

## Tax, public finance and the rule of law

It is widely acknowledged that tax law and administration should be carried out consistently with the rule of law, but it is less clear precisely what this means, whether and when it should yield to other imperatives such as the proper funding of public services and the prevention of evasion and avoidance, and whether the rule of law applies with the same force to other aspects of public finance such as public spending, welfare, borrowing and money-creation. Although the rule of law is often mentioned in the tax literature, and subject to honourable exceptions, it tends to be heavily under-theorised.

The tax field has changed significantly in recent years, notably at an international level. The financial crisis of 2008 was followed by sovereign debt crises in several European countries that have altered profoundly the fiscal relationships between the EU and its member states. The OECD has taken advantage of the momentum created by the financial crisis to embark on a series of reforms of international tax arrangements under the aegis of the BEPS project and to routinise the exchange of tax information across national borders, in both instances significantly changing the context in which the rule of law operates. More recently, COVID-19 has placed great strains on public finances, with government responses to these pressures often stretching the rule of law to its limits (examples in the UK may include aspects of the APN and Follower Notice regimes). The time is ripe for a re-examination of how the rule of law is understood and protected in this evolving environment.

There is also space for a deeper critical engagement with the rule of law than is often found in the tax literature. On one level, it is difficult to argue with either the 'narrow' rule of law preference for visible, stable, non-retrospective law with which it is possible to comply (eg Raz, Fuller) or 'wider' values such as human rights protection that are sometimes included in the rule of law (eg Bingham). The problem is that if these values are overstated in the tax field, they may have the consequence of protecting those who are privileged enough to be able to pay significant amounts of tax, whilst offering very little to those with few assets and low income. Is there a risk, accordingly, that in the tax context the rule of law could become an adjunct of privilege with potentially regressive implications? Is there an argument for placing limits on taxpayer protection, perhaps along the lines sketched by the majority of the European Court of Human Rights in the *Ferrazzini* decision? Alternatively, should the focus on taxpayers be replaced or supplemented by a greater emphasis on rule of law values in welfare law or even other aspects of public spending, borrowing and money creation? Should some individuals or organisations be able to assert positive rights to receive public funding, and if so, how would these rights relate to existing understandings of the rule of law?

What we are looking for in paper proposals is therefore a deeper engagement with how the rule of law applies to taxation, especially in a wider historical, social, political or public finance context. A proposal need not cover all of the issues canvassed above, need not adopt any particular political or normative position, and may consider points that we have not considered in this brief document. We would, however, hope for something more substantial than the mere assertion that taxpayers have rights that ought to be protected to the greatest possible extent under the rule of law; at the very least, such a view would need to be theoretically informed.