

## Conclusions of the summary report on the assessment process used for determining personal income tax liability

The analysis carried out by the jurisprudence-analysing working group on the assessment process used for determining personal income tax liability was a complex one involving judges, academics and practitioners. The primary aim was to analyse and draw conclusions on the relevant court practice, but the lawfulness of the tax authority's practice and the conformity of the applicable law to EU law and to the constitutional requirements were also examined. The involvement of academics and practitioners made it possible to gain an insight into international experience, thus in the discussions issues having international aspects also arose, and the examination of such aspects proved to be useful in the analysis of the domestic practice.

In general, it can be stated that the very careful examination, which covered a whole year, did not disclose any major shortcomings and found the courts' jurisprudence basically uniform. Such a finding, however, does not mean that no difficulties arose as to the interpretation of the law and no statutory provisions were found to be in need of amendment by the majority of the working group.

The analysis revealed that in this type of action, on account of the special proving system, the method of proving, temporal succession, and the provision of proper information to the taxpayers may be of decisive importance. The analysis can also serve as a help to a review of the legislative background of the guarantee system protecting taxpayers, and the summary report identifies the possible directions of such a review at several points in the text.

Part of the private persons affected by enrichment investigations did not have legal representation, and thus acted in person, both in the tax authority investigations and in the administrative as well as the first instance court proceedings. Therefore, as to the so-called *Completeness Declaration* to be submitted by such taxpayers upon invitation to that effect, it may happen that such persons choose not the most advantageous legal possibility, and in filling out the *Declaration* they may provide, despite their good-faith conduct, (e.g. because of the time that elapsed or because of unpreserved documents) data which subsequently can be corrected only with difficulties and which are incriminating to themselves. The possibility of such conduct is only reinforced by the fact that the *Completeness Statement* employed in enrichment investigations is not contained or regulated in the Act on the Order of Taxation.

The tax authority is entitled to examine the true content of the submitted facts and data even for periods in respect of which the right of tax assessment has already become time-barred by statute of limitations where the taxpayer alleges that his/her enrichment has originated from that period. It must, however, be pointed out, that the tax authority is not entitled to carry out checks and audits for periods in respect of which the right of tax assessment has already become time-barred by statute of limitations, hence no law requires the establishment of facts, titles and savings allegedly deriving from such periods. The tax authority and the courts must carry out any such taxpayer-initiated evidence takings that are suitable and necessary to determine a disputed fact or opening entry. As to the question whether the opening entry of a cash flow statement and balance sheet is to be proved by the tax authority, at a theoretical level two restrictions need to be taken into consideration: on the one hand, the time frame of the audited tax period and, on the other hand, the statute of limitations applicable to the right

of tax assessment. In the majority of the cases analysed by the working group, the starting date for a tax authority audit was the last tax year not time-barred yet. In such cases the tax authority is not entitled to examine or take evidence for tax periods having already become time-barred.

The working group found the method of time series cash flow statement suitable for determining the substantiated tax base, that is, for calculating any lacking resources from the revenues and expenditures. The tax authority is to assess the revenue amount that the person under examination needed to finance his enrichment and lifestyle.

In compiling time series cash flow statements, extra resources from a spouse must be taken into consideration where such spousal resource is expressly invoked by the taxpayer and where the data and evidence gained in the ex-post tax authority revision carried out in respect of the personal income tax returns of the spouse supports such taking into consideration.

As to time series cash flow statements, the data entered in them and their making accessible, as soon as possible, in a clear and transparent manner to the taxpayer subjected to tax revision are of utmost importance, as only in such cases can taxpayers rely on the possibility of counterproving, by submitting the credible data.

During the several-month long work of the jurisprudence-analysing working group various, sometimes conflicting thoughts, ideas and proposals arose. Conflicting views were on several points resolved by voting, but the summary report contains not only the majority opinions but also the minority opinions.