Volume XXI, Issue (1) (2025) 744-754

International May Conference on Strategic Management

DOI: 10.5937/IMCSM25744K *Original Research*

THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT IN POLISH TAX SYSTEM

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Abstract: The article discusses the issue of the principle of sustainable development and its impact on the Polish tax system. This topic is current due to the global and pan-European tendencies to intensify policies for sustainable development and environmental protection. The aim of the article is to examine what legal instruments the Polish legislator has introduced into the tax law system in two dimensions: ecological tax burdens and ecological tax preferences (reliefs and exemptions). The constitutional origin of the principle of sustainable development is also emphasized.

Keywords: sustainable development, ecological tax, environmental tax, pro-ecological taxation, environmentally related tax reliefs and exemptions.

1. INTRODUCTION

According to the statement of the Directorate-General of the European Commission, "sustainable development means meeting the needs of the present whilst ensuring future generations can meet their own needs. It has three pillars: economic, environmental and social. To achieve sustainable development, policies in these three areas have to work together and support each other" (Sustainable development in EU trade agreements).

During United Nation Summit on 25 September 2015, the United Nations General Assembly adopted the 17 Sustainable Development Goals of the 2030 Agenda for Sustainable Development (Transforming our world: the 2030 Agenda for Sustainable Development, 2015). Agenda 2030 Goal's entered into force on 1 January 2016. The Agenda Goals are as follows: No Poverty, Zero Hunger, Good Health and Well-Being, Quality of Education, Gender Equality, Clean Water and Sanitation, Affordable and Clean Energy, Decent Work and Economic Growth, Industry, Innovation, and Infrastructure, Reduced Inequalities, Sustainable Cities and Communities, Responsible Consumption and Production, Climate Action, Life Below Water, Life on Land, Peace, Justice and Strong Institutions, Partnerships (The Sustainable Development Goals).

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According to the European Commission, the European Union made contribution to the principle of sustainable development in recent years by implementing the Agenda's goals in its practice (policy) (Sustainable Development Goals).

The implementation of the abovementioned goals may consist in the implementation of appropriate tax solutions by the EU Member States. The concept of tax solutions should be understood very broadly, i.e. as the creation of new taxes or a change to the existing ones, or more precisely their structural elements. The introduction of new fiscal burdens on taxpayers who do not implement the assumptions of sustainable development through their activities while reducing the tax burden on taxpayers who implement tasks related to the principle of sustainable development – is related to rewarding the stimulating function (the stimulating function prevails over the fiscal function) (Supera-Markowska, 2021, 24).

2. THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT CONSTITUTIONAL GROUNDS

The principle of sustainable development has its source in constitutional law. As stated in the art. 5 of the Constitution of the Republic of Poland As adopted by the National Assembly on 2nd April 1997 (furthermore: "Constitution"), "The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development".

The concept of "sustainable development" itself has not been defined in the Constitution. It was included directly in the Act of 27 April 2001 – Environmental Law, and more precisely in art. 3 (50) of this Act. Sustainable development is such socio-economic development in which the process of integrating political, economic and social activities takes place, while maintaining natural balance and the durability of basic natural processes, in order to guarantee the possibility of meeting the basic needs of individual communities or citizens of both the current generation and future generations.

However, following the principle of autonomous interpretation of constitutional concepts, it should be stated that sustainable development included in art. 5 of the Constitution can be understood as a constitutional principle or a principle of state policy (Olejarczyk, 2016, 128–130; Florczak-Wątor, 2016, IV. F.).

The location of art. 5 in the initial regulations of the Constitution, and more precisely in the chapter entitled "The Republic", next to such principles as the principle of a democratic state of law, the principle of the supremacy of the Nation – is intended to emphasize its significant significance. Assigning the rank of a constitutional principle to the discussed concept implies an obligation on the part of the authorities to be guided by it in the implementation of the basic functions of the state specified in art. 5 of the Constitution of the Republic of Poland (the so-called final goals of the state), i.e. independence and inviolability of its territory, ensuring freedom and rights and security of man and citizen and the security of citizens, guarding the national heritage and ensuring environmental protection (Olejarczyk, 2016, 128–130; Florczak-Wątor, 2016, IV. F.).

Art. 5 of the Constitution of the Republic of Poland can also be interpreted in isolation from the constitutional systematics. The lexical interpretation of this provision leads to the conclusion that the principle of sustainable development as a principle of state policy is a norm that requires all bodies (i.e. legislative, executive or judicial) to strive to achieve a state of sustainable development. This approach results in the fact that public authorities should be guided by the guideline in the form of "continuous development", in the process of which the constitutional social, economic and environmental values should be proportionally balanced. This also means that the principle of sustainable development can function autonomously in relation to the principle of environmental protection (Olejarczyk, 2016, 128–130; Florczak-Wątor, 2016, IV. F.).

It should be emphasized that sometimes the concept of sustainable development is formulated not so much as a principle, but as an interpretative directive. In the case law of polish administrative courts, it is assumed that when doubts arise as to the scope of obligations, the type of obligations and the manner of their implementation, the principle of sustainable development should be used. It therefore plays a role similar to the rules of social intercourse (Florczak-Wątor, 2016, IV. F., On the principle of sustainable development see also more broadly Hermanowski, 2023).

3. ENVIRONMENTAL (ECOLOGICAL) TAX REGULATIONS

The Polish legislator, implementing the principle of sustainable development as a policy principle, has introduced many legal instruments into tax law that serve to implement this principle. This action is also the manifestation of the stimulating function of taxes. Legislative solutions can be divided into two main types of legal instruments: environmentally related taxes (so-called ecological taxes), environmentally related tax reliefs and exemptions (so-called ecological tax preferences). More about pro-ecological taxation in Poland see here: Goettel, 2015, Bryndziak, 2014; Kielan and Kowalski, 2021; Kożuch, 2012; Ziółko, 2016; Drywa, 2024; Małecki, 2012.

3.1. Environmentally related taxes

According to the art. 2 (2) of the Regulation (EU) No 691/2011 of the European Parliament and of the Council of 6 July 2011 on European environmental economic accounts Text with EEA relevance, environmentally related tax means a tax whose tax base is a physical unit (or a proxy of a physical unit) of something that has a proven, specific negative impact on the environment, and which is identified in ESA 95 as a tax. Moreover, based on Eurostat definition, “An environmental tax is a tax on something that has a proven, specific negative impact on the environment. The tax base can be a physical unit, for example litres of gasoline, or a proxy of a physical unit, for example taxes on nuclear power stations. The tax is always a monetary amount, such as euros” (Environmental taxes and subsidies). See more: Supera-Markowska, 2021, 23–41. About environmental tax statistic see more here: Environmental tax statistics - detailed analysis.

3.1.1. Excise tax

Excise tax is a tax classified as indirect tax, levied only on specific product categories. The purpose of creating excise tax was to limit the consumption of certain goods that are harmful to health or the environment. Another reason is the significant accumulation of profit – low production costs and very high demand (Podatek akcyzowy (akcyza), 2022).

The Act of 6 December 2008 Excise Duty determines the imposition of excise duty on excise goods (energy products, electricity, alcoholic beverages, tobacco products, dried tobacco, electronic cigarette liquids, and novel products) and cars the organisation of trade in excise goods, and labelling with duty stamps (art. 1 sec. 1 in conjunction with art. 2 (1) of Excise Duty Act).

In relation to goods subject to excise tax, the legislator indicated specific taxable activities. For example, in accordance with art. 8 of the Excise Duty Act, the following shall be the object of the imposition of the excise duty: production of excise goods; entry of excise goods in a tax warehouse; import of excise goods with some exclusions, intra-Community acquisition of excise goods, to the exclusion of the intra-Community acquisition effected to a tax warehouse etc.

The tax base in excise tax is linked to tax rates. Both elements are differentiated depending on the subject of taxation. For instance, in the case of energy products, the tax base is their quantity, expressed, depending on the type of product, in litres or kilograms or in energy value. What is more, the tax base for: tobacco products is the number of tobacco products or the number of kilograms, electricity is its quantity expressed in megawatt-hours, gas products is their calorific value (Mastalski, 2021, 400).

As Ł. Dubiński rightly points out, these features of excise tax allow us to assume that, one can speak of a transparent structure of this kind of public levy. The point is that it is clearly specified "what and when" is subject to taxation. Excise tax should be both an effective instrument for conducting state policy (creating budget revenues) and achieving specific socio-economic goals. The legislator may indicate specific goods that will be subject to excise duty, and thus by imposing excise duty on them, he will aim to achieve a fiscal goal while limiting the consumption of a given good as a result of imposing excise duty on it. For environmental effects, such a mechanism is desirable (Dubiński, 2014, 82). Therefore, the key from the perspective of the principle of sustainable development is the subject of taxation and the type of excise good.

3.1.2. Environmental levy

Based on the art. 273 of the Environmental Law, the environmental levy is paid for the releasing of gases or dusts to the air; emission allowances and the storage of waste.

The rate of environmental levies and administrative civil penalties depends on: the quantity and type of gases and dusts released to the air; the amount of the environmental levy in the case of emission allowances issued in accordance with the rules laid down in the ETS Act shall be the product of the number of emission allowances issued in a given year for a given operator holding account or a given aircraft operator holding account in the European Union register referred to in Article 8.1 of that Act and the applicable rate of the levies for the introduction of gases or dust into the air for carbon dioxide emissions in the year in which the emission allowances were issued; the quantity and type of waste stored, provided the rate of the elevated levy depends also on the time of storing waste (in the case of the storage waste) (art. 274 of the Environmental Law).

Articles 275 and 276 of the Environmental Law define who is the entity using the environment, obliged to pay environmental levys. The list of these entities is very wide and includes both entities conducting business activities and those that do not not conduct such activities, but use the environment to the extent that involves the need to levys. On the other hand, art. 284 sec. 1 of this Act states that the obligation to pay fees arises ex lege, without the need for an administrative body to issue a decision specifying the amount of the obligation (Gruszecki, 2022a, 1, 2).

The fee rates specified in art. 290 sec. 1 of the Environmental Law are maximum rates and therefore they are not directly binding – the obligations of entities using the environment will result from the regulations which the Council of Ministers was obliged to issue (Gruszecki, 2022b, 2). Nevertheless, the upper unit rates of the levies amount to, subject to Article 291 sec.

1: PLN 512,23 per 1 kg of gases or dusts released to the air; PLN 375,25 for depositing 1 Mg of waste in a landfill (Art. 290 of the Environmental Law).

3.1.3. Emission fee

The introduction of motor fuels onto the domestic market (activities subject to excise duty whose objects are those motor fuels) shall be subject to a emission fee. Motor fuels subject to the emission fee shall be: motor petrols of CN codes CN 2710 11 45, CN 2710 11 49 and gas oils of CN code CN 2710 19 41 (art. 321a of Environmental Law).

The emission fee shall constitute the revenue of the National Fund for Environmental Protection and Water Management and the Public Bus Transport Development Fund, with 95% of the emission fee being the revenue of the first Fund and 5% of that fee being the revenue of the second one (art. 321b of Environmental Law).

The obligation to pay abovementioned fee applies to the following entities: a manufacturer of motor fuels or an importer of motor fuels, or an entity making an intra-Community acquisition within the meaning of the provisions on the excise duty on motor fuels, or another entity subject to a tax obligation within the scope of excise duty on motor fuels on the basis of excise duty regulations (art. 321c of Environmental Law).

The moment of the obligation to pay the emission fee is the day on which the tax liability for excise duty on motor fuels arises (Gruszecki, 2022c, 2). The emission fee rate for: motor petrols-shall be PLN 80 for 1000 litres; gas oils-shall be PLN 80 for 1000 litres (art. 321f of Environmental Law).

3.1.4. Tax on transport vehicles

The tax on transport vehicles is a type of local government tax characterized by the fact that it constitutes income for the municipal budget and may be shaped to a certain extent by the municipal council or the head of a gmina (mayor of a town, president of a city) (Dowgier et al., 2021a, 2).

As indicated in the art. 8 of the Act of 12 January 1991 Local Taxes and Duties Act, tax on transport vehicles is imposed on: heavy goods vehicles with a gross vehicle weight of more than 3.5 tonnes and less than 12 tonnes; heavy goods vehicles with a gross vehicle weight equal or more than 12 tonnes; road tractors and ballast tractors to be used with a trailer or semi-trailer with a gross combination weight from 3.5 tonnes and less than 12 tonnes; road tractors and ballast tractors to be used with a trailer or semi-trailer with a gross combination weight equal or more than 12 tonnes; trailers and semi-trailers with gross combination weight together with a motor vehicle from 7 tonnes and no more than 12 tonnes, excluding those used exclusively to conduct the agricultural activity of a taxpayer of agricultural tax; trailers and semi-trailers with a gross combination weight together with a motor vehicle equal or more than 12 tonnes, excluding those used exclusively to conduct the agricultural activity of a taxpayer of agricultural tax; buses.

It is assumed that the tax liability arises by operation of law, i.e. on the day of the occurrence of an event specified in the act, with which the tax act connects the creation of this liability (Dowgier et al., 2021b, 26). The tax liability in the tax on transport vehicles has been linked to the possession of a specific legal title to the vehicle. Tax obligation is imposed on: natural and legal persons who own (or co-own) transport vehicles; unincorporated organisational units on whose account transport vehicles are registered; persons who are holders of transport vehicles registered in the Republic of Poland as vehicles entrusted by a foreign natural or legal person to a Polish entity (Dowgier et al., 2021b, 1).

The tax obligation starts as of the first day of a month following the month when a transport vehicle was registered in the Republic of Poland, and if a registered vehicle is purchased - as of the first day of a month following the month of purchase. Tax obligation also arises also as of the first day of a month following the month when a transport vehicle was re-admitted after expiry of the period stipulated in a decision of the registration authority on temporary withdrawal of that vehicle from use (art. 9 sec. 4, 4a of the Local Taxes Act).

The tax on transport vehicles is annual. Taxpayers are obliged to submit a declaration for this tax by 15 February of the given tax year (Dowgier et al., 2021b, 26).

Article 10 of the Local Taxes Act specifies the rules for setting rates of tax on transport vehicles – depending on the type of vehicle. The gmina council adopts a resolution on the tax rates for a given tax year (Dowgier et al., 2021c, 1). For example, the annual tax rate per one vehicle cannot exceed, in the case of heavy goods vehicles (with a gross vehicle weight of more than 3.5 tonnes and less than 12 tonnes), depending on gross vehicle weight: more than 3.5 tonnes up to and including 5.5 tonnes - PLN 1020,16; more than 5.5 tonnes up to and including 9 tonnes - PLN 1.701,84; more than 9 tonnes - PLN 2.042,19. In the case of a bus, the annual tax rate per one vehicle cannot exceed, depending on the number of seats apart from the driver's seat: less than 22 seats - PLN 2,411.44; equal to or more than 22 seats - PLN 3,048.71 (art. 10 sec. 1 (1, 7) of the Local Taxes Act).

3.2. Environmentally related tax reliefs and exemptions

In the legal literature, exemptions are defined as a situation in which a specific entity or its activity is subject to the provisions of a tax but have been exempted from it. Moreover, reliefs are mechanisms that reduce the amount of tax. The reduction may result from a reduction in the tax base or in the tax rate or a reduction in the tax amount. Reliefs and exemptions are the basic instruments for implementing specific policies within the stimulating function of taxes (e.g. policy supporting the principle of sustainable development) (Supera-Markowska, 2021, 23–41 quoted from Nykiel, 2002, 20, 23).

3.2.1. Environmentally related tax exemptions

The Polish legislator has established many ecological tax exemptions. The most important of them are:

1. Article. 21 sec. 1 (129a) of the Act of 26 July 1991 on Personal Income Tax according to which, tax exemptions shall be applied to: benefits, in particular donations and amounts of released loans, received from the funds of the National Fund for Environmental Protection and Water Management or voivodeship environmental protection and water management funds for drafting documentation and implementing a project, including those received from means made available to banks in line with selected Environmental Protection Law provisions;
2. Article 17 sec. 1 (4) of the Act of 15 February 1992 r. on Corporate Income Tax according to which, the following types of income are tax free: subject to paragraph 1c, income of taxpayers whose statutory objectives are activities in the area of science, technological science, education (including university education), culture, physical culture, sport, environmental protection, supporting social initiatives for the construction of roads and telecommunications networks in rural areas and water supply to rural area, charity, health protection and social aid, professional and social rehabilitation of the handicapped and religious worship - the part of income allocated to those objectives;

3. Article 30 sec. 1 of Excise Tax Act, according to which electricity generated from renewable energy sources shall be exempt from excise duty on the basis of a document confirming the redemption of a certificate of origin, within the meaning of the provisions of energy law or the provisions of the Act of 20 February 2015 on Renewable Energy Sources (Journal of Laws of 2021, items 610, 1093, 1873 and 2376);
4. Article 7 sec. 1 (8) of the Local Taxes Act, according to which, the following properties are exempt from immovable property tax: located in national parks or nature reserves and used directly and exclusively to achieve goals in the scope of environmental protection: land located in the areas under strict, active or landscape protection (a); buildings and structures permanently fixed to the ground (b);
5. Article 2 (2) of the Act of 9 September 2000 Tax on Civil Law Transactions, according to which, the tax is not charged on: an agreement for the sale of real property or a perpetual usufruct right concluded in association with the execution of claims arising from the limited use of real property pursuant to environmental protection provisions;
6. Article 12 sec. 1 (8) of the Act of 15 November 1984 on Agricultural Tax according to which, the following are exempt from agricultural tax: ecological areas;
7. Article 7 sec. 1 (1, 3) of the Act of 30 October 2002 on Forest Tax according to which, the following are exempt from forest tax: forests with trees up to 40 years old and ecological areas.

3.2.2. Environmentally related tax reliefs

The Polish legislator has also established many ecological tax reliefs. The most important of them are: thermodernisation and investment reliefs and 0 percent tax rate.

Thanks to the thermalmodernization relief, the taxable person who is an owner or a co-owner of a single-family residential building has the right to deduct from the taxable base (established on the basis of the relevant regulations) expenses borne in the tax year for construction materials, equipment and services related to the implementation of a thermomodernisation project in that building, specified in regulations issued pursuant to paragraph 10, which shall be completed in the period of 3 subsequent years counting from the end of the tax year in which the first expense was borne (art. 26h sec. 1 of the PIT Act).

The amount deducted cannot exceed PLN 53,000 in relation to all thermomodernisation projects being implemented in individual buildings of which the taxable person is an owner or co-owner. The amount of expenses is determined on the basis of invoices issued by a VAT taxable person who is not exempted from that tax (art. 26h sec. 2, 3 of the PIT Act).

Moreover, taxpayers of agricultural tax are entitled to the investment relief. This relief allows taxpayers to deduct from the agricultural tax due on land located in the commune in which the investment was made – in the amount of 25% of the investment outlays documented by invoices. Investment relief is granted after the completion of the investment. (art. 13 sec. 2 of the Agricultural Tax Act).

Taxpayers of agricultural tax are entitled to investment relief for expenses incurred on: construction or modernization of livestock buildings used for breeding, raising and maintaining farm animals and facilities for environmental protection (1); purchase and installation of: sprinklers, drainage devices and devices for supplying the farm with water, devices for using natural energy sources (wind, biogas, sun, water fall) for production purposes – if these expenses were not financed in whole or in part with the participation of public funds (art. 13 sec. 1 of the Agricultural Tax Act).

What is more, the VAT tax rate of 0 percent applies to services of sea rescue, supervision over sea and inland navigation safety, and services connected with marine environment protection and the upkeep of port basins and deepwater channels (art. 83 sec. 1 (11) of the Act of 11 March 2004 on Goods and Services Tax).

4. SUMMARY

Environmentally related taxes and preferences can greatly support the process of implementing the principle of sustainable development in Poland. Economics emphasizes their main task, which is "to send signals to market participants regarding the real social costs of production and consumption of goods and services. In this way, the market economy can, given the resources of our planet, best meet our needs and those of future generations. The key to success is a change in awareness and social acceptance of the use of fiscal tools, which can greatly support the implementation of ambitious environmental protection goals" (Neneman, 2022, 88).

The study of legal institutions constituting the concept of the principle of sustainable development in Polish tax law has led to the following conclusions.

The principle of sustainable development is a principle that occurs both at the international and pan-European level. What is more, it has a constitutional origin. As a policy principle, it has led (and continues to lead, as a result of legislative changes) to the creation of tax regulations for environmental protection. By resigning, in principle, to a certain extent from budget revenues, the legislator stimulates pro-ecological behaviours in society. This is done by means of taxes that are pro-environmental (burdening taxpayers' negative behaviours in the sense of the titular principle) and tax preferences (rewarding taxpayers' positive behaviours in the sense of the titular principle).

As for specific legislative instruments themselves, their catalogue is undoubtedly diverse. The question remains whether it is rich and how Poland compares in this case to other European Union countries. Comparative studies conducted in the future will be helpful in this respect (Święch-Kujawska, 2023, 29).

ACKNOWLEDGMENT

This article is an extended version of the paper presented at the international practical scientific conference "Tax Sustainability and Certainty: A Global and Local Approach", held on October 3, 2024, organized by the Tax Disputes Commission and the Vilnius University Faculty of Law.

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