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GENERAL TAX INTERPRETATION IN POLAND – SELECTED LEGAL FINANCIAL ISSUES

Regardless of the country of origin of the tax law, it always remains the interference law. It is meant to create social relationships non-existing beyond it[1]. The essence of these relationships demonstrates itself in the fact, that state representations imposing the obligation of tax performance upon a particular subject do not establish a simultaneous obligation of ensuring an immediate reciprocal performance for the subject benefit from the side of state or any local administrative unit[2].

A specific character of the legal tie, that is being established between the addressee of norm – a taxpayer /in some cases also with other subjects, i.e. other taxpayers, collectors or successors in right / and a legislator demands the acceptance of, on the one hand for the needs of tax law a closed system of sources and, on the other hand, the conditions of their interpretation (taking into consideration that legal norms resulting for the system of sources are not always transparent in spite of aiming at such transparency). The issue becomes crucial wherever, beside the local legal regulations, the subjects are obliged to use norms of foreign law as well. In the conditions of Poland or other countries that are the members of the European Union it implies that using the tax law and explaining its contents procedure should be based on respecting both constitution resolutions as well as norms of the European Union law.

The indicated conditioning of actions that aim at the establishment of tax norms essence, allows to form the opinion that those actions will be to a great extent based on the usage of static elements, i.e. "following the letter of the law"[3]. However, it must not shadow the fact that considering the exceptionally tight relationship between tax law and economy, thus in nature a very dynamic phenomenon, the application of law can not be limited to the interpretation merely based on the wording of the regulation – its grammatical interpretation. It also has to refer to the extralinguistic interpretation of law, above all the systemic one and the one indicating the way of attaining a goal (the teleological one).

Dilemmas concerning the admissibility of the application of linguistic and extralinguistic interpretations in the area of tax law norms determine the reflection of the conflict between two concepts of interpretation of legal acts: the clarification concept and the derivative one[4]. According to what has already been stated above, in the understanding of Polish doctrine of tax law, the opinion about the relevance of applying the latter concept prevails. It is so, above all, since it remains convergent

[1] See: R. Mastalski, *Prawo podatkowe*, Warszawa 2006, p. 110.

[2] Ibidem.

[3] See: B. Brzeziński, *Wstęp do nauki prawa podatkowego*, Toruń 2003, p. 189 and the following; R. Mastalski, *Prawo*, op.cit., p. 110.

[4] See: B. Brzeziński, *Wstęp*, op.cit., p. 192.

with the postulate of carrying on the interpretation until the moment of obtaining the full clarity of the content of the analyzed norm. This is done not only on the basis of literal interpretation. Therefore, it determines the rejection of the postulate of: "limiting the interpretative activity to the establishment of meaning of legal text on the basis of linguistic interpretation rules and contenting oneself on its results"[5].

It is beyond any doubts, that there are no arguments for the standpoint that the above mentioned rules do not concern the totality of subjects undertaking the interpretation of the provisions of tax law. Therefore, the obligation of applying them should exist both when they are promulgated by the Minister of Finance (later called MF) and other official tax agencies together with the motion put forward by an authorized person.

In the margin of indicated issues, it needs to be pointed out that in practice there is no unequivocal terminology denoting activities and actions undertaken in order to clarify contents of tax law norms. It regards in particular the already mentioned terms: "interpretation of legal acts" and "interpretation of law". Usually they are treated as synonyms, because, in particular cases they have a very similar significative range. From the semantic point of view, however, it is necessary to perceive differences in between them and to agree in this respect with the idea of B. Brzeziński. According to that author, "interpretation" refers to searching for meaning of the text of normative acts, whereas "commentary" encompasses both interpretations and drawing logical consequences from the norms established in the procedure of interpretation, i.e. drawing conclusions from norms about norms, as well as closing the so called "gaps in the law"[6].

Such an understanding of the notion "commentary of the law" allows him to assign different law sources functions simultaneously ensuring an indispensable communicativeness.

In the science of financial law and judicature a distinct view is also represented i.e. that the regulations of the tax law[7] do not characterize themselves with any unusual "canon" of methods of the law commentary. This means that making a commentary on the tax law regulations the same methods of commentary (interpretation) should be used as in other spheres of law. That point of view should be discussed, however, indicating that it is their certain specifics that decides about the range of the commentary on the tax law regulations. It manifests in particular attitudes and expectations towards the result of the commentary[8].This standpoint does not oppose the relevant idea of T. Dębowska-Romanowska,that interpretation does not determine the source of law and is not treated by constitution in this way[9]. The effect it brings about is the fact that it can not influence neither creating nor cancellation of the laws and duties resulting from tax regulations.

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[5] See: B. Brzeziński, *Wstęp*, op.cit., p. 192 and the following.

[6] See: B. Brzeziński, *Wstęp*, op.cit., p. 189.

[7] See: art 3 of the law of 29th August 1997 Tax regulations Journal of Laws No 160, pos. 1083 with changes./later: t.r./.

[8] According to B. Brzeziński it constitutes the consequence of the fact, that the institution of tax limits the property law, that is the value constitutionally protected in Poland – see: B. Brzeziński, *Wstęp*, op.cit., p. 191.

[9] See: T. Dębowska-Romanowska, *Obliczanie podatku a gwarancje praw obywatelskich*, P i P 1998, No 7.

The brought to mind rules of tax law regulations commentary usage, though not determined by those regulations interchangeably, should find reflection in their contents. The issue becomes more visible if the fact is taken into consideration, that the normalization of tax law anticipate the application of the institutional commentary on the legal regulations both with reference to individual cases as well as general ones, including all the persons obliged, that have identical features.

The present work has been devoted to selected legal financial issues resulting from the application of one of the institutionalized options of tax law interpretation in Poland, the general interpretation established by the Minister of Finance. The basic argument supporting the advisability of undertaking the subjective analysis is the fact, that the solutions of the Polish law that are in force regards the issue, despite frequent modifications, have not created a satisfactory mechanism of the tax law norms interpretation in a general sense, independent from a concrete factual state included in the decision of tax agency.

In the light of the current wording of tax regulations – art. 14 a, the minister appropriate for the cases of public finances, aims at ensuring a homogenous application of tax law. This is done by tax agencies and financial inspection agencies, making a detailed interpretation, taking into account judicial decisions as well the decisions of Constitutional Tribunal and the European Tribunal of Justice (general interpretation). Those interpretations are published without any delay in The Official Gazette of the Ministry of Finances and placed in the Bulletin of Public Information – art. 14 i.

Until their introduction into the binding normalization, the subjective legal solutions had undergone several modifications. Here, it should also be remarked, that the idea of informing the taxpayers about the binding law had been considered already before the date of coming into force of the tax regulations. It has been drawn out of the contents of the regulation of the article 9 of code of administrative procedure. The rule was transformed in the tax regulations by the law of art. 121 par. 2 for the taxpayers disadvantage because it limits the duties of the tax agency regards giving information and explaining the questions indispensable for the tax procedure needs and only in connection with the subject of that procedure[10].

The interpretation which is mentioned in the regulation art. 14 a of tax regulations reaches out the duties imposed upon tax agencies – giving help to the persons obliged (taxpayers)[11]. It also serves the tax agencies, even when self calculation of tax is not used[12].

In the original wording, tax regulations imposed upon the MF the duty of aiming at homogenous application of law by tax agencies and the agencies of financial inspection particularly by making its official interpretation, taking into account the judicial decisions and the decisions of the Constitutional Tribunal. According to B. Adamiak this determined limitations of the independence of the agency, appropriate to make

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[10] See: J. Zimmermann, *Ordynacja podatkowa. Komentarz. Postępowanie podatkowe*, Toruń 1998, p. 19 and the following.

[11] the directives regarding interpretation are called in France: "administrative tax doctrines" – see L. Vapaille, *La doctrine administrative fiscale*, Paris–Montreal 1999; H. Dzwonkowski, Z. Zgierski, *Procedury podatkowe*, Warszawa 2006, p. 131.

[12] For instance during the interwar period in Poland – see J. Kulicki, *Zasady, tryb, i skutki prawne interpretacji prawa podatkowego. Information 1128 Chancellery of Seym Feb.*, 2005, p. 1.

judicial decisions in a specific case[13]. That normalization underwent amending with the regulations of the law of the 12th of September 2002 about the change of the law "tax regulations" and about the change of some other laws[14]. The amending introduced the rule that the interpretations of MF should be directed to tax agencies and financial inspection agencies, they should refer to tax law problems and bind specified agencies regarding judicial decisions making. In the literature on the subject that normalization underwent a far more detailed critics in the name of protection of interests of the person obliged against the lawlessness of tax agencies[15]. The doctrine reproached legal subjective solutions also with the fact that it determined a limitation of independence of the agencies responsible for judicial decisions, because they were bound by official interpretation. The presented legal state was to have a negative influence upon the taxpayer's rights, as it deprived him in practice of the right for a two instances system procedure.[16]

From the point of view of proper legislation the appointed solution was criticized as contradicted with the regulation of the art. 78 of the Constitution, i.e. violating the rule of the two instances system[17], but, when local government tax agencies judicial decisions concerning tax were meant, it was accepted, that the solution violated both the cardinal rule of the local government units independence (expressed in the regulation of the art.16 of the law 2) and the tax control attributed to them[18].

The negative evaluation of the appointed normalization was definitely confirmed by the judgment of the Constitutional Tribunal of the 11th of May 2004, according to which the regulation of art. 14 par. 2 of tax regulations in the part constituting, that the interpretation of MF that binds tax agencies is in discordance with the regulation of the art. 78 and 93 of the law 2 of the Constitution[19]. This fact, as well as the regulations introduced with the art. 10 of the law of July, 2nd 2004 about freedom of economic activity[20] (authorizing the entrepreneur to apply to the appropriate tax agency for an opinion regarding the range and manner of the usage of regulations of which results his obligation to render a public tribute), basically changed the conditions of making interpretation by the MF – art. 14 par. 1 of the tax regulations[21]. Above all, it meant the lack of legal basis justifying the practice that the MF held de facto the powers to make interpretation of tax law in the mode of art. 14 par. 1 pt. 2 in cases of

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[13] See: B. Adamiak, *Model dwuinstancyjności postępowania podatkowego*, P i P 1998 no 2; A. Jedlińska, *O tak zwanej urzędowej interpretacji prawa podatkowego*, Rejent 2001, no 12, p. 60.

[14] Journal of Laws, No 169, pos. 1387.

[15] See: J. Glumińska-Pawlic, *Wiążące interpretacje podatkowe w orzecznictwie samorządowych organów podatkowych*, Mon. Pod. 2005, no 6, p. 29.

[16] See: C. Kosikowski, H. Dzwonkowski, *A. Huchla: Ustawa ordynacja podatkowa. Komentarz*, Warszawa 2000, p. 65; J. Glumińska-Pawlic, *Urzędowa interpretacja prawa podatkowego a orzecznictwo samorządowych organów podatkowych*, in: *Polski system podatkowy. Założenia i praktyka*, Lublin 2004, p. 474 and the following.

[17] See: R. Zelwiański, *Wątpliwe zmiany w ordynacji podatkowej i ustawie o Naczelnym Sądzie Administracyjnym*, Prz. Pod. 2003, No 4, p. 52 and the following. The opposite post was held by H. Dworniak, who considered the introduced changes appropriate – see H. Dworniak, *Ordynacja podatkowa. Komentarz*, Warszawa 2003, p. 24.

[18] See: J. Glumińska-Pawlic, *Urzędowe*, op.cit., p. 30.

[19] Sign., K4/03 Journal of Laws No 122, pos 1288; see also B. Brzeziński, *Wstęp*, op.cit., p. 137.

[20] Journal of Laws of 2007, No 155, pos. 1095 with changes.

[21] Law of June, 30th, 2005. Journal of Laws No 143, pos. 1199 with change.

individual tax payers and collectors. At present, such powers are given to the MF[22], but on the basis of a separate regulation of the art. 14 of tax regulations.

Following one after another tax regulations amendments regarding the conditions of giving general interpretation (official one) up to the present moment have not eliminated however, the doubts concerning the aims and conditions of usage of the institution in question.

Further in this work, there have been presented selected issues connected with the signalized above legal doubts.

One of the most important of them and connected with the usage of the regulation of art. 14 a is undoubtedly the issue of "circumstances and prerequisites" of giving the general interpretation. Undertaking an attempt of giving an answer to such a stated problem it should be indicated at first that MF making an interpretation of tax regulations law acts only in such a range and direction that he will consider advisable.[23] On the other hand, however, taking into account the art. 14 a, it should be underlined, that the basic target of giving an interpretation by MF is aiming at ensuring homogeneity of tax law usage by the subjects to whom it was directed. The legislator's use of the term "homogeneity" leads to a conclusion, that the subjective interpretation has any sense only in case when a discrepancy excluding that homogeneity appears in the practice of using the law.[24] Thus, these will be such factual and legal states when tax or financial control agencies dealing with the same type of cases pass different judgments [25].

Discussing the signalized issues, the attention should be paid to one more of their aspects. Namely, the wording of the appointed regulation (with the use of the general interpretation directive, concerning tax law regulations that, it can not have an extending character), orders to accept, that the discrepancies can refer to judicial decisions activity of the same type of agency. Thus, they will determine the basis to give the official interpretation by MF, when the discrepancies will appear in judicial decisions of tax or financial control agencies and will not determine such a basis when the judicial decisions line of tax agencies will be different than the line of the administrative courts or common courts of law judicial decisions. Wherever such discrepancies are not registered there is no foundation for giving the interpretation[26].

Wondering about the character of prerequisites that can evoke the need of giving an official interpretation, it can not be eliminated, that they might be the result of control of the usage of law by subjects subordinate to MF[27].

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[22] See: J. Krawczyk, M. Gumała, P. Jabłonowski, *Ordynacja Podatkowa. Komentarz do nowelizacji*, Warszawa 2006, p. 42.

[23] Ibidem.

[24] See: S. Babiarz, D. Dauter, B. Gruszczyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *Ordynacja podatkowa. Komentarz*, Warszawa 2006, p. 129.

[25] There is an idea represented in literature that the lack of homogeneity can also be spoken about when there are the same judgments, but based on different commentary of the same regulations – see: S. Babiarz, D. Dauter, B. Gruszczyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *Ordynacja*, op.cit., p. 81.

[26] Ibidem.

[27] See. C. Kosikowski, L. Etel, E. Ruśkowski, *Kontrola tworzenia i stosowania prawa podatkowego pod rządami konstytucji*, Warszawa 2006, p. 110.

Justified doubts regard the laws of tax regulations in the question of passing judgments whether the general interpretation based on the art. 14 a can be issued only by the minister appropriate for public finances cases – Minister of Finance – the grammar commentary on the law would appeal for that, or is the deviation of such rule admissible in specific cases. The latter would have a particular sense if, of the objective reasons, the MF could not temporally perform his duties. The legal basis for such a standpoint seems to be created by the regulation of the art. 36 of the law of the 8th of August 1996 about the Council of Ministers[28]. It says about the possibility of realization of powers serving the MF by persons entitled to deputize for him. However, the acceptance of the appointed legal norm as the basis for analysis of the discussed issue would signify, that the MF would not be able to authorize effectively other persons (ex his secretary) to make interpretations[29].

A much more serious problem from the point of view of the exerted effects is the question whether the initiative of giving subjective interpretations serves only the MF. The discussed laws of tax regulations do not explain interchangeably such a stated issue, the literature on the subject, anyhow, presents contrasting ideas. According to one of them, assuming that the regulation of the art. 14 a (previously art 14 par. 1 pt. 2 of tax regulations) says about the official interpretation, the initiative of giving a general interpretation serves only the MF.

According to the opposite standpoint it can be also be given on application of the interested subject not being at the same time an interpretation in an individual case[30]. Considering a reasonable, the other of the mentioned types of standpoints would result in creating further doubts regarding the specification of what subjects and in what mood could be given a general interpretation.

These doubts and grammar analysis of the regulation of art. 14a as well as the regulations binding previously, make one thus accept, as the appropriate one, a "compromise concept". Therefore, making interpretation by MF should have basically an official usage, because, neither the currently binding regulation, nor the regulations valid previously predict the application for such an interpretation.[31] Since, however, the appointed regulations do not include a strict interdiction of putting forward such a motion, it is not inadmissible. Accepting such a point of view would let one agree that such a motion could be put forward not only by tax agencies or financial control agencies but also the subjects interested in passing a judgment, though not having the status of a tax agency. In the light of the regulation of the art. 14b–14e of tax regulations the circle of such subjects would be limited, though[32]. An additional issue that should be discussed, accepting as the binding one the last of the proposed solutions, would be the necessity of establishing a legal character of the motion of

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[28] Journal of Laws of 2003. No 24, pos. 199 with changes.

[29] See: S. Babiarz, D. Dauter, B. Gruszczyński, R. Hausner, A. Kubat, M. Niezgódka-Medek, *Ordynacja*, op.cit., p. 87.

[30] See: R. Kubacki, *Urzędowe interpretacje prawa podatkowego – pozorna korzyść*, Prz. Pod. 1998, No 8, p. 27.

[31] See: S. Babiarz, D. Dauter, B. Gruszczynski, R. Hauser, A. Kubat, M. Niezgódka-Medek, *Ordynacja*, op.cit., p. 76.

[32] See: C. Kosikowski, L. Etel, R. Dowgier, P.Pietrasz, S. Presnarowicz, *Ordynacja podatkowa. Komentarz*, Warszawa 2006, p. 95; S. Babiarz, D. Dauter, B. Gruszczyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *Ordynacja*, op.cit., p. 133.

this kind. Not entering any detailed speculations in this area,which would extend the subject of this work, it should be generally taken into account that such motion would not have any traits of application in the understanding of the art. 168 of tax regulations. It would have the characteristics of a typical "signaling" of the existing doubts regarding specific issues of tax law, the explanation of which is indispensable, in order to provide its homogenous usage[33]. The consequences of the acceptance of this type of interpretation would be, however, predictable. Above all, it should be admitted that, putting the motion forward would not impose upon the MF the obligation of the motion investigation in a specified period of time[34].

Examining the problem of usage of the regulation of art. 14 a of t.r. from the point of view of tax agencies functioning it is also necessary to mention the question of the sources of laws, which should be used while making an interpretation, the form of their publication as well as legal consequences of their edition for tax agencies (financial control agencies) or other subjects participating in the legal tax system relations.

Analyzing the first of the exposed issues it should be indicated that, on the ground of the quoted regulation of art. 14 a of t.r. /and both in the original wording, as well as, currently binding/ MF while making an interpretation of tax law is obliged to take into account the content of the judicial decisions in this scope. These judicial decisions have a domestic scope: the judicial decisions of Polish courts and the Constitutional Tribunal and of the extra-domestic one – decisions of the European Tribunal of Justice /further: ETJ/, indicating that, the order of categories of judgments, that should be taken into consideration, can not be concluded from the contents of the discussed regulations.

Grammar interpretation of a regulation seems to appeal for a widespread usage of the achievements of judicature within the usage of law even when the judicial decisions are not homogenous as far as the rule is concerned [35]. This type of interpretation, in the light of what was mentioned at the beginning of the present work can not be considered satisfactory. The advisability and systemic interpretations thus should be helpful. These ones, however lead to a conclusion, that MF giving a general interpretation should at first consider the resolutions specifying legal issues as well as ideas expressed in particular judicial decisions which are commonly accepted by the benches in given cases of other domestic courts. Using the judicial decision to make an accomplishment of ETJ should dominate in situations when given issues are regulated entirely or in a crucial part by the commonwealth law[36].

The regulation of art 14 par. 1 of t.r. imposes upon the MF the obligation of publication of the interpretation in the Official Gazette of the Ministry of Finance. This bears the question about the legal character of the interpretation since it should be placed in that kind of promulgation act. The question arises, however, what legal

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[33] See: S. Babiarz, D. Dauter, B. Gruszczyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *Ordynacja*, op.cit., p. 80; C. Kosikowski, H. Dzwonkowski, A. Huchla, *Ordynacja*, op.cit., p. 77.

[34] See: C. Kosikowski, L. Etel, R. Dowgier, P. Pietrasz, S. Presnarowicz, *Ordynacja*, op.cit., p. 95.

[35] See: C. Kosikowski, H. Dzwonkowski, A. Huchla, *Ustawa*, op.cit., p. 78; J. Głuchowski: *Polskie prawo podatkowe*, Warszawa 2004, p. 23.

[36] See: S. Babiarz, D. Dauter, B. Gruszczyński, H. Hauser, A. Kabat, M. Niezgódka-Medek, *Ordynacja*, op.cit., p. 89; C. Kosikowski, *Interpretacje art. 14 ordynacji podatkowej*, Glosa 1999, No p1; R. Kubecki, *Urzędowe*, op.cit., p. 27.

consequences it will have in case the subjects refer to it, knowing its contents from other sources. The answer to such an asked question, taking into account the aim of the discussed institution should be interchangeable i.e. that the appointed regulation does not exclude the law of the subject,who adjusted his procedure to the contents of the interpretation,though it was not published [37]. Beside the risen argument, the accuracy of the presented standpoint is supported by a strictly "informative" character of such type of publications[38].

What refers to the obligation of the announcement of the publication, the commonly used regulations should be used, i.e., above all, of the law of July, 20th, 2000 about the publication of normative acts and some other legal acts[39]. The necessity of using the regulations of the mentioned law if there is no separate legal regulation concerning the moment of the interpretation coming into force, anyway, obliges the subject to use general regulations in this scope. According to them, the acts placed in the Official Gazette come into force after their promulgation – art. 4[40].

On the background of the presented considerations, a uniquely important meaning from the point of view of legal results (that the usage of the general interpretation implies for parties of tax law relations) has the issue of "binding force" of the subjective interpretation. As it was indicated above the legislator withdrew from the earlier wording of the regulation – art. 14 par. 2. of t.r. which established, that, the official interpretation binds tax agencies and financial control agencies, because that solution was considered inconsistent with the Constitution. At present, they are "directed" to the above mentioned agencies. The wording of regulation thus, neither says interchangeably about the uncompromising binding of tax agencies with the contents of the official interpretation, nor about the binding with other subjects. In connection with that, for the evaluation of a given legal issue – art. 14 k par.2 will have the basic meaning. According to it, the appeal for general interpretation before its change[41] can not do any harm to the subject that used it, as well as in case of not applying it in tax decision making. As a consequence, par. 3 of the appointed regulation introduces rightly an interdiction of instituting legal procedures in cases of fiscal offence or fiscal petty offence and it imposes the obligation of remission of the instituted proceedings in these cases and the obligation to assign from counting the default interest.

The contents of the called regulation does not justify the standpoint, that the interpretation binds subjects mentioned above. Since that is true, they do not have to undergo that interpretation [42]. Furthermore, obeying the contents of the interpre-

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[37] Differently. J. Szczurek, *Wiążąca interpretacja przepisów podatkowych przez organy podatkowe – założenia oczekiwania, rzeczywistość*, Mon. Pod. 2004, No 2, p. 22.

[38] See: C. Kosikowski, H. Dzwonkowski, A. Huchla, *Ustawa*, op.cit., p. 78; C. Kosikowski, E. Etel, E. Ruśkowski, *Kontrola tworzenia*, op.cit., p. 96.

[39] Journal of Laws, No 62, pos. 718 with changes.

[40] See: S. Babiarz, D. Dauter, B. Gruszczyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *Ordynacja*, op.cit., p. 84.

[41] By virtue of the art. 14 e par. 1, the minister appropriate for the cases of public finances can by virtue of post change the edited general interpretation if he states its incorrectness, taking into account in particular the judicial decisions of courts, Constitutional Tribunal or the European Tribunal of Justice.

[42] See: A. Główczewska, *Urzędowe interpretacje i informacje o stosowaniu prawa*, Prz. Pod. 2003, No 3, p. 45; B. Adamiak, J. Borkowski, R. Mastalski, J. Zubrzycki, *Ordynacja*, op.cit., p. 102.

tation by the subjects included in the regulation can determine only the justification of the demand for the remission of tax arrears – art. 67 of t. r. In such a case, thus, one can assume, that the two prerequisites included in the regulation are fulfilled: an important interest of the taxpayer or the public interest[43]. It should be underlined here,that there is a different point of view represented in the literature on the subject. This means that the change of the general interpretation from binding to a non binding one has only a formal character and does not change in the fundamental way the crux of that institution [44]. That is supported by the contents of the regulation of laws of the art. 14 k par. 2 and 14 l of t. r., which, despite the introduction of the rule, that following tax interpretation can not do any harm[45], they do not, however, release the obliged from the obligation of tax payment. This happens in case, when tax results connected with the event that corresponds with the factual state (which is the subject of interpretation), take place before making the general interpretation public.

Among doubts involving the use of the regulation of art. 14 a of t. r. there is finally the question of the possible discrepancies between the standpoint of the administrative court in the passed judgement or passed resolution and the contents of interpretation of MF. Deciding about the issue, as it seems, requires reaching for the regulations of the law that normalises the rules of functioning of the administrative court in Poland[46]. According to them the legal judgement expressed in the judicial decision of the court binds, in case when the given office or court whose activities or inactivity were the subject of the appeal. In the light of the above there can not be any doubts as far as the fact is concerned, that in the case in which the Supreme Administrative Court passed the judgment or when the resolution was passed both by this court and also the tax agency whose appeal was the subject of proceeding (which was connected with the legal standpoint of SAC). The rule in question will find its application mainly when the resolutions of this court are revealed because, all the others are equipped with the so called " indirect binding force. This is reflected a.o. in the fact that departing from the standpoint included in the given resolution by any administrative court bench demands opening a special resolution procedure[47].

Summing up the presented above considerations, two conclusions of general nature should be arrived at. At first it should be underlined, that the regulations of tax law referring to the rules of giving and using the general interpretation by MF from a formal point of view are directed to all the tax law using agencies though they would not have any status of tax agency or financial control agency. Next, the regulation of

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[43] See: S. Babiarz, D. Dauter, B. Gruszczyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *Ordynacja*, op.cit., p. 85.

[44] See: Z. Ofiarski, *Kilka uwag o urzędowych interpretacjach prawa podatkowego dokonywanych przez Ministra Finansów*, in: *Procedury podatkowe – gwarancje prawne, czy instrumenty fiskalizmu*, red. H. Dzwonkowski, Biblioteka Monitora Podatkowego, Warszawa 2005, p. 16.

[45] See: Judgment of the Regional Administrative Court of Dec., 4th, 2000. I.S.A. I Ka 1414/99 Glosa 2001, no 5, p. 55; judgement of the Supreme Administrative Court of Nov., 7th, 2000, III S.A. 1670/99 Glosa 2002, no 1, p. 48.

[46] Law of July., 25th, 2002, The law about the structure of administrative courts, Journal of Laws No. 152, pos. 1269 with changes.

[47] See: S. Babiarz, D. Dauter, B. Gruszczyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *Komentarz*, op.cit., p. 93.

art. 14 a of t r. and the following regulations justify the opinion that, in spite of frequent modifications of the regulations regarding general interpretation, they do not determine any precise solution. Their usage bears several interpretive doubts starting from specifying the subject of interpretation through specification of the subject authorised to take an initiative of their promulgation up to the evaluation of the results of its usage for the persons obliged. In connection with that the presented solutions need further improvement.

The carried out analysis justifies also the conclusion, that, although, since July 2005 the interpretations of MF does not formally have a binding character for tax agencies, they influence legal tax decisions in practice. It is the case since the objective of that institution has been maintained[48].

[48] See: H. Dzwonkowski, Z. Zgierski, *Procedury*, op.cit., p. 136.