

# THE SUSPENSION OF THE LIMITATION PERIOD FOR A TAX OBLIGATION FROM THE PERSPECTIVE OF THE PRINCIPLE OF THE CITIZENS' TRUST IN THE STATE AND ITS LAWS

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**Abstract.** This study is devoted to the issue of the suspension the limitation period for a tax obligation. Pursuant to Article 70(6)(1) of the Act of 29 August 1997, the Tax Ordinance, the course of the limitation period for a tax obligation does not begin, and, in the event it has begun, is suspended, on the day on which proceedings in a case of a fiscal offence or fiscal petty offence are initiated, of which the taxpayer has been notified, if a suspicion that the offence or petty offence has been committed is connected with failure to fulfil this obligation. It is worth considering whether this regulation is consistent with the principle of citizens' trust in the State and its Laws, as expressed in Article 2 of the Constitution of the Republic of Poland, and consequently with Article 32(1) of the Constitution. The main research intention is to describe what impact the above-mentioned legal regulation has for determining the extent of the effect the tax regulation in question on the principle of the citizens' trust in the State and its Laws. It should be noted that the failure to inform about the existence of a condition for suspension expressed in the analysed provision may result in the fact that, as a consequence of a misconception on the part of the taxpayer, decisions taken by him or her in connection with the disposing of property will also be incorrect.

**Keywords:** tax obligation, course of a period, statute of limitation, principle of trust

## INTRODUCTION

This study is devoted to the issue of the suspension the limitation period for a tax obligation. Pursuant to article 70(6)(1) of the Act of 29 August 1997, the Tax Ordinance,<sup>1</sup> the course of the limitation period for a tax liability does not begin, and, in the event it has begun, is suspended, on the day on which proceedings in a case of a fiscal offence or fiscal petty offence are initiated, of which the taxpayer has been notified, if a suspicion that the offence or petty

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<sup>1</sup> Journal of Laws of 2021, item 72 as amended.

offence has been committed is connected with failure to fulfil this obligation. It is worth considering whether this regulation is consistent with the principle of citizens' trust in the State and its Laws, as expressed in Article 2 of the Constitution of the Republic of Poland, and consequently with Article 32(1) of the Constitution.<sup>2</sup>

The mere notification of the taxpayer of the commencement of proceedings for a fiscal offence or fiscal petty offence constitutes therefore a condition for suspending the course of the limitation period for a tax obligation if a suspicion that an offence or a petty offence has been committed is connected with failure to fulfil this obligation. In legal scholarship, one may encounter the view that the structure of the provision of Article 70(6)(1) of the Tax Ordinance does not provide taxpayers with measures which would prevent them from instrumental use of this provision by tax authorities. As a result, it is the administrative courts reviewing complaints against decisions of the tax administration that will decide whether the application of Article 70(6)(1) of the Tax Ordinance in a given legal and tax situation did not constitute an abuse of power [Wojtuń 2017, 115]. As a rule, the institution of the statute of limitations for a tax obligation should be subject to the values protected by the Constitution of the Republic of Poland. As a result, a taxpayer has the right to expect that the expiry of a tax obligation will occur within a reasonable time. This assumption is based on the thesis that a taxpayer should know when his or her tax obligation expired. Thus, if the time limit for a tax obligation is extended for any reason, it is reasonable that the taxpayer should also know about it. For example, informing a taxpayer of being charged is linked to the notification of the suspension of the limitation period, since at that moment the taxpayer has knowledge of the ongoing penal-fiscal proceedings. However, one should consider suspending the course of the limitation period for a tax obligation as a consequence of imitating proceedings for a tax offence or tax petty offence when, in connection with court proceedings, a judgment acquitting the defendant or accused of the charge of a tax offence or tax petty offence has been issued or discontinuance of such proceedings as a result of court proceedings conducted. It should be emphasised that the provision of Article 70(6)(1) of the Tax Ordinance defines the day of the suspension of the course of limitation period in such a way that this day is the commencement of proceedings in a case of a fiscal offence or petty offence. Moreover, it applies only to such cases in which the suspicion that a fiscal offence or petty offence has been committed is connected with failure to fulfil an obligation whose limitation is running. In the context of the principle of citizens' trust in the state and its laws, what seems to be important are the legal effects of the suspension of the limitation period for a tax obligation in a situation

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<sup>2</sup> The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

where the court proceedings were discontinued or the defendant or accused was acquitted.

In scholarship on tax law, the view has become quite common that it affects the running of the limitation period initiation of proceedings in the case (issuance of a decision to initiate investigation) and not against the person though, in theory, the purpose of the proceedings in the case is the detection of the perpetrator, Article 70(6)(1) of the Tax Ordinance actually assumes occurrence of a suspect.

Therefore, a taxpayer, having confidence in the general principle of tax law – the five-year limitation period for a tax obligation, calculated from the end of the calendar year in which the tax obligation arose, may dispose of his financial and property resources in the conviction that he or she is not under an obligation to pay tax arrears [Banaszak 2011, 10–12].

In view of the above, one should consider whether the actions undertaken by the legislator led to the creation a properly functioning institution of the suspension of the tax obligation limitation period. The main research intention is to describe what impact the above-mentioned legal regulations have on the principle of citizens' trust in the State and its Laws. It is worth noting that the failure to inform about the occurrence of a condition for suspension expressed in the analysed provision, may cause that, as a result of wrong conviction of the taxpayer, decisions taken by him or her related to the disposition of property will be therefore also incorrect. In addition, it should be pointed out to what extent and on what basis the legislator assumed that the developed legal solutions would determine a well-functioning system of suspension of the period of limitation for a tax obligation.

## 1. THE PRINCIPLE OF THE CITIZENS' TRUST IN THE STATE AND ITS LAWS

At the outset, it should be noted that principle mentioned in the title of this article has its source in Article 2 of the Constitution of the Republic of Poland. It is a pillar for the formulation of a number of conditions that should be enforced by the state authorities so that this principle is not just an empty declaration of the legislator. Among these conditions, the issue of the citizens' trust in acts issued by the public administration has an important place [Celińska–Grzegorzyc 2010, 61]. Interestingly, legal scholarship points out that the principle of citizens' trust in the State and its Laws stems from the idea of the rule of law, even before the entry into force of the Basic Law [Łętowska 2012, 299]. However, it was developed primarily in the case law of the Constitutional Tribunal [Potrzeszcz 2007, 223–24]. The content of the principle of trust in the state and its laws they create include ensuring the legal security of the individual related to legal certainty. "The practice of tax

authorities leading to the passage of the limitation period is at the discretion of the tax authority and is not subject to any judicial review, and it jeopardizes the objectives of the European Union, including the principle of effectiveness. This implies a breach of the principle of sincere cooperation expressed in Article 4(3) of the Treaty on European Union, as well as the principle of legal certainty, the principle of legitimate expectations, restricts the exercise of the right to property in a disproportionate and unacceptable manner, thus violating Article 17 of the EU Charter of Fundamental Rights in conjunction with Article 52(1) of the Charter of Fundamental Rights and Article 21(1) and Article 64 of the Constitution in conjunction with Article 31(3) of the Constitution of the Republic of Poland.”<sup>3</sup>

The principle of enhancing trust in state authorities expressed in Article 8 of the Code of Administrative Procedure is in a way a reflection of the constitutional principle of a democratic state of law. The principle of conducting proceedings in a way that inspires or increases the trust of the individual in the public authorities aims to eliminate such procedural situations which may surprise the participants of the proceedings [Borkowski 2020, 145]. As S. Rozmaryn rightly notes, this principle constitutes a framework which covers the entire proceedings. Starting from the assumption that the strength of the State and the effectiveness of the State and its actions are determined by the citizens’ trust in public authority, the legislator has made it the point of reference for the remaining principles [Rozmaryn 1961, 903]. What follows from this principle is, *inter alia*, the duty to respect the principle of equality of citizens before the law, a reliable explanation of the circumstances of a given case and the intention to convince the parties of the rightness of the decisions taken [Kmieciak 2019, 65].

When explaining the issue of the citizens’ trust in the state and its laws, one should also reflect upon the issue of equality before the law. The constitutional principles, which directly bind a public administration body and is subject to self-application in the process of law application by the body, includes the principle of equality before the law. Legal scholarship emphasises that Article 32(1) of the Constitution of the Republic of Poland is the basis for reconstruction of the principle of law of the second degree, which is indicated by the systematic nature of the Fundamental Act, as well as the close relationship of equality with justice and freedom, as well as human dignity as the most significant constitutional value. The obligation of equal treatment should therefore be understood as a principle of system construction, which concerns the application of other constitutional norms and manifests itself in the form of an interpretative rule. The consequence of the application of the principle under analysis is an order, lying with the bodies applying the law, to reject the result

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<sup>3</sup> Judgment of the Provincial Administrative Court in Wrocław of 22 July 2019, ref. no. I SA/Wr 366/19, Lex no. 2740672.

of an interpretation that would result in a violation of equality [Ziółkowski 2015, 103]. Therefore, from Article 32(1) of the Constitution of the Republic of Poland one should derive the obligation of equal treatment of entities in a similar situation and, at the same time, the prohibition of differentiation in this treatment without an argument finding proper justification in a provision of at least statutory rank. It should be pointed out that justice requires that legal differentiation of entities be in correct relation to differences in their factual situation as addressees of certain legal norms.

In the case law of the Constitutional Tribunal the view has become established that “equality in the constitutional sense is not of an abstract and absolute nature, in accordance with the generally accepted assumption, it does not mean identity of rights of all individuals. Equality (the right to equal treatment) always operates in a certain situational context, it must be referred to prohibitions or orders, or granting rights to certain individuals (groups of individuals) in comparison to the status of other individuals (groups). Equality does not mean the same factual and legal situation of everyone, but it consists in equal entitlement to various rights [...]. Article 32(1) of the Constitution refers here both to the application of the law (all are equal before the law), as well as lawmaking (the right to equal treatment by public authorities, including the legislative authority)” [Zubik 2008, 184]. It should therefore be concluded that arguments in favour of a possible derogation from the principle of equality must result from other values which justify a different treatment. Undoubtedly, one of such principles is the one expressed in Article 2 of the Constitution of the Republic of Poland. Although the two principles in questions overlap to a significant extent, differentiation between subjects of law is possible, provided that it complies with the principle of a democratic state of law. As a result, citizens’ lack of trust in the State and its Laws, in principle, the result of a breach of the law by public administrative authorities, in particular of equality.

It is worth emphasising that the consequences of the principle of citizen’s trust in the state and its Laws also concern the creation of tax law. According to the Constitutional Tribunal, “the far-reaching freedom of the legislator in shaping the substantive content of tax law is, however, in a way balanced by the existence of the duty on the part of the legislator to respect (the procedural aspects of) the principle of a democratic state of law.”<sup>4</sup> The Tribunal has repeatedly expressed its views on the principle of decent legislation in the area of tax law as a manifestation of the general principle of citizens’ trust in the State and its Laws. Thus, “tax legislation must always be [...] carefully assessed from the point of view of compliance with... procedural requirements. Since its effects for the citizens take on a specific financial dimension and are

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<sup>4</sup> Judgment of the Constitutional Tribunal of 24 May 1994, ref. no. K 1/94, Lex no. 25098.

often connected with the depletion of their income, the legislator must form new tax regulations taking into account the fact that taxpayers – assuming the stability of previous regulations – have planned certain economic actions and their various interests may be pending. Obviously, an absolute nature cannot be ascribed to the protection of these interests, as the volatility of the law is an element which citizens must take into account. In any case, in situations where the provisions of law set a certain time horizon for planning and carrying out a certain financial or economic undertaking, the rules of the game cannot be changed before the expiry of the period or deadline envisaged by the legislator. If an undertaking began based on trust in the law, and the law provided that it would be carried out over a certain period of time, then – apart from special situations – a citizen should be confident that he or she will be able to use that period of time safely. The commencement of a financial or economic undertaking normally entails an initial outlay, and a sudden change of such an undertaking could expose a citizen to serious losses.”<sup>5</sup>

Pursuant to Article 121(1) of the Tax Ordinance, tax proceedings should be conducted in a manner that inspires confidence in tax authorities. There is no doubt, that this principle rule has not only normative value, but also content going beyond the legal framework. The aim of the legislator was to protect taxpayers against negative consequences of mistakes made by tax authorities. It is important that the implementation of this principle should take place without the need for the taxpayer to intervene. This means that the authority conducting the proceedings should *ex officio* ensure that this principle is respected at any time during the conduct of a tax case. In legal scholarship one can find the opinion that the principle in question still has a form of a postulate only. This is supposed to result, *inter alia*, from the conflict of mutually exclusive legal norms, which cannot *de iure* create a coherent tax law system. However, the legislator intended this principle to be not only an abstract postulate, but a legal norm the application of which should have a specific dimension in the course of tax proceedings. At the same time, it is important that a balance is maintained in the relationship between the taxpayer and the tax authority [Mariański 2021, 679–81]. Significantly, Poland’s accession to the European Union resulted in the implementation of sources of European law into the Polish legal system. It has therefore become necessary to implement solutions of Community law. Pursuant to Article 19 of the Treaty on European Union,<sup>6</sup> the Court of Justice of the European Union guarantees respect for the law in the interpretation and application of Treaties. The CJEU, in particular through its preliminary ruling, interprets the provisions of European Union law. Consequently, the practice of tax authorities is also increasingly

<sup>5</sup> Judgement of the Constitutional Tribunal of 25 November 1997, ref. no. K 26/97, Lex no. 31034.

<sup>6</sup> Treaty on European Union, O.J. EU C of 2010, No. 83.

influenced by CJEU rulings. This Court has repeatedly pointed out the correct relationship between a taxpayer and a tax authority, emphasising the extent to which a taxpayer may expect the CJEU case law to have an impact on his or her tax and legal situation. Over the years, the Court has, *inter alia*, pointed out, that the providing incorrect information must not burden a taxpayer if he or she has already used it. This applies in particular to a party to tax proceedings who acted in good faith and in trust as to the content of the tax decision received.<sup>7</sup> In view of the examples referred to, it is therefore reasonable to conclude that a violation of the principle of conducting proceedings in a manner inspiring trust in tax authorities is an independent condition for the annulment of a tax decision. Moreover, one should conclude that since it is a norm of a general nature, its violation will also occur in the case of violation of other norms that should be observed in the course of resolving a tax case. As a rule, all elements of the legal relationship are subject to assessment if the proceedings conducted in a confidence-inspiring manner are to be called substantively accurate [Dzwonkowski 2020, 856–59]. It is also worth emphasising that the assessment of a tax authority contrary to the will of a taxpayer does not prove a violation of the principle of conducting proceedings in a manner inspiring trust in tax authorities. Undoubtedly, however, not infrequently the legal ties connecting a taxpayer with a tax authority become complicated and then the principle of the citizens' confidence in the State is significant from the point of view of the existence of a tax obligation. In conclusion, the principle of deepening trust as a principle of procedural law requires, first of all, the authority to comply with the principle of operation on the basis and within the limits of the law – it is addressed to the authority which is to observe the law, not to correct it. The principle of trust in the state and its laws is addressed it is, however – as is clear from the jurisprudence of the Constitutional Tribunal – to the legislator himself.

## 2. THE SUSPENSION OF THE LIMITATION PERIOD FOR A TAX LIABILITY

When analysing the question of the statute of limitations of a tax liability, it is necessary to address the issue of the failure to deliver to a taxpayer a decision on the commencement of preparatory proceedings in the case of a tax offence. The prevailing view in the case law is that there are no legal grounds for adopting the view that it may have any procedural effects in tax proceedings.<sup>8</sup> It is worth noting that the purpose of the statute of limitations in tax law

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<sup>7</sup> Judgment of CJEU of 27 September 2012, ref. no. C–392/11, Lex no. 1219340.

<sup>8</sup> Judgment of the Supreme Administrative Court of 1 October 2012, ref. no. II FSK 302/11, Lex no. 1227213.

is to ensure to the taxpayer that a tax liability will expire after a certain period of time. Therefore, the indication of clear conditions for suspending or interrupting the course of the limitation period is important, as they have a real impact on the time when a tax obligation is due and the tax authorities can demand its enforcement. Undoubtedly, the derivation of the condition in question from Article 70(6)(1) of the Tax Ordinance was dictated by securing the fiscal interests of the State. Legal scholarship points out that the condition for the suspension the limitation period of a tax liability is the commencement of proceedings for a fiscal offence or petty offence, which leads to the conclusion that it is not necessary to initiate such proceedings against a person. Therefore, one may conclude that the suspension of the limitation period for a tax liability constitutes a kind of additional obligation for the taxpayer. At the same time, the legislator did not take into account a regulation that would allow a party to tax proceedings to exercise his or her rights by appealing against this suspension as of the date of commencement of criminal proceedings or proceedings for a fiscal offence or petty offence [Banaszak 2011, 15–16]. It should be noted that the provision of Article 70(6)(1) of the Tax Ordinance leads nonetheless to negative legal consequences for a taxpayer; the rational legislator did not provide him or her with a legal remedy that could secure his or her legal and tax interest. In this context, it should be emphasised that the possibility of appealing against court or administrative rulings constitutes an important aspect of the principle of citizens' trust in the state and its laws. As an aside, it is worth mentioning that it follows from the provisions of Article 102 of the Penal Code<sup>9</sup> and Article 44(5) of the Fiscal Penal Code<sup>10</sup> that the suspension of the limitation period for punish ability of a criminal offence or a fiscal offence may take place at the moment of initiating criminal or fiscal penal proceedings against a person. This means that this institution can be applied only at the *in personam* stage, as opposed to the model expressed in the Tax Ordinance. The difference between these legal regulations once again calls into question the application of the principle of citizens' trust in the State in practice [Kulik 2016, 155–60]. In the case of tax proceedings, in order to suspend the limitation period of for a tax obligation, it is only necessary to initiate preparatory proceedings in the case, whereas in criminal or penal fiscal proceedings, it is necessary for these proceedings to enter the *in personam* stage. Therefore, it seems that as a result Article 70(6)(1) of the Tax Ordinance creates uncertainty for its addressees as to the content of their rights and, moreover, gives consent to its free interpretation by tax authorities. In this way, there is a completely unjustified differentiation of the position of a party to tax proceedings, consisting in the fact that he or she is not informed

<sup>9</sup> Act of 6 June 1997, the Penal Code, Journal of Laws of 2021, item 1023.

<sup>10</sup> Act of 10 September 1999, the Fiscal Penal Code, Journal of Laws of 2021, item 408 as amended.



of the occurrence of an event leading to the suspension of the limitation period for a tax liability. The conclusion seems to be clear. Taxpayers to whom this regulation applies are in a worse legal and fiscal position than entities with respect to whom at least the conditions of Article 70(1–4) and (6(2)) of the Tax Ordinance apply. *De lege lata*, there is no actual mechanism enabling a taxpayer to obtain information about pending proceedings for a tax offence or petty offence [Serafiński 2020, D5].

Important for the analysed issue is the judgment of the Constitutional Tribunal of 17 July 2012 in ref. no. P 30/11,<sup>11</sup> which explicitly pointed out that Article 70(6)(1) of the Tax Ordinance, in the wording introduced by Article 1(58) of the Act of 12 September 2002 amending the Tax Ordinance Act and certain other acts,<sup>12</sup> to the extent to which it leads to suspension of the running of the limitation period of a tax liability in connection with initiation of criminal proceedings or proceedings for a fiscal offence or petty offence, about which the taxpayer was not informed not later than within the time limit expressed in Article 70(1) of the Tax Ordinance, is contrary to the principle of the citizen's trust in the State and its Laws. Significantly, the view has become established in the case law of the administrative courts<sup>13</sup> that the above remark of the Tribunal applies to the legal situation from 1 September 2005 to 14 October 2013.

After this ruling of the Constitutional Court, the tax authorities significantly changed their previous position, informing taxpayers about the suspension of the limitation period in connection with initiated criminal proceedings. In addition, the tax authorities began to initiate criminal proceedings against taxpayers for the existence of the condition of the suspension of the running of the limitation period [Serafiński 2016, C2]. Changes which are essential for the issue in question were introduced by the resolution of the Supreme Administrative Court of 18 March 2019 in case ref. no. I FPS 3/18, which adopted two theses. “To effectively fulfil the duty arising from Article 70c of the Tax Ordinance of 29 August 1997 [...] the notification referred to in this provision should be delivered to the attorney who was appointed in control or tax proceedings, even if this notification is made by a tax authority before which no proceedings with the participation of the party's attorney are pending. Failure to comply with the above obligation should be treated as failure to fulfil the substantive law effect provided for in Article 70(6)(1) of the Tax Ordinance.”<sup>14</sup>

<sup>11</sup> Lex no. 1171372.

<sup>12</sup> Act of 12 September 2002 amending the Tax Ordinance Act and certain other acts, Journal of Laws of 2007, item 1650 as amended.

<sup>13</sup> See decision of the Supreme Administrative Court of 24 March 2011, ref. no. I FSK 302/1, Lex no. 783577; judgment of the Supreme Administrative Court of 18 September 2012, ref. no. 1775/11 and the judgement of the Supreme Administrative Court of 4 October 2012, ref. no. II FSK 314/11, CBOSA.

<sup>14</sup> Lex no. 2633666.

Although this position does not raise any doubts, one may reflect on the view of this Court, which concerns the legal situation prior to 15 October 2013, i.e. the date of entry into force of Article 70c. The Supreme Administrative Court stated that the above-cited decision of the Court is “a negative interpretative judgment with complex effects. The complexity of the effects of such a judgment lies in the fact that within the scope not indicated in the operative part, the controlled provision is not deemed to be contrary to the Constitution of the Republic of Poland; such effect occurs only in relation to the scope indicated in the operative part of the ruling.”<sup>15</sup> Therefore, the Supreme Administrative Court assumed that the ruling of the Tribunal does not in any way change the content of the legal norm resulting from Article 70(6)(1) of the Tax Ordinance [Czeszejko-Sochacki, Garlicki, and Trzeciński 1999, 214]. It should be noted that under the *tempus regit actum* rule, administrative courts adjudicate based on the case file as well as on the factual and legal situation existing on the day the controlled decision was issued. It may be assumed that the content of the justification of the analysed resolution of the Supreme Administrative Court is a result of the fact that although the vagueness of the provision of Article 70(6)(1) of the Tax Ordinance was far-reaching, the legislator did not decide to deprive the analysed provision of its binding force. At this point it is worthwhile to devote some attention to this issue. Bearing in mind the manner of the expiry of a tax obligation the legislator has provided for two methods causing termination of the legal and fiscal bond between the taxpayer and the tax creditor. The first method assumes voluntary payment of the tax by the taxpayer or the occurrence of other events provided for in tax acts, which lead to the taxpayer’s fulfilment of his or her tax obligation and satisfaction of the tax creditor. Alternatively, a tax obligation expires as a result of the occurrence of other events provided for by the legislator, such as the limitation for a tax liability. The expiry of a tax liability as a result of a limitation is ineffective, as it does not satisfy the financial claims of the tax creditor. The limitation produces specific substantive legal effects as a result of the passage of time. The essence of the statute of limitations is that a tax liability expires after a certain period of time, even though it has not been settled. As a result, the relationship of obligation between the tax debtor and the tax creditor ceases to exist. This means that with the expiry of the limitation period, the tax obligation expires and it does not matter whether the debtor invokes it [Adamiak, Zubrzycki, Borkowski, et al. 2017, 370]. It should be added that the limitation a tax liability applies not only to the principal amount due, but to all monetary claims of the tax creditor, including those that arose as interest for late payment. Of key importance is the fact that the provision of Article 70 of the Tax Ordinance concerns existing tax obligations. Therefore, the taxpayer must

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<sup>15</sup> Ibid.

know the amount and date of payment of the tax. As a rule, the beginning and end date of the limitation period for a tax obligation is determined by the date of payment of the tax to which this obligation is related. An exception is the suspension and interruption of the limitation period, which affect the final date of the limitation period [ibid., 371]. As indicated above, the legal event that causes the suspension of the limitation period for a tax obligation pursuant to Article 70(6)(1) of the Tax Ordinance is the commencement of proceedings in a case of a fiscal offence or petty offence. Therefore, the suspension of the limitation period of a tax liability under Article 70(6)(1) of the Tax Ordinance takes place on the day of the issuance of the decision to commence preparatory proceedings in the case of a fiscal offence or petty offence. It should be added that the date of commencement of criminal proceedings and proceedings for a fiscal offence or petty offence. is the date of issuance of the decision on the commencement of an investigation. Thus, proceeding to the conclusion, bearing in mind the resolution of the Supreme Administrative Court discussed above, it should be pointed out that the Court made a pro-constitutional interpretation of the law, stating that until the provision of Article 70c of the Tax Ordinance is introduced, the basis for notifying taxpayers of the suspension of the limitation period referred to in Article 70(6)(1) of the Tax Ordinance was the principle of the citizens' trust in the State and its Laws. Independently of the introduced Article 70c of the Tax Ordinance, it seems that the principle of the citizens' trust in the State and its Laws requires that a taxpayer should be aware whether his or her tax obligation is time-barred or not. It should be assumed that the legislator introduced a legal structure, the essence of which is to link the commencement of the limitation period for a tax liability with the date of initiation of proceedings in the case, and not against a specific person. Thus, the legislator deprived the taxpayer of the possibility of a trial responding to cases of excessive length of fiscal penal proceedings. It is worth noting that even if the taxpayer finds that the proceedings in the case of a tax offense or a tax offense are grossly lengthy, he will not be able to counteract it, despite the fact that this circumstance has a significant impact on his legal interests. "Article 70(6)(1) of the Tax Ordinance, in so far as it provides for the running of the limitation period for the obligation tax does not begin, and the started one is suspended, on the day of initiating proceedings in the case, and not against the person, violates the principle of citizens' trust in the state and and its Laws. It makes an objective legal category in the form of a limitation period."<sup>16</sup>

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<sup>16</sup> The position of the Human Rights Defender on the constitutional complaint concerning Article 70(6)(1) of the Tax Ordinance, <https://www.rpo.gov.pl/sites/default/files/Stanowisko%20RPO%20ws.%20skargi%20konstytucyjnej%20dotycz%C4%85cej%20art.%2070%20ust.%206%20pkt%201%20Ordynacji%20podatkowej%2C%2017.01.2020.pdf> [accessed: 04.03.2022].

## CONCLUSIONS

The issues addressed in this article are evidently exemplified in practice. The legal solutions adopted in Article 70(6)(1) of the Tax Ordinance support the thesis about the complex nature of the concept of the suspension of the limitation period for a tax obligation. The explanation of its essence is simpler if one refers directly to the mechanism of the statute of limitations. This institution concerns existing tax obligations, i.e. the case in which the amount and date of payment of the tax are known to the party to the tax proceedings. Thus, the taxpayer's obligation to make a public contribution is concretised and updated. The five-year period specified in Article 70(1) of the Tax Ordinance, due to its substantive nature, cannot be restored. It cannot be postponed either. Due to the suspension of the limitation period for a tax obligation, the period does not run. As a result, the five-year limitation period of a tax obligation is extended by the period during which it was suspended. Pursuant to Article 70(6)(1) of the Tax Ordinance, the course of the limitation period of a tax obligation is suspended on the day on which criminal proceedings or proceedings for a fiscal offence or petty offence are initiated. This article proves that the regulation in question violates the principle of protecting the citizens' trust in the State and its Laws expressed in Article 2 of the Constitution of the Republic of Poland and consequently Article 32(1) of the Constitution.

The principle of the protection of the citizens' trust in the State and its Laws made by it is one of the most significant derivatives resulting from the principle of a democratic State of law. "In accordance with the principle of trust in the State and its Laws created by it, arising from Article 2 of the Constitution, also referred to as the principle of loyalty of the state towards citizens, the law should provide security for individuals and enable them to decide on their conduct, with the sense of knowing the legal consequences of the actions taken and the premises of action of state bodies, which will not be arbitrarily changed by the legislator. Its essence is the prohibition of setting legal «traps» for citizens, of making empty promises, or of abruptly withdrawing from promises made or established rules of conduct."<sup>17</sup> In this context, it is closely linked to the principle expressed in Article 32(1) of the Polish Constitution. The key subjective right in the form of the right to equal treatment arise from the principle of equality. It requires identical treatment of all addressees of legal norms who are in the same or similar legally relevant situation. There is an established view in the case law that if "the lawmaker differentiates between subjects of law who share a common essential feature, it introduces a derogation from the principle of equality. The differentiation of legal entities characterised by a common essential feature is permissible

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<sup>17</sup> Judgment of the Constitutional Tribunal of 8 April 2014, ref. no. SK 22/11, Lex no. 1477520.

(it does not violate the principle of equality but the *sine qua non* condition is a clearly formulated criterion on the basis of which the differentiation is made, No differentiation may be made according to an arbitrary criterion or no criterion at all. The criterion must be relevant, i.e. it must be directly related to the purpose and essential content of the provisions in which the controlled norm is included and must serve the purpose of achieving this purpose and content. The differentiation introduced must therefore be reasonably justified, and the criterion of differentiation must be in appropriate proportion to the importance of the interests that are violated as a result of unequal treatment of similar entities. In addition it must be related to constitutional principles, values and norms which justify different treatment of similar entities. Any derogation from the requirement of equal treatment of similar entities must always be based on sufficiently convincing arguments.”<sup>18</sup> Taking the above into account, it should therefore be assumed that, on the one hand, a situation in which a taxpayer considers it impossible to suspend the limitation period for a tax obligation and, as a result, to extend the five-year period, which does not constitute a constitutionally protected right. On the other hand, the analysed case may constitute a trap for a taxpayer, since, by failing to fulfil his or her tax obligation on time, he or she cannot predict the suspension of the limitation period as a result of the commencement of preparatory proceedings for a fiscal offence or petty offence. Although liability for fiscal offences and petty offence is based on completely different principles than tax liability, it cannot be assumed that informing a taxpayer about the commencement of proceedings for a fiscal offence or petty offence would constitute interference in the course of such proceedings [Mastalski 2019, 454]. *De lege lata*, it would seem that Article 70c of the Tax Ordinance should be treated as a necessity to remove doubts concerning the determination of the moment of suspension of the limitation period for a tax liability. However, Article 70(6)(1) of the Tax Ordinance still remains in force, which constitutes a trap for a taxpayer. The analysed regulation creates solutions in which tax authorities have the possibility to abuse their position towards a party to tax proceedings. As a consequence, it may lead to wrong decisions being taken by the obliged party on the disposal of his or her property.

To sum up, the adopted solution is of a nature which is primarily inconsistent, allowing tax authorities to continue to use the institution mentioned in the title of this article in an instrumental manner. It is worth noting that the introduced tax mechanism does not give the possibility of application of the statute of limitations even when the accusation or charge was wrong at the moment of a given procedural act, which is ultimately decided by the court in a ruling acquitting of a tax offence (petty offence) or discontinuing the proceedings

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<sup>18</sup> Judgment of the Supreme Court of 17 September 2020, ref. no. II PK 6/19, Lex no. 3063122.

[Eichstaedt 2020, 1327–330]. Therefore, it should be concluded that the institution of limitation of a tax obligation loses its significance. As a result of suspension of the limitation period, the tax obligation does not expire with the lapse of the 5-year period counted from the end of the calendar year in which the tax obligation arose, but it may still be effectively enforced, also after completion of preparatory proceedings in a case for a fiscal offence or petty offence. The key assumption for this institution should be that a taxpayer has the right to expect that the expiry of the limitation period will result in the expiry of any outstanding tax obligations. Suspension of the limitation period extends this time-limit by the period of suspension and thus *de facto* changes the legal and factual situation of the obliged person. There is no doubt that a state of uncertainty does not correlate with the principle of citizens' trust in the State and its Laws. What is unacceptable is a situation in which each commencement of penal fiscal proceedings, even in the absence of any substantive or procedural grounds, would result in the suspension of the limitation period of the tax obligation. Therefore, it seems that *de lege ferenda* changes should be postulated in the direction that the suspension of the period should not take place if only the proceedings were initiated in the case about which the taxpayer is not notified and also when these proceedings did not provide any grounds to charge anyone. As rightly noted by A. Chorążwska and L. Wilk “in a democratic a legal state that respects the principle of legal security of an individual, it should there is a «rule of mirror image», sanctioning a direct functional relationship the institution of interruption of the limitation period for a tax liability and the institution of extension the punishability of a tax tort related to failure to perform this obligation tax. It is unacceptable for the same facts to be assessed differently by the legislator on the basis of various areas of law. Meanwhile, if we accept that same initiation of penal fiscal proceedings regarding the failure to fulfill a tax obligation with only the taxpayer notifying about the pending proceedings in the in rem phase before after the basic deadline of the tax liability expires, it gives the right to recognize that the limitation period for this obligation was interrupted, it means consent to such action of the state” [Chorążwska and Wilk 2016, 151–52].

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