

THE CHALLENGES OF THE TAX ADMINISTRATION OF CATALONIA

Joan Iglesias Capellas

Director of the programme to define a new tax administration model for Catalonia

Introduction

Throughout the lengthy process of drafting and approving the Statute of Autonomy of Catalonia and negotiating the financing model of the autonomous communities under the ordinary tax regulations for the period 2009-2014 (now subjected to an uncertain review process), Catalan society and the government of the Generalitat must yet again trust the syllogism (promise) which claims that by attaining a greater degree of decision-making authority on public spending (education, health, security, social assistance, etc.) they would get a correlative increase in budgetary resources from the Spanish State in order to properly meet the needs of the citizenry of Catalonia. In other words, if the government of the Spanish State agreed to shift the competences to deal with the public services inherent to the welfare state to the Generalitat de Catalunya, the principle of institutional loyalty and fiscal co-responsibility would ensure that it would also provide Catalonia with the financing needed to ensure a level of care and provision of public goods equivalent to the fiscal effort made by Catalan society.

Unfortunately, experience has shown that this syllogism has always been a mirage, or perhaps even more, a fallacy. In fact, Catalonia's endemic tax deficit in its financial relations with the Spanish State is doing anything but lowering; instead, it only rises with every passing day.¹ The economic crisis which we have unfortunately been experiencing since 2008 has only aggravated this financial dependence on the central government to such an extent that today practically the entire treasury of the Generalitat

¹ According to the study by the Department of Economy and Knowledge, the tax balance for 2010, calculated according to the cash flow method, shows that Catalonia contributed 19.5% of the total revenues of the central administration of the Spanish State and received 14.2% of the total State spending. Therefore, Catalonia contributed at a proportion higher than its weight within the state GDP (18.6% in 2010), yet it received a fraction of the spending, which did not reflect the weight of its population over the whole of Spain's population (16%). This means that the tax deficit in Catalonia was 16.543 billion euros, equivalent to 8.5% of Catalonia's GDP. According to the profit flow method, in 2010 the Catalan tax deficit was 11.258 billion euros, which accounts for 5.8% of the GDP of Catalonia. In the tax balance for 2011, if we apply the cash flow method, the deficit would be 7.7% of the GDP (15.006 billion euros), while if we apply the payment-profit flow method, it would be 5.7% of the GDP (11.087 euros).

de Catalunya is fed from the transfers sent to it from the Spanish Ministry of the Treasury and Public Administrations² for one category of expenditure or another.

On the other hand, we should bear in mind the middle- and long-term consequences stemming from the irreversible process of harmonising the fiscal, budgetary and financial policies of the European Union Member States.

Keeping the euro as the single currency leads to the gradual loss of economic sovereignty in the Member States in favour of the European institutions. This signals a paradigm shift that is not always readily accepted by Spanish authorities, and it still poses major questions regarding its permanent implementation.³

In the midst of these two opposing trends, from the standpoint of the new Catalan tax system, having its own tax administration is a first-order strategic objective not only in the short term but also, and more importantly, when looking towards the Generalitat de Catalunya's full tax sovereignty in the future.

That is, in order to compete in a globalised world, it is essential to achieve freedom of economic decision-making and management of its own tax resources, since the complexity of today's taxation systems requires an efficient, technically prepared institutional structure, one that is especially equipped with state-of-the-art technological means and oriented at facilitating the progress of the economic and social system of the territory where it operates.

Once this present and especially future challenge has been framed, we should recall that a modern taxation system is shaped by the following elements:

- First, there must be a **fiscal structure**, defined as the entire set of taxes and levies required of taxpayers at any given time.
- Secondly, a **regulatory system** must be developed which includes the legal norms that govern citizens' duty to pay taxes, as well as the administrative procedures needed to do so.

² Apart from the advances from the financing model, right now the only source of revenue available to the Generalitat de Catalunya to cover the direct needs of its treasury are the Regional Liquidity Funds (Fons de Liquiditat Autònoma, or FLA), and it can also divert the payment of certain external services to the Suppliers Payment Plan. Both instruments are controlled by Spain's Treasury and Public Administrations and provide the Spanish authorities with significant authority to supervise the spending decisions of the Generalitat de Catalunya.

³ The latest and best expression of this phenomenon is the transfer of bank supervision competences to the European Central Bank.

- The third element is **fiscal authority**, meant as the institutional structure made up of the different bodies that hold administrative competences. This includes the staff and material resources that the public sector earmarks to the functions inherent to a tax administration: assessing, checking, collecting, reviewing and sanctioning.
- And finally, in the 21st century it is essential to implement an **information management** structure made up of the IT tools needed to collect, store, protect and use the fiscal information on all the taxpayers to the system.

Therefore, according to the principles established by the Advisory Council for the National Transition,⁴ even though currently the Generalitat de Catalunya does not have the competences needed to become the authority of the Catalan tax system, what can be done right now is to define a comprehensive tax administration project, organised according to the criteria and solutions used in other European countries with a social and business fabric similar to Catalonia's (such as Sweden, Austria, Denmark, Holland, etc.).⁵ Thus, instead of settling on just copying the tax administration model of the Spanish State in Catalan society, we will be capable of offering our society an alternative model which is rigorous and at the same time has the potential to transform the taxation system in line with the most advanced trends today.

Therefore, we should take advantage of the time at hand to lay the ideological and structural foundations of a public organisation of the 21st century in an international scene in constant transformation, where the composition of the current taxation system will foreseeably evolve towards simpler and more locally decentralised systems (such as environmental taxes), combined with general Europe-wide taxes (such as VAT), and where direct taxation on individuals' income and assets (which is directly linked to the welfare state) will remain present but gradually lose prominence in terms of the proportion of taxes it raises.⁶

1. Models of organising the tax administration

⁴ Report no. 2, dated 20 December 2013, on the tax administration of Catalonia.

⁵ This is also the approach taken by Modest Ginjoan, Xavier Quadras and Miquel Puig, the authors of *Com Àustria o Dinamarca: La Catalunya possible*. Barcelona: Pòrtic, 2013.

⁶ In this sense, the reference on the leading trends in taxation matters can be found in the publication by the commission presided over by Sir James Mirlees, whose conclusions are found in "Dimensions of Tax Design, The Mirlees Review", 2010, and in "Tax by Design, The Mirlees Review", 2011. Both studies are translated into Spanish in *Diseño de un sistema tributario óptimo. Informe Mirlees*. Madrid: Editorial Universitaria Ramón Areces, 2013.

When organising a tax administration, there are as many possibilities as there are tax systems in the world. Despite this, and despite the specificities and unique features of the models applied by the different territories with their own tax jurisdiction, international experience allows us to synthesise the most important features of a tax administration model according to four parameters.

The first parameter is related to the principle which ultimately justifies the tax. Drastically simplifying, we could say that historically a tax can be justified in two ways. First, since ancient times, a “tribute” has been the price of military defeat or submission to the established power.⁷ The conquering people (or king) believe that they have the right to secure much of the wealth produced by the conquered people (or subjects), and therefore they are required to pay a tribute under the threat of (economic or personal) punishment if they disobey. Therefore, a tax viewed as a tribute is primarily grounded upon the principle of authority.

Ever since American independence (which was triggered precisely by a popular uprising over taxes), most democratic societies justify (at least formally) taxes as an obligatory “contribution” to the common good. In fact, some people regard taxes as the price of civilisation.⁸ In this case, the law, as an expression of popular will, is what legitimises the requirement (even if it is coercive) to pay taxes. Therefore, when viewed as contributions, taxes are grounded upon the principles of legality (“no taxation without representation”) and especially solidarity.

Once taxes are examined from this vantage point, it is very significant that in systems in which citizens perceive the taxes they pay to be a “tribute”, the resistance to paying (tax fraud) is much higher than in systems where citizens perceive that they are “contributing” to collective wellbeing by paying taxes.⁹ Likewise, since ancient times, when a tax is grounded upon the principle of authority (of the conqueror or king) and payment was made out of fear of punishment, tax disobedience earned a kind of social standing as the expression of a sort of resistance to oppression. And the opposite also

⁷ The word *fisc*, from which the concept of *fiscal* derives, comes from the Latin word *fiscus*, which was the basket where the emperor’s collectors placed the taxes.

⁸ “*Taxes are what we pay for a civilized society.*” This sentence, uttered by Oliver Wendell Holmes (1841-1935), presides over the entrance to the Internal Revenue Service (IRS), the United States tax authority.

⁹ In this sense, it is interesting to contrast the results of a comparative calculation of the underground economy that Friedrich Schneider makes in “The Shadow Economy in Europe, 2011”, published by the University of Linz, Austria.

holds true: when the tax is perceived by the (free) citizenry as a contribution to benefit society as a whole, failure to pay taxes is frowned upon.

Naturally, this tax morality has an indisputable cultural origin, but it also has a great deal to do with the transparency of the political system, and especially with the attitude of the bodies that administer public spending when asked to be accountable for how the public funds they steward are spent.

The second parameter is the relationship between the tax administration and the taxpayers, and in this sense we can distinguish between models grounded upon trust and models grounded upon mistrust. The former promote cooperation and transparency while the latter prioritise monitoring and punishment of failure to pay.

Naturally, in virtually no modern tax jurisdiction can we find a pure model of one kind or the other, but in the most developed countries in the world (the OECD countries), the trend is to replace the traditional monitoring paradigm with techniques known as cooperative compliance. Based on the experience of the Australian Tax Administration,¹⁰ this has led the tax authorities' approach to evolve toward the quest for spaces of collaboration and dialogue with taxpayers, who are then more predisposed to fulfil their tax obligations.

The third parameter which we can use to classify tax administration models determines how the jobs of applying the taxation system are divided, that is, how the obligations which result from the legal norms are converted into an amount that taxpayers must pay. From this perspective, we can distinguish tax systems in which self-assessment prevails from tax systems in which administrative assessment of the amount payable predominates.

In the former, the entire job of applying taxes befalls the taxpayers. Therefore, in a single document, they declare (recognise) the taxable event, assess (quantify) the amount yielded by applying the tax regulations in force and deposit the payment of the resulting debt. In the latter, the tax debt is determined jointly by taxpayers (who declare the taxable event and provide documents to justify it) and the tax administration (which assesses the payment).

¹⁰ See, among others: OECD. "Evaluating the Effectiveness of Compliance Risk Treatment Strategies". Forum on Tax Administration, SME Compliance Subgroup, 2011.

In models grounded upon self-assessment, the tax administration primarily conducts *a posteriori* monitoring aimed at revealing (and punishing) any possible incidents of noncompliance with the taxation regulations, which have been applied (and interpreted) unilaterally (alone) by each taxpayer, perhaps assisted by a tax professional.

In administrative assessment models, the administration not only monitors compliance but is also charged with applying taxation law and handling the technical aspects of the application process, which logistically speaking requires it to have an extensive network of offices and large staffs in order to deal with citizens who go there regularly to pay their taxes.

In this sense, despite the fact that the international trends are not uniform, in the realm of direct taxation (Spain's income tax and tax on business profit) the traditional administrative assessment model prevails in the European countries, while self-assessment predominates in indirect taxation (especially VAT).¹¹

Finally, the fourth parameter to be borne in mind when describing the tax management model defines how the public functions that apply the taxation system are organised within the tax administration.

From this organisational standpoint, we can see that there are systems in which all the authority and administrative functions (assessment, collection, checking and inspection of tax obligations) are concentrated in a single organisation, as are the jobs of pursuing and punishing any infractions found, while in other systems each of these functions is entrusted to specialised bodies.

In the former, we can find highly centralised and hierarchical tax administrations, while in the latter we can see more decentralised (networked) systems which accept cooperation or even co-production of certain management services (such as executive collection) with the private sector.¹²

Likewise, there are systems in which customs, property taxes and social security are part of the same organic structure as the services that administer internal taxes, while in other systems each has its own functional organisation.

¹¹ See the list of OECD countries that use either management system in "Tax Administration 2013: Comparative Information on OECD and Other Advanced and Emerging Economies".

¹² The way Sweden and Italy have decentralised the collection function is relevant in this sense.

In short, if the aphorism attributed to Luigi Einaudi is correct, “a tax system is worth as much as the administration that must apply it”, then the first conclusion we can reach is that the tax management model chosen determines the characteristics of the administration that applies it.

In other words, in tax systems (like Spain’s) where most taxes are managed through self-assessment, the tax administration tends to adopt a centralised model and to specialise in *a posteriori* monitoring, such that the relationship with the taxpayers materialises primarily when possible noncompliance with tax responsibilities is detected.

As we shall see, this explains many of the impressions and sensations that Spanish (and Catalan) taxpayers have regarding the tax system currently in place. Thus, if the goal is to reform it or to suggest an alternative model, the first thing we must do is determine how it works, ascertain what its strong and weak points are, and especially pinpoint its most important shortcomings.

2. The Spanish model of tax system management

The model of tax administration which was instated in Spain after 1978 (and especially after 1992 upon the creation of the State Tax Administration Agency, or AEAT¹³) is a direct outcome of a tax management model based on the self-assessment model, which shifts to taxpayers all the operations needed to determine the amount they have to pay into the public treasury.

This decision of the Spanish tax laws, adopted after democracy was instated, can be considered rather bold and innovative in light of the circumstances of the day. It signalled a qualitative shift away from the traditional tax administration model, which until then had been based on the classic scheme of taxpayers’ “declarations” of taxable income and subsequent “administrative assessment” of the amount due. Especially for direct taxes (income tax and business tax), this system still operates in many countries around us, including France, Germany, Belgium, Holland, Sweden, Austria and Denmark.¹⁴

¹³ Article 103 of Law 31/1991 dated 27 December 1991.

¹⁴ “Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series (2008)”, 28 January 2009. The Spanish version is entitled *La Administración tributaria en los países de la*

Shifting the responsibility of paying tax debts to the taxpayers (and companies) – even with prepayments (withholdings) – significantly lowered the amount of human resources needed to manage the newly implemented tax structure, since instead of monitoring *a priori* (when the taxpayers communicate with the administration to declare their tax event), the self-assessment model is characterised by having a system of *a posteriori* monitoring, such that the tax administration's intervention focuses on reviewing the legality of the decisions taken unilaterally by taxpayers within the valid timeframe (currently four years; it used to be five) and especially watching that companies, from which the majority of taxes are collected, regularly pay their taxes.

From the functional perspective, we could say that the Spanish model is a concentrated, centralised model which is charged with assessing, collecting and checking tax obligations in a single body, as well as uncovering and punishing any infractions committed by taxpayers. The AEAT is also in charge of managing European Union customs within Spain, whereas for now social security and property taxes have their own different structures.

The crux of the tax administration model developed in Spain after 1992 is the gradual replacement of the human factor with IT. Until then, the Ministry of the Economy's tax monitoring was intensive in its use of trained staff (especially the corps of inspectors and tax specialists). However, since the AEAT was created, and especially since the Department of Tax Information (DIT) was formed, monitoring of compliance is now an activity that largely depends on the use of technological resources.

Somehow, we could summarise this entire process as the transformation from a document-based system (paper) into a digital system (data) and soon to a completely electronic system.

This explains, among other factors, why today the number of tax officials per inhabitant in Spain is among the lowest in Europe, and why the cost of tax collection is also among the lowest in the OECD countries (0.86 euros per every 100 euros collected).¹⁵

OCDE y en determinados países no miembros: Información comparada (2008). Madrid: Instituto de Estudios Fiscales (IEF), 2009.

¹⁵ “Intra-European Organisation of Tax Administration (IOTA), 2012-2013” [online]. <<http://www.iota-tax.org>>.

Despite this, even though there is a difference in the ratio of Spanish tax administration staff (which includes 27,000 civil servants, not counting those in the autonomous communities and local corporations with tax collecting competences) compared to other European tax administrations, the real reason behind this difference is not so much the efficacy of Spain's organisation as the strategic choice of a pure self-assessment model and *a posteriori* administrative monitoring, in contrast to the administrative assessment model which is still used in these other countries.

Examined in this light, the *a posteriori* tax monitoring system that the AEAT currently uses is based upon two cornerstones:

a) First, on the reserved nature of tax information and, even more importantly, the AEAT's monopoly on using this information.¹⁶

b) Secondly, on determining the punishments for any tax noncompliance uncovered by the monitoring and investigation bodies, which are defined either in a catalogue of steep economic sanctions or by setting a figure beyond which tax infractions become criminal, and can even lead to penalties that deprive offenders of their freedom.¹⁷

So despite the extensive technological and legal resources at its disposal, despite its monopoly on the vast stores of information it uses, and despite the intensity of the sanctioning power it wields, after more than twenty years in operation the AEAT has not prevented the economic activity that is not taxed in Spain (commonly known as the "shadow economy") from invariably remaining within a range of between 20% and 25% of the GDP (between 200 and 250 billion euros, according to the sources checked).

¹⁶ According to article 95.1 of the General Tax Law 58/2003 (LGT) dated 27 December 2003: "Any data, reports or records obtained by the Tax Administration in the performance of its functions are reserved and may only be used in order to properly apply the taxes or resources whose management it has been entrusted and to impose punishments, and these data, reports or records may not be given to or shared with third parties except for the purposes of: [...]."

¹⁷ According to article 305 of the penal code currently in force: "Whoever, by action or omission, defrauds the state, autonomous, regional or local Public Treasury by evading taxes, amounts deducted or that should have been deducted or withholdings, unduly getting reimbursements or enjoying undue tax benefits, as long as the amount of the rate defrauded, the amount not paid of the deductions or withholdings or the reimbursements or tax benefits unduly obtained or enjoyed exceeds 120,000, will be punished with the penalty of a one- to five-year prison term and a fine of six times the aforementioned amount in euros, unless the offender has regularised their tax situation within the terms contained in section 4 of this article."

According to some (unofficial) studies, this may account for lost collections of between 70 and 80 billion euros every year.¹⁸

This percentage of inefficacy is far above the European mean¹⁹ and reveals the fact that in order to fight against tax noncompliance, repressive measures or an increase in the number of inspectors are not enough. Instead, the citizenry's tax morality must be improved. In this sense, it is clear that the tax administration model implemented in 1992 has not achieved the efficiency objectives it should have, since the majority of taxpayers recognise that they pay taxes out of fear of being found out and punished,²⁰ whereas in the more developed countries with which we compare ourselves (and compete), the main factor justifying the payment of taxes is the civic duty to contribute.

Therefore, despite the apparent sound results trumpeted in the reports that the AEAT publishes each year, comparatively speaking the Spanish tax system shows a dearth of efficiency which can be seen in three areas:

- a) First, from the perspective of optimal taxation, the current structure of the Spanish tax system generates major distortions in the decisions on how to allocate resources.²¹
- b) Secondly, from the financial perspective, the capacity of the management model currently in place to contribute resources to the General State Budgets is between 8 and 10 points under the average in European Union countries.²²
- c) And finally, the compliance cost which taxpayers must shoulder in order to carry out the job of applying the tax code entrusted to them (primarily informative declarations) is much higher than the results obtained in the "fight against fraud".²³

¹⁸ Among many of these sources, see: ARRAZOLA, M.; DE HEVIA, J.; MAULEON, I.; SÁNCHEZ, R. "La economía sumergida en España", *Dos ensayos de actualidad sobre la economía española*. Madrid: Fundación de las Cajas de Ahorros (Funcas), 2011.

¹⁹ According to figures published by Eurostat, between 2008 and 2012 the average fiscal pressure in the European Union countries as a whole was 40%, while in Spain it was not quite 34%. Thus, in terms of effective collection, if we take Spain's GDP during this period, each point of difference represents approximately 10 billion euros.

²⁰ Quite telling in this sense are the conclusions of the survey administered by the Centre for Sociological Research (CIS) which appear in the July 2012 report entitled "Opinión pública i política fiscal: módulo pymes i emprendedores".

²¹ This is one of the main conclusions of the Lagares Commission in its "Informe para la reforma del sistema tributario español" submitted in February 2014.

²² According to OECD calculations, in 2013 the Spanish fiscal pressure stood at 32.3% of the GDP, a far cry from the 47.6% of Denmark, the 45.5% of Sweden, the 43.5% of Belgium and the 42% of Austria, among other countries. See "Tax Administration 2013: Comparative Information on OECD and Other Advanced and Emerging Economies".

At the same time, the dynamic of a management model which prioritises monitoring leads to high rates of conflictiveness, since the relationship between the taxpayers and the public bodies within the tax administration tends to be vertical, where the former are subjected to the power of the tax authorities.

If we add to this the fact that the Spanish legal system is one of the few that has no non-adversarial proceeding (such as mediation, transaction, conciliation, arbitration, etc.) to resolve any conflicts that inevitably arise between the administration and the taxpayers, it should come as no surprise that the rate of tax litigation in Spain is among the highest in the Western world.²⁴

3. Fiscal efficiency as the main goal of the tax administration

Well into the 21st century, in a world characterised by the globalisation of economic transactions, and in view of the exponential development of the information and communication technologies (ICT), the tax administration model established in 1992 should be subjected to an in-depth revision so that it can fully respond to the new challenges which the countries in the Western world are facing, and especially the challenges that Catalonia is facing at a historical juncture in which its citizens aspire to attain full administration of their fiscal resources as a defining feature of their national and political identity.

Therefore, regardless of how we view it, the goal is fiscal efficiency in the middle and long term, which consists of bringing the revenues effectively collected close to the tax system's potential performance. The difference between both magnitudes is an indicator of the tax collection efficiency (or inefficiency, depending on how it is viewed) of a fiscal system, known internationally as the tax gap.²⁵

²³ In this sense, the conclusions contained in report no. 1,023 of the Court of Auditors are striking. See: "Fiscalización de las principales actuaciones realizadas por la Agencia Estatal de Administración tributaria en ejecución del Plan de Prevención del Fraude Fiscal, durante los ejercicios 2010, 2011 y 2012".

²⁴ This is reported in ALONSO GONZÁLEZ, L. M. *Informe: propuestas para disminuir la litigiosidad fiscal en España a la luz del derecho comparado*. Barcelona: Col·legi de Gestors Administratius de Catalunya, 2014.

²⁵ At this time, the main countries that calculate the tax gap are: United Kingdom (7% of GDP), United States of America (15% of GDP), Sweden (10% of GDP) and Denmark (9% of GDP). In Spain, there is no official figure that allows us not only to quantify but even to approximate the economic magnitude of the inefficiency of the system, and everything is reduced to generic mentions of the shadow economy which, inexplicably, is not calculated by the Ministry of the Treasury either.

Only in this way, will the country secure the budgetary resources (revenue) needed to amortise the debt accumulated in recent years and lower its finance charges while maintaining an acceptable level of social spending per citizen. That is, the goal is to earn a “tax dividend” that will allow us to invert the current rise in (legal) nominal rates of the main taxes in the system, such that the much-needed increase in collections does not come from taxpayers who already pay (especially from working wages) but from a better allocation of the tax burdens and an expansion of the taxpayer base.

In order to achieve fiscal efficiency, a culture shift is needed, which must begin with exemplariness and transparency in the management of the public resources. This, in turn, requires the decision-making centre – on both collection and spending – to be closer to the citizenry.

That is, unlike the centralising momentum which has gained force in recent years (with a clearly political motivation), for the sake of efficiency in the management of public resources, the principle of subsidiarity regarding tax revenues must also be decisively implemented to ensure that the proximity between the budget managers and taxpayers who receive the services financed by their taxes facilitates monitoring and accountability.

On the other hand, it is essential that the tax authorities abandon the exculpatory practice of blaming the citizens for the failure in the tax system. Tax fraud is not the cause but the consequence of poor management of the risk of noncompliance.²⁶ If the public organisation responsible for applying the tax system internalises the fact that its results (output) are insignificant compared to the putative results of a rise in the voluntary compliance rate (outcome), the definition of the goals sought by the tax administration and the criteria to evaluate (or compensate) the job performed by its staff would change radically, such that cooperation with taxpayers would become the main tool used to improve the efficiency of the system.

4. Guiding principles of a modern tax administration

²⁶ “Tax Gap Map for Sweden. How was it created and how can be used?” Stockholm: Swedish National Tax Agency Research Unit, 2008.

In recent years, many studies have been published that use the available data to demonstrate that Catalonia is economically feasible without Spain.²⁷ Despite this, in order to build a complete financial cycle which can meet the public spending needs of the Generalitat de Catalunya, economic capacity is not sufficient. What remains to be organised is how part of the wealth produced by the Catalan economic is transferred to the public sector (budget) so that it can finance its own institutional structure (a “State” in the political sense), while also meeting the needs of the Catalan people (a welfare State).

This job, which is crucial in the functioning of a State, is often assigned to the tax administration, meaning the set of public bodies charged with collecting taxes. However, the fact is that “administering” a tax system consists of getting profit from it, and this is a highly complex job in which not only does the public sector participate, but the private sector (companies, tax intermediaries and credit banks) also plays a pivotal role.

Thus, from the outset it must be made very clear that a “tax management model” is something more than just a “tax administration model” and much more than a “tax agency model”.

The first concept leads us to define the role of each of the operators within the system (taxpayers, companies, intermediaries and public bodies) and their interrelations. The second tells us the characteristics and composition of the public authority within a given tax system. And finally, the third concept describes the nature and functions of the body which is entrusted with monitoring compliance with the duty to pay taxes.

Framed in this fashion, and following the parameters outlined in the previous section, the tax management model which would best fit the characteristics and capacities of Catalan society according to the latest international trends is one that, from an inclusive perspective, manages to integrate all the operators in the system, generates a climate of reciprocal trust through shared instruments of governance, and prioritises strategies aimed at improving tax morality without sacrificing the job of monitoring compliance.

²⁷ This is very clearly explained in *Economia de Catalunya: Preguntes i respostes sobre l'impacte econòmic de la independència*. Barcelona: Col·legi d'Economistes de Catalunya, 2014.

If this is so, in order for the tax administration of Catalonia to become the public authority in a management model based on trust and cooperation with the majority of taxpayers, it must fulfil the principles of transparency, professionalism, public service and especially efficiency.

a) Transparency and accountability

A transparent tax administration requires a close relationship between taxpayers and the body that manages the public resources.²⁸

An association between the centre that manages direct public spending (healthcare, education, social services, citizen safety, etc.) and the centre that manages tax collection facilitates citizens' perception of the contributory nature of their fiscal effort.

This two-way co-responsibility, coupled with proximity between those who pay and those who decide how to spend the public money, is the main factor in improving the voluntary compliance rate while also improving the efficacy of public spending in terms of social welfare.

On the other hand, a transparent tax administration is an organisation that is accountable to society.

Therefore, the goal is not to submit an annual report which only contains magnitudes on the results of output; instead, an objective parameter must be introduced that allows us to check at all times that the administration's actions effectively reduce the tax gap²⁹ and increase the voluntary compliance rate.

b) Professionalism

²⁸ On this issue, see "Recomanacions per a la millora de la transparència a les institucions i a les empreses". Barcelona: CAREC, 2013.

²⁹ In the document "Tax Gap Map for Sweden: How was it created and how can it be used?" (2008), the Swedish tax administration lays out the criteria for calculating the differences between the taxes actually collected and the potential collections within its economic system.

A professional tax administration should implement a new organisational model for its human resources.³⁰

The goal is to build a public organisation following criteria of excellence, made up of highly qualified, motivated staff aware that they belong to an institution which is accountable to the citizenry. Thus, the organisation of the human resources of the Catalan tax administration should not be grounded exclusively upon the traditional method of hiring civil servants by exams and seniority, but instead it could introduce hiring, promotion, performance review and compensation based on objectives attained, comparable to what is applied today in the most advanced organisations in the world.³¹

That is, despite the fact that the bulk of the human resources would still be public servants specialised in the functions of applying taxation (especially those jobs that entail exercising the sanctioning authorities), we should not discard the possibility of hiring professionals with experience in the private sector, university professors or other experts who might make a more diversified staff that could act according to professional management criteria, similar to private organisations.³²

c) Public service

A tax administration oriented towards public service should lower conflictiveness with taxpayers.

Right now, international organisations recommend viewing taxpayers as clients and simplifying the tasks that befall companies. In a management system based on self-assessment and advance payments (withholdings), the operators are de facto in charge of tax collection and are often laden with excess bureaucratic burdens.

Therefore, the priority of the tax administration of Catalonia should be to facilitate compliance with tax obligations by trying to eliminate unnecessary paperwork and formalities. Technical solutions should be sought and, if needed, changes in

³⁰ Particularly applicable in this sense are the recommendations contained in the “Informe de la Comissió d’Experts per a la reforma de l’Administració Pública i el seu Sector Públic”, by the Expert Commission presided over by Guillem López Casanovas, which inspired by Administration Reform Plan submitted in 2014 by the government of the Generalitat.

³¹ “Fiscal Blueprints: A path to a robust, modern and efficient tax administration”. Luxemburg: European Commission, 2007.

³² According to an OECD publication, almost 80% of the tax organisations analysed have broad leeway when hiring staff.

regulations should be proposed so that individuals, and especially companies, can lower their indirect tax costs.³³

d) Efficiency

A tax administration is efficient when it does more with less.

Along with the service provided to the taxpayers who help to manage taxes, the main goal of the tax administration should be to achieve high levels of efficacy in the fight against fraud so that the taxes effectively collected draw closer and closer to what should be collected according to the magnitudes of the economic system.

In order to achieve this goal, not only are the traditional tax monitoring procedures and sanctions for irregularities needed, but once again we must enlist the participation of society as a whole. After all, only if everyone is aware of the negative effects of tax fraud can the percentage of collections significantly improve.

Achieving this active participation is one of the main challenges facing the tax administrations of the most advanced countries in the world.

5.- A new model of tax administration

According to everything said so far, to successfully manage a fiscal system it is not enough to promote the cultural of voluntary compliance. More than anything, we must make an in-depth reform of the tax administration model possible so that the public organisations in charge of channelling citizens' fiscal efforts internalise new values, redefine their mission and become the factor that effectively spearheads the transformation of the current model of interaction between the tax authorities and the taxpayers.

³³ Even though based on international statistics the Spanish tax administration seems to be one of the ones with the lowest operating budget, the fact is that in a pure self-assessment model, companies shoulder most of the costs needed to manage the tax system. These extremely high "compliance costs" are not only one of the main factors distorting the Spanish management model but, inasmuch as they are not even quantified, they are not internalised when calculating the efficiency rate.

The challenge we are facing right now is replacing a tax monitoring system grounded upon mistrust of the taxpayers with a new tax management model in which the cooperative nature of relations between the citizenry and the administration predominates.

The goal is to further implement the recommendations that the OECD³⁴ and European Union³⁵ have been making for over a decade, and which other countries (like Sweden and Denmark) are already applying, which has allowed them to garner indisputable success in terms of both collections and their fight against tax fraud.

5.1. A transparent tax administration must facilitate access to tax information

As the Advisory Council for the National Transition says, in the 21st century “today the crux of the matter is computer code”.

This sentence places the key emphasis on the current status of tax organisations in advanced countries, since in an increasingly complex, globalised economic system in which services (professional, financial, commercial, etc.) prevail, the strategic factor in fiscal power is no longer control over the territory but control over information.

From this vantage point, it is fair to recognise that Spain’s tax administration has been (and still is) a pioneer in developing devices to gather and process information that is important to taxation. The ongoing investment in technology applied to tax management (in terms of both equipment and specialised staff) has allowed it to achieve efficacy rates that are far above the usual parameters of other tax organisations in the Western world.

In any event, we must bear in mind the overall cost of this operational model, given that although it is true that the “administrative costs” have dropped considerably, the “compliance costs”, the ones that befall the taxpayers and especially companies, have risen steadily year after year, since the tendency to displace the material application of the tax system to the private sectors entails a constant rise in indirect fiscal pressure.

³⁴ Among many others, see “Together for Better Outcomes: Engaging an Involving SME Taxpayers and Stakeholders”. OECD, 2013.

³⁵ “Improving Tax governance in EU Member States: Criteria for successful policies”. Brussels: European Commission, 2012.

For this reason, if we quantified all the costs of this management model and compared them to the results they yield, perhaps we could no longer so confidently claim that the Spanish model is exemplary in its efficiency, given that ultimately it has only transferred costs from the public sector to the private sector.

In a management model based on self-assessment, taxpayers are not only responsible for the entire process of complying with paying their tax obligations, but they are also responsible for providing their information to the administration, which collects and organises it according to a census of tax obligations. At the same time, almost everyone is required to provide the AEAT with important tax information on their professional or business activity through what are known as “informative declarations”.³⁶

By systematically crossing the information provided by the taxpayers themselves with the data supplied by everyone with whom they have interacted, the AEAT has an indirect means of monitoring that enables it to detect “discrepancies” and to precisely choose the scope of the administration’s audits, which increases the success of regularisation proceedings.

The results of this model of information use are often presented as the hallmark of the AEAT, so much that in order to prove its efficacy in the battle against tax fraud, it has often displayed statistics showing a clear upswing in recent years. That is, if we believe the figures that appear in the reports it has published in recent years, despite the cutbacks in its management budget, year after year the AEAT claims that it has discovered many more irregularities than in the previous year, which it trumpets as its main indicator of efficacy.³⁷

In any event, without disputing either the quality of the information management systems or the professionalism, qualifications or experience of the civil servants within the Spanish tax administration, in order to analyse the feasibility of the *a posteriori* monitoring model applied today, we should keep two considerations in mind.

The first is that no matter how powerful it is, a computer system can only process the information it is fed, as long as it is associated with individuals or

³⁶ Articles 93 and 94 of the General Tax Law.

³⁷ The AEAT’s 2011 report is particularly illustrative of this.

organisations that appear directly or indirectly in the census of taxpayers. Therefore, the efficacy of using crossed data to detect irregularities drops considerably for those who deliberately engage in economic activity outside the “system”, either because they have not been identified (failure to declare), or because they pay all or part of their transactions in cash,³⁸ or because they use fiduciary structures (front men, tax havens, etc.). As a result, concentrating the efforts on what is called “extensive monitoring” is seemingly profitable in quantitative terms, but it negatively discriminates against those taxpayers who are known to the tax administration, whose irregularities are therefore easier to discover and remedy.

The second consideration is that one thing is being efficient in gathering information, and another totally different thing is being efficient in how that information is used, given that today the flow of information that the AEAT receives is so great that exploiting it in monopoly fashion leads to an efficiency manifested by underuse.

The inevitable limitations on the human and material resources available to the AEAT means that the amount of data it constantly receives is not fully mined. Indeed, the reserved nature of fiscal information extends even to the data themselves. Thus, in addition to not enjoying legal coverage,³⁹ from the perspective of efficiency this is totally absurd since it leads to involuntary or unconscious irregularities⁴⁰ which, given the immense volume of taxpayers to be checked,⁴¹ necessitates widespread monitoring, which in turn requires vast human and material resources.⁴²

In order to overcome the shortcomings of the *a posteriori* administrative model, we must consider what would happen if instead of monopolising the data obtained, the AEAT allowed the taxpayers (both individuals and companies) that are duly included in

³⁸ Even though money has no colour, when these operations are excluded from the declaration, this practice of undeclared income and expenses is known as “black” payments in Catalan (“*pagaments i cobraments en diner negre*”).

³⁹ According to article 95 LGT, fiscal data are “reserved” in nature, such that the AEAT cannot give this information “to third parties” except in the cases indicated in the law itself. However, regarding their own information, taxpayers (either natural or legal persons) are never “third parties” and they therefore have the full right to request unlimited access to their tax information held by the AEAT. This is what can be gleaned from the provisions of Directive 95/46/EC of the Parliament and the Council of the European Union on access to one’s own information, Organic Law 15/1999 (LPDPC) and, within the scope of the AEAT, Instruction 6/2000 dated 4 December 2000.

⁴⁰ HM Revenue & Customs. “Measuring Tax Gaps 2013 edition. Tax gaps estimates for 2011-2012”, 2013.

⁴¹ According to the IOTA publication in 2011, 51,477,717 obligatory taxpayers appeared in the AEAT census.

⁴² According to the AEAT report, in 2012 more than one million (parallel) management checks were performed.

the census to access their fiscal information at any time, without restrictions, in order to verify their tax situation on a preventative basis and, if needed, rectify any possible discrepancies with the content of the declarations submitted.

The empirical proof that sharing information is profitable for both parties is the success of the draft income tax self-assessment. Despite its unnecessary restrictions, today a practice has gained ground in which many citizens (though not companies) can access their fiscal data during the legally established period in order to submit their self-assessments. They are even offered the possibility of confirming the prior calculation which the (virtual) administration has made using this same data to get the amount to be paid or reimbursed, a figure which is used by default if no changes are made.

Another example of the success of cooperation with taxpayers and information-sharing can be found in customs management. For many years, professional customs agents have been able to access their clients' information in real time and remotely submit most of the entry or exit proceedings of goods within EU territory.

So if the computer system allowed for constant access (24 hours a day, 365 days a year) to one's own information on all taxes, it would provide identified taxpayers (those who declare) with a mechanism that would allow them to self-monitor for possible irregularities (self-audits), which would in turn help to lower both taxpayers' compliance costs and the administration's management costs.

In this way, the human and material resources of the different public bodies charged with monitoring the system could instead be earmarked to uncovering the underground economy⁴³ (those who fail to declare) and especially to deal with high-intensity tax fraud,⁴⁴ such as fraud networks (primarily VAT).

If this is true, then in order to improve the voluntary compliance rate, perhaps we do not need to stress the need to reinforce the *a posteriori* administrative monitoring mechanisms (inspections) and keep harshening the catalogue of sanctions when an irregularity is found. Instead, perhaps we should provide the legal and technological tools so that the taxpayers themselves can be in charge of verifying the accuracy of their self-assessments.

⁴³ According to the 2012 AEAT report, 24,000 intensive checks (inspections) were performed.

⁴⁴ According to the 2012 AEAT report, 1,000 judicial cooperation actions were filed on crimes against the public treasury.

That is, given that it is impossible to ever fully control the entire census of taxpayers, they should be segmented into risk groups, responsibilities should be assigned and the resources that the administration earmarks to each of the profiles should be prioritised depending on their greater or lesser willingness to cooperate. In this way, the resources could be optimised and the administration's efforts could be targeted where the most damage is caused to the smooth running of the system.

5.2. A public-service tax administration must work with the network of tax advisement professionals

Within the framework of a tax management model characterised by *a posteriori* administrative monitoring and sanctions of noncompliance that has already happened, and in which inspection predominates when defining the role that the tax administration should play, the interlocution between taxpayers and the administration usually happens in monitoring or investigation procedures whose purpose, as everyone knows, is to review the accuracy and legality of a tax decision previously adopted by the taxpayers.⁴⁵

In the context of this relationship, we run the risk that each operator within the system will act following manifestly opposing interests, which will end up fostering a climate of reciprocal mistrust among the tax administration professionals (civil servants or otherwise) and tax advisement professionals who, as is logical, will defend the interests of their clients (taxpayers) but often find themselves obligated to do so in a climate of vast legal uncertainty and insecurity.

This spiral of mistrust means that managing the inevitable conflicts arising from the interpretation and application of tax law might lead to increasing conflict between both sides, each fighting to impose its own criteria and interests, which would significantly increase the amount of tax litigation, harm tax morality, negatively affect collection and hinder society's collaboration in the struggle against tax fraud.

In view of this phenomenon, which is harmful to all concerned, the trend must be inverted. The vicious circle of mistrust must be stopped, and a clear push must be made for collaboration among everyone. The efficiency of the tax system management

⁴⁵ In this sense, see FERREIRO LAPATZA, J.J. et al. *La justicia tributaria en España*. Barcelona: Marcial Pons, 2004.

requires a substantial change in the current model of interlocution between taxpayers and the administration, and the participation of a tax intermediary plays a fundamental role in this shift.⁴⁶

One example of how we could articulate a model of reciprocal trust between the administration and taxpayers, which would also help to lower both “compliance costs” and “monitoring costs”, is by allowing these professionals access to their clients’ tax information.

Today, a tax advisor who prepares their clients’ tax declarations cannot check the information provided by their clients (except the draft income tax declaration). Therefore, oftentimes they are forced to make a “blind” diagnosis, trusting that they have all the information they need to determine the tax category of the events reported by their clients.

However, reality shows that many of the irregularities that are behind administrative monitoring procedures are “discrepancies” between the information declared by taxpayers and the information that third parties have provided the administration through their informative declarations.

Clearing up these irregularities leads to internal costs in the tax agency (staff, IT, time, etc.) and a large number of administrative assessments (the famous parallel checks), and it is the source of a great deal of litigation.⁴⁷

Therefore, this conflictiveness (which is harmful to all concerned) could be drastically curtailed if the professionals could have constant access to their clients’ tax information with their clients’ previous authorisation. In this way, any possible involuntary irregularities would be detected from the start, given that the tax professionals would have the official source of information that would allow them to check the information that the taxpayers provide them and thus help them lower the margin of error when taking decisions.

For all of these reasons, the dividends of collaboration between the administration and tax intermediaries would be:

⁴⁶ “Study into the Role of Tax Intermediaries”. OECD, 2008.

⁴⁷ More than 60% of the economic administrative claims submitted to the Regional Economic-Administrative Court (TEAR) of Catalonia are for less than 6,000 euros.

- a) A rise in collections during the voluntary period and therefore a drop in the tax gap without having to raise sanctions.
- b) A reduction in both compliance and monitoring costs for taxpayers who submit declarations (the majority of them).
- c) A drop in low- or mid-level conflictiveness.
- d) A clear improvement in the image of the tax administration, which would no longer act unpredictably and instead act in a transparent, cooperative way.

That is, reality shows that despite the illusion of “absolute control”, in an open, globalised economy, tax administrations cannot investigate everyone. Therefore, the most effective solution is to focus public action on the citizens and economic agents that are deliberately outside the system (free riders). In other words, in order to make the most of the limited resources at their disposal, the tax authorities should carefully choose the subjective scope of their fight against fraud in order to funnel the bulk of their resources on uncovering underground and directly fraudulent economic activity.⁴⁸

5.3. A public-service tax administration must reduce conflictiveness with taxpayers

The main referent of the new tax management model should be service to taxpayers, and especially to small and medium-sized companies, which are the ones that truly bear the brunt of tax collection, often with excessive bureaucratic burdens.

The tax organisation’s priority should be to ensure that tax obligations are fulfilled by trying to eliminate unnecessary paperwork and formalities.

Likewise, in order to lower litigation, the prestige of administrative reviews should be boosted (as they are more economical and affordable for most citizens), and to do so it is essential to enhance the arbitration function of the organisations charged with performing legal audits of the tax administration’s actions.⁴⁹

The efficacy of non-jurisdictional audits depends directly on the social prestige of the organisations entrusted with reviews.

⁴⁸ In this vein, see GASCON CATALÁN, J. “La gestión de los impuestos: En busca de una Administración tributaria eficiente”, *Papeles de Economía Española*, no. 139, pp. 153-173.

⁴⁹ A good example of the different systems for resolving tax conflicts can be found in ESPEJO POYATOS, I.; THURONYI, V. “Resolving Tax Disputes”. IMF, 2012.

As happens today with economic-administrative tribunals, almost all of whose members are civil servants from the tax administration, it is inevitable that this organisation is not perceived as a true way of solving discrepancies but instead as a bureaucratic step required prior to access to judicial monitoring. This leads to an unnecessary prolongation of the conflict, which generates costs (in time and money) that could be avoided if the decision of the reviewing body had the authority that comes with independent judgement and proven technical competency.

5.4. A public-service tax administration must provide legal security to taxpayers

Another factor that must be improved in order to make a tax system efficient is legal security.

Right now, the current status of taxpayers in administrative doctrine is totally passive. They only have the right to make inquiries⁵⁰ but not to participate in the procedure of determining an interpretative criterion which might be applied beyond the specific case that motivated the inquiry.

Therefore, if we want to improve the prestige and observance of the interpretative criteria of tax regulations and thus avoid litigation, we must establish a mechanism that allows professional organisations (or taxpayers) to express their opinions, and for these opinions to be duly taken into account when these tax regulations are interpreted. In this way, if the criterion is accepted by both parties, its repercussions will be further-reaching and especially more readily accepted by its targets.

5.5. A tax administration is efficient when it does more with less

Along with the service to taxpayers who submit declarations, the main goal of the tax administration should be to achieve high levels of efficacy in the fight against fraud so that the collections effectively obtained are increasingly close to what is called for in the State budgets.

In order to achieve this goal, not only must we have tax monitoring procedures in place, but once again we must enlist the participation of society as a whole, since

⁵⁰ Articles 88 and 89 of the LGT.

only if everyone is aware of the effects of tax fraud will we be able to significantly increase the collection rates.

Yet again, the key factor is information. In societies with an advanced taxation culture, fiscal reputation is a highly valued asset which serves as a dissuasive mechanism against fraud, since public knowledge of everyone's status with the tax administration makes it easier to uncover hidden activities and works as a disincentive to the underground economy.

Therefore, given that fiscal reputation will become an increasingly highly valued asset in society, instruments must be put into place that reveal what we could call "fair tax play", either voluntarily, through the intervention of companies specialising in tax ratings, or through anonymous information published by the tax administration itself.

In this sense, it is very important to be aware that working together on the fight against tax fraud does not mean "outing" our neighbours. Instead, it means rejecting any approach that is unlawful, providing the information on transactions performed and, most importantly, trusting the administration.

If with a cooperative approach, "low-intensity" fraud can be lowered through cooperation between the public and private sectors, the human and material resources of the tax administration can be spent on investigating and preventing "high-intensity" fraud, which is what truly erodes the efficacy of the tax system.

6. Conclusions

To conclude and recapitulate everything we have said until now, we should stress two factors:

One. The model of a tax management system based on self-assessment should evolve and provide taxpayers with self-monitoring instruments, since *a posteriori* administrative control is not enough.

Two. We will only be able to achieve fiscal efficiency if we are able to define and put into practice an effective model of collaboration between the public and private sectors.

In short, the new tax administration model should take advantage of the technical and operative knowledge garnered through AEAT's experience, but it should

place them at the service of society and establish a framework of understanding that allows us to improve effective collections without turning tax management into a constant source of conflict.

The alternative to the Spanish model, which is based on *a posteriori* monitoring and punishment of any infractions discovered by the administration, is the model of cooperation and management of the risk of noncompliance, which is based on taxpayer segmentation.

Some of the tax administrations in the most advanced countries in the world have already moved beyond the traditional general monitoring model and are implementing a tax management model based on trust among taxpayers and cooperation with tax intermediaries, which allows them to concentrate administrative action on monitoring the economic operators which deliberately work outside the law.

For this reason, the “Catalan model” of tax management should be grounded upon the contributory nature of tax payments, just as the model of tax administration should be grounded upon cooperation among the different stakeholders in the tax system: taxpayers, companies, tax intermediaries, public bodies, security forces and legal authorities. They all share the same interest, which is simply to ensure that the system runs smoothly.

In other words, if the citizens of Catalonia perceive that the economic effort they make when they pay taxes leads directly to an improvement in the living conditions of the people who live and work in Catalonia, and that public resources are administered in a transparent, responsible way, the percentage of voluntary compliance might improve considerably, which would make it much easier to implement a tax administration in its own State.⁵¹

The Catalans’ tax morality, as an expression of their national consciousness, could become a factor in the transformation of the current status quo and could catapult Catalonia’s indisputable economic potential towards a new model of interaction between society and its governing institutions which could once and for all provide our

⁵¹ In this sense, we should take into consideration many of the proposals which appear in the report entitled “Principles for a Modern and Efficient Tax System in an Independent Scotland”, which the Fiscal Commission Working Group submitted to the government of Scotland in order to prepare its own tax system.

citizens with the levels of wellbeing and progress that their extraordinary fiscal effort deserves.

If we all manage to transform the perspective of the citizens of Catalonia on taxpaying, we will achieve the fiscal efficiency of our tax system and therefore break the current vicious circle of tax consolidation which is eroding the welfare state that has taken us so many years (and so many sacrifices) to build. I am confident that we can.