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## Tax audit in the Polish Deal programme

**Keywords:** tax audit, Polish Deal, verification purchase, temporary seizure of movable property

**Summary.** The Polish Deal (*Polski Ład*) is a government programme effective from the beginning of 2022. It is supposed to help to recover from the economic crisis Poland found itself in after the pandemic. It provides for changes in tax law. In addition to tax changes, it is intended to help solve housing problems. It also applies to healthcare, retirement and disability pensions, economic activity, social security, and, to a certain extent, labour law. The Polish Deal did not introduce changes to the tax audit, although this had been planned. Tax audit is still regulated primarily by the provisions of the Tax Ordinance and the Law of Entrepreneurs. It is conducted *ex officio* and is designed to check the application of tax laws by those being audited. A novelty in the tax legislation is a verification purchase, relating to the purchase of goods and services using a cash register. Additionally, temporary seizure of movable property was added to the National Tax Administration Act. It consists in the ability to seize the movable property of a taxpayer who is in arrears with payments to the tax authorities. This is done for a period of 96 hours. The enforcement authority may confirm the seizure or waive it. There are no direct provisions in the Polish Deal that would regulate tax audits. Several new approaches to the audit can be proposed in this regard. We may add to the regulations a request for a tax audit at the demand of the auditee, or provisions permitting an audited entity to request a selected audit activity, or a proposal to limit duration or number of audits at a taxpayers. The author proposes that one audit may be conducted once every five years at a given entity. A good solution in the first years of the Polish Deal may also be to apply lower penalties for mistakes in interpreting its provisions.

### Kontrola podatkowa w Polskim Ładzie

**Słowa kluczowe:** kontrola podatkowa, Polski Ład, nabycie sprawdzające, tymczasowe zajęcie ruchomości

**Streszczenie.** Polski Ład to rządowy program obowiązujący od początku 2022 r. Ma on pomóc wyjść z kryzysu gospodarczego, w którym znalazła się Polska po pandemii. Przewiduje on zmiany w prawie podatkowym. Oprócz zmian w podatkach ma pomóc rozwiązać problemy mieszkaniowe. Dotyczy służby zdrowia, emerytur i rent, działalności gospodarczej, ubezpieczeń społecznych i poniekąd prawa pracy. Polski Ład nie wprowadził zmian do kontroli podatkowej, chociaż je planował. Kontrola podatkowa nadal regulowana jest głównie przepisami Ordynacji podatkowej i Prawa przedsiębiorców. Prowadzona jest z urzędu i ma na celu sprawdzać stosowanie przepisów podatkowych przez kontrolowanych. Nowością w przepisach podatkowych było wprowadzenie nabycia sprawdzającego. Dotyczy to zakupu towarów i usług przy użyciu kasy fiskalnej. Dodatkowo do ustawy o Krajowej

Administracji Skarbowej dodano tymczasowe zajęcie ruchomości. Jest to możliwość zajęcia rzeczy ruchomych podatnikowi, który zalega z płatnościami wobec organów podatkowych. Dokonuje się tego na czas 96 godzin. Organ egzekucyjny może potwierdzić zajęcie lub odstąpić od niego. Brak jest bezpośrednich przepisów w Polskim Ładzie dotyczących regulacji kontroli podatkowej. Można w związku z tym zaproponować kilka nowych rozwiązań do kontroli. Możemy dodać do przepisów wniosek o kontrolę podatkową na żądanie kontrolowanego. Również przepisy zezwalające na wnioskowanie kontrolowanemu z prośbą o dokonanie wybranej czynności kontrolnej. Następnie propozycja ograniczania czasowego i ilościowego w przeprowadzaniu kontroli u podatnika. Przyjmijmy, że można przeprowadzać jedną kontrolę raz na pięć lat u danego podmiotu. Dobrym rozwiązaniem w pierwszych latach obowiązywania Polskiego Ładu może być stosowanie niższych kar za błędy w interpretacji jego przepisów.

## Introduction

We have come to live in interesting yet challenging times. On the one hand, we are experiencing an economic crisis caused by the coronavirus pandemic. On the other hand, we are seeing an increase in armed conflict incidence. A good example is the war in Syria, which has led to large migrations of people into Europe. Now, we are concerned about the conflict in Ukraine. All these events are of great importance for the quality of life in Poland. They also affect our law, forcing rapid change.

The Polish Deal has been conceived as an antidote to the current problems. It is a government programme designed to help us recover from the economic crisis. This programme was first proposed at the conference of the Law and Justice (in Polish: *Prawo i Sprawiedliwość*) party on 15 May 2021. The Polish Deal contains many legal changes, introduced with the citizens in mind. “The so-called Polish Deal is probably the biggest reform of the tax and contribution system in Poland in recent years. It is implemented under the slogan of a historic tax reduction...”<sup>1</sup>.

The Polish Deal introduces many novelties or modifications to existing tax laws. Some of the new provisions are contained in the Tax Ordinance<sup>2</sup>, the National Tax Administration Act<sup>3</sup>, even the Act on Enforcement Proceedings in Administration<sup>4</sup>, and other acts<sup>5</sup>. However, novelties or changes are not limited to tax acts. The programme is intended to have a comprehensive effect, to be felt this year and beyond.

The programme was developed by a wide array of specialists. The Polish Deal reform requires substantial expenditure: “Initially, according to the government’s assumptions, about PLN 72 billion a year is to be allocated for the implementa-

<sup>1</sup> A. Bartosiewicz, *Polski Ład. Podatki i składki*, Warszawa 2022, p. 21.

<sup>2</sup> The Act of 29 August 1997 – Tax Ordinance (Journal of Laws no. 137 item 926, as amended), hereinafter: the Tax Ordinance or TO.

<sup>3</sup> The National Tax Administration Act of 16 November 2016 (Journal of Laws of 2016 item 1947, as amended), hereinafter: the National Tax Administration Act or NTAA.

<sup>4</sup> The Act of 17 June 1966 on Enforcement Proceedings in Administration (Journal of Laws no. 24 item 151, as amended).

<sup>5</sup> <https://poradnikprzedsiębiorcy.pl/-kontrola-podatnikow-w> (accessed on 23 February 2022).

tion of all projects under the Polish Deal. Total investment by 2030 is expected to exceed PLN 650 billion<sup>6</sup>.

Nearly 18 million Polish citizens are said to benefit from the tax reduction. The tax-free amount has been raised to PLN 30 thousand. The tax threshold has been raised to PLN 120 thousand.<sup>7</sup> In addition, beneficial arrangements for families are provided. Married couples will still be able to file their tax returns jointly, and the tax-free amount will be PLN 60 thousand. There are also beneficial solutions for single parents. Noteworthy solutions include *i.e.*, tax relief for return from emigration, or relief for 4+ families. Retirees receiving up to PLN 2500 per month will not pay tax<sup>8</sup>.

The introduction of many reliefs and changes will require scrutiny in a tax audit. The Polish Deal, however, provides for no changes in it. Hence, the author proposes several new developments that may be considered by the legislator in the future.

## 1. Tax audit

In order to guarantee the certainty of fiscal law, the possibility of verifying compliance with the tax law through a tax audit was invented. Without control, it is impossible to speak of the effectiveness of legal norms. Tax audit is related to compliance with the provisions of tax law, *i.e.*, acts, international agreements, secondary legislation, and local tax laws. It is important to remember that frequent audits hinder proper functioning of the audited entities and are viewed negatively. “The intensity of scrutiny should therefore be reasonably distributed, according to the needs, the anticipated results and the side effects that it may produce”<sup>9</sup>.

### 1.1. Basic rules of tax audit in Poland

Tax audit is conducted by tax authorities on the basis of the provisions of the Tax Ordinance, regulated in Section VI thereof<sup>10</sup>. Also, the Law of Entrepreneurs<sup>11</sup> contains provisions on conducting tax audits at entrepreneurs’. It stipulates *i.e.*,

<sup>6</sup> [https://biznes.gazetaprawna.pl/artykuly/8260629,polski-lad—czym-jest-i-jakie-zmiany-przyniesie.html?gclid=EAIaIQobChMI0pSMsq-Y9gIVjtayCh3GGA04EAAYAiAAEgJX4\\_D\\_BwE](https://biznes.gazetaprawna.pl/artykuly/8260629,polski-lad—czym-jest-i-jakie-zmiany-przyniesie.html?gclid=EAIaIQobChMI0pSMsq-Y9gIVjtayCh3GGA04EAAYAiAAEgJX4_D_BwE) (accessed on 23 February 2022).

<sup>7</sup> *Podręcznik Reformy Polski Ład*, Polish Ministry of Finance, legal status as on 7 February 2022, p. 4.

<sup>8</sup> <https://www.podatki.gov.pl/polski-lad/podrecznik-polski-lad/> (accessed on 24 February 2022).

<sup>9</sup> J. Jagielski, *Kontrola administracji publicznej*, Warszawa 2007, p. 76.

<sup>10</sup> The Act of 29 August 1997 (Journal of Laws no. 137 item 926, as amended), hereinafter: the Tax Ordinance or TO.

<sup>11</sup> The Act of 6 March 2018 – The Law of Entrepreneurs (Journal of Laws of 2018 item 646, as amended), hereinafter: the Law of Entrepreneurs or LE.

on the audit duration<sup>12</sup>. In addition, in matters not regulated in Section VI “Tax audit”, the provisions of Section IV “Tax Procedure” shall apply. This reference is derived from the Tax Ordinance and jurisprudence<sup>13</sup>.

“Since the legislator has clearly distinguished the institutions of tax audit and tax procedure in the TO, the position that the tax proceeding initiated in the case is in fact a continuation of the completed audit is not correct”<sup>14</sup>. A tax audit is a special type of formal proceeding. It has a definite beginning (Articles 284, 284a) and end (Article 291 § 4). The result of the proceeding is included in the audit report. The content of this document is defined (Article 290)<sup>15</sup>.

“A tax proceeding, despite the causal relationship, constitutes a new case in relation to the tax audit conducted, for which a separate file is established. The two proceedings are governed by different regulations. They also have an independent course, beginning and end. A tax audit is initiated by delivering to the audited entity an authorisation to conduct it and by presenting an official ID. A tax audit ends with the preparation of an audit report and its delivery to the auditee, while a tax proceeding generally aims at issuing a tax decision. If, however, a tax proceeding was to constitute only another stage of the same case, the legislator would not impose on the authorities the obligation to issue a separate decision to initiate it and would not attach such far-reaching legal consequences of the effectiveness of its issuance and delivery”<sup>16</sup>.

Pursuant to Article 45(1) LE, control of an entrepreneur’s business activity is conducted on the basis of the provisions of the Law of Entrepreneurs. What should also not be forgotten is the obligation to apply the provisions of generally applicable Community law or ratified international agreements. “However, according to paragraph 2, to the extent not regulated in Section 5 of the Law of Entrepreneurs, the provisions of special laws shall apply, which undoubtedly includes the Tax Ordinance; it determines the subjective scope of control of an entrepreneur’s business activity and the authorities authorised to conduct such control”<sup>17</sup>.

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<sup>12</sup> *Kontrola podatkowa i skarbowa – porównanie procedur*, <https://poradnikprzedsiębiorcy.pl/-kontrola-podatkowa-i-skarbowa> (accessed on 20 April 2020).

<sup>13</sup> Judgment by the Voivodship Administrative Court in Warsaw of 19 March 2004, case no. III SA 2616/02, not published.

<sup>14</sup> Judgment by the Voivodship Administrative Court in Olsztyn of 27 January 2010, case no. I SA/OI 737/09, OSG 2010, no. 7.

<sup>15</sup> S. Babiarz, B. Dauter, B. Gruszczynski, R. Hauser, A. Kabat, M. Niezgodka-Medek, *Ordynacja podatkowa. Komentarz*, Warszawa 2009, p. 922.

<sup>16</sup> Judgment by the Voivodship Administrative Court in Gdańsk of 18 February 2020, case no. I SA/Gd 1627/19, Lex no. 3027116.

<sup>17</sup> D. Antonów, A. Bieńkowska, T. Grzegorzczak *et al.*, *Meritum. Podatki 2022*, Warszawa 2022, p. 1514.

## 1.2. Importance of the audit to the taxpayer

“The purpose of the tax audit is to ensure that the tax authorities implement the principle of substantive truth in tax proceedings, for which it is necessary to establish all the circumstances that shape the factual situation in terms of tax law. The audit is to secure documents, examine the tax books, establish the facts at the time of starting the audit, obtain the explanations that are necessary at this stage. The course of the audit is documented in a report which cannot contain any legal assessment of the matter subject to control, and its most important part is the factual findings and documentation concerning the evidence taken (Article 290 § 2 and 3 TO)”<sup>18</sup>.

An essential element of a tax audit is to check whether the auditees fulfil the obligations imposed on them by law with respect to the State Treasury and local government units. Employees of the tax authorities check how the company fulfils its obligations under the tax law – proper calculation and payment of taxes and timely settlements. Auditors may inspect such taxes as: PIT, CIT, VAT, PCC, inheritance, and donation tax, etc. During the audit, revenue office employees (inspectors) must carry an authorisation which contains information on the subjective scope of the audit, the type of tax to be checked, the period covered by the verification and the duration of the audit<sup>19</sup>.

A tax audit cannot be requested as it can only be initiated *ex officio* in accordance with the principle of the authority’s obligation to act *ex officio*. “A tax audit is initiated *ex officio*, although signals justifying it may come from a variety of sources. They can come from external entities...”<sup>20</sup>.

There are several stages to the audit procedure. First, revenue office employees must prepare a notification stating when the audit will take place. After that, the audit starts, and the inspectors proceed to the inspection activities. Once the investigation is complete, taxpayers receive an audit report. Then, depending on the result, the taxpayer may submit explanations and objections to the audit report within 14 days from its delivery. The Head of the Revenue Office responds to objections and explanations within 14 days of their submission and conducts further post-inspection activities.

The result of the tax audit is positive when irregularities are found. The taxpayer will be required to take action to correct them or face consequences, and sanc-

<sup>18</sup> Judgment by the Supreme Administrative Court in Warsaw of 29 May 2013, case no. II FSK 1895/11, LEX no. 1329415.

<sup>19</sup> Judgment by the Voivodship Administrative Court in Gliwice of 5 October 2017, case no. I SA/Gl 445/17, Legalis.

<sup>20</sup> H. Dzwonkowski, A. Huchla, C. Kosikowski, *Ustawa Ordynacja podatkowa. Komentarz*, Warszawa 2000, p. 666.

tions may also be imposed. When the tax audit is negative, no consequences will be incurred<sup>21</sup>.

## 2. Tax audit vs. the Polish Deal

The Polish Deal proposed several new changes in tax law. Amendments were made to the Tax Ordinance and the National Tax Administration Act. They include:

- 1) amendments to the regulations on e-delivery;
- 2) informing taxpayers by a tax authority on possible participation in a tax carousel;
- 3) possibility of filing a corrected return and its implications that do not always protect a taxpayer from a penalty;
- 4) tax risk management mandate for large investors;
- 5) application of the revised anti-avoidance clause;
- 6) regulations on voluntary disclosure which can still be filed electronically and to which authority;
- 7) a verification purchase using a cash register;
- 8) temporary seizure of movable property by the tax authorities on taxpayers in arrears<sup>22</sup>.

However, the legislator did not introduce any changes to the tax audit in the Polish Deal. This seems surprising, although there was one proposed change to the tax audit, but it ultimately did not make it into the Polish Deal.

The Ministry of Finance prepared a draft on tax audit as part of the Polish Deal. The findings of a tax audit were to be reviewed by a decision not for six months as it is now, but until the end of the limitation period, which in case of tax liabilities is five years. The draft of this amendment was to be put down in the Tax Ordinance by adding a new § 4 to Article 165b. This provision was intended to allow initiation of proceeding at any time for a case in which a tax audit had been conducted. There were three reasons:

- 1) a substantiated presumption that the decision was issued under an evasion clause,
- 2) the same presumption about the so-called contractual benefits of double tax treaties,
- 3) the request of the Head of the National Tax Administration<sup>23</sup>.

<sup>21</sup> M. Górczak, *Kontrola podatkowa*, <https://www.zakiewicz-adwokaci.pl/prawo/kontrola-podatkowa.html> (accessed on 23 February 2022).

<sup>22</sup> <https://podatki.gazetaprawna.pl/artykuly/8332797,polski-lad-kontrola-podatkowa-postepowanie-podatkowe.html> (accessed on 23 February 2022).

<sup>23</sup> <https://www.rp.pl/podatki/art18735031-polski-lad-pis-coraz-wiecej-pulapek-na-obejscie-prawa-podatkowego> (accessed on 23 February 2022).

The authority would have time to initiate the proceeding until the end of the limitation period on the tax liability and pursue the consequences of the violations found in the tax audit<sup>24</sup>. Transitional provisions assumed the extension of Article 165b § 4 to the proceeding that is initiated but not completed, and to tax audits completed before the effective date of the proposed amendment<sup>25</sup>. This solution would be less beneficial to the taxpayer. This would prolong the period of uncertainty in the taxpayer's life. This amendment was not made, the draft was not passed.

Currently, upon completion of an audit, the taxpayer submits objections to the audit report. The tax authority has six months to initiate a proceeding. If it does not do it by that time, the taxpayer considers the return to be correct. The legal status in this area has not changed, contrary to what was intended in the Polish Deal regulations. However, it should be remembered that current commentaries to Article 165b of the Tax Ordinance prove a conditional effect of this article. It is misleading to think that a proceeding is time-barred unconditionally. A tax authority can initiate the proceeding virtually any time it wishes to do so<sup>26</sup>.

The Ministry of Finance was not the only entity which wanted to amend the tax audit regulations. The need for changes in tax audit was also suggested by entrepreneurs.

### 3. Entrepreneurs' proposals concerning tax audit

Entrepreneurs have raised the suggestion that a tax audit can be requested. For many years, tax audits have always been conducted *ex officio*. First, there is an audit notification, then the auditee is served with an inspection authorisation and the inspector presents their official ID. The audit may be conducted while the authorisation is valid and in accordance with its scope. The principle of the authority's obligation to initiate the audit *ex officio* raises various considerations for those audited. The current arrangement is acceptable because no one except authorised persons has any influence on the initiation and conduct of the audit. As a result, however, the audit comes as a big surprise to the auditee.

After the introduction of the Polish Deal, some entrepreneurs said that it would be advisable to provide for a tax audit on request. The audited entity could request the auditing authority to check on the correct application of the Polish Deal at the self-selected time<sup>27</sup>. As a result, the entrepreneur would promptly learn about

<sup>24</sup> <https://www.rp.pl/podatki/art18735031-polski-lad-pis-coraz-wiecej-pulapek-na-obejscie-prawa-podatkowego> (accessed on 24 February 2022).

<sup>25</sup> <https://www.money.pl/podatki/pl> (accessed on 24 February 2022).

<sup>26</sup> H. Dzwonkowski (ed.), *Ordynacja podatkowa. Komentarz*, Warszawa 2019, p. 993.

<sup>27</sup> <https://www.rp.pl/prawo/art19108401-kontrola-podatkowe-bez-kar-pomysl-przed-siebiorcow-na-polski-lad-pis> (accessed on 24 February 2022).

their errors, instead of waiting for the authority to conduct the audit in three- or five-years' time. Hence, a requested audit makes it possible to quickly verify reality against the legal status. Entrepreneurs are aware that mistakes in the application of the Polish Deal regulations are inevitable, as a considerable number of changes was introduced in a short period of time. Federation of Polish Entrepreneurs reports that the Polish Deal concerns changes in 26 acts. Thus, it can become quite confusing<sup>28</sup>.

The entrepreneurs' proposal is general and needs to be clarified in regulations. Accordingly, the author proposes that the requested audit should proceed as follows. Let's start from requesting an audit. A taxpayer could request a tax audit from the relevant tax authority at any time. This arrangement will allow auditees to decide on a tax audit. They can choose a convenient time to initiate it, and they can also prepare for it. Such a request for a tax audit could be made by any entity that wishes to be audited. Once the request is delivered to the authority, it would have time to process it. A response should be made within 30 days. If the request is denied within 30 days, the authority would issue a ruling denying the audit. It is not necessary to provide a statement of reasons. The ruling would not be appealable. This procedure would not include appealing against a refusal to initiate an audit. This will also comply with the principle of active participation in the proceedings, which the inspected entity is entitled to during the audit. Active participation of the auditees is confirmed by their participation in evidence activities and their knowledge of the evidence. This principle is safeguarded for taxpayers in the tax legislation. By the introduction of the amendment proposed by entrepreneurs, this will also be implemented at the time of the initiation of the audit on request. Thus, the entity would actively participate in the proceeding from the very beginning. This can help to foster cooperation between the auditee and the inspectors during the inspection.

It was also proposed that a taxpayer receiving a warning from the Head of the National Tax Administration about a suspicious contractor could check it out by requesting the tax authority to conduct a tax audit of their company for the warning. Thus, the auditee will have the opportunity to verify the integrity of their contractors. This solution may give rise to many audits. Some may be willing to abuse this empowerment. Audits will not necessarily be undertaken to identify dishonest taxpayers<sup>29</sup>.

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<sup>28</sup> <https://www.money.pl/podatki/polski-lad-daje-skarbowce-nowe-narzedzia-przedsiębiorcy-musza-byc-gotowi-na-nowe-kontrole-6666064773180192a.html> (accessed on 24 February 2022).

<sup>29</sup> <https://www.money.pl/podatki/polski-lad-daje-skarbowce-nowe-narzedzia-przedsiębiorcy-musza-byc-gotowi-na-nowe-kontrole-6666064773180192a.html> (accessed on 24 February 2022).



These amendments were not introduced to the tax audit regulations. Instead, the legislator added provisions in the NTAA regarding two new institutions.

#### 4. Changes to the Polish Deal that were included in the tax audit

The changes involve tax audit in a broader sense, *i.e.*, not only tax audit referred to Section VI of the Tax Ordinance, but also customs and fiscal audit. The Polish Deal introduced new solutions to the NTAA, in the form of a verification purchase (controlled purchase – Article 94k et seq. NTAA) and temporary seizure of movable property (Article 94y et seq. NTAA).

A revenue officer (authorised person) can pretend to be a customer and make what was previously called a “controlled purchase”, with a view to assessing correct recording of sales using a cash register. This tool is intended to help combat the shadow economy. The loss of money in the shadow economy is estimated differently depending on the perpetrator – roughly at the level of over PLN 2 billion. However, the Foundation for the Development of Cashless Transactions estimates the shadow economy to be worth about PLN 10 billion. Verification purchase is therefore intended to be another tool to combat abuse of the VAT rules. It verifies correct and lawful recording of sales. “This action will not constitute a tax audit or a custom and fiscal audit, making it less formalised and therefore quick to conduct and not oppressive to taxpayers”<sup>30</sup>. If there is no VAT violation, the official will issue a note. If an infringement occurs, the official will draw up a report and fine the offender with the appropriate amount.

It is desirable to introduce clearer provisions and more precise regulations for the verification purchase regulated by the NTAA. A controlled purchase can apply to the sales of a good as well as a service. It can be conducted at any time. However, a fine should be imposed only when the value of the goods or services exceeds PLN 100. The fine should be proportionate to the amount of the offence. There is too much discretion in the current regulation in imposing the fine. These provisions need to be further refined, a more accurate and precise table of fines should be defined. Besides, the first-time unrecorded sales are discovered, it would be recommended to make a note and instruct the offender. Only the next case of sales made without a cash register should be punished with a fine.

Another solution proposed by the Polish Deal is temporary seizure of movable property. Debtors whose tax arrears exceed PLN 10,000 (the amount does not include: interest, reminder costs, other enforcement costs) may have their movable property temporarily seized by the revenue office. After 96 hours, such a seizure

<sup>30</sup> <https://www.ptpodatki.pl/polski-lad-najwazniejsze-zmiany-w-zakresie-kontroli-i-postepowan-podatkowych/> (accessed on 23 February 2022).

must be accepted by the enforcement agency<sup>31</sup>. In accordance with Article 94y et seq. NTAA, this new institution was added. Temporary seizure of movable property is a tool used during a custom and fiscal audit. It is intended to increase the effectiveness of ongoing administrative enforcement and conducted on the basis of issued enforcement orders. Temporary seizure of movable property may be applied to a natural person, a legal person, and an unincorporated organisational unit with tax arrears. The period of 96 hours shall be counted from the time the report is signed by the obliged party. After signing the report, the debtor is deprived of the right to temporarily dispose of the seized item<sup>32</sup>.

The proposal for temporary seizure of movable property still needs to be refined. In case of taxpayers who correctly settle their accounts with the tax authorities and have never been in tax arrears, the procedure should look different than the NTAA proposes. A seizure with such a taxpayer should be preceded by a warning. The authority shall serve a written warning before seizing the movable property for 96 hours, reading that in 3 days' time after the warning has been issued the movable property concerned shall be attached. After 3 days, when the amount due is not received in the authority's account, a temporary seizure of movable property shall be affected. In addition, items required for the continuation of economic activity should be exempt from temporary seizure. It is important that the entrepreneur has the ability to earn money to pay back the debt. The regulations should specifically list items that are not subject to temporary seizure. This includes computers, manufacturing equipment and machinery, and one car. Other items could be subject to seizure for 96 hours. After that time, the enforcement authority should confirm the seizure of the movable property or waive it.

These two institutions were introduced in the NTAA. However, there are still other changes to be made to improve tax audits.

## 5. Additional proposed changes to the current tax audit

Let us consider making some improvements and changes for the auditors and the auditees. These can be brought to the attention of the legislator and considered for enactment.

Another manifestation of active participation in the audit may be the introduction of a request to carry out the desired inspection activity during the audit. The auditors gather all evidence in the audit. They decide which activities shall be

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<sup>31</sup> <https://podatki.gazetaprawna.pl/artykuly/8332797,polski-lad-kontrola-podatkowa-postepowanie-podatkowe.html> (accessed on 23 February 2022).

<sup>32</sup> <https://poradnikprzedsiębiorcy.pl/-kontrola-podatkowa-i-skarbowa> (accessed on 23 February 2022).

performed in the audit. Therefore, the proposal is that a taxpayer can request a selected activity at any time. This reasoned request should come to the authority in writing. The auditing party should then review it within 3 days. If the auditor does not accept the activity, a notification of refusal shall be issued. It shall not need to be substantiated and shall be non-appealable. After consideration, the auditor shall deliver it in writing to the auditee within 3 days. Upon delivery, the second copy shall be included in the audit file.

Proposal for lower penalties for errors in the application of the Polish Deal regulations. Mistakes in applying the reform in its first years, *i.e.*, 2022 to 2025, should lead to more lenient sanctions. Therefore, audits of taxpayers in these years should result in more lenient penalties. The taxpayer should suffer a penalty, but one that is less severe than provided for under current tax regulations. Authorities should collect arrears at a lower rate than hitherto. The procedure should be as follows. If, as a result of the audit, the authority finds tax arrears up to the amount of PLN 1,000, then the penalty shall be waived. Instead, the authority shall issue an appropriate written instruction and guidance for the future. The justification for this will be that the value of the arrears is too low. If errors in the application of the Polish Deal exceed PLN 1,000 but are lower than PLN 10,000, the consequences will be different. The authority will recommend payment of the calculated arrears on which no interest will be charged. Instead of interest, the taxpayer will pay the cost of inflation. In the case of an audit that reveals errors in the amount of PLN 10,000 to 100,000, taxpayers will incur a penalty of 50% of the calculated arrears plus statutory interest. In other cases, *i.e.*, if the errors exceed the amount of PLN 100,000, the regulations shall remain unchanged. The offender shall have to pay the amount of irregularities calculated by the authority plus statutory interest.

It may be important for taxpayers to ensure that repeated and frequent audits of the same taxpayers are prohibited. The law guarantees to taxpayers that the same scope cannot be audited twice. In addition, strict time limits can be put in place, limiting the number of tax audits to one every five years. An exception to this may be the case of fraudulent taxpayers, who need to be audited more frequently. This limitation should not apply to audits at the request of the taxpayer. In case of VAT and undisclosed sources of income, the proceeding would be different. More frequent audits can be used in these cases. Better audit conditions for so-called honest taxpayers are also important. If no irregularities are found, the audit duration could be shortened, and a subsequent audit could be conducted not earlier than in five years.

These aforementioned improvements can be included in the tax legislation. These regulations are more favourable than the existing ones. Hence, it would be advisable to introduce them. This will benefit both the auditors and the auditees.

## Conclusion

The provisions of the Polish Deal did not change the tax audit. It still exists and is still needed. That is why the legislator did not remove this tool from the legislation, though some changes to the procedure should have been made. The Polish Deal regulations were introduced very promptly and there are problems in interpreting them. Taxpayers have already been applying the current amendments since the beginning of the year. During tax audits, inspectors will be checking on the changes made to taxes by the Polish Deal. Hence, audits related to the Polish Deal should have more lenient sanctions for errors in applying the changes introduced by this reform. Limiting the time and number of audits conducted at a taxpayer's would mean more certainty for auditees. The number of tax audits shall be limited to one every five years. Long and frequent audits disorganise work in audited entities and disrupt their operations.

It is positive, since fewer and fewer audits have been carried out in recent years. This does not mean that the audits should be less frequent than before. In fact, they are now more effective than before. Revenue offices are currently doing much more data analysis. Officials have changed their strategy. The uniform control file helps them to detect irregularities. A report published by the Supreme Audit Office in 2018 says that the reform of the National Tax Administration has worked well. Revenue offices are more efficient in their operations and in collecting VAT<sup>33</sup>. Additionally, provisions on the introduction of a verification purchase should be helpful.

Without the tax audit, there would be no guarantee of tax revenue for the state budget. This is further aided by the temporary seizure of movable property. The role of auditors is to prevent abuses of the law, and to this end they should be equipped with appropriate means of combating phenomena that are undesirable in fact and in law. Hence, there is a lot of responsibility on the auditors. On the other hand, the entities subject to scrutiny, for their own sake, should have the right to decide on an audit. This can be guaranteed by an audit on request and by providing more opportunities to participate in audit activities. More cooperation between the auditors and the auditees will bring better results.

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