

# The Assumptions of a New Tax Ordinance in Poland

**Leonard Etel\***, **Mariusz Popławski\*\***

\* Prof. zw. dr hab. Leonard Etel is the Rector of University of Białystok, Head of Department of Tax Law, Law Faculty, University of Białystok; President of General Taxation Law Codification Committee. (e-mail: leonard.etel@wp.pl)

\*\* Dr hab. Mariusz Popławski is associate professor of the Department of Tax Law, Law Faculty, University of Białystok, Poland; Researcher at the Center of Czech and International Tax Law at Masaryk University, Faculty of Law, Brno, Czech Republic; Member of General Taxation Law Codification Committee. (e-mail: mpoplawski@poczta.onet.pl)

*Abstract:* In 2014, the General Tax Law Codification Committee (GTLCC), responsible for drafting a new Tax Ordinance, was established in Poland. This paper intends to present, in two parts, the expectations of this new Tax Ordinance, which has been prepared by the GTLCC. The first details how the protection of taxpayers' rights will be fulfilled, and the second focuses on the legal constructs used to increase the efficiency and efficacy of the Tax Ordinance.

*Keywords:* tax; tax law; Tax Ordinance; general tax law; codification of tax law; Polish tax law

## 1. Introduction

The current Tax Ordinance, introduced in 1998, has been amended several dozen times, and yet despite this, fails to meet today's needs and standards. This was the main driving factor in establishing the General Tax Law Codification Committee (GTLCC),<sup>1</sup> which was formed by the Council of Ministers at the end of 2014. The aim of the Committee was to prepare for the development of a new Tax Ordinance, and (within 2 years from the day of adopting the assumption by Council of Ministers) to draft a bill for a new general tax act in conjunction with acts regarding its implementation.

The aim of this paper<sup>2</sup> is to present the most important elements of the revised Tax Ordinance objectives<sup>3</sup>, and will be preceded by a short description of the current Tax Ordinance. Additionally, several reasons will be presented explaining the necessity of this new Tax Ordinance in being introduced; primarily that these regulations will fulfill two fundamental objectives. The first is to protect taxpayers' rights. This will be accomplished primarily through the mitigation of excessive rigor of the Tax Ordinance with regard to taxpayers. It is strongly recommended that legal mechanisms protecting taxpayers' positions in their contact with tax administration should be introduced in the new act. Regulations contained therein should be based on the presumption that a taxpayer is a reliable person who does not consciously commit tax law violations. The second main purpose of the new Tax Ordinance is an increase

in the efficiency and efficacy of the tax obligation's fulfillment. Tax laws, including Tax Ordinances, should serve for the collection of tax. Greater efficiency of tax authorities, however, cannot involve the infringement of taxpayers' rights.

## **2. Outlook of the Tax Ordinance of 1997**

The currently binding Tax Ordinance came into effect on January 1st 1998. This act covers institutions of tax law which are common for all taxes that are in force in Poland. Regulations included in this Tax Ordinance can be divided into several groups. The first is composed of defining catch-all provisions. Certain concepts used by the legislator in tax statutes are not concurrently explained therein. However, they have been defined in the Tax Ordinance and may be used, to such an extent, as additional support. The second includes substantive law institutions that certain obligations from, burdening taxpayers most of all. Such an obligation, for example, is the need to pay default interest. This obligation supplements a primary duty, which is tax payment in due time. Within this framework, regulations imposing obligations on other subjects of tax law – third parties, legal successors, heirs, tax remitters, and tax collectors should also be indicated. The third part includes institutions granting specified rights connected with the execution of liabilities they are burdened with. They concern both a taxpayer's inter alia, the right to recover excess payment or the right to obtain postponement of maturity, but also a tax authority (security of tax obligations execution). The fourth part is procedural regulations—that is actions which are undertaken inter alia, from the moment tax proceedings are initiated, to the issue and service of tax decisions.

## **3. The reasons to introduce a new Tax Ordinance**

There are approximately seven reasons why the currently binding Tax Ordinance should be replaced rather than amended. To begin with, there is need to create in the ordinance such mechanisms that would assure a balance between both the public and taxpayers' interests. Justifiable claims to increase the protection of a taxpayer's position in relation to tax service are commonly postulated. Such a delicate matter as tax must be solved not only with due

respect paid to taxpayers' rights but also the State's interest, i.e., the organization financed by all taxpayers, a fact which is frequently forgotten. The currently binding Tax Ordinance lacks institutional characteristics of a mature codification of tax law's general part. The leading one among them is the need to write down the principles of general tax law. Their catalogue will contribute to a better understanding and application of tax provisions contained not only in the Tax Ordinance.

Secondly, there is an urgent need to establish taxpayers' rights and duties in the form of a catalogue, included in one legal act of statutory power. This will improve the relations between taxpayers and tax authorities, which are negatively perceived by society. The new Tax Ordinance must embrace an enormous amount of the existing case-law of administrative courts on tax matters. Its impact, therefore, on the application of law is substantial. However, not all potential doubts could be successfully dispelled this way, which is why a new law is necessary.

Thirdly, due to numerous amendments, meaning and understanding of some solutions has changed over time, which can hamper the application of this Act. It is now no longer sufficient to understand a legal text and rules of legal interpretation, complemented by the knowledge of judicial judgments, to interpret Tax Ordinance. It is absolutely necessary to know the history of the multiple changes thereto, and to be knowledgeable of what unexpected outcomes they have sometimes resulted in.

Additionally, currently binding Tax Ordinance lacks institutions existing in most modern acts of this type. An example is of the clause against tax evasion, or regulations on soft forms of tax disputes' settlements not only within tax proceedings (mediations and agreements).

Moreover, there is a need for greater and more frequent use of electronic communication to contact taxpayers. This issue should be comprehensively and systematically regulated, which is not possible in the course of continuous amendments of the existing provisions.

Furthermore, due to Poland's accession to the EU, development of technology – as well as phenomena and processes that are subject to tax law – resulted in the objective expiry of solutions adopted in the Tax Ordinance several years ago. The legislator attempted to prevent this by implementing successive amendments thereto, sometimes quite extensively, but such a continually amended ordinance has lost its original structure, which itself has

not been free of defects. It has become clear now that the possibilities of improving and updating the Tax Ordinance in the course of further amendments has been exhausted.

Finally, it is necessary to harmonize the provisions of a new Tax Ordinance with other tax law provisions and regulations beyond this area. It is indispensable to clearly and precisely establish the relation of the Ordinance to the provisions on, among others, fiscal inspection, regulations on administrative execution, the Code of Administrative Procedure, or the Act on Freedom of Economic Activity.

## **4. The protection of taxpayers' rights**

### **4.1 The principles of tax law**

Since there is non-equivalence between tax debtors and creditors, there is a need to establish in the new Tax Ordinance provisions assuring the protection of taxpayers' rights, as they are a weaker party to the tax law relation than a tax authority. In proposing the introduction of a catalogue of tax law principles to the new Tax Ordinance, it should be restricted to norms determining the application of legal regulations within the scope of tax law. Regulations on tax lawmaking are, and should be left, beyond the scope of tax law principles codified in the provisions of general tax law. The reason being is that the issues of lawmaking are regulated in the Constitution of 1997, so there is no need to repeat the norms thereof in the new Tax Ordinance. Additionally, the matter of general tax law justifies such a scope of tax law principles. If the Tax Ordinance does not regulate the process of lawmaking, there are no grounds to include fundamental lawmaking principles within it. Tax law principles should therefore exclusively embrace the rules of applicable tax law; fundamental norms determining the relationship between a tax authority and an entity subject to taxation.

The justification for creation of a catalogue for this branch of legal principles, that would be uniform and common for both substantive and procedural tax law, also justify the codification of taxpayers' rights and duties.

## **4.2 Taxpayers' rights and duties**

In order to improve potentially faulty, or even oppressive, operations of tax authorities, it is necessary to articulate to taxpayers their rights, to hopefully eliminate any knowledge disparities. Such citizen legal protections are reasonable due to the existence of a catalogue of recognized values, and when one considers contemporary standards of the relationship between citizens and their State authorities, which are based on ancillary roles of the State administration towards society. The State should use the powers it is entitled to in a manner assuring not only the fulfillment of its set objectives, but also respecting the interests of entities incurring the burden of its functioning (taxpayers).

## **4.3 New soft forms of tax authorities' operation**

The new Tax Ordinance act will be provided with the following new forms of tax authorities' operation: taxpayer's guide and support; consultation procedures; agreements between taxpayers and tax authorities; tax mediation; and a program of correct settlement based on cooperation. Tax authorities are appointed to facilitate correct fulfillment of the duty to provide State authority with taxes. In the new Tax Ordinance, a taxpayer will be entitled to acquire, and be able to rely on, official information from many sources— deriving protective effects from the fact of applying it. Within general consultation procedures, an applicant and tax authority shall make arrangements on the past or future settlements of the taxpayer. This procedure could be done at the taxpayer's request within the scope of the evaluation of tax consequences of complicated transactions carrying a high tax risk for economic entities, estimation of the taxable object's value, and evaluation of the transaction object's character, etc. Within the procedure, factual arrangements shall be made, and evidentiary proceedings will be carried out. A decision issued in the procedure will be binding for both the tax authority and taxpayer, and will furthermore be subject to suability. The use of the consultation procedure will, in principle, be payable.

Agreements between tax authorities and taxpayers will be concluded in case of doubts as to the matter's factual state. This may be difficult to eliminate, on determination of the value of a taxable object, or transaction, on validity of the

application of reliefs in tax payment. The agreements will be documented by records containing, among others, the scope and content of the arrangements made. A tax authority will be required to reflect on the arrangements in tax inspection records, or tax decision. The subject of an agreement will not only cover a case settlement, but will also detail any issues that arise during tax proceedings, or tax inspection, that do not decide on the settlement (e.g. the scope of evidentiary proceedings that should be carried out). The amount of the tax obligation cannot be directly subject to the agreements.

Tax mediation shall be the procedure used to solve disputes with the participation of a third party – a mediator. It will be introduced as a procedural mechanism facilitating communication between a tax authority and taxpayer. This procedure will constitute particular proceedings initiated upon the request of one of the parties of a dispute (a taxpayer, or tax authority) upon agreement of the other party. This may occur at any stage during the course of the proceedings. The procedure will be constructed with respect for basic rules on mediation, among others: voluntariness, impartiality, neutrality of a mediator, and confidentiality. The parties thereto will select a mediator freely and jointly from the list kept by the Minister of Finance. Mediation costs will be borne by the State or municipality.

The purpose of the program will be to assure the observance of tax law through establishing close relations between tax authorities and taxpayers. The program will be addressed to strategic entities for the State budget. Its purpose is reflected in the slogan, ‘transparency in return for certainty’. ‘Transparency’, because a taxpayer who is a participant of the program reveals any substantive tax issues that are potentially disputable between him/her and an authority. ‘Certainty’, because a tax authority responds to questions asked by a taxpayer without delay (after consulting a taxpayer him or herself and in the spirit of agreement and understanding for business).

The program of correct settlement based on cooperation shall be maximally deformalized, and based on a personal obligation of decision-makers in a business entity and tax authority. Participation in the program will be not obligatory. Conditions of the participation therein shall be well-functioning internal procedures of settlements in an entrepreneur’s business (‘tax governance’), verified by an audit before concluding an agreement with the taxpayer.

## 4.4 Advance tax rulings

Tax law is a complex field of law. This is, among other things, due to: the existence of different taxes and forms of taxation; their frequent changes; and binding EU and international law regulations, which all contribute to increasing complexity of law and uncertainty regarding its content and, in consequence, its interpretation and application. It is a source of potential conflict between the interests of taxpayers, and the tax administration which represents the State's fiscal interests. That is why, advance tax rulings (ATRs) of general and individual character, should be treated as a significant extension of the scope of protection of taxpayers' economic rights and freedoms. Additionally, ATRs are an important and stabilizing element of solving disputes between a taxpayer and tax authority. ATRs are one of the most vital guarantees protecting taxpayers' subjective rights. Undeniably, on the basis of these rulings, a taxpayer acquires knowledge within the scope of rules which, together with tax law provisions, co-create a potential legal situation of each addressee of tax law. These entities develop their sense of legal certainty and security not only on the basis of tax acts, but also on the basis of application of tax law by tax administration.

Within the scope of the fulfillment of fundamental objectives of the new Tax Ordinance, and the enhancement of guarantees resulting from binding rulings of tax law provisions, two aims should be achieved. First, we should strengthen the importance of general ATRs. Thus, there would be primacy of general rulings over individual ones. Individual rulings would be issued when general ones do not function in a given factual state; a possibility of quoting general rulings in an equivalent factual state. At present, a considerable number of individual rulings influences a lack of transparency in understanding tax law, and causes doubts in its application. The adopted solution will be to assure the elimination of divergent interpretations referring to the same factual state, and the need for multiple applications for the issue of individual rulings in the same factual state. The adopted solutions regarding solely general interpretations should introduce a possibility of asking legal questions by an authority authorized to issue such rulings to the Supreme Administrative Court.

Second, there should be a centralization of the process of issuing ATRs. The introduction of uniform principles within this scope, with regard to the

entirety of tax law provisions' rulings, regardless if a particular taxpayer constitutes income of the State budget, or local self-government units. It results from the need to undertake actions leading to the extension of the scope of services provided for the benefit of taxpayers and quality improvement. A modern, efficient, and national point of uniform tax information for taxpayers and tax administration employees should be created within this scope. This will guarantee uniform procedures and standards within the scope of issuing individual ATRs.

## **4.5 Discretionary reliefs**

The new Tax Ordinance will prefer forms of support not resulting in failure to pay tax but allowing late, yet still effective, fulfillment of a tax obligation. The catalogue of applied discretionary reliefs shall be extended by the introduction of the possibility of a tax remission, or its part, in order to avoid the occurrence of tax arrears for a taxpayer, and is a condition of applying the relief. On the other hand, reliefs will be applied according to the principle of balance between public and taxpayers' interests using soft forms of arranging matters. In the case of tax-constituting municipal revenue, the application of reliefs to pay tax should be decided solely by municipal tax authorities.

## **4.6 Representation**

This Tax Ordinance will also contain comprehensive regulation of powers of attorney, and proposes three distinguished categories: general, limited, and for 'service of process.' The general power of attorney will apply to all participants of tax procedures. The appointment of a general agent will eliminate any potential nuisance connected with the obligation to submit a power of attorney, or officially certified transcript of a power of attorney to be attached to the files of each tax case. This will not only limit bureaucracy in tax authorities, but also simplify representation of the party by an agent. General powers of attorney will be gathered in the electronic database, entitled Central Register of General Powers of Attorney, and will be instantly available for all State and self-government tax authorities, as well as tax inspection bodies. Limited agents will be authorized to act in the indicated tax case, or other indicated case within the jurisdiction of a tax authority, after submitting a power of attorney to the files of the specific case. The new Tax Ordinance will maintain the institution of an agent for service of process. The appointment of such an agent in Poland will be compulsory when a general, or limited

attorney, has not been appointed, and communication with a participant of tax procedure may be hampered due to a change of place of residence (stay), or lack of place of residence (stay) in Poland, or another EU Member State.

The new Tax Ordinance will introduce the institution of a temporary limited agent instead of a representative of an absent person. The prerequisite to appoint this type of agent shall only be for urgent cases, and a temporary agent will be appointed by a tax authority for an absent natural person. Whereas for a legal person, or organizational unit without legal personality, a temporary agent shall be appointed if their bodies are not present, or if it is not possible to establish the address of their official seat, the place of running a business activity, or the place of residence of persons authorized to represent their matters. Such a temporary agent would be empowered until a court appoints a guardian.

## **4.7 Limitation of tax obligations**

During works on limitation, it is particularly important to distinguish the limitation of the right to tax assessment, and the right to collect tax. In the proposed model, a tax authority has time, determined by the provisions of law, to assess tax understood as submitting a decision determining, or establishing in nature by a first instance tax authority. Thus, it would be the period of time to question the correctness of tax settlements made by a taxpayer (e.g. in a submitted tax declaration), or issue a determining decision if a declaration is missing. Moreover, this time limit would bind a tax authority within the scope of issuing a decision determining the amount of tax obligation if the Act envisions such a manner of tax chargeability. During such a period of time, it should be possible to issue decisions aiming at recovery of dues the State is entitled to that have been wrongly remitted, or credited towards a taxpayer and which are subject to Tax Ordinance including, among others, the use of loss, or tax to be carried over, etc. In the case of a decision determining tax loss, one should support the solution according to which this decision could be issued during the period of limitation of the assessment of tax obligation during which a taxpayer settles the loss.

The second type of limitation, limitation of the right to tax collection, would be applied when tax obligation exists and its amount is known (it results, in principle, from a correctly submitted tax declaration, or declaration's

correction, or served decision). This limitation would apply after the period lapse of the limitation of tax assessment.

As far as the limitation of assessment is concerned, two periods of limitations should be introduced: three or five years, counted from the lapse of the term of payment, or tax obligation occurrence. A three-year-long period of the limitation of assessment would be applied with regard to tax settlements not connected to a business activity. A five-year-long period would refer to those tax settlements connected with a business activity. Thus, a three-year-long period of the limitation of assessment will cover taxpayers whose settlements, in principle, are of uncomplicated matters. This mechanism will concern, among others, most taxpayers subject to a natural person's income tax. And after the three-year lapse (not after five years as it is now), a large group of taxpayers will be exempt from the duty to keep records of documents regarding tax obligations. This shall be the case of the new Tax Ordinance except in certain situations where the limitation of assessment will occur after a five-year lapse. Specifically, the following cases should be covered by the five-year-long period of the limitation of assessment:

- Tax connected with running a business activity, i.e. tax that requires keeping tax records pursuant to separate provisions (the current Tax Ordinance defines tax records as accounts, revenue and expense ledgers, and registers and records taxpayers, remitters, or collectors are obliged to keep pursuant to separate provisions).

- Income tax owed for the so-called revenue from undisclosed sources.

- Income tax owed for the sale of real estate.

The introduction of a five-year-long period of the limitation of assessment in the above mentioned cases is supported by a more complicated nature of these settlements, which entails the need of using a wider catalogue of evidence during proceedings, or a greater number of tax law institutions (e.g. estimation).

The introduction of a five-year-long period of the limitation of tax collection should be postulated, because the introduction of a shorter period does not seem justified. If the obligation results from a submitted and correct tax declaration, or a final decision (possibly verified by a binding court ruling), pursuant to the principle of tax fairness, it should be executed. Therefore, it should go without saying that if someone is obliged to pay the tax whose existence and amount are, in principle, correctly established, s/he should pay

it. For this reason, the enforcement of tax owed is justified over a longer time period.

The institution of a tax limitation should be feasible in nature. Under this limitation of assessment, the possibility of an exclusion of the limitation should be regulated, whereas its suspension should occur solely for objective reasons. This would be independent of a tax authority in events such as: taxpayer's death; the need to obtain information necessary for taxation from another state; applying to a common court with a motion to establish the existence of a legal relation or right; suspension of proceedings due to the settlement of a representative case; as well as submission of a complaint to an administrative court. The application of prerequisites for the suspension of limitation of assessment should not prolong the period of limitation of assessment by more than five years in total.

Under the limitation of collection, prerequisites of the suspension or interruption of its activities should be restricted as well. Under the limitation of collection, the preservation of the following prerequisites of the suspension, or interruption of the activities of limitation should be postulated: division into installments; deferment of the deadline to submit a declaration, or payment; prolongation of the term of payment; voluntary or executive pledge; announcement of insolvency; or application of enforcement measures. The new ordinance should prepare and introduce solutions which would allow a maximum period for the prolongation of the period of limitation of collection, due to the suspension or interruption of the course of activities of the limitation of collection.

## **4.8 Excess payment**

It is necessary to introduce legislative solutions within the scope of cases for when tax is paid unduly by a taxpayer who did not bear the economic burden thereof. The construction of some tax, particularly indirect, allows to transfer such burden upon a consumer of goods or services. Legal solutions and mechanisms within the scope of excess payment should not lead to unjust requirements of a taxpayer. Therefore, the introduction of the mechanism allowing the acquirement of excess payment by taxpayers subject to indirect tax should be postulated, provided they bear the economic burden of the tax.

Changes within the scope of legal regulations on tax excess and return should also contain the following:

– We should aim at the introduction of similar procedures for tax excess and return. However in the latter case, they will be applied if special provisions regulating the construction of the individual kind of return do not stipulate otherwise.

– It is reasonable to simplify the procedure of claiming tax excess and return, on proceedings to confirm overpayment initiated ex officio, or if a request should be introduced. A tax authority should, ex officio, in a simplified procedure (if possible), among others without the need to initiate proceedings, confirm overpayment each time it acknowledges its existence.

– The catalogue of cases where overpayment shall be returned without issuing a decision should be extended in instances, among others, when: overpayment results from a declaration, or the correction of a declaration is not questioned by an authority; when excess payment is a results of the motion of a taxpayer to confirm overpayment that is fully accepted by an authority; or when excess payment is confirmed ex officio. In the above-mentioned cases, a decision should be issued, but only when it is requested by the party. If an authority confirms excess payment without a decision, it also should not be obliged to issue decisions on overpayment (e.g. in the matter of crediting overpayment towards tax arrears), unless the party applies for it. Discontinuance of the issuing decisions mentioned above should be accompanied by the rule according to which a tax authority should inform the party about the settlement (e.g. crediting overpayment towards tax arrears), by means of electronic communication, or by a telephone. Simultaneously, the information regarding confirmed overpayment may also be delivered in this form. A vital supplement of the above-mentioned mechanism should be the solution according to which the settlement on interest (i.e. confirmation of its existence, or lack thereof), will be an element of the decision on overpayment. However, the subject of this settlement should not be the calculation of the amount of due interest, and it will not be necessary to initiate separate proceedings in the matter of interest. If an authority does not issue a decision to confirm overpayment, and a taxpayer is entitled to interest, an authority transfers interest without issuing a decision thereon. Nevertheless, each time a taxpayer should have the possibility of applying for granted interest which should be settled in the form of a decision, unless it is fully accepted.

– Determination of the relation between proceedings to confirm overpayment and proceedings establishing the amount of tax obligation (e.g.

with a statutory exclusion of the obligation to conduct recovery proceedings before the examination of a request to confirm overpayment).

– Extension of cases where overpayment is returned together with interest. Excess payment should be returned together with interest calculated from the payment date when it results from defective lawmaking (confirmed by the judgment of the Constitutional Tribunal, or the Court of Justice of the European Union), or the application of law. Additionally, from the lapse of the term of overpayment, if it was not returned within this time, and a taxpayer did not contribute to the delay. A taxpayer should not incur negative consequences connected with defective operation of the State authority, both within law making and the application of law. An important supplement of the above-mentioned mechanisms should be the solution according to which the settlement on interest (i.e. confirmation of its existence, or lack thereof) will be an element of the decision on overpayment.

– Extension of the group of entities entitled to obtain excess payment by all entities covered by the tax law relation, among others remitters, collectors, legal successors, or third parties, including such problems as, for example, the loss of tax capital group status, the loss of law existence, legal capacity or capacity for legal actions, and/or insolvency.

– A possibility to introduce the return of overpayment to entities indicated by a taxpayer.

## **4.9 Electronic communication**

Contact with a taxpayer through modern communication technologies should be further emphasized. Thanks to this, proceedings' dynamics will increase, while their costs will diminish. It is not economical to instigate tax proceedings when the cost of their pursuit, including tax authorities' expenditures and costs of letter services, exceeds the inflicted amount of obligation. The new Tax Ordinance should enshrine the concept of a simplified legal environment, and the creation of facilities for taxpayers—including entrepreneurs. Indicated legal mechanisms and instruments are necessary for the development of e-administration. They confirm changes occurring in the approach of administration towards an individual. They also demonstrate a support-oriented attitude to individuals, and the need to provide them with more efficient, and effective, contacts with administration. Development of new IT and communication technologies, including electronic communication, exerts

a positive impact on digital society's development. This is particularly important within the rapid paced and progress-oriented context of the surrounding world.

## **4.10 Complaints**

The new Tax Ordinance will contain provisions on complaints. Under the current legal status, the Code of Administrative Procedure applies thereto, however preservation of this status is unsubstantiated. It disrupts regulative uniformity of tax procedures, and limits taxpayers – who are potentially interested in submitting a complaint or request – from getting acquainted with the provisions specifying a relevant course, or even being aware of their existence. These provisions were previously located in another Act, but failure to adjust some of them to the specificity of tax cases can result in their identification and corrective potential to be unused.

## **5. Increased efficiency and efficacy of tax obligation's assessment and collection**

### **5.1 Increased efficiency of tax proceedings**

The right of a party to challenge a decision should be made feasible. The time limit to submit an appeal or complaint should be prolonged (up to thirty and fourteen days respectively). This will allow better preparation for a party to formulate complaints against a decision or order and more precise preparation of motions for evidence. For the same reasons, the time limit to apply for the withdrawal of a final decision after the judgment of Constitutional Tribunal, or Court of Justice of the European Union, should be prolonged from one to three months.

One of the general principles of tax proceedings is of expeditious proceedings. Inactivity of a tax authority, or protracted pursuit of proceedings, threatens citizen's confidence in State bodies. Therefore, it is reasonable to strengthen the position of a party to the proceedings through equipping it with effective legal measures for action in the situation of inactive, or protracted conduct, of a tax authority.

The economics of tax and judicial administrative proceedings justifies the creation of a possibility of suspending proceedings in similar cases, or in closely related ones. To begin with, a dispute in the 'representative' matter should be settled, while other cases should be suspended. This will allow a taxpayer to rationalize procedural costs and eliminate a risk of massive enforcement of decisions that may appear defective.

Tax authority should be authorized not to instigate and discontinue proceedings initiated ex officio if the expected amount of the obligation does not exceed a specified numerical limit. The new Tax Ordinance should follow the direction of standardization of motions in tax cases. Provisions on disciplinary penalties require fundamental changes. The Codification Committee decided not to recommend for further works: renouncement from an appeal for the sake of a direct complaint to a court, and presentation of the case's legal evaluation by an authority before issuing a decision.

## **5.2 Tax authorities**

The new act should be aimed at simplified provisions concerning local jurisdiction, and would be more expansive than current applications of the same principle, which is binding in cases of all taxes collected by the authorities subordinate to the Minister of Finance. Moreover, changes within the scope of jurisdiction should embrace principles concerning the so-called ossification of jurisdiction which dictates that an authority involved at the moment of launching an inspection shall remain involved in all relevant issues connected with the subject of the case, both in tax and interlocutory proceedings (e.g. concerning security).

There are almost 2500 self-government tax authorities in Poland. Due to this, their expectations and needs cannot be ignored while creating a new Tax Ordinance. This is an issue of particular importance for tax authorities but also from the point of view of taxpayers. Self-government taxes such as real estate, agricultural, or forest taxes should be simplified due to their common nature. It is necessary to assume that all tax authorities should have similar powers as far as general tax law provisions are concerned. Deviations from this principle (including, most of all, specificity of tax assessed and collected by the corresponding category of tax authorities) will occur. Nevertheless, they must be sufficiently justified (the principle of adequacy). Moreover, the issue of complementary regulation of the status of municipal tax authorities in the

provisions of general tax law and structural system provisions is valuable. There is no legal act regulating structural, organizational, or functional matters of local self-government tax administration, except self-government appeal boards. In the long term, proposed actions are to improve self-government tax authorities' operations, increase their efficiency, and facilitate correct fulfillment of taxpayers' obligations connected with the settlement of taxes and fees constituting self-government revenue.

## **5.3 Tax inspection**

It is proposed to establish a uniform and integrated procedure of tax inspection in the new Tax Ordinance provisions for taxpayers who, in principle, fulfill their duties, and introduce a separate regulation for more rigorous inspection procedures directed at fighting common revenue offences. The current procedure of tax inspection is, on the one hand, sometimes too burdensome for most taxpayers. Conversely, it can be too ineffective with regard to tax evaders. Therefore, it is important to diversify inspection procedures where the criteria of applying individual procedures should refer to the seriousness of irregularities, or the degree of harmfulness of committed revenue offences and the need to secure evidence promptly.

The procedure which refers to inspections aimed at fighting tax fraud and revenue offences should be contained in a legal act separate from the Tax Ordinance (Law on Fiscal Inspection) and connect the elements of current solutions of the Tax Ordinance, Law on Fiscal Inspection and Criminal Procedure. The legitimacy of the introduction of this procedure is confirmed by a recently observed increase in tax offences, particularly within the scope of value-added tax scams. These offences are especially detrimental because they result, on the one hand, in billions of PLN loss for the State Treasury (threatening its financial security) and on the other, in immeasurable consequences for the principles of competence, as well as the danger of eliminating honest entrepreneurs from the market. It is purposeful to create a catalogue of cases where this procedure would be applied. It should be used, in particular, in the following cases: activities in organized crime, or organizations aiming at committing revenue offences; money laundry; issuing documents on activities that have not been performed, or intentional forgery of tax documents.

## **5.4 The clause against tax evasion**

There is a need to establish an anti-avoidance rule in new Tax Ordinance. The application of this clause will both deprive taxpayers of the tax benefits they intend to obtain, or those benefits obtained due to undertaking artificial arrangements which lacked economic justification, but were done for the purpose of obtaining tax benefits. Financial sanctions are not envisaged. The most vital form of the clause's impact should be prevention. The clause will embrace all State and self-government taxes except the value-added tax. One of the authorities entitled to apply this rule will be the Minister of Finance. Taxpayers could request the issuance of a decision by their specially appointed consulting body independent of tax administration.

## **5.5 Solidarity in tax law**

Currently binding Tax Ordinance regulates the occurrence of joint/several obligations to a limited extent, particularly when it is necessary to issue and serve a decision thereto. Tax procedures conducted by tax authorities are not sufficiently regulated in binding provisions within the context of solidarity but also, for example, in the self-calculation of tax. Similar problems occur within the scope of the institution of reliefs to pay tax obligations when only some joint/several debtors apply for the relief.

Suitable changes connected with solidarity in tax law should be introduced to individual institutions regulated in the new Tax Ordinance. Basic principles of solidarity in tax laws, however, should be somehow factored out of general provisions due to their universal character. This solution is also supported by the heterogeneous character of joint and several liability in tax law which can be connected with the obligation of this nature, including those arising through the service of a decision. Nevertheless, it may also be the liability for another person's debt, therefore it may be the institution connected both with the stage when the tax law relation arises, and the assessment and performance of tax obligations.

## **5.6 Default interest**

Default interest is the consequence of an occurrence of tax arrears, and the obligation to assess it exists regardless of the cause(s) of occurrence and taxpayer's fault within this scope. It should be required to pay interest without the notice of tax authorities, whereas payments towards tax arrears and default interest thereon should be proportionally credited. The catalogue of cases of non-application of default interest with regard to the binding legal status

should be extended by a new case. This would then be connected with non-application of interest during the period of judicial administrative proceedings on checking legitimacy of a tax authority's decision establishing, or determining, tax obligation that is pending for more than twelve months. Moreover, the prerequisite of non-application of default interest when a tax authority did not verify the declaration containing mathematical errors, or apparent mistakes under examinations thereof during two years should be modified. The maintenance of a two-year-long period envisioned in the currently binding provision, when tax authorities use electronic tools for a declaration's validation within the scope of arithmetic errors and apparent mistakes, cannot be justified. This period should be shortened to one year. The instrument aimed at maximizing the level of voluntary fulfillment of tax obligations in the new Act's provisions should be the introduction of a lowered default interest rate for taxpayers wishing to correct irregularities in the original declaration and immediately settle tax arrears with the simultaneous indication of time limits during which it will be possible.

## **6. Conclusion**

For two primary reasons, the new Tax Ordinance has a chance to be a positive change in the field of Polish general tax law. First, it will introduce new institutions which currently do not exist in Polish legislation, such as the introduction of tax law principles, and the catalogue of taxpayers' rights and duties to the new Tax Ordinance. By introducing these legal solutions, a relationship will develop between tax debtors and creditors assuring necessary protection to the weaker subject. The complaint procedure, which will be introduced in the new act, will become an important element in the system of protection for taxpayers' rights. The course of submitting complaints will be most suitable to report possible infringements of some rights (such as the right to polite and professional treatment by civil servants). Among other things we can outline new soft forms of tax authorities' operations. The advantages of this are clear. This will create the conditions to observe and apply tax law in a way that is simultaneously efficient, effective, and appropriate. This will favor cooperation between tax authorities and taxpayers and discourage disputes. Another very essential elements of the new Tax Ordinance is the general anti-avoidance rule. This construct aims at setting a limit between tax planning and tax avoidance, sometimes referred to as aggressive tax planning. Such a norm

will establish the limits of a taxpayer's right to minimize his or her tax obligations.

Second, it will improve some tax legal constructs, which were claimed to operate improperly. Limitation stabilizes economic turnover through the restriction, or exclusion, of a possibility of redress. In tax law, limitation prevents either the assessment of tax obligation, or leads to its expiry. However, in the currently binding act, a consequence of several exceptions to the general rule is that its guaranteeing function is impaired. The construction of new provisions on excess payment should be accompanied by endeavors to simplify the procedure leading to the transfer of excess payments to authorized entities, as well as eliminate currently existing shortcomings in the application of this institution. Tax procedure must be modernized so that it may satisfy contemporary needs of taxpayers in a better way. Nowadays, in many fields of life and economy, procedures that are based on prompt and deformalized contact are developing. Basic issues within the scope of electronic communication should be contained in the general provisions of the new Tax Ordinance. Moreover, further provisions thereof will include special regulations connected with concrete institutions of tax law and reference to the issue of using modern IT and communication technologies.

## References

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3. The assumptions of the new ordinance is published at: [http://145.237.239.199/documents/764034/12688111/20150317\\_Kierunkowe\\_zalozenia\\_Ordynacji\\_Podatkowej.pdf](http://145.237.239.199/documents/764034/12688111/20150317_Kierunkowe_zalozenia_Ordynacji_Podatkowej.pdf) (accessed 6 October 2015)