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## Collaboration with local tax authorities providing tax information

### Współdziałanie z samorządowymi organami podatkowymi udostępniającymi informacje podatkowe

#### Abstract

Currently, there is an increasing cooperation in the exchange of tax information, and this information is also obtained from local tax authorities by other public administration bodies. The issue of providing tax information by local tax authorities is a part of a broader topic concerning the cooperation between administrative bodies. Collaboration between authorities in this regard brings about numerous challenges related to limiting the scope of information provision and the procedure in which it occurs. It is crucial to have legal mechanisms that ensure an efficient process of providing information while protecting the taxpayer's rights. There is no doubt about the need to limit, for example, tax secrecy when disclosing information about taxpayers to other public authorities as part of their duties. Any intrusion into the right to privacy should be balanced with both the public interest and the taxpayer's interest. The existing regulations regarding the subject matter of information provision by local tax authorities and the list of entities entitled to request this information are considered clear and not raising any doubts in their application. However, regarding the procedure for providing information and the form in which disclosure or refusal should take place, legislative changes are necessary, including the introduction of an obligation to inform the taxpayer about the disclosure of their information.

**Keywords:** tax information, cooperation between authorities, local tax authorities, tax secrecy.

#### Streszczenie

Współcześnie zwiększa się współpraca w zakresie wymiany informacji podatkowych, w tym informacje te pozyskiwane są również od samorządowych organów podatkowych przez inne organy administracji publicznej. Problem udostępniania informacji podatkowych przez samorządowe organy podatkowe stanowi przy tym wycinek szerszej problematyki współdziałania administracji. W związku ze współdziałaniem organów w tej dziedzinie pojawiają się liczne problemy związane z ograniczeniem zakresu udzielania informacji oraz procedury, w jakiej się ono odbywa. Jako istotne należy zatem uznać istnienie prawnych mechanizmów, które gwarantują sprawny tryb udzielania informacji oraz

równocześnie chronią prawa podatnika. Nie budzi jednocześnie wątpliwości konieczność ograniczenia przykładowo tajemnicy skarbowej w sytuacji ujawniania informacji dotyczących podatników innym organom władzy publicznej w związku z wykonywaniem przez nie zadań. Ingerencji w prawo do prywatności towarzyszyć powinno zachowanie równowagi pomiędzy interesem publicznym oraz interesem podatnika. Obowiązujące regulacje w zakresie przedmiotu udostępniania informacji przez samorządowe organy podatkowe oraz katalog podmiotów uprawnionych do żądania tych informacji należy ocenić jako niewywołujące wątpliwości w ich stosowaniu. Z kolei w zakresie procedury udzielania informacji, form, w jakich udostępnienie lub odmowa powinny nastąpić, wskazano na konieczność zmian legislacyjnych, w tym wprowadzenia obowiązku informowania podatnika o ich udostępnianiu.

**Słowa kluczowe:** informacje podatkowe, współdziałanie organów, samorządowe organy podatkowe, tajemnica skarbowa.

## 1. Introduction

The issue of providing tax information by local tax authorities to non-tax public administration bodies is just a part of a broader challenge in terms of government cooperation. Collaboration between tax authorities, particularly in the context of information sharing, has significant consequences, as the evaluation of the correctness of actions taken within this cooperation can subsequently determine the effectiveness of another government entity's activities<sup>1</sup>. The collaboration between these authorities raises numerous issues related to the scope of information sharing and the procedures involved. The conducted analysis will encompass the issue of providing information exclusively to public administration bodies for the purpose of analysing the limits within which local tax authorities can provide them, with the aim of evaluating existing legislative solutions and proposing changes in this regard.

## 2. The concept of tax information and the scope of its disclosure

The term "information" lacks a precise definition, which makes the only adequate definition applicable to various contexts where the concept of information is found, a general statement that information is a certain portion of meaningful knowledge<sup>2</sup>. As for legal information, it should be understood as information about any facts that have or may have legal significance<sup>3</sup>. On the other hand, tax

<sup>1</sup> See, for example, the assessment of the actions of the authority performing the informational duty consisting of delivering a notification of the non-commencement or suspension of the statute of limitations for a tax obligation, as undertaken in cooperation in issuing a decision by another authority (Resolution of the Supreme Administrative Court dated March 18, 2019, FPS 3/18, CBOSA).

<sup>2</sup> W. Załuski, *O pojęciu informacji w perspektywie teoretyczno-prawnej* [in:] *Informacje gospodarcze. Studium prawne*, ed. A. Walaszek-Pyziół, Warszawa 2018, p. 11.

<sup>3</sup> G. Wierczyński, W. Wiewiórski, *Informatyka prawnicza*, Warszawa 2016, p. 51.

information refers to information provided to tax authorities about taxable events<sup>4</sup>, which serves the tax administration in monitoring taxpayers' compliance with the law<sup>5</sup>. The sources of tax information collected by tax authorities primarily include private and official documents, as well as registries and databases maintained by these authorities.

The acquisition of information from local tax authorities by other public administration bodies arises from the necessity to take them into account when handling matters, most commonly related to social assistance, social insurance, and administrative penalty enforcement in practice. In connection with the fact that local tax authorities are limited to two entities – commune administrators (mayors and city presidents) and local appeal boards, and tax collection in their case is limited to selected local taxes, the subject of the request usually concerns information regarding taxable properties (land, including agricultural and forest land, and buildings, as well as incidentally – structures)<sup>6</sup>. These pieces of information are simultaneously subject to tax secrecy, which entails a prohibition on disclosing individual data, i.e., information concerning a specific person and their activities, regardless of how the tax authorities obtain them<sup>7</sup>. The rule is, however, the use of information held by the tax authority is limited to its organizational structures and exclusively for tax purposes, while exceptions to this rule should be *expressis verbis* defined in legal provisions<sup>8</sup>.

### 3. Tax secrecy and its limitation

The background of the issue of providing information is the concept of tax secrecy. According to Article 293 § 1 of the Tax Ordinance Act of August 29, 1997<sup>9</sup>, individual data contained in declarations and other documents submitted by taxpayers, payers, or collectors are subject to tax secrecy. The broadest definition of “tax secrecy”, based on the content of the mentioned provision, indicates that

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<sup>4</sup> B. Brzeziński, *Informacje i dokumentacja w prawie podatkowym* [in:] *Prawo podatkowe. Teoria. Instytucje. Funkcjonowanie*, ed. B. Brzeziński, Toruń 2009, p. 296.

<sup>5</sup> B. Brzeziński, *Informacje podatkowe* [in:] *Wielka Encyklopedia Prawa*, Vol. XI: *Prawo finansowe*, eds. H. Litwińczuk, B. Brzeziński, Z. Ofiarski, Warszawa 2017, p. 205.

<sup>6</sup> In the case of local government authorities, there is also no issue arising regarding the provision of information on the international level.

<sup>7</sup> J. Orłowski, *Tajemnica skarbowa* [in:] *Wielka Encyklopedia Prawa*, Vol. XI: *Prawo finansowe*, eds. H. Litwińczuk, B. Brzeziński, Z. Ofiarski, Warszawa 2017, p. 473.

<sup>8</sup> The judgment of the Supreme Administrative Court dated December 3, 2003, I SA/Wr 2083/01, CBOSA. Similarly: R. Mastalski [in:] J. Borkowski, B. Adamiak, R. Mastalski, J. Zubrzycki, *Ordynacja podatkowa. Komentarz 2016*, Wrocław 2016, p. 1404.

<sup>9</sup> Consolidated text Journal of Laws of 2022, item 2651, as amended, hereinafter referred to as “Tax Ordinance”.

it involves a lack of transparency (involving a prohibition on disclosure or provision of information) of individual data contained in any documents submitted by a taxpayer, payer, or collector to the tax authority, as well as in documents held by that authority or information obtained by the authority about that data<sup>10</sup>.

Treasury secrecy constitutes a type of official secrecy, with the notable aspect that it should be defined as broadly as possible, which, *notabene*, has occurred in the current regulations. It is also well-established in legal doctrine and jurisprudence that every case of disclosing data contained in any tax documents should be strictly regulated, both in terms of the authorized entities and the extent to which it can occur.

At the same time, there is no doubt about the need to limit tax secrecy in situations where information about taxpayers is disclosed, especially to various public authorities in the course of performing their tasks. In this context, there is a collision between the public interest and the constitutional principle of protecting an individual's right to privacy, which is considered permissible. The right to privacy is not absolute and may be subject to limitations in connection with the enforcement of other norms<sup>11</sup>. In this situation, it is necessary for the legislator to maintain the principle of proportionality so that any intrusion into the right to privacy is balanced with the public interest and the taxpayer's interest. The issue of the boundaries within which tax information is shared is significant today due to the increasing scale of information collection by tax authorities. Additionally, a new phenomenon in modern times is the expansion of the possibilities of using information that was once exclusively available to tax authorities and subject to tax secrecy by other entities (including private entities) and the public opinion<sup>12</sup>. However, the boundaries for sharing information cannot be so narrow that, in the name of protecting information, they hinder tax authorities from, for example, combatting abuse. In light of these general issues, there are detailed questions about the scope of the information to be shared, the list of entities authorized to request information, the appropriate procedure for providing information, the forms in which disclosure or refusal should occur, judicial oversight of information sharing, and whether the taxpayer should be informed about its disclosure. All of these issues also pertain to the sharing of information by local tax authorities.

It's important to note that one of the institutions that limits tax secrecy in a way that raises questions about maintaining the principle of proportionality is the disclosure of specific information according to Article 299b § 1 of the Tax Ordinance Act. This provision allows the Head of the National Revenue Administration to

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<sup>10</sup> In this sense: *Ordynacja podatkowa. Komentarz*, eds. C. Kosikowski, L. Etel, Warszawa 2006, p. 907.

<sup>11</sup> M. Florczak-Wątor, *Komentarz do art. 47 [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, LEX/el. 2019.

<sup>12</sup> P. Schwartz, *The Future of Tax Privacy*, "National Tax Journal" 2008, No. 4, p. 896.

give consent for the disclosure of certain information constituting tax secrecy by heads of tax offices, heads of customs and tax offices, directors of chambers of tax administration. This disclosure excludes information that constitutes secrecy other than tax secrecy and is protected under separate laws. The manner of disclosure and use of the disclosed information should be indicated at the same time. Consent can only be given in the presence of a significant public interest and when it is necessary to achieve the goals of tax control, customs and tax control, tax proceedings, or when the disclosure of this information fulfils citizens' right to be accurately informed about the actions of tax authorities and the transparency of public life<sup>13</sup>. The current regulations do not provide a similar solution for the disclosure of tax secrecy by local tax authorities, which, considering the reservation regarding the potential violation of the proportionality principle of this regulation, should be considered appropriate.

#### 4. Subjective scope of information disclosure by local tax authorities

The existing regulations provide for the possibility of disclosing data covered by tax secrecy, including in connection with their provision to other specifically designated state authorities or the disclosure of information from tax records. Statutory regulations regarding the disclosure of tax information have been divided within the editorial units of the Tax Ordinance Act depending on who requests the information and what it pertains to.

Regarding the disclosure of information by local tax authorities, Article 298 of the Tax Ordinance Act should be noted, which states that tax authorities make available records that do not contain financial information from banks and other financial institutions to the entities enumerated in this provision. These entities include, among others, the Minister responsible for public finance, the Head of the National Revenue Administration, the Supreme Audit Office, authorized in writing by the prosecutor, to the officers of the Police, Internal Security Agency, and Border Guard authorized in writing by the prosecutor in connection with ongoing proceedings, Military Counterintelligence Service, Intelligence Agency, Military Intelligence Service, Central Anticorruption Bureau, Military Gendarmerie, Prison Service, voivode. Records of cases that do not contain information from financial institutions are marked with the "tax secrecy" clause when transferred to authorities and individuals who are not tax authorities.

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<sup>13</sup> For a more extensive discussion on the institution of disclosing secrets and criticism of the adopted solutions, see: I. Nowak, *Ujawnienie tajemnicy skarbowej na podstawie artykułu 299b Ordynacji podatkowej*, "Prawo Budżetowe Państwa i Samorządu" 2020, No. 1, pp. 65–88. See also: D. Habrat, P. Majka, *Upoważnienie inspektora kontroli skarbowej do ujawnienia informacji stanowiących tajemnicę skarbową*, "Przeгляд Podatkowy" 2013, No. 8, pp. 36–43.

The issue of disclosing information from tax records has been separately regulated, and in the case of local tax authorities, it is the most common subject of their cooperation with other authorities. According to Article 299 § 1 of the Tax Ordinance Act, tax authorities provide information contained in tax records, excluding information from banks and other financial institutions, to the authorities and individuals listed in Article 298 of the Tax Ordinance Act. Additionally, Article 299 § 3 of the Tax Ordinance Act specifies that tax authorities also provide information to entities such as county and voivodeship labour offices, organizational units of the Agricultural Social Insurance Fund and Social Insurance Institution, the Minister responsible for internal affairs, mayors, city presidents, and voivodes in the context of proceedings related to social benefits. In accordance with Article 299c of the Tax Ordinance Act, tax authorities also provide information contained in tax records, excluding information from financial institutions, to authorities that are required by separate laws to accept certificates or declarations regarding the amount of income or revenue, or certificates or declarations regarding the absence of tax arrears, to the extent necessary to verify the content of the declaration.

In the literature, it is emphasized that the information contained in tax records is processed by the authority providing it, which only provides specific information contained in the records without attaching copies of documents from the case files<sup>14</sup>. Due to the use of the term “information contained in tax records” in Article 299 of the Tax Ordinance Act, there has been some confusion in practice about whether tax information that was not included in the specific tax case files but is found in other information repositories is subject to disclosure in this manner<sup>15</sup>. This issue has been resolved by introducing the regulations of Article 299d of the Tax Ordinance Act, which stipulate that information obtained from entities other than taxpayers, payers, and collectors, as well as information obtained by tax authorities from financial institutions, is subject to the provisions regarding the disclosure of information arising from tax records. Documents containing the information mentioned in Article 299 of the Tax Ordinance Act are marked with the “tax secrecy” clause.

## 5. Procedure for information disclosure

The disclosure of tax information by local tax authorities to other government entities does not follow a single, coherent, and clearly regulated procedure outlined in the legislation. This raises questions about how to classify the act of providing tax information to other government entities in the context of procedural regulations.

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<sup>14</sup> W. Stachurski, *Komentarz do art. 299 [in:] Ordynacja podatkowa. Komentarz zaktualizowany*, ed. L. Etel, LEX/el. 2021.

<sup>15</sup> W. Stachurski, *Komentarz do art. 299d [in:] Ordynacja podatkowa. Komentarz zaktualizowany*, ed. L. Etel, LEX/el. 2021.

From the perspective of the authority requesting tax information from a local tax authority, obtaining this information is usually associated with actions involving the collection of evidence in the course of proceedings, inspections, or other verification activities. The multitude and diversity of these forms of activity by public administration bodies make it impossible to provide a comprehensive overview in this discussion. However, it should be noted that, in general, the procedural classification of actions for obtaining information is related to the collection of evidence. The issues of the authority to request tax information from a tax authority and the scope of the acquired information are usually regulated in detailed provisions concerning the activities of the entity requesting this information, regardless of the fact that they are also mentioned in the Tax Ordinance Act. In this context, providing information by local tax authorities to other non-tax government entities can also be classified as part of the collaboration between government agencies. The obligation for such cooperation during administrative proceedings may arise from Article 7b of the Code of Administrative Procedure<sup>16</sup>, which states that in the course of administrative proceedings, public administration bodies cooperate with each other as necessary to thoroughly clarify the factual and legal circumstances of the case, taking into account the public interest, the legitimate interests of citizens, and the efficiency of the proceedings, using appropriate means suitable for the nature, circumstances, and complexity of the case<sup>17</sup>. There is no equivalent provision in the Tax Ordinance Act. It is important to note that for entities that are not government bodies (e.g., courts or the prosecution), the basis for providing tax information will generally come from specific procedural regulations that these entities follow, often related to the collection of evidence in civil, criminal, criminal-tax, or administrative proceedings.

The classification of providing tax information from the perspective of actions taken by local tax authorities stems from the aforementioned provisions of the Tax Ordinance Act or specific regulations that may indicate the nature of this activity in the context of proceedings before another authority. The act of providing information is most commonly associated with presenting evidence from a document or conveying information that points to a factual circumstance that needs to be determined. In cases where the Tax Ordinance Act regulations do not specify that providing information is related to an ongoing proceeding, the tax authority, when providing such information, does not have grounds to verify the validity of the request. Nevertheless, this act should be classified as a form of collaboration between entities that are government bodies.

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<sup>16</sup> Consolidated text Journal of Laws of 2023, item 775, hereinafter referred to as “Code of Administrative Procedure”.

<sup>17</sup> For a broader theoretical understanding of the collaboration among public administration entities, see: S. Biernat, *Działania wspólne w administracji publicznej*, Wrocław 1979, p. 36.

Regardless of the theoretical classification of the act of providing tax information by the tax authority, it should be noted that technically, the act of providing information, which involves sending case files or their parts, or a document containing the information, does not have a formal initiation date with legal consequences for the taxpayer concerned by the information. Instead, the date of initiation of these activities is considered to be the date of receipt of the relevant request for information by the local tax authority. Since there is no tax proceeding conducted in this case, one could point to the moment of completing the information-sharing activity, which is associated with its transmission (the date it is dispatched to the requesting authority or the document containing the information). However, this is not of significant importance in terms of legal consequences. It should also be emphasized that the regulations do not provide for mechanisms to discipline local tax authorities regarding the time frame for providing information or any obligation for the authority to provide such information in the first place. There are also no procedural regulations concerning the appeal of the act itself, for example, in case of incomplete provision of information.

Since providing information does not lead to the issuance of explicit decisions concluding proceedings, and the act of providing information is not considered another administrative act or action within the scope of government administration responsibilities or obligations arising from the law, as defined in Article 3 § 2 point 4 of the Act of August 30, 2002, on Proceedings Before Administrative Courts<sup>18</sup>, there is no judicial control over the course of providing information. It should also be noted that in the context of providing information, the taxpayer may not be aware of this action (as the authority requesting information may not be obligated to inform the taxpayer), and the taxpayer is not entitled to participate in it<sup>19</sup>. At the same time, the lack of the taxpayer's involvement is not procedurally significant for them, as even if the taxpayer is informed about another entity's request for information, they have no legal remedies to protect their rights during this process. Furthermore, the absence of a general regulation that requires notifying the taxpayer each time another authority requests information concerning them appears not to meet the standards set by the case law of courts adjudicating in international matters in assessing the legality of obtaining information from tax authorities of other countries by the tax administration. For example, in the judgment of the European Court of Human Rights dated November 27, 1996, in the case of *FS v. Germany*<sup>20</sup>, the German tax authorities informed the taxpayer that they intend to transmit, based on the provisions of the agreement on the avoidance of double taxation, information and

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<sup>18</sup> Consolidated text Journal of Laws of 2023, item 1634, as amended.

<sup>19</sup> Regarding the taxpayer's right to be informed about the exchange of information concerning them, see: M. Sęk *Prawo do informacji w prawie podatkowym* [in:] *Ochrona praw podatnika. Diagnoza sytuacji*, ed. A. Franczak, Warszawa 2021, p. 369.

<sup>20</sup> No. 30128/96.



documents concerning his assets in the Federal Republic of Germany to the Dutch tax authorities. When assessing the proportionality in the actions of German tax authorities, the European Court of Human Rights found that there were substantial reasons to suspect that the taxpayer was evading taxes in the Netherlands. This led to the conclusion that while providing information would indeed infringe on the right to privacy, it was done in accordance with the principle of proportionality. The idea of balancing the public and private interests in the context of international information exchange, with a focus on the principle of proportionality, should also be taken into consideration when applying regulations regarding the provision of information by Polish tax authorities to other entities on a domestic level. In this regard, it is recommended to introduce a statutory rule that obliges the taxpayer to be informed about this action. Any exceptions in this regard should be rare and based on significant grounds related to the protection of the public interest, for instance, in cases involving law violations during verification procedures.

## **6. Conclusion**

Currently, there is an increasing cooperation in the exchange of tax information, and this information is also obtained from local tax authorities by other public administration bodies. It is essential to have legal mechanisms that ensure an efficient process of providing information while protecting the taxpayer's rights. In terms of protecting the taxpayer's rights, the barrier to sharing information is the institution of tax secrecy. There is no doubt about the need to limit this secrecy when disclosing taxpayer information to other public authorities in the course of their duties. In this context, there is a collision between the public interest and the protection of an individual's right to privacy, which can be considered acceptable under certain conditions. Limiting this secrecy in connection with providing information to domestic entities should be done while maintaining the principle of proportionality, ensuring that the intrusion into the right to privacy is balanced with the public interest and the taxpayer's interest. The existing regulations regarding the scope of information provision by local tax authorities and the list of entities entitled to request this information are considered stable and currently do not raise any doubts in their application. However, regarding the procedure for providing information and the form in which disclosure or refusal should take place, considering the lack of judicial oversight over the provision of information by local tax authorities, legislative changes are desirable. This may include introducing an obligation to inform the taxpayer about the disclosure of their information. It seems that the model of information exchange procedure within international cooperation could serve as a template for creating a coherent procedure for providing tax information.

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