

LITHUANIAN CAPITAL COMPANY AS A PARTY TO TAX PROCEEDINGS IN POLAND

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Introduction

Economic cooperation of Poland and Lithuania has continued since the thirteenth century A.D. Currently, the two countries have friendly relations within both the structure of the European Union and NATO (North Atlantic Treaty Organization). Representatives of these Member States often meet to discuss the nature of economic cooperation. Lithuania is a country that since the 1st of January 2015 has been (as opposed to Poland) a member of the Euro zone. This event will certainly have its repercussions also in the area of economic relations between Lithuania and its neighbors. It should be remembered that Poland and Lithuania cooperate regarding taxation of multinational companies that achieve income on their territories. The definition of the method of avoidance of double taxation regarding income tax from legal persons took place on the 20th January 1994 (about 10 years before Poland joined the European Union). On that date the two countries signed an agreement on the avoidance of double taxation which regulates the issues connected with the achievement of income in the country of non-residence by a given taxpayer¹. This document allows, in legible manner, for interpretations of cross-border taxation of companies (established in one of these countries) on the basis of income tax. However, the achievement of income in Poland by the Lithuanian capital company is sometimes associated with active participation in legal activities in Poland. In accordance with Art. 49 of the Treaty on the Functioning of the European Union², Lithuanian entrepreneurs should be provided with the same conditions for doing business as an entrepreneur considered to be a tax resident. This means that the Lithuanian company can participate in the national economic relations in Poland, competing with Polish companies under fair conditions. Thus, a Lithuanian resident becomes a subject of rights and duties which also have repercussions on tax law. It is interesting to examine the capacity of a Lithuanian resident before tax authorities. Since tax authorities conduct tax proceedings verifying the accuracy of tax settlements of taxpayers regarding public liabilities, then a Lithuanian company may also become a party to tax proceedings. It is therefore necessary to consider the representation of the company in the proceedings and mode of delivery of tax writings, also in the cases of a branch in Poland. To do this, it is worth analysing the tax subjectivity of a company based in Lithuania.

¹ Double taxation agreement between Poland and Lithuanian.

² The Treaty on the Functioning of the European Union (Dz. U. 2004, № 90, poz. 864).

1. Lithuanian capital company as taxpayer

The Lithuanian resident can participate in the creation or the management of a legal person established in Poland. In this case all rights and obligations (including restrictions) to which the Polish capital company is subject are applied to new companies set up by citizens or Lithuanian companies³. There is also a case where a capital company based in Lithuania (without the agency of its branch or representative) takes tax actions within the meaning of Polish tax laws. One should keep in mind that in the Polish legal system taxpayer institutions were constructed on the basis of objective and subjective (non-territorial) criteria. In accordance with Art. 7 of the Tax Code⁴, the taxpayer is a natural person, legal person or organizational unit without legal personality. The legislature, in a general way, specifies only the subjective nature of the taxpayer without addressing the issue of their registered seat. Whether a taxpayer may be subject to a given tax depends on the provisions of the Act on that tax. The general rule is that the entity is subject to taxation if they take actions that give rise to tax liability. The exceptions are the situations when the company is subject to taxation (is a taxpayer), but does not pay the tax due to objective exemption. One should consider the subjective scope of taxation on the example of a particular tax.

In relation to legal actions not under value added tax, the obligation of the entity to pay tax on civil law transactions often occurs⁵. The Lithuanian company becomes taxable when it borrows money from a Polish company (release of funds takes place on Polish territory), the usufructuary of land located in Poland is established. Moreover, the Lithuanian company will be obliged to pay the tax on civil law transactions when for its benefit the servitude of the Polish property is established or when the company registered in Lithuania establishes a mortgage on this property (see. Art. 4 of the tax of civil law transactions). It can be concluded that the acquisition of the status of the taxpayer in the light of the law may result from: deliberate actions of the company or arise *ex lege* as a result of the events on which entity had no impact. Thus, if the company arranges gambling or poker tournaments, then in addition to the required permit it will also have to submit declarations as a taxpayer (Art. 71, 75 of the Act on gambling games⁶). Failure to comply with the obligation to obtain a license conditions the legality of the conduct of a controlled form of activity does not prejudice the qualifications of the entity on the basis of the taxes on certain minerals⁷. The taxpayer is a legal person making the extraction of copper or silver, whether doing it legally or not. If a company acquires ownership of the property or it will manage it as a spontaneous holder or usufructuary it will become the payer of the property tax (Art. 3 of *Act on taxes and local fee*⁸). Similarly, in relation to agricultural lands and lands on which agricultural activities are conducted, the company obtains the status of the agricultural tax payer (Art. 3 of the agricultural tax)⁹. If the lands whose holder is a non-resident qualify as forest, this does not constitute

³ BIENIEK, G. Podejmowanie przez przedsiębiorców zagranicznych działalności gospodarczej w Polsce (wybrane zagadnienia), *Rejent*, 2001, № 7–8, p. 13.

⁴ Tax Code (Dz. U. 2012, poz. 749, j. t.).

⁵ Act on tax civil law transactions (Dz. U. 2010, № 101, poz. 649).

⁶ *Act on gambling games* (Dz. U. 2009, № 201, poz. 1540).

⁷ *The tax on some ore act* (Dz. U. 2012, poz. 362).

⁸ *Act on taxes and local fee* (Dz. U. 2014, poz. 849, j. t.).

⁹ *The act on agricultural tax* (Dz. U. 2013, poz. 1381, j. t.). The Lithuanian company in purchasing the real estate and ground in Poland must obtain a permit from the Minister of Internal Affairs under the procedure – art. 1a of *Foreign Nationals Acts* (Dz. U. 2014, poz. 1380, j. t.). Embracing or purchasing no less than 50 % shares in the share capital of the Polish company by the Lithuanian company requires the analogous administrative permission (if owns the real estate). However making such action with the Polish company using or leasing the real estate is permitted – CZAJKOWSKA, B. Obrót udziałami (akcjami) w spółce handlowej będącej właścicielem nieruchomości. *Prawo Spółek*, 2005, № 3, p. 36; DUDARSKI, M. Nabywanie przez cudzoziemców udziałów (akcji) spółek posiadających nieruchomości. *Rejent*, 2009, № 6, p. 35; HARTWICH, F. Czynności prawne dotyczące akcji lub udziałów w świetle przepisów ustawy o nabywaniu nieruchomości przez cudzoziemców. *Prawo Spółek*, 2010, № 4, p. 26.

grounds for exclusion from taxation. The company will receive the status of the payer of tax on means of transport only when it becomes the owner of the truck (weighing not less than 3.5 tons) appearing in the Central Register of Vehicles and Drivers. It is worth mentioning that Article 2 point 3 c of the Tonnage Tax Act explicitly mentions that the taxpayer may also be a foreign entrepreneur (established in another Member State). The Lithuanian company may also unwittingly become a taxpayer when it is endowed by a Polish citizen with a donation or is provided with (without the knowledge of the recipient) electricity by a Polish company. It is clear that regarding local fees (e.g. market, local, spa fees, and dog licence), the Lithuanian company can only be a taxpayer of market fees as the structure of the remaining public liabilities does not account for taxing legal persons art. 15–19 of *Act on taxes and local fee*. It is therefore necessary to name the two categories of taxpayers who are non-residents. Some acquire the status of the taxpayer in a conscious way (by making a taxable transaction), and the others become them despite their passive attitude. Given the above, it is clear that in the provisions relating to individual taxes, there are no legal norms which directly state about the possibility of a non-resident being regarded as the taxpayer (of the Lithuanian company). Even though, according to the principle of *quae non sunt prohibita, permissa intelleguntur* (what is not forbidden is allowed) if the provision does not prohibit the participation of Lithuanian company as a taxpayer, it seems fair that the tax legislator should clarify in the Tax Code that the taxpayer is also an individual person, legal person or entity without legal personality, whose registered office (place of residence) is in another country.

2. Lithuanian company as a party to tax proceedings

The provisions of tax proceedings do not directly provide for the possibility of a foreign company acting as a party to tax proceedings. It is helpful in this regard to analyze the existing jurisprudence of administrative courts according to which the body authorizing the company to act as a party in the proceedings should examine in particular its legal personality and the manner of representation¹⁰. In addition, a foreign entrepreneur acting as a subject of rights and duties in Poland has a similar legal nature granted to them as part of native laws. This means that if a limited liability company has been granted (by the Lithuanian legislature) with a legal personality and the ability to be a party to the administrative, tax and court proceedings, then the Polish legislature also grants this company with similar subjectivity¹¹. Such actions should be considered to be the implementation of the principle of equal treatment of taxpayers in tax proceedings (regardless of their domicile, legal personality or activity). It is worth remembering that Polish tax authorities are obliged to apply the numerous rules of proceedings arising from the Code of Good Administrative Behaviour¹². According to the Code, a Lithuanian company has the right to expect (in tax proceedings) the tax authorities to comply with the principle of proportionality, principle of impartiality of independence, principle of objectivity, principles of acknowledgement of receipt of letter, principle of informing about the actions taken by the authority. Such a catalogue of rules of tax proceedings makes it impossible to conduct inquisitorial proceedings in relation to the Lithuanian entity which would only be carried out to prove the suspected guilt of the taxpayer (e.g. omission to submit tax declarations). Tax proceedings can also be initiated at the request of the Lithuanian company. There are no obstacles to a foreign entity applying

¹⁰ Judgement of WSA (provincial administrative court) in Opole of 16.01.2008, signature I SA/Op 189/07, accessible: Lex nr 461867; Judgement of WSA (provincial administrative court) in Poznań of 15.03.2012, signature IV SA/Po 1138/11, accessible: Lex nr 1164476. Also KAWECKA, N. Reprezentacja spółek w urzędzie, *Wspólnota*, 2012, № 11, p. 36.

¹¹ See: PODLEŚ, M. *Charakter prawny spółki cywilnej na tle prawa europejskiego i niemieckiego*. Warsaw, 2008, p. 62.

¹² *Decision on the Code of good administrative practice* (Dz. U.UE. C 2011, № 285, poz. 3).

for individual interpretation of the tax law, if only in relation to the facts described by the company, the Polish tax laws have a reference. It is stipulated that the Lithuanian company in the course of tax proceedings should use Polish in the procedural letters (as an official language). There are no difficulties to the documents produced originally being used in the Lithuanian language if a party can submit their translation into Polish.

It should be noted that the Lithuanian company gains the status of the party to tax proceedings *ex lege* or through their individual actions. By law, the status is granted when the tax authority shall initiate tax proceedings regarding the taxpayer. Moreover if the cross-border merger of Lithuanian and Polish company has taken place, then according to Art. 491, 494 of the Code of Commercial Companies¹³ the entity resulting from this process will be the successor to the rights and obligations of the Polish company. If a newly established company has office in Lithuania, there are no obstacles for it to be a party (taxpayer) in the conducted tax proceedings against the company merged. In the Tax Code, there is no provision which would explicitly provide for the present tax succession. However, Art. 93a of the Tax Code can be assumed to be a the legal basis for such a solution. Polish regulations in this respect comply with Art. 29 of Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and the transfer of the registered office of an SE or SCE from one Member State to another Member State¹⁴. The Polish legislature considers one tax authority (Head of the Second Tax Office in Warsaw-Śródmieście) to be appropriate for the Lithuanian company which does not have a permanent place of business in Poland. Exceptionally, in relation to the mining of copper and silver, the competent tax authority will be the Head of the Customs Office in Legnica. These bodies also have the opportunity to work with the tax authorities of the country of residence of the company. In light of Art. 17 of the Convention on Mutual Administrative Assistance in Tax Matters¹⁵, they may demand that the Lithuanian tax authorities send documents related to tax proceedings carried out in relation to the entity in Lithuania.

3. Branch of Lithuanian company as party to tax proceedings

Lithuanian companies, using the EU rules on freedom of establishment, can conduct economic activity in every European Union country directly through an entity registered only in Lithuania. However, for the technical and marketing purposes, it is sometimes reasonable to isolate the branch of the entrepreneur. Then potential customers can make transaction through the branch of the company using the near location of the entity in their country of residence. It is assumed that the branch of a foreign company in Poland is an entity isolated economically and organizationally that does not have a separate legal personality¹⁶. Lithuanian company that wants to do business in Poland through a branch is

¹³ *Commercial Companies Code* (Dz. U. 2013, poz. 1030, j. t.).

¹⁴ Council directives 2009/133/EC from 19 October 2009 on common system of the taxation being applicable in case of the join, divisions, divisions by separation, of carrying assets and the companies concerning the exchange of shares of various Member States and moving the registered office stipulated in the Articles of Association just or for Co. from one Member State to the other Member State (Dz. U. UE.L 2009, № 310, poz. 34).

¹⁵ Conventions on the mutual administrative assistance in tax matters (Dz. U. 1998, № 141, poz. 913).

¹⁶ ZDYB, M. *Prawo działalności gospodarczej. Komentarz do ustawy z dnia 19 listopada 1999 r.* Cracow, 2000, p. 563; and SZYDŁO, M. *Swoboda działalności gospodarczej.* Warsaw, 2005, p. 221; SIERADZKA, M. *Oddziały przedsiębiorców zagranicznych w Polsce.* In [ed.] BISKUP, R., ed. GANCAR, M. *Warunki podejmowania i prowadzenia działalności gospodarczej w rejonach przygranicznych Polski i Ukrainy.* Lublin 2007, s. 140. With sentence J. Napierała, regulation concerning the branch of the foreign entrepreneur will admit are discriminating against non-residents towards residents – NAPIERAŁA, J. *Zakładanie oddziału przez spółkę zagraniczną w świetle wyroku Trybunału Sprawiedliwości w sprawie Inspire Art.* *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2004, № 2, p. 74.

obliged to register the branch in the Register of the National Court Register. For this purpose, it must draw up a deed of incorporation of the branch (in the form of a notarial deed) containing details of persons authorized to represent the branch, the object of economic activity and branch office, and other information. Registration of the branch by a foreign entrepreneur means that the parent entity is responsible for any tax liability arising from the operation of the branch. It should also be noted that the Lithuanian company's branch in Poland may conduct business only within the range (subject) of activity registered by the company in Lithuania. A branch should be distinguished from the representative office which is registered only for advertising or promotional purposes of the parent company. One should express opposition to the thesis concerning the recognition of each organizational unit (in Poland) of the Lithuanian company conducting advertising activities as a representative of the company¹⁷. Indeed, it is important that the statutory criteria applying to foreign entities are met. In the case of both entities, a foreign company must keep accounting records¹⁸, report within 14 days material changes in the company and add "branch in Poland" or "representation in Poland" to the company's branch name in Poland. It should be emphasized that there is no requirement in the Polish legislation concerning setting up branches or representative offices by foreign entrepreneurs who wish to conduct business in Poland. The foreign entrepreneur by opening one of the types of these entities creates only an additional place of business. Both the department and the representation of the Lithuanian capital company does not have the qualities necessary to be regarded as a separate legal entity. Thus, there is no legal capacity, capacity to perform legal action or judicial ability, and they cannot be a party to civil, commercial, labour and other contracts¹⁹. Any contracts signed by clients and representing a branch of the company are in fact signed directly with the Lithuanian company. Tax Identification Number used in Poland is identical for the Lithuanian company and its branch. According to the administrative courts if the foreign entrepreneur in Poland registers a branch of their business, it automatically becomes a player of tax on goods and services and acts as the subject of rights and duties (a branch does not have a separate tax subjectivity)²⁰. Thus, regarding taxes, a Lithuanian company and its branch in Poland constitute a single entity. A branch can be in the context of tax compared to the additional place of business of the entrepreneur. This means that, within the branch, a tax inspection authority or tax authority may carry out activities related to the control or tax proceedings. Moreover, the Lithuanian company can take a number of procedural steps through a representative branch of the company in Poland. Therefore, it is worth considering the nature of the representation of the Lithuanian company in the proceedings before tax authorities.

¹⁷ A contrario: ZAFRAŃSKI, D. Osoba zagraniczna a cudzoziemiec. *Glosa*, 2001, № 9, p. 3.

¹⁸ Person managing the branch of the company foreign is folding in the register court and the revenue office what annual financial reports of the branch – Article 69 of Accounting Act (Dz. U. 2013, poz. 330, j.t.).

¹⁹ KISIEL, P. Polski oddział zagranicznego przedsiębiorcy jako pracodawca. *Radca prawny*, 2013, № 3, p. 13; STRUCZEWSKI, J. Sytuacja prawna inwestorów zagranicznych w Polsce i na Białorusi (porównanie prawa działalności gospodarczej i Kodeksu Inwestycyjnego Republiki Białorusi). *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2002, № 2, p. 21; KUBALA, W. Oddziały i przedstawicielstwa w ujęciu ustawy – Prawo działalności gospodarczej. *Prawo Spółek*, 2001, № 2, p. 32.

²⁰ Judgement of WSA (provincial administrative court) in Cracow of 08.11.2012, signature I SA/Kr 926/12, accessible: Lex nr 1239656; Judgement of WSA (provincial administrative court) in Szczecin of 08.02.2006, signature II SA/Sz 984/05, accessible: Lex nr 296027. Similar: Individual interpretation from 12 December 2011 of the Director of Revenue Office in Katowice, IBPP3/443-993/11/PK; Individual interpretation from 12 September 2011 of the Director of Revenue Office in Poznań, ILPP4/443-409/11-5/EWW and PODŻORSKI, M. Opodatkowanie podatkiem dochodowym od osób prawnych przedsiębiorców zagranicznych działających w Polsce w formie oddziałów i przedstawicielstw. *Przegląd podatkowy*, 2005, № 12, p. 25.

4. Representation of the Lithuanian company before tax authorities

Party in the tax proceedings may be represented by any natural person who has legal capacity and full capacity to act, and was secured by the mandante. One should also mention the possibility of establishing a professional attorney – lawyer, legal counsel or tax adviser. These are the professions regulated in relation to which it is guaranteed that these persons have full knowledge about taxes and experience in representing taxpayers²¹. As has been shown above, branch and representative office (located in Poland) of the Lithuanian company do not have separate tax subjectivity in tax proceedings. Therefore, the attorney for the Lithuanian company established before the Polish tax authorities is authorized to represent the branch or a representative office of the company (if this has not been excluded by the party authorising). It is understood that there is the impossibility of establishing a permanent representative for foreign entrepreneurs – procurator (109¹ § 1 of the Civil Code)²². If the Lithuanian company is obliged to register as an active VAT payer in Poland, it must establish a tax representative before Polish tax authorities. Representation (also agency) is a special type of representation as a result of which a foreign entity (established in another Member State) can do business in Poland, by registering as an active VAT payer. This does not mean, however, that for the purposes of Polish tax law it becomes a resident²³. In accordance with Art. Paragraph 18b. 1 of the VAT Act, a representative may be a natural person, legal person or person without legal personality (e.g. partnership) which meets the statutory requirements: domicile (registered office in Poland), tax subjectivity (status of an active VAT taxpayer), permissions (in terms of tax advisory services or professional bookkeeping).

The requirement to have the permissions to conduct professional accounting does not apply to customs agencies, if the taxpayer establishing the entity tax representative performs in the territory of the country only the import of goods destined for the territory of a Member State other than the country and export from the country is made by the importer of the goods within the intra-Community supply of goods. Moreover, a representative for the past 24 months may not fall behind with payments of individual income taxes constituting the state budget, exceeding separately for each tax 3% of the amount due to the tax liabilities of individual taxes (share of arrears in the amount of tax is determined in relation to the amount of due payments for the settlement period to which the arrear relates). In the light of Art. Paragraph 18b. 1 pt. 3 of the VAT Act, an agent must give the warranty of good character, i.e. show proof of good conduct in the field of fiscal offenses. There must be between the tax representative and the represented entity a written agreement that includes a definition of the address of the documentation kept, the statement of the representative about the fulfillment of all the conditions of Art. 18b sec. 1 of the VAT Act and agreement of the representative to perform the duties and responsibilities of the taxpayer – in their own name but on behalf of the taxpayer. As discussed in the European jurisdiction, the fact of the establishment of a tax representative does not mean that the foreign entrepreneur created the tax department in the country. This means that the creation of this representation cannot be seen as an organizational change in the structure of the foreign company. The tax representative performs on behalf of and for the benefit of the taxpayer the obligations of the taxpayer in terms of the tax return²⁴,

²¹ See: BERNAT, R. Doradca podatkowy jako pełnomocnik przed sądami administracyjnymi. *Zeszyty Naukowe WSZiA*, 2014, № 1, p. 37 and BERNAT, R. Doradca podatkowy jako pełnomocnik przed Trybunałem Sprawiedliwości Unii Europejskiej. *Monitor Prawa Celnego i Podatkowego*, 2014, № 12, p. 478–482.

²² Verdict of the Supreme Court from 26 February 2014, III CZP 103/13, Lex nr 1433733. Civil code (Dz .U. 2014, poz. 121, j. t.).

²³ Also a Court of Justice of the European Union certified such a position in the sentence from 6 February 2014, case C-323/12, Lex nr 1421774.

²⁴ The VAT declaration for the tax representative was determined in the regulation on the model of the declaration for the value added tax of the tax representative (Dz. U. 2013, poz. 357).

preparation of tax returns (as well as summary information) and also keeping and retaining tax records. The agreement between the representative and the taxpayer may provide for the performance of other tasks. A foreign entity is obliged to pay the tax as a result of the use of the method of self-calculation by a tax representative.

5. Delivery of letters from tax authorities

In tax proceedings, the issue of delivery of documents sent by the payer and sent from the tax authorities is essential to the nature of the case conducted. One can even argue that the failure to meet the statutory limitation periods prevents the continuation of the proceedings. In the Polish procedure tax authorities may communicate with the taxpayer using traditional mail or by means of electronic communications (art. 144 and 144a of the Tax Code). The delivery address for (Polish) commercial companies and partnerships is the address of their registered office. In relation to taxpayers who are abroad the legislature provided for two modes of delivery of letters. In accordance with Art. 147 of the Tax Code if the party to proceedings is not in Poland for a period longer than 60 days, it is required to appoint a proxy for deliveries in Poland. In the event that the company has a branch in Poland and liquidates it without establishing a representative before the authority, the delivery will be performed for the last known mailing address of the liquidated branch. The exception is the method of delivery of correspondence by e-mail. For this purpose, the Lithuanian company should apply to the authority and indicate the electronic address for delivery (*vide* Art. 144a § 1 of the Tax Code). Importantly, the tax authority cannot decide on such a method of service without the consent of the taxpayer²⁵. If the taxpayer does not obtain the document sent (the signature of acknowledgement of receipt), then after 7 days the notice about the possibility obtaining the letter is sent again. The failure to collect the letter within 14 days from the date of sending it *via* e-mail to the taxpayer results in the fact that the letter is regarded as delivered. Therefore, it is important that an entrepreneur from Lithuania who chooses to receive a letter from the tax authorities through a means of electronic correspondence meet (at the time of application for this method of delivery) technical criteria.

If the tax authority has difficulty in determining the address for delivery of the Lithuanian company, it may request the help of the tax authorities in Lithuania. The Minister of Finance appointed the Director of the Tax Revenue in Poznań as the competent authority to mediate the transmission of requests for delivery to the tax authorities of other countries of the European Union. According to some, the entire burden of time and effectiveness of the delivery lies on the post operator of the country sending which asks the postal operator in Lithuania for help²⁶. It should be noted that the Polish tax authority can also send a fax message to the Lithuanian authorities informing about the fact that a request to produce a valid delivery address of the Lithuanian company has been sent. Telephone contact between officials does not constitute a binding form of communication because of the difficulty in proving the nature of the conversation.

²⁵ NOWAK, T. Doręczanie pism zagranicę w postępowaniu podatkowym – głos w dyskusji. In [ed.] NOWAK, T.; STANISŁAWSZCZYN, P. *Prawo celne i podatek akcyzowy. Kierunki przeobrażeń i zmian*, Warszawa, 2014, p. 214; CISOWSKA-SAKRAJDA, E. Doręczanie pism w postępowaniu administracyjnym ogólnym i podatkowym w obrocie zagranicznym. *Administracja*, 2010, № 3, p. 32; CELAREK, K. Informatyzacja postępowania administracyjnego, *Ius et Administratio*, 2006, № 10, p. 195; The taxpayer must meet technical criteria enabling the receipt for him electronic korespondencji determined among others in provisions Act on 17 February 2005 about the computerization of activities of entities performing public tasks (Dz. U. 2014, poz. 1114, j. t.).

²⁶ SĘDKOWSKA, A., STELMASZCZYK, K., Doręczenia w postępowaniu podatkowym – standardy i wątpliwości. In CIECIERSKI, M., MUDRECKI, A., STANISŁAWSZCZYN, P. *Wybrane problemy prawa finansowego w Polsce*. Opole, 2009, p. 268.

Summary

A limited liability company or joint stock company with its headquarters in Lithuania can be a taxpayer of Polish direct or indirect taxes. The Lithuanian company is authorized to be a party to the proceedings before the tax authorities of first or second instance. Since the Polish tax procedure is based on the subjective or objective criterion, there are no obstacles to the proceedings regarding the Lithuanian resident taking place. Note, however, that it must be represented before the authorities by an attorney who uses the Polish language. It is best if this person is a lawyer, legal adviser or tax adviser of Polish origin. If a limited liability company based in Lithuania has its branch in Poland, a person representing a branch may appear before the tax authority. Note, however, that all the repercussions on the course and outcome of the proceedings will affect the parent entity. The fact is that the branch of the company is present in the proceedings in the name and on behalf of the founding company. The lack of current regulations on deliveries in tax proceedings specifically relating to foreign taxpayers should be regarded as a *de lege lata* application. There is a possibility of delivering the letter by means of electronic communication. However, the taxpayer must already be familiar with complex rules relating to this method of delivery and meet its formal requirements. The need to extend the statutory definition of the taxpayer (located in the Tax Code) with a reference to entities located outside Poland was recognized as a *de lege ferenda* application. It is worth confirming, through legislative changes, the equality of rights and responsibilities of all taxpayers in the Polish tax procedure, regardless of their residence.

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2. The Treaty on the Functioning of the European Union – in Polish – Traktat z 13 grudnia 2007 r. o funkcjonowaniu Unii Europejskiej z dnia (Dz. U. 2004, № 90, poz. 864).
3. Tax Code – in Polish – Ustawa z dnia 29 sierpnia 1997 r. Ordynacja podatkowa (Dz. U. 2012, poz. 749, j. t.)
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24. Judgement of WSA (provincial administrative court) in Cracow of 08.11.2012, signature I SA/Kr 926/12, accessible: Lex nr 1239656.

25. Judgement of WSA (provincial administrative court) in Szczecin of 08.02.2006, signature II SA/Sz 984/05, accessible: Lex nr 296027.

26. Verdict of the Supreme Court from 26 February 2014, III CZP 103/13, Lex nr 1433733.

27. Verdict of the Court of Justice of the European Union from 6 February 2014 C – 323/12, Lex nr 1421774.

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28. Individual interpretation from 12 December 2011 of the Director of Revenue Office in Katowice, IBPP3/443-993/11/PK.

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