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## **TAX-LEGAL AND ECONOMIC- MANAGEMENT DETERMINANTS OF THE LIABILITY OF THE HEALTH RESORT FEE COLLECTOR**

### **PODATKOWO-PRAWNE I EKONOMICZNO-ZARZĄDCZE UWARUNKOWANIA ODPOWIEDZIALNOŚCI INKASENTA OPŁATY UZDROWISKOWEJ**

## ABSTRACT

The role of the tax collector is to facilitate the fulfilment of tax obligations by taxpayers. The applicable tax laws provide for the possibility to use it for the collection of taxes constituting the income of local government units, while the decision-making on the ordering of tax collection by means of collection, the determination of collectors and the amount of remuneration for collection is entrusted to municipal councils by means of acts of local law (resolutions). The entities on which the municipal councils impose the obligation to collect tax by way of collection are obliged to perform it.

## STRESZCZENIE

Rolą inkasenta jest ułatwienie podatnikom wywiązywania się ze zobowiązań podatkowych. W obowiązujących ustawach podatkowych przewidziano możliwość wykorzystywania go do poboru podatków stanowiących dochody jednostek samorządu terytorialnego, przy czym podjęcie decyzji co do zarządzenia poboru podatku w drodze inkasa, określenia inkasentów i wysokości wynagrodzenia za inkaso powierzono radom gmin w drodze aktów prawa miejscowego (uchwał). Podmioty, na które rady gmin nałożą obowiązek poboru podatku w drodze inkasa, są zobligowane do jego wykonywania.

**KEYWORDS:** *economic of development, management of a spa LGU's, economic rationality, collection efficiency, tax obligation, penal-fiscal code, collector, spa fee, tax management*

**SŁOWA KLUCZOWE:** *ekonomika rozwoju, zarządzanie gminą uzdrowiskową, racjonalność ekonomiczna, efektywność poboru, obowiązek podatkowy, kodeks karny-skarbowy, inkasent, opłata uzdrowiskowa, zarządzanie podatkami*

## INTRODUCTION

Spa municipalities are a special type of self-governing municipality in Poland, distinguished not only by their spa and climate assets, but also by a wider range of public tasks than a normal municipality and the possibility of additional sources of their financing through the collection of a spa charge (Sikora 2014). From the point of view of the tax system, the spa fee is entirely the municipalities' own revenue. The principle of indicating the entities entitled to collect the fee is interesting – it is a list drawn up by the locally relevant provincial governor in agreement with the Minister of the Environment (Wołowiec, Podolchak 2022). In the systematics of public taxes and fees, the place of the spa levy is also unique. Its very structure refers to a lump-sum personal tax of a consumption nature, levied on personal income at the stage of its disbursement. Referring directly to the provisions of the Act on Local Taxes and Fees, the spa fee can be seen as – in a sense – a concession fee levied on the use of environmental resources, treated as a special case of fees for granting rights (Wołowiec 2016).

Due to the fact that the health resort municipality carries out tasks related to the functioning of the health resort (as a municipality) and the entire infrastructure on a general basis from its own revenues, but is also entitled to collect a health resort fee for their implementation and to receive a health resort subsidy under Article 49 of the Health Resort Act, in an amount equal to the revenues from the health resort fee collected in the health resort in the year preceding the base year, within the meaning of the Act on revenues of local government units. This fee is very important in the financial system of spa municipalities due to both the amount of the spa subsidy received, which depends on it, and the necessity to fulfil other (additional) tasks set out in the Spa Act. Thus, the issues of effective collection of this fee and the sealing of the local tax system are of vital interest to the spa municipalities (Artyukhova, Tiutiunyk, Bogacki, Wołowiec, Dluhopolskyi, Kovalenko 2022).

Resort community management is a set of activities (including planning and administrative decision-making organising processes and leading, i.e. directing people, and controlling) directed at the organisation's resources (human, financial, physical and information) and performed with the intention of achieving the organisation's objectives in an efficient and effective

manner. They are an activity involving the disposal of resources; since the most important resources are people, the resources are money, and through them people are influenced. The essence of the management function as a specific type of regulating function performed collectively by 'regulating' organisational units is, in particular, the formulation of the purpose of action, planning, i.e. organising structures, and controlling the implementation of objectives.

## REASERCH METHODOLOGY

Research in the social sciences, is inspired by numerous and diverse needs. Therefore, we will reduce the existing needs to two main types, to which certain types of research correspond. The first is combined with needs of a theoretical or cognitive nature, that is, it includes all those needs that are associated with the development of a particular science. The second is combined with the various needs of practice.

Legal and administrative sciences, as well as management and quality sciences, use typical methods found in the social sciences and humanities, i.e.: the study of documents (legal acts and judgments of administrative courts), comparative methods (expert opinions, legal opinions, analyses resulting from linguistic, grammatical and historical interpretation) and case studies. The result of cognitive research is new assertions or theories.

Induction was used as the main research method. It involves drawing general conclusions or establishing regularities on the basis of analysis of empirically established 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-life 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 the thesis article is to analyse the economic and paternal determinants of the scope of the responsibility of the resort fee collector for the collection and payment to the tax authority of public law receivables, in the context of tax receivables management.

## **ORGANISATIONAL AND LEGAL-ECONOMIC POSITION OF THE TAX COLLECTOR IN THE LIGHT OF THE PROVISIONS OF THE TAX CODE**

The role and task of the tax collector is to facilitate the fulfilment of tax obligations by taxpayers. The applicable tax laws provide for the possibility to use it for the collection of taxes constituting the income of local government units, while the decision-making on the ordering of tax collection by means of collection, the determination of collectors and the amount of remuneration for collection is entrusted to municipal councils by means of acts of local law (resolutions). The entities on which the municipal councils impose the obligation to collect tax by means of collection are obliged to perform it. Such a regulation can be found in Article 6 (12) and Article 19 (2) of the Act on Local Taxes and Fees with regard to the collection of real estate tax from natural persons and local fees, as well as with regard to agricultural and forestry tax collected from natural persons (Morawski, Brzeziński 2010).

Significantly, the establishment of collection of the spa fee by way of collection is the power of the Municipal Council, resulting directly from Article 19 para. 2 u.p.o.l. The order for collection facilitates the collection of the health resort fee, but does not exclude the taxpayer's right to pay it in another manner provided for in the Tax Ordinance Act, that is in cash or in a non-cash form. (Dowgier, Pietrasz, Popławski, Presnarowicz, Stachurski, Teszner 2017).

It should be emphasised that failure to pay the resort fee to the collector does not cause any negative consequences for the person obliged to pay it. The person obliged to pay the resort fee may refuse to pay it to the cash collector, who should notify the local tax authority of this fact, which may initiate tax proceedings against such a person. It should be remembered that the rights of a person in respect of the obligation to pay the spa fee and the determination of the amount of the fee are protected by the provisions of the Tax Ordinance and the Act on Local Taxes and Fees. (Judgment of the WSA of 12 April 2018 I SA/Sz 129/18). The taxpayer has the right to challenge the obligation to pay the resort fee with respect to the basis on which she is subject to that obligation, as well as the amount of that fee. Her rights are protected in this case by ensuring her participation in the tax proceedings

concerning this fee before the tax authority, as well as the possibility to challenge the decision determining this fee.

It follows from the definition of 'collector' that it is the provisions of the tax law that determine whether a given natural person, legal entity or organisational unit without legal personality will have the status of a 'collector' and therefore perform the duties of a collector, with the provisions indicating (specifying) the duties imposed on the collector (Judgment of the WSA in Szczecin of 18 October 2017 I SA/Sz 754/17).

The duty of the tax collector to collect the tax and pay it to the tax authority on the appropriate date, arises from the regulations on particular types of taxes, which provide for such possibility to collect a given tax by way of collection and the procedure for appointing entities as collectors. If a resolution of the municipal council does not provide for collection by means of a collection order, then the conclusion of agreements by the municipal council (head of the municipality) with an entity that is to collect the fee is an action contrary to the adopted resolution, i.e. in contravention of the binding provision of the law, and above all this entity does not become an 'arm' of the authority that is authorised and obliged to collect the levy" (Judgment of the Supreme Administrative Court in Warsaw of 16 April 2008 I FSK 622/07).

It should be borne in mind that the municipal council is not authorised to enact additional regulations on collection, e.g. concerning the issuance of a receipt. The duties of collectors with regard to the collected taxes and fees derive directly from the law, i.e. from Article 9 and Article 47 § 4a of the Tax Ordinance, and the principles of liability for non-performance or improper performance of these duties by collectors, as well as the principles of conduct of the tax authority, are established by the norms of Article 30 § 2 and § 3 of the Tax Ordinance (Resolution of the RIO in Olsztyn of 9 December 2015 No. 0102-469.15).

## **MANAGEMENT AND PRACTICAL PROBLEMS WITH ENFORCING THE OBLIGATIONS OF COLLECTORS**

In practice, the tax authorities of the spa municipalities have difficulties involving the enforcement of the obligation to collect the spa fee from the collectors. This problem is due to the lack of liability of the collectors for not collecting the fee (Florek, 2021). In view of the above, many collectors deliberately and consciously fail to collect the fee due to the municipality. In addition, it should be noted that the collectors of the health resort fee are not obliged to keep records of registrations of persons using accommodation services, which would both significantly improve the organisation of work for the tax authorities in terms of carrying out checks and controls of the correctness of collecting the fees, and would also be a comprehensive source of statistical information on the number of tourists arriving at the health resorts, which could be included in the promotional material of the given area. (Cienkowski, Wołowicz 2014).

In fact, the scope of duties incumbent on the tax collector indicates that collection of taxes by way of collection may only take place with regard to those taxes and fees whose amount is directly prescribed by law, or the tax authority is obliged to calculate the tax (Judgment of the WSA in Szczecin of 11 January 2018 I SA/Sz 948/17).

The provisions of the Tax Ordinance do not impose an obligation on the tax collector to calculate the amount of tax. Moreover, a debt collector, unlike a payer, does not have economic control over the taxable payment by which it cannot reduce the payment made by the amount of tax collected. Consequently, the tax collector is not liable for failure to collect the tax. On the other hand, collection of tax by a tax collector and failure to pay it to the account of the competent tax authority results in the liability of the tax collector adjudicated by the tax authority pursuant to Article 30 § 2 and 4 of the Tax Code. The tax collector also bears fiscal penal liability for failure to pay the collected tax to the tax authority on time, pursuant to Article 77 of the Act – Fiscal Penal Code. Therefore, can the liability of the collector for the uncollected fee be extended. This seems troublesome, as such an extension of the collector's liability would lead to the equalization of his liability with that of the payer under

Article 30 § 1 o.p.. The scopes of responsibility of the collector and the payer should therefore not overlap. The application of the *withholding* tax collection technique to the payer enables him to fulfil his obligations in real terms. The payer has the ability to collect tax irrespective of the will of the taxpayer. The tax collector is not endowed with such a power. The duty to collect tax can only be fulfilled by the tax collector if the taxpayer wishes to pay the tax. It would therefore be unreasonable to hold the tax collector responsible for uncollected taxes. On the other hand, possible difficulties in enforcing the obligation to collect local fees from the collectors could be solved by proper organisation of collection in the municipality (selection of appropriate entities as collectors, determination of appropriate remuneration for collection).

In spa municipalities, the failure of collectors to fulfil their collection obligation is a major problem, especially with regard to the spa fee. The collectors of the fee are most often the owners of guesthouses, holiday homes, hotels, hostels, etc., who are understandably reluctant to collect it from their guests. The only solution to the inactivity of the collectors is to deprive them of this function by amending the resolution of the council and appointing new collectors (Reško, Wołowiec 2015). In some cases, civil law contracts concerning the performance of additional duties not directly related to the collection of taxes (keeping of records, settlement of proofs of payment, etc., provision of information on amounts collected) are also effective, where contractual penalties are provided for failure to perform these activities. These contracts may not relate to the collector's statutory duties, i.e. collection and payment of taxes (Kosikowski, Etel, Dowgier, Pietrasz, Popławski, Presnarowicz 2011).



## CONCLUSIONS

Analysing the issue of collection of the health resort fee and the legal regulations governing the tasks and responsibilities of the collector, the following conclusions can be formulated.

Firstly, the institution of a collector differs from that of a payer in that the collector is not obliged to calculate the amount of tax payable by the taxpayer. In addition, a debt collector, unlike a payer, has no economic control over the levy (or tax) and thus cannot reduce the payment made by, for example, the amount of tax collected. Therefore, the collector is not liable for the failure to collect the resort fee.

Secondly, the legislation in force does not provide for the possibility of appointing a collector by means of a civil law contract. As indicated by the judicature, an administrative-legal relationship arises between the municipality and the collector, the source of which is a resolution of the municipality council and not an agreement (judgment of the Supreme Administrative Court of 6 September 2007 I FSK 1192/06).

Thirdly, failure to pay the health resort fee to the collector does not result in any negative consequences with respect to the person obliged to pay this tax. A person obliged to pay the spa fee may refuse to pay it to the collector, who should notify the local tax authority, which may initiate tax proceedings. It should be borne in mind that the rights of the person in question in respect of the obligation to pay the spa fee and the determination of the amount of the fee are protected by the provisions of the Polish Public Health Service Act and the Local Tax Authorities Act. This is because the taxpayer has the right to question the obligation to pay the spa fee with respect to the grounds for being subject to this obligation, as well as the amount of the fee itself.

Fourthly, collection of the tax by the collector without its payment to the account of the competent tax authority results in liability of the collector adjudicated by the tax authority pursuant to Article 30 § 2 and 4 of the Tax Ordinance. The collector also bears criminal liability for failing to pay the collected fee to the tax authority on time. Importantly, a tax collector who has failed to fulfil the obligations set out in Article 8 of the Tax Code, is liable for tax not collected or tax collected but not paid. Perhaps a solution to improve collection of the

health resort fee would be to supplement the content of Article 32 of the Tax Ordinance Act by introducing a new paragraph regulating the duty of collectors to keep separate records related to collection of the health resort fee. At the same time, it should be borne in mind that the Tax Ordinance is a legal act of a codicil nature regulating general tax law, and therefore contains substantive and procedural regulations relating essentially to all taxes, as well as fees and non-tax receivables of the state budget applicable on the territory of the country. Thus, the Tax Ordinance is not a normative act suitable for regulating in detail the duties of a tax collector with respect to a specific type of fee, but such a solution may be considered at the level of an act implementing the Act. However, there is no doubt that imposing such additional obligations on the collector would increase the inconvenience of performing the duties imposed by the municipal council, while at the same time there would be no impact of the introduction of this solution on the efficiency of fee collection.

Fifthly, the legislator does not indicate the principles for appointing the collectors, which should be followed by the municipalities' decision-making bodies, which means that this can be done by indicating the name and surname of selected persons or specifying the official position or functions performed by specific persons. It is also submitted that when appointing these entities, however, criteria should be applied which are sufficiently precise so that there is no doubt as to who has been appointed to perform this function. The jurisprudence indicates that the identification of collectors may be done by providing personal data, i.e. in a concrete manner, or by listing the characteristics (attributes) of a natural person, a legal person or an organisational unit without legal personality, i.e. using the technique of creating general norms. Therefore, there are no legal obstacles to appointing not only natural persons indicated by name or by specifying criteria characterising such persons, e.g. mayors of specific localities, as collectors, but it is also possible to appoint a legal person or an organisational unit without legal personality as a collector. (Wołowiec 2016).

Collection of taxes by way of collection may only take place with regard to taxes the amount of which is directly prescribed by law or the tax authority is obliged to calculate the tax. The provisions of the Tax Ordinance do not impose an obligation on the tax collector to calculate the amount of the tax (Kępa 2018).

Moreover, a tax collector, unlike a payer, does not have economic control over the taxable payment, which means that it cannot reduce the payment by the amount of the tax collected. On the other hand, collection of tax by a tax collector and failure to pay it to the account of the competent tax authority results in liability of the tax collector adjudicated by the tax authority on the basis of Article 30 § 2 and 4 of the Tax Ordinance. The tax collector also bears fiscal penal liability for failure to pay the collected tax to the tax authority on time (under Article 77 of the Act of 10 September 1999 Fiscal Penal Code). It appears that the possible extension of the liability of the tax collector to uncollected tax would lead to equating his liability with that of the tax remitter under Article 30 § 1 of the Tax Ordinance. The latter, in turn, is obliged to calculate the tax payable from the taxpayer, collect the tax from the taxpayer and pay the tax in due time to the tax authority (Wołowiec 2018).

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