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Summary of the doctoral dissertation titled: "Tax secrecy in Polish tax law. "Current state and directions of change"

The aim of this work is to analyze the institution of fiscal secrecy specified in the provisions of the Tax Ordinance from the perspective of protecting individual data of taxpayers, payers and collectors provided to tax authorities. In the considerations undertaken, bibliographic sources were used, consisting of the content of the provisions of national and international acts, national jurisprudence, as well as the achievements of the literature on the subject and legal doctrine. The literature used includes monographs, articles in scientific journals, chapters in collective works and commentaries. The jurisprudence of the Constitutional Tribunal, the Supreme Court, the Supreme Administrative Court, the Provincial Administrative Court and common courts at all levels were also analyzed. The work also uses statistical data obtained from the Police Headquarters, the Ministry of Finance and the Ministry of Justice.

Several research theses were formulated, which were verified and confirmed in the work undertaken. The first thesis assumes that the method of regulation and the level of protection of data subject to fiscal secrecy existing at the level of Polish tax law does not guarantee taxpayers, payers and collectors proper protection of private life and protection of personal data in a manner adequate to the constitutional standards established primarily by Art. 47 and art. 51 of the Constitution of the Republic of Poland. Secondly, currently there is too wide a group of entities entitled to access to fiscal secrecy, which in the longer term and the extension of the scope of entities having access to fiscal secrecy may result in compliance with fiscal secrecy becoming an exception. Thirdly, the currently existing statutory positive conditions enabling the Head of the National Tax Administration to consent to the disclosure of fiscal secrets are legally undefined general clauses, which is a manifestation of unlimited freedom in making decisions in this matter, at the expense of protecting the individual data of taxpayers, payers

and collectors. Regulation of art. 299b op. regulating the consent of the Head of the National Tax Administration to the disclosure of tax secrets is abused and constitutes the widest "gateway" to the publication of legally protected data in tax law. Fourthly, an entity whose data covered by fiscal secrecy is made available or disclosed to other tax authorities, institutions or persons performing public tasks is not informed about this fact, and therefore there is no means of appealing against such a decision to be able to take actions aimed at questioning the validity of transferring his confidential data. Fifthly, the dualism of the regulation of criminal liability for disclosing a fiscal secret both at the level of Art. 306 o.p., as well as art. 278 of the KAS Act, requires unification and writing down one sanctioning norm in one legal act.

Taking the above into account, the hearing assumed that, contrary to the legislator's assumptions, the regulations contained in the Tax Ordinance relating to fiscal secrecy in the Polish legal system do not ensure complete effectiveness in the protection of individual data specified in Art. 293 § 1 and § 2 of the Act, due to the impreciseness of the adopted legal solutions.

Solving the research theses posed in this way required the use of several research methods, where the key method turned out to be the formal-dogmatic method. Legal acts, both domestic and international, related to the right to privacy, the right to data protection, secrets protected by law and others related to the issues discussed were analyzed. The literature was analyzed, mainly in the field of tax law, constitutional law, civil law and criminal law.

The work also uses the historical and descriptive method of law research to show the evolution of the institution of fiscal secrecy and the progress and persuasion of the state to give up its competences and make concessions to limit the transparency of private information about citizens. The regulations on fiscal secrecy result from the historical and economic conditions of our country. Some of the original assumptions (with some changes) have been transferred to modern legal norms, which also justifies the use of this research method to fully understand the shape of the regulation of fiscal secrecy.

The study used the comparative method (comparative interpretation), which compared legal acts regulating fiscal secrecy adopted in selected countries, i.e. the Federal Republic of Germany, the Czech Republic and Hungary. This allowed for the assessment of national regulations of fiscal secrecy in relation to the regulations contained in selected countries and to show differences and similarities in the principles of operation of the mentioned secrecy in comparison with national solutions, in order to then search for our own and appropriate model of fiscal secrecy.

The work also uses an empirical method to show, first of all, the principles of criminal liability for disclosing a fiscal secret and the principles of civil liability by analyzing the judgments of common courts and the Supreme Court. In addition, the judgments of common courts, the Supreme Court, administrative courts, the Supreme Administrative Court and the Constitutional Tribunal were examined in the scope relating to the issues discussed.

The statistical method was used as an auxiliary method, which was carried out by analyzing publicly available data from the Ministry of Justice and obtaining and analyzing the requested data from the Police Headquarters in the period from 2017 to 2022 regarding the crime of disclosing a fiscal secret. Data was also obtained from the Ministry of Finance regarding the number of consents issued by the Head of the National Revenue Administration pursuant to Art. 299b op. to disclose data subject to fiscal secrecy at the request of the head of the tax office, the head of customs and tax offices and the directors of tax administration chambers.

The doctoral thesis consists of seven chapters preceded by general remarks and ended with conclusions that refer to the observations made within the analyzed matter in a given chapter.

The first chapter of the work presents fiscal secrecy as a legal instrument for realizing the right to privacy and the right to personal data protection, guaranteed primarily by Art. 47 and 51 of the Constitution of the Republic of Poland and documents and legal acts of international law. The classification of fiscal secrecy in Polish legislation is shown by specifying and characterizing individual secrets legally protected as a type of professional secrecy. This chapter focuses on an attempt to define the very concept of mystery, which raises many interpretation problems. The entire discussion of the work is concluded with the scheme adopted by the author for the division of secrets protected by law and the location of fiscal secrecy in it. Additionally, the chapter examines the essence of fiscal secrecy, because there is no legal definition of fiscal secrecy in the area of tax law provisions. This deadline was therefore established taking into account the analysis of the achievements of doctrine and case law.

The second chapter of the work presents a historical outline of tax secrecy regulations in Polish legislation. For a long period of time in the history of fiscal secrecy, there were no regulations obliging tax authorities to maintain the confidentiality of, above all, taxpayers' data. It was only in the first half of the 20th century that we could talk about the "birth" of fiscal secrecy, when some of the original assumptions (with some changes) were transferred to modern legal norms.

The third chapter illustrates the regulations of fiscal secrecy in selected three European Union Member States' legislation, i.e. the Federal Republic of Germany, the Czech Republic and Hungary, which allowed to show the differences in the principles of operation of the above-mentioned secrecy, and then to search for our own and appropriate model of fiscal secrecy. In the study, the author focused on the general regulations of fiscal secrecy, moving from the general assumptions of the tax systems of selected countries to the detailed regulations of the legally protected secrecy in question at the level of the regulations of these countries. Therefore, the study focused mainly on the regulation of fiscal secrecy, as a deeper analysis of the tax system and the historical outline of the tax law of individual selected countries would go beyond the scope of this work.

The fourth chapter presents the subjective scope of persons obliged to observe fiscal secrecy and their characteristics based on the statutory group of entities specified in Art. 294 p.p. The obligation to file a denial of fiscal secrecy and the temporal scope of fiscal secrecy were indicated.

The fifth chapter of the dissertation refers to showing the scope of the subject matter of fiscal secrecy. It presents all documents, information and files which, by enumerating them in Art. 293 p.p. were subject to fiscal secrecy due to the inclusion of individual data of taxpayers, payers and collectors. The basis for marking given documents with the "Tax Secret" clause and the special method of storing files containing data legally protected as fiscal secrecy were indicated.

The penultimate chapter of the work, i.e. the sixth chapter, is devoted to the analysis of the legal basis, modes and conditions for disclosing and making available fiscal secrets to other tax authorities, institutions, entities and persons specified in the provisions of the Tax Ordinance. This chapter pays particular attention to the undefined (positive) grounds for disclosing information covered by fiscal secrecy by the Head of the National Revenue Administration, pursuant to Art. 299b op. both from the perspective of doctrine, case law and data obtained from the Ministry of Finance.

Chapter seven of the work presents the guarantee of maintaining fiscal secrecy, with significant reference to criminal liability for a prohibited act specified in Art. 306 p.p. (and Article 278 of the KAS Act) by analyzing case law and statistical data obtained from the Police Headquarters and the Ministry of Finance. The basis for civil and disciplinary liability for disclosing tax secrets without legal basis was also discussed.

The work ends with a conclusion, the main purpose of which is to refer to the research theses formulated in the introduction. In conclusion to the detailed conclusions drawn in the

work, it should be stated that the concept of fiscal secrecy is justified by the creation of a legal institution whose aim is to legally protect private life in the scope of settlements with tax authorities. The issue of the discussed secret and access to it by third parties is closely related to the right to privacy. The source of the institution of fiscal secrecy is Art. 47 of the Constitution of the Republic of Poland, which is supplemented in Art. 51 of the Constitution of the Republic of Poland as an explication of this law. The current way of regulating fiscal secrecy means that the Polish legislator should undertake at least an in-depth analysis of their compliance and proportionality with constitutional guarantees (citizen's rights and freedoms), and, consequently, change them to the extent postulated in the content of the work.