

Dear Ladies and Gentlemen,  
Dear Guests

70 years are a good reason to look back, but also to look forward to the next decades.

And therefore I would like to share some thoughts with you today on the "Perspectives of tax consulting in the age of digitalization".

For those of you for whom tax law is a necessary evil, I would like to reassure you right at the beginning that it will not be about substantive tax law.

Rather, I would like to show you the extent to which digitization - partly obviously partly unnoticed - has already found its way into tax proceedings and how we as a medium-sized law firm are reacting to the growing demands of digitization.

All of you, whether in the private or business sector, cannot escape the increasing digitalization of tax law. Here are just a few of the developments in recent years:

- Income tax returns must be submitted electronically to the tax office since already 8 years now,
- This also applies in principle to the corporate income tax return. Practice has shown, however, that the tax authorities do not regularly manage to make the forms available on time. As a result, paper filing has been permitted again in recent years.
- One step further is the so-called prefilled tax return, in which the taxpayer can retrieve all data that has already been deposited with the tax authorities and that has been reported electronically by third parties, e.g. employers or social insurance organization.
- The so-called e-balance sheet was introduced about 8 years ago as a pilot phase and has been mandatory to submit electronically to the tax office for 5 years.

The other side of the coin is that the electronically transmitted declarations are then manually entered into the system again and, for example, paper files are still sent today in the case of a relocation of the registered office across the borders of a federal state, since the computer systems are not compatible with all federal states.

And how the implementation of electronic communication takes place on the part of the state, the lawyers were also able to experience with the "bea", the special electronic lawyer's mailbox, in which as a first reaction of the judiciary

powerful printers were purchased in order to be able to print the electronically transmitted pleadings.

Apart from such initial difficulties, consultants and clients have been accustomed to electronic communication for a long time; and the change in the communication channel alone certainly does not justify the fact that everyone is talking about digitization.

It is not only the form of the communication, but - and here it becomes interesting for the tax lawyer - also the treatment and evaluation of the electronically submitted documents is increasingly digitized.

For more than 10 years now, the tax authorities have had the right to electronically access documents that the taxpayer has created using data processing systems within the framework of external audits. The data is regularly checked by the tax authorities with the aid of risk management systems. This means that the data is checked for anomalies and contradictions and only if the system displays anomalies is a more in-depth manual check carried out.

The so-called summary risk assessments are controversial in this context. These are used to verify the presumption of correctness of a formally proper accounting system by means of various checks and analysis methods.

- time series analysis
- numerical analysis
- rule-based data evaluation

to refute the power of the law.

According to the case-law of the Federal Fiscal Court, a pure time series analysis should not be suitable for discarding an accounting and leading to an estimation power.

For the taxpayer and also the advisors it is particularly important in this connection that the tax audit must communicate its calculation bases, determinations and results of the audit to the taxpayer. This is intended to ensure effective legal protection.

In practice, however, this regularly leads to a reversal of the burden of proof:

If the system finds anomalies, the taxpayer must prove to the tax audit that his bookkeeping is free of errors; the law does not provide for this.

Nevertheless, it should be stressed that the risk management systems only carry out an audit for anomalies. In the tax audit, the tax auditor and thus the person alone remains decisive for the decisions.

In this respect, the step of digitization described here - which can already be regarded as proven - differs significantly from the next step:

Since 2 years the legislator has permitted the exclusively automation-supported processing of tax returns.

In practice, this means that a not inconsiderable part of tax returns is no longer processed by a person, but is scanned exclusively by risk management systems for anomalies and - if these are not available - the tax assessment is made fully automatically.

The legislator has expressly stipulated that when programming the risk management systems not only the legality of the taxation but also questions of the economy and expediency of the tax execution can be considered.

Which sounds on the 1. view after a meaningful rationalization of the administration, raises questions from view of the advisor and the taxpayers in addition, questions:

Is this actually a contribution to the uniformity of taxation, or is an invitation to the taxpayers to be seen in this to always try with the delivery of the tax returns to lie just still below the level of the conspicuity? Isn't there a danger that the saying "the honest is the stupid" will become more topical?

The legislator has tried to counteract this tension between the legality and uniformity of taxation and the economic aspects of tax assessment with two different measures:

On the one hand, it has ordered the strict secrecy of the algorithms of the risk management system and

On the other hand, a certain number of tax returns are randomly selected and manually processed.

Whether these measures are sufficient to allow the use of risk management systems and the fully automated preparation of tax returns to meet constitutional requirements is controversially discussed.

Firstly, in times of freedom of information and transparency, the "secret science" of the tax authorities is judged very critically, and

Secondly, it is emphasized that there must be no "full automation" of law enforcement and that people must be able to intervene in the process at all times.

From the consultant's point of view, 2 points are to be emphasized:

1. The increasing "self-declaration" is not an "invitation" to make incomplete or incorrect statements in the hope that they will not be noticed. The development of the last years shows that the tax authorities on the one hand transfer more and more responsibility to the taxpayer but on the other hand "open the red file faster and faster" in case of detected mistakes, i.e. turn the case into a criminal tax proceeding.

2. Since the tax return becomes a self-assessment, which is only checked manually by the tax office in exceptional cases, even more care must be taken to ensure that in particular all facts favorable to the taxpayer are recorded accurately and completely.

Any deviation from the declaration in favor of the client will be even less frequent.

So far, I have mainly talked about digitization in tax administration. However, digitization is also playing an increasingly important role in consulting practice and in our relationship with you, our clients:

Terms such as Artificial Intelligence, Machine learning, Big Data Analysis, Big Data are haunting the media and give the impression that the consultant, as he was known in the past, and whose mission statement Mr. Meilicke vividly presented, will soon be a thing of the past.

- Apps that create sample contracts after entering fewer facts,
- Programs that scan, analyze and independently revise contracts,
- Apps which automatically create the corresponding warning notices and complaints for product piracy on the basis of a photo
- Shared Service Center for Tax Compliance in Eastern Europe and Asia

Is this the legal world of the future? Is that the cooperation that clients expect from consultants?

Over the past 70 years, it has always been our most important concern not to leave our clients alone with the legal analysis, but also to make them aware of the economic and practical consequences of their actions. In times of digitalization, this claim applies more than ever and is the challenge for us to focus on digitalization and automation wherever this leads to effectiveness and quality improvement for the client.

However, this also clearly sets the limit for the use of modern technology: The personal advisor who, in addition to purely legal questions, also has an eye on the economic consequences and advises on practical implementation will continue to be the important contact person for the client in the future. Both in complex corporate structures and in the daily struggle with the tax office.

To use the progress and advantages of digitalization where it makes sense in the interest of the client and to strengthen personal consultation and individual competence in order to achieve the best possible consultation is the challenge that we are happy to take up.

It remains our goal to personally and competently assist you with our legal advice over the next 70 years and - as Mr. Meilicke so nicely put it earlier - in the best case "to lead you and your company to his happiness".

With this in mind, I wish us all a pleasant evening of interesting discussions and thank you very much for your attention.

Dr. Uwe Scholz