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Received: 07.02.2019

Accepted: 29.04.2019

The Condition of “Reasonable Fear” in the Polish Procedure of Securing the Performance of Tax Liabilities

Abstract: This work analyses the provisions of Art. 33(1) of the Tax Ordinance Act, case law, and the achievements of the tax law which regulate the condition and criteria of securing the performance of a tax liability against the taxpayer's properties in Poland. The main purpose is to confirm the hypothesis that the condition of “reasonable fear” of a failure to perform this liability by the taxpayer is a vague term; an attempt to make it more precise in the act by specifying an open list consisting of two criteria (a permanent failure by the taxpayer to perform their due liabilities to the treasury or disposal by the taxpayer of their property to make enforcement more difficult or impossible) enables tax authorities to issue decisions on securing the performance of such a liability quite freely. The option by tax authorities to use other so-called non-statutory criteria in this area has been criticized as they violate the general principles of tax proceedings (including the principle of conducting tax proceedings in a manner that generates trust in the tax authorities and the principle of explaining to concerned parties the reasons for the conditions the authorities apply when conducting a case). The work uses the dogmatic-legal method and, supplementary, an empirical-analytic method.

Keywords: Tax liability, security, taxpayer's property, fear of a failure to perform a liability

1. Introduction

The principle of universal taxation is a foundation of the Polish tax system and the fundamental canon of tax law. It is formed in the Constitution of the Republic of Poland (Art. 84 of the Polish Constitution¹), which states that each person is obliged to perform obligations and make considerations to the treasury, including the payment of taxes specified in the relevant act. This has specific consequences for the whole tax law system. The universality of taxation is decided by the word “each” used

1 Constitution of the Republic of Poland of 02 April 1997 (Journal of Laws of 1997 no. 78 item 483).

in the provision². The principle of universal taxation applies to the area of making tax law (e.g. by limiting tax reliefs and deductions, which should be exceptions) as well as in the area of applying tax law, including the provisions governing the performance of tax liabilities using enforcement measures. It is believed that inefficient enforcement mechanisms, which may deny the principles of mandatory and universal taxation, may violate Art. 84 of the Polish Constitution³.

The public-law nature of tax liabilities require that an appropriate legal protection of performing such liabilities be provided for. The institution of securing tax liabilities against the taxpayer's (as well as tax remitter's or tax collector's) property is a special form of efficient enforcement of tax liabilities. Its fundamental element is the protection of future interests of the creditor (the State Treasury or a local government unit treasury). However, the security does not lead to a performance of a liability, as the decision concerning the security expires after the issue of the decision on the value of the liability; it only provides certain guarantees that the performance of the liability will be enforced in future⁴. The security of performing legal liabilities regulated in the Tax Ordinance Act (TOA)⁵ is one of many legal solutions supporting the universality of taxation. Its application by tax authorities is burdensome for a taxpayer; however, a symmetric nature of those solutions in relation to the expected behaviour of the taxpayer should be emphasized here. The assessment of whether such behaviours will actually take place is one of the competences of the tax authority. Under Art. 33 TOA, a tax liability may be secured against the property of the obliged party. The expression "may be" used in that provision means that the tax authority has been authorized to make a decision using its administrative discretion⁶. The legislator has formed criteria which may be used by the tax authority to make such a decision. They allow some freedom for the tax authority; however, at the same time, they should guarantee that decisions in this area are not completely free.

The purpose of this work is to demonstrate that the condition of "reasonable fear" used in Art. 33 TAO together with the criteria of possibly meeting that condition by the tax authority (a permanent failure by the taxpayer to perform their due liabilities to the treasury or performing actions consisting in disposing of the taxpayer's property which may make enforcement more difficult or impossible) do not set any borderlines for admissible application of a security of performance of tax liabilities.

2 A. Gomułowicz, Wybrane zagadnienia prawodawstwa podatkowego, "Przegląd Legislacyjny" 1999, no. 1, p. 17.

3 A. Krzywoń, Podatki i inne daniny publiczne - podstawowe pojęcia konstytucyjne, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2011, no. 2, p. 53.

4 Judgment of the Voivodeship Administrative Court in Gdańsk of 29 November 2011, I SA/Gd 986/11, CBOSA.

5 Art. 33 of the Tax Ordinance Act of 29 August 1997 (consolidated text Journal of Laws of 2018, item 800), further TOA.

6 J. Orłowski, Uznanie administracyjne w prawie podatkowym, Gdańsk 2005, p. 120.

That being so, the author has verified the hypothesis concerning the need to modify the provision under Art. 33(1) TOA, including without being limited to removing the expression “in particular” and closing the currently open list of statutory criteria which make it possible to determine that the condition of “reasonable fear” of a failure by the taxpayer to perform their tax liabilities has been met. Including a closed list of such criteria in the act should not weaken the principle of universal taxation; it may, on the other hand, contribute to strengthening certain general principles of tax proceedings, including the principle of conducting tax procedures in the manner raising trust in tax authorities and the principle of explaining to the parties, by tax authorities, the reasons for conditions the authorities apply when conducting a case. Considering the purpose of this work and its other assumptions, the author examined and assessed the current legislative acts concerning a security of performance of tax liabilities as well as related case law and achievements of tax law. The work uses the dogmatic-legal method and a supplementary empirical-analytic method (applied to case law).

2. The Essence of “Reasonable Fear” of a Failure to Perform a Tax Liability

A dictionary defines “fear” as an anxiety or worry⁷, as well as the feeling of anxiety (worry, dread) about a result⁸ or consequences of something⁹. If any action is taken in fear of something, it is aimed at preventing specific events¹⁰. The meaning and the manner of understanding the condition of “reasonable fear” is presented in the clearest way by one of the judgements of the Supreme Administrative Court, which states that fear is a state of uncertainty or worry as to the results or consequences of something. The adjective “reasonable” means that such a fear is based on objective reasons or foundations and, as a consequence, it is justified in the circumstances concerned¹¹. When applying a security of performance of a tax liability, the legal safety of the taxpayer should also be taken into account¹².

Courts have taken interest in the expression of “reasonable fear” used in Art. 33(1) TOA many times. It is rightly considered equivalent to a suspicion¹³ or a probability

7 M. Bańko (ed.), *Wielki słownik wyrazów bliskoznacznych* PWN, Warsaw 2005, p. 429-452.

8 S. Dubisz, *Uniwersalny słownik języka polskiego*, vol. 3, Warsaw 2003, p. 7.

9 A. Markowski (ed.), *Wielki słownik poprawnej polszczyzny* PWN, Warsaw 2004, p. 635.

10 M. Bańko, *Słownik języka polskiego*, vol. 3, Warsaw 2007, p. 222.

11 Judgment of the Supreme Administrative Court of 18 May 2017, I FSK 1880/15, CBOSA.

12 D. Breuer, *Przesłanki zabezpieczenia zobowiązania podatkowego a bezpieczeństwo prawne podatnika*, (in:) A. Mudrecki et al., *Wybrane problemy prawa finansowego w Polsce*, Opole 2009, p. 342.

13 Judgment of the Voivodeship Administrative Court in Warsaw of 7 May 2014, III SA/Wa 2886/13, CBOSA.

of a failure to perform a tax liability¹⁴. It is assumed that reasonable fear has its source in the objectively determined facts of a case; however, it is the tax authority that is supposed to determine, at its discretion, whether the condition of reasonable fear has been met in a specific case. That discretion may not mean freedom of action; it should be based on all facts and legal circumstances and should be clearly substantiated to the taxpayer in the statement of reasons for the decision. The legislator has not defined the notion of “reasonable fear of a failure to perform a liability” due to its broad scope. The events listed in Art. 33(1) TOA are only examples of behaviours suggesting that the statutory condition has been met, ones which fit in a general formula. They include “a permanent failure to perform liabilities to the treasury” or “performing actions consisting in disposing of one’s property which may make enforcement more difficult or impossible”¹⁵. Therefore, it should be accepted that the expression of “reasonable fear” is vague¹⁶.

The condition of “reasonable fear” and the criteria which allow its identification are related to an already existing situation (the state of fear) and to the future (a threat of a failure to perform a tax liability). Reasonable fear has to exist at the moment of making a decision concerning the provision of security¹⁷. However, the fear is also related to an event which has not taken place yet and is not certain to take place at all¹⁸. As regards the future, the discussion is always focused on a certain hypothetical state and, as a consequence, it is only a possibility of that state becoming real that may be a subject of the assessment (as well as demonstrating arguments for that assessment¹⁹). The notion of reasonable fear does not refer to proven facts only to circumstances which are highly probable. Therefore, the tax authority does not conduct any evidentiary proceedings at this stage. To find that the conditions for a security have been met, it is sufficient to determine that they are highly probable²⁰.

It is worth emphasizing that the wording of Art. 33(1) TOA does not include only “fear”; it has been complemented with the adjective “reasonable”. That means that the legislator requires that the tax authority behave in a manner which aims at protecting

14 Judgment of the Voivodeship Administrative Court in Gliwice of 23 February 2015, III SA/GI 1449/14, CBOSA.

15 Judgment of the Voivodeship Administrative Court in Bydgoszcz of 11 March 2015, I SA/Bd 62/15, CBOSA.

16 Judgment of the Supreme Administrative Court of 7 March 2017, II FSK 306/15, CBOSA.

17 Judgment of the Voivodeship Administrative Court in Łódź of 27 January 2015, I SA/Łd 1217/14, CBOSA.

18 Judgment of the Voivodeship Administrative Court in Gliwice of 16 February 2015, III SA/GI 1450/14, CBOSA.

19 Judgment of the Supreme Administrative Court of 19 November 2009, I FSK 1383/08, CBOSA.

20 Judgment of the Voivodeship Administrative Court in Gliwice of 9 November 2017, III SA/GI 440/16, CBOSA.

the financial interests of the State Treasury or the treasury of a local government unit and, on the other hand, which does not interfere in the sphere of property of the obliged entity exposed to difficulties related to the application of a security of performance of a tax liability. The adjective "reasonable" means that something is based on objective reasons, which are just and justified. Therefore, "reasonable fear" is a state where, based on objective reasons, the results or consequences of something are not certain. That, in turn, in the context of a future performance of a tax liability, translates into a situation where the tax authority has objective reasons to believe that a taxpayer may fail to perform their liability²¹. The assessment conducted by the tax authority should be reliable and related to a specific case, i.e. it may not be supposed but has to be substantiated in the statement of reasons in the decision concerning a security in a manner convincing for the taxpayer²².

The reasons for fear should not be equated with evidence, only with substantiation that the taxpayer will fail to perform their tax liability²³. That means that the legislator does not require that the tax authority demonstrate relevant circumstances using evidence regulated with the provisions of tax proceedings; the conditions for accepting the tax authority's statements are less strict and de-formalized. Substantiation is a substitute of evidence and does not mean a need to prove a circumstance concerned. It comes down only to becoming convinced about the existence of specific facts in a thinking process which is not bound with rules of evidence²⁴. The purpose of this simplified procedure is to ensure quick action of tax authorities. A detailed and exhaustive evidentiary procedure, ensuring all guarantees due to a party in the main tax procedure, would not only be an over-interpretation of an explicit wording of provisions concerning the security procedure but would also deny the purpose of that institution²⁵.

The fear of a failure to perform a liability does not refer only to a voluntary performance of a liability. Art. 33(1) TOA includes the expression of "reasonable fear of a failure to perform a tax liability" and does not specify the manner of performing the liability; as a consequence, it refers to a performance of a tax liability through a voluntary payment as well as through enforcement²⁶.

21 Judgment of the Voivodeship Administrative Court in Olsztyn of 12 December 2017, I SA/Ol 917/17, CBOSA.

22 Judgment of the Voivodeship Administrative Court in Warsaw of 13 July 2016, III SA/Wa 258/16, CBOSA.

23 Judgment of the Voivodeship Administrative Court in Cracow of 26 July 2017, I SA/Kr 445/17, CBOSA.

24 Judgment of the Voivodeship Administrative Court in Łódź of 6 April 2017, I SA/Łd 1099/16, CBOSA.

25 Judgment of the Voivodeship Administrative Court in Warsaw of 28 September 2016, III SA/Wa 45/16, CBOSA.

26 Judgment of the Supreme Administrative Court of 7 December 2017, I FSK 469/16, CBOSA.

Tax law scholars voice opinions concerning the nature of the condition of “reasonable fear”. It has been indicated that it includes a vague expression which takes the form of an estimate used as a part of the institution of a security of performance of a tax liability²⁷. The degree of vagueness is high²⁸, but that should not be found totally negative. The legislative technique used in this case ensures that tax authorities may act flexibly and, as a consequence, it enables the determination of an appropriate period in which the tax authority should react²⁹. Whether the condition of “reasonable fear” has been met should be determined during the security proceedings³⁰.

3. Statutory Criteria Confirming that the Condition of “Reasonable Fear” Has Been Met

Art. 33(1) TOA explicitly mentions only two criteria enabling the tax authority to assess whether, in a specific situation, there is a “reasonable fear” of a failure by the taxpayer to perform their tax liability. Reasonable fear arises when the taxpayer permanently fails to perform due liabilities to the treasury or performs actions consisting of disposing of their property which may make enforcement more difficult or impossible to achieve. The criteria referred to above form an open list, as they are preceded with the expression “including without being limited to”³¹. The fact that the condition of “reasonable fear” has been met may also be substantiated by pointing to circumstances other than those listed explicitly in the provision³². The list of criteria confirming reasonable fear in Art. 33(1) TOA uses the conjunction “and/or”, so those criteria do not have to be met at the same time to allow using the security of performance of a tax liability³³. The statutory criteria showing the existence of reasonable fear on the part of the tax authority are not cumulative³⁴.

The first of the statutory criteria confirming the existence of reasonable fear refers to a permanent failure of the taxpayer to perform their liabilities to the treasury. This

27 P. Borszowski, Glosa to wyroku NSA z dnia 6 marca 2012 r., I FSK 594/11, “Prawo i Podatki” 2013, no. 10, p. 23.

28 A. Marecka, Zabezpieczenie wykonania zobowiązań podatkowych na majątku podatnika, “Przegląd Podatkowy” 2005, no. 1, p. 51.

29 P. Borszowski, Określenia nieostre i klauzule generalne w prawie podatkowym, Warsaw 2017, p. 196.

30 H. Dzwonkowski, et al: Procedury podatkowe, Warsaw 2006, p. 517.

31 Judgment of the Supreme Administrative Court of 7 June 2013, I FSK 970/12, CBOSA.

32 Judgment of the Supreme Administrative Court of 11 September 2014, I FSK 1423/13, CBOSA.

33 Judgment of the Voivodeship Administrative Court in Poznań of 24 March 2011, I SA/Po 56/11, CBOSA.

34 J. Sawczuk, Odpowiedzialność podatkowa i zabezpieczenie realizacji obowiązków ciążących na płatniku, “Studia Prawnicze KUL” 2013, no. 1, p. 121.

may be demonstrated by finding, during a tax inspection, unreliable invoices used by the taxpayer in preceding years. The state of paying tax liabilities lower than due is permanent³⁵. It should be underlined here that it is not only a failure to perform tax liabilities that decides on a possibility to use a security but also a failure to perform other liabilities to the treasury. The expression of "liabilities to the treasury" used in Art. 33(1) is wider than "tax liabilities". It includes taxes, charges, and other non-tax payables to the treasury³⁶. It is possible to apply a security of performance of tax liabilities even to the taxpayer who pays taxes on time but permanently fails to perform other due liabilities to the treasury.

The expression "a permanent failure to perform" is not precise, as the legislator has not specified any timeframes for the taxpayer's defaults nor has it determined the minimum number of events consisting in a failure to pay liabilities to the treasury to enable the determination that they are permanent. The manner of formulating this criterion does not indicate whether a permanent failure to perform liabilities to the treasury refers to full values of liabilities or a failure to pay a partial amount should also be taken into account (e.g. a half of an amount due). The property of permanence as referred to liabilities to the treasury defaulted on by the taxpayer has been examined by the courts. It has been found that a permanent failure to pay such liabilities takes place when the taxpayer fails to pay for a longer time, when such a failure refers to all the taxpayer's liabilities, and when there are no indications that the situation will change; however, such a permanence of a failure to pay has to be shown and proven by the tax authority³⁷. An imprecise expression of "for a longer time" has been replaced in a judgement of a different court with another general expression of "for at least several months"³⁸. A permanent failure to perform liabilities should be referred to all the taxpayer's liabilities to the treasury rather than only one of many such liabilities of the taxpayer³⁹. It has been emphasized that a permanent failure to perform liabilities should be related strictly to the facts concerning financial and property possibilities of the taxpayer⁴⁰. An opinion may be accepted that when making a decision on establishing a security against the taxpayer's property the tax authority should not take into account whether a permanent failure to perform due

35 Judgment of the Voivodeship Administrative Court in Cracow of 4 October 2017, I SA/Kr 657/17, CBOSA.

36 A. Makowiec, Zabezpieczenie wykonania zobowiązań podatkowych, "Monitor Podatkowy" 2012, no. 5, p. 24.

37 Judgment of the Voivodeship Administrative Court in Gliwice of 23 July 2014, III SA/Gl 1570/14, CBOSA.

38 Judgment of the Voivodeship Administrative Court in Olsztyn of 23 November 2013, I SA/Ol 688/13, CBOSA.

39 Judgment of the Supreme Administrative Court of 19 March 2014, I FSK 759/12, CBOSA.

40 Judgment of the Voivodeship Administrative Court in Warsaw of 19 December 2011, III SA/Wa 2209/11, CBOSA.

liabilities to the treasury is a result of unwillingness to perform such liabilities or of the taxpayer having no funds⁴¹.

The second statutory criterion, i.e. performing, by the taxpayer, actions consisting in disposing of their property which may make enforcement more difficult or impossible, may be a source of “reasonable fear” of the debtor’s failure to perform a tax liability only when such actions may not be classified as a normal sign of operations conducted by the taxpayer⁴². Furthermore, disposal of property should make future enforcement more difficult or impossible⁴³; therefore, it is irrelevant from the viewpoint of Art. 33(1) TOA whether actions consisting in the disposal of movables and immovables result in making the taxpayer insolvent as the fear concerns the fact of making enforcement not only impossible but also more difficult⁴⁴.

The court has found correctly that the circumstances related to the disposal of the property have to indicate that they are not a normal sign of operations conducted by the taxpayer⁴⁵. The taxpayer who sells property, plant and equipment at arm’s length conditions for market prices and who is not making such transactions in a hurry may not be treated as an entity which disposes of its property to make enforcement of tax liabilities impossible. A random sale of a machine or a device may not justify the use of a security. To use a security correctly, it is important whether the extent of deterioration of the financial situation and the dynamics of that unfavourable tendency with regard to the specific taxpayer translate into meeting the conditions for using a security⁴⁶. However, the use of a security may not be justified with a situation where the taxpayer makes it possible for a different party to use the taxpayer’s assets permanently, depreciate them, and reduce their value⁴⁷.

41 M. Zdebel, *Konieczne przesłanki zabezpieczenia wykonania zobowiązań podatkowych*, “Prawo i Podatki” 2007, no. 1, p. 11.

42 Judgment of the Voivodeship Administrative Court in Bydgoszcz of 11 March 2015, I SA/Bd 62/15, CBOSA.

43 Judgment of the Voivodeship Administrative Court in Warsaw of 13 June 2017, VIII SA/Wa 86/17, CBOSA.

44 Judgment of the Voivodeship Administrative Court in Gliwice of 13 September 2016, III SA/Gl 1091/16, CBOSA.

45 Judgment of the Voivodeship Administrative Court in Wrocław of 31 May 2017, I SA/Wr 20/17, CBOSA.

46 Judgment of the Voivodeship Administrative Court in Lublin of 26 March 2013, SA/Lu 136/13, CBOSA.

47 T. Brzezicki et al., *O potrzebie uporządkowania regulacji normatywnej zabezpieczenia wykonania zobowiązań podatkowych*, (in:) M. Popławski, *Ordynacja podatkowa. Zagadnienia proceduralne*, Białystok 2011, p. 195.

4. Other Criteria (Circumstances) Justifying a Fear of the Taxpayer's Failure to Perform a Tax Liability

The use of an open list of statutory criteria confirming a reasonable fear of the taxpayer's failure to perform a tax liability enables tax authorities to consider also other criteria (circumstances or events) which may support such a fear. In this respect, the case law is interesting, which states that tax authorities may use all evidence and factual findings which justify "reasonable fear", including, most of all, those related to the financial situation or even the wider property situation of the taxpayer, which demonstrates that the taxpayer does not have sufficient assets to pay possible tax voluntarily or under duress⁴⁸. So far, the courts have found that such circumstances may include a reduction of rent received by the taxpayer from their real properties; encumbering property with mortgages; making loan agreements without a repayment date specified; ceasing to conduct business operations; the taxpayer's extravagance or donating the taxpayer's property⁴⁹; a high value of tax arrears with interest as compared to the taxpayer's income when the taxpayer fails to make any effort to pay the liabilities; relatively low income of the taxpayer as compared to a future liability; disposal by the taxpayer of a significant part of property, plant and equipment to repay a delinquent bank loan⁵⁰; keeping the books unreliably; understating taxable income⁵¹; overstating deductible costs illegally⁵²; disposing by the taxpayer of a significant part of property, plant and equipment held⁵³; and the practice of obtaining "empty" purchase invoices to reduce the taxpayer's tax burden⁵⁴. It has been clearly stated that the value of a predicted tax liability itself should not be a reason for issuing a decision concerning a security; however, relating that value to the taxpayer's financial situation may substantiate the fact that the liability will be impossible to enforce in future⁵⁵.

48 Judgment of the Voivodeship Administrative Court in Cracow of 28 April 2016, I SA/Kr 254/16, CBOSA.

49 Judgment of the Voivodeship Administrative Court in Olsztyn of 23 March 2017, I SA/Ol 28/17, CBOSA.

50 Judgment of the Voivodeship Administrative Court in Gliwice of 13 September 2016, III SA/Gl 1086/16, CBOSA.

51 Judgment of the Voivodeship Administrative Court in Gdańsk of 24 September 2014, I SA/Gd 632/14, CBOSA.

52 Judgment of the Voivodeship Administrative Court in Szczecin of 28 June 2017, I SA/Sz 60/17, CBOSA.

53 Judgment of the Voivodeship Administrative Court in Wrocław of 20 March 2007, I SA/Wr 1605/06, CBOSA.

54 Judgment of the Voivodeship Administrative Court in Gdańsk of 19 March 2014, I SA/Gd 155/14, CBOSA.

55 Judgment of the Voivodeship Administrative Court in Białystok of 16 November 2017, I SA/Bk 604/17, CBOSA.

In some cases, the courts have found that the phenomenon of “a permanent failure to perform liabilities to the treasury” should not be equated with the fact that the taxpayer has stopped to pay all their liabilities but may also mean a delayed payment of individual liabilities despite the fact that it is not possible to demonstrate that the failure to pay them is permanent. In such a situation, it is necessary to demonstrate a relationship between the circumstances which took place and the condition of reasonable fear. Such circumstances mean actions of the taxpayer or situations related to them which influence the taxpayer’s property situation in the context of predicted liabilities and the possibility to conduct effective enforcement proceedings. It is only the relationship between the information on the economic situation of the taxpayer as well as their resources and ability to pay, and the value of the predicted tax liability that may be found to prove a reasonable fear of a failure to perform that liability voluntary or under duress⁵⁶.

Referring, by the tax authority, to the criteria listed explicitly in Art. 33(1) TOA as well as to other circumstances which are not mentioned in that provision should be justified in detail in the decision concerning a security. The statement of reasons for the decision must include at least the basic information on the current property and life situation of the taxpayer. It should also describe the reliability of the taxpayer in performing fiscal liabilities based on tax returns held by the tax authority⁵⁷.

5. Conclusions

The analysis of the provisions under Art. 33(1) TOA, the case law, and the achievements of tax law conducted by the author, confirms the assumptions made in this work. It has been determined that the condition for making a decision on a security of performance of a tax liability, i.e. a reasonable fear that such a liability will not be performed, should be understood widely. The two criteria referred to in that provision, which may confirm reasonable fear, are only examples. Tax authorities may not restrict themselves only to two statutory criteria when the taxpayer fails to perform due liabilities to the treasury permanently or when the taxpayer performs actions consisting in disposing of their property which may make enforcement more difficult. To the contrary, the authorities may demonstrate that there is a risk of a failure to perform a tax liability in future which justifies a decision on a security using all facts found in the case⁵⁸.

A fast-rising number of disputes between tax authorities and taxpayers related to decisions on a security of performance of tax liabilities leads, most of all, to

56 Judgment of the Voivodeship Administrative Court in Gliwice of 13 September 2016, III SA/Gl 1087/16. CBOSA.

57 Judgment of the Constitutional Tribunal of 8 October 2013, SK 40/12, LEX no. 2144017.

58 Judgment of the Supreme Administrative Court of 20 January 2017, I FSK 882/15, CBOSA.

the conclusion that there is a need to include a closed list of criteria confirming "reasonable fear" of a failure to perform such liabilities in Art. 33(1) TOA. Such disputes concern mainly the manner of understanding the criteria used by tax authorities, other than those specified explicitly in the Act. Furthermore, a definition could be proposed of the expression of "liabilities to the treasury" used in that provision by listing the properties of such liabilities. In the light of the current legal situation regulation in Art. 33(1) of TOA, certain doubts arise as to the interpretation whether the expression referred to above should include only liabilities to the treasury which the Tax Ordinance Act apply to (i.e. taxes, public charges, and non-tax payables to the treasury) or to all such liabilities (e.g. obligatory payments to the Employees' Guaranteed Benefits Fund, obligatory payments to the National Fund for Rehabilitation of the Disabled, or premiums for health insurance).

The vague expression of "reasonable fear" and a possibility rather than an obligation of using, by the tax authority, a security of performance of tax liabilities against the taxpayer's property form a relatively wide scope for flexible action of the tax authority. Therefore, it is not necessary to maintain the legal situation where tax authorities could, using criteria other than those listed in the act, seek reasons for fear of a failure by the taxpayer to perform their tax liability. Freedom of decision and administrative discretion which are characteristic of a decision concerning a security of performance of tax liabilities make a sufficient exception from general principles of tax proceedings, including the principle of conducting tax proceedings in the manner raising trust in tax authorities and the principle of explaining, by tax authorities to the parties, the reasons for conditions used by the authorities when conducting a case. The legislator should determine explicit restrictions on the allowed use of a security of performance of tax liabilities. Such a situation may be created by closing the statutory list of criteria (circumstances) being reasons for a fear of a failure by the taxpayer to perform their tax liabilities.

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