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CHALLENGING TAX DECISIONS IN THE REPUBLIC OF LITHUANIA

| Abstract

- ▶ *Goal* – The purpose of this paper is to present the tax dispute resolution procedures that are in force in the Republic of Lithuania.
- ▶ *Research methodology* – Laws and literature were analysed for the purpose of this paper.
- ▶ *Score/results* – The paper showed, from the legal standpoint, how a tax decision can be challenged in the Republic of Lithuania, in the context of the amendments adopted in 2024.
- ▶ *Originality/value* – The paper expands the knowledge of challenging of tax decisions in the Republic of Lithuania.

| **Keywords:** Republic of Lithuania, taxpayer, tax authority, administrative court, tax dispute

1. Introduction

The purpose of this paper is to analyse the provisions of law relating to the challenging of tax decisions, that is, the tax dispute resolution procedures in force in the Republic of Lithuania. In Lithuanian tax law doctrine, the view has emerged that when establishing a procedure for the resolution of tax disputes, the state should pursue two basic objectives: to provide an effective mechanism for defending the rights of taxpayers, on the one hand, and to ensure the state's right to collect the revenue due to it, on the other. It is more difficult to combine these two main objectives than to identify them. This is because, firstly, each country

should have an established tax system and should highlight its main goals and aspirations, and secondly, it should select a consistent procedure regarding the systemic tools it will use to achieve its goals [Medelienė, 2005: 31].

In the Republic of Lithuania, the tax dispute resolution procedure, which forms a specific legal system, has been regulated by several legal acts, the most important of which are:

- Constitution of the Republic of Lithuania of November 6, 1992 [Žin., 1992: 33–1014; hereinafter referred to as Constitution of the Republic of Lithuania];
- Act of the Republic of Lithuania dated April 13, 2004 on the tax ordinance [Žin., 2004: 63–2243; hereinafter referred to as Tax Ordinance];
- Act of the Republic of Lithuania of January 14, 1999 on the administrative procedure [Žin., 1999:13–308; hereinafter referred to as Act on Administrative Procedure];
- Act of the Republic of Lithuania of January 14, 1999 on administrative disputes commissions [Žin., 1999: 13–310; hereinafter referred to as Act on Administrative Disputes Commissions].

The discussion of the rules for challenging tax decisions in the Republic of Lithuania presented in this paper is intended to familiarize the readers with this issue and to enrich their knowledge in this area. The main research method used in this paper is the dogmatic-legal method. Due to the limited volume of the text, the author focused only on the basic and most important elements of the legal solutions relating to the procedure governing tax matters in the Republic of Lithuania.

2. Pretrial tax dispute resolution procedure

According to the provisions of Article 67(15) of the Constitution of the Republic of Lithuania, only the Lithuanian parliament (Seimas) has the right to establish state taxes and other mandatory levies [Wisner, in: Staškiewicz, 2011: 427ff]. The literature indicates that there is a unified tax system in the Republic of Lithuania, which consists of, among others, the following taxes and levies: 1) VAT; 2) excise tax; 3) personal income tax; 4) property tax; 5) land tax; 6) tax on state natural resources; 7) tax on hydrocarbon resources; 8) environmental pollution fee; 9) inheritance tax; 10) compulsory health insurance premiums; 11) payments to the Guarantee Fund; 12) tax on lotteries and gambling;

13) corporate income tax; 14) social security contributions; 15) sugar sector surplus levy; 16) sugar sector production levy; 21) customs duties; 22) forest law revenue deductions; and 23) tax for the use of state property under trust law [B. Sudavičius, in: Presnarowicz, Sudavičius, 2017: 154–155]. Taxes are paid to the state budget, to the local government budget, and to the accounts of special state budget programs or earmarked cash funds. In this regard, a distinction is made between taxes paid to the state budget and to local governments, and earmarked taxes. The state budget receives corporate income tax, VAT, and other taxes, and local government budgets receive personal income tax, land tax, inheritance tax, and other taxes. Taxes paid to these two types of budgets are not earmarked; they flow into the savings account of the relevant budget and are spent according to the approved plan. In contrast, earmarked taxes and levies (compulsory health insurance premiums, social security contributions, payments to the Guarantee Fund, and others) flow into the respective earmarked cash funds or into the accounts of special budget programs, and are disbursed to finance specific activities for the implementation of which a specific fund (approved special budget program) has been established [Sudavičius in: Presnarowicz, Sudavičius, 2017: 155–156].

In the Republic of Lithuania, the administration of the taxes described above is handled by the tax authorities. The state institution responsible for the administration of the taxes listed in Article 13 of the Tax Ordinance, excluding customs duties, is the State Tax Inspectorate. The authority responsible for the administration of customs duties is the Customs Office [Article 15(1) of the Tax Ordinance¹]. According to the provisions of Article 17(1) of the Tax Ordinance, the State Tax Inspectorate is a body established as part of the Ministry of Finance of the Republic of Lithuania. The structure of the State Tax Inspectorate, according to Article 18 of the Tax Ordinance, comprises:

1. State Tax Inspectorate at the Ministry of Finance – the central tax authority;
2. local state tax inspectorates – local tax authorities.

Local tax authorities are part of the state tax inspectorate system of the Republic of Lithuania and are subordinate to the State Tax Inspectorate at the Ministry of Finance [Commentary: 41]². Article 19 of the Tax Ordinance specifies

¹ All translations of the Tax Ordinance and commentaries relating to it: Teresa Dalecka.

² There are currently 10 local tax authorities: in Olitsa, Kaunas, Klaipėda, Marijampolė, Panevėžys, Šiauliai, Tauragė, Telšės, Utena, and Vilnius.

the following the main tasks of the State Tax Inspectorate: (1) to help taxpayers exercise their rights and perform their duties; (2) to enforce tax laws; and (3) to ensure the collection of taxes into the budget.

During the enforcement of taxes, a tax dispute may emerge between the taxpayer and the tax authority. Lithuanian tax law theory defines a tax dispute as a clash of interests between a taxpayer and a tax authority. It is emphasised that the beginning of a dispute is associated with the filing of a complaint by the taxpayer within the established time limit regarding an audit report drafted by the local tax authority, and the end – with the position of the taxpayer, when the taxpayer either agrees with the decision of the authority that resolves tax disputes and does not appeal against it, or when the examination of the tax dispute ends with a final decision of the Supreme Administrative Court of the Republic of Lithuania [Medelienė, Sudavičius, 2011: 246ff].

According to Article 132(1) of the Tax Ordinance, in cases where an employee of a tax authority reveals violations of the provisions of tax laws in the course of a tax audit, the results of the audit are approved by a decision on approval of the audit report. That decision is made taking into account the materials included in the audit report and the taxpayer's comments on the audit report (if any). When issuing a decision on the approval of an audit report, a tax authority may: (1) approve the audit report; (2) approve the audit report in part; (3) not approve the audit report; (4) order a repeated audit of the taxpayer; (5) make changes to the audit report [Article 132(2) of the Tax Ordinance].

Chapter IX of the Tax Ordinance normalises the procedure for the examination of a tax dispute (the appeal, the bodies that hear complaints, their rights and obligations, requirements regarding the content of the complaint, etc.). Article 145(1) of the Tax Ordinance specifies a mandatory procedure for pre-court examination of tax disputes. This provision does not limit the taxpayer's right to go directly to court after the relevant central tax authority issues a decision. A commentary to that article emphasises that, according to Article 20(2) of the Tax Ordinance, tax disputes arising between a taxpayer and a tax authority that are related to a decision to approve an audit report or any other similar decision that requires the tax to be paid by the taxpayer to be calculated again, as well as a decision of the tax authority to refuse to refund an overpaid amount tax, must be examined obligatorily in a pretrial procedure. This means that the right to file an application with an administrative court regarding a tax dispute³

³ In accordance with Article 15(1)(4) of the Act on Administrative Procedure.

arises only if the taxpayer has followed the procedure for the examination of the dispute, as set forth in the Tax Ordinance. In the pretrial procedure, tax disputes are handled by the central tax authority and the Tax Disputes Commission at the Government of the Republic of Lithuania. A taxpayer may file a complaint against a decision issued by the central tax authority related to a tax dispute either with the Tax Disputes Commission under the Government of the Republic of Lithuania or directly with the Vilnius District Administrative Court [Commentary: 349].

According to Article 147 of the Tax Ordinance, tax disputes are examined by the central tax authority, i.e., the State Tax Inspectorate, the Tax Disputes Commission (hereinafter referred to as pretrial bodies examining tax disputes), and courts.

A complaint should be filed with the State Tax Inspectorate in writing within a time limit not exceeding 20 days from the date of service on the taxpayer of the local tax authority's decision that the taxpayer is challenging [Article 152(1) of the Tax Ordinance]. A complaint to the State Tax Inspectorate must be filed through the local tax authority whose decision is being challenged [Article 154(1) of the Tax Ordinance]. The local tax authority is required to send the taxpayer's complaint and the materials necessary for its examination to the central tax authority within 3 business days.

The State Tax Inspectorate is required to issue a decision on the complaint within 30 days of its receipt. The central tax authority may decide to extend this time limit to 60 days if the examination of the complaint requires additional investigation. The taxpayer who filed the complaint should be informed of this in writing. After reviewing the taxpayer's complaint, in accordance with its own powers, the State Tax Inspectorate issues one of the following decisions: (1) it approves the decision of the local tax authority; (2) it revokes the decision of the local tax authority; (3) it partially approves or partially revokes the decision of the local tax authority; (4) it amends the decision of the local tax authority; (5) it revokes the decision of the local tax authority and orders that the authority issue a new decision. The decision should indicate the taxpayer's right to appeal the issued decision to the Tax Disputes Commission or A court, as well as the time limits for filing a complaint [Article 154(5) of the Tax Ordinance].

According to Article 148 of the Tax Ordinance, the Tax Disputes Commission is a public legal entity financed from the state budget. The task of the Commission is to objectively examine taxpayers' complaints and issue lawful and reasonable decisions. The Commission is composed of a chairman and four members. The

Commission's Rules of Procedure are approved by the Government of the Republic of Lithuania. The term of office of the Commission's members is four years. A person with an impeccable reputation, holding a master's degree in finance, law, or economics, or having completed other equivalent higher education and at least 3 years of work experience in the field of tax, customs, or corporate law may become a member of the Commission. A complaint should be submitted to the Tax Disputes Commission in writing within 20 days from the date of service on the taxpayer of the challenged decision of the State Tax Inspectorate or within 20 days from the expiration of the deadline for issuing a decision in a tax dispute [Article 152(2) of the Tax Ordinance].

Article 153 of the Tax Ordinance sets forth the requirements to be met by complaints filed with both the State Tax Inspectorate and the Tax Disputes Commission. Such complaints should indicate: (1) the taxpayer's name (first and last name), his or her identification number (code) and address; (2) the contested decision and the date of its issuance; (3) the circumstances referred to by the applicant in making the claim and the evidence to support them; and (4) the claim of the complainant. The complaint should be signed by the taxpayer (or his or her attorney).

In accordance with the provisions of Article 155 of the Tax Ordinance, the complaint is submitted to the Tax Disputes Commission through the State Tax Inspectorate. The State Tax Inspectorate, within 3 business days from the date of receipt of the complaint, prepares a tax dispute file and submits it to the Tax Disputes Commission. The taxpayer and the tax authority have the right to review the case materials at the Tax Disputes Commission. The Tax Disputes Commission issues a decision within 60 days from the date of receipt of the complaint. At the request of the taxpayer, this period may be reduced to 30 days by decision of the Commission. The taxpayer who filed the complaint and the central tax authority should be informed of this in writing. Decisions are made by a majority vote of the members of the Tax Disputes Commission. The Tax Disputes Commission may decide to: (1) approve the decision of the central tax authority; (2) revoke the decision of the central tax authority; (3) partially approve or partially revoke the decision of the central tax authority; (4) amend the decision of the central tax authority; or (5) remit the complaint to the central tax authority for consideration. The decision should indicate the taxpayer's right to appeal against the issued decision to a court (it should specify the name of the court) and the time limits for filing a complaint with the court.

3. The procedure for resolving tax disputes before administrative courts

The Lithuanian tax law doctrine emphasised that resolution of tax disputes in courts differs from pre-court resolution not only due to the status of the bodies that consider these disputes, but also in the regulations governing the process. Resolution of tax disputes in courts is governed by the Act on Administrative Procedure. Compared to other bodies that resolve tax disputes at the pre-court stage, courts are less specialised in the field of taxation, the process there is more formalised, and, in addition, both the taxpayer and the tax authority must go through all levels of the court process [Medelienė, Sudavičius, 2011: 263–264].

According to Article 159(1) of the Tax Ordinance, if a taxpayer disagrees with a decision of the central tax authority or the Tax Disputes Commission, he or she has the right to appeal to a court. The State Tax Inspectorate also has the right to challenge a decision of the Tax Disputes Commission, but only if the State Tax Inspectorate and the Tax Disputes Commission, in considering a tax dispute (or in the course of a tax dispute), made a different interpretation of the provisions of an act or other piece of legislation [Article 159(2) of the Tax Ordinance]. The complaint should be filed with the court within 20 days, from the date of service of the decision issued by the State Tax Inspectorate or the Tax Disputes Commission. Appeals against a decision issued by the State Tax Inspectorate or the Tax Disputes Commission regarding a tax dispute are considered by an administrative court of first instance. The decision of this court may be appealed to the Supreme Administrative Court in Vilnius.

In accordance with Articles 2, 3, and 4 of the Act of the Republic of Lithuania on the reorganisation of Administrative Courts, as of January 1, 2024, the reorganised Regional District Administrative Court is merged (by way of a merger) with the Administrative Court of the Vilnius District, and the name of the Administrative Court of the Vilnius District is changed to Regional Administrative Court. As of January 1, 2024, the names “Regional District Administrative Court” and “Administrative Court of the Vilnius District” as well as the term “district administrative court” used in the legal acts are considered to mean “Regional Administrative Court.”⁴

⁴ According to Article 31(3) of the Act on Administrative Procedure, a complaint (application or statement) must be filed with the Regional Administrative Court in any chamber of the court, and other pleadings must be filed with the chamber of the Regional Administrative Court where the case is to be heard. Taking this into account, complaints against decisions of the central tax authority, issued in pre-court proceedings as part of

According to Article 17(1)(4) of the Act on Administrative Procedure, the administrative court considers cases concerning the payment of taxes, other mandatory charges, or levies, their refund or enforcement, the application of financial sanctions, as well as cases concerning tax disputes [Commentary: 373].

Tax disputes in administrative courts are heard by panels consisting of three judges, but in complex cases heard by the Supreme Administrative Court, five-judge panels may be appointed or the case may be heard in a plenary session. The taxpayer and the tax authority are parties to the dispute, and the representatives before the court are the heads of state authorities or employees of these authorities authorised by them. After hearing the case, the court of first instance may issue a ruling dismissing the complaint as unfounded or upholding it, may repeal the contested decision or uphold the complaint and oblige the specified public administration entity to perform an action, or may uphold the complaint in part. The decision is made by a majority of the judges. Within three days after the ruling is recorded, copies of the ruling are sent to the parties to the proceedings and interested persons. Decisions of the court of first instance that have not been challenged become final after the time limit for appeal has expired. A challenged ruling, if not repealed, becomes final after the appeal is heard [Medelienė, Sudavičius, 2011: 264ff].

In the appeal procedure, tax disputes are heard by the Supreme Administrative Court with its seat in Vilnius. The important thing is that the time limit for filing an appeal is much shorter than at other stages of tax dispute resolution. Appeals may be filed with this court directly or through the Regional Administrative Court. The Supreme Administrative Court may uphold the decision of the court of first instance and dismiss the appeal, or it may repeal the decision of the court of first instance and issue a new decision. It may also amend the decision of the court of first instance or repeal the decision of the court of first instance in whole or in part and remit the case to the court of first instance for a new trial, as well as discontinue the case or leave the complaint unexamined. The decision of the Supreme Administrative Court becomes final on the date of its issuance and is not subject to a cassation appeal, so this court is the last instance that considers tax disputes [Medelienė, Sudavičius, 2011: 266ff].

the decisions of complaints against decisions of a local tax authority, or against of the Tax Disputes Commission are considered by the Regional Administrative Court, after filing a complaint in any chamber: in Vilnius, Kaunas, Klaipėda, Šiauliai, or Panevėžys.

4. Conclusions

This paper presents the procedures for resolving tax disputes that are in place in the Republic of Lithuania. Attention was drawn to the recent amendments to the law governing these procedures, which were adopted in 2024.

When analysing the procedure for challenging tax decisions in the Republic of Lithuania, it should be emphasised that, from the legal standpoint, it preserves the rules of a democratic law-abiding state that apply in most modern countries in the world with a democratic system of government. In particular, it should be stressed that, in the Republic of Lithuania, a taxpayer who is not satisfied with the decision of the tax authority of the first instance may file a complaint with the tax authority of the second instance. The Tax Disputes Commission is a collective appellate body in which tax disputes are considered not by one, but by several persons. Therefore, even at this stage, the procedure is quasi-judicial in nature. In some cases taxpayers can also bypass this tax authority and file their case directly to the administrative court.

In the Republic of Lithuania, taxpayers enjoy full judicial protection of their legitimate tax-related rights. This is because they are able to appeal decisions of the tax authority of the second instance to the administrative court of first instance. They can also appeal against the rulings of that court to the Supreme Administrative Court in Vilnius. The model for challenging tax decisions in the Republic of Lithuania that has been formed in this way deserves to be rated very highly. Indeed, it is a good example for many countries around the world to follow in terms of the legal solutions they should adopt.

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