Fishing in the data lake for tax purposes

Liesa Keunen

Ghent University, Faculty of Law and Criminology, department of Law & Technology

Abstract (472 words without titles)

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The growing technological ability to collect, process and extract new and predictive knowledge from **big data** is changing our society (Council of Europe, 2017). Every day, individuals share and disclose data on their location, payment transactions and communications. These data are not only valuable to commercial companies, but also to **governments** and the way in which they achieve various goals of public interest.

For instance, the present era of big data offers new opportunities for the collection of information by the **tax authorities**. Tax authorities are offered information by the tax payer and others, such as employers. Recently, however, they have also started to explore the advantages of large data sets that are gathered by third parties (e.g. energy suppliers, payment services) (De Raedt, 2016; Goudsmit, 2015; Wisman, 2014). The availability and use of such data could make the global fight against **tax fraud** more efficient since it enables tax authorities to identify and cluster tax payers based on risk of non-compliance with tax law.

At the same time, the use of big data means that private information will be acquired on a large scale, often without awareness by the tax payer. Moreover, tax authorities may share this information with other public authorities who can use the data for their (unrelated) purposes.

The use of big data by tax authorities therefore gives rise to significant legal issues, one being the possible interference with the **right to privacy**. In early 2020, a Dutch Court in The Hague decided that the automated (tax and social) fraud detection system in the Netherlands (SyRI) breaches the proportionality principle of article 8 ECHR (Court The Hague, 2020). It furthermore evokes questions regarding the **right to data protection** since the information gathered by tax authorities may include both anonymised, pseudonymised and non-pseudonymised personal data (De Raedt, 2017). Finally, there are questions regarding the principle of **prohibition of fishing expeditions in tax matters** (Van Der Sloot, Broeders and Schrijvers, 2016). According to this principle, tax authorities are not allowed to search ("fish") for information, the existence of which is uncertain. As a result, the use of these large data sets for tax purposes seems incompatible with this prohibition.

A closer look at this prohibition unveils that it has no generally accepted definition although authors, legislators and judges often refer to it. For that reason, this paper aims to identify the main characteristics of this prohibition using a selection of relevant policy documents (international, regional and national) and case law of the ECtHR and the CJEU in which there is a reference to the principle. In every case a critical analysis of the meaning attributed to the prohibition will be undertaken. In a second step, based on the identified characteristics, the compatibility of big data tax audits with this principle in the context of tax matters will be evaluated.

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