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ADMINISTRATIVE PROCEEDINGS VS. TAX PROCEEDINGS

POSTĘPOWANIE ADMINISTRACYJNE A POSTĘPOWANIE PODATKOWE

ABSTRACT

Tax proceedings are a separate type of administrative proceeding, which is conducted by tax authorities. It has the character of an authoritative, public-law concretization, a unilateral legal relationship in the field of tax law. The provisions governing the proceeding include both the Tax Ordinance and the Code of Administrative Procedure. The purpose of tax proceedings is to assess tax... Administrative proceedings are both a series of procedural actions, regulated by procedural law, taken by public administration bodies and other procedural entities to resolve an administrative matter in the form of an administrative decision, and a series of procedural actions taken to verify a previously issued administrative decision.

STRESZCZENIE

Postępowanie podatkowe stanowi odrębny rodzaj postępowania administracyjnego, które jest prowadzone przez organy podatkowe. Ma ono charakter władczej, publicznoprawnej konkretyzacji, jednostronnego stosunku prawnego z zakresu prawa podatkowego. Przepisy regulujące postępowanie obejmują zarówno przepisy Ordynacji podatkowej, jak i Kodeks postępowania administracyjnego. Celem postępowania podatkowego jest wymiar podatku. Postępowanie administracyjne to zarówno regulowany przez prawo procesowe ciąg czynności procesowych, podejmowanych przez organy administracji publicznej oraz inne podmioty postępowania w celu rozstrzygnięcia sprawy administracyjnej w formie decyzji administracyjnej, jak i ciąg czynności procesowych podjętych w celu weryfikacji uprzednio wydanej decyzji administracyjnej.

KEYWORDS: *Tax proceedings, administrative proceedings, Tax Ordinance, Code of administrative proceedings, administration decision, tax decision*

SŁOWA KLUCZOWE: *postępowanie podatkowe, postępowanie administracyjne, Ordynacja podatkowa, Kodeks postępowania administracyjnego, decyzja administracyjna, decyzja podatkowa*

INTRODUCTION

Administrative procedure, also called formal administrative law, procedural administrative law or administrative procedure, is one of the three parts of administrative law. The first part of administrative law – substantive law – defines the rights and obligations of the addressees of administrative law norms, i.e. administrative bodies and entities dealing with administrative matters. The second part of administrative law – administrative proceedings – regulates the manner and form of dealing with administrative matters relating to specific entities not subordinated to these bodies by public administration bodies. However, administrative proceedings do not concern internal affairs of administration, in which the two entities involved in the case are public administration bodies. The third part of administrative law – systemic law – regulates the structure, organization and competences of public administration bodies. The norms of constitutional law are contained in the Constitution of the Republic of Poland of April 2, 1997 and in many other acts (called systemic acts). Administrative proceedings in Poland are codified, which means that their most important issues are regulated in an act in the form of a code. The act regulating administrative proceedings is the Act of June 14, 1960 – Code of Administrative Procedure. However, it should be remembered that administrative law is a very extensive branch of public law and it regulates many, often very different, issues. For this reason, the Code of Administrative Procedure may be supplemented by other acts. These acts are referred to as *lex specialis* in relation to the Code of Administrative Procedure (Stawecki, Winczorek, 2003).

Tax proceedings are aimed at making determinations in an appropriate legal form regarding the existence, amount and performance of tax liabilities, but not all activities aimed at this purpose can be considered tax proceedings. This is due to the fact that the tax authority will not always be directly involved in such proceedings. In some proceedings, payers or collectors take part, and the task of the tax authority is limited to verification tasks. Tax proceedings are aimed at making determinations in an appropriate legal form regarding the existence, amount and performance of tax liabilities, but not all activities aimed at this purpose can be considered tax proceedings. This is due to the fact that the tax authority will not always be directly involved in such proceedings.

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TYPES OF ADMINISTRATIVE LAW NORMS

Tax proceedings are aimed at making determinations in an appropriate legal form regarding the existence, amount and performance of tax liabilities, but not all activities aimed at this purpose can be considered tax proceedings. This is due to the fact that the tax authority will not always be directly involved in such proceedings. In some proceedings, payers or collectors take part, and the task of the tax authority is limited to verification tasks. Administrative law in a general way can be defined as that part of the legal order that norms the structure and functioning of public administration in its peculiar forms of action (regulates public administration in the sense of subjects and objects). Referring to the content of the function of public administration, administrative law consists of an ordered set of legal norms, the *raison d'être* of which is the direct implementation by public administration bodies of values distinguished in terms of the common good. The concept of the common good refers to the axiological basis of this branch of law, since it aggregates all the constitutionally and statutorily defined values for the implementation of which the law is made (Cieślak, 2002).

Taking into account the criterion of how to concretize the substantive legal powers and obligations of the individual, we can distinguish:

1. substantive legal norms that require concretization through an administrative act – in particular, an administrative decision (for example, a norm providing for the obligation to demolish an arbitrarily erected building);
2. substantive legal norms that do not require concretization through an administrative act, where rights or obligations arise *ex lege* with the realization of a certain factual state (e.g., the norm imposing on the driver of a vehicle the obligation to use while driving passing lights)

Administrative procedure in the strict sense means a series of procedural actions, normalized by procedural law, taken by public administration bodies and other subjects of the proceedings, in order to concretize and realize powers or obligations of a substantive legal nature. The scope of the concept of administrative procedure so understood strative includes:

1. jurisdictional proceedings aimed at establishing a specific right or obligation of a substantive legal nature of a named addressee by means of an external administrative act (in particular, an administrative decision). Within its framework, a distinction is made between:
 - a. general jurisdictional proceedings (referred to as administrative) – aimed at issuing an administrative decision, regulated in Sections I, II, IV, IX and X of the KPA and applicable to the jurisdictional activities of all public administration bodies, unless – by special provisions – it has been expressly excluded or limited in its application to a specific category of cases,
 - b. special jurisdictional proceedings – also aimed at issuing an administrative decision, but normalized in whole or in substantial part outside the Code of Administrative Procedure (e.g., tax, customs, industrial property, diplomatic and consular, social security, before regulatory authorities – the President of the Energy Regulatory Authority, the President of the Office of Electronic Communications and the President of the Railway Transport Authority, or before an antitrust authority – the President of the Office of Competition and Consumer Protection),
 - c. jurisdictional proceedings ending in a tacit settlement of the case – its culmination may be a so-called concluding administrative act granting the party's request in full (cf. Article 122a § 2 of the KPA); this procedure is provided for in Chapter 8a of Section II of the KPA and special provisions;
2. enforcement proceedings, normalized in the Law of 17.6.1966 on Administrative Enforcement Proceedings (unified text, Journal of Laws of 2017, item 1201, as amended), and whose purpose is to bring about the enforcement, through the use of state coercive measures, of obligations arising from acts subject to administrative enforcement,

in particular, from administrative acts issued in jurisdictional proceedings. We can divide the enforcement procedure into:

- a. enforcement proceedings *sensu stricto*, which are aimed directly at inducing the obligee by the enforcement authority to perform an administrative-legal obligation, or at the enforcement authority's performance of said obligation,
- b. collateral proceedings, which are accessory and prior in nature to the aforementioned. It consists in the application of coercive measures by the enforcement authorities to guarantee future performance of obligations subject to administrative enforcement.

The prerequisite for the execution of security is when, in the opinion of the enforcement authority, its absence could hinder or frustrate future enforcement. It should be noted that jurisdictional and enforcement proceedings are not the only procedural regulations used by the administrative apparatus. The scope of duties of public administration bodies included not only the implementation of the norms of substantive administrative law, but also the implementation of other public tasks, using specific legal forms of action, which correspond more or less precisely to regulated procedures of an administrative nature. Therefore, the concept of administrative proceedings *sensu largo* was introduced in the doctrine. Most often, it is defined as a series of procedural activities regulated by procedural law by public administration bodies and other entities in the proceedings, aimed either at implementing a substantive law norm or at establishing another legal effect required by law. This effect may consist in particular in: resolution about the right or obligation of an individual in an administrative decision, compulsory performance of an obligation under administrative enforcement, post-inspection determination, issuance of a normative act, consideration of a complaint or application under Chapter VIII of the Code of Administrative Procedure (*Łaszczycza 2005*).

This definition of the administrative procedure in the broad sense allows us to conclude that its scope covers the following proceedings:

1. administrative proceedings in the strict sense (i.e. jurisdictional proceedings and enforcement proceedings);
2. additional proceedings, including:

- a. procedure for issuing certificates, regulated in section VII of the Code of Administrative Procedure and section VIIIa of the Act of August 29, 1997 – Ordinance supplementary text (consolidated text: Journal of Laws of 2017, item 201, as amended), aimed at or confirmation of specific facts or legal status by means of an official document (material and technical activity) issued at the request of an authorized person by a public administration body,
- b. proceedings in matters of complaints and applications, regulated in Section VIII of the Code of Administrative Procedure, aimed at:
 - assessing the functioning of the bodies and institutions mentioned stipulated in Art. 221 § 1 of the Code of Administrative Procedure as a result of expression by anyone (individual or collective entity) dissatisfaction with their activitiesness;
 - considering proposals to improve the activities of the entities indicated in Art. 221 § 1 of the Code of Administrative Procedure;
3. proceedings for resolving disputes over jurisdiction between local government bodies and government administration bodies, as well as between bodies performing functions delegated to public administration, which are partially regulated by Art. 22 § 1 and art. 23 of the Code of Administrative Procedure and Art. 19–20 of the Tax Ordinance. This procedure aims to determine the authority authorized and obliged in a specific case to deal with the matter by way of an administrative decision, conduct administrative enforcement, issue a certificate, consider a complaint or process an application, in a situation where either at least two public administration bodies they consider themselves competent to undertake these activities (positive dispute over jurisdiction), or none of the authorities recognizes their competence in this respect (negative dispute over jurisdiction);
4. separate (special) proceedings – their feature is that, unlike the procedures discussed so far, they are not directly related to dealing with individual matters of citizens (units). They are undertaken primarily in the public interest (collective interest), on the basis of separate

procedures to which the Code of Administrative Procedure can only have supplementary application (Niewiadomski, 2002).

ADMINISTRATIVE PROCEEDINGS

Pursuant to Art. 1 of the Act of 14 June 1960 – Code of Administrative Procedure (Journal of Laws of 2023, item 775) regulates:

- rules of procedure before public administration bodies in relevant individual cases;
- proceedings before other state authorities and entities when they concern individual cases; proceedings in matters of jurisdiction between local government bodies and government administration bodies;
- proceedings regarding the issuance of certificates;
- imposing and imposing administrative fines and the procedure for European administrative cooperation.

The provisions of the Code do not apply, among others: for proceedings in criminal fiscal and tax matters – regulated in the Tax Ordinance and falling within the jurisdiction of Polish diplomatic missions and consular offices. Although the Act provides for several exceptions, it should be assumed that the Code of Administrative Procedure will apply to most matters dealt with in public administration bodies.

Rules of administrative proceedings in the light of the Administrative Code. Administrative proceedings, like any other proceedings, are governed by their own rules. Only by following them can you be sure that the principles of the rule of law are being implemented. Public administration bodies are guided by the principles set out in Chapter II of the Code of Administrative Procedure. Belong to them:

- the principle of the rule of law, i.e. acting on the basis of legal provisions;
- the principle of objective truth, characterized by the obligation to precisely explain the facts in order to settle matters in accordance with the social interest and the interest of the citizen;

- the principle of resolving doubts in favor of the party, i.e. taking into account the citizen's interest if an obligation is imposed on him or his rights are taken away during administrative proceedings, and the regulations on a given issue are not clear;
- the principle of cooperation between public administration bodies, i.e. cooperation between various bodies in order to clarify the matter using appropriate means;
- the principle of trust in public authority, which consists in conducting affairs in such a way that it inspires confidence of its participants in public authority;
- the principle of informing the parties, i.e. providing all necessary information to the party in the proceedings that influences the course of the case and determines the rights or obligations of the party;
- the principle of active participation of the party in the proceedings, characterized by the fact that the authorities are obliged to enable the party to actively participate in the proceedings, and departure from this principle may only take place in exceptional circumstances;
- the principle of persuasion, i.e. the obligation to explain the premises that guide the authority when dealing with a case;
- the principle of speed and simplicity of proceedings, i.e. the obligation to resolve the matter immediately and by the simplest means;
- the principle of amicable resolution of disputes, i.e. striving to resolve the matter by way of settlement when disputes arise between the parties during the proceedings;
- the principle of written proceedings, which requires that matters be recorded in writing: it may be in both paper and electronic form, also using automatically generated and online documents;
- the principle of enabling the assessment of the activities of offices managed by public administration bodies, it allows for the assessment of the work of the office and its employees;
- the principle of two-instance proceedings, which may be omitted only if a specific provision so provides;

- the principle of durability of administrative decisions, which states that decisions are final and can only be reversed in cases described in the code.

The catalog of principles presented above is the foundation for conducting administrative proceedings. Conducting them in accordance with the law and within the limits of the law means that the parties to the proceedings have confidence in the public authority whose decisions issued in accordance with the law will be respected (Stawecki, Winczorek, 2003).

Taking into account the above principles, administrative proceedings play a special role in public life. Without clearly defined rules of conduct, it would be extremely difficult to gain citizens' trust in administrative bodies. What are the most important functions of administrative proceedings (Piątek, Sawczyn, 2020):

1. Protection of the rights of citizens and business entities. Administrative proceedings provide citizens with the opportunity to defend their rights and interests in the context of decisions and actions of public administration bodies.
2. Ensuring the rule of law. Organizing and carrying out administrative procedures on the basis of applicable legal provisions ensures that administrative bodies do not act in a discretionary manner and their activities are subject to control and evaluation.
3. Transparency and access to information. Administrative proceedings require keeping records and sharing information. It also allows a party to access documents related to its case.
4. Determining administrative responsibility. As part of the administrative procedure, it can be clarified and determined whether the administrative authority acted in accordance with the law.
5. Dispute resolution. Administrative proceedings enable the resolution of conflicts between citizens and public administration. A party dissatisfied with an administrative decision may appeal to a higher instance or to an administrative court, which results in a re-analysis of the case.
6. Preventing abuse of power. Administrative proceedings are a mechanism for controlling the activities of public administration bodies.

Administrative proceedings are therefore a key element of a democratic state of law and aim to ensure a balance between the interests of citizens and the activities of public administration. An important function of the proceedings is also to ensure compliance with the law in relations between citizens and the state.

Administrative procedures create a scheme of actions aimed at issuing an administrative decision. The administrative procedure consists of several stages. The first thing that should be indicated is the initiation of proceedings. It does not matter whether the proceedings are initiated *ex officio* or upon request. This is the first and necessary element of the administrative procedure. The next stage is evidentiary proceedings, in which the authority is obliged to determine the factual and legal status. On their basis, a final decision will be made. The next stage is an administrative decision, issued after collecting evidence and possibly hearing the parties or consulting another authority. The final step is the appeal. It belongs to the party to the proceedings and may be brought only to one instance (Kmieciak, 2014).

After completing the entire administrative procedure, the decision becomes final and the proceedings are completed. Administrative proceedings are a process conducted by public administration bodies in order to resolve a specific case or make decisions in matters relating to various areas of social life. It may concern many different issues, depending on the competences and scope of activity of a given administrative body, including: issuing evidence, vehicle registration, construction law (obtaining permits), labor law in terms of inspections, environmental protection law in terms of compliance with the Environmental Protection Act and many other areas in which a decision is necessary (Kmieciak, Wegner, Wojtuń, 2023).

Administrative proceedings are aimed at resolving a given case. Most often in the form of a decision. Therefore, it is not a procedure similar to court proceedings in which someone's case is proven. Additionally, the administrative proceedings do not involve a court or a mediator, but a state administration body. Administrative proceedings are less formalized than court or tax proceedings. However, it cannot be said that the proceedings have no features in common with court or tax proceedings. In all these proceedings, the most important principles are the rule of law, access to information, hearing of the parties and presentation of evidence.

TAX PROCEEDINGS

Tax proceedings are a type of administrative proceedings. They are carried out by the tax authority of the first instance, which may be the head of the tax office, the head of the customs and tax office, the commune head, the mayor, the city president, the starosta, or the voivodeship marshal. The proceedings are carried out ex officio or at the taxpayer's request. When initiated ex officio, it requires the issuance of a decision by the competent authority. The delivered decision begins the entire procedure. Most often, tax proceedings occur after irregularities in tax settlements are detected during a tax audit. Art. 165b par. 1 of the Tax Ordinance says that (Brzeziński, Morawski, 2015) if the tax inspection reveals irregularities as to the compliance of the inspected person with the obligations arising from the provisions of tax law and the taxpayer fails to submit a declaration or fails to correct the declaration in full to take into account the revealed irregularities, the tax authority shall initiate tax proceedings in the matter that was the subject of the tax inspection, no later than 6 months from the end of the inspection.

The basic rule regarding the deadline for conducting evidentiary proceedings is that unless the provisions of the Tax Ordinance provide otherwise, evidentiary proceedings should be conducted as soon as possible, without undue delay, but no later than within 1 month. In the case of a more complicated case, this may be 2 months from the date of initiation of the proceedings. If the case is likely to be resolved only on the basis of evidence presented by the party together with the request to initiate proceedings or on the basis of facts that are generally known and on the basis of evidence known ex officio, then the authority conducting the proceedings should consider the case immediately. If an appeal proceeds, it should be considered no later than 2 months from the date of receipt of the appeal by the appeal body. If a hearing was held in a given case or a party submitted a request for one, the date of the appeal proceedings may be set for no later than 3 months. The given deadlines are not absolute. They did not include: deadlines provided for in tax law relating to specific activities, periods of suspension of proceedings and periods of delays caused by the fault of the party or for reasons beyond the control of the authority.

Failure to meet the deadline due to the authority's fault. Sometimes it may happen that the authority will not be able to resolve the matter within the required time. In such a situation, he is obliged to notify the party about this fact and provide the reasons for failure to meet the deadline, indicating the new date for settling the matter. The authority notifies and sets a new deadline also when failure to meet the deadline was beyond its control. If the authority fails to meet the deadline, the party to the proceedings has the right to submit a reminder to: higher tax authority, director of the tax administration chamber, Head of the National Tax Administration.

If the authority to which the reminder was sent finds that it was justified, it will set an additional deadline for settling the matter and issue an order obliging it to explain the reasons and identify the persons responsible for settling the matter within the deadline. If necessary, the authority may take measures that will prevent violations of deadlines in the future. The authority should also check whether the failure to meet deadlines in settling the case was not in gross violation of the law. An employee who, for unjustified reasons, does not resolve the matter on time is subject to liability, including disciplinary action. As a party to tax proceedings, an entrepreneur may act as a taxpayer, payer, collector, legal successor, third party or other entity listed in the Tax Ordinance. However, it is not stated that in every case he must participate in the proceedings in person. In these matters, he may be replaced by an attorney-in-fact, unless the nature of the activity requires his personal action. A natural person with full legal capacity may become a representative. There are three types of powers of attorney with different scope:

- general power of attorney – allows you to act in all tax matters, as well as in other matters that fall within the jurisdiction of the tax authorities. All information about the granted powers of attorney, their changes, revocation or termination is available in the Central Register of General Powers of Attorney, which is published by the Head of the National Tax Administration.
- special power of attorney – allows you to take action in a specified tax matter or other specified matter that falls within the jurisdiction of the tax authority. The power of attorney may be granted in writing or in the form of an electronic document or reported orally to the minutes

- power of attorney for service – the party is obliged to appoint a representative for service in the country if it does not appoint a general or special representative. In this situation, a power of attorney is established when:
- changes the address of residence or changes the address of habitual residence to an address in a country that is not an EU Member State does not have a place of residence or habitual residence in Poland or another EU Member State and submits an application to initiate proceedings in the country or was served with a decision to initiate proceedings in the country.

In tax proceedings, evidence includes in particular: tax records, declarations submitted by the party, witness statements, expert opinions and materials and information from the inspection, tax information and other documents collected during KAS's analytical activities, during inspection activities, during tax inspections or customs and fiscal inspections and materials collected during criminal proceedings or proceedings in cases of fiscal crimes or fiscal offenses.

The word *in particular* means that the catalog is not closed. In this situation, evidence may be anything that will help establish the facts and contribute to clarifying the case, and is in accordance with the law. Evidence obtained illegally cannot in any way constitute the basis for a tax charge. Tax books are evidence of particular importance and should be kept reliably and without any defects. Only such can be evidence. The reliability of the book lies in the fact that the entries in it reflect the actual situation. Keeping books in a fault-free manner means that the books are kept in accordance with applicable regulations. Tax authorities may also use other evidence. In addition, a party to the proceedings also has the right to present evidence (Wołowiec, 2018).
Conducting tax proceedings – other rules:

1. The principle of legalism. Tax authorities act in accordance with the law. Their action cannot be based on the principle of discretion. All actions must be taken on the basis of legal provisions and cannot depend on the will of an official. The proceedings must be conducted in such a way as to inspire confidence in the office. At each stage, the taxpayer has the right to obtain information and explanations related to tax regulations related to the conducted proceedings. It is the duty

- of the tax authority to strive to clarify the factual situation as precisely as possible. The taxpayer has the full right to actively participate in tax proceedings. After its completion, a decision is issued. The parties have the right to comment on the evidence and materials collected, as well as the submitted requests. The exceptions are cases relating to security and tax pledges and decisions issued in connection with the full acceptance of a party's application in proceedings initiated at its request.
2. The principle of convincing the party that the tax authority is right. The tax authorities are obliged to explain to the party what the grounds were when explaining the case, so that the parties can implement the decision without coercive measures.
 3. The principle of simplicity and speed of proceedings. Tax authorities should take action in a given case quite carefully and relatively quickly, using the simplest possible means to resolve the matter. A case in which evidence, information or explanations do not need to be collected should be resolved as soon as possible.

CONCLUSIONS

The general principles of tax proceedings are characterized by the lack of certain principles (the principle of taking into account the legitimate interests of the parties and the social interest; the principle of supervision over the proceedings, the principle of judicial review), the limited principle of information (only to the provisions legal regulations), the principle of transparency. The party to the proceedings is the taxpayer, payer, collector, heir, third party (Article 133 in connection with Articles 7-9 of the Tax Ordinance and Articles 110-117 of the Tax Ordinance), as well as a civil partnership as a party and spouses as one party to the proceedings. Entities with the rights of a party may be a social organization only with the consent (Article 133a of the Tax Ordinance) and a prosecutor, in accordance with the Code of Administrative Procedure. Regarding the deadlines for settling the case – a hearing (3 months) and you are entitled to a reminder if the case is not resolved on time. Summons – obligation to appear in person (province – Article 156 of the Tax Ordinance). The proceedings are initiated

ex officio by issuing decisions (resolutions) and without initiating the proceedings (Article 165 § 5 of the Tax Ordinance) – there is no obligation to issue a decision to initiate (Article 165 § 6 and 7 Tax Ordinance, as well as initiating proceedings after a tax audit. Evidence – submitting a declaration of assets as of a specific date; additional types of evidence (tax information and other documents collected in the course of verification activities or tax audits, subject to Article 284a § 3, Article 284b § 3 and Article 288 § 2 of the Tax Ordinance, and materials collected in the course of criminal proceedings or proceedings in cases of fiscal crimes or fiscal offenses); digitally reproduced application and declarations; information from banks; evidence from tax records. The parties have a time limit to comment on the evidence collected (Article 200 of the Tax Ordinance Code).

Tax proceedings and administrative proceedings – list of main differences. Suspension of proceedings – additional conditions for mandatory suspension (from January 1, 2016 – in the event of filing a complaint to the administrative court against a decision repealing the decision of the first-instance authority in its entirety and remitting the case for reconsideration by this authority or declaring the decision invalid). It is not possible to resolve the preliminary issue on your own, which is a form of suspending the optional proceedings. Appeal – requirements and elements of an appeal; non-devolutionary appeal and we have a formula for leaving the appeal without consideration due to missing elements.

Decisions of the appeal body – a decision repealing and transferring the case to the competent body; other grounds for transferring the case to the first instance authority. There is a general ban on reform decisions in the case of administrative discretion. Implementation of the decision – in the Code of Administrative Procedure the power of appeal is regulated, the enforceability of the decision is regulated in the Tax Ordinance (Article 239a et seq.). There is no possibility of making the decision immediately enforceable. Resumption of proceedings – new grounds for resuming proceedings (e.g. Article 240 point 11 of the Tax Ordinance). The form of refusal to resume is a decision. Repeal or change of a decision – exclusion of the possibility of changing and repealing the decision (Article 253b). Changing the decision establishing or determining the amount of tax liability (Article 254) and limitation of the right to request a change of decision (Article 256 of the Tax Ordinance).

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