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RELIEF IN REPAYMENT OF NON-TAX BUDGET RECEIVABLES GRANTED BY LOCAL GOVERNMENT UNITS

ULGI W SPŁACIE NIEPODATKOWYCH NALEŻNOŚCI BUDŻETOWYCH UDZIELANE PRZEZ JEDNOSTKI SAMORZĄDU TERYTORIALNEGO

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Abstract

As of 28 April 2017, amended provisions of the Public Finance Act are in force regarding the granting of relief in repayment of monetary receivables of a civil-law nature falling to government administration bodies, state budgetary units and state customs funds (e.g., fees from the lease or rental of real estate, costs of court proceedings), and non-tax budgetary receivables of a public-law nature (fines imposed by way of a penalty ticket, fines, administrative fees). The amended provisions of the Public Finance Act: with respect to civil law debts, they clearly specify when debts may be written off *ex officio* and when at the debtor's request (Article 57), and they unify the premises for granting preferences in repayment of debts, which are general clauses: "important interest of the debtor" and "public interest." The Act provides for the possibility to write off part of a debt, postpone repayment dates of all or part of a debt, or spread payment of all or part of a debt in installments – if justified by social or economic reasons, particularly the debtor's ability to pay. Since the application of these reliefs will have a more lenient effect on the State Treasury, the body granting the relief will be able to rely on grounds other than full write-off, such as social or economic reasons, e.g. the debtor's limited ability to pay.

Keywords: public finance act, non-tax sub-action dues, revenue capacity, public interest, interest of a party to proceedings

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Abstrakt

Od 28 kwietnia 2017 r. obowiązują zmienione przepisy ustawy o finansach publicznych, dotyczące udzielania ulg w spłacie należności pieniężnych mających charakter cywilnoprawny, przypadających organom administracji rządowej, państwowym jednostkom budżetowym i państwowym funduszom celowym (np. opłaty z tytułu najmu lub dzierżawy nieruchomości, koszty postępowań sądowych), oraz niepodatkowych należności budżetowych o charakterze publicznoprawnym (np. grzywny nakładane w drodze mandatu karnego, kary pieniężne, opłaty administracyjne). Zmienione przepisy ustawy o finansach publicznych: w zakresie należności o charakterze cywilnoprawnym wyraźnie określają, kiedy należności mogą być umarzane z urzędu, a kiedy na wniosek dłużnika (art. 57), oraz ujednolicają dla przesłanki udzielania preferencji w spłacie należności, stanowiące klauzule generalne: „ważny interes dłużnika" oraz „interes publiczny". Ustawa przewiduje możliwość umorzenia należności w części, odroczenia terminów spłaty całości albo części należności lub rozłożenia na raty płatności całości albo części należności – gdy jest to uzasadnione względami społecznymi lub gospodarczymi, w szczególności możliwościami płatniczymi dłużnika. Ze względu na fakt, że zastosowanie tych ulg będzie wywoływać łagodniejsze skutki dla Skarbu Państwa, organ udzielający ulgi będzie mógł kierować się innymi niż przy całkowitym umorzeniu należności przesłankami, takimi jak względy społeczne lub gospodarcze, np. ograniczone możliwości płatnicze dłużnika.

Słowa kluczowe: ustawa o finansach publicznych, niepodatkowe należności podatkowe, zdolnośc dochodowach, interes publiczny, interes strony postępowania

1. Research methodology

The paper uses analytical and synthetic methods. Legal sciences use typical methods encountered on the ground of social sciences and humanities, i.e.: examination of documents (legal acts and administrative court decisions), comparative methods (expert opinions, legal opinions, analyses resulting from linguistic, grammatical and historical interpretation) and case studies. Induction was used as the main research method. It consists in drawing general conclusions or establishing regularities on the basis of analysis of empirically stated phenomena and processes. It is a type of inference based on details about the general properties of a phenomenon or object. The use of this method requires the assumption that only facts can form the basis of scientific inference. These facts are real existing

situations (economic and legal). Inductive methods include various types of legal acts, analyses, expert reports and scientific documents used in social research.

The main objective of this paper is to analyse the significant write-off of non-tax debts from the perspective of premises of an important interest of the payer or public interest. An additional aim is a critical analysis of the phrase "social or economic reasons" instead of the phrase "important interest of the payer" or "public interest," which makes it difficult to use the rich body of jurisprudence interpreting the notions of important interest of the taxpayer and public interest on the grounds of regulations justifying the application of tax relief.

2. Financial receivables of according to a civil law nature

It is difficult to find in law regulations a definition of the concept of civil law debts, therefore we may describe them through the source of their origin, i.e. civil law relations. Local government units[1] appear in legal transactions at least in two ways. First, they exercise the powers of the organs of public authority or administration, e.g. by issuing administrative decisions. Secondly, they also establish equivalent relationships with other entities in the market which is governed by the rules of civil law. For example, when announcing a tender for the sale of real estate, a LGU does not act as a public authority, but as an owner who offers to sell a part of its assets. The public nature of these assets makes the disposal procedures subject to certain restrictions (in this case, defined in the Act on Real Estate Management).[2] The municipality, carrying out through the municipal office the tasks of a water and sewage company in the field of collective water supply and collective sewage disposal, enters into civil-law relations with the recipients of services (water supply, sewage disposal), regardless of the obligation to comply with certain restrictions introduced by the provisions of substantive administrative law. According to Article 6(1) and (1a) of the Act on Collective Water Supply and Collective Sewage Disposal,[3]

[1] [hereinafter: LGU].

[2] Act of 21 August 1997 on Real Estate Management, Journal of Laws of 2018, item 121.

[3] Act of 7 June 2001 on Collective Water Supply and Collective Sewage Disposal, Journal of Laws of 2017, item 328.

the supply of water or the discharge of sewage takes place on the basis of a written contract for the supply of water or the discharge of sewage, concluded between the water and sewage company and the recipient of services. The provisions of the Civil Code[4] shall apply to the purchase of water or the introduction by the water supply and sewage disposal company of sewage into sewage disposal facilities which are not in its possession. In accordance with the content of Article 5(2) of the Act on public finance,[5] receivables of a civil-law nature have the nature of public revenue. The ufp includes to these incomes among others [Wołowiec 2016a, 10-12]: 1) receivables from the sale of real estate and other assets; 2) receivables from fees for perpetual usufruct of real estate; 3) receivables from lease, tenancy, usufruct and other contracts on the basis of which territorial self-government makes its assets available against payment; 4) receivables from water sales and sewage collection; 5) receivables from donation, inheritance, bequest; 6) receivables from sale of securities; 7) receivables from dividends.

3. Non-tax budget receivables of public-private nature

In accordance with Article 60 of the ufp, non-tax budget receivables of a public-private nature may include [Idem 2017, 57-59]: 1) amounts of subsidies subject to return in cases specified in this Act; 2) receivables in respect of guarantees and sureties issued by the State Treasury and LGU; 3) payments of surplus of working capital of self-government budgetary establishments; 4) payments of surplus funds of executive agencies; 5) payments of funds for settlements of implementation of pre-accession programmes; 6) receivables from the return of funds allocated for the implementation of programmes financed with the participation of European funds and other receivables related to the implementation of projects financed with the participation of these funds, as well as interest on these funds and on these receivables; 7) receivables from fines imposed by way of a fine in misdemeanour proceedings and in fiscal misdemeanour proceedings; 8) revenues collected by state and local government budgetary

[4] Act of 23 April 1964 – Civil Code, Journal of Laws of 2017, item 459.

[5] Act of 29 August 2009 on public finance, Journal of Laws of 2013, item 885 [hereinafter: ufp].

units on the basis of separate acts; 9) revenues collected by territorial self-government units (territorial self-government units) connected with performance of government administration tasks and other tasks commissioned by territorial self-government units under separate acts, and not transferred to the State budget revenue account.

If a given receivable arises from the public-legal relations and constitutes revenue of the local government units budget, then Article 60 of the ufp applies to it, as a non-taxable budgetary receivable of public-legal nature. The provisions of the Tax Ordinance Act[6] will be applied to such a receivable not by virtue of Article 2, para. 1, item 1 of the Op, but in connection with the reference in Article 67 of the ufp (i.e. in matters not regulated in the ufp the provisions of section III of the Op apply accordingly). The public-law nature of the liability means that it arises out of administrative law provisions, and the legal relationship is characterised by the superiority of the public administration body authorised to shape the legal situation of the other party (e.g. by issuing an administrative decision establishing or determining the amount of the liability). Such features are not present in the civil law relationship, which is based on an equal relationship between the parties and the principle of equivalence.

The catalogue of non-taxable budget receivables of a public-law nature provided for in Article 60 of the ufp is open. From the point of view of the LGU budget, the most important is Article 60.7 of the ufp, which indicates that the non-taxable budget dues should include revenue collected by state and local government budget units under separate acts. Non-tax budget receivables include, *inter alia*: the planning rent, the fee for occupation of the road strip; adiacenckie fees, the fee for removal of a vehicle from the public road and its storage and the fee for management of municipal waste. Non-tax receivables of the LGU budget are the amounts of subsidies which are subject to return to the budget in situations described in Articles 251 and 252 of the Public Procurement Law,[7] i.e. the amounts of subsidies collected in excessive amount, collected unduly or used contrary to their purpose. The same applies to unused subsidies, which have

[6] Act of 29 August 1997 – Tax Ordinance, Journal of Laws of 2019, item 900 [hereinafter: Op].

[7] Act of 11 September 2019 – Public Procurement Law, Journal of Laws of 2021, item 1129 [hereinafter: Pp].

not been returned on time. Non-tax receivables from the budget of territorial self-government units also include receivables from fines imposed by way of a penalty ticket in misdemeanour proceedings and in fiscal misdemeanour proceedings. This group includes, in particular, fines imposed by municipal guards by way of a penalty ticket for offences specified in the procedure provided for by the provisions on proceedings in cases of offences, which constitute income of municipalities.[8]

It should be remembered that LGU may be both a beneficiary of the receivables indicated therein and an entity obliged to pay them to the state budget (e.g. with regard to reimbursable subsidies received from the state budget, with regard to receivables from the reimbursement of funds allocated for the implementation of programmes financed with the participation of European funds and other receivables related to the implementation of projects financed with the participation of these funds or with regard to collected revenues related to the implementation of tasks of government administration and other tasks assigned to the LGU by separate acts and not paid to the state budget revenue account). Enforced enforcement of non-tax liabilities of public-law character constituting income for the budget of territorial self-government units takes place with the application of regulations on enforcement proceedings in administration.[9]

4. Granting Relief in Payment of Civil Law Debts

In accordance with Article 254, item. 1 of the ufp, territorial self-government units are obliged to establish pecuniary receivables falling due to them, including those of civil law nature, and to take timely action against the debtors in order to settle the liabilities. Article 59 of the Pp allows for the application of reliefs of liabilities of civil law character falling to the TSU or specified organizational units of the LGU, i.e. budgetary units, budgetary establishments and cultural institutions. The reliefs may consist in writing off, deferring the payment or spreading the payment into instalments – due to important interest of the debtor or public

[8] Act of 13 November 2003 on income of local government units, Journal of Laws of 2017, item 1453.

[9] Act of 17 June 1966 on enforcement proceedings in administration, Journal of Laws No. 2027, item 1201.

interest. The basis for the application of relief is a resolution of the council or regional parliament determining the principles, manner and mode of their granting, as well as the conditions for admissibility of public aid in cases in which the relief constitutes public aid. The possibility of relief application is connected with the existence of prerequisites of an important interest of the debtor and public interest [Idem 2016b, 17-19]. While interpreting them, one may refer to the jurisprudence of the administrative courts as regards the understanding of the prerequisites of Article 67a, para. 1 of the Op, i.e. "important interest of the taxpayer" and "public interest." Therefore, according to Article 67a, para. 1, item 3 of the Pp, in cases justified by an "important interest of the taxpayer" or "public interest," the tax authority, at the request of a party (taxpayer), may write off, in whole or in part, tax arrears, public or civil law liabilities, interest for delay or prolongation fee. However, the institution of remission is an exceptional institution, the application of which should be justified by special and extraordinary circumstances. It is not possible to make this institution a commonly used means of releasing from payment of a debt. Redemption is nothing more than an inefficient way of extinguishing liabilities of different legal nature, consisting in the creditor's final abandonment of the collection of a public receivable after the payment deadline [Etel 2013, 156].

Redemption of receivables of public nature is one of the elements of shaping public-legal burdens. Therefore, it is particularly important to correctly apply the legal prerequisites for the remission of public debts. One should fully agree with the statement of B. Brzeziński referring to the tax obligation, but the argumentation has a universal character, covering with the logic of interpretation both civil-legal and public-legal receivables. Thus, in the case of a refusal decision, the authority may reach for arguments related to the genesis of the tax debt. It seems that neither the essence of administrative discretion nor the structure of Article 67a would be inconsistent with a decision referring in its justification to the fact of creating, as a result of recklessness or negligence of the taxpayer, a situation in which payment of the tax is made difficult or even impossible. "The tax authority may justify its decision using any argumentation it wishes – as long as it is logical, connected with the realities of the case and does not violate the constitutionally protected system of values. The argumentation may therefore – in the absence of *expressis verbis* formulated

exclusions – also refer to the reasons why payment of the tax is impossible or difficult" [Brzeziński 2008, 105-107]. Voluntary payment of the overdue liability prior to filing an application for its remission renders the proceedings for granting the relief groundless and as such should be discontinued. Also, voluntary payment of a liability after filing a relief application results in expiration of the arrears, and thus the proceedings should be discontinued.[10] The Supreme Court also stated in one of its judgments that proceedings for remission of a (tax) arrears cannot be discontinued as groundless when the taxpayer has paid the (tax) arrears while appeal proceedings are pending.[11]

Speaking of the discretionary nature of decisions to write off public debts, it should be emphasized that they are based on a provision that contains indefinite terms, such as "important interest of the taxpayer" and "public interest." The combination of a discretionary decision with the indefinite terms constituting the legal basis for its issuance gives the tax authorities a very broad discretionary power. In order for such exceptionally broad powers not to undermine the essence of the rule of law, it is necessary to refer to fundamental constitutional principles or general principles of procedure, including in particular the principle of trust in tax authorities. Although the discretionary nature of the decision means that the tax authorities may, but are not obliged to, write off tax arrears, decisions issued in this manner cannot be arbitrary. A negative decision should be justified in a particularly convincing and clear manner, both as to the facts and as to the law, so that there is no doubt that all the circumstances of the case have been deeply considered and evaluated, and the final decision is a logical consequence of them [Wołowiec and Skrzypek-Ahmed 2016, 130-32].

The tax authority is obliged not only to determine whether the prerequisites of an important interest of the taxpayer or public interest exist, but is also obliged to balance the public interest with the individual interest

[10] Judgment of the Supreme Administrative Court of 4 May 2004, FSK 1999/04 and judgment of the Supreme Administrative Court of 9 November 1995, III ARN 51/95, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

[11] Judgment of the Supreme Administrative Court of 5 June 2013, SA/Po 3597/93, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

of the party.[12] An important interest of the taxpayer requires the existence of extraordinary circumstances in the life situation of a specific taxpayer (party to the proceedings), events objectively independent of the attitude, behaviour of the taxpayer (party), which could not be influenced even with the application of extraordinary diligence in the given circumstances, while the public interest means that the application of the requested relief must be supported by the necessity to respect the values common for the entire society, such as justice, security, trust of citizens in the authorities. The existence of circumstances of an important interest of the taxpayer or public interest does not generate an obligation for the authority to issue a positive decision for the party. The cancellation of amounts due may be justified by circumstances beyond the control of the party or caused by factors beyond the control of the taxpayer. Thus, the decision to write off tax arrears is discretionary in nature. It must be remembered that the notions of "important interest of the taxpayer" and "public interest" are always of an equal nature under the Tax Code.[13] It is the body conducting the proceedings in the matter of relief that is obliged to determine which of the two prevails and, on this basis, decide to apply, for example, the relief requested by the party in the repayment of public liabilities [Wołowiec and Żywicka 2017, 115-19]. This issue should be raised in the justification of the decision, because its omission is a premise for treating the decision as arbitrary. As indicated in the case law, an important interest of the taxpayer may be said to exist when the taxpayer becomes in arrears as a result of extraordinary circumstances, such as natural disasters, fortuitous events occurring independently of the taxpayer, which may shake the foundations of his existence. It is a situation in which the taxpayer is unable to meet his obligation to pay public levies without ad hoc assistance from the tax authorities.[14] On the other hand, the notion of public interest should be associated with respecting such values as justice, public order understood

[12] Judgment of the Administrative Court of 10 August 2002, SA/Wr 1458/01, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

[13] Judgment of the Administrative Court of 12 April 2010, III SA/Wa 1410/09, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

[14] Decision of the Self-Government Appeal Court of 13 May 2011, No. 3001/11, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

as trust towards public administration bodies, widely understood acting in the interest of the state or the society.

The public interest should be read as a certain need, the satisfaction of which should serve local communities or the whole society. Additionally, it should be pointed out that the taxpayer's interest should not collide with the public interest, which is undoubtedly the timely payment of liabilities. Remission is an institution that may be used as an exception to the principle, which is the fulfilment of tax obligations. A difficult financial situation of the taxpayer cannot be equated with an important interest of the taxpayer because such an approach would lead to injustice and inequality with respect to all taxpayers subject to the general obligation to pay taxes.[15] It should be stated that the Tax Ordinance, when defining private interest, puts emphasis on the term "important." Thus, it is not about any interest, but about the so-called qualified interest. Its existence is determined by objectivized criteria, on the basis of which the tax authority decides on remission or not. An important interest of a taxpayer cannot be equated with his/her subjective conviction about the need to write off a public liability.[16] Based on the analysis of the jurisprudence, it is possible to indicate several main theses clarifying these undefined concepts [Wołowiec 2016c, 6-10; Idem 2016b, 17-21]: 1) the important interest of the taxpayer is a situation when, due to extraordinary, fortuitous cases, the taxpayer is unable to settle the obligations incumbent upon him; 2) the prerequisites for remission (i.e. important interest of the taxpayer and public interest) should be assessed not only in the context of the personal financial situation of the party but also taking into account the connection between the reduction of the ability to pay and the occurrence of accidents causing and justifying the inability to pay;[17] 3) in cases of applying reductions in repayment of liabilities, the subject of assessment by tax authorities must

[15] Decision of the Local Government Appeal Court of 13 May 2011, No. 3001/11; judgment of the Administrative Court of 10 September 2010, I SA/Łd 557/2009 and judgment of the Administrative Court of 25 October 2021, I SA/Kr 706/2009, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

[16] Judgment of the Administrative Court of 22 April 1999, SA/Sz 850/98, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

[17] Judgment of the Supreme Administrative Court of 26 November 1999, I SA/Łd 13/98, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

be the factual state, including mainly the financial, family and life situation of the taxpayer existing on the date of resolving the case;[18] 4) the condition of "important interest of the taxpayer" requires determination of the financial situation of the party, economic effects that will occur as a result of fulfilment of the obligation for him and his family;[19] 5) an important interest of the taxpayer cannot be identified with a subjective conviction of the taxpayer about the need to redeem debts. On the contrary, an important interest of the taxpayer should be understood as extraordinary reasons which could shake the basis of the party's existence and that remission will be justified only in such cases which were caused by the action of factors which the taxpayer cannot influence and which are independent of his/her conduct.[20]

5. Resolution of the decision-making authority

The statutory regulation concerning the granting of relief with respect to civil law liabilities falling to the LGU or its subordinate units is of a general nature and requires specification in a relevant resolution of the council or the local council. In the absence of a valid resolution adopted on the basis of Article 59, section 2 of the ufp, it is unacceptable to grant reductions in payment of civil law debts. The obligatory content of the resolution consists of: 1) detailed principles (i.e. rules of conduct), manner and mode of providing relief (i.e. established order of settling cases); 2) terms of admissibility of public aid in cases where the relief would constitute public aid under separate provisions. The provisions of the resolution should decide at least what type of public aid is permissible in the case of relief and indicate the prerequisites for its application in the event that the relief may be qualified as public aid. In practice, resolutions usually refer to *de minimis* aid; 3) indication of the body or person authorized to grant such reductions.

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[18] Judgment of the Supreme Administrative Court of 27 June 2000, I SA/Ka 1821/98, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

[19] Judgment of the Supreme Administrative Court of 21 March 2001, I SA/Ka 577/00, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

[20] Judgment of the Administrative Court of 30 August 2010, I SA/Łd 173/09, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

It should be noted that if the constituting body omits any of the above mentioned elements of the authorization it fails to fully implement the authorization (does not exhaust the subject matter to be regulated by way of a resolution), which is viewed negatively by the supervisory authority. It is permissible to include in the resolution provisions on debt write-off by offsetting – if the debtor applying for write-off is at the same time a creditor of another title in relation to the territorial self-government unit or its subordinate unit and both debts are due and may be enforced in court. The subject-matter scope of the resolution is limited to civil law receivables, thus a write-off, division into instalments or deferment of the payment deadline takes place on the basis of civil law regulations (e.g. in the form of a settlement or a unilateral statement of will of the executive body). Therefore, the refusal to write off civil law debts is not subject to appeal to the administrative court, and the inaction of the authority in the case concerning the writing off of civil law debts does not fall within the scope of the cognition of the administrative court designated by the legislator in Article 3, para. 2, item 8 of the Act on proceedings before administrative courts.[21]

The Resolution applies to receivables of the LGU or local government budgetary units and budgetary establishments and local government cultural institutions. Redemption of cash receivables due to a territorial self-government unit or organizational unit in violation of the rules or procedure set forth in the resolution issued on the basis of statutory authorization contained in Article 59 of the ufp may be qualified as a breach of public finance discipline. A breach of public finance discipline will also be a debt write-off in the absence of a valid resolution of the local government body adopted on the basis of Article 59 of the ufp.

6. Granting Relief in Payment of Non-Taxable Budget Debts of Public Law Character

The substantive legal basis for the competent authority of the territorial self-government unit to grant relief in payment of non-tax budget

[21] Act of 30 August 2002 on proceedings before administrative courts, Journal of Laws of 2017, item 1369.

receivables of public-law nature is Article 67 of the ufp. Following the changes that entered into force on 28 April 2017, it should be recognised that in the subject matter there is no basis for the appropriate application of the provisions of the Op. The lack of grounds for applying the reference formulated in Article 67 of the ufp does not mean, of course, that there is no possibility of referring to the provisions of the Op in the situation of determining the meaning of particular notions in the process of explaining the meaning of the legal norms arising from Article 64 of the ufp (e.g. the notion of "important interest of the obliged party"). The provisions of Article 64 of the ufp govern the competence of the authority, the types of reliefs, the conditions for the granting of reliefs and the procedure for their granting. The tax relief may be granted *ex officio* or upon application, where the tax relief granted *ex officio* involves only a total write-off of the debt in question. The relief may be granted in the cases provided for in Article 56(1)(1)-(4) of the ufp, i.e. when: 1) the natural person – died leaving no property, or left property not subject to enforcement on the basis of separate provisions, or left objects of everyday household use, the total value of which does not exceed PLN 6000; 2) the legal person has been deleted from the relevant register of legal persons and there are no assets from which the receivable could be enforced, and the liability for the receivable does not pass to third parties by operation of law; 3) there is a justified assumption that the enforcement proceedings will not yield an amount higher than the costs of investigation and enforcement of the receivable or the enforcement proceedings have proved ineffective; 4) an organizational unit without legal personality has been liquidated.

In the case of reliefs granted at the request of a debtor obliged to pay a non-taxable budget receivable, the legislator differentiated the prerequisites for their application depending on the status of the applicant, shaping the current legal regime differently with respect to debtors who conduct business activity. In the case of persons who do not conduct business activity, the competent authority may write off, in whole or in part, non-tax budgetary receivables, postpone the date of payment of all or part of the receivables, as well as spread the payment of all or part of the receivables into instalments. It is not very fortunate that the legislator differentiated the prerequisites for granting particular types of relief. The full write-off of a debt depends on a significant interest of the debtor or the public

interest, while the application of other reliefs (including partial write-offs) depends on social or economic reasons, particularly the debtor's ability to pay. Particularly critical is the use of the term "social or economic reasons" instead of the term "important interest of the payer" or "public interest," which hinders the use of the extensive body of case law interpreting the notions of important interest of the taxpayer and public interest in the grounds of the provisions justifying the application of tax reliefs.

Decisions issued in the matter of reliefs from payment of non-tax budgetary dues are within the scope of the so-called administrative discretion, which means that the lack of occurrence of statutorily defined prerequisites of granting the relief obliges the public administration body to issue a negative decision, whereas stating the occurrence of these prerequisites does not entail the obligation to grant the relief. However, the refusal should be comprehensively justified so that it is possible to verify the legal and factual grounds for the particular manner of decision.[22] In the case of entities conducting business activity, additional conditions for the relief are set out in Article 64 para. 2 of the ufp. It should be emphasized that the meaning of this provision should be read in conjunction with Article 64, section 1(2) of the ufp, which means that the granting of the tax relief depends on the occurrence of the prerequisites indicated in this provision and the additional fulfilment of the rigors set out in Article 64, section 2 of the ufp, which are current with respect to the debtors conducting business activity. Therefore, Article 64, section 2 of the ufp is not an independent basis for granting relief in respect of the payment of non-tax liabilities of a public-law nature. In the event that an entity conducting business activity submits an application for full write-off of a non-taxable budget receivable of a public-law nature, the tax authority of the local government is required to first establish whether the circumstances indicated in Article 64, section 1(2) of the ufp (an important interest of the debtor or the public interest) exist, and then to determine whether the grant of the relief is permitted under Article 64, section 2 of the ufp.

[22] Judgment of the Supreme Administrative Court of 18 January 1995, I SA/Wr 1386/94, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

7. Write-off of grants as a nontax receivable from the LGU budget

Monetary receivables of civil law nature due to government administration bodies, state budget units and state purpose funds may be written off in whole or in part or their repayment may be deferred or spread into instalments. The act introduces a closed catalogue of reliefs from the repayment of pecuniary receivables that may be applied by the entities specified therein. The write-off of pecuniary receivables means the release of the debtor from the obligation to fulfil the payment to the unit of the public finance sector and results in the abandonment of the enforcement of the receivable. A monetary receivable may be written off in whole or in part if the application of other relief would be insufficient or impossible. Because of its exceptional character, debt write-off should serve temporarily to restore financial balance or liquidity of the debtor and not be a permanent form of subsidizing. There is no obstacle that in the case of the impossibility of satisfying the receivable in cash, the receivable should be converted, at the request of the debtor, into a benefit in kind or services, corresponding to the value of the receivable [Lipiec-Warzecha 2011, 15]. Therefore, the authorities should carry out evidence-based proceedings aimed at establishing the applicant's financial situation, including, *inter alia*, his payment capacity. In order to fully consider an individual interest of a debtor, it is not sufficient to base only on the findings regarding the debtor's assets and current income, without determining the actual financial situation of the debtor, which is affected – in addition to income – by the size of fixed charges and liabilities of the debtor.[23] The authority makes the decision on possible remission after analysing the evidence presented in the case and assessing whether it deserves consideration in the individual case. In addition, the authority's freedom to choose a decision is limited by the principle expressed in Article 7 of the Code of Administrative Procedure[24] of taking into account *ex officio* the public (social) interest or the legitimate interest of the party.

[23] Judgment of the Administrative Court of 12 September 2006, I SA/Bk 150/06, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

[24] Act of 14 June 1960 – Code of Administrative Procedure, Journal of Laws of 2016, item 24.

The cited principle obliges the authority to make a decision in the case after careful balancing of the competing general social and individual values that come into play. Article 7 of the Code of Administrative Procedure introducing the principle of *ex officio* taking into account the social interest and the legitimate interest of citizens – does not specify the hierarchy of these values or the principles of resolving conflicts between them. From the point of view of the structure and goals of administrative proceedings it can be assumed that the interests mentioned in this article are legally equivalent, which means that in the process of interpreting procedural norms the public administration body cannot be guided by the hierarchy of these interests assumed a priori. In general it can be said that the above provision imposes on bodies conducting proceedings an obligation to harmonize public interest and individual interest, if they are in conflict with each other in a particular case. In court rulings on the relation between the public interest and the legitimate interest of the party, the dominance of the public interest over the legitimate interest of the party was acknowledged. In the current legal state, the so-called administrative discretion has lost its previous character. The scope of freedom of the administrative body, resulting from the provisions of substantive law, is now limited by the general rules of administrative procedure, set out in Article 7 and other provisions of the Code of Administrative Procedure.

Conclusions

In the case of the cancellation of subsidies in administrative proceedings for the award of subsidies conducted by the province governor, the party to such proceedings, i.e. the municipality, is obliged to present all documents and materials necessary for a comprehensive assessment of the material and financial situation. Such documents include: reports on budget execution, a multi-year financial forecast, a report on the state of liabilities and receivables, a report on surplus and deficit, as well as any other information and documents allowing for a thorough examination of the actual state of affairs, bearing in mind the special role in a discretionary decision of its compliance with the social interest and the interest of the citizen. Within the framework of the administrative proceedings, the provincial governor makes practical use of certain indicators belonging to the group

of indicators recommended by the Ministry of Finance as helpful in assessing the financial situation of local government units. Within the indicator analysis the body conducting the proceedings for granting the tax relief assesses the share of the current revenue and own revenue in the total revenue of the municipality. Own revenues are treated as a determinant of the municipality's wealth and the basic source of information about its financial condition.

The decision to write off a budget subsidy is discretionary in nature. It depends on the decision of the authority whether it considers that in the specific case there are reasons of important interest of the debtor or public interest. At the same time the occurrence of these prerequisites does not have to mean a positive decision by the authority (voivode), because it is entitled to consider whether in general, and if so in what part, the arrears may be written off. The notions of "important interest of the debtor" and "public interest" are vague notions and therefore have the character of general clauses, which means that their content should be assessed in the realities of a specific, individual case.[25]

An important interest of the taxpayer is a premise directly related to the situation of a specific entity. This reason must be so important and exceptional that its omission will result in clearly discernible negative consequences for this entity. In the case of entities that are not natural persons, which are not affected in such spheres as health, family, education, the negative effects will usually manifest themselves in the economic sphere, affecting the ability to compete, meet various obligations, and may also lead to the liquidation of the entity. The fact that the legislator left to the authorities, in the above-mentioned provision, the exclusive competence to assess whether the facts of a specific case support an important interest of the taxpayer or a public interest in the cancellation of tax arrears means that the tax authority also has a certain degree of freedom both in interpreting the notions of important interest of the taxpayer and public interest (the Act does not define these notions) and in taking the final decision on the application of relief. Even the existence of the prerequisite of an important interest of the taxpayer in the circumstances of a specific

[25] Supervisory decision of the Governor of Lublin of 30 July 2010, NK.II.0911/2412/10.

case may therefore result in a negative decision for the taxpayer.[26] In the judicature of the Supreme Administrative Court the view is well established that since the remission of arrears is an extraordinary institution, therefore social and economic cases must have the same feature. Therefore, the application of relief in the form of arrears can be supported by such situations which are independent of the taxpayer's conduct or caused by factors beyond the taxpayer's control.[27]

Granting a municipality relief in repayment of a public-legal budget liability by way of a subsidy should be made for reasons important enough to distinguish the situation of the municipality in comparison to others which are subject to similar obligations. Having regard to the fiscal goal as the overriding objective of public finance, the institution of write-off should be of an extraordinary nature and should concern, on the one hand, the situation in which the party finds itself and, on the other, the economic and material situation of the municipality. It seems that citing the municipality's general financial difficulties will not be an sufficient argument, because not every financial difficulty may justify the application of relief in the form of debt write-off, but only such which, in specific circumstances, would be associated with a threat to the significant interest of the oblige.

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[26] Judgment of the Administrative Court of 19 May 2010, I SA/Sz 110/2010, www.orzeczenia.nsa.gov.pl [accessed: 22.11.2022].

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