

CRIMINAL OFFENCE OF DISCLOSING OFFICIAL SECRET IN SERBIAN TAX LAW

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Summary: Officials in state agencies and organizations must perform its activities, legally and effectively, within their official and public authorities. Acting contrary to the rules of service, violation or abuse of official authorities harm other persons and violate their rights guaranteed by the Constitution. In this paper the author deals with the obligation to keep the official secret in the tax procedure. Official secret in the tax law is not only a document, information or data about the taxpayer, but also information on technological inventions, patents and technological procedures and methods applied by the taxpayer, reached by the officials. The author analyzes the relevant principle in the tax legislation of the Republic of Serbia, as well as the Art. 369 of the Criminal Law related to the criminal offence of disclosure of official secret. She points out that the officials, as well as other persons in the tax, tax-infringement or judicial proceedings must keep data, information, records and documents which have been characterized as an official secret. By confidentiality of these information and documents not only the personal and professional integrity of the taxpayer are protected, but also the public interest of the Republic of Serbia. The author notes that certain people, because of their professional relationship with the taxpayer (e.g. a lawyer, a tax consultant, an auditor, an insurance agent, a psychologist, a doctor, a priest), may refrain from providing information which are relevant for tax assessment. However, this is a professional, not the official secret. The sanctions for the criminal offence of disclosing official secret are examined in the paper, too. In addition to the criminal sanction (imprisonment of six months to five years), the taxpayer is also entitled to the legal protection and may claim the compensation of damage (pecuniary and non-pecuniary). The analysis also includes the different cases in the Serbian tax legislation when the official secrecy is not violated by announcing information or allowing access to certain documents of the taxpayer. For example, data on the tax identification number of the taxpayer is not confidential; information which cannot be explicitly linked to a particular taxpayer; if the taxpayer agrees in written that some information about him can be disclosed or published; the Internal Service has an obligation to announce at its website the list of the largest tax debtors in the country, on a quarterly basis, etc.

Keywords: disclosure of official secret, official secret, tax information, tax principle, tax procedure.