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PRESS RELEASE

The provisions protecting a taxpayer against changes in the interpretation of tax laws do not apply in case of artificial arrangements

Sitting in its highest judicial body i.e. the Litigation Assembly, the Conseil d'Etat considers that Article L. 80 A of the Tax Procedures Book, which protects a taxpayer from changes in the interpretation of tax laws given by the tax authority, does not apply when the taxpayer has put into place an artificial arrangement constituting an abuse of rights.

The provisions laid down in article L. 80 A of the Tax Procedures Book protect a taxpayer from changes in the interpretation given by the tax authority of tax law instruments. This guarantee mechanism allows a taxpayer to win, in the event of a dispute with the tax services, based on the interpretation of tax law given by the tax authority, for example in circulars, guidance notes (“instructions ministérielles”) or in the Official Bulletin of Public Finance – Taxes, even if the tax authority did not correctly stated the law.

In the ruling released today, the Conseil d'Etat confirms its previous case law: this guarantee mechanism prevents the tax authority from increasing a taxpayer's liability on the ground that the interpretation of the tax law upon which it relied exceeded the legal scope that the authority actually intended to adopt.

However, the Conseil d'Etat also rules that Article L. 64 of the Tax Procedures Book allows the tax authority to ignore, for the purposes of calculating tax liability, the constituent elements of an abuse of rights. These elements include artificial tax arrangements which are devoid of any justification and purely designed to avoid taxation, and whose definition derives from the European Union law.

The Conseil d'Etat infers from both of these provisions that the tax authority can sanction a taxpayer who relied upon an interpretation of tax law by setting up an artificial tax arrangement, in order to obtain an advantage. In such situation, the provisions laid down in Article 80 A do not apply. In order to suppress this type of abuse of rights, the tax authority has to establish, thanks to objective elements, the existence of an artificial tax arrangement.

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