

## PRO-FAMILY TAX SOLUTIONS IN LAW

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### Summary

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Provisions in the tax code which offer exemptions, deductions, allowances, or credits (both refundable or non-wasteable and non-refundable or wasteable). They may be more or less integrated with the income transfer system; a cash, refundable, child tax credit may be considered the equivalent of a child allowance. They are designed to help parents defray the costs of child rearing, generally, or more specifically, to help pay the costs of child care and education. Like family allowances, tax benefits have one or more of the following benefits: horizontal equity, *vertical equity or redistribution*, *strengthening labor force attachments* or *social inclusion/exclusion* - particularly as the European Union moves toward greater unity among its member states, family allowances are viewed as an instrument that can foster societal cohesion and progress. Keywords: pro-family taxation, existence minimum, tax reliefs, allowances, scale, level of tax rates.

### Introduction

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Tax legal solutions which may influence the situation of the family can be divided into two groups. The first group comprises the constructions that are not introduced with the benefit of the family in mind, but which are of great significance to it. Here we have:

- the way and scope of calculating costs of obtaining revenue,
- the issue of the minimum income that is not taxable (the so-called

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‘existence minimum’),

- the possibility of extending tax brackets (thresholds) when using the progressive scale,
- the problem of the level of tax rates.

The second group are legal solutions which may be introduced into the tax system intentionally in order to protect or promote families. An example of such a solution is obviously the possibility of joint taxation of incomes obtained by family members, taking into account the number of people staying in the household or maintained by the taxpayer.

Legal solutions which may directly influence the family situation may – depending on the accepted concept – lead to increasing the minimum income that is non-taxable, lowering tax base, lowering tax rates or decreasing the calculated tax depending on the taxpayer’s financial situation.

In order to improve the situation of families in Poland changes in both groups of legal solutions are required. It is also necessary to simplify the construction of the current personal income tax.

### **Costs of obtaining revenue**

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The way and scope of calculating costs of obtaining revenue is of great significance for the taxpayer. As we know, personal income tax is an income-type of tax, which means that it is the income not the revenue that is taxed. To calculate the size of income gained by the taxpayer we should subtract costs of obtaining revenue from revenue itself. Only this difference – supposing its value is positive – is the taxpayer’s income that is subject to taxation. In legal solutions of the Polish tax system only in case of running economic activities the real cost method is applied. It allows us to take into account the real costs incurred by the taxpayer. However, it requires keeping the tax register of revenues and expenses<sup>4</sup>.

Using this method when obtaining other revenues – mostly remuneration from employment relationship or related contracts, as well as contracts of personal services and contracts to perform specified tasks – is practically impossible. We use then the so-called method of lump-sum costs, also known as the ‘percentage’ method. It means that a certain part – expressed in percentage – of obtained remuneration (which is revenue) is treated as costs of obtaining this revenue no matter whether such costs were incurred or not.

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4 ROGOZIŃSKA-MITRUT J. WOŁOWIEC T.: Impact of economic crisis on the management of companies. Winnica: INSTITUTE OF UKRAINIAN – POLISH COOPERATION, 2012.

In the current construction of tax, in case of contracts of personal services and contracts for specified tasks the cost is 20% of obtained remuneration, while in case of copyrights – 50%. In case of employment relationship remuneration the valid legal solution treats these costs as negligible in fact. They are determined at the level of 3% of the amount constituting the upper limit of the first threshold of the progressive tax scale. In practice this amount only reflects the expenses incurred by the taxpayer with reference to commuting to work. These expenses are deducted from the remuneration as fixed amount, roughly an equivalent of the public transport annual ticket. This amount is taken in account by the payer when collecting monthly advance payments for tax. It is deducted in the tax year by only one payer. The taxpayer who obtains remuneration from several sources is only allowed to increase these costs by 50% in their annual statement. It is also possible to deduct higher costs (which must be documented) when the taxpayer commutes to a different place than their place of residence and uses public communication. However, they have to keep monthly tickets with their name on them. One can finally take into account higher costs without confirming them with monthly tickets, but they only increase the costs by 25%<sup>5</sup>.

A narrow and very complicated system of calculating costs related to remuneration for work does not reflect the income nature of the tax. It does not reflect the costs related to preparation to perform activities, possible further education and professional development or expenses related to the nature of work, etc. Although a small part of incurred costs may be reflected within the so-called “training” relief, but both its size and the catalogue of exemptions do not cover the actual expenses in this area.

It is worth noticing that expenses related to performed jobs increase along with the complexity and responsibility of the activities performed by the worker. They require an appropriate level of professional knowledge, both theoretical and practical, its continuous development, improving one’s qualifications through trainings, specializations, post-graduate studies, participation in conferences, etc. All these expenses are currently not treated as costs of obtaining revenue.

The current solution requires changes towards the lump-sum (percentage) deduction from obtained revenue – or directly from remuneration for work – the costs that are directly and indirectly connected with the type of performed

5 See: REŚKO D. WOŁOWIEC T. Kierunki reform i proponowanych zmian w prorodzinnych i prosojalnych regulacjach podatkowych w Polsce. /in/ WOŁOWIEC T. (red.) Wybrane problemy teorii i praktyki opodatkowania. Kiyev-Świnoujście: Cech Rzemiosł Różnych & Institut of Cooperation In Kyiev 2012. Pp. 57-72.

work. Theoretically there are various solutions possible here.

This can be deduction of the costs in a fixed amount for all taxpayers, defined as percentage of an employee's remuneration. This would be a similar solution to the one applied in contracts of personal services and contracts for specified tasks.

We can also imagine differentiation of costs determined as percentage, depending on the type of performed work, level of professionalism, necessity to cover the costs of further education, etc. This type of solution is much more complicated. It would require developing special tables for jobs and types of work that would qualify for particular percentage brackets.

The size of the costs that are taken into account should always be tied to the amount of obtained remuneration, not to the minimum or average remuneration in the economy (or in the so-called budget sphere). The share of costs of obtaining revenue from remuneration should never be separated from the size of obtained remuneration for work, as it happens today<sup>6</sup>.

The adoption of percentage (lump-sum) form of taking into account costs of obtaining remuneration should not eliminate the possibility of deducting real costs when the taxpayer could prove that they incurred them in the higher amount than the one calculated on the basis of the percentage method.

If we are employed by more than one employer, each remuneration obtained by the taxpayer should have the possibility of separate deduction of costs. A similar solution is currently used with contracts of personal services and contracts to perform specified tasks.

### **Tax-free income.**

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One of legal solutions undoubtedly influencing the legal and tax situation of families, though it would be hard to describe it as directly 'pro-family', is to provide taxpayers with a minimum amount of taxation-free income. It can be called the 'existence' minimum. It stems from the necessity to reflect – albeit minimum – expenses related to biological (or even social) existence of a taxpayer. It is a starting condition determining the initiation of any professional activity by the taxpayer. The minimum is

6 WOŁOWIEC T. SOBOŃ J. ROGOZIŃSKA-MITRUT: Some issues of personal income taxation. Winnica: INSTITUTE OF UKRAINIAN – POLISH COOPERATION 2012; WOŁOWIEC T. ISMAILOVA D. ROGIZIŃSKA-MITRUT J. (red). New trends in social policy and welfare economy. Kiyev: INSTITUTE OF UKRAINIAN – POLISH COOPERATION 2012 and ROGOZIŃSKA-MITRUT J. WOŁOWIEC T.: Impact of economic crisis on the management of companies. Winnica: INSTITUTE OF UKRAINIAN – POLISH COOPERATION, 2011.

also necessary for taxation of the disabled pensioners, retired people and all the other individual taxpayers.

The existence minimum is a determined part of income obtained by the taxpayer. This means that the revenue obtained by the taxpayer should be first decreased by the costs of obtaining revenue (for example revenues from business activity or remuneration) in order to determine the level of income. In some situations (for example disability pensions, retirement pensions) revenue equals income, as the taxpayer does not incur any costs related to obtaining the disability or retirement pension. Then we should take into account the amount of proposed minimum.

The necessity to take into account the minimum income that is tax-free stems from the fact that in order to live and to be a taxpayer, an individual must cover the most indispensable living expenses, the so-called subsistence minimum costs. Reflecting such expenses may theoretically be performed in two ways: by exempting some minimum income of the taxpayer obtained in a particular year from taxation or, as a deduction from obtained revenue the minimum costs of taxpayer's subsistence as costs of obtaining this revenue.

In both versions this minimum should obviously relate to the level of basic consumer goods prices and inflation rate. It can be determined, for example, in relation to the level of minimum wages in a particular tax year (for example  $\frac{1}{2}$  of such wages).

It seems that the version of exempting minimum income from taxation is more appropriate from the theoretical point of view than treating minimum subsistence as costs of obtaining revenue, at least as the costs directly related to such revenue.

The amount of the tax-free minimum should be reassessed each year and announced before the beginning of the next tax year to which it will apply.

## **Tax scale**

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When using the progressive tax scale for taxation of personal incomes the legal and tax situation of families is greatly affected by the income brackets assigned to particular tax rates.

The current construction of income tax has two such ranges. Theoretically this solution should be considered a correct one. There are low and medium incomes (1<sup>st</sup> range) and high incomes (2<sup>nd</sup> range). It is the size of particular ranges that raises some objections. Even with relatively low remunerations – and almost always when a taxpayer takes up additional

work – the obtained income (with present regulations almost the same as the remuneration) qualifies the taxpayer to the higher tax threshold. In most developed countries tax rates are quite high, but next rates appear only when the taxpayer's income exceeds the average level many times.

Particular ranges of progression should be significantly "extended". It seems that it would be possible to accept the construction based on multiples of average annual remuneration earned in the budget sector in a previous tax year. In this way, for example incomes up to three times the average annual income would be taxed with the lowest rate, incomes of four to six times such remuneration would be in the second bracket and only those that exceed the average annual remuneration more than six times would be taxed with the highest rate<sup>7</sup>.

### **Direct pro-family construction.**

All the indicated elements in the construction of personal income tax and possible proposals for their changes undoubtedly, but indirectly influence the situation of Polish families. They affect tax burdens of all taxpayers, regardless of their family situation.

However, other solutions are possible in income tax, they would be directly pro-family and they would take into account the number of household members maintained by the taxpayer (or living with them) when taxing the income.

Similar constructions – though in various versions – are used in many countries, also developed countries in Europe and outside<sup>8</sup>. Even if we

7 Compare: WOŁOWIEC T.: Poziom obciążeń podatkiem dochodowym od osób fizycznych w krajach Unii Europejskiej. „Studia Europejskie” 2006, No 4. pp. 165 – 175; WOŁOWIEC T.: Wybrane zagadnienia opodatkowania dochodów osób fizycznych w latach 90-tych XX wieku. Wydanie pierwsze. Nowy Sącz: Wyższa Szkoła Biznesu-NLU 2003; WOŁOWIEC T.: Podatek dochodowy od osób fizycznych instrumentem polityki prorodzinnej /in./ (ed.) ŚWIĄTKOWSKI A.: Studia z zakresu prawa pracy i polityki społecznej. Kraków: Uniwersytet Jagielloński, roczniki Collegium Iuridicum, 2003/2004. pp. 387 – 400.

8 WOŁOWIEC T.: Podatek dochodowy od osób fizycznych w krajach Unii Europejskiej. „Ekonomika i Organizacja Przedsiębiorstwa” 2002 No 12. pp. 75 – 87; WOŁOWIEC T.: Podmiotowy i przedmiotowy zakres opodatkowania dochodów osób fizycznych w wybranych państwach europejskich. „Myśl ekonomiczna i prawna”, 2004, No 2. p. 74 – 95; WOŁOWIEC T.: An evaluation of the individual income tax system in Poland and some chosen European Union countries, taking into account pro-family tax politics. „Productivita” 2004, no 1. p.23; WOŁOWIEC T.: Niedoceniona koncepcja prorodzinnych zmian w podatku dochodowym od osób fizycznych. „Polityka Społeczna” 2004, No 8. pp. 9 – 12; WOŁOWIEC T.: Podatek dochodowy od osób

assume the already discussed tax neutrality, such solutions are acceptable and justified as they take into account the equity of taxation understood subjectively. Since one taxpayer has family members to support and another is not burdened with such responsibilities, they are not in an identical tax situation. Therefore they could – and should – be treated differently. This obviously cannot mean introduction of any tax increases for single persons and for couples without children. It may, however, consist in – theoretically varied – possibilities of joint taxation of the taxpayer's income together with the income of the family members who live with them<sup>9</sup>.

This could be joint taxation of the incomes of all family members who make up one household, accepting that the family is the subject of income tax. Another variation is taxation of the 'family head', as his/her incomes are supplemented with incomes obtained by other family members. It is also possible to construct joint taxation of spouses' incomes while preserving their individual character. In all the above solutions various deductions, exemptions, discounts or the so-called reliefs can be used, their size depending on the number of people in the family.

## Joint taxation

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A general rule says that the income (revenue) obtained by the taxpayer is subject to individual taxation<sup>10</sup>. Several exceptions to this rule cover: joint taxation of spouses, taxation of single people who raise children and taxation of the incomes obtained by minor children. The concept of joint taxation of spouses has as many supporters as opponents. Those in favor emphasize that this is consistent with the nature and structure of

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fizycznych instrumentem polityki prorodzinnej. /in./ (ed.) ŚWIĄTKOWSKI A.: Studia z zakresu prawa pracy i polityki społecznej. Kraków: Uniwersytet Jagielloński, roczniki Collegium Iuridicum, 2003/2004. pp. 387 – 400.

- 9 See more: WOŁOWIEC T. ISMAILOVA D. ROGZIŃSKA-MITRUT J. (red). New trends in social policy and welfare economy. Kiyev: INSTITUTE OF UKRAINIAN – POLISH COOPERATION 2012 and ROGOZIŃSKA-MITRUT J. WOŁOWIEC T.: Impact of economic crisis on the management of companies. Winnica: INSTITUTE OF UKRAINIAN – POLISH COOPERATION, 2011; BYCZKOWSKA M., CZYRKA K., Factoring jako niekonwencjonalna forma finansowania mikro i małych przedsiębiorstw red. A. Bielawska, A. Szopa, Uwarunkowania rynkowe rozwoju mikro, małych i średnich przedsiębiorstw. Systemy finansowania i oceny, Zeszyty Naukowe nr 637, Ekonomiczne problemy usług nr 62, Wyd. WNUS, Szczecin 2011, s.42-52.
- 10 GĘSICKI M GĘSICKI Ł.: System prawa podatkowego część II Prawo Materialne. UŁ: Łódź 1996, p. 17; WOŁOWIEC T.: Modele podatkowych preferencji prorodzinnych w państwach członkowskich Unii Europejskiej. „Studia Europejskie” 2004, No 4. pp. 193 – 201.

marital relationships, as all decisions concerning the division and allocation of income are made jointly. The consequence of this state is joint taxation of taxpayers who are married, which better reflects tax capacity of spouses and manifests pro-family policy of the state.<sup>11</sup> The main argument presented by supporters of individual taxation is that joint taxation leads to complications with tax collection. They also point out that this construction, when it does not reflect any form of quotient with the progressive tax scale, negatively influences the motivation to increase income by one spouse. Individual taxation does not create such barriers. It is conducive to income growth, improving the family's material situation<sup>12</sup>. Joint taxation of spouses, being a special case of tax accumulation, is not a totally new element in the Polish tax system. Various forms of this accumulation appeared in the previous system, for example in the income tax or in the first version of surtax<sup>13</sup>.

The current construction of personal income tax allows joint taxation of spouses who have been married for the whole year and who have had joint property as long as they submit a joint tax declaration. This is a form of family preference. Joint taxation allows to lower the tax on incomes which are in fact joint for the whole family. This construction, as we know, consists in summing the incomes obtained by both spouses, adding possible incomes of minor children and then dividing the sum into two. The tax is calculated from this half of incomes and then multiplied by two.

It is beneficial for spouses to calculate their due tax in this way when one of them does not have any income or when their incomes differ

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11 WÓJTOWICZ W. SMOLEŃ P.: Podatek dochodowy od osób fizycznych – prorodzinny czy neutralny?, ABC, Warszawa 1999, pp. 52-62; WOŁOWIEC T.: Analiza zasad opodatkowania dochodów osób fizycznych w krajach Unii Europejskiej- implikacje dla procesu harmonizacji. „Studia Prawno-Ekonomiczne”, 2006, Volume LXXIII. pp. 193 – 205; WOŁOWIEC T.: Analiza porównawcza zasad opodatkowania dochodów osób fizycznych w krajach Unii Europejskiej. „Studia Prawno-Ekonomiczne”, 2005, Volume LXXI. pp. 39 – 76.

12 See MAJEWICZ M.: Opodatkowanie dochodów rodziny – przykłady rozwiązań stosowanych w krajach europejskich. Warszawa 1992, pp. 6-10. The problem of choosing the appropriate method of taxation of spouses was practically reflected in the legislative work of the Polish Parliament. Compare NOWAK A. H.: Opodatkowanie dochodu rodziny. „Monitor Podatkowy”, No 1/1995, p. 325.

13 More on this can be found in KOSTECKI A.: Łączne opodatkowanie małżonków w Polsce Ludowej. „Finanse” No 10/1963. pp. 31-43; WOŁOWIEC T.: Główne nieprawidłowości w praktyce wymiaru i poboru podatku dochodowego od osób fizycznych. „Studia Prawno-Ekonomiczne”, 2003, Volume LXVIII. pp. 239 – 250; WOŁOWIEC T.: Geneza i główne założenia reformy podatkowej w Polsce w latach dziewięćdziesiątych. „Studia Prawno-Ekonomiczne”, 2003, Volume LXVII. pp. 111 – 127.



significantly. Joint taxation allows to take into account double tax-free minimum and application of a lower tax rate.

The construction of joint taxation of spouses adopted in the current legislature differs from previous solutions. The creators of the Polish income tax based joint taxation of spouses on the principle of marital quotient. This formula is more advantageous for couples, as, contrary to previous concepts, it allows to lower tax burden. This stems from the essence of marital quotient, which assumes that the tax base is half of the sum of spouses' incomes. Thanks to this it is possible to move to a lower tax threshold and to apply a lower tax rate.

In case of joint taxation of spouses we encounter the phenomenon of accumulation of incomes from all sources, thus combining them for tax purposes. There are some exceptions to this principle, as stipulated by the Act, consisting in lump-sum taxation of some types of income. According to the principle of accumulation, the subject of taxation in a given tax year is a sum of incomes obtained from various sources after deducting losses. Spouses taxed separately may be taxed jointly if they express such wish. If they wish to be taxed jointly, they have to submit the joint annual tax declaration signed by both of them.

The application for joint taxation of incomes may be submitted by spouses who meet (jointly) the following requirements:

- they are subject to unlimited tax obligation in Poland,
- they have been married for the whole tax year
- they have had joint marital property for the whole year
- the regulations concerning line tax, lump sum tax or tonnage tax do not apply to them.

If the taxpayer decided to be jointly taxed with their late spouse – they lose the right to settle a given year as a single person bringing up children. If he/she does not make such a decision, in the year when their spouse died they can settle their taxes as a single person bringing up children as long as they meet all the other requirements. Thus a widowed taxpayer with children has a choice – to be taxed jointly with late spouse or to be taxed as a single parent bringing up children.

However, there are some circumstances in which spouses cannot be taxed jointly. This takes place in a situation when at least one of the spouses is referred to in the following regulations:

- article 30c of the Act on Personal Income Tax (allowing settling income tax on incomes obtained from non-agriculture economic

- activity according to the 19% tax rate, the so-called line tax),
- the Act on Lump-Sum Income Tax,
- the Act on Tonnage Tax.

This exemption does not concern individuals who pay lump-sum income tax on their revenues from letting or subletting, usufruct lease or sub-usufruct lease or other similar contracts, if these contracts are concluded within non-agricultural economic activity and if these taxpayers do not have their revenues from non-agricultural activity taxed on the basis of Article 30c or in the Act on Lump-Sum Income Tax.

The possibility of joint taxation of spouses' incomes allows to lower due tax in the situation when there is a big difference in incomes obtained by them or if one spouse does not obtain any income (this refers to 5% of taxpayers). The possibility of joint taxation of incomes in 2005 was used by 10,641,814 taxpayers (44.5% of all taxpayers who paid according to the tax scale), in 2006 – 9,525,326 (39.58%), in 2007 – 9,736,632 (39.81%), in 2008 – 9,901,352 (40.01%), and in 2009 – 9,899,750 taxpayers (40.01% of all taxpayers who pay according to the tax scale). Joint taxation of spouses resulted in lowering tax income by the following amounts: in 2005 – PLN 2,740 million, in 2006 – PLN 3,008 million, in 2007 – PLN 3,058 million, in 2008 – PLN 4,054 million, and in 2009 – PLN 2,693 million<sup>14</sup>.

The lowering of tax progression was very beneficial for taxpayers especially before 2009, that is when the tax scale had three ranges of incomes. The average gain enjoyed by the taxpayer was: in 2005 – PLN 257, in 2006 – PLN 316, in 2007 – PLN 314, in 2008 – PLN 409, in 2009 – PLN 272. Joint taxation of spouses is financially most beneficial for taxpayers in the situation when one of the spouses does not obtain any income or obtains much lower income than the other spouse. For example, if in 2010 the taxpayer obtains revenue of PLN 180,000 from employment relationship and his/her spouse does not obtain any income, using joint taxation, they can save nearly PLN 11,500. Permanent and large interest in this form of taxation is also connected with decreased formalities of income tax settlement (one form to fill), even if such a solution is financially neutral to spouses. Joint taxation simplifies tax procedures (joint and several liability of spouses) and decreases the tax administration costs).

The construction of joint taxation of spouses is beneficial for them when one of the spouses does not obtain any income or when spouses' incomes differ significantly. Joint taxation allows to apply a lower tax

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<sup>14</sup> Preferencje podatkowe w Polsce, Ministerstwo Finansów, Warszawa 2010, pp. 25-26; own calculations.

rate. Accumulation then allows to limit tax burden in families in which the incomes obtained by spouses differ a lot or when one spouse does not obtain any income.

The intention of joint taxation supporters was to use this solution for social protection of the family. However, in many cases, it is the cancellation of spouses' joint property is needed to protect the family wealth. It happens, like in legal incapacitation, separate property of spouses may appear independently of the spouses will. In all these cases spouses, protecting their family by cancelling joint property, have to suffer the sanction consisting in losing the right to preference taxation. It should also be noted that in the current legal state, the construction of joint taxation is internally incoherent. The right to joint tax declaration is refused in case of spouses who, in order to protect their family cancelled spouses' joint property, but still remain part of one household, but the right is given to spouses who are actually in separation. This preference is even granted to those spouses for whom separation is a permanent state.

An analogous construction is currently used for taxation of incomes obtained by a single person who raises children. In both cases, joint taxation does not take into account the number of people maintained by the taxpayer. The tax is calculated in the same way for a couple without children and for a family with a few children as well as for a single person raising one or a few children.

Single persons have to meet one additional requirement, that is their children cannot obtain incomes which are subject to income tax. This requirement must be considered as contradictory to the principle of tax equity, as in case of joint taxation of spouses, both a husband and a wife can obtain income that is subject to income taxation.

*A single person raising children* is a parent or a legal guardian if this person is single or a widow, a widower, a divorcee or a person for whom the court adjudged separation. This can also be a person whose spouse was deprived of parental rights or who is serving the imprisonment sentence. In case of a divorced person raising children, the right to this special form of taxation is determined by the legal title, which is a court decision on performing parental powers.

The actual upbringing of the child is as important as being a single person. Preference treatment is given to people who, in a given tax year, raise<sup>15</sup>:

15 See more: WOŁOWIEC T. SOBOŃ J. ROGOZIŃSKA-MITRUT: Some issues of personal income taxation. Winnica: INSTITUTE OF UKRAINIAN – POLISH COOPERATION 2012; WOŁOWIEC T. ISMAILOVA D. ROGIZIŃSKA-MITRUT

- minor children,
- children, regardless of their age, who obtained care benefit (allowance) or social pension on the basis of separate regulations,
- children up to 25 years who study at schools defined in the provisions of the education system law or higher education law valid in another country, if in the tax year they did not obtain any incomes that are taxed, apart from incomes that are free from income tax, family pension or incomes in the amount that does not create an obligation to pay taxes. In 2011 the child's income of PLN 3,089 is treated as revenue exempted from taxation.

An identical way of taxation is applied to persons who are not residents and who raise children in the tax year on their own, if:

- their place of residence for tax purposes is in a different European Union member country or a country belonging to the European Economic Area or to the Swiss Confederacy and;
- obtained the revenue in the territory of the Republic of Poland which is subject to taxation and which constitutes at least 75% of total revenue obtained in a given tax year and documented their place of residence for tax purposes with a certificate of residence.

For the preference settlement of taxes, a single parent cannot just have the status of a single person, a divorcee or a widower/widow, but they have to bring up a child on their own. Currently taxpayers believe that they are entitled to use this preference even if they actually raise the child together with another person (a cohabitant). These practices should be eliminated by clear indication of regulations that a parent or a legal guardian must bring up children on their own in a given tax year.

If the annual declaration containing the petition for joint taxation is placed after the deadline, the joint taxation with a child or with a spouse will not be possible even if all the other requirements are met. Therefore it is important to meet the deadline which is 30<sup>th</sup> April each year. Placing a declaration (application) after the deadline deprives taxpayers of the possibility of preference settlement of taxes together with a spouse or as single parents raising children.

The date of placing the petition for preference taxation is a date of substantive law and cannot be restored. The spouses' petition for joint taxation or single parents' petition for preference settlement of taxes,

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consisting in calculating tax obligation from half of the income in double amount, may be effectively submitted only before or on 30<sup>th</sup> April of the year after the tax year for which the declaration is placed. The statement submitted after this date does not produce any legal consequences, so it is ineffective. A similar situation can be observed with the correction of declarations. The possibility of correcting particular amounts in the PIT fields after 30<sup>th</sup> April of the year after the tax year does not entitle the taxpayer to submit a new – changed – statement concerning the choice of joint or separate taxation of spouses. Such statements placed after 30<sup>th</sup> April do not produce any legal consequences, so they are ineffective. The same concerns single parents.

Within the proposed tax changes we should provide the possibility of using joint taxation by single persons raising children following the same principles as in case of taxation of spouses – that is summing up the incomes obtained by the parent and the child (children). However, the upper age limit of the studying, adult child should be preserved (for example 25 years) to allow joint taxation. Age limit should be related to the average period of regular education, taking into account the period of university studies.

The principles of joint taxation should be reformed so that they reflected the number of children in a family. Three constructions could be used here: the so-called family quotient, increasing the minimum income that is exempted from tax or a similar solution in form of lowering the tax base by determined amounts for each person maintained by the taxpayer or lowering the tax by determined amounts, also due to the family situation of the taxpayer.

### **The family quotient**

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The family quotient may be considered the most ‘pro-family’ tax construction. It may have a complicated and developed form (as in France). It could also be simplified, without, for example differentiating children’s ages. However, its introduction should be related to a detailed economic simulation, sociological and demographical studies. The family quotient should reflect both the family interest and prefer its particular model, as well as take into account financial possibilities of the state or budget requirements. The family quotient should be varied. It could, for example, look like this: each spouse would receive one family unit, the first child – 0.25 family units, the second child – 0.5 family units, the third child – one unit, the fourth child 0.5 units, the fifth child 0.25 units. It is also necessary to introduce an upper limit to the quotient – for example to up to the fifth child. This does

not mean that families with more children would not be able to obtain state support (for example additional allowances for families with many children or in an especially difficult situation, for incomplete families, for families with disabled members, suffering from serious illnesses, unemployment, etc.). In the tax system, however, we should not introduce constructions which would sanction having many children as a way of complete freedom from the burden of paying taxes.

When using the family quotient method, taxable income of all family members, both parents, minor children and adult children who are continuing studying until a certain age, would be summed up and then divided by the quotient indicator. The income calculated in this way would then be the basis for calculating due tax, taking into account the minimum income free from taxation and appropriate tax rate. This tax would then be multiplied by the family quotient indicator.

An alternative to the family quotient could be to take into account the taxpayer's family situation by using exemption from taxation of precisely determined amounts for each child of the taxpayer, with attention paid to their age or health. Similar exemptions could be used with reference to the spouse who does not work and raises children, as well as to other people maintained by the taxpayer (for example their siblings who still study). The introduction of such a construction would link the amount of the minimum income free from taxation to the taxpayer's family situation. Such pro-family tax construction would be possible also with the introduction of line tax. It would show some features that could be considered pro-family<sup>16</sup>.

A similar solution is to lower the taxation base by precisely defined amounts related to the fact that a taxpayer has to maintain family members. Such base decreases are in form of tax reliefs. Such reliefs, when used with progressive taxation, may not only lower the amount of calculated tax, but may also qualify the income for the lower range and thus for a lower tax rate. They can have various consequences depending on size of their income.

Similar consequences for all taxpayers could be caused by family discounts which would decrease due tax by the amount determined for each member of family. The deducted amount could be differentiated because of the number of children, their age and health<sup>17</sup>. Lowering the tax would

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16 See: WOŁOWIEC T.: Regulacje socjalne w konstrukcji podatku dochodowego od osób fizycznych w krajach UE, „Studia Europejskie” 2010, nr 3. pp. 201-224.

17 WOŁOWIEC T.: Niedoceniona koncepcja prorodzinnych zmian w podatku dochodowym od osób fizycznych. „Polityka Społeczna” 2004, No 8. pp. 9 – 12; WOŁOWIEC T.: Wybrane zagadnienia opodatkowania dochodów osób fizycznych w latach 90-tych XX wieku. Wydanie pierwsze. Nowy Sącz: Wyższa Szkoła Biznesu-

mean equal treatment of all taxpayers regardless of the size of their incomes. This circumstance would be essential only when preserving the progressive system of personal income taxation. In case of line tax, tax equity and equality would not be greatly affected by the choice of pro-family solution in form of increased minimum income free from tax due to the taxpayer's health, lower tax base or lower tax itself.

The introduction of 'pro-family' legal and tax solutions, regardless of the final choice of one possible version, should be accompanied by elimination of various tax reliefs existing in the current structure of tax. It is widely believed that all tax reliefs (those influencing tax base and those deducted from taxes) favor richer and smarter people, as they know how to take advantage of them and they know legal regulations. In this sense such reliefs go against equal treatment of all taxpayers.

### **The systems family income taxation in Poland in 1918-2011**

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

The period of 1944-1989 brought the exclusion of the incomes obtained by individual farmers and the incomes from hired work as far as the taxation of families are concerned. The latter were originally fully taxed with a remuneration tax, and since 1972, in the part paid by socialism economy units, with the tax on payroll, and then tax on wages. Since 1957 incomes of individuals were also covered with a surtax. Income tax of that period was characterized by joint capacity of spouses, which meant that their incomes

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NLU 2003; WOŁOWIEC T.: Podatek dochodowy od osób fizycznych instrumentem polityki prorodzinnej. /in./ (ed.) ŚWIĄTKOWSKI A.: Studia z zakresu prawa pracy i polityki społecznej. Kraków: Uniwersytet Jagielloński, roczniki Collegium Iuridicum, 2003/2004. pp. 387 – 400.

were combined and taxed in the name of both spouses (the regulation was introduced in 1948; until that time the principle of representation from before the war had been valid, so the wife's income was added to the husband's income and taxed in the name of the latter). The post-war legislation upheld the principle of combining (accumulating) incomes of descending relatives with the income of an ascending relative, as well as a wide range of family reliefs for children, a spouse who did not obtain any income, parents and parents-in-law who did not obtain any income as well as the siblings who were still maintained by the taxpayer. The subject scope of these reliefs, though narrower than before the war, was still quite wide. The tax system of 1945-1989, just like the tax system before the war, undoubtedly reflected the family and economic (financial) situation of a taxpayer. However, it was not a homogenous system and the constructions of many reliefs and their size had evolved significantly over forty years. Also the concept of a family had evolved (it had been narrowed). The rule of accumulation of spouses' incomes had not changed, though instead of taxing the family representative (head), the tax capacity of both spouses was introduced (spouses' incomes were taxed in their joint name).

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



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