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Impact of Anti-Crisis Shield on the running of the limitation period for tax liabilities in Poland

E W E L I N A B O B R U S - N O W I Ń S K A *

Abstract: This article studies the impact of the Anti-Crisis Shield on the running of the limitation period for tax liabilities in Poland. The main purpose of the article is to analyse whether regulations enacted in relation to introducing the state of epidemic in Poland resulted in the suspension of the running of the limitation period for tax liabilities. The Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them directly stipulates that the running of time limits set forth in provisions of administrative law shall be suspended. First of all, arguments for the autonomy of tax law are presented. This allows for the hypothesis that tax law is an autonomous branch of law – separate from administrative law, leading to the conclusion that there are no grounds to assume that the Anti-Crisis Shield suspended the running of the limitation period for tax liabilities. Secondly, the retroactive effect of regulations of the Anti-Crisis Shield is analysed.

Keywords: Anti-Crisis Shield, limitation, suspension of the running of the limitation period, autonomy of tax law

1. INTRODUCTION

The coronavirus has influenced not only the everyday lives of citizens around the world, but also the shape of the law. Individual countries took up the challenge to find a legal solution to fight this unexpected enemy. In Poland, the coronavirus had

an influence in material and procedural terms, among others.

In accordance with Article 15zzr section 1 of the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them¹ during the period of a risk of epidemics and a state of epidemic, time limits “provided for by administrative law” shall not start, and if started, shall be suspended. The aforementioned provision only remained binding until 16 May 2020, but despite applying for a limited period only, it caused some confusion, the effects of which will be felt long into the future. This is because the literal text of the provision could imply that the Shield does not refer directly to the limitation period in tax law, while a systemic and teleological interpretation may lead to a completely different conclusion. This is due to the question of the legislator allowing for the extension of the time limit, e.g. for handling a matter or issuing a decision imposing a liability, but at the same time failing to modify the limitation period of liability.

This article pertains to the impact of the Anti-Crisis Shield on the time limits provided for by administrative law. The main purpose of the article is to resolve doubts as to whether the Anti-Crisis Shield actually influenced the suspension of the

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limitation period for tax liabilities. The scientific methods used are analysis, induction, deduction and description.

2. THE ANTI-CRISIS SHIELD

Due to the risk of SARS CoV-2 spreading it was necessary to introduce special solutions that would allow actions complementing basic regulations to be taken to minimise the risk to public health. The Anti-Crisis Shield defines, in particular, the principles and procedures for preventing and combating infection and the spread of an infectious disease caused by SARS-CoV-2, including the principles and procedures for taking anti-epidemic and preventive measures to neutralise the sources of infection and cut the paths of disease spread, both tasks of public administration bodies in the field of preventing and combating this disease.

Under the so-called the Anti-Crisis Shield and other legal acts, including regulations of the Council of Ministers, numerous changes were introduced to the tax regulations currently in force. These changes were made on the basis of both individual taxes and general tax law. For example, the entry into force of significant changes was postponed, for instance in the field of VAT reporting as well as tax rates. As part of the solutions directly supporting activities aimed at reducing the risks associated with the SARS-CoV-2 virus, preferences for taxpayers were also provided. The anti-crisis solutions for income taxpayers affected by SARS-CoV-2 include, among others, the possibility to delay paying tax and submitting tax declarations as well as preparing and submitting financial statements for 2019, preferences in settling tax losses related to the pandemic, and facilities for small entrepreneurs regarding the settling of advances for corporate income tax.

The solutions introduced should be favourable for taxpayers in most cases. However, the exceptional circumstances, including the pace of the introduced changes, means that some changes should be critically assessed. One of them is undoubtedly the suspension of the limitation periods. The indi-

cated regulation does not refer directly to tax law, as it directly points to the terms of administrative law. However, such an interpretation may turn out to be contrary to the aims of the legislator.

3. THE SUSPENSION AND INTERRUPTION OF THE LIMITATION PERIOD

The limitation of tax liabilities means that after a specified period, the tax liability, although unpaid, expires together with the interest for late payment.² After the expiry of the limitation period by law, the liability relationship between the taxpayer and the tax creditor ceases to exist without the need to issue any decisions. Although unsatisfied, the creditor – State Treasury or municipality – no longer has grounds to enforce the tax liability. The voluntary fulfilment of this obligation by the taxpayer leads to an overpayment, which is refundable. The limitation of tax liabilities simultaneously serves the implementation of two important constitutional values: the need to maintain a budget balance, and the need to stabilise social relations by extinguishing long-standing tax liabilities. The limitation of tax liabilities, although not regulated *expressis verbis* in the Constitution, is therefore based on constitutionally protected values. Both the introduction of a statute of limitations in tax law and the determination of the date on which it will occur is left to the discretion of the legislator. The legislator may choose between different limitation structures, establishing separate time limits for carrying out activities verifying the compliance of taxpayers with their obligations and setting separate time limits for the debt collection procedure. However, these deadlines cannot be too short, as they would exclude the implementation of the principle of universality and tax fairness, nor may they remain too long, making the statute of limitations an illusory institution. The limitation mechanism established in tax law may not induce taxpayers to evade tax and treat the statute of limitations instrumentally, in terms of a tool allowing them to avoid paying the tax after

some time. The rule is to pay taxes, and not expect that the tax liability will be time-barred.

According to the Tax Ordinance,³ the tax liability limitation period is 5 years beginning from the end of the calendar year in which the tax payment deadline expired. Polish tax law exhaustively enumerates the exceptional situations when the period of limitation for liabilities is longer than 5 years. Pursuant to the Tax Ordinance:

A new limitation period does not commence or an existing limitation period is suspended:

- 1) from the issue date of a decision granting tax relief until the due date to pay deferred tax or tax arrears, the last tax instalment or the last instalment of tax arrears;
- 2) from the date a regulation enters into force on extending the time limit to pay tax, issued by the minister in charge of public finance, until the end of the extended time limit;
- 3) by declaration of bankruptcy (a suspended limitation period resumes on the day after the decision to end or discontinue bankruptcy proceedings becomes final);
- 4) as a result of applying an enforcement measure which a taxpayer was notified about. A suspended limitation period resumes on the day after the enforcement measure is applied;
- 5) if a tax liability can be determined or established on the basis of a double taxation agreement or another international agreement to which the Republic of Poland is party, and the establishment or determination of that liability amount by a tax authority depends on whether the authorities of another state provide sufficient information;
- 6) on the day when proceedings commence in a case involving a fiscal crime or fiscal offence the taxpayer has been notified of, if the crime or offence is related to a failure to settle the liability;
- 7) on the day when a complaint against a decision concerning that liability is filed with an administrative court;
- 8) on the day when a request is filed with a general court to determine whether a legal relationship or law exists or not;

on the day when a decision to accept security is delivered, or an order to establish security in accordance with the provisions on administrative enforcement proceedings is delivered;

on the day when confirmation about joining the security in the cases defined in the Act of 17 June 1966 on Enforcement Proceedings in Administration (Journal of Laws of 2019, item 1438, as amended) is served;

on the day when the Head of the National Tax Administration requests an opinion from the Anti-Avoidance Board.

In each case, the circumstances indicated above should be considered exceptional situations.

Apart from the limitation period, the Ordinance introduces the so-called interruption of the limitation period. Following each interruption of limitation, it shall commence anew.

In accordance with the provisions of the Ordinance, the limitation period is interrupted by a declaration of bankruptcy. After the limitation period is interrupted, it runs again from the day after the decision on the end or discontinuation of bankruptcy proceedings becomes final. The limitation period is also interrupted as a result of an enforcement measure notified to the taxpayer. After the limitation period is interrupted, it runs again from the day after the enforcement measure is applied.

4. AUTONOMY OF TAX LAW

In the context of identifying consequences of Article 15zzr of the Anti-Crisis Shield coming into force, it is crucially important to try answering the question whether, when using the notion of “administrative law,” the legislator really only meant administrative law, or extended “administrative law” to include tax law as well.

Before examining the issue of mutual relationships between tax law and other branches of law, especially at the linguistic level, it is necessary to examine the position of tax law in the legal

system, especially whether it is an autonomous branch thereof. Both theoretical and practical issues are of decisive importance in this case.⁴ This is because autonomy consists in the fact that it is possible to identify common features of a group of tax norms that allow them to be distinguished from other norms and have an impact on the creation, application and interpretation of law.⁵

Tax law belongs to public law,⁶ i.e. to the branches of law where the public interest prevails. It is worthwhile recalling that tax law, being part of financial law, has been undergoing significant transformation in Poland for some time, aimed at separating tax law, making a separate branch of law, having its own legal norms, principles and the subject and method of regulation, as well as specific legal relationships. The criteria for the subject and method of legal regulation will be vitally important in the separation of tax law.⁷ In this law, the method of regulating social relationships is the administrative and legal method based on power and subordination.⁸ For a very long time, tax law was an integral part of financial law. There was the concept of financial law as generally understood, meaning budget law in a narrow sense, the law of budget spending and the law of budget revenues. The last one included, *inter alia*, tax law.⁹ The autonomy of tax law in the legal system – as the whole set of norms regulating financial relationships – was approved earlier. It is worthwhile recalling that treating tax law as part of financial law seems archaic. This is because it does not take into account the importance of particular areas of financial law in practice. Consequently, this author assumes that the classification recognising tax law as a separate branch of law, equal to budget law, is more adequate.¹⁰ Financial law structures also emerged¹¹ including the broadly understood budget law as a separate section, with tax law being its only component.¹²

The following criteria had a decisive influence on the separation of tax law from the norms of financial law: the subject of the norms, the structure of norms, features of social relationships regulated by these norms, the manner of implementing

these relations, the purpose of their establishment.¹³ Moreover, it is also possible to identify legislative autonomy – this is because tax law norms are included in separate legal acts.¹⁴ The degree of development of tax law is also confirmed by the existence of an extensive general part, having its own tradition, the separation of a system of authorities and procedures, and a professional group – tax advisers.¹⁵ Additionally, the function of tax law norms, their legal character, as well as the social and economic role affect the interpretation to such an extent that it is possible to refer to tax law interpretation principles.¹⁶

Summing up the aforementioned deliberations, it should be concluded that tax law, which constitutes a separate branch of law, shows autonomy involving the development of solutions and institutions in a relatively independent way. The limits of the autonomy of tax law are determined by the basic principles of the legal system, which are included in the Constitution of the Republic of Poland and which pertain to freedoms, rights and obligations of persons and citizens, sources of law, including statute as an exclusive basis of tax matters, and the legislative procedure.¹⁷ They are obligatory rules in the process of the administration of law. Moreover, it is necessary to take into account the need to maintain the necessary consistency and internal integration of the legal system. This is because tax law is an element of this system and should be harmonised with other branches thereof. From a substantive point of view, this means that tax law cannot be inconsistent with other branches of law or interfere with their functioning, whereas formally it means the need to adjust the legal language.

Against the background of deliberations pertaining to the autonomy of tax law, it is worthwhile emphasising its relationships with other areas of law. Each of them shows separate features appropriate to the functions performed. Norms can usually be classified into one of the areas of law – private (e.g. civil) or public (e.g. administrative). In the context of the matter under consideration, it is worthwhile noting relationships between tax law and administrative law in particular.

Tax law is related to administrative law at the systemic level.¹⁸ This is because norms defining the organisation and operating principles of tax administration authorities constitute a system following the example of solutions used in other departments of public administration. Additionally, tax law applies notions typical for administrative law (e.g. public administration authority, supervision, subordination). Mutual relationships between the two indicated branches of law are confirmed by the fact that in the years 1981-1997, provisions of the Code of Administrative Procedure, i.e. general administrative procedure, applied to tax proceedings.

Despite its administrative origin, tax law is a branch of law separate from administrative law. This is confirmed by the fact that the legislator knows the “tax law” notion and uses it in other legal acts, e.g. provisions of the Tax Ordinance. Moreover, in provisions of the Tax Ordinance, the legislator included a legal definition of the notion of “tax law provisions”. Consequently, the legislator is undoubtedly aware of this notion.

5. APPLICATION OF THE ANTI-CRISIS SHIELD DIRECTLY FOR THE INSTITUTION OF TAX LAW

It is worthwhile noting that the authors of the Anti-Crisis Shield, in other provisions of the Act, refer separately to the institutions of administrative law and tax law, which confirms that the legislator distinguishes between these branches of law. In Article 15zzs section 1 of the Shield, the legislator makes a distinction between “administrative proceedings” (point 6) and “proceedings and inspections carried out based on the Tax Ordinance” (point 7), which supports the hypothesis that the legislator distinguishes between tax law and administrative law in provisions of the Shield.¹⁹

Consequently, taking into account the structure of provisions of the Shield, it seems that the legislator is aware of the autonomy of tax law from other branches of law. Consequently, it is justified

to assume that if the legislator had intended to suspend the running of periods under substantive law in tax matters, this issue would have been explicitly regulated in the provisions of the Shield. Article 15zzr section 1 refers only to the running of periods under substantive law in administrative matters, therefore it cannot be presumed that this provision also covers periods under tax law.

The correctness of the aforementioned hypothesis seems to be confirmed by the introduction of Article 15zzj to the Shield as well, according to which the submission of the annual PIT tax return for 2019 and payment of the tax due after the expiry of the statutory time limit, but before 1 June 2020, will not result in penal fiscal sanctions.

It is worthwhile noting that if the running of substantive law periods in tax matters had been suspended based on Article 15zzr section 1 of the Shield, no sanctions could have been imposed on the taxpayer for failure to pay tax by the end of April this year. It seems that in the case of a broad interpretation of Article 15zzr section 1 of the Shield, also covering the suspension of the running of periods under tax law, the time limits for paying taxes would also be suspended. Thus, the introduction of Article 15zzj to the Shield would have been pointless and contrary to the principle requiring the creation of regulations by a rational legislator.

Taking into account the text of the Anti-Crisis Shield, it is therefore justified to assume that the running of substantive law periods in tax matters was not suspended by provisions of the Shield. Firstly, tax law is a branch of law separate from administrative law with its own autonomy. Secondly, the legislator introduced provisions in the Shield suggesting that at least some periods under tax law (tax payment periods) were not suspended. Consequently, taking into account the fact that the legislator acts reasonably, it is impossible to agree with the opinion that Article 15zzr of the Shield would also regulate the issue of the running of substantive law periods in tax matters – if it was the legislator’s intention, the legislator would, without any doubt, explicitly present its intentions in this respect.

Article 15zzr was annulled with “Shield 3.0” coming into force, while the running of periods under substantive law in administrative matters was restarted. Pursuant to Article 68 of the Act of 14 May 2020 amending some acts in the area of protective activities in connection with the spread of the SARS-CoV-2,²⁰ these periods will start running again 7 days after the effective date of the act. Consequently, deliberations regarding the scope of application of Article 15zzr remain valid despite the provision itself being annulled. Annuling Article 15zzr does not nullify the legal effects of the suspension. This is because periods covered by that provision remained suspended for a certain time, which will ultimately have an impact on the expiration of the particular period.

This is especially important in the context of the running of limitation periods of tax liabilities – assuming that Article 15zzr also applies to time limits under tax law, the limitation periods of tax liabilities would have been suspended based on the provisions of the Shield, which means that the limitation period of tax liabilities should be extended by the period of suspension.

One of the functions of the limitation period for tax liabilities is related to its guarantee nature. After the expiry of the limitation period, the taxpayer can be sure that they will not face any consequences in the form of paying the tax. In particular, provisions pertaining to the length of the limitation period, including suspending the running of the limitation period for tax liabilities, have the nature of a guarantee. This shows that, bearing in mind the principle that doubts should be resolved in favour of the taxpayer, it cannot be concluded that the circumstances justifying the suspension of running the limitation period may not be expressed directly.

6. RETROSPECTIVE EFFECT OF LIMITATION PROVISIONS

Against the background of the issues discussed, it is important to determine how long the An-

ti-Crisis Shield applies for. It clearly refers to “a state of risk of epidemics and a state of epidemic announced due to COVID-19.” The state of risk of epidemics was announced on 14 March 2020, and the Anti-Crisis Shield 1.0 came into force on 31 March 2020; just from the provisions of Article 15zzr, and considering the explicit reference to the period of a risk of epidemics, it follows that it should apply retrospectively.²¹ At this point, it is worthwhile analysing how the retroactive effect of the act could affect suspending the running of the limitation period if the legislator had concluded that the reference to the statute of limitations in administrative law should also be understood to include tax law.

The retroactive effect of an act in such a way is expressly provided for in Section 51 (2) of the Regulation of 20 June 2002 of the Council of Ministers on the principles of legislative techniques: “Provisions of the act other than those to which the final provisions gave retroactive effect, and having retroactive effect resulting from their content and relating to events or states of affairs, which arose before the effective date of the act, shall be formulated in a way that clearly indicates these events or states of affairs.” Also, in accordance with the Act of 10 July 2000 on the publication of normative acts and some other legal acts (Journal of Laws of 2019, item 1461), it is possible to give retroactive effect to a normative act if the principles of a democratic state ruled by law do not prevent it (Article 5).

Consequently, assuming that Article 15zzr of the Anti-Crisis Shield could also apply to the limitation of tax liabilities, it is only necessary to analyse whether it can be assumed that it suspends the running of the period of limitation before the Shield came into force. This question cannot be answered in the affirmative. Although it is theoretically and legally possible, as shown above, the additional condition related to the compliance of such a solution with the Constitution raises serious doubts. First of all, it should be noted that the limitation of tax liabilities is an institution that results in positive consequences for the taxpayer. This is because the expiry of the limitation peri-

od results in the extinguishing of the tax liability. Consequently, the statute of limitations is a desirable institution in terms of the taxpayer's legal situation – it causes the liability to expire. The application for confirming or refunding an overpayment, as described in Article 78 section 2 of the Tax Ordinance, is an exceptional situation where the statute of limitations may have negative consequences for the taxpayer.

7. CONCLUSION

The pace of legislative works on the Anti-Crisis Shield was very fast, and at the same time involved large-scale changes. Due to a combination of these two elements, the quality of the resulting regulations is questionable. Despite the short time since their introduction, widely different opinions have emerged as to their normative content. The status of the issue as to whether the Anti-Crisis Shield suspended the running of the limitation of period for tax liabilities is similar. The very fact that based on Article 15zzr section 1 of the Shield it is impossible to answer this question unequivocally reflects the legislative level of the provision in question. Without any doubt, the situation that developed in March 2020 made it necessary to look for specific legal solutions aimed at provid-

ing a quick reaction to the crisis, given that the state stopped functioning. For example, in the Anti-Crisis Shield, the legislator decided on the possibility of delaying the payment of personal income tax without any negative consequences, and decided to extend the time limit for issuing an individual ruling. Actions taken by the legislator, their main intention and the coronavirus context may indicate the intent to suspend the running of tax liability limitation periods, but the wording of the provisions in the Anti-Crisis Shield does not allow us to conclude that the running of the limitation period was actually suspended. Suspending the running of the limitation period for tax liabilities is disadvantageous for taxpayers (with some exceptions), as it extends the period during which the taxpayer is obliged to pay tax. Consequently, particular caution should be exercised when trying to extend such a period. Taking into account the basic principles of interpretation of legal acts and the legislator's rationality principle, we cannot presume that in Article 15zzr of the Shield the legislator also meant tax law when referring to the notion of administrative law. The accuracy of this hypothesis is also confirmed by the fact that the Anti-Crisis Shield contains provisions directly referring to tax law, and thus it is justified to assume that where there is no direct reference to tax law, the legislator does not allow such a reference.

Notes

- 1 Hereinafter referred to as: the Anti-Crisis Shield.
- 2 The Act of 29 August 1997 Tax Ordinance, Journal of Laws of 2020, item 1325 as amended. Art. 70.
- 3 The Act of 29 August 1997 Tax Ordinance, Journal of Laws of 2020, item 1325 as amended. Art. 70.
- 4 Nykiel, W. (1999). Autonomia prawa podatkowego – wybrane zagadnienia [Tax law autonomy – selected issues]. In: T. Dębowska-Romanowska, A. Jankiewicz (Eds.), *Konstytucja. Ustrój, system finansowy państwa. Księga pamiątkowa ku czci prof. Natalii Gajl* [Constitution. structure, state financial system. Commemorative Book in Honour of Natalia Gajl]. Publishers of the Constitutional Tribunal. p. 397.
- 5 Lang, W., Wróblewski, J., Zawadzki, S. (1979), *Teoria państwa i prawa* [Theory of state and law]. State Scientific Publishing House. p. 369.
- 6 Bell, J.S. (2008). *Comparative administrative law*. In: M. Reimann, R. Zimmerman (Eds.), *The Oxford handbook of comparative law*, Oxford Handbooks, DOI:10.1093/oxfordhb/9780199296064.013.0040.
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- 8 Mastalski, R. (2000). *Prawo podatkowe* [Tax law] (*Prawo podatkowe*), Beck. p. 17.
- 9 Kurowski, L. (1976). *Wstęp do nauki prawa finansowego* [Introduction to the financial law science], State Scientific Publishing House. p. 26.
- 10 Brzeziński, B. (1995). *Zarys prawa finansów publicznych* [Outline of public finance law]. Scientific Society of Organization and Management House of the Organizer. p. 19.

- 11 Kosikowski, C., Ruśkowski, E. (1993). *Finanse i prawo finansowe [Finance and financial law]*. Temida. p. 42. For many years, it was pointed out that the conclusion that financial law is a separate branch of law, deriving from administrative law, should not be debatable.
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- 13 Nykiel, W. (1999). Autonomia prawa podatkowego – wybrane zagadnienia [Tax law autonomy – selected issues]. In: T. Dębowska-Romanowska, A. Jankiewicz (Eds.), *Konstytucja. Ustrój, system finansowy państwa. Księga pamiątkowa ku czci prof. Natalii Gajl [Constitution. structure, state financial system. Commemorative Book in Honour of Natalia Gajl]*. Publishers of the Constitutional Tribunal. p. 398.
- 14 Mastalski, R., (2003). *Autonomia prawa podatkowego a spójność i zupełność systemu prawa [Autonomy of tax law vs. consistency and completeness of the system of law]*. Przegląd Podatkowy [Tax Review], p. 12.
- 15 Mariański, A. (2009). *Rozstrzygnięcie wątpliwości na korzyść podatnika. Zasada prawa podatkowego [Resolution of doubts in favour of taxpayer. Tax law rule]*. Oficyna. p. 13.
- 16 Brzeziński, B. (2002). *Szkice z wykładni prawa podatkowego [Outline of interpretation of tax law]*. Center of Counseling and Personnel Improvement. p. 9.
- 17 The Act of 2 April 1997 The Constitution of the Republic of Poland, Journal of Laws, no. 78, item 483. Art. 30-76.
- 18 Dzwonkowski, H. (2010). *Prawo podatkowe [Tax law]*. Beck. p. 25.
- 19 Wincenciak, M. (2019). *Przedawnienie w polskim prawie administracyjnym [Statute of limitations in Polish administrative law]*. Wolters Kluwer. p. 31.
- 20 Journal of Laws of 2020, item 875.
- 21 This regulation was revoked by Regulation of 20 March 2020 of the Minister of Health on announcing a state of epidemics in the territory of the Republic of Poland, Journal of Law, item 491, as amended.