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Summary

of the article: **Commentary on the compliance of Art. 89.16 of the Act on Excise Duty dated 6 December 2008 with the Constitution of the Republic of Poland**

In the part of the act referred to in the title that concerns the excise duty on heating oil the legislator introduced a lower rate for heating oil and a higher rate for oil used as vehicle fuel (i.e. for propulsion purposes). Art. 89.16 is a reaction to the possibility of replacing heating oil for fuel oil. If heating oil may be used not only for heating purposes, but also as vehicle fuel, the legislator was concerned with preventing the reduction of the state budget inflows as a result of using heating oil inconsistently with its purpose (i.e. not for heating purposes but as a substitute for fuel oil). Art. 89.5 to Art. 89.15 of the Act on Excise Duty imposed on the heating oil sellers a number of obligations. If they fail to satisfy these obligations the rate of the excise duty on the oil they sell will be the rate applicable to fuel oil, higher than the rate applicable to heating oil.

The solution outlined in this article seems to be logical and justified by the economic interest of the state. The problem is that on the one hand Art. 89.16 is imprecise and on the other hand it is far too rigorous if we look at it from the perspective of the principles set out in the Constitution of the Republic of Poland.

The discussion in the article leads to the conclusion that Art. 89.16 in connection with Art. 89.5 to Art. 89.15 do not include sufficiently specific provisions and therefore violate the principle of sufficient specification inferred from the rule of the democratic state of law included in Art. 2 of the Constitution and fail to satisfy the requirement of sufficient specification that may be inferred from Art. 217 of the Constitution. Given that the remedies (sanctions) set out in Art. 89.16 are inadequate for the purpose of the Act on Excise Duty these provisions violate the principle of proportionality inferred from, amongst others, the principle of the democratic state of law (Art. 2 of the Constitution) and Art. 31.3 of the Constitution.

Please note that customs and fiscal administration authorities may not be specific robots applying laws to the citizens and other entities whose declarations they verify for their satisfaction of formal requirements. The verification of these declarations as such may not be reduced to the mere confirmation of the presence or absence of the required signatures, PESELs (Personal Identification Numbers) or NIPs (Tax identification Numbers), observation of deadlines, etc. In this context Art. 89.16 of the act on Excise Duty must be recognised as openly violating the prohibition of excessive formalism inferred from the principle of the democratic state of law.

Summary

of the article: **General interpretations of the tax law provisions**

The Minister of Finance issues general interpretations of tax law provisions both by virtue of law and at request. In these interpretations the Minister of Finance presents the evaluation of the ability to apply the specific provisions of law and their construction, if it is necessary for the purpose of such evaluation.

The object of interpretation may be the provision of the substantive tax law. However, an interpretation – within the meaning of the Tax Code – may not be issued with respect to the application and construction of the provisions regulating tax proceedings. Issuing the interpretations of the provisions creating the institutions of tax law regulated and performed on the basis of administrative discretion would also be legally unjustified.

General interpretations of tax law provisions formally have no binding force, but actually affect the taxpayers' conduct and the tax authorities' decisions. Following an interpretation gives rise to a particular legal protection.

Summary

of the article: **Suability of the act of transferring a case according to a court's competence in the light of the amended Civil Procedure Code**

Under the Administrative Procedure Code an administrative authority must transfer an erroneously submitted request (application) to a competent authority or, in the event of a few matters for which a few authorities are competent, instruct the applicant that he/she must submit individual requests to the competent public administration authorities. Amendments to Art. 65 and 66 of the Administrative Procedure Code that came into force on 11 April 2011 changed the form of such actions at the same time depriving the persons submitting the application of the right to bring a complaint. However, due to the lack of transitional provisions, the extent to which and the method in which the amendments affect the pending proceedings became problematic.

Assuming that when no transitional provisions are issued the new regulations are applicable, the authors analyse the individual cases when the amendments affect the ability to verify the decisions issued under Art. 65 and 66.1 of the Administrative Procedure Code. The discussion concerned both the admissibility of initiating the course of instances or extraordinary verification with respect to such provisions in the light of the new regulations as well as their court control. In the article the authors discuss the very action of bringing a complaint and the competence of the authority (a court) to verify the decision. Particular attention was paid to the possible decisions of a second instance authority.

Summary

of the article: **Time limits in the proceedings to award direct payments to agricultural producers**

The notion of time and its role in the administrative law is significant and complex. Time limit, understood as an additional reservation to an action limiting in time its result and lacking the element of uncertainty, is frequently a constructing element of the institutions of administrative law, both substantive and procedural. Time limits are divided into time limits of the substantive law and time limits of the procedural law on the basis of the criterion of various levels of results of failure to comply with them.

The question of "time limit" as a legal phenomenon is of material importance in context of the legal acts (both national and European) regulating the principles of awarding direct payments or assistance within the framework of EU Common Agricultural Policy. These are the Act on Payments under Direct Support Schemes dated 26 June 2007 implemented in the national law under the direct support schemes and the Act on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) dated 7 March 2007 implemented under the support for rural areas schemes. Functioning within different assistance schemes these acts have a lot in common – they are related to various acts of EU law determining their contents as well as the method and direction of their interpretation, they have mixed nature and the proceedings they regulate are particular proceedings whose important feature is a high degree of formality and speed determined by their purpose and nature (distribution of assistance funds depending on their limited amount and time when they are to be distributed), emphasised in the solutions aimed at efficiency. The solutions ensuring the efficiency of these proceedings include the time limit. As the statutory time limit it is addressed to the beneficiaries of the benefits regulated by the above mentioned acts of law.

Interpretation of the provisions pursuant to which the legislator operates a time limit the complyance with which is supposed to be a premise for evaluating the efficiency of the activities or actions undertaken by the beneficiary of the assistance may identify various doubts concerning the evaluation of the legal effects of the failure to comply with the specific time limit and, as a result, its nature. Analysis of the legal decisions made by the administrative courts shows that in most cases the views on the legal nature of a given time limit are uniform. The matters in which opinions seem to diverge are these concerning the interpretation of Art. 8.2 of the Regulation of the Council of Ministers dated 7 December 2004 on the detailed terms and conditions of granting financial assistance supporting the semi-subsistence farms covered with the rural areas development plan and Art. 2.3(b) of the Regulation of the Minister of Agriculture and Rural Development dated 23 July 2007 on the time limits for the applicants, collectors and the first processors to perform certain actions i.e. the legal nature of the time limits set out therein.

Summary

of the article: **The repayment of EU funds by the beneficiary**

The purpose of this article is to discuss the major legal problems related to the repayment of the funds allocated to the implementation of programs with the participation of European funds by the beneficiaries of these funds, in particular the prerequisites and the procedure of the repayment.

These matters are regulated in Art. 207 of the Public Finance Act dated 27 August 2009 (the "PFA"). The prerequisites for the repayment of funds by the beneficiary are: (1) a misuse of the funds, (2) the use of funds in violation of the procedures set forth in Art. 184 of the PFA, (3) an undue drawing of the funds or drawing them in excessive amount. The interpretation of the prerequisites for the repayment regulated in the PFA poses many difficulties. The prerequisites for the repayment are formulated in an unclear and inaccurate manner, allowing the administrative authorities to interpret and apply them arbitrarily.

In the further part of the article the procedure of the repayment by the beneficiary has been discussed. It is a two-step procedure. First, it consist of the informal, non-codified procedure, in course of which the authority determines, whether the prerequisites for repayment of funds by the beneficiary have been met. This procedure ends with the service of the request to the beneficiary to repay the funds voluntarily or to grant consent to reduce future payments within 14 days from the service of the request. The legal nature of the request is not clear – according to the author it should be considered as a public administration action a complaint against which may not be brought to an administrative court of administration concerning the obligation derived from the provisions of law. If the beneficiary does not comply with the request, the competent authority imposes on the beneficiary an obligation to repay the funds in the form of a decision. It is an administrative decision issued in the procedure regulated in the Administrative Procedure Code – it is subject to an appeal and to a complaint to an administrative court.

The regulations of the PFA pertaining to the repayment of funds by the beneficiary should be assessed negatively. The prerequisites of the repayment have been formulated in a sketchy manner, therefore their interpretation and application consist of the interpretation of the provisions of the subsidy agreement concluded with the respective beneficiary. In practice it is not the provisions of the PFA, but the provisions of the subsidy agreement that form the basis for issuing the decision on the repayment of funds, which is contradictory to Art. 7 of the Polish Constitution.