

# THE SPANISH TAX SYSTEM AND TAX POLICY IN SPAIN IN THE CONTEXT OF THE COVID-19 PANDEMIC FRAMEWORK

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## Abstract

**The purpose of this paper** is to characterize the Spanish tax system and to present the main assumptions of tax policy in Spain in the context of the COVID-19 pandemic framework in order to formulate conclusions as to the desirable (or undesirable) directions of tax policy in other countries, including Poland in particular. In fact, **the research hypothesis** is that, to a large extent, certain changes in the Spanish tax system in 2021 may inspire the orientation of tax policies in other countries, especially in Poland. Spain, like other countries, had to face a need to modify its tax policy due to the effects and challenges that the pandemic period has created, but the Spanish tax policy was shaped in a completely different way than the Polish policy in the same pandemic circumstances. Obviously, it is necessary to take into account systemic differences in both countries, but these may also constitute a contribution to the determination of the desired directions of systemic changes, on the basis of the experiences from the pandemic period, which highlighted many – not only temporary – problems. **The methodology** used in the paper is a dogmatic-legal and legal-comparative method, taking into account the provisions of constitutional law and tax law, the body of literature and case law as well as some economic data. **The results of the research** is the formulation of some conclusions as to the desirable directions of tax policy taking into account the indisputable need for higher or additional tax revenues (necessary in the face of excessive fiscal indicators), but at the same time realizing the basic tax principles, such as, in particular, the principles of tax capacity, equity, simplicity and transparency and respecting the financial autonomy of regional and local self-government units. In fact, a responsible tax policy should be aimed at ensuring financial as well as environmental sustainability, while being relevant to the current times and their economic, technological and social realities, always in line with the fundamental principle of social justice and tax (economic) capacity. This means, in particular, that the increase in public burdens (if that may not be avoided for the implementation of the fiscal function) should affect carefully selected entities – those with a greatest tax capacity (e.g., tax payers with the highest incomes or the largest assets). On the other hand, it may serve important non-fiscal objectives (changing unfavourable dietary habits, countering speculative transactions, protecting the environment). At the same time, for these assumptions to have a positive effect, it is necessary to combat tax avoidance at its roots by building up the conviction among taxpayers that the tax system is fair, transparent and friendly, and for this purpose, it is necessary to be honest in the messages addressed to taxpayers about the foundations and assumptions of that system and to facilitate its practical operation in contacts with the tax administration. Finally, in the context of the fact that the fiscally negative consequences of the so-called Polish Deal are largely borne by local governments, attention should be paid to the Spanish system, in which regional and local governments have extensive tax authority, which allows them to "neutralize" tax decisions of the national legislator that are undesirable from their point of view and may threaten their financial independence or create excessive tax burden for their citizens

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## INTRODUCTION

The Spanish tax system is characterised by a rather high level of complexity, linked, inter alia, to the extensive taxing power of local and regional authorities (including the right to levy their own taxes). It is a highly decentralised and diverse system, especially in comparison with the Polish one. It is also characterised – in contrast to the Polish system – by the articulation of the basic tax principles in the Constitution<sup>1</sup>. These are: the principle of universality, the principle of economic capacity, the principle of equity, the principle of equality, the principle of progressivity and the prohibition of the confiscatory nature of the tax system (Collado Yurrita and Moreno González, 2018: 112–134). It should be added that in the Spanish tax system, in addition to providing resources to cover public expenditure (fiscal function), taxation can serve as an instrument of general economic policy and to achieve the principles and objectives set out in the Constitution. The non-fiscal use of taxes is fully and directly justified by and based on the second sentence of Article 2 item 1 of the Spanish General Tax Act (Ley 58/2003), while it is criticised in Polish literature (Modzelewski, 2005: 24–27; Wójtowicz 1999: 409). In terms of the fiscal function, income taxes are of key importance in the Spanish public finance system, secondarily followed by value added tax and special taxes (*Presupuestos Generales del Estado...2021*). However, in 2020, due to the economic impact of the COVID-19 pandemic, Spain experienced a significant drop in tax revenue – the Spanish economy was particularly hard hit by negative effects of the pandemic due to the importance of the sectors most directly affected by the restrictions to counter its spread (inter alia, hotels, culture, tourism and passenger transport) (*Presupuestos Generales del Estado 2021. Informe...: 8*). In the first eight months of 2020, the state budget deficit amounted to EUR 60 billion, equivalent to 5.39% of GDP (after deducting debt service costs, the primary deficit was 4.02% of GDP). This result was driven by a 13.9% fall in the revenue target and, on the other hand, an 18.9% increase (to EUR 170 billion) in public expenditure (mainly on health programmes and transfers to the social security subsector and autonomous communities) (*Presupuestos Generales del Estado 2021. Informe...: 13*). At the end of 2020, the deficit of the entire public finance sector in Spain was 10.95% of GDP (EUR 123 billion) (*Déficit público de España*), while the public debt increased to 117.1% of GDP (EUR 1.2 trillion) (Nieves and Becedas, *La deuda...*). At the end of 2021, these figures were as follows: 6,87% (EUR 82,8 billion) (*Déficit público de España*) and 118,40% (EUR 1.42 trillion) (*Deuda Pública*) respectively. In this context, it should also be taken into account that Spain is the sixth Eurozone country with the lowest public revenue of the total GDP (*Presupuestos Generales*

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<sup>1</sup> Constitución Española, hereinafter: the Spanish Constitution.

*del Estado 2021. Informe...: 57*). In view of the economic impact caused by the pandemic, the Agreements of the Council of Ministers of 11 February approving the objectives of budget stability and public debt for 2020 and 2021–2023 (*Presupuestos Generales del Estado 2021. Informe...: 66*) are no longer applicable, and in terms of tax policy, certain new taxes have been introduced, and some of the existing ones have been increased on the grounds of the current situation in public finances and the need to create a fairer tax system.

## **1. STATE, REGIONAL AND LOCAL TAXES IN SPAIN**

### **1.1. State taxes**

One of the basic divisions of Spanish taxes is their division into state taxes and regional and local taxes, including so-called assigned taxes, i.e. state taxes from which part or all of the proceeds are transferred to territorial self-government units. State taxes are mainly: income taxes, value added tax (VAT), special taxes (excise duties), tax on certain digital services and tax on financial transactions (see more in: Supera-Markowska, 2021c: 47–49). For 2021, the estimated state budget revenue from these taxes was stipulated at: EUR 66.8 billion from income taxes, EUR 36 billion from value added tax, EUR 8.7 billion from special taxes, and EUR 1.8 billion from the tax on certain digital services and the tax on financial transactions (*Presupuestos Generales del Estado...2021*). Other fiscally most relevant state taxes include, among indirect taxes: the tax on insurance premiums expected to generate revenues of EUR 2.2 billion and the tax on waste disposal with revenues planned at EUR 861 million, and among direct taxes: taxes on the production and storage of electricity and fuels (EUR 1.5 billion) (*Presupuestos Generales del Estado...2021*) – see more in Carrasco Parrilla (2018: 509–512; 523 et seq.). According to the plan for 2022, the state budget revenues are to amount to: EUR 74.3 billion from income taxes, EUR 42.9 billion from VAT, EUR 10.2 billion from special taxes, EUR 2.1 billion from tax on insurance premiums, EUR 1.4 billion from taxes on production and storage of electricity and fuels, and a total of EUR 0.6 billion from a tax on certain digital services and a tax on financial transactions (*Presupuestos Generales del Estado...2022*).

### **1.2. Regional taxes**

Regional self-government units in Spain comprise 17 autonomous communities (see more in: Alonso de Antonio and Alonso de Antonio, 2006: 575–635), and there are also two cities with autonomous status: Ceuta and Melilla (*INEbase/.../Relación de provincias*). Taxation is one of the basic categories in

their financing system. The financing system of the Autonomous Communities is governed mainly by Organic Law 8/1980, of 22 September, on the Financing of the Autonomous Communities<sup>2</sup>, which states that the Autonomous Communities have at their disposal the following tax revenues: their own taxes, taxes assigned to them (in whole or in part) by the State and supplements to State taxes. In case of the aforementioned assigned taxes, these may be taxes delegated in part, as in case of personal income tax, VAT and some special taxes, or taxes delegated in full, as in case of, inter alia: tax on the transfer of property and documented legal acts (see more in: Casanellas Chuecos, 2018: 363–406) – in Poland: tax on civil law transactions, inheritance and donations tax (see more in e.g., Rozas Valdés, 2018: 333–362) and wealth tax (see more in e.g., Sanz Díaz-Palacios, 2018: 311–332).

The financial autonomy of Spanish regions in the area of taxation can include both managerial competences, primarily related to tax collection, and normative competences in the area of tax law (Montoya López, 2018: 189 and 203), implemented through the adoption of autonomous laws (Cuervas-Mons Martínez: 171–172). Autonomous Communities may in fact independently establish their own taxes in accordance with the provisions of Articles 133 item 2 and 157 item 1(b) of the Spanish Constitution. For example, the so-called business (trade) tax (Polish: *podatek handlowy*) in Spain was introduced at the time by three Autonomous Communities: Asturias, Aragon and Catalonia (see more in: Supera-Markowska, 2021d: 32–34). In total, there are dozens (about 80) regional taxes, but their number varies from one community to another, e.g., Catalonia has as many as 15, while Castilla y León and Castilla-La Mancha have only 2 each (*Impuestos por comunidades...*).

The issue of such a large taxing power is justified by the broad powers and responsibilities of the Autonomous Communities. However, the resulting inter-regional variation in the number, type or amount of taxes in the Autonomous Communities often results in a very different tax burden on the same subject in individual Autonomous Communities (*Impuesto de Sucesiones...*), and, on the other hand, in differences in access to or a level of public services provided on their territory. It is also related to the issue of inter-regional tax competition, which is discussed later in the paper. The most important source of tax revenue for budgets of regions is the personal income tax (planned revenues in 2021 were to reach EUR 51 billion and in 2022 EUR 52 billion), followed by value added tax (EUR 36.7 billion and EUR 33.4 billion, respectively) and special taxes (EUR 14.8 billion and EUR 13.5 billion). Other taxes are much less important and these are: tax on the transfer of property and documented legal acts (planned revenues for 2021 were to reach EUR 7.6 billion and in 2022: EUR 10.4 billion), inheritance

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<sup>2</sup> Ley Orgánica 8/1980, hereinafter: LOFCA.

and donations tax (EUR 2.6 billion and EUR 2.9 billion) and wealth tax (EUR 1.1 billion and EUR 1.3 billion) (Ministerio de Hacienda y Función Pública, *Presupuestos... 2021*; Ministerio de Hacienda y Función Pública, *Presupuestos... 2022*).

It should be added that in case of the Autonomous Communities, in addition to the aforementioned common system regulated by the LOFCA, there is a separate system for two communities, the Basque Country and Navarre, for which there are some differences in their regional tax systems (Montoya López, 2018: 198–201). Some distinctiveness also exists for the Canary Islands and Ceuta and Melilla (Supera-Markowska, 2019: 104).

### 1.3. Local taxes

At the local level, there are 50 provinces, the autonomous cities of Ceuta and Melilla (*INEbase/.../Relación de provincias*) and more than 8,000 municipalities (*INEbase/.../Relación de municipios*) in the system of territorial self-government units in Spain. Their financing system is mainly defined by the Royal Legislative Decree 2/2004, of 5 March 2004, through which the consolidated text of the Law Regulating the System of Local Public Finance was approved<sup>3</sup>. In case of local taxes, municipalities<sup>4</sup> have their own taxes assigned to them – municipal taxes (see more in: Olañeta Fernández-Grande, 2018), among which we can distinguish between compulsory municipal taxes occurring obligatorily in all municipalities<sup>5</sup>, and optional taxes as to which municipalities can decide independently whether they want to collect them or not<sup>6</sup>. The terms “obligatory” and “optional” do not refer to the nature of taxes for the taxpayer, but only to the powers of the tax creditor (municipality) to collect them. The power to decide in this regard is a manifestation of the autonomy of municipalities, which, however, unlike autonomous communities, cannot create new taxes on their own initiative, as they do not have the legislative competence to do so (Collado Yurrita and Romero Flor, 2018: 48; Montoya López, 2018: 185). Obligatory taxes include the real estate tax, the tax on economic activities and the motor vehicle tax (see more in: Supera-Markowska, 2021c: 50). Optional taxes, on the other hand, include the tax on construction, installation or works and the tax on the increase in urban land value (see more in: Supera-Markowska, 2021 c: 50). The strong decentralisation and fiscal autonomy of regional and local self-government units is linked to the high degree

<sup>3</sup> Real Decreto Legislativo 2/2004, hereinafter: RDL 2/2004.

<sup>4</sup> Provinces, on the other hand, may receive some tax revenue from state or local taxes in the form of some surcharges or shares or the remittance of part of taxes to them (Montoya López, 2018: 206).

<sup>5</sup> See Article 59 item 1 of RDL 2/2004.

<sup>6</sup> See Article 59 item 2 of RDL 2/2004.

of decentralisation of public finances in general and the wide financial autonomy of Spanish self-government units in their financing system (Supera, 2006: 164–175). Financial autonomy, on the other hand, is needed to exercise a wide range of own competences (Alonso de Antonio and Alonso de Antonio: 583).

## **2. INCREASING THE EXISTING TAX BURDENS IN SPAIN IN 2021**

### **2.1. General remarks**

In view of the systemic circumstances presented, the situation of public finances and the basic principles and functions of taxation, the tax policy in Spain in 2021, apart from some *ad hoc* solutions related to the COVID-19 pandemic (see more in: Supera-Markowska, 2022: 217–219), focused on two areas:

- an increase in selected tax burdens for certain taxpayers (in particular, in personal income tax, wealth tax, insurance premium tax and value added tax) in the name of the principle of economic capacity and social justice, while respecting the financial autonomy of regional and local self-governments;
- the introduction of new tax burdens in response to the inadequacy of existing tax rules to meet modern economic and social realities and to fulfil certain non-fiscal functions.

It should be added that concurrently with the implementation of the aforementioned changes, the Integrated Digital Administration (Spanish *Administración Digital Integral* – ADI) (www1) system was launched, which is expected to significantly facilitate taxpayers' contacts with the tax administration, in line with the postulate of simplicity of the tax system.

### **2.2. An increase in tax burden in personal income tax**

Taxation of personal income is governed by Law No. 35/2006 of November 28, on Tax on Personal Income and Partially Amending the Laws on Taxes on Corporations, Non-Resident Income and Wealth<sup>7</sup> and the Law on Tax on Non-Resident Income, adopted by Royal Legislative Decree 5/2004, of March 5<sup>8</sup>. The personal income tax (see more in: Nocete Correa, 2018: 53–106 and Moreno González, 2018: 107–180) is a tax to which both residents and non-residents are subject, with residents being taxed in accordance with the provisions of the LIRPF, while non-residents, in principle, are taxed in accordance with the provisions of the LIRNR (see more in: Sánchez López, 2018: 267–309). Pursuant

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<sup>7</sup> Ley 35/2006, hereinafter: LIRPF.

<sup>8</sup> Real Decreto Legislativo 5/2004, hereinafter: LIRNR.

to Article 6 of the LIRPF, the taxpayer's income includes income from the following sources: labour, capital, business, property, and other sources as defined by law; income from each source is then allocated to either general income or savings income, respectively, and the general tax base or savings tax base is then determined separately (Moreno González, 2018: 108–117). The tax rates applied to these two tax bases are also separate. There are several steps in the progression; namely six steps (at the State level<sup>9</sup>) for the general tax base (Article 63 of the LIRPF) and four steps for the savings tax base (Article 66 of the LIRPF). In 2021, the level of taxation on the savings tax base of more than EUR 200,000 per year was increased, with the overall rate raised (resulting from the sum of the State and regional rates) from 23% to 26%. On the other hand, in case of a general tax base exceeding EUR 300,000, the State rate has been increased by two percentage points (change of the highest State rate from 22.5% to 24.5%), which means that the total tax rate for the general tax base (resulting from the sum of the State and regional rates) may be as high as approx. 50%. However, Autonomous Communities can compensate their residents for the increase in the State rate by reducing the regional rate; this is what the Autonomous Community of Madrid has done, for example, by reducing the regional rate by 0.5% in 2021 (Murcia and Vallejo, *Estas son...*). High total nominal tax rates, however, do not imply such a high effective level of taxation, inter alia, due to simultaneously high amounts of deductions (the basic amount deductible under the so-called personal and family minimum (Spanish *mínimo personal y familiar*) is EUR 5,550 and can be increased even to a certain multiple of EUR 4,500), a wide range of allowances and favourable rules of family tax assessment (see more in: Supera-Markowska, 2021e: 51–52).

### 2.3. Wealth tax and insurance premium tax

The wealth tax is also a personal tax, levied only on individuals on their assets, both immovable and movable, worth more than EUR 700,000 (the free amount available to taxpayers in the absence of relevant regulations of the Autonomous Community on the matter<sup>10</sup>) and it is therefore called a wealth tax. It has no equivalent in the Polish tax system, as Polish property taxes are more similar to the Spanish local real estate tax (see more in: Olañeta Fernández-Grande, 2018: 578–585). The personal nature of this tax implies, among other aspects, that it is a progressive tax; there are eight tax rates ranging from 0.2% to 3.5%. The highest rate: 3.5%, was introduced in 2021 as part of the aforementioned path of the

<sup>9</sup> The scope of the tax scale in the case of the Autonomous Communities may vary provided that the principle of progressivity is respected (Moreno González, 2018: 125).

<sup>10</sup> Art. 28 item 2 of Law No. 19/1991, of June 6, on Wealth Tax (Ley 19/1991).



Spanish tax policy of increasing the amount of certain tax burdens and it applies to assets worth more than EUR 10,695,996.06. However, the Autonomous Communities (the tax is entirely assigned to the regions) may adopt a different scale. In practice, the taxing power of the regions manifests itself in the fact that, for example, in the Autonomous Community of Madrid, this tax is not levied at all (*Impuesto de Sucesiones...*). Once again, therefore, it can be seen that in the Spanish tax system, in case of the State tax policy aimed at increasing the level of the tax burden, it is possible, under the autonomous policy of the regions, to mitigate it. This results in the aforementioned regional disparities in taxation and may raise some doubts in light of the principle of equality expressed in Article 14 of the Spanish Constitution and the principle of universality of taxation derived from Article 31 of the Spanish Constitution. This is why the current government has announced, among other things, the future establishment of a minimum rate for wealth tax (as well as for inheritance and donations tax, where a similar phenomenon occurs) (Murcia and Vallejo, *Estas son...*). It should be noted, however, that the Spanish Constitutional Court<sup>11</sup> has indicated that there is no obstacle to tax residence being a differentiating criterion for taxpayers, as long as this differentiation is appropriate for the achievement of a constitutionally legitimate objective, and residence does not become a differentiating criterion in itself. However, it should be noted here that there is a difference between a situation in which differentiation arises as a result of the financial (including fiscal) autonomy of the regions when a particular regional tax (or a tax assigned to the regions) is levied on their territory, and a situation in which a region differentiates its taxation according to whether or not a taxpayer is a resident for tax purposes in its territory, and that it would be the only criterion justifying differentiation of the tax burden. The former one requires a broader view of the system of organisation of the State and the regions, their finances and their tasks; the latter, in principle, should not take place. In its ruling in Case 60/2015<sup>12</sup>, concerning inheritance and donations tax in Valencian Community, the Constitutional Court indicated that differentiating the situation of two heirs (both descendants) of the same testator solely because of their different tax residence is unjustified.

However, returning to the main thread of consideration, i.e. the introduction of increases in existing tax burdens, from some other solutions, the increase in the rate in the insurance premium tax, which is levied on insurance and capitalisation transactions, should be mentioned. This tax, which has not increased since 1998, was raised from 6% to 8% (Murcia and Vallejo, *Estas son...*). These and other changes are connected with the assumption of searching for additional (necessary

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<sup>11</sup> Sentence 60/2015, of 18 March 2015 (B.O.E. No. 98, of 24.4.2015).

<sup>12</sup> Sentence 60/2015, of 18 March 2015 (B.O.E. No. 98, of 24.4.2015); similarly subsequently in sentence 52/2018, of 10 May 2018 (B.O.E. No 141, of 11.6.2018).



in the face of excessive fiscal indicators) tax revenues from taxpayers with higher economic capacity, defined in the Polish tax literature as, among others, “ability to pay” or “tax capacity” (Polish: *zdolność płatnicza/zdolność podatkowa*) (Gomułowicz, 2001: 36), which, as already mentioned, is explicitly referred to in Article 31 of the Spanish Constitution as economic capacity (Spanish: *capacidad económica*). It is worth emphasising that on the part of the proponents of the changes or, more broadly, the tax administration, it is clearly evident that the changes introduced will result in an increase in the tax burden, respecting the principle of transparency and a certain honesty in communicating the changes to taxpayers. Thus, the tax increase is not kept in secret, but it is communicated explicitly, focusing on its rational determination and justification in light of fundamental constitutional tax principles (including, in particular, the principle of economic capacity) pointing out that “those with greater economic capacity are expected to contribute more ..., so that everyone contributes according to his/her capacity and receives according to his/her needs” (*Presupuestos Generales del Estado 2021. Informe...: 57*).

#### **2.4. Taxation of sweetened beverages**

Some increase in the burden is also related to the implementation of a non-fiscal function, namely the increase of the VAT rate for sweetened beverages (except for dairy products). Value added tax is regulated by Law No. 37/1992 of 28 December, on Value Added Tax (Ley 37/1992), and its basic rate in Spain is 21%, reduced rate – 10% and preferential rate – 4%. In case of the aforementioned beverages, since 2021 the previously applicable reduced tax rate (10%) has been changed to the basic one (21%). This change was justified by a non-fiscal objective: to influence a change in consumer habits towards a more health-oriented one; in terms of fiscal revenue, it was estimated that the increase would generate around provisions of the EUR 400 million, most of which (EUR 340 million) in 2021 (Murcia and Vallejo, *Estas son...*). However, with a similar essence and purpose that in Poland accompanied the introduction of the so-called sugar levy (Polish: *opłata cukrowa*) (see more in: Dahms, 2021: 3–8), a completely different methodological and presentational approach of this burden was applied, which in Poland was adopted under the name of the levy despite the features of a tax that it actually demonstrates. The Spanish solution is far simpler and more transparent and fairer to taxpayers – like not hiding the actual increase in other taxes, but focusing on a rational and constitutionally sound tax justification for such an increase and ensuring that regional and local governments can mitigate its effects through their autonomous tax policy. The increase in the VAT rate on sweetened beverages, in addition to increasing the fulfilment of

a fiscal function, also serves a non-fiscal purpose, and is part of the second of the two main areas of change in the tax policy in Spain, namely: the introduction of new (increase of already existing) tax burdens in response to inadequacy of the existing tax rules to the contemporary economic reality and in order to fulfil certain non-fiscal functions.

### **3. NEW TAXES TO ADAPT THE SPANISH TAX SYSTEM TO MODERN ECONOMIC REALITIES AND TO PURSUE NON-FISCAL OBJECTIVES**

Among the taxes adapting the Spanish tax system to the modern economic reality, we should mention, first of all, the tax on certain digital services (DST), introduced in January 2021<sup>13</sup>. The introduction of this tax is part of a broader context of a discussion that has been going on for some time – both within the European Union and the OECD – concerning the incommensurability of the existing principles of income taxation to economic activity conducted in the conditions of the digital economy and the resulting necessity to introduce new principles of taxation, and in the meantime – *ad hoc* measures aimed at addressing these problems, if only temporarily and incompletely. This tax was to bring to the State budget EUR 968 million in 2021 (see more in: Supera-Markowska, 2021b: 44–51), but only EUR 225 million in 2022 (*Presupuestos Generales del Estado...2022*). Furthermore, also in January 2021<sup>14</sup>, a financial transaction tax (FTT) was introduced, including in the context of VAT and a certain “gap” in taxation resulting from the exemption of financial services, among others, from this tax (Cubero Truyo and Toribio Bernárdez, 2020: 79–80) and the implementation of certain non-fiscal functions (see more in: Supera-Markowska, 2021a: 50–56). The FTT was expected to generate revenues of EUR 850 million for the State budget in 2021 (*Presupuestos Generales del Estado 2021. Informe...*) (and in 2022 EUR 372 only – *Presupuestos Generales del Estado...2022*) being a levy of relatively low fiscal importance but with strong non-fiscal functions (see more in: Supera-Markowska, 2021a: 50–56). It may be noted that the FTT complements general turnover taxation for financial services, just as the DST is intended – at least to some extent and on an *ad hoc* basis – to address the lack of adequate income taxation of digital companies. A similar situation, i.e. the existence of a special tax complementary to the system of general income taxation, exists in case of a tax on non-resident income, as confirmed by the Spanish Constitutional Court in its sentence of 8 June 2017<sup>15</sup>. Among the other levies that serve non-fiscal functions, taxes defined as environmental ones should be

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<sup>13</sup> Law No. 4/2020, of 15 October, on the Tax on Certain Digital Services (*Ley 4/2020*).

<sup>14</sup> Law No. 5/2020, of 15 October, on Financial Transactions Tax (*Ley 5/2020*).

<sup>15</sup> Sentence 73/2017, of 8 June 2017, B.O.E. No. 168, of 15.7.2017.

mentioned and they include, among others, the regional so-called “business” (trade) taxes mentioned earlier, but also certain other levies. The assumptions of the Spanish tax policy focus not only on fiscal aspects and the demand for financial stability (ensuring tax revenues), but also on environmental stability: “In short, a responsible fiscal policy for financial and environmental sustainability will be developed to guarantee future growth so as to prepare for future pandemics” (*Presupuestos Generales del Estado 2021. Informe...*: 58). Thus, within the distinguished second area of the Spanish tax policy, attempts have been made to adapt the tax system to the new models of the globalized and digital economy, to implement ecological taxes (see more in: Supera-Markowska, 2021d: 24–42) and to counteract certain phenomena of a speculative nature – FTT as “Tobin tax” (Supera-Markowska, 2021a: 53).

## CONCLUSIONS

Spain, as well as Poland (along also with other countries), faced the obligation to modify its tax policy in the face of the effects and challenges that the pandemic period has created, but the Spanish tax policy was shaped in a completely different way than in particular the Polish policy in the same period.

The tax policy in Spain during the COVID-19 pandemic provided for, on an *ad hoc* basis, some tax solutions to encourage support for counter-pandemic effort, or to make it easier for taxpayers to meet their obligations in the new reality. At the same time, however, starting from 2021, a number of comprehensive and *non-ad hoc* tax measures have been introduced in the Spanish tax system to serve the fiscal function of taxation (by increasing selected tax burdens for certain taxpayers and introducing new tax burdens in response to the inadequacy of existing taxation rules to contemporary economic, social and environmental realities) and as an attempt to fulfil certain non-fiscal functions. Meanwhile, the Polish tax policy declaratively supposed to reduce tax burdens and to simplify the tax system under the so-called Polish Deal<sup>16</sup> very shortly after the implementation of new regulations, it has turned out to be completely contrary to these officially presented by the Polish tax administration (www2) assumptions (the sum of public burdens has effectively increased and the system has become significantly more complicated). In Spain, on the contrary, changes introduced are regulated in a clear and transparent way which, together with the launch of the ADI system, should serve to implement the principle of simplicity and create good relations between the tax administration and taxpayers. It is also worth emphasising that

<sup>16</sup> Introduced by Law of 29 October 2021 amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts (Ustawa z 29 października 2021 r. o zmianie ustawy o podatku dochodowym od osób fizycznych, ustawy o podatku dochodowym od osób prawnych oraz niektórych innych ustaw, Dz.U. item 2105, with amendments).

the increased or new tax burdens in Spain clearly find their justification in the constitutional principle of the economic capacity of taxpayers, or are an adequate response to the challenges of the globalised and digitalised economy or the assumptions of taxation in accordance with the principles of sustainable development (or with others objectives). At the same time, both the increased burdens (for taxpayers with the highest incomes or the largest assets) and the new taxes (for large digital companies or high frequency traders for individuals with a large capital) do not apply to taxpayers most affected by the pandemic or serve important non-fiscal objectives (changing unfavourable dietary habits, countering speculative transactions, protecting the environment). This seems to be the right direction for tax policy – especially during the COVID-19 pandemic and in times of increase of the public deficit and debt – for the construction of a fairer tax system. In fact, a responsible tax policy should be aimed at ensuring financial as well as environmental sustainability, while being relevant to the current times and their economic, technological and social realities, always in line with the fundamental principle of social justice and tax (economic) capacity. At the same time, for its assumptions to have a positive effect, it is necessary to combat tax avoidance at its roots by building up the conviction among taxpayers that the tax system is fair, transparent and friendly, and for this purpose it is necessary to be honest in the messages addressed to taxpayers about the foundations and assumptions of that system and to facilitate its practical operation in contacts with the tax administration. These should be universal guidelines, also recommended for use in the Polish tax system when creating a tax policy. Finally, in the context of the fact that the fiscally negative consequences of the so-called Polish Deal are largely borne by local governments, some attention should be paid to the Spanish system characterised by extensive regional and local governments tax authority, which allows them to “neutralize” tax decisions of the national legislator that are undesirable from their point of view and may threaten their financial independence or create excessive tax burden for their citizens.

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