

Global Tax Symposium

*Paper: Evaluating the Impact and Practical operation of Client-Attorney Privilege
in the Context of Tax and Financial Transparency*

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The Architecture of the Paper

- The Quest for “Delicate Balance”:
 - Struggle against tax evasion/avoidance needs **transparency** and is **data/info-driven**;
 - Taxpayer’s Rights: **confidentiality** of data shared with counsellors/lawyers/...
- Conclusion:
 - The “Privilege” in context (...)
 - No “*Exceptionalism*”: *Additional exceptions for C-AP in the Context of Tax and financial transparency, are therefore not required.*

How Did We end up in This Situation?

- **The Paradox of Taxation:**

- **Collaboration: State and taxpayer aligned.** Taxpayers must collaborate to promote common goals and a shared (democratic) vision of society;
 - No need for secrecy: full and unrestrained disclosure, fairness, bona fides. Analogy with Civil law.
- **Conflict: State and Taxpayer departed.** Taxation is a qualified expropriation and is intrinsically conflictual.
 - Right to defence, to remain silent, (...) the Rise of the privilege. Analogy with Criminal Law.

The *Sparkle* (How the Problem Arose)

- The European DAC-6 Directive (2018/822):
 - Duty of disclosure imposed on lawyers / (...) if conditions are met (Article 8ab(1 ...) of 2011/16 Directive);
 - The directive acknowledges the Privilege (but conditions apply);
- DAC-6 is part of a much broader mosaic in the making by the European Commission / EU, whose goal is to expand transparency.

Evidence of the Conflict

- In the paper, a comprehensive set of references to the most significant case law in the matter;
- Further cases might be included/emphasised:
 - C-694/20 December 8th 2022 *Orde van Vlaamse Balies*;
 - Article 7 Charter of Fundamentals Right of the European Union (Private and family life);
 - C-432/23 September 26th 2024 F SCS, *Ordre des avocats du barreau de Luxembourg*;
 - No tax “exceptionalism”
 - ECHR 36617/18 February 6th 2025 *Italgomme SRL*;
 - Fundamental rights during the audit/inspection procedure.
 - ...

A Matter of Boundaries

- Only lawyers?
 - Who is a lawyer?
 - What about the other professions?
- Is it a *right* or a *duty*?
- What are the boundaries of the information privileged?
 - Documents?
 - Data?
- In the paper, a distinction between “*communication*” and “*information*”?

Redefining the Problem

- Privilege is not a stand-alone prerogative but has to be included in a more comprehensive framework:
 1. Privilege is the cornerstone on which the due process clause is built;
 2. You can't have "Rule of Law" without due process, ergo ...
 3. No Privilege ... no Rule of Law;
- If this is true, then the classic "*balancing approach*" can not be used to define the extension of the Privilege.
 - Conversely, we are in "all in or all out" scenario.

The Questions Left Unanswered

- **Ethics and the Law**: what is the Role of the Rolls / Orders / Association of Lawyers?
 - Is there any precise scenario in the EU? And beyond the EU?
- Limits to the privilege:
 - External: aiding and abetting the commission of a crime
 - Internal: Are there any? For instance, AML provides evidence that limitations are possible ...

Conclusion: the Road Ahead

- Further questions for European / non-European researchers:
 - Extension of the privilege as a factor of competitiveness;
 - Extension of the privilege beyond the borders (cross-border consultancy)
 - A clash between Ethics and Law?
 - Redefining the problem via the role of the Ethic bodies of the Orders / Associations?



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Now, to Dr. Rao ...