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**POWERS OF THE NATIONAL REVENUE
ADMINISTRATION WITH REGARD TO TEMPORARY
ATTACHMENT OF MOVABLE PROPERTY:
LEGISLATIVE ASPECTS**

Abstract

The amendment of the Act on the National Revenue Administration, in force since 1 January 2022, gave officers the right to temporary seizure of movable property. As a part of the ‘Polish Deal’, amendments were made to the Act of 16 November 2016 on the National Revenue Administration and added in Section V Chapter 1c ‘Temporary attachment of movable property’, as well as Chapter 5a ‘Approval of temporary attachment of movable property’ was added in Section II of the Act of 17 June 1966 on Enforcement Proceedings in Administration. Under these changes, from the beginning of 2022, movable property may be temporarily attached by an officer who conducts customs and tax inspection. Seized movable property may include, for example, machines, computers, raw materials and means of transport. An authority may temporarily seize movable property even before the end of the customs and tax inspection. The new regulations are aimed at increasing the efficiency of public debt collection. The change in the regulations resulted from the recognition of the existing legal regulations as defective, i.a. due to the difficulty in searching for the debtor’s assets. The aim of this paper is to assess the legislative correctness and operation of the construct of temporary attachment of movable property. The following problems have been identified: (1) whether the legislator has indicated the criteria for assessing if in a given situation temporary attachment will increase the

efficiency of enforcement; (2) whether the legislator has included a definition of the term ‘efficiency’ in the discussed provision; (3) whether a tax and customs officer is obliged to temporarily attach movable property or whether it may not be seized despite the conditions being met; (4) whether the provisions establishing temporary attachment of movable property lay down rules for estimating the value of the seized movable property. A formal and dogmatic method has been used to carry out the above analysis. This method involves a linguistic and logical analysis of legal texts. In response to the questions posed, it has been established that the legislator did not indicate the criteria according to which it would be assessed whether in a given situation temporary attachment would increase the efficiency of enforcement. Nor did the legislator define the concept of ‘efficiency’. Interpretative doubts have also been raised as to whether the officer is obliged to temporarily seize movable property or whether it may not be attached despite the conditions being met. In addition, the provisions establishing temporary attachment of movable property do not lay down rules for estimating the movable property value.

KEYWORDS

administrative enforcement, customs and tax inspection, National Revenue Administration, temporary seizure/attachment of movable property, obligor

SŁOWA KLUCZOWE

egzekucja administracyjna, kontrola celno-skarbowa, Krajowa Administracja Skarbowa, tymczasowe zajęcie ruchomości, zobowiązany

I. INTRODUCTION

The provisions introducing temporary attachment of movable property into the Polish legal regime have been in force as from 1 January 2022. These provisions were added to the Act of 16 November 2016 on the National Revenue Administration (NRA Act)¹ and to the Act of 17 June 1966 on Enforcement Proceedings in Administration (EPA Act)². The amendments were introduced by the Act of 29 October 2021 amending the Personal Income Tax Act, the Corporate

¹ (Ustawa z dnia 16 listopada 2016 r. o Krajowej Administracji Skarbowej) consolidated text [2022] JoL [Journal of Laws] 813 as amended.

² (Ustawa z dnia 17 czerwca 1966 r. o postępowaniu egzekucyjnym w administracji) consolidated text [2022] JoL 479 as amended.

Income Tax Act and some other acts.³ From 2022 onwards, temporary attachment of movable property may be used during customs and tax inspection. This type of control, although its main purpose is to verify compliance of the taxpayer's activities with tax law, as in the case of tax inspection, is characterized by much broader powers of tax authorities. The far-reaching powers granted to officers of the National Revenue Administration (NRA) conducting customs and tax inspections result from the essence of customs and tax control. It is aimed at identifying taxpayers' shortcomings in the sphere of the tax law that significantly affect the state financial security system.⁴

Before the entry into force of the amendment introducing temporary attachment of movable property, the head of the tax office could, as an enforcement authority, seize movable property, but the regulations in force at that time provided for many restrictions in this respect. As a result, there was a need to redesign the regulations regarding tax authorities' enforcement competences. The newly established construct of temporary attachment of movable property adds a new, previously unknown customs and tax control right. Property is attached this way by the officer conducting the inspection if he/she finds that administrative enforcement is being carried out against the obligor. As a result, the head of the customs and tax office acquires a temporary right to take control of the movable property of the obligor. Under Article 94z s 2 NRA Act, such a seizure may not last longer than 96 hours from the moment of the officer's signing the relevant report.

In the opinion of the drafter, the actions of an officer of the Customs and Tax Service will be more effective than the search for the obligor's movable property by the tax collector. The rules for temporary attachment of real property are governed by Articles 94y–94dz NRA Act. They stipulate e.g. that in order to increase the efficiency of administrative recovery of monetary receivables, the officer, in the course of customs and tax inspection, has the right to temporarily seize the movable property of the obligor referred to in Article 1a EPA Act, against whom the enforcement authority being the head of the tax office conducts administrative enforcement on the basis of enforcement titles covering monetary claims exceeding PLN 10,000 in total (Article 94y s 1 NRA Act).

Article 94y s 1 NRA Act provides that the officer has the right to temporarily seize movable property in order to increase the efficiency of administrative enforcement, while Article 94y s 3 NRA Act indicates that movable property significantly exceeding the amount enforced is not subject to attachment, and Article 94za NRA Act provides for cases when the officer should not attach property

³ (Ustawa z dnia 29 października 2021 r. o zmianie ustawy o podatku dochodowym od osób fizycznych, ustawy o podatku dochodowym od osób prawnych oraz niektórych innych ustaw) [2021] JoL 2105.

⁴ <<https://www.pitax.pl/wiedza/aktualnosci/polski-lad-tymczasowe-zajecie-ruchomosci>> accessed 10 July 2023.

(i.e. the obligor has demonstrated non-enforceability of the obligation; movable property is excluded or exempt under the provisions of the EPA Act; animals or perishable goods would be subject to seizure).

According to the Constitutional Tribunal,⁵ the presence of vague concepts in legal acts is common and unavoidable; they have significant advantages as they make the legal regime more flexible and adaptable to actual situations, and thus contribute to expressing, in the course of applying the law, the values which result from the rule of law. However, the Constitutional Tribunal points out that the principles of good legislation include, among other things, the requirement of sufficient precision of legal provisions, which should be formulated in an explicit, clear and linguistically correct manner.

Despite the introduction of temporary attachment of movable property, the scope of monetary receivables has not been limited to those which are exclusively specified in this Act⁶ (taxes, duties, non-tax budget receivables).⁷

Article 94y NRA Act stipulates that temporary attachment of movable property concerns the administrative enforcement in recovery of monetary receivables without indicating their nature. As a consequence, these may also be, for example, administrative penalties, enforcement costs, social security contributions, fines⁸ or subscription fees imposed for the use of radio and television sets⁹. Moreover, Article 94y s 3 NRA Act provides that movable property with a value significantly exceeding the amount needed to satisfy the enforced monetary claim should not be temporarily attached. Article 97 § 5 EPA Act also lays down the rule that movable property which value exceeds the amount needed to satisfy the enforced claims is not attached if the obligor has another movable property subject to enforcement with a value sufficient to satisfy these receivables, and the enforced sale of this movable property does not cause any difficulties.

As a result, during the analysis of the above issues, remarkable gaps have been noted, which are crucial for the correct application of the adopted regulations. The following problems have been identified:

- (1) whether the legislator has indicated the criteria for assessing if in a given situation temporary attachment will increase the efficiency of enforcement;

⁵ Judgment in SK 40/12, 8 October 2013 Polish Constitutional Tribunal <<https://trybunal.gov.pl/s/sk-4012>> accessed 10 July 2023.

⁶ Conversely and, in my opinion, erroneously in Joanna Zawiejska-Rataj and Jakub Sekulski, 'Polski Ład a ustawa o Krajowej Administracji Skarbowej w procesie zmian' (2022) 1 Przegląd Podatkowy 26, 28. Temporary attachment of movable property is understood as the possibility of temporary seizure, by an officer of the National Revenue Administration during customs and fiscal inspection, of movable property of the obligor who has tax arrears subject to enforcement by the head of the tax office.

⁷ Art 2 s 1 para 1 NRA Act.

⁸ Art 2 EPA Act.

⁹ Art 7 s 3 of the Act of 21 April 2005 on Subscription Fees (Ustawa z dnia 21 kwietnia 2005 r. o opłatach abonamentowych) consolidated text [2020] JoL 1689 as amended.

- (2) whether the legislator has included the definition of the concept of 'efficiency' in the provision;
- (3) whether an officer is obliged to temporarily attach movable property or it may not be seized despite the conditions being met;
- (4) whether the provisions establishing temporary attachment of movable property lay down rules for estimating the value of seized movable property.

Therefore, this paper is inspired by the issues that require clarification during further study. However, the key objective in what follows is to assess the legislative correctness and functionality of the solutions adopted by the legislator. In order to do so, an analysis has been carried out with the use of the formal and dogmatic method. The paper is based on the analysis of regulations and literature since, due to the relatively short time when the provisions in question have been in force, there has been no related case law.

II. *RATIO LEGIS* OF TEMPORARY ATTACHMENT OF MOVABLE PROPERTY

Administrative enforcement is a set of legally defined procedural actions undertaken by the subjects of enforcement proceedings in order to achieve a goal, which is the performance of the obligation incumbent on the obligor. These consist of legal and factual actions which, in light of the applicable law and in accordance with the nature of the obligation specified in the enforceable title, are to lead to the termination of the legal relationship in which it has arisen.¹⁰ The importance of the objectives set for administrative enforcement, i.e. ensuring the performance of legal obligations by the obligors, prompts the legislator to seek measures to guarantee efficient administrative enforcement.

Article 94z s 1 NRA Act states that temporary attachment of movable property consists in depriving the obligor of the right to dispose of the attached movable property for some time. In the opinion of the drafter, the actions of an officer of the Customs and Tax Service will be more effective than the search for the obligor's movable property by the tax collector, therefore the regulation of temporary attachment of movable property is aimed at increasing the efficiency of enforcement in recovery of monetary receivables.¹¹ In the regulatory impact

¹⁰ Marta Romańska, *Postępowanie egzekucyjne i zabezpieczające w administracji* (1st edn, Wolters Kluwer Polska 2021) 35.

¹¹ Government bill amending the Personal Income Tax Act, the Corporate Income Tax Act and some other acts (paper no 1532) 249.

assessment,¹² the drafter predicts that the revenues of the public finance sector in connection with the use of this solution in the years 2022–2031 will amount to PLN 500 million annually.¹³

By introducing the amendment, the legislator has extended the tasks of the National Revenue Administration unrelated to tax and customs duties. However, this is not an exceptional solution. NRA already has a number of similar powers, such as audit of the public funds spending. It can also be pointed out that the Act of 15 December 2022 amending the Act on the Commercial Quality of Agricultural and Food Products and the Act on the National Revenue Administration¹⁴ adds further tasks for the NRA authorities unrelated to taxes or customs duties.

III. PROCEDURE FOR TEMPORARY ATTACHMENT OF MOVABLE PROPERTY

Pursuant to Article 28 s 1 para 4 NRA Act, administrative enforcement in recovery of monetary receivables is the exclusive competence of the head of the tax office from among the NRA authorities. Pursuant to Article 19 § 1 EPA Act, the head of the tax office is an enforcement body authorized to take all the measures provided for administrative enforcement in recovery of monetary receivables.¹⁵ The head of the tax office is a special type of authority under the provisions of the Act on Enforcement Proceedings in Administration and the only authority that can take an enforcement measure in the form of execution against real property.¹⁶

Movable property is attached in the course of customs and tax inspection. The customs and tax inspection is a task performed by the head of the customs and tax

¹² The assessment of regulatory impact is understood as an analytical procedure that helps determine all the consequences – both benefits and costs – of the planned state intervention as precisely as possible; see Krzysztof Koźmiński, ‘Ograniczenie handlu w niedziele – przewidywanie skutków regulacji czy wróżenie z fusów?’ (2018) 78 *Studia Iuridica* 212.

¹³ *ibid* 573. Income related to the application of temporary attachment of movable property is primarily the income of the state budget and local government units, due to the nature of the receivables to which the solution applies. In the regulatory impact assessment, the drafter has not indicated how it envisaged the distribution of revenues from the estimated sum of PLN 500 million per year. As part of the regulatory impact assessment, the economic analysis and social research methods are used; the fact that regulatory impact assessment is particularly important is emphasized in the economic analysis of law; see Koźmiński, ‘Ograniczenie handlu’ (n 12) 212–213.

¹⁴ (Ustawa z dnia 15 grudnia 2022 r. o zmianie ustawy o jakości handlowej artykułów rolno-spożywczych oraz ustawy o Krajowej Administracji Skarbowej) [2023] *JoL* 177.

¹⁵ The catalogue of enforcement measures for pecuniary claims is provided for in Art 1a paras (1)–(12)(a) EPA Act.

¹⁶ Judgment in II FSK 1601/12, 28 May 2014 Polish Supreme Administrative Court, CBOSA.

office (Article 33 s 1 para 1 NRA Act). It may be carried out both by an officer of the Customs and Tax Service¹⁷ and by employees of the tax administration who are civil servants. However, during customs and tax inspections, officers have broader powers than civil servants (Article 64 s 2 NRA Act). Movable property may be temporarily attached only by officers of the Customs and Tax Service. As a consequence of such decision made by the legislator, the use of this solution is excluded in the context of tax inspection.¹⁸ During the inspection, the officers are authorized i.a. to: enter, stay and move on the ground and in the building, a room or other premises of the inspected person;¹⁹ search the premises, including living quarters, other rooms and places and items, also with the use of technical devices and assistance dogs;²⁰ carry out an inspection of goods, products and means of transport, also with the use of technical devices and assistance dogs.²¹ Article 139 NRA Act grants the Customs and Tax Service officers the right to use means of direct coercion specified by law, means intended to help overcome construction closures, and other means, excluding explosives.

Pursuant to Article 94y s 1 NRA Act, as a consequence of the adopted regulation, the enforcement in recovery of monetary receivables, e.g. social security contributions, administrative penalties or local taxes and fees, will not always be supported by temporary attachment of movable property, because it is not in every case that these receivables will be enforced by the head of a tax office. However, it seems that the legislator correctly provided for the right of temporary seizure of movable property only by the tax administration. It does not seem that the efficiency of enforcement would be greater if such powers were granted also to other authorities. It may be postulated *de lege lata* that the extension of the introduced legal construct should also be considered for tax inspection carried out on the basis of the Tax Ordinance. In the course of tax inspection, the powers of the inspectors are narrower, e.g. they have the right to secure factual evidence but not to conduct a search to find it.²²

Paragraph 11 of the Principles of Legislative Technique²³ casts doubt on Article 94y s 1 NRA Act. This provision of the Principles of Legislative Technique stipulates that an act should not include statements that do not serve to express

¹⁷ Pursuant to Art 1 s 3 NRA Act, the Customs and Tax Service is defined in the National Revenue Administration as a uniform and uniformed service composed of officers.

¹⁸ Section VI of the Tax Ordinance Act of 29 August 1997 (Ustawa z dnia 29 sierpnia 1997 r. – Ordynacja podatkowa) [2022] JoL 2651 as amended.

¹⁹ Art 64 s 1 para 2 NRA Act.

²⁰ Art 64 s 1 para 6 NRA Act.

²¹ Art 64 s 2 para 1 NRA Act.

²² Judgment in I FSK 2212/15, 26 September 2017 Polish Supreme Administrative Court, CBOSA.

²³ Annex to the Regulation of the Prime Minister of 20 June 2002 [2016] JoL 283. The principles of legislative technique are rules for formulating correct normative acts and making reliable changes in the system, which are binding on the government legislator (judgment in P

legal norms, in particular, justifications for formulated norms. It is worth emphasizing that temporary attachment of movable property is intended to increase the efficiency of administrative enforcement, is non-normative, provides justification by the legislator for the introduced regulation and should be indicated only in the justification for draft laws.²⁴ Seemingly, the purpose of the construct in question is to allow the officer to temporarily attach movable property if administrative enforcement in recovery of monetary receivables is pending against the inspected person and not to assess whether temporary seizure of movable property will be efficient. The legislator has not laid down the criteria according to which it should be assessed whether temporary attachment would increase the efficiency of administrative enforcement in a given situation. In addition, the legislator has not defined the concept of efficiency. The said concept does not pertain to legal sciences; it is a notion applied in economics. Efficiency is understood as the best achievable output from a given input.²⁵ Economic efficiency is also a determinant of effective law in general. As Rafał Stroiński points out, effective law is the law that should not lead to waste and loss of economic value.²⁶

In connection with the wording of the provision adopted by the legislator and the principle that every expression of a legal text is normative and in the process of interpretation the interpreter may not omit any expression,²⁷ it is necessary to assess the temporary seizure of movable property through the prism of efficiency. The legislator indicates a premise that provides a legal basis for the obligor to raise the objection that the use of temporary attachment of movable property in a given case will not contribute to increased efficiency of enforcement. It can be assumed that the seizure of movable property with, in the officer's opinion, low probability of sale should be considered inefficient.

There are also interpretative doubts as to whether an officer is obliged to temporarily seize movable property or whether the property may not be seized despite the conditions being met. In Article 94y s 1 NRA Act, the legislator states that an officer has the right to temporarily seize movable property. Article 94y s 3 NRA Act stipulates that the movable property value significantly exceeding

15/05, 12 December 2006 Polish Constitutional Tribunal <<https://trybunal.gov.pl/s/p-1505>> accessed 20 July 2023).

²⁴ In the explanatory memorandum and in the regulatory impact assessment, the drafter of the bill emphasizes that the amendment is aimed at increasing the efficiency of administrative enforcement.

²⁵ 'Efektywność' (Efficiency), *Encyklopedia Administracji Publicznej* <<http://encyklopediaiap.uw.edu.pl/index.php/Efektywno%C5%9B%C4%87>> accessed 20 March 2023; N Gregory Mankiw and Mark P Taylor, *Mikroekonomia* (Jarosław Sawicki tr, PWE 2009) 35.

²⁶ Rafał Stroiński, 'O kosztach transakcyjnych i potrzebie analizy ekonomicznej w prawie handlowym' (2004) 6 *Przegląd Prawa Handlowego* 36, 37; see also Krzysztof Koźmiński, 'Krytyka ekonomicznej analizy prawa' (2016) 1 *Przegląd Prawniczy Uniwersytetu Warszawskiego* 31, 39.

²⁷ Sławomira Wronkowska and Maciej Zieliński, *Komentarz do Zasad techniki prawodawczej* (Wydawnictwo Sejmowe 2021) 43.

the enforced amount is not subject to attachment, while Article 94za NRA Act provides for cases when an officer should not attach property (i.e. the obligor has demonstrated non-enforceability of the obligation; movable property is excluded or exempt in accordance with the provisions of the EPA Act; animals or perishable items would be seized). The wording of Article 94y ss 1 and 3 and of Article 94za NRA Act concludes that if temporary attachment of movable property increases the efficiency of administrative enforcement, it is obligatory, unless there are cases indicated in the aforementioned provisions. The obligatory application of the provision on temporary attachment of movable property is also supported by the principle of equality, which should exclude arbitrariness; if the legislator does not indicate the criteria to be adopted, in cases where the statutory conditions are met, it should be argued that temporary attachment of movable property is mandatory.

Article 94y s 3 NRA Act provides that movable property significantly exceeding the amount enforced is not subject to attachment. This provision should be assessed in relation to the principle of precision of the law derived by the Constitutional Tribunal. In light of the judgment of 10 October 2013,²⁸ the presence of vague concepts in legal acts is common and unavoidable; they have significant advantages as they make the legal regime more flexible and adaptable to the actual situations and thus contribute to expressing, in the course of the application of law, the values which result from the rule of law. However, the Constitutional Tribunal points out that the principles of good legislation include, among other things, the requirement of sufficient precision of provisions, which should be formulated in an explicit, clear and linguistically correct manner.²⁹

On the basis of enforcement proceedings, the issue of the difference between the value of the enforced receivable and the value of movable property has been regulated in various ways. Article 97 § 5 EPA Act establishes the rule that movable property which value exceeds the amount needed to satisfy the enforced claim is not attached if the obligor has another movable property subject to enforcement with a value sufficient to satisfy these receivables and the enforced sale of this movable property does not cause any difficulties. As a consequence, the question arises about a situation where an officer of the Customs and Tax Service identifies relevant movables of the inspected person and seizes them contrary to Article 94y s 3 NRA Act. Article 96n EPA Act, when providing for the approval of temporary attachment of movable property, does not stipulate that the enforcement authority should examine whether the value of the seized movable property significantly exceeds the amount needed to satisfy the enforced monetary claim. It should also be noted that the provisions establishing temporary attachment of movable property do not specify the rules for estimating the value of movable property. It is

²⁸ Judgment in SK 40/12, October 2013 Polish Constitutional Tribunal (n 5).

²⁹ Judgment in Kp 5/08, 16 December 2009 Polish Constitutional Tribunal <<https://trybunal.gov.pl/s/kp-508>> accessed 10 July 2023.

not known how an officer of the Customs and Tax Service is to assess the value of the disclosed movables. The fact that the officer identifies movable property of the obligor, the value of which significantly exceeds the amount needed to satisfy the enforced claims, and does not temporarily seize them does not change the fact that these movables will be seized by the enforcement authority. Based on Article 94y s 1 NRA Act, the same applies to the situation when movable property is disclosed, but the debtor's receivables do not exceed PLN 10,000.

Article 96q § 3 EPA Act is equally important for the temporary attachment procedure as its wording is changed in the amendment. Currently, it provides that in the event temporary attachment of movable property is lifted or it is not performed for other reasons, the costs actually incurred by the head of the customs and tax office, under whose authorization the officer has performed the customs and tax inspection during which movable property has been temporarily seized, are considered enforcement expenses. That is, only in the case of refusal to approve of temporary seizure of movable property or failure to issue a decision approving its temporary seizure, the costs actually incurred by the head of the customs and tax office, under whose authority the officer has performed the customs and tax inspection during which movable property has been temporarily seized, are considered enforcement expenses. The wording of Article 96q § 3 EPA Act has been changed in order to avoid such interpretative doubts regarding the expenses incurred by the head of the customs and tax office in the event of approval of temporary seizure of movable property by the enforcement authority. The change consists in resigning from indicating cases in which the costs actually incurred by the head of the customs and tax office in connection with temporary attachment of movable property should be considered enforcement expenses. The amended provision excludes the need of authorization by the head of the customs and tax office. It provides that the costs actually incurred by the head of the customs and tax office (not only when the head of the customs and tax office has issued the authorization) in connection with temporary seizure of movable property are to be regarded as enforcement expenses.³⁰

When assessing temporary seizure of movable property through the prism of the usefulness of this provision,³¹ it can be stated that the provision has a clearly defined purpose (to increase administrative enforcement efficiency), but its proper operation is hindered by legislative errors, such as the lack of an unambiguous definition of when it is applicable and the lack of rules for estimating the value of movable property.

³⁰ Bill amending the Act on Enforcement Proceedings in Administration and some other acts (paper no 2952) accessed 10 July 2023.

³¹ When assessing the usefulness of given provisions, the impact of these provisions and their usefulness at the relevant moment of social development are taken into account, see Koźmiński, 'Krytyka' (n 26) 49.

IV. PROTECTION OF THE OBLIGOR DURING TEMPORARY ATTACHMENT PROCEDURE

Debtors may be protected against temporary attachment of their property if they prove that they have fulfilled their obligation or that the obligation claimed is not due, has been discharged, has expired for some other reason or does not exist. If they cannot produce such evidence, upon signing the temporary attachment report, they will lose the right to use the attached movable property and they cannot sell it. It is worth noting that property is temporarily seized based on a report not a decision, so the debtor is not able to challenge temporary attachment of movable property. The report of temporary attachment of movable property is served on the obligor and the supervisor. At the request of the obligor, and also if the officer deems it necessary, a witness may be called to be present during the attachment procedure.³²

Pursuant to Article 96q § 1 EPA Act, if a decision is issued refusing to approve of temporary attachment of movable property or a decision approving its temporary attachment is not issued, temporary seizure of movable property is revoked by operation of law and temporarily seized movable property is returned immediately to the obligor. Doubts arise as to the legislator's stipulation that temporary attachment of movable property is revocable by operation of law. Revocation is an act performed by an administrative body or court,³³ hence the wording of the adopted provision should indicate that the authority is obliged to lift temporary attachment of movable property upon the occurrence of conditions specified in the regulations, or that the temporary seizure of movable property ceases to have legal effect when certain conditions are met. In this case, lifting of temporary attachment of movable property is not a required act, but after 96 hours such attachment of movable property ceases to have legal effect if it has not been approved.³⁴

V. CONCLUSIONS

During the analysis of temporary attachment of movable property carried out in this paper, this newly established construct in the Polish legal regime should be

³² Art 94zb NRA Act; Iwona Czauderna, 'Tymczasowe zajęcie ruchomości – nowe uprawnienia urzędów celno-skarbowych' (*legalis*, 13 April 2022) <<https://biz.legalis.pl/tymczasowe-zajecie-ruchomosci-nowe-uprawnienia-urzedow-celno-skarbowych>> accessed 7 July 2023.

³³ Cf. Art 138 of the Code of Administrative Procedure, Art 27h § 2 para 1, Art 42, Art 54 § 6 para 1, Art 54b § 1 EPA Act.

³⁴ Pursuant to Art 94z s 2 NRA Act, temporary attachment of movable property may not last longer than 96 hours from the moment the officer signs the report of temporary attachment of movable property.

assessed. The legislator, guided by the need to increase the efficiency of administrative enforcement in recovery of monetary receivables, has granted additional competences to the tax administration by amending the NRA Act. These competences are related to the basic tasks of the National Revenue Administration, i.e. collection of budget revenues from taxes and customs duties. The legislator has chosen the NRA from among other entities authorized to carry out inspections, recognizing the tasks of officers of the Customs and Tax Service as related to the tasks of enforcement authorities. Officers of the Customs and Tax Service, when performing their duties, may identify assets belonging to obligors that have not been disclosed by the enforcement authority.

Having analysed the construct of temporary attachment of movable property, the following issues can be identified which are of particular relevance to its application, namely:

- (1) The legislator does not specify what criteria an officer of the Customs and Tax Service should adopt when making an assessment whether the attachment will increase enforcement efficiency;
- (2) The legislator does not specify what such assessment should consist of (efficiency is an economic concept);
- (3) It is not clear whether, if the statutory conditions are met, temporary attachment of movable property is obligatory or optional;
- (4) The provisions establishing temporary attachment of movable property do not lay down rules for estimating the value of movable property. It is not known how an officer of the Customs and Tax Service should estimate the value of the disclosed movable property, nor is there a legal basis for the enforcement authority to conduct such an analysis when approving temporary attachment of movable property. This is important from the point of view of the provision which states that movable property with a value significantly exceeding the amount needed to satisfy the enforced monetary claim is not subject to temporary attachment.

Therefore, the analysis of the solutions adopted by the legislator has led to the following conclusions. The analysis has shown that the provisions in the part determining the role of temporary attachment of movable property, which is supposed to increase the enforcement efficiency, should be repealed. In addition, it should be clearly stipulated whether temporary attachment of movable property is obligatory or optional; and if it is optional, it is necessary to specify the rules according to which the decision on its application is to be made. Regarding the principles of estimating property value, reference should also be made to the application of the provisions of the Act on Enforcement Proceedings in this respect.

REFERENCES

- Act of 17 November 1964 – Code of Civil Procedure (Ustawa z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego) consolidated text [2021] JoL 1805 as amended (PL)
- Act of 17 June 1966 on Enforcement Proceedings in Administration (Ustawa z dnia 17 czerwca 1966 r. o postępowaniu egzekucyjnym w administracji) consolidated text [2022] JoL 479 (PL)
- Act of 29 August 1997 – Tax Ordinance (Ustawa z dnia 29 sierpnia 1997 r. – Ordynacja podatkowa) [2022] JoL 2651 as amended (PL)
- Act of 16 November 2016 on the National Revenue Administration (Ustawa z dnia 16 listopada 2016 r. o Krajowej Administracji Skarbowej) consolidated text [2022] JoL 813 (PL)
- Act of 29 October 2021 amending the Personal Income Tax Act, the Corporate Income Tax Act and some other acts (Ustawa z dnia 29 października 2021 r. o zmianie ustawy o podatku dochodowym od osób fizycznych, ustawy o podatku dochodowym od osób prawnych oraz niektórych innych ustaw) [2021] JoL 2105 (PL)
- Act of 15 December 2022 amending the Act on Commercial Quality of Agricultural and Food Products and the Act on the National Revenue Administration (Ustawa z dnia 15 grudnia 2022 r. o zmianie ustawy o jakości handlowej artykułów rolno-spożywczych oraz ustawy o Krajowej Administracji Skarbowej) consolidated text [2023] JoL 177 (PL)
- Act of 9 March 2023 amending the Act on Enforcement Proceedings in Administration and some other acts (Ustawa z 9 marca 2023 r. o zmianie ustawy o postępowaniu egzekucyjnym w administracji oraz niektórych innych ustaw) [2023] JoL 556 (PL)
- Case K 33/08 13 December 2011 Polish Constitutional Tribunal (Trybunał Konstytucyjny) <<https://trybunal.gov.pl/s/k-3308>> accessed 10 July 2023
- Case Kp 5/08, 16 December 2009 Polish Constitutional Tribunal (Trybunał Konstytucyjny) <<https://trybunal.gov.pl/s/kp-508>> accessed 10 July 2023
- Case P 15/05, 12 December 2006 Polish Constitutional Tribunal (Trybunał Konstytucyjny) <<https://trybunal.gov.pl/s/p-1505>> accessed 10 July 2023
- Case SK 40/12, 8 October 2013 Polish Constitutional Tribunal (Trybunał Konstytucyjny) <<https://trybunal.gov.pl/s/sk-4012>> accessed 10 July 2023
- Czauderna I, ‘Tymczasowe zajęcie ruchomości – nowe uprawnienia urzędów celno-skarbowych’ (*legalis*, 13 April 2022) <<https://biz.legalis.pl/tymczasowe-zajecie-ruchomosci-nowe-uprawnienia-urzedow-celno-skarbowych>> accessed 7 July 2023
- Encyklopedia Administracji Publicznej* <<http://encyklopediaap.uw.edu.pl/index.php/Efektywno%C5%9B%C4%87>> accessed 10 July 2023
- Explanatory memorandum to the Bill on the National Revenue Administration <<http://orka.sejm.gov.pl/Druki8ka.nsf/0/1D3E5786527F7070C1258025005B78E5/%24File/826-uzas.docx>> accessed 10 July 2023
- Government bill amending the Act on Enforcement Proceedings in Administration and some other acts (paper no 2952) accessed 10 July 2023
- Góra T, *Postępowanie egzekucyjne w administracji* (Difin 2022)
- Hauser R and Wierzbowski M (eds) *Postępowanie egzekucyjne w administracji: Komentarz* (1st edn, CH Beck 2021)

- Koźmiński K, 'Krytyka ekonomicznej analizy prawa' (2016) 1 Przegląd Prawniczy Uniwersytetu Warszawskiego 31
- — 'Ograniczenie handlu w niedziele – przewidywanie skutków regulacji czy wróżenie z fusów?' (2018) 78 *Studia Iuridica* 212
- Mankiw NG and Taylor MP, *Mikroekonomia* (J Sawicki tr, PWE 2009)
- Podsiadły A and Zawiejska-Rataj J, 'Krajowa Administracja Skarbowa – proceduralne aspekty wykrywania unikania opodatkowania' in B Brzeziński, K Lasiński-Sulecki and W Morawski (eds), *Nowe narzędzia kontrole, dokumentacyjne i informatyczne w prawie podatkowym* (1st edn, Wolters Kluwer Polska 2018)
- Przybysz P, *Postępowanie egzekucyjne w administracji: Komentarz* (LEX/el. 2023)
- Regulation of the Prime Minister of 20 June 2002 on the Principles of Legislative Technique, consolidated text [2016] JoL 283 as amended
- Romańska M, *Postępowanie egzekucyjne i zabezpieczające w administracji* (1st edn, Wolters Kluwer Polska 2021)
- Stroiński R, 'O kosztach transakcyjnych i potrzebie analizy ekonomicznej w prawie handlowym' (2004) 6 *Przegląd Prawa Handlowego* 36
- Wronkowska S and Zieliński M, *Komentarz do Zasad techniki prawodawczej* (Wydawnictwo Sejmowe 2021)
- Zalewski D (ed), *Kontrola podatkowa działalności gospodarczej* (1st edn, Wolters Kluwer Polska 2019)
- Zawiejska-Rataj J and Sekulski J, 'Polski Ład a ustawa o Krajowej Administracji Skarbowej w procesie zmian' (2022) 1 *Przegląd Podatkowy* 26
- Zdunek A, 'Krajowa Administracja Skarbowa – konsolidacja służb skarbowych i celnych w celu uszczelnienia systemu podatkowego' in B Brzeziński, K Lasiński-Sulecki and W Morawski (eds), *Nowe narzędzia kontrole, dokumentacyjne i informatyczne w prawie podatkowym* (1st edn, Wolters Kluwer Polska 2018)