

**Significance of awareness of taxpayer for arising of tax obligations and their amount**  
**DESCRIPTION FOR THE GENERAL PUBLIC**

In the world today it has become easy to conclude transactions with entities which we do not have full knowledge about or even with such ones that we do not know at all. At the same time the construction of certain taxes allows relatively easy enrichment through completely illegal activities (e.g. fraud through undue refunds of value added tax, disposal of heating fuel subject to lower excise duty rates as oil for propulsion purposes, where the excise duty rate is much higher), or legal, but classified as aggressive tax planning (e.g. the creation of structures artificial from an economic perspective and adopting pricing of transactions departing from an arm's length standard with related parties from other tax jurisdictions).

In both of the above mentioned cases, problems arise with regard to the awareness of taxpayers.

As far as fraud in the field of value added tax or excise duty is concerned, the taxpayer may be completely devoid of any reason to believe that the counterparty is a fraudster. When, however, tax fraud is committed, the fraudster will probably be already outside Polish tax jurisdiction, while the taxpayer, unaware of the risks, who properly fulfilled its duties in the field of taxation, will remain in that jurisdiction and the tax authorities will be able to find this very honest taxpayer. At this stage the question arises whether it would be justified to impose tax on such a taxpayer in order to recover the amount lost by the state budget as a result of tax fraud committed by another entity. As regards the value added tax, the negative answer to such a question is perceived as obvious in the case law of the Court of Justice, although the obviousness is only a seeming one, as the extent to which the taxpayer is protected due to acting in good faith and due diligence is not so obvious at all. In the sphere of excise duties giving clear answers to the earlier question would be even more difficult under the case law.

Referring to the problems of aggressive tax planning where the assessment is usually carried out by comparing the activities of related entities involved in the planning with independent entities, the main problem lies in the difference in the time of the evaluation of a transaction (action) by an economic operator and by the tax authorities. The operator takes economic decisions first, and only later they are assessed by the tax authority (sometimes more than five years later!), which means that the authority has a completely different perspective of activities than the taxpayer, because it knows the consequences that the taxpayer could once only predict. Besides, for the tax authority it is easier to determine which actions are market-based, because the authority can collect various data in the course of audit procedures conducted in different businesses, and taxpayers cannot do that. They can collect data only from commercial databases and voluntarily made available by other economic operators.

It does not seem to be acceptable to impose on the taxpayer the obligation to pay any tax in connection with certain events or facts, about which, even while maintaining diligence adequate for the conduct of his business, he reasonably could not have known. Such making of fiscal liability absolute would be a sign of fiscal stringency and would be in contradiction to the general principles of EU law and constitutional principles.

The result of the research should serve as means of influencing the targeting of judicial decisions and administrative practice (and therefore reducing discrepancies which occur in them). In the long term, it could be the basis for action taken by the legislature, which as much as it is possible would address explicitly the importance of awareness of the taxpayer for the arising and amount of tax liabilities, which also contribute to the moderately consistent approach to this subject at the stage of application of the law by the tax authorities. In broader terms, the result of the research would allow the tax authorities to effectively counteract the financial consequences of tax evasion but not at the expense of honest taxpayers but just on the expense of fraudsters mentioned earlier. As regards aggressive tax planning, tax authorities would use effective instruments to combat this phenomenon, but would not be able to expect from taxpayers to possess knowledge normally held only by fortune-tellers i.e. full knowledge of future events and details of transactions made by competing taxpayers.