

# Kluwer International Tax Blog

## Big Data, Tax Information and the New Oil – Paradox of Plenty?

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After the [first post](#) on BEPS, I decided to go laterally and approach an issue that may resonate to many tax practitioners but unfortunately is not so widely discussed perhaps because of its interdisciplinary impacts – what are the consequences and limits for this “rush” towards massification of tax information data retrieval and exchange.

We undoubtedly live in very interesting times, where we see the rise of a networking society. The shift occurring on the tax information field through the last decade is part of this wider revolution.

After reading the enticing book of Erik Brynjolfsson and Andrew McAfee – “[The Second Machine Age](#)” – I am more and more convinced of the staggering impact of the digitalization of the world in the coming years. If as the authors indicate, innovation will accelerate at an exponential rate because of computing power, digitization, and the combinatorial nature of innovation. The same impact is expected on the new tax information edifice that is being institutionalized by the OECD, EU and US.

On top of the domestic information requirements which have undoubtedly increased in recent years with adoption of initiatives such as standard audit file for tax (SAF-T) and the widespread use of VAT electronic invoicing, the future is challenging in terms of tax information management both for companies and for tax administrations.

We are expecting new initiatives arising from BEPS project (such as specific mandatory disclosure rules), country-by-country reporting (CbC), widespread adoption of the Common Reporting Standard and FATCA and its underpinnings in terms of Accounting for Uncertainty in Income Taxes (FIN 48) and “tax positions” of corporate entities for Corporate Social Responsibility disclosures (see an example in the field of [indexes](#)). The EU is also paving its way with Directive 2014/107/EU on administrative cooperation in direct taxation which provides for mandatory automatic exchange of financial information as foreseen in the OECD global standard. More recently, we have also seen a move by the [EU Commission to propose](#) a mandatory automatic exchange of information regarding advance cross-border rulings and advance pricing arrangements within EU Member-States.

All these trends seem focused on valid principles of addressing international profit shifting or income disclosure based on transparency of tax affairs, but information flowing beyond frontiers raises novel concerns on the type of information shared and the sheer scale of sharing mechanism

is overwhelming. If you want to have an idea of the sheer size of digital data generated every minute see this [infographic by Domo](#).

We are all facing a very firm push towards the realignment of the information flows and reworked principles of legality in what concerns “tax information sharing” but sometimes I stop and ask myself if we (as society) are ready for this flow of Big Data?

Recently in my home country we were faced with a domestic debate on privacy and data protection of taxpayer information and this may serve to illustrate how difficult it is for tax administrations in today’s digitalized world to manage and draw procedures on the Big Data, with so many access nodes available. A small example, especially when we look to the issues raised by wider game-changers such as Snowden Leaks; Lux Leaks and the more recent Swiss Leaks.

It seems that the authorities and government agencies found their “holy grail” for tackling this transparency debate. The objective is achieved by disclosing more, more and more tax information and presenting it in interchangeable formats. For the tax authorities “Big (tax) data is the new oil.”

If those new elements are mainly directed to shrink the so-called “tax gap” the new tools will likely result in further improvement by the tax authorities understanding and capabilities in data management and analytics.

An example of this information mapping at use is the “cooperative compliance approach” involving Australia and five other jurisdictions to investigate the global tax planning of multinational enterprises operating in the e-commerce industry. There is no doubt that this joint audit initiatives arise from increased mapping capabilities from tax administrations based on public and private tax information available. It will be interesting to see the outputs of BEPS Action 11, which is directed to establish methodologies to collect and analyze data on BEPS behaviors (expected for 17 April 2015) as this action will very likely draw on this magnetism towards further reinforcing information exchange between tax administrations.

From the business side, no doubts the future will see the birth of tools directed specifically to what is called “tax analytics” of companies, directed to make sense of the sheer tax information outflows it generates in different platforms, analyze the information in real time and allowing companies to react faster. We will see tax optimization decisions of the future move beyond the mere taxation of in and outflows and ETR calculations and become more analytic and linked to the Big Data generated by the company.

But if Big Data has an undeniable transformative effect that extends to analytic capabilities of how tax authorities map risks and approach tax controversies to how companies will use and manage that same information to become more competitive and profitable in the market place, how should we (as a society) position ourselves towards this (r)evolution and/or supervise what is done with this unlimited amount of tax information?

A number of points may be raised as start for discussion, although I am sure many others may be framed.

- First is whether this piecemeal approach towards international tax information (in many fronts and formats) raises administrability and resource issues and additional compliance burdens and if less intrusive and simplified methods are available. The sheer fact of multiplication of platforms, language and technology barriers and allocation of resources to cost-centers of entities needs to be

addressed. As George Washington noted that “no taxes can be devised which are not more or less inconvenient and unpleasant” the point may be how compliance burdens will be safeguarded and efficiency and equality of all players guaranteed.

- Second issue relates to the relevancy of privacy aspects of enhanced transparency because as Julie Cohen mentions “[conditions of diminished privacy also impair the capacity to innovate](#)”. The more tax related information without aggregation and boundaries we have the more privacy violations become more accepted, the more trade secrets that are core to the profit drivers of companies become part of Big Data”. What are the limits? Is this public tax returns? and what we really achieve with that?

- Third point focuses on potential constitutional constraints that may be raised on data collection. For example, it is difficult to understand right away the legal principles underlying the EU proposal of casting a net of rulings/APAs issued during the last 10 years. One could understand a rule for the future but retrospective mapping to find “needles in the haystack” should not be the principle that drives the European Union towards innovation. Connected to that is the need for an adequate mechanism to reinforce legal basis and supervision for the transfer personal/corporate data (see for example the important case of transfer of personal data to the USA by Facebook currently [pending on the ECJ](#)). A recent March 2015 Report of the EU Commission [AEFI expert group](#) on the implementation of Directive 2014/107/EU highlights that there are “still serious concerns as regards data protection and privacy aspects that could jeopardize the implementation of automatic exchange of financial account information”. The statement of [Article 29 Working Party \(WP29\)](#) on tax exchange of information is also revealing of serious liability and (security) risks.

- The fourth and final point is what this push towards information exchange links with new trends post-Piketty being discussed towards enhancing wealth tax reporting and world-wide taxing of financial capital and/or wealth (including ideas for setting a [world financial registry](#)). We should perhaps clearly discuss more widely than in [Brussels forums](#) the (real) objectives and challenges of this trends and the uses of tax information mechanism of Big Data towards providing sufficient data as interims to such policy ideas.

We are confronted with a realignment of the tax information flows from on-demand to automatic plus additional tax disclosures from a cross-border perspective. This shift has an immediate impact on economy and individuals. The process is far from being an easy subject but organizations need to be more prone to debating the difficult issues of this International/European agenda.

Do not take this post as originating from situationist or privacy ideologue, as the point I want to raise is to what extent we are considering or inserting the adequate restraints and balances (such as a regulator) related to data availability and sharing on the new international tax edifice that is being drawn by the global institutions.

If Big (tax) data is then the new oil, one hopes tax authorities also do not start suffering from the so-called [Paradox of plenty](#).

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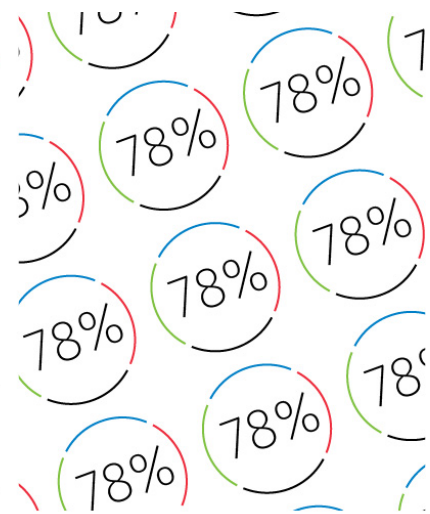
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