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SHARES IN THE REVENUE FROM INCOME TAXES AS INCOME OF LOCAL SELF-GOVERNMENT UNITS IN POLAND

Introduction

In most European countries, revenue from income taxes is divided between the state budget and the budget of local self-government units. The division of public income from income taxes is performed through the institution of a share in the revenue from these taxes or local income taxes, also known as "piggyback taxes". The institution of a share in the revenue from income taxes is used *inter alia* in Austria, Czech Republic, Greece, Spain, Germany, Poland, Portugal, Romania, Slovakia, Slovenia, Hungary and the Baltic states[1]. On the other hand, piggyback taxes are used mostly in Scandinavian countries – Sweden, Norway, Finland and Denmark, as well as Croatia and Italy[2]. Not only income taxes are subject to a division between the state budget and the budgets of local self-government units in European states. Examples include sales taxes in Germany and Spain, the property tax in the United Kingdom, the vehicle tax in Ireland, the inheritance tax in Lithuania and the gambling tax in Latvia[3].

Shares in revenue from income taxes are a substantial part of the income of local self-government units in Poland as well. They comprise 21% of all income, as well as 42% of the own income of communes (*gmina*), counties (*powiat*) and provinces (*województwo*)[4]. Shares in revenue from income taxes are regulated in Polish law by the Act on the Income of Local Self-Government Units of 13 November 2003 (*ustawa z dnia 13 listopada 2003 roku o dochodach jednostek samorządu terytorialnego*)[5]. This Act indicates that shares are income of local self-government units at all levels (Art. 3 par. 2), regulates the allocations of shares (Art. 4 par. 2 & 3, art 5 par. 2 & 3, and Art. 6 par. 2 & 3), the criteria for dividing the shares between local self-government units at various levels (Art. 4 par. 2 & 3, Art. 5 par. 2 & 3, Art. 6 par. 2 & 3, Art. 9, Art. 10, Art. 10a), the procedure for transferring the shares (Art. 12, Art. 12) and interest on the shares (Art. 13). The aim of this article is to present the character of shares in the revenue from income taxes as income of the local self-government units in Poland on the basis of the share classification criteria proposed by H. Blöchliger and O. Petzold.

The article is a continuation of previously published research concerning local self-government units' shares in the revenue from income taxes in Poland[6].

H. Blöchliger and O. Petzold's classification of local self-government units' shares in tax revenue

European states use the term "shares" for different legal constructs of dividing public income from taxes between the state budget and the budgets of local self-government units. H. Blöchliger and O. Petzold, in order to clarify the meaning of the term, propose the classification of shares according to the following criteria[7]:

1) risk sharing,
2) un-conditionality,
3) formula stability,
4) individual proportionality.

The first criterion – risk sharing – is concerned with whether the local self-government units have shares in the real or planned revenue from a given tax. The second criterion – un-conditionality – indicates whether local self-government units are free to spend the income from shares in taxes however they choose. The third criterion – formula stability – classifies shares based on whether they are given to the local self-government units for an indeterminate time, or whether the formula changes cyclically, e.g. is written yearly into the budget act. The fourth criterion – individual proportionality – is concerned with whether local self-government units have shares in the revenue from taxes proportional to the amount of taxes paid on their territory.

Based on these criteria we may distinguish "strict tax sharing", regular "tax sharing" and "intergovernmental grants"[8]. When all four criteria are fulfilled, a given institution falls under "strict tax sharing". In this case, local self-government units have shares in the real, not planned, revenue from taxes, can freely spend the means acquired in this manner, legal regulation of the shares is stable, and the recipients acquire their due shares proportionally to the revenue from taxes paid in their territory. "Strict tax sharing" first and foremost fulfills a fiscal role and does not equalize the income of local self-government units. Because of this, it is necessary to introduce compensatory mechanisms to the local self-government finance system of a given state in order to correct for the uneven distribution of income. Institutions that fulfill the first three criteria but not the individual proportionality criterion are called regular "tax sharing" institutions. In this case, the shares are distributed centrally, based on legally determined criteria. The amount of income acquired thusly by the local self-government units is therefore not dependent on the amount of taxes paid in their territory. It also means that unlike "strict tax sharing", regular "tax sharing" also plays a compensatory role. However, if one of the first three criteria is not fulfilled, a given institution, despite its name, is not a share, but a transfer from the state budget to the budgets of local self-government units[9].

The presented criteria for classifying shares in tax revenue will allow for an assessment of Polish legal regulations of shares in revenue from income taxes, and for finding an answer to whether Polish shares should be classified as "strict tax sharing", "tax sharing" or transfers in further parts of the article.

Risk sharing criterion

There are two ways of calculating the amount of local self-government shares in revenue from income taxes. This can either be based on the real revenue from a given tax, or from the revenue planned in the state budget[10]. In Poland, since 1990 the real revenue model has been used. Polish communes, counties and provinces have shares in the general amount of personal income tax revenue[11] and the general amount of corporate income tax revenue. In this way, almost 50% of general personal income tax revenue and almost 23% of corporate income tax revenue goes to the budgets of local self-government units.

The risk sharing criterion differentiates shares in revenue from income taxes from state budget transfers to the budgets of local self-government units, which also appear in Poland – the general subsidy and designated subsidies. The values of the general subsidy and designated subsidies that are owed to local self-government units from the state budget are independent from any fluctuations in state budget income and from the risk of not being able to meet the planned income[12]. Their value is based on formulas determined by statute. In contrast, the value of shares owed to local self-government units is based on the real revenue from income taxes. This means that local self-government units also share in the risk of not meeting the planned income from their shares.

Based on the foregoing, it can be stated that Polish local self-government units' shares in income tax revenue fulfill the risk sharing criterion.

Un-conditionality criterion

Local self-government units have discretion in how they spend the resources acquired from their shares in income taxes. This differentiates them from designated subsidies, which are granted for specific purposes[13]. This means that a unit that is granted a designated subsidy must finance a specified task. Not using it for its designated purpose results in sanctions specified in the Public Finances Act[14], the Act on Liability for Infringing Public Finance Discipline[15], the Criminal Code[16] and the Tax Criminal Code[17]. This indicates that Polish local self-government units' shares in income tax revenue fulfill the un-conditionality criterion.

Formula stability criterion

As mentioned above, local self-government units' shares in personal income tax revenue are regulated in the Act on Income of Local self-government units of 13 November 2003. This Act regulates in detail the percentages for distribution, the criteria for dividing revenue among local self-government units at the same level, and the procedure for transferring the shares due. They are granted to local self-government units for an indeterminate time, and their value is not – as a rule – modified yearly. The value of shares due to communes, counties and provinces is determined by Art. 4 par. 2 & 3, Art. 5 par. 2 & 3, and Art. 6 par. 2 & 3 of the Act on Income of Local self-government units. The share in personal income tax from taxpayers living within the borders of a commune due to the communes is 39.34%, subject to the exception set forth in Art. 89 of the Act. The share in corporate income tax from taxpayers domiciled within the borders of the commune due to communes is 6.71%. For counties it is, respectively, 10.25% and 1.40%, and for provinces 1.60% and 14.75%.

The only exception is the aforementioned Article 89 of the Act on Income of Local self-government units, according to which the communes' share in revenue from personal income taxes is modified yearly based on the number of people admitted before January 1, 2004 to nursing homes. This solution is meant to allow for a gradual transition to a new model of financing some social care tasks. Residence in nursing homes during the transitional period is financed from two sources – the share in revenue from personal income taxes and designated subsidies from the state budget. Annually, the designated subsidy is to be decreased, and the share in revenue from personal income tax is to be increased[18]. In accordance with the regulation in Art. 89 of the Act on Income of Local self-government units, in 2015 communes' share in revenue from personal income tax was 37.67%, making it 1.67% lower than the target share (39.34%).

This change in the share percentages is possible due to changes in the scope of tasks that fall under the responsibility of the local self-government units. The rule of providing local self-government units with appropriate shares in public income based on tasks delegated to them results from Art. 167 par. 1 & 4 of the Constitution of the Republic of Poland[19]. During the period in which the Act on Income of Local self-government units has been in effect, the percentage of the provinces' share in the corporate income tax has been changed twice. In the original version of the Act it was 15.90%. On January 1, 2008, it was lowered to 14% as legally guaranteed discounts on bus fares were no longer financed from the provinces' own income[20]. On January 1, 2010, however, it was increased to 14.75% due to the need to finance tasks connected with regional passenger rail transport by provincial governments[21].

This indicates that Polish local self-government units' shares in income tax revenue fulfill the formula stability criterion.

Individual proportionality criterion

Local self-government units in Poland have shares in tax revenue that are proportional to the amount of taxes paid within their borders. When dividing shares among local self-government units of a given level, the decisive factor is residence of a natural person (in respect of shares in personal income tax) and the location of the headquarters or branch of a juridical person (in respect of shares in corporate income tax).

Art. 4 par. 2, Art. 5 par. 2 and Art 6 par. 2 of the Act on Income of Local self-government units stipulate that communes, counties and provinces have shares in the revenue from personal income tax from taxpayers residing within the borders of these units. In respect of shares in corporate income tax, according to Art. 4 par. 3, Art. 5 par. 3, Art 6 par. 3 and Art. 10 of the Act on Income of Local self-government units, shares are due to the local self-government unit where a taxpayer is headquartered, and in the case of a branch located within the territory of another local self-government unit, part of that income is transferred to the budget of the local self-government unit in whose territory the branch is located, proportionally to the number of people engaged thereby under labour contracts.

The division of revenue from income taxes among local self-government units at a given level in Poland is based on granting these units shares in revenue from taxes paid by the taxpayers domiciled or located within the borders of a given unit. This indicates that Polish local government unit shares in income tax revenue fulfill the individual proportionality criterion.

Conclusions

Legal constructions regarding the division of public income from taxes between the state budget and the budgets of local self-government units that are used in European states can be categorized based on the criteria of 1) risk sharing, 2) un-conditionality, 3) formula stability, 4) individual proportionality. The first criterion – risk sharing – is concerned with whether local self-government units have shares in the real or planned revenue from a given tax. The second criterion – un-conditionality – indicates whether local self-government units are free to spend the income from shares in taxes how they choose. The third criterion – formula stability – classifies shares based on whether they are given to local self-government units for an indeterminate time, or whether the formula changes cyclically, e.g. is written annually into the budget act. The fourth criterion – individual proportionality – is concerned with whether local self-government units have shares in the revenue from taxes proportional to the amount of taxes paid on their territory. If all of these criteria are met, a given institution is classified as "strict tax sharing". Not fulfilling the fourth criterion while fulfilling the first three means that the institution is simply "tax sharing". In turn, if one of the first three criteria is not met, it means that a given institution, despite its name, is not a share, but a transfer from the state budget to the budgets of local self-government units (intergovernmental grant).

Shares of Polish local self-government units in revenue from income taxes can be classified as "strict tax sharing", as they fulfill all four of the above criteria. First, the shares are based on real, and not planned revenue from income taxes. Because of this, local self-government units take on the risk of not meeting the planned revenue. Second, local self-government units can freely spend the means acquired through shares in income taxes. Third, the amount of shares is based on percentages specified in the Act on Income of Local self-government units. Fourth, local self-government units have shares in the revenue from taxes paid by taxpayers domiciled or located within the territory of a given unit.

Abstract

In most European countries, the revenue from income taxes is divided between the state budget and the budget of local self-government units. The division of public income from income taxes is performed *inter alia* through the use of the institution of shares in the revenue from these taxes. European states use the term "shares" for different legal constructs. H. Blöchliger and O. Petzold, in order to clarify the meaning of the term, propose a classification of shares through the criteria of 1) risk sharing, 2) un-conditionality, 3) formula stability, 4) individual proportionality. The aim of this article is to present the character of shares in the revenue from income taxes as income of local self-government units in Poland on the basis of the presented criteria for classifying these shares.

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