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Dissertation thesis: Legal nature of tax interpretations

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Summary of the doctoral dissertation

The subject of the PhD dissertation is the theoretical analysis of legal issues concerning the interpretation of the provisions of tax law. The possibility of making tax interpretations is prescribed in Art. 14A § 1 paragraph 1 and article. 14b § 1 of the Act of 23 August 1997 Tax Ordinance (Journal of Laws of 2021, item 1540, as amended), by authorized organs of public administration. General tax interpretations may be made by the minister competent for public finances, who, at the same time, should strive to ensure uniform application of tax law provisions; individual interpretations at the request of the person concerned are issued in an individual case by the Director of the National Tax and Customs Information Office (KIS) or, according to the competence and in the scope specified in the act, by the village mayors, mayors (presidents of cities), starosts or voivodship marshals.

The official interpretation is a specific instrument which role is to clarify unclear tax law. If the addressee of certain legal norms is uncertain as to the effects of his behavior, which is specified in the Act, he or she has the legally permitted possibility to request the interpretation of his or her individual situation by an organ of public administration. The application for individual interpretation may refer to the actual facts or case or future events. In its content, the application should contain full presentation of the actual state of affairs (future event) and as well as personal opinion on the legal assessment of this fact or case (future event). Interpretations are published in the Official Journal of the Minister of Finance and in the Public Information Bulletin.

The application of an individual interpretation prior to its change or before delivering to the tax authority a copy of the final and valid judgment of the administrative court revoking the individual interpretation must not be detrimental to the applicant.

The scope of issues related to official tax interpretations is an interesting object of scientific research. Therefore, it was made an attempt to evaluate the indicated issues in the problems presented below.

The main research thesis of this dissertation is aimed at finding the reason for introducing and the function of the tax interpretation. It was made an attempt in the dissertation to answer the question what prompted the legislator and what criteria it applied to develop legal norms in this respect, and if the interpretation is an additional element (phase) of tax court proceedings before the final decision.

It is also required to examine whether the tax interpretation constitutes an additional element of tax jurisdictional proceedings ending with a decision, and if it is true, whether there are two decisions (a decision concerning the interpretation of tax law provisions and the final decision concerning the case), and in the case of a negative answer, whether we have one proceeding divided into parts, i.e. separate phases of one proceeding devoted to the interpretation (which in turn would be a court proceeding without the key element for the procedure, i.e. connection of the facts with a legal norm). It also arises a question here if there is not an alarming symptoms concerning the quality of tax law and its legibility for the parties to the proceedings. One of the directives of proper legislation deriving from the principle of a democratic state ruled by law (Article 2 of the Constitution of the Republic of Poland) is the principle of specificity of law. It is the legislator's obligation to create legal provisions, both in terms of their content and form, that are as specific as possible in a given case.

Detailed research theses are aimed at developing the main thesis. As part of detailed issues: 1) it was performed an analysis of the subjective and objective scope and an assessment of the competence of organs authorized to provide official interpretations of law; 2) the effects and the procedure for issuing interpretations were examined.

The dissertation also shows the doubts regarding the preservation of the constitutional principle of equality before the law of every person having or not having interpretations concerning the same actual state (future events), and the doubts regarding the scope to which tax authorities will <feel> connected with particular interpretations and what their real impact will be on the cases examined at each stage of proceeding.

Important comments as to official interpretations are also made on the basis of the system of sources of law generally applicable in Poland, defined in Art. 87 sec. 1 of the Polish Constitution. This provision indicates that the sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, regulations and enactments of local law in the territory of the organ issuing such enactments.

The discussion and the variety of views and opinions on the essence of the legal interpretation are clearly presented in the doctrine of the subject. Therefore, it was necessary to determine the forms of interpretation to which the individual interpretation of the tax law should be included.

The tax interpretations also gave rise to other doubts. The legislator granted the Minister of Finance the power that justify comparing the competences of this body to the competences of both the legislative and judicial powers. Court decisions that (also) are not a source of law under Art. 87 of the Polish Constitution, in fact have a great impact on its application. However, we are not able to find any provision that the behavior of a person in accordance with the opinion expressed by the Supreme Court or another court may not harm him. The question appears, why the Minister of Finance was granted powers that practically are greater than the powers of courts? This question becomes particularly important in a situation where the Constitutional Tribunal has been deprived of the right to provide a generally binding interpretation.

The analysis of the legal nature of the tax law interpretation allowed for some findings. They are presented in four chapters, the introduction and summaries of the dissertation. It is supplemented by a list of abbreviations, judgments, interpretations of tax law and a bibliography. The internal synthesis in the form of <Conclusions> is the summary of dissertation. It is the list and synthetic presentation of the research results in each chapters, as well as the summary of the detailed findings.

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