LEGAL AREA STUDIES BAND 4

Martin Löhnig, Wojciech Morawski and
Anna Moszyńska (eds.)

FAIR TAXES OR BUDGET REVENUES AT ANY PRICE?

Polish tax law in the post-BEPS era

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

Legal Area Studies

Edited by
Martin Löhnig

Volume 4

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

Martin Löhnig / Wojciech Morawski /
Anna Moszyńska (eds.)

Fair taxes or budget revenues at any price?

Polish tax law in the post-BEPS era

BÖHLAU VERLAG WIEN KÖLN

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

All research chapters in this book have undergone rigorous double blind peer review, based on initial editor's screening.

Bibliographic information published by the Deutsche Nationalbibliothek:
The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data available online: https://dnb.de.

Koninklijke Brill NV incorporates the imprints Brill, Brill Nijhoff, Brill Hotei, Brill Schöningh, Brill Fink, Brill mentis, Vandenhoeck & Ruprecht, Böhlau, V&R unipress.

Cover image: https://pixabay.com

Cover design: Michael Haderer, Vienna
Typesetting: le-tex publishing services, Leipzig

Vandenhoeck & Ruprecht Verlage | www.vandenhoeck-ruprecht-verlage.com
ISBN 978-3-205-21528-8

Contents

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

Foreword

Poland has been in a phase of change since 2015. The constitutional system of the Third Republic is being restructured. The Judiciary, media, schools and universities are the main focus of attention.

In contrast, the structures and changes in Polish tax law receive less attention. This is surprising, because tax law is not only a very complex matter, but also a very powerful political instrument. The Polish government is aware of this. The aim of its measures seems to be to increase tax revenues to finance a major social redistribution project in favour of low-income citizens and pensioners – sections of the population in which the share of voters of the ruling PiS party is particularly high.

Some changes to the Polish tax system have already taken place. Some of these were based on the OECD's BEPS (Base Erosion and Profit Shifting) project, whose recommendations, useful for achieving its goals, the Polish government was happy to implement – admittedly also to combat illegitimate tax avoidance strategies, as was the case in other European jurisdictions. The same applies to ATAD 1 (Anti-Tax-Avoidance-Directive), which only provides a minimum level of protection and allows member states to impose stricter regulations, of which Poland makes intensive use.

Further changes are underway. The tax system is to be fundamentally restructured to relieve the tax burden on less wealthy citizens and to finance an ambitious birth promotion policy. The instruments to be considered here are the abolition of the inclusion of health care expenses in income tax and a significant increase in tax rates for higher incomes. The goal of a significant increase in the tax exemption limit or a far-reaching tax exemption for pensioners is thus to be achieved at the expense of higher earners and the self-employed.

A study of the Polish tax system and Polish tax policy based on the contributions collected in this volume enriches knowledge of developments in one of the most important states in Europe.

Prof. Dr. Martin Löhnig

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

Foreword

Modern tax systems are characterised by a high degree of complexity. This state of affairs reflects the complexity of the modern world, the organizational structures of the world economy and the level of globalization of that economy, which – contrary to the predictions of some political scientists – is doing quite well, or at most its manifestations are different than before.

The design of national tax systems, especially in Europe, is influenced both by real social and economic phenomena and by attempts to coordinate tax policy and the way its tools are applied in an international context.

The socio-economic phenomena in question here are not only tax avoidance in its various forms – with the transfer of taxable income to jurisdictions with less severe tax regimes or even to more or less disguised tax havens at the forefront. These are also qualitatively new economic phenomena that require a qualitatively new "response" from the tax system – computerisation and digitalisation of the economy, robotisation of industry and services or mass use of virtual currencies. There are more such phenomena; it is enough to indicate the more and more sophisticatedly constructed financial instruments or the emergence of special needs in the area of environmental protection, some of which can be handled by tax methods.

Attempts to coordinate the shape of structures and rules of functioning of tax systems are made both at the EU and broader OECD levels. The results of actions taken so far by these two organisations are assessed as ambivalent. They were primarily aimed at limiting tax avoidance, especially in the context of international enterprises. They have also sought a general anti-avoidance instrument (GAAR) and a more coherent system of allocation of taxing powers in international double taxation treaties. The assessment of developments in this regard is generally positive.

What has not been achieved so far is a more proportionate distribution of the income tax base between the individual countries in which multinationals operate. This requires a political decision by the major players in the global economy. Even within a relatively coherent organisation, such as the European Union, the project of introducing a common consolidated corporate tax base (CCCTB) has not found universal acceptance and, as a result, has not come into force.

The above mentioned changes have also other aspects, related to the legal position of the taxpayer and his relations with the tax administration. The contemporary system changes either make this situation worse or are at best neutral for the taxpayer. They increase the tax risk and raise the costs of economic activity. The field of joint and several liability of a taxpayer for the actions of his contractors is being created and extended. The level of penalisation of behaviours that are

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

inconsistent with the determinants of the tax law increases in a manner that is contrary to the principle of proportionality, and the scope and detail of information that taxpayers are obliged to provide to the tax administration increases. This information is collected *en masse*, but the degree to which it is used is low and, in addition, it is not sufficiently protected.

The fact that the complication of the tax system is accompanied by the complication of the tax law as such can also be disturbing. There is a degradation of the system of its sources, the destruction of the textual layer as a result of repeated and far-reaching changes in the tax law provisions and a relatively low discipline of the process of their interpretation. This leads to an increase in the level of uncertainty of the content of existing legal norms, which in Poland results in a strikingly low level of private investment.

The aim of the book we present is to provide a foreign reader with an overview of the Polish tax system. Particular attention is given to the analysis and evaluation of changes in Polish tax law caused both by changes in the economy (technologies, organizational structures and forms of business) and by undertakings of international organizations working to improve the efficiency of both national tax systems and the global tax system as a whole.

Political changes in Poland (electoral victory of the right-wing Law and Justice party) coincided with changes on the global tax scene, which were associated with the BEPS (Base Erosion and Profit Shifting) project implemented by the OECD. The struggle to rebuild countries' tax revenues began. The ambitious social policy in Poland, which involved substantial transfers of funds to the less well-off, required an increase in budget revenues. Thus, the Polish government quickly became an ardent supporter of BEPS, implementing many solutions it envisaged with almost exaggerated zeal. The radicalism of the tax policy changes raised many doubts among practitioners, who accused the authorities of excessive fiscalism. On the other hand, the legal rules previously in force did indeed poorly protect the fiscal interests of the state (e.g. lack of a general anti-avoidance clause, so even aggressive tax avoidance could not be counteracted by tax authorities). The changes were not limited only to income taxes. The bane of the Polish reality was the numerous carousel fraud in the field of VAT, though not only Polish but also many other Member States of the European Union faced the same problem.

This book is a collective work of many authors belonging to the Toruń tax law school or associated with it in various ways. Thus, it is the result of cooperation of academics – mainly from the Nicolaus Copernicus University in Toruń – and practitioners from major tax advisory firms (EY, PwC, Deloitte) as well as in-house tax experts.

Prof. dr hab. Bogumił Brzeziński dr h.c.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

Jacek Wantoch-Rekowski, Martyna Wilmanowicz-Słupczewska

The tax system in Poland

1. Sources of Tax Law

In order to fully discuss the implementation of BEPS, ATADs and other instruments to increase the efficiency of the Polish tax system, it is necessary to indicate the specificity of Polish tax law. The Constitution of the Republic of Poland of April 2, 1997[1] provides that the sources of universally binding law of the Republic of Poland shall be: the Constitution, legal acts, ratified international agreements, and regulations.[2] Furthermore, the sources of universally binding law of the Republic of Poland shall be acts of local law in the area of activity of the bodies which established them.[3] The sources of law in a formal approach should currently be understood as legal acts originating from legislative bodies, issued within the limits of their competence and in the form provided by law.[4]

The Basic Law regulates tax issues directly in two provisions:

1) everyone is obliged to bear the burdens of public benefits, including taxes specified in an act,[5]
2) the imposition of taxes, as well as other public levies, the determination of subjects, objects, and rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of entities exempt from taxation, shall be by way of an act.[6]

What is more, chapters of local government shall have the right to determine the level of local taxes and charges in the scope specified in the act.[7]

1 *Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.* [The Constitution of the Republic of Poland of April 2, 1997] J. of L. of 1997, No. 78, item 483, as amended (hereinafter: 'Constitution').

2 Article 87(1) of the Constitution.

3 Article 87(2) of the Constitution.

4 D. Antonów, in: Prawo podatkowe z kazusami i pytaniami [Tax law with case studies and questions] (ed.): P. Borszowski, Wolters Kluwer, Warsaw 2018, p. 35.

5 Article 84 of the Constitution.

6 Article 217 of the Constitution; See more broadly: B. Brzeziński, Prawo podatkowe. Zagadnienia teorii i praktyki [Tax Law. Issues of theory and practice], TNOiK, Toruń 2017, pp. 338–340.

7 Article 168 of the Constitution.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

Acts should be considered the basic source of tax law, and owing to the regulated issues (subject matter) they are referred to as 'tax acts'.[8] Among them one may distinguish the acts on general tax law (e.g. the Act of August 29, 1997 – the Tax Ordinance Act,[9] the Act of November 16, 2016 on the National Revenue Administration)[10] and acts on detailed tax law (e.g. the Act of July 26, 1991 on Personal Income Tax,[11] the Act of February 15, 1992 on Corporate Income Tax,[12] the Act of March 11, 2004 on Tax on Goods and Services,[13] the Act of December 6, 2008 on Excise Duty,[14] and the Act of January 12, 1991 on Local Taxes and Fees).[15]

International agreements are also sources of generally applicable law in Poland, which after publication in the Journal of Laws are part of the national legal order, and those international agreements which have been ratified upon prior consent expressed in the act take precedence over the act if the act cannot be reconciled with the international agreement. Among international agreements, the most important are those on the basis of which Poland has become a member of international organizations, and those on preventing double taxation.[16]

Since May 1, 2004, European Union law has become part of the Polish legal order – both primary and secondary law (regulations, directives, decisions, recommendations, and opinions).

The source of tax law also includes regulations which shall be issued by the bodies specified in the Constitution on the basis of detailed authorization contained in an act, and for the purpose of the implementation of the act.[17] The authorization shall specify the body competent to issue a regulation and the scope of matters to

8 On the definition of tax acts, genesis, creation etc. see: C. Kosikowski, Ustawa podatkowa [Tax Act], LexisNexis, Warsaw 2006.

9 *Ustawa z dnia 29 sierpnia 1997 r. – Ordynacja podatkowa* [The Act of August 29, 1997 – the Tax Ordinance Act, hereinafter: 'Tax Ordinance Act'] J. of L. of 2021, item 1540 as amended.

10 *Ustawa z dnia 16 listopada 2016 r. o Krajowej Administracji Skarbowej* [the Act of November 16, 2016 on the National Revenue Administration], J. of L. of 2021, item 422 as amended.

11 *Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych* [the Act of July 26, 1991 on Personal Income Tax, hereinafter: PIT Act] J. of L. of 2021, item 1128 as amended.

12 *Ustawa z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych* [the Act of February 15, 1992 on Corporate Income Tax, hereinafter: CIT Act] J. of L. of 2020, item 1406 as amended.

13 *Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług* [the Act of March 11, 2004 on Tax on Goods and Services, hereinafter: VAT Act], J. of L. of 2021, item 685 as amended.

14 *Ustawa z dnia 6 grudnia 2008 r. o podatku akcyzowym* [the Act of December 6, 2008 on Excise Duty], J. of L. of 2020, item 722 as amended.

15 *Ustawa z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych* [the Act of January 12, 1991 on Local Taxes and Fees], J. of L. of 2019, item 1170.

16 D. Antonów, in: Prawo podatkowe z kazusami i pytaniami [Tax law with case studies and questions], P. Borszowski (ed.), Wolters Kluwer, Warsaw 2018, p. 41.

17 Article 92(1) of the Constitution of the Republic of Poland.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

be regulated as well as guidelines concerning the provisions of such act. Executive regulations concerning tax acts are issued primarily by the Minister of Finance.

Sources of tax law also include some acts of the local law that regulate tax issues on the basis of and to the extent specified in acts (e.g. resolutions of municipal councils on property tax rates).

2. Corporate Income Tax

2.1 Introduction

The indisputable advantages of income taxes include significant flexibility, as they take into account, to a high degree, individual payment capacity.[18] Nowadays, income taxation generally takes the form of separate income taxation for natural persons and for legal persons,[19] which is also the case in the Polish tax system.

Structures appropriate for taxing the income of natural persons cannot apply to legal persons, since the personal situation of the taxpayer remains irrelevant with respect to corporate income taxpayers.[20]

2.2 Taxpayers

The Corporate Income Tax Act regulates income taxation of the income of legal persons and capital companies in organization. Thus, entities subject to income tax are joint-stock companies, limited liability companies, state-owned enterprises, cooperatives, and tax groups of companies. However, limited partnerships are transparent for tax purposes, their tax purposes and partners are taxed individually on their profit share. Moreover, contrary to the name of this tax, the provisions of the Act also apply to organizational units without legal personality, with the exception of inherited enterprises and companies without legal personality, apart from the exceptions listed in Art. 1(1) and (3) of CIT Act, and limited joint-stock partnerships having their registered office or management board in the territory of the Republic of Poland.

The provisions of the Corporate Income Tax Act also apply to companies without legal personality having their registered office or management board in another

18 B. Brzeziński, Wprowadzenie do prawa podatkowego [Introduction to tax law], TNOiK, Toruń 2008, p. 42.

19 M. Kalinowski, Współczesne systemy podatkowe [Modern tax systems], Toruń 1996, p. 46.

20 A. Mariański, D. Strzelec, Podatki dochodowe [Income taxes], in: Zagadnienia ogólne prawa podatkowego [General issues of tax law], W. Nykiel, M. Wilk (ed.), Fundacja Centrum Dokumentacji i Studiów Podatkowych, Łódź 2014, p. 95.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

country, if, in accordance with the tax law of that country, they are treated as legal persons and are subject to taxation on all their income, regardless of the place of its generation. Consequently, if an organizational unit without legal personality is treated as a legal person for tax purposes in the system of another country, it will also be subject to corporate income tax in Poland.

Taxpayers can also be groups of at least two commercial law companies with legal personality that remain in capital associations, called 'tax capital groups' provided that the statutory conditions are met.

2.3 Residence

Taxpayers are subject to a tax obligation on all their income, regardless of the place of its generation, if they have their registered office or management board in the territory of the Republic of Poland.[21]

Taxpayers, if they do not have a registered office or management board in the territory of the Republic of Poland, are subject to a tax obligation only on income that they generate in the territory of the Republic of Poland.[22]

The exclusive economic zone outside the territorial sea is also considered to be the territory of the Republic of Poland, in which the Republic of Poland, on the basis of internal law and in accordance with international law, exercises rights relating to the exploration and exploitation of the seabed and its subsoil and their natural resources.[23]

2.4 Taxable Income

2.4.1 Object of Taxation

The basic source of law regarding corporate income tax and other entities without legal personality treated by legal provisions as legal persons is the Act of February 15, 1992 on Corporate Income Tax.

The object of income taxation is the income being the sum of income from capital gains and income from commonly named 'other sources' of revenues, with the income for each of these sources being calculated separately as the difference between the revenues from a given source and the costs assigned to that source.

21 Article 3(1) of the CIT Act.
22 Article 3(2) of the CIT Act.
23 Article 4 of the CIT Act.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

2.4.2. Object Exclusions

Currently, non-taxable activities are excluded from the scope of the tax in question, and income from these activities is not subject to income tax. The provisions of the CIT Act shall not apply in particular to revenues from agricultural activities, except for revenues from special branches of agricultural production, revenues from forestry within the meaning of the Act on Forests, or revenues arising from activities that cannot be the subject of a legally effective contract[24].

2.5 Tax Deductible Costs

The costs of obtaining revenues are the costs incurred in order to generate revenues from a source of revenues or to maintain or secure the source of revenues, with the exception of costs listed in Art. 16(1) of CIT Act. Importantly, costs incurred in foreign currencies are converted into zloty at the average exchange rate announced by the National Bank of Poland on the last working day preceding the day of incurring the cost. For example, tax deductible costs include, among others, expenses incurred by the employer to ensure the proper implementation of an employee pension scheme within the meaning of the provisions on employee pension schemes.

2.6 Expenses Not Recognized as Costs

Currently, in particular, expenses for the purchase of land or the right of perpetual usufruct of land, with the exception of fees for perpetual usufruct of land, the acquisition or own production of fixed assets as well as intangible and legal assets other than those listed above, including those which are a part of the acquired enterprise or its organized parts, or improvement of fixed assets, which pursuant to Art. 16g(13) of CIT Act, increase the value of fixed assets, which is the basis for calculating depreciation write-offs, are not considered as tax deductible costs.[25] However, it should be emphasized that these expenses, updated in accordance with separate provisions, reduced by the sum of depreciation write-offs, referred to in Art. 16h(1)(1) of the CIT Act, constitute tax deductible costs if a disposal for consideration of fixed assets or intangible and legal assets takes place, regardless of the time when they were incurred.

24 Article 2(1) of the CIT Act.
25 Article 16(1) of the CIT Act.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

2.7 Depreciation Rules

Statutory regulations regarding the depreciation of fixed assets as well as intangible and legal assets are included in the provisions of the CIT Act.[26] Importantly, the criterion of including by value property or rights into fixed assets as well as intangible and legal assets has been increased to PLN 10,000 since January 1, 2018, while until December 31, 2017, this amount was PLN 3,500.

Pursuant to the provisions of CIT Act, depreciation applies in particular to structures, buildings, and premises which are a separate property; machinery, equipment, and means of transport; as well as other devices with an expected period of use longer than one year, used by the taxpayer for the purposes of his economic activity or let for use on the basis of a rental, tenancy, or leasing contract, called fixed assets.

2.8 Income from Capital Gains

Under Polish law, there is no separate tax on capital gains. Income from capital gains is considered to be revenues from the share in the profits of legal persons,[27] constituting the revenues actually obtained from this share, including in particular dividends, balance surpluses in cooperatives, and income of investment funds or collective investment institutions received by the participants therein, where the statute provides for the payment of these incomes without repurchasing share units or buying investment certificates; revenues from the redemption of shares (stocks) or from a decrease in their value, or revenues obtained as a result of transformations, mergers, or divisions of entities, including revenues of a partner of a merged or divided company, revenues of a divided company, or revenues of a legal person or an acquiring company as a result of a merger or division of assets or part of the assets of another legal person or company, and others.[28]

In addition, these are also revenues from the contribution in kind to a legal person or company and other specified revenues from shares (stocks) in a legal person or company, including revenues from the disposal of shares (stocks), including the disposal made for their redemption, revenues obtained as a result of exchange of shares; revenues from the disposal of all rights and obligations in a company which is not a legal person; revenues from the disposal of receivables previously acquired by the taxpayer and receivables arising from the revenues included in capital gains, and others.

26 Article 16a-16m of the CIT Act.

27 Subject to Article 12(1)(4b) of the CIT Act.

28 Article 7b(1) of the CIT Act.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

2.9 Tax Rate

As a rule, corporate income is taxed at a flat rate of 19%. The tax amount is the product of the tax base calculated according to the principles described in the CIT Act[29] and the tax rate. Both the tax base and the calculated tax are rounded in accordance with the principles set out in the provisions of the Act of August 29, 1997 the Tax Ordinance Act, i.e. mathematically to full zloty.

As indicated by the Provincial Administrative Court in Gdańsk in its judgment of June 3, 2008,[30] the income that constitutes a tax base is determined, among other methods, after deducting losses from earlier years. It cannot be assumed that the loss from previous years contributes to the generation of income in the amount not resulting in a tax liability. It is clear that income, under the Corporate Income Tax Act, always gives rise to a tax liability, unless, of course, it is exempt from tax.[31]

Polish regulations provide for a reduced tax rate of 9% of the tax base on revenues (income) other than from capital gains – in the case of taxpayers whose income obtained in a tax year did not exceed the amount expressed in PLN corresponding to the equivalent of EUR 2,000,000 calculated according to the average euro exchange rate announced by the National Bank of Poland on the first working day of the tax year, rounded to PLN 1000. This applies to commonly named 'small taxpayers'.

2.10 Tax Period

The tax year shall, in principle, be the calendar year, unless the taxpayer decides otherwise in the statutes or in the articles of association, or in any other document properly regulating the rules of organisation of other taxpayers, in which case the tax year shall be the period of twelve consecutive calendar months.[32] A taxpayer's loss is a surplus of costs over the revenues obtained.[33] It is settled in the next 5 tax years, deducting it from the income in an amount not exceeding 50% of the loss incurred in a given tax year.

Since January 1, 2019, the loss for 2019 or later can be deducted earlier if the loss obtained does not exceed PLN 5,000,000. The taxpayer may deduct the loss in full at once in one of the next five years. However, if the loss exceeded PLN 5,000,000, then the taxpayer may deduct this loss in the amount of 5 million in one year and the remainder of the loss in the following years. However, the taxpayer then applies

29 Article 18 and 18d of the CIT Act.

30 Judgment of the Provincial Administrative Court in Gdańsk of 3 June 2008, I SA/Gd 172/08, LEX No. 395665.

31 Article 19(1) of the CIT Act.

32 Article 8 of the CIT Act subject to paragraphs 2, 2a, 3 and 6.

33 Article 7(2) of the CIT Act.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

the rule that the rest of the loss exceeding PLN 5,000,000 is deducted in the amount not exceeding 50% of the loss in one year.

2.11 Annual Tax Return

Taxpayers[34] are required to submit a tax return concerning an obtained income (losses incurred) to tax offices, according to a fixed form in a tax year – by the end of the third month of the following year and within this period pay the tax due or the difference between the tax due on the income shown in the tax return and the sum of due advance payments for the period from the beginning of the year.[35]

The tax return – referred to above – is submitted by means of electronic communication in accordance with the provisions of the Tax Ordinance Act.

Since October 1, 2018, entities entered in the Register of Entrepreneurs of the National Court Register[36] have not been submitting financial statements to the Tax Office. Financial statements are available and submitted only in the National Court Register. However, from January 1, 2020, taxpayers obliged to prepare a financial report shall submit the report by electronic means of communication, to the Head of the National Tax Administration. If the statement was audited by a certified auditor, the audit opinion must also be forwarded. In addition, the annual tax return is prepared by all corporate taxpayers.

3. Personal income tax

3.1 Introduction

The Polish tax system operates with two main income taxes including personal income tax. It should be noted however that there are many other varieties of income taxes and formally separate taxes that replace income taxes.[37]

The regulations on personal income tax are contained in the Personal Income Tax Act of 26 July 1991. Although the European Union legislation does not include personal income tax within the scope of tax law harmonization, the EU regulations ought to be taken into account. The currency in Poland is the zloty (PLN).

34 With the exception of entities exempt from tax pursuant to Article 6(1) of the CIT Act, subject to par. 1d, Art. 17(1)(4a)(a) and the provisions of the Act mentioned in Article 40(2)(8) of the CIT Act, subject to par. 2a.

35 Article 27(1) of the CIT Act.

36 Hereinafter: NCR.

37 J. Wantoch-Rekowski, W. Morawski, Podstawy prawa finansów publicznych [Fundamentals of Public Finance Law. An academic handbook], Dom Organizatora, Toruń 2019, pp. 260–261.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

3.2 Taxpayers

The tax obligation on all its income (revenues) regardless of the location of the sources of income (unlimited tax obligation) applies to natural persons who have their place of residence in the territory of the Republic of Poland. The above mentioned act regulates the taxation of personal income tax and solidarity levies, but also the taxation of inherited companies' income, i.e. the entrepreneur's assets after his death. With reference to the civil law partnership agreement, the personal income tax obligation is borne by the shareholders of the aforementioned company, not by the company. As indicated by the Supreme Administrative Court in its judgment of 27 April 2001,[38] under this Act, one cannot presume that an entity (not subject to tax obligation under the Tax Act) is a taxpayer on its income.

With a view to the PIT Act provisions, a natural person with residence in the territory of the Republic of Poland is a natural person that:

a) has a centre of personal or economic interest on the territory of the Republic of Poland (centre of vital interests) or
b) resides in the territory of the Republic of Poland for more than 183 days in a tax year.

Other persons are subject to tax obligation only on income (revenues) generated in the Republic of Poland (limited tax obligation).

According to the applicable regulations, spouses are subject to separate taxation on their income. Spouses subject to the tax obligation referred to above and between whom there is a joint property, married throughout the tax year, may, on a joint request expressed in their tax return, be taxed jointly on the sum of their income. First, the spouses determine the common tax base by adding their income previously reduced separately by each spouse by the amounts of tax credits deductible from income,[39] decreased by the allowance for research and development activities[40] and the thermomodernization allowance.[41] If the spouses receive income from several sources, they aggregate the income from all sources. Revenues (income) which are subject to flat-rate taxation under the provisions of the PIT Act are not included in the total income. In this case, the tax is specified in the name of both spouses in the double amount of tax calculated on half of their total income.

The principle and method of taxation as described above also applies to:

38 Judgment of the Supreme Administrative Court of 27 April 2001, III SA 429/00, LEX no. 54003.

39 Article 26 of the PIT Act.

40 Article 26e of the PIT Act.

41 Article 26h of the PIT Act.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

1) spouses who are resident for tax purposes in a Member State of the European Union other than the Republic of Poland, or in another State of the European Economic Area or in the Swiss Confederation,
2) spouses, one of whom is subject to unlimited tax liability in the Republic of Poland and the other has a residence for tax purposes in a Member State of the European Union other than the Republic of Poland or in another State of the European Economic Area or in the Swiss Confederation.

This is the case, in particular, if they have obtained taxable income in the territory of the Republic of Poland in an amount constituting in total at least 75% of the total income earned by both spouses in a given tax year and have documented with a certificate of residence their place of residence for tax purposes.

Under the Polish provisions of the Personal Income Tax Act, joint taxation may take place even if the spouse dies. An application for joint taxation of the income of spouses between whom there was a joint property in the tax year may also be filed by the taxpayer who:
1) got married before the beginning of the tax year and whose spouse died during the tax year;
2) was married throughout the tax year and whose spouse died after the end of the tax year before submitting the tax return.

The income of minor children and adoptees, with the exception of income from their work, scholarships, and income from objects given to them for free use, subject to taxation in the territory of the Republic of Poland, is added to the income of the parents, unless the parents are not entitled to collect benefits from the sources of their children's income.[42] If spouses are subject to separate taxation, half of the income of minor children is added to the income of each spouse.[43]

3.3 Sources of income

According to the Personal Income Tax Act, the sources of income include:[44]
1) business relationship, employment relationship, including cooperative employment relationship, membership of an agricultural production cooperative or other cooperative engaged in agricultural production, home-based work, disability pension, retirement pension,
2) activities carried out in person,

---

42 Article 7 paragraph 1 of the PIT Act.
43 Article 7 paragraph 2 of the PIT Act.
44 Article 10 of the PIT Act.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

3) non-agricultural economic activity,
4) special divisions of agricultural production,
5) rent, sublease, tenancy, subleasing and other contracts of a similar nature, including rent, subleasing of special sections of agricultural production and of the farm or its components for non-agricultural purposes or for the operation of special sections of agricultural production, with the exception of assets related to economic activity,
6) cash capitals and property rights, including disposal of property rights against payment,[45]
7) paid sale of:[46]
   a) real estate or parts thereof and a share in real estate,
   b) the cooperative ownership right to residential or commercial premises and the right to a detached house in a housing cooperative,
   c) rights of perpetual usufruct of land,
   d) other things, if the disposal against payment does not take place in the course of business activity and has been effected in the case of disposal against payment of real estate and property rights referred to in points a–c – before the lapse of five years from the end of the calendar year in which the acquisition or construction took place and in respect of other things – before the lapse of six months from the end of the month in which the acquisition took place; in the case of exchange, these periods shall apply to each person making the exchange,
8) activity conducted by a foreign controlled entity,
9) unrealised gains referred to in Article 30da of the PIT Act (exit tax),
10) other sources.

The object of income taxes should be the generation of income understood as a surplus of income over costs. For example, the source of income is remuneration, or revenues from business activity.[47] However, with regard to the definition of tax deductible costs, reference should be made to the regulations of specific tax acts.

45 Other than listed in Article 10 paragraph 1 (8)(a-c) of the PIT Act.

46 With reservation of Article 10 paragraph 2 of the PIT Act.

47 See: Casey Murdock M., Tax Insight For Tax Year 2013 and Beyond, Apress, Berkeley, CA, 2013, p. 26.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

3.4 Exempt income

The provisions on personal income tax do not provide for exemptions. The exception is the partial exemption,[48] which refers in particular to income obtained by staff members of diplomatic representations and consular posts from sources of income located abroad.

There is an elaborate catalogue of statutory subjective or subjective-objective exemptions. The nature and application of the exemptions means in consequence that they are not included in the tax return. A closed catalogue of subjective exemptions includes, inter alia, death severance payments and funeral allowances and pensions granted under separate provisions on the provisioning of war and military invalids and their families.[49]

3.5 Income from an employment relationship and equivalent

All kinds of cash payments and the monetary value of benefits in kind or their equivalents, regardless of the source of financing of those payments and benefits, are regarded as income from an official, employment, home-based, and cooperative employment relationship.[50]

In particular, these are basic salaries, wages and salaries for overtime, various allowances, bonuses, awards, holiday pay, and any other amounts, whether or not pre-determined, as well as cash payments for the employee and the value of other unpaid or partially paid benefits.

An employee, within the meaning of the Act, is a person who remains in a business relationship, employment relationship, home-based employment relationship, or cooperative employment relationship.

3.6 Tax scale

As a rule, the personal income tax due is the product of the tax rate and the tax base. The amount of tax due directly depends on the tax rate.

The Polish legislator has adopted the income tax model as a progressive tax with continuous progression. As a result, the legislator determines individual income brackets.

48 Article 3(3) of the PIT Act.
49 Article 21(1) of the PIT Act.
50 Article 12(1) of the PIT Act.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

Table 1 Tax scale in Personal Income Tax

Tax calculation basis in Polish zloty	Tax amount
up to 85 528	17% – minus the tax-deductible amount
above 85 528	PLN 14,539 PLN 76 + 32% surplus over PLN 85,528 – minus the tax-deductible amount

Source: table based on art. 27(1) of the Personal Income Tax Act.

Taking into account the fact that the legislator has decided to opt for the so-called continuous progression, i.e. one where the tax base is divided into parts of a certain amount and the tax is calculated on these parts at a separate tax rate – tax brackets are an important element of the tax scale. The legislator determines the tax brackets, with the latter being open in nature.

The Polish income tax also has a specific, zero tax rate. This function is performed by the tax-free amount. This too is an element of the tax scale.

3.7 Tax year

The tax year is the calendar year, unless the Tax Act provides otherwise.[51]

3.8 Collection of tax or tax advances by payers

Pursuant to the Personal Income Tax Act, natural persons, legal entities, and organizational units without legal personality are obliged, as payers, to calculate, and collect during the year, advance payments for personal income tax from persons who receive income from these companies under a business relationship, employment relationship, home-based work or cooperative employment relationship, social security cash benefits paid by companies, and in labour cooperatives – payments for participation in the balance sheet surplus.[52]

4. VAT

The goods and services tax, regulated by the Act of 11 March 2004 on Goods and Services Tax, is one of the harmonized taxes in the European Union. Article 113 of the Treaty on the Functioning of the European Union, on the basis of which Council Directive 2006/112/EC of 29 November 2006 on the common system of

51 Article 11 of the Tax Ordinance Act.

52 Article 31 of the PIT Act.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

value added tax, which is currently in force, was adopted, should be regarded as the legal basis for such harmonization.[53]

One of the objectives of this Directive is to achieve such harmonization of legislation on turnover taxes through the value added tax (VAT) system that it will eliminate, as far as possible, factors which may distort conditions of competition both at national and Community level. The Directive assumes that, even if rates and exemptions are not fully harmonized, the common VAT system should make it possible to achieve neutral conditions of competition, in the sense that within the territory of each Member State similar goods and services are subject to the same tax burden, regardless of the length of the production and distribution chain.

5. Excise tax

Excise tax is currently regulated by the Excise Duty Act of 6 December 2008. It constitutes an income of the state budget.

The literature indicates that this is a tax which constitutes:

1) a turnover tax (charged on the activity of turnover),
2) a 'special' tax (it is levied only on strictly defined goods),
3) a single-phase tax (it is calculated and paid only in one phase of the excise product turnover),
4) an indirect tax (the assessment and collection concerns an entity that does not effectively bear the tax burden),
5) a pricing tax (it is included in the price of the excise product),
6) a harmonized tax (the harmonization of excise duty aims to harmonize this tax in order to build a single internal market of the European Union),
7) a non-recoverable and non-refundable tax (an excise tax payer is not, in principle, the person economically liable for the tax; it is not refundable, as is the case for value added tax).[54]

Excise duty is levied on goods such as: energy products, electricity, alcoholic beverages, tobacco products, dried tobacco, electronic cigarette liquid, innovative products, and passenger cars.

For the purposes of collecting excise duty and marking excise goods with excise stamps, as well as for binding excise information (BEI), the classification in the layout corresponding to the Combined Nomenclature (CN) as set out in Council

53 Council Directive 2006/112/EC of 29 November 2006 on the common system of value added tax, EU J.L. L 347, p. 1.

54 A. Halasz [in:] Prawo podatkowe z kazusami i pytaniami [Tax law with case studies and questions], (eds.) P. Borszowski, Wolters Kluwer, Warszawa 2018, p. 293.

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288

Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff applies. The BEI is a decision issued for the purposes of excise taxation of an excise product or passenger car, organization of trade in excise goods, or marking of these goods with excise stamps, which specifies:
(1) the classification of the excise product or passenger car in an arrangement corresponding to the Combined Nomenclature (CN) or
(2) the type of excise goods through a description of those goods to such a degree of detail as is sufficient to determine whether they are subject to excise duty, organization of trade in excise goods or excise marking of those goods.

6. Property taxes

Taxes can be classified in many ways, although they are usually divided into three groups: income taxes, turnover taxes, and property taxes. Property taxes primarily include: inheritance and donation tax, tax on civil law transactions, agricultural tax, forestry tax, real estate tax, and tax on means of transport.

The inheritance and donation tax is regulated by the Inheritance and Donation Tax Act of 28 July 1983.[55] The following are subject to this tax: acquisition by natural persons of ownership of property located on the territory of the Republic of Poland or property rights exercised on the territory of the Republic of Poland, under the title of: inheritance, ordinary legacy, further legacy, debt collection order, testamentary order, donation, donor's order, usucaption, gratuitous abolition of co-ownership, legitime (if the entitled person did not obtain it in the form of a donation made by the donor or by inheritance or as a legacy) and gratuitous pension, gratuitous use, and gratuitous easement. The acquisition of rights to a savings contribution on the basis of an instruction to make a contribution in case of death and the acquisition of participation units on the basis of an instruction of a participant in an open-end investment fund or a specialist investment fund open in case of his death are also subject to tax.

The inheritance and donation tax is not of great fiscal importance. The revenues from this tax contribute to the budgets of municipalities.

The tax on civil law transactions is regulated by the Act of 9 September 2000 on tax on civil law transactions.[56] The tax is levied on civil law transactions, including contracts for the sale and exchange of goods and property rights, contracts

55 *Ustawa z dnia 28 lipca 1983 r. o podatku od spadków i darowizn* [the Inheritance and Donation Tax Act of 28 July 1983] Consolidated text: J. of L. of 2021 it. 1043.

56 *Ustawa z dnia 9 września 2000 r. o podatku od czynności cywilnoprawnych* [the Act of 9 September 2000 on tax on civil law transactions] Consolidated text: J. of L. of 2020 it. 815

ISBN Print: 9783205215271 — ISBN E-Book: 9783205215288