
TAX ORDINANCE. THE ASSUMPTIONS OF A NEW REGULATION

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I. GENERAL ISSUES

The currently binding Tax Ordinance came into force on 1st January, 1998 and since then it has been amended several times. Numerous alterations show that the content of this document has had to be frequently adjusted in many areas to ever changing conditions. Despite this, it still fails to meet today's needs and standards. There are several reasons for this.

One of them, which is a basic one, is more and more apparent need to create in the Ordinance such mechanisms that would assure the balance between the public interest and taxpayers' interest. Justifiable claims to increase the protection of a taxpayer's position in the relations with tax service are commonly postulated. Such a delicate matter as tax must be solved not only with due respect paid to

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taxpayers' rights but also the State's interest, i.e., put simply, the organization financed by all taxpayers, the fact which is frequently forgotten. The currently binding Tax Ordinance lacks institutions characteristic of the 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 better understanding and applying of tax provisions contained not only in Tax Ordinance.

Moreover, 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 perceived negatively by the society.

The new Tax Ordinance must embrace an enormous amount of the existing case-law of administrative courts on tax matters. Its impact on the application of law is more than significant. However, not all interpretative doubts could be successfully dispelled this way. Passing a new law will enable their full and definite elimination.

Another reason for commencing works on the new Act is the fact that the meaning of some solutions has changed due to numerous amendments, which hampers the application of this Act. It is now no longer sufficient to know 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 multiple changes thereto and be aware of the fact what unexpected results they have sometimes evoked.

Another fact for passing a new Act is that the currently binding Tax Ordinance lacks institutions existing in most modern acts of this type. An example thereof may be the clause against tax evasion, or regulations on soft forms of tax disputes' settlements not only within tax proceedings (mediations and agreements).

One of the factors mandating legal changes is the need of more and more common use of means of electronic communication to contact a taxpayer. This issue requires to be comprehensively and systematically regulated, which is not possible in the course of continuous amendments of the provisions.

Poland's accession to the EU, development of technology as well as phenomena and processes that are subject to tax law are the cause of objective expiry of the solutions adopted in Tax Ordinance several years ago. The legislator attempted to prevent this by implementing successive amendments thereto, sometimes very extensive. Such a continually amended Ordinance has lost its original structure, which has not been free of defects as well. It has become clear now that the possibilities of improving and updating Tax Ordinance in the course of further amendments have been exhausted.

What is more, 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.

Drafting the new Act, it is worth using such legal solutions elaborated during years of validity and enhancement of the Tax Ordinance of 1997 that have worked. It should be remembered, however, that a legislative task no longer aims at the correction of the old Tax Ordinance but the creation of a new one that would be devoid of its predecessor's weaknesses.

General Taxation Law Codification Committee (GTLCC) has been appointed to prepare a draft of a new Tax Ordinance. Its tasks were specified in the Council of Ministers' Regulation of 21st October, 2014 on the creation, organization and operation of General Taxation Law Codification Committee (Journal of Laws of 2014, item 1471). Pursuant to § 8 thereof, the Committee's tasks embrace: preparation, within 4 months from their first meeting, assumptions of a comprehensive statutory regulation of general tax law as well as preparation, within 2 years from the day of adopting the assumptions, a draft bill containing comprehensive provisions on general tax law together with implementing acts. The purpose of GTLCC is regulation (clearing up) tax law's general part in the form of a new legal act titled "Tax Ordinance". It is a form of the so called partial codification of tax law.

Regulations contained in the new Tax Ordinance are to fulfill two fundamental objectives:

- 1) protect taxpayers' rights during tax obligations' fulfillment, and
- 2) increase efficiency and efficacy of tax obligations' fulfillment.

The first objective will be accomplished, among others, through mitigation of excessive rigor of Tax Ordinance with regard to taxpayers. Legal mechanisms protecting taxpayers' position in their contact with tax administration should be introduced to the new Act. Regulations contained therein should be based on the presumption that a taxpayer is a reliable person who does not consciously aim at tax law violation.

The second fundamental purpose of the new Tax Ordinance is an increase in the efficiency and efficacy of tax obligations' fulfillment. Tax Laws, including Tax Ordinance as well, should serve the acquirement of tax. Greater efficiency of tax authorities, however, cannot entail infringement of taxpayers' rights.

II. THE ASSUMPTIONS OF THE NEW TAX ORDINANCE AIMING AT THE PROTECTION OF TAXPAYERS' RIGHTS

1. The instruments of taxpayers rights' protection in the provisions of general tax law – the principles of tax law and taxpayers' rights and duties in the new Tax Ordinance's regulations

Non-equivalence between tax debtors and creditors evokes an important problem, i.e. the need to establish in the new Tax Ordinance provisions assuring protection of taxpayers' rights (as well as other entities subject to tax) as they are a weaker party to the tax law relation than a tax authority. Codification of tax law principles and development of a statutory catalogue of taxpayers' rights are to fulfill just this purpose. It should be a specific "golden means" strengthening the legal position of tax debtors in their relations with tax administration, which prevails over them both in the sphere of substantive as well as procedural tax law. Due to the matter of tax law, i.e. the fact it regulates principles determining non-equivalent and compulsory pecuniary considerations, it is not possible to develop the content of tax obligations in a soft way preserving the autonomy of the parties' will at the same time.

Taking into consideration the state of Polish tax law development as well as (or perhaps even most of all) having regard to the level of legal awareness of a Polish taxpayer and work ethos of tax administration, it seems that duplication of the German model of tax law principles' specification, i.e. reliance solely on constitutional guarantees as well as regulations of general and special tax law, is not reasonable in Poland. In Polish reality, on the other hand, it is appropriate to formulate directly, in one place of Tax Ordinance, fundamental directives affecting the content of a legal relation connecting the parties to the tax law relation. It is absolutely essential to show a tax debtor, who often lacks tax law expertise, basic rules of applying tax law provisions in a clear and legible manner. What is more, such a way of developing tax law principles was adopted in the Czech Republic, the country close to Poland both for historical and cultural reasons, where the level of tax law development, legal awareness of citizens and civil service ethics is similar. Finally, it is worth noticing that the need to include tax law principles in Tax Ordinance as well as their specific proposals have been articulated in the Polish science of tax law for a long time.

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. On the other hand, regulations on tax law-making should be left beyond the scope of tax law principles codified in the provisions of general tax law. The reason for this is the fact that the issues of lawmaking are regulated in the Polish Constitution and there is no need to repeat the norms thereof in Tax Ordinance. Moreover, the matter of general tax law justifies such the scope of tax law principles. If

Tax Ordinance does not regulate the process of lawmaking, there are no grounds to develop fundamental principles of its making in it (with reference to tax law norms). This is why tax law principles should exclusively embrace rules of tax law application that, at the same time, are fundamental norms determining the relation between a tax authority and an entity subject to tax.

The reasons accounting for the creation of a catalogue of this branch of law's principles that would be uniform and common for both substantive and procedural tax law also justify codification of taxpayers' rights and duties. Similar to tax law principles, it is essential to articulate such rights of a taxpayer that would level differences in the possibilities of operation of the parties to the legal relation and allow to improve faulty, or even oppressive operations of tax authorities. It also seems reasonable due to contemporary standards of relations between citizens and State authorities that are based on an ancillary role of the State administration towards society and the existence of a catalogue of recognized values, with regard to which citizens are entitled to legal protection. 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 interests of entities incurring the burden of its functioning (taxpayers). Nevertheless, the need to formulate a catalogue of taxpayers' rights and duties is discerned not only in the science of tax law. Organization for Economic Cooperation and Development (OECD) indicates the need to regulate this issue in individual countries. Entrepreneurs emphasize the necessity to codify taxpayers' rights too.

The introduction of tax law principles as well as the catalogue of taxpayers' rights and duties to the New Tax Ordinance is undoubtedly an innovating undertaking as these regulations do not have their "full" counterparts in existing provisions of tax law. What is more, in other legal systems, such a method of developing relations between the parties to the tax law relation is not always applied. Taking into account Polish experience as well as the state of tax law and legal awareness of Polish taxpayers, however, it seems that the introduction of these legal solutions will contribute to the appropriate development of the relation between tax debtors and creditors assuring necessary protection to the weaker subject of the tax law relation.

2. New soft forms of tax authorities' operation

2.1. General comments

New soft forms of tax authorities' operation will create the conditions to observe and apply tax law in a way that is simultaneously efficient, effective and appropriate. They will be introduced in order to support a taxpayer in the fulfillment of obligations resulting from tax law, prevent the occurrence of tax disputes and create conditions for their better settlements. They will favor joint action (cooperation) between tax authorities (employees authorized by them to act) and taxpayers.

2.2. Taxpayer's guide and support

Tax authorities are appointed to facilitate correct fulfillment of the duty to provide State authority with pecuniary means necessary to satisfy the community's needs by honest taxpayers (i.e. their decisive majority). In the new Tax Ordinance, a taxpayer will *expressis verbis* be entitled to acquire clerical (official) information from many sources and rely on it – deriving protective effects from the fact of applying it.

2.3. Consultation procedure

In the new Tax Ordinance, general consultation procedure will be regulated. Within its framework, an applicant and tax authority will make arrangements on the past or future settlements of a taxpayer. The procedure could be used upon a 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 will be made and evidentiary proceedings will be carried out. A decision issued in the procedure will be binding both a tax authority and taxpayer; it will be subject to suability. The use of the consultation procedure will, in principle, be payable.

2.4. Agreements between taxpayers and tax authorities

Tax disputes could be solved in a consensual way. Agreements between tax authorities and taxpayers will be concluded, in particular, in case of doubts as to the matter's factual state that are difficult to eliminate, on determination of the value of a taxable object, or transaction, on validity of the application of reliefs in tax payment, a kind of relief that should be applied as well as the manner of its application. The agreements will be documented by a minutes containing, among others, the scope and content of arrangements made. A tax authority will be obliged to reflect the arrangements in a tax inspection minutes, or tax decision.

The subject of an agreement will not only cover a case settlement but also detailed issues arising during tax proceedings, or tax inspection that do not decide about the settlement (e.g. the scope of evidentiary proceedings that should be carried out). The amount of tax obligation will not be subject to the agreements (directly). At the same time, the agreements could influence this amount indirectly as a derivative, for example, of factual arrangements being made.

2.5. Tax mediation

Tax mediation, i.e. the procedure of solving disputes with the participation of a third party – a mediator, 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 to a dispute (a taxpayer, or tax authority) upon agreement of the other party at any stage during the course of the proceedings. The procedure will be constructed with respect for basic rules of 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.

2.6. The program of correct settlement based on cooperation (*cooperative compliance*)

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 entities strategic for the State budget. Its essence 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 himself/herself and in the spirit of agreement and understanding for business).

The program of this kind will be maximally deformed and based on a personal obligation of decision makers in a business entity and tax authority. Participation in the program will be voluntary. The condition of the participation therein will 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.

3. Interpretations of tax law provisions

The existence of difference taxes and forms of taxation, their frequent changes, and binding EU and international law regulations contribute to increasing complexity of law and uncertainty about its content and, in consequence, its interpretation and application. It is a source of potential conflicts between the interest of taxpayers and tax administration representing the State’s fiscal interest. For these reasons, institutions of general and individual interpretations of tax law provisions introduced in the currently binding Tax Ordinance should be treated as a significant extension of the scope of protection

of taxpayers' economic rights and freedoms. Moreover, interpretations are an important and stabilizing element of solving disputes between a taxpayer and tax authority. Interpretations are one of the most vital guarantees protecting taxpayers' subjective rights. Undeniably, on the basis of interpretation, 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. For the above mentioned reasons, we should share dominant opinions on the necessity of maintenance of the solutions concerning tax law provisions' interpretations in the new Tax Ordinance and reject those in favor of their elimination.

Within the scope of the fulfillment of fundamental objectives of the new Tax Ordinance and the enhancement of guarantees resulting from binding interpretations of tax law provisions, the following concepts should be recognized expedient:

- first of all, strengthening the importance of general interpretations. Primacy of general interpretations over individual ones. Individual interpretations should be issued when general interpretation does not function in a given factual state. A possibility of quoting general interpretation in an equivalent factual state. At present, a considerable number of individual interpretations influences a lack of transparency in understanding tax law and arises doubts in its application. The adopted solution will assure elimination of divergent interpretations referring to the same factual state and the need for a multiple application for the issue of individual interpretation 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 interpretations to Supreme Administrative Court. The introduction of this kind of a solution requires a parallel change in the Act on Proceedings before Administrative Courts (Section VI of the Supreme Administrative Court's Resolution, Art. 264 § 2);
- secondly, centralization of the process of issuing interpretations. The introduction of uniform principles within this scope with regard to entirety of tax law provisions' interpretation 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 the improvement of their quality. 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 interpretations.

4. Basic terms and definitions

General tax law provisions introduce and define several terms that are fundamental for the Polish tax law, among others tax, tax obligation, tax liability, taxpayer, remitter, or collector.

Although present definitions thereof, in principle, fulfill their function well, definitions of tax obligation and tax liability require certain corrections.

5. Representation and power of attorney

A comprehensive regulation concerning the capacity to act, represent and hold power of attorney both in the substantive and procedural sphere of law will be established in the new Act.

Both the capacity to act in the sphere of natural persons' income tax and the capacity to represent legal persons and organizational units without legal personality should be developed according to appropriate regulations contained in the Civil Code through relevant reference to the provisions therein³⁷⁰. In particular, we should adopt a principle saying that the capacity to act on one's behalf is vested in natural persons having full capacity for legal actions in the meaning of civil law. Natural persons not having full capacity for legal actions, on the other hand, will be able to act solely through their statutory representatives in the meaning of civil law.

As far as legal persons' representation is concerned, Tax Ordinance should contain a reference to Art. 38 of the Civil Code according to which a legal person acts through its bodies in the manner prescribed by the law and its articles of association based on that law.

What is more, Tax Ordinance will contain comprehensive regulation of powers of attorney. It is proposed to distinguish therein three categories of powers of attorney: general, limited and for service of process.

The institution of a general power of attorney will apply to all participants of tax procedures. The appointment of a general attorney/agent will eliminate 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, which will not only limit bureaucracy in tax authorities but also simplify representation of the party by an attorney/agent.

General powers of attorney will be gathered in the electronic database called 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 attorneys/agents, as before, 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 attorney/agent for service

³⁷⁰ See Art. 34 of the Model Tax Code of International Monetary Fund (Code of the Republic of Taxastan. A Hypothetical Tax Law. Prepared by the IMF Legal Department, September 29, 2000), where it was indicated, among other, that in case of natural persons' representation, it can be a natural person acting as a representative pursuant to civil law provisions.

of process. The appointment of such an attorney/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 attorney/agent instead of the institution of a representative of an absent person. The prerequisite to appoint this kind of an attorney/agent will be an urgent case. A temporary attorney/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 attorney/agent will 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. A temporary attorney/agent would be empowered until a court appoints a guardian.

6. Discretionary reliefs

All payment reliefs should be regulated in one separate chapter of Tax Ordinance. It will embrace both the provisions on paying advance tax and tax as well as already owed tax arrears. What is more, the new Tax Ordinance provisions will cover deferred submission of a tax declaration and provisions on matters regulated in other laws than those regulating tax matter.

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 will be extended by the introduction of a possibility of tax remission, or its part in order to avoid the occurrence of tax arrears for a taxpayer as a condition of applying the relief. On the other hand, reliefs will be applied according to the principle of balance between public and taxpayers' interest using soft forms of arranging matters.

In case of tax constituting municipal revenue, the application of reliefs to pay tax should be decided solely by municipal tax authorities.

7. Limitation of tax obligations

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 consequence of several exceptions to the general rule, its guaranteeing function is impaired.

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 settlement 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 envisages 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 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 connected with the situation 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 begin to run after the lapse of the period of 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 settlement not connected with the conducted business activity. A five-year long period would refer to tax settlement connected with conducting a business activity. Thus a three-year long period of the limitation of assessment will cover taxpayers whose settlements, in principle, regard uncomplicated matters. This mechanism will concern, among others, most taxpayers subject to natural persons' income tax. It means that after the lapse of three years, 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. The new Tax Ordinance will adopt the principle according to which the right to assessment expires after the lapse of three years except situations listed enumeratively and specified during further works on the project of the new Tax Ordinance where the limitation of assessment will occur after the lapse of five years. The following cases should be covered by a five-year long period of the limitation of assessment in particular:

- tax connected with running a business activity, i.e. tax that requires keeping tax records pursuant to separate provisions (now, 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 a 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. The introduction of a shorter period does not seem justified. If the obligation results from a submitted 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 even in a longer time perspective.

The institution of tax limitation should be feasible in nature. Due to this, under the limitation of assessment, possibilities of the interruption of the course of its running should be excluded whereas its suspension should occur solely for objective reasons, not dependent on a tax authority, 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 of the suspension of limitation of assessment should not lead to the prolongation of 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 course of running should be restricted too. Under the limitation of collection, the preservation of the following prerequisites of the suspension, or interruption of the course of running 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. During further works on the new Ordinance, specified solutions which would introduce a maximum period of the prolongation of the period of limitation of collection due to the suspension, or interruption of the course of running of the limitation of collection should be prepared and introduced. At the same time, however, the issue of the impact of security of tax obligation's enforcement through holding a mortgage, or fiscal pledge upon the limitation of tax collection should be regulated. It has been decided that within this scope, a solution should be introduced

corresponding to the limitation of civil law liabilities (debts) secured by a mortgage, or pledge. Within this scope, the solution corresponding to the limitation of civil law debts secured by a mortgage, or pledge should be introduced. Consequently, the limitation of collection with regard to tax liabilities (debts) secured by a mortgage, or pledge would not violate the right of a public creditor to recover satisfaction from the encumbered asset.

8. Excess tax and tax return

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. During works on the assumptions, it was decided that it is necessary to introduce legislative solutions within the scope of cases 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 enrichment 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 bore the economic burden of the tax.

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

- we should aim at the introduction of generally the same 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 – one proceedings to confirm overpayment initiated ex officio, or upon a request should be introduced. A tax authority should, ex officio, in a possibly simplified procedure, among others without the need to initiate proceedings, confirm overpayment each time it acknowledges its existence;
- the catalogue of cases where overpayment will be returned without issuing a decision should be extended (among others, when overpayment results from a declaration, or the correction of a declaration not questioned by an authority, but also when excess payment results from 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 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 about 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. 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 a possibility of applying for the 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 Constitutional Tribunal, or Court of Justice of the European Union), or the application of law, as well as 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 within both law making and law applying. 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, e.g., 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.

9. Electronic communication

The new Act should enshrine the idea of legal environment's simplification and the creation of facilities for taxpayers, including entrepreneurs. Indicated legal mechanisms and instruments are necessary for the development of e-administration and e-economy. They confirm changes occurring in the approach of administration towards an individual. They prove 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 positive impact on digital society's development, which is particularly important in the context of such a rapid pace of progress of the surrounding world.

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.

10. The protection of tax confidentiality

The provisions on the protection of tax confidentiality must, on the one hand, assure tax authorities with efficient and effective pursuit of tax proceedings understood as widely as possible, whereas on the other hand, guarantee to taxpayers, remitters, collectors, third parties and legal successors control over obtaining, gathering and exposing data embraced by tax confidentiality.

11. Complaints and conclusions

The new Tax Ordinance will contain provisions on complaints and conclusions. Under the current legal status, Section VIII of the Code of Administrative Procedure applies thereto. Preservation of this status is unsubstantiated. It disrupts regulative uniformity of tax procedures and hampers taxpayers 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. A previous location of these provisions in another Act and failure to adjust some of them to the specificity of tax cases cause that their signaling and corrective potential remain unused.

What is more, another argument in favor of the inclusion of provisions on complaints and conclusions in Tax Ordinance is an intentional connection of this regulation with the catalogue of taxpayers' rights and duties included in the drafted Act. The complaint procedure will become an important element of the system of taxpayers rights' protection. The course of submitting complaints will be most suitable to report possible infringements of some rights (such as, e.g., the right to polite and professional treatment by civil servants).

III. ASSUMPTIONS OF THE NEW TAX ORDINANCE AIMING AT INCREASED EFFICIENCY AND EFFICACY OF TAX OBLIGATIONS' ASSESSMENT AND COLLECTION

1. Enhancement of the party's position and increased efficiency of tax proceedings – selected issues

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. This work discusses selected most important recommendations of General Taxation Law Codification Committee concerning changes in tax proceedings.

The right of a party to challenge a decision should be made feasible. The time limit to submit an appeal/complaint should be prolonged (up to thirty and fourteen days respectively). This will allow a better preparation of a party to formulate complaints against a decision/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 a month to three months.

One of the general principles of tax proceedings is the principle 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. In the first place, 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.

The contact with a taxpayer with the use of modern communication technologies should be more 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' expenditure and costs of letters service, exceeds the inflicted amount of obligation. Due to this, a tax authority should be authorized not to instigate and to discontinue proceedings initiated ex officio if the expected amount of the obligation does not exceed a specified limit of money.

We should follow the direction of standardization of motions in tax cases. Provisions on disciplinary penalties require fundamental changes.

The final part of this study signals two concepts concerning tax proceedings which Codification Committee analyzed profoundly but 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.

2. The procedure determining a market value of things and property rights

The principles determining a market value of things, which frequently exerts considerable impact on the tax base, are distinctly regulated in several laws. These laws, above all, differently regulate the term of a market value itself. According to the doctrine, the term of a market value resulting from tax laws is, to a certain extent, relative and, in consequence, may arise doubts and disputes in the process of law application.

Due to this, in the created Ordinance, it is reasonable to regulate procedures determining a market value of things for tax purposes applicable, in principle, to all taxes.

Under the procedure of determining a market value, it will first be determined, as a rule, by a taxpayer. If, however, a taxpayer does not determine the value of a thing, or the value determined by him/her does not correspond to the market value according to the initial evaluation of a tax authority, this authority will carry out the procedure aiming at the establishment of the thing's value. The procedure will determine both the principles of carrying out initial evaluation of the value and principles determining a market value of a thing when an expert is appointed to establish this value.

3. Tax authorities and their jurisdiction

3.1. State tax authorities

New provisions on tax authorities should guarantee both fundamental rights of taxpayers and, simultaneously, effective tax collection (minimization of the costs of tax authorities' operation). They should be systematized and clear for both taxpayers themselves and tax authorities.

Therefore, in relation to currently binding solutions, the new Law should include the system (structure) of tax authorities subject to Minister of Finance in the Act on Tax Administration. The solutions elaborated thereon will be taken into consideration during works on the target structure of tax authorities.

Within next years, it is also necessary to undertake legislative actions aiming at organizational and structural changes in the functioning of self-government tax authorities which will rely on the experiences of the commenced reforms of State tax administration. In the long term, it should realize the same postulates that were the basis of organizational changes of State tax authorities.

New Tax Ordinance should aim at maximum simplification of provisions concerning local jurisdiction involving wider than so far application of the same principle binding in case of all taxes collected by the authorities subordinate to Minister of Finance.

Moreover, changes within the scope of jurisdiction should embrace principles concerning the so called ossification of jurisdiction which, in consequence, means that an authority competent at the moment of launching inspection will remain competent in all issues connected with the subject of the case both in tax proceedings and other interlocutory ones, e.g. concerning security.

3.2. Self-government tax authorities

2478 municipalities whose bodies realize their own tax operate in Poland. Due to this, their expectations and needs cannot be ignored while creating a new Tax Ordinance. This issue is of particular importance also from the point of view of taxpayers because such self-government taxes as a real estate tax, agricultural, or forest tax should be realized in a possibly simple way due to their common nature.

During works on the new Tax Ordinance, it is essential to assume that all tax authorities should have similar competence (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 specified 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 seems important. 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' operation, increase their efficiency and facilitate correct fulfillment of taxpayers' obligations connected with the settlement of taxes and fees constituting self-government revenue.

4. Tax inspection

With regard to tax inspection, a legal framework should be created that will rationalize and improve this procedure and, at the same time, provide the inspected party with extensive procedural rights. Thus, it is proposed to establish a uniform and integrated procedure of tax inspection in Tax Ordinance provisions for taxpayers who, in principle, fulfill their duties, and introduce a separate regulation for more rigorous inspection procedure directed at fighting widely understood revenue offences. The current procedure of tax inspection is, on the one hand, sometimes too burdensome for most taxpayers, whereas on the other hand, too ineffective with regard to taxpayers evading paying tax. Therefore, it is important to diversify inspection procedures whereas 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 addressed to taxpayers fulfilling their tax duties should generally focus on current solutions of Tax Ordinance and Act on Freedom of Economic Activity. Presently binding provisions of Tax Ordinance and Act on Freedom of Economic Activity provide entities running a business activity with particular protection. There are no rational arguments for maintaining such diversity. We should remember, however, that specificity of tax inspection causes that not all special legal solutions included in the Act on Freedom of Economic Activity can apply directly to tax inspection, and that is why they should be regulated differently in Ordinance as it is now.

What is more, under the tax inspection procedure realized on the basis of Tax Ordinance provisions, a possibility of electronic inspection based on a standard and logical computer data allowing the exchange of information by means of electronic communication between tax authorities and taxpayers should be introduced.

On the other hand, the procedure referring to inspection aiming at fighting tax fraud and revenue offences should be contained in a separate from Tax Ordinance legal act (Law on Fiscal Inspection) and connect the elements of current solutions of Tax Ordinance, Law on Fiscal Inspection and Criminal Procedure. The legitimacy of the introduction of this procedure is confirmed by recently observed increase in tax offences, particularly within the scope of value added tax scams. These offences are particularly 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 hand, in difficult to estimate negative effects in the form of distortion of the principles of competence as well as danger of eliminating honest entrepreneurs from the market. It is purposeful to create the catalogue of cases where this procedure would be applied. It should be used, in particular, in the following cases: activity 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. Examinations

It will be reasonable to regulate examinations again separately from tax inspection in the new Tax Ordinance. Nevertheless, in principle, priority of carrying out examinations by a tax authority before launching tax inspection should be introduced simultaneously as it is assumed that examinations may lead to the verification of the amount of obligation by a taxpayer, or tax authority in the course of correction. Therefore, it will not be necessary to initiate tax inspection, or tax proceedings in this case.

It is also important to introduce procedural guarantees during their pursuit.

Fulfilling the above purpose, it is necessary to:

- extend the subjective scope of examinations;
- create an additional possibility of pursuing examinations outside a tax authority upon the taxpayer's request, which will contribute to the development of examinations as a friendly and, at the same time, effective procedure;
- establish a simplified procedure of a tax declaration correction by a tax authority if the change of the amount of tax obligation, excess payment, tax return, or the amount of loss in effect of this correction does not exceed PLN 50. This procedure would be applied when a tax authority acknowledges arithmetic errors, or apparent mistakes. It would not require any participation of a taxpayer therein thus limiting bureaucratic duties on the part of tax authorities to absolute minimum.

6. General anti-avoidance rule

One of more essential elements of the Assumptions of the New Tax Ordinance prepared by GTLCC is the project of introducing the general anti-avoidance rule (GAAR) to the Polish tax system. This regulation aims at setting a limit between tax planning and tax avoidance, sometimes called aggressive tax planning. Such a norm will establish the limits of the taxpayers' right to minimize their tax obligations.

A basic difficulty in constructing the anti-avoidance rule is that this norm should be both general and precise.

The application of this clause will, in consequence, deprive taxpayers of the tax benefit they intended to obtain, or obtained due to undertaking artificial arrangements which lacked economic justification but were undertaken for the purpose of obtaining tax benefit. On the other hand, additional financial sanctions are not envisaged (a taxpayer may, however, be obliged to pay default interest). The most vital form of the clause's impact should be prevention. The clause will embrace all State and self-government taxes except value added tax. The authority entitled exclusively to apply this rule will be

Minister of Finance. Taxpayers could request the issuance of a decision by the specially appointed consulting body independent of tax administration (a ‘GAAR consultative committee’ or ‘advisory panel’).

7. Securing tax obligation’s enforcement

The new Tax Ordinance should preserve possibilities of securing tax obligation’s enforcement by the issue and execution of the decision on collateral and property (assets) collateral (mortgage and pledge).

As far as securing tax obligation’s enforcement by the issue and execution of the decision on collateral is concerned, the principle should be preserved according to which it is possible to secure the enforcement of tax obligation both before the issue of the assessment decision and after the issue of such non-final decision. This regulation, however, must be cleared up in order to become more efficient and increase the protection of taxpayers’ rights. Future solutions will also preserve a possibility of voluntary execution of the decision on collateral through the acceptance of the collateral offered by a taxpayer (remitter) by a tax authority.

Binding regulations refer to the unclear criterion of justified fear of failure to fulfill tax obligation. An attempt should be made to complement regulations on the prerequisites of collateral through reference to more precise circumstances indicating that collateral is justified.

As far as collateral by the issue of the decision on collateral and its execution through the realization of the collateral order is concerned, its consequence is a serious intervention into the taxpayer’s assets. It is necessary to check legitimacy of such an action even in the context of redress for unlawful activities of State bodies. Therefore, we should renounce the institution of the expiry of a decision on collateral after the issue of assessment decisions in order to fully check legitimacy of the collateral both in the administrative and judicial course.

New solutions should lead to the transfer of the regulation on a technical side of securing tax obligation’s enforcement to the Law on Executive Proceedings in Administration. Regulations on the prerequisites of performing collateral and the prerequisites of the issue of a decision on collateral would then be left in the Tax Ordinance. Moreover, Tax Ordinance would regulate voluntary collateral where the manner of performing it would be left to the taxpayers’ decision. The Law on Executive Proceedings in Administration would regulate a “technical” side of performing this collateral, i.e. the issue of a collateral order and execution thereof.

8. Tax liability and succession

Tax liability and succession in the future Tax Ordinance should be based on the previous principles. Changes will regard only some areas. For instance, the principle should be established according to which a remitter is not liable (for uncollected tax) if non-collection of tax is not his/her fault. The principle should also be introduced according to which a tax authority will be able to abandon holding third parties liable in justified cases even though it is entitled to it under the law.

As far as a legal position of heirs being legal successors of the deceased taxpayer is concerned, the regulation thereon should be cleared up so that it is less casuistic (meticulous, or intricate). Certain rules should be simplified, for instance: it should not be requested that all heirs make an amicable declaration of will in order to obtain a refund of overpayment.

9. Tax declarations

The new Tax Ordinance should, above all, adopt the principle according to which the matter of tax declarations and corrections thereof should be regulated comprehensively in a separate chapter.

All declarations, including returns, statements, specifications and information taxpayers, remitters and collectors are obliged to submit pursuant to tax law provisions should be subject to the benefit of the presumption of being accurate. Tax declaration's correction should have the same legal character as the declaration itself.

The solutions proposed within the scope of regulating tax declarations will realize the principle of the new Tax Ordinance according to which each taxpayer (a passive subject of the tax law relation) is reliable.

10. Solidarity in tax law

Drafted regulations of the new Act connected with solidarity in tax law should be based on the assumption that under this branch of law, the right of a creditor should be precisely regulated within this scope. It is not reasonable, at the same time, to transfer mechanically civil law institutions of joint and several obligations to the new Act. Tax law regulates specific institutions that are unknown to private law, which requires the establishment of a separate legal framework for them. Therefore, specificity of institutions occurring in tax law should be included, which speaks for complementary regulation of the legal position of both debtors and creditors in the context of solidarity of debt and liabilities. Nevertheless, the principle saying that solidarity of debt and liability in tax law must result directly from statutory provisions should be preserved.

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

Suitable changes connected with solidarity in tax law should be introduced to individual institutions regulated in the new Act. Basic principles of solidarity in tax laws, however, should be somehow factored out 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 with both the stage when the tax law relation arises and the assessment and performance of tax obligations.

In the long term, the proposed changes are to contribute to the relatively comprehensive regulation of solidarity of liabilities and debts in general tax law provisions.

11. Tax arrears

In the newly drafted Ordinance, the definition of tax arrears would imitate basic features of tax arrears adopted in currently binding provisions. In particular, tax arrears would be still characterized by automatic occurrence due to delayed payment regardless of the will, knowledge, fault, or intention of the parties to the tax law relation. The notion of tax arrears would cover unpaid dues of not only a taxpayer but also a taxpayer, remitter, collector, third party, or legal successor.

Tax Ordinance in its current reading includes the enumerative list of due payments which are treated equivalent to arrears even though they are not arrears (they are not tax paid after due term). It is not an exhaustive regulation because it does not embrace all situations when a taxpayer is obliged to return unduly received payments which should be treated as tax arrears. Changes within this scope are envisaged by the Act amending the Act on Tax Ordinance and some other Acts, which was passed by the Sejm on 9th July, 2015, which specified anew the catalogue of dues that are treated as arrears. Moreover, the above mentioned Act stipulated the obligation to return public law benefits unduly obtained by a taxpayer (a remitter, or collector).

12. Default interest

The drafted regulation should be based on fixed principles resulting from binding provisions of Tax Ordinance. In particular, it should preserve the rule according to which default interest is the consequence of the occurrence of tax arrears and the obligation to assess it exists regardless of the causes of tax arrears occurrence and taxpayer's (remitters', or collector's) fault within this scope. Moreover, it should be the rule 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 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. What is more, the prerequisite of non-application of default interest when a tax authority did not verify the declaration containing arithmetic errors, or apparent mistakes under examinations thereof during two years should be modified. The maintenance of a two-year long period envisaged in the currently binding provision when tax authorities use electronic tools of declarations' validation within the scope of arithmetic errors and apparent mistakes cannot be justified. Due to the above, this period should be shortened to one year.

The manner of establishing the amount (amounts) of default interest should be left unchanged in the new regulation, i.e. on the basis of the marginal lending facility rate provided by the National Bank of Poland to commercial banks. The amount (amounts) of default interest is an essential element of the State financial policy, in particular within the scope of securing timely fulfillment of tax obligations by the obliged parties.

The instrument aiming at maximization of 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 improve (correct) irregularities in the original declaration and immediately settle tax arrears with the simultaneous indication of time limits during which it will be possible.

13. Time limits

It is reasonable to undertake activities clearing up regulations on time limits in the following ways.

Firstly, we should distinguish the principles establishing time limits, including the principle of their restitution, in order to create a uniform regulation encompassing all, both substantive and procedural, time limits occurring in tax law.

Secondly, the above provisions should be included in the general provisions of the future Tax Ordinance.

An important *novum* necessary in the practice of tax law application will be the introduction of the institution allowing to assume that a substantive law time limit shall be deemed to be observed despite its failure by the interested party. A similar institution applicable to substantive law time limits towards which Art. 162 of Tax Ordinance cannot be applied in the current legal status, is presently included in Art. 48 of Tax Ordinance. A vital modification with regard to the present content of Art. 48 of Tax Ordinance will be a possibility allowing taxpayers to submit an appropriate motion for the recognition of the time limit as observed when it was failed with the simultaneous fulfillment of the activity this time limit was set for.

It is assumed that the drafted provisions that will be placed in a separate editorial unit devoted to time limits will not be applicable to the issues connected with restrictions and time limits connected with the pursuit of tax proceedings and tax inspection as well as deferred payment of tax which would be subject to special regulations on individual reliefs to pay tax.

14. Certificates

The drafted procedure of issuing certificates should preserve their previous model with the introduction of a practical institution which, although already existing, yet marginally, involves a possibility of the certificate's amendment, or annulment.

15. Proceedings when case files have been lost or damaged

In order to assure a comprehensive character of legal regulations referring to tax procedure, it is reasonable to include the matter on the proceedings pursued when case files have been either lost or damaged in the new Tax Ordinance. Lack of such provisions evokes discrepancies in administrative courts' judgments and doctrine with regard to the principles of reproduction of administrative files.

16. Participation of a prosecutor and Human Rights Defender (Ombudsman) in the tax procedure

Tax Ordinance should regulate the principles of participation of a prosecutor and Human Rights Defender (Ombudsman) in the tax procedure. The solutions thereon should not, in principle, differ from those included in the Code of Administrative Procedure.

17. Disputes on competence and conflicts of jurisdiction

Tax Ordinance provisions regulate the matter of the settlement of disputes on competence and conflicts of jurisdiction only within the scope of disputes between tax authorities. There are no regulations on the settlement of disputes on competence and conflicts of jurisdiction between tax authorities and other administrative bodies. It is reasonable to introduce in the Tax Ordinance a regulation referring to the application of Art. 22 of the Code of Administrative Procedure within the scope of the settlement of disputes on competence and conflicts of jurisdiction between tax authorities and other administrative bodies that are not tax authorities.