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Objectives of the new Tax Ordinance

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The article presents the aims of the new tax ordinance as well as the instruments to be used for the purpose of executing it. The following new regulations put forward in the project should be considered as rules protecting the taxpayer within the framework of their relationship with the tax service and alleviating excessive formalism of tax procedures; among others: general principles of tax law, consensual forms of settling tax matters (tax agreements, mediation, consultation of tax consequences of transactions, collaboration agreement), normative catalogue of rights and obligations of the taxpayer, regulations protecting the taxpayer if they follow the information provided by tax authorities and well-established practice, limited statute of limitation regarding tax liability, prohibition of passing judgement to the detriment of the taxpayer during the first instance proceedings, measures for countering protracted proceedings, the right to correct the tax return prior to termination of tax proceedings, waiving the right to appeal against a decision in favour of filing a complaint to the court, remission of tax, official information on significant changes in the provisions of tax law, longer deadlines to appeal or complain, and better arrangement of rules for making a non-final decision immediately enforceable.

An increase in revenue from taxation is to be achieved through, among other things: introduction of an effective model of tax proceedings (including summary procedure, representative proceedings, elimination of proceedings concerning trivial amounts of tax), creation of an effective mode of delivery of tax letters, popularization of electronic means of communication, ordering to cooperate in meeting the obligations imposed by tax authorities, reinforcing the role of the tax return, expanding the range of possibilities for other entities to pay the tax, decisions determining part of tax, perfecting the provisions of law regulating the clause countering tax avoidance, taking into consideration the specificity of local tax authorities, simplification of procedures concerned with determination and repayment of overpayment, establishment of rules for meeting joint liability, better arrangement of the rules for imposing and determining penalties, and modification of the rules for issuing interpretations of the provisions of tax law.

Keywords: tax ordinance, taxation, tax procedure

I. Introduction

On 9 October 2017, the Minister of Development and Finance received a draft of the new tax ordinance prepareded by the General Taxation Law Codification Committee (GTLCC). The Committee was appointed by the Regulation of the Council of Ministers of 21 October 2014 in order to prepare a draft of a comprehensive regulation referring to the general tax law as well as executive

provisions[1]. GTLCC completed the tasts, which should be emphasized, within the assumed time, which was not easy with considerable amendments being introduced at that time in the tax law. The draft of the new tax ordinance is a form of codifying the general tax law and will come into effect on 1 January 2019, replacing the current ordinance of 1997. It is not a revolution in the general tax law. This was GTLCC's assumption. The works concentrated on perfecting the provisions currently in force, including in particular the elimination of those badly functioning and adding to this act new regulations, which are known to be part of this type of acts. Thus, neither taxpayers not employees of tax authorities should be afraid of the proposed regulations. The fundamental canons of the general tax law developed as early as in the Tax Ordinance of 1934 have been preserved. In accordance with them, the taxpayer's obligation to pay a specific tax result from a statutory tax obligation. If the taxpayer pays the tax, the obligation expires, and if not, tax arrears occur, which might be executed with interest. On the other hand, if the taxpayer pays unduly or too much, then occurs overpayment, which is refundable. The authority may require the taxpayer to pay the tax until the limitation period expires, because later the liability expires by virtue of law. These rules, included in the aforementioned Ordinance of 1934 and in the current Ordinance of 1997, are also honored in the draft of the new ordinance. The general tax law, as we can see, develops through evolution rather than rapid and radical "reforms", which are good at the stage of working on the design, but not at the stage of implementation and application.

The draft of the new ordinance is an act consisting of 5 sections (General Provisions, Tax Liabilities, Tax Procedure, Special Proceedings and Final Provisions) divided into chapters, and some chapters, which is a novelty, into subchapters. The subchapters were introduced in expanded chapters (statute of limitations, overpayment, tax control) in order to increase the transparency of their content.

The draft includes 687 articles, which, referring to the current ordinance of 344 articles, may erroneously suggest that it is twice as extensive. In fact, the number of articles is a bad measure of the volume of this act due to the fact – and this is a problem of the current ordinance – that institutions which, due to their scope, should be regulated in separate editorial units marked with a number, are regulated in one article with letters. An example is Article 119, which exhausts the content of the entire Chapter IIIA „Counteracting tax evasion". In fact, these are 33 articles, the last of which is Article 119zf, which proves that the letters of the alphabet had to be used for the second time to designate the basic editorial units of the ordinance. The same is true of art. 14a–14s regulating the interpretations of tax law regulations, which are additionally incorrectly placed in section II „Tax authorities and their jurisdiction". More examples of such examples can be mentioned. In this situation, a better measure of the volume of these acts is the number of standardized pages. The draft ordinance has 255 pages whereas the current act 221. Thus, the volume of the draft is higher than the current act by 34 pages, which gives 15%. Why the „surplus"? It should be noted that the extensive regulations contained in the Act on the principles of registration and identification of taxpayers and payers (12 pages of the draft) were transferred to the project with minor modifications. These are undoubtedly the provisions of the general tax law, which for this reason should be in the ordinance and not in a separate act. The bill also regulates many necessary institutions that are not included in the current ordinance. For example, the non-ruling methods of dealing with tax matters themselves occupy 13 parties in the draft (mediation 4 pages, tax agreement 2 pages, consultation on tax consequences of transactions 5 pages, cooperation agreement 2 pages). When we add completely new regulations regulating general principles of tax law, rights and obligations of the debtor, the right to information and support

[1] Regulation of the Council of Ministers of October 21, 2014 for creating, organizing and mode of operating of the General Taxation Law Codification Committee (Dz. U. poz. 1471).

and protection of legitimate expectations, representation in tax law, or simplified proceedings, it turns out that total innovations take much more than the aforementioned 34 pages. This leads to the conclusion that if only the matters which are the subject of the current ordinance were regulated in the draft, the draft would have a smaller volume. However, not the smallest possible volume is the aim of a good code regulation. It must be an act which comprehensively regulates the whole of general tax law and, what is equally important, includes new tax law institutions that function well in other systems. And these conditions are fulfilled by the draft of the new tax law „thicker" than the existing law by about 1/6.

A nightmare of acts with so large a number of editorial units is their poor legibility, resulting, among other things, from the so-called cascading references (reference to the provision in which there is a reference to the next provision). This is also a shortcoming of the current ordinance, which is most noticeable under the regulations referring to overpayment. In the bill, such a way of regulation has been limited to the necessary minimum, which has been paid close attention to when editing new regulations. References cannot be avoided, but they should not lead to confusing regulations that are so difficult in reception. The new provisions regulating the aforementioned overpayment confirm that, GTLCC has tried to eliminate this problem in the draft[2].

[2] An example is the question of the interest rate on the overpayment indicated in the submitted declaration, for example, for personal income tax or in the correction of the declaration. Currently, in order to determine from when it is due, it is necessary to refer to 3 and 5 regulations respectively. After the change, it will be possible after the analysis of 2 and 3 provisions of the new tax law respectively. Another example is the simplification of the regulations concerning the concept of overpayment. Instead of 9 editorial units (paragraphs, points, letters) – as is currently the case in Article 72, in the proposed Article 180 there are only 3 editorial units (paragraphs). Unfortunately, it is not possible to eliminate these references completely in the new legislation, which is associated with the particularly complicated nature of the institution of overpayment.

II. Objectives of the bill

The project focuses on the implementation of two main aims:

1) protection of taxpayer's rights in his relations with tax authorities and improvement of the „atmosphere" of these relations,
2) improvement of the efficiency and effectiveness of tax revenue collection3.

The main reason for the formulation of the first objective is the bad, in public opinion, perception of the relationship between tax authorities and taxpayers. It is natural that the taxpayer , the weaker party of these relations, should be protected by law. Instruments for the protection of its rights have been secured in many provisions of the new law. However, this does not lead to the solution of the fundamental problem in these relations, which is, in the opinion of the GTLCC, the excessive formalism and rigor of the procedures for handling tax matters regulated in the ordinance. The vast majority of cases are conducted according to such a scheme: control, initiation of proceedings, decision, enforcement, complaint to an administrative court. The taxpayer does not talk to the authority (an official) in this manner of preceedings, but exchanges letters, which sometimes takes several years. In the current regulations there is no room for informal ways of solving tax problems, which are reduced to the taxpayer talking to an official and agreeing on controversial issues. The existing law is silent on this subject, which will discourage both parties from making attempts to settle matters in this way. Tax officials are even afraid to deal with matters in consultation with taxpayers because of easy to formulate allegations of corruption. The draft provides for regulations that legalize the so-called non-ruling forms of dealing with tax matters (mediation, tax agreement, cooperation agreement) and secure their implementation. They also oblige officials to provide information addressed to taxpayers in any form, including during their conversations with them.

[3] L. Etel et al., Ordynacja podatkowa. Kierunkowe założenia nowej regulacji, Białystok 2015, p. 31+.

The bill „legalizes" the official's conversation with the taxpayer, from which the information and findings are legally protected. The official can already communicate with the taxpayer (e.g. as to the number of installments into which the tax liability will be divided) without fear of corruption, and the taxpayer who receives the information in the conversation with the official will know that if it turns out to be untrue, it will not suffer negative consequences of complying with it. In the opinion of the GTLCC, many issues (including tax issues) can be handled quickly and cheaply by talking and not exchanging letters, because it may last, as current practice shows, for years!

The fact that the basic institutions of the general tax law have been retained in the draft does not mean that nothing has changed in the new ordinance. There are many of these changes and they will be presented with a division into the objectives they are to achieve.

III. New regulations in the draft of the tax ordinance serving to protect taxpayers' rights

The new regulations contained in the draft, which protect the taxpayer in his relations with the tax authorities and mitigate excessive formalism of tax procedures, include the following: general principles of tax law, consensual forms of dealing with tax matters (tax agreements, mediation, consultation on the tax consequences of transactions, cooperation agreement), a normative catalogue of rights and obligations of the taxpayer, regulations protecting the taxpayer in the event of compliance with the information of tax authorities and established practice, a limitation period for tax liabilities, a ban on ruling to the taxpayer's disadvantage at the stage of first instance proceedings, measures to combat the lengthiness of proceedings, the right to correct tax declarations before the end of tax proceedings, resignation from appeals against decisions in favor of complaints to the court, tax discontinuance, official information on significant changes in tax law, longer deadlines for appeals and complaints, ordering the rules of imposing an order of immediate enforceability of decisions that are not final.

1. Catalogue of general principles of tax law

The general provisions of the drafted ordinance contain a catalogue of general principles of tax law. It is undoubtedly the realization of probably the longest-served postulate concerning the organization of the general tax law. At present, a catalogue of directional directives of proceedings in the settlement of tax cases, referred to as the principles of tax law, has been developed in the judicial decisions and doctrine[4]. Not all of these directives are recorded in the tax ordinance. There is no such thing as the principle of amicable settlement of cases, the principle of balancing the interests of the taxpayer and the public interest, the prohibition of abuse of law by the tax authority, the principle of pragmatism, or the principle of proportionality and cooperation between the taxpayer and the tax authorities. In the bill, they have gained the status of normative principles.

The general principles of tax law should be gathered in one place, and not, as at present, in the regulations governing tax proceedings (Articles 122–129) and general regulations (Article 2a). Their catalogue in the draft law is not, by definition, closed and may be enriched in the future with new rules developed by doctrine and judicial decisions..

2. Prohibition of abuse of tax law by tax authorities

The new program principle, the ban on abuse of the law by tax authorities, will be of great importance for the protection of taxpayers' rights.

[4] B. Brzeziński, *Zasady ogólne prawa podatkowego a założenia nowej ordynacji podatkowej*, „Przegląd Orzecznictwa Podatkowego" 2016, nr 3.

Abuse of the law by a tax authority is understood as an act of this authority inconsistent with the purpose of tax law provisions. The tax authority abuses the right in a situation where, for example, it tries to extract the information it needs by requesting explanations (which the taxpayer cannot refuse), instead of obtaining them in the form of a party's hearing (in this case, the taxpayer's consent is required). This is a rule addressed to tax authorities, whose specific equivalent is a clause against tax evasion aimed at combating the effects of abuse of rights by the taxpayers who evade taxation. Neither the taxpayer nor the tax authority should abuse the law.

Infringements of the prohibition of the abuse of law may be appealed against with all legal means available to the taxpayer in the event of infringement of other provisions of the newly introduced act.

3. Information and support for the taxpayer and protection of legitimate expectations

The title principle regulated in Article 16 of the draft bill obliges the tax authorities to provide information and support for the obliged parties in independent, correct and voluntary performance of their duties by the obliged party and in exercising their rights. The tax authority will be required by law to provide the taxpayer with information and assistance not only within the framework of tax proceedings, but also at each stage of handling tax matters. Detailed issues related to the implementation of this principle are regulated in particular in the provisions contained in Section 1, Chapter 5, Section I „Right to information and support and protection of legitimate expectations" and Chapter 2, Section IV „Interpretations and information on tax law provisions". The purpose of these regulations is to specify the rights of the taxpayer (interested party) to obtain information and support in independent, correct and voluntary performance of his duties and rights. Information and support should be provided by tax authorities in various forms indicated in these regulations. Adherence to incorrect information obtained from the tax authority will protect the taxpayer, among other things, against interest on arrears, sanctions in the value added tax and fiscal penal liability. At the same time, the taxpayer will be able, when applying for tax reliefs, to indicate incorrect information obtained from an authority; then the condition of its important interest will be met. The same protection will be available in the case of compliance with a well-established practice or a position taken by a tax authority in a deed addressed to it. The proposed Article 20 provides, inter alia, that the taxpayer's legitimate expectations are subject to legal protection, which corresponds to the principle in question.

4. Deciding on doubts as to the facts in favour of the debtor

Among the newly introduced general principles of tax law protecting the rights of taxpayers, it is important to distinguish the principle of resolving doubts as to the actual state of affairs in their favor. It complements the Directive *in dubio pro tributario*, which until recently aroused a lot of emotion and has already been introduced into the law. This principle obliges the tax authority to resolve any doubts as to the facts in favor of the taxpayer in the event that, after the taking of evidence in a case, doubts as to the facts remain unremovable. It was formulated within the framework of the rules governing the principle of objective truth because of its connection with the taking of evidence. It should be assumed that in this way the doubts as to whether this principle can be applied in tax matters can be eliminated.

5. Non-ruling methods of dealing with tax matters

Mediation and tax agreements are one of the so-called non-ruling forms of dealing with tax matters, which until recently were considered useless in tax law. Based on the experience of other countries in this field. GTLCC decided to regulate

in the draft law conciliation methods of dealing with tax matters, which consist in contractual dealing with difficult issues between the taxpayer and the tax authority. The taxpayer and the tax authority may agree on their own or with the participation of a neutral and impartial third party, a mediator. Mediation may be initiated by a party or by a tax authority and is voluntary. This method of resolving disputes may be used wherever a tax treaty may be concluded. Mediation is by definition designed to enable the parties, the tax authority and the taxpayer, to reach an agreement, which may make tax proceedings cheaper and more effective.

It will not be possible to conclude a contract in every case. It is not possible to agree on the amount of tax. However, agreements in the light of the project may be used, among others, in the evidence process, especially when it concerns the findings of the facts from several years ago, the determination of the value of the transaction, action or event, or the type of discretionary reliefs (e.g. the number of installments or the date of tax deferral). In these areas, the tax authority and the taxpayer may, for example, agree on the value of real estate without appointing an expert for this purpose and conducting long-term tax and court proceedings. This will pay off for both parties, which is the best incentive to conclude such agreements.

7. Cooperation agreement

The essence of this agreement is the cooperation of the taxpayer with the tax authority with respect to its tax liabilities. It is based on total transparency of the taxpayer's actions, which informs the tax authority about all important and controversial issues affecting the amount of taxes paid by the taxpayer. The tax authority knows what happens to the taxpayer and the taxpayer, in return, is sure that his tax settlements are correct. Such cooperation cannot, due to its specific nature, be commonly used in relations between the authority and the taxpayer. A cooperation agreement may be concluded only at the request of a taxpayer of economic or social significance. In principle, it may concern the largest business entities, the list of which will be established by the minister in charge of public finance after obtaining an opinion of the Social Dialogue Council.

8. Consultation procedure

The introduction of this procedure is a response to the taxpayers' demands for the tax authority to audit the correctness of their tax settlements at their request. This applies especially to taxpayers who have made complex economic operations (e.g. transformations) and are not sure whether they have made mistakes which have negative tax consequences. In such a situation, they will be able to apply to the tax authority for a decision on the tax consequences of transactions to which they were a party or participant. In this decision, the tax authority may determine the correct tax amount in the event that it finds that the taxpayer incorrectly determined the tax amount in the declaration. This procedure differs from individual interpretations not only in the possibility of issuing a decision determining the tax amount. During the consultation procedure, the tax authority does not limit itself to the analysis of data presented by the taxpayer (this is the case with interpretations), but actually examines all documentation in order to determine the correctness of settlements made by the taxpayer. Thus, it is a „control on demand", which must involve the payment of a fee, similar to agreements on transaction prices. In the course of proceedings, a taxpayer has numerous rights which allow him to pursue his interest better than in standard proceedings.

9. Rights and obligations of taxpayers

Recently, there has been an increasingly strong need for taxpayers to clearly formulate their rights and obligations in one place, while at the same time providing legal remedies to protect these rights. Declarations and charters of taxpayers' rights which are not of a normative nature

are no longer sufficient because their importance at the stage of application of the provisions by the tax authorities is little. Therefore, the model tax codes indicate the need to record these rights and obligations in the Law[5]. In the draft law, the rights and obligations of the debtor are specified in Chapter 3, Section I „General Provisions". The provisions of this chapter correspond – this was the assumption – to further regulations of the draft, where the instruments for the protection of these rights and the enforcement of obligations were provided for. Therefore, these are not provisions-postulates, but specific legal norms, which are developed in specific provisions included in the further part of the ordinance.

10. Limitation period

The current model of the statute of limitations has been modified in the draft for two main reasons. The first one is the problem of two different statutes of limitation depending on how a tax liability arises. In the case of taxes in which a liability arises through the delivery of a decision (e.g. real estate, agricultural or forestry tax, when natural persons are taxpayers, inheritance and donation tax), the tax authority is entitled to assess them for a period of 3 or 5 years (Article 68 of the Tax Ordinance, hereinafter referred to as t.o.), and then, after the liability arises, has 5 years to collect the tax (Article 70 t.o.). However, in the case of taxes arising under the Act (e.g. PIT, CIT, VAT, excise tax, real estate, agricultural and forestry tax, where the taxpayers are legal persons and organizational units without legal personality) there is a uniform period for the assessment and collection of tax of 5 years (Article 70 t.o.).

Equally controversial was the length of the statute of limitations for tax liabilities referred to in Article 70 of the current law. According to this provision, the tax liability expires 5 years after the end of the calendar year in which the tax payment deadline expired. The indicated period of 5 years, as a result of the numerous reasons for suspending its course and the possibility of interrupting it, is extended. This gives rise to situations in which, for example, a tax liability may be enforced even after several years. Possibility of multiple application of an enforcement measure (interruption of the limitation period) or instituting proceedings in a case of a crime or a fiscal offence (suspension of the statute of limitations) may result, in extreme cases, in the obligation never becoming statute-barred. In this context, it is not true that in the current legal situation the limitation period is 5 years. Indeed, the period can be extended indefinitely. This state of affairs has been changed in the proposed legislation.

The new legal structure of the statute of limitations is based on the assumption that the rules of statute of limitations for tax liabilities (both those arising from the law and those arising after the delivery of the decision) should be uniform. Therefore, it is proposed to introduce a statute of limitations for tax assessment and a statute of limitations for tax collection. The statute of limitations is 3 or 5 years from the date of expiry of the payment period or the date on which the tax obligation arises. Within this period, the tax authority would have to deliver a decision establishing or determining the tax amount. A five-year limitation period would apply to the settlement of taxes related to the business activity and a three-year limitation period would apply to other taxes. A longer limitation period for business related taxes is linked to the more complex nature of these settlements. The expiry of the statute of limitations would be followed by a 5-year statute of limitations on collection. During this period, tax authorities could enforce taxes arising from a declaration or decision.

The interruption and suspension of the statute of limitations has been severely limited in the draft. The statute of limitations excludes the possibility of interrupting the course of the statute of limitations and should be suspended only for

[5] M. Popławski, Tax Code Models (in:) L. Etel, M. Popławski (ed.), Tax Codes Concepts in the Countries of Central and Eastern Europe. Białystok 2016, p. 15+, as well as the decision of the Interparliamentary Team of Member-States of the CIS of December 9, 2000: A Model Tax Code for Member States of the CIS.

objective reasons beyond the control of the tax authority. Suspension of the statute of limitations may not lead to its extension by more than 5 years.

The premises for interrupting and suspending the period of conscription have also been considerably limited. The time limit for the commencement of the collection period is also limited to 5 years.

11. Prohibition on ruling against the taxpayer by the first instance authority

The draft of the new tax ordinance introduces a prohibition on issuing a decision worsening the taxpayer's situation by the first instance authority, if the decision is reversed and the case is referred back for re-examination. Under the new regulations, a tax authority whose decision has been reversed may not, when re-examining a case, issue a decision to the disadvantage of a party, unless the revoked decision contained defects which constitute grounds for declaring it invalid or recommencing proceedings.

12. Measures to combat excessive length of proceedings

In the current regulations, whenever a case is not settled on time, the tax authority is obliged to notify the taxpayer about it and indicate a new deadline. The problem is that the deadline does not have to be final and the tax authority may set a new deadline once again. This, among other things, leads to the prolongation of proceedings consisting in the fact that the tax authority unjustifiably prolongs the proceedings without formally infringing the law. A taxpayer is entitled to a reminder, but only not to settle the case on time (inactivity of the tax authority). In the new law, lengthiness of proceedings is also the basis for submitting a reminder to a higher authority. A finding of protractedness or inaction obliges the authority to set a deadline for settling the case.

13. Right to adjust the tax declaration before the end of the tax procedure

The draft maintains the prohibition on correcting tax declarations in the course of tax proceedings, but provides for an exception that will be broadly applicable. According to the draft regulations, the taxpayer may correct the tax declaration within the time limit set by the tax authority for commenting on the collected evidence. The tax authority will be obliged to notify the party of the possibility of correcting the tax declaration, informing them about the possibility of familiarizing themselves with the evidence gathered in the proceedings. As a result, the taxpayer will be able to correct the declaration on their own without waiting for the authority's decision. This regulation, beneficial for the tax authority and the taxpayer (fiscal penal liability, interest), will accelerate the procedure of handling cases and reduce the costs of proceedings.

14. The taxpayer's resignation from the right to appeal against the decision

The new ordinance gives the taxpayer the right to withdraw from the appeal against the tax authority's decision. It should be emphasized that this is the taxpayer's right, which can be exercised only on his own initiative. In accordance with the new regulations, the party may resign from appealing in favour of a complaint to an administrative court, if it does not raise against the decision objections of infringement of procedural rules and does not question the facts which the authority found to be proved, the evidence which the authority believed and the reasons for which the authority refused the credibility of the decision contained in the justification. What can a taxpayer gain by renouncing an appeal? First of all, a reduction of the time taken to conduct proceedings by two instances. If the taxpayer does not believe that the appeal will bring anything, he may resign from it and immediately refer the case to the administrative court.

15. Restoration of a substantive legal deadline

The draft law introduces the possibility for the tax authority to restore the deadline resulting from the provisions of the tax law in the event of its breach by the obliged. In practice, this institution, which is similar to the one currently in force, will apply, among others, to the deadline for filing tax declarations, the deadline for filing a declaration on the choice of or resignation from a tax card or a lump sum for registered income, the deadline for choosing taxation at the flat rate in personal income tax. In accordance with the new regulations, the tax authority will be able to restore the deadline if the taxpayer makes it probable that it was done without his fault and completes the given activity. Practice justifies the need to introduce such a possibility due to the fact that the consequences of failure to comply with the deadline are very often inadequate to the degree of the taxpayer's fault.

16. Tax remission

In the current tax law, the tax authority can only write off the tax arrears. Thus, the taxpayer who meets the criteria for obtaining this relief cannot apply for it before the tax payment deadline expires. He has to wait until the tax transforms into arrears (which is connected with interest and possible penal fiscal liability) and only then can he apply for its redemption together with interest. The new regulations provide for the possibility to redeem the tax amount without waiting for the payment deadline to expire. This is advantageous for the taxpayer because in case of refusal, he is not exposed to the risk of paying interest on tax arrears.

17. Official information on important amendments in tax law regulations

The proposed regulations plan to oblige the minister in charge of public finance to issue *ex officio* information on changes made to tax law regulations and how they affect the rights and obligations of taxpayers. This information will be published in the Public Information Bulletin. It is worth noting that it will be a statutory obligation of the Minister of Finance. Those obliged to comply with such information will not suffer any negative consequences in the event of a change in the Minister's position or its omission in tax proceedings.

18. Extension of time limits for filing appeals and complaints

The draft regulations provide for an extension of the deadline for submitting an appeal to 30 days (until now it was 14 days) and the deadline for filing a complaint to 14 days (until now it was 7 days). The proposed more than twofold extension of the time limit for filing a complaint will enable better preparation of the party to formulate objections to the appeal and a more detailed analysis of the evidence gathered in the proceedings. A longer time limit for filing the above-mentioned appeals will eliminate appeals lodged without due justification in a rush of appeals and complaints, which are difficult to consider by the tax authorities and prolong proceedings due to their later supplementation in the form of various pleadings. It is worth noting that the proposed solution does not limit the party's right to file an appeal faster than specified in the Act.

19. Arrangement of the rules for immediate enforcement of non-final decisions

The draft of the new tax ordinance maintains the principle of non-execution of non-final decisions. A non-final decision imposing on a party an obligation to be enforced under the provisions on enforcement proceedings in administration shall not be enforced unless it has been made immediately enforceable. However, the most problematic premise of imposing rigor was deleted; less than 3 months were left before the expiry of the statute of limitations for tax liabilities. This

was possible to be done due to a general reconstruction of the statute of limitations (separation of the statute of limitations on the right to a tax assessment from the statute of limitations on collection). If a decision must be issued within the statute of limitations and then the authority may enforce it within the statute of limitations, the analyzed prerequisite for the application of the immediate enforceability order has become pointless.

IV. New regulations in the draft tax ordinance aimed at increasing tax revenues

The second, equivalent objective of the new tax law is to increase the efficiency of tax revenue collection. Taxes are designed to provide the state and local government budgets with specific revenues. Tax acts, including the tax ordinance, are to ensure that the assumed tax revenues are obtained. Therefore, the ordinance includes mechanisms to increase the effectiveness of tax authorities in the area of tax collection and collection. The implementation of this objective is usually associated with the need to tighten the tax system and, as a result, reduce the tax gap. In the opinion of the GTLCC, the implementation of this objective means not only increasing tax revenues (sealing the system), but also the need to increase budget revenues from the tax system. This means revenues understood as revenues from taxes less the costs of their implementation. Why would one need a tax in the amount of PLN 50 when the costs of collecting it amount to PLN 70? Such a tax needs to be added to, and the current regulations do not contain systemic solutions in this respect. Complex proceedings in very serious cases (and concerning e.g. PLN 100 million) are currently carried out according to the same procedure as proceedings in simple cases (concerning e.g. PLN 100 million), where it is a waste of time and money to observe all formal requirements, unwanted by the taxpayer. Simple matters concerning small amounts should be dealt with, with the taxpayer's consent, in simplified proceedings. This will greatly reduce the costs of tax proceedings conducted by state and local tax authorities.

Increasing tax revenues understood in this way is to be achieved, among other things, by introduction of an effective model of tax proceedings (simplified proceedings, representative proceedings, elimination of proceedings concerning trivial tax amounts), development of an effective mode of delivery of tax letters, popularization of electronic communication means, order for the debtor to cooperate with tax authorities, increasing the role of tax declarations, extension of the possibility to pay tax by other entities, decisions determining the part of the tax, improvement of provisions regulating the functioning of the anti-avoidance clause, taking into account the specificity of local tax authorities, simplification of procedures related to the determination and return of overpayment, determination of rules for the performance of joint and several liabilities, ordering the principles of applying and measuring fines, modification of the principles of issuing interpretations of tax law.

1. Not initiating and discontinuing proceedings concerning trivial amounts

Conducting tax proceedings according to the same rules with regard to complicated and completely simple cases is excessively burdensome for tax authorities and causes that the costs of proceedings are very high, often exceeding the amount of tax obtained. In order to change this, it is necessary to introduce a simplified procedure for dealing with cases involving small, trivial amounts of liabilities. There is no point in conducting proceedings when the amount of tax does not exceed PLN 50. In many cases, this amount does not cover costs related to the delivery of letters. According to the draft, such proceedings are not instituted and the instituted proceedings are discontinued.

2. Simplified procedure

The idea of simplified proceedings can be reduced to the fact that if there is no need to conduct evidence proceedings (the facts are beyond doubt) or the amount of tax does not exceed PLN 5,000, the tax authority may, with the consent of the party, immediately issue a decision that does not justify it. At any time until the decision is issued, the taxpayer will be able to resign from this procedure of settling the matter. A decision issued in these proceedings will be subject to appeal on general principles. Simplification of the procedure will make it possible to settle matters quickly, within a period of no longer than 14 days. The simplified procedure will accelerate the handling of small cases, reduce the workload of authorities and related costs.

3. Suspension of proceedings on the grounds of a "representative case"

In accordance with the draft regulations, a tax authority, at the request of a party or *ex officio*, may suspend the proceedings when other proceedings are pending and the factual state of these cases or the legal problem existing in them is similar. In this way, instead of conducting several proceedings against the taxpayer for individual years at the same time, it is possible to wait for the court to resolve a representative case, which will enable the suspended cases to be resolved quickly.

4. Making an effective procedure for the delivery of tax documents

In the opinion of the GTLCC, a cheap and effective way of communicating with the taxpayer and its representative should be introduced. It cannot be the case that the delivery of a tax decision is a costly „ordeal" for the tax authorities, which sometimes makes it impossible, due to the statute of limitations, to collect large amounts of tax. The project proposes to extend the possibility of delivery by electronic means of communication. In this form it will be possible to deliver letters not only to professional proxies and public entities, but also to entrepreneurs (except for those taxed in the form of a tax card and a lump sum on registered income, unless they provide an electronic address) and to users of IT systems (e-PUAP and a tax portal). In addition, it is proposed that the data indicated in the registration form and stored in the Central Register of Taxpayers of the National Register of Taxpayers (CRT) should be the basis for determining the address of the place of residence and the address of the registered office for the purpose of delivery of letters. The possibility of effective delivery to the address indicated in the register will increase the efficiency of delivery and reduce the costs associated with it. For taxpayers who do not have an address in the CRT, letters will be delivered in accordance with general rules.

5. Popularisation of the use of electronic means of communication

The new tax law comprehensively regulates issues concerning the use of electronic communication means in tax law. The basic principles related to this are included, as has long been postulated, in a separate chapter of the Tax Ordinance. The rules contained therein order the use of electronic communication tools not only in contacts with taxpayers, but also, among others, in the process of creating tax documentation, transferring and obtaining tax information, tax control, registration of taxpayers. The rule is that all kinds of documents can be submitted and sent electronically, if the taxpayer requests it or agrees to it.

6. The principle of cooperation of the obliged with tax authorities

The obligation of the debtor to cooperate with the tax authority, which is raised to the rank of a general tax law principle, will serve to increase the effectiveness of tax proceedings. The coop-

eration injunction extends only to what results from the tax law regulations. According to this rule, taxpayers are obliged to provide all kinds of necessary evidence and clarify disputable issues when dealing with tax matters. The tax authority may demand from the obliged, within the limits set out in the law, to deliver documents in his possession and to present facts known to him that may contribute to the legal termination of the proceedings. The taxpayer cannot passively wait for the tax authority to clarify all the circumstances of a case when it has knowledge (evidence) influencing how the case is to be handled. The introduction of this rule will eliminate disputes as to whether a taxpayer who applies for tax relief must provide evidence indicating a premise for his important interest or may only passively wait for the tax authority to determine the legitimacy of his application. The principle of cooperation implies the taxpayer's obligation to provide evidence justifying his application, which was sometimes questioned earlier. This principle corresponds to the taxpayer's obligations set out in the ordinance, such as, among others, providing information and documents and presenting other evidence in its possession. Such an understanding of cooperation between the taxpayer and the tax authority will surely contribute to faster handling of cases and reduction of costs of proceedings.

7. Tax declarations as a basic document for detecting irregularities in the tax payment

The new ordinance regulates in one chapter the issue of filing and correcting tax declarations. So far, the dispersion of these provisions has resulted in numerous problems of interpretation. Tax declarations are a basic document that provides tax authorities with verification of taxpayer's actions and quick detection of irregularities and symptoms of tax evasion. This makes it possible for the tax authorities to quickly undertake verification activities or tax audits and, if necessary, tax proceedings. And this has been taken into account in the new regulations, but not only. There are also regulations that increase taxpayers' rights in filing and correcting tax declarations. All tax declarations, and in principle the data contained in them, will be subject to the presumption of reliability. The taxpayer will also have the right to correct the tax declaration in the last phase of tax proceedings before the decision is issued.

8. Decisions determining the part of the tax

These are decisions in which only a part of the tax liability is specified, indicated by the taxpayer in the request for overpayment or resulting from the request for a consultation procedure. If a partial decision is issued, the tax liability results partly from the decision (hence the name) and partly from the tax declaration submitted by the taxpayer. The possibility of issuing such a decision will facilitate the proceedings from the taxpayer's application, where there is a need to determine the liability to a small extent (e.g. the taxpayer applies for a declaration of overpayment in the amount of PLN 100 in a situation where the liability amounts to PLN 1 million). In such a situation, the authority does not have to conduct the entire assessment proceedings covering the entirety of the factual situation affecting the amount of tax liability, but will limit itself to a decision on the tax amount on the object indicated by the taxpayer.

9. Extension of the possibility to pay a tax by entities other than the taxpayer

Until recently, the tax on a taxpayer could not be paid by another entity. For practical reasons, exceptions should be introduced to this prohibition, allowing others to pay more for the taxpayer than hitherto. Under the proposed regulations, another person will be able to pay not only the tax (as it is now), but also the tax arrears, interest on arrears, costs of tax proceedings and remind-

er costs. It is also proposed to increase the limit of tax payment for the taxpayer from PLN 1,000 to PLN 5,000.

10. Anti-tax avoidance clause

It is an important institution which has recently been introduced into the tax law for the second time. Its legal structure has been developed by the GTLCC and only to a small extent has it been changed in the legislative process. The experience of other countries confirms that this is an institution which is primarily intended to act as a preventive measure: to deter the creation of artificial structures whose main objective is tax evasion. The Commission wanted to introduce the clause to the Polish tax law and for this purpose prepared a draft of the regulations regulating it, which was accepted, which is very welcome, by the minister in charge of public finance and the Parliament. It is the first institution introduced into the legal system and developed within the framework of the work of the GTLCC. It should be stated with satisfaction that its introduction, strongly criticized by some, did not lead to its abuse by tax authorities. After more than a year of legislation in force, no decision on the application of the anti-avoidance clause has yet been issued. Perhaps, then, it is not necessary? The main task of the clause, as the GTLCC emphasized in the directional assumptions of the new tax ordinance, is preventive discouragement from tax evasion and in this aspect the clause works.

11. Taking account of the specific characteristics of local tax authorities and the taxes and fees they collect

There are almost 2,500 municipalities in Poland, whose authorities collect their own taxes. Therefore, when preparing a new tax ordinance, it is impossible to ignore their needs and expectations of taxpayers who pay such common taxes as those on real estate. In the works on the new tax ordinance, it was justified to adopt the assumption that all tax authorities should have similar powers under general tax law. Obviously, there will be exceptions from the aforementioned principle justified by the specific nature of taxes assessed and collected, and with regard to local government authorities, also their fragmentation. In any case, however, there must be sufficient justification for deviating from the general principle of equal treatment of tax authorities. Where this is not the case, there should be no differences. This remark applies, inter alia, to the currently existing decentralization in the scope of issuing individual interpretations of tax law provisions. The multiplicity of local tax authorities which are authorized to issue them may lead to divergences in interpretation. There is also a lack of a uniform template of an application for an interpretation and a common base in which they would be made public. These issues have been regulated in the proposed regulations in such a way that individual interpretations also in matters related to local government taxes are issued by the Director of National Fiscal Information in cooperation with municipal tax authorities.

The rules of assessment and collection of such common self-government taxes as real estate, agricultural or forestry also justify the introduction of the tax remission institution, so that it is possible to apply the relief before the tax arrears arise.

The application of tax reliefs in the payment of all taxes constituting the income of the budgets of municipalities should be decided by the municipal tax authorities. In accordance with the project, this competence of municipal authorities will also include inheritance and donation tax, civil law transaction tax and tax card, which are currently the responsibility of state tax authorities.

12. Simplification of procedures related to the ascertainment and return of overpayments

The regulations governing overpayment were subject to general reconstruction. First of all, a rule has been introduced under which overpay-

ment is credited or refunded without any decision being taken whenever it does not raise any doubts of the tax authority. A decision on overpayment arises when the tax authority disagrees with the amount of overpayment calculated by the taxpayer. The adoption of this rule made it possible to resign from overpayment decisions (issued ex officio) and overpayment decisions (issued at the taxpayer's request). Whenever an authority comes into contact with an undoubtedly overpaid tax, it should be credited or returned immediately, without any proceedings or decisions stating that the tax has been overpaid. The possibility of issuing the so-called partial decisions stating overpayment within the limits set out in the taxpayer's application has been modified. In such decisions, the authority states the amount of overpayment and determines the amount of liability on the subject matter of taxation indicated in the taxpayer's request for overpayment. The amount of liability in the remaining part is specified, which raised doubts in the current legal status, in the tax declaration submitted by the taxpayer. Thus, the amount of liability results partly from the return and partly from the decision of the tax authority.

Other changes include the clarification of the definition of overpayment, including the element of unjust enrichment as a premise which eliminates the possibility of its return, unification of the deadlines for repayment and interest on overpayment and its crediting against tax arrears. This difficult tax law institution as a result of the changes will be more readable for taxpayers and tax authorities.

13. Implementation of joint and several commitments

The reference to the provisions of the Civil Code in the area of joint and several liability, currently binding in Article 91 t.o. of the Civil Code, does not solve a number of problems related to this under tax law. This can be seen very clearly in the case of tax preferences (reliefs, exemptions, exclusions) in relation to entities which are jointly and severally liable for tax liabilities. These issues have been comprehensively regulated in the proposed regulations.

In the case of exclusion from taxation, exemption from the obligation to pay the tax, limitation period or collection of tax and abandonment of tax collection with respect to one of the jointly and severally liable entities, the tax benefit is reduced to the extent attributable to that entity and is payable only by the remaining entities.

Similarly, if a tax relief is applied in the form of a write-off of one of the jointly and severally liable parties, the tax liability expires to the extent not higher than that attributable to that party, and the tax benefit is reduced by the amount of the write-off.

The postponement of the period provided for in tax law, the postponement of the payment period, the division into installments and the suspension and interruption of the period of limitation of the right to assess and collect the tax on one of the jointly and severally obliged parties does not have effect in respect of the others.

It may be argued, of course, that these rules in fact violate the essence of civilistic joint and several (indivisible) liability, but practice shows that in tax law they must be adapted to the specificity of tax liability.

14. Arrangement of penalties

The new ordinance clarifies and reregulates the principles of imposing penalties. First of all, it introduces the criteria for measuring these penalties, which were not present before. It was specified what a penalty may be imposed for, because, contrary to appearances, in practice it raised many doubts, especially as regards the refusal to participate in „another activity". The deadlines for the imposition and collection of enforcement penalties were shortened.

15. Strengthening the importance of general interpretations

The possibility for the interested party to apply for an interpretation of tax law has been main-

tained in the new law, but has been modified. The fundamental problem with interpretation is that there are too many individual interpretations and too few general ones, which leads to the blocking of courts, especially the Supreme Administrative Court. Changes in the rules for issuing interpretations of tax law regulations in the new tax ordinance are aimed at increasing the number and strengthening the importance of general interpretations. The minister in charge of public finance is obliged to issue a general interpretation without undue delay in the event of a significant number of requests for individual interpretations concerning the same facts or future events submitted in the same legal status. Issuing such an interpretation significantly limits the number of individual interpretations, which is the purpose of these amendments.

Issuance of general interpretations by the minister must be coordinated with judicial decisions concerning similar legal problems. Therefore, the new regulations authorize the minister in charge of public finance to address legal questions to the Supreme Administrative Court. He will be able to do so if, in the course of issuing a general interpretation, serious doubts arise in the light of divergent judicial decisions of administrative courts.

The new legislation centralizes the process of issuing individual interpretations. Currently, individual interpretations are issued not only by the Director of the National Fiscal Information (Director of the NFI), but also by approx. 2,5 thousand municipal tax authorities. It cannot be the case that a taxpayer, in order to obtain interpretations concerning the taxation of e.g. a pipeline, should apply to 300 municipal tax authorities, through which the pipeline runs. In order to eliminate this, the new regulations introduced uniform rules for issuing and publishing interpretations of tax law provisions, regardless of whether a given tax constitutes revenue for the state budget or local government units. Municipal tax authorities will have an influence on the mode and content of interpretations of local government taxes issued by the Director of the NFI.

Conclusions

The draft of the new tax ordinance prepared by the GTLCC includes legal instruments for the implementation of two objectives assumed from the very beginning of work on the draft, namely: improving the protection of the taxpayer in his relations with tax authorities and increasing the efficiency and effectiveness of obtaining tax revenues. Not all of the proposed regulations are new in Polish tax law. While preparing the draft, the Committee decided to draw from the current ordinance all well-functioning and known solutions that have proved their worth in practice (tax obligation – tax liability – tax). In this context, the proposal cannot be seen as a „revolution" in general tax law. This is because the basic rules of this law, which date back to the tax ordinance of 1934, have been preserved there. The project is a stage of evolutionary adjustment of the general tax law to the changing social and economic realities. Some of the provisions of the current tax law, for various reasons, had to be changed, some thoroughly (statute of limitations, overpayment, extraordinary procedures of moving final decisions, declarations, electronic communication means). This type of changes, consisting in the improvement of existing regulations, is the most significant, which confirms the implementation of the assumption of evolutionary (and not revolutionary) rebuilding of the tax ordinance. Finally, the draft could not lack completely new proposals, taking into account institutions which function well in other countries and which are not included in the current act, mainly because it was passed 20 years ago. Among them, it is important to pay attention to non-ruling methods of dealing with tax matters (mediation, tax agreement, cooperation agreement), a catalogue of general principles of tax law, a normative catalogue of taxpayers' rights and obligations, new forms of information and support for taxpayers, rationalization of tax procedures (simplified and trivial proceedings, suspension of proceedings in representative cases), effective methods of delivery of tax documents, correction of tax declara-

tions under tax proceedings, measures to combat lengthiness of proceedings, the possibility of resigning from appeal in favor of a complaint to an administrative court, „on request" control, prohibition of ruling against the taxpayer by first instance authorities, tax discontinuance (not only arrears), restoration of the material and legal term. These novelties have been selected by the GTLCC from a number of those postulated in literature and functioning in other regulatory systems as being useful for achieving the objectives set for the new tax ordinance. The GTLCC did not accept the proposals to include in the ordinance provisions concerning: a reliable taxpayer, an ombudsman for taxpayer's rights, principles of creating tax law, the system of tax authorities, a catalogue of rights and obligations of tax authorities, enforcement and criminal liability for non-payment of taxes, replacement of an appeal with an application for reconsideration of a case, tacit handling of a tax case or resignation from using the term „tax obligation". The reasons for their rejection were presented in the directional assumptions of the new tax ordinance and in the justification of the project.

The presented draft of the new tax ordinance has two very important qualities that need to be taken care of at the stage of further legislative works. It is not an anonymous draft. It was prepared by the GTLCC and this committee takes responsibility for the regulations proposed in it. It would be very bad if it were to be „corrected" by people who are unknown, who have the possibility to amend it, and who do not bear responsibility for it. This bill – this is the second quality mentioned above – is an internally structured solution. Improving only some provisions without taking into account the effects this has on others could lead to its ‚demolition'. I hope that this will not be the case.

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