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***Extractive taxes – evaluation of the tax regime of extraction of certain
minerals in Poland in the light of solutions of selected countries***

***(Podatki wydobywcze – ocena systemu opodatkowania wydobycia niektórych
kopalin w Polsce na tle rozwiązań wybranych krajów)***

SUMMARY

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The doctoral dissertation regards a problem of taxation of extractive industry. Its aim is to evaluate the Polish system of mineral extraction taxation and formulate *de lege ferenda* postulates in this respect. In order to fulfill this goal proper fiscal tools are presented and assessed in the light of certain criteria.

The dissertation consists of five chapters and has the following structure. The first chapter is devoted to the characteristics of taxation of extractive industry as this sector can be characterized by some special features that make its taxation a difficult challenge (for example high costs, long-lasting production processes, uncertainty or finite nature of minerals can be mentioned). The subsequent stages of mining investments are described and the important notion of a resource rent is explained. Next, numerous legal forms of taxing the extraction of minerals are discussed. Fiscal instruments are presented by the following classifications: due to the type of levy, its construction and the scope of taxation.

The second chapter includes a brief overview of taxes levied at extraction of minerals in selected countries: Australia, Canada, Norway and Mexico. These countries have large extractive potential and have developed diverse fiscal instruments in this area. The selection is based on their geographical location (so that the list would include countries located on different continents). This part is concluded with comparative findings.

The third chapter contains the analysis of Polish legal acts regulating levies imposed on the mining sector. Firstly, the legal framework for ownership of minerals resulting from the Geological and Mining Law of 2011 is mentioned, indicating proper ownership rights of the State in this respect (the notions of mining ownership, mining usufruct and concessions are described) as well as fees that must be paid by entrepreneurs conducting mining activities (these are: fee for issuing a concession for exploration of minerals, maintenance fee for the extracted mineral, fee for establishing mining usufruct and fee for providing geological information). Next, the most important provisions of the Tax on the Extraction of Certain Minerals Act of 2012 are discussed, describing particular structural element as well as *ratio legis* of this tax. Finally, the regulation stemming from the Special Hydrocarbon Tax Act of 2014 is analysed. Apart from its structure and reasons of its implementation, attention is also paid on important issue related to the temporal scope of its application as the legislator has provided special rules in this respect.

In the fourth chapter there are formulated certain criteria in the light of which mining levies should be evaluated. Due to the Author's scientific field, the analysis is limited solely to Polish taxes imposed on the extractive sector, i.e. tax on the extraction of certain minerals and special hydrocarbon tax. As introduction, the desirable features of the "ideal" system of taxation of mineral extraction are indicated, taking into consideration the conflict of interest between the State as the owner of the minerals and entrepreneurs conducting mining activities connected with their extraction. Next, legal criteria of assessment are indicated. They are based on selected tax principles and related regulations provided in the Constitution of the Republic of Poland. These principles are as follows: tax fairness (including the notion of equality and universality of taxation), neutrality and certainty of taxation. They were selected because of their importance within taxation of the extractive sector. Then, non-legal criteria of assessment are indicated. In this context several practical, non-legal factors are taken into account, such as the fiscal role of Polish extractive taxes, political circumstances as well as geological conditions representing Polish extractive potential.

The fifth, final chapter is devoted to the evaluation of Polish extractive taxes in the light of both legal and non-legal criteria formulated in the previous chapter. Thus, Polish extractive taxes are assessed from the point of view of abovementioned tax principles. Attention is also paid to their fiscal significance within the structure of the Polish budget in 2012-2017. The political context of taxation of the mining sector in Poland is outlined as well - only to the necessary extent. Certain geological data is also presented, showing the volume of the resources of particular minerals being subject to taxation as well as the scope of their extraction in 2011-2017. It has to be noted that the full assessment is possible only with regard to tax on the extraction of certain minerals, as provisions regulating special hydrocarbon tax came into force in 2016, but this tax will not be collected until 2020. The ongoing period of "tax holidays" does not allow to draw complete conclusions. However, several assessments on this tax are formulated on the basis of the binding regulation (indicating the structure of this tax) and some of its practical implications.

Tax on the extraction of certain minerals has been functioning in the Polish legal system for several years. Its material scope includes extraction of copper and silver (from its introduction in 2012) as well as oil and gas (since 2016) while its personal scope involves individuals, legal persons and organizational units without legal personality carrying out mining activities connected with indicated minerals. As analysed tax is based on the construction of royalty, the taxable base constitutes the volume of extraction of minerals

being subject to tax. Because of the mechanism of tax rate calculation (including global prices of abovementioned minerals), there can be some reservations from the point of view of the principle of tax fairness. The amount of tax due is detached from the real income from mining activities what may be considered as a violation of the ability to pay principle. Moreover, taking the deteriorating financial situation of the only taxpayer into account, tax on extraction of certain minerals cannot be considered as neutral. In the course of the legislative procedure, some allegations were also made regarding potential violation of the principle of legal certainty by establishing too short *vacatio legis* period. Despite the lack of unconstitutionality in this respect, in my opinion taxpayers should have more than 14 days to become familiar with the provisions introducing new tax burden. Budget revenues stemming from analysed tax in 2012-2017 amount to nearly 9,5 billion PLN, although its role within the Polish budget structure can be considered as insignificant (0,41%-0,69% of the global budget revenues in abovementioned years). Polish mining potential with regard to copper and silver is undeniable, however due to the high tax burden of the only taxpayer and particular political reasons in this context we can expect its rapid reduction or even total elimination from Polish tax system.

Special hydrocarbon tax has not yet been collected, although its regulation was introduced in 2014 (generally in force since 2016). As mentioned above, tax obligation will arise with respect to revenues obtained from 2020. This tax is charged on the hydrocarbons' extraction activities (related to oil and gas). Its personal scope includes individuals, legal persons and organizational units without legal personality carrying out abovementioned activities while the taxable base is profit derived from them. It has to be noted that special hydrocarbon tax is in fact the form of elastic income tax what implies some constructional similarities. Due to the mechanism of tax rate calculation (correlated with the amount of R-factor, which can be defined as a ratio of accumulated revenues to accumulated expenses), special hydrocarbon tax rates vary from 0% to 25% (rates increase with the increase of the profitability of the extraction). In my opinion this mechanism deserves a positive assessment as it reflects the specific course of extractive projects and therefore complies with the principle of tax fairness and ability to pay principle. However, there may be justified concerns whether this tax will not be abolished (before it actually started to be collected), because according to the declarations prepared by its taxpayers, the revenues from this tax will either not appear at all or will be significantly lower than the legislator has assumed.

Finally, there are presented legislative propositions concerning analysed taxes, which may result in modification of their structure or their complete abolition. Several *de lege ferenda* postulates are also formulated. In my opinion tax on the extraction of certain minerals should not be totally eliminated from the Polish tax system. However, its constructional elements need to be revised (e.g. the mechanism of calculating tax rates), as well as proper investment incentives should be provided. When it comes to special hydrocarbon tax, in my opinion its introduction was premature and based on overestimated data. Therefore, the following options can be indicated – its total abolition or extension of its material scope to new minerals.

Regardless of the future of analysed taxes, the issue of taxation of Polish minerals should be the matter of a debate (legal, scientific, economic and political) resulting in a coherent, long-term strategy in this area. In my opinion only such cooperation may ensure a stable participation in the revenues from natural resources not only to us, but also future generations.

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