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The statute of limitation on the right to assess the tax liability – the Tax Authorities officials' unlawful interpretation of the beginning of the statute of limitation

In accordance with the General Tax Act that was in force until 31st December 2016, and is no longer in force, the commencement of the statute of limitation on the right to assess the tax liability, was prescribed by Art 94, paragraph 2, which read:

- *“The statute of limitations on the right to assess the tax liabilities and interest begins to run after the year **in which tax liabilities and interests should have been assessed.**”*

Based on said provision, an interpretation in practice has been established whereby if the tax return for a specific tax period falling within a particular calendar year or coinciding with a particular calendar year (hereinafter referred to as 'TP') is filed in the subsequent calendar year (hereinafter referred to as 'TP+1'), then the statute of limitations on the right to assess the tax liability begins to run with a shift of one year, specifically after the expiration of the calendar year in which the tax return ought to have been submitted, i.e., after the expiration of year TP+1 (namely, on 1st January of year TP+2).

However, under the provisions of the General Tax Act, which became effective on 1st January 2017, and are currently in force, the commencement of the statute of limitations on the right to assess the tax liability is prescribed differently, specifically by Art 108, paragraph 2, which states:

veljača 2023.

Zastara prava na utvrđivanje na utvrđivanje porezne obveze – nezakonito tumačenje službenika Porezne uprave vezano za početak tijeka zastare

Sukladno Općem poreznom zakonu koji je bio na snazi zaključno s 31.12.2016. godine, te više nije na snazi, početak tijeka zastare prava na utvrđivanje porezne obveze bio je propisan čl. 94. st. 2. koji je glasilo:

- *„Zastara prava na utvrđivanje porezne obveze i kamata počinje teći nakon isteka godine **u kojoj je trebalo utvrditi porezne obveze i kamate.**”*

Temeljem te odredbe u praksi se ustalilo tumačenje prema kojem, ako se za određeno porezno razdoblje koje je unutar određene kalendarske godine ili je jednako određenoj kalendarskoj godini (u nastavku: PR) obračunska porezna prijava podnosi tek u sljedećoj kalendarskoj godini (u nastavku: PR+1), tad zastara prava na utvrđivanje porezne obveze počinje teći tek s pomakom od jedne godine tj. istekom godine u kojoj je trebalo podnijeti obračunsku poreznu prijavu, odnosno istekom godine PR+1 (tj. na 1.1. godine PR+2).

Međutim, sukladno Općem poreznom zakonu koji je na snazi od 1.1.2017. godine, i koji je trenutno na snazi, početak tijeka zastare prava na utvrđivanje porezne obveze propisan je drugačije, i to čl. 108. st. 2. koji glasi:

- *“The statute of limitation on the right to assess the tax liabilities and interest begins to run on the expiry of the calendar year **during which the tax liability arose**. The emergence of the tax liability is prescribed by the special tax legislation.”*
- *„Zastara prava na utvrđivanje porezne obveze i kamata počinje teći istekom godine **u kojoj je nastala porezna obveza**. Nastanak porezne obveze propisan je posebnim poreznim zakonima.“*

Despite the evident disparity in the legal provisions governing the commencement of the statute of limitations, as is evident from the bolded excerpts cited above, and notwithstanding the passage of several years since the amendment, the Tax Authorities consistently disregard the legal change and persists in above stated interpretation of the commencement of the statute of limitation, i.e., interpretation that the statute of limitations on the right to assess the tax liability begins to run only after the expiration of the calendar year in which the tax return had to be submitted, i.e., after the expiration of year TP+1 (namely, on 1st January of year TP+2).

However, since 1st January 2017, such an interpretation is no longer valid, and the Tax Authorities usually issue decisions lacking legal basis to support such interpretation.

Unfortunately, in cases in which the General Tax Act, which entered into force in 2017, is applicable, some judgments can be found in which even the Administrative Court judges illegally, and without adequate explanation, applied an interpretation in which the commencement of the statute of limitations is shifted one calendar year if the tax return is submitted in the year following the year for which the tax is assessed. However, in September 2022, the Administrative Court in Zagreb made an important judgement regarding personal income tax, in which it confirmed that the position according to which the tax liability **arose** at the time when the taxpayer should have reported it with a tax return was wrong. In that judgment, it was explained that this does not follow from Art 108, par 2 of the General Tax Act. Furthermore, this judgement also delineated that Art 108, par 2 of the General Tax Act associates the commencement of the statute of limitations with the moment when the tax liability “arises”, rather than the day when the taxpayer is obligated to report the tax liability to the Tax Authorities. The judgement, which pertained to personal income tax, confirmed that the statute of limitations for determining personal income tax, regardless of when the tax return is submitted, commences on 1st January of the year following the occurrence of all events that may have an impact on the tax base, and not with a shift of one calendar year.

The aforementioned judgment pertained to personal income tax, but for other taxes there are also strong arguments against the interpretation according to which the commencement of the statute of limitations depends on the deadline for submitting tax returns. For example, when it comes to VAT, according to Art. 29, par 2 of the VAT Act the chargeability of VAT refers to a moment at which the Tax Administration becomes entitled to claim VAT, even though the time of payment is deferred, while Art 30, par 1 of the VAT Act clearly stipulates: “The chargeable event and chargeability of VAT shall arise when the goods or the services are supplied.”

Iako je iz citiranih boldanih dijelove očito da je došlo do značajne razlike u zakonskoj odredbi koja propisuje početak tijeka zastare, te iako je od te promjene prošlo više godina, Porezna uprava u pravilu ignorira ovu promjenu zakonske odredbe te početak tijeka zastare i dalje tumači na gore naveden način, tj. na način da zastara prava na utvrđivanje porezne obveze počinje teći tek istekom godine u kojoj je trebalo podnijeti obračunsku poreznu prijavu tj. istekom godine PR+1 (tj. na 1.1. godine PR+2).

Međutim, takvo tumačenje nakon 1.1.2017. godine više nije ispravno, a Porezna uprava za takvo tumačenje prilikom donošenja rješenja u pravilu ne daje argumente koji bi bili utemeljeni na zakonu.

Na žalost, u predmetima u kojima je primjenjiv Opći porezni zakon koji je stupio na snagu 2017. godine mogu se pronaći i neke presude u kojima su čak i suci upravnih sudova nezakonito, i bez adekvatnog obrazloženja, primijenili tumačenje u kojem se početak tijeka zastare pomiče za jednu kalendarsku godinu ako se porezna prijava podnosi u godini koja slijedi iza godine za koju se porez utvrđuje. Međutim, u rujnu 2022. godine je Upravni sud u Zagrebu u vezi poreza na dohodak donio jednu važnu presudu u kojoj je potvrdio da je pogrešan stav prema kojem je porezna obveza **nastala** u vrijeme kada ju je porezni obveznik trebao prijaviti poreznom prijavom. U toj presudi je obrazloženo da to ne proizlazi iz čl. 108. st. 2. Općeg poreznog zakona. U toj presudi se također navodi da čl. 108. st. 2. Općeg poreznog zakona početak tijeka zastare veže uz dan „nastanka“ porezne obveze, a ne uz dan kada je porezni obveznik dužan nastalu poreznu obvezu prijaviti poreznim tijelima. Presuda se odnosila na porez na dohodak te je u njoj potvrđeno da zastara prava na utvrđivanje poreza na dohodak, bez obzira na to kada se podnosi porezna prijava, počinje teći 1. siječnja odmah nakon godine u kojoj su se dogodili svi događaji koji mogu imati utjecaj na poreznu osnovicu, a ne s pomakom od jedne kalendarske godine.

Spomenuta presuda se odnosila na porez na dohodak, no i za druge porezne oblike postoje čvrsti argumenti iz kojih proizlazi da više nije zakonito tumačenje prema kojem zastara ovisi o tome kada treba podnijeti poreznu prijavu. Na primjer, kada je u pitanju PDV, sukladno čl. 29. st. 2. Zakona o PDV-u obveza obračuna PDV-a se odnosi na trenutak kada Porezna uprava ima pravo potraživati PDV, iako je samo plaćanje PDV-a odgođeno, dok članak 30. st. 1. Zakona o PDV-u jasno propisuje: „Oporezivi događaj i obveza obračuna PDV-a nastaju kada su dobra isporučena ili usluge obavljene.”

So, based on that legal provision, it is clear that the chargeability of VAT for any month or quarter of a certain calendar year arises in that year, and that this also applies when the VAT return for the last month or the last quarter is submitted only in the following calendar year. That is, if some goods were delivered, for example, in December 2022, the VAT liability on that basis had to be determined by submitting a VAT return, which had to be submitted in January 2023, but from Art 30, par 1 of the VAT Act, it is clear that the chargeability of VAT (i.e. VAT liability) **arose** in December 2022, not in 2023. As the VAT liability **arose** in 2022, and based on Art 108, par 2 of the General Tax Act, which is currently in force, the statute of limitations on the right to assess the tax liability and interest begins to run at the end of the year in which the tax liability **arose** - it is clear that the statute of limitations begins to run immediately after the end of 2022, i.e., from 1st January 2023. So, the interpretation according to which the commencement of the statute of limitation is shifted into the future by one calendar year if the tax return is submitted after the year for which the tax is assessed - is not a legal interpretation.

A similarly strong argumentation supporting such an interpretation also exists for the corporate income tax.

According to our knowledge, **for the time being, officials of the Tax Authorities, are persisting in disregarding that legal provision concerning the commencement of the statute of limitation on the right to assess the tax liability has been changed as of 1st January 2017, and they act illegally, but the mentioned judgement of the Administrative court issued in September 2022 implies that illegal practice has slowly started to change.**

Znači, temeljem te zakonske odredbe je jasno da obveza PDV-a za bilo koji mjesec ili tromjesečje određene kalendarske godine nastaje u toj godini, te da to vrijedi i onda kada se PDV prijava za posljednji mjesec ili posljednje tromjesečje podnosi tek u sljedećoj kalendarskoj godini. Naime, ako su neka dobra isporučena npr. u prosincu npr. 2022. godine, obvezu PDV-a po toj osnovi je potrebno utvrditi podnošenjem PDV prijave koja se podnosi u siječnju 2023. godine, no iz čl. 30. st. 1. Zakona o PDV-u je jasno da je PDV obveza **nastala** u prosincu 2022. godine, a ne u 2023. godini. Kako je PDV obveza **nastala** u 2022. godini, a člankom 108. st. 2. Općeg poreznog zakona koji je trenutno na snazi zastara prava na utvrđivanje porezne obveze i kamata počinje teći istekom godine u kojoj je **nastala** porezna obveza – jasno da zastara počinje teći odmah nakon isteka 2022. godine, tj. od 1.1.2023. godine. Znači, tumačenje prema kojem se početak tijeka zastare pomiče u budućnost za jednu kalendarsku godinu ako se porezna prijava podnosi nakon godine za koju se porez utvrđivanje – nije zakonito tumačenje.

Usporediva čvrsta argumentacija za takvo tumačenje postoji i za porez na dobit.

Prema našim saznanjima, **za sada službenici Porezne uprave u pravilu ignoriraju da je od 1.1.2017. godine izmijenjena zakonska odredba koja propisuje početak tijeka zastare prava na utvrđivanje porezne obveze te postupaju nezakonito, no spomenuta presuda Upravnog suda iz rujna 2022. godine ukazuje na to da se nezakonita praksa polako počela mijenjati.**

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