

Chapter 6

Blocking of Bank Accounts by the National Revenue Administration

Michał Biernacki

Wrocław University of Economics and Business

ORCID: 0000-0002-7269-8212

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Quote as: Biernacki, M. (2025). Blocking of Bank Accounts by the National Revenue Administration. In I. Chuy, P. Luty, V. Lakatos (Eds.), *Modern Tools for Fraud Detection: Insights from the V4 and Ukraine* (pp. 76-84). Publishing House of Wrocław University of Economics and Business.

DOI: 10.15611/2025.40.5.06

6.1. Introduction

The proper and stable functioning of the state budget system, and thereby the security of public finances, is primarily achieved through the implementation of solutions that may not always be popular but enable the reduction of the shadow economy and tax fraud. Advanced solutions and their implementation increase the level of security and enhance fiscal efficiency, however they also define the predictability of tax relations between the state and taxpayers, ensuring an acceptable level of tax burdens while maintaining taxpayer trust in the state.

The purpose of this chapter was to present the procedures for bank account blocking by the National Revenue Administration (Krajowa Administracja Skarbowa – KAS), aiming to secure public-law liabilities, including tax obligations. This chapter outlines the reasons, the process, and the consequences of such a blockade.

A bank account blockade by KAS can occur in various circumstances, most often when a taxpayer fails to pay their tax on time, has outstanding social security contributions, or is subject to enforcement proceedings. It is also necessary to consider whether such actions by the tax authorities may hinder business financial management, generate additional costs for the taxpayer, and lead to a loss of trust between taxpayers and the state.

To achieve this objective, it was necessary to systematise the possibilities and procedures for bank account blocking by the National Revenue Administration, identify the procedures, and analyse and present court rulings. The main research methods used included legal analysis, deduction, and critical analysis.

6.2. Preliminary Assumptions

The blocking of bank accounts in business practice is a frequently used measure even at the stage prior to the initiation of criminal or administrative proceedings. Once blocked, the bank account holder cannot freely use and dispose of the blocked funds, withdraw or transfer them to another account. This can lead to difficulties in paying off tax liabilities, contractual obligations or other debts, generating additional and new problems for the bank account holder.

The blocking of bank accounts by the National Revenue Administration is an issue that has recently attracted much controversy and doubt among the public. The decision to block bank accounts in many cases has serious consequences for those affected, so it is important to have a correct understanding of the procedures and rights involved.

The monitoring of bank accounts by the so-called 'treasury' is understandable in the case of entrepreneurs, as can be deduced from the opinions expressed by Poles, particularly when it comes to the 'VAT mafia' aspect. Nowadays, standard VAT carousels are largely a thing of the past, as the introduction of JPK_VAT (Uniform Control File_VAT) has significantly curbed this practice. Ongoing VAT problems have become more sophisticated and nuanced, making them more difficult to detect. In terms of losses to the Treasury, the main problem at present appears to be the so-called grey market. The blocking of a bank account can take place on two legal levels: the tax ordinance as well as banking law.

6.3. Blocking of Bank Accounts Based on the Tax Ordinance

The National Revenue Administration can block the accounts of entities suspected of using the banking sector for tax evasion for up to 72 hours, which can be extended up to three months. Note that the grounds for its application do not have to be proven – it is sufficient to make them plausible.

The use of blocking is employed to counteract the use of the financial sector for tax evasion, especially in the field of VAT. The indication to reach for this solution is mainly the result of the analysis of the STIR system (Teleinformatic Clearing House System) processing data provided by banks and SKOKs (Stefczyk's Bank – Cooperative Savings and Credit Bank). The analysis covers information on transactions on accounts of so-called qualified entities, i.e. natural persons who are entrepreneurs, natural persons who do not have the status of entrepreneurs, but who carry out gainful activity on their own account, legal persons and organisational units without legal personality, but which have legal capacity. Bank settlement accounts, time deposits, accounts held for business purposes with SKOKs and VAT accounts of these entities are monitored. The fraud risk index qualifying blocking is determined for a given entity based on algorithms developed by the clearing house. The algorithms, by definition, take into account the best practices of banks and SKOKs in preventing their use for criminal activities, as well as economic, geographical or subject matter criteria pursuant to Article 199 *zn* § 3 points 1-5 of the Tax Ordinance (Ustawa z dnia 29 sierpnia 1997...). The collected information on the risk indicator is received by the Head of KAS.

As already indicated, the blocking is applied for a period of not more than 72 hours, but may be extended for a specified period of time not exceeding three months. Short account blocking occurs when information received indicates that a qualified entity may be using financial sector

activities for purposes related to tax evasion or for activities aimed at tax evasion, and is a countermeasure here. Its function is to immediately interrupt a suspicious transfer of money in accordance with Article 119zv § 1 of the Tax Ordinance (Ustawa z dnia 29 sierpnia 1997...). Fiscal extortion and activities aiming at it do not have to occur directly in a qualified entity. According to the judgment of the Supreme Administrative Court of 3 June 2022 (Wyrok NSA z dnia 3 czerwca 2022...), tax fraud may also be perpetrated by another entity, but if a qualified entity uses the activities of banks or SKOKs for the purposes of this fraud, the blocking of its account may be necessary to counteract tax fraud by another entity. An extension of the blocking occurs when there is a reasonable fear that the qualified entity will not fulfil an existing, or about to arise, tax or third-party tax liability obligation exceeding the equivalent of EUR 10,000. Conversion into zlotys is made according to the average euro exchange rate announced by the National Bank of Poland on the last working day of the year preceding the year in which the decision to extend the blockade was made (Ustawa z dnia 29 sierpnia 1997..., Art. 119zw § 1).

The assessment of whether it is necessary to extend the blocking of the account should be made in accordance with the rules applicable to the establishment of security for the payment of tax liabilities. The rationale for the application of both solutions is a well-founded fear of non-performance of the tax liability. The purpose of blocking the account is to secure funds that should be used to pay the tax due, before they are transferred outside the Polish banking system. The circumstances justifying the application are: failure to settle an existing tax liability, relatively low income of the taxpayer in relation to the future tax liability or failure to disclose the value of supplies and acquisitions (Wyrok NSA z dnia 16 lutego 2022...).

The bank account may be blocked, pursuant to Article 119zg point 4 and point 5 of the Tax Ordinance Act (Ustawa z dnia 29 sierpnia 1997...), when:

- 1) natural persons who are entrepreneurs (including farmers who are considered entrepreneurs according to the judgment of the Supreme Court (Wyrok SN z dnia 3 października 2014...) and Supreme Court resolution (Uchwała SN z dnia 26 lutego 2015...);
- 2) natural persons conducting a gainful activity for their own account who are not entrepreneurs, e.g. persons who achieve the so-called income from activities pursued personally listed in Article 13 of the Personal Income Tax Act (Ustawa z dnia 26 lipca 1991...), such as income of contractors, managers, members of management boards, supervisory boards, auditing committees and other governing bodies of legal persons;
- 3) legal persons, e.g. limited liability companies, joint stock companies, cooperatives, state-owned enterprises, foundations, registered associations;
- 4) organisational entities without legal personality but with legal capacity, e.g.:
 - a) general partnerships, limited partnerships, limited joint-stock partnerships, housing communities,
 - b) limited liability companies and joint-stock companies in organisation, regular associations.

Those whose accounts are blocked have little chance of successfully challenging this action.

A short blockade takes the form of a demand communicated to the bank or SKOK, and it is not subject to a legal remedy in its own right. An extension of the blockade, on the other hand, requires a ruling. The entrepreneur may file a complaint. Once the complaint procedure has been exhausted, the decision can be appealed to the administrative court. It should be noted that the accepted position is that in a complaint or an action against the decision on the extension of the account blockade, the reasons for its application (making a short blockade)

may also be challenged. Indeed, the two blockades are interrelated. The KAS, when making a (short) blockade, does not have to prove the use of the financial sector by the entity in question for tax evasion. It only has to prove that such a probability exists. This means that it must present the view that criminal activities may have occurred or may occur in the future. It should be noted that all actions of the Head of the KAS are discretionary in nature. When the Head of KAS finds that the reason for the blockade has ceased during the extension of the blockade period, he/she is obliged to revoke the blockade.

According to the judgment of the Supreme Administrative Court (Wyrok NSA z dnia 26 stycznia 2022...), the key evidence in the case is the risk analysis made in STIR. Determining exactly who was committing tax evasion, in what manner and to what scale is not within the scope of account blocking proceedings, and especially within the framework of proceedings preceding a short block. The final assessment of the correctness of the suspected entity's accounts only takes place in the course of an audit or tax proceedings, and as a result of this verification, it may turn out that it has nevertheless acted lawfully.

The order extending the blockade must be issued within three days. This excludes the conduct of proceedings with a classic evidentiary procedure, ensuring the qualified entity's active participation in it, setting a deadline for reading the case file. It should be noted that it is unrealistic to take explanations from the trader or to interview witnesses. The authority does not conduct evidentiary proceedings to the same extent as in tax assessment proceedings, but assesses the circumstances related to the performance of the disputed transactions taking into account the evidence collected in the course of checking activities, inspections or tax proceedings or resulting from tax returns and JPK_VAT files.

Within the framework of the procedure for challenging the blocking of a bank account, the correctness of the findings of the tax authorities as final and binding for the determination of the tax liability is not assessed, but only examined whether the circumstances given by the tax authority justify the application of such blocking, i.e. whether the authority has substantiated the premises for blocking the bank account. It should be noted that it is problematic whether it is possible to challenge the blocking of an account made for 72 hours; in this respect, one may observe discrepancies in court judgments. The Provincial Administrative Court in Warsaw stated that the proceedings on a short (72-hour) blockade and the proceedings on the extension of the blockade, although they must overlap in time, operate on completely different premises, and the contestability is provided for only in the later procedure (Wyrok WSA z 10 kwietnia 2020...). On the other hand, the judgment of the Supreme Administrative Court specifies that the interpretation and analysis of the content of the provisions of the Tax Ordinance, consistent with the constitutional principles, leads to the conclusion that the prerequisites of a short blockade of an account are subject to judicial and administrative control in the case of challenging the decision of the Head of the KAS on the extension of such blockade for a specified period (Wyrok NSA z 27 kwietnia 2020...). When considering the constitutional norms, one should follow the second of the presented views and indicate that both the initial blockade and its extension are subject to judicial-administrative control. One has to agree with the position that in a complaint against an order extending a blockade (and in a court action) it is possible to challenge the making of a 72-hour blockade. In summary, it can be stated that challenging the blocking of a bank account under the STIR is done by means of a complaint and a complaint to an administrative court. Both the establishment of a short blockade and its extension can be challenged in the legal remedies.

According to the STIR regulations, fiscal extortion is:

- fiscal offences
 - tax evasion (Ustawa z dnia 10 września 1999..., Art. 54 § 1 and 2),
 - *firmanctwo* (Ustawa z dnia 10 września 1999..., Art. 55 § 1 and 2), i.e. fraudulently conducting business activity under the name of another person or company,
 - tax fraud (Ustawa z dnia 10 września 1999..., Art. 56 § 1 and 2),
 - failure to issue, issuing defectively or refusing to issue an invoice or bill (Ustawa z dnia 10 września 1999..., Art. 62 § 1),
 - issuing or using an untrustworthy invoice or bill (Ustawa z dnia 10 września 1999..., Art. 62 § 2 and 2a),
 - defrauding of an overpayment or refund of tax (Ustawa z dnia 10 września 1999..., Art. 76 § 1 and 2);
- crimes:
 - forgery or falsification of an invoice or the use of such an invoice as authentic according to the Penal Code (Ustawa z dnia 6 czerwca 1997..., Art. 270a § 1 and 2 and 277a § 1),
 - issuing or using a false invoice according to the Penal Code (Ustawa z dnia 6 czerwca 1997..., Art. 271a § 1 and 2 and 277a § 1),
- participation in an organised group or association aimed at committing the above-mentioned offences or fiscal offences (Ustawa z dnia 6 czerwca 1997..., Art. 258 § 1-3).

The blocking of the qualified entity's bank account falls:

- at the end of the period specified in the request to block the account for 72 hours or the period for which the blocking was extended for a maximum of three months,
- upon the execution by the bank or SKOK of a request to cancel the blockade issued pursuant to Art. 119zy § 7(2) or Art. 119zw § 5(2) of the Tax Ordinance (Ustawa z dnia 29 sierpnia 1997...),
- when the seizure is made on the basis of:
 - a freezing order issued under the provisions of the administrative enforcement procedure in connection with a notice to block a qualified entity's account for 72 hours to secure a tax or customs debt and interest on arrears,
 - an asset freezing order issued under the provisions of the Code of Criminal Procedure in connection with the notification on blocking the account of a qualified entity for 72 hours

in the part corresponding to the amount specified in the freezing order or asset freezing order, as the case may be.

6.4. Blocking of Bank Accounts in Accordance with Banking Law

Under banking law, account blocking consists of freezing all or part of the funds held in an account. The legal basis for blocking a bank account may be:

- Art. 106 of the Banking Law (Ustawa z dnia 29 sierpnia 1997...),
- Art. 86 of the Anti-Money Laundering and Counteracting the Financing of Terrorism Act (Ustawa z dnia 1 marca 2018...),
- Art. 39 of the Act on Supervision of the Financial Market (Ustawa z dnia 21 lipca 2006...),

According to the Banking Law: “If there is a reasonable suspicion that the bank’s activities are being used to conceal criminal activities or for purposes related to a fiscal offence or an offence other than an offence referred to in Article 165a or Article 299 of the Criminal Code – the bank shall notify the public prosecutor, the Police or any other competent authority authorised to conduct preparatory proceedings” (Ustawa z dnia 29 sierpnia 1997..., Art. 106a.1). In such a situation, the bank on its own may take action and block the bank account. The legal basis for the action is Article 106a(3) of the Banking Law: “If a reasonable suspicion arises that the funds accumulated on a bank account, in whole or in part, originate from or are connected with a fiscal offence or an offence other than an offence referred to in Article 165a or Article 299 of the Penal Code, the bank shall be entitled to block the funds on the account. The blocking may only take place up to the amount of funds accumulated in the account suspected of being so” (Ustawa z dnia 29 sierpnia 1997...).

The bank is obliged to notify the law enforcement authorities of suspected criminal use of a bank account, while the blocking of a bank account is optional, not mandatory for the bank. The maximum period of application of an account block by the bank is 72 hours. Immediately after blocking, the bank must notify the public prosecutor who will then decide whether to initiate criminal proceedings within 72 hours calculated from the moment the account is blocked. If proceedings are initiated, the public prosecutor has the option to stop a specific transaction or to block the funds in the account for a specified period of time not exceeding six months from the receipt of the bank’s notification of the account blocking.

A person who has experienced a bank account blockage has two types of protection measures aimed at lifting it:

- complaint against an order to apply or extend a blockade,
- request for the blockade to be lifted.

A complaint against the blocking of a bank account must be lodged within seven days from the date of service of the blocking order. The complaint must be lodged with the court having jurisdiction to hear the case, through the public prosecutor who issued the order. It should be noted that despite the filing of the complaint, the blocking of the bank account is maintained and the person is not able to dispose of his/her funds.

Asset freezing can take place on the property of the accused or the suspect. The prosecutor is obliged to formally charge the account holder in the first instance. The law enforcement authorities are more likely to opt for an order based on material evidence as there is no need to charge first (Art. 236b of the Code of Criminal Procedure – Ustawa z dnia 6 czerwca 1997...):

- “§ 1. A thing or object within the meaning of the provisions of this Chapter shall also be funds in an account.
- § 2. An order on material evidence may concern funds in an account if they have been retained as evidence in the case”.

This interpretation and application of the law has the effect of keeping the bank account blocked for the entire duration of the proceedings, i.e. indefinitely.

Pursuant to Art. 86(1) of the AML/CFT Law, “an obliged institution shall immediately notify the General Inspector, by means of electronic communication, in the event that a reasonable suspicion arises that a specific transaction or specific assets may be related to money laundering or terrorist financing” (Ustawa z dnia 1 marca 2018...).

The General Inspector of Financial Information (GIIF) may

- stop the transaction in question,
- block the bank account for a maximum period of 96 hours.

At the same time, he/she shall notify the competent public prosecutor of the suspected offence of money laundering or terrorist financing. The blocking of the bank account can then be extended by the public prosecutor for a period of six months, or indefinitely if a material evidence order is made.

At the same time, according to Art. 39(1) of the Act on Supervision of the Financial Market: “where it appears from the information obtained which justifies a suspicion that an offence specified in Articles 181-183 of the Act on Trading in Financial Instruments has been committed, that a transaction which has been or is about to be committed may be connected with the commission of that offence, the Chair of the Commission or his/her deputy may apply to the supervised entity with a written request for the blocking carried out by that entity.

- (1) a securities account or omnibus account,
- (2) another account in which financial instruments that are not securities are recorded,
- (3) a cash account
 - for a period not exceeding 96 hours from the time indicated in the request. At the same time as the request, the President of the Commission or his/her deputy shall submit a notification of suspicion of an offence, enclosing information and documents relating to the blocked account” (Ustawa z dnia 21 lipca 2006...).

It therefore follows that the powers of the Chair of the Financial Supervisory Commission are limited to offences against trading in financial instruments, as defined in the special law.

It should also be noted that pursuant to Art. 106a(10) of the Banking Law: “The bank shall not be liable for any damage that may result from the good faith performance of the obligations set out in paragraphs 3 to 5. In such a case, if the circumstances referred to in paragraphs 3 to 5 were not related to the criminal offence or concealment of criminal activities referred to in paragraph 1, the State Treasury shall be liable for the damage resulting from the blocking of funds on the account” (Ustawa z dnia 29 sierpnia 1997...). Such a provision makes it clear that any claim relating to the blocking of a bank account should be addressed to the State Treasury and not to the banks.

The above considerations lead to the conclusion that, first of all, measures should be taken to minimise the risk of the occurrence of events justifying the use of a bank account blockade. This is important in the situation of the crime of money laundering, the statutory prerequisites of which are so broadly defined that, on many occasions, these prerequisites may be fulfilled by entities that do not realise that the funds they receive or trade in may be related to the crime.

A comparison with other forms of account blocking allows a better understanding of the specifics of the procedure applied by the National Revenue Administration. It is also crucial to understand the scope of competence of the Head of KAS and to look carefully at examples of situations in which account blocking may occur. It should be emphasised that it is important to comply with the law and to be cautious in the conduct of one’s financial activities when blocking an account.

It is also important to stress that, in accordance with the Supreme Administrative Court resolution, it is possible to remove a taxpayer from the VAT register without notifying the taxpayer (Uchwała NSA z dnia 23 października 2023...). The Court agreed with the tax

authorities that deletion of a taxpayer from the register of active taxpayers under Art. 96(9) (5) of the VAT Act is effected by performing a material and technical act, and therefore also without notifying the taxpayer of this fact (Ustawa z dnia 11 marca 2004...). Note that this resolution is problematic to understand and apply as it concerns the taxpayer's rights and obligations (among others, the right to deduct VAT) and the lack of information on deletion is simply detrimental to the taxpayer. From the taxpayers' point of view, it is therefore reasonable to apply in practice the slogan 'cash is king'. The blocking of accounts (whether under STIR or security or enforcement), is highly problematic and affects both the flow of money and even the perception of the entity by stakeholders. It can bring a business to a standstill, so caution is suggested when dealing with tax authorities.

6.5. Bank Account Blocking in the V4 Countries

In the other V4 countries, namely Czechia, Hungary, and Slovakia the tax administrations have the authority to block bank accounts, though the procedures vary between countries.

- Czechia: the tax administration has the authority to block bank accounts in cases of suspected tax evasion or other tax-related crimes. These procedures are regulated by national tax laws.
- Hungary: the tax authorities can freeze the bank accounts of taxpayers suspected of tax fraud or tax arrears. These procedures are part of measures aimed at ensuring the collection of tax liabilities.
- Slovakia: the tax administration has the authority to block bank accounts in cases of suspected tax evasion or other violations of tax regulations. These procedures are defined in Slovak tax law.

Similarly to Poland, in each of these countries, tax administration procedures for bank account blocking are regulated by local laws and are intended to prevent tax fraud and ensure effective tax collection. When comparing Poland's bank account blocking system to those of the other V4 countries, several key aspects stand out:

- Czechia: the procedures are less automated than in Poland, and their execution depends on specific cases and legal interpretations.
- Hungary: decisions may be based on a narrower range of legal premises, which can affect reaction time and the scope of applied measures. The system is less automated than in Poland.
- Slovakia: the tax administration has the authority to block accounts, but the procedures are more time-consuming and less automated.

6.6. Conclusions

As presented in the chapter, the bank account blockade by the National Revenue Administration is a significant tool intended to secure tax liabilities. Entrepreneurs should be aware of the causes, process, and consequences of such a blockade to appeal effectively against it if necessary, and minimise its negative impact on their businesses.

Administrative courts generally emphasise in their rulings that KAS has the right to block a bank account when a taxpayer has outstanding tax liabilities. However, such actions must comply with applicable legal regulations and general principles, such as proportionality and transparency.

Administrative court rulings play a key role in shaping the practice of applying the regulations on bank account blocking by KAS. Through these rulings, taxpayers can better understand their rights and appeal options. It is worth noting that these rulings may influence future KAS decisions and the way tax authorities approach tax enforcement.

Court judgments highlight the importance of proportionality, transparency, and adherence to procedures, which are crucial for ensuring fairness in the tax enforcement process. These rulings provide taxpayers with an opportunity to effectively assert their rights in cases of unjustified account blockades.

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