Abstract
Digitalisation of society and redesign of the tax system: lessons from legal history

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The Digitalisation brings significant changes for society and the economy. The industrialised world with factories, machines and inventions like the car, now evolves towards a virtual world where the internet, information and new technologies like artificial intelligence have a central role (Kaplan & Haenlein, 2019). The Digitalisation therefore also impacts how fundamental principles, that are the backbones of the tax system, are implemented in tax legislation. The questions who and what should be subject to tax need re-evaluation taking into account this new virtual world, in order for the tax system to reflect as much as possible these fundamental principles like the ability to pay principle, the benefit principle, the neutrality principle and the efficiency principle.

The research question of this project is as follows: “How does Digitalisation impacts the implementation of the ability to pay principle, the benefit principle, the neutrality principle and the efficiency principle with respect to who and what should be subject to tax?”.

The research project will use legal history as a research method. Legal history’s purpose is to capture the contexts which shaped the law (Hamil, 2019). The research will show that the current Digitalisation has a lot of parallels with the Industrialisation in 1867-1914. Also at that time, a similar normative question was raised: how should the tax system be redesigned in order to grasp the new social and economic context? Research into the legal history of Belgian tax legislation will show how the Belgian legislator has tried to address this question and will evaluate to what extent the legislator has succeeded in its aim. Based on the conclusions of this research of legal history, guidance for the future will be derived. The research takes Belgian legislation as an example. However, since the above-mentioned fundamental principles are also applicable in other countries, this research has a wider relevance.

In a first chapter the research will map the main specific features of the Industrialisation in 1867-1914 and of the current Digitalisation, as well as the impact on society and the economy, based on an interdisciplinary literature review. In addition to the above-mentioned evolution from an industrialised world to a virtual world, the following features can for example be identified: a shift from centrally organised companies to decentralised economic actors such as platforms, an evolution from prudent internationalisation to real globalisation, and a rising share of services in cross border trade (OECD, 2019; Fenwick & Vermeulen, 2018). Taking into account these features the research will investigate how in the past the Industrialisation and now the Digitalisation impact the implementation of the ability to pay principle, the benefit principle, the neutrality principle and the efficiency principle.

In a second chapter the research will investigate whether upon the Digitalisation the fundamental principles call for new categories of taxpayers. Legal history for example shows that during the Industrialisation the Belgian legislator acknowledged the importance of
companies as important new economic actors. In a first phase, the legislator qualified the taxes paid at the level of the company as a prepayment of the personal income tax due by the individual shareholders. However, later in 1962 the legislator introduced the company as a new category of taxpayers for income tax purposes. The legislator justified this new category of taxpayers based on the consideration that henceforth companies have their “own existence” and “act as completely autonomous entities”. For the ability to pay principle this implied that companies could be considered to have their own “ability to pay” and thus it could be considered legitimate to qualify such companies as separate taxpayers.

Similarly, upon the Digitalisation the autonomy of artificial intelligence is increasing (Perez Casares, 2018). Consequently, legal history suggests that very autonomous artificial intelligence that has its “own existence” and acts “as completely autonomous entities”, may be considered to have its own ability to pay and thus it may be legitimate to qualify such artificial intelligence as a separate taxpayer (cf. Oberson, 2017).

However, legal history also shows that since 1962 the Belgian legislation lacks coherence between the company income tax and the personal income tax. For example, since the company income tax rate is much lower, company forms tend to be “abused” for income tax purposes. Accordingly, from the past one can learn that in case artificial intelligence is identified as a separate taxpayer with a separate tax system, coherence with the existing tax systems should be carefully addressed in such a way that tax neutrality of decisions to have tasks performed either by human intelligence or by artificial intelligence, is guaranteed (neutrality principle).

In a third chapter the research will investigate whether upon the Digitalisation the fundamental principles call for new categories of taxable objects. Upon the Industrialisation the Belgian legislator indeed introduced new taxable objects. The legislator for example identified new signs of taxable capacity resulting from new inventions. Also, the legislator took into account new government tasks justifying new taxable objects based on the benefit principle. The road tax is a good example of this evolution. Immediately after the invention of the car, the government decided not to introduce taxation on cars, since this new invention substantially contributed to the development of the economy. In 1913, the legislator eventually introduced a road tax, based on two considerations. First, the property of a car could be considered as a sign of new taxable capacity which justified an additional tax taking into account the ability to pay principle. Second, the invention of the car had triggered additional government tasks such as road maintenance for the benefit of car owners. As such, the road tax was justified not only by the ability to pay principle but also by the benefit principle.

The features of the Digitalisation reveal that similarly this evolution has an impact on signs of taxable capacity as well as on government tasks. For example, information is now considered as very valuable. Also, information entails new government tasks like the regulation of the collection, the processing and the transfer of information, the security of information networks and the privacy of persons (Kaplan & Haenlein, 2019, at 24). Accordingly, the ability to pay principle as well as the benefit principle may justify taxation of information.

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2 Parliamentary documents 1912-1913, no. 291, 2.
Legal history shows, however, that whenever new taxable objects are identified, one should carefully address the overlap with other similar taxes and the risk of double taxation. Specifically in the Belgian context for example the introduction of the road tax resulted in a double taxation with local road taxes that had already been introduced. In order to avoid such double taxation, the legislator in 1913 also abolished all local road taxes.

This research is important for society since the impact of Digitalisation is increasing and legitimate taxation requires that the tax design reflects as much as possible the fundamental principles such as the ability to pay principle, the benefit principle, the neutrality principle and the efficiency principle. From a scientific perspective, this research is novel for at least two reasons. First, literature devotes a lot of attention to the impact of Digitalisation on international tax law and the allocation of taxable income between different states (e.g. OESO, 2019; Becker & English, 2019). This research concerns the preliminary and more fundamental question who and what should be considered as taxable. So far, except for the specific research of Oberson concerning the introduction of a robot tax (Oberson, 2017), this question has received too little attention. Second, the research into legal history is an unusual approach in tax research. Taking into account the parallels between the Industrialisation and the Digitalisation, this methods is very fit for our research.

References


