



# Editorial : Taxless society, Stateless society?

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IN **REVUE FRANÇAISE DE FINANCES PUBLIQUES** 2019/1 N° 145 , PAGES XIX TO XXXI  
PUBLISHER **LEXTENSO**

ISSN 0294-0833

DOI 10.3917/rffp.145.0000b

Uploaded: 09/01/2024

**Article available online at**

<https://droit.cairn.info/revue-revue-francaise-de-finances-publiques-2019-1-page-XIX?lang=en>



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## Editorial

### Taxless society, Stateless society?

Taxation is currently a subject of uneasiness whether in the polls,<sup>1</sup> in political, economic or social debates or even in the refusal expressed against creating new taxes (e.g. carbon tax) or increasing others (e.g. CSG, general social contribution).

This situation may appear worrisome to those who see tax as the expression as well as the fulfilment of a social link. Whereas, it may appear encouraging to those who believe that taxation slows investment and economic development in general.

However, beyond this uneasiness, this incomprehension reveals deep-rooted social discontent.<sup>2</sup> Discontent that has arisen from *a transition* taking place between the post-World War II model of society and another model that remains unclear and unstable stemming from globalisation along with economic liberalism and widespread algorithms jeopardizing numerous traditional business sectors as well as many intellectual customs and day-to-day practices. No tinkering of the tax system can fix this discontent or make it disappear since it is this very system that is unsuitable and which worsens the suffering of the most vulnerable individuals or those who are soon to be.

We are witnessing a transformation of society which against the backdrop of the “digital revolution” is gaining speed and increasingly identifies the way in which the public sector operates as that of a business. But nothing is certain yet. The process is evolving and the occasional clumsy answers to problems encountered are for the most part due to the fact that we still have one foot in a political and social philosophy of taxation that is rooted in the 19th and 20th centuries, and the other in an economic and entrepreneurial philosophy that has

1. See IPSOS polls for *Le Monde* and *FONDAFIP* on October 2013 and November 2018.
2. See BOUVIER M., “The French and taxes: which system of taxation for which society?” [*Les Français et les impôts : quelle fiscalité pour quelle société ?*], Editorial, RFFP Nov. 2013, n° 124, p. V ; see also “The French and taxes” [*Les Français et les impôts*], Ipsos survey, October 2013, available on [Fondafip.org](http://Fondafip.org).

steadily taken hold. According to this recent concept, the social link is being replaced by an individualized view of taxes that can be summed up as: what do I pay and how does this benefit me?

### What is the meaning of taxation?

The meaning of taxation can be seen through the various functions that are allocated to it. The budget function is what immediately comes to mind. It is omnipresent beyond just the economic function that can be allocated to it to develop a certain sector. Taxes also hold a political function as an attribute of the role of a citizen and as part of belonging to a community. Its function may also be social when it is used as an instrument for redistributing wealth and reducing inequalities, also known as solidarity. All of its functions are threatened by the loss of trust that has clearly been expressed by the people as well as in radically anti-fiscal doctrine.

Furthermore, taxes have always been considered as an essential attribute of State sovereignty. However, is this still the case today in light of a globalized world organized horizontally through digital networks in order to avoid tax?

Lastly it is fair to wonder whether tax has a function other than budgetary, even though this function has also been severely undermined. What meaning could it be given today in an environment that is so radically different from not so long ago? In other words, how to restore trust in taxes? Have taxes been definitively discredited? Is this opinion unanimous or are taxes still accepted by the majority of citizens? It is not always clear. Should taxes be mistrusted? Lastly, what is the future of taxes and consequently what is the future of the State?

### Is tax resistance “intellectually respectable”?

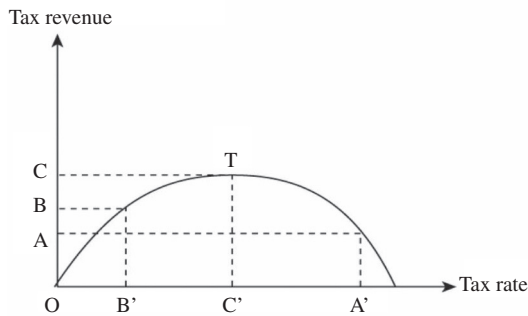
Liberal economists are particularly wary of taxation. They denounce big government that feeds off taxes and paralyzes the economic market. In other words, faced with this fossilized system, the only possible solution is to switch from State regulation to market regulation, which would lead to a reduction in public spending and a decreased tax burden.

In these analyses, the *belief in the State* as a regulator of the economy and society as a whole is replaced by a *belief in the market* that places taxation at the heart of all its issues. In this instance, taxation is not

an instrument of voluntary or interventionist policies led by the State. On the contrary, the goal is to reduce its influence in order to restore market-led regulation.

An ultraliberal economist, Arthur Laffer, lent particular credence to this criticism through a simple bell-shaped curve illustrating the idea that any increase in tax pressure would result in a decrease in economic activities or an increase in fraud and evasion. For Guy Sorman, this curve “justified tax revolt not just on a populist level but also in terms of economic efficiency. With Laffer, tax revolt has become intellectually respectable. It is no longer populist revolt but rather economic science”.<sup>3</sup>

The Laffer curve



### Has tax become invisible?

Undermined by a more or less moderate tax revolt theory, tax is also threatened by its increasing invisibility.

In a world of widespread trade, taxation could consist in solely taxing flows through taxes included in prices. This method for levying taxes could potentially be accompanied by systematic withholding tax on income.

If such a scheme were to be imposed taxation by embracing mobility and occasionally the virtuality of its environment would eventually disappear in its most visible forms. Forgetting its origins, taxes would see its traditional figures and images become increasingly evanescent, its authoritative essence, like its contributory character would increasingly fade into the global dynamic of the economic order. In this context,

3. SORMAN G., *The liberal solution [La solution libérale]*, Fayard, 1984.

the problem would then arise of the control that each individual has on the weight of the tax burden, with it disappearing like an obvious reality as well as a symbol of a way of being in society, a social link. Once associated with a price or a salary, taxes are no longer visible and can no longer be directly perceived. This invisibility excludes anything that can or has characterized its political or social nature in favour of an economic logic of trade. This presence/absence of taxes is suitable with a model of society where real and virtual networks are intertwined.

### **Has the taxpayer disappeared behind the client?**

Characterized by a consumer culture the image of taxation has rapidly and radically transformed. It is presented more and more as the price of a service provided by the institution that benefits from it rather than the expression of a social duty. Taxpayers now “want their money’s worth”. They are concerned by the use of public funds. In other words, by considering themselves as a client it perfectly embraces the management culture that has currently spread throughout the public sector.

Similarly, the shift in the meaning comes at a time when tax compliance has taken on a role that is more administrative and management focused than political. This management culture is both part of the search for a better quality of services provided to users and for control over public spending, as a consequence of lower administrative costs, especially for the treatment of taxes by the tax authorities. This involves promoting tax acceptance by encouraging citizens to voluntarily perform their fiscal obligations. This strategy that leads to isolating cheaters or “bad payers” satisfies a budgetary objective, specifically the proper collection of taxes. This system, that is based on a logic focused on the prevention of tax evasion represents however a “double-edged sword”. If the service quality is not upheld, the citizen/customer will refuse to recognize the legitimacy of the tax that is asked of it.

However, things are not that simple. Two ways to look at taxes coexist in the collective psyche. The solidarity concept remains and justifies the demand for public services while being concurrent to reducing the tax burden. When taxpayers/customers observe that numerous public services have closed or feel that the service quality is not sufficient or else they do not see an improvement in the reduction of unemployment or an increase in wages and pensions, doubt over the use of taxes will

continue to grow. Such a belief promotes, even for some justifies, tax revolts or even tax evasion. This may lead one to think that there is a contradiction between the two attitudes of citizens customers/taxpayers and even astounding irresponsibility that may leave one dumbfounded.

In reality, this reveals the result of a loss of bearings and the presence of a paradox that has taken hold within society and a source of great misunderstanding. Two images of taxation therefore coexist in the minds. And these two images will need to be integrated and made real if a new tax order is to be built. They reflect that which characterizes today's society, ***a consumer culture within which a need for solidarity and goodwill is felt by the majority of the population.***

### **Are tax systems breaking down?**

Over the years, corporatism of all sorts has grown and even thrived while demanding and obtaining tax privileges that result in multiple tax reductions or even the partial control of certain mandatory contributions. This corporatist wave, born from a general crisis and a degeneration of the welfare state is at the origin of a rise in recent years of concessions and special arrangements, the famous "tax loopholes" that provide current national and local taxation with their patchwork image.

However, if the changes stopped there, this would only express an excessive growth of an ultimately old, common and well-known phenomenon. A closer look reveals another phenomenon, a certain appropriation of tax known as earmarked taxation.<sup>4</sup> This concerns numerous sectors such as the social sector, professional and job training, consular bodies, equipment, housing, transport, urban planning, agriculture, industry, trade, artisanal industry, environment, culture, etc. This situation is related to a characteristic of contemporary societies that is their diversification and their networking through communities of interests.

It is in this framework that tax power shatters. It has become an especially big challenge for multiple centres of public and private decisions that now form the fabric of society, while being less and less the attribute of a universal power represented up to now by a sovereign

4. See two reports that may be downloaded for free: FONDAFIP report (February 2013), "Earmarked taxes: what legitimacy?" [*Les impôts affectés : quelle légitimité ?*] on [www.fondafip.org](http://www.fondafip.org) . CPO report (July 2013), "Earmarked taxes: findings, challenges and reforms" [*La fiscalité affectée : constats, enjeux et réformes*] on [www.ccomptes.fr](http://www.ccomptes.fr)

state. With this dispersion of taxation, a shift seems to be occurring towards a new Middle Age of taxation.

### **Tax sovereignty in danger?**

For States with open economies, the growing weight of international constraints is likely to considerably limit the leeway of national decision makers. Thereafter, fiscal policies cannot truly be autonomous. They are not impervious to the globalisation of trade and act retroactively on one another.

So, in the absence of arrangements for coordination, a wild tax competition has arisen, notably through advantages aimed at influencing the decisions on where companies and also the wealthiest individuals should locate.<sup>5</sup> Major companies, and sometimes even smaller ones, define strategies by taking into account the tax pressure in various countries. This transnational management, characterized by a greater mobility of locations amplified by the development of the digital economy, limits the autonomy of tax policies. The threat of delocalisation and the loss of resources therefore oblige States to ensure that these policies attract companies instead of inciting them to set up elsewhere. Furthermore, for members of the European Union, the constraints related to community rules aim to harmonize the tax legislations of member States. The unanimity rule is now the subject of debate.

### **Taxation that bewilders both taxpayers and decision makers**

The public deficit, public debt and tax pressure have continued to grow over the past 40 years. Meanwhile tax evasion, in particular internationally, has reached an unprecedented scale. A crisis of understanding has resulted, *a deep-rooted feeling of incomprehension and injustice on behalf of taxpayers* who are disoriented as well as growing distanced from taxation. At the same time, the requirement of the State to balance public finances imperceptibly leads political and administrative decision makers to design and reduce taxation to its purely budgetary function. Yet, if the only recognized function of taxes was to reduce the public deficit, while at the same time tax avoidance or evasion practices prosper by those who would continue to benefit

5. However, we can observe that taxation is not the key factor for the location of companies, contrary to preconceived ideas in this domain.

from infrastructure and public services, the famous “stowaways”, the legitimacy<sup>6</sup> of taxes could potentially disappear. It should be added that this budgetary function is discredited by tax pressure at the top of OECD countries with 46.2% in 2017 and without balancing the budget.

The phenomenon is also amplified by the fact that with globalisation more and more economic players, companies as well as individuals no longer live in the same time, place or standards as national political and administrative players in charge of tax policies. So, if the economic sphere currently transcends borders, the tax, administrative, legal and even political sphere still remains largely confined within the national scope.

This new context is the source of veritable tax disarray.<sup>7</sup> When faced with such a situation and indecisive or even contradictory points of view, the fiscal choices have been made difficult. As a result uncertain tax policies that are reflected by an increase in tax rates or by an accumulation of mandatory contributions form a complicated structure as they are built by successive layers, one by one, without an overall logic.

Faced with a society that has grown increasingly complex over the past 40 years to attain the heights of today, political decision-makers are in disarray throughout the world. The answers provided, overly restricted by outdated management techniques or ideologies, have not offered any vision for society to the disoriented populations. While the solutions brought to the root of the problem which is unemployment, and efforts to combat poverty have been either ineffective or have been achieved at the expense of that which at the end of World War II bestowed its legitimacy and momentum to the welfare state. This results in an increasingly large gap between the richest and poorest that appears to be limitless. Unlike the years of rebuilding and the economic development that followed World War II, today nobody has proposed or formalized any major restructuring project for the State or the economy. Not the political class, any social movement or intellectuals. As a result, the fragmented problems are limited to specific issues and confined to negotiations related to reducing rates

6. On the question of tax consent, see Michel BOUVIER, “Introduction to general tax law and tax theory” [*Introduction au droit fiscal général et à la théorie de l’impôt*], LGDJ, 2017, 3<sup>e</sup> éd.

7. BOUVIER M., “For a general uprising against tax disarray!” [*Pour une mobilisation générale contre le désarroi fiscal !*] in *Le Cercle Les Échos* on 19 September 2013: <http://lecercle.lesechos.fr/economie-societe/politique-eco-conjoncture/fiscalite/221180102/mobilisation-generale-contre-desarroi> See also: “The French and taxes: what taxation for which society” [*Les Français et les impôts : quelle fiscalité pour quelle société ?*], Editorial, in *RFFP* Nov. 2013, n° 124, p. V.

or bases lacking any overall consistency. Corporatism, urgent needs, or the withdrawal of overly unpopular measures dominate decisions.

The tax decision makers are in some ways bewildered. Political leaders are confronted with increasingly complex questions to which they have never had to deal with, questions that cannot be solved by the answers that used to work. Experts that they call on offer contradictory statements.

In the end, hesitation and trouble that we can observe in taxation are the result of a global economic and social order that is undergoing a vast transformation. Given the multitude of players and factors concerned by such an upheaval a sense of vertigo took hold within the tax system insofar as this situation promotes large-scale national and international tax evasion. In today's globalised and interconnected world, tax evasion is the sign of a deep-rooted change in the economic and political model that has been developing since the "Trente Glorieuses" (1945-1975).

### **Will the "great tax escape" mean the end of taxes and the State?**

Tax avoidance may involve fraud, which is a criminal act or fleeing from taxes without actually breaking the law but instead using the law to one's advantage, either by benefiting from legal loopholes or by using multiple tax schemes especially internationally. All of these aspects are compounded and amplified due to changes underway in contemporary corporations.

We are witnessing the unprecedented growth of transnational firms, mid-caps or large companies, and even individuals, setting up abroad, that raises the question of the contemporary validity of fiscal sovereignty and the principle of the territoriality of taxation. The concept of the permanent establishment, that dates back from last century and which is used by the tax authorities to determine the tax base and to tax is particularly concerned in light of a reorganisation of the international sphere. From this emerges the most serious threat to taxation, the fallout from which could range from income tax to VAT. The challenge in taxing the income of these companies is, as we know, real and related to the question of the territoriality of taxation. This question raises very technical issues that occasionally may even appear insurmountable, as they are intertwined with challenges of very different levels.

The OECD rapidly took into account the consequences for the international tax system. In its most recent interim report focused on

the Base Erosion and Profit Shifting (BEPS) it states that: “a robust understanding of how digitalisation is changing the way businesses operate and how they create value is fundamental to ensuring that the tax system responds to these challenges”.

Moreover, the 127 countries that represent 90% of the global economy gave their agreement to the OECD to examine and propose measures enabling multinational taxation by the end of 2020. This led Pascal Saint-Amans to say: “the international community has taken a significant step forward toward resolving the tax challenges arising from digitalisation”.<sup>8</sup> He added: “Countries have agreed to explore potential solutions that would update fundamental tax principles for a twenty-first century economy, when firms can be heavily involved in the economic life of different jurisdictions without any significant physical presence and where new and often intangible drivers of value become more and more important”.

These proposals, as they appear in the document approved by the Inclusive Framework of BEPS are built on two pillars.

The first “will focus on how the existing rules that divide up the right to tax the income of multinational enterprises among jurisdictions, including traditional transfer-pricing rules and the arm’s length principle, could be modified to take into account the changes that digitalisation has brought to the world economy. This will require a re-examination of the so-called ‘nexus’ rules – namely how to determine the connection a business has with a given jurisdiction – and the rules that govern how much profit should be allocated to the business conducted there. The Inclusive Framework will look at proposals based on the concepts of marketing intangibles, user contribution and significant economic presence and how they can be used to modernise the international tax system to address the tax challenges of digitalisation”.<sup>9</sup>

“A second pillar aims to resolve remaining BEPS issues and will explore two sets of interlocking rules designed to give jurisdictions a remedy in cases where income is subject to no or only very low taxation.”<sup>10</sup>

In other words, it involves examining how it will be possible to shift the right to tax from the country where the company is located to the country where its consumers or data suppliers are located. It is also a

8. In OECD, Note on 29 January 2019.

9. OECD note. Also see the G20 OECD Project, *Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note* on 29 January 2019.

10. OECD note. Also see the G20 OECD Project, *Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note* on 29 January 2019.

matter of studying the State's ability "to tax profits where the other jurisdiction with taxing rights applies a low effective rate of tax to those profits. These proposals recognise that in part the tax challenges of the digitalisation of the economy form part of the larger landscape relating to remaining BEPS challenges and further reflect more recent developments such as US tax reform."<sup>11</sup>

In total, it is recognised that as digital development and globalisation are inseparable, they result in a new economic model within which value takes on a new form. This alliance stems from the a-territorialisation<sup>12</sup> that has replaced classic de-territorialisation. This is what is facing the sedentary tax administrations and tax law which often appear paralysed and still deeply entrenched in the 20th century.

It should be noted that it is not the most visible or even spectacular forms of delocalisation in the matters of taxability of some companies and wealthy individuals which is important. The importance is in a disappearing tax base that is less visible and far more fearsome extends across all entrepreneurial activities. This a-territorialisation feeds a never-before-seen form of tax evasion that embraces the more traditional tax avoidance schemes while multiplying its effects.

While it is crucial, for budgetary reasons and fair taxation, to know how to tax the income of companies in the digital economy, and where to tax them, it has become urgent to relate this concern with the fundamental question of the existence of taxes and consequently, the nature, function, and meaning of tax within contemporary society. Accordingly, with these companies moving into a parallel sphere where the location becomes unenforceable, an especially challenging nomadism of taxpayers and tax bases has grown. This situation fundamentally calls into question the usual tax, legal and administrative frameworks. It threatens them directly and reveals their weakness and fragility.

If the current trend towards an erosion of tax bases should continue, in other words if sufficiently effective answers are not given quickly by international institutions, governments will certainly take disorderly positions due to their inability to address the threat that weighs upon taxation. This matter is in reality far more serious than it appears. It is

11. Also see the G20 OECD Project, *Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note* on 29 January 2019.

12. See BOUVIER L.-A., "From deterritorialisation to a-territorialisation of taxes: taxation of profits in light of the digital revolution" [*De la déterritorialisation à l'a-territorialisation de l'impôt : la taxation des bénéfices face à la révolution numérique*], in RFFP Sept. 2017, n° 139, p. 165.

widely believed that territorial corporatism must urgently be overcome, the future of democracy and the people's well-being are at stake.

Therein lays a serious danger for taxes. Current developments may legitimately raise fears that the very foundation of public finances may soon be eroded. It carries the seed of transition towards a model of society in which the role of taxation is not obvious. An important measure, both symbolic and tangible, would be to secure taxes as a driver of public policies and of the State by attributing it with visibility and a presence that it does not currently have. While it appears prominently in the Declaration of the Rights of Man and of the Citizen in articles 13 and 14, it would be well advised to integrate the underlying principles<sup>13</sup> in the Constitution through a specific article. This article would be placed at the forefront of the Constitution since all public institutions rely on taxes.

### **A stateless society?**

It is clear that taxation is facing a major challenge and has substantial obstacles to overcome. Is it necessary, under these conditions, to continue to try tweaking legal and administrative instruments that have been surpassed by changes in their environment? Is it not our concept of taxation that has to be changed? Is it not appropriate to undertake an assessment of the validity of the system that forms taxes without dodging the question of their interdependence? The major portion of compulsory contributions deemed as “modern” were invented for a relatively closed centralised State and for an economic model rooted in the industrial development that it mirrored. Now is the time to rethink its validity and relevance in an open, multipolar world irrigated by the digital economy, and that is more competitive than ever while having to address the challenge of the digital shock and robotisation.

In this tax system crippled by the transformations of its environment an underlying question remains, that of its nature, function and therefore legitimacy that needs to be redefined. This is an important subject. So apart from the need to set out the rules for halting tax evasion which, when its validity is not debatable, it is crucial to also examine taxes in the 21st century, and outside of the 19th and 20th century mindsets.

We are faced with the emergence of a new civilisation and we must keep that in mind in the coming years, taxation and, accordingly,

13. Principle of consent, equality and necessity.

the public sector and political powers, are poised to undergo an unprecedented revolution arising from the impacts of major phenomena: metropolisation, digital technology and globalisation. The future of politics and tax hinges on the basis of the inevitable development of artificial intelligence, the new corporate model as well as metropolises driven by population growth and irrigated by artificial intelligence. This combination may favour the self-development of a new economic and political model in networks without any control over the meaning apart from by the GAFAM or BATX<sup>14</sup>.

Institutional changes are moreover well under way. We can observe that imperceptibly the joint development of metropolises, at the root of an organisation of territories in national and international horizontal networks, and the digital giants, are little by little reshaping the entire concept of life in society. They already act as bridges for States weakened by crises. An economic and financial model is taking shape, how it evolves will be a determining factor for the quality of the social link and more so the sustainability or rather the transformation and the reform of local and national political institutions. It is a new form of living together or its end which is at stake. In any case it is fair to think that an evanescence of centrality as we know it has begun. Metropolises and digital giants have shaken up a number of acquired intellectual certainties and institutional situations.

Everything today appears to indicate that the shift to a stateless society is a possible future. The universe of web users is a consumer universe that willingly does without politics and in which international tax evasion is a logical consequence of an economic model that has been self-made in the absence of any suitable legal and administrative framework.

In other words, a new society that embodies the most radical proposals of liberals and libertarians, that has brought itself to life and has bred a civilization in which the State does not have its place. A leap into the unknown, a shift uncontrolled for the moment to another galaxy is happening against the backdrop of the struggle for influence between digital giants in North America and Asia.

Admittedly it is still hard to clearly see the consequences of these developments that blend imperceptibly into the intricacies of artificial intelligence which their producers have disseminated across the planet. And this situation is amplified by an economic model built outside the traditional political scope and that fosters a stateless society, both

14. Baidu, Alibaba, Tencent, Xiaomi.

virtual as well as real that breaks with traditional society. It is parallel to it while being a part of it. It fundamentally calls into question the usual tax, legal and administrative frameworks and policies.

***It is the most formidable threat to tax*** because it directly concerns the survival of the State. Furthermore, ***the death of taxation would certainly mean the death of the entire public sector.***

Michel BOUVIER