Financial Law Review

No. 30 (2)/2023

UNIVERSITY OF GDAŃSK • MASARYK UNIVERSITY • PAVOL JOZEF ŠAFÁRIK UNIVERSITY
http://www.ejournals.eu/FLR

ALEKSANDRA BIAŁOWSKA*

DOES THE TAXPAYER HAVE A CHANCE TO WIN AGAINST THE TAX AUTHORITY?

Abstract

This article concerns the principle of in dubio pro tributario in tax law (Article 2a of the Tax Ordinance). The legal provision regulates the resolution of doubts in favour of the taxpayer. The scope of application of the principle has been narrowed to doubts about the content of tax law provisions that cannot be removed.

The article is divided into five main parts: an introduction, three chapters and a conclusion.

Chapter I covers the genesis normative basis of the in dubio pro tributario principle. The author briefly indicates there that the principle has a longer history, but focuses on the history of the principle in the Polish legal system.

In Chapter II there are analysis of the content of the provision, in order to obtain the fullest possible knowledge on the application of the regulated principle. The views of doctrine are juxtaposed there and the issues of application of the principle are indicated.

Chapter III is a juxtaposition of art. 2a Tax Ordinance with the general principles of tax proceedings selected by the Author and the notion of tax justice.

The author's opinion is revealed in the conclusion, where she also determines how the discussed regulation should be applied. This may be the case when, after linguistic, systemic and functional

* Lawyer, graduate of the Faculty of Law and Administration of the University of Gdańsk (2022). She specializes in tax law, civil law and human rights. Contact email: ola.bialowska@gmail.com, https://orcid.org/0000-0001-6264-7174.

interpretation only, doubts remain as to the content of tax law provisions. The principle is a postulate for reliable establishment and application of tax law.

The study uses a dogmatic and legal research method and analysis of the literature on the subject.

Key words: in dubio pro tributario, principle of tax law, principle of resolving doubts in favour of the taxpayer, tax law, Article 2a Tax Ordinance.

JEL Classification: K34

1. Introduction

Public authorities shape the legal situation of subjects within a certain territory quite broadly. They have the means at their disposal to interfere with the rights and freedoms of individuals. An example of this is the establishment of taxes. The text of the normative act as well as following the past practice of the tax authorities or administrative courts, is the source of knowledge for entities that meet certain conditions for the payment of a public, gratuitous, compulsory and non-refundable monetary benefit (tax). The taxpayer should analyse each of its behaviours and assess whether it is related to the payment of the aforementioned receivable. This therefore implies an obligation on the part of the taxpayer to know the law, even though it does not generally affect the formation of the tax law. In the event of an error arising from the improper or non-performance of a tax obligation, the consequences will be borne by the taxpayer, in the form of criminal liability.

The interest of the State Treasury, the province, the district or the municipality is in conflict with the interest of the taxpayer, in particular with his freedom of economic activity [Adamczyk-Kaczmara 2021]. The essence of tax law is to appropriately balance their rights and obligations so that the purpose of tax law is achieved, as well as to guarantee adequate protection of the taxpayer's rights and freedoms. The principles of taxation and the principles of tax law are examples of establishing a compromise between the two. Principles of law are a context-dependent concept of legal language. This is because they serve to set directions: legislative action, application of the law and interpretation of the law, as well as shaping the position of a party in the proceedings. Principles of law are most often derived from legal rules, linguistic interpretation, while doctrinal views are postulates for legal systems. An example of a principle protecting the taxpayer is in dubio pro tributario, which means that doubts are resolved in his favour. It definitely tilts the scales of the dispute, but determining whether this is the case in the Polish legal system requires a thorough analysis of the specifics of the in dubio pro tributario principle.

The purpose of this article is to answer the question: does the taxpayer have a chance to win against the tax authority? On the one hand, Article 2a of the Act of August 29, 1997. - Tax Ordinance (hereinafter: Tax Ordinance) appears to be an extremely favourable regulation; on the other hand, it is problematic whether the tax authorities will rule against themselves?

The article uses a dogmatic-legal research method and an analysis of the literature on the subject.

The first chapter focuses on presenting the genesis of the formation of the in dubio pro tributario principle, enabling a better understanding of the principle. The second chapter undertakes a consideration of the normative principle and its application by citing selected doctrinal views. The third chapter describes the relationship of the general principle of tax law with selected general principles of tax procedure.

Assumptions have been made in the article, which will not be discussed further. Firstly, tax law is an autonomous branch of law. Moreover, that the principle in dubio pro tributario is a broader concept than the one included in Article 2a Tax Ordinance, but will be used interchangeably in the article. When discussing the principle in dubio pro reo, the modification of the principle has been omitted[1], and the focus has been on the current wording of the principle having a broader material scope[2]. When referring to the taxpayer, the author will also have in mind the third addressee group (discussed in Chapter II).

Based on the normative content of the principle, the views of the doctrine, the author attempts to describe the problematic and specific nature of the principle in dubio pro tributario in tax law, considering it as a principle protecting the rights of the taxpayer.

2. Genesis

The origins of the principle in dubio pro tributario may originate from to antiquity. In ancient Rome disputes with public authority arose, as evidenced by the Justinian Digesta. Roman jurists wrote down legal problems in them and then provided answers to them. In D.49.14.10, Modestine states that it is not a criminal offence to bring an action against the fiscus if there is doubt about an obligation [Sitek 2015: 59]. From his sentence was

[1] This is rightly mentioned by M. Kurowski, 2022, art. 5. The rule changed its scope as to doubts in favour of the accused.
[2] Compare with Article 3 § 3 of the Act of 19 April 1969 Code of Criminal Procedure (Journal of Laws No. 13, item 96 as amended) with Article 5 of the Act of 6 June 1997 Code of Criminal Procedure (i.e. Journal of Laws 2021, item 534 as amended).

formulated the principle in dubio contra fiscum, meaning to resolve doubts against the authority [Jońca 2018: 92]. In contrast, deciding in favour of the taxpayer means in dubio pro tributario in Latin.

It seems a remarkable document, a letter from the Ostrogoth king Theodoric the Great addressed to the advocatus fisci Marcel, ordering the addressee to take into account the opinion of the parties and forbidding the abuse of authority to win cases against his subjects. The king instructs him to maintain justice by following the law. The letter also states as follows: "(...) it is better that the treasury should lose than that there should be no justice" [Jońca 2018: 96], which illustrates the importance of a law-abiding state for the ruler. For it appears that the rule of law is linked to the principle of resolving doubts in favour of the taxpayer.

Pliny rightly believed that the manifestation of an emperor's greatness was to lose in a dispute [Sitek 2015: 61]. Too many burdens on the subjects provokes their rebellion. In doing so, it is worth moving on to the next historical epoch, i.e. the Middle Ages, when King John without Land of England issued the Great Charter of Liberties in 1215. It was a response to the rebellion of his subjects and became an act of constitutional rank in the United Kingdom [Tadla 2021: 18]. It stipulated, among other things, that shield tax and money allowance would only be imposed with the approval of the Royal General Council [Maciejewski 2011: 126]. Such a regulation is a limitation of royal power, but at the same time the beginning of the implementation of the principle of nullum tributum sine lege (translated: no tax without a law). Undoubtedly, the provision of a written form for the content of tax obligations is a protection of the taxpayer's rights, but how should one proceed in a situation where it is not possible to eliminate doubts about the content of the law? Should the taxpayer comply with such a provision, or can she/he oppose or ignore such a provision? If she/he proceeds by choosing one of the last two actions because of his/her inability to understand the provision, will there be no negative consequences for him/her?

In Poland, prior to the introduction of the principle of resolving doubts in favour of the taxpayer, the wording of this legal norm was derived from constitutional legal provisions and the principles of tax procedure. Article 2 of the Constitution of the Republic of Poland of 2 April 1997 exposes the state system, the value of law and social justice. In addition, the principle of decent legislation, the establishment of adequate vacatio legis, the judicial administration of justice and the independence of the courts [Florczak-Wątor 2021]. For tax law, this means above all guaranteeing the protection of taxpayers' rights and legal certainty [Mariański 2009: 52-53], as well as building citizens' trust in the state [NSA, II FSK 1627/16]. Legal certainty is achieved if the legislation is comprehensible and stable [Brzeziński 2018].

This does not mean, however, that tax law should not adapt to changes in, inter alia, economic, social or political developments (in particular, having regard to the tax policy of other countries) [Litwińczuk 2020]. Legal certainty should also manifest itself in a certain degree of imprecision of the regulation so that the legal provision can be adapted to the situation[3]. The representatives of the state authority should inform the citizens in advance about the upcoming legal and tax changes in order to adapt to the new situation as soon as possible [NSA, SA/Wr 301/93]. One guarantee will be to set an appropriate length of vacatio legis. It will also be justified to send clear, legible messages to strictly defined entities, e.g. fiscal cash register owners, about the necessity to use only an online cash register, followed by time and precise instructions for proper conduct. Otherwise, a significant degree of incomprehensibility of the legal provisions will be a premise for a finding of a violation of Article 2 of the Polish Constitution. However, this finding will be preceded by an analysis of the definiteness of the provision in question, i.e. its precision, clarity and correctness. This will be followed by a control of the constitutionality of the norms by formal interpretation, and then by contrasting the remaining constitutional rules, principles and values [Constitutional Court, Kp 3/09].

Sometimes only Articles 84 and 217 of the Constitution of the Republic of Poland are cited as the constitutional basis for the principle in dubio pro tributario [Bartosiewicz 2021; Popławski 2022]. They present the principle of nullum tributum sine lege. Public burdens and benefits should therefore be included in the law. According to Article 84 of the Polish Constitution, everyone should pay taxes. This consequently implies knowledge of the content of legal acts, in particular tax laws. Article 217 of the Constitution of the Republic of Poland lists what should be included in them: the subject, object, rates, principles of granting reliefs and remissions and the category of entities exempt from taxes. The above legal bases shape the principle of determinacy. The making and application of the law are to be characterised by precision, so that there are no doubts as to the circle of addressees and the behaviour required of them, their obligations, including the manner of payment of taxes [Knawa 2014: 166].

The application of the law by the tax authorities and the courts corrects the mistakes of the legislature. This is not so much due to the confrontation of the wording of the legal provision with practice, but also due to the interpretation process carried out. The deficiencies of the

[3] As defined by the Constitutional Court, "The vagueness or imprecision of legal concepts favours making the legal order more flexible and sensitive to the facts occurring in reality, and thus may contribute to a fuller expression, in the course of the application of the law, of the values that arise from the rule of law." More: the judgment of the Constitutional Tribunal of 13th September 2011, file ref. P 33/09.

tax law are often put forward by the doctrine. It seems most relevant the allegation of A. Mariański, that tax law is not characterised by a high level of legislation [Mariański 2009: 52-53]. There is a lack of a tax policy and the Minister of Finance has a significant influence on tax lawmaking. This results in directing regulations to tax authorities, as a result of which they do not remain comprehensible to professionals. Knawa's view seems plausible, that the low level of legislation results from the lack of understanding of the content of the law by its addressees, as a result of which it is impossible to determine the amount of the tax liability [Knawa 2014: 173}. A. Halasz adds to this the uneven application of legal definitions and even the lack of predictability of decisions [Halasz 2017: 113]. Both of these issues arise in the course of both application and lawmaking. K. Cień rightly points out that legal terms have different meanings in legal and common language, which results in their vagueness, ambiguity and lack of understanding. The use of references to criteria outside the legal system also affects the differentiation of the application of law [Cień 2018]. B. Wojciechowski draws attention that the colloquial meaning of words gains precedence, which de facto does not constitute an analysis of the law [Wojciechowski 2019: 58-72]. The above comments on the state of the tax law are aimed at the problem of the article, i.e. how can a taxpayer, making a self-assessment of tax, be certain of her/his rightness? She/He submits evidence to the tax authorities to support the amount of tax she/he has determined, but if the obligation is too new, it is problematic whether she/he will not miss the actual implementation of the provision and make a mistake. Perhaps if there was a legal basis to protect the taxpayer from doubts about the law and about the taxpayer's condition, the battle with the tax authority would be evened out.

Tax laws are also distinguished by their casuistry, their high degree of complexity and their progressive increase in volume. It is postulated to maintain a balance between casuistry and vagueness [Bogucki 2021: 87]. It is assessed that the taxpayer's rights are not sufficiently protected, especially when government interventionism is increasing in an attempt to curb tax avoidance and evasion [Nykiel, Sęk 2020: 466]. R. Bernat is correct in stating that tax laws are the most complex [Bernat 2016: 102]. Infrequent changes of laws, undefined concepts, different lines of interpretation of tax authorities, as well as distinctness of judicial interpretation, make taxpayers may feel that the certainty of tax law is not ensured. A problem also arises when a taxpayer is accused of seeking to avoid or evade tax by choosing activities involving more favourable taxation. And then she/he will be also disadvantaged by the disproportionality of his remedies compared to those available to the authority [Bernat 2016: 101-108].

Has the introduction of the in dubio pro tributario principle into the legal system changed the state of tax law? The Supreme Administrative Court (hereinafter: NSA), in its judgment of 18 January 1988, maintains that it "has repeatedly emphasised that any ambiguities or doubts of this or similar nature must not be resolved to the disadvantage of the taxpayer" [NSA, III SA 964/87]. It thus proves that the standardisation in the Polish legal system of the principle in dubio pro tributario is not revolutionary and has a longer history. Unfortunately, the judgment does not indicate, as is currently the case, previous rulings with a similar thesis. It is also possible that the NSA in the case under consideration has repeatedly expressed itself in the same way. It should certainly be stated that constitutional grounds do not constitute the beginning of the principle in question.

There is a prevailing view pointing to the principle in dubio pro reo[4], i.e. the principle in Article 5 of the Act of 6 June 1997, Code of Criminal Procedure, as the basis for the principle in question in tax law. Tax law, like criminal law, belongs to public law. This means that there is a relationship of supremacy between the state authorities and the individual, and their obligations arise from legal norms of a general-abstract nature. Z. Kmieciak in the gloss states that the judgment of the NSA confirming the principle of adjudication in favour of a party reflects the principle in force in criminal proceedings[5]. The principles of resolving in favour of a party, however, differ depending on the branch of law, but their similar scope - concerning the resolution of both legal and factual doubts - has been postulated. According to A. Mariański, the presumption of innocence from a criminal trial is also the same regulation concerning the presumption of truthfulness of a tax declaration submitted [Mariański, 2009: 89]. As long as it is not challenged by evidence, the taxpayer or the accused should not be held liable.

There is also the view that the general principles of tax procedure mirror the general principles of administrative procedure [Tomke 2014; Münnich 2021], and that the principle in dubio pro libertate is more general than the principle in dubio pro tributario [Olszanowski 2018]. Article 7a and Article 81a of the Act of 14 June 1960 of the Code of Administrative Procedure were introduced as of 1 June 2017, as will be shown later in this article is a later regulation than the introduced principle of in dubio pro tributario [Przybysz 2022]. However, the legislator chose to separate the in dubio pro libertate principle into two legal provisions, separating doubts about the content of the legal norm (Article 7a of the Code of Civil

[4] Compare with: [Brzeziński 2003: 255], [Janczukowicz 2019], [Bielska-Brodziak 2019], [Mariański 2009: 24].
[5] Then regulated in Article 3 § 3 of the Act of 19 April 1969 Code of Criminal Procedure (Journal of Laws No. 13, item 96 as amended). More [Kmieciak 1990: 251].

Procedure) from the facts (Article 81a of the Code of Civil Procedure). Why, then, did he not make a similar change in the Tax Ordinance? Moreover, Z. Kmieciak derived the principle of resolving doubts in favour of a party in administrative proceedings from the principles of objective truth (Article 7 of the Code of Administrative Procedure) and active participation of a party in the proceedings [Kmieciak 1990: 251].

The principle of in dubio pro tributario is also derived from procedural principles [Kwietko-Bębnowski 2016], viz: the principle of conducting tax proceedings in a manner that inspires confidence in the tax authorities (Article 121 § 1 Tax Ordinance), including the provision of necessary information, the principle of material truth (Article 122 Tax Ordinance), the persuasion of a party (Article 124 Tax Ordinance), and the principle of two instances (Article 127 Tax Ordinance) [Gomułowicz, Mączyński 2016]. Their confrontation with the normative principle of adjudication in favour of the taxpayer is presented in Chapter III, so here it will only be signalled.

In the justification of the presidential project of the act on amendments to the act - Tax Ordinance and some other acts, 7th term, parliamentary print no. 3018, which included the justification for the introduction of Article 2a of the Tax Ordinance, regulating the principle of resolving doubts in favour of the taxpayer, it was stated that one of the reasons was its recommendation by experts. What is more, in other countries, such as Canada [Brzeziński 2002], the United States, Belgium [Kalinowski 2004] or France [Kalinowski 2004], this principle should also be regulated in Poland. This does not mean that tax authorities are to act against the interest of the State Treasury. A. Bielska-Brodziak emphasises that the rule was controversial, it was not explicitly postulated for. And if it was supposed to, it was to refer to substantive and procedural law, thus resolving doubts about the law and the facts introduction [Bielska-Brodziak, Suska 2020: 69]. It was supposed to eliminate regulations that were inefficient and too burdensome for taxpayers. However, the Tax Law Advisory Board, in its Opinion No. 1/2015 of 30 January 2015, stated that the introduction of the principle would not have a significant impact on the operation of the tax system, the consistency of tax law and the financial implications. Nevertheless, a sceptical assessment was given by the Legislative Council [Legislative Council, Opinion of 13 March 2015]. It alleged that the regulation of interpretation directives is not applied in the Polish legal system. It is inappropriate to recommend practitioners of tax law to follow the Constitution, which has been a consequence of systemic interpretation so far.

A speech addressed to the Minister of Finance was drafted by the Ombudsman on 8 October 2015. In it, he considered the regulation of Article 2a Tax Ordinance introduced into the tax law system as necessary for the protection of taxpayer's rights, but the application of the

principle may prove problematic as it will be unevenly practised due to its generality. For this reason, he called for the preparation of an appropriate training designed for the tax administration. In his response of 3 November 2015 The Minister of Finance acknowledges the Ombudsman's concerns, as there were objections already raised during the legislative process on the project. The letter emphasised that the newly introduced legal standard was more theoretical. Despite the above, the "perceived shortcomings of the provision" have not been removed and the Minister of Finance foresees the existence of divergences in the application of Article 2a Tax Ordinance, as a consequence of which she/he undertook to issue a general interpretation.

On 17 June 2015. The President of the Republic of Poland ordered a nationwide referendum for 6 September 2015. One of the three questions concerned the introduction of the principle of resolving doubts about the interpretation of tax law in favour of the taxpayer. A positive answer was given by 94.51%. It is worth noting at this point that the turnout in Poland was 7.80%, so not too many taxpayers spoke. Despite the ordering of the referendum, the result was not awaited, because with the amendment of the Tax Ordinance, dated 5 August 2015, Article 2a was introduced. This provision entered into force on 1 January 2016 and has not changed its wording until today.

3. About the principle in dubio pro tributario

The principle in dubio pro tributario contained in Article 2a of the Tax Ordinance does not have a consensus opinion on its recognition as a general principle of tax proceedings. This is primarily justified by its location in the Tax Ordinance, as the principle in question is to be found in Section I General Provisions, instead of with other general principles of tax proceedings, i.e. in Section IV Tax Proceedings, Chapter I General Principles, Articles 120-129. According to M. Münnich, there are eleven general principles of tax proceedings and this is a closed catalogue[6]. The more puzzling is the status of the principle in dubio pro tributario, which, as a general principle, regulates the status of the obliged party and determines the direction of the actions of the tax authorities [Rudowski 2021: 17]. The Tax Law Consultative Council points out that the principle in dubio pro tributario is intended to

[6] He lists the principles of: legalism, conducting proceedings in a way that inspires trust in tax authorities, providing necessary information and explanations about the provisions of tax law related to the subject matter of these proceedings, objective truth, active participation of a party in the proceedings, persuasion of a party, speed of the proceedings, written form, two-instance nature of tax proceedings, permanence of final tax decisions and openness of the proceedings only for the parties. More: [Münnich 2021].

protect the taxpayer from abuse of public authority [Opinion No 11/2015 of the Tax Law Advisory Board]. A. Gomułowicz defines it as a mega-principle, a super-principle, which is a directive for the interpretation of the law [Gomułowicz 2016]. It is applicable to all regulations contained in other sections of this act. S. Bogucki presents a view stating that the principle is an interpretative presumption [Bogucki 2021: 88]. J. Olszanowski argues the normative principle in dubio pro tributario as a directive of interpretation of the law [Olszanowski 2018]. A. Mariański distinguishes three types of general principles [Mariański 2009]. The principle in dubio pro tributario is regulated, so it cannot be a postulate, and at the same time it is not inferred from other legal norms, so the principle should be qualified as a general principle. This expands the scope of the principle's matter.

Article 2a of the Tax Ordinance stipulates that **doubts regarding the content of tax law provisions that cannot be removed shall be resolved in favour** (hereafter interchangeably referred to as: benefit) **of the taxpayer**. At the beginning of the discussion of the normative principle of in dubio pro tributario, it is necessary to examine the effectiveness of the interpretation of the law of provisions, so that doubts that cannot be removed should arise. Interpretation of the law is a process in the course of which the meaning of a legal provision is established, and the content of the legal norms adapted to the relevant factual situation. Among the possible interpretations, the following can be distinguished: linguistic, systemic, intentional, as well as authentic, operative, doctrinal, historical, comparative and pro-EU. With regard to the scope of interpretation, a distinction is made between literal (strict), extensional and restrictive interpretation [Dauter 2018]. Interpretations are sometimes valued by grading them[7]. This consists in the fact that if the first degree does not produce an unambiguous result, the next degree should be applied. Interpretative rules, e.g. argumentum a fortiori, argumentum a coherentia, lege non distinguente nec nostrum est distinguere or lex susperior derogat legi interiori, have a supplementary function in the understanding of the law, whether they are applied in tax law will be discussed later.

The linguistic interpretation is the first to be applied. It reflects the precise understanding of the provision after analysing the language. The danger that arises in practice is to give different meanings to the concepts contained in the provision. Legal, juridical, specialised or colloquial language may apply. Attention should be drawn to the position of the NSA [NSA, II FSK 3729/14], according to which it is not allowed to find definitions, meanings of concepts from dictionaries, even if the concepts contained in legal acts are ambiguous. The

[7] [Bielska- Brodziak, Suska 2020: 76], distinguished 3 degrees; [Gomułowicz 2016: 260-267] 2 degrees.

opposite would lead to considering a dictionary as a source of law, when in fact it is an aid to understanding colloquial language. Such a provision affects a party who may have understood a provision differently from the authority by the colloquial meaning of a word. For this purpose, the legislator introduces legal definitions, allowing a better understanding of the terms used in the provisions. They must be interpreted in their entirety, without omitting parts, so as not to give them different meanings. In doing so, it must be emphasised that the language of the legislator should not be equated with the language of lawyers. Specialised language, on the other hand, covers a particular field (e.g. medicine, physics). The legislator may use specialist language in a law in order to regulate more comprehensively, e.g. a particular area of the economy. The linguistic interpretation takes precedence over the others as long as no two or more interpretations arise from the provision [Supreme Court, V KK 337/03].

Systemic interpretation comes next and establishes the meaning of a legal text by referring to the context of its relationship with other norms. It is divided into internal and external [Rudowski 2021: 13]. Internal systematic interpretation links the analysed provision with other provisions of the Tax Ordinance. This may result, for example, from the aforementioned legal definition. External systematic interpretation goes beyond the legal act, linking legal provisions to different legal acts. The reason for this may be linguistic discrepancies resulting from acts translated into national language [Litwińczuk 2020] or the implementation of the principle of effectiveness of EU law [Antonów 2008: 15-20], thus it becomes necessary to refer to other legal acts. According to J. Rudowski, argumentum a rubrica guarantees a complete and uncontradicted understanding of a legal norm [Rudowski 2021: 13].

The meaning of provisions also depends on facts of a political, social, economic or moral nature. The rules of functional interpretation prescribe taking into account the objectives of the regulation, the functions of the law and its socio-economic purpose. Here, the interpretation of the provision goes beyond the letter of the law. Functional interpretation is sometimes equated with purposive interpretation [Janczukowicz 2019, Gomułowicz: 2016]. In order to simplify her claims, the author will use the concept of functional interpretation, including purposive interpretation.

B. Wojciechowski points out that system and functional interpretation are subject to dynamic changes in the form of, inter alia, the legislator's intentions, administrative decisions or social practices [Wojciechowski 2019: 58-72]. This allows to prevent extreme formalism of the law, as is the case with linguistic interpretation.

It proves to be a controversial issue when EU, international rules clash with national law, when the former mentioned worsens the position of the taxpayer. There is no prohibition on not worsening the legal position of a subject as a result of applying a pro-EU interpretation [Bartosiewicz 2021]. In the case of tax harmonisation, pro-EU interpretative principles should be followed. The opposite position is presented by B. Brzezinski that EU law does not primarily impose rules of interpretation on Member States, but only legal institutions [Brzeziński 2015: 17-21]. Therefore, there is no legal contradiction that could worsen the legal position of the taxpayer. On the other hand, in case of doubts concerning the application of a purposive interpretation aimed at eliminating double taxation or combating tax avoidance, B. Kuźniacki points out the preference for the former [Kużniacki 2015: 44-55]. The author subscribes to this view.

The position of the NSA gives the impression of being inappropriate, stating that the principle of resolving doubts in favour of the taxpayer applies only to doubts that cannot be removed by means of the available interpretation rules [NSA, III FSK 4839/21]. If, in fact, all possible interpretations or rules of interpretation were to be used, then in addition to those discussed above, other interpretations should also be considered, i.e. authentic, operative, doctrinal, historical or comparative. The specificity of tax law, however, determines the linguistic and systemic interpretation, followed by the functional interpretation (in particular the purposive one) [Antonów 2020: 50-52]. In the opinion of the Legislative Council, taxpayers should not read tax norms through complex interpretations: systemic, historical or purposive. Such a view should be extended to the other existing modes of interpretation, including interpretative rules. If a taxpayer were to consider all possible interpretations to be considered, the principle of deciding in favour of the taxpayer would border on precedent. In the author's view, it is important to clarify which taxpayers can consider. It seems appropriate to limit it to three: linguistic, systemic and functional.

As a result of the interpretation carried out, a lack of, irrelevant or resolved doubts may arise [Bielska-Brodziak 2019]. The tax authority has the right to refuse to apply the principle in dubio pro tributario for lack of grounds. It should be emphasised that unresolvable doubt is a vague concept. Tax authorities have discretion, but this is limited by the obligation to apply the rule discussed above. It is a truism to state that with newly created tax laws it will not

be possible to apply the provision, as a more favourable understanding of the provision will only emerge after a certain period of time[8].

The subject of the doubts that have arisen also needs to be discussed. Pursuant to the content of art. 3 item 2 Tax Ordinance, the provisions of the tax law are understood as the provisions of tax acts, provisions of agreements ratified by the Republic of Poland on avoidance of double taxation and other international agreements ratified by the Republic of Poland concerning tax issues, as well as provisions of executive acts issued on the basis of tax acts. The last-mentioned acts concern taxes, fees and non-tax budgetary dues defining the subject, object of taxation, emergence of tax obligation, tax base, tax rates and regulating the rights and obligations of tax authorities, taxpayers, payers and collectors, as well as their legal successors and third parties (art. 3 item 1 Tax Ordinance). Most importantly, the normative principle of in dubio pro tributario therefore refers not only to the Tax Ordinance, but to a wider range of legal acts. Consequently, it is of greater significance for tax law than the general principles of tax procedure. In the author's view, the principle of in dubio pro tributario is a normative general principle of tax law.

The phrase "shall be resolved in" contained in Article 2a Tax Ordinance does not have a strictly defined subject. It makes it impossible to determine whether it refers to the obligation of tax authorities or administrative courts to make specific declarations of intent. The principle in dubio pro tributario is addressed to an unspecified addressee. Indeed, it can refer to 3 entities.. The first of these is the legislator. In accordance with the aforementioned principle of nullum tributum sine lege (see Chapter I), the content of laws is therefore of significant importance. The doctrine of tax law repeatedly points to the poor state of legislation and calls for improvements in the quality of legislation, as already mentioned in Chapter I. Accordingly, it is the legislator's task to create clear, unambiguous provisions that ensure their stability in the legal system, as well as to define the relations between them. Recipients should also be aware of what they are obliged to do and what the consequences of non-performance or improper performance are. The tax authority should furthermore have strictly defined competences. According to R. Mastalski, the legislator should shape the content of tax law on the basis of the rules of decent legislation [Mastalski 2018: 55], constituting the implementation of the principle of definiteness. In the Author's view, the principle of in dubio pro tributario (set out in Article 2a of the Tax Code) is

[8] Compare with the referenced position of Rychlewska and Hotel (in) [Bielska-Brodziak, Suska 2020: 76-77[.

inseparable from written law. It is on its basis and within its boundaries that the state authorities take action and the legal situation of the taxpayer is shaped.

The tax authorities should thoroughly examine the facts of the case. The following sentence B. Brzezinski is true: in a democratic state of law they are also obliged to examine the legibility of the provisions for the taxpayer in each case [Brzeziński 2015: 18]. The application of Article 2a Tax Ordinance by the tax authorities may be subject to judicial review in terms of the legality of their actions. B. Brzezinski cites the view that courts and authorities do not respond to this principle or exceptionally decide in favour of the taxpayer. In doing so, he postulates that the courts should draw up an exhaustive justification, including an explanation for disregarding the taxpayer's claims. The tax authority has the burden of proving facts affecting the outcome of the case. It may follow from the legal provisions that the position more favourable to the taxpayer must be supported by evidence. The Constitutional Tribunal is convinced of the duty to co-operate in the collection of the necessary evidence, especially those intended to confirm a specific circumstance. However, it rightly emphasises the lack of a normative basis for the principle of co-operation with a public administration body, taking into account the tax authorities [Constitutional Court, SK 18/09]. An interpretation unfavourable to the taxpayer must be firmly based on specific interpretations and the factual findings must be complete and demonstrate beyond any doubt that they differ from the taxpayer's claims. If the contrary happens, the administrative court will analyse the case, including the actions of the tax authorities. This shows the importance of the reasoning of the decision not only for the authority (protection against appeal to a higher authority, but also protection of the taxpayer's rights (checking that his rights have not been violated).

The third subject, which is the addressee of Article 2a Tax Ordinance, is the taxpayer, but the Author will discuss it further. It seems necessary to link this addressee to the benefit ascribed in the provision.

A tax favour should be defined as the non-occurrence of a tax liability, postponement of the occurrence of a tax liability or a reduction in its amount, the occurrence or overstatement of a tax loss, the occurrence of an overpayment or right to a tax refund or an overstatement of the amount of an overpayment or refund, as well as the absence of an obligation to collect tax by the payer, if it results from the non-occurrence of a tax liability, postponement of the occurrence of a tax liability or a reduction in its amount (Article 3(18) Tax Ordinance). Art. 86a Tax Ordinance extends the understanding of the tax benefit by an increase in the amount of the excess of input tax over due tax, within the meaning of the provisions of the

Act of 11 March 2004 on tax on goods and services, to be carried forward to the next settlement period, the non-arising of the obligation or postponement of the arising of the obligation to prepare and submit tax information, including information on tax schemes. However, the literature does not cite the content of these provisions. A. Drywa recognises benefit as a subjective assessment criterion, refers to life experience and analysis of all potential effects of each possible solution [Drywa 2016: 22]. The Ministry of Finance also states that the benefit is not objective in nature [Minister of Finance, General Interpretation of 29.12.2015]. Tax authorities have not been obliged to understand taxpayers' benefit in the same way, even if the subject of application of Article 2a Tax Ordinance will be the same provision of tax law. It seems necessary to refer to the legal definition of a tax benefit in order to unify the application of tax law, as well as to narrow this benefit to the one that may be considered by the tax authorities. If the advantage would not relate to the largo sense of tax law, why should the authorities additionally interfere in the taxpayer's relationship with another entity? Perhaps this is due to the broad scope of the legal norm. A benefit in tax law provisions occurring in other acts of law than in the Tax Ordinance, should be not excluding a possible extension of the understanding of benefits. This position can be supported by a comparison with Art. 199a Tax Ordinance, where in § 1 of this provision it is written about a benefit and the subsequent provisions are further specified to be understood as a tax benefit. At the same time, it does not apply to, inter alia, the tax on goods and services, where the abuse of the right has been regulated in its tax act[9]. With this in mind, it seems advisable not to specify the concept of advantage, emphasising that finding its meaning should be within the competence of the tax authorities. In particular, when the taxpayer has acted in accordance with the law, and no breach of the law is to be found in his act or omission.

A taxpayer is a natural person, a legal person or an unincorporated organisational unit subject to tax liability under tax laws. Tax laws may also establish other entities as taxpayers, so it is necessary to apply this principle of tax law broadly.

The Minister of Finance was right to extend the application of Article 2a Tax Ordinance in the general interpretation issued, covering payers, collectors, legal successors and third parties responsible for tax liabilities of taxpayers. This determines their status as the last addressees of the legal norm resulting from Article 2a Tax Ordinance. Their legal situation, however, is shaped depending on the content of the act, the taxpayer or the assumption of

[9] See Article 5(5). of the Value Added Tax Act of 11 March 2004 (i.e. Journal of Laws 2022, item 931, as amended). It states: "(...) for the purpose of achieving tax benefits".

specific responsibility. Recognising the difference in the situation of the above-mentioned entities from the taxpayer, it is justified to interpret their benefits in a different, i.e. subjective manner.

In procedural law, there is the principle of audiatur et altera pars [the other party must be heard as well], which could be a source for the principle of in dubio pro tributario. If the state authorities with the taxpayer present their position on the case, having received contrary statements, and it is still impossible to remove doubts from the tax law, the weaker party (third addressee) should be favoured. The essence of the application of this principle is to hear the parties' understanding of the legal provision in question, and when an uncontradicted position on the case arises, then Article 2a Tax Ordinance does not apply. Taxpayers should be able to rely on it when drafting an enquiry to obtain an individual interpretation as to a future state of affairs and in appeal proceedings. This also allows the tax authority's developed statements to be known. A. Drywa indicates the application of the principle in dubio pro tributario also during a tax audit or transaction price agreement [Drywa 2016: 20]. A. Bielska-Brodziak adds that the principle should be applied when there are legal gaps [Bielska-Brodziak 2019: 70]. In the author's view, the principle of in dubio pro tributario should be applied as widely as possible.

It is argued that the principle in dubio pro tributario requires 3 conditions to be met: the existence of doubts as to the content of tax law provisions, doubts that cannot be removed and multiple interpretations [Bogucki 2021: 92]. Interpretations giving rise to irremovable doubts about a provision should differ in their understanding of the content of the law as well as their benefits.

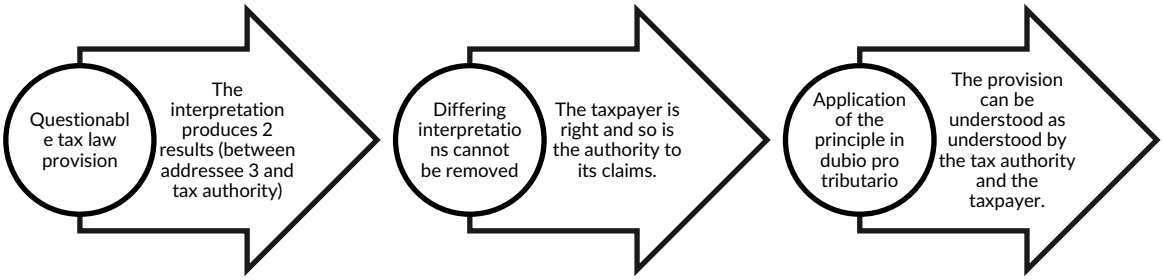
The principle of in dubio pro tributario may constitute a plea in the form of a combination with other legal provisions, e.g. Article 174(1) of the Act of 30 August 2002 Law on Proceedings before Administrative Courts, i.e. infringement of substantive law, i.e. Article 2a Tax Ordinance in connection with Article 2, Article 84 and Article 217 of the Constitution of the Republic of Poland and Article 120 of the Tax Ordinance. Subsequently, the tax authorities use it in the form of substantiating their decisions, i.e. decisions, rulings, tax interpretations. The court assesses the legitimacy of their application or the necessity of the use of Article 2a of the Tax Ordinance in its rulings, as presented on numerous occasions by the NSA [NSA, III FSK 3876/21, III FSK 4070/21, III FSK 4123/21, III FSK 4197/21, III FSK 4200/21}. A taxpayer may also invoke the principle even earlier, as already when preparing an application for an individual tax interpretation. However, adherence to this interpretation does not release from the obligation to pay tax, in a situation where certain tax

consequences related to an event to which the facts being the subject of the interpretation correspond, took place prior to the publication of the general interpretation or prior to the delivery of the individual interpretation (compare with art. 14l Tax Ordinance).

It is indicated that the principle of deciding in favour of the taxpayer can have a threefold reach [Brzeziński 2003]. The most extensive is the so-called strong one, throwing out a complex legal provision from the legal system. The moderate reach involves equivalent second-level directives, among which the most favourable interpretative alternative for the taxpayer is selected. With the last, i.e. weak reach, equal legal norms are juxtaposed that do not have sufficient justification for application or lead to different results. Qualifying the reach of Article 2a Tax Ordinance creates too many complications. Given the nature of the in dubio pro tributario principle as a normative general principle of tax law, it is possible to assign it to other provisions of tax law. Doubtful tax provisions should be interpreted narrowly, and if they do not yield an unambiguous result, they should be resolved in favour of the taxpayer, which is according to the position that is favourable or most favourable to the taxpayer. According to the statistics of decisions issued applying the in dubio pro tributario principle as at 31 March 2018, it appears that the tax with the highest number of rulings applying the principle is the goods and services tax [Góźdź 2018]. According to the author, the increasing trend will become apparent as the years go by. In confirmation of this, it is worth noting that prior to the introduction of the principle, authorities were not inclined to adopt a favourable attitude towards the taxpayer. In the author's opinion, the upward trend will become apparent as the years go by. In confirmation of this, it is worth noting that, prior to the introduction of the principle, the authorities were not inclined to be favourably disposed towards the taxpayer. E.g. in 2012 and 2013 overwhelmingly the courts rejected the taxpayer's arguments [Bielska-Brodziak 2019: 68]. Perhaps this is due to the lack of a specific legal basis.

In simple terms, the process of applying the in dubio pro tributario principle would look like this:

Figure 1 Simplified process for applying the in dubio pro tributario principle



Source: Author's own elaboration.

To conclude the consideration, the institution of the Ombudsman needs to be cited. To date, no Taxpayer Ombudsman has been appointed, although a government bill has been drafted [Draft Law on the Taxpayer Ombudsman, Parliamentary Paper No. 3516], and earlier parliamentary groups have been the proponents of such bills [Draft Law on the Taxpayer Ombudsman, Parliamentary Paper No. 669, Draft Law on the Taxpayer Ombudsman, Parliamentary Paper No. 4360]. As taxpayer rights are part of human rights and the Ombudsman is the guardian of human and civil liberties and rights. Examples of the Ombudsman's activities on behalf of taxpayers include taking action to improve the activities of state bodies and the functioning of the state, i.e. joining individual cases before the courts[10], participating in parliamentary hearings or appearing before the Ministry of Finance. In the context of human rights, an important role is also played by the rulings of the European Court of Human Rights, which point out the value of precise legal provisions that allow certain subjects to adapt to a new legal situation. The Ombudsman should also draw the attention of state authorities to this and strive to improve the state of tax law so that the principle of in dubio pro tributario does not have to be exploited in practice.

4. Confronting in dubio pro tributario with selected principles

Principles of law interact with each other, and by confronting them, one can better understand a particular principle, while understanding the specificity and problems of a particular branch of law. This chapter undertakes a confrontation of the principle in dubio pro tributario with selected general principles of tax procedure and the concept of tax justice. The principles discussed will be the principle of objective truth, the principle of writtenness, the principle of conducting tax proceedings in a way that inspires confidence,

[10] Góźdź points to the accession to proceedings in individual cases before the NSA (ref. no. II FSK 3811/14) and before the WSA in Łódź (ref. no. I SA/Łd 1110/16).

the principle of providing information and persuasion (justification), the principle of active participation of the parties, the principle of speed, the principle of writtenness.

Firstly, the presumption of truthfulness of a tax declaration presupposes the reliable fulfilment of the taxpayer's obligations under the tax law. If, in a tax proceeding, the tax authority finds that the taxpayer, despite the obligation incumbent upon it, has not paid the tax in full or in part, has not submitted a tax return, or that the amount of the tax liability is different from that shown in the return, or the liability incurred has not been shown, the tax authority issues a decision in which it determines the amount of the tax liability (Art. 21 § 3 Tax Ordinance). The provision proves that the taxpayer is entitled to certain errors, and the authority may help him remove them. The principle of deciding in favour of the taxpayer does not seem to apply in such a case, unless the authority is in error.

Accordingly A. Marinski points to the principle in dubio pro tributario as a supplement to the principle of objective truth. It is the duty of the tax authorities to clarify the facts, including gathering evidence ex officio and at the request of a party. By virtue of Article 200 Tax Ordinance, a party is obliged to comment on the collected evidence, which constitutes its legal protection against repressive action and abuse of power on the part of the tax authorities. According to A. Mariański, this legal basis also constitutes a possibility to formulate a plea by virtue of which the administrative court revokes the decisions issued. The author subscribes to this views.

Tax decisions with justification are delivered in writing. This is not so much an implementation of the principle of writtenness, but also an opportunity to verify the actions of the authority, e.g. whether the authority has complied with the principle in dubio pro tributario, whether the authority has deprived the parties to the proceedings of certain rights, whether the authority has fully conducted the evidentiary procedure, what means it has used in the case. The statement of reasons is also important to demonstrate the principles of persuasion, information, openness and inspiring confidence in the tax authorities. The content of the tax decision contains the facts and the legal position. An adequate presentation of the facts interacts with the establishment of the relevant legal basis. In this regard, the appropriate collection of evidence is crucial. The tax authority should explain to the party the legitimacy of the basis it used in deciding the case in order to induce the party to voluntarily implement the decision without the use of coercive measures. It must be emphasised that the tax authority shall take thorough actions in the tax procedure, but in doing so, choosing the least onerous for the taxpayer [Nykiel, Sęk 2020: 466]. The assessment of the correctness of the actions of the authority in the course of tax

proceedings, including the collected evidence and the decision in the case, is vested in the taxpayer. Rightly A. Mariański points out that the principle in dubio pro tributario defines for the court the limits of free evaluation of evidence. A finding of a violation of the in dubio pro tributario principle occurs when the results of the interpretation formulate more than two positions, from which the authority chooses the one with the less favourable or unfavourable wording [NSA, III FSK 3952/21]. The same would be the case in the event of a ruling in favour of the authorities with unconvincing positions [Adamiak 2020].

The legislator decided to limit the principle of openness, exclusively for the parties. An attorney or representative is not excluded here. This is related to tax secrecy. The principle of openness of the proceedings guarantees, at each stage of the proceedings, access to the files (Article 178 of the Tax Ordinance) and active participation of the party (Article 123 of the Tax Ordinance), which allows to assess the implementation of the principle of resolving in favour of the taxpayer.

A. Gomułowicz rightly points out the problem of the independence of the courts when ruling in favour of the taxpayer, as this limits the judicial discretion to a certain pattern of ruling [Gomułowicz 2016: 282-283]. In the Author's opinion, the principle in dubio pro tributario should not be understood as a limitation of judicial discretion, as the principle in dubio pro tributario may apply when at least 2 interpretations arise. The principle is intended to protect the weaker individual from repressive action by the tax authorities and is also a means of improving the law when the tax authorities and the taxpayers (3rd addressee) are unable to reach an interpretative compromise. The judge should find that there is a basis for the existence of an interpretative doubt in the provision, not when the taxpayer (3rd addressee) denies the factual and legal existence of the tax obligation. Judges must also take into account that their decision may be rejected and referred to a higher authority. Here, the issue of exhaustively justifying their position as to why the principle in dubio pro tributario has or has not been applied arises again. The authorities should take it into account, but the parties should also invoke it.

The inspiring confidence in the tax authoritiesis linked to the constitutional principle and its normative basis in the Tax Oridnance (see Chapter I). It is advisable that the authorities present professional knowledge, an appropriate level of culture and an appropriate approach to the entity using their services. Confidence should be based on proven methods, which also implies stability of case settlements. Authorities should not be guided by personal motivations, beliefs or prejudices. However, trust-building should work both ways. The taxpayer is to receive professional assistance, while the authority is to receive the assurance

that the taxpayer will perform according to its instructions. If this were in fact the case, it would prove useless to establish this principle, particularly when differences of opinion arise over tax obligations. The principle of resolving in favour of the taxpayer seems to be an advantageous solution for both parties when negligence on the part of the legislator arises and the taxpayer and the tax authority are unable to remove doubts about the content of the tax law. The principle of inspiring confidence in the tax authorities is the implementation of the principle of providing information and explanations about the provisions of tax law. It is unjustifiable to hold taxpayers responsible for errors, negligence, shortcomings or other forms of violations for which the tax authorities, administrative courts or the legislator itself are responsible. Each entity should duly discharge its competences as well as its obligations. However, before this can happen, the taxpayer (third party), must be aware of its rights and obligations, if this is not fulfilled, we have a paradox. If the authority does not know what follows from the legal norm and is not able to explain the obligations or rights to the taxpayer, it is all the more necessary to safeguard the taxpayer's rights (for example, through the principle of in dubio pro tributario).

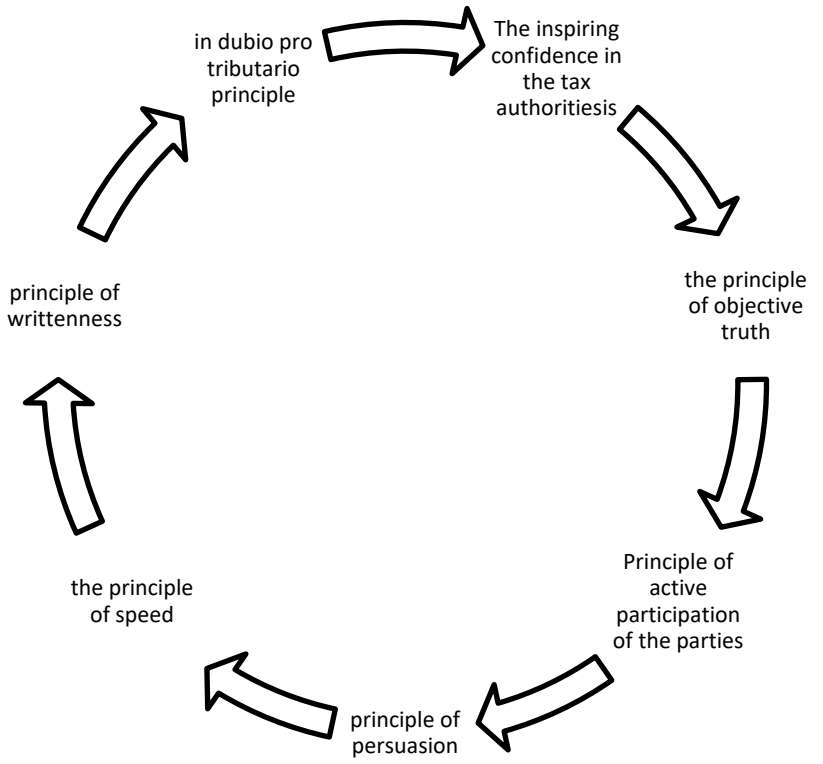
Against protracted proceedings there is a plea under Article 125 Tax Ordinance, concerning the imposition of speed and simplicity in the conduct of proceedings, which translates into an obligation on the authorities to use appropriate legal means to achieve the intended result, which is the substantive resolution of the case. A. Mariański assesses as a frequent phenomenon when tax authorities undertake control in matters of taxation of income from undisclosed sources of income and the obligation to show additional evidence just before the expiry of the liability limitation period. Failure to reconstruct those facts (e.g. due to lack of memory as to events, persons) should be adjudicated using the principle in dubio pro tributario. However, the question arises as to whether this is a doubt as to the law or the facts. In the Author's opinion as to the latter, it is therefore necessary to extend the scope of the principle in dubio pro tributario. The tax authorities should immediately take steps to clarify unclear actions of the taxpayer (third addressee). This also affects the principle of inspiring confidence in the tax authorities.

Tax justice manifests itself in the belief that the taxpayer should not suffer negative consequences resulting from a lack of or improper action by the state. In response to this, a stable legal construction of the tax is sought by law, ensuring legal security for the taxpayer, while prescribing an equal tax burden for all taxpayers [Nita 2013]. This justice is a broader concept than tax law certainty. It also corresponds to social, economic developments, i.e. to what is beyond the provisions of tax laws. Unlike legal certainty, it does not focus on the

practice of its application by tax authorities, administrative courts. This concept is not regulated in the law, but seems to capture the idea of the principle in Article 2a of the Tax Ordinance.

The principle of deciding in favour of the taxpayer is a normative general principle of tax law. Firstly, what distinguishes it from others, apart from its location in the Tax Ordinance, is its applicability. It may be the basis for the claims of the third addressee, a directive to state bodies, as well as the basis for an appeal. However, the conditions for its application must be defined, as discussed in Chapter 2. The principles of tax procedure are supplemented by the principles of in dubio pro tributario, starting with the principle of enhancing trust in tax authorities and ending with the principle of openness. The figure below is simplified and does not list all the principles of tax procedure. It is intended to help understand the relationship between the principles, that it is important to circulate between the principles and bring about the full realisation of the principle in dubio pro tributario. The introduction of Article 2 of the Tax Ordinance, seems to have given state authorities an additional point of reference. Tax justice seems to be realised by the principle in dubio pro tributario.

Figure 2 Dependent circle of principles



Source: Author's own elaboration.

5. Conclusion

According to the clara non sunt interpretanda rule, one does not attempt to interpret things that are clear. What should be done in the opposite situation, when the rules raise doubts?

This article undertakes an assessment of the effectiveness of the in dubio pro tributario principle in tax law, which dictates that such situations should be resolved in favour of the taxpayer. This seems undoubtedly a positive regulation, guaranteeing not only respect for the rights and freedoms of the weaker subject, but also a way to improve the quality of legislation. As indicated in Chapter II, the application of the provision raises practical doubts. The authorities, whose interest is to decide in their favour, are supposed to act differently. If the taxpayer is aware of her/his rights, she/he will be able to look after his interest. If the law is so unclear, i.e. it raises interpretative doubts, it will be necessary to interpret the law in favour of the taxpayer. It will be necessary to continuously develop a friendly state [Kwietko-Bębnowski 2016]. A. Drywa aptly defines the principle in question as a yardstick for the relationship between the state and the citizen. The principle provides a guarantee of protection for the taxpayer, as well as for other entities (see the 3rd addressee of Article 2a Tax Ordinance, discussed in Chapter II), against abuses by the state with coercive measures against the individual. As B. Brzezinski rightly emphasises, the introduction of Article 2a Tax Ordinance. does not mean a breakthrough in the hitherto jurisprudence of administrative courts [Brzeziński 2015: 19]. Nevertheless, the NSA's position on the uselessness of regulations that cause too many interpretation doubts is correct, as they should be removed from the legal system rather than resolved in favour of the taxpayer [NSA, III SA 3108/00]. It also creates uncertainty in the situation of a taxpayer who has adjusted to a disadvantageous situation in order to avoid conflict with the tax authorities. The author would like to stress that it will take some time before the flawed provision is removed. What to do when a provision is questionable and the legislator does not act? It seems that in such a situation, where the tax law is flawed, the solution is the principle of in dubio pro tributario. It should be noted that this rule also carries the risk that the legislator remains passive in improving the law.

The principle of resolving in favour of the taxpayer will apply if, after the application of three types of interpretation of a provision of tax law, irremovable doubts of interpretation persist. It is right to apply this regulation also to other subjects of tax law, i.e. payers, collectors, legal successors and third parties responsible for tax liabilities of taxpayers. The protection of the rights of these entities should be ensured at the stage of application and creation of tax law provisions. This is because, like the taxpayer, they are the weaker party in a dispute with tax authority. The need to increase the awareness of the taxpayer and other entities as to their

rights and obligations is important. The principle of in dubio pro tributario should also contribute to improving the content of legal regulations created by the legislator. There cannot be a situation where the legislator neglects the quality of the content of the legal provisions and does not seek to improve them (in the form of amendments, changes). Otherwise, the poor state of legislation will lead to the constant undertaking of improvements in the understanding of the provisions both by the tax authorities, the courts, but above all by the doctrine. Not to overlook the fact that it leads to a changeable situation of the taxpayer.

The principle of in dubio pro tributario also complements and influences other principles (for example, the speed of proceedings). The content of the statement of reasons turns out to be important, it is the fulfilment of the principle of writtenness, the principle of persuasion and the principle of enhancing trust in the authorities. 3 subject must feel that his or her opinion in the form of a different understanding will be taken into account. The principle of in dubio pro tributario is not intended to serve as an argument that has no factual basis. The taxpayer must clearly demonstrate how it has understood the provision in question. The principle in dubio pro tributario is not intended to serve as an entry into polemics with the authority, but as a factual protection of the taxpayer's rights.

The favourable situation of the taxpayer requires appropriate measures and, above all, the awareness of the individual. It is desirable that in a democratic state under the rule of law implementing the principles of social justice, taxpayers do not have to wonder about the content of their rights and obligations. Indeed, the principle of in dubio pro tributario is a means of improving their situation in the event of irremovable doubts about the content of the tax rules. An analysis of the application of this principle appears to be important. It makes it possible to draw attention to the current quality of legal provisions and to improve the interpretation of the content of tax law provisions.

The favourable situation of the taxpayer requires the use of appropriate means and, above all, the awareness of the individual. It is desirable that in a democratic state under the rule of law implementing the principles of social justice, taxpayers do not have to wonder about the content of their rights and obligations. Indeed, the principle of in dubio pro tributario is a means of improving their situation if there are irremovable doubts about the content of the tax laws. It seems important to examine the application of the principle. It allows attention to be paid to the current quality of legislation and to improve the interpretation of the content of tax law provisions.

The principle of in dubio pro tributario should be a guarantee of efficient and reliable resolution of doubts. It should contribute to faster proceedings, provide a sense of security for the taxpayer; as well as to the efficient, professional operation of state authorities and their obligation to collect full evidence, including the proper preparation of convincing justifications. This calls for improving the quality of regulations, strengthening the knowledge of the content of tax law among taxpayers , although all entities, including tax authorities, should also be obliged here. The principle of in dubio pro tributario has the effect of shifting the responsibility of the state for the quality of the law made and applied. The taxpayer cannot be burdened with the negative consequences of faulty and doubtful tax laws.

The principle in dubio pro tributario also raises doubts about its applicability. If the authorities are not in doubt or aware of the possibility that the taxpayer's assertions are incorrect, will the unaware taxpayer be able to count on a more favourable outcome? The principle of decent legislation therefore needs to be emphasised. The next doubt arises when the taxpayer can choose a solution less favourable to him and avoids entering into a dispute with the authorities. The reason for such action appears to be the repressive action of the authorities and the disproportionality of the measures. At this point, however, the principle is used too rarely. It is necessary that 3 the addressee, having a different opinion to the authority, invokes the principle of Article 2a of the Tax Ordinance. The principle argues that the taxpayer has a chance to prevail in a dispute with the tax authorities, but it must be used more often.

References

Adamczyk-Kaczmara S., Nadużycie prawa a zasada neutralności podatku od wartości dodanej, Autoreferat rozprawy doktorskiej [Abuse of the law and the principle of value added tax neutrality, Self-reference of the doctoral dissertation], Warszawa 2021.

Adamiak B., 2.1.2. Podstawa prawna ustalenia zgodnego z prawem stosowania przepisów prawa [Legal basis for determining the lawful application of the legislation] (in:) B. Adamiak, J. Borkowski, Metodyka pracy sędziego w sprawach administracyjnych [Methodology of the judge in administrative cases], J. Borkowski, Warszawa 2020.

Antonów D., 2.8. Istota wykładni prawa podatkowego [The essence of tax law interpretation] (in:) Prawo podatkowe z kazusami i pytaniami [Tax law with case studies and questions], ed. P. Borszowski, 2020 p. 50-52.

Antonów D., Wykładnia systemowa prawa podatkowego w realiach członkostwa Polski w Unii Europejskiej [Systematic interpretation of tax law in the reality of Poland's membership in the European Union], Przegląd Podatkowy [Tax Review] 2008, no. 2, p. 15-20.

Bartosiewicz A., 6. Wykładnia prounijna a pogorszenie sytuacji prawnej jednostki [Pro-EU interpretation and deterioration of an individual's legal position] (in:) Ochrona praw podatnika. Diagnoza sytuacji [Protecting taxpayer rights. Diagnosis of the situation], ed. A. Franczak, Warszawa 2021.

Bernat R., Stosowanie zasady in dubio pro tributario. Komentarz do Interpretacji ogólnej Ministra Finansów z 29.12.2015 r. [Application of the principle in dubio pro tributario. Commentary to the Minister of Finance's General Interpretation of 29.12.2015] (PK4.8022.44.2015), Przegląd Prawa Podatkowego [Tax Law Review] 2016, no. 10.

Bielska-Brodziak A., In dubio pro tributario - przeszłość i teraźniejszość [w:] Współczesne problemy prawa podatkowego - teoria i praktyka. Księga jubileuszowa dedykowana Profesorowi Bogumiłowi Brzezińskiemu (tom I) [In dubio pro tributario - past and present [in:] Contemporary problems of tax law - theory and practice. Jubilee book dedicated to Professor Bogumił Brzeziński (Volume I)], ed. J. Głuchowski, Warszawa 2019.

Bielska-Brodziak A., Suska M., Węzeł gordyjski, czyli o in dubio pro tributario na tle klasyfikacji dyrektyw wykładni oraz pojęcia momentu interpretacyjnego [The Gordian knot, or in dubio pro tributario against the background of the classification of interpretation directives and the concept of the interpretative moment], Państwo i Prawo [State and Law] 2020, no. 8, p. 69-82.

Bogucki S., Zasada in dubio pro tributario po jej normatywizacji [The in dubio pro tributario principle after its standardisation], Zeszyty Naukowe Sądownictwa Administracyjnego [Scientific Journals of Administrative Justice] 2021, no. 3-4.

Brzeziński B., 2. Pewność prawa w świetle koncepcji teoretycznych [Legal certainty in the light of theoretical concepts] (in:) Zasada pewności w prawie podatkowym [Principle of certainty in tax law], ed. A. Franczak, A. Kaźmierczyk, Warszawa 2018.

Brzeziński B., Ewolucja strategii interpretacji ustaw podatkowych w orzecznictwie Sądu Najwyższego Kanady (in:) Regulacje prawno-podatkowe i rozwiązania finansowe. Pro publico bono. Księga Jubileuszowa Profesora Jana Głuchowskiego [Evolving strategies for interpreting tax statutes in the jurisprudence of the Supreme Court of Canada (in:) Legal and tax regulation and financial solutions. Pro publico bono. Professor Jan Głuchowski's Jubilee Book], Toruń 2002, p. 267 and n.

Brzeziński B., O wątpliwościach wokół zasady rozstrzygania wątpliwości na korzyść podatnika [On doubts around the principle of resolving doubts in favour of the taxpayer], Przegląd Podatkowy [Tax Review] 2015, no. 4, p. 17-21.

Brzeziński B., Rozstrzyganie wątpliwości na korzyść podatnika jako zasada wykładni prawa podatkowego. Próba analizy [The resolution of doubts in favour of the taxpayer as a principle of tax law interpretation. An attempt at analysis] (in:) Ex iniuria non oritur ius.

Księga pamiątkowa ku czci Profesora Wojciecha Łączkowskiego [Memorial book in memory of Professor Wojciech Łączkowski], ed. A. Gomułowicz and J. Małecki, Poznań 2003.

Cień K., 2. Nieokreśloność nazw w przepisach prawa podatkowego [Indeterminacy of names in tax law] (in:) Zasada pewności w prawie podatkowym [The principle of certainty in tax law], ed. A. Franczak, A. Kaźmierczyk, Warszawa 2018.

Dauter B., 4.5. Zakres wykładni [Scope of interpretation] (in:) Metodyka pracy sędziego sądu administracyjnego [Methodology of the administrative court judge], Warszawa 2018.

Drywa A., Zasada rozstrzygania wątpliwości na korzyść podatnika jako element budowania zaufania podatnika do państwa [The principle of resolving doubts in favour of the taxpayer as part of building taxpayer confidence in the state] (in:) Ordynacja podatkowa: zmiany w ogólnym prawie podatkowym [Tax ordinance: changes in general tax law], ed. R. Dowgier and M. Popławski, Temida 2: przy współpracy Wydziału Prawa Uniwersytetu w Białymstoku [in cooperation with the Faculty of Law of the University of Białystok], 2016, p. 15–27.

Florczak-Wątor M. (in:) Konstytucja Rzeczypospolitej Polskiej. Komentarz [The Constitution of the Republic of Poland. Commentary], wyd. II, ed. P. Tuleja, LEX/el. 2021, art. 2.

Gomułowicz A., Mączyński D., Podatki i prawo podatkowe [Taxation and tax law], Warszawa 2016.

Halasz A., Niejednolite stosowanie definicji pojęć prawnych w prawie podatkowym [Heterogeneous application of definitions of legal concepts in tax law], Kwartalnik Prawa Podatkowego [Tax Law Quarterly] 2017, no. 3, p. 113-123.

Janczukowicz K., Stosowanie zasady in dubio pro tributario do wątpliwości co do faktów [Application of the in dubio pro tributario principle to doubts about facts], LEX/el. 2019.

Jońca M., In dubio contra fiscum – kilka uwag na temat „barbarzyńskiej" zasady prawnej [In dubio contra fiscum - some comments on a 'barbaric' legal principle], Teka Komisji Prawniczej PAN Oddział w Lublinie [Teka Commission of Legal Sciences Polish Academy of Sciences Branch in Lublin], tom XI [Volume XI], 2018, no. 1.

Kalinowski M., Wykładnia prawa podatkowego we Belgii [Interpretation of tax law in Belgium], Kwartalnik Prawa Podatkowego [Tax Law Quarterly] 2004, no. 4.

Kalinowski M., Wykładnia prawa podatkowego we Francji [Interpretation of tax law in France], Kwartalnik Prawa Podatkowego [Tax Law Quarterly] 2004, no. 4.

Kinecka L., Zasada in dubio pro tributario jako gwarancja stabilności prawa podatkowego [The in dubio pro tributario principle as a guarantee of stability in tax law], Studia Prawnicze: rozprawy i materiały [Legal Studies: treatises and materials], 2016, no. 2(19), p. 141-15.

Kmieciak Z., Glosa do wyroku NSA z dnia 18 stycznia 1988 r. [Glossary to the judgment of the Supreme Administrative Court of 18 January 1988.], III SA 964/87, Orzecznictwo Sądów Polskich [Jurisprudence of the Polish Courts] 1990, no. 5-6.

Knawa K., Zasada określoności zobowiązania podatkowego jako postulat nauki i wymóg prawny [The principle of determinacy of tax liability as a scientific postulate and legal requirement], Toruński Rocznik Podatkowy [Toruń Tax Yearbook] 2014

Kurowski M. (in:) Kodeks postępowania karnego. Tom I. Komentarz aktualizowany [Code of Criminal Procedure. Volume I. Commentary updated], ed. D. Świecki, LEX/el. 2022, art. 5.

Kuźniacki B., Polskie CFC rules w świetle międzynarodowego prawa podatkowego. Zagraniczna i polska praktyka legislacyjna w zakresie relacji między CFC rules a umowami o UPO [Polish CFC rules in the light of international tax law. Foreign and Polish legislative practice with regard to the relationship between CFC rules and UPO agreements], Przegląd Podatkowy [Tax Review] 2015, no. 3, p. 44-55.

Kwietko-Bębnowski M., Ordynacja podatkowa. 426 wyjaśnień i interpretacji [Tax Ordinance. 426 explanations and interpretations], Warszawa 2016.

Litwińczuk H., Rozdział 7 WYKŁADNIA UMÓW O UNIKANIU PODWÓJNEGO OPODATKOWANIA [Chapter 7 EXPLANATION OF DUAL TAXATION AVOIDANCE AGREEMENTS] (in:) Międzynarodowe prawo podatkowe [International tax law], Warszawa 2020.

Maciejewski T., Historia powszechna ustroju i prawa [General history of the system and law], wyd. 4, Warszawa, 2011.

Mariański A., Rozstrzyganie wątpliwości na korzyść podatnika. Zasada prawa podatkowego [Resolving doubts in favour of the taxpayer. Principle of tax law], Warszawa 2009.

Mastalski R., Rozstrzyganie wątpliwości na korzyść podatnika, konstytucyjne i unijne podstawy opodatkowania, racjonalne tworzenie prawa, szerokie pole interpretacji prawa. Glosa do wyroku NSA z dnia 29 listopada 2017 r. [Resolving doubts in favour of the taxpayer, constitutional and EU grounds for taxation, rational lawmaking, wide field of interpretation of the law. Gloss to the judgment of the Supreme Administrative Court of 29 November 2017], II FSK 3280/15, Orzecznictwo Sądów Polskich [Jurisprudence of the Polish Courts] 2018, no. 5.

Münnich M., § 13. Zasady ogólne postępowania podatkowego [General principles of tax procedure] (in:) Prawo podatkowe [Tax Law], ed. P. Smoleń, W. Wójtowicz, Warszawa 2021 (BECK).

Nita A., Teoretyczne i normatywne wyznaczniki sprawiedliwego opodatkowania [Theoretical and normative determinants of fair taxation], Toruński Rocznik Podatkowy [Toruń Tax Yearbook] 2013.

Nykiel W., Sęk M., Karta praw podatnika – potrzebny instrument ochrony praw polskiego podatnika [The taxpayer's charter of rights - a needed instrument to protect the rights of the Polish taxpayer] (in:) Regulacje finansów publicznych i prawa podatkowego Podsumowanie stanu obecnego i dynamika zmian, Księga jubileuszowa dedykowana Profesor Wiesławie Miemiec [Public finance and tax law regulations Summary of the current state and dynamics of change, Jubilee book dedicated to Professor Wieslawa Miemiec], Warszawa 2020.

Olszanowski J., 3.2.3.4.2. Zasada przyjaznej interpretacji przepisów [Principle of friendly interpretation of the rules] (in:) System Prawa Administracyjnego Procesowego. Tom II. Część 2. Zasady ogólne postępowania administracyjnego [System of Administrative Procedural Law. Volume II. Part 2. General principles of administrative proceedings], ed. G. Łaszczyca, A. Matan, W. Piątek, J. P. Tarno, Warszawa 2018.

Popławski M. (in:) Ordynacja podatkowa. Komentarz. Tom I. Zobowiązania podatkowe. Art. 1-119zzk [Tax Ordinance. Commentary. Volume I. Tax liabilities. Art. 1-119zzk], ed. L. Etel, Warszawa 2022, art. 6.

Przybysz P. M. (in:) Kodeks postępowania administracyjnego. Komentarz aktualizowany [Administrative Procedure Code. Commentary updated], LEX/el. 2022, art. 7(a).

Rudowski J., Zasady ogólne prawa podatkowego w orzecznictwie sądów administracyjnych [General principles of tax law in the jurisprudence of administrative courts], Zeszyty Naukowe Sądownictwa Administracyjnego [Scientific Journals of Administrative Justice] 2021, no. 3-4, p. 9-18.

Sitek B., In dubio magis contra fiscum est respondendum (D.49.14.10), Studia Prawnoustrojowe [Legal Studies] no. 27, 2015.

Tadla T. J., Europejska Konwencja Praw Człowieka w porządku konstytucyjnym Zjednoczonego Królestwa, Europejski Przegląd Sądowy [European Judicial Review] 2021, no. 3, p. 16-23.

Tomke P., Zasady ogólne postępowania podatkowego na tle prawnoporównawczym [General principles of tax procedure against a comparative legal background], Gliwice 2014.

Wojciechowski B., Stosowanie prawa podatkowego przez sądy administracyjne w sytuacji interpretacyjnego pluralizmu instytucjonalnego i otwartej tekstowości prawa [Application of tax law by administrative courts in a situation of interpretive

institutional pluralism and open textuality of law], Państwo i Prawo [State and Law] 2019, no. 12.

Legal Acts

Constitution of the Republic of Poland of 2 April 1997 ((Journal of Laws, vol. 78, issue 483 with amendments).

Act of 14 June 1960 Code of Administrative Procedure (Journal of Laws of 2021, item 735 as amended).

Act of 19 April 1969 Code of Criminal Procedure (Journal of Laws No. 13, item 96 as amended).

Act of 6 June 1997 - Code of Criminal Procedure (Journal of Laws of 2021, item 534, as amended).

Act of 29 August 1997. - Tax Ordinance (Journal of Laws of 2021, item 1540, as amended).

Act of 30 August 2002. Law on proceedings before administrative courts (Journal of Laws of 2022, item 329, as amended).

Act of 11 March 2004 on Goods and Services Tax (Journal of Laws of 2022, item 931, as amended).

Act of 5 August 2015 amending the Act - Tax Ordinance and certain other acts (Journal of Laws, item 1197).

Draft Acts

Draft Act amending the Act - Tax Ordinance and certain other acts, 7th Sejm, Sejm No. 3018.

Draft Act on the Taxpayer Ombudsman, Sejm No. 669, Sejm of the Republic of Poland of the 7th term. Draft Act on the Taxpayer Ombudsman, Sejm No. 4360, Sejm of the 6th legislature.

Draft Act on the Taxpayer Ombudsman, Sejm print no. 3516, Sejm of the Republic of Poland of the 8th term.

Court rulings

Resolution of a panel of 7 judges of the NSA [Supreme Administrative Court] of 7th July 2014, II FPS 1/2014 (ONSAiWSA 2015, no. 1, item 3)

Judgment of the NSA in Warsaw of 18th January 1988, III SA 964/87 (ONSA 1989, no. 1, item 5)

Judgment of the NSA in Wrocław of 20th July 1993, SA/Wr 301/93 (M.Podat. 1994, no. 1, item 14)

Judgment of the NSA in Warsaw of 3 April 2001, III SA 3108/00 (M.Podat. 2001, no. 9, item 36)

Judgment of the Supreme Court of 7th April 2004, V KK 337/03 (OSNwSK 2004, no. 1, item 700)

Judgment of the Constitutional Tribunal of 28th October 2009, Kp 3/09 (OTK-A 2009, no. 9, item 138)

Judgment of the Constitutional Tribunal of 13th September 2011, P 33/09 (OTK-A 2011, no. 7, item 71)

Judgment of the Constitutional Tribunal of 18th July 2013, SK 18/09 (OTK-A 2013, no. 6, item 80)

Judgment of the NSA of 10th January 2017, II FSK 3729/14 (LEX no. 2182650)

Judgment of the NSA of 8th June 2018, II FSK 1627/16 (LEX no. 2523892)

Judgment of the NSA of 3rd August 2021, III FSK 3952/21 (LEX no. 3217883)

Judgment of the NSA of 31st August 2021, III FSK 3876/21 (LEX no. 3279330)

Judgment of the NSA of 10th November 2021, III FSK 4070/21 (LEX no. 3294605)

Judgment of the NSA of 1st December 2021, III FSK 4123/21 (LEX no. 3305110)

Judgment of the NSA of 2nd December 2021, III FSK 4200/21 (LEX no. 3286594)

Judgment of the NSA of 12th January 2022, III FSK 4839/21 (LEX no. 3285957)

Judgment of the NSA of 7th April 2022, III FSK 4197/21 (LEX no. 3338906)

Other official documents

Data from the website of the State Electoral Office [National Referendum 6th September 2015] Available at: https://referendum2015.pkw.gov.pl/341_Polska/0.html, accessed: 28th May 2022

Data from the website of the State Electoral Office [National Referendum 6th September 2015] Available at: https://referendum2015.pkw.gov.pl/342_Zagranica.html, accessed: 28th May 2022

Decision of the President of the Republic of Poland of 17 June 2015 on ordering a nationwide referendum (Journal of Laws of 2015, item 852, as amended).

Government Bill on the Taxpayer Ombudsman, Work in progress before the bill was sent to the Sejm, Available at: https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?id=3C4188DE6229EA53C1258417003990CA, accessed: 6th June 2022

Góźdź E., (2015) [Rzecznik praw Obywatelskich, O zasadzie rozstrzygania wątpliwości na korzyść podatnika. Praktyczny poradnik] [Ombudsman, On the principle of resolving doubts in favour of the taxpayer. A practical guide] Available at: https://www.rpo.gov.pl/sites/default/files/Rozstrzyganie%20na%20korzyść%20podatnika%20%28in%20dubio%20pro%20tribitario%29%20-%20poradnik_0.pdf, accessed: 20th May 2022

Legislative Council, Opinion of 13 March 2015 on the draft position of the Government vis-à-vis the Presidential bill on amendments to the Act - Tax Ordinance and some other acts (RL-0303-3/15), Przegląd Legislacyjny [Legislative Review] 2016, no. 2, p. 145-156.

Minister of Finance [General Interpretation of 29.12.2015, PK4.8022.44.2015, Application of the principle of resolving doubts in favour of the taxpayer] Available at: https://www.mf.gov.pl/ministerstwo-finansow/minister-finansow/dziennik-urzedowy/-/document_library_display/4PmY/view/5175930, accessed: 20th May 2022

Minister of Finance, Letter of 22 September 2015, no. PK3.002.13.MLK.2015

Ombudsman, Speech to the Minister of Finance, 8 October 2015, No. V.511.494.2015.KB on the preparation of the tax administration for the uniform application of the provision of Article 2a of the Act of 29 August 1997. - Tax Ordinance (Journal of Laws of 2015, item 613, as amended).

Tax Law Consultative Council [Opinion No. 1/2015 of 30 January 2015 on the legitimacy of introducing into Polish tax law a provision expressing the principle of resolving interpretative doubts in favour of the taxpayer]
Available at: https://mf-

arch2.mf.gov.pl/c/document_library/get_file?uuid=4cecec4d-8045-4a1a-9e3f-f1ce5ab73c7f&groupId=764034, accessed: 31th May 2022

Tax Law Consultative Council, Opinion No. 11/2015 of 16 November 2015 on the problems that may arise from the application of the provision of Article 2a of the Tax Ordinance.