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# АДМІНІСТРАТИВНЕ І ФІНАНСОВЕ ПРАВО

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## LEGAL SUCCESSION OF DECEASED TAXPAYER'S RIGHTS AND DUTIES INTHE CASE LAW OF POLISH ADMINISTRATIVE COURTS[1]

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The institution of legal succession in the event of the death of taxpayer first appeared in Polish tax law in 1998 with the adoption of the Tax Code 1997 ('Ordynacjapodatkowa', General Tax Law). The existence of such succession was previously a rule of private law, while in the field of tax law it constituted a novelty. Determination of the normative effects generated by the death of a natural person in the sphere of rights and duties regulated by tax law is very important and practical issue. It is not the problem of inheritance tax, but general tax law.

According to Article 97 § 1 of Polish Tax Code, the heirs to a taxpayer assume the rights and duties in property of the deceased taxpayer as provided for in tax law regulations. It means that the heirs of the taxpayer do not assume all the rights and duties of the testator as may arise under the provisions of tax law, but only those that are of a material character (rights in property). So, the scope of a succession in tax law is determined by the legislator on the basis of an unclear criterion, one which gives rise to doubts in the case law. The Author of the article observed, that this concept was taken from private law (inheritance law, Civil Code 1964). The genesis of this regulation referring to succession in tax law does not, however, provide us with a solution of the problem of how we are to understand rights and duties in property on tax law grounds. The criterion of the division is the nature of the duties and rights – whether they are property or non-property. For example, heirs are not required to file a tax return for a deceased taxpayer, but they must pay all the taxes he owed. A pecuniary character can also be attributed to certain rights, such as the right to the refund of tax overpayment, etc. The Author of the article concludes, that the nature of some rights and duties under tax law is not obvious. In particular cases, far-reaching doubts still arise when trying to define and precisely delimit rights and obligations according to the criterion adopted by the legislator. The case law in this area is rather modest. The observation arises that, in practice, the question of what types of rights pass to heirs has been much more controversial. In recent years, there has been a tendency to grant heirs a wide range of rights. The passing of duties has not led to many controversies.

*Keywords:* tax law, succession, heir, taxpayer

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**Introduction.** The institution of legal succession in the event of the death of natural persons first appeared in Polish tax law in 1998with the adoption of the Tax Code [23].

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The existence of such succession was previously and remains a rule within the field of private law, while in the field of tax law it constituted a novelty. This analysis takes as its subject matter the regulation that is presently in force. It is worth to get startednoted that tax obligations and tax rights of a natural person generally do not expire with the death of the deceased taxpayer (testator). Tax succession in the case of heirs includes mainly property rights and duties; non-property rights pass only exceptionally, and non-property duties do not transfer at all.

**Formulation of the scientific problem.** Precise determination of the normative effects generated by the death of a natural person in the sphere of rights and duties regulated by tax law is not only a very important issue from the practical point of view, but also a very interesting theoretical matter. Traditionally, the civil law distinguishes legal succession under general and special title (universal succession and singular succession, respectively). The former occurs, for example, in the case of inheritance or merger of corporate entities (such as companies). Whenever the issue of legal succession arises, the question must be posed about its scope. The essence of legal succession entry by the successor into an existing legal relationship in place of another person, assuming their rights and/or duties. However, even when we are dealing with legal succession under a general title, assumption of the rights/duties of the predecessor is, to a certain degree, of a selective nature.

**Distinguishing property and non-property rights and duties of the taxpayer as a criterion determining the extent of legal succession of their heirs.** Regulation on the legal succession of heirs as concerns tax law is contained in the Tax Code 1997 *(Ordynacjapodatkowa)*. The scope of legal succession of heirs is provided for in the following regulations:

*Article 97.*

*§ 1. The heirs to a taxpayer, subject to the provisions of § 1a, 2 and 2a, assume the rights and duties in property of the deceased taxpayer as provided for in tax law regulations.*

*§ 2. If, pursuant to the provisions of tax law, a deceased was entitled to non-property rights related to the economic activities conducted by him, those rights pass to his heirs, provided they continue those activities on their own account. (...)*

In accordance with Article 97 § 1 of the Tax Code, the heirs of the taxpayer do not assume all the rights and duties of the testator as may arise under the provisions of tax law, but only those that are of a pecuniary nature [1, p. 34; 3, p. 129]. For example, heirs are not required to file a tax return for a deceased taxpayer, etc. Although the obligation to file returns is a duty under tax law, no one claims that it passes to heirs, because non-property obligations are not assumed by heirs.

The division of rights and duties resulting from the provisions of tax law into property and non-property rights as introduced by the legislator should be considered as disjunctive, and the criterion of the division is the nature of the duties and rights – whether they are property or non-property [20, p. 542]. The scope of rights and duties assumed by heirs is thus determined by the legislator on the basis of an unclear criterion, one which gives rise to doubts in the case law. A property character can undoubtedly be assigned to the obligation to pay tax and other tributes to which the provisions of tax law apply. A pecuniary character can also be attributed to certain rights, such as the right to the refund of tax overpayment, etc. [20, p. 542]. However, the nature of some rights and duties under tax law is not obvious. In particular cases, far-reaching doubts arise when trying to define and precisely delimit rights and obligations according to the criterion adopted by the legislator [20, p. 542]. However, such a distinction is, on grounds of

Art. 97 Tax Code, necessary, because non-property duties do not transfer to heirs at all, while non-property rights do so only under the condition specified in § 2, which will be discussed below. At the same time, since the legislator distinguishes between property and non-property duties arising from the provisions of tax law, it is obvious that in its opinion not all tax rights and duties can be assigned a property character. Since this distinction has been made, it means that the legislator acknowledges those which, although they are related to taxes, are of a non-property nature.

The distinction (of property and non-property rights and duties) employed by the legislator is – in the sphere of tax law – a highly unfortunate one, unclear because of the absence of a definition, or even normative (statutory) criteria for such a distinction [20, p. 542]. One can therefore wonder why the legislator has introduced such a distinction, why it was felt that such a criterion would be appropriate in delimiting those tax rights and duties that heirs assume after the taxpayer's death and those which do not transfer to someone else with the taxpayer's death. The answer seems obvious: this concept was taken from private law (inheritance law). Article 922 § 1 of the Civil Code [9] states: «The rights and duties in property of the deceased pass from his death to one or several persons in accordance with the provisions of this book» *(the Polish Civil Code is divided into four main sections called 'books')*. The genesis of this regulation referring to succession in tax law does not, however, provide us with a solution of the problem of how we are to understand rights and duties in property on tax law grounds. In the sphere of private law, it is generally accepted that those rights and duties which are directly conditioned by the economic interest of the entity are of a property character [27, p. 138]. In light of this, it matters not whether such a right has or can obtain real value [25, p. 24]. However, there is also a widely-held view that only a right with a specifiable value can be recognized as a property right [24, p. 24].

The provisions of the tax law referring to the legal succession of heirs adopted the civil law's distinction of rights and duties in property and non-property. The legislator apparently determined that succession in tax law and private law should be based on the same principles. Although the distinction in civil law was known and observed for a long time, the introduction of this division into tax law was a difficult task. The legislator did not provide any indications as to what kind of rights are to be considered in tax law as rights in property, and which as non-property. A. Marianski pointed out that the provisions of tax law lack definitions of the meanings of the notions of property and non-property rights and duties. [12, p. 108]. S. Babiarz, in turn, proposes that the following provision should be included in the Tax Code: «Property rights and duties in tax law are those that are conditioned by the direct economic interest of the rightholder» [2, p. 129]. Criteria that had long been used under civil law proved difficult to translate into tax regulations. The division into property and non-property rights provided for in the Tax Code is artificial [11, p. 23; 10, p. 67; 13, p. 12]. *Prima facie* it could even seem that in the area of tax law, all rights are inherently in property [11, p. 23; 12, p. 14]. Certainly, however, the legislator did not think so, considering how the wording of the relevant provisions (Article 97 Tax Code) distinguishes them and treats them differently. On the other hand, in the field of tax law all rights are, in principle, intrinsic and non-transferable (they can not be transferred through a legal transaction), which is one of the main determinants and main features of property rights in the field of civil law.

In the literature on tax law, it is indicated that the concept of «rights and duties in property» should, on tax-law grounds, be understood in principle as in the civil law system, and thus as rights and duties directly conditioned by the economic interest of the rightholder [1, p. 27]. The property character of rights or duties in the light of case law

must result from tax law provisions, is general in nature, and specific tax law provisions may modify it and thus limit it [1, p. 21, 40]. Sharing this position in the case-law, it was held that these may be duties or rights existing before the death of the testator. Provincial Administrative Court in Kraków in judgment of November 17, 2015 (I SA/Kr 1227/15) stated that «In order to speak of a property right subject to succession that right must exist in the lifetime of the testator». In judgment of the Supreme Administrative Court of April 25, 2014 (II FSK 1175/12) has been stated that the scope of the term «non-proprietary rights» can not be extended to encompass personal rights [1, p. 21, 40]. The features of property rights distinguished in the civil law (measurability, usefulness, enforceability, marketability) do not fully correspond to the distinguished property rights in tax law, which does not mean, however, that for this reason alone they may be denied the characteristic of rights in property.

On the basis of tax law personal rights cannot be equated with non-property rights [11, p. 26; 12, p. 108]. Economic interest is inextricably linked with rights and duties arising from the provisions of tax law [11, p. 26; 12, p. 108.]. One can doubt whether non-proprietary rights can be distinguished at all on the basis of tax law.

The division of rights and duties into property and non-property adopted in Art. 97 Tax Code is an artificial one, and the legislator should abandon it [11, p. 26; 16, p. 410; 18, p. 178]. Currently, the scope of property rights encompassed by succession is defined *de facto* in case law, which has also been noted in the case law itself (for example, in judgment I SA/Gl 643/16 of 30 August 2016 of the Provincial Administrative Court in Gliwice) [7, p. 87; 8, p. 78; 15, p. 157; 17, p. 453].

**Case law on the scope of rights and duties of the deceased taxpayer assumed by his heirs.** In the case law of the Polish administrative courts, attempts have been made to indicate the criteria for categorizing rights and duties as property or non-property [3, p. 115–26]. Rights in property are considered those rights arising from tax regulations which, during the taxpayer's life, shaped his economic situation, and, above all, led to a reduction or even elimination of the tax burden on the testator (judgment of Provincial Administrative Court in Lublin, November 4, 2015, I SA/Lu 651/15). For the purposes of determining the scope of legal succession by the heirs of the deceased taxpayer, it is nevertheless assumed that the basis for the division into «property» and «non-property» rights is done based on the interest served by these rights; although perhaps it should rather be said that this means the type of interest the taxpayer is to be pursue through these rights. Property rights are, therefore, those that are related to the economic interest of the entitled entity and are related to its assets(judgment of Provincial Administrative Court in Warsaw, May 29, 2018 (III SA/Wa 2489/17).

As to certain rights and duties, their nature (property/non-property) is a settled issue; in many cases, however, controversies exist which are resolved *ad casum*. The case law in this area is rather modest. Particularly in recent years, there has been a tendency to grant heirs a wide range of rights. Equity arguments based on axiology are taken into account to a larger extent than in the initial years of the regulation's existence. However, it has not yet proven possible to develop clear, transparent criteria for distinguishing property and non-property rights and duties.

In its judgment of 10 February 2009 (II FSK 1623/07) the Supreme Administrative Court (NSA) stated: «In tax law, the notions of ‘property’ and ‘non-property’ are not defined. The civil law attempts to clarify these concepts, drawing attention to the direct impact of property rights on the economic interest of the individual and the lack of such a direct impact in the case of non-proprietary rights. On public law grounds it is indicated that the line of the division of rights and duties into tangible and intangible runs along the

division in the financial law of substantive and formal. Thus, non-property procedural rights are those on whose basis organizational relationships of a legal and financial nature are established, while property rights refer to the rights and duties on whose basis legal and financial relationships are established. Property rights include, for example, the right to a refund of overpayment, tax refund or difference of input tax (legal constructions typical of value added tax), the right to settle (i.e., deduct) losses in subsequent settlement periods, the right to concessions and investment bonuses, the unused right to spread out the payment of tax in installments, deferment of payment of tax» (Judgment of Supreme Administrative Court (NSA), April 30, 2014, II FSK 1227/12).

The criterion of the transferability of rights as a criterion for distinguishing property and non-property rights in the context of succession of heirs (Article 97 § 1 Tax Code) should be considered inadequate to tax-law relations. In private law, the inclusion of a given right in the category of property rights is settled jointly by two conditions, first – whether the right can be the object of exchange, so whether it is transferable, and second – whether it has a determinable property value (judgment of Supreme Administrative Court of June 20, 2006, II FSK 839/05).

In practice and in the literature, there is no dispute that property duties arising from tax law provisions include tax liability [4, p. 33; 6, p. 568; 21, p. 453]. The right to a refund of overpayment is also a right in property. Overpayment occurs when undue tax has been paid (i.e., a payment was made despite the fact there was no obligation to pay). In these situations, the tax is refunded to the taxpayer. The case law states that the right to claim overpayment and tax rebate associated with it are constitutionally protected property rights (judgment of Supreme Administrative Court of February 27, 2013, I FSK 475/12). Courts share the view of scholars that the right to reimbursement of tax overpayment is a property right subject to constitutional protection under Art. 64 of the Polish Constitution as a property right other than ownership [28, p. 590].

Interestingly, courts in their decisions have also recognized that since the right to declare overpayment is of a property nature, proceedings to ascertain overpayment made while a testator was still alive may be initiated after his death upon application of an heir (judgment of Provincial Administrative Court in Poznań, November 27, 2014, I SA/Po 633/14). Interpreting in this context Art. 97 § 1 Tax Code, one administrative court appealed to the Constitution and stated that since the right to declare and to obtain refund of an overpayment, as a right of a public-law nature, enjoys the protection provided for in Art. 21 § 1 and Art. 64 § 1 of the Polish Constitution, Art. 97 § of the Tax Ordinance should be interpreted in such a way as to enable the heir to acquire this right (judgment of Provincial Administrative Court in Poznań, November 27, 2014, I SA/Po 633/14).The court based its arguments in particular on the fact that the occurrence of an overpayment means that the tax authority has received a tax benefit that it is not entitled to. Solutions sanctioning the payment of taxes and other public-law liabilities collected unduly or regulatory omissions to prevent the recovery of such claims (which lead to the same essential effect) should not, however, be accepted. Therefore, such a situation in which the tax authority receives undue payment and there is no procedural way to implement the constitutionally protected right to declare and obtain refund of tax overpayment because the taxpayer died would be unacceptable.

This view has met with approval in judgments of Supreme Administrative Court [Supreme Administrative Court in two judgments from April 20, 2017: II FSK 840/15 and II FSK 841/15. Bearing in mind that pursuant to Art. 97 § 1 Tax Code, the heirs of the taxpayer assume all of the taxpayer's property rights and duties as provided for in tax law, and that the right to declare and obtain a refund of overpayment is a right in

property, the court held that proceedings regarding the overpayment of tax by the testator may be initiated after his death upon application of a heir. The court agreed with the earlier view expressed in the case law that in the opposite case, a situation would arise in which Art. 97 § 1 Tax Code, while providing for the transfer of the right to refund of overpayment to heirs, would not provide for any procedural possibilities (guarantees) to exercise this right. In fact, this would render the right of the heir illusory. The Supreme Administrative Court invoked the case law of the Polish Constitutional Tribunal in a ruling from May 21, 2001 (SK 15/00) in a case that, while not concerning tax law, did concern the legal position of heirs as legal successors to the deceased.In addition, this would violate the constitutional principle of equality, since the succession of tax obligations would not be matched by the succession of the right that is the correlate of the obligations. Here the Supreme Administrative Court invoked the ruling of the Constitutional Tribunal of May 29, 2007 (P 20/2006).

Another interesting issue arose concerning doubts as to whether the right to income tax deductions for losses incurred is a right in property that can be assumed by the heir of the deceased taxpayer who continues his business. According to the Polish Personal Income Tax Act, certain losses are deductible for tax calculation purposes. Individuals doing business activity as sole traders or partners in partnerships can deduct losses for a period of five years from income derived from the same source [22, Art. 9(3)].

The problem has arisen of whether the heir of the deceased taxpayer could deduct from his income losses suffered by deceased persons conducting business activity as sole traders or partners in partnerships (entrepreneurs). In its judgment of January 12, 2012 (I SA/Go 1140/11) the Provincial Administrative Court in Gorzów Wielkopolski stated that the right to deduct a loss in subsequent tax years is a property right that passes to the heirs of the deceased taxpayer. Thus, the heir can settle the loss of the deceased, provided he deducts it from income derived from the same source of income. This means, for example, that if the source of the loss was an economic activity, the heir can deduct the loss only if he is also an individual operating a business as a sole trader or partner in a partnership (entrepreneur), although he does not necessarily have to continue running the same business activity that was conducted by the deceased taxpayer.

Against the backdrop of issues related to the assessment of whether a specific taxpayer's entitlement constitutes a property right, and whether it thus transfers to his heirs - there is an interesting matter concerning exemption from income tax on the sale of shares. In Poland, income from the sale of shares was exempt for several years, but this exemption was subsequently abolished; however, income from the sale of shares acquired before 2004 retained its exempt status. It could thus be the case that a taxpayer selling shares purchased many years earlier still retained the right to the exemption, even though it was no longer provided for in the relevant legislation. Despite changes in the relevant regulations, the exemption of income from the sale of shares remained in effect for many years and concerned shares acquired before 2004; the legal basis was Art. 52 Personal Income Tax Act [22]. and Art. 19 of the Act of November 12, 2003 amending the Personal Income Tax Act(OJ L no. 202, item 1956, as amended).This problem arose in a case when the owner of shares acquired before 2004 died, the shares were inherited by his heir, and the heir then sold them, thereby generating income. The issue did not concern inheritance tax, but only personal income tax, as the heir generated income through the sale of shares, irrespective of whether they were inherited or bought by him personally. If the owner himself had sold them, the income would be tax-exempt. At issue was whether the testator, when still alive, had acquired the right to an exemption on tax on income from shares sold and could such a property right pass to his heir.

In one case the heir argued that the right to the exemption is a property right which, pursuant to Art. 97 § 1 Tax Code, passes to the heir. The court of first instance agreed with this position. It ruled that the tax exemption is not of a personal nature, but rather a right in property, and hence the heir may invoke it (as ruled Provincial Administrative Court in Łódź, judgment of January 13, 2012 (I SA/Łd 1427/11). In the opinion of the court, the situation of the heir should therefore be the same as the situation of the deceased taxpayer who, after all, could have benefited from the exemption if he had sold the shares himself.

However, the judgment cited was overturned by a higher court, which did not share this view (judgment of Supreme Administrative Court, April 30, 2014, II FSK 1227/12). The Supreme Administrative Court held that the right to deduction was only hypothetical, and could only be invoked during the testator's life. Because he did not sell the shares, he did not acquire the right to the exemption. Therefore, he had no right that his heir could assume. The court distinguished a situation in which the testator (owner of the shares) is entitled to an exemption as he sold shares acquired before 2004 from a situation in which the testator could claim no exemption because the failure to sell shares in his lifetime means that he did not generate any income at all. A position similarly unfavorable for the heir was taken by the Supreme Administrative Court in its judgment of November 29, 2012 (II FSK 737/11). This position was criticized by some authors [5, p. 106 et seq.]. Later, however, the case law adopted a more favorable position for heirs, which has since become entrenched [4, p. 152 et seq.]. It was observed, that refusing successors the right to deduct expenses related to acquisition borne by the testator would constitute unjustified discrimination against the successors.

A somewhat similar problem in relation to the tax exemption right concerned the exemption from income tax in a situation where the taxpayer had obtained income from the sale of real estate and subsequently died. As a rule, such income is taxed at a rate of 19 %. The taxpayer, however, has the right to an exemption (in full or in part) if, within 2 years of the sale, he spends the income generated by the sale of the real estate for the purchase of another residential property or for the construction of a house. However, the taxpayer died before he was able to exercise this right. The obligation to pay income tax passed to the heir of the deceased taxpayer. The problem arose as to whether the heir could benefit from the tax exemption if he were to buy a property for residential purposes [2, p. 14]. Judging by the number of cases of this kind that appear in the courts, such situations are not uncommon.

Initially, tax authorities and courts responded in the negative [For example, judgment of the Provincial Administrative Court in Kraków of March 21, 2016, I SA/Kr 164/16, and their position was criticized in the subject literature [14, p. 67]. It was argued that the provision establishing a tax exemption for income derived from the sale of real estate states that the taxpayer benefits from the exemption if he spends this income on his own housing purposes. According to the courts, «own purposes» refers to the person who obtained the income. Therefore, the heir, in simplified terms, «inherited» the obligation to pay the tax, but the right to the exemption did not pass to him.

Ultimately, however, a different view emerged in the case law that, in the situation described above, the heir of the deceased taxpayer may benefit from the exemption if he purchases property for his own residential purposes (to meet his housing needs). Again, this concerns income that the testator obtained from the sale of property during his lifetime. This view, beneficial for heirs, now seems to dominate in the case law(see for example, judgment of the Supreme Administrative Court of November 29, 2017, II FSK 2119/15; Supreme Administrative Court of January 18, 2018, II FSK 3633/15; Provincial

Administrative Court in Gdańsk of January 31, 2018, I SA/Gd 1612/17; earlier, judgment of Provincial Administrative Court in Lublin of November 4, 2015, I SA/Lu 651/15; judgment of Provincial Administrative Court in Warsaw of August 5, 2015, III SA/Wa 3441/14). It has thus been held that the testator acquired in his lifetime the right to an exemption from tax on income obtained from the sale of real estate, and this right was a property right, which is why it passes to his heir. It would not matter, then, that the «own housing purposes» on which the exemption is based are not the purposes of the deceased taxpayer who obtained income, but rather the purposes of another person (heir).

In its judgment of 24 May 2016 (II FSK 1014/16), the Supreme Administrative Court held that «The tax obligation arising from the sale of real estate in the conditions referred to in Art. 10 (1)(8)(a) of the Personal Income Tax Act does not apply in relation to heirs obliged to sell real estate on the basis of an agreement referred to in Art. 389 and Art. 390 of the Civil Code, made as a consequence of a preliminary contract concluded by a testator not obliged to pay the tax, insofar as the conclusion of the final agreement came within five years of the end of the calendar year in which the acquisition took place, i.e. the opening of the probate estate. The right of the taxpayer (here: testator) assumed by heirs was the right to exempt income obtained from the sale of the property acquired in the conditions referred to in Art. 10(1)(8)(a) Personal Income Tax Act which does not give rise to a tax obligation arising from disposal for consideration.» Here the court held that the property right which the taxpayer had had was the right to exclude income from taxation, which should not be confused with the tax exemption referred to above. When he died, this right passed to his heirs. As a result, they found themselves in the same situation in tax terms as the deceased taxpayer was before.

The Provincial Administrative Court in Gliwice, in its judgment of 30 August 2016, I SA/Gl 643/16, expressed the view that the choice of form (method, principles) of taxation is also a property right subject to succession. The court ruled: «the choice of the method of taxing income from non-agricultural economic activity under the terms provided for in Art. 30c Personal Income Tax Act is a right subject to succession under tax law. It is a right that the testator was entitled to, and the exercise of it by the testator generated a specific tax effect in the form of payment of the so-called flat tax (tax rate 19 %), rather than under general rules (progressive tax rate 18 % and 32 %). The choice of the method of taxation is subject to succession, since it is a right provided for in tax law provisions – in Art. 9a(2) and Art. 30c Personal Income Tax Act. To sum up, this is a property right subject to succession, in accordance with Art. 97 § 1 Tax Code, since it came into being during the deceased's lifetime and has an economic character».

Some privileges in property have themselves been recognized as property rights which, in the event of the taxpayer's death, pass to his heirs. In its judgment of November 25, 2016, II FSK 3059/14, the Supreme Administrative Court took the view that the right to demand the resumption of tax proceedings is, considering its substance, a property right as referred to in Art. 97 § 1 Tax Code. The resumption of proceedings is a special procedural mode in which, for specified reasons, an application may be made for the tax authority to re-examine a case which it has already resolved and concluded with a final decision. According to Art. 240 § 1 Tax Code, such an application may be made, for example, if the taxpayer did not take part in the proceedings without fault or new facts or evidence that existed on the date of the first decision, but unknown to the authority at that time, have been revealed; the decision was based on a different decision which was subsequently revoked or amended and this affected the assessment of the case which the taxpayer is currently appealing, etc. Such an application can be made even several years after the decision. According to the court, «it cannot be held that this right is non-property (Article 97

§ 2 Tax Code) and is enjoyed only by heirs who continue the economic activity of the testator, as this would discriminate against heirs and infringe Art. 8(2) in connection with Art. 21(2) and Art. 32 and Art. 64(1) of the Constitution of the Republic of Poland».

An interesting view was formulated in a judgment of the Provincial Administrative Court in Kraków of 17 November 2015, I SA / Kr 1227/15. One of the key issues concerned whether the right of a taxpayer was sufficiently specified during his lifetime that it could pass to his heirs, who continued his economic activity. The dispute concerned whether the heir of a commercial enterprise operated by his father acquired the right to adjust tax pursuant to Art. 89a(1) of the Value Added Tax Act, if the expiration of the limitation period on substantiation of claims expired after the death of the testator. According to the tax authority, the heir can not take advantage of the so-called «relief for bad debts» provided for by this provision, when at the time of death of his father (who was a taxpayer) the condition specified in art. 89a paragraph 2 point 6 of the VAT Act. The court disagreed with this assessment. Firstly, he formulated the view that in the context of the legal problem under consideration in the case, the division of property and non-proprietary rights was irrelevant, because the heir continued the economic activity of the testator, which means that he takes over both his property rights (Article 97 § 1 of Tax Code), and non-proprietary (Article 97 § 2 of Tax Code). As to the crux of the problem, the court ruled that the entitlement to dispute was vested in the heir even if the time limit for finding that the claim was irrecoverable, i.e. that the VAT concession was satisfied was fulfilled only after the death of the deceased taxpayer. The court stated that the heir should be treated the same as a deceased taxpayer. This leads to the observation that, however doubtful it may be, whether the right to benefit from the discount in question has been concretized in the taxpayer's lifetime, or it can be said that he acquired it, which generally conditions the possibility of passing the right to heir - it is the Court of First Instance he made an interpretation favorable to the heir, advocating that the situation of the heir would be as close as possible to the situation of the deceased taxpayer. You can see the arguments referring to the so-called economic interpretation of law.

A relatively rare subject of controversy is the issue of whether a certain obligation resulting from the provisions of tax law is of a property character or not. As a rule, there is no doubt that formal obligations are not «property» in the sense of Art. 97 § 1 Tax Code, and therefore do not pass to heirs, but rather expire with the death of the person on whom such a duty was imposed.

For example, in one cases the issue at hand was whether the obligation to submit information about real estate and other buildings to the tax authority is of a property character (Judgment of Provincial Administrative Court in Poznań, December 28, 2011 (III SA/Po 530/11). On the basis of such information, the tax authority assesses a property tax. In the opinion of the court, the obligation to submit such information by natural persons is not of a property nature in the sense of Art. 97 § 1 Tax Code, because it can not be unequivocally stated that the submission of such information directly affects the taxpayer's economic interest. The court pointed out that information about real estate does not affect the existence of the tax obligation, which arises on statutory grounds at the beginning of each calendar year. Submission of this information is also not necessary for the tax liability to arise, because the decision on assessment of tax can be issued by the tax authority as necessary and without such information from the owner. Finally, the owner is not obliged to submit such information annually if the parameters determining the amount of tax (area, mode of use, etc.) have not changed. In conclusion, the court stated that since such information does not condition the presence of either a tax obligation or a tax liability, it does not affect the legal relationship between the taxpayer and the tax authority. As a result,

the obligation to submit such information can not be considered a property obligation. The taxpayer's heirs, therefore, do not inherit the obligation to submit information which was the responsibility of the deceased owner. It is another matter that the heir who inherits a property is legally obliged to submit information allowing the authority to assess property tax. The point, however, is that it is not an obligation «inherited» from the deceased taxpayer, but the obligation of every subsequent property owner as a taxpayer of real estate tax. The practical consequences of this distinction are important because in the case before the court the authorities referred to the circumstances indicated in Art. 68 § 2(1) Tax Code justifying the extension of the deadline to 5 years for issuing a decision determining tax liability in the event the tax return has not been submitted on time.

**Conclusions.** The issue tackled by this study was that of which rights and duties of a taxpayer arising from tax law regulations pass to his heirs. In particular, the practical understanding of the notions of «property right» and «property duty» was analyzed, as in principle only property rights and duties are passed on to the taxpayer's heirs without any additional conditions.

The observation arises that, in practice, the question of what types of rights pass to heirs has been much more controversial. The passing of duties has not led to so as much dispute, as we can clearly grasp reviewing the relevant case law.

As for the criterion itself (i.e., the «property» trait), it has turned out to be a source of endless controversy. It seems that the adoption in the tax law of this trait as a criterion determining whether a given right or duty passes to an heir was mistaken. In this case, the model developed in the civil law and enjoying a well-established tradition in private law is not the best fit for tax law. On the other hand, it seems that during the twenty years during in which the regulations have been in force, the most basic (main) problems have been resolved. The wording used in tax legislation, not entirely clear, has been made precise in the case law. At the same time, it seems that a review of court decisions allows for the thesis that of the two potential types of interpretation (restrictive and broad), the broad model takes precedence in doubtful cases; it ultimately leads to a model under which the tax situation of the heir should be made as similar as possible to that of the deceased taxpayer (i.e., the testator).

The question should be asked of whether, despite the clear imperfections of present statutory solutions relating to the tax succession of natural persons, it is necessary to change the criteria determining which rights and duties are passed to heirs. Since the civil law model (based on the distinction between property and non-property rights) is imperfect, it may be necessary to develop other criteria. There is an opportunity to do so at present, as legislative work is in progress to replace the current Tax Code with a new act regulating general tax law, including issues of legal succession in the tax sphere. There is still a chance to redefine the way these issues are dealt with.

Despite all the flaws of the existing solutions, it seems that at present a departure from the criterion based on the distinction between property and non-property rights and duties is no longer an issue of urgency. It can be concluded that the twenty-year lifespan of the present provisions has seen the development of a fairly stable and clear understanding of what are admittedly foggy rules.

It has also turned out that, in practice, the greatest number of disputes surrounded not whether a right was of a property or non-property character, but whether a right could be perceived in a given situation which was sufficiently specific in the life of the taxpayer, and was therefore suitable for the heirs to assume. The vagueness of the statutory criteria (property/non-property) has turned out to be essentially harmless, a conclusion which may seem somewhat surprising.

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## ЮРИДИЧНЕ ПРАВОНАСТУПНИЦТВО ПРАВ ТА ОБОВ'ЯЗКІВ ПОМЕРЛИХ ПЛАТНИКІВ ПОДАТКІВ У СУДОВІЙ ПРАКТИЦІ ПОЛЬСЬКИХ АДМІНІСТРАТИВНИХ СУДІВ

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Інститут правонаступництва у випадку смерті платника податків уперше з'явився у польському податковому законодавстві 1998 року з прийняттям Податкового кодексу 1997 року («Ordynacja podatkowa», Загальне податкове законодавство). Наявність такого правонаступництва раніше було нормою приватного права, тоді як у сфері податкового права це було новинкою. Визначення нормативних наслідків, спричинених смертю фізичної особи у сфері прав та обов'язків, що регулюються податковим законодавством, є дуже важливим та практичним питанням. Це не проблема податку на спадщину, а загального податкового права.

Відповідно до п. 1 та 2 ст. 97 Податкового кодексу Польщі спадкоємці платника податків беруть на себе права та обов'язки у власності померлого платника податку, як це передбачено положеннями податкового законодавства. Це означає, що спадкоємці платника податків не беруть на себе всі права та обов'язки спадкодавця, які можуть виникати відповідно до положень податкового законодавства, а лише ті, що мають матеріальний характер (майнові права). Якщо відповідно до положень податкового законодавства померлий платник податку мав право на немайнові права, пов'язані зі здійснюваною ним господарською діяльністю, ці права переходять до його спадкоємців за умови, що вони продовжують цю діяльність. Отже, критерій поділу – характеробов'язків та прав – незалежно від того, є вони майновими чи немайновими.

Автор статті зауважила, що ця концепція взята з приватного права (спадкове право, Цивільний кодекс 1964 року). Положення податкового закону, що стосуються правонаступництва спадкоємців, перейняли розмежування прав та обов'язків на майнові та немайнові. Законодавець, очевидно, визначив, що правонаступництво у податковому та приватному праві має ґрунтуватися на одних і тих же принципах. Однак генезис цієї норми, що стосується правонаступництва у податковому праві, не дає вирішення проблеми того, як ми розуміємо права та обов'язки у власності на підставі податкового законодавства. Хоча розмежування в цивільному праві було відоме та дотримувалося тривалий час, впровадження цього поділу в податкове право було складним завданням. Законодавець не надав жодних вказівок щодо того, які саме права доцільно розглядати в податковому законодавстві як права на власність, а які як немайнові. Прецедентна практика у цій галузі досить скромна. Можна зробити висновок, що поділ на майнові та немайнові права, передбачений Податковим кодексом, є штучним і законодавець повинен відмовитися від нього.

У прецедентній практиці адміністративних судів зроблено спробу визначити критерії класифікації прав та обов'язків як майнових чи немайнових. Наприклад, спадкоємці не зобов'язані подавати податкову декларацію померлого платника податку, але вони повинні сплатити всі податки, які він заборгував. Грошовий характер також може бути притаманний певним правам, таким, як право на відшкодування переплати податку тощо. Адміністративні суди у своїх рішеннях також визнали, що оскільки право оголосити про переплату має майновий характер, процедура щодо встановлення переплати, розпочата ще коли заповідач був живий, може бути продовжена після його смерті за заявою спадкоємця. Спадкоємець померлого платника податків може також зменшити дохід на суму витрат, понесених померлими особами, які здійснювали підприємницьку діяльність. Право вимагати відновлення податкового провадження вважається також майновим правом.

Водночас характер деяких прав та обов'язків, відповідно до податкового законодавства, не є очевидним. У конкретних випадках все ще виникають сумніви при спробі визначити та точно розмежувати права та обов'язки відповідно до критерію, прийнятого законодавцем. Ще немає можливості розробити чіткі, прозорі критерії розмежування майнових та немайнових прав і обов'язків у податковому законодавстві. Автор наводить багато прикладів із відповідної судової практики польських адміністративних судів.

Питання, яке вирішувалось у дослідженні, полягало в тому, яке право та обов'язки платника податків, що виникають із норм податкового законодавства, переходять до його спадкоємців. Зокрема, було проаналізовано практичне розуміння понять «право власності» та «майновий обов'язок», оскільки в принципі лише майнові права та обов'язки передаються спадкоємцям платника податків без додаткових умов.

Зроблено висновок, що на практиці питання про те, які види прав переходять до спадкоємців, було значно суперечливішим. В останні роки спостерігається тенденція надання спадкоємцям широкого кола прав. Натомість передача обов'язків не призвела до численних дискусій.

Формулювання, використане в податковому законодавстві, не зовсім чітке, було чітко визначено у судовій практиці. Видається, що протягом двадцяти років, протягом яких діяли нормативні акти, були вирішені відповідні основні (головні) проблеми. У той же час, видається, що перегляд судових рішень дає змогу висловити тезу, що з двох потенційних типів тлумачення (обмежувального та широкого) широкий спосіб тлумачення має перевагу у сумнівних випадках; це в кінцевому підсумку призводить до моделі, за якою податкове становище спадкоємця повинно бути максимально схожим на ситуацію з померлим платником податків (тобто спадкодавцем).

*Ключові слова:* податкове право, правонаступництво, спадкове право, судова практика.

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