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PUBLIC INTEREST AS A PREREQUISITE FOR REMISSION OF TAX OBLIGATIONS

The law of the 29th August 1997 Tax Regulations (1; hereafter: regulations) stipulates a few simplifications, following the example of the law of the 19th December 1980 about tax obligations (2), taking into account, however, the term from chapter 7a – "of tax allowance in the repayment of tax obligations". The expression used in the heading of the chapter constitutes a novelty in relation to the regulations binding before the date of coming into force of the amending of the regulations of the 30th June, 2005 – i.e. before the 1st September 2005 (3,4, p. 461). The regulations of the article 67a inserted in that chapter as well as the regulations that follow, should not thus be associated with the term "allowance' in the sense imposed to it by the regulation of the article 3, pt 6 of the law. "Repayment", of which it is said in the name of the chapter, if to seek for similarities, is rather closer to regulations included in the regulations of the article 204, paragraph 1, as well as 210, paragraph 5, sentence two of the regulations (4, p. 462).

Wording of the regulation of the article 67a, paragraph 1 of the regulations justifies, however, the statement, that the objective allowance are legal solutions introduced with that regulation,the use of which results in either a shift in time of tax payment in relation to the generally binding final date for performance or an extinction of the obligation together with possible default interests (4, p. 462).

The content of the appointed regulation allows to quantify the following simplifications in the repayment of tax obligations:

- adjournment of the final date of tax performance
- allowing tax to be paid by instalments
- adjournment of the payment of tax arrears together with interests for delay
- allowing tax arrears to be paid by instalments together with interests for delay
- adjournment of payment of interests stated in the decision,of which it is said in article 53a of the regulations, or allowing the payment of them to be paid by instalments,
- remission of the total or a part of the tax arrears, together with the interests for delay
- remission of the total or a part of interests for delay which are specified in the decision, of which it is said in article 53a of the regulations,
- remission of the total or a part of the prolongation fee.

Not going into details of an analysis of the core and legal tax consequences of the legal solutions in question, which would surpass the frames of issues within the subject of the present work, it is necessary to agree with the view determined in the literature on the subject, that there is a common feature for that type of solutions. Namely, they all cause modification of the individual situation of a taxpayer regards the realization of tax obligation (as well as the other subjects, obliged to pay tax i.e. taxpayers, collec-

tors, successors in right, heirs and third parties) in such way that it diverges from general rules of tax obligations performance (4, p. 462), with the reservation, however, that the remission does not lead to discharging the tax (delay interests prolongation fee), but causes its expiration. From the point of view of the regulation of the article 59 of the regulations such consequence allows to qualify remission as one of the ineffective ways of expiration of tax obligations (5, p. 309).

It is the legal prerequisites which also make the mentioned forms of tax allowance similar and with the prerequisites occurrence, the legislator associates the opportunity of their application, after depositing a formal motion by the obligated person (with the exclusion of remissions applied officially – article 67d of the regulations).

On the ground of the binding wording of the regulations – article 67a paragraph 1, the prerequisites take one of two forms: "the existence of an important interest of a taxpayer" or "the existence of a public interest" – article 22 (6). At this point, it should be noticed,that also the regulations of the law about tax obligations, in the article 31 provided for a possibility of remission of tax arrears as well as the interests for delay, referring to general prerequisites. The remission was thus admissible on the basis of the decision of the tax organ in economically" or "socially" justified cases. The lack of "clarity" in formulating the contents of the mentioned prerequisites forced their quantification in the process of investigating every individual motion (7, p. 47; 8, p. 29).

The subject of considerations taken up in the present work is the second of the mentioned prerequisites the one justifying the application of allowance in the form of remission, i.e. "the existence of public interest". At least, a few arguments weigh in favor of the advisability of undertaking an analysis of the issue. One of the most important of them is the fact, that the institution of remission constitutes a unique reproduction of institution applied in the legal and civil turnover – amortization of a debt (9, p. 71). Moreover, as it has been signalized above, it differs from the remaining reductions,determined by the regulation of the article 67a as well the legal solution introduced by the article 22 of the regulations in the consequence of application,i.e. it is not going to ensure payment of tax performance, i.e. its effective performance, but results in the extinction of debt,though its emergence constitutes the consequence of proper application of the regulations of tax law – articles 51 and 57 of the regulations.

The editing of the regulation of the article 67a paragraph 1 seems to convince also, that the aim of the legislator was to introduce a rule, that the tax organ, making decisions about the remission or rejection of the remission should take into consideration the taxpayer interest, the public interest or both prerequisites inclusively (5, p. 255). This, however might raise a doubt, if the subject regulation does not introduce simultaneously "a competition of prerequisites" preferring one of them. For instance, does the editing of the regulation not justify the statement, that the tax organs, settling motions for remissions. ought not to refer to the prerequisites of an important taxpayer interest only when it does not collide with the public interest.

In the opinion of the author such a view does not find any bases because the linguistic interpretation of the regulation weighs against it, particularly the use of the legislator of the expression "or". Such an argumentation finds support in the literature on the subject, though it should be underlined, that the attributing by the tax organ more importance to public interest in a concrete case can not be excluded, however it should always be unequivocal and convincingly justified (4, p. 471; 10; 11, p. 2).

On the other hand, the semantic areas attributed to the legal prerequisites for remission must lead to a conclusion, that there are serious differences in between them. The most important one constitutes the consequence of the fact that the taxpayer interest is always an individual interest and is limited only to the taxpayer himself. Public interest is a general interest i.e. regards financial situation of a greater group of subjects (12, p. 25).

Decisions of tax organs regards remission or refusal of remission of tax arrears, interests for delay as well as prolongation fees similarly to decisions regards the remaining allowance in tax obligations payment refer to "administrative approval". This signifies, that in the cases of procedures including the participation of these organs, they have at their disposal the possibility of making a choice of legal consequences of the ensuing situation (the found actual state), to which the legal tax norm hypothesis is referred to (4, p. 464).

It should be underlined, that, yet on the ground of the appointed regulation of the article 31 of the law about tax obligations, the vagueness of the lawyers' language regarding the determination of the prerequisites for remission, was justified with the necessity of leaving the tax organ applying the law, a specific " interpretation space". In practice, that was to mean, that in a particular situation the organ was equipped with a possibility of taking into account the specificity of a given case for the aim of settling, but also determined about the fact that, the legislator, using vague notions shifted the burden and the right to make a decision onto the organ. Assumed in advance, a positive evaluation of such practice constituted in turn a consequence of the assumption that, the vagueness of prerequisites should foster the adaptation of law to changing evaluations, referring to particular cases, without the necessity of changes of the binding law (13, p. 163; 14, p. 3).

The basic conclusion, which is suggested by contents of the regulations of article 67a, paragraph 1 of the regulations and the article 31 of the law about tax obligations, leads to a statement, that the tax organ, settling in the case of remission is not obliged to its approval. However, the evaluation made by the tax organ,regards both the question whether there were any legal prerequisites and what their impact on the range of the settled allowance was (total or partial remission). The evaluation is based on the elements of "fairness " nature, getting out of control of the administrative courts (15, p. 274). This position is unanimous with the position of judicature, who generally represents the opinion, that the administrative discretion is not expressed in the freedom of evaluation of existence in actual state of the case, the circumstances corresponding the contents of legal prerequisites, but in the possibility of the settlement of the case, negative for the obligated person, even when there was an important taxpayer interest or a public interest (16; 17, pos. 31; 18, p. 14; 19; 20, p. 47).

The presented view does not signify, obviously, that the administrative discretion on the basis of which the tax organs settle the case, has an unlimited character. Such a view would be in a striking discrepancy with the article 120 of the regulations creating the rule of transparency, but also with the rule of trust for the tax organs as well as convincing the parties – article 121 and 124 of the regulations (21, p. 246; 22, p. 25). In this respect, one should rather concur to the opinion of B. Rutkowski according to whom, the regulations of tax law are resolved by competences of tax organs in a two way manner, i.e. within binding, when the legal norm determines unequivocally the legal consequences of the actual state, forcing an undertaking of activities, as well as,

when the regulations let the tax organs make a choice. Even, however in the latter case the range of competences reserved for tax organs should not be too wide due to the character of tax law (23, p. 27).

The vagueness of the prerequisite " public interest" extorts a multidimensional view of the institution, all the more, that beyond the argument there is its complex character and the way of the interpretation of this prerequisite should be adjusted to circumstances, with the occurrence of which their application is connected (24, p. 701). The ambiguity of the notion " public interest" constitutes the consequence of the fact that, it is frequently associated with national interest, state interest, social or legal interest (25, p. 13).

Summing up that part of considerations, there should be regarded as extremely accurate the view of E. Modliński (26, p. 2), that " public interest" constitutes itself an ambiguous notion and one that is not to be defined by concretes, which fills itself with contents only by juxtaposition with the law of an individual, as a substitute of any community.

A range of concepts differing from one another have been formulated in polish science whose aim is to explain the core of "public interest". And so for instance M. Wyrzykowski believes that it signifies certain tendency towards achieving particular targets, which are to be achieved by the society (27, p. 2 and the next). According to E. Smoktunowicz signifies all that is accordance with law, and which is beneficial for the society as a whole (28, p. 8). Moreover according to J. Łętowski there can not be any public interest, understood as a constant, and depends on the conclusion resulting from the contents of legal regulations a common project circumstances and targets which are to be achieved (29).

In the light of the above, the prerequisite in question should be, similarly to the prerequisite "an important taxpayer interest", treated as a general clause (27, p. 52; 25, p. 13), within which, the tax organ, settling a motion refers also to extra-legal evaluations (30, p. 227), but according to the judicial decisions, that were made in this respect while binding of the law about tax obligations, but preserved its validity in the binding legal regime, this signifies that, the tax organ, referring to the mentioned clause, should indicate the criteria of remission, depending on the circumstances of the particular case, taking into account the moment of making decision about remission (15, p. 273; 20, p. 48). This signifies, that the tax organ basing the settlement on the fact of such prerequisite existence, and the lack of others, does not have a possibility to refer to the absolutely binding legal rules (20, p. 49), including the one, according to which, the public interest might be identified with the protection of fiscal interests of the state. As the result, the motions for the remission can not be settled only or mainly by the prism of defense of budget incomes, which does not change the fact, that this type of allowance constitutes an evident deviation from the rule of universality of tax obligation and should be treated as an exceptional solution (5, p. 247). A different treatment of such directive of proceeding in the cases of remissions,would question the rationality of legal solutions admitted in this respect by the legislator (20, p. 49).

The opinions presented above regarding the possibility of determining general rules, that influence making decisions by tax organs in the cases of remissions can not be, from an objective point of view recognized as inviolable. On the contrary, this view would undergo modification in a situation, if a doctrine or judicature were able to distinguish certain rules of evaluation, referring to values common to whole society, values, the protection and support of which would coincide with the public interest. In other words, values in so far general that, they would have a timeless character.

Directed by such criteria, one should admit, that the court judicature and the doctrine grown up on its base of the financial law have undertaken attempts to catalogue such rules. Quite basic sense in this respect should be attributed to sentences theses of the National Administrative Court of the 12th, Febr., 2003, the III rd Administrative Court 1838/01/31/ as well as of the 6th July 2005, Ist Administrative Court (Bk 134/05/20,49), according to which, the obligation of taking into account the public interest, of which it is spoken in article 67 paragraph 1 (the previous sounding art. 67a paragraph 1) of the regulations signifies the directive of proceeding obliging to have in mind respecting the values common for the whole society, such as justice, safety, trust of citizens for authority organs, ability of action of the state apparatus, or correction of wrong decisions (32, p. 240; 33, p. 148).

As it seems, the indicated directive has found its application in individual court settlements regards motions for remissions or a reproduction in views presented by some representatives of science. To the first category one might undoubtedly number the already passed judgment of the National Administrative Court of the 30th of May 2001, 3rd Administrative Court 830/00 as well as the judgment of National Administrative Court of 31st October, 2000, 3rd Administrative Court 660/99 (20, p. 49). These judicial decisions determine, thus, that " public interest" is not only the need to ensure necessary incomes to the state budget, but also limiting its possible expenses, ex. unemployment allowance, or social care aid (34).

The same group of judgments should include the thesis of the sentence of National Administrative Court of the 24th April 1999, Sa/Sz 850/98 (35; 36), according to which public interest is a situation, when the payment of tax arrears causes the necessity for the taxpayer to for the means of state aid, as he will not be able to fulfill his material needs.

Another type of value of a public character is indicated by thesis of the sentence of National Administrative Court of the 9th of June 2004, III SA 394/03 (37; 38, p. 79; 4, p. 469). Thereby, it is remarked,that in the evaluation of fact of existence or non-existence of the prerequisite of public interest there should be taken into consideration, the rule of proceeding in a way, trustworthy to tax organs. Moreover, one should also consider the ban, resulting from that rule, of loading the taxpayer with consequences of errors and mistakes made by tax organs in the procedures of application of regulations of tax law.

The last of the mentioned factual states has also been perceived by the doctrine, particularly in the shape of the expressed opinion, that the prerequisites of an important interest of taxpayer and public interest occur in situations when the taxpayer adjusted his activities to the contents of tax interpretations issued by appropriate organs in the course of article 14 and the following of the regulations (5, p. 255).

Discussing the point of view of the doctrine regards the application of the prerequisite of public interest as an element of evaluation conditioning the remission of tax obligation there should be underlined the view presented by A.Bartosiewicz and R.Kubacki. Both authors, on the basis of judgment, passed by National Administrative Court, of 16th January 2007, I FSK 477/06 derived and justified the thesis, that public interest can be found also in behaviors aiming at ensuring protection and promotion of rules included in the Constitution of the Republic of Poland (39). Beyond argument is thus the fact, that in a democratic state of law every attempt of realization of constitutional values lies in the public interests. Thus, applying by the tax organ, the competences reserved to it in such a way which might cause the realization of constitutional values by taxpayers themselves, lies in the public interest (20, p. 49).

CONCLUSIONS

Summing up the considerations contained in the present work, it is necessary to admit, that the use of "public interest" as one of the legal prerequisites of the application of allowance in tax obligations payment is justified. This does not change the fact, however, that the prerequisite due to its character is exceptionally ambiguous and not submissive to the attempts of defining. Its application in a considerate and rational way is thus possible only by concretization of individual cases, taking into account simultaneously, the directional targets and values governing the process of tax law application (40, p. 15).

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