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ENFORCEABLE TITLE AS A BASIS FOR ENFORCEMENT OF TAX LIABILITIES

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Abstract

Effective enforcement of tax liabilities guarantees proper functioning of the state. The key role is played by the administrative enforceable title [*Polish: tytuł wykonawczy*], issued by the creditor, which constitutes the basis for initiation and implementation of enforcement proceedings. It is an official document constituting evidence of a taxpayer's failure to meet an obligation in a timely manner, giving an enforcement authority the right to use coercive measures on that taxpayer. The aim of the article is to present the enforceable title, as a necessary basis for the administrative enforcement of tax claims to condition its compliance with the law regulations and attempt to answer the question: does the legal enforceable title in current law regulations guarantees the creditor realization of the public interest and the taxpayer the right to legal procedures for enforcement? Primarily, legal and comparative method based on the condition and operation of the law in force is used in the article.

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The role and significance of taxes, in particular in the economic relations of countries with market economy, makes their compulsory execution one of the state's greatest priorities. In a democratic legal state, the tax system should ensure tax optimisation and coercive measures in terms of execution should guarantee that substantive law norms are observed in the event that relevant public levies are not paid voluntarily¹.

The objective of this paper is to present the meaning and role played by the enforceable title in administrative enforcement of tax liabilities.

Legal nature of an enforceable title

Administrative enforcement of tax liabilities was regulated in the Act of 17 June 1966 on enforcement proceedings in administration². The very concept of execution is identified with "coercion" and is used as its colloquial synonym.

The rule of law expressed in Article 7 of the Constitution of the Republic of Poland³ and Article 7 of the Code of Administrative Procedure⁴ obliges the obligee to take or abstain from a commanded action. Article 6 of the Act on enforcement proceedings in administration obliges the creditor to use coercive measures on the taxpayer. Coercive execution, which is the ultimate form of state activity, taken in the case of public obligations are not met voluntarily, should be put into action only when other methods of ensuring that obligations are met and have proven to be ineffective. The use of coercive measures is in the best interest of the both public creditor and the entity. It should therefore be found reasonable,

¹ D. R. Kijowski [in:] D.R. Kijowski (ed.), Cisowska-Sakrajda E. Faryna M., Grzeškiewicz W., Kulesza C., Łuczaj W., Pietrasz P., Radwanowicz-Wanczewska Joanna, Starzyński P., Suwaj R., *Ustawa o postępowaniu egzekucyjnym w administracji. Komentarz, [The Act on enforcement proceedings in administration. A Commentary]* Warszawa 2015, p. 34 and subsequent.

² I.e. Dziennik Ustaw of 2014, item 1619.

³ Act of 2 April 1997, Dziennik Ustaw of 2009, No. 78, item 483.

⁴ Act of 14 June 1960, Code of Administrative Procedure, i.e. Dziennik Ustaw of 2013, item 267, also referred to as "kpa".

as can be found in various publications, that “the use [of coercion – Author’s comment] (...) cannot be understood as emanation of only the formal competence resulting from the content (...) of the enforceable title”⁵. Enforceable title constitutes the basis for the initiation and implementation of administrative execution. Its legal nature was repeatedly been contemplated in doctrine⁶ and court rulings⁷. While an enforceable title constitutes the basis for the initiation and implementation of execution, it does not constitute a letter initiating enforcement proceedings. It is an official document issued by the creditor who is a public entity. The difficulties in creating an accurate definition of the legal nature of the enforceable title results from the fact that it can’t be classified as a decision or resolution passed by a local government. It differs from the aforementioned decisions in the fact that it does not decide about legal consequences of norms for specific addressees and from resolutions in the fact that it is not abstract and universal⁸. It cannot be appealed against under ordinary and extraordinary means of appeal specified in the Code of Administrative Procedure and the Act on enforcement proceedings in administration and by way of a complaint lodged to the administra-

⁵ A. Skoczylas, *Postępowanie egzekucyjne w administracji* [Enforcement proceedings in administration, [in:] R. Hauser, Z. Niewiadomski, A. Wróbel, (ed.) *System prawa administracyjnego. Prawo procesowe administracyjne*, [Administrative law system. Administrative procedural law] Vol. 9, Warszawa 2014, p. 327 A. Dalkowska, *Zobowiązany w administracyjnym postępowaniu zabezpieczającym* [Obligee in administrative proceedings to secure claims], Sopot 2012, p. 32.

⁶ J.P. Tarno (ed.), Ewa Cisowska-Sakrajda, Katarzyna Defecińska-Tomczak, Magdalena Sieniuc, Agnieszka Suławko-Karetko, Joanna Wyporska-Frankiewicz, *Doradca podatkowy w egzekucji administracyjnej należności pieniężnych* [Tax advisor in administrative execution of monetary liabilities] A. Dalkowska, *Zabezpieczenie administracyjne należności pieniężnych w praktyce organów egzekucyjnych* [Administrative securing of monetary claims in the practice of enforcement bodies], Wrocław 2015, p. 49 and subsequent, A.Miruć, J. Maćkowiak, *Tytuł wykonawczy w administracyjnym postępowaniu egzekucyjnym* [Enforceable title in administrative enforcement proceedings], [in:] J. Niczyporuk, S. Fundowicz, J. Radwanowicz, *System...*, p. 35, A. Skoczylas, *Postępowanie egzekucyjne w administracji* [Enforcement proceedings in administration] [in:] R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), *System...*, Warszawa 2014, p. 346.

⁷ Ruling of the Regional Administrative Court (WSA) in Olsztyn dated 21 May 2014 I SA/OI 162/08, LEX No. 521781 Ruling of the Regional Administrative Court (WSA) in Olsztyn dated 16 January 2014 I SA/OI 221/13 LEX No.1426597. Ruling of the Regional Administrative Court (WSA) in Lublin dated 13 March 2014 SA/Lu 1352/13 LEX No. 1522308. Ruling of the Supreme Administrative Court (NSA) dated 25 October 1996, SAB/Wr 1/96, Lex No. 27349.

⁸ Cf. Decision of the Supreme Administrative Court (NSA) dated 10 December 2013, II GZ 720/13, Lex No. 1420268., pursuant to which: “An enforceable title is an official document constituting evidence of failure to meet a specific obligation”.

tive court⁹. Issuing an enforceable title by a creditor does not constitute an execution act, it should rather be qualified as an actual act which has significant legal consequences for the taxpayer. The fact of issuing an enforceable title is evidence to objective and subjective circumstances. It confirms, indisputably, the fact that an enforceable obligation exists and provides evidence that the taxpayer failed to meet that obligation voluntarily¹⁰. It is also an expression of the creditor's belief about the need to initiate and continue administrative execution. The content of an enforceable title includes information collected by the creditor, transmitted to the enforcement authority and to the obligee regarding the tax liability which is the subject of execution and about the maturity date. The fact that a tax obligation exists (under an administrative decision or directly under provisions of law) is not a sufficient basis for the initiation and implementation of the proceedings. The enforcement authority's contribution to "creation" of an enforceable title is in the competence to grant a execution approval clause after its prior inspection with regard to formal correctness and admissibility of administrative execution.

As of 1 January 2016¹¹, the rules of the creditor's actions taken at the stage of proceeding the decision on the need to issue an enforceable title have been significantly modified. In the present legal situation, actions taken by the creditor can be divided into those taken at a stage preceding the initiation of enforcement proceedings and those implemented in the course of enforcement proceedings. The creditor's activity determines the efficiency of execution, accumulation of factors which might result in the obligee's voluntary meeting of obligations, and in consequence reduction of execution costs. Prior to issuing an enforceable title, the creditor is obliged to monitor first whether tax liabilities are settled in a timely manner, and then draw up and deliver a reminder to the taxpayer, under Article 15 of the Act on enforcement proceedings in administration. Administrative execution is based on the creditor's obligation to take action, with the reservation that the 2016 amendment introduced an exception by equipping the creditor with an optional competence to take the so-called informative actions towards the taxpayer which would result in the obligee's voluntary meeting of tax obligations.

⁹ Compare comments on the legal nature of the enforceable title, i.a. P. Ostojki, W. Piątek. *Egzekucja administracyjna świadczeń pieniężnych* [Administrative execution of monetary claims], *Tytuł...*, p. 251.

¹⁰ Decision of the Supreme Administrative Court (NSA) dated 8 January 2014 II GSK 2415/13 LEX No. 1452758.

¹¹ Act of 10 July 2015 on tax administration (Dziennik Ustaw of 2015, item 1269)

Introduced solution should be assessed positively. However, there is a concern whether it fulfills its role intended by the legislature in practice – to minimize the costs of enforcement. Creditor who is directly interested in the realization of the obligation can be more interested in the implementation of coercive measures rather than the “mediation” with the taxpayer.

Content of an enforceable title

An administrative enforceable title is a strictly formalised official document issued in accordance with a template specified by the provisions of law¹². Formal conditions of an enforceable title are specified in Article 27 of the Act on enforcement proceedings in administration, whereas the necessary elements constitute a numerus clausus list. An analysis of the afore-mentioned provision allows for extracting the following groups of factors determining the content of an enforceable title:

1. Data identifying the creditor.
2. Data identifying the debtor – name and surname or business name, tax identification number (Polish: NIP) or Universal Electronic System for Registration of the Population number (Polish: PESEL), names and addresses of shareholders, if the title is issued against a company without legal personality.
3. Data identifying the liability – content, legal basis, maturity, and in the case of enforcement of monetary liabilities – also its amount, the date after which interest on overdue liabilities are accrued, as well as the type and rate of such interest.
4. Data on collateral security – legal mortgage and registered pledge.
5. Legal grounds for a monetary liability’s precedence, if the liability uses that precedence and the precedence does not result from securing the monetary liability.
6. Data identifying the person acting on behalf of the creditor.
7. Dates – date on which the enforceable title was issued and the date of the reminder, and if the reminder was not required, the legal basis for the lack of the obligation to send a reminder.
8. Legal basis for implementing administrative execution.

¹² Regulation of the Minister of Finance of 16 May 2014 on templates of enforceable titles used in administrative enforcement, Dziennik Ustaw of 2014, item 650.

9. Instructions for the obligee – about the consequences of failure to notify the enforcement authority about a change in the place of residence and the right, applicable for a 7-day period, to file charges to the enforcement authority on the implementation of the administrative execution.
10. Provision of the enforcement authority to assign the enforceable title to administrative execution.
11. Enforcement measures used in the recovery of monetary liabilities.

For an enforceable title to be formally correct, it must contain all of the above-listed elements. It has been repeatedly emphasised in court rulings that they determine the validity and legality of administrative execution. In its ruling dated 13 June 2013, the Regional Administrative Court (WSA, Polish: Wojewódzki Sąd Administracyjny) in Szczecin concluded that “The lack of even one of the above-listed elements results in the fact that the given enforceable title cannot constitute grounds for initiating execution”¹³. On the other hand, in a ruling dated 1 January 2014, the Regional Administrative Court in Olsztyn, by stating that enforceable titles are official documents which are a prerequisite for initiation of execution, admitted that “for that to be possible, the title should include all elements specified in Article 27 of the Act on enforcement proceedings in administration. The lack of even one of those elements results in inadmissibility of enforcement in the administrative enforcement proceedings”¹⁴. In another ruling dated 12 March 2014, the Regional Administrative Court in Lublin, by indicating the fundamental role and significance of the formal content of the enforceable title, emphasised that “Formal requirements are not just unnecessary elements, they serve a concrete purpose. That purpose is guaranteeing to the obligee that the amount which will be enforced will indeed be the amount which was subject to the obligation under the authority’s decision”¹⁵.

¹³ Ruling of the Regional Administrative Court (WSA) in Szczecin dated 13 June 2013. II SA/Sz 1253/12, Lex No.1336523, A. Skóra, Commentary to the WSA ruling dated 6 January 2004., I SA 2394/03, GSP-Prz.Orz. 2005 No. 3 pp. 17–22.

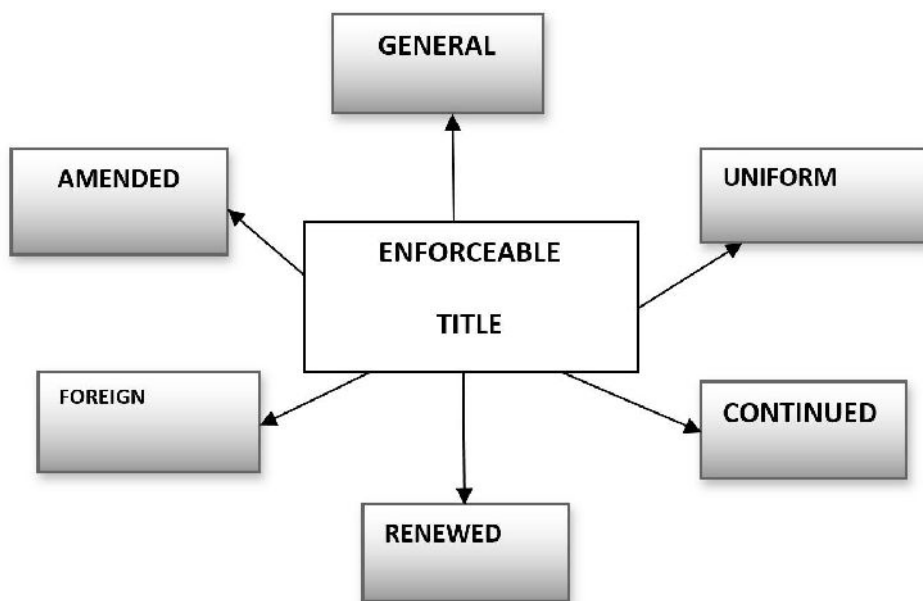
¹⁴ Ruling of the Regional Administrative Court (WSA) in Olsztyn dated 16 January 2014 I SA/OI 221/13 LEX No.1426597.

¹⁵ Ruling of the Regional Administrative Court (WSA) in Lublin dated 13 March 2014 SA/Lu 1352/13 LEX No. 1522308. Cf. T. Brzezicki, W. Morawski, *Skutki wadliwego określenia w tytule wykonawczym odsetek od zaległości podatkowej dla prowadzonej egzekucji administracyjnej* [Consequences of incorrect determination of interest on outstanding taxes in an enforceable titles for administrative execution], “Przegląd Podatkowy” 2013, No. 1, p. 36.

Types of administrative enforceable titles

On 21 November 2013, an amendment to the Act on enforcement proceedings in administration¹⁶ was introduced, and its objective was to adjust Polish provisions on administrative execution to EU law by way of implementing the Council Directive 2010/24/EU of 16 March 2010¹⁷ concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures¹⁷ and Commission Regulation (EU) No. 189/2011 dated 18 November 2011 laying down specific rules on certain provisions of the Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures¹⁸. Grounds for initiating and implementing administrative execution include now, apart from the enforceable title specified in Article 27 of the Act on enforcement proceedings in administration (the so-called general enforceable title) also other official documents issued by EU and third country state authorities.

The types of enforceable titles are presented in the following diagram:



¹⁶ Act of 11 November 2013 on mutual assistance in recovery of taxes, duties and other applicable monetary belonging (Dziennik Ustaw of 2013, item 1289), hereinafter abbreviated as “the Act on mutual assistance.”

¹⁷ OJ EU L84 of 31.03.2010.

¹⁸ OJ EU L 302 of 18.05.2011.

A uniform enforceable title is a document issued by the creditor or an enforcement authority of a Member State which is attached to the request for recovery of monetary liabilities, as referred to in Article 2 paras. 1-6 of the aforementioned Act on mutual assistance. Its author can be both a Polish body or a Member State body. It reflects the substantive content of the original enforceable title, i.e. official document which constitutes the basis for coercive recovery of claims in the country where the document was issued. Additionally, it can include claims which arose after the original enforceable title was issued. A foreign enforceable title is a specific type of enforceable title which is an official document issued by the Central Liaison Office and which reflects the substantive content of the original enforceable title. What distinguishes it from a uniform enforceable title is that it is issued by the Central Liaison Office, the functions of which are performed by the Tax Chamber in Poznań, while uniform enforceable titles are issued by creditors or enforcement authorities of a European Union Member State.

On 7 November 2014, an amendment of the Act on execution introduced new grounds for implementing administrative execution by way of an amended enforceable title, amended foreign enforceable title, continued enforceable title and renewed enforceable title. Amended enforceable title constitutes grounds for continued execution in the event the amount of liability is subject to change in the course of the proceedings without the need to issue a new enforceable title. Amended enforceable titles constitute an innovatory concept in administrative execution and are not known in judicial execution where the basis for execution can only be an obligation resulting from an enforceable title specified in Articles 776 – 795 of the Code of Civil Procedure. Continued enforceable titles are issued in accordance with Article 26c para. 1 of the Act on enforcement proceedings in administration in the case execution is to be implemented by more than one enforcement authority or when monetary liabilities are to be secured by legal mortgage, including maritime legal mortgage. It includes a sequence number and designation of the objective for which it was issued. It is not served to the obligee and its content is identical to the original enforceable title. Renewed enforceable titles constitute grounds for administrative execution in the event the original enforceable title was lost after execution has been commenced. It is issued by the creditor on the basis of a prior decision that the primary title was lost.

The changes are aimed in the right direction. Critical reference is made to issue an enormous amount of enforcement titles, which may cause difficulties in the authorities' practice and among other parties of the execution lack of "a sense of" le-

gal stability caused by the multiplicity and variety of documents that are the basis of administrative enforcement.

Conclusions

An enforceable title is an official document which is the necessary element allowing for initiating and implementing execution of tax liabilities. It plays a significant role in administrative execution of tax liabilities. Without settling an entity's individual rights or obligations, it constitutes "evidence" of failure to meet an obligation and presents the content of that obligation. It provides the enforcement authority and the taxpayer with information about legal and actual premises determining admissibility of execution. On the one hand, it constitutes a necessary condition which opens an enforcement authority's way to use coercive measures towards a taxpayer. On the other hand, it offers the obligee the possibility to question the circumstances specified in the form of charges described in the title under Article 33 of the Act on enforcement proceedings in administration.

In the current law regulations normative solutions concerning enforcement title guarantee the creditor realization of his interest, and the taxpayer the right to lawful procedures for enforcement. The multiplicity and diversity of instruments is a serious challenge for practice and can lead to acts which are not always legal. Therefore, it would be postulated to systemize the issues concerning the types of enforcement titles in current regulations.

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