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WRITE-OFF OF GRANTS (SUBSIDIES) IN THE CONTEXT OF THE PRINCIPLES OF ADMINISTRATIVE AND TAX PROCEDURE AND TAX RISK MANAGEMENT

UMARZANIE DOTACJI W KONTEKŚCIE ZASAD POSTĘPOWANIA ADMINISTRACYJNEGO I PODATKOWEGO ORAZ ZARZĄDZANIA RYZYSKIEM PODATKOWYM

ABSTRACT

Grants are funds from the state budget, budget of local government units and state purpose funds allocated on the basis of this Act, separate acts or international agreements for financing or co-financing of the implementation of public tasks, subject to specific settlement rules. The Public Finance Act also includes definitions of three types of subsidies: purpose-specific, subject-specific and object-specific. With regard to subsidies, the legislator in the provisions of the Public Finance Act points out that subsidies for local government units and subsidies for tasks specified in separate acts constitute a special purpose for the allocation of expenditures of the state budget and orders to include in annexes to the budget act: a list of units receiving purpose-specific and subject-specific subsidies and amounts of subsidies and the scope and amounts of subject-specific and subject-specific subsidies, defines subsidies (together with subsidies) as a separate group of expenditures of the state budget.

STRESZCZENIE

Dotacje są to podlegające szczególnym zasadom rozliczania środki z budżetu państwa, budżetu jednostek samorządu terytorialnego oraz z państwowych funduszy celowych przeznaczone na podstawie niniejszej ustawy, odrębnych ustaw lub umów międzynarodowych, na finansowanie lub dofinansowanie realizacji zadań publicznych. W ustawie o finansach publicznych zostały zawarte również definicje trzech rodzajów dotacji: celowych, podmiotowych i przedmiotowych. W odniesieniu do dotacji ustawodawca w przepisach ustawy o finansach publicznych zwraca uwagę, iż dotacje dla jednostek samorządu terytorialnego oraz dotacje na zadania określone odrębnymi ustawami stanowią szczególnie cel przeznaczenia wydatków budżetu państwa i nakazuje zamieszczać w załącznikach do ustawy budżetowej: wykaz jednostek otrzymujących dotacje podmiotowe i celowe oraz kwoty dotacji oraz zakres i kwoty dotacji przedmiotowych i podmiotowych, definiuje dotacje (wraz z subwencjami) jako odrębną grupę wydatków budżetu państwa.

KEYWORDS: *tax procedure, administrative procedure, Tax Ordinance, Code of Administrative Procedure, public finance, tax management, efficiency of the write-off process*

SŁOWA KLUCZOWE: *postępowanie podatkowe, postępowanie administracyjne, Ordynacja podatkowa, Kodeks postępowania administracyjnego, finanse publiczne, zarządzanie podatkami, efektywność procesu umarzania*

INTRODUCTION

Development in general consists of positive changes of a quantitative and qualitative nature. It is a process based on endogenous and exogenous factors. Local development is a process of harmonised and systematic action of the community, public authorities and other entities functioning in a given territorial unit, aiming at creating new and improving existing utility values in a given territorial unit, creating favourable conditions for the economy and ensuring spatial and environmental order. Pursuant to the provisions of the Act on the Principles of the Development Policy, the development policy is defined as a set of interrelated activities undertaken and implemented to ensure sustainable and balanced development of the country, socio-economic, regional and spatial cohesion and to increase the competitiveness of the economy and create new jobs. Shaping local development policy requires a comprehensive approach. It is a process that should be planned, conscious, coordinated and steered by local structures, e.g. municipal authorities. As a rule, it is a long-term process, as the effects of pro-development activities are often distant in time (Wołowiec, 2022). Development policy should be based on the activity of local communities. This is a labour-intensive and sometimes even innovative process. The creation of development policy is fraught with risk and therefore requires constant monitoring of effects and grading of progress. This process requires integration and coordination, primarily because of: the interdependencies that exist in the development process; the individuality of the individuals who are involved in development initiatives; and the need for the local population to take an interest in development. The municipality's development policy should take into account, among other things: the geographical location, the structure of the economy and its specifics, the demographic situation and the local labour market, the technical and social infrastructure, the natural environment, the resources that can be used, the leading areas of development and the characteristics of the local community (Parysek, 2008).

Planning documents in the municipality are drawn up in order to coordinate activities and unify approaches to solving key development problems. They support the policy of sustainable development. The main instruments

for the implementation of local economic policy are the local development programme of the territorial unit, the study of conditions, the local development plan and the budget (Wołowiec, 2017).

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.

LEGAL REGULATIONS OF THE PUBLIC FINANCE ACT

Pursuant to Article 56(1)(5) of the Act of 27 August 2009 on Public Finance, receivables referred to in Article 55 may be written off in full if there is an important interest of the debtor or the public interest. Article 55 of the indicated Act stipulates that monetary receivables of a civil law nature, falling to government administration bodies, state budgetary units and state purpose funds, may be written off in whole or in part or their repayment may be deferred or spread into instalments. The Act introduces a closed catalogue of reductions in the repayment of monetary receivables that may be applied by the entities specified therein. The write-off of a monetary receivable means

releasing the debtor from the obligation to fulfil the performance towards the unit of the public finance sector and results in abandoning the pursuit of the receivable. A pecuniary receivable may be written off in whole or in part if the application of other relief would be insufficient or impossible. The write-off of a debt, due to its extraordinary nature, should serve to temporarily restore the debtor's financial equilibrium or liquidity and not be a permanent form of subsidising it. There is no impediment to the conversion of the claim, at the debtor's request, into a benefit in kind or a service corresponding to the value of the claim where it cannot be settled in cash. Therefore, the authorities should carry out an evidentiary procedure aimed at establishing the applicant's financial situation, including, *inter alia*, his ability to pay. In order to fully consider the existence of an individual interest of the debtor, it is not sufficient to rely only on the findings of the debtor's assets and current income, without establishing the actual financial situation of the debtor, which is influenced – in addition to income – also by the size of the debtor's fixed charges and liabilities (Wołowiec, 2016). The authority decides on possible remission after analysing the evidence presented in the case and grading whether it deserves to be taken into account in the individual case. In addition, the authority's freedom of decision is limited by the principle expressed in Article 7 of the Code of Administrative Procedure of taking into account *ex officio* the public (social) interest or the legitimate interest of a party (Lipiec-Warzecha, 2011).

PUBLIC INTEREST AND THE INTEREST OF A PARTY TO ADMINISTRATIVE AND TAX PROCEEDINGS

The principle referred to obliges the authority to decide the case after carefully weighing the competing general and individual values at stake. Article 7 of the Code of Administrative Procedure. – which introduces the principle of taking into account the social interest and the legitimate interest of citizens *ex officio* – does not specify the hierarchy of these values or the principles of resolving conflicts between them. From the point of view of the structure and objectives of administrative proceedings, it can be assumed that the interests listed in this article are legally equivalent, which means that in the process

of interpreting procedural norms the public administration body cannot be guided by the hierarchy of these interests assumed a priori. In general, it can be stated that the above provision imposes an obligation on the authorities conducting the proceedings to harmonise the public interest and the individual interest if they are in conflict with each other in a particular case (Wołowiec, Reśko 2016). Judicial jurisprudence has commented on the relationship between the public interest and the legitimate interest of the party in such a way that it has in fact recognised the dominance of the public interest over the legitimate interest of the party (Judgment of the Supreme Administrative Court of 18 January 1995 SA/Wrr 1386/94). In the current legal state, the so-called administrative discretion has lost its previous character. The scope of the discretion of the administrative authority, resulting from the provisions of the substantive law, is now limited by the general principles of administrative procedure, set out in Article 7 and other provisions of the Code of Administrative Procedure.

PROCEEDINGS FOR THE WRITE-OFF OF SUBSIDIES

In the case of remission of subsidies in administrative proceedings for granting relief, conducted by the governor, a party to such proceedings, i.e. the municipality, is obliged to present all documents and materials necessary for a comprehensive grade of the material and financial situation. Such documents include: reports on the execution of the budget, the multiannual financial forecast, a report on the state of liabilities and receivables, a report on the surplus and deficit, as well as any other information and documents allowing for a thorough examination of the factual state, bearing in mind the special role in a discretionary decision of its compliance with the social interest and the interest of the citizen (Wołowiec, 2016). Within the framework of the administrative procedure, the governor uses in practice certain indicators belonging to the group of indicators recommended by the Ministry of Finance as helpful for the grade of the financial situation of local government units. As part of the indicator analysis, the body conducting the relief proceedings assesses the share of current income and own income in the total

income of the municipality. Own income is treated as a determinant of the municipality's wealth and the primary source of information on its financial condition. The share of own revenue in total revenue is a measure of the revenue independence of the local authority. The higher the own revenue ratio, the greater the independence of the local authority's budget from state budget transfers. A municipality's own revenue includes all revenue with the exception of general subventions and earmarked subsidies. Sources of a municipality's own revenue include, inter alia: tax revenues, budget charges and revenue from the municipality's assets. In addition, an important source of municipal own revenue is shares in personal and corporate income tax revenues. If the body conducting the relief proceedings finds that the municipality has generated an operating surplus, understood as the difference between current revenue and current expenditure, defined as the current result, which if positive is referred to as the operating surplus, this will be a positive phenomenon in the financial management of the municipality. It should be borne in mind that the existence of an operating surplus does not yet determine the financial health of the municipality. At the same time, it should be an important criterion for examining a municipality's creditworthiness, as well as a significant parameter in debt analyses. If the municipality generates a positive value of the current result (operating surplus) for consecutive years, it means that the municipality has the ability and capacity to timely repay previously incurred liabilities and to finance investment expenditures. If the share of operating surplus is positive, this means that the municipality has the ability to fully cover current expenditure with current income, without the contribution of income from the municipality's assets, with the possibility of increasing current expenditure by a certain percentage of the operating surplus. A high self-financing ratio means a better financial situation for the municipality. Property expenditures are the basic form of business support by municipalities and their amount is a resultant of local needs and the ability to meet them. It is investment activities, the financial reflection of which is the amount of investment expenditure incurred by municipalities, that are the basic factor in local development. It will therefore be difficult for a municipality to obtain a budget subsidy write-off in a situation where the municipality has been generating an operating surplus for several years and the share of this surplus in the municipality's

total revenue is positive. This will mean that the municipality's own tasks are performed from the obtained current revenues, while at the same time it is possible to increase unplanned current expenditures (the level of the municipality's debt in relation to the performed and planned revenues is also important). The per capita tax revenue ratio for individual municipalities (G), which is the basis for calculating the general subvention, also appears to be important. A high value of the indicator indicates a good financial situation of the municipality (Wołowiec, 2017).

DISCRETIONARY NATURE OF THE DECISION

The decision to write off a budget subsidy issued on the basis of Article 56(1)(5) of the Public Finance Act is discretionary in nature. It is up to the decision of the authority whether it considers that in a specific case there are prerequisites of important interest of the debtor or public interest. At the same time, the occurrence of these prerequisites does not necessarily imply a positive decision of the authority (voivode), as it is entitled to consider whether the arrears may be written off at all and, if so, in what part. The notions of *important interest of the debtor* and *public interest* are vague notions and therefore have the character of general clauses, which means that their content should be assessed in the realities of a specific, individual case (Supervisory decision of the Lublin Voivodship Governor of 30 July 2010, NK.II.0911/2412/10). An important interest of the taxpayer is a premise directly related to the situation of a specific entity. This reason must be so important and exceptional that its omission has clearly discernible negative consequences for that entity (Wołowiec, 2016). In the case of entities that are not natural persons, in respect of which effects in spheres such as health, family, education are not at stake, the negative effects will usually manifest themselves in the economic sphere, affecting the ability to compete, fulfil various obligations, and may also lead to the entity's liquidation. The fact that the legislator has left to the authorities, in the above-mentioned provision, the exclusive competence to grade whether the facts of a specific case support an important interest of the taxpayer or the public interest in the remission

of tax arrears means that the tax authority also has a certain degree of freedom both in interpreting the notions: important interest of the taxpayer and public interest (the act does not define these notions) and in taking the final decision on the application of relief. Even the existence, in the circumstances of a specific case, of the condition of an important interest of the taxpayer may therefore result in a negative decision for the taxpayer (Judgment of the WSA in Szczecin of 19 May 2010, I SA/Sz 110/2010). In the jurisprudence of the Supreme Administrative Court, it is a well-established view that since the remission of arrears is an extraordinary institution, thus social and economic cases must have the same feature. Therefore, the application of relief in the form of remission of arrears will be supported by such situations, which are independent of the manner of the taxpayer's conduct or are caused by the action of factors beyond the taxpayer's control (judgement of the Supreme Administrative Court in Warsaw of 20 March 2002, I SA/Gd 1563/99).

The existence of an important interest of the taxpayer (authority) is determined by objectivised criteria, on the basis of which the authority decides whether or not to write off the tax arrears (subsidies). An important public interest should not be equated with a subjective belief in the need to write off a tax arrears (grant). It is accepted in doctrine that an important interest of the taxpayer should be understood as extraordinary considerations that could shake the taxpayer's basis of existence (or the ability of the municipality to carry out, for example, its own tasks) judgment of the Supreme Administrative Court in Warsaw of 22 April 1999. SA/Sz 850/98).

CONCLUSIONS

The granting of relief to a municipality from the repayment of a budgetary debt of a public-law nature by way of a grant should be made for reasons that are sufficiently important to make the situation of the municipality clearly distinguishable from that of others subject to similar obligations (Wołowiec, Gwoździewicz, Reško, 2016). Having regard to the fiscal objective, as the overriding aim of public finance, the institution of remission should be of an extraordinary nature and relate to the situation in which the party finds itself, on the one hand, and to the economic and material situation of the municipality, on the other. It seems that it will be an insufficient argument to refer to the municipality's general financial difficulties, as not every financial difficulty can justify the application of relief in the form of write-off of debts, but only those which, in specific circumstances, would involve a threat to the significant interest of the obliged party (judgment of the WSA in Poznań of 3 June 2014 III SA/Po 1780/13). This means that the remission of arrears (subsidies) will be supported by situations that are independent of the party's conduct and caused by factors beyond the party's control (unforeseen, fortuitous events). In order to properly grade the situation, it is necessary to establish the financial situation of the municipality, however, it cannot constitute the only premise for the decision to write off the subsidy.

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