

## LEGAL SECURITY IN THE INTERPRETATION OF TAX LAW

Dr. habil. Jadwiga Potrzeszcz, University Professor

Department of Theory and Philosophy of Law, Faculty of Law, Canon Law  
and Administration, The John Paul II Catholic University in Lublin, Poland  
e-mail: [jadwiga.potrzeszcz@kul.pl](mailto:jadwiga.potrzeszcz@kul.pl); <https://orcid.org/0000-0002-4358-7273>

**Abstract.** This article defines the concept of legal security of the state in the sphere of public finance and the concept of legal security of the taxpayer. Subsequently, it presents a critical analysis of the legal interpretation directives that was carried out, taking into account the specificity of tax law and normatively defined institutions that guarantee the legal security of tax law recipients.

**Keywords:** taxpayer, interpretation of law, legal security of the state in the sphere of public finance, legal security of the taxpayer, interpretations of tax law

### INTRODUCTION

The subject of this article is legal security in the interpretation of tax law. At the outset, it should be noted that the considerations presented in this study are at the normative level in the sense that they define the obligation to implement legal security and indicate which methods of interpretation and legally defined institutions can provide legal security to the recipients of tax law at the highest level.

A separate study is required to verify the practical functioning of the tax law guarantee instruments presented at the normative level. Considerations of such a kind are on the descriptive level and relate to specific problems emerging in practice when interpreting and applying tax law. Several of aforementioned problems are presented in the literature [Potrzeszcz 2019, 149–63].

Therefore, while remaining on the normative level, many specific issues should be indicated. Primarily, the necessity to interpret the law should be emphasized at the outset, due to the ambiguity of the language, along with the dynamics of the socio-political and economic environment in which the law operates. This applies in particular to tax law. Subsequently, it is necessary to explain the meaning of the concept of legal security that is applied in relation

to the creation and application of tax law. It is also worth considering why legal security is an important value in tax law.

Referring to the undertaken and discussed wider issues, determined by the topic “Legal security of the state and the taxpayer and a fair tax system,” we should raise the question of the passive entity and active entity of legal security in the context of tax law and its interpretation. Namely, it should be indicated whose rights and interests are to be guaranteed, by what means, and who is the entity responsible for ensuring these rights and interests.

A further group of issues concerns the separation of directives specific to the interpretation of tax law, which directly serve to respect the legal security of tax law recipients. Moreover, the institutions of general and individual tax interpretations will be discussed due to their protective function of tax law recipients.

## 1. THE NECESSITY TO INTERPRET THE LAW, INCLUDING TAX LAW

It is widely recognized the statement of Montesquieu, who in his famous work *The Spirit of the Laws*, mentioned “things to be followed in making laws.” He indicated, inter alia, that “the style of laws should be concise,” “the style of laws should be simple,” and above all, “it is of the utmost importance that the words of laws evoke the same concepts in everyone” [Montesquieu 2003, 524]. Fulfilling such demands is also extremely important nowadays. This applies in particular to repressive regulations in the sense that they create obligations or a heavy burden on the recipients. An illustration of such a regulation is tax law, the specificity of which consists in a particularly strongly outlined state authority over the taxpayer, as well as in the application of the principle of self-calculation of tax [Potrzeszcz 2019, 149–63].

The directive of colloquial language, contemporary accentuated, perfectly harmonizes with the postulate of Montesquieu. This directive should be a guideline in relation to both the principles of drafting laws and their interpretation. This is very important especially in cases where the recipients of legal norms are ordinary citizens, not lawyers specializing in tax law interpretation [Brzeziński 2008, 45].

In practice, however, it turns out that the legal provisions are not so unambiguous and clear that the person applying the law could only be the “mouth of the law,” the mouth that expresses the wording of laws, without the necessity and possibility of interpreting the legal provisions in advance, as Montesquieu postulated in relation to judges. The demand and necessity to interpret the law occurs in all areas of law, including those which, due to their specificity, are closed (criminal law and tax law). The necessity to interpret the law is primarily related to the nature of the language in which legal provisions are expressed. That language is characterized by vagueness, ambiguity, semantic

openness (indeterminate). Moreover, the language is dependent on changing non-linguistic contexts, including social, economic, political relationships and moral convictions [Morawski 2010, 19].

Therefore, we accept the view of A. Kaufmann, an outstanding representative of legal hermeneutics, according to which legal provisions constitute only a potential law, while the relevant law arises as a result of an interpretation in the form of a hermeneutic circle. Kaufmann, therefore, rightly argues that “there no exists the law before its interpretation,” and Montesquieu’s claim that judges are “mouths of laws” is the biggest mistake in legal thinking [Kaufmann and Hassemer 1995, 122]. This view corresponds with the proclaimed by M. Zielinski legal maxim *Omnia sunt interpretanda* [Zieliński 2005, 120], contrasted with the legal maxim *Clara non sunt interpretanda*, and its sophisticated form *Interpretatio cessat in claris*. We always deal with the situation of interpretation whenever we try to apply the law. This view was confirmed in the judgment of the Polish Constitutional Tribunal, according to which “The Constitutional Tribunal states that the fact that a provision is ambiguous, and therefore its possible different linguistic interpretation, does not by mean that a proper interpretation is impossible. According to the currently predominant position of the doctrine, the interpretation of a provision – as a reconstruction of a legal norm from the text of a normative act – is always made, even in cases apparently raise no doubts as to interpretation.”<sup>1</sup>

Tax laws are among the most complex in legal system. Frequent amendments to tax laws, the introduction of indefinite phrases, divergent interpretative lines of the tax authorities and differences in the interpretation of judicial interpretation of the judiciary cause that the taxpayer may get the impression of the failure to implement the principle of legal certainty of tax law [Bernat 2016, 102], as well as the principle of legal security.

## 2. THE CONCEPT AND IMPORTANCE OF LEGAL SECURITY OF THE STATE AND THE TAXPAYER

Each country requires financial resources in order to function, and manage to fulfil its obligations towards its citizens. The scope of such obligations of the state towards its citizens determines the value of the common good, defined as “the sum of the conditions of social life enabling and facilitating the integral development of all members of the political community and the communities created by them” [Piechowiak 2012, 433].

On the other hand, citizens are obliged to care for the common good, inter alia, by bearing public burdens and benefits, including taxes, specified in the

---

<sup>1</sup> The judgment of the Constitutional Tribunal of 13 January 2005, ref. no. P 15/02, OTK ZU No. 1/A/2005, item 4, p. 39; see Zieliński 2002, 56.

law (Article 84 of the Polish Constitution<sup>2</sup>). Thus, the obligation to pay taxes is justified by the necessity to bear burdens for the sake of the common good of the entire political community. As such, it does not raise any objections.

From the taxpayer's perspective, taxation also restricts their ownership. Property as a constitutional value is subject to equal legal protection for all, however, it is not an absolute value and may be limited by law, but only to the extent that the law does not infringe the essence of the right to property (Article 64 of the Polish Constitution).

Turning to the issue of determining the concepts of legal security of the state and legal security of the taxpayer, I apply a more general definition, according to which "Legal security is the state achieved by means of positive law, in which life goods and interests of the subject of that security are guaranteed as completely and effectively as possible" [Potrzeszcz 2013, 405]. Legal security is the value gradated in the sense that the level of its implementation may be relatively corresponding to the standards of the rule of law.

An important issue that requires to be defined is also the concept of the legal security subject. It is necessary to distinguish between the passive subject and the active subject. Referring to the passive subject of legal security, we understand the entity that is entitled to protection in the legal order or the entity that is the beneficiary of legal security. By contrast, as the active subject of legal security, we indicate the entity that acts to realize the idea of legal security a reality [Idem 2015, 76]. The passive subject of legal security in the context of tax law is both the state and the taxpayer.

Legal security of the state in the sphere of public finances means the state in which the fiscal interests of the state are guaranteed by means of tax law, allowing for obtaining funds for the budget, as well as maintaining budget balance. Whereas the legal security of a taxpayer means the state in which tax law defines in a precise and unequivocal manner what their rights and obligations are towards the tax authorities (legal certainty), as well as fair imposition of the tax obligation, respecting the principle of equality and proportionality. In this sense, the legal security of the taxpayer can only occur if the fair tax system (law) exists. In contrast, certainty of tax law may exist independently of the fairness of this law.

From the perspective of the concepts defined in such a manner, the issue of protecting the legal security of the state in the sphere of public finance and the legal security of the taxpayer should be analysed in the process of interpreting tax law. The legal security of the taxpayer requires not only certainty of tax law, and thus the possibility of unambiguous identification of the tax obligation, which is closely related to the issue of tax law interpretation. The legal security of the taxpayer additionally requires fairness of the tax system. The

---

<sup>2</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended [hereinafter: the Polish Constitution].

postulate of justice is an argument invoked for centuries by both the state and taxpayers, and is reflected in particular in the context of reforms. The implementation of the principle of justice determines the acceptance by society of tax burdens, in turn in the legal sphere it legitimizes the state's tax jurisdiction.

Tax justice is the guiding idea of the creation of a tax law system, however, simultaneously it is a very complex issue involving multiple points of view of the participants of the political community, who from the perspective of their economic situation in various manners perceive the role of the state. Commonly, entrepreneurial entities that receive high incomes, postulate the state ought to limit its role to a "night watchman," which implies the hope of lowering taxes. The situation is different from the perspective of entities benefiting from state aid in the social sphere. Undoubtedly, the views on the economic system adopted in a given country are closely related to the understanding of tax justice.

### 3. LEGAL SECURITY AS A PARTICULARLY IMPORTANT VALUE IN TAX LAW

It is emphasized in the literature and judicature that, in particular, tax law should be created in a precise and defined manner, and that the so-called autonomous model should be characteristic for its creation. In such a model the most important values are legality and legal security, including guarantees of fundamental human rights. The argumentative procedure of discussing the law and the idea of formal justice are prevailing [Wojciechowski 2019, 59].

One of the basic tax principles is the principle of tax certainty. The taxpayer, as the weaker party to the obligation relationship, must know their obligations and rights. They should also be aware of when their specific behaviour or omission will result in a tax obligation, which subsequently will turn into a tax liability. The taxpayer should also know at what time, in what place and in what amount to pay the tax due [Burzec 2012, 207].

Due to the specific nature of tax law, in which the authority of the state in relation to the taxpayer is particularly strongly outlined, the necessity to guarantee legal security for the taxpayer at the highest possible level becomes of significant importance. On the other hand, legal security should also be secured in relation to the guarantees of the fiscal interests of the state in order to maintain the budget balance.

A sort of symmetry of the right of the state and the taxpayer to secure interests was indicated both in the doctrine and in jurisprudence. For instance, in the context of considering the dilemma whether issuing an interpretation means its delivery, the Supreme Administrative Court stated that "if the taxpayer is to gain legal certainty by delivering the interpretation, the tax authority should have the same certainty concerning the end of the deadline for

issuing the decision. The protective function of the law is not unilateral. The term referred to, determines the security limits for both the interested party and the tax authority.”<sup>3</sup>

The Constitutional Tribunal accepted the arguments of the Supreme Administrative Court, confirming that “if the taxpayer were to gain legal certainty by delivering the interpretation, then the tax authority should have the same certainty regarding the end of the deadline for issuing it. The protective function of the law is not unilateral. The term referred to, determines the security limits of both the interested party and the tax authority. Due to the consequences that are associated with the expiry of each term, both procedural and material, the entity to which the term refers, must know when it starts and when it ends. The absence of clarity of the provision in this regard would be tantamount to violation of the principle of specificity by the legislator.”<sup>4</sup>

However, jurisprudence often emphasizes the necessity of assurance of legal security, primarily for the taxpayer, taking into account their weaker position in relation to the position of state authorities. The Constitutional Tribunal has repeatedly emphasized that legal certainty and the related principle of legal security have an important role in the law regulating public levies. According to the Constitutional Tribunal, legal certainty means not so much the stability of legal provisions, which in this area of law may be difficult to achieve in a given economic situation of the state, but the conditions for the possibility of predicting the actions of state organs and the related behaviour of citizens. Thus understood, predictable actions of the state legislature guarantee confidence in the legislator and the constituted law. Frequently, the inevitable increase in the burden by changing the law should be done in such a manner so that the legal entities, which it relates to, have adequate time to rationally dispose of their interests.<sup>5</sup>

#### 4. TAX LAW AS A MEANS OF GUARANTEEING THE RIGHTS AND INTERESTS OF PASSIVE SUBJECTS OF LEGAL SECURITY

When considering the issue of legal means by which the rights and interests of passive subjects are secured, attention should be paid to the quality of tax law. Legal norms are reconstructed from the provisions of tax law through their interpretation. According to the derivative theory of legal interpretation, the purpose of interpretation is to reconstruct the full and unambiguous norm

---

<sup>3</sup> Resolution of the Supreme Administrative Court of 14 December 2009, ref. no. II FPS 7/09, ONSAiWSA 2010, No. 3, item 38.

<sup>4</sup> Judgment of the Constitutional Tribunal of 25 September 2014, ref. no. K 49/12, OTK ZU No. 8/A/2014, item 94.

<sup>5</sup> Cf. judgment of the Constitutional Tribunal of 27 February 2002, ref. no. K 47/01, OTK ZU No. 1/A/2002, item 6.

of conduct from legal provisions. Therefore, only as a result of interpretation do we obtain the norms of tax law. The task of these norms is to protect the fiscal interests of the state, on the one hand, and the rights and interests of the taxpayer, on the other hand.

When applying the principles of tax law interpretation, it should be taken into account that in accordance with Article 2 of the Polish Constitution, the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice. The principle of a democratic state ruled by law includes many specific principles. One of them is the principle of correct legislation, which, in turn, covers such issues as the obligation to respect rightly acquired rights, the prohibition to enact legal provisions with retroactive effect, the obligation to observe *vacatio legis*. The state ruled by law should protect citizens' confidence in the law. In particular, the provisions of tax law should be formulated in such a manner as to precisely and clearly define the content of the taxpayers' rights and obligations. Tax law provisions should not allow tax authorities to abuse their position towards taxpayers.<sup>6</sup>

The far-reaching freedom of the legislator in shaping the substantive content of tax law is balanced by the existence of an obligation, concerning the legislator, to respect the procedural aspects of the principle of a democratic state of law, and in particular to respect the principle of correct legislation. As the Constitutional Tribunal has repeatedly emphasized, in a democratic state ruled by law, making and applying the law cannot be a trap for the citizen. A citizen should have the possibility of arranging their affairs in the confidence that they do not expose themselves to adverse legal results of their decisions and actions, the consequences of which they could not have foreseen at the time of taking their decisions and actions. Therefore, tax legislation must always be carefully assessed in terms of compliance with these procedural requirements. Since its effects for the citizen take a specific financial aspect and are often associated with the reduction of their income, the legislator must shape new tax regulations taking into consideration the fact that the taxpayer, assuming the stability of the previous regulations, planned certain economic moves and their various interests may be in progress. Obviously, the protection of such interests cannot be attributed an absolute character, as the volatility of law is an element that citizens must take into account. However, in situations where the provisions of the law set a certain time horizon for planning and carrying out a specific financial or economic project, such "rules of the game" cannot be changed before the end of the period or deadline provided by the legislator. Since, in confidence in the applicable law, a specific project has already been started, and the law stipulated that it would be realized for a certain period of time, therefore, except special situations, the citizen should have

---

<sup>6</sup> Legal certainty, with regard to the interpretation of tax law, is also indicated as a value [Filipczyk 2013].

the confidence that they would be allowed to use this period safely. Starting a financial or economic enterprise is frequently associated with making the first investments, and a sudden change in the legal framework of such an enterprise may expose the citizen to serious losses.<sup>7</sup>

## 5. THE SPECIFICITY OF THE INTERPRETATION OF TAX LAW WITH RESPECT TO THE VALUE OF LEGAL SECURITY

### 5.1. The principle of linguistic interpretation primacy

The principle of the primacy of linguistic interpretation is universal and applies to all branches of law. However, it is of particular importance in relation to tax law. The recipient of tax law is every subject obligated to pay taxes, not only entities professionally involved in the creation and application of the law. Therefore, it is important that the recipient of the law can reconstruct the binding legal norms on the basis of the legal text. Consequently, in tax law, the principle of the primacy of language interpretation [Mastalski 2008, 156] before teleological or functional ones should be observed. Such preference rules primarily serve the legal security of taxpayers.

In justified cases, however, when the linguistic interpretation does not provide satisfactory results, the teleological and functional interpretation should also be applied. The doctrine rightly emphasizes that linguistic interpretation is not the only or essentially exclusive tool for determining the content and meaning of norms of tax law [Brolik 2014, 61].

### 5.2. The legal language directive

The legal language directive requires that the specific legal meaning assigned by the legislator be respected to certain expressions. Specifically, if the legislator formulated a legal definition, it should be taken into account in the process of interpreting the law. The problematic issue is whether legal definitions expressed in one branch of law can be included in another branch of law. This problem raises numerous controversies in terms of tax law. The question is whether terms that are not defined under tax law, but are defined in other branches of law, should be applied in their colloquial meanings or in the meaning assigned to them in the source regulations. The popular view is that the specific objectives of the tax regulations determine the conceptual autonomy of tax law and generally exclude the application of concepts in their civil interpretation or adopted in other branches of law [Morawski 2010, 111].

---

<sup>7</sup> Judgment of the Constitutional Tribunal of 25 November 1997, ref. no. K 26/97, OTK ZU No. 5–6/1997, item 64.



### 5.3. Functional interpretation

Due to the fact that the application of a functional interpretation involves reaching beyond the text of a legal provision, we should be careful when interpreting tax law. Tax regulations introduce severe obligations, and therefore require precise and unambiguous regulations. Therefore, the application methods of teleological interpretation to tax regulations should be exceptional and is justified mainly when the meaning of the regulations is not clear [ibid., 157].

### 5.4. Static and dynamic interpretation

In the case law the preference of static interpretation in relation to tax law, where the highest value is certainty, predictability and a sense of security of the taxpayer, can be observed. Otherwise, dynamic interpretation is applied in such cases where the law should be adapted to changing social, economic or political contexts [ibid., 161].

In the view of the Supreme Administrative Court, the characteristics of the tax law allow for the assumption of a significant role of static elements in the interpretation of tax law. This leads us to conclusions that it is essential to prefer legal certainty and legal security in the interpretation of tax law, as well as strict adherence to the “letter of the law.” This would be an interpretation with a strong “static” overtone, postulating the permanence of the meaning of the law and seeking the will of the legislator primarily in historical reality. Applying only such a type of interpretation is, as one can assume, an intriguing postulate regarding tax law, however, unfortunately not very realistic. Its fulfilment would require considerable precision of the provisions of tax law, as well as the elimination of subjective and evaluative elements, so that the concepts of tax law were at least as objectified as in the case of economic sciences. Determining the economic phenomena in the language appropriate for the law, however, requires a certain schematization and standardization, which means that the provisions of tax law are distant from the precision and clarity, and when applying them, certain subjective elements seem to be unavoidable. The bonds of tax law and civil law concerning the phenomena of economic life lead to the conclusion that tax law is likewise, to some extent, the law of everyday life. This requires, when interpreting it, to take into account not only the moment when a normative act is created, but also the moment at which the interpretation is made, and thus also the dynamic elements of the interpretation. According to the postulates of dynamic theories, the interpretation of law should link the meaning of the provision with the will of the current legislator, with the extensive consideration of the changing reality. For instance, applying a dynamic interpretation, when interpreting the concept of “renovation” with regard to the nature of the works performed by the complaining party,

we should take into account the changing economic reality and technical progress, which have a large impact on the manner and means of carrying out the works covered by this concept<sup>8</sup>.

### **5.5. The scope of tax law interpretation**

Due to the scope of interpretation, the following types of interpretation are distinguished: 1) literal interpretation (*interpretatio declarativa*), 2) intensive interpretation (*interpretatio extensiva*), 3) restrictive interpretation (*interpretatio restrictiva*) [Morawski 2010, 191].

The case law and doctrine developed directives specifying the principles of applying aforementioned types of interpretation. With regard to tax law, an order for a literal interpretation of the provisions of this law is formulated. This order is justified by the concern to protect the interests of taxpayers, because it is unacceptable, applying an intensive interpretation, to impose new obligations or increase the scope of tax obligations upon taxpayers.

The fiscal interests of the state are also protected by the obligation to interpret the provisions of tax law literally. Especially, with regard to the provisions establishing tax exemptions or reliefs, which are treated as exceptions to general taxation rules, the requirement of their literal and the prohibition of their intensive interpretation, is a manifestation of concern for the fiscal interests of the state, and thus the legal security of the state in the sphere of public finances.

### **5.6. Logical interpretation of tax law**

With regard to the provisions of tax law, as a rule, inference *a contrario* is applied, and the application of inference from analogy is prohibited. Inference from the opposite is the exact opposite of inferring from analogy. Inferring from analogy entitles to the application of similar or the same legal consequences to situations that are substantially similar to each other. In contrast, inference from the opposite forbids that [ibid., 245].

Basically, it is assumed that all tax obligations should be expressly stated in the provisions of tax law. This corresponds to the principle of *nullum tributum sine lege*. Unless the legislator explicitly established a tax obligation in the regulations, such an obligation cannot be imposed on the taxpayer applying logical interpretation. Therefore, it is prohibited to use analogy in tax law if it might lead to extending the scope of taxation. However, the doctrine

---

<sup>8</sup> See the judgment of the Supreme Administrative Court of 1 March 2000, ref. no. I SA/Wr 2915/98, [http://www.orzeczenia-nsa.pl/wyrok/i-sa-wr-2915-98/podatki\\_i\\_inne\\_swadczenia\\_pieniezne\\_do\\_ktorych\\_maja\\_zastosowanie\\_przepisy\\_ordynacji\\_podatkowej/9db84a/6.html?q=&\\_symbol=611&\\_sad=NSA+oz.+we+Wroc%C5%82awiu&\\_okres=2000\\_03](http://www.orzeczenia-nsa.pl/wyrok/i-sa-wr-2915-98/podatki_i_inne_swadczenia_pieniezne_do_ktorych_maja_zastosowanie_przepisy_ordynacji_podatkowej/9db84a/6.html?q=&_symbol=611&_sad=NSA+oz.+we+Wroc%C5%82awiu&_okres=2000_03) [accessed: 24.05.2021].

recognizes that it is permissible to use analogies to the benefit of the taxpayer [ibid., 228], this view may be debatable due to the need to protect the financial interests and legal security of the state.

## 6. THE RULE *IN DUBIO PRO TRIBUTARIO*

The rule *in dubio pro tributario* orders to settle questions of interpretation in favour of the taxpayer. Simultaneously, this rule prohibits the resolution of interpretative doubts in favour of the tax authorities (*in dubio pro fisco*). This undoubtedly constitutes a significant protection of the taxpayer's interests, thus increasing the level of legal security guaranteed. The rule *in dubio pro tributario* has its well-established position within the framework of *ius interpretandi*, i.e. the canon of legal interpretation directives adopted in a given legal culture.

Currently, this rule is reflected in the provisions of tax law. Namely, Article 2a of the Act of 29 August 1997, the Tax Code<sup>9</sup> provides "Doubts that cannot be removed as to the content of tax law provisions in favour of the taxpayer." The introduction of this provision is widely commented in the doctrine. It is emphasized that the positivization of the *in dubio pro tributario* made in the Directive on 1 January 2016 is an event whose significance from the perspective of legal theory cannot be overestimated [Bielska–Brodziak and Suska 2020, 69]. The legal provision directly expressed a directive that used to be only an element of legal culture. Representatives of the doctrine rightly emphasize that the rule *in dubio pro tributario* can and should be an element of the legal system building the legal culture and "civilizing" tax law [Brzeziński 2015, 21]. Undoubtedly, it serves the legal security of taxpayers.

## 7. INTERPRETATIONS OF TAX LAW

An important protective function in relation to taxpayers is performed by the interpretations of tax law provided for in the Tax Code. They include general tax interpretations, tax explanations and individual tax interpretations. The existence of above-mentioned institutions in Polish tax law is justified by the adoption of the general rule that the recipient's compliance with the interpretation derived from a state authority may not harm the entity who followed it, regardless of whether the interpretation is binding or not. This principle is a necessary condition for the implementation of legal security for taxpayers who act in confidence in the state authorities [ibid., 48].

---

<sup>9</sup> Journal of Laws of 2020, item 1325 as amended [hereinafter: the Tax Code].

### **7.1. General tax interpretations and tax explanations**

General tax interpretations and tax explanations are regulated in the Tax Code. According to Article 14a(1) of the Tax Code “The minister responsible for public finance aims to ensure the uniform application of tax law by tax authorities, in particular: 1) interpreting them, ex officio or upon request (general interpretations), 2) issuing ex officio general explanations of provisions of tax law concerning the application of these provisions (tax explanations).”

“The essence and purpose of the general interpretation should be perceived mainly from the perspective of the principle of legal certainty and legal security. Legal certainty, often treated as legal security considered from the point of view of the protection of individual rights, is nowadays considered to be one of the most important factors of the proper functioning of the law and means the possibility of predicting what decisions will be issued by entities applying the law - in this case the tax administration. In tax law, legal certainty has long been associated with such a precise and clear shaping of the law that the role of entities applying the law is mainly limited to executive activities. More realistic, however, is the position, when analysing legal certainty places emphasis on the process of interpretation and application of law, recognizing that the ultimate result of legal certainty is a product of its concretization carried out by entities applying the law. The taxpayer should therefore build their sense of legal certainty not only on the wording of tax laws, but also on how the administration and courts apply tax law. Consequently, it will be to a great extent objective legal certainty, and thus independent of the experience of a specific entity, based not only on the interpretation of the law made by the taxpayer and their legal adviser, but also on the knowledge of the practice of applying tax law by the tax authorities” [Mastalski 2007, 8; Brolik 2013, 26].

### **7.2. Individual tax interpretations**

Individual tax interpretations are regulated in the Tax Code. According to Article 14b(1) of the Tax Code “The director of the National Tax Information, upon request of the interested entity, issues an interpretation of tax law (individual interpretation) in their individual case.” The individual interpretation contains an interpretation of tax law in an individual factual state or a future event directly related to the applicant. The Supreme Administrative Court noted that “The introduction of the institution of individual tax interpretations as of 1 July 2007 was based on the assumption that they are to perform two types of functions, specifically the informative and guarantee functions. This assumption was implemented in the scope of the informative function in Article 14b(1–3) and Article 14c(1) and (2) of the Tax Code. In contrast, the guarantee function of individual interpretations was ensured by introducing the so-called provisions «not damaging» the entity that complied with the

issued legal interpretation (Article 14k(1) and (3), Article 14m and Article 14f of the Tax Code). Therefore, by its nature, issuing an individual interpretation should mean that the interested entity will know the views of the tax authority concerning certain provisions of tax law, having regard to the factual situation described in the application, as well as the fact that the «interested subject» will have a real opportunity of relying on the issued interpretation in case of potential disputes with tax authorities [...] Thus an individual interpretation is an act in which the authority, by assessing the situation of the applicant described in the application for the interpretation, grants or refuses to grant certain rights by ensuring that compliance with the position of the authority cannot injure the taxpayer, regardless of the correctness of this interpretation.”<sup>10</sup>

## CONCLUSION

The considerations presented in this study lead to the conclusion that, both at the doctrinal, normative and judicial level, the value of legal security of tax law recipients is recognized and appreciated. Although, due to the frequent scarcely intuitive understanding of the concept of “legal security” of a given entity, there are no (or are very seldom) direct references to the manners of realization of such security in tax law by measures of applied methods of interpretation, however, the guarantee function of the measures indicated in this study can be specified by analysing their role and importance in the legal order.

It requires separate studies to examine the practical operation reconstructed in this article directives and institutions designed to essentially implement legal security of recipients of tax law. This issue is beyond the scope of the study.

## REFERENCES

- Bernat, Rafał. 2016. “Stosowanie zasady in dubio pro tributario. Komentarz do Interpretacji ogólnej Ministra Finansów z 29.12.2015 r. (PK4.8022.44.2015).” *Przegląd Prawa Publicznego* 10:101–108.
- Bielska–Brodziak, Agnieszka, and Marek Suska. 2020. “Węzeł gordyjski, czyli o in dubio pro tributario na tle klasyfikacji dyrektyw wykładni oraz pojęcia momentu interpretacyjnego.” *Państwo i Prawo* 8:69–82.
- Brolik, Jacek. 2013. “Interpretacje ogólne przepisów prawa podatkowego.” *Zeszyty Naukowe Sądownictwa Administracyjnego* 1:22–42.

---

<sup>10</sup> The judgment of the Supreme Administrative Court of 14 January 2020, ref. no. II FSK 440/18, Central Database of Administrative Court Rulings, <http://orzeczenia.nsa.gov.pl/doc/9675EAEBAA> [accessed: 24.05.2021].

- Brolik, Jacek. 2014. "Wykładnia prawa podatkowego oraz jej determinanty." *Zeszyty Naukowe Sądownictwa Administracyjnego* 3:54–75.
- Brzeziński, Bogumił. 2008. *Podstawy wykładni prawa podatkowego*. Gdańsk: Wydawnictwo ODDK – Ośrodek Doradztwa i Doskonalenia Kadr.
- Brzeziński, Bogumił. 2015. "O wątpliwościach wokół zasady rozstrzygania wątpliwości na korzyść podatnika." *Przegląd Podatkowy* 4:17–21.
- Burzec, Marcin. 2012. "Ochrona podatnika w przepisach prawa podatkowego – wybrane instytucje na gruncie Ordynacji podatkowej." *Studia Prawnicze i Administracyjne* 1:205–22.
- Filipczyk, Hanna. 2013. *Postulat pewności prawa w wykładni operatywnej prawa podatkowego*. Warsaw: Wolters Kluwer.
- Kaufmann, Arthur, and Winfried Hassemer. 1995. *Einführung in Rechtsphilosophie und Rechtstheorie der Gegenwart*. Heidelberg: F.C. Müller Verlag.
- Mastalski, Ryszard. 2007. "Charakter prawny interpretacji prawa podatkowego dokonywanej przez Ministra Finansów." *Jurisdykcja Podatkowa* 1:8–9.
- Mastalski, Ryszard. 2008. *Stosowanie prawa podatkowego*. Warsaw: Wolters Kluwer.
- Montesquieu. 2003. *O duchu praw*. Translated by Tadeusz Boy-Żeleński. Cracow: Wydawnictwo Znak.
- Morawski, Lech. 2010. *Zasady wykładni prawa*. Toruń: TNOiK.
- Piechowiak, Marek. 2012. *Dobro wspólne jako fundament polskiego porządku konstytucyjnego*. Warsaw: Biuro Trybunału Konstytucyjnego.
- Potrzeszcz, Jadwiga. 2013. *Bezpieczeństwo prawne z perspektywy filozofii prawa*. Lublin: Wydawnictwo KUL.
- Potrzeszcz, Jadwiga. 2015. "Podmiot bierny a podmiot czynny bezpieczeństwa prawnego." *Teka Komisji Prawniczej PAN Oddział w Lublinie* vol. VIII, 76–93.
- Potrzeszcz, Jadwiga. 2019. "Wykładnia prawa a bezpieczeństwo prawne na przykładzie wybranych problemów stosowania prawa podatkowego." In *Wykładnia prawa – aspekty teoretyczne i praktyczne*, edited by Jadwiga Potrzeszcz, and Bartosz Liżewski, 149–63. Lublin: Wydawnictwo KUL.
- Wojciechowski, Bartosz. 2019. "Stosowanie prawa podatkowego przez sądy administracyjne w sytuacji interpretacyjnego pluralizmu instytucjonalnego i otwartej tekstowości prawa." *Państwo i Prawo* 12:58–72.
- Zieliński, Maciej. 2002. *Wykładnia prawa. Zasady. Reguły. Wskazówki*. Warsaw: LexisNexis.
- Zieliński, Maciej. 2005. "Podstawowe zasady współczesnej wykładni prawa." In *Teoria i praktyka wykładni prawa*, edited by Piotr Winczorek, 117–34. Warsaw: Liber.