

## Principle of Tax Justice and Tax System

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*Beyond any doubt, the division of tax charges should be just and, thus, the tax legislation, similarly as the tax system, should be established so as to meet the standard of justice. However, the ethic standard of justice causes significant complications in the legislative practice. These mainly result from the fact that there is no confidence in the idea of just taxation. The reasons why the principle of just taxation cannot be trusted are different for the legislator and different for the taxpayer. The legislator's distrust stems, above all, from fear that it might not be possible to connect the just taxation with effectiveness in fulfilling the income function. In the legislative practice a strong wrong belief continues to be shared that the just taxation amounts to the reducing of tax proceeds. Whereas the fear of the taxpayers that the system of tax charges applies to results from their awareness which has been developed and enhanced long enough to show that the legislator, while referring to the concept of justice, too often carries out reforms that contradict it. The tax justice – as an argument underlying the structure of the tax system – is employed much too frequently to mask the fiscal interest of the State, that is the effective fulfillment of the income function. What is important just as well is the fact that the ethical postulate of just taxation can provide the legislator with grounds to formulate various courses of action and, as a result, various tax law solutions.*

*There is a variety of tax rules that can be deemed to incorporate the postulate of justice [1]. However, a more complicated question arises whether the legislator can put the just taxation into practice by referring to the idea of justice. This has always raised doubts [2].*

### **Taxpayer and State – Taxation Dilemmas**

The circumstances that underlie the development of the tax system are quite complex. They have to incorporate the system-related objectives as well as economic and social conditions. The tax system cannot violate the boundaries of taxation [3]. One important element of the structure of the tax system is the taxation justice. It is, at the same time, one of the essential criteria of assessment of the quality of the tax system [4]. Democracy always provides grounds to respect the idea of justice and in relation to the tax system it may provide grounds to establish just taxes. Nevertheless, it is necessary to emphasize the fact that democracy does not warrant the idea of justice. For the levy law, which is exposed to strong pressure by lobbies [5], the establishment of just tax solutions has to follow the political will to build a just tax system, according to clear, transparent and simple rules. Certain compromises reached under the influ-

ence of lobbyists in establishing the contents of the tax system happen to break the logic and internal coherence of the system and, due to the fact that specific law abuse is practiced in the interest of the lobbyists, the tax legislation may reflect such “justice” that in reality is the sum of injustice.

The justice of taxation should be considered in the context of solving the problem of conflict of interests. This is because the contents of the tax system and, above all, the establishment of the level of tax charges and the rules imposing them explicitly show the conflict between the interests of the State and the taxpayer. And it is this context, where the tax legislation has to face a few problems that need to be solved so as to ensure that the contents of the tax system have the quality of justice.

Firstly, the following question is always invariably topical: how far the good of an individual should be subordinated to the good of the public. In determining the public good the

public authority, which is based on the democratic public order being stipulated by the Constitution, may not be driven by any values that would deny the idea of justice. This would otherwise mean that the State can freely and arbitrarily define the level of tax charges. In terms of the political system, in determining the tax system no constitutional standards should be omitted that protect the economic freedoms and rights, as defined by Articles 20, 21, 22, 32, 47 and 64 of the Constitution of the Republic of Poland.

Secondly, when the problem of economic rights and freedoms of an individual is considered, particularly, in the constitutional aspect, as well as the problem related with the scope of obligations of the individual, it becomes readily clear that the financial existence and order of the State is based on two correlated concepts that condition one another. One of them is the idea of freedom and the other the idea of obligation [6].

From the standpoint of the idea of freedom, those constitutional standards are particularly important that protect such economic freedoms and rights as freedom to start and carry on business activities, private property, ownership protection, protection of other property rights and protection of the right of inheritance. The constitutional standards establish very crucial warranties, from the individual's viewpoint, that apply to the sanctity of the essence of the ownership right. The sanctity of the essence of the ownership right must be one of the reasons to further the idea of the taxation justice.

The Constitution also clearly defines the idea of obligation. In terms of public law, the idea of obligation is, first and foremost, the necessity to bear the public charges and benefits, such as taxes and other public levies. Tax collection, as shown by the history of fiscal thought and the present day, has always accompanied any paid activities and any economic process. The State has guaranteed itself a direct or indirect share in the individual's financial income and the profit of entrepreneurs, which is supported by the very idea of the state and the attribute of authority. Tax proceeds are always the foundation of the budgetary economy of the State and the demand for the public income increases as the public tasks increase, which must be financed by the State.

Thirdly, in the view of the public authority, what is essential is the stance of an individual on the tax obligation. This individual stance

purports to include the attitude of the individual towards the idea of the public good. The fact that the freedom of the individual is never absolute and unlimited is self-evident. This is the reason why a fiscal interference with the sphere of the economic freedoms and rights of the individual calls for the principle of justice to be applied in the tax legislation. Any taxation, due to the essence and nature of taxes, infringes, to a certain extent, the sphere of economic freedoms and rights, for it is an interference with the individual's rights. Thus, the constitutional regulations concerning respect for justice in taxation are of utmost importance. The boundaries of the fiscal interference are demarcated by the Constitution. However, the Constitution must also ensure that the economic and legal boundaries of taxation are unalterable.

A tax, which refers directly to the relations between the State and an individual, is significant in terms of the political system. Therefore, a question arises how to define the boundaries of the Parliament's freedom in formulating the contents of the tax obligation. Obviously, the Constitution must always be a fundamental and normative basis for any solutions in the area of tax legislation. The Constitution must set such a direction for the tax legislation that, while allowing for the idea of obligation as well as the idea of freedom, should: (1) guarantee the fulfillment of tax obligations, provided that (2) the constitutional protection of the economic rights and freedoms is respected at the same time.

The principle of justice has never been the primary fundamental goal of developing the tax system. Taxes have always fulfilled the same basic function, i.e. they provide the State budget with means necessary to effectively discharge public duties. The function of achieving budgetary income by the State accounts for the fiscal purpose of taxation. Still, this end may not justify the means and the solutions employed to take over a part of the taxpayer's income and property. This means that the demand of the State for budgetary income may not substantiate any taxation denying the idea of justice.

When the problems of just taxation are considered in the systemic perspective, it becomes necessary to provide effective guarantees of dual nature.

One guarantee should include protection of the taxpayer's rights against infringement by the tax legislator. The process of tax legislation is not then free from errors and also completely conscious and intentional acts that result from

political calculations. Protecting the taxpayer's rights, the Constitution itself cannot counteract the infringing of those rights in the process of tax legislation. Sometimes the tax legislator, being full aware of acting against the obvious tax rules [7] and constitutional norms, happens to adopt, for various political reasons, such tax solutions that obviously contravene the idea of justice.

The other guarantee should include protection of the taxpayer's rights against infringement by tax bodies. A tax may not terminate the source of taxation [8]. In practice, this means that taxation should not exceed such a level of charges, at which income or profit or property is not a sufficient source to pay the tax. In these circumstances, the rule of the taxpayer's solvency to bear the tax charge is breached and yet the protection of taxation sources, both in legal and economic terms, is a condition for sustaining the fiscal efficiency of the tax.

The constitutional guarantees, being stipulated by and stemming from Art. 217 and Art. 84, as well guarantees resulting from other articles of the Constitution, which regard the economic freedoms and rights (Art. 20, 21, 22, 64), privacy (Art. 47), the principle of equality (Art. 32), the principle of democratic legal state (Art. 2), the principle of operation of public authorities on the basis and to the extent allowed by the law (Art. 7) should become the standard, according to which the contents of tax obligations should be formulated. The Constitution, providing a political standard of protection of the taxpayer's rights, enforces solutions with which the Constitutional Tribunal, being the guarantor of the principle of tax constitutionality, simultaneously becomes the guarantor of the principle of just taxation [9].

Taxes are a constitutional element of the State and this means that the problem of just taxation has to allow as the starting point the political system reference, i.e. the Constitution. Respecting the standards in the legislative process that follow from the principle of tax justice is very obvious when it comes to substantiation. The State requires the taxpayer to ensure fairness and due diligence in fulfilling tax obligations. This, in turn, supports and justifies the taxpayer's claim for tax obligations to be determined in compliance with the standard of justice. In this context a problem occurs that applies to the standard of correct tax legislation. Without it one cannot further the idea of taxation justice. The Constitutional Tribunal has

decided that the standard of correct tax legislation is fulfilled, provided that [10]:

- Each regulation that restricts the constitutional freedoms and rights is formulated in a way that clearly determines who and when is subject to restrictions;
- Each regulation is precise enough to ensure its uniform interpretation and application;
- Each regulation is formulated so that the scope of its application covers only those circumstances, in which the legislator, acting reasonably, actually intended to introduce a regulation restricting the use of the constitutional freedoms and rights.

The tax doctrine clearly shows that the regulations that do not comply with the standard of tax legislation are mainly those that "blatantly breach the fundamental principles of justice or any other commonly recognized moral standards or else carry an obvious legislative error or sustain a legal status that poses a threat to the foundations of the social order, or cause irreparable social or economic loss" [11].

From the viewpoint of public authority, the problem of just taxation does not lie in that taxes should be presented as just, but mainly in that the legislative practice should develop the tax system in compliance with the principles of justice. The principle of tax justice neither precludes nor hinders the effective fulfillment of the fiscal function; on the contrary, it renders the tax system comprehensible and makes the tax mentality and morality progress in the right direction. This, in turn, contributes to the effective fulfillment of tax obligations. Negating the principle of justice in legislation signifies that the tax system is susceptible to political willfulness and an arbitrary course of action, since, in fact, it lacks any fixed systemic foundation.

In general, the significance of justice in taxation comes down to the establishing of individual tax constructions, according to the rules designated by the horizontal justice and the vertical justice [12]. Thus, any tax should affect all the entities in the identical economic conditions in the same way (horizontal justice.) The rule of common taxation requires that all entities subject to taxation should be taxed irrespective of extra-economic criteria. The rule of even taxation, in turn, requires that entities in the same essential economic conditions should be treated the same with respect to a given tax. Moreover, what is uneven in fiscal terms should be taxed unevenly, too (vertical justice).

The rule of tax equality not only applies to

the equality of law application, but also, and above all, requires the legislator to ensure equality in establishing the law. To this end, the tax legislator needs a measure to evenly divide the tax charges. The even nature of tax charges can be ensured when tax facts differ in payment capacity. Equal taxation means different taxation, according to economic payment capacity.

The equality of charges incorporated in the provisions of Tax Acts becomes, however, useless, if a tax body incorrectly enforces these provisions in breach of the standards of their interpretation. In a tax relation governed by the rule of equality and law compliance, the obligation of the taxpayer to lawfully pay the taxes corresponds to the obligation to impose the taxes in accordance with the constitutional foundations.

Furthermore, from the perspective of justice, the individual types of taxes cannot constitute an accidental system that is not content-related.

## Conclusions

The dilemma that regards the respecting of the principle of tax justice in the tax legislation can be said to apply, basically, to the problem of tax boundaries being economically, legally and morally accepted. Thereby, it reveals the basis of the conflict between the State and the taxpayer.

With reference to the problem of tax justice, it is conspicuous that distrust exists between the advocates of the tax theory and the public authority which decides on the establishment of taxes. Too frequently does the public authority perceive the functions and the significance of the tax theory in the context of establishing complete rules of actions being readily applicable in the legislative practice. In this sense, the theoretical concepts referring to the tax justice have meaning to the authority only when the statement of scientific theses is convergent with the results of the application of their recommendations in the legislative practice. However, the public authority tends to forget that the results of the practical application of the theoretical concepts and assumptions emerge ad hoc extremely rarely and normally they have to be waited for. In the meantime, though “life has time”, particularly the economic and social life, the politicians who decide the contents, shape and the form of taxation, are in a great rush, instead.

The postulate of taxation justice can be treated as the starting point to formulate a prac-

tical tax theory. This means that the possibilities of applying ethical rules of taxation should be presented in the tax system. This can be achieved, if all possible standpoints are taken into account, especially the overlapping contradictions and the conflicts of interests, and the taxation justice is proven to legitimize the tax authority of the State and contribute to the tax attitudes that are desirable from the point of view of the State.

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5. A lobby normally intends to make a break with the rule of justice by demanding tax privileges. Lobbyists not only justify their egoist tax proposals but also present, in a smart socio-technical way, the particular interests as the public good. The tax legislation allows for certain suggestions from the lobbyists, since the political life as well as the social and economic life is very complicated and this complicated nature is transposed to the tax legislation.
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  10. Decision of The Constitutional Tribunal dated 02.05.2002, K6/02.
  11. Małecki J. *Lex Falsa Lex Non Est? / Ex Iniuria Non Oritur Ius.* op. cit.
  12. A common view is accentuated that the formal aspect of the horizontal justice lies in that the rule “the equal should be treated equally” is respected. Thereby, the horizontal justice covers common and even taxation. The postulate of common taxation requires that all taxpayers should be obliged to pay a tax, if one of the conditions established by the law exists for imposing such tax. The postulate of even taxation states that those taxpayers who are in the same tax relevant conditions, in fiscal terms, should be treated the same.

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### Teisingo apmokestinimo principas ir mokesčių sistema

#### Santrauka

Straipsnyje nagrinėjami mokesčių naštos paskirstymo teisingumo ir mokesčių sistemos teisingumo klausimai, taip pat mokesčių teisinių santykių subjektų tikėjimo teisingo apmokestinimo idėja aspektai, iš jų kylanti praktinė problema, ar remdamasis teisingumo idėja įstatymų leidėjas gali praktiškai įgyvendinti teisingo apmokestinimo principą.

Klausimas, ar mokesčių sistemoje išties laikomasi teisingo apmokestinimo principo, gali būti paprastai įvardijamas kaip problema, ar apmokestinimo ribos priimtinos ekonominiu, teisiniu ir moraliniu aspektu. Tokiu būdu atskleidžiamas konflikto tarp valstybės ir mokesčių mokėtojų pagrindas.

Nagrinėjant teisingumo mokesčių srityje vykdymo klausimą pažymimi nesutarimai tarp mokesčių teorijos gynėjų ir viešosios valdžios, kuri sprendžia mokesčių nustatymo klausimus. Viešoji valdžia pernelyg dažnai mokesčių teorijos funkcijas ir reikšmę suvokia taip, tarsi jomis būtų nustatomos visa apimančios elgesio taisyklės, tiesiogiai taikomos teisėkūros praktikoje. Tačiau su teisingu apmokestinimu susijusios teorinės koncepcijos valdžiai turi reikšmės tik tada, kai mokslinių tezių įtvirtinimas dera su jomis siūlomų rekomendacijų taikymo teisėkūros praktikoje rezultatais. Deja, viešoji valdžia dažnai pamiršta, kad teorinių koncepcijų ir prielaidų taikymas *ad hoc* nutinka labai retai, ir paprastai jo tenka palaukti. Nors „gyventi reikia laiko“ (tai ypač taikoma ekonominei ir socialinei sritims), politikai, nustatydami mokesčių sistemos turinį, pobūdį ir formą, labai skuba.

Teigiama, kad teisingo apmokestinimo principas gali būti laikomas pradiniu praktinės mokesčių teisės teorijos formulavimo tašku. Tai reiškia, kad taikyti etines apmokestinimo taisykles mokesčių sistemoje būtų privaloma. To galima pasiekti atsižvelgus į visus aspektus, pirmiausia – į prieštaras, interesų konfliktus. Vykdam teisingumą mokesčių srityje, pripažintina (įteisinama) valstybės viršenybė mokesčių srityje ir skatintinas pageidautinas valstybei elgesys.

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