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***Tax on certain financial institutions in the context of fairness principle***

***(Podatek od niektórych instytucji finansowych w kontekście zasady sprawiedliwości)***

## **SUMMARY**

Doctoral dissertation prepared  
in the Tax Law Department  
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Łódź 2021

The Ph.D dissertation regards a problem of compliance of tax on certain financial institutions with the fairness principle. After the global *subprime crisis* of 2007-2009, the issue of taxation of financial institutions was widely discussed by politicians, representatives of legal and economic sciences and the financial industry. The main topic was the search for an optimal approach to the taxation of financial institutions and their activities on the financial market. As a result of the discussions, in the post-crisis years there was an increased tendency to impose additional tax burdens on the financial sector. Although, taxes with a similar structure to the Polish tax on certain financial institutions were introduced in some countries even before the global financial crisis of 2007. Given the international character of many financial institutions, it seems necessary to conduct an international reflection on the direction in which the taxation of this sector should go - considering the specificity of the sector and analyzing the objectives and effects of introducing additional burdens. The fiscal goal of individual countries introducing additional tax burdens on the financial sector should not be separated from the aim of achieving a global consensus at least on the direction in which the taxation of the financial sector should go.

The purpose of this dissertation is to evaluate the tax on certain financial institutions introduced in Poland in 2016 in terms of compliance with the principle of tax fairness. Moreover, the aim is to present *de lege ferenda* postulates and proposals for changes in the tax so it realizes the tax fairness rule. The following research methods were used in the dissertation: dogmatic method, comparative method and historical method.

The first chapter is dedicated to the principle of tax fairness, the analysis of the nature of this principle and its place among the principles of law. This chapter also discusses the place of tax principles on the ground of principles of law. Also, it presents those tax principles which are closely connected with or stem from the principle of tax fairness.

The second chapter characterizes financial institutions and presents the special role they play in modern economic systems. This part also describes the concept of financial stability, the phenomenon of financial crisis and contain a brief overview of the subprime crisis that was also discussed as a justification for introducing additional tax burdens for the financial sector.

The third chapter includes the analysis of Polish regulations regarding tax on certain financial institutions. This section presents the goals and motives of the legislator in introducing a new tax and the structural elements characterizing the Polish banking tax.

The fourth chapter reviews and compares the financial sectors of selected states and the tax burdens that have been imposed on financial institutions in those states, with particular emphasis on bank taxes. The choice of countries for the analysis carried out in this chapter was based on the choice of the legislator, who indicated these countries in the explanatory to the Act on Tax on Certain Financial Institutions.

The last, fifth chapter is devoted to the evaluation of rationale for the introduction of tax on certain financial institutions and presents alternative ways of taxing the financial sector. This chapter describes taxes other than banking tax, which are imposed on financial market entities, i.e. tax on financial transactions (TFI) and tax on financial activities (FAT). Finally, there are presented amendments and *de lege ferenda* postulates to the Polish Act on Tax on Certain Financial Institutions.

In the thesis there was made an attempt to find features distinguishing the entities of financial sector from other enterprises, which would make it possible to justify the imposition of an additional tax burden. As it was proved in the dissertation, such a feature is not the often quoted "high profitability of entities operating in the financial market". However, the distinguishing features of the banking sector entities are a number of statutory regulations which apply to them and its role in ensuring the financial stability. The legislator, when imposing an additional burden on financial institutions, should take into account precisely these distinguishing features. Consequently, the revenues from the tax on these entities should be allocated (to a significant extent) for the purposes related to supporting the stability of the financial system in Poland. It seems to be a good solution to transfer the revenues of this tax to the stabilization fund, as it is the case in some countries where the tax is similar in structure to Polish banking tax.

The main drawbacks of tax on certain financial institutions in Poland are:

- the construction of the tax, in which the tax base includes assets of financial institutions;
- lack of compliance with the principle of tax fairness;



- possibility of shifting the economic burden to the clients of financial institutions;
- the exclusively fiscal nature of the tax, without considering activities aimed at stabilization of the banking sector.

Calculations made for financial industry reports show that the banking tax in relation to the size of the banking sector (measured by the balance sheet total) is the highest in Poland. This means that the Polish banking sector is burdened with bank tax more than proportionally to its size. A solution to this problem could be the change in the structure of the polish tax on certain financial institutions, including lowering the tax rate.

Taxation of financial institutions, in order to fully realize the principle of tax equity, should be based on a detailed analysis of the economic effects it will have and consider the special functions and characteristics of entities operating in financial markets. Moreover, due to the fast progressing globalization processes, which also concern the sector of financial institutions, the desired direction in which the plans for taxation of this sector should be heading, seems to be the unification of tax policy.

Łódź, 9.12.2021 r.  
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