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Tax Confidentiality as a Limitation in the Procedure for Public Control of the State of Public Finances

Abstract: Any control, regardless of the field to which it relates, requires information. This claim is also valid in the field of citizen's control. For an individual to be able to effectively assess what is going on around him or her and make sound decisions on that basis, he or she must be able to obtain a variety of information, including, above all, information that is comprehensive public knowledge. According to what follows from the regulations of the Act of 6 September 2001 on access to public information, their catalogue is broad and, more importantly, open. Although on the surface it might seem that the individual does not need anything more, it should not be forgotten that the same legislator determines a number of restrictions that block or completely close the way to certain pieces of public information. This group of statutory restrictions includes tax confidentiality as defined by the Tax Ordinance Act of 29 August 1997. The main objective of the considerations undertaken in this article is to determine to what extent tax confidentiality by its very nature restricts the process of public scrutiny of the state of public finances, taking into account its subjective and objective scope and its positioning among all the premises limiting accessibility to public knowledge.

Keywords: access to information, public finance, taxpayer

Introduction

Nowadays, it is difficult to notice a person with a book or chatting with a companion sitting next to him or her, but it is impossible to avoid meeting people staring at their phones or tablets. This reality confirms the role that information plays in the life of a modern man. The wish to seek and access information is a consequence of

one of the basic human needs – the need to know.¹ Information has become and continues to be a valuable product, regardless of its type and subject matter. Even though information from the world of show business is of great interest and cannot be denied, such importance should also be given to information about the world around us: the economy, finance, politics or law. These are the areas that guarantee individuals the opportunity to be fully involved in public life, to decide rationally on issues affecting society as a whole or a particular local community. The Constitution of the Republic of Poland of 2 April 1997², in Article 61 Point 1, guarantees citizens the opportunity to obtain specific knowledge – public knowledge. ‘The constitutional right of a citizen serves real participation in public life... This right also serves the purpose of exercising citizen control over the functioning of public authority.’³ However, this right is not complete and absolute, and the legislature itself indicates the necessity of limiting it for the sake of specific values of high importance. Their development and specification is based on the provisions of the Act of 6 September 2001 on access to public information (hereinafter referred to as UDIP⁴ - ustawa o dostępie do informacji publicznej), where in Article 5 the legislator creates a catalogue of confidential information dictated by the necessity of protecting public and private interests. Despite the lack of a clear statutory definition, this includes tax confidentiality, the scope of which was determined by the content of the Act of 29 August 1997 on tax ordinance – hereinafter referred to as OP⁵ - ordynacja podatkowa). The focus of the analysis here is on determining to what extent the need to protect individual taxpayers’ data diminishes the extent and importance of public control attributed to the institution of access to public knowledge. For the present purposes, it seems necessary to restrict the legally permissible limits of the disclosure process and to situate tax confidentiality among them. It is also important to present its objective scope as well as the legitimacy of its statutory introduction into the legal order.

1. Access to public information as an institution of public control

In a state with a democratic system, knowledge of what the public authorities do, with what motivation, and for what purpose, is of major importance.⁶ The well-

1 T. Górzyńska, *Prawo do informacji i zasada jawności administracyjnej*, Zakamycze 1999, p. 20.

2 *Journal of Laws of 1997*, item 78 Point 483 as amended.

3 Resolution of the Supreme Administrative Court of 11 April 2005, I OPS 1/05, <https://orzeczenia.nsa.gov.pl/doc/571022A55E> (8.08.2022).

4 *Journal of Laws of 2022*, Item 902.

5 *Journal of Laws of 2021*, Item 1540 as amended.

6 J.E. Stiglitz, *On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life*, (in:) U.J. Gibney (ed.), *Globalizing Right: The Oxford Amnesty Lectures*, Oxford/New York 2003, p. 115 and ff.

known statement that ‘he who has the information has the power in the state’⁷ in its literal sense is undoubtedly a slight exaggeration, but it confirms the importance of public information in making citizens fully aware of the state of public affairs, capable of making rational decisions and willing to actively participate in public life. For instance, if the details of public finances concerning openness and transparency in the management of public funds are not made available, then individuals will be deprived of the opportunity to find out what the price of living and functioning in a country is.⁸

Access to public information whose role is to provide knowledge of what representatives of the ruling power do, as well as how, by what means and to what degree, has been regulated by the content of the UDIP. This is about access to public information, the instrumental nature of which results, among other things, from the content of Article 3 UDIP, which determines the special rights of an individual in connection with the constitutionally guaranteed information law. As elements of the sharing process, each of them individually as well as all of them together make visible what an individual interested in obtaining public knowledge can count on. The right of access to public information is realized through it being permissible to request public knowledge, inspection of an official document and access to meetings of commonly elected collegiate bodies are forms in which the right of . Further reinforced by the legally guaranteed means by which an individual can actually acquire public information of interest to him or her (Article 7 UDIP), they confirm the servile role of access to public knowledge. What is at stake here is first and foremost the possibility of carrying out independent, unorganized public control of public life based on information defined by the legislator as data on public affairs. An interested party may collect and use various information regarding the correctness of the implementation of public tasks, allowing the assessment of whether public funds have been administered correctly. This is information on public matters, imprecisely defined by the legislator (Article 1 Point 1 UDIP). It happens because in a democratic state ruled by law, the subject of public control must cover a wide range of information.⁹ Their extensive substantive scope, confirmed by the openness of the catalogue presented in Article 6 UDIP, constitutes a particular confirmation of the functionality ascribed to access, although at the same time, it should be emphasized that it leads to many problems resulting from divergences in interpretation between the entity requesting information

7 Opoka, Kto ma informacje, ten ma władzę, https://opoka.org.pl/biblioteka/P/PS/fronda62_wywiad.html; J. Berdychowski, Kto ma informację, ten ma władzę. I to się nie zmienia, <https://wszystkoconajwazniejsze.pl/jan-berdychowski-kto-ma-informacje-ten-ma-wladze-i-to-sie-nie-zmienia/> (11.08.2022).

8 See H. McRae, *Świat w roku 2020*, Warsaw 1996, p. 297 and T.R. Aleksandrowicz, *Komentarz do ustawy o dostępie do informacji publicznej*, Warsaw 2008, p. 7.

9 P. Szustakiewicz, *Dostęp do informacji na podstawie ustawy o dostępie do informacji publicznej*, (in:) T. Gardocka (ed.), *Obywatelskie prawo do informacji*, Warsaw 2008, p. 20.

and the entity obliged to provide it. However, the position of the individual as a fundamental part of an information society geared towards knowledge and its active use is undoubtedly strengthened. Although no one can or does force anyone to access public information (an individual may be indifferent to what is happening in his/her environment), nevertheless a greater or lesser display of interest in the state of public affairs gives rise to an obligation on the part of the entity referred to in Article 4 UDIP as an obliged informant. This does not constitute any guarantee that the individual will obtain what they expect, but it follows from the fact of it being a public subjective right that the right to information gives the individual the possibility to challenge an action taken by the obliged party, albeit incorrectly according to the intention of the person concerned, and also creates the opportunity to respond effectively to the lack to such actions. From a procedural point of view, the economy of formalism in the process of requesting information, or in the scope of independent recourse to public information in no-application procedure, also deserves special emphasis. Both doctrine and jurisprudence point out that the public information procedure is administratively deformed and simplified. The absence of the need to prove a legal or factual interest, the possibility for the applicant to remain anonymous at the application stage, not burdening the application process with the rigour associated with the need to accept a certain content of the claim and the use of an official form, is supposed to make the procedure for making public information available an uncomplicated one, while confirming the assumption that access serves the public interest.

2. Legally regulated restrictions on the process of making public information available

The statutorily presented institution of access to public knowledge constitutes an institution for the protection of the public interest by the public control function attributed to it. Importantly, however, this protection also manifests itself in the context of the limitations referred to in Article 5 UDIP and additionally accompanies the protection of private interests. The search for the protection of private interests on the grounds of the regulations of the UDIP entails considering the content of Article 2 Point 2 UDIP and Article 5 UDIP, already mentioned above. While the admissibility of public control as part of access to public information is guaranteed for the benefit of all individuals living in a given state, the need to protect information whose disclosure would or could cause damage to the Republic of Poland or be detrimental to its interests is also unfavourable, according to the protection of the public interest (the protection of classified information).¹⁰ In addition, while the acquisition of information for public scrutiny may subsequently entail its use for personal purposes (i.e. the

10 See Act of 5 August 2010 (Journal of Laws of 2019, Item 742 as amended).

protection of private interests), the need to protect the public interest and the consequent protection of private interests must not lead to the infringement of the personal interests of others in connection with the disclosure of discretionary, sensitive individual data of those subject to legal protection.¹¹

Although the institution of confidentiality is seen undesirable, keeping certain information hidden from others, even if it involves restricting the citizen's right to information, is not an end in itself; it is intended to protect various interests, largely related to the need to safeguard the private life of a particular individual. Legal regulation of the issue of limiting access to public information, although undesirable, safeguards against the emergence of a grey area where officials decide independently what information should be made available and to whom.¹² After all, the institution of access is supposed to protect from and prevent corrupt activities and not foster their emergence and spread in the public sphere.

While the constitutional regulation creates limitations to the universal right to information, i.e. in Article 61 Point 3 of the Constitution of the Republic of Poland, the legislator indicates the values that must be protected (the freedom and rights of other persons and economic entities, public order, security or important economic interests of the state). To ensure this protection, the legislator creates a specific catalogue of restrictions allowing for the distinction, within them, of public and private secrets (established in the public interest or the private interest Article 5). Although the nomenclature of the provisions of the UDIP, as well as their literal interpretation, may unambiguously indicate this, Article 5 UDIP, is not the only one that introduces a limitation on the content of 'access' regulations. Although the legislator, by granting priority to the laws defining different principles and procedures of access to information that is public in Article 1 Point 2 UDIP, did not intend to create an additional restriction in the process of making public knowledge accessible, lawmaker nevertheless limited the application of general regulations (UDIP) in those cases in which general regulations cannot be used. What is important, however, in the group of these specific regulations to which the legislator gives priority, is that there is also a place for those regulations which, from the point of view of Article 5 UDIP, contain in their content the so-called other statutorily protected secrets. As follows from Article 5 Points 1 and 2 UDIP, statutory limitations of the universal right to information boil down to the protection of classified information, other secrets protected by law, the privacy of a natural person and business secrets. And while the three indicated above were clearly defined by the legislator (although they require reference to separate regulations), the catalogue of the so-called other secrets protected by statute is extensive,

11 See also judgement of the Voivodeship Administrative Court in Poznań of 29 September 2016, IV SAB/Po 58/16, <https://orzeczenia.nsa.gov.pl/doc/16097CE591> (8.08.2022).

12 See B. Opaliński, Dostęp do informacji publicznej jako emanacja zasady jawności życia publicznego, 'Przeгляд Права Publicznego' 2019, no. 7, pp. 35–43.

not uniform in terms of type, and is related to the need to comply with various rules for establishing secrets.

3. Tax confidentiality versus public information

The statutory definition of public information, burdened with a linguistic error, requires the interpretation process to take into account the constitutional understanding of the universal right to public information. Importantly, however, the subjective definition of public information, although it brings the interested party closer to the substantive scope of the issue of interest, cannot change the fact that the scope of this type of data is broad and the concept of public information itself remains undefined and ambiguous. Although this broadness of the catalogue of information deemed to be public (Article 6 UDIP) can be and is considered in terms of an intentional act of the legislator, it raises problems of interpretation, which are further amplified by the broadness of the catalogue of restrictions which completely exclude or limit accessibility to a specific type of data. Just as the catalogue of information constituting public knowledge is characterized by its openness, the range of restrictions providing for impediments to accessing its content, contrary to what the UDIP says, is not closed.

As can be seen from Article 6 Point 1(2)(f) and Point 5 UDIP, information on the assets held by entities obliged to provide information constitutes public knowledge. Moreover, the same legislator, in the content of the Act of 27 August 2009 on public finances (UFP¹³ - ustawa o finansach publicznych), points to the openness and transparency of public finances. Pursuant to Article 33 UFP, management of public funds is open. The regulation then goes on to set out the ways in which this openness can be implemented as a fulfilment of Article 33. These provisions should be classified, following the content of Article 1 Point 2 UDIP, to the group of regulations which, having priority in applying, provide for specific principles and procedures of giving access to public information, with the reservation, however, that where certain issues are not regulated at all or not fully, the general regulations – UDIP – apply. What deserves to be emphasized is that in Articles 36 Point 4 and Article 37 Point 2 UFP, there are references to tax confidentiality, which may raise doubts as to the convergence with the definition of this concept under the OP as indicated by the legislator. The announcement or the public disclosure of certain aggregate data (lists) does not violate tax confidentiality provisions, although, given the content of this information, it could be questioned whether there is no disclosure of data that betrays the privacy of individuals and exposes them to ridicule or insult. However, the legislator emphasizes (to prevent any ambiguity) that these actions do not violate tax confidentiality

13 Journal of Laws of 2022, Item 1634.

provisions. Furthermore, it should not be forgotten that these regulations have been given precedence in the creation of the specific rules for the access process.

The concept of limited access to public information is equivalent to the fact that certain information, despite having the status of being public, is not subject to disclosure, or may be disclosed but only under special rules.¹⁴ The juxtaposition of this position with the content of Article 5 UDIP (the right to public information being subject to restriction) may lead to claims that all information, the availability of which is subject to an exclusion (or restriction) as a result of a refusal to provide access or as a result of anonymization, has the status of public knowledge. Indeed, this would in any case be public information, but not subject to release due to legally established restrictions. However, it should not be forgotten that a significant part of the restrictions, the confidentiality, is established precisely to protect information at the opposite end of the spectrum, i.e. private information. This, together with other information, may constitute a communication or a document bearing the hallmarks of public knowledge. This group of data undoubtedly includes information whose scope is defined by Article 293 OP as tax confidentiality, and refers to individual data contained in declarations and other documents submitted by taxpayers, payers, or collectors, as well as information which is in the possession of public authorities, a catalogue of which is presented in Article 293 Point 2 OP. This includes personal data,¹⁵ data on the sources or amount of income earned, the types and amount of expenses incurred, and on advance tax payments made. The content of Article 293 OP does not constitute a legal definition of tax confidentiality, although on its basis it becomes possible to determine what kind of information is at stake. And although through the prism of the scope delineated therein claims are derived about the safeguarding of private data, the doctrinal reference to the category in question gives rise to conclusions about going beyond the framework of protection dictated solely by the private interests of individuals. The doctrinal meaning of tax confidentiality reduces the understanding of classified data obtained in connection with official activities or commissioned work, the unauthorized disclosure of which may jeopardize the legally protected interests of citizens and organizational units but which may also lead to negative consequences for the state and its citizens.¹⁶

14 M.I. Ulasiewicz, Ograniczenia dostępu do informacji publicznej – zagadnienia wybrane, 'Przegląd Prawa Publicznego' 2010, no. 9, pp. 6–22. See also judgement of Supreme Administrative Court of 12 March 2014, I OSK 2216/13, <https://orzeczenia.nsa.gov.pl/doc/37BE3FB383> (9.08.2022).

15 See the judgment of the Supreme Administrative Court of 3 February 2022 r., III OSK 4926/21, <https://orzeczenia.nsa.gov.pl/doc/29D38C5110> (9.08.2022).

16 D. Zalewski (ed.), *Kontrola skarbowa. Komentarz praktyczny*, Warsaw 2015, p. 422 and ff; D. Zalewski, *Naruszenie tajemnicy skarbowej a legalność postępowania podatkowego*, 'Monitor Podatkowy' 2019, no. 11, SIP Legalis, <https://sip.legalis.pl/document-full.seam?documentId=m-jxw62zogi3damruegydqmy&refSource=search> (9.08.2022).

In one of the judgments of the Voivodeship Administrative Court, it was emphasized that the data referred to in Article 293 of the Public Procurement Act do not have the value of public information; in particular, there are no grounds for making them available, as they serve purposes other than the exercise of the right of access to public information.¹⁷ In this case, it is a matter of the protection of the right to privacy and the safeguarding of personal data, i.e. the values referred to in Articles 47 and 51 of the Constitution, except that they require protection at the level of tax law.¹⁸ For example, data contained in a tax authority ruling indicating the individual tax assessment of a particular taxpayer is covered by tax confidentiality.¹⁹ Importantly, it is not so much the data location in the act of applying the law that matters in this case, but their possession of a doubly personalized character (individual dimension and specific taxpayer). Individualism in this case prejudices their non-disclosure. It is particularly important to emphasize this because of Article 6 Point 1(4)(a-1) UDIP, where the legislator points to the openness of administrative and other similar decisions resulting from the authoritative action of public entities. Under the regulations of the UDIP, information on taxpayers may be made available, but of an aggregate nature, as evidenced by Article 293 OP.²⁰ This implies the admissibility of the claim that aggregate information fulfil the status of public knowledge, since only such information can be made available under the UDIP and used for public control purposes. This then leads to the conclusion that it is impossible to draw a rigid line in this respect with exclusive reference to the content of the data as information on taxpayers to the exclusion of its collective or individual nature. This kind of state of affairs is not very surprising, as the tax level is a sphere within which two worlds collide: the public and the private. It covers certain types of economic processes, information about which would merit public disclosure in the light of the UDIP, for, inter alia, preventing and combating tax offences, but whose intertwining with aspects of an individual's private life makes it necessary to keep the information hidden in order not to expose that subject to embarrassment, ridicule or insult. Although the legislator, introducing in Article 5 UDIP the admissibility of limiting the availability of information, does not impose on the obliged entities a specific manner of exclusion of openness (such as refusal or anonymization), nevertheless, as follows from the case law, data covered by tax confidentiality, as a rule, includes the full content of all documentation coming

17 See the judgment of the Voivodeship Administrative Court in Szczecin of 15 April 2021, II SA/Sz 129/21, <https://orzeczenia.nsa.gov.pl/doc/87B91FF30D> (9.08.2022).

18 A. Mariański, *Ordynacja podatkowa. Komentarz*, Warsaw 2021, SIP Legalis, <https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3danbrg43tmny&refSource=search> (10.08.2022).

19 See the judgment of the Voivodeship Administrative Court in Wrocław of 27 June 2012, IV SA/Wr 154/12, <https://orzeczenia.nsa.gov.pl/doc/6A6AD60728> (9.08.2022).

20 See the judgment of the Voivodeship Administrative Court in Szczecin of 15 April 2021, *op. cit.*

from taxpayers, payers or collectors submitted to the tax authority.²¹ Thus, despite the legislator refraining from statutory rejection of the anonymization process, this procedure appears to be insufficient in this respect. Data that can be determined based on the facts or that can be drawn from the context, for example, of data on the tax obligation and liability of a particular entity could cause extreme feelings, ranging from jealousy (when the entity's financial condition is good) to compassion, pity, aversion or even hostility (when an individual cannot cope with his/her personal and professional life and benefits from state aid).²²

4. Tax confidentiality as a restriction on the release of public information

Given the content of the OP, it is necessary to take the view that there are two types of restriction on access to public information. On the one hand, due to tax confidentiality, the OP introduces a limitation of access to information that has the character of public knowledge (an inherent limitation of the disclosure process), while on the other hand, it provides for specific rules for the disclosure process (a quasi-restriction amounting to the exclusion of the application of UDIP regulations). UDIP regulations give priority to both those regulations that provide for the protection of special categories of data and those that differently relate to the implementation of the disclosure process.²³ The quasi-restriction of accessibility in connection with tax confidentiality regulations does not so much indicate the exclusion of certain data from openness as the inhibition of the UDIP in its application. The precedence of the OP is particularly evident in the appointment of specific entities obliged to keep secret information covered by tax confidentiality (Article 294 OP). Looking at its content, one may be tempted to conclude that those entities which, in the light of the UDIP, form a group of information obligations at the level of the UDIP constitute entities obliged to maintain silence concerning tax confidentiality. The sphere of exemption from tax confidentiality, i.e. the statutorily defined range of subjects to whom the information may be made available against the need to protect special values (Articles 295 and following OP), is also not without significance in this regard. The access guaranteed in this case is intended for the performance of official tasks and is linked to the performance of a specific function or to the occupation of a particular position.²⁴

21 Judgment of the Supreme Administrative Court of 3 February 2022, *op. cit.*

22 See also the judgment of the Supreme Administrative Court affiliate in Wrocław of 3 December 2003, I SA/Wr 2083/01, <https://orzeczenia.nsa.gov.pl/doc/E91DE66735> (10.08.2022).

23 Judgment of the Voivodeship Administrative Court in Warsaw of 7 January 2020, II SA/Wa 1869/19, <https://orzeczenia.nsa.gov.pl/doc/AF6E786E56> (09.08.2022).

24 See J. Wyporska-Frankiewicz, E. Jarzęcka-Siwik, Ograniczenie prawa dostępu do informacji publicznej, (in:) J. Wyporska-Frankiewicz (ed.), Dostęp do informacji publicznej w praktyce jednostek samorządu terytorialnego, Warsaw 2019, SIP LEX, <https://sip.lex.pl/#/monograph/369457722/48/>

It is quite common in the doctrine to state that tax confidentiality, as defined by the content of Article 293 OP, has a wide scope. This does not happen without reason, as the justification for this is the universality of the tax obligation.²⁵ Focusing solely on this assertion can and does give rise to negative feelings towards the institution in question as limiting the general right to information and diminishing the process of public control. It seems that caring for the economic situation of the state, striving to prevent the appearance of pathological phenomena in the form of tax evasion, concealment of sources of income, and carrying out illegal transactions, including so-called money laundering, requires guaranteeing the widest possible access to knowledge. However, a closer look at the scope of the tax confidentiality in question as well as the statutory subject and object exclusions allows one to conclude that the assessment of tax confidentiality need not and should not be so negative. The legislator expressly emphasizes the individual nature of the data to be protected, the disclosure of which could infringe upon the individual's right to privacy, under Article 2 Point 1 UDIP. Indeed, any individual striving for full public awareness of public matters may find him- or herself in a difficult and embarrassing situation. It is worth noting that in the area of tax law, certain activities are nevertheless subject to disclosure even if they are embarrassing or sensitive, if lawful. For example, the legally protected use of guarantees, warranties, abatements and write-offs can lead to embarrassment and shame when this information is subject to public disclosure. And while in this case, the legislator does not feel the need to guarantee full protection (Articles 36 and 37 UFP, in the field of information of a similar nature which carries knowledge of the difficult material and personal situation of a particular taxpayer (e.g. concerning non-payment of tax dues), it provides for the necessity of guaranteeing full protection of private life. In the legislator's opinion, this information should not be subject to public scrutiny, as this would do more harm than good due to the clash of two values that are important in a democratic state: openness and the right to privacy. The primacy of the protection of all information that could expose the taxpayer's private life, including above all his or her data, should therefore be recognized. As rightly emphasized by the Constitutional Court, the universal right to information is not synonymous with making every piece of information available at any cost.²⁶ However, in

wyporska-frankiewicz-joanna-red-dostep-do-informacji-publicznej-w-praktyce-jednostek-samorzadu...?keyword=Dostep%20do%20informacji%20publicznej%20w%20praktyce%20jednostek%20samorzadu%20terytorialnego&cm=SREST (10.08.2022); J. Brolik (ed.), *Ordynacja podatkowa. Komentarz*, Warsaw 2013, p. 650; K. Sołowiec, *Tajemnica skarbowa*, (in:) A. Mariański (ed.), *Ordynacja podatkowa 2017. Poradnik dla praktyków*, Warsaw 2017, SIP Legalis, <https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3damjvg44tmmj&ref=Source=search> (10.08.2022).

25 See J. Gliniecka, *Tajemnica finansowa. Aspekty aksjologiczne, normatywne i funkcjonalne*, Bydgoszcz-Gdańsk 2007, p. 123.

26 Judgment of the Constitutional Tribunal of 19 June 2002, K11/02, OTK ZU 4A/2002, Item 43.

no way can it be assumed that the legislator, in connection with the institution of tax confidentiality, deprives the public of its right to public control. This is because collective information is subject to disclosure, and it contains all the features of public knowledge. Under Article 305 OP, the head of the National Revenue Administration (KAS - Krajowa Administracja Skarbowa) shall make aggregate tax data public, and this power is also vested in other tax authorities and the president of the Supreme Audit Office (NIK - Najwyższa Izba Kontroli). It is worth noting at this point the position of the judiciary, according to which information about the economic processes themselves, which may take place in business ventures carried out by taxpayers, is not covered by tax confidentiality.²⁷ They can be an efficient instrument of public control of public finances. Particularly noteworthy is also Article 299(b) OP, which creates an exemption of a discretionary, inferential, subjective and particularly important from the point of view of the admissibility of public control, also deserves special mention. According to the mentioned regulation, the head of the KAS may consent to the disclosure of certain information constituting tax confidentiality by heads of tax offices, heads of customs and treasury offices, and directors of tax administration chambers. However, this does not apply to information that constitutes secrets other than tax confidentiality or that is protected under separate regulations. The conditionality of the abrogation of confidentiality outlined above is based on acts in the public interest and is dictated by the need to achieve the objectives of the tax or audit proceedings. It can also be based on a desire to realize the right of citizens to be fairly informed about the activities of the tax authorities and to ensure openness in public life. What is noteworthy is that the lack of a statutory definition of authorized persons to whom the information may be communicated in connection with the revocation of confidentiality under Article 299(b) OP proves the openness of the catalogue of entities to which such information may reach. However, the freedom to deal with this information has been limited by the authority of the head of the KAS to designate the manner of disclosure and the scope of the use of data in respect of which a decision has been made to lift its confidentiality (Article 299(b)(1) OP).

As emphasized in one of the judgments of the Voivodeship Administrative Court in Wrocław, each situation of providing access to data located in various tax documents is strictly regulated, both as regards the person to whom the information may be provided and the subject matter framework, which may not be exceeded in the process.²⁸ When looking at the subjective exclusions of tax confidentiality itself, it has to be taken as a given that, although the principle is to use tax confidentiality information within the administrative apparatus to which it reaches and only for tax

27 Judgment of the Voivodeship Administrative Court in Warsaw of 15 July 2008, III SA/Wa 54/08, <https://orzeczenia.nsa.gov.pl/doc/BE7BC99C96> (10.08.2022).

28 Judgment of the Voivodeship Administrative Court in Wrocław of 27 June 2012, *op. cit.*

purposes, the statutory exceptions to this rule are extensive.²⁹ This implies claims that the right to privacy is only apparently protected under tax confidentiality.³⁰ It in no way implies giving this information the attribute of public knowledge and making it available to everyone, which also does not affect the state of public scrutiny, but it undeniably modifies the assumption of the broad scope of tax confidentiality.

Conclusions

Considered a key impediment to the availability of information, tax confidentiality undoubtedly narrows the scope of those data that an interested party would wish to access. The need, emphasized by doctrine and jurisprudence, for all documentation to be covered by such confidentiality should be regarded as a particular problem in this respect, as only in this way can the values underpinning the establishment of this confidentiality be fully protected. However, the restriction of access to information dictated by tax confidentiality does not completely remove the possibility of public scrutiny, but it does exclude the possibility of seeing those data that could pose a threat to another entity. Importantly, as the OP states, this narrowing is not absolute. The legislator, through subject and object exclusions, seeks to minimize impediments to the process of controlling the state of public finances. Gliniecka even stresses that the number of these exceptions to confidentiality allows us to take the position that its existence is illusory.³¹ In addition, through the established permissibility of waiving the obligation to keep confidential data hidden, the individual is given appropriate opportunities to claim information on the premise of realizing the right to be fairly informed about the activities of the tax authorities and ensuring openness in public life. While it does not imply the possibility of obtaining every piece of information by everyone (as every Polish citizen would wish), the advisability of its introduction is based on offsetting the inconvenience caused by the state of restricted access to information.

29 B. Adamiak, J. Borkowski, R. Mastalski, J. Zubrzycki, *Ordynacja podatkowa. Komentarz*, Wrocław 2011, p. 1162, Judgment of the Voivodeship Administrative Court in Wrocław of 27 June 2012, *op. cit.*

30 D. Habrat, P. Majka, Upoważnienie inspektora kontroli skarbowej do ujawnienia informacji stanowiących tajemnicę skarbową, *Przegląd Podatkowy* 2013, no. 8, pp. 36–43; M. Szubiakowski, Problemy prawnej regulacji tajemnicy skarbowej, *Zeszyty Naukowe Sądownictwa Administracyjnego* 2014, no. 4, pp. 9–18; H. Dzwonkowski (ed.), *Ordynacja podatkowa. Komentarz*, Warsaw 2011, p. 1574.

31 J. Gliniecka, *Tajemnica finansowa...*, *op. cit.*, p. 143.

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