

# NEWSLETTER

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## The case can be examined several times by the same officer

In today's newsletter we would like to inform you about the latest judgment of the Supreme Administrative Court, in which the Court presented the position according to which issuing **multiple decision in the appeal proceedings in the same case and by the same composition of the Local Government Appeals Board is permissible and does not breach the principle of objective dispute of a case** (judgment of the Supreme Administrative Court of August 23, 2016, file no II FSK 2078/14).

The case, in which the Supreme Administrative Court issued the judgment concerned the arrears of property tax.

It is worth to point out that:

- 1) in accordance with Article 130 § 1 item 6 of the Tax Law, an employee of the municipality (city), county, marshal's office, the treasurer's office, a customs officer or employee of the customs office, chambers customs, office supporting the minister responsible for public finance and a member of the Local Government Appeals Board **shall be excluded from participation in proceedings in matters relating to tax and other matters subject to the provisions of tax law, which took part in the adoption of the contested decision,**
- 2) provided that it comes to a situation contrary to the abovementioned provision i.e. an employee who took part in the adoption of the contested decision, will take part in the appeal proceedings concerning above decision pursuant to Art. 240 § 1 point 3 of the Tax Law, **it is possible to resume of the final decision issued in this proceeding.**

Quoted mechanism is designed to provide an objective examination of the case by various employees of the authority so that the matter has been resolved in an impartial manner. So far, the courts took the view, according to which for reasons of objective truth is prescribed off employee of collective body from participation in the appeal proceedings, when he previously participated in the decision either in a body of first instance or second instance.

Considering the above provisions and indicated judgment of the Supreme Administrative Court, it should be noted that the Supreme Administrative Court took a different position on the examination of the case at the stage of the appeal - because in the opinion of the Supreme Administrative Court hearing the case by the same employee, within the framework of the appeal proceedings is admissible, does not prejudice principle of objective settlement of the case and does not constitute grounds for reopening proceedings.