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TRANSFORMATION OF THE POLISH TAXATION SYSTEM IN THE YEARS 1989-1999¹

The present taxation system started to evolve even as far back as the early 80s, but its development has accelerated since 1991 as a result of the process of adapting to the demands of the free market and the conditions imposed by the new form of government. The necessity of change resulted from the anachronicity and inadequacy of the old system in a modern free market.² The basic elements of the current taxation system were either completely overhauled or greatly transformed in the years 1990-1994. The Polish taxation system was extensively changed, in order to adapt it to the demands of the free market, as well as the ideas of modern taxation theory.³ Hundreds of years of experience in the field of taxation, especially the experience gained by highly-developed countries was used to reform the taxation system. The following ideas should be treated as major elements, on which the taxation reforms have been based:⁴

- maintaining central control over taxation;
- basing government income on a few major types of taxation;

¹ This article is a corrected version of a longer article entitled *Podstawy wiedzy o podatkach i polskim systemie podatkowym*, Opole, 1999.

² P. Owsiak calls this process 'gentle taxation revolution' (łagodna rewolucja podatkowa), see: *Ibid.*, p. 318.

³ See: Wierzba, R., "Proces zbliżania polskiego systemu podatkowego do systemów podatkowych wspólnoty europejskiej", [in:] *Polityka pieniężna i fiskalna w procesie urynkowienia gospodarki*, Wrocław, 1993, p. 129-142; Owsiak, P., *op. cit.*, p. 320.

⁴ See: Wierzba, R., "Proces zbliżania polskiego systemu podatkowego do systemów podatkowych wspólnoty europejskiej", [in:] *Polityka pieniężna i fiskalna w procesie urynkowienia gospodarki*, Wrocław, 1993, p. 129-142; Owsiak, P., *op. cit.*, p. 320.

- transferring a part of the income from some taxes (and duties) solely to the local government in way of increasing their budget;
 - a greater proportion of income coming from indirect taxation;
 - long-term co-operation of the local government in the national taxation system;
 - the possibility of making use of tax income to carry out non-fiscal policies;
 - adapting the system to the norms in force in the European Union.
- The most important changes in the Polish taxation system include:
- the introduction in 1989 of profit taxes on corporations,⁵ which ended the division between communal and non-communal enterprises;
 - the reforms of local taxes and duties carried out in 1991;⁶
 - the introduction in 1991-1992 of income taxes on individuals and organisations not having a corporate status and in consequence the liquidation of taxes on earnings,⁷ the levelling tax⁸ and, in part, of agricultural taxes with regard to the income of individuals in special areas of agricultural production,⁹ the incredibly complicated system of taxes on salaries,¹⁰ as well as a whole series of regulations in this field;¹¹
 - the introduction in 1992 of regulations, which to a large extent brought into line the methods of taxing corporations and individuals running their own business;

⁵ The bill from January 31st 1989 regarding corporate taxation (Governmental records 1991, no. 49, par. 216, no. 80, par. 350 and no. 101, par. 444).

⁶ This replaced the bill from March 14th 1985 regarding local taxes and duties (Governmental records 1985, no. 12, par. 50; 1988, no. 19, par. 132; 1989, no. 35, par. 192 and no. 74, par. 443; and 1990, no. 34, par. 198).

⁷ The bill from February 26th 1982 regarding the taxation of communal enterprises (Government records 1987, no. 12, par. 77; 1989, no. 3, par. 12, no. 35, par. 192, and no. 74, par. 443; 1990, no. 21, par. 126; and 1991, no. 9, par. 30) – in part regarding taxation of income.

⁸ The bill from July 28th 1983 regarding the levelling tax (Governmental records 1983, no. 42, par. 188; 1984, no. 52, par. 268; 1988, no. 34, par. 254; 1989, no. 35, par. 192; and 1991, no. 78, par. 345).

⁹ The bill from November 15th 1984 regarding agricultural tax (Governmental records 1984, no. 52, par. 268; 1986, no. 46, par. 225; 1988, no. 1, par. 1; 1989, no. 7, par. 45, no. 10, par. 53, no. 35, par. 192, and no. 74, par. 443; 1990, no. 34, par. 198; and 1991, no. 7, par. 24).

¹⁰ The bill from February 4th 1949 regarding taxation of salaries (Governmental records 1949, no. 7, par. 41; 1956, no. 44, par. 201; 1959, no. 11, par. 69, and 1963, no. 57, par. 309).

¹¹ The bill from December 16th 1972 regarding income tax (Governmental records 1989, no. 27, par. 147, no. 74, par. 443; and 1991, no. 9, par. 30, no. 35, par. 155, and no. 60, par. 253), art. 27 of the bill from June 14th 1991 regarding businesses with foreign investors (Governmental records 1991, no. 60, par. 253), the regulations contained in particular bills, in part containing exemptions for groups of individual tax-payers, or types of income, or reductions in the level of taxation in those bills, which were completely or partially rescinded.

- the introduction in 1992 of gambling taxes due to the passing of law on games of chance and betting;¹²
- the replacement of two trading taxes in 1993, i.e. trading taxes on communal enterprises and trading taxes on corporations which are not part of a communal organisation,¹³ by a general tax on goods and services together with a supplementary excise tax;
- the replacement in 1994 of a type of trading tax, the border tax, which was collected on all imported goods, by an import tax,¹⁴ which was later liquidated;¹⁵
- the introduction in 1995 of taxes on the sale of shares in public circulation,¹⁶ and its later liquidation;¹⁷
- the introduction in 1994 of taxes on increases in salaries above the norm,¹⁸ in force since 1982 under different names and systematically changed, which was intended to be a balance to the payment demands of employees.¹⁹ This tax was paid by firms, who increased salaries by more than administratively set limit;
- the acceptance of a taxation ordinance, which fully came into life on January 1st 1998 and replaced the laws previously in force and control-

¹²The bill from July 29th 1992 regarding games of chance and mutual bets (Governmental records 1992, no. 68, par. 341).

¹³The bill from December 16th 1972 regarding turnover tax (Governmental records 1983, no. 43, par. 191; 1985, no. 12, par. 50; 1989, no. 3, par. 12 and no. 74, par. 443; 1991, no. 9, par. 30 and no. 35, par. 155; and 1992, no. 21, par. 86, and no. 68, par. 341). The bill from February 26th 1982 regarding the taxation of communal enterprises (Governmental records 1987, no. 12, par. 77; 1989, no. 3, par. 12, no. 35, par. 192, and no. 74, par. 443; 1990, no. 21, par. 126; 1991, no. 9, par. 30 and no. 80, par. 350; and 1992, no. 21, par. 86 and no. 68, par. 341).

¹⁴The bill from November 25th 1993 regarding import tax on goods imported or sent from foreign countries (Governmental records 1993, no. 123, par. 551; 1994, no. 132, par. 669, no. 132, par. 669; and 1995, no. 138, par. 683).

¹⁵The bill was in force from January 1st 1994 to December 31st 1996, with the exception of article 9, which was in force until December 31st.

¹⁶The bill from October 21st 1994 regarding the taxation of the sale of shares on the public market (Governmental records 1994, no. 123, par. 602).

¹⁷The bill from October 13th 1995 regarding the reform of the corporate tax bill and the reform of several other bills (Governmental records 1995, no. 142, par. 704).

¹⁸The bill from December 22nd 1990 regarding the taxation of above norm increases in salaries (Governmental records 1991, no. 1, par. 1; 1992, no. 21, par. 85, no. 73, par. 361, and no. 100, par. 498; 1993, no. 28, par. 127; and 1994, no. 43, par. 163).

¹⁹The bill from December 29th 1993 regarding the rescinding of the bill from December 22nd 1990 regarding the taxation of above norm increases in salaries (Governmental records 1993, no. 134, par. 648 and 1994, no. 28, par. 97).

ling matters regarding taxation problems in Poland, namely the act of May 16th 1956, regarding the giving and taking away of relief in the payment of state taxes,²⁰ the law from December 21st 1958 regarding methods of collecting debts to the state resulting from the tax obligations of property owners,²¹ as well as the law from December 19th 1980 regarding tax obligations.²² The ordinance made changes in the following laws: the codex of administrative practice²³ from June 14th 1960, the codex on executing administrative practice²⁴ from June 17th 1966, the treasury law regarding punishments from October 26th 1971,²⁵ the law regarding records of property rights and mortgages²⁶ from July 6th 1982, the law regarding inheritance taxes and charitable gifts²⁷ from July 28th 1983, the law regarding agricultural taxes²⁸ from November 15th 1984, the banking law²⁹ from January 31st 1989, the law regarding

²⁰ Governmental records 1956, no. 17, par. 92 and 1975, no. 10, par. 56.

²¹ Governmental records 1958, no. 77, par. 398; 1962, no. 38, par. 166; and 1971, no. 27, par. 250.

²² Governmental records 1993, no. 108, par. 486 and no. 134, par. 646; 1995, no. 5, par. 25 and no. 85, par. 426; 1996, no. 75, par. 357; and 1997, no. 121, par. 770.

²³ Governmental records 1980, no. 9, par. 26 and no. 27, par. 111; 1982, no. 7, par. 55 and no. 45, par. 289; 1983, no. 41, par. 185; 1984, no. 34, par. 183; 1986, no. 47, par. 228; 1987, no. 21, par. 123 and no. 33, par. 186; 1989, no. 20, par. 107; 1990, no. 34, par. 201; 1991, no. 100, par. 442 and no. 119, par. 513; 1994, no. 122, par. 593; 1995, no. 1, par. 1 and no. 74, par. 368; 1996, no. 43, par. 189 and no. 106, par. 496; and 1997, no. 75, par. 471 and no. 102, par. 643.

²⁴ Governmental records 1991, no. 36, par. 161; 1992, no. 20, par. 78; 1993, no. 28, par. 127; 1995, no. 85, par. 426 and no. 141, par. 692; and 1996, no. 43, par. 189 and no. 146, par. 680.

²⁵ Governmental records 1984, no. 22, par. 103; 1985, no. 23, par. 100; 1990, no. 14, par. 84 and no. 86, par. 503; 1991, no. 100, par. 442 and no. 107, par. 458; 1992, no. 21, par. 85 and no. 68, par. 341; 1994, no. 43, par. 160, no. 126, par. 615, and no. 136, par. 703; 1995, no. 132, par. 641; 1996, no. 132, par. 621, no. 137, par. 640, and no. 152, par. 720; and 1997, no. 71, par. 449, no. 79, par. 485, no. 102, par. 643, and no. 121, par. 770.

²⁶ Governmental records 1982, no. 19, par. 147; 1991, no. 22, par. 92 and no. 115, par. 496; 1994, no. 85, par. 388; 1996, no. 107, par. 499; and 1997, no. 117, par. 752.

²⁷ Governmental records 1997, no. 16, par. 89.

²⁸ Governmental records 1993, no. 94, par. 431; 1994, no. 1, par. 3; 1996, no. 91, par. 409; and 1997, no. 43, par. 272.

²⁹ Governmental records 1992, no. 72, par. 359; 1993, no. 6, par. 29, no. 28, par. 127, and no. 134, par. 646; 1994, no. 80, par. 369 and no. 121, par. 591; 1995, no. 4, par. 18 and no. 133, par. 654; 1996, no. 10, par. 61, no. 75, par. 357, no. 90, par. 406, no. 106, par. 496, and no. 149, par. 703; and 1997, no. 23, par. 117, no. 24, par. 119, no. 71, par. 449, no. 88, par. 554, and no. 121, par. 769 and 770. The bill was rescinded and was replaced by the bill from August 29th 1997 regarding banking law records 1997, no. 110, par. 939; 1998, no. 160, par. 1063 and no. 162, par. 1118.

treasury duties³⁰ from January 31st 1989, the communications law³¹ from November 23rd 1990, the budget law³² from January 5th 1991, the law regarding income taxes on individuals³³ from July 26th 1991, the law regarding treasury control³⁴ from September 28th 1991, the law regarding taxation of corporations³⁵ from February 15th 1992, the games of chance and betting law³⁶ from July 29th 1992, the law regarding taxes on trading and services together with excise taxes³⁷ from January 8th 1993, the local government funding law³⁸ from December 10th 1993, as well as the law about the commercialisation and privatisation of state firms³⁹ from August 30th 1996.

³⁰ Governmental records 1989, no. 4, par. 23 and no. 74, par. 443; 1992, no. 21, par. 86; 1993, no. 11, par. 50; 1995, no. 86, par. 433; and 1997, no. 117, par. 751.

³¹ Governmental records 1995, no. 117, par. 564; 1996, no. 106, par. 496; and 1997, no. 43, par. 272, no. 88, par. 554, no. 106, par. 675, and no. 121, par. 770.

³² Governmental records 1993, no. 72, par. 344; 1994, no. 76, par. 344, no. 121, par. 591, and no. 133, par. 685; 1995, no. 78, par. 390, no. 124, par. 601, and no. 132, par. 640; 1996, no. 89, par. 402, no. 106, par. 496, no. 132, par. 621, and no. 139, par. 647; and 1997, no. 54, par. 348, no. 79, par. 484, no. 121, par. 770, no. 123, par. 775, and no. 133, par. 883.

³³ Governmental records 1993, no. 90, par. 416 and no. 134, par. 646; 1994, no. 43, par. 163, no. 90, par. 419, no. 113, par. 547, no. 123, par. 602, and no. 126, par. 626; 1995, no. 5, par. 25 and no. 133, par. 654; 1996, no. 25, par. 113, no. 87, par. 395, no. 137, par. 638, no. 147, par. 686, and no. 156, par. 776; and 1997, no. 28, par. 153, no. 30, par. 164, no. 71, par. 449, no. 85, par. 538, no. 96, par. 592, no. 121, par. 770, and no. 123, par. 776.

³⁴ Governmental records 1991, no. 100, par. 442; 1992, no. 21, par. 85; 1996, no. 106, par. 496 and no. 152, par. 720; and 1997, no. 18, par. 105, no. 71, par. 449, and no. 121, par. 770.

³⁵ Governmental records 1993, no. 106, par. 482 and no. 134, par. 646; 1994, no. 1, par. 2, no. 43, par. 163, no. 80, par. 368, no. 87, par. 406, no. 90, par. 419, no. 113, par. 547, no. 123, par. 602, and no. 127, par. 627; 1995, no. 5, par. 25, no. 86, par. 433, no. 96, par. 478, no. 133, par. 654, and no. 142, par. 704; 1996, no. 25, par. 113, no. 34, par. 146, no. 90, par. 405, no. 137, par. 639, and no. 147, par. 686; and 1997, no. 9, par. 44, no. 28, par. 153, no. 79, par. 484, no. 96, par. 592, no. 107, par. 685, no. 118, par. 754, no. 121, par. 770, and no. 123, par. 776 and 777.

³⁶ Governmental records 1992, no. 68, par. 341; 1993, no. 28, par. 127; 1994, no. 98, par. 472; 1996, no. 106, par. 496 and no. 132, par. 621; and 1997, no. 80, par. 503 and no. 121, par. 770.

³⁷ Governmental records 1993, no. 11, par. 50, no. 28, par. 127, and no. 129, par. 599; 1994, no. 132, par. 670; 1995, no. 44, par. 231 and no. 142, par. 702 and 703; 1996, no. 137, par. 640; and 1997, no. 111, par. 722 and no. 123, par. 776 and 780.

³⁸ Governmental records 1993, no. 129, par. 600; 1994, no. 105, par. 509; 1995, no. 124, par. 601 and no. 154, par. 794; 1996, no. 149, par. 704 and no. 156, par. 774; and 1997, no. 79, par. 484, no. 113, par. 734, no. 121, par. 770, and no. 123, par. 780.

³⁹ Governmental records 1996, no. 118, par. 561 and no. 156, par. 775 as well as 1997, no. 32, par. 184, no. 98, par. 603, no. 106, par. 673, and no. 121, par. 770.

– the updating of the law regarding corporate taxation based on the lowering of tax rates, the elimination of the majority of forms of tax relief and introduction of regulations regarding the amortisation of capital goods, which came into life on January 1st 2000.

In this way the major remnants of the period of the centrally planned economy, which financially differentiated between different forms of the legal status and ownership of organisations carrying out economic activities, have been eliminated from the Polish taxation system. However, in these acts there lacked continuity, as well as a clearly defined vision of the taxation system to which the changes should lead. Each tax was developed and introduced in isolation and subject to various changes and updates almost as soon as being passed. Various governments and parliamentary coalitions, which governed Poland in the 90s, changed and improved the taxation system.

Despite all this, the changes have significantly simplified and clarified the Polish taxation system and brought it in line with the taxation systems in force in the majority of modern states, particularly European states.

1. The general nature of taxes and quasi-taxes in the Polish taxation system

There are eleven forms of taxes of a permanent nature, which make up the present Polish taxation system. That is to say that they will be part of the system in the foreseeable future, although their contents may be significantly changed. There are also 2 quasi-taxes of a transient nature, which like other taxes have appeared and later been liquidated. In addition, there are four forms of excise taxes, which form the basis of local government income, which should be included as part of the taxation system, since they are regulated by laws regarding taxation payments. Various types of payments with a defined purpose (quasi-taxes) should also be treated as part of the Polish taxation system.

The following should be regarded as more or less the permanent basis of the Polish taxation system:⁴⁰

1. taxes on goods and services;⁴¹

⁴⁰Because of the regular changes in the regulations regarding practically all of the taxes, the article has resigned from a detailed account and limits itself to a general presentation of the types of taxes together with information about what is taxed, the basis of taxation, relief, exemptions and tax increases, the types of tax-payer, their obligations, and the role of the taxes.

⁴¹The bill from January 8th 1993 regarding taxation of goods and services as well as excise taxes (Governmental records 1993, no. 11, par. 50, no. 28, par. 127, and no. 129, par. 599; 1994, no. 132, par. 670 and no. 132, par. 670; 1995, no. 44, par. 231, no. 142, par.

2. excise taxes;⁴²
3. profit taxes on corporations;⁴³
4. income taxes on individuals;⁴⁴
5. real estate taxes;⁴⁵
6. vehicle tax;⁴⁶
7. dog ownership tax;⁴⁷
8. agricultural taxes;⁴⁸
9. forestry taxes;⁴⁹

702, and no. 142, par. 703; 1996, no. 137, par. 640 and no. 137, par. 640; 1997, no. 111, par. 722, no. 123, par. 776, no. 123, par. 780, no. 137, par. 926, no. 162, par. 1104, no. 141, par. 943, and no. 162, par. 1104; 1998, no. 139, par. 905 and no. 161, par. 1076; 1999, no. 50, par. 499, no. 57, par. 596, and no. 95, par. 1100).

⁴²Ibid.

⁴³The bill from February 15th 1992 regarding corporation taxes (Governmental records 1993, no. 106, par. 482 and no. 134, par. 646; 1994, no. 1, par. 2, no. 43, par. 163, no. 80 par. 368, no. 87, par. 406, no. 90, par. 419, no. 113, par. 547, no. 123, par. 602, and no. 127, par. 627; 1995, no. 5, par. 25, no. 96, par. 478, no. 86, par. 433, no. 133, par. 654, and no. 142, par. 704; 1996, no. 25, par. 113, no. 34, par. 146, no. 90, par. 405, no. 137, par. 639, and no. 147, par. 686; 1997, no. 9, par. 44, no. 28, par. 153, no. 79, par. 484, no. 96, par. 592, no. 107, par. 685, no. 118, par. 754, no. 121, par. 770, no. 123, par. 776, no. 123, par. 777, no. 137, par. 926, no. 139, par. 932, no. 139, par. 933, no. 139, par. 934, no. 140, par. 939, and no. 141, par. 945; 1998, no. 60, par. 383, no. 108, par. 685, no. 117, par. 756, no. 137, par. 887, no. 144, par. 931, and no. 162, par. 1112 and 1121; and 1999, no. 49, par. 484, no. 62, par. 689, and no. 95, par. 1101).

⁴⁴The bill from July 26th 1991 regarding income tax on individuals (Governmental records 1993, no. 90, par. 416 and no. 134, par. 646; 1994, no. 43, par. 163, no. 90, par. 419, no. 113, par. 547, no. 123, par. 602, and no. 126, par. 626; 1995, no. 5, par. 25 and no. 133, par. 654; 1996, no. 25, par. 113, no. 87, par. 395, no. 137, par. 638, no. 147, par. 686, and no. 156, par. 776; 1997, no. 28, par. 153, no. 30, par. 164, no. 71, par. 449, no. 85, par. 538, no. 96, par. 592, no. 121, par. 770, no. 123, par. 776, no. 137, par. 926, no. 139, par. 932-934, and no. 141, par. 943 and 945; and 1998, no. 66, par. 430, no. 74, par. 471, no. 108, par. 685, and no. 117, par. 756).

⁴⁵The bill from January 12th 1991 regarding local taxes and (Governmental records 1991, no. 9, par. 31; 1991, no. 101, par. 444 and no. 116, par. 502; 1992, no. 21 par. 86 and no. 94, par. 467; 1993, no. 121, par. 540; 1994, no. 123, par. 600; 1994, no. 132, par. 675; 1995, no. 147, par. 715; 1996, no. 149, par. 704, no. 91, par. 409, and no. 149, par. 704; 1997, no. 5. par. 24, no. 123, par. 780, no. 121, par. 770, no. 107, par. 689, no. 123, par. 780, and no. 143, par. 956; and 1998, no. 106, par. 668).

⁴⁶Ibid.

⁴⁷Ibid.

⁴⁸The bill from November 15th 1984 regarding agricultural taxes (Governmental records 1993, no. 94, par. 431; 1994, no. 1, par. 3; 1996, no. 91, par. 409; 1997, no. 43, par. 272 and no. 137, par. 926; and 1998, no. 108, par. 681).

⁴⁹The bill from September 28th 1991 regarding forestry (Governmental records 1991, no. 101, par. 444; 1992, no. 21, par. 85 and no. 54, par. 254; 1994, no. 1, par. 3 and no.

10. inheritance taxes and taxes on gifts;⁵⁰

11. gambling taxes.⁵¹

The following should be treated as types of taxes, although they carry another name:

- income gained from the profits of state firms (formerly dividends),⁵²
- income gained from the profits of firms of the State Treasury (interest on the capital of firms of the State Treasury).⁵³

In addition, local governments have the right to raise their own taxes, in the form of the so-called self taxing⁵⁴ of local residents. Income from the self taxing of residents may be introduced by means of a local referendum.⁵⁵

Besides the taxes mentioned above, amongst which are taxes of the nature of a fee (e.g. excise taxes, real estate taxes, vehicle taxes), organi-

127, par. 627; 1995, no. 147, par. 713; 1996, no. 91, par. 409; 1997, no. 54, par. 349, no. 121, par. 770, and no. 54, par. 349; and 1998, no. 106, par. 668, art. 9).

⁵⁰The bill from July 28th 1983 regarding taxation on inheritances and gifts (Governmental records 1997, no. 16, par. 89, no. 34, par. 209, no. 137, par. 926, and no. 139, par. 932).

⁵¹A communiqué of the Minister of Finance from December 21st 1992 regarding taxation on games of chance (Governmental records 1993, no. 1, par. 3 and 1997, no. 14, par. 79).

⁵²The bill from January 31st 1989 regarding the financial running of state enterprises (Governmental records 1992 no. 6, par. 27; 1993, no. 18, par. 82; 1994, no. 121, par. 591; and 1995, no. 154, par. 791). The rate used in the calculation of the payment from profits is equal to 15% of the profits after tax. If the value of the calculated dividends in a state enterprise exceeded 25% of the net profit in 1989, then the payment to the state budget was equal to 25% of the net profit.

⁵³The bill from July 19th 1991 regarding the interest rate on capital in enterprises of the State Treasury (Governmental records 1991, no. 75, par. 330 and 1992, no. 45, par. 200). The bill from December 1st 1995 regarding payments to the treasury from the profits of enterprises of the State Treasury (Governmental records 1995, no. 154, par. 792). Enterprises of the State Treasury were obliged to pay the State Treasury the interest on the capital invested in the enterprise by the State Treasury. The basis of the calculation of the interest was – in the case of a public company – the value of the shares held, the in the case of limited companies the value of the capital invested. The interest was paid from the profits at a rate of 0.5% monthly. At the present time, public companies, as well as limited companies are obliged to make payments from the profits after tax to the state budget. The percentage rate used to calculate the payment to the state budget is 15% of the profits after tax.

⁵⁴The bill from March 8th 1990 regarding local government (Governmental records 1996, no. 13, par. 74; 1996, no. 58, par. 261, no. 106, par. 496, and no. 132, par. 622; and 1997, no. 9, par. 43, no. 123, par. 775, no. 107, par. 686, no. 113, par. 734, no. 106, par. 679, and no. 106, par. 679).

⁵⁵The bill from October 11th 1991 regarding local referenda (Governmental records 1996, no. 84, par. 386).

sations carrying out economic activity are obliged to pay various sums to para-budget funds. These increase activity costs, in particular work costs. The costs mainly consist of payments to:

- health insurance funds,⁵⁶ to the end of 1998 these amounted to 45% of salary payments, presently these are pension and health insurance payments;
- work fund,⁵⁷ based on the level of payments to social funds and pension payments; the level of the payment is set by the budget (from 1993 this payment amounts to 3% of salary costs).

In addition there are payments to:

- the state rehabilitation fund for disabled persons (PFRON).⁵⁸ An organisation employing at least 50 employees is required to pay PFRON an amount equalling the product of 50% of the average salary and the number of full-time positions, being the difference between the level of employment ensuring that 6% of the workforce is disabled and the actual level of employment of disabled people. Thus firms, in which at least 6% of the full-time posts (or equivalent) are occupied by disabled people, are not obliged to make such payments. State and local government organisations are also not obliged to pay PFRON, but they are obliged to employ disabled people;
- workers' guarantee funds;⁵⁹ the rate in 1999 was 0.15% of the basic insurance rate.

The Polish system consists of property, income and sales taxes. However, finding an unambiguous way of attributing the majority of these taxes to one of these three types and defining their nature is very difficult. This results from the mixed nature of the particular taxes. For example, agricultural taxes have a property-income nature, real estate taxes do not completely fulfil the definitions of a property tax, and so on.

From the point of view of a tax-payer, the most logical division of taxes is as follows:

⁵⁶The bill from February 6th regarding general health insurance (Governmental records 1997, no. 28, par. 153 and no. 75, par. 468 and 1998, no. 117, par. 756).

⁵⁷The bill from December 14th 1994 regarding employment and fighting unemployment (Governmental records 1995, no. 1, par. 1).

⁵⁸The bill from August 27th 1997 regarding professional and social rehabilitation together with the employment of disabled people (Governmental records 1997, no. 123, par. 776 and no. 160, par. 1082; 1998, no. 99, par. 628 no. 106, par. 668).

⁵⁹The bill from December 29th 1993 regarding the payment of debts to workers in the case of a firm's bankruptcy (Governmental records 1994, no. 1, par. 1; 1995, no. 87, par. 435; 1996, no. 5, par. 34; and 1997, no. 28, par. 153 and no. 123, par. 776).

1. direct taxes, i.e. those which are calculated according to an individual's earnings, income or property. The payer of these taxes is the organisation employing the tax-payer or the tax-payer himself;
2. indirect taxes, i.e. those which are included in the price of a good or service. The payer of these taxes is the seller, but in reality the consumer pays these costs.

The following are the main forms of direct taxation:

- corporate taxes;
- income taxes on individuals;
- property taxes;
- vehicle taxes;
- dog ownership taxes;
- agricultural taxes;
- forestry taxes;
- inheritance taxes and taxes on gifts.

The following are the main forms of indirect taxation:

- taxes on goods and services, also known as the value added tax;
- excise taxes;
- gambling taxes.

Another criterion for differentiating taxes, which has a great meaning from the point of view of the way in which they finance the budget system is the division between taxes forming the basis of:

- state income;
- local government income.

2. The general nature of direct taxation⁶⁰

The payers of corporate income tax are organisations with corporate status as well as some organisations without a corporate identity (e.g. organisations maintained by the budget, the Polish Academy of Science (PAN), schools and educational establishments, health care organisations, and various societies). Partnerships, general partnerships and limited partnerships due to a lack of corporate status do not pay taxes. The partners of such companies, and not the company itself, pay income tax as individuals. Certain organisations do not have to pay corporate income tax (e.g. the State Treasury (*Skarb Państwa*), the Polish National Bank (*Narodowy Bank Polski*), and local government).

⁶⁰Local direct taxation was omitted from this section, since it was presented in the previous one.

The earnings which are taxed are equal to the difference between a tax-payer's income and the cost of obtaining this income. From 1992 to 1996 the corporate income tax rate was 40%, in 1997 – 38%, in 1998 – 36% and in 1999 – 34%. In 2000 and the following years this rate was supposed to be set at 32%. As a result of the updating of the tax laws carried out in 1999 it was decided that the tax rate would be 30% of the taxable income, in 2001 it would be 28%, in 2002 – 28%, in 2003 – 24% and in 2004 and the following years it would be 22% of the taxable income.

Capital gains are taxed according to general rules based either on a linear rate, which is set for a given year depending on the type of capital, or according to a 20% flat rate. For example, interest payments, as well as gains from selling shares are in the first category, and share dividends are in the second category. Businessmen, as individual tax-payers, may subtract the tax paid on their share dividends from their tax payments according to the rate in force that year. This means that in practice they are not subject to this tax.

When a Polish businessman pays interest or share dividends to a foreign citizen, the income of the payee is subject to taxes, to be paid to the Polish government, the rate being at 20% of the payment. This rate is, however, subject to double-sided agreements, in which the Polish government is one of the signatories. That is to say an international agreement, which enables the avoidance of double tax payments. Depending on the agreement, this rate is 15, 10, or 5% and in rare cases 0%.

In accordance with the Article 217 in the Constitution of the Republic of Poland, regulations regarding the amortisation of capital goods were introduced in 1999 by an act defining the basis of corporate taxation. This has had a direct effect on the basis for calculation of the corporate tax. At the same time a series of changes with regard to the previous regulations concerning amortisation were carried out, namely:

- a relaxation of the system of amortising, allowing tax-payers to change the amortisation rate during the amortisation of capital goods, if they are used in worse than average conditions. Also, at the start of a new tax year, tax-payers are allowed to increase or decrease the amortisation rate of a capital good subject to an increased tax rate;
 - the number of amortisation rates has been reduced to 10 basic rates, which are defined in terms of the maximum rate;
 - the amortisation rate for buildings as well as chosen types of machines and devices has been increased;
 - the value of a capital good, as well as the legal or non-material value of a purchase, enabling the addition of the purchase costs directly to the costs of obtaining income has been raised from 2500 to 3500 zł.
- The costs involved with the improving of capital goods, enabling pay-

ments to be directly added to the costs of obtaining income has been raised from 1000 to 2000 zł.

The basis for calculation of the income tax payable by an individual is his/her income minus tax-deductible costs together with reliefs. All the income of an individual is subject to income tax, with the exception of income gained from:

- agricultural activities (except for special areas of agricultural production);
- forestry;
- activities, which cannot be the subject of a legal agreement (e.g. the passing on of stolen goods);
- income subject to tax regulations regarding inheritances and gifts.

The system of income tax on individuals introduced in 1992 was designed to embrace all tax-payers in a uniform manner.

There exists within the income tax system a large number of payments which are tax-free. Social benefits (e.g. family and nursing benefits), workers' benefits (e.g. the subsidising of workers meals paid by employers), and some payments to pensioners and people of disability benefit (e.g. payments received from a former employer) are free from taxation. In addition there are tax exemptions, made in order to support certain groups of tax-payers (e.g. housing benefit, flat rate heating allowances, and benefits reducing expenditure on required medicines). Interest received from savings accounts, winnings from games with a random element and bets made at a licensed bookmaker are free from tax. The following elements influence the amount of income tax payable by an individual:

- income;
- costs of gaining that income;
- tax rates;
- the levels of income at which the tax rate changes;
- the amount of income free from taxation;
- tax relief.

Sources of income are, amongst others, earnings and benefits from steady employment, pension and disability benefit, enterprise activities and activities carried out independently (e.g. commissioned work), earnings from legal ownership rights (e.g. copyright, rights to trademarks), capital earnings, and income from sales outside of business activities (e.g. property sales, second-hand car sales).

The costs of obtaining an income are directly deducted from the income gained. The difference between these amounts is the starting point for defining the basis, on which an individual's income tax is calculated. With regard to steady employment, activities carried out personally, and earnings from legal ownership rights, the cost of obtaining an income is defined at a fixed rate. For earnings from steady employment, these de-

ductions depend on the taxation structure and amount to 0.25% of the upper limit for the lowest tax rate. For independent work and for some types of earnings from legal ownership rights (e.g. copyright), these costs are defined to be a proportion of the income gained (either 20% or 50%).

There are three different income tax rates. These rates form a progressive taxation system, with different tax rates applying in different income bands.

At the time of the introduction of income tax in 1994, the following tax rates applied:

- up to the first limit – 20%,
- up to the second limit – 30%,
- up to the third limit – 40%.

Between 1994 and 1996 the tax rates were higher: 21%, 33%, and 45% respectively. In 1997 these rates were lowered to 20%, 32%, and 44% respectively. There followed a further change of the income tax rates in 1998, and they were set at 19%, 30%, and 40% respectively. These rates are supposed to apply for the next few years.⁶¹

The boundaries of the tax bands are increased each year according to the growth index of the average monthly salary in the national economy during the first three quarters of the preceding financial year, with regard to the year beforehand. However, this method has not always been followed. In 1993 these bands were not increased by this growth index (the boundaries remained at the levels set for 1992). In the following years the boundaries were increased, but the effects of the freezing of the bounds in 1993 was not taken into consideration.

Income not subject to this income tax is subject to a fixed taxation rate (e.g. income from the sale of property, income obtained from the interest payments on loans, and dividends).

In order to calculate the income tax payable by an individual, tax deductions are taken into account. The effective (real) level of income tax depends on the rates in a given tax bracket, the amount of taxable income and the possibility of tax deductions due to tax reliefs.

There is a wide range of income tax reliefs and these include:

- income free from taxation;
- deductions from income;

⁶¹The Minister of Finance attempted to change the system of taxation on individuals by presenting a project bill to the parliament. The project aimed to reduce the number of tax brackets, lower the tax rates, and radically reduce the possibilities of tax relief. As a result of the disputes which arose in connection with this project, it was not put into action. According to statements by politicians, the attempt to reform the tax system will be renewed in 2000.

- tax deductions;
- taxation rates for married couples (a form of pro-family tax relief);
- preferential rates for single people raising children (a form of pro-family tax relief).

Capital returns are a source of income subject to income tax. Depending on the type of income from capital returns, these earnings are taxed as part of the total income, according to the progressive taxation rates, or independently, at a rate of 20%.

Income obtained by the sale of public shares, shares in private companies, shares purchased outside of the stock exchange, together with interest payments on bank accounts, and income from business activities are all taxed as part of total income together with other earnings according to the progressive taxation rates. Interest obtained from loans, income resulting from shares in the profits of corporations (e.g. dividends) are subject to a flat tax rate of 20%.

The following forms of income are permanently free of tax: income from the sale of compensation bonds, interest and discounts obtained on bonds emitted by the State Treasury and local government, and interest on saving accounts in banks (with the exception of accounts related to the operations of an enterprise).

Individuals carrying out low-scale business activities can take advantage of a fixed rate income tax. There are two methods, a tax license or a flat rate paid on documented income. This tax license is a simplified form of fixed rate income tax for individuals and small firms, mainly in the service sector. The license covers service and production/service activities, retail sales of groceries, tobacco and flowers, culinary enterprises (as long as no drinks with an alcohol content of more than 1.5% are sold), transport and entertainment services, as well as health care services (by nurses and midwives) and veterinary services. Individuals taxed in this way do not have to document their actual income and costs. They are not subject to the requirement of keeping accounts, filling in tax statements, submitting declarations regarding their level of income. The cost of a tax license depends on the location of business, the type of business, as well as the number of employees. These rates are quoted in each individual case by the treasury office as a fixed amount for a fixed length of time to be paid in advance. A system for increasing or decreasing this rate on request from the tax-payer or from the treasury office is used. This allows to take into account the individual nature of each business.

The flat rate tax on documented income was introduced in 1994. Tax-payers may pay income tax on income gained from business activities in this way, as long as the total income from their business activities in the previous year did not exceed a defined rate, or if the business was set

up in that tax year. The tax rate on documented income is paid on the total amount of income, without taking the costs of obtaining that income into account. The tax rates are quoted as a percentage of income and are based on the average profitability of the group of tax-payers carrying out business activities in similar financial conditions. These rates are:

- 9.5% on the income from a service sector activity;
- 6.0% on the income from production, building work, or transport of goods by vehicles with a loading capacity of above 2 tonnes;
- 3.3% on the income from retail sales and culinary enterprises, except for the sales of drinks containing more than 1.5% of alcohol.

Tax-payers paying this fixed rate tax on documented income have to carry out only a simplified form of accounting. They are required to keep the receipts from the purchase of goods, raw materials and basic materials, without the necessity of their documentation. In the course of the tax year they submit a tax statement after six months together with a full tax statement at the end of the year. In cases where the accounts are not kept or when the accounts are not fully kept, the tax office estimates the value of the undocumented income and taxes this income at a rate of 20%.

This income, taxed in the form of the tax license or the flat rate of documented income, is not taken into account in the taxation of income from other sources, which is carried out on a general basis. Earnings from business activities taxed in this way do not disallow the possibility of a married couple submitting a joint tax statement (as long as certain conditions are satisfied).

3. The general nature of indirect taxes

The basis of taxing goods and services (Value Added Tax) is that the seller calculates the tax on sales carried out, as shown in the sales accounts, and subtracts from this the tax that was paid on the goods supplied to him, as shown in the purchase accounts. The difference is paid to the state budget, or the seller receives a rebate if the tax on the goods sold amounts to less than the tax on his supplies. Value Added Tax (VAT) must be paid by individual and corporate tax-payers and organisations not having corporate status if they sell goods (products), provide services, export and/or import, or carry out other related activities (e.g. donation of goods). The basic rate of VAT is 22%, which is slightly above the European average. Some goods and services are covered by a lower rate of VAT. These rates are 7% and 0%. The 7% rate is used with regard to the majority of grocery items and building work. The 0% rate is mainly used for export goods. This rate also covers some groups of goods

and services. Apart from these standard rates (22%, 7%, 0%), temporary rates are also in use.

Apart from the lower rates, there is also a wide range of exemptions from VAT for goods and tax-payers.

It should be added that the regulations, as in the case of other taxes have left the possibility of not setting VAT rates or not collecting the tax in some cases. Decisions in this field are made by the treasury office, in the case of individual tax-payers, but in the case of a group of tax-payers these decisions belong to the Minister of Finance.

Excise tax is a type of indirect tax, which is set on certain consumption goods, known as the excise goods. These include alcoholic drinks, tobacco, petrol and goods defined to be luxury goods. The excise tax may even be around 30% or 40% of the retail price. Goods which do not comply with standards set in other regulations are also subject to excise tax, cases where the treasury judges that the excise on produced goods has not been paid. Excise taxes are paid by the producer or importer of excise goods. The maximum tax rates are set by law, but the individual rates are set by the Minister of Finance. There are exemptions from the excise tax system. However, the range of these exemptions is not as wide as in the case of VAT.

Promotional lotteries, in which the participants take part by purchasing a certain good or service, and prizes in the form of money or goods are offered are not subject to gambling taxes. The method of calculating these taxes is rather complicated. Percentage rates are used (from 2% to 60%), as well as fixed amounts plus a percentage rate.

4. The general nature of local taxes⁶²

Real estate tax has partly the character of a property tax. Individual and corporate tax-payers, as well as organisations without corporate status are subject to property tax (with certain exceptions). The basis of property taxes is as follows:

- constructions - according to the value set on January 1st in that tax year, which is the basis for the calculation of amortisation. In the case of completely amortised buildings, according to the value on January 1st in the year that the building became fully amortised;

⁶²The majority of the forms of taxation regarded as local taxes were defined in the bill regarding local taxes and duties, which to a certain degree defined their nature. Nevertheless, it should be stated that local government only has a limited power, granted by the central government, to set these and other local taxes. According to the definitions of the European Union, such taxes are not local taxes. In consequence, these tax should be described as having a mixed stato-local nature.

- buildings or parts of buildings – their surface area;
- land – its surface area.

The following are, among others, exempt from property taxes:

- buildings or parts of buildings occupied by local government departments;
- property of foreign states or international organisations (as well as buildings given to them for permanent use), buildings which are the headquarters of diplomatic ambassadors, consulates and other organisations enjoying privileges and immunities determined by law, agreements, or international custom – under the condition of mutuality;
- public roads, together with the land the road occupies and the lanes themselves, etc.

Local government may introduce other forms of exemption. They also set the tax rates. These rates, however, cannot exceed the maximum rates set by the government, which are subject to an annual increase equal to the inflation rate for goods and consumer services over the first three quarters of the year in which the increase takes place, with respect to the analogous period of the previous year. These rates cannot be lower than 50% of the maximum rates.

Vehicle taxes also have the nature of a capital tax. Individual and corporate tax-payers, as well as organisations which do not have corporate status, who are registered as vehicle owners are subject to vehicle tax. From 1998 the owners of private vehicles have not been subject to this tax, with exception of owners of vehicles over 2 tonnes, buses, trailers, and articulated trailers over 5 tonnes, as well as saddle and ballast tractors.

The following are exempt from vehicle tax:

- vehicles in the possession of diplomatic embassies, consulates and other international organisations, enjoying privileges and immunities determined by laws, agreements or international customs, together with their personnel (or their equivalent), if they are not Polish citizens and do not have permanent residence rights within the territory of the Republic of Poland – under the condition of mutuality;
- emergency vehicles.

Local government can introduce other exemptions. They also define the tax rates. These rates, however, cannot exceed the maximum rates set by the government, which are subject to an annual increase equal to the inflation rate for goods and consumer services over the first three quarters of the year in which the increase takes place, with respect to the analogous period of the previous year.

Individual tax-payers who own a dog are subject to the dog-ownership tax. The following are exempt from this tax:

- personnel of diplomatic embassies and consulates – under the condition of mutuality;

- owners of guide dogs for disabled people (blind, deaf, and dumb);
- people over 70 years of age living independently (they can have one dog tax-free);
- owners of dogs kept in order to protect farms (two dogs for each farm).

Local government can introduce other exemptions. This includes the possibility of exempting all the residents from dog ownership tax. They also define the tax rates. These rates, however, cannot exceed the maximum rates set by the government, which are subject to an annual increase equal to the inflation rate for goods and consumer services over the first three quarters of the year in which the increase takes place, with respect to the analogous period of the previous year.

Agricultural tax is basically a property tax, calculated according to the area of land in agricultural use using scale factors to take into account the type of land, its class, and location.

Land which is deemed to be in agricultural use, land under ponds, and land which is documented to be agricultural, together with land of a total area of over one hectare (taking into account the scaling factors) under some type of construction connected with agricultural purposes, being the property or in possession of an individual or corporate tax-payer, or an organisation which does not have corporate status is subject to agricultural tax.

The following are, among others, not subject to agricultural tax:

- land under lakes or flowing water, and land on which there are reservoirs supplying water to communities, as well as land underneath dikes used as flood protection;
- barren land.

The agricultural tax act defines three types of tax relief:

- tax exemption;
- reduction of tax rates;
- tax relief on investment.

The agricultural tax on one hectare (scaled) for a year is equal to the monetary value of two and a half quintals of rye, calculated according to the average price of rye in the first three quarters of the previous tax year. The average price is based upon the report of the President of the Central Statistical Office (*Prezes Głównego Urzędu Statystycznego*), announced in the Governmental Records of the Republic of Poland "Monitor Polski" within 20 days of the end of the third quarter.

Local government has the right to lower the price used as a basis to calculate agricultural tax in its administrative region.

Individual and corporate tax-payers, together with organisations which do not have corporate status, who come under one of the following categories are subject to forestry tax:

- owners or possessors of forestry;

- possessors of forestry being the property of the State Treasury or the local government on the basis of an agreement or other legal document, or without an agreement.

All forestry is subject to forestry tax, with the exception of:

- forestry not connected with the timber industry;
- forestry on building sites or in recreational areas;
- forestry decreed by administrative decisions to be set aside for purposes other than the timber industry.

The basis for the calculation of forestry tax is the number of scaled hectares, according to the area occupied by live trees of the major species of tree in the forest stand and a stand quality classification system for the major species, based upon the plan of the forest according to the state of the forest on January 1st of that tax year.

The forestry tax on one scaled hectare is equal to the monetary value of 0.2 cubic metres of coniferous wood for saw mills, calculated according to the sale price of such wood obtained by forestry commissions. The average sale price of wood is based upon the report of the President of the Central Statistical Office, announced in the Governmental Records of the Republic of Poland "Monitor Polski" within 20 days of the end of the third quarter.

The tax on forestry preservations, forestry being part of a nature reserve or national park and on forestry with no designated exploitation plan or only a simplified exploitation plan, equals the monetary value of 0.3 quintals of rye per scaled hectare of actual forest and forestry land, calculated on the basis of the records for that land. The average sale price of rye is based upon the report of the President of the Central Statistical Office, used for the purposes of the agricultural tax.

Forests, which are less than 40 years old, or are recorded in the register of historic buildings and sites are exempt from forestry tax. Local government are allowed to introduce other exemptions.

Individual tax-payers, who receive goods or legal rights as a gift or according to the will of a deceased person, or the rights to a savings account according to the will of a deceased person, or obtain goods and legal rights by means of residence are subject to the inheritance and gift tax. The following are exempt from the inheritance tax:

- those in the first category of tax-payers receiving a monetary gift, or other gifts, designated for the purpose of buying a residence (up to a set limit);
- a spouse, ancestor or descendent (in a direct line), brother or sister, or a common-law spouse of the possessor of the account receiving the rights to a housing savings-credit account by means of a gift, provided that the account balance is designated for housing purposes.

The receiver of goods and legal rights is in general the person subject to taxation. However, in the case of gifts, both the donator and the receiver are subject to taxation.

The amount of tax is calculated according to the value of the goods and legal rights received minus debts and costs (the net value), according to the state of the goods and rights received on the day of receipt and the market prices on the day on which payment of taxes was due. The level of the tax varies according to the tax group of which the recipient is a member. This group is determined by the relationship between the recipient and the donator/deceased, from whom the goods and/or legal rights were obtained.

These groups are defined as follows:

- group I - spouse, direct descendants and ancestors, step-children, son-in-law, daughter-in-law, brothers and sisters, step-father, step-mother and parents-in-law;
- group II - descendants of brothers or sisters, uncles, aunts, descendants and spouses of the step-children, brothers and sisters-in-law, spouses of other descendants;
- group III - other recipients.

The excess above the sum which is free from tax is taxed according to the tax rates in force. In the case of inflation rates on durable goods of above 20%, the Minister of Finance increases the following tax bands according to the level of inflation:

- the value of goods which is not subject to taxation;
- the boundaries of the tax bands according to which the excess value is taxed.

The inflation rate is based on the reports of the President of the Central Statistical Office, appearing in the Governmental records of the Republic of Poland "Monitor Polski", within 30 days of the end of each quarter.

5. The general nature of the adaptation of various elements of the Polish tax law to the international tax law

The adaptation of the Polish tax law to the existing international tax law is a priority in the changes made in the Polish taxation system. These are either changes in the Polish law only, or changes of a bilateral nature, based on an agreement between two sides. Changes in the definition of how individual and corporate tax-payers pay tax on the income earned from foreign sources belong to the first group of changes. Taxing only those earnings which have their source in Poland is known as limited tax liability, while

taxing all earning is known as unlimited tax liability. With regard to individual tax-payers, limited tax liability is based on the payment of income taxes only on the income from the work carried out on the territory of the Republic of Poland in way of employment,⁶³ regardless of the place in which the payment takes place and also on other forms of income received on the territory of the Republic of Poland. It covers the following groups of individuals:

- residing permanently in Poland, but who stay in Poland no longer than 183 days in a given tax year;
- who have come to Poland as temporary residents, in order to work in a foreign production enterprise, in a company with foreign investors, or in the branches of foreign enterprises and banks;
- who are personnel of diplomatic corps or a consulate, as well as persons enjoying diplomatic or consular rights and immunities, on the basis of an agreement or generally accepted international customs, together with the members of their family living in the same residence, who are not Polish citizens and do not have rights of residence in Poland.⁶⁴

The basis of limited tax liability, with regard to corporate tax-payers who do not have their headquarters or board of directors in Poland, means that only the income earned by such enterprises on the territory of the Republic of Poland is subject to tax.⁶⁵

The basis of unlimited tax liability is the taxation of all earnings, regardless of the place where those earnings were made. Unlimited tax liability covers individuals who live permanently in Poland, or whose temporary stay in Poland in a given tax year lasts more than 183 days and who are not exempt as a member of a group of those having limited tax liability.⁶⁶ Unlimited tax liability covers corporate tax-payers who have their headquarters or board of directors in Poland.

Tax exemptions, used in both of these types of taxation are used as a way of avoiding double taxation within the Polish system. Some of the types of exemption are as follows:⁶⁷

- based on mutual agreements;
- connected with unlimited tax liability;

⁶³ Apart from the territorial waters of Poland, the waters which form an economic zone outside those waters are defined to be within the territory of the Republic of Poland. These are the waters in which Poland, according to state and international law carries out its rights with respect to the research and exploitation of the sea bed and its natural resources.

⁶⁴ The bill regarding income tax on individuals, art. 3 and 4.

⁶⁵ *Ibid.*, art. 3.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, art. 21, no. 1, par. 33.

– the exemption of individuals who live in a foreign country and firms having their headquarters in a foreign country.

In general, double taxation of foreign people or firms is avoided by using a fixed-rate form of taxation, covering both people who have unlimited tax liability and people who have limited tax liability. The income tax on foreign individuals who are covered by limited tax liability may take the form of a fixed rate. The tax rate is 20% or 10% of the income.⁶⁸ Certain forms of income are subject to this type of taxation, including income from interest and from copyright, from patent rights, brand names and trademarks, including the sale of such rights, the sale of the knowledge of production processes or of secret recipes, the sale of the rights of use of industrial, trade or scientific devices, or means of transport, as well as sales of information connected with gaining experience in the fields of industry, trade or science (know-how) unless an agreement in the area of avoiding double taxation has been reached with the country of origin of the tax-payer.⁶⁹ In general, individual tax-payers are subject to this form of unlimited tax liability, which covers people, who came to Poland to work in enterprises other than foreign low-scale production enterprises and companies with foreign investors, or in branches of foreign firms or banks, and whose stay in Poland lasted longer than 183 days in the tax year.

Foreign corporate tax-payers who are subject to limited tax liability pay a fixed-rate tax on the same sources of income and on the same basis as mentioned above for individual tax-payers.⁷⁰

Income earned by tax-payers from sources outside of Poland are free from taxation, as long as Poland is one side of an international agreement, which exempts them from tax on income earned from foreign sources.⁷¹ Individual tax-payers who are subject to unlimited tax liability are exempt from paying tax on income earned in foreign states, with which Poland has not signed an international agreement regarding the avoiding of double taxation, under the conditions that those sources of income are subject to the same types of taxes in that foreign state and

⁶⁸ Communiqué of the Minister of Finance from April 3rd 1992 regarding the income tax and corporate tax on income from foreign countries by people who reside or have their headquarters in a foreign country (§ 2 no. 1, Governmental records 1992, no. 32, par. 137 together with later changes).

⁶⁹ The bill regarding income tax on individuals, art. 29, no. 1.

⁷⁰ The bill regarding corporate tax, art. 21, no. 1.

⁷¹ The bill regarding income tax on individuals, art. 27, no. 5 and 6. The bill regarding corporate tax, art. 20.

the foreign state exempts, in the same manner, its citizens from taxes on income earned in Poland from those sources.⁷²

Individuals who are covered by unlimited tax liability and who obtain income from sources both inside and outside of Poland calculate the tax payable on their income according to the following methods of exemption⁷³ or proportionality.⁷⁴

The income tax payable, according to the method of exemption is calculated in the following manner:

- as long as the following is in accordance with the international agreements made with Poland, the income earned in a foreign state exempt from taxation is added to the income earned from Polish sources and subject to Polish taxes. The tax to be paid is calculated according to this sum and the tax rates in force at that time;
- the percentage rate of tax is set according to the sum of these incomes and the tax payable is calculated according to these rates.

The tax payable according to the method of proportionality is calculated as follows;

- unless an agreement with a foreign state regarding the avoidance of double taxation states otherwise, the income from foreign sources which is subject to taxes and taxed in the foreign state is added to the income from Polish sources which is subject to taxation. The tax payable on this income is calculated according to the sum and the tax rates in force at that time;
- the value of the taxes paid in the foreign state is subtracted from the amount of taxes payable in Poland on the total sum, under the condition that income tax subtracted cannot exceed the taxation that would be payable, under the Polish system, on the income earned from overseas sources.

The method of exemption is used by individual and corporate tax-payers with regard to income earned in foreign states with which Poland has a signed agreement regarding the avoidance of double taxation, unless the agreement states otherwise. A progressive tax system is used with regard to individual tax-payers and a linear rate is used for corporate tax-payers.⁷⁵ The method of exemption is also applied when the source of income earned is in a foreign state with which Poland has not signed agreement regarding the avoidance of double taxation, under the

⁷² Communiqué of the Minister of Finance from March 24th 1995, § 9, no. 1, par. 6.

⁷³ The bill regarding income tax on individuals, art. 27, no. 5.

⁷⁴ The bill regarding income tax on individuals, art. 27, no. 6. The bill regarding corporate tax art. 20.

⁷⁵ The bill regarding corporate tax art. 19.

condition that this country taxes the earnings of Polish citizens according to the same basis.

The method of proportionality is used in order to calculate the tax payable by tax-payers who receive income from dividends, copyright, and interest,⁷⁶ from artistic or sporting activities, or from participation in boards of management and other managerial groups in corporate firms.⁷⁷ This method is also used to calculate the amount of tax payable by an individual tax-payer on income from foreign sources, if Poland does not have a signed agreement with the relevant country and that country does not tax Polish citizens according to the basis of mutuality.

At the present moment Poland has 69 agreements in force regarding the avoidance of double taxation and preventing the non-payment of taxes, or of a similar character.

6. An appraisal of the Polish taxation system

Despite the changes made during the 90s in the Polish taxation system, it still does not fully respond to the demands of a modern free market economy. In particular, it does not support the aims of economic growth and the creation of jobs. Also, it does not sufficiently promote productive economic behaviour. The system has many drawbacks. Amongst these the following are the most important:⁷⁸

- despite the lowering of the corporate tax rates, these rates are still too high;
- complexity of the system, an excessive number of types of taxes and tax exemptions;
- tax law is very complicated, there are many ill-defined tax regulations;⁷⁹
- ambiguity of many of the current tax regulations, which cause disagreements and often require official interpretations;⁸⁰

⁷⁶International agreements.

⁷⁷According to the agreement with the Federal Republic of Germany. However, according to the agreements with the United States, Great Britain and Russia (amongst others) the proportional method of calculation is used.

⁷⁸*Reforma systemu finansowego państwa*, J. Kaleta (ed.), Warszawa, 1991, p. 54–55; *Biała księga...*, p. 49–53.

⁷⁹For example there are many bills which work in conjunction with the bills regulating income tax on individuals, in which there are many definitions of the ideas used in the tax bill (13 communiqués of the Minister of Finance, together with 19 communiqués of the Cabinet together with the Minister of Finance).

⁸⁰Evidence of this is amongst other things: the number of interpretations of tax laws given by treasury offices. Just in the case of income tax on individuals treasury offices give tens of thousands of interpretations, which are sometimes mutually contradictory.

- although for some time tax relief was practically eliminated, the tax relief system is now too wide-ranging. Also tax relief granted by the treasury administration, including exemption of groups from taxation payment, not collecting payments, postponing the deadline of tax payments, and allowing tax debts to be paid in instalments is widely available;⁸¹
- the property tax system and laws are still too differentiated with regard to different types of property (although the regulations have been simplified);
- the bases of a just system are not satisfied – there are too many ways of avoiding taxation and holes in the legislation;
- lack of co-ordination between taxation policy and the other areas of socio-economic policy;
- concentration of the power in setting tax policy at the central level, which practically denies regional government power to influence the form and realisation of the tax policy;
- lack of effective control by treasury departments;
- lack of stability in tax legislation;⁸²
- tax legislation favours the so called 'grey market'.

A measure of the fiscal nature of the taxation system, which is seen to be the greatest weakness of the Polish system is the level of taxation as a percentage of the gross national product (GNP). According to the last complete statistical records of the OECD, covering 1995, the level of taxation as a percentage of GNP was 42.7%.⁸³

Despite the ongoing processes of improving the Polish tax system and eliminating inefficient tax legislation, tax-payers do not regard the changes as an improvement in the system. In fact, they often feel that tax legislation is becoming steadily worse. It should be stated, that one of the important reasons behind this belief is on the one hand the very slow pace

⁸¹ For example 125 tax exemptions, 13 ways of reducing taxable income, and 16 forms of tax relief are described in the bill and working regulations regarding income tax on individuals.

⁸² Between 1992 and 1999 the bill regarding income tax on individuals was changed more than 30 times (basically, none of the regulations in the present bill are similar to any of the 1992 bill), and the bill regarding corporate tax was changed nearly 40 times. The bill regarding taxes on goods and services together with excise taxes was changed 15 times.

⁸³ This level of taxation in the gross national product (GNP) places Poland in the group of countries with the highest degree of fiscal load along with the Scandinavian states, which have traditionally been regarded as the most 'socially orientated'. In the Republic of Ireland, which presently has the highest economic growth rate in Europe, this level is 33.8% and in the USA it is 27.9%.

of changes, and lack of consistency in the legislation changes and on the other hand an attempt to use the process of tax reform as a bargaining factor in political confrontations. Although there are many different types of taxes in the Polish system, only a few of them are a subject of controversy and most of the 'sins' of the system are blamed on these forms of taxation. These are the forms of taxation which play an important role as sources of income of the treasury and are simultaneously an important factor in deciding the financial situation of economic groups and individuals who do not run businesses. The following are the forms of taxation which bring the largest income to the treasury and thus play the most important role in influencing the economic situation of tax-payers: taxes on services and goods (VAT), excise taxes corporate taxes, income taxes on individuals, real estate taxes and, to a certain degree, agricultural tax. Although six types of taxation have been mentioned, the main criticisms are levelled at the first four forms of taxation.

In conclusion, despite the changes made in the Polish taxation system:

- there is still an excessive level of taxation on the profits of businesses, which should be rather used for investment purposes – thus, the taxation system does not fulfil social and economic goals;
- it is still ambiguous and misunderstood by tax-payers.

In consequence of this, the frequency of tax evasion has increased. In connection with major problems linked to the legal means of avoiding taxation (and not just these means), many methods of tax evasion are used. This means that taxes are illegally avoided, which in consequence maintains the 'grey market' at a noticeably higher level than in countries of a similar level of development.

The following methods are the most commonly used methods of tax fraud:

- failing to declare earnings;
- transfer of earnings from an enterprise which is subject to taxation, to an enterprise which is not subject to taxation;
- falsification of proofs of purchase;
- declaring higher costs than those actually incurred;
- lowering the monthly rates of income tax payments;
- artificial lowering of the value of goods;
- failing to pay the taxes due before the deadline;
- false tax records in the accounts.

Apart from these classic forms of tax fraud, more complicated frauds occur, although more rarely. These types of fraud are more difficult to uncover and so cause a much larger loss to the state budget.