Subject scope of taxation in personal income
taxation in European Union member states

Problemy harmonizacji opodatkowania opodatkowania
dochodów osób fizycznych u krajach UE

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Summary
The European Union states use two main types of income taxes: scheduler tax (on partial incomes) and global tax (on global incomes). The advantage of income taxes based on scheduler model is effective adjustment of taxation method and tax rates to the specificity of particular sources of revenue.

Keywords: subject scope of taxation, global income tax, scheduler tax, join taxation

Streszczenie
Konstrukcja podatku dochodowego od osób fizycznych w krajach Unii Europejskiej opiera się na trzech zasadach: powszechności, równości (sprawiedliwości) oraz opodatkowania tzw. czystego dochodu. Zasada powszechności może być ujmowana w aspekcie podmiotowym i przedmiotowym. W ujęciu podmiotowym oznacza, iż podatek ten powinien objąć wszystkie osoby uzyskujące dochód na obszarze obowiązywania podatku.

Słowa kluczowe: przedmiot opodatkowania, globalny podatek, unitarny podatek, wspólne opodatkowanie
Introduction

The European Union states use two main types of income taxes: scheduler tax (on partial incomes) and global tax (on global incomes). The advantage of income taxes based on scheduler model is effective adjustment of taxation method and tax rates to the specificity of particular sources of revenue. Income that is taxes separately may then be combined and taxed again as global income. In this case we have double taxation of the same income. Usually this construction uses milder taxation of incomes from employment than from capital gains.

Global type of income tax

Using the scheduler taxation the lawmakers usually achieve gradual burden on various sources of income and implement principles of equitable taxation. The drawback of this method is that it does not reflect the whole economic and personal situation of a taxpayer\(^1\). It is not possible to personalize scheduler taxes by using various deductions on particular family-related burden on the taxpayer.

German tax practice developed a global type of income tax. It covered global (joint) income of an individual, regardless of its source. Joint taxation of all incomes obtained by a taxpayer allows to take into account their subjective payment capacities resulting from a specific material and family situation. The system of global tax does not know the phenomenon of preliminary taxation of incomes from particular sources. The tax base is the so-called pure income\(^2\). It is believed that global tax reflects the taxpayer's payment capacity in the best way, including their family status. Global taxation of the taxpayer's income allows to implement the constitutional principle of taxation equity by using the subsistence minimum in its structure, using various social reliefs or differentiating tax burden with tax scale, in line with obtained incomes.

Taking into account the presented features of scheduler tax, tax systems of EU states use either a form of global tax or a mixed form, in which, apart from a flat scheduler tax (on capital gains, for instance), there is additional global tax, progressively taxing the sum of taxpayer's incomes. The combination consisting in using both global and scheduler tax allows us to combine both taxation techniques and preserve both differentiation and personalization and progression of the tax.

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\(^1\) For example France in 1914-1917 schedular taxes on partial incomes were combined with progressive tax on global income, imposed in 1914. In Great Britain income tax covers six schedules divided into 16 categories and assessed with various techniques, which make up a single income tax to which they add progressive surtax on the part of income which exceeds the minimum determined in acts of law.

\(^2\) Global tax was first introduced by Prussia, then Austria. General income tax was used in Germany, its forerunner was *Einkommensteuer*. 
Tax systems in the European union states evolve towards adjusting the way of taxing income in Latin countries (scheduler system) to the way of taxing income in Anglo-Saxon countries (global income system). Total income is determined by indicating taxable sources of revenues.

**Tax principles**

Taxation of personal incomes in the European union countries is based on five fundamental tax principles:

- **subject universality** – it means that tax should cover all people obtaining income in the taxed area. This means exclusion of subject exemptions, except for cases justified by international law or customs (such as exemptions of diplomatic and consular staff respecting the principle of mutuality);

- **object universality** – it is expressed in taxation of joint income of an individual (global tax), not incomes from some sources of revenue (scheduler tax). Consistent application of this rule does not allow separate taxation of some incomes or using separate tax scales of rates. It allows deduction of incurred losses from one source of revenue from other incomes;

- **principle of equality (equity)** – states that all taxpayers obtaining the same income are treated equally, regardless of their source of revenue. This principle is often expressed as the principle of the so-called tax equity, postulating exempting people with the lowest incomes from taxation, leaving tax-free subsistence minimum, using social and family preferences, differentiation of tax burden adequately to payment capacity by applying tax progression;

- **taxation of “pure income” in object perspective** – this means taxation of only the income that is at the taxpayer’s disposal, after deducting expenses made in order to obtain revenue (decreased by the so-called costs of obtaining revenue);

- **taxation of “pure income” in subject perspective** – connected with leaving some tax-free amount (subsistence minimum) for taxpayers in order to satisfy their basic individual and family needs. Non-compliance with this rule would necessitate returning the taxes collected by public authorities in form of various social allowances.

**Subjectivity of personal income tax**

Subjectivity of personal income tax is based on the so-called principle of residence, which takes into account the individual’s residence address. It postulates that taxation should cover all incomes, regardless of the place where they were obtained, in the state in which the taxpayer has its registered seat or place of resi-

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3 Tax as obligatory performance is unfair in its nature, as each obligation limits human freedom. Therefore the word equity should be used, in my opinion, as a specific metaphor.
Dence. Possible conflicts of tax jurisdictions should be solved by reference to the taxpayer’s residence. From this perspective tax legislation in the EU countries is characterized by unlimited tax obligation, placed on individuals whose residence is in a particular EU country or who stay in the member state for longer than 183 days in a given tax year (with reference to corporations this means their registered seat or board). Unlimited tax obligation is when the taxation subject has to pay tax on all its incomes, regardless of their source. This obligation covers both home and foreign sources of income. Unlimited tax obligation does not concern people who are employed by various foreign companies and enterprises operating in a particular country. It does not cover people enjoying diplomatic and consular privileges and immunities, staff of multinational and transnational organizations.

In Polish tax system till the end of 2002 unlimited tax obligation consisted in taxing all incomes of a taxpayer regardless of the location of revenue sources. This obligation related to people with place of residence in Poland and people whose temporary stay in Poland in a given tax year exceeded 183 days. Unlimited obligation covered both incomes from home revenue sources and foreign sources (following the principle of residence).

Amendment of the Act on Personal Income Tax introduced serious changes since 1st January 2003, according to which unlimited tax obligation on all their incomes was imposed on individuals whose place of residence is in Poland. The-

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5 On the basis of Vienna Convention on Diplomatic Relations from 18th April 1961 (Journal of Laws from 1995, No 37, item 22 – attachment) and Convention on Consular Relations from 24th April 1963 (Journal of Laws from 1982, No 13, item 98 – attachment) and bilateral international agreements, staff of diplomatic and consular posts and other posts using immunities and diplomatic and consular privileges are exempted from paying taxes, even on incomes obtained in Poland.

6 Articles 3 and 4 of the Act of 26th July 1991 on personal income tax (Journal of Laws from 2000, No 14, item 176, as amended).

7 Article 3 paragraph 1 of the Act of 27th July 2002 on changing the Act on personal income tax and other acts (Journal of Laws, No 141, item 1182).
Therefore, in view of this regulation, whether we have unlimited tax obligation is determined exclusively by the taxpayer’s place of residence\(^8\).

The principle of source states that taxation should be imposed on each income obtained in the country. So it is not the taxpayer’s residence but the place where income was generated that matters. The principle of source can be used with reference to taxation of real estate, taxed only in the country where it is located. The principle of source is also related to the so-called limited tax obligation. It takes place when the tax entity is obliged to pay tax only on incomes obtained in a given EU state, according to the criteria of place of residence or permanent stay. The principle states that personal income taxpayers can only be individuals who do not have their place of residence in any particular EU country, but who obtain income in its territory.

In Polish legal system, individuals who do not have place of residence in Poland are subject to limited tax obligation\(^9\). Such people are subject to tax obligations only on incomes obtained in the territory of Poland from labor or employment relationship, regardless of the place where remuneration is paid out, and other income obtained in Poland. In view of the regulations of the Act on PIT,

\(^8\) Both in the content of the Act on personal income tax and in the Act on Tax Ordinance, the place of residence of an individual does not have its legal definition. In view of this we need to use provisions of Articles 25-28 of the Civil Code (CC) and the Act on Census. According to Article 25 CC, the place of residence of an individual is a place where this person lives with the intention of permanent stay. As we can see, the place of residence is a particular place (city, village), not an address. It should be emphasized that according to CC, the place of residence is determined by two factors: external (actual stay) and internal (intention to stay), which appear and exist jointly. The condition of staying in a particular place is objective, as it is easy to prove that a person is staying in a particular place. A break in actual staying, even a long one (related to studies, military service, etc.), does not deprive a person of the place of residence if it is not accompanied by an intention. While the first condition (staying) is not easy to determine, the other one (intention of permanent stay) is much more difficult. We can assume that staying with an intention of permanent stay in a particular place is subjective and results from the person’s will (intention). In this case it is enough for this intention to result from the behavior of a person, consisting in focusing their life activity in a particular place, which becomes a center of one’s life activities (a place of work, a house, a family and staying with a spouse in the same place). If these conditions are met, an average observer concludes that a particular place is the main center of an individual’s activity. It is assumed that for establishing a new or losing the current place of residence, both conditions require changing, namely a person will break actual contacts with the place and will show appropriate intentions. Both moments must appear jointly. The place of residence, as understood by Article 25 CC, should be distinguished from the place of registration for permanent stay, as understood by regulations on census and IDs. The place of residence is determined by actual premises, while registration consists in performing some defined formal activities. Thus registration in a given place, under given address does not determine the place of residence, but makes it highly probable that a person registered in a particular place will also have a place of residence there. In reality, we may have a situation where an individual is registered in a particular place, but this fact is not reflected in their actual stay in this place with intention of permanent stay.

\(^9\) Article 3 paragraph 2a of the Act on personal income tax.
when assessing whether we have limited or unlimited tax obligation, we should take into account agreements on avoiding double taxation which Poland signed as a party\textsuperscript{10}. Detailed principles regulating unlimited and limited tax obligation are regulated in acts on taxes passed by particular member states\textsuperscript{11}.

Methods of preventing double taxation in the area of personal income taxation

The development of international relations causes a phenomenon consisting in the fact that a person with a place of residence or registered seat in one country, obtains income from revenue sources located abroad. Generally, each state wants to tax all incomes obtained by a person with place of residence or registered seat in its territory, regardless of the location of revenue sources, as well as incomes from sources located in its territory, regardless of the place of residence or registered seat of a person obtaining them. As a result, we could have a phenomenon of double taxation of the same income. To avoid this unfavorable event, countries conclude agreements on avoidance of double taxation. Both people with unlimited and limited tax obligation may experience double taxation of income, namely in a country in which their revenue sources are located. Thus in international tax law (and especially in bilateral agreements on avoiding double taxation), the so-called methods of avoiding double taxation are of special importance. They are based on two principles, that is the principle of residence and the principle of source. As not all types of income are taxed on the basis of one of these principles, in the remaining scope the so-called methods of avoiding double taxation are used. International agreements on avoiding double taxation are subject to ratification, in accordance with regulations binding the states – parties to those agreements. These agreements are given priority over the act in case of potential clash between provisions of the act and provisions of the agreement.

Agreements do not violate tax privileges that diplomatic or consular staff are entitled to on the basis of general principles of international law or provisions of particular agreements. Polish legislation, like in other EU countries, exempts from income tax the income obtained abroad by diplomatic and consular staff and by other people enjoying diplomatic and consular privileges and immunities on the basis of international agreements or commonly acknowledged customs, as well as members of their families who make up households with them.

The amount of income obtained abroad definitely influences the amount of tax paid in Poland. Double taxation is prevented on the basis of international agreements Poland is party to, and if there are no such agreements, these matters are

\textsuperscript{10} See Article 4a of the Act on personal income tax.

regulated by legislation determining income taxes paid by individuals. The following methods of avoiding double taxation have been developed:

1. Method of unlimited exclusion (full exclusion).
2. Method of exclusion with progression (tax exemption).

1. **Tax on estimated income.**

   Method of unlimited exclusion (full exclusion) means that the state of taxpayer’s registered seat exempts from tax the income which, in line with an international agreement, may be taxed in the source state. As a result, incomes generated in another country are excluded from taxation in the country of the taxpayer’s registered seat.

   Method of exclusion with progression (tax exemption) assumes that incomes excluded from taxation in the state of registered seat are accumulated with incomes subject to taxation in this country in order to determine tax rate on these incomes. For determining the rate of due tax on income obtained in the country in which there is the place of residence or registered seat, we use the relevant rate for the whole income, that is jointly with income obtained in another country.

   In Polish tax law, procedures regarding this are regulated by Article 27 paragraph 5 of the Act on personal income tax, according to which we should take the following steps:

   - add income exempted from tax to taxed income and calculate due tax from the sum, using the scale,
   - percentage rate of this tax is established,
   - determined percentage rate is applied to taxed income.

   If the Polish taxpayer obtains income abroad that cannot be exempted from tax in Poland, we can apply the method of tax credit (deducting tax paid abroad). Such legal regulations take place when the agreement on avoiding double taxation does not release particular income from tax in a given state and at the same time this income is subject to taxation at the source state. This method consists in combining income from sources abroad with income obtained at home. Due tax is calculated on total sum of income and then we deduct the amount of tax already paid in another country from it. This deduction, though, cannot exceed the part of calculated tax before deduction which proportionally relates to the income obtained in another country. In Polish law article 27 paragraph 6 of the act on personal income tax regulates this as well as article 20 of the act on corporate income tax.

   The above methods can be applied to tax incomes of taxpayers who are subject to unlimited tax obligation in Poland. The entities that are subject to limited tax obligation according to tax acts are only obliged to pay in Poland only tax on in-
come obtained in our country. Similar solutions are used by all the other member states of the Community.

With tax on estimated income, the income from foreign sources is taxed at the source state and the state in which the taxpayer’s place of residence and/or registered seats are. Decreasing taxation level, the state of the place of residence (registered seat) burdens taxpayer’s incomes with tax on estimated income (preferential rates).

Bilateral agreements on avoiding double taxation use the above methods. Different methods are often used with reference to various types of income obtained in another country. Therefore each individual case should be thoroughly examined on the basis of provisions of a relevant international agreement.

The OECD Convention model

From the subject perspective, the model of OECD convention can be applied to persons whose residence or registered seat is in either of agreeing states. By persons we understand:

- an individual with citizenship of an agreeing state,
- a legal person, personal partnership, association established on the basis of legislation of the agreeing state.

The OECD Convention model and international agreements based on it and signed by Poland concerning (a) some types in income obtained in another country, stipulates that such income is subject to taxation only in the state of the taxpayer’s residence or registered seat. In this case double taxation does not take place. When establishing the taxpayer’s residence or registered seat, internal law of a particular country prevails. The conventions and international agreements indicate some collision rules that allow to grant the status of an individual and a legal person in a situation when such persons are considered residents in both agreeing countries at the same time.

In case of individuals collision rules may concern the following situations:

- an individual has a place of residence in the country in which they have the permanent place of residence;
- if an individual has permanent place of residence in both agreeing countries, the location of their life interests center is of vital importance;
- if we cannot decide where an individual’s center of life interests is located or when an individual does not have place of residence in any agreeing state, for tax purposes we choose the place in which such person usually stays;
- if an individual does not stay in any agreeing state or stays in both of them, their citizenship determines this for tax purposes;
- If we cannot apply any of these four principles, the place of an individual’s residence is established by both parties – states in mutual agreement.
With reference to legal persons we adopt two collision rules:

- if a legal person has its registered seat in both agreeing states, it is assumed that it has the seat in the country in which its actual board resides (place of taking most current decisions concerning management);
- if the actual place of the board residence cannot be established, the governments of agreeing countries establish this together.

With reference to remaining income in the country of residence or registered seat, agreements stipulate:

1. Method of tax exemption (exclusion with progression), applied to personal incomes, as corporations pay their income tax according to a flat rate (without progression), or;
2. Method of tax credit (method of deducting tax paid abroad), in higher amount than tax corresponding proportionally to income obtained abroad.
3. Method of proportional deduction, where deduction in home country cannot exceed this part of tax that falls proportionally on income obtained in a foreign country.

The method of tax credit can be used when agreements allow possibility of taxing a given income in both countries, that is in the country in which income is generated and in the country with the place of residence or registered seat of a person obtaining this income. We should remember that agreements usually contain a regulation that a given income “may” be taxed in a given state, which does not mean giving the freedom to choose in which country the income will be taxed. It means that the other country has the right to tax such income if, according to its legislation, such income is taxable.

In a situation when an agreement stipulates taxation of income in the location of revenue sources, namely abroad, and application of the method of tax exemption (exclusion with progression), such income is exempted from taxation in Poland (or another EU country), but when taxing individuals who obtain other incomes in Poland, relevant regulations of tax legislation of a given country are used, adjusted to the method of exclusion with progression\(^\text{12}\). This means that we combine the income from revenue sources abroad and income obtained in Poland (another EU country).

Agreements using method of tax exemption (exclusion with progression), with reference to some incomes state that a given income is subject to taxation only in one country. It is usually the country of the taxpayer’s residence or registered seat. This concerns incomes from international transport, retirement pensions and from other sources listed there.

Method of proportional deduction of tax consist in the fact that we add income obtained abroad to income obtained in Poland (or another EU country) and

\(^{12}\) See Article 27 paragraph 5 of the Act on personal income tax.
calculate income tax on the total amount of income, using the tax scale valid in Poland (or another EU country). Then we deduct the amount of tax paid abroad from the tax calculated in this way. The method is used in taxation of individuals when there is no agreement with a given state and the principle of mutuality does not apply\(^\text{13}\).

The obligation of declaring foreign incomes in Poland relates to cases when income obtained from revenue source abroad, in accordance with an agreement made with this state:
- is subject to taxation only in the state which is the place of residence, as in case of retirement and disability pensions, or
- is subject to taxation in this state and the agreement stipulates avoidance of double taxation using the method of exclusion with progression, but the taxpayer also obtains income from revenue sources located in Poland;
- is subject to taxation in this country, but the agreement stipulates avoidance of double taxation using the method of proportional deduction of tax paid abroad. Therefore such income is not subject to exemption in Poland both in case it is the only income of a taxpayer and when the taxpayer has other sources of income in Poland. The tax paid abroad is deducted from tax due in Poland.

**Conclusion**

The convention and agreements on avoidance of double taxation indicate principles of taxing incomes, taking into account their sources. Such principles are to eliminate double taxation in international relations. They boil down to the following rules:
- property incomes can be taxed only in the country in which property is located;
- company profits are subject to taxation in one agreeing state. When an enterprise from one agreeing state conducts its activities on the territory of the other state through the branch located there, profits of this branch can be taxed in the state in which it is located;
- dividend may be taxed simultaneously in the country in which its receiver has their residence or registered seat and in the country in which the company paying it has its registered seat;
- interests may be taxed both in the country of residence or registered seat of interest beneficiary or in the country in which interests are generated;
- license fees originating in one state and receivable by a person whose residence or registered seat is in the other state can be taxed only in the other state;
- capital gains obtained by a person with residence or registered seat in one state and coming from transfer of ownership of immovable property located in the other state, can be taxed in the other state;

\(^{13}\) According to Article 27 paragraph 6 of the Act on personal income tax.
capital gains from transferring ownership of movable assets being part of company assets, which the company from one state owns in the other state, as well as gains from transferring ownership of movable assets belonging to permanent contribution which the person residing in one state has at its disposal in the other state in order to perform a liberal profession, are subject to taxation in the other country;

- capital gains from ownership of other than movable and immovable property, we take into account the country in which the person transferring property has place of residence or registered seat;
- income from hired labor and liberal professions, obtained by a person whose residence or registered seat in one agreeing state can be taxed only in this state;
- taxation of immovable property belonging to a person whose residence or registered seat is in the agreeing state and located in the other state – it is assumed that tax is collected by the state in which property is located;
- movable property being part of the branch possessed by an enterprise from an agreeing state in the other agreeing state can be taxed in the other state.

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