



# Editorial

## Fiscal Certainty: A Public-Policy Issue in its Own Right

**Michel Bouvier**

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## Editorial

### Fiscal Certainty: A Public-Policy Issue in its Own Right

It is undeniable that fiscal certainty is understood and realised by means of legal constructs. However, its roots in the increasingly complex twists and turns of the law should not blind us to the fact that, beyond the legal approach, the issue is one of public policy in its own right, and a matter of societal choice, just like education, defence, culture, healthcare and even justice. The field in question, taxation, makes it a particularly sensitive area. Indeed, history has shown us that taxation can lead to serious breaches of fundamental rights. Happily, we no longer live in times where sums are exacted by the decision-makers or the collectors themselves, but this does not mean that the issue of fiscal certainty has disappeared. The matter is felt keenly when the nature of taxation veers towards confiscation, affecting the financial capacity of taxpayers, or indeed when rules become so unstable that taxpayers are no longer able to build their own personal futures, or the future of their businesses.

Certainty in tax matters is essential for a number of reasons and, while the forms and accomplishment thereof ultimately depend on legal rules and the related administrative practices, it is useful first and foremost to consider it as arising from a way of organising society. Political values such as those relating to democratic tradition and protection of human rights are at stake. Economic imperatives are also key, relating equally to the dynamics of consumption and the dynamics of business. Financial considerations also need to be borne in mind, since fiscal uncertainty necessarily has an impact on compliance by taxpayers with their obligations, and may compromise the collection of taxes<sup>1</sup>. It should also be remembered that the policy framework for the

1. A. Smith believed that taxation had to have two essential qualities: *clarity* and *convenience*. “The tax each individual is bound to pay ought to be certain, and not arbitrary,” he wrote. “The time of payment, the manner of payment, and the quantity to be paid, ought all to be

management of taxation by the relevant people needs to be sufficiently clear to ensure they are able to carry out their jobs correctly. Finally, a lack of fiscal certainty is liable to result in different tax avoidance strategies: rebellions, obviously, but also relocations to states that can offer the essential factors underlying this certainty.

Considered from a general point of view, and as excellently highlighted by F. Luchaire, “legal certainty is an element of security. As such, it is founded on Article 2 of the 1789 Declaration of the Rights of Man and of the Citizen<sup>2</sup>, which includes security among the natural and imprescriptible rights of man alongside property and resistance to oppression”<sup>3</sup>. Legal certainty, and therefore fiscal certainty, are therefore involved in the protection of human rights. However, as mentioned, *the issue is also an economic one*. Moreover, it has become a burning issue on account of the economic crisis, which has generated economic and financial instability and made the need for fiscal certainty even more acute. But it is primarily in response to the development of a globalized society that renewed interest has been shown on the issue of fiscal certainty, since this backdrop has increased fiscal uncertainty for companies as well as for employees. With globalisation making the economic markets more unpredictable than ever, fiscal certainty is more than ever an essential objective for the correct running of economic activities. The increasingly urgent need for fiscal certainty is also being felt both by small, domestic enterprises, whose fate – whether they like it or not – is determined to a greater or lesser extent by fluctuations in the international market, and by large companies implementing fiscal strategies applied at global level.

In parallel to this, *the tax authorities are faced with a similar problem*. Indeed, not only does their public service function require them to ensure that taxpayers are clearly informed of their rights and duties, but they also need to manage taxation and check the accuracy of tax returns against a backdrop marked by the increasing use of fiscal devices that are getting more and more complicated, and even aggressive.

clear and plain to the contributor, and to every other person.” This principle of certainty was accompanied by a principle of convenience, according to which “Every tax ought to be levied at the time, or in the manner in which it is most likely to be convenient for the contributor to pay it”. (in *An Inquiry into the Nature and Causes of the Wealth of Nations*, 1776).

2. “The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.”
3. F. LUCHAIRE, « La sécurité juridique en droit constitutionnel français » [Legal certainty in French constitutional law], Cahiers du Conseil constitutionnel, n° 11-2001.

As such, tax law comes out in the form of standards for extremely varied political, financial, economic and social objectives. This is why it is a complex branch of law whose rules are often difficult to interpret, the complexity of this law being matched only by the variety of situations that it is required to cover. This also explains its complexity and instability, the legislator being bound to multiply exemptions and to constantly modify establish rules. The sources of this law are also increasing (national and international, legislative, regulatory, precedent), and *new domains, new stakeholders and new issues* are always appearing. This results in a wide range of taxes and rules for tax bases and procedures that are often very complicated and give *a complex image of the fiscal structure, which is not in any way reassuring*. This has been perfectly expressed in the Fouquet report: “the instability and complexity of fiscal regulations are the primary causes for legal uncertainty: the frequent changes in the law and the difficulties that arise when attempting interpretation constitute a source of risk for all taxpayers in their relations with the tax authorities, as well as when appraising the fiscal dimension of an economic project”<sup>4</sup>.

As shown, the essential question of fiscal certainty needs to be posed within a global context, and must be understood as a genuine public-policy issue. This is the key to reactivating public-spiritedness in taxation and invigorating the economic markets. *We understand that it is urgent to firmly establish that this public-policy issue needs to be clearly defined and identified as such as part of a nationwide strategy*. It is essential for affirming the legitimacy of taxation amongst current and future taxpayers. An essential and crucial issue nowadays.

Michel BOUVIER

4. « Améliorer la sécurité juridique des relations entre l’administration fiscale et les contribuables : une nouvelle approche » [*Improving legal certainty in the relations between tax authorities and taxpayers: a new approach*], Fouquet report (2008).