



Tax authorities never have doubts

It has been 18 months since the introduction of the clause on settling doubts to the benefit of tax payers. Its aim was to change the approach of tax authorities towards companies and citizens. Unfortunately, it turned out that the clause has not been applied.

In autumn 2015, the clause on settling doubts to the benefit of tax payers (“in dubio pro tributario” principle) kindled our hearts and minds for months. It was even used politically as one of the three questions in the national referendum proposed by the President Bronisław Komorowski. The clause was supposed to be a magic wand changing a tax payer-suppliant to a tax payer-customer. Owing to it, most of the problems connected with the inflation of ambiguous law were to disappear. Most of disputes with tax authorities were supposed to be eliminated and thus the administrative judiciary was to be disburdened.

Finally at the end of 2015, the clause was entered into the Tax Ordinance, and in theory, on January 1st, 2016 it came into force and has been a binding and hard law since then. What is the reality? Do officers of tax authorities in fact use the principle according to which they settle doubts concerning interpretations of tax regulations in favour of a tax payer?

Unfortunately not. As the analysis conducted by the Grant Thornton experts show, during the first six months of functioning of the clause, there existed no single case in which a tax office would settle a doubt to the benefit of a tax payer. **It simply appears that officers... do not have doubts.**



Our analysis showed a surprising and very intriguing correlation. Although tax payers in Poland face serious issues connected with interpreting tax regulations every day and request nearly 40 thousand tax interpretations a year, the officers, oddly enough, do not have similar problems. In any case, they see the regulations as clear, obvious and unambiguous.

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Whether the clause has been applied or not can be verified through an analysis of the individual interpretations published on the website of the Minister of Finance. Our own calculations show that in the first six months of the term of the clause, the Ministry of Finance issued the total of **17,524 individual interpretations** of tax law. We counted that in **192 cases a tax payer requested the use of the clause** proving inconsistency of the judicature in the case concerning the request and therefore presented unremovable doubts.

Unfortunately, among the large number of issued interpretations **there is no single one** in which the tax office would issue a decision favourable for the tax payer justifying it with “in dubio pro tributario” clause.

Therefore, in the vast majority of cases, the Minister of Finance ignored tax payers’ requests to apply the clause, not referring to it at all. **In three interpretations only did the tax office invoke the clause. However, it advised that the clause did not apply.**

The following is one of the justifications:

In the case within the scope of the hereby interpretation, the Authority (...) had no doubts concerning the interpretation of the tax law provisions at issue. [...] In the case in question, there were no conditions to apply the principle [to settle doubts to the benefit of a tax payer – ed.].

(no. IBPB-1-1 4510-28 16 DW of April 4, 2016; a similar position was taken in interpretations no. 1061-IPTPB2.4511.186.2016.2.Akr and IPPB3/4510-896/15-2/DP)

17 524 The number of individual interpretations issued by tax offices in the first 6 months of 2016...

192 ... the number of cases when a tax payer invoked the “In dubio pro tributario” principle...

3 ... the number of cases in which a tax authority referred to the principle invoked by tax payers...

0 ... the number of cases when a tax authority applied it and therefore settled a doubt to the benefit of a tax payer.

Source: Own study based on individual interpretations of tax law issued on behalf of the Minister of Finance between January 1, 2016 and June 30, 2016, published at <http://sip.mf.gov.pl/>.



Our statistics show that a number of tax payers did believe that the “In dubio...” principle would be applied in Poland in real terms since January 1. In almost 200 cases, they directly invoked it in their requests for interpretation. Unfortunately, it turned out that despite the changes in law, this principle is still not applied. Officers keep settling all doubts to their benefit.

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Our biggest fears signalled when the clause entered into force that it will not be applied, came true. When it came into force, we wrote in one of the commentaries:

”The above regulation will only illusorily protect tax payers. It is easy to imagine a situation when a law enforcing entity discontinues further interpretation claiming that the one conducted before gives unambiguous results and that there is no need to conduct a more thorough analysis of the legal norm”

In our opinion, the practice of tax authorities of refusing to apply the clause on settling doubts to the benefit of a tax payer should be considered negative. However, it can be expected that the conduct of authorities will change and that they will finally realize that there are many examples of ambiguous interpretations of authorities and administrative courts. Since the authorities of the state issue contradictory settlements in similar cases, there can be no doubt that, in many areas, the law is contradictory and generates doubts which should be settled to the benefit of tax payers.



In Polish tax regulations, there are no questions that could raise doubts of tax payers? Then how to explain the fact that there are many instances in which two different administrative courts make completely different decisions in similar tax cases? The examples themselves are the material to apply the "In dubio..." principle. Let us hope that officers will soon put this rule into practice.

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