

LAW AND TECHNOLOGY

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TAX AUDITS ON BIG DATA: EXPLORING THE LEGITIMACY AND LIMITS IN LIGHT OF THE PROHIBITION OF FISHING EXPEDITIONS

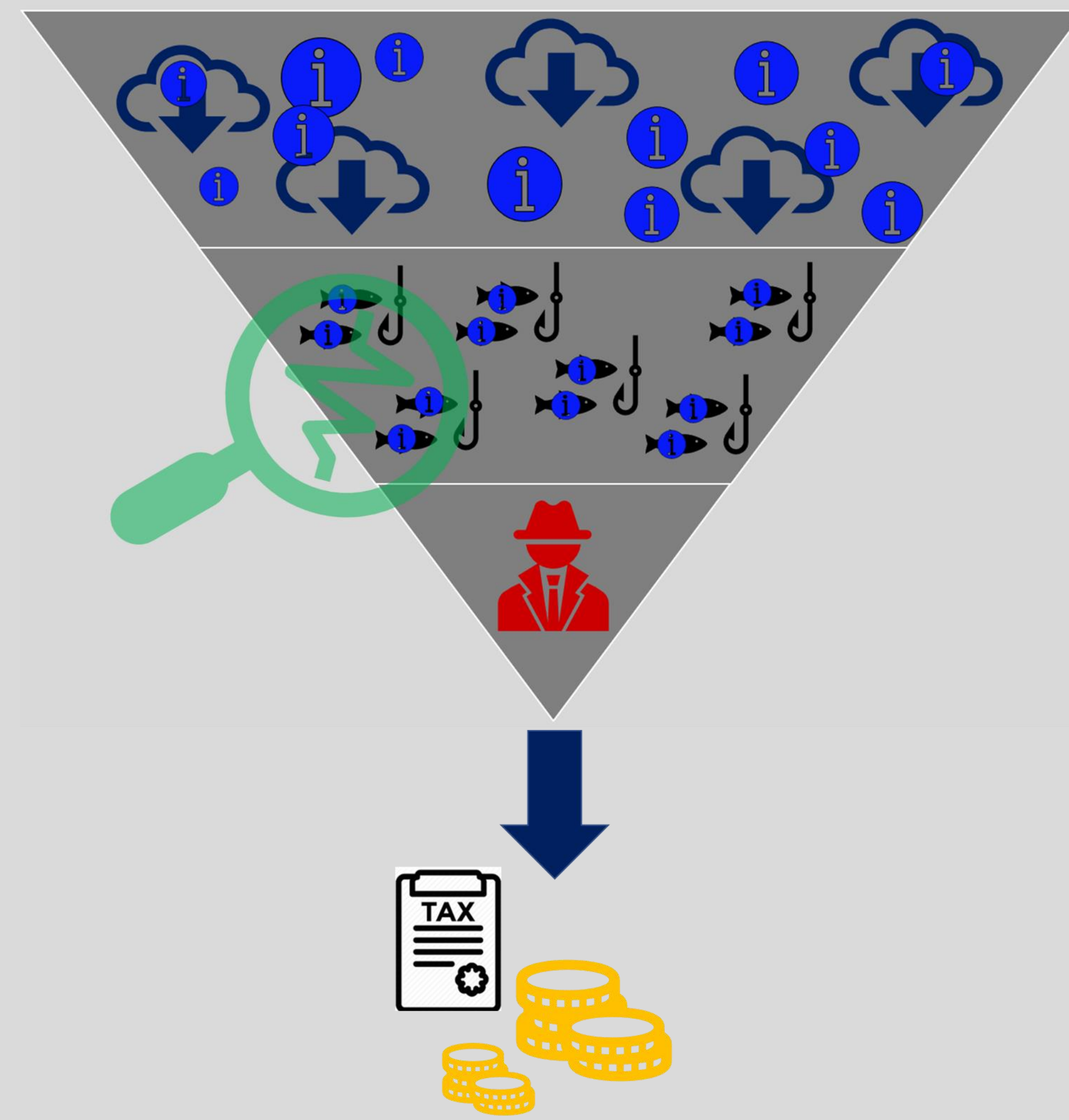
Research subject

In our increasingly digitised society, tax administrations have started to explore the advantages of data that is **shared online** or is gathered by **third parties**, such as energy suppliers, providers of telecommunication and payment services. The availability of this information (**big data**), could make the global fight against tax fraud more efficient.

These tax audits on big data have an enormous impact on numerous people: such audits involve a lot of **intrinsically private information** that becomes available to tax authorities (1) and much of the information concerns individuals that are not involved in any fraudulent action (2).

Against this background, several fundamental legal questions arise with regard to:

- **the prohibition of fishing expeditions.** Exploiting big data for tax purposes seems incompatible with this principle, according to which tax authorities are not allowed to search (“fish”) for information, the existence of which is uncertain. This principle seems generally accepted by tax legal scholarship, as well as by legislators and judges. Yet, the prohibition of fishing expeditions is not always interpreted in the same manner. Moreover, there is no explicit legal ground for this principle although it seems so generally accepted.
- the extent to which the **rights to the protection of private life and of personal data** can be restricted for taxation purposes. Namely, the gathering of information by the tax authorities, especially on the basis of big data audits, can constitute an interference in the private life in the sense of article 8 ECHR. Article 8 ECHR requires that interferences comply with certain conditions, including necessity and proportionality. These conditions might raise important questions in relation to big data audits for tax purposes. Next to that, the gathering of information by the tax authorities mostly implies the processing of personal data. The requirements of legitimate processing of personal data, laid down in the GDPR, include respect for the principle of fair and lawful processing, data minimisation and purpose limitation, all of which are relevant in this context.



Research objective

Main focus = to explore the legitimacy and limits of big data audits for tax purposes, induced from the principle of the prohibition of fishing expeditions in tax matters.

RQ1	RQ2	RQ3
<ul style="list-style-type: none"> • Identifying the various meanings of the prohibition of fishing expeditions in tax matters 	<ul style="list-style-type: none"> • Identifying the (implicit) legal ground that underpins the prohibition of fishing expeditions in tax matters 	<ul style="list-style-type: none"> • Assessing the legitimacy and limits of big data audits in tax matters

Possible implicit legal grounds:

- right to privacy (art. 8 ECHR, art. 7 EU Charter)
- right to data protection (art. 8 EU Charter, GDPR)
- rules related to the burden of proof (art. 6 ECHR,...)


The implicit legal ground found in this research will not only influence the assessment of the legitimacy of big data audits, but will also allow to assess the exact limits that need to be observed by tax (and possibly other) authorities that are using big data.


Methodology

RQ1 (Meanings)	RQ2 (Legal ground)	RQ3 (Legitimacy and limits)
<p>1. Different tax law sources</p> <ul style="list-style-type: none"> • Similarities → characteristics <p>2. Intradisciplinary approach</p> <ul style="list-style-type: none"> • Comparison social law and competition law <p>3. The Netherlands</p>	<p>1. Human rights law</p> <ul style="list-style-type: none"> • Right to private life • Right to data protection <p>2. Rules related to (the burden of) proof</p>	<p>1. Conclusions on the legitimacy</p> <p>2. Identify the limits</p> <p>3. Proposal to amend existing legislation in relation to the investigative powers of tax authorities</p>

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