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Summary

of the article: The payment of tax (advance) by a taxpayer and the decision on the remitter's tax liability

This articles attempts to answer the question if the payment by a taxpayer of the amount of dues in respect of the tax or an advance on account of tax when the remitter should have earlier paid such tax or advance may prevent the issuing of decision on the remitter's liability for the failure to collect and remit the tax or advance on account of tax in the due amount or renders such decision irrelevant.

In the authors' opinion the problem of issuing a decision on the remitter's or collector's liability specifying the amount of dues in respect of the non-collected tax or the tax collected but not remitted (Art. 30.4 of the Tax Code) must be distinguished from the actual imposing of the obligation to pay such dues on the remitter. If the tax liability in respect of such tax has already arisen and the dues (tax, advance) have been paid by the taxpayer, the relevant laws and regulations do not permit for such dues to be enforced against the remitter. The same tax (advance on account of tax) may not be paid twice. However, the fact that the tax has been paid does not prevent a tax authority from issuing a decision on the remitter's liability for the failure to collect and remit the tax or advance on account of tax in the due amount. Such decision first of all confirms only the amount of the dues in respect of the non-collected tax or the tax collected but not remitted and serves as the basis for enforcing such dues but only if they have not been already paid. Therefore such act does not impose on the remitter the sanctions set out in Art. 8 of the Tax Code (calculation and collection of the tax from the taxpayer and remitting it in due time to the tax authority) but allows the tax authority to enforce the outstanding tax dues. Furthermore, such decision allows to enforce against the remitter the interest on the non-collected tax or the tax collected but not remitted also when the tax has been paid but after the lapse of the time limit for its payment.

Summary

of the article: The entities authorised to make pleas regarding the administrative enforcement proceedings

The pleas concerning the conduct of the enforcement proceedings are of particular importance among the legal remedies available in the administrative enforcement proceedings. This article presents considerations concerning the entities authorised to seek such legal remedy.

The literature indicates that the only subject of administrative enforcement authorised to seek such remedy is the obligor. However, not each obligor will be authorised to make pleas concerning the conduct of the administrative enforcement. Such authorisation is attributable only to the obligor named in the enforcement title.

Furthermore, the person who is not an obligor but was erroneously named in the enforcement title is also authorised to make pleas concerning the conduct of the administrative enforcement. In such event that entity may not be treated as a third party who would be obliged to protect its rights by making a demand to exclude a property right or an asset from execution.

This article also discusses the authorisation of the obligor's spouse. Under Art. 27c of the Act on Enforcement Proceedings in Administration (the AEPA) if enforcement is to be conducted against the joint property of the obligor and his/her spouse as well as their individual personal properties, the enforcement title is issued for both spouses. This legal norm is analysed on the assumption that the enforcement title referred to therein is issued for the taxpayer and his/her spouse when enforcement is to be conducted against the obligor's joint property. Therefore the scope of those authorised to make pleas concerning the conduct of the administrative enforcement must be extended to include the spouse of the obligor in respect of whom the enforcement title was issued under Art. 27c of the AEPA and against whose joint property the enforcement was instituted. This right shall accrue also when the person seeking that legal remedy is not named in the enforcement title. The obligor's spouse, when the administrative enforcement is conducted against his/her personal property, is not authorised to make a pg, those authorised to make pleas concerning the conduct of the enforcement proceedings are the obligors named in the enforcement title and the person who is not an obligor but was erroneously named in the enforcement title. Furthermore, the authorisation to make pleas concerning the conduct of the administrative enforcement is also vested in the obligor's spouse when the administrative enforcement is conducted against their joint property.

Summary

of the article: Proceedings in the case of distribution of funds available under the development policy and the court supervision in such cases

This article discusses the problems related to the solution introduced in the Act on the Principles of Implementing the Development Policy (the APIDP) dated 6 December 2006 which on the one hand excludes the application of the Administrative Procedure Code to the decisions made under the APIDP and, on the other hand, provides for the far-reaching modification in the proceedings before administrative courts in the cases regulated by the APIDP.

The first part presents the problem of effects of the adopted solutions for the situation when the distribution of funds is decided. It outlines the effects of resignation from the application of the general procedure and the constitutional implications of the adopted solution. The conclusion of this part justifies the opinion on the unconstitutionality of the existing regulation due to its intervention in the matter for which the Constitution includes detailed requirements.

The second part refers to the detailed modifications in the proceedings before administrative courts. It presents the discussion of the solutions by which the APIDP modified the court procedure. The analysis shows that the court procedure was not only significantly modified for one type of cases but it was modified in the way preventing the reconciliation of many of the new solutions with the existing regulations.

The third part discusses the drafting of the APIDP and presents the opinion that as a result of disregarding many entities whose participation in the drafting process is obligatory the adopted regulations may not be recognised as implementing the norms whose observance ensures the satisfaction of the requirements of the legislative procedure set out in the constitutional standards. The degree of the APIDP's defectiveness justifies the opinion on the poor quality of the legislative procedure in which such defective legal act was adopted.

Summary

of the article: Objection against a decision made by a justices' clerk in proceedings before administrative courts – selected issues

Together with the introduction of the institution of the justices' clerk four years ago the legislator made available a new, previously unknown, remedy – an objection. However, the legislator devoted to it only 2 articles i.e. 259 and 260 of the Law on Proceedings Before Administrative Courts (the LPBAC) and hence in the legal practice there have arisen many doubts concerning the challenging of decisions made by the justices' clerks.

An objection is a quasi-remedy that may be sought only against the orders and decisions made by a justices' clerk. It is not a means of appeal or devolution – a court is not authorised to consider the merits of the reasons for the objection and making the objection does not transfer the proceedings to a court of higher instance. Making an objection renders the challenged decision ineffective and results in the reconsideration of the case by the court of the 1st instance which may not reverse the challenged decision and transfer the case for reconsideration to the justices' clerk.

Analysis of the institution of an objection regulated in the LPBAC indicates that an objection may be made by a party to the proceedings only in respect of the right of assistance (an attorney, a representative) or a last resort advocate, legal advisor, tax advisor or patent attorney. Nevertheless, only an objection made by an attorney appointed under the right of assistance (an advocate, legal advisor, tax advisor or patent attorney) must be justified and if the objection is not justified it must be rejected. In its objection a party may not effectively expand the scope of the demand to be granted the right of assistance as the court verifies only the merits of the request for granting the right of assistance and not the objection itself. It must be also assumed that an objection, as any other pleading, may be withdrawn by its author, but such action may not reinstate the validity of the decision made by the justices' clerk. In such event the court may not discontinue the proceedings to such extent as being irrelevant but it should reconsider the request for granting the right of assistance. It should be beyond doubt that the court's decision on rejecting the objection may be appealed against.

Summary

of the article: The request for granting the right of assistance prior to filing a complaint with an administrative court

The model of proceedings before administrative courts adopted in Poland gives rise to the specific doubts concerning a request for granting the right of assistance made before the commencement of the proceedings or, generally, before a comp-

laint is filed with a court (Art. 243.1 of the Law on Proceedings Before Administrative Courts dated 30 August 2002, Journal of Laws No. 153, item 1270, as amended) (the LPBAC). These doubts are related to the necessity to consider the request when a court (a justices' clerk) does not have access to the complaint and the administrative files. Nevertheless the proceedings concerning such request, although being partially independent, alike other proceedings of this type, is incidental towards the proceedings before an administrative court being accessory in relation to the case to which it refers. In this context the issue of the formal conditions of the request, in particular the designation of the act or action which the request refers to or is supposed to refer to is of particular importance. It allows to „bind" the granted right of assistance with the specific complaint and, as a result, with the proceedings instituted by such complaint and the court competent to consider the request. The right of assistance may be granted to a party, therefore it must be also determined in the course of the proceedings if the requesting party may be a party to the given proceedings. Such determination may not obviously consist in specifying the role in which such party might participate in the proceedings as before the proceedings are instituted this issue must be deemed open. Before a complaint is filed with a court the proceedings concerning the request to grant the right of assistance are basically conducted on the same principles as any other proceedings in this respect. Therefore it is possible to apply in such proceedings Art. 247 of the LPBAC (it is not possible to grant the right of assistance if a complaint is obviously groundless) and Art. 249 of the LPBAC (withdrawing the right of assistance). The attorney appointed in exercising of the right of assistance will not be awarded any remuneration if the complaint has not been lodged at all.