

THE COMPARISON OF PREMISES FOR RECOGNIZING TAX BOOKS AS KEPT NOT COMPLIANT IN THE TAX LAW AND ACCOUNTING LAW IN POLAND

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Abstract

The purpose of this article. The purpose of the paper is to compare and assess provisions on premises for recognizing tax books as kept not compliant to the regulations in the tax law and accountancy law as well as to discuss the possibility of using the tax judgments on this issue in the interpretation of compliant account books in the accountancy law. The research hypothesis is as follows: The tax judgments on the premises for recognizing tax books as kept not compliant may be also used directly for the interpretation of compliancy of account books in the accountancy law.

Methodology. The descriptive study including critical attitude to the legal acts and literature was used to solve the research problem.

The result of the research. Both the tax law and accountancy law comprise the rules for recognizing tax books (account books) to be compliant to the regulations. The tax law uses the terms of the reliability and correctness. The Accountancy Act law uses the terms of the reliability, error-free, verifiable manner and on an on-going basis. Although definitions of reliability are very similar, as the analysis shows, the character of reliability of tax books is not always the same as for account books. The judgments in the field of interpretation of the reliability for tax purposes may not always be used for accounting purposes. The term correctness in the Tax Ordinance does not always correspond to the terms: error-free, verifiable manner and on an on-going basis in the Accountancy Act. So, the tax judgment concerning correctness of the tax book from the tax law cannot be directly applied into the interpretation of such terms as error-free, verifiable manner and on an on-going basis in the accountancy law. The paper additionally proposes some changes to the tax law concerning the unreliability of tax books, as well as changes to the Accountancy Act.

Keywords: tax books, account books, tax base estimation, unreliability and incorrectness of tax books, unreliability of account books.

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INTRODUCTION

The taxpayers and enterprises should keep their tax books (account books) compliant to the regulations. Both the tax law and accountancy law comprise the rules for recognizing tax books (account books) to be compliant to the regulations.

The tax law uses the terms of the reliability and correctness of tax books in the assessment of their compliance with regulations. The tax law defines the terms of reliability and correctness.

The features of compliant account books are also indicated in the accountancy law. Account books should be kept as reliable, error-free, in a verifiable manner and on an on-going basis. The accountancy law also defines these terms.

Moreover, there are numerous juridical judgments concerning the problem of compliant tax books in respect of their reliability or correctness.

The judgments concerning the problem of compliant account books in the accountancy law are much less numerous compared to the tax judgments.

According to some authors, the premises for recognizing tax books as kept not compliant to the regulations respond to those indicated in the Accountancy Act (Bartosiewicz and Kubacki, 2008a: 27; Bartosiewicz and Kubacki 2008b: 26–29). Some authors claim that the tax judgment in respect of reliability or correctness of tax books may be used in the interpretation of features of compliant account books (Walińska and Wencel, 2018: art. 24; Wencel, 2018: 473–482; Iwińska et al., 2008).

However, such opinions are not so obvious. The premises for recognizing tax books as kept not compliant to the tax law are not the same as those in the accountancy law.

The purpose of the paper is to compare and assess provisions on premises for recognizing tax books as kept not compliant to the regulations in the tax and accountancy law as well as the discussion of the possibility of using the tax judgments on this issue in the interpretation of compliant account books in the accountancy law.

The research hypothesis is as follows: The tax judgments on the premises for recognizing tax books as kept not compliant may be also used directly for the interpretation of compliancy of account books in the accountancy law.

The descriptive study including critical attitude to the legal acts and literature was used to solve the research problem.

1. COMPLIANCE OF TAX AND ACCOUNT BOOKS WITH THE REGULATIONS

Taxpayers and entrepreneurs should keep their tax or accounting books compliant to the regulations. The issue of tax or accounting books compliance is discussed in the tax and accountancy law.

The compliance of tax books is part of the tax compliance as one of the reason of tax frauds (Andreoni et al., 1998). In case of tax books compliance the researchers concentrate on negative effects of uncompliant tax books. Being compliant to the regulations is therefore critical for companies to experience successful inspections and avoid negative effects of uncompliant tax books. The consequences of not compliant tax books are presented (Huchel, 1994; Buse, 2010; *Schaetzung...*). As Lapidoth indicates that the uncompliant tax books may cause the tax base estimation (Lapidoth, 1977). Other authors indicate the methods of calculating the tax liabilities and the methods of tax base estimations by the tax administration (Gaudemet, 1990; Huchel, 1994; Klein, 2009).

An important issue of tax compliance including the compliance of tax books is transfer pricing. The scope and types of transfer prices are discussed (Jaeger, 1987; Cravens, 1997; Schronberger, 1998; Klein et al., 1983).

As transfer prices may be used for tax planning or tax frauds (Eden, 2009), the establishing of transfer prices is widely discussed. The use of different transfer pricing methods is especially discussed (Kaminski, 2001; Helbing, 1995; Guenkel, 1996; Boss et al., 2000; Hamaekers, 2002; Hamaekers, 2003; Rosenberg, 2003).

OECD has issued numerous guidelines on the use of transfer pricing for tax objectives (OECD, 2020a; OECD, 2017; OECD, 2015; OECD, 2012; OECD, 2010; OECD, 2001; OECD, 1987; OECD, 1981). The use of those guidelines in particular is discussed (Schreiber and Poennighaus, 2013). The influence of Covid-19 on tax regulations in case of transfer pricing is also discussed (OECD, 2020b; Le Boulanger et al.).

The issue of compliance of tax books to the Polish tax law has also been widely discussed. Researchers concentrate on interpretation of meaning of reliability and the correctness for tax purposes including the judicial judgment.

Polanowski e.g. proposes the definitions of reliability for tax purposes (Polanowski, 1997: 9–11).

Malinowski discusses the procedural issues concerning declaring the books as unreliable in the tax inspection (Malinowski, 2006: 3–4).

Bartosiewicz and Kubacki discuss the meaning of reliability also in the judicial judgment, consequences of declaring the books as unreliable in the tax law and in the fiscal-penalty or penalty law (Bartosiewicz and Kubacki, 2008a). These authors also discuss the meaning of correctness, consequences of declaring the books as incorrect in the tax law and in the fiscal-penalty or penalty law (Bartosiewicz and Kubacki, 2008b). Melezini and Zalewski, apart from discussing the meaning of reliability and the consequences of declaring the books as unreliable in the tax law, indicate examples of unreliable tax books (Melezini and Zalewski, 2011: 27–31).

Wencel explains a meaning of reliability and the correctness of book accounts for accounting and taxation purposes, and presents the most frequent reasons for disputing the reliability of tax books by tax authorities (Wencel, 2018: 473–482). The consequences of unreliable or incorrect tax books in the tax law are discussed (Biernacki, 2008; Dzwonkowski, 2012).

The relationships between reliability and the correctness are also presented (Omieczynska, 2022).

The researchers take also the results of not compliant tax books in the tax base estimations into account. The correctness of the use the methods of tax base estimations by the tax administration is primarily discussed (Ginter, 2015; Durczyńska, 2015; Witczak, 2017; Witczak, 2018; Kłosińska, 2020).

The tax issues of transfer pricing, especially the method of establishing transfer pricing and tax documentations are widely discussed (Baćkowski, 2001; O’Shaughnessy, 2003; Dmowski, 2006; Felis, 2008; Nykiel and Strzelec, 2014; Ścierańska, 2016; Piekarczyk, 2018; Kosieradzki et al., 2021).

The issue of accounting books compliance is involved with the discussion on the true and fair view principle and its application in different systems (Alexander, 1993; Arden, 1997; Antoniadou, 2009: 1–17).

Nowak presents the role of accounting standards in creating a true and fair view of a company (Nowak, 2014: 117–125).

Ignatowski evaluates the understanding and practical dimension of the concept of true and fair view (Ignatowski, 2017: 47–70).

Supera (2022) indicates the premises for the compliance of account books and the penalty effects of not compliant account books.

2. COMPLIANCE OF TAX BOOKS TO THE REGULATIONS IN THE POLISH TAX LAW

Generally, the Tax Ordinance Act regulates the compliance of tax books to the regulations in the tax law. The law in force states that tax records should be kept reliable and correct (Adamiak et al., 2016: 255–256; Melezini 2017: 281).

According to the law, tax books are meant as account books, tax book of revenues and expenditures, records and registers, which taxpayers, tax remitters and tax collectors are obliged to keep for tax purposes, on the basis of separate provisions (Art. 3 p. 4 Act of 29 August 1997 Tax Ordinance Journal of Laws 2021, item 1540).

It means that on one hand, there are the account books, tax book of revenues and expenditures, records and registers as well, although the records and registers were not specified by the law. The account books and tax book of revenues and expenditures are traditionally considered to be devices that record economic activities of major importance for tax reasons, having a special evidential

significance and high importance for income taxes. The records and registers not specified in the provisions in more detail, are kept on the basis of various provisions by taxpayers, tax remitters and tax collectors (Strzelec, 2015).

The law requires that unreliability and incorrectness of tax books should be determined in a report of the review of the tax books as stated in Art. 193 item 6 Act of 29 August 1997 Tax Ordinance (Journal of Laws 2021, item 1540).

According to the law, the tax books are considered reliable if the records made in them reflect an actual state of affairs. So, the unreliability of tax books means that their entries do not reflect the actual state as stated in Art. 193 item 2 Act of 29 August 1997 Tax Ordinance (Journal of Laws 2021, item 1540). The tax book should be reliable, which means it should be kept correct in terms of material (Strzelec, 2015).

It is indicated that the unreliability is objective in nature. It does not depend on the reasons for its performance. A tax book in which an error was made due to a mistake, not an intention to actually evade taxes will be considered as unreliable (Piłat: 2010 gpp1).

It does not matter for the tax book to be considered unreliable due to the fault (or the lack of the fault) of the taxpayer. Determining of guilt occurs in the case of criminal law (penal-fiscal law). The purpose of criminal proceedings is to establish the taxpayer's guilt for the committed crime. The purpose of the tax proceedings (more broadly, considering the discussed issue of legal and tax relations) is different. Their primary task is to provide funds for the functioning of the state, and the awareness, or lack of awareness of a mistake making the tax book unreliable for the tax consequences, is irrelevant (Hanusz, 2000: 68–69).

The question of the objectivity of unreliability of the tax books had not been clear in judgments in the past. There had been judgments stating that the taxpayer's intent, purpose and fault, as well as other circumstances, are relevant to determining the reliability of the tax books (SC judgment 20.06.1996). In another judgment, the Supreme Court stated that tax authorities should also take into account subjectively possible human errors (SC judgment 20.06.1996). A similar view was expressed by the Supreme Administrative Court in its judgment (SAC judgment 22.01.1997).

However, this approach has been rejected in subsequent court judgments. The Supreme Administrative Court stated that “for the assessment of the reliability of a tax book, the subjective factors accompanying the making of entries in it are not relevant. Thus, both a tax book in which no entry was made to conceal the income earned, and one in which an erroneous entry was made by mistake are considered unreliable” (SAC judgment 21.03.2000).

Similarly, in another judgment, the Voivodeship Administrative Court stated that “For the assessment of the unreliability of tax books, the reasons for it are not important. It is irrelevant whether the taxpayer culpably (e.g. as a result of a lack

of attention to their own economic interests, or intentionally)” (VAC judgment 11.08.2016).

The tax book is unreliable if there was no entry of the activity in order to hide the activity or the revenue. The tax book is also unreliable if the wrong entry of the activity was caused by the mistake (Mariański and Strzelec, 2012: 108).

The reliable tax book should include all economic activities which may have the impact on the amount of tax. All such economic activities should be entered in the tax book. Tax books are considered reliable when they show all the facts that should be entered and these entries are entirely truthful. The feature of reliability is lost when records do not reflect the actual facts, i.e. they contain false entries. For example, the false entries are: the lack of records of events that took place in reality, recognition of fictitious events, e.g. in terms of tax deductible costs, recording amounts in deviating values from reality. To assess if the tax book is unreliable, the effect of overreporting or underreporting the tax base is irrelevant. This means that the tax book will be unreliable both when the taxpayer overreported the tax deductible costs and when the taxpayer did not include these costs in the tax book. Nevertheless, the judgments indicate that unreliability is a factual error and is not related to errors in the application of the law. One judgment of the Supreme Administrative Court states that the provisions do not allow for the recognition of the tax book as unreliable if the tax authority finds that the expenditure from its point of view is irrational, and should not incur a tax deductible cost (Strzelec, 2015). Important interpretation of the character of unreliability is presented by the juridical judgment. According to the administrative court, a taxpayer’s violation of the substantive law by deducting as deductible expenses that cannot be recognized as such expenses, is not the unreliability of the tax books, and this regardless of the size of this error, in relation to the amount of revenue. The concept of tax books reliability refers to the correspondence of entries with the actual state of affairs. In other words, unreliability is an error of fact, not of law, for the assessment of the books in terms of reliability relates to the sphere of fact-finding, not legal assessment (VAS judgment 15.04.2009).

The determination of unreliable tax books is one of the elements of the entire procedure related to the tax base estimation. According to the Supreme Administrative Court, first of all, the books should be examined, their unreliability should be found while complying with the procedure under Art. 193 § 4–8 of the Tax Ordinance. Then, the report on the examination of the books should be provided. Only when there is no data necessary to determine the tax base, and also when the data resulting from tax books does not allow for its determination – can the tax base be determined by estimation. As the Supreme Administrative Court states, the tax base estimation is allowed only after the tax book is recognized unreliable and as a consequence, the tax books are not acknowledged as evidence

of what it follows from the entries in the tax book. In the opinion of the court, the tax base estimation may only be a consequence of determining the tax book as unreliable, and not the reason for determining this unreliability (SAC judgment 27.10.2005).

The tax law foresees cases when the approach to the unreliability is gentler. Regulation on tax book of revenues and expenditures indicates five different cases which allow, in spite of the committed errors, to recognize the tax book of revenues and expenditures as reliable. For example, the tax book of revenues and expenditures is treated as reliable, even if not entered, or incorrectly entered amounts of revenue do not exceed a total of 0.5% of the revenue shown in the book for a given tax year, or revenue shown in the tax year until the date on which the tax authority found these errors as stated in Art. 10 Regulation of 23.12.2019 on Keeping Tax Book of Revenues and Expenditures (Journal of Laws 2019, item 2544).

These regulations are a special provision in relation to the principles of recognizing tax books as unreliable in the Tax Ordinance. One can analyze the constitutionality of these provisions, as they change the understanding of the reliability specified in the Tax Ordinance. The legislator gave the right to define the principles of keeping tax books for those who do business activity. It should be considered whether the Minister of Finance has not exceeded his powers to soften the conditions for recognizing the books as reliable or correct. According to the law, the Minister of Finance should take into account when issuing the regulation, the method of keeping a tax book of revenue and expenditures, detailed conditions to which that tax book must conform, and the detailed scope of duties connected with keeping that tax book in order to enable its use as a proof that allows to determine tax liabilities in the correct amount (Art. 23a item 7 Act of 26 July 1991 on Personal Income Tax Journal of Laws 2021, item 1128).

Certainly, this softening of conditions of unreliability does not infringe the rights of taxpayers. Nevertheless, the regulation itself may be unconstitutional in this respect. It would be advisable to introduce legislative changes.

Two separate ways can be distinguished here: one consisting in the deletion of provisions in the regulation on tax book of revenues and expenditures regarding reliability; the other – their transfer to a legal act or extension of the scope to issue a regulation in Personal Income Tax.

The tax law in context of keeping tax books, uses not only the term of reliability but also the term of correctness. Tax books are correct when they are kept in accordance with principles resulting from separate provisions. However, the tax authority shall consider as evidence the tax books that are kept incorrectly, if defects have no essential impact on the tax case as stated in Art. 193 item 3, 5 Act of 29 August 1997 Tax Ordinance (Journal of Laws 2021, item 1540).

Thus, correctness of tax books concerns the relationship between the reality understood as a way of making an entry and the legal model of this way contained in the applicable regulations. Therefore, whether the books kept by the taxpayer may be considered evidence in the proceedings, as kept in accordance with the applicable rules, is determined by the provisions regulating the operation of a specific record-keeping device. The tax book should be correct i.e. kept correctly in formal terms (Strzelec, 2015).

The incorrectness of the tax books is graded. If the error causing them to be incorrect is not material, and not relevant to the case, then the incorrect tax books can be used as evidence in tax proceedings (Bartosiewicz and Kubacki, 2008b: 27).

The literature indicates that unreliability and incorrectness are separate concepts, as they have separate patterns. However, if the incorrectness results in the rejection of the books, the results of incorrectness and unreliability are the same. This does not mean, however, that incorrectness becomes unreliability. Unreliability is an evident inconsistency of the accounting entry with reality, which – if it were taken as the basis for the assessment – would result in the determination of an incorrect amount of tax. Irregularity means that it is impossible to determine the tax base, but not that the data is factually incorrect. It can be noticed that even in the 1980s, the boundaries between unreliability and incorrectness were not clear (Dzwonkowski). However, a contrary opinion is presented in the literature. According to Omieczńska (2022) the concept of unreliability is broader and encompasses the concept of incorrectness, for any finding of unreliable and incompetent preparation of tax records is evidence of the existence of defects that are material to the case. By contrast, not every incorrectness is evidence of unreliable preparation of records. Thus, unreliability is a qualified form of incorrectness.

It can be firmly stated that the terms unreliability and incorrectness differ. An entry to tax books may cause both unreliability and incorrectness, but their character is different.

This distinction is very important to assess if we may use the tax jurisdiction for accounting purposes.

3. COMPLIANCE OF ACCOUNT BOOKS TO THE REGULATIONS IN THE ACCOUNTANCY LAW

The question of compliance of account books with the regulations is also discussed in the accountancy. The literature indicates the features of account books (Kiziukiewicz, 2016). They are also indicated in the Accountancy Act. Account books should be kept as reliable, error-free, in a verifiable manner and on an on-going basis as stated in Art. 24 item 1 Act of 29 September 1994 Accountancy Act (Journal of Laws 2021, item 217).

According to the law account books are considered to be reliable if the entries made in them reflect the actual state of affairs as stated in Art. 24 item 2 Act of 29 September 1994 Accountancy Act (Journal of Laws 2021, item 217).

According to some authors, the statement of reliable account books means that the entries show the actual state, referring to the economic effects of transactions. The account books should provide actual information about the financial position, financial performance of the entity. Reliability means that the entries in the account books are consistent with the actual economic transactions, i.e. economic operations are recognized in accordance with the actual state. So, economic operations are recorded in line with the actual state of affairs. Unreliability of account books will appear, for example, in the following situations: a failure to enter in the account books the factual transaction; entering the fictitious transaction in the account books; entering under or over reporting value of transaction in the account books (Walińska and Wencel, 2018: art. 24). Reliability is understood objectively, so the reason for the error is irrelevant (Śleszyńska, 2013).

Making rational management decisions requires constant access to complete and reliable information. One of the basic sources of such information should be accounting and especially, its last stage – reporting. Therefore, the books of accounts must reliably present the picture of the financial position, financial situation. According to Rosiek, it is about making efforts to ensure that the account books and finally, also the financial statements reflect the reality in the best possible way (Rosiek, 2020).

In order to ensure the reliability of bookkeeping, it is of particular importance to control the accounting documents that are the basis for entering, as well as the control of the correct entering of economic operations. Detected accounting errors can be removed only in the manner specified in the Accounting Act (Śleszyńska, 2013).

When analyzing the reliability of the books of accounts from the point of view of the accountancy law, it should be noted that the concept of reliability also appears in the context of accounting documents. According to the regulations, accounting documents should be reliable, i.e. consistent with the actual course of the business operation that they document, complete, containing at least the data specified in the regulations, and free from accounting errors as stated in Art. 22 item 1, Act of 29 September 1994 on Accountancy (Journal of Laws, 2021, item 217).

The term of reliability for accounting documents refers to the concept of the actual course of business operations. If an accounting document does not fully reflect the course of a business transaction (there is a discrepancy in, for example, the date, value, quantity), it cannot be considered reliable. The regulations separately indicate that the documents should be free from accounting errors as

stated in Art. 22 item 1, Act of 29 September 1994 on Accountancy (Journal of Laws 2021, item 217).

Committing an accounting error (e.g. in summing up a physical inventory) always causes a given document to cease to be reliable. The value indicated in such a document does not reflect the actual course of the operation – objectively the actual value that should be shown.

The fact that the legislator distinguishes as a feature of an accounting document, no accounting error should be discussed. In practice, the accounting errors just occur. Their commitment is not always caused by the desire to hide the actual size of the transaction. A person who makes an accounting error often has no intention of distorting the reality, but the result of his action is that the source document provides data that is inconsistent with the reality. According to the literature, unreliability should also include a mistake in the account book to one's own detriment (Iwińska et al., 2008).

Thus, it should be concluded that an entry made on the basis of a document in which an accounting error was made, results in the unreliability of the account books.

Another feature that should characterize the account books is to be error-free.

According to the law, account books are considered to be error-free if all the accounting documents approved for posting in the account books in a given month have been entered in a complete and correct manner, and if continuity of entries as well as the flawlessness of the applied calculation procedures was ensured (Art. 24 item 3 Act of 29 September 1994 on Accountancy, Journal of Laws 2021, item 217).

In the opinion of some researchers, being error-free consists in not omitting documents related to a given period in the accounting, or leaving any inconsistencies without explanation. The tax concept of correctness can be related to the balance concept of being error-free (Walińska and Wencel, 2018: art. 24).

The distinction between being error-free and reliability means that the terms should seem to be separate. This approach is also presented in the literature. It is indicated that the concept of being error-free should be distinguished from the concept of reliability (Walińska and Wencel, 2018: art. 24).

However, it should be recognized that, to some extent, these concepts, as defined, overlap. If a specific account document which has been qualified for entry has not been entered (for any reason), the condition for recognizing the account books as not being error-free will be met. At the same time, it will most often also result in situations where such account books may be considered as unreliable, because an economic event documented with this evidence will not be included. So, these account books will not reflect reality and therefore cannot be considered as reliable. At the same time, the premise of being error-free will not be fulfilled either. Since in the account books kept without errors there can be no omission of

documents in the entering, then, the account books in which the account document was omitted should be considered as kept not being error-free. Thus, both the premise of unreliability and not being error-free will be met. On the other hand, the account books may be reliable but not error-free. For example, when the principle of maintaining the continuity of entries is not met.

Account books are considered to be verifiable if they allow for the correctness of entries made and amounts (balances) entered, and of the operation of the applied calculation procedures, to be checked, including in particular as stated in Art. 24 item 4 Act of 29 September 1994 on Accountancy (Journal of Laws 2021, item 217):

- based on the evidence of the entries, it is possible to identify the underlying accounting documents and the manner in which they were posted in the account books at all stages of data processing;
- the entries are arranged chronologically and systematically according to classification criteria which allow to draw up financial statements and other reports, including tax returns, which an enterprise is obliged to prepare, as well as to carry out financial settlements;
- in the case of computer-assisted bookkeeping, it is possible to control the completeness of the accounting system files and data processing parameters;
- access to data files is ensured, making it possible to obtain, at any time, for any reporting period and irrespective of the technique used, clear and comprehensible information on the substance of the entries made in the account books.

The next feature of the account books is keeping them on an on-going basis (Kiziukiewicz, 2016). Account books are considered to be kept on an on-going basis, as stated in Art. 24 item 5 Act of 29 September 1994 on Accountancy (Journal of Laws 2021, item 217):

- the information derived from those account books enables a reporting entity to prepare the required financial statements and other reports, including tax returns, and as well as to carry out financial settlements in a timely manner by the prescribed date;
- general ledger trial balances are prepared at least for the respective reporting periods and no less frequently than at the end of each month in a timely manner as mentioned in item above, and for the financial year, no later than the 85th day after the balance sheet date;
- payments received and made in cash, cheques and bills of exchange, as well as any transactions in retail trade and in food services, are recognized on the day on which they were made.

Only the fulfillment of all the premises of compliance enables the preparation of a financial statement allowing for the assessment of the financial situation of an economic entity (Chybiński, 2019).

Keeping account books in accordance with the conditions set out in the regulations is of fundamental importance for the quality of data generated in the accounting system, constituting the basis for the preparation the financial statements and tax returns (Kiziukiewicz, 2016).

4. THE CONSEQUENCES OF NON COMPLIANCE OF ACCOUNT AND TAX BOOKS IN THE POLISH LAW INCLUDING THE POSIBILITY TO USE TAX JUDGMENT FOR ACCOUNTANCY

The effect of unreliability or incorrectness of tax books in the Polish tax law has two dimensions for the taxpayer: the rejection of books due to their defectiveness and penalties.

Determination of the unreliability and incorrectness results in the rejection of books due to their defectiveness (Strzelec, 2015).

In the light of the provisions of the Tax Ordinance, it should be assumed that the tax authority should undertake activities within the following sequence. The first step is to establish whether the books are reliable and correct. If the tax books are unreliable or incorrect, the tax administration should determine whether and to what extent, it is possible to correctly determine the tax base established on reliable evidence resulting from the tax books. In case the evidences resulting from the books are not sufficient to determine the tax base, evidence proceedings should be carried out in accordance with general principles. Other existing evidences should be examined. These evidences can be disclosed by both the tax authority and the taxpayer (burden of proof). Only when the evidence proceedings under general rules are not sufficient to determine the tax base, the tax base should be estimated (Dzwonkowski).

Determination of the unreliability and incorrectness of tax books is an important element of the whole process of tax base estimation. Tax base estimation may be used by the tax administration, if the tax books themselves are questioned. For example, determination that the taxpayer incurred the expense as tax costs, which was then questioned by the tax authority because the contractor appearing on the invoices could not perform the work (although the work itself was undoubtedly performed), does not imply an obligation to estimate such costs. The tax administration may not allow to deduct such expenses and, as the result, the revenue will be taxed without the deduction of the costs (VAC judgment in Łódź 10.10.2011). According to Strzelec, the consequence of the special evidence power of tax books is the prohibition of specifying in tax proceedings elements affecting the amount of tax, without first stating in a manner prescribed by law that the tax book is unreliable or incorrect. This means that the attribute of reliability and correctness was related to individual entries in the book and this has some importance for the tax base estimation, which is treated as a consequence

of the lack of data resulting from the rejection of books due to their defectiveness (Strzelec, 2015).

So, the effect of unreliable or incorrect tax books may be the estimation of the tax base (Adamiak et al., 2016: 255–256; Melezini, 2017: 281).

The effect of unreliability and incorrectness of tax books is also regulated in the fiscal penalty code. As the law states, for unreliable tax books no more than 240 daily rates of fine is imposed. In a case of lesser gravity, keeping unreliable tax books is treated as fiscal contraventions (which means lower penalty). Keeping incorrect tax books is also treated as fiscal contraventions. The court imposes the fine in an amount of daily rates (no less than 10 daily rates) and the amount of daily rate. While determining the value of the daily rate, the court takes into consideration the perpetrator's income, personal and family conditions, financial situation and income perspectives. The value of one daily rate may not amount to less than one-thirtieth of the minimum wage or exceed it four hundred times. It means that the fine may not be less than 301 PLN (in case of fiscal contraventions) and no more than 9 631 680 PLN in 2022.

The most important effect of incompliance of account books is misleading the external users of financial statement prepared on the basis of accounting books. Apart from it, incompliance of account books results also in imposing the penalty.

The provisions of the Accountancy Act introduce criminal liability, *inter alia*, when the account books: are not kept at all, are kept contrary to the provisions of the Act, or comprise unreliable information. The criminal liability consists in fine or imprisonment up to 2 or both as stated in Art. 77 Act of 29 September 1994 on Accountancy (Journal of Laws 2021, item 217).

Kukuła indicates different activities that meet imposing of the fine on the basis of Art. 77 of the Accountancy Act like incorrect entering of cash documents or failure to prepare the opening balance of account books (Kukuła, 2013).

A fine is imposed in daily rates by indicating a number of daily rates and the value of one daily rate. The lowest number of daily rates equals 10 and the maximum number of daily rates equals 540. While determining the value of the daily rate, the court takes into consideration the perpetrator's income, personal and family conditions, financial situation and income perspectives. The value of one daily rate may not amount to less than 10 PLN and more than 2 000 PLN. It means the lowest fine for unreliability of account books amounts to 100 PLN and the maximum fine amounts to 1 080 000 PLN.

There are numerous juridical judgments concerning the problem of compliant tax books in respect of their reliability or correctness. The judgments concerning the problem of compliant account books in the accountancy law are much less numerous compared to the tax judgments. Such data was checked in the Lex Legal Information System database (the data on 20-th November, 2021).

There were 2,630 judgments on the reliability of tax books under the Tax Ordinance in the Lex database. In the case of penalty fiscal code concerning the penalization of unreliability or incorrectness of tax books, there were 928 judgments in the Lex database. In the Lex database 185 judgments existed which involved the application of Art. 77 of the Accounting Act. However, nearly 20% of judgments assigned to the article 77 of the Accounting Act were issued by the administrative courts in tax cases. This data shows that the tax judgments concerning the unreliability or incorrectness of tax books are applied in the practice for the interpretation of premises for incompliance of account books.

As the data shows, the juridical judgments are issued much more often for the tax law than for the accountancy purposes. This is why it is so important to answer the question whether we may use the tax judgment on unreliability or incorrectness of tax books directly for the interpretation of premises for incompliance of account books.

Some authors also present an opinion that the tax judgment in respect of reliability or correctness of tax books may be used in the interpretation for the accountancy law (Bartosiewicz and Kubacki, 2008a: 27; Bartosiewicz and Kubacki, 2008b: 26–29; Wencel, 2018: 473–482; Iwińska et al., 2008).

Wencel indicates that the term reliability in the tax and accountancy law are practically the same. The term correctness in the tax law corresponds to the term error-free in the accountancy law (Wencel, 2018: 473–482).

Bartosiewicz and Kubacki also state that the term reliability in the Tax Ordinance and Accountancy Act are the same (Bartosiewicz and Kubacki, 2008a: 27). These authors indicate that the term correctness in the tax law is involved with term error-free in the accountancy law (Bartosiewicz and Kubacki, 2008a: 27). According to these authors, the term correctness in the Tax Ordinance corresponds to the terms: error-free, verifiable manner and on an on-going basis in the Accountancy Act (Bartosiewicz and Kubacki, 2008b: 26–29).

The assumption that the terms reliability or correctness of tax books used in the tax law correspond to the compliancy of account books allows to use the tax judgment for the interpretation of the compliancy of account books.

However, such an assumption is not so obvious. First of all, it is necessary to point out the distinctiveness of tax law and accounting law. The primary purpose of taxes is the fiscal function. Taxpayers should pay taxes established by the law. The realization of this principle is made by various instruments, among others, properly kept tax books.

A similar opinion was expressed by the administrative court, which stated that the significance of tax books is related to the presumption of reliability assigned to them under Article 193 § 1 of the Tax Ordinance. This, in turn, is derived from the obligation to keep books in order to determine or establish tax liabilities (VAC judgment, 06.04.2004).

So, compliant (reliable, corrected) tax books are to help determine the correct amount of tax liability.

In accountancy the most important principle is the true and fair view principle. The compliant accounting books are to prepare a true and fair financial statement.

The differences in the aims of the tax law and the accountancy law have an impact on interpretation of the terms of reliability or correctness.

In order to show the effects of the separateness of the tax and accounting law on the assessment of the reliability of tax books, we can analyze the following situation.

A company has calculated the amount of depreciation correctly in accordance with accounting policy and tax rules. However, the accountant made a mistake and entered the depreciation as external services. From the point of view of tax law, the amount of costs in the tax books will be shown on a proper level. The tax would be calculated properly. This means that the tax books are kept reliably. However, the tax books are not kept correctly because depreciation was shown in external services, so it is not in accordance with the accountancy rules. Consequently, the tax books are reliable – they allow to calculate the proper amount of cost, tax base and tax liability – but tax books are incorrect.

The same situation should be evaluated differently from an accounting perspective. Showing depreciation as external services does not comply with the principle of true and fair view. The financial statements prepared on the basis of such account books will not be reliable. This is because investors will receive erroneous information regarding the amount of depreciation. After all, these costs are taken into account when calculating certain ratios, for example, EBITDA. As a result, such account books cannot be considered as reliable on the basis of accounting regulations. So, the same event can be assessed differently in terms of the reliability of the tax (account) books for tax and accounting purposes.

In the case of accountancy and the reliability of the account books we have to analyze the application of the materiality principle.

When we apply this principle, we are faced with the issue of gradeability of errors. In accordance with the established case law on taxation, the reliability of tax books is not graded while the application of the principle of materiality may lead to the conclusion that a small error will not affect the assessment of the reliability of the financial statements and the account books. Thus, a small error in the tax will result in the recognition of tax books as unreliable, whereas, in the case of accountancy, it does not immediately mean that we are dealing with unreliable account books.

The Art. 24 of the Accountancy Act does not directly include the consequences of applying the materiality principle. As it was already discussed, the account books are in fact reliable but an error (entering not adequate account)

could be committed. In such situations, the auditor would call such account books as “inaccurate”. The changes to the Art. 24 of the Accountancy Act are recommended to include such situations. The implementation of the definition of the “inaccurate” account books is recommended. However, it should be discussed in more detail.

Therefore, the character of reliability of tax books is not always the same as the character of reliability of account books. As it is often the case, it should be recognized that judicature in the field of interpretation of the reliability for tax purposes may not always be used for accounting purposes. For example, the tax judgment on objective reliability of tax books cannot be applied for the accountancy law. The opposite relationship may be considered valid as well. It means that the judgment issued in cases of reliability under the Accountancy Act may not always be used for interpretation of the reliability for tax purposes.

The question of using the tax judgment concerning the correctness of tax books for accountancy purposes also arises. If the term correctness in the Tax Ordinance corresponds to the terms: error-free, verifiable manner and on an on-going basis in the Accountancy Act, the answer could be positive.

However, such an assumption is not so obvious. We can once again analyze the example of the company that has calculated the amount of depreciation correctly, but the depreciation was entered as external services. As it was discussed, such a mistake causes that the tax books are reliable but they are incorrect. In accountancy such a mistake causes that the tax books are unreliable and are also not error-free. However, these account books are still kept in a verifiable manner and on an on-going basis.

It means that the term correctness in the Tax Ordinance does not always correspond to the terms: error-free, verifiable manner and on an on-going basis in the Accountancy Act. So, the tax judgment concerning correctness of the tax books from the tax law cannot be directly applied to the interpretation of terms error-free, verifiable manner and on an on-going basis in the accountancy law.

The opposite relationship may be considered valid as well. It means that the judgment issued in cases of error-free, verifiable manner and on an on-going basis under the Accountancy Act cannot be directly applied for interpretation of correctness for tax purposes.

CONCLUSIONS

Generally, the Tax Ordinance Act regulates the compliance of tax books to the regulations in the tax law. According to the law, the tax books should be kept reliably and correctly. These terms are separate, although one mistake may cause that the tax books are unreliable and incorrect. There are numerous tax judgments concerning the interpretation of reliable and correct tax books.

The problem of account books compliance is regulated in the Accountancy Act. Account books should be kept reliable, error-free, verifiable manner and on an on-going basis. The accountancy law also defines these terms. The judgments concerning the problem of compliant account books in the accountancy law are much less numerous compared to the tax judgments.

Although definitions of reliability are very similar in the tax and accountancy law, as the analysis shows, the character of reliability of tax books is not always the same as for account books. The judgments in the field of interpretation of the reliability for tax purposes may not always be used for accounting purposes. The judgment issued in cases of reliability under the Accountancy Act may not always be used for interpretation of the reliability for tax purposes.

The term correctness in the Tax Ordinance does not always correspond to the terms: error-free, verifiable manner and on an on-going basis in the Accountancy Act. Therefore, the tax judgment concerning correctness of the tax book from the tax law cannot be directly applied to the interpretation of terms error-free, verifiable manner and on an on-going basis in the accountancy law.

The judgment issued in cases of error-free, verifiable manner and on an on-going basis under the Accountancy Act cannot be directly applied for the interpretation of the correctness for tax purposes.

The approach to unreliability is gentler treated in the regulations on tax book of revenues and expenditures compared to the Tax Ordinance. It would be advisable to introduce legislative changes. Two separate ways can be distinguished. One consisting in the deletion of provisions in the regulation on tax book of revenues and expenditures regarding reliability; the other – their transfer to a legal act, or extension of the scope to issue a regulation in Personal Income Tax.

The Art. 24 of Accountancy Act does not directly include the consequences of applying the materiality principle. The changes to the Art. 24 of the Accountancy Act are recommended to include such situations. The implementation of the definition of “inaccurate” account books is recommended. However, the way how to formulate such a provision should be discussed in more detail.

DISCLOSURE STATEMENT

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