

Tax, technology and human rights: problems and solutions for the EU value added tax law

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MARIE CURIE ACTIONS

Overview

1. Tax – EU VAT system and its problems

2. Technology at a service of tax

3. Human Rights – Taxpayers' rights


1. TAX

VALUE ADDED TAX

Important revenue instrument



General indirect tax on consumption expenditure – paid by final consumers, collected by businesses on behalf of a state



Harmonized in the EU (Directive 2006/112/EC)



Susceptible to fraud



European Commission

VAT GAP REPORT 2021



2 December 2021

WHAT IS THE VAT GAP ?

The VAT GAP is the overall difference between the expected VAT revenue and the amount actually collected.

- In 2019, the VAT Gap in the EU was **€134 billion**, equating to a total revenue loss across the EU of **10.3%**.
- Quantifying the scale of the VAT Gap can help to **develop well-targeted measures** and monitor their effectiveness.

WHAT CAUSES THE VAT GAP ?



Fraud and tax evasion



Corporate insolvency



Corporate bankruptcy



Maladministration



Legal tax optimisation

VAT FRAUD

Revenue loss

Distortions of competition

Tax equity affected

Time aspect

Third party liability

Legal obligation for MS to combat

2. TECHNOLOGY

Technology as means of combatting VAT fraud

1. Technology as a core element of a far-reaching reform to the EU VAT system

- Definitive VAT system supported by blockchain and/or generalized split-payment?
- Automated, self-executive assessment and collection of VAT?

2. Technology as means of supporting the existing EU VAT system

- Experience of several MS with different technology tools in VAT
- Electronic, **real time reporting (e-invoicing)** – e.g. SII in Spain, clearance model of e-invoicing in Italy, SAF-T; upcoming proposal from the European Commission
- Automated (algorithm based) analysis of big data – eg. TNA in EU, STIR in Poland

Technology and big data in VAT – inevitable element of the future of EU VAT

- DAC 7 and exchange of information – reporting obligations for digital platforms – data may be used also for VAT purposes;
- Directive 2020/284 – requirements for payment service providers;
- COM(2020) 312 final “An action plan for fair and simple taxation supporting the recovery strategy”

Technology in VAT- opportunities

Effective tool for
combatting VAT fraud

Facilitates automated
access to large amounts of
data, even in real time,
increases tax transparency

Can facilitate compliance
and protect compliant
taxpayers

Important for effective
functioning of
administrative cooperation
and exchange of
information, can help avoid
double taxation

Technology in VAT- challenges

Fragmentation – lack of harmonized approach

Compliance cost

Adapting algorithms to changing law/interpretation of law

Collection, storage and sharing of large volumes of data concerning all taxpayers

Algorithmic processing, profiling and decision making

3. HUMAN RIGHTS

Taxpayers' Rights perspective

- The classic legal issue of the rule of law: the limits of the State's authority
- Taxpayer's rights purpose: to maintain a balance between a State exercising its sovereign rights to tax and a taxpayer – counterbalance the *a priori* asymmetry
- A need to revisit important and timely:
 - When the major focus is on combating tax avoidance and evasion and securing tax revenues
 - In the context of the challenges of new technologies

“Due to the requirements for the recruitment, appointment and training of persons holding public office and the generally applicable management procedures, which ensure a high level of quality in public administration, it must be assumed that there is a particularly justified presumption that administrative acts be flawless”

(Denmark, district court's decision in SKM 2021.390)



3 categories of problems

1. Compatibility of the DRR as such with the established EU legal framework for the protection of human rights

2. The impact of the DRR on other procedural and material tax law rules in the light of the rule of law principle

3. Compatibility of the DRR and the use of it by tax administrations with the fundamental principles underlying the EU VAT system

Taxpayers' rights – established legal framework

- Polycentry of the sources of law in the EU: The Charter of Fundamental Rights of the European Union, European Convention on Human Rights, national constitutions; VAT Directive
- The rights are not absolute – can be limited when it is strictly 'necessary in a democratic society', based on a need to preserve the fundamental rights of other persons or to safeguard an important public interest (Art. 52(1) CFR):
 - limitation has to be provided by law,
 - It must respect the essence of the rights and freedoms,
 - It must be proportionate and necessary and
 - It must meet objectives of general interest recognized by the Union (such as ensuring effectiveness of fiscal supervision, effective fight against VAT fraud).
- GDPR (art. 23(1)(e)); AI and tax fraud - less protection?

Proportionate and necessary?

- Illegal surveillance (CJEU: *Digital Rights* C- 293/12; *Tele2Sverige* C-698/15)
- Strictly necessary in a democratic society
- Relation between stored data and fraud?
- Access to legal remedies, procedural safeguards
- Presumption of innocence
- Protection against algorithmic discrimination
- Transparency and legal certainty?

Conclusions: The present and future of taxpayers' rights in technology based VAT?

Technology provides unprecedented opportunities for combating tax fraud

Combating tax fraud has been an important general interest capable to justify even far-reaching restrictions to taxpayers' rights

Are the challenges fully realized?

Are taxpayers' rights systematically infringed?

Does the law as it stands provide for sufficient protection?

New taxpayers rights or new regulation?

Thank you!

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