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The will of parties to civil law relations in Polish tax law

Zasada autonomii woli stron stosunków cywilnoprawnych
na gruncie polskiego prawa podatkowego

1. The principle of autonomous will of parties is one of the fundamental principles of civil law. Despite various constraints, it has always been virtually impossible to overestimate the principle's significance. Nowadays the principle's importance is being reshaped due to social relationships which foster market economy and grant freedom of action to various individuals. According to the principle of autonomous will civil law renders wide freedom of diverse action to various individuals participating in legal turnover. The freedom includes ability to shape content of a legal action, choose the form, and, when it comes to bilateral actions, it grants the parties liberty to choose a partner.[1] Amongst the latter actions it is contracts that make up the basic instrument which allows the parties to shape their legal status.

The issue connected with assessing validity and efficacy of civil legal actions in the field of tax law should be considered while taking account of two rather different practical situations. The first occurs when the tax legislator clear-

[1] Compare: *System instytucji prawa cywilnego*, vol. I, *Część ogólna*, edited by S. Grzybowski, Wrocław 1985, p. 51 and following.

ly refers to tax law terms. The second takes place when the legislator uses fixed civil law terms for tax purposes. Nonetheless, the legislator has defined the terms in a way that is specific and characteristic of only one speciality. The point is that these terms and constructions as well as the meanings are understood differently in the field of civil law. Consequently, their validity and effects in the field of tax law are different[2] (e.g. the tax year in personal income tax and the farm in the scope of the provisions of agrarian tax).

In such cases examining validity and efficacy of civil legal actions, i.e. their importance in the field of tax law, one should assume that tax law is separate from civil law, which view is well-known in the bibliography of the subject. According to that view tax law should be bound by its own terms only. On the other hand, employing unmodified and unchanged civil law concepts and constructions evokes specified consequences in the field of tax law as long as they might be employed to achieve goals which are to be realised in the field of tax law.[3] Therefore, legal analysis of the meaning of civil law actions' content in the scope of tax law must be subordinated to the goals which have been set for regulations of this branch of law rather than civil law. Nevertheless, goals and tasks which are to be realised by tax law are nearly always of fiscal nature, which seems to be only natural.

According to the view which presents tax law as separate from civil law, the issue of the form in which a civil law action was performed should also be assessed separately for both branches of law. Therefore, consequences of keeping or not keeping the specified form of a legal action in the field of civil law may be different than those in the sphere of a specified tax duty. Consequently, it may be assumed that the view postulating separation of tax law, as a rule, rejects civil law viewpoint when it comes to interpretation of tax law. The thesis of the sentence of the Administrative Supreme Court (NSA) passed on 10th Nov. 1994 seems to be an expression of such a stand. The thesis straightforwardly states that "provisions of the contracts regulating rights and duties of the parties of a civil law relation cannot change the rights and duties which originate from public law relations, such as tax rights and tax duties".[4] Therefore, nature of civil law actions, as seen in the light of the tax law separation theory, manifests itself

[2] Examples might be the notion of farm according to the provisions of agrarian tax law or usable surface according to the provisions of property or lease tax law.

[3] See R. Mastalski: *Problemy stosowania prawa podatkowego*, „Edukacja Prawnicza" 1995, no. 3, p. 54.

[4] The sentence of NSA passed on 10 Nov. 1994 , SA/P 1652/94, „Monitor Podatkowy" 1995, no. 11, p. 347. Justifying the sentence the Court pointed out that: "Provisions of tax law, as the branch of law cannot be analysed in the light of the consequences of civil law actions taken by taxpayers. Therefore […] the issues of an action being proper in the field of tax law […] and the consequences of taking it should be separated from the consequences brought about by certain economic actions that the taxpayer has taken in the field of his tax duties".

in the parties' ability to freely shape their legal status, i.e. their rights and duties, however, their freedom is only granted in the field of civil law. The parties' ability to freely shape their civil law relations is restricted, from the viewpoint of their consequences, by the constraints which the concepts and institutions of tax law bring about. However, if the concepts and institutions of tax law employ the concepts and institutions from civil law domain, the effects that civil law actions bring about in the sphere of tax law depend on whether or not they are consistent with the aims of tax law regulations. This way the parties' freedom to shape their mutual civil law relations may be constrained by the provisions of tax law.[5]

A different situation occurs when the tax legislator refers to the terms of explicit civil law meaning. In such cases, the legislator purposefully and often directly reaches for civil law concepts that he has not defined separately, or whose definitions have not been included in the norms of tax law. In this vein there appears a different kind of connection between tax law and civil law: tax law employs various civil law concepts and institutions (e.g. the contract of donation, sale, credit, taking over a debt, cession of debt, exemption of debt, hire, rent, pension, the institution of coming into inheritance, etc.). Such concepts and institutions make up the basis for creating tax law norms and institutions as they become elements of the tax law norm's hypothesis.[6]

Therefore, in such cases the consequences of specified events and civil law actions become, as should be assumed, definite factual states.[7] In other words, the effects of the events or legal actions connected with specific civil law institutions make up the premises for suitable tax law institutions to function, which triggers consequences such as the rise of tax duty in the scope of a certain tax.[8] Therefore, the tax legislator may be said to have given up prerogatives that would have resulted from the theory of separation of tax law from the civil law, which has been achieved by adopting concepts and institutions that are defined and function in civil law into the normative solutions of tax law.

It may be said that separation of tax law is only justifiable as long as it regulates and specifies tax factual states. If tax law does not do it, whatever the reasons of such a state, according to the principle of unity of the legal system (or-

[5] Such a view might be found in the works by S. Rozmaryn: *Prawo podatkowe a prawo prywatne w świetle wykładni prawa*, Lwów 1939; K. Ostrowski: *Prawo finansowe. Zarys ogólny*, Kraków 1970; A. Kostecki: *Związki prawa finansowego z prawem cywilnym. System instytucji prawno-finansowych PRL*, Wrocław 1982, p. 447; R. Mastalski: *Interpretacja prawa podatkowego*, Wrocław 1989.

[6] See A. Kostecki: *idem*, p. 447; B. Brzeziński, M. Kalinowski: *Glosa do wyroku NSA*, passed on 7 Nov. 1991, S.A./Po1198/91, OSP1993, no. 10, p. 483.

[7] See K. Ostrowski: *op. cit.*, p. 23.

[8] E.g., sale of commodities in specific circumstances makes up the premises for tax duty to occur, as far as VAT is concerned, similarly taking many actions, not being a professional, triggers certain consequences as far as stamp duty is concerned.

der), while employing tax law one should use legal solutions regulated in normative acts of other branches of law (e.g. civil law, bank law, insurance law, etc.).[9] Consequently, interpreting tax provisions one should assume civil law viewpoint, or a viewpoint represented by other branches of positive law. This may provide the ground for a further-reaching conclusion. Assessment of validity and efficacy of civil law actions or events which is carried out in the field tax law depends on whether tax provisions applying to a specific case are based on concepts and institutions which have been specified autonomously, i.e. separately from other branches of law, or whether such provisions use the concepts and institutions subsidiarily, i.e. in a way that is typical of these branches of law.

2. However, the liaisons between tax law and civil law are not confined to settling the issue of mutual dependencies between specific terms. Another crucial issue is the one of authorization of an institution which is entitled to assess the actual content of civil law actions, their validity, and consequently, to pronounce the effects that they bring about in the field of tax law. It seems that this problem should be analysed in the scope of the range and the limits of separating tax law from civil law. Wherever separation of tax law can be accepted, it is the body that applies the law that should interpret the concepts included in the provisions applied. The consequence is that the principle of autonomous will of parties to civil law relations is naturally constrained in the field of tax law. The parties which take civil law actions may use the concepts which are identical to those employed in tax law, but, according to what has already been mentioned, it does not follow that tax law is bound by these concepts and civil law consequences of the actions taken. The body that applies a law can interpret it according to the regulations accepted by tax law and the aims of these regulations, analysing their content from the viewpoint of tax law provisions.

Nevertheless, the situation is different whenever the norms of tax law employ the concepts or refer to the institutions from the scope of civil law which have not been separately defined in tax law.[10] Therefore, it concerns the situations in which tax law treats certain categories of civil law relations as elements of hypotheses of tax law norms. In such cases the parties' freedom to shape content or form of civil legal actions, which is granted by civil law, should not be constrained in any way. It refers to the range of interpretation of the validity of given civil law actions, as well as their efficacy in the field of tax law.

[9] „Vademecum Przedsiębiorcy i Podatnika" 1997, no. 4, p. 61.

[10] An example might be the notion of property employed by the provisions of property tax. As the legislator has not defined this notion in the field of regulations pertaining to property tax one assumes the view that the notion should be interpreted according to art. 46 of Polish Civil Code. See sentence of NSA, passed on 27 Feb. 1992, SA-p1346/91 [in:] A. Hanusz: *Podatki i opłaty lokalne*, Warszawa 1993, p. 16.

Consequently, there appears an issue of unconstrained acceptance of the view postulating that it should be tax authorities that assess actual content of civil law relations included in certain legal actions, whenever a need of assessment arises. Can tax authorities similarly assess a legal action's congruity as to whether or not the parties kept a required form, and what ought the consequences of not keeping such a form to be? One should also ask whether tax law provides sufficient substantive and procedural basis to carry out assessment of the actual content of civil law actions, or examining validity and efficacy of civil law contracts in the field of civil law, and whether such actions defy the principle of unity of the legal system.

3. Doubts are raised about present standard practice of evaluating the actual character and analysing validity and consequences of civil law actions in the sphere of tax rights and duties. Doubts arise on the part of the taxpayer as well as the authorities employing tax law and the courts passing sentences in tax cases.[11] Interpreting expressions of will from the viewpoint of certain tax consequences has been becoming unavoidable in economic turnover more and more often. Such a necessity is much lesser whenever the parties of a civil law relation took legal action (e.g. a contract) in writing. They very often do so, even when not obliged, while giving an expression of will in a way which is clear, distinct and not raising any doubts. However, a problem arises whenever there is no clear and unambiguous expression of will of the parties referring to the content of the actions (e.g. contracts) which have not been taken in writing.

In such cases it is, first of all, necessary to perform proper analysis and qualification of a certain civil legal action from the civil law viewpoint. Its point is to establish the actual sense and character of a certain action. Establishing whether a certain contract is a contract of donation, sale, rent leasing or hire etc. might serve as a practical illustration of the issue. Secondly, one ought to assess whether or not, and to what extent, a certain action matches formal and substantive premises which seem important as far as its validity and civil law consequences are concerned. Thirdly, one should assess the consequences of an action in the field of tax law.[12]

A similar problem also arises when an expression of will given by the parties is unclear and one cannot precisely interpret its sense. In such cases it is not only the consequences in the field of civil law that make up importance of the issue of assessing the real character and purpose of an expression of will as an element shaping the content of any legal action. It is equally important in the sphere of tax law, in particular in the scope of tax rights and duties. One should consider a

[11] See *NSA: tax duty and civil contract*, „Monitor Podatkowy" 1995, no. 11, p. 347.

[12] Compare S. Brzeszczyńska: *Granice pomiędzy darowizną a nieodpłatnym świadczeniem w podatku dochodowym od osób fizycznych*, „Monitor Podatkowy" 1997, no. 8, p. 232.

general assumption that a taxpayer can neither constrain his rights as far as discretion of legal action is concerned nor give up the privileges that the principle of autonomous will of parties to civil legal relations gives him, fixing one's regards on presumptive tax law consequences instead, no matter who will assess the character and the purpose of the expression of will. The fact that civil law grants the parties extensive freedom of shaping their legal status should not trigger negative consequences in the field of other branches of law. In case of doubt, while explaining the content of an expression of will one should always employ a general interpretation directive expressed art. 62 § 2 of the Polish Civil Code: while interpreting contracts one should first of all consider the criterion of unanimous intention of parties and the purpose of the contract, analysis of the literal form of the contract being a secondary matter.

Last but not least, it should be pointed out that tax law provisions do not restrain the parties from taking actions that would be best for them from the economic viewpoint.[13] The fact that they take liberty to enter into contracts or that the taxpayers choose certain institutions and legal solutions cannot be judged by tax authorities on account of the financial results that such institutions and solutions bring to the budget of the state or a council. However, there remains a problem of assessing their concord with the actual content of an expression of will and the law in force, so, among other things sham contracts and actions in *fraudem legis*. Financial consequences resulting not only from tax law relation of commitment but, first of all, from the duty pertaining to a certain tax depend on establishing the actual content of an expression of will given by the parties of a civil law relation. It is the issue of the efficacy of civil law actions in the field of tax law rather than the issue of validity that is crucial for employing concepts and institutions of civil law in the field of tax law.[14]

[13] It seems that one may agree with the view of B. Brzeziński and M. Kalinowski included in the aforementioned gloss on the sentence of NSA passed on 7 Nov. 1991(p. 483), according to which tax law circumstances are one of many reasons that can be taken into consideration while assessing the benefits resulting from the transactions that the parties take. Other such premises include commodities' and services' price, the degree of risk and uncertainty in realisation of the contracts the parties enter into.

[14] See the statement by R. Mastalski made during the conference organised by the editors of „Przegląd Podatkowy" (1998, no. 4, p. 3) entitled *Podatek dochodowy a renta umowna*. Validity of civil legal actions is not decisive in the field of tax law, except in stamp duty. In other public duties even the actions which are not valid in the light of civil law are subjects to taxation. For example, the content of the art. 2 section 4 of the act passed on 8 Jan. 1993 concerning VAT and excise (Dz. U. no. 11 section 50), states that actions included in the subject range of the VAT are taxed no matter whether or not they have been taken without breaching the conditions and the forms set up by the provisions of law.

4. The issue of making use of civil law actions to circumvent tax law is equally important.[15] Broadly speaking, it is about employing constructions and the principles of civil law, including the principle of autonomous will of parties to civil law relations, to bypass tax law in order to evade taxation or restrict taxation effectiveness via lessening financial burdens. The issues connected with using civil law actions in order to get round tax law trigger many controversies in the field of civil law doctrine as well as in the field of tax law. Moreover, there are various ways in which this phenomenon is interpreted by the judicature.

According to the view that seems to dominate in administrative jurisdiction, the character of civil law contracts that allows the parties to shape their mutual rights and obligations cannot be employed to circumvent tax law provisions by evading tax duty or lessening tax commitment.[16] However, a further reaching thesis can be found in the sentence of the SN (Polish Supreme Court), in which it was assumed that a civil law action that the parties shaped in order to bypass tax provisions does not become invalid because of that reason. The action is still valid in the field of civil law. However, the consequences in the field of tax law do not result from respecting such actions. The ratio of such a stand is the assumption that tax law norms feature proper means of realising the objectives for which they have been drafted. Consequently, reaching these objectives becomes independent of the legal actions that aim at circumventing tax law provisions.[17] Another sentence of the Supreme Court (Sąd Najwyższy) features a slightly different viewpoint. It proposes that the parties can freely shape their contractual relations, on the condition that their content and the aim do not contradict the nature of a given legal relation. However, assessing the content and the aims of a given contract one should first of all take account of actual activities of the taxpayers. It should be done even if the taxpayers' actual actions do not result from the provisions stated *expressis verbis* in the contract itself.[18]

It seems acceptable that whenever the lawmaker asserts separation of tax law from civil law and other branches of law, tax authorities are not bound by the civil meanings of the terms, concepts and legal institutions or the forms that the

[15] Considering the views expressed in the civil law doctrine, one may assume that a legal action that aims at circumventing law is the one whose content, although formally in agreement with a legal act, in fact gets at the aim that has been prohibited by that act. Compare S. Rudnicki: *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna*, Warszawa 1998, p. 47 and following.

[16] See NSA sentences passed on 7th Dec 1991, SA/Po 1198/91, OSP 1993, no. 10, p. 479; on 30th Dec. 1991, SA/Po1562/91, ONSA 1993, no. 2 item 34; on 10 Nov. 1993, SA/P 1527/93, „Przegląd Orzecznictwa Podatkowego" 1995, no. 3 item 47.

[17] See the sentence of SN passed on 8th Feb. 1978, II CR 1/78, „Przegląd Orzecznictwa Gospodarczego" 1979, no. 8–9, p. 262 and following.

[18] See the sentence of SN passed on 4th of Feb.1994, III ARN 84/91, OSN 1994, no. 10, item 196.

participants of the legal turnover adopted for their actions, and consequently civil law assessment of the achieved results. Tax authorities are not bound by such consequences neither while establishing the fact of arising a tax duty nor at the point of establishing or designating the amount of tax. Therefore, whenever tax law adopts civil law concepts and institutions tax authorities should check whether the meaning that they acquire in civil law triggers consequences in the field of tax law, and if so to what extent it does so (e.g., if a person enters into a contract of tenancy of the lands incorporated in a farm, tax authorities should check whether the person does so in the light of the provisions of the agrarian tax, so as to properly assess tax law consequences of such an action). Moreover, tax authorities can also make sure that an action which, in their opinion, makes use of concepts, institutions or forms provided by civil law is not in contrast with tax law objectives, as far as a given case is concerned.

Tax authorities are entitled to individually establish the actual content of the relations that bind the parties. Nonetheless, it may well result in constraining the parties' freedom to shape their legal relations. Tax authorities have the right to look into and assess content or form of a civil law act, however only according to the factual tax law state that has been provided by specific law. Therefore, the subject and the range of such an assessment is set up by the tax law norms. Tax authorities can only establish the factual state that they come across at the moment of instigating tax procedure, assess it and derive tax law consequences on the basis of such an assessment.[19] There is no legal possibility for tax authorities to arbitrarily assess and verify the content of a given legal action, nor to pass a judgement on the validity and efficacy of a given civil law contract.

Yet tax authorities can carry out such procedures if it should be necessary for the validity and efficacy of a contract to satisfy the conditions that have to be met under provisions of a given tax law, which makes such conditions elements of tax law factual state (e.g. when tax law provisions demand that the form which has been set up by civil law be met, so that a legal act can be acknowledged as valid).[20] In such cases tax authorities investigate and assess nothing but the content of a tax law action, taking tax law norms into consideration. Conversely, it neither investigates civil law actions nor uses civil law norms to do so. However, tax authorities will take interest in the consequences of certain civil law actions, provided that they make up hypotheses of tax law norms, i.e. elements of tax law factual state.

5. In this field there appears a problem of procedural guarantees of autonomous will of parties performing civil law acts in tax proceedings. Actually, it is tax authorities that nearly always – for the purposes of tax law – perform inter-

[19] See the sentence of NSA passed on 29th Aug. 1997, SA/Ł 3157/95, unpublished.

[20] This is pointed out by C. Wiśniewski, see discussion on *Podatek dochodowy…*, *ibidem*, p. 4.

pretation and arbitrarily establish the content and the consequences of a given civil law act. For instance, passing the decision designating amount of tax overdue according to the procedure provided by art. 22 § 3 of Procedural Tax Law (Ordynacja podatkowa)[21], tax authorities state that the taxpayer concluded the contract of tenancy rather than – as might be understood from the content of the according document – the contract of loan. Passing another decision, tax authorities state that a contract of sale is in fact a contract of lease, and a contract of commutation is, according to tax authorities, a contract of sale, etc. Tax authorities quite often take such steps after a long time. Therefore, not only does such a situation threaten the principle of autonomous will of parties to civil law relations, but also the principle of certainty of legal turnover, it also defies the principle of unity of legal system. Consequently tax authorities' intrusion into the content of civil law relations results in changing the elements of tax law factual state. The consequence for the taxpayer is an increase in financial burden. On the other hand, it is accompanied by an increase in public income.

Tax law guarantees of independent assessment of civil law acts should first of all be sought in the general principles of tax procedure. They have been listed in Procedural Tax Law (Ordynacja podatkowa). The guarantees, mainly stem from the content of art. 121 § 1 of Procedural Tax Law (Ordynacja podatkowa): "tax procedure should be carried out in a way that instils confidence in tax authorities," which should be understood as an impartial way of carrying out tax procedures. According to art. 122 "during tax proceedings tax authorities are obliged to take all steps necessary to precisely clarify the factual state of the case." The principle of the objective truth obliges tax authorities to take active measures while seeking inference that matches reality. The principle is substantiated by the provisions of Procedural Tax Law (Ordynacja podatkowa) concerning evidence proceedings. Inference in accordance with the facts may only be acquired on condition that all the rules set up by Procedural Tax Law (Ordynacja podatkowa) are obeyed, particularly the provision of art. 187 § 1. According to its content tax authorities are bound to collect a thorough body of evidence, and then examine it comprehensively. Tax authorities should collect evidence considering circumstances that are disadvantageous as well as those that are advantageous to the taxpayer's substantive situation. However, it is only the circumstances and facts which have been revealed during tax proceedings that can make up the basis of a tax decision. Tax authorities adjudicate (art. 191 Procedural Tax Law) whether or not a given circumstance has been proven on the basis of the evidence gathered. According to the principle of the unconstraint assessment of evidence tax authorities are not bound by any principles concerning evidence. Contrary to the principle of formal assessment of evidence, which

[21] The act passed on 29th of Aug. 1997 – Ordynacja podatkowa, Dz. U. no. 137, item 926.

ascribes a given factual state to a ready content, tax authorities adjudicate the case on the basis of their belief that is based on free recognition of evidence accepted. Some pieces of evidence may be considered trustworthy, others untrustworthy.[22] Tax authorities must give a tax decision founded on a convincing basis and explain it in the decision's content. However, evaluation of evidence may only be carried out in agreement with the principles of logic. The range of evaluation is naturally limited to the pieces of evidence which have been collected in the course of evidence proceedings.

6. The basic constraint of the principle of autonomous will of parties to civil law relations in tax proceedings is unilateral interpretation of the principle of free evaluation of evidence performed by tax authorities.[23] Tax authorities claim the ability of evaluating content of civil law relations without employing all means of evidence. This way adjudications which are not based on complete circumstances are accepted. In other words, having given up such means of evidence as hearing the witnesses, it is tax authorities' arbitrary consideration that is decisive in establishing whether a deal of lend, closed years ago, was, from the tax law viewpoint, a deal of lease, leasing or another deal of a similar character.

In my opinion, proceedings in a public court that would lead to adjudicating, as an introductory matter, the issues of evaluating the actual character of the content of a given civil law relation would provide full guarantees to the principle of autonomous will of parties to civil law relations in the field of tax law. Tax authorities should suspend tax proceedings to make it possible. According to art. 201 § 1 of Procedural Tax Law (Ordynacja podatkowa), whenever there occur events that make further proceedings temporarily impossible, tax authorities are obliged to suspend such proceedings. Procedural Tax Law embraces the situation in which passing a decision depends on another court's or organ's adjudication upon an introductory matter that is a pre-judicial issue, as one of the causes justifying suspending tax proceedings. Passing a tax decision in accordance with law becomes impossible without establishing the actual content of an expression of will. Such an adjudication can only be made by a public court.[24] Suspending proceedings tax authorities are obliged to pass a decision that is delivered to a party. The party is entitled to bring forward a grievance in opposition to the decision suspending proceedings. Accepting the aforementioned way

[22] Compare R. Mastalski, J. Zubrzycki: *Ordynacja podatkowa. Komentarz*, Wrocław 1998, p. 176,

[23] One must admit that the principle of autonomous will of parties of civil law relations is constrained in the field of civil law as well. However, it is first of all connected with guaranteeing certainty of the legal turnover, especially ascribing specific consequences with bad or good will of the buyer of commodities or legal rights, compare *System prawa cywilnego*…, p. 52.

[24] See M. Szubiakowski, M. Wierzbowski, A. Wiktorowska: *Postępowanie administracyjne ogólne, podatkowe i egzekucyjne*, Warszawa 1996, p. 156.

of acting doubtlessly prolongs the course of tax proceedings. However, in no way does it breach the content of art. 125 of Procedural Tax Law (Ordynacja podatkowa), which obliges tax authorities to act promptly and make use of the simplest available means leading to settling the case. This provision, first of all states that the primary directive and the feature of tax proceedings must be its insight. Breaching substantive law that lies in a faulty qualification of a civil law contract's content and consequently tax law factual state is doubtlessly defiance of the postulate of insight in tax proceedings.

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In conclusion, it may be assumed that the guarantees of respecting the principle of autonomous will of parties in the process of applying law do exist although their range is restricted in the field of provisions of Procedural Tax Law (Ordynacja podatkowa). Such awareness should encourage taxpayers to employ the guarantees in tax proceedings. It should also be noted that in many cases the provisions of Procedural Tax Law (Ordynacja podatkowa) do not satisfactorily oblige tax authorities to act in a way that would respect the principle. They put the taxpayer in a position that is considerably less favourable than that of tax authorities. It is a symptom of constant superiority and domination of the state's (or a council's) fiscal interest over the country's general-economic and macroeconomic considerations. Consequently, such a situation may result in restraining and even eliminating some types and kinds of civil law actions from economic turnover.

STRESZCZENIE

Jedną z fundamentalnych reguł prawa cywilnego jest zasada autonomii woli stron stosunków cywilnoprawnych. Skuteczność dokonywanych w ramach tej zasady czynności cywilnoprawnych, oceniana na gruncie prawa podatkowego, zależy od wielu czynników. Dla oceny tej istotne jest przede wszystkim to, czy przepisy prawa podatkowego w konkretnym przypadku opierają się na pojęciach i instytucjach prawnych w znaczeniu nadawanym im w prawie cywilnym, czy też posługują się nimi w sposób właściwy wyłącznie dla stosunków prawnopodatkowych. Jednakże analiza prawna znaczenia treści czynności cywilnoprawnych na płaszczyźnie prawa podatkowego zawsze podporządkowana musi być zadaniom, jakie ustawodawca stawia regulacjom tej gałęzi prawa, nie zaś prawa cywilnego.

Dość powszechnie przyjmuje się, że organy podatkowe mają prawo badać i oceniać treść bądź formę czynności cywilnoprawnych. Analiza ta powinna być z kolei dokonywana w zakresie wyznaczonym przez normy prawa podatkowego. Należy również pamiętać, że skutki określonych czynności cywilnoprawnych mają znaczenie dla organów podatkowych tylko wówczas, gdy są one objęte hipotezami norm prawnopodatkowych,

a więc elementem danego prawnopodatkowego stanu faktycznego. Wydaje się jednak, że w obowiązujących przepisach regulujących postępowanie podatkowe brak jest wystarczających gwarancji przestrzegania przez organy podatkowe autonomii woli stron stosunków cywilnoprawnych. Obecna sytuacja prowadzić może w konsekwencji do ograniczania, a nawet eliminowania niektórych typów i rodzajów czynności cywilnoprawnych z obrotu gospodarczego. Dostatecznych gwarancji przestrzegania omawianej zasady udzielałoby natomiast z konieczności postępowanie przed sądem powszechnym, prowadzone w celu rozstrzygnięcia kwestii oceny rzeczywistego charakteru treści danego stosunku cywilnoprawnego jako zagadnienia wstępnego.