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## STANDARDS APPLIED IN PROTECTION OF TAXPAYERS' RIGHTS

### *Summary*

*The paper discusses selected legal solutions, from Polish tax system, which are to protect taxpayer's rights. Using judgments issued by institutions adjudicating in tax cases, biding tax law provisions were critically assessed, in particular, the principle of trust. Consequently, based on the experience of selected countries, the weaknesses of legal solutions in force in Poland were mentioned, including difficult access to the information about the taxpayer's rights, lack of the Charter of Taxpayer's Rights as well as limiting the need for trust only in relation to tax proceedings.*

**Key words:** *taxpayer, tax authorities, adjudicating institution, the principle of trust, taxpayer's rights.*

### **Introduction**

The protection of taxpayer's rights are primarily determined by standards which have the character of rules set at the supranational level, constitutional norms and principles resulting from national legislation. The regulations formulated by science and doctrine also play an important role in this protection. Moreover, the creation of conditions for securing the taxpayer's interests also takes place within the framework of shaping tax relationship. Similarly, the adopted model and the quality of the tax system serve this protection. This in turn is related to the implemented strategy. This argument is indicated by the need to protect taxpayers' interests in the government documents and the related strategy of acting of the Polish fiscal authorities<sup>1</sup>.

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<sup>1</sup> *State development strategy 2020*, Annex to the Government Resolution, No 157, Monitor Polski, Warszawa, p. 32.

The aim of this article is the analysis and evaluation of legal solutions which as to the heart of the matter serve to protect taxpayer's rights. Adopted rules were subjected to critical assessment including judicial practice. The first section describes institutions operating in binding taxation system. The second one is devoted to one of the principles relevant to tax proceedings which is the principle of trust. The third, in the scope of taxpayer's rights, presents classification of taxpayer's rights in Poland in the view of solutions based on practice in EU countries.

### **1. Methodology**

The article is a deliberation on the legal protection of the taxpayer in Poland and the standards applied in this respect. Taxpayer's rights were presented in accordance with the provisions of Tax Ordinance Act. The basis of the research was a review of legal domestic and foreign literature as well as the analysis of judicial practice regarding tax cases against taxpayers conducted by the Voivodship Administrative Court, the Supreme Administrative Court and the European Court of Justice. Also, statistical data from the Ministry of Finance and information about administrative courts activities were used.

### **2. Standards and institutions adjudicating on tax matters**

Poland, as one of the members of the European Union, is obliged to comply with the general standards determined by: the Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>2</sup> the Treaty establishing the European Community, the Charter of Fundamental

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<sup>2</sup>The practice of countries with a developed tradition of the lawful activities of administrative bodies shows that despite the ratification of the Convention, its impact on the rights of taxpayers has a different nature and scope and domestic provisions of law may not provide proper standards of protection. What is more, in large part of European countries' constitutions there are provisions similar to those listed in the Convention. However, in other countries there is stronger reference to the Convention than to Constitution. A. Leszczyńska, *European convention on human rights and fundamental freedoms as a tool to protect taxpayer's rights*, *Kwartalnik Prawa Podatkowego* 2004, No1/2, p. 9 – 49, A. Mariański, *Rozstrzygnięcie wątpliwości na korzyść podatnika. Zasada prawa podatkowego*, Wolters Kluwer Polska Sp. z o.o., Warszawa 2011, p. 27.

### *Standards Used for Protection of Taxpayers' Rights*

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Rights of the European Union<sup>3</sup> and the European Code of Good Administrative Behavior<sup>4</sup>. Administrative courts refer to the Convention and the judicial practice of the European Court of Human Rights when considering the protection of human and civil rights and freedoms. It is acknowledged that no other international treaty had such an impact on citizens' right protection against public administration. Significant in that field is also the Treaty establishing the European Union. The confirmation of that are numerous judicial decisions of European Court of Justice (ECJ)<sup>5</sup>. As T. Michnik claims it gives Polish taxpayer the opportunity to find support that is often difficult to find in domestic provisions<sup>6</sup>. It might be proved by European Court of Justice judgment regarding due diligence defined in Hungarian Act, but having great importance for Polish taxpayers. The provisions of VAT Act directly refer to the necessity of due diligence in acting to have the basis for input tax deduction. In quoted case the authorities decided that from the point of view of Hungarian provisions and binding practice the fact that transactions have been carried out and they were proper, were not sufficient reasons for the taxpayer to exercise his right to deduct VAT<sup>7</sup>. The European Court of Justice has decided that it is acceptable behavior if Member States introduce additional restrictions, but they must be justified by genuinely existing risk of understatement of liabilities or tax avoidance. ECJ has also pointed out that countries may not introduce restrictions of general nature, regarding the right to deduct and solutions that hinder exercising that right. Hindrance might be the fact that the taxpayer may not be able to deduct VAT if he does not meet additional criteria resulting from domestic provisions. In the EJC's view Hungarian

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<sup>3</sup>The Charter is a collection of fundamental human rights passed and signed on 7 of December 2000, during the Nice European Council. Once more with some amendments, signed during Lisbon European Council on 12th of December 2007.

<sup>4</sup>The Code was enacted by European Parliament on 6th of September 2011.

<sup>5</sup>A. Mariański, *Rozstrzygnięcie wątpliwości na korzyść podatnika. Zasada prawa podatkowego*, Wolters Kluwer Polska Sp. z o.o., Warszawa 2011, pp. 29 -31.

<sup>6</sup>T. Michalik, *It is worth knowing the judicial practice of the ECJ* prawo.rp.pl, 29th of August 2012.

<sup>7</sup>The cases concerned two entities: Mahageben company and private entrepreneur. The body's justification for their position was that Mahageben did not check whether its supplier had and whether it could have the goods it was buying. In the second case, the contractor subcontracted construction work in which the authorities decided that he did not provide services himself, but only rewrote invoices issued by another subcontractor.

practice put excessive restrictions as compared to those resulting from the Directive<sup>8</sup>.

As T. Frey claims, essentially except Constitution, the only legal act binding in Poland that is the source of the right to good administrative behavior, is the Act on Civil Service<sup>9</sup>. However, the author points out that this right is also drawn from court decisions (especially decisions of Constitutional Tribunal, Supreme Court and Supreme Administrative Court) and from activities of Ombudsman<sup>10</sup>. The significance of the standard concerning the right to good administrative behavior may be proved by the words of former Ombudsman A. Zoll, who claimed that as long as there is a significant difference between the duty and reality, it is necessary to constantly remind the administration about their duty and making the citizens aware of their rights. In addition, he emphasizes that there are no reasons against recognizing the standards included in the European Code of Good Administrative Behavior as useful in the process of defining duties in Polish administration as well as in the interpretation of substantive and procedural law. It is important for adjusting citizen's daily contact with the office to standards set in the European Union<sup>11</sup>.

In the case of domestic conditions, as statistical data shows, it is always justified. According to data from the Ministry of Finance in 2016 there were numerous irregularities in conducted judicial proceedings. The number of complaints and applications settled totaled 1643. Those mainly concerned incorrect operation of tax and customs authorities (612), complaints about employees (392), irregularities in judicial proceedings (297), untimely settlement of cases (91), irregularities in dealing with complaints and improper work organization (78) and others<sup>12</sup>.

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<sup>8</sup> Ł. Zalewski, VAT: *The office must prove lack of due diligence or bad faith to the taxpayer*, podatki.gazetaprawna.pl, 22nd of October 2012

<sup>9</sup> Act on *Civil Service* of 21st of November 2008, Art.1, Journal of Laws. 2006 No 170 item. 1218 as amended

<sup>10</sup> T. Frey, *State- Citizen relationship and standards of good administration*, The Ombudsman Bulletin No 58, Warsaw, October 2007, p. 11.

<sup>11</sup> J. Świątkiewicz, *European Code of Good Administrative Behavior Text and comments about applying the code in conditions of Polish Administrative procedures*, The Ombudsman Office, Warszawa October 2002, p. 3.

<sup>12</sup> *Report on complaints, applications and citizens' admissions regarding complaints and applications in the Ministry of Finance and organizational units subordinated to the*

At this point it is worth emphasizing that in such countries as: Canada (since 2007), Spain, France, the United States (since 1979), Austria, Germany - there are institutions supervising the tax authorities' observance of taxpayer's rights. In Poland, by December 2012, there was a debate on the legitimacy of establishing such an institution which would be referred to as the Taxpayer's Rights Ombudsman (TRO). It would serve as specialized body responsible for monitoring the functioning of the tax system, and therefore for preventive actions against negative consequences, which burden taxpayers. However, at the meeting of the Public Finance Committee, after considering the draft Taxpayer's Rights Ombudsman Act, it was rejected in 2013. At this point, it should be emphasized that the experience of EU countries and not only, proves the existence of institutions that uphold the tax authorities' observance of taxpayers' rights. From the taxpayer's point of view, it is an irreparable loss.

The role of the courts is therefore brought to checking whether the tax authority has issued a lawful decision or correctly interpreted the provisions. In the case of received individual interpretation of the provisions, the taxpayer has the right to file a complaint because of its unlawfulness. Such an interesting issue emerged when the complaint was examined by the Voivodship Administrative Court for individual interpretation. The appealed interpretation concerned VAT taxation in the case of free distribution of goods for advertising purposes. By way of ruling it was decided that the provisions of Polish Act on VAT are wrongful implementation of EU directive<sup>13</sup>. Therefore in accordance with the right of primacy of EU law they cannot be applied. The court did not agree with the possibility of direct application of the provision of the directive in this matter and ruled that the provision of the Polish law, which incorrectly transposes the provisions of the directive into the national order, is more advantageous for the taxpayer. In this situation, there are no grounds for making a pro-Union interpretation and imposing on the citizen obligations arising from the Directive itself. A positive

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*Minister of Development and Finance in 2016, Program Management and Internal Audit Office, the Ministry of Finance, Warsaw, March 2017, p. 4.*

<sup>13</sup>Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Art. 16 Official Journal of European Council, L 347/1, 11th of December 2006.

aspect is that the law prohibits changing the decision to the appealing party's disadvantage<sup>14</sup>.

To this end, attention should be paid to the case concluded with a final judgment of the Voivodship Administrative Court of 31st August 2011, case reference number I SA / Bk 98/11. In this case tax authorities challenged the taxpayer right to deduct input tax from invoices that were lost as a result of fire. The court, by revoking the challenged decision, expressed the view that invoices documenting input tax must exist on the date of tax settlement because on that day the taxpayer uses his right - reduction of the tax due by the amount of input tax on the purchase of goods and services. Thus, the objective lack of ability to submit all VAT invoices at the stage of subsequent proceedings cannot prejudice the lack of the right to deduct input tax. In this case the court noted that the fact that the taxpayer had invoices before the fire was confirmed in the report on the tax audit. Therefore, the court decided that the actual lack of VAT invoices lost as a result of a fire, if their existence was confirmed by employees of the authorized body, did not deprive the taxpayer of the right to benefit from a reduction in the tax due.<sup>15</sup>

According to statistical data, taxpayers often use the right to challenge a decision to the Voivodship Administrative Court. In 2016, the majority of decisions were made in tax matters. They constituted about 1/3 of all matters settled. The courts granted 21% of them. In the same year, more than 10,000 complaints about acts and activities of tax chambers and tax inspection offices were received. The courts adjudicated by judgment 67% of complaints of which nearly 19% were granted<sup>16</sup>. Data on the number of complaints submitted to the Voivodship Administrative Court are presented in Table 1.

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<sup>14</sup>Supreme Administrative Court in judgment on 27th of July 2012, case reference number II FSK 2608/10, Supreme Administrative Court in judgment on 5th of April 2012, case reference number II FSK 1475/10, Supreme Administrative Court in judgment on 22nd of December 2008, case reference number I FSK 1389/07, Supreme Administrative Court in judgment 17 of May 2012, case reference number II FSK 2114/10.

<sup>15</sup>*Information about administrative courts activities in 2011*, Supreme Administrative Court, Warsaw, 2012, p. 72.

<sup>16</sup>*Information about administrative courts activities in 2016*, Supreme Administrative Court, Warsaw, 2017, pp. 16-17.

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**Table 1. Challenging tax decisions to the Provincial Administrative Court in 2016.**

Specification	Number
Settled complaints on acts and activities of authorities in tax cases	20,559
Including those complaints granted by the court	4,404
Complaints on acts and activities of tax chambers and Treasury Control Offices	10,860
Including those complaints granted by the court	1,366

*Source: Own work based on: Information about administrative courts activities in 2016, Supreme Administrative Court, Warsaw, 2017, pp. 16-17.*

In comparison, in 2013 voivodship administrative courts granted over 30% of complaints about acts and activities of tax chambers and inspectors of fiscal control offices, while in 2012 only 26%<sup>17</sup>. In 2005 - 2010, the average number of complaints filed (included and dismissed) was 12 751. During this period, the Voivodship Administrative Court granted on average about half of the complaints filed by taxpayers<sup>18</sup>.

Identification of appeals against judgments of provincial administrative courts as well as adopting resolutions aimed at clarifying provisions whose application caused discrepancies in the judicature of administrative courts lies with the Supreme Administrative Court's activities<sup>19</sup>. One of the unprecedented judgments issued by this court was the verdict on VAT fraud. The method used to reduce the tax burden is carried out within the so-called tax carousel in intra-Community transactions. Entities are often unknowingly involved in this type of crime. In many cases, tax authorities refuse taxpayers the right to deduct VAT, even to those who have acted with due diligence and checked their contractors but could not recognize that they are involved in a crime. The ECJ found that if the taxpayer did not commit an offense and carried out the transaction in accordance with national and EU VAT regulations, unfair actions of the contractors should have no impact on his situation. Hence the Supreme Administrative Court while implementing EU

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<sup>17</sup>*Information about administrative courts activities in 2014*, Supreme Administrative Court, Warsaw, 2015, p. 41.

<sup>18</sup> Ł. Zalewski, *Tax office wins in court with the taxpayers*, [www.podatki.gazetaprawna.pl](http://www.podatki.gazetaprawna.pl), 24th of January 2012

<sup>19</sup> Act of 30 of August 2002, *Law on proceedings before administrative courts*, Art. 15, par.1, Journal of Laws 2002 No. 153, item. 1270 as amended).

practice and in its decision ruled that tax body did not prove the taxpayer that in his contact with contractors he did not exercise due diligence. Therefore, he may not be punished for the contractors acting dishonestly<sup>20</sup>.

More and more often court proceedings do not end at the level of the Voivodship Administrative Court. Taxpayers have the right to lodge cassation appeal to decision or ruling issued by the Voivodship Administrative Court. In 2016 the number of cassation appeals lodged to the Supreme Administrative Court increased significantly. Most often they concerned taxes and other cash considerations to which the provisions of Tax Ordinance Act apply (36%)<sup>21</sup>. Data concerning cassation appeals was presented in Table 2.

**Table 2. Cassation appeals to the Supreme Administrative Court in 2010 and 2016.**

Specification	2010	2016
Number of cassation appeals lodged	4,386	18,847
The share of dismissed cassation complaints in the total number of cassation appeals	66%	67%

*Source: Own work based on: Information about administrative courts activities in 2010, The Supreme Administrative Court, Warsaw, 2011, p. 31. Information about administrative courts activities in 2016, The Supreme Administrative Court, Warsaw, 2017, pp. 16-17, 372.*

In 2010 taxpayers and tax bodies lodged almost 4400 cassation appeals to the Financial Chamber of the Supreme Administrative Court which deals with the control of judgments in tax matters. In both years about 70 % of cassation appeals were dismissed by the Supreme Administrative Court which means that the decisions of the Voivodship Administrative Courts were correct and binding.

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<sup>20</sup> Similarly was ruled by the Court of Justice in its judgment of June 21, 2012, in matters related to C-80/11 and C-142/11, [www.ekonomicznie.nowyekran.pl](http://www.ekonomicznie.nowyekran.pl), 24 July 2012, [www.forbes.pl](http://www.forbes.pl), 2/07/2012.C-80/11 i C-142/11, [www.ekonomicznie.nowyekran.pl](http://www.ekonomicznie.nowyekran.pl), 24 July 2012, [www.forbes.pl](http://www.forbes.pl), 2.07.2012.  
*Information about administrative courts activities in 2016*, Supreme Administrative Court, Warsaw, 2017, p. 21.

### **3. The principle of trust as the expression of the superiority of taxpayer protection**

As L. P. Feld and B. S. Frey claim nowadays, the tax ratio is identified with the type of tax agreement which takes the form of a hidden engagement or psychological contract. The duration of this type of agreement requires specific behavior of both parties. In this context, the appropriate standards arise from civil law<sup>22</sup>. As tax law remains in close connection with it, it allows to mention a rule which "Contracting parties may establish a legal relationship in such a way that it did not oppose the principles of social coexistence already mentioned<sup>23</sup>. This determines the minimum of accepted principles of correctness and honesty in mutual relations.

In case of domestic law, the issue of taxpayers' legal safety results directly from the Constitution<sup>24</sup>. Whereas the rules mentioned In Tax Ordinance Act are only the reflection of those defined in Code of Administrative Proceedings. There was no complete transformation of the provisions which resulted in omission of the principle of considering the public interest and citizen's legitimate interest<sup>25</sup>. Judicial practice of administrative courts shows that significant legal consequences may result from that principle if tax body issues a decision based on administrative recognition. Some people recognize that the principle of trust referred to in the Tax Ordinance Act is an expression of the superiority of taxpayer protection over the fiscal interest of the state<sup>26</sup>. It

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<sup>22</sup> L. P. Feld, B. S. Frey, *Trust Breeds Trust: How Taxpayers Are Treated*, Institute for Empirical Research in Economics University of Zurich, Working Paper No. 98, January 2002, p. 6.

<sup>23</sup> Act of 23 of April 1964 Civil Code Art. 3531, Journal of Laws 1964 No 16 item 93 as amended.

<sup>24</sup> One of the basic principles defining relations between a citizen and a state is the principle of protection of the citizen's trust in the state and the law they enact. These principles are based on the principle of legal certainty which in the judicial practice of the Constitutional Tribunal means a set of legal features that ensure the unit's legal safety. Speech by dr J. Kochanowski, Ombudsman, Scientific conference "The language of Polish legislation, or the understanding of the message and the application of law" p. 1, [www.rpo.gov.pl](http://www.rpo.gov.pl).

<sup>25</sup> A. Mariański, *Rozstrzygnięcie wątpliwości na korzyść podatnika. Zasada prawa podatkowego*, Wolters Kluwer Polska Sp. z o.o., Warszawa 2011, p. 53.

<sup>26</sup> Polański P, *Tax proceedings*, [www.gazetaprawna.pl/encyklopedia](http://www.gazetaprawna.pl/encyklopedia), 13th of January 2013.

is only when we interpret the Constitution that convinces us that we deal with two basic principles conflict. The principle that prohibits imposing tax obligations on the taxpayer in a different way than based on statutory regulation and the principle that is a kind of counterbalance to the first, i.e. protection of fiscal interests of the state - its consequence is the prohibition of granting reliefs, exemptions and remissions without explicit statutory authorization<sup>27</sup>. It is from the principle of democratic state of law that the Constitutional Tribunal derived a number of values having great significance for proper shaping state-unit relationship, especially with regard to tax law. What results from it is the principle of citizen's trust to state and the established law. T. Frey acknowledges that the state has no right of existence if the citizens do not trust it. The law and law-abidance are the factors building the trust between the state bodies and the citizens<sup>28</sup>. P. Łukasiak emphasizes that in this case very significant are good office practice and tax bodies code of ethics<sup>29</sup>.

Abiding the principle of trust should be prioritized by tax administrative bodies. It results from the fact that it is in close connection with every other general principle included in Tax Ordinance Act. Violation of any of them clearly is the violence of the trust principle.

#### **4. Standards applied by the countries in the field of taxpayer's rights**

According to OECD fundamental role of information concerning taxpayer's rights is to improve the relation between the state and the taxpayer<sup>30</sup>. The numerous OECD publications, as well as the European Commission, determine the importance of regulating the rights and obligations of the taxpayer<sup>31</sup>. The International Monetary Fund or the

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<sup>27</sup> *The Constitution* Art. 217 and Sz. Gajda, *Tax law provisions interpretation*, www.bgst.pl,

<sup>28</sup> T. Frey, *State-citizen relationship and standards of good administration*, The Ombudsman Bulletin No 58, The Ombudsman Office Warsaw, 2007, p. 85.

<sup>29</sup> P. Łukasiak, *The principle of a democratic state of law in tax law in the light of the judicial practice of the Constitutional Tribunal*, Gdańsk University, www.knpf.ug.edu.pl, 06.05.2013, p. 7.

<sup>30</sup> *Taxpayers' rights and obligations. A survey of the legal situation in OECD countries*, OECD's Committee of Fiscal Affairs, Working Party Number 8, OECD, 1990, p. 3.

<sup>31</sup> OECD published sequentially: 1990 - *Taxpayers' rights and obligations. A survey of the legal situation in OECD countries*; 2003 - *Taxpayers' Rights and Obligations - Practice note*; 2008 - *Tax Intermediaries study dealing with the role of tax advisers*; 2013 - *Cooperative Compliance report*. European Commission publications: 2012 -

World Bank are also involved in the activities. The studies of western literature show that in many countries different forms of informing taxpayers about their rights and obligations are used. The dominant role has so-called Charter of Taxpayer Rights constituting the catalogue of rights and obligations. The first charter of taxpayer rights was drafted in the United States. The following countries also introduced it into their system sequentially: France in 1975, Great Britain in 1986, Germany in 1919. In Australia, the Charter was created in 1997. It lists 13 rights and 6 obligations of taxpayers. Among them, one can find the right of the taxpayer to expect that he will be treated as honest unless he violated the law. In addition, the taxpayer can be represented by any person he or she appoints and the information about him or her is secret. It is indicated that taxpayers should be honest and truthful and that declarations are properly prepared based on collected documents. The Charter indicates that the tax authorities are obliged to presume the taxpayer's truthfulness and accept the position that the taxpayer is trying to honestly fulfill all tax obligations. What is more, the role of the authorities is to be reduced to supporting them in this regard<sup>32</sup>. In the OECD 2004 report, it can be read that the fiscal authorities of the countries are paying attention that the taxpayers' rights card is widely available. It is recognized that respecting it depends on the ability to read and understand it<sup>33</sup>.

In Poland, so far so-called Charter of Taxpayer Rights does not function similarly to the mentioned examples. It seems that such a tool would be beneficial solution for taxpayers if the access to the charter was easy. That means the access in electronic form as well as on paper. Currently the taxpayers are informed about their rights and duties via e.g. The Ministry of Finance website.

The rights of taxpayers are also listed in *Tax Ordinance Act* as of 29th August 1997. The first of them is the right to personal data protection. Information included in income statements or any other documents filed to tax authorities or resulting from tax matters files, are subject to fiscal secrecy.

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“Action plan against tax fraud and evasion: idea of „An EU Taxpayer’s Code “; 2014 - Publication of EU Taxpayer’s Code.

<sup>32</sup> A. Mariański, *Rozstrzygnięcie wątpliwości na korzyść podatnika. Zasada prawa podatkowego*, Wolters Kluwer Polska Sp. z o.o., Warszawa 2011, p. 98.

<sup>33</sup>E. Matyszewska, *Taxpayer’s rights protection in Poland and the European Union*, Dziennik Gazeta Prawna, No 106, part. B2, 2nd of June 2008.

Taxpayers have the right to claim reimbursement of overpaid tax. The law also provides for the existence of so-called reliefs in tax liabilities payment. And so, taxpayer may apply to the tax authority to exempt the payer (employer, Social Insurance Institution) from the obligation to collect tax. It is also possible to limit the collection of advances for tax or postponing the date of payment of tax or payment of tax arrears with interest for late payment. One of the most beneficial solutions is possibility to pay tax or tax arrears with interest for late payment or amortization in whole or in part of tax arrears, interest for late payment or a prolongation fee. The taxpayer also has the right to request a certificate, e.g. clearance certificate and settling the matter on time. The tax authority is obliged to notify the taxpayer, specify the reasons for not meeting the deadline and indicate a new one. In addition, the taxpayer in this case has the right to submit request for urgent consideration to the higher-level tax authority or to the Head of the NRA, if the matter has not been settled by the Director of the Fiscal Administration Chamber.

The taxpayer has the right to be notified of the intention to initiate tax control. The authorization to carry out the tax inspection includes an instruction on basic rights and obligations during the inspection.

It should be emphasized that the taxpayer has the right to appoint a representative who will sign declarations on his behalf and take active part in tax proceedings. During the tax proceedings, the taxpayer has the right to inspect the case files and make notes, copies or excerpts from them. He might also request to certify excerpts or case file copies or issuing from case files certified excerpts as well as he might request a comment on evidence collected in the case. The proceedings end with the issuance of a decision that determines the merit of the case. As tax proceedings are two-tier. Decision issued in first instance may be appealed. Upon a justified taxpayer's request, the appeal body may conduct a hearing on which the taxpayer may submit explanations, make requests, proposals and allegations, and provide evidence. The decision issued by the tax authority may be final and not final. When the tax decision is final, the taxpayer has the right to appeal to the tax authority to challenge the decision in the form of, for example, the resumption of the proceedings, declaring it invalid.

It is procedure of democratic state that the right to challenge the decision or ruling issued by first instance authorities emerges from. The Constitution of the Republic of Poland included it in citizen's rights and

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Tax Ordinance Act introduced the principle of two-tier to tax proceedings. Lodging an appeal results in deciding on the case again by the higher instance authority. The provisions of Tax Ordinance Act also provide that if the taxpayer fails to comply with the procedural time limit specified for carrying out actions, for example to appeal or complaint, he/she has the right to apply to the competent tax authority for reinstatement. This is called the right to procedural term reinstatement.

It is worth noting that under the right to claim reimbursement of costs, at the taxpayer's request, the tax authority is obliged to reimburse such costs if the proceedings were initiated *ex officio* or when the person was wrongly summoned.

The indicated rights do not constitute a closed set. Taxpayers have the possibility to make use of so-called the right of assistance which gives entities, in difficult financial conditions, the opportunity to defend their rights before an administrative court, for example without incurring costs of proceedings and attending legal representative<sup>34</sup>.

The interpretation of tax provisions plays invaluable role in their interpretation. From the point of view of the taxpayer, the protective value of the interpretation is important, because by anticipating his actions the taxpayer spreads or, at best, eliminates the tax risk.

Explanations may take the form of individual as well as general interpretation. The first one is addressed to specific applicants who, on their own initiative, ask for issuance of interpretation. Such a solution protects the taxpayer against another decision of the body that controls the entity's tax settlements. The issued interpretation is not binding for the taxpayer, which means that he can apply to it, but there is no obligation to do so. Compliance with given interpretation cannot be harmful to the taxpayer<sup>35</sup>. It seems that accepted construction is very beneficial for the taxpayer. It does not allow the authorities to ignore taxpayers position resulting from the interpretation issued by tax authority. Differences resulting from issued individual interpretations (i.e. the same facts described in the application have been interpreted in various ways) may be corrected by general explanations<sup>36</sup>. As it results

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<sup>34</sup> Act of 30 August 2002 Law on proceedings before administrative courts, chapter 3, Journal of Law No. 153, item 1270 amended.

<sup>35</sup> [www.podatki.egospodarka.pl](http://www.podatki.egospodarka.pl), 7th of June 2011.

<sup>36</sup> The Act of 16th September 2011 on the reduction of certain obligations of citizens and entrepreneurs Art 9 (Journal of Laws No 232, item 1378).

from the essence of general interpretation it is addressed to all taxpayers and aims to unify the application of tax law. At this point new solution, which is tax explanation, should be indicated. Pursuant to the amended Tax Ordinance Act, taxpayers may use explanations issued by the minister competent for public finances. In this case a fee is collected. What is important taxpayers' use of tax explanations is treated as compliance with the issued interpretation.

### **Conclusions**

It cannot be denied that the taxpayer's trust in the tax authority, which is strongly embedded in the realities of the system, may support the implementation of the fiscal objective, thus constituting the strength of the state and its effectiveness. However, it must be noticed that on one hand provisions of law strongly interfere in the rights of the individual, and on the other hand, it is essence of public law that the responsibility of the state for the protection of taxpayers stems from. The literature emphasizes that the activation of the mechanism of legal protection in public law is on the state's initiative. Hence, tax law, preferring the public interest, should result in increased taxpayer's protection. In democratic countries advanced works on taxpayer protection acting as party in the administrative proceeding might be observed, because such increased need is observed on the basis of tax law.<sup>37</sup>

In the current legal and tax system in Poland, some weaknesses can be noticed. Weaknesses which put into question the real concern of public authorities for the taxpayer's rights. In must be indicated among other that the taxpayer's presumption of innocence results very poorly from the provisions of the Tax Ordinance Act. Moreover, the same act of law lists general rules of tax proceedings. Unfortunately, there are no rules which would apply to the whole branch of law. It seems important not to limit the need to keep the trust only in relation to the participants of given proceedings. The principle of trust results directly from the provisions of law. And the taxpayers have no real sense that they are treated by the authorities with trust.

It should also be noted that taxpayers are informed about their rights through the relevant act or website. So far, the fiscal authorities have not

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<sup>37</sup> A. Mariański, *Rozstrzygnięcie wątpliwości na korzyść podatnika. Zasada prawa podatkowego*, Wolters Kluwer Polska Sp. z o.o., Warszawa 2011, pp. 20 - 33.

decided to introduce the Charter of Taxpayer Rights into the system. While, a dozen or so years ago, special brochures about this subject were published. And easy access to information on the taxpayer's rights is one of the aims of the foreign fiscal policy.

The basic objection is, however, insufficient level of transparency of the tax policy in the aspect of informing taxpayers about the strategy implemented by the fiscal authorities. Taxpayers should be certain about the state interest which is in fact taxpayer's rights protection.

In the European system, for a long time, we have been working on creating a model within which the official conducting the administrative proceedings and the client are partners. In addition, it might be observed that there is a tendency for the public administration to fulfill the service function of the citizen. Also in Poland the changes are proceeding in the same direction. Regarding the role of public administration in relation to its clients, the before mentioned term "service" is often used.<sup>38</sup> In pursuit of guaranteeing appropriate rights to taxpayers and increasing their sense of safety fiscal authorities established General Taxation Law Codification Committee<sup>39</sup> Its main task is to prepare new act draft which is to replace current Tax Ordinance Act.

For the last two years the members of the Committee have been working on draft of general tax law act. Announced transfer of the draft act to the Ministry of Finance in near future seem to be the fact. It is symbolic that created draft coincides with twenty-year period of validity of Tax Ordinance Act in its current form. It may be assumed that changes introduced to the draft influence taxpayer-tax authority relation in a significant and beneficial way.

### **Legal acts**

[1.] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Art. 16 Official Journal of European Council, L 347/1, 11th of December 2006.

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<sup>38</sup>It is the result of Act on Civil Service enacted on 18th of December 1998 (Journal of Laws 1999, No 49, item 483, as amended).

<sup>39</sup> The Committee was established pursuant to Regulation of Council of Ministers from 21st of October 2014 on the establishment, organization and mode of operation of the General Taxation Law Codification Committee, Journal of Laws 2014 item 1471.

- [2.] The Constitution of 2nd of April 1997 Journal of Laws of 1997 No 78, item 483.
- [3.] The Act of 16 September 2011 on the reduction of certain obligations of citizens and entrepreneurs Art 9 (Journal of Laws No 232, item 1378).
- [4.] Act on Civil Service (Journal of Laws 1999, No 49, item 483, as amended).
- [5.] Act of 30th of August 2002, Law on proceedings before administrative courts, Art. 15, par.1, Journal of Laws 2002 No 153, item. 1270 as amended).
- [6.] The rights of taxpayers are also listed in Tax Ordinance Act as of 29th August 1997.
- [7.] Act of 30th of August 2002, Law on proceedings before administrative courts, chapter 3, Journal of Law No 153, item. 1270 as amended).
- [8.] Act of 23rd of April 1964 Civil Code Art. 3531, Journal of Laws 1964 No 16 item 93 as amended.
- [9.] Act on Civil Service of 21st of November 2008, Art.1, Journal of Laws. 2006 No 170 item. 1218 as amended.
- [10.] Regulation of Council of Ministers from 21st of October 2014 on the establishment, organization and mode of operation of the General Taxation Law Codification Committee, Journal of Laws 2014 item 1471.

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