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**THE IMPACT OF GENERAL TAX LAW PRINCIPLES
CONTAINED IN THE NEW TAX ORDINANCE ACT
ON THE INTERPRETATION OF TAX LAW****Introduction**

Works on the New Tax Ordinance Act began in 2014 when the General Tax Law Codification Commission was established¹. This entity prepared in 2018 a draft of the act, which, after some modifications introduced by the Minister of Finance, was adopted by the Council of Ministers in May 2019 and forwarded to further works in the lower house of Polish parliament in early June this year².

The New Tax Ordinance Act (hereinafter referred to as NTO) is to enter into force on 1 January 2021. It will replace the effective from 1998 Tax Ordinance Act of 29 August 1997³. It will be an act significantly different from the current law as it contains almost twenty new ideas that currently do not function in the Polish legal order⁴. Among the newly introduced solutions, one should note, inter alia: general principles of tax law⁵, restoration of the substantive deadline, information and support for the taxpayer, tax cancellation, correction of declarations in the context of tax proceedings, mediation, tax agreement, measures to combat the length of proceedings, simplified proceedings, proceedings regarding

¹ Regulation of the Council of Ministers of 21 October 2014, regarding the establishment, organization, and operation of the General Tax Law Codification Commission (Dz.U. Item 1471 as amended).

² <https://legislacja.rcl.gov.pl/docs//2/12314054/12523424/dokument399176.pdf> (10.06.2019).

³ Tax Ordinance Act, Dz.U. 2015, Item 613 as amended.

⁴ See: Justification for the draft Tax Code, p. 11 et seq, <https://legislacja.rcl.gov.pl/docs//2/12314054/12523424/dokument399176.pdf> (10.06.2019).

⁵ A. Mariański draws attention to the importance of these principles: *Zasady ogólne prawa podatkowego – teoria i praktyka* [in:] *Współczesne problemy prawa podatkowego. Teoria i praktyka*, vol. 1, *Księga Jubileuszowa dedykowana Profesorowi Bogumiłowi Brzezińskiemu*, ed. J. Głuchowski, Warszawa 2019, p. 283 et seq.

trivial amounts of tax, suspension of proceedings due to “representative case”, possibility of resigning from an appeal against a decision, prohibition of adjudicating against the taxpayer by the first instance authority, consultation procedure, cooperation agreement, official general information about significant changes in tax law, determination of the value of things, and procedure for restoring files. Among the newly introduced solutions that can be found in the New Tax Ordinance Act, the general principles of tax law play a special role. These rules are regulated in Section I “General provisions”, Chapter 2 “General principles of tax law”, which consists of nineteen articles.

General principles of tax law contained in the New Tax Ordinance can be divided into the following types: principles regarding the interpretation of provisions of tax law, principles resulting in increasing the efficiency of tax authorities, principles regarding support for the taxpayer and those improving the level of respect for taxpayer’s rights. The purpose of this study is to provide a general presentation of tax law principles that relate to the interpretation of tax law provisions, as well as an attempt to indicate their significance for the interpretation of the law. This paper points out the following research hypotheses. First of all, these rules will have a significant impact on the interpretation of the tax law provisions contained in the acts shaping the structure of individual taxes, e.g. value-added tax, excise tax, income taxes or property taxes. Secondly, these principles will also apply to other tax law provisions, including those contained in the New Tax Ordinance Act. Thirdly, these rules will affect the interpretation of the provisions contained in non-tax provisions, the application of which has an impact on the functioning of tax law provisions. To fulfill the abovementioned aim of this paper and to verify the hypotheses, the work will be divided into parts to enable specified grouping of general principles of tax law and proper presentation of their meaning.

The principle of determining the content of tax law provisions, including the structure of the tax to which those provisions relate

Following Art. 15 of the NTO draft, the content of tax law provisions is determined after taking into account the structure of the tax to which those provisions relate. It is pointed out that this rule imposes an obligation to take into account the structure of the tax when determining the content of the provisions of tax law, and that it is an interpretative directive, requiring the need to issue tax rulings in accordance with the basic structural assumptions of a given tax⁶. It is also argued that this rule will be able to apply to the inter-

⁶ See: Justification for the draft Tax Code, p. 64 et seq.

pretation of regulations in many taxes, including value-added tax, which assumes a mechanism for calculating the tax by the entity supplying the goods or services and its deduction by the buyer, which means that in the absence of an explicit legal basis, the right to deduct should not be questioned (the nature of the value-added tax creates a presumption of deduction of input tax)⁷. However, in the case of income taxes, it is indicated that the rule is to impose an income tax, i.e. the excess of revenues over the costs of obtaining them. This means that if revenue is recognized in the tax account, the taxpayer is also entitled to include the cost of obtaining the income since, due to the structure of income tax, it should be assumed that each income is accompanied by the cost of obtaining the income⁸. It is also added that the income tax structure indicates that the same income of the same taxpayer should not be taxed more than once, and also, that if the tax authority determines a tax liability greater than the tax declaration, stating that the taxpayer has underestimated the income tax in a transaction with a related entity, this entity should be entitled to increase the tax-deductible costs accordingly⁹.

By complementing the abovementioned explanations contained in the justification to the NTO draft, it should be indicated that the structure of property, agricultural or forestry taxes indicates that those are the property ownership taxes. Therefore, doubts about the provisions relating to the taxpayer should be clarified in such a way that the entity, which will be subject to tax liability, is the one who uses those properties. Doubts about this issue still exist, among others in cases where the permanent manager of the property owned by the State Treasury or local government unit transfers ownership based on an appropriate lease or rental agreement¹⁰. The principle contained in the NTO draft may also apply in the case of the assessment of who will be the taxpayer in a situation where the real estate is jointly owned by a public (State Treasury or local government unit) and private entity, and at the same time when an agreement transferring the ownership of such real estate is concluded¹¹.

⁷ *Ibidem.*

⁸ *Ibidem.*

⁹ *Ibidem.*

¹⁰ See: Supreme Administrative Court judgment of 29 November 2018 (II FSK 3229/16), according to which in the context of Art. 3 clause 1 point 4 subparagraph a, Act on Taxes and Local Fees, in the event of renting items that are under permanent management, the property taxpayer is the lessee (tenant) as a dependent owner of the property under a contract concluded with the owner within the meaning of this provision.

¹¹ See: Supreme Administrative Court judgment of 17 January 2019 (II FSK 2742/18) in which the court indicated that since in Art. 3 clause 1 point 4 subparagraph a, Act on Taxes and Local Fees says about ownership – and there is no provision that would exclude the situation where the State Treasury is a co-owner – it is impossible to differentiate the situation of being a co-owner from being the owner.

The principle of settling doubts as to the content of a legal norm in favor of the taxpayer

Following Art. 18 of the NTO draft, the unresolvable doubts as to the content of the legal norm shall be resolved in favor of the obligated party. This rule reflects the provision resulting from the currently applicable Art. 2a of the Act of Tax Ordinance. According to this provision, unresolvable doubts as to the content of tax law provisions shall be in favor of the taxpayer. From the combination of both of the above regulations, included in the draft of the New Tax Ordinance Act and The Act of Tax Ordinance, two differences arise. The first concerns the issue of what may be the subject of resolving doubts by using this principle. In the process of interpreting the law, doubts that should be resolved in favor of the taxpayer may refer to a legal norm (Art. 18 of the NTO draft) rather than a legal provision (Art. 2a of the Act of Tax Ordinance), which should rather be treated as an editorial unit of a legal act.

When analyzing the subject regulation, one can notice the extension of the subjective and objective scope of the analyzed principle. It will apply not only to the provisions of tax law but also to other legal provisions that will shape or refer to the taxpayer's situation. Therefore, doubts regarding e.g. regulations of the construction law, to which the provisions of the Act of 12 January 1991 on local taxes and charges¹² (part relating to real estate tax) refer, should be settled in favor of the taxpayer. Based on Art. 18 of the NTO draft, there is also no doubt that the analyzed principle will apply not only to taxpayers but also to other passive entities related to the tax law. In Art. 18 of the NTO draft, it is indicated that this regulation applies to the obligated person, who, according to Art. 13 point 23 of this project is not only the taxpayer but also payers, collectors, third parties and legal successors.

For maintaining in the NTO the principle (introduced in Art. 2a of the Act of Tax Ordinance) of settling doubts in favor of a taxpayer speaks the fact that in a democratic state a taxpayer cannot bear the negative consequences of the imprecise definition of his/her obligations stated in the Tax Act¹³. It is also argued that if a different understanding of the provisions in a given situation is possible and each of the interpretative "versions" is justified, the existing doubt should be resolved in such a way that, when assessing the legal consequences of the taxpayer's behavior, the understanding of the provisions is the most favorable for the entity liable for tax¹⁴.

¹² Dz.U. 2018, Item 1445 as amended.

¹³ Compare: A. Mariański, *Rozstrzyganie wątpliwości na korzyść podatnika. Zasada prawa podatkowego*, Warszawa 2009, p. 234.

¹⁴ However, the literature raises doubts as to how this principle is formulated. See: Z. Tobor, *Interpretacja „na korzyść podatnika”* [in:] *Doradca podatkowy obrońcą praw podatnika*, ed. J. Glumińska-Pawlic, Katowice 2007, p. 136–137; A. Gomułowicz, *Złudny mit in dubio pro tributario w prawie podatkowym*, „Gazeta Prawna”, 2.02.2015.

It should be emphasized that this principle will be applied only when other methods of interpretation do not give the appropriate result. Entities applying tax law, i.e. tax authorities and courts, when applying this principle, should always first apply the principle of interpreting legal provisions developed in legal science and take into account the priority of language interpretation¹⁵. One should agree with the statement expressed in the literature, according to which the principle of settling doubts in favor of the taxpayer will apply only when the methods of interpretation of the law used, including the Union-wide interpretation, will not give a relatively clear result¹⁶. It should be added that in the case of harmonized taxes in the process of interpreting tax law provisions, one cannot omit the pro-EU interpretation. It is also important that, when interpreting the tax law provisions, one should take into account the jurisprudence of the Court of Justice of the European Union and the Constitutional Court¹⁷.

It is argued that this rule is mandatory, which means that the authorities applying the provisions of tax law (tax authorities, including self-government administrative courts) based on the law of the Act of Tax Ordinance will be obliged under the NTO project to apply it *ex officio*, and therefore the entities applying the abovementioned regulations should always verify if there are no premises for application of the above-discussed rule¹⁸.

The literature on the subject draws attention to the issue of the form in which the tax authority will decide on the application of the principle of resolving doubts in favor of the taxpayer¹⁹. It is argued that the provision shaping the principle in question has no specific regulation in this respect. However, there should be no doubt that the tax authority will decide on the application of this principle positively (when the principle of resolving doubts applies in a given taxpayer's case) or negatively (when the taxpayer makes a request and the authority finds that there are no premises to apply this regulation in the taxpayer's case)²⁰.

¹⁵ See: Justification of the draft act amending the act – Tax Code, Parliamentary Print No. 3018, Polish Parliament (VII term of office).

¹⁶ B. Brzeziński, *O wątpliwościach wokół zasady rozstrzygnięcia wątpliwości na korzyść podatnika*, „Przegląd Podatkowy” 2015, no. 4, p. 17 et seq.

¹⁷ See: General interpretation No. PK4.8022.44.2015 of the Minister of Finance regarding the application of Art. 2a of the Act of Tax Ordinance.

¹⁸ See: M. Popławski, *Stosowanie przez gminne organy podatkowe zasady rozstrzygnięcia wątpliwości prawa podatkowego*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2016, no. 10, p. 24 et seq.

¹⁹ See: M. Popławski, *Komentarz do art. 2a [in:] Ordynacja podatkowa. Komentarz*, ed. L. Etel, Warsaw 2017.

²⁰ *Ibidem*.

The principle of balancing the legitimate interest of the obligated and public interest

According to Art. 26 of the NTO draft, the tax authorities balance the legitimate interest of the taxpayer and the public interest. A similar principle has been articulated in Art. 7 of the Code of Administrative Procedure²¹, according to which public administration authorities safeguard the rule of law (ex officio or at the request of the parties), take all necessary steps to thoroughly clarify the facts and settle the matter by taking into account the social interest and the legitimate interest of citizens²².

In the context of the principle of balancing interests in the justification to the NTO draft, it is argued that the principle of balancing interests results in a directive, which orders to take into account the “interests” of both parties²³. It is rightly pointed out that this is not entirely a novelty, because this way of interpreting the law results from the Act of April 2, 1997, the Constitution of the Republic of Poland²⁴. As a consequence, entities interpreting the provisions of tax law should take into account (as one of the elements of interpretation) also the fact that the determined meanings of a given tax law provision should allow balancing of both the abovementioned interests²⁵. The interpreting tax regulations through the prism of the principle of balancing interests, i.e. taking into account and balancing both of the above interests, should be considered as part of the systemic interpretation process²⁶. The order to interpret regulations in accordance with legal principles is one of the most fundamental directives of systemic interpretation of the law²⁷. The literature points out that issues related to the role of legal principles are discussed as part of the systemic interpretation²⁸. Also as part of the systemic interpretation, there is a directive that takes into account the structure of a legal act, and the content of this directive draws interpretative argumentation from the structure of a legal act²⁹.

²¹ See: Act of 14 June 1960 Code of Administrative Procedure (i.e., Dz.U. 2017, Item 1257 as amended).

²² See: L. Etel, M. Popławski, *Weighing the interest of the obliged and the public interest in the polish tax law* [in:] *Optimization of organization and legal solutions concerning public revenues and expenditures in public interest (conference proceedings)*, eds. E. Lotko, U.K. Zawadzka-Pąk, M. Radwan, Białystok 2018, <http://hdl.handle.net/11320/6951>.

²³ See: Directional assumptions of the new tax code prepared by the General Tax Law Codification Commission, Warsaw of May 6, 2015, <http://legislacja.rcl.gov.pl/docs//1/12274851/12300341/12300342/dokument175319.pdf> (14.08.2017), p. 6.

²⁴ *Ibidem*.

²⁵ See: L. Etel, M. Popławski, *Weighing the interest...*

²⁶ *Ibidem*.

²⁷ See: L. Morawski, *Zasady wykładni prawa*, Toruń 2010, p. 130 et seq.

²⁸ See: J. Nowacki, Z. Tobor, *Wstęp do prawoznawstwa*, Warszawa 2007, p. 199.

²⁹ See: B. Brzeziński, *Podstawy wykładni prawa podatkowego*, Gdańsk 2008, p. 104.

The principle of balancing the legitimate interest of the obligated person and the public interest will undoubtedly affect the interpretation and, consequently, the determination of the meaning of various provisions of tax law, including other principles contained in the NTO³⁰. This situation will undoubtedly take place, among others in relation to the provision expressing the principle of proportionality³¹. According to Art. 21 § 1 of the NTO draft, tax authorities undertake only actions imposing obligations on the obligated person or limiting his/her rights. Such actions: enable achieving the statutory goal; are necessary to achieve the goal; bring results commensurate with the imposed obligations on the obligated person or limit his/her rights. When determining the meaning of the concept of “actions bringing results commensurate with obligations imposed on the obligated”, the authority should balance the interest of the obligated person (actions undertaken by the authority should not create additional obligations of a similar or greater intensity for the obligated than obligations arising from the provisions of tax law) and the public interest (actions undertaken by the authority should be sufficiently used to fulfill the obligations arising from the provisions of tax law)³².

The principle of balancing interests at the stage of interpreting regulations should also be taken into account, e.g. in the case of interpreting the principle of the speed of conduct³³. According to Art. 24 § 1 of the NTO draft, the tax authorities act thoroughly and quickly, using the simplest possible means to deal with a given case. When assessing what should be understood as the simplest measure of action, the tax authority should balance both the taxpayer’s interest (the measure should minimize conflicts in current affairs and should not impede the functioning of the taxpayer) but also the public interest (the measure should not generate too high costs for the tax authority).

The application of the principle of balancing interests, in the context of the interpretation of the provision, will also apply in the case of the regulation regarding the general clause on tax avoidance³⁴. According to Art. 35 § 1 of the NTO draft, the act performed primarily to achieve a tax benefit, which is incompatible in the circumstances with the subject and purpose of the Tax Act, does not result in a tax benefit if the course of action was artificial (tax avoidance). The tax authority, which decides what should be understood as a performance of a given activity in circumstances contrary to the subject and purpose of the Tax Act, should, on the one hand, take into account the private interest (the purpose of the Tax Act may be to stimulate specific taxpayer behavior by introducing exemptions or tax reliefs) but also the public interest (the subject of the tax law is the realization of the largest possible tax revenue).

³⁰ See: L. Etel, M. Popławski, *Weighing the interest...*

³¹ *Ibidem.*

³² *Ibidem.*

³³ *Ibidem.*

³⁴ *Ibidem.*

Conclusions

Based on the research, all the hypotheses indicated in the introduction were positively verified.

In the context of the first hypothesis, according to which the general principles of the NTO tax law will have a significant impact on the interpretation of the provisions of tax law contained in the acts shaping the construction of individual taxes, it should be noted that this will lead to the need to interpret these provisions through the prism of the essence, assumptions, mechanisms or goals of particular taxes. Sources of information in this regard should include, apart from the literature on the subject or case law, the materials prepared and published from the legislative process in the course of governmental and parliamentary works, in particular, the justification of draft laws and other legal acts. In addition, due to the abovementioned rule, the interpretation of the provisions on value-added tax should include e.g. the presumption of deduction of input tax; when it comes to income taxes e.g. the presumption that each income is accompanied by the taxable cost of obtaining the income; in case of property taxes (property tax, agricultural and forestry tax) what should be taken into account is the presumption that the taxpayer is the entity that uses the property.

With regard to the second research hypothesis, according to which these principles will also apply to other provisions of tax law, including those contained in the New Tax Ordinance Act, it should be noted that this claim primarily concerns the principle of settling doubts in favor of the obligated person and the principles of balancing the interest of the obligated and the public interest. In this regard, the following points should be mentioned. The principle of resolving doubts in favor of the obligor will apply (which will no longer raise doubts) not only to taxpayers but also to payers, collectors, third parties and legal successors. This principle will be applied only if other methods of interpretation will not give the appropriate result. As opposed, the application of the principle of balancing the legitimate interest of the obligated and the public interest should be regarded as part of the systemic interpretation process. Notwithstanding this, the interpretation of the rules developed in legal science should continue to apply, first and foremost taking into account the language interpretation which is of fundamental importance in tax law.

In the context of the third research hypothesis, the NTO principles will affect the interpretation of the provisions contained in non-tax provisions, the application of which has an impact on the functioning of tax law provisions. It should be indicated that this will apply to the principle of resolving in favor of the taxpayer those doubts that relate to such non-tax provisions, to which the provisions contained in tax laws refer, or those which application is necessary when interpreting the provisions of tax law.

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Summary

The study aims to present the meaning of general tax law principles resulting from the draft of the New Tax Ordinance Act on the process of tax law interpretation. A detailed analysis covers three principles: the principle of determining the content of tax law provisions, including the structure of the tax to which these provisions apply, the principle of resolving doubts in favor of the obliged, as well as the principle of balancing the legitimate interest of the obliged and the public interest. As part of the work, the following research hypotheses regarding these principles have been positively verified: the principles will have a significant impact on the interpretation of tax law provisions contained in the laws shaping the construction of individual taxes, they will also apply to other tax law provisions, additionally they will affect non-tax provisions, the application of which affects the operation of tax law provisions.

Keywords: tax law, general principles, tax law principles, interpretation of tax law, tax ordinance

WPLYW OGÓLNYCH ZASAD PRAWA PODATKOWEGO ZAWARTYCH W NOWEJ ORDYNACJI PODATKOWEJ NA INTERPRETACJĘ PRZEPISÓW PRAWA PODATKOWEGO

Streszczenie

Celem opracowania jest przedstawienie wpływu zasad ogólnych prawa podatkowego wynikających z projektu nowej ordynacji podatkowej na proces interpretacji prawa podatkowego. Szczegółową analizą objęto trzy zasady: zasadę ustalenia treści przepisów prawa podatkowego z uwzględnieniem konstrukcji podatku, którego przepisy te dotyczą, zasadę rozstrzygnięcia wątpliwości na korzyść zobowiązanego, a także zasadę wyważania słusznego interesu zobowiązanego oraz interesu publicznego. W ramach artykułu pozytywnie zweryfikowano hipotezy badawcze dotyczące tych zasad, a w konsekwencji uznano, że zasady te będą miały istotny wpływ na interpretację przepisów prawa podatkowego zawartych w ustawach kształtujących konstrukcję poszczególnych podatków, a także że będą one miały zastosowanie w odniesieniu do innych przepisów prawa podatkowego, a ponadto będą one miały wpływ na interpretację przepisów niepodatkowych, których stosowanie ma wpływ na funkcjonowanie przepisów prawa podatkowego.

Słowa kluczowe: prawo podatkowe, zasady ogólne, zasady prawa podatkowego, interpretacja prawa podatkowego, ordynacja podatkowa