

THE SYSTEMS FAMILY INCOME TAXATION IN POLAND

Tomasz Wołowiec, hab. Ph.D., University Professor

Institute of Public Administration, Management and Business

at the University of Economy and Innovation in Lublin

e-mail: tomasz.wolowiec@wsei.lublin.pl; <https://orcid.org/0000-0002-7688-4231>

Summary. Among many elements affecting the size of income tax burden for families (system of tax reliefs, exemptions, deductions, decreases or increases, proportional or as fixed amounts, construction of revenues and costs of obtaining them), the way of treating incomes obtained by the family and its members (separately or jointly) is of vital importance. We may venture a thesis that it stems from the way the law maker perceived the family and functions performed by it. Joint taxation of family incomes is based on tax accumulation, it may refer to all family members making up a household or only to the spouses. The accumulation may be full (complete) or partial as far as its object is concerned.

Key words: personal income taxation, pro-family policy, legal solutions

INTRODUCTION

The “pro-family nature” of the whole tax system, especially its personal income tax element, quite often appears both in politicians’ declarations, social activists’ statements and in hopes of taxpayers, especially those with large families. In practice, legal solutions, especially concerning taxation of personal incomes, should not ignore pro-family social expectations. At the same time we should stress a widespread view that taxes should be neutral, which is prevailing in the doctrine [Zych, Dobrowolska, and Szczypiński 2015]. The belief that taxes should be neutral stems from their fiscal function. We should not – according to some experts – use taxes to achieve various social goals, some of which may go against fiscal requirements of the state. Such goals should be accomplished using other, non-tax instruments (for example by introducing family benefits rather than pro-family tax preferences). With such different positions of the financial law doctrine – on one hand, and many politicians and a considerable part of the society – on the other hand, is it possible to introduce pro-family solutions into the tax system and do they make sense? What would such “pro-family” solutions consist in? It is difficult to provide a clear-cut answer to such questions. However, it should be noticed that the law – including the tax law – cannot be separated from the influences of broadly understood politics. This means that in reality we implement legal solutions without taking into consideration the position of ‘pure’ doctrine, isolated from politics. Such a situation may also concern legal tax solutions which would support stability of a family and improve its status, also as far as taxation of incomes is concerned [Damaz and Gorąca-Paczuska 2018, 155–60].

1. THE SYSTEMS FAMILY INCOME TAXATION IN POLAND (MAIN FEATURES)

Among many elements affecting the size of income tax burden for families (system of tax reliefs, exemptions, deductions, decreases or increases, proportional or as fixed amounts, construction of revenues and costs of obtaining them), the way of treating incomes obtained by the family and its members (separately or jointly) is of vital importance. We may venture a thesis that it stems from the way the law maker perceived the family and functions performed by it. Joint taxation of family incomes is based on tax accumulation, it may refer to all family members making up a household or only to the spouses. The accumulation may be full (complete) or partial as far as its object is concerned [Klimek 2013, 133–40].

A classic form of full accumulation both in its subject and object is the concept of taxing a household, although even here some object departures are possible. This method consists in accumulating the incomes of all family members and taxing them on behalf of one family member who is its head. In fact, the incomes obtained by family members are added to the income obtained by the family head who, in this case, is the tax subject (entity) – payer of income tax, while other member constituting a household are deprived of this subjectivity.

The concept of a household does not rule out the possibility of introducing limitations concerning subject accumulation and excluding some incomes from it, whose origin is specified, for example income from employment relationships. Such structure of a household was used by Polish lawmakers before the Second World War. It excluded the incomes of family members coming from professional activities or all other activities related to earning a salary, wages, receiving retirement pension from subject accumulation with the incomes obtained by the family head.

The concept of a household taxation makes it impossible to exclude some family members from this community and limiting it only to some members. However, it does not limit the freedom of defining the household from the subject perspective. A household can be defined broadly or more specifically. Which formula to apply depends on the assumed concept of a family, the auxiliary criteria being, for example: living together or the nature of civil law relationships between particular family members. Broadly understood, a household comprises spouses, children and spouses' relatives in the ascending and descending line, their siblings, and even children of these siblings. A more specific concept of a household covers only spouses and children.¹

The concept of household taxation began evolving together with changes in the way families are perceived, from a multi-generation family to a family composed of only parents and their children. Subsequent concepts of family income

¹ See *Wybrane zagadnienia polityki prorodzinnej w niektórych państwach Unii Europejskiej*, Biuro Analiz i Dokumentacji, Zespół Analiz i Opracowań Tematycznych, OT–617, Kancelaria Senatu, Warszawa 2013.

taxation emphasized two main elements determining the way of taxing its incomes: firstly – joint taxation of spouses, secondly – accumulation of the incomes of descending relatives (children) with the incomes of ascending relatives (parents). They were then still based on the accumulation of incomes, broken into two elements: marital accumulation and accumulation of the incomes of descending relatives with the incomes of ascending relatives.

In joint taxation of spouses the doctrine differentiates three fundamental solutions [Litwińczuk 1989, 18–37; Wójtowicz and Smoleń 1999]. The criterion that differentiates between them is the treatment (determination) of legal and tax subjectivity of spouses. We have a system of representation, a system of joint legal capacity and a system of separate legal capacity. The system of representation, the closest to the concept of a household, is based on combining spouses incomes and taxing them in the name of one spouse, mostly a husband (such model was used in Poland in 1946–1948), though there are no legal restrictions to taxing incomes in the name of a wife. The system of joint legal capacity assumes tax identity of the subject and object spheres, which means that a married couple are considered a separate tax entity. It is the couple, not spouses, who are income tax payers. The system of separate legal capacity, on the other hand, brings legal and tax equality of spouses. Its essence consists in taxation of accumulated incomes of the spouses in their both names. A husband and a wife are equal income tax payers [Wołowicz 2004b, 193–201; Idem 2004a, 23].

Comparing these three systems we immediately notice that they all rely on accumulation of incomes, which, economically (fiscal consequence for the family finances), equalizes them. Income accumulation, except for some marginal situations, always leads to increasing the taxation base, and, as a result, increasing – with progressive tax scale – tax burden. These systems, apart from ‘technical processing’ of spouses accumulated income (the accepted method of calculating tax), differ only in legal situation of spouses. In the system of representation, the tax entity (taxpayer) from the legal point of view is only the representative of the married couple, usually a husband. He is the party to the tax proceedings, his wife is deprived of any rights in this sphere, though the proceedings regulations may grant her some rights in relationships with tax organs. In the system of joint legal capacity, the couple are a taxpayer, however, due to the nature of marriage, which is a union of a man and a woman, that is two people, the taxpayer *de facto* are a husband and a wife jointly. A similar construction is found in the separate legal capacity. The tax is assessed in the name of both spouses, which means that they are both, jointly, from the legal point of view, income tax payers; if they are both jointly, then *de facto* the taxpayer is a couple [Rękas 2014, 442–44].

The difference between the systems of joint and separate legal capacities seems to be of mostly doctrinal significance. It is not important for the determination of spouses liability for meeting their tax obligations, which equally burdens them in both systems, not for defining their rights as parties to the tax proceedings; in this case we can only talk of the difference between the system of re-

presentation and the other two systems of joint taxation of spouses. In all three models of joint taxation of spouses it is possible to use a whole range of tax reliefs and ‘technical methods of processing’ the accumulated income of spouses (thus we cannot talk of a better or worse system in this aspect or of a system that is better or worse at protecting the family finance). This does not mean that equal (the same) tax reliefs can be used in all these systems [Kulicki 2006, 1–27; Idem 2011, 16–18].

Generally, all three models can use proper mechanisms for the so-called splitting total income of spouses, that is either a separate tax scale for the spouses and for single persons, increased (double) minimum free from tax or the method of marriage quotient, which consists in calculating tax due from half of total incomes obtained by spouses (tax obligation is then a double amount of the tax calculated from half of joint incomes of spouses), which may significantly affect the income tax burden of spouses.

The last method, possible only with progressive tax scale, mostly brings profits to spouses obtaining higher incomes, and only when one of the spouses does not obtain any income or if there is a great difference between the incomes of spouses (one obtains much higher income than the other), but this must mean that the incomes of each spouse are in a different range of the tax scale.

When taxing spouses it is also possible to use the concept of tax separation of the spouses, which means that each spouse is a payer of income tax calculated from the income obtained by him/her. Such separation fully meets the requirement of tax system neutrality for the married couple, understood as lack of influence of the fact that a marriage was concluded on the size of taxpayer’s tax burden. This neutrality is limited, though, by the common (marital) construction of tax reliefs, assuming the same limits for single persons and for married couples. The requirement of such understood tax neutrality would be fully met only when separation of incomes was followed by separation of non-family tax reliefs, namely those that can be granted to every taxpayer, regardless of their family situation or marital status. Otherwise, it is hard to claim that the law maker does not take into account the personal and family situation of a taxpayer when constructing the tax system. The second element of the system of personal income taxation (the second pillar of the split method of accumulating incomes of family members) is the way of treating incomes obtained by ascending relatives (children). Here we can differentiate two basic situations: the first one – joining children’s incomes with parents’ incomes, the second one – separate taxation of children’s incomes. The choice of the model is based on such criteria as: child’s age, type of the source of the child’s revenue and the type of civil law relationships between the parent and the child (scope of parental rights – full or limited). The last element is especially significant not only for combining child’s income with parent’s income, but also – in case of parents’ divorce or separation – for assessment whether one of parents can be considered a single person raising a child. This may be impor-

tant in evaluating the possibility of using tax privileges (preferences) intended for single persons raising children by such a parent [Święch 2013, 13–24].

Generally tax legislation assumes separate taxation of adult children and their parents, even if they are bound by the fact that they live together and that children are maintained by parents, so the latter fulfill a kind of maintenance obligation towards an adult child who, for example due to studying at school, cannot take up any work and obtain income that would be sufficient for them to support themselves. In case of minor children, in principle their incomes are combined with their parents' incomes if parents have the right to collect benefits from their children's incomes, that is when they have full parental rights. A minor child becomes in this case only an indirect tax entity, that is the one which can generate revenue (income) but is not burdened with tax obligation – an obligation to pay the tax [Kulicki 2003, 132–34]. This obligation is placed upon the parents' shoulders, as they are direct entities of income tax – its taxpayers [Idem 2011, 1–4].

2. PRO-FAMILY TAX POLICY BEFORE SECOND WORLD WAR UP TO 1989

The period before the Second World War featured a mixed system as far as family income taxation is concerned. With reference to income from professional service and all employment relationships as well as retirement pensions, the concept of subject separation of family members was adopted (each person obtaining income from these taxation titles was taxed separately). With reference to other incomes, the concept of accumulating (joining) family members incomes with the incomes of the family head and taxing them with the family representative (family head) was accepted. In the latter case the family head was entitled to take advantage of tax reliefs for family members maintained by him/her. A specific type of relief in income tax was a relief allowing to decrease the amount of due tax in case of specific, unpredictable situations which significantly constrained the tax potential of a taxpayer [Szczepańska 2013, 145–51].

The period of 1944–1989 brought the exclusion of the incomes obtained by individual farmers and the incomes from hired work as far as the taxation of families are concerned. The latter were originally fully taxed with a remuneration tax, and since 1972, in the part paid by socialism economy units, with the tax on payroll, and then tax on wages. Since 1957 incomes of individuals were also covered with a surtax. Income tax of that period was characterized by joint capacity of spouses, which meant that their incomes were combined and taxed in the name of both spouses (the regulation was introduced in 1948; until that time the principle of representation from before the war had been valid, so the wife's income was added to the husband's income and taxed in the name of the latter). The post-war legislation upheld the principle of combining (accumulating) incomes of descending relatives with the income of an ascending relative, as well as a wide range of family reliefs for children, a spouse who did not obtain any income, parents

and parents-in-law who did not obtain any income as well as the siblings who were still maintained by the taxpayer. The subject scope of these reliefs, though narrower than before the war, was still quite wide. The tax system of 1945–1989, just like the tax system before the war, undoubtedly reflected the family and economic (financial) situation of a taxpayer. However, it was not a homogenous system and the constructions of many reliefs and their size had evolved significantly over forty years. Also the concept of a family had evolved (it had been narrowed). The rule of accumulation of spouses' incomes had not changed, though instead of taxing the family representative (head), the tax capacity of both spouses was introduced (spouses' incomes were taxed in their joint name).

After 1989 the systemic transformation took place, bringing the introduction of a homogenous (at least according to its original assumptions) and universal (excluding the incomes obtained from agricultural activity and forestry) personal income tax in 1992. The basic assumption when developing the concept of this tax was to personalize the tax obligation by separate taxation of the incomes obtained by each adult taxpayer (individual), regardless of their marital and family status.

3. STRENGTHENING PRO-FAMILY AND PRO-SOCIAL REGULATIONS IN PERSONAL INCOME TAX

The main goal of family policy (being the type and form of implementing social policy) is creation of such mechanisms and institutions which will provide the optimal conditions for starting a family, its development, proper functioning and ensuring its stability and will offset negative demographic phenomena, affecting all members of a particular community, regardless of their family status (for example in retirement and disability pensions, proper functioning of labor market).

The above-mentioned goals of tax and family policy lead to the conclusion that it is difficult to reach a compromise between them. As we can see, fiscal goals dominate. Moreover, taking into account the principle of tax neutrality, one might wonder whether we should aim at accomplishing non-fiscal goals using taxes [Ofiarski 2006, 29]. Practice shows that all functions of taxes intermingle and condition each other, as the contemporary state cannot avoid solving social and economic problems determining its relatively undisturbed functioning [Balcerzak–Paradowska 2005].

Thus we can assume that taxes actually are and should be an instrument of implementing social (welfare policy as well). This obviously requires precise determination of the goal and mechanisms allowing its accomplishment. It is necessary to take into account society evolution as well as the length of administrative and political decision-making procedures [Rękas 2014, 440–43; Bouvier 2000, 175].

In Poland it is even more essential as demographic studies show that Poland is a country with aging population due to decreasing numbers of children and civilization progress resulting in longer average life expectancy. Also a change

in the family model is important, attributed to difficult and unstable economic conditions of the society and family caused by labor market situation and high unemployment rate. This, in turn, influences the possibility of providing proper care, upbringing, education and material existence to only one child [Cudak 2004, 284; Rękas 2014, 445–47]. Thus, the pro-family (welfare) tax policy should be reflected in the structure of taxes making up the tax system which will purposefully use the construction elements of the tax to stimulate generally understood pro-family (welfare) behaviors. To implement such policy the following tools will be needed: appropriately defined object and subject scope of tax and tax reliefs and exemptions.

In reality, tax solutions, especially those concerning personal income taxation, should not neglect pro-family expectations of a society [Wołowicz 2004c, 9–12]. Taking of family taxation we cannot ignore an important issue related to the requirement to respect the principle of tax (social) equity in the tax system. Of course, the assumption that the system should meet basic requirements of equity calls for finding a compromise between this idea and the essence of taxation. As already indicated, the basic goal of taxation is fiscal, that is to obtain income saving the country's expenditure needs. We should accept the thesis that using only the criterion of taxation effectiveness practically excludes the possibility of taking tax equity into consideration [Gomułowicz 1996, 3]. Also we should fully support the view that in a democratic state justice and obligation to provide the state with income should be perceived as two independent constitutional values which do not exclude each other but must be achieved jointly. It is often emphasized that in order to create a rational tax system we need to determine goals that it must accomplish. But even more important it is to accomplish general economic and social assumptions, at possibly the lowest costs.

Moreover, it should be noticed that the contemporary understanding of tax (social) equity significantly diverges from its original notion. It is usually considered in the context of the whole tax system, and it is assumed that a fair tax system must be individualized and varied, taking into account numerous factors influencing taxation. We should consider then not only the amount of income but also its source, family, social, personal and economic situation. It is necessary to choose between proportional and progressive rates, the latter widely considered a fairer option as it provides the possibility of taking into consideration the taxpayer's personal situation and using various tax reliefs, tax-free minimum amount, exemptions and decreases or increases of social and economic nature, which may stabilize the moods of large social groups in different situations [Gliniecka and Harasimowicz 1997, 1]. Polarization, with reference to wealth levels, may be the background of various social conflicts. In other words, taxation equity does not mean that all subjects should pay the same amounts of tax, but that they should carry equal burdens in relation to their payment capacity. We can talk here of 'horizontal' and 'vertical' equity, the former postulating equal treatment of subjects belonging to the same category and expressed in a saying "equal treatment of

equal people.” On the other hand, vertical equity assumes different allocation of tax burden onto entities operating in different economic conditions [Gajl 1992, 142].

Moreover, it is also postulated that the basic principle affecting creation of fair tax system should be the principle of payment capacity (in fact this is an element of equity), so that tax burden should be determined by the ability to pay the tax, which is directly related to the necessity of differentiating the tax for particular taxpayers. The principle of payment capacity should refer to the measure – equality of taxation. This equality should be reflected in both appropriate weight of tax and in choice of a particular good to be taxed. It is typical then to link equity in taxation with individualization of tax burden, also through application of various reliefs and tax discounts [Gomułowicz 1998]. As we can clearly see, tax equity is not an intrinsic value. It should constitute a foundation on which tax policy goals are established. Also the institution of tax accumulation may contribute to the practical application of the principle of tax (social) equity.

Summing up, we can state that personal income tax has a special place in contemporary tax systems. It is a form of final taxation of particular entities, thus it can be used in accomplishment of social goals of taxation that play an increasingly important role [Mastalski 1995, 48]. This is due to the fact that income tax is assumed to be a tribute that best implements the principle of tax equity, combining taxation with capacity of paying tax. In this context, the nature of personal income tax and its influence on the situation of Polish families is widely discussed.

4. LEGAL SOLUTIONS *VERSUS* FAMILY TAX SITUATION

The analysis of presented legal solutions allows us to make a conclusion that the tax situation of a family is affected not only by construction elements of the tax, such as tax reliefs and exemptions, but also the institution of tax accumulation, widely used especially in income taxes. Its use brings totally opposite effects: from easing the tax burden to its increasing [Święch 2009, 163–75]. We can observe a certain regularity: tax burden is minimized through application of accumulation only following the request of interested taxpayers. They have to meet a number of legal requirements entitling them to use this taxation technique treated as a tax preference. In this area we can indicate certain liberalization of legal solutions, consistent with widely proposed postulates. It consists in the already indicated possibility of joint taxation of widowed spouses’ incomes. We should also consider the possibility of joint taxation of divorced spouses, where incomes could be summed proportionally to the number of months in which the marriage relationship existed in a given tax year.

Construction of tax scale. The valid tax scale practically leads to line taxation of incomes, making it impossible to differentiate tax in line with size of income and smooth movement from a lower to a higher tax range. Analyzing tax rates in particular ranges of a tax scale in EU member states in relationship to the lowest

(minimum) salary, we must notice that Poland belongs to the group of countries with the highest burden of income tax as far as low and very low incomes are concerned and relatively low burden placed on high incomes (in relation to the lowest salary). In Poland the 18% tax rate is imposed on incomes from 3.38 times the lowest salary (up to as many as 44.93 times) [Andersson 2005].

Joint treatment of family incomes. As a rule, spouses' incomes are taxed separately, but if spouses meet the requirements defined in the law, they can apply for joint taxation of their incomes. The provision concerning joining children's and parents' incomes was preserved in the system. An exception is made to incomes obtained from scholarships, employment and from objects given to children for their free use. However, children's incomes from pension granted to children who lost their parent are joined to incomes of the other parent. Maintenance for children are tax-free (tax is paid by the person obliged to provide maintenance).

Tax reliefs. Since 1992 Tax legislation concerning income tax has diverted from determining tax-free amounts available to taxpayers who have children or who provide for the unemployed spouse. This construction was replaced with deductions from income related to educating children and their commuting to school, however these reliefs were eliminated. The tax-free amount for an unemployed spouse was not substituted with anything, though. Among tax reliefs we should mention tax exemptions under Article 21 of the Act on Personal Income Tax: a) family benefits, family and care allowances and childbirth allowances; b) one-off allowances paid for giving birth to a child, paid out from trade union means; c) social aid for foster families; d) some types of scholarships; e) allowances to family pensions for orphaned children; f) contributions to some kind of holidays; g) benefits provided by social support.

Such object exemptions function in tax systems of all European Union countries and do not determine the pro-family nature of a tax. They only serve the purpose of excluding – due to social and technical reasons – particular categories of factual or legal situations from the object scope of a particular tax.

The system of personal income tax has eliminated all types of deductions which lowered either tax base or amount of due tax. These deductions could be treated as pro-family reliefs (deducting expenditure on educating children and youth, their commuting to school, financing costs of studying and professional development, also of children, or for health purposes). An exception here is made by deductions of expenditure on rehabilitation of the taxpayer and their dependants, however, they are related to the degree of disability suffered by the taxpayer, not to their family situation. We can notice, however, that the departure from supporting the family through tax constructions and using the equality principle without the principles of social equity, solidarity and subsidiarity, does not stop the current trend [Łączkowski 2005, 233–43]. Taxation of the incomes of a married couple or a family and a single person along the same criteria, at very low, low and average incomes, and such incomes are obtained by 95% of Polish taxpayers, violates the principle of equality of taxation. The use of various tax

preferences may be the consequence of taking into account tax equality understood subjectively. Such equality requires noticing various material, family or social situation of a taxpayer. If we assume that both spouses work and obtain the same incomes, their economic situation will not be worse than the situation of a single person, but if spouses decide to have children, their economic situation, even if they both work, will significantly deteriorate and will depend on the number of children. Moreover, a single person, due to their income left after paying income tax, can take advantage of various tax reliefs (through different types of investment) which lower their tax burden, a situation that a family is deprived of, even if it obtains the same income as a single person, but it has to pay the costs of supporting children. The tax law pays special attention to the obligation of implementing the postulate of tax equity. It means that, for example, when determining tax base and amount of due income tax, we should take into account not only the size of income obtained by the taxpayer but also their payment capacity reflecting necessary expenses on maintaining the family. This problem is perceived by most law-makers in the EU countries, for whom the system of family tax reliefs is a construction element of the tax, as vital as taxation objects and subjects. It should be remembered that tax constructions treating equally married couples and families and single persons are only one of the elements of a pro-family system which does not have to produce desired effects if it is not balanced with other unfavorable solutions. It should be remembered that in most European Union countries we can observe the trend to lower the number of children even though the fiscal systems undoubtedly have pro-family features.

In case of personal income taxation, an element which best links the principle of equality and equity, subsidiarity and solidarity, protection of marriage and family, motherhood and parenthood, universality of taxation and protection of the state's financial stability is the taxpayer's fiscal capacity. We should differentiate here between the fiscal capacity of a taxpayer and the protection of the source of revenue. Fiscal capacity is directly related to the family situation of a taxpayer, whereas protection of sources of revenue first of all concerns professional and economic activities of a taxpayer. Thus it concerns directly economic entities (persons and entities which conduct economic activities regardless of its type and form), and indirectly people who work for economic entities. It is not possible to combine these two notions (values) in the construction of income tax so that they were coherent and they did not discriminate or privilege any group of taxpayers. Thus it is important that the construction of income tax should reflect the elements which affect understanding and application of the principle of tax equity and equality.²

² PricewaterhouseCoopers, *Polityka prorodzinna: Polska nadal w czołówce państw UE* [henceforth cited as: PwC], 2016; PwC 2017.

5. WAYS OF REFORMING PERSONAL INCOME TAXATION

The project of changes to the Act on Personal Income Tax should first of all assume the introduction of tax-free amount for maintaining a child. The tax-free amount is not a tax relief but a construction element of a system guaranteeing equality of all taxpayers towards public burden. Therefore tax-free amount should be available to each taxpayer who maintains their biological or adopted children, for each child, regardless of the form of income taxation or marital status. The tax-free amount should be defined as a minimum cost of maintaining a child (subsistence level). In order to keep the adopted amount in the same relation to the costs of maintaining a child, regardless of inflation rate, its size should be determined by means of an appreciation clause (125% of average monthly remuneration in the enterprises sector).

The aim of such mechanism is not to cover the costs of maintaining a child, even in subsistence level, but only to neutralize the economic burden of the VAT tax, which places heavy burden on necessary consumption of goods for children. The proposal aims at allowing to lower tax base with this amount, not at introducing a deduction of the same amount from tax.

The basic goal of changes in law should be to eliminate unfair treatment of people maintaining children and those who do not, offered currently by the Polish law. The valid tax system places heavier tax burden on people supporting children than on those who do not, even if the consumption level is similar. The valid PIT Act raises some doubts whether it is consistent with the Constitution. The Act does not aim at implementing pro-family policy (income tax is potentially one of the instruments of pro-family policy) or creating special preferences for families. It only wants to eliminate discriminating effects of direct taxation of child's consumption in the necessary scope.

The proposed changes are fully justified by the comparative analysis. In nearly all European Union countries, beginning with the biggest ones: Germany, France, Spain or Italy, to Austria, Belgium, Estonia, the Netherlands, Luxemburg, Hungary, Bulgaria or Romania, the necessity to reflect the costs of upbringing children in the tax system is noticed. A taxpayer who uses their income on upbringing children cannot pay as much tax as they would if they did not have children without any detriment to them. At a similar level of personal consumption, such a taxpayer already pays more VAT than a person who does not support children, as they pay additional VAT on necessary consumption of their children. Therefore the EU countries either introduce the principle of joint taxation of a family (not only spouses), which goes beyond the requirement of tax neutrality and supports the family, or, in order to ensure taxpayers' equality towards public burden and neutrality of tax system towards the family, tax-free amounts are introduced for each child. These solutions, however, do not free the taxpayer from the economic burden of upbringing the child. It is the family that bears the costs of upbringing

and educating children. These solutions ensure neutralization of the economic burden imposed by VAT that burdens the child's consumption.

The first of these models assumes joint taxation of spouses and children by summing the family incomes, tax-free amounts and dividing them by the number of family members (multiplying by the coefficient determined in the law). Such a solution can be found in personal income tax law valid in France and Luxemburg.

The second model stipulates taxation of personal incomes only when they exceed specific amounts necessary to maintain the child. Such solutions are used in Italy and Estonia. The latter is of particular interest, as it is far less case-based than the former and functions in the line tax system (one uniform tax rate). It also proves that the problem of tax discrimination against people maintaining children exists not only in the progressive tax system, though tax progression is especially painful to people maintaining children. It should also be noticed that the countries using the tax-free amount systems, the system only supplements the principles of joint taxation and is not an alternative solution to it (for example in Germany, Austria, Spain, Belgium). Regardless of the differences in tax constructions or size of tax-free amounts for particular children (these range from 300 to 2000 euro and depend on the number of children and maintenance costs in a given country), the universality of these solutions shows that they express a general view that the tax system should be at least neutral towards the family and tax law-makers must take into account the constitutional obligation of equal public burden.³

In conclusion, it must be pointed out that the Polish income tax can hardly be called pro-family one. It has some institutions referring to the taxation of families, but they only provide some kind of secondary protection of their members. This is due to problems related to accomplishment of fiscal and non-fiscal goals at the same time. Such state is also an effect of instability of legal regulations and no long-term tax policy.⁴

A recent report of the European Union (joint report on welfare care and social integration from 4th March 2008) stated that among 78 million Europeans who were threatened with poverty in 2005, 19 million were children. In many member states children are more exposed to the risk of poverty than the rest of the population, and this ration is particularly high in Greece (20%), Romania (25%), Lithuania (27%) and unfortunately, in Poland. Another worrying phenomenon is the intensity of poverty among Polish kids, measured as 'poverty gap', that is a percentage distance between poverty threshold and incomes of families with children, as also in this respect our country (together with Bulgaria, Lithuania and Estonia) is in a group of countries in which children poverty is the highest.⁵

³ See Porozumienie Stowarzyszeń na rzecz Rodziny, <http://www.pro-rodzina.pl> [accessed: 05.04.2020].

⁴ *Raport o stanie prawa podatkowego 2010, Centrum Dokumentacji i Studiów Podatkowych*, "Kwartalnik Prawa Podatkowego" 2011, no. 1, p. 61–83.

⁵ See *Koszty wychowania dzieci w Polsce a podnoszenie podatków pośrednich*, Centrum im. Adama Smitha, May 2008, p. 3.

Children poverty is largely a derivative of a general level of poverty as well as the structure and condition of a family. All over the world, children maintained and raised by single persons and children from large families (in the EU, on average, 13% of children are taken care of by one parent and 21% in families which have at least 3 children). Single persons raising children must make difficult choices between the length and intensity of work and the time for their child, large families, on the other hand, must solve the problem of high costs of goods and services that are necessary for children. Although joys and worries of parenthood do not boil down only to continuous utilitarian calculation of costs and benefits derived from having a baby, it must be noticed that raising and maintaining children is extremely expensive. Moreover, we should emphasize that although for parents having children always leads to some sacrifices, for the society as a whole – children (their quantity and also ‘quality’) are a clearly positive value – a resource without which the well-being and functioning of a society is at risk. The community and its political organization – the state – should take care to ensure appropriately large size of Polish families and ‘quality’ of Polish families [Surdej 2015, 4–16; Idem 2016, 5–15].

The most complete data on the costs of raising children are gathered and provided for the public in the USA. We can learn from them that the cost of raising two children until they come of age is \$250,000, their studies at a private university increase this cost by \$100,000. On the other hand, in Australia, the analyses showed that the average costs of maintaining and raising one child equal 20.1% of the income at the disposal of a household, when calculated without costs of childcare and 24.6% when they include costs of external care [Henman 2007].

Unfortunately, we do not have any data collected over the years which would allow us to calculate full costs of raising a child. Gathering official data and presenting it to the public to show how costly child maintenance is (a Belgian saying is: ‘One child – one house,’ the English calculated that a child costs around GBP 160,000 until he/she becomes independent economically), is necessary as it will ensure better understanding of the economic situation of families with children.⁶ The costs of raising children are the sum of direct costs (expenditure on food, clothes, shoes, medical care, etc.) and direct or alternative costs (large families ‘sacrifice’ earnings of one parent who must take care of children full-time). Though it is obvious that the costs of raising children may vary (depending on parents aspirations and financial capacities), it is essential for the state to determine approximate minimum costs (costs reflecting living standards in a particular society) [Surdej 2019, 1–5].

What were these minimum costs in 2019? The cost of raising one child until the child reaches the age of 20 is around PLN 260,000 in Poland, while the costs of raising two children is approximately PLN 380,000 (assuming the costs of raising the second child is 80% of the costs of raising the first one as some savings

⁶ Ibid., p. 5.

are possible). In case of families with three children these costs (assuming 60% for the third child) are around PLN 476,000. We should remember that this calculation does not take into account indirect or alternative costs and that it is a calculation of minimum costs, therefore the real total costs are probably much higher.

It should be noticed that there is a very strong relationship between poverty and costs of children. Maintaining children constitutes a burden for family budgets, negatively influencing parents' living standards, while fears among potential parents concerning economic security of a family and its living standards negatively influence their decisions on the number of children. Thus if the general fertility rate, showing the relationship between the number of childbirths to the number of women of child-bearing age decrease from around 3 in 1960 to around 1.3 in 2003, this can be attributed to the high cost of children.⁷ The calculation of such costs should not be criticized as we do not compare the usefulness of a child with the usefulness of such objects as a house or a car, but we point out that for an individual, possessing children inevitably leads to the diminishing of income available for other goals in life.

Directions of activities which lower costs of children. We can point two directions. One is to create special programs aimed at improving living conditions for families with children (from tax reliefs to goods coupons to programs of feeding children). Another is to take care of high quality of public services while reducing tax burden carried by families and, more broadly, all citizens. The history of welfare programs shows that they are rather ineffective and costly. The experience of many countries – from the USA to western Europe (not mentioning former real socialism countries) proves that the effectiveness of welfare programs is very low and sometimes encourages the very behavior the government wants to eliminate: if the government uses public money and state offices to limit the number of single mothers raising children, it increases it, as the case was in the USA; if, providing generous unemployment benefits, the government wants to protect the living standard of the unemployed, as a result the number of the unemployed increases [Surdej 2018, 1–10; Idem 2019, 1–5]. The above examples are not an argument against all kinds of aid for those in need, but they remind us that administrative interference is rather ineffective. Without it people spontaneously provide and organize help for others.

CONCLUSIONS

The pro-family policy should be based on a foundation that the most beneficial solutions for the family is to provide it with the right to use its money as it wishes and to provide it with a competitive environment covering the area of public services, that is mainly health care and education. It should be remembered that the

⁷ Green Paper “Confronting demographic change: a new solidarity between the generations”, European Commission, 2005.

development of welfare programs goes in line with higher tax burdens and higher public expenditure. Public expenses grew significantly in the period between 1960 and mid-1980s, when many countries, especially in the west, created a complex system of 'social security' redistribution, putting an individual's life into the framework of the state's social care. In the period of one generation (twenty-five years), several European countries, especially Austria, Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands and Sweden, increased their public expenditure to nearly (sometimes over) 50% of their GDP. Moreover, in some countries, such as Italy and Belgium, public debt exceeded 100% of their GDP, while interests rates on this debt additionally burdens their citizens. Countries like Italy fell into a debt trap: servicing public debt requires them to maintain high level of tax burden, while high taxes negatively influence their international competitiveness.

VAT rate versus costs of a child in Poland. According to our calculations, maintaining, raising and educating three children costs PLN 626,000, therefore working parents must obtain the incomes of PLN 749,000 before taxation in nearly a quarter of a century (assuming a 18% tax rate). The calculation shows that parents-taxpayers give the state the amount of PLN 323,000. We should also remember about hidden, significant burdens from the VAT tax. It should be noticed that the VAT tax rate in Poland is higher than the VAT tax rate in most EU countries: the average rate of VAT for 27 member states is 19.5%. A higher VAT rate than in Poland can only be found in Sweden and Denmark (it is 25% in both of them).

Let us stick to the example of a family with three children. For the purpose of simplicity, we assume a uniform VAT tax rate of 23% and we can see that the expenditure on maintaining, raising and educating children is burdened with the tax of PLN 242,000. Although the real VAT burden is slightly lower due to lower rates of VAT on food, clothes and footwear, the size of indirect tax burden is quite high. Raising the VAT tax on children products (clothes and footwear) from 7% to 22% from 1st January 2012, the government increased the costs of children in a three-children family by PLN 8,890 in the whole. Calculations for families with three children are a starting point for calculating hypothetical costs for all Polish families. Since at the beginning of the 21st century, around 47% of Polish families are one-child families, around 36% of them have two children and the others are families with three or more children, this change is related to the increase in additional expenses of PLN 2.42 billion annually.

The economic analysis leads to the conclusion that the combination of high taxes (including VAT) with a complex system of benefits for particular objectives is an ineffective solution and it is further consolidated by the fact that high taxation, lowering disposable income of citizens, pushes some of them below poverty threshold and encourages the government to develop welfare programs. It would be more effective to have a system in which low taxes (and low obligatory social contributions) motivate people to work, allow them to increase their disposable

income and reduce the number of people who depend on welfare transfers. The Polish government should decrease the costs of children by lowering taxation (and maintaining lower VAT rates for products for children), as this increases the effectiveness of managing and decreases the costs of administering complex programs transferring incomes as well as it reduces the threat of preserving the dependence on welfare benefits (there are families in which the benefit from the transfer in a short time is the only available benefit, though such cases are not numerous). In case of Polish families, the lower VAT rate for products for children, including children's footwear, is the most effective way of decreasing the costs of raising children. This does not require to incur the costs of transferring resources and allows parents to buy the needed goods. Lower VAT rate also improves the availability of better quality footwear and encourages families to do their shopping more often, both factors are of great significance for children's health.

Taking into account the personal nature of income tax and postulates concerning payment capacity and equity, many constructions of income tax implemented in European Union countries reflect (in various ways and forms) the taxpayer's family status. No legal scheme shaping the issue of taxing family incomes has been developed yet. Particular countries separately determine rules and principles of taxing income generated by families. Among legal solutions that may affect the family situation we can differentiate two groups used in EU countries tax systems. The first contains constructions which are not introduced into income tax for the benefit of a family, but which are essential to it, that is the ones which indirectly reflect this benefit. These are: tax-free amount; joint settlement of taxes by spouses (marital quotient); the scope of costs of obtaining revenue; possibility of extending tax ranges; the height of tax rates.

The second group concerns those which can be introduced to the tax system deliberately in order to protect or promote the family. These are: joint taxation of the incomes obtained by children and parents; pro-family tax reliefs; the concept of a family quotient.

One of legal solutions significantly influencing legal and tax situation of a family is the minimum income free from tax, which would be difficult to classify as directly of pro-family type. It is treated as subsistence minimum, taking into account the costs of biological or even social existence of a taxpayer. This takes the form of either exempting a certain amount of income from taxation or including it into costs of obtaining revenue. In both forms, an attempt is made to relate the minimum to the indicator of basic consumer goods prices growth and the inflation indicator.

We can observe significant differences among the European Union countries as far as the amount of tax-free income and its relation to the average monthly earnings are concerned. This can be attributed to the fact that the amount of tax-free income is an outcome of political compromise, reflecting diverse cultural, social and civilization factors as well as independent policies of welfare benefits within the European Union.

A general principle is individual taxation of income (revenue) generated by the taxpayer. There are some exceptions to this rule: joint taxation of spouses, taxation of single persons raising children and taxation of incomes obtained by minor children. The concept of joint taxation of spouses has as many supporters as opponents. The former emphasize that it is consistent with the nature and structure of marital relations, as all decisions concerning division and allocation of income are taken jointly in marriage. The consequence of this situation is joint taxation of spouses, which better reflects tax capacity of spouses and is a manifest of state's pro-family policy. The main argument of supporters of individual taxation is that it leads to complications in tax collection. They also point out that this construction, when it does not take into account any form of quotient in case of a progressive tax scale, negatively affects motivation to increase income of one spouse. Individual taxation does not create such barriers. It is conducive to income growth and improves the financial situation of a family.

Analyzing the issues of family income taxation we can observe both extremely pro-family solutions (for example in France) and solutions assuming neutral approach to family (for example the Netherlands, Great Britain). The most popular model is that between these two extremes, granting some privileges to taxpayers with families but refusing to treat the family as a tax and legal subject (for example Austria, Belgium, Germany, Italy). These privileges consist in taking into account the taxpayer's family situation by providing an appropriate construction of the tax base. This is reflected in: deducting expenses on children and spouse who are maintained by the taxpayer from tax base; tax reliefs of specified amounts or percentage for children and spouse maintained by the taxpayer; using several progressive scales for various types of families, adequately to their personal composition; splitting joint income of spouses (the so-called *income splitting system*), by summing spouses incomes, calculating due tax and multiplying it by two; using the family-quotient taxation, a developed concept of splitting joint income of spouses and their minor children, dividing it by the number of consumption units. Tax is calculated on income determined in this way and multiplied by the number of consumption units; system of welfare benefits for children and spouse maintained by the taxpayer (used parallel to the system of tax reliefs or separately); negative income tax is a form of integrating the system of welfare benefits for the family and the income tax.

REFERENCES

- Andersson, Gunnar. 2005. *A study on policies and practices in selected countries that encourage childbirth: The case of Sweden*. Rostok: Max Planck Institute for Demographic Research.
- Balcerzak-Paradowska, Bożena. 2005. "Polityka rodzinna w Polsce w XXI wieku." In *Rodzina. Etyka. Ekonomia. Collection of papers*, ed. Ryszard Horodeński, and Edward Ozorowski, 34–55. Białystok: Wydawnictwo Wyższej Szkoły Ekonomicznej.
- Bouvier, Michael. 2000. *Wprowadzenie do prawa podatkowego i teorii podatku*. Warszawa: PWE.

- Cudak, Henryk. 2004. "Problemy uspołecznienia dzieci jedynych w rodzinie współczesnej." In *Współczesne rodziny polskie – ich stan i kierunek przemian*, ed. Maria Tyszkowa, 56–71. Poznań: Wydawnictwo Uniwersytetu Adama Mickiewicza.
- Damaz, Marta, and Jolanta Gorąca-Paczuska. 2018. "Opodatkowanie dochodów małżonków i rodziny, w tym wynikających z zarządzania (dysponowania) majątkiem rodzinnym – obecny i postulowany model." *Studia BAS* 2 (54):155–77.
- Gajl, Natalia. 1992. *Teorie podatkowe w świecie*. Warszawa: Wydawnictwo Sejmowe.
- Gliniecka, Jolanta, and Jerzy Harasimowicz. 1997. "Z zagadnień teorii podatku." *Glosa* 5:1.
- Gomułowicz, Andrzej. 1996. "Problemy teorii opodatkowania w Polsce." *Glosa* 4:3.
- Gomułowicz, Andrzej. 1998. "Zasada sprawiedliwości podatkowej a prawodawstwo podatkowe." In *Księga pamiątkowa ku czci Profesora Apoloniusza Kosteckiego*, ed. Andrzej Gomułowicz, i Jerzy Małecki, 134–42. Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika.
- Henman, Peter. 2007. *Updated Costs of Children Using Australian Budget Standards*. Queensland: McMillan.
- Klimek, Paweł. 2013. "Prawnofinansowe instrumenty polityki prorodzinnej – postulat zmian inspirowanych brytyjskim systemem Child Trust Fund." *Studia Prawnicze. Rozprawy i Materiały* 1 (12):133–50.
- Kulicki, Jacek. 2003. *Podatek dochodowy od osób fizycznych*. Warszawa: Dom Wydawniczy ABC.
- Kulicki, Jacek. 2006. "Polityka podatkowa w Polsce w latach 1920–2005 w zakresie opodatkowania dochodów rodziny." *BAS. Biuro Analiz Sejmowych*. Report No. 238:1–27.
- Kulicki, Jacek. 2011. "Systemy opodatkowania dochodów rodziny w Polsce w latach 1918–2011." *Studia BAS* 4:1–19.
- Litwińczuk, Hanna. 1989. *Opodatkowanie rodziny*. Warszawa: Wydawnictwo Uniwersytetu Warszawskiego.
- Łączkowski, Wojciech. 2005. "Daniny publiczne a zasada pomocniczości." In *W kręgu prawa podatkowego i finansów publicznych. Księga dedykowana Profesorowi Cezaremu Kosikowskiemu*, ed. Henryk Dzwonkowski, 233–43. Lublin: Wydawnictwo UMCS.
- Mastalski, Ryszard. 1995. *Wprowadzenie do prawa podatkowego*. Warszawa: Wydawnictwo C.H. Beck.
- Ofiarski, Zbigniew. 2006. *Prawo podatkowe*. Warszawa: PWN.
- Rękas Magdalena. 2014. "Wsparcie rodziny w podatku dochodowym od osób fizycznych (PIT) w Polsce w latach 1992–2013." *Nierówności Społeczne a Wzrost Gospodarczy* 37, no. 1:440–52.
- Surdej, Aleksander. 2015. *Koszty wychowania dzieci w Polsce*. Warszawa: Centrum Adama Smith'a.
- Surdej, Aleksander. 2016. *Koszty wychowania dzieci w Polsce*. Warszawa: Centrum Adama Smith'a.
- Surdej, Aleksander. 2018. *Koszty wychowania dzieci w Polsce*. Warszawa: Centrum Adama Smith'a.
- Surdej, Aleksander. 2019. *Koszty wychowania dzieci w Polsce*. Warszawa: Centrum Adama Smith'a.
- Szczepańska, Ilona. 2013. "Rozwiązania o charakterze prorodzinnym w polskiej konstrukcji podatku dochodowego od osób fizycznych nieprowadzących działalności gospodarczej." *Ius Novum* 2:143–74.
- Święch, Katarzyna. 2009. "Kumulacja dochodów rodziny jako element polityki podatkowej." *Toruński Rocznik Podatkowy* 1:163–75.
- Święch, Katarzyna. 2013. *Pozycja rodziny w Polskim prawie podatkowym*. Warszawa: Wolters Kluwer Polska.
- Wójtowicz, Wanda, and Paweł Smoleń. 1999. *Podatek dochodowy od osób fizycznych – prorodziny czy neutralny?* Warszawa: Dom Wydawniczy ABC.
- Wołowiec, Tomasz. 2004a. "An evaluation of the individual income tax system in Poland and some Chosen European Union countries, taking into account pro-family tax politics." *Productivita* 1:23.
- Wołowiec, Tomasz. 2004b. "Modele podatkowych preferencji prorodzinnych w państwach członkowskich Unii Europejskiej." *Studia Europejskie* 4:193–201.
- Wołowiec, Tomasz. 2004c. "Niedoceniona koncepcja prorodzinnych zmian w podatku dochodowym od osób fizycznych." *Polityka Społeczna* 8:9–12.

Zych, Tymoteusz, Karolina Dobrowolska, and Olaf Szczypiński. 2015. *Jakiej polityki rodzinnej potrzebuje Polska?* Raport Instytutu Ordo Iuris. Warszawa: Instytut Ordo Iuris.

ZASADY OPODATKOWANIA DOCHODÓW RODZINY W POLSCE

Streszczenie. Polityka prorodzinna to polityka mająca na celu dobro rodziny i społeczeństwa. Polityka prorodzinna polega na próbie tworzenia przez państwo (samorząd terytorialny itp.) rodzinom odpowiednich warunków ekonomicznych. Obejmuje stosowanie ulg podatkowych, płacowych dodatków i zasiłków dla osób utrzymujących rodziny i dzieci, stosowanie preferencji kredytowych dla młodych małżeństw, zapewnianie mniej zamożnym rodzinom mieszkań w budownictwie publicznym, zapewnienie bezpłatnej opieki zdrowotnej dla matek i dzieci, preferencje w uzyskaniu pracy oraz jej ochronę dla pracujących matek.

Słowa kluczowe: podatek dochodowy od osób fizycznych, pro-rodzinna polityka podatkowa, elementy techniki podatkowej

Informacje o Autorze: Dr hab. Tomasz Wołowiec, prof. WSEI – Instytut Administracji Publicznej, Zarządzania i Biznesu Wyższej Szkoły Ekonomii i Innowacji w Lublinie; e-mail: tomasz.wolowiec@wsei.lublin.pl; <https://orcid.org/0000-0002-7688-4231>