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A HEARING IN THE TAX PROCEEDING APPEAL – INTERPRETATION OF THE RULES BY THE TAX AUTHORITIES

Abstract. The purpose of this article is to analyze the powers of tax appeal authorities and their interpretation of the Tax Ordinance Act governing tax hearings.

The tax hearing is part of the tax appeal proceeding and takes place within an additional procedure to supplement the evidence and materials on the case. This means that article 229 of Tax Ordinance Act is the limit of the hearing conducted by the tax body. Tax trial/hearing should be treated as a form of activity in gathering evidence, which operates next to the cabinet proceedings. In the literature, the current forms were considered to be equivalent.

The decision to perform additional procedures to supplement the evidence and materials should always be on that tax appeal authority. The phrase “can perform” should be interpreted by the authority as an obligation to conduct, at least as an order to make a positive or negative assessment of the need for additional evidence.

In the Author’s opinion, there are no objections to carry out certain types of evidence. The appeal tax authority is recognizing the case *de novo* and is evaluating the facts in a way it is required to assess the completeness of the collected evidence, and the same to determine whether all of the facts have been proven.

The limits of the powers of the tax appeal authority to conduct current investigation determines the content of articles 229 and 233 § 2 of Tax Ordinance Act. The competence of the appeal body, which is not subject to challenge, is to complement the evidence to draw additional conclusions, but not to change the basic findings. It may hear witnesses, appoint experts and confront their opinions, carry out documentary evidence, as necessary to carry out a visual inspection, provided that these activities are within the limits of additional evidence and conduct supplementary materials in the case. All of this evidence can be carried out during the tax hearing ordered by the tax appeal authority.

1. General Remarks

The purpose of this article is to analyze the powers of tax appeal authorities and their interpretation of the Tax Ordinance Act (ustawa z 29 sierpnia

1997 – Ordynacja podatkowa Dz. U. z 2012, poz. 749 j.t.), governing tax hearings. Institution of the tax hearing was introduced on January 1, 2007 and it is described by the articles of Tax Ordinance Act 200a–200d (Dz. U. z 2012, poz. 749 j.t.) and can be used only in case of appeal. It is treated as a part of the explanatory proceedings, although the acquisition of evidence takes place in the proceedings carried out by the first instance.

The implementation of the principle of two instances in tax proceedings (Article 127 of Tax Ordinance Act – (Dz. U. z 2012, poz. 749 j.t.)), however, requires that the tax issue must be recognized twice by two different tax authorities, in the second instance by the higher level. On appeal, the tax authority should conduct a fair assessment of the evidence and then resolve the tax issue. Often it turns out that the evidence contains gaps and the authority body faces the dilemma of whether to perform additional procedures to supplement the evidence and materials in question. Broad understanding of “evidence” as any mean allowed by the law, which may help to clarify the matter, causes that during the procedure the need to supplement the evidence may arise, explaining the circumstances of the case, and even confronting the participants of the case. These operations are supported by the institution of tax hearing.

2. Guidelines for interpretation of the rules governing the tax hearing by tax authorities

The tax hearing is part of the tax appeal proceeding and takes place within an additional procedure to supplement the evidence and materials on the case. (Presnarowicz, 2011, p. 993; Presnarowicz, 2007, p. 97). This means that article 229 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) is the limit of the hearing conducted by the tax body. Tax trial/hearing should be treated as a form of activity in gathering evidence, which operates along the cabinet proceedings. In the literature, the current forms were considered to be equivalent. (Zbrojewski, 2012, p. 1231; Łaszczyca, Martysz, Matan, 2003, p. 575). However, the scope of the hearing is much more limited. The tax appeal authorities carry out additional investigation in the form of cabinet proceeding more frequently, avoiding tax hearing. On the one hand, it seems obvious. The first of these cases is less formal. It can be done during the same operation as gathering evidence at the hearing. However, the main advantage of the tax hearing is to assemble in one place and time all the parties who carry out specific process steps verbally and directly. (Dawidowicz, 1962, p. 154).

The construction hearing in tax proceedings was based on contradictory elements, through the introduction of an authorized officer of the first instance, from whose decision the appeal was filed. (Adamiak, 2010, p. 220). The term used in art. 200c § 3 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) “participating in the trial/hearing” means that the party is involved in the activities of the trial/hearing, including the submission of related explanations, asking questions to witnesses and cannot be reduced to assist operations undertaken by the other participants in the hearing. (Pietrasz, Teszner, 2010, p. 169, Adamiak, 2007, p. 39; otherwise Strzelec, 2008, p. 32). The hearing allows you to confront the positions and arguments of the first instance and the parties of the proceedings, though of course there could be no question of a classic adversarial. Employee of the first instance does not become party in the proceedings, and the body/tax authority is not the arbiter.

Preliminary studies carried out in the framework of the research project Nr 2011/01/N/HS5/02599: “The use of a hearing by the institutions of public administration in tax proceedings”, funded by the National Science Centre, show that tax authorities rarely carry out a hearing *ex officio*. In the period since 1 January 2007 to 30 September 2012, 83 tax authorities conducted a total of 52 tax hearing appeals. In proceedings held in treasury chambers 30 hearings were conducted, and the government appeal councils – 22.¹ Tax hearings were not carried out by the Minister of Finance or the Directors of the Customs Chambers. Interesting results were noted during the analysis of the number of applications brought by taxpayers demanding a hearing. The treasury chambers noted 536 applications, of which 502 were refused, while to the customs chambers taxpayers have submitted 197 applications for tax hearing and all of them were refused.

Very rare cases of evidence gathering by the tax bodies in the form of a tax trial/hearing are surprising in the context of the construction of art. 200a of Tax Ordinance Act. (Dz. U. z 2012, poz. 749 j.t.). This article describes the order of tax hearing being carried out in certain situations. It must be admitted that tax hearing limits the tax authority in carrying out the process of the selection and gathering of supplementary evidence. Obligatory conduct of the tax hearings means that the authority cannot demand additional proceeding carried out and additional supplement evidence and materials from the authority that issued the decision in the first instance. Managing tax hearing, the appeal tax authority waives cassation decision according to article 233 § 2 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) or transfer the case back to first instance to be recognized

again. But you cannot deny the authority the power at a later stage, depending on the results of the case proceeding. During the assessment, it may be that there is a need to gather further evidence, for example, as a consequence of the disclosure of irregularities in the proceedings at first instance, or the lack of evidence would not be repaired by the appeal tax authority, because such activities go beyond the additional supplementary proceedings. In this case, the body will have no alternative but to revoke the decision of the first instance on the basis of art. 233 § 2 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) and refer the case for reconsideration. (Strzelec, 2008, p. 33).

The tax authorities conduct a hearing *ex officio*, or it can be performed at the request of the parties or their attorney. Based on the art. 200a § 1 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) there can be distinguished the following principles of a tax hearing on authorities' own initiative, i.e.:

- there is a need to clarify the relevant facts of the case with the participation of witnesses;
- there is a need to clarify the relevant facts of the case with the participation of experts;
- there is a need to clarify the relevant facts of the case by inspection;
- there is a need to clarify the legal arguments presented by a party in the proceedings.

This is a closed list of cases and in the event of even one of them the tax body is obliged to hold a tax hearing. The tax appeal authority recognizing the issue should re-assess the evidence gathered every time. If it finds that there is a need to supplement the material or to clarify the relevant facts with witnesses, experts, or by visual inspection, it should hold a tax hearing. The literature emphasizes that the trial/hearing cannot be a form of explaining basic facts of the case concerned, and the scope of its admissibility in order to explain the relevant facts cannot violate the principle of two instances, as one of the fundamental rights of the procedural safeguards.

Administrative hearing as evidence of the appeal is limited based on article 200a § 1 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) and by the evaluation of legitimate use of that evidence (wyrok Naczelnego Sądu Administracyjnego z dnia 23 kwietnia 2010 r., II FSK 2164/08; wyrok Wojewódzkiego Sądu Administracyjnego w Poznaniu z dnia 2 września 2010 r., I SA/Po 381/10). In the appeal proceeding, it is the tax appeal authority's responsibility to examine whether in the light of the circumstances of the case there are reasons to hold a tax hearing. If so, the tax authority cannot evade from this obligation.

There is no doubt that the interpretation of art. 200a § 1 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) by the tax appeal authority in a specific case is made in the application of the law. It takes place in the individual case pending tax. This is particularly evident in the case of recognition of the parties' request for a tax hearing, resolved in the form of provision. The tax appeal authority interprets in operative way, which is understood not as a reconstruction of the entire rule of law, but it boils down to the reconstruction of the rule of law, understood as the basis for final decision. (Leszczyński, 2004, p. 115). It is therefore to restore the base to the situation.

However, some questions are asked about the way of interpretation and rationale determining the tax hearing proceeding. The answer is not clear.

The legislature uses plural for evidence listed in the construction of premises for the hearing, i.e.: "with the participation of witnesses or experts" and that brings doubts whether the obligation to carry out a tax hearing is created when there is a need to interview at least two witnesses, or at least two experts, or whether it can be carried out in order to hear one witness or hear one expert.

In my opinion, it is not possible to use in this case *argumentum a maiori ad minus*. (in contrast: Presnarowicz, 2011, p. 984). I agree with the interpretation and the nature of the institutions taking into account the hearing, which should aim to focus and implement evidence based on rate proceedings. Thus, the trial/hearing should be carried out in any situation where there is a need for more evidence, such as witness and expert hearing of at least two witnesses, two experts, a witness and inspection. (similarly: Zbrojewski, 2012, p. 1233). Surveys indicate a different behaviour of the tax authorities. Some of them used language interpretation of art. 200a § 1 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) and do not carry out a tax hearing if there is no need to use at least two means of evidence. There were also cases where the trial/hearing was carried out for the tax hearing of one witness, or to make an inspection of the tax base.

Regarding inspection, I do not think that at the hearing, only the inspection of goods and documents can be carried out. (similarly: Zbrojewski, 2012, p. 1232). The rules governing the tax hearing by the tax appeal authority do not pose any restrictions as to the place of activity, i.e., to the seat of the Appellate Body. Worthy of approval is the view expressed by S. Presnarowicz (2011, p. 989) that if necessary, the hearing may be conducted in the office of the party or the place of their business, especially if there is a need to clarify the relevant facts of the case with the participation of witnesses in connection with visual inspection of the property.

The hearing may be conducted at the request of a party, but it should be duly justified. Party should justify the need for a hearing, specify the circumstances that should be explained, and what steps should be taken in evidence gathering at the tax hearing. If the request for a formal hearing meets the requirements, and it would be subject to the relevant circumstances of the case, you need to consider a positive decision by setting a tax hearing date, and it will be carried out. (wyrok Wojewódzkiego Sądu Administracyjnego z dnia 10 listopada 2010, I SA/Ke 514/10). There can be no doubt that the request for the tax hearing should be ordered positively if the circumstances under which it will carry out are the same, as in the case of a tax hearing conducted by the authority itself. There are other factors which are of paramount importance to the case as evidence from the party hearing, expert evidence, evaluation of source documents gathered that strengthen the need for a proceeding by the appeal tax authority in the form of tax hearing. (Dauter, 2011, p. 830).

The tax party may apply for tax hearing conducted by the tax appeal authority. The parties described in the article 200a § 1, point 2, and § 2 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) are the same as parties referred to in articles 133 and 133a of Tax Ordinance Act. Therefore it must be concluded that the parties that can request a tax hearing are: the taxpayer, the payer, collector, their successor, as well as third parties referred to in article 110–117a of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) responsible for tax arrears of others. Among the latter, there are: the divorced spouse of the taxpayer, taxpayer's family member, the customer enterprise or its organized part, single-capital company created by the transformation of the entrepreneur as an individual, firmant (the one who represents the owner), the user of objects or property rights, property's real estate tenant, partner in a civil company, a public member of the board and general partner of a limited liability company and a joint stock company, a member of the managing body of another legal entity, the acquiring legal person, a legal entity created by the division, the guarantor. In addition, requesting for a tax hearing may delegate parties and social organization involved in the proceedings as a party.

It is assumed that the tax authority is not bound by the application, which means that it may refuse to hold a tax hearing. But this decision is not taken freely by the tax authority.² The art. 200a § 3 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) shows that the tax authority may refuse to hold a tax hearing in only two cases, i.e. when the subject of the hearing is not relevant to the circumstances of the case, or the circumstances are confirmed by other evidence. No other reasons or evidence justify

a refusal to hold a tax hearing by the appellate body. (similary: wyrok Wojewódzkiego Sądu Administracyjnego w Olsztynie z dnia 18 marca 2010, I SA/Ol 869/09). It can be said that the obligation to hold a tax hearing by the tax appeal authority will be performed whenever the taxpayer reports the application of well founded merits, demonstrating the need to examine the facts having a significant meaning to the case, and indicating the steps that should be taken in gathering the evidence at the tax hearing. The general “just-in-case” applications cannot be approved, submitted only to provide explanations or presenting the request, even though the individual elements of the facts have been established and confirmed by other evidence.

The question arises of how the tax authority, refusing to hold a tax hearing should interpret premise “These circumstances are confirmed by other evidence.” This is important in the context of the results of the study, indicating a significant number of refusals to carry out the tax hearing. In my opinion, a request for a hearing should always be granted when a party requests to carry out certain evidence at the hearing of arguments different than proven (proof to the contrary). The facts that have been found sufficient by other evidence may be a prerequisite to reject the request for a tax hearing if the request relates to the circumstances already stated on the benefit of the party. (Strzelec, 2008, p. 30).

Analysing the evidence for a basis of refusing to hold a tax hearing it can be noted that it is practically identical, as set out in article 188 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) and the refusal of evidence. It should therefore be followed fairly strictly by the administrative courts especially in a situation where the tax authorities unreasonably refused to hold a tax hearing. This refusal, in the case of the actual existence of circumstances justifying a tax hearing, will be a violation of the provisions of tax proceedings that may have a significant impact on the outcome of the case. To determine whether a violation of art. 200a § 1 – § 4 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.), could have a significant impact on the outcome of the case, it is necessary to determine whether in the circumstances of a particular, ongoing proceedings there was a legitimate need, within the limits imposed by law, for the authority to conduct the tax hearing. (wyrok Naczelnego Sądu Administracyjnego z dnia 21 października 2010, FSK 1885/09; wyrok Wojewódzkiego Sądu Administracyjnego w Gliwicach z dnia 10 lipca 2008 r., I SA/GL 453/07).

Date of the tax hearing by the tax appeal authority set at the request of a party shows that the authority did not use the right to refuse to hold a tax hearing. However, even if the authority has exercised this power, and

issued an order refusing to hold a tax hearing on the basis of art. 200a § 3 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) there are no formal obstacles to the circumstances of the case, for the appeal body overturned its own decision and held a tax hearing. It may indeed prove that holding a tax hearing can be justified, if the subject would be an explanation of circumstances that are important for the case. (Dauter, 2011, p. 831).

In the design of the institution of the appeal tax hearing, in a special way the powers of parties were underlined. Based on art. 200d of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.), the party may provide explanations, submit requests, suggestions and complaints, and to present evidence in support thereof. In addition, the party has the right to speak about the results of the evidence. This is important in the context of the purpose of tax hearing, the more so if it is important to clarify the facts with the participation of witnesses or experts, or by visual inspection. This does not mean, however, that new evidence reported by the party, such as the appointment of new witnesses or new expert, must be considered as positive evidence made at the hearing. Any new evidence needs to be assessed due to the whole of the evidence gathered in the case. In addition, consideration should be given the complementary nature of the investigation because of the limits set by the article 229 of Tax Ordinance Act. (Dz. U. z 2012, poz. 749 j.t.).

3. Tax hearing as a “dead body” of supplementary proceedings

The art. 229 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) shows that the tax appeal authority during proceedings can order an additional proceeding to complete material and evidence in the case. It may also order the first instant authority, which issued the decision, to carry out this procedure for the tax authorities. Additional procedures to supplement the evidence and materials may be performed both on-demand and ex officio. However, it should do so after careful consideration and analysis of the objections raised in the appeal against the decision and requests submitted by a party, as well as the evidence justifying it. Only re-examination of the case, together with the merits of the allegations and claims referred to in the appeal will enable the review authority to assess for completeness of the evidence and materials in the case.

Studies have demonstrated that the appeal institutions very rarely carry out a tax hearing ex officio, even though they are the basis for this under the statutory grounds set out in article 200a § 1 point 1 of Tax Ordinance

Act. (Dz. U. z 2012, poz. 749 j.t.). It was indicated that there was no need to clarify the relevant facts of the case with the participation of witnesses or experts, or by visual inspection. At the same time to the question of whether the body interrogated witnesses, experts or carried out the survey – the authorities responded positively. This demonstrates the free interpretation of this provision and even evasion of the institution.

The appellate authorities answering the question of how to gather additional evidence relied on the use of art. 229 of Tax Ordinance Act. (Dz. U. z 2012, poz. 749 j.t.). The additional supplementary proceedings were often carried out to supplement the evidence and materials on the case or the proceedings were commissioned to the first instance authority. Certain authorities were responsible for abusing power to decide appeals in accordance with art. 233 § 2 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.), treating them as the only effective instrument leading to supplement the evidence, with a total ignorance of art. 200a and 229 of Tax Ordinance Act at the same time. (Dz. U. z 2012, poz. 749 j.t.).

The decision to perform additional procedures to supplement the evidence and materials should always be on the tax appeal authority. The phrase “can perform” should be interpreted by the authority as an obligation to conduct (Presnarowicz, 2011, p. 1081, Adamiak 1998, p. 52), or at least as an order to make a positive or negative assessment of the need for additional evidence. (Dzwonkowski, 2012, p. 1314). In this assessment authority shall take into account all the circumstances of the case, in particular the demand side and pointing to specific evidence to justify a demand that cannot be ignored if the party reports it. In the course of the appeal the party shall have the right to submit new evidence that the tax authority should carefully consider. (wyrok Wojewódzkiego Sądu Administracyjnego w Łodzi z 11 lipca 2006, I SA/ Łd 600/06). The Supreme Administrative Court (Naczelny Sąd Administracyjny, NSA) has emphasized that if the taxpayer acted according to the obligation resulting from art. 222 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) and pointed out important evidence for the outcome of the case, the refusal to consider it is a violation of the art. 229 of Tax Ordinance Act. (wyrok Naczelnego Sądu Administracyjnego z dnia 17 marca 2003, I SA/Ka 130/02).

The purpose of the additional proceeding has been clearly formulated. It is to complement the evidence and materials in the case. The art. 229 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) is strictly giving it the status of supplementary investigation/proceeding. This means significant tightening of the extent of additional investigation, which is only ancillary to the proceedings conducted in the first instance. At the same time the tax

authority cannot perform the procedure correctly, but only to supplement and material evidence in the case. (Kabat, 2011, p. 887).

At this point, it is reasonable to place the question of the limits of supplemental proceedings. The question is, when the proceeding is complementary, and when beyond the complementary, and what factors decide upon it. The case of administrative law indicates that to determine the answer to this question it requires reference to a specific situation. The finding that there is only the supplementary proceeding must be associated with the assessment of the evidence gathered in the case so far (in the first instance) and that is reflected in the records of the case and the determination of the authority, which activities in the area of evidence should be taken. Then, it is necessary to reference and compare the evidence so far collected by the authority of the first instance and activities made by appellate body. (wyrok Naczelnego Sądu Administracyjnego z dnia 7 października 2010, I GSK 682/09). In other situations courts decided that the assessment whether gathering of evidence will only be a complement to already carried out, or whether it will be carried out in large part, depends on the circumstances of the case. The most important is not the amount of evidence carried out in the course, but the range of facts that are the subject of the case. (see: wyrok Naczelnego Sądu Administracyjnego z dnia 29 stycznia 2010, I FSK 662/09; wyrok Naczelnego Sądu Administracyjnego z dnia 21 sierpnia 2009, II FSK 455/08; wyrok Naczelnego Sądu Administracyjnego z dnia 12 września 2008, II FSK 885/07). There can also be distinguished sentences indicating the limit of an additional procedure (article 229 of Tax Ordinance Act – (Dz. U. z 2012, poz. 749 j.t.)) by 2 factors, such as having to disclose an inquiry in whole or in substantial part, object recognition by appeal body, which is the case with the decision of the first instance, in other words, the identity of the case. (wyrok Wojewódzkiego Sądu Administracyjnego w Lublinie z dnia 18 marca 2008, I SA/Lu 788/07; wyrok Wojewódzkiego Sądu Administracyjnego z dnia 23 kwietnia 2008, I SA/Lu 789/07).

Similar factors defining the limit of supplemental proceedings are highlighted in the literature. In particular, the view of Z. Kmiecik (2011, p. 88) is worth noting, according to which the meaning of contained in the article 229 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) word “additional” must be determined in regard to the specific factual, legal and investigative potential scale. “Thus, even in the case of obvious negligence of the first instance assessed as not the case, you can fix this error on appeal if the evidence and supplement of the evidence would amount to simple, not requiring much effort the Appellate Body actions and circumstances of the case would indicate the merits of the appeal”. Other words also should be interpreted

extensively, as used in the art. 229 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) and art. 136 of Administrative Proceeding Code (ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego (Dz. U. z 2013 poz. 267 t.j.)), phrases “additional conduct” and “to make up evidence and materials”, making it possible to carry out all the necessary evidence by the Appellate Body.³

The above considerations are consistent with the position expressed Provincial Administrative Court in Opole (Wojewódzki Sąd Administracyjny, WSA) in its judgment of 28 January 2009 (wyrok Wojewódzkiego Sądu Administracyjnego w Opolu z dnia 28 stycznia 2009, I SA/Op 345/08) stating that the need for proof or some evidence (e.g. expert consultation and hearing several witnesses) is in the competence of the appeal body for investigation and a supplement. The same court in another judgment stressed that the authority collecting the expert evidence is acting consistently with the article 229 of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) and proves unfounded allegation of infringement of two instances of proceeding. (wyrok Wojewódzkiego Sądu Administracyjnego z dnia 25 listopada 2009, I SA/Op 134/09).

It should be considered whether the tax authority in the appeal may allow new evidence and consider new facts, or whether it should recognize the case based on already collected material and supplementary interview of the same witnesses and carry out supplementary evidence from the interview of the same experts. I am in favour of the first of these positions. A similar conclusion was made by the WSA in Lublin stating in its judgment of 6 November 2009 (wyrok Wojewódzkiego Sądu Administracyjnego z Lublinie z 6 listopada 2009, I SA/Lu 422/09) that in evidence proceeding at the appeal stage, the exclusion does not apply to the admissibility of new evidence and new facts, or any prohibition of their consideration. Directly from the principle of objective truth, taking into account new evidence by the tax appeal authority can be derived, provided that they do not go beyond the boundaries of the identity of the case. It is because there are situations when a party of tax proceedings only in the final stage of the appeal reports some evidence, such as civil-law agreement.

The appeal body may itself carry out further investigation and evidence supporting materials on the case, or have this procedure carried out by the authority which issued the decision in the first instance. The decision in this regard, that is the choice of the form of the proceedings, falls within the exclusive competence of the appeal body. Authority of the first instance cannot replace the Appellate Body in the supplemental proceedings, but its role is limited only to legal aid.

4. Conclusion

To summarize the above considerations in the interpretation by the tax authorities of the rules governing appeal tax hearing, it should be noted that there are no objections to carry out certain types of evidence. The appeal tax authority is recognizing the case *de novo* and is evaluating the facts in a way it is required to assess the completeness of the collected evidence, and the same is true when determining whether all of the facts have been proven.

The limits of the powers of the tax appeal authority to conduct current investigation determines the content of articles 229 and 233 § 2 of Tax Ordinance Act. (Dz. U. z 2012, poz. 749 j.t.). The competence of the appeal body, which is not subject to challenge, is to complement the evidence to draw additional conclusions, but not to change the basic findings. It may hear witnesses, appoint experts and confront their opinions, carry out documentary evidence, as necessary to carry out a visual inspection, provided that these activities are within the limits of additional evidence and conduct supplementary materials in the case.

All of this evidence can be carried out during the tax hearing ordered by the tax appeal authority. It seems that because of assembly of participants in the appeal at the same time and place, there is a need of more frequent use of the tax hearing by the tax authorities. The appellate authorities in the event referred to in article 200a of Tax Ordinance Act (Dz. U. z 2012, poz. 749 j.t.) justifying the tax hearing, cannot evade from this duty.

N O T E S

¹ Information has been obtained on the basis of surveys with the tax authorities.

² (Presnarowicz, 2011, p. 986) Contrary to claims that the authority may decide in this case, on the basis of choice.

³ This was pointed out by Zimmermann, J. (1986). *Administracyjny tok instancji*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 92.

R E F E R E N C E S

- Adamiak, B. (1998). Model dwuinstancyjności postępowania podatkowego. *Państwo i Prawo*, 12, 52.
- Adamiak, B. (2007). Czy rozprawa uprości postępowanie odwoławcze? *Jurysdykcja Podatkowa*, 1, 39.

- Adamiak, B. (2010). In R. Hauser, Z. Niewiadomski, A. Wróbel (Eds.), *System Prawa Administracyjnego*, vol. 9, *Prawo procesowe administracyjne* (p. 220). Warszawa: Wydawnictwo C.H. Beck.
- Dauter, B. (2011). In Stefan Babiaryz et al., *Ordynacja podatkowa. Komentarz* (p. 830). Warszawa: LexisNexis Polska.
- Dawidowicz, W. (1962). *Ogólne postępowanie administracyjne. Zarys systemu*. Warszawa: Państwowe Wydawnictwo Naukowe, 154.
- Kabat, A. (2011). In S. Babiaryz et al., *Ordynacja podatkowa. Komentarz*, 7th ed. (p. 887). Warszawa: Wydawnictwo LexisNexis Polska.
- Kmiecik, Z. (2011). *Odwolania w postępowaniu administracyjnym*. Warszawa: Wolters Kluwer Polska, 88.
- Łaszczyca, G., Martysz, Cz., Matan, A. (2003). *Postępowanie administracyjne ogólne*. Warszawa: C.H. Beck, 575.
- Leszczynski, L. (2004). *Zagadnienia teorii stosowania prawa: doktryna i tezy orzecznictwa*, 3rd ed. Kraków: Kantor Wydawniczy Zakamycze, 115.
- Pietrasz, P., Teszner, K. (2010). Elementy kontrydiktoryjności w procedurze podatkowej prowadzonej przez samorządowe organy podatkowe – wybrane zagadnienia. In *Administracja publiczna. Studia krajowe i międzynarodowe* 2, 169.
- Presnarowicz, S. (2007). Rozprawa w postępowaniu podatkowym. In *Ordynacja podatkowa w praktyce* (p. 77). Białystok: Wydawnictwo Temida 2.
- Presnarowicz, S. (2011). In C. Kosikowski et al., *Ordynacja podatkowa. Komentarz* 4th ed. (p. 986, p. 993, p. 1081). Warszawa: Wolters Kluwer.
- Strzelec, D. (2008). Naruszenia przepisów postępowania związane z instytucją rozprawy. *Prawo i Podatki*, 10, 32.
- Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego (Dz. U. z 2013, poz. 267 j.t.).
- Ustawa z 29 sierpnia 1997 r. – Ordynacja podatkowa (Dz. U. z 2012, poz. 749 j.t.).
- Wyrok Naczelnego Sądu Administracyjnego z dnia 23 kwietnia 2010, II FSK 2164/08, CBOSA.
- Wyrok Naczelnego Sądu Administracyjnego z dnia 21 października 2010, I FSK 1885/09, CBOSA.
- Wyrok Naczelnego Sądu Administracyjnego z dnia 12 września 2008, II FSK 885/07, LEX nr 492423.
- Wyrok Naczelnego Sądu Administracyjnego z dnia 17 marca 2003, I SA/Ka 130/02, LEX nr 142771.
- Wyrok Naczelnego Sądu Administracyjnego z dnia 21 sierpnia 2009, II FSK 455/08, LEX nr 524596.
- Wyrok Naczelnego Sądu Administracyjnego z dnia 29 stycznia 2010, I FSK 662/09, CBOSA.

- Wyrok Naczelnego Sądu Administracyjnego z dnia 7 października 2010, I GSK 682/09, LEX nr 744846.
- Wyrok Wojewódzkiego Sądu Administracyjnego w Opolu z dnia 28 stycznia 2009, I SA/Op 345/08, LEX nr 504662.
- Wyrok Wojewódzkiego Sądu Administracyjnego w Olsztynie z 18 marca 2010, I SA/Ol 869/09, LEX nr 576062.
- Wyrok Wojewódzkiego Sądu Administracyjnego z dnia 10 listopada 2010, I SA/Ke 514/10, LEX nr 748995.
- Wyrok Wojewódzkiego Sądu Administracyjnego w Łodzi z dnia 11 lipca 2006, I SA/Łd 600/06, LEX nr 190038.
- Wyrok Wojewódzkiego Sądu Administracyjnego w Lublinie z dnia 18 marca 2008, I SA/Lu 788/07, LEX nr 467865.
- Wyrok Wojewódzkiego Sądu Administracyjnego w Lublinie z dnia 23 kwietnia 2008, I SA/Lu 789/07, LEX nr 468211.
- Wyrok Wojewódzkiego Sądu Administracyjnego w Poznaniu z dnia 2 września 2010, I SA/Po 381/10, Lex nr 749892.
- Wyrok Wojewódzkiego Sądu Administracyjnego w Opolu z dnia 25 listopada 2009, I SA/Op 134/09, LEX nr 550379.
- Wyrok Wojewódzkiego Sądu Administracyjnego z Lublinie z dnia 6 listopada 2009, I SA/Lu 422/09, LEX nr 541951.
- Wyrok Wojewódzkiego Sądu Administracyjnego w Gliwicach z dnia 10 lipca 2008, I SA/GL 453/07, LEX nr 483517 z glosą L. Bieleckiego, Lex/el. 2010.
- Zbrojewski, T. (2012). In H. Dzwonkowski (Ed.), *Ordynacja podatkowa 2011* (p. 1231). Warszawa: C.H. Beck.
- Zimmermann, J. (1986). *Administracyjny tok instancji*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 92.