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WYDZIAŁ PRAWA
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Przedawnienie w prawie podatkowym.

(Statute of limitation in tax law)

SUMMARY

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The subject of this paper is an analysis of the legal institution – statute of limitation in tax law, in order to indicate the direction of reforms of this institution. Statute of limitation in tax law is a legal regulation passed by legislative bodies to set the maximum period of time within which the correcting assessment of the tax liability or a replacing one can be made or within which the tax authority is entitled to collect the due tax. When the period of time specified in a statute of limitations passes, these actions cannot be done any more. Abovementioned legal institution is important for both: the taxpayer and the State represented by the tax authority as well. The purpose of statute of limitation is to protect the taxpayer's and the Treasury's interests. Tax law provisions in that area do not deliver their functions.

As far as the current legal regulations are taken into consideration, the limitation period is not precisely examined. Under the provisions of article 70 of Polish Tax Ordinance Act the taxpayers shall be subject to a limitation period of five years. Nevertheless, there are several circumstances under which the limitation period is interrupted or suspended. The limitation period is suspended for such period as criminal proceedings are pending against the taxpayer in connection with the same facts that refer to the tax liability. The course of the limitation period shall be interrupted by the application of enforcement remedies of which the taxpayer was notified. After the interruption to the limitation period it shall run anew from the day following the day on which the execution measure was applied. The course of the limitation period shall be interrupted by a declaration of bankruptcy as well. Secondly, Polish tax law does not provide for the full separation of the limitation period for the assessment and the limitation period for the collection of the tax liability. As far as self-assessment is concerned period of limitation of 5 years is not only the period within which the tax authority is entitled to check if the assessment made by the taxpayer is correct or not. If the reassessment made by the tax authority results in higher amount of due tax, the period of limitation for tax assessment is also the period of limitation for collection due tax. Most of the taxes and tax obligations are subject to self-assessment by the taxpayer and it is the taxpayer that is liable for calculating the amount of the tax and obviously for its paying as well.

The aim of this doctoral dissertation is to prove a thesis that this legal institution is not effective because it does not follow the legal character of tax law legal relationship and to create a currently valid model of limitation in tax law.

The first chapter of the doctoral dissertation consists of two sections. The first one is devoted to the issue of the concept of limitation in tax law and the second one refers to

functions of limitation in tax law.

It is appropriate to distinguish two types of limitation periods: the tax assessment limitation and the tax collection limitation. The basic function of the statute of limitations is legal certainty. Limitation also affects the implementation of the principle of budget balance. If the expiration of the limitation period is precisely determined, the State is able to plan the amount of revenue that the State can achieve in such a way that the planned expenditures are not higher than the planned revenues.

Chapter two describes limitation in tax law in the light of the legal character of the tax-law relationship. This chapter concerns the concept and elements of the legal relationship, refers to types of legal relationships and the legal nature of the tax relationship.

Chapter three includes a comparative analysis of regulations concerning limitations in other branches of law - in civil law, in criminal law and in administrative law. Because of differences between the tax law legal relationship, the civil law legal relationship and the criminal law legal relationship it is not possible to adopt automatically legal provisions concerning limitation in these branches of law to limitation in tax law.

The fourth chapter covers issues of limitation in model tax codes and limitation in tax systems of selected countries. This chapter includes a comparative analysis of regulations concerning limitations in tax law in several countries and provisions of model tax codes created since the sixties of the twentieth century.

Chapter five describes the evolution of the institution in Polish tax law since 1918. It contains a detailed description of regulations devoted to the limitation institution in Polish tax law since 1918 until 1997. Many of the provisions concerning limitation in tax law arise from interwar and post-war periods. These legal regulations were created when most of obligations concerning tax assessment were the obligations on tax authorities. These obligations are now mainly imposed on taxpayers. Taking that into consideration, it is unreasonable to maintain historical regulations.

The sixth chapter focuses on the impact of applying the conclusions made in previous chapters to enhance the effectiveness of the limitation function by introducing changes in regulations concerning the limitation in tax law. There shall be modified limitation period, the beginning and end of their run. The circumstances under which the period of limitation in tax law shall be suspended or interrupted. This chapter presents an extensive analysis of provisions of the Tax Ordinance Act in the scope of limitation in tax law. It also contains proposal for amendments to this regulation.

The final part of the dissertation includes a summary of the research and the conclusion of the analysis.

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