– Questionnaire –

“Surcharges and Penalties in Tax Law"

Polish report

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<table>
<thead>
<tr>
<th>Table of Content</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introductory Explanation</td>
<td>3</td>
</tr>
<tr>
<td>1 Taxpayer and Third Party Duties</td>
<td>3</td>
</tr>
<tr>
<td>2 Definition and Categorisation of different Types of Surcharges</td>
<td>7</td>
</tr>
<tr>
<td>3 Catalogue of Attributes of different Surcharges</td>
<td>16</td>
</tr>
<tr>
<td>4 Surcharges regarding Third Parties</td>
<td>22</td>
</tr>
<tr>
<td>5 Legal Protection of the Taxpayer</td>
<td>22</td>
</tr>
<tr>
<td>6 Deductibility of Surcharges</td>
<td>27</td>
</tr>
<tr>
<td>7 Numbers</td>
<td>28</td>
</tr>
<tr>
<td>8 Effectiveness</td>
<td>29</td>
</tr>
</tbody>
</table>
Introductory Explanation

The questions shall be answered in the given order and in the form of a continuous text: Please focus on your country’s federal level and only on the main/most important taxes (e.g. Income Tax, VAT, ...) and emphasize the constitutional principles and the case law if it is relevant.

Please note that ‘surcharge’ within this questionnaire is used as the generic term covering criminal and administrative penalties and interests as it refers to all instruments that are imposed additionally to the assessed taxes.

1 Taxpayer and Third Party Duties

In how far is the taxpayer obliged to contribute to a successful tax assessment procedure? Please name the duties taxpayers have in your country in order to secure tax assessment and refer to the possible duties listed below. Please also list, if existent, duties of third parties with relevance to tax assessment (e.g. duties of tax advisors, withholding agents or persons with certain notification obligations).

1.1 Tax Assessment Procedures

Please define the character of the tax assessment procedures that exist in your country (e.g. tax assessment ex officio, self assessment).

According to art. 21 § 1 of the Polish General Tax Law Act (Tax Ordinance) - *Ordynacja podatkowa*¹ the tax liability arises on the day when an event associated with the occurrence of such liability by a tax act takes place or on the day when a decision of a tax authority determining the value of such liability is delivered. In majority of Polish taxes, in majority of chargeable events which are objects of taxation tax liability arises on this first method – when an event associated with the tax occurrence takes place. In such situation the taxpayer is obliged to do a self – assessment or – according to a concrete tax law act – the calculation of a tax amount is done by a tax remitter (*płatnik*), who is obliged to calculate a tax, to collect a tax from a taxpayer and to pay the tax to a tax authority by the appropriate deadline. If the taxpayer is not substituted in calculation of the tax by the tax remitter, he has to do his self – assessment (to calculate and to pay the tax) by the deadline fixed in a concrete tax law act.

However, in minority of cases, when the tax liability arises after delivering a decision of a tax authority determining the value of such liability is an issue of a tax declaration is not a self – assessment but only an information about realizing by a taxpayer of a chargeable event described in a concrete tax law act. Such declaration is for a tax authority an impulse to form a tax decision, which delivering creates a tax liability. After delivery of such decision a taxpayer is obliged to pay a tax amount (in principle within 14 days, but sometimes on the day/days pointed in a concrete tax law act). He/she makes it directly to the tax authority or – if such possibility is created in a concrete tax law act – by the agency of a tax collector (inkasent). According to the Polish Tax Ordinance the tax collector is obliged to collect a tax from a taxpayer and to pay the tax to a tax authority by the appropriate deadline. In contrast to the tax remitter the tax collector does not calculate a tax amount, because he can occur only when the tax liability is created after delivering of the constitutive tax decision formed by the tax authority.

1.2 General Duties within Tax Assessment Procedures

Please name the duties taxpayers/third parties have within the tax assessment procedures regarding the preparation and filing of tax returns (e.g. book keeping, disclosure, filing, self-assessment).

Tax collectors and tax remitters are obliged to keep accounts (books) and to fill tax returns. The duty to keep accounts (books) concerns also the taxpayers, especially entrepreneurs or legal entities. In some cases, taxpayers are not obliged to keep accounts, for example employees who are taxpayers of the income tax or taxpayers taxed by a lump-sum tax (karta podatkowa).

As it was mentioned (1.1), in majority of chargeable events which are objects of taxation in Poland the taxpayers are obliged to make a self–assessment. Sometimes, according to a particular tax law act – the calculation of a tax amount is done by a tax remitter (płatnik). However, when the tax liability arises after delivering a decision of a tax authority determining the value of such liability is an issue of a tax declaration is only an information about realising by a taxpayer of a chargeable event described in a particular tax law act.

1.3 Duties regarding Clarification, Examination and Supervision Procedures

This shall for example include tax audits where the lawfulness of tax returns and tax assessments are verified and examined for a certain or several period(s) retrospectively. Sometimes
further procedures exist. For example, present observations, where the auditor can demand access to the present books and records. Furthermore, please also name the duties – if existent – regarding general tax supervision in the sense of a continuous control of the relevant tax assessment. Please make reference to the duties regarding the above mentioned clarification or supervision procedures and any other similar procedure that may exist in your country. Please also name the duties where an authority investigates tax crimes and tax offences and please also refer to a possible change of duties if such criminal investigations are triggered by the aforementioned examination or supervision procedures.

In the Polish Tax Ordinance does not exist any general obligation to collaborate with tax authorities during a tax proceedings. It means that in the Polish tax law does not exist regulation comparable to § 90 of the German Tax Ordinance (Abgabenordnung). However, such general duty is often expressed in judgements of Polish administrative courts. For example, in many judgements they are of opinion that a taxpayer is obliged to collaborate with tax authorities and he has to prove that the cost of the obtainment of the income was actually borne and prove that it is connected with the income. The same is with tax exemptions, tax reliefs and with an input tax in VAT. It is extremely difficult to accept this view, because it does not have its legal ground in the Polish tax law. The general assumption of the truth of a tax declaration formed in the Art. 21 of the Polish Tax Ordinance seems to be contrary to such views. If the tax authority have any doubt about the declaration, it has to prove its suspicions and a taxpayer should not be generally obliged to assist them in it. However, it must be pointed that there is a detailed regulation in the Polish tax law being a base for a collaboration of a taxpayer with tax authorities during a tax proceedings. It is not doubt that the taxpayer is obliged to present tax books and invoices. There is also no doubt that the taxpayer is obliged to fold explanations (Art. 155 of the Polish Tax Ordinance). However, according to the art. 199 of the Polish Tax Ordinance a tax authority may hear a party of proceedings only after the party consents to testify. If the party testify, he or she has to testify the truth. It is because the provisions concerning witnesses (except for the provisions on coercive measures) apply to the hearing of a party (Art. 199 of the Polish Tax Ordinance).

Much more detailed and less controversial is a duty of collaboration of a taxpayer with a tax authority during a tax control (tax inspection). According to the art. 285 § 1 of the Polish Tax Ordinance inspection-related activities are conducted in the presence of the inspected party or a person appointed by him, unless the inspected party resigns from the right to participate in these activities. A statement of giving up the right to participate in inspection-related activities
shall be submitted in writing. However, if the inspected party refuses to submit a statement, the inspector makes a relevant note and encloses it to the minutes (Art. 285 § 2 of the Polish Tax Ordinance). The tax inspector’s activities are exhaustively described in the art. 286 of the Polish Tax Ordinance. It is, among the others: access the land and buildings, premises and other property of the inspected party, requesting access to the property subject to inspection and inspect that property, requesting access to files, books and all kinds of documents relevant to the object of inspection and making copies or excerpts, taking notes, printing or downloading data in electronic format. Inspectors are authorised to enter the premises of the inspected unit and to move around those premises on the basis of an official ID, without the need to obtain a pass, and may not be made subject to a body search as may be provided for in the internal regulations of that unit; however, they are bound by the occupational health and safety provisions applicable in the inspected unit (art. 285 § 5 of the Polish Tax Ordinance).

Such privileges of a tax inspector have their equivalents in duties of an inspected party. The inspected party, the person authorised to represent the inspected party or to manage his affairs, an employee and a person cooperating with the inspected party are obliged to make possible the activities referred to in art. 286, and in particular to enable the free of charge filming, photographing, audio recording and recording of the actual state of affairs with other media, if a film, photograph, video recording or information recorded on another medium may serve as evidence or contribute to recording evidence in the case that is the object of inspection. They are also obliged to present, at the request of the inspector, Polish translation of foreign language documentation of the case that is the object of inspection (art. 287 § 1 of the Polish Tax Ordinance). This translation shall be performed free of charge.

Another duty of the inspected party is providing the explanations. According to the art. 287 § 3 of the Polish Tax Ordinance the inspected party shall, in due time, provide all and any explanations related to the object of inspection, submit the required documents to the inspector and ensure appropriate working conditions for the inspector, including, if possible, an independent room and place to store documents. The similar duty concerns the persons authorised to represent the inspected party or manage his affairs, employees and persons cooperating with the inspected party. They shall provide explanations concerning the object of the inspection insofar as may be relevant to the actual activities or tasks (art. 287 § 4 of the Polish Tax Ordinance).

In case an authority investigates tax offences, the duties and obligations of the defendant are basically the same, as in a general criminal law. The suspect (podejrzany) may testify and he or she may refuse to testify without any adverse consequences. The suspect may not be forced to
provide any evidence *(nemo se ipsum accusare tenetur)* and the burden of proof lies on the investigating authority.

1.4 **Duties regarding Tax Collection**

Please name the duties taxpayers/third parties have within tax collection procedures.

1.5 **Duties regarding Tax Shelter or Tax Schemes**

Do specific rules and therefore duties with respect to tax shelter or tax schemes exist in your country (e.g. disclosure obligations if a tax shelter was designed/modelled and used)?

1.6 **Other Duties**

Special duty connected with the VAT is the obligation to keep a cash register and to hand out the receipt from the cash register without the client’s request. This duty concerns taxpayers of VAT who sells goods or services for subjects who are not taxpayers of this tax (who are consumers)\(^2\). However, by delivery of goods or services for another taxpayers of VAT or for legal entities the taxpayer of VAT is obliged to hand out an invoice. He is obliged to do it also by the delivery of goods or services for not VAT payers on their demand (in such situation the taxpayer of VAT hands out an invoice, not the receipt from the cash register).

2 **Definition and Categorisation of different Types of Surcharges**

Please describe the different measures that exist in your country in order to assure the taxpayer’s/third party’s compliance with his/her duties or in order to secure tax assessment. The different measures shall be categorised into criminal penalties, administrative tax penalties, interests and other surcharges. Please refer to the relevant criteria for the categorisation and differentiation of the different measures stated below.

Surcharges as a legal institution have not be classified in the Polish tax law – neither in the Polish Tax Ordinance nor in the particular Polish tax law acts a legal classification of Surcharges exist. Therefore all the classifications can be formed only in the theory and doctrine of

\(^2\) According to the Art. 111 sect. 1 of the Polish Value Added Tax Act of 11 March 2004 (The Journal of Laws from 2011, No. 177, pos. 1054 – with changes) taxable persons who complete a sale for natural persons not conducting economic activity and flat-rate farmers shall keep the record of turnover and amounts of the output tax with the use of cash registers.
tax law. It distinguish criminal penalties and administrative tax penalties. We can also distinguish interests as a separated form of surcharges.

Criminal penalties are imposed by criminal courts. The administrative tax penalties are imposed by tax authorities (in a decision). However, according to the Polish Tax Ordinance the obligation of payment of interests comes into being automatically – without the necessity of specifying their amount in a tax decision. According to the Polish Tax Ordinance the amount of interests should be in principle calculated by a taxpayer (or another tax debtor – for example tax remitter or tax collector).

2.1 Criminal Penalties

Please name all means of criminal nature relating to tax law under your national law and the relevant criteria for this categorisation. Generally, criminal penalties intend to prevent criminal behaviour by deterrence and are more of a repressive nature. The ECHR, for example, defines the following steps in order to examine and determine the criminal nature of penalties (Engel, EGMR-E No. 23 of 5.12.2008; p: 178, para. 82):

1. Does the offence charged belong to criminal law according to your national law? / Is it a criminal penalty according to your national law?
2. If not, can the very nature of the offence be characterized as being of criminal nature?
3. If also the very nature cannot be characterized as being criminal, does the degree of severity of the penalty make Art. 6 ECHR being applicable? Here, not only the actually imposed penalty, but also the penalty the taxpayer is risking to incur has to be considered.

How is a criminal penalty characterised in your country? Does its match with the aforementioned definition given by the ECHR? If not, please name the differences.

In general terms, the definition of criminal liability in Polish legal system match with the Engel criteria. As it was laid down by the Constitutional Tribunal (Trybunal Konstytucyjny), the very nature of the liability is important, rather than the name used. In the constitutional meaning (i.e. for the purpose of the application of the constitutional freedoms and guarantees, like presumption of innocence or right to defence) the scope of the criminal liability is broader (so called “repressive liability” or “criminal liability sensu largo”). It covers the liability related to crimes (przestępstwa), contraventions (wykroczenia), criminally prohibited acts of legal persons (collective entities), juvenile delinquent acts and even – to some extent – the disciplinary delicts.
On the other hand, the criminal liability sensu stricto is related to the liability for crimes (przestępstwa) and for the fiscal offences (przestępstwa skarbowe). It is very important to point out, that in Polish legal system the fiscal criminal law (prawo karne skarbowe) is traditionally autonomous within the criminal law. It has not only a separate specific part (like in Germany and most of other countries) but also the autonomous general part. As a rule, the provisions of the general part of criminal law (the general part of Criminal Code) are not applied in the fiscal criminal law (art. 20 § 1 Fiscal Criminal Code). Only part (ca. 50%) of the articles of the Criminal Code are applied mutatis mutandis (art. 20 § 2 FCC).

The prohibited acts are divided into fiscal offences (przestępstwa skarbowe) and fiscal contraventions (wykroczenia skarbowe). Almost all the fiscal contraventions are the sub-types of the fiscal offences, delimited either by the quantitative criterion (the value not exceeding 5 minimum monthly wages) or by the criterion of “less serious case” (wypadek mniejszej wagi).

One of the specific instruments of fiscal criminal law (not present in a general criminal law) is the subsidiary liability of the third party for the fines imposed on the defendant in fiscal criminal case (odpowiedzialność posiłkowa). It is briefly discussed in 4. below.

The Fiscal Criminal Code contains also the specific, procedural and executional parts. As for the specific part, it is divided into four groups of fiscal offences: in the area of taxes (Chapter 6), customs and excise (Chapter 7), foreign currency (Chapter 8) and gambling (Chapter 9). Out of theoretically and doctrinally possible groups of fiscal offences, the social insurance fraud and the budget infringements are normally subject to general criminal law, not the fiscal criminal law.

The procedure and execution is based on Criminal Procedure Code and on the Execution of Penalties Code respectively. Some differences and some own legal institutions are to be found in the FCC. The perpetrator has the position of the suspect within the preparatory procedure and the defendant within the court procedures (main hearing), with no differences versus a general criminal procedure. It will be discussed under 5. below.

2.2 Administrative Tax Penalties
Administrative tax penalties represent a general preventive purpose (not repressive) to ensure tax compliance in order to assure a lawful, timely and equal tax assessment. They are a mean of pressure in order to lead to a certain result. Possible administrative tax penalties could be for example late payment penalties, failure to file penalties or penalties for non- or late provision of relevant information, documents or records. How is an administrative tax penalty defined in your country? Please name all means of administrative tax nature relating to tax law under your
national law and the relevant criteria for this categorisation. Please also refer to the *ne bis in idem principle* and state if it is solely applicable regarding criminal law or if it may also be applied to administrative tax penalties.

Administrative penalties in the Polish tax law does not have their legal definition formulated in any legal act. In the theory of Polish tax law they are described as reaction or the forecast of reaction from the side of the state on conflicting behaviour with the norm, being effective negative after-effects for violating this norm. In a narrow meaning, the administrative penalties are only the measures described in the tax law. The legal solutions provided in the criminal fiscal law or in the executional law does not belong to this category. This is because the function of administrative penalties is a prevention only. However, administrative penalties does not play a role of repression (like the criminal penalties do). Next, executional measures cannot be considered administrative penalties, because their aim is only restitution - the restoration of the status from before the infringement of law.

Various examples of administrative penalties in the Polish tax law may be pointed out. These are higher (sanctional) tax rates or an additional tax obligation. A separated kind of administrative penalties are penalties for Breach of Order which aim is assurance of the correct course of the tax proceedings. According to the art. 262 § 1 of the Polish Tax Ordinance a party, a party's representative, witness or expert who, despite being correctly summoned by a tax authority:

1) failed without just cause to appear in person, even though he was obliged to do so, or
2) refused without any reason to provide explanations, make a testimony, express an opinion, present the object of inspection or participate in other actions, or
3) left the place of an action without permission of the tax authority, before the action was completed,

may be punished with a penalty for breach of order of up to PLN 2,800.

However, an example of an administrative penalty which consist in higher than normal tax rate could be the Polish Inheritance and Gift Tax Act. According to it the level of the tax rates depends on sc. “taxation group”. It is determined according to the degree of closeness (kinship, relation) between a donor and a beneficiary, a decedent and a heir etc. The level of tax rates for members of the first tax group is according to the tax base 3%, 5% and 7%. For members of the second group it is 7%, 9% and 12%. If someone belongs to the third group, the level of tax rates is 12%, 16% and 20%. The special level of a tax rate which is kind of surcharge has

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its application when the taxpayer tried to evade the inheritance and gift tax, did not declare the tax base and claimed the gift only in the presence of a tax authority or fiscal inspection authority in the course of an audit, tax proceedings, fiscal control, or control activities, and the tax due on that acquisition has not been paid. Such a level of the tax rate is always 20%.

Similar regulation exist in Polish personal income tax. According to the art. 20 section 3 of the Polish Personal Income Tax Act (PIT) the amount of revenue not justified by the revealed sources or arising from the sources not revealed shall be determined on the basis of expenses incurred by a taxpayer in a tax year and the value of property gathered in a given year if the expenses and the assets cannot be covered by the assets gathered before incurring the expenses or gathering the property arising from the revenue previously taxed or exempt from taxation. In this case the tax rate is as much as 75% of income. It is much higher than “normal” tax rates which are part of the progressive tax bracket with two rates (18% and 30%). It must be also pointed out that the 75% taxation of “concealed incomes” makes the use of the tax reliefs impossible. It is also impossible to reach for the common taxation of spouses and a common taxation of taxpayers who are single parents.

Art. 20 section 3 of the Polish Personal Income Tax Act forms a very general premises for taxation of concealed incomes. Due to this, the Constitutional Tribunal in his judgement of 29 July 2014 recognized this regulation as too vague in democratic state of law. In consequence, a legal definition of “concealed income” should be specified till 6 February 2016.

As it was mentioned, an example of the administrative penalties in the Polish tax law is also an additional tax obligation in VAT. It had the wider use in the past (it was a consequence of a wrong self-assessment - a lower tax due or higher input tax), but these days it is connected only with a duty to keep the record of turnover and amounts of the output tax with the use of cash registers. According to the art. 111 section 2 of the Polish Value Added Tax Act, if it is found that a taxable person violates this obligation, the head of a tax office or tax inspection authority shall determine for the period since which the record of turnover and amounts of the

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6 Art. 30 sect. 1 point 7 of the Polish Personal Income Tax Act.

output tax with the use of cash registers has been kept an additional tax liability in the amount of 30 % of the tax charged upon the acquisition of goods and services.

It must be emphasised that this additional tax liability is not determined in case of natural persons who, in respect of the same act, bear liability for a fiscal contravention offence or fiscal offence\textsuperscript{8}. This regulation is a consequence of two judgement of the Constitutional Tribunal. The Tribunal considered the question of administrative sanctions in the context of the principle of proportionality. The reaction of the state (sanction) for infringement of right in a democratic state of law should not be obviously inappropriate or irrational or incommensurate complained\textsuperscript{9}. In its judgements of 29 April 1998 (K 17/97)\textsuperscript{10} and of 4 September 2007 (P 43/06)\textsuperscript{11} the Constitutional Tribunal made it clear that the accumulation of two sanctions – administrative additional tax liability in VAT and penal sanction against the same natural person violates the principle of proportionality and cannot have its place in the democratic state of law. As it can be understood, the Constitutional Tribunal recognised a repressive function of additional tax liability and according to the \textit{ne bis in idem} principle excluded applying of this administrative sanction to the same natural person together with a penal sanction.

The Constitutional Tribunal expressed a different opinion in the judgement given in the case of personal income tax calculated with the 75 % tax rate. In this case the Constitutional Tribunal did not found any “double jeopardy”, because it did not recognise an element of repression in this higher tax rate. In the opinion of this court, the income tax amount calculated with this 75 % tax rate cannot be considered obviously inappropriate or irrational or incommensurate complained. It is because of the function of this rate\textsuperscript{12}. The Constitutional Tribunal is of opinion that this legal construction is not a sanction (repression). The higher amount of rates compensates the lack of the delay interests (late interests). They are to be paid only when the 75% income tax was not paid within 14 days after handing out of the decision creating this obligation. Therefore, the higher tax rate is not a repression, but a compensation to the state for all of this period, when the taxpayer tried to evade the tax and did not pay an income tax.

Special regulation contained in the Polish personal income tax act and in the Polish corporate income tax act concerns a higher tax rate connected with taxation of transactions made with connected subjects and the payment is made directly or indirectly to the entity that has its

\begin{itemize}
  \item \textsuperscript{8} Art. 111 sect. 2 of the Polish Value Added Tax Act.
  \item \textsuperscript{9} Sentence of the Constitutional Tribunal of 15 January 2007 (P 19/06), OTK ZU, No 1/A/2007, pos. 2.
  \item \textsuperscript{10} OTK ZU, No 3/1998, pos. 30.
  \item \textsuperscript{11} OTK ZU, No 8/A/2007, pos. 95.
  \item \textsuperscript{12} Sentence of the Constitutional Tribunal of 12 April 2011 (P 90/08), The Journal of Laws from 2011, No. 87, pos. 493.
\end{itemize}
place of residence, registered office or management board within the territory or in the country that implements harmful tax competition. According to art. 30d section 1 of the Polish personal income tax act and art. 19 section 4 of the Polish Corporate Income Tax (CIT)\(^{13}\) if the competent tax authority or tax inspection authority determines the taxpayer's income in the amount higher than (or the loss lower than) declared by the taxpayer in connection with conducting of transactions between connected subjects and the payment of liabilities arising from said transactions is made directly or indirectly to the entity that has its place of residence, registered office or management board within the territory or in the country that implements harmful tax competition and the taxpayer fails to furnish to those authorities the required tax documents - the difference between the income declared by the taxpayer and the income determined by said authorities shall be charged at the 50 % rate.

2.3 Interests
Besides the above mentioned measures interest provisions exist, which represent surcharges in a broader sense. Imposed interests do not represent sanctions. Their purpose is rather to absorb possible liquidity benefits and secure timely payments as well as the real value of tax claims across different time periods. Possible relevant interests could be for example interests during deferment, interests on evaded tax, interests on refund amounts during legal proceedings, interests while implementation is suspended or interests on subsequent tax claims and tax refunds. Please name all interests relating to tax law under your national law and the relevant criteria for this categorisation.

In contrast to special surcharges, which are connected with late submission of a tax declaration, interests as a consequence of delayed payment of a tax or a consequence of an excess tax are regulated in the Polish Tax Ordinance. According to this statute, there are two kinds of interests: delay interests (late interests), which should be paid by taxpayers and another subjects which are tax debtors (tax remitters and tax collectors, third persons responsible for others liability, legal successors) and interest of excess payment, which should by paid by the state or commune and are connected with the delayed return of the excess payment of the tax.

It must be emphasised that paying interests by the tax debtor is a simple consequence of the existence of tax arrears. Coming into being of this obligation does not depend on the cause

of tax arrears\textsuperscript{14}. Even when the taxpayer or another tax debtor did not pay a tax without his fault he or she must pay the interests. However, the first day of running interests is the first day of existing tax arrears and they run to the day of paying an outstanding tax\textsuperscript{15}. According to the art. 56 § 1 of the Polish Tax Ordinance the late interest rate is equal to the sum of 200\% of the basic lombard rate determined in accordance with the provisions on the National Bank of Poland and 2\%, though the rate may not be lower than 8\%. This regulation determines also the level of tax overpayments interests. It is because the tax overpayments are subject to interest at a rate equal to the late interest rate on tax arrears\textsuperscript{16}. Only tax overpayments whose amount does not exceed the costs of issuing a reminder in enforcement proceedings are not subject to interest\textsuperscript{17}.

It is also possible to calculate a lower amount of interests. This is “a gift” or “a positive sanction” for a taxpayer linked with voluntary submitting of a tax declaration connected with explanation of a reason of this correction and paying of the entire tax arrears. According to the art. 56 § 1a of the Polish Tax Ordinance if a legally effective corrected declaration is submitted together with an explanation why the correction was made and if the entire tax arrears are paid within 7 days from the submission of the corrected declaration, a reduced late interest rate of 75\% of the normal rate applies.

In a due course, the tax authority establishes a prolongation duty due on tax or tax arrears in a decision which subject is deferring the tax due date or dividing tax into instalments as well as deferring or dividing into instalments of the tax arrears including late interest concerning taxes constituting the state budget income\textsuperscript{18}. The prolongation duty rate is 50\% of the late interest rate. However, a commune council may establish a prolongation duty - whose amount may not exceed the amount determined for postponing of state taxes if the taxes or tax arrears constituting the income of a commune (art. 57 § 7 of the Polish Tax Ordinance).

\subsection*{2.4 Other Surcharges}

In some countries “indirect” or “hidden” sanctions exist. “Indirect” sanctions are sanctions that produce disadvantageous consequences (e.g. voidness of agreements or the shutdown of businesses if the respective taxes are not paid) whereas “hidden” sanctions shall have the same effect, but are not categorised as a typical sanction (e.g. no deduction of costs if they are not re-

\begin{thebibliography}{9}
\bibitem{14} Art. 51 §1 and 53 §1 of the Polish Tax Ordinance.
\bibitem{15} Only in eight exceptional situation pointed in Art. 54 §1 of the Polish Tax Ordinance late interest is not accrued.
\bibitem{16} Art. 78 § 1 of the Polish Tax Ordinance.
\bibitem{17} Art. 78 § 2 of the Polish Tax Ordinance.
\bibitem{18} Art. 57 § 1 of the Polish Tax Ordinance.
\end{thebibliography}
corded as required). Besides those non-monetary sanctions, punitive taxes, exceeding interests above market interest and costs arising from imposed sanctions may also exist in some countries and shall be considered.

Please name all other surcharges relating to tax law under your national law and the relevant criteria for this categorisation and why it cannot be classified according to the aforementioned categories under 2.1, 2.2 and 2.3.

In general, in the Polish tax law do not exist any special measures (administrative penalties) being the consequence of delayed composition of the tax declaration by the taxpayer or by the other tax debtors. Normally, the sanction for such behaviour are only in the area of criminal law. Only sometimes late composition of the tax declaration has its special consequences in a tax law. It is connected with art. 68 of the Polish Tax Ordinance. According to this regulation the prescription of tax assessment follows after the lapse of three years from the end of the calendar year in which the tax obligation arose. After this time is not possible to deliver the tax decision which creates a tax liability. On the other hand, if a taxpayer fails to submit a declaration within the time limit determined in the provisions of tax law or fails to report in his declaration all the information necessary to determine the amount of tax liability, a tax liability does not arise, provided that a decision establishing that liability is delivered after the lapse of five years from the end of the calendar year in which the tax obligation arose\textsuperscript{19}.

Another specific tax regulation intended to encourage submitting of a tax declaration on time is a legal construction contained in the Polish Personal Income Tax Act. According to it the choice of the common taxation by spouses or the choice of special taxation by single parents is possible only in a tax declaration submitted to the end of period for submitting a declaration for the personal income tax (it is the 30\textsuperscript{th} April of the next calendar year). Later choosing of such privilege is not possible.

Also the Polish Inheritance and Gift Tax Act contains a special regulation which can be perceived as an adverse consequence of late fulfilling the administrative duties. According to the art. 4a section 1 of this tax act the acquisition of ownership title to tangible property or property rights by a spouse, descendants, ascendants, stepchild, siblings, stepfather and stepmother, is exempt from tax if, among the others, they report the acquisition of such tangible property or property rights to the competent head of a tax office within six months from the date of tax obligation occurrence and in the case of acquisition by succession - within 6 months from the date of the definitive court ruling on the acquisition of inheritance. Lack of report within this time

\textsuperscript{19} Art. 68 § 2 of the Polish Tax Ordinance.
prevents the taxpayer from the use of the tax exemption regulated in the art. 4a section 1 of the Polish Inheritance and Gift Tax Act.

3 Catalogue of Attributes of different Surcharges

Please refer to the surcharges that exist according to the categories defined under section 2 in your country. Please emphasize the distinction between the different categories of surcharges and make reference to the following attributes:

3.1 Purpose/aim/justification

The justification of the criminal liability is the same, as in a general criminal law, i.e. predominantly preventive and repressive.

3.2 Prerequisites

In case of fiscal offences, the prerequisites are determined in general part of Fiscal Criminal Code as well as in particular types of the offences.

According to Fiscal Criminal Code, the fiscal criminal liability may be imposed for human conduct matching the elements of the fiscal offence. These elements are generally the same, as in general criminal law, i.e. the active or passive conduct have to match the type of crime as determined in a specific part, have to be illegal (bezprawny), got a level of social dangerousness more than negligible (społecznie szkodliwy w stopniu wyższym niż znikomy) and faulty (zawiniony).

The criminal liability may be attributed not only in case of completion of the crime, but also in case of attempt (much narrower, however, than in general criminal code). Not only the direct perpetrator is liable, but also the aides and abettors. According to the specific clause in art. 9 § 3 FCC, the person acting on behalf of the other person (natural or legal) may also be held responsible as an emanation of the represented person. For example: if the individual offence may be committed by the “taxpayer” and the taxpayer in particular case is a company (not the individual person), the individual person in charge of particular duty is held liable as an agent of the company.

Relevant tax criminal acts are to be found in Fiscal Criminal Code Chapter 6. Most of them are punished with fine, some most serious with imprisonment, either suspended or not sus-
pended. In the latter cases, usually accompanied with fine. Other important accessorial measure is a forfeiture.

Art. 54 is a tax evasion. The offence is committed, if the taxpayer evades the taxation by nondisclosure to the competent organ the taxation object or the taxable base and the tax is exposed to diminution. The prescribed penalty is the fine up to 720 day units or the imprisonment up to 5 year (both are maximum penalties in FCC).

Art. 56 is a tax fraud. The crime is committed by the taxpayer if he or she files a tax return containing the misleading or false information and this way exposes the tax on diminution. The prescribed penalty is the same as in case of tax evasion.

Specific type of a tax fraud is to be found in art. 76 FCC. The offence is committed if the fraud leads to improper return of the tax already paid. In practice it happens mostly in VAT cases (sc. carousel fraud, among the others). The penalty limits are the same, as in art. 54 and 56 FCC.

The offence of art. 77 FCC may be committed by the tax collector who delays the payment of the tax already collected form the taxpayer. The upper limit of the penalty is 3 years imprisonment.

All of these articles contain the basic type of the offence in § 1 and the less serious type of the offence in § 2, characterised by the tax amount not exceeding “small value”, what is defined as 200 minimum wages (i.e. ca 80 000 Euros). It means, that almost all the “individual” (non-corporate) perpetrators fall into this milder qualification, not endangered with the imprisonment, but the fine only.

It should be mentioned, that the proper tax assessment is indirectly protected also by the art. 60 and 61 FCC. First of the offences is committed if the perpetrator do not keep the commercial records (books) he/she is obliged to, do not keep them in declared place or do not inform about letting the bookkeeping to the tax advisor. The other one, if the record contains inaccurate information. In case of art. 60 FCC the obvious reason of criminalisation is a prevention from the “hidden” tax fraud, committed by the concealing of the information or making it unavailable to the controlling agencies. Both are punished with a moderate fine.

All of these fiscal offences have the corresponding fiscal contraventions. The tax evasion, fraud and delay are the fiscal contravention if the amount of the tax evaded, endangered or delayed is lower than 5 minimal wages (ca. 2000 Euros). In case of the offences connected with the improper bookkeeping, the contravention is in “lesser case” (the criterions are specified in the general part) or if the record is kept formally improperly, but it does not contain false information.
Due to unclear reasons, some criminal behaviours indirectly related to tax assessment may also be found outside of the fiscal criminal law – in Bookkeeping Act of 1994 (ustawa o rachunkowości).

In case of administrative penalties, the prerequisites are determined in tax law acts. However, the legal base for proceedings is the Tax Ordinance. Such elements like a level of social dangerousness more than negligible or fault are absent here.

### 3.3 Timely appliance of the surcharge (e.g. immediately, after a certain time period).

An additional tax liability related to the goods and services tax does not arise if a decision establishing that liability is delivered after the lapse of 5 years from the end of the calendar year in which the tax obligation arose (art. 68 § 3 of the Polish Tax Ordinance). The liability on account of tax levied on income that is not reflected in the reported revenue sources or earned from unreported sources does not arise if a decision establishing that liability is delivered after the lapse of 5 years from the end of the year of the expiry of the time limit for the payers of personal income tax to submit an annual return for the tax year which the decision concerns (art. 68 § 3 of the Polish Tax Ordinance).

All the tax liabilities expire in a result of prescription of tax liability after 5 years beginning with the end of the calendar year in which the time limit to pay tax ended (art. 70 § 1 of the Polish Tax Ordinance).

For the criminal liability, there is no difference to other criminal proceedings. The statute of limitation exists. According to art. 44 Fiscal Criminal Code, the prescription is 10 years in case of more serious offences (among the others: tax evasion and tax fraud) or 5 years in other offences. In case if tax diminution or exposure to diminution, the criminal prescription may not be earlier, that the tax-law prescription. There are some additional provision, the prescription normally starts the last day of the calendar year the criminal act was committed.

### 3.4 Amount of the Surcharge, base on which the Surcharge is applied (e.g. tax amount, certain underlying object) or the duration of imprisonment.

### 3.5 Maximum limit regarding the surcharge amount or the imprisonment.

According to the provisions of the general part of the Fiscal Criminal Code, the fine for the tax offences is imposed in daily units (the same, as in Criminal Code). The number of day
units is 10 to 720, the day unit may vary from 1/30 of the minimum wages to 13 1/3 of the minimum wage (it is ca. 13.5 Euro to ca 550 Euros). Similarly as in other legal systems, the court shall determine the amount of the daily unit taking into consideration the personal and financial circumstances of the defendant. The imprisonment may normally be between 5 days and 5 years (except for extraordinary aggravation of the penalty and the aggregate penalties). The fiscal contraventions are punishable with the fines only. The fine may not exceed 10 minimum monthly wages (ca. 4000 Euros). In case of fine ticket, the fine may not exceed 2 minimum monthly wages (ca. 800 Euros).

In case of the offences connected with the tax assessment, the limits of the penalties as specified in the specific part of FCC are:

| Art. 54 § 1 | Fine: up to 720 day units | Imprisonment: up to 5 years |
| Art. 56 § 1 | Fine: up to 720 day units | Imprisonment: none |
| Art. 76 § 1 | Fine: up to 720 day units | Imprisonment: up to 3 years |
| Art. 77 § 1 | Fine: up to 240 day units |
| Art. 54 § 2 | |
| Art. 56 § 2 | |
| Art. 76 § 2 | |
| Art. 77 § 2 | |
| Art. 60 § 1, 2 and 3 | |
| Art. 61 § 1 | |

3.6 If the surcharge is depending on fault or not (please name the degree of the personal responsibility).

The fiscal criminal liability is based on fault. There is no difference between the general criminal law and fiscal criminal law in this point. No strict liability exists in Polish criminal law. All the offences discussed here require the intentional conduct (umyślność).

The administrative penalties does not require any fault.
3.7 If exemptions from surcharges exist (e.g. due to severity, reasonable justification of the non-compliance or acting in good faith).

In the area of fiscal criminal law three institutions need to be mentioned.

First is the mixed definition of crime (and fiscal offence), requiring the level of the social dangerousness of the particular crime being higher, than negligible (znikomy). It means, that some conducts, even if “technically” constitute the offence, are not the offences because of the lack of “social relevance”. The same effect is achieved in other systems by the concept of negligible fault, by extensive exceptions from the mandatory prosecution (e.g. Germany) or procedural opportunism (e.g. Anglo-American common law system as well as some Continental systems).

The second is an active repentance (czynny żal, art. 16 FCC). If the offender informs the competent authority about his/her offence before the authority has the information about it, pays the due public revenue and completes some other duties, he or she is entirely exempted from the criminal liability (!). The active repentance clause corresponds the clauses in Criminal Code (the active repentance in case of the attempt or criminal collaboration, both existing also in fiscal criminal code) but it reaches much further, up to the ex-post nullification of the liability for the offence already completed. Along with some other institutions of the Fiscal Criminal Code (the voluntary subordination to penalty, application of the reduced penalty at the request of the defendant) it shifts the accent form the retaliation and the rehabilitation (as in general criminal law) to the execution of public revenues and safeguarding the administrative duties of the individual and legal persons.

The other is a correction of the tax refund (art. 16a FCC). Making the proper correction accompanied with payment of the outstanding public allowance nullifies the offense already committed.

On the other hand, the standard criminal law justification of necessity does not exist in a fiscal criminal law.

The forfeiture is not applied if the value of the object is disproportionally higher than the evaded tax amount.

3.8 Who imposes surcharges/penalties? / Who is in charge (differ between criminal penalties, administrative tax penalties, interests and other surcharges)?
Both in general and in fiscal criminal law the criminal penalties are imposed by the court only. Before 1999 they could be applied (except for imprisonment) by the administrative authorities (tax administration and customs administration) in a simplified procedure. After 1999 the imposition of the penalties for all the criminal misconducts is the domain of the courts (with the exception of the small fines in contravention and fiscal contravention cases in the fine ticket procedure). Therefore all the penalties for the fiscal offences and part of the penalties for the fiscal contraventions are imposed by the court. Some part of fines in case of the fiscal contraventions is applied by the tax or customs administration in the fine ticket procedure.

Administrative penalties are imposed by tax authorities only.

Interests are as a rule calculated by taxpayers (or other debtors). In exceptional cases the calculation of interests is done in decisions of tax authorities.

3.9 What are the procedures regarding the imposition of administrative tax penalties and criminal penalties. Please also compare those procedures. Are there differences, similarities, links?

According to art. 113 Fiscal Criminal Code, the Criminal Procedure Code applies in case of fiscal offences (and fiscal contraventions). The subsequent articles of FCC (art. 114-177) contain the catalogue of the differences. The preparatory procedure is conducted by the fiscal authorities, rather than police. The competent court is the District Court (Sąd Rejonowy - the lowest level of the Ordinary Courts) – the same as in vast majority of the ordinary criminal cases. The appeals are dealt with by the Provincial Court (Sąd Okręgowy – second level of the system of Ordinary Courts). The whole procedure is based on exactly the same principles, as the general criminal cases (objective truth, presumption of innocence, right to defence, immediacy, free valuation of the evidence, legality and others). The Administrative Courts play no role in determining the criminal liability for fiscal crimes. However, in case of the concurrent proceedings, the criminal court may stay its procedures, if the final decision depends on solution of some questions dealt with by the control authority, tax authority or the administrative court (art. 114a FCC).

Administrative penalties are imposed in proceedings regulated in the Tax Ordinance. It is the same proceedings which applies in determination of tax liabilities. It has nothing in common with the criminal proceedings and the principles of application of the administrative penalties are different/ Such elements typical for criminal law like a level of social dangerousness more than negligible or requirement of fault does not exist in an administrative (tax) proceedings.
4 Surcharges regarding Third Parties
If third parties are involved (see section 1) in the tax assessment procedure, are respective sanctions applied in your country if the third person does not act in conformity with its legal duties?
Is the fault of a third person attributed to the taxpayer or are those parties sanctioned separately?
If the latter is the case, please state which kind of surcharges are imposed on the third parties according to your national law (please refer to the attributes given under 3).

According to the art. 24 Fiscal Criminal Code, for the fine imposed on the defendant, the third party may be held subsidiary liable (odpowiedzialny posiłkowo), if the offender was acting on behalf of the third person and the third person financially profited or might have potentially profit from the fiscal offence committed. In practice the subsidiary liability play the limited role.

5 Legal Protection of the Taxpayer/Third Parties
Please state the possible actions a taxpayer/third party may take on the administrative and court level if surcharges have been imposed. In this content, please answer the following questions:

Every tax decisions can be appealed against to the tax authority of the second instance. Some orders of authority issued in the course of proceedings may also be contested. The legal measure against tax decisions is an appeal (odwołanie), the legal measure against the orders is a complaint (zażalenie). The addition, the final decision or final order which earlier was an object of appeal or complaint can be challenged with the complaint to the Province Administrative Court (Wojewódzki Sąd Administracyjny)\(^{20}\). Next, the judgements of the Province Administrative Court can be object of an extraordinary appeal (kasacja) to the Superior Administrative Court (Naczelny Sąd Administracyjny) in Warsaw. It means that in Poland exists two degrees of an administrative proceedings (every decision and some of the orders is a subject of an instance control) and after it they can be challenged before an administrative court.

Both additional liability and tax liability determined by higher tax rates are shaped in a tax decision. In consequence, they come under the administrative and (then) judicial control. However, the penalties for breach of order are controlled on complaint and subsequently they are

\(^{20}\) Currently exist sixteen Province Administrative Courts (Wojewódzkich Sądów Administracyjnych) – one court in each province (województwo) in which is divided the Republic of Poland.
subjected to the judicial control\textsuperscript{21}. It is also possible, that the person punished for the breach of order gives up bringing a complaint and fulfils his procedural duty. In such situation the tax authority that imposed a penalty for breach of order may, at the request of the punished person filed within seven days from the day of delivery of an order imposing a penalty for breach of order, recognise the failure to appear or comply with other duties as justified and set aside the order imposing the penalty\textsuperscript{22}.

The time limit for filing a complaint is seven days from the day of delivery of an order. The appeal against a tax decisions can be filed within fourteen days from the day of their delivery. Both of these legal measures are filed with the competent appellate or complaint authority via the tax authority that issued the decision or the order concerned\textsuperscript{23}. It should forward the appeal (the complaint), accompanied by case files, to the appellate authority without undue delay and not later than within fourteen days from the day of receipt of the appeal\textsuperscript{24}. In the same time limit it can consider if the entire appeal (complaint) filed by a party should be recognised. If the tax authority did it, it issues a new decision, whereby it sets aside or modifies the contested decision\textsuperscript{25}.

According to art. 139 § 1 of the Polish Tax Ordinance all the cases requiring evidentiary hearing should in principle be settled without undue delay, however, not later than within a month, and if a case is particularly complicated - not later than within two months from the day of the institution of proceedings. In the appellate proceedings, the cases should be settled at the latest within two months from the day of receipt of an appeal by the appellate authority, and cases where a trial was conducted or a party filed a petition for trial - at the latest within three months\textsuperscript{26}.

Complaints against these decisions and orders shall be lodged to a Province Administrative Court within thirty days from the day of service of the solution of the case on the complainant\textsuperscript{27}. It shall be lodged through the authority whose action or failure to act has been challenged\textsuperscript{28}. The cassation appeal shall be lodged with the Province Administrative Court which

\textsuperscript{21} Art. 262 § 5 of the Polish Tax Ordinance.
\textsuperscript{22} Art. 262 § 5 of the Polish Tax Ordinance.
\textsuperscript{23} Art. 223 § 1 and Art. 239 of the Polish Tax Ordinance.
\textsuperscript{24} Art. 226 § 1 of the Polish Tax Ordinance.
\textsuperscript{25} Art. 227 § 1 of the Polish Tax Ordinance.
\textsuperscript{26} Art. 139 § 3 of the Polish Tax Ordinance.
\textsuperscript{28} Art. 54 § 1 of the act on proceedings before administrative courts.
has issued the challenged judgement or order, within thirty days from the day of service on the party of the copy of the decision with the reasons given. It should be forwarded to the Supreme Administrative Court. The time limit in which a complaint and a cassation appeal should be settled is not determined. In practice, it is not longer than several months in province administrative courts and not longer than two years in tax cases in the Supreme Administrative Court.

5.1 Does he/she have recourse to legal actions?
Is he/she able to realise the fundamental principles of equality and proportionality through these means?

5.2 Which authority or institution has to be addressed by the taxpayer/third party if he/she wants to file an objection?

As it was mentioned, it is possible to lodge an appeal and a complaint within a tax proceedings. The condition of it are the same for all the taxpayers or other tax debtors. The participation of the Ombudsman, a prosecutor and a social organisation is also possible. According to art. 133a § 1 of the Polish Tax Ordinance in a case involving another person, subject to that person's consent, a social organisation may request to institute proceedings and to be allowed to participate in proceedings if it is justified by the organisation's statutory objectives and by public interest. They can also take part in a proceedings conducted in administrative courts. A complaint and a cassation appeal is available both to the taxpayer and to the tax authority, but a cassation appeal has to be prepared on behalf of a taxpayer by the professional lawyer (barrister, legal advisor, tax advisor).

In case of criminal conviction, the appeal (apelacja) is available both to the prosecutor and to the defendant, under the same conditions as in a general criminal procedure. Some important decisions during the proceedings (provisional detention, search, seizure, stay of the proceedings and others) may also be subject to interlocutory appeal / complaint (zażalenie).

The fine ticket (applicable in small contravention cases) always requires the acceptance of the perpetrator. If the perpetrator objects such procedure, the case is transferred to the court and dealt in ordinary procedure (with a penal order in most cases).

29 Art. 177 § 1 of the act on proceedings before administrative courts.
5.3 Do interim measures regarding legal protection exist in your country?

Interim measures or interim relief mean the suspension of tax surcharges during the time of an objection procedure until the final decision is made. Which information/arguments does the taxpayer/third party have to provide in order to get this kind of interim protection (e.g. the degree of doubts regarding the lawfulness of the objected surcharge or the degree of the likelihood)?

Only final decisions which impose administrative penalties and only final judgements which adjudicate criminal penalties can be executed. According to art. 239b §1 of the Polish Tax Ordinance a non-final decision may be (exceptionally) declared to be immediately enforceable, if:

1) a tax authority has access to information according to which a party is involved in other pending enforcement proceedings involving other debts, or
2) a party does not have property of a value corresponding to the amount of tax arrears, including late interest, on which a compulsory mortgage or tax lien with the right of priority over other claims could be established, or
3) a party takes actions aimed at the disposal of property of major value, or
4) the limitation period of a tax liability ends within less than 3 months.

All these provisions apply if a tax authority substantiates the risk that the liability determined in a decision will not be satisfied (art. 239b § 2 of the Polish Tax Ordinance).

5.4 Does protection through advance ruling exist in your country? If yes, what are the prerequisites?

Protection through advance ruling exists in Poland. Tax administration can be asked by every interested person (among them by taxpayers) to give the advance interpretation of tax law. Applying to the writing misleading information given by tax administration cannot disadvantage the applicant. It means that no proceedings involving fiscal offences or criminal offences shall be instituted in such situation, any such proceedings shall be terminated, and no late interest shall be charged (art. 14k of the Polish Tax Ordinance). However, complying to the false information in principle does not exempt from the obligation to pay tax. Only if the fiscal consequences associated with an event corresponding to an actual state of affairs covered by an interpretation took place after delivery of an information and a liability was not duly complied with due to application of an mistaken information (Art. 14m § 1 of the Polish Tax Ordinance).
5.5 Do alternative dispute resolutions or settlements (dealing) regarding surcharges exist in your country (e.g. within tax audits)?

If yes, please name the prerequisites and state if alternative dispute resolutions or settlements are solely executed regarding surcharges or if so-called package deals exist which additionally include the tax itself.

The settlements are not regulated in tax procedure. It is also impossible to negotiate the scope of sanctions regulated in the particular Polish tax law acts. This is because the tax authorities after discovering the irregularities are obliged to apply the legal regulated sanction in the dimension prescribed in a tax act. Due to this, there is not space for settlements regarding administrative penalties.

In the general criminal procedure the mediation is possible. In the fiscal criminal cases the mediation is not allowed. On the other hand, the landmark of the fiscal criminal procedure is the presence and importance of various consensual instruments encouraging the cooperation of the defendant with the authorities and offering to him various advantages in return for the cooperation.

These instruments are:
- Active repentance after the commission of the crime and a correction of the tax refund
- Active repentance in case of criminal collaboration and in case of attempt
- Voluntary subordination to penalty (more than a half of the cases are dealt with this way)
- Application of the mitigated penalty without the hearing (art. 156 FCC)
- Application of the mitigated penalty on the request of the defendant (art. 161 FCC and art. 387 Criminal Procedure Code)
- Penal order procedure

5.6 Do other tax law safeguards exist in your country (does a special taxpayer bill of rights exist)? Is the level of tax law safeguards in general higher/lower compared to civil, administrative or criminal rules?

It does not exist any special taxpayer bill of rights in Poland, although an idea and proposal to enact such statute is present in the theory of the tax law.

On the level of procedural law (not in substantive tax law) the principles of the tax proceedings as set up in the Polish Tax Ordinance exist. They are the legal norms and they, among
the others, should protect a taxpayer during a tax proceedings. According to the opinion of the doctrine of tax law the protection is not strong enough, therefore the creation of the abovementioned taxpayer’s bill of rights is suggested.

6 Deductibility of Surcharges

Please state if surcharges are considered within tax procedure law or tax proceedings. Are surcharges deductible from the tax base? If your national law allows the assessing of surcharges in a cumulative manner, does a consideration exist where a subsequent surcharge is imposed? Please also make reference to the extent and prerequisites of these considerations/deductions.

It depends on the kind of a tax. In personal income tax the tax rate is 75% of the “concealed incomes”. The amount of “concealed incomes” are counted the specific way. It is the value of property gathered in a given year if the expenses and the assets cannot be covered by the assets gathered before incurring these expenses or gathering that property arising from the revenue previously taxed or exempt from taxation. As it was mentioned above, in opposition to the “ordinary tax base” it is impossible to apply to such tax obligation (and tax liability) the tax reliefs. It is also impossible to choose a common taxation of spouse and a common taxation of taxpayers who are single parents.

In inheritance and gift tax act the tax base is the same as in applying “normal” tax rates. Only a tax rate (20%) is higher than usual.

As far as it concerns VAT, the base of surcharge (sanction) is specific. This surcharge is connected with lack of a cash register and a tax authority shall determine for the period since which the record of turnover and amounts of the output tax with the use of cash registers has been kept an additional tax liability in the amount of 30% of the tax charged upon the acquisition of goods and services. It means that this liability is deducted from its “own” tax base and exists next to the “normal” liability in VAT.

The higher tax rate (50%) connected with taxation of connected subjects and payment done to the entity that has its place of residence, registered office or management board within the territory or in the country that implements harmful tax competition and failing to furnish to the tax authorities the required tax documents is related to the tax base determined without taking into account the conditions resulting these relations (connections).

The criminal sentence does not exempt from the payment of the due public revenue (art. 15 § 1 FCC). Neither the public revenue is deductible from the fine nor the fine from the public revenue to be paid.
7 Numbers

Please state, as far as possible, the number and development of proceedings regarding surcharges in tax law over the past years until today (especially criminal proceedings) and how these proceedings end (what kind of sanctions are imposed). Please also make reference to the total amount of imposed surcharges. In the case that alternative dispute resolutions or settlements regarding surcharges were carried out (see 5.5), please state the kind and quantity of dealings executed in your country.

In 2012 the numbers of convicted persons and the applied criminal penalties were as follows:

<table>
<thead>
<tr>
<th>Art.</th>
<th>convicted persons</th>
<th>fine</th>
<th>Suspended imprisonment</th>
<th>Imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>54 § 1 and 2</td>
<td>1424</td>
<td>1234</td>
<td>186</td>
<td>22</td>
</tr>
<tr>
<td>56 § 1 and 2</td>
<td>1038</td>
<td>905</td>
<td>129</td>
<td>49</td>
</tr>
<tr>
<td>60 § 1, 2 and 3</td>
<td>131</td>
<td>131</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>61 § 1</td>
<td>105</td>
<td>101</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>76 § 1 and 2</td>
<td>92</td>
<td>83</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>77 § 1 and 2</td>
<td>1180</td>
<td>1173</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>3970</td>
<td>3627</td>
<td>331</td>
<td>73</td>
</tr>
<tr>
<td>All the fiscal offences</td>
<td>6839</td>
<td>6229</td>
<td>483</td>
<td>107</td>
</tr>
<tr>
<td>% among the all fiscal offences</td>
<td>58.04</td>
<td>58.23</td>
<td>68.53</td>
<td>68.22</td>
</tr>
</tbody>
</table>

The data for 2013 is not yet available, but we may assume the figures are similar.
Source: Ministry of Justice official statistics www.ms.gov.pl

It should be remarked, that out of 107 persons sent to prison for the fiscal offences on 2012, more than two thirds were convicted for the crimes connected with the tax assessment, most of them for (aggravated) tax fraud. In more general terms, the imprisonment is clearly an ultima ratio, vast majority of the cases (and virtually all the smaller cases) end with the economic sanctions only.

Unfortunately the comprehensive data on administrative measures is not available.

According to the statistics published by the Inspector General of Fiscal Control (http://www.mf.gov.pl/kontrola-skarbowa), in 2013 the number of control proceedings was
10 177. In 5 285 cases the ground for the institution of the criminal investigation was found. 2 037 cases ended with a voluntary submission to punishment and the total amount of fines was PLN 2,9 million. In addition to this, the inspectors issued 51 839 fine tickets. The amount of the fines imposed this way was PLN 11,9 million.

The total amount of the tax evasions discovered by the inspectors was PLN 6 446,7 million. The taxpayers voluntarily corrected the tax returns and paid PLN 198,1 million (less than in preceding years). The rest of the amount was subject to the tax decisions. In addition to this, the control procedures prevented the unduly return of VAT to the amount of PLN 66,8 million (less than in preceding year).

The average amount of the tax withheld per one control was PLN 633,5 thousand (more than in preceding years).

The total number of controls was 7 078. In 3 652 cases the decision was issued, in 1 905 the voluntary correction was made. It means, that 78,51% of the controls ended with the decision or with the voluntary correction.

In respect of particular taxes, more than 70% findings were related to VAT, 4,5% to excise, less than 12% to PIT and more than 12% to CIT.

The most important problem was the growing number of the documents of fictional operations (for the purpose of the VAT refund). The number of such documents revealed by the inspectors was 154 645 and the amount of the fictional operations was almost PLN 19 713 million.

More than 30% of the tax evasions were related with the fuels, 12,3% with trash metal, 16,2% with other metals, 10,9 % with steel, 8,6% with domestic electronics, 6,3% with IT services and 5,3% with the construction services.

8 Effectiveness

Please evaluate the effectiveness of the different surcharge types with respect to the purposes defined in 2 and 3 as far as possible and describe the position of surcharges within your national tax enforcement system.

Similarly, as in other areas of law (e.g. environment protection law) the interesting phenomenon is pointed out. In case of parallel ways of liability and repression, the criminal penalties are not necessarily the most harsh, but the guarantees in the criminal law are by far stronger, than in the area of administrative law. This encourages the Legislature to create new and extend the existing forms of administrative liability in order to divert and avoid all the restrictions pre-
sent in criminal law. High level and high quality of criminal-law safeguards may paradoxically lead to weakening of the practical position of the particular person, subject to various simplified forms of administrative repression, either parallel or instead of the criminal liability.

In most general terms, the administrative surcharges are treated as the primary and the criminal law measures as the subsidiary. In small cases the taxpayers are encouraged to file a correction of the tax return and voluntarily pay the outstanding tax (with the delay interest) or to accept and pay a fine ticket. If this is not possible, the procedure of the voluntary subordination to penalty is employed in numerous cases. The indictments are filed in the most serious offences only. The most important penalty is a fine, sometimes accompanied with the forfeiture. The unsuspended imprisonment is used very rare, in aggravated cases (recidivism, very serious tax fraud, organised criminality).