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Cancellation of tax arrears not only in extraordinary cases – by the grace of the Supreme Administrative Court

Tax Alert

According to Art. 67a § 1 of the Tax Ordinance, hereinafter referred to as the TO, the tax authority may, upon the request of a taxpayer – in cases justified by important taxpayer's or public interests – postpone the date of tax payment or arrange for the payment to be made in instalments. Taxpayers are entitled to the same in respect of tax arrears and the interest accrued. Under the said provision, it is also possible to cancel, in whole or in part, tax arrears, late payment interest or a grace period fee.

The right to cancellation of tax arrears and – above all – the notion of important taxpayer's or public interest in the context of the relief in the payment of tax liabilities referred to in Art. 67a § 1 of the TO was the subject of the judgement delivered on 10 February 2016 by the Supreme Administrative Court (the SAC), ref. No. II FSK 3139/13.

The Head of the Tax Office failed to recognise the taxpayer's right to cancellation of tax arrears. The Head of the Tax Chamber in Warsaw upheld the above decision. Both bodies viewed the difficult financial situation of the taxpayer and his health problems as insufficient grounds to grant the taxpayer the requested relief.

However, the Voivodship Administrative Court in Warsaw (the WSA) considered the taxpayer's position to be reasonable and upheld his complaint. The WSA emphasised that the authorities of both instances should have conducted a proper analysis of the notion of important taxpayer's and public interest in the context of circumstances presented by the taxpayer, but they did not do it. It was pointed out that the thesis of the absence of important taxpayer's interest, in the light of the difficult life situation presented by him, was unjustified. Moreover, according to the WSA, the authorities should also have noted the indications of important public interest.

The Supreme Administrative Court approved the opinion expressed by the WSA in Warsaw

The SAC pointed out that in order to take advantage of the relief in repayment of tax liabilities referred to in Art. 67a § 1 of the TO, one of two conditions must be met: important taxpayer's interest or important public interest. The conjunction "or" used in the regulation indicates that it is enough if only one of them has been met. This means that the tax authority, in all cases, must examine the case in terms of fulfilment of both premises.

The SAC also emphasised that the notions of important taxpayer's interest and important public interest are not mutually exclusive or competitive. Therefore, it cannot be automatically assumed that granting tax relief to the taxpayer is only beneficial from the point of view of the taxpayer, but never from the point of view of public interest.

Important interest of the taxpayer

With regard to important taxpayer's interest, the SAC emphasised that the notion cannot be confined only to extraordinary situations. The taxpayer's financial situation is also included in its scope. Authorities should each time analyse whether any indication of important taxpayer's interest has occurred, taking into account the amount of their income and expenditure, including expenses incurred in connection with the protection of their own health or the health of their immediate family members (medical costs).

Important public interest

With regard to the existence of public interest, the SAC emphasised that tax reliefs listed in Art. 67a § 1 of the TO are firstly to provide aid granted by the State to the taxpayer in order to ensure that the recovery of tax arrears will not lead to undesirable effects, both from the point of view of the taxpayer and people around them.

Secondly, the relief should be granted if the absence of its use would mean greater costs incurred by the State, than if it were granted. Sometimes the economic calculation shows that it is more favourable for the State to grant tax relief to a taxpayer than to execute their tax arrears.

Postponing the date of tax payment or arranging for the payment of tax and tax arrears to be made in instalments – the judgement offers a powerful argument

The case which resulted in the discussed judgement concerns the cancellation of tax arrears. However, the interpretation of the notions of important taxpayer's and public interests carried out by the SAC is crucial for taxpayers seeking not only the cancellation of tax arrears, but also other relief referred to in Art. 67a § 1 of the TO, such as postponing the date of tax payment or arranging for the payment of tax or tax arrears to be made in instalments.

Unfortunately, tax authorities are reluctant to allow requests for tax relief. Consequently, in most cases, only the occurrence of extraordinary events, e.g. a total destruction of the plant caused by fire or flood, are sufficient reasons for tax authorities taking such a restrictive approach to grant the taxpayer relief on the basis of Art. 67a § 1 of the TO. Meanwhile, in most cases, taxpayers allege that they have lost their jobs, have a sick child, or simply cannot afford to repay debts.

We hope that the ruling will change the previously very restrictive position of tax authorities in this regard. SAC's ruling is a clear indication for tax authorities on how to make a thorough analysis of the two prerequisites for tax relief. Meticulously collected comprehensive evidence shall always be the starting point and the thorough analysis of taxpayer's and public interest shall be the second step. Such cases are usually very difficult for two reasons: firstly, relief is an exception to the rule of paying taxes and secondly, the decision is always taken sovereignly by the authority. Courts are not the addressees of administrative discretion – their effort, therefore, focuses on examining whether everything has been done in order to make the right decision in a given case. The very decision, however, may not be judged by the court.

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Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

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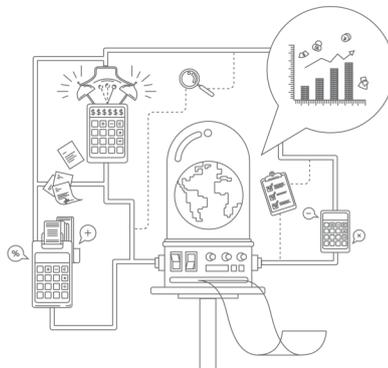
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