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TAX CODE OF UKRAINE: TERMINOLOGICAL PROBLEMS AND JUDICIAL PRACTICE

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THE SCIENTIFIC ACTIVITY OF THE FACULTY OF LAW AT THE UNIVERSITY OF BIAŁYSTOK ASSOCIATED WITH THE COUNTRY OF CENTRAL AND EASTERN EUROPE

ISSN 1899-5942

no. 10

XV INTERNATIONAL SCIENTIFIC CONFERENCE
"CONCEPTS OF TAX CODES. THE FIFTEENTH ANNIVERSARY
OF THE CENTER'S ACTIVITY"
(25-27 September 2016, Białystok, Poland)

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Print www.druk-24h.com.pl

Edition 250 copies

Publisher by
The Center for Information and Research Organization in Public Finance and Tax Law of Central and Eastern European Countries, the Faculty of Law, the University of Białystok

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Introduction

It is a great pleasure to introduce you to the new issue of the Annual Center Review. The Annual Center Review, as a joint project of the Association Center for Information and Research Organisation in Public Finance and Tax Law in the Countries of Central and Eastern Europe, as well as the Faculty of Law at the University of Bialystok, will present academic accomplishments of the Association Center and the Faculty in the area of research on the issues concerning finances of the countries in this part of Europe. It is essential that our Review promotes texts of doctors and doctoral students besides the elaborations of experienced researchers.

In the 10th ACR issue we continue the discussion started during the 15th Jubilee Conference of the Center on "Concepts of Tax Codes. The Fifteenth Anniversary of the Center's Activity", which took place on 25-27 September 2016 in Białystok. The first two articles analyse legal solutions concerning codification of Russian and Ukrainian tax law. The following article entitled "Habilitation in Slovakia and the Problem of its Nostrification in Poland" regards current, significant issue of research activity referring at the same time to the discussion started at the conference as well as to the series of articles concerning publications and international scientific cooperation published in the previous ACR issue.

Another interesting article is entitled "The Role of the State in Creating Voluntary Retirements Savings" presenting Polish solutions regarding voluntary individual and group retirement savings within the whole retirement system as well as changes in the system proposed by the state. This article refers to the problems raised during 16th International Conference of the "Center" on "The Optimization of Organization and Legal Solutions Concerning Public Revenues and Expenditures in Social Interest" held on 21-22 September in Vilnius.

Presenting current problems of the broadly understood area of public finances and tax law in the Central and Eastern European Countries, in this issue we publish elaboration of Authors from such countries as the Czech Republic and Russia.

The authors consider some issues related to bankruptcy law enforcement in Russia, recovery of the entity's (bank) soundness and repayment ability, promotion of business activity, as well as the terms of challenging queer transactions consummated by the banks in bankruptcy proceedings. Based on the analysis of accumulated arbitration courts practice the Authors reveal the peculiarities of challenging queer transactions in accordance with the existing bankruptcy legislation and explain legal ideas of ensuring financial stabilization.

In this issue we also present problems connected with the Czech legislation on implementing new regulations concerning fiscal control of the funds co-financed from the EU budget.

The goal of the next article is to confirm or disprove the hypothesis, whether: "The tax administrators are allowed to use the instruments of evidence which are gained by applying anti-tax fraud methods along with measures of anti-money laundering and counter-terrorism financing only according to the procedural rules of the specific procedure and to the EU data protection rules."

The last article presents problems and a proposal of a new legal solution connected with supporting Czech communes with income tax.

In Annual Center Review we also publish information about current initiatives taken by the Center and the Faculty of Law at the University of Bialystok. In this issue we present two reports from international conferences co-organised by the Center. The first report concerns the conference organised by the Faculty of Law at the University of Bialystok and the Center entitled "Concepts of Tax Codes. The Fifteenth Anniversary of the Center's Activity". The second report is from the 15th International Conference organised by the Faculty of Economics-Informatics Branch of the University of Bialystok in Vilnius in cooperation with the Department of Public Finances and Financial Law as well as with the Department of Tax Law with the participation of the Center entitled "The Optimization of Organization and Legal Solutions Concerning Public Revenues and Expenditures in Social Interest".

In this issue we also publish accomplishments of the Student Finance Law Club affiliated to the Faculty of Law at the University of Bialystok which initiated the conference "Financial Institutions as a Workplace for Lawyers" as well as initiatives taken by the employees of the Faculty of Law regarding cooperation with the Countries of Central and Eastern Europe.

It is my great pleasure to inform you that we have launched a webpage of the Annual Center Review www.ciob.pl, subpage: ACR, where all the information from the Editorial Board as well as subsequent issues of the journal will be published. I invite you to become familiar with the editorial requirements which will be strictly obeyed in the subsequent issues as well as to send in research papers in English or Russian. Looking forward to fruitful cooperation, I wish you a pleasant reading.

Ewa Lotko

DOI: 10.15290/acr.2017.10.01

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TAX CODE OF THE RUSSIAN FEDERATION AS A LEGAL FORM OF ENSURING NATIONAL TAX SECURITY

Abstract

Codified legislative acts (Tax Code of Russian Federation, the Russian Code of Administrative Offences, Criminal Code) play a special role in ensuring tax security among other ordinary laws, because they are designed systematically to organize the groups of public relations developing with the participation of taxpayers and representatives of public authorities. That is exactly why codified acts can most effectively resolve the most complex and serious threats to security in the tax sphere. This article presents solutions for the Russian tax law codification.

Key words

Tax code; national tax security; public governance

Introduction

National tax security can be described as a situation of the state when the amount of collected taxes corresponds to the number of planned tax revenues taking into account the need for full funding of all functions and tasks of the state and municipalities both in the current period and in the future [Kostukov, Maslov 2015, p. 119].

Such situation could be achieved only by systematic and continuous work of all participants of public relations.

Provision for tax security may be implemented by using a range of methods and various forms.

The theory of legal forms of administrative activities was developed greatly in the science of administrative law and public administration [Atamanchuk 2006; Lunev 1977; Tikhomirov 1987]. Such forms are traditionally divided into legal (the edition of the normative and individual legal acts, the performance of legally significant actions) [Alekhin, Kozlov 1994, pp. 178-180] and non-legal forms (the implementation of organizational activities and logistical operations) [Starilov 2007, p. 336].

If we consider public governance in a broad sense as a regulating effect of all public authorities in the spheres of public life [Starilov 2002, p. 118], we must recognize that the implementation of such administration in legal forms is a legal provision itself.

Constitutional and ordinary laws (and the Constitution, of course) are the most significant among the legal forms of governance (taken in the broad sense), because rules for social life, which are set in such laws, have supreme legal force.

Codified legislative acts (Tax Code of Russian Federation, the Russian Code of Administrative Offences, Criminal Code) play a special role in ensuring tax security among other ordinary laws, because they are designed systematically to organize the groups of public relations developing with the participation of taxpayers and representatives of public authorities. That is exactly why codified acts can most effectively resolve the most complex and serious threats to the security in the tax sphere.

Main part

The threat to the security is usually understood as "an event or set of events that directly affect the existence of the subject and are able to entail the termination of this existence or significantly impair it" [Guskov, Reznik 2013, p. 86]. Meanwhile, not only events (facts that do not depend on the will of the people), but also the actions of specific actors can significantly worsen the conditions of tax revenue.

Threats to tax security can be divided, depending on the participation of certain actors, into:

A) those, which come from taxpayers and other participants of legal relations, not possessing imperious powers;
B) those, which are made by the tax administration and other public authorities;
C) those, which are made by the authorities of foreign states and international organizations.

Threats of the first group include tax evasion in all its forms (starting from the deliberate perpetration of tax crimes to technical errors due to incorrect understanding of the legislative requirements), as well as facilitating evasion or resistance.

Second group of threats may be divided into the threats of legislative and law enforcement nature. Legislative threats are the arbitrary imposition of excessive tax burden and administrative barriers for entrepreneurial activities, a difficult form of presentation of the law-making requirements, omissions and conflicting nature of the law. Law enforcement threats are arbitrary tax administration with the aim of achieving a planned management performance by deliberate disregard of the requirements of the law or the use of defects of its legal technique, the corruption offenses.

Threats of the third group can be divided into the decisions of supranational institutions whose member the State is, the actions and decisions of other states. Tax competition may contribute to the improvement of the tax system of the competing states, but when it is associated with the benefits of an administrative nature (in particular, the concealment of information on the beneficiaries of the business) it poses a serious challenge to the sovereignty and security of other countries.

Focus on the most consistent threats to the national tax security can be traced in the Tax code of the Russian Federation, because this legislative act is aimed at systematical regulation of the relationships arising solely in the field of taxation.

The adoption of the two parts of the Tax code of the Russian Federation in the late 1990s – early 2000-ies cannot be assessed otherwise as a revolution in the regulation of relations arising in the sphere of taxation. This assessment is due to the following characteristics of the Tax code of the Russian Federation:

– it firstly established tax principles, tailored to verified legal positions of the constitutional Court of the Russian Federation and aimed at protecting the rights of taxpayers to use entrepreneurship freely. The principles of interpretation of all unremovable doubts, contradictions and ambiguities of law in favor of the taxpayer ("in dubio pro reo") are particularly important in law enforcement;
– the Code limited subordinate rule-making, rule-making of subjects of Federation and municipal entities in the tax area, which previously led to uncontrolled weighting of the tax burden;
– the Code has streamlined the rights and obligations of taxpayers and tax administration in procedural relations;
– economically reasonable elements of specific taxes were fixed in the Code (for example, proportional tax rate on income tax for individuals; an open list of deductible expenses for tax on profit for organizations).

The tax code continues to respond adequately to emerging challenges in many aspects. So, concise rules of Article 40 (that allowed taxpayers to abolish any tax claim to the prices for formal reasons), were replaced by the specialized section V. 1, consisting of twenty five articles, to minimize the danger of tax evasion through transfer pricing.

The consolidation in 2017 of the rules of collection of insurance fees to state extra-budgetary funds, which are mandatory public law payments, of the Tax code of the Russian Federation should be evaluated positively in the context of increasing the efficiency of the administration. The rules previously established in the Federal Law of 24.07.2009, № 212-FZ for the most part (especially in the procedural part) retold the provisions of the Tax Code of the Russian Federation. However, this retelling contained gaps and contradictions, worsening the rights of taxpayers and promoting tax evasion. For example, the rules of granting the deferment of insurance fee payment was adopted in the Law No. 212-FZ only after five (sic!) years after adoption of this law. We believe that the transfer of similar features for administering the collection of insurance fees and taxes under a unified authority will not only streamline administration, but will make various aspects of performance of the obligation to pay fees more clear and convenient for taxpayers.

From the point of view of reducing the threat of excessive administrative pressure on taxpayers we should positively evaluate the changes introduced by the federal law of 1.05.2016 in paragraph 2 of the Article 93 of the Russian Tax Code, which allowed to provide scanned copies of documents to tax authorities.

Streamlining the rules of electronic document flow in the Tax Code of the Russian Federation also increases the efficiency of tax authorities to counter the threat of tax evasion by computerized analysis of indicators of taxpayers economic activity and automated detection of tax offences.

However, the Tax Code is not without drawbacks, which discourage effective neutralization of threats to the national tax security.

A number of legal principles of taxation developed in the jurisprudence should be urgently fixed in the Tax Code of the Russian Federation, because it is the most obligatory and stable legal act. It is, first and foremost, actual for the principle of inadmissibility of the abuse of right in tax relations (unjustified tax benefit). This principle is quite elaborated in the judicial practice, but because of variability of the practice it may cause legal uncertainty to taxpayers. For example, even the explanations of the Plenum of the Supreme Court of the Russian Federation change its meaning by interpretation in subsequent decisions of the Court.

Frequent and chaotic changes to the Tax Code of the Russian Federation create unconditional ground for violations (primarily unintentional) of tax rules. Changes in the first part of the Tax Code of the Russian Federation have been made by 103 Federal Laws over 18 years of its existence. If taken into account the duration of the tax period for the main taxes and the rule setting that changes come in force from the beginning of the new tax period, it would be prudent to fix a rule about the inadmissibility of making the text changes by more than one Federal law during a quarter. Such innovation would contribute to the streamlining of the rulemaking, and to facilitating the execution of the changing rules by participants of tax relations.

Conclusion

The legal nature of responsibility measures stipulated by the Tax Code of the Russian Federation is disputable. We believe that offences described in the Tax Code (according to the elements of their composition and degree of public danger) and punishment (according to degree of severity) do not differ significantly from those embodied in Chapter 15 of the Russian Code of Administrative Offences, and the duplication of norms only complicates their correct application and leads to conflicts. For example, one-year statute of limitation of administrative responsibility for violation of legislation on taxes and fees, established in the Art 4.5 of the Russian Code of Administrative Offences, does not take into account the three-year period of coverage of a field tax audit. This situation often leads to the impossibility of imposing administrative sanctions on the offenders. Consolidation of rules of all the offences in tax sphere in a separate Chapter of the Russian Code of Administrative Offences would more effectively counteract the threat of tax evasion due to the synergistic effect.

Thus, the Tax Code is the key legal form of ensuring national tax security. However, the provisions of the code require not conceptual, but a tactical improvement in order to counteract emerging threats to national tax security more effectively.

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DOI: 10.15290/acr.2017.10.02

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TAX CODE OF UKRAINE: TERMINOLOGICAL PROBLEMS AND JUDICIAL PRACTICE

Abstract

The article presents Ukrainian solutions regarding the introduction of the Tax Code. The Tax Code of Ukraine is a progressive instrument of the national economic development that reflects measures for decreasing the tax burden on taxpayers (decreasing the profit tax rate), stimulating capital renewals (an introduction of the accelerated depreciation), and providing special investment incentives. This document stipulates the improved conditions for doing business: the reduction of the activities that require licenses, the decrease of licensing periods and tax benefits related to the reduction of rates. The purpose of the article is to presents terminological problems and judicial practice of the adoption of the Tax Code.

Key words

Tax code; judicial practice; terminological problems

Introduction

Adopted in 2010, the Tax Code of Ukraine (hereinafter – the TC of Ukraine) came into force in 2011. It regulates the relations arising from the collection of taxes and charges. In particular, it determines an exhaustive list of the taxes and charges levied in Ukraine and the procedure of their administration, as well as tax and levy payers, their rights and duties, competence of regulatory bodies, the powers and duties of their officials during tax control, and liability for the violation of the tax legislation. This Code defines functions and creates a legal framework of the regulatory bodies' activities.

Main part

The Tax Code of Ukraine is a progressive instrument of the national economic development that reflects measures for decreasing the tax burden on taxpayers (decreasing the profit tax rate), stimulating capital renewals (an introduction of the accelerated depreciation), and providing special investment incentives. This document stipulates the improved conditions for doing business: the reduction of the activities that require licenses, the decrease of licensing periods and the tax benefits related to the reduction of rates [Shevchenko 2014, p. 11].

The positive points of the adoption of the TC of Ukraine are as follows:

- the reduction of a number of tax laws (the laws handling matters of certain taxes have become ineffective);
- the reduction of the number of taxes and charges by abolishing those whose administration expenses have exceed their income (although, we disclose below the reverse side of such reduction and ineffectiveness);
- the unification of the terminology used for collection of all existing taxes (but this unification has gone beyond certain limits, we examine below the terminological problems of the TC of Ukraine);
- the attempt to unite the tax registration and accounting standards by terminology (but soon it has become clear that the TC of Ukraine is unable to cover the full accounting terminology and now Ukraine carries out further development and practical implementation of the International Financial Reporting Standards (IFRS) in parallel with the statutes of the tax law;
- the expansion of opportunities for tax reporting in electronic format. Today, the following national taxes (corporate income tax; individual income tax; VAT; excise tax; ecological tax; rent tax for the transportation of oil and petroleum products by petroleum pipelines and main product pipelines, and for the transit of natural gas and ammonia by pipelines across Ukraine; rent tax for oil, natural gas and gas

condensate produced in Ukraine; extraction tax; land tax; flat agricultural tax), national charges (charge for the first registration of a vehicle; charge for the use of Ukrainian radio frequency resource; charge for the special use of water; charge for the special use of forest resources; charge for the development of wine, fruit and hop growing; additional levy to the current tariff rate for electricity and heat, except the electric power produced by special co-generation plants; additional levy to the current tariff rate for natural gas provided for consumers of all forms of ownership), local taxes (tax for immovable property, other than land plot; single tax; single tax for entrepreneurs-natural persons), and local charges (charge for parking space; tourist charge) can be reported in electronic format.

The statement is veracious asserting that 'despite the fact that the TC of Ukraine, with all its changes and improvements, affects positively the country development, its impact is not so great. The biggest problem here is not so much the Code as its sustainable violation and flouting in practice, disregard for strong rule of the law, and government corruption. Today this is a frequent occurrence when the tax authorities interpret the statutes of the law in different ways. In addition, the internal (informal) tax rules and interpretations are contrary not only to the Tax Code, but to each other as well' [Shevchenko 2014, p. 11].

The effective TC of Ukraine is highly controversial. Professor Kucheriavenko [2014, pp. 7-10] has generalized those contradictions. Based on his views and our own thoughts, we have indicated the following problems of the TC of Ukraine.

Induced reduction of the number of the national taxes and charges (from 30 to 19, and later to 8). Before the TC of Ukraine was adopted, the Taxation System Act of Ukraine of 25.06.1991 was in force including 29 national taxes and charges (obligatory payments), and a single tax for small business was imposed by the Decree of the President of Ukraine "On simplified system of small business taxation, accounting and reporting" of 3.07.1998, No. 727/98. Scientists rightly emphasize that the fact that the single tax for small business is not a part of taxes, charges, and obligatory payments listed in the Taxation System Act of Ukraine results from legislative negligence [Lysenkov 2010; Ped 2009, p. 416].

First, the TC of Ukraine included 18 national taxes and charges. In 2012 and 2014, the number of the national taxes and charges was amended to 7, and in December 2014, a military charge was imposed. So, in general, 8 national taxes and charges are levied today in Ukraine: corporate income tax; individual income tax; value added tax (hereinafter – VAT); excise tax; ecological tax; rent tax; custom duties; military charge.

Obviously, the adoption of the TC of Ukraine is aimed at eliminating either inefficient taxes and charges that do not provide a notable income (the fishery tax; the levy from dog-owners) or those ones which cannot be imposed throughout Ukraine (the resort levy; the joint fee levied at the checkpoint on the state border of Ukraine, etc.). At the same time, 'in parallel with such a "cosmetic" reduction of tax payments, new taxes have been introduced (the tax for immovable property, other than land plot). Also, the tax base has been expanded on many taxes, and tax exemptions have been reduced [Kucheriavenko 2014, p. 8].

Problems of term definitions (Art. 14 of the TC of Ukraine). The article is one of the most important components of any regulatory legal act that defines its concept (glossary) and is one of the problems in the TC of Ukraine. In the amended TC of Ukraine as of April 2016, the Article 14 "Term definitions" contains the definitions of 280 terms and concepts that are thematically grouped to some extent, in other words, it has no general alphabetical order. In addition, the definitions are given throughout the Code, in other words, some definitions should be found by viewing individual articles.

Considering the glossary problems, Professor Kucheriavenko M.P. has grouped all the terms presented in Art. 14 of the TC of Ukraine as follows [Kucheriavenko 2014, pp. 8-9]:

a) terms borrowed from other legislation and reproduced without changes and any specificities for the tax and legal regulations (e.g. agricultural land (para. 14.1.76), railway land (para. 14.1.78[1]), significant mineral resources (para. 14.1.79));
b) terms used exclusively in separate paragraphs of the TC of Ukraine (e.g. the term "time study" is defined in para. 14.1.264, and then mentioned only in Art. 80, para. 80.8 of the TC of Ukraine);
c) terms that are unlikely to be considered as fundamental legislative definitions that form the main approaches to the conceptual structure of the tax and legal regulations (composite motor fuel (para. 14.1.141), petrol (para. 14.1.141-[1]), beer (para. 14.1.144), recirculated gas (para. 14.1.216), time study (para. 14.1.264 etc.);
d) terms that cannot be used, in fact. The term "separate unit" is repeatedly mentioned in the TC of Ukraine (para. 14.1.222 of Art. 14, Art. 168, Art. 176). In

addition, at the time when the TC of Ukraine was adopted, the Commercial Code of Ukraine was amended and the term was removed from its text, and the Civil Code of Ukraine uses terms "branch", "agency".

Some terms and categories are not mentioned in the TC of Ukraine, but they are used more in judicial decisions taken as the results of tax dispute resolutions. In particular, terms "good faith" and "bad faith" are often used concerning taxpayers in foreign tax practice. For example, the Decision of the Supreme Administrative Court of Ukraine of 30.10.2013 No. 804/366/13-a "On invalidation and revocation of tax assessment notices" [www.reyestr.court.gov.ua/Review/34532380 (accessed 20.09.2016)] indicates that the tax authority has reduced business expenses for the tax credit considering the absence of a counterparty by its location, and its subsequent bankruptcy.

According to the tax authority, these facts indicate the nullity of the agreement concluded because it is not aimed at ensuing real legal consequences. Revoking the tax assessment notices, courts proceeded from the fact that the term "prompt payer" used in tax legal matters does not require a payer's additional obligation to control its suppliers' compliance with the taxation rules, and the payer itself is not empowered to keep the tax control in order to perform the functions assigned to the tax authorities, and therefore, they cannot have the information concerning the performance of the tax obligations by counterparties… It is also noted that the judicial practice of tax dispute resolutions proceeds from the presumption of the good faith of payers and other participants of legal relations in the legal economy.

Therefore, it is presumed that the payer's actions that result in obtaining a tax benefit (in particular, in the form of a reduction of a tax base, profits tax, and value added tax to the amount of the expenses incurred due to the payment of a delivered product) are economically justified, and the information contained in the tax return and tax reporting is exact, unless the contrary is proved by the tax authority. In addition, the conclusion on the payer's unjustified tax benefit should be based on objective information that indubitably confirms the lack of a reasonable business purpose in the payer's actions and their focus solely on creating favourable tax consequences.

In the information letter of the Supreme Administrative Court of Ukraine of 20.07.2010 No. 1112/11/13-10 "Worries on application of legislation in matters involving the state tax authorities", the attention is drawn to the fact that 'there are common cases in practice when bad-faith members try to artificially create a negative difference between tax obligations and tax credit in the tax registration of value added tax, in order to unreasonably obtain funds from the state budget'. On the other hand, there are many cases of late VAT refunds to prompt taxpayers, particularly, to exporters. The above situation causes origins of numerous legal disputes between payers of value added tax and the tax authorities.

In case No. K/9991/81512/12, the Supreme Administrative Court of Ukraine stressed that the term "prompt payer" does not require a taxpayer's obligation to control its counterparties' compliance with the tax legislation, and a failure to such control cannot create negative consequences for this taxpayer (except when such actions are coordinated between a payer and its counterparty, or when a payer acts without proper diligence and caution). The Supreme Administrative Court of Ukraine made similar conclusions in case No. K/800/27906/14, noting that the presence or absence of certain documents, as well as errors in their execution shall not be cause for the conclusions on the lack of business operation, if other data indicates the actual assets flow or changes in owner's equity or liabilities of a taxpayer [www.kpmg.com/UA/en/IssuesAndInsights/ArticlesPublications/Tax-Dispute-Resolution-Update/Documents/Tax_Litigation_News_December_2014_uk.pdf (accessed 15.09.2016)].

By its decision of 31 October 2012 on the case No. K/9991/74364/11, the Supreme Administrative Court of Ukraine again applied the principle of the personalization of responsibility. According to the court decision, a prompt taxpayer shall not be liable for its counterparty's violations of the tax legislation. The Court explained that the Company cannot be responsible for the failure to pay taxes by its counterparty, if the case has no evidence confirming the agreement between the Company and its counterparty of the actions aimed at obtaining unjustified tax benefits. Being a prompt taxpayer, the Company is not obliged and authorized to control timely payments of tax by its counterparty.

Also, by its other decisions (in cases No. K/9991/71302/12 and No. K/ 800/15312/13), the Supreme Administrative Court of Ukraine has established a number of important criteria for defining a business purpose of business operation. In particular, if a tax purpose dominates a commercial one, a taxpayer's business purpose will be unfair. Therefore, the Court drew attention of judges to the following factors needed for establishing a taxpayer's good-faith business purpose: a taxpayer's operations are aimed at receiving profit; a payer shall achieve a business purpose of the operation, and in case of failure to achieve, they provide the factors that prevented this; a payer shall have

good economic reasons that are not related to obtaining tax benefits for such operations; a payer shall determine the market risks related to the operations performed; a payer shall allocate money for performance of such operations; the proportionality of the money allocated by a payer and resources for performance of the operations, and the received income, with regard to economic rationality and compliance of a payer's actions with rules of the commerce stream (Decision of 21.01.2015 in the case No. K/9991/71302/12; Decision of 20.01.2015 in the case No. K/800/15312/13) [www.kpmg.com/UA/en/IssuesAndInsights/ArticlesPublications/Documents/Tax_Litigation_News_March_2015_uk.pdf (accessed 10.10.2016)].

In the event of default by a bank on a payer's money transfer to a budget, the payer's tax obligation is considered to be settled upon the submission of necessary bank payment orders. It was decided by the Supreme Administrative Court of Ukraine in the case No. 815/5192/14 of 18.06.2015. In particular, the payer stated that he submitted the necessary payment orders to the bank, but the bank was in default on the payer's money transfer to the budget. The Supreme Administrative Court of Ukraine has determined that the payer's constitutional obligation to pay taxes shall be considered to be performed upon the submission of the payment order to the servicing bank on the transfer of funds from the payer's account to the budget system of Ukraine, on the account of the State Treasury, if the payer has enough money balance on the date of the payment. In addition, the payer is not liable for the actions of banks and credit institutions participating in the multistage process of payment and transfer of taxes to the budget. That is, if the payer has evidence that confirms the fulfilment of all the statutory conditions to recognise it as a prompt payer, the obligation of paying the appropriate amount of tax liability shall be considered to be performed, regardless of the actual payment transfer to the budget system of Ukraine.

Despite the obvious practical significance and necessity of using the term "good faith", the domestic judicial practice has not, unfortunately, prompted the Verkhovna Rada of Ukraine to amend the TC of Ukraine and fix the term "good faith", as well as good faith criteria in it. This is the case when lawmakers "do not hear" the results of judicial practice.

The problem of sanctions. In Art. 14, para. 14.1.265, the Tax Code provides the definition of the term "forfeit penalty (financial penalty, fine)". This is a payment in the form of a fixed amount and/or interest levied from a taxpayer due to the their breach of the requirements of tax and other legislations, the compliance of which is controlled by the regulatory authorities, as well as penalties for violations in foreign economic activities. Hence, 'at least two questions arise: what is the difference between fines and penalties (if a fine means a penalty); and why is it said about a number of penalties, when just one penalty – a fine – is applied from the entire system of financial penalties?' [Kucheriavenko 2014, p. 9]. It is even more interesting further. In Art. 111 of the TC of Ukraine, it is noted that 'the financial responsibility for violation of laws on taxation and other laws is applied in the form of forfeit (financial) penalties (fines) and/or surcharges. However, it is not defined in the Code what a "forfeit penalty" or "financial penalty" is. In the subparagraph "e" of para. 176.1 of Art. 176, forfeit (financial) penalties are mentioned (why not penalties or fines? Obscurely…). Art. 113-116 of the TC of Ukraine considers actually forfeit (financial) penalties (fines), and Art. 123[1] considers penalties (and all this is presented within the same chapter "Responsibility").

Physical checks. Part 1 of Art. 75 of the TC of Ukraine stipulates that 'the regulatory authorities are entitled to conduct desk audits, office audits (routine or unscheduled, field or remote audits) and physical checks'. The latter – physical check – mostly raises questions, which is conducted at the location of carrying on the taxpayer's actual business, at the location of economic or other items of the taxpayer's property, without prior notice to them. According to Art. 80, para. 80.2 of the TC of Ukraine, a physical check can be conducted under the decision of the head of the regulatory authorities, which is issued under an order. Although, Art. 80 provides an exhaustive list of the circumstances in which such checks are possible to be conducted, but the regulatory authorities have quickly found the possibility of abusing their rights in order to conduct physical checks (with great desire and need you can always find a necessary ground).

In accordance with Art. 94, para. 94.2 of the TC of Ukraine, an administrative arrest of a taxpayer's property can be applied, if they reject the conduct of desk audit or physical check, given legal basis for its conduct, or admission of the officials of the regulatory authorities. It should be noted that in 2015 the Art. 94, para. 94.2 of the TC of Ukraine was amended, and before then, the paragraph had mentioned about the rejection of conducting a desk audit. Those changes were a positive reaction to the controversial judisial practice on this issue. For example, two officials of the State Fiscal Service of Ukraine came to the Limited Liability Company "A" in order to conduct a physical check.

A chief accountant acquainted with the materials and rejected the conduct as well as the admission to the physical check, giving as a reason that the director was absent. Let us consider different judgments on this case.

In its decision of 3.04.2013 on the case No. 810/1552/13-a, Kyiv District Administrative Court notes that 'the application of Art. 94 of the TC of Ukraine is possible, if the taxpayer rejects *the conduct of only a desk audit*... The taxpayer's rejection of admission of the officials of the State Tax Service aiming to conduct a physical check *cannot be a base for the application of the administrative arrest of the taxpayer's property*, as the current legislation does not allow to use the administrative arrest of a property in the case of a taxpayer's rejection of conducting a physical check' (emphasis added. – *O.M.-C.*).

In its decision of 15.10.2013 on the case No. 2a/2370/4023/12, Kyiv Appeal Administrative Court notes that *based on the definitions of a desk audit and a physical check, it can be concluded that a physical check is a subtype of a desk audit, but it covers more or less narrow range of issues to be checked*. Based on the above, the Court fulfilled the filing of the tax authorities on the validity of the arrest in virtue of the requirements of paragraphs 94.2.3, 94.2 of Art. 94 of the TC of Ukraine (emphasis added. – *O.M.-C.*). Namely, the Court applied a broad interpretation of the norm and the analogy of law that is not of its jurisdiction.

In the decision of the Supreme Administrative Court of Ukraine of 15.09.2014 No. K/800/55020/13 "On confirmation of validity of an administrative arrest of a taxpayer's property", the court concluded that 'the concept of rejection of auditing and the concept of rejection of the admission to audit have separate legal substances, and therefore, they shall be considered as non-identical concepts. Therefore, there are grounds to believe that the claims of Art. 94, para. 94.2, subparagraph 94.2.3 of the TC of Ukraine are applied to the cases of arresting a taxpayer's property in case of: either rejection of desk auditing, or *non-admission to any kind of audit, if the admission is to be applied for such audit*. So, *the arrest of assets can be applied both by the rejection of the admission to a desk audit, and the rejection of the admission to other type of audit, including physical check*' (emphasis added. – *O.M.-C.*).

It is a positive thing that the judicial practice was finally taken into consideration by the Verkhovna Rada of Ukraine, and the TC of Ukraine was consequently amended.

Conclusion

We have considered only a few problem points of the TC of Ukraine. Of course, there are other issues as well that could be subjected to independent scientific research. In any case, the adoption of the codified act that comprehensively regulates tax relations in the country is an important step in the legislative process. Finally, we note that: tax law will never satisfy both taxpayers and regulatory bodies representing public financial interests, especially the interests of the country. For a taxpayer, as British Prime Minister Winston Churchill said, 'there are no good taxes', on the other hand, as French lawyer, writer and political thinker Charles Louis Montesquieu argued, 'a tax inspector is one who cares more for how you spend your money than how a government spends them'.

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DOI: 10.15290/acr.2017.10.03

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HABILITATION IN SLOVAKIA AND THE PROBLEM OF ITS NOSTRIFICATION IN POLAND

Abstract

This article concerns significant, current problem of scientific activity, referring at the same time to a series of articles regarding publications and international scientific cooperation published in the last issue of "Annual Center Review".

Key words

Habilitation; nostrification; Poland; Slovakia

Introduction

The issues of Polish scientists' habilitation implemented in Slovakia has become a legend. Until mid-2016 the Slovak pedagogical-academic title of docent was treated equally to the Polish degree of habilitated doctor (Pol. *doctor habilitowany*). Due to the change of the agreement between Poland and Slovakia, today recognising Slovak title of docent as an equivalent to habilitated doctor is subjected to nostrification procedure. This solution should favour the protection of Polish science without causing barriers in international scientific cooperation and internationalisation of research. However, new problems arise whose solution requires a change of practice and in particular issues also a change of Polish provisions.

This article concerns significant, current problem of scientific activity, referring at the same time to a series of articles regarding publications and international scientific cooperation published in the last issue of ACR.

Slovak requirements for habilitation

Habilitation process in Slovakia is determined by explicit legal regulations, very often more clear and precise than in Poland. People who fulfil minimal academic and pedagogical requirements, described in details, may be subjected to this procedure. The candidate should comply with the following criteria:

- 3 years of educational work after obtaining the title of Ph.D.;
- 1 handbook, textbook or educational text of at least 3 AH[1] volume;
- supervision over 5 finished dissertations;
- with regard to scientific publications: 1 monography or monothematic work of at least 3 AH volume, the authorship of 20 original scientific works with at least 4 articles published in a foreign, reviewed journal and 3 professional articles published in specialised journals and reviewed journals;
- with regard to publication referencing: 12 quotations and 2 quotations in WoS or SCOPUS databases;
- supervision or participation in 2 grant projects.

Postdoctoral dissertation is subjected to 3 reviews by professors and a defence. Application for the award of the pedagogical-academic title of docent is considered by the faculty council and is conferred by rector.

Nostrification of Slovak habilitation in Poland

Nostrification process of the scientific degree of habilitated doctor, and in the analysed case recognition that the pedagogical-academic title of docent is equivalent to the degree of habilitated doctor, is conducted by the council of the organisational unit authorised to confer such title in the given field of science, in the scientific discipline

[1] 1 AH = 36000 characters

which this degree concerns[2]. Discrepancies which sometimes occur between pedagogic specialisation in which the Slovak title of docent is awarded and the Polish field of science and scientific discipline[3] must be eliminated.

As a rule, the detailed criteria of obtaining habilitation in Slovakia and in Poland are almost identical[4], but it may be argued that Slovak rules are more strict (quotations, defence of habilitation). The problem is restricted to the general criterion of opening the habilitation procedure, in Poland determined by the Art 16 par. 1 of the Act of 24 March 2003 on scientific degrees and title and degrees and title in the arts [J of Laws of 2017, item 1789]. It states that „a person who holds a doctoral degree and demonstrates scientific and artistic achievements representing a significant contribution to the advancement of a given scientific or artistic discipline, made after the award of the doctoral degree, and who is meaningfully engaged in scientific or artistic activity may be admitted to a habilitation assessment process". The comparison of the Slovak habilitation requirements to the above mentioned criterion allows to state that there is no condition of **significant contribution of the author to the advancement of a given scientific (or artistic) discipline**. Therefore, habilitation assessment process properly conducted in Slovakia may not refer to this condition at all. Thus, a question arises, what should be the stance of the Polish council conducting nostrification process of the degree of habilitated doctor?

Polish council conducting such process, besides candidates' application form, receives several documents generally determined in the Regulation of the Minister of Science and Higher Education of 8 September 2011. Based on this Regulation, during nostrification process the council may adopt a resolution on the necessity to prepare reviews of the documents confirming scientific achievements which constitute the basis for obtaining the scientific degree. Nostrification process is ended by the council resolution on the recognition of the scientific degree as equivalent to the Polish scientific degree or the degree in arts or on refusal to recognise the scientific degree as equivalent to the Polish scientific degree or the degree in arts. The council refuses to recognise the scientific degree as equivalent to the appropriate Polish scientific degree or to exempt from nostrifiction procedure in the case when the institution which has conferred the scientific degree was not on the date of issuing the diploma accredited to award scientific degrees within the meaning of domestic law of the country in whose higher education system the institution operates or does not operate in a higher education system of any country.

What the law is and what it should be – remarks

The last sentence creates a serious interpretative problem. The issue is whether the only reason to refuse to recognise a scientific degree as equivalent to the Polish degree of habilitated doctor constitutes two premises specified in the provisions of the quoted Regulation of the Minister of Science and Higher Education (i.e.: when the institution which has issued the diploma was not on the date of issuing accredited to award scientific degrees within the meaning of domestic law of the country in whose higher education system the institution operates or it does not operate in a higher education system of any country) or there may be other premises depending on the discretion of the council. Grammatical interpretation of this provision inclines to accept the first opinion. However, systemic, purposive and logical interpretation supports the second opinion, which also the Author of this article agrees with. It is logical to read this provision not as a whole premises to refuse to recognise the scientific degree as equivalent to the degree of habilitated doctor but as an obligation to refuse to recognise the scientific degree in the mentioned circumstances. If nostrification process was only to establish the existence of the above mentioned premises, then the whole procedure would be apparent and the sole fact of their existence would not have to be established by the council though separate nostrification procedure but by an appropriate clerk of the Ministry of Science and Higher Education.

On the basis of the binding provisions, an issue arises for the council (and a potential reviewer) whether scientific accomplishments (scientific achievements and postdoctoral dissertation) **represent a significant contribution of the author to the advancement of a given scientific (or artistic) discipline**. During habilitation procedure in Slovakia this contribution is not considered and the

[2] See: Regulation of the Minister of Science and Higher Education of 8 August 2011 on nostrification of academic degrees and degrees related to art study obtained abroad (J of Laws No. 179, item. 1067).

[3] Compare: Regulation of the Minister of Science and Higher Education of 8 August 2011 concerning areas of knowledge, fields of science and art, and scientific and artistic disciplines (J of Laws No. 179, item 1065).

[4] See: Regulation of the Minister of Science and Higher Education of 1 September 2011 on the criteria of assessing the accomplishments of a person applying for the conferment of the degree of habilitated doctor (J of Laws No. 196, item 1165).

issues of minimal achievements, their originality and minimal amount of quotations (required in Slovakia) may not be recognised as equivalent to it. Documents of conferring the pedagogical-academic title of docent do not solve this problem. It requires analysis of additional documents (e.g. review of the Slovak habilitation, review and evaluation of achievements and particular publications) in terms of the significant contribution of the author to the advancement of a given scientific discipline. The problem lies, however, in the fact that the candidate may submit such documents, but formally there is no such obligation. If such documents are not submitted or the premise of significant contribution of the author to the advancement of a given scientific discipline does not arise from them, then the council must conduct independent evaluation on the basis of own beliefs of the council members concerning significant contribution to the advancement of a given scientific discipline. It is worth to emphasise the important difference of the received at the council's request review of the documents confirming scientific achievements and constituting the basis to obtain the scientific degree. The reviewer may evaluate only submitted documents. She does not have the authority to independently evaluate the achievements and postdoctoral dissertation with regard to the significant contribution of the author to the advancement of a given scientific (or artistic) discipline. However, there are no substantive obstacles for every member of the council to establish own, substantive position in this respect, before nostrification voting.

Postulates to consider implementing changes in the currently binding detailed provisions regarding nostrification (i.e. in the Regulation of the Minister of Science and Higher Education of 8 September 2011) should be directed to the Ministry of Science and Higher Education. They arise from the first experiences of recognising as equivalent to the Polish scientific degree of habilitated doctor the pedagogical-academic title of docent in Slovakia. Additional information in this scope are necessary for the council to make rational decision. As a rule, it should be similar as in the Polish habilitation procedure or refer to it. Therefore, a summary of professional accomplishments and information not only about current (or previous) nostrification procedures but also about habilitation processes seem to be essential. In the matter of nostrification of the pedagogical-academic title of docent (and often also in other matters) is necessary an independent, super review of a qualified professor, aiming at establishing the significant contribution of the author's scientific and artistic achievements to the advancement of a given scientific or artistic discipline. The possibility to commission such a review by the council should replace or supplement current review of the documents confirming scientific achievements, constituting the basis to obtain the scientific degree.

Conclusion

Recognising scientific degrees and titles in international relations serves internationalisation of scientific research and international scientific cooperation. Sometimes however, there are exceptions to this rule which are to protect the level of science in the given country. Basic instrument in this scope is nostrification. In the case of nostrification of the pedagogical-academic title of docent in Slovakia with the scientific title of habilitated doctor in Poland essential is not only the change of international agreement but adjusting the domestic provisions of the country implementing the obligation of nostrification to the new conditions. Without this, the nostrification procedure will be an artificial process causing results difficult to foresee today.

Legal Acts

Act of 24 March 2003 on scientific degrees and title and degrees and title in the arts (J of Laws of 2017, item 1789).

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DOI: 10.15290/acr.2017.10.04

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THE ROLE OF THE STATE IN CREATING VOLUNTARY RETIREMENT SAVINGS

Abstract

This paper presents Polish solutions for voluntary individual and group retirement savings as a part of the entire pension system and the change in the system recently proposed by the state. It is evident that, facing deteriorating demographic situation, additional accumulation of pension capital becomes necessary. The article characterizes in detail the functioning of occupational pension schemes and individual retirement accounts, and presents some foreign solutions to this problem. It is emphasized that the role of the state is to create appropriate reliefs, exemptions and incentives for voluntary savings for future retirement benefits. The aforementioned project of changes in the legal regulations concerning the Polish pension system is also discussed, including the place of voluntary retirement savings sector. The article does not exhaust the large and controversial issue, outlined in its title, but rather contributes to further studies and discussion on the subject.

Key words

Pension system; voluntary pension schemes; forms of saving; occupational pension schemes; pension funds

Introduction

In some situations, the state should intervene in the market mechanisms by creating appropriate solutions for social problems, such as unemployment, poverty, or inaccessibility of basic social services. These actions should be adequately balanced, so that they do not constrain the free market through the implementation of the ideas of social justice. The aim of the study is to present the role of the state in the creation of appropriate reliefs, exemptions and incentives for voluntary savings for future retirement benefits. The paper also proposes amendments to the legal regulations concerning the Polish pension system. A research hypothesis has been formulated that the changes in the regulation of voluntary savings for future retirement should be transparent and clear, and they should base on proven solutions. The paper uses the following research methods: literature studies, descriptive and comparative analysis.

Demographic situation and the pension system

Any demographic changes have fundamental importance for the pension system. The impact of these changes, such as the increase in demographic burden or the negative relationship between the period of professional activity and the period of retirement, causes worries about the sustainability of the future pension system. Demographic problems affect almost all European countries, hence many of them have opted for the reforms of their pension systems in order to secure the stability of the systems.

Population aging is a heavy burden for the state budget, since it results in the increasing number of citizens entitled to receive even minimum pensions. According to a study performed by the United Nations, the number

of elderly people in the world has grown significantly over recent years, and aging is expected to deepen in the forthcoming decades. In 2015, the number of people at least 60 years old was higher than 900 million worldwide. Compared with 2000, the number of elderly people increased by 48%, as in 2000 there were 607 million of them. The number of elderly people in the world is forecasted to reach 1.4 billion in 2030 and 2.1 billion in 2050. It should be emphasized that the growth of the oldest population (over 80 years old) occurs even faster than the general increase in the elderly population (over 60 years old). Research show that the number of people over the age of 80 will triple by 2050 compared to 2015 [www.un.org/en/development/desa/population/pub (accessed 11.06.2017)].

In the coming decades, the age structure of the European population will change significantly due to the low birth rate and the prolonged life expectancy. According to estimates in 2060 in the European Union the population in the working age (15–64 years) will be 50 million less numerous than in 2008, while the number of people aged 65 years and more will increase by nearly 67 million. The ratio of these two age groups will double by 2060. This means that there will be only two working-age persons per one pensioner in 2060 [Mikulec 2010, p. 110].

The aging of the society is progressing in Poland as well. There are many factors that contribute to the prolonged length of life, such as: progress in medicine, positive changes in healthy behaviours among people, favourable changes in the structure of education, economic development (including increase in wealth).

In 2015, the men live 73.6 years on average, and the women 81.6 years. In 2030, an average man will reach the age of 78 and woman 84.8 years. After another 20 years, in 2050, men will live 83 years on average, and women 88.4 years [www.stat.gov.pl/obszary-tematyczne/ludnosc/trwanie-zycia (accessed 11.06.2017)].

Studies on the propensity of Poles to accumulate retirement savings and knowledge of the 3rd pillar show that most Poles are aware that the future public pension will be insufficient to cover living costs [www.tnsglobal.pl/coslychac/files/2016/03/Sklonnosc-do-oszczedzania-na-emeryture-2016-03-04.pdf (accessed 11.06.2017)]. Still, due to low pension benefits and lack of savings, there may be a need for further paid work, despite the entry into retirement age. 60% of Poles aged 25–45 intend, during their retirement, to have other sources of income than ZUS (Social Insurance Institution). Among sources of additional income 80% of them point at professional work, and only 20% claim that the additional income would come from their individual retirement savings, or other unspecified sources.

The characteristics of current pension system in Poland

The so-called new pension system, which exists in Poland since 1999, is based on two basic obligatory pillars: the pay-as-you-go pillar (1st pillar) and the capital pillar (2nd pillar), which are held by ZUS and open pension funds (OFE) [Chybalski 2013, p. 13]. The contribution that hitherto financed pay-as-you-go pillar was divided into two parts, of which about 40% were transferred to OFE. To compensate the transfer of contributions to the OFE and maintenance of the continuity of paid pensions the state had to take a debt [www.emerytura.gov.pl/system-emerytalny/reforma-systemu-1999 (accessed 5.06.2017)]. Within the 2nd pillar, the insured person individually selects a General Pension Association, which manages they open pension fund (OFE), investing the financial funds in the markets in order to multiply the capital.

Since 2014, the participation in the 2nd pillar of the pension system has not been obligatory. The insured has the right to choose between transferring the entire 2nd pillar contribution (7.3%) to the Social Insurance Fund to a specially created sub-account managed by ZUS, or split the contribution into two parts of which 4.38% would go to the aforementioned ZUS sub-account and the remaining 2.92% would be transferred to Open Pension Funds [Szwedo 2016, p. 72]. These changes demonstrate the gradual marginalization of the capital financing the Polish pension system and a return to the pay-as-you-go solution.

The amount of pension benefits depends mainly on the amount of capital registered on an individual pension account in ZUS. Calculated initial capital determines how much the insured person saved before 1 January 1999. Initial capital, together with the value of contributions paid for retirement insurance after 1 January 1999, provides the basis for the calculation of pension. Although the pension will be paid regardless of the length of the contribution period, the amount of pension is directly proportional to it. The longer the insured person is professionally active, the more initial capital they collect in ZUS. In addition to the value of the registered pension

capital, the average life expectancy also affects the amount of pension. A statistical indicator calculated by the Central Statistical Office tells how long a person who reaches the retirement age is supposed to live. There is also a minimum pension, guaranteed by the law on pension system that comes from the Social Insurance Fund. Retirement age and appropriate length of professional activity are minimum requirements for the minimum pension.

In the new pension system, the legislator also provided the possibility of setting up institutions of the 3rd pillar of the pension scheme, which are voluntary and complementary to the general pension system.

Detailed description of the 3rd pillar of the Polish pension system

The 3rd pillar of the Polish pension system is a form of retirement saving which includes the institutions of individual pension accounts (IKE), individual pension security accounts (IKZE) and occupational pension schemes (PPE). Saving through these schemes are associated with a number of tax advantages designed to encourage retirement saving. Initially, the function of the 3rd pillar was played only by PPE. The amount of savings contributed to them were insufficient, so the 3rd pillar was expanded in 2004 to IKE and then in 2012 to IKZE. IKE and IKZE have individual character. Saving in PPE have collective character and is offered by employers to their employees. It is important to note the dynamic nature of the changes of retirement accounts. Predicting their future features seems to be an extremely difficult task.

Occupational pension schemes (PPE)

One of the elements of the 3rd pillar of the Polish pension system is occupational pension schemes. They are organized by employers and are a collective, voluntary form of retirement saving. The legal basis, which defines the rules for establishing and operating the PPE, is provided by the Act of 20 April 2004 on occupational pension schemes.

Occupational pension scheme is initiated by two contracts – one within a company and one with a financial institution. The creation of a program consists of an agreement on the conditions of its functioning between the employer and a representation of employees, and the contract of the employer with a selected financial institution to which contributions will be transferred. The program must also be registered by the Financial Supervision Authority (KNF) [(J of Laws of 2016 r. item 1449), Art. 10, point 1]. From the point of view of the employee, the content of the company agreement is essential. This agreement defines the form of the occupational pension scheme and the conditions under which it operates, including terms and conditions of joining and leaving the program and the amount of basic contribution. The decision to set up the program is always on the employer's side, as they are responsible for paying the contribution to financial institution [Wykowska 2014, p. 10].

The basic contribution cannot exceed 7% of the gross salary of the participant [(J of Laws of 2016 r. item 1449) Art. 24, point 2] and the precise amount is the result of the decision of the employer and above all the consequence of their financial capacity. On the other hand, the voluntary contribution cannot exceed the employee's net monthly salary, and in the calendar year the sum of these contributions cannot exceed the quota equivalent to four and a half times the average expected monthly remuneration in the national economy for the year [(J of Laws of 2016 r. item 1449) Art. 25, point 4]. Table 1 lists PPE payment limits for the years 2010–2016. In 2016, the limit for PPE payments was PLN 18 247.50 [www.mpips.gov.pl/ubezpieczenia-spoleczne/ubezpieczenie-emerytalne/ppe-limit/rok-2016 (accessed 3.06.2017)].

Table 1. Limits of the voluntary contribution to one PPE in the years 2010–2016

Year	2010	2011	2012	2013	2014	2015	2016
Limit (PLN)	14 368.50	15 115.50	15 867	16 708.50	16 857	17 815.50	18 247.50

Source: Ministry of Labour and Social Policy [online], www.mpips.gov.pl (accessed 7.06.2017).

The funds collected by the participant may be paid, transferred (to another PPE or IK E) or refunded. Payment of accumulated savings may occur [(J of Laws of 2016 r. item 1449) Art. 42, point 1]:

- at the request of participant who has reached the age of 60,
- at the request of participant who has reached the age of 55 and has been granted the retirement status,
- automatically when participant reaches the age of 70 (and has not yet requested the payment),
- on the request of an authorised person, in case of death of the participant.

Table 2 presents the most important data on the PPE market for December 31, 2015.

Table 2. Data on the PPE market for December 31, 2015

Number of running programs	1 054
Value of accumulated savings	10.6 billion PLN
Number of people participating in PPE	392.6 thousand (2.41% of employed)
Average value of savings per participant	27.5 thousand PLN

Source: Pracownicze programy emerytalne w 2015 roku, KNF [online], www.knf.gov.pl/Images/RAPORT_PPE_2015_tcm75-47390.pdf (accessed 3.05.2017).

At the end of 2015 there were 1 054 occupational retirement schemes, of which [www.knf.gov.pl/Images/RAPORT_PPE_2015_tcm75-47390.pdf (accessed 11.05.2017)]:

- 689 in the form of an agreement with an insurance company,
- 332 in the form of an agreement with an investment fund;
- 33 in the form of an agreement with an occupational pension fund.

According to the latest data, the value of savings accumulated in occupational retirement programs at the end of December 2016 amounted to PLN 11.4 billion and increased by 7.2% as compared to 2015. Among particular forms in which the programs can be implemented, the highest amount of savings was invested in investment funds – PLN 6.5 billion, in insurance companies – PLN 3.1 billion and in occupational pension funds – PLN 1.8 billion. Occupational pension schemes covered 395.6 thousand of people at the end of 2016 (an increase of 0.8% compared to 2015) [www.knf.gov.pl/Images/informacja_PPE_2016_tcm75-49281.pdf (accessed 5.06.2017)].

Individual pension accounts (IKE) and individual pension security accounts (IKZE)

Due to many similarities between IKE and IKZE, these two forms will be discussed jointly. Afterwards, a comparison between these institutions will be presented.

Individual pension accounts and individual pension security accounts operate on the basis of the Act of 20 April 2004 on individual pension accounts. They are pension accounts established for individual savers by a financial institution.

Everyone can hold one IKE account and one IKZE account. It is therefore impossible for spouses to have shared accounts within the 3rd retirement pillar. Neither one can share the account with one's child [Wykowska 2014, p. 13]. A minor who has reached the age of 16 is entitled to contribute to their IKE and IKZE account only in the calendar years in which they were employed on the basis of an employment contract [J of Laws of 2014 item 1147, of 2015 item 978, 1844, of 2016 item 615, 996; Art. 3, points 1 and 2]. Adults can make contributions whenever they wish, up to the limit specified for a given year.

Contributions to IKE and IKZE

Contributions to IKE and IKZA can be made freely, no regularity is required. Similarly as in case of PPE, there are limits for yearly IKE and IKZE contributions. Individual retirement accounts can be supplied with an amount of 300% of the estimated average monthly remuneration for the year [J of Laws of 2014 item 1147, of 2015 item 978, 1844, of 2016 item 615, 996; Art. 13, point 1]. This limit has been in force since 2009, when it was doubled compared to 2004–2008 limit of 150% of the average monthly salary. Table 3 lists the IKE contribution limits in the years 2004–2017.

Table 3. Limits of the contribution to IKE in the years 2004–2017

Year	2004	2006	2008	2009	2011	2013	2015	2016	2017
Limit (PLN)	3 435	3 521	4 055	9 579	10 077	11 139	11 877	12 165	12 789

Source: Indywidualne konta emerytalne oraz indywidualne konta zabezpieczenia emerytalnego w 2016 r., Urząd Komisji Nadzoru Finansowego [online], www.knf.gov.pl/Images/IKE_IKZE_2016_tcm75-50159.pdf (accessed 4.06.2017).

In addition, as introduced by the Act of 6 November 2008 on the amendment of the Act on individual pension accounts and certain other acts, this limit in the following year may not be lower than the limit for IKE contributions in the previous year [www.mpips.gov.pl/ubezpieczenia-spoleczne/ubezpieczenie-emerytalne/indywidualne-konto-emerytalne/co-trzeba-wiedziec-o-ike (accessed 3.06.2017)]. In subsequent years, the maximum limit will depend on the rate of pay rise in Poland.

In 2016 the contribution limit for the IKE amounted to PLN 12 165 [M. P. of 16 December 2015, item 1266].

By analogy with IKE, the limit for contributions to IKZE accounts is dependent on the national average monthly salary expected for a given year and is equivalent to 120% of the salary [J of Laws of 2014 item 1147, of 2015 item 978, 1844, of 2016 item 615, 996; Art. 13a, point 1]. The above legal provision was introduced by the Act of 6 December 2013 on the amendment of certain acts. In the years 2012 and 2013, the IKZE contribution limit was dependent on the amount of the pension insurance contribution base determined for the insured person for the previous year [www.mpips.gov.pl/ubezpieczenia-spoleczne/ubezpieczenie-emerytalne/ikze/indywidualne-konto-zabezpieczenia-emerytalnego (accessed 3.06.2017)]. Table 4 contains the IKZE contribution limits in the years 2012–2017.

Table 4. Limits of the contribution to IKZE in the years 2012–2017

Year	2012	2013	2014	2015	2016	2017
Limit (PLN)	4 031	4 231	4 495	4 751	4 866	5 116

Source: Indywidualne konta emerytalne oraz indywidualne konta zabezpieczenia emerytalnego w 2016 r., Urząd Komisji Nadzoru Finansowego [online], www.knf.gov.pl/Images/IKE_IKZE_2016_tcm75-50159.pdf (accessed 4.06.2017).

There is also a legal regulation that in a given year the limit of IKZE contribution cannot be lower than in the previous year. In 2016 the limit of contribution to IKZE was PLN 4 866 [M. P. of 16 December 2015, item 1266].

Together, a person that has both IKE and IKZE accounts, could increase his pension capital by the amount of PLN 17 031 in 2016.

Table 5 shows the value of IKE and IKZE savings held in financial institutions as of 30 June 2016.

Taking into account both IKE and IKZE, the leaders in terms of the total value of accumulated assets are insurance companies, which accounted for 34.3% (in IKE) and 37.0% (IKZE) of total value of this market. Other institutions with significant participation are investment funds. In IKE established as the agreements with investment funds, PLN 1 995 million was collected by 2016, which constituted 30.3% of the market. In IKZE investment funds managed an amount of PLN 408 million (37.8% of the market), which means that in 2016, in terms of the share in the accumulated funds, they moved to the first place [www.knf.gov.pl/Images/IKE_IKZE_2016_tcm75-50159.pdf (accessed 2017.06.11)].

Table 5. Value of IKE and IKZE assets saved in different financial institutions in 2016

Financial institutions running IKE/IKZE	Value of IKE (thousand PLN)	Share in total value of IKE	Value of IKZE (thousand PLN)	Share in total value of IKZE
Insurance companies	2 283 011	34.3%	398 589	37.0%
Investment funds	1 995 158	30.3%	407 884	37.8%
Brokering companies	1 075 628	16.2%	57 045	5.3%
Banks	1 266 112	19.0%	66 600	6.2%
Voluntary pension funds	35 588	0.53%	147 972	13.7%
Sum	6 655 497	100%	1 078 090	100%

Source: own elaboration based on: Indywidualne konta emerytalne oraz indywidualne konta zabezpieczenia emerytalnego w 2016 r., Urząd Komisji Nadzoru Finansowego [online], www.knf.gov.pl/Images/IKE_IKZE_2016_tcm75-50159.pdf (accessed 11.06.2017).

Tax benefits from saving within IKE and IKZE frameworks

The most important issue from the perspective of the saving person are tax incentives offered by the legislator, which significantly increase the profitability of collecting private retirement savings. The benefits of saving in IKE are restricted to the exception from paying capital income tax (the so-called "Belka tax") for savings gathered on IKE account [J of Laws of 2016, item 2032; Art. 21 point 1].

Tax advantages of saving money through IKZE are a bit more complex than those of IKE, but they are noticed in shorter time. Contributions made in a given year to an individual pension insurance account can be deducted from the taxable personal income. In other words, one who saves through IKZE may reduce their income in an annual tax return and, consequently, pay lower income tax [J of Laws of 2016, item 2032; Art. 26 point 1].

Proposals for amendments in the system of voluntary retirement saving

The outline of the new changes in the pension system disclosed by the state authorities in mid-2017 implies that the institutional solutions should go towards the increase of the share of the individuals in systematic retirement saving within the 3rd pillar supervised by KNF. It is an obligation of the state government to create good conditions for the development of voluntary forms of saving for old age. Appropriate legislative initiatives are designed to promote the interest in creating capital retirement programs by the employers and participation of employees in them. These programs will also include employees of the public sector, who expect to receive relatively low pensions in the future due to the amount of their salaries, and do not have enough money to create personal savings for their old age and therefore may suffer an income gap after retirement.

In order not to increase the labour costs for the employers, one of the proposals is that the employers' contribution would be financed from the company's social fund, using a quota limitation, which would allow differentiation of the contribution depending on the employee's financial situation [Rutecka 2014].

Previous solutions did not enhance saving for future retirement, because of voluntary form of participation, illegible schemes of tax benefits, and limits preventing higher-income people's engagement. The fees for PPE, IKE and IKZE are also much higher than those used by PTEs in OFEs.

According to the draft law on voluntary retirement saving, 75% of the assets currently held by the OFE are to be transferred to the retirement accounts of the 3rd pillar in the form of IKZE and the remainder to be transferred to the Demographic Reserve Fund. This institution would collect assets for the payment of pensions in case there would be not enough money in the state budget. The fund would be managed by an investment fund company, whose sole shareholder would be the Polish Development Fund. It would then turn OFE into investment funds and the PTE would be transformed into investment fund companies [www.serwisy.gazetaprawna.pl/emerytury-i-renty/artykuly/1047383,reforma-ofe-od--stycznia-iii-filar.html (accessed 5.06.2017)]. In this way the funds collected so far in the 2nd pillar would now go to the voluntary part realised by the 3rd pillar. They would thus become private pension savings.

Further changes concern occupational pension schemes. It is expected that the employer would pay a contribution of 1.5% of employee's salary (although it may be increased by an additional 2.5%), while the minimum employee's contribution would be 2% of the salary (and may be increased by further 2%). Savings on occupational capital schemes would still be voluntary, although the default rule would apply. This means that every employee would be enrolled in the PPK, but they would also be eligible to file a declaration of non-participation in this form of retirement savings.

An incentive to save money would be additional public contribution paid to the PPK accounts. According to the project, additional contribution of 6% of the minimum wage would be made to the accounts of those who have been saving for the whole year and had collected contributions equalling at least half of the minimum wage. The costs of this contributions would be financed from the state budget through a special grant to ZUS. Saving in PPK is to be done through investment funds. At least four types of funds will be created to adjust to insured people life cycle. A central register of employee capital plans will be created with the information about persons and employers in the program.

Conclusion

The role of the state is to create a stable pension system with an appropriate system of allowances, exemptions and subsidies, stimulating individual or group retirement saving. Constant changes do not facilitate saving, and their introduction requires clear and transparent information. Moving funds accumulated in the OFE to the voluntary part (3rd pillar) will completely rid the capital level of the general pension system in Poland. The whole system of incentives for voluntary saving has been proposed, but the future years will show to what degree it will be accepted by the Poles. The system requires stabilisation in terms of legal regulations and announced projects of new solutions should end this period of change. It is important to increase the trust in the pension system, which should favour the decisions on voluntary retirement savings.

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DOI: 10.15290/acr.2017.10.05

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FINANCIAL CONTROL OF FUNDS CO-FINANCED FROM THE EU BUDGET: POSSIBILITIES OF CONSIDERING NEW AND MORE FAVORABLE LEGAL PROVISIONS

Abstract

This paper presents secondary control of funds co-financed from the EU budget and the possibility of taking into account new and (for the recipients of funds) more favourable legal provisions. This applies to situations when the beneficiary implementing an expenditure breaches regulations which are later, e.g. at the time of auditing, generally not regarded as illegal behaviour. In this meaning, it is necessary to distinguish between the general principle of punishment and rules based on the principle of sound financial management and the recovery of unduly granted funds.

Key words

Financial control; budget EU; status of audit

Introduction

In my contribution I would like to focus on secondary control of funds co-financed from the EU budget and the possibility of taking into account new and (for the recipients of funds) more favourable legal provisions. This applies to situations when the beneficiary implementing an expenditure breaches regulations which are later, e.g. at the time of auditing, generally not regarded as illegal behaviour.

In this meaning, it is necessary to distinguish between the general principle of punishment and rules based on the principle of sound financial management and the recovery of unduly granted funds. This will be discussed below.

As the author of this contribution lives in the Czech Republic, where he deals with the auditing of EU funds, the legal environment of this Member State will be further discussed.

Legal basis

The rules of individual European funds and other subsidies or grants provided to the Member States differ in certain aspects. One of the reasons is that the financial allocation is administered and managed by various Directorates General (DG) of the European Commission. Further insights will be analysed in the framework of the European structural and investment funds (later referred to as “ESIF”), which consists of the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Maritime and Fisheries Fund and the European Agricultural Fund for Rural Development.

Funds provided within these financial mechanisms fall under the principle of shared management of the European Commission and the Member States. The shared management is based on the Article 317 of The Treaty on the Functioning of the European Union (hereinafter “TFEU”), which functions as the basis for laying down the financial regulation [Regulation (EU, EURATOM) No. 966/2012], and which further defines the rules of the aforementioned Art. 317 and lays down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities.

The basic legal framework for the financial management of the European structural and investment funds is given by the so-called Regulation on common provision [Regulation (EU) No. 1303/2013].

At the national level, the system of control is currently governed by the Act no. 320/2001 coll., on financial control in public administration (hereinafter "ZFK"). The system of financial control provided by control authorities according to Art. 7 to 11 ZFK includes the financial control of facts that are relevant to the management of public funds, especially in public spending including the public financial support of those controlled or audited (hereinafter "auditee") at the time prior to their granting, during their use and after their use (primary system), and an audit provided according to the rules of the European Union. Audits performed by the audit authority (AA) are conducted in accordance with Art. 13a ZFK and Art. 127 para 1 of the Regulation on common provisions (secondary system).

Status of Audit

At the national level, the ESIF funds are reallocated from individual operational programmes (e.g. Operational Programme Transport or Operational Programme Environment) formed on the basis of the so-called Partnership Agreement between the European Commission and the Member State (the Czech Republic). The control of individual operational programs is delivered by managing authorities or intermediate bodies that have the status of fund providers. Managing authorities are responsible for setting up an adequate management and control system as well as for implementing financial controls (management verifications).

Financial control, not only of ESIF, is set on a two-level system of projects verification. First is performed by providers, followed by an additional verification performed by a different functionally independent body on a selected sample of operations[1].

[1] 'Operation' according to Art. 2 para 9 of the Regulation on common provisions means a project, contract, action or group of projects selected by the managing authorities of the programmes concerned, or under their responsibility, that contributes to the objectives of a priority or priorities; in the context of financial instruments, an operation is constituted by the financial contributions from a programme to financial instruments and the subsequent financial support provided by those financial instruments.

The primary control system of the operational programmes is carried out by the managing authority of the operational programme or by the Certifying Authority (which manages the financial flows between the Member State and the European Commission), while the secondary system is ensured by an independent central Audit Authority within the Ministry of Finance of the Czech Republic.

According to the legal provisions, the managing authority is responsible for managing and implementing the operational program in accordance with the principles of sound financial management and ensures that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable EU and national rules for the whole period of their implementation.

Within the primary control system, the managing authority is obliged to perform verification of operations / projects related to administrative, financial, technical and potentially physical aspects of operations. The primary control system shall ideally ensure that co-financed products and services are delivered and that the expenditure declared by the beneficiaries for operations has actually been incurred and complies with the EU and national rules.

The secondary control system (audit) should primarily evaluate the effectiveness of the primary control system and propose corrective measures (e.g. improving the managing and control system or financial corrections) in the case of failure.

The prerequisite for the smooth drawing from EU funds is therefore an appropriate set-up of the primary control system that is able to identify errors at an early stage of the project cycle. One limit is the fact that authorities performing the control or audit may not have the same information (certain circumstances can arise after the primary control but they will be taken into account during the audit).

The primary and secondary control are treated through inspection and surveillance issued by European authorities – corresponding Directorates General of the European Commission and the European Court of Auditors (ECA) including Supreme Audit Institutions (e.g. the Czech Supreme Audit Office).

New and more favourable legal provisions

The possibility or suitability of taking account of new and more favourable legal provisions comes into question when the recipient breaches regulations related to public procurement at the time of tendering a public procurement. A change of rules can take place before an audit is performed on the operation.

The financial control deals with the question of the eligibility of costs. The result of the financial control is the audit protocol or audit report which is, by the character a bearer of information, not a declaration of rights and responsibilities. The audit report does not state an administrative offense, nor does it place a sentence or penalty in the case of the breach of rules related to tendering public procurements. It simply states the amount of eligible and ineligible expenditures.

The main point is that the costs related to a public procurement tendered against the law cannot be considered eligible, in the full amount or in the amount that corresponds to the seriousness of the breach, from the perspective of an audit. Any ineligible costs should be set aside from the assessment of whether the contracting authority committed an administrative offense or not whether it is possible to apply the Art. 40 paragraph 6 of the (Czech) Charter of Fundamental Rights and Freedoms which lays down that imposed penalty shall not be heavier than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

An ineligible expenditure presents an irregularity in the meaning of Art. 2 paragraph 36 of the Regulation on common provisions. In the case of non-compliance with public procurement rules a financial correction shall be based on the Commission Decision C(2013) 9527. The purpose of financial corrections is under recital 6 EC Decision C(2013) 9527[2] *"to restore a situation where all of the expenditure declared for financing by the Union is legal and regular, in line with the applicable national and Union rules."*

The seriousness of the irregularity is laid down in the Commission Decision C(2013) 9527 as follows: *"The seriousness of an irregularity related to non-compliance with the rules on public procurement and the related financial impact to the Union budget is assessed taking into account the following factors: level of competition, transparency and equal treatment. When the non-compliance at stake has a deterrent effect to potential tenderers or when the non-compliance leads to the award of a contract to a tender other than the one that should have been awarded, this is a strong indicator that the irregularity is serious."* The audit therefore examines whether the breach of public procurement rules had an impact on competition and if so, to what extent. Precisely from this it can be deduced that audits should aim to assess the compliance of relevant legal rules at that time.

The above-mentioned decision of the European Commission is not directly binding for the Member States, but to the Commission. It lays down guidelines for services of the European Commission on how they shall assess the breach of public procurement rules and what level of expenditures shall be classified as ineligible. Member States (MA and AA) should respect these guidelines in case of findings as a minimum, because when Commission asses such a finding and the financial correction is not set according to the guidelines, it can refer to a system irregularity (in the meaning of the whole Member State).

In the Czech Republic, irregularities are levied from the recipients as payment (levy) for the breach of budgetary discipline which is a process governed by tax laws. The tax administrator is bound by the principles of legality, material truth and the free evaluation of evidence among others and will apply a different approach to the principles of proportionality in determining the amount of ineligible costs / expenditure than the Commission, MA or AA. Irrespective of the success in this proceeding, the European Commission enforces the irregularities from the Member State.

A practical example

Generally, in the case of detection of a breach of a legal provision audit authority considers the breach of the provision in a way taking into account the time when the legal provisions were in force when the project was implemented and the irregularity occurred. In this context findings and the corresponding financial corrections are based on those rules and provisions in effect at the time when it happened even though there might be actually new legal provisions which are more favourable to the beneficiaries. New and more favourable legal provisions are therefore

[2] Commission Decision of 19.12.2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement.

not taken into account retrospectively in order to grant lower financial corrections for these cases. This audit practice is based on consultations which took place in the past between auditors of the Czech audit authority and DG for Regional and Urban Policy.

However, the recent approach of the auditors of the European Court of Auditors is to take into account the later changed legal provisions which are more favourable than the legal provisions in effect at the time of the project implementation (when irregularity occurred)[3].

It is obvious that in this matter a detailed opinion to cover all possible cases cannot be given and at the same time I am aware that it is always necessary to consider all aspects of a particular situation on a "case by case" basis. In particular, it is necessary to examine the reasons for which the past and newly changed legislation was adopted.

For the purpose of further analysis it is to demonstrate the above stated issue on the example of the public procurement rules.

Considering the transposition of the new EU public procurement directive 2014/24/EU into the Czech legislation Act No. 134/2016, which should have been transposed by 18 April 2016 but was effectively transposed only as of 1 October 2016, the issue of more favourable legal provisions will be certainly raised by the beneficiaries for cases of irregularities which occurred between 18 April 2016 and 1 October 2016 and also before the original planned date of the transposition of 18 April 2016.

One of the most common cases of the issue mentioned above will be the case of additional works. The previous EU public procurement directive and its Czech transposition set out relatively rigid rules for the use of negotiated procedure without publication including cases for awarding additional works. The new EU public procurement directive and its Czech transposition (EU Art. 222.4 / CZ Art. 72.2) allow to change a public contract without initiating a new award procedure, if the value of the additional works is less than 10% of the initial public contract for services or supplies, and 15% of the initial public contract for works.

In this context the Czech contracting authorities, which awarded a contract for example in December 2014, in July 2015 or in May 2016, and for which audit of the AA would found an illegal use of the negotiated procedure for awarding additional works but in the amount not exceeding the limit of 10% for services/supplies and 15% for works, might argue that there should be no financial correction as the later Czech legislation on public procurement Act No. 134/2016 (valid as of 1 October 2016) legally allows to award the additional works not exceeding 10/15% of the initial value of the contract.

Moreover, the EU public procurement directive 2014/24/EU which specified the above stated legal provisions was at the time of the audited projects already adopted or even as of 18 April 2016 should have been effectively transposed into the Czech national legislation.

EU legislation (directives) and related decision-making practice of the Commission and of the European Court of Justice ensure competitive environment among suppliers in the area of public procurement. This legislation at some point (current period) "found" that an amendment to a contract, which does not alter the subject matter of the contract and its value is not exceeding the limit of 10% for services/supplies and 15% for works, is not a substantial modification of the public procurement contract and it can be awarded without a competition among bidders (while fulfilling also other conditions). Therefore, the current legislation in force is based on the assumption that such a modification does not distort competition.

The annex to the Commission Decision C(2013)9527 from 19 December 2013 in Article 1.3 (first paragraph) states that the percentages reflect the gravity of the irregularities and the principle of proportionality and that they apply in cases where it is not possible to quantify the financial impact for the procurement contract at stake, so in other words, the primary goal is to quantify the financial impact. The new current EU legislation related to the public procurement is based on the assumption that a certain amount of additional works awarded to the original contractor without a competition does not distort competition. Then it is possible to assume that such an award of a contract (even in the past period when the award was not in line with the legislation in force) should not have any financial implications.

When reviewing the possibilities of considering more favourable legislation and thus stating a formal breach without financial impact, we can formulate arguments in favour of taking this kind of procedure into account as well as arguments against this approach. You will find a few of them listed below.

Arguments for **DISREGARDING** new and more favourable provisions:

[3] ECA audit in the context of PF 7194 DAS 2015 considered its finding as "other compliance issue" instead of "quantified error":

The contracting authority intentionally (or out of negligence) breaches national legislation applicable to the area of public procurement and affected competition between potential bidders which could have resulted in a more favourable price (higher quality of delivery in terms of performance/ price) of the public procurement.

Arguments for **CONSIDERING** new and more favourable provisions:

EU legislation (directives/ guidelines) and the subsequent decision-making practice of the Commission and judicial institutions of the EU on the area of public procurement provide competition and a competitive environment among bidders. This legislation at some point (current period) "found" that an amendment to a contract, which does not alter the subject matter of the contract and its value does not exceed the limit of 10% for services/supplies and 15% for works, is not a substantial modification of the public procurement contract and it can be awarded without a competition among bidders (while fulfilling also other conditions). Therefore, the current legislation in force is based on the assumption that such a modification does not distort competition.

Conclusion

From the context, it is possible to state that from the audit perspective, it is not entirely appropriate to determine financial corrections in situations when the law was breached at the time but the legislator removed such obligation from legal provisions.

This approach in Czech could be used by the audit for projects in which public contracts were launched between 26 February 2014 (the date of the adoption of the Directive 2014/24/EU) and 30 September 2016 (the last date before the entry into force of the Czech Act 134/2016, transposition of the last public procurement directive). In this context, no financial corrections shall be applied. When performing audits, only an infringement of the legislation should be stated but without applying financial corrections.

It is also an issue that cannot be, in terms of the ESIF financial controls, concluded unequivocally. The reason for that are two different levels. One of them is present between the provider and the recipient of the subsidy/ grant who would probably achieve the consideration of subsequent more favourable legislation in the tax proceedings, but the Member State does not have such a clear position with regard to the rules of shared management and the rules of the Commission Decision C(2013) 9527.

All in all, it seems to be needed to close such findings taking into account new provisions at least by decreasing financial correction and if sufficient completion than to formulate "only" formal breach of rules.

Acknowledgment

To conclude, let me thank all my colleagues thanks to whom I had the opportunity to compare opinions and draw my own conclusions during countless discussions last years. A big thank you goes out to my colleagues from the Czech Ministry of Finance, especially to those from the Audit Authority.

Legal Acts

Regulation (EU, EURATOM) No. 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No. 1605/2002.

Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006.

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DOI: 10.15290/acr.2017.10.06

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PECULIARITIES OF THE RUSSIAN BANKRUPTCY LAW ENFORCEMENT

Abstract

The authors consider some issues related to bankruptcy law enforcement, recovery of the entity's (bank) soundness and repayment ability, promotion of business activity, as well as the terms of challenging queer transactions consummated by the banks in bankruptcy proceedings. Based on the analysis of accumulated arbitration courts' practice the Authors reveal the peculiarities of challenging queer transactions in accordance with the existing bankruptcy legislation and explain the legal ideas of ensuring financial stabilization.

Key words

Banking law; bankruptcy legislation; financial stabilization

Introduction

Legal regulation of the institute of insolvency (bankruptcy) is one of the most actively developing spheres of legislation, as it reflects direct and backward linkages between economy and law. By their economic and legal nature bankruptcy processes are aimed at strengthening and increasing the efficiency of economy. The development of the given institute implies constant renewal of legal norms with the aim of decreasing economic risks by either liquidating or restructuring economically inefficient entities. From the viewpoint of legal support, the most crucial issues are those of protecting creditors' rights, ensuring financial and economic discipline, improving the reliability of credits and goods circulation and the quality of corporate management of entities.

The institute of insolvency in modern Russia (as there was no bankruptcy legislation in the USSR) developed in the form of three laws. The first one was the Law of the Russian Federation dated 19.11.1992 № 3929-1 "On the Insolvency (Bankruptcy) of an Entity" [Law of the Russian Federation of 19 November 1992 № 3929], the second one was the Federal Law of 8.01.1998 № 6-FZ "On the Insolvency (Bankruptcy)" [Federal Law of 8.01.1998 № 6-ФЗ].

In 2002 in his annual President's Message to the Federal Assembly of the Russian Federation V.V. Putin noted: "We must make the mechanism of bankruptcy proceedings and of the recovery of businesses more transparent, more market-oriented, and therefore less sensitive to corruption" [www.kremlin.ru/events/president/transcripts/21567 (accessed 5.11.2017)]. So to establish order in the area of bankruptcy a third legal act was adopted, the Federal Law of 26.10.2002 № 127-FZ "On the Insolvency (Bankruptcy)" [Federal Law of 26.10.2002 № 127-FZ] (hereafter, the Bankruptcy Law).

The model that was embodied in the Bankruptcy Law was most compromising. It softened the "suddenness of application of bankruptcy proceedings" for business, thus helping to get rid of the notorious practice of the 90s-2000s, when the given institute was often used as a means of redistribution of property or a method of political or economic pressure. The fundamental concepts of the law were also implemented in other branches of legislation (e.g. criminal law); more independence was given to the institute of insolvency representatives in terms of extending the rights of self-regulating organizations; the problem of the "absent debtor" was settled. However, the law was changed and amended and since 1.01.2017 it has been effective in the version of 3.07.2016.

One should also note here that in addition to the general legal acts mentioned above there were also special ones: the Federal Law of 25 February 1999 № 40-FZ "On the

Insolvency (Bankruptcy) of Credit Organizations" [Federal Law of 25.02.1999 № 40-FZ], and the Federal Law of 24 June 1999 № 122-FZ "On the Peculiarities of Insolvency (Bankruptcy) of Subjects of Natural Monopolies of Fuel and Energy Sector" [Federal Law of 24 June 1999 № 122-FZ] that are of no effect at present.

There is a need for scientific understanding of the inadequacy of the development of infrastructure of bankruptcy legislation enforcement, originating from the comprehensive nature of legal regulation and selective application of civil and public law methods supported by court practice.

The given article highlights the peculiarities of regulation of the insolvency of credit organizations that act as a blood vessel of any economy. It is axiomatic that financial stability of a bank system predetermines the stability of economic development, as well as social peace and security.

Main part

In his annual Message to the Federal Assembly of 1 December 2016, V.V. Putin noted that "…the bank system is getting rid of the establishments that infringe the law and clients' rights, and consummate suspicious financial transactions. The bank sector has been sanitized… All of this is a good basis for rapid revitalization of economy and the development of lending to real economy" [www.kremlin.ru/events/president/news/53379 (accessed 5.11.2017)]. It would be fair to draw attention to the positive vector of development of bankruptcy law enforcement and court practice here. The chairman of the Supreme Court of the Russian Federation V.M. Lebedev has pointed out positive developments in the arbitration practice: "… after the merger (of Higher courts) the efficiency of court's work has increased, the Supreme Court has become more productive in working out its legal positions and in the analysis of judicial practice [www.kommersant.ru/doc/2824328 (accessed 6.10.2017)]. Using the experience of the judicial norm setting and developing court practice of the Supreme Court of Arbitration in the work of Supreme Court of the Russian Federation contributes to legal certainty and legal support of economic relations.

Challenging queer transactions consummated by a bank is not a simple issue in the sphere of bankruptcy law enforcement.

The analysis of arbitration practice shows that insolvency representatives quite often challenge queer transactions consummated by the banks that are involved in bankruptcy proceedings on special grounds stipulated in the bankruptcy legislation [www.kad.arbitr.ru (accessed 5.10.2017)]. To our mind, the given legal option is directly related to additional protection of the creditors' rights, extra search for the sources of bankruptcy assets. At the same time it preventively contributes to strengthening financial discipline and economic order.

It is important that the special grounds for challenging queer transactions consummated by banks are stipulated in a separate norm, Article 61.2 chapter III.I of the Federal Law of 26.10.2002 № 127-FZ "On the Insolvency (Bankruptcy)" [Federal Law of 26.10.2002 № 127-FZ], according to which a queer transaction can be challenged by virtue of two special grounds:

- unequal reciprocal fulfilment of obligations by the other party of the transaction (point 1 Article 61.2 of the Bankruptcy Law);
- a transaction with the intention to inflict harm to the property rights of the bank's creditors (point 2 Article 61.2 of the Bankruptcy Law).

The ground stipulated in point 1 Article 61.2 of the Bankruptcy Law must be proved by the insolvency representative of the debtor. As it follows from the explanation in point 8 of the Resolution of the Plenum of the Supreme Court of Arbitration of the Russian Federation of 23.12.2010 № 63 (as amended of 30.07.2013) "On Some Issues Related to the Application of Chapter III.I of the Federal Law 'On the Insolvency (Bankruptcy)' [Bulletin 2011] (hereafter, Resolution № 63), **unequal reciprocal fulfilment of obligations** by the other party of the transaction takes place if the price and (or) other terms of the transaction at the moment of its consummation are considerably worse for the debtor compared to the price and (or) other terms of similar transactions consummated under comparable circumstances. It is important to keep in mind that when comparing the terms of the challenged transaction with similar transactions one should consider both the terms of the transactions consummated by the bank and the terms of transactions consummated by other economic agents.

The analysis of arbitration practice reveals that courts accept a petition from a bank's insolvency representative invalidating a transaction only in case there is direct evidence of unequal reciprocal performance of obligations [www.kad.arbitr.ru (accessed 15.12.2017)].

If the insolvency representative does not provide appropriate evidence confirming that the value of property transferred by the bank as part of the challenged transaction is considerably higher than the value of counter-performance of obligations, courts deny the application to invalidate the queer transaction based on point 1 Article 61.2 of the Bankruptcy Law [www.kad.arbitr.ru (accessed 12.11.2017)].

It is also important to take into account the timeframe allowing for a queer transaction to be challenged.

To invalidate a transaction based by virtue of point 1 Article 61.2 of the Bankruptcy Law it is necessary to prove that **the queer transaction was consummated within one year before bankruptcy petition was accepted or after the petition was accepted.**

Thus, the petition from the insolvency representative to invalidate a queer transaction is to be accepted if the applicant has proved and the court has found the following facts:

– inadequacy of counter-performance of obligations;
– consummating a transaction within a year before the bankruptcy petition was accepted.

There are also issues related to challenging the transactions consummated with the aim to inflict harm to the creditors' rights (point 2 Article 61.2 of the Bankruptcy Law).

First of all, one should take into account the explanations from point 5 of the Resolution of the Plenum of the Supreme Court of Arbitration of the Russian Federation of 23.12.2010 № 63, according to which to invalidate a transaction by virtue of point 2 Article 61.2 of the Bankruptcy Law, one has to prove the totality of the following circumstances:

– the transaction was consummated by the bank with the aim of inflicting property rights of the bank's creditors;
– as a result of the transaction consummation the property rights of the bank creditors have been inflicted;
– the other party of the transaction was aware or was supposed to be aware of the indicated aim of the debtor by the time of the transaction consummation.

In the case at least one of the given circumstances is not proved courts refuse to invalidate a transaction on the given grounds [www.kad.arbitr.ru (accessed 14.10.2017)].

It is important to keep in mind that when challenging a transaction based on point 2 Article 61.2 of the Bankruptcy Law the aim of inflicting harm to the banks' creditors' rights is assumed if two of the following circumstances are present at the same time:

– the bank was qualified for insolvency at the time of the transaction consummation;
– there is at least one of other circumstances present of those stipulated in paragraphs 2-5 of point 2 Article 61.2 of the Bankruptcy Law [Federal Law of 26.10.2002 № 127-FZ].

When defining the category of "harm to the creditors' property rights" one understands the following: the factual circumstances of decreasing the value and volume of the bank's property and (or) increasing the recovery claims to it, as well as other consequences of the transaction consummation or other legally meaningful actions that led or may lead to the full or partial loss of the opportunity for the creditors to satisfy their claims on account of the bank's property.

By virtue of point 1 Article 61.2 of the Bankruptcy Law it is assumed that the other party was aware of the aim to inflict harm to the creditors' property rights if it is qualified as an interested person (Article 19 of the Law), or if it was aware or was supposed to be aware of the infringement of the creditors' interests, or of the signs of insolvency of the debtor.

When the arbitration court settles the issue whether the other party of the transaction was supposed to be aware of the circumstances mentioned above, one considers whether it could establish the availability of the given circumstances by acting reasonably and with due circumspection.

As if follows from the explanations in point 7 of the Resolution of the Plenum of the Supreme Court of Arbitration of the Russian Federation of 23.12.2010 № 63, in the case of challenging a transaction on grounds of point 2 Article 61.2 of the Bankruptcy Law regarding the transactions that were consummated after the information about the implementation of a bankruptcy procedure had been published, one should proceed on the following basis: unless there is evidence to the contrary, any person should have learnt that a certain bankruptcy procedure had been implemented and therefore that there are signs of the debtor's insolvency.

If the queer transaction was consummated within a year before the debtor was declared bankrupt or after it, then the circumstances indicated in point 1 Article 61.2 of the Bankruptcy Law are sufficient for invalidating it and there is no need for the availability of other circumstances determined in point 2 of the given Article.

If the queer transaction with unequal reciprocal performance of obligations was consummated no later than within three years and no earlier than one year before the arbitration court accepted the bankruptcy petition, it can be invalidated only by virtue of point 2 Article 61.2 of the Bankruptcy Law and in the presence of the circumstances stipulated in this point.

The analysis of the arbitration practice shows that when challenging queer transactions consummated by banks by virtue of point 2 Article 61.2 of the Bankruptcy Law, arbitration courts rely on the recommendations stipulated in the given point [www.kad.arbitr.ru (accessed 8.09.2017)].

Conclusion

The positions mentioned above allow the Authors to make the following conclusions:

- the development of the Russian insolvency (bankruptcy) legislation proves adequate legal reaction to economic challenges;
- general bankruptcy legislation contains special norms regulating bankruptcy procedures in the socially important sectors of economy, particularly the bank sector;
- there are certain peculiarities of regulating bankruptcy procedures in the bank sector, based on a combination of civil and public legal methods;
- the analysis of the arbitration court practice in the sphere of challenging queer transactions by the insolvency representatives proves the presence of public legal aspects in their activity, aimed at decreasing creditors' risks and removing inefficient credit organizations from the market of bank services.

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DOI: 10.15290/acr.2017.10.07

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EVIDENCE TYPES AND SURVEILLANCE SYSTEMS IN ANTI-TAX FRAUD MEASURES, ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING

Abstract

The goal of this article is to confirm or disprove the hypothesis, whether: "The tax administrators are allowed to use the instruments of evidence which are gained by applying anti-tax fraud methods along with measures of anti-money laundering and counter-terrorism financing only according to the procedural rules of the specific procedure and to the EU data protection rules". It will also discuss the options that the public agencies, including tax administrators and Financial Intelligence Unit, have with regard to using the instruments of evidence, information, documents and tax statements including tax return, control statements and transaction reports received from different subjects via Electronic Registry of Incomes (ERI, EET). This article involves different evidence coming from surveillance systems in Anti-Tax Fraud, Anti-Money Laundering (AML) and in Counter-Terrorism Financing (CTF) according to Tax Procedure Code, Criminal Procedure Code and Administrative Procedure Code along with special legal acts.

Key words

Surveillance Systems; Evidence; Anti-Tax Fraud; Anti-Money Laundering; AML; Counter-Terrorism Financing; Criminal Procedure Code

Introduction

The goal of this article is to discuss the options that the state has with regard to integrating the evidence, information, documents and tax forms, including tax return, control statements and transaction reports, received from different subjects. The article will confirm or disprove the hypothesis, whether: "**The tax administrators are allowed to use the instruments of evidence which are gained by applying anti-tax fraud methods along with measures of anti-money laundering and counter-terrorism financing only according to the procedural rules of the specific procedure and to the EU data protection rules."**

It will also discuss the options that the public agencies, including tax administrators, law enforcement agencies and Financial Intelligence Unit, have with regard to using the instruments of evidence, information, documents and tax statements including tax return, control statements and transaction reports, received from different subjects via Electronic Registry of Incomes (ERI, EET). Therefore, I use the concept of public agency instead of tax administrator in some parts of the text because the agencies in the text also involve criminal procedure agencies such as police, state attorney's offices or courts along with tax administration and tax procedure. This article involves different evidence coming from surveillance systems in Anti-Tax Fraud, Anti-Money Laundering (AML) and in Counter-Terrorism Financing (CTF) according to the Tax Procedure Code, Criminal Procedure Code and Administrative Procedure Code along with special legal acts.

It will start in its **first chapter "Evidence and Presenting the Evidence"** by discussing the evidence and methods of its presenting along with the instruments of proof in the official procedure (which may differ in many countries). These rules will be discussed in general but the Czech regulation will be taken into account as the main basis for anchoring the system. The evidence is given by the instruments of proof which are discussed for example by Macnair [2013, p. 91].

The second chapter, "Surveillance Systems in Tax Law" will involve discussion on surveillance in general and on specific deployment of new systems in tax administration which involve collecting the data on income transactions committed to enterprises to the so-called Electronic Registry of Incomes.

The **third chapter** entitled **"Surveillance Systems in AML & CTF and their Legality for Tax Administration"** will include the connected area of measures against money laundering (anti-money laundering) and terrorism financing (counter-terrorism financing) and surveillance systems in these two areas of instruments for protection of the economy and financial system against the misuse of the economic relations. These two types of activities are very dangerous for the economic system itself.

The article will be ended by a **Conclusion** containing summarising remarks on these areas which have been formulated according to the current legal measures available in evidence and its presence in the Czech law.

Evidence and Presenting the Evidence

The public agencies including tax administrators, law enforcement agencies and Financial Intelligence Unit possess the access to many resources of evidence with regard to using the instruments of proof, information, documents and tax statements, including tax return, control statements and transaction reports, received from different subjects via Electronic Registry of Incomes (ERI, EET). This article discusses different instruments of evidence coming from surveillance systems in Anti-Tax Fraud, Anti-Money Laundering (AML) and in Counter-Terrorism Financing (CTF) according to Tax Procedure Code, Criminal Procedure Code and Administrative Procedure Code along with special legal acts.

Every procedural legal act usually contains the regulation of the concept: *burden of proof*, which is defined as "***the responsibility for proving something***" (according to Cambridge Dictionary) [www.dictionary.cambridge.org (accessed 15.09.2016)]. This *burden of proof* has to be held by the tax administrator in tax administration, which is allowed to use any documents that may (according to § 93 of Tax Procedure Code) serve to verify the real face of affairs and to verify the facts decisive for the correct detection and assessment of the tax. It also allows documents and instruments of proof that have been obtained before the beginning of the procedure. There is also a prohibition to use instruments of proof which have been obtained *contra legem*.

In the regime of administrative procedure, the burden of proof is held by the proponent of a rule or order for the proceedings on the request. For the administrative procedure ex officio, the burden is held by the administrative body administering the proceedings.

This kind of evidence for the successful management of finance management in public sector was discussed by Eigen in the year 2000 [2000, pp. 99-117].

Every instrument of proof has to be dealt with according to the specific procedural legal act. For the tax procedure, the specific act in the Czech Republic is the Tax Procedure Act No. 280/2009 Sb. (Coll.), valid as of 1st January 2011. There is no other lex generalis to the Tax Procedure Act because the Tax Procedure Act is lex generalis itself and at the same time § 262 of Tax Procedure Act stipulates that it is not possible to use any regulation coming from Administrative Procedure Code on any tax administration processes. The instruments of proof based on the Tax Procedure Act are based on the following evidence types:

- documents (paper or electronic, public and private ones);
- expert opinion;
- witnesses;
- recording duty of the taxable persons (who also create documents);
- aid tools in case of insufficient evidence;
- contract on tax between the Taxable Person and the Tax Administrator;
- preliminary question by the court, administrative body or especially by Court of Justice of the European Union.

For the Anti-Money Laundering and Counter-Terrorism Financing measures, the specific legal act regulating the instruments of proof which come from AML and CTF is the so-called Anti-Money Laundering Act no. 253/2008 Sb. (Coll.) as *lex specialis*. Lex generalis for the Act no. 253/2008 Sb. (Coll.) is the Administrative Procedure Act no. 500/2004 Sb. (Coll.):

- evidence through documents (also paper or electronic, public and private ones);
- evidence through inspections;
- evidence through witness testimonies;
- evidence through expert opinion;
- preliminary question by the court, administrative body or especially by Court of Justice of the European Union.

For the Criminal Procedure regarding the Tax Crimes (incl. for example Value Added Tax crimes which are a serious issue in the Czech legal practice), lex generalis which regulates the instruments of proof is the Criminal Procedure Code (as opposed by the Criminal Code itself):

- testimony of the accused, witness testimony and videoconference interrogation;
- confrontation, recognition, investigative experiment and reconstruction;
- on-site verification;
- expert testimony or opinion incl. opinion of the institute;
- evidence by things and documentary evidence;
- inspection incl. inspection of body and inspection of mental state.

As it is visible in the previous lists of instruments of proof, each of the three mentioned legal regimes of instruments of proof contains:

- a type of documentary evidence (documents in tax procedure, evidence through documents in administrative procedure and documentary evidence in criminal procedure);
- evidence based on witnesses and other persons are most general in criminal procedure: testimony of the accused, witness testimony and videoconference interrogation;
- inspections are named in a different way in different procedures - on-site verification in criminal procedure, evidence through inspections in administrative procedure and
- expert opinion (the same name in tax procedure and administrative procedure, expert testimony or opinion incl. opinion of the institute in criminal procedure);
- specific evidence types for criminal procedure involve confrontation, recognition, investigative experiment, reconstruction, videoconference interrogation, evidence by things which are explicitly regulated only in criminal procedures;
- preliminary question is explicitly regulated in the administrative procedure and in the tax procedure, but de facto exists also in criminal procedure although it is not explicitly regulated – in this case preliminary question may be decided by court or by an administrative body;
- specific tax law legal regimes of instruments include recording duty of the taxable persons (who also create documents), aid tools in case of insufficient evidence and contract on tax between the Taxable Person and the Tax Administrator, all three are specifically connected with the nature of the tax administration and tax law (that is collecting public revenues through taxes and other similar pecuniary instruments paid by taxable persons).

According to the Data Protection Act no. 101/2000 Sb. (Coll.) there has to be a title of data processing of a specific data set. The most general title for data processing is the consent of the data subject who is according to Art. 2 letter a) first phrase of the Data Protection Directive no. 95/46/EC (furthermore also as "DPD"): an "identified or identifiable natural person" via the personal data. The consent itself is required by Art. 7 letter (a) DPD, e.g. for classic private relations, enterprise data processing incl. customer relationship management, marketing, etc. The tax procedure incl. anti-tax fraud measures in this type of procedure, along with anti-money laundering and counter-terrorism financing measures and criminal procedure incl. procedure on tax fraud fall under a different title of data processing: Art. 7 letter (e) DPD stating that data processing is allowed when it *"is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed*" [Art. 7 Directive 95/46/EC of the European Parliament]. As of 26 May 2018, currently existing Data Protection Directive will be repealed by the so-called GDPR - General Data Protection Directive which has been passed as the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [Regulation (EU) 2016/679 of the European Parliament]. Also a new Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA has been adopted.

This new framework of personal data regulatory scheme involves the continuation of the previous system of regulation based on the protection of personality rights based on the constitutional rights.

Surveillance Systems in Tax Law

Surveillance Technologies are defined by Coleman and McCahill as technologies "operating through plural systems of rule aimed at regulating the movement of goods, persons and the control of criminality" [Lyon 2010, p. 24]. For the purposes of this article, I have simplified Systems of Surveillance Technologies to Surveillance Systems because I believe that the meaning is identical as the previous one. Behind the surveillance systems, there has been a substantial theoretical discussion in sociology and other humanities disciplines on the process of social sorting linked with surveillance, which has been reflected for example by Lyon [2002, pp. 20-22].

The part of gathering evidence on tax evasion is often based on surveillance systems. These systems exist both in anti-tax fraud and in anti-money laundering and counter-terrorism financing. At first, I would like to focus on surveillance systems in tax law. As of 1 December 2016, the Czech Republic introduced a new instrument as a surveillance system per se for collecting the data on transactions and cash / payment card income of enterprises - from this date, restaurants, hotels, hostels, guest houses, cafés, camping sites and canteens.

Electronic Registry of Income is the system that has been introduced into the Czech law according to the Act no. 112/2016 Sb. (Coll.), on the Registry of Income (furthermore as "RI"). This act came into effect as of 1 September 2016 in its part and from 1 December 2016 as a whole. It introduces the concept of "registered income" according to § 4 part 1 and part 2, which includes the "*payment fulfilling formal requirements for a registered income and which forms a basis to decisive income*" [§ 4 part 1 Act no. 112/2016 Sb.]. Second group of registered income involves payments "*fulfilling formal requirements for a registered income and is a) dedicated to subsequent drawdown or clearing that both create decisive income, or b) is a subsequent drawdown or clearing that both create decisive income*" [§ 4 part 2 Act no. 112/2016 Sb.]. It is obvious that this definition has been set out as a definition "in circle", mainly because the Czech version of the act is using different terms "evidovaná tržba" as registered income and "rozhodný příjem" as decisive income but both "tržba" and "příjem" is both translated as income (while *revenue* which is also sometimes used means a different concept, "výnos", which does not necessarily involve the actual physical payment of the money).

Technically, this system will serve as an Internet reporting system for every payment which has been received according to § 5 RI by an enterprise in cash, by cheque, by bill of exchange, by payment card (which is defined through generally technically-independent definition cashless transfer of money which has been ordered by payer through the beneficiary - taxpayer who is entitled to register the income), in other forms similar to the aforementioned ones and also by netting of bail or guarantee deposited by the aforementioned payment methods. This new regulation was introduced in the same time as the tax package planned for 2017 [Boháč 2016, p. 28], but for many reasons it was submitted into the legislative procedure as a separate act. It was (correctly) expected that this act will be very sensitive in the legislative process, mainly in the Parliament of the Czech Republic.

One of many different arguments against the Electronic Registry of Income has been the violation of fundamental human freedom of "enterprise" granted by Art. 26 part 1 which states "*Everybody has … the right to engage in enterprise and pursue other economic activity*" [www.usoud.cz/en (accessed 15.09.2016)]. This argument was mentioned in the Czech legislative procedure's discussion (having no impact on the fact that the Electronic Registry of Income passed). It is obvious that any type of surveillance in tax administration may diminish the constitutional right to engage in enterprise. But still, in my opinion, the surveillance in an amount which is passed by democratic means, is in compliance with the legal and legitimacy standards given by the constitutional law and the limitation of constitutional rights, is in the limits provided by the Czech Charter of Constitutional Rights and Freedoms. In this case, Art. 26 part 2 of the Charter states that "*conditions and limitations may be set by law upon the right to engage in certain professions or activities.*" In the society of the rule of law, it is usual that one person is limited in its rights and freedoms for the benefits of other persons (on the contrary, the right to judicial and other legal protection is different, because it cannot be limited, it only may have conditions, as it is stated in Art. 36 of the Charter). That means the constitutional shield is limiting and preventing overuse or misuse of the surveillance systems for the purposes outside the legally protected interests of the state.

Surveillance Systems in AML & CTF and their Legality for Tax Administration

Automated systems for risk assessment are in the first moment initiated by a bank who is an obliged person

according to the Act no. 253/2008 Sb. (Coll.) on Anti-Money Laundering and Counter-Terrorism Financing as amended [further only as "AML Act"]. These systems are based on identification of suspicious trades according to the § 6 of AML Act. The suspicious trades have no specific legislative definition, it is outlined only on the basis of the full enumerative list.

On the basis of the detection of suspicious trades the bank or any other service provider has a duty to report the suspicious trade to the Financial Intelligence Unit.[1] The Financial Intelligence Unit in Slovakia has a seat in Bratislava and has been founded by the Act no. 297/2008 Z. z. (Coll.) On Anti-Money Laundering and on Counter-Terrorism Financing and on the amendment and supplementation of various legal acts as amended.

This mechanism is a part of the general principle "Know Your Customer" which has been extensively discussed by financial lawyers from Brno Faculty of Law [Kyncl 2012, p.166] currently harmonized by the European Union. As to September 2016, it has been harmonized by the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. As of 26 June 2017 the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing will come into force and be applicable.

With regard to the aforementioned data protection, the lawmaker had an option to let the evidence produced in Anti-Money Laundering and Counter-Terrorism Financing processes to be used in an Anti-Tax Fraud measures in tax administration. According to the Czech legal regulation *de lege lata*, the amendment of AML Act would be advisable. It is currently unclear because of the construction of a limit on sharing the evidence produced by AML to the tax administration, customs administration and law enforcement agencies. In the past, data protection has been considered mainly the issue for private data processors. The EU regulation shows obvious conclusion - the data processing by public agencies which would be excessive may of course be at the same time harmful to a part of people in the society. It is although obvious interest of the state to allow the tax authorities to be able to tax the data which has earlier been gained from the criminal activities. The lawmaker should therefore adopt the amendment to § 32 part 2 which contains clear jurisdiction of the Financial Intelligence Unit to inform the Police, Financial Administration bodies, Customs Administration Bodies (the latter through General Financial Directorate and General Directorate of Customs) about the facts important for the conduct of activities of these three state bodies. Unfortunately, there is a limitation in § 32 part 2 to provide only the information which are not in violation for the purpose of the Czech AML Act. It is important to mention the goal of AML Act, which is mentioned in Art. 2 of Recital in Directive 2005/60 as the protection of: *"the soundness, integrity and stability of credit and financial institutions and confidence in the financial system… (against) the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes."* That means the effect of the economic system on taxes is the part of the broad goal of the AML Act but is not the primary goal of the AML and CTF regulation.

Despite the mentioned imperfect texting of the AML Act, the source of data and documents in the Anti-Money Laundering and Counter-Terrorism Financing for the benefits of tax administration is expected by the law. The Financial Intelligence Unit usually provides this data and documents to the financial administration and to the customs administration and therefore the texting of the jurisdictional regulation should explicitly mention the ability to disclose the data by Financial Intelligence Unit to the financial and customs administration for tax purposes (which is not regulated in this form, not even with the effectivity as of 1 January 2017 that is in the new legal regulation complying with the aforementioned 4th AML Directive 2015/849/EU).

Conclusion

The goal of this article was to discuss the options that the public agencies including tax administrators and Financial Intelligence Unit have with regard to using the instruments of proof, information, documents and tax statements, including tax return, control statements and transaction reports received from different subjects via Electronic Registry of Incomes (ERI, EET). I believe that this goal has been met, because the article has partially confirmed and partially disproved the following hypothesis: "**The Tax Administrators are allowed to use the**

[1] The Czech Financial Intelligence Unit (FIU) is a separate independent department of the Ministry of Finance. In other countries, the legal stance of FIU may vary - e.g. in Slovakia FIU is a department of the Ministry of Interior.

instruments of proof which are gained by applying anti-tax fraud methods along with measures of anti-money laundering and counter-terrorism financing." The public agencies use the information from surveillance systems for gathering evidence on financial transactions and economic activities that are conducted by taxable persons. The role of the surveillance systems is to obtain specific information and documents that enable upholding the burden of proof ex post in the official procedure, without regard to the fact whether that is a tax procedure, criminal procedure or a special administrative procedure.

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Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

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DOI: 10.15290/acr.2017.10.08

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MUNICIPALITY AND INCOME TAX

Abstract

This article is a brief insight into the issue of income tax and its relation to the municipalities. Firstly, the Authors present some basic information about the income tax and the new Act on the Income Tax. Further, budgets of municipalities are described, where attention is focused especially on the revenues of municipalities from the income tax. Besides a historical development of the amount of this revenue and its present amount, the Authors also propose different ways how municipality could influence the amount of revenues which flow from the income tax into its budget. Conclusion summarizes facts about instruments which are in competence of municipality, for law rules taxes very strictly.

Key words

Municipality; income tax; budget; tax revenues

Introduction

Within the amendment of the Act No. 586/1992 Coll., on the Income Tax with effect from 1 January 2017 we would like to focus on relation between this tax and local self-government unit, especially municipality – from the preview of the current situation to possible future development. We will be interested also in methods which municipality can use to influence the amount of income tax yield – percentage as well as the number of taxpayers in the municipality - flowing into its budget.

This tax relates to direct taxes and the Act on Income Tax divides it into personal income tax and corporate income tax. It is a part of the municipality´s income. The Act No. 243/2000 Coll., on the budget determination of revenues from specific taxes to territorial self-governing units and specific state funds declares percentage amount which is delivered to the concrete budget, for example of municipality or region. Municipality gains from taxes yield from property tax, value added tax and at last from the income tax. Local charges can also be included into tax revenues. We could mentioned, for example dog charge, charge for spa and recreation stay, charge for using public places, charge on entrance, etc.

Among other revenues we could distinguish revenues from self-employment, gifts, revenues from sale of fixed assets or from sale of shares. The last and very important part of all incomes are donations, whether from the state or regional budget. Therefore, income tax shows how many percent the subject participates in creating the municipality budget due to subject´s income, instead of excise duties. Budgetary determination of taxes is essential for municipality and it creates a large part of its revenues.

Budget of a municipality

A budget is a financial plan, which manages funding of the municipality activities. It is created for the following year and is based on budget forecast, which contains intended revenues and expenditures of a municipality. Revenues of a municipality include disposal of property, municipal activity, grants, tax yield and others [Act No. 250/2000 Coll.]. The largest part of the revenues is composed of tax and grant revenues. Although non-tax revenues are not as great as tax revenues [Tomášková, Pařízková 2015]. Expenditures involve performance of obligations resulting from law, contracts, expenditure on its own activity, etc.

There is nothing specific about budgetary process during the construction of a budget. Draft budget has to be published at least for 15 days on a notice board - it is a manifestation of the transparency principle. Afterwards, the draft is discussed at the local council and then approved. Otherwise municipality proceeds according to the budget for the prior period. However, this is not the end of the budgetary process, because its part is also management in accordance with the plan and continuous and consequent control [Act No. 250/2000 Coll.].

Income tax as a revenue of the municipal budget

Tax revenues of the municipality can occur as local taxes, entrusted taxes, shared taxes, or such taxes, which are collected besides the central taxes [Provazníková 2015]. We will be interested only in entrusted and shared taxes, which are related to income tax. Revenue from entrusted taxes belongs in this case entirely to the municipality. It includes a property tax, which is unfortunately only additional source of revenues of the municipal budgets [Radvan 2011], and personal income tax from self-employment and business. Only 30% of this tax flows to the municipal budget and it is always the municipality in which the entrepreneurs have their permanent residence. On the other hand, shared taxes have similar tax base, which is shared by the state, regions and municipalities. Collected taxes are shared in accordance with the law and municipalities have no actual chance to influence it. There are two types:

- **derivative type** – is based on distributing the percentage, which belongs to municipalities, according to the revenue from this tax on the territory of the municipality**;**
- **non-derivative type** – there is a distribution based on criteria other than the tax revenue on the territory, for example according to the number of residents of a community. The Czech Republic uses this method.

In the Czech Republic these taxes include a part of personal income tax from self-employment and business, personal income tax from employment, corporate income tax and value added tax [Provazníková 2015]. The amount of tax revenues percentage cannot be influence by municipality – percentage is regulated by the law. However, the municipality can influence the number of inhabitants, for example by creating appropriate environment for families with children or for business entities. All this has an impact on the amount of the revenue which municipality obtains.

Budget composition

Budget composition determinates uniform division of fiscal operations, which is obligatory for all public budgets including municipal budgets [Provazníková 2015]. It allows comparison of special, i.e. between individual budgets on the same level, and also temporal domain, between different periods. It ensures unity and transparency throughout the whole budget system. Using this we can far better analyse the economy and cover the budget deficit. The problematics is regulated by the regulation of the Ministry of Finance No. 323/2002 Sb., o rozpočtové skladbě (on budget composition) [Provazníková 2015].

The budget composition uses four basic perspectives sorting fiscal operations: chapter, generic, sectoral and consolidation [Červenka 2009]. The generic perspective is considered basic and it is obligatory for the municipal authorities. Using this we can differentiate between fiscal operations of revenue, expense and the so-called funding. Tax revenues are using this perspective defined as *compulsory, unreciprocated, irretrievably collected revenue, coming from taxes, insured social and health insurance and supplementary payments including taxes and penalties for late or incorrect payment* [Provazníková 2015]. Among these revenues are ranked income, profit and capital gains tax and also taxes on domestic goods and services, goods and charges on chosen activities and others.

Developement of tax revenues

Tax revenues are one of the most important municipal revenues in the Czech Republic, because they make almost half of their total amount. Because of this, it is appropriate to become familiar with the development of tax revenues since the origin of the Czech Republic, due to implementation of a new tax system. The development can be divided into three phases (based on break-through moments) [Provazníková 2015].

Phase I (1993–1995): By the introduction of a new tax system the individual income tax (IIT) became the source of municipal revenues – the municipality gained the whole income from the IIT from self-employment and a share on IIT from dependent activity. A few years later the revenues were extended by the whole income from the corporate income tax, but it had only trivial significance. At the time bonding tax revenues with district-wide revenues made significant problems. It caused great differences in municipal revenues in the different districts. It was not uncommon that two municipalities of almost the same characteristics gained different level of tax revenues

only by being located in different districts. There were also speculative practices of municipalities and their acquisition of businesspeople permanent residence. Due to this fact, the passage of the amendment to the budget rules was imminent.

Phase II (1996–2000): The amendment of 1996 brought changes focused mainly on the individual income tax from dependent activity and the corporate income tax. The goal was to connect tax revenues of municipalities with economic activities of the businesspeople operating on the municipality's territory and to avoid widening the differences between municipalities and districts [Provazníková 2015]. This amendment did not remove unequal tax revenues of the municipalities within the territory for the future. Above all small municipalities were weaker due to not having the payers' residence. Competition for acquisition of businesspeople also prevailed [Provazníková 2015].

Phase III (2001–present): It was more than desirable to pass another amendment removing sources of unequal differences in the municipal revenues and cutting the bond with the district-wide revenues. There were also efforts to contribute to greater stability of the municipal budgets in time and to better predictability of the municipal budgets using bigger involvement of the shared taxes. Also constantly raising unequal dynamics in the development of tax revenues of the municipal budgets and the state budget was removed. Concurrently it was necessary to include new level of a higher territorial self-governing unit, kraj (region), in the funding [Provazníková 2015]. In **2002** was assigned new motivational element to the municipalities, 1.5% share of the republic-wide revenues from the individual income tax from dependent activity and functional benefits depending on the number of employees in the municipality (in comparison to the total number of employees in the Czech Republic). In **2008** the legislation was changed once more. This time after fierce demonstrations followed by submission of the complaint to the Constitutional Court against discrimination of small municipalities anchored in the Act No. 243/2000 Sb. In the following amendment were introduced new criteria for the redistribution of the revenues from the shared taxes for the municipalities: criterion of total acreage of the municipality, criterion of a simple number of residents of the municipality and modified existing criterion – number of residents of the municipality modified by coefficients of size categories of the municipalities. Municipality revenues were increased to the 21.4% share of the shared taxes revenues [Provazníková 2015].

The present day

Currently, the concerned problematics is adjusted by the Act No. 243/2000 Sb., on the budget determination of revenues from specific taxes to territorial self-governing units and specific state funds - the BDT. Tax revenues are transferred to the municipal budgets by the tax administrator once every month, unless specified otherwise [www.financnisprava.cz/cs/dane-a-pojistne/kraje-a-obce/danove-prijmy-kraju-a-obci/danove-prijmy-rozpoctu-kraju-a-obci-3736 (accessed 10.02.2017)]. The specific amount of money to be assigned to the municipalities is calculated using a mechanism specified in § 4 of the BTD.

The basis for the calculation of municipality's claim is 100 % of national gross tax revenue. There are exceptions, for example for the individual income tax there is a basis of 60 % (except for the tax from dependent activity and for the taxes collected by the reduction by a special rate) [www.financnisprava.cz/cs/dane-a-pojistne/kraje-a-obce/danove-prijmy-kraju-a-obci/danove-prijmy-rozpoctu-kraju-a-obci-3736 (accessed 10.02.2017)].

From the basis specified in the preceding paragraph according to the BTD a specific percent is determined to be the final complex for the calculation of municipalities' claim in the Czech Republic. The rest of the tax revenue falls to the state budget and to the regional budgets. The rate which a specific municipality gains from the final complex comes from the criteria based on:

1. total acreage of the municipality – criterion weight 3%
2. simple number of residents – criterion weight 10%
3. number of learners – criterion weight 7%
4. number of residents modified by coefficients of gradual transitions between size categories of the municipalities – criterion weight 80 %

So final percentage is determined by the division of the criteria for the specific municipality and the summary of the criteria for all municipalities. Exception is made for four largest cities of the Czech Republic – Brno, Ostrava, Plzeň and Prague – for which special rules are applied.

Of 1 January 2017 the problematic, and for the most of municipalities disadvantageous, 30% share from corporate taxes (the so-called motivational element) was removed by the senate amendment [www.dvs.cz/clanek.asp?id=6710577 (accessed 10.02.2017)] and in contrast the share of municipalities on VAT was raised to the total of 21.4 %. The approved text is a great benefit to the municipalities. According to preliminary estimates over 5.500 municipalities should gain more than CZK 1 billion extra in total. The following reasons supported the removal of the motivational element:

- This share favoured only a small group of municipalities, not always totally objectively
- Only 23 % of the municipalities of the Czech Republic had claim on the share
- Income from this tax is decreasing in the long term, plus it is hard to predict

Possibilities to influence the income tax of municipalities

Indirect influence of municipalities

To implement the solution to raise community revenues from the income tax is more in the competence of the state than the municipality itself. The easiest way to change it is by political decision providing higher tax rate to the municipalities. But municipalities cannot influence this, they can only propose to raise this tax. We could also think about increasing the number of criteria to determine the amount of a specific sum of nationwide tax yield – today we talk about the area of municipality, population and number of children who attend schools or other school facilities, which are established by the community. For example, the area of its cadastral territory could be tightened to a built-up area. This would help in more equitable allocation of tax yield. Also more criteria could better express the need of the municipality regarding its expenses. This topic will be discussed below.

If we leave this method and close it as a method which community cannot influence, we will demonstrate the minimal instruments belonging to municipality. As mentioned above, the specific sum which enters into the municipality account comes from legal criteria. We will attempt to describe each one separately and we will explain how municipality could use it for its own profit and whether it is possible to increase the number of residents considering income tax depending on them.

The first legal criterion is its area. It is determined by cadastral map limited by such other territories of neighboring villages. Their borders meet. Municipality could change only the size of its built-up area and therefore the relation between built-up area and non-urbanized area. In this case it has no significance.

Another important element is the number of residents who have their permanent residence there. It means not only factual place of residence but registered place of permanent residence, because income tax yield flows only to the municipality where the person´s permanent residence is. Municipality could attract new inhabitants by creating better conditions for living and positive development for their children, and to increase the number of its residents – modify parks, playgrounds. Also it is possible to create quiet areas for living, cheaper building sites for constructing new houses, ensuring good access to larger cities by public transport. Establishment of basic schools or kindergartens in the community is suitable for families with children for two reasons – first one is a closer accessibility without the need to commute and the second one is a stable team which works during school lessons as well as after school, near to their homes. Also construction of new local council flats belongs to the one of solutions – rent of these apartments is lower than of the apartments in possession of housing associations or privately owned apartments. For businesspeople municipality could offer non-residential premises for rent, cheap building sites, Construction Company residing right in the community – this all could make their businesses go easier. Last criterion is the number of pupils who go to schools or other school facilities established by municipality. There is only one possibility how municipality could influence this point – establish some of these school facilities with the highest possible number of pupils.

Proposition of changes

The above mentioned ideas show how a municipality may indirectly influence its tax revenues. In this chapter we try to propose suitable solutions for the shared taxes to be redistributed more fairly, eventually for the tax jurisdiction to be strengthened. The BDT could, besides a few present criteria used for the redistribution of the shared taxes (acreage of the municipality, number of residents, number of children and students attending schools established by the municipality, gradual transition), consider some other factors. It could inspire abroad, for example the legal regulation of the Slovak Republic considers the number of residents who exceeded the age of 60. It could be used to estimate the expenses of the municipality on people in the retirement age [Kapounová 2009]. In addition, the distance to the administrative authorities, traffic availability, job opportunities, level of unemployment, or municipality's natural conditions could be also considered. The more criteria is examined, the more fair the redistribution of shared taxes to the individual municipalities is [Kapounová 2009].

Motivational elements are used by the legislators to motivate municipalities to create conditions beneficial to support business and employment in their area. It is the best way to increase their income from tax revenues. Till 1 January 2017 was a typical motivational element 30% share from the business people's taxes, but it was removed

due to the reasons stated above. Currently, the motivational element stays at 1.5% share of the national tax revenues of IIT from dependent activity according to the number of employees in the given municipality. It is important to motivate municipality to attempt to participate in its economic development and it is also necessary for the municipality to be for the effort financially rewarded [Kapounová 2009]. To increase the influence of the motivational elements, new elements could be introduced or at least the percentage share of the existing ones should be increased.

Additional taxes could be used for strengthening of municipality's tax jurisdiction, which is currently insignificant. It is not a new institute, it already appeared in Austria-Germany era and became municipality's main revenue. This tradition was continued in the newly founded Czechoslovak Republic [www.toulky-minulosti.cz/danove-prirazky (accessed 10.2.2017)]. It means that every municipality can set a supplementary charge to the centrally set taxes depending on its needs and deliberation. This is used in Denmark, where state-level taxes are at a low level and municipalities have the opportunity to choose their own rates. Similar solution is used in France, where similarly additional taxes can be set by municipalities and regions.

Conclusion

Present BDT does not give, in comparison with other developed countries, too much space for municipalities to influence their tax revenues. It is caused by the fact that all the taxes within the approved tax system are regulated by the laws with nationwide validity and are resolved by the parliament. Using these laws the basic parameters of the taxes are determined – the tax entity, tax object, tax basis and tax rate. In addition, all these taxes are collected by the state through the territorial fiscal authorities.

As it was stated above, the municipality cannot influence tax revenues. On the one hand, it decreases the expenses spent on the tax administration, and the other hand the bond between returned taxes and the expenses of the municipalities' budgets disappears. Also the bond between the taxpayers and the given area disappears, which often leads to unwillingness to pay taxes. After that these subjects have a tendency to evade taxes or to commit various tax frauds. Concurrently the interest of the public in the municipalities' budgets decreases and with that also the eventual public supervision over the economy of a specific municipality [Provazníková 2015].

In this contribution we outlined several possibilities how municipalities can at least indirectly influence their tax revenues and concurrently we tried to propose several solutions which can lead to strengthening the municipality's tax authority or at least to a better and more righteous shared tax redistribution.

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DOI: 10.15290/acr.2017.10.09

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REPORT ON THE 15th INTERNATIONAL SCIENTIFIC CONFERENCE "CONCEPTS OF TAX CODES. THE FIFTEENTH ANNIVERSARY OF THE CENTER'S ACTIVITY"

(25-27 September 2016, Białystok, Poland)

The 15th International Scientific Conference "Concepts of Tax Codes" took place from 25 to 27 September 2016 in Bialystok, Poland. The Conference was organized by University of Bialystok, Faculty of Law and the Center for Information and Research Organization in Public Finance and Tax Law of Central and Eastern European Countries. The 15th International Academic Conference was special, because it was the Fifteenth Anniversary of the Center's Activity.

During these three days representatives from Belarus, the Czech Republic, Hungary, Lithuania, Poland, Russia, Slovakia, Ukraine were discussing and sharing experiences revolve around Tax Codes in their countries. The Fifteenth Anniversary was also an opportunity to celebrate years of cooperation between Academic Centers in Central and Eastern Europe.

Conference started on Sunday evening (25 September). The participants met on integration meeting in the Faculty of Law Club.

On Monday the President of the Center, Prof. Eugeniusz Ruśkowski opened the Conference. The first panel was moderated by Prof. Marina Karasieva – Sentzova and three lectures were given. Prof. Mariusz Popławski told listeners about Polish Tax Code; Doc. Lilia Abramchik analysed how Belarus Tax Code was created and showed practical aspects of this codification; Prof. Vladimir Babčák described Tax Code in Slovakia.

The second panel was moderated by Dr. Gábor Hulkó. In this section Prof. Marina Karasieva – Sentzova spoke about the Tax Code of the Russian Federation. She described history, structure and reforming problems of this legislation. Prof. Marie Karafiková and Doc. Radim Boháč characterised Tax Procedure Code in the Czech Republic and Doc. Andrii Mostovyi gave a speech on the features of legal regulation of tax relations in Ukraine.

The last panel on the second day was moderated by Doc. Michal Radvan. During this panel Dr. Júlia Fehér, Dr. Gábor Hulkó, Dr. László Pardavi talked about Hungarian Tax Code. This part also included lecture by Prof. Bronius Sudavičius and Dr. Martynas Endrjaitis, who drew the audience's attention to Tax Ordinance Act of the Republic of Lithuania. Prof. Danylo Getmantsev spoke about codification of Tax Legislation of Ukraine.

The last day of the conference began with a presentation of the Scientific Guide Book of the Center. The President of the Center, Prof. Eugeniusz Ruśkowski, showed the results of scientists' work from Academic Centers in Central and Eastern Europe. After presentation there was a discussion panel "Rules and problems of evaluation and dissemination of the scientific achievements concerning public finance and tax law in the countries of Central and Eastern Europe and Center's support in their implementation and solution".

The chairman Prof. Jan Głuchowski moderated the last panel. The lectures were given by: Dr. Urszula Zawadzka

– Pąk (Poland), Doc. Michal Radvan (Czech Republic), Prof. Marina Karasieva – Sentzova (Russia), Doc. Mária Bujňáková (Slovakia), Prof. Oksana Muzyka – Stefanchuk (Ukraine), Dr. Gábor Hulkóv (Hungary), Doc. Lilia Abramchik and Doc. Svetlana Ahiyevets (Belarus).

The 15th International Scientific Conference was concluded by Prof. Leonard Etel, Prof. Jan Głuchowski and Prof. Eugeniusz Ruśkowski. They summarized the conference and shared their feelings about it. In the end there was the General Assembly of the Center. During this part plans related to the Center's activity were presented. The President of the Center announced also that the next edition topic will be: "The Optimization of Organization and Legal Solutions Concerning Public Revenues and Expenditure in Social Interest". All participants agreed that this jubilee edition was very didactic, inspirational and interesting. Days of conference in Bialystok were spend in friendly and scientific atmosphere. After the conference, a book "Tax Codes Concepts in the Countries of Central and Eastern Europe" (Edited by: Prof. Leonard Etel and Prof. Mariusz Popławski) was published. The book made by publishing house "Temida 2" includes the speeches of the conference participants.

Author biography:

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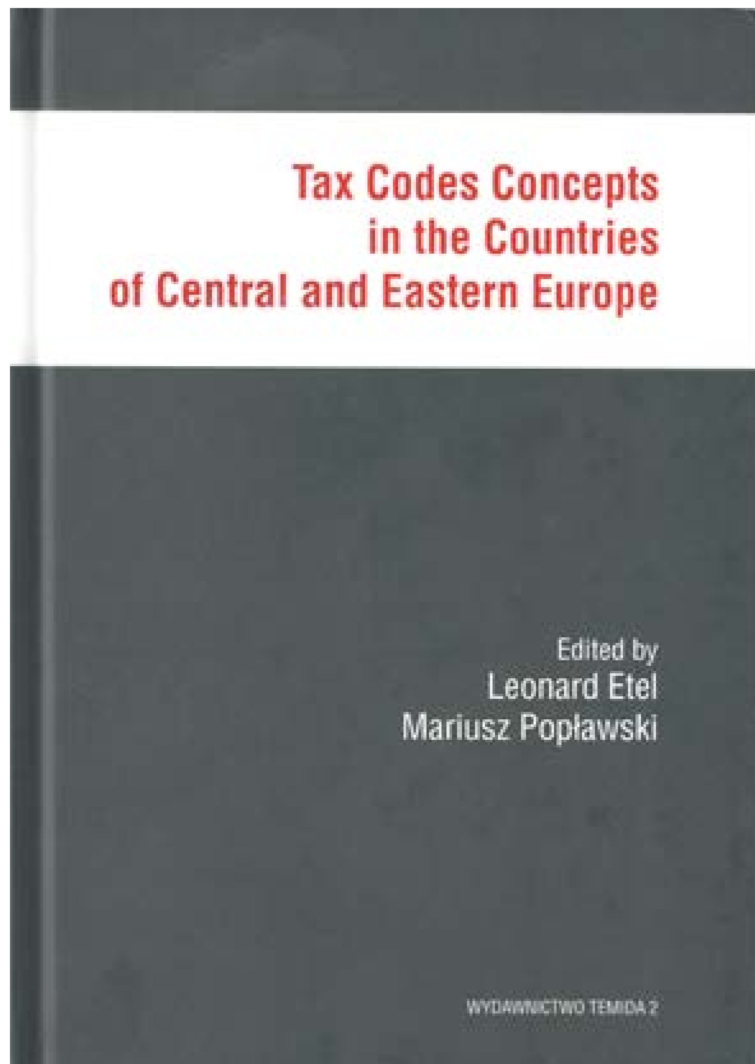

DOI: 10.15290/acr.2017.10.10

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REPORT ON THE 16th INTERNATIONAL SCIENTIFIC CONFERENCE "THE OPTIMIZATION OF ORGANIZATION AND LEGAL SOLUTIONS CONCERNING PUBLIC REVENUES AND EXPENDITURES IN SOCIAL INTEREST" (21-22 September 2017, Vilnius, Lithuania)

16th International Scientific Conference "The optimization of organization and legal solutions of public revenues and expenditures in social interest" took place on 21-22 September 2017 in Vilnius. It was organized by the Faculty of Economics and Information Branch of the University of Bialystok in Vilnius in cooperation with the Department of Public Finance and Financial Law and the Department of Tax Law of the Faculty of Law at the University of Bialystok with the participation of the Center for Information and Research Organization in Public Finance and Tax Law of Central and Eastern European Countries.

The objective of the International Conference was to present the relationship between income, budget expenditures and public financial interest. Several speeches were followed by discussions, what was a developing aspect of the conference. The success was also a large number of participants, namely dozens of lawyers and economists, including representatives from such countries as Belarus, the Czech Republic, Lithuania, Poland, Russia, Romania, Slovakia and Hungary.

The 16th International Conference was held at the House of Polish Culture in Vilnius, where the Ponas Tadas Hotel is located. The languages of the Conference were Polish, English and Russian. An unusual event was the Seminar for PhD Students and Junior Academics organized together with a competition for the most interesting scientific papers.

In the opening ceremony of the conference, the first to speak was prof. Eugeniusz Ruśkowski, the President of the Center for Information and Research Organization in Public Finance and Tax Law of Central and Eastern European Countries. Then, as second spoke prof. Mieczysław Zdanowicz, Dean of the Faculty of Economics-Informatics Branch of the University of Białystok in Vilnius. At the end of the opening ceremony, all participants were greeted by Urszula Doroszewska, the Ambassador of the Republic of Poland in Lithuania.

Then the general panel of the Conference started and at this panel the Chairs were prof. Jan Głuchowski and prof. Marina Sentsova. The papers were generally related to the notion of public financial interest in selected countries. On the above subject, the following speakers presented their issues:

1. Dr. Paweł Lewkowicz "O pojęciu interesu publicznego w teorii i praktyce".

2. Prof. Witold Modzelewski "Publiczny interes finansowy w polskim prawie podatkowym".
3. Prof. Lilia Ambramchik "O pojęciu publicznego interesu na Białorusi".
4. Prof. Elena Chernikova "Public Interest in Russian Financial Law and Modern Legal Studies".
5. Prof. Petr Mrkyvka "O pojęciu interesu publicznego w Republice Czeskiej".
6. Prof. Bronius Sudavičius "Публичный интерес и финансовая деятельность государства в Литовской Республике".
7. Dr. Gabor Hulko, Dr. Diana Kocsis "Basic Principles of Administrative and Tax Procedures in Hungary as a Tool of Balancing Private and Public Interest".

During the next two panel sessions, the speakers focused on specific issues concerning public interest in public revenues and in public expenditures. At the end of each panel there was a discussion on the presented subject.

The first plenary session of the Conference on public revenues took place under the chairmanship of prof. Marie Karfikova and prof. Wiesław Miemiec. In this part of the conference, the following speakers presented their speeches:

1. Prof. Zbigniew Ofiarski "Interes publiczny (społeczny) jako pozytywna przesłanka stosowania ulg w zapłacie zobowiązań z tytułu niepodatkowych należności budżetu państwa".
2. Prof. Barbara Roszkowska-Mądra, Dr. Elżbieta Zalesko "Źrodła finansowania dóbr publicznych w polskim rolnictwie".
3. Doc. Radim Bohač "Revenues and expenditures of public budgets in the Czech Republic related to gambling".
4. Dr. Elżbieta Ambrożej "Ochrona interesu publicznego oraz interesu podatnika jako cel doradztwa podatkowego w Polsce".
5. Dr. Cosmin F. Costas "Kill(er) Bill in Revenues Collection. A Romanian Tale of Tax Misinterpretation".
6. Dr. Miroslav Štrkolec "Security Institutes in Tax Administration as an Instrument to Eliminate Tax Evasion".

After a short break, the second plenary session on expenditures was held under the chairmanship of prof. Hana Markova and prof. Krystyna Piotrowska-Marczak. The following speakers presented their issues:

1. Prof. Marta Postuła "Zarządzanie wydatkami przez cele w sektorze publicznym - 10 lat polskich doświadczeń".
2. Prof. Artur Mudrecki "Zasada proporcjonalności w podatkach od towarów i usług".
3. Dr. Michał Mariański "Optymalizacja dochodów i wydatków publicznych w interesie społecznym na przykładzie form prawych dla realizacji zadań własnych przez j.s.t. w prawie francuskim".
4. Doc. Julia Gorosh "Issues in Safeguarding Public Financial Interests in Terms of Public Finance Management".
5. Dr. Larisa Korobeynikova "Оценка эффективности расходов по эколо-гической деятельности".
6. Dr. Anna Romanova "Local Government Revenues and Expenditures and Rationalization of Public Administration".

During both plenary sessions of the Conference, a Seminar for PhD Students and Junior Academics was held at the same time, for the first time in the history of the Center's annual conferences. The aim of the seminar was to improve the scientific skills of young scientist and to exchange experiences of the international scientific community. The speakers presented their articles that corresponded with the subject of the Conference, which was the optimization of organization and legal solutions of public revenues and expenditures in social interest. During the Seminar, young scientists not only presented their papers, but also made comments on one of the presented articles. The aim of this was to show ambiguity and improve the quality of the presented article. The discussants asked questions and pointed to the strengths and weaknesses of previously read articles, sharing their experience in the scientific work.

The seminar for PhD Students and Junior Academics was held in two panels and each of them was ended with a discussion. The first panel was chaired by prof. Michal Radvan. The speakers in this part of the Seminary were:

1. Dr. Ivana Štieberova "Measures to prevent VAT tax fraud and their impact on public revenues - what is the interest of society?" *(discussant: Dr. Adrián Popovič).*
2. Dr. Jozef Sabo "Reasoning about evidence in Tax Matters." *(discussant: Dr. Ivana Štieberová).*
3. Dr. Adrian Popovič "The Initiatives in the area of Financing of the EU Budget in the Context of Environmental Protection" *(discussant: Dr. Jozef Sábo).*
4. Mgr Petra Snopkova, Mgr Zuzana Marethova "Electronic record of sales in the Czech Republic - theory and praxis" *(discussant: Mgr Michal Liška).*
5. Mgr Michal Liška "Formal aspects of Income Tax Act and other tax acts according to Czech case law" *(discussant: Mgr Richard Bartes).*
6. Mgr Richard Bartes "Juridical institute of fiscal repentant" *(discussant: Mgr Zuzana Marethová).*

The second panel of the Seminar for PhD Students and Junior Academics was combined with a discussion under the chairmanship of prof. Jolanta Szołno-Koguc. In this part of the Seminar, the speakers were:

1. Mgr Robert Aliukonis, mgr Stanisław Pilżys "Deficyt budżetowy i dług publiczny w krajach nadbałtyckich w latach 2010-2015" (*discussant: Mgr Ernest Ginc*).
2. Mgr Ernest Ginc "Struktura krajowych źrodeł finansowania infrastruktury drogowej na Litwie" (*discussant: Mgr Robert Aliukonis*).
3. Mgr Justyna Sobolewska "Wpływ indywidualnego wskaźnika zadłużenia na finanse j.s.t. w Polsce" (*discussant: Mgr Krystian Jaszczyk*).
4. Mgr Krystian Jaszczyk "Partnerstwo Publiczno-Prywatne w ujęciu umowy o budowę szpitala w Żywcu jako przykład optymalizacji wydatków publicznych w interesie społecznym" (*discussant: Mgr Justyna Sobolewska*).

The seminar was combined with a competition for the best articles and presentations, in which jurors were: Prof. Rafał Dowgier - Chairman, Prof. Jolanta Szołno-Koguc, Prof. Michal Radvan, Dr. Urszula K. Zawadzka-Pąk, Dr. Ewa Lotko. The first prize in the competition was won by Jozef Sábo from the University in Košice. The equal second award went to: Justyna Sobolewska from the University of Warsaw and Michał Liška from the Masaryk University in Brno. The third prize was won by Robert Aliukonis and Stanisław Pilżys from the Branch of the University of Bialystok in Vilnius. The concept of the seminar was well received by the international financial community present at the conference, therefore, it was decided to permanently include it in the program of future international conferences co-organized by the Center. The ceremonial ending of the Conference and Seminar took place in the late afternoon. After the conference, there was a gala dinner at the Restaurant of Ponas Tadas Hotel. The evening was honoured with artistic performances by the House of Polish Culture.

The 16th International Conference, not only had scientific value, but also had a recreational aspect. On the 20th September 2017, the participants of the Conference had the opportunity to visit the Castle in Trakai and urban buildings of the city. Next, on the 22nd September 2017, there was a tour of Vilnius, which started with visiting the University of Vilnius. Lastly, the participants went to see the Castle of the Grand Dukes of Lithuania.

The result of the XVI International Scientific Conference will be a monograph published in English.

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DOI: 10.15290/acr.2017.10.11

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REPORT ON THE CONFERENCE "FINANCIAL INSTITUTIONS AS A WORKPLACE FOR LAWYERS" (23 Febrauary 2017, Białystok, Poland)

On 23 February 2017 the Student Finance Law Club at the Faculty of Law of the University in Bialystok organized the conference entitled "Financial institutions as a workplace for lawyers".

The issue concerned different perspectives of financial institutions and developing the activity of academic circles in the Faculty of Law in Białystok. The key questions was: what next after graduation?

Before the main part of the conference, the members of the Student Finance Law Club presented their papers. Introductory report was delivered by Adrian Szorc, a 5th year student of law, entitled: "Banks as financial institutions". The next subject "Polish Intelligence Agency as financial institution financed from the state budged – the legal basis and the characteristics of individual services" presented Patryk Zabrocki, a 5th year student of law. Further, Magdalena Olchanowska, a 3rd year student of law, presented "Supreme Chamber of Control as a workplace for lawyers". Marta Maksimczuk, a 3th year student of law presented "Voivodship Funds for Environmental Protection and Water Management as a workplace for lawyers". Patrycja Marczak, a 5th year student of law, in her paper outlined the new reform in Poland changing Fiscal Chamber to National Fiscal Administration. The initiative undertaken by Student Finance Law Club was aimed at various financial institutions as opportunities for a future work after finishing law studies.

The conference was officially opened by LLM Ewa Lotko. She welcomed the guests and all the participants and briefly explained discussed topics.

Next part were the speeches of invited guests - Mrs. Barbara Chilińska, Director of the Białystok Department of the Supreme Chamber of Control, Mr. Stanisław Srocki, President of the Regional Audit Chamber in Bialystok and Mr. Wojciech Orłowski, acting Director of the Fiscal Chamber in Bialystok. Mrs. Chilińska outlined current aspects of working in Supreme Chamber of Control. Mr. Stanisław Srocki gave an overview of the recruitments of Regional Audit Chamber. He also mentioned the candidates requirements and what the work in the chamber involves. In his speech, Mr. Wojciech Orłowski, presented the method of application for posts in the Fiscal Chamber.

After of our guests' speeches the discussion started. Students asked a lot of questions about the details and they were especially interested in the advice for their first step after graduation. Then LLM. Ewa Lotko summed up and closed the conference. Finally, she thanked the guests and all the members for their arrival and active participation. This conference was a great opportunity for students to get information about what they can do if they will not choose pupilage.

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Marta Sawicka – a 4th year law student at the University of Bialystok. Since 2016 a member of the Student Finance Law Club at the Faculty of Law of the University of Bialystok.

DOI: 10.15290/acr.2017.10.12

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THE SCIENTIFIC ACTIVITY OF THE FACULTY OF LAW AT THE UNIVERSITY OF BIAŁYSTOK ASSOCIATED WITH THE COUNTRIES OF CENTRAL AND EASTERN EUROPE

Among scientific activity connected with the research conducted by Faculty of Law at the University of Bialystok in 2016-2017 the following publications, lectures and participation in international projects can be mentioned:

SCIENTIFIC ACTIVITY:

- Conference "From Theory to Practice in Language for Specific Purpose" organized by Association of LSP Teachers at Higher Education Institutions, 19-20.02.2016, Croatia.
  Conference participants:
  - **dr Halina Sierocka** "Prospects of teaching English for legal purposes at tertiary level in Poland".
- Conference "Creation and application of law as a factor in the development of modern economic systems" organized by Janka Kupala Grodno State University, 16-17.03.2016, Belarus.
  Conference participants:
  - **dr hab. Katarzyna Laskowska, prof. UwB** "Illegal trade in tobacco products as a threat to the Polish economy";
  - **dr hab. Sławomir Presnarowicz,** "Amendments to the law in appealing tax decisions to administrative courts in Poland".
- Conference "National minorities - an opportunity, a challenge or a threat to national security?" organized by Association of Polish Scholars of Lithuania, 28-30.04.2016, Lithuania.
  Conference session chairman: **dr hab. Mieczysława Zdanowicz, prof. UwB.**
- Conference "XXII Annual Forum of Young Legal Historians" organized by University of Belgrade, 5-9.05.2016, Serbia.
  Conference participants:
  - **dr Marcin Łysko** "Legislative procedures in Poland in 20th century".
- Conference "Spreading Standards, Building Capacities: European Administrative Space in Progress" organized by Network of Institutes and Schools of Public Administration in Central and Eastern Europe, University of Zagreb, 18-22.05.2016, Croatia.
  Conference participants:
  - **dr Anna Budnik** "When the government says "no". The privacy right as an exemption from freedom of information in Poland".

- Conference “Gouvernance financière locale” organized by Hubei University of Economics and FONDAFIP (Association for the International Foundation of Public Finance), 25-31.05.2016, China.

  Conference participants:
  - **dr Urszula Zawadzka-Pąk** “Subventions and vertical transfers in Poland”.
- Conference “The response of the Visegrad 4 Countries to the Migration Crisis” organized by Hungarian Europe Society, 29-31.05.2016, Hungary.

  Conference participants:
  - **dr hab. Elżbieta Kużelewska** “Poland towards Migration Crisis”.
- Conference “About Public Governance, Administration and Finances Law review” organized by Széchenyi István University in Győr, 1-2.06.2016, Hungary.

  Conference participants:
  - **dr hab. Mariusz Popławski, prof. UwB** “The Assumptions of a New Tax Ordinance in Poland”;
  - **dr Artur Modrzejewski**
  - **dr Marcin Tyniewicki**
- XV International Scientific Conference “Concepts of Tax Codes. The Fifteenth Anniversary of the Center’s Activity” organized by The Faculty of Law, University in Bialystok, 25-27.09.2016, Poland.

  Conference participants:
  - **prof. zw. dr hab. Eugeniusz Ruśkowski –** presentation of the Center Scientific Bulletin;
  - **dr hab. Mariusz Popławski, prof. UwB –** “Polish Tax Code”;
  - **dr Urszula Zawadzka-Pąk, dr Rafał Dowgier –** “Scientific publications as an element of evaluation of scientific output in Poland”;
  - **prof. zw. dr hab. Leonard Etel; prof. zw. dr hab. Joanna Salachna; dr hab. Janusz Stankiewicz, prof. UwB; dr hab. Sławomir Presnarowicz; dr Paweł Lewkowicz; dr Marcin Tyniewicki; dr Grzegorz Liszewski; mgr Ewa Lotko.**
- Conference “Concept of a tax code - introducing the Polish tax codification and trends in the Hungarian tax administration” organized by National University of Public Service, 7.10.2016, Hungary.

  Conference participants:
  - **prof. zw. dr hab. Leonard Etel** “Do we need a new tax code in Poland?”;
  - **dr hab. Mariusz Popławski, prof. UwB** “Tax procedures in the new Polish tax code”;
  - **dr hab. Rafał Dowgier** “Basic principles of taxation and tax procedure and the rights and obligation of taxpayers”;
  - **dr Piotr Pietrasz** “Constitutional aspects of the tax code in Poland”.
- Conference “Vilnius Arbitration Day” organized by the Court of Commercial Arbitration, 6-8.10.2016, Lithuania.

  Conference participants: **dr Marta Skrodzka.**
- According to the cooperation with Scientific and Research Institute of Financial and Tax Law in Almaty (Kazakhstan) and active participation in VII International Scientific and Theoretical Conference organized by Institute of Financial and Tax Law in Almaty “Current problems of legal administration regulation in public finances”, 20.10.2016, **prof. zw. dr hab. Eugeniusz Ruśkowski,** received William Petty Medal. The prize is awarded in recognition of his activities in the field of comparative research. During the conference prof. zw. dr hab. Eugeniusz Ruśkowski had a lecture on “Current problems of legal administration regulation in public finances”.
- Ceremonial inauguration of the School of German Law and the opening of the German-Belarusian-Polish Seminar, organized as part of the School of German Law conducted in cooperation with the Law Faculty of the Humboldt-Universität zu Berlin and Janka Kupala Grodno State University, 27.10.2016, Poland.
- International Seminar “Le procedure giudiziali nella Roma antica e nell’attualita tra gli interessi pubblici e private” (“The legal procedure in ancient

Rome and current public and private interests") organized by Universita di Econamia Nazionalee Nondiale, Bratislava, 2-6.11.2016, Slovakia.
Conference participants:
  - **dr Piotr Kołodko** "The role of quaestor as a prosecutor in criminal proceedings in the ancient Rome";
  - **prof. dr hab. Piotr Niczyporuk** "La capacita giuridica e la tutela del nascituro nel diritto romano".

- Conference "The Issues of Tax Law Codification in Russia and Poland: the needs and necessity" organized by Russian Presidential Academy of National Economy and Public Administration, 10.11.2016, Russia.
  Conference participants:
  - **prof. zw. dr hab. Leonard Etel** "The new tax code";
  - **dr hab. Sławomir Presnarowicz** "The principle *in dubio pro tributario* in the tax law in Poland".

- Conference "Stability and progressive development of legal systems in the context of integration processes" organized by Janka Kupala Grodno State University, 15-17.02.2017, Belarus.
  Conference participants:
  - **dr hab. Katarzyna Laskowska, prof. UwB** "Car theft in Polish Criminal Code";
  - **dr hab. Sławomir Presnarowicz** "*In dubio pro tributario* in tax legislation"
  - **dr Jarosław Matwiejuk** "Evolution of the judiciary in the Russian Federation".

- **Dr Anna Budnik** and **dr Izabela Kraśnicka** took part in meeting which was a part of the project "Introducing modules on law and rights in programmes of teacher training and educational sciences: a contribution to building rights - based education systems in countries in transition (ELA)" organized by Moscow City University, 3-5.02.2017, Russia.

- III международная научно-практическая конференция "Уголовная политика Республики Белорусь: состояние и пути совершенствования" (III International Scientific and Practical Conference "Criminal policy of the Republic of Belarus: state and ways of improving") organized by Baranovichi State University, Baranavichy, 10-13.05.2017, Belarus. Conference participants:
  - **dr hab. Katarzyna Laskowska, prof. UwB** – "Наказания связанные с изоляцией осужденного от общества в свете уголовного кодекса 1997 г. и судебной практики в Польше".

- "Stability and Progressive Development of Legal Systems in the Context of Integration Process" organized by Janka Kupala Grodno State University, Grodno,15-17.03.2017, Belarus.
  Conference participants:
  - **dr hab. Katarzyna Laskowska, prof. UwB** "Car theft in Polish Criminal Code";
  - **dr hab. Ewa Czech, prof. UwB** "Leasing agreement as nominate contract";
  - **dr hab. Sławomir Presnarowicz** "*In dubio pro tributario*";
  - **dr Jarosław Matwiejuk** "Evolution of the judiciary in the Russian Federation".

- Conference "Protecting Democracy. Law, Politics, Economy and Society in Central and Eastern Europe" organized by Széchenyi István University, Győr, 20-25.02.2017**,** Hungary.
  Conference participants:
  - **dr Anna Budnik** "Dostęp do sądu w Polsce"

- "Third International Scientific Conference - Civic Education and Practices of Democracy in Post-Soviet Countries" organized by Ivane Javakhishvili Tbilisi State University, Tbilisi, 29.06-6.07.2017, Georgia. Conference participants:
  - **dr hab. Elżbieta Kużelewska –** "E-tools of Civic Participation in Poland. Perspectives for the Future".

- "III International Round Table Criminal Law: traditions and innovations dedicated to the scientist W.W. Staszis", Academy of State Penitentiary Service, Chernihiv, 06 – 08.09.2017, Ukraine.

Conference participants:

- **prof. dr hab. Katarzyna Laskowska** – "Current problems in the establishment and execution of imprisonment in Poland"

- XVI International Scientific Conference "The Optimization of Organization and Legal Solutions of Public Revenues and Expenditures in Social Interest"), Faculty of Economics-Informatics Branch of the University of Bialystok in Vilnius, 20 – 22.09.2017, Lithuania.

  Conference participants:

  - **prof. zw. dr hab. Eugeniusz Ruśkowski** - introductory speech;
  - **dr hab. Sławomir Presnarowicz, prof. UwB** – "The concept of public interest in the application of reliefs in the payment of tax liabilities on selected examples of judgments of Polish administrative courts"
  - **dr Urszula Zawadzka-Pąk** – "From multidimensional model of accountability for public debt to the model of legal norms effective in limiting public debt. Theoretical approach";
  - **dr Krzysztof Teszner** – "The national fiscal administration – challenges and expectations";
  - **dr Paweł Lewkowicz** – "Public interest and the social interest in the polish law system"
  - **dr Ewa Lotko** – "Tax motivation as an instrument protecting public financial interest";
  - **prof. zw. dr hab. Leonard Etel; dr hab. Mieczysława Zdanowicz, prof. UwB; dr hab. Rafał Dowgier; dr Grzegorz Liszewski.**

- International Scientific-Practical Conference "Legal and comparative analysis of commercial and civil law in Poland and Lithuania", Association of Polish Lawyers in Lithuania, Vilnius, 29-30.09.2017, Lithuania.

  Conference participants:

  - **dr hab. Katarzyna Bagan-Kurluta, prof. UwB** – "Motherhood in the comparative aspect";
  - **dr Urszula Drozdowska** – "Alternative dispute resolution in medical matters".

- "XIII Luby Law Days – International Scientific Conference Social Function of Law and Growing Wealth Inequality", Faculty of Law, Trnava University, Smolenice, 27.09. – 01.10.2017, Hungary.

  Conference participants:

  - **dr hab. Piotr Fiedorczyk** – "Matrimonial property regimes and their impact on the economic situation of families. Historical issues".

- International Scientific-Practical Conference "Legal and comparative analysis of commercial and civil law in Poland and Lithuania", Association of Polish Lawyers in Lithuania, Vilnius, 29-30.09.2017, Lithuania.

  Conference participants:

  - **dr Arkadiusz Bieliński** – "Problems of the costs of mediation proceedings in civil proceedings in Poland".

- International Scientific and Practical Conference "Corporate Law of Ukraine and European Countries: Issues of Theory and Practice", Vasyl Stefanyk Precarpathian National University, Ivano-Frankivsk, 5 – 8.10.2017, Ukraine.

  Conference participants:

  - **dr Renata Tanajewska** – " Management and supervision in commercial companies in Poland - selected issues".

- Міжнародна науково-практична конференція «Кримінально-правове забезпечення сталого розвитку України в умовах глобалізації (International scientific and practical conference "Criminal law protection of Ukraine's continuing development in the conditions of globalization") organized by Yaroslav the Wise State University of Law, Kharkiv, 12-13.10.2017, Ukraine.

  Conference participants:

  - **prof. dr hab. Katarzyna Laskowska** – "Electronic supervision system as a way of executing the penalty of deprivation of liberty in Poland".

- V International Scientific and Practical Conference "Penal Policy and Practice of the Application

of Law", organized by the Russian State University of Justice, Saint Petersburg, 3.11.2017, Russia.

Conference participants:

- **prof. dr hab. Katarzyna Laskowska** – "The dimension of penalties against perpetrators of crimes in Poland in the years 1999-2016".

- Day Law, Faculty of Law, Masaryk University, 8-11.11.2017, the Czech Republic.

  Conference participants:
  - **dr Ewa Lotko** – "The negative determinants of the taxpayers' fiscal motivation";
  - **dr Urszula Zawadzka-Pąk** – "Participatory Budgeting under the Pressure of Fiscal Austerity in three Polish Cities".

- International Scientific Conference "Modernisation of Company Law: Effective, Innovative and Optimal Solutions", Vilnius University, 16-19.11.2017, Lithuania.

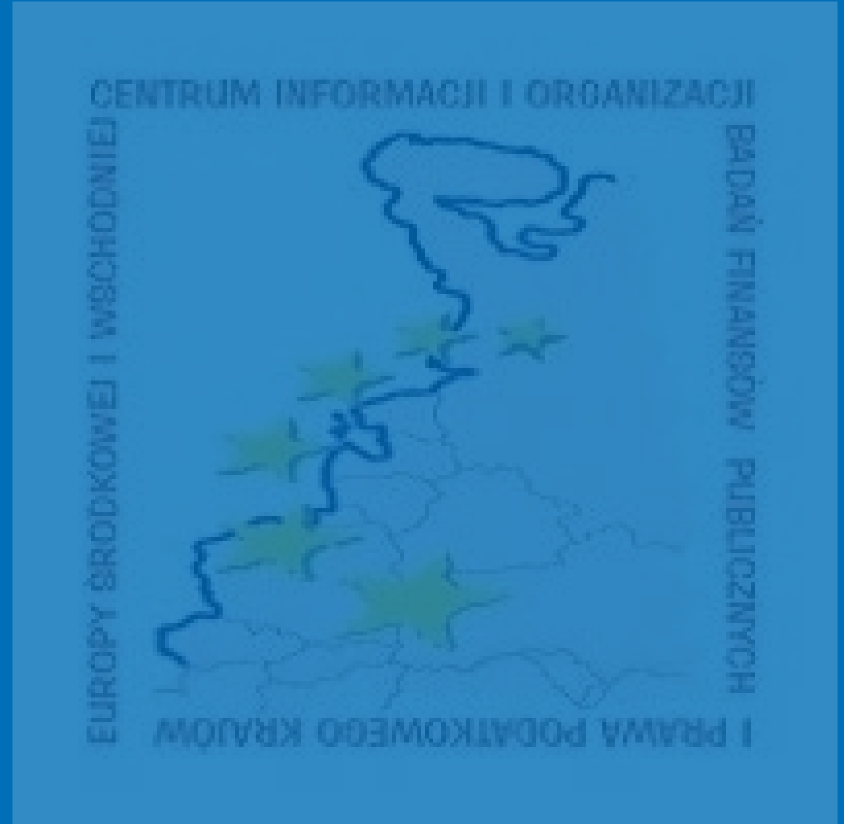
  Conference participants: **dr Renata Tanajewska.**

RESEARCH AND TEACHING ACTIVITIES ABROAD AND ERASMUS+:

- **dr hab. Sławomir Presnarowicz,** lectures "Administrative courts in Poland", Erasmus+ Program, Voronezh State University, Russia (3-8.04.2016);
- **dr hab. Katarzyna Laskowska, prof. UwB,** scientific internship in A. I. Herzen Russian State University, Russia (3-17.04.2016);
- **dr hab. Mariusz Popławski, prof. UwB,** lectures "General tax law and substantive tax law", Erasmus+ Program, Masaryk University, Brno, the Czech Republic (19-25.06.2016);
- **dr Lech Jamróz,** lectures "The Constitutional Tribunal in Poland on the background of constitutional judicature", Erasmus+ Program, University of Latvia, Latvia (17-21.10.2016);
- **dr Anna Budnik,** lecture "Mediation in court-administrative proceedings in Poland", Erasmus + Program, Turiba University, Latvia (12-17.03.2017);
- **dr hab. Piotr Fiedorczyk,** Erasmus+ KA107 lectures, University of Latvia, lectures for Ph.D. students, Latvia (14-27.04.2017);
- **dr hab. Katarzyna Laskowska, prof. UwB,** Erasmus+ KA107 lectures, Janka Kupala Grodno State University Faculty of Law, Grodno, Belarus (14-20.05.2017);
- **dr hab. Katarzyna Laskowska, prof. UwB,** lecture "Crime Trends and Prevention of Criminality in Poland", Erasmus+ KA107 Program, Janka Kupala Grodno State University, Grodno, Belarus (15-19.05.2017);
- **dr Wioleta Hryniewicka-Filipkowska** – internship abroad as a part of an international project Law and Rights Modules in Teacher Training Programmes, Erasmus+ Program, supervisor: Prof. Gracienne Lauwers (Vrije Universiteit Brussel), Kaunas, Lithuania (4-10.06.2017);
- **dr hab. Mieczysława Zdanowicz, prof. UwB**, lecture "Practical aspects of the functioning of the European Citizens' Initiative", Erasmus+ Program, Immanuel Kant Baltic Federal University, Kaliningrad, Russia (10-17.09.2017);
- **dr hab. Anna Doliwa-Klepacka,** lecture "Democratization of legislative procedures in the European Union", Erasmus+ Program, Immanuel Kant Baltic Federal University, Kaliningrad, Russia (10-17.09.2017);
- **dr hab. Katarzyna Bagan-Kurluta, prof. UwB,** Erasmus + Program training course, Masaryk University, Brno, the Czech Republic (16-23.09.2017);
- **dr Halina Sierocka,** lecture "How to stimulate oral statements during legal English classes?", Erasmus+ Program, Masaryk University/Language Centre, Brno, the Czech Republic (17-22.09.2017);
- **dr Halina Sierocka** – courses raising professional qualifications, Masaryk University, Brno, the Czech Republic (23 – 24.09.2017);
- **dr hab. Anna Piszcz, prof. UwB,** participation in the doctoral committee, Mykolas Romeris University, Vilnius, Lithuania (5-7.01.2017).

XVI INTERNATIONAL SCIENTIFIC CONFERENCE
“THE OPTIMIZATION OF ORGANIZATION AND LEGAL SOLUTIONS CONCERNING PUBLIC REVENUES AND EXPENDITURES IN SOCIAL INTEREST”
(21-22 September 2017, Vilnius, Lithuania)

WYDZIAŁ PRAWA
UwB


CENTRUM INFORMACJI I ORGANIZACJI
BADAŃ FINANSÓW PUBLICZNYCH
I PRAWA PODATKOWEGO KRAJÓW
EUROPY ŚRODKOWEJ I WSCHODNIEJ