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THE IMPACT OF THE ADOPTED SECOND- INSTANCE TAX ADMINISTRATIVE ACTS ON THE BUDGET OF THE REPUBLIC OF SERBIA

Abstract: The Tax Administration, as one of the most important state bodies that participates in the process of collecting public revenues, among other functions it performs, also has the authority to adopt tax administrative acts which determine the amount of tax liability that taxpayers are obliged to pay. Taxpayers, on the other hand, are constantly looking for a way to avoid paying the determined taxes or to reduce the tax liability as much as possible. In this process, the activities of both parties have an impact on the budget and the amount of tax revenue collected. The paper discusses the Tax Administration's rights and obligations, specifically those related to the adoption of tax administrative acts, with an emphasis on the second-instance tax procedure as it directly affects the amount of collected revenues. Furthermore, the paper describes the role of taxpayers in the process of adopting tax administrative acts, focusing primarily on the institute of appeal in this procedure. The available data are also presented supporting the conclusions of this article.

Key words: tax procedure, budget, second-instance body, local self-government, appeal

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1. Introduction

The topic of this paper is the analysis of the impact that administrative acts, passed by the Tax Administration, have on public revenues. The paper consists of six sections which define the core functions of the Tax Administration and the legal norms on which it is based. In addition to this, emphasis is placed on the institute of appeals, which may have a negative impact on the revenue budget. Following an overview of competencies of the Tax Administration bodies in the third section of the paper, the fourth section discusses the time limits for these bodies in the process of determining an appeal, followed by the fifth section of the paper which discusses the negative effects that may arise in case of exceeding these time limits. The sixth section deals with the mechanisms and legal remedies that a party may use if they are dissatisfied with the second-instance administrative decision.

In addition to the voluntary settlement of tax liabilities determined by the taxpayer through self-taxation (Radičić and Raičević, 2011), the tax administration makes decisions in the process of determining the tax liability, in the process of checking compliance with tax regulations and proper assessment of tax liabilities (Milojević, 2010) by the taxpayer (Dobos and Takács-György, 2020, p.78) and in the process of forced collection of assessed, but unsettled tax liabilities. The decision of the tax authority may be quashed on appeal in the second-instance procedure or by administrative proceedings. An appeal is a regular legal remedy by which a party can challenge the legality or regularity of a decision made in the first instance tax-administrative procedure which determines the party's rights and obligations. The party dissatisfied with the decision passed in the first-instance procedure initiates the second-instance procedure by filing an appeal. The right to appeal is permitted to both parties in the procedure - the Tax Administration and the taxpayer, or other tax debtors (Lazić, 2018, p. 11). When the rights or obligations are decided by an appellate decision, the person can file an appeal like any other person with an interest in the proceedings (such as a tax guarantor or persons responsible for due secondary tax liability of another taxpayer).

2. Jurisdiction of state bodies in the second-instance tax administrative procedure

In this part of the paper, we will discuss the legal norms that give the Tax Administration the right to decide on tax administrative acts, the timing of the granted right, and the organization of the Tax Administration.

The Constitution of the Republic of Serbia (“Official Gazette of RS”, No. 98/2006 - hereinafter: the Constitution) guarantees two levels of administrative proceedings. The provision of Article 198, paragraph 1 of the Constitution prescribes that “Individual acts and actions of state bodies, organizations with delegated public powers, bodies of autonomous provinces and local self-government units must be based on the Law.” The Constitution, Article 198, paragraph 2, stipulates “Legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in an administrative proceedings”

In accordance with the Law on Ministries, specifically Article 3 (“Official Gazette of RS”, No. 128/20), the competent authority in appeals against first-instance tax decisions, made in the process of assessing, auditing and collecting tax by the Tax Administration and local tax administration, is the Ministry of Finance – Sector for Second-Instance Tax and Customs Procedure (hereinafter: the Sector).

Up until 30 June 2017, in accordance with the Law on Tax Procedure and Tax Administration (“Official Gazette of RS”, No. 80/02, 84/02, 23/03, 70/03, 55 / 04, 61/05, 85/05, 62/06, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2/12, 93/12, 47/13, 108/13, 68/14, 105/14, 91/15, 112/15 and 15/16), the Tax Administration was designated as the second-instance authority in tax-administrative procedure. This means that the same authority was making both first-instance and second-instance decisions. The amending Article 25 [s11] of the Law on Tax Procedure and Tax Administration published in the Official Gazette of RS 108/2016 stipulates that as of 1 July 2017, the competent authority for dealing with appeals against decisions of the Tax Administration and local tax administration in the field of own-source revenues is to be the basic organizational unit within the Ministry of Finance, i.e. the Sector

for Second-Instance Tax and Customs Procedure. Such a solution was primarily aimed at preventing the same authority from making decisions in both the first-instance and the second-instance proceedings, (Nikodijević, 2019, p. 119), particularly considering the fact that the decisions in first-instance and second-instance proceedings were often made by the same persons who work in the Tax Administration offices.

The Sector's competencies include: "Deciding on and processing of appeals filed against first-instance decisions made by the Tax Administration units and local tax authorities. The departments within the Sector prepare decisions and file answers to judicial bodies when these decisions are to be prepared and drafted for the application of extraordinary legal remedies, they also respond to lawsuits filed with the relevant court against decisions made in tax and customs administrative proceedings. The Sector decides on legal remedies against customs administrative acts of customs offices adopted in the first-instance customs administrative procedure relating to the application of regulations in the field of the customs system. The Sector prepares decisions for the execution of judgments of the court competent for resolving administrative disputes, and provides an analysis of tax-administrative court practice relating to the application of regulations that fall within the scope of the Sector." (Information booklet on the work of the Ministry of Finance, December, 2020). The sector is headed by an Assistant Minister.

In terms of organization, the Sector is divided into four internal units that perform activities related to the second-instance tax administrative cases. Further organization implies the application of the territorial principle, i.e. four departments for second-instance tax procedure in:

- Belgrade,
- Novi Sad,
- Kragujevac and
- Nis

3. Institute of Appeals in Tax Procedure

This part of the paper discusses a party's right to appeal the procedure of tax assessment. We will explain what an appeal is, when and how it is possible to file an appeal, i.e., the competence of the first-instance and second-instance authority in the procedure of deciding on the appeal.

The Law on General Administrative Procedure in Article 13, paragraph 1 ("Official Gazette of the RS", No. 18/16 and 95/18 - hereinafter: the Law on Administrative Procedure) stipulates that "Against the decision rendered in the first instance, i.e., if the body in the administrative matter has not decided within the prescribed time limit, the party has the right to appeal, unless otherwise regulated by law, and if the body in the administrative matter has not made a decision within the prescribed time limit." Article 151 and Article 159 of the Law on Administrative Procedure stipulate the conditions under which an appeal may be filed. The same right to appeal and the conditions under which the appeal is allowed are defined in Article 24, paragraph 1, item 13 and Article 140 of the Law on Tax Procedure and Tax Administration ("Official Gazette of RS", No. 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 62/06, 61/07, 20/09, 72/09, 53/10, 101/11, 2 / 12, 93/12, 47/13, 108/13, 68/14, 105/14, 91/15, 112/15, 15/16, 108/16, 30/18, 95/18, 86/19 and 144/20 - hereinafter: LTPTA). The party is allowed the right to appeal in case the decision is not issued within the statutory time limit. Administrative proceedings may be instituted against the final tax administrative act unless otherwise provided by law. Administrative proceedings may be initiated, as if an appeal had been denied, also in cases when the person who initiates proceedings states that his appeal has not been decided within the statutory time limit. An appeal against the first-instance decision shall be filed with a locally competent authority. The prepared second-instance decision is signed by the assistant minister in charge of the second-instance tax administrative procedure.

The first-instance tax authority may accept an appeal, if it finds that the appeal is justified and that it is not necessary to investigate the facts anew, if it finds that the conducted proceedings were incomplete, and that this could have had a bearing on decision-making, if the appel-

lant presents new facts and evidence which could be of relevance for the matter to be decided otherwise, if the appellant was not, although it was obligatory, given the opportunity to take part in the proceedings and if the appellant failed to participate in the proceedings, but has justified such failure in the appeal. If an appeal is inadmissible, belated, or filed by an unauthorized person, and the first-instance tax authority failed to dismiss it on those grounds, the second-instance authority will dismiss it in accordance with the LTPTA.

If an appeal is not dismissed, the second-instance authority takes the case into consideration, and it can:

- 1) deny an appeal;
- 2) annul the tax administrative act in whole or in part;
- 3) amend the tax administrative act.

4. Time limits for resolving appeals proceedings

The data presented in this part of the paper are based on the time limits that the authority in the tax-administrative procedure must adhere to, the time limits stated are in accordance with LTPTA, and the data table shows the number of filed complaints according to the decisions of territorial organizational units of the Tax Administration.

4.1. Time limits prescribed by LTPTA

According to the provisions of Article 147, paragraph 4 of the LTPTA, the second-instance authority, i.e., the Sector, in the appellate procedure is obliged to make a decision no later than 60 days from the day when the appeal was submitted. The first-instance tax authority, in the tax procedure upon appeal, may adopt the appeal and amend the tax administrative act and thus avoid the devolutive effect of an appeal. It must be noted that in this case it is still a matter of amending the first-instance tax administrative act, i.e., that the first-instance authority can resolve the appeal without having to forward it to the competent second-instance authority pursuant to Article 144, paragraph 2 of the LTPTA. In such cases, and in accordance with the provisions of Article

144, paragraph 7 of the LTPTA, the tax authority is obliged to make a decision no later than 30 days from the receipt date of the appeal.

4.2. Time limits for the second-instance appeal procedures

In practice, and contrary to the LTPTA, the second-instance authority decides the appeal outside the prescribed time limits. The time limits by which the second-instance authority decides the appeal are several times longer and it usually takes around one year and six months from the receipt date of the appeal for the decision to be made, considering the period from 1 July 2017, when the Sector was formed, as an organizational unit of the Ministry of Finance. If a shorter period of time is observed, it can be concluded that in the year the Sector was formed, i.e., in the period from 1 July 2017 to 31 December 2017, the authorities resolved appeals within one year and 11 months. Such a long period of decision-making by the second-instance authority is, of course, due to the large number of cases taken over from the second-instance authority within the Tax Administration at the time. With the transfer of the competence to act in the second-instance tax procedure, the Ministry of Finance took over 10,374 cases from the Tax Administration. In 2018, the time limit for determining the appeal was shortened to one year and five months. However, in 2019 the time limit was extended again, and now it amounts to one year and eight months. Considering the territorial organization of the Sector, below is a table with time limits in dealing with the appeals.

Table 1

Appeals taken over, received and resolved in the period by years (2017, 2018 and 2019)

| Department | 1 July - 31 December 2017 | | | 1 January – 31 December 2018 | | | 1 January – 31 December 2019 | | |
|------------------------------------|---------------------------|----------|----------|------------------------------|----------|----------|------------------------------|----------|----------|
| | Taken over | Received | Resolved | Taken over | Received | Resolved | Taken over | Received | Resolved |
| Belgrade | 2.360 | 1.939 | 1.132 | 3.167 | 4.559 | 6.424 | 1.302 | 3.578 | 4.331 |
| Novi Sad | 4.109 | 2.466 | 905 | 5.670 | 4.214 | 6.639 | 3.245 | 2.679 | 3.574 |
| Kragujevac | 1.751 | 1.378 | 682 | 2.447 | 2.263 | 2.794 | 1.916 | 1.589 | 1.633 |
| Nis | 1.774 | 1.022 | 515 | 2.281 | 2.127 | 2.757 | 1.651 | 1.691 | 2.261 |
| Customs | 380 | 1.858 | 1719 | 519 | 2.453 | 2.481 | 491 | 1.860 | 2.135 |
| Σ tax departments | 9.994 | 6.805 | 3.234 | 13.565 | 13.163 | 18.614 | 8.114 | 9.537 | 11.799 |
| Σ customs + tax departments | 10.374 | 8.663 | 4.953 | 14.084 | 15.616 | 21.095 | 8.605 | 11.397 | 13.934 |

Source: Information booklet on the work of the Ministry of Finance, December 2020

Table 1a

Appeals taken over, received and resolved in the period from 1 January – 30 June 2020

| Department | <i>January 1 – June 30 2020</i> |
|--------------------------|---------------------------------|
| | Resolved |
| Belgrade | 1.927 |
| Novi Sad | 2.147 |
| Kragujevac | 920 |
| Nis | 924 |
| Customs | 579 |
| Σ tax departments | 5.918 |

5. Consequences of exceeding time limits in the appeal procedure

The tax liability determined by the appealed decision cannot be forcibly collected when the second-instance authority in the appeal procedure does not act in accordance with the provision of Article 147, paragraph 4 of the LTPTA, that is, if the decision is made 60 days from the delivery date of the appeal, according to Article 79, paragraph 1, point 4) of the LTPTA and Article 147, paragraph 6 of the LTPTA. Also, if the procedure of forced collection (Janjetović, 2015, p. 41) has started, it must be terminated until the taxpayer, i.e. appellant, who filed an appeal against the decision, is served with the reviewed decision, i.e., until the first-instance authority acts upon the order of the second-instance authority by which the decision was annulled on appeal. The tax authority then issues a decision to terminate the forced collection procedure, according to the provisions of Article 147, paragraph 6 of the LTPTA. The Tax Administration is obliged to terminate the forced collection procedure and, in case the appeal procedure is not completed within the prescribed time limits, the forced collection is suspended until the person who filed an appeal against the first-instance decision is served with the second-instance decision, i.e., until the first-instance authority acts as ordered by the second-instance authority and makes a new decision in a repeated procedure.

The procedure of forced collection of taxes is suspended *ex officio* when the tax liability that is the subject of the forced collection is annulled. Lengthy time limits for deciding cases on appeal, especially in repeated procedures, can lead to the expiry of the limitation period for tax assessment and collection. The Limitation Period within the tax procedure refers to the passage of time after which certain rights and powers or certain relations cease to exist. The subject of law cannot exercise his rights and powers indefinitely. Therefore, the legislator defines a deadline within which the rights and powers can be exercised. If the subject of law does not exercise his rights within the prescribed period, his rights and powers cease to exist as it is considered that if one does not exercise (does not use) his rights and powers and has no interest in doing so, he renounces them. Following the limitation period for tax assessment and collection (Gogić, 2020, p. 22), The Tax Administration

and the local tax authority will not be able to assess or collect taxes and secondary tax liabilities if the limitation period expires, which occurs five years from the date the limitation period starts to run, according to Article 114, paragraph 1 of the LTPTA.

6. Administrative dispute vs. the adopted second-instance tax administrative act

The decision of the second-instance authority in tax administrative cases is final, i.e., there is no regular legal remedy in the form of further proceedings concerning the administrative case that was decided on by the second-instance authority. However, a taxpayer dissatisfied with the second-instance tax administrative act (decision) may consider bringing a case to the Administrative Court. The Administrative Court is a special court established by the Law on Organisation of Courts (“Official Gazette of the RS”, No. 116/2008, 104/2009, 101/2010, 31/2011 - other law, 78/2011 - other law, 101 / 2011, 101/2013, 106/2015, 40/2015 - other law, 13/2016, 108/2016, 113/2017, 65/2018 - AC decision, 87/2018 and 88/2018 - AC decision) that adjudicates in administrative disputes. In an administrative dispute, the court also decides on the legality of final individual acts, which determine a party’s right, obligation or legal interest, in respect of which the law at times does not provide effective judicial protection. Considering the quality of the decisions made in tax administrative proceedings, the protection of the taxpayer as a party in the proceedings (Vladislavljević & Pešić, 2018, p. 94) further prolongs the proceedings conducted by the tax authority against taxpayers since the judgment in favor of the claimant in the administrative dispute annuls the final decision. When the case is returned for a new procedure, the second-instance authority is obliged to act as ordered by the court. In such cases, the second-instance authority will annul the first-instance decision and return the case to the authority that ordered a retrial, and the budget will be deprived of the amount of determined tax or, if not completely deprived, then at least negatively affected by the tax deferral. All this prolongs the decision-making deadlines in terms of the enforceability of the decision and leads to increased costs, concerning both the

budget and the taxpayers. Here is an illustration of the work of the second-instance authority.

Table 2

The structure of decisions in the second-instance tax administrative procedure and initiated administrative disputes in 2019

| Department | Annulled decisions | | Rejected decisions | | Total no. of decision | | Sued decision | |
|------------|--------------------|--------------|--------------------|--------------|-----------------------|---------------|---------------|--------------|
| | Number | % | Number | % | Number | % | Number | % |
| Belgrade | 1.406 | 41,59 | 1.975 | 58,41 | 3.381 | 100,00 | 547 | 27,70 |
| Novi Sad | 1.660 | 54,27 | 1.399 | 45,73 | 3.059 | 100,00 | 142 | 10,15 |
| Kragujevac | 482 | 31,00 | 1.073 | 69,00 | 1.555 | 100,00 | 205 | 19,11 |
| Nis | 830 | 43,48 | 1.079 | 56,52 | 1.722 | 100,00 | 508 | 47,08 |
| Σ (Total) | 4.378 | 44,20 | 5.526 | 55,80 | 9.904 | 100,00 | 1.402 | 25,37 |

Source: Ministry of Finance

Based on the stated data, it can be concluded that in the appeal procedure, many first-instance decisions are annulled, as a matter of fact, as much as 44.20% of first-instance decisions are annulled. In 55.80% of cases in which an appeal was filed, the second-instance authority confirmed the first-instance decision by rejecting the appeal as unfounded.

However, the actions of the second-instance authority are not uniform, so it can be noted that the departments in Belgrade and Nis act on the average level of the Sector, while the departments in Novi Sad and Kragujevac record significant deviations from the average. Ob-

servicing the results of second-instance procedures by departments, it can be concluded that the fewest annulled decisions were made by the Department in Kragujevac - 31%, while the largest number of annulled decisions, according to draft decisions, was made by the Department in Novi Sad - as much as 54.27%. Regarding the number of initiated administrative disputes, the Department in Nis displays the least favorable situation, where in as many as 47.08% of cases in which an appeal against the first-instance decision was rejected for being unfounded, a claim is started before the Administrative Court, while the smallest percentage of appealed final decisions is in Novi Sad - only 10,15%. In most cases, the main reason for appealing these tax decisions is non-compliance with the time limits prescribed by Article 140 of the LTPTA, while a smaller number of appeals were filed because the procedure was not conducted properly, that is, it was incomplete, and also for providing other important facts which can affect the tax decision and the amount of tax debt. (<https://www.mfin.gov.rs>).

7. The costs of contesting the tax-administrative act

The provisions of Articles 85 and 87 of the Law on Administrative Procedure prescribe who bears the costs of the procedure. Article 85, paragraph 1 of the Law on Administrative Procedure stipulates that the costs of the procedure shall be borne by the authority conducting the procedure, while paragraph 2 of the same Article stipulates that this authority shall also bear the expenses of the procedure initiated *ex officio* and resolved in favor of the party unless otherwise provided by law.

When a decision on an administrative matter is made, it also states the costs of the procedure. When the second-instance authority decides the administrative matter itself, it specifies the costs of both the first and the second instance procedure. In an administrative dispute, the Administrative Court decides on the costs of the procedure. In proceedings in which a party hires a lawyer to protect his rights and the appeal procedure is subsequently successful, i.e., the lawsuit against the final decision made in the second-instance tax administrative procedure ends in favour of the party, the costs of the procedure shall be borne by

the authority whose decision was annulled as defined by Article 24 of LTPTA.

The party who submits an appeal against the passed tax administrative act is obliged to, by Tariff No. 6 or 7 of the Law on Republic Administrative Fees (“Official Gazette of RS”, No. 43/2003, 51/2003 - amended 61/2005, 101/2005 - other law, 5/2009, 54/2009, 50/2011, 70/2011 - adjusted amount, 55/2012 - adjusted amount, 93/2012, 47 / 2013 - adjusted amount, 65/2013 - other law, 57/2014 - adjusted amount, 45/2015 - adjusted amount, 83/2015, 112/2015, 50/2016 - adjusted amount, 61/2017 - adjusted amount, 113/2017, 3/2018 - amended, 50/2018 - adjusted amount, 95/2018, 38/2019 - adjusted amount, 86 / 2019, 90/2019 - amended, 98/2020 - adjusted amount and 144/2020 - hereinafter the Law on Republic Administrative Fees), pay the fee in order for the procedure to be initiated. The current fee for filing an appeal against the decision of the Tax Administration made in the administrative procedure is 1,970.00 RSD, in accordance with Tariff No. 7, paragraph 5 of the Law on Republic Administrative Fees.

If the court decides that the taxpayer’s rights have been violated, compensation for damages and court costs shall be borne by the budget of the Republic, or the local self-government units, as prescribed in Article 24, paragraph 3 of the LTPTA.

During tax proceedings, the Tax Administration does not pay any taxes, fees or other expenses for actions and services provided to it by state bodies, governmental bodies responsible for record keeping, banks and other bodies and organizations, as stated in Article 166 of the LTPTA.

Here, we should also mention the fees and expenses determined by the lawyer’s tariff system which represent lawyers’ compensation for their legal services, i.e., submitting motions, filing appeals, initiating lawsuits and participating in hearings related to a specific tax procedure or administrative procedure.

Table 3

Lawyer's fees in tax administrative proceedings and administrative disputes

| Submission | Hearing | Appeal |
|-------------------|----------------|---------------|
| 30,000.00 RSD | 31,500.00 RSD | 60,000.00 RSD |

8. Conclusion

The success of the Tax Administration and the Revenue Administration of local self-government units is measured by the amount of tax revenue collected (Pantić, Jovanović and Issa, 2019, p. 43) since it is only the continuous collection of tax revenue that ensures unhindered financing of public services and projects provided by state and local governments (Đorđević and Krstić, 2020, p.12). Therefore, it is the efficient, continuous, and effective collection of taxes from all taxpayers that is the most important task of the tax administration (Popović, 2014).

Considering the fact that in 2019, as many as 1,402 second-instance decisions in tax-administrative cases were appealed, it was not surprising to see a direct increase in state budget expenditures. Given that the paper has already stated that the main reasons for disputing both the first and the second instance decisions of the Tax Administration bodies were non-compliance with the time limits prescribed by the LTPTA, failure to conduct the procedure properly, as well as providing other important facts that may affect the decision, we can conclude that it is necessary to:

- Increase the efficiency of tax administration bodies, especially in terms of respecting time limits prescribed by Article 140 of the LTPTA, which can be achieved either by increasing the number of employees in the Tax Administration by means of employment reform programme or by amending the provisions of the LTPTA which deal with time limits and modifying these limitations to meet the conditions,

- Identify irregularities in decisions made and point them out in order to avoid repeating the same mistakes,
- Make decisions with as much evidence as possible that support the decision made.

Adoption of some of the above proposals would greatly contribute to the improvement of tax collection, and would certainly reduce the number of administrative disputes and relieve Administrative Courts.

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