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Korekta: *Justyna Woldańska*
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ADRES REDAKCJI
Naczelny Sąd Administracyjny
00-011 Warszawa, ul. G.P. Boduena 3/5
tel. 22 826-74-88, fax 22 826-74-54, e-mail: msawicka@nsa.gov.pl

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of the article: **Problems with the legal regulation of fiscal secrecy**

The article discusses issues relating to doubts raised by chapter VII of the Tax Ordinance – Fiscal Secrecy, which have so far not been discussed in other publications. The article presents the historic sources of the regulation as well as its development in the last period. However, most of the discussion presented in the article relates to the current form of the regulation, including especially the point of view of its relationship with provisions on tax proceedings and the judicial review of administration.

The presented analysis illustrates that there are significant problems in at least three areas.

Firstly, one aspect that raises doubts is the excessive freedom of state authorities, including especially administration, in accessing information that is subject to fiscal secrecy. In this regard, the article points out to large areas in which authorities that do not take part in proceedings can easily access protected information.

Secondly, there are doubts as to the compliance of this legal arrangement with the Constitution, especially in view of the fact that the legislator has included foreign entities in the group of entities that may access information from financial institutions without specifying such entities in more detail.

Thirdly, the article shows that there is no complete conformity between the statutory regulation, including but not limited to provisions related to tax proceedings, and the provisions on fiscal secrecy. It results in a dysfunction that affects proceedings in which the rights of a party are limited in the evidence hearing process due to the lack of the synchronization of the two regulations.

However, the most critical assessment stems from the analysis of the current legal arrangement in relation to constitutional standards. The issue of personal data protection, privacy of correspondence or ban on the excessive collection of data on citizens are not given sufficient consideration in the discussed legal arrangements relating to the tax ordinance.

Summary

of the article: **Consolidation bonus as a tax deductible expense (outline of issues)**

The corporate income tax is levied on income, defined as the excess of revenues over tax deductible expenses, earned in a given fiscal year. Thinking rationally, taxpayers aim to increase their revenues or to secure their source.

In principle each expense incurred by taxpayers in the case of which it can be objectively determined that it helped them generate revenues should be considered a tax deductible expense. To correctly apply art. 15(1) of the Corporate Income Tax Act of February 15th 1992, it needs to be established whether a given expense was incurred by a taxpayer in order to gain revenues, and each situation, both factual and legal, needs to be analyzed separately. It is not possible to analyze all cases using one pattern (scheme).

Issues related to tax deductible expenses become particularly complicated in the case of the process of the transformation of companies. Until the day of the takeover, companies that are taken over are subject to the corporate income tax independently of companies that take them over. Therefore, the expenses that the taken-over companies incur before they cease to be a legal person should (in the absence of a particular legal regulation in this regard) be analyzed in terms of whether or not they can generate revenues or help retain their source.

Usually the aim of a consolidation bonus, paid right before consolidation together with other privileges guaranteed in a signed social contract, is to ensure peace and public order during the restructuring process, which creates uncertainty among employees as to their future employment and job security. It means that the conclusion of a social contract in the case of privatization (takeover of a company) is profitable to the investor that takes over a given company, even though it also entails costs that the investor should include in the purchase price, as the costs resulting from the contract are part of the price paid for taking over the company.

The high rank of social contracts in the light of the labour law does not translate into the classification of costs incurred pursuant to such contracts (including the payment of the so-called consolidation bonus) as tax deductible expenses due to the requirement provided for in art. 15(1) of the Corporate Income Tax that there is a cause and effect relationship between a given incurred expense and the generated or expected revenues.

Summary

of the article: **Participation of community organizations in proceedings before administrative courts in matters related to the legal interests of other people**

Community organizations have been able to participate in proceedings before administrative courts as a representative of public interests for over 30 year now, i.e. since the administrative justice was reintroduced in Poland in 1980, and the regulations governing such participation have changed over this period, along with changes in the Polish model of the judicial review of public administration. Before that, community organizations had already been able to participate in administrative proceedings as well as in civil and criminal ones. The legislator decided not to eliminate the possibility of the participation of community organizations in administrative proceedings when introducing the Act on proceedings before administrative courts of August 30th 2002, which provided for the two-tier basis of the administrative justice. It testifies to the timeless nature of such possibility as well as the fact that the legislator recognized its importance in the changed constitutional order. Currently, the participation of community organizations in administrative court proceedings needs to be considered as one of the forms of social control and an element of the so-called civic society. It should also be noticed that the Committee of Ministers of the Council of Europe in its recommendation Rec(2004)20 on the judicial review of administrative acts encourages states to grant the right to appeal also to associations other persons and bodies empowered to protect collective or community interests.

The article analyses such issues as: the capacity of a community organization to be a party in court proceedings in matters pertaining to the legal issues of other people, its right to appeal as well as participation in proceedings as a party. The capacity of community organizations to participate in administrative court proceedings in matters relating to other people is limited to cases in which such organizations may participate in administrative proceedings as a party as well as cases which fall within the scope of their statutory aims. With regard to the right of community organizations to bring an appeal, it should be stressed that the legislator returned to the regulation of 1980 by introducing a requirement of a prior participation of a given organization in administrative proceedings. Moreover, a given case has to fall within the scope of the statutory activity of the organization. One novelty in two-stage administrative court proceedings is the possibility of the participation of a community organization in such proceedings as a party, regardless of whether or not it earlier participated in administrative proceedings. Even though, pursuant to the Act, the only condition for the participation of a community organization in court proceedings is the requirement that the subject matter of a given case falls within the scope of the activity of the organization, almost ever since the two-tier basis of administrative court proceedings was introduced, there has been a prevailing opinion that one other criterion that should be taken into account is the protection of the public interest, or, in other words, the performance by community organizations of their social function, namely the monitoring of proceedings.

Although the statistics kept by the Supreme Administrative Court indicate that the number of appeals brought by community organizations to provincial administrative courts remains at relatively the same level and is neither too high nor low, it needs to be borne in mind that such appeals are often brought in cases of great social significance, including cases related to environmental protection. On the other hand, a community organization that takes part in proceedings as a party has a number of rights, including the right to lodge appeals, which enables it to exert a significant influence both on the proceedings and, indirectly, their result. In this way, community organizations perform their basic function, namely social control, which in today's civic societies is the basis for the functioning of the democratic rule of law.

Summary

of the article: **Return of fraudulently claimed family benefits – selected case-law aspects**

The article presents selected case-law aspects related to the issues of the return of fraudulently claimed family benefits as well as arguments that have not yet been raised in the process of the construction and application of provisions regulating this issue. In particular, the article discusses the opinion expressed in the decisions of administrative court judges rendered after 2009 that a decision ordering the return of fraudulently claimed family benefits can only be rendered after proceedings on determining fraudulently claimed family benefits have been closed, analysing this opinion from the point of view of dogmatic grounds (provisions of art. 30 of the Act on family benefits, including the provision on the period of limitation for the enforcement of a judgment debt on account of fraudulently claimed family benefits and the period of limitation for rendering decisions on the return of fraudulently claimed benefits), the possibility of achieving the aim of the provision of art. 30 of the Act and the legal situation of an individual and the authority. It is noticed that the attention paid by authorities to the lawfulness of the disbursements of public funds should not cause additional problems for persons that were obliged to return a fraudulently claimed family benefit under the pretext of the protection of their interests in administrative proceedings.

Summary

of the article: **Limits to the delegation of powers to court referendaries in administrative court proceedings**

The aim of the article is to determine the acceptable limits to the delegation of powers to court referendaries in administrative court proceedings. The discussion focuses on the issue of whether the scope of the competences of court referendaries, currently governed by the Act on administrative court proceedings of August 30th 2002 and provided for in the draft amendment to the Act submitted with the Sejm by the President of the Republic of Poland, is compliant with the provisions of the Constitution of the Republic of Poland on the right to a hearing of the case as well as on bodies authorized to administer justice.

The article first indicates that the legal issue that arises in relation to the imposition of limits to the delegation of powers to court referendaries is constitutional in character. Therefore, it is necessary to determine if the Constitution of the Republic of Poland requires that justice should only be administered by judges, as defined in the Constitution, or if it provides for the possibility of justice being administered by non-judicial entities, e.g. court referendaries. The article lists examples of decisions rendered by the Constitutional Tribunal relating to the bodies that are authorized to administer justice. It is indicated that the issue of which bodies are authorized to administer justice arises at the point where the two elements of the right to a hearing of the case collide, namely the right to have a case heard without undue delay and the right to an adequate system and status of bodies that hear cases.

The article then analyses the legal status of court referendaries in administrative justice. The analysis shows that many elements of the status undermine the thesis about the independent judicial decisions of court referendaries. It is concluded that in the current legal situation, court referendaries cannot be authorized to administer justice due to their legal status.

The article then analyses the competences of court referendaries in administrative courts with regard to conformity with the rule of the judicial justice system. It is shown that the competences of court referendaries, both those that are currently provided for by law and those that are proposed by the President in his draft amendment to the Act, do not violate the provisions of the Constitution. It is suggested that the activities related to legal protection that do not fall within the scope of the administration of justice be further delegated to court referendaries in administrative courts, making it possible for judges to focus on activities that are strictly related to rendering judicial decisions. It is also indicated that the expansion of the court referendaries' scope of the competences entails the need to further increase the number of such officials.

Summary

of the article: **National Enfranchisement Commission as an appeal body in matters relating to communalization**

The National Enfranchisement Commission (Pol. Krajowa Komisja Uwłaszczeniowa, KKU) is authorized to deal with cases related to all aspects of issues pertaining to the acquisition of municipal property – usually referred to as communalization. The legislator intended the Commission to be a body to which appeals can be brought against the decisions of governors in matters relating to ascertaining the acquisition of municipal property by communes by virtue of the law as well as in matters relating to handing such property over to communes.

It seems necessary to analyse in detail the legal nature and competences of the Commission, especially in view of the practical value and great legal significance of proceedings before this authority. Proceedings related to communalization are unique, as also illustrated by the competences of authorities with respect to the verification of decisions rendered in matters relating to communalization as well as the establishment of a specialized collegial body, i.e. the National Enfranchisement Commission. Even though it is not a higher body in relation to governors, this specialized appeal body in cases related to communalization is authorized to bring extraordinary appeals and, consequently, has the competences of a supervisory body. With regard to the verification of decisions by the Commission outside the course of proceedings in the first and second instance – in extraordinary proceedings, it needs to be determined if the Commission is authorized in a given case to challenge decisions rendered in proceedings related to communalization.

As it is not possible to determine conclusively, both in the field of legislation and the doctrine, the legal status of the National Enfranchisement Commission, the analysis of the issue will undoubtedly help expand knowledge related to the theory of administrative system and procedural law.

Summary

of the article: **Evasion of indirect taxes in light of the judicial decisions of the Court of Justice of the European Union**

The article analyses the selected examples of judicial decisions of the Court of Justice of the European Union pertaining to the evasion of indirect taxes. The main part of the analysis relates to the abuse of the provisions of the community law for the purpose of gaining benefits in a manner that is contrary to their purposes. The analysis indicates a situation in which the actions of taxpayers are qualified as the abuse of the law relating to indirect taxes. The conclusions reached in this article stress the role of the Polish legislator.