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of the article: **Amendments to the Administrative Procedure Code and the Law on Proceedings Before Administrative Courts that came into force in 2011**

The author of this article discusses the legislative amendments to the Administrative Procedure Code (the APC) and the Law on Proceedings Before Administrative Courts (the LPBAC) introduced in 2011. After the period of relative stability, in particular in the case of the APC (which has been amended 19 times since its uniform text was promulgated in 2000), in 2011 the APC will be amended 5 times. It must be added that the amendment introduced by virtue of the Act Amending the Administrative Procedure Code and the Law on Proceedings Before Administrative Courts dated 3 December 2010 (Journal of Laws of 2011, No. 6, item 18) introduced rather significant changes thereto. Their purpose was to modernise the regulation included in the APC. The tax procedure regulated in Section IV of the Tax Code dated 29 August 1997 (Journal of Laws of 2005, No. 8, item 60, as amended), based on the provisions of the APC on the general administrative procedure almost literally transferred thereto has become, due to many further amendments, the procedure more up-to-date and adapted to the present reality than the original procedure.

The author analyses all amendments to the provisions of the APC, in particular the substantial changes. First of all these include the explicit inclusion of the request to reconsider a case which may be submitted in connection with the decisions made in the first instance by a minister and a local government boards of appeal that have no superior authorities above them to the category of the usual remedies; introducing the new means of appeal in the form of a complaint on the excessive duration of administrative proceedings; the possibility of issuing a decision refusing to institute the proceedings when the request was submitted by an entity without a legal interest in the case; resignation from transferring a case on the grounds of competence in the form of a decision that may be complained against; introdu-

cing the possibility of supplementing by virtue of law the decision on the adjudication and advice on the available means of appeal as well as specifying the conditions for an appellate authority to issue a decision on cassation.

The most important amendment to the LPBAC consists in introducing the possibility to file a complaint against the excessive duration of proceedings in the matters referred to in Art. 3.2.1- 4a of the LPBAC

Summary

of the article: **Guarantees of taxpayers' rights in the Constitution**

The reasonable system of tax law being an element of the legal system should be consistent with the Constitution of the Republic of Poland, synchronised with the other branches of law as well as ensure a taxpayer's security. The guarantees of a taxpayer's security in the tax proceedings must be sought in the tax authorities' respect for the tax principles and in particular the principle of stability and certainly of the tax law, undoubtedly related to the principles of the citizens' trust in the tax authorities which covers not only the process of applying law (the tax proceedings) but also of adopting law (the legislative activities).

The certainty of law means rather the existence of the conditions for foreseeing the activities of the state authorities and the related activities of the citizens than the stability of the provisions of law which in this area of law in certain economic conditions of the state may be difficult to achieve. The predictability of the state activities understood so guarantees the trust in the legislator and the law it makes. It must be emphasised that the principle of certainty and stability of the tax law may not be interpreted in such a way that its application promotes tax evasion. Then it would result in denying the basic function of taxes i.e. their fiscal role. The basic function of the principle of stability and certainty of law is ensuring that the taxpayers and other parties e.g. the tax remitters and the tax collectors face an uncomplicated, clear and coherent system of tax law allowing them to perform their tax liabilities. The certainty of law means not only the absolute stability of tax law but rather the ability to foresee the activities of the tax authorities applying law.

The basic principles providing guarantees to a taxpayer include the principle of the exclusive statutory regulation in the tax law. Adopting the principle of the exclusive statutory regulation in the domain of the tax law means that the events when the tax laws include authorisations to issue the implementing regulations are determined predominantly by the wording of Art. 217 of the Constitution of the Republic of Poland.

Another principle providing a taxpayer with the "guarantee of security" is the principle of equality in law. The Constitutional Tribunal on many occasions emphasised that the principle of equality of law means that all subjects of law (the addressees of the legal norms) displaying a given material (relevant) trait to the same extent are to be treated equally i.e. the same, without discrimination or preference.

Summary

of the article: **Parties' reservations to the minutes of a hearing (Art. 105 of the Law on Proceedings Before Administrative Courts)**

The existence of the adversary proceedings before administrative courts results in the joint responsibility of the parties thereto for the conduct of the trial. The prevailing principle of cooperation between the parties to the proceedings and the court is expressed in Art. 105 of the Law on Proceedings Before Administrative Courts (the LPBAC) imposing on the parties the obligation to draw the court's attention to the violation of the procedural provisions by submitting a motion to enter a reservation in the minutes of the hearing.

Art. 105 of the LPBAC covers all procedural errors (*errores in procedendo*) both these most important and irrelevant. In principle, in the course of a trial it is difficult to determine whether the irregularity that has occurred will affect its final result. The scope of application of the discussed regulation includes the non-appealable and non-binding decisions of a 1st instance court which therefore may be changed in accordance with the current needs of the trial. Art. 105 of the LPBAC also applies to the irregularities in the court taking the procedural activities which are not decisions and which do not put the parties in the situation of uncertainty as to the court's further plans and intentions concerning the course of the trial. These irregularities include, among others, the defective service of process (Art. 65-81 of the LPBAC), setting a hearing on a date preventing a party from appearing in person (Art. 91.1 of the LPBAC), setting a hearing on a date preventing the parties from preparing to the hearing (Art. 91.2 of the LPBAC), incorrect designation of the time, purpose or the results of failure to appear at the hearing (Art. 93.2 2, 4, 5 of the LPBAC).

The reservations to the minutes of a hearing made by professional attorneys should specify in detail what in the party's opinion is the essence of the court's procedural violation, but the reservations made by the parties without legal expertise do not need to include in-depth legal argumentation enumerating all the elements of the violated legal norm. The court should also instruct the non-professional parties to the trial under Art. 6 of the LPBAC that they are entitled to make reservations.

At the same time in Art. 105 of the LPBAC the legislator provided for two exceptions to the rule of the obligatory notification of reservations to the minutes of a hearing. The first exception covers all the events when the proceedings are invalid (Art. 183.2 of the LPBAC) as they represent violations the court must take into account by virtue of law. The second exception is the lack of a party's fault in not making a reservation that must be substantiated. The lack of fault is in particular the concurrence of circumstances acting to the party's detriment, such as disability, considerable lack of skill and resources or absence justified by an event of force majeure.

The parties to the proceedings should make the fullest possible use of Art. 105 of the LPBAC. The obligation to notify reservations to the minutes, on the one hand strictly observed by the SAC, on the other understood as reasonably formalistic, might promote even deeper control over the functioning of public administration and responsibility of the parties to the trial for its course and result.

Summary

of the article: **The concurrence of administrative and criminal liability**

This article discusses the concurrence of administrative liability with the widely understood criminal liability. The need to discuss this subject is determined basically by the fact that the regulations usually do not include the solutions excluding the possibility of double punishment, which gives rise to the constitutional doubts. The fact that these doubts are not groundless is best evidenced by the exceptionally joint voices of the representatives of the legal doctrine, the Human Rights Defender and the Constitutional Tribunal, where the latter has already considered this problem on a few occasions. First, in 1998, when it concluded that the regulations, to the extent they permit imposing on the same person an administrative sanction and a punishment for a minor offence for the same action, are inconsistent with the constitutional principle of the democratic state of law and are the token of excessive fiscalism (case K. 17/97). Therefore it has become necessary to eliminate the relevant regulations from the legal order or create the appropriate norms of competence in order to avoid the competition between two or more rigours of liability of the similar functions in reference to the same action and the same entity. Satisfying the above postulate requires closer analysis of each event of restriction of a right or freedom, in particular by confronting the values and goods the relevant regulation protects with these that are restricted as a result thereof as well as by evaluating the method of implementing the restriction. Obviously, the legislator's decision on giving priority to certain norms should be preceded by the systemic divagations and a certain hint in this respect might be the principle of the subsidiary nature of the criminal law. Although the dynamics of the social changes and the number of the solutions and means at the legislator's disposal hinder optimising such type of decisions, but it must be remembered that the legislator's inappropriate (in relation to the qualities of the object of regulation) selection of the instruments of impact results in the destruction of law as the measure of social control.

Summary

of the article: **The competence of a tax inspection authorities to issue a decision on holding a partnership's/company's former partners/shareholders liable**

A tax inspection in a liquidated company has given rise to many doubts in the practice of the tax authorities and the tax inspection authorities. The prevailing laws and regulations do not provide for the possibility of carrying out such inspection which does not mean that

in specific circumstances the former shareholders or members of the management boards of the liquidated companies will not be held liable for the outstanding tax liabilities that were not paid when the company was in existence. One of the material problems related to the issue in question is liquidation of a partnership (established both under the Civil Code and the Partnerships and Companies Code) in the course of the tax proceedings conducted by the tax authorities and the tax inspection authorities. In such event the tax inspectors will have to effectively end the initiated proceedings and take the decision on instituting separate proceedings against all the partners of the liquidated partnership in order to decide on holding them liable for the outstanding tax liabilities under Art. 115.4 of the Tax Code dated 29 August 1997.

Such decision in the case seems to be obvious in the case of the tax authorities. The practice of the tax inspection authorities so far has been inconsistent, mainly due to the interpretation doubts concerning their competence to make the decision under Art. 115.4 of the Tax Code. The judicial decisions of the administrative courts initially recognised the tax inspection authorities as lacking capacity to issue such decisions. Two judgements passed by the Supreme Administrative Court following the analysis of the problem started a new line of adjudication rendering it possible. However, this line has not become generally approved. Most of the tax inspection authorities still do not issue decisions in the said procedure, ending the proceedings with the inspection result and transferring the case to the territorially competent director of the tax office. In the event the taxpayers complain about such decision, the administrative courts accept the said procedure in their decisions. As a result there are significant differences concerning the evaluation of the proper form in which the tax inspection authorities should end the proceedings, also in the judicial decisions of the administrative courts, which should not be the case.

In order to remove the existing discrepancies in the judicature, it should be procured under Art. 15.1.2 and 15.1.3. of the Law on Proceedings Before Administrative Courts of 30 August 2002 that the Supreme Administrative Court adopts a resolution aimed at clarifying the interpretation of Art. 115 of the Tax Code and determining whether it may be applied also by the tax inspection authorities.