

CONSIDERATION OF GENERAL COMPLAINTS FILED IN CONNECTION WITH TAX PROCEEDINGS

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ABSTRACT

This paper addresses the issue of the consideration of general complaints filed during various phases of tax proceedings and closely related to such proceedings. Bearing in mind the priority of jurisdictional proceedings over simplified complaint proceedings, and the prohibition of double-track proceedings, the author presents various possibilities for treating complaints in tax proceedings, particularly those filed by a party to such proceedings. The author demonstrates that general complaints meeting the formal requirements for such measures should be dealt with in tax proceedings, in accordance with the principle of the priority of tax proceedings over simplified complaint proceedings. It is also shown that general complaints may be considered within tax proceedings even if they do not meet the formal requirements for documents handled in such proceedings – provided that any deficiencies can be remedied in accordance with the tax procedure. This applies in particular to instances such as the absence of a signature in the complaint, failure to provide a tax identifier, or omission of a correction to a return (tax declaration). The author further argues that informing third-party complainants about the consideration of a complaint within a tax procedure should always take into account the need to respect both the confidentiality of that specific procedure and fiscal secrecy.

Key words: complaint, complaint proceedings, tax proceedings, complaint in tax proceedings

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INTRODUCTION

The right to lodge complaints and motions (equivalent in other democratic states to the right of petition) is one of the oldest individual rights guaranteed in democratic societies. It constitutes the most common, accessible, and de-formalised way of asserting and defending the rights and interests of an individual or a group.¹ This right belongs to the catalogue of political freedoms and universal rights (to which every human being is entitled), alongside the rights to peaceful assembly and association, including membership in trade unions, farmers' socio-professional organisations, and employers' organisations.² Among these three means of exercising rights in summary proceedings – complaint, motion, and petition – the general complaint is the most frequently used.

General complaint proceedings, which embody the constitutional right to complain³ and serve as an important instrument of social control in a changing administration, constitute a special type of simplified administrative procedure. These proceedings are a form of administrative process in the broad sense (administrative route *sensu largo*), with a code-based, albeit non-jurisdictional, character.⁴ Since the legislator has defined the subject of a general complaint relatively broadly,⁵ and the list of permissible grounds for its filing is not closed,⁶ such complaints are often closely related to jurisdictional proceedings. However, jurisdictional proceedings are governed by completely different rules. The legislator has accounted for this by introducing a form of obligation to consider a complaint with such content within the relevant jurisdictional proceedings; this undoubtedly follows from the prohibition of double-track proceedings.

One of the jurisdictional proceedings in connection with which complaints are lodged is tax proceedings, which exhibit many features distinct from classic administrative proceedings. Therefore, general complaints brought in connection with the conduct of tax proceedings are subject to specific treatment and consideration within those proceedings. The aim of this paper is to demonstrate the specific manner of handling a complaint filed in connection with ongoing tax proceedings

¹ A. Skóra, *Ogólne postępowanie administracyjne. Zarys wykładu*, Elbląg, 2015, p. 122.

² W.M. Hrynicky, 'Zbieżność zakresów przedmiotowych wniosków i petycji jako pozaprocesowych środków dyscyplinujących organy władzy publicznej', *Administracja. Teoria–Dydaktyka–Praktyka*, 2017, No. 2(47), pp. 39 et seq.; K. Eckhardt, 'Wolności, prawa i obowiązki człowieka i obywatela', in: Buczkowski J. (ed.), *Prawo konstytucyjne RP (Instytucje wybrane)*, Rzeszów–Przemysł, 2013, pp. 54 et seq.

³ Article 63 of the Act of 2 April 1997 – Constitution of the Republic of Poland (Journal of Laws of 1997, No. 78, item 483, as amended).

⁴ P. Gołaszewski, K. Wąsowski, 'Komentarz do art. 2', in: Hauser R., Wierzbowski M. (eds), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa, 2018, p. 55.

⁵ Article 227 of the Act of 14 June 1960 – Code of Administrative Procedure (Journal of Laws of 2024, item 572), hereinafter referred to as 'the CAP': 'A complaint may concern, in particular, negligence or improper performance of duties by competent authorities or their employees, violation of the rule of law or the interests of complainants, as well as excessive delays or bureaucratic handling of cases.'

⁶ Judgment of the Provincial Administrative Court in Kraków of 20 June 2017, II SAB/Kr 92/17; order of the Supreme Administrative Court of 4 April 2012, I OSK 717/12.

and, consequently, to prove and present the various possibilities for its consideration within such proceedings. It is assumed that a general complaint filed in connection with ongoing tax proceedings, and meeting the formal requirements of a letter in those proceedings, should be considered within those proceedings in accordance with the principle of the priority of tax proceedings over simplified complaint proceedings. Furthermore, it is also assumed that a general complaint which does not meet the formal requirements for letters handled in tax proceedings, but where the deficiencies can be remedied in accordance with the tax procedure, should likewise be addressed within such proceedings. This applies, for instance, to cases involving the absence of a signature in the complaint, failure to provide a tax identifier, or failure to attach a correction to a return (tax declaration). Additionally, it is assumed that the information provided to third-party complainants regarding the consideration of a complaint in tax proceedings should always take into account the need to maintain both procedural and fiscal secrecy.

The dogmatic-legal method, enriched with comparative elements, was applied to realise the research goal and verify the adopted hypotheses. The subject of this method was the legal provisions specific to the simplified complaint procedure and tax proceedings. The analysis of source provisions is accompanied by a review of the literature and the jurisprudence of administrative courts.

SPECIFICITY OF SIMPLIFIED COMPLAINT PROCEEDINGS

The role and scope of functions performed by contemporary administration are evolving in line with the concept of building a new, democratic state under the rule of law.⁷ Regardless of changing circumstances, however, the overriding function of administration remains to serve the state and its citizens – a task that is undeniably multifaceted. As a result, the administration is subject to control, and control itself is a complex function that cannot be fulfilled by a single act but involves a sequence of actions.⁸ The complaint is among the most important mechanisms of social control, intended to create opportunities for citizens to examine and evaluate public administration and, consequently, to exert a certain influence on its functioning and the performance of its public tasks.⁹ Almost any negative assessment of the activity of an entity established to perform state tasks – or of another entity, such as a social organisation commissioned to perform public administration tasks, along with its employees and officers – may be the subject of a complaint.¹⁰ The effective

⁷ J. Blicharz, J. Glumińska-Pawlic, L. Zacharko, 'Szkic o pojęciu administracji publicznej', in: Matan A. (ed.), *Administracja w demokratycznym państwie prawa. Księga jubileuszowa Profesora Czesława Martysza*, Katowice–Warszawa, 2022, pp. 63–72 (68).

⁸ L. Zacharko, 'Tradycyjne a współczesne pojęcie kontroli i jej zasięg', in: Ziółkowska A., Gronkiewicz A. (eds), *Administracyjne procedury kontrolne. Wybrane zagadnienia*, Katowice, 2016, p. 11.

⁹ J. Jagielski, *Kontrola administracji publicznej*, Warszawa, 2006, p. 141.

¹⁰ M. Jaśkowska, in: Wróbel A., Jaśkowska M. (eds), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa, 2018, p. 1305.

functioning of modern administration requires institutions and procedures that ensure the administered – i.e. the citizens – have an influence on the decisions taken.¹¹ Consequently, the complaint (petition, motion) procedure constitutes the primary means of protecting factual interests in the current legal order.¹²

A complaint is not a particularly formal measure. Apart from the complainant's given name and surname (or name, in the case of an entity), address, and the allegation forming the basis of the complaint, it need not contain other elements. Except when made orally for the record, a complaint does not have to be signed. Furthermore, a complaint may be lodged not only in the manner prescribed for a classic application, but also by ordinary e-mail or by fax.¹³ Complaint proceedings are of a non-jurisdictional nature, to which only a few provisions regulating general administrative proceedings (Articles 36–38 CAP) apply. Even the application of provisions concerning the service of letters or the calculation of time limits in these proceedings is subject to dispute.¹⁴ Nevertheless, it should be assumed that the principle of objectivity and the duty to comprehensively clarify the case underlying the complaint apply in complaint proceedings.¹⁵

The notice regarding how the complaint has been dealt with is a substantive and technical act of the administration. It does not resolve the issue raised by the complainant but merely informs the complainant whether the allegations were found to be valid and whether any corrective or remedial action has been taken by the authority. The notice is not an administrative act, although it is undoubtedly a manifestation of a commanding form of administrative action, since by indicating whether or not the complaint allegation is well-founded, it represents a form of decision-making. The notice is also not subject to appeal. Lodging an appeal against a complaint notice obliges the competent authority to treat the appeal as inadmissible.¹⁶ The complainant may be dissatisfied with the response received from the complaint-handling body, but that response is not subject to appeal.¹⁷

Most importantly, complaint proceedings are only applicable where it is not possible to initiate regular jurisdictional proceedings that would resolve the matter raised in the complaint. The preference for regular administrative procedure

¹¹ E. Knosala, *Rozważania z teorii nauki administracji*, Tychy, 2004, p. 92.

¹² J. Zimmermann, *Prawo administracyjne*, Warszawa, 2010, p. 421.

¹³ §§ 6–7 of the Regulation of the Council of Ministers of 8 January 2002 on the organisation of the receipt and consideration of complaints and motions (hereinafter referred to as 'Regulation on complaints and motions') (Journal of Laws of 2002, No. 5, item 46); more on the subject: W.M. Hrynicky, *Skargi, wnioski, petycje i inne interwencje obywatelskie*, Warszawa, 2022, pp. 68–70.

¹⁴ More on the subject: W.M. Hrynicky, 'Normatywne i praktyczne aspekty załatwiania skarg i wniosków niespełniających wymogów formalnych, zagadnienia wybrane', *Administracja. Teoria–Dydaktyka–Praktyka*, 2017, No. 4(49), pp. 18–38.

¹⁵ B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz*, Warszawa, 2017, p. 1010.

¹⁶ Judgment of the Provincial Administrative Court in Gorzów Wielkopolski of 3 August 2017, II SA/Go 433/17; order of the Supreme Administrative Court of 14 September 2004, OSK 642/04; order of the Supreme Administrative Court of 18 February 2005, OW 166/04.

¹⁷ Order of the Provincial Administrative Court in Warszawa of 1 June 2009, II SA/Wa 629/09.

(or tax procedure) is justified by significant considerations, namely the need to ensure full procedural rights of the party, the necessity of conducting evidentiary proceedings, and the possibility of challenging the administrative act concluding the proceedings. The intersection between tax procedure – which is regulated differently from general administrative procedure – and simplified complaint proceedings may give rise to ambiguities and uncertainties in the handling of complaints brought in connection with tax proceedings.

SPECIFICITY OF TAX PROCEEDINGS

Tax proceedings constitute a type of regular administrative procedure of special application, the regulation of which is contained in the Tax Ordinance.¹⁸ The aim of these proceedings is, in particular, the assessment of taxes, fees, or other non-tax receivables owed to the state budget or the budgets of local self-governing bodies, in situations leading to the issuance of an administrative act. This applies both to cases in which the legislator has provided in advance for the issuance of such an act to fulfil a tax obligation and to cases where the tax authorities challenge a taxpayer's self-assessment. Tax proceedings, therefore, do not encompass all actions of tax authorities and taxpayers aimed at fulfilling tax obligations, but only those actions of tax authorities directed towards the issuance of a tax decision.¹⁹ Undoubtedly, tax proceedings are the epitome of administrative proceedings in matters of taxation and other selected public charges. They constitute administrative proceedings in the strict sense, and therefore jurisdictional proceedings, as evidenced by the position of the tax authority as both the body conducting the proceedings and the executor of tax duties and rights; by the reciprocal structure of rights and obligations between the tax authorities and the parties to the proceedings; and by the effect of the proceedings, namely the unilateral, authoritative shaping of the legal situation of a party through a decision issued by the tax authority.²⁰ Since substantive administrative law is not identical to substantive tax law, tax proceedings also possess specific features that distinguish them from general administrative proceedings.²¹

Tax proceedings are the most formalised jurisdictional proceedings among those provided for in the Tax Ordinance,²² alongside tax inspection and verification activities. The purpose of tax proceedings is therefore to realise the correlation of tax rights and obligations between the entities involved in the tax-legal relationship,

¹⁸ Act of 29 August 1997 – Tax Ordinance (Journal of Laws of 2025, item 111, as amended).

¹⁹ B. Brzeziński, M. Kalinowski, M. Masternak, *Ordynacja podatkowa – postępowanie. Komentarz praktyczny*, Gdańsk, 1999, p. 9.

²⁰ A. Huchla, 'Postępowanie podatkowe', in: Borszowski P. (ed.), *Prawo podatkowe z kasami i pytaniami*, Warszawa, 2018, p. 148.

²¹ A. Gorgol, 'Zobowiązania podatkowe i postępowanie podatkowe', in: Wójtowicz W. (ed.), *Zarys finansów publicznych i prawa finansowego*, Warszawa, 2020, pp. 235–236.

²² D. Strzelec, *Postępowanie podatkowe a postępowanie karne skarbowe. Zasadnicze związki międzygałęziowe*, Warszawa, 2023, p. 75.

namely the tax authority and the taxpayer.²³ This realisation occurs through the formal fulfilment of the intention to impose taxation. On the other hand, the primary purpose of taxation is to obtain the funds necessary to cover public needs. Accordingly, one of the basic tasks of tax proceedings is to facilitate the transfer of funds between the subjects of obligatory legal relations.²⁴

In conducting tax proceedings, the tax authority must adhere to a number of general principles, which are not merely recommendations concerning the conduct of tax authorities but constitute binding legal norms – on par with other procedural provisions. A violation of these principles may serve as grounds for an appeal or a complaint before the administrative court.²⁵ These principles include in particular: the principle of legality, the principle of enhancing trust in tax authorities, the principle of information, the principle of objective truth, the principle of speed and simplicity of proceedings, the principle of active participation of a party in tax proceedings, and the principle of permanence of a final tax decision. Undoubtedly, the general principles of procedure shape the model of a given procedure;²⁶ however, their scope extends beyond tax proceedings in the narrow sense. There is no reason why the same values should not be protected in other procedures, just as they are in narrowly understood tax proceedings.²⁷

Tax proceedings, like classic administrative proceedings, are based on a thorough evidentiary procedure. It should be emphasised that the catalogues of designated evidentiary means in tax proceedings and in general administrative proceedings are distinct. Tax proceedings frequently rely on forms of evidence specific to that procedure.²⁸ They usually conclude with the issuance of a tax decision. This decision may, for instance, determine the amount of tax liability, grant optional tax reliefs, or adjudicate tax liability enforcement. The phrase ‘the decision shall resolve the case on its merits’, as used in Article 207 § 2 of the Tax Ordinance, clearly indicates that a decision issued by a tax authority must constitute a resolution of the entire case pending before that authority.²⁹ Undoubtedly, a tax decision is a manifestation of the tax authority’s power.³⁰ However, it must be stressed that despite the similarity between classic administrative and tax proceedings, the latter exhibit features specific to them, particularly in relation to the implementation of tax obligations and the formalities arising therefrom.

²³ R. Oktaba, ‘Prawo podatkowe – część ogólna’, in: Nowak-Far A. (ed.), *Finanse publiczne i prawo finansowe*, Warszawa, 2020, p. 510.

²⁴ R. Mastalski, *Prawo podatkowe*, Warszawa, 2023, p. 214.

²⁵ A. Kaźmierski, A. Melezini, D. Zalewski, ‘Postępowanie podatkowe’, in: Zalewski D., Melezini A. (eds), *Postępowanie podatkowe – 810 wyjaśnień i interpretacji*, Warszawa, 2013, p. 392.

²⁶ J. Jendroška, *Polskie postępowanie administracyjne i sądowoadministracyjne*, Wrocław, 2003, p. 34.

²⁷ H. Dzwonkowski, Z. Zgierski, *Procedury podatkowe*, Warszawa, 2006, pp. 633 et seq.

²⁸ A. Huchla, ‘Postępowanie...’, op. cit., p. 156.

²⁹ B. Dauter, A. Kabat, ‘Dowody’, in: Babiarz S., Dauter B., Hauser R., Kabat A., Niezgódka-Medek M., Rudowski J., *Ordynacja podatkowa. Komentarz*, Warszawa, 2019, p. 1197.

³⁰ Z. Ofiarski, *Ogólne prawo podatkowe. Zagadnienia materialnoprawne i proceduralne*, Warszawa, 2013, p. 408.

CLASSICAL CONSIDERATION OF COMPLAINTS LODGED IN CONNECTION WITH TAX PROCEEDINGS

The broad subject-matter scope of a general complaint, together with the peculiarities of tax proceedings – in which taxpayers and payers frequently challenge the actions or decisions of tax authorities – means that the paths of these two procedures sometimes intersect. A general complaint is often confused with, or filed in parallel to, the appeals provided for in tax procedure. While a complaint is not in itself a procedural action within the tax procedure, it may nevertheless become one when it takes on the characteristics of such an action. However, the principle of the primacy of the jurisdictional procedure, and the principle of the one-track nature of proceedings, prohibits both the parallel consideration of general complaints and legal remedies characteristic of the tax procedure, and the substitution of general complaints for the procedural remedies inherent in that procedure. The provisions of Articles 233–236 and 240 CAP establish the priority of jurisdictional proceedings over complaint proceedings, thereby preventing the conduct of two or more proceedings in the same matter at the same time. The principle of one-track examination excludes the possibility of using different or consecutive procedures in parallel for the same matter, and also prevents the evasion of procedural rigour.³¹ However, the content of a submitted letter is not always clear enough to explicitly determine the taxpayer's intention. Nonetheless, it must always be remembered that a lodged tax case must first be handled through the proper jurisdictional route, which cannot be replaced by a simplified complaint procedure.

Apart from the possibility of initiating extraordinary procedures,³² a complaint lodged by a party to tax proceedings shall be examined in the course of the proceedings in which the case is pending.³³ Less frequently, it may lead to the initiation of tax proceedings in an individual case that has not been and is not the subject of ongoing proceedings.³⁴ Conversely, a complaint lodged by an entity that is not, and cannot become, a party to tax proceedings may give rise to the initiation of tax proceedings only *ex officio* – unless applicable regulations require a party to request³⁵ the initiation of proceedings, or where the complaint constitutes material to be considered *ex officio* by the authority conducting the tax proceedings, provided the complaint concerns those proceedings.³⁶

In general administrative procedure, complaints may in practice be transformed into another legal remedy specific to that procedure³⁷ and dealt with in accordance with the rules and time limits applicable to it. The consideration of a complaint largely determines the actual settlement of the matter, as the authority examines

³¹ J. Borkowski, in: Adamiak B., Borkowski J., *Kodeks postępowania...*, op. cit., p. 1016.

³² Article 235 in conjunction with Article 240 CAP.

³³ Article 234(1) in conjunction with Article 240 CAP.

³⁴ Article 233 first sentence, in conjunction with Article 240 CAP.

³⁵ Article 233 second sentence, in conjunction with Article 240 CAP.

³⁶ Article 234(2) in conjunction with Article 240 CAP.

³⁷ E. Iserzon, J. Starościak, *Kodeks postępowania administracyjnego. Komentarz, teksty, wzory i formularze*, Warszawa, 1970, p. 305.

the merits of the complaint and determines how the matter in question³⁸ is to be resolved. Given the nature of tax procedure, it should be examined whether such a relationship exists in the case of complaints lodged in connection with that procedure.

An example of a complaint filed in connection with tax proceedings is a complaint by a party to the proceedings – or its proxy – challenging the evidence proceedings conducted. It should be emphasised that the evidentiary procedure in tax proceedings shares both similarities and differences with that of general administrative proceedings. The aim of the evidentiary procedure in tax matters is to establish findings of fact that correspond to the actual state of affairs, as only such findings can ensure the implementation of the principle of objective truth. Properly conducted evidentiary proceedings ensure, on the one hand, the correct resolution of the case and, on the other, contribute to reducing the costs of the proceedings.³⁹ Despite the fact that the demand for taking evidence is one of the elements implementing the principle of active participation of a party in tax proceedings,⁴⁰ as expressed in Article 123 of the Tax Ordinance, the tax authority often shapes the course of evidentiary proceedings, imposing evidence or shifting the burden of conducting it onto the party.⁴¹ The active participation of a party in tax proceedings is sometimes compelled by the attitude of tax authorities, which fail to uphold the principle of objective truth and attempt to shift as many duties as possible – both documentary and evidentiary – onto the party to the proceedings.⁴² This may cause a sense of dissatisfaction, resulting in a general complaint, especially when requests for evidence are informally disregarded. However, it should be borne in mind that the taxpayer's failure to indicate sources of evidence does not relieve the tax authority from its obligation to conduct exhaustive evidentiary proceedings *ex officio*.⁴³ The tax authority is also obliged to establish circumstances favourable to the party.⁴⁴ In such a situation, a complaint submitted by a party to the proceedings – or its proxy – filed in connection with the conduct of tax proceedings may be considered in the relevant decision settling the evidentiary motion. The actual consideration of the complaint allegations will be found in the justification

³⁸ J. Lang, 'Wybrane problemy prawnej regulacji wykonywania prawa do składania skarg i wniosków', *Acta Universitatis Vratislaviensis. Prawo CLXXVIII*, Wrocław, 1990, pp. 161–168.

³⁹ H. Dzwonkowski, J. Gorąca-Paczuska, in: Dzwonkowski H. (ed.), *Ordynacja podatkowa. Komentarz*, Warszawa, 2020, p. 1053.

⁴⁰ B. Dauter, 'Decyzje', in: Babiarz S., Dauter B., Hauser R., Kabat A., Niezgódka-Medek M., Rudowski J., *Ordynacja podatkowa. Komentarz*, Warszawa, 2019, p. 1122.

⁴¹ Cf. judgment of the Provincial Administrative Court in Warszawa of 23 July 2004, III SA 949/03; judgment of the Provincial Administrative Court in Warszawa of 3 August 2006, III SA/Wa 187/05.

⁴² D. Strzelec, *Naruszenia przepisów postępowania przez organy podatkowe*, Warszawa, 2009, pp. 131 et seq.

⁴³ A. Mariański, *Rozstrzyganie wątpliwości na korzyść podatnika. Zasada prawa podatkowego*, Warszawa, 2011, p. 133; judgment of the Supreme Administrative Court External Branch in Łódź of 2 October 2003, I SA/Łd 822/03.

⁴⁴ H. Dzwonkowski, J. Gorąca-Paczuska, in: Dzwonkowski H. (ed.), *Ordynacja podatkowa...*, op. cit., p. 1127; judgment of the Supreme Administrative Court External Branch in Katowice of 4 January 2002, I SA/Ka 2164/00.

of that order on evidentiary motions, not in its operative part. Thus, in essence, a general complaint questioning the conduct of the evidentiary proceedings in pending tax proceedings, or requesting the admission of a specific type of evidence, becomes a pleading formally dealt with within the ongoing tax proceedings. The decision issued in the evidentiary matter constitutes a substantive consideration of the complaint allegations, which appears to be consistent with Article 234(1) CAP. It also appears that there are no legal obstacles to such a complaint being settled by means of a simple notice (information letter), provided that this is issued by the authority conducting the proceedings and the complaint was lodged together with a request for evidence, which was resolved by an appropriate decision.

A similar situation arises with a general complaint whose allegations broadly relate to the subject matter of the ongoing tax proceedings (e.g. the existence of a tax liability, the legitimacy of a tax assessment, the application of a specific tax credit or exemption, or the adjudication of tax liability). A complaint of this nature, submitted by a party to the proceedings, should be considered within those proceedings, in accordance with Article 234(1) CAP. The complaint allegations may be addressed, for example, in the justification of the decision concluding the case – but not in the operative part of the decision. This is because the operative part, i.e. the dispositive section of the decision, sets out the entitlement or obligation established therein. It must be formulated in such a way that it clearly indicates the right or obligation imposed⁴⁵ on the party. A tax decision is the result of proceedings⁴⁶ conducted by the tax authority. In such a decision, the authority should justify that, given certain established facts, a specific legal rule⁴⁷ is applicable. Based on this, it must be assumed that a possible way of addressing a complaint submitted by a party or its proxy concerning the subject matter of pending tax proceedings is to discuss it in the justification of the decision concluding those proceedings. This type of indirect consideration is not reflected in the operative part of the tax decision, as the general complaint does not affect it. Addressing the complaint allegations in the justification of the tax decision – when they coincide with the subject matter of the proceedings – may be done without affecting the operative part of the decision, which appears to be in line with Article 234(1) CAP. It also appears that there are no legal obstacles to such a complaint being addressed by the authority conducting the proceedings through a simple notice (information letter), issued independently of the tax decision.

In conclusion, complaints submitted by a party to tax proceedings may be considered, in accordance with Article 234(1) CAP, within a decision settling a request for the taking of evidence, in a decision concluding the proceedings, or through a simple notice (information letter) issued by the body conducting the proceedings – depending on the subject of the complaint and the discretion of the tax authority.

⁴⁵ W. Nykiel, W. Chróścielewski, 'Postępowanie podatkowe', in: Koperkiewicz-Mordel K., Chróścielewski W., Nykiel W., *Polskie prawo podatkowe*, Warszawa, 2006, p. 112.

⁴⁶ H. Dzwonkowski, M. Kurzac, in: Dzwonkowski H. (ed.), *Ordynacja podatkowa. Komentarz*, Warszawa, 2020, p. 1225.

⁴⁷ A. Mariański, D. Strzelec, 'Uzasadnienie decyzji podatkowej a gwarancje ochrony praw podatnika', *Monitor Podatkowy*, 2006, No. 2, p. 26.

However, it is important that the complaint is considered by the body conducting the tax proceedings, as is the case with complaints filed in administrative enforcement proceedings and considered by the enforcement authority.⁴⁸

NON-OBVIOUS CASES OF CONSIDERING COMPLAINTS MADE IN CONNECTION WITH TAX PROCEEDINGS

Tax proceedings are typically characterised by divergent interests between the party and the tax authority and may thus become a field of various conflicts, occasionally giving rise to general complaints. Setting aside the classical ways of addressing complaints within tax proceedings, the intersection of the rules governing tax procedure and simplified complaint proceedings gives rise to several further important issues. These include, in particular:

- (1) the dissimilarity between the formal requirements for a general complaint and those for letters in tax proceedings;
- (2) the possibility of initiating tax proceedings when other tax law requirements must be met;
- (3) the possibility of informing a complainant who is not a party to the proceedings about the details of those proceedings.

Firstly, a general complaint does not have to be submitted in the manner prescribed for a standard application in a tax case,⁴⁹ nor does it require a signature⁵⁰ – unlike a formal application lodged in writing or verbally for the record (Article 168 § 3 of the Tax Ordinance). In addition, a general complaint may include only a simple e-mail address, which is not permitted for applications in tax matters (Article 169 § 1b of the Tax Ordinance). The legislator has therefore provided broader formal possibilities for filing general complaints than for letters submitted in tax cases, which may complicate the handling of complaints filed in connection with tax proceedings. If, for example, a complaint from a party to tax proceedings was submitted via ordinary e-mail⁵¹ without a tax identification number or signature, it would be debatable – given the priority of tax proceedings over simplified complaint proceedings – whether it could be examined by the authority conducting the tax proceedings on formal grounds. On the one hand, an application in a tax case that is filed in a manner not prescribed by the Tax Ordinance must be left unprocessed and without notice to the applicant (Article 169 § 1b of the Tax Ordinance). On the other hand, the constitutional right to lodge

⁴⁸ More on the subject: W.M. Hrynicky, 'Rozpatrywanie skarg powszechnych w postępowaniu egzekucyjnym w administracji', *Ius Novum*, 2022, Vol. 16, No. 1, pp. 83–102.

⁴⁹ Applications shall be submitted in writing or orally for the record. Applications in electronic form shall be submitted to the electronic delivery address or via an account in the tax authority's ICT system (Article 168 § 1 of the Tax Ordinance).

⁵⁰ Cf. W.M. Hrynicky, 'Zasadność wezwań w sprawach niepodpisanych skarg, wniosków i petycji – przyczynek do dyskusji', *Acta Iuris Stetinensis*, 2018, No. 3(23), pp. 77–95.

⁵¹ Cf. W.M. Hrynicky, 'Glosa do wyroku Wojewódzkiego Sądu Administracyjnego w Gorzowie Wielkopolskim z dnia 5 września 2018 r. (sygn. akt II SA/Go 508/18)', *Zeszyty Naukowe Sądownictwa Administracyjnego*, 2022, No. 1(100), pp. 170–179.

a general complaint permits it to be exercised through all electronic channels, without a tax identification number and without requiring a signature.⁵² If it were to be assumed that a complaint relating to tax proceedings must only be lodged in the manner prescribed for tax applications, then any complaint submitted differently would not need to be acted upon (Article 169 § 1b of the Tax Ordinance). However, considering the constitutional nature of the general complaint and its broad function as an instrument of social control, it must be assumed that a complaint lodged via ordinary e-mail (and therefore unsigned) may be treated as a written application that does not meet the formal requirements. In such cases, the complainant should be asked by the competent tax authority to complete the missing elements required by law, with an instruction that failure to do so will result in the letter being left unprocessed. This approach to resolving the under-regulated issue is supported both by the need to realise the constitutional right to lodge a complaint – practically implemented through the priority of the jurisdictional procedure over the complaint procedure – and by the necessity of fulfilling the formal requirements for letters in tax proceedings, where this right can be effectively exercised. Once supplemented with a signature and tax identification number, the complaint – effectively transformed into a pleading – will be examined by the authority conducting the tax proceedings.

However, if a similar complaint from a taxpayer who is a party to tax proceedings were submitted by ordinary e-mail and did not include an address (place of residence or habitual residence, registered office, or place of business) or an address for service within the country, it is doubtful that it could be considered by the authority conducting the tax proceedings. In the absence of an address in the application, Article 169 § 1a of the Tax Ordinance requires that it be left unprocessed, while also prohibiting both the issuance of a summons under Article 169 § 1 of the Tax Ordinance and the issuance of an order to leave the application unprocessed. It should be noted that, in the case of a general complaint, the term ‘address’ is interpreted more broadly than in applications submitted in tax matters. While § 8(1) of the Regulation on complaints and motions uses the term ‘address’, which is to be understood broadly (also including an Internet address, such as an e-mail address),⁵³ Article 168 § 2 of the Tax Ordinance expressly states that the term ‘address’ shall mean the place of residence or habitual residence, the registered office, or the place of business. This definition removes any doubt, under Article 169 of the Tax Ordinance, as to whether the term ‘address’ includes an electronic address.⁵⁴ Therefore, while under the simplified complaint procedure, complaints that contain, in addition to the complainant’s name and the allegation, only an e-mail address instead of a residence address (e.g. permanent residence, temporary stay, etc.) may be examined and disposed of as valid legal remedies for the relevant purpose, applications in tax proceedings that provide only an e-mail address cannot be considered. In the case of general complaints, more lenient formal requirements are envisaged in view of the constitutional right to lodge a complaint, the social

⁵² § 5 of the Regulation on complaints and motions.

⁵³ Cf. W.M. Hrynicky, ‘Normatywne i praktyczne aspekty...’, *op. cit.*, pp. 18–38.

⁵⁴ Ł. Porada, in: Mariański A. (ed.), *Ordynacja podatkowa 2023. Komentarz*, Warszawa, 2023, p. 875.

control function of such complaints, and their broad subject matter. However, in the context of an application in a tax case, an e-mail address is not sufficient. Accordingly, such a complaint cannot be transferred to tax proceedings based on the principle of the priority of tax proceedings over simplified complaint proceedings, because tax proceedings, in a case where the complaint contains only an e-mail address, will not be initiated at all (Article 233 CAP), nor can such a complaint constitute a letter considered in the course of ongoing tax proceedings (Article 234(1) CAP). This could result in the complaint not being processed at all. It appears that such a complaint should be resolved negatively (pursuant to Article 238 § 1 CAP), while at the same time instructing the complainant of the possibility to file an effective letter in ongoing tax proceedings or to submit an application requesting the initiation of such proceedings, depending on the specific circumstances of the case.

As regards the second area of the doubts considered, it should be noted that the initiation of tax proceedings is sometimes subject to various formal legal requirements, which may render initiation ineffective through a general complaint (Article 233, first sentence CAP). These conditions include, in particular, the obligation to submit a tax return or tax declaration, including any necessary corrections, if the request concerns a statement of tax overpayment (Article 75 § 3 of the Tax Ordinance).⁵⁵ It is true that one must agree with the position that, upon the request of a party, tax proceedings are initiated by the delivery of the party's motion to the tax authority (Article 165 § 3 of the Tax Ordinance), and that the initiation of proceedings is the automatic consequence, by operation of law, of submitting such a motion.⁵⁶ Nevertheless, it must be remembered that a petition in a tax matter must also meet other requirements set out in specific provisions (Article 168 § 2 of the Tax Ordinance). One such special requirement, in the case of a request for a declaration of tax overpayment, is the submission of a corrected tax return (or tax declaration). Issuing an assessment decision regarding a claim for overpayment is closely tied to the mechanisms through which tax liabilities are assessed.⁵⁷ It may therefore occur that a general complaint concerning tax assessment – where no tax proceedings are pending or have previously been conducted – may, in fact, lead to tax assessment. This would be the case, for example, where a taxpayer reconsiders their tax assessment and concludes that a different calculation would have resulted in an overpayment, which they present in the form of a general complaint. In such a case, bearing in mind the primacy of tax proceedings over the simplified complaint procedure, consideration should be given to the possibility of addressing such a complaint within the appropriate tax proceedings.⁵⁸ Nevertheless, it should be emphasised that, just as in cases involving the absence of a signature on a motion or the absence of a tax identifier, the lack of an appropriate correction to a tax return (or declaration) accompanying a request for confirmation of overpayment obliges the tax authority

⁵⁵ Cf. J. Marciniuk, *Podatek dochodowy od osób fizycznych. Komentarz*, Warszawa, 2017, pp. 1098 et seq.

⁵⁶ A. Huchla, 'Postępowanie podatkowe...', op. cit., p. 153.

⁵⁷ J. Gorąca-Paczuska, in: Dzwonkowski H. (ed.), *Ordynacja podatkowa. Komentarz*, Warszawa, 2020, p. 601.

⁵⁸ Article 233 first sentence, in conjunction with Article 240 CAP.

to call upon the taxpayer to submit the required correction, as a formally necessary element of the request. In this situation, a complaint challenging the taxpayer's self-assessment and requesting confirmation of a tax overpayment (even if only implicitly), without an attached correction to the return (or declaration), could be treated as an incomplete motion. The taxpayer could then be summoned to supplement the complaint with the relevant correction.⁵⁹ Accordingly, the principle of the primacy of tax proceedings over the simplified complaint procedure may also apply in the case of a complaint requesting confirmation of tax overpayment, even where the complaint is not accompanied by the legally required correction to the return or declaration, as this formal deficiency can be remedied.

In the context of the first sentence of Article 233 CAP, it should also be noted that the legislator provides two alternative possibilities for the initiation of proceedings to which a general complaint may relate. In this provision, the legislator uses the phrase 'causes the initiation' in relation to potential proceedings, indicating that both automatic initiation based on the complaint itself (where it contains a request for initiation) and initiation *ex officio* are foreseen. If the legislator had intended to allow only one method of initiating proceedings, they would have used a more categorical phrase, such as 'initiates' or 'is the basis for initiation'. Under tax law, it cannot be ruled out that a general complaint challenging, for example, a tax assessment could, within the appropriate tax proceedings, result in a change in the amount of the tax liability. However, if the result were to be an increase in liability, such a complaint could only give rise to tax proceedings initiated *ex officio*. Tax proceedings concerning an upward adjustment of liability may be initiated only by the tax authority, pursuant to Article 21 § 3 of the Tax Ordinance.⁶⁰ Another instance where proceedings must be initiated *ex officio* as a result of a general complaint, pursuant to the first sentence of Article 233 CAP, may be a case in which the complainant challenges the form of taxation applied by the tax authority, which is less favourable to the complainant than the form they had chosen. Importantly, the resolution of such a complaint may take the form of either a decision that addresses the substance and form of the complaint (e.g., a decision confirming an overpayment of tax or a decision refusing to confirm such an overpayment), or a decision that formally concludes the case (e.g., a decision discontinuing the tax proceedings), since in both cases the decisions lawfully terminate the proceedings and may be subject to appeal in the next instance as well as to judicial review by administrative courts. However, in most cases, preference should be given to a decision that substantively and formally addresses the taxpayer's claim (in this case, also the complainant's claim). At present, the provisions of the Tax Ordinance do not require the issuance of a decision confirming an overpayment of tax if the accuracy of the corrected return (declaration) is not in doubt (Article 75 § 4 of the Tax Ordinance). In such cases, consideration of a complaint that has effectively become a formal request for confirmation of tax overpayment will be a material and

⁵⁹ Article 233 first sentence, in conjunction with Article 240 CAP and Article 169 § 1 of the Tax Ordinance.

⁶⁰ J. Gorąca-Paczuska, in: Dzwonkowski H. (ed.), *Ordynacja podatkowa...*, op. cit., p. 601.

technical action involving the actual return of the overpayment and the termination of the proceedings thus initiated. From a formal point of view, however, the person requesting a tax overpayment via a general complaint should be informed of the legitimacy of the request. There is no legal obstacle to providing such information in the form of a simple written notice. Nor is there any obstacle to issuing a formal decision declaring the tax overpayment in response to the demand expressed in the complaint. Nothing prevents the authority from choosing to address the taxpayer's request by issuing a decision declaring the overpayment. However, the procedure without a formal decision is faster and more cost-effective, which argues in favour of its application.⁶¹

With regard the third level of the concerns raised, it is necessary to consider the possibility of examining general complaints, submitted in connection with tax proceedings, by persons who are not parties to those proceedings. This may occur both in cases where the matter has not yet been the subject of proceedings – and may potentially initiate them – and in cases where proceedings are already underway. A complaint submitted by a third party (i.e. someone not a party to the proceedings) may only trigger the initiation of tax proceedings *ex officio*, provided that the relevant regulations do not require a party's request – or that of another authorised entity – for initiation.⁶² For example, the right to request a declaration of tax overpayment is granted to taxpayers, payers, collectors, former partners of a civil partnership, companies that formed a tax capital group, and representatives of a VAT group.⁶³ If such a request is submitted by an unauthorised entity, the tax authority will not be able to initiate proceedings *ex officio*. However, there is no obstacle preventing the authority from initiating proceedings to determine the amount of tax liability and, within that framework, to decide on the existence of an overpayment.⁶⁴ Setting aside the issue of overpayment determinations, it will always remain at the discretion of the tax authority whether a general complaint in a tax case submitted by a third party will result in the initiation of formal tax proceedings, as reflected in the phrase 'may cause the initiation'⁶⁵ used by the legislator. On the other hand, in a case where tax proceedings are already pending, a complaint from a third party constitutes material that the authority conducting the proceedings should consider *ex officio*.⁶⁶ However, the legislator does not specify how such *ex officio* consideration should occur, or whether it must be formalised in any specific way. In this under-regulated legal context, it can be assumed that whenever a third-party complaint could lead to the initiation of tax proceedings – or could serve as material in proceedings already underway – it should, in each case, be transferred to those proceedings. Such a complaint may be treated as evidence in

⁶¹ L. Etel, 'Stwierdzenie nadpłaty po nowemu', in: Dowgier R., Popławski M. (eds), *Ordynacja podatkowa. Zmiany w ogólnym prawie podatkowym*, Białystok, 2016, p. 133.

⁶² Article 233 second sentence in conjunction with Article 240 CAP.

⁶³ Article 75 §§ 1–2a of the Tax Ordinance.

⁶⁴ L. Etel, 'Stwierdzenie nadpłaty...', op. cit., p. 143.

⁶⁵ Article 233 second sentence CAP.

⁶⁶ Article 234(2) in conjunction with Article 240 CAP.

jurisdictional proceedings⁶⁷. In light of Article 236 § 1 CAP, the authority forwarding the complaint merely notifies the complainant of the forwarding, while it is the tax authority that decides whether to initiate tax proceedings, determines their precise scope, and decides how the complaint will be used within those proceedings. Accordingly, it is the authority initiating the proceedings that formally notifies the complainant either of the initiation of the tax proceedings or of the manner in which the complaint is being utilised therein, and also determines the content of such notification. At the same time, it should be emphasised that the specific nature of the tax authority's actions is linked to the existence of both procedural secrecy and fiscal secrecy (Article 293 § 1 et seq. of the Tax Ordinance). Therefore, since a general complaint submitted by a third party may be considered in the course of proceedings, and yet, due to procedural and fiscal secrecy, the complainant cannot be informed of the details of that consideration, a question arises as to what information may be provided to the complainant. It appears that the legislator's intention in such cases is not to allow the complaint to be received and then the complainant to be left without a response, particularly where the complaint has been received by the authority competent to initiate or conduct the relevant tax proceedings, and given the tax authorities' declared commitment to transparency and openness towards taxpayers. However, in view of the obligation to maintain the confidentiality of tax proceedings and fiscal secrecy, any information provided should be of a general nature. It therefore seems that, whether the complaint leads to the initiation of proceedings or is examined within an already pending procedure, the complainant may be notified in terms that are as general as possible.

In summary, the treatment of a general complaint in tax proceedings depends on its formal nature. In accordance with the precedence of tax proceedings over simplified complaint proceedings, such complaints can be redirected to tax proceedings if they meet the conditions of a letter in tax matters, or if their formal deficiencies can be remedied. Remediable deficiencies include the absence of a signature, lack of a tax identifier, and failure to attach a correction to the tax return (tax declaration). In contrast, where a complaint is submitted by a third party – one that is capable of initiating tax proceedings or raising issues related to proceedings already underway – the tax authority, in providing a synthetic response, must take into account the need to maintain procedural and fiscal secrecy.

CONCLUSION AND FINDINGS

To conclude, it is important to emphasise that the distinctiveness of a general complaint submitted in connection with tax proceedings affects the variety of ways it may be considered within those proceedings. A complaint in a tax case is indeed different from complaints submitted in connection with other procedures, such as administrative enforcement proceedings. A general complaint lodged in connection

⁶⁷ K. Wojciechowska, 'Dział VIII. Skargi i wnioski', in: Hauser R., Wierzbowski M. (eds), *Kodeks postępowania administracyjnego. Komentarz*, Warszawa, 2018, p. 1367.

with ongoing tax proceedings, and which meets the formal requirements of a letter in such proceedings, should be handled within those proceedings, in accordance with the principle of the priority of tax proceedings over simplified complaint proceedings, and the prohibition on double-track proceedings. Conversely, a general complaint that does not meet the formal requirements for letters handled in tax proceedings may still be considered by the authority conducting the proceedings, provided that the deficiencies can be remedied in accordance with the tax procedure. This applies, for example, to cases where the complaint lacks a signature, a tax identifier, or the required correction to a return (tax declaration). In this respect, the research objective – taking into account the formulated hypotheses – was fulfilled.

A general complaint submitted in connection with tax proceedings can be addressed in various practical ways. When redirected to be dealt with within tax proceedings, the formal requirements applicable to pleadings in tax matters must be observed to effectively consider the claims made. A complaint submitted by a party to the proceedings, which meets these formal requirements, may be considered in an order issued during the course of proceedings or in a tax decision terminating the proceedings. There are no legal obstacles to considering such a complaint in a separate letter prepared by the authority conducting the proceedings.

However, where a general complaint meets the general formal requirements for this type of communication but does not meet the requirements applicable to letters handled in tax proceedings, the principle of the priority of tax proceedings over simplified complaint proceedings requires that it be determined whether such deficiencies can be remedied within the framework of tax proceedings. Remediable deficiencies, pursuant to Article 169 § 1 of the Tax Ordinance, include the absence of the complainant's signature, failure to provide a tax identifier, and failure to attach a required correction to the return (tax declaration). Irremediable deficiencies, on the other hand, include the absence of an address in the letter, which results in the necessity of leaving it unprocessed pursuant to Article 169 § 1a of the Tax Ordinance. Additionally, information regarding the consideration of a complaint submitted by a third party in connection with tax proceedings must respect the confidentiality of the proceedings and fiscal secrecy. It should also be emphasised that not only complaints that directly initiate tax proceedings, but also those that require the tax authority to initiate proceedings *ex officio*, may lead to the initiation of tax proceedings. This interpretation arises from the use of the phrase 'causes the initiation' in Article 233 CAP.

In conclusion, general complaints brought in connection with tax proceedings are varied in nature. Such complaints may be considered within tax proceedings, in line with the principle of the priority of tax proceedings over simplified complaint proceedings and the prohibition on double-track proceedings, even if they do not initially meet the formal requirements for letters in tax proceedings – provided those deficiencies can be remedied in accordance with the tax procedure. Complaints filed by third parties who are not parties to the tax proceedings may be considered only with due regard to procedural and fiscal secrecy.

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