

The Principle of Equality of Taxation and the Structure of the Simplified Personal Income Taxation. Selected Issues



THE DOCTRINE OF EQUALITY IN TAXATION

In the legal and financial doctrine the term “principles of taxation” are scientifically formulated tenets of both tax practice and tax policy. Truth be told, these are not binding legal regulations, to be observed in structuring specific taxes. Their consideration may help to ensure the proper functioning of the entire tax system and of each individual taxes¹.

Among the taxation principles, which have been formulated during the past centuries, one may invoke rules referring to the fundamental values, such as equality and fairness, as well as the criteria of technical nature, i.e. certainty, price, convenience, and transparency of taxation and economic criteria, such as inviolability of taxpayers’ assets and capital that constitute the source of taxation.

Due to the role taxes play in the public and economic life, some of the accepted principles have been viewed as particularly important, therefore they acquired the status of law, including constitutions. The principle of equality of taxation² is one of them.

In tax studies, the principle of equality was and still is interpreted in a different way. This was conditional mostly on a national political system at a given time, on the existing socio-economic conditions, and the

¹ J. Gluchowski, *Polskie prawo podatkowe*, Lexis Nexis, Warsaw 1996, p. 10.

² See e.g. Art. 32 of the Constitution of the Republic of Poland of 2 April 1997 incorporating, *Journal of Laws* No. 78, item 483.





provisions of the doctrine of taxation.

The taxation principles go back to the liberal economic thinking³. The XVIII-century English economist, Adam Smith, who in his work titled *An Inquiry Into the Nature and Causes of the Wealth of Nations* formulated a catalogue of four fundamental tax principles, such as: the principle of equality, the principle of certainty, the principle of convenience, and the principle of low cost of taxation⁴. He is regarded as the founding father of the taxation principles.

Propagating the principle of equality, Adam Smith relied on the theory of equivalence of advantages, according to which a tax was a kind of a price (a payment, remuneration) paid for the services and performances received by taxpayers from the state⁵. This concept rested on the assumption that there existed a mutual, proportional ratio between the amount of the taxes paid and the level of state expenditures, which were justified by the protection of citizens and their assets⁶. Therefore, the necessity to distribute the encumbrances – so that each citizen participates in the financing of public expenditures incurred by the state in return for the services rendered by the state – became grounded. According to Smith, the equality of taxation is preserved if two prerequisites – proportionality and universality of taxation⁷ are satisfied. In his opinion, proportional tax rates denoted “a fair price” for the services provided to the taxpayer by the state⁸. Universality of taxation, however, had called for abolishing of the feudal privileges. All people, irrespective of their residence, social or political status, were to pay taxes and all taxpayers were to enjoy the same rights⁹. This stemmed from the fact that the Smithsonian equality-in-taxation was based on the mainstream enlightenment philosophy, where the authorities-and-citizen relationship was to be treated in a new manner, different from the old feudal sovereign-vassal relationship¹⁰. Feudalism accepted that each person should bear encumbrances benefiting the

³ See: B. Brzeziński (ed.), *Prawo podatkowe. Teoria. Instytucje. Funkcjonowanie*, TNOiK, Toruń 2009, p. 13.

⁴ A. Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, Libaty Press, Warsaw 1954, Vol. II, pp. 584–587.

⁵ These performances are the provision of internal and external security for the state, the protection of property and the administration of justice.

⁶ A. Gomułowicz, J. Małecki, *Podatki i prawo podatkowe*, Lexis Nexis, Warsaw 2010, p. 43.

⁷ See: Z. Fedorowicz, *Historia podatków do końca XIX*, in: *Encyklopedia podatkowa*, WN PWN, Warsaw 1998, p. B/64.

⁸ Comp. A. Gomułowicz, J. Małecki, op. cit., p. 43.

⁹ Comp. R. Gwiazdowski, *Adam Smith's concepts of the functions of the state, international trade, public finance and taxes*, *Studia Iuridica* 2003, Vol. 41, Warsaw 2003, p. 94.

¹⁰ T. Geodecki, *Zdolność płatnicza jako element sprawiedliwości podatkowej*, *Zeszyty Naukowe Akademii Ekonomicznej w Krakowie* 2004, No. 667, p. 41.



sovereign and public good, while encumbrances were aligned with a social class¹¹.

From the times of Adam Smith, the political and social picture of entire Europe has changed and this being the case, it became necessary to establish a new approach toward taxation¹². Besides, the very doctrine of equality of taxation has also changed.

In the “equal sacrifice” concept, built on the utilitarian foundations, a tax was seen as a financial sacrifice paid for the maintenance of the state. According to John Stuart Mill, the author of the concept, the fact that a person is a member of the society obliges each citizen to “bear one’s part of financial sacrifice in order to protect society or its members against injustice or abuse”¹³. However, contrary to the theory of equivalence, the taxpayer does not make a sacrifice in exchange for individually received performances, but for the services rendered by the state for general good¹⁴. The extent of a sacrifice made by a taxpayer stemmed directly from the principle of equal, i.e. identical, treatment of citizens. Since each citizen is entitled to the same rights, each shall make an identical – in economic terms – financial sacrifice in order to maintain the state or bear the identical loss¹⁵. According to J.S. Mill, individual advantages, which the taxpayer has lost because of taxation, proves the equality in taxation¹⁶. Then, the equality of taxation is preserved, if taxpayers with identical incomes pay the same taxes and their financial sacrifice shall entail identical loss of income. This assumption leads to the conclusion that taxpayers, who gain different income, should make different financial sacrifice, i.e. pay different taxes.

John Stuart Mill inspired other scholars, including Francis Ysidro Edgeworth¹⁷, who, emphasizing the concept of marginal utility of the taxpayer’s income, said that the equal distribution of fiscal burdens does not mean that all taxpayers shall make the same financial sacrifice, but that its payment

¹¹ E. Tegler, *Wybrane aspekty teoretyczne i praktyczne sprawiedliwości podatkowej*, in: E. Chojna-Duch, W. Goronowski (eds.), *Podstawowe zagadnienia prawa finansowego i polityki finansowej w Polsce w latach 1989–1997*. Księga jubileuszowa profesora dr. Leona Kurowskiego, KIK, Warsaw 1998, p. 53.

¹² R. Gwiazdowski, op. cit., p. 97.

¹³ J. S. Mill, *O wolności*, PWN, Warsaw 1959, p. 132.

¹⁴ A. Gomułowicz, *Postulat sprawiedliwości a system podatkowy*, *Monitor Podatkowy* 1995, nr 4, p. 103.

¹⁵ A. Gomułowicz, *Zasady podatkowe wczoraj i dziś*, Dom Wydawniczy ABC, Warsaw 2001, p. 93.

¹⁶ A. Gomułowicz, *Postulat...*, p. 102.

¹⁷ Comp. F.Y. Edgeworth, *The Pure Theory of Taxation*, in: R.A. Musgrave, A.T. Peacock (eds.), *Classics in the theory of public finance*, London–New York 1958, pp. 119 et seq.



makes all taxpayers incur the same loss¹⁸. According to Edgeworth, taxes should be levied primarily on the wealthy, because their lost profits due to their income taxation, calculated as the marginal utility of the taxpayer income, will be smaller than lost profits of the poor¹⁹.

The representatives of the historical school of economics established in Germany in the second half of the XIX century were of an absolutely different view. Adolf Wagner²⁰ – who argued that citizens should participate in the upkeep of the state in a manner differentiated and adjusted to their material situation – is the most outstanding representative of this doctrine in the financial law theory. In his opinion, the differentiation of tax burdens depending on the “paying capacity” makes the equal taxation possible²¹. Variable economic conditions (income and property) of the taxpayer exert a direct impact on his genuine financial opportunities enabling to bear the tax burden. Therefore, the application of a progressive tax scale and the idea of universal taxation should apply to an equal distribution of burdens among the citizens. Taxes should be paid by all citizens, because all them should take care of the public good and therefore participate in financing of common needs²². According to Wagner, the implementation of this theory in practice entails defining of the social minimum and in consequence of the tax exemption. A failure to apply this criterion to the distribution of fiscal burdens would deprive those who earn relatively low income of the means of subsistence. As a result, taxes should be refunded to them by a state in the form of social benefits.

A similar concept can be found in Fritz Neumark’s works. He believed that the justification for taxation was that the state has to earn funds to implement its objectives, which are universally regarded as useful or necessary. In his opinion, when one uses such funds, it is necessary to observe the fundamental principle of equal treatment, binding in every society. Neumark believed that this principle provides the instruction on how to distribute taxes. Since all citizens should be treated identically, the same tax rights and the same tax obligations must be defined in terms of tax obligations of all taxpayers. Due to the fact that a payable sum should be

¹⁸ Comp. A. Gomułowicz, J. Małecki, *Podatki...*, p. 59.

¹⁹ S. Owsiak, *Finanse publiczne. Teoria i praktyka*, WN PWN, Warsaw 2006, p. 190.

²⁰ Other representatives of this school included Lorenz von Stein oraz Albert Schäffle.

²¹ Comp. A. Gomułowicz, J. Małecki, *Podatki...*, p. 68.

²² A. Gomułowicz, *Zasada sprawiedliwości podatkowej w orzecznictwie Trybunału Konstytucyjnego. Aspekt materialny*, Dom Wydawniczy ABC, Warsaw 2003, p. 19.



a derivative of income, revenue, profit or of assets²³, in order to comprehensively implement the principle of equality, it is necessary to treat taxpayers unequally, individually and to differentiate. Thus, taxation should depend on the capacity to pay. Such distribution makes it possible to specify different taxation levels to be accepted by the public as fair²⁴.

In the modern finance law theory, the principle of tax equality denotes, as a rule, the idea of fairness²⁵. The imperative of fairness in taxation requires to establish a relevant level of tax burdens and of its proper distribution²⁶.

Contrary to what was believed so far, at the current stage of development of the finance law theory the prevailing view is that a fairly distributed tax entails differentiation and individualization²⁷. An evenly distributed tax is based on the capacity to generate income, which means that a modern tax system is characterized by a relatively high degree of individualization of encumbrances²⁸. The Supreme Administrative Court and the Constitutional Tribunal share this widely accepted viewpoint. In one of its judgments, the Tribunal confirmed that “equality in law means that all legal entities (the addressees of legal standards), characterized by a given relevant feature in an equal degree, shall be treated equally²⁹. The Tribunal’s judgment leads to a general rule, which is applicable to the distribution of taxes as well³⁰. In consequence tax payers who earn comparable income, but whose situation is absolutely different, should, in terms of their tax rights and obligations, be treated differently. Therefore entities in a better financial condition, i.e., making more money, should pay higher taxes³¹.

The above overview of doctrines suggests that the principle of tax equality is implemented, when the construction of a tax satisfies the criterion of

²³ A. Gomułowicz, J. Małecki, *Podatki...*, p. 73.

²⁴ A. Gomułowicz, *Zasady...*, p. 97.

²⁵ For example N. Gajl, *Teorie podatkowe w świecie*, PWN, Warsaw 1992, p. 141; W. Wójtowicz, P. Smoleń, *Podatek dochodowy od osób fizycznych – prorodzinny czy neutralny?*, Dom Wydawniczy ABC, Warsaw 1999, p. 12; J. Gluchowski, *Sprawiedliwość podatkowa: założenia teoretyczne i możliwości adaptacyjne*, in: S. Owsiak, E. Mączyńska (eds.), *System podatkowy. Stan, kierunki reformy, wpływ na wzrost gospodarczy*, A report by Polskie Towarzystwo Ekonomiczne, Warsaw 1999, pp. 38 et seq.; J. Gliniecka, J. Harasimowicz, *Z zagadnień teorii podatku*, *Glosa* 1997, No. 5, pp. 1–3; W. Łączkowski, *Problemy opodatkowania ludności w Polsce*, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 1991, No. 1, p. 32; E. Tegler, *Wybrane aspekty...*, p. 55; M. Weralski, *Pojęcie podatku*, in: *System instytucji prawno-finansowych PRL*, Vol. III, Part II, Ossolineum, Wrocław 1985, p. 45.

²⁶ N. Gajl, *op. cit.*, p. 142.

²⁷ Comp. R. Gwiazdowski, *op. cit.*, p. 97.

²⁸ More: P. Owsiak, *op. cit.*, p. 232.

²⁹ Judgment by the Constitutional Tribunal of 9 March 1988, file No. U. 7/87.

³⁰ A. Gomułowicz, *Postulat...*, *op. cit.*, p. 103.

³¹ E. Tegler, *op. cit.*, p. 57.



universal taxation. Under universal taxation rule the obligation to pay is placed on all entities, without any particular exemptions in terms of types of taxpayers, and is related to each separate source of income³². For comprehensive implementation of universality of taxation it is necessary to relate the amount of a tax the capacity to pay. The latter should be defined by reference to the current financial and personal situation and on income³³. Only such understanding of the principle of universality of taxation is adequate, for it justifies the most desirable and fair (in the public eye) distribution of taxes.

2

SIMPLIFIED INCOME TAXES AND THE PRINCIPLE OF EQUALITY

In the finance law doctrine, simplified forms of income taxation are deemed to be an exception³⁴. The difference is that the general principles provide for registration and taxation of income actually earned. The simplified forms of taxation, skip, for the purpose of calculation, certain tax techniques known in the general taxation rules³⁵. The most frequent simplification is to ignore the actual amount of income or revenue and to rely averages or estimates. In case of physical persons, the law withdraws from the estimation of the tax base relying on a lump-sum³⁶; then the amount of levy is usually conditional on the external characteristics of the subject-matter of taxation. In case of taxation of business, these external characteristics include the type of activity (and, indirectly, profitability, the number of staff and of population in the territorial unit where activity was carried out).

Disregarding the results of business activity *ergo* taxpayer's economic ability to incur fiscal burdens, should be an exception from the principle of equality³⁷. It is accepted in the finance law theory, that the material and personal situation reflects one's tax capability. It is best reflected by the

³² R. Gwiazdowski, *op. cit.*, p. 94.

³³ E. Tegler, *op. cit.*, p. 54.

³⁴ R. Mastalski, *Ustalenie podstawy wymiaru w polskim systemie podatkowym*, Ossolineum, Wrocław 1973, p. 128.

³⁵ K. Koperkiewicz-Mordel, W. Chróścielewski, W. Nykiel, *Polskie prawo podatkowe*, Difin, Warsaw 2006, p. 172.

³⁶ W. Wójtowicz (ed.), *Prawo podatkowe – część ogólna i szczegółowa*, Wydawnictwo C.H. Beck, Warsaw 2009, p. 294.

³⁷ A. Gomułowicz, *Zasada...*, p. 37.



amount of income. The fluctuation of income has an impact on the level of tax ability. Giving up the calculation of income makes it practically impossible. This leads to a situation when a taxpayer without income, i.e. without paying capacity, shall pay taxes. And *vice versa*, when income is disregarded its fluctuations do not correspond to the amount of levy and consequently the principle of equality of taxation is being violated.

The above-mentioned legislative practice is justified. The key rationale for simplifying tax rules is stimulation. Because in the simplified forms the level of tax performance does not depend on the actual result but is based on the average income, the increase of income (revenue, turnover increase) does not affect the tax. Therefore, such construction of a tax rewards better than average performance and encourages higher productivity.

In addition, by introducing simplified forms of taxation, the law accords the opportunity to put taxpayers on a desirable course. In making decisions, for example on the form of taxation, taxpayers are usually guided by the amount to pay, so they opt for milder forms of taxation, allowing them to keep a larger share of income to be used for expansion, consumption or put in the savings account. These milder tax formulas are regarded in literature as simplified taxation. By applying them the legislature exerts a substantial impact on the scope of taxpayers' activities. By lowering tax rates it assists the disappearing sectors of the national industry and stimulates taxpayers to commence business activity.

Another essential reason to apply simplified forms is the reduction in tax estimate and collection costs. The calculation of the final (and correct) amount of a tax in accordance with general principles requires to know the size of the assessed activity. It is a labor-intensive and formalized process for it places on the taxpayers an obligation to maintain tax books. Due to the ambiguous and ever-changing regulations, taxpayers are often forced to resort to a legal counsel or a tax advisor, or an accounting company³⁸. In the classic forms of simplified taxation, a tax is calculated in advance for the entire tax year in the form of monthly or quarterly installments. These amounts are determined in a decision of the head of a relevant tax office, while taxpayers are obliged to pay these amounts on time. This model of taxation does not impose on a taxpayer any additional (often

³⁸ R. Zieliński, *Zalety i wady uproszczonych form opodatkowania dochodów osób fizycznych uzyskiwanych z działalności gospodarczej*, in: A. Pomorska (ed.), *W poszukiwaniu optymalnych rozwiązań prawa podatkowego i finansów publicznych*, Kozłowski Academy Law School Paper Series 2008, p. 95.



absolutely ungrounded) costs related to the calculation of a tax. There is no need to set up a tax administrative apparatus to verify the correctness of the tax co-calculated by the taxpayers. As a result, the application of the simplified forms of taxation leads to a considerable reduction in general costs related to the calculation and collection of taxes.

Simplified forms of income taxation help to accommodate the specific features of different activities carried out by the taxpayers. On the one hand, such special features of certain activities may complicate assessment of the actually earned income. On the other hand, such activities may considerably escape the general taxation criteria used to determine tax rates³⁹. For these reasons, it is justified to apply simplified form of taxation, where the amount of tax due is specified not on the basis of an individualized tax base⁴⁰.

Simplified forms of income taxation of physical persons, as compared to the general principles, constitute a milder form of taxation. As a result, their application yields smaller tax revenues for both local and the state budgets. The law, implementing fiscal objectives, in the majority of cases limits the scope of application of the simplified forms of income taxation. Therefore, in order to use simplified forms the taxpayers have to satisfy some additional conditions set forth in the tax legislation.



SIMPLIFIED TAXATION IN THE POLISH TAX SYSTEM

At present, the Polish tax system allows for the following forms of a simplified personal income tax: tax card, a lump sum on registered revenues and a lump sum income tax from clergy. The principles of such taxation regime are included in the Lump Sum Personal Income Tax Act of 20 November 1998⁴¹.

Tax Card is a traditional form of a simplified personal income tax. The taxpayer may acquire the right to such tax regime provided that he or she conducts a predefined type of economic activity and complies with the

³⁹ N. Gajl, *Modele podatkowe. Podatki obrotowe i inne formy obciążeń pośrednich*, Wydawnictwo Sejmowe, Warsaw 1995, pp. 86–87.

⁴⁰ K. Ostrowski, *Prawo finansowe. Zarys ogólny*, PWN, Warsaw 1970, p. 152.

⁴¹ Journal of Laws Nr 144, poz. 930, as amended.



employment limits specified in a statute. The list of businesses subject to the tax card regime is long. The Act names 11 different areas of business comprising over 100 activities⁴². The areas of business are services and manufacturing and combination thereof, retail trade in food, beverages, tobacco and flowers⁴³, retail trade in non-food goods⁴⁴, restaurant and related establishments⁴⁵, one-vehicle transportation service⁴⁶, show business, sale of meals at home⁴⁷, free professions⁴⁸, home care for children and the sick and educational services charged per hour. A tax card is also applicable to farmers rendering agro-technological or transportation services to hunters' associations, hotel services⁴⁹ or folk and artistic craftsmanship as an auxiliary activity to farming⁵⁰.

A principal condition for using a tax card is compliance with the statutory employment limits. Pursuant to the Act, in conducting predefined types of activity, taxpayers have the right to hire no more than three or five workers⁵¹. In certain exceptional cases, taxpayers cannot hire at all like in dowsing. The law specifies which employees are excluded from the employment limits. Under the current regulations they are taxpayer's family members being also his household members, apprentices and trainees.

⁴² See appendix No. 3 i 4 the Lump Sum Personal Income Tax Act of 20 November 1998, Journal of Laws No. 144, item 930 as amended.

⁴³ Except for beverages containing more than 1.5% if employment does not exceed 3 employees where an employee is also an adult family member, excluding the spouse.

⁴⁴ Except for trade in engine fuels, transportation vehicles, parts and accessories to motor vehicles, tractors and motorcycles, trading in non-food goods, subject to a concession, if employment, depending on the type of service, does not exceed 3 employees, where an adult family member is also considered an employee except for the spouse.

⁴⁵ If there are no sales of beverages containing more than 1.5% alcohol, ice cream from vending machines and other food-related activity, where employment does not exceed 4 employees.

⁴⁶ Performed personally or by a substitute where an adult family member is also considered a substitute unless he or she is a spouse.

⁴⁷ If there are no sales of beverages exceeding 1.5% alcohol with up to 30 meals of a type per day, or up to 100 meals in the case of single dishes and alcohol-free drinks based on a contract with a unit authorized to offer meal or tourist services.

⁴⁸ A free profession is defined in art. 4 item 1 point 11 of the Lump Sum Act, devised solely for this act. It lists the following free professions: a physician, dentist, veterinary, dental technician, midwife, nurse, translator and educational services charged per hour if not performed to the benefit of legal persons, organizational units not having legal personality nor natural persons for the purpose of non-farming activity. Personal performance is understood as conducting such activity without employees hired under a contract, appointment or a contract of similar character by persons conducting activities related to the essence of a given profession.

⁴⁹ Consisting of rental of guest rooms and vacation cottages, inclusive of meals, if the total number of rooms, including the rooms does not exceed twelve.

⁵⁰ i.e. activity consisting solely of hand-making, using machinery solely for preliminary processing of raw materials, of goods accepted by the ethnographic and artistic committees of the Folklore Artists Association "Cepelia" – and the Foundation for the Protection and Development of Folk Art.

⁵¹ The limit does not apply to taxpayers conducting business activity within local communities where the risk of structural unemployment is very high or running a farm and simultaneously conducting a non-farming business activity in a place inhabited by not more than 5000. In such cases the law allows to expand the statutory employment limits. Taxpayers conducting their activity in local communities where the risk of structural unemployment is very high can increase the statutory employment limit by 6 employees, and those running a farm, to 5 employees. Employment increase requires notification of a competent head of the tax office and does not increase of the tax card rate as defined in the appendix to the Act.



If a taxpayer conducts a predefined type of business activity and does not exceed the employment limits, he or she may apply for a tax card regime. However, irrespective of the fulfillment of the above requirements, the law *a priori* excludes a tax card regime should there occur any of the negative premises, listed in the Act. These include, but are not limited to, a prohibition of employment based on any other contract than an employment contract (as opposed to a contract of mandate or a contract for a specified task) and of using services of other enterprises⁵². A tax card regime does not apply if a taxpayer conducts other types of non-farming business activity⁵³, or if a taxpayer's spouse conducts the same type of activity. Eligibility for a tax card is also excluded if a taxpayer is a manufacturer of goods subject to an excise tax and conducts business activity outside the Republic of Poland.

Another simplified personal income tax is a lump sum tax on registered income. The character of this taxation is unique, especially that in fact it does not constitute a lump sum in its classic form. Typically, a lump sum does not require a taxable base to be assessed or even approximated and its characteristic feature is that a tax is imposed in the amount specified in advance⁵⁴. Contrary to the general model a taxpayer is obliged to keep the record of the proceeds. Their value is a basis for tax assessment. The essence of a lump sum tax is that it is charged on the revenues obtained by the taxpayer and showed in the records decreased by applicable tax deductions. Scholars are right to conclude that the lump sum is only a simplified personal income tax regime providing profit to the state treasury and not a lump sum in its classic form⁵⁵.

The main criterion limiting the right the lump sum taxation is the maximum amount of proceeds derived by natural persons conducting business activity. Under the law, taxpayers eligible for a lump sum regime are those whose proceeds are derived from independent business activities not exceeding 150 000 EURO in the preceding year. The same applies if they operate in the form of a civil or registered partnership, where the aggregate revenue of all partners did not exceed the above mentioned amount. Going

⁵² This reservation does not apply to the performance of the so called specialist services, i.e. activities and work not included in the registered activity, yet necessary for manufacturing or services. It includes accompanying activities and work.

⁵³ An exception from the above-mentioned rule is electricity generation in hydro- and wind power plants having the output power up to 5000 kWatt, biogas production and revenues obtained based on contracts of lease, sub-lease, rent, sub-rent or other contracts of similar character where the proceeds from the activity are subject to general taxation rules.

⁵⁴ See also: W. Wójtowicz (ed.), *Prawo podatkowe...*, p. 297.

⁵⁵ See also: L. Eteł (ed.), *Opodatkowanie dochodu w wybranych krajach Europy Środkowej i Wschodniej*, Temida 2, Białystok 2006, p. 238.



above the limit obligates a taxpayer to switch the taxation regime in the following tax year into a general taxation regime. Entities just starting business activity are eligible for a lump sum regime regardless of the revenue generated in the previous year.

The upper limit of revenue is not the only limitation for the taxpayers choosing this form of taxation. Taxpayers applying for a lump sum cannot manufacture commodities subject to excise tax⁵⁶ or become tax card payers. Moreover, a lump sum is not applicable to the taxpayers deriving revenues from pharmacies, pawnshops, currency exchanges auto parts trade and accessories, financial agencies, headhunting services, advertisement, detective and security services.

The third form of a simplified personal income tax is a lump sum income tax on the clergy. Its application is justified by the specific character of the clergymen's activity and the character of the source of profit. They usually include the so called *iura stolae* (i.e. offerings for baptism, marriage, funerals, etc.) and offerings received for and during celebration of the holy mass, typically voluntary also to the amount. Therefore, imposing on the clergy of an obligation to keep records or simplified registers to establish the actual amount of proceeds would be questionable.

Under the law, only the clergymen specified in the Act are eligible for this form of the income tax. However, Polish law does not provide a legal definition of the above tax which raises a number of interpretative problems⁵⁷. The doctrine and the courts hold that such a tax applies both to Catholic clergy as well as to other Christian denominations and congregations recognized by the state⁵⁸. In the case of the Roman Catholic Church, these include mainly parish priests, vicars, clergymen temporarily performing the function of parish priests, clergymen managing church units outside of parish administration (such as curacies), rectors, other clergymen if they obtain proceeds from missions, retreat and other religious service, including pastoral service.

It is easy to notice that the above catalogue does not include monks, nuns, retired clergymen obtaining proceeds from pastoral service or the so called residents⁵⁹. This apparent legal lacuna means that in practice they are

⁵⁶ Except for energy generation from renewable sources.

⁵⁷ More: J. Patyk, *Opodatkowanie Kościoła Katolickiego i osób duchownych*, Wydawnictwo Akademickie Plus, Toruń 2008, pp. 211–216.

⁵⁸ M. Tyrakowski, *Opodatkowanie dochodów Kościoła Katolickiego w Polsce*, Wolters Kluwer Polska, Warsaw 2005, p. 166.

⁵⁹ See also: J. Patyk, *op. cit.*, p. 335.



excluded from taxation which in finance law is considered to be a departure from the concept of equality in taxation. Equally doubtful is the scope of taxation of the highest ranking officials of the Roman Catholic Church, bishops, archbishops and cardinals. The Act does not enumerate them as eligible for a lump sum tax. Even if they can be classified as clergymen who do not perform the function of parish priests, associate curates or rectors receiving revenues in return for pastoral function, missions, retreats and other types of religious service, the tax rate paid by them remains controversial⁶⁰. Under the Act their proceeds are taxable as those of associate curates in parishes of 1 000 to 3 000 inhabitants⁶¹. This means that quarterly tax rate for bishops, archbishops and cardinals ranges from PLN 341 to 358 depending on the number of inhabitants in the local community or a town where a parish is located⁶².

It follows from the above analysis that the simplified personal income tax regime constitutes an exception from the accepted doctrinal principle of equal taxation. The number and character of various restrictions imposed on eligibility for this taxation significantly limit its availability. The finance law doctrine, however, considers the universal character of taxation as one of fundamental pillars of equality and naturally extends it to equality in taxation⁶³. By limiting the scope of application of simplified taxation the law intentionally violates the principle of equality. However, in this case it appears fully justified by its stimulatory effect. It encourages to reduce the cost of calculation and collection of taxes. It helps to align taxation with the specific features of business activity and to attain the fiscal objectives of the state.

It seems that the currently scope and principles of simplified personal income taxation regime in Poland and the existing restrictions on its use is justified by the more lenient terms of taxation on certain economic activities by according protection to the financial interest of the state. Therefore, they do not require any substantial reform. There is, however, an urgent need to overcome a lacuna concerning the subjective scope of clergy taxation and to adjust the tax burden of the highest ranking Church officials to their function and indirectly to the revenues obtained from their pastoral services.

⁶⁰ Ibidem, p. 336.

⁶¹ See art. 45 item 4 of the above Act.

⁶² Appendix No. 3 to the Finance Minister's Announcement dated November 2, 2009 on tax card rates, amount limit for rendering some services, except for the service for the public, and quarterly lump sum rates for the proceeds of parish priests and associate curates binding in 2010, M.P. No. 72, item 912.

⁶³ A. Gomułowicz, op. cit., p. 27.



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