



ROBOTS AS SUBJECTS UNDER BULGARIAN TAX LAW – MISSION IM/POSSIBLE?¹

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Abstract: *The aim of the current paper is to examine theoretically the possibility robots to be treated as subjects under Bulgarian tax law. For this purpose, the author will outline the main hypotheses following the tax specifics of the legal personality. Taking into account the relevant provisions of the Bulgarian tax law acts, he will draw conclusion on the future tax treatment of robots.*

Keywords: *robots, subject of taxation; legal personality; Bulgarian tax law*
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1. Introduction

From something futuristic and revolutionary, robots are becoming an invariable part of our daily lives. There are already cases of a robot assisting in operations, court representation, as well as educational activities.³ Their variety of functions makes them a valuable helper, but also raises a number of (legal) issues. The lack of detailed legal regulations provides the opportunity for discussions whether it is recommendable for new mandatory measures on this issue or whether we should rather follow the traditional perceptions.

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³ See for example <https://futurium.ec.europa.eu/en/european-ai-alliance/best-practices/robot-judges-and-ai-systems-chinas-courts-and-public-security-agencies>;
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4387301; <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/robot-assistants-operating-room-promise-safer-surgery>;
<https://aiforgood.itu.int/the-future-of-educational-robotics-enhancing-education-bridging-the-digital-divide-and-supporting-diverse-learners/>



If the idea of significant legal amendments to comply with robotic labor is accepted, the fundamental question is in what direction they should be. Based on the different branches of law and the specifics of international and European law, it is challenging to derive a clear answer.

If it is considered that there should be no amendments, it means that the traditional rules are also applicable to the current trends. However, robotic labor has a number of specificities, and the lack of rules can lead to divergent practice regarding its proper treatment. According to the author, the best option is to find a balance between the two options. The main legal postulates are increasingly difficult to resist the new business models and the types of work. At the same time, a revolutionary change can lead to unwanted negative effects. How this will reflect on the traditional legal institutions cannot be fully determined. Therefore, adherence to the traditional legal postulates, amended accordingly, seems a rational option at this stage.

2. Robots and tax law

From tax law perspective, it is intriguing the robots' impact and more specifically the robotic labor. Robots increasingly seem to be the preferred option for 'employees'. This also reflects the payment of wages, and hence also the liability to pay taxes. Thus, it is advisable to analyze the possibility of introducing special rules governing this matter.

There are already numerous publications on this issue, examining various hypotheses, in the academic literature (Oberson, X., 2019, *Taxing Robots*, Edward Elgar Publishing; De la Feria, R. and Ruiz, M., 2022 *Taxing Robots in Interactive Robotics: Legal, Ethical, Social and Economic Aspects*, Springer Nature, Ch 17; Scarcella, L., 2019, *Artificial Intelligence and Labor Markets. A Critical Analysis of Solution Models from a Tax Law and Social Security Law Perspective*, *Rivista italiana di informatica e diritto* 1, 1; Chand, V., Kostic, S. and Reis, A., 2020, *Taxing Artificial Intelligence and Robots: Critical Assessment of Potential Policy Solutions and Recommendation for Alternative Approaches – Sovereign Measure: Education Taxes/Global Measure: Global Education Tax or Planetary tax*, *World Tax Journal*).



In this regard, different positions are shared. Some propose the introduction of ‘robot tax’. Others are of the opinion that the existing rules should be amended, but not revolutionary. Another proposal is that tax reforms are not the right option and different solutions should be found. There is also view that nothing should be amended, given that robots are machines. Last but not least, the revolutionary idea of robots being subject to taxation and paying taxes, respectively, can also be mentioned.

Although this last hypothesis seems too futuristic and rather impossible, the author believes that it should not be completely ruled out, not least because no one knows to what extent robots will play a key role in the forthcoming decades. Therefore, he will briefly examine whether they can be defined as subjects under Bulgarian tax law, taking into account the current situation and the future trends.

3. Robots as subjects under Bulgarian tax law

3.1. Primary and secondary legal personality

In order to give rise to tax liability, the existence of subject and object of taxation, which are in a certain relationship with each other, are necessary in tax law. That is why, such question is vital and directly affects taxation. If robots do not satisfy the subject criteria, it is impossible for them to have obligations and, respectively, to rely on certain rights. Conversely, if they have legal personality, they should generally file tax returns and pay taxes.

In order to outline certain position, it is necessary to focus on several fundamental points on this matter. First, legal personality should be considered through different perspectives. On the one hand, it is crucial to think about the interaction between tax law and other branches of law. In this regard, there is the so-called primary and secondary legal personality.

Secondary is also known as ‘derivative’. Subjects that exist in other branches of law are also subjects in tax law (for example, in civil law). Hence, there is an identity between them. However, this does not automatically lead to the understanding that subjects in another branches



of law should necessarily be subjects in tax as well. The opposite statement is also valid through the prism of primary legal personality.

Based on these arguments, Bulgarian legislation does not contain provisions that define robots as subjects. Therefore, they do not have secondary legal personality under the Bulgarian tax law.

Some may share the opinion that their legal personality should be outlined firstly in civil law so that it can reflect other branches of law. It is therefore irrelevant to examine this question for tax purposes.

On the other hand, there is primary legal personality in tax law as well. It can be defined as 'unique', specific only thereto. In this case, subjects, that do not exist in other branches of law, have legal personality for tax purposes. As such, the unincorporated associations are relevant example. In relation to the requirements of the European legislation, hybrid mismatches can also be mentioned as another hypothesis.⁴ Therefore, it is not impossible to add new types of subjects in tax law and sometimes it is even mandatory due to regulations at international and European level.

It can be summarized that primary legal personality in tax law has two dimensions - in relation to international requirements and due to internal needs. Can robots then have such legal personality for tax purposes? According to the author, the answer should be considered in two ways.

First, there are no international requirements to impose such legal measure at this stage. Therefore, taking into account the cross-border norms, it is rather impossible at the moment. Even if this happens, there is again no guarantee to what extent Bulgaria will adopt such position and/or modify it for its own needs .

Second, the answer may also be derived from the specifics of the national legislation. Based on its national sovereignty (with special focus on direct taxes), Bulgaria has the right to

⁴ Bulgaria had to transpose Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, where they are outlined.



introduce new tax rules. The main point here is whether this is appropriate and what would be the arguments of the rule-maker for such measures.

Perhaps, the most anticipated answer here is to provide more revenue for the state. Robotic labor is nothing new and even risks job cuts. This reflects on the wages, their taxation and social security contributions. Thus, fewer taxes in this case would negatively affect the budget.

Although such argument sounds logical, it is again not possible to outline a definitive answer whether this particular measure is the most appropriate. If primary legal personality is still recognized as possible, the question regarding its legislative design remains open. In this regard, three main options are possible.

The first is to define robots as e-humans, a subcategory of humans. In this way, they are 'equal' to natural persons. Robots are becoming more and more like us, replacing humans in variety of activities. As already shared, this reflects income taxes and social security contributions. The author considers such approach futuristic and most impractical. At this stage, robots are more associated as 'smart machines', as some kind of technique that facilitates the work. Till now, there is no similar precedent - to define a given category of subjects as a sub/category of human.

The second hypothesis is that they are 'equivalent' to legal persons. Such approach already exists under Bulgarian corporate income taxation and new examples have been noticed over the years.⁵ In this case, robots will be similar to the corporations and realize profit. They may be construed as a 'combination of entities' that satisfies the notions of a corporate structure for tax purposes.

However, this approach carries a number of risks. Indeed, Corporate Income Tax Act (CITA) contains several similar hypotheses, but some of them are dictated by the European law. Also, robots are controlled by humans. For example, an unincorporated association consists of

⁵ See for example Art. 2, para 4 of the Corporate Income Tax Act.



human members. Even if robots are perceived to realize profit, it is rather ‘absorbed’ by the humans who control them. The latter should pay the tax.

The third hypothesis is to introduce an entirely new category of tax entities– ‘robots’, for which new rules should be outlined. Perhaps, this idea seems fairest at first glance, but also the most difficult to implement. It would give rise to numerous challenges and does not correspond to the postulates of the current legal system.

Regarding the primary and secondary legal personalities, the following aspects can be outlined. Secondary personality cannot exist under tax law, as robots are not recognized as subjects in other legal branches. In regards to the primary personality, there are numerous challenges, such as under which hypothesis the robots can fall into.

3.2. Legal personality under different Bulgarian substantive tax law acts

Legal personality should also be considered through the prism of the various substantive tax law acts. Based on their specificity, each has different object and subject criteria. For example, Personal Income Tax Act (PITA) examines the taxation of natural persons, while CITA – of legal persons. Pursuant to Value Added Tax Act (VATA), both natural and legal persons can be subjects from VAT perspective, if they perform ‘independent economic activity’.

From substantive tax law acts perspective, robots cannot simultaneously meet the subject criterion thereunder. The most difficult for realisation is the hypothesis that they may be subjects under PITA. Pursuant to Art. 3 thereof these are only the natural persons. As evident, PITA follows the secondary legal personality from the civil law. Robots cannot satisfy this criterion and it is impossible to expand it with a new subcategory of ‘humans’.

Based on the specifics of CITA, it contains examples of both primary (e.g. unincorporated associations and secondary (e.g. legal persons) legal personality. Following the first, robots can be ‘equivalent’ to legal persons if they realize profit. The im/possibility of fulfilling the requirements in this substantive tax law act has been already outlined in item 3.1 of this article.

VATA uses the broad term ‘person’. At first glance, it does not matter here whether it is natural or legal person or otherwise. Crucial is that it can carry out ‘independent economic



activity'. In this regard, it should be considered whether robots satisfy this criterion. If the focus is more on the activity and not on the subject, there seems to be such possibility. What matters more is what is meant by 'independent'. If this is identical to 'autonomous', then robots do not satisfy this criterion.

Taking into account the Bulgarian case law on this issue, it is hardly to define robots as subjects. According to Decision No 5030 from 10.04.2013 under adm. c. No 8381/2012, Bulgarian Supreme Administrative Court: 'The provision of Art. 3, para 2 VATA as definitive and contained in the substantive tax law, cannot be interpreted expansively'. Also, 'in the absence of an explicit legal text for determination on the taxable persons...,tax legislation can not be interpreted expansively or applied by analogy' (Decision No 8037 from 16.06.2010 under adm. c. 2016/2010, Bulgarian Supreme Administrative Court). 'Determination of taxable persons cannot be done by interpretation, but only by explicit legal text' (Interpretative Decision No 2/2008 under int. c. No 2/2008, Bulgarian Supreme Administrative Court).

As seen from the Bulgarian substantive tax law acts and case law, robots would hardly satisfy subject criterion. Whether they should be 'equivalent' to the legal persons and fall within the scope of the CITA remains rather impossible at this stage.

3.3. Active and passive subjects under Bulgarian tax law

According to the Bulgarian tax law doctrine, subjects may be categorized as active and passive. This is related to the authoritarian method of legal regulation. It is distinguished by 'vertical' relations - of authority and subordination, which is why subjects in tax law are not in equal position (with some exceptions).

In general, passive subjects are those who bear tax liability. They have already been examined in the previous parts of this publication regarding the various substantive tax law acts. Therefore, the author will not focus on this hypothesis again.

Active subjects are the state or the municipal bodies that have authority. They act on behalf of the state/municipality and one of their main functions is to collect the tax revenue from the passive subjects. It is typical for them that they have 'competence'. It has different dimensions.



It can be temporary if it is for a certain period of time. Competence is also territorial, as it extends to certain geographical boundaries. The material includes the range of powers that the authority has. The personal concerns the specific individual who is the active subject in the respective relationship.

Evidently from these dimensions of the competence, robots cannot be active subjects due to their lack of competence. They help the revenue administration with certain tasks. They are rather tools by which the revenue authorities carry out their activities. It is also difficult to imagine robot performing tax audit or tax check autonomously.

3.4. Legal personality under Tax and Social Security Procedure Code

Art. 9 of the Tax and Social Security Procedure Code (TSSPC) outlines the subjects in the tax process. Pursuant to Art. 9, para. 1 of the TSSPC, these are the administrative body, the natural and the legal persons. Therefore, robots cannot fall into any of the listed categories.

Art. 9, para. 2 of the TSSPC also examines the equivalent to legal persons subjects. They are again explicitly delineated. As can be seen from the provision, robots again do not meet the requirements.

However, can Art. 9 of the TSSPC be expanded and include a special text on robots? The author believes that the answer is negative. Main arguments are related to their control from humans. It is impossible for robots to independently submit tax returns, pay taxes, bear administrative criminal liability, be tax audited, have the right to defense, etc.

Conclusion

The purpose of the present paper is to examine the main hypotheses regarding robots as possible subjects under Bulgarian tax law. This aspect is significant for tax law because it reflects the traditional postulates. If the understanding, that they can have legal personality, is adopted, it will lead to complete rethinking of the tax system.

The author is of the opinion that nowadays the answer should be negative. Theoretically, there is no proper argument how robots can be textually placed. There is also no national practice that would allow such possibility. Robots are not recognized as subjects in



other branches of law, too. There is no suitable option for them to participate in the tax process with certain rights and obligations. It is also impossible to talk about that they may have competence.

However, the author believes that if now such question seems too revolutionary, then it is not so certain what robot's fate will be in the future. The first robot-citizen - Sophia⁶, can be mentioned as an example. Even if it is an exception and seems more like an advertisement, the introduction of such opportunities may lead to a number of legal risks.

In case that robots are defined as subjects in tax law, there are many challenges. For example, should they have equal rights with the already existing tax subjects? If the answer is affirmative, then it would be interesting to see robot prosecuted for tax crimes. If it is negative, can this be defined as discriminatory? Is it possible to create special rights and obligations based on the specifics of robots as mixture of the opposite views?

In fact, the biggest question here is whether they should be tax law subjects at all? The author does not support the understanding that this is a suitable measure due to their increasingly widespread use in the work process that reflects income taxes. If this is the main argument, then other mechanisms may be introduced. These could be, for example, a new tax on robots, an increase in the tax burden on robotic activities or even another form of public receivables. However, at this stage, their inclusion as subjects in tax law does not seem to be a rationale option.

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⁶ More about this in <https://www.hansonrobotics.com/sophia/>



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Online resources

<https://aiforgood.itu.int/the-future-of-educational-robotics-enhancing-education-bridging-the-digital-divide-and-supporting-diverse-learners/>

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