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Commencement and Termination of the Limitation Period for Tax Liabilities in Bankruptcy Proceedings

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Commencement and termination of the limitation period is only outwardly precisely set out in the tax law. It is a particularly complicated task to determine them, if they are dependent on events that are not defined in the Tax Ordinance. From the point of view of the creditor under public law, it is important to determine the date when the limitation period restarts.

As far as legal persons are concerned, the regulations stipulate that it does on the date when the decision to terminate bankruptcy proceedings becomes final. It is problematic to determine the time of restart of the limitation period for tax liabilities of bankrupt natural persons who have benefited from, for example, the possibility of having the bankruptcy court devise a repayment plan.

There is sound reason to acquire a broad understanding of bankruptcy proceedings that such debtors are subjected to, which would not be limited to, for example, Article $491^{14}(8)$ of the Bankruptcy Law.

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General provisions on limitation of tax liabilities

The period of limitation of tax liabilities is only seemingly comprehensively regulated in the Polish provisions of the law. As a rule, tax liabilities expire within five years. This period is calculated from the end of the year during which the payment deadline for a liability expired. The institution of the limitation period for tax liabilities is autonomous in relation to other identical regulations. The situation was set in order no sooner than when a resolution of the seven judges of the Supreme Administrative Court of 3 June 2019, No. II FPS 1/19, had been issued. In accordance with this resolution, the limitation period for tax liabilities begins at the end of the calendar year in which the tax payment deadline expired. At the same time, when calculating the five-year limitation period, Article 12(4) of the Tax Ordinance should be taken into account.

The beginning of the limitation period for tax liabilities is not an event that allows one to start calculating the period during which the tax author-

ity may request payment of tax (Etel et al., 2024). This moment is not related to the chargeability of the tax liability as it occurs earlier. The period during which the tax authority may demand payment of tax is not identical as the one stipulated in the Civil Code in relation to the limitation of liabilities. Unlike in the case of liabilities based on civil law, the limitation period for tax liabilities does not begin immediately after the claim becomes due. The tax authority may demand payment of tax whose limitation period has not begun yet but which is, in fact, already tax arrears (Babiarz et al., 2024). This situation occurs in the period between expiry of the payment deadline and the end of a calendar year.

Beginning of the limitation period of tax liability in the event of declaration of a taxpayer's bankruptcy

Declaration of a tax debtor's bankruptcy is an event that modifies the moment of commencement of the limitation period of tax liabilities. In accordance with Article 70(3) of the Tax Ordinance, the limitation period for tax liabilities is interrupted by the declaration of bankruptcy. This takes place on the day the decision regarding declaration of bankruptcy is issued by the court (as per Article 52 of the Bankruptcy Law). Interruption of the limitation period is not linked to the taxpayer remaining bankrupt. It is important that the relevant decision be issued by an ordinary court (see judgement of the RAC in Gliwice of 6 June 2018, case No. I SA/Gl 47/18).

The case law of the courts has been affected by the doubts as to interpretation of Article 70(1) of the Tax Ordinance, which were concerned with whether the limitation period for tax liabilities starts at the end of the year in which the tax payment deadline expired or right after the payment deadline. Within the Polish legal framework, it was not clear whether it was permissible to interrupt the limitation period of tax liability by declaring the taxpayer bankrupt, if this event took place before the end of the year in which the deadline for the payment of the liability expired. In part of the case law, it was indicated that such a situation is permissible, for example, in judgement of the RAC in Gliwice of 16 September 2019, case No. III SA/Gl 585/19, judgement of the SAC of 26 February 2019, case No. I GSK 3209/18, judgement of the SAC of 16 October 2018, case No. I GSK 1203/16.

This dispute, however, has become irrelevant when a resolution of the SAC No. II FPS 1/19 was issued. Moreover, on 1 January 2016, Article 70(3a) of the Tax Ordinance was introduced, which states that if the taxpayer is declared bankrupt before the commencement of the limitation period, this period begins on the day following the day when the decision on termination or dismissal of bankruptcy proceedings becomes final.

It should be noted that the effect of modifying the beginning of the limitation period for tax liabilities is independent of the activity of the creditor acting within the framework of the public law. Interruption or non-commencement of the limitation period (on such grounds) takes place, even if the claim is not submitted under Article 236 in conjunction with Article 189 of the Bankruptcy Law.

Relationship between the provisions of the Tax Ordinance and the Bankruptcy Law in respect to the beginning of the limitation period-

If the provisions of the Tax Ordinance were assumed to be the only ones that regulate the limitation period for tax liabilities, it would significantly limit the legally permissible methods that the tax authorities could use to pursue recovery of the tax arrears. In legal relations, the Head of the Tax Office (HoTO) serves many roles, for example, of a creditor of amounts payable. Therefore, if a taxpayer's bankruptcy proceedings are initiated, the HoTO may demand repayment of the liability in accordance with the rules of such proceedings. Since, among other things, it is possi-

ble for the tax authority to take on a different role than the one related to tax collection, it can be assumed that the provisions of the Tax Ordinance cannot regulate comprehensively the institution of limitation (Adamus, 2018). The legal institutions identical with ones that are based on tax law can be regulated differently within the framework of each of the proceedings that the tax authority may take part in and which are not regulated by the tax laws. This situation is relevant for the limitation period, which is differently regulated in the Tax Ordinance and in civil law. The judgement of the SAC of 7 December 2005 (case No. I FSK 752/05) remains relevant; it points out that the rules governing the bankruptcy proceedings are *lex specialis* with regard to the provisions of the Tax Ordinance. Therefore, possible prescription of the liability in the course of bankruptcy proceedings will be regulated not by the Tax Ordinance, but by the Bankruptcy Law.

A tax liability is a claim within the meaning of the Bankruptcy Law. Thus, the tax authority can claim repayment using this mode. On top of that, if bankruptcy proceedings are initiated, they are the only way for the creditor acting under public law to pursue repayment (Adamus, 2018). The entitlement of the Heads of Tax Office to submit claims is derived, among others, from Article 28(1)(3) of the Act on the National Revenue Administration (NRA).

The tax authority participating in bankruptcy proceedings of a taxpayer stands on an equal footing as the other creditors. Hence, the provisions of the Bankruptcy Law – and not the Tax Ordinance –first of all should apply to the claims submitted by the tax authority.

If the tax authority undertakes procedural activity consisting in submitting tax claims, the limitation period will be interrupted. This situation is abstract in relation to the provisions of the Tax Ordinance because it allows for a modification of the beginning of the limitation period, where it is prohibited by the Tax Ordinance. This is a consequence of the fact that there are claims in bankruptcy proceedings. Claims, in turn, are regulated by the civil law (Nazaruk, 2024) and bankruptcy law is part of it (Witosz, 2021). Since the provisions of the Tax Ordinance do not define this term, they cannot apply to it.

Article 120(1) of the Civil Code stipulates that the limitation period begins when a liability becomes chargeable, whereas the limitation period of tax liabilities is determined in a completely different way. The provisions of the law do not explicitly define the concept of chargeability. However, it should be assumed that this is a state allowing the creditor to demand satisfaction (Nazaruk et al., 2024). It undoubtedly occurs after the payment deadline.

Since tax liability is also a claim subjected to bankruptcy proceedings, Article 239a of the Bankruptcy Law will apply to it, which states that the limitation period for the liability is interrupted by submitting the claim. Thus, the activity of a public-law creditor (in the form of submitting a claim) allows for another interruption of the limitation period at a different time than the moment regulated by the Tax Ordinance. The Tax Ordinance allows interruption of the limitation period, only if bankruptcy is declared in the year subsequent to the year when the tax payment deadline expired, whereas the Bankruptcy Law provides for the possibility of interrupting the limitation period right after the payment deadline has expired.

In the event of interruption of the limitation period of tax liability, which will then be submitted as a claim in bankruptcy proceedings of the taxpayer, this will take place twice. First, it will happen under Article 70(3) of the Tax Ordinance. Then, it will take place under Article 239a of the Bankruptcy Law (or Article 123[1][1] of the Civil Code – if the application for bankruptcy was submitted before 24 March 2020). In turn, in respect of liabilities whose limitation period has not started yet in accordance with the Tax Ordinance at the time bankruptcy was declared, the limitation period will start on the date indicated by Article 239a of the Bankruptcy Law. In that case, the effect of applying the rule stipulated in the Bankruptcy Law will be identical as the one arising from the provisions of the Tax Ordinance. The limitation period will start the day after the termination of the bank-

ruptcy proceedings. It does not matter whether it will start again (due to its interruption pursuant to Article 239a of the Bankruptcy Law) or for the first time (due to postponement of the beginning of the limitation period pursuant to Article 70[3a] of the Tax Ordinance). The above is a consequence of the identical sense of the legal provisions.

The possibility of repeatedly interrupting the limitation period for tax liabilities submitted to the bankruptcy proceedings is justified due to the fact that, during the bankruptcy proceedings, the provisions of the Tax Ordinance are superseded by the Bankruptcy Law. In turn, for the purposes of the bankruptcy proceedings, it is necessary that the limitation period be interrupted (and calculated) on the basis of the rules governing these proceedings. According to A. Jedliński, "*the essence of interruption of a limitation period is, first of all, that the limitation period ceases to continue when the circumstances causing the interruption occur and does not continue throughout the break*" (Nazaruk et al., 2024). As regards the limitation period for tax claims submitted to bankruptcy proceedings, this rule is somewhat breached.

Under the Tax Ordinance, the interrupted limitation period does not continue due to the declaration of a taxpayer's bankruptcy but only with respect to relations regulated by this Act. Bankruptcy proceedings create a kind of a new legal relationship between the tax authority and the taxpayer (by bringing their procedural roles down to being the creditor and the debtor). From the date of declaring bankruptcy, the tax authority will no longer demand full payment of overdue tax. However, it will be able to demand repayment of their claim which is derived from a relationship based on public law; in principle, the repayment will only be partial. Owing to the fact that the Tax Ordinance and the Bankruptcy Law are acts of laws with two completely different purposes, it is necessary to differentiate between the provisions governing the existence of liabilities. In this case, the borderline is the day of submitting the claim. From then on, the provisions of the Tax Ordinance cease to be relevant and the limitation period for tax liability regulated therein no longer corresponds to the reality of the bankruptcy proceedings. The needs of the civil proceedings go beyond the regulations of the Tax Ordinance.

The legislative rationality, the objectives of the bankruptcy proceedings, and the exclusivity of this procedure in terms of the possibility of obtaining repayments justify the conclusion that debt under public law should not prescribe as a tax liability in line with the provisions of the Tax Ordinance during the bankruptcy proceedings. The provisions clearly state that it does not prescribe in the course of these proceedings. This is a consequence of the fact that the tax authority is entitled to demand satisfaction from the bankruptcy estate. At this point, the liability cannot prescribe under one act and at the same time not prescribe under another.

If it were assumed that a tax liability always remains governed by the Tax Ordinance, it would give rise to many procedural problems in the ongoing bankruptcy proceedings. Bankruptcy proceedings usually last many years, and thus there would be a risk of prescription of the creditor's claim and they would have no legal means of preventing it. Such a situation would necessitate constant updates to the list of claims and, thus, it would prolong the proceedings and generate costs.

Termination of the limitation period for tax liabilities in bankruptcy proceedings

Termination of the limitation period for tax liabilities is inseparably related to its restart. At the time of the final termination of bankruptcy proceedings, the limitation period falls back under the regime of the Tax Ordinance (Witosz, 2017). Therefore, Article 70(1) of the Tax Ordinance will apply, except that the beginning of the limitation period will not be determined by the date of payment of the tax.

The moment of commencement of the limitation period has already been specified in the case law, however, determination of the time when the lim-

itation period starts again may raise doubts, depending on whether the provisions are interpreted while taking into account the interests of the debtor or the creditor.

Restart of the limitation period for tax liabilities

The event causing the limitation period for tax liabilities covered by the bankruptcy proceedings to start again is the final decision to either terminate or dismiss the proceedings. In turn, Article 124(2) of the Civil Code indicates that the limitation period restarts with termination of the proceedings.

Dismissal of bankruptcy proceedings is, in principle, clearly defined in the law. Pursuant to Article 361(1) of the Bankruptcy Law, dismissal of bankruptcy proceedings is permissible if:

a) The assets which remain following deduction of the debtor's property encumbered with a mortgage, lien, registered lien, tax lien, or ship's mortgage are not sufficient to cover the costs of the proceedings;
b) The creditors obliged by a resolution taken at the creditors' meeting or by a decision of the syndic-judge have not made an advance payment to cover the costs of the proceedings within the prescribed time limit and there are no liquid funds available to cover them;
c) All the creditors who have submitted their claims demand that the proceedings be dismissed and the bankrupt debtor has agreed.

The above-mentioned occurrences oblige the bankruptcy court to issue a decision to dismiss the proceedings (Witosz et al., 2021). The decision referred to in Article 361 of the Bankruptcy Law applies only to the proper bankruptcy proceedings (Witosz et al., 2021). The insolvency officer, the creditor or the debtor may complain against this decision (Article 362[1] of the Bankruptcy Law). However, such a decision should be an exception, since the bankruptcy court already examines whether the debtor possesses assets sufficient to carry out the procedure in the course of the proceedings that precede the declaration of bankruptcy. If this is not the case, the application should be rejected on the basis of Article 13(1) of the Bankruptcy Law (Jakubecki, Zedler, 2011).

The Bankruptcy Law also recognizes situations that go beyond Article 361 of the Bankruptcy Law, which may result in dismissal of the bankruptcy proceedings (Jakubecki, Zedler, 2011). A. Torbus points out that "*the relevant literature makes note of reasons for dismissing the proceedings which are not mentioned in Article 361 of the Bankruptcy Law* (...). *In at least two cases, dismissal will be necessary based on Article 355 of the Code of Civil Procedure in conjunction with Article 229 of the Bankruptcy Law: If no creditor comes forward and the debtor's files do not indicate that there are any claims entered on the list of claims ex officio; and in the event of a final refusal to recognize any of the claims added to the list of claims, if there are no claims eligible for ex officio recognition*" (Witosz et al., 2021).

Article 491^{10} of the Bankruptcy Law provides for the possibility of dismissing bankruptcy proceedings conducted against a natural person. This provision indicates that, in principle, this is mandatory, if requested by the bankrupt debtor (see section 1). In addition, the court will dismiss the proceedings, if the bankrupt debtor fails to report or surrender all of their assets and submit necessary documents to the insolvency official or otherwise fails to perform their obligations (see section 2) or if it is found that the data provided by the debtor in the application for bankruptcy are incorrect or incomplete (see section 2a). In the above-mentioned cases, the court will issue a decision that can be complained against (Article 491^{10}[4] of the Bankruptcy Law).

It is worth noting that the restart of the limitation period for tax liabilities is not so much related to termination of the bankruptcy proceedings as it is related to the final decision on the termination of the proceedings.

The decision to terminate bankruptcy proceedings is a decision that is explicitly provided for by the Bankruptcy Law. It is necessary to issue such a decision, for example, when the final division

plan has been implemented or all the creditors have been satisfied (Article 368[1&2] of the Bankruptcy Law). In such a case, continuation of the bankruptcy proceedings ceases to make sense. Then, there are no longer any debtor's assets that could be used to repay the creditors or there are no more creditors whose claims should be settled. In such a situation, the objectives of the proceedings have been met and no further action with the participation of the bankrupt debtor can be taken.

However, as far as bankruptcy proceedings against natural persons are concerned, the moment of termination of such proceedings is not as tangible and clear-cut.

Certainly if proceedings are carried out under Article 491^{1}(2) of the Bankruptcy Law, the court issues a decision to terminate the bankruptcy proceedings based on Article 491^{1}(4) of the Bankruptcy Law. Then, within 30 days, the bankrupt debtor may submit an application for the formulation of a repayment plan (Article 369 of the Bankruptcy Law), whereas in the case of simplified bankruptcy proceedings, the court does not issue a decision to terminate the proceedings. This procedure ends with, among others, putting forward a repayment plan (Article 491^{14}[8] of the Bankruptcy Law).

By interpreting Article 491^{14}(8) of the Bankruptcy Law in a literal way, one might become convinced that the limitation period for tax liabilities involved in a taxpayer's bankruptcy proceedings will restart on the day following the day when the decision on the formulation of a repayment plan becomes final. Then, the period continues concurrently with the implementation of the repayment plan. It should be noted that the limitation period for the tax liability will then be five years (Article 70[1] in conjunction with Article 70[3] of the Tax Ordinance), and the repayment plan can be set for a maximum of 7 years, as per Article 491^{15}(1a) of the Bankruptcy Law. Such a situation would thus give rise to a possibility of prescription of a tax claim regulated under the repayment plan. Additionally, it should be noted that, during the implementation of the repayment plan, the creditor has no legal possibility of modifying the limitation period for such a liability by, for example, adopting an enforcement measure (see Article 491^{15}[6] of the Bankruptcy Law).

Therefore, it should be considered whether Article 70(3) of the Tax Ordinance and Article 239a of the Bankruptcy Law make the restart of the limitation period of liabilities dependent, for instance, on the repayment plan becoming final. Then, termination of the proceedings would only be connected with the insolvency official losing authority with simultaneous handing over of the management over the assets to the debtor (Mrówczyński, 2019). It would not be related to the end of the debt-clearing phase which, in fact, only just begins with the repayment plan becoming final. In turn, the debt-clearing phase ends with full implementation of the repayment plan, which the bankruptcy court determines by way of issuing a decision referred to in Article 491^{21} of the Bankruptcy Law or Article 370f of the Bankruptcy Law.

It may seem that termination of the proceedings referred to in Article 491^{14}(8) of the Bankruptcy Law is characterized by certain formalism. It currently takes place *ex lege*, irrespective of the decision in this matter becoming final. In this case, termination of the bankruptcy proceedings is linked to the need to hand over management over the assets to the bankrupt debtor who must, after all, meet their obligations resulting from the agreed repayment plan. In order to do so, they must have their property. However, it remains under the control of the insolvency official, the creditors, and the bankruptcy court. Regardless of whether the bankruptcy proceedings are conducted on the basis of general provisions of the law or the rules governing a simplified procedure, the provisions of the Bankruptcy Law still treat the debtor as a 'bankrupt debtor' (e.g. Articles 491^{18} to 491^{20}). Therefore, despite formal termination of the proceedings, their participants keep their existing procedural roles. Such a situation suggests that the bankruptcy proceedings (in a broad sense) are still ongoing and effectively end at a different moment than might be indicated by Article 491^{14}(8) of the Bankruptcy Law (and Article 368 of the Bankruptcy Law in the case of pro-

ceedings conducted based on general provisions) (Mrówczyński, 2019).

When making linguistic interpretation of Article 491^{14}(8) of the Bankruptcy Law in conjunction with Article 70(3) of the Tax Ordinance (or Article 239a of the Bankruptcy Law), we do not arrive at the meaning of a legal rule that would raise no doubts. As already mentioned earlier, the commencement of the limitation period for tax liabilities at the very moment the repayment plan becomes final would pose a risk of prescription of the claim covered by the repayment plan before its complete implementation. At this point, one may wonder whether setting new payment deadlines for such liabilities means that they cannot prescribe due to their non-chargeability. However, one should then consider the *ratio legis* of Article 70(3) of the Tax Ordinance (or rather Article 70[3a] of the Tax Ordinance). What would be the reason for the legislator to postpone the commencement of the limitation period for tax liabilities, due to foreseeing the possibility that they will be covered by a repayment plan, if such an effect occured by virtue of the law owing to a change in the payment deadline? In my opinion, the effect exerted, for example, in consequence of approval of an arrangement that is a product of a consensus between the creditors and the debtor is not fully achieved in this case. When approving the arrangement, the court examines whether it breaches the law; is viable; does not prejudice grossly the interests of the creditors who have raised their reservations; and whether, when concluding the arrangement, an appropriate relation has been maintained between the contested claims and the ones owned by the creditors generally entitled to vote on the arrangement (Article 165[1–3] of the Restructuring Law). When doing so, the court may not change the arrangement proposals or otherwise interfere with their substance.

The resolution of the panel of seven judges of the SC of 22 October 2021, case No. III CZP 78/20 indicates that the possibility of deferral of the payment, which affects the continuation of the limitation period for this liability, must result from an agreement between the creditors and the debtor. In that case, the limitation period begins with the expiry of the deferred deadline. It can be assumed that such a compromise is reached when arrangement proposals are accepted (during the restructuring proceedings).

Issuance of a repayment plan is preceded by collecting the creditors' viewpoints on its draft (Article 491^{14}[3][2] of the Bankruptcy Law). However, when determining its content, the court is not bound by these viewpoints. The bankruptcy court formulates a decision regarding the repayment plan based on assessment of the collected evidence. The court exercises discretion when making this assessment within the framework of independence of the judiciary (Article 233 of the Code of Civil Procedure). In this case, although the repayment plan has the features characteristic of restructuring (Witosz et al., 2021), it need not be formulated with as much respect for the creditors' viewpoints as is the case with arrangement approval. Therefore, the court uses discretion as to the formulation of the decision regarding the repayment plan. Decision on the approval of an arrangement is essentially the result of an assessment of the arrangement proposals. Therefore, it cannot be assumed that issuance of a repayment plan causes the claims it covers to be deferred in effect of an arrangement between the debtor and the creditors, which would cause the limitation period to restart following the expiry of the deadline deferred with this decision.

It should be borne in mind that after bankruptcy is declared, a situation may occur where a tax liability of the bankrupt debtor arises, which will not be covered by the repayment plan. This situation is concerned with the so-called split commitments referred to in Article 245a(1) of the Bankruptcy Law or tax liabilities which the bankrupt debtor has adjusted following repayment plan formulation.

In such a case, it will be inadmissible to submit such a claim to the proceedings and so the limitation period will begin on the day following the date when the decision on termination of the bankruptcy proceedings becomes final; if the provisions of the Bankruptcy Law are interpreted literally, it will take place already at the time the repayment plan becomes final. In such a case, the

limitation period will continue throughout the time when the creditor is not able to initiate execution of such a liability. They will also not be entitled to receive payments under the repayment plan which is being implemented. Moreover, this liability will not be subject to cancellation on the basis of Article 491^{21}(1) of the Bankruptcy Law. Therefore, such a liability would only await prescription. Under such circumstances, bankruptcy proceedings would be a 'freezer' for liabilities, which is not in line with the legislator's postulate of rationality (Witosz, 2017).

Considering the above, it may be stated that the linguistic interpretation of Article 491^{14}(8) of the Bankruptcy Law in conjunction with Article 70(3&3a) of the Tax Ordinance (or Article 239a of the Bankruptcy Law) offers no clear legal rule that raises no doubts. On the other hand, seeking to recognize the decision on the full implementation of the repayment plan as the decision on termination of the bankruptcy proceedings referred to in Article 70(3) of the Tax Ordinance does not follow directly from the provisions of the Bankruptcy Law. Therefore, historical and purposive interpretation should be referred to.

The historical interpretation makes it possible to interpret a given legal institution taking into account the evolution of the relevant rules over time, whereas the purposive interpretation allows to interpret a given legal rule in line with the purpose of the entire legal act (Koszowski, 2019, p. 207). In accordance with the previous wording of the regulations, the bankruptcy proceedings were terminated on condition that a natural person had met their obligations arising from the repayment plan (Jakubecki, Zedler, 2011). The wording of the then applicable Article 491^{12}(1) of the Bankruptcy and Remedial Law indicated that when the bankrupt debtor met their obligations set out in the plan for repayment of the creditors, the court issued a decision on the cancellation of the outstanding liabilities covered by the repayment plan and on the termination of the bankruptcy proceedings. The regulation in such a form was appliable until 31 December 2014. This regulation was replaced by Article 491^{14}(3) of the Bankruptcy Law, which indicated that when a decision to establish a plan for repayment of the creditors or to cancel the liabilities of the bankrupt debtor without establishing the repayment plan became final, the proceedings were terminated. The provision was applicable in this wording until 24 March 2020. The provision has been replaced with the currently applicable Article 491^{14}(8) of the Bankruptcy Law, which stipulates that the proceedings end with the issuance of a repayment plan.

As can be noticed, the legislator originally perceived the full implementation of the repayment plan as termination of the bankruptcy proceedings. This regulation indicated that implementation of the repayment plan is a stage of the bankruptcy proceedings.

Making the moment of termination of the bankruptcy proceedings more prominent by linking it to the moment the repayment plan becomes final and then is issued does not change the fact that it is still a rule that the debt-clearing phase is part of the bankruptcy proceedings. In my opinion, the legislative measure that has been described above did not change the moment of termination of the bankruptcy proceedings *sensu largo*, but only made the formal moment of termination of the bankruptcy proceedings more visible, which is not connected with the completion of the entire procedure, but only refers to the time when the insolvency official is entitled to manage the bankruptcy estate. At that time, the composition of the bankruptcy estate is also determined as well as the debtor's ability to pay. However, these actions do not end the whole procedure. The objective of the bankruptcy proceedings is, in principle, to meet the creditors' claims to the highest possible extent. As far as proceedings against natural persons are concerned, they should be conducted in a way that first of all enables cancellation of the arrears that were not satisfied in the bankruptcy proceedings. Such cancellation may take place following the full implementation of the repayment plan or instead of it (Article 491^{21}[1] and Article 491^{16}[1] of the Bankruptcy Law). Under no circumstances, the proceedings are intended to result in prescription of liabilities and this institution is not identical with cancellation.

It follows from the above that the objective of the bankruptcy proceedings consisting in cancellation of the bankrupt debtor's liabilities pursuant to Article $491^{21}(1)$ of the Bankruptcy Law, which have not been repaid in the course of the implementation of the repayment plan, will only be possible after formal termination of the proceedings, that is, following the issuance of the repayment plan. The goals of the proceedings can only be achieved in the course of these proceedings (so at the time they are being conducted). Achievement of the objectives of the proceeding at the time when they have ended would be irrational in a normative sense. Therefore, if in the case of bankruptcy proceedings conducted against natural persons, the objective in the form of cancellation referred to in Article 2(2) of the Bankruptcy Law can only be achieved after the formal termination of the proceedings, thus, it must be deemed that the proceedings, in fact, do not end with the issuance of the repayment plan. In order for the proceedings to achieve their basic objective, they must continue until the repayment plan is implemented or changed by way of cancellation of liabilities (Article 491^{19}[1] of the Bankruptcy Law). The same is the case with conditional cancellation of liabilities. The bankruptcy proceedings end with the issuance of a decision on conditional cancellation of liabilities (pursuant to Article 491^{14}[8] of the Bankruptcy Law), however, these liabilities are only cancelled after the period of five years from the moment this decision becomes final and on condition that within that time none of the creditors submits an application for a repayment plan (Article 491^{16}[2i] of the Bankruptcy Law). Moreover, if, in such a case, the court issues a repayment plan at the creditor's request, will termination of the proceedings take place again along with the issuance of the repayment plan? If that were the case, the law would be allowing to open terminated proceedings multiple times, which would result in uncertainty as to the chargeability of liabilities. It would not be clear whether the limitation period started on the date the decision on conditional cancellation of liabilities was issued or restarted on the date of issue of the repayment plan. Obviously, Article 491^{16}(2a) of the Bankruptcy Law stipulates that, when establishing a repayment plan, the court will first repeal the decision regarding conditional cancellation of liabilities in such a case. As a result, the effect of termination of the proceedings referred to in Article 491^{14}(8) of the Bankruptcy Law, which refers to the decision on conditional cancellation, ceases to exist. Nevertheless, this situation creates legal uncertainty, which is reflected in the fact that in such a case the creditor (and the debtor) cannot be sure whether the limitation period for the liability has already started or it will start at another time. This is not consistent with the constitutional principle of legal certainty. If full implementation of the repayment plan is considered termination of the bankruptcy proceedings, this gap is bridged and no more doubts are left as to the moment when the limitation period for liabilities restarts.

Regardless of whether the limitation period for a liability starts with the issuance of a repayment plan or with the moment of its full implementation, it is essential that the plan become final.

In principle, a decision of an ordinary court becomes final, if there is no more means of appeal against it (Article 363 of the Code of Civil Procedure). Finality produces an effect for the court that has issued a decision, for the parties to the proceedings that it is concerned with, for other courts, the authorities as well as offices, and, in cases provided for by the law, it also binds other persons (Article 365 of the Code of Civil Procedure). Finality is a feature of a court judgement which is not exclusively attributed to judgements ending proceedings (Piaskowska et al., 2023).

Discrepancies between the Tax Ordinance and the Bankruptcy Law in respect of the limitation period

The relationship between the Tax Ordinance and the Bankruptcy Law is marked by a certain dose of individuality. These differences are particularly apparent in the way the limitation period is regu-

lated. In principle, the limitation period for tax liabilities cannot be interrupted, e.g. at the time it was suspended earlier. This rule may raise doubts in the course of bankruptcy proceedings, especially as regards admissibility of interruption of the limitation period for a tax liability (or more precisely a claim) based on Article 239a of the Bankruptcy Law, whose limitation period has previously been suspended based on the provisions of the Tax Ordinance.

Tax liability of a member of the management board

It is often the case that, in order to extend the group of persons responsible for a taxable person's tax liability, the tax authority makes a decision regarding tax liability of, among others, members of the management board of a capital company. In such a case, if a party to such proceedings who is a natural person declares bankruptcy, there is a risk that liabilities of this type will not survive (pursuant to the provisions of the Tax Ordinance) until repayment based on the agreed repayment plan. The above issue is created by legal and factual obstacles.

The third party's liability is subsidiary to the taxable person's liability. In this case, the taxable person is a capital company which is in arrears with the payment of tax. If a decision is issued against a member of the management board regarding tax liability of the taxable person, they are jointly and severally liable with that person. Such liability is based on the same principles as the joint and several liability regulated in the Civil Code (Article 92 of the Tax Ordinance). Therefore, the tax authority may demand repayment directly from the taxable person or directly from the third party. And so they can voice their demands in the course of the ongoing bankruptcy proceedings by submitting a claim.

The subsidiary character of the liabilities of the taxable person and the third party means that the third party's liability automatically expires when the taxable person's tax liability does. Pursuant to Article 59(1)(9) of the Tax Ordinance, the tax liability expires as a result of prescription. The effect of declaring bankruptcy is closely connected with the bankrupt debtor. Therefore, the consequences of bankruptcy should not be extended onto entities other than those specified in the law. If bankruptcy of the taxable person has not been declared, the limitation period for their liabilities will not be modified on this basis, whereas, if the tax authority submits a claim based on a decision issued pursuant to Article 116(1) of the Tax Ordinance, the limitation period for this liability will be interrupted in accordance with Article 239a of the Bankruptcy Law. However, such interruption will only take effect for the purposes of the bankruptcy proceedings. In consequence, the claim in question will be covered by the bankruptcy proceedings of the third party, even if the taxable person's liability expires on the basis of the provisions of the Tax Ordinance (Kozakiewicz, 2023).

This is aimed at protecting the creditor under the public law (Kozakiewicz, 2023). The bankruptcy proceedings of the third party will be the only way to obtain any repayments linked to a decision on the tax liability imposed on a member of the management board. In addition, in the course of the bankruptcy proceedings, the debtor each time decides whether they accept the claim or not. They file a statement on the basis of Article 243(1) of the Bankruptcy Law. When they do, they can no longer defend themselves effectively against execution of the liabilities covered by the agreed repayment plan, even if, from the very beginning of their involvement in the proceedings, they have been prescribed (Kozakiewicz, 2023).

As far as the issue of the beginning of the limitation period for such liabilities is concerned, it is noteworthy that, as a rule, the limitation period starts at the end of the year in which the tax authority's decision regarding tax liability was served (Article 118[2] of the Tax Ordinance). In that case, this period is three years. It can be modified for various reasons – including due to declaration of bankruptcy (Article 70[3] of the Tax Ordinance). Interruption of the limitation period on such a basis takes place with no interference from the tax

authority. The effect will occur with no activity from the creditor under public law as opposed to the effect resulting from application of Article 239a of the Bankruptcy Law. If such a claim is submitted within the course of the third party's bankruptcy proceedings, the limitation period for such a claim is absolutely interrupted. Moreover, if the bankrupt debtor accepts the claim and it is covered by the repayment plan, the debtor is obliged to settle it, even if the tax liability of the jointly and severally liable debtor has expired (Kozakiewicz, 2023). In that case, the basis for pursuing repayment is longer the decision on tax liability, which produces no legal effects owing to prescription of the taxable person's liability. The basis for pursuing repayment will be the fact that the bankrupt debtor has recognized the claim, which will naturally result in including it in a final decision on the repayment plan. Since the debtor is bound with a final repayment plan, refusal to perform any of the obligations specified therein may be a basis for its repeal (Kozakiewicz, 2023).

Death of the taxpayer

The limitation period does not start and if it already has, it is suspended on the date of death of the taxpayer until the day the court's decision on acquisition of inheritance or registration of a certificate of inheritance becomes final. Such a period cannot last longer than two years following the death of the testator (Article 99 of the Tax Ordinance). In turn, in the event of death of an entrepreneur, the tax creditor may apply to the court for a declaration of their bankruptcy. However, this entitlement is limited in time; it needs to be exercised within up to one year from the date of the debtor's death (Article 7 of the Bankruptcy Law).

One may wonder whether modification of the period of limitation of the deceased entrepreneur's liabilities based on the Tax Ordinance takes place automatically upon the taxpayer's death. The objective of the provision in question is to protect the tax authority's claims should there be issues with pursuing the arrears from the heirs. Therefore, suspension of the limitation period on this basis does not take place, for example, if there is succession management established; although it does not follow from the wording of the provision (according to the SAC's judgement of 25 May 2023, case No. I FSK 139/2023).

Certainly if an heir applies for a refund of tax overpaid by the testator or enters the proceedings conducted against the testator as a party, Article 99 of the Tax Ordinance requires that proceedings on acquisition of inheritance be carried out (and the heir be holding a final decision on the acquisition of inheritance or a registered inheritance certificate). Such proceedings should also be initiated by the tax authority, if they have not been previously opened by the heirs, in the event that there are tax proceedings conducted in regard of the heir's liability for the testator's tax arrears (Dowgier et al., 2024). Likewise, for example, in judgement of the RAC in Warsaw of 19 November 2020, case No. III SA/Wa 543/20.

Regardless of whether suspension of the limitation period always takes place at the time of death of the taxpayer or the time of suspension corresponds to the deadline for applying for bankruptcy (which is shorter in this case than the maximum suspension deadline), if there are simultaneously ongoing proceedings in respect of acquisition of inheritance, as a rule it is not possible to interrupt the limitation period, if it has been previously suspended. It may seem that such a situation will take place as regards liabilities of a deceased entrepreneur. The rule described above only applies to a situation in which the limitation period has been suspended (and is to be interrupted) pursuant to tax regulations. As indicated earlier, the provisions of the Bankruptcy Law only govern claims submitted to bankruptcy proceedings. Otherwise, the tax creditor would be entitled to initiate such proceedings while risking that all the submitted claims might become prescribed in the course of such proceedings. Thus, the tax authority might be apprehensive of losing the legitimacy to be a party to the proceedings. Interruption of the limitation period owing to submission of a claim would not take effect in case of

claims submitted by the tax authority. Such a situation would be detrimental and, certainly, this was not the intention of the legislator. Under such circumstances, the Head of the Tax Office would be in a much worse procedural position than the other creditors whose claims benefit from the interruption of the limitation period in accordance with Article 239a of the Bankruptcy Law.

Therefore, the above considerations allow one to assume that the suspension referred to in Article 99 of the Tax Ordinance does not affect the tax creditor's right to apply for declaring bankruptcy of the deceased entrepreneur. As a result of such an action, the authority will be able to seek repayment in the course of the ongoing bankruptcy proceedings, even if no group of heirs of the taxpayer is established.

Split commitments

It is frequently the case that if bankruptcy of a taxpayer is declared, a tax liability arises during the relevant tax settlement period. It might not be chargeable yet, however, it is undoubtedly subject to partial submission to the bankruptcy proceedings. In such a case, it is proportionally split into pre- and post-bankruptcy commitments. The division takes place by virtue of the law. In the case of monthly settlement, the effect is two tax claims and two different modes of their satisfaction and limitation (Kozakiewicz, 2023).

The claim for the period prior to the declaration of bankruptcy is subject to repayment from the bankruptcy estate. It can be submitted to the proceedings. For this reason, the limitation period for the claim may be interrupted pursuant to Article 239a of the Bankruptcy Law. This effect is independent of the fact that, under the Tax Ordinance, the limitation period for such a liability has not started yet. This is because the deadline for the payment of the tax expires before the end of the year in which bankruptcy was declared. The limitation period begins the day after the decision to terminate the proceedings becomes final. As for the considerations above, at this stage of the elaboration, it is of secondary importance when such termination actually takes place. As far as proceedings against natural persons are concerned, after the repayment plan is fully implemented, such a claim may be cancelled in principle. Therefore, the limitation period will not start because the claim will have expired.

The situation is quite different with claims generated in the period following the declaration of bankruptcy. Such liabilities cannot be submitted to the proceedings. However, they may be recognized as cost in the bankruptcy estate, which is satisfied in accordance with Article 230 of the Bankruptcy Law. In such a case, Article 239a of the Bankruptcy Law will no longer apply and so the limitation period will not be interrupted. As a rule, it would have begun at the end of the calendar year in which the tax payment deadline expired. Due to the ongoing bankruptcy proceedings (and non-submission of a claim), Article 70(3a) of the Tax Ordinance will apply. The Bankruptcy Law will not supersede tax regulations owing to the fact that Article 239a of the Bankruptcy Law does not regulate non-commencement of the limitation period. Therefore, this period begins the day after the decision to terminate the proceedings becomes final. The limitation period is calculated based on Article 70(1) of the Tax Ordinance, which states that the tax liability prescribes after five years.

As previously highlighted, accepting the day of issuance of a repayment plan as the moment of termination of the bankruptcy proceedings may pose a risk of prescription of the liabilities of this type. Their limitation period is shorter than the maximum repayment period. It is worth bearing in mind that such liabilities cannot be cancelled following the implementation of the repayment plan. Therefore, they would simply await expiry as a result of prescription. It seems that the objective of Article 245a of the Bankruptcy Law is different and, by way of ordering the bankrupt debtor to also settle the liabilities for the period in which bankruptcy was declared, the legislator did not intend to have them prescribed too soon; especially considering that the outstanding liabilities includ-

ed in the bankruptcy estate are attributable to the bankrupt debtor. The commencement of the limitation period at the time when the creditor has no way to execute them seriously restricts the debtor's liability by virtually eliminating it and making this provision only apparent. For this reason, the limitation period for such liabilities should start at the time when the debtor is no longer obliged to implement the repayment plan.

Liabilities not disclosed by the bankrupt taxpayer

When the repayment plan is issued, the debtor regains management of their assets. In consequence, they may submit corrections of tax returns, regardless of whether such liabilities have already been included in the repayment plan. If the correction leads to an increase in tax liability, a question arises whether the unpaid excess of the declared liability is subject to cancellation based on Article $491^{21}(1)$ of the Bankruptcy Law as a liability which had arisen before the declaration of bankruptcy but was not submitted to the proceedings.

The tax shown in the tax return is tax payable (Article 21[2] of the Tax Ordinance). Such a presumption means that the tax authority has no legal possibility of challenging the amount of tax due, which has been reported by the taxpayer in the tax return. This rule is relaxed, if the tax authority conducts tax proceedings which result in a decision stating a different amount tax (Article 21[3] of the Tax Ordinance).

Therefore, when the tax creditor submits a claim, they must rely on the tax return filed by the taxpayer. The amount of tax reported by the taxpayer is submitted to the bankruptcy proceedings as a claim due. However, if the debtor subsequently submits an adjustment to such a tax return (e.g. after the repayment plan becomes final), the tax authority will be able to execute freely this liability by means of administrative enforcement. The amount of tax due in excess of the amount submitted to the proceedings will be a liability covered by Article $491^{21}(2)$ of the Bankruptcy Law, which was intentionally not disclosed by the debtor (see the judgement of the SAC of 28 September 2021, case No. II FSK 695/21).

However, the tax authority will not be free to execute such a liability in the course of implementation of the repayment plan. The debtor's assets will still be affected by the bankruptcy proceedings as the bankrupt debtor will be forced to bear the burden of implementing the repayment plan. Therefore, part of the debtor's assets will be allocated for this purpose and, thus, it may not be usable to the creditor. The creditor under public law will be forced to limit execution to the extent that does not undermine the taxpayer's ability to implement the repayment plan, especially that this lies in their interest after all, because part of the adjusted tax is covered by the planned repayments.

If the limitation period started with the repayment plan becoming final, the adjusted liability might prescribe before full implementation of the repayment plan. If it is assumed that the limitation period for liabilities begins after the repayment plan has been implemented, the tax creditor may execute their claim even before this period begins (while the plan is being carried out), which is legally permissible. This is because the tax authority is entitled to issue an enforcement title following delivery of a reminder to pay tax. Such activities can be done after the deadline for the payment of tax expires, even before the commencement of the limitation period, which begins at the end of the year.

In the course of implementation of the repayment plan, execution of such obligations cannot be complete; although it could theoretically apply to all the debtor's assets. It is limited by the fact that the debtor's assets are burdened with what is necessary for the implementation of the repayment plan. Therefore, it is justified that the limitation period should be inactive at this period of time. It should be active when the creditor is able to execute their claim against the debtor's assets, which are no longer burdened due to implementation of the repayment plan. In such a case, forced execution of a tax claim will be limited in time as

there will no longer be any legal and factual obstacles to its enforcement.

Conclusion

The tax authority's claims do not lose their fiscal character when bankruptcy proceedings are opened. However, as long as such proceedings are ongoing, they offer the only means for the creditor bound by public law to obtain any repayments. Therefore, such liabilities are governed by the provisions regulating these proceedings.

Depending on whether the provisions of the Tax Ordinance and the Bankruptcy Law are interpreted taking into account the creditor's or the debtor's interest, the moment the limitation period for tax liabilities restarts can be set differently. It is important to make sure that interpretation of the regulations does not lead to absurdity and (most importantly) takes into account the needs of all the participants in the proceedings.

It lies in the debtor's interest for the limitation period for liabilities to begin at a time when the Bankruptcy Law has not ceased yet to affect their relations with the creditors. It is a comfortable situation for the debtor to have the limitation period start at the time when creditors have difficulty pursuing repayment of their claims, even the ones not covered by the repayment plan, that is the claims that are not in fact involved in the proceedings. In turn, the creditor is interested in preventing prescription of their claims.

The assumption that the limitation period for liabilities restarts with termination of the bankruptcy proceedings, which takes place when the repayment plan has been fully implemented, does not actually follow from the literal meaning of the provisions of the Bankruptcy Law. However, neither Article 70[3&3a] of the Tax Ordinance nor Article 239a of the Bankruptcy Law prevent the assumption that the regulations in question refer to the proceedings in a broad sense, which include the period from the moment of declaring bankruptcy to the moment the decision on implementation of the repayment plan becomes final. Otherwise, the creditor governed by public law could be in a worse position than the creditor under civil law. The claims of the former, which they cannot execute or submit to the proceedings, would, after all, become prescribed; for example, this would be the case with the claims that arose during the settlement period in which bankruptcy was declared. Then, the bankruptcy proceedings would stray far away from their basic goal, which is to service indebtedness. In such a form, servicing liabilities would only cover the ones that had arisen before bankruptcy was declared and it would be possible to release the debtor from the obligation to service the liabilities that have arisen later. Such a relationship between the debtor and the creditor would be unfair and incompatible with the socio-economic purpose of the bankruptcy proceedings. In addition, the educational goal of the repayment plan would be defeated.

The repayment plan should also serve an educational and preventive role. Its repayment should be a certain inconvenience for the debtor, in order to stop them from falling into a spiral of debt again. How could such goals be achieved, if the legislator legally allowed the debtor not to settle new liabilities? Inactivity of the bankrupt debtor would, therefore, not involve any risk of adoption of a restrictive measure. It is the educational function of the repayment plan that advocates not restarting the limitation period too early, so that the debtor is not released from the obligation to pay their liabilities too soon.

Interpretation of Article 239a of the Bankruptcy Law should lead to a conclusion that the rule produces effects along with submission of a claim and continue to exist until the decision on the implementation of the repayment plan becomes final.

When applying this provision, it should be kept in mind that it is concerned with both interruption (at the time of submission of a claim) and the restart of the limitation period. As far as the limitation period for tax liabilities is concerned, it should not be the case that the initial effect (in the form of interruption of the limitation period) occurs on the basis of the Bankruptcy Law and

the final effect (in the form of commencement of the limitation period) occurs on the basis of the Tax Ordinance; even though these regulations are identical. The provisions of the Bankruptcy Law govern the existence of a liability in the course of the bankruptcy proceedings. Therefore, they are appropriate for setting the moment when the limitation period for a liability subjected to such proceedings restarts, whereas the regulations appropriate to calculate the limitation period itself will be the provisions of the Tax Ordinance: for example, Article 70(1), which indicates that tax liabilities, in principle, expire five years from the end of the year in which the tax payment deadline expired (Witosz, 2017).

There are many reasons to claim that when a repayment plan is issued, the limitation period for liabilities covered by the taxpayer's bankruptcy proceedings restarts on the day following the date when the decision on implementation of the plan becomes final. If the bankruptcy proceedings are treated as a conglomeration of smaller proceedings, it can be stated that it consists of several stages and the last one (for natural persons) is the debt-clearing phase (see judgement of the Regional Court in Olsztyn of 31 March 2021, case No. IX Ca 1153/20). The considerations presented above may appear to be theoretical owing to the fact that following the full implementation of the repayment plan, the creditor will not be able to execute the liabilities that have arisen before the repayment plan was formulated (Article 491^{21}[3] of the Bankruptcy Law). The above is a realization of the legislator's intention to release natural persons of all debt both as regards liabilities that had arisen before bankruptcy was declared and as regards the ones that have arisen later and which are the cost of the proceedings for which the bankrupt debtor is responsible (Witosz et al., 2021). Finally, the liability referred to in Article 231(2) of the Bankruptcy Law may only be executed, if the bankruptcy proceedings terminate in a different way than through the full implementation of the repayment plan, for example, as a result of its repeal. However, if the repayment plan is fully implemented, the creditor under public law, especially the tax authority, will be able to claim repayment in a different way than through execution of the liabilities. Due to non-prescription of a tax liability, which was not included in the repayment plan, and which has arisen after bankruptcy was declared, it will be possible to repay it, for example, as a result of crediting overpaid tax towards it or recovering the claim by way of offsetting against the reimbursed court costs. Such acts of the tax authority are not related to initiation of execution, although they result in reduction of a tax claim. For this reason, the prohibition referred to in Article 491^{21}(3) and Article 370f(4) of the Bankruptcy Law will not apply. The debtor's obligation to cover the costs of the bankruptcy estate results from the fact that the legislator has not cancelled these liabilities *ex officio* but only indicated that they cannot be executed. In the case of similar liabilities, other than the ones governed by the public law, they will also not prescribe by virtue of the law. They will, however, turn into natural obligations.

The assumption that the limitation period for a liability restarts with the full implementation of a repayment plan also corresponds to the objectives of the bankruptcy proceedings. The legislator assumes that such proceedings conducted with respect to natural persons should allow for the cancellation of liabilities. Although the liabilities that have arisen after bankruptcy was declared are not subject to cancellation, they are covered by debt-clearing (Article 491^{15}[6] and Article 491^{21}[3] of the Bankruptcy Law). Debt servicing does not, however, consist in having the liabilities prescribed, which could happen, if the limitation period started with the moment the repayment plan became final. The effect of prescription of the liabilities would be produced in the course of the bankruptcy proceedings (understood broadly).

Such liabilities should still be serviced, however, in principle, it would take a form different than execution. Whereas the effect of prescription should occur after termination of the bankruptcy proceedings as a natural consequence of continued existence of uncollectible debt. In such a case, it will no longer be identified as a means of servicing debt.

One may certainly argue that if a repayment plan is repealed, the effect of prescription of a liability is cancelled as well because the limitation period was calculated on the basis of a judgement that has been abolished. Nevertheless, there are many arguments supporting the claim that the limitation period restarts at a different time than would seemingly follow from the literal meaning of the provisions of the Bankruptcy Law. It is worth taking note of the judgement of the RAC in Warsaw of 28 August 2020, case No. III SA/Wa 2237/19, which indicates that the limitation period under Article 70(3) of the Tax Ordinance begins after the repayment plan becomes final. This conclusion follows form the literal meaning of Article 491^{14}(8) of the Bankruptcy Law. This judgement was repealed with the judgement of the SAC of 28 September 2021, case No. II FSK 695/21. However, the SAC did not address the interpretation of Article 491^{14}(8) of the Bankruptcy Law. The RAC's judgement was repealed on other grounds.

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