Chapter 23

Poland: Tax Law and Policy in Poland – Bold and Expected Changes

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Abstract

This publication addresses the issues related to the concept and processes of the coexistence of tax harmonisation in the EU and the sovereign tax policies of individual Member States. An important task in the context of the creation and application of EU tax law regulations is determining the tax sovereignty of Member States and the legitimacy of implementing an autonomous tax policy adapted to the current social and economic needs of a given country. These phenomena also affect the tax competitiveness of a given country in the international arena. Importantly, implementing a sovereign tax policy allows state authorities to take flexible actions to counteract tax avoidance and combat tax fraud in a given country. Thus, eliminating unfair competition from the market strengthens the position of law-abiding taxpayers. Moreover, this interdependence contributes to economic growth and employment opportunities. As a result, it is possible to increase tax revenues from the taxation of both the growing economic turnover and the income of natural persons and entrepreneurs. Therefore, the possibility of implementing a sovereign tax policy allows for the creation and maintenance of a tight and functional tax system, which is a key element of economic and social order. It is worth emphasizing here that macroeconomic data, both domestic and international, indicate that Poland's sovereign tax policy has yielded excellent results over the last seven to eight years.

Keywords: *tax sovereignty, tax avoidance, tax policy, budget revenues*

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1. Tax Law and Policy in Poland

1.1. Introductory remarks

The authority of the European Union (EU) to create legal regulations in various areas of law is important because of the limitations of its Member States. The accession of individual countries to the EU does not mean that they have given up full sovereignty in favour of the EU's body of international law. Moreover, the consequence of each country's accession to the EU was their adoption of the *acquis communautaire*,[1] which requires them to harmonise their legal orders and accept common European standards in the field of taxes;[2] specifically, the EU's legal system for taxes requires Member States to harmonize their regulations for the common internal market.[3]

Therefore, the directions chosen for tax policy play an important role in deepening the economic integration of the EU and achieving its fundamental goals, including the creation of an internal market.[4] However, full tax harmonisation is virtually impossible because of diverging national interests;[5] therefore, a selective approach to the tax policy of Member States is currently implemented. Most of the attention in this area is devoted to indirect taxes, which affect the functioning of internal markets.[6] By contrast, direct taxation is only slightly subject to adjustments. Importantly, harmonisation in this area occurs when the different regulations of individual Member States restrict the free movement of capital[7] between Member States.

Member States enjoy considerable freedom in designing direct tax systems[8] to meet their internal tax policy objectives and requirements. Poland, like other EU Member States, retains sovereignty over its fiscal policies. This sovereignty is also visible in the organizational and structural spheres. Although individual Member States currently shape the structure and functions of their tax administration, they may not continue to enjoy this freedom in the future – within the EU, there are clear tendencies towards centralisation and gradual encroachment into the regulatory areas of Member States.[9]

1 Mik, 2018, p. 184.
2 Brzeziński and Kalinowski, 2017, p. 17.
3 Litwińczuk, 2020, p. 42.
4 Andrzejewska-Czernek, 2013, p. 24.
5 Oręziak, 2007, p. 141.
6 Chalmers, Davies and Monti, 2010, p. 674.
7 Lipniewicz, 2011, p. 40.
8 Majdowski, 2020.
9 Kuś, 2014.

1.2. Tax sovereignty: Content and scope

The concept of “sovereignty” is defined as legal independence from external factors and the competence to regulate all relations within the state. What has been important since the beginning of functioning statehood is the ability to establish and collect taxes which determined the sovereignty of a given state or lack thereof. Currently, sovereignty is no longer perceived as the ability of the state not to submit to external influences, and the concept of unlimited sovereignty is a thing of the past. A conscious limitation of sovereignty resulting from the will of the state occurs in relations between individual nation-states and the EU.[10]

Therefore, the decision to deepen harmonisation – in this case, to deepen tax harmonisation – will limit one’s own national fiscal sovereignty in favour of the economically integrated group. Therefore, it plays a highly important role in continuing the process of both economic and social integration within the EU. The current process of equalising the legal systems of EU Member States has brought the EU much closer to full integration and, at the same time, significantly moved it away from the European formula made up of fully sovereign nations.

At this point, it should be emphasised that the possibility of a national tax policy within the EU is one of the few areas of economic policy in which member states retain relative sovereignty. The fact is that EU law does not entirely regulate the tax system but refers only to individual issues, most often those related to cross-border economic turnover. Thus, the EU’s tax law is not the exclusive responsibility of the EU; Member States have their own separate and independent tax systems, which are only subject to common harmonisation to a certain extent. Therefore, general tax issues are not solely determined by the EU.[11]

Currently, the European Commission is pushing to change the rules for making decisions in the tax area. This gives rise to considerations regarding whether doing so is in the interest of the entire EU and motivated by a desire to make the process more democratic. Indeed, this change seems to be about suppressing countries that block deeper integration in the tax area, since such decisions may not yield economic and social benefits for these countries. Further, a change in the currently applicable rules may result in some EU Member States being taxed against their will, as a result of decisions taken by other countries – citizens of outvoted countries will have to submit to decisions made by governments of other Member States. Considering how much the history of tax law is related to the issue of national self-determination, it seems unlikely that the European Commission’s approach is more democratic than a unanimous procedure.[12] The unanimity principle is an expression of the limited trust of states in terms of their foreign or security policies. In this sense, it can also support

10 Dobrowolski, 2014, p. 183.
11 Kuś, 2014.
12 Antas, 2019.

their unity. Simultaneously, making decisions through majority voting in sensitive areas may trigger disintegration.

It is worth recalling that, in 2015, Germany forced a majority vote on the relocation of migrants and refugees, which led to deep divisions between the Member States of the EU that persist to this day. Thus, the declared effectiveness may be very effective.[13] On the departure from the unanimity rule in the EU, the Polish Minister of Foreign Affairs, Prof. Zbigniew Rau, presented the position of the Polish government, stating that Poland would not agree to replace unanimity with a majority in voting in the EU. Further, he added that Germany strongly tends to prefer majority voting for matters that are currently legally subject to unanimity, such as issues related to tax, and, most importantly, security and foreign policy. However, we do not agree with this statement.[14]

German ideas for achieving economic happiness and development in the EU are still well acknowledged, including the Nord Stream1 and Nord Stream2 initiatives, and the invitation of migrants from around the world. This is why it is surprising to see a push for erroneous ideas, such as moving away from unanimity or creating a federal state over the heads of sovereign societies. Fortunately, social awareness of and resistance to such ideas are growing in other EU countries.

Undoubtedly, it is very important for each state to be able to exercise tax powers resulting from tax sovereignty and the related independence in shaping its tax policy. The power to tax is of key importance for the sovereignty of Member States, which have granted the EU only limited power in this area. Even limited national tax sovereignty enables a tax policy tailored to social and economic needs and, further, affects the level of tax competitiveness in a given country. Poland's recent tax policy was the result of the decisive actions of its government. During the last seven to eight years, intensive reconnaissance has been conducted on the nation's social and economic needs, including in the field of tax law. Based on the findings, tax law was profoundly changed. As a result, the current tax burden[15] is lower and tax revenues to the state budget are higher.

1.3. Tax harmonisation

As already established above, tax harmonisation in the EU, on the one hand, limits the tax sovereignty of Member States, and, on the other hand, maintains Member States' tax sovereignty by effectively stopping harmonisation processes in specific tax areas. Unlike indirect taxes, direct taxes are clearly subjected to the harmonisation process to a very small extent.[16] Indeed, this is the underlying condition for maintaining tax competitiveness among EU Member States.

13 Cichocki, 2022.
14 Osiński, 2023.
15 Cooter and Ulen, 2007, p. 6.
16 Selera, 2010.

Notably, the difficulty of harmonising direct taxes is a result of the actual reluctance of Member State governments to further lose sovereignty in the area of tax policy and, additionally, is largely related to the differences in the structure of taxes in these countries. Recently, however, some space has been developed for a common understanding of the significant deepening of the tax harmonisation process.

Currently, EU tax law provides for the introduction of a global minimum tax for transnational corporations. The Directive for the introduction of such a tax was adopted by EU finance ministers in December 2022, with the regulation applying to international capital groups with annual consolidated revenues over EUR 750 million. EU member states have implemented this solution since 2024. It should be emphasised that these regulations also apply in countries with nominally higher income tax rates. The key issue with the minimum tax is that transnational corporations must pay the difference between the tax due at the minimum rate of 15% and the tax actually paid in the jurisdiction concerned. Therefore, the Directive establishes the effective tax rate for a specific country based on two factors: (i) the income of concern in a given country, calculated as net accounting income for the tax year based on consolidated financial statements and not adjusted for intra-group transactions; (ii) the qualified tax, which includes adjusted income taxes or profit taxes imposed on qualified entities in a given country.

Such a solution may mean that in cases where a subsidiary of concern generates income in a given country but, for various reasons, does not pay tax or pays a low tax, there will be a reason to charge an additional compensatory tax. The tax amount reflects the difference between the tax effectively paid and the 15% rate if the tax paid is lower. Importantly, the tax is not paid by government entities, investment funds, companies investing mainly in real estate, and subsidiaries in which at least 95% of shares belong to these exempt entities. The tax is also not levied on international corporations just beginning their operations; specifically, the capital group must operate in no more than six countries, and the value of fixed assets of the entire group cannot exceed EUR 50 million. This amount does not include the value of fixed assets in the country in which the given concern has the greatest impact.[17]

Importantly, the Directive provides an exemption for companies that conduct business in a given country. This is usually evidenced by the possession of fixed assets (e.g. buildings, machines, and other devices) and the workforce employed. Therefore, the Directive allows part of the value of fixed assets and employees' salaries to be excluded from taxable income with the new tax. Ultimately, the excluded value amounts to 5% of the value of fixed assets and payroll costs. The Directive provides for a transitional period until 2032. Then, the value of exclusion will increase, following which it is expected to gradually decrease every year. In the first year of the directive (2024), it is 10% for salaries and 8% for fixed assets. It should be emphasised that compensatory taxes will not always be paid in one place. The directive provides for the rule of income inclusion, which means that a compensatory tax

17 Rochowicz, 2022.

will be payable in the country of residence of the parent company of a given group. However, it will be possible to transfer the right to tax to the source country; that is, the country in which such an obligation arose. Thus, such a country is entitled to a share of the compensatory tax. However, this option is only possible if the country in which the group's headquarters are located decides not to implement the rules.[18] Therefore, much will depend on the content of future national laws implementing the directive, both in Poland and other EU countries.

The new global minimum taxation system is primarily intended to combat various activities aimed at avoiding taxation, particularly by establishing entities that do not engage in actual economic activity. The main purpose of the regulation defining the global minimum tax is to combat aggressive tax structures and jurisdictions that offer tax rates that are too low.

However, it seems that Council Directive (EU) 2022/2523 in its proposed form may discourage large corporations from investing in regions such as Central Europe because it may be a common practice for a corporation with a subsidiary in Poland to pay a new tax in another country. The negative consequences may affect countries that offer legal solutions that promote innovative activities and create new jobs. One of the significant drawbacks of the Directive is its failure to consider tax incentives for investors, especially in poorer countries that want to attract foreign investment in this way. With the introduction of global minimum tax regulations, the world's largest corporations will likely have to charge a compensatory tax on activities in such countries. Therefore, in its current form, this regulation may direct investments to other countries where, for example, the issue of refundable tax relief does not exist; this will negatively affect Poland and other Central European countries. Unfortunately, the Directive does not clearly determine how to treat income legally exempt from tax, such as income earned in Polish Special Economic Zones or in the Polish Investment Zone system. This may lead to a situation in which international corporations will be less willing to invest in countries such as Poland, which cannot offer them said relief; at the same time, these corporations will have to pay a compensatory tax to the country in which their headquarters are located. Unfortunately, this may distort the long-formulated goal of taxing income where it is generated.[19]

Importantly, the Directive provides provisions that would allow not imposing a compensatory minimum taxation in cases where so-called refundable tax credits are used. These reliefs are closer to government grants than to deductions from tax bases or taxes. Unfortunately, almost all relief measures active in Poland, including those provided for Special Economic Zones and the Polish Investment Zone, may not have such a character; they are limited by the amount of tax income. The only exception may be relief for R&D combined with relief for innovative employees; however, this is not a universal rule. As a result, the use of such relief by global concerns seriously affects the effective tax rate shown in Poland and, as suggested above, will

18 Rochowicz, 2022.
19 Rochowicz, 2022.

probably force them to pay a compensatory tax in the country where their headquarters are located. Therefore, to avoid such an effect, the Polish legislature would have to thoroughly restructure the Polish system of investment relief in the direction of returnable relief, which may turn out to be too challenging.

The global minimum tax should not be confused with the Polish tax entered into the CIT Act,[20] charged to companies generating losses or showing profitability lower than 1.5% of their revenue. It applies not only to large enterprises but also to those with a turnover exceeding EUR 2 million per year. Importantly, the provisions of the Polish minimum tax remain suspended, and it is not clear from the previous statements of the representatives of the Ministry of Finance whether both minimum taxes will ultimately apply. A regulation is being analysed in which one of the solutions may be to separate the scope of both taxes so that any given enterprise does not pay the two taxes at the same time.[21]

1.4. Tools to combat tax evasion on the basis of Polish tax laws

Combating tax avoidance and tax fraud[22] is a course of action that has included many changes[23] consistently implemented in Poland in recent years. Such tax policies made it possible to introduce lower tax rates for individuals and companies, while increasing tax revenues to the state budget. In 2022, budgetary tax revenues were over 80% higher than in 2016. The largest changes were recorded in the VAT revenue. Notably, Poland is at the forefront of EU countries that are reducing the VAT gap at the fastest pace. Since 2016, there has been a rapid increase in CIT revenue (see Table 1). Excise tax revenues have also grown regularly.

An important element of the tax policy pursued in Poland was the reform of the tax and customs administration. The National Revenue Administration (NRA) was established and, from 1 March 2017, replaced the existing tax administration, tax inspection, and Customs Service. The reform improved the flow of information between different bodies of the NRA.[24] This resulted in a more effective collection of taxes and duties and strengthened the fight against criminal economic activities. As a result, state budget revenues began to grow significantly. Importantly, the administration focused on supporting honest taxpayers and securing the interests of legal businesses. Accordingly, taxpayers positively assessed cooperation with the NRA, with satisfaction surveys showing that the quality of taxpayer services in tax offices throughout Poland has grown systematically. Within two years, the satisfaction of taxpayers (including entrepreneurs) after a visit to the tax office increased from 78% to 87%, and the percentage of solving any given matter during one visit increased

20 Knap and Grosicki, 2023.
21 Rochowicz, 2022.
22 Kujawski, 2016, p. 11.
23 Klonowska, 2017, p. 6.
24 Melezini and Teszner, 2018, p. 45.

from 77% to 85%.[25] Legal changes were also introduced to help tighten the tax system[26] and effectively combat tax avoidance and fraud.[27]

The Council for Counteracting Tax Avoidance was established as an independent body issuing opinions on the appropriateness of applying a general clause against tax avoidance and measures limiting contractual benefits in individual matters. The Council's task is to provide opinions on draft tax laws and changes in tax law provisions contained in other acts of normative regulation related to counteracting tax avoidance. The council can also express opinions on the presented assumptions or general project clarifications on the applicability of the general anti-tax avoidance clause or other anti-tax avoidance provisions if a tax scheme or category of tax schemes is used and opinions on matters relating to the withdrawal of avoidance effect taxation. The Council for Counteracting Tax was appointed for its first term by the Minister of Finance in September 2016 and, in October 2020, the Council for the second term was established for 2020–2024.[28] Comprising nine experts in tax law and finance, the Council is an independent body that provides opinions on the validity of applying a clause against tax avoidance in individual cases. Importantly, the Minister of Finance can request an opinion during tax proceedings regarding tax avoidance. Moreover, when the Minister decides on a given matter for the application of the clause, the interested party may appeal the decision and request the Council's opinion. In addition to government representatives, the council also gathers tax advisors, entrepreneurs, university representatives, and local governments. Individuals appointed to the Council must have knowledge, experience, and authority in the fields of tax law, the financial system, financial markets, economic turnover, or international economic law to guarantee the proper functioning and implementation of the Council's tasks.

The rich jurisprudence of administrative courts in Poland[29] has played an important role in counteracting tax avoidance and tax fraud, especially over the last seven to eight years. As a result, the fight against black markets and value-added tax (VAT) mafias is becoming increasingly effective. The most important solutions are listed below: (i) *Anti-tax avoidance clause:* This clause was introduced in July 2016. The provisions of the clause in Polish law are set out in Arts. 119a to 119f of the Tax Ordinance and are applied in accordance with the provisions of Council Directive (EU) 2016/1164, establishing counteracting tax-avoidance practices that have a direct impact on the functioning of the internal market. Importantly, the clause should be used only in situations where the transactions created by the taxpayer have no economic justification; that is, if the action would not have taken place if it

25 *Skąd miliardy do budżetu* [Online]. Available at: https://www.podatki.gov.pl/skad-miliardy-do-budzetu (Accessed: 9 August 2023.).

26 Gajewski, 2020, p. 17.

27 Cień, 2022, p. 40.

28 *Rada do Spraw Przeciwdziałania Unikaniu Opodatkowania* [Online]. Available at: https://shorturl.at/emL7G (Accessed: 20 September 2023).

29 Gajewski, 2022, p. 24.

was not about achieving a tax advantage.[30] This means that the anti-tax avoidance clause is a tool that allows one to fight aggressive tax planning, the essence of which is to carry out activities primarily or exclusively for the purpose of obtaining a tax advantage, provided that the method of operation is artificial. Therefore, aggressive tax optimisation that may be covered by the clause includes activities that are non-market in nature and are carried out primarily to obtain a tax advantage. Simultaneously, it should be emphasised that optimisation activities are permissible if they are conducted in the course of real economic activities; (ii) *Reporting JPK VAT*: The JPK VAT is a Uniform Control File – an electronic collection of information on an entrepreneur's economic operations for a given period. Initially, the JPK VAT was introduced in July 2016 for large enterprises and extended to other companies (i.e. medium, small, and microenterprises that are VAT payers) in October 2020. However, in October 2020, taxpayers submitted one JPK VAT file with a declaration (instead of separate JPK VAT files and VAT returns). This current approach to electronically reporting the JPK VAT with a declaration means fewer submitted documents and fewer tax audits for the taxpayer. The JPK VAT system automates verification activities, and the NRA authorities react faster to irregularities and attempts at tax fraud. Owing to the analysis of data from files, inspections require less time, are less burdensome, and cost less. Moreover, the algorithms automatically select fictitious transactions that carry out the so-called company poles. Consequently, the authorities of the NRA detect VAT fraud more effectively, thus limiting unfair competition and protecting law-abiding taxpayers; (iii) *The fuel package*: Introduced in August 2016, the fuel package streamlined the rules for importing fuel into the country and significantly reduced the shadow economy in this market. New solutions were implemented in the VAT, excise duty, and concession regulations, which eliminated fraud in liquid fuel trading. Increased revenue from VAT to the state budget was observed. Originally, a taxpayer importing fuel from EU countries to Poland had to pay VAT within five days of import. This regulation significantly shortened the payment deadline compared with the standard rules, which provided for settlement by the 25th day of the month following the month of intra-community acquisition. However, it is now possible to apply the settlement deadline to the 16th day of the month following the intra-community acquisition of goods; (iv) *Transport Package – Electronic Transport Supervision System (SENT)*: The SENT was introduced in April 2017 to facilitate the monitoring of the transport of sensitive goods, such as fuel and heating fuels, liquified petroleum gas, fully and partially denatured alcohols, vegetable oils, dried tobacco, goods for the production of cigarettes, waste, coal, coke, drugs at risk of unavailability to Polish patients, and selected agricultural products. As a rule, the carriage of goods is reported to the SENT register by the sending entity, receiving entity, or carrier. These actors register with the system and receive the status of an intermediary (for sellers) or recipient (for buyers). Before purchasing goods, the buyer must generate a transaction code from the system and use it to confirm the

30 Mariański, 2020, pp. 12–13.

receipt of diesel fuel from the supplier; otherwise, the supplier will refuse to deliver the products. Importantly, transportation vehicles must be equipped with devices that transmit geolocation data to the systems of the NRA. Thanks to this, the transport of goods is monitored in real time, which allows for a quick reaction from Customs and Tax Service officers in the event of a risk of irregularities. This regulation clearly reduced the shadow economy in these areas and contributed to an increase in state budget revenues; (v) *ICT System of the Clearing House (STIR)*: The STIR was introduced in January 2018 to prevent tax fraud caused by abuse of the banking system and enables information exchanges between banking systems and the NRA. The STIR is also used for financial analyses to identify flows typical of tax fraud. This gives the NRA the ability to react to suspicious transactions in real time. For example, it enables the risk analysis of using the activities of banks and cooperative savings and credit union entities to commit fiscal crimes, submit fraudulent VAT refunds, or issue so-called 'empty invoices'; (vi) *Reporting tax schemes – Mandatory Disclosure Rules (MDR)*: The MDR were introduced into the legal order in January 2019. This regulation is a partial transposition of Council Directive (EU) 2018/822 in the scope of the mandatory automatic exchange of information in the field of taxation with regard to reportable cross-border arrangements. Importantly, in Poland, aggressive tax planning affects not only international arrangements but also those of a national nature. As a result, it was decided that the reporting mechanism would also cover schemes that did not have a cross-border element if they were concerned with taxpayers whose activities may significantly affect state budget revenues; (vii) *Tax on income from unrealized profits (Exit Tax)*: The Exit Tax was introduced in January 2019. The tax applies to the transfer of an asset outside Poland's territory as a result of which the Polish tax authority loses, in whole or in part, the right to tax income from the transfer of this asset, provided that the transferred asset remains the property of the same entity. In addition, taxation is also subject to a change in tax residence by a taxpayer subject to unlimited tax liability in Poland that causes Poland to lose, in whole or in part, the right to tax income from the sale of an asset owned by that taxpayer in connection with the transfer of its place of residence in another country;[31] (viii) *Online cash registers, cash registers in the form of software, e-receipt regulations*: These regulations were introduced in May 2019. Online cash and virtual cash registers are tools that not only limit the grey economy but also make money laundering more difficult. Otherwise, they could be legalised by charging cash registers for transactions that did not actually take place. An e-receipt is an electronic fiscal receipt. To address this issue, a virtual or online cash register must be used. According to Polish law, it is recognised, just like a paper receipt, as valid proof of purchase and payment. The seller does not have to print it, but can deliver it online (e.g. by e-mail). These documents are saved in fiscal or protected memory and sent to the National Tax Administration's Central Repository of Cash Registers; (ix) *List of VAT taxpayers*: This list was introduced in September 2019 and

31 Mariański, 2020, p. 12.

operates electronically. It includes a single and free database of VAT taxpayers that entrepreneurs can use to verify contractors and thus increases the security of economic transactions. The list contains the data of entities registered as VAT payers, unregistered, deleted, and restored to the VAT register. Importantly, it is updated every working day; (x) *Split Payment Mechanism (SPM)*: The SPM protects honest taxpayers from the consequences of being unknowingly involved in VAT fraud. This mechanism was introduced in November 2019. The essence of the split-payment mechanism is that the payment of a VAT invoice for purchased goods or services can be divided into two streams: the first means that the buyer's payment corresponding to all or part of the net sales value goes to the supplier's settlement account, while the second stream means that the payment of the amount corresponding to all or part of the VAT is paid to the supplier's special VAT account.[32] Importantly, the split payment mechanism is mandatory for invoices above a gross value of PLN 15.000, which relate to sensitive goods and services; (xi) *The National e-Invoice System (NeIS)*: The NeIS was introduced in January 2022 to further strengthen the tax system. Currently, e-invoicing is voluntary and functions as a permitted form of sales documentation, next to paper and electronic invoices. However, from July 2024, e-invoicing is expected to become a mandatory and common settlement system for economic transactions, which will make it easier for entrepreneurs to run their businesses. Importantly, for small entrepreneurs who do not settle for VAT, the deadline will be postponed and will enter into force on 1 January 2025.

From our Polish point of view, an important issue in the creation of a new tax order in the EU is the dispute with the European Commission regarding retail sales tax. This case illustrates the circumstances in which an important EU authority hinders and deliberately blocks the sovereign tax policy of a Member State. This situation was presented in an exceptionally clear way by legal adviser Maciej Toroń:

In July 2016, Poland introduced a new retail sales tax. This tax was to be charged to all retailers selling goods to consumers. The amount of the tax depended on monthly revenues, with the proviso that monthly revenues of stores not exceeding PLN 17 million are exempt from tax, the surplus revenues above PLN 17 million and below PLN 170 million are taxed with retail sales tax at the rate 0.8%, surplus revenues over PLN 170 million are taxed at the rate of 1.4%.

Two months later, the European Commission issued a decision by which it initiated a formal investigation procedure and applied an interim measure in the form of an order to suspend tax collection until the matter was clarified. After conducting the explanatory proceedings, the European Commission issued a second decision, stating that the Polish retail sales tax was incompatible with EU law: in the Commission's opinion, Poland's new tax constituted an illegal aid measure for entrepreneurs, with the Commission finding that the conditions for prohibited state aid were met. The decision not to collect taxes from some entrepreneurs (i.e. those with monthly sales revenue below PLN 17 million) is a benefit derived from state funds, as the

32 Wesołowska, 2020, p. 33.

state resigns from collecting the tax. This aid is addressed to selected entrepreneurs who obtain lower sales revenue, which is not concealed by the Polish government, indicating that the retail sales tax will be charged mainly to large retail chains, enabling smaller entrepreneurs to effectively compete with them. In the opinion of the Commission, the Polish government indicated that by introducing a tax affecting large retail chains, Poland intended to influence the structure of the retail market, which also sought to disrupt competition in the EU market.

The Polish government disagreed with the Commission's position and appealed to the EU's Court of Justice. In the Court Judgment issued in May 2019, the Court (the former Court of First Instance) shared the position of the Polish government – it acceded to some of the allegations made by Poland and Hungary (which supported Poland). Consequently, the General Court annulled both contested decisions.

If the Polish government is correct, then the European Commission erroneously decided that the introduction of the tax on retail sales revenues using progressive tax rates constitutes prohibited public aid because it gives rise to a selective advantage for some entrepreneurs who, in practice, will not be obliged to pay this public levy owing to the exemption of revenues below the threshold of PLN 17 million from tax. The court also decided to repeal the decision to initiate the investigation procedure and suspend the application of the tax, indicating that at that stage of the proceedings there were no reasonable doubts regarding the existence of a prohibited state aid measure that would indicate the need for the Commission to investigate.

The European Commission did not agree with the Court's judgment and decided to make an appeal. The Tribunal, acting on a bench of 15 judges, issued a judgment that dismissed the Commission's appeal and agreed with the Court's position regarding irregularities in the Commission's classification of the retail sales tax introduced by Poland as prohibited state aid for some entrepreneurs. In the opinion of the Tribunal, the Court correctly determined that in the case of the Polish tax instrument, one of the conditions constituting state aid (i.e. a selective advantage for a specific group of entrepreneurs) did not occur. It should be emphasised here that the Court only examined this aspect because it was covered by the scope of the complaint specified by the Commission in the appeal.

The European Commission claimed that the introduction of progressive tax rates, as a result of which some entrepreneurs will not be obliged to pay the tax, is of decisive importance for recognising the Polish commercial tax as prohibited state aid. In both instances, EU courts did not share this view. The Court recalled that, to the extent not harmonised by EU law, Member States are free to shape their tax systems. This tax sovereignty also includes the choice of a progressive system of tax rates and applies not only to the taxation of natural persons but also to taxes levied on legal persons. The Tribunal emphasised that such a progressive taxation system may constitute unlawful state aid in a situation where it favours specific entrepreneurs or groups of entrepreneurs; however, the Commission, which is obligated to prove the existence of unlawful state aid, failed to prove the existence of this selective advantage. The Commission's assumption of an ideal system in which Polish sellers pay the same tax regardless of the amount of their revenue, as a point of reference, was wrong.

The effects of the court's judgment on the Polish trade tax should be considered on several levels. First, from the perspective of entrepreneurs and sellers, the judgment finally ends the dispute between the Commission and Poland over the compliance of trade tax with EU law, resulting in the need to pay the tax. The Polish government began collecting taxes on 1 January 2021 after a favourable opinion of the Advocate General of the Tribunal, without waiting for the final decision of the tribunal. Second, the judgment of the Court, which confirms that the Commission made errors in assessing the Polish trade tax as illegal state aid and that there were no grounds for suspending tax collection from September 2017 to March 2021, potentially opens the way for Poland to pursue possible compensation from the EU for losses incurred by the state budget due to the lack of tax collection in the above-mentioned period as a result of the Commission's decision. The Polish government is considering this possibility, as the estimated revenue from the retail sales tax exceeds PLN 2.5 billion per year; however, as a result of the Commission's decision, the Polish government has been unable to collect the tax for over three years. Third, the consistent position of the Court on progressive taxation systems (in another judgment issued on the same day, the Court dismissed the Commission's appeal against the judgment of the Court, annulling the Commission's decisions on the non-compliance of the Hungarian turnover tax on advertising with EU law) has forced the European Commission to be more careful in preparing a justification in case the Commission intends to question similar taxes introduced by the member states of the EU in the future.[33]

2. Conclusions

The current stage of social and economic development in the EU is defined, on the one hand, by the integration of common freedoms and, on the other hand, by national differences, including those related to economic conditions (e.g. degree of industrialisation or debt). The preservation of tax sovereignty in individual Member States seems to be a natural consequence of these differences. Moreover, merely maintaining the current framework of tax sovereignty can support tax competition in the EU and help many countries (and societies) achieve economic development, as if Europe had never been divided into Eastern and Western Europe.

The use of tax sovereignty has historically been based on the same two distinct stages. The first stage involves a thorough analysis of the current social and economic situation in a given country, which makes it possible to identify barriers to

33 Toroń, 2021.

the development of society and the national economy. After defining the barriers, measures should be taken to gradually remove them. This stage ends with a political decision to launch a legislative path and introduce security measures into the tax and legal order. The second stage covers the process of applying tax laws by all addressees of the established standards; that is, taxpayers and tax authorities. The simultaneous monitoring of both macroeconomic (budget) and microeconomic (household budgets and entrepreneurs) effects allowed us to assess the quality and legitimacy of the introduced tax and legal regulations.

In recent years, in Poland, tax policy has clearly contributed to microeconomic trends by increasing societal wealth, both on the demand and supply sides. On the contrary, along the macroeconomic plane, it has significantly increased not only budget revenues, but also economic and, relatedly, employment growth.

Table 1 presents data from the government's annual reports on the implementation of the state budget,[34] including tax budget revenues over the last full eleven years. Attention has been paid to the clear increase in revenues since 2016, especially in comparison with the stagnation of budgetary tax revenues in this area in previous years.

Table 1: Budget revenues from taxes and customs in Poland in 2012–2022 in billion PLN[35]

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total budget revenues	*287,60*	*279,15*	*283,54*	*289,14*	*314,68*	*350,42*	*380,05*	*400,54*	*419,80*	*494,84*	*504,82*
VAT	*120,70*	*113,41*	*124,26*	*123,12*	*126,58*	*156,80*	*174,95*	*180,89*	*184,55*	*215,73*	*230,39*
Excise	*60,45*	*60,65*	*61,57*	*62,81*	*65,75*	*68,26*	*72,11*	*72,40*	*71,79*	*75,80*	*79,77*
PIT	*39,81*	*41,29*	*43,02*	*45,04*	*48,23*	*52,67*	*59,56*	*65,45*	*63,80*	*73,61*	*68,11*
CIT	*25,16*	*23,08*	*23,27*	*25,81*	*26,38*	*29,76*	*34,64*	*40,00*	*41,29*	*52,37*	*70,14*
PNIF[36]	–	–	–	–	*3,51*	*4,34*	*4,51*	*4,70*	*4,82*	*5,29*	*6,08*
PG[37]	*1,44*	*1,30*	*1,24*	*1,34*	*1,41*	*1,64*	*1,90*	*2,34*	*2,34*	*3,05*	*3,89*

34 Oktaba, 2019, p 14.

35 The table was based on the data provided by the annual reports of the State Budget Department. See: *Revenue, expenditure – execution* [Online]. Available at: https://www.gov.pl/web/finance/revenue-expenditure-execution (Accessed: 3 August 2023).

36 Tax on selected financial institutions.

37 Tax on games.

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
PWNK[38]	*1,43*	*1,92*	*1,43*	*1,55*	*1,28*	*1,79*	*1,70*	*1,54*	*1,67*	*3,69*	*3,79*
PSD[39]	–	–	–	–	–	–	–	–	–	*2,63*	*3,30*
Customs	*1,97*	*2,02*	*2,44*	*2,93*	*3,18*	*3,56*	*4,04*	*4,41*	*4,56*	*6,41*	*8,27*
Budget deficit	*30,41*	*42,19*	*28,98*	*42,61*	*46,16*	*25,35*	*10,49*	*13,74*	*86,80*	*26,37*	*12,58*

38 Tax on the extraction of certain minerals.
39 Retail tax.

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