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Consequences of a taxpayer's error in Polish tax law - repression or cooperation?

Summary.

The doctoral dissertation consists of two parts. The first part consists of four chapters describing theoretical issues, the second one, on the other hand, contains five chapters describing institutions included in the Polish Tax Ordinance Act.

In the first chapter of my doctoral dissertation, I'm explaining definitions of repression and cooperation. In the next part, I am presenting the institutions of mediation. Mediation does not exist in Polish tax law, but it is found in Polish administrative law and the administrative court proceedings. Mediation is one of the methods of amicable resolution of legal disputes, also known as alternative methods (Alternative Dispute Resolution – ADR).

Mediation introduced to other areas of law, unfortunately, has not brought the expected results. Statistics show that the institution of mediation has not been recognized in Polish law. This situation results mainly in the lack of trust among the parties and lack of knowledge about this institution.

The second institution described in the first chapter is the cooperation agreement. The provisions introducing the cooperation agreement came into force on 1 July 2020. This agreement provides for the cooperation of tax authorities with taxpayers.

The tax payer -entrepreneur being a party to the cooperation agreement will have the opportunity to discuss with the Head of NTA important issues related to the tax settlements. The main concerns of such arrangements may include:

- interpretation of tax laws and the content of tax rulings,
- transfer pricing rules,
- the amount of advance income tax,
- or non-applicability of the general anti avoidance rule.

The cooperation agreement may provide the taxpayer with benefits such as: reduction (by half) of the fees for an advance pricing agreement and for a security opinion, as well as reduction (or, in some cases, even the lack) of interest on tax arrears. The cooperation agreement may also protect an entrepreneur against additional tax liability and the tax audit. Moreover, the Customs and fiscal control of a taxpayer who is a party to the cooperation agreement will be carried out only by the Head of the NTA.

An entrepreneur interested in concluding a cooperation agreement will have to meet some conditions (e.g. introduce a Tax Control Framework in the company). By concluding the

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contract, the taxpayer will declare to voluntarily and properly fulfilling the duties and to report to the NTA all potentially controversial tax issues. The conclusion of such an agreement will be preceded by a pre-audit carried out by the Head of the NTA.

We will have to wait until 2023 for the results of the introduced cooperation agreement. However, it seems that the very idea of introducing a cooperation agreement is right, especially in the context of experiences of other countries. The main point, however, is the correct approach by both tax authorities and taxpayers, based on mutual understanding, cooperation and willingness to achieve the set goals.

At the end of the first chapter, I indicated research theses. The main research thesis is leaving the cooperation between a taxpayer and the tax authorities.

The second chapter shows the institution of an error. It contains a detailed description of an error in civil and criminal law. The institution of error is not described in Polish tax law. Polish administrative courts indicate the obligation to use the dictionary definition of an error. We cannot use the analogy taken from civil law or criminal law, which regulates the institution of an error in detail.

The next chapter presents the role of tax authorities with particular emphasis on their imperious actions. As indicated, the administrative act resolves an individual tax case in an imperious manner.

In the case of taxpayers, they are obliged to self-calculate taxes in the correct manner. However, due to the lack of clarity, transparency and stability of tax law, taxpayers often make mistakes unknowingly and risk negative consequences.

The last chapter of the first part of the doctoral dissertation contains the main descriptions of constitutional principles that should be followed by tax authorities and taxpayers.

The principle of a democratic state ruled by law and the principle of legalism are of particular importance. These rules should be the basis for the proper performance of duties by tax authorities. They also enable the proper performance of duties by taxpayers, provided that they are properly used, primarily by a tax legislator.

I have divided the institutions presented in the second part of this doctoral dissertation into two parts: positive - that is, giving the possibility of avoiding an error or correcting the taxpayer's error, and negative, which sanctions a taxpayer after making a mistake. When I started writing my doctoral thesis in 2014, I included into positive the following: tax returns, tax reliefs and individual interpretations of tax law. Currently, however, I would not classify individual interpretations as a positive institution protecting the taxpayer. On the other hand, the negative consequences of making a mistake include: an interest for late payment and additional tax obligation (administrative sanction).

The institutions presented in the second part of the doctoral dissertation are rather focused on the imperious actions of tax authorities. If a taxpayer makes a mistake, tax authorities do not have much room for cooperation. In many cases, they may request a taxpayer to correct a

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In chapter five, I presented the institution of a tax return. This chapter presents the evolution of an institution correcting a tax return and its impact on a taxpayer's error.

In the practice of applying the law, a tax return is a significant institution, especially as it can eliminate errors of both a formal and material nature from the initial settlement. Formal errors, e.g. failure to use a tax relief and exemptions may result in incorrect calculation of an income or loss. Mistakes of a material nature result in incorrect interpretation of tax law.

A positive institution that should be fully maintained in the context of making mistakes by taxpayers are tax reliefs, presented in chapter seven. These institutions give the possibility of waiving the imposition of late payment interest or the prolongation fee, if the mistake was shown, inter alia, in the declaration that it was an obvious mistake.

In chapter six, I presented additional tax obligation that came into life on January 1, 2017. However, it is not a new institution, it was in force in the Value Added Tax Act of 1993 and 2004. In relations to a positive ruling by the CJEU, defining the additional tax liability as an administrative sanction, was restored to the VAT Act. An additional tax obligation is a result of incorrectly shown tax liability or the incorrect tax charged in a previously submitted VAT return, or failure to submit a tax return and payment of the tax liability amount.

Another negative institution in tax law, which, like an additional tax liability has a repressive function, is interest on late payment. They are calculated automatically in the event of non-payment of the tax liability within the specified time and amount. The taxpayer can't avoid it, which means that when making a mistake, he/she has to take into account the negative consequences in the form of interest for late payment.

It seems that at present it is better to reveal irregularities and therefore pay additional default interest than to bear penal fiscal liability. A taxpayer will then avoid major negative consequences. Especially since they are much higher than the amount of a default interest.

The last institution described in the doctoral dissertation is individual interpretations of tax law. Individual interpretations in the Polish tax system have existed in their present shape since 2007 and therefore have become a permanent source of information on the interpretation of tax regulations. This institution is designed to protect the taxpayer against negative consequences resulting from both general tax law and individual tax acts. Currently, this protection is limited, and even façade.

After conducting an in-depth analysis of the provisions in the field of selected tax law institutions, I can unequivocally state that they are not conducive to the cooperation of taxpayers with tax authorities.

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