

THE BLOCKADE OF BANK ACCOUNT BY THE USE OF STIR – DANGER OR PROTECTION FOR TAXPAYERS IN THE LIGHT OF SAC’S DECISIONS

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<https://doi.org/10.18778/2391-6478.4.36.06>

Abstract

The purpose of the article/hypothesis. The purpose of the paper is the evaluation of using STIR to blockade the bank account by tax administration. The research hypothesis is as follows: The blockade of the bank account by the use of STIR is abused by tax administration. **Methodology.** The descriptive study including critical attitude to legal acts and literature was used as well as the case studies of SAC’s decisions were applied as scientific methods. **Results of the research.** Tax frauds in VAT are an important problem of security of taxpayers. One instrument to combat them is the blockade of bank account by the use of STIR. Tax authorities very seldom use the blockade of bank account by the use of STIR. The analysis of SAC’s decisions shows that tax authorities do not abuse this instrument. The blockade of bank account by the use of STIR decreases tax frauds and increases the security of taxpayers.

Keywords: tax ordinance, STIR, blockade of bank account, combating tax frauds, security of taxpayers.

JEL Class: H26, K34, H83.

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INTRODUCTION

One of the essential elements related to both the security of the public finance system and the economic activity is the tax system. The relationships between the tax system and taxpayer security can be diverse. They may include the occurrence of tax frauds. A very important type of tax frauds is carousel crime. The tolerance of tax frauds by the state may result in unfair competition with regard to entities meeting their tax obligations, which may also result in a reduction in the scale of economic activity. Organizers of carousel crimes also pose a threat to honest taxpayers. They can exploit normally operating taxpayers to defraud VAT. Therefore, the tax system should include instruments preventing tax frauds. One of such instruments is blocking a bank account under STIR (abbreviation for Polish – system teleinformatyczny izby rozliczeniowej – clearing house ICT system). However, its application to an honest entrepreneur may cause a threat to his operation. When the account-blocking mechanism was introduced, tax advisors expressed concerns that the institution could be abused. Its use against taxpayers who accidentally fall into the blockade system can cause the company's finances to be at risk. Even a short lack of access to money may disturb the company's liquidity (Tarka, 2018: A16). Tax experts compared the introduction of the possibility of blocking an account under STIR to equipping tax administration with nuclear weapons (Tarka, 2020; Mroziuk and Zalewski, 2019).

The purpose of the paper is the evaluation of using STIR to blockade the bank account by tax administration. The research hypothesis is as follows: The blockade of the bank account by the use of STIR is abused by tax administration. The descriptive study including critical attitude to legal acts and literature was used as well as the case studies of SAC's decisions were applied as scientific methods.

1. BANK ACCOUNT BLOCKING AS AN ELEMENT OF THE USE OF THE STIR SYSTEM – RULES OF APPLICATION

One of the elements influencing security of the public finance system and economic activity is the occurrence of tax frauds. Crimes related to VAT frauds, including carousel offenses, are of particular importance. Their occurrence reduces tax revenues. At the same time, the state's tolerance of tax frauds may result in unfair competition with regard to entities fulfilling their tax obligations, which may also result in a reduction in the scale of business activity. Organizers of carousel offences are also a threat to honest taxpayers. They can use normally functioning taxpayers to defraud VAT. Therefore, there should be some instruments in the tax system to counter tax frauds. In the past decade numerous

methods like reverse charge, split payment, Standard Audit File were implemented in the tax system to diminish the VAT gap.

One of such instruments was the introduction of a regulation to the tax ordinance enabling the Head of the National Revenue Administration to block funds in the taxpayer's bank account under the STIR. Similar instruments (the blockade of bank account by the tax administration) exist not only in Poland but also in other countries (Markowić, 2014: 258–267). The reverse charge or split payment are instruments whose aim is to prevent the commitment of tax fraud. The blockade of a bank account by the use of STIR aims not only to prevent the commitment of tax fraud but also to blockade the funds of tax evaders.

The term STIR itself refers to the clearing house ICT system. This system is used to analyze cash flows on bank accounts. It is maintained and operated by the National Clearing House – as an interbank clearing house in Poland (Mikuła, 2018: 27–32). At the same time, STIR is used by the legislator as a tool for typing suspicious transactions and entities that should be controlled and their bank accounts blocked. The STIR system is not only used to block bank accounts, but is also used for: risk analysis prior to the initiation of controls, prevention of undue VAT refunds, identification and interruption of the chains of companies trading fictitiously with each other (Sarnowski and Selera, 2020: 40).

Thus, a bank account monitoring mechanism is used to decide on the blocking of a bank account. An account blockade is a specific type of instrument designed to prevent an entity from temporarily disposing of funds in order to prevent tax evasion. According to the government's assumptions, the main purpose of introducing bank account blocking using the STIR is to tighten the tax system and, in particular, to reduce the VAT gap caused by frauds. At the same time, the use of this mechanism is to eliminate companies that cheat honest entrepreneurs and contribute to the improvement of business conditions for all taxpayers by restoring fair competition on the market (Druk nr 1880). The subject literature points out that the scale of scams significantly harms the financial security of the state. Blocking a bank account is to prevent the transfer of funds accumulated by entities suspected of fiscal frauds to another financial institution in a selected place in the world (Babiarz, 2019). The body authorized to block the account is the Head of the National Revenue Administration. The blockade may be applied as a result of a risk analysis. An important element of the analysis is the determination of the so-called risk index. It is determined on the basis of algorithms which, as a rule, are secret. If STIR assigns a specific risk indicator to a given entity, or the indicator changes, such information is provided only to the Head of the National Revenue Administration and the relevant bank at least once a day (Mikuła, 2018: 27–32). A special algorithm is used to target suspicious accounts. According to the regulations, officials take five considerations into account: economic, geographic, subject matter, behavioral

and relationship criteria. They analyze, inter alia, whether the transactions are economically justified and whether there is a high risk of tax frauds in a given industry (Pogroszewska, 2018).

The literature indicates that the algorithm used by Head of the National Revenue Administration belongs to the so-called Automated Decision Making (ADM) systems. ADM systems combine technical infrastructure and social procedures in order to delegate a part of decision-making to computer models, which has so far been in the hands of humans (Mileszyk et al., 2019: 28). On the basis of the cash flow information provided by banks and the National Clearing House, as well as the additional criteria indicated earlier, the STIR automatically assigns an appropriate risk indicator to trading participants (Chądzyński, 2019).

The determination of risk indicator and other information collected by the Head of the National Revenue Administration (e.g., analysis of Standard Audit File for Tax) may lead to an assumption that the activity of a given entity is related to criminal acts – in particular, to tax extortion, and this may result in blocking the bank account (Mikuła, 2018: 27–32; Szulc, 2019a); The entity against which the blockade occurs is referred to as a qualified entity. The blockade is imposed up to 72 hours – based on Article 119zv and can be extended up to three months as stated in the Tax Ordinance Act of August 29, 1997 (Journal of Laws 2021, item 1540).

The regulations indicate two basic criteria to be followed by the Head of the National Revenue Administration when issuing an order on a blockade for a period of up to 72 hours. The first criterion is the occurrence of a high risk of using the activities of banks or credit unions for purposes related to tax frauds. The second criterion is that a blockage is necessary to counteract it. Both conditions should be met jointly (Tarka, 2018: A16). The blockade may be extended if there is a reasonable fear that a qualified entity will not fulfill an existing, or about to arise, tax liability exceeding the equivalent of €10,000 in line with the Tax Ordinance Act of August 29, 1997: Article 119zw (Journal of Laws 2021, item 1540).

Thus, the Clearing House ICT System is used as a channel for transmitting information, data and requests both to the Head of the National Revenue Administration (e.g., information on the risk indicator) and in the reverse direction (e.g., in connection with a request from the Head of the National Revenue Administration to apply a block on a qualified entity's account) (Zalewski, 2021).

The tax administration uses the blockade of the bank account by the following (see Table 1).

Table 1. The blockade of the bank account by the use of STIR by the tax administration

| | 2018 | 2019 | 2020 |
|--------------------------------------------------------------|------|------|------|
| Number of qualified entities | 23 | 120 | 196 |
| Number of blocked bank accounts | 41 | 566 | 1020 |
| Total amount of funds blocked on the bank accounts (PLN mln) | 10.3 | 69.7 | 96.2 |

Source: Szymczyk and Szymański (2022: 21).

The data in Table 1 shows that a number of qualified entities, bank accounts and total amount of blocked funds has increased since 2018. As the Ministry of Finance has informed, thanks to the STIR system, in the period from 2017 to the end of June 2022, the Head of the National Revenue Administration blocked bank accounts of 733 entities 3478 times, to the amount of almost PLN 313 million (Pokojska, 2022) So, we can expect that this instrument will be used increasingly often by tax administration.

In the literature, account blocking is not clearly evaluated.

When proposing the introduction of account blocking, the tax administration announced that account blocking was intended to be an extraordinary instrument and would not be abused (Rudowski, 2018: A16).

When the account-blocking mechanism was introduced, tax advisors expressed concern that it could be abused. Its use against taxpayers who accidentally fall into the blockade system can cause the company's finances to be at risk. Even a short lack of access to money may disturb the company's liquidity (Tarka, 2018: A16). Tax experts compared the introduction of the possibility of blocking an account under STIR to equipping tax administration with nuclear weapons (Tarka, 2020; Mroziuk and Zalewski, 2019).

The opinion is expressed that "regulations on blocking bank accounts based on an algorithm unknown to anyone – except the officials involved – violate the constitutional principle of proportionality" (Matarewicz, 2021).

Evaluating the initial actions of tax authorities with regard to the applied account blocking within the STIR, an opinion is expressed according to which entrepreneurs need not fear abuse of powers in this regard (Szulc, 2019b). It is pointed out that the blocking procedures are clear and the risk of abuse by tax administration is low (Chądryński, 2019).

On the other hand, it is indicated that officials will reach for the blockade of accounts too hastily and willingly, which may hit honest taxpayers. As a confirmation of this opinion, the authors point to numerous disputes that are submitted to administrative courts (Tarka, 2022: D4). Some authors, assessing the activities of tax administration authorities, express the opinion that although there

is an improvement in statistics related to the effectiveness of inspections, tax authorities continue to abuse tools that are burdensome to taxpayers. A good example is the fact that by November 2021, 243 STIR blockades were implemented, in which there were blocked funds in 1,169 bank accounts for the total amount of PLN 83.86 million – which is more than 20% more than in the previous year (Majkowski and Wala, 2022: 6–7).

However, the mere fact of the occurrence of court disputes does not necessarily mean that tax authorities are abusing the blocking of accounts. Taxpayers have a right to lodge a complaint against the actions of tax administration bodies, even if objectively the actions of the authorities were lawful. Likewise, the mere increase in the number or value of the blockades carried out is not a basis for concluding that the instrument is being abused. Therefore, in order to assess whether the blocking of accounts is being abused, it is important to analyze the court rulings themselves, in which there has been a review of the actions of tax administration authorities.

In the opinion of some authors, the analysis of the rulings of the Provincial Administrative Court leads to the conclusion that the account was blocked due to: the tax officials' complete ignorance of the business models operating in the economy, faulty interpretation of the blocking regulations, making accusations in exaggeration, lack of any analysis of the facts supported by evidence, the existence of small discrepancies between the gross value of VAT invoices shown in SAF for VAT and cash flows (Kwietko-Bębnowski, 2021: 22). The evaluation of the activities of tax authorities requires an analysis of the rulings of administrative courts. For the purposes of the undertaken study, an analysis of the judgments of the Supreme Administrative Court was carried out.

2. ASSESSMENT OF THE APPLICATION OF THE BLOCKADE BY FISCAL ADMINISTRATION

The assessment of the blockade by tax administration was carried out through the analysis of a case study – judgments of the Supreme Administrative Court. Taxpayers who do not agree with the decisions of tax authorities regarding the applied blockade of the bank account under the STIR may submit a complaint to the Provincial Administrative Court. Due to the two-instance nature of court proceedings in Poland, the parties (both taxpayers and tax administration authorities) have an option of submitting a cassation appeal to the Supreme Administrative Court. The analysis of the Supreme Administrative Court's rulings on bank account blocking is intended to serve the purpose of the article and to verify the adopted hypothesis. As of March 25, 2022, there were 17 judgments of the Supreme Administrative Court assigned to the provisions on account blocking in the Lex database. All 17 NSA judgments were analyzed. Not all resolved rulings assessed the legitimacy of the blockade provision (see Table 2).

Table 2. The number of judgments in which the court assessed the blocking of the account and the number of judgments related to other issues

| Number of judgments covered by the examination | Number of judgments in which account blockade was assessed | Share of the number of judgments in which account blockade was assessed in total judgments | Number of judgments on other issues | Share of judgments on other issues in total judgments |
|------------------------------------------------|------------------------------------------------------------|--------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------------------------|
| 17 | 10 | 58,8% | 7 | 41,2% |

Source: own calculations.

The data in Table 2 shows that in seven analyzed cases, the court did not rule on the merits of the order imposing the blockade. Although tax administration authorities applied the account blockade, the panel of judges did not assess the legitimacy of its use, but considered various other issues. Among other things, they assessed the power of the courts to review the so-called 72-hour blockade. The rulings also referred to procedural issues concerning the time limit for reviewing a complaint against an order to extend the deadline for blocking bank accounts, the deadline for extending the VAT refund, or the form and effect of serving a letter. On the other hand, ten judgments of the Supreme Administrative Court related to the issue of blocking an account under STIR. In the vast majority of decisions, the Supreme Administrative Court approved the actions of tax administration authorities (see Table 3).

Table 3. Supreme Administrative Court's assessment of account blocking under STIR

| Number of judgments covered by the examination | Number of judgments in which an account block was accepted | Share of the number of judgments in which an account block was accepted in the judgments examined | Number of judgments in which no resolution occurred | Share of the number of judgments in which no resolution occurred in the judgments examined |
|------------------------------------------------|------------------------------------------------------------|---------------------------------------------------------------------------------------------------|-----------------------------------------------------|--------------------------------------------------------------------------------------------|
| 10 | 9 | 90,0% | 7 | 10,0% |

Source: own study.

The data in Table 3 shows that in none of the analyzed cases the court found that the tax authority unjustifiably blocked the bank account. This allows to conclude that the actions of tax administration bodies are not characterized by abuse of the discussed instrument. Such an observation should be considered a positive element in the functioning of the tax administration.

In one case, there was no ruling on the legitimacy of blocking bank accounts. The court of first instance ruled that in its proceedings it could not consider whether the taxpayer's account was used for purposes related to or aimed at defrauding the taxpayer. The Supreme Administrative Court disagreed with the interpretation made by the Provincial Administrative Court and overturned its ruling, referring the case for reconsideration. However, the Supreme Administrative Court did not make a final ruling on whether the account blocking was applied correctly. Thus, it is not possible at this stage of the case to determine whether the tax authorities' actions were justified.

In nine analyzed cases, the Supreme Administrative Court approved the actions of tax authorities, finding that there were grounds for blocking the taxpayer's account. The Supreme Administrative Court found that the suspicion that the entities might have participated in tax frauds was justified, and that there was a justified fear that the taxpayer would not fulfil an existing, or arising tax liability. In order to assess the correctness of the application of account blocking, it is worth conducting a thorough analysis of the premises for its application. In the analyzed cases, the tax authorities blocked the account for taxpayers who undertake various activities that expose the state treasury to losses. These activities can be divided into the following groups:

- VAT evasion,
- evasion of VAT and excise duties,
- reducing VAT paid by reducing input VAT,
- participation of the taxpayer in the VAT fraud mechanism.

Tax authorities have blocked a bank account in connection with VAT evasion for two taxpayers.

In one case, the tax authority found that the taxpayer deliberately participated in such an artificially created structure of selling goods to individual customers, which only appeared to be intermediation in the distribution of goods. The authority presented a detailed description of the mechanism aimed at non-payment of the tax. The company was in fact making sales (mostly retail) through sales platforms and its own online shop. The use of the account blockade was to protect the interests of the state treasury.

In another analyzed case, the taxpayer made sales on the Polish territory to individuals and business entities, which should have been taxed in Poland at the basic rate of 23%, but were shown as a supply from the UK. This conclusion was reached on the basis of an analysis of:

- financial flows on bank accounts ,
- the organizational structure of the taxpayer, including the place of doing business, persons entitled to bank account,
- structure of trading in new electronics in connection with the Polish entity.

In these both cases, the panels of judges found that in such situations it was reasonable to apply a blocking of the bank account in order to safeguard the interests of the state treasury.

The administrative court also accepted the application of a bank account block in relation to the evasion of VAT and excise duties. The taxpayer's core business was the production of lubricating oil with parameters similar to diesel oil. This provided, *inter alia*, an opportunity to use the lubricating oil as a substitute for diesel and then placing this product on the market without paying the due fees and taxes in connection with the use of the excise duty suspension procedure. The tax administration authorities indicated that, in most cases, the destinations/deliveries of the product were in the commercial documents accompanying the shipment other than the address/country/data of the consignee of the goods to whom the documents were issued. Moreover, the findings showed that the actual delivery of the excise product was made to a different location than that declared in the documents accompanying its shipment. In addition, it was found that payments were received in the controlled period from an entity that had been deleted from the VAT register and did not sell to the company. The value of payments from one of the counterparties amounted to PLN 9.8 million in PLN terms, while the sales disclosed in the SAF for VAT files to this entity amounted to PLN 30.5 million. This was done to make the transactions more plausible. The court agreed that the blockade was justified in such circumstances.

The account blockage under STIR was also used by two taxpayers due to the reduction of the VAT paid by reducing the input VAT. In one of the cases, the taxpayer indicated that he is a so-called large taxpayer (served by a specialized tax office), pays his tax on time, does not liquidate his assets, and operates on the family property of the company's owners. Since the beginning of 2019, he has declared and paid more than PLN 2.8 million in value added tax for the period between January–September 2019. However, according to the court, a detailed analysis of the taxpayer's counterparties indicated that they may have been involved in tax fraud, engaged in extortion, or assisted other entities in doing so by avoiding payment of tax due. According to the court, it could not be ruled out that the counterparties explicitly acted as so-called "disappearing taxpayers" or acted as buffers artificially extending the supply chain, with the disappearing taxpayers being the entities before them in the invoicing chain. The court found that there was a reasonable suspicion that the taxpayer's inclusion in his tax accounts of purchase VAT invoices issued to two entities did not document actual economic events and could only have been intended to reduce output tax by the input tax resulting from those invoices. The court stated that the blocking of an entity's account may be necessary in order to counteract defrauding taxpayers other than the qualified entity. In the following case, it was considered that the taxpayer may have been involved in a practice whereby output tax was reduced

by the input tax resulting from VAT invoices stating transactions that had not actually taken place. In the opinion of the tax authorities, the taxpayer used accounting evidence that could document fictitious acquisitions and the tax returns he submitted are not factually correct. Such conclusions were drawn on the basis of an analysis of the statement of transactions, invoices, tax returns, transfers in the company's bank accounts, as well as an analysis of evidence concerning its counterparties. The panel of judges agreed with the argumentation of the tax authorities, confirming the legitimacy of the bank account blocking applied.

In four analyzed cases, in the opinion of the tax authorities, it was necessary to block a bank account under STIR due to the taxpayer's involvement in a VAT fraud mechanism.

The tax authority blocked bank account of "Y" limited liability company due to the actions of its counterparty. Company "Y" concluded goods purchase transactions from a related company "X", which was registered at the same address as company "Y". Company "X" submitted SAF for VAT from January to August 2019, whereby "X" reported neither supplies nor amounts of purchases of goods and services for January–February 2019. Sales of goods began to be declared from March 2019. However, the purchase of goods began to be shown in SAF for VAT from May 2019. The total value of sales was over PLN 38 million, and the purchase value was over PLN 8 million. Additionally, company "X" did not pay VAT. The Tax Office enforced PLN 550,000 for the receivables of company "X", but the arrears of company "X" still exceeded PLN 6.3 million. All the circumstances, including the activities of company "X" – the disproportionate amount of purchases in relation to the amount of sales, the existence of tax arrears resulted in the blocking of company "Y" 's account, which was approved by the Supreme Administrative Court.

In another case, the tax administration found that the taxpayer, in the period from January 2019 to April 2020, declared in the submitted SAF for VAT the largest acquisitions from entities that did not submit VAT-7 tax returns or who used invoices issued by entities that did not submit VAT-7 tax returns in their settlements. Most of these entities were registered with minimal share capital (PLN 5,000), had virtual offices, had no employees, owned no real estate or movable property, did not declare the acquisition of fixed assets, declared purchases from entities that did not submit VAT returns, in the analyzed period they reported only excess input tax over output tax to be carried forward. Some of the contractors were removed from the register of VAT taxpayers in 2019. According to the tax authorities, the taxpayer did not have any significant assets. In the submitted VAT-7 returns in the analyzed period, he did not show the acquisition of fixed assets, he did not submit financial statements for 2018 and 2019. The taxpayer also did not own vehicles and did not own any real estate.

According to the tax authority, the taxpayer did not employ employees, as no payment of salaries or transfers of contributions to the Social Security Institution were found among the operations carried out through the bank account. In addition, an analysis of the bank accounts showed significant differences between the value of funds transferred/received and the gross value of VAT invoices received/issued. The court accepted the application of a bank account blockade in such circumstances.

In the next case, the authority blocked the bank account after analyzing the financial flows on the taxpayer's bank accounts, the differences between payments made through the bank account in comparison with the SAF for VAT files, credits and debits from entities not shown in the submitted SAF for VAT files. Verification of the taxpayer's counterparties was also carried out in terms of analysis of share capital, place of business, method and execution of payments made and disbursements made, personal relationships in companies, turnover in bank accounts in relation to the declared million PLN payments. The analysis pointed to the fact that the taxpayer's contractors had minimal share capital, the companies were formed as a result of the purchase of "ready-made companies" the place of business was a so-called "virtual office", some were eventually removed from the VAT register. The panel of judges agreed with the argumentation of the tax authorities, confirming the legitimacy of the bank account blocking applied.

A detailed analysis carried out by the tax authorities indicated the possibility of participating in VAT fraud in another case. The company declared in SAF for VAT to issue invoices for a total gross value of PLN 50 559 thousand (including output VAT over PLN 9.4 million). However, it received only 4% of the invoice value from its contractors. The total amount of funds that flowed into the company's account in the analyzed period was more than PLN 3.8 million, but 37% of the funds came from entities to which the taxpayer did not declare to issue invoices, while at the same time these entities did not show transactions with the company in their VAT records. At the same time, the company showed invoices for more than PLN 50.5 million in its purchase records, while no payment was made for the purchases made. Direct or indirect suppliers did not show in their records the tax resulting from the invoices shown by the taxpayer. The company did not show assets or employees employed. Among the vast majority of reported contractors, the individuals who founded these companies were repeated owner. and members of their single-member boards of directors at the time of the audit were persons of Vietnamese origin. The cash withdrawals were made by the company's attorney, not by the person listed in the National Court Register as the president. In view of the analysis presented, the tax authority decided to block the account, which was approved by the court.

The analysis of nine rulings shows that in each case there are individual, characteristic premises indicating the possibility of participation of entities in tax frauds. In each case, there were individual circumstances justifying, in the opinion of the Supreme Administrative Court, blocking the account. The extensive analysis carried out by tax administration bodies should be assessed positively. It was not narrowed down to the risk indicator alone, but other information indicating the legitimacy of applying an account blocking under STIR was taken into account. The conducted research allows to conclude that the research hypothesis has been negatively verified. In none of the analyzed cases, the Supreme Administrative Court found that the tax authority unjustifiably blocked a bank account.

CONCLUSIONS

VAT frauds are a significant problem for public finances. One of the instruments aimed at counteracting unfavorable mechanisms is the introduction of blocking bank accounts under the STIR system. However, for individual entities, the use of a blockade may pose a threat to their functioning. This is especially true for those entities that are not actually involved in tax crime activities. The conducted research allows to conclude that the research hypothesis has been negatively verified. In none of the analyzed cases, the Supreme Administrative Court found that the tax authority unjustifiably blocked a bank account.

The analysis of these judgments shows that in each case there are individual, characteristic premises indicating the possibility of participation of entities in tax frauds. In each case, there were individual circumstances justifying, in the opinion of the Supreme Administrative Court, blocking the account.

Tax authorities took into account multiple factors when deciding whether to apply a bank account blockade. These were not hasty decisions based solely on a cursory random analysis of data on the only element of the company's operation. The conducted research shows that the blocking of bank accounts under the STIR system is not abused by tax administration authorities. The presence of such an instrument contributes to the reduction of the scale of tax frauds, and increases the security of the public finance system as well as of economic activity by eliminating entities engaged in tax frauds. Nevertheless, it is advisable to conduct further research to evaluate the activities of tax administration. The correctness of the application of regulations does not exclude the possibility of mistakes in the future.

ACKNOWLEDGMENTS

I would like to thank my wife, Magda for the help in formatting and editing the article when I couldn't work on the computer due to my eyesight.

DISCLOSURE STATEMENT

The authors report no conflicts of interest.

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Zakończenie recenzji/ End of review: 30.10.2022

Przyjęto/Accepted: 03.11.2022

Opublikowano/Published: 23.11.2022