

також поширили це право на жінок-військовослужбовців і чоловіків-військовослужбовців. Різницю у ставленні у випадку заявника не можна вважати позитивною дискримінацією на користь жінок, оскільки вона явно не спрямована на виправлення пригнобленого становища жінок у суспільстві. Натомість вона спричинила поглиблення ґендерних стереотипів і була несприятливою як для професійної діяльності жінок, так і для сімейного життя чоловіків. Тобто посилення на традиційний розподіл ґендерних ролей у суспільстві не може виправдати відмову чоловікам, включно з військовослужбовцями, у праві на відпустку по догляду за дитиною» [1].

Враховуючи вищевикладене, стає зрозумілим, що тема застосування принципу ґендерної рівності у практиці Європейського суду з прав людини є надзвичайно важливою та актуальною. Рішення ЄСПЛ у ґендерно чутливих справах формують сучасну юриспруденцію, стають керівними для національних судів та прямо впливають на розробку та вдосконалення національної законодавчої бази для забезпечення рівності громадян.

ЛІТЕРАТУРА:

1. Konstantin Markin v. Russian Federation. URL: <http://hudoc.echr.coe.int>.
2. Стратегія ґендерної рівності Ради Європи на 2014–2017 роки URL: <https://rm.coe.int/1680590176>
3. Стратегія ґендерної рівності Ради Європи на 2018-2023 роки URL: <https://rm.coe.int/prems-041318-gbr-gender-equality-strategy-2023-ukr-new2/16808b35a4>

Mateusz Tchórzewski
PhD, attorney-at-law, economist
Assistant professor at the Law and
Administration Faculty Cardinal Stefan Wyszyński
University in Warsaw

AUTOMATION OF THE APPLICATION OF TAX LAW: CHOSEN CURRENT PRACTICES AND LEGAL DILEMMAS

1. Introduction

Automation can be defined as ‘a process of application of machines to tasks once performed by human beings or, increasingly, to tasks that would otherwise be impossible’ [1]. It can also be understood as ‘automatically controlled operation of an apparatus, process, or system by mechanical or electronic devices that take the place of human labour’ [2], ‘to make a process in a factory or office operate by machines or computers, in order to reduce the amount of work done by humans and the time taken to do the work’ [3], ‘the use of machines and computers to do work that was previously done by people’ [4].

It should be noted that automation historically was related mostly to physical labour, and only relatively recently affects, to a large degree, intellectual activities. This is connected to the notion of artificial intelligence – an advanced field of

computer science, where a computer is programmed to exhibit traits associated with human intelligence. These traits include the capacity to learn, understand language, reason, solve problems and render expert diagnoses [1]. In the context of application of tax law, it is important to highlight that the development of information technologies made it possible to gather and store vast amounts of data. This was accompanied by a decrease in the cost of creating, gathering and storing information in electronic form [5, p. 1].

The above should be viewed as being connected to large language models. These are a category of foundation models, trained on immense amounts of data, which makes them capable of understating as well as generating natural language and other types of content in order to perform a wide range of tasks [6].

Rapidly growing capabilities of information technology, in the context of intellectual tasks related to usage of language, suggests that it will be increasingly used for the purposes of facilitating the interpretation and application of the law. This seems to be of a particular relevance in the context of tax law. The reason for that being that tax law, as juxtaposed with other fields of the law, has a comparatively strong quantitative aspect. Tax statutes contain legal norms which are primarily designed to give raise to tax liabilities which are monetary, that is by definition quantitative, in nature. Furthermore, the tax base, being one of the primary determinants of the amount of the tax liability, can be described as an institution which serves to quantify the legal or (and) factual state which is connected with the rise of the tax obligation. This is particularly relevant from the point of view of taxes such as the value added tax as well as income taxes, as the tax bases in these taxes can be described as having a financial character. It is important to note here that value added tax, personal income tax and corporate income tax, together with the excise tax, tend to constitute a crucial source of revenue for the state budget. As a consequence, they can be considered as some of the most indispensable fundamentals of the functioning of the state.

The information technology has therefore an increasing potential in terms of application of the tax law. The reasons for that seem to be twofold. The first lies in the fact that information technology becomes increasingly adept at automation of intellectual labour in the context of language. Legal acts, by definition, are expressed in a language. Therefore, the potential of large language models in terms of automation of the activities related to application of the law is substantial. At the same time, the quantitative idiosyncrasies of tax law seem to make it particularly predisposed to automation with the use of the information technology.

2. Automation of tax control

The consequences and possibilities of automation seem to be particularly interesting in the context of application of tax law, especially in the context of tax control. Tax control is understood as a process of determining and comparing the taxpayer's actions with the demands made by tax law, as well as explaining the discrepancies which take place between them. The goal of tax control is generally to verify whether the controlled entities follow their obligations, which stem from tax law [7, 485-486]. The goals of tax control also include:

1. avoidance of commencing of superfluous tax proceedings,
2. gathering the evidence which can be later used if the obligations stemming from tax law are not fulfilled [8, 231].

It needs highlighting that the notion of tax control can be understood as formal proceedings regulated by appropriate legal acts. However, it appears that tax control *sensu largo* can also be associated with any activities related to identifying non-compliance in terms of the norms of tax law.

The notion of tax control involves verifying whether specific entities fulfil their legal obligations. From this point of view two interconnected problems merit attention, *i.e.*:

1. massive scope of the application of tax law,
2. limited resources that are at the disposal of tax authorities, particularly in terms of human resources.

The norms of tax law affect not only very large numbers of entities (most important being the taxpayers), but also extensive amounts of events which are relevant from the point of view of taxation. These characteristics of tax law have made it very problematic to enforce, as tax authorities did not possess objective possibilities to verify large numbers of relevant events (activities) connected to particular taxpayers. Tax control, and other similar activities, could impact only a relatively small number (part) of aforementioned events. This has limited the possibility of detecting the breaches of tax law. Furthermore, the problem of tax control is related to the question of selecting which entities should be subject to it. The importance of making correct choices in that regard is difficult to overestimate due to the limited possibilities of conducting such controls. It is crucial to direct such controls at events (entities) in an effective way. Automation seems to have a large role to play in that respect, as it creates possibilities not only to help identify the entities that should be selected for tax control. Automation may also allow the tax control to take place on a larger scale, with smaller burdens put on the entities being subject to it.

3. Chosen current practises

Polish law includes a very interesting institution related to the subject matter, *i.e.* the freezing of an account of a qualified subject. According to article 119zv § 1 of the Polish Tax Ordinance (Journal of Laws 2023, item 519, consolidated text, as amended) the Head of the National Fiscal Administration may demand to freeze an account of a qualified subject for the period no longer than 72 hours if, in particular, the results of risk analysis suggest that the qualified subject may use the activities of the banks (banking institutions) for purposes related to tax fraud, and the freeze is necessary to prevent the said tax fraud. The abovementioned risk analysis is regulated in art. 119zn of the Tax Ordinance. The § 3 of this article states that the relevant risk factor is established based on specific algorithms, which take into consideration the best practices of the banking sector in terms of prevention of taking advantage of its activities to commit crimes as well as fiscal crimes. Additionally, the following criteria are being taken into consideration:

1. economic criteria (related to the goal of the business activity or conducting transactions not related with the conducted business activity),
2. geographic criteria (related to conducting transactions with the entities located in states where there is a high risk of tax fraud),
3. criteria related to the subject (related to conducting business activity of a high risk from the point of view of susceptibility to tax fraud),
4. behavioural criteria (related to an atypical, in given circumstances, behaviour of the qualified subject),

5. connection criteria (related to the existence of a connection between the qualified subject with entities which are characterized by a risk of participating in activities related to tax fraud).

It is important to point out that the criteria described above seem to be relatively unclear and general in nature. In particular the behavioural criteria, related to a behaviour which is atypical for a given situation of a taxpayer, are considered to be especially challenging from the point of view of the interpretation of the law [9, p. 19]. Additionally, the relevant algorithms were not determined in a normative way, nor were they disclosed publicly [10, p. 40].

The discussed freeze of an account may have a very significant impact on the situation of the affected entity, particularly in terms of possible disturbances in liquidity. The *de facto* situation of the taxpayer may be therefore actually governed, to a significant degree, not by the law but by an algorithm. Furthermore, the relevant algorithm was not only not made public, but its content and functioning is largely not determined in a normative way.

The situation described above can serve as an interesting exemplification of opportunities and challenges related to the application of modern instruments of information technology in the context of tax law. On the one hand, this application creates unparalleled opportunities in terms of detecting and preventing tax evasion and thus helping to safeguard tax justice and legitimate fiscal interests of the state. On the other hand, it poses new challenges to tax law where the rights and obligations of taxpayers may be increasingly determined not by the law, but rather by algorithms and information technology. This raises important questions, including how to make sure that the content, as well as the functioning of information technology instruments, are determined by the law.

REFERENCES:

1. <https://www.britannica.com/technology/automation/Modern-developments> (date of access: 10.04.2024).
2. <https://www.merriam-webster.com/dictionary/automation> (date of access: 10.04.2024).
3. <https://dictionary.cambridge.org/dictionary/english/automating> (date of access: 10.04.2024).
4. <https://www.oxfordlearnersdictionaries.com/definition/english/automation#:~:text=%2F%CB%8C%C9%94%CB%90t%C9%99%CB%88me%C9%AA%CA%83n%2F,w%20previously%20done%20by%20people> (date of access: 10.04.2024).
5. Gruca, A., *Eksploracja danych*, Park Naukowo-Technologiczny „Technopark Gliwice”, Gliwice 2013.
6. <https://www.ibm.com/topics/large-language-models> (date of access: 11.04.2024).
7. Gomułowicz A., Mączyński D., *Podatki i prawo podatkowe*, 2016.
8. Kaczyński T., Charkiewicz M., *Skutki ograniczenia czasu trwania kontroli podatkowej* [in:] R. Dowgier (ed.), *Ordynacja podatkowa. Kontrola realizacji zobowiązań podatkowych*, 2012 (cited after: Popławski M. [in:] Etel L. (ed.), *Ordynacja podatkowa. Tom II. Procedury podatkowe. Art. 120-344. Komentarz aktualizowany*, art. 281, no. 7, 2023).
9. Kwietko-Bębnowski M., *Blokada rachunku podmiotu kwalifikowanego – skalpel chirurga czy prymitywna maczuga?*, *Przegląd Podatkowy* 2023, nr 6.

10. Szymanek P., Sposoby bieżącego nadzoru nad podatnikami w podatkach dochodowych oraz podatku od towarów i usług (lata 1992-2021), Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych 2021, nr 12.

dr hab. Edyta Sokalska
Faculty of Law and Administration
University of Warmia and
Mazury in Olsztyn

SEARCHING FOR A NEW FORMULA OF A STATE: INTERNATIONAL DISCOURSE ON DELIBERATIVE DEMOCRACY

The idea of civil society might be taken into closer consideration in a variety of contexts. International discourse searches for the appropriate forms of institutionalization corresponding to its essence. The importance of the subject matter became part of the transformation of the post communist regimes that were characterized by the distinctive dichotomy between a society and a state, as well as the European integration process, where the idea of civil society was reflected in formal and legal subjectivity of individuals [7, p. 9; 8, pp. 14-30]. The development of civil society in the 21st century has aroused curiosity concerning the instruments and forms that promote effective participation and deliberation in the field of local self-government and other areas. Social participation might be perceived as the way of expression of the civil society [5, p. 12; 9, pp. 22-24; 6, pp. 240-241].

Deliberative democracy might be perceived as a present form of civil society. It reaches presently new fields of varied empirical insights and theoretical debates, however, some flaws of deliberation and participation are also noticed [11, pp. 77-84; 13, pp. 22-23]. In the matter of fact, the diversity of forms of participation gives a real opportunity to shape the policies of a state, region or local government [10, p. 184]. Citizens themselves implement solutions in the area of administration, social affairs and economy through their participation in contemporary social dialogue.

It can be observed that during a thirty-year worldwide debate on the development of deliberative democracy, any unified 'school' or current were established [12, pp. 227-230]. In line with the development of the discourse, it was becoming more internally diverse. Advocates of deliberative democracy differ when answering the question of what kind of communication is conceived as deliberative, where and at which level deliberation should take place, who should participate in deliberation and how. They also present different points of view on the expected outcomes of deliberation [14, pp. 208-211; 13, pp. 19-37].

Although there is some overlap in certain solutions, methodologies, and tools, several stages can be identified in the deliberative democracy discourse. The first generation of explorers of deliberative democracy were concerned with the normative theory. Jürgen Habermas highlighted the legitimacy of collective decisions through the discursive character of their decision-making procedures. In his early works, John S. Dryzek presented a radical concept of discursive democracy allowing for a transnational or supra-state view on democracy. The