

DIMENSIONS OF THE FUNCTION OF INFORMATION PROVISION OF TAX AUTHORITIES IN MANAGEMENT OF PUBLIC LEVIES



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ABSTRACT

The objective of this paper is to define the dimensions of the function of information provision of tax authorities in public levies management. Accomplishment of the objective is based on the example of Poland, however the outcome may be applied intersubjectively in various models of tax administration all over the world. Critical review of the relevant literature has been employed as a methodological basis in combination with gradual concretization and comparative analysis as part of making inferences. It has also been assumed that the function of information provision of tax authorities is composed of an internal part as well as an external one, which is being developed on the level: tax authorities – tax management bodies. Therefore, a research hypothesis has been put forward stating that the function of information provision of tax authorities is heavily deformed, carried out selectively, and with no reflection on performance. The obtained research results testify to that and allow to indicate that the dimensions of this function overlap and not always co-contribute to subsidiarity in meeting tax obligations and simultaneously state interventionism marked by penalization of criminal offences. An undoubted theoretical contribution is a proposition of the dimensions of the function of information provision of tax authorities, enriched with possibilities for different management of intellectual capital as well as execution of the law on public levies. The results of this study may be of use to broadly defined tax administration, students, and researchers studying socio-economic processes.

KEY WORDS

Management of public levies, the function of information provision, tax authorities, tax consulting, control

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INTRODUCTION

The tax system, which includes state institutions with tax administration in the forefront, the applicable legislation, on the one hand, and the real economy, in which taxpayers operate on the other, serves the role of control as well as organisation of socio-economic processes occurring in a country. Taxation itself may serve both the purpose of stirring economic growth and development as well as creation of incentives or deterrents to certain behaviours. Taxes may directly influence improvement of the health of individuals, while ensuring effectiveness of collecting public levies and reducing accumulation of profits, if they are imposed on consumption of addictive goods, such as e.g. tobacco products, which causes an increase in their prices, but they may also be a threat to

the health of individuals and budget revenue, if the amount of tax is too high, which contributes to the development of the unofficial economy (Gallant, 2013, pp. 119-125).

Since information is a public good and the function of information provision is the basic determinant of activity undertaken by the state, especially with regard to the whole legal and organizational domain concerning public levies, the present article will elaborate on the dimensions of this function, both internal and external. The framework for discussing the accepted assumptions is a thesis that management of public levies in an ordered manner is only possible, if the internal dimension of the function of information provision is oriented at efficiency of action, and

the external one – at subsidiarity and interventionism at the same time.

Therefore, the purpose of this paper is to define the dimensions of the function of information provision of tax authorities in management of public levies. Accomplishment of the objective is based on the example of Poland, however the outcome may be applied intersubjectively in various models of tax administration all over the world. Research hypothesis has been put forward stating that the function of information provision of tax authorities is heavily deformed, carried out selectively, and with no reflection on performance. Critical review of the relevant literature has been employed as a methodological basis in combination with gradual concretization and comparative analysis as part of making inferences.

1. THE FUNCTION OF INFORMATION PROVISION OF TAX AUTHORITIES – PRACTICAL ASPECTS

The flow of information is a key element of the operation of the tax system (Review ..., 2006, pp. 1-45; Council ..., 2015). The function of information provision of tax authorities should be performed both in the internal and the external domain of tax administration and the former (the internal dimension) must foster a strong and quite intimate connection on the level: tax authorities – tax management bodies. Theoretically, tax authorities should exercise tax law and tax (or more broadly public finance) management bodies should shape it. In practice, drawing a clear line between those functions is very problematic and sometimes even impossible, at least in Poland. Predominantly, it is a consequence of the fact that tax authorities at the central level (heads of tax offices, heads of customs offices, executives in tax or customs chambers – first instance bodies; executives in tax or customs chambers – second instance bodies, the minister in charge of public finance), (Dz. U. z 2012 r., poz. 749) serve both those functions, often unaware of this fact, or as part of a routine or a plan. Of course, they first and foremost exercise tax law but also issue circulars, guidelines, shape norms of behaviour, or draw up other recommendations which in fact mould tax law. If they also participate in the work of central assemblies in the ministry on top of that and more or less directly shape budget forecasting, planning, or distribution of public funds (to a smaller, often negligible, extent), or control the course of spending public funds, then how is that different from management of public funds (Gaudement, Molinier, 2000)? The answer to this question is quite obvious – it is not.

It must be clearly stressed, however, that politicians holding the power at a given moment are the ones who are chiefly responsible for shaping tax law. They are the ones who dictate which election promises shall be honoured and which general decisions on accumulation and spending of public funds should be enacted upon. It is thus clear that broadly defined management of public levies may be shifted upward (the Council of Ministers along with external and subsidiary bodies of the Council of Ministers, joint committees, or codification committees dealing with a given branch of the law) as well as downward (tax authorities). The Minister of Finance also serves a double role in this system. On the one hand, in line with Article 34 section 1 of the Act of 08 August, 1996 on the Council of Ministers (Journal of Laws of 2012, item 392), (Dz. U. z 2012 r., poz. 392), the Minister of Finance is the general body managing the whole Ministry of Finance since they manage, supervise, and control the activity undertaken by bodies, offices, and units which are subordinated to it. The Minister of Finance is also entitled to establish or wind organisational units up as well as appoint or remove managers of organizational units from position. On the other hand, in accordance with Article 13 paragraph 2 of the Tax Ordinance Act, the Minister of Finance is a first and second instance tax body (Dz. U. z 2012 r., poz. 749) – so they exercise tax law. Such a model of tax administration along with the whole overlay of political and rarely substantive intervention of the executive branch causes it impossible for tax law to be shaped well, and if this condition is not satisfied, it is difficult to talk about its appropriate enforcement. This impossibility results from insufficient knowledge or awareness of the majority of politicians exercising power with respect to the essence of public finance as well as frequent selection of the decisions which are not only unreasonable from the perspective of the economy and the society as a whole but may also bring about catastrophic consequences for the present and future generations.

Enhancement of the possibility of shaping the law on public levies should take place as part of horizontal lawmaking. The Ministry of Finance, which predominantly acts in line with a given act of law in tax matters, must bear in mind that it is merely an element of the whole system of law and will exert influence over the whole economic and social system. In order to achieve this aim, it is necessary to involve experts on, among other things, financial and commercial law or penal procedures in tax matters as well as economists, experts in organization and management (who should notice and indicate the range of the praxeological function in the socio-economic system of a country and its environment, which is

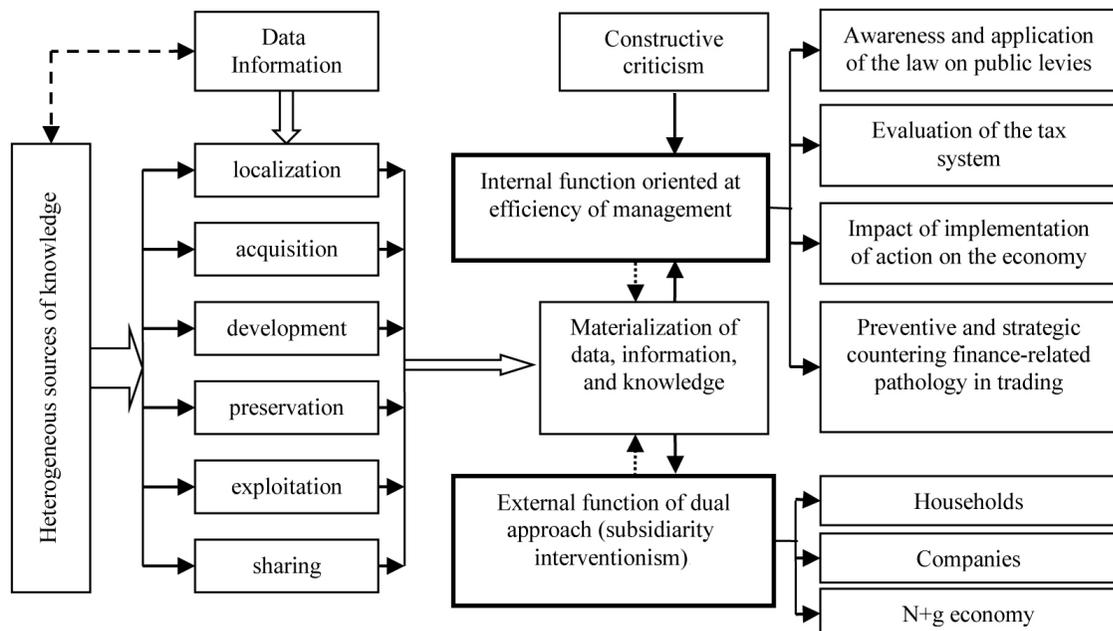
broader than the legal dimension) in the legislative process in particular ministries. It is incomprehensible why the Government Legislation Centre (RCL) has not been offered broader coordination entitlements so far, which could compel and not only suggest such a formulation of draft laws which would be simple and professional. After all, a correct diagnosis has been reached in the Green Papers on the system of lawmaking in Poland, which reads: “improvement to the system of lawmaking may be achieved through expansion of the role of preparing assessment of the impact of regulation, participation of citizens in the process of preparing assessment of the impact, and responsibility held by the author of an act of law for the consequences of its implementation” (System ..., 2013, p. 9).

2. STRATEGIES REGARDING THE SIGNIFICANCE OF THE FUNCTION OF INFORMATION PROVISION OF TAX AUTHORITIES AND ITS DIMENSIONS

The function of information provision of tax authorities, both internal and external (Fig. 1) must contain three essential elements (Intezari, Paulen, 2013, pp. 393-404):

- morality – as an element stabilising the interests and values of various interested parties both when it comes to the established goals of the system of public levies and activity undertaken within its competence;
- awareness of errors in data, information, and knowledge, which translate into incorrect interpretation and distortion of events, relations, decisions, or even the whole trade;
- appreciation that the end does not justify the means and action taken (if those are immoral, illegal, or provoking to commit a crime or an offence).

In the model approach presented above, a broader depiction is necessary. First of all, heterogeneous sources of knowledge denote all possible sources of data and information which allow to carry out the classical process of knowledge management through the agency of a human being as part of its localization, acquisition, development, preservation, sharing, and exploitation. These are all the possible sources of knowledge and not only selected ones, e.g.: internet websites, social networking websites, diplomacy, organisational, economic, tax, or behavioural benchmarks, advanced scientific research as well as pilot studies, knowledge which is an element of observational, surveillance processes or secretly supervised ones. Such sources also encompass practical and real knowledge of economic processes, which lawyers, certified auditors, securities brokers, tax consultants, investment funds, or insurance companies have. They are the ones who cooperate and service companies or



N+g – national + global

Fig. 1. Dimensions of the function of information provision of tax authorities

whole holding companies on everyday basis, which often as part of optimisation forced by their own economic interests establish or subordinate subsidiaries – or less often parent companies – predominantly for a particular or temporary purpose.

Heterogeneous sources of knowledge in Poland are also tax offenders. However, those are not ordinary taxpayers who may become tax offenders even unknowingly in line with the understanding of criminal or criminal/tax liability (which unfortunately happens in Poland and other countries). In particular, those are professional tax offenders who have made all types of, among others, tax fraud (e.g. regarding VAT), an active and stable source of income. Since they know so well what the legal loopholes are and how to employ jurisdiction data and tax strategies in practice and have done so illegally on multiple occasions, why not use their knowledge in order to combat tax crime? Tax offenders could take advantage of the possibility to become a protected witness as defined in the Act of 25 June, 1977 on Protected Witness as a suspect who acquired the status of a protected witness and as a perpetrator not be subjected to punishment for crimes or tax crimes (Dz. U. z 2014 r., poz. 1801). Simultaneously, nothing would stand in the way of making such a suspect holding this status, or even a perpetrator convicted with a legally binding sentence, obliged to work off the penalty in tax administration (or for the benefit of it – if statutory regulations allowed such a solution in the future) in a form of full-time community service – in a specified situation and circumstances – in lieu of serving a term in prison. Everything would be dependent on whether the tax offence or crime committed by a perpetrator were enacted directly by the perpetrator, i.e. by an individual who has expert and exceptional knowledge in this respect, or if they used international tax consulting offices and, in reality, do not know what the process looked like. At the same time, such a substitute for punishment in criminal proceedings concerning financial offences should not relieve the severity of a fine or remit it altogether along with other liabilities on account of loss of state budget revenue. On the contrary, indeed. A fine, calculated on the basis of a perpetrator's income, personal and home circumstances, equity relationships, or possibilities for earning remuneration, in such a case is an equivalent to punishment in some sense. In the case of multimillion tax extortions, the fine may not exceed the maximum of only PLN 1.08 million and in the case of extraordinary restrictions – PLN 1.62 million (Dz. U. z 1997 r., nr 88, poz. 553), which would and is more of an incentive to commit such crimes in many cases, since the income arising from fraud would be (and often is) several times higher. Owing

to this, laying down the conditions for imposing a 75% penalizing tax on income from undisclosed sources or ones that may not be confirmed in the disclosed sources (Dz. U. z 2012 r., poz. 361) could create a severe penalty and fair at the same time (obviously assuming that the suspect is guilty and the collected evidence clearly confirms it). It would be very helpful in this respect, if much closer cooperation between tax authorities and the Asset Recovery Office of the General Headquarters of the Police were encouraged, which is simultaneously a point where the Camden Assets Recovery Inter-Agency Network – CARIM and Interpol as well as Europol, which use formal contact means of exchange of information, make contact. Since no benefit for the tax system would be brought about by disclosure of tax offences, if the offender could not be deprived of their illegal incomes. Such actions should even be referred to as preventive measures as the inevitable vision of losing the illegally accumulated wealth compels one to re-consider if it is worth committing such criminal offences at all, if the sum of benefits that could arise from taking the risk involved in intentional illegal activity in the broadly defined domain of taxes will be eliminated.

It should also be noted that a very significant internal function of information provision served by tax authorities should be performed through constructive criticism of action undertaken and decisions made – preferably in the planning phase already. Such a practical and simultaneously performance-oriented approach in serving the function of information provision in the internal dimension would even be the establishment of a separate position of, e.g. a consultant on constructive criticism, who would be responsible for describing and explaining for their superiors (managers of organizational units) of faults and threats arising from various scenarios of actions or decisions along with preparing justified substitute options. Since nowadays only a few people, and on top of that not always, have the opportunity or willingness to share their negative opinions on a given matter due to the fact that it is wrongly seen pejoratively as negating the option of the superior. And so any exchange of views and ideas, especially regarding opposite stands, is frequently hampered, which results in confidence in infallibility of choice to be made. Such a consultant should be appointed for all the head of organizational units in the Ministry of Finance (the Tax Office [US], the Tax Chamber [IS], the Treasury Control Office [UKS], the Customs Office [UC], the Customs Chamber [IC], the Ministry of Finance [MF]) and be subordinated directly to the head of an office or chamber or the Secretary/Undersecretary of State responsible chiefly for supervision over administration of public levies. However, a prerequi-

site for the existence of such a position is that it would be held for tenure with no possibility of removal at any point in time. Additionally, such a consultant should have a very broad array of competences, especially with regard to the law and economy and of a particularly interdisciplinary character, i.e. analytical and logically multivalued, as only in such circumstances their work would make sense. Such a consultant could be an individual who has held a managerial position and possess prominent qualifications as well as an individual who has analogous qualifications and skills and works in a given organizational unit on everyday basis.

Secondly, the function of information provision of authorities should contribute – as part of the dual approach – to a broadly defined subsidiarity in meeting tax liabilities and simultaneously to state interventionism penalizing criminal offences. Subsidiarity in this sense should be perceived as helpfulness of treasury administration towards taxpayers in any case in which they have no knowledge on what tax base to use in a given economic activity, what type of a contract to apply, from the point of view of taxes, in order to secure the interests of both parties but also guard against the consequences of ignorance of the law, especially in economic terms. At last, subsidiarity is direct and ongoing consulting support of tax officials who should indicate the paths that may be followed in legal economic activity and what should the taxpayer do in order to guard against, among others, involuntary accumulation of tax arrears or involuntary acting in bad faith. In this process, support from the officials, expressed by means of subsidiarity, should also be orientated at innovative tax consulting characterized by informing the taxpayer about the manners of reducing tax liabilities by way of creating new jobs or developing the business that they conduct. Nothing stands in the way of appointing such consultants advising the taxpayer in tax and customs offices, especially consultants obliged to perform their duties within the first two years of operation of a given business. In such a way, the application of tax subsidiarity of treasury administration proposed by the author to be part of the external function of information provision would be a narrower fulfilment of the fundamental and much broader Community function expressed in Article 5 section 3 of the Treaty on European Union (Dz. Urz. UE 2012 C 326) and in protocol No. 2 of this Treaty on adhering to the subsidiarity and proportionality principles (Dz. Urz. UE 2012 C 326). If European subsidiarity, understood as helpfulness, is applied on the level tax official-taxpayer, it means:

- sharing competences both among different levels of authority in tax administration itself and on the

level: tax authorities-taxpayer. The essence of such an approach should be a certain degree of autonomy of self-reliant and well-educated civil servants at the operational level, who would have the capacity to act with authorization from a direct or even the chief superior in some tax-related matters, when it is necessary to take conscious action in order to secure legality of trade as part of risk dispersion;

- a possibility, or, in fact, an obligation, to provide a taxpayer with information or help, if there is a risk that they may not be able to meet their tax liabilities for various reasons, regardless of the size of business conducted or income generated;

- a possibility to eliminate time-consuming and mutually burdening tax inspections owing to effective and efficient bilateral communication channels for exchange of information and knowledge, which would be a preventive measure but friendly too;

- recognition of the fact that neglecting or taking insufficient actions by tax authorities with regard to the taxpayer in terms of informing and advising may fuel mistrust, widen the tax gap, strengthen unfair competition, and simultaneously contribute to the development of the unofficial economy.

By performing the direct advisory function, tax authorities would in fact be exercising informative tax consulting as part of the economic policy. Therefore, tax consultants in tax administration should be appointed from among people possessing the vastest competence and experience. As Shiller, a Nobel prize winner in economics, rightly claims, the average person requires informative financial counselling in a form of direct contact with another human being. This process may not be replaced by even the best websites or information leaflets since the majority of people do not seek necessary information on their own. They simply need someone who can talk to them in person and competently explain what solutions would be beneficial for them in accordance with the law (Shiller, 2013, pp. 21-24). It should not be the case, however, as it is now in the Polish tax system, that tax authorities are not responsible for any information given to the taxpayer, if it is not in written form – the so called individual or general tax interpretation in line with the Tax Ordinance Act (Dz. U. z 2012 r., poz. 749).

On the other extreme of subsidiarity, there is interventionism involved in the external function of information provision of tax authorities concerned. It may be referred to as state interventionism focused *de facto* on a broader than merely tax-related domain, which is particularly concerned with the fiscal criminal code, the criminal code as well as a wide array of actions taken by the state towards elimination of pathology in trading. The most important factors re-

garding this sub-function of information provision ought to be: protection of fair competition, active creation of international tax competitiveness as well as securing tax revenue credited to the state budget. Such interventionism would stand in opposition to the Austrian economic school in this respect, which claimed that economic freedom and the possibility for individual members and organisations within a society to peacefully co-exist are only possible, if interventionism is eliminated completely (von Mises, 2010, p. 160). Nevertheless, especially taking into account the practical negative experiences of excessive deregulation, lack of risk management, and insufficient state interventionism before the financial crisis of 2008+, one must admit that reasonable state interventionism, especially exercised through control and repair, should be a universal practice and not an anomaly in normal circumstances. The degree of interventionism will be dependent on public regulation within the existing organizational culture and strategic cooperation among voters, the political class, or competing sectors (Sánchez, Perote-Peña, 2013, pp. 169-181). In point of fact, as empirically evidenced by, among others, I. S. Dinc and I. Erel, governments are not neutral towards business in the contemporary economic processes. They intervene – usually protecting domestic businessmen and large companies against takeover, which influences the functioning of the economy and may deter future investors (Dinc, Erel, 2013, pp. 2471-2514). If they do not protect the domestic economy and facilitate taking over of the largest and most profitable companies, which are of key importance from the point of view of the nation as well as the economy, it is tantamount with waiving the possibility to shape socio-economic processes. As far as taxes are concerned, state interventionism should both encourage direct foreign investment and ensure taxation of the biggest entities or groups of companies. Simultaneously, a clear message should be communicated that all taxable persons and economic entities which choose illegal forms of business activity, including ones, and perhaps those ones in particular, engaged in creative accounting, evading taxation, or extorting rebates of turnover taxes from the national budget will be severely punished.

Intervention is always an external response to real trade while alleviation of demand shocks, supporting lending for companies, especially non-financial ones, or driving internal consumption and export should arouse the interest of the government and the formulated, among others, fiscal policy (Laeven, Valencia, 2013, pp. 147-177). It should be assumed that tax interventionism of a given government should safeguard execution of the planned state budget through the agency of tax administration, and if possible gen-

erate budget surpluses on account of economic growth which may be better than expected. Hence it should not be surprising that we are witnesses to an abundance of official information about interventions on the currency, monetary, or even the stock market (Bhanot, Kadapakkam, 2006, p. 963). An example of such an intervention, which was of systemic significance for the global system though supported chiefly yet not only the government and the budget of the United States of America, was the Foreign Account Tax Compliance Act – FATCA passed in 2010 by the US Congress and formally binding since 01 January, 2013 (Public Law 111-147-MAR. 18, 2010), which abolishes bank secrecy and compels foreign banks under penalty to automatically disclose information to the Internal Revenue Service – IRS about foreign bank accounts held by American taxpayers (Grinberg, 2012, pp. 304-383; Zucman, 2014, pp. 121-148).

In Polish circumstances, such automatic solutions do not exist and in some cases tax authorities find it a lot easier to obtain automatic information from foreign rather than domestic banks. It happens because some banks forced to fight against tax evasion have repealed a large portion of bank secrecy. Although tax authorities in Poland do have access to bank accounts of the taxpayer but only if tax procedure is instituted and information is demanded pursuant to a decision of the head of a tax or customs office. First, however (after proceedings are instituted but before issuing a formal request to the bank), a tax body should ask the taxpayer to voluntarily agree to disclose the demanded information and if they refuse, a decision is issued (Article 183 in conjunction with Article 182 of the Tax Ordinance Act), (Dz. U. z 2012 r., poz. 749). It is clear that such access to bank information in Poland is absolutely ineffective in case of tax fraud and allows the taxpayer to intentionally transfer financial resources out at any time before audit. It is thus an ineffective solution which is applied in controlling business establishments operating legally and not ones which intend to commit an offence in the domain of finance from the very outset.

Thirdly, the very substance of public levies is of interest as far as (Litwińczuk, 2013) competence of tax administration staff (with respect to the internal and external function of information provision) is concerned, as regards:

- the general character of all taxable persons, especially with turnover VAT (in particular in intra-Community supply and acquisition of goods);
- knowledge of property taxes (e.g. on real property, forest, agriculture, motor vehicles, civil law transactions, some solid minerals mining) and their significance for the economy;

- manners, methods, and typology of determining an entrepreneur's income;
- the possibilities for determining income of selected groups of taxable persons;
- the construction and principles underlying taxation imposed on income when a company undergoes transformation, a business is wound up, companies merge or split, or accumulated estate is disposed of;
- international design of tax strategies followed by companies within corporations or holding companies as well as of national budgets, and fiscal planning;
- possibilities for taxation of cross-border movements of incomes and its extent;
- possibilities for treating VAT and other taxes – as goods subject to the laws of supply and demand, which entails fictitious invoices and trade, and real attempts (and often very effective) at tax extortions from the state budget;
- the principles underlying taxation and tax exemptions as far as public aid is concerned;
- the capability of distinguishing between the process of tax optimization and the process of aggressive tax optimization within the unofficial economy (Raczkowski, 2013, pp. 347-363);
- possibilities for shaping the economic and social policies through the fiscal policy.

It appears that the very substantive-analytical aspect of tax administration (considered in the light of aggressive tax optimisation pursued as part of international tax strategies) is the Achilles' heel of its operation. As long as this state of affairs is not improved, tax administrative staff will not be aware of what they still do not know and will thus be making erroneous decisions.

CONCLUSIONS

The elaboration presented above positively verifies the research hypothesis put forward in the introduction stating that the function of information provision of tax authorities is heavily deformed, carried out selectively and with no reflection on performance. It turns out that this function in the Polish model of the tax system is performed only selectively and in many cases is not served at all. Certainly, in the present form, it does not perform well as good performance is associated with effectiveness, economical thinking, and ethics, while the current performance is often contrary to that.

The dimensions of the function of information provision of tax authorities presented by the author constitute a practical proposal for bridging the cogni-

tive-organizational gap in the analysed respect. Both the function of information provision of tax authorities and the budgetary policy along with all the instruments and tools of the Ministry of Finance may not be an end in itself but merely a means to pursuing the economic policy as part of the global economy. Though the current model of operation of tax administration requires reformulation – even complete reformulation – that will implement the dual approach in practice – which should be extraordinarily friendly and compulsorily informative-advisory for honest taxpayers and simultaneously restrictive with respect to intentional criminal activity. The function of information provision should demonstrate a clearly asymmetric approach to different categories of taxpayers and entities abiding by the law and those who have chosen a different – dishonest manner of operation. Then in the medium term, it will be possible to create certain principles and an organisational culture, which will discourage taxpayers from shifting from tax optimisation to its aggressive form resulting in tax evasion because it will not be profitable and punishment will be inevitable. However, it will only be possible if assets acquired by way of tax fraud may be effectively secured and forfeited, and top management in tax administration in cooperation with the government will support such changes in public finance and the budgetary policy, which will directly encourage innovativeness and competitiveness of companies, ensuring appropriate contributions to the budget and balanced expenses.

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