

WHO DEFINES THE FISCAL SYSTEM IN SPAIN? THE SPANISH FISCAL POLICY AND THE OECD

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Fiscal policies are frequently a major issue on the agenda of political debates, particularly at election time. The proposals made by the different political parties, in addition to having their own political effects, determine the feasibility of all electoral programs in such central fields as social policies. In fact, the logic of our political system relies on the possibility that our Parliament defines our fiscal system and, based on the results, chooses one or another political alternative.

This principle is however totally unrealistic given that determining the tax base upon which tax laws will be designed does not completely depend on the decisions of the Spanish public authorities. Indeed, a large part of the corporate profits generated in Spain, which constitute a significant share of the tax base, escape the Spanish legislation through illegal actions (tax evasion) but above all through legal actions (tax avoidance) stemming from the EU and international law or from other countries' tax competition strategies.

In other fields, similar phenomena derived from globalization have tried to be solved by the EU. On the contrary, EU responses in fiscal matters have been very weak to date due to the limitation of powers, diverging interests and especially the capacity to elude the EU regulations and move the flows to other territories, which would entail harming the current "tax havens" in the EU without benefiting the other Member States.

In response to this problem, Governments have lately turned to the OECD in order to reach international agreements and assume them, more or less willingly, through the corresponding international treaties and domestic implementation and development regulations. The best-known and successful example is the adoption of the agreements on the exchange of information for tax purposes. While applicable upon request at an early stage (FATCA) and automatically at a second stage ([CRS](#)), in the last few years these agreements have decisively transformed the role of bank secrecy in many countries.

Both generations of agreements have worked similarly: following a political decision adopted by the G-20 the OECD carried out negotiations aiming at the drafting of standard agreements that were literally included in international treaties and politically imposed on the states that benefit from the practices to be eliminated. These treaties are usually limited to setting forth obligations that the countries will then translate to the subjects concerned (banking institutions in particular). Concerning political options, decisions are adopted by the OECD according to the mandates of the G-20. They are then executed (not developed) in international treaties and domestic laws concerning which national Parliaments only have formal capacities. Indeed, these laws only cover the formal legal requirements and corresponding guarantees such as the enforceability of the principles and constitutional laws during proceedings. These limitations arise several interesting legal questions about matters such as non-retroactivity, double taxation and the protection of legal confidence.

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In 2013 the G-20 decided to advance in the fight against tax avoidance by establishing different lines of action to prevent national base erosion: the [BEPS package](#). Between 2013 and 2015 the OECD worked in this field and drew a [first set of conclusions](#) that was presented in October and assumed by the G-20 in November 2015. The first results are now being discussed in the [European Union](#) for the first time, although many aspects will need to be developed by the OECD. In addition, there is [considerable debate](#) over the sufficiency and adequacy of the conclusions reached. These lines do not aim to start a discussion about the conclusions but rather to highlight some points:

- the inexistence of any debate whatsoever over this matter in the Spanish Congress during the 10th parliamentary term, even though Spain is an OECD member and a G-20 permanent guest
- the deafening silence during the last elections (and most probably also in future ones) despite the undeniable impact of this process on almost all core matters of the programs of all political parties
- the widespread lack of awareness of the legislative process in the OECD. We know who pushes forward the legislative process in national parliaments and we encourage the public debate between the majority and the minorities. The same happens in the European Union, albeit maybe with more transparency but less public impact. However, we do not know how the OECD works, how it has pushed forward the process and, in case Spain has contributed to the process, how this has been done, what aspects have been highlighted by our Minister of Finance and what obstacles to the alternatives have brought the parties to discard them.

It would be unfair to neglect the fact that some initiatives for modification have been presented. They are far too limited but at the same time, and for this reason, praiseworthy. On 19 October 2015 a delegation of members of the Congress and the Senate attended a [meeting of the OECD Parliamentary Group on Tax](#) in Paris, and on 2 February 2016 the Congress Bureau accepted a request of the socialist group to “[create, within the Commission for Finance and Public Administrations, a subcommission on the EU and international harmonization, tax coordination and fight against tax fraud and tax havens](#)”. Maybe in the future our Parliament will carry out real promotion and control of the desirable (and hardly known) stand of the Spanish Government in this field.