tax disputes, including the different alternative systems (mediation, arbitration, European or international ombudsman, tax agreements, ...).** **Chapter IV.** Mechanisms to prevent and correct international tax fraud.



Professor Andrés proposed the possibility of an instrument of this kind being multilaterally arbitrated. In the future, it could turn into a multilateral agreement open to signature by States.

Note: This paper will be published in a scientific Review included in SCOPUS citation database in 2017 (ESEVIER platform). The pre-print version of this article will be published March 30th, 2017, in the digital repository of University of Barcelona.

PANEL 2:

INTERNATIONAL ADMINISTRATIVE COOPERATION AND TAX GOVERNANCE: CONCEPTS, PRINCIPLES, SOURCES AND COSTS

After a short break the event was resumed. The second section was about the concepts, sources, principles and costs of the international administrative cooperation and it addressed tax governance. The section was moderated by Professor Andres Sanchez Pedroche (*ex Rector of Universidad a Distancia de Madrid*). It focused on the point that cooperation between different States will not be totally effective, nor efficient, until homogeneity is established between different tax systems. A summary of the lectures follows.

- Rita de la Feria:** Professor at Leeds University and one of the leading worldwide experts in VAT (Value-Added Tax). Her research is regularly cited by courts across Europe, including the EU Court of Justice and various Supreme Courts, and has supported various policy documents emerging from the international and EU institutions. She was VAT Policy and Legal Advisor to the different Governments. She was listed in the Global Tax 2015 by the *International Tax Review* as one of the 50 most influential people in tax in the world, and was co-recipient of the 2016 Outstanding Women in Tax Award, by *Tax Analysts*.

Rita de la Feria introduced the topic of Tax Cooperation in VAT by making a clarifying distinction between the substantial jurisdiction and compliance. Within this context she explained the traditional VAT model in the European tax system, highlighting the importance of the destination principle of taxation. She addressed the remodelling of the traditional VAT system's by highlighting the failures of the current model, mainly addressing the evolution of the issues that on the moment of its establishment were less relevant for online international trade. Nevertheless, de la Feria has a critical point of view about the amendment proposal suggested by the Commission because she thinks that the proposal yields to pressures from Member States trying not to harmonize VAT categories. On the other hand, she claimed for more efficiency in the fight against fraud, which not only means a loss of tax revenues, but also a distortion of competition in the market, an attack against consumers' equality and even an organized crime subsidy.
- Alessandro Turina:** brilliant researcher of the Bocconi University of Milan and member of the International Bureau of Fiscal Documentation of Amsterdam: Alessandro Turina is a postdoctoral research fellow at IBFD, where he focuses on a research project dealing with international tax problems related to the geographical area of Latin America. He holds a PhD in International Tax Law from Bocconi University (Milan, Italy), where he has also been a research and teaching associate.

Dr Turina is also a member of the international research project Sustainable Tax Governance in Developing Countries through Global Tax Transparency, financed by the Research Council of Norway. He has authored several articles and book chapters for Italian and international publications.

Professor Turina addressed the variable geometry of cost and its distribution in the exchange of information, offering different points of view. He analysed one of the main problems of exchanging international tax information: which are the costs of the process and which types of costs exist, making differences between ordinary costs, which are paid for by each State; and extraordinary costs, which are extraordinarily complex to allocate.

The administrative costs, he emphasizes, have caused some problems and they even might be an obstacle for cooperation. The issue of the allocation and the distribution of costs is one of the pillars of the international administrative cooperation's architecture in tax matters.

- **Peter Hongler:** is a professor at the Zurich University and he is an expert on international -and Swedish- tax law and recognized researcher with the BEPS's project team. Peter Hongler is a postdoctoral researcher at IBFD within the BEPS project team. He is a lecturer at the University of Zurich and his areas of expertise are international and Swiss tax law, fields in which he has published a dissertation and several articles. He holds a PhD in Tax Law from the University of Zurich (2011). Prior to joining IBFD, he was a tax lawyer at a major law firm in Switzerland for several years and before that he was a visiting researcher at the Institute for Austrian and International Tax Law (WU, Vienna).

He made his presentation on the possible proposal of a Tax constitution. He explained the change of paradigm in the last few years, wondering whether the tax system should be more integrated. He also linked this possible constitution with the Swedish model, where the human rights are contemplated; there is a legal order and rules for territorial organization.

His proposal involves having a legislative, executive and judiciary body and a regulation that clarifies who is competent for each subject, something we are still far from achieving. He expressed that in the category of subjective rights there are people who are globally missed, and also that in a protection of common interest's levels, these ones could only be protected through international coordination. On the other hand, he also stressed the existence of two important objectives: fighting tax evasion and fraud.

In his opinion the protection is currently based on the each State's interests and not on the global interest. This goes against one of the constitutional principles, which is equal wealth distribution. This principle is not being contemplated within the global tax economy.

From his speech, we could extract one analytic tool about the global society's integration level, and even analyse the differences between State level and global level.

- **Carlos María López Espadafor:** Tax law professor at Jaén University. He has a brilliant CV as a researcher with numerous publications addressing diverse topics; from international and European tax law and the Tax Territorial Offices to environmental taxation. He started his speech wondering whether the general principle of cooperation is actually a principle, due to the fact that in general it has been forgotten by the international tax law.

Developing this idea, he expressed that international general law could not be understood as if it was extinct because the OECD agreement models would exist notwithstanding DIG, whose paper consists in reporting to them and appear as an interim way on issues not yet regulated.

Finally, he explained that in the UN's context, non-cooperation means a "lack of respect" of the States' sovereignty and independence. Nowadays the rules of cooperation involve the international general principles, conventions and EU law rules, which include own resources and tax harmonization.

Tax cooperation, which could be included in the last point, disappeared from the European Constitution in what could not be regarded as a forward step in this field.

### PANEL 3

#### CONCERNS AND LIMITATIONS: THE TAXPAYERS' RIGHTS

The third session started in the afternoon and focused on taxpayers' rights. The panel was moderated by Irma Mosquera from IBFD, who started the panel with a few grateful words to Professor Andrés, organizer of the congress. She introduced the speakers who discussed about taxpayers' concerns and limitations.

- **Pasquale Pistone** is the Academic Chairman of IBFD. He holds a Jean Monnet ad personam Chair in European Tax Law and Policy at WU Vienna University of Economics and Business (Austria) and is Associate Professor of Tax Law at the University of Salerno (Italy). His main fields of expertise are European and international tax law, in which he is regarded as a top academic expert in various parts of

the world. He is one of the best known worldwide experts in European and International tax. He has been granted different awards, such as the one by the International Association of Tax Law, he was awarded for his book *"Reflexiones en torno a un modelo latinoamericano de convenio de doble imposición"*.

He claimed in his speech a better protection of taxpayers' rights, especially in the EU context where they have been scantily guaranteed. In contrast with the internal protection in the different States, international legislation suffers from important lacks in this regard. In relation with that, he analysed the cross-border exchange of information and the agreements for solving disputes, defending the incorporation of the taxpayers in friendly procedures. He complemented his argumentation with relevant cases; one of them is the Berlioz case.

- **Philip Baker.** In his second presentation, Professor Baker focused on data protection and its relation to taxpayers' rights. After a review of the legal frame and international jurisprudence, he analysed the exceptions that could be suggested to the legal exchange of information, the necessity or the proportionality. He emphasized the taxpayer's right of being notified at the beginning of an automatic exchange of information's procedure, which is frequently a forgotten guarantee.
- **Pietro Mastellone:** Professor who combines his work as a researcher at the Univesità deli Studio di Firenze with the law practise. He is a recognized specialist in European- and International Tax Law. Research fellow (*assegnista di ricerca*) of international tax law, Florence University, Department of Legal Sciences, and lecturer in post-graduate programmes in tax law at the University of Florence, at the University of Turin, at the University "Bocconi" and at the Chatholic University of the "Sacred Heart" of Milan. Speaker at tax law conferences and seminars in the same area. Member, Board of Editors of the *Rivista Trimestrale di Diritto Tributario (Tax Law Quarterly)*.

Firstly, he introduced a global vision about the situation of the taxpayers' rights, highlighting important lacks. He was particularly critic about the OECD's exchange of information regulation (article 26 of the convention), due to the fact that it doesn't specifically detail the taxpayers' rights. Consequently, he made numerous proposals for improvement.

He has studied also the reach of the above mentioned rights in three categories: notification, consultation and participation of the taxpayer. He compared the information exchange models of some States, such as Italy, Germany, Luxembourg, Belgium, Switzerland, Spain, etc. On the other hand, he mentioned relevant examples like the Sabou case about the uses of illegally obtained information.

- **Irma Mosquera** is a Senior Research Associate and Technical Editor of IBFD's Global Tax Treaty Commentaries (GTTC). She also works as a tax adviser at Hamelink & Van den Tooren. She worked as a tax adviser at PwC in the Netherlands and as an assistant professor at the University of Utrecht and at the The Hague University of applied Sciences.

She highlighted the difficulties that the current model represents for developing countries. They should make a big effort in order to implement the exchange of information. The main benefits accrue to the developed States. Some considerations are therefore required for the less favoured States and the international regulation must be adapted to its needs. For example, some safeguards must be established to avoid hateful practices like prosecution for political reasons. Finally, she considered the possibility of creating a multilateral instrument open for signature by States.

- **Luis Viñuales Sebastián** has been a partner of Uría Menéndez since 2003 and heads the Tax Practice Area in Barcelona. Luis provides general tax advice to both resident and non-resident entities in the following areas: banking and finance, energy, industry, consulting and services, sports and entertainment. He frequently advises on cross-border business transactions and the taxation of public-private initiatives. He also advises high net worth individuals, including artists and sports players, on their tax planning.

He contributed a more practical vision acquired through his professional experience, focusing on the counsel for regulatory entities in the field of money laundering and the financing of terrorism.

He introduced a panoramic view about the regulatory framework on the subject and the terms of the exchange of information, pointing out the importance of the fact that the mechanism should not be used to generalize *fishing expeditions*. The line which divides those risky requests from licit requirements is, with no doubt, thin.

**CLOSURE (Elena de las Morenas. Agencia Tributaria de España & Eva Andrés Aucejo) &  
Homage Act (tribute in memory of Isabel Espejo Poyato, by Prof. Rozas Valdés, J.)**

*Signed by:*

*Eva Andrés Aucejo, Santiago Ibañez Marsilla, Pablo Busto Caviedes; Aleix Agualeles Cascales;  
Anna Maria Jiménez Arís, Rubén Mudejar and Anna Cerrillo*