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JUDICIAL INTERPRETATION OF THE TAX LAW PROVISIONS AND PROTECTION OF THE SUBJECTIVE RIGHTS OF TAXPAYERS – IN THE LIGHT OF ART. 153 OF THE ACT ON PROCEEDINGS BEFORE ADMINISTRATIVE COURTS IN POLAND

Abstract. This article refers to the issues associated with the crucial significance of the interpretation of tax law provisions made by administrative courts in the course of the judicial inspection of tax decisions, within the context of protecting the subjective rights of taxpayers. The analysis in that regard has been prepared based on the provisions of art. 153 of the Act of 25 July 2002 on Proceedings before Administrative Courts, which expresses the important rule of binding the court and the administrative authority, whose act was the subject of an appeal, with a legal assessment and instructions regarding the further proceedings described in the decision of the administrative court.

As a result of this rule, a decision of an administrative court exerts the results exceeding the scope of judicial administrative proceedings, while its effect also covers the future tax proceedings. If the legal assessment made by the court refers to the regulations that affect the subjective rights of a taxpayer, it means that the administrative court imposes the effects of "its" interpretation of those provisions on a tax authority. In turn, the tax authority is obliged to respect those rights in accordance with the opinions of the court, which usually affects the final resolution of a tax case.

It should be borne in mind that a taxpayer, by submitting an appeal against a tax decision to an administrative court, demands not only an inspection of the acts of tax administration, but also – which should be emphasized – demands the execution of its rights, including its subjective rights. Therefore, we should not forget the crucial role of the administrative courts in the protection of the substantive rights of taxpayers. The instrument that allows the administrative courts to guard the subjective rights of taxpayers, consists in the procedural regulations included in the provisions on proceedings before administrative courts, and in particular art. 153 of the Act on Proceedings before Administrative Courts in Poland.

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1. Introduction

The aim of this study is to turn the attention to the issues associated with the crucial significance of the interpretation of tax law provisions made by administrative courts in the course of the judicial inspection of tax decisions, within the context of protecting the subjective rights of taxpayers. The analysis in that regard has been prepared based on the provisions of art. 153 of the Act on Proceedings before Administrative Courts (ustawa z dnia 25 lipca 2002 r. o postępowaniu przed sądami administracyjnymi (Dz. U. z 2012 r., poz. 270 j.t.)) which expresses the important rule of binding the court and the administrative authority, whose act was the subject of an appeal, with a legal assessment and instructions regarding the further proceedings described in the decision of the administrative court.

2. Judicial interpretation of tax law provisions – general remarks

As for the doctrine, the interpretation of the law consists in the activities and reasoning leading to the reconstruction of a legal standard from the specific standard-setting facts. (Leszczyński, 2003, p. 109). In the process of applying the law, also in the course of court and administrative proceedings, the interpretation of the law consists solely in a reconstruction of the legal standard necessary to solve the given case. (Leszczyński, 2003, p. 115; Mastalski, 2008, p. 70).

The interpretation of the legal provisions, while making the decision on applying the law, is called operational interpretation. The application of the law and its (operating) interpretation takes place in the course of court and administrative proceedings as a result of the court inspection of the acts of public administration authorities. Although the decision of an administrative court regarding the inspection of the acts of public administration authorities, and in particular of their decisions, doubtlessly refers to the essence of the case, it does not provide a definitive settlement of the administrative (tax) case. It is because the court does not take over the administrative (tax) case for solving and it does not apply the law with the effect of determining or specifying the legal situation of the party to the administrative (tax) proceedings. The decision on the essence of an administrative (tax) case results from applying the substantive and procedural law. However, the administrative courts do not participate in the process that includes the following four activities, i.e. in determining the contents of the legal standard, in determining the factual state, in performing the

subsumption and in determining the legal consequences of the factual state based on the legal standard applied. However, the above observation does not entitle us to state that the administrative courts do not apply the law and do not interpret it.

The administrative courts apply the administrative law and tax law, but they do so indirectly, in a sense, that is within the inspection of the application of that law by the public administration authorities. (Leszczyński, 2010, p. 306). That view has been confirmed also in the judicial decisions of the Supreme Administrative Court (Naczelny Sąd Administracyjny, NSA). The resolution of the complete composition of the NSA of 26 October 2009, (wyrok Naczelnego Sądu Administracyjnego (pełen skład) z dnia 26 października 2009, I OPS 10/09) emphasized the specific application of the law by an administrative court, consisting in making a legal provision for inspecting the legality of an administrative decision. It was indicated that that kind of "verification-based" application of a legal standard, consisting in applying it as a model for assessing the legality, does not necessarily have to be treated as an act other than the application of the law.[1]

In the doctrine it has been indicated that the application of the tax law within the proceedings associated with performing the tax obligations occurs in two stages. In the first stage, the entities that apply that law are the passive entities of the legal-tax relationship, especially the taxpayers and tax withholding agents. In turn, the second stage consists of the classical application of the law, because that application is performed by the tax administration authorities and – what is crucial – also by the administrative courts. (Mastalski, 2008, p. 39; Mastalski, 2011, p. 274).

The interpretation of the law is indispensably associated with applying it. The interpretation by an administrative court is performed for inspection reasons, associated with assessing the operational interpretation of the provisions of the law which had been applied by an administrative authority while making a specific decision. (Leszczyński, 2012, p. 210).

3. Binding with a legal assessment expressed in a decision – remarks against the background of art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.)

Under the provisions of art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.), the legal assessment and instructions as to the further acts expressed in the court decisions, are

binding for the court or authority whose act or failure to act was the subject of an appeal.

As the legislator has failed to equip the administrative courts with the instruments that would allow them to directly particularize the legal situation of the administrative entities, it has been necessary to introduce the concept of binding the administrative authority with opinions of administrative courts, and the legal influence of the court decisions on the activities of public administration, both past and future. The legal assessment refers mainly to the past, i.e. to the previous acts of the authorities in specific cases. The court, while testing the compliance with the law of the appealed act of a tax authority, takes into account the factual and legal state of the case existing on the day of making it, i.e. in the past. However, in a sense the legal assessment also affects the future. It is closely associated with the instructions regarding further acts. (Woś, 1989, p. 177). In turn, the instructions regarding further acts refer solely to the future.

That is because they set the manner of behaviour of a tax authority in the tax proceedings which will be held in the future. (Pietrasz, 2010, p. 251 and next).

The idea of binding the tax authority with the opinion of the administrative court expressed in the judgment, boils down to the fact that that authority must follow the opinions of that court regarding the particular case, and it must respect them. The obligation to submit to the assessment and to the instructions regarding the further acts presented by the court, has been legally sanctioned. The potential disobedience by the authority may lead to a sanction in the form of elimination of its decision, in which the court assessment or instruction was ignored, from the legal transactions. Therefore, the tax authorities may not challenge the legal assessments made by the courts or their instructions regarding further acts. Naturally, binding of the public administration authorities does not preclude the possibility for that authority to appeal against the decision of the court of first instance and to submit a cassation appeal to the National Administrative Court. Therefore, a failure by that tax authority to appeal against the judgment of the administrative court of first instance constitutes the approval of the opinions of that court. (Pietrasz, 2010, p. 251 and next).

The contents of art. 153 correspond to art. 141 § 4 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.) which determines the requirements for justifying court judgments. As per the contents of that provision, the justification of a decision should include, among others, the legal basis for that decision and its explanation – which corresponds to a legal assessment. Moreover, if, as a result of allowing the appeal,

the case is to be retried by the administrative authority, the justification should include the recommendations for further acts.

The legal binding of an administrative authority with a legal assessment and instructions regarding further acts, illustrates the so-called rule-making function of administrative courts. (Zimmermann, 2005, p. 497). As has already been noted, an administrative court that inspects the appealed decisions of administrative authorities, does not, as a rule, issue the decisions that would resolve the essence of the administrative (tax) case. Instead, it interprets the legal provisions applicable to the given case, within the inspection of the functioning of public authorities. Therefore, the administrative courts derivatively formulate the standards of the second level, through which they influence their own future judicial decisions, as well as the manner of resolving the cases by public administration authorities. From that point of view, art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.) makes the judicial decisions become one of the basic unorganized sources of the law that apply only to one concrete (incidental) case. (Zimmermann, 2005, p. 497).

The legal assessment, referred to in art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.), is universally understood as the explanation of the crucial contents of legal provisions and of the manner of applying them in the examined case. That includes both the criticism of the manner of applying the legal standard in the appealed act, as well as the explanation of why the application of that standard, by the authority that had performed that act, was considered incorrect. (Hanausek, 1986, p. 318; Żukowski, 2002, p. 271). The binding legal assessment must refer to the proper application of a specific provision, or to its correct interpretation in reference to the very specific decision made in the given case. As a result, such an assessment may not disregard the specific factual and legal state which exists in the case. Moreover, it must be in logical reference to the contents of the decision of an administrative court in which it was formulated. The legal assessment constitutes the presentation of the court's opinion on a legal issue, which opinion will have to be taken into account by the administrative authority during the review of the case. (Pietrasz, 2010, p. 251 and next). In one of the recent decisions, a court has indicated that the notion of "legal assessment" within the understanding of art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.) comprises only the position of the court regarding the meaning of the legal provisions and manner of applying them in the case, which has been presented in the justification of the decision. (wyrok Naczelnego Sądu Administracyjnego z dnia 15 marca 2012, II OSK 2562/10).

The binding of an administrative authority with a legal assessment refers to the specific elements of the justification of the judgment made. That is because, despite the use of the word "decision" in art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.), it refers not only to the judgment, but also to the justification. The justification contains the reasoning that led the court to draw the specific legal conclusion. The analysis of the contents of the judgment justification also allows to make the scope of the subject of assessment more precise, i.e. to determine what the court had taken into account while allowing or dismissing the given appeal. (wyrok Naczelnego Sądu Administracyjnego z dnia 7 grudnia 2009, I OPS 6/09). These assessments always result from building the so-called relative phrases concerning the compliance or lack of compliance of the appealed acts of the public administration authorities, with the legal standard. (Wróblewski, 1969, p. 3 and next). The court assesses and evaluates the act, including the position of the tax authority in the case, at various stages of the application of that law by that authority. If the position of the tax authority differs from the opinions of the court in the given case, that court will verify the appealed legal act – from the point of view of compliance with the legal order – and thus has the power to challenge the position of the authority and indicate its own legal assessment of the specific case. (Kamiński, 2008, p. 66).

The assessment referring to the application of the law by the tax authority covers both the substantive law, and the procedural law. In turn, the tax authority is not bound with the assessment of the factual findings. (wyrok Naczelnego Sądu Administracyjnego z 4 września 2007, I FSK 1130/06). It has been indicated in the doctrine that the assessment associated with the application of substantive law may include the instructions that the given legal provision does not apply to the given case; in turn, if that provision does apply, the court will indicate the incorrect determination of the meaning of the legal standard, an error in the subsumption or an incorrect determination of the legal effect by determining the consequences which are not provided by the legal standard, and within those limits the court will determine the interpretation of that provision. In turn, in reference to the procedural law provisions, in its legal assessment the court indicates the incorrect application of the provisions and provides the instructions on how they should be applied correctly, e.g. it assesses the whole evidence material, and not only the selected evidence, and assesses the need to examine the evidence as to the specific facts. (Adamiak, 1999).

The administrative court of the first instance, in a judgment allowing the appeal as justified, should clearly indicate that, apart from the noted

faults presented in the justification, no other violations of the substantive law were noted, which violations might affect the result of the case, or violations of the law providing the basis for reinitiating the administrative proceedings, or finding a decision invalid, or another violation of the procedural provisions which might affect the outcome of the case in a significant manner. It should be emphasized that such formulation also comprises an element of the legal assessment of the appealed decision, which should be included in the contents of the justification of the judgment, under the provisions of art. 135 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.). Lack of such formulation raises doubts as to the performance by the administrative court of the rule of not binding the court of first instance with the limits of the appeal. However, it should be noted that if the factual findings are questioned due to a violation of the procedural provisions, it is premature to conduct a substantive analysis of the allegation associated with violating the provisions of substantive law. (I FSK 518/07). That remark refers mainly to the allegation of an incorrect application of substantive law. Therefore, in such a situation, the legal assessment from a court should not refer to the substantive law that was applied as a result of an incorrect factual finding.

The judicial decisions of administrative courts indicate that the lack of the position of the court regarding some issue, resulting from failure to notice the problem, should never be understood as the issuing by that court of a legal assessment within the meaning of 153 of the Act on Proceedings before Administrative Courts. (Dz. U. z 2012 r., poz. 270 j.t.). (wyrok Naczelnego Sądu Administracyjnego z dnia 25 stycznia 2007, OSK 213/06). It is inadmissible for the authority to conjecture the intention of the court dismissing the decision or the legal assessment presented in the decision. On the other hand, the lack of unequivocal instruction as to what the violation of provisions consisted in, in fact deprives the authority of the guidelines as to the further acts. (wyrok Naczelnego Sądu Administracyjnego z dnia 16 stycznia 2009, I GSK 151/08).

In turn, the instructions as to further acts, aimed at the administrative authority, are considered as the obligatory element of justifying the sentence taking into account the appeal, what follows from art. 141 § 4 sentence two of the Act on Proceedings before Administrative Courts. (Dz. U. z 2012 r., poz. 270 j.t.). (wyrok Naczelnego Sądu Administracyjnego z dnia 16 września 2008, II OSK 1082/07). They usually comprise the consequences of the legal assessment, forming certain instructions from an administrative court. They refer to the manner of acting in the course of reviewing the case and their purpose is to avoid the mistakes already made and to indicate the

direction in which the future proceedings should be taken in order to avoid the faults, for example in the form of shortages in the evidence material or other procedural infringements. (Haunasek, 1986, p. 319). Therefore, an administrative court may not only criticize the decisions of tax authorities, but also impose on that authority the specific manner of proceeding which will eliminate the infringements and doubts that occurred while examining the case. The instructions of an administrative court aimed at a tax authority are of imperative nature. (Woś, 1989, p. 178).

The opinions of a court as to the further manner of proceeding may not include a priori solution to the problems associated with the contents of a future decision, and may not breach upon the rule of free assessment of evidence, which means that they may not restrict a tax authority in the process of assessing that evidence. (Woś, 2009, p. 624). Otherwise, the acts of an administrative court would enter the area reserved for the administrative authorities. While reviewing the case, a tax authority is bound by the legal assessment and instructions as to the further manner of proceeding, i.e. to the direction which it should take. Binding instructions may also refer to the necessity to conduct the assessment of specific evidence, but it does not mean that the tax authority may not examine or assess any other evidence while reviewing the case. (Pietrasz, 2010, p. 251 and next).

The effectiveness of the judicial inspection of the public administration authorities, performed by administrative courts, requires the formulation of the instructions addressed at the authorities, whose acts were overruled, which instructions are adequately precise, consistent with the circumstances of the case, and especially – verifiable (subjected to an objective assessment) and enforceable. The failure to meet that obligation makes that inspection illusory, by destroying the results of initiating the mechanism of making judicial decisions by administrative courts, which mechanism is, as a rule, cassation-oriented. (wyrok Naczelnego Sądu Administracyjnego z dnia 20 maja 2008, II FSK 455/07).

Like the legal assessment, also the instructions from a court should refer to the particular case. Therefore, they may not be abstract in nature.

4. The issue of taxpayers' subjective rights (from the substantial-legal and procedural points of view)

The basic aim of taxation is to obtain the resources to cover the public spending. In the tax law doctrine it has been assumed that the structure of the tax system should lead towards a compromise between the fiscal,

economic and social aims. (Mastalski, 2000, p. 43). The tax system should be rational, and based on the legal system in effect in the given state. One of the necessary elements of a rational tax system is the establishment and compliance with the tax law regulations while applying the law. The compliance with tax regulations guarantees the lawfulness in the application of tax law and provides the taxpayers and other parties to the tax-legal relationship with legal protection. (Dumas, 2011, p. 26).

Within the doctrine, the notion of subjective rights includes a set of rights rather than a single right, which a subject is entitled to. With substantive rights, the legal entities have the possibility to freely make the decisions as to their behavior, to the performance of undertaken activities, and have the possibility to demand that the other entities also perform the obligations imposed on them by the legal standards which are necessary for that right to be performed. (Stawecki, Winczorek, 2003, p. 75 and next).

First and foremost, the tax law provisions impose duties on a taxpayer, and only then provide it with specific rights. Therefore, there exists the necessity to balance the taxpayer's tax obligations with effectively protected rights, which necessity has been widely commented on in the doctrine. The literature (Brzeziński, 2005, p. 13 and next; Szczurek, 2008, p. 2) emphasizes that currently there is no cohesive and uniform category of taxpayers' rights, just like there is no cohesive and uniform category of means of protecting those rights. The first attempts at classifying the taxpayers' rights regarding the relationships between the taxpayers and the tax administration have already been undertaken – the relationships which follow not only from the domestic legal provisions, but also from the international and EU legal provisions. The definition and classification of "taxpayers' rights" existing in the Polish tax literature assumes the division of those rights into the taxpayers' rights that are the commonly accepted standards of relationships between the taxpayers and the state with its tax administration, and the taxpayers' rights that include the more or less specific legal solutions that execute, as fully as possible, the taxpayers' rights and that appear wherever the taxpayers have at their disposal the legal means to protect their own interests. (Brzeziński, 2005, p. 9 and next). The taxpayers have at their disposal the rights guaranteed to them as human beings and citizens (taxpayers' rights in the general sense) and the rights guaranteed to them as parties to tax-legal relationships (taxpayers' rights in the narrow sense).The determination of the mechanisms for protecting those rights should be considered crucial.

The substantive rights of taxpayers may be violated, in the systematic sense, on two levels. First – at the stage of determining the tax law. Second – at the stage of implementing the tax law. At the second stage, the

crucial problems are the determination of the factual basis for resolving an individual tax case, the respect for the standards of directives included in the literature, and the respect for the legal order associated with the EU achievements.

The sources of the rights to which the taxpayers' are entitled and of the system of protecting them should at first be looked for in the Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 hereinafter referred to as Polish Constitution (Dz. U. z 1997 Nr 78, poz. 483), and in particular in Chapter I "The Republic" and in Chapter II "The freedoms, rights and duties of human beings and citizens." Some of the rules are expressed directly in the provisions of the Polish Constitution – the rule of lawfulness, the rule of exclusivity of statutory regulation in tax law. Most of the rules were interpreted from the rule resulting from art. 2 of the Polish Constitution – the rule of the democratic state of the law – such as the rule of trust of the citizens to the state and to the law, and the rule of proper legislation.

The judicial decisions of the Constitutional Tribunal have emphasized that the exclusivity of the statutory pathway in imposing the taxes serves to create a stronger procedural protection of taxpayers' rights from the public authorities, and the order, included in art. 217 of the Polish Constitution, to specify in the acts the crucial elements of the tax obligation, should be understood as the order to apply special precision while specifying the subjects of taxation, objects of taxation, and tax rates. In the light of the judicial decisions of the Constitutional Tribunal, art. 217 of the Polish Constitution (Dz. U. z 1997 Nr 78, poz. 483) specifies, within the tax obligation, the rule of definite character of the law which is a part of the rule of trust of the citizens in the state and the law.[2] (In practice, however, it is not possible to regulate all the issues of tax law in tax statutes. This raises the necessity to use in the statutes the statutory authorizations – in the scope not excluded by art. 217 of the Polish Constitution.) (Dz. U. z 1997 Nr 78, poz. 483). The regulation of the tribute law, reserved only for the statutes, must be supplemented with art. 92 subpar. 1 of the Polish Constitution (Dz. U. z 1997 Nr 78, poz. 483) which includes the instructions regarding the issuance of the acts of basic nature.

Another crucial tax principle from the Polish Constitution is the rule of reliability and stability of tax law, associated with the rule of trust of the citizens to the governing and administrative authorities. (Dumas, 2011, p. 28 and next). The necessity to comply with that rule in the process of applying the law is often mentioned in the judicial decisions of the Constitutional Tribunal. The reliability of the law and the associated rule of legal protection has the crucial importance in the law regulating the public

tributes, as has been indicated by the Constitutional Tribunal. The reliability of the law means not the stability of the legal provisions, but rather the conditions for the possibility to predict the acts of the state authorities and the citizens' behaviours associated with them. The reliability of the acts of the state understood in that manner guarantees the trust in the lawmaker and in the laws made by it. (wyrok Trybunału Konstytucyjnego z dnia 27 lutego 2002, K 47/2001). The crucial lack of precision of tax law provisions which results in their ambiguity, often leads to a lack of definite character of those provisions, because no precise legal standards may be constructed on their basis. The vagueness of provisions and lack of precision of legal norms leads to various interpretations and undermines the trust of the citizens to the state and to the law introduced by it. The Constitutional Tribunal has often emphasized the significance of violating art. 2 of the Polish Constitution (Dz. U. z 1997 Nr 78, poz. 483) in connection with the tax law. The Tribunal has been justifying that the order of precision and explicitness of the wording and of legislative correctness, originating from these rules, is especially important for tax law, especially in the cases where it provides for the obligation to calculate taxes on one's own. The rule of reliability obliges the lawmaker to take into account the factual and legal consequences which will affect the recipients of the specified legal norms upon the introduction of the new regulations. It obliges to make and apply the law that respects the "ongoing interests". (Dumas, 2011, p. 32 and next). The basic feature of the rule of stability and reliability of the law is equipping the taxpayers and other entities (e.g. withholding agents, collectors) with an uncomplicated, clear and cohesive tax law system, so that they have the opportunity to meet their tax obligations. The reliability of the law means not the absolute stability of the legal provisions, but rather the possibility to predict the acts of the state authorities that apply the tax law.

Another important rule providing the taxpayer with a "safety guarantee" is the rule of equality under law. The Constitutional Tribunal (Trybunał Konstytucyjny, TK) has often indicated that the rule of equality under law means that "all the subjects of the law, possessing a given feature that is important at the same level, are to be treated equally, i.e. in accordance with the same measure, without differentiation that is either discriminating or in somebody's favour. The equality under law also consists in the legitimacy of choosing one, and not the other, criterion for differentiating between the subjects of the law." (wyrok Trybunału Konstytucyjnego z dnia 6 maja 1998, K. 37/97; wyrok Trybunału Konstytucyjnego z dnia 20 października 1998, K. 7/98; wyrok Trybunału Konstytucyjnego z dnia

z dnia 17 maja 1999, P. 6/98; wyrok Trybunału Konstytucyjnego z dnia 21 września 1999, K. 6/98; wyrok Trybunału Konstytucyjnego z dnia 4 stycznia 2000, K. 18/99; wyrok Trybunału Konstytucyjnego z dnia 18 grudnia 2000, K. 10/00; wyrok Trybunału Konstytucyjnego z dnia 21 maja 2002, K. 30/01; wyrok Trybunału Konstytucyjnego z dnia 9 maja 2005, SK 14/04). The selection of premises for differentiating between the taxpayers' legal situation, which selection is unjust and not motivated in rational terms, on its own violates the rule of equality under law. The differentiation of the taxpayers' situation based on the manner of the occurrence of the obligation is arbitrary and unjust – that regulation violates art. 32 subpar. 1 of the Polish Constitution (Dz. U. z 1997 Nr 78, poz. 483).

Many provisions of the tax, procedural and substantive law refer to the rule of taxpayers' trust to the state and to the law. From the provisions of procedural law, we should mention the ones which formulate the general rules of tax behavior, i.e. the manner of conducting the proceedings in the manner that evokes the trust to tax authorities – art. 121 § 1 of the Tax Ordinance Act (ustawa z 29 sierpnia 1997 – Ordynacja podatkowa (Dz. U. z 2012, poz. 749 j.t.)), the rule of providing the parties to the proceedings with information, and the rule to provide them with explanation expressed in art. 124 of the Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) the rule of active participation of the parties to the tax proceedings resulting from art. 123 of the Tax Ordinance Act ((Dz. U. z 2012, poz. 749 j.t.), and the rule of making the case files available to the parties resulting from art. 178 of the Tax Ordinance Act. (Dz. U. z 2012, poz. 749 j.t.). The provisions associated with the interpretation of the tax law, performed by the Minister of Finance (art. 14 a – 14 p of the Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.)) are included in the scope of the provisions of substantive law (Szczurek, 2008, p. 70 and next).

The Supreme Administrative Court (NSA) has indicated in its many decisions that the rule of trust to tax authorities, expressed in art. 121 § 1 of the Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.), may not be treated solely as an abstract demand from the authorities, but as a legal standard which should be applied precisely in practice. Surprising a party with a new interpretation and imposing high fees for the previous years devastates the economic assumptions made by the party and must be regarded as a glaring violation of art. 121 § 1 of the Tax Ordinance Act. (Dz. U. z 2012, poz. 749 j.t.). A change in the interpretation of legal provisions may not cause negative consequences for the taxpayer who acts in good faith and who trusts the contents of the interpretation received. (wyrok Naczelnego Sądu Administracyjnego z dnia 26 marca 2002, III SA 3390/00). The vari-

ability of decisions made by tax authorities in such a factual and legal state, violates the rule expressed in art. 121 § of the Tax Ordinance Act. (Dz. U. z 2012, poz. 749 j.t.).

The standards of protecting the rights of taxpayers implicate the introduction of the standards of resolving the disputes between them and the public authorities. The standards understood in that way are associated with the requirements to provide the citizens with unhindered access to courts, reasonable time of examining the dispute, just and open examination of the case, impartiality and independence of judicial decisions, and the feeling of legal protection of the applicant. (Chrościelewski, Kmieciak, Tarno, 2002, p. 32). Under art. 175 subpar. 1 of the Polish Constitution (Dz. U. z 1997 Nr 78, poz. 483), the administrative courts uphold the system of justice in the Republic of Poland next to the Supreme Court (Sąd Najwyższy, SN), common courts and military courts. The competences of the administrative courts have been specified in art. 184 of the Polish Constitution (Dz. U. z 1997 Nr 78, poz. 483), under which the Supreme Administrative Court (NSA) and other administrative courts exercise, within the scope specified by the statutory law, the supervision over the acts of public administration authorities. Under the right to court access, there should be emphasized the right to expect that the court will apply the law, while providing the basis for its decision, in the manner that is correct and timely. Apart from the right to independent and impartial court, there is the right of a party to have its case examined within a reasonable time limit. (Mudrycki, 2007, p. 49). From the general rule included in art. 7 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.) there follows the instruction to settle the case in a fast manner. The administrative courts should undertake the activities aimed at settling the cases fast, and should endeavour to settle them at the first session. The regulations of the Act of 17 June 2004 (ustawa z dnia 17 czerwca 2004 r. o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki (Dz. U. 2004 Nr 179, poz. 1843 z późn. zm.)) on a complaint against the violation of the party's right to have a case examined without undue delay in judicial proceedings allow the party to submit a complaint against the protracted duration of the proceedings, and to receive the compensation from the State Treasury and the decision ordering the performance of proper acts by the court that examines the essence of the case.

The constitutional rights need to be supplemented and developed in the regular statutory law. The tax law provisions that determine the taxpayers' rights and entitlements regulate their legal situation directly, allowing them

to effectively demand that the tax authorities respect and protect the taxpayers' rights in the process of applying the law. The tax law doctrine lists two groups of taxpayers' rights. (Szczurek, 2008, p. 159). The basic taxpayers' rights include the right to a court and to judicial and tax proceedings consisting of two instances, the right to protection of privacy, the right to protection of ownership, the right not to be discriminated against and the right to have the damage, caused by the unlawful acts of public authorities, redressed. In turn, the group of taxpayers' rights that are specific to the area of tax law comprises the taxpayers' rights to demand the return of overpayments with interest, the right to correct a tax declaration and the right to information.

Within the context of the above deliberations, it should be stated that the notion of "taxpayers' rights" is a consolidated category that includes the taxpayers' rights and entitlements that are different as to their source and nature. Similarly, the scope of means of protection of taxpayers' rights is diverse. A rational tax law system should be consistent with the Polish Constitution, synchronized with other branches of the law, providing the protection of taxpayers' and guaranteeing the respect of their subjective rights. The guarantees of taxpayers' subjective rights consist in respecting the tax rules by the tax authorities. In the tax proceedings the tax authorities are obliged to act based on the law by applying the provisions of the substantive and procedural law while examining and settling the cases, as well as while making individual interpretations of the tax law provisions. The administrative courts are obliged to inspect the legality of the appealed acts issued by tax authorities.

In 2011 (http:/www.dzienpodatnika.pl, retrieved November 29, 2012) an initiative was introduced for the purpose of introducing a Declaration of Taxpayer Rights for the experts and practitioners of tax law in Poland, which would constitute a list of the rights that should be effective in the Polish tax system. The purpose of the initiators of the establishment of that Declaration is to improve the tax system, mainly by making the public authorities acknowledge the Declaration, and by expanding the awareness among the taxpayers. The declaration includes ten basic taxpayers' rights resulting from the Polish Constitution, i.e.: I – the right to good tax law, II – the right to pay the tax at the level resulting from the tax statutory law, III – the right to participate in the tax proceedings that are conducted in a reliable manner, IV – the right to be treated properly by tax administration authorities, V – the right to judicial protection in tax cases, VI – the right to information on tax-related cases, VII – the right to assess the tax law, VIII – the right to assess the work of tax administration, IX – the right

to respect the rule of presumption of innocence, and the rule of commensurability and individual character of the penalty for violating the tax law, X – the right to have the damage made by a decision of public authorities redressed.

5. The effect of binding the authorities and courts to the interpretation resulting from the justification of a judgment, on the taxpayers' subjective rights

There should exist a proper relationship between the law regulating the social relations, and the relations themselves – the relationship of conformity. (Brzeziński, 2011, p. 39 and next). The history of changes of the law was presented by M. Zirk – Sadowski (2004, p. 9 and next) in the article devoted to the issue of interpreting the tax law from the point of view of the general directions of law transformation. The author indicated the possibility to differentiate between the three stages of development of legal systems. The criterion of differentiation is associated with the character of the relationship between the authorities and the society. The first stage is repressive law, the second – autonomous law. The third stage is the stage of responsive law that is more inclined towards the social needs, rather than the authorities' "own" needs. It is characterized by the increasing cooperation between the participants to legal relationships, the light manners of conflict solving (mediation, conciliation, arbitration), the flexibility of applying the law in particular situations. Coercion is limited to the necessary cases. The significance of the general clauses and of legal rules increases, as well as the role of purpose-related interpretation. B. Brzeziński has indicated that there exist sufficient premises to assume that the legal systems are entering the phase of responsive law. The tax system is oriented towards the cooperation between the taxpayers and the tax authorities through the exchange of information, elements of negotiations, and increase of the level of mutual trust. The tax systems demonstrate a higher flexibility, for example through the possibility for the taxpayer to select its form of income taxation.

In accordance with the Declaration of Taxpayer Rights (http:/www.dzienpodatnika.pl/, retrieved November 29, 2012), the right to judicial protection of the rights in tax cases is exercised through the following:

1. The taxpayer has the right to initiate a court inspection of the tax decision affecting it, through an impartial and independent court, in the course of a two-instance, just, reliable, fast and open trial.

2. The lack of resources to cover the costs of proceedings may not restrict the taxpayer's right to court access.
3. Each taxpayer has the right to reliable judicial proceedings.
4. Taxpayers' cases are examined in open judicial proceedings, and the exclusion of their open character may only occur in specially justified cases.
5. The courts of both instances examine the taxpayers' cases without unjustified delay, and in the event of their protracted duration, the taxpayers are entitled to proper redress and compensation.
6. The courts exercise the obligation of the authorities to hold the positions regarding the substance, in response to appeals and cassation appeals.
7. The court notifies the minister responsible for the issues of public finances about each glaring violation of taxpayers' rights noted in tax proceedings.
8. In their judicial decisions, the courts should apply the prohibition of the *in dubio pro fisco* interpretation.
9. The justifications of a court decision contain not only the arguments supporting the decision, but also the exhaustive assessment of the opposing arguments, especially in the case of dismissing an appeal or a cassation appeal.

As has already been indicated, the legal assessment, referred to in art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.), should be understood as the explanation of the crucial contents of legal provisions and the manner of applying them in the particular instance associated with the case. This is because the legal assessment included in the justification of a judgment is especially associated with interpretation of the law. That assessment may refer both to substantive and procedural legal provisions. Both an administration authority and a court that reexamine a case, are obliged to apply the assessment included in the justification of the judgment previously issued. That binding refers also to the instructions as to the further conduct in the case of revocation of the previous decision due to a breach of the procedural provisions in the scope associated with explaining the factual state of the case.

The legal assessment, referred to in art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.), expressed in the judgment allowing the appeal, binds the authority by creating an absolute obligation to take it into account in the next administrative proceedings which will end with the issuance of the next decision. In turn, binding an administrative court with the legal assessment, referred to in art. 154 of the Act on Proceedings before Administrative Courts (Dz. U.

z 2012 r., poz. 270 j.t.), expressed in the previous decision allowing the appeal, creates an obligation, in the case of another appeal against that act, to conduct the judicial inspection of the legality of the next decision issued as a result of allowing the appeal. That inspection consists in the verification whether the authority complied with the obligation to apply the legal assessment and the instructions included in the revoking decision, and is within the limits of the case examined by an administrative court, within the meaning of art. 134 § 1 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.). Also, the administrative court of the first instance, by examining the appeal against a decision issued as a result of repeated administrative proceedings, may not formulate the assessments different from the ones that have been clearly indicated in the previous judgment. (wyrok Naczelnego Sądu Administracyjnego z dnia 11 marca 2008, II FSK 16/07).

The procedural significance of justification of a judgment is shown in the fact that it is supposed to guarantee that the court will exercise due diligence while making the decision, to allow the court of the higher instance to assess whether the premises, which provided the basis for the decision of the court of lower instance, are accurate, and in case of doubt, to allow the determination of the limits of the *rei iudicatae* and other legal effects of the judgment. With such procedural significance of the justification of a judgment, it is not sufficient to just quote the legal provisions or invoke their literal wording, or the general views presented in the doctrine. It follows from the contents of art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.) that whenever the given case (until a final and valid conclusion) is subject to examination by that court, it will always be bound by the legal assessment (just like the authority) expressed in that decision, if it is not revoked and if the provisions do not change. (wyrok Naczelnego Sądu Administracyjnego z dnia 14 kwietnia 2008, II FSK 90/07).

From the point of view of protecting the taxpayers' rights, another significant issue is the determination of the relationships between the judgments of administrative courts associated with inspection of particular tax interpretations, and the judgments associated with inspection of tax decisions. The legal literature emphasizes that, due to the constitutional rule of right to court access, confronted with the character of the act of an individual negative tax interpretation, the view should be assumed that the court inspecting the tax decision associated with the level of tax obligation is not bound by the legal assessment expressed in a final and valid judgment of the inspecting court that "upholds" the negative interpretation issued

before. What should be especially emphasized is that neither the upheld negative interpretation, nor the final and valid decision that denies the appeal from the taxpayer, comprise a prejudication which might, in a certain way, affect the judicial proceedings in which the inspection is performed with regard to the tax decision associated with the level of the tax obligation. The above does not violate the rule of the binding force of a final and valid decision expressed in art. 170 of the Act on Proceedings before Administrative Courts. (Dz. U. z 2012 r., poz. 270 j.t.). (Pietrasz, Sawczuk, 2010, p. 13 and next).

The failure to bind with the limits of the appeal means that the court has the right, and the obligation, to assess the compliance with the law of the appealed administrative act even if the given allegation has not been presented in the appeal. The limits of examining the appeal by the Court are provided on the one hand by the criterion of legality of the activities of public authorities, and on the other – only by all the legal aspects, and only by the administrative-legal relationship that is included in the appealed decision. (wyrok Naczelnego Sądu Administracyjnego z dnia 17 marca 2006, II FSK 509/05).

What should also be indicated is the position, assumed in judicial decisions, that even if the cassation court does not address the essence of the allegations made due to defects in the cassation appeal, then by dismissing the appeal in the part appealed by the party it made the decision of the court of first instance become final and valid in that part, on the date of issuance of the judgment, and bound both the tax authority, and later – the court. The binding of the authorities and of the court continues to have effect as long as the factual state of the case does not change. It should be emphasized that the violation of the rule of binding with a legal assessment, constitutes a disqualifying fault that results in the decision being found invalid in the next proceedings. The court expresses its assessment in the addressed scope so that the scope of that assessment is not subject to examination during the next examination of the case. (wyrok Naczelnego Sądu Administracyjnego z dnia 15 lutego 2007, II FSK 274/06).

6. Conclusions

The idea of binding a public administration authority (tax authority) with a legal assessment and with the instructions from an administrative court, functions on the verge of two separate procedures, i.e. the administrative (tax) procedure and the court-administrative procedure.

The structure included in art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.) includes a guarantee that the court instructions will be performed and that the administration authorities will be bound by the interpretation of the legal provisions made by that court. As a result, a decision of an administrative court exerts the results exceeding the scope of judicial administrative proceedings, while its effect also covers the future tax proceedings. By conducting the tax proceedings after the former cassation decision of an administrative court, a tax authority acts in a different legal situation in comparison with the situation under the supervision of a court. Apart from the procedural solutions included in the tax regulations, that authority must also act subject to the provisions of art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.), and as a result, also to the opinions of a court. As a result, the judicial decisions of an administrative court are, in a sense, law-making. However, that law-making refers only to a specific case, because a court does not create abstract standards. In other words, the legal assessment and the instructions are made with regard to a specific tax case. The legal assessment expressed in the sentence of an administrative court, comprises a special element of the legal status of the case, because it includes a statement on the compliance of the inspected act with the law. As a result, both the legal assessment and the court instructions must be invoked in the justification of a tax decision made in the proceedings conducted after the prior inspection from the administrative court.

If the legal assessment made by the court refers to the regulations that affect the subjective rights of a taxpayer, it means that the administrative court imposes the effects of "its" interpretation of those provisions on a tax authority. In turn, the tax authority is obliged to respect those rights in accordance with the opinions of the court, which usually affects the final resolution of a tax case.

It should be kept in mind that a taxpayer, by submitting an appeal against a tax decision to an administrative court, demands not only an inspection of the acts of tax administration, but also – which should be emphasized – demands the execution of its rights, including its subjective rights. Therefore, we should not forget the crucial role of the administrative courts in the protection of the substantive rights of taxpayers. The instrument that allows the administrative courts to guard the subjective rights of taxpayers, consists in the procedural regulations included in the provisions on proceedings before administrative courts, and in particular art. 153 of the Act on Proceedings before Administrative Courts (Dz. U. z 2012 r., poz. 270 j.t.).

NOTES

[1] From the justification of the resolution of the NSA of 26 October 2009, (I OPS 10/09).

[2] Judgment of the Constitutional Tribunal of 11 May 2004 (wyrok Trybunału Konstytucyjnego z dnia 11 maja 2004, K 4/03); see also: Sokolewicz, W. (2005). Uwagi do art. 217. In L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 4, (pp. 12–19). Warszawa: Wydawnictwo Sejmowe.

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