



August 2018

## Draft of the new Tax Ordinance

**Draft of the new Tax Ordinance (hereinafter: “the Draft”) has been published on the Government Legislation Centre website.**

**The Draft contains 728 articles, and its justification has a 554 pages.**

### The aims of the Draft

According to the justification of the Draft, the proposed regulations are aimed to achieve the two following goals:

- 1) protection of the taxpayer's rights in their relations with the tax authorities, and
- 2) increase of the efficiency of tax collection.

The new regulations introduce legal mechanisms for protecting the taxpayer's position in his relations with the tax authorities.

This mechanism includes among others the general principles of tax law, consensual methods of resolving tax disputes (the tax agreements between the tax authorities and the taxpayers, the mediation procedure, the consultations on transactions' tax consequences, the statutory catalogue of taxpayer's rights and duties, the prohibition of issuing decision to the disadvantage of the taxpayer in the repeated proceedings at first instance, the measures

for reducing the length of the proceedings, the right to correct the tax return before ending the tax proceedings, the waiving of the right to appeal against the decision to the second instance for the complaint to the administrative court).

Increasing efficiency of tax collection is to be achieved by improving the regulations on the GAAR clause, introducing the simplified tax procedure, introducing the obligation of cooperation of the tax authorities with taxpayers.

We present below the most important proposals of the Draft.

### The simplified procedure in low value cases

The simplified procedure is projected to shorten proceedings time to a maximum of 14 days, if:

- the factual state does not raise any doubts, and
- there is no need to gather any evidence, or
- where the expected amount of the tax liability does not exceed PLN 5 000.

### The tax agreements

The Draft proposes introducing the new procedure - the tax agreements made by the tax authorities and the taxpayers.

The tax agreement will not replace the decision of the tax authority.

The new procedure will not apply in all cases, i.e. agreement may not concern directly the amount of tax liability.

The tax agreement may be applied in the evidence process relating to:

- the findings from a couple of years ago,
- the transaction value,
- the legal event or activities,
- the discretionary tax relief (e.g. number of instalments or the delayed payment of tax).

The agreement should be documented in the protocol, and the tax authority will be bound by the provisions of the agreement.

The arrangements of the tax agreement will have to be reflected in the decision of the tax authority, in the audit protocol, in the result of the tax audit, or in any other document closing the proceedings.

### Mediation

The Draft provides a specific procedure for resolving disputes between taxpayers and tax authorities (mediation) with the participation of independent, impartial third party (mediator).

The mediation may be applied if conclusion of tax agreement is permissible.

The mediation may not end by concluding the tax agreement.

The tax authority will refer the matter to mediation at the request or with the consent of the party. The mediation will be voluntary dispute-resolving procedure for the tax authority and the taxpayer.

An application for the mediation shall indicate its subject. The procedure will be opened only for the tax authorities, the taxpayer and the mediator.

#### **The consultation procedure (the audit on request)**

This procedure gives the taxpayer and the tax authority the chance to make arrangements concerning the tax consequences of transactions made by the taxpayer, prior to the existence of any dispute.

This solution is dedicated to the taxpayers who have doubts regarding the potential negative tax effects related to complicated business transactions (e.g. restructuring). In this case, the taxpayers may apply to the tax authorities for issuing a decision on the tax consequences of transactions in which they participated.

The abovementioned decision of the tax authorities may determine the correct amount of tax liability, if the taxpayer indicates a wrong amount of tax in the tax return.

During the consultation procedure the tax authorities will not be limited only to examine the information presented by the taxpayer (in contrast to the individual tax ruling procedure) but may also analyze all documentation referring to the investigated transaction to verify the correctness of tax settlements.

#### **The prohibition against issuing decision to the disadvantage of the taxpayer in the proceedings at first instance**

The Draft provides a prohibition against issuing decision to the disadvantage of the taxpayer in the proceedings at first instance, in the event of the cancellation of the first instance decision and remittal of the case for further consideration.

In accordance with the new regulations, the tax authority whose decision has been cancelled, cannot issue the decision to the disadvantage of the taxpayer unless the cancelled decision contains the errors which result in reopening of proceedings or the invalidity of the decision.

#### **The cooperation agreement**

The Draft proposes introducing the cooperation agreements.

The aim of this procedure is to ensure a cooperation between tax authorities and taxpayer in the field of his tax obligations.

The cooperation agreement can be concluded only at the request of the taxpayer of significant economic importance.

The cooperation agreements are intended for the largest economic entities listed by the Minister of Finance.

The Draft is in public consultation. We will keep you informed about the progress of the Draft.

Please contact us if you would like to obtain more information on the aforementioned proposals.

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