

F. Alfredo García Prats

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**TEACHING OF TAX LAW IN SPAIN**

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## TEACHING OF TAX LAW IN SPAIN

by F. ALFREDO GARCÍA PRATS (\*)

*Abstract.* This paper studies the consolidation of tax law in Spain as a subject of study in the Bachelor Law Degree, and the result of the evolution of the different amendments of the Law Study Plan. Despite the fact that Tax Law is broadly and generally studied as a mandatory subject at the Bachelor level, it diminishes its relevance at the Official Master Level, mainly due to the fact of the absence of a specialized Courts in the Spanish judiciary system. The possibilities of development and consolidation still arise at the postgraduate level with the specialized professional studies, much demanded by companies and advocacy. The tendency, however, seem to go for advanced specialized ad hoc courses. The paper also scrutinizes the different systems of promotion in the academic career which are common to the different University fields in Spain, devoting special attention to the strengths and weaknesses of the ‘national accreditation’ system of a double step, first at the national level and second at each University level. This analysis leads to end the discussion with some considerations on the weak and indirect role that tax scholars play in the social and public debate, and also the limited role in the definition of tax policy goals and preparation of legislative proposals, mainly influenced by economists.

*J.E.L. Classification:* H80

*Keywords:* University teaching; Bologna Plan; Spain; Accreditation system; Tax policy; Tax doctrine; Tax literature; Professional tax specialization

**SUMMARY:** 1. Introduction. - 1.1. Historical background. - 1.2. The road to Bologna: Choices and consequences. — 2. University education. - 2.1. Mandatory courses in the Bachelor Law Degree. - 2.1.1. Structure and content of the courses. - 2.1.2. Teaching methodology. - 2.1.3. Objectives of the new teaching methodologies and adaptation of teaching materials. - 2.2. Voluntary (optional) courses in Tax Law

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(\*) *Jean Monnet Chair ‘EU Tax Law and Policy’, Catedrático de Derecho Financiero y Tributario, Universitat de València (Spain).*

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in the Bachelor Law Degree. - 2.3. Tax Law in other Bachelor Degrees. - 2.4. Tax Law at the postgraduate level. - 2.5. Tax Law at the doctoral level. — 3. Academic career. - 3.1. Categories in the academic career. - 3.2. Evaluation of teaching and research activities. - 3.3. Critical remarks. — 4. Role and influence of tax scholars. - 4.1. Internal influence. - 4.2. External influence. - 4.2.1. Tax policy. - 4.2.2. Drafting tax legislation. - 4.2.3. Legal implementation, evolution of tax standards and tax scholars. - 4.2.4. Social and public debate.

### 1. *Introduction.*

Generally speaking, Spain is one of the few European countries where the study of Tax Law is highly mandatory in the Law Bachelor Degree studies. This is due to historical and legal reasons that the present introduction tries to explain and analyze. On the contrary, studies of Tax Law are only of a relative importance in the Master Degrees, where apparently there should be enough room for technical and professional specialization, being tax law one of the evident fields of specialization for lawyers — and also, for economists —. This also has an historical explanation, due to the consolidation of Tax Law Chairs in all — new and old — Spanish Universities which reinforced the relevance of the studies of Tax Law at the Degree level, diminishing the relevance of the Tax Law specialization studies in the Master Degree, almost monopolized by the Master in Legal Practice — *Master de la Abogacía* —. Moreover, there is a legal explanation that justifies this clear tendency. Spain opted to include the Law Studies in the Bologna European Plan establishing a Degree of 4 years duration /240 ECTS credits/ instead of a 3+2 plan, recognizing greater relevance to the Degree studies. Postgraduate Studies truly specialized in tax law exist in several Universities, although they are far from being generalized among the different Spanish Universities.

In Spain, the teaching of tax law is generalized in the Law degrees in all Law Faculties and Law Schools dependent on the different Spanish Universities that offer the studies in Law. However, the extent of the teaching and the structure of the teaching topics experiences some variations among the 82 recognized Spanish Universities (50 Public Universities and 32 Private Universities) (1). This situation has both an historical and a legal explanation, due to the recognition of University autonomy in the Constitution based in the legal terms (article 27.10 of the Spanish Constitution).

#### 1.1. *Historical background.*

Historically, since the Law Degree Plan of 1953 (Decree of 11<sup>th</sup> August 1953, OJ 29 of August 1953), Financial and Tax Law was part of the curricula, although as a part of the studies in Public Finance.

It was not until the early 70's where the new chairs in Public Finance were formally separated from the studies in Public Finance and started teaching

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(1) From the 82 Spanish Universities not all offer a Bachelor Law Degree, although most of it — 64, with the exception of Politecnic Universities — do.

properly Financial and Tax Law, which is still the title hold by University professors teaching tax law (*Profesor de Derecho Financiero y Tributario*). This legal and teaching autonomy was mainly due, on the one hand, to the teaching influence of prof. Sainz de Bujanda and his school of thought, who established the legal framework of the system, justified its autonomy and the basic structure of the course (2). On the other hand, there was also a clear influence of the Italian and German tax literature, where the new Chair holders developed their PhD studies, thanks in great part to the Scholars and Doctoral Students of the Royal Spanish College in the University of Bologna (Italy) that developed the systematic of the studies of Financial and Tax Law due to the influence of Italian — and German — scholars.

Most of the Universities — although still scarce in total number — followed this historical plan. According to that plan, both Public Finance studies from an economic point of view, and Financial and Tax Law, from a legal point of view, were included in the Law Degree, consisting of around 350 credits, from which only one-year course subject of 90 hours in total was devoted to the legal study of Financial and Tax Law. It generally included both general studies and specific basic studies of the main figures —taxes — of the Spanish tax system.

Some Universities (Seville and Valencia), however, approved a new plan in 1965, that recognized a specialization in Public or Private law (and in Valencia also in Business law), that doubled the teaching devoted to Financial and Tax Law, establishing two mandatory courses in the fourth and fifth year; the first one related to the so-called *general part* (principles, categories and tax procedures), named *Derecho Financiero y Tributario I*; and the second one devoted to the so-called *special part*, dedicated to the study of the most relevant figures of the domestic tax system, named *Derecho Financiero y Tributario II*, each of them comprising 90 hours of teaching and the second including a practical part. The University of Valencia also included in the new plan as an optional subject matter, International Tax Law, of 2,75 credits, thanks to the influences of the German doctrine, after the translation into Spanish of the *Prinzipien des Internationalen Steuerrechts* by Ottmar Bühler, *Principios de Derecho Internacional Tributario*, EDF, 1963.

Several Universities accomplished an important renovation of the plan of studies in the 90's, as a consequence of the Royal Decree 1424/1990, of 26 October. This new reform established *Licenciaturas* (Law Degrees) of 300-450 credits. As a result of this reform, the mandatory courses in tax law in many Universities expanded — in some others, like Valencia, were reduced in time, although not significantly in the reconsideration of the program —. Moreover, the plan saw an exponential growth of the optional courses in Financial and Tax Law as a result of the increase of the total credits of the Degree. For instance, in the University of Valencia, 5 optional tax topics were introduced ranging from 60

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(2) SAINZ DE BUJANDA F., *Notas de Derecho Financiero*. Universidad Complutense, 1967; SAINZ DE BUJANDA F., *Hacienda y Derecho*, 6 vols. 1962; SAINZ DE BUJANDA F., *Sistema de Derecho Financiero*, 1977; SAINZ DE BUJANDA F., *Lecciones de Derecho financiero*, Universidad Complutense, 1979; SAINZ DE BUJANDA F., *Teoría de la educación tributaria*, 1967.

hours — 6 credits each — to 45 hours — 4,5 credits each —: International Tax Law, Budgetary Law, Tax Procedures, Business Taxation and Regional-Local Taxation —. These plans were early reformulated due to the decision of the Spanish legislator to adapt the Spanish University system — with some exception, such as Medicine — to the requirements and suggestions of the Bologna Plan (3).

### 1.2. *The road to Bologna: Choices and consequences.*

In order to adapt the Spanish University curricula to the European Higher Education Area (Bologna Process), the Law of Universities, Organic Law 4/2007 of 12<sup>th</sup> April, developed a new structure of the Bachelor Degrees, that was formulated as a general framework to be developed by the Universities by the Royal Decree 1393/2007, of 29<sup>th</sup> October. Initially, the Royal Decree 55/2005 of 21st January established the general framework for University Bachelor degrees, distinguishing between the Bachelor Degrees — between 180 and 240 ECTS — and the Master degrees — between 60-90 ECTS —. Finally, as regards the Bachelor Degrees, the Royal Decree 1303/2007, of 29th October opted for the Bachelor Degree of 240 ECTS, to be taught during 4 years duration. Master programs were attributed a variation of 60/90 ECTS.

Generally speaking, the Spanish universities ‘opted’, then, as regards the studies in law, for a 4+1 system (that is to say, 4 year — Bachelor Degree — *Graduado en Derecho* — plus one/one and a half year of specialization — *Master in Laws* —. Therefore, the traditional old Law Degree plans (*Licenciatura*, 5 years) had to adapt to the new structure for university studies.

In 2015, however, the Government introduced new chances for confusion, since Royal Decree 43/2015, of 2nd February recognized the possibility of choice for Universities to establish Bachelor Degrees between 180/240 ECTS, and thus, between 3 and 4 years. Formally, the need to adapt to the plans of other EU countries was argued, but greater uncertainty was introduced since it did not specify the differences between a Bachelor Degree of 180 ECTS and a Bachelor Degree of 240 ECTS, both leading to an ‘equivalent’ degree. Universities, however, didn’t react to the possibilities of plan reform opened by the Decree of 2015, which came into force and has not been derogated. To close the uncertainty, the Resolution of 11th May 2017 has ‘clarified’ the structure of the different Bachelor Degrees, most of them including Law Degree, which still follows the 240 ECTS structure, despite of being possible the approval of a Law Degree in 180 ECTS.

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(3) The so-called Bologna Plan — Plan de Bolonia — refers to the agreements reached by the Ministries of Education of 29 European countries in Bologna in 19 June 1999, signing the Declaration of Bologna that set the establishment in 2010 of the so-called European Higher Education Area — EHEA —, in order to converge and make compatible the different European university systems, favoring the employment, mobility and mutual recognition of European University Degrees. This Agreements, voluntarily signed where renewed together with other 45 countries in April 2009. See [https://www.eurashe.eu/library/modernising-phe/Bologna\\_1999\\_Bologna-Declaration.pdf](https://www.eurashe.eu/library/modernising-phe/Bologna_1999_Bologna-Declaration.pdf).

As a result of the process started in 2005, all Universities had to adapt the studies of tax law to the new plans for Bachelor in Law that followed the four-year plan. In addition to that, several Universities also approved official Master programs, despite the fact that they are not followed by a majority of University students yet (4) covering different areas of specialization in Law, both from a professional and academic/scientific perspective, some of them dealing with tax law matters. In addition to that, some Universities continue to offer specific own Master and Courses of Expertise and Professional Specialization.

Finally, the Doctoral studies also had to adapt to the new structure of the University studies in line with the European Higher Education and Research Area (EHERA), which came into force with the Royal Decree 99/2011, of 28<sup>th</sup> January, that establishes the official teaching of doctorate. Until then, several Doctoral programs have coexisted with its own legal regulation. The content and development of it will be dealt in a subsequent paragraph.

## 2. *University education.*

Generally speaking, in Spain Tax Law is a mandatory subject in the Law Bachelor Degree despite the lack of inclusion of minimum guidelines in the general framework described by the Royal Decree for the procurement of such a degree. However, the length, distribution, and structure of the teachings varies from University to University (5).

As mentioned in the previous chapter, the generalization of a 4+1 scheme for the Law studies in Spain favored a consolidation of the recognition and inclusion of tax law courses in the different Study Plans, plus an active involvement of several professors during the negotiations and the preparations of them.

In order to understand the presence of tax law matters in the Law Bachelor Degree, we need to distinguish between mandatory and optional courses in Tax Law.

### 2.1. *Mandatory Courses in the Bachelor Law Degree.*

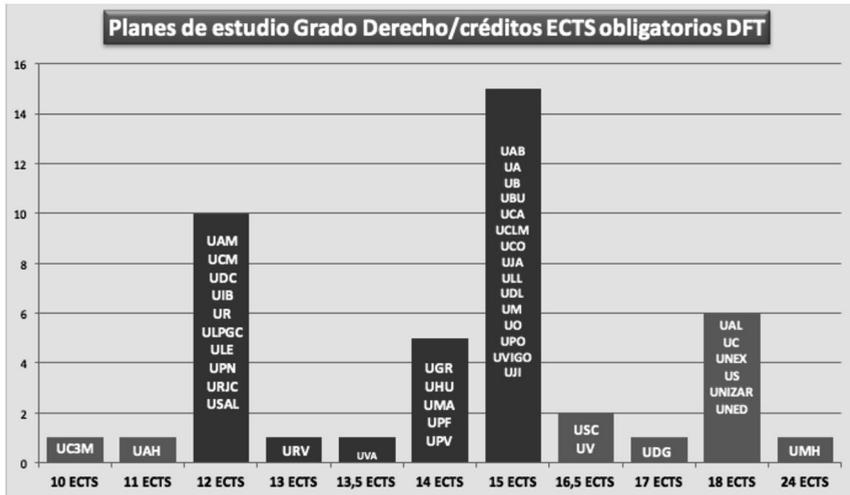
All Law Bachelor Degrees in Spain include mandatory courses in tax law, varying from a duration of 10 ECTS (University Carlos III, Madrid) to a duration of 24 ECTS (University Miguel Hernández, Elche). The most repeated scheme

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(4) The Master in Legal Practice (Master de la Abogacía) is now a prerequisite to enter into the different Bar Associations in Spain and to prepare for the Bar Associations Test, but it is not a requisite to prepare the exam to become a Judge, a Public Prosecutor, a Tax Inspector or a Law Officer.

(5) In elaborating this paragraph, we have conducted our own comparative research. Moreover, we have benefited from the research being made by prof. Dr. Ramirez Gomez, from the University of Huelva, to whom we are very grateful, in a presentation made during the V Reunión de Profesores de Derecho Financiero y Tributario held in San Sebastián in September 8th 2017 under the title 'Reforma de los planes de estudio y de postgrado y Derecho Financiero y Tributario'. When indicated, we reproduce with permission of the author the different comparative charters to show the comparative analysis among the different Spanish Universities.

incorporates two mandatory courses — one General Course in Financial and Tax Law, and one Specific Course devoted to the main taxes of the Spanish tax system — involving 15 ECTS, although some Universities follow a pattern of 12 ECTS, 18 ECTS, 14 ECTS or even 16,5 ECTS, as the most repeated duration of the mandatory tax law courses.



(Taken from the presentation of prof. Ramírez Gómez, cit.)

### 2.1.1. Structure and content of the courses.

As previously said, generally speaking mandatory teaching of tax law is divided in two courses of a similar length. The first one refers to the General part of Financial Tax Law. It normally includes the analysis of the Public Budget, the different public resources, and an analysis of the different categories of resources, with special devotion to the public debt, the fees and the taxes. Constitutional financial and tax principles are also studied in depth, both material and formal principles and also procedural ones. Tax power and territorial structure of the tax power is also included. The basic categories of tax law, taxable fact, taxpayer, account payments plus a general /or sometimes detailed description of the different tax procedures complete the basic structure of the general financial and tax law course — normally named as *Derecho Financiero y Tributario I* or *Parte General* —.

The second one is devoted to the basic analysis of the main figures of the Spanish tax system, with special emphasis to the Individual Income Tax — IRPF—. The course also normally includes a general analysis of the VAT and the Corporate Income Tax and it is completed with a basic knowledge of other State taxes (Wealth Tax, Inheritance Tax and Stamp Duties), plus a basic analysis of the Local Tax System plus specific Regional Taxes, normally reduced to the regional taxes corresponding to the territory of the University. In some Law Faculties, such as the one in the University of Valencia, a third mandatory course

is added on Tax Practice, which integrates the study of both the procedural aspects of tax law and the implications in the different figures of the tax system involving regularization, control, assessment, collection and administrative and judicial appeal, plus an integrated analysis on penalties and criminal tax law.

### 2.1.2. *Teaching methodology.*

Referring to the teaching methodology — or better, teaching methodologies, in plural —, there is a need to refer to the traditional teaching method (the so-called master class, or *clase magistral* (6)) and the tendency to substitute it by new ‘innovative’ teaching methodologies (7). By innovation, comparative analysis and research show a broad range of pedagogical methodologies and learning approaches (8). For schematic and clarification purposes, we may classify these approaches in the following groups:

— *A.* Innovation through the use of technological tools and presentations. The use of Virtual Rooms is being generalized which allows direct access to the repository of materials by the students and a closer — different — relationship with students through the use of virtual forums, chats, peer-review, self-correct exercises, that are used by many professors in all Universities of Spain (9). Surprisingly, some tax literature considers the use of presentations during lectures (in the form of *powerpoint*) to have certain *innovative* character.

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(6) PÉREZ ROYO F., *La figura de Jaime García Añoveros en la enseñanza del Derecho Financiero y Tributario*, Documentos IEF, 11/2002, pp. 53-57.

(7) Modern times reflect a change of parameters in the relevance of the teaching methodologies, as if it were an indirect — and unforeseen — influence between restoration typologies and law teaching. Since the traditional master classes disappear from the Law Faculties and fill the television’s schedule grids with plenty of kitchen TV programs, innovative ideas brought from modern restaurants are being included in the Law degrees by new professors.

(8) The relevance and study of new methodological approach in law matters and, specifically in tax matters has been subject to diverse meetings, congresses, workshops along the Spanish territory and resulted in great diversity of publications. Among them, RANCAÑO MARTÍN M.A., *Revisión y mejora de la metodología docente: una experiencia concreta en derecho tributario*, IX Jornades de xarxes d’investigació en docència universitària. Disseny de bones pràctiques docents en el context actual, 2011, p. 1507. RUIZ GARLJO M., *Resultados de innovación docente en Derecho Tributario. Nuevos planteamientos en la metodología y los procesos de evaluación*, Actas del II Congreso de innovación docente en ciencias jurídicas. 2009, p. 64. GONZÁLEZ GONZÁLEZ A.I. - HERRERO DE LA ESCOSURA P., *Aplicación de nuevas metodologías docentes en Derecho Financiero y Tributario*, Documentos Instituto de Estudios Fiscales, 30/2009, pp. 19-34. RIBES RIBES A., *Los foros académicos virtuales en la enseñanza del Derecho Financiero y Tributario*, XIV Jornades de Redes de Investigación en Docencia Universitaria: investigación, innovación y enseñanza universitaria: enfoques pluridisciplinarios, Teruel, 2016, pp. 1092-1101. AGUILAR RUBIO M. et alii., *El aprendizaje del Derecho Financiero y Tributario en el marco del EEES: experiencias desde la Universidad de Almería(I)*, Documentos Instituto de Estudios Fiscales, 30/2009, pp. 95-106.

(9) DELGADO O., *La evaluación continua en un nuevo escenario docente*, Vol 3, num 1/2006, Revista de Universidad y Sociedad del Conocimiento. [http://www.uoc.edu/rusc/3/1/dt/esp/delgado\\_oliver.pdf](http://www.uoc.edu/rusc/3/1/dt/esp/delgado_oliver.pdf); FERRIZ PAPI J.A. - FERRER GRACIA J.M. - HUECA TORTOSA J.A. - SPAIRANI BERRIO S., *Debates virtuales en la docencia universitaria:*

— *B.* Innovation through the reformulation of the teaching methodology, abandoning the traditional master-class and favoring other types of approaches that involve an active participation of the student and the need of previous preparation and group interrelation. In this sense, the incorporation of a practical part in the Programs has been generalized, which forces the student and the professor to have a different approach more linked to the day-to-day practice of taxes, both from a procedural and technical point of view. Moreover, new teaching techniques include a socratic-approach through the use of questions and answers, a case-law oriented analysis in which the analysis of the jurisprudence becomes crucial in the proper understanding of the law, or a problem-solving approach or development of a positive-normative solution to practical problems — learning by projects — . The development of these new teaching methodologies goes for the detriment of the deep analysis of the legal configuration of traditional and dogmatic legal categories. From an additional perspective, most programs include now complementary activities given by professionals — tax inspectors, tax advisors, ... — .

Generally speaking, these new pedagogical approaches are mainly justified by the need to have a closer relationship with real problems in the classroom, the development of new evaluation techniques of the docent activities of the Universities and the consolidation of the Docent Guide as a reference framework, substituting the traditional Program of the course with the recognition of the need to achieve certain competences and skills. The effectiveness of this new approach has not been properly tested. However, a closer relationship between University classrooms and the ‘reality’ (whatever it means) is certainly achieved.

In the debate between the classical vs innovative teaching methodologies and the move towards innovation and innovative methodologies, the recognition of critical relevance of such innovation criteria in the evaluation process for the accreditation of professors may have played a crucial role, plus the development of specific grants and subsidies devoted to strengthening these new pedagogical approaches, and the establishment of networks and groups specifically devoted to that goal. Results have not been certainly tested, though, and are far from clear.

Most universities offer their studies in Spanish only, although in the Universities where there is another co-official language, Tax Law can also be studied in this language (Galician, Basque, Catalan/Valencian). Some Universities also offer the possibility to study Law Bachelor Degree in English, which is the case of the University of Valencia in specific groups of high academic performance (ARA groups), not necessarily due to the great acceptance of Spanish Universities among Erasmus students of other European countries.

There must be mentioned also the great impact and development that in the last few years is having the online teaching. Some universities have arisen in the

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*comparación entre aplicaciones de chat y foros*, en TORTOSA IBÁÑEZ M.T. - ALVAREZ TERUEL J.D. - PELLIN BUADES N., *Jornadas de Redes de Investigación en Docencia Universitaria: Diseño de Buenas Prácticas Docentes en el Contexto Actual*, Universidad de Alicante, 2011, pp. 981-995. DELGADO OLIVER ROVIRA, *Cómo fomentar la comunicación en una aula virtual. El caso de la sala de fiscalidad*, Uoc, 2011, <https://web.ua.es/es/ice/jornadas-redes/documentos/2013-comunicaciones-orales/334930.pdf>.

last years offering online teaching (Uoc, VIU, UDIMA, UNIR, among others (10)). This new approach to teach tax law offers a new perspective for teaching methodologies and more flexibility of programs, despite the fact that they have not reached the level of relevance, development and influence that they already have in other countries, such as the United States. Several other Universities offer online courses at a postgraduate professional level.

2.1.3. *Objectives of the new teaching methodologies and adaptation of teaching materials.*

The generalization of new teaching methodologies has as main goals the argumentation development, the establishment of a critical approach, the ability to identify of legal consequences and risks, the formulation of comprehensive analysis of simple and complex tax legal problems, or the understanding of technicalities in tax law among others. These goals, summarized and development of criticism, legal techniques and argumentation capacity, should not be — and in fact, they are not — exclusive of new teaching methodologies and no legal framework should be amended or updated to verify the achievement of these goals. Most of the subjects include a practical approach, a mandatory theoretical-practical approach or a separated part of the course — with subgroups of smaller number of students — devoted to practical exercise and analysis, both in General and Specific Tax Law Courses.

This approach has been favoured by the significant reduction of students per group as a result of the implementation of the Bologna plan. It is difficult to establish a general rate of students per group, but as an average it can be estimated an average of 80 students per group. Most Law Faculties, in fact, offer several groups of each Tax Law course in order to respect this standard of students per classroom. In sub-groups devoted to practical learning, the average number may be reduced in two or three subgroups which allows to put into practice alternative teaching methodologies and a more direct involvement of the student in the development of the course and a better control of their improvement in the learning process. Since many Law Faculties follow the continuous evaluation scheme, attendance of students is regularly very high — in some cases attendance is foreseen as a pre-requisite —, the average mainly reduced by students of second and successive enrollment that have difficulties to make compatible their continuous attendance.

Furthermore, the new approach has enabled the development of a *more coordinated approach*, which basically means a reduction of the diversity and divergence of programs of the teaching specially among the professors of the same Tax Law Department. The progressive substitution of the Tax Law Program that each professor had to develop for their courses by the so-called Docent Guides has increased a progressive standardization of the topics, the distribution and dura-

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(10) The traditional long-distance Spanish University, the so-called UNED, Universidad Nacional de Educación a Distancia, is still much appreciated with a decentralized situs along the Spanish geography combine a presential and online teaching.

tion of each of them during the course, and the materials, activities and practices accompanying each of the subjects of the program. This fact somehow diminishes the autonomy of each Professor to configure and develop his/her own classes and approaches to the different topics. Most Universities require the preparation of Docent Guidelines for each topic of the program, which substitutes the old Programs of each course prepared by each single Professor. Docent Guidelines mandatorily include a syllabus, the content of the different units of the program, a structure temporal division of the course, materials to be used, mandatory readings and work to be performed by the student along the course, plus a clear identification of the method of evaluation of the course, and the relevance given to continuous evaluation and the practice part in front of the theoretical part (normally upon a 30/70 proportion). The Docent Guidelines have more than a soft law character, since they may be binding for each of the professors teaching the same topic in front of the students in case of a dispute regarding the final qualification, and it certainly conditions the academic freedom of each professor that is recognized by the Spanish Constitution — article 20.1.c) —, in order to enable a considerable degree of configuration by the professors of the structure of the course (Stc 179/1996 of 12th November).

The Docent Guidelines are highly influenced by the new learning methodologies and the new evaluation methods (continuous evaluation), with a strong stress on the need to develop abilities, competences and skills. Moreover, they lead to a progressive substitution of the traditional ‘Manuals’ (11) to more varied but sometimes softened materials to prepare the course, although the traditional Manuals are still of relevance.

As regards the evaluation, there is an increase tendency towards continuous evaluation with higher relevance of the so-called practical approach, namely exercises on cases based on specific situations. However, the instrumentalization of the Docent Guidelines and the need to previously determine specifically the

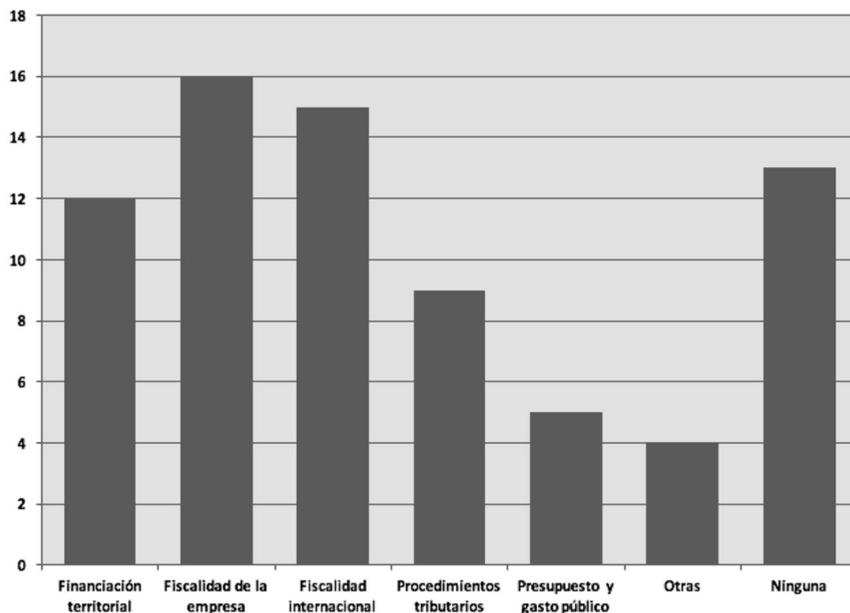
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(11) There is a great diversity and high quality of Manuals referred both to the General Tax Law Course and the Specific Tax System Course. As for the General Course there is a need to mention MARTÍN QUERALT J. - LOZANO SERRANO C. - TEJERIZO LÓPEZ J.M. - CASADO OLLERO G., *Curso de Derecho Financiero y Tributario*, 28th Ed. Tecnos, Madrid. CALVO ORTEGA R., *Curso de Derecho Financiero*, Aranzadi, 2017. PÉREZ ROYO F., *Derecho Financiero y Tributario. Parte General*, Civitas, 2017. CAZORLA PRIETO, *Derecho Financiero y tributario. Parte General*, Thomson-Aranzadi, 2016. FALCÓN Y TELLA R., *Derecho financiero y tributario (parte general)*, Universidad Complutense, 2013. MARTÍNEZ LAGO M.A. - GARCÍA DE LA MORA L., *Lecciones de Derecho Financiero y Tributario*, Iustel, 2012. FERREIRO LAPATZA J.J., *Instituciones de Derecho Financiero*. Marcial Pons, 2010. COLLADO YURRITA M.A. et alii, *Derecho tributario. parte general*. Atelier, 2009. Following the new methodologies and the new reduced program, MARTÍN QUERALT J. - LOZANO SERRANO C. - TEJERIZO LÓPEZ J.M., *Derecho tributario*, Aranzadi, 2017. DELGADO GARCÍA A. - OLIVER CUELLO R., *Actividades de Derecho Financiero y Tributario*, Bosch, 2009. ESEVERRI MARTÍNEZ E., *Manual práctico de derecho tributario: parte general*, Tirant lo Blanch, 2016. As regards the Course on specific taxes MARTÍN QUERALT J. - TEJERIZO LÓPEZ J.M. - CAYÓN GALLARDO A. et alii., *Manual de Derecho Tributario. Parte Especial*, Aranzadi, 2017. DE LA PEÑA VELASCO G., *Sistema Fiscal Español*, Iustel, 2017.

value of every and each activity, practice, workshop and paper prepared for the course may lead the student to ‘collect’ the different points and additional marks to pass the exam, more than to learn it from a global and joint perspective.

2.2. *Voluntary (optional) courses in Tax Law in the Bachelor Law Degree.*

The implementation of the plans of reform in order to accommodate to the Bologna requirements has led to a significant increase of optional courses in tax law in the Bachelor Law Degree, already started after the 1990 reform. Historically, only the University of Valencia included in its specialized program an optional subject (International Tax Law), but there has been a significant change. Nowadays, on the contrary, only 13 Universities do not include any single optional tax matter in the Law Bachelor Degree. The rest include at least one optional course additional to the mandatory courses in tax law already referred previously.



(Taken from the presentation of prof. Ramírez Gómez, cit.)

The most popular optional subject is Business Taxation — offered in 16 Universities — (12), followed by International Taxation — offered in 15 Universities — (13), Regional taxation -offered in 12 Universities— including studies on

(12) GARCÍA PRATS F.A. - GARCÍA MORENO V.A. - MONTESINOS OLTRA S., *Tributación empresarial. Esquemas y supuestos prácticos*, Tirant lo Blanch, 2009, 9º ed.

(13) FALCÓN Y TELLA R., *Derecho fiscal internacional*, Marcial Pons, 2013. MEDINA

both regional and local taxes. Tax Procedures is also a very relevant optional subject matter in 9 Universities and Budget and Public Expenditure in 5 Universities.

Contrary to this general tendency, for instance, is the University of Valencia, historically the first University in Spain to introduce International Tax Law in the program of Law. In 1990, the amendment of the program led to the introduction of all five optional matters mentioned before, plus the two mandatory courses in tax law, which, if chosen all by one student would made a total of 33 credits up to 350 in total of the Law Degree devoted to the study of Tax Law. However, in the last reform, the University of Valencia only contains 2 optional tax subjects — Business Taxation and Public Expenditure —. Tax procedures have been included in the third mandatory course in tax law, and territorial taxation and international taxation have been postponed to the postgraduate programs.

Generally speaking, it can be said that the teaching of Tax Law is of utmost significance in the Bachelor Degree and has little relevance in the Specialization period that should belong to the Master Degree studies, due to the major monopoly of the Master in Legal Practice in this area and the little relevance of the Tax Law in the program to pass the Bar exams. Therefore, specialization is left at the postgraduate level at an official or extra-official level, being taken such responsibility by the Universities and other Docent and Specialized Centres. Another trend that can be inferred from the comparative analysis is that the teaching of tax law is very rigid and has little acceptance for innovative areas of study — not of innovative teaching methods —. Internally, this is due to the fact of the growing coordination mechanisms being put in place in the different Bachelor Degrees. Externally, due to the closed consideration of the Programs of the Degree, it is extremely difficult to introduce new subjects and courses one-off that may be considered relevant as a result of the evolution of the demands of the society, the legal evolution or the specialization of the Faculty, with the sole exception of the exchange programs with other — Spanish and foreign — Universities. The same is true, paradoxically, at the Master level, which certainly would demand a higher degree of flexibility and adaptation to the aforementioned evolution. Budget constrains seems to be at the core of the rigidity decision.

### 2.3. *Tax Law in other Bachelor Degrees.*

There has been a traditional dispute over the teaching of tax law and the Spanish tax law system in the Business Administration Bachelor Degree. Traditionally, the teaching of tax law was segregated from the Chairs on Applied Economics. Therefore, a few number of Universities maintained this segregation also in the Business Administration Degree which meant that specific courses on tax law — General Tax Law and Business Taxation — were offered by the Tax Law Departments. However, most of the traditional Universities in Spain devel-

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CEPERO, *Fiscalidad internacional*, La Ley 2000. ROSEMBUJ T., *Fiscalidad internacional*, Marcial Pons, 1998.

oped tax law courses in the Faculties of Economy and Business Administration under the direction and development of professors of Applied Economics specialized in Public Finance.

At least initially, this would imply that the teaching methodology would be adequate to an economic approach and analysis of the tax phenomena. However, this is not always the case, since some Tax Law Courses in Business Administration Degrees are courses on positive tax *law* taught by professors of Applied Economics.

Generally speaking, it is possible to trace a general distinction between classical/old Universities and new Universities, especially those that were created during the 80's last century. In the first group, taxation is mainly taught in Business Administration and Economic degrees by economists, both from an economic and a legal perspective. In the second group, taxation and tax law courses have been programmed and developed by Tax Law Departments thus creating a continuity of teaching methodologies with tax law being taught at the Law Faculties.

The courses taught in Business Administration Degrees mainly refer to General Tax Law — devoted to the understanding of the management of the tax obligations from a dynamic perspective, specially as regards the obligations of the enterprise and the obligations and duties of the entrepreneurs and companies, and the rights and obligations in the development of the different tax procedures —. Another common course is devoted to Business Taxation, which can appear as one single course or more than one course, specifically oriented to the analysis of the Corporate Income Tax and VAT.

Another general trend refers to the creation of new Bachelor Degrees being managed by the Business Administration Faculties, such as ADE — *Administración y Dirección de Empresas* —, International Economy, International Business and Trade, Finance, Accounting, Tourism, ... —. Most of these new Degrees contain specific and specialized courses on taxation, such as Taxation of the Touristic Sector, which sometimes are also taught by Tax Law professors. Most of the times, however, Tax matters are taught by economists.

The teaching of Tax Law at the Bachelor Degree in Spain is completed by some modules taught in the Politic Sciences Degree and the Public Administration Degree.

#### 2.4. *Tax Law at the postgraduate level.*

The *implementation* of the Bologna Plan has forced many students to study a Master in Laws if they want to practice as a Lawyer and become member of any of the Spanish Bars. Contrary to what could have been desirable, only one official Master may led to the preparation of the Entrance Exams to the Bar, which is the *Master de la Abogacía* (Master in Legal Practice). This Master is gaining relevance among the Law Degree Students for obvious reasons, especially from those who want to practice Law before the Courts and is minimizing the affluence of Students to other Official Masters that serve to complete the Official Law Studies.

Even if this is the case, the average of University students completing a Master Degree is still low in Spain — around 10% according to the statistics — but not significantly minor as compared to the situation in other EU countries.

As the main Postgraduate Master being offered by most of the Spanish Universities — all public universities and 19 private universities —, the program of this Master contains little or no reference to tax law. This is due to the fact that the program of the contents of the accreditation exam only has two references to the tax law: the relationship between the accounting and tax liability of the lawyer (it has to be taken into account that one of the competences of the master consists on the knowledge and application of the tax system of the lawyer) and the tax procedure, the economic-administrative appeal, and the revision of the administrative acts in tax matters. The relevance of the tax matters in the different exams being held up to date is also very scarce: only a couple of generic questions have been included in the last 5 years in two years, in other years no specific questions were included.

The lack of a specific jurisdictional order, as occurs in other countries such as Italy, has significantly reduced the presence of tax matters in the Study Plans of the different Masters of Legal Practice. Some Universities include a testimonial reference to tax law in the study of the Contentious Administrative Proceedings. In some others, tax law is offered only as an optional subject.

Among the other generic official masters, some of them include specific and special relevance to tax law. This is the case, for instance of the Master in Business Law offered by the University of Valencia of 90 ECTS, which offers a semester of specialization in business taxation — among others — which comprises 30 credits in different areas of tax law.

A few Spanish Universities have approved a specific official master in Tax Matters. Among them, the University Rey Juan Carlos (Master in Financial and Tax Advisory), Miguel Hernández (Tax Advisory), Barcelona (Accountancy and Taxation), Complutense-UNED (Advanced Studies on Financial and Tax Law), UNED (Public Finance and Financial and Tax Administration). Two Spanish Universities (Santiago and Castilla La Mancha) offer an Official Master on International and EU Taxation of 60 ECTS (14).

Some other Universities have opted to develop specialized tax postgraduate courses in the scope of the so-called 'own titles', University Degrees that each University is entitled to offer. These titles are mainly relevant in areas, such as tax law, where no official title —even not a single University or Baccalaureate degree; — is required to exercise the profession of tax adviser. They serve, mainly to cover a demand of the society and the business operators in search for specialized professionals with specific knowledge and expertise. Depending on the length of these own titles they are called Master — from 60 ECTS on —, or Expert — less than 60 ECTS — courses.

9 Universities in Spain offer a specific professional Master in Tax Law. Among them, the oldest title is the one offered by the University of Valencia — since 2015 in cooperation with University Jaume I —, that has offered 28 editions

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(14) Taken from *Ramírez Gómez*, cit.

of the *Máster Financiero y Tributario/Asesoría Fiscal* of 62 Ects (15). This Degree offers a true professional specialization devoting specific courses on Constitutional Tax Principles, Accounting and Tax, Corporate Law, Individual Income Tax, Corporate Income Tax, VAT, Excise Duties, Inheritance taxation, Taxation of business transfers, Customs Duties, Environmental Taxes, International and EU Law Taxation, Local Taxation, Tax Management, Tax Inspection and Control, Tax Collection, Tax Penalties and Criminal Tax Law, and Tax appeals and Tax procedures. Students must prepare a final Master Thesis on a specific tax topic of relevance each year. Other Universities offering a specific Master in Tax Law are Autónoma Madrid, Alicante, Cantabria, La Laguna, Murcia, Salamanca and Castilla La Mancha.

Another alternative for postgraduate specialization is the offering of Expert Courses as University Titles. These courses are both of a general character in tax law (Cadiz, Las Palmas, Malaga, Base Country, Oviedo), or specific, such as in Autónoma (Local Taxation) of Valencia, which offers two online courses both in Spanish and English in International Taxation — Basic and Advanced — (16), in Customs Duties (17), or in business taxation. However, in this area the competence of non-university courses is very high and fierce, since some law offices have their own specialization programs in-house or with specific academies outside the University world.

### 2.5. *Tax Law at the doctoral level.*

Most of the Law Faculties in Spain offer the possibility of a Doctoral Degree course. After the regulation of the RD 99/2011, students that want to enroll in a Doctoral study must hold an Official Master Degree that is recognized for research purposes or, to prepare specific methodological courses that enable students with an Official Master Degree with no research focus, or an *analogous* foreign Master title. Few Law Faculties have specific doctoral programs in Tax Matters. Almost no PhD course offer interdisciplinary programs including subjects other than law.

There is a growing tendency of international students developing their PhD studies in Tax Law in Spain, specially coming from Latin America. Moreover, there is a possibility to develop a thesis under co-direction from different Universities, or to hold a Doctoral Degree with an international mention for those researchers that have spent part of their research period abroad. Contrary to what happens in other countries, PhD studies are not well funded and there is no guarantee that the PhD students may develop their Doctoral thesis full-time under a Grant scheme.

PhD may be written in a non-Spanish-official language, in which case students must present a summary in any of the Spanish official languages. There is a slight growing tendency of Tax Law thesis being written in English, which allows further dissemination of the results.

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(15) [www.mastertributario.com](http://www.mastertributario.com).

(16) [www.tributacioninternacional.com](http://www.tributacioninternacional.com).

(17) [www.derechoaduanero.es](http://www.derechoaduanero.es).

Doctoral thesis are evaluated by a board of examiners, between 3 and 5 members, not necessarily belonging to the same University — excluded the Director in any case —. They must write an evaluation report previous to the approval of the Defensio and then submit a judgment after a live discussion with the candidate after the presentation of the thesis.

### 3. *Academic career.*

The academic career of Tax Law professors is similar — if not identical — to other University areas — with some specialities and special figures in the Medical Faculty and some Engineering careers —, all of them with a retirement age at 70, unless the Emeritus status is granted. It suffered considerable changes in the 90's and first decade of the XXI Century, where the actual system was approved by the RD 1312/2007, of 5th October. This Royal Decree established a dual system for accreditation, composed by a national accreditation system for the access to the University Teaching Bodies (*Profesor Titular de Universidad* and *Catedrático de Universidad*), on the one hand, and a call made by each of the Universities to specific posts and chairs. Professors in private universities have a specific accreditation system, despite the fact that public accredited professors may also participate in the contests.

The whole system but specifically the whole accreditation system suffered from the economic and budgetary crisis affecting Europe, which almost collapsed the entry in the bodies, thanks to the establishment of a replacement maximum quota of 10%, while the accreditation process was kept open. This situation determined a considerable increase of professors having passed the accreditation with no possibilities to enter the bodies, since very few — if any — vacant posts were offered during the second decade of the XXI Century.

The accreditation system was partially amended and *clarified* by RD 415/2015 of 29th May, which toughened the requirements and developed more transparent and objective criteria, enlarging the number of specific commissions of evaluation (Financial and Tax Law belongs to section D, Social and Juridic Sciences, D14 Law, 150 Financial and Tax Law). Hardening the procedure may enable the progressive elimination of accredited professors occupying no chair, since the Universities have started to open the offer thanks to the progressive elimination of the replacement quota. The fact is that, after the approval of the amendment, the accreditation process is being kept in a stand-by position, waiting for final guidelines and requirements to be clarified.

The Accreditation for the University Teaching Bodies, which gives the consideration of civil servant, is attributed to the ANECA (*Agencia Nacional de Evaluación de la Calidad y Acreditación*), an Agency that belongs to the Central Government. 9 Autonomous Communities (Andalucía, Aragón, Canary Islands, Castille and Leon, Catalonia, Madrid, Valencian Community, Galice, and Balearic Islands) have their own accreditation agencies that play an important and complementary role in the accreditation of previous positions of researchers and docent professors. Some regions, such as Catalonia, have created their own university career parallel to the State career, which enables professors to benefit from a similar recognition and payroll despite not being civil servants.

### 3.1. *Categories in the academic career.*

The academic career is actually made of the following categories (starting from the bottom).

Students preparing PhD may opt for a Doctoral Grant — Predoctoral Fellow — or contract — *research assistant* — to work full time on the thesis. Normally these grants and contracts appear linked to a specific research project and have a duration up to 4 years or until the PhD is defended. In the last two years, these doctoral students may assist in teaching activities, especially regarding the practical part of modules and courses. The new R+D policies of both the Central and Regional Governments link the granting of these positions to research groups with some quality that pass a positive evaluation and commit to carry on a research project linked to the priority lines of research. As said in a previous paragraph, not all PhD students are entitled to a grant to prepare their PhD which renders the PhD studies and the doctoral students uncertain as regards their result.

On the other hand, the restrictive public research policies practiced in the last few years has rendered uncertain the University career after the Doctoral Degree, which has determined that the best students do neither necessarily opt nor are interested in pursuing an academic career. In fact, many doctoral students cannot access the ‘academic career’ even after the PhD lecture, which forces them to look for Postdoctoral Fellowships — abroad or in other universities —. The Government has developed special *Postdoctoral programs*, both to enable researchers that moved abroad to return, despite that no specific tax incentives apply to them or to the Universities, and to favour the continuity of the academic career for post-doctoral students that cannot be enrolled as an assistant. Several programs either general, such as the Ramon y Cajal program, the Juan de la Cierva program, or linked to excellence research projects, offer Research Fellow and Senior Research Fellow positions to post-doctoral students.

In order to cope with the teaching obligations and some research duties, the actual system defines some *contractual positions* that configure the starting of the academic career before the official accreditation. Initially, there is the possibility to opt for a contract for professors that are not doctors yet — *Ayudante no Doctor* —, which are considered for Tutor. However, the academic career in Spain needs to hold a doctor degree in order to properly start it. The first contract of doctors in University is called *Profesor Ayudante Doctor* — or *Lector* in the Catalan system and *Profesor adjunto* in the Base system —. This assistant professor may be in charge of courses on his/her own and is of temporal nature, from 3 to 5 years. A superior degree is deserved for those that pass an accreditation system — either central or at the respective autonomous communities —, and allow to become *Profesor Contratado Doctor* — Lecturer — or *Agregado* in the Catalan and Base system, which is of a contractual but fixed character. This figure requires to pass a selection process in the University of destination.

To become a civil servant, the system requires a twofold mechanism: first, to pass a national accreditation system and, second, to pass the corresponding contest in a specific University. University professors in Spain are classified in

two categories: (a) *Profesor Titular de Universidad* or Senior Lecturer, and (b) *Catedrático de Universidad*, or Professor with Full Tenure (18).

Both positions are subject to a *national accreditation procedure*, which constitutes a pre-requirement necessary but not sufficient part of the Doctoral degree. The accreditation procedure is a written request procedure in which a national Commission — for each field of specialization — evaluates the curriculum of the candidate under three pre-established separated parts — research and teaching as the main parts, but also academic background, transfer of knowledge, professional experiences, and university management are evaluated separately — according to pre-established and evaluated criteria. The specific Commission in charge of the evaluation may ask for specific Evaluation Reports to Experts — normally scholars belonging to the same area of expertise that are not in a refusal position- in order to clarify their final decision.

According to the actual regulation requirements, there is a possibility to obtain between A (exceptional) to E (special circumstance) qualification, but only if minimum levels of qualification are obtained in each of the part (19).

These criteria have been provisionally developed by the ANECA, the State Agency in charge of the evaluation of the different candidates after a discussion among the professors belonging to the different Sections of accreditation, both for *profesores titulares* and for *catedráticos*. At present, there is a partial and provisional list of criteria that has been released by the ANECA (20). However, there has been some reaction to it, considering the strong requirements approved that make more difficult the access to the accreditation process. This situation has led to a temporal closure of the accreditation process, until the criteria are completed, clarified and/or reconsidered. However, for illustrative purposes the approved criteria are reproduced. Criteria for C, D and E qualifications have not been published.

As for the *catedráticos*, the possible combinations to pass the accreditation are

	Research	Teaching	Transfer, professional activity	Management
Minimum qualifice	B	B		
Minimum qualifice	A	C, E		
Minimum qualifice	B	C	B	
Minimum qualifice	B	C		B
Minimum qualifice	C	B	A	
Minimum qualifice	C	B		A

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(18) The ancient figure *Profesor Titular de Escuela Universitaria* which did not require to hold a Doctor degree is in the process of being disappeared, and so has done the old *Catedrático de Escuela Universitaria*, similar in level to *Profesor Titular de Universidad*.

(19) Qualifications stand for A (exceptional), B (good), C (to be compensated), D (insufficient), E (special circumstance).

(20) Resolution of 24th November 2016, of the Comisión Nacional Evaluadora de la Actividad Investigadora, publishing the specific criteria approved for each of the different fields of evaluation (BOE, 26th November 2016).

As for the *profesor titular*, the possible combinations to pass the accreditation are

	Research	Teaching	Transfer, professional activity	Manag.	Background
Calificación mínima	B	B			
Calificación mínima	A	C, E			B
Calificación mínima	B	C	B		B
Calificación mínima	B	C		B	B
Calificación mínima	C	B	A		B

In order to obtain A qualification, a *profesor titular* candidate is required to demonstrate a higher level of excellence, full time docent experience, with positive evaluation of at least 15 years, with 2000 hours at least of teaching, 600 belonging to Master level, and at least 70% after the obtention of the Doctoral degree. As for the research, at least 3 monographic books, 10 book chapters and 10 articles are required, plus some complementary requirements (at least 6, among participation in research — non-applied — contract, participation in congresses, evaluation of articles, post-doctoral stays in other centres, ...). B teaching qualification (*profesor titular*) reduces, instead, the number of qualifications and merits is reduced (2 monographic books, 6 book chapters and at least 6 articles), and also for the teaching requirements (5 years, 600 hours, at least 80% with a doctor degree).

As for the evaluation of *catedráticos*, A qualification has not been published. B teaching qualification (*catedrático*) requires an academic leadership with external recognition, a coherent, independent and active research track, that needs to be guaranteed by the development of competitive research projects.

As for the teaching requirements to become *Catedrático* (B, *catedrático*), 11 years of experience with doctoral degree is needed, with positive evaluation and at least 1300 hours, with some other additional specific requirements (direction of 2 PhD with final publication, design, direction and teaching of courses in other Universities, coordination of teaching projects, 3 evaluation periods). Moreover, there is a need to become *Profesor Titular* previously or, at least to have a doctoral degree obtained with more than 8 years in advance and have obtained an exceptional qualification in the accreditation process to *Profesor Titular* (A qualification, exceptional), or has obtained an equivalent position in another EU Member State University.

As for the research requirements to become a *catedrático*, candidates need to present the four major inputs more relevant in the academic career of the candidate, showing evidence of the impact and the significance in the development of the career. It is specially considered the quality of the editorial or the level of the review — with special emphasis on international reviews in a different non-official language —. Candidates must show at least four monographic books, at least 15 book chapters and at least 15 articles, being modulated based on the quality of them. Apart, other alternative merits are the membership in the editorial or academic council of a relevant scientific review with evidence of the specific functions developed, prices of international recognitions, main researcher

in international or national research projects, during at least 3 year, main organizer of recognized Congresses, or 3 research periods positively evaluated. Other complementary merits are required.

Once the accreditation has been granted, there is a need to pass a competition procedure at the level of the different single Universities that make a public call. Universities are free to establish the conditions, specific proofs and merits to be presented and defended by the different candidates. Each University is competent to approve the criteria for this second procedure and there are diverse mechanisms to make the contest: some contests are open to both (new) accredited professors and existing professors; some others are only open to accredited professors. The accreditation recognition has not an expiration period. However, if the accreditation request is not approved, an 18-month waiting period must be observed until a new request can be made.

### 3.2. *Evaluation of teaching and research activities.*

All professors are subject to a continuous evaluation procedure for both teaching and research activities. Positive evaluation of these activities constitute both a requirement to pass the accreditation system, plus a payroll incentive. Teaching activities are subject to evaluation once every five years (*quinquennios*), while research activities give rise to the possibility to obtain a positive evaluation every six years (*sexennios*). If the evaluation is not passed successfully, a period of 3 years-break is needed until another evaluation can be submitted. Moreover, some additional teaching charges may be established on those professors that do not pass certain minimum research accreditation periods.

The 6-year research evaluation requires the professor to demonstrate the relevance of 5 inputs, or less than 5 only if they are of an extraordinary quality and have had a high scientific or technical relevance. Publication in journals and editorials of recognized prestige is a quality index. Domestic tax law journals include *Civitas*, *Revista Española de Derecho Financiero*, *Crónica Tributaria*, *CEF*, *Revista de Contabilidad y Tributación*, *Quincena Fiscal*, *Carta Tributaria*, *Gaceta Fiscal*, *Nueva Fiscalidad* and others. Publication in international reviews of quality —peer review— is also considered an index of quality. Editorials of prestige include *Civitas*, *Thomson-Reuters Aranzadi*, *Tecnos*, *Tirant lo Blanch*, *Kluwer*, *La Ley*, *Atelier* and others. There is a list of tests that both Law Reviews and Editorials must fulfil in order to determine the level and quality of the publication. However, this only represents an index of quality, since the number and characteristics of citations is also taken into account, as well as the reviews of the book or other criteria. Book chapters are only valid if the quality is demonstrated as regards the specific chapter and not the book. Writings by co-authors are not considered in general unless demonstrated the specific parts written by each author. Translation is also an index of quality. Bibliometric and citation indexes can be used for evidence. There are specific goals and trends to demonstrate the quality of the inputs (Resolution of 24<sup>th</sup> November 2016, of the *Comisión Nacional Evaluadora de la Actividad Investigadora*, publishing the specific criteria approved for each field of evaluation).

Due to the budgetary restrictions, several universities manage to cope with the extensive teaching requirements of Tax Law in the different Bachelor and Master Degrees using a contract-form whose only purpose is teaching and research is excluded. These are the so-called *profesores asociados* — part-time Associate Lecturers — that have different teaching obligations depending on the extension — per hours — of the contract. The figure was meant to attract to the University high level professionals that could give a professional perspective of interest for the students — Judges, Tax Inspectors, Tax Advisors —. However, this is not always the case due to budgetary restrictions.

### 3.3. *Critical remarks.*

Generally speaking, the accreditation system has received a positive criticism by the members of the academia. It provides with *objective criteria* and leaves behind certain room of maneuver for the members of the board. Moreover, the Members of the Board do not belong to the specific University but are named by the Ministry and cannot serve for more than two terms in the Commission; specific different evaluators can be appointed for each case, despite of being confidential the names. These criteria render more difficult to obstruct the academic career of professors that have demonstrated a solvency and scholar recognition both domestically and internationally.

However, there is still pending a potential reconsideration of the criteria to pass the University test, which depends exclusively on each University, which decides the chairs to be posted, the type of proofs —by regulation — and the members of the board of examiners. Therefore, the so-called *university endogamy* cannot be totally prevented with this system.

Moreover, due to the economic constraints the accreditation process has severely suffered, with the promotion of a significant number of accredited professors that could gain no chairs being offered by the Universities. And, more recently, the criteria for accreditation have been severely hardened, making more difficult the normal evolution of the academic career or, at least, lasting it until a later stage, as compared to previous situation where the higher positions could be achieved much earlier and with much less requirements. In any case, due to the budgetary constraints, the lack of sufficient reposition quota and the important gap of new researchers developing and academic career in the last few years makes the academic career interesting —now and again — for new Bachelor students.

### 4. *Role and influence of tax scholars.*

There are several aspects of this paragraph to be commented, both referring to the role and to the influence. On the one hand, there is the internal influence of tax scholars — scholars among scholars —. On the other hand, there is the external influence of tax scholars, which at the same time can be divided in several aspects, which I will try to structure afterwards. Talking about the role,

and following the magisterium of Palao Taboada (21), we can consider it from a descriptive point of view —what is the actual role — and from a critical prescriptive point of view —what it should be —. We will deal with these aspects in the following paragraphs.

#### 4.1. *Internal influence.*

Regarding internal influence —scholars among scholars —, there can be seen a decrease of the influence of the authoritative voices of the academia among the academia itself. This may be due to the circumstances of modern times, where reflection and careful delimitation are overcome by immediate reaction and time constraints. Discussions are most of the times governed by the dictatorship of the clock and not for the time needed for the elaboration, demonstration and discussion of proposals and theories. (Almost) everything requires to be elaborated by now or even before, and prompt reaction is appreciated and sometimes preferred to sound elaboration. Reflection arrives out-of-date since new parameters, proposals, policy choices and trendy topics displace previous ones faster than desired. In times of instant reaction, first — and short — comments are much more considered than thorough and elaborated theories and approaches. Diffusion and the need to *disseminate* knowledge among scholars and outside world forces a tendency towards these new approaches to influence the social, political and legal debate.

This new reality —not to talk about social media, which are not of a widespread use among scholars — stimulates scholars to place their results and focus their attention outside the classrooms and the walls of the University to promote and disseminate the ‘results’ of its research and thinking. In that sense, the University is not the holder of the knowledge and higher debates anymore —if ever —. Professional associations and the mass media —and even more recently social networks — have taken the lead in many instances, both at the tax policy debate or at the implementation side.

Moreover, scholars do not necessarily debate among scholars but with outside professionals — judges, magistrates, tax officials, tax advisors, lawyers, economists, and so on — which certainly represents an enrichment of the debate and a diversification of the elements that are taken into account. This new approach determines that scholars tend to have a more pragmatic approach, aside from the theoretical categorization approach. These new *standards* have important implications in the role of the scholars and in the formulations of the theoretical foundations of tax law.

Theoretical discussion is superseded or overcome by considerations on projects and reports — policy and legal aspects, but also on *soft* law —, positive analysis, and applied law —administrative practices, jurisprudence/case law. The recent discussion on the BEPS action plan and the different proposals and reports

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(21) PALAO TABOADA C., *El papel de los profesores de Derecho Financiero y Tributario en la elaboración de la Legislación Tributaria*, I Jornada Metodológica ‘Jaime García Añoveros’ sobre la metodología académica y la enseñanza del Derecho Financiero y Tributario, IEF, Doc 11/02. P 66 and ff.

is a good example of it. Another example is the commentaries on case law, for instance the ECJ case law on tax matters analysis, sometimes with a comprehensive perspective, some others with a clear specific-topic oriented approach. By doing so, jurisprudence is placed at the center of the debate among scholars, replacing the discussion on the legal categories and concepts by the correctness and implications of judicial decisions. Systematizing, and making comprehensive proposals for understanding is not necessarily behind the objectives of the research analysis, but a more direct and immediate effect and scope is looked for, considering the relevant legal consequences, for domestic law, for taxpayers or for the economy.

Therefore, *the 'need of the immediate'* poses interesting challenges to the role of the scholars and the University in general. It is difficult and probably not recommendable to put aside these new mechanisms and roles attributed to the University and the scholars. But as a question of priorities, the option and adoption for such strategy —as necessary— should not imply the abandonment and neglect of the other reflexive function, inherent to the knowledge development and to the influence of the memory in our societies and the University itself.

#### 4.2. *External influence.*

As regards the external influence, it can be considered on the following areas. On the one hand, the influence on the tax policy debate and consolidation. In the second place, in the drafting of tax legislation (and regulations); and finally, the relevance in the implementation sphere, considering the administrative practice, the professional practice or the case-law doctrine. Moreover, and from an external perspective, it can be pointed out the *social* relevance, the presence in the media, and the influence in the social debate on taxes.

##### 4.2.1. *Tax policy.*

Starting from the influence on the tax policy debate, scholars in tax law are only one of the actors in this important debate. Following professor Palao (cit.) it is not sure that tax law scholars are the most prepared professional to discuss on some issues that requires not legal but other type of specific knowledge. This mainly refers to macroeconomic knowledge where economists, engineers and mathematicians dispute over the supremacy of the debate. However, in Spain, there is a relative influence of tax professors and scholars on an individual basis, not on a collective one, on the formulation of papers and reports for tax reform in Spain. The Ministry of Finance, the Government, the Conference of Autonomic presidents, or other public institutions, directly or through the Institute for Fiscal Studies normally create a Committee of Experts almost every time that a major tax reform is foreseen or needed (22). As said before, the institution suggesting the

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(22) See for instance the Report on the Reform of the System of Autonomic Financing, made public in July 2017 — <http://www.minhfp.gob.es/Documentacion/Publico/CDI/Sist%20Financiacion%20y%20Deuda/Informaci%C3%B3nCCAA/Info>

creation of the Committee of Experts nominates them at an individual basis. There is no (informal) recognition of any Association of Tax Professors for them to nominate an expert or representative, as it may happen at a European Union level with the EATLP.

Despite that fact that shows little relevance of the tax scholars in the tax policy influence, authoritative voices consider this fact as somehow irrelevant, since there is no evidence of the real influence that these Committees and their conclusions have in the final political decision or outcome and the interests lying behind the creation of such Committees. In some cases, it can be concluded that the final political decision does not necessarily coincide with the outcomes of the scientific or technical debate. What should be more relevant is the ability — or inability — for tax scholars to generate, stimulate and conclude such debates and the formulation of policy proposals that could be implemented at the legal ground.

Another issue to present is the self-restraint position of many tax scholars — and other experts — regarding policy issues. Most of the times, proposals are made up for suggesting a technical solution, without entering in the debate of the policy choice. This is not necessarily what happens in other countries — especially in the US- where scholars lead to conclusions that show a clear policy option after considering the pros and cons of different alternatives. The confusing translation of *opciones políticas* and *opciones de política fiscal* into the Spanish language — the confusion in a word, *política*, of the expressions ‘politics’ and ‘policy’, may be at the base of this surprising self-restraint position —, thus leaving aside the discussion on the different political choices; or, when made, it is made dependent on the methodological limitations and justifying the options on the basis of constitutional and legal principles. Such a debate has been maintained in Spain between some tax law scholars regarding the justification and the future of the Inheritance tax (23).

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rme\_final\_Comisi%C3%B3n\_Reforma\_SFA.pdf —. This Committee was formed by independent professionals being proposed by the State (5) and the Autonomous Communities (1 for each, 16 in total) of Common System. Among the experts, only one was professor of Tax Law, most of them being professors of Applied Economics. Also the Committee of Experts for the revision of the Model of Local Financing, July 2017, created by the Council of Ministries on 10<sup>th</sup> February 2017 — Final Report on [http://www.minhfp.gob.es/Documentacion/Publico/CDI/Sist%20Financiacion%20%20Deuda/InformacionEELLS/2017/Informe\\_final\\_Comisi%C3%B3n\\_Reforma\\_SFL.pdf](http://www.minhfp.gob.es/Documentacion/Publico/CDI/Sist%20Financiacion%20%20Deuda/InformacionEELLS/2017/Informe_final_Comisi%C3%B3n_Reforma_SFL.pdf) —. In this case, the presence of Tax Law Scholars was higher — 5 out of 10 —. Previously, the Government created a Committee of Experts for the Reform of the Spanish Tax System that produced a Report on February 2014 — <http://www.minhfp.gob.es/es-ES/Prensa/En%20Portada/2014/Documents/Informe%20expertos.pdf> — which originated the Tax System reform operated at the end of 2014 in both the Personal Income Tax and the Corporate Income tax. In that case, only 1 out of 9 Members was a Tax Law Professor. A similar ratio — or even lesser — may be found in some Committees being created at the European Union Level, where the European Association of Tax Law Professors is normally entitled to suggest a candidate.

(23) See, among others ALONSO GONZÁLEZ L.M., *La inconstitucionalidad del impuesto sobre sucesiones y donaciones*, Instituto de Estudios Económicos, 2001. CAAMAÑO ANIDO M.A. - PEÑA ALONSO J.L., *El impuesto sobre sucesiones y donaciones*, EDESA, 2002. CHECA GONZÁLEZ C., *La supresión del impuesto sobre sucesiones y donaciones: materiales para la reflexión*, Instituto de Estudios del Libre Comercio, 1996.

#### 4.2.2. *Drafting tax legislation.*

In general terms, tax scholars do not intervene in drafting the tax legislation approved by the different levels of government in Spain, neither in the Central Government, nor in the Autonomous Communities nor in the Local Entities. Every structure of the State has its own body or bodies in charge of drafting legislation.

As regards tax matters, they are not normally subject to the advice of the *Comisión General de Codificación*, regulated by RD 845/2015 of 28<sup>th</sup> September. On the contrary, it is normally the Ministry of Finance who elaborates the Drafts and the Projects of different tax laws, regulations and orders.

Moreover, tax scholars, neither individually nor as a body (24), do not normally participate in the debate or in the formulation of suggestions for improvement to different tax reform when a specific procedure is open for it. However, some professors directly participate in the formulation of such suggestions in other associations that normally send comments, such as the Spanish Association of Tax Advisors (AEDAF). Nevertheless, almost every part of the legislation and the proposals regarding tax amendments is object of consideration and study by the broad community of tax scholars in Spain, through studies published in different tax reviews and journals, either scientific or professional.

#### 4.2.3. *Legal implementation, evolution of tax standards and tax scholars.*

As a general matter, one could say that the influence of the position of some tax scholars is notorious, and it has derived in the formulation of real case law doctrine, as well as in the formulation of some decisions of the Constitutional Court. Many other proposals have become law or have been incorporated as a legal solution to problems raised by the previous regulation. To deny the influence of the doctrine and the literature of tax scholars in the ‘implementation world’ would simply oversimplify and deny a reality that can be certainly checked and demonstrated. However, and contrary to what happens in other countries, such as Germany, where the Constitutional Court refers to citation of authoritative doctrine, or the Advocate General in the ECJ that does the same, domestic Courts and the Constitutional Court in Spain do neither refer nor identify the intellectual formation of the theories or arguments being used in the motivation or decision.

There are several meetings, congresses and seminars where there is broad participation of scholars interacting both with professionals, tax administration and judges to debate on pending cases or issues of practical relevance, both organized by the Universities and by the Associations, sometimes with the collaboration of the *Consejo General del Poder Judicial* and the *Agencia Estatal de*

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(24) There is an association of Tax Law professors in Spain under the name of ‘Red de Profesores de Derecho Financiero y Tributario’ where the majority of tax professors are members. ([www.rpdft.org](http://www.rpdft.org)). Some professors also belong to other tax professors associations, such as the EATLP, as well as to other tax professional associations.

*la Administración Tributaria*. The positive effects of such interaction have already been mentioned, despite the fact of centering the intellectual debate on the legal effects of case law instead of on the elaboration of tax categories.

Moreover, the evolution of international tax standards may force tax scholars to reconsider their role in the proper establishment and consolidation of such standards, as they may derive in a progressive de-juridification, as a result of the development and implementation of the BEPS action plan. This process can be observed in different areas, concurrent in the result.

On the one hand, the progressive substitution of positive law — international and internal — by soft law, of more diffuse contents in terms of its spatio-temporal efficacy, and allegedly uncertain in its integration with the scheme of traditional sources of law of the tax system in different tax systems. In any case, the development of instruments of soft law — necessary for the progressive attainment of the consensus that develops the international norms — should not steal leadership to the parliamentary action and debate, where the democratic legitimacy of the tax systems deepens their roots.

On the other hand, we are assisting to a progressive transfer of tax conflicts from the legal discussion to the factual side. The orientation given to international reports shifts the epicenter of decision making from the correct classification *of the facts* according to the norm up to the correct assessment of the underlying economic reality underlying the legal appearance. Moreover, the new proposals do not hesitate to generate new — deemed — *tax legal realities* that overlap and contrast.

The expected evolution steals the conflict from the debate and legal judicial control to the judiciary, where the questions of evidence and limitations in their contribution and appreciation may lead to a reduction in the defense of constitutionally protected rights. To further increase the risk, it is proposed as a preferred solution for the expected increase in international tax disputes the development of good practices in mutual agreement procedures, and not a better preparation and training of judges of different jurisdictions in international tax matters. The incorporation of an arbitration closing clause into MAP's is offered as an efficient and necessary solution to the foreseeable increase in conflicts, although it is still to be seen its effectiveness, even dissuasive; especially from a purely legal perspective. In the light of new international standards, guided by greater transparency, the proposal of confidential arbitration clauses and MAPs do not seem very in line — especially with legal guarantees —, considering that not only the outcome is unknown but also — even — the development and elaboration of a legal motivation testable and subject to criticism through its public knowledge is impossible.

Finally, the development and inclusion of various anti-abuse instruments in Tax Conventions and EU Law, of uncertain verification, scope and consequences, significantly reduce the operation of these normative instruments, which continue, paradoxically, incorporating references to the benefits and beneficiaries of the Convention, with clear American reminiscences. It would not be unreasonable to think of an “additional” clause — voluntarily renouncing these benefits on the part of the affected taxpayer, in order to at least free themselves from the indirect burden that may be the proof of their theoretical benefit. Otherwise, they fail to generate real reasons and interests that encourage States to sign new double

taxation conventions based on the new international parameters. It remains to be answered, with the new multilateral agreement, how the revised tax agreements can contribute to growth and economic development.

4.2.4. *Social and public debate.*

Recently, taxes have been at the core of the social debate. There is a growing concern and public awareness on the fair distribution of income taxes, especially after some ‘scandals’ have arisen to the press, referring to multinationals and wealthy individuals, and the issue arises as to whether scholars should influence, intervene or mediate in the debate. My impression is that these ‘scandals’, being true, are interested scandals and mass media and groups of interest — among them, the tax administrations of some States — play their role. The University, as far as it is not affected, should not concentrate on solving or leading public opinion on public scandals but should stay apart, doing what is supposed to be doing, promoting sound proposals and solutions for improving the fairness of the tax system and its proper implementation and efficiency. It is difficult to play a leading role in a field that is not crucial for the University, despite the fact that the University cannot be set aside of the increasing social pressure and interest for a demand of fairer tax systems.