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Simplified Tax Procedures in the New Tax Ordinance Act in Poland

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Abstract: The purpose of this article is to indicate the need to simplify typical tax procedures but also to explain how it could be done. The discussed issues are based on proposed provisions provided in the draft of the New Tax Ordinance Act prepared by the General Tax Code Codification Committee. Efforts should be made to increase the efficiency of tax proceedings, which means, among others, the elimination of the overly extensive and formalized procedure for assessment of low tax amounts. At present, for example, proceedings regarding million zlotys tax amounts are carried out on identical terms as in the case of taxes amounting to several dozen PLN. The proposed new law will speed up the handling of many matters, but will also reduce the costs incurred in meeting all the existing procedural requirements. In addition, there should be no proceedings undertaken regarding tax amounts that are lower than the costs of obtaining them. The procedures for serving documents to taxpayers should be also simplified. Currently, they are very expensive. Additionally, they are often ineffective, which leads to the loss of significant tax revenues by the state. In addition, the process of granting individual tax reliefs should be simplified, especially in the context of local taxes. It should be enabled municipalities to independently decide on these entitlements and streamline the procedure for their granting.

Keywords: simplification in tax law; simplified tax proceeding; tax procedures; tax proceeding; general tax law; tax ordinance act

1. Introduction

The problem which should be solved in the nearest future is excessive and too formalized procedures of the realization of taxes. Tax authorities have to assess and then collect taxes with all formal procedural requirements determined in the Act of 29 August 1997, Tax Ordinance Act, hereinafter referred to as TO (Act no. 749/2012, On Books). Paradoxically,

this just rule in reference to all tax evokes, however, a great number of negative consequences (Popławski: 77). One of them is the fact that proceedings referring to tax amounts going into millions are realized on the same basis as in the case of taxes of a few dozen zlotys. This results in the tax authorities being overwhelmed with petty cases, and thereby they have less time to conduct proceedings referring to considerable amounts. Also the costs borne in connection with fulfilling all procedural requirements resulting from the Ordinance are not to be disregarded. A typical tax procedure concluded with issuing a decision consists of at least three letters addressed to the taxpayer (the decision of initiating the procedure, notice on a possibility to comment on the gathered evidence and the decision). The cost of their delivery alone is more than a dozen zlotys. They are not considerable expenses in the proceedings concerning high amounts, but when the tax oscillates within PLN 40, it is doubtful if the costs of the proceedings do not exceed the obtained revenues. The problem has already been noticed by the legislator but the amends to the Ordinance are not sufficient. The provided possibility in the TO as for the delivery of the establishing decision only, at the so-called annual assessments in the situation where the actual state has not changed or where the decision is to be issued only on the basis of the data resulting from the information submitted by the taxpayer, fails to solve the problem under examination. This enhances the realization the property tax, the agricultural tax and the forest tax, but they are still classic simplified procedures where the procedural requirements, unwanted by the taxpayer, and unnecessarily lengthening the tax case proceedings, are reduced to a minimum. The proceedings concerning the tax amounts which are lower than the costs of their obtaining should also be abandoned. The currently valid regulations in this matter are too rarely applied due to the low amount which allows for not initiating and discontinuing petty cases. It is also important to modify the mode of the changes in final decisions due to the circumstances occurring after their issuing which affect the tax amount. In practice this mode is applied out of the provision wording – it is impossible otherwise – which is not a positive phenomenon. The process of communication of the tax authority and the taxpayer should be spread. The present day procedures of delivering the taxpayers' letters, beside the fact that they are expensive, are often ineffective, which leads to the municipalities' losses of considerable revenues. The opportunity of paying the tax for the taxpayer by other persons should also be extended.

It is easy to indicate the effects of their elimination in all the procedures and methods. This would be a beneficial action for tax authorities (lower expenses and workload) as well as taxpayers (swifter handling of the case). The objective of this article is to indicate the need for simplifying typical tax procedures and the ways it should be done. Proposing amendments in the currently valid regulations, the proposed provisions of the new Tax Ordinance are taken into consideration, as presented in The New Tax Ordinance Bill of 6 October 2017 and its justification prepared by the Codification Commission of the General Tax Law (hereinafter referred to as the Commission).

2. Simplified Procedures

A problem which negatively affects the effectiveness of tax authorities' work is the necessity of carrying out tax proceedings concerning small tax amounts in obvious cases, which do not require any evidence procedure. There is no sense in a formalized and expensive procedure in the situation where the tax amount is not disputable, the actual state raises no doubts and the taxpayer wants to have the case settled as soon as possible. Under the current Ordinance routine cases referring to less than a few dozen zlotys must be carried out on the same basis as the cases of a few million zlotys, which by nature requires a long evidence procedure. This illustrates the need for introducing simplified procedures (Kmieciak). Such procedures are deformed and by definition must be short. They are concluded with issuing a decision which is not justified. In effect, the taxpayer has a fast decision, and the tax authority has less work and lower procedure costs. The simplified procedure cannot be implemented without the taxpayer's consent (or request) and in problematic cases, where are discrepancies referring to the circumstances affecting the tax amount. The proposal of simplified procedures is included in the bill of the New Tax Ordinance. In accordance with the bill, if there is no need for an evidence procedure (the actual state raises no doubts) or the tax amount does not exceed PLN 5,000, the tax authority may, at the party's consent, issue a decision immediately without its justification. Cases in this procedure will be handled quickly, no longer than within 14 days. In accordance with the bill, the simplification of the procedure is reduced to the decision that there is no need for issuing and delivering the decision on its initiation, the taxpayer is not notified on an opportunity to comment on the collected evidence, and the issued decision is not justified, unless the party demands it after the conclusion is delivered. The taxpayer has the right, on the terms of general rules, to appeal against the decision issued by the authority of the first instance to the authority of the second instance and to complain to the court the decision issued by the second instance authority. The introduction of the simplified procedure proposed in the bill of the New Tax Ordinance will enhance handling petty cases, reduce the workload of tax authorities and the expenses connected therewith. (The Bill of the Tax Ordinance).

3. Proceedings on Trivial Tax Amounts

We should decidedly extend the already implemented procedure for tax amounts not exceeding the lowest expenses of the delivery of a registered mail with confirmation of receipt (currently, the rounded amount is PLN 7.00). The amount is too low. The tax of a few zlotys covers the costs of delivery only, assuming that in the case only one tax decision is issued. And what about other expenses connected with the collection of this tax? A tax the amount of which is lower than the costs of its enforcement has no economic grounds. Such a tax is not wanted by the state or a local government unit, and, which is obvious, by the taxpayer. It is collected only because it is required by the tax law. It is the beneficiary of tax incomes who should decide on when it is profitable to collect the tax. Otherwise, the taxes generating costs are a financial burden for the entities which should benefit from

them. The already mentioned bill of the New Tax Ordinance extends the rule of not initiating or discontinuing proceedings on trivial amounts. In the case where the tax amount does not exceed PLN 50.00 the procedure is not initiated and those initiated are discontinued, and the taxpayer is notified about the fact.

The procedure refers to the proceedings initiated (discontinued) *ex officio*. It cannot be applied by, for example, a taxpayer who assessed in the declaration the tax amount lower than PLN 50.00. The amount resulting from the declaration must be paid. If the taxpayer fails to pay, the authority may, on the basis of the declaration, initiate enforcement proceedings.

In the case of taxes being the income of the state, in accordance with the bill of the New Tax Ordinance, there will be no possibility to conduct tax proceedings if the amount possible to collect is less than PLN 50.00. The bill provides for, including the interest of tax beneficiaries who have significant incomes from trivial obligations, competences for the municipality council of establishing the amount lower than the limit amount of PLN 50.00. In this way municipality councils obtain an opportunity to adjust the limit of triviality to the specificity of a particular area.

Here it is important to note an erroneous practice of certain tax authorities, which is reduced to issuing and delivering so-called zero decisions. The tax authority assesses in such a decision that the taxpayer has nothing to pay (for example, is exempted) and this "assessment decision" is delivered to the taxpayer¹. As a result of realizing this tax, the tax authority loses (delivery costs) and does not profit, which contradicts the essence of the tax. This case, even though the statutory obligation of not initiating or discontinuing proceedings on trivial amounts has been introduced, is still controversial. Taxpayers demand issuing such decisions, especially in the agricultural tax, due to the needs for acquiring by them or their family members social benefits (e.g. scholarship, dole). The "zero" decision is treated here groundlessly as an equivalent of the certificate which should be issued in a different mode.

4. The Modification of the Rules of Changing Establishing and Determining Decisions

Issuing thousands of decisions establishing the amount of the tax obligation within the framework of an annual assessment (in the property tax, agricultural tax and forest tax) at the beginning of the year entails the obligation of their change, if, after their delivery, changes occur affecting the tax amount. These are very often situations connected with, for instance, a sale of the property or a change of its intended use during the year, which raises the need for modification of the decision issued at the beginning of the year and assessing the tax for the whole year. The burdensomeness of the procedure of decision change is connected with the flaws of the currently valid regulations (Act no. 749/2012 on Books: Art. 254), being the only legal basis for these changes. In accordance therewith, the final decision, establishing or determining the amount of a tax obligation for a particular period, may be changed by the tax authority that issued it, if, after its delivery, a change occurred of actual circumstances affecting the cessation or determination of the obligation amount,

and the results of these circumstances were regulated in the provisions of tax law binding on the day of the decision issuing. Thus, a decision change requires the occurrence of actual circumstances, the results of which are regulated by the provisions of law. Literature aptly notes that the reduction of the possibility of a decision change to the occurrence of actual circumstances only in practice unnecessarily limits this competence of tax authorities (Dowgier: 274). The reason for a decision change may be also other circumstances, for example legal, which results in the necessity of adjusting to them the assessment decisions issued before (e.g. the introduction of an exemption or lowering the rate). In such circumstances, the only basis for a decision change is the regulation under scrutiny (Act no. 749/2012 on Books: Art. 254), which discusses actual circumstances only. Interpretative problems emerge also because of the reservation that the effects of the occurrence of the circumstances affecting the tax amount must be provided for in the provisions of tax law. These provisions, regulating particular local taxes (property, agricultural and forest taxes) regulate the effects of the occurrence of these circumstances, but only in reference to natural persons. Nothing is mentioned on legal persons and organizational entities without legal personality, in relation to whom decisions determining the tax amount were issued. Thus, in the current legal state, taking into account only the wording of the provision under analysis, it is possible to change a decision establishing the amount of the obligation for a natural person, and it is formally impossible to change a decision determining the obligation for a legal person. This is absolutely groundless and therefore, in practice, on the basis of TO, all decisions which established or determined obligations are being changed (Act no. 749/2012 on Books: Art. 254). This practice, however, misses the literary wording of this regulation. In the works on the new tax ordinance an improvement of the mode under scrutiny was proposed, so that it could be applied as extensively as possible. (The Bill of the Tax Ordinance: Art. 259). In accordance with the planned wording, the final decision establishing or determining the amount of the tax obligation may be changed, *ex officio* or on the party's request, if after its delivery a change of the circumstances occurred affecting its content. The designed adjustment of this mode of the decision change to the needs of local tax authorities will eliminate the aforementioned interpretative doubts. The facultative nature of this decision is not a drawback of the designed regulation. The decision may be changed, or the authority may not have to change it. If a tax authority decides, regardless if *ex officio* or on request that there were circumstances affecting the tax amount established or determined in the decision, it has to change it (the principle of legalism). It will not be allowed to do it after the obligation expiry date only.

5. Procedures of Communication with the Taxpayer

A considerable and costly problem connected with conducting tax proceedings by tax authorities is the mode of communication with the taxpayer (his representative). Due to the fact that the currently valid regulations do not include an obligation of the taxpayer to report the change of his address to the tax authority (in the period out of the tax proceedings), the delivery of the decision very often makes a great number of difficulties and lengthens the proceedings. Taxpayers make use of gaps in legal regulations regarding

deliveries in order to evade paying taxes. It is relatively easy, for example in local taxes paid by natural persons, because the failure in the delivery of the establishing decision results in no obligation and the interest for delay is not accrued. Legal persons, on the other hand, as practice shows, use the imperfect procedure of establishing decision deliveries for lengthening the proceedings till the expiry date. These problems were noted in the bill of the New Tax Ordinance. In the opinion of the Codification Commission of General Tax Law, it is important to introduce a cheap and effective method of communicating with the taxpayer and his representative. The bill proposes extending the possibility of delivery through electronic devices. In this form the letters could be delivered to not only professional representatives and public entities, but also entrepreneurs (except those taxed in the form of tax card and lump sum for registered incomes, unless they provide their electronic address) as well as the users of ICT systems (e-PUAP and the tax portal). Additionally, it is proposed that the data in the registering report stored in the Central Register of Taxpayers of the National Registry of Taxpayers (CRT) were the basis for establishing the address of residence and the address of the headquarters for the purpose of delivering letters. The possibility of successful delivering to the address indicated in the register will enhance the effectiveness of deliveries and reduce the costs connected therewith. Taxpayers, who do not have an address registered in the CRT, letters will be delivered on general basis.

6. Tax Payment for the Taxpayer

The possibility of paying a tax for the taxpayer by the members of his closest family and by certain other categories of persons was first introduced to the Ordinance in 2016. Taxes are very often paid not by the taxpayer but other persons, foremost his family. This is not bad in itself and does not result in abuses. Why, for example, a father cannot pay an agricultural tax for his daughter and reversely? The introduction of such a possibility should be assessed positively. In relation to taxpayers this is legalizing the common practice resulting in paying taxes on time. Beside the family members who can pay a tax without reducing the amount, also the current owner of the subject of compulsory mortgage or tax pledge may pay the secured amount of tax. All other persons may pay the tax for the taxpayer but up to PLN 1,000 only. The introduction of this limitation leads to interpretative problems.² Does this entitlement embrace the possibility of paying tax arrears along with the interest for delay? We believe so, because the tax arrears is nothing else but the tax unpaid before the deadline. It is impossible to pay the arrears alone without paying the interest amount for delay connected therewith. Thus, other persons may pay the arrears together with the interest for delay for the taxpayer. The statutory limit of PLN 1,000 should be referred to the arrears amount only, and not the interest for delay. For example, if the amount of the arrears is PLN 300 and the interest PLN 1,000, then, even though the amount of the payment exceeds the statutory limit, there is no basis for questioning the payment by the person other than the taxpayer. The amount of arrears has not exceeded PLN 1,000 (the interest amount should not be counted as the statutory limit). There is also no problem if another entity pays for the taxpayer a PLN 200

installment of the tax. This regulation is applicable without doubts to the moment when there are five installments. The tax is also an installment and an advanced payment, which is an argument for recognizing such a payment (Act no. 749/2012 on Books: Art. 3 point 3). As we can see, the article under analysis may be differently interpreted, which justifies the need for enhancing its wording. The bill of the New Tax Ordinance raises the tax amount which may be paid by another person up to PLN 5,000. This possibility also includes tax arrears and the entailed interest for delay. In this way we increase the possibility of paying relatively petty tax amounts by persons other than the taxpayer, which will facilitate their enforcement.

7. Conclusions

In conclusion, it is important to state that certain tax procedures for tax realization should be modified due to the need for increasing their effectiveness and reducing the costs of tax collection. The aforementioned proposals are largely included in the planned provisions of the New Tax Ordinance. However, changes are necessary also in the laws regulating particular taxes, including foremost the taxes supplying municipal budgets. First of all, we have to reform the procedure of the so-called annual tax assessment, based on delivering sometimes dozens of thousands decisions establishing the amount of the tax obligation for natural persons in a short period of time (January–February). Also declarations and information submitted by the taxpayer should be uniformed, which will lead to the popularization of their submission through the means of electronic communication. The tax records must finally begin to operate, not only on paper, which will perfectly facilitate the access to date necessary for proper and punctual concluding tax proceedings.

Reference

- 1 This does not refer to decisions on investment reliefs issued on the basis of Article 13 of the Act on Agricultural Tax. This decision establishes the agricultural tax amount and then the so-called investment expenses borne by the taxpayer are deducted, which results in the situation that there is no tax amount to pay. This decision has to be delivered, because the fact of its delivery results in the tax obligation from which the investment expenses are deducted.
- 2 Leonard Etel (ed.), *Ordynacja podatkowa, Komentarz*, 544, (Warsaw 2017).