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The Inheritance Manager as a Subject of Tax Decision: Legal Status of the Inheritance Manager

Abstract

With the introduction of the institution of inheritance management into the Polish legal system, it became necessary for the legislator to regulate a number of private and public law regulations related to the activity of the manager after the death of the entrepreneur. The special regulation of the tax subjectivity of an inheritance business and the way of carrying out its management after the entrepreneur's death means the appearance of new, previously unknown entities in tax proceedings (i.e. inheritance business, inheritance manager, inheritance business owner, etc.). Consequently, it is necessary to determine their legal status on the basis of the provisions regulating these procedures. The problem of subjectivity of the inheritance manager is also present in the issuance of a tax decision, since, according to the substantive law, the subject of the decision was, until now, the entrepreneur. The aim of this paper is to present the substantive, legal and procedural status of an inheritance manager and, consequently, to answer whether a manager will be the subject of a tax decision.

KEYWORDS: Inheritance law, inheritance manager, inheritance enterprise, tax decision

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1 Introduction

The institution of inheritance management is a kind of private law novelty in the Polish legal system. It came into being when the Act on Succession Management of an Enterprise of a Natural Person (hereinafter referred to as a.s.m.)[1] and Other Facilitations Related to the Inheritance of Enterprises entered into force on July 5, 2018. This regulation applies to sole proprietors as natural persons who manage their businesses, enabling economic continuity after the death of the entrepreneur and ensuring inheritance[2]. The law regulates the temporary management of the deceased's business and the continuation of economic activity using this business until the deceased's heirs inherit it.

With the introduction of inheritance management into the domestic legal order, the legislator had to regulate a number of private and public law regulations related to the manager's activity after the entrepreneur's death. In spite of many changes in the valid normative acts[3], the enacted legislation mainly regulates the financial and legal status of the persons appointed to the management of the enterprise, the inheritance manager and the enterprise itself without any new legal acts. As M. Masternak pointed out, there is no doubt that the regulation of the tax subjectivity of the inherited enterprise and the way of its management after the death of the entrepreneur means that in the tax proceedings new, previously unknown subjects will appear (i.e. the inherited enterprise, the inherited manager, the owner of the inherited enterprise). As a result, it is necessary to define the legal situation on the basis of the rules that normalize these procedures[4].

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1 Act of July 5, 2018 on the Succession of Management of a Natural Person (Journal of Laws, item 1629 with amendments). The title of the Act in its current wording was established by Article 66 item 1 of the Act of July 31, 2019, on the amendment of certain acts to reduce the regulatory burden (Journal of Laws, item 1495 and of 2020, items 568 and 875), which came into effect on 1 January 2020.

2 See the explanatory memorandum to a draft law on the management of the succession to a natural person's enterprise, Sejm of the 7th term, print no. 2293.

3 These changes are reflected not only in the adoption of the Law on Inheritance, but also in changes in tax and procedural regulations.

4 Marian Masternak, „Pozycja prawna zarządcy sukcesyjnego w postępowaniu podatkowym", [in:] *Współczesne problemy prawa podatkowego. Teoria i praktyka. Księga jubileuszowa dedykowana Profesorowi Bogumiłowi Brzezińskiemu*, Vol. I, red. Jan Głuchowski (Warszawa: Wolters Kluwer, 2019), 301-302.

This problem is particularly manifested in the procedure for issuing a tax decision by the National Revenue Administration, since it is difficult to define the subject to which such a decision should be addressed when it comes to inheritance enterprises. For the above reasons, they apply the solution in relation to the bankruptcy receiver, often somewhat by analogy. However, despite the similarities, there is a difference between a bankruptcy trustee and an estate administrator in the scope of their powers. The purpose of this article is to present the legal status of the administrator, the form of administration performed by him, with his procedural position, in comparison with the position of the bankruptcy trustee, with the aim of determining whether the administrator of a natural person's estate can be the subject of a tax decision in the event that the heirs are not revealed.

2 Inheritance enterprise

The administration of the estate, in accordance with Art. 18 a.s.m., includes the obligation to manage the estate and the power to perform judicial and extrajudicial acts related to its management. Article 2 defines the inherited enterprise as the tangible and intangible assets used for the operation of a business, which are the property of the entrepreneur at the time of his death. The inherited enterprise is therefore broader in scope than the enterprise within the meaning of Art. 55 of the law of April 23, 1964 – Civil Code[5] (hereinafter c.c). Contrary to the definition of the Code, it is not necessary to collect financial assets intended for the operation of a business, so that the inherited business includes tangible and intangible assets acquired on the basis of preventive measures, as well as those acquired by the administrator of the estate since the death of the entrepreneur or until the termination of the administration of the estate or the powers of the receiver in bankruptcy[6]. Regardless of whether they and their spouse owned the business at the time of the entrepreneur's death or not, it is

5 Law of April 23, 1964 – Civil Code (Journal of Laws of 2020, item 2320 with amendments).

6 Kinga Kosowska, „Status prawny, w tym podatkowy, przedsiębiorstwa w spadku oraz zarządcy sukcesyjnego. Wybrane problemy" *Przegląd Podatkowy*, nr 8 (2020): 47.

fully recognized as an inherited business. According to Art. 2 a.s.m., in the event of the death of a partner in a civil partnership, the rules relating to the inherited business are applied in accordance with the entrepreneur's share in the joint property of the partners in a civil partnership.

The company, viewed in this way, did not receive subjectivity on the basis of civil law, as the law on inheritance management presents the company in a wider scope than the Civil Code. According to the Act on the Administration of Estates, these are capital assets managed by the inheritance manager, who acts on behalf of the owners. According to Art. 3 a.s.m. the owners are:

1. A person who, in accordance with a valid court decision on the determination of the acquisition of inheritance, a registered certificate of inheritance or an issued European certificate of inheritance, has acquired the enterprise, which was the property of the entrepreneur at the time of his death, in accordance with the law or a will, or has acquired the enterprise or a share in the enterprise on the basis of a specific legacy;
2. The spouse of the entrepreneur has the right to inherit the business at the time of the entrepreneur's death;
3. An acquirer of the inherited enterprise or a share in it, also as a contribution, by legal action taken after the entrepreneur's death[7].

It should be noted that according to Art. 24 of the a.s.m., the appointment of the management of an inherited enterprise prevents subjects other than the heir from managing the enterprise[8]. The inheritance manager does not have the right to appoint other managers of the inheritance, since it cannot be transferred to another person, in accordance with Art. 19 a.s.m.. He may, however, appoint an attorney-in-fact for some or all of the activities. The plenipotentiary will perform activities on behalf of the

7 Katarzyna Kopaczyńska-Pieczniak, „Status prawny zarządcy sukcesyjnego" *Przegląd Prawa Handlowego*, nr 12 (2018): 7.

8 This is indicated by the content of the cited article of the a.s.m., in which the legislator excludes the possibility of the administration of the inheritance by a curator or executor of the will, if an administration of the inheritance has been established.

administrator, and the effects of his actions will have the same effects as the effects of the manager's actions[9].

Notwithstanding the foregoing, the inheritance enterprise constitutes the subject on the basis of the tax law. Article 49 a.s.m. gives the inheritance enterprise the status of a taxpayer as a legal entity with limited legal capacity. In the doctrine, if a legal entity with limited legal capacity is to become a taxpayer on the basis of a given tax, it is necessary to connect this subject and a tax subject, taking into account the actual tax status, which creates a tax-legal relationship[10]. With regard to inheritance enterprise Art. 49 a.s.m. clearly states that it will be a taxpayer on the basis of a specific act because it is a continuation of the business of a deceased entrepreneur (there is a connection between a subject and an object). Assigning the legal subjectivity of the tax to the inherited enterprise ensures the continuity of the tax payment related to the activity of the inherited enterprise during the period of its management. Income tax, VAT and excise tax should be specified here. Inheritance companies will not be able to pay real estate tax or motor vehicle tax, since they don't have to pay taxes or local fees, except for stamp fees[11]. Consequently, if the inheritance process is not completed and the successors are not known, there is no basis for taxing the company. The solution of adopting a uniform interpretation in all taxes related to an economic activity, assuming that this enterprise is a taxpayer, is very coherent. In spite of the academic disputes, it allows us to consider the inherited enterprise as the legal successor of the previous economic activity of the entrepreneur[12]. This interpretation of the inherited business is controversial because of the question whether the party to the legal relationship can be a property (in the sense of Art. 2 a.s.m.), not a natural person, a legal person or an imperfect legal person (Art. 33 c.c.) or, finally, the manager of the inheritance who is a natural person. This construction chosen by the legislator can be explained by the fact that, after the death of the entrepreneur,

9 Masternak, „Pozycja prawna zarządcy sukcesyjnego w postępowaniu podatkowym", 302.

10 See: Kosowska, „Status prawny", 47; Marek Kalinowski, *Podmiotowość prawna podatnika* (Toruń: Dom Organizatora, 1999), 236.

11 Kosowska, „Status prawny", 47.

12 In the literature, there are voices both in favor and in criticism of this solution. There are voices that call it absurd, especially in relation to the inheritance business as a personal income tax payer. See: Kosowska, „Status prawny", 47; Paweł Bajer, *Zarząd sukcesyjny przedsiębiorstwem osoby fizycznej. Pytania i odpowiedzi. Wzory pism. Przepisy* (Warszawa: Wolters Kluwer, 2019), 132.

the property that constitutes the business at the time of his death continues to exist, even though the heirs haven't entered into their rights. As a result of the inherited enterprise becoming a tax subject, the entrepreneur's TIN is transferred to the inherited enterprise. It expires at the end of the administration of the estate and, if no new administration is appointed two months after the entrepreneur's death, at the end of the period for appointing the inheritance manager[13]. The TIN of a deceased entrepreneur may be used both in the case of the actual continuation of the deceased's business activity and in the case of its termination and liquidation.

3 Legal status of the inheritance manager in the inheritance enterprise

Due to its structure, the legal institution of inheritance management has no equivalent in the legal institutions. Therefore, it is not easy to define the position of the inheritance manager.

According to article 21 of a.s.m., the inheritance manager acts in his own name, but on behalf of the owner of the inheritance enterprise. Therefore, his duty is to manage the company. This provision establishes the new private law institution. Consequently, the executor cannot be recognized as the representative of the owner because he acts on his behalf. In external relations, the inheritance manager acts as a legal party, but his actions have legal effects directly on the owner of the inheritance enterprise.

The institution of the administrator of the estate is most similar to the institution of the bankruptcy trustee, which is established by Art. 160 of the Act of February 28, 2003 – Bankruptcy Act (hereinafter B.L.)[14] performs acts on behalf of the bankrupt. It is the so-called institution of the indirect representative[15].

13 Krzysztof Wiśniewski in: *Planowanie sukcesyjne. Prawne i podatkowe aspekty zarządu sukcesyjnego przedsiębiorstwem osoby fizycznej,* red. Adam Mariański (Warszawa: Wolters Kluwer, 2019), 199.

14 Law of February 28, 2003 – Bankruptcy Law (Journal of Laws of 2020, item 2320).

15 All acts, rights and obligations resulting from a legal act performed by an indirect representative are transferred to a third party, e.g. in the case of acts performed by a bankruptcy trustee. However, there are differences between

A person who takes the necessary actions to preserve the property and the ordinary management in accordance with Art. 15 a.s.m., acts similarly. As a result, despite the fact that they perform their duties, they do not carry out their economic activity, neither according to Art. 3 of the Commercial Code and Art. 43^1 of the Civil Code. However, it's interesting to note that in the case of the scope not regulated by the law on inheritance, the regulations on the entrepreneur's economic activity are applied to the inheritance business managed by the entrepreneur (in terms of control, administrative fine and other sanctions). Therefore, the Commercial Code and separate legal acts regulating the conduct of economic activity are applied if the subject of the activity or activities carried out within the framework of inheritance management should be applied[16]. M. Masternak expressed the same opinion, because the law regulates only certain issues related to the management of an inherited business by an heir, and in the area not regulated therein, the relevant regulations on the management of a business by an entrepreneur apply[17].

The inheritance manager may independently carry out ordinary management related to the management of the inheritance enterprise that exceeds the scope of ordinary management, but he should obtain the consent of all the owners of the inheritance enterprise, which may be difficult if all the owners are not disclosed. However, in the absence of such consent, the court's permission will be substituted. It should be noted that if a special form is required for the validity of exceeding the ordinary management, the consent of the co-owners of the inherited enterprise should be expressed in the same form. The inheritance management can't be limited to the effect on the third parties (according to Art. 20 a.s.m.). As stated in the literature, the scope of responsibility of the administrator of the estate towards third parties is determined by the law and is the same for each person performing this function. It relates to the legal relations between the administrator and the third parties and aims to protect the security of transactions[18]. In the Act on the Succession Management, the legislator has introduced restrictions on the administration of property to a person

a liquidator and an indirect representative on the basis of substantive civil law, and therefore the scope of his powers differs from the typical representation of this institution.

16 Kosowska, „Status prawny", 51.

17 Masternak, „Pozycja prawna zarządcy sukcesyjnego w postępowaniu podatkowym", 303.

18 Kopaczyńska-Pieczniak, „Status prawny zarządcy sukcesyjnego", 9.

with limited or no legal capacity. According to Art. 23 a.s.m., a guardianship court shall impose such restrictions if it is necessary for the proper administration of the person's property. The court may determine whether the performance of certain acts is subject to the permission of the court or to the imposition of restrictions on the administrator of the estate to which the guardian is subject.

The institution of an inheritance manager is a new solution of legal representation that has no equivalent in the Polish legal system and doesn't fully correspond to any form of representation or classical indirect representation. Some remarks should be made about the form of legal representation. Direct representation, i.e. representation, was regulated as a performance on behalf of another person on the basis of a power of attorney with direct effects on the represented person. Legal acts performed by the representative within the scope of the power of attorney have legal consequences for the represented person. The subsequent appointment of the representative is not mandatory[19]. What is important is the existence of a power of attorney to indicate the account on which the representative is acting. Representation may result from an act or a declaration of will by the represented person (power of attorney). Indirect representation is characterized by the performance of legal acts in one's own name but for the account of a represented person. In relation to third parties, an indirect representative acts on behalf of another person. The legal effects of the activities concern the representative himself (who acquires rights and incurs obligations), while the essence is their transfer to the represented person.

Art. 18 a.s.m., which regulates the basic powers of the representative, uses the term „to empower", as in the case of representation, but it does not designate the subject on whose behalf he is to act.

According to Art. 21 of the a.s.m., the inheritance manager acts on behalf of the owner of the inheritance business. The rights acquired by him do not have to be transferred to the owner of the inheritance object. He benefits from both direct and indirect forms of representation. The construction of indirect representation is used in external relations, where actions are performed in the name of the manager.

In internal relations, i.e. between the manager and the owner of the inheritance enterprise, direct representation will be used. The form of representation adopted by the law and performed by the manager

19 Stanisław Dmowski, Seweryn Rudnicki, *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna* (Warszawa: Lexis Nexis, 2002), 300-301.

of the inheritance is most similar to the performance of the receiver in bankruptcy.[20].

In view of the above, both the performance of the inheritance manager and the performance of the bankruptcy trustee are a kind of indirect representation. The difference between the actions of an inheritance manager and an indirect representative is manifested in the lack of obligation to transfer the acquired rights to the owner of the inherited property. He or she does not incur any obligations to the property. His or her actions have legal consequences for the owner of the inheritance company, *ex lege*[21].

The unique feature of inheritance management is that it is carried out in the name of the owner. The owners of the company are not revealed to third parties in the course of business. They are revealed only when the decision on the acquisition of the inheritance becomes valid or the European Certificate of Succession is issued. Since that moment, according to art. 21 a.s.m., the administrator of the estate is obliged, upon the request of the other party, to provide information about the persons on whose behalf he is acting[22].

4 Establishing the inheritance management

As already mentioned, the inheritance company is connected with the institution of the inheritance administration, since it is the latter that, as a rule, carries out actions related to the management of the company during the transitional period. However, according to chapter 3 a.s.m., the entitled person may take preventive measures necessary to preserve the right to property or to manage the enterprise from the death of the entrepreneur until the day of the appointment of the administrator or until the expiration of the powers of appointment. Except for preventive measures, he may, until the appointment of the administrator, carry out ordinary management activities within the framework of the economic activity, if this is necessary to maintain the continuity of the business or to prevent

20 Kosowska, „Status prawny", 52.

21 Masternak, „Pozycja prawna zarządcy sukcesyjnego w postępowaniu podatkowym", 304.

22 Ibidem.

serious damage to property. The person referred to in Art. 14 a.s.m. acts in his name, but for the account of the owner of the inheritance enterprise, and performs activities under Art. 13 a.s.m. If the person does not act in bad faith and there is no doubt about his rights, any person referred to in Art. 14 a.s.m. may carry them out independently, regardless of acting in agreement with other entitled persons[23].

Management activities are excluded from these activities. A different situation arises in the case of actions exceeding ordinary management, in which case the manager must obtain the consent of all owners of the enterprise, and in case there is no such consent – permission of the court (Art. 22 part 2 a.s.m.)[24]. This is regulated according to Art. 98 and 199 c.c. This is regulated by Art. 98 and 199 of the c.c. The current jurisprudence and the view of legal scholars will refer to the acts of ordinary management and those that go beyond ordinary management[25].

In Art. 13 a.s.m., the legislator has included an open catalogue of preventive measures, which may be taken by the entrepreneur's spouse, who is entitled to a share in the business, by the heir by will or by testament, or by the debtor, who is entitled to a share in the business, in accordance with Art. 14 a.s.m. Among the preventive measures to which they are entitled, the legislator has included the satisfaction of enforceable claims or the acceptance of claims arising from the obligation of the entrepreneur in connection with an economic activity carried out prior to his death; the sale of current assets, within the meaning of the Accounting Act of September 29, 1994[26]; as well as the elimination of imminent danger or the collection of rent[27].

In order to establish an estate administration, it is necessary to fulfill three conditions specified in the Law, i.e. to appoint a specific person, to obtain his/her consent to perform the function of an inheritance manager, and to make an entry in the Central Register and Information on Economic Activity. The bankruptcy of an entrepreneur does not preclude the establishment of an estate administration, but the suspension of economic activity does. The right to establish inheritance management, to act mortis

23 The Supreme Court resolution of 30 October 2013, II CSK 673/12 „Orzecznictwo Sądów Polskich" 2014/7-8, item 72.

24 Kosowska, „Status prawny", 49.

25 Dariusz Celiński, „Stosowanie w praktyce notarialnej przepisów ustawy o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej – zagadnienia wybrane" *Rejent*, nr 5 (2019): 22-42.

26 Journal of Laws 2019, item 351 with amendments.

27 Kosowska, „Status prawny", 49.

causa, is given first to the manager registered in the CRIEA[28]. Within the meaning of Art. 9 part 1 a.s.m., he may appoint an administrator of the estate by appointing a specific person or on the condition that, at the time of his death, the commercial representative indicated becomes the inheritance manager. The appointment of an manager and the consent of the person appointed should be made in writing, on pain of nullity. The necessary condition is that the entrepreneur submits a request for the registration of the administrator in the CRIEA; otherwise, the appointment of the manager can only be made by the persons designated by law, pursuant to art. 10 and 12[29].

In Art. 12 a.s.m. specifies the persons who are entitled to appoint an inheritance manager if the entrepreneur did not do so during his or her lifetime. This group includes the entrepreneur's spouse, who is entitled to a share in the inherited business; the intermarried or testamentary heir, who has accepted the inheritance; or the testamentary legatee of the entrepreneur, who has accepted the specific legacy. However, these powers expire two months after the death of the entrepreneur. The form of a notarial deed and the consent of the persons who together hold more than 85% of the inherited business are essential. Pursuant to Art. 12 a.s.m., in the absence of a valid intestacy decision, a registered inheritance contract or a European certificate of inheritance, the number of shares in the inheritance company is determined taking into account all persons known to the person appointing the executor and who are entitled to a share in the inheritance company at the time of the appointment of the executor. Pursuant to Art. 12 part 6 a.s.m., such a declaration is made before a notary under penalty of criminal liability for false testimony, which is subject to the conclusion of a protocol on the appointment of an inheritance manager. According to Art. 11 part 1 a.s.m., only one person at a time, as stated in the CRIEA, can be an inheritance manager. It is important to note that if the initially appointed manager resigns or is unable to perform his functions due to death, restriction or loss of legal capacity, is dismissed by the entrepreneur or the court decision on the scope of economic activity becomes effective, the legislator provides for the possibility of appointing

28 Entrepreneurs who are not required to register with the CRIEA, as well as those who have not been registered despite submitting an appropriate application, will be deprived of this option under the Act of March 6, 2018 Entrepreneurs Law (Journal of Laws of 2019, item 1292 with amendments).

29 Kosowska, „Status prawny", 49.

a substitute manager (more)[30]. Within the meaning of Art. 8 part 1 a.s.m., only a natural person with active legal capacity has the passive right to perform the function of an administrator of an estate. A person who has been disqualified from economic activity pursuant to Art. 373 of the Bankruptcy Act, a punitive or protective measure in the form of a ban on certain economic activity related to entrepreneurial activity or economic activity within the scope of property management, cannot become an inheritance manager. It is irrelevant whether the person who assumes the duties of an inheritance manager is related to the entrepreneur or carries out the entrepreneur's economic activity, as he/she may be, for example, an employee, a commercial agent, one of the heirs or legatees of the deceased entrepreneur, as well as a third party who is not related to the entrepreneur[31].

The most advantageous solution seems to be the choice of a commercial representative within the meaning of Art. 109 c.c. is a natural person with full legal capacity to perform the functions of an inheritance manager. A commercial proxy participates in the management of the company, knows its character and assets, and doesn't need a license to take on the duties of an inheritance manager, unlike a bankruptcy trustee. The power of attorney of an inheritance manager results from the will of the owner of the inherited business, certified by a notarial deed.

The manager of the inheritance can be dismissed at any time, but a written form and a request to the CRIEA are required. Then, after the death of the entrepreneur, the manager can be dismissed by persons with the right to appoint him or her, but a form of notarial deed is also required. (Art. 55 a.s.m.). The court may also dismiss the manager in case of serious breach of duty (art. 56 part 1 a.s.m.). Articles 52 and 57 a.s.m. provide for the possibility of resigning from the function of an estate manager appointed during the lifetime of the entrepreneur and after his death[32].

In accordance with Art. 59 part 1 a.s.m, inheritance management expires, *ex lege*:

- two months after the entrepreneur's death, if none of the heirs has accepted the inheritance, or a debt collector has not accepted

30 It is essential to fully ensure the company's ability to continue its economic activity.

31 Kopaczyńska-Pieczniak, „Status prawny zarządcy sukcesyjnego", 5.

32 Kosowska, „Status prawny", 50.

the specific inheritance, the subject of which is an enterprise or a share in an enterprise, unless the administrator of the inheritance is acting on behalf of the entrepreneur's spouse, who is entitled to a share in the enterprise;
- on the day of the decision of the ascertaining court on the acquisition of the inheritance, the registration of the certificate of inheritance or the issuance of the European certificate of inheritance, if the heir or a debtor has acquired the inherited business as a whole;
- on the day of acquisition of the inherited business by a person through legal actions;
- at the end of the month, from the day when the administrator's registration in CREIA is cancelled, unless another manager has been appointed at that time;
- on the day of the declaration of bankruptcy;
- on the day of the division of the estate, including the enterprise;
- two years after the death of the entrepreneur.

In exceptional cases, the court may extend the period of inheritance management to five years after the entrepreneur's death[33].

Since the establishment of the inheritance management, the administration of the estate managed by an administrator or an executor doesn't include the inheritance business, because their powers can't overlap. Consequently, after the appointment of a manager, the executor, even if appointed by the heir, cannot manage the company (art. 24 a.s.m.). The legislator has not explicitly regulated the mutual relations between the executor and the persons who perform the actions necessary to preserve the property (actions of ordinary management). It seems that they should be regulated in the will, and in the absence of regulations, Art. 988 c.c. is applied. However, these persons can have an inheritance or a share in it. On the other hand, ordinary administrative acts are carried out by an estate curator or an executor. It is important to note that the persons mentioned in Art. 14 a.s.m. can appoint a manager of the inheritance immediately after the death of the entrepreneur. The curator of the estate and the executor of the will are excluded from performing these activities (Art. 24 a.s.m.)[34].

33 Art. 60 a.s.m.
34 Kosowska, „Status prawny", 51.

5 Inheritance manager in tax proceedings. Manager of the tax decision subject

Article 21, part 2 a.s.m., defines the legal status of an inheritance manager, i.e. the legal consequences of the given status. He has the right to sue and be sued in cases arising from the economic activity of the entrepreneur or from the management of the estate. He also has the right to participate in administrative, tax and administrative court proceedings. In the above-mentioned proceedings, the inheritance manager acts in his or her own name, but on behalf of the owner of the inheritance enterprise[35]. The manager represents the inheritance company only to the extent that he can conduct the case of the inheritance company. We should assume that the legislator has given the manager the status of a party to a lawsuit; however, he is neither a party in the financial sense nor an independent subject of rights and obligations – similar to the aforementioned bankruptcy trustee[36]. Paragraph 3 of the aforementioned law, i.e., the requirement to make all statements and serve documents arising from the conduct of business by the entrepreneur or manager of the enterprise in the estate to the administrator of the estate, correlates with Article 21(2) of the a.s.m[37].

Due to the lack of procedures and legitimacy of the inheritance enterprise, it is necessary to determine whether a subject fulfills the rights and obligations of the inheritance enterprise, whether it is subject to tax laws, whether it is subject to tax obligations and whether it acts as a taxpayer.

In view of the above, according to Marian Masternak[38], the inheritance manager may appear in the tax proceedings as a subject who is jointly and severally liable for the tax obligations of the inheritance enterprise. He can also appear as a person who carries out the administration of the estate.

35 The financial legal effects of the proceedings will always apply to the owners of the estate, regardless of the status of the inheritance manager.

36 Masternak, „Pozycja prawna zarządcy sukcesyjnego w postępowaniu podatkowym", 305.

37 It should be noted that the manager of an inheritance is entitled to the aforementioned procedural rights only in cases resulting from the entrepreneur's economic activity prior to his death or from the management of the enterprise. However, the manager is not entitled to these rights in other cases, which are sometimes connected with the enterprise, e.g. concerning the owners of an inherited enterprise.

38 See: Masternak, „Pozycja prawna zarządcy sukcesyjnego w postępowaniu podatkowym", 306.

The question of the legal status of an inheritance manager as a subject responsible for the tax obligations of the inheritance enterprise doesn't raise any major legal doubts and is regulated by the provisions of the Tax Ordinance Act[39] (t.o.a) of August 29, 1997, i.e. Art. 97a, 117d, 133 and others[40]. However, this issue is of secondary importance in relation to the subject of this article, which is civil law issues and, consequently, the question of who should be listed as an entity in the tax decision. An analysis of the second situation is important.

For the determination of the status of an inheritance manager acting as a person carrying out the inheritance management of an inheritance enterprise, Art. 49 a.s.m., by which the legislator has given tax subjectivity to the managed inheritance company[41]. It is a taxpayer, a legal entity with limited legal capacity, referred to in Art. 49 a.s.m. As a result of this solution, legal subjectivity is given to the inherited company instead of an administrator or the owners of the inherited enterprise.

In view of the above, in tax proceedings in which an enterprise is subject to a tax obligation under tax legislation, the enterprise is a party in the financial sense. Since the enterprise is a taxpayer, it should be granted a legal interest within the meaning of Art. 133 par. 1 t.o.a., there is a prerequisite for recognizing it as a party to the proceedings. However, an inheritance company cannot act independently in tax proceedings due

39 Tax Ordinance Act of 29 August 1997 (Journal of Laws of 2021, item 1005 with amendments).

40 See more: Masternak, „Pozycja prawna zarządcy sukcesyjnego w postępowaniu podatkowym", 308; Kosowska, „Status prawny", 53-54; Rafał Dowgier, „Komentarz do Art. 97 Ordynacji podatkowej", [in:] *Ordynacja podatkowa. Komentarz aktualizowany*, red. Leonard Etel, LEX/el. 2021.

41 According to the tax law, the only unchangeable normative characteristic of a taxpayer is the obligation to pay taxes, i.e. the legal norm determines the legal and tax subjectivity. Theoretically, the law has unlimited possibilities to create its subjects on the basis of tax acts. This issue is regulated differently in civil law, where the possession of legal personality creates a presumption of the possibility to have all rights and obligations. In order to determine that a person has the capacity to acquire a certain right, it is not necessary to determine beforehand that the person possesses special characteristics or personal qualities. The mere fact of a person's existence determines his entry into certain legal relations, under which he will have certain rights or obligations. Only an express provision of the law can limit this capacity. Thus, in the absence of statutory regulation, legal subjectivity in a civil law system is understood to be *de natura*. More on legal subjectivity in civil law. See more: Alfred Klein, „Zdolność prawna, zdolność do czynności prawnych i inne zdolności a klasyfikacja zdarzeń prawnych" *Studia Cywilistyczne*, Vol. XIII-XIV (1969): 175.

to the lack of (formal) procedural legitimacy. It doesn't have a legal entity that can perform legal actions[42]. Therefore, it is a financial but not a procedural party. The need to define the subject's behavior within the scope of tax obligations led to granting the status of a taxpayer to an inheritance company, which is a legal entity with limited legal capacity. The legislator has regulated this issue in Art. 7a t.o.a., according to which the rights and duties of a taxpayer and a payer who is an inheritance enterprise, in the case of being subject to tax obligation, under the tax law, from the establishment to the expiration of inheritance management, are performed by an inheritance manager. From the date of the entrepreneur's death until the date of the establishment of the estate administration or until the expiration of the right to establish the estate administration, as well as from the date when the estate administrator ceases to perform this function until the date of the appointment of another estate administrator or until the expiration of the inheritance management, the rights and obligations (including court proceedings) of an enterprise as a taxpayer and payer within the scope of preventive measures are performed by entitled persons, pursuant to Art. 14 a.s.m. This means that from the day of the establishment of the estate administration until the termination of the inheritance management, the inheritance manager is entitled to act as a party in tax proceedings concerning the rights and obligations of an entrepreneur as a taxpayer. This does not mean that he becomes a party to the proceedings *ex lege*. Since he has no legal interest in the proceedings, he must exercise the rights and obligations of an inheritance company (a party in the financial-legal sense). The manager acts in his own name, but the subject of rights and obligations in the proceedings is the inheritance company. The manager is a party only in the formal-legal sense.

Since the manager of the inheritance is a party in the formal sense, he or she can submit new requests and motions to the administrative bodies, and all the formal acts performed by the tax authorities in a given case will be issued to the manager of the inheritance. Similarly, with regard to a bankruptcy trustee, we can assume that all court decisions, including tax decisions, should be delivered to the inheritance manager[43]. However, it should be emphasized that as much as a tax decision is to be delivered to an inheritance manager as a subject in the formal sense, its decisions will

42 The entrepreneur is dead and his heirs have not yet entered into his rights and obligations.

43 See the SAC resolution of 24 February 2015, ref. II FSK 1910/14, LEX no. 1772074.

relate to the inheritance enterprise, which is a taxpayer (a subject in the financial sense), because as a participant in the proceedings acts a subject that is actually not financially eligible, but has the opportunity to act in the proceedings on its behalf, but on the account of a right holder[44]. Consequently, the answer to the question posed is that, despite the delivery of a tax decision to an inheritance manager, the addressee of the rights and obligations must be a particular inheritance enterprise, as a party in the financial sense. Therefore, it is pointless to address judicial decisions to an inheritance manager and what the tax authorities do, because according to the substantive law, their addressee is the company.

6 Conclusion

The institution of an inheritance manager is a specific legal structure which, in private law, resembles the position of the receiver in bankruptcy proceedings. However, the manager acts in his own name on behalf of the owners of the estate, which is a modified form of indirect representation. Despite the fact that the manager is acting in a de facto manner, the legal consequences relate to the owners of the inherited enterprise or the enterprise itself. In administrative, tax and administrative court proceedings, the inheritance manager has the status of a party to the proceedings in the procedural sense, but not in the substantive sense. However, the inheritance company, as a legal entity with limited legal capacity, is not a subject of civil law (as a rule, it is an object). However, from a tax point of view, it is a subject (as a result of the link between the company and the object of taxation). A broader understanding of the concept of an inheritance company than that based on Article 55 of the Civil Code leads to its non-recognition as an imperfect legal person under civil law. Therefore, all the above-mentioned doubts of the tax authorities and the attempt to characterize the legal position of an inheritance manager by analogy with

44 See: Jerzy Jodłowski, Zbigniew Resich, Jerzy Lapierre, Teresa Misiuk-Jodłowska, Karol Weitz, *Postępowanie cywilne* (Warszawa: Wolters Kluwer, 2016), 236: Jacek Trzewik, „Status procesowy wojewódzkiego konserwatora zabytków w postępowaniu cywilnym na tle zmian legislacyjnych" *Roczniki Nauk Pranych KUL*, No. 3 (2017): 94.

the position of a bankruptcy trustee. This problem may also arise with respect to legal subjectivity under the Civil Code, where the subject may be a natural person, a legal entity or an organizational unit within the meaning of Article 33 of the Civil Code. However, the solution adopted by the legislator deserves approval, since the property is always guaranteed (inheritance company). If the heirs have not yet acquired the rights of the deceased entrepreneur, the tax due is guaranteed.

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