

Differentiation of taxation rules for the income of individuals depending on the type of source of income. Considerations in the context of the principle of tax fairness

Summary

The Polish system of personal income taxation is formed by several legal acts. The key one is the Law on Personal Income Tax, which was enacted in 1991. It regulates the principles of taxation of most types of income. Although the literature emphasizes the universal nature of the personal income tax, there are a few exemptions from this tax for several categories of income earned by individuals where some of them are regulated in other acts. Income subject to taxation under the rules regulated by the Personal Income Tax Law has been categorized by the source from which it is derived. This enumeration of sources of income is of vital importance as the legislator has differentiated the rules of taxation of income received by individuals depending on the type of source from which it comes. The source of income is therefore a category of fundamental importance in the Polish system of personal income taxation as it determines whether a given type of income is taxable and in what manner.

The differentiation of the tax obligations depending on the source of income is assessed in this work in the context of the principle of tax fairness. The ethical aspects of taxation are one of the main problems considered in the science of tax law and economics for centuries. Hence, the first chapter shows the evolution of the concept of tax fairness: from a certain philosophical and economic idea to a principle of law. It was pointed out that the modern understanding of this concept consists of the postulate of equal taxation of all individuals according to their ability to pay determined on the basis of objective criteria like income of the taxpayer. This means also that the tax system should maintain its neutrality, while tax progressivity must not lead to discrimination against certain groups of taxpayers, and the tax-free amount should secure the taxpayer's minimum subsistence.

The next chapter traces the process of the formation of direct taxes - from taxes in which the subject and the object of taxation was the individual (poll taxes), through taxes that burden the taxpayer's property, to income and revenue taxes. It was clarified that the spread of income tax was determined by the need to adjust the amount of tax liability to the economic capacity of taxpayers. It was income that was considered to be the criterion that allows individualization of the tax burden. The framework of the modern Polish system of taxation of individuals' income was also outlined, including lump-sum forms of taxation, agricultural tax and forestry tax as well as inheritance and donation tax. The elements of the system that individualize the

tax burden and its distribution according to the tax capacity of individuals were emphasized. The problem of differentiation of the rules of taxation depending on the source of income was also described, pointing out that the source of income affects the understanding of income and the methods of its determining as well as the tax assessment and reconciliation of the income tax liability.

The third chapter examines the most frequently cited theories of income, i.e. the source theory, the pure wealth accrual theory (Schanz-Haig-Simons definition) and the market income concept. It seems that it is the concept of pure wealth accrual that best reflects the goals assigned to income tax today and most fully realizes the demands of fairness. However, in the Polish personal income tax none of the presented theories of income has been reflected. The Polish legislator has made the concept of income a category that depends on the source of income from which the income was obtained, and some types of income are subject to cumulative taxation. Next, the three main models of income taxation were presented, i.e. the unitary, cedular and mixed model, and it was pointed out that the Polish taxation model contains elements of each of them.

The fourth chapter develops a higher-level norm for the review of the fairness of tax regulations. It was pointed out that the constitutional principle of tax fairness is formed by the principles of universality and equality of bearing the tax burden, statutory regulation of taxes and the definiteness of laws, with which are connected the principles of citizens' trust in the state and the law and the prohibition of retroactive legislation and making changes in the law during the year when they are not beneficial to the taxpayers. The standards of tax fairness also include the principles of tax neutrality, rational lawmaking and social justice, from which it follows for the legislator to distribute the tax burden in accordance with the taxpayers' ability to pay, measured on the basis of the amount of so-called "pure income profit", which in turn entails the obligation to establish a tax-free amount at a level that guarantees the taxpayer the minimum subsistence. The principle of individualization of income tax liability involves also the need to structure taxation according to a progressive scale. In turn, the prohibition of confiscatory taxation is derived from the constitutional provision on the protection of private property.

The research problem undertaken in this work is presented in chapter five. It is claimed in the paper that the differentiation of income taxation rules depending of the source of income does not comply with the constitutional principle of tax fairness, while the current model of income taxation, due to its casuistry, is not compatible with the dynamically changing socio-

economic reality. In order to prove it, several partial theses were formulated and verified, relating to the principles forming the canon of fair taxation postulates.

The discrepancies in the interpretation of tax law norms regarding the qualification of income to the appropriate source were presented. It has been shown that the way in which the terms used by the legislator are defined creates many difficulties for taxpayers and tax authorities in the source classification of income and allows tax authorities considerable discretion, which is inconsistent with the principle of definiteness of laws and does not promote confidence in the state and the law. It is presented that the terms used by the Polish legislator to define the sources of income make the system of taxation of income earned by individuals ossified, and the categorization of reality carried out for income tax purposes is artificial. The work also proves that the fineness of the regulation leads to a situation in which certain types of income are not subject to taxation, contrary to the legislator's intention.

Next, examples of differentiating the situation of taxpayers based on criteria unrelated to the economic ability to pay income tax by exempting certain types of income from taxation were described. It was pointed out that they constitute a violation of the principle of equality and universality of taxation to the extent that it is not grounded in the Constitution, i.e. does not serve to protect constitutional values, or is not proportional to the purpose it is intended to achieve.

Exceptions to the rule of income taxation were also presented, causing that in the case of certain sources of income, the subject of personal income tax is not the real amount of income, but an abstract value adopted by the legislator, or even revenue. Thus, with regard to selected sources of income, the legislator does not undertake an examination of the taxpayer's financial capacity, which contradicts the constitutional requirement to adjust the burden of income tax to the taxpayer's ability to pay.

In addition, it has been demonstrated that for selected sources of income the legislator has abandoned the means of individualizing the tax burden. The legislator has waived the rules of accumulation of income and losses and tax progression, and deprived taxpayers of the right to the tax free amount, as well as some tax reliefs. It has thus been proven that the existing differentiation in the means of individualizing the tax burden depending on the source of income is inconsistent with the constitutional principles of equality, ability to pay and social justice.

The dissertation also identifies provisions that result in confiscatory taxation, which violates the constitutional principles of ability to pay, protection of private property and the democratic rule of law. It describes how the legislator uses the tax law for repressive purposes, adopting tax rates for certain types of income that have the character of tax sanctions.

It was also proven that the existing differentiation of taxation rules depending on the source of income and the type of activity of the taxpayer is incompatible with the principles of equality and neutrality of income tax, prompting taxpayers to undertake activities other than those that would have been taken in undisturbed market conditions.

Thus, the main thesis of the work was verified, according to which the existing differentiation of the rules of taxation of income of individuals depending on the source of income contradicts the constitutional principle of tax fairness. It was also confirmed that the current model of income taxation, due to its casuistry, is not compatible with the dynamically changing socio-economic reality.

The final chapter compares the rules for taxing the various types of personal income described in chapter five with those found in the tax systems of Great Britain, Germany and France. These countries are considered the cradles of the main income taxation models, i.e. cedular, unitary and mixed. Those solutions adopted by French, British and German legislators were exposed that significantly distinguish the income taxation models there from the model chosen in Poland and make the tax systems in these countries more in line with the principle of fairness of taxation than in Poland.