

Presentation of Budgetary Balance as an Argument Justifying Granting Tax Payment Relief: Scope of Control of Discretionary Decisions by an Administrative Court

Ruling of the Voivodeship Administrative Court in Lublin of 20 January 2023, I SA/Lu 598/22

The discretionary decision of the tax authority regarding the granting of tax payment relief should be based on criteria related to accepted constitutional principles and values. Its justification should confirm that the assessment of the tax authority was logical, comprehensive, objective, and related to the circumstances and conditions of the case. Maintaining budgetary balance, both at the municipality and national level, can be considered as an argument in the proceedings concerning the granting of tax payment relief.

Kacper Kanka

Warsztat Podatkowy Kacper Kanka, EY, Poland

kacper.kanka@gmail.com

ORCID: 0000-0002-1214-9588

<https://doi.org/10.26881/gsp.2024.1.11>

Commentary

1. The subject of the ruling under discussion is the decision of the Director of the Tax Administration Chamber in Lublin upholding the decision of the first-instance authority refusing to grant the municipality relief in the form of cancelling interest on VAT arrears. The reason for the arrears was the submission of amendments to the VAT declaration by the municipality. These amendments resulted from a change in the tax classification of EU funds allocated for renewable energy sources.¹ The municipality, in justifying the request for interest cancellation, referred to the taxpayer's significant interest and the public interest related to the difficult, continuously deteriorating financial situation and the circumstances in which the tax arrears arose. The municipality indicated that in the year when the arrears arose, besides ongoing tasks, it carried

¹ This issue is the subject of a request for a preliminary ruling from the Supreme Administrative Court, Case C-612/21.

out numerous investments with the participation of EU funds, which required its own contribution. At the same time, when submitting the application, the municipality was struggling with problems related to underfunding of education and the effects of the pandemic. After receiving an unfavorable decision, the municipality lodged an appeal to the Voivodeship Administrative Court in Lublin. In its ruling of November 3, 2021 (file reference: I SA/Lu 433),² the court overturned both decisions issued in the case. The court found the complaint's allegation of the misinterpretation of Article 67a § 1(3) Tax Ordinance³ legitimate.

After reconsidering the case, both the first and second-instance tax authorities once again refused to grant the requested relief despite it fulfilling both prerequisites under Article 67a § 1(3) of the Tax Ordinance (important interest of the taxpayer and public interest). In particular, the authority, while justifying the refusal, referred to the circumstances accompanying the case, such as the municipality's contribution to the tax arrears, the associated interest, and the recognition that its financial and material situation was not extraordinary.

In the ruling in question, the court of first instance overturned the contested decision. In its reasoning, the court emphasised that a decision made under administrative discretion cannot be arbitrary. It must result from a comprehensive and thorough consideration of all the circumstances of the case and effectively balance the important interest of the taxpayer and the public interest. When exercising administrative discretion, the authority should aim to issue the best possible decision based on various criteria and the specific factual situation. According to the court, the authority is bound by substantive and procedural norms, as well as the need to consider the relationships arising from constitutional norms. The review of such decisions by administrative courts does not involve examining the validity of the decision for relief itself but rather how the authority arrived at a particular decision and whether it falls within the legally defined limits. Administrative courts have the authority to scrutinize if an authority exercised its power in a wholly irrational manner or contrary to fundamental constitutional principles. In the court's opinion, the grounds of the contested decision do not indicate that the case was decided in accordance with these standards. The reference to the principle of universality of taxation and the related needs of the State Treasury, in the context of acknowledging the difficult financial situation of the municipality and the manner in which the tax arrears arose, does not justify the choice of legal consequences of the established facts in a manner consistent with the indicated standards. Therefore, the tax authority exceeded the limits of administrative discretion.

2. Turning to the assessment of the ruling in question, it is worth focusing on two fundamental aspects. The first concerns the argumentation presented by both parties,

² All rulings of the administrative courts mentioned in this commentary are available in the Central Database of Administrative Court Judgments (Centralna Baza Orzeczeń Sądów Administracyjnych).

³ Tax Ordinance Act of 29 August 1997 (consolidated text: Journal of Laws 2022, item 2651 as amended).

namely the municipality and the tax authority, which relates to the material (budgetary) situation of the municipality and the State Treasury, respectively. The second is related to the extent of control over the legality of the authority's actions within the proceedings concerning the decision on granting relief as referred to in Article 67a of the Tax Ordinance. In my opinion, the court's key findings in this regard warrant approval.

3. The specificity of the case at hand is that the applicant seeking relief is a municipality. As a unit of local self-government, the municipality performs its own tasks as well as assigned ones, which are of a public nature. The municipality is obligated to maintain financial (budgetary) balance. Consequently, it is necessary to manage funds in a way that effectively meets the needs of the local community and fulfills the assigned tasks. The municipality may also act as a taxpayer of VAT, and settlements in this regard affect the budget it manages.

Upon reading the justification of the ruling under review, we can find extensive arguments presented by the municipality regarding its financial situation. Excerpts from the justification relating to this issue include:⁴

a. "[...] the authority's analysis of the financial position bears the hallmarks of a financial analysis of a profit-oriented enterprise. Above all, the assessment of the Municipality's financial condition was based on data concerning the level of the budget surplus/deficit, treating these figures respectively as the profit/loss of the enterprise. Meanwhile, in assessing the real ability to pay, account should have been taken of the serious constraints on the disposal of the available financial resources, resulting from the legislation in force;"

b. "[...] despite the accumulation of significant financial resources, the Municipality invariably struggles to meet its current obligations;"

c. "A major problem is the decline in revenue, including the current one. Income from shares of personal income tax revenue is showing a particular decline. The Municipality has problems with the current payment of pecuniary obligations. There is a lack of funds for the maintenance of schools, kindergartens, ongoing maintenance of roads, and for the maintenance of cleanliness and order in the city. In addition, the city's operating costs are increasing."

These arguments, along with others put forward by the municipality, can be categorized as arguments related to the implementation of the principle of preserving the municipality's budget balance. From the tax authority's perspective, these arguments formed the basis for assuming, in addition to the uncertainty related to the application of the provisions of the VAT Act, that the municipality had confirmed the existence of both an important interest of the taxpayer and the public interest, which are conditions for granting relief. Therefore, it can be assumed, as it seems to have been undisputed in this case, that preserving budgetary balance can be a valid interest of the taxpayer-municipality. Considering that the finances of the municipality are closely

⁴ Author's own translation.

tied to flows of a public nature and the fact that the municipality's funds are dedicated to achieving public (local community) objectives, it seems more accurate to classify the effort to preserve the municipality's budget balance as a public interest.

Similar arguments were presented by the tax authority as part of their reasons for refusing to grant relief. In this regard, it is worth highlighting the following passage from the justification: "According to the authority, in this case, it is also necessary to take into account the situation of the state budget, and the current situation of public finances is objectively difficult. The budget must be able to cover the costs of the shielding measures, and the primary duty of the tax administration bodies is to secure regular revenue for the State Treasury."⁵ The court, however, does not seem to agree with this argumentation, as evidenced by the following passage in the justification: "Based again on unsupported hypotheses [...], it was instead concluded that the Municipality will not be significantly harmed by the payment of more than PLN 200,000 and that granting it relief (in view of its total debt) will not fundamentally improve its situation. Instead, it will impoverish the State Treasury, whereas, applying an estimate analogous to that of the authority, one would have to conclude that the amount of PLN 200,000 is a tiny part of the central budget deficit."⁶

In my opinion, the principle of budget balance of the State Treasury may serve as an argument justifying the refusal to grant relief for tax liability payment. Tax collection has a direct impact on the financial stability of the state, as taxes function to secure the budget balance. In light of this, it is important to emphasise that while each budget item, when considered individually, may appear insignificant or minor, their cumulative effect can be significant for the entire State Treasury. Therefore, the fact that a specific relief request does not impose a significant burden on the State Treasury does not mean that it does not impact the realization of the constitutional value of preserving budgetary balance. Consequently, I would not dismiss the argumentation put forward by the authority in the present case. However, it is crucial to consider the argumentation invoking budgetary balance within the specific context of the case and compare it with the argumentation and circumstances justifying granting relief.⁷

As a side note, it is worth mentioning that the principle of preserving budgetary balance has been referred to in tax case law and legal discussions, including issues related to the statute of limitations on tax liabilities,⁸ the interpretation of provisions

⁵ Author's own translation.

⁶ Author's own translation.

⁷ It is also pointed out that there is no basis for interpreting from the positive legal system the value of budgetary balance and the legal principle protecting it – A. Hanusz, *Równowaga budżetowa a zasady prawa*, PiP 2015, no. 9, p. 32. However, it seems that the Constitutional Court's jurisprudence transpired earlier provides a basis for assuming that budgetary balance is a constitutionally protected value and should be taken into account within the process of issuing a decision on relief.

⁸ Ruling of the Voivodship Administrative Court in Lublin dated August 10, 2022 (file reference: I SA/Lu 278/22).

on tax credits,⁹ the justification for the adoption of procedural deadlines,¹⁰ the interpretation of provisions related to the prevention from tax avoidance,¹¹ or, more recently, in the discussion on the constitutionality of the introduction of a windfall profits tax.¹² In this regard, it is emphasized that the protection of the stability of the State's finances, particularly the preservation of the State's budgetary balance, should not be viewed solely in terms of safeguarding the State's fiscal interests. It serves the common good and enables the realization of the principle of social justice. Therefore, the principle itself does not possess inherent value, but rather provides a financial foundation for the implementation of other legally protected values, which should also be assessed on a case-by-case basis.

4. It is acknowledged, as the court also highlights in this ruling, that the procedure for granting relief for tax liability payment consists of two phases. The first phase involves determining whether there exists an important interest of the taxpayer or a public interest that justifies granting the relief.¹³ If either of these interests is confirmed, the proceedings move on to the second phase, which pertains to the discretionary decision-making process.¹⁴ The regulations do not specify what criteria the authority should adopt when making a decision in this regard. This aspect is significant from the perspective of the court's review of such a decision.

The case law on this matter does not provide a clear answer. There are administrative court rulings that suggest the authority has complete discretion.¹⁵ Other rulings indicate that although the criteria adopted by the authority are not subject to review, choosing one of the discretionary alternatives cannot be done in flagrant violation of the principle of fairness, such as considering obviously irrelevant or unreasonable criteria or based on false premises.¹⁶ Some judgments also intervene more significantly in the decision-making process of the authority. In these cases, the courts expect the authority, in this type of procedure, to be guided by principles and general directives specific to tax collection. Thus, the criteria employed by the authority in issuing the decision must be assessed. This position is shared by the court in the ruling in question.

⁹ Ruling of the Voivodship Administrative Court in Gorzów Wlkp. dated October 21, 2020 (file reference: I SA/Go 298/20).

¹⁰ Ruling of the Voivodship Administrative Court in Gorzów Wlkp. dated May 5, 2022 (file reference: I SA/Go 61/22).

¹¹ Ruling of the Supreme Administrative Court dated July 8, 2019 (file reference: II FSK 135/19).

¹² W. Marcinkowski, *Wprowadzenie podatku od nadzwyczajnych zysków a zasada niedziałania prawa wstecz*, "Przegląd Podatkowy" 2023, no. 1, pp. 27–33.

¹³ For more on both criteria, see: R. Linka, *Ulgi w spłacie zobowiązań podatkowych jako forma wsparcia podatników w czasie kryzysu*, "Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych" 2020, no. 5, pp. 31–32, and M. Münnich, *Aksjologia zewnętrzna klauzul generalnych obowiązujących w polskim prawie podatkowym*, "Studia Prawnicze KUL" 2021, no. 2, pp. 154–168.

¹⁴ M. Jaskowska, *Glosa do wyroku NSA z dnia 26 września 2002 r., III SA 659/01*, OSP 2003, no. 9, p. 112.

¹⁵ Ruling of the Voivodship Administrative Court in Gliwice dated May 6, 2014 (file reference: I SA/Gl 1141/13).

¹⁶ Ruling of the Supreme Administrative Court dated January 11, 2017 (file reference: II FSK 3824/14).

As mentioned earlier, Article 67a of the Tax Ordinance does not provide specific guidelines for selecting the legal consequences of a given factual situation (which qualifies as an important interest of the taxpayer or a public interest). Consequently, it can be assumed hypothetically that the authority has complete freedom in choosing criteria in this regard. However, it is reasonable to assume that the authority's decision should be guided by generally accepted constitutional values.¹⁷ The normative basis for such a claim should be recognized standards, such as the expectation that the actions of the tax authority should be based on and within the limits of the law (Article 120 of the Tax Ordinance), as well as conducted in a manner that inspires confidence in its actions (Article 121 § 1 of the Tax Ordinance). Therefore, the actions of the tax authority should not only be legal but also reliable and free from arbitrariness.¹⁸

In light of this, it should be emphasized that the procedure for granting relief for tax liability payment is of an exceptional nature.¹⁹ Such a decision interferes with several legal principles, including those of a constitutional nature (primarily the principle of equality, the universality of taxation, and the aforementioned principle of preserving budgetary balance). This leads to the assumption that the granting of tax liability payment relief is an exceptional institution that should only be applied in special circumstances.²⁰

The aforementioned constitutional principles are not absolute, which is why the institution regulated by Article 67a of the Tax Ordinance exists. The function of this institution is to realize other legally and socially recognized principles and values related to tax collection, which ultimately justify granting preferential treatment to a specific taxpayer in an individual case. It is agreed with the court that these principles may include the principles of a democratic state governed by the rule of law, legalism, proportionality, equality (where fairness of taxation is an element), protection of individual rights and freedoms, as well as the principle of human dignity or, although not mentioned by the court, the principle of self-governance. However, these criteria thus defined do not directly determine the selection of a particular decision. Both the selection criteria and the decision itself should be based on the facts of the case. Operationalization in this regard may involve considering specific social and economic circumstances (such

¹⁷ A. Niezgoda, *Sądowa kontrola decyzji organów podatkowych w sprawach ulg opartych na uznaniu administracyjnym*, ZNSA 2021, no. 3–4, p. 147.

¹⁸ Ruling of the Voivodship Administrative Court in Wrocław dated September 9, 2020 (file reference: I SA/Wr 265/20).

¹⁹ It should be pointed out, however, that it is possible to identify the position in the doctrine according to which the institution in question could be applied more widely and be an element of consensual enforcement of tax liabilities – see A. Dmowski, *Czy w polskim systemie podatkowym powinny funkcjonować konsensualne metody określenia wysokości zobowiązania podatkowego na wzór wniosku o wydanie na posiedzeniu wyroku skazującego i orzeczenia kar uzgodnionych z oskarżonym (art. 335) oraz dobrowolnego poddania się odpowiedzialności karnej (art. 387) w świetle Kodeksu postępowania karnego?*, *Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych* 2023, no. 3, pp. 5–17.

²⁰ Ruling of the Voivodship Administrative Court in Warsaw dated March 19, 2008 (file reference: III SA/Wa 2055/07).

as the taxpayer's financial difficulties and their contribution to their creation),²¹ the taxpayer's past compliance with tax obligations, the circumstances surrounding the creation of the tax arrears, whether the relief will improve the taxpayer's financial situation and enable financial stability,²² or refer to the scope of the relief requested.²³

Therefore, it is necessary for the authority's decision to refer to the aforementioned principles, and the reasoning behind the decision should allow for an assessment of whether the authority's verification was logical, comprehensive, objective, and related to the circumstances and conditions of the case.²⁴ According to the court, the reasoning in the challenged decision did not provide a basis for concluding that the authority's verification met these criteria. On one hand, the authority acknowledges the existence of important interests of the taxpayer and the public interest justifying the granting of relief. On the other hand, the authority demonstrates that the analogous arguments, which in its view proved the existence of those interests, do not provide a basis for writing-off of the interest on the tax arrears. The court addressed these arguments comprehensively and convincingly, demonstrating their inconsistency in light of the evidence gathered. Therefore, the court rightly considered this defect to be an abuse of the authority's discretion.²⁵

Literature

Brzeziński B., *Glosa do wyroku WSA z dnia 29 maja 2008 r., I SA/Gd 998/07*, "Przegląd Orzecznictwa Podatkowego" 2010, no. 2.

Dmowski A., *Czy w polskim systemie podatkowym powinny funkcjonować konsensualne metody określenia wysokości zobowiązania podatkowego na wzór wniosku o wydanie na posiedzeniu wyroku skazującego i orzeczenia kar uzgodnionych z oskarżonym (art. 335) oraz dobrowolnego poddania się odpowiedzialności karnej (art. 387) w świetle Kodeksu postępowania karnego?*, "Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych" 2023, no. 3.

Hanusz A., *Równowaga budżetowa a zasady prawa*, "Państwo i Prawo" 2015, no. 9.

Jaśkowska M., *Glosa do wyroku NSA z dnia 26 września 2002 r., III SA 659/01*, "Orzecznictwo Sądów Polskich" 2003, no. 9.

Linka R., *Ulgi w spłacie zobowiązań podatkowych jako forma wsparcia podatników w czasie kryzysu*, "Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych" 2020, no. 5.

²¹ Cf. B. Brzeziński, *Glosa do wyroku WSA z dnia 29 maja 2008 r., I SA/Gd 998/07*, POP 2010, no. 2, pp. 105–107.

²² Ruling of the Voivodship Administrative Court in Gdańsk dated January 29, 2009 (file reference: I SA/Gd 825/08).

²³ Cf. the ruling of the Supreme Administrative Court dated March 2, 2016 (file reference: II FSK 2474/15).

²⁴ As indicated by the Voivodship Administrative Court in Lublin in its judgment dated November 3, 2021 (file reference: I SA/Lu 433/21), the diligent handling of a taxpayer's request cannot be seen as an act of grace, but must be the result of a diligent assessment of what, in the established realities of the facts, will be more favorable from a social point of view: the application of relief or the refusal to grant the party's request.

²⁵ See J. Orłowski, *Uzasadnienie decyzji w sprawie ulgi w spłacie zobowiązania podatkowego niebędącej pomocą publiczną* [in:] *Ordynacja podatkowa: wokół nowelizacji*, ed. R. Dowgier, Białystok 2009, p. 176.

- Marcinkowski W., *Wprowadzenie podatku od nadzwyczajnych zysków a zasada niezdziałania prawa wstecz*, "Przeгляд Podatkowy" 2023, no. 1.
- Münnich M., *Aksjologia zewnętrzna klauzul generalnych obowiązujących w polskim prawie podatkowym*, "Studia Prawnicze KUL" 2021, no. 2.
- Nieżgoda A., *Sądowa kontrola decyzji organów podatkowych w sprawach ulg opartych na uznaniu administracyjnym*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2021, no. 3–4.
- Orłowski J., *Uzasadnienie decyzji w sprawie ulgi w spłacie zobowiązania podatkowego niebędącej pomocą publiczną [in:] Ordynacja podatkowa: wokół nowelizacji*, ed. R. Dowgier, Białystok 2009.
- Szumlakowski R., *Zasada zachowania równowagi budżetowej pomiędzy wydatkami a dochodami budżetowymi jednostek samorządu terytorialnego*, "Kortowski Przeгляд Prawniczy" 2013, no. 2.

Summary

Kacper Kanka

Presentation of Budgetary Balance as an Argument Justifying Granting Tax Payment Relief: Scope of Control of Discretionary Decisions by an Administrative Court

The author analyzes a ruling of the Voivodship Administrative Court in Lublin concerning the application of Article 67a of the Tax Ordinance. The judgment in question raises the issue of the extent to which an administrative court can review the actions of a tax authority when exercising administrative discretion. The author agrees with the court in Lublin that the authority's decision in this regard should consider criteria that align with the recognized constitutional values in tax collection. In this regard, one hopes that the court's ruling will be the prevailing line of jurisprudence that will significantly improve the taxpayer's procedural position within the framework of the procedure for granting tax payment relief. Furthermore, the author examines the practical implications of arguments related to the preservation of budgetary balance for both the municipality (which applied for relief from the payment of a tax liability) and the State Treasury. In this respect, the author's basic thesis is that the argument of the preservation of budgetary balance should be taken into account when reviewing the legality of the tax authority's decision at hand. However, this cannot be an argument that once provided will exclude the possibility of granting of tax payment relief in every instance.

Keywords: budget balance, discretionary decision, fiscal stability, tax collection, tax relief.

Streszczenie

Kacper Kanka

Zachowanie równowagi budżetowej jako argument uzasadniający przyznanie ulgi w spłacie zobowiązań podatkowych. Zakres weryfikacji decyzji uznaniowej przez sąd administracyjny

Autor analizuje wyrok Wojewódzkiego Sądu Administracyjnego w Lublinie dotyczący stosowania art. 67a ordynacji podatkowej. Komentowany wyrok porusza kwestię zakresu, w jakim sąd administracyjny może kontrolować działania organu podatkowego w ramach uznania administracyjnego. Autor zgadza się z sądem w Lublinie, że decyzja organu w tym zakresie powinna uwzględniać kryteria zgodne z uznanymi wartościami konstytucyjnymi dotyczące poboru podatków. W tym zakresie można mieć nadzieję, że orzeczenie Sądu będzie dominującą linią orzeczniczą, która znacząco poprawi pozycję procesową podatnika w ramach postępowania o udzielenie ulgi w spłacie zobowiązań podatkowych. Ponadto autor analizuje praktyczne implikacje argumentacji związanej z zachowaniem równowagi budżetowej zarówno dla gminy (która wystąpiła z wnioskiem o udzielenie ulgi w spłacie zobowiązania podatkowego), jak i Skarbu Państwa. W tym zakresie podstawową tezę Autora jest stwierdzenie, że argument zachowania równowagi budżetowej powinien być brany pod uwagę przy kontroli legalności przedmiotowej decyzji organu podatkowego. Nie może to być jednak argument, który raz podniesiony będzie każdorazowo wykluczał możliwość udzielenia ulgi w spłacie zobowiązania podatkowego.

Słowa kluczowe: saldo budżetowe, decyzja uznaniowa, stabilność fiskalna, ściągalność podatków, ulgi podatkowe.