

Marcel Kamba-Kibatshi

Obligations of parties of the tax and legal relation in Poland - selected problems

Annales Universitatis Mariae Curie-Skłodowska. Sectio H, Oeconomia 46/2,
83-100

2012

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

Instytut Socjologii,
Uniwersytet Kardynała Stefana Wyszyńskiego

MARCEL KAMBA-KIBATSHI

*Obligations of parties of the tax and legal relation in Poland –
selected problems*

Dostosowanie obowiązków stron stosunku podatkowoprawnego w Polsce do standardów
Unii Europejskiej – wybrane problemy

Słowa kluczowe: podatnik, podatek, podmiot, płatnik, obowiązki podatkowe, stosunki podatkowo-
prawne, organ podatkowy, inkasent, przepisy prawa podatkowego

Keywords: taxpayer, tax, entity, payer, tax obligations, tax legal relations, tax organ, tax collector,
tax law regulations

Introduction

The subject of this article are obligations of the tax and legal relation entities which are referred to execution of all tax liabilities by them in due time. There are always two entities in the tax and legal relation, the first entity is tax body and the second – taxpayers. Payers, tax collectors and third parties are also very often regarded as entities of tax and legal relation. The aim of this article is to present obligations discharged to the taxpayer, the payer, as well as to the tax collector in the range of carried out tax liabilities and also to discuss duties of the tax body, which is undoubtedly obliged to execute those obligations. Moreover, it should be added that the aim of this article is also presentation effective ways of tax liabilities termination as well as analysing operation which is payment of tax liabilities¹. The

¹ S. Owsiak, *Harmonizacja podatków bezpośrednich warunkiem integracji gospodarczej Unii Europejskiej*, tekst przedstawiony na VIII Kongresie Ekonomistów Polskich dostępny na stronie, http://www.pte.pl/pliki/2/1/s_owsiak_harmonizacja.pdf.

tax body is the entity entitled to assess, it means to establish or determine the rate of taxes and to collect these taxes. This subject particularly arises interest because every entity should know its obligations and rights. This knowledge undoubtedly can turn out to be very useful, among others for annual incomes accounting. Getting acquainted with basic rights and obligations of the tax payer, the payer and the tax collector can help to avoid unintentionally incompleting duties or unwittingly not using entitled rights. Generally it is worth to underline that taxes even in the area of one country, as well as in Poland, are not neutral in view of economic and social processes. It would be rather hard to expect such a neutrality in the case of integration of strongly diversified countries. Therefore it was the major challenge for the originators of economic union to limit negative impact of exaggerated diversification in the tax systems on integration processes than neutralizing the influence of taxes on these processes. Perfect taxes' neutralization in decisions of business entities does not exist, even in the case of indirect taxes or so-called linear income taxes². In the moment of creating the Treaty of Roma it was considered that for accomplishing the idea of internal homogeneous market it would be sufficient to harmonize indirect taxes and eliminate custom's barriers, because they directly influence free flow of goods and services. The harmonization of direct taxes was not discussed, because it was regarded that these taxes did not influence considerably the functioning of homogeneous internal market³.

I. Tax entities and legal relation in the fiscal law

1.1. The concept of the tax body

The tax body is an entity representing the state, province or other public and low body, whose duty is to accomplish activities in the range of assessing, it means establish and determine the rate of taxes as well as collecting these taxes⁴. The tax body is not the beneficiary but the state, the province, the district or the commune are. Therefore the taxes belong to the state, the province rather than the tax body. Then the tax organ is the entity entitled to collect taxes and the tax payer is the entity obliged – that means that the tax payer is economically re-

² W. E. Oates, *Fiscal Competition or Harmonization? Some Reflections*, „National Tax Journal” 2001, no. 54, p. 507–512.

³ H. Cremer, F. Gahvari, *Tax Evasion, Fiscal Competition and Economic Integration*, „European Economic Review” 2000, vol. 44, p. 1633–1657.

⁴ A. Olesińska, *Prawo podatkowe*, Toruń 2004, p. 23.

sponsible for the payment of taxes. In turn the tax body goal is to enforce this obligations which are discharged to the taxpayer, the payer and the tax collector.

According to the art. 15 § 1 of General Tax Law, the tax bodies comply with their territorial and material jurisdiction *ex officio*. Material jurisdiction is understood as the type of imposed and collected taxes and territorial jurisdiction is the territorial range of its activity, there is also functional jurisdiction, which means the role of the first instance body or the appeal body⁵. Rights and obligations of these entities should be shaped according to the principle of the taxation controlling, the tax and legal actual state of acts on taxes. Depending on the legal regulations different organizational units of the public and legal relation will be representing entity in the tax and legal relations. It is possible to distinguish two organizational sections of tax bodies. These are state and self government tax bodies, which are entitled to establish and determine the tax liabilities (to conduct assessment proceedings) and to the tax collection⁶. In the system of government administration authorities the tax first instance body is a director of the tax Inland Revenue and a director of the Customs, sometimes also a director of the Revenue Chamber, and a director of the Custom Chamber on the basis of the separate regulations. Minister of Public Finance is also the tax authority in the exceptional cases. According to the art. 13 § 2 of General Tax Law, Minister of Public Finances is an appeal body as the first instance authority from decisions sentenced in the cases of decision nullity stating, revivory of the proceeding, decision changing or reversing or its expiration *ex officio* (z języka łac., oznacza z urzędu, urzędowo). In the case of self government system the first instance tax body is a village or a city mayor. Then an appeal body is the self-government appeal board. Self-government appeal board is an appealing body from decisions of mayor, prefect or Marshal. The tax payer is a natural person, a legal person or organizational entity without legal status, which is obliged to taxation by taxes' acts. In the light of this definition, the tax payer is an entity which is obliged to taxation, so he becomes a potential obligating debtor in the legal relation⁷. It means that the tax body – as a creditor – can direct a tax claim against this entity, that is, can demand from this entity to pay the tax. This entity is economic incurred of taxation. The responsibility of the taxpayer for taxes is called the personal responsibility⁸. The taxpayer is obliged directly and at first to fulfil tax ob-

⁵ Z. Ofiarski, *Prawo podatkowe*, Wyd. C. H. Beck, Warszawa 2006, p. 89.

⁶ M. Staniszewski, *Ordynacja podatkowa dla studentów i praktyków*, Wyd. Wyższej Szkoły Bankowej, Poznań 2002, p. 31.

⁷ *Ibid.*, p. 25.

⁸ R. Mastalski, *Prawo podatkowe*, Wyd. C. H. Beck, Warszawa 2004, p. 186.

ligation, the tax liability is resting mainly on the taxpayer. Subjective scope of the tax determines who is the taxpayer, which is described in the specific act on taxes. To be the taxpayer is objective state, independent of the will of the taxpayer or even the tax body⁹. The taxpayer cannot abandon the debt by transferring his tax liabilities on the other person in the way of civil and legal agreement and tax bodies are not able to make permission for this kind of agreement. The Supreme Administrative Court is taking similar position, in its point of view the taxpayer cannot abandon its duty in the way of contract with other persons and transfer his liability on this person, whereas that kind of agreement does not effect in the range of tax obligations, as well as does not change the existing or future legal relation¹⁰. The view that the tax cannot be paid for the taxpayer by another entity support first of all the substance of obligation relation in the fiscal law, as well as the possible legal complications in the case of rebate demand which was payed by another entity in the name of the taxpayer. The natural person's death does not cause the expiration of tax liabilities in Polish fiscal law, i.e. the end of legal and tax relation between the taxpayer and civil and legal institution. In this situation legal consequences and legal and tax relation is being in force, but the obliged entity is changed, in the way of other entity commission to the responsibility. As well as expiry of another person's responsibility does not lead to the expiration of the taxpayer obligation¹¹, similarly the judgment on responsibility of another person for the taxpayer's tax liabilities does not cause tax obligation expiration. The basic taxpayer obligations are: the tax payment, advance payment, submitting right declarations and tax returns.

Poles are complaining about the amount of paid taxes. In spite of rates reduction during last few years, all the time we think that we are paying too much. However, comparing effective rates of taxation counted on the basis of average salary in various countries of the European Union, it is possible to make a conclusion that Poland turned out well. Anyway, there is no doubt that the quality of Polish tax system is still low, first of all the tax regulations and the scope of taxpayers obligations are clear enough.

⁹ A. Olesińska, *op. cit.*, p. 25.

¹⁰ Judgment of Administrative Supreme Court from 25 November, 1992, sygn. SA/Kr 1838/92, unpublished.

¹¹ A. Kamińska, *Wygaśnięcie zobowiązania osoby trzeciej nie prowadzi do wygaśnięcia zobowiązania podatnika*, „Monitor Podatkowy” 1999, no 9, p. 45.

1.2. Other entities in obligatory relations

In legal relation of the tax liability as the tax debtor may occur exceptionally other entities than the taxpayer. These are: the payer, the tax collector and other persons¹².

According to the art. 8 of General Tax Law the payer is a natural person, a legal person or organizational entity without legal status, obliged on the basis of the tax law, to calculate and collect the tax from taxpayer and to pay it to the tax body in due time. As follows from definition, the payer responsibilities are: due tax calculation, collection of this tax, making the payment of collected tax to the tax body in due time. The payer obligations are kind of public functions, because they fulfil delegated tasks in the scope of administration¹³. The payer is only agent of tax implementation, does not bear the economic duty of the tax. It is mediating between the entitled entity, the tax body and obliged entity, the taxpayer. The tax law regulations impose on the payer fixed procedural duties in the range of determining tax liabilities and tax collecting¹⁴. In the case of non-fulfilment of these obligations or improper fulfilment, the payer is responsible for not collected tax or tax collected at the lower amount than the output tax, as well as for the payment of the tax not in due time. In this situation, identified irregularities of payer activity cause that it becomes the tax debtor in exchange for the taxpayer.

The scope of the tax collector's duties are much lesser than the payer's, the tax collector does not calculate the output tax, but only collects it from the taxpayer and transfers to the tax body¹⁵. According to the art. 9 of General Tax Law, the tax collector is a natural person, a legal person or organizational entity without legal status, obliged to collect the tax from the taxpayer and to transfer this tax to the tax body in due time. Just as in the case of the payer, the essence of the tax collector's obligations is fulfilment of delegated tasks in the scope of administration. Specified entity obtains the status of the tax collector by the letter of law. It is not also possible to release from the tax collector obligations in the way of contract with another person. Tax collectors fulfil their duties for a fee and under the same conditions as payers do. Payers and tax collectors are entitled to get flat payment for transferring collected taxes to the Budget in due time¹⁶. The

¹² K. Koperkiewicz-Mordel, W. Nykiel, W. Chróścielewski, *Polskie prawo podatkowe*, Wyd. Difin, Warszawa 2003, p. 30.

¹³ A. Olesińska, *op. cit.*, p. 25.

¹⁴ R. Mastalski, *op. cit.*, p. 189.

¹⁵ *Ibid.*, p. 189.

¹⁶ K. Koperkiewicz-Mordel, W. Nykiel, W. Chróścielewski, *op. cit.*, p. 31.

payment amount for collecting of taxes transferred to the Budget is determined by the executory regulations for General Tax Law, and in the case of payers collecting taxes in the name of self-government, the municipal council can determine the amount of payment by the resolution. As it is known, in Polish tax law, entities of the tax and legal relations can also be legal successors of the taxpayer (in some cases also payers and tax collectors), as well as other persons responsible for the tax liabilities of the taxpayer.

Therefore the issue of the tax liabilities is regulated by the Act of 29 August 1997 – General Tax Law, it is described in chapter III of General Tax Law, entitled *Tax liabilities*. The present provisions have been deeply developed in relation to the earlier Act of 19 December 1980 on the Tax Obligations. The tax liability is a legal relation, in which one party (a creditor) can demand from the other party (a debtor) a payment and the other party should fulfil this demand¹⁷. The creditor is the state who can demand the payment of taxes and has instruments to implement this demand, while the debtor is the taxpayer who is burdened with the tax obligation.

According to the definition included in General Tax Law, the tax liability is an obligation to payment for the Treasury, province, district or commune the tax in the amount, term and place specified in the tax law regulations¹⁸. This definition is similar to the definition included in the Act on The Tax Obligation and in relation to these definitions the tax liability results from the tax obligation. The tax liability cannot arise without prior existence of the tax obligation¹⁹. According to many experts of the discussed issue and to literature of the issue, the tax liability is defined as a concrete tax obligation²⁰. This specification contains four essential elements, namely determination of the person who is the entity of this obligation, the amount of the tax obligation, the term of tax payment and the place of tax payment. So, the tax liability is concrete tax obligation, which means that the tax assesment, the tax debtor, the tax amount, term and place of payment are already known. The entity which has been burdened with tax obligation is obliged to pay this tax in term and place specified in the tax law regulations. If the payment term has not been confirmed, the taxpayer has not legal obligation to pay this tax till the term is fixed. There are also situations when the tax obligation does not turn into the tax liability, for example, when the taxpayer income

¹⁷ W. Czachórski, *Zobowiązania*, Wyd. PWN, Warszawa 1998, p. 31.

¹⁸ S. Dolata, *Podstawy wiedzy o podatkach i polskim systemie podatkowym*, Wyd. OPOLE 1999, p. 153.

¹⁹ R. Waloński, *System podatkowy w Polsce*, Wyd. Zakamycze 2004, p. 244.

²⁰ K. Koperkiewicz-Mordel, W. Nykiel, W. Chróścieleski, *op. cit.*, p. 31.

does not exceed so-called “the level of bare subsistence” or in the case of transferring all income for the socially useful purpose or gaining income by the person who is temporarily exempted from taxation because of starting business activity²¹. There is also situation when the tax obligation does not turn into tax liability because of the termination of the right for determination of tax liability. In accordance with the art. 68 of General Tax Law, it takes place when the decision of the tax body about setting the tax liability will be delivered after 3 or 5 years from the end of the tax year, when the tax was required. Therefore, the institution of the right limitation fulfills the role of tax obligation expiration, and thus there is no tax liability without tax obligation. Since the 1st of January 2001, institution of the tax liability determining omission was given up, it could be done in the way of Minister of Finance’s regulation or the tax body decision, as a form of a giving up of the public and law body from the entitled right to demand tax liabilities. It cannot be applied in practice because it causes inability to issue and deliver a decision determining the amount of tax liability. Expiration of the tax liability causes termination of the tax and law relation between the taxpayer and the entity entitled to tax provision²². Legal relation of the tax obligation usually finishes in the moment of the provision fulfilment. Provision fulfilment by the debtor, i.e. taxpayer, causes that the purpose of the obligatory relation is carried out and it leads to decay of legal relation between creditor and debtor²³. Art. 59 of General Tax Law specifies all possibilities of the tax liabilities expiration in the executory procedure.

II. The evolution of the taxpayer obligation

2.1. The concept and forms of the tax payment

The tax payment, in the opinion of many experts in this field, is the basic way of the tax obligation fulfilment. The accomplishment of the tax liability through the payment means that the creditor, i.e. the tax body has the right to expect charge payment by the taxpayer in due time. The payment is an actual fulfil-

²¹ A. Gomulowicz, J. Malecki, *Podatki i prawo podatkowe*, Wyd. LexisNexis, Warszawa 2004, p. 320.

²² S. Babiarz, B. Deuter, B. Gruszyński, R. Hauser, A. Kabat, M. Niezgodka-Medek, *Ordynacja podatkowa – komentarz*, Wyd. LexisNexis, Warszawa 2005, p. 217.

²³ R. Mastalski, *op. cit.*, p. 197.

ment of tax obligation, namely it means the transfer of cash between the obliged entity – the debtor and the entitled entity – the creditor²⁴. The obligation of the taxpayer as a tax debtor is tax payment in due time, form and amount on the account of the right tax body. The payment of the tax is done in the way of making payment by the taxpayer (payer or tax collector) of the tax liability on the account of proper tax body²⁵. The payer obligation is to calculate, collect and pay the collected tax for the right tax body, while the tax collector duty is to collect and pay the collected tax. The tax payment can take various forms. In the literature there are specified basic (cash form) and supplementary forms of tax payment. As a cash form we can single out cash and non-cash payment. The cash payment is giving cash directly, as well as in the form of postal money order or bank money order. In turn, non-cash payment is a bank money transfer, which is made through the recording on the bank account, this record reduces means on the debtor account (the taxpayer) and adequately adds means on the creditor account (the tax body). The taxpayer can pay the tax directly in the cash-desk of the tax body or make payment on the account of the right tax authority in the bank, at the post office, in the cooperative banks or transfer the tax to the payer or tax collector. In turn, non-cash form of the tax payment is making debit on the taxpayer's bank account in the way of money transfer order²⁶. It is possible to pay tax in the cash form if there is no obligation to pay the tax in the non-cash form. In the situation when the General Tax Law does not impose the obligation of paying the tax in the non-cash form or one of the supplementary forms, the tax payment can be made in the cash form²⁷. As it is known, business entities which pay taxes in the non-cash form, can pay other taxes in the cash form. If the cash form of the tax payment is acceptable and there is no obligation to make payment in non-cash form, in this situation the cash form can be replaced with non-cash form by the taxpayer. When the tax is paid by the taxpayer on the bank account of the tax body, in the case of transferring the tax amount on this account in the bank or at the post, the crucial is the day of making payment but not a day of actual transferring of this payment on the tax authority account. However, in the case of non-cash payment, there is the reverse situation, when the taxpayer decides about the choice of the bank. Provisions of General Tax Law (art. 61 § 1) impose the non-cash form of the tax payment only for the taxpayers who are

²⁴ A. M. Dereń, *Ordynacja podatkowa po nowelizacji*, AJG Bydgoszcz 2003, OPO, p. 72.

²⁵ R. Mastalski, *op. cit.*, p. 199.

²⁶ A. M. Dereń, *op. cit.*, p. 73.

²⁷ P. Smoleń, M. Szustek-Jankowska, W. Wójtowicz, *Prawo podatkowe*, pod red. W Wójtowicz, Wyd. Branta 2000, p. 56.

business entities obliged to keep books²⁸. They are obliged to settle taxation in the form of money transfer order. Unfortunately, provisions of General Tax Law do not provide for any other form of tax payment for business entities. However, the rule of making payment in the non-cash form does not have to be applied: to payment taxes which are not related to carried out business activity; when the tax payment, according to the tax law provisions, is made with the securities (at present this form of settling accounts with tax authorities does not exist), excise duties, stamp duties or official bills of exchange; to collect taxes by the payers and the tax collectors²⁹. Business entities obliged to keep books have to settle account with the tax body using the money transfer order. However, the rest of taxpayers can, but not must, use this form of tax payment. Regardless of paying the tax with bank transfer by the taxpayer, because it is ordered by the provisions of tax law, or because it is his choice, the act does not require making the tax payment by these entities, even connected with the business activity, in the non-cash form, provisions provide for other forms of payment (i.e. excise duties, stamp duties)³⁰. There is no obligation to pay tax in the non-cash form for natural persons, legal persons or organizational entity without the legal status who use the simplified form of taxation. The provisions of tax regulations enable making payment order for the tax authorities in the electronic form, using computer software provided by the bank or other financial institutions entitled to receive payment orders³¹. If the payment is not made in due time, the obligation has not been fulfilled or has been fulfilled inadequately³². In the situation when the bank does not fulfil the debtor order, for example does not execute the money transfer order, then the interest of the creditor will not be met. The term of making cash payment is a day of direct transferring the tax amount for an entity representing fiscal interest toward taxpayer (the payer – custom authority). On the basis of Administrative Supreme Court's judgment it was stated that cannot taxpayer can't bear responsibility for disturbance in transferring payments which was paid in cash on the right bank account of the payer by the taxpayer³³.

²⁸ Act of 29 August, 1997 – General Tax Law (Dz. U. of 2005, no 8, item 60).

²⁹ M. Staniszewski, *op. cit.*, p. 113.

³⁰ A. Olesińska, *op. cit.*, p. 54.

³¹ S. Babiarz, B. Deuter, B. Gruszyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *op. cit.*, p. 221.

³² R. Mastalski, *op. cit.*, p. 200.

³³ Judgment of Administrative Supreme Court of 3 October, 2002, sygn. I SA/Po 207/01, unpublished.

The date of the tax payment by the payer or the tax collector is the day of tax collection by the one of these entities. Receiving by the creditor all financial means in due time is equivalent to fulfilment of tax obligation by the debtor³⁴. In the situation when the tax obligation arised by the issue and delivery of the decision fixing the amount of the tax payment, this tax should be payed within 14 days from the date of this decision delivery to the taxpayer. The date of payment may also be specified for given date³⁵. If the provisions of tax law determine the term of tax payment, tax pre-payment or tax part payment for a given date and decision fixing the amount of tax has not been delivered at least 14 days before the term of tax payment, first tax pre-payment or first tax part payment, the 14 days time is obligatory. Presenting the issue of payment dates it should be noted that in accordance with art. 12 §5 of General Tax Law, if the last day of time is being due on a Saturday or on the day legally free from work, for the last day of time is considered the next day after the day or days free from work³⁶. The tax payment deadlines as well as some other time limits may be extended by the regulation of the Finance Minister. The Minister may, by the regulation, in view of public interest, extend the time limits provided for in provisions of tax law, including the time limits of the tax payment³⁷. Article 62 §1 of General Tax Law includes rules which are obligatory for taking into account payments made by the taxpayer on the account of tax body in a situation when the payment amount is not sufficient to cover all liabilities of the taxpayer³⁸. If tax liabilities of various taxes rest with taxpayer, it means that it is a debtor in several obligatory relations and the payment made is not sufficient to cover all of them and the taxpayer is not able to indicate which liability he wants to pay for. If he does not, then the tax authority will count the payment made for the cover of the tax, tax pre-payment, tax part payment or tax arrears, starting from the liability with the earliest payment date³⁹. Anyway, in the situation when the taxpayer is a debtor in several obligatory relations and the payment made does not cover all liabilities, he is obliged to indicate which liability the payment is made for⁴⁰. Art. 62 §2 of General Tax Law is determining cases when the tax or the tax arrears may be paid in

³⁴ E. Jankowski, *Formy zabezpieczenia zobowiązań podatkowych*, ABC, Warszawa 1999, p. 21.

³⁵ A. Olesińska, *op. cit.*, p. 56.

³⁶ K. Koperkiewicz-Mordel, W. Nykiel, W. Chróścielewski, *op. cit.*, p. 33.

³⁷ A. Olesińska, *op. cit.*, p. 46.

³⁸ S. Babiarz, B. Deuter, B. Gruszyński, R. Hauser, A. Kabat, M. Niezgódka-Medek, *op. cit.*, p. 224.

³⁹ S. Dolata, *op. cit.*, p. 179.

⁴⁰ A. Gomułowicz, J. Małecki, *op. cit.*, p. 327.

installment, then the payment made is counted for the installment with the earliest payment date. These rules of payments assigning can be applied also to payments made by payers, tax collectors, legal successors and other persons⁴¹.

It should be underlined that full economic integration requires to regard taxes as important factor of integration processes, because the Member States of the EU are tax countries, i.e. states whose budget revenue comes, above all, from the taxation, and therefore it is worth to adapt the Polish tax system to the EU standards⁴². It is known that tax systems of EU's Member States are strongly diversified because of their individual ways of development formed by different history of the state, civilization development, culture, systems of values, the social and economic policies which are defining current financial needs of the state⁴³.

Harmonization is needed when differences in systems of individual countries cause that decisions made by one or a few countries may influence also other states⁴⁴. Taxes harmonization is a process which results in unification of various countries' tax systems. The aim of this process is to lead to such a state that tax issues in the EU do not affect the flow of goods, services and production factors between these countries. This is the process which aims to reconcile tax systems of various countries, as well as to match the functioning of these systems to the EU economic purposes⁴⁵.

Moreover, it should be added that the harmonization of indirect taxes in the European Union is strictly connected to the concept of the common market. To introduce this concept there must be fulfilled, above all, a condition of equal rights of every market participant, that is every entity from any member state⁴⁶. Due to the fact that these entities are competing mainly with price, factors affecting the price should be similar in all member states. Taking into consideration the fact that indirect taxes are price-determining taxes, therefore their harmonization is very important from the point of view of forming the common market⁴⁷. Both the VAT and the excise tax are increasing the price of goods and in consequence are burdening the final consumer. Entities operating in the countries with

⁴¹ Act of 29 August, 1997 – General Tax Law, (Dz. U. of 2005, no 8, item 60), art. 62 §5.

⁴² S. Owskiak, *op. cit.*, p. 68 and the following.

⁴³ *Ibidem*.

⁴⁴ *Ibidem*.

⁴⁵ *Ibidem*.

⁴⁶ L. Oreżiak, *op. cit.*, p. 43 and the following.

⁴⁷ K. Wach, *op. cit.*, p. 54.

minimum rates of VAT and excise taxes are privileged in the comparison to entities operating in the countries with higher rates of these taxes⁴⁸.

2.2. The tax deferment and arranging installments for a payment

The date of tax payment as other time limits of tax law can be deferred. The date deferment is changing the date of tax payment for lower date than the tax law regulatory date. The tax body has the right to differing the date of tax payment and tax arrears with due interest. Deferment of payment and arranging installments for a payment also may be considered in relation to the tax pre-payment and tax installments. That deferred payment could be possible it must be complied with the following conditions: first of all the taxpayer must submit an application; secondly the tax authority must determine the importance of taxpayer or public interest. There is also a third condition, but in relation to taxes which are income of local authorities and collected by the tax bodies, there is necessary the consent of local government chairman. The first two conditions have a general nature, because they relate to all taxes. But this last condition is specific, it refers to a certain group of taxes. In turn the first and last condition are formal, and the second is substantive⁴⁹. For deferment of the tax payment may apply taxpayer, payer, tax collector, successor of taxpayer or payer, as well as other persons responsible for taxpayer debts. The entity interested in getting tax payment relief should demonstrate initiative and make due application to the tax body, even before the date of tax payment. It is considered that the taxpayer's application should be made before the due date of tax payment, because it is not used to defer the date which has already passed⁵⁰. In the case, where it will not be possible to defer tax payment date, it is also possible to apply for arranging installments for a payment. An application for the deferment must meet requirements included in the art. 168 of General Tax Law. On the day of application delivery to the tax authority proceedings in this case is launched. The application must specify the type of relief in tax payment that the taxpayer is applying, for example whether it is to be deferred payment or arrangement installments for tax payment or tax arrears. It is also important that the applicant has identified the tax relief which he would like to receive, or in the case of deferment, specified the date of this deferment and in the case of installments arrangement there should be specified the number of installments, their amount, as well as dates of

⁴⁸ *Ibid.*, s. 58.

⁴⁹ P. Smoleń, M. Szustek-Jankowska, W. Wójtowicz, *op. cit.*, p. 52.

⁵⁰ A. Olesińska, *op. cit.*, p. 46.

installments payments. It is worth to mention the Administrative Supreme Court's judgment, where the court stressed that taking into account the taxpayer application for arranging installments for tax payment or arrears payment, in principle does not obligate the tax body to arrange installments for tax payment (tax arrears) for such a number as taxpayer suggests⁵¹. In any case, the tax body should accurately analyze the taxpayer material status in order to arrange installments for tax payment (tax arrears) in such a number which would be possible to be paid by taxpayer in his current financial situation. The application should include a proposal of case resolution, because the decision must strictly define new time limits for payment; there is not possible deferral without defining time limits, it means later "completion" of time limits by the tax authority. In a situation when the taxpayer fails to make payment till the differed date, the date of tax payment (tax pre-payment, tax part payment) is again original date, resulting from decision fixing tax liability amount or legislation⁵². The tax authority may defer the date of tax payment only on the taxpayer application and only in cases justified by an important interest of taxpayer. In accordance with art. 48 §1 of General Tax Law, the tax authority on the taxpayer application, in cases of reasonable taxpayer important interests or public interest may defer the time limits provided for in the provisions of tax law. Condition of the taxpayer important interest relates specifically to his situation. In the Administrative Supreme Court's opinion the important interest of taxpayer does not oblige the tax authority to issue positive decision⁵³. During one month and in the complicated cases (within two months) the reply from the tax body should be received, it means decision giving consent for later tax liability payment or decision refusing deferment. In the second case there may be made appeal to Fiscal Chamber.

In accordance with the art. 57 §1 of General Tax Law, in decisions on differing payment dates or arranging installments for tax payment which are income of the state budget, the tax body fix the prolongation charge. The rate of prolongation charge is 50% of arrear interest rate. The Municipal Council, District Council, as well as Province Sejm may introduce prolongation charge at a level not higher than that established for the State taxes on the ground of arranging installments or differing tax payment date which are income of municipality, district or

⁵¹ Judgment of Administrative Supreme Court 24 April 2001, sygn. akt I SA/Ka 481/00, unpublished.

⁵² K. Koperkiewicz-Mordel, W. Nykiel, W. Chróścielewski, *op. cit.*, p. 34.

⁵³ Judgment of the Administrative Supreme Court of 11 September, 1996, sygn. SA./Ka 1543/95, Biuletyn Skarbowy Ministerstwa Finansów 1997, no 2, p. 30, published.

province⁵⁴. The prolongation charge for the tax authority is a kind of compensation for not assessed interest in relation to giving relief in payment of tax liabilities in the form of arranging installments for the tax payment or the tax arrears, deferment tax payment dates, as well as deferment tax arrears payment for taxpayer. Tax provisions provide exemptions from the prolongation charge. The prolongation charge shall not be fixed in the case of natural disaster or emergency⁵⁵. The tax body may abandon the prolongation charge in the case of reorganization proceedings or on the ground of other acts. Provisions of General Tax Law regulating the prolongation charge can be also applied to arranged installments for tax liabilities of payers, tax collectors, legal successors and other persons⁵⁶. The prolongation charge is assessed from the next day after the tax payment deadline till the application date (and only till this date). The consequence of such “return” is an obligation to pay interest on arrears instead of prolongation charge; it is because the installment becomes into arrear⁵⁷. In this situation the taxpayer who had to pay interest on delayed payments for the period after issuing decision had to pay only prolongation charge which is 50% rate of interest on the arrear. General Tax Law provides for possibility of prolongation charge redemption, however, this possibility is not available for payers.

Tax, which has not been paid in due time becomes the tax arrears, by General Tax Law. In accordance with the position of the Administrative Supreme Court arising of tax arrears is the only simple consequence of tax payment delay. It arises automatically and irrespective of the reason for payment’s delay⁵⁸. The tax debtor fault or innocence has any meaning only on the ground of applying provisions of the fiscal penal code⁵⁹. General Tax Law’s Provisions also provide for category of equalized amounts with tax arrears which are, among others: inflated and returned for taxpayer tax excess payment (similar effect has including tax excess for a tax arrears, as well as current or future tax obligations), uncollectible or inflated tax rebate unless the taxpayer proves that it was not his fault. The tax arrears can be executive inquired by applying measures provided for the act on executive proceeding in the administration, for example by seizure

⁵⁴ A. Majchrzycka-Guzowska, *Finanse i prawo finansowe*, Wyd. PWN, Warszawa 1995, p. 205.

⁵⁵ M. Staniszewski, *op. cit.*, p. 109.

⁵⁶ R. Mastalski, *op. cit.*, p. 202.

⁵⁷ P. Smoleń, M. Szustek-Janowska, W. Wójtowicz, *op. cit.*, p. 54.

⁵⁸ Judgment of the Administrative Supreme Court of 23 January, 1985, sygn. SA./Lu 282/85, unpublished.

⁵⁹ A. Olesińska, *op. cit.*, p. 50.

and sale of movables⁶⁰. There are calculated and collected interests on payment delaying from tax arrears⁶¹. In accordance with the art. 53 §1 and §2 of General Tax Law there are calculated interests on the tax arrears, as well as amounts due treated equal with tax arrears and unpaid tax pre-payment in due time. Similarly interest is being collected from amounts equated with arrears. The interest on tax obligations are a form of penalty for the taxpayer for delayed payment of the budget liabilities, while persistent evasion from taxpaying or other obligations which are treated as tax liabilities in accordance with provisions, may cause imposing additional criminal sanctions (for the offence or even crime).

Until 31 December, 2005 interest on arrears was counted to full ten groszy. And since 1 January, 2006 interest on arrears has been already counted as full one zloty, in such a way that ends of amounts less than 50 groszy are skipped and the end of amounts ranging between 50 and 99 groszy is counted as full 1 zloty. Anyway, the interest on arrears was the same (11.5%) in both described years. The amount of interest on delayed payment depends on the interest rate, amount of tax arrears and time. General Tax Law does not determine directly the rate of interest, but in relation to the amount of basic lombard credit interest rate⁶². In accordance with the position of the Administrative Supreme Court, after 1st January, 1998 the amount of interest on tax arrears was 200% of basic lombard credit interest rate which is fixed by the Monetary Policy Council⁶³. Any change in the interest rate is announced by the Minister of Finance. The Minister of Finance announces, by notice, the interest rate on arrears in the Official Journal of the Republic of Poland "Monitor Polski"⁶⁴. Since 1st February, 2006 the interest rate on tax arrears is 11.5% of the annual basis. The interest rate on the tax arrears for previous years itself presents as follows:

According to the Minister of Finance Regulation from 22 August, 2005 on counting interest on delayed payment and prolongation charge as well as the range of information included in the accountancy, interest is determined according to the formula: $Kz \times L \times O / 365 = On$, where each symbol and number means Kz – arrear amount, L – number of delay days, O – interest rate for delay on the

⁶⁰ M. Staniszewski, *op. cit.*, p. 100.

⁶¹ P. Smoleń, M. Szustek-Janowska, W. Wójtowicz, *op. cit.*, p. 55.

⁶² A. Olesińska, *op. cit.*, p. 51.

⁶³ Judgment of the Administrative Supreme Court of 4 March, 2003, sygn. akt III SA 1996/01, unpublished.

⁶⁴ K. Koperkiewicz-Mordel, W. Nykiel, W. Chróścielewski, *op. cit.*, p. 35.

Table 1. The interest rate on the tax arrears for 2004, 2005, 2006 and 2007

Date of the obligatory rate »since«	Interest rate on tax obligations on annual basis
1 July 2004	14.50%
29 July 2004	15%
26 August 2004	16%
31 March 2005	15%
28 April 2005	14%
30 June 2005	13%
28 July 2005	12.50%
1 September 2005	12%
1 February 2006	11.5%
1 March 2006	11%
1 March 2007	11.5%

Source: Own work on the basis of the Minister of Finance's data

annual basis, 365 – number of days in a year, On – arrear amount⁶⁵. While counting the amount of arrear according to this formula, it should be kept in mind that in the case when the tax payment falls on Saturday, the interest on arrear can be calculated only from the next day after the first working day since Saturday, it means from Tuesday, if the payment has not been done on Monday.

Conclusion

Every entity of tax–legal relationship should know its obligations as well as rights. The purpose of the article is describing duties related to the fulfilment of tax obligations which are entitled to entities of the tax–legal relationship. There is presented the role of the tax organ whose task is enforcing these obligations. Failure to perform obligations by these entities has certain consequences. Therefore, in order to avoid them, every entity should treat one's own duties seriously. Otherwise the tax office is able to punish them in the case of failing to perform these tax obligations.

⁶⁵ Minister of Finance Regulation from 22 August, 2005 on counting interest on delayed payment and prolongation charge as well as the range of information included in the accountancy, (Dz. U. no 165, item 1373).

Taking into account the fact that in the complicated, sometimes even abstract, tax and legal relations, the central and fundamental obligation is duty of taxes payment, entities obliged for this payment are called tax debtors. It is possible to state that this fact results from obligation to pay taxes⁶⁶. Therefore, calling the obliged entities the tax debtors is justified, as well as calling the entity obliged to tax payment the tax debtor closely corresponds to its linguistic meaning and social consciousness. It should be underlined that there are also other terms used for describing the entity first of all obligated in the tax and legal relation. There are such notions as “tax entity”, “taxpayer” or mentioned above “tax debtor”⁶⁷, which are commonly used interchangeably in the literature. However, at the level of the tax obligation all these three notions in fact refer to the same “entity”⁶⁸, but it is necessary to distinguish them. The notion of tax entity basically is used in two meanings: as the determined structure of the positive law and as the financial and legal institution (or tax and legal). In the positive law (that is in provisions of the fiscal law) the tax entity is the entity (an unit of social life) determined in the hypothesis of the legal norm, where this norm is imposing the obligation of the tax payment to this entity⁶⁹. At the same time the fiscal acts do not use the notion of tax entity, there is used first of all the notion “taxpayer”⁷⁰.

Bibliography

Literature

- Babiarz S., Deuter B., Gruszyński B., Hauser R., Kabat A., Niezgódka-Medek M., *Ordynacja podatkowa – komentarz*, Wyd. LexisNexis, Warszawa 2005.
- Dereń A. M., *Ordynacja podatkowa po nowelizacji*, AJG Bydgoszcz 2003.
- Gomułowicz A., Małecki J., *Podatki i prawo podatkowe*, Wyd. LexisNexis, Warszawa 2004.
- Jankowski E., *Formy zabezpieczenia zobowiązań podatkowych*, ABC, Warszawa 1999.
- Kamieńska A., *Wygaśnięcie zobowiązania osoby trzeciej nie prowadzi do wygaśnięcia zobowiązania podatnika*, „Monitor Podatkowy” 1999, nr 9.

⁶⁶ A. Kostecki, *Elementy konstrukcji instytucji podatku*, [w:] *System instytucji prawno-finansowych PRL*, t. III, M. Weralski (red.), Wrocław 1985, p. 158.

⁶⁷ P. Borszowski, *Podmioty stosunku prawnego zobowiązania podatkowego*, Głosa 2000, nr 6, p. 4.

⁶⁸ Idem, *Elementy stosunku prawnego zobowiązania podatkowego*, Zakamycze 2004, p. 56.

⁶⁹ M. Kalinowski, *Podmiotowość podatkowa a ordynacja podatkowa*, [w:] B. Brzeziński, C. Kosikowski (red.), *Ordynacja podatkowa. Studia*, Toruń 1999, p. 95.

⁷⁰ H. Litwińczuk (red.), *Prawo podatkowe przedsiębiorców*, t. 1, P. Karwat, H. Litwińczuk, Wolters Kluwer Polska, 2008, p. 19.

- Koperkiewicz-Mordel K., Nykiel W., Chróścielewski W., *Polskie prawo podatkowe*, Wyd. Difin, Warszawa 2003.
- Majchrzycka-Guzowska A., *Finanse i prawo finansowe*, Wyd. PWN, Warszawa 1995.
- Mastalski R., *Prawo podatkowe*, Wyd. C. H. Beck, Warszawa 2004.
- Ofiarski Z., *Prawo podatkowe*, Wyd. C.H. Beck, Warszawa 2006.
- Olesińska A., *Prawo podatkowe*, Wyd. Toruń 2004.
- Smoleń P., Szustek-Jankowska M., Wójtowicz W., *Prawo podatkowe*, pod red. W. Wójtowicz, Wyd. Branta 2000.
- Staniszewski M., *Ordynacja podatkowa dla studentów i praktyków*, Wyd. Wyższej Szkoły Bankowej, Poznań 2002.
- Waloński R., *System podatkowy w Polsce*, Wyd. Zakamycze 2004.

Legal acts

- Act of 29 August, 1997 – General Tax Law, (Dz. U. of 2005, no 8, item 60 ze), art. 62 § 5;
- Minister of Finance Regulation from 22 August 2005 on counting interest on delayed payment and prolongation charge as well as the range of information included in the accountancy, (Dz. U. no 165, item 1373).

Other sources

- Judgment of Administrative Supreme Court of 23 January 1985, sygn. SA./Lu 282/85, unpublished;
- Judgment of Administrative Supreme Court of 25 November 1992, sygn. SA/Kr 1838/92, unpublished;
- Judgment of Administrative Supreme Court of 11 September 1996, sygn. SA./Ka 1543/95, Biuletyn Skarbowy Ministerstwa Finansów 1997, no 2, p. 30, published;
- Judgment of Administrative Supreme Court of 24 April 2001, sygn. akt I SA/Ka 481/00, unpublished;
- Judgment of Administrative Supreme Court of 3 October 2002, sygn. I SA/Po 207/01, unpublished;
- Judgment of Administrative Supreme Court of 4 March 2003, sygn. akt III SA 1996/01, unpublished.

Dostosowanie obowiązków stron stosunku podatkowoprawnego w Polsce do standardów Unii Europejskiej – wybrane problemy

Każdy podmiot stosunku podatkowoprawnego powinien znać zarówno swoje obowiązki, jak i prawa. Za cel artykułu postawiono obowiązki, jakie spoczywają na podmiotach stosunku podatkowoprawnego, związanych z wykonaniem zobowiązań podatkowych. Ukazano w nim rolę organu podatkowego, którego zadaniem jest te obowiązki egzekwować. Niewykonywanie obowiązków przez te podmioty pociąga za sobą pewne konsekwencje. Stąd też, aby ich uniknąć, każdy podmiot powinien traktować swoje obowiązki poważnie. W przeciwnym razie urząd skarbowy może wymierzyć kary za niewywiązanie się ze wspomnianych obowiązków podatkowych.