CHAPTER 18

CASE 5 – AN ERRONEOUS DETERMINATION BY AN AI-DRIVEN FISCAL PROGRAM

A. Austria

Matthias Zußner

The automated case here is a *Bescheid* based on the Austrian Income Tax Act[1]. Appeals against decisions under the Income Tax Act must be made to the Federal Finance Court (BFG), a special administrative court for tax and other financial matters. Mrs Lupin argues that her income in 2021 was the same as in 2022 and that she paid the same amount of tax. If this argument were correct, then there would be an error in the algorithm that automatically generated the *Bescheid*. The decision would be unlawful and would therefore have to be annulled on the basis of an appeal under Article 130 paragraph 1 No 1 of the Administrative Procedure Act. However, the tax authority would not be obliged to issue a new decision, nor could the tax authority be obliged to explain the reasons for the algorithmic decision (through an interim injunction). Instead, the Federal Fiscal Court would have to determine all the relevant facts of the case itself, assess them, and decide on the appeal against the decision in the matter itself in accordance with the general constitutional provisions on legal protection against the administration; in other words, it would have to issue a decision and give reasons for it. In doing so, the decision of the algorithm may not be accepted by the Federal Finance Court without examination. If the necessary transparency or rationality is lacking, a decision of the court on the basis of the results of the algorithm is not permissible, and the BFG must provide its own decision and reasons (see the answer to Case 3).

[1] *Bundesgesetz vom 7. Juli 1988 über die Besteuerung des Einkommens natürlicher Personen* (*Einkommensteuergesetz* 1988 – EStG 1988), BGBl. No. 400/1988.

B. China

Xixin Wang

In the context of Chinese law, Mrs Lupin has several remedies and legal arguments available to challenge the AI-driven decision. First of all, she can file for administrative reconsideration, which is an internal hierarchical review system. According to the PRC Administrative Reconsideration Law, Mrs Lupin can lodge a complaint with the tax authority one level higher than the one imposing additional tax payments. The superior fiscal authority can then review both the legality and reasonableness of the challenged decision. If it establishes that the decision is unreasonable and unlawful, it can quash the decision. If not, and therefore Mrs Lupin is unsatisfied, she can pursue further administrative litigation. Alternatively, Mrs Lupin can bypass the internal administrative reconsideration process and go directly to court for administrative litigation. Of course, it is also legally possible for her to do so. Ask the decision-making fiscal authority to review its own decision before escalating the matter to the superior reviewing fiscal authority or the judiciary, which could potentially resolve the issue more efficiently.

Once in the proceedings of administrative reconsideration or litigation, the reviewing authority and the court can request explanations and evidence from the original decision-making body, as it is a widely accepted principle in Chinese administrative law that administrative decisions must have a factual basis. If the fiscal authority is unable to supply reasons behind the decision and simply relies on the algorithm, the court is likely to quash the notice of payment, as it is now recognised in Chinese law that unfavourable or burdensome administrative decisions cannot purely be based on technology without any human oversight. The PRC Administrative Punishment Law, as revised in 2021, states in Article 41 that administrative agencies using electronic technology monitoring equipment to collect and record illegal facts in accordance with laws and administrative regulations must undergo legal and technical review to ensure that the equipment meets standards, is reasonably installed and has clear signage.

The illegal facts recorded by electronic monitoring equipment should be true, clear, complete, and accurate. The administrative agency shall review whether the record content meets the requirements. If it is not reviewed or does not meet the requirements after review, it shall not be used as evidence for administrative penalties. A typical scenario

captured by this article is the automatic recording of traffic activities, which could subsequently be used against drivers as evidence of traffic law violations. The just-mentioned clause makes it clear that there must be additional human verification of such tech-generated evidence before it can be used to justify administrative punishment. By way of analogy, it is understandable that if the fiscal authority collects evidence about potential financial fraud via the IVT System, it is legally required to implement human verification before making penalty decisions based on such evidence. Moreover, it must also provide the punished party with an explanation of what the evidence is and how it led to the decision. If none of this is available, the reviewing authority or the court would have sufficient reason to quash the decision that lacks reasoning and procedural propriety.

C. Estonia

Katrin Nyman-Metcalf

The fiscal authority has to review the decision. The solution is similar to what has been described above primarily regarding the forestry decisions. The fact that AI is used does not exempt the authority from ensuring the accuracy of the decision, nor does it in any way restrict the right to appeal. Another possible analogy could be drawn from Estonia could be the formulation in the Code of Civil Procedure about automated orders for payment (see above). Orders may be made in an automated manner through the designated information system if the fulfilment of the prerequisites for making the order can be verified in an automated manner. The latter words are relevant, as they show that the automation shall only be used if relevant criteria can be verified.

D. European Union

Leonardo Parona

As in most of the previous cases, the present hypothetical requires some adaptations to be meaningfully addressed from the perspective of the EU legal system. Besides the increasing harmonisation of taxation within the framework of EU tax policy (under Articles 110-113 TFEU),

the Union has no power to levy or collect taxes; these powers rest with the Member States.

To address some of the legal issues raised by the present hypothetical, it is nonetheless possible to set aside the specific field of fiscal supervision and consider other sectors where the EU directly exercises supervisory functions through its institutions and bodies. This is the case, for instance, with financial markets, where the ECB[2], ESMA[3] and the EIOPA[4] are all experimenting with AI for the performance – among other duties – of supervisory tasks, which could lead to situations similar – with the necessary adjustments – to the one presented by the case of Mrs Lupin.

In this case, it is not entirely clear whether there was any human intervention in the outcome provided by the Income Variations Targeting System (IVT System) employed by the administration; it is therefore necessary to consider both scenarios. Supposing that such human intervention was lacking, and that the notice imposing the additional payment and the penalty had been issued at the conclusion of a fully automated procedure. The reviewing Court would consider such act in contrast with the principle of human intervention – in the light of the recent CJEU case law cited in the previous answers and would therefore quash it as unlawful. The other requirements established by the AI Act for high-risk systems do not apply in this case, since the algorithm here employed to detect fiscal frauds arguably falls within the exception of Annex III, Article 5, lett. d) of the AI Act[5].

Supposing, on the contrary, that the proceeding authority did ensure some form of human oversight in the outcome of the IVT System, the notice of payment and the penalty could still be deemed unlawful by the Court, but it would do so on the grounds of a breach of the duty to give reasons (Article 296 TFEU). In this case, however, the more effective duty to provide meaningful explanation under Article 86 of the AI Act is inapplicable, since the application at issue – as already mentioned – does not qualify as high-risk.

---

[2] More information on these aspects can be found on the Institution's website, at: *https://www.bankingsupervision.europa.eu/press/interviews/date/2024/html/ssm.in240226~c6f7fc9251.en.html*.

[3] See EIOPA's SupTech strategy, available at: *https://www.eiopa.europa.eu/publications/suptech-strategy_en*.

[4] More information on these aspects can be found on the Agency's website at: *https://www.esma.europa.eu/sites/default/files/library/esma_74-362-2159_speech_natasha_cazenave_afme_2021.pdf*.

[5] Annex III, Article 5, lett. d) of the AI Act in fact excludes from the list of high-risk AI systems those that are "used for detecting financial fraud".

As already clarified when answering the general questions, merely deferring to a data mining algorithm built on parameters and trained on historical data that do not, *per se,* make clear the grounds and the decision-making process that lead to a given output, is not enough to comply with the reason-giving requirement under Article 296(2) TFEU, and amounts to a violation of Article 41 CFR.

In both scenarios, therefore, the Court would quash the decision under Article 263 TFEU. As a consequence, the administration would be obliged to exercise its power again in compliance with the Court judgment, which would mean assessing the output of the IVT System, explaining its functioning logic and providing – as far as possible – adequate reasons for the possible issuance of a new penalty. It seems unrealistic, however, that the Court would not quash the act but simply issue an injunction ordering the administration to conduct a "parallel administrative procedure". Once the CJEU ascertains the unlawfulness of an act, it must in fact quash it – possibly limiting the quashing effects to the future.

Lastly, the question of whether Mrs Lupin might request the proceeding authority to reconsider its decision before going to court should in principle be answered in the affirmative. EU institutions, agencies, and bodies have established a highly structured framework of internal remedies, which differ across various EU administrations both in terms of the composition and scope of powers delegated to the reviewing body[6].

E. France

Maximilien Lanna

The fiscal authority issues a notice of payment based on the Income Variations Targeting System (IVT System), a data-mining algorithm built on the basis of a variety of parameters and trained on historical data held by public administrations to signal potential fiscal frauds. The fiscal authority is unable to explain the reasons for issuing the notice of payment.

---

[6] See B. Marchetti (ed.), *Administrative Remedies in the European Union. The Emergence of a Quasi-Judicial Administration* (2017), and P. Chirulli, L. De Lucia, *Non-judicial Remedies and EU Administration. Protection of Rights versus Preservation of Autonomy* (2021).

Could the person obtain explanations from the tax authorities as to the procedure used? Could the notice of payment be challenged before the competent court in order to obtain its annulment?

The distinctive feature of the French tax audit system is that it is based on the quasi-constitutional principle of contradictory evidence: both the tax authorities and the taxpayer must prove their claims.

The core of the guarantee provided by Article L76 B of the LPF (*Livre des 297isualized fiscales*) is to enable the taxpayer to have access to the very documents that are being held against him by the tax authorities.

French law authorises the implementation of an automated anti-fraud process called "targeting fraud and enhancing requests". The processing enables fraudulent behaviour to be modelled and 297isualized for the purposes of preventing, investigating, recording or prosecuting criminal offences, as well as investigating, recording or prosecuting tax offences. French law also provides for a right to access information and a right to rectify information contained in the processing, exercised before the French data protection authority or with the tax authorities.

While, in theory, there are some obligations linked to the transparency of algorithms, the processing implemented in this case is covered by one of the secrets provided for by law (2° of Article L.311-5 of the CRPA): the investigation and prevention of offences. Mrs Lupin will, therefore, not have access to the source code of the algorithm.

The court would nevertheless rule in favour of Mrs Lupin and quash the notice.

Under Article L. 190 of the French Tax Procedures Code (LPF), taxpayers are obliged to submit a claim to the tax authorities before taking their case to the tax court, to seek either a discharge or a reduction of the disputed tax. The authority has six months to investigate and rule on the claim. In addition, it must give reasons for any decision to reject the application in whole or in part. When the tax authorities rectify the tax bases, it is up to them to establish the validity of the rectification (art. R. 194-1 of the Tax Procedures Books).

Certain specific rules of proof have been laid down by the legislator: the burden of proof always rests on the taxpayer when he or she is subject to an ex officio assessment (art. L. 193). On the other hand, the burden of proof always rests on the administration when it intends to impose a penalty (art. L. 195).

Tax litigation does not concern abuse of authority (excès de pouvoir), which would lead the court only to annul the disputed decision: the tax court can pronounce the discharge of taxation, or its

reduction, or even allow the taxpayer to benefit from a right to deduction (*contentieux de "pleine juridicition").*

The fiscal authorities should indeed have sent her a proposal for rectification, and the opportunity to comment on or accept it before going to court. Regarding the burden of proof, when the tax authorities have established a tax base, they must demonstrate that they were justified in doing so and that they did not draw excessive conclusions from the information gathered.

F. Germany

Cristina Fraenkel-Haeberle & Charlotte Langer

This case must be divided into two distinct parts: the notice of taxes due, on the one hand, and the allegation of fiscal fraud, on the other. The notice of taxes due is an administrative act that Mrs Lupin can challenge by following the tax collection agency's procedure set out in §§ 347-367 of the *Abgabenordnung* (AO; General Tax Code). The charge of tax fraud is, depending on the alleged severity and intent, a misdemeanour or criminal offence, to be handled under either the *Ordnungswidrigkeitengesetz* (OwiG; Administrative Offences Act) or the *Strafprozessordnung* (stop; Code of Criminal Procedure), as amended by specific provisions of the General Tax Code.

Part 1: Notice of taxes due

Pre-trial procedure

The notice of taxes due can and must be challenged through an appeal in a pre-trial procedure (*Vorverfahren*) under §§ 347 et seq. of the German Tax Code (AO). The agency conducts a full review of the challenged decision. If the appeal is rejected, Mrs Lupin may then file a lawsuit with the competent fiscal court.

The decision of the Tax Court

The Tax Court, just like the General Administrative Court, follows the investigative principle under § 76(1) of the *Finanzgerichtsordnung* (FGO; Fiscal Court Code of Procedure). This means that it must investigate the facts of the case. It will therefore direct the Tax Authority to provide detailed reasoning for the notice of taxes due, including a breakdown of calculations underlying Mrs Lupin's tax bill. The mere fact

that an algorithm flagged her as likely to have withheld taxes will not be considered sufficient justification. The court will review Mrs Lupin's financial statement for the fiscal year 2022, and if some aspects are disputed by the tax collection agency, she will be asked to provide evidence in this regard. If, based on the gathered evidence, the court concludes that the notice of taxes owed was incorrect, it will annul the decision. Since the tax collection agency has no discretion concerning the amount of taxes owed, the Tax Court will then determine Mrs Lupin's correct tax burden in its judgment.

The secondary motion is inadmissible, as there is no *Rechtsschutzbedürfnis* (need for legal remedy) with regard to an isolated demand for a justification without challenging the decision itself[7]. A review of her fiscal position for other years is not provided for under German tax law. She would need to challenge her tax bills for the years in question to have them reviewed in court; however, the deadline for filing a claim will probably have passed. Moreover, the tax collection agency can no longer revoke her past tax bills.

Part 2: The charge of tax fraud

The charge of tax fraud follows a different legal path. If the Tax Authority finds that Mrs Lupin recklessly or negligently withheld taxes, her action would constitute a tax misdemeanour under §§ 370, 377, and 378 AO. In such cases, the Tax Authority initially imposes a fine; if the accused appeals, the case is referred to the competent criminal court. However, if the tax authority finds that Mrs Lupin acted with malicious intent, this constitutes a criminal offence and will be prosecuted directly in a criminal court.

In both cases, however, the presumption of innocence holds[8]. This means that the Tax Authority, which assumes the role of prosecutor in tax-related cases under §§ 386 and 399 AO, needs to prove beyond reasonable doubt that Mrs Lupin withheld taxes either negligently (if the matter is pursued as a misdemeanour) or with intent (if pursued as a criminal offence). In either case, the algorithm's indication has no evidentiary value: admissible evidence is strictly limited in criminal

[7] VGH München, BayVBl 1985, 278; U. Ramsauer, § 39 *Begründung des Verwaltungsakts*, in U. Ramsauer, F. Kopp (eds), *Verwaltungsverfahrensgesetz Kommentar* 923 (2022).

[8] B. Schmitt, *§ 261 Grundsatz der freien richterlichen Beweiswürdigung*, in L. Meyer-Goßner, B. Schmitt (eds), *Strafprozessordnung Kommentar* 1377 (2022); concerning the assumption of innocence in misdemeanor procedures see OLG Hamm, judgment of 18.09.2003, 2 Ss OWi 595/03.

procedure and does not include algorithmic or statistical assessments[9]. Mrs Lupin will be found not guilty unless the Tax Authority can produce proof that she committed tax fraud.

G. Italy

Stefano D'Ancona

Italian case law affirms that authorities must provide reasons for their measures. As the Council of State has clarified in rulings dedicated to the issue (see Council of State section VI, no. 2270 /2019 and Judgments 8472, 8473, 8474 of 2019), recourse to the algorithmic function in administrative procedure is not prohibited per se, not even in relation to proceedings characterised by discretion, including technical discretion, provided that certain requirements, deriving both from the principles of domestic law, are met. More recently, the Naples Regional Administrative Court reiterated that among the indicated guarantees, primary importance attaches to respect for the principle of transparency, which, as is well known, finds an immediate corollary in the obligation to give reasons for administrative acts pursuant to Article 3 l. 241/90, which cannot be suppressed or reduced merely because of the presence of an algorithm within the procedural process to the standards of European law (TAR Campania, Naples, 14.11.2022, no. 7003).

Use of an algorithm, whether in a supportive and integrative role for human decision-making or in a partially decisional capacity in proceedings with minimal discretion, must never result in a reduction of the legal protections afforded in administrative proceedings, particularly concerning the obligation to give reasons and the principle of non-exclusivity of algorithmic decisions. Among the specified guarantees, the principle of transparency is of primary importance. This principle is closely linked to the obligation to give reasons for administrative acts, as outlined in Article 3 of Law 241/90, and cannot be suppressed simply due to the use of an algorithm in the procedural process. Additionally, Article 41 of the Charter of Nice emphasises the right to good administration, stating that when publish authorities intend to make a decision that could adversely affect an individual, they must hear that individual beforehand and grant access to their archives and documents.

[9] For details, see B. Schmitt, § 244, in B. Schmitt, L. Meyer-Goßner (eds), *Strafprozessordnung Kommentar* 1213 et seq. (2022).

An authority must also "give reasons for its decisions" (TAR Campania, Naples, 14.11.2022, no. 7003).

Therefore, Mrs Lupin is entitled to know both the grounds for the decision. It should be added that the failure to give reasons could be cause for annulment of the measure. Italian case law affirms that "the motivation of the measure constitutes the presupposition, the foundation, the centre of gravity and the very essence of the legitimate exercise of administrative power"; for this reason, it constitutes "an irreplaceable safeguard of substantive legality"[10].

Another part of the question refers to the possibility of requesting a review of the decision.

The answer is in the affirmative.

The principle of non-exclusivity in algorithmic decision-making is affirmed under European privacy law and is globally relevant, as demonstrated by the well-known Loomis v. Wisconsin decision. In practice, the Council of State stipulates that if an automated decision produces legal effects concerning or significantly affecting an individual, that individual has the right to ensure that the decision is not based solely on the automated process (Article 22 GDPR)[11].

In this respect, there must in any case be human input in the decision-making process capable of checking, validating, or refuting the automated decision. In the mathematical and informational fields, the model is defined as HITL ("human in the loop"), in which, in order to produce its result, it is necessary for a machine to interact with a human being.

Therefore, Mrs Lupin would be entitled to have the authority in question review the automatic decision with human intervention.

H. Netherlands

Louise Verboeket & Jacobine van den Brink

The contested decision (*besluit*) to impose the payment of an additional amount of taxes and a penalty constitutes a single-case decision (*beschikking*) as defined by Article 1:3(2) of the Dutch General

[10] Council of State section IV, 1/02/2024, no.1023 quoting ex multis, Constitutional Court , Ord. No. 92, 2015; Council of State - section III, 7 April 2014, no. 1629; section VI, 22 September 2014, no. 4770; section III, 30 April 2014, no. 2247; section V, 27 March 2013, no. 1808).

[11] Council of State section VI, 13 December 2019, no. 8472.

Administrative Law Act (GALA, *Algemene wet bestuursrecht*). Since this concerns a tax decision, an appeal can be lodged with the tax chamber of the District Court (*rechtbank*), followed by appeal to the Court of Appeal (*gerechtshof*), and cassation with the Supreme Court (*Hoge Raad*)[12]. These courts will apply the same standard of review to (automated) decisions of the Tax Administration (*Belastingdienst*) as the administrative courts (*bestuursrechter*) do to (automated) decisions made by other administrative authorities[13].

Since it is an established fact in this case that the Tax Administration is unable to explain the reasons for issuing the notice of payment, it is likely that the court will rule in favour of Mrs Lupin and annul the decision due to lack of reasoning. This is in violation of the duty to give reasons (*motiveringsbeginsel*)[14]. In doing so, the court may indeed order the Tax Administration to issue a new decision on the objection (*beslissing op bezwaar*) within a specified time period, possibly with the specific instruction to include further justification in that decision[15]. The court may also choose to apply an administrative loop (*bestuurlijke lus*) as a form of a 'parallel administrative procedure'[16]. This would give the Tax Administration the opportunity to rectify the reasoning defect in the contested decision while the appeal procedure is pending[17]. The Tax Administration has already had the opportunity to do this during the objection phase, which is precisely intended for a *de novo* or *ex nunc* review of the decision that has been contested. To this end, Article 7:11 of the GALA stipulates that the administrative authority (*bestuursorgaan*, in this case, the Tax Administration) must reconsider the contested decision (*bestreden besluit* or *besluit in primo*) based on the objection (*bezwaar*)[18].

In principle, Mrs Lupin can only appeal to the court after first lodging an objection against the decision. In this sense, under Dutch law,

---

[12] Art. 44 Judicial Organisation Act, Annex 2, Art. 12 GALA and Art. 28 General Tax Act.

[13] Supreme Court 17 August 2018, ECLI:NL:HR:2018:1316. See the answer to the fourth question in the Chapter on the Netherlands in Part II for a more detailed discussion on this standard of review.

[14] Art. 3:46 GALA.

[15] Art. 8:72(4) GALA.

[16] See the elaboration of second hypothetical case for further details on the procedural course of action regarding an administrative loop.

[17] See, for example, District Court of Zeeland-West-Brabant 30 June 2023, ECLI:NL:RBZWB:2023:4561.

[18] See the elaboration of the third hypothetical case for further details on the reconsideration by the administrative authority in the objection phase.

it is not just possible but actually obligatory to first request the Tax Administration to reconsider its decision before the court can review it [19]. Various studies have highlighted the importance of the mandatory objection phase in the context of automated administrative decision-making, as the objection phase allows potential adverse effects of (fully) automated administrative decision-making to be flagged[20]. Identifying possible errors at an early stage is particularly important when an automated system has to issue a large number of decisions, as is typically the case with tax authorities.

I. Spain

Agustí Cerrillo-i-Martínez

Article 35 of Law 40/2015 sets forth an obligation to state the reasons for government actions, for example, when they limit individuals' rights or legitimate interests, or when they form part of the exercise of discretionary powers.

The lack of reasons may determine the nullity of the decision.

Mr Lupin would have different ways of asking the tax authority to review its decision. In particular, Law 58/2003 of 17 December, the General Tax Law, stipulates that acts and procedures for the application of taxes and the acts of imposing tax penalties may be reviewed through various mechanisms (i.e. special review procedures, appeal for reconsideration, and economic-administrative claims) (Article 213). It also states that the resolutions of special review procedures, appeals, and claims must be justified, with a brief reference to the facts and the legal grounds (Article 215).

L. United Kingdom

Gordon Anthony

This question is relatively uncomplicated from a UK perspective, where the third question in the final paragraph can be addressed first,

[19] Art. 7:1 GALA.

[20] J.C.A. de Poorter, J. Goossens, *Effectieve rechtsbescherming bij algoritmische besluitvorming in het bestuursrecht*, Nederlands Juristenblad 2777 (2019), 3310, Council of State (*Raad van State*), *Digitalisering. Wetgeving en bestuursrechtspraak* (2021), 80.

and in the affirmative. In short, there is a well-established pre-action protocol process in the UK whereby individuals can – indeed, must – ask a public authority to reconsider a contested decision. While the protocol does not always mean that a matter will be resolved without the need for litigation – the process is informal and conducted before a matter is brought to the attention of the court – it is intended to save costs through the early settlement of a case. In instances of obvious illegality – this case arguably providing just such an example – it would be regrettable were it not to operate to bring a matter to a close.

The illegality in the case relates to the absence of reasons and would be likely to lead the court to quash the decision, which would require that the decision be retaken in a manner that is consistent with the ruling of a court. As outlined under question 3.1 above, the common law imposes a duty on decision-makers to give reasons when that is required in the interests of fairness. This is plainly a scenario where there would be a need for fairness: the authority seeks to levy a penalty, and it ought to be required to provide "*proper, adequate and intelligible*" reasons for doing so [21]. Reasons, in this way, would complement the common law's more general aversion towards arbitrary decision-making[22].

In terms of an injunction that would compel the authority to provide the reasons and hold a *de novo* hearing, this would arguably be unnecessary on the facts. This is because (as above) a court order that quashes a decision has the effect of rendering the decision *void ab initio* and requiring the decision-maker to retake the decision in a manner that is consistent with the ruling of the court. However, were there any doubt as to what would be required by the fiscal authority, the court could, for instance, make a declaration as to the public authority's duties and responsibilities. A more intrusive order in the form of an injunction might be deemed unnecessary.

To summarise: Mrs Lupin should seek to resolve this matter through the pre-action protocol process. Should that not prove successful, she ought to bring proceedings in which she could expect to obtain an order to quash the demand for payment. A further order in the form of an injunction may be deemed unnecessary, albeit the court could grant a declaration that would, in effect, provide guidance on how the matter is to be progressed[23].

[21] *Dover DC v Kent* [2017] UKSC 79, [2018] 1 WLR 108, 121, para 37, Lord Carnwath.
[22] *R (Anufrijeva) v Secretary of State for the Home Department* [2004] 1 AC 604.
[23] On the range of remedies that are available in judicial review see P. Craig, *Administrative Law* (2025), especially Chapter 26.

M. United States

Catherine M. Sharkey & Caterina Barrena Hyneman

Background

In the U.S., while taxes are levied at the federal, state, and local level, at the federal level, taxes are all determined and disputed by the Internal Revenue Service (IRS)[24].

Answer

It is possible but unlikely that a court would grant Mrs. Lupin *de novo* review over a tax decision. At the federal level, the IRS has exclusive jurisdiction over whether and how much people pay in taxes. The IRS is at the forefront of implementation of an AI fraud detection algorithm[25]. This fraud detection algorithm has a notice and appeals process that is already in line with federal guidelines for implementing an AI system[26], and it includes an opportunity for someone like Mrs. Lupin to appeal to a human decision maker who would have to explain the decision or squash it.

At the state level, different rules may be in play. In one New York county, the legislature approved a reassessment of the real property tax for the tax season using an algorithm[27]. After being reassessed, the properties that lowered in value did not have their taxes lowered[28]. The Plaintiffs sued the county, its Department of Assessment, Assessment Review Commission, the County Executive, and County Assessor in New York state court, arguing that the reassessment was rushed and arbitrary and capricious[29]. The court has upheld almost every one of the Plaintiff's claims and maintained that the suit can proceed as a class action[30].

---

[24] See Internal Revenue Serv., Penalties, *https://www.irs.gov/payments/penalties#:~:text =If%20you%20disagree%20with%20the,the%20address%20on%20your%20notice*.

[25] . Freeman Engstrom, D. E. Ho, C. M. Sharkey, M.-F. Cuéllar, *Government by Algorithm: Artificial Intelligence in Federal Administrative Agencies* (2020) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/document/government-algorithm-artificial-intelligence-federal-administrative-agencies*, at 10.

[26] Internal Revenue Serv., *Penalties*, cit.

[27] Berliner v. Nassau County, No. 605904/19, 2020 NYLJ LEXIS 311 (N.Y. Sup. Ct. 2020).

[28] *Ibid.* at *12.

[29] *Ibid.*

[30] *Ibid.* at *37.