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Understanding the requirement to document the receipt of a donation from close relatives in order to benefit from inheritance and gift tax exemption (Article 4a (1) (2) of the Act on Inheritance and Gift Tax). An approving commentary on the resolution of the Supreme Administrative Court of 20 March 2023, III FPS 3/22

Rozumienie wymogu udokumentowania otrzymania darowizny celem skorzystania ze zwolnienia z podatku od spadków i darowizn przez osobę najbliższą (art. 4a ust. 1 pkt 2 ustawy o podatku od spadków i darowizn). Glosa aprobująca do uchwały Naczelnego Sądu Administracyjnego z dnia 20 marca 2023 r., III FPS 3/22

Понимание требования документального подтверждения получения дарения с целью воспользоваться освобождением от уплаты налога на наследство и дарение ближайшим лицом (статья 4а, 1, пункт 2 Закона о налоге на наследство и дарение). Одобрительный комментарий к постановлению Высшего Административного Суда от 20 марта 2023 г., III FPS 3/22

Розуміння вимоги документального підтвердження отримання дарчі для того, щоб скористатися звільненням від сплати податку на спадщину та дарування найближчою особою (ст. 4а абз. 1 п. 2 Закону „Про податок на спадщину та дарування"). Відгук до постанови Вищого адміністративного суду від 20 березня 2023 року, № III FPS 3/22

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Summary: The study approvingly refers to the resolution of the Supreme Administrative Court of 20 March 2023, III FPS 3/22, adopted at the request of the Commissioner for Human Rights, on the formal and technical requirements that a taxpayer must meet to obtain an inheritance and gift tax exemption on account of receiving a donation of funds from close relatives. Contrary to the prevailing line of jurisprudence, the Supreme Administrative Court stated in the above-mentioned resolution that it is not sufficient for the donee to deposit the donation to a bank account on behalf of the donor in order to prove entitlement to a tax exemption. According to the Supreme Administrative Court, this does not make it possible to identify the parties to the donation agreement and does not achieve the purpose of the obligation to document cash donations, i.e. to tighten the tax system and prevent activities aimed at introducing cash of undetermined origin into circulation. The above-mentioned resolution indicates that the condition of documenting the acquisition of a donation is fulfilled only when the donor makes a transfer to the recipient's bank account (or uses a postal order). This study examines the normative content of the obligation to document the acquisition of a donation of funds, aiming

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to dispel doubts raised by the linguistic interpretation of Article 4a (1) (2) of the Act of 28 July 1983 on inheritance and gift tax, which establishes this obligation. A dogmatic-legal research method is used in the study. The result is the claim that a recipient's payment to their own bank account does not meet the conditions of the exemption regulated in Article 4a of the above-mentioned Act, which prompts the author to positively assess the commented resolution of the Supreme Administrative Court.

Key words: Inheritance and Gift Tax, donation, tax exemption, bank transfer, postal order

Streszczenie: W opracowaniu aprobująco odniesiono się do uchwały Naczelnego Sądu Administracyjnego z dnia 20 marca 2023 r., III FPS 3/22, podjętej na wniosek Rzecznika Praw Obywatelskich w sprawie wymogów formalno-technicznych, jakie musi spełnić podatnik, aby uzyskać zwolnienie z podatku od spadków i darowizn z tytułu otrzymania darowizny środków pieniężnych od osób najbliższych. Wbrew przeważającej linii orzeczniczej, NSA w wyżej wymienionej uchwale stwierdził, że do skorzystania ze zwolnienia podatkowego nie jest wystarczające dokonanie wpłaty darowizny na rachunek bankowy przez obdarowanego na własną rzecz w imieniu darczyńcy. Zdaniem NSA taki sposób wpłaty pieniędzy nie pozwala na identyfikację stron umowy darowizny oraz nie realizuje celu obowiązku udokumentowania darowizny pieniężnej, jakim jest uszczelnienie systemu podatkowego i uniemożliwienie działań zmierzających do wprowadzenia do obiegu środków pieniężnych o nieustalonym pochodzeniu. W przywołanej uchwale wskazano, że przesłankę udokumentowania nabycia darowizny spełnia dopiero dokonanie przez darczyńcę przelewu na rachunek bankowy obdarowanego (względnie posłużenie się przekazem pocztowym). Przedmiotem badań jest treść normatywna obowiązku udokumentowania nabycia darowizny środków pieniężnych, a ich celem rozwianie wątpliwości, jakie budzi wykładnia językowa art. 4a ust. 1 pkt 2 ustawy z dnia 28 lipca 1983 r. o podatku od spadków i darowizn, który ten obowiązek ustanawia. W analizach posłużono się dogmatyczno-prawną metodą badawczą. Rezultatem badań jest twierdzenie, że dokonanie wpłaty własnej na rachunek bankowy obdarowanego nie spełnia warunków zwolnienia uregulowanego w art. 4a ww. ustawy, co skłoniło autora do pozytywnej oceny komentowanej uchwały NSA.

Słowa kluczowe: podatek od spadków i darowizn, darowizna, zwolnienie, przelew bankowy, przekaz pocztowy

Резюме: В документе с одобрением рассматривается постановление Высшего Административного Суда от 20 марта 2023 года, III FPS 3/22, принятое по заявлению Уполномоченного по гражданским правам о формальных и технических требованиях, которые должен выполнить налогоплательщик, чтобы получить освобождение от налога на наследство и дарение при получении дарения денежных средств от ближайших родственников. Вопреки сложившейся судебной практике, Высший Административный Суд в вышеупомянутом постановлении утверждает, что для того, чтобы воспользоваться освобождением от уплаты налога, недостаточно, чтобы дарение было перечислено на банковский счет получателя им самим от имени дарителя. По мнению Высшего Административного Суда, такой способ внесения денег не позволяет идентифицировать сторон договора дарения и не осуществляет цели обязанности документального подтверждения дарения денежных средств, которая заключается в обеспечении эффективности налоговой системы и предотвращении действий, направленных на введение в оборот денежных средств неопределенного происхождения. В рассматриваемом постановлении указано, что условие о документальном подтверждении получения дарения выполняется только путем перечисления дарителем денежных средств на банковский счет получателя (или с использованием почтового перевода). Предметом исследования является нормативное содержание обязанности документального подтверждения приобретения дарения денежных средств, а его целью – устранение сомнений, возникающих при лингвистическом толковании статьи 4a, 1, пункт 2 Закона о налоге на наследство и дарение от 28 июля 1983 года, устанавливающей данную обязанность. В исследовании был использован догматико-правовой метод. Результатом исследования является утверждение о том, что осуществление собственного платежа на банковский счет получателя не соответствует условиям освобождения, установленного в статье 4a вышеупомянутого Закона, что привело автора к положительной оценке комментируемого постановления Высшего Административного Суда.

Ключевые слова: налог на наследство и дарение, дарение, освобождение, банковский перевод, почтовый перевод

Резюме: У дослідженні схвально оцінюється рішення Вищого адміністративного суду від 20 березня 2023 року, III FPS 3/22, прийняте на запит Омбудсмена щодо формальних і технічних вимог, яким повинен відповідати платник податків, щоб отримати звільнення від сплати податку на спадщину та дарування при отриманні грошової допомоги від найближчих родичів. Всупереч домінуючій судовій практиці, у вищезгаданому рішенні ВАС зазначило, що для того, щоб скористатися податковим звільненням, обдаровуваному недостатньо здійснити на свою користь платіж пожертви на банківський рахунок від імені дарувальника. На думку ВАС такий спосіб внесення коштів не дозволяє ідентифікувати сторони договору пожертви та не відповідає меті обов'язку документального оформлення готівкової пожертви, яка полягає в герметизації податкової системи та запобіганні діям, спрямованим на введення в обіг готівки невизначеного походження. Вищезазначена постанова вказує на те, що передумовою документального оформлення набуття пожертви є лише здійснення пожертвувачем переказу на банківський рахунок набувача (або за допомогою поштового переказу). Предметом дослідження є нормативний зміст обов'язку документального підтвердження набуття пожертви готівкою, а його метою – розвіяти сумніви, викликані лінгвістичним тлумаченням статті 4a абз. 1 п. 2 Закону „Про податок на спадщину та дарування" від 28 липня 1983 року, яка встановлює цей обов'язок. У дослідженні використано догматико-юридичний метод. Результатом дослідження є твердження про те, що здійснення власного платежу на банківський рахунок одержувача не відповідає умовам звільнення, регламентованого ст. 4a вищезгаданого Закону, що зумовило позитивну оцінку автором коментованої постанови Вищого адміністративного суду.

Ключові слова: податок на спадщину та дарування, дарування, звільнення, банківський переказ, поштовий переказ

Introduction

The subject of the study, undertaken with the intention to comment on the resolution of the Supreme Administrative Court (hereinafter: the SAC) of 20 March 2023 (ref. no. III FPS 3/22; hereinafter: the Resolution), is the obligation to document the acquisition of a donation of money specified in Article 4a (1) (2) of the Act of 28 July 1983 on Inheritance and Gift Tax (hereinafter: Inheritance and Gift Tax Act). The wording of this provision gives rise to doubts as to interpretation, which give rise to a dispute as to whether making a payment by the donee to their own payment account a correct form of fulfilling the obligation set out in the above-mentioned provision. This is particularly important because the proper performance of the said obligation is associated with obtaining an exemption from inheritance and gift tax on the received donation of funds.

The thesis that the author will seek to prove when commenting on the Resolution is the view that the above-mentioned obligation should be interpreted strictly and, consequently, that the interpretation that accepts ways of fulfilling this obligation other than those expressly indicated in Article 4a (1) (2) of the Inheritance and Gift Tax Act is incorrect.

At the outset, it should be noted that the thesis adopted by the author makes the commentary approving, and its subject is the analysis and assessment of the

Resolution adopted at the request of the Commissioner for Human Rights of 16 November 2022 (ref. no. V.511.953.2022.EG) for a panel of seven judges of the SAC to adopt a resolution aimed at clarifying the issue, which is the subject of divergences in the case-law of administrative courts, namely: "Should the expression used in Article 4a (1) (2) of the Act of 28 July 1983 on Inheritance and Gift Tax (Journal of Laws 2021 item 1043, as amended): 'where the object of the acquisition is cash as a gift or donor's instruction […], they [i.e. the acquirer] document their receipt with a confirmation that the above amount was transferred to the acquirer's account in a bank […]' be understood as meaning that the payment or transfer of the funds which are the subject of the legal transaction of donation exclusively by the donor to the account of the donee is deemed to be evidence for benefitting from the tax exemption for close relatives, or is it sufficient for the donee to make a payment of funds to their own account on behalf of the donor?" In response to the question posed in this way, the SAC ruled in the operative part of the resolution that: "Expression used in Article 4a (1) (2) of the Act of 28 July 1983 on Inheritance and Gift Tax (Journal of Laws 2021 item 1043, as amended) 'where the object of the acquisition is cash as a gift or donor's instruction […], they [i.e. the acquirer] document their receipt with a confirmation that the above amount was transferred to the acquirer's account in a bank […]', it should be understood as meaning that a sufficient condition for benefitting from the tax exemption provided for in that provision is that the donor has documented the transfer of funds to the donee in the manner indicated in that provision."

The SAC thus opted for an unfavourable interpretation for taxpayers under Article 4a (1) (2) of the Inheritance and Gift Tax Act. According to this interpretation, the conditions for exemption will not be met if the payment to a payment account is made by the recipient themselves (e.g. in person at a bank branch), even though the parties to the donation agreement are clearly indicated and the monetary value of the donation is known and beyond doubt. In other words, the right to tax exemption is to be determined by whether the donation agreement was performed by way of a factual act of bank transfer or postal order (the exemption is granted) or by means of another factual transaction (the exemption is not granted).

In the commented case there is no factual situation in the classic sense of the term, as the Commissioner for Human Rights requested that the SAC adopt a so-called abstract resolution based on Article 15 (1) (2) of the Act of 30 August 2002 – The Law on Proceedings Before Administrative Courts, in connection with a significant discrepancy in the jurisprudence of administrative courts in the scope covered by the above-mentioned application for the issuance of the Resolution.

The considerations are based on the legal status as at the date of the SAC's resolution, i.e. 20 March 2023, unless it is clearly stated otherwise.

1. Legal status

On the day of the Supreme Administrative Court's ruling pursuant to Article 4a (1) (2) of the Inheritance and Gift Tax Act:

> Acquisition of ownership title to tangible property or property rights by a spouse, descendants, ascendants, stepchild, siblings, stepfather and stepmother, is exempt from tax if:
> 1) they report the acquisition of ownership of tangible property or property rights to the competent head of the tax office within 6 months as of the day on which the tax liability arose […], and
> 2) the object of acquisition by way of donation or donor's instruction is cash,
>
> and their value […] exceeds the amount specified in Article 9.1 (1) – they document their receipt with a confirmation that the above amount was transferred to the acquirer's account in a bank or a savings and credit union, or by postal order.

This regulation entered into force on 1 January 2007 and has been amended several times since then[1] but the relevant provision has not changed since the date of adoption of the Resolution.

It should be noted that in the explanatory memorandum to the bill introducing the exemption in question, it was emphasised that the introduction of the necessity to document donations is to ensure the tightness of the tax system, and at the same time to prevent actions aimed at introducing cash of undetermined origin into circulation, and to prevent fictitious contracts drawn up to reduce other tax liabilities,

[1] For more information on the tax preference and its evolution, see: P. Borszowski, in: K.J. Musiał, A. Nita, K. Stelmaszczyk-Borszowska, J. Wantoch-Rekowski, P. Borszowski, *Ustawa o podatku od spadków i darowizn. Komentarz*, Warszawa 2022, Commentary on Article 4a; J. Szczygieł, in: S. Bogucki, G. Liszewski, P. Smoleń, K. Winiarski, J. Szczygieł, *Podatek od spadków i darowizn. Komentarz*, Warszawa 2021, Commentary on Article 4a; R. Styczyński, *Ustawa o podatku od spadków i darowizn. Komentarz*, Warszawa 2014, Commentary on Article 4a; S. Babiarz, in: A. Mariański, W. Nykiel, S. Babiarz, *Ustawa o podatku od spadków i darowizn. Komentarz*, Warszawa 2010, Commentary on Article 4a; S. Brzeszczyńska, *Podatek od spadków i darowizn. Komentarz*, Warszawa 2009, and more indicated in Bibliography.

for example by invoking amounts obtained from donations from relatives in proceedings concerning undisclosed sources of revenue.[2]

2. Discrepancies in the jurisprudence of administrative courts

With regard to the interpretation of the rules for documenting the acquisition of funds as a gift, two lines of jurisprudence have developed in the case law of administrative courts:

1) a sufficient condition for the exemption to be applied is also when the donee makes a payment to their own account on behalf of the donor;
2) a sine qua non condition for the exemption is that it is only the donor who makes a transfer or payment to the recipient's account.

Examples of judgments representing the first of these lines of case-law are: judgment of the SAC of 11 December 2019 (II FSK 3954/17), judgment of the Voivodeship Administrative Court in Gliwice of 25 January 2023 (I SA/Gl 1069/22), judgment of the Voivodeship Administrative Court in Gliwice of 25 January 2023 (I SA/Gl 1069/22), judgment of the Voivodeship Administrative Court in Kraków of 20 December 2022 (I SA/Kr 933/22), judgment of the Voivodeship Administrative Court in Gliwice of 14 April 2022 (I SA/Gl 1684/21), judgment of the Voivodeship Administrative Court in Gliwice of 15 February 2022 (I SA/Gl 1307/21), judgment of the Voivodeship Administrative Court in Łódź of 25 August 2020 (I SA/Gl 1307/21), judgment of the Voivodeship Administrative Court in Bydgoszcz of 1 December 2021 (I SA/Bd 249/21) and judgment of the Voivodeship Administrative Court in Lublin of 13 March 2020 (I SA/Lu 742/19). In the grounds of those judgments, similar arguments are repeated in support of a more favourable interpretation of Article 4a (1) (2) of the Inheritance and Gift Tax Act. First, in the cited judgments, the administrative courts draw attention to the technical aspect of this obligation, which is secondary when there is no doubt as to the parties, date and value of the donation of funds. Second, those courts consider that it does not follow from Article 4a (1) (2) of the Inheritance and Gift Tax Act that the person making the payment to the recipient's payment account must be the donor. Third, the time lapse between the payment of the donation in cash and its payment to the recipient's payment account is not an obstacle to obtaining the exemption. In summary, on the

[2] Explanatory memorandum to the government's bill amending the Act on Inheritance and Gift Tax and the Act on Tax on Civil Law Transactions – V term, Sejm paper no. 736.

one hand, those courts give priority to facts rather than to how they are established and thus consider it sufficient to make an own payment of funds received without a bank transfer.

Examples of judgments representing the second line of case law are: judgment of the SAC of 19 December 2019 (II FSK 293/18), judgment of the SAC of 26 November 2013 (II FSK 2967/11), judgment of the Voivodeship Administrative Court in Łódź of 8 March 2022 (I SA/Łd 890/21), judgment of the Voivodeship Administrative Court in Gliwice of 27 February 2020 (I SA/Gl 1570/19) and judgment of the Voivodeship Administrative Court in Gliwice of 26 February 2020 (I SA/Gl 1000/19). In those judgments, the reasoning of the administrative courts is different. These courts emphasise that the recipient's payment to their own account is neither proof of the donor's transfer of funds nor proof of their receipt from the donor – it is only proof of own payment by the account holder. Proof of transfer should document the donor's payment to the recipient's account – only then can the fact of the donation be proven. Those courts also note that a donation amounts to a gratuitous transfer of a specific property to the donee by the donor. The proof should be a manifestation of the donor's activity, not that of any other entity – that is why own payment does not meet the condition set out in Article 4a (1) (2) of the Inheritance and Gift Tax Act.

A review of the case law clearly indicates that its prevailing line is more favourable to taxpayers, in particular at the level of voivodeship administrative courts.

3. The verdict made in the voted Resolution of the Supreme Administrative Court and its assessment

In the opinion of the SAC, as in every case of judicial application of law, it is necessary to refer to interpretative directives belonging to the achievements of legal culture established by legal science and legal practice. In the present case, the totality of the principles of interpretation of national law clearly supports the rejection of the interpretation adopted by the Ombudsman in their request for the adoption of an abstract resolution.

The SAC, assessing the clarity of the provisions to be interpreted in order to adopt the Resolution, assessed that the mere use of the words contained in Article 4a (1) (2) of the Inheritance and Gift Tax Act is not sufficient to determine the possible meaning of these words, which is necessary to determine the legal norm encoded in the above-mentioned provision. It should be remembered, however,

that when applying a teleological interpretation, the wording of legal acts is linked to the meaning and purpose of the legal provisions, and the limit of interpretation is the possible meaning of the words used by the legislator to express its will.

The SAC clearly stated that it did not agree with the view of the Commissioner for Human Rights, who downplayed the role of the obligation to properly document the purchase of a monetary donation.

The SAC also emphasised that, in its opinion, the discrepancy in the case law and doubts in interpretation do not concern the understanding of the legal text because of its ambiguity, but the issue of departing from the unambiguous wording of the provisions and applying them without the conditions expressly stated therein, i.e. omitting a fragment of the provision that would have to be considered not so much unnecessary as inadmissible, grossly violating the Constitution of the Republic of Poland, contrary to the values it protects.

In the opinion of the SAC, treating the condition of documentation as a technical obligation of lesser importance is unjustified. This leads to an erroneous interpretation of Article 4a (1) of the Inheritance and Gift Tax Act postulated by the Ombudsman. At the same time, the SAC states that it approves the pro-constitutional interpretation of Article 4a of the Inheritance and Gift Tax Act indicated by the Commissioner for Human Rights and the adjudicating panels of the SAC in justifications for some judgments. At the same time, it should be noted that the introduction of point 2 to Article 4a (1) of the Inheritance and Gift Tax Act was a deliberate action of the legislator. The reconstruction of the *ratio legis* of Article 4a of the Inheritance and Gift Tax Act cannot disregard this circumstance.

The SAC rightly points out that the legislator, when constructing the tax exemption referred to in Article 4a of the Inheritance and Gift Tax Act, was guided by a complex goal: on the one hand, it sought to introduce a family-friendly tax solution in the field of inheritance and gift tax, and on the other hand, it imposed conditions for the use of the analysed exemption to ensure the security of legal transactions and the tax system that serves the state, i.e. the common good of all citizens (Article 1 of the Constitution of the Republic of Poland). Both aspects of the *ratio legis* of Article 4a (1) (2) of the Inheritance and Gift Tax Act must be taken into account.

Considering the entirety of the legal, functional and systemic circumstances, the SAC took the view that one of the equivalent prerequisites for the application of the exemption, i.e. proper documentation of the acquisition of a donation, cannot be underestimated. It is not the role of the judiciary to interpret provisions in law, which could be the case, in particular, in a situation where a court's assessment of the reasonableness of a given legal regulation is questionable. As a consequence, the SAC held that the obligation to document the acquisition of a donation should

be interpreted strictly and, in the face of reconciling both the protection of the interests of the immediate family and the interests of public finances, it cannot be concluded that the implementation of this obligation in another way than those indicated by the legislator could be valid, taking into account the overriding need for unambiguous identification of both parties to the donation agreement.

Moving on to the assessment of the resolution under discussion, it should be emphasised that the donor's payment of funds to their own bank account does not allow to state with certainty that these funds actually come from a donation obtained from a specific person. Such a payment also does not have a documentary function in terms of determining the date of execution of the donation (an unspecified period of time may elapse from the moment of actual receipt of the funds to the moment of their payment by the donee to their own account), which is particularly important in the case of donation agreements not concluded in the form of a notarial deed (which form is defined by the legislator in first sentence of Article 890 § 1 of the Civil Code). In such a case, the date on which the service is rendered by the donor determines the date on which the tax obligation arises.

Making a transfer by the donor to the recipient's bank account is devoid of the above-mentioned drawbacks of recipient's own payment. A bank transfer clearly indicates the name of the donor (the holder of sender's bank account) and the date of making the donation (the date of the transfer order). In such a case, the amount of the endowment on the part of the donee is also not disputed. Precise determination of the date of the transfer of assets between the donor and the donee is not only an advantage in determining the moment when the tax obligation arises but also enables a more precise determination of the chronology of the transaction in a broader context, when, for example, the entire financial settlements of the donee and the donor (both mutual and with other entities) are subject to tax audit.

It seems that the problem with the subject of the Resolution results from widespread criticism of the rather clear linguistic interpretation of Article 4a (1) (2) of the Inheritance and Gift Tax Act, which is further strengthened by suggestions that it is necessary to apply other methods of interpretation of the law, which are supposed to result in an understanding of the above-mentioned provision other than its linguistic understanding, consistent with a more liberal view. In this context, however, it is necessary to refer to one of the fundamental rules of tax law interpretation, which is the principle of the primacy of linguistic interpretation, additionally strengthened by the prohibition of a broad interpretation of a legal provision establishing an exception to a legal principle (exceptiones non sunt extendae).[3] In

[3] L. Morawski, *Zasady wykładni prawa*, Toruń 2006, pp. 171–182.

the author's opinion, the literal interpretation of Article 4a (1) (2) of the Inheritance and Gift Tax Act leaves no doubt and leads to the conclusions presented by the Supreme Administrative Court in the Resolution.

As rightly noted in the case law of the Supreme Administrative Court, the linguistic analysis of a given provision of law is not only the starting point for the interpretation of law, but also delineates its limits. An attempt to interpret a provision of law that would be contrary to the linguistic meaning of that provision would be a violation of the rule of law. The linguistic meaning of a provision of law sets the limits of permissible interpretation, since "a verbal formula is […] the limit of any permissible meaning that can be looked for in the text of legal provisions."[4]

In order to determine this meaning, it is possible to refer to the linguistic, systemic and functional context of the legal provision being interpreted, in accordance with the principles of linguistic, systemic and functional interpretation adopted in the jurisprudence. When resorting to non-linguistic methods of interpretation, it should be remembered that their result must be within the linguistic meaning of the words forming a given provision of law, because accepting the result of an interpretation that is clearly incompatible with the broadly understood meaning of the interpreted phrases would be tantamount to a contra legem interpretation.[5]

In the author's opinion, it is particularly important to follow the principle of linguistic interpretation, referred to as the prohibition of interpretation per non est, in the course of interpretation, and therefore it is not possible to interpret a given provision of law in such a way that some part of it turns out to be superfluous.[6]

The principle of the primacy of linguistic interpretation should not lead to the conclusion that the interpreter is entitled to ignore a systematic or functional interpretation altogether. It may turn out that the meaning of a provision that seems linguistically clear turns out to be questionable when confronted with other provisions or when the purpose of the legal regulation is taken into account. One of the strongest arguments for the correctness of an interpretation is the fact that the linguistic, systemic, and functional interpretations give a consistent result. Whenever there is a suspicion that the result of a linguistic interpretation may be inadequate, the interpreter should confront it with a systemic and functional interpretation.[7]

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4 See: judgment of the SAC of 26 November 2019, II FSK 2967/11, and judgment of the SAC of 18 December 2000, III SA 3055/09.

5 See: judgment of the SAC of 26 November 2019, II FSK 2967/11, and judgment of the SAC of 3 December 2009, II FSK 1019/08.

6 L. Morawski, *Zasady*…, p. 122.

7 M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki*, Warszawa 2002, p. 275.

With regard to the interpretation of the condition of documentation, such a confrontation also occurs. As rightly pointed out by the Supreme Administrative Court in the Resolution, the documentation of the acquisition of funds as a donation should enable the identification of the parties to the agreement. The condition in question is not expressly stated in Article 4a (1) (2) of the Inheritance and Gift Tax Act, and it is taken into account by applying a functional and systemic interpretation.[8]

Questioning the legitimacy of the allegedly "narrowing" interpretation of Article 4a (1) (2) of the Inheritance and Gift Tax Act cannot be justified by the payment habits of Poles today. According to the results of a survey conducted by the National Bank of Poland (NBP) in 2020, 88.5% of respondents had a payment account, and in the survey, such an account was defined as an account in a bank, cooperative bank, credit union or other institution that could be used for payments (e.g. a current account).[9] On the other hand, according to the World Bank data quoted by the NBP in the Report on cash turnover in Poland in 2022,[10] 96.7% of adult Poles have a bank account. This means that the number of account holders has increased by 26 percentage points over the last decade.[11] In the author's opinion, the quoted data justify the view that the condition of making a donation by way of a bank transfer is not an organisational obstacle today. At the same time, it should be remembered that the legislator still provides for a solution that allows to meet the statutory requirement as to the form of making a cash donation to and by persons who do not have a bank account (both on the part of the recipient and the donor), i.e. a postal order.

In the author's opinion, the views discrediting the so-called strict interpretation of Article 4a (1) (2) of the Inheritance and Gift Tax Act presented in the Resolution have no legal basis. However, this does not change the fact that these views are supported by important axiological arguments. At the same time, as the SAC rightly noted in the Resolution, the purpose of resolving the issue by a panel of seven judges of the SAC "is not to find an optimal normative solution."

Certainly, a solution according to which forms of transfer of control over funds (which are the subject of the donation) other than a bank transfer or a postal order do not deprive the donee of the right to the exemption provided for in Article 4a of

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8 A. Goettel, *Obowiązek udokumentowania nabycia środków pieniężnych jako warunek zwolnienia z podatku od spadków i darowizn*, Glosa 2014, no. 3, pp. 124–125.

9 NBP, Zwyczaje płatnicze w Polsce w 2020 r., https://nbp.pl/wp-content/uploads/2022/09/zwyczaje_platnicze_Polakow_2020p.pdf [access: 9.11.2023], p. 18.

10 NBP, Raport o obrocie gotówkowym w Polsce w 2022 r., https://nbp.pl/wp-content/uploads/2023/10/Raport-o-obrocie-gotowkowym-2022_internet.pdf [access: 9.11.2023], p. 25.

11 Global Database of World Bank Findex 2021, https://www.worldbank.org/en/publication/globalfindex/Data [access: 9.11.2023].

the of the Inheritance and Gift Tax Act would make it possible to avoid a situation where the donee risks having to comply with the obligation to pay the tax as a result of their ignorance of regulations in this respect, rather than of a deliberate effort to conceal the true nature of money transfers. However, taking this direction would require the intervention of the legislator and the explicit addition of "confirmation of a cash payment made by the donor or the donee to the donee's bank account" to the methods of documenting the transfer of a donation (subject to tax exemption) because one should agree with the Resolution that such a possibility does not follow from the current wording of Article 4a (1) of the Inheritance and Gift Tax Act (derived after a reliable linguistic interpretation of this provision).

As far as the main thread of considerations is concerned, it is worth mentioning an issue which, however, calls into question the consistency of the legislator's intentions, which speak in favour of the current form of taxation of cash donations from persons listed in Article 4a (1) of the Inheritance and Gift Tax Act. On the one hand, the legislator establishes a technical requirement concerning the form of making a donation, which determines the right to exemption, while on the other, the only clear 'sanction' for failure to comply with this requirement is the payment of tax at the rate provided for tax group I (which includes, i.a., all persons referred to in Article 4a (1) of the Inheritance and Gift Tax Act).[12] Along the way, however, there is generally no instrument that would verify that there was in fact a donation of a particular amount between the persons concerned. Consequently, the legislator maintains that the purpose of proper documentation of a donation is to verify beyond doubt that the donation was made by the indicated donor in a known amount. However, the lack of such verification in the manner prescribed by the legislature (bank transfer or postal order) does not prevent the legislator from taxing such a donation made on unverified terms. Of course, the tax authority has general tools to verify the correct fulfilment of tax obligations (e.g. through verification activities or a more far-reaching tax audit), but it is striking that while the legislator approaches the taxpayer with reserve at the stage of applying the tax exemption, at the stage of application of Article 4a (3) of the Inheritance and Gift Tax Act, a specific verification of the above-mentioned circumstances is usually not performed.

[12] I. Nowak, *Zwolnienie dla osób najbliższych na podstawie art. 4a ustawy o podatku od spadków i darowizn w świetle orzecznictwa i poglądów doktryny*, Toruński Rocznik Podatkowy 2012, pp. 77–78.

Conclusions

In the author's opinion, the Resolution deserves approval. Undoubtedly, the issue under study, due to its universality, is important for all Poles who can potentially receive funds by way of a donation. The importance of this issue is revealed in the common risk of a tax obligation arising if a method of transferring funds other than that provided for in Article 4a (1) (2) of the Inheritance and Gift Tax Act is used in the performance of a donation agreement. This risk reinforces the view expressed in the Resolution, because according to it, an own payment made by the donee on behalf of the donor does not satisfy the conditions for the application of the tax exemption.

This view, although different from the prevailing line of case law so far, and at the same time controversial due to its rigorousness, should be considered to be based on the current legal situation. In this context, despite the axiological doubts, it should be remembered that the primacy of the linguistic interpretation of the law has a special force in tax law.

On the other hand, the above-mentioned axiological doubts may constitute the basis for formulating possible postulates to amend Article 4a (1) (2) of the Inheritance and Gift Tax Act by taking into account "confirmation of a cash payment made by the donor or the donee to the donee's bank account" as a factual act satisfying the requirement to document the acquisition of a donation of funds. However, as long as this issue is not settled, it should be assumed, following the correct operative part of the Resolution, that "a sufficient condition for benefitting from the tax exemption provided for in that provision is that the donor has documented the transfer of funds to the donee in the manner indicated in that provision."

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