

Polish Tax Law

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1. Tax and tax system

BASIC DEFINITIONS:

Tax - a gratuitous, compulsory, non-repayable pecuniary performance made under public law in favour of the State Treasury, a *voivodeship*, a *poviat* or a *gmina*, resulting from statutory tax law.

Subject of taxation - each party of a legally binding fiscal relationship; on one hand there is a subject under obligation to pay a tax - the taxpayer; on the other hand there is a subject entitled to receive tax contribution - state or territorial self-local government units- represented by tax authority.

Object of taxation - the factual or legal status which is connected with tax liability arising from a Tax Act.

Tax base - the object of the taxation expressed in quantity or a value

Tax rates - an element of the tax structure that expresses a quantitative relation between tax base and tax amount, on the grounds of which a tax amount is assessed,

Tax reliefs - an element of the tax structure that reduces the amount of tax to be paid by decreasing: the **tax base**, e.g. deducting social insurance premium from income, **tax rate**, e.g. the reduction of a rye purchase price, and as a consequence also of the tax rate in agricultural tax, **tax amount**, e.g. deducting a specified amount provided for the children supported by the taxpayer from the tax.

Tax exemptions - the exclusion of a given tax belonging to a certain category of subjects (**subjective exemptions**) from the subjective scope, e.g. the State Treasury in income tax; or the exclusion a certain category of objects (**objective exemption**), e.g. social welfare benefits.

Time limits for payment - the time limit within which the tax should be paid.

Procedure and terms of payment - statutorily specified rules a taxpayer is obliged by while paying a tax, which concern a time limit on tax payment, a manner and form of payment and a place of payment.

1.1. The definition of tax

The normative definition of the **tax** is enclosed in the Tax Ordinance Act¹. According to this definition, every pecuniary contribution, regardless of its name, that jointly meets requirements laid down in the OP is a tax. It means that e.g. the customs duty should also be considered as a tax.

1.2. Constant features of tax

There are some constant features that each levy must meet to be called a tax². Firstly, taxes should be **specified by tax acts**. By virtue of the Constitution only an act can introduce a tax.

Secondly, the general rule envisages that taxes should always be specified in a **certain amount of money**. However, there is a possibility to settle up a tax in an auxiliary form (e.g. with securities or stamp duties), which has a financial dimension as well. The above rule also applies when ownership rights or property rights have been transferred for the benefit of the State Treasury or territorial self-government units to cover tax arrears. By virtue of this rule one can meet a tax obligation imposed on a taxpayer.

Thirdly, to secure the fulfillment of tax obligations, tax authorities can use **enforcement proceedings** provided by the law. It means that a tax-creditor has at his/her disposal legal means which enable them to take over the ownership of property or property right in enforcement proceedings, even without a taxpayer's consent.

1 See Art. 6 of 29th August 1997 Tax Ordinance Act (Journal of Laws - Dz.U. No. 137, item 926 with amendments) - hereinafter referred to as Tax Ordinance or OP.

2 See L. Etel, (editor) Prawo podatkowe, Warsaw 2008, p 21 and the following.

Fourthly, a tax that has not been overpaid **cannot be returnable**. This distinguishes taxes from credits or loans, which must be returned within a certain period of time. However, some exceptions to that rule can be pointed out. Tax returns are envisaged more often as a kind of tax preferences. They can stimulate certain behaviours (value added tax refunds for natural persons, connected with some housing expenses), increase incomes (excise tax refund on fuel used for agricultural activity). Tax refunds can occur also as a part of tax construction (in the case when input VAT exceeds output VAT).

Fifthly, the paid tax cannot constitute a ground for **any legal claims against the state or territorial self-government units lodged by taxpayers**. A taxpayer cannot demand special preferences due to the fact that s/he pays taxes. Tax due is not implicitly tied with certain expenditures. It leads to the conclusion that there are no specified duties of tax beneficiaries connected with tax payment.

Sixthly, the privilege to receive taxes belong **only to the state and territorial self-government units**. By virtue of the Polish tax system there is only one level of territorial self-government unit having its own tax incomes. Apart from *poviats* and *voivodeships*, only local councils were provided with local taxes. Other local authorities obtained tax share in income taxes.

1.3. Structural components of tax

Every tax can be characterized on the basis of its structural elements such as: **subject of taxation, object of taxation, tax base, tax rates, tax reliefs and exemptions, time limits for payment and payment conditions**³. They are called variable features of the tax.

The **subject of taxation** with a duty to pay a tax is called a passive party of a legal tax relationship. The tax authority, authorised to represent a tax creditor, is called an active party of a legal tax relationship.

3 See M. Radvan, Czech Tax Law, Brno 2005, page 6 and the following.

For example, obtaining income or revenue, or showing turnover constitute an actual state of affairs which is **object of taxation**. Acquiring ownership of a property, acceptance of inheritance, conclusion of a contract of the sale are examples of a legal status which is object of the tax.

The income which is expressed as a particular amount of money (an object of taxation formulated taking into account its value) is an example of tax base. On the other hand, the buildings which are liable for real estate tax are taxed on the basis of usable area of that property, expressed in square meters (an object of taxation formulated quantitatively).

Tax rates are of various character, nevertheless, we can distinguish three different **tax rates** according to their form: expressed by the **amount** of due tax (e.g. in property tax - PLN 0,59 for 1 m² of a usable area, **percentage** (e.g. in legal persons' income tax - 19% on income), or **mixed percentage** (e.g. in natural persons' income tax - PLN 7866, 25 + 30% of surplus over PLN 44.490).

As far as the relation between the tax rate and the tax base is concerned, we can talk about **proportional (flat) rates** - the rate remains unchanged despite the change of tax base, e.g. a 19% rate on natural person's income tax, **progressive** - as a rule, these rates go up together with the increase of the tax base, e.g. in natural person's income tax, for the income up to PLN 44.490, the rate amounts to 19% minus the amount decreasing the tax - PLN 586,85, and in the case of the income between PLN 44.490 and PLN 85.528, the tax amounts to PLN 7.866,25 + 30% of surplus over PLN 44.490), etc., **regressive** - seldom occurs, as the result of the essential structure of these rates they decrease proportionally to the increase of the tax base (the opposite of progressive rates), **degressive** - they decrease when the tax base goes down and they are uncommon, too.

Tax reliefs and tax exemptions are other elements of the tax structure. Unlike other elements, these are optional. As opposed to tax exemption, **tax relief** does not exclude the obligation to pay tax in whole but reduces its amount.

Furthermore, tax acts list **exclusions** which lead to the elimination of a specific category of factual or legal occurrences or a specific category of subjects from the subjective or objective scope of a given statute. In the case of exclusion, tax obligation does not arise at all because the provisions of a given statute do not apply in an excluded scope.

1.4. Tax classification

Taxes can be classified according to the following criteria: **the object of taxation** (income, property, turnover), **the method of assessing the tax base** (unit, value), **the relation to the tax source** (direct, indirect), **the type of activity conducted by a taxpayer** (connected with running an economic activity, others), **income allocation among the budgets** (that constitute state and local authorities' income).

Taking the last criterion into consideration, the following taxes should be classified as the state budget income: **goods and services tax, excise tax, gaming tax, legal persons' income tax, natural persons' income tax, including tax paid as a lump-sum tax, i.e. a lump-sum on registered revenues, a lump-sum on the income tax paid by clerics, tonnage tax.**

The following taxes should be classified as communal (*gmina*) budget income: **real estate tax, agricultural tax, forestry tax, tax on means of transport, donation and inheritance tax, tax on civil law acts, natural persons' income tax paid in a form of a tax card.**

1.5. Tax system

A tax system is the entirety of taxes existing in a given place and time. The set of taxes shaped in specific social and economic conditions is called a **historical system**. This system, due to its imperfections, is not a rational system. **A rational tax system** is a model a legislator should aim at while constructing a tax system in given conditions. A rational

tax system assumes that taxes are put in order, harmonized and serve their functions; this, however, is difficult to achieve in practice.

The Constitution of the Republic of Poland of 2nd April 1997 (Journal of Laws - Dz.U. No 43, item 296⁴)

Art. 84. *Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute.*

Art. 217. *The imposition of taxes, as well as other public imposts, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.*

29th August 1997 Tax Ordinance Act (Consolidated text: Journal of Laws - Dz.U. 2005, No. 8, item 60, with amendments)

Art. 3. *Whenever used in this Act:*

- 1) tax Acts - shall mean the Acts concerning taxes, charges and non-tax dues to the State budget, specifying the subject and object of taxation, the arising of tax liability, tax base, tax rates and regulating the rights and duties of the tax authorities, taxpayers, tax remitters and tax collectors, as well as their legal successors and third parties;*
- 2) provisions of tax law - shall mean the provisions of tax Acts, provisions of double taxation avoidance agreements ratified by the Republic of Poland and other tax-related international agreements ratified by the Republic of Poland, as well as provisions of implementing instruments issued pursuant to tax Acts;*

4 The Constitution of the Republic of Poland, <http://www.trybunal.gov.pl/eng/index.htm>

2. Parties to a legally binding fiscal relationship

BASIC DEFINITIONS:

Taxpayer - a natural person, a legal person or an organizational unit having no legal personality that is subject to tax liability by virtue of tax acts.

Tax remitter - a natural person, a legal person or an organizational unit having no legal personality, obliged, on the basis of the provisions of tax law, to calculate and collect tax from a taxpayer and to pay it to the tax authority within appropriate time limits;

Tax collector - a natural person, a legal person or an organizational unit having no legal personality obliged to collect tax from a taxpayer and to pay it in due time to the tax authority.

Tax authority - a subject representing a public-legal entity competent to carry out actions connected with assessing and collecting taxes.

2.1. General comments

A legally binding fiscal relationship is characterized by the lack of subjects' equality. On one hand, we deal with a tax authority which has the powers of mandatory enforcement of taxes, whereas on the other hand, we deal with a taxpayer who is obliged to pay them. The first one is called an active and the other one a passive party to a legally binding fiscal relationship. The legally binding fiscal relationship is similar to an administrative relationship, which is also different from a civil law relationship. Only in the last case both parties are equal subjects that may shape their mutual rights and duties under the same rules.

2.2. Tax authorities

Tax authorities are active party to a legally binding fiscal relationship. Tax authorities in Poland are divided into two types. The first one comprises the following tax authorities: **heads of revenue offices, heads of customs offices, directors of fiscal chambers, directors of customs chambers, minister of finance**⁵. Whereas the second group includes local government tax authorities. They include the following authorities: in local councils - **the village - mayor, the mayor, the president of a city**⁶, in poviats - **the *starosta***, in regional government voivodeships - **the marshal of a voivodeship**. A local government authority of the second instance is a local government board of appeal. State tax authorities enforce taxes that constitute the state budget income and three ways of performance for communal budgets (tax card, tax on civil law acts, inheritance and donation tax). Local government authorities have powers to enforce taxes supplying self-government units' budgets whereas the *starosta* and the marshal of a *voivodeship* operate in the structure of local government tax authorities despite the fact that neither *poviat* nor *voivodeship* can collect their own taxes nowadays. In the current legal status only a local council has its own income from taxation.

2.3. Competence of tax authorities

Tax authorities are obliged to preserve their **local, material and instance competence** ex officio. It should be noted that any actions taken by tax authorities that may infringe the above competence are undertaken at a distinct disadvantage; such actions may invalidate any decisions made as the result of such infringement.

5 See Art. 13 of the Act of 29th August 1997 Tax Ordinance (Consolidated text: Journal of Laws - Dz.U. 2005 year, No. 8, item 60, with amendments) - hereinafter referred to as Tax Ordinance or OP.

6 *Wojt, burmistrz*, city president are head offices of the same level of communal authorities. Their different names depend generally on the rural, urban-rural or urban character of a commune.

Material competence is a competence to settle cases of a given type, most often resulting from acts regulating the structure of individual taxes.

Local competence is a competence to settle cases in a specified area. According to the general rule, the place of residence or the address of the taxpayer's registered office is a criterion deciding on the local competence. In other words, a tax authority, located in the area of the taxpayer's registered office or his/her place of residence, shall be the competent authority to settle his/her case.

Instance competence is a competence to settle cases in the first instance or as an appeal authority.

2.4. A taxpayer

It happens in practice that a taxpayer is a subject that is not obliged to pay tax - in the case of legal persons' income tax where the Act attributed the feature of a taxpayer to the so called tax capital group. It is an entity composed of at least two commercial law incorporate companies that are connected by capital relations.

A taxpayer is, first and foremost, obliged to pay the tax s/he is encumbered with. There are also instrumental tasks that fulfill this basic duty. They include, *inter alia*, the submission of different tax documents (tax returns, information, statements), advance tax payment, and keeping tax books.

2.5. A tax remitter and a tax collector

A tax remitter is a subject who, in fact, plays a role of an agent between a taxpayer and tax authority, and whose task is to calculate, collect and transfer collected tax within appropriate time limit. Tax remitters receive lump-sum remuneration which amounts up to 0,3% of the collected taxes for the fulfillment of their duties.

The institution of a tax remitter is used by the legislator mostly for taxes based on self-calculation of the dues without the necessity to issue

a decision by the tax authority. It occurs, *inter alia*, in natural persons' income tax, where an employer is a tax remitter of their employees' revenue obtained as a result of their employment relation. A notary who draws up notary deeds referring to civil law actions in a form of a notary deed is a tax remitter of the tax on civil law actions.

The institution of a tax collector is mostly used for local taxes, i.e. real estate tax, agricultural tax, forestry tax and local charges (market fees, a local fee for dog owners). In this case the level of remuneration depends on a decision of the competent local (*gmina*) council which specifies this in an appropriate resolution.

Tax remitters and tax collectors are also obliged to fulfill following duties:

- to appoint natural persons whose responsibility is to calculate and collect taxes and pay the collected amounts to the tax authority in due time, and also to inform the locally competent tax authority as to the first names, surnames and addresses of such persons - it refers to tax remitters and tax collectors, which are legal persons and organizational units having no legal personality
- to keep the documents connected with the collection or encashment of taxes until the limitation period of the tax remitter or tax collector's obligation has lapsed.

29th August 1997 Tax Ordinance Act (Consolidated text: Journal of Laws - Dz.U. 2005, No. 8, item 60, with amendments)

Article 15. § 1. Tax authorities shall preserve their local and material competence ex officio.

Article 16. The material competence of tax authorities shall be determined pursuant to the provisions specifying their scope of activities.

Article 17. § 1. Unless tax Acts provide otherwise, the local competence of tax authorities shall be determined according to the place of residence or the address of the seat of the taxpayer, tax remitter or tax collector.

Article 18. § 1. *If, during a tax year or another settlement period fixed in separate provisions, there occurs an event which results in a change of the competence of a tax authority, the tax authority which was competent on the first day of the tax year or settlement period shall continue to be the locally competent tax authority for said settlement period.*

Article 18b. *Tax authorities competent on the day of institution of tax proceedings or tax control shall remain competent in a matter to which the said proceedings or control relate even if, in the course of the proceedings or control, an event occurs which results in changing the competence.*

Article 28. § 1. *Tax remitters and tax collectors shall have the right to lump-sum remuneration for paying in time the collected taxes in favour of the State budget.*

3. From tax liability to tax arrears

BASIC DEFINITIONS:

Tax liability - unspecified duty, resulting from tax acts, to make a compulsory pecuniary performance in relation to the occurrence of an event specified by such acts.

Tax obligation - an obligation of the taxpayer, resulting from tax liability, to pay a tax in favour of the State Treasury, a *voivodeship*, *poviat* or *gmina* in the amount, time limits and place determined by the provisions of tax law.

Tax arrear - tax, which was not paid within the time limits for such a payment.

Default interest - due to pay accrue on tax arrears.

3.1. Tax liability

The provisions of the tax acts indicate specified factual and legal status, the occurrence of which results in tax liability. A factual state like, for instance, the obtainment of income, results in the commencement of tax liability through natural persons' income tax and legal persons' income tax. The legal status, mentioned above, could be for example acquiring the right of ownership to a truck, which has implications for tax liability through the tax on means of transport.

The moment a given subject becomes burdened with tax liability raises specified requirements. S/he can be obliged, *inter alia*, to submit statements, information, returns, to make advance tax payments, to keep tax books, etc. It should be emphasized that the obligation to pay tax is not directly connected with tax liability since tax payment is connected with the transforming tax liability into tax obligation.

3.2. Tax obligation

Tax obligation can arise only if a given subject has been earlier burdened with tax liability. The consequence of the transformation of tax liability into tax obligation is the obligation to pay tax of a specified amount within specified time limits and in a given place. However, this transformation does not always necessarily occur. Tax obligation will not arise when, for example, a taxpayer takes advantage of a tax exemption s/he is entitled to or if tax liability becomes barred by limitation (tax authority fails to serve a tax payer with a decision assessing the level of tax obligation within strictly specified time limits).

The relations between these notions may be illustrated in the following way:

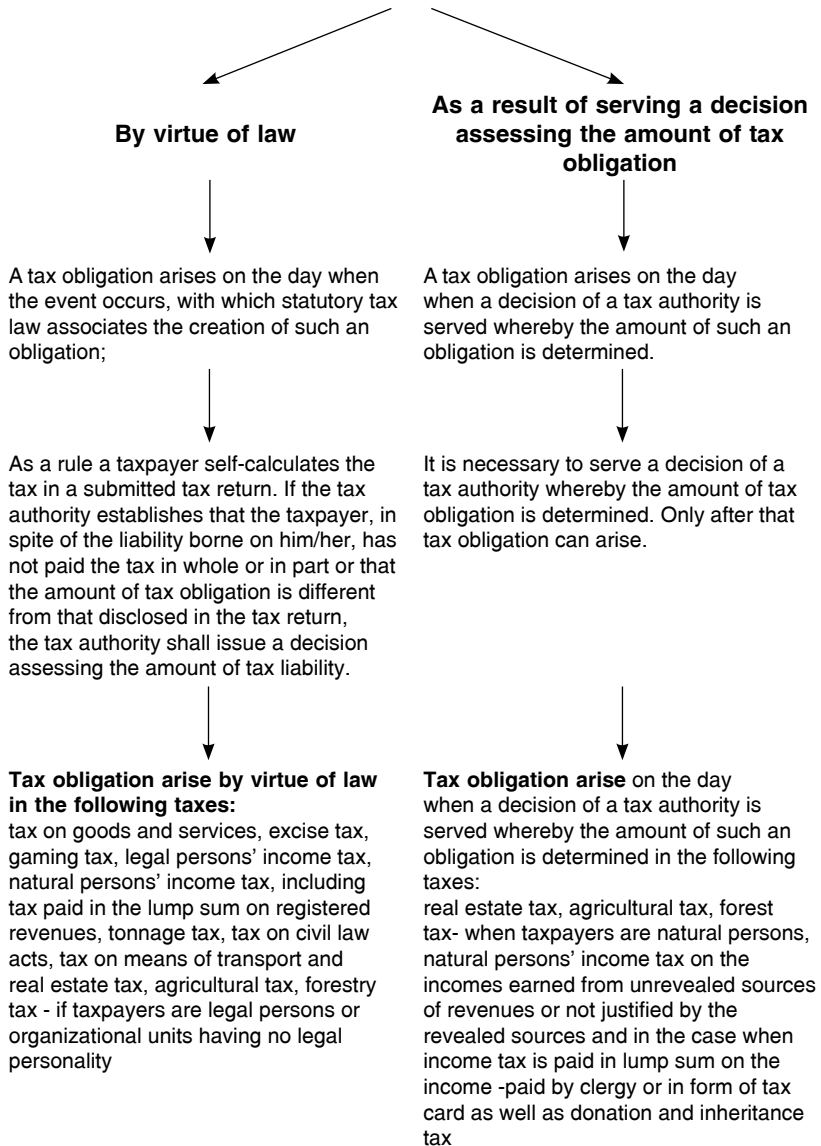
tax liability → tax obligation → tax → tax arrears

Source: author's own study.

3.3. How tax obligations are formed

A manner tax obligations arise is their important element. The legislator envisaged two manners of the transformation of tax liability into tax obligation, i.e. by the virtue of law and as a result of serving a decision assessing the amount of tax obligation. At the same time the legislator determined the taxes that a given manner applies to. It means that neither tax authority nor taxpayers themselves decide whether tax obligation arises in this or in a different manner for a given tax as this results from the Act.

The commencement of tax obligations



Source: R. Dowgier, *Prawo podatkowe. Ściaga akademicka*, Warsaw 2008, p. 29.

3.4. Payment limits

As a rule, a taxpayer is obliged to calculate and pay the tax personally. The time limit for payment shall be considered the last day on which, pursuant to the provisions of tax law, the payment is to be made.

In terms of tax obligations arising by serving the decision, whereby, the amount of tax is determined, the time limit for payment is 14 days from the day the decision assessing the amount of tax obligation is served.

If the provisions of tax law specify calendar time limits for the tax payment, advance tax payment or tax installment, and the decision assessing the amount of tax obligation has not been served at least 14 days before the time limit for the tax payment, the first advance tax payment or the first tax installment, the time limit for the payment is 14 days from the day of serving that decision.

The time limit for the payment for tax remitters shall be the last day on which, according to the provisions of tax law, the payment of the due tax is to be made.

The time limit for the payment for tax collectors is the day following the last day on which, according to the provisions of tax law, the payment of the tax is to be made, unless the decision-making body of the competent local authority has fixed a later date.

There is an important rule considering the time limit for the payment that states: if the last day of a time period is a Saturday or a holiday under statutory law, the last day of the time period shall be considered the day immediately following that day.

3.5. Tax arrears

Tax arrears appear not only as a result of tax that has not been paid within the time limits but also when the advance tax payment or tax installment is not paid within the payment time limit. The tax arrears

are also the dues of tax remitter or tax collector, if not paid within the payment time limit.

The Tax Ordinance Act treats also other dues as tax arrears, for example: unduly overpayment or tax refund reimbursed by the tax authority, remuneration of tax remitters or tax collectors collected unduly or in an amount higher than that due and also interest accrued on an unduly collected overpayment or tax refund and refunded or counted towards overdue, current or future tax obligations.

There is a duty to pay default interest for tax arrears.

3.6. Default interest

The duty to pay default interest arises as a result of failure to pay tax within specified time limits. It refers to every subject who has failed to pay due tax s/he has been obliged to, that is mostly to a taxpayer, but also to a tax remitter and a tax collector, etc. The duty to pay due tax arises by virtue of law. It is reflected in the fact that it is a rule for a taxpayer or another subject who is in arrears to calculate interest. In some cases the Act exempts some subjects from paying interest. It mainly refers to the situations where the procedure of assessment of due tax, and in consequence, interest, takes a long time (over three months), which is not the taxpayer's fault.

If the amount of interest does not exceed thrice the amount of additional fee collected by the Polish Post for registering a letter (PLN 6,6), default interest should not be accrued. Default interest rate is 200 per cent of the basic interest rate on pawn credits, fixed in accordance with the provisions on the National Bank of Poland. At present, it is at the level of 14,5% per cent a year.

3.7. Securing the fulfillment of tax obligations

Tax Ordinance envisages three manners of securing the fulfillment of tax obligations, i.e. securing on the taxpayer's property, on the joint property of the taxpayer and his or her spouse, Treasury pledge

and compulsory mortgage. The purpose of the application of these institutions is mostly to reduce a tax creditor's risk connected with the failure to fulfill or inappropriate fulfillment of the obligations by the taxpayer s/he is encumbered with, which result from the legally binding fiscal relation, i.e. tax payment. A basic condition to apply these measures is the existence of reasonable fear, as estimated by the tax authority, that tax obligation will not be properly met.

29th August 1997 Tax Ordinance Act (Consolidated text: Journal of Laws - Dz.U. 2005, No. 8, item 60, with amendments)

Article 21. § 1. *Tax obligations shall arise on the day when:*

1) *an event occurs, with which statutory tax law associates the creation of such obligation;*

2) *a decision of a tax authority is issued whereby the amount of such obligation is determined.*

§ 2. *If the provisions of tax law impose on a taxpayer a duty to submit a tax return and the tax obligation arises according to the manner determined in paragraph 1, subparagraph 1, the tax disclosed in the tax return shall be the tax to be paid, subject to paragraph 3.*

§ 3. *If, during tax proceedings, the tax authority establishes that the taxpayer, in spite of the liability borne by him, has not paid the tax in whole or in part or that the amount of tax obligation is different from that disclosed in the tax return, the tax authority shall issue a decision assessing the amount of tax liability.*

Article 34. § 1. *The State Treasury and territorial self-government units shall have the right of mortgage on all immovable property of the taxpayer, tax remitter, tax collector, legal successor or third parties with respect to tax obligations arising in accordance with the manner envisaged in Article 21, paragraph 1, subparagraph 2 and with respect to tax arrears on taxes constituting their income as well as default interest on such arrears, such mortgage being hereinafter referred to as "compulsory mortgage".*

Article 41. § 1. *With respect to tax obligations which have arisen in the manner provided for in Article 21, paragraph 1, subparagraph 2*

and also with respect to tax arrears on taxes constituting their income, the State Treasury and units of territorial self-government shall have the right to Treasury pledge on all movable things which belong to the taxpayer or constitute joint co-ownership of the taxpayer and his/her spouse and on transferable property rights, if the value of particular movables or rights equals to or exceeds 10,600 zloties (in year 2008), subject to paragraph 2.

§ 2. Things or property rights which are not subject to execution and may be the object of a mortgage may not be encumbered with a Treasury pledge.

Article 55. *§ 1. Default interest shall be paid without summons to do so by the tax authority.*

§ 2. If the payment made does not cover the amount of tax arrears together with default interest, such payment shall be counted proportionally towards the amount of tax arrears and towards the amount of default interest at the ratio of the amount of tax arrears to the amount of default interest on the day of payment.

4. The expiry of tax obligations and overpayment

BASIC DEFINITIONS:

The effective manners of the expiry of tax obligations - tax payment, tax collection by a tax remitter or a tax collector, offsetting, taking into account an overpayment or tax refund, transfer of ownership of goods or property rights, taking over the ownership of immovable property or a property right in enforcement proceedings.

The non effective manners of the expiry of tax obligations - annulment of arrears, limitation, exemption from the duty to pay tax under Article 14 of the Tax Ordinance Act and cessation of collection.

Tax payment - an effective manner of the expiry of tax obligation; there are three forms of tax payment envisaged by law, i.e. by cash, non-cash (a transfer order) and auxiliary (by securities, excise stamp duty).

Limitation of a tax obligation - a non effective manner of the expiry of tax obligation; the essence of it is that after the lapse of a specified time period, the tax a given subject is burdened with, cannot be enforced as the lapse of this time limit results in its limitation,

Overpayment - the amounts of overpaid or unduly paid tax and the tax collected by a tax remitter unduly or in an amount higher than that due

4.1. Effective and non-effective ways of tax obligations expiry

The legislator specified a closed catalogue of situations resulting in the expiry of tax liability. It means that a taxpayer is no longer obliged to pay a tax if at least one of the prerequisites included in the catalogue

mentioned above has been met. They can be divided into two groups, i.e. **effective and non-effective manners of tax obligations expiry**. The first group includes cases that lead to tax creditor's satisfaction. The other one contains situations that do not fulfill this condition.

4.2. Tax payment

Tax obligation most often expires as a result of tax payment. Our analysis should include consideration the payment forms, which situations individual forms of tax payment can be applied to, the moment the tax payment is accepted and the principles according to which tax payments are to be rounded up or down.

Tax law permits freedom in choosing tax payment form. However, there is a significant exception to this rule. Non-cash settlement of taxes should be made by taxpayers conducting economic activity who are obliged to keep an account book or a tax book of revenues and expenditures. This duty, however, does not apply to the payment of taxes that are not connected with economic activity, tax payment in an auxiliary form, and collecting taxes by a tax collector.

When a taxpayer pays in cash, the date of making a tax payment is the day when the amount of tax is paid at the tax authority's cash desk or into the account of the said authority in a bank, at a post office, in cooperative savings and credit fund, or the day when a tax remitter or tax collector collects the tax.

The day when the taxpayer's bank account or the taxpayer's account in cooperative savings and credit fund is debited on the basis of a transfer order is considered the date of making a tax payment for non-cash operations.

Before the tax is transferred or paid in cash, it should be rounded to full zloties in such a manner that amounts ending in less than 50 grosze shall be rounded down, and those endings in 50 grosze or more shall be rounded up to full zloties.

4.3. Limitation in tax law

Tax law envisages two types of limitations, i.e. **limitation of tax obligation** and **limitation of the right to serve a decision assessing the amount of tax obligation**, which is also defined as a limitation of tax liability. It should be emphasized that only the first of the above types of limitations results in the expiry of tax obligation. If the second type of limitation is applied, such an effect does not arise at all.

Limitation of tax obligation results in such a situation that any possible payment made after this date is considered overpayment, which is subject to a refund. The time limit after which it becomes effective is 5 years, counted from the end of a calendar year in which the time limit to pay a tax lapsed.

The course of the limitation period of a tax obligation can be suspended or interrupted. The suspension of the course of the limitation period of a tax obligation occurs, *inter alia*, between the day of filing a complaint to an administrative court about the decision concerning tax obligation, and the day following the day on which a copy of an administrative court's pronouncement on the tax authority, including the statement of legal validity thereof, is served upon the tax authority.

The period of limitation is interrupted by the declaration of bankruptcy. After the course of the limitation period is interrupted, it will run anew from the day following the day on which the ruling ending the bankruptcy proceedings becomes valid. The course of the limitation period shall be interrupted as the result of application of an enforcement measure about which the taxpayer was informed. After the course of the limitation period is interrupted, it shall run anew from the day following the day on which the enforcement measure was applied.

The essence of the **limitation of the right to serve a decision assessing the amount of tax obligation** is the fact that tax obligation, which arises as a result of serving such a decision, will not arise if the tax authority fails to serve such a decision within specified time limit. Serving such a decision with the breach of the statutory time limit will not result in the commencement of tax obligation.

The time limit for serving that decision is 3 years from the end of the calendar year in which the tax obligation arose. There are some exceptions to this rule. The longer time limit (5 year-period) is applied in following circumstances:

- taxpayer has not submitted the tax return within the time limits stipulated in the provisions of tax law,
- taxpayer, in the submitted tax return, has not revealed all particulars necessary to assess the tax obligation,
- additional tax obligation as regards goods and services tax,
- the obligation, which arises from the taxation of the income that is not justified by the revealed sources of revenues or the income from non-revealed sources. In this case a 5 - year time period to serve the decision is counted from the end of the year in which the time limit lapsed for submitting the annual income tax return for natural persons' income tax payers for the tax year which the decision concerns.

The period of limitation is suspended if the issuance of the decision depends on solving the initial question by another authority or a court. The suspension of the course of the limitation period will last until the day when the decision of another authority becomes final or the court's decision becomes valid, however, no longer than 2 years.

4.4. Overpayment

Overpayment can be connected not only with a taxpayer but also with a tax remitter, a tax collector, a third party or a successor. Overpayment is an obligation paid, for example, by a tax remitter or a tax collector if the tax amount to pay has been assessed unduly or in an amount higher than that due in the decision, which concerns tax responsibility of the tax remitter or tax collector,. Overpayment also appears when the tax obligation, paid by a third party or a successor, was assessed unduly or in an amount higher than that due in the decision on their tax responsibility or in the decision fixing the amount of tax obligation of the testate or intestate deceased.

The issue of overpayment is connected with such aspects as: the procedure of assessing and refunding, and the moment overpayment arises.

Tax authority decides on overpayment issuing a decision, acting therein ex officio or upon a motion made by a taxpayer or another subject for whom the overpayment arose. The exception, here, is the situation when the indicated subjects revealed the tax higher than the one included in the tax return. In this case a tax authority can refund it without issuing a decision. Here, it is based on a motion submitted by the taxpayer for the statement of overpayment as well as the corrected tax return.

Overpayment arises on the day when the taxpayer pays undue tax or tax in an amount higher than that due. If the structure of the tax stipulates the submission of a tax return (natural persons' income tax, legal persons' income or excise tax), the overpayment arises on the day this document is submitted.

Firstly, overpayment is refunded in an indirect procedure, and if the prerequisites to its application are not met, a direct procedure is used. In the first procedure, overpayment and interest are calculated ex officio towards tax arrears together with default interest and current tax obligations. In the case when there are no tax obligations, overpayment is subject to refund in cash unless the taxpayer submits a motion to count it in whole or in part towards future tax obligations. Overpayment which does not exceed the cost of caution in enforcement proceedings (now up to PLN 8,80), is first of all the subject to count it ex officio towards tax arrears together with default interest as well as current tax obligations, and in the case when there are no current tax obligations they are counted towards the future ones unless the taxpayer applies for their refund.

29th August 1997 Tax Ordinance Act (Consolidated text: Journal of Laws - Dz.U. 2005, No. 8, item 60, with amendments)

Article 14m. § 1. Application of an interpretation which was subsequently changed or which was not taken into account in resolution of a tax case shall result in exemption from the duty to pay tax to the

extent resulting from the event being the subject-matter of interpretation if:

1) the obligation was not performed properly due to application of an interpretation which was changed or which was not taken into account in resolution of a tax case; and

2) the tax effects connected with the event to which the state of affairs being the subject-matter of interpretation corresponds occurred after publication of the general interpretation or after service of the individual interpretation.

Article 64. *§ 1. Tax obligations and tax arrears with default interest as regards taxes constituting the income of the State budget shall, upon the taxpayer's application, be set off against a mutual, undisputed and matured receivable debt owed by the State Treasury to the taxpayer, such a debt resulting from:*

1) a valid court judgment issued pursuant to Article 417 or 419 of the Civil Code;

3) acquisition of a immovable property by the State Treasury for purposes justifying its expropriation or expropriation of a immovable property pursuant to the provisions on the management of immovable properties;

4) indemnities for unjust conviction or temporary arrest or detention, obtained pursuant to the provisions of the Code of Criminal Procedure;

6) indemnities awarded by a decision of an authority of government administration.

Article 66. *§ 1. A special case of tax obligation becoming extinguished shall be the transferring of the ownership of a thing or property rights for the benefit of:*

1) the State Treasury - in exchange for tax arrears with respect to taxes constituting incomes of the State budget;

2) a gmina, powiat or voivodeship - in exchange for tax arrears with respect to taxes constituting income of their budgets.

5. Tax reliefs available to meet tax obligations

BASIC DEFINITIONS:

Reliefs concerning repayment of tax obligations - tax preferences granted by a tax decision or by tax authority; they are of a recognizable nature; it means that even if the taxpayer fulfills statutory prerequisites necessary to apply this preference, tax authority is not obliged to grant this relief.

Prolongation fee - a due paid for the State Treasury or local self-government units by the subject who was granted a relief to repay tax obligation in a form of deferred time limit to repay tax or pay tax in installments or deferred or put tax arrears into installments together with default interest.

5.1. Types of reliefs concerning repayment of tax obligations

Tax law envisages three basic reliefs concerning repayment of tax obligations. The first one is **deferral of the time limit for tax payment**. This applies if the time limit for tax payment has not yet lapsed. In this case, a new time limit for tax payment is the day on which the payment of the deferred tax should be made according to the decision. The benefit specified by this preference is that the tax arrears and the delay interest do not arise. It should be, however, emphasized that there is a possibility of deferring the time limit for tax payment for tax arrears and ensuing interest as well. In consequence the taxpayer benefits from it as the course of default interest is suspended during the period the tax is deferred for.

A second type of relief concerning repayment of tax obligations is **paying the tax or tax arrears in installments**. This institution is very

similar to deferring the time limit for tax payment. A basic difference is that in the case of the installments a specified due (tax or tax arrears) is divided into at least two parts (installments) for which different time limits for paying those dues are determined.

A third type of relief concerning repayment of tax obligations is **annulment of tax arrears, interest or prolongation fee**. Tax arrears can be annulled in part or in whole. The annulment of tax arrears causes automatic annulment of default interest too in the proportion falling to the main due. It is also possible to annul only interest or prolongation fee.

5.2. The procedure of applying relief to repay tax due

As a rule, the application of reliefs to repay tax obligations occurs upon a taxpayer's motion. A basic prerequisite (which must be the subject of the explanatory proceedings) in this case is the establishment of the existence of the taxpayer's important interest or important public interest justifying the application of this preference. The **taxpayer's important interest** is, most of all, the situation when s/he is not able to settle tax arrears due to extraordinary acts of God (e.g. when his/her property has been damaged in fire or flood). The **public interest** requires to respect values that are common for the entire society, such as: justice, safety, confidence of citizens in the government authorities, the efficiency of operation of the state system, and correction of wrong decisions. The public interest is not only the need to assure maximum income for the state budget but also the reduction of its possible expenses, e.g. for unemployment benefits or assistance from social welfare. The application of the relief to repay the due to public interest can occur in practice if, e.g., such help is necessary to maintain workplaces in a given area.

We should be mindful of the fact that when a tax authority grants a relief to the taxpayer carrying out economic activity, it is obliged to apply the regulations concerning the provision of public assistance.

5.3. Prolongation fee

Prolongation fee is compulsory if the preferences mentioned above are applied in the form of taxes constituting the state budget income. On the other hand, this fee is optional (the body constituting a local self-government unit decides on its existence) in the case of taxes constituting income of local self-government units.

The due level of prolongation fee is 50% and in the case of reliefs concerning taxes constituting income of a local self-government unit, not more than 50% of the interest rate for delay. The fee is calculated in the tax authority's decision granting the relief to repay.

29th August 1997 Tax Ordinance Act (Consolidated text: Journal of Laws - Dz.U. 2005, No. 8, item 60, with amendments)

Article 67a. § 1. *Upon a taxpayer's application, in the events substantiated by important interest of the taxpayer or public interest, the tax authority may, subject to Article 67b:*

1) defer the time limit for tax payment or spread the tax payment into installments;

2) defer or spread into installments the payment of tax arrears including the default interest or interest specified in the decision referred to in Article 53a;

3) annul tax arrears, default interest or prolongation fee in whole or in part.

§ 2. *Annulment of tax arrears shall also cause annulment of default interest in full or in such part in which the tax arrears have been annulled.*

Article 67b. § 1. *Upon application of a taxpayer pursuing an economic activity, the tax authority may grant the reliefs concerning repayment of tax obligations specified in Article 67a:*

1) which do not constitute public aid;

2) which constitute *de minimis aid* - to the extent and upon principles specified in directly applicable acts of the Community law on aid granted according to *de minimis* principle;

3) which constitute *public aid*:

Article 57. § 1. *In the decision issued under Article 67a, paragraph 1, subparagraph 1 or 2, concerning taxes constituting the State budget income, the tax authority shall fix a prolongation fee on the amount of tax or tax arrears.*

§ 6. *The tax authority may abandon fixing a prolongation fee if the decision referred to in paragraph 1 is issued in connection with arrangement proceedings or pursuant to separate Acts.*

§ 7. *The council of a gmina, council of a powiat or a sejmik of a voivodeship may introduce a prolongation fee, whose amount cannot exceed that specified in paragraph 2, for spreading into instalments or deferring the time limit for the payment of taxes and arrears in taxes constituting income of a gmina, powiat or voivodeship, accordingly.*

6. Duty to pay tax

BASIC DEFINITIONS:

The responsibility to pay tax - the right to demand tax payment from the subjects obliged to pay it, as well as the powers to apply measures envisaged by law, aiming at the enforcement of due amounts from those subjects' assets⁷; this right can be performed by tax creditors i.e. the State Treasury or local self-government units.

Legal successors - subjects formed as a result of a merger or a consolidation of other subjects; they take over all rights and duties of a newly created subject or subjects stipulated by the provisions of the tax law; also a taxpayer's successors who are natural persons who take over the deceased's tax liabilities that are stipulated by the provisions of the tax law.

Third parties - subjects indicated in Tax Ordinance Act that can be responsible with all their assets for a taxpayer's tax arrears, jointly and severally with the taxpayer.

Joint responsibility for tax obligations - tax authority may demand a whole or a part of the tax from all the taxpayers jointly, from some of them or from each of them separately, and the satisfaction of the creditor gained from any of the debtors exempts the other debtors.

6.1. General comments

As a rule **the responsibility to pay tax** is of financial, personal and non-limited nature. It means that the duty of the debtor to pay refers to his entire property that exists at the moment of its performance. The

7 B. Brzeziński, Odpowiedzialność podatnika, płatnika i inkasenta w prawie podatkowym, Toruń 1993, p. 6.

responsibility to pay tax can concern a few subjects such as: taxpayers, tax remitters and tax collectors, legal successors and third parties. The rules thereof depend on tax liabilities that a given subject is burdened with and which have been imposed on him by the provisions of law.

6.2. Responsibility of taxpayers

A taxpayer is responsible with all his/her assets for taxes resulting from tax obligations. It means that if the taxpayer fails to pay tax voluntarily, a tax creditor has the right to its compulsory enforcement because the responsibility for tax obligations is independent of the taxpayer's will. His/her responsibility, however, is of a personal and non-limited nature here.

The responsibility of the taxpayer refers to each tax regardless of the form it is to be paid, therefore, it also refers to advance tax payments or installments. Moreover, it is also applied to tax arrears and dues that are treated equally to them.

As a rule, the scope of the taxpayer's responsibility for taxes resulting from tax obligations extends throughout the entire period in which s/he is burdened with tax obligation. However, this responsibility is limited if they (taxes) are met by tax remitters or tax collectors. It means that the collection of an appropriate amount of tax by the tax remitter effects in the expiry of the taxpayer's tax obligation. If the tax remitter fails to transfer the tax collected from the taxpayer, the latter one cannot be held accountable. If the tax remitter collected tax, we deal with his/her responsibility. The relations between the taxpayer's responsibility and the tax collector's responsibility is the following: if the tax has been collected but not transferred, the taxpayer cannot be held responsible. If, however, the tax collector did not collect tax, the taxpayer and not the tax collector shall be the subject that is solely responsible.

The legislator introduced special rules of responsibility with reference to taxpayers who are married. In such cases, the responsibility for taxes resulting from tax obligations covers the separate assets of

the taxpayer and joint property of the taxpayer and his or her spouse. Responsibility of taxpayer's spouse for tax obligations can be modified contractually or by court's decision, as a consequence of limitation, exclusion or termination of the statutory property co-ownership.

6.3. Responsibility of tax remitters and tax collectors

A tax remitter that does not perform their duties (of calculating and collecting tax from a taxpayer and paying it, within appropriate time limits, to the tax authority) is liable for the tax not collected or for the tax collected and not paid in. It means that s/he is liable for the tax not collected from taxpayer, the tax collected from taxpayer in a lower amount than the due, and also for a tax collected from taxpayer but not paid in. If the tax authority establishes the circumstances mentioned above, it should issue a decision concerning tax responsibility of the tax remitter, in which the amount due in respect of the tax not collected or of the tax collected and not paid in should be determined.

A tax collector is responsible with all his/her assets for taxes collected from taxpayer and not paid in to the tax authority. In that case tax authority should issue a decision concerning tax responsibility of the tax collector. However, in the situation when s/he has not collected taxes s/he is obliged to, is not held accountable.

6.4. Responsibility of legal successors

A clear division can be made in tax regulations concerning legal responsibility of legal successors. The two types of **legal successors** are: legal persons (e.g. commercial law companies) and organizational units that do not have legal personality (e.g. State budget institutions), and natural persons .

With regards to the first category, the legislator introduces a basic rule, according to which subjects formed as a result of a merger or a consolidation take over all rights and duties of a newly created subject or subjects that are stipulated by the provisions of the tax law.

In the case of the responsibility of natural persons who are successors, the rule applied therein says that the taxpayer's successors take over the testator's tax liabilities that are stipulated by the provisions of the tax law. Tax responsibility of the successors refers also to tax liabilities which result from the decisions issued on the basis of the provisions of the tax law.

After determining the successors, the competent tax authority transfers tax responsibility for the testator's tax obligations onto them issuing a decision regarding the scope of the successors' responsibility. Tax authority can issue this decision if no tax proceedings were instigated against the testator, or tax proceedings in which the testator was a party to, were concluded with a final decision.

6.5. Responsibility of third parties

Third parties are responsible with all their assets jointly and severally with the taxpayer for his/ her tax arrears. It means that the tax authority can demand from the taxpayer to meet the dues and at the same time demand that the third party do so after meeting specified conditions. Only the subject treated in the Act as the third party can be answerable for tax obligations. These subjects are for example: a divorced spouse of the taxpayer, the purchaser of an enterprise, its organized part or fixed assets.

The responsibility of the third party is adjudicated by a tax authority in a form of a decision after conducting proceedings in this matter. It should be taken into consideration that the responsibility of the third party is also **accessory** (the issuance of the decision on the responsibility of the third party, by no means exempts the previous debtor from the duty to settle tax obligation), as well as **auxiliary** (a tax creditor must first carry out the execution from the taxpayer, and only if it is ineffective in whole or in part, it can be directed to the third party) and **personal** (from the third party's entire property and not only from individual objects s/he possesses).

6.6. Joint responsibility for tax obligations

This kind of responsibility in tax law appears when the Act imposes tax liability into at least two subjects, e.g. in agricultural tax, forestry tax, and real estate tax (in the case of co-ownership or co-possession of taxation objects).

29th August 1997 Tax Ordinance Act (Consolidated text: Journal of Laws - Dz.U. 2005, No. 8, item 60, with amendments)

Article 26. *A taxpayer shall be responsible with all his assets for taxes resulting from tax obligations.*

Article 29. § 1. *In the case of married persons, the responsibility referred to in Article 26 shall cover the separate assets of the taxpayer and joint property of the taxpayer and his or her spouse.*

Article 92. § 1. *If, pursuant to tax Acts, taxpayers bear joint and several responsibility for tax obligations and such obligations arise according to the manner provided for in Article 21, paragraph 1, subparagraph 2, taxpayers who have been served with the decision assessing the amount of tax obligation shall be responsible jointly and severally.*

Article 93. § 1. *A legal person formed (established) as a result of merger of legal persons, commercial partnerships, commercial partnerships and companies - shall take over all rights and duties of each of the merging persons, partnerships or companies, said rights and duties envisaged in the provisions of tax law.*

§ 2. *The provision of paragraph 1 shall apply accordingly to a legal person merging by takeover of another legal person (other legal persons), a commercial partnership (commercial partnerships).*

Article 97. § 1. *Heirs of the taxpayer, subject to paragraph 2, shall take over the property rights and duties of the deceased, whether testate or intestate, envisaged in the provisions of tax law.*

Article 107. § 1. *In the cases and within the scope envisaged in Chapter 15, third parties shall also be responsible with all their assets for a taxpayer's tax arrears, jointly and severally with the taxpayer.*

7. Tax procedures

BASIC DEFINITIONS:

Tax proceedings - a multi-stage process aiming at the issuance and delivery of a tax decision.

Tax rules - basic rules of tax proceedings that are, most of all, to protect the “weaker” party to the legally binding fiscal relation, i.e. the taxpayer in tax proceedings.

Inspection acts - activities of the tax authorities for the purpose of: verification of the observance of time limits for filing tax returns and payments of declared taxes, stating the formal correctness of the documents mentioned above, establishing the factual state of affairs to the extent necessary to determine its conformity with the documents presented.

Tax control - activities of the tax authorities to verify the fulfillment of duties resulting from provisions of tax law by the persons controlled.

7.1. A model of tax proceedings

Classic proceedings comprise the following four stages of the tax proceedings: the initiation of the proceedings, proceedings to take evidence, setting a 7-day deadline to get acquainted with the collected evidence and issuing and serving the tax decision. Due to the circumstances of a given case, it can be restricted, e.g. in connection with the possibility of a deviation from instigating tax proceedings or by setting the taxpayer a time limit to get acquainted with the evidence gathered in the case.

7.2. General rules of tax proceedings

They are of a normative character, which means that their violation decides about the defect of these proceedings and may be the ground for the annulment of a given decision.

The catalogue and the essence of general rules of tax proceedings are specified in the Tax Ordinance (Art. 120-129), which go as follows: the rule of **legality and lawfulness** (tax authorities act pursuant to the provisions of law), of **inspiring confidence in tax authorities, providing information and objective truth** (in the course of proceedings, tax authorities undertake all necessary acts in order to explain the factual state precisely and to settle the case in tax proceedings), **active participation of the parties to the proceedings** (tax authorities are obliged to enable both parties to participate actively in every stage of the proceedings and, before issuing a decision, allow them to present their opinions as to the gathered evidence and material and also the claims put forward), of **persuasion** (tax authorities should explain to parties the merits of the prerequisites taken into account while settling the case, in order to encourage the parties to implement the decision, as far as possible, without applying means of coercion), of **diligence, promptness and simplicity of proceedings** (tax authorities should act promptly and with due diligence, using the simplest means available to settle the case; cases which do not require gathering evidence, information or explanations should be settled immediately), of **a written form, two-instance proceedings, permanence of final decisions** (decisions which cannot be appealed against in tax proceedings are final; revoking or changing such decisions, stating their invalidity or resumption of the proceedings may only occur in cases provided for in this Act and in tax acts), and of tax proceedings openness only to parties.

7.3. The procedure and initiation of tax proceedings

Tax law stipulates two courses of the initiation of tax proceedings, i.e. **upon the party's request** and **ex officio**.

In first case it is initiated on the day when the request is submitted to the tax authority.

If the request is submitted in an electronic form the tax proceedings are instigated on the day when the tax authority or data processing support unit of tax administration receives the request.

Taxpayers initiate tax proceedings **upon their request** for example submitting an application for a statement of tax overpayment or applying for reliefs concerning repayment of tax obligations. Tax proceedings are initiated **ex officio** by the issuance of a decision in this matter. This procedure is applied, among the others, when the taxpayer does not declare output tax, which results in the necessity to assess the amount of the tax obligation by the tax authority in a decision issued in tax proceedings.

The day the party is served with the ruling on initiation of legal proceedings is the date of initiation of the proceedings *ex officio*. In some cases it is not necessary to issue and serve formally the decision mentioned. It occurs, *inter alia*, in the cases while assessing tax obligations which, according to separate provisions, are assessed annually (real estate tax, agricultural tax, forestry tax) if the factual state, on the basis of which the amount of the tax obligation for the previous period was assessed, has not changed. Moreover, this document is not required in the cases when tax obligations are terminated *ex officio*.

7.4. Decisions and rulings

The tax authority applies the rule of a written form of the proceedings, most of all, by adopting two kinds of settlements addressed and served to the parties to the tax proceedings: **decisions** and **rulings**.

The decision settles the case as far as its merits are concerned or shall otherwise terminate the proceedings in a given case (for instance by remitting proceedings in a case). It is a rule that the tax authority settles the case by means of a decision unless the provisions state otherwise.

Basic elements that should be included in the **decision** are: designation of the tax authority, the issuance date, the party's description, reference to the legal basis, settlement of the case, factual and legal justification, instruction on appeal proceedings - if the decision may be appealed against, the signature of the authorized person, including the first name, surname and official position.

In the course of the proceedings the tax authority shall issue **rulings** concerning particular questions which arise in the course of tax proceedings but which do not decide on the essence of the case (a ruling on suspending the proceedings, a ruling on presenting evidence being in possession of party). Rulings should comprise the same basic elements that are included in decisions. However, a ruling should contain factual and legal justification only if it may be complained against or reviewed by an administrative court and if it has been issued as a result of a complaint against the ruling.

7.5. Ordinary appeal measures

Ordinary appeal measures are: **an appeal** and a **complaint**. The first one is applied with regard to decisions whereas the second one - to rulings. Under the rule of two-instance proceedings, an appeal against the tax decision issued in the first instance can only be made to one instance. A higher instance authority is competent to examine the appeal. In some cases the appeal is examined by the same authority which issued the first instance decision - if the decision in the first instance has been issued by the minister competent for public finances, by a director of a fiscal chamber, director of a customs chamber or by a self-government appeal board.

An appeal to a competent appeal authority should be made through the tax authority which has issued the decision. The party has to appeal within 14 days from the day s/he is served with the decision.

An appeal against a decision of the tax authority should include objections against the **decision**, define the merits and the scope of request made in the appeal and indicate the evidence justifying the request.

It can be underlined that, lodging an appeal against the tax authority's decision does not **suspend the implementation of the decision**, unless tax authority ex officio or upon the party's application suspend the implementation of the decision in whole or in part.

There are only some rulings that can be complained against. They may be complained only when the Act states so (a ruling on refusal to initiate proceedings). The ruling which cannot be complained against, may be appealed against by the party only with an appeal against the decision. A ruling issued in the course of proceedings may be complained against when the Act states so. A complaint should be filed within 7 days from the day when the party is served with the ruling.

7.6. Extraordinary procedures of setting aside final decisions

According to the rule of **permanence of decisions** mentioned above, the decisions which cannot be complained against in tax proceedings are final. Such decisions are, inter alia, not questioned settlements issued by the first instance authority, decisions issued by the appeal authorities upholding the first instance decision in force. It does not mean that such decisions cannot be set aside in any way. It is possible only on the basis of so called **extraordinary procedures of decision verification** which are: **resumption of the proceedings** (Art. 240-246 OP.), **ruling on invalidity of the final decision** (Art. 247-252 OP.), **annulment or change of the final decision** (Art. 253-256 OP.)

7.7. Inspection acts

The tax authority are authorized, among the others, to demand from taxpayer to submit an appropriate statement, correct it, and explain its correctness. A breach of tax liabilities revealed in inspection acts can be the basis for the initiation of tax proceedings unless the errors are corrected differently, e.g. by the submission of the corrected tax return by the taxpayer. Therefore inspection acts can be treated as actions which may precede tax proceedings.

7.8. Tax control

Tax control can be performed only ex officio by the head of the revenue office, the head of a customs office, the village -mayor, the mayor, or (the president of a city), or the minister competent for public finances.

In the course of the tax control the controllers, are entitled, in particular, to: enter a land or buildings, premises or other rooms which belong to the party under control, demand the property under control to be presented and inspect it, demand that records, books and all kinds of documents connected with the object of the control be made available and to make copies, reproductions, statements, notes and printouts thereof and to collect data in the electronic form, documenting the said action.

Act of 29 August 1997 Tax Ordinance (Consolidated text: Journal of Laws - Dz.U. 2005 year, No. 8, item 60, with amendments)

Article 169. § 1. *If the petition does not meet the requirements specified by the provisions of law, the tax authority shall summon the applicant to eliminate the defects within 7 days, with an instruction that if such condition is not fulfilled, the petition shall be left without answer.*

Article 170. § 1. *If the tax authority with which the petition has been filed is not competent in the matter, it shall immediately transfer the petition to a competent authority, and notify the person filing it thereof.*

Article 211. *The decision shall be served on a party in writing.*

Article 212. *Once served, the decision shall be binding for the tax authority by which it was issued. The decisions referred to in Article 67d, shall be binding for the tax authority from the moment of their issue.*

Article 218. *The ruling which may be subject to a complain against a ruling or a complaint to an administrative court shall be served in writing.*

8. Natural persons' income tax

BASIC DEFINITIONS:

Unlimited tax liability - tax liability imposed on natural persons whose place of residence is located on the territory of Poland; he/she is a subject to tax liability as regards the total of their incomes irrespective of the location of the sources of their revenues.

Limited tax liability - tax liability imposed on natural persons whose place of residence is not located on the territory of Poland; he/she is subject to tax liability only as regards the incomes earned on the territory of Poland.

'Small taxpayer' - the taxpayer whose revenue from sales (including the amount of output goods and services tax), in the preceding tax year, did not exceed an amount denominated in zloties being the equivalent of EUR 800,000.

Income - the surplus of the revenues over the revenue earning costs.

Loss - the surplus of the revenue earning costs over the revenues.

8.1. Subject of taxation

Natural persons who obtain income, which is subject to taxation, are encumbered with tax liability. The issue whether such subjects reside in Poland or not is important. Natural person, having the place of residence in Poland and earning incomes in Poland, is subject to **unlimited tax liability**. In the case when s/he does not reside in Poland, s/he can be levied with **limited tax liability**, only on the income earned within the territory of Poland.

The legislator stipulates the institution of 'so called' **joint tax** (spouses and also single parents who bring up children, have the right - after fulfilling specified conditions - to preferential tax settlement) and

small taxpayer. Small taxpayers are entitled, in particular, to choose the quarterly method of making advance tax payments.

8.2. Object of taxation

All income, except the income excluded or exempted from the taxation, is subject to income tax. The catalogue of revenue sources is not closed. It comprises, *inter alia*, the income on: employment relationship, the activity performed personally, non-agricultural economic activity. **The revenue earning costs** are the costs incurred for the purpose of making the revenue or retaining or securing the source of revenue, except the costs listed in the Act.

For example, the expenditures incurred on the acquisition of land cannot be considered as **revenue earning costs**, even if there is a plan to build premises used for conducting economic activity.

It is the rule that **the revenue earning costs** are the costs connected with actually born expenses. In some cases, however, so called lump-sum costs are envisaged. They refer, among the others, to the revenue obtained in employment relation (in 2008 the revenue obtained in one employment relation can be decreased by PLN 111,25 monthly, and for a tax year by not more than PLN 1335) and the revenue obtained in certain kinds of activity performed personally - the revenue for services carried out on the basis of a mandatory agreement or service agreement, if these services are not included in the scope of economic activity of the mandatory provided for the public, it may be lowered by 20%, and if the revenue concerns copyrights and related rights use by the authors or the disposition of these rights by them, these costs amount to 50% of the revenue.

8.3. Tax rates

Basic rates are of progressive, mixed percentage character. They are presented in the chart below. It shows the sections of the income and tax rates related to it, obligatory for the year 2008.

Taxable income		Tax rates
Taxable income over... in PLN	Taxable income up to.... in PLN	
	44.490	19 % less 586 zł 85 gr
44.490	85.528	7.866 zł 25 gr plus 30 % of surplus over 44.490 zł
85.528		20.177 zł 65 gr plus 40 % of surplus over 85.528 zł

Flat, proportional rates are also stipulated in tax act for certain kinds of income: **10%** (for instance, on prizes won in competitions, games and mutual bets or awards connected with bonus sales), **19%** (interest on loans, except for granting loans within the scope of one's economic activity, interest or discount on securities), **20%** (non-residents' income from the activity performed personally, copyright and related rights, rights to inventive designs, trade marks and decorative patterns), **50%** (*inter alia* on tax income of taxpayers performing transactions with family - related subjects; it refers to the difference between the income declared by the taxpayer and that determined by tax authorities), **75%** (on income earned from unrevealed sources of revenues or not justified in the revealed sources).

8.4. Tax allowances and tax exemptions

There are two kinds of tax allowances in natural persons' income tax. A taxpayer is entitled to have tax base (income) or the tax reduced. The following payments may be **deducted from the tax base**: insurance premiums on social insurance system - (for retirement and other pension insurance, as well as sickness and occupational accident insurance of the taxpayer), the expenses on rehabilitation, the expenses born by the taxpayer for using the Internet in premises being his/her place of residence in the amount not exceeding 760 zloties in a given tax year, donations made for public benefit activity, for religious practice, blood donations made by voluntary blood donors - the amount of the donation, however, cannot exceed the amount which equals to 6

per cent of the income, expenditures incurred by the taxpayer for the acquisition of new technologies.

The following expenses can be deducted from the tax: the amount of premiums spent on the health insurance - not more than 7.75 per cent of the assessment base of the premium, payments made for public benefit activity, not more than 1% of the annual income. The taxpayer has also right to deduct the amount in connection with children who live by him/her.

The system of tax exemptions in natural persons' income tax is quite complex as there are over 100 of them. For example, the amount received from property and personal insurance, death benefit and funeral allowance are exempted from the income tax.

8.5. The procedure and terms of payment

Taxpayers who receive an income are obliged to pay the income advance tax payments during the tax year. It refers to subjects conducting economic activity, receiving income from an activity performed personally (such as artistic, literary, scientific, educational and journalist activities) and also to the income from pensions gained abroad, unless it is received by the mediation of the bank in Poland. Advance tax payments are payable in the period from January to November by the 20th day of every month for the preceding month. The pre-payment for December, in the amount of the November due, shall be remitted by 20th December of the tax year. Small taxpayers and taxpayers commencing economic activity may make advance tax payments every quarter. There is also a possibility to pay the advance tax payments in a given tax year in a simplified form based on income shown in the statement in the tax year preceding a given tax year.

In some cases income pre-payments are collected and remitted by a tax remitter within the same time limits. There is an obligation to collect monthly advance tax payments imposed on certain tax remitters: insurance pension authorities, banks, higher schools, employment offices, penitentiary establishments.

Taxpayers are obliged to submit a statement on the amount of income earned (loss incurred) during the tax year according to the specified form, not later than on 30th April of the following year. They are obliged to pay in the income tax due, resulting from the statement within that time limit

26th July 1991 Act on Natural Persons' Income Tax (Consolidated text: Dz.U. 2000, No. 14, item 176 with amendments)

Article 3. 1a. *A person whose place of residence lies within the territory of the Republic of Poland shall be the natural person who:*

1) has his/her centre of personal or economic interests (centre of life interests) within the territory of the Republic of Poland; or

2) stays within the territory of the Republic of Poland longer than 183 days in a tax year.

Article 6. 1. *Spouses shall be liable to pay separate taxes on the incomes they receive.*

2. Nevertheless, spouses who are subject to the tax liability referred to in Article 3, paragraph 1, and who co-own property and remain married during the whole tax year, subject to paragraph 8, may, at the request presented in their joint annual tax statement, subject to Article 6a, be liable to joint tax assessment on the sum of their incomes specified in accordance with Article 9, paragraphs 1 and 1a, after having deducted, separately by each of the spouses, the amounts specified in Articles 26 and 26c; in such case the tax shall be assessed on behalf of the both spouses in the amount equal to double the tax calculated for half of the joint incomes of the spouses, provided that the sum of such incomes shall not include incomes (revenues) liable to a lump-sum tax.

Article 9. 1. *Income tax shall be levied on all kinds of incomes except incomes listed in Articles 21, 52 and 52a and 52c incomes the collection of tax on which was ceased pursuant to the provisions of the Tax Ordinance.*

1a. Where the taxpayer earns incomes from more than one source, the object of taxation in a given tax year shall be, subject to Article 24,

paragraph 3, Articles 29 to 30c, Article 30e, and Article 44, paragraphs 7e and 7f, the total amount of incomes from all sources of revenues.

2. Income from a source of revenue, if the provisions of Articles 24 to 25 do not state otherwise, shall be the excess of the total of revenues from the source over the revenue earning costs in a given tax year. Where the revenue earning costs exceed the total of revenues, the difference shall be the loss from the source of revenue.

3. A loss from a source of revenue incurred in a tax year may be deducted from the in income earned from that source during the immediately following five subsequent tax years, however, the amount of such deduction in any of these years may not be higher than 50 per cent of the amount of such loss.

9. Lump-sum forms of income tax

BASIC DEFINITIONS:

Lump sum income tax on registered revenues - lump-sum form of income taxation on revenues from non-agricultural economic activity or a contract of lease or tenancy (things or property rights) earned by natural persons.

Tax card - lump-sum form of income taxation on revenues from certain non-agricultural economic activity earned by natural persons.

Lump-sum paid by clergy - lump-sum income tax on the revenues of the clergy paid by the clerics of the legally recognized denominations, obtaining revenues from the fees received in connection with performing their pastoral functions.

Tonnage tax - lump-sum form of income taxation, refers both to natural and legal persons who are ship owners exploiting sea merchant ships in international navigation.

9.1. Lump-sum on registered revenues

Natural persons who are sole traders or act within civil partnership or general partnership are subject to lump-sum income tax. The persons who obtain revenue on tenancy or lease agreement or other similar agreements may also be subject to lump-sum taxation.

This form of taxation can be applied if in a year preceding a tax year a taxpayer obtained revenue on economic activity s/he solely conducted, in the amount not exceeding EUR 150 000, or the amount of the revenue of the partners in the partnership did not exceed EUR 150 000. If the revenue for the previous year exceeded the amounts mentioned above, the taxpayers are taxed according to general rules

and keep a tax book of revenues or complete bookkeeping unless they fulfill the conditions to be taxed in another lump-sum form.

The lump-sum taxation may be applied provided the taxpayer submits a motion for its application. Otherwise the rules resulting from the Act on Natural Persons' Income Tax are applied. This motion may be submitted by the day preceding the commencement of the activity - in the case of taxpayers already conducting economic activity, by 20th January of a tax year.

There are some taxpayers that are **excluded from this form of taxation**. It refers to those who, among the others, obtain revenue in whole or in part on, e.g.: conducting chemist's, performing freelance jobs (however, physicians, veterinarians, nurses, translators and teachers may benefit from this form), produce goods taxed by excise tax, provide services of, for example agency in the sale of goods or architectural or legal services.

The **tax base** of the taxation is the revenue disclosed by the taxpayer in the register of revenues s/he keeps. It means that taxpayers cannot take into account the expenses incurred in connection with the obtained revenue. Apart from the register of revenues taxpayers should make a list of fixed assets, keep an equipment register and have and keep the evidence of the purchased goods. Taxpayers may order an accountancy agency to keep the register of revenues as well as a tax book of revenues and expenses.

Tax rates of the lump sum on registered revenues are proportional and are related to revenues as follows:

- 20% of the revenues received performing freelance professions, as well as revenues from tenancy, sub-tenancy, lease, sublease or other similar contracts over EUR 4,000,
- 17% of revenues received from some intangible services, (for example: car rental, hotels, mediation in wholesale trade),
- 8.5% of revenues, *inter alia*, from services, including revenues from catering activities in the scope of selling alcoholic drinks (stronger than 1.5%), as well as revenues from tenancy, sub-

tenancy, lease, sublease or other similar contracts over EUR 4,000,

- 5.5% from revenues from construction and manufacturing activities,
- 3.0% from the revenues, (*for example*: from services related to trade and catering, with the exception of revenues from selling alcoholic drinks (stronger than 1.5%).

The legislator stipulates ‘so called’ **sanction rate** as well. It is applied when the register of revenue is not kept or kept in that way that it cannot be recognized as evidence in tax proceedings. In such a case tax authority assesses the value of not-registered revenue by estimation and determines a lump-sum on this amount which is five times higher than the appropriate rate but not more than 75% of the revenue. The lump sum on registered revenues is payable by the 20th day of every month for the preceding month and for December by 31st January of the following year.

9.2. Tax card

This taxation form can be applied to natural persons conducting economic activity individually or as a part of civil law partnership. The legislator enables to use this form of taxation for the kinds of activities that are listed in the Act, *inter alia*: services and manufacturing, retail trade of food, agricultural and horticultural products, retail trade of manufactured goods or catering services provided alcohol is not marketed. At the same time specified restrictions concerning the possibility of benefiting from this form of taxation have been introduced. A taxpayer may use it, among the others, if in his/her economic activity s/he does not use services of the people s/he does not employ, on the basis of employment contract as well as the services of other enterprises and institutions unless these are specialist services; the taxpayer’s spouse does not run activity in the same scope; does not manufacture goods that are taxed by excise tax by virtue of separate provisions and the off-agricultural activity registered in the motion is not conducted outside the territory of the Republic of Poland. The essential element

of applying the tax card is the necessity to submit a motion according to the rules that are similar to the ones referring to the lump-sum on the registered revenues.

Tax authority, in the form of decision, assesses output tax after having confirmed that the taxpayer fulfills the conditions necessary to apply a tax card. The amount of the card is assessed on the basis of monthly rates for particular kinds of activities resulting from the Act. They mostly depend on: a number of employees, a number of inhabitants in a place the activity is run, and a kind of activity being run. Taxpayers pay for the card by the 7th day of a month for the previous month, and for December - by 28th December of a tax year.

Taxpayers, conducting economic activity, taxed in a form of a tax card are exempted from the obligation to keep books, submit tax returns or pay income advance tax payment. However, they are obliged to issue invoices that are mentioned in separate provisions and which prove the sale of goods, products or provision of services upon a client's demand, and keep copies of these invoices for five tax years counting from the end of the year the invoice was issued.

9.3. Lump-sum paid by clergy

On principle clergy (rectors, vicars, etc.) who obtain revenues on charges in connection with the performance of their pastoral work pay income tax on these revenues in a form of lump-sum on clergy's revenues. They may renounce this form of taxation by a submission of an appropriate statement to the competent head of a revenue office by 20th January of a tax year or by the day preceding the day they started to hold their pastoral post. As a consequence, they will be obliged to pay tax according to general rules.

The amount of a lump-sum for a given tax year is assessed by a decision of the head of a revenue office on the basis of quarterly rates specified in the Act. The amount of the rate depends on a clergyman the rate is applied to and on a number of inhabitants in a given parish. The lump sum is paid by the 20th day of the month after the quarter has lapsed, and for the fourth quarter - by 28th December of a tax year.

Clergymen paying lump-sum are exempted from the submission of a tax return on the amount of obtained revenue for the activity covered by the lump-sum.

9.4. Tonnage tax

A tonnage tax, different from the lump-sum forms of income taxation mentioned above, refers both to natural and legal persons. **Subjects who are ship owners exploiting sea merchant ships in international navigation** can benefit from this form of taxation. For this purpose a ship owner must submit a statement according to the accepted form, to a competent head of a revenue office by 20th January of the first tax year of a taxation period, and if a ship owner starts his/her activity in the tax year - by the day preceding the day s/he initiated the activity. Otherwise general rules of income taxation are applied.

The tax covers only the income involving the services in international navigation in the scope of, *inter alia*, transport of cargos and passengers, lease and use of containers, high seas rescue.

The tax base here is the income specified in a lump-sum which corresponds to the ratio of a 24-hour rate resulting from the Act (from EUR 0,1 to EUR 0,5) and the exploitation time in a given month of all the ships belonging to the ship owner. This income is taxed at a **19% tax rate**.

The tax for every month is calculated and paid without summons of the tax authority by the 20th day of each month for the previous month, and for December - within the time limit to submit a tax return for a given tax year (by 30th January of the next year).

10. Legal persons' income tax

BASIC DEFINITIONS:

The capital group - group consisting of at least two commercial law companies with a legal personality, operating in capital relationships and complying with the conditions stipulated in the Act.

Revenues connected with economic activity - revenue due, even if not yet actually received, excluding the value of the returned goods, granted rebates and discounts.

10.1. Subject of taxation

There are three categories of taxpayers: **legal persons** (for example limited liability company, joint stock company), **organizational units having no legal personality**, except for partnerships, (state budget entities, foreigners' representation) and **tax capital group**.

10.2. Object of taxation and tax base

Object of taxation is total income irrespective of the kinds of the revenue sources from which the incomes are earned (*inter alia* money and pecuniary values received, including also differences between rates of exchange, value of things or rights received gratuitously or partly paid for). In some cases income tax is imposed on revenues not on income (revenue from dividends and other sharing profits of legal persons having their seat within the territory of Poland).

10.3. Tax rates

The basic tax rate for legal persons' income tax is 19%. Tax act also stipulates flat, proportional rates for certain kinds of incomes: **10%**

(for due payments for overseas transportation of loads and passengers accepted for the carriage in Polish harbours by foreign sea trading enterprises, except for transit loads and passengers), **20%** (revenues received within the territory of Poland by the taxpayers who have no seat within the territory of Poland, from interest, copyright or related rights, rights to inventive projects, trade marks and design patterns, including revenues on the sale of such intellectual property rights, fees for the access to a secret recipe or production process, the use or the right to use an industrial, commercial or scientific device and also a means of transport, the information connected with the experience acquired in the industrial, commercial or scientific field (know-how), **50%** (on tax income of taxpayers performing transactions with family - related subjects; it refers to the difference between the income declared by the taxpayer and that determined by tax authorities).

10.4. Tax allowances and tax exemptions

A taxpayer is entitled **to have tax base** (income) reduced. Donations made for public benefit activity or for religious practice *inter alia* may be deducted, however, not more than the amount equal to 10 per cent of income, expenditures incurred by the taxpayer for the acquisition of new technologies.

Subjective tax exemptions (the State Treasury, the National Bank of Poland, state budget entities, territorial self-government units are exempted from tax) and **objective tax exemptions** (*inter alia* incomes of church legal persons, incomes received from conducting a school - the income which is spent on the school's objectives) can be distinguished.

10.5. The procedure and terms of payment

The income advance tax payments have to be paid during the tax year. They are payable by the 20th day of every month for the preceding month. There is also possibility to pay the advance tax payments in a given tax year in a simplified form in the amount of 1/12 of the tax due

disclosed in the statement filed in the year preceding a given tax year. Small taxpayers and taxpayers commencing economic activity may make quarterly advance tax payments.

Taxpayers are obliged to submit a statement on the amount of income earned (loss incurred) during the tax year according to the specified form, by the end of the third month of the following year. They should pay, within this time limit, the tax due or the difference between the tax due on income disclosed in this statement and the sum of tax pre- payments due for the period from the beginning of the year.

In the case of tax collected by tax remitters, they are obliged to remit the amounts of tax by the 7th day of the month following the month in which the tax was collected.

15th February 1992 Act on Legal Persons' Income Tax (Consolidated text: Dz.U. 2000, No. 54, item 654 with subsequent amendments)

Article 3. 1. If taxpayers have their seat or management office within the territory of the Republic of Poland, they shall be subject to tax liability imposed on their total incomes, without taking into consideration where they were got.

2. If taxpayers have not their seat or management office within the territory of the Republic of Poland, they shall be subject to tax liability imposed only on the incomes which they earn within the territory of the Republic of Poland.

Article. 7. 1. The income tax shall be imposed on any income, irrespective of the kinds of the sources of revenue from which the incomes are earned; in the cases referred to in Articles 21 and 22 below, the income tax shall be imposed on revenues.

2. The income shall be the surplus of total revenues over the costs of their earning gained in the tax year; if the revenue earning costs exceed the amount of revenue, the difference shall constitute a loss.

Article 7a. 1. The object of imposition of income tax in tax capital groups, the tax being calculated according to Article 19, shall be the income earned in a tax year which is a surplus of total incomes earned

by all companies constituting a tax capital group in excess of their total losses. Where, in a tax year, total losses exceed total incomes of the companies, the difference shall be a loss of the tax capital group. Incomes and losses of the companies shall be calculated in compliance with Article 7, paragraphs 1 to 3.

2. The losses, referred to in paragraph 1 above, incurred by a tax capital group, shall not be covered out of the incomes of particular companies after the expiry of the agreement or after the loss of its status by a tax capital group for reasons specified in Article 1a, paragraph 10.

3. Losses of the companies which are members of a tax capital group, suffered by them in a period before the group was formed, shall not be covered out of the income of such tax capital group.

Article 8. *1. The calendar year shall be the tax year subject to paragraphs 2, 2a, 3 and 6 unless a taxpayer decides otherwise in the articles of a company, in the deed of company or in another document regulating the organizational structure of other taxpayers, and notifies a competent head of the revenue office to this extent; in such case the period of twelve consecutive calendar months shall be a tax year.*

Article 22. *1. Income tax on incomes (revenues) from dividends and other revenues from sharing in profits of legal persons having their seat or management office within the territory of the Republic of Poland shall be assessed in the amount of 19 per cent of the revenue received.*

11. Goods and services tax - subjective and objective scope

BASIC DEFINITIONS:

Tax representative - a legal person or an organizational unit without legal personality, having its seat in the territory of the country, or a natural person having his/her permanent place of residence in the territory of the country, who is liable, jointly and severally with the taxpayer, for tax obligations of the taxpayer represented thereby.

The provision of services - each performance for the benefit of a natural person, legal person or organizational unit without legal personality which does not constitute supply of goods; it is also every gratuitous provision of services if they are not connected with running the enterprise and if the taxpayer had the right to reduce the amount of output tax by the amount of input tax for acquisition of the goods and services connected with these services, in whole or in part.

The supply of goods - a transfer of the right to dispose the goods as an owner - most frequently it is the transfer of ownership; however, it will also be every other action which effects in the possibility of factual disposal of the goods which can be defined as payable delivery; actions connected with the delivery of goods, e.g. transfer or consumption of the goods for the taxpayer or his/her employees' personal purposes, are also subject to taxation.

Export of goods - an exportation of goods, confirmed by the customs office specified in customs law provisions, from the territory of Poland outside the territory of the Community.

Import of goods - an importation of goods from the territory of a third country into the territory of Poland.

The intra-Community acquisition of goods - an acquisition of the right to dispose as the owner of the goods which, as a result of

supply, are dispatched or transported into the territory of a Member State of the European Community other than the territory of the Member State of the European Community of departure of the dispatch or transport by the person providing the supply, acquirer of goods or for their benefit.

The intra-Community supply of goods - an exportation of goods from the territory of Poland into the territory of another Member State of the European Community.

11.1. Subject of taxation

Taxpayers are legal persons, organizational units without legal personality and natural persons, who individually conduct the economic activity, regardless of the purpose or results of such activity. That economic activity includes any activity of manufacturers, traders or service providers, including the subjects acquiring natural resources and farmers, as well as the activity of people performing free-lance professions, also when the given activity was performed once, in the circumstances indicating an intention to perform such activities frequently.

The taxpayers that do not have their seat, permanent place of conducting activity or permanent place of residence in Poland are obliged to appoint a **tax representative**.

11.2. Object of taxation

The object of taxation of goods and services tax concerns: **supply of goods for consideration and provision of services for consideration in the territory of Poland, export of goods, import of goods, intra-Community acquisition of goods for remuneration in the territory of the country, intra-Community supply of goods.**

11.3. Tax base

The turnover understood as the whole payment due from the acquirer is tax base. That payment should be increased by the received

grants, subventions and other additional payments of a similar character exerting a direct influence on the price (amount due) of goods delivered or services provided by the taxpayer, reduced by the amount of output tax. On the other hand it should be reduced by the amounts of documented, legally admissible and obligatory rebates (abatements, discounts, granted complaints and cash discounts) and by the value of returned goods, refunded undue amounts within the meaning of provisions on prices and refunded amounts of grants, subventions and other additional payments of a similar character, as well as the amounts resulting from invoice corrections.

11th March 2004 Act on Goods and Services Tax (Dz.U. 2004, No. 54, item 535 with amendments)

Art. 2 *Whenever in the following provisions there is mention of:*

6) goods - this shall be understood as movable things, all forms of energy, buildings and constructions or their parts, which are the object of activities subject to goods and services tax which are listed in classifications issued on the basis of provisions on public statistics, as well as land;

Art. 15 (6) *Public authorities and offices servicing such authorities shall not be considered taxpayers within the scope of implemented tasks imposed by separate provisions of law for the implementation of which they have been appointed, save for the activities performed pursuant to civil law contracts concluded.*

Article 16. *Taxpayers shall also be legal persons, organizational units without legal personality and natural persons not being the taxpayers referred to in Article 15, if they effect intra-Community supplies of new means of transport in the case when the circumstances do not indicate an intention to perform this activity frequently.*

Article 17. 1. *Taxpayers shall also be legal persons, organizational units without legal personality and natural persons:*

1) who bear the duty to pay customs duties, also in the case when, pursuant to the provisions of customs law, imported goods are exempt from customs duties or customs duties on the goods have been

suspended in whole or in part, or if a preferential, reduced or zero customs rate has been applied;

2) entitled to use the customs procedure including inward processing, temporary clearance, processing under customs control, including also the persons onto which, pursuant to separate provisions, the rights and duties connected with these procedures have been transferred;

3) effecting intra-Community acquisition of goods;

4) being recipients of the services provided by taxpayers having their seats or places of residence or stay outside the territory of the country;

12. Goods and services tax - rates, preferences, payment rules

BASIC DEFINITIONS:

Output tax - the amount of tax that encumbers the turnover obtained by a taxpayer; drawing up an invoice to document the sale of goods, a taxpayer is obliged to disclose thereon the amount of the output tax.

Input tax - the sum of tax amounts shown on the invoices received by the taxpayer by virtue of the purchase of goods and provision of services, and in case of import, it is a sum of tax amounts resulting from the customs document; therefore, this is the tax paid by a taxpayer in the price of purchased or imported goods that he needs to perform actions that are subject to taxation.

12.1. Tax rates

The standard rate in goods and services tax imposed in Poland is **22%**. It covers all goods and services, where lower rates cannot be applied. There are also preferential rates of **7%** (it is applied to pharmaceuticals and medical equipment, some processed foods, passenger transport, hotel accommodation and some goods for infants) and of **3%** (lumped rate applied to taxi transport services). In addition, a **0%** VAT rate is applied mainly to exports of goods and intra-Community supplies of goods.

12.2. Tax exemptions

There are two kinds of tax exemption in goods and services tax. The first group is created by **subjective exemptions** (the taxpayers whose

total taxable sales in the preceding tax year did not exceed the value of PLN 50,000 are exempted from the tax). The other group comprises both **objective or mixed exemptions**. (*inter alia* gratuitous provision of services on health care, educational, scientific and investigative services, the import of goods which are exempt from customs duty and the sale of second hand goods).

The tax payers who are tax exempt cannot enjoy the right to reduce the amount of output tax by the amount of input tax.

12.3. The procedure and terms of payment

Taxpayers who pay goods and services tax are obliged to submit a registration entry before performing the first action (being subject to taxation) to the head of a revenue office. Taxpayers who intend to effect transactions within the European Community are obliged to inform the head of a revenue office about it. They are registered by revenue offices as “EU VAT taxpayers” and are given an appropriate number before they perform the first action.

Taxpayers who conduct economic activity, as a rule, have to submit **tax returns** by the 25th day of the month following each subsequent month. Exceptionally, small taxpayers who selected a cash method, submit returns quarterly by the 25th day of the month following the subsequent quarter. This rule is also applied to lump-sum farmers who resigned from the exemption.

Taxpayers who are exempted from the tax subjectively as well as those who only perform actions exempted from tax **do not submit tax returns**.

The tax on imported goods is calculated and disclosed in the **customs notification**. Taxpayers conducting economic activity, who enter into transactions within the European Community, disclose the tax on these actions in the submitted returns. Apart from the returns they are obliged to submit the **information summarizing** transactions concluded within the European Community for quarterly periods by the 25th day of the month following the lapse of the quarter.

Taxpayers are encumbered with the duty to draw up **invoices** which, in particular, specify the transaction, a date of sale, a unit price before taxation, a tax base and the details of the taxpayer and the purchaser. The invoice is a document which provides the mechanism of deduction of input tax from output tax. Taxpayers are obliged to keep **register** (full or simplified version- taxpayers subjectively exempted or special with the use of cash registers) to settle taxes on goods and services.

12.4. Due tax

Due tax is the difference between **output and input tax**. As a rule the output tax is decreased by the input tax in the settlement for the period (a month or a quarter) a taxpayer received the invoice or the customs document for.

11th March 2004 Act on Goods and Services Tax (Dz.U. 2004, no. 54, item 535 with amendments)

Article 85. If the taxpayer provides services, including in the field of commerce and gastronomy, the amount of due tax may be calculated as the product of the value of supply and the rate of:

- 1) 18.03 per cent - for goods and services taxable at 22 per cent rate;*
- 2) 6.54 per cent - for goods and services taxable at 7 per cent rate;*
- 3) 2.91 per cent - for goods and services taxable at 3 per cent rate.*

Article 96. 1. Prior to carrying out the first activity specified in Article 5, the subjects referred to in Article 15 shall file an application for registration with the head of the revenue office, subject to paragraph 3.

2. In the case of natural persons referred to in Article 15, paragraphs 4 and 5, the application for registration may be made

exclusively by one of the persons to whom invoices will be drawn in the case of purchase of goods and services and who will issue invoices in the case of sale of agricultural products.

3. The subjects mentioned in Article 15, exempt from tax under Article 113, paragraphs 1 and 9 or carrying out exclusively the activities exempt from tax under Article 43, paragraph 1 and Article 82, paragraph 3, may file an application for registration.

4. The head of a revenue office shall register a taxpayer and acknowledge his registration as an “active VAT payer” or, in the case of the taxpayers referred to in paragraph 3, as an “exempt VAT payer”.

Article 99. *1. The taxpayers shall be obliged to submit their tax returns to the revenue office monthly, by the 25th day of the month following each subsequent month, subject to paragraphs 2 to 10 and Article 133.*

2. The small taxpayers who have chosen the cash-basis method shall submit to the revenue office the tax returns quarterly, by the 25th day of the month following each subsequent quarter.

3. The small taxpayers who have not chosen the cash-basis method may also submit the tax returns referred to in paragraph 2, having notified the head of a revenue office thereof in writing prior to the end of the quarter preceding the quarter in which the first quarterly tax return will be filed.

13. Excise duty and tax on gambling

BASIC DEFINITIONS:

Harmonized excise goods - goods such as engine fuels, heating oils and gas, alcoholic beverages and tobacco products; they are taxable to excise in all UE countries.

Non harmonized excise goods - excise goods other than harmonized excise goods e.g. cosmetics, cars, and playing cards; they can be taxable only when states decides to do so.

Tax warehouse - place specified in a permit issued by the competent head of a customs office and liable to a special tax supervision by virtue of provisions on the customs service, where harmonized excise goods are placed under excise-suspension procedure and may be subject to acts performed under specified conditions.

Excise duty marks - markings used for designating excise goods or single packaging of excise goods liable to such designation.

Registered trader - subject who has been granted a permit to acquire harmonized excise goods from another Member State under excise-suspension procedure, within the scope of his/her economic activity.

13.1. Subject of taxation in excise duty

Tax payers of excise are natural persons, legal persons and organizational units having no legal personality performing taxable acts. These subjects are *inter alia*: producers of the excise goods, salesmen and importers or exporters of these goods.

Tax payers are also the subjects who acquire or hold the excise goods on which excise has not been paid in due amount; subjects who hold harmonized excise goods, where an excessive wastage or shortage

has occurred and also contractors of services to manufacture excise goods under a contract to perform specific work or other contracts.

13.2. Object of taxation in excise duty

The objective scope of excise duty includes: manufacture of harmonized excise goods, dispatch of harmonized excise goods from a tax warehouse, sale of excise goods within the territory of Poland, export and import of excise goods, intra-Community acquisition and supply, acquisition or holding the excise goods on which excise has not been paid in due amount.

The term of sale mentioned above refers to, *inter alia*, the situations of giving or using excise goods for the purposes of official entertainment or advertising, using excise goods for the payer's personal needs, their partners, shareholders.

Excise goods are divided into two categories: **harmonized** (covered by the process of harmonization at the EU level - engine fuels, fuel oils and gas, alcoholic beverages and tobacco products) and **non-harmonized** (their catalogue and the way of taxation has been left to the Polish legislator's discretion - e.g. perfume, cars).

The terms of export, import, intra-Community acquisition and supply have similar meanings to these which refer to the goods and services tax.

13.3. Tax base in excise duty

In general, the **value of excise goods** is the tax base in the excise tax. The tax base is understood as: the due amount from the sale of excise goods within the territory of Poland reduced by the amount of tax on goods and services and the excise amount due from such goods; the amount the acquirer is obliged to pay for excise goods in the case of intra-Community acquisition, the due amount from the supply of excise goods into the territory of the Member State in the case of an intra-

Community supply, the customs value of excise goods increased by the due amount of customs duty, in import.

If the excise rate is expressed as an amount per unit of goods, the tax base is the **quantity of excise goods**. (e.g. in the case of fuels, the liquor, gas). The tax base can also be the **retail price fixed and printed on a single packaging** (e.g. cigarettes). In that case the excise rate is expressed as an amount per unit of goods and a percentage of the maximum retail price.

13.4. Tax rates in excise

Excise tax rates can have the form of: **amount rates** (e.g. 136 zloty for the hectolitre of wine), **proportional rate** (e.g. 10 % for perfumes), **mixed** (the amount per unit of goods and a percentage of the maximum retail e.g. cigarettes).

The rates imposed by Tax Act are of maximum value and can be reduced with the ordinance by the competent minister of public finances.

13.5. Tax exemption in excise

Tax Act regulates two categories of the exemptions: **subjective** (*inter alia* diplomatic agencies, armed forces of NATO) and **objective** (e.g. the electrical energy produced from renewable sources of energy; beer, wine and fermented drinks, made at home by natural persons for their personal needs and not intended to be sold).

13.6. The procedure and terms of payment

Taxpayers who conduct economic activity connected with excise goods are obliged to submit a registration entry before performing the first action, being subject to taxation, to the head of a customs office.

Taxpayers are obliged to calculate and pay monthly amounts of excise by the 25th day of the month following the month in which the tax liability arose, into a competent customs chamber's account.

With regard to harmonized excise goods, the payers shall also be obliged to calculate and pay the **initial daily excise amounts**. Initial payments of daily excise amounts shall be made no later than on the 25th day following the day on which the tax liability arose. The payments of daily amounts made for a given settlement month shall be taken into account during the settlement of the excise for a given settlement month.

Taxpayers importing excise goods are obliged to pay the excise within the time limit and under conditions specified in the customs law provisions for customs duties.

There is an obligation to designate excise goods with tax excise duty marks. It refers to producers, importers, subjects who acquire intra-Community goods, tax representatives and subjects package, dispense or weigh goods into single packaging, as well as repackage, re-dispense or subsequently weigh excise goods into other single packaging.

13.7. Gaming tax

Gaming tax is paid by subjects who conduct activity in the scope of **games and bets** on the basis of the permit/license they have been granted with, the subjects who **arrange games of chance on slot-machines** as well as **games and lotteries** that are the state monopoly. Whereas organizing **games, lotteries and bets** is the object of the tax.

The tax base depends on the kind of game conducted. In lotteries, for example, it will be the sum of receipts obtained from the sale of lottery tickets or other proofs of participation in the game, whereas in the case of slot-machines games, the amount which is a difference between the amount obtained from the exchange of games tokens or the amount paid into the till in the amusement arcade and credited in the slot-machine's memory or paid into the slot-machine, and the sum of winnings obtained by the participants of games.

Tax rates on the gaming tax take the form of proportional, flat rates (**10%** for tombola, bingo and bets, **15%** for money lotteries, **20%** for number games, **45%** for games conducted in casinos and amusement arcades on slot-machines) or **lump-sum** (e.g. EUR 125 a month for each slot-machine of low winnings).

Taxpayers are obliged to **count and pay gaming tax for monthly periods** into the competent revenue office's account by the 10th day of the month following the month the settlement refers to. Taxpayers who arrange number games pay gaming tax into the competent revenue office's account within 10 days of the day of the drawing.

23rd January 2004 Act on Excise Duty (Dz.U. 2004, no. 29, item 257 with amendments)

Article 13. 1. Tax authorities for excise shall be, within their respective areas of competence, the head of a customs office and the director of a customs chamber competent for the place of performance of taxable acts.

Article 26. 1. The collection of excise on harmonized excise goods shall be suspended where the goods are:

- 1) manufactured, processed or stored in a tax warehouse;*
- 2) moved between tax warehouses within the territory of the country;*
- 3) exempt from excise duty due to their intended use or supplied to the acquirers entitled to acquire goods exempt from excise.*

Article 27. 1. Where the excise-suspension procedure is related to the operation of a tax warehouse, the excise collection suspension shall be conditional on a permit to operate a tax warehouse issued for a given subject by the competent head of a customs office.

2. Where the excise-suspension procedure is related to a registered trader or non-registered trader, in the context of an intra-Community supply, the excise collection suspension shall be conditional on an authorization issued by the competent tax authority of a Member State to receive harmonized excise goods by the acquirer under the excise-suspension procedure.

Article 37. 1. *Upon a written application of the subject concerned, the head of a customs office may issue a permit for acquisition of harmonized excise goods under the excise-suspension procedure. While issuing such permit, the head of a customs office shall assign an excise identification number thereto.*

14. The taxation of real estates in Poland

BASIC DEFINITIONS:

Building - a building structure which is permanently connected with the ground, possesses walls, foundations and the roof.

Structures - building structures which are not building or the accessory buildings.

14.1. General comments

There is a duty to pay a property tax for real estates in Poland⁸. It can be one of the three following dues: real estate tax, agricultural tax or forestry tax. Only one of these dues is bound with the given real estate. Otherwise we would deal with double taxation. As a consequence, settling, e.g. agricultural tax, as an appropriate one to be levied in the given case, eliminates the possibility of burdening this real estate with other property tax (forestry or real estate tax).

14.2. The tax payer

In real estate tax, agricultural tax and forestry tax, the legislator introduced very similar rules denominating the tax-payer. There can be all subjects, aside from their legal status, such as: natural persons, corporate bodies and organizational entities. The duty shall be levied on them, if they possess properties on the grounds of a definite, valid legal title like ownership or perpetual usufruct⁹. It can also be the contract

8 See M. Popławski (editor), *Stanowienie i stosowanie prawa podatkowego w gminach*, Białystok 2007, p. 124 and the following

9 Perpetual usufruct is a contract where the ground owned by State Treasure or the territorial self-government units is delivered into the prolonged use to the given subject.

or other act, on the ground of which one subject becomes a possessor of real estates (for example the tenancy, lease, hire). However, a bailee of real estates (the tenant, the user etc.) shall be a tax-payer only when the contract refers to the property of the State Treasury or the territorial self-government units. It means that the transfer of possession of private property is not effective with the transfer of the tax-duty on the possessor as in such a case, the owner shall still be the tax-payer.

The legislator stipulates that there are cases when a tax-payer shall be the subject which has no valid legal title - in the case of the existence of the autonomous possessor and in the possession of real estates of the State Treasury or the territorial autonomy units without the valid title.

14.3. The object of taxation

Real estate tax refers to **structures, buildings, and grounds**, which are not taxable by agricultural tax or forestry tax. Arable lands are only taxable to agricultural tax and forests are taxed with forest tax. It means that building structures (buildings and structures) are taxed by a real estate tax, while grounds, depending on their character, by one of the three above-mentioned taxes.

Technical networks (telecommunication network, water conduits and sewerages, other conduit systems, energy distribution structures, etc., reservoirs, antenna masts etc. are examples of taxed structures. In contrast to buildings, the structures are taxed only when they are commercially used. Buildings, on the other hand, will be taxable regardless of their purposes (habitable or commercial ones).

The entry in the register of property decides on the character of grounds. It is binding both for the tax-payers and tax authorities. Sometimes real estate tax can be levied on arable lands and forest. This will take place in the case of the factual seizure of these grounds for the economic activity other than agricultural one. Thus, real estate tax should be paid. It happens if, for example, there is a gravel pit commercially used on the arable land. Real estate tax should be imposed, in spite of the fact, that there are no changes concerning

14.4. The tax base

The tax base for buildings or their parts is determined by their usable area expressed in square meters. These data can be fixed based on the physical quantity survey of the area of the building according to the internal length of walls. The quantity survey is made by the taxpayer who shows the usable area in the tax return.

The amortization-value of the structures determines the tax base - which may be used when the object is redeemed. In other event, the tax base is the trading value fixed by the tax-payer, after the regard of the state and the degree of the structure wear.

The tax base for grounds is expressed in meters (when taxed with real estate tax) or hectares (when taxed with an agricultural tax or forestry tax).

14.5. Rules of establishing the rates

Communes, where the taxable real estates are located, decide on the amount of the rates in real estate tax, agricultural tax and forestry tax. However, the element of a tax structure is affected in a different way. In the real estate tax the commune council is obliged to estimate the amount of rates. The rates estimated by the commune council cannot exceed maximum rates, valorized annually for the inflation level.

In the case of agricultural and forestry tax the rates depend on annually estimated prices of the ryes (agricultural tax) and wood (the forestry tax). The commune council can reduce the prices of these goods to decrease these taxes.

14.6. The commencement and expiry of a tax liability

Tax liability in real estate tax, agricultural and a forestry tax arises on the first day of the month following the month, in which a certain circumstance appeared being the ground for this duty. It means that the subject who purchased the ground or the building shall be burdened

with this tax liability starting from the next month after the month in which real estates were purchased. The exception refers to newly built buildings or structures. In this case tax liability arises from the beginning of the year following the year, in which the construction of the mentioned objects was finished or in which the building or its parts were used before their final finish.

Tax liability expires at the end of the month, in which the circumstance, based on which this duty arose, disappeared (e.g. the sale or disposal of real estates).

14.7. Tax allowances and tax exemptions

The catalogue of preferences in local taxes imposed on the seisin in law of real estates is quite complex. They can be classified as tax allowances and tax exemptions. Tax allowances appear only in the case of the agricultural tax (e.g. the abatement of a tax in connection with investment expenses) or in forestry tax (reducing price of wood). Tax allowances do not appear in the real estate tax.

Tax exemptions refer to all three taxes. They can arise out of financial acts or tax resolutions introduced by the commune councils. Nowadays the following cases are exempted from real estate tax: the railway-infrastructure and the grounds occupied under it, buildings or their parts with the forest-activity, buildings or their parts used exclusively for the agricultural activity, real estates occupied for the purposes of associations that conduct educational activity among children and young people, museums, schools, colleges, places of employment of disabled people.

In the agricultural tax, the following cases are exempted: grounds of the poor class (qualities), farm grounds on which the farming production was ceased, the grounds acquired for the purpose to increase or form a new farm. The forests with the stand aged to 40 years and forests inscribed individually to the register of monuments are exempted from the forest tax.

The commune council can introduce additional exemptions in tax-resolutions¹⁰. Communes often take advantage of this right to exempt buildings and grounds of farmers who are retired, communal real estates the possession of which have not been transferred to other subjects, or buildings used for charity or cultural and educational purposes.

14.8. Time-limits and payment rules

The tax-payer of real estate tax, agricultural tax and forest tax, who is a natural person, is obliged to pay the tax in installments in time-limits: by the 15th day of March, 15th day of May, 15th day of September and 15th day of November, of the tax year. This duty is, however, enforceable only after the taxpayer has been served with the tax decision. It is due to the fact that in these cases tax due arises only as the result of the delivery of the tax-decision.

The village mayor, the mayor, the president of a city are the subjects who are authorized to pass such decisions. The tax returns filed by taxpayers should constitute the grounds for the decisions. The decisions should indicate all the data indispensable to the taxation. Tax-payers who are natural persons, have been obliged to deliver these forms termly 14 days, from the day when the circumstances determining the tax liability appeared.

Tax payers that are corporate bodies or organizational units are obliged to pay real estate tax, calculated individually by them in the tax return, without the summons. They ought to pay tax monthly, into the competent community budget account, termly by the 15th day of each month. Agricultural tax is an exception payable by these subjects in four installments.

10 See L. Etel, M. Popławski, R. Dowgier, *Gminny poradnik podatkowy*, Volume I, Warsaw 2005, p. 68 and the following

15. Other local taxes

15.1. Tax on means of transport

The subjects who are obliged to pay this tax are: the owners of means of transport, organizational units that do not have legal personality (e.g. state budget entities) that are registered owners of the means of transport as well as the owners of means of transport registered within the territory of the Republic of Poland as those entrusted to a Polish subject by a foreign natural or legal person.

The following means of transport are **subject to tax on means of transport**: trucks of permissible total weight over 3,5 tones; truck and ballast tractors adapted for use together with a trailer or a semi trailer of permissible total weight of the set of vehicles over 3,5 tons; trailers and semi trailers which together with the motor vehicle have permissible total weight over 7 tons except those that are exclusively connected with agricultural activity run by the taxpayer who pays agricultural tax; and buses.

Tax rates are expressed in a form of fixed amounts. They are assessed by the resolution adopted by the commune council. While adopting the resolution a commune council cannot exceed **maximum rates** specified for all categories of means of transport. Moreover, for vehicles whose permissible total weight exceeds 12 tons, **minimum tax rates** have been envisaged, which must be also taken into account by the commune council in the resolution on the tax rates.

By virtue of the Act the means of transport that are, *inter alia*, mobilization reserves, special or historical vehicles, are exempted from the tax. In a resolution the commune council can introduce other tax exemptions than those stipulated in the Act except those means of transport the legislator envisaged the minimum rates for.

Taxpayers who use means of transport in combined transport within the territory of the Republic of Poland are entitled to the refund of the tax paid. The amount of the refund is assessed according to a number of drives with or without cargo made by the means of transport in a railway transportation in a given tax year.

Taxpayers are obliged to submit tax returns for the tax on means of transport for a given tax year by 15th February to the village mayor or mayor (the president of a city) competent according to the place of residence or the taxpayer's seat, and if the duty arose after this date - within 14 days from the day the circumstances justifying this duty appeared. The tax disclosed in the tax return is paid without summons into the tax authority's account as a rule in two installments by 15th February and 15th September of each year.

15.2. Donation and inheritance tax

The taxpayers are natural persons who obtain the possession of things that are located within the territory of the Republic of Poland or property rights executed within the territory of the Republic of Poland.

Obtainment of the possession of things located within the territory of the Republic of Poland or of property rights executed within the territory of the Republic of Poland effected by natural persons by virtue of, among the others, succession, bequest, further legacy, testamentary instruction; donation, donator's instruction; acquisitive prescription; gratuitous dissolution of co-ownership, is subject to taxation.

The tax base is the value of the things and property rights obtained after deduction of debts and burdens (**pure value**), assessed according to the conjuncture and property rights on the day of the obtainment and market prices as of the day the tax liability arose. This value is assessed according to the conjuncture and property rights on the day of the obtainment and market prices as of the day the tax liability arose.

The obtainment of the possession to the things and property rights effected by the obtainer from one person of the pure value exceeding PLN 9637 is subject to taxation if this person belongs to the **tax group**

I(a spouse, descendants, ascendants, a stepson, a son-in-law, a daughter-in-law, siblings, a stepfather, a stepmother and a father-in-law); PLN 7276 if the obtainer belongs to the **tax group II** (siblings' descendants, parents' siblings, descendants and spouses of stepchildren, siblings' spouses, spouses' siblings, spouses of spouses' siblings, spouses of other descendants); PLN 4902 if the obtainer belongs to the **tax group III** (other obtainers who have been classified neither in the first nor the second group). In consequence, the obtainment of the possession to things and rights, whose pure value does not exceed the amounts mentioned above is not subject to taxation. However, it should be emphasized that if the obtainment is effected after the same person, the amounts obtained during 5 years are added to calculate a free amount.

Tax rates are included in the tax scale and they embrace specified amount ranges and tax groups. They are of a **progressive, percentage and mixed percentage-amount nature** (e.g. in the case of obtainers classified in the tax group I, the tax rate, calculated from the surplus over the free amount, amounts to: up to PLN 10278 - the rate amounts to 3%, between PLN 10278 and PLN 20556 - the rate amounts to PLN 308,30 and 5% of surplus over PLN 10278. There is also an **interest rate** in the analyzed tax (7% in the case of the obtainment by acquisitive prescription and 20% in the case of donation and if the tax liability arose as result of the circumstances effecting this donation by a taxpayer before a tax authority or fiscal control authority in inspection acts, tax proceedings, tax control or inspection proceedings).

The catalogue of reliefs and exemptions is quite extended. For instance, the exemption is applied in the case of gratuitous dismissal of co-ownership between people classified in the tax group I.

Donation and inheritance tax can be collected by a public notary (if he or she certifies that a given action has been performed). As a **tax remitter**, the notary is obliged to calculate and collect tax on donation deeds made before him or her. The collection of the tax by the notary exempts the taxpayers from submitting tax returns. In other cases the taxpayers are obliged to submit **tax returns on the obtainment of the possession to the things and property rights** to competent heads of revenue offices within a month from the day the tax liability arose. On

the basis of the data included in the tax return the tax authority **issues a decision assessing the amount of the tax obligation** in the donation and inheritance tax. The tax which arises from this decision must be paid within 14 days from the day it was served.

15.3. Tax on acts in civil law

Tax liability encumbers the following parties to the civil law actions covered by the analyzed tax: the **purchaser** - in the case of sales agreement, the **parties to the action** - in the case of exchange agreement, the **donatory** - in the case of donation agreement, the **purchaser of the real estate's ownership** - in the case of life-rent agreement, the **subject purchasing things or property rights exceeding the share of the inheritance or in the co-ownership** - in the case of agreements on inheritance division/partition or dismissal of co-ownership, the **user or the purchaser of easement** - in the case of the establishment of payable use of rights, including incorrect or payable servitude, the **borrower or keeper** - in the case of a loan agreement or incorrect deposit agreement, the **person making a declaration of will to establish mortgage** - in the case of mortgage establishment, the **partners** - in the case of civil partnership contract, and the **partnership** - in the case of other partnerships contracts.

Civil law actions are subject to tax if their objects are things located within the territory of the Republic of Poland or property rights executed within the territory of the Republic of Poland, or if the things are located abroad or property rights are executed abroad. In the latter case the purchaser must have a place of residence or a seat within the territory of the Republic of Poland and the civil law action must be carried out within the territory of the Republic of Poland.

The tax base is varied depending on the object of taxation. For instance, in the case of a sales agreement it is a **market value** of the thing or property rights, in the case of a loan agreement and incorrect deposit agreement - the **amount or value of the loan** or deposit.

As a rule tax rates are of an percentage nature, **from 0,5%** (in case of partnership contract) **to 20%** (when referring to the fact of

concluding, e.g., a loan agreement before a tax authority or fiscal control authority in inspection acts, tax proceedings, tax control or inspection proceedings). There is also an amount rate of PLN 19 applied for mortgage establishment to secure claims of unspecified amount.

Taxpayers are obliged to submit a tax return, in the matter of civil law actions tax according to specified pattern without the summons, to a tax authority and to calculate and pay the tax within 14 days from the day the tax liability arose excluding cases when the tax is collected by the tax remitter. Public notaries are **tax remitters** of the tax on civil law actions made in a form of a notary deed. They are obliged to make the performance of a civil law action dependent on a prior payment of the tax.

Useful links:

The Constitution of the Republic of Poland

<http://www.trybunal.gov.pl/eng/index.htm>

The Ministry of Finance in Poland

<http://www.mf.gov.pl/index.php?const=1&dzial=1562&wysw=84&sub=sub4>

The Centre of Tax Documentation and Studies in Łódź (lecture of Prof. Nykiel titled Introduction to Polish Tax Law)

<http://cdisp.uni.lodz.pl/>

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- E. Puławska, Polish Tax Law. Personal Income Tax Act. Corporate Income Tax Act. Goods and Services Tax Act, Warsaw 2006.
- M. Radvan, Czech Tax Law, Brno 2005.

17. Glossary

accrue (v.)	-	to accumulate, grow,
admonition (n.)	-	a warning
arrears (n.)	-	overdue payments, unpaid debts
deceased (n.)	-	the dead
deferment (n.)	-	the act of delaying or postponing
disclose (v.)	-	to expose to view, open up
discretion (n.)	-	individual choice or judgment
encumber (v.)	-	to burden, load
exempt from (v.)	-	released from some liability to which others are subject
installment (n.)	-	one of the parts into which a debt is divided
lapse (n.)	-	passage of time, termination, expiration
lump-sum (n.)	-	a single payment for the total amount due, as opposed to a series of periodic payments
mortgage (n.)	-	conditional transfer of property as for security on a loan;
prerequisite (n.)	-	prior condition
pursuant (adj.)	-	in accordance with
reimburse (v.)	-	repay, refund
remuneration (n.)	-	payment
summons (n.)	-	to command somebody to appear in court
tenancy (n.)	-	the temporary possession or occupancy of something (as a house) that belongs to another

Based on:

Merriam-Webster: www.merriam-webster.com

Babylon: www.dictionary.babylon.com

18. Quiz

I. Decide if the following sentences are true or false (10 pts)

1. Taxes can be introduced by the resolution of a local council.
2. Tax base is a structural element of every tax.
3. Tax relief excludes the obligation to pay tax in whole
4. Forestry tax is classified as state budget income.
5. There are three ways in which tax obligations are formed.
6. There are three manners of securing the fulfillment of tax obligations.
7. Cash and non-cash are the only forms of tax payment envisaged by law.
8. Tax proceedings can only be instigated *ex officio*.
9. An appeal is one of two ordinary appeal measures.
10. The difference between output and input tax is called due tax.

II. Complete the names of taxes with one word (5 pts)

1. Natural persons' _____ tax
2. Goods and _____ tax
3. Tax _____
4. Tax on means of _____
5. _____ property tax

**III. Match the phrases with the definitions given below.
There are some extra words (5 pts)**

tax *tax arrears* *tax exemptions* *tax liability*
tax obligation *tax collector* *tax payment* *tax remitter*

- a. gratuitous, compulsory, non-repayable pecuniary performance made under public law in favour of the State Treasury, a *voivodeship*, a *poviat* or a *gmina*, resulting from statutory tax law;
- b. the exclusion of a given tax belonging to a certain category of subjects or objects;
- c. natural person, a legal person or an organizational unit having no legal personality, obliged, on the basis of the provisions of tax law, to calculate and collect tax from a taxpayer and to pay it to the tax authority within appropriate time limits;
- d. tax which was not paid within the time limits for such a payment;
- e. an obligation of the taxpayer, resulting from tax liability, to pay a tax in favour of the State Treasury, a *voivodeship*, *poviat* or *gmina* in the amount, time limits and place determined by the provisions of tax law.

IV. Match the columns (10 pts)

- | | |
|-----------------|---------------|
| 1) prolongation | a) interest |
| 2) legal | b) tax |
| 3) object of | c) sum |
| 4) inheritance | d) allowances |
| 5) lump | e) person |
| 6) default | f) group |
| 7) tax | g) fee |
| 8) the capital | h) goods |

9) excise

i) parties

10) third

j) taxation

V. Complete the extract with the words given below (5 pts)

local provisions residence seat tax authorities

***Article 15.** § 1. _____ shall preserve their _____ and material competence ex officio.*

***Article 16.** The material competence of tax authorities shall be determined pursuant to the _____ specifying their scope of activities.*

***Article 17.** § 1. Unless tax Acts provide otherwise, the local competence of tax authorities shall be determined according to the place of _____ or the address of the _____ of the taxpayer, tax remitter or tax collector.*

Both glossary and quiz were prepared by Halina Sierocka.