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• CURRENT CHALLENGES FOR NATIONAL TAX POLICIES AND INTERNATIONAL TAX COORDINATION – SELECTED ISSUES FROM THE POLISH, SPANISH AND INTERNATIONAL PERSPECTIVES •

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PREFACE

Maria Supera-Markowska *

The purpose of this paper which serves as an introduction to the special edition of the quarterly of "Finanse i Prawo Finansowe. Journal of Finance and Financial Law" under the title of *Current Challenges for National Tax Policies and International Tax Coordination – Selected Issues from the Polish, Spanish and International Perspectives*, is to outline major issues and challenges in shaping national and international tax policies. **The research hypothesis** is that, to a large extent, the economic consequences of the COVID-19 pandemic, but also the changing economic reality associated with the progressive internationalization and digitalization of business activity, pose numerous and significant challenges in the field of shaping tax policies, both at the national and international level. The research was carried out using a dogmatic-legal and legal-comparative method, taking into account the provisions of law, the body of literature as well as some economic data. **The result of the research** is to establish a starting point for further analysis of selected topics that reflect the major current challenges for national tax policies and international tax coordination. They include the question of legitimacy of taxes, the issues of correct realisation of the fiscal function of taxes while at the same time implementing the basic tax principles, the matter of tax compliance and the question of tax policy-shaping within the framework of the democratic law-governed state. Those issues presented from the Polish and Spanish perspectives, hopefully may provide an interesting contribution and make a valuable input to further discussions on the issue of shaping tax policies, both at the national and international levels.

INTRODUCTION

We proudly present a special edition of the quarterly of "Finanse i Prawo Finansowe. Journal of Finance and Financial Law" under the title of *Current Challenges for National Tax Policies and International Tax Coordination – Selected Issues from the Polish, Spanish and International Perspectives*. The aim of this edition is to present selected problematic issues constituting current challenges in shaping national tax policies, while taking into account the international context from the perspectives of two EU countries: Poland and Spain. The selection of these countries was dictated by the results of research activities and the exchange of experiences and viewpoints between Polish and Spanish representatives of law and economic sciences, initiated and conducted

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under the direction of the author within activities carried out in the Spanish and European Law Centre at University of Warsaw. Simultaneously, these experiences and the resulting lessons are part of a broader context of current challenges and concerns in the field of tax policies.

LEGITIMACY OF TAXES

A fundamental issue regarding the shaping of tax policies and tax systems is the question of their objectives, or in other words, their functions, in the context of which the sources for the legitimacy of taxes should be sought. In the Spanish legal system, the starting point for consideration in this regard is first and foremost Article 31 Paragraph 1 of the 1978 Spanish Constitution[1], according to which "everyone shall contribute to covering public expenditure in accordance with their economic capacity under a fair tax system inspired by the principles of equality and progressiveness, which shall not under any circumstances extend to confiscation"[2]. As regards the Polish law, reference should be made to Article 84 of the Constitution of the Republic of Poland of 1997[3] which states that "everyone is obliged to bear public burdens and contributions, including taxes, specified in the Act"[4]. It should be noted here that the Polish Constitution, unlike the Spanish Constitution, does not formulate a catalogue of tax principles, nor is there in the Polish tax system an equivalent of Article 2 Paragraph 1 Sentence 2 of the Spanish General Tax Act[5] (in Poland *Tax Ordinance Act*[6]), which provides not only for fiscal, but also allows for certain non-fiscal uses of taxes, stipulating that "public duties, apart from being an instrument for obtaining the necessary means for covering public expenses, may serve as instruments of general economic policy and for achieving principles and objectives set forth in the Constitution"[7]. On the contrary, the non-fiscal use of taxes is criticised in the Polish financial law doctrine (Modzelewski, 2005, 24–27; Wójtowicz, 1999: 409), emphasising that

[1] Constitución Española de 1978, B.O.E. No. 311, of 29.12.1978, as amended.

[2] In the original: "Todos contribuirán al sostenimiento de los gastos públicos de acuerdo con su capacidad económica mediante un sistema tributario justo inspirado en los principios de igualdad y progresividad que, en ningún caso, tendrá alcance confiscatorio".

[3] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. No. 78, item 483, as amended.

[4] In the original: "Każdy jest obowiązany do ponoszenia ciężarów i świadczeń publicznych, w tym podatków, określonych w ustawie".

[5] Law No. 58/2003, of 17 December, General Tax (Ley 58/2003, de 17 de diciembre, General Tributaria, B. O. E. No. 302, of 18.12.2003, as amended).

[6] Act of 29 August 1997 – Tax Ordinance (Ustawa z 29 sierpnia 1997 r. – Ordynacja Podatkowa, Dz.U. of 2021, item 1540, as amended).

[7] In the original: "Los tributos, además de ser medios para obtener los recursos necesarios para el sostenimiento de los gastos públicos, podrán servir como instrumentos de la política económica general y atender a la realización de los principios y fines contenidos en la Constitución".

the fiscal function is the primary function of taxes (Bitner et al., 2017: 274; Gomułowicz and Małecki, 2013: 259; Modzelewski, 2005: 24–27; Wójtowicz, 1999: 408). Regardless of this, in each of these tax systems – both Polish and Spanish – the basic purpose of the tax system and taxes is to contribute to sustaining public expenditure and public expenditure should contribute to achieving the objectives of the State set out in Constitutions. Therefore and as presented in the paper *The Purpose of the Tax System that Gives Meaning and Legitimacy to Taxes* (by J. L. Muñoz López) the purpose of the tax system, which gives meaning to and legitimises taxes, is finally none other than to achieve the welfare of citizens and to realize some other constitutional objectives.

TAX CAPACITY CONCEPT AND ITS DETERMINATION

A further fundamental issue regarding the shaping of tax policies and tax systems is the tax capacity concept and principles and rules for its determination. In this context, subsequently, in particular to allow for some legal and comparative analysis in terms of the Spanish and Polish tax systems, the most important assumptions and novelties in the Spanish tax policy are presented in the paper entitled: *The Spanish Tax System and Tax Policy in Spain in the Context of the COVID-19 Pandemic Framework* (by M. Supera-Markowska). The Spanish tax policy has been strongly influenced by the current situation of public finances and fiscal consequences of the pandemic period but also by the constitutional principles of taxation, especially the principle of economic capacity (Spanish *capacidad económica*), also referred to in the Polish literature as "financial capacity to pay" (Polish *zdolność płatnicza*), "taxation endurance" (Polish *wytrzymałość podatkowa*), "capacity to bear tax" (Polish *zdolność do poniesienia podatku*) "economic capacity of the taxpayer" (Polish *zdolność ekonomiczna podatnika*), "capacity to provide contributions" (Polish *zdolność świadczenia*) or "tax capacity" (Polish *zdolność podatkowa*) (Gomułowicz, 2001: 36). This principle means, in particular, that the increase in public burdens (that may be inevitably necessary for the implementation of the fiscal function) should affect carefully selected entities – those with the greatest tax capacity (for example taxpayers with the highest incomes or the largest assets). On the other hand, it may serve important non-fiscal objectives (such as changing unfavourable dietary habits or countering speculative transactions). 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.

Within the concept of tax capacity it is essential to specify proper indicators reflecting the ability to bear the tax burden (the identification of economic sources of taxation). In case of income taxes, the indicator is to be income, which in turn, requires the establishment of rules for its measurement. At the same time, we may observe nowadays that within the framework of income taxes, the measurement of tax capacity through calculation of income is more and more often abandoned in favour of other indicators; in particular revenue, and in tax systems – as a specific supplement of taxation of entrepreneurs with income taxes – other taxes are introduced, e.g. the so-called digital tax, adopted among other countries in Spain (Supera-Markowska, 2021); in Poland, no analogous levy has been implemented. Related issues, i.e. the establishment of rules for determining the tax capacity of entrepreneurs with respect to income taxes, constitute the subject of consideration in the successive paper entitled *Principles and Rules for Determining the Tax Capacity of Entrepreneurs in Income Taxes* (by M. Supera-Markowska). These rules currently in force, in particular, are no longer relevant in the context of nowadays, when not only cross-border trade but also the provision of services without a physical presence is possible, and often the main value for businesses (henceforth referred to as digital businesses) lies in the content digitally generated by their users and the collection of data. This latter phenomenon is part of the broader issue of a new way of creating value within the digital economy and the lack of commensurability of taxation with the value so created. This is a consequence of the fact that the traditional approach to income tax assessment is to determine income on the basis of the taxpayer's revenues and costs generated in transactions. However, in the digital economy, the value created (e.g. digital content created by users) is not always reflected in the form of transactions, and a correct allocation of tax to a particular country is often not even possible under the current rules. What is more, the issue of determining this capacity applies not only to digital companies, but also to other taxpayers, both those operating domestically and internationally. In Poland, this is related, inter alia, to progressing differentiation of rules for determining the tax capacity of entrepreneurs with regard to income taxes: determining income for tax purposes independently of the financial result, in some cases (the so-called Estonian CIT) – as the adjusted financial result (a solution applied in turn in Spain as the basic solution for determining the income of entrepreneurs), with a progressing abandoning of determining income in income taxation at all in favour of taxation of revenue (the so-called flat-rate income tax on registered revenues). A distinction should be made between the situations where the abandoning of the determination of income as part of the implementation of the principle of tax capacity in income taxes in favour of another criterion is justified by the pursuit of a fair distribution of the tax burden (as, for example, in a digital tax) and the situations where this is to be justified by non-fiscal arguments. In such a case, any

variation in those rules must be assessed on a case-by-case basis as to whether it is justified; although that potential justification may be the desire to achieve, in the context of the intervention function, a certain economic (or other) policy objective, which requires an in-depth analysis in view of the potential infringement of the principle of neutrality of taxation which may result from that differentiation. Finally, in the international context, these issues are related to the concept of a common consolidated corporate tax base (CCCTB) (Supera-Markowska, 2010) – to be replaced by the project of *Business in Europe: Framework for Income Taxation* (BEFIT), and activities within the Organisation for Economic Co-operation and Development (OECD) under the *Base Erosion and Profit Shifting* (BEPS) project and a two-pillar multilateral agreement on new principles of income taxation in the international aspect worked out within its framework. In view of these issues and also of the increasing development of general and specific substantive tax law norms aimed at minimising the phenomena of tax avoidance and optimisation, it seems increasingly possible to adopt as a principle that the tax capacity of entrepreneurs should be determined by its natural measure, i.e. the financial result (with some necessary adjustments for tax purposes) of their business activity.

TAX COMPLIANCE

The issue of preventing the loss of tax revenue is another of the most important tax challenges nowadays, both at national and international level – the problem of tax compliance should be analysed in this context. Its system encourages the adoption of a series of voluntary mechanisms for cooperation between taxpayers and the tax administration and minimizes the uncertainty. By building better relations between the creditor and the tax debtor and thus providing the stability of the tax system – tax compliance is worth analysing, especially in the context of facilitating the implementation of the aforementioned fiscal function and taking into account the correct fulfilment of basic tax principles (among others, the fairness and transparency principles).

The tax compliance problems in this regard are presented in the following two papers: the paper entitled *Factors Explaining Tax Compliance* (by M.G. Lagos Rodríguez) in the context of factors explaining it, and in the paper entitled *Trust in Institutions and Tax Compliance. A multilevel analysis with Spanish regions* (by J. Cantero-Galiano) first and foremost in the context of the principle of trust in relations between taxpayers and the tax administration.

It is worth emphasising that in case of Spain, this question also extends to the regional (and potentially, also the local) level, whereas, in Poland, tax competence is exercised at the State level and, beyond that, only to a very limited extent at the

level of municipalities. As noted in the previous paper (*The Spanish Tax System and Tax Policy in Spain in the Context of the COVID-19 Pandemic Framework* by M. Supera-Markowska) special attention should be paid to the aspect of regional and local extensive tax authority in the Spanish system, which allows to "neutralize" tax decisions of the national legislator that may threaten the financial independence of regional and local self-government units, or create excessive tax burden for their citizens (the phenomenon that may be unfortunately observed currently in the Polish tax system, in which the fiscally negative consequences of the so-called Polish Deal are largely borne by local governments).

THE TAX POLICY IN THE DEMOCRATIC LAW-GOVERNED STATE

Finally, returning to the issue of the axiological foundations of tax policies, it is worth considering them in a broader context of the concepts of a democratic law-governed state, economic development policies and support for religious communities, as discussed in the last paper entitled *Democracy, Economy, Progress and the Rule of Law. Special Reference to the Tax Regime for Religious Denominations* (by S. Catalá Rubio). The work shows that democracies need effective control mechanisms if they are not to degenerate into corrupt and ineffective systems. These issues are extremely important in the context of shaping tax policies so that they do not become an easy tool for implementation of populist slogans in order to obtain political support or for other individual goals, and not with attention to constitutional values and proper legitimacy of tax systems, which should be the starting point for all considerations on tax policies.

CONCLUSIONS

A fundamental issue regarding the shaping of tax policies and tax systems is the question of their objectives, or in other words, their functions, in the context of which the sources for the legitimacy of taxes should be sought. The tax system and taxation are delimited as a tool for raising revenue to cover the needs of the public budgets (basic, fiscal function of taxes) and thus guaranteeing the sustainability of the public finances system. Within this system public expenditure should contribute to achieving the objectives of the State set out in Constitutions and within their framework.

A further fundamental issue regarding the shaping of tax policies and tax systems is the tax capacity concept and principles and rules for its determination. These matters are related to one of the most significant tax challenges of contemporary times, namely the inadequacy of existing income tax rules to conducting a business activity in conditions of a globalised digital economy. However, the question of determining the tax capacity applies not only to digital

companies, but also to other taxpayers, both those operating domestically and internationally. In Poland, this is related, inter alia, to progressing differentiation of rules for determining the tax capacity of entrepreneurs with regard to income taxes. A distinction should be made between situations where the abandoning of the determination of income as part of the implementation of the principle of tax capacity in income taxes in favour of another criterion is justified by the pursuit of a fair distribution of the tax burden (as, for example, in a digital tax) and situations where this is to be justified by non-fiscal arguments. In such a case, any variation in those rules must be assessed on a case-by-case basis as to whether it is justified; although that potential justification may be the desire to achieve, in the context of the intervention function, a certain economic (or other) policy objective that requires an in-depth analysis in view of the potential infringement of the principle of neutrality of taxation which may result from that differentiation. In view of these issues and measurement of tax capacity of entrepreneurs in income taxes, taking into account the increasing development of general and specific substantive tax law norms aimed at minimising the phenomena of tax avoidance and optimisation, it seems more and more possible to adopt as a principle that the tax capacity of entrepreneurs should be determined by its natural measure, i.e. the financial result (with some necessary adjustments for tax purposes) of their business activity.

The issue of preventing the loss of tax revenue is another of the most important tax challenges nowadays, both at the national and international level. The tax compliance system is one of concepts that are seen as a directional solution to problems in this regard. By building better relations between the creditor and the tax debtor, and thus providing the stability of the tax system – tax compliance is worth analysing especially in the context of facilitating the implementation of the fiscal function and taking into account the correct fulfilment of basic tax principles (among others, the fairness and transparency principles).

Finally the axiological foundations of tax policies should be taken into account considering the issues of tax policy in the broader context of, among others, a democratic law-governed state and economic development policies. Democracies need effective control mechanisms if they are not to degenerate into corrupt and ineffective systems, in which, among other things, tax policies can be shaped to implement populist slogans in order to obtain political support or for individual goals, and not with attention to constitutional values and proper legitimacy of tax systems.

I hope that this selection of topics, presented from the Polish and Spanish perspectives, may provide an interesting contribution and make a valuable input to further discussions on the issue of shaping tax policies, both at the national and international levels.

I would like to thank Iwona Dorota Czechowska, Associate Professor, Ph.D. for the opportunity to present this topic on the forum of the JOFFL quarterly. I do hope readers will enjoy their reading and I cordially invite you to exchange your views.

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THE PURPOSE OF THE TAX SYSTEM THAT GIVES MEANING AND LEGITIMACY TO TAXES

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Abstract

The purpose of this article is to analyze the ultimate purpose of the tax system that gives meaning and legitimacy to taxation. The citizen thus becomes an integral part of the State, has the ability to elect its representatives through suffrage. The law is a guarantee of equality and justice that provides legal security, facilitating peace and coexistence. This guarantee is manifested through the constitutional system (Alvarado Plana, 2016: 193–195), where the Constitution (Escudero, 2012: 857–858) becomes the legislative framework and the supreme norm of the entire legal system that orders the coexistence of citizens and ensures the proper functioning of the State. The tax system is defined as a revenue collection tool to cover the needs of the State, but there is certainly more than that: to achieve the goal of equality, justice, freedom, peace and well-being of the society, but also to guarantee the sustainability of the system, achieve progress and social peace. It is also essential to attract investment, create wealth and achieve proper development within the European Union (Sampedro, 2010: 300–309). **Methodology.** The analysis includes the basic values and principles assumed by Spanish culture, the evolution towards a modern society in which the citizen has rights and duties enshrined in the Constitution that justifies and legitimizes tax system and therefore taxes and a critical vision and an approach to our tax model through its ultimate purpose to contribute to defray public spending. All of these based on the principles and values established in the Spanish Constitution, which enshrines the rights of the citizen and, through them, supports the conception of the State itself. It also provides a modern approach to the future of our society and guarantees the legitimacy of our tax system. **The result of the research.** The analysis shows that the ultimate goal of the tax system is to contribute to public spending by the State. Therefore, in the contribution and control of spending, we find the guarantee that the State has healthy public accounts (deficit reduction, less public debt, and strict control of spending), so that the State has greater sovereignty and economic decision-making capacity. It allows the country to meet the objectives of the Constitution for any advanced society, such as peace, equality, justice, freedom and well-being of its citizens.

Keywords: Constitution, taxes, distribution of wealth, law and justice.

JEL Class: K34.

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INTRODUCTION

The purpose of this article is to demonstrate that beyond the legal system of a country, its laws, its constitution (Alvarado Plana, 2016: 193–195; Escudero, 2012, 857–858), the state administration itself, the economy and politics, it is the citizen and their needs that justify the very existence of the state and, therefore, it is also the objective of the state that justifies a need for a tax system and, ultimately, taxes.

The Spanish Constitution of 1978 defines very well the legal legitimacy of our Tax System through several articles where we can see some faces of that legitimacy. However, we must certainly delve into the true meaning of this legitimacy and give it a practical and real meaning (www39; Balaguer, 2011: 442–444).

The Tax System and taxes have a clear purpose i.e. to contribute to public spending as expressed in the Spanish Constitution in its article 31.1 (hereinafter CE) where it says: "Everyone will contribute to the maintenance of public spending in accordance with their economic capacity through a fair tax system inspired by the principles of equality and progressivity that, in no case shall it have confiscatory scope". This means that all citizens are obliged to support public spending by the state. And as Article 31.2 of the Spanish Constitution says: "Public spending shall guarantee an equitable allocation of public resources, and its programming and execution shall meet the criteria of efficiency and economy" (www23).

In this way, the system is legitimized both in terms of income and expenditure, but we must look deeper to see where the most vital meaning of the system lies, which ultimately perfects and legitimizes it (Balaguer, 2011: 302–303).

I refer to the Spanish Constitution because it is the supreme norm of our legal system. It emerged from the consensus of all Spaniards after a dictatorship with the aim of modernizing, decentralizing power and democratizing our country. It reflects tolerance and respect for pluralism through the recognition of political parties in order to carry out the political reform of the State and thus, resolves the territorial particularity of Spain, recognizing for the first time, the autonomous communities as a tool of equality in the distribution of power and wealth among all the territories of the country and therefore among all citizens.

Our legal system serves as a guarantee for compliance with the laws within our society. The State must have a perfect functioning, must have sufficient income to cover its needs and thus to meet the objectives established in the Constitution. But the question that arises here is about what is happening in our society today, what the reality is, what problems and possible solutions can be indicated.

Politics is very important in the Tax System because of the impact of the decisions of different governments on power according to their fiscal policies. The economy also directly influences the decisions of governments and citizens according to the indicators and economic cycles in which we find ourselves.

Next, the objectives and rights guaranteed by our Constitution will be briefly analyzed, as well as a description of the current situation of our system will be provided while indicating the problems and possible solutions

1. THE OBJECTIVES OF SPANISH CONSTITUTION

The objectives of our Constitution are tolerance, respect and pluralism of ideas among all Spaniards, to face the political reform of the State and to resolve the territorial question. It recognized the autonomous communities and the figure of political parties as an expression of political pluralism.

It is through the articles 31.1, 31.2 and 31.3 of the Spanish Constitution, where can we see the ultimate objectives of the tax system and its principles.

In article 133.1, the rule of law appears by establishing a clear Reservation of Law where it is stated that "the original power to establish taxes corresponds exclusively to the law". Next, 133.2 of the Spanish Constitution states that "the Autonomous Communities and local corporations may establish and demand taxes in accordance with the Constitution and the laws" and 133.3 of the Spanish Constitution says that "all tax benefits affecting the taxes of the State must be established by virtue of the law". Then, Articles 14, 53 and 81 of the Spanish Constitution where the equality of citizens is established, stipulate the special protection of constitutional principles and the regulation thereof by means of organic laws.

The general budgets of the state in line with article 134.1 of the Spanish Constitution will by law refer to the approval of the budget and the public administrations, and will only be able to contract financial obligations and make expenses in accordance with the laws. Article 134.2 reflects the obligation to register the tax benefits that affect the state taxes in the State's general budgets (Martín-Queralt, 2010: 724–725).

In Article 135 of the Spanish Constitution on public debt, it is said that "the government must be authorized by law to issue public debt or take out loans". Thus, the Reserve Law has a double function:

– firstly, to ensure respect for the principle of self-assessment so that citizens do not pay more taxes than their legitimate representatives have given their consent. "There is no taxation without representation" – it has its origin in the English Constitution of 1215 where it was promulgated that the king cannot

increase taxes without the general approval of the kingdom and therefore of the representatives of the people (Martin-Queralt, 2010: 174);

– secondly, to guarantee the right to property – it has its origin in the first Cortes of León in 1188 where respect for private property was promulgated for the first time – (Balaguer: 2011, vol. II, 303).

It is important to highlight the social function of property promulgated by the Constitution in Article 33.2, or the establishment of a flexible framework for the economy with the establishment of freedom in Article 38 aiming "to promote the conditions so that the freedom and equality of the individual and the groups in which he/she is integrated are real and effective. Another purpose is to eliminate obstacles that prevent or hinder its fullness and facilitate the participation of all citizens in political, economic, cultural and social life, as well as guarantee equality among all Spaniards without any discrimination.

2. THE CURRENT SITUATION OF SPANISH SYSTEM: PROBLEMS AND SOLUTIONS

After the great financial crisis of 2008, the pandemic caused by COVID-19 at the beginning of 2020, and now, because of the invasion of Ukraine, we are undoubtedly facing a situation of unprecedented economic crisis to date due to the circumstances in which it has occurred, and because it has affected the entire planet in a systemic way (www31; .www48; www2; www70; www29).

This situation has led to unprecedented unemployment in many strategic sectors of the economy, such as tourism, trade, the production of goods and logistics, to mention just a few, which have caused layoffs, loss of sales, closure of businesses and factories, paralyzing the world production of many products and generating an economic, employment and supply crisis of certain goods and products that has led to shortages in many markets and ultimately, to a global crisis.

The first way to survive this crisis was to turn to markets (Niño-Becerra, 2012: 30–33) through public debt and generate an unprecedented aid package in the EU for all member countries, which has generated, as always, discrepancies over the distribution of aid and conditions for recipient countries (www38).

What the debt has allowed for is to reach levels of spending that we could not have reached otherwise, and that has meant an increase in the level of debt close to 26% compared to 2019, when it reached 95.5% of GDP (www35).

According to the Bank of Spain of September 2021, the debt of the Public Administrations reached 1.43 trillion euros, 122.1% of GDP in September 2021, 9.5% more than last year, 12,885 million euros (www34).

This has helped to solve the problem in the short term, but given the level of spending – it has served to cover aid to SMEs and companies that does not come

from the NEXT Generation of EU funds, the ERTE, the transfers to the Autonomous Communities to face the COVID-19 consequences. It included what we have now, and what is planned for 2022 (according to the General State Budgets, which will break all spending records, making it the most expensive budget in the history of our country). We could run into a big long-term problem for future generations, since the use of public debt definitely is not unlimited. Would we have trouble borrowing in future crises? (www64; www92; www43; www65; www63).

Given that debt is valued in terms of GDP and that the OECD expects our country's debt to be reduced next year from 6.8% to 4.5% – and continues to decrease – the debt ratio may rise, which will mean a greater burden on the State coffers and less room for greater indebtedness. But can we keep borrowing indefinitely? How long will the markets continue to lend us? (www86).

The debt problem comes from the public deficit, the State spends more than it collects, the consequence is a mismatch in the public accounts. Depending on who governs, fiscal policies may be oriented towards higher spending and higher taxes, others think that what should be done is to reduce spending and lower taxes. The other views suggest that more should be spent on infrastructure and less on social spending, another option is that taxes should be raised, etc. The fact is that none of them has managed to contain the deficit or eliminate it, which should be a priority objective.

The deficit has thus become something that all governments have assumed and it is covered by public debt of the type that never seemed to have to be paid. Yet, it not only has to be paid, but also has an additional cost, which is the interest that is charged on this debt, that increases as our needs increase: the famous risk premium (dictated by the rating agencies) is the one that determines the cost of this debt.

So, a crucial question arising here concerns all the consequence of this situation. If spending is the source of the contribution, the need and the reason why the Tax System and taxes make sense, how it is spent is so important that it legitimizes the entire system (Shiller, 2012: 191–202).

Thus, the fact that we allocate part of this expenditure to settle our debt harms the purpose of the expenditure, the objectives pursued by the State, the rights enshrined in the Constitution, and harms the capacity of the State to make economic decisions, since it limits it and therefore harms our national sovereignty (Nuñez Seixas, 2018: 920–926) by putting ourselves in the hands of third parties, markets.

If spending, overspending (the excessive number of politicians and advisers, the oversized administration of the State, the Autonomous Communities, local entities, etc.) are controlled, the State would have the necessary funds to pay the taxes required for the State to function. The State would have the necessary funds

to achieve the objectives set out in our Constitution and those that we must pursue as a society. We would not have such a high deficit, we would not have to resort so much to the public debt and the State would have greater sovereignty and a greater capacity to implement fiscal policies to achieve the objectives.

An example of the loss of national sovereignty is what happened in August 2011, due to the financial crisis that began in 2007. In a situation of extreme need, the government of J.L. Rodríguez Zapatero, our President of the Government at that time, through a Royal Decree expressly changed the Constitution and was forced to bow to the markets (www42; Sampedro, 2002: 51–56).

This amendment consisted of amending Article 135 C.E. in two ways, firstly, by adding the concept of budgetary stability set by the European Union to control the expenditure ceiling. Secondly, by establishing the fact that the payment of the public debt became the most important payment of the State and the first in comparison with any other expenditure in the general budgets of the State without any possible modifications.

This modification took away our sovereignty as a country, and the message we sent to the markets was very clear, i.e. "continue lending money to Spain because whatever happens, the first thing that will always be paid will be the public debt", so, it was undoubtedly a message of confidence for the markets.

Our social system is failing, markets and money still exist, but what happened to the rights of man and the citizen, the goals of a better, freer and more egalitarian society?

What will happen if the popular economy continues to deteriorate in favor of the markets? Can a state survive if the economy and living conditions get worse and worse? And when interest rates go up, when the cost of debt goes up, will we raise taxes even more?

Education, information and the unity of all citizens will give us the strength to remain a better society. Improving people's living conditions is an obligation of our society in the same way as meeting the goals set out in the Constitution (Stiglitz, 2012: 331–356).

If wages don't go up and down, if inflation goes up and the cost of living is higher, if interest rates go up and the tax burden is getting bigger, won't we face a more impoverished society? It is true that the capacity of families has decreased, and this affects another pillar of taxation, which is the economic capacity. This is the basis of taxation (www47).

Economic capacity is the basis of taxation and if there is no economic capacity there is no taxation, so as it decreases, so will consumption and therefore, the collection of taxes by the State.

Citizens must be guaranteed a minimum standard of living for their survival that is not taxable, which is the amount we need to live, and which will depend on

each personal situation depending on whether you are married or not, have children, or any other circumstances.

Inflation and the economic crisis cause the cost of living to rise, so the vital necessary minimum is increasing, but nevertheless, the economic capacity of families has decreased as wages are lower and inflation itself has reduced purchasing power (www56; www1; www20; www50; www36).

The result of it all is a lower economic capacity and therefore, less tax revenues, a need for greater social spending in the face of the deterioration of the quality of life of citizens, a greater deficit and consequently increasing public debt (www22; www6).

A worsening economic situation for the country and its citizens is detrimental to the living conditions of society, and it leads to higher spending. In the face of this discontent, many movements are emerging with populist policies that promise a lot of spending. As Thomas Jefferson said, "A government capable of giving you everything you want is capable of taking away everything you have".

All these factors generate instability and distort our goals of equality, justice, freedom, peace and well-being (Navarro, 2011: 78–82).

In response to this situation, fiscal policies are moving towards higher fiscal pressure with tax increases and an expansionary spending policy as a measure to revive the economy.

The question that arises is whether all this is sustainable, and what is going on with the debt, because what is being done is to grow and spend on the basis of debt. It seems justified to say that this is "bread for today and hunger for tomorrow". Debt is not the solution.

What good is it to raise taxes if citizens have less and less wealth and less economic capacity, believe less and less in the system and pay less and less taxes?

There is an underground economy estimated at 25% of GDP, about 91,600 million euros that do not reach the coffers of the State. All this translates into a problem of tax collection, with less collection than should be the case (www58).

This shows a lack of credibility in our system and a lack of commitment on the part of citizens. One may wonder why this happens, whether it is a matter of education. Perhaps there is too much tax pressure, or the feeling of citizens is that taxes do not benefit the well-being of society and therefore, there is no commitment to pay them, unlike in the Nordic countries where there is a total commitment to pay taxes since it is very clear that it has a direct impact on the quality of life.

Spain was the OECD country with the highest tax burden in 2020 due to the fall in GDP related to the COVID-19 pandemic, with an increase of 1.9 percentage points in the relationship between the weight of taxes and Social Security contributions and the size of the economy. In 2020, the tax burden stood at 36.6% compared to 34.7% in 2019 (www88).

The State must guarantee a better quality of life for its citizens. In the current debate, it is even clearer that we want to live better but we want the state not to spend more or to spend worse, not that the public stipend is paid by all of us. It is in spending that the tax system must be legitimized to achieve the objectives of improving our society that are established in the Constitution.

Both the Bank of Spain and the Independent Authority for Fiscal Responsibility (AIReF) (Independent Body for Fiscal Responsibility created in 2013 by the Spanish Government at the initiative of the EU, which complies with the constitutional principle of budgetary stability), recommend reviewing tax benefits (they are fiscal policy instruments that pursue economic and social objectives) because they entail lower tax revenues, and this denotes the weakness of the system (www26).

Tax benefits are part of the expense, but they are also understood as lower income. They are expressed in taxes as reductions, deductions, rebates or exemptions that are applied to benefit certain activities or certain population groups (Banacloche, 2008: 267).

It is true that we have a wide range of bonuses, but the real problem of tax collection is that not all of them are yet justified or applied correctly. The truth is that from the point of view of income it means less income.

The tax benefits have a fiscal cost of about 60,000 million euros per year for the state coffers, which is important enough to review their validity. They are to fulfill the function for which they were created and, therefore, if they are not, should be reformulated, if necessary (www27).

In this sense, reforms have already been initiated in different taxes such as Personal Income Tax, where the reduction for contributions to pension plans has been reduced to a minimum, and has also been working for some time to end the reduction for joint taxation, etc. (www17; www18).

In VAT, there is a desire to eliminate reduced rate rebates and leave it only for certain items, as it is one of the most important costs, but this is nourished by policies to protect certain products and vulnerable groups (www45).

It is true that the EU's recommendation is that the elimination or modification of certain tax benefits, such as reduced VAT rates, be carried out gradually and be accompanied by policies to help vulnerable groups.

It would also be very interesting to examine the tax benefits of SICAVs and SOCIMIS, eliminating these tax benefits and adapting them to the EU rates (www82).

In any case, tax benefits pose many problems because they are seen as lower taxation and have a very high cost that we should review if they meet the objectives of our Constitution. The Bank of Spain, the AiREF and the EU recommend revising them due to their high opportunity cost for the system.

Another issue to be addressed is whether the pension system is sustainable. The first thing to mention is that, according to the Constitutional Court, the right of pensioners to the revaluation of pensions is recognized in Article 50 of the EC, which does not mean "that the Constitution obliges that each and every one of the initial pensions be maintained in the amount foreseen, nor that each and every one of those already paid must experience an annual increase" (STC 134/1987, of July 21). However, on the contrary, it must be said that it is exclusively up to the legislator "to determine the scope of the right of citizens to obtain the correlative obligation of the public authorities for the granting of a pension during old age, establishing the requirements and conditions necessary to give effect to this right" (STC 114/1987, of 6 July). There is a clear debate about the sustainability of pensions. Spending on pensions stands at 12% of GDP according to Social Security estimates, which represents an expenditure of 10,251 million euros, 3.24% more than last year (www13; www11; www10).

While examining the 9,881,206 contributory pensions paid as at 1 October, it can be mentioned that 6,190,182 were retirement pensions, 2,353,994 widow's pensions, 950,472 permanent disability pensions, 341,436 orphans' pensions and 44,122 family pensions. The average pension in Spain stands at 1,037.48 euros per month, while the Minimum Interprofessional Wage (SMI) is 965 euros per month as of September 1, 2021.

According to an OECD study that has just been published on the different retirement systems in force in the most developed economies, it warns that the Spanish situation is very delicate and that the decision to eliminate the sustainability factor will aggravate the situation of the pension system. The OECD has questioned the latest pension reform for having repealed an automatic adjustment, such as the sustainability factor, to replace it with the intergenerational equity mechanism (2021 Report) (www75; www85).

The indexation of pensions to the CPI will significantly increase spending, while the intergenerational equity mechanism announced by the Government of Pedro Sánchez will not be able to maintain the balance, so a significant deterioration of the Social Security system is expected in the coming years (www51; www37).

It is important to note that Spain has been one of the countries that has spent the most on pensions in the last twenty years, and two factors that affect this greater expenditure must be added here. First, Spain is one of the developed economies where working life ends earlier, secondly, life expectancy at the time of retirement is especially high in Spain, with men living an average of 23 years after retirement and women 27.7 years, compared to 19.5 for men and 23.8 for women in the rest of the OECD countries (www87).

It seems that all developed countries have an adjustment mechanism that automatically increases or reduces pensions according to criteria of population,

demography and the financial balance of the Social Security system. Spain no longer has it, it abandoned the stabilization system to index pensions to the CPI, and this will undoubtedly increase spending and could cast serious doubts on the viability and sustainability of pensions in the future, especially in the face of the "demographic winter" in our country where the birth rate has plummeted from 2.3 children in 1980 to 1.3 in 2020. The projection for 2040 is 1.5, to which, if we add the growth in life expectancy, it will be difficult to maintain the current calculation of pensions, especially considering the large number of retirees who are added to the pension payroll each year.

As established by Law 27/2011 of August 1, on updating, adapting and modernizing the Social Security System, and taking into account the evolution of the life expectancy of the Spanish population, the retirement age will rise from 65 o 67 years in a period of five years. Namely, it will increase progressively until it reaches 67 in 2027 (www41).

In 2022 the legal retirement age is 66 years and 2 months in the case of having contributed less than 37 years and 6 months. For workers who have contributed for 37 years and 6 months or more, they may retire at 65 years of age. In 2027 all those workers who have contributed for 38 years and 6 months will be able to retire at the age of 65, for the rest who have contributed less than, the ordinary retirement age will be 67 years (www91).

Another issue is to highlight the lower collection capacity of the new figures and fiscal measures introduced in 2021, as in the case of the new taxes on financial transactions (the so-called Tobin tax), and on certain digital services (the so-called Google tax). The limitation of double taxation exemptions for large companies and the increase in VAT on sugary drinks have had less impact than expected, as well as the non-entry into force of the tax on non-reusable plastic packaging and on waste in landfills (www24; www25).

There is no point in setting new taxes, raising taxes, or reducing tax benefits if the economy is unhealthy; families and businesses must have the economic capacity to pay taxes, otherwise, the system is distorted and does not work.

Another important massive problem is the fight against tax fraud, tax avoidance and tax havens. They lead to lower revenue collection, unbalanced public accounts, generate inequality, provoke capital movements and harm the distribution of wealth. Tax havens should disappear to avoid the possibility of tax evasion.

More and more is being spent, less is being collected, there is a larger deficit, we have to resort to public debt and the surplus in spending is getting smaller. As a result, we cannot meet all the objectives and that is when we must give up certain expenditures. This is where we find ourselves after the 2008 financial crisis, when there were significant cuts in health, education and social services, which meant that the social goals set by the state could not be met.

Such a situation cannot happen again, the purpose of the system is different. Taxes and the tax system are designed to contribute to public spending, not to be an unbearable burden on the citizen as a result of excessive spending.

Another outstanding issue of our democracy is the effective distribution of wealth, which today, 43 years after the promulgation of our constitution, still has not been achieved (www68).

The current system of Autonomous Communities (Niño-Becerra, Santiago, 2012:33–34), which has undoubtedly served to decentralize political power and competences in certain areas such as health, education, the environment, etc., has become economically inefficient due to the high cost incurred by 17 parliaments, with their politicians and advisers, in the assumption of competences such as education, health, social services, etc. They were not provided with their own source of income and most of their income comes just from state-ceded taxes and the public debt of the Autonoma Communities themselves (www40; www9; www3).

The creation of infrastructures to structure the territory has not always responded to the interests of all. It turns out that today the quality of life in all communities is not the same. There is an imbalance and inequality in the distribution of wealth, always based on criteria of population, tax collection, distribution and contribution to the solidarity fund. Yet, justice must be emphasized, since it is not possible that these criteria for the distribution of wealth and the different fiscal policies of each community have determined the polarization of wealth in certain areas of the country compared to others. Therefore, they have caused capital movements, migratory movements and certain investment decisions that have benefited some and harmed others (www73; www74).

The Quota model that affects the Basque Country and Navarre reveals nothing more than inequality based on obsolete privileges that do not correspond to a modern and fair society (www62; www19; Lago Peñas and Vaquero, 2016: 57–66).

The fact that the electoral law gives more weight to certain territories that fight for their rights than for the general interest has also contributed to inequality. Additionally, it made it impossible to implement effective equality policies, since significant amounts of the annual budget have been allocated to the detriment of other areas of the country to the satisfaction of certain nationalist parties.

It is not possible that, in Extremadura, Castilla-La Mancha and some provinces of other regions such as Teruel in Aragon, Soria, Palencia or Zamora in Castilla-León, Jaén in Andalusia, etc., the standard of living and services are not the same as in the rest of the territory. After all, all citizens pay taxes and public services should be the same anywhere in Spain.

There is also a problem that each region establishes different tax policies and benefits that cause movements of capital and investment, and therefore of wealth from one region to another. In the same way, this also determines population movements and harms the fixation of the population, affecting the income balances of these regions and thus increasing the inequality gap and imbalances.

It is paradoxical that while we are witnessing a process of integration and equalization of norms and policies within the European Union, our country has not managed to do so at the regional level, with such negative consequences for the territories, the citizens and for the fulfillment of the objectives of equality of the Constitution and the State.

3. ADDITIONAL PROBLEMS

Other problems that can be observed are old problems that still appear in chats but have not been solved or no easy solution has been found. One of them is the progressivity that our Constitution promulgates on taxes: if they must be progressive, those who have more must pay more. Then, the question arises how far this progressivity can go and whether they all are progressive taxes.

According to the Constitutional Court, not all taxes should be progressive, it is the system that should be progressive, and in fact there are very few progressive taxes in our system, only Personal Income Tax, Wealth Tax and Inheritance and Gift Tax.

Another point that should be mentioned is the concept of tax justice, which is enshrined in the Spanish Constitution in article 31.1. Tax justice has to do with all of the above, with the distribution of wealth, with compliance with constitutional precepts and compliance with the law. Although tax justice does not appear as a constitutional principle, it is understood that compliance with the material principles of equality, generality, progressivity and non-confiscatory character established in the Constitution is in line with the mandate of a "fair system", as explained by Rafael Calvo-Ortega, professor of Financial Law (Calvo-Ortega, 2012: 21–30).

Finally, I would like to refer to the General State Budget for 2022. It will undoubtedly be the most expensive budget in all democracies, with the following objectives and figures: Access to housing with a 46% increase in the budget (www59).

Its elements also include: fight against youth unemployment, 2,076 million in European funds for vocational training and 750 million for youth employment, 2 billion in scholarships, which is the highest value in history, measures against early school leaving and to promote the quality of education (www5; www76).

The other points are: increased productivity, 40 billion to make the productive sector more competitive, more than 13 billion for research, development, innovation and digitalization – again the highest value in history, €2,140 million in European funds for the SME Promotion Plan (www59; www60).

Another objective is improvement of well-being. Dependency spending will increase by 23.3% over the previous year. Health will have three times as many resources for primary care, oral health and mental health. Education increases its budget to 9.2% due to the increase in scholarships and vocational training. Almost 726 million in European funds will be targeted at the Long-Term Care and Support Plan.

The next point is fight against depopulation. More than 4,000 million euros will be directed to combat depopulation including rural mobility projects, energy improvement programs and promotion of clean energy, 600 million in European funds will be used for the deployment of 5G (www61).

Another goal is to achieve full equality. The Ministry of Equality exceeds 500 million for the first time, 14% more resources, 190 million transferred to the Autonomous Communities for the Correspondents' Plan to promote family reconciliation. The State Pact against Gender Violence exceeds 200 million for the first time. The Equal Opportunities Programme for Men and Women will receive €225 million (www69; www52).

The next objective is fight against fraud and tax evasion. The Tax Agency will have a budget of 1.7 million, the largest in history, and the workforce will increase by 1,043 additional employees (www78).

Another point in the budget is strengthening the economy and increasing cohesion. Pensions will increase by 4.8%. The Minimum Vital Income and other benefits will reach 4,436 million. Industry will allocate 700 million for the reconversion of companies. The following sectors receive such funds as: Agriculture and Fisheries – 8,844 million for greater competitiveness, tourism more than 1,700 million, Culture – an increase of 38.4% to 1,589 million, Energy Policy – 3,817 million, Equality – for the first time more than 500 million and Infrastructures and Resilient Ecosystems – 11,841 million.

The major objective is a fair recovery after the pandemic, the transformation of the productive model and a more sustainable, resilient, greener, more digital development with greater social and territorial cohesion. In addition, it establishes the Government's commitment to Budgetary Stability with a spending ceiling that remains at historic highs of 196,142 million and the reduction of the Deficit, which is estimated to go from 119.5 to 115.1 in the debt-to-GDP ratio.

The revenue forecast for the Public Administration will reach 39.8% of GDP, which will amount to 522,264 million, representing a growth of 4.6%. Tax revenues will amount to 298,801 million. As for the expenditure forecast, the

Budget Plan foresees that its weight on GDP will fall to 44.7% in 2022. The salaries of public employees will increase by 2% (www79).

The General State Budget for 2022 includes an injection of 27,633 million from the Resilience and Recovery Mechanism of the European Union. These resources will be used to lay the foundations for more sustainable, durable, balanced and socially just growth. Importantly, co-governance dominates the management of European funds (www49).

In conclusion, these are very expensive budgets that will lead to an unprecedented level of spending and that effectively seem to be destined to meet the constitutional objectives. They will ultimately result in a better quality of life for citizens and are incorporated within the strategic plan of the government of Spain 2050 (www77).

What criticisms and problems can we find in these budgets? Increased spending in the midst of a pandemic, so spending continues to increase without securing revenue, and in turn there are many international organizations contradicting the government's forecasts.

The European funds will arrive with conditions, as long as the objectives set by Brussels regarding the reform of the pension system and the reform of the labour market are met, and there is a risk that these funds could be (www4; www89) compromised if all the requirements and conditions established by the European Union over the years are not met. A major problem is that the government's economic forecasts and state revenue figures will not be met, with the risk that this entails in terms of spending and the impact on the public deficit. Although it must be noted that the government for the moment has managed to meet the requirements to make the funds effective (www80) and there has also been a regularization of these funds with an increase because finally, the growth figures have been higher than expected (www81).

It can be concluded that we are in a moment of great uncertainty (www72) where the economic crisis (32), inflation, the Ukrainian war (www33; www90), geopolitics (www71; www57) and all the exogenous factors that we cannot control affect us directly (www28). So, we must be proactive, control spending so that it is invested correctly and we must not squander European funds that are undoubtedly a great opportunity to generate wealth and improve our future.

CONCLUSIONS

The purpose of the tax system and taxes is to contribute to the maintenance of public spending, as established by our Constitution. From this mandate, we must determine that public spending should contribute to the achievement of the objectives of the State. Obviously, the objectives of the State should be none other

than to guarantee the objectives set out in our Constitution and all those pursued by any modern society to achieve the well-being of its citizens.

Progress, political and institutional stability, quality of life, competitiveness in the international context, etc., require budgetary measures to control public spending, spending that must be oriented towards growth, the sustainability of the system and social welfare. Fiscal and financial policy in the context of the European Union, must be subject to rules that respect Community policies, since Spain's weight in Europe is important and cannot and should not destabilise the Union with policies that do not meet the objectives of stability.

Summing up, the objectives that the state must pursue are peace, equality, justice, freedom to achieve the well-being of its citizens as already promulgated by the first Spanish Constitution, that of Cadiz of 1812 (Alvarado Plana, 2016: 196–199), (Escudero 2012, 859–862) in its Title III Article 13 "The Objective of the Government is the happiness of the Nation, since the end of every political society is none other than the well-being of the individuals who compose it" (www44) and thus protect the Welfare State (www16; www14).

Therefore, in order for the Tax System and taxes to be legitimized, a deep control of spending must be carried out, so that the budget and public spending respond to the objectives of the State established in our Constitution to improve the lives of citizens, and achieve the objectives of peace, freedom, equality and justice. For all this, the purpose of the Tax System, which gives meaning and legitimizes taxes, is none other than to achieve the well-being of citizens.

Finally, it should be stated that in the face of the new emerging powers and the new world order (www67), the more than certain climate change (www8; www21; www12; www53; www55) , the energy (www93; www54) and demographic challenges (www7; www46; www15; www84; www83) and the technological revolution that will (www30; www66) surely change the world and the new order that will emerge from these (Noah Harari, 2018: 19–36), the rights and well-being of citizens (Judt, 2011: 151–177) will be the main challenge (Navarro, 2011: 191–207) of the new generations (www94; Sampedro et al.; 2011: 25–43) that Society and the State will have to face.

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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

Keywords: taxes, tax policies, Spain, Poland, COVID-19 framework.

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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[1]. 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 (EUR1.2 trillion) (Nieves and Becedas, *La deuda…*). At the end of 2021, these figures were as follows: 6,87% (EUR82,8 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*

[1] 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[2], 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

[2] 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[3]. In case of local taxes, municipalities[4] 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[5], and optional taxes as to which municipalities can decide independently whether they want to collect them or not[6]. 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

[3] Real Decreto Legislativo 2/2004, hereinafter: RDL 2/2004.

[4] 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).

[5] See Article 59 item 1 of RDL 2/2004.

[6] 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[7] and the Law on Tax on Non-Resident Income, adopted by Royal Legislative Decree 5/2004, of March 5[8]. 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

[7] Ley 35/2006, hereinafter: LIRPF.
[8] 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[9]) 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[10]) 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

[9] 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).

[10] 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[11] 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[12], 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

[11] Sentence 60/2015, of 18 March 2015 (B.O.E. No. 98, of 24.4.2015).

[12] 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 existsing) 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[13]. 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[14], 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[15]. Among the other levies that serve non-fiscal functions, taxes defined as environmental ones should be

[13] Law No. 4/2020, of 15 October, on the Tax on Certain Digital Services (Ley 4/2020).
[14] Law No. 5/2020, of 15 October, on Financial Transactions Tax (Ley 5/2020).
[15] 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[16] 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

[16] 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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PRINCIPLES AND RULES FOR DETERMINING THE TAX CAPACITY OF ENTREPRENEURS IN INCOME TAXES

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Abstract

The purpose of this paper is a multifaceted theoretical and legal analysis of the issue of determining the tax capacity of entrepreneurs in income taxes so as to be able to assess the adequacy of the rules in this area for the proper implementation of this concept. **The research hypothesis** assumes that these rules currently in force, to a large extent, do not ensure proper implementation of the concept of tax capacity, especially in the conditions of the digitalized and globalized economy, but also in times of progressive development of instruments to counteract not only tax evasion but also tax avoidance. Therefore, it is necessary to change them in many aspects. The research was carried out using a **dogmatic and comparative legal method**, taking into account in particular the provisions of domestic, foreign and EU laws, the body of domestic and foreign tax law literature, court rulings and proposals for new tax and legal solutions put forward on the EU and international forum. The analysis took into account the essence of the tax capacity concept and closely related tax principles, as well as the functions of taxes, both in the national and international context. **The results of the research** is the formulation of some conclusions as to the desirable guidelines for determining the rules for measuring the tax capacity of entrepreneurs in income taxes, which should be related to the fundamental concept of tax capacity and the principles of equity and neutrality of taxation. Currently, these principles are violated in many national, as well as international aspects, i.a. by deviating from the criteria of income as an indicator of tax capacity. In this context a very important distinction should be made between situations where the abandoning of the determination of income of entrepreneurs is justified by the pursuit of a fair distribution of the tax burden (as, e.g., in case of so-called digital tax) and situations when it results from the desire to achieve certain non-fiscal goals. In such a case, any variation in those rules must be assessed on a case-by-case basis as to whether it is justified. On the other hand, in the former case, even temporarily – especially in the international aspect – until international solutions are worked out, it may even be indispensable to differentiate the rules for determining the tax capacity of entrepreneurs (e.g. abandoning the criterion of income in favor of revenue in digital tax) precisely in order to ensure fair and neutral taxation. In this context, it is worth noting that some of the problems underlying these different approaches may be solved by a comprehensive reform of the rules for determining the tax capacity of entrepreneurs, to be developed both internationally within the OECD and in the EU within BEFIT. It should also not be underestimated that in these projects the fundamental categories and concepts are those of balance sheet law, including in particular the proposed adoption of the concept of adjusted financial result for the purposes of determining the tax result. Taking into account this issue and also in a view of the increasing development of general tax law norms aimed at minimizing the phenomena of tax avoidance and optimization, it seems worth considering an increasing possibility that the tax capacity of entrepreneurs should be determined by its natural measure, i.e. the financial result of their business activity.

Keywords: taxes, tax capacity, income taxes and entrepreneurs, tax principles.

JEL Class: K34.

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INTRODUCTION

One of the fundamental concepts in the science of tax law, as well as in the practical dimension of constructing the tax system, is tax capacity, also referred to in the literature as "the capacity to pay", "tax endurance", "capacity to bear tax", "economic capacity of the taxpayer" or "capacity to provide contributions" (Gomułowicz, 2001: 36). The discussion as to the meaning and essence of this concept has been going on for at least a couple of centuries; it has been the subject of considerations conducted, among others, by: A. Wagner, F.J. Neumann, J.S. Mill, A.E.F. Schäffle, F. Lassalle or E. Seligman (Gomułowicz, 2001: 26; Drozdowski, 2018: 25–42). The concept of tax capacity began to replace the theory of equivalence, according to which the tax was supposed to be a price or an insurance premium for the State (Drozdowski, 2018: 21–25, 41 and 180). In contrast, the concept of tax capacity does not make the receipt of benefits from the State conditional on the payment of tax, and the tax itself is to be appropriate to the capacity to bear it. The literature points to two dimensions of tax capacity: *sensu largo* – the tax must refer to manifestations of tax capacity, i.e. to economic sources of taxation, and *sensu stricto* – bearing the tax burden should be individualised (Drozdowski, 2018: 109, 144 and 182–183).

Within the concept of tax capacity (more on this concept: Drozdowski, 2018; Gomułowicz, 1998: 85–91; Gomułowicz and Małecki, 2013: 74–75, 245–246) it is essential to identify appropriate indicators reflecting the ability to bear the tax burden. Such an indicator (economic source of taxation) may be revenue, income, property (its status or increase) or consumption (see e.g., Drozdowski, 2018: 109, 121 and 145; Bitner et al., 2017: 278–279) or in slightly different terms: income, turnover and wealth, which underlies one of the basic divisions of taxes into income, turnover and wealth taxes (Modzelewski and Bielawny, 2005: 10). In case of income taxes, the indicator is to be income, which in turn requires the establishment of rules for its calculation (measurement). The issue of income measurement is the first of the problematic aspects analysed in the paper.

At the same time, we may observe nowadays that within the framework of income taxes, the assessment of tax capacity by determining income is more and more often abandoned in favour of other indicators, including, in particular, revenue. Moreover, in tax systems – as a kind of supplement to income taxation of entrepreneurs – other taxes are introduced; formally not on income, but actually – to some extent – replacing or supplementing income taxation. This is the nature of the so-called digital tax adopted in many countries, in an attempt to provide some solution to the disproportionality of currently in force income tax rules to the economic activities carried out in the globalised digital economy (see more in: Supera-Markowska, 2021b: 293–314). The presented issue of abandoning income in favour of other indicators of tax capacity in income taxes of enterpreuneurs is

the second problem area analysed in the paper. Considerations in this respect will be focused on the issues of digital tax and taxation of entrepreneurs with a flat-rate tax on revenues in the Polish tax system. These two manifestations of the departure from determining income in favour of revenue taxation were chosen due to the fact that they clearly exemplify fundamentally different motivating premises, which in turn results in their diametrically different assessment.

Finally, the third problem area analysed in the paper is the issue of further (after determining the indicator itself and the method of its measurement) implementation of the principles of determining the tax capacity of entrepreneurs in income taxes. They include in particular the assignment of the right to tax to individual countries in cross-border situations, questions of the elimination of double taxation and counteracting international tax avoidance, tax evasion and so-called aggressive tax optimisation; issues relating to these phenomena are also relevant in the national context.

1. TAX CAPACITY MEASUREMENT IN INCOME TAXES – INCOME AS A TAX RESULT VERSUS A FINANCIAL RESULT

In case of income taxes, tax capacity is determined, in principle and as the name implies, by the income – tax result ratio. However, this result does not always correspond to the financial result of the entrepreneur for whom, as a profit-driven entity, the category of financial result is the most important one.

The question of the possibility of approximating these two categories, i.e. tax result and financial result, or using financial result for income tax purposes, has been the subject of consideration, discussion and some proposals since the last century. The 1992 Ruding Committee Report[1] proposed the use of financial accounting as a starting point for calculating the corporate tax bases in Member States and recommended that steps be taken to bring about an approximation of the principles for determining tax income and profit in financial accounting. Subsequently, the possibility of using international accounting standards, currently, international financial reporting standards (IAS/IFRS), to determine the tax base was explored in a public consultation process in 2003 (Summary Report on the results of the DG Taxation…); it was also analysed in the literature and discussed at international conferences (Bielen, 2006; Schön, 2004). This question has become particularly important following the adoption in the EU of the regulation on the application of international accounting standards[2], which introduced the obligation to apply IAS/IFRS to the preparation of consolidated

[1] Commission of the European Communities, Conclusions and recommendations of the Committee of independent experts on company taxation, Luxembourg 1992.

[2] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

financial statements by issuers whose securities are admitted to trading on regulated markets of the member states of the European Economic Area. The issue was further explored in the context of the work undertaken at the EU forum in 2004 to develop a common consolidated corporate tax base (CCCTB) concept (see more in: Supera-Markowska, 2010). At that time, consideration was given to the possibility of using the IAS/IFRS rules for determining tax income in the CCCTB, but it was finally agreed that "although work on the CCCTB might be more straightforward if all companies, in all Member States, were permitted to use IAS/IFRS and therefore there were a single starting point for all companies, the Commission accepts that currently this is not the case"[3] and IAS/IFRS could at most provide a starting point for determining the tax base, rather than the base itself[4]. It was accepted that the main role of IAS/IFRS was to provide a common language to develop the concept of the CCCTB and that the standards themselves could provide a starting point for determining tax income for the CCCTB, but only as a tool for developing that concept[5]. The developed concept was presented in the draft CCCTB Directive of 2011[6], however, it was not adopted. A further, amended, draft[7] was published in 2016, providing that the tax base would be determined as adjusted financial result[8]. Subsequently, the European Commission's 2021 Communication *Business Taxation for the 21st Century*[9] indicated that the CCCTB proposal was to be replaced by the BEFIT (*Business in Europe: Framework for Income Taxation*) project. It provides, inter alia, for the

[3] Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, Implementing the Community Lisbon Programme: Progress to date and next steps towards a Common Consolidated Corporate Tax Base (CCCTB), COM (2006) 157 final, Brussels, 5.4.2006, p. 7.

[4] Communication From the Commission to the Council, the European Parliament and the European Economic and Social Committee, An Internal Market without company tax obstacles: achievements, ongoing initiatives and remaining challenges, COM (2003) 726 final, Brussels, 24.11.2003, p. 17.

[5] European Commission, Summary Record of the Meeting of the Common Consolidated Corporate Tax Base Working Group, CCCTB/WP\005\doc\en, Brussels, 21.01.2005, p. 7.

[6] European Commission, Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM (2011) 121 final/2, Brussels, 3.10.2011. For more on the draft directive and its significance for the Polish taxpayer, see: M. Supera-Markowska, Projekt dyrektywy w sprawie wspólnej skonsolidowanej podstawy opodatkowania osób prawnych (CCCTB) – analiza zaproponowanych regulacji i ich znaczenie dla polskiego podatnika, v. 1–5, "Przegląd Podatkowy" 2011/9, 2011/11, 2012/2, 2012/5, 2012/10.

[7] European Commission, Proposal for a Council Directive on a Common Corporate Tax Base, COM (2016) 685 final, Strasbourg, 25.10.2016, hereinafter: COM (2016) 685 final.

[8] Article 6 item 5 of the Directive of the draft contained in the document of the Presidency of the EU Council of 6 June 2019 Proposal for a Council Directive on a Common Corporate Tax Base (CCTB) – State of play, 9676/19, FISC 278 ECOFIN 518.

[9] Communication from the Commission to the European Parliament and the Council, Business Taxation for the 21st Century, COM (2021) 251 final, Brussels, 18.5.2021, hereinafter: COM (2021) 251 final.

establishment of common rules for calculating the corporate tax base in all Member States for international companies[10], which corresponds to the basic assumptions of the CCCTB. It is therefore possible that the solution adopted in this regard (which is expected to be in 2023[11]) will be analogous to that proposed for the CCTTB, i.e. the determination of the tax base would be as the adjusted financial result. Such a solution is already used in some countries, e.g. Spain (Supera-Markowska, 2019: 489–490 and literature cited therein), and in Poland a certain manifestation of its application is the so-called Estonian CIT (flat-rate income tax on income of capital companies[12]). However, in other cases and as a general rule, the determination of tax base in income taxes in Poland is formally independent from the determination of the financial result; the rules for determining tax result are set out in the tax law regulations and there are no references in this respect to the financial result. At the same time, taxpayers keeping books of account are obliged to keep them in accordance with the provisions of the Accounting Act[13], but in a manner ensuring determination of the tax result, the tax base and the amount of tax due for the tax year[14]. However, the relationship arising from these provisions is of a formal nature, as confirmed by extensive judicial case law[15] (see more in: Supera-Markowska, 2022: 364–369). This is due to the fact that taxpayers use separate legal acts to determine their tax and financial result, and the result determined in accordance with the provisions of the Accounting Act often differs from the result determined for tax purposes (for more on these differences, see Wyrzykowski, 2003: 24–30 and 31–170). Meanwhile, in case of entrepreneurs – by their very nature profit-oriented – the natural economic source of the tax seems to be positive financial result from their activity (however, in case of a natural person it may be necessary to still take into account their personal situation). The economic source of taxation thus established is to serve the concept of tax capacity, which is closely related to the tax principle of equity.

[10] COM (2021) 251 final, pp. 11–13.

[11] COM (2021) 251 final, p. 13.

[12] See art. 28m of Act of 15 February 1992 on Corporate Income Tax (ustawa z 15 lutego 1992 r. o podatku dochodowym od osób prawnych, Dz.U. of 2021, item 1800, as amended), hereinafter: u.p.d.o.p.

[13] Act of 29 September 1994 on Accounting (Ustawa z 29 września 1994 r. o rachunkowości, Dz.U. 2021, item 217, as amended), hereinafter: u.r.

[14] See art. 9 paragraph 1 of u.p.d.o.p. and art. 24a paragraph 1 of Act of 26 July 1991 on Personal Income Tax (ustawa z 26 lipca 1991 r. o podatku dochodowym od osób fizycznych, Dz.U. 2021, item 1128, as amended).

[15] Inter alia, rulings under the following reference symbols: III SA 245/91, SA/Lu 666/94, SA/Po 3730/94, SA/Lu 1456/94, SA/Ka 1405/95, III SA 11/03, III SA/Wa 2431/06, I SA/Bd 625/10, I SA/Łd 915/10, I SA/Gl 1137/10.

2. PRINCIPLE OF EQUITY IN TAXATION

The tax equity principle is seen from both vertical and horizontal perspectives. From a vertical point of view, it requires that the tax burden be shared among taxpayers according to their ability to pay. Horizontally, it means that entities in the same situation should be treated in the same way (European Commission 2004: 3–4) and it is violated by discriminatory regulation (Bielen, 2006: 16). Horizontal equity is concretised by the principle of universality and the principle of equality (Gomułowicz, 2001: 27). In case of entrepreneurs, it is also quite closely related to the principle of neutrality, according to which tax regulations should not influence entrepreneurs' decisions – these should be made on the basis of economic premises (European Commission 2004: 4; in more detail: Desai and Hines, 2003).

In international tax law, the principle of horizontal equity is linked to the prevention of double taxation (elimination of double taxation), on the one hand, and tax avoidance and evasion, on the other hand. The combination of the residence principle and the source principle with unlimited and limited tax liability respectively, as well as appropriate methods to eliminate double taxation, are intended to ensure that tax is paid once. On the other hand, regulations aimed at preventing tax avoidance and evasion are intended to prevent situations of non-taxation or too low taxation in relation to the taxpayer's economic capacity. For entrepreneurs, both double taxation and non-taxation, by favouring some taxpayers over others, not only violates the principle of equity but also distorts equal competition.

The issue of counteracting, or at least limiting, such privileged treatment of certain entrepreneurs has given rise to work at the international levels on legal solutions aimed at counteracting certain types of entrepreneurs' activities, referred to as "tax optimisation", whereby they unjustifiably reduce their tax burden and thus obtain a privileged position in relation to entrepreneurs who do not engage in such activities, and the resulting inequalities undermine the principle of tax justice. The term "tax optimisation", often used with the addition of "aggressive", should be distinguished from "tax evasion". While tax evasion involves taking unlawful actions (cf. Bitner et al., 2017: 299), the concept of "tax optimisation" can be defined as the choice of such a form of taxation and planned transaction within the framework and limits of the applicable tax law to legally reduce the level of tax burden (Kudert and Jamroży, 2007: 22). Extensive literature is devoted to this issue (see Supera-Markowska, 2020: 544–545 and the literature cited therein), which proposes, among other measures, the assumption that tax optimisation includes activities undertaken within the framework of tax planning (understood as the use of the allowed and legitimate possibilities of tax reduction, without significant changes in lifestyle or business activity) and tax avoidance

(understood as all activities undertaken by a given entity, which remain in compliance with the provisions invoked by this entity and which are undertaken by this entity exclusively or mainly in order to obtain a broadly understood tax advantage). Tax optimisation understood in this way may lead to a breach of the principle of tax equity by allowing certain entities to gain a privileged position by reducing their tax burden, not being justified by their tax capacity and thus gaining a competitive advantage over entities unable or unwilling to make use of tax optimisation. This phenomenon, as has already been pointed out, undermines the principle of tax equity when real income is taxed under different rules or at different levels without being justified by objective factors. In this context, the Base Erosion and Profit Shifting (BEPS) initiative was undertaken at the OECD forum. Its assumptions were formulated in the 2013 report (OECD, 2013), and preliminary conclusions in the 2015 reports (www1). Fifteen main problem areas – actions – were identified. These include Action 12 on mandatory reporting of tax schemes (OECD, 2015), which recommends, inter alia, that Member States introduce mandatory disclosure rules (MDRs) in order to prevent tax abuse. Within the EU, this issue is related to the issuance of Council Directive (EU) 2018/822 of 25.5.2018 amending Directive 2011/16/EU as regards the mandatory automatic exchange of information in the field of taxation with regard to reportable cross-border arrangements[16]. The implementation of the relevant regulations in the Polish system took place in 2019[17], except that the scope of mandatory reporting was extended to not only cross-border situations. The introduction of MDRs obligations is just one of many examples of increasing tax information obligations for entrepreneurs[18], justified by the desire to ensure a fair taxation system in which not only illegal tax evasion but also so-called optimisation measures are hindered or prevented. The activities undertaken in this area give rise to a renewed reflection on the possibility of using the financial result for tax purposes. In view of these increased obligations and other instruments aimed at preventing tax avoidance under general[19] or specific substantive tax law[20], the financial and tax results could be – at least potentially – more closely linked.

[16] OJ EU No. L 139, 5.6.2018, p.1.

[17] Act of 23 October 2018 amending the Personal Income Tax Act, the Corporate Income Tax Act, the Tax Ordinance Act and certain other acts (Ustawa z 23 października 2018 r. o zmianie ustawy o podatku dochodowym od osób fizycznych, ustawy o podatku dochodowym od osób prawnych, ustawy – Ordynacja podatkowa oraz niektórych innych ustaw, Journal of Laws 2018, item 2193, as amended).

[18] Apart from the MDRs, among others, it is worth mentioning the uniform control files, e-financial reporting or transfer pricing obligations.

[19] In particular, the introduction of a general clause on counteracting tax avoidance.

[20] E.g. legislation on foreign controlled companies, thin capitalisation, exit tax and others.

3. THE POSSIBILITY OF DETERMINING THE TAX CAPACITY OF ENTREPRENEURS IN RELATION TO THEIR FINANCIAL RESULTS

Until now, one of the key arguments against such a solution has been the risk that the basic function of taxes, i.e. the fiscal function, would not be correctly performed, in case of reliance on the principles of financial accounting for tax purposes, which may give excessive discretion to entrepreneurs and, serving a purpose other than a fiscal one, lead to an underestimation of the result and, consequently, to an understatement of the tax base and the amount of tax (see more in: Supera-Markowska, 2010: 124–130 and the literature cited therein and Supera-Markowska, 2019: 487–492 and the literature cited therein). Today, however, in view of the increasing range of instruments aimed at counteracting tax avoidance and optimisation, this risk could be reduced by these instruments. It is also important to note that in the EU and international projects on income taxation, there are references to the category of the financial result.

As already indicated, in the CCCTB proposal[21], now to be replaced by the BEFIT[22], the tax base was to be determined in accordance with the accounting rules applied in Member States, which provided that they were compliant with the rules laid down in the Directive. Therefore, the concept of determining tax income as an adjusted financial result was adopted. These adjustments would relate primarily to the exclusion of exempted revenues and of certain expenses from the categories of taxable revenues and deductible expenses. This is a methodology that is already being used in some countries, e.g. in Spain. Pursuant to art. 10 paragraph 3 of the Spanish law on corporate taxation[23] and art. 28 paragraph 1 of the law on personal income taxation[24], the tax result is determined as the financial result adjusted in accordance with the provisions of the tax law, except that the categories of exempt revenues and costs not constituting tax deductible costs are few. What makes this system effective is the universality of the obligation to keep accounts. Meanwhile, in Poland, many categories of taxpayers are exempted from the obligation to keep accounting books, and one can observe the progressive phenomenon of replacing accounting books with tax records, and replacing the financial result with the tax result, or even completely abandoning the determination of the result (see more in: Supera-Markowska, 2022: 379–383).

[21] COM (2016) 685 final.

[22] COM (2021) 251 final.

[23] Law No. 27/2014, of November 27, on Tax on Companies (Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades, B.O.E. No 288, of 28.11.2014, as amended), hereinafter: LIS.

[24] Law No. 35/2006, of November 28, on Tax on Personal Income and Partially Amending the Laws on Tax on Companies, Non-Resident Income and Wealth (Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio, B.O.E. No 285, of 29.11.2006, as amended).

Recently, the group of entrepreneurs who are exempt from the obligation to determine their income in a situation where they use taxation in a form of a flat-rate income tax on registred revenues[25] has been significantly expanded; this expansion took place by increasing the revenue threshold up to which such taxation is possible (from EUR 250,000 to EUR 2 million) and by allowing more types of activity to be subject to such taxation[26]. The amount of EUR 2 million (previously EUR 1.2 million) is also the revenue threshold below which many entities do not have to keep accounts[27].

Such a development would be a significant obstacle to the implementation of a uniform and universal methodology of determining tax income as an adjusted balance sheet result. At the same time, however, for certain taxpayers who are subject to flat-rate income taxation on the income of capital companies (so-called Estonian CIT)[28], a method of determining the tax result as, in essence, their adjusted financial result has just been introduced. In order to extend the application of this methodology to all entrepreneurs, it would first be necessary to introduce a general obligation for taxpayers to keep accounting books (although certain simplifications in the Accounting Act should be maintained for small entities). In such a case, many tax provisions (e.g. most of the depreciation regulations[29]) could be removed from tax laws, resulting in their considerable simplification and increased transparency. Tax legislation could refer to the financial result as the starting point for determining the tax result, focusing only on adjustments necessary due to different tax and financial reporting objectives and principles (both in view of the risk of potential tax abuse by taxpayers and of over-taxation). In addition, the need to maintain the very broad catalogues of non-deductible costs and exempt revenues currently contained in u.p.d.o.p. and u.p.d.o.f should be reviewed. Certain reduction of them could also result in some approximation of the tax result and the financial result. Such a solution, i.e. to rely more closely on the financial result when determining the tax capacity of entrepreneurs, would serve the implementation of the principle of vertical equity

[25] See Act of 20 November 1998 on Flat-rate Income tax on Certain Revenues Earned by Natural Persons (ustawa z 20 listopada 1998 r. o zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne, Dz.U. 2021, item 1993, as amended).

[26] Amendments were introduced by Act of 28 November 2020 amending the Personal Income Tax Act, the Corporate Income Tax Act, the Act on Flat-rate Income Tax on Certain Revenues Earned by Natural Persons and certain other acts (ustawa z 28 listopada 2020 r. o zmianie ustawy o podatku dochodowym od osób fizycznych, ustawy o podatku dochodowym od osób prawnych, ustawy o zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne oraz niektórych innych ustaw, Dz.U. item 2123, as amended).

[27] See art. 2 of u.r.

[28] See art. 28m of u.p.d.o.p.

[29] This is the case in the Spanish system (see art. 12 of LIS), where the tax rules on depreciation mainly address the determination of its maximum periods. The regulation of other issues in tax law is superfluous due to the aforementioned reference to balance sheet law.

better, while the harmonisation of the methodology of its measurement would serve the principle of horizontal equity. Nevertheless, as it has already been mentioned, in the Polish tax system, there is a phenomenon of abandoning income determination for the purpose of taxing entrepreneurs with income taxes by extending the scope of implementing the concept of the so-called grossed-up income tax imposed on revenues (in the form of a flat-rate income tax on registered revenues), while revenue taxes are usually introduced in countries with a low level of economic development, in a situation where entities' profits are at a marginal level and the tax administration has limited possibilities of verifying tax-deductible costs (Gomułowicz and Małecki, 2013: 121).

4. ABANDONING THE DETERMINATION OF TAX CAPACITY IN INCOME TAXES IN THE PRISM OF SHIFTING FOCUS FROM INCOME TO REVENUE

Taxation of revenue in income taxes may also occur in an international context[30]. Such taxation of foreign entities without a permanent establishment in a given country is generally not perceived as discriminatory – although it does not meet the criteria of the principle of tax capacity, it is intended to simplify the settlement of foreign taxpayers; it is also justified by the intention to reduce tax abuse, often difficult to capture, e.g. in case of income earned in connection with the provision of services of an intangible nature (Drozdowski, 2018: 68, 89–90 and 96 and the literature cited therein). In contrast, it is much more problematic to shift from determining income in favour of taxing revenue with income tax in case of domestic entities and in situations without a cross-border element. Such regulations exclude the concretisation of the assumptions of the principle of tax capacity and thus of the principle of vertical equity. Moreover, where they are available only to certain entrepreneurs, such differentiation of the resulting principles of taxation of taxpayers of the same tax may give rise to doubts as to compliance with the principles of tax neutrality, equality and horizontal equity.

It is also possible, however, that it is the determination of different – than general – rules that is necessary for the proper implementation of the concepts of tax capacity and fair and neutral taxation, since general rules do not guarantee the fulfilment of these assumptions. This latter aspect is particularly evident in case of entrepreneurs referred to as "digital entrepreneurs", especially those operating internationally (read more: Kofler, Mayr and Schlager, 2018: 126). The digital economy has changed in many ways the manner of conducting business and consumption, whereas existing rules on taxation of entrepreneurs have lagged behind (Álamo Cerrillo, 2020: 177–180, 182–184; Kofler, Mayr and Schlager,

[30] See e.g. art. 21 of u.p.d.o.p.

2017: 523–524; Olbert and Spengel, 2017: 3; Schön, 2018: 1–6). In particular, these rules are not suited to the context, in which not only cross-border trade but also the provision of services of this kind is possible without a physical presence, and often the main value for digital entrepreneurs is the content digitally generated by their users and the collection of data. The latter phenomenon is part of a broader issue – the new way of creating value within the digital economy and the lack of commensurability of taxation with the value so created (Calabrese, 2019: 71 et seq.). This is a consequence of the fact that the traditional approach to the assessment of income for taxation purposes is to determine the tax result on the basis of the taxpayer's revenues and costs generated by the transactions. However, in the digital economy, the value created (e.g. digital content generated by users) is not always reflected in the form of revenue-costs transactions.

Digital entrepreneurs often participate in a given national market without having any real presence there, only a virtual presence, as physical presence is no longer necessary to ensure the sale of their products there. As a result, under currently in force tax rules, taxable income cannot be assigned to the state of a given market. In fact, income tax regulations were designed for the traditional economy and the resulting tax rules are based on the principle of assigning the right to tax income largely on the basis of physical presence in the country. Thus, the State in whose market a digital entrepreneur operates, often on a very large scale, may not have any taxing rights on the profits of that entrepreneur if it is not resident or does not have a permanent establishment on its territory. However, even in case of a physical presence of the entrepreneur in the country concerned enabling the entrepreneur to be taxed, the rules on the distribution of profits attributable to a permanent establishment may lead to the determination of a very low amount of taxable income in that country. This may be due to the fact that existing tax rules do not take into account other specificities of digital activities, such as, in particular, the importance of the users' contribution to the creation of value. This poses a double challenge from a tax point of view. Firstly, data acquired by the entrepreneur from users, which is an important element of value creation, may originate in a tax jurisdiction where the digital entrepreneur does not have a physical presence, so the income from such activities is not taxable in that jurisdiction. Secondly, even if the entrepreneur has a permanent establishment in the jurisdiction where users are located, the value generated by users is not taken into account in determining the taxable income there. In this context, the significant disparity in the real level of taxation between traditional and digital businesses is striking: the effective tax rate of the former is 23.2%, while that of the latter is 9.5%[31]. This distorts competition (by favouring digital entrepreneurs

[31] Communication from the Commission to the European Parliament and the Council, Time to establish a modern, fair and efficient taxation standard for the digital economy, COM (2018) 146 final, Brussels, 21.3.2018, p. 4.

over other taxpayers) and thus infringes the principle of tax equity. Both at the EU and OECD fora, work was therefore carried out on a new concept of taxation of entrepreneurs in the globalised digital economy, but in the absence of tangible results in the expected timeframe, some countries decided to introduce certain solutions in this area unilaterally, adopting in their tax systems taxes referred to as "digital" (read more: Supera-Markowska, 2021b: 293–314 and the literature cited therein). Recently, among others, such a tax has been adopted in Spain (Supera-Markowska, 2021a: 44–51 and the literature cited therein). Although formally it is an indirect tax on the revenue of digital entrepreneurs with a turnover above certain thresholds, in its essence it is a direct tax, addressing (albeit rather only temporarily and to an incomplete extent) the problem of the incommensurability of existing income tax rules with the challenges of the digital economy. In this case, the taxation of revenues with digital tax is precisely to ensure the correct implementation of the concept of tax capacity and the neutrality principle. It is to ensure the systemic fairness of the tax law, according to which tax capacity cannot be treated in an isolated manner, but precisely in a systemic manner. This was also the justification for the Spanish solution, pointing out that a tax on certain digital services (Spanish *impuesto sobre determinados servicios digitales*) was introduced because of the long period of time that has elapsed since international debates on the matter began without the adoption of practical solutions, taking into account social pressure, the principle of tax justice and the postulate of sustainability of the tax system, and in view of the adoption of unilateral *ad hoc* tax measures initiated by other countries[32].

On the other hand, other reasons underlie the extension of the scope of application of taxation of income in the form of a flat-rate revenue tax in Poland. In the explanatory memorandum to the amending act[33] they were justified by the objective to "increase the attractiveness of taxation in this form and expand the group of taxpayers who will be able to exercise it"[34]. "Overruling" the principle of tax capacity in this case needs to be justified by a possible non-fiscal function and an intervening application of tax rules.

[32] See the preamble to the law introducing this tax: Law 4/2020, of 15 October, on the Tax on Certain Digital Services (Ley 4/2020, de 15 de octubre, del Impuesto sobre Determinados Servicios Digitales, B.O.E. No. 274, of 16.10.2020).

[33] Document No. 642 of 30.9.2020, Rządowy projekt ustawy o zmianie ustawy o podatku dochodowym od osób fizycznych, ustawy o podatku dochodowym od osób prawnych, ustawy o zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne oraz niektórych innych ustaw. Uzasadnienie, p. 19.

[34] In original: (Zmiany w ustawie o ryczałcie mają) na celu zwiększenie atrakcyjności opodatkowania w tej formie oraz poszerzenie grupy podatników, którzy będą mogli z niej skorzystać.

5. TAX CAPACITY AND THE INTERVENTION EFFECT OF THE TAX

In principle, the effect of tax can be divided into a burdening effect, which is subordinate to the fiscal function, and an intervention effect, where the tax rule induces the taxpayer to act or not to act in a certain way by reducing or abolishing or imposing or increasing the tax burden (whereby more than one intervention effect may be associated with a tax rule). The fiscal function, or income function, is the basic function of taxes and is associated with the need to cover the demand of public budgets for financial resources (Gomułowicz and Małecki, 2013: 259). In this function, the principle of tax capacity is intended to ensure the proper allocation of the tax burden. This principle is so fundamental that in some countries it is explicitly expressed in the Constitution – this is the case, for example, in the Spanish Constitution[35], as well as in the constitutions of France, Greece, Italy or Turkey, among others (Drozdowski, 2018: 44–49 and the literature cited therein). However, even if it has not been explicitly articulated in the Constitution, it can nevertheless be derived from other constitutional norms (Drozdowski, 2018: 52). Still, in each of these options, three basic functions of the tax capacity concept can be distinguished. First of all, it justifies taxation itself in general, the imposition of a tax burden on the premise that sources of taxation should be sought where resources are present. Secondly, tax capacity defines the limits of taxation that the legislator should respect. This involves issues such as the tax rate, tax free amounts or various reliefs related to the individual situation of the taxpayer. Finally, thirdly, tax capacity is a way of determining the individual and sum of tax burdens, with the aim of ensuring fair taxation (that is, not permitting both over- and under-taxation) in view of the taxpayer's economic capacity (Collado Yurrita and Moreno González, 2018: 113). When these basic functions are not fully realised in the face of an attempt to achieve a certain intervention effect, the question arises as to how justified and acceptable this is. While it is generally possible for the principle of tax capacity to give way to an interventionist function – as indicated in the literature, in market economies, tax interventionism is the norm (Gajl: 77; Orłowski, 2013: 92), it requires individualized justification, including in particular as to the rationale of the interventional objectives[36].

[35] Art. 31 of the Spanish Constitution of 1978 (Constitución Española de 1978, B.O.E. No 311, 29.12.1978, as amended).

[36] A detailed assessment in this area goes beyond the framework of this paper, which aims to identify the main problematic areas and determine possible directions for searching for their solutions, without conducting a detailed analysis of specific issues.

6. INTERNATIONAL PROPOSALS FOR NEW RULES ON THE DETERMINATION OF TAX CAPACITY

As already indicated, in turn, the taxation of revenues by means of a digital tax finds precisely the full justification in the context of the tax capacity principle. It is possible that this tax (and other equivalent unilateral taxes) will lose its *raison d'être* after some time following the implementation of some comprehensive solutions as a result of the agreement reached at the OECD on the changes to the rules on taxation of international entrepreneurs and the BEFIT project in EU. The agreement reached in July 2021 (OECD/G20) at the OECD forum includes two pillars. Pillar 1, which was initially primarily focused on digital entrepreneurs in discussions, aims to adapt international rules on the taxation of corporate profits to reflect the changing nature of business models, including the ability of entrepreneurs to do business without a physical presence in a country. Under it, countries will be given the right to tax a portion of the profits of certain non-resident entrepreneurs by reallocating a portion of their global profits among the jurisdictions in which the company has customers or users, using an agreed formula. The profits in question would be measured using the financial result, with a small number of adjustments. Pillar 2, on the other hand, aims to reduce excessive tax competition by ensuring a minimum level of taxation of multinational entrepreneurs on all profits by allowing jurisdictions to top up the amount of tax paid by large multinational entrepreneurs to an agreed minimum effective level. This minimum taxation on corporate profits is intended to reduce opportunities for tax avoidance.

At the EU level, both activities related to the OECD agreement and some beyond the OECD agreement are set out in the Communication *Business Taxation for the 21st century*[37]. It indicates that the European Commission is to propose a new framework for corporate income taxation in Europe in connection with the BEFIT project. The BEFIT framework will be a single set of corporate tax rules in the EU based on two key features: a common tax base and the allocation of profits to Member States on the basis of a formula for distribution (apportionment). They are intended to be based on progress in global discussions, including at the OECD forum. The BEFIT framework is designed to ensure, inter alia, that companies can do business in the single market without any unjustified tax barriers, making it easier to do business and protecting Member States against tax avoidance[38]. BEFIT and the rules it lays down for determining the tax capacity of entrepreneurs with respect to income taxes should not only contribute to the principle of fairness but also to that of tax neutrality and should make it possible to achieve a certain positive intervention effect – the development of economic activity in the EU internal market by eliminating tax obstacles to that activity.

[37] COM (2021) 251 final.
[38] COM (2021) 251 final, p. 11–14.

CONCLUSIONS

A tax levied in accordance with the principle of tax capacity should create neither an excessive burden on certain taxpayers nor an unreasonably low burden. In the international context, this is related both to the issue of avoiding double taxation and preventing tax evasion or avoidance, as well as to the so-called aggressive tax optimisation, which may create a privileged position of entrepreneurs using it in relation to other economic entities, thus violating the principle of tax capacity and the principles of equity and neutrality. These principles may also be violated in a national context, including by deviating from the criteria of the principle of tax capacity in favour of achieving a certain intervening objective or by unjustifiably varying the rules for determining the tax capacity of entrepreneurs. In case of income taxes, this issue may be related to the abandonment of the determination of tax capacity in these taxes by income (in favour of revenue) or to the differentiation of the rules for the determination of income itself (in some cases as adjusted financial result and in other cases independently of the financial result). In view of the increasing development of general tax law norms aimed at minimising the phenomena of tax avoidance and optimisation, it seems increasingly possible to adopt as a principle that the tax capacity of entrepreneurs should be determined by its natural measure, i.e. the financial result of their business activity. It should also not be underestimated that in certain EU and OECD projects the fundamental categories and concepts are those of balance sheet law, including in particular the proposed adoption of the concept of adjusted financial result for the purposes of determining the tax result.

A distinction should be made between situations where the abandoning of the determination of income in income taxes in favour of another criterion is justified by the pursuit of a fair distribution of the tax burden (as, for example, in a digital tax) and situations where this is to be justified by non-fiscal arguments. In such a case, any variation in those rules must be assessed on a case-by-case basis as to whether it is justified; although that potential justification may be the desire to achieve, in the context of the intervention function, a certain economic policy objective, that requires an in-depth analysis in view of the potential infringement of the principles of equity and neutrality of taxation which may result from that differentiation. On the other hand, in the former case, even temporarily – especially in the international aspect – until international solutions are worked out, it may even be indispensable to differentiate the rules for determining the tax capacity of entrepreneurs (e.g. digital entrepreneurs through their taxation with digital tax) precisely in order to ensure fair and neutral taxation. In this context, it is worth noting that some of the problems underlying these different approaches may be solved by a comprehensive reform of the rules for determining the tax capacity of entrepreneurs, to be developed both internationally within the OECD and in the EU within BEFIT.

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FACTORS EXPLAINING TAX COMPLIANCE

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Abstract

The aim of the article: The aim is to examine factors explaining tax compliance identified in the Economy to design an efficient tax compliance system. **Methodology:** In order to achieve the formulated aim, the paper provides an economic literature review on tax compliance related to the efforts of governments to encourage taxpayer compliance while minimizing the cost of a tax administration's activity. The paper presents a brief laying out the economics of tax evasion. Them, it focuses on critical summaries of what has been learned. **Results of the research:** The different factors identified indicate that tax compliance is a complex problem, with evident social costs and a significant impact on tax administration decisions. The tax compliance system minimizes the uncertainty and encourages the adoption of a series of voluntary mechanisms for cooperation between taxpayers and the tax administration.

Keywords: tax administration, tax compliance, taxpayer behavior, public decision-making, public economy, theoretical review.

JEL Class: H26, H30.

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INTRODUCTION

In recent decades, the efforts of states and their member organizations against tax non-compliance have been a constant feature of public decision-making. Their objectives have been to improve taxation figures, encourage taxpayer compliance by both coercive and voluntary means, as well as to coordinate tax decisions at the international level. However, as the global data shows, the problem of the loss of resources through tax avoidance or evasion remains inadequately addressed[1].

Tax fraud is a reality that generates serious economic distortions. It alters the equity of the tax system, both horizontally – taxpayers with similar economic capacities bear different effective burdens – and vertically – insofar as the loss of utility derived from the payment of taxes from taxpayers with similar tax functions differs. It compromises the stability of the economic system due to the incorrect functioning of the automatic stabilizers of income – progressive taxation – and expenditure – transfers to households and companies and also prevents the public sector from developing a distributive function of adequate interpersonal income.

Two well-known phenomena are at the origin of this situation. On the one hand, it is the globalization of commercial operations, which involves different tax administrations in the taxation of the different taxable events that arise. On the other hand, we have the disparity in the tax qualification rules adopted by states to tax the above operations.

Recent economic crises have highlighted the need to correct the progressive loss of tax resources to safeguard both the fairness of the tax system and the sufficiency of public finances. Three factors primarily explain the current tax fraud problems: the low incidence of increased penalties associated with tax non-compliance due to taxpayers' ability to choose their tax sovereignty; the progressive reduction in the tax rates applied to productive factors, especially on capital; and the use of tax amnesties that exempt tax non-compliance penalties.

Because of economic globalization, taxpayers, whether individuals or companies, will have to settle the tax burdens generated in the different territories in which a tax liability has arisen. However, it is not always easy to determine which tax obligations must be complied with under which legislation, and this can lead to undesired non-compliance. The fact is that the differences in the rules of tax classification and the consequences for taxpayers have opened up a type of "global tax market", in which the most competitive agents can choose tax sovereignty. This ability is reserved for those who are best adapted to the global environment, e.g., multinational groups operating in different states and which, above all, can relocate their permanent establishments or their headquarters according to their taxing interests.

[1] Revenue losses are estimated at over $400 billion annually (Tax Justice Network 2020).

In the context of traditional commerce, with taxpayers located in the territory of a state, the problems of attribution of tax sovereignty were solved by applying the rules of taxation at the source or in the territory of residence of the taxable person. Without going into historical analysis, the pre-eminence of the taxpayer's state of residence as the active agent is well known. The residence criterion ensures taxation of the taxpayer's actual ability to pay, which taxes all their income, irrespective of where it is generated. Another argument in favor, and a decisive one, is that the countries of residence of large business corporations tended to be the most developed states, which, moreover, offered a legal environment of greater certainty and stability.

The digitalization of productive activity and the emergence of intangible elements that do not require the establishment of the parties involved in a transaction, a company can establish itself in a territory with lower taxation. However, a large part of their income is obtained from the citizens of territories with high taxation, which are usually those with a higher purchasing power.

From the taxpayer's perspective, the complexity of legal and economic relations has reached a point where the ability to specify and comply with tax obligations under conditions of certainty has become difficult. The causes of this situation are multiple and their presence, isolated or combined, determines a degree of difficulty in tax compliance. The situation is far from favorable for most taxpayers. Even for large transnational business groups, the tax requirements of the different states in which they operate, require significant investments in material and human resources, which adds to their management costs. The difficulty of following different, and sometimes conflicting, accounting and tax rules means that the possibilities of failing to comply with tax obligations are multiplied[2]. This is true not only in the case of those directly linked to the payment of taxes but also for all the formal and reporting obligations that go with them.

In this context, the tax compliance proposal aims to be an efficient solution to the problems of legal uncertainty for taxpayers and revenue losses for the states. It is designed to be a tool to enable economic operators to prevent, identify and tackle behaviors that could generate administrative or criminal liability, thus constituting an instrument capable of resolving these *ex-ante* tax non-compliance problems. To do so, taxpayers must have the appropriate information to detect the risks they incur. It is clear, therefore, that the success of a compliance program requires the cooperation of the parties involved: administration, taxpayers, and tax advisors.

[2] As Pareja García (2018: 152–165) points out: "These obligations are particularly complex if we take into account the territoriality criterion that links tax criteria to a specific State, so that in those cases in which the company has a multinational activity it must make an extra effort to adapt its operations to comply with its tax obligations with respect to the different States in which it operates".

Nowadays, public administrations are on the way to implementing tax compliance systems understanding that tax audits are not enough to avoid tax fraud. Due to that fact this article presents a review of the economic literature about the factors that explain tax compliance with the aim to highlight which of them are critical in an efficient tax compliance structure.

1. REVIEW OF THE ECONOMIC LITERATURE ON TAX COMPLIANCE

Economic science has analyzed tax non-compliance under the premise that the decisions of all the agents involved are taken under conditions of uncertainty. The presence of incomplete and asymmetric information determines the possibilities of action of the two parties who, abstracting from ethical and moral values, will attempt to maximize their respective gains. The problem is posed as a zero-sum game in which one party gains what the other loses, even if the overall welfare losses are added to what the public sector strictly forgoes in revenue. The starting point of economic analyses of tax compliance has traditionally been the bilateral relationship between taxpayers and administration. The taxpayer knows their real economic capacity, but the administration does not, and, in contrast, the taxpayer lacks precise knowledge of the inspection decisions and the means available to the public treasury.

The first doctrinal analysis in this area was that of Allinghan and Sandmo (1972: 323–338). These authors analyze income tax fraud and conclude that a taxpayer's decision to defraud will be determined both by the tax savings they can obtain and the probability of being detected and penalized. The benefit of fraud will depend on the marginal tax rates, which grow higher as the rate rises[3], and the costs will be those arising from the penalty imposed and the taxpayer's ability to conceal their income, which may involve commissioning specialized third parties. The response to this phenomenon will be either to reduce the tax benefit – by lowering tax rates – or to increase its cost – mainly by increasing penalties.

An alternative might be the establishment of a proportional tax system, in which taxpayers are taxed at the same rate, whatever their income. For different reasons[4], Heinemann and Kocher (2013: 225–246) show that the tendency to tax non-compliance is higher in a proportional than in a progressive tax system.

Allinghan and Sandmo's model approaches taxpayer behavior as a portfolio selection problem: it predicts taxpayers' fraudulent behavior depending on whether they choose a risk-free asset – paying their taxes – or a risky one – not

[3] A sample of this correlation can be found in Dahmi and Al-Nowaihi (2007: 171–192).

[4] One explanation for this result is that there is a reaction to the perceived unfairness of a flat tax system (Spicer and Becker, 1980: 171–175).

reporting all the income due. The criticism of this model is that it is unable to predict the compliance or non-compliance behavior of agents with higher taxpaying capacities. This is the case of higher-income taxpayers with decreasing risk aversion, i.e., those liable for more tax show a higher degree of tax compliance because the penalty imposed would be higher, but, at the same time, they may be those who defraud more because the tax rate applied to them is higher than the rate applied to the rest (see Hashimzade, Myles and Tran-Nam, 2013: 941–977; Bernasconi, Corazzini and Seri, 2014: 103–118).

Yitzhaki (1974: 201–202) proposes a variant that solves the above problem. His contribution is to make the penalty proportional to the tax evaded and not to the undeclared income. Adjusting the penalty to the amount of tax non-compliance encourages correct tax behavior by high-income taxpayers, who will seek to avoid significant penalties. Yitzhaki's contribution is, however, contradicted by most of the empirical studies that have attempted to test his hypothesis[5].

The complexity of taxpayer behavior makes it difficult to design appropriate public policies to encourage tax compliance. For this reason, other proposals such as the Prospect Theory (Kahneman and Tversky, 1979: 263–292; 1992: 297–323) have arisen, which evaluate the losses and gains of tax compliance concerning a reference point, and not in an absolute manner, as in the previous model. In essence, this involves moving beyond the utility function, implying that an individual will prefer to avoid losses – penalties– rather than obtain equivalent monetary gains – unpaid taxes. To formalize the application of this theory in the tax sphere, Yaniv (1999: 753–764) considers the use of withholding taxes as a mechanism for correcting tax fraud and shows that their effectiveness is related to the amount that is set, such that if the withholding tax is very high, its effectiveness as an instrument for encouraging tax compliance is reduced.

Some authors introduce into the analysis the perceived probability of an inspection as another explanatory element. Schmidt (2001: 157–172) shows that individuals tend to overestimate the probability of being subject to a tax audit, which encourages voluntary tax[6] compliance. Some studies show that the degree of compliance of a taxpayer who has already experienced a tax audit is higher because they estimate the probability of being audited again to be higher (Spicer and Hero, 1985: 263–267). However, other contributions corroborate what has been called the "bomb-crater-effect" (Mittone, 2006: 813–835) that is, designating the inspected taxpayer's perception of the drastic reduction of the chances of immediate re-inspection. In these cases, the opposite phenomenon occurs, i.e., the degree of non-

[5] It is not the purpose of this paper to go into the empirical evidence on the relationship between income level and tax compliance. However, most studies carried out contradict Yitzhaki's hypothesis. See Boylan and Sprinkle (2001: 75–90).

[6] Alm, McCelland and Schulze (1992: 21–38) already anticipated the possibility of this over-dimensioning of the potential tax audit as a factor to be considered.

compliance increases, partly in response to this "crater effect" and partly as a "reparation mechanism" that allows them to compensate for the loss caused by the payment of taxes and the penalty imposed (Panadés i Martí, 2017: 86–111).

The influence of tax audits on taxpayer behavior varies depending on whether they are random or selective (Malézieux, 2018: 107–127). Thus, if a taxpayer considers they have the same chance of being audited as another taxpayer, the deterrent effect of tax non-compliance is lower than if the possibility exists of their being strategically audited in consequence of an analysis of their tax risk profile. Therefore, the application of endogenous or strategic rules in tax audits improves their efficiency as incentives to comply with tax obligations[7].

In this specific field, and taking Game Theory as a theoretical reference, an attempt has been made to establish the taxpayer/administration relationship under the principal/agent approach. Considering the tax administration as the "principal" of the legal-tax relationship, it proposes to a taxpayer – "agent" – a contract with a compliance commitment about the inspection objectives to be developed. Once the administration's tax review policy is known, taxpayers will be able to estimate the probability of being inspected and adjust their degree of tax non-compliance, which will be lower than if it is not known. The problem arises *a posteriori* for the tax authorities themselves since their inspection activity will be more efficient if it is devoted to areas other than those they have announced. Moreover, to the extent that the inspection guidelines are not binding on the administration, the taxpayer always faces the probability of being inspected in areas other than those set-out and the assumption of losses for complying in the areas identified by the tax authorities[8].

Alm, McKee and Beck (1990: 23–37), Torgler and Schaltegger (2005: 403–431) and Rechberger et al. (2010: 214–225) analyze the impact of tax amnesties. A tax amnesty is understood as a legal opportunity that allows a tax evader to repay their debt without bearing the penalties associated with their behavior. The work of the authors above shows that a tax amnesty has a positive effect on tax compliance. However, the effect is *a posteriori*, i.e., if the taxpayer has no prior expectation of a possible amnesty. Otherwise, it acts as an incentive to tax non-compliance in the expectation of not being inspected or, if in the worst-case scenario non-compliance is identified, not assuming the corresponding penalty. Not generating expectations about future amnesties is therefore essential for tax administrations to be able to obtain positive results from their application. A different issue, and no less important, is the legal effect of unfair treatment of compliant taxpayers. For one reason or the other, the use of tax amnesty should be limited and exceptional.

[7] An example might be membership of a particular group of taxpayers or the individual's own tax history.

[8] For more information on this issue, see Caballé and Panadés (2003: 239–263) and Bayer (2006: 1071–1104).

Kirchler et al. (2009: 488–507) test the hypothesis that if the taxable income has been obtained with great effort, the taxpayer is willing to take a higher risk, i.e., that their acceptance of fraudulent behavior related to this income is higher. Consequently, the tax administration should make a greater effort to inspect income derived from capital, where less effort in obtaining such a tax may generate a higher propensity for fraud than that for income derived from labor. The costs of increased enforcement are administrative and excess tax burden, but also "the extra uncertainty to taxpayers that de »tax audit lottery« creates" (Slemrod, 2020: 76). Although the results of their research are not conclusive, it can be deduced that the burden of effort in obtaining the taxable income or wealth is not a determining factor in the decision of tax non-compliance. On the contrary, the authors find a direct relationship between effort and the taxpayer's level of aspiration, which they define as "the individual's expectancy for financial compensation for the prior effort". In sum, an individual's expectations about tax behavior derived from the values they hold are determinants of tax evasion behavior. This evidence reinforces the consideration of psychological and social factors in the analysis of tax non-compliance.

As additional factors, research on tax compliance in the economic sphere has also pointed to the influence of the complexity of the tax system and the impact of the nature of the taxpayer's productive activities. To put briefly, and despite what might *a priori be* inferred, the excessive complexity of the tax system is a clear inducer of tax non-compliance. Taxpayers' perception of a confusing tax framework is that there are opportunities to avoid its application. Simplicity and transparency of tax rules, in contrast, favor compliance[9].

Regarding the economic activity carried out by the taxpayer, studies have reported a coherent behavior between tax non-compliance and risk tolerance. In other words, taxpayers engaged in riskier productive activities – such as entrepreneurs and the self-employed – are more tolerant of potential loss due to tax non-compliance[10]. These findings are directly applicable in defining the criteria for targeted tax audits.

Finally, in this brief review of theories on taxpayer behavior towards tax obligations, it is necessary to reference a group of studies analyzing the impact of an individual's moral values. In this area, the initial premise is that the observed degree of tax compliance is higher than that inferred from the aforementioned

[9] It is worth highlighting the work by Gangl et al. (2013: 487–510) on a sample of taxpayers in the Netherlands, in which a positive correlation is found between the tax advice service the administration made available to taxpayers and the degree of tax compliance.

[10] Works complete the analysis by adding the perspective of tax evasion opportunities available to the taxpayer (Hashimzade et al., 2014: 134–146 and Doerrenberg and Duncan, 2014: 48–70). They conclude that tax compliance is higher in activities that do not provide options for tax evasion – for example, personal work – and that it increases in those that do – business activities.

theoretical models. Individuals, therefore, tend to be honest and pay their taxes, which allows us to consider psychological and moral elements that alter the expected result. The literature offers two explanations in this regard. On the one hand, the psychological cost of non-compliance increases as non-compliance increases, which leads individuals to reject such behavior (Gordon: 1980: 797–805). On the other hand, there is a social cost linked to the loss of reputation of the taxpayer who defrauds. As we shall see, this latter approach is a determining factor in the planning of administrations' actions to promote tax compliance in commercial companies.

In any event, each analysis provides information on a complex problem, with evident social costs and a significant impact on the non-compliant taxpayer detected by tax administrations.[11] Economic science aims to attempt to encourage correct tax behavior by taxpayers while minimizing the cost of a tax administration's activity. Under the law, as discussed below, all this must be done with the necessary respect for the rights of individuals.

2. CONCLUSIONS ABOUT OPTIMAL TAX COMPLIANCE SYSTEM CONFIGURATION

Cooperation in tax matters can be analyzed based on an idyllic conception of the relations between the taxpayer and the tax administrations or under the observation of the evolution of the phenomenon of tax fraud in a global and digitalized economy. In my opinion, it is only from the perspective of the advantages that both parties obtain in reaching a tax agreement that it is possible to examine its regulatory implementation and predict its chances of success. A tax compliance system is, in this sense, a preventive mechanism for tax non-compliance in which the two parties involved – the tax administration and the taxpayers – stand to gain.

The principle of cooperation is projected onto taxpayers' compliance with their tax obligations, specifically in the adoption of a series of voluntary mechanisms for cooperation with the administration. The alternative requires assuming increasingly higher fiscal and reputational risks, both in terms of the number of penalties applied and the speed and extent of knowledge and social reprobation of tax evasion behavior. For administrations, not considering the implementation of cooperation mechanisms with the taxpayer will require them to make a considerable effort to combat fraudulent conduct and international coordination that is not always feasible.

In addition to the effects of the application of voluntary tax compliance systems on the revenue obtained, it has been noted that the consequences of their

[11] For a current and comprehensive review of the explanatory factors of evasion behaviour, see Alm and Malézieux (2021: 669–750).

implementation go beyond the tax sphere to fall within the scope of Organizational Social Responsibility. In this sense, tax compliance is an instrument that allows reputational value to intervene in taxpayers' decision-making, moderating the weight of the potential economic gains derived from tax non-compliance. Tax compliance becomes a further element in business decision-making and its protection is embodied in the economic and organizational practices of the business structure itself.

As basic elements of tax compliance systems, it is worth highlighting that they reduce the legal uncertainty with which taxpayers and administrations operate. The certainty about the tax risks detected and the measures to be adopted to neutralize them entails significant cost savings for both parties and, therefore, greater efficiency in the economic activity of taxpayers and the collection and inspection activity of the public finances.

Different proposals put forward by states and international organizations lead to the conclusion that a tax compliance system must include certain characteristics that allow it to be useful and successful. Thus, a tax compliance program must be flexible and able to adapt to the dynamic circumstances of the market. It cannot be an obstacle or an added risk to economic activity, especially in conditions of high competition in a digital and global environment. The administration's response to taxpayers' queries must be quick and tailored to taxpayers' needs. This condition is essential to facilitate responsible tax decision-making, especially for large transnational business groups whose reputation is essential for the development of their activity in different countries.

To achieve the above objective, the taxpayer/administration relationship needs to be one of mutual trust and respect for basic principles – such as those set out in the European Taxpayer's Code (European Commission, 2016) – including transparency about the intention of tax rules and procedures or the presumption of honesty.

In short, there must be a change in the paradigm of relations between public finances and taxpayers, which is the basic condition for the success of tax compliance programs.

Although today's environment is digital and global, the premise of uncertainty in decision-making has not changed; on the contrary, it has become more intense. The higher the risk, the greater the chances of making a profit or suffering heavy losses. For this reason, taxpayers and administrations seek to mitigate the effect of uncertainty by creating trusting environments in which tax relationships can develop.

In a world in which the value of information is increasing, voluntary tax compliance systems mean that tax administrations can achieve levels of knowledge of the taxpayers' financial risks that extend to transactions and individuals with whom this system has not been agreed. This implies, in line with

theoretical forecasts, that inspection activities on economic agents who do not adhere to these processes will be more selective and efficient.

In this context, a tax compliance program is a tool that allows economic operators to prevent, identify and tackle behaviors, and that could generate administrative or criminal liability. However, to be an efficient solution to solve the problems of legal uncertainty for taxpayers and revenue losses for states, the tax system must comply with the principles of justice, simplicity and legal certainty, and respect for the rights of citizens/taxpayers. If the taxes faced by taxpayers are too complex, if the tax burden is perceived as excessive – and therefore unfair – if the administration does not ensure fair and respectful treatment, and, finally, if right tax governance is not guaranteed, resistance to tax compliance will be so strong that voluntary compliance systems will not be effective in the fight against tax fraud.

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TRUST IN INSTITUTIONS AND TAX COMPLIANCE. A MULTILEVEL ANALYSIS OF THE REGIONS OF SPAIN

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Abstract

The purpose of the article/hypothesis: The aim of this work is to delve into the significance of trust in the phenomenon of tax compliance. Specifically, the relationship between taxpayers' trust in the Government, administrations and institutions and their reported disposition towards tax compliance is explored based on the case of Spain and at regional level (NUTS2). **Methodology:** Using 2017 data collected by the European Values Study (EVS) and the Quality of Government Institute at the University of Gothenburg (QoG), a multilevel linear model is proposed where we assess the impact of citizen support for the Government and institutions on the disposition towards tax compliance. This model allows to simultaneously capture the relationships at taxpayer level and the effects of regional factors in the same equation. **Results of the research:** The results of the multilevel estimation allow the authors to reject the null hypothesis and accept, at least provisionally, the existence of a direct effect of trust in the institutions on tax compliance at regional level. Additionally, the low significance observed in the regional level variables suggests that citizens have non-decentralized perception of tax obligations. Furthermore, given that the effects are measured in terms of the quality of the institutions and government, the implications for regional policy and the actions of regional governments are of significant interest for the study of tax behavior and compliance.

Keywords: tax compliance, trust, tax behavior, slippery slope framework, multilevel analysis.

JEL Class: H26, H30, C12.

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INTRODUCTION

Taxes, in contrast to other rules and regulations, are unique in their simultaneous impact on practically all the issues and events that surround us, and on our day-to-day lives (Long and Swingen, 1991).

From an economic and budgetary perspective, taxes are categorized as a collection of coercive pecuniary transfers to the public sector (Prest, 1983). However, from the broader perspective of economic policy, given these resources are essential to sustain the welfare state and to enable all other public policies, taxation is a fundamental cornerstone of modern societies (Gaisbauer, Schweiger and Sedmak, 2015).

It is therefore unsurprising that the political mandate assigned to tax authorities is always subject to the constraints established under the corresponding legislation, ensuring the level of tax compliance needed to fund public programs and expenditure (OECD, 2010). Consequently, as payment of taxes is obligatory in nature, and compulsory by the Law, in practice, the strategies enacted to maximize tax collection have traditionally and extensively consisted of asserting the principle of authority to enforce tax compliance and of implementing mechanisms and instruments to detect, control and sanction tax evasion practices (Frey, 2003).

Tax authorities continue to resort to, and rely on, the use of deterrent measures, justified under the classic vision of taxpayer compliance being essentially determined by calculating, given the risks involved, the utility and profitability of tax fraud. Nonetheless, in recent decades, the majority of OECD countries have begun to reshape their tax compliance actions and programs, based on more sophisticated notions of taxpayer behavior (OECD, 2014a).

These novel tax compliance approaches and strategies are thus designed with new aims, such as increasing the efficiency and effectiveness of the resources used in policies of deterrence or establishing measures focused on reducing and limiting the possibilities of fraud and evasion, particularly as regards large corporations and multinational firms (OECD, 2008).

Following the concept of the "compliance pyramid" defined by the OECD, the primary premise of national strategies to fight against tax fraud is to correctly identify and classify taxpayers according to their "risk as taxpayers", i.e., their actual intention and willingness not to comply (OECD, 2004). The aim is none other than to more efficiently manage the resources available to fight against fraud, and, above all, to channel them towards activities and taxpayers with a definite high risk of non-compliance, so applying the proposal and recommendations laid out in the OECD report on "Compliance Risk Management" (OECD, 2004). In addition, the resources thus released and the savings that might be made as a result of applying more efficient anti-fraud

policies should be devoted to implementing "soft" deterrent measures and educational and informative projects, aimed at increasing compliance across all taxpayers that, despite having failed to comply on certain occasions or under certain circumstances, have the intention and willingness to effectively comply with their tax obligations.

In 2010, the OECD recommended tax authorities to persevere in developing and perfecting the new strategies already undertaken and to advance in adapting and directing traditional measures and instruments of deterrence, taking as their lynchpin a broader-based and multidimensional notion of taxpayer behavior. This new approach takes a form of a tax compliance model identifying five primary components that explain and condition the phenomenon: economic factors, norms, deterrence, opportunity, and fairness (OECD, 2010). This served to consolidate the trend towards using more innovative tools to improve tax compliance, built upon a better understanding and identification of the motives underlying taxpayer behavior, without neglecting traditional instruments of deterrence, such as audits and sanctions.

Following the proposals of the OECD, and as a result of the development and application of previous works, measures and recommendations, since 2013, more than twenty countries have incorporated new "Co-operative Compliance" programs into their policies and measures on improving tax compliance. Initially aimed at tax relationships with large corporations, these programs are built upon the premises of mutual trust and collaboration between parties, fluid exchange of information and fairer, more transparent, and symmetrical nexus between large taxpayers and tax authorities (OECD, 2013).

The aim of "Co-operative Compliance" is for both tax administrations and taxpayers to simultaneously obtain benefits. On the one hand, firms are expected to adopt a transparent and collaborative attitude towards the tax authorities, thus enhancing tax risk management. On the other one, the tax authorities undertake to maintain a more fluid exchange of information, thus enabling a reduction in uncertainty, greater certainty in transactions and, in short, greater legal certainty, as has long been demanded by taxpayers (IEF, 2021).

As recognized by the OECD (2013), recent findings from disciplines such as behavioral economics and psychology have evidenced that the environment and the context are significant determinants of the behavior of the actors involved. Thus, when designing and undertaking new programs and mechanisms seeking to tackle fraud and improve tax compliance, it is necessary to have a more systemic vision of tax behavior and to take into account the contributions of research into the phenomenon (OECD, 2014b).

Eberhartinger and Zieser (2021) find parallels between the concept and groundings of "Co-operative Compliance" and various theoretical models and developments, such as those described by Ford and Condon (2011) or Widt

(2017), focused on the paradigm of "new public governance" and which underline the need to recognize that citizens demand quality from services provided by the public administration, in the same way as they do with market-provided services. The authors also report similarities with the work by Braithwaite (2002) on "responsive regulation", which posits that deterrent efforts should be adapted to the characteristics and motivations of the taxpayers they target, in order to ensure more effective results. Finally, they highlight the link between some of the underpinnings of collaborative compliance and the general premises of the "slippery-slope framework" (SSF) (Kirchler, Hoelzl and Wahl, 2008), where taxpayers' trust in (administrations) and the perceived/exercised power of (administrations) form a balanced mix that shapes attitudes and disposition towards tax compliance.

The aim of the present work is to delve deeper into the importance of trust, understood as the acceptance and legitimacy of the authorities and institutions, in the phenomenon of tax compliance. Specifically, we explore, based on the case of Spain and at regional level (NUTS2), the relationship between taxpayers' trust in the administrations and institutions and their disposition towards tax compliance.

To this end, we use 2017 data from the European Values Study (EVS) (EVS, 2020) and the Quality of Government Institute (QoG) (Charron, Lapuente and Annoni, 2019). We perform a multilevel linear model that allows us to simultaneously capture the relationships under study at a taxpayer level and the effects of regional factors in the same equation.

Lago-Peñas and Lago-Peñas (2008) have exploited data from the European Social Survey in order to study tax morale in European countries. They apply a multilevel statistical model and investigate whether the individual differences in micro-level variables and the cross-national differences in macro-level variables were able to produce systematically different patterns of tax morale. Nevertheless, to our best knowledge, there is no previous multilevel analysis on tax compliance and trust in the administrations and institutions regarding the Spanish Regions.

1. THEORETICAL FRAMEWORK AND STUDY HYPOTHESIS

In the early 1970s, Allingham and Sandmo (1972) and Srinivasan (1973), drawing on the work on the economics of crime by Becker (1968), designed models intended to explain the motivations of tax fraud. The literature considers these works as the first theoretical approaches to tax compliance, and the starting point for the studies conducted to date (Alm, 2019).

The study by Allingham and Sandmo (1972) is the most influential and the most representative example of the current known as "classic" or "economic" in the literature on tax compliance (Alm, 2019) and can be viewed as the main

theoretical backing for deterrence and sanctions as the traditional measures to fight against fraud (OECD, 2010; OECD, 2014c).

Economics-oriented models are based on the premise that taxpayers behave like a *homo economicus*, i.e., a rational individual whose main goal is to maximize utility. Thus, the decision to pay or evade taxes lies in a problem of economic calculus under risk (Alm, Kirchler and Muehlbacher, 2012). The primary conclusion is that such *rational* individuals will only pay taxes when they judge the costs of evasion to be higher than the expected benefits of such behavior. This argument is the theoretical underpinning and justification for the traditional recourse to audits and sanctions as anti-fraud measures, since, by increasing the "cost" of tax evasion, such strategies may be useful tools to deter fraud and enhance tax compliance.

Tax compliance is, however, a complex phenomenon that depends on numerous factors that go beyond the merely economic ones (Frank, 1991; Alm, Sánchez and Juan, 1995). Hence, the concept should be analyzed from a broader and more cross-disciplinary perspective, which incorporates the explicit study of behavior and decision-making into the traditional economic analysis (Schmölders, 2006). Consequently, disciplines as varied as economics, law, psychology, sociology, politics, and even medical science (neurology, for example, is a field that has recently shown interest in the question) have provided numerous contributions and conducted considerable research, most of which highlight a spirit of multidisciplinary integration, and a firm commitment to improving and broadening the understanding of tax compliance (Randlane, 2016).

Therefore, the research in the field of tax compliance has been perfected while identifying different factors that appear to determine taxpayer behavior, such as the influence of their environment (family, colleagues, friends, etc.), personal, sociodemographic, and cultural characteristics of taxpayers or the trust [in] and legitimacy [of] the institutions and authorities (Brezina, Eberhartinger and Zieser, 2021).

Taxpayers' perception of the power of [coercive], and their trust in, the tax authorities is the core argument of the "slippery-slope framework" (SFF) (Kirchler, Hoelzl and Wahl, 2008). This model analyzes tax compliance from the perspective of taxpayers' motivations for complying with their tax obligations, distinguishing between "voluntary" and "enforced" motivation. The SFF thus brings together the majority of the main determinants of tax behavior previously examined and firmly established in the relevant literature, i.e., "economic" and "non-economic" factors, and psychological, social and cultural influences. The "voluntary" motivation to comply with tax obligations is associated with the taxpayer's set of values and moral conscience, while "enforced" motivation is grounded in the construct of individualistic factors (maximization of utility), but is also related to, and justified by, the level and perceived efficacy of the power of

authority, translated in the implementation and effectiveness of deterrent and coercive measures, such as audits, fines, or sanctions.

Thus, there emerges a dynamic interaction between the taxpayer and authority as a response to the perceived attitude and disposition of the adversary. Under the SSF, taxpayers form a mental framework (perception) of the behavior and attitudes of the tax authorities, which serves for them to assess their trust in these authorities and their legitimacy (which is the result of transparent and fair tax procedures and actions, proper treatment and services provided by the administration, benevolence and understanding shown towards taxpayers, etc.). It also allows them to identify and judge the [perceived] effective power of the authorities (application of coercive measures and the capacity to control and detect fraud, sanctions, etc.) (Prinz, Muehlbacher and Kirchler, 2014).

Consequently, if both perceptions (trust [in] and power [of]) give rise to a balance in favor of "trust", taxpayers believe it is advisable and justified to "voluntarily" comply with their tax obligations and thus the predominant motives are not strictly economic in nature (taxpayer morality). However, if the perceived power [of the authorities] holds greater weight, compliance is "enforced" and the logic of economic models, based on maximization of utility, come into play (Brezina, Eberhartinger and Zieser, 2021).

This study proposes a general interpretation of the SFF model whereby it suggests that taxpayers with mental constructs and perceptions based on trust in and the legitimacy of the authorities find that "voluntarily" complying with their tax obligations is justified and makes sense. This broad vision leads us to wonder whether the level of "voluntary" compliance is directly linked to a taxpayer's level of trust in governmental authorities and institutions, their positive assessment of them and their perceived legitimacy.

Hence, the main hypothesis was as follows, H1: Taxpayers that show greater trust in, and more positive assessments of the government, administrations, and institutions, have a greater commitment to tax compliance (greater rejection of non-compliance).

2. DATA, METHODOLOGY AND DEFINITION OF VARIABLES

2.1. Sources and data collection

Two sources were used to test the hypothesis of the study. Firstly, we extracted data from the 2017 European Values Study (EVS, 2020), which is a large-scale, longitudinal, cross-national survey that, since 1981, has collected information on

the opinions of European citizens aged over 18 years on a wide range of demographic, familial, political, economic, and social questions[1].

This database was chosen for a number of reasons. On the one hand, the EVS allows longitudinal studies to be conducted, since it has mostly followed the same methodological structure from its first waves through to the most recent (the waves correspond to 1981, 1990, 1999, 2008 and 2017). On the other hand, it has the advantage of including information from 37 European countries at the NUTS2 level of disaggregation, which coincides with that of the regions of Europe (Autonomous Communities, in the case of Spain). Thus, we were able to conduct our analysis taking this regional dimension into account, which is especially important in the case of Spain, as it is highly decentralized in terms of politics and administration. Finally, the EVS directly questions the respondents on their attitude towards tax compliance.

From the 2017 EVS, the sub-sample of the answers provided by respondent resident in the Spanish Autonomous Communities was used, accounting for a total of 1.209 observations and 466 variables. Of these, those directly asking about attitudes towards paying taxes and about their trust in, and opinion of, a series of public and private institutions were selected.

Specifically, as the *proxy* for tax behavior, just one variable was used, namely, the response to the question of whether "you consider it justified to cheat (evade/avoid) on tax if you have the chance", which is scored on a 10-point Likert-type scale, where 1 is "never justified" and 10 is "always justified"[2].

As the *proxy* to measure citizens' trust in institutions, administrations, and authorities, the responses to 18 questions were used, all following the same format, asking "how much confidence do you have in…". The respondents rate their confidence on a 4-point scale, where 1 is "none at all" and 4 is "a great deal"[3]. The institutions about which they are asked to indicate their level of confidence are the following: the church, the armed forces, the education system, the press, trade unions, the police, the Parliament, the civil service, the social security system, the European Union, the United Nations Organization, the health care system, the justice system, major companies, environmental organizations, political parties, Government and, lastly, social media.

The second source of data used in this study is the 2017 European regional dataset (QoG EU Regional) published by the Quality of Government Institute at the University of Gothenburg (QoG) (Charron, Lapuente and Annoni, 2019). This dataset provides a series of aggregate indexes (at European region level, NUTS2) on citizens' perceptions about the quality of their governments. These indicators

[1] Access to data and documentation: EVS, 2020.

[2] ZA7500: EVS 2017: Integrated Dataset, variable v150: do you justify: cheating on tax (Q44B).

[3] ZA7500: EVS 2017: Integrated Dataset, variables from v115 (Q38A) to v132 (Q38R).

are developed according to the processing of responses collected from surveys and opinion polls on citizens' experience and personal perception of public services and their interactions with local and regional public administrations, including assessments of their perception of honesty and corruption in administrations.

Additionally, the QoG EU Regional compiles and provides data on more than 350 variables related to sociodemographic indicators. All the datasets are available in time-series format for the European regions (NUTS2)[4], which facilitates conducting comparative, longitudinal studies, and more importantly for our analysis, they are broken down at a regional level.

From this source, we extracted the sub-sample with 2017 items of data for the Spanish NUTS2 regions (the Autonomous Communities), comprising a total of 17 observations and 337 aggregate NUTS2-level variables. We analyzed three indicators of quality of government: *EQI Index Score*[5], which is an overall index focused on quality of government and includes all the variables from the survey (Charron, Lapuente and Annoni, 2019). The others were *EQI quality pillar*[6], based only on citizens' experience and opinion of the public services on which they are consulted in the surveys and the *EQI corruption perceptions index*[7], which measures citizens' perceptions of corruption in government.

2.2. Modeling and definition of variables

2.2.1. SPECIFICATION OF THE TWO-LEVEL MULTILEVEL LINEAR MODEL

In order to verify at regional level the relationship between the opinions of, and trust in, the institutions and the motivation to comply with tax obligations, we used a two-level linear model as our methodological instrument. The reason was twofold: on the one hand, as the data was cross-regional, we were dealing with a hierarchical schema (citizens within regions). In this sense, the observations in each region would not be independent (within-groups variability), while the total variability of the sample would be partly due to regional effects (between-groups variability), i.e., due to the nesting of the data into independent sets (Raudenbush and Bryk, 2002). That means that the subjects that belong to the same subgroup are not, very likely, independent of each other, which constitutes a severe breach of a basic assumption of the general linear model: the independence between observations. However, linear mixed models (including multilevel models) make

[4] Access to data and documentation: www1.
[5] Variable (sqi_score) at: www2.
[6] Variable (eqi_zquality) at: www2.
[7] Variable (eqi zcorruptper) at: www2.

it possible to deal with this type of hierarchical structure, paying attention to the existing covariance in the data.

Hierarchic models (Raudenbush et al., 2000), multilevel modelling (Goldstein, 2003; Hox, 2002; Luke, 2004) or random coefficients models (Longford, 1993) have been proposed to analyze data when cases are grouped into larger information units. Measures are taken at the lowest level (the cases) and the highest levels (the groups) and allows us to simultaneously identify and capture in the relationship explained the fixed effects – those common to all the individuals – and the random effects, due to the dependence between levels. In a two-level model, the coefficients (means and slopes) from Level 1 are interpreted as results of the coefficients and variables from Level 2.

In our analysis, Level 1 corresponds to the observations for each respondent, and Level 2 corresponds to the NUTS2 regions (the Spanish Autonomous Communities). The general specification of the two-level model is:

$$[Level\ 1]\ Y_{ij} = \beta_{j0} + \sum_{i=1}^{k} \beta_k X_{kij} + r_{ij} \quad (1)$$

where:
Y_{ij} – Observations of the dependent variable for individual *i* in level *j*,
X_{ij} – Observations of the explanatory variables for individual *i* in level *j*,
β_k – Coefficients (fixed),
β_{j0} – Random effects, due to level *j*, which, in a more detailed manner, are specified as:

$$[Level\ 2]\ \beta_{j0} = \gamma_{00} + \sum_{h=1}^{p} \gamma_{0h} W_h + \mu_{0j} \quad (2)$$

where:
W_h – are the specific explanatory variables of level *j*,
γ_{00} and γ_{0h} are the intercept and the slope for each level *j*.

2.2.2. DEFINITION OF VARIABLES

In Level 1 (respondents), we defined the explanatory variable *Trust* (total trust), constructed by means of the unweighted aggregation of the individual scores obtained for the responses to the questions on evaluating confidence in different institutions. The result was normalized using the z-standardization procedure and, finally, was weighted by the raising factor for the NUTS2 facilitated by the EVS.

In Level 2 (regions), the variables used were the indexes taken directly from the QoG EU Regional database for 2017. On the one hand, we have the *QIndex*

variable, which reflects the so-called *EQI Index Score* (overall index of quality of government), while, on the other, is the *CorruptionIndex*, which corresponds to the values from the *EQI corruption perceptions* index (which measures the perceived corruption, also at regional level). All these variables are z-standardized and were not submitted to any additional transformation.
Finally, the variable Region refers to the Spanish NUTS2 regions (Autonomous Communities) from the EVS sample, while *CheatTax* is the dependent variable in the model, the proxy for tax compliance, which we developed directly from the individual scores on the question related to the justification of cheating on taxes (variable v150 in the EVS notations), which we also weighted by the regional raising factor of the EVS sample.

3. RESULTS AND DISCUSION

Following Pardo, Ruiz and San Martín (2007), multiple specifications of the two-level multilevel model are estimated. Model 1 analyzes variance using a one-random-effects factor specification (unconditional or null model). Everything related to the Level 1 (X_{ij}) and Level 2 (W_h) independent variables has been eliminated in this model[8].

Second, to reduce the differences between the means of each Level 2 grouping (regions), Model 2 fits a multilevel specification with a Level 2 covariate (W_h).

Model 3 incorporates a Level 1 covariate (X_{ij})[9], and then we perform a covariance analysis using a random-effects factor specification to explain differences between subjects within the same Region (Level 1 variability).

Model 4 (random coefficient specification) derives a regression equation for each Region and analyzes how the intercepts and slopes of those equations vary. Therefore, it allows both coefficients (the intercept and the slope) to vary randomly between the Regions. Finally, Model 5 fits the complete specification of a multilevel model. Therefore, the coefficients (means and slopes) of Level 1 are interpreted as results of the coefficients and variables of Level 2.

Tables from 1 to 4 show the results of the analysis. Table 1 offers descriptive information: the average tax compliance observed is not the same in all regions (in Region of Murcia, the lowest average is obtained (1,44); in Aragon the highest is obtained (7,15); therefore, the level of tax compliance may seem to be related to regional factors; the last two columns contain the standard deviation and the coefficient of variation (quotient between the standard deviation and the mean, expressed as a percentage).

[8] The estimations were performed with IBM SPSS Statistics© statical software (Version: 28.0.0.0 (190)), using the *MIXER* multilevel analysis function.

[9] All independent variables are mean-centred before perform estimations.

Table 1. Descriptive statistics of the dependent variable CheatTax in each Region (SD= standard deviation; CV= coefficient of variation)[10]

Region (Autonomous Communities)	NUTS2	n	Mean	SD	VC
GALICIA	ES11	70	3,77	3,9	103,3%
PRINCIPALITY OF ASTURIAS	ES12	29	2,18	3,5	158,8%
CANTABRIA	ES13	17	4,35	4,5	102,8%
BASQUE COMMUNITY	ES21	57	2,66	1,9	72,6%
NAVARRE	ES22	17	2,28	1,1	46,3%
LA RIOJA	ES23	5	7,09	4,4	61,4%
ARAGON	ES24	34	7,15	2,6	35,8%
MADRID	ES30	169	2,82	2,7	96,4%
CASTILE-LEON	ES41	63	3,08	2,4	77,8%
CASTILE-LA MANCHA	ES42	54	4,77	3,5	73,1%
EXTREMADURA	ES43	28	1,78	1,5	82,0%
CATALONIA	ES51	191	2,63	2,5	95,7%
VALENCIAN COMMUNITY	ES52	127	1,91	2,2	115,0%
BALEARIC ISLANDS	ES53	29	2,52	2,2	89,3%
ANDALUSIA	ES61	191	2,23	2,0	90,1%
REGION OF MURCIA	ES62	41	1,44	1,1	76,5%
CANARY ISLANDS	ES70	53	2,91	3,6	124,7%
Total	.	1175	2,81	2,8	100,2%

Source: own study.

Table 2 offers various global fit statistics that indicate to what extent the proposed model can represent the variability observed in the data. The first of these statistics is deviance (–2LL). The second statistic (AIC) is the Akaike information criterion; the third (AICC) is the corrected Akaike Information Criterion; the fourth (CAIC) is the consistent Akaike information criterion, and the fifth (BIC) is the Bayesian information criterion. The fit of the model to the data is better the lower the value of these statistics.

Table 3 collects the estimated value of the constant or intersection (population mean of the 17 Regions in the dependent variable) and the fixed effects parameters for the different specifications.

In addition, standard error; degrees of freedom; t value (which is obtained by dividing the estimate by its standard error); and the critical level are obtained by testing the hypothesis that the parameter is equal to or different from zero (Sig. < 0,05) are shown.

[10] Autonomous Cities Ceuta (ES63) and Melilla (ES64) were excluded.

Table 2. Global fit statistics (better fit the lower the value)

Statistics	Model 1	Model 2	Model 3	Model 4	Model 5
Deviance (–2LL)	5648,76	5646,44	5623,92	5625,53	5627,30
(AIC)	5652,76	5650,44	5627,92	5633,53	5635,30
(AICC)	5652,77	5650,45	5627,93	5633,56	5635,34
(CAIC)	5664,89	5662,57	5640,05	5657,80	5659,56
(BIC)	5662,89	5660,57	5638,05	5653,80	5655,56

Source: own study.

Table 3. Fixed effect parameter estimates (dependent variable: CheatTax)

Model	Parameter	Estimates	Standar error	gl	t	Sig.
Model 1	Intersección	3,18	0,37	13,88	8,52	<,001
Model 2	Intersección	3,02	0,41	12,38	7,34	<,001
	CorruptionIndex	0,77	0,81	13,18	0,95	0,36
Model 3	Intersección	3,01	0,41	12,69	7,32	<,001
	CorruptionIndex	0,78	0,81	13,48	0,97	0,35
	Trust	–0,03	0,01	1161,53	–5,63	<,001
Model 4	Intersección	3,16	0,37	14,20	8,45	<,001
	Trust	–0,03	0,01	3,70	–4,03	0,02
Model 5	Intersección	2,99	0,42	11,99	7,05	<,001
	Trust	–0,03	0,01	5,93	–3,21	0,02
	QIndex	–0,49	2,81	12,40	–0,18	0,86
	CorruptionIndex	1,20	2,47	12,29	0,49	0,64
	Trust * QIndex	–0,09	0,07	5,72	–1,32	0,24
	Trust * CorruptionIndex	0,06	0,06	5,75	1,07	0,33

Source: own study.

Finally, Table 4 offers the estimates of the covariance parameters, i.e., the estimates of the parameters associated with the random effects of the models.

Table 4. Covariance parameter estimates (dependent variable: CheatTax)

Model	Parameter		Estimates	Standar error	Wald Z	Sig.
Model 1	Residue		6,89	0,29	24,04	<,001
	Region	Variance	2,16	0,89	2,42	0,015
Model 2	Residue		6,89	0,29	24,04	<,001
	Interpetion [unit = Region]	Variance	2,19	0,93	2,35	0,019
Model 3	Residue		6,71	0,28	24,04	<,001
	Iterception [unit = Region]	Variance	2,19	0,92	2,38	0,017
Model 4	Residue		6,66	0,28	23,65	<,001
	Interception + Trust [unit = Region]	UN (1,1)	2,18	0,89	2,46	0,014
		UN (2,1)	0,00	0,02	–0,12	0,908
		UN (2,2)	0,00	0,00	0,62	0,537
Model 5	Residue		6,64	0,28	23,85	<,001
	Interception + Trust [unit = Region]	UN (1,1)	2,33	1,00	2,33	0,02
		UN (2,1)	–0,01	0,02	–0,45	0,653
		UN (2,2)	0,00	0,00	1,12	0,262

Source: own study.

Prior to estimating the complete models (2, 3, 4 y 5), we estimated the null model (model 1) to verify whether the data follow a pattern (dependence with Level 2) and, thus, whether it was necessary to specify a multilevel structure. The coefficient of the null model, which coincided with the estimation of the intercept for each region (*j*-level), was significant at 1% level (99% confidence interval), and thus the multilevel specification was justified.

Additionally, we calculated the intra-class correlation coefficient (ICC), i.e., the fraction of total variability observed in the sample that is not explained by the explanatory variables observed for Levels 1 and 2. The ICC measures the homogeneity of the observations within each region and the differences

between the observations for each different region. This was calculated as the ratio of explained variance at regional level (j-level) divided by the total variance of the model. In our analysis, the ICC was 0,024, which means that approximately 24% of the total variance was due to regional factors that were not directly observed.

The ICC value also represents the degree of relationship or resemblance between patients in the same Region. In addition, the population variance of the regional factor is zero, the Wald Z statistic is offered, and it has an associated critical level (Sig.) less than 0,05. Thus, we can reject the null hypothesis and state that the variance of the factor is different from zero. Therefore, it can be concluded that tax compliance is not the same in all regions. This argument further corroborates the nested structure of the data and the suitability of multilevel modelling.

The next step in the analysis should be to find out if there is any variable capable of accounting for confirmed differences between the means of the regions. The QoG *CorruptionIndex* variable measures the average regional perception of corruption (a level 2 variable). It is known that the perception of corruption is related to lower tax compliance (Feld and Frey, 2002). Consequently, since the perception of corruption is not the same in all regions, the differences observed in tax compliance in different regions could be explained, at least in part, by the differences in the average perception of corruption. However, the variable is not significant. In addition, there is hardly any decrease in the intercept variance concerning the null model (average variability of the set of regions). Therefore, the regional perception of corruption does not contribute to explaining the differences observed between regions.

From Model 3 results obtained fitting a covariance analysis using a random-effects factor specification, it is particularly worth noting that the parameters estimated are significant for all the variables included except *CorruptionIndex*. We found a highly significant effect of the variable *Trust* (*proxy* for the overall trust of individuals on the institutions).

As expected, greater legitimacy and trust in the institutions is related to a greater willingness to pay taxes (*CheatTax*, *proxy* for tax compliance). Furthermore, albeit with a lower significance, the variable *CorruptionIndex*, which captures the rate of perceived overall regional governmental corruption, suggests that citizens think that corruption is an important element in justifying cheating on taxes. In addition, the inclusion of the *Trust* variable reduces the residual variability, which is due to differences in tax compliance within each region.

Finally, although models 4 and 5 show an improvement in explaining intra-regional variability after assuming the existence of different equations for each Region, the null hypothesis of the existence of different slopes cannot be rejected.

Moreover, the covariance between the slopes and the regional averages cannot be accepted either.

Therefore, the *Trust* variable reflects fundamental explanatory relevance while *QIndex* (general quality of regional government perception) does not add more significance to the model.

CONCLUSIONS

Consequently, overall, the results of the estimation lead us to reject the null hypothesis and accept, with some reservations, the general hypothesis proposed in this work.

However, the low significance found in the Level 2 regional variables (*CorruptionIndex* and *QIndex*) suggests that citizens have a non-decentralized perception of tax obligations. Given that these effects are measured in terms of the quality of the institutions and government, the implications for regional policies and the actions of regional governments are of great importance.

Nonetheless, the intention of our analysis was to make a first approach to the relationship between trust in government and institutions as well as the disposition towards tax compliance. Hence, we recognize the need to delve deeper into this issue, and, above all, avoid, for the time being, drawing categorical conclusions.

In this sense, it would be advisable to use a more precise *proxy* indicator of tax compliance than that used in our model. Moreover, as regional effects have been detected in the estimation, it is also necessary to look further into this aspect, including a set of regional variables that encompass measures of economic and social wellbeing by region.

This might enable us to make recommendations and suggest specific measures of regional policy designed to improve tax compliance.

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DEMOCRACY, ECONOMY, PROGRESS AND THE RULE OF LAW. SPECIAL REFERENCE TO THE TAX REGIME FOR RELIGIOUS DENOMINATIONS

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Abstract

The purpose of this article is twofold: on the one hand, to relate the fiscal and financial model to the Social and Democratic Rule of Law, on the other one, to transfer Spanish experiences that may be of interest to Poland, as both countries began their democratic experience and integration into the European Union a few decades ago. From a multidisciplinary perspective, the contributions that law could make to the field of political economy can be of capital importance for the consolidation of our democratic systems, public order, and social peace, analyzing the role of religious confessions. **Methodology.** To achieve this purpose, the analytical-comparative-interdisciplinary method was chosen as it was considered the most appropriate one in view of the close connections between economics, law, progress and social peace. **The result of the research.** The work shows that democracies, although they are the most effective models for achieving the highest standards of progress, and even though in the Polish and Spanish cases, they have the advantage of having served to bring dictatorial periods to an end, there is a need for effective control mechanisms. Democracies absolutely cannot degenerate into corrupt and ineffective systems under the control of large political and partisan oligarchies. The independence of the judiciary is, in this sense, an essential and inalienable element in guaranteeing the correct functioning of other state institutions. It is necessary to insist on the importance of the legal norm as an instrument of political control and its impact on macroeconomics, and the consolidation of democratic regimes, even more in the context initiated with the respective integration processes in the European Union. On the other hand, the aim is to show how beneficial tax treatment for religious denominations has a powerful effect on the achievement of the common good and social peace. In addition, it is about relating importance that has the budgetary balance and mechanisms for controlling public expenditure for the maintenance of progress and social justice in a sustainable model.

Keywords: democratic state, social state, the rule of law, financing and taxation.

JEL Class: K30; K34.

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INTRODUCTION

Democracy and the rule of law are not, *strictu sensu*, equivalent terms; in the process of progressive acceleration undergone by the History of Humanity – whose speed is increasingly vertiginous – everything points to the establishment of a cause-effect relationship between the rule of law, democracy and development.

A global overview confirms the theory that the countries with the best democratic standards are those that offer the highest levels of quality of life, legal security, political and social stability, as well as the best levels of social cover age and progress. In fact, out of ten countries with the highest quality of life in the world, seven are the European ones (Denmark, Sweden, Norway, Switzerland, the Netherlands, Finland, and Germany), one is also Western (Canada) and the other two (Australia and New Zealand) have a markedly Anglo-Saxon culture. The reason is to be found not in their GDP, their size, their natural resources, their population, or other macro factors, but in the proper functioning of their institutions.

The law, which is – without a doubt – the most effective instrument that exists to transform reality – especially when it offers stability to the system – is, unfortunately, used by the political classes in the most immature democracies as an ideological and partisan tool, thus losing the raison d'être it has had throughout history to create culture, civilization and system.

But some Western democracies have major drawbacks, one of which is the excessive ideologization of power, which is transferred to the economy, politics, law, the model of society that is sought...; another is the short duration of terms of office (Catalá, 2013: 75) and the improvisation (Garrigues, 2013: 25). These factors, together with the alternation of the governing political party, mean that, in immature democracies, what one government plans, the other undoes, and the population suffers the vicissitudes of erratic and ineffective policies. In the case of Spain, for example, it is common to observe a very limited capacity for consensus on major state issues, which leads to a certain instability in its institutions, inefficiency, waste of public resources, etc.

It is therefore worth asking whether the success of a nation, of a civilization, of a continental structure such as the European Union, etc., depends so much on the democratic regime – understood as a set of rules for access to power, be it national, regional, provincial or local – or, on the contrary, more on the degree of maturity of the political class and, in particular, on the legal system created and agreed upon. In other words, democracy may only be a question of procedure, i.e. a mechanism for access to power, but this in no way implies a guarantee that we are dealing with a true rule of law, i.e. a democratic regime is compatible with a failed state. The Ibero-American republics, in fact, are submerged in a loop of

institutional instability, underdevelopment and poverty; they do not offer a real system of guarantees, they do not have the capacity to attract foreign investment, nor to prevent capital flight, nor do they guarantee minimum security standards. They are a long way from achieving an acceptable model of social welfare, and yet they are formally democratic regimes.

When the common characteristics of Western Constitutionalism are analyzed and compared with those of Islamic, African, Asian or Latin American Constitutionalism, it becomes clear that their Magna Carta, in addition to representing the summit of their normative systems, are, pillars on which the gigantic legal and institutional structure of the State is based. Thanks to the firmness and effectiveness of these texts, due to their unquestionable relevance, the former are a true seed of a model of advanced society.

What follows is that politics can become the enemy of the law and that the pretensions of ideological groups can serve to improve the normative model, but also to instrumentalize it, manipulate it or deprive it of effectiveness.

These reflections from Spain are addressed to a great country such as Poland, aware that both nations are united by territories of similar size, a shared Catholic tradition, a youthful democratic experience, and the novelty of full membership of Community structures, hence the interest that this work may offer.

The European Union is the biggest and best international project that history has ever known; it will not be easy for there to be another one of greater scope, interest, and effectiveness in the future. It is undoubtedly destined to be a strong counterweight to great powers such as the USA, Russia, and China. Unlike these, the conception of the "social state" model – conceived and nurtured in a powerful and decisive way by European institutions – represents the highest standard of quality of life achieved to date, a model that guarantees high levels of progress. What is more, in the face of Spain's political instability, the excessive parliamentary weight of communism, separatism, etc., and in the face of ideological currents of ideology, the "social model" is a model that guarantees high levels of progress. Facing ideological currents that mask models of society which seek to combat the family (the capital cell for the formation of a solid social structure) or the risks of institutional, economic and social destabilization from foreign powers, the EU has been, is and will be an area of security and stability. However, there are many problems it has to face and many aspects that may clash with certain interests of the member nations and their governments of the day.

Certainly, the EU membership has entailed a partial loss of national sovereignty, a classic concept that is constantly under review and which, albeit it may partially affect the idiosyncrasies of each people or nation, offers numerous advantages for the societies particularly prone to excessive manipulation, ideologization or drift. This is the case with the Spanish nation that is made up of numerous peoples and cultures which are diametrically opposed to each other.

Coping with internal problems our country is going through, it is in the heart of the Union that the best possible scenario for future stability can be found.

This paper will analyze some aspects related to economic and social progress that have to do with two friendly nations, Poland, and Spain, within the Union. Another objective is to provide a reflection for a better functioning of its institutions and also to avoid certain dangers coming from foreign interests, intrusive ideologies, or destabilizing agents.

1. FINANCING, TAXATION, STATE MODEL AND DEMOCRACY

The proliferation and exponential growth of large multinationals operating potentially all over the world is putting the tax system in check, placing national companies in a situation of clear inferiority with all that this entails.

The social state is only viable through effective revenue collection mechanisms, but growth is directly dependent on tax levels. Two great economic truths come together in the same direction: on the one hand, low tax rates generate more revenue in the medium and long term, boosting internal growth and foreign investment; on the other hand, it is a form of competition that can be unfair in communities of nations, such as the EU.

In this aspect, as in so many others, each country enjoys a certain margin of fiscal and financial autonomy that coexists, at the same time, with the EU rules that restrict these tax and budgetary freedoms[1]. The questions that could be asked are: should Europe continue to monitor and control the revenue-raising capacity of the Member States, and to what extent, and for how long?

Certainly, the search for a balanced budget is a desirable objective; economies – both national and particular (of individuals or companies) – cannot settle in infinite and progressive indebtedness. The Community project is integrating and definitive, it needs minimum conditions of economic "health" that guarantee its viability and the greatest possible specific weight in the Community of Nations. This economic health depends directly on the health of each Member State in relation to its indebtedness, GDP and continental GDP[2].

The question that should be asked is whether the controls carried out by Europe are adequate, whether there should be fewer or, on the contrary, whether they should be reoriented, more demanding, and so on.

In Spain, a country with a very strong pro-European sentiment, some miss greater EU interventionism because we suffer from a large budgetary imbalance (Sáez, 2000: 271–278). The policies pursued in the Nordic and Central European countries are, in general, much more serious, mature and effective than those

[1] On this issue see articles 3.3 TUE: 110–113; 126; 174–178 TFUE.

[2] Idem, Protocol on economic and social cohesion; arts. 71 and 177 TFUE.

pursued within our borders. One example that shows how public money is wasted in a completely sterile way, should be presented here.

Every country has a public television that aims to always guarantee access to information and in all circumstances. How biased it is, whether it is used politically or ideologically, how much revenue it raises, the net cost, etc., are questions that could – and should – be discussed, but this is not the right place to deal with these issues. What is important here is that in Spain, thanks to the financial autonomy enjoyed by the Autonomous Communities[3], there are almost as many autonomous television stations as there are regions in Spain. Except for Cantabria and La Rioja, the rest (16 in total) have public broadcasters, but many of these regions have several channels: Andalusia 4, Aragon 2, Balearic Islands 2, Catalonia 5, Galicia 2, Madrid 2, the Basque Autonomous Community 4. These public broadcasters, together with the regional television channels, which only have one channel (Asturias, Canary Islands, Castile-La Mancha, Extremadura, Murcia, Valencia and Ceuta), make a total of 28 regional broadcasters. The municipalities, public radio channels, etc. must be also added here.

It is unquestionable that the service offered by the public television channels is close to zero, serving almost exclusively as "placement agencies" for people who support the party that governs the region. Additionally, also in a preponderant way, these are instruments of political propaganda of the party that governs the Community, strengthening the Iron Law (Robert Michels -1911-) according to which political power tends to consolidate and institutionalize itself.

These mechanisms of intervention in public opinion, favoring the political group that governs the corresponding region, because of the principle of financial and budgetary autonomy, cost the coffers of the public sector more than 1,100 million euros per year, generating budget deficits that the Autonomous Communities themselves must cover.

The very territorial configuration of the Spanish State, with 17 Autonomous Communities, six of them unprovincial (Madrid, La Rioja, Navarra, Murcia, Asturias and Cantabria) and two Autonomous Cities (Ceuta and Melilla), all with their own autonomous parliaments, governments, High Courts of Justice, their own public administrations..., is a colossal nonsense in organizational, political, legal, economic and budgetary terms, so much so that a very high percentage of the Spanish public deficit is caused by the Autonomous Communities. It is true that they have served to structure the territory, to guarantee public services to practically the entire population and to combat certain inequalities that once existed between what is called "rich Spain" and "poor Spain", but it is also true that the model requires permanent audits, readjustments..., which nobody wants to do.

[3] Art. 156 CE.

The legislative capacity of the Autonomous Regions, their excessive spending, their superfluousness on numerous occasions and, above all, their absurd proliferation, such that it could be considered the Fourth Taifal Period (Catalá, 2013: 74), are excesses that will never be tackled from within. We can only hope that the European institutions will gradually restrict so much nonsense, forcing our country to adopt measures to rationalize the management of public services and to control the excessive spending that they give rise to, since it is not covered for policies to defend regional diversity (Cuadrado and Parellada, 2002: 349–350).

One of them would be, for example, to make the existence of regional and local radio and television broadcasting bodies conditional on their having a surplus, i.e., on their not being a cost to the public coffers, or on the autonomous community, town or city council having a surplus and using part of it to pay for its own media. This would almost certainly lead to the disappearance of all of them.

It is obvious that this type of solution will not come from the home soil, so only a solution imposed in the European context is possible. The EU must be more demanding with certain States and their accounts, controlling budgets in terms of superfluous, unnecessary, ideological spending, or spending that serves to promote clientelism and/or turn political parties into employment agencies, maintain the system, etc., making Community funds conditional on certain rules – increasingly strict – in relation to public spending, otherwise, its budgetary balance will not be achieved (Antuñano and Fuentes, 2015: 85–114; Tamames and Rueda, 2008: 759–765).

The same could be said of trade unions and employers' organizations: they should not receive public subsidies, otherwise they would be granting a charter to groups that end up as instruments in the hands of political power (Catalá, 2013: 74). Institutional mechanisms of this kind, financed with public money, make the Iron Law of the oligarchies more effective, to the clear detriment of the general interest and, of course, against true democratic principles.

The endemic problems of an EU member state should be tackled from within, but we must ask ourselves whether, if they are not solved of their own accord, the EU should not intervene to demand higher democratic standards and better integration into the EU's financial and budgetary design. Article 126 of the Treaty on the Functioning of the European Union seeks to avoid excessive indebtedness but does not allow intervention in expenditure chapters.

A problem that affects Poland and Spain, among other countries, is the desire for control of the judiciary. Western parliamentarism, at least in the case of Spain, is in trouble in that it is not the legislative chambers that control the executive power, but the other way around: the political leader who governs the state rules his party and the deputies and senators do what they are ordered to do. The people's representatives neither represent the people nor defend their interests,

which are the general interests; they are much more attentive to their political future, obedient to their superiors, and the only thing the government needs to do is to achieve the maximum possible control by controlling the judiciary.

In the Spanish case, the issue is unavoidably serious. There have been several mechanisms to control the judiciary: on the one hand, the appointment of the State Attorney General, a person trusted by the President who will accuse, investigate…, or not, depending on party interests. On the other, the control of the General Council of the Judiciary and the two highest courts of the State: the Supreme Court and the Constitutional Court. Whenever the members of the latter or the members of the General Council of the Judiciary must be appointed, the two major parties in Spain are in real conflict, and only a distribution of quotas can make a possible agreement viable, but this in no way detracts from the idea of control exercised by the former in the main judicial bodies. Access to the judiciary by the third and fourth rounds is another mechanism for the politicization of the judiciary. Over time, a national party can have a strong hold on the third branch of government.

The fourth power is also very easily controlled. Not only through public television and radio stations, whether state, regional or local, but also through subsidies to the private media, the contracting of advertising, the granting of broadcasting licenses, etc., which depend on the decisions taken by the public authorities. All these measures produce a perverse effect in relation to the minimum standards of democratic quality. It is not that Spain lacks people of great political and moral stature; it is that it is impossible for them to enter politics because they have no place in the structures of either the parties or the State itself. It is enough to look at the general failure of all political leaders in the opinion polls and demoscopic evaluations that are carried out from time to time, with no active politician obtaining more than a 5.

This section can be concluded with two very clear conclusions: the Spanish case cannot be described, strictly speaking, as a "Democracy" since it is a full-fledged "Partitocracy" (Catalá, 2013: 73). The second is as serious as the first one: the Budget Laws and the mechanisms for financing political parties, trade unions, the media, associations, NGOs, etc., conceal a perverse mechanism of political ideologization, clientelism and waste incompatible with the minimum standards of an advanced democracy.

My opinion still is that the vices of the Spanish political/legal/economic/financial system cannot be tackled if it is not from the EU. Hence, the importance of controlling the State budgets (and those of the Autonomous Communities) preventing public waste because, in addition to all that has been said, official cars must be added, advisors, bodyguards, duplication and overlapping of functions and tasks, hypertrophy of public administrations and their inefficiency, lack of

effective control mechanisms and lack of political, legal and economic accountability of public servants.

The classic concept of "national sovereignty", which is clearly outdated and which has served, in its negative side, to feed all the vices of the State, must give way to the need to build a cohesive common space in which there are – in addition to the existing ones – three stable areas of common European action: educational (at all levels), budgetary (which implies fiscal and financial) and, finally, what refers to minimum democratic standards and implies a proper separation of powers and, therefore, an autonomous judiciary and a State Attorney General elected from among the public prosecutors (i.e. what is appropriate in a true democracy).

The European Higher Education Area, with all its shortcomings, has served to further the idea of the "common home", but it has lacked the most important, the most basic thing: to do the same with the two previous stages of education, primary and secondary. In these, the parties constantly project their ideology to shape consciences more or less in line with their partisan approaches. It is necessary to intervene in the unpresentable, ephemeral, and tendentious Spanish educational model, and this will only be possible – in the absence of a State Pact that will never come about in this area – from the Community bodies: imposing minimum standards of quality and operation, subject to supervision and control. This competence, that of education, transferred to the Autonomous Communities, has given rise to one of the great "cancers" of the Spanish system, subjected to constant harassment from the undue ideologization of the majority political formations, regionalists, separatists, etc. (Catalá, 2013: 75).

The Spanish case is a magnificent "test bed" of democratic shortcomings. Another example that highlights the perversity of our political system can be also presented.

In my country there is talk of "rich Spain" and "poor Spain". Curiously, after more than forty years of "democratic" experience, the poor provinces, counties, and regions are increasingly depopulated, with poorer communications and lower per capita income. In contrast, the rich regions are becoming more so in proportion and weight. The reason for this lies in the democratic game which, as was pointed out, is perverse.

What politicians do is to finance the regions according to their population (among other criteria), which generates less funding for the less populated regions. However, as the less populated regions have less political weight, i.e. they elect fewer members of parliament, they receive fewer budgets because at both state and regional level, the different governments make wealth-generating investments in the richest regions and provinces. This means that, through the funding mechanism and the freedom that each autonomous region has to determine its own public spending, the perverse effect of the progressive impoverishment of the

poorest areas is produced, given that they have less political clout. Each legislature is, in this sense, worse than the previous one for the depressed areas.

The European Regional Development Fund could not achieve its goals as long as there exists so much impact of political ideology on the economy[4].

This perversion is magnified by other mechanisms. One of them is, for example, the capture of ERDF funds and other items intended precisely to combat depopulation, isolation, lack of infrastructures and services, lack of opportunities, etc. . These funds are captured and managed by the Autonomous Communities, which oversee distributing them according to their own criteria: to continue improving the richer provinces to the detriment of the poorer ones. In this way, a double objective is achieved: on the one hand, the vote of those who benefit from these aid and investment packages (which are the most numerous populations) is guaranteed, on the other hand, the poverty of the poorest and most depopulated areas is maintained and increased, which provides standards of destitution that justify more money from the State and the European Union, to continue doing the same thing year after year, legislature after legislature. In this way, it is not complied with the Community policy of economic, social and territorial cohesion (Fernandez, in: Linde, 2006: 656–673; Buitrago, 2013: 335–381).

Recently, mechanisms are being adopted, precisely from the EU, which are intended to target the most depopulated areas; this is very plausible, but if the money is administered by the Autonomous Communities, the problem will persist. These funds should go directly to the comarcas, not even to the provinces. The reason is the following: the provinces are political bodies of indirect representation, governed in practically all the territory by the PP or the PSOE, which are the big national parties. To give them more economic power is to give them more political power, that is, to put more resources in the hands of those who are responsible for the country's structural ills. The equality of all Spaniards is, of course, broken. The principle of economic and social cohesion is thus broken because local development is not taken into account (Tamames and Rueda, 2008: 660–661).

For reasons of material justice, for reasons of immediacy and efficiency, the regions should be the ones to receive national and Community resources to address their development; the ones that have a direct link with the European Institutions, the ones that can put forward their needs. If this were done and done well, Europe could be a much more dignified, balanced, and fairer area, and more effective responses could be given to problems such as ageing populations, immigration, social cohesion and development.

Another problem in which my country is recreating itself is that of the Spain of inequalities. Certain statutes of autonomy, such as the Basque one, generate

[4] About this subject, Punzón (2009: 82–90); Sáez (1999: 279–285).

a privileged financial and tax framework for the citizens and for the prevailing regional party (Catalá, 2013: 73–74). The latter sells its votes in the national parliament-especially in situations of simple majorities, which are becoming more and more frequent – in exchange for financial and tax privileges. In doing so, it gains more power, more popular support and greater gross and net wealth. The circle is vicious, progressively generating a "Spain of Inequality" with very different speeds and legislative, budgetary, and fiscal frameworks that have nothing to do with the fundamental right to equality of all Spaniards proclaimed in the Constitution[5].

The same is true of the tax burden and salaries. Regarding the former, there are very different tax burdens in different regions. The most obvious example is an inheritance tax, which is extremely heavy in some regions and almost non-existent in others[6]. As for the second, we can see that a specialist doctor working in the public health service can receive much higher salaries if he/she works in regions such as Navarre than when he /she works in others such as Madrid. It happens despite the fact that the category, level, duties, responsibility, etc., are the same, simply because the regions have budgetary freedom and can reward their civil servants with bonuses that other regions do not establish. If this were the case without generating a public budget deficit, it would be an injustice in every sense of the word, as it violates the most elementary rights and principles of the Constitution; but if it also generates a budget deficit, then the result could not be more perverse. Once again, the Iron Law: things are done to guarantee the vote of the citizens who benefit from it.

Spain's anomalies in these fundamental aspects affecting its budgetary and taxation model can only be tackled from outside, i.e., by the European Union, which must create a framework that is incompatible with the perverse system that currently exists in Spain.

2. TAX AND FINANCIAL REGIME OF THE CATHOLIC CHURCH AND OTHER CONFESSIONS

This paper is finished by making some references to the legal and financial regime enjoyed by the Catholic Church in Spain, on the one hand, and the other churches and creeds recognized as such by the State, on the other (González Del Valle and Ibán, 2002; Motilla, 2008: 14–49).

The Catholic Church is financed mainly through three different mechanisms (apart from its own resources). These are the following:

1. direct financing – the Catholic Church receives a percentage of personal income tax from the State on a voluntary basis. It works in such a way that

[5] On this matter see Rodríguez (1995: 223–363).

[6] E. g. inheritance tax.

taxpayers who wish to do so, by indicating it on the self-declaration form, contribute to the support of the Spanish Catholic Church with a percentage of their tax, which currently amounts to 0.7% of the total.

It is the only church that enjoys this privilege, which gives it an annual income of around 300 million euros, thanks to the support of almost 7.2 million taxpayers (approximately one third of the population). Its origin comes from the major confiscations of real estate that the Catholic Church suffered, especially in the 19th century, as well as from the State's monopoly on tax collection (remember that the Church could collect tithes, first fruits and other taxes directly from the faithful). Having mentioned that, there is no reason not to establish this mechanism to help other religious denominations that have signed agreements with the state;

2. indirect financing, through tax exemptions from different taxes such as Real Estate Tax (local), Property Transfer Tax (regional), Tax on Economic Activities (state), Gift and Inheritance Tax (regional), the Tax on Works (municipal), etc. This regime applies, in general, to other religious denominations and non-profit organizations if they do not engage in business, professional, commercial, or otherwise remunerated activities;

3. tax relief for individuals and companies making contributions to religious groups. Like the second method, the third one affects all Churches and denominations recognized as such by the State through their registration in the Register of Religious Entities. This tax incentive promotes aid to all types of entities, including NGOs, which represents a very interesting – and important – contribution to the maintenance of social services, the integration of the most disadvantaged people and groups, which contributes, in short, in a very effective way to the achievement of public order and social peace (Rojo, 2019: 207–237).

The fiscal and financial regime enjoyed by the Catholic Church and, in general, by other religious entities and non-profit associations in particular, is a powerful mechanism that has an extraordinary impact on the welfare of the most disadvantaged people living in Spain (Rodrígues, 2012: 183–219)[7].

The network of Diocesan Caritas and parish Caritas is extremely important in Spain, but Protestant institutions are increasingly present, for example those dedicated to the care of the elderly, the reintegration of drug addicts and alcoholics, etc. This dense network of institutions makes an essential contribution to achieving the aims pursued by the social state and, in this sense, it can be affirmed that the Spanish model of church-state and state-religious confession relations is one of the best on the planet and one of the most fruitful in the search for the common good. Immigrants, ex-prisoners, prostitutes, the poor, the separated, the homeless, drug addicts, the long-term unemployed, who are often

[7] On this subject see Motilla and Catalá (2012: 201–225).

excluded from state aid – since the state lacks the huge network of centers through which religious denominations operate – benefit daily from the aid they receive from denominational and non-denominational bodies. Moreover, the former is subject to stricter rules of control of public spending, with much more bureaucratized structures, so that the needy find in the Catholic Church and in other ecclesiastical entities, NGOs, etc., much more effective areas of protection than those offered by public institutions.

Therefore, even though the first two parts of this contribution have been dominated by a critical spirit, it must be admitted that the quality standards of the social system, of the so-called welfare state since the 1978 Constitution, have reached very high levels.

However, apart from the direct and indirect funding mechanisms that religious entities can enjoy, two of their most genuine dimensions are no less important. One of these is e.g., their participation in the provision of public services. The Catholic Church offers a network of schools and institutes of education at all pre-university levels, which, by means of agreements with the corresponding Autonomous Communities, under very favorable economic conditions for the public administration, contribute directly and positively to the education of the new generations. The same is true of the Church's universities, even if, since they are not compulsory education, they are paid for with their own resources, and in other broader areas such as health care, care for the elderly, etc.

The Spanish case is, moreover, very special, as it has a historical and artistic heritage of such magnitude that it ranks between second and third in the world. An important part of this heritage is, precisely, in the hands of the Catholic Church, which, by preserving it and making it available to society, contributes enormously to the overall development of the nation, generating resources for the State and the private sector (hotels, gastronomy, travel agencies, commerce).

But it is not only its immovable and movable heritage (books, libraries, carvings, altarpieces, gold and silver work, etc.), which are counted in enormous quantities, but also the important artistic and cultural activities that take place throughout the territory (examples of this are the Camino de Santiago and the Rocío) or the fabulous event of Holy Week. Its importance, its beauty, its depth, is of such magnitude that every year it attracts millions of foreign tourists who come to visit us, thus contributing to increasing the wealth and income of the most diverse economic sectors.

It is not easy to calculate the very important savings for the State of the thousands and thousands of teaching places in Catholic schools and colleges throughout the peninsula and the islands, whose desks would be much more expensive if they were in public centers, in turn installed in their own buildings, which are costly to maintain. It is more difficult to calculate the wealth and income that certain religious phenomena and festivals generate, as well as the good that in

absolute terms is provided to society by the network of asylums, nurseries, psychiatric hospitals, care, and help centers for the needy... which both the Catholic Church and other religious organizations provide[8]. Both the Catholic Church and other confessional – and non-confessional – entities provide a lot to society, but it can be affirmed that the Church gives much more than it receives. In other words, the contributions that the State makes to the Catholic Church – and what it stops receiving from it and from other confessional and non-confessional organizations, but which are non-profit-making and clearly socially oriented – is infinitely less than the return it obtains for the services they provide to the general interest (in this same line, the work of Rodrigues Araújo, 2012: 221–226).

CONCLUSIONS

Democracy as a system of government is perhaps the model that has borne the greatest and best fruits to countries throughout history; however, like all human endeavors, it needs to be nurtured, monitored, improved and audited. Political parties play a leading role in it, and it is precisely the excessive weight they have in public affairs, the use and abuse of power, as well as the management of the extraordinarily high public budgets, that are the aspects most important for the jurist to bear in mind.

In the design of democratic models, the balance of the three branches of government plays an important role, on the one hand, and on the other, the social model and, in the latter, the financing model, insofar as it compromises the welfare state, but also growth, the purchasing power of citizens and full employment.

All authors agree to establish budgetary balancing mechanisms (Viñas et al., 2016: 196–200; Banco De España, 2005: 218–227), tax harmonization (Galindo and Fernández, 2006: 97–115), control public spending (García in: Velarde, 2011: 223–241), as well as fiscal (Antón and Diáz-Giménez in: Bentolila, et al., 2010: 501–512) and budgetary balance, taking into account that the budgetary imbalance affects the euro area (García and Ruesga, 2014: 322–323).

The sustainability of the Spanish system affects the Community system, i.e. all the member countries of the Union. Hence, in the absence of internal control, the Community institutions should oblige Spain and other countries in similar conditions to adopt specific measures to control public spending, fiscal and financial policies, but also effective mechanisms to control political power and to abide by rules of action that prevent the imbalance of the European area, the interference of non-EU countries or ideologies or any other aspect that could jeopardize the future of the Union.

[8] It is estimated that the Catholic Church saves the State 30.000 million euros per year.

Some of the aspects addressed and referred to Spain, *mutatis mutandis*, can be extended to Poland, Italy, Greece, Hungary, and other countries, perhaps prone to endemic problems resulting from a certain democratic immaturity.

In this context, the legal and fiscal treatment of religious denominations and their role in society as social agents that contribute to the common good and social peace, the ultimate and primordial goals of any self-respecting system, takes on a singular importance – often silenced or overlooked (García, 2008: 10–12; Martín, 2004: 54–56).

As it has been presented, the scarce resources allocated to religious denominations generate enormous benefits for society. On the other hand, the great resources that are destined to public communication media are a perfect example of the opposite: waste of resources, politicization, ideologization.

Spain is an example of perfect Partitocracy, which contrasts with a true rule of law. The problem is that the two large political parties – and other smaller ones that constantly benefit from the system, such as the regional, separatist and even anti-Spanish parties – are the great beneficiaries, hence the model is not questioned at all and from within existing.

Throughout its history, Spain has suffered numerous periods of great expansion and development, but also many others of clear and progressive decline. History demonstrates the need for mechanisms to limit political power (separation of powers and effective control of the judiciary).

Any country of the European Union can go into frank regression in the political economic and social spheres; the EU itself may go into decline if does not maintain some control over the States to guarantee the proper functioning of its institutions.

The only hope that remains for the citizens is that the European Union exercises controls of constitutional legality – such as the one that affects the separation of powers, and of the configuration of the budgets of the State and the Autonomous Communities (including the control of spending public), establishing corrective measures for the constant partisan political excesses. If effective measures are not adopted – and not taking long – there is danger, not only for my country, but even for the future of the Union itself.

Ortega was right when he said, more than a century ago, that “Spain is the problem, Europe the solution”.

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