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Interpretation of tax law in cases involving commercial entities: Opportunities to exchange best practices in the area of corporate social responsibility regulation

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Abstract

The article aims to develop a correct understanding of the essence and implications of the basic principles and legal provisions governing tax matters, as well as to form an insight into their evolutionary transformations on the basis of the exchange of relevant best practices between Ukraine and other countries. Relying on methods of comparative review, as well as methods of systematic review and standard techniques of text analysis, the author covers theoretical and practical issues related to the balanced combination of literal and intentional interpretation of tax legislation provisions, in dubio pro tributario in the interpretation of tax laws and question of reasonable cause and good faith of taxpayers. It is noted, in particular, that common law countries and continental legal systems are united by a tendency towards a balanced combination of literal and purposive interpretation. It is emphasized in the conclusions that, along with the literal wording of tax law provisions, the purpose of their introduction and the general principles of tax law are taken into account. Moreover, in some countries, reference to the intention of the legislators is even allowed.

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Interpretación de la legislación fiscal en casos que involucran entidades comerciales: Oportunidades para intercambiar mejores prácticas en el aspecto de la regulación de la responsabilidad social de las empresas

Resumen

El artículo tiene como objetivo desarrollar una comprensión correcta de la esencia y las implicaciones de los principios básicos y las disposiciones legales que rigen los asuntos tributarios, además de formar una visión de sus transformaciones evolutivas sobre la base del intercambio de mejores prácticas relevantes entre Ucrania y otros países. Apoyándose en métodos de revisión comparativa, así como en métodos de revisión sistemática y técnicas estándar de análisis de texto, el autor cubre cuestiones teóricas y prácticas relacionadas con la combinación equilibrada de interpretación literal e intencional de las disposiciones de la legislación tributaria, *in dubio pro* tributario en la interpretación de las leyes tributarias y cuestión de causa razonable y buena fe de los contribuyentes. Se observa, en particular, que los países del *common law* y los sistemas jurídicos continentales están unidos por una tendencia hacia una combinación equilibrada de interpretación literal y deliberada. Destaca en las conclusiones que, junto con la redacción literal de las disposiciones de la legislación tributaria, se tienen en cuenta el propósito de su introducción y los principios generales de la legislación tributaria. Además, en algunos países, incluso se permite la referencia a la intención de los legisladores.

Palabras clave: jurisprudencia; derecho comparado; empresas; interpretación juridica; fiscalidad.

Introduction

Interpretation and application of taxation principles and provisions is often accompanied by complex law enforcement situations related to the peculiarities of tax administration, which results primarily from the complexity and high dynamics of changes of tax laws and regulations and its significant impact on the financial standing of enterprises.

In light of this, getting a correct understanding of essence and implications of core principles and legal provisions governing taxation matters, along with forming a vision of their evolutionary transformations in accordance with shifts in relevant economic relations, as well as the development of optimal ways of their application for determination of rights, duties and liabilities of taxpayers in real law enforcement situations – set a task for the scientific community to provide tax authorities and administrative courts with the best recommendations regarding the most progressive and consistent ways of interpretation of the provisions of tax law and regulations.

The global nature of tax legislation along with the absence of internationally unified reference mechanisms for tax regulation and administration lead to the fact that the countries of the world have accumulated diverse experience that they can use for mutual enrichment of the practice of interpretation and application of their national tax legislation.

1. Analysis of recent research and publications

A review of scientific sources shows that the world scientific community has made significant efforts to accumulate and systematize scientific knowledge on the best approaches to solving key issues of interpretation of tax laws and regulations. In particular, the fundamental publication 'Legal Interpretation of Tax Law' (Eds.: R. Krever, R. van Berderode), as well as research papers by certain scientists and practitioners, cited within this study, attract particular attention. However, these scientific developments need further comprehending and updating. Moreover, relevant Ukrainian experience, which can be useful for scientific discussions on the subject of practical interpretation of tax legislation provisions at the level of supreme courts and ways of further improvement of relevant theoretical knowledge, is insufficiently represented in international scientific publications. While covering these issues a particular set of methods of scientific is required. Among them are comparative review methods as well as systematic review methods and standard techniques of text analysis.

2. Results

2.1. Interpretation of Tax Principles and Rules: Literal and Purposive Approach

It is to be noted at the outset that the interpretation of law is the process of determining the meaning of a law, as well as its application to a particular set of facts. It is a fundamental part of the legal process, and its importance

lies in making sure that the law is applied fairly and consistently. The European Court of Human Rights has acknowledged in its case law that however clearly drafted a legal provision may be, in any system of law there is an inevitable element of judicial interpretation.

The court, furthermore, highlighted that there will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain. However, the ECHR may find that the requirement of foreseeability is not met if the application or interpretation of legislation has been unexpected, overly broad, or bordering on the arbitrary (*OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 568).

For instance, in light of the foregoing it is generally accepted, that "no person should be forced to speculate, at peril of conviction, whether his or her conduct is prohibited or not, or to be exposed to unduly broad discretion of the authorities, in particular if it was possible, either by drafting legislation in more precise terms or through judicial interpretation, to specify the relevant provision in a way that would dispel uncertainty" (*Matić and Polonia d.o.o. v. Serbia* (*dec.*), no. 23001/08, § 50).

Interpretation of tax laws and regulations is of particular importance task because tax laws are complex and often difficult to understand. It is believed that: "Because of their general nature, tax norms are always targeted at a certain "average" type of life situation and do not reflect the specifics of an infinite variety of tax situations" (Demin, 2019: 13). Owing to this interpretation of tax laws is essential for ensuring that taxpayers comply with their obligations and that the government can effectively enforce tax laws. Additionally, interpreting taxation provisions helps to ensure that taxpayers are not unfairly advantaged or disadvantaged when it comes to taxation.

When studying peculiar features of the interpretation of the principles and provisions of tax legislation, first of all, attention should be paid to the fact that as the pace of development of tax regulation and administration systems accelerates and as these phenomena become more and more complicated, the search for the optimal ratio of elements of strict and purposive interpretation in modern states becomes more and more urgent. In light of this, the theoretical and practical approaches followed by the competent authorities of the counties of the common law and continental legal systems are of considerable scientific interest from the point of view of the potential for their mutual approximation and enrichment.

Turning to scientific and legal sources, which reveal the rationale for the mostly literal interpretation of the provisions of the tax legislation, the following standpoint of His Lordship Bhagwati J. of the Supreme Court of India could be noted. In *A. V. Fernandez vs. State of Kerala* the judge stated that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter (Supreme Court of India, 1957).

The strict interpretation premises on overarching implicit rationale based on the Latin tenet 'ubi lex voluit dixit, ubi tacuit noluit', which amounts to a counterfactual: if the legislator did not say something, then it clearly did not actually mean to say something. That means, that "if legislator had wanted something, it would have said so" (Garbarino, 2014: 215). In scientific literature and analytical publications, it is noted that tax law remained remarkably resistant to the new non-formalist methods of interpretation.

It is commonly acknowledged that if the taxpayer was entitled to stand on a literal construction of the words used regardless of the purpose of the statute [...] tax law was by and large left behind as some island of literal interpretation. However, with the passage of time it became more and more apparent that literal interpretation of tax statutes and the formalistic insistence on examining steps in a composite scheme separately allowed tax avoidance schemes to flourish, which led the United Kingdom courts to insist that the same principles of statutory interpretation applied to tax statutes as to other legislation (Irish Revenue Commissioners, 2021: 35).

The literal interpretation of the law in the legal doctrine of the common law states is juxtaposed to a certain extent to the purposive interpretation, which is based on the concept called the golden rule of interpretation or the rule of reasonable construction.

This rule is a modification of the literal rule. It states that if the literal rule produces an absurdity, then the court should look for another meaning of the words to avoid that absurd result. According to Asuzu (2017) the rule was closely defined by Lord Wensleydale in *Grey v. Pearson* (1857), who stated that:

> The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no farther (Asuzu, 2017:19).

Applying this approach when deciding tax disputes, in particular, the Supreme Court of Ireland, as confirmed by *Dunnes Stores v. Revenue Commissioners,* holds the opinion that if a strict manner of interpretation is absurd or ambiguous, read the piece of legislation as a whole (including the long and short titles, preamble, schedules, definition and interpretation sections, and marginal notes) and apply the plain intention of the Oireachtas or maker of the legislation where it is clear based on the context of the provision within the act as a whole, but potentially more broadly than that (Supreme Court of Ireland, 2011).

In other words, as the Supreme Court of Ireland reiterated in *McGrath v McDermott,* it is clear that successful tax avoidance schemes can result in unfair burdens on other taxpayers and that unfairness is something against which courts naturally lean.

The function of the courts in interpreting a statute of the Oireachtas is, however, strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to a consideration of the purpose and intention of the legislature to be inferred from other provisions of the statute involved, or even of other statutes expressed to be construed with it. The courts do not have a function to add to or delete from the express statutory provisions so as to achieve objectives which to the courts appear desirable. In rare and limited circumstances words or phrases may be implied into statutory provisions solely for the purpose of making them effective to achieve their expressly avowed objective (Supreme Court of Ireland, 2011).

As Garbarino (2014) pointed out within the Italian context purposive interpretation emerged for two reasons: (i) the need to address so-called 'hard cases', i.e., cases that cannot be solved through strict interpretation due to the increasing complexities of the tax system; and (ii) the need to counteract aggressive strategies of taxpayers exploiting the limitations of strict interpretation.

This has resulted in a new brand of interpretive ideologies – particularly in governmental agencies – according to which individual positions of taxpayers can be 'compressed' by social policies and this has ultimately created a problem of protection of constitutionally protected rights. Because of the increasing complexity of auditing techniques and the judicial activism of the Italian Corte di Cassazione, a paradigm shift is currently under way in which the purposive interpretation is gradually predominating over the strict interpretation (215).

Thus, the common law countries and continental legal systems are united by a tendency towards a balanced combination of literal and purposive interpretation of the provisions of tax legislation. This tendency is based on its increasing complexity and dynamics of its development, as well as has its

roots in its focus on achieving both public interests and, in a certain sense, the private interests of conscientious taxpayers related to preventing their competitors from gaining unjustified competitive advantages via tax fraud.

With this in mind, next to the literal wording of tax legislation provisions, the purpose of their introduction and the general principles of tax law are taken into account. In addition, in some countries, even reference to the intention of the lawmakers is allowed. However, the limit of a broad interpretation of the norms of tax law is in the fact that it is only acceptable to eliminate absurd law enforcement situations.

The case law of Ukrainian courts is quite rich in examples of the application and combination of literal and purposive interpretation.

For instance, their commitment to proper balancing the literal perception of legislative provisions with their purposive interpretation is clearly demonstrated by the following judgment of the Supreme Court of Ukraine. The central issue of the case was the validity of the standpoint of the courts of previous instances regarding the fact that the plaintiff's BMW X5 cannot be subject to transport tax under the legislation of Ukraine, since the cylinder volume of its engine (2993 cubic cm) is smaller, than specified by the Ministry of Economy of Ukraine in the List of passenger cars subject to transport tax in the relevant year (3.0 liters). Having considered the case, the Supreme Court of Ukraine pointed out that the volume of the engine in the totality of elements that affect the value of the car as an object of taxation is used as an economic characteristic of the car, and not a purely technical indicator of it.

Therefore, the court considers it justified to use the generally accepted designation of the engine volume in liters, and not its detailed technical characteristics in cubic centimeters, since this is enough to identify the car. Deviation by a few thousandths from the indicator in liters of engine volume applied by the Ministry of Economy of Ukraine does not indicate that the corresponding car is not subject to taxation, as it does not affect its average market value. Thus, the court chamber came to the conclusion about the lawfulness of charging the transport tax, since a car with such properties as the one belonging to the plaintiff is included in the list of passenger cars that are subject to taxation in the corresponding year (Supreme Court of Ukraine, 2022a).

In the case law of the Supreme Court of Ukraine, there are also cases of systematic interpretation of several basic principles of tax legislation, as a result of which the highest judicial institution deviated from the literal wording of one of them.

To form a sufficient context, first of all, we note that in Article 4, subparagraph 4.1.9 of the Tax Code of Ukraine it is established that the tax legislation of Ukraine is based on several principles, one of which is stability.

The stability of tax legislation provides that changes to any elements of taxes and fees cannot be made later than 6 months before the start of the new budget period, in which new rules and rates will apply. Moreover, it is determined that taxes and fees, their rates, as well as tax benefits cannot change during the budget year (Tax Code of Ukraine, 2010).

At the same time, the Supreme Court of Ukraine recognized the increase in the rate of rent for the use of subsoil for the extraction of natural gas from 28% to 55% less than 6 months before the start of the new budget period as justified and not amounting to an arbitrary interference with the right to peaceful enjoyment of property, as it had been done in view of public interests. It was highlighted that the principle of stability should be applied in conjunction with the principles of generality of taxation, fiscal sufficiency and social justice. The court also noted that the social effect of such a policy was directed, in particular, to the real implementation of the state's functions in terms of balancing the budget (Supreme Court of Ukraine, 2022b).

Having considered these legal opinions of the Supreme Court of Ukraine, I have reasons to support the viewpoint, according to which, taking into account the peculiarities of the taxation sphere, a negligible deviation of a particular object from the qualifying parameters of the object of taxation cannot lead to its removal from taxation. This statement fully complies with the generally accepted conditions of purposive interpretation, because the opposite conclusion would lead to an absurd decision that is inconsistent with the clear and correctly interpreted purpose of the relevant provisions of the tax legislation.

On the other hand, despite the fact that the conclusion of the Supreme Court of Ukraine on the need to balance several basic principles of tax legislation, which are inconsistent in the context of the circumstances of the case, has a significant theoretical and legal value, the statement implying that one of the principles of tax legislation can completely nullify another seems questionable.

2.2. In Dubio Pro Tributario in Interpreatation of Tax Laws and Regulations

Continuing the research, it is to be noted that an important global trend in the development of the interpretation of tax legislation provisions is the consistent affirmation of the presumption of lawfulness of the taxpayer's behavior in conditions when the legislation gives rise to ambiguous (multiple) interpretations of the rights and duties of taxpayers or tax authorities, as a result of which there is an opportunity to make a decision in favor of both the taxpayer and the tax authority.

As Demin (2019) asserts, such defects are the fault of the law-maker, not the taxpayer. Therefore, it is the state as the guilty party that takes upon itself the burden of the negative consequences of all the shortcomings of the legislation. Since the law-maker is obliged to formulate tax legislation in such a way that every person knows precisely which taxes (levies) they must pay, and when, and according to what procedure they must pay them, then it is the state that should be responsible for the non-fulfillment of this duty. Legal uncertainty caused by the legislator's insufficient work should be interpreted in favor of the taxpayer (24).

According to Preston's apt statement the principle of in dubio pro tributario in its tax projection is fully consistent with the purposive approach to the interpretation of tax legislation. The author indicates that:

> Traditionally there was only one exception to the plain meaning rule and this was where the taxpayer was at risk of having imposed upon him a liability so farfetched and so fantastic that the suggestion that that was what parliament intended could not be entertained. This is used in conjunction with the minor rule that the taxpayer has the benefit of the doubt (Preston, 1990: 45).

In scientific literature, attention is also drawn to the fact that application of the principle in dubio pro tributario in the interpretation of the tax law is to ensure implementation of the principle of certainty in tax legislation.

This principle should perform the function of clarifying and simplifying legislation, which is important from the point of view of the general state of tax law. This particularly applies to the situation when the position of regulation lead to conclusions that do not make sense, contradictory or ambiguous, then the best solution is a choice of interpretation of legal norms, which will be beneficial to the taxpayer (Juchniewicz and Stwoł, 2017: 309).

Turning to the practice of applying the principle in dubio pro tributario during the judicial settlement of tax disputes, first of all, it should be noted that respected national and international judicial institutions consider it a fundamental guideline for the correct interpretation of tax laws and regulations. In particular, the US Supreme Court adheres to the view that if the words of a statute are doubtful, the doubt must be resolved against the government and in favor of the taxpayer (US Supreme Court, 1923).

The legal opinions of the Supreme Court of Ukraine describing in more detail the grounds for applying the above-mentioned principle of interpretation of tax legislation provisions are also of considerable scientific and practical value. In particular, the court emphasized that in the event that the national legislation gave rise to an ambiguous or multiple interpretation of the rights and duties of individuals and business entities, national authorities are obliged to apply the most favorable approach for individuals and business entities.

That means that conflicts in the legislation are always resolved in favor of the individual or business entity. Moreover, the simultaneous existence of other conflicting norms gives the court indisputable grounds for resolving conflicts in legislation in favor of a person (Supreme Court of Ukraine, 2020).

The presumption of lawfulness of the taxpayer's decisions accrues when the tax rules directly or as a result of their interpretation are not unambiguous and allow the multiply ways of interpretation of assessment powers both in favor of the taxpayer and the tax authorities. It is necessary and sufficient to identify two or more alternative options for lawful behavior, choosing the most beneficial one for the taxpayer to feel protected from possible negative consequences from both the tax authority and the court. At the same time, the burden of proving the absence of legal grounds for the behavior option chosen by the taxpayer is assigned by law to tax authorities (Supreme Court of Ukraine: 2020).

In other words, in the case of inaccuracy, lack of clarity, and inconsistencies in the norms of positive law, the norm must be interpreted in favor of the non-government person (if one of the parties to the dispute is a representative of the state or a local self-government body), because if the state is unable to ensure the issuance of clear rules, then it is it and must pay for its shortcomings. This is the so-called rule of priority of the norm according to the most favorable interpretation for the person (Supreme Court of Ukraine, 2022c).

A plain and illustrative example of a situation, in which the rule of priority of the norm according to the most favorable interpretation is applicable, is the duplication of the product in two different columns of the table of excise tax rates (Supreme Court of Ukraine, 2021).

Having thought through the above, it could be noted that the general trend in the development of the interpretation of the tax legislation provisions is the assertion of the absolute responsibility of the state for the clarity and accuracy of the wording of tax laws and regulations. Both in the common law countries and in the continental legal systems tax authorities and courts are expected to adhere to the concept prescribing an opportunity for the taxpayer can choose the most beneficial option for itself in event that rules of tax law directly or as a result of their interpretation are not unambiguous and give rise to multiple interpretations of executive powers of tax authorities both in favor of the taxpayer and the supervisory authority.

2.3. Reasonable Cause and Good Faith of the Taxpayers

Approaching the next matter, it is to be highlighted that tax control, as well as judicial control of the lawfulness of an increase in the taxpayer's tax liability or the amount of the tax benefit claimed is often accompanied by the

interpretation of the provisions of tax legislation, for the correct application of which the good faith of the taxpayer's behavior must be assessed, which is not limited to a purely legal dimension, but also covers the economic aspects and the essence of its economic operations.

This issue is particularly acute, because it is quite difficult to distinguish the signs of business operations, which indicate their legitimate structuring in order to optimize the tax burden on their participants, from the circumstances that indicate commitment of tax fraud by taxpayers, which has the form of understating their tax obligations or overestimation of the tax benefit.

Relying on legal opinions of the Supreme Court of Ukraine on the issue of the formation of a tax credit, it could be noted that this court consistently emphasizes that the determining factor for this is the compliance of the tax invoice with the order of its filling and the subsequent use of the purchased goods (fixed assets) in taxable transactions within the economic activity of the taxpayer. Developing this opinion, it was concluded that by submitting to the tax authority all properly drafted primary documents required by law the taxpayer can receive a tax benefit only if the tax authority does not prove falsehood, inauthenticity or discrepancies in the information in such documents.

Furthermore, the Supreme Court of Ukraine emphasized that the current legislation does not make the condition of the tax obligations of the taxpayer dependent on the state of the tax accounting of its counterparties, the presence or absence of fixed assets or personnel, submission / non-submission of tax reports. The court also added that when resolving tax disputes, the court is guided by the presumption of good faith of the taxpayer, which encompasses economic justification of actions resulting in tax benefits, as well as the reliability of information in accounting and tax reporting. The bad faith of the payer must be proven by unconditional and unambiguously interpreted evidence (Supreme Court of Ukraine, 2022d).

A clear predisposition towards human rights protection in the interpretation of tax legislation can also be traced in the case law of the Supreme Court of Ukraine on matters relating to taxpayers' expenditures. In particular, the court repeatedly stated that the tax authority could not make determinations about recognizing or non-recognizing of expenditures relying on far-fetched conclusions.

Moreover, this judicial institution demonstrates a sufficient understanding of the nature of entrepreneurship and the essence of business processes, noting that it is not necessary that the economic effect be observed immediately after the transaction; it is possible that as a result of objective reasons, the economic effect may not occur whatsoever. The taxpayer must have the intention to obtain an appropriate economic

effect. The failure of the enterprise to receive income from a separate business operation does not indicate that such an operation is not related to the economic activity of the enterprise, since when conducting business operations there is a normal commercial risk of not receiving income from a specific operation (Supreme Court of Ukraine, 2022a).

Thus, the Supreme Court of Ukraine, when interpreting principles and provisions of the tax legislation related to assessment of business operations of taxpayers, is guided by coherent concepts about the nature of entrepreneurship and the commercial risks inherent in it, which could possibly lead to decisive influence on the economic consequences of business operations.

Bearing in mind these considerations, the Supreme Court of Ukraine adheres to the presumption of the existence of an economic rationale for the activity of taxpayers, if the tax authority does not prove the falsehood, unreliability or contradictory nature of information in documents related to specific economic transactions, or the absence of changes in assets and liabilities of taxpayers as a result of specific financial transactions. On the other hand, accompanying circumstances, such as the company's failure to receive income from a separate business operation, the sufficiency of fixed assets and personnel, and the submission of tax returns by themselves cannot lead to conclusions not in favor of taxpayers.

Recognizing the potential significant value of the above-mentioned legal opinions for interpretation and application of tax laws and regulations within the European legal space, it should, however, be noted that in Ukraine the issue of distinguishing the optimization of the tax burden and tax fraud is not sufficiently sorted out. The practice of interpreting the tax legislation of Ukraine is not distinguished by a deep understanding of the nature of internal and external business processes.

In particular, having looked into the research materials of Garbarino (2014), we could infer that they include a sufficiently coherent and progressive doctrine. While revealing it, the author noted that whether a '*valid business purpose*' for a certain transaction exists is determined on the basis of a substantive analysis of the business and financial strategies of a firm. With reference to the assessment of the valid business purpose, there are basically two interpretive arguments. In the *first argument*, if the tax saving is the only reason underlying a transaction, then it has no valid business purpose; these kind of transactions are '*tax-driven*' and imply tax avoidance.

In the second argument, if the transaction has both a valid business purpose and a tax reason, then one has to assess the prevailing nature of the tax reason versus the business reason. For example, in structured finance transactions it is usually required that the transaction be '*pre-tax positive*'; i.e., that the gain of the transaction is not exclusively deriving from tax savings.

In other words, the existence of a '*purposive scheme*' aimed at '*by-passing of rights and duties*' is the typical situation in which the taxpayer arranges his course of affairs in such a way to unduly avoid or prevent the application of the normal taxing rules. Moreover there is a '*purposive scheme*' when the transaction conflicts with (i) general principles of tax law, (ii) specific principles of a certain area of tax law, (iii) the function of tax rules, or (iv) the natural entitlement of tax positions. For example, a taxpayer may violate: (i) the general principles of tax law according to which one should not allocate income to other parties; or (ii) specific principles of a certain area of tax law such as the rule that if capital gains on participations are exempt, capital losses are not deductible; (iii) the function of tax rules, such as the function of jurisdictional links for taxing income sourced in Italy; or (iv) the natural entitlement of tax positions by allocating portions of income to related parties.

However, *by-passing* of tax rights *does not occur* when the taxpayer makes an election, which *is expressly provided for by tax rules* between two alternative courses of action equally available, thereby achieving a tax reduction. In such cases, the taxpayer has a right to choose among alternative tax treatments that are considered by the tax system as equally available and legally obtainable (Garbarino, 2014, pp. 235-236).

Thus, in order to correctly distinguish between optimization of the tax burden and tax fraud, it is necessary to investigate the financial and economic aspects of the taxpayer's business activities to determine whether this or that business operation was aimed solely or predominantly at tax evasion. At the same time, it is customary to adhere to the opinion that by-passing of tax rights does not occur when the taxpayer makes an election which is expressly provided for by tax rules among two alternative courses of action equally available, since in such cases, the taxpayer has a right to choose among alternative tax treatments that are considered by the tax system as equally available and legally obtainable.

Conclusions

Having regard to the above considerations it could be inferred that, the common law countries and continental legal systems are united by a tendency towards a balanced combination of literal and purposive interpretation of the provisions of tax legislation. Along with the literal wording of tax legislation provisions, the purpose of their introduction and the general principles of tax law are taken into account. In addition, in some countries, even reference to the intention of the law-makers is allowed.

For instance, a negligible deviation of a particular object from the qualifying parameters of the object of taxation cannot lead to its removal

from taxation. However, the limit of a broad interpretation of the norms of tax law is in the fact that it is only acceptable to eliminate absurd law enforcement situations. For example, the legal opinion of the Supreme Court of Ukraine implying that one of the principles of tax legislation can completely nullify another is untenable.

Another general trend in the development of the interpretation of the tax legislation provisions is the assertion of the absolute responsibility of the state for the clarity and accuracy of the wording of tax laws and regulations. Both in the common law countries and in the continental legal systems tax authorities and courts are expected to adhere to the concept prescribing an opportunity for the taxpayer can choose the most beneficial option for itself in event that rules of tax law directly or as a result of their interpretation are not unambiguous and give rise to multiple interpretations of executive powers of tax authorities both in favor of the taxpayer and the supervisory authority.

It is also noteworthy that the Supreme Court of Ukraine adheres to the presumption of the existence of an economic rationale for the activity of taxpayers, if the tax authority does not prove the falsehood, unreliability or contradictory nature of information in documents related to specific economic transactions, or the absence of changes in assets and liabilities of taxpayers as a result of specific financial transactions. However, in order to correctly distinguish between optimization of the tax burden and tax fraud, it is necessary to investigate the financial and economic aspects of the taxpayer's business activities to determine whether this or that business operation was aimed solely or predominantly at tax evasion.

At the same time, it is customary to adhere to the opinion that by-passing of tax rights does not occur when the taxpayer makes an election which is expressly provided for by tax rules among two alternative courses of action equally available, since in such cases, the taxpayer has a right to choose among alternative tax treatments that are considered by the tax system as equally available and legally obtainable.

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