



## **CENTER FOR TAXPAYER RIGHTS**

International Conference on Taxpayer Rights  
Access to Justice: Judicial Review & Alternative Dispute  
Resolution

---

Current Developments in case law  
May 26, 2023

# Current Developments in Case Law

---

## Agenda

- Disclosure of tax information by the taxpayer
- Disclosure of tax information by lawyers: the extent of legal privilege
- Collection of information by tax authorities
- Trends: Issues concerning

# Disclosure of tax information by the taxpayer

- ECtHR, *De Legé v. the Netherlands* (Application no. 58342/15)
- The case concerns the use of documents for the re-setting of a tax fine. The documents relate to a foreign bank account
- The documents had been obtained from the applicant under threat of substantial penalty payments
- The applicant alleged disrespect of the privilege against self-incrimination (Article 6§1 ECHR)

# Disclosure of tax information by the taxpayer

- ECtHR, *De Legé v. the Netherlands* (Application no. 58342/15)
- The Court concluded that the documents disclosed by the taxpayer were **pre-existing documents**; the tax authorities knew that the taxpayer had a bank account with the foreign bank; it was **not a fishing expedition**
- The imposition of **penalty payments** for failure to comply with the disclosure of documents **cannot be considered to amount to treatment in breach of Article 3** of the Convention (dignity)
- The use of those documents is not covered by the right to remain silent

# The extent of legal privilege

---

- CJEU, *C-694/20, Orde van Vlaamse Balies*
- DAC 6 provides for the mandatory automatic exchange of information in relation to reportable cross-border arrangements
- Lawyers have such reporting obligations concerning their clients
- The relevant provisions of DAC 6 were challenged as contrary to the legal privilege

# The extent of legal privilege

---

- CJEU, *C-694/20, Orde van Vlaamse Balies*
- The Court held that the relevant provisions of **DAC 6 are invalid** in light of Article 7 of the EU Charter of Fundamental Rights (right to privacy), in so far as the directive has the effect of requiring a lawyer- intermediary, (who is otherwise exempt from the reporting obligations of DAC 6 on account of the legal professional privilege) to notify without delay any other intermediary who is not his or her client, of that intermediary's reporting obligations under DAC6.

# Collection of information by tax authorities

---

- CJEU, [C-175/20 SIA 'SS' v Valsts ieņēmumu dienests](#)
- The case concerns the interpretation of the General Data Protection Regulation (GDPR)
- It concerns a dispute between the Latvian Tax Authority and a company, in relation to a request for disclosure of information relating to advertisements for the sale of vehicles which had been posted on the company's website.

# Collection of information by tax authorities

---

- CJEU, [C-175/20 SIA 'SS' v Valsts ieņēmumu dienests](#)
- According to Latvian tax law the provider of online advertising services is obliged to provide, at the request of the Latvian tax authority, the information it has about the taxpayers who have published ads using its services.
- The company challenged a request it received, claiming that such a request is in breach of the GDPR



# Collection of information by tax authorities

---

- CJEU, [C-175/20 SIA 'SS' v Valsts ieņēmumu dienests](#)
- The Court held that when the tax authority of a member state collects from an economic operator information containing a significant amount of personal data, the GDPR applies
- Accordingly, and subject to the existence of a specific legal provision, the GDPR allows tax authorities to compel a provider of online advertisement to disclose to it information concerning taxpayers who have published advertisements if, among other things, (i) **this data is necessary in relation to the specific purposes for which they are collected** and (ii) **the period of time concerning the collection of the data does not exceed what is absolutely necessary to achieve the intended purpose of public interest.**

# Trends

---

- Cases referred to the ECtHR; applications nos. [32078/17](#) and [42335/19](#) *Giovanni DI NARDO and Giovanni DI NARDO and Angela MERCURIO v Italy*; application no. [40607/19](#), *Matteo FERRIERI v Italy*
- The applications concern tax investigating authorities' access to the applicants' banking record data regarding movements, transactions and any other disposition that could be related to the applicants or traced back to them

# Trends

---

- Cases referred to the ECtHR; applications nos. [32078/17](#) and [42335/19](#)  
*Giovanni DI NARDO and Giovanni DI NARDO and Angela MERCURIO v Italy*; application no. [40607/19](#), *Matteo FERRIERI v Italy*
- The first applicant is a practising lawyer and submits that access to his banking data involves access to information which is covered by his privileged relation with his clients and, therefore, circumvents his obligation of confidentiality regarding his clients' names, proceedings, transactions, and other information.

# Trends

---

- Cases referred to the ECtHR; applications nos. [32078/17](#) and [42335/19](#) *Giovanni DI NARDO and Giovanni DI NARDO and Angela MERCURIO v Italy*; application no. [40607/19](#), *Matteo FERRIERI v Italy*, and two others
- The applicants were not notified by tax authorities of the act authorising access to such data. They were subsequently summoned to provide the tax investigating authorities with clarifications concerning certain identified movements and transactions.

# Trends

---

- Cases referred to the ECtHR; applications nos. [32078/17](#) and [42335/19](#)  
*Giovanni DI NARDO and Giovanni DI NARDO and Angela MERCURIO v Italy*; application no. [40607/19](#), *Matteo FERRIERI v Italy*, and two others
- The applicants complain under Article 8 ECHR (private life)
- The claim it has not been proportionate, as it concerned information indiscriminately relating to all their banking transactions and movements and was not subject to an *ex post facto* judicial review.

# Current Developments in Case Law

---

- An increased concern on the powers of tax authorities in relation to information collection and use
- At the same time a balancing act is taking place: the guarantees of the ECHR and the EU Charter are providing limits whereas the monitoring under GDPR is also constant

THANK YOU!

<https://www.ibfd.org/ibfd-academic/publications/observatory-protection-taxpayers-rights-optr>