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IN SEARCH FOR USEFUL UNDERSTANDING OF THE TERM "PRIVACY" FOR TAX MATTERS[1]

Abstract

The terminology issue regarding the concept of "privacy" seems to be increasingly important in the context of the changing tax reality in which the emphasis is put even more strongly than before on the protection of fiscal interest, at the expense of limiting the sphere of taxpayers' privacy, in particular through the expansion of their surveillance on an unprecedented scale.

The OECD, in its notable achievements, treats the taxpayer's right to privacy very superficially. In one of the documents, which is a kind of report on the rights and obligations of taxpayers in force in individual countries, we can read that "All taxpayers have the right to expect that the tax authorities will not intrude unnecessarily upon their privacy". I would argue that this statement is far not enough in the reality of current technological possibilities and realizes too narrow protection of taxpayer's right. The issue of taxpayers' right to privacy should be introduced to public and scientific awareness. But how should the term privacy itself be understood? The answer is not easy, one the term is not precise so understanding is difficult though the literature on this issue is very broad. Two it is rarely used on the ground of debate on taxation. The critical approach has led to a review of the immensely rich body of literature on the theory of privacy and the right to privacy, and an attempt to adopt an understanding of the term "privacy" that will also be useful in tax matters. There is the absence of a

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consensus on the adoption of a particular way of defining “privacy”. For that reason it has to be emphasized that there is no theoretical basis to conduct a discussion on this specific taxpayer right, which is right to privacy. This paper is an attempt to find such understanding of the term "privacy" that will be useful in tax context.

Keywords: tax, privacy, taxpayer’s privacy, taxpayer’s right to privacy, taxpayer’s right.

JEL Classification: K34

1. Introduction

The observation that most amendments to tax law, introduced by an example in Poland, but also in most other countries, are dramatically demonstrating how much of their privacy taxpayers have already surrendered is very worrying[2]. One of the causes of this situation is the fact that tax avoidance and evasion as well as a number of tax frauds forced vigilance and a reaction of the authorities in terms of the need to counteract them, which resulted in the expansion of surveillance and restrictions on the privacy of taxpayers. This trend is clearly visible. It should be expected that the topic of taxpayers' privacy protection will become increasingly relevant, and it will become increasingly noticed. The issue of taxpayers’ right to privacy should be introduced to public and scientific awareness. But how to proceed with the discussion on this topic, when there is no consensus on how should the term privacy itself be understood? Its analysis is difficult for assorted reasons, but we must pay attention to a fundamental issue, such as the existing terminological problems, because we do not know how to properly understand the concept of privacy. This paper is an attend to indicate the possible useful way of understanding the term “privacy” in tax matters. Although it has to be raised, that there is almost no adequate literature concerning tax matters that are raising the problem of protecting taxpayer’s privacy.

Reflecting on privacy is never easy, as it is a dynamic concept, furthermore the regulations introducing the right to privacy are of a general nature. What is more the decisions of the courts in that regard are by their very nature fragmentary and do not allow its general understanding to be decoded. Nor has a universally accepted definition of privacy or the right to privacy been developed. Therefore, the definition of the terminology framework itself of the issue of the taxpayer's right to privacy may not be unambiguous, even despite the OECD's recognition of the expression “taxpayers' right to privacy,” which of course sets a specific direction for understanding this concept, but I will argue that its practical

[2] See more on this in: A. Drywa, Taxpayer’s Right to Privacy?, Intertax 2022, vol. 50, issue 1, p. 40-55.

usefulness is limited due to the lack of precision of the wording and its realizes too narrow protection of taxpayer's right to privacy. There is the absence of a consensus on the adoption of a particular way of defining "privacy". For that reason it has to be emphasized that there is no theoretical basis to conduct a discussion on this specific taxpayer right. Therefore, a critical approach requires familiarisation with the rich body of literature in the field of views on privacy and the right to privacy. In view of the multiplicity of theories, it became necessary to review them and adopt a concept that would be useful in the field of tax law. For that reason the aim of this article is an attempt to organise views, transfer them to the level of reflection on tax law and propose a specific way of thinking about taxpayers' privacy. This paper is an attempt to find such understanding of the term "privacy" that will be useful in tax context. Because of that its character is strictly theoretical, and appropriate scientific methods were applied, such as theoretical analysis.

2. Starting point

In its "Taxpayers' Rights and Obligations – Practice Note" document, the OECD states that in most countries, taxpayers have the right to privacy: "All taxpayers have the right to expect that the tax authorities will not intrude unnecessarily upon their privacy. In practice, this is interpreted as avoiding unreasonable searches of their homes and requests for information which is not relevant for determining the correct amount of tax due[...]" [OECD 1990: 5]. It should be noted that the OECD, using the term taxpayers' right to privacy, does not define the concept of privacy, but indicates typical situations based on the practice of tax authorities that may result in a violation of privacy. It will be committed by tax authorities, which, acting within the framework of applicable regulations, will make unreasonable search or will request for information which is not relevant. When taking this concept as a starting point, it seems that analysing theories about understanding privacy can shed additional light on understanding taxpayers' right to privacy. It is necessary to reach for the rich achievements of privacy theory to see the different shades of the problem.

At the same time, the OECD's position indicates a certain direction in the understanding of privacy. It must be seen as an argument in favour of rejecting the view presented in a part of the literature in favour of adopting a narrow understanding of "privacy" limited to the informational aspect. It should be considered that perhaps such an approach of the OECD does not appear to encompass all the important aspects identified in privacy theories that are of real significance to the protection of taxpayers' privacy, and should, therefore, be supplemented. In my opinion taxpayer right to privacy means much more than only

protection of unreasonable searches of taxpayer's homes and irrelevant requests for information. This kind of statement is far not enough in the reality of current technological possibilities of the legislator.

3. Dynamic perception of privacy

It is worth noting that although the right to privacy is widespread, distinct cultural circles attribute to privacy and its protection slightly different ranks and philosophies[3]. It is certainly more embedded in the structure of societies representing the so-called Western culture of law than states that have generally rejected individualism, replacing it with the subordination of the individual to the community and the nation [Osiatyński 2011: 238-240]. For example, in China still, privacy is characterised primarily as a "foreign concept" [Yang, Kluver 2006: 88]. Of course, it relates to democracy, and distant to authoritarian states.

The right to privacy is a fundamental human right, guaranteed within the framework of the international system of human rights protection as well as in regional human rights protection systems. It was introduced, among others, by the Universal Declaration of Human Rights[4] of 1948[5], European Convention on Human Rights of 1950[6], International Covenant on Civil and Political Rights[7] of 1966[8], Charter of Fundamental Rights of the European Union[9]. However, these regulations are very general in nature, which is why there are deep cultural differences even between European countries as to what should be private [Leith 2006: 11; also Westin 1967: 29-32]. Some societies expect the scope of protection to be

[3] The right to privacy is not a right that has an assigned identical value on a global scale [Westin 1967: 26-30].

[4] The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

[5] Article 12 states that „No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

[6] Article 8 states that „1.Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[7] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

[8] Article 17 states that „1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks."

[9] Official Journal of the European Union 2012/C 326/02, article 7 states that „Everyone has the right to respect for his or her private and family life, home and communications. "

expanded to include new aspects of contemporary reality, while others are rather in favour of broad transparency. We, therefore, assume that the intention of the national legislator will be to adapt the scope of privacy protection (the right to privacy) to the changing reality. The right to privacy must reflect the present, which basically means constantly redefining it in such a way as to correspond to social conditions and expectations. Therefore, a dynamic (renewable) look at privacy law regulations seems justified[10]. In addition, privacy is a humanistic phenomenon, and I think this fact should also determine its understanding.

Legal norms in the context of the right to privacy do not have a closed character and, moreover, they are characterised by a specific non-defined normative space that allows regulations to be adapted to the current challenges and threats [Ferenc-Kopeć 2014: 131]. I see this characteristic as an advantage, since provisions cannot be interpreted and applied in a vacuum [ECHR, Loizidou v. Turkey, 15318/89, § 43]. Such a flexible approach to the right to privacy allows taking into consideration the current context, e.g., economic, cultural, or social one, when setting the standard of protection. This remark seems to be particularly important in the context of tax law and the tendency noticeable in many countries to change the assumptions and emphases in tax law.

4. Privacy and the Right to privacy concepts

Privacy, as we like to claim or got used to doing that, occupies a principal place in the western liberal culture [Kahn 2003: 371; DeCew 1997: 1; Rössler 2005: 10; Solove 2009: 2]. It can be considered a paradox that, at the same time, we are experiencing fundamental problems with the conceptualization of this term[11]. In the common sense, privacy is a term of many meanings [Posner 2008: 245], for everyone it means something different, and in addition it is dynamic, it reflects civilizational changes; therefore, as a phenomenon, it resists research analyses[12].

[10] I suggest the dynamic (renewable) understanding of the right to privacy after an inspired reading of "Odnawianie znaczeń [Renewal of meanings]." See: Janion 1980: 5 ff.

[11] In literature, there have been many attempts to discuss the terms of privacy and the right to privacy. A full review of the concept is not as much impossible as it is unnecessary in the context of the problem of the taxpayer's right to privacy under review. I believe that it is important to be aware of the problem of conceptualization in the area of privacy from an external perspective and to focus on the discussion itself, taking this knowledge only as a starting point for further considerations. Focusing on principle on the main stream of the views on the understanding of the right to privacy, their choice has been determined, on the one hand, by the need to show the multi-layered nature and complexity of the concept and, on the other hand, for them to be the most useful and operational in the context of the problem being investigated.

[12] Problems with conceptualization of privacy and the right to privacy are highlighted by a number of researchers working on this problem. See e.g.: Parent 1983: 341; Solove 2009: 1-2.

Drawing some general conclusions from a broad and multifaceted debate in literature, it should be noted that privacy derives from values such as dignity, freedom, and property [Parent1983: 341; Thomson 1975: 306; Henkin 1974: 1421]. Privacy is one of the aspects of dignity, it involves the more focused right to protect the conditions necessary to individuation, it is an attribute of individuality [Kahn 2003: 378]. Privacy, variously understood, in mainstream views is basically seen either as a social situation of autonomy, or a claim, a psychological state, a physical area that should not be invaded, or a form of control [Gavison 1980: 426; Kahn 2003: 371]. Moreover, its essence can be seen in the delimitation between the individual and the rest of the society, the market, and the state; therefore, as a phenomenon it is inseparable from culture and changes taking place in the society [Marcus 1986: 167; Kahn 2003: 372; Kański 1991: 322-323]. In this sense, privacy organizes social life to some extent [Gavison 1980: 423]. Its satisfaction, which also performs important psychological functions providing the individual with a sense of security, trust, or peace, is an essential component of self-definition and individual development.

It is worth noting that all problems related to the conceptualization of the idea of privacy are also reflected in the legal understanding, built on the idea of privacy, the concept of the right to privacy[13]. The purpose of the right to privacy is to offer a normative view of privacy protection and thus to provide it with a legal framework. Therefore, it can be said that the right to privacy is a kind of a regulative principle for constructing and managing relations between the individual and the state, society, and the market [Kahn 2003: 372].

Despite the difficulties noted by the researchers, both privacy and the right to privacy have been the subject of numerous studies for 130 years, because privacy protection is an important problem that has become even more important today in the face of the technological revolution. The concepts of privacy and the right to privacy are issues that have been developed so many times that they create a true mosaic of views formulated under different circumstances and over a broad period, as well as representing different perspectives[14].

[13] In this context, we need to share the reflection of P.M. Regan, who noticed that actually in all philosophical and legal papers on privacy, the authors begin with noting the difficulties with the conceptualization of its subject. Cf. Regan 1995: p. XIII. About problems with-conceptualization, see also, e.g.: Gavison 1980: 421 ("Anyone who studies the law of privacy today may well feel a sense of uneasiness."); Innes 1992: 138 ("Throughout this book, I have referred to the elusive status of privacy and the chaotic state of the legal and philosophical privacy literature."); Solove 2002: 1088-1089 ("legal theorists, and jurists have lamented the great difficulty in reaching a satisfying conception of privacy"); Thomson 1975: 296. ("Perhaps the most striking thing about the right to privacy is that nobody seems to have any very clear idea what it is.").

[14] Comparison of conceptions regarding the right to privacy have been performed numerous times by researchers, see, e.g.: J. Kahn 2003: 374-409; Post 2001: 2087 – 2098; Solove 2002: 1099-1126.

It all started with an article by Warren and Brandeis from 1890, when the discussion on the understanding and the legitimacy of the separation of privacy (especially in philosophy, sociology, and psychology) and the right to privacy (in legal sciences and case law) has started.

Samuel Warren and Louis Brandeis were the first to formulate a coherent concept of the right to privacy, seeing privacy as a value that requires legal protection. They have created a coherent argument for a legally distinct right to privacy grounded in a human's spiritual nature. The foundations for this concept was human inviolate personality [Warren, Brandeis 1890: 205]. They did not connect the right to privacy with property but saw it as a general right of the individual 'to be let alone' [Warren, Brandeis 1890: 194-205]. Their merits cannot be overestimated. Although their understanding of the right to privacy was novel, yet legible, clear, and illustrative, it must unfortunately be recognized that its meaning in this way is too broad and unlimited to be regarded as useful in law without amendment[15]. It must be acknowledged, however, that the phrase 'the right to be let alone' reflects the essence of the right to privacy, although it does not allow its limits to be precisely set. Therefore, despite the enthusiasm for isolating the right to privacy and including it in a neat framework of 'the right to be let alone,' it must be stated that this formula actually covers every possible situation that does not leave an individual alone as a violation of privacy [Gavison 1980: 438]. Although they did not regard the right to privacy as an absolute right, they did not include that in their formula [16]. This was done later by many researchers, such as Andrzej Kopff, who believed that the right to privacy was an individual's right to live their own life, organized in accordance with one's will with any external interference limited to the necessary minimum [Kopff 1972: 30].

William Prosser understood the right to privacy differently, he significantly contributed to the dissemination of the concept and uniformity of the decisions of the U.S. courts regarding privacy violations [Hudson Jr. 2011: 15-17]. In his conception "[t]he law of privacy comprises four distinct kinds of invasion of four different interests of the plaintiff, which are tied together by the common name, but otherwise have almost nothing in common" [Prosser 1960: 389]. Hence, privacy is not an independent value. He fractured the concept into four distinct torts (sub-torts): one – intrusion into private affairs; two- public disclosure of private

[15] See remarks on this formulated by: Gavison 1980: 437-438; Thomson 1975: 295; Henkin 1974: 1426.

[16] They noticed: "It remains to consider what are the limitations of this right to privacy [...] To determine in advance of experience the exact line at which the dignity and convenience of the individual must yield to the demands of the public welfare or of private justice would be a difficult task [...]" [Warren, Brandeis 1890: 214].

facts; three – false light; four – appropriation of name or likeness for commercial benefit [Prosser 1960: 389].

This concept has been critically approached by Bloustein, who tried to reunify the tort of invasion of privacy as injuries to human dignity [Bloustein 1964: 1003]. Seeing privacy as an independent right, implicating not property but one's very self of individuality [Bloustein 1964: 987]. Similarly, Louis Henkin builds his conception of dignity as the foundation of the right to privacy. He argues that "human dignity requires respect for every individual's physical and psychic integrity, for his (her) 'personhood' before the law, for her (his) autonomy and freedom." [Henkin 1992: 210]. It can be seen that concepts that make dignity the foundation of the right to privacy refer to the sociological view of privacy [Post 2001: 2092-2093]. Seeing it as a kind of a social ritual by means of which an individual's moral title to their existence is conferred [Reiman 1976: 39].

Another approach to the concept of the right to privacy is to emphasize control over the extent of interference by others. That control may relate to the informational aspect, that is, generally, manifested in deciding on the scope and conditions for making information concerning the entity available to other entities, or the relational aspect of privacy, that is, deciding on the access to the individual and establishing interaction with the surroundings. It is worth noting that these concepts generally adopt a narrow understanding of privacy and the right to privacy.

A.F. Westin is consistent with this trend and considers privacy as a claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent, information about them is communicated to others [Westin 1967: 7]. "Viewed in terms of the relations of the individual to social participation, privacy is the voluntary and temporary withdrawal of a person from the general society through physical or psychological means, either in a state of solitude or small-group intimacy or, when among larger groups, in a condition of anonymity or reserve." [Westin 1967: 7] Elizabeth Beardsley also emphasizes the informational aspect. In fact, she understands the right to privacy as the right to decide when and how much information about ourselves we will make known to others (selective disclosure) [Beardsley 1971: 65-70]. Similarly, Edward Shils consider privacy as a boundary through which information does not flow from the person who possess it to others [Shils 1966: 282]. Parent, on the other hand, in his concept, starts from privacy, which he understands as a condition for others of not having undocumented information (knowledge) about us [Parent 1983: 306]. The right to privacy in Parent's concept protects against the unwarranted acquisition of undocumented personal knowledge [Parent 1983: 306-308]. In view of these statements, it may be surprising that such values as autonomy, solitude, and

secrecy, he considers as related but distinct to privacy [Parent 1983A: 341]. The state of privacy, he explains, is a moral value for those who also value freedom and individuality, while part of it is the right to privacy, which protects against an unjustified invasion of privacy [DeCew 1997: 28].

The right to privacy might be understand as the right to control one's living space, the right to control one's identity, which is to provide an individual the freedom to create their image as perceived by others. In this, emphasizing the informational aspect, pointing out that the right to privacy includes the right to control information about an individual. For example, Hyman Gross understands privacy as a function of control over access to personal affairs [Gross 1971: 169]. Wolfgang Sofsky, in turn, sees privacy as the individual's fortress, an area free of domination, and under the individual's control [Sofsky 2008: 12]. Privacy is a citadel of personal freedom. It is a tool of defence against expropriation, importunity, and imposition as well as power and coercion [Sofsky 2008: 30]. He simply says that it keeps unauthorized persons out being a bulwark against external intruders and internal traitors, setting a buffer zone of social distance [Sofsky 2008: 30].

Daniel Solove offers a different, innovative approach to privacy [Solove 2002: 1092]. He is critical of the developed ideas, considering them either broad or too narrow, hence useless [Solove 2002: 1154]. He adopts a pragmatic understanding of privacy. Recognising that certain concepts may not have a single common feature, rather they draw from a pool of similar elements[17]. He assumes "an approach to conceptualize privacy from the bottom up rather than the top down, from particular contexts rather than in the abstract" [Solove 2002: 1092]. He suggests focusing more specifically on the various forms of privacy, examining specific problematic situations, and recognizing their similarities and differences [Solove 2002: 1126]. Yet, observing the connections that are obtained, as I understand this, may not be enough to create a comprehensive and consistent conception of the right to privacy. Contextual understanding of privacy as the base for conception of the right to privacy may be seen rather as a tool used to confirm a general theory. Formulating generalizations, in my opinion, still seems to be a task of major importance in conceptualizing privacy.

5. Useful concept of understanding privacy in tax matters

The above-mentioned sample of views on privacy and the right to privacy makes us aware of the significant differences that can arise against this background. Just only being aware

[17] Daniel Solove bases on the conception of Ludwig Wittgenstein's notion of 'family resemblances.' See: Solove 2002: 1091.

of that is good. In my opinion, in the context of the research problem under consideration, broad, comprehensive, three-element concepts such as that presented by Ruth Gavison, who equates privacy with the limited availability of individuals to others, deserve special attention. In her proposed approach, the right to privacy governs the extent to which we are known to others, the extent to which others have physical access to us, and the extent to which we are the subject of others' attention [Gavison 1980: 423]. She aptly notes that we can only lose privacy by becoming an object of interest, even if no new information as a result of such an action is obtained and regardless of whether the interest is conscious and intentional or unintentional [Gavison 1980: 429-430]. She lists three elements that build privacy: 'secrecy,' that is, information about an individual provided by others, 'anonymity,' i.e., interest in the individual by others, and 'solitude,' understood as a question of physical access to the individual.

Judith Wagner DeCew presents a similar approach to privacy. She takes a broad understanding of the concept of privacy, seeing it as "an umbrella term for a wide variety of interests" [DeCew 1986: 145]. She rejects information acquisition and publication as solely determinative of privacy invasions [DeCew 1986: 159]. She also sees three dimensions of privacy, although as it seems, she perceives the informational aspect as the main one, complemented by the relational and physical aspect[s][18]. She claims that privacy is a property of types of information and activity, but what is important, viewed by a reasonable person in normal circumstances as beyond the legitimate concern of others [DeCew 1986: 60]. She explains that by adopting this understanding, we can assume that there is a legitimate violation of privacy and the relationship between privacy and freedom [DeCew 1986: 60]. At the same time, she states that privacy is essential for one's self-esteem and sense of identity, providing the ability to maintain presumptive control and decision-making power not only over what information others have about oneself and for what purpose, but also over who has access to oneself and what personal activities and relationships one can pursue without intrusion by others [DeCew 1986: 66; see also pp. 73-80].

The concepts adopted by Gavison and DeCew, in their essential part, seem to be coherent and useful in law. They point to three aspects of privacy, which, in my view, together create a comprehensive approach to privacy. It can, therefore, be assumed that privacy is a space of physical and mental unavailability within which an individual decides on the possibility, form, and extent of access to it. Privacy is, therefore, a state in which an individual is left alone in matters of their physical and mental existence when they wish for it, and this does

[18] J.W. DeCew accepts a different terminology: informational privacy, accessibility privacy, and expressive privacy [DeCew 1986: 75-78].

not conflict with the essential interests of the public and the rights and freedoms of others. In this case, the manifestation of such privacy will take on three dimensions: relational (regulation of social contacts; determination of the nature and type of the relationships), informational (determining the nature and range of the information provided; the ability of the individual to control information related to them), and physical (physical access to the person and their personal space) [Dopierała 2013: 22-29]. It is, therefore, a combination of these three aspects. They make up a coherent whole. Since privacy is complex, it cannot be put into a too narrow theory. The advantage of such a view on privacy is accepting that it consists of separate and independent aspects, creating a holistic concept. In such a sense, it is not a problem that, in some cases, the boundary between them may be fluid and there is interdependence between them. In conclusion, it must be considered that the loss, invasion of privacy will occur when other entities show interest in the entity, gain access to information about it [Gavison 1980: 428].

In the context of the analysed problem of the taxpayer's right to privacy, the three-element concept of the right to privacy is useful. Moreover, it appears to be in line with the substance of the understanding adopted in the legal acts and case law. First, privacy is closely related to the amount of information known about an individual and their disclosure or secrecy (although this is only one aspect of privacy, many researchers see in it the essence of privacy, or even limit privacy to it) [Gavison 1980: 429]. This is certainly the aspect of privacy around which the liveliest discussions are currently taking place. This is due to technological developments and changing data collection and analysis capabilities. In addition, as Ruth Gavison argues, an individual always loses privacy when they become the subject of attention, no matter if it is conscious and purposeful, or inadvertent [Gavison 1980: 432]. Finally, it cannot be underestimated that privacy is violated when others gain a physical access to the individual [Gavison 1980: 433].

However, it must be noted, that other conceptions raised on understanding privacy seems to be different. E.g., Paul Schwartz reduces the problem of tax privacy to the informational aspect only, perceiving it as one aspect of information privacy law [Schwartz 2008: 883]. Such an approach seems too narrow, also due to the OECD's position, because a number of other issues, apart from tax disclosure, tax confidentiality and tax data protection, should be associated with the taxpayer's right to privacy. It must be admitted that in the field of the taxpayer's right to privacy, the informational aspect is of fundamental importance. Personal information, i.e., facts, circumstances of an event that an entity does not want to share with others are used in tax procedures. However, the physical and relational aspect of privacy protection cannot be overlooked.

All three aspects of privacy may be violated in tax law relations, although not always all of them at the same time and to the same extent. The distinctness and independence of the three spheres is manifested in the fact that the infringement of at least one of them must be regarded as an interference with privacy. To recognize that there has been an invasion of privacy, it is not necessary for an infringement to occur jointly in each of these spheres.

6. Conclusions

Privacy is a broad concept [ECHR, Usmanov v. Russia, 43936/18, § 52]. It is, however, too rarely analysed in the context of tax law. Although many countries declare that the taxpayer is granted the right to privacy [OECD 1990:3], a number of circumstances causes the scope of taxpayer privacy protection to be increasingly limited.

It should be unequivocally stated that an individual always loses privacy when it becomes an object of interest, both involuntary and accidental, as well as conscious and intentional (relational aspect) [Gavison 1980: 423]. Privacy is also closely related to access to certain information about an entity and the fact that it is shared with others (informational aspect) [19]. But the entity also loses privacy when its physical boundaries are violated, that is, others have physical access to it (physical aspect). At the same time, it should be noted that a person's territory can be violated in many ways, obviously through invasions but also for example through arrogance or importunity [Sofsky: 41]. That all may occur in tax matters. All three aspects of privacy mentioned by R. Gavison and J.W. DeCew, i.e., relational, informational, and physical, must be seen, although not all of them will have the same meaning under tax law. Privacy should be understood broadly, always taking into consideration its current context in the socio-economic reality. A separate issue under tax law is the permissible interference in the sphere of taxpayers' privacy due to the need to implement tax burdens. The scope of this interference is determined by the legislator.

The rules of tax law are of an interfering nature, tax legislation constitutes the competence of the tax authorities to exercise a special type of power over an individual, to enter directly

[19] Cf. e.g. ECHR, 26 March, 1987, Leander v. Sweden, 9248/81, § 48: „Both the storing and the release of such information [...] amounted to an interference with his right to respect for private life"; ECHR,16 February, 2000, Amann v. Switzerland, 27798/95, § 69: „The Court reiterates that the storing by a public authority of information relating to an individual's private life amounts to an interference within the meaning of Article 8. The subsequent use of the stored information has no bearing on that finding"; CJEU, 2 October, 2018, Ministerio Fiscal, C-207/16, § 51: „As to the existence of an interference with those fundamental rights, it should be borne in mind [...] that the access of public authorities to such data constitutes an interference with the fundamental right to respect for private life".

into their personal sphere, in particular property and privacy, to enforce the tax benefit due from them [Brzeziński 2002: 10; Zaborek 2008: 37]. In tax matters, the vast majority of cases of intrusion into the taxpayer's privacy consist in collecting information about them (and possibly sharing it), also when violating their physical inaccessibility, e.g., during a home inspection or as a result of violating the confidentiality of communication. The taxpayer also becomes the “object” of deliberate interest in the scope specified by the regulations. It should not be excessive and conducted to an excessive, unjustified, or unauthorised extent. The action of the tax authorities must not be unjustified, overwhelming, or irrational in its dimension and in the context of the expected results. It cannot be disputed that the tax authorities must have adequate access to information so that tax returns can be verified. However, it is expected, that tax administration will not seek intrusive and extraneous information about e.g. taxpayer’s lifestyle if there is no reasonable sign that he has unreported income or committed tax fraud. Furthermore, actions taken should be no more intrusive to taxpayer than it is necessary.

In connection with the accepted understanding of the term privacy, it should be indicated that the protection of privacy (of taxpayers) requires, on the one hand, ensuring that the applicable legal regulations allow, to the widest extent possible, the taxpayer to maintain anonymity, seclusion and disposing of themselves and information about themselves, as well as determining the conditions for permissible interference in these spheres from the outside, on the other hand, it is about the way tax authorities operate, who must not unnecessarily intrude upon the taxpayer's privacy.

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