

Received: 21.12.2019
Accepted: 23.01.2020
Published: 30.03.2020

Roczniki Administracji i Prawa
Annals of The Administration and Law
2020, XX, z. 1: s. 141-150
ISSN: 1644-9126
DOI: 10.5604/01.3001.0014.1431
<https://rocznikiadministracjiiprawa.publisherspanel.com>

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RELIABLE TAXPAYER = SAFE TAXPAYER?

RZETELNY PODATNIK = BEZPIECZNY PODATNIK?

Summary: The article is an attempt to answer the question whether Polish taxpayers who reliably settle and pays taxes can feel safe in the highly complicated and so frequently changed legal status in Poland. Constant amendments to the regulations mean that the taxpayer increase tax resistance because they are unable to learn about the applicable regulations and put them into practice. Hence the postulate that the legislator specifies - at least in terms of - the premises that will allow us to objectively recognize that we are dealing with a reliable taxpayer. On the other hand, the effects of legislative chaos cannot be passed on to taxpayers who are trying to honestly fulfil their tax obligations. The tax authority, which hosts the proceedings and acts in imperative forms, should ensure the protection of the taxpayers' rights and operational security.

Keywords: taxpayers, reliable, changeability, legal certainty, duty, safety and security

Streszczenie: Artykuł jest próbą udzielenia odpowiedzi na pytanie czy w istniejącym w Polsce tak często zmienianym i wysoce skomplikowanym stanie prawnym polski podatnik, który rzetelnie rozlicza i płaci podatki, może czuć się bezpiecznie. Tymczasem ciągle nowelizacje przepisów powodują, że w podatniku rośnie opór podatkowy, ponieważ nie jest w stanie poznać obowiązujących regulacji i zastosować ich w praktyce. Stąd też postulat, by ustawodawca określił – przynajmniej ramowo – przesłanki, które pozwolą obiektywnie uznać, że mamy do czynienia z rzetelnym podatnikiem. Natomiast skutki chaosu ustawodawczego nie mogą być przerzucane na podatnika, który usiłuje rzetelnie wypełnić swoje zobowiązania podatkowe. Organ podatkowy, który jest gospodarzem prowadzonego postępowania i działa w formach władczych, powinien zapewnić podatnikowi ochronę jego praw i bezpieczeństwo działania.

Słowa kluczowe: podatnik, rzetelny, zmienność, pewność prawa, obowiązek, bezpieczeństwo

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INTRODUCTION

Taxes are one of the basic sources of budget revenues, and for taxpayers – regardless of their amount – they are a significant burden, giving birth to the so-called tax resistance, understood as a sense of injustice and experiencing “financial harm”. This, in turn, causes negative attitudes towards the state, and the tax is perceived as a “harassment”. Paying taxes is a burdensome duty, and reluctance is a taxpayer’s natural reaction against coercion imposed by the state that charges the income, proceeds or property of its citizens. Too restrictive law and too deep interference with property rights give rise to the taxpayers’ opposition and become the reason for their indifference towards the state and power. The tax obligation is equated with the assassination of dreams – dreams of owning property and its constant expansion. Tax is treated as a financial loss and its negative reception justifies – in the opinion of many – tax avoidance. The amount of taxation is not insignificant for the taxpayers’ personal attitude. Hence, the authorities are looking for such instruments that will allow it to achieve the assumed level of budget revenues, without raising suspicions and opposition of taxpayers. It should be emphasized, however, that taxation is not ethically neutral and does not remain beyond good and evil, and ethics in taxation co-decides about the respect of tax obligations and shapes tax awareness of the citizens¹.

CHANGEABILITY OF THE TAX LAW AND THE PRINCIPLE OF LEGAL CERTAINTY

In Poland, for many years, unfortunately, there has been a permanent “tax reform” regarding both substantive tax law, principles concerning the tax authorities and tax proceedings. The reason for this is on the one hand the desire and need to adapt national solutions to the requirements of the European Union law – and this should be assessed positively, on the other – the lack of conceptually consistent socio-economic policy and tax policy against this background, which unfortunately should be assessed negatively. In 2016, the concept of functioning of tax administration bodies changed radically², which was transformed into follow-up control bodies in terms of correct self-calculation and timely payment of taxes, shifting to the taxpayer – not always prepared for it – many of their obligations to date, especially in the scope of taxes³. It should be emphasized that the consolidation of the tax apparatus and a kind of “IT

¹ Szerzej: A. Gomułowicz, *Podatki a etyka*, Warszawa 2013, pp. 47-48.

² See the Laws of 16 November 2016 on the National Revenue Administration (i.e. Journal of Laws of 2019, item 768 with later amendments) and the regulations introducing the Act on the National Revenue Administration (Journal of Laws of 2016, item 1948, as later amended).

³ J. Glumińska-Pawlic, *Pożądanie kierunki zmian (reform) obecnego modelu tworzenia prawa podatkowego*, [in:] H. Dzwonkowski, J. Kulicki (ed.), *Dylematy reformy systemu podatkowego w Polsce*, Warszawa 2016, p. 105 et seq.

revolution” significantly increased its effectiveness and efficiency with a significantly reduced number of controls. New tools have enabled changes in the control process itself. Instead of the current principle of “randomness” and the traditional visit of employees of the tax authority at the taxpayer’s headquarters, the control is moved to its earlier phase: analysis of collected data and on this basis planning and selection of entities for control. The method of carrying out “at source” controls has also changed, especially those carried out by customs and tax offices, which forces entrepreneurs to adapt to new rules that leave much less time to prepare for and respond to control. Such control takes place on the basis of an authorization to carry it out and begins immediately after the authorization is provided and the controller’s official ID is presented (and in justified cases even without authorization). An important change is also the abolition of the obligation to deliver to the controlled entities the notification of their intention to initiate the control proceedings.

Tax law belongs to those areas of law that have a direct impact on social life and the economy of the country, while the variability of this law is a significant annoyance not only for its direct addressees - taxpayers, but also for employees of tax authorities. The Constitution of the Republic of Poland⁴, by providing a stable foundation for tax legislation, forces the Polish legislator to respect procedural aspects arising from the principles of a democratic state of law and decent legislation. The model and standards set out in the Constitution for reviewing tax legislation mean that the Constitutional Tribunal may assess whether the principles of exclusivity of tax law and correct legislation have been met, and whether the economic rights and freedoms contained in the Constitution are properly protected⁵, and tax law meets the requirements of universality and equality.

In Poland, however, the rules for creating tax law are not observed, which means that its quality decreases, and the excessively “produced” regulations are not preceded by analyses and do not meet social needs. The most difficult thing, however, is the need to master the rules of the technique of editing legal texts. Polish tax legislators do not have this skill, as evidenced by the number of deficiencies contained in the submitted drafts, and after their passage, the need to amend the provisions of laws even before they enter into force. It should be emphasized that the basic condition for proper communication between the legislator and the addressees of the norms is the precise and communicative formulation of legal texts, which alleviates the consequences of adopting the principle of *ignorantia iuris nocet*. A carefully edited legal text means that the entity applying the law can concentrate all its efforts on the substantive side of the decisions taken, because difficulties that have to be overcome at the stage of text interpretation are eliminated, which also ensures uniformity of interpretation and, as a consequence, greater uniform-

⁴ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 with later amendments).

⁵ J. Oniszczyk, *Podatki i inne daniny w orzecznictwie Trybunału Konstytucyjnego*, Warszawa 2001, p. 11.

ity of application of law⁶. Unfortunately, these requirements are not met by the texts of tax laws regulating, in particular, tax structures, the content of which is specified in constitutional provisions⁷. Drafts of such laws require justification and the opinion of the Minister of Finance as to the financial consequences of their passage and may not be of an urgent nature. This is indicated in art. 123 of the Polish Constitution, which prohibits urgent processing of such drafts. Even if it is considered that a tax law needs to be changed quickly, the law-making rules require a fair justification for such a change. This does not happen, however, as evidenced by the urgent change in rates of excise duty, which does not comply with the principles of decent legislation⁸.

The stability of tax law provisions in our country is varied. Frequently changing laws and regulations implementing them make it difficult for both the taxpayers and tax authorities to properly implement their obligations and reconcile the interests of both parties in a tax law relationship. The creation and application of tax law should primarily be oriented on the compliance with the constitution and the principle of the rule of law expressed in it, which requires compliance with the statutory exclusivity in matters concerning the rights and obligations of citizens. On the other hand, the principle of the state under the rule of law is expressed nowadays by the democracy of law-making, consisting in the participation of a broad public opinion, including the appropriate participation of experts and representatives of science, in a way that ensures their influence on the law-making process⁹. That is why it is so important to discuss the shape of prepared legal acts, which for many years can shape the mutual relations between the rights and obligations of the tax authorities and the taxpayers¹⁰. Of course, one should also be fully aware that there will never be symmetry between these two entities (participants) of the tax law relationship, since tax is always a benefit arbitrarily imposed by the state and enforced by it. Nevertheless, tax laws should guarantee the legal protection of taxpayers' interests against the tax authorities' arbitrariness. It cannot be, as it has been until now, that the tax law provisions contain solutions created by the Ministry of Finance primarily for the convenience of the tax administration, and their purpose will be mainly to secure the interests of the State Treasury, often neglecting even the interests of local government units that are also beneficiaries of taxation.

⁶ S. Wronkowska, M. Zieliński, *O korespondencji dyrektyw redagowania i interpretowania tekstu prawnego*, „Studia Prawnicze” 1985, b. 3-4.

⁷ In accordance with art. 217 imposing taxes, other public levies, specifying entities, objects of taxation and tax rates, as well as the rules for granting reliefs and redemptions as well as categories of entities exempt from taxes is by means of the Law.

⁸ See the government bill amending the law on excise tax (Sejm Print No. 15), which was received by the Sejm on 14 November 2019, and the first reading took place at the sitting of the Sejm on 19 November while the second and third on 21 November, on the next day the adopted law was handed over to the President and Marshal of the Senate.

⁹ H. Rot, *Akty prawotwórcze w PRL. Koncepcja i typy*, Wrocław 1980, pp. 138-139.

¹⁰ Zob. R. Mastalski, *Tworzenie prawa podatkowego a jego stosowanie*, Warszawa 2016, pp. 23 et seq.

The uniformity of its application by the tax administration is also extremely important in tax law. This, in turn, should guarantee the practical implementation of the constitutional principles of justice, equality and universality, as well as legalism and certainty of taxation¹¹. The condition for the acceptance by all citizens of tax burdens must be the conviction that justice and equality of taxation are implemented, and all entities are subject to taxation as required by the laws. Therefore, there can be no question of discriminating some entities (groups) by taxes, or favouring others if they have the same features specified in the law. Tax law provisions should therefore maintain an appropriate balance between the rights and obligations of taxpayers. However, many existing and proposed solutions are clearly one-sided and are moving towards burdening the taxpayer with numerous obligations and even ailments, while it gives the Minister of Finance unlimited possibilities of charging taxpayers with far-reaching procedural obligations.

CAN A POLISH TAXPAYER BE A RELIABLE TAXPAYER?

The poor state of the tax legislation has in practice many negative effects, among which are the following:

- creation of barriers and restrictions in business operations,
- an increase in the costs of accounting and legal services not only for entrepreneurs, but even for taxpayers who do not run a business, but due to changes in regulations are not able to submit a correct tax return on their own,
- increased taxpayer risk (error = severe consequences),
- tax authorities focus on „honest errors”¹²,
- reducing the investment activity of entrepreneurs, as well as a decrease in the prestige of our country abroad and among potential foreign investors,
- and finally, a disregarding attitude towards the state and the law it creates.

It should also be noted that the recently introduced tax privileges mean that among the youngest Polish potential taxpayers entering the labour market the correct attitudes and habits of paying taxes are not being built. An example would be the Law of 4 July 2019 amending the Law on personal income tax, the Law on family benefits and the Law on health care benefits financed from public funds¹³ pursuant to which an exemption from taxation of income from work and from mandate contracts was introduced up to the amount of PLN 85,528 in the tax year of persons under 26 years of age. Also taking over by tax authorities of the taxpayers' settlements on-line means

¹¹ J. Glumińska-Pawlic, *Zasada pewności opodatkowania w polskim prawie podatkowym*, [in:] C. Martysz, A. Matan, Z. Tobor (ed.), *Zasady prawa*, Bydgoszcz – Katowice 2007, pp. 33-40.

¹² Compare R. Sowiński, *Realizacja zasady pewności opodatkowania – oczekiwania i możliwości*, [in:] A. Pomorska (ed.), *Polski system podatkowy. Założenia a praktyka*, Lublin 2004, p. 34.

¹³ Journal of Laws of 2019, item 1394.

that the tax awareness of the majority of Polish taxpayers built with so much difficulty since 1992 has been ruined. The taxpayers lose the sense of the existence of the tax obligation, they are not interested in changes, considering that this does not apply to them. And reality can be cruel, because income tax is not the only burden to be faced when deadlines, declarations and financial consequences must be remembered about.

So, in such a complicated and unstable legal system, can a Polish taxpayer feel confident and safe deserving of being called a “reliable taxpayer”? It should be noted that the word *reliable* has as many as 284 synonyms in the Dictionary of Synonyms¹⁴. A reliable person is one who does their job well, performs the duties properly, is diligent, dependable and trustworthy. Reliability is a positive character trait testifying to the precision, accuracy and correctness of performed tasks. The taxpayers’ reliability in fulfilling their obligations to the state is a subjective sense, their own conviction that they made settlements with the tax office correctly. Often, however, it turns out that this is a false belief, as evidenced by the results of inspection.

The current regulations allow tax authorities during the audit to request the taxpayers’ contractors to provide information and documents regarding a specific transaction, significantly expanding the catalogue of “contractors”, including even entities that provided only peri-transactional services. Taxpayers were also required to report on the schemes used¹⁵, i.e. arrangements allowing the entity to achieve a potential tax benefit, which may, in turn, affect the emergence or non-emergence of a tax obligation. An additional problem to be resolved is the fact that the legislator uses indeterminate phrases or phrases which have not yet appeared in other regulations of Polish law, which hinders the proper subsumption of the provisions. The effect of the introduced legal solutions is also the obligation to introduce appropriate reporting procedures. In this situation, taxpayers - and especially entrepreneurs - and their advisers should document their actions to confirm that they exercise due diligence, since it is the taxpayer who must prove to the authority that he is honest. In the current practice, the authorities assume in advance that all errors in tax returns are the intended action of the payee, even if they are the result of a lack of knowledge or changes in regulations during the tax year.

The draft of the new tax ordinance, which is currently being processed in the parliament, gives some hopes for a change in the relationship between the tax authorities and taxpayers¹⁶. The regulations contained in the draft law are to serve, in particular, the implementation of two basic objectives: protection of taxpayers’

¹⁴ <https://synonim.net> [access: 21.11.2019].

¹⁵ The obligation to report tax schemes is the implementation of the EU Council Directive 2018/822 of 25 May 2018 into the national legal order. However, the Polish legislator decided to implement these provisions from 1 January 2019 and additionally expanded the scope of reporting to include domestic and not just cross-border transactions. The statutory definition of the “tax scheme” is included in Art. 86a § 1 item 9 of the Tax Code (consolidated text, Journal of Laws of 2019, item 900, as amended).

¹⁶ Government draft of the law – Tax ordinance of 4 June 2019. Druk Sejmowy No. 3517.

rights in their relations with tax authorities and increasing the efficiency and effectiveness of tax collection. In the assumption of draft initiators¹⁷ the new law is to ease the excessive rigorism of the tax ordinance with regard to taxpayers by introducing legal mechanisms protecting the taxpayers' position, and above all to set general principles of tax law, consensual forms of dealing with tax matters and the normative catalogue of taxpayers' rights and obligations, including clarifying the right to obtain information and support in the independent, correct and voluntary performance of their duties and rights.

Among the general principles, special attention should be paid to art. 19 § 2 the principle of the presumption of the payer's honesty, which provides that the tax authorities are guided in their activities by the principle of trust in the payer, assuming that he acts fairly and lawfully. As the content of the justification to the draft reveals, the principle of the presumption of honesty of the legally obliged payers obliges tax authorities to assume that the taxpayers (obliged) are citizens willing to cooperate, who – as long as they understand the provisions of tax law and perceive tax laws and procedures as legitimate – want to act in accordance with law¹⁸. A similar “presumption of honesty” is also found in the European Union Taxpayer Code (point 3.1.3), according to which “Taxpayers can expect: they will be considered honest, unless there is a clear reason to believe otherwise, although tax administrations can check the taxpayer's tax situation, carry out verification or proceed to an inspection”. Also, in accordance with art. 5 section 1 of the taxpayer's card model “in the absence of proof to the contrary, it is presumed that the taxpayer is honest and truthful”. A similar principle - characterised as the taxpayer's law, and at the same time the obligation of the tax administration - is found in many cards of taxpayer rights (e.g. in Great Britain, France, Ireland or Australia). However, there are voices in the literature that “the mere provision of the presumption of the reliability of the obligated party is insufficient to effectively enforce this right”¹⁹.

The current protection of taxpayers' rights provided in particular in art. 2a of the Tax Ordinance Law²⁰ provides only theoretical protection and has only been valid since 2016. In numerous publications – including press ones – it was pointed out that in practice this clause remains dead, and the Minister of Finance explained in a general interpretation that it is applicable only in the event of doubts as to the content of tax law provisions, and not in relation to the findings on the factual state. The addressee of the norm expressed in the analysed provision is the tax authority

¹⁷ The draft was prepared by the Codification Commission for General Tax Law established by the Regulation of the Council of Ministers regarding its establishment, organization and mode of operation of 21 October 2014 (Journal of Laws of 2014, item 1471).

¹⁸ See Justification to the bill. Sejm Print No. 3517, pp. 73-74.

¹⁹ <https://kancelaria-skarbiec.pl/publikacje/zasada-domniemania-rzetelnosci-zobowiazanego.html> [access: 21.11.2019].

²⁰ Law of 29 August 1997 (i.e. Journal of Laws of 2019, item 900 as later amended).

deciding the case, as well as taxpayers and other entities burdened with obligations arising from the provisions of tax law (i.e. payers, collectors or third parties responsible for someone else's tax liabilities)²¹. Neither the wording of the provision nor the general interpretation of the Ministry of Finance dispelled existing doubts in this respect. This is evidenced, for example, by the judgment of the Constitutional Tribunal of 13 December 2017²², in which numerous doubts as to the proper application of the above principle by tax authorities and administrative courts were pointed out, emphasizing that it does not fulfil its role in practice, because its application depends on the subjective approach of the authority or court that uses it.

Therefore, it should be postulated that the legislator specifies – at least in the frame – the premises that will allow us to objectively recognize that we are dealing with a reliable taxpayer. For several years, the professional governing body of tax advisors proposed in talks with the Ministry of Finance that such a status should be given – as in other countries – to the taxpayer represented by a tax advisor.

CAN A POLISH TAXPAYER FEEL SAFE?

Reliable taxpayers, i.e. those who perform their duties in accordance with the law, regulate taxes on time and in the correct amount, do not use illegal tax schemes, in doubtful cases apply for individual tax interpretations or protective tax rulings²³ should feel safe. This is not the case, however, because the Polish legislator constantly changes the applicable regulations and imposes more and more obligations on the taxpayers, also of a material and technical nature. In order to ensure a sense of security, the taxpayers, and in particular the entrepreneurs, should monitor conducted and planned transactions on an ongoing basis and assess the tax effects of concluded contracts together with the business justification indicating the rationality of the chosen path. The taxpayers should also regularly monitor the timeliness and regularity of taxes paid, entrusting the duties and responsibilities in this respect to qualified employees. Finally, they should verify contractors using official explanations and interpretations published on the website of the Ministry of Finance, with particular diligence when purchasing assets of significant value from unknown suppliers.

The entrepreneurs should also be prepared for any control and should develop appropriate procedures for this purpose. The subjective belief that the documentation kept in the entity meets all the criteria set out in the Accounting Act is correct and dependable may be unreliable. The risk of making a mistake often lies outside the

²¹ General interpretation of the Ministry of Finance of 29 December 2015 (reference PK4.8022.44.2015).

²² Ref. SK 48/15.

²³ J. Glumińska-Pawlic, B. Kubista, *Klauzula przeciwko unikaniu opodatkowania. Aspekty prawno-podatkowe*, „Analizy i Studia CASP” 2017, No. 1, pp. 18-19.

enterprise, and the biggest risks are related to frauds in VAT²⁴. The entrepreneur – despite due diligence – may be entangled in the tax carousel fraud. Tax optimization is another area of danger. Often, even having individual tax interpretations and opinions of tax advisers does not mean that the company is completely secure. During the audit, tax authorities question the operations carried out and the tax settlements made.

Therefore, the entrepreneur should be prepared for any dispute with the tax authority, but only after assessing the company's accounting and tax documentation from the point of view of its results, especially the opportunities in court proceedings. Sometimes, giving up a dispute and making an adjustment can be beneficial for a company, despite having to pay back taxes and interest. Making an adjustment can reduce the penalty interest and sometimes save the company. Entering into a dispute should be based on a fair assessment of the chances of winning. Losing can damage the interests of many parties: the owners of this and other companies, their management boards, employees responsible for taxes, as well as the company's partners and contractors.

CONCLUSION

In Poland, not paying taxes is unfortunately not a shameful thing, and in some environments it is even a source of pride. Therefore, the tax mentality of Polish citizens should be changed by tax legislation, which cannot ignore the moral aspect of adopted solutions. For tax policy, it should be important to promote the attitude of approval of tax burdens and care for creating good and stable law. Therefore, it is necessary to educate the entire society about existing tax regulations in order to skilfully adapt their behaviour to the rules and principles set out by tax law, which – where possible – should be clear, understandable and certain in the meaning that the tax consequences of economic decisions can be predicted and properly assessed. In turn, the high changeability of regulations, the number of which is constantly growing, as well as the complexity of normative structures means that the very determination of the existence of a tax obligation or entity's entitlement becomes extremely complicated. The interpretation difficulties are increased by the fact that tax law is characterized by an above average level of divergence of interests of parties to legal relations²⁵. However, in the conditions of ever-changing law, it is neither the taxpayer's nor the tax authority's fault that the Polish legislator creates inconsistent or even contradictory provisions that cannot be practically implemented. However, the taxpayers who try to honestly fulfil their tax obligations cannot be blamed and ultimately punished. Meanwhile, the tax law relationship privileges the tax authority, which is the host of the proceedings

²⁴ J. Glumińska-Pawlic, K. Nowak, *Oszustwa w podatku VAT – geneza, istota, przeciwdziałanie*, „Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych” 2017, No. 10, pp. 6-15.

²⁵ B. Brzeziński (ed.), *Wykładnia i stosowanie prawa podatkowego. Węzłowe problemy*, Warszawa 2013, p. 17.

and acts in the form of authority over the taxpayer. That is why he should be guaranteed protection of his rights and operational safety.

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