Teka Komisji Prawniczej PAN Oddział w Lublinie, vol. XVIII, 2025, no. 1, pp. 113-129
https://doi.org/10.32084/tkp.9060

REVIEW OF THE SUPREME ADMINISTRATIVE COURT'S JUDICIAL DECISIONS ON CORPORATE INCOME TAX IN 2019-2022

Dr. Ewa Jakubiak

University of Lomza, Poland
e-mail: ejakubiak@al.edu.pl; https://orcid.org/0000-0002-7849-2880

Dr. Julia Tocicka

SGH Warsaw School of Economics, Poland
e-mail: jtocic@sgh.waw.pl; https://orcid.org/0000-0003-1536-6817

Abstract. The article presents a review of the judicial decisions of the Supreme Administrative Court in the field of corporate income tax in 2019-2022. It emphasises the importance of the Supreme Administrative Court's judicial decisions in shaping and interpreting tax law. Tax legislation and the interpretation of tax law cannot be fully considered without taking into account the importance of the judicial decisions of administrative courts. Court judgments, although they are not sources of law, have a significant impact on the structure of corporate income tax. The review of the case law of the Supreme Administrative Court is therefore crucial in this respect for understanding its impact on the structure of tax law and shaping the tax policy of the state. The analysis of judicial decisions shows a desire to extend the protection of individual rights and tax justice, as well as limit the practices of tax authorities and restore unjustly deprived rights of taxpayers.

Keywords: judicial decisions; corporate income tax; tax legislation; interpretation of tax law.

INTRODUCTION

In Article 87 of the Constitution of the Republic of Poland, the concepts of a closed catalogue of sources of law[1] were adopted. However, this does not limit the possibility of making legal acts created by the administrative judiciary in specific judicial situations [Gomułowicz and Mączyński 2022, 222]. The closure of the catalogue of sources of law applies only to the sources of written law and does not mean that it cannot be supplemented with other sources of law [Małecki 2003, 63]. Polish administrative

[1] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997, No. 78, item 483 as amended.

ISSN 1899-7694
e-ISSN 2719-7379

courts have numerous objective reasons for substituting the legislator, who, in many cases, adopts defective solutions in the field of tax law [Idem 2005, 249]. This applies primarily to situations in which there is a need to: 1) specify the content of general concepts used in the field of tax law; 2) clarify defective tax regulations; 3) adopt a resolution of the Supreme Administrative Court [Gajewski 2022, 87] performing an explanatory function in the field of the correct application of tax law.

Supervision over the judicial decisions of provincial administrative courts in matters of tax liabilities and other monetary benefits to which tax regulations apply, and on the enforcement of monetary benefits falls within the jurisdiction of the Financial Chamber of the Supreme Administrative Court.[2] For the purposes of this article, the judicial decisions of the Financial Chamber of the Supreme Administrative Court in the field of corporate income tax in 2019-2022 were analysed (Table 1). The subject of the analysis was the materials contained in the annual *Information on the activities of administrative courts*, which is a material form of fulfilling the information obligation of the President of the Supreme Administrative Court on the activities of administrative courts.

1. JUDICIAL DECISIONS OF THE SUPREME ADMINISTRATIVE COURT IN THE FIELD OF CORPORATE INCOME TAX

Tax legislation and systemic solutions regarding the interpretation of tax law cannot be considered without determining the importance of the judicial decisions of administrative courts. Although court judgments are not sources of tax law, they significantly affect the structures of corporate income tax. Considering the above, an analysis of the judicial decisions of the Supreme Administrative Court in the field of corporate income tax becomes justified and purposeful. It affects the construction of tax law and the shaping of the state's tax policy.

The data presented in Table 1 shows that cases in the field of corporate income tax in the years 2019-2022 constituted from 7% to 9% of all cases received by the Financial Chamber of the Supreme Administrative Court.

Table 1. Information on the Supreme Administrative Court's judicial decisions in the field of corporate income tax in 2019-2022

[2] Act of 25 July 2002, the Law on the system of administrative courts, Journal of Laws item 2492 as amended, Article 39.

1	2	3	4	5
Year	Number of cases received (in total) by the Financial Chamber of the Supreme Administrative Court	Number of corporate income tax cases	Percentage of corporate income tax cases	Issues in the field of corporate income tax resulting from the judicial decisions of the Financial Chamber of the Supreme Administrative Court
2019	5650 cassation appeals +16 petitions for resumption of proceedings	443	8%	1) Expenditure on catering services as tax costs (judgment of the Supreme Administrative Court of 8 January 2019, ref. no. II FSK 3524/16). 2) Special economic zones (judgments of the Supreme Administrative Court: of 5 March 2019, ref. no. II FSK 780/17; of 12 August 2019, ref. no. II FSK 2998/17). 3) Guarantee deposit (judgments of the Supreme Administrative Court: of 11 April 2019, ref. no. II FSK 79/17; of 10 September 2019, ref. no. II FSK 839/18). 4) Employees serving as members of supervisory boards (judgment of the Supreme Administrative Court of 28 May 2019, ref. no. II FSK 1585/17). 5) Revenue from the establishment of a gratuitous transmission easement (judgment of the Supreme Administrative Court of 14 August 2019, ref. no. II FSK 3396/17). 6) Uncollectible or redeemed receivables and tax-deductible costs (judgment of the Supreme Administrative Court of 24 July 2019, ref. no. II FSK 2841/17). 7) Implementation of the matching principle of expenses with revenues (judgment of the Supreme Administrative Court of 2 August 2019, ref. no. II FSK 2612/17). 8) Gratuitous performance of the function of a member of the company's management board as taxable revenue from gratuitous services (judgment of the Supreme Administrative Court of 30 October 2019, ref. no. II FSK 3717/17).

1	2	3	4	5
2020	4803 cassation appeals + 49 petitions for resumption of proceedings	421	9%	1) Admissibility of excluding from tax-deductible costs of expenses for the acquisition of intangible services incurred by the taxpayer for contractors (judgment of the Supreme Administrative Court of 23 January 2020, ref. no. II FSK 1750/19). 2) Tax-deductible costs, correction invoices, compensating adjustment (judgment of the Supreme Administrative Court of 30 January 2020, ref. no. II FSK 191/19). 3) Date of revenue arising from the contract for using security – financial service (judgment of the Supreme Administrative Court of 3 March 2020, ref. no. II FSK 783/19). 4) Monetary benefits of the founder to the foundation made based on the foundation act for the implementation of the foundation's objectives and the donation agreement (judgment of the Supreme Administrative Court of 10 March 2020, ref. no. II FSK 3179/18). 5) License fees for a personally affiliated company as tax-deductible costs (judgment of the Supreme Administrative Court of 9 May 2020, ref. no. II FSK 2900/19). 6) Expertises and opinions, eligible costs for the purposes of research and development relief (judgment of the Supreme Administrative Court of 8 July 2020, ref. no. II FSK 1264/18). 7) Legal and tax consequences of selling all rights and obligations of a general partner in a limited partnership (judgment of the Supreme Administrative Court of 14 July 2020, ref. no. II FSK 3017/19). 8) Conversion of own receivables into shares (judgment of the Supreme Administrative Court of 18 August 2020, ref. no. II FSK 2083/19). 9) Exchange rate for invoice correction (judgment of the Supreme Administrative Court of 25 August 2020, ref. no. II FSK 1153/18). 10) Resignation from remuneration by a member of the management board and revenue from gratuitous benefits (judgment of the Supreme Administrative Court of 13 October 2020, ref. no. II FSK 991/18). 11) Resignation of a partner from a partnership (judgment of the Supreme Administrative Court of 13 October 2020, ref. no. II FSK 1614/18). 12) Passenger car insurance as a cost paid by the lessee (judgment of the Supreme Administrative Court of 18 November 2020, ref. no. II FSK 2781/19). 13) Tax-deductible costs and losses in current assets (judgment of 19 November 2020, ref. no. II FSK 1841/18).

1	2	3	4	5
2021	6079 cassation appeals +55 petitions for resumption of proceedings	449	7%	1) Interest on ERDF funds (judgment of the Supreme Administrative Court of 12 January 2021, ref. no. II FSK 1220/20). 2) Exemption of the cooperative from taxation of income from the rental of garages occupied by persons who do not have the status of a member of a housing cooperative (judgment of the Supreme Administrative Court of 12 January 2021, ref. no. II FSK 1034/19). 3) Documentation obligation, loan, and interest (judgment of the Supreme Administrative Court of 15 January 2021, ref. no. II FSK 2514/18). 4) Permanent separation of a component or peripheral part of a fixed asset (judgment of the Supreme Administrative Court of 20 January 2021, ref. no. II FSK 2254/18). 5) Remuneration for adapting the room by the tenant as the owner's tax expense (judgment of the Supreme Administrative Court of 11 February 2021, ref. no. II FSK 3014/18). 6) Intermediate trade service, excluded from costs (judgment of the Supreme Administrative Court of 23 February 2021, ref. no. II FSK 2697/20). 7) R&D relief, adjustment of eligible costs (judgment of the Supreme Administrative Court of 9 March 2021, ref. no. II FSK 3178/18). 8) Revenue from the loan guarantee granted by the parent company to related companies (judgment of the Supreme Administrative Court of 9 March 2021, ref. no. II FSK 2808/18). 9) The right to reduce the revenue from buildings (judgment of the Supreme Administrative Court of 5 May 5 2021, ref. no. II FSK 1487/20). 10) The right to correction, limitation (judgment of the Supreme Administrative Court of 12 May 2021, ref. no. II FSK 3642/18). 11) Interest-free loan, gratuitous service (judgment of the Supreme Administrative Court of 26 May 2021, ref. no. II FSK 3527/18). 12) Exemption from corporate income tax on investment fund income – CFC (judgment of the Supreme Administrative Court of 27 May 2021, ref. no. II FSK 59/20). 13) Lending institution, uncollectible receivables (judgment of the Supreme Administrative Court of 11 June 2021, ref. no. II FSK 3504/18). 14) Takeover of liabilities and tax-deductible costs (judgment of the Supreme Administrative Court of 20 July 2021, ref. no. II FSK 3738/18).

1	2	3	4	5
2021	6079 cassation appeals +55 petitions for resumption of proceedings	449	7%	15) The transaction price specified in the contract (judgment of the Supreme Administrative Court of 20 July 2021, ref. no. II FSK 28/19). 16) Foreign legal entity (judgment of the Supreme Administrative Court of 3 August 2021, ref. no. II FSK 2939/18). 17) Beneficial owner (judgment of the Supreme Administrative Court of 12 August 2021, ref. no. II FSK 126/19). 18) Calculating the limit of debt financing costs, above which they are excluded from tax costs (judgment of the Supreme Administrative Court of 26 October 2021, ref. no. II FSK 976/21). 19) Exemption of income of foreign collective investment institutions (judgment of 25 November 2021, ref. no. II FSK 813/19).
2022	5,217 cassation appeals + 22 petitions for resumption of proceedings	458	78%	1) Planning services in the context of exemption from Article 15e(1) on corporate income tax (judgment of the Supreme Administrative Court of 14 January 2022, ref. no. II FSK 987/19). 2) Data storage service on the server in the context of withholding tax collection (judgment of the Supreme Administrative Court of 19 January 2022, ref. no. II FSK 1274/19); 3) Special economic zones (judgment of the Supreme Administrative Court of 15 February 2022, ref. no. II FSK 1233/19). 4) Uncollectible receivables (judgment of the Supreme Administrative Court of 5 April 2022, ref. no. II FSK 1833/19). 5) Acquisition utility certificates (judgment of the Supreme Administrative Court of 17 May 2022, ref. no. II FSK 2386/19). 6) Rules for converting applied costs in foreign currencies pursuant to Article 15(1) on corporate income tax – correction invoice (judgment of the Supreme Administrative Court of 25 May 2022, ref. no. II FSK 2530/19). 7) Recognising the expense as a tax-deductible cost (judgment of the Supreme Administrative Court of 18 October 2022, ref. no. II FSK 432/20). 8) An entity paying interest on the issue of bonds to a non-resident as an obligation to collect and pay withholding tax (judgment of the Supreme Administrative Court of 16 November 2022, ref. no. II FSK 598/20).

Source: own study.

2. ANALYSIS OF JUDICIAL DECISIONS ON CORPORATE INCOME TAX IN 2019-2022

In 2019, the jurisprudence of the Supreme Administrative Court focused mainly on the following issues: 1) tax costs; 2) special economic zones; 3) guarantee deposits; 4) revenues from the establishment of a gratuitous transmission easement; 5) tax deductible costs; 6) implementation of the matching principle of expenses with revenues; 7) revenues from gratuitous services subject to taxation.

The Supreme Administrative Court, in its judgment of 8 January 2019, considered that the purpose of representation costs is to create a certain image of the taxpayer, create a good image of their company, activities, etc., create positive relationships. with contractors. When assessing whether the costs are representative, it is necessary to look through the prism of their purpose. If the sole or dominant purpose of the costs incurred is to create such an image of the taxpayer, these costs are representative. Listing expenses for catering services and the purchase of food and beverages, including alcoholic beverages, as examples of representative costs, does not mean that these expenses must always be excluded from tax-deductible costs. They are not costs only if they are representative in nature. The qualification of each case should be separate, depending on its circumstances.[3]

Two judgments of the Supreme Administrative Court regarding special economic zones are also worth mentioning. The judgment of 5 March 2019 shows that the income obtained from the sale of zonal products, in part in which it would correspond to the value of non-zonal products and services used in their production, may, in certain circumstances, be considered as income obtained from business activities conducted in a special economic zone. In the same circumstances, expenses incurred for the purchase of these products and services should also be considered as tax-deductible costs of this activity.[4]

However, in the judgment of 12 August 2019, the Supreme Administrative Court ruled that a change in the legal status may lead to the decision losing the binding force and thus to the abolition of the resulting individual norm resulting from it or amendment of the act resulting from the individual norm, but only if the new provisions provide so. Therefore, the legislator cannot stop repealing or amending the previous act but must also refer to the decisions issued on its basis in individual cases. The changing

---

[3] Judgment of the Supreme Administrative Court of 8 January 2019, ref. no. II FSK 3524/16, Lex no. 2618815.

[4] Judgment of the Supreme Administrative Court of 5 March 2019, ref. no. II FSK 780/17, Lex no. 2641889.

legislation regulating the activity of special economic zones did not contain provisions that would specify new conditions for previously issued exemptions in terms of time. It also did not make general changes to the permits issued so far. These permits took the legal form of administrative decisions; therefore, they were an administrative act that unilaterally, by the action of the competent authority, resolved an individual matter. The issue of changing the conditions, including the duration of exemptions, was left to interested entities conducting business activity in the zones. Therefore, this exemption did not become an exemption for an indefinite period only because the new legislation did not provide for the issue of such permits.[5]

The judgment of 11 April 2019 is also noteworthy (ref. no. II FSK 79/17), according to which the guarantee deposit is tax-neutral, which means that it is neither a revenue nor a cost. On the other hand, the tax consequences are related to the occurrence of circumstances entitling the creditor to be satisfied with the deposit. The amount of the guarantee deposit received cannot be considered a final receipt, unless there are circumstances entitling the deposit to be retained. Then, the amount paid as security for the concluded contract loses its security character. Consequently, it cannot be doubted that the expenses incurred for the guarantee deposit could not be deductible costs since they were not definitively incurred but were incurred temporarily. In the judicial decision of administrative courts, there is no doubt that the cost incurred is a final expense.[6] In this situation, the provision of Article 15(1j)(3) on corporate income tax, stating that the tax-deductible costs from taking up shares in exchange for a contribution in a form other than an enterprise or its organised part as at the date of taking up these shares are determined in the amount actually incurred, not included in the tax-deductible costs, expenses for their acquisition, could not be applied in the case, since the expenses for the guarantee deposit were not actually (definitively) incurred.[7]

In 2020, the judgments of the Supreme Administrative Court referred to the following issues: 1) excluding from tax-deductible costs of expenses for the acquisition of intangible services incurred by the taxpayer for the contractors; 2) tax deductible costs (compensating adjustment); 3) revenue arising from a contract for using security; 4) transfer of assets to the foundation; 5) license fees for a personally affiliated company (tax-deductible costs); 6) eligible costs for the purposes of R&D relief; 7) tax consequences

[5] Judgment of the Supreme Administrative Court of 12 August 2019, ref. no. II FSK 2998/17, Lex no. 2769497.

[6] Judgment of the Supreme Administrative Court of 20 April 2007, ref. no. II FSK 563/06, Lex no. 389357; judgment of the Supreme Administrative Court of 28 April 2005, ref. no. FSK 1818/04, Lex no. 166056.

[7] Judgment of the Supreme Administrative Court of 11 April 2019, ref. no. II FSK 79/17, Lex no. 2656077.

of selling all rights and obligations of the general partner in a limited partnership; 8) conversion of own receivables into shares; 9) exchange rate for invoice correction; 10) revenues from gratuitous benefits; 11) tax consequences of the partner's withdrawal from a partnership; 12) costs paid by the lessee; 13) costs of obtaining revenues and losses in current assets.

In particular, the judgment of 14 July 2020 should be included in the group of important judgments (ref. no. II FSK 3017/19) which explains that the transfer of all rights and obligations of a partner in a partnership to another person is related to the withdrawal of the transferring partner. All rights and obligations of a partner in a partnership may be transferred to another person only after obtaining the written consent of all other partners unless the partnership agreement provides otherwise. Article 10 of the Commercial Companies Code[8] states that only all rights and obligations may be disposed of. Therefore, the rights and obligations of the shareholders cannot be separated. It is also not possible to dispose of individual rights in partnerships, as trading in rights is not allowed due to their relationship with the partner. The rule of indissolubility of a partner's rights and obligations determines the need to transfer all the partner's rights and obligations always as an indivisible (inseparable) whole. In the event of transferring all the rights and obligations of a partner in a partnership to an acceding partner, the set of rights and obligations is transferred to the extent to which the partner appearing at the time of the transfer is entitled. However, there may be cases in which there will be no transferable rights in the company. In contrast, the rights resulting from the withdrawal from the company will be vested in the former partner after withdrawal from the company and due to the implementation of the said withdrawal, and not due to the sale of rights in the existing company, with the consent of the partners. In addition, the transfer of all rights and obligations of a partner in a partnership is regulated in Article 10 CCC, while the withdrawal from the company is regulated in Article 65 CCC. The hypotheses, premises and method of implementing the aforementioned provisions are normatively separate and not the same. It follows from the above that the normative concept of transferring to another person all the rights and obligations of a partner in a partnership cannot be reasonably identified with the normative concept of withdrawal of a partner from a partnership.[9]

In the judgment of the Supreme Administrative Court of 23 January 2020 (ref. no. FSK 1750/19), a decision was made that was important for corporate income taxpayers regarding the inclusion of expenses incurred

[8] Act of 15 September 2000, the Code of Commercial Companies Code, Journal of Laws of 2024, item 18 as amended [hereinafter: CCC].

[9] Judgment of the Supreme Administrative Court of 14 July 2020, ref. no. II FSK 3017/19, Lex no. 3052524.

for related entities as tax-deductible costs within the meaning of Article 11 on the corporate income tax. The Court emphasised that if there is no doubt that the costs incurred are necessary to produce a product or provide services, the possibility of deducting them should not be limited. It was noted that the expression "directly" used by the legislator means that expenses for the acquisition of intangible services incurred by the taxpayer for contractors are not subject to exclusion from tax-deductible costs pursuant to Article 15e(1) in connection with Article 15e(11)(1) on the corporate income tax, if these expenses have such a cause and effect relationship that they determine, in the adopted business model, the acquisition or production of a given type of goods or the provision of a specific type of service.[10]

An important and permanent element of interest in the judicial decision of the Supreme Administrative Court in 2021 was the issue of: 1) interest on the funds from the European Regional Development Fund;[11] 2) exemption of the cooperative from taxation of income from renting garages occupied by persons who do not have the status of a member of a housing cooperative; 3) obligation to prepare tax documentation regarding the loan agreement; 4) permanent separation of the component or peripheral part of the fixed asset; 5) tax expenses of the owner of the premises; 5) exclusion from the costs of services of affiliated entity; 6) adjustment of eligible costs of R&D relief; 7) revenues from the loan guarantee granted by the parent company to affiliated companies; 8) rights to reduce the revenue from buildings; 9) limitation as excluding the right to correction; 10) non-interest-bearing loan; 11) exemption from corporate income tax of the investment fund (CFC); 12) tax costs of lending institutions (bad debts); 13) costs of obtaining income (takeover of liabilities); 14) prices; 15) foreign legal entities; 16) beneficial owner (17); calculation of the limit of debt financing costs, excluded from tax costs; 18) exemption of income of foreign collective investment institutions.

In its judgment of 25 November 2021 (ref. no. II FSK 813/19) the Supreme Administrative Court decided that collective investment institutions equivalent to Polish closed-end investment funds and specialised open-end investment funds operating with restrictions may, in principle, invest in tax-transparent companies. However, the income generated from these investments is not exempt and is subject to taxation as income from business activities,[12] some of them as revenues from capital gains.[13] Exemption specified

[10] Judgment of the Supreme Administrative Court of 23 January 2020, ref. no. II FSK 1750/19, ONSAiWSA 2021, No. 1, item 5.

[11] Hereinafter: ERDF.

[12] Act of 15 February 1992, the Corporate Income Tax, Journal of Laws of 2025, item 278 as amended, Article 5(3).

[13] Ibid., Article 7b(1)(4).

in Article 17(1)(58) on corporate income tax applies only to income that is obtained from investing funds in securities, financial instruments and other (than shares in tax-transparent companies) property rights.[14]

However, in another judgment, the Supreme Administrative Court disagreed with the position presented by the body of the Director of the National Tax Information[15] and by the court of first instance, which was based on the statement that "to the income within the meaning of Article 24a on corporate tax income will not apply, as is the case with the income determined in accordance with Article 7(2) of this Act, the objective exemption pursuant to Article 17(1)(57) on corporate income tax." In other words, as the Director of the National Tax Information stated in the conclusion of his considerations, "the income of a controlled foreign company reported by the Fund does not benefit from the exemption referred to in Article 17(1)(57) on corporate income tax, because the income determined in accordance with Article 7(2) is exempt under this provision and not the income referred to in Article 24a of this Act." The Supreme Administrative Court stated that this thesis does not find any confirmation in the text of the Act, nor can it be interpreted by applying a systemic interpretation or other types of interpretation. The Supreme Administrative Court also found that Article 24a does not constitute a derogation from the principle expressed in Article 7(1) on corporate income tax because this provision also mentions income, only that it is determined according to a specific methodology. In the opinion of the Supreme Administrative Court, pursuant to the reservation contained in Article 7(2) on corporate income tax does not follow that Article 17(1)(57) of this Act used a different concept of income than in Article 24a, i.e., that the income within the meaning of Article 17(1)(57) on corporate income tax constituted a category separate from income within the meaning of Article 24a of this Act. It follows that the income referred to in Article 24a on corporate income tax may benefit from the exemption specified in Article 17(1)(57) on corporate income tax.[16]

The Supreme Administrative Court, in its judgment of 9 March 2021 (ref. no. II FSK 2808/18) indicated that pursuant to Article 11(1) and (4) and (5) in connection with Article 12(1)(2) on corporate income tax, it follows that the revenue from a loan guarantee granted by the parent company to affiliated companies can only be obtained by the beneficiary of the guarantee and not by the guarantor. In Article 5(2)(8) and Article 5(5)

---

[14] Judgment of the Supreme Administrative Court of 25 November 2021, ref. no. II FSK 813/19, ONSAiWSA 2022, No. 3, item 40.

[15] Letter of 24 May 2018 issued by Director of the National Tax Information, 0114-KDIP2-2.4010.131.2018.1.AM, http://sip.mf.gov.pl [accessed: 27.11.2023].

[16] Judgment of the Supreme Administrative Court of 27 May 2021, ref. no. II FSK 59/20, Lex no. 3199342.

and Article 170(1) and (2) of the Act of 29 August 1997, the Banking Law,[17] there is a sanction prohibiting collecting remuneration (commission) for granting a guarantee by organisational units other than banks.[18]

The judgment of the Supreme Administrative Court of 9 March 2021 also remains noteworthy (ref. no. II FSK 3178/18). The aforementioned decision stated that the adjustment of tax-deductible costs should be made on an ongoing basis. The fact that the legislator has not regulated this matter cannot be a reason to adopt a solution unfavourable to the taxpayer. In the opinion of the Supreme Administrative Court, the obligation to separate the costs of research and development activities also includes the accounting reflection of the adjustments made to the eligible costs, both in minus and in plus. Therefore, the reduction of the relief for research and development activities occurs not through global summaries of amounts but through a precise illustration of the method of spending eligible costs appropriately reduced or increased due to, for example, correction invoices received. According to the Supreme Administrative Court, clearly in Article 18d(5) on corporate income tax, it was emphasised that the eligible costs to be deducted cannot be reimbursed in any form. This, therefore, applies to all kinds of situations in which the taxpayer receives a subsidy (reimbursement of funds) that is used to cover eligible costs and not about a subsequent correction of these costs, as claimed by the interpretative authority. The Court also stated that the purpose of the provision of Article 18d(5) on corporate income tax is to exclude covered expenses from the basis for calculating the tax relief in the economic sense from funds other than the taxpayer's own funds.[19]

In the case resolved by the judgment of 15 January 2021 (ref. no. II FSK 2514/18) the Supreme Administrative Court stated that in the value of the transaction in the light of Article 9a(1)(1) and Article 9a(1d) on corporate income tax, both the value of the money transferred to the borrower (capital) and the sum of interest due constituting remuneration for granting the loan should have been recognised in the case of the loan agreement.[20]

However, in the judgment of 5 May 2021 (ref. no. II FSK 1487/20) the Supreme Administrative Court indicated that the regulation contained in Article 24b(10) on corporate tax income does not apply to situations in which the taxpayer of income tax on buildings does not directly or indirectly hold in other companies shares in the capital or voting rights

---

[17] Act of 29 August 1997, the Banking Law, Journal of Laws of 2018, item. 2488 as amended.

[18] Judgment of the Supreme Administrative Court of 9 March 2021, ref. no. II FSK 2808/18, ONSAiWSA 2021, No. 5, item 77.

[19] Judgment of the Supreme Administrative Court of 9 March 2021, ref. no. II FSK 3178/18, Lex no. 3157771.

[20] Judgment of the Supreme Administrative Court of 15 January 2021, ref. no. II FSK 2514/18, Lex no. 3117883.

in controlling, decision-making or managing bodies, or shares or rights to participate in profits or assets or their prospects, including participation units and investment certificates.[21]

An important issue was also raised in the judgment of 20 July 2021 (ref. no. II FSK 28/19). The main dispute in the case focused on the correct interpretation of the provisions of substantive law, in particular Article 14(1) on corporate income tax. Pursuant to this provision, the revenue from the disposal of goods, property rights or the provision of services is their value expressed in the price specified in the contract. However, if the price, without justified economic reasons, differs significantly from the market value of these goods, rights or services, the tax authority determines this revenue in the amount of the market value. The position of the applicant is based on the adoption of such an interpretation of this provision, according to which the binding factor for determining the amount of revenue is only the price expressed in the contract agreed by the parties to a given transaction, regardless of the provisions of the sales contract, as well as other agreements of an obligatory nature accompanying it, which directly modify the mutual obligations of its parties. Meanwhile, the literal provision of the analysed provision shows that the revenue is the value of goods, property rights or services expressed in the price specified in the contract. Therefore, when interpreting this provision, an appeal cannot be omitted when determining the revenue from the sale of goods and property rights to their value, which is to be reflected in the price specified in the contract. In addition, as follows from the second sentence of Article 14(1) on corporate income tax and Article 14(2) on corporate income tax, in accordance with the will of the legislator, the amount of income from this title is to correspond to the market value of the goods, rights or services sold.[22]

In 2022, the last year of the analysed cases, the judicial decision of the Supreme Administrative Court focused on the following issues: 1) exemptions from Article 15e(1) on corporate income tax; 2) withholding tax collection in the case of data storage services on the server; 3) special economic zones; 4) uncollectible receivables; 5) acquisition of utility certificates; 6) rules for converting costs incurred in foreign currencies pursuant to Article 15(1) on corporate income tax; 7) recognition of the expense as a tax-deductible cost; 8) obligation to collect withholding tax by the entity paying interest on the issue of bonds to a non-resident.

---

[21] Judgment of the Supreme Administrative Court of 6 May 2021, ref. no. II FSK 1487/20, Lex no. 3284632.

[22] Judgment of the Supreme Administrative Court of 20 July 2021, ref. no. II FSK 28/19, Lex no. 3217781.

The judgment of the Supreme Administrative Court of 16 November 2022 seems particularly important (ref. no. II FSK 598/20), which shows that the provisions of agreements (conventions) on the avoidance of double taxation in the field of interest apply only if the entity receiving interest has the status of a beneficial owner, i.e. an entity whose right to dispose of the payment received is not only formal in nature. This means that the agreement's provisions can only be applied to the final recipient of the interest, who, as the actual recipient, is the "beneficial owner of the interest". A feature of the "beneficial owner of the interest" is the ultimate benefit of the right to interest. Therefore, the point is not that the "interest recipient" should be a direct recipient, but that as a beneficial owner (and not an intermediary), it should be a "person entitled" to interest, i.e. it should be possible to independently decide on the allocation of the received receivable.[23] It should be emphasised here that the Corporate Income Tax Act does not contain an equal definition of income, and in Article 12 on corporate income tax, only a partial definition was formulated, which is limited to mentioning exemplary categories of events that are designators of the defined concept and at the same time limiting this concept by indicating what is not considered as revenue. At the same time, in Article 21(1) on corporate income tax, it was assumed that the tax on obtaining income in the territory of the Republic of Poland is 20% of income from interest paid to taxpayers referred to in Article 3(2) on corporate income tax. Therefore, the literal wording of this provision does not indicate that it is necessary to determine whether the taxpayer to whom the interest is paid was the beneficial owner. We cannot lose sight of the fact that in the light of Article 3(2) on corporate income tax, income (revenues) generated in the territory of the Republic of Poland by entities not having their registered office or management board in the Republic of Poland are subject to taxation. However, this does not mean that if the entity to which the interest is paid is not the beneficial owner, no revenue is generated on their side, and consequently, there are no grounds for applying Article 21(1)(1) on corporate income tax. This means only that in relation to an entity that meets the conditions set out in Article 21(3)(1-3) on corporate income tax, the provided tax exemption cannot be applied because it does not meet the last of the conditions, i.e. it is not the beneficial owner of interest.[24] In the context of the aforementioned international agreements, this only means that since it is not possible to identify

[23] Judgments of the Supreme Administrative Court of: 17 August 2022, ref. no. II FSK 3101/19, Lex no. 3424927; of 26 July 2022, ref. no. II FSK 1230/21, Lex no. 3417791; of 14 April 2021, ref. no. II FSK 508/19, Lex no. 3176496; of 13 December 2017, ref. no. II FSK 3188/15, Lex no. 2442921; of 16 September 2016, ref. no. II FSK 2299/14, Lex no. 2120031; of 2 March 2016, ref. no. II FSK 3666/13, Lex no. 2036649.

[24] Act of 15 February 1992, the Corporate Income Tax, Article 21(3)(4).

the beneficial owners of interest, the preferential tax rates or exclusions provided for in the double taxation agreements applicable to these entities cannot be applied to these interests.[25]

In the judgment of 25 May 2022 (ref. no. II FSK 2530/19) the Supreme Administrative Court stated, however, that the principle of converting costs incurred in foreign currencies from Article 15(1) on corporate income tax applies to the current conversion related to the date of incurring the cost. Therefore, there is no justification not to use such a current conversion for corrections. Therefore, applying the provision of Article 15(1) on corporate income tax, it should be considered that the amounts expressed in foreign currency in correction invoices (or other correction accounting documents) received by the taxpayer should be converted at the average exchange rate of the National Bank of Poland from the last business day preceding the date of issuing the correction invoice (or other correction accounting document).[26]

Attention should also be paid to the judgment of the Supreme Administrative Court of 19 January 2022 (ref. no. II FSK 1274/19) which emphasised that the fees for the data storage service on the server are not fees for the use or the right to use an industrial device within the meaning of Article 21(1)(1) on corporate income tax, but the fees for the provision of the service. Therefore, they do not result in an obligation to collect withholding tax pursuant to Article 26(1) on corporate income tax in connection with Article 21(1)(1) on corporate income tax. Polish law considers the hosting agreement an innominate contract. As indicated in the literature, it is necessary to exclude the appropriate application of the provisions on the lease, tenancy or use agreement to this type of agreement because the objects of these named agreements are defined in terms of identity. In contrast, in the hosting agreement, the service provider provides only generically defined space on the server. The economic purpose of the aforementioned named agreements is also different. It involves the use of equipment, while with a hosting agreement, the purpose is not only to make the server space available but also to secure the data on it [Gołaczyński 2018, 571-81]. It is indicated that the hosting agreement is very similar to the service provision agreement[27] by providing access to data on the server and to the storage agreement [Rączka 2009, 36], as its subject is to keep the data sent by the service recipient in a non-deteriorated state (in the case of a storage agreement, this obligation applies to movable goods, and in the case of hosting – digital files). A reminder of the features of the hosting agree-

[25] Judgment of the Supreme Administrative Court of 16 November 2022, ref. no. II FSK 598/20, Lex no. 3486340.

[26] Judgment of the Supreme Administrative Court of 25 May 2022, ref. no. II FSK 2530/19, Lex no. 3401329.

[27] Act of 23 April 1964, the Civil Code, Journal of Laws of 2024, item 1061, Article 751.

ment is necessary to determine whether the fee under this agreement, made for the benefit of the service provider, meets the conditions for its inclusion in the revenues for the use or the right to use an industrial device, including a means of transport, commercial or scientific equipment referred to in Article 21(1)(1) on corporate income tax.[28]

CONCLUSION

The relationship between the legislative and judicial powers may be shaped differently in individual legal systems. However, it should be clearly stated that the legislative and judicial powers are closely correlated, which becomes particularly visible in the field of legal norms relating to the issue of corporate taxation. Polish administrative courts have numerous objective reasons for substituting the legislator, which often takes defective solutions. This is mainly due to the lack of due diligence in the law-making process. Considering the above, Polish tax law standards are very often ambiguous, inconsistent and highly complex. This is where the interpretative role of Polish administrative courts begins. It should be clearly emphasised that the role of the judicial decision of administrative courts in the process of establishing tax law in the field of corporate taxation is not limited only to clarifying undefined issues or fulfilling the content of the general clause. Particularly important in this respect are the resolutions of the Supreme Administrative Court, which unify case law and organise opinions on issues that raised discrepancies and indicate the directions of decisions in the most complex cases.

The analysis of information on the judicial activities of administrative courts in the field of corporate income tax in 2019-2022 clearly indicates the use of judicial activities aimed at expanding the sphere of protection of individual rights. This was reflected both in the judgments and resolutions of the Supreme Administrative Court regarding tax equity, consisting, among others, in limiting the practice of tax authorities based on the *in dubio pro fisco* principle, rejecting the thesis on the autonomy of tax law and restoring unjustly deprived rights of taxpayers.

REFERENCES

Gajewski, Dominik J. 2022. *Unikanie opodatkowania orzecznictwie sadów administracyjnych*. Warszawa: Wolters Kluwer Polska.

Gołaczyński, Jacek. 2018. In *System Prawa Prywatnego*, vol. 9, edited by Wojciech J. Katner, 571-81. Warszawa: C.H. Beck.

[28] Judgment of the Supreme Administrative Court of 19 January 2022, ref. no. II FSK 1274/19, Lex no. 3361076.

Gomułowicz, Andrzej, and Dariusz Mączyński. 2022. *Podatki i prawo podatkowe*. Warszawa: Wolters Kluwer Polska.

Małecki, Jacek. 2003. "Lex falsa lex non est?" In *Ex iniuria non oritur. Orzeczenia ius. Księga ku czci profesora Wojciecha Łączkowskiego*, vol. 9, edited by Andrzej Gomułowicz, and Jacek Małecki, 63-65. Poznań: Prace Wydziału Prawa i Administracji UAM.

Małecki, Jacek. 2005. "Orzeczenia Naczelnego Sądu Administracyjnego w procesach tworzenia i stosowania przepisów prawa finansowego." In *W kręgu prawa podatkowego i finansów publicznych. Księga dedykowana Profesorowi Cezaremu Kosikowskiemu w 40-lecie pracy naukowej*, edited by Henryk Dzwonkowski, Jan Głuchowski, Alicja Pomorska, et al., 249-50. Lublin: Wydawnictwo UMCS.

Rączka, Gabriela. 2009. "Prawne zagadnienia hostingu." *Przegląd Prawa Handlowego* 4:31-38.