Glosa
PRAWO GOSPODARCZE
W ORZECZENIACH I KOMENTARZACH

PRAWO HANDLOWE

WŁASNOŚĆ INTELEKTUALNA

OCHRONA KONKURENCJI

PODATKI

Wersją podstawową (referencyjną) czasopisma jest wersja papierowa.

Zgodnie z komunikatem Ministra Nauki i Szkolnictwa Wyższego z 17.12.2013 r. w sprawie wykazu czasopism naukowych wraz z liczbą punktów przyznawanych za publikacje w tych czasopismach, każda publikacja ukazująca się na łamach GLOSY otrzymuje 6 punktów.

WARUNKI PRZYJMOWANIA TEKSTÓW DO DRUKU

Materiały do publikacji – o objętości do 15 stron znormalizowanego maszynopisu (ok. 25 tysięcy znaków ze spacjami) – przyjmujemy pocztą elektroniczną lub zwykłą, z załączoną płytą CD (z imieniem, nazwiskiem, krótkim CV oraz telefonami kontaktowymi i adresem e-mail). Tekst musi zawierać tytuł, krótkie wprowadzenie (lead) oraz abstrakt w języku polskim, o objętości nie większej niż 800 znaków. Autor może zaproponować tłumaczenie na język angielski tytułu tekstu oraz abstraktu. Artykuły o większej objętości – zaakceptowane do druku – Redakcja będzie odsyłała Autorom w celu ich skrócenia. Do materiałów przysyłanych do Redakcji przez absolwentów wydziałów prawa, doktorantów, asystentów i aplikantów powinna być dołączona rekomendacja (recenzja) opiekuna naukowego.

Autor, przekazując Redakcji tekst, przenosi na Wydawcę wyłączne prawo do jego publikacji (prawa autorskie i wydawnicze). Redakcja zastrzega sobie możliwość dokonywania zmian w tekstach przeznaczonych do publikacji. Materiały niezamówione nie będą zwracane.

Warunkiem publikacji jest odesłanie uprzednio podpisanej umowy z Wydawnictwem.

Redakcja

Glosa
PRAWO GOSPODARCZE
W ORZECZENIACH I KOMENTARZACH

COMMERCIAL LAW

In 2013, a significant area of the case law of the Supreme Court in matters of company law was associated with the functioning of companies in the broad sense. In this field, what dominated were primarily issues of appeal against resolutions of bodies of company owners (general meetings). In addition to the issues of appealing against resolutions, in 2013 we also witnessed the Supreme Court expressing important views on the status of members of the board and of the supervisory board in companies, in particular: the mode of appointment of members of the supervisory board, the responsibility of directors of a limited liability company and the resignation of a member of the supervisory board. Important conclusions for the theory and practice resulting from the problem areas perceived against the background of Supreme Court jurisprudence related to the functioning of company governing bodies justify devoting this review to precisely these issues.

The interpretation of provisions which introduce the mechanism of election of supervisory board members of a joint-stock company by means of voting in separate groups causes controversies which arise in the practice of companies and courts applying the law, which can be seen in judicial practice, including the case law of the Supreme Court. Many problems with the interpretation of these provisions can be unambiguously resolved only by functional interpretation. The study includes an analysis of Art. 385 of the Code of Commercial Partnerships and Companies in the context of the number of supervisory board members in the companies whose articles of association define that number as range, without specifying a precise number (e.g. from 5 to 7) and also an overview of several judgments which concern election of supervisory board members by means of voting in separate groups.

Having an interest in obtaining a public contract determines an effective use of the legal remedies, referred to Art. 179–198 of the Public Procurement Law (Act of 29 January 2004 – Public Procurement Law (Journal of Laws of 2013 item 907; "PPL"). These remedies include, de lege lata, appeal against unlawful acts of the awarding entity undertaken during the procedure of awarding a public contract or against omission to perform an act to which said entity was legally bound, as well as and complaint to regional court against a judgment of the National Chamber of Appeal (the "NCA") deciding on the aforementioned appeal. Effective use of the legal remedies mentioned above, and – consequently – granting legal protection pursuant to them is possible when the following three conditions are fulfilled: infringement of the provisions on contract award procedure, interest in contract award of person seeking legal remedies, who suffered a damage or who could suffer damage as a consequence of such infringement and a causal relationship between this infringement and the damage. In the court practice what is particularly problematic is the reconstruction of the notion of interest in being awarded a public contract, especially due to amendments to the Public Procurement Law introduced in 2009 Act of 2 December 2009 amending the Act – Public Procurement Law and Certain Other Acts (Journal of Laws of 2009, No. 223, item 1778) in order to seek legal remedies a threat or infringement to interest is sufficient, and not – as until recently – detriment to legal interest. An evaluation of whether there has been a violation of the Act is done ad casum, just like identification of the causal relationship between a violation of regulations and the threat to the appellant's interest. Therefore, this article is only an attempt at determining the proper understanding the category of interest as used in Art. 179 and subs. PPL. Of course, besides proving that the conditions are met, for effective prosecution of the awarding entity's act it is also necessary to have the ability to appeal, that is, to have the status of an entity authorized to seek legal remedies according to Art. 179 and subs. PPL. Complaint about the awarding entity's acts, undertaken during the contract award procedure, does not have the character of actio popularis.

The commentary critically assesses the possibility of applying the rules on legal persons to a partner representing a registered partnership. This leads to a rejection of the construction of statutory representation. The author of the commentary is in favour of statutory representation, seeing its legitimacy directly in the provisions of the Commercial Partnerships and Companies Code (Art. 29 CPCC), which excludes even application mutatis mutandis of the provision on authorities of legal persons. The Supreme Court also called into question acts in law performed by a part-

The commented judgment of the Court of Appeal in Warsaw (CoA) refers to fines for delay in the enforcement of decisions of the President of the Office of Competition and Consumer Protection (OCCP) on conditional clearance for a concentration of undertakings, imposed by the OCCP President. The Court of Appeal assessed, among other things, the nature of the administrative responsibility of an undertaking for breach of its obligations under the Act of 16 February 2007 on the Protection of Competition and Consumers (APCC). In the judgment, the CoA acknowledged a limited role of an undertaking's fault (intentional or unintentional infringement of APCC provisions); it was reduced to the role of a circumstance affecting the amount of the fine imposed and not that of a condition for the undertaking's responsibility. The position of the CoA is yet another comment in the discussion, one which is unfavourable for undertakings; it is a continuation of the debate on the interpretation of terms used in the APCC, such as "delay", "intentionally or unintentionally" and "even if unintentionally".

TAXES

The opinions of administrative courts in matters of real estate taxation in respect of industrial facilities are unstable. The case law on the taxation of electrostatic precipitators is an example of such instability. The judgments of administrative courts present several conflicting ideas on taxation of electrostatic precipitators. Moreover, the jurisprudence is inconsistent with the judgments concerning the taxation of other industrial facilities.

One of the features of tax liability limitation is that it is guaranteed by the law. Upon expiration of the period of limitation, a taxpayer gains certainty that the liability is no longer collectible. In particular the rules related to the length of the period of limitation are guaranteed by law, including the suspension of limitation period of tax liability. The Tax Ordinance provides for a number of reasons for prolongation of the period of limitation by its suspension. Most of them have been introduced to the legal system in the past few years. For this reason the case law of administrative courts has only began to be formed. In this situation it is important to regularly analyze disputes which are resolved in this regard, the more so that they show the practical aspects of using this relatively new mechanism of tax law. This study aims to present the current achievements in administrative courts' case law related to the suspension of the limitation period of tax liability. Some of the presented judgments of administrative courts are unlawful. However it is worthwhile to be aware of them as they demonstrate the real problems in how tax authorities use the rules relating to the various conditions of suspension of the limitation period for tax liabilities.

The Constitutional Court (CC) completely shattered the most onerous provision for cheating taxpayers: Art. 20(3) of the Act of 26 July 1991 on Personal Income Tax. Filling the gap that has emerged while maintaining the legislative standards specified in the judgment is the proverbial 'tough nut to crack' for the legislator. What we publish is a judgment of great importance, both for tax legislation and for case law. It does not happen often that tax provisions are subjected to such in-depth and comprehensive assessment and that the assessment is so crushing for the legislator. Bitter words were also addressed to administrative courts which, for over 20 years, failed to notice the deficiencies of the provisions pointed at by the CC. As a consequence it led to infringement of the in dubio pro tributario principle, which the courts had developed themselves and enshrined in case law. I accept the criticism humbly, because I have sinned myself and I feel guilty. The dura lex sed lex principle should not be applied indiscriminately in a state ruled by law. The reasons for the judgment are 85 pages long, which makes it impossible to publish in full. Here, I quote only the final fragments of recitals, being a summary of the multifaceted analysis of provisions in the light of 'enhanced standard of legislative correctness'. As a consequence of the judgment, many tax-assessment decisions have already been annulled, both those of administrative courts and those issued in tax proceedings. The loss of binding force of Art. 20(3) of the Act on PIT on 28 October 2013 (judgment published in Dziennik Ustaw of 27 October 2013, item 985) makes it impossible to conduct proceedings aimed at taxation of non-disclosed income. Although the CC, being bound by the limitations of the constitutional complaint, evaluated a provision in the wording which was no longer in force, but it observed that the amended Art. 20(3) of the Act on PIT showed the same flaws as those that caused the previous wording to be held unconstitutional. So until the new provisions are adopted dishonest taxpayers will take advantage of a tax amnesty of a kind, which also is a consequence (unintended) of the judgment in question. I invite you to read the fascinating reasoning of the CC.