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An approving commentary on the judgement of the Supreme Administrative Court of 16 January 2025, II FSK 501/22

Aprobująca glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 16 stycznia 2025 r., II FSK 501/22

Одобрительный комментарий к решению Высшего административного суда от 16 января 2025 г., II FSK 501/22

Апробаційний коментар до рішення Верховного адміністративного суду від 16 січня 2025 року, II FSK 501/22

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Abstract: The subject of this paper is an analysis of the relevance of tax law principles to the proper application of the income tax exemption of income of a church legal entity for religiously useful purposes. The Supreme Administrative Court upheld interpretation of the tax law that only entities directly involved in religious activities can benefit from this exemption. The article also addresses the problem of limiting aggressive tax optimisation involving church legal entities. The article points out the need to change the system of tax reliefs and preferences provided for religious associations. The ruling aims to reduce aggressive tax optimisation practices and ensure that tax exemptions are used for legitimate religious purposes, rather than for tax avoidance. This decision clarifies that only entities directly controlled by church legal entities are eligible for the exemption, reinforcing the importance of adhering to the true spirit of the law and preventing misuse. Finally, the ruling highlights the need for a deeper reflection on the systemic nature of tax exemptions for religious associations, suggesting that new tax solutions could be developed through bilateral agreements between the State and churches. This would align tax exemptions with modern tax principles.

Keywords: tax relief, donation, church charity and welfare activities, church legal entity, religious organisation

Streszczenie: Przedmiotem analizy niniejszej glosy jest zastosowanie zwolnienia z podatku dochodowego dla dochodów kościelnych osób prawnych przeznaczonych na cele religijnie użyteczne. Ponadto w opracowaniu poruszono problem ograniczenia agresywnej optymalizacji podatkowej związanej z podmiotami kościelnymi. NSA potwierdził, że zwolnienia podatkowe muszą być wykorzystywane wyłącznie do celów religijnych, a nie unikania opodatkowania. Dodatkowo NSA zaznaczył, że tylko podmioty religijne bezpośrednio zaangażowane mogą korzystać z tego zwolnienia, co podkreśla konieczność przestrzegania prawdziwego celu ustawy i zapobiegania jej nadużywaniu. W komentarzu wskazano na potrzebę głębszej refleksji nad systemem zwolnień podatkowych dla związków wyznaniowych, sugerując, że nowe rozwiązania podatkowe mogłyby zostać opracowane w ramach umów bilateralnych między państwem a związkami wyznaniowymi. Taki krok pozwoliłby lepiej dostosować zwolnienia podatkowe do współczesnych zasad prawa podatkowego.

Słowa kluczowe: ulga podatkowa, darowizna, kościelna działalność charytatywno-opiekuńcza, kościelna osoba prawna, optymalizacja podatkowa, związek wyznaniowy

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Резюме: Предметом анализа настоящего комментария является применение освобождения от подоходного налога для доходов церковных юридических лиц, предназначенных для религиозных целей, на основании решения Высшего административного суда от 16 января 2025 г., II FSK 501/22. Кроме того, в исследовании затронута проблема ограничения агрессивной налоговой оптимизации, связанной с церковными субъектами. Высший административный суд подтвердил, что налоговые льготы должны использоваться исключительно для религиозных целей, а не для уклонения от уплаты налогов. Кроме того, Высший административный суд отметил, что только непосредственно вовлеченные религиозные субъекты могут пользоваться этой льготой, что подчеркивает необходимость соблюдения истинной цели закона и предотвращения его злоупотребления. В комментарии указана необходимость более глубокого анализа системы налоговых льгот для религиозных объединений, при этом предлагается разработать новые налоговые решения в рамках двусторонних соглашений между государством и религиозными объединениями. Такой шаг позволил бы лучше адаптировать налоговые льготы к современным принципам налогового права.

Ключевые слова: налоговая льгота, дарение, благотворительная и опекунская деятельность церкви, церковное юридическое лицо, оптимизация налогообложения, религиозное объединение

Анотація: Предметом аналізу цього коментаря є застосування звільнення від податку на прибуток щодо доходів церковних юридичних осіб, призначених для релігійних цілей, на основі рішення Верховного адміністративного суду від 16 січня 2025 року, II FSK 501/22. Крім того, у дослідженні порушено проблему обмеження агресивної податкової оптимізації, пов'язаної з церковними організаціями. ВАС підтвердив, що податкові пільги повинні застосовуватися виключно для релігійних цілей, а не для уникнення оподаткування. Крім того, Верховний адміністративний суд зазначив, що тільки безпосередньо залучені релігійні організації можуть скористатися цим звільненням, що підкреслює необхідність дотримання справжньої мети закону та запобігання його зловживанню. У коментарі вказано на необхідність глибшого аналізу системи податкових пільг для релігійних об'єднань, зокрема припускається, що нові податкові рішення могли б бути розроблені в рамках двосторонніх угод між державою та релігійними об'єднаннями. Такий крок дозволив би краще адаптувати податкові пільги до сучасних принципів податкового права.

Ключові слова: податкова пільга, пожертва, благодійна та соціально-опікунська діяльність Церкви, церковна юридична особа, податкова оптимізація, релігійна організація

Introduction

It is generally accepted that the main source of financing for religious denominations in Poland is the generosity of the faithful.[1] The legal basis for receiving donations by church legal entities is established by the provisions of the Act of 17 May 1989,

[1] D. Walencik, *Nabywanie dóbr doczesnych przez osoby prawne Kościoła katolickiego w świetle prawa polskiego i prawa kanonicznego*, Studia z Prawa Wyznaniowego 2004, vol. 7, pp. 168–169; T. Stanisławski, *Darowizny na cele kultu religijnego i kościelną działalność charytatywno-opiekuńczą. Kontrowersje i nowe rozwiązania*, Studia z Prawa Wyznaniowego 2009, vol. 12, p. 329; B. Pieron, *Finansowanie celów kultu religijnego realizowanego przez kościoły i inne związki wyznaniowe*, Studia z Prawa Wyznaniowego 2011, vol. 14, pp. 148–152; J. Koredczuk, *Ulgi podatkowe z tytułu darowizn jako źródło finansowania kościołów i innych związków wyznaniowych oraz ich działalności*, w: *Finansowanie kościołów i innych związków wyznaniowych*, eds. P. Sobczyk, K. Warchałowski, Warszawa 2013, p. 265.

on the Guarantees of Freedom of Conscience and Religion.[2] It should also be noted that church legal entities can receive donations for religious worship purposes as well as for public benefit activities.[3] Many religious denominations also have the opportunity to receive donations for religious charitable and welfare activities.[4] The financial support for church welfare activities raises many controversies in administrative court rulings due to the lack of limits on permissible deductions.[5]

The resolution of the Financial Chamber of the Supreme Administrative Court dated 14 March 2005, FPS 5/04 is a crucial reference point for the system of tax exemptions and deductions provided for religious denominations in Poland.[6] According to the judgement interpretation, "tax provisions" contained in individual laws regulating the relationship between the state and specific religious associations should be applied in accordance with the principle *lex specialis derogat legi generali*.[7] As a result of adopting this principle, there is a need to prioritise the provisions of individual laws over those of the Personal Income Tax Act and the Corporate Income Tax Act. In the case of a conflict of norms, there is no need to fulfil the conditions specified in the public tax law.[8]

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2 Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, Journal of Laws [Dziennik Ustaw] 2023 item 265.

3 P. Stanisz, *Zwolnienia i ulgi podatkowe jako forma finansowania związków wyznaniowych ze środków publicznych*, w: *Finansowanie związków wyznaniowych w krajach niemieckojęzycznych i w Polsce. Die Finanzierung der Religionsgemeinschaften in der Deutschsprachigen Ländern und in Polen*, eds. D. Walencik, M. Worbs, Opole 2012, p. 166; J. Koredczuk, *Ulgi podatkowe z tytułu darowizn…*, 268.

4 Specifically: Article 55 (7) of the Act on the Relations Between the State and the Catholic Church in the Republic of Poland; Article 40 (7) of the Act on the Relations Between the State and the Polish Autocephalous Orthodox Church in the Republic of Poland; Article 34 (2) of the Act on the Relations Between the State and the Evangelical-Augsburg Church in the Republic of Poland; Article 19 (2) of the Act on the Relations Between the State and the Evangelical-Reformed Church in the Republic of Poland; Article 27 (5) of the Act on the Relations Between the State and the Polish Catholic Church in the Republic of Poland; Article 28 (5) of the Act on the Relations Between the State and the Seventh-Day Adventist Church in the Republic of Poland; Article 33 (5) of the Act on the Relations Between the State and the Baptist Church in the Republic of Poland; Article 29 (5) of the Act on the Relations Between the State and the Evangelical-Methodist Church in the Republic of Poland; Article 26 (5) of the Act on the Relations Between the State and the Old Catholic Mariavite Church in the Republic of Poland; Article 29 (5) of the Act on the Relations Between the State and the Pentecostal Church in the Republic of Poland; Article 24 (5) of the Act on the Relations Between the State and the Catholic Mariavite Church in the Republic of Poland.

5 A. Abramowicz, *Ulgi podatkowe z tytułu darowizn na kościelną działalność charytatywno-opiekuńczą*, Studia z Prawa Wyznaniowego 2019, vol. 22, pp. 201–232.

6 R. Mastalski, *Glosa do uchwały NSA z 14 marca 2005 r., FPS 5/04*, Zeszyty Naukowe Sądownictwa Administracyjnego 2005, no. 2–23, item 142; P. Borecki, *Glosa do uchwały NSA z 14 marca 2005 r., FPS 5/04*, Zeszyty Naukowe Sądownictwa Administracyjnego 2005, no. 2, item 119.

7 T. Stanisławski, *Darowizny na cele kultu religijnego…*, pp. 216–217.

8 A. Abramowicz, *Ulgi podatkowe z tytułu darowizn na kościelną działalność charytatywno-opiekuńczą*, Studia z Prawa Wyznaniowego 2019, vol. 22, p. 206.

The recent ruling by the Supreme Administrative Court will serve as a foundation for drawing general conclusions about the entire system of tax exemptions and preferences granted to church legal entities. The ruling will outline the necessary conditions for church legal entities to properly benefit from income tax exemptions, with a particular focus on maintaining a clear distinction between religious and commercial activities.[9]

1. Facts of the case

It must be noted that the issue was resolved through a written interpretation of tax law provisions issued for an individual case. According to Article 17 (1) (4b) of the Corporate Income Tax Act of 15 February 1992,[10] income of companies whose sole shareholders (or members) are church legal entities is exempt from tax, provided it is allocated to the purposes listed in point 4a (b) of the same Act. The exemption mentioned above is conditional and does not apply to income derived from so-called "contaminated sources."[11]

The factual state underlying the request for an individual interpretation by G. Limited Liability Company, based in Ż. (Poland) (hereinafter: "Applicant"), was as follows: The Applicant is a limited liability company based in Poland. The Applicant's shareholders are five other limited liability companies based in Poland. The sole shareholders of these companies are church legal entities (each of the Applicant's shareholders is a separate church legal entity). The Applicant intends to allocate part of its income to purposes such as religious worship, educational, scientific, cultural, charitable, and caregiving activities, as well as to the preservation of monuments, operation of catechetical points, and investment in sacred activities such as building, expanding,

9 See more M. Zawiślak, *Granice dopuszczalnej optymalizacji podatkowej z udziałem kościelnych osób prawnych. Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 16 stycznia 2025 r.*, II FSK 501/22, Prawo i Więź 2025, no. 5 (58), pp. 759–787.

10 Ustawa z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych, Journal of Laws 2025 item 278 (hereinafter: CIT).

11 The exemption does not apply to income derived from activities related to the production of electronic, fuel, tobacco, spirits, wine, brewing, and other alcoholic beverages with an alcohol content exceeding 1.5%, as well as products made from precious metals or containing these metals, or income derived from the trade of these products. The exemption also applies to income derived from activities related to the lease of tangible assets or intangible assets for a fee under the terms specified in law regulations (Articles 17a–17k).

or restoring churches and chapels, adapting other buildings for sacred purposes, and other investments aimed at catechetical points and charitable-caregiving institutions.

The Applicant justified its position by stating that its sole shareholders are church legal entities. Although church legal entities are not direct shareholders in the Applicant, they indirectly (through the shareholders) hold 100% of the shares in the Applicant's capital. The key issue, therefore, was whether a church legal entity, whose shareholders are five limited liability companies that are not church legal entities, satisfies the personal requirements for applying the exemption under Article 17 (1) (4b) of the CIT.

The tax authority (Director of the National Tax Chamber)[12] issued an individual interpretation, in which it considered the Company's position to be incorrect. The tax authority, in its legal interpretation, determined that the exemptions mentioned in Article 17 (1) (4b) of the CIT apply to those entities whose sole shareholders are church legal entities and who allocate their income to the purposes listed in Article 17(1) (4a) (b). Therefore, only entities directly involved in the "financial undertaking" can benefit from this exemption. The tax authority emphasised in the justification that the provisions establishing exemptions and tax reliefs in the Polish tax system are an important exception to the principle of tax justice – the universality and equality of taxation – and, therefore, must be applied strictly. Any interpretation extending the application of these provisions regarding the above-mentioned tax preferences is unacceptable.

The tax authority concluded that the Applicant did not meet the requirement of direct involvement under the provisions of Article 17 (1) (4b) of the CIT, as the Applicant's shareholders are limited liability companies. The crucial issue was that the church legal entities were shareholders of the Applicant's shareholders, not the Applicant itself. The Supreme Administrative Court interpreted the tax exemption from corporate income tax, stating that the right to benefit from the exemption only applies to the entity directly engaged in religious activity.

2. Counteracting aggressive tax optimisation

In light of ambiguities regarding the allocation of donations to church charitable and welfare activities, the Supreme Administrative Court has stated in its rulings that the purpose and justification of these donations should be the actual and effective

12 Dyrektor Krajowej Izby Skarbowej.

execution of these activities. This conclusion also applies to other tax exemptions and preferences provided by laws regulating the relationship between the state and religious denominations. The issue concerns the activities of a religious denomination, which should serve the fulfilment of spiritual rather than commercial missions. As W. Brzozowski rightly noted, "commercial activity should remain secondary in this case and should not determine the true nature of the religious group's functioning."[13]

It appears that the personal and financial structure of a church legal entity will significantly influence its eligibility to benefit from the exemption outlined in Article 17 (1) (4b) of the Corporate Income Tax (CIT) Act. This reflects a broader debate between two interpretative approaches: "exemption by function," where the key criterion is whether the activity itself serves religious or charitable purposes, and "exemption by personality," which focuses solely on whether the taxpayer is a church legal entity. The Supreme Administrative Court's ruling aligns more closely with the latter approach, emphasising that only church legal entities directly engaged in religious purposes can be beneficiaries. The "exemption by function" model determines eligibility based on the nature of the activity being carried out – if the activity serves a religious, charitable, or spiritually beneficial function, then the tax exemption applies regardless of the specific nature of the entity performing it. This approach promotes purpose-based tax fairness and aligns with broader principles of equitable treatment across different sectors pursuing public benefit missions.

Conversely, the "exemption by personality" model anchors eligibility in the identity of the taxpayer. Under this view, only entities formally recognised as church legal entities – due to their institutional character and legal status – can benefit from the exemption, regardless of the particular function being performed. This approach is favoured for its legal certainty and administrative clarity, making it easier to implement and audit. The Supreme Administrative Court's ruling aligns more closely with the latter approach, emphasising that only church legal entities directly engaged in religious purposes can be beneficiaries. Clearly identifying which model endorses Supreme Administrative Court is crucial, as it directly informs how tax exemption eligibility is interpreted and enforced, particularly in light of constraints imposed by Article 107 of the Treaty on the Functioning of the European Union (TFEU), which prohibits state aid that distorts competition.[14]

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13 W. Brzozowski, *Działalność kultowa czy działalność gospodarcza?*, in: *Finansowanie kościołów i innych związków wyznaniowych*, red. P. Sobczyk, K. Warchałowski, Warszawa 2013, p. 59.

14 The European Court of Justice (ECJ) set aside the judgement of the General Court from 15 September 2016 in the case Scuola Elementare Maria Montessori v Commission (T-220/13). That earlier judgement had rejected the school's challenge against a European Commission decision regarding state aid granted by Italy in the form of municipal real estate tax exemptions for non-commercial

The paper considers the organisational complexity within some church communities, particularly among Protestant denominations, where umbrella corporations or federations coordinate the activities of multiple churches or religious institutions. These umbrella structures, while facilitating cooperation and resource sharing, do not themselves qualify for tax exemptions unless they are formally constituted as church legal entities.[15] According to the analysed decisions, the constituent parts may be eligible individually, but the overarching corporation – unless independently recognised – cannot benefit from tax relief. This distinction underscores the principle that eligibility for tax exemptions depends on the direct legal status of the entity, not on its affiliations or coordination roles, and highlights the strict interpretation of the exemption provisions under Article 17 (1) (4b) of the CIT Act.

Another crucial point for clarification is whether tax exemptions for church legal entities are considered a right – stemming either from constitutional principles such as freedom of religion or from bilateral agreements between the state and churches – or rather a form of ex gratia legislative policy subject to modification or revocation. This distinction has far-reaching consequences for legal certainty, church-state relations, and administrative discretion.

Although many churches see tax exemptions as deriving from divine law, the constitutional right to freedom of religion does not automatically guarantee such exemptions. Tax exemptions are granted on the basis of statutory provisions and must comply with constitutional principles such as equality before the law and separation of church and state.[16] Therefore, although tax exemptions for religious organisations are universal, they are not unlimited and are subject to constitutional review.

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entities using property for specific purposes. Specifically, the ECJ disagreed with the General Court's acceptance of the Commission's failure to order the recovery of unlawful aid provided through these tax exemptions. The ECJ's decision implies that even tax exemptions granted to non-commercial entities – such as private religious schools – must be carefully scrutinised under EU state aid rules, and failure to reclaim incompatible aid may violate EU law.

15 In the pending case in the USA under the Catholic Charities Bureau's (CCB) umbrella are four service agencies – Barron County Developmental Services, Black River Industries, Diversified Services, and Headwaters – that provide government-funded support for people with disabilities. These programs are non-religious in nature, open to all, and not directly financed by the Diocese. In 2016, the CCB sought an exemption from state unemployment insurance contributions. After a series of reversals by various bodies, the Wisconsin Supreme Court ultimately ruled that the organisations did not qualify for the religious exemption, as they were not operated primarily for religious purposes. Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission. Oyez, https://www.oyez.org/cases/2024/24-154 [access: 29.05.2025].

16 In the United States, the Supreme Court addressed whether the government could compel an employer to pay social security taxes, even if the employer's religious beliefs opposed the system. The Court ultimately ruled that the government could enforce the tax, holding that the essential governmental

The paper should further explore this issue alongside the constitutional implications of granting preferential tax treatment to religious organisations over similarly purposed secular non-profits. Such analysis should address compliance with the principle of equality and non-discrimination, ensuring that religious and non-religious actors engaged in comparable public benefit activities are treated equitably and transparently under the tax system principles. Without such justification, privileging religious entities risks violating the constitutional commitment to equal treatment under the national law,[17] and may invite legal scrutiny both domestically and at the European level under Article 107 of the Treaty on the Functioning of the European Union[18] and even more under the ECHR.[19]

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interest in maintaining the Social Security program justified the limitation on the employer's religious liberty. See more United States v. Lee 455 U.S. 252 (1982).

17 The case of Assemblée Chrétienne Des Témoins de Jéhovah d'Anderlecht and Others v. Belgium concerned an application made by the Jehovah's Witnesses for being denied property tax exemptions. Under legislation created by the Brussels-Capital Region 2018, the tax exemption applied to "recognised religions." Belgium argued that this did not extend to applicant congregations, in which the Jehovah's Witness congregation disputed that failure to grant exemption was made on discrimination grounds. The courts assessed whether Belgium had violated Article 14 and Article 9 which prohibit discrimination and promote freedom of thought respectively. They found that the current regulations do not provide sufficient safeguard from discrimination for applicant congregations and that recognition is determined by the legislature, not the State. To review the claim on a minimum ground of fairness, the actions to not grant tax exemptions were not based on an "objective assessment of their claims." See Assemblée Chrétienne Des Témoins de Jéhovah d'Anderlecht and Others v. Belgium (application no. 20165/20).

18 Judgement of the Court (Grand Chamber) of 6 November 2018, joined cases C-622/16 P to C-624/16 P.

19 Case of The Church of Jesus Christ of Latter-Day Saints v. The United Kingdom. In conclusion, insofar as any difference of treatment between religious groups in comparable situations can be said to have been established in relation to tax exemption of places of worship, such difference of treatment had a reasonable and objective justification. In particular, the contested measure pursued a legitimate aim in the public interest and there was a reasonable relationship of proportionality between that aim and the means used to achieve it. The domestic authorities cannot be considered as having exceeded the margin of appreciation available to them in this context, even having due regard to the duties incumbent on the State by virtue of Article 9 of the Convention in relation to its exercise of its regulatory powers in the sphere of religious freedom. It follows that the Court does not find that the applicant Church has suffered discrimination in breach of Article 14 of the Convention, taken in conjunction with Article 9 (par. 35). See also Decision ECHR (inadmissible) 29.09.2020 Christian Religious Organization of Jehovah's Witnesses v. Armenia (dec.) – 73601/14 The Court was mindful of the cumulative financial effect of the measures in question over the years, since the applicant organisation imported religious literature regularly. However, it had not been submitted that the applicant organisation could not afford to pay the customs clearance tax imposed on its imports or that it had found itself in such financial hardship that it had been prevented from guaranteeing its adherents' freedom to exercise their religious beliefs. Rather, the organisation could have otherwise used its funds to develop its religious activities. Nor had the organisation been unable to import a sufficient quantity of periodicals, CDs and DVDs, having regard to the total number of its adherents.

Direct involvement, in this context, means that the church legal entity must be the "actual beneficiary" of such an exemption. This condition will have important tax implications moving forward. Most notably, it will prevent the misuse of this exemption for aggressive tax optimisation strategies that are not related to religious activities. Additionally, the requirement for direct involvement will help curb potential fiscal abuse. The ruling of the Supreme Administrative Court confirmed that only church legal entities that directly benefit from the tax exemption on income allocated to religious purposes, as specified in Article 17 (1) (4b) in conjunction with Article 17 (1) (4a) (b) of the CIT, are eligible to benefit from this exemption.

The concept of "aggressive tax optimisation" should be clarified here. It refers not only to legally permissible arrangements that reduce tax liabilities but to those that exploit the letter of the law while undermining its spirit, particularly when used systematically and without alignment with the intended purpose of tax preferences. In the case of church legal entities, such behaviour may involve complex corporate structures designed to channel income in ways that circumvent direct oversight or accountability. Beyond legal compliance, this behaviour raises concerns about fiscal equity and public trust, as it may lead to disproportionate benefits for certain actors under the guise of religious activity, thereby challenging the integrity of the tax system. Clarifying the threshold between legitimate tax planning and abuse is essential to preserving the balance between religious freedom and equitable taxation.

The phrase "actual beneficiary" in the context of church legal entities benefiting from tax preferences raises questions about the application of the Act on Counteracting Money Laundering and Financing of Terrorism (AML Act).[20] According to Article 2 (2) (1) of the AML Act, a "beneficial owner" is "any natural person who directly or indirectly controls a legal entity through the possession of rights resulting from legal or factual circumstances that enable exerting decisive influence on actions or decisions made by the legal entity." In the Special Register (Central Register of Beneficial Owners – CRBR), which is publicly accessible and maintained by the Ministry of Finance in the electronic system, information about the beneficial owners of entities listed in the National Court Register (KRS) is collected. The legislature's aim in establishing the CRBR is to counteract money laundering and terrorism financing, with the goal of preventing the concealment of identities within complex corporate structures. In the case of a capital company whose sole (100%) shareholder is a religious order or its organisational unit (e.g. a provincial order, abbey, independent monastery, convent), the beneficial owner is the relevant

[20] Ustawa z dnia 1 marca 2018 r. o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu, Journal of Laws 2023 item 1124 as amended.

superior of the order, as well as members of its council. In the case of a parish or diocese, the relevant bishop and members of the diocesan economic council and consultative council are the beneficial owners.[21]

The interpretation by the Supreme Administrative Court in its ruling of 16 January 2025, in case file II FSK 501/22, does not allow entities indirectly involved in benefiting from this tax preference to use the tax exemption. This means that the nature of connections between entities benefitting from this exemption is of particular importance. It should not be overlooked that only those companies whose sole shareholders (or members) are church legal entities directly are eligible for the exemption under Article 17 (1) (4b) of the CIT. Administrative court rulings uniformly assume that provisions regulating tax exemptions, as exceptions to the general principle of taxation, must be interpreted strictly, primarily based on linguistic interpretation.

The interpretation provided by the Supreme Administrative Court in its ruling of 16 January 2025, in case file II FSK 501/22, clearly states that religious entities indirectly involved in benefitting from this tax preference are not eligible for the tax exemption. This means that the nature of connections between entities benefitting from this exemption is of particular importance. It should not be overlooked that only those companies whose sole shareholders (or members) are church legal entities directly are eligible for the exemption under Article 17 (1) (4b) of the CIT. Administrative court rulings consistently emphasise that provisions governing tax exemptions, being exceptions to the general principle of taxation, must be interpreted strictly, primarily relying on linguistic interpretation.[22]

3. Supporting religiously useful activities by the state

The purpose of the exemption in question was undoubtedly to ensure that church legal entities engaged in business activities could allocate part or all of their income to "religiously useful purposes." It is worth noting that this provision was enacted

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21 D. Walencik, *Opinia prawna na temat beneficjenta rzeczywistego w przypadku spółki kapitałowej, której jedynym (100%) udziałowcem czy akcjonariuszem jest zakon bądź jego jednostka organizacyjna (prowincja zakonna, opactwo, klasztor niezależny, dom zakonny)*, Studia z Prawa Wyznaniowego 2020, vol. 23, p. 481.

22 See judgement of Supreme Administrative Court of 2 December 2021, II FSK 774/19; judgement of Supreme Administrative Court of 25 November 2021, II FSK 919/21; judgement of Supreme Administrative Court of 14 January 2021, II FSK 2333/20; judgement of Supreme Administrative Court of 6 April 2018, II FSK 816/16; judgement of Voivodeship Administrative Court in Gliwice of 18 May 2021, I SA/Gl 273/21.

in 1989, in a socio-economic context different from the present one. Historical circumstances today call for a deeper reflection on the system of tax exemptions and preferences for religious associations. The main issue is to ensure that existing tax exemptions and concessions stimulate religious activities. Despite appearances, this is particularly significant in the current context, especially after the introduction of the so-called Polish Deal, which, contrary to the principle of social justice, deprived clergy of the right to deduct the health insurance contribution from their taxes.[23]

It is clear that the exemption mentioned in Article 17 (1) (4b) of the CIT is meant to serve as a guarantee of stable financing for church legal entities. It should be remembered that, with the change in the political system, a range of tax exemptions and preferences was introduced to support socially useful purposes. These are not privileges but rational methods of securing the financial situation of various entities, including church legal entities, in a free market economy.

When examining the content of Article 17 (1) (4b) of the CIT Act, it becomes clear that this legal provision is designed to allow for the allocation of part (or all) of the income of a church legal entity to the core activities of the church. As such, the purpose of this provision is to offer a tax exemption specifically for a church entity with legal personality, not for dependent or capital-linked entities. Changes in Polish society since 1989 have led to a shift in the perception of how religious activities are financed. This is the issue that the Supreme Administrative Court had to address in this case. Nowadays, knowledge of tax optimisation mechanisms is widespread, and religious entities also take advantage of these mechanisms.

The essence of the case boils down to determining the limits of income optimisation by church legal entities within the framework of applicable tax laws. Creating a religious entity consisting of five companies, with church legal entities as the sole shareholders, is a typical tax scheme based on the principle of pursuing aggressive tax optimisation. In this case, it is hard not to be swayed by the simplicity of the argument presented by the religious entity. After all, the church company consisted of shareholders, each of which was solely owned by church legal entities. Thus, it may seem that the mentioned companies, as shareholders of the church company, fulfil the criteria for applying the tax exemption. However, the Supreme Administrative Court definitively rejected the church company's argumentation on the grounds that the creation of church companies whose main purpose was to achieve a tax benefit was contrary to the object and purpose of the CIT Act. Beneath the surface of the

[23] P. Stanisz, D. Walencik, *Zryczałtowany podatek dochodowy od przychodów osób duchownych po wprowadzeniu „Polskiego Ładu": uwagi do ustawy z dnia 9 czerwca 2022 r. o zmianie ustawy o podatku dochodowym od osób fizycznych oraz niektórych innych ustaw*, Studia z Prawa Wyznaniowego 2022, vol. 25, pp. 300–306.

ruling in question lies the need to align the tax benefits and exemptions available to religious associations with the current principles of tax law. This alignment ensures that these benefits are applied in a way that is consistent with modern tax regulations and avoids potential misuse or abuse of the exemptions.[24]

Conclusions

It must be remembered that the tax exemptions and reliefs for religious associations were introduced into the tax system after the political transformation in a different socio-economic reality. Despite the passage of time, public authorities have not conducted a thorough reflection on the systemic nature of these tax preferences. It should be mentioned that working out new tax solutions for religious associations as a matter of mutual relations between the State and churches should be the subject of work within bilateral agreements, which would fulfil the requirements of Articles 25 (4)–(5) of the Constitution.[25] The call of J. Krukowski, to regulate the financial issues of the Catholic Church in Poland through a partial concordat, is still valid in this context.[26]

It is important to note that the discussed ruling will positively influence the reduction of aggressive tax optimisation using church legal entities. This is especially important as most churches and other religious associations in Poland conduct business activities using available tax exemptions and reliefs. Any activities aimed at creating artificial actions whose main goal is to achieve only tax benefits, contrary to the implementation of religiously useful purposes, should be eliminated from the tax

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24 Judgement of Supreme Administrative Court of 6 September 2007, FSK 993/06, LEX no. 377575; judgement of Supreme Administrative Court of 22 April 2008, II FSK 312/07, LEX no. 471241; judgement of Supreme Administrative Court of 9 August 2016, II FSK 2397/14, LEX no. 2116249; judgement of Supreme Administrative Court of 9 August 2016, II FSK 2049/14, LEX no. 2118972.

25 P. Borecki, *Opinia prawna w sprawie wykładni art. 25 ust. 5 Konstytucji Rzeczypospolitej Polskiej*, Przegląd Prawa Wyznaniowego 2014, no. 6, pp. 279–284; P. Stanisz, *O obowiązku układowego regulowania stosunków między Rzecząpospolitą Polską a Kościołem Katolickim*, in: *Układowe formy regulacji stosunków między państwem a związkami wyznaniowymi (art. 25 ust. 4–5 Konstytucji RP)*, red. P. Stanisz, M. Ordon, Lublin 2013, pp. 459–463.

26 J. Krukowski, *Systemy finansowania kościołów w świecie współczesnym. Zarys problematyki*, in: *Finansowanie kościołów i innych związków wyznaniowych*, eds. P. Sobczyk, K. Warchałowski, Warszawa 2013, pp. 356–357.

law system. These concerns are justified, as the Polish legal system has a limitation on enforcement for church legal entities.[27]

The judgement offers two arguments for religious autonomy and accountability. A positive outcome of this ruling will be the reduction of aggressive tax optimisation practices involving capital- or personally-dependent entities of church legal entities. By clarifying the conditions for tax exemptions, the ruling ensures that these entities can no longer exploit tax benefits through indirect means, fostering a more transparent and fair application of tax laws. This will likely encourage a more responsible and compliant approach to tax exemptions within the religious sector.

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[27] R. Adamus, *Postępowanie egzekucyjne albo upadłościowe wobec osoby prawnej Kościoła Katolickiego w Polsce a mienie stanowiące przedmiot kultu religijnego*, Studia z Prawa Wyznaniowego 2024, vol. 27, pp. 17–18.

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