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Calculation of tax income of entrepreneurs – possible prospects and main problems of implementation of the book-tax conformity concept in the Polish system

Obliczanie dochodu podatkowego przedsiębiorców – możliwe perspektywy i główne problemy implementacji koncepcji zgodności księgowo-podatkowej w polskim systemie

Расчет налогооблагаемого дохода предпринимателей – возможные перспективы и основные проблемы внедрения концепции соответствия между бухгалтерской и налоговой отчетностью в польской системе

Розрахунок податкового доходу підприємців – можливі перспективи та основні проблеми впровадження концепції податкового-бухгалтерської відповідності в польській системі

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Summary: According to book-tax conformity (BTC) concept, financial accounts are authoritative for tax purposes. This concept is used in some countries, while in others (including Poland) – it is not. Currently and among other aspects, due to some EU and OECD projects, this situation most probably will have to change, at least to some extent. It is in this regard that the possible prospects and main problems of implementation of the book-tax conformity concept in the Polish system are analysed in this article.

Key words: book-tax conformity, income taxes, financial accounting, entrepreneurs

Streszczenie: Koncepcja zgodności księgowo-podatkowej (*book-tax conformity*) oznacza, że rachunkowość finansowa jest autorytatywna dla celów podatkowych. Koncepcja ta jest stosowana w niektórych krajach, a w innych (w tym w Polsce) – nie. Obecnie, m.in. w związku z niektórymi projektami unijnymi i OECD, sytuacja ta najprawdopodobniej, przynajmniej w pewnym stopniu, będzie musiała ulec zmianie. W związku z tym w artykule przeanalizowano możliwe perspektywy i główne problemy implementacji koncepcji zgodności księgowo-podatkowej w polskim systemie.

Słowa kluczowe: zgodność księgowo-podatkowa, podatki dochodowe, rachunkowość finansowa, przedsiębiorcy

Резюме: Концепция соответствия между бухгалтерской и налоговой отчетностью (*book-tax conformity*) означает, что финансовый бухгалтерский учет является авторитетным для налоговых целей. Эта концепция применяется в одних странах, а в других (в том числе в Польше) – нет. В настоящее время, в частности, благодаря некоторым проектам ЕС и ОЭСР, эта ситуация, скорее всего, должна измениться, по крайней мере, в некоторой степени. Поэтому в статье анализируются возможные перспективы и основные проблемы внедрения концепции соответствия между бухгалтерской и налоговой отчетностью в польской системе.

Ключевые слова: концепция соответствия между бухгалтерской и налоговой отчетностью, налоги на прибыль, финансовый бухгалтерский учет, предприниматели

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Резюме: Концепція бухгалтерсько-податкової відповідності (*book-tax conformity*) означає, що фінансовий облік є достовірним для цілей оподаткування. У деяких країнах ця концепція застосовується, але не в інших (у тому числі в Польщі) – зовсім не використовується. Сьогодні здається, що, зокрема, завдяки деяким проєктам ЄС та ОЕСР, ця ситуація принаймні до певної міри мусить змінитися. Тому в статті проаналізовано можливі перспективи та основні проблеми впровадження концепції бухгалтерсько-податкової відповідності в польській системі.

Ключові слова: бухгалтерсько-податкова відповідність, податки на прибуток, фінансовий облік, підприємці

Introduction

According to the book-tax conformity (BTC) concept, financial accounts are authoritative for tax purposes, i.e. taxpayers who are obliged to prepare financial statements and to calculate financial result have to use them (at least to some extent) for the purposes of calculation of income taxes as well. The origins of this concept date back to the end of the 19th century, with its beginning in 1891 in Prussia.[1] Currently, this concept is used in some countries (e.g. Spain), while in others (including Poland) – it is not. Moreover, the relationships between financial accounting and tax law have evolved in some countries, in particular in the case of Poland, where there was a significant change from the system of close relationships, transitioning to that of relationships based only on the use of accounting books for tax purposes as recording tools and independent calculation of the tax result from the financial result.

In the period before Poland's political transformation and introduction of the market economy, the model of calculating the tax result based on the financial result was in force and the principles of financial result determination were subordinated to tax purposes. Along with the system transformation, there was a departure from this model of relations. Coordinating the accounting system and tax law proved more difficult in practice than it first seemed. Among the causes of these difficulties, the literature points out the traditions of Roman law deeply rooted in Poland and the inspirations drawn from German commercial law. They have been difficult to reconcile with the approach based on the assumptions of common law and international standards, which have been the main trends in the development of modern financial accounting.[2]

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1 F. Fraberger, M. Petrit, C. Wytrzens, *Maßgeblichkeitsprinzip*, in: *Handbuch der österreichischen Steuerlehre Band II. Steuerliche Gewinnermittlung und Steuerbilanzpolitik*, eds. R. Bertl, K. Hirschler, Wien 2016, p. 91.

2 A. Helin, *Ustawa o rachunkowości 2009*, Warszawa 2009, p. LXXI.

When the Accounting Act[3] was prepared, two approaches were possible: the development of a relatively short legal act of a framework nature, requiring numerous implementing regulations; or the transfer of all relevant provisions to the AAct, i.e. the development of a comprehensive legal act of the character of a code. The latter solution was adopted, thus following the trend present in countries significantly influenced by Roman law. In Poland, moreover, a manifestation of this approach is the low importance of standards developed by professional circles.[4]

Subsequently, in relation to the processes of harmonisation of balance sheet law in the European Union (and also some implementation[5] of International Accounting Standards – IAS, currently International Financial Reporting Standards – IFRS), appropriate adaptations of the balance sheet law regulations have been made, although it did not inspire changes in the system established in the 1990s of the model of relations between financial accounting and tax result – based on the assumption of independent determination of financial result and calculation of tax result.

The rules of tax result calculation are set out by tax law and, as a consequence, the profit or loss determined in accordance with the provisions of the balance sheet law often differs from the result determined for tax purposes. The balance sheet law should be understood as a set of rules resulting primarily from the AAct and its regulations. In addition, certain specific accounting regulations may be included in other legal acts (e.g. certain regulations concerning the accounting of entities operating under the provisions of the Banking Law[6] are specified in relevant regulations of the Minister of Finance). Moreover, the AAct refers directly[7] to accounting standards, which may result in the extension of the rules of financial accounting with international standards (IAS and IFRS) or national standards (issued by the Accounting Standards Committee in Poland).

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3 Accounting Act of 29 September 1994, Journal of Laws [Dziennik Ustaw] 2023 item 120 as amended (hereinafter: AAct).

4 A. Helin, *Ustawa*…, pp. LIII and LIIVIII.

5 According to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, OJ L 243, 11.09.2002, pp. 1–4.

6 Act of 29 August 1997 – Banking Law, Journal of Laws 2023 item 2488 (hereinafter: Banking Law).

7 See Article 2 (3) of the AAct and Article 10 (3) of the AAct. For more see M. Supera-Markowska, *Rachunkowość – aspekty prawne i podatkowe*, Warszawa 2022, pp. 75–80.

1. Tax and financial results in the Polish system

In Poland, in the regulations of both tax and balance sheet law, although operating a slightly different nomenclature (income in tax law, and profit or surplus of revenues over costs in the balance sheet law and loss in tax law or loss or excess of costs over revenues in balance sheet law), the fundamental concept is the result from activity (economic or other, e.g. public benefit[8]) understood as the difference between revenues and costs (deductible costs in tax law) for the essentially identical tax and financial reporting period (tax year and financial year). Therefore, for all these conceptual categories, the common name "result" can be used.

The category of tax result (income or loss) is a category of tax law, regulated in the provisions of the following income tax acts: the Act of 26 July 1991 on Personal Income Tax[9] and the Act of 15 February 1992 on corporate income tax.[10] The third income tax act, however non-operating in its regulation with income category as it provides for revenue taxation (or taxation based on the characteristics of income/revenue), is the Act of 20 November 1998 on Lump Sum Income Tax on Certain Revenues Earned by Natural Persons.[11] The category of financial result (gain or loss and – in some cases – surplus of revenues over costs or excess of costs over revenues) is a category of balance sheet law, which is regulated by the provisions of the AAct.

Both based on tax law and balance sheet law, the result of the activity is calculated for a certain period, which is primarily the tax year and the financial year. Pursuant to Article 3 (1) (9) of the AAct, the financial year is a calendar year or other period of 12 consecutive full calendar months, also used for tax purposes. The financial year or changes thereto shall be specified in the statutes or agreement under which the entity is established. If an entity commenced operations in the second half of the adopted financial year, the accounting books and financial statement for that period may be combined with the accounts and financial statement for the following year. In the case of a change in the financial year, the first financial year after the change should be longer than 12 consecutive months.

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8 The considerations in this article, in accordance with the adopted assumptions, will be focused on the issues of business taxation (taxation of entrepreneurs).

9 Act of 26 July 1991 on Personal Income Tax, Journal of Laws 2024 item 226 as amended (hereinafter: PITAct).

10 Corporate Income Tax Act of 15 February 1992, Journal of Laws 2023 item 2805 as amended (hereinafter: CITAct).

11 Act of 20 November 1998 on Lump Sum Income Tax on Certain Revenues Earned by Natural Persons, Journal of Laws 2022 item 2540 as amended (hereinafter: LSITAct).

In the case of PIT taxpayers, the tax year is the calendar year.[12] In the case of CIT taxpayers, under Article 8 (1) of the CITAct, the tax year – with certain reservations – is the calendar year, unless the taxpayer decides otherwise in the statutes or articles of association or in another document adequately regulating the constitutional principles of other taxpayers (in such a case, the tax year is the period of the 12 consecutive calendar months). In the case of taking up business activity for the first time, the first tax year starts from the date of commencement of activity and ends at the end of the calendar year or on the last day of the selected tax year, but lasts no longer than 12 consecutive calendar months (Article 8 (2) of the CITAct). In case of taking up business activity for the first time in the second half of the calendar year and choosing the tax year coincides with the calendar year, the first tax year may run from the date of commencement of activity until the end of the calendar year following the year in which the activity began (Article 8 (2a) of the CITAct). In addition, in accordance with Article 8 (6) of the CITAct, when separate provisions result in an obligation of closing the accounting books (drawing up the balance sheet) before the end of the tax year adopted by the taxpayer, the period from the first day of the month following the end of the previous tax year until the date of closure of the financial accounts is considered the tax year. In this case, the next tax year is considered the period from the date of opening the accounting books to the end of the tax year adopted by the taxpayer.

Due to the common essence of the concepts of tax result and financial result – understood as the difference between revenues and costs (deductible costs in tax law) for a certain period (financial and tax year) – a fundamental question arises, namely whether (and, if so, how) the relationship between the rules of determining the financial result and tax result can be established. As it was already mentioned, in Poland, these relations have evolved significantly from the system of close relationships, transitioning to the variant of relationships based only on the use of accounting books for tax purposes as recording devices and independent determination of the tax result from the financial result.

It should be also noted that in addition to accounting books, there are also other books or records (in particular, the tax book of revenues and expenditures[13]), the keeping of which – under certain conditions – exempts from the obligation to keep accounting books. All these books and records fall within the scope of the notion

12 What follows from Article 11 of Act of 29 August 1997 Tax Ordinance, Journal of Laws 2023 item 2383 as amended (hereinafter: TOAct), according to which the tax year is the calendar year, unless the tax act provides otherwise (and the PITAct does not provide otherwise).

13 Regulation of the Minister of Finance of 23 December 2019 on Keeping a Tax Book of Revenues and Expenditures, Journal of Laws 2019 item 2544.

of "tax books," as defined in Article 3 (4) of the TOAct, which covers: accounting books, books of revenues and expenditures and other records and registers that taxpayers (tax remitters or tax collectors) are obliged to keep for tax purposes, on the basis of separate regulations. These tax books, other than the accounting books, serve only to determine the tax result on the basis of tax regulations and – in the case of the subjects conducting them – the category of financial result (and more broadly financial accounting) does not apply to them. It means that not all income tax taxpayers are obliged to keep accounting books and calculate the financial result of their activities. However, even in the case of entities, for which the accounting books are tax books, accounting books are merely technical instruments for recording events, and taxpayers apply tax regulations – not the provisions of the balance sheet law[14] – to determine the tax result. Therefore, the relationship resulting from the aforementioned provisions is only technical-formal, which has been confirmed by many administrative court sentences.[15]

2. Income of entrepreneurs in the Polish system of income taxation – state of play

Both income tax acts indicate that the object of taxation is, in principle,[16] income – each formulating its own definitions. Under Article 7 of the CITAct[17] and Article 9 of the PITAct,[18] "income" is defined as the surplus of the sum of revenues over the costs of obtaining them (deductibles costs) achieved in the tax year. Deciding which of the two income tax acts (PITAct or CITAct) taxpayers are to apply depends on

14 With a few exceptions.

15 Among others see the following sentences of administrative courts: Supreme Administrative Court in Lublin of 24 January 1995, SA/Lu 666/94; Supreme Administrative Court in Lublin of 9 May 1995, SA/Lu 1456/94; Supreme Administrative Court in Poznań of 8 June 1995, SA/Po 3730/94; Supreme Administrative Court in Katowice of 2 April 1996, SA/Ka 1405/95; Voivodeship Administrative Court in Warsaw of 12 May 2004, III SA 11/03; Voivodeship Administrative Court in Warsaw of 26 March 2007, III SA/Wa 2431/06; Voivodeship Administrative Court in Warsaw of 8 December 2009, III SA/Wa 1298/09; Voivodeship Administrative Court in Bydgoszcz of 21 September 2010, I SA/Bd 625/10; Voivodeship Administrative Court in Łódź of 16 November 2010, I SA/Łd 915/10; and Voivodeship Administrative Court in Gliwice of 8 March 2011, I SA/Gl 1137/10.

16 However, they also provide for certain income tax derogations in favour of revenues taxation, e.g. in the case of non-residents.

17 See Article 7 (2) of the CITAct.

18 See Article 9 (2) of the PITAct.

their legal form[19] and not on the professional character of their activity. Taxation on the basis of acts appropriate to the legal form of the taxpayer concerns both entities (with a given legal form) conducting business activity and those obtaining income (revenues) from other sources. However, only natural persons (or enterprises in inheritance) are subject to lump sum income taxation on registered revenues or a tax card specified in the LSITAct.

Pursuant to Article 6 of the LSITAct, the revenues of natural persons or enterprises in inheritance from non-agricultural business activity (including when this activity is carried out in the form of a civil law partnership of natural persons, a civil law partnership of natural persons and an enterprise in inheritance or a general partnership of natural persons) are subject to taxation (optionally, at the taxpayer's choice) in the form of a lump sum income taxation on registered revenues if, in the year preceding the tax year, taxpayers obtained revenues from this activity conducted exclusively independently in an amount not exceeding EUR 2 million (in the case of activities conducted as a partnership, the sum of revenues of the partnership's shareholders from this activity did not exceed EUR 2 million) or commenced their activities in the tax year – regardless of the amount of the revenues – under the condition of not benefiting from taxation in the form of a tax card. As for the taxation in the form of a tax card, it may be paid only by taxpayers who continue to apply taxation in this form after 31 December 2021 and did not give it up or lose the right to tax in this form after that date.

In the case of both these forms of taxation, tax is levied without determining income – based on revenues or only the characteristics of income (revenue). It means that some PIT taxpayers, including those conducting business activity – being subject to taxation on revenues (lump-sum taxation on registered revenues) – are not required to determine their result at all, neither under tax regulations nor for financial reporting purposes (they do not have to keep accounting books at all, but only need to register their revenues), and some may continue to benefit from

[19] In the case of natural persons and enterprises in inheritance, they should apply the provisions of the PITAct (Articles 1–1a of the PITAct) and the CITAct regulations apply to tax capital groups; legal persons; and organisational units without legal personality, with the exception of enterprises in inheritance and companies or partnerships without legal personality, unless they are: capital companies in the organisation; limited partnerships or limited joint-stock partnerships having their registered office or place of management in the territory of the Republic of Poland; certain general partnerships having their registered office or place of management in the territory of the Republic of Poland; or partnerships having their registered office or place of management in another country if, under the tax law of that other country, they are treated as legal persons and are taxed in that country on their worldwide income; and family foundations in organisation (Articles 1–1a of the CITAct).

taxation based on the characteristics of income/revenue (in the form of a tax card), for which they do not even have to register their revenues.

In turn, some CIT taxpayers may choose to be taxed in the form of a lump sum on company income (the so-called Estonian CIT,[20] which was introduced fairly recently, that is 2021, as an exceptional form of taxation accessible only for some CIT taxpayers), in which case the basis for determining their tax result is the financial result (their net financial profit adjusted for tax purposes according to CITAct provisions).[21]

Finally, in the case of shipping entrepreneurs, they may be subject to a special tax in the form of tonnage tax,[22] the amount of which depends on the tonnage of the taxpayer's vessels, and that excludes taxation of their revenues (income) on the basis of the CITAct[23] and PITAct[24] (similarly for revenues taxed on the principles resulting from the Act on the Activation of the Shipbuilding Industry and Complementary Industries,[25] in which case the amount of taxation depends on the revenue due from the sale or conversion of a ship).

Still, as a principle – despite some exceptions – in the current Polish system, the income tax result of entrepreneurs is determined (if the taxpayer is obliged to determine it at all) independently of the calculation of the financial result. In this context, some problems must be analysed in relation to the concept of the common consolidated corporate tax base (CCCTB),[26] proposals for its directives,[27] the *Business in Europe: Framework for Income Taxation* (BEFIT) project[28] and OECD's Base

20 See Articles 28c–28t of the CITAct.

21 See Article 28m of the CITAct.

22 See Act of 24 August 2006 on Tonnage Tax, Journal of Laws 2021 item 985.

23 See Article 2 of the CITAct.

24 See Article 2 of the PITAct.

25 See Act of 6 July 2016 on the Activation of the Shipbuilding Industry and Complementary Industries, Journal of Laws 2021 item 1704.

26 See M. Supera-Markowska, *Wspólna skonsolidowana podstawa opodatkowania jako koncepcja harmonizacji opodatkowania korporacyjnego w UE*, Warszawa 2010, and the literature referred to therein.

27 European Commission, Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM/2011/121 final; European Commission, Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM/2016/683 final and European Commission, Proposal for a Council Directive on a Common Corporate Tax Base (CCTB), COM/2016/685 final. In reference to the CCCTB directive project and its potential meaning for Polish taxpayers, see M. Supera-Markowska, *Projekt dyrektywy w sprawie wspólnej skonsolidowanej podstawy opodatkowania osób prawnych (CCCTB) – analiza zaproponowanych regulacji i ich znaczenie dla polskiego podatnika*, Przegląd Podatkowy 2011–2012, no. 1–5, and the literature referred to therein.

28 European Commission, Communication from the Commission to the European Parliament and the Council, Business Taxation for the 21st Century, COM (2021) 251 final. See M. Supera-Markowska, *Możliwości zbliżenia zasad ustalania wyniku podatkowego i bilansowego*, in: *Prawo podatkowe w systemie*

Erosion and Profit Shifting (BEPS) Two-Pillar Solution[29] project, since all of them are based – although to some extent only – on the concept of calculation of tax result in relation with the financial result (financial accounting).

3. The BTC concept in EU directives and BEPS project

In recent and upcoming developments in EU and international tax law: minimum taxation (EU directive on minimum taxation[30] and Pillar Two of BEPS) as well as the discussion of reallocation of international taxing rights (Pillar One of BEPS), there might be observed the establishment of some link between income taxation of entrepreneurs and financial accounting. Also BEFIT, which has replaced the CCCTB project and has recently resulted in a directive proposal,[31] to some extent is based on BTC concept implementation.

According to Article 4 (1) of the BEFIT Directive "the preliminary tax result of each BEFIT group member shall be determined, for each fiscal year, based on its financial accounting net income or loss as adjusted in accordance with Article 8 to 41 of this Directive." The relation between financial and tax result and accounting can also be observed in OECD Pillar Two,[32] and Pillar One approach.[33] In both cases, the OECD model rules link the tax burden to the financial result and statements of the taxpayers in question. As it was already mentioned in Statement from 2021[34] in the case of Pillar One, "the relevant measure of profit or loss of the in-scope MNE will be determined by reference to financial accounting income, with a small

prawa. Międzygałęziowe związki norm i instytucji prawnych, eds. A. Kaźmierczyk, A. Franczak, Warszawa 2019, and the literature referred to therein.

29 See OECD, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 8 October 2021*, https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm [access: 10.05.2024]. As at 9 of June 2023, 139 member states have agreed on the Inclusive Framework on BEPS, see https://www.oecd.org/tax/beps/oecd-g20-inclusive-framework-members-joining-statement-on-two-pillar-solution-to-address-tax-challenges-arising-from-digitalisation-october-2021.pdf [access: 10.05.2024].

30 Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022, pp. 1–58 (hereinafter: Directive (EU) 2022/2523).

31 European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), COM (2023) 532 final (hereinafter: BEFIT Directive).

32 See more https://oecdpillars.com/pillar-two-navigator/ [access: 10.05.2024].

33 See more https://oecdpillars.com/pillar-one-navigator/ [access: 10.05.2024].

34 OECD, *Statement on a Two-Pillar Solution*…

number of adjustments"[35] and in case of Pillar Two "the GloBE rules will operate to impose a top-up tax using an effective tax rate test that is calculated on a jurisdictional basis and that uses a common definition of covered taxes and a tax base determined by reference to financial accounting income (with agreed adjustments consistent with the tax policy objectives of Pillar Two and mechanisms to address timing differences)."[36] Also Directive (EU) 2022/2523 follows this approach declaring that "the qualifying income or loss of a constituent entity shall be computed by making the adjustments set out in Articles 16 to 19 to the financial accounting net income or loss of the constituent entity for the fiscal year before any consolidation adjustments for eliminating intra-group transactions, as determined under the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity."[37]

It therefore seems that it is inevitable, at least to some extent,[38] that the BTC will have to be implemented. Hence it seems worthy of attention to try to analyse fundamental issues related to the possible prospects and main problems of its implementation in the Polish tax system (taking into consideration not only the BEFIT project, minimum taxation and other BEPS issues – but more widely).[39] These are the questions of subjective scopes of income taxation and financial accounting, important differences between tax and balance sheet law principles and finally statutory act of law regulation in the case of taxes *versus* the use of standards in financial accounting.

4. Subjective scopes of income taxation and financial accounting in the Polish system

In order to adopt a system of determining the tax result in relation to the financial result (accounting) in Poland, first it should be ensured that income tax taxpayers are covered by the scope of financial accounting. The catalogue of entities obliged

35 Ibidem, p. 2.

36 Ibidem, p. 4.

37 Article 15 (1) of the Council Directive (EU) 2022/2523.

38 However, in accordance with the adopted assumptions, the issue of this extent is not the subject of analysis in this article.

39 Also because the advantages and disadvantages of BTC concept implementation have been widely discussed in the literature for years, these aspects will not be analysed in this text, concentrated on the topic of possible prospects and main problems of its implementation in Polish tax system and not the evaluation of the concept itself.

to apply the provisions on financial accounting is specified in Article 2 of the AAct. It can be indicated that – among the entities obliged to apply the accounting rules and principles set out in the AAct – there are entities to which these rules and principles apply, regardless of the size of their revenues, and entities that are subject to the obligation in question only as a result of the achievement of a certain minimum revenue threshold. The latter group includes natural persons, civil law partnerships of natural persons, civil law partnerships of natural persons and enterprise in inheritance, enterprises in inheritance, general partnerships of natural persons and professional partnerships, which are subject to the obligation to apply the accounting rules and principles set out in the AAct, if their net revenues (from the sale of goods, products and financial operations) for the previous financial year amounted to at least the equivalent (in Polish currency) of EUR 2 million.[40] The regulations in question indicate that the accounting rules and principles set out in the AAct are applied by three groups of entities: entities to which they apply obligatorily, regardless of the size of their revenues; entities to which they apply obligatorily, in connection with the achievement of a certain minimum revenue threshold (EUR 2 million); and entities that apply the accounting rules and principles set out in the AAct optionally, despite not reaching a certain minimal revenue threshold, based on their voluntary decision. This means that the subjective scope of the AAct and of both income tax acts does not always coincide.

Taxpayers keeping accounting books are obliged to keep them also for income tax purposes. Such obligations result primarily from Article 9 (1) of the CITAct and Article 24a (1) of the PITAct:

a) pursuant to Article 9 (1) of the CITAct, taxpayers of this tax are obliged to keep accounting records, under separate regulations, in a way that ensures the determination of the amount of income (loss), the tax base and the amount of tax due for the tax year and to include in the register of fixed assets and intangible assets information necessary to calculate the amount of depreciation charges under the provisions of Articles 16a–16m of the CITAct; such records may consist of:
– accounting books (in the case of the entities referred to in Article 2 of the AAct and on the terms set out therein); or

40 However, if this threshold is not met, pursuant to Article 2 (2) of the AAct, these entities may apply the accounting rules and principles set out in the Act also from the beginning of the following financial year. In this case, they are obliged to notify the tax office competent in matters of income tax or to submit a notification on the basis of the provisions of the Act of 6 March 2018 on Central Registration and Information on Economic Activity and the Information Point for Entrepreneur, Journal of Laws 2022 item 541.

– other records, including in particular certain simplified records of revenues and expenditures (but only in the case of some of the taxpayers);

b) pursuant to Article 24a (1) of the PITAct, natural persons, enterprises in inheritance, civil law partnerships of natural persons, civil law partnerships of natural persons and enterprises in inheritance, general partnerships of natural persons and professional partnerships performing business activity are obliged to maintain:

– books of revenues and expenditures; or
– accounting books, in accordance with separate regulations, in a way that ensures the determination of income (loss), the tax base and the amount of tax due for the tax year (including for the reporting period) and to include in the register of fixed assets and intangible assets information necessary to calculate the amount of depreciation charges in accordance with the provisions of Articles 22a–22o of the PITAct;

b) however, in the following cases, there is an obligation to keep accounting books:

– natural persons, civil law partnerships of natural persons, civil law partnerships of natural persons and enterprise in inheritance, general partnerships of natural persons, professional partnerships, enterprises in inheritance, if their revenues for the previous tax year amounted in Polish currency to at least the equivalent of the amount specified in euros in the accounting regulations (i.e. EUR 2 million);
– in the case of a deceased natural person engaged in business activities if, in the tax year in which the entrepreneur died, the deceased person kept accounting books, the enterprise in the inheritance is obliged to keep these books until the end of that tax year;
– an enterprise in inheritance is obliged to keep accounting books if the revenues of the deceased person and the enterprise in inheritance for the previous tax year amounted (in Polish currency) to at least the equivalent of the amount specified in euros in the accounting regulations (i.e. EUR 2 million);
– in the case of a deceased partner of a civil law partnership of natural persons if, in the tax year in which the entrepreneur died, the civil law partnership kept accounting books, the partnership of natural persons and an enterprise in the inheritance is obliged to keep these books until the end of that tax year; and
– a civil law partnership of natural persons and an enterprise in inheritance is obliged to keep accounting books in the tax year following the year in which the partner of the civil law partnership of natural persons died, if the revenues of the civil law partnership of natural persons and the civil law partnership of natural persons and enterprise in inheritance amounted in total (in Polish currency) to

at least the equivalent of the amount specified in euros in the accounting regulations (i.e. EUR 2 million).[41]

Therefore, in the case of some PIT taxpayers, the role of tax books must be played by accounting books and, in the case of others, could be by books of revenues and expenditures[42] (unless taxpayers can keep only some record of revenues or not keep any records at all as regards taxation in the form of lump sum income tax on registered revenues or a tax card). In the case of CIT taxpayers, in principle, the role of tax books is played by accounting books, unless they can keep simplified records of revenues and expenditures (which does not apply to all entities, and especially not the business entities).

It means that not all income tax taxpayers are covered by the scope of financial accounting. What's more, the observed trend consists of releasing more and more taxpayers from these obligations and an increase in replacing accounting books with tax records and the financial result with tax result (or even completely abandoning the determination of the tax result in favour of revenue taxation or taxation based on the characteristics of income/revenue). Such a situation would constitute an obstacle to implementing a uniform and common methodology for determining the tax result according to the BTC concept. Of course, this methodology could be limited only to entities currently keeping accounting books but, from the point of view of tax system consistency, a uniform approach would be the most desirable (although for small size entities, some simplifications should be maintained, but in the AAct itself).

5. Tax and financial accounting principles – unsolved problem or question of adjustments?

The primary function of financial accounting is the information function, i.e. the provision of information to owners, managers, investors, lenders and public authorities.[43] Therefore, the provisions of the balance sheet law and accounting standards

41 Article 24a (4)–(4f) of the PITAct.

42 That are only a tax record, based on the principle of one-sided entry, subordinated to tax purposes and may not be treated as a simplified form of financial accounting.

43 For more information on financial accounting functions and objectives, see inter alia Z. Messner, J. Pfaff, *Podstawy rachunkowości*, Warszawa 1998, pp. 13–18; I. Olchowicz, *Rachunkowość podatkowa*, Warszawa 2004, pp. 53–54; eadem, *Podstawy rachunkowości. Część 1. Wykład*, Warszawa 2004, pp. 16–18; *Rachunkowość. Zasady prowadzenia w jednostkach gospodarczych według polskiego prawa*

(both international and national) are intended to enable the assessment of the assets and financial position of the entity so as to give its owners and other entities a clear and complete picture (the principle of true and fair view). Tax legislation, in turn, serves to determine the taxable amount in order to determine the tax burden imposed on the taxpayer's income. This is why, in financial accounting, the main emphasis is placed on ensuring that there is no revaluation of the assets or the result of the entity, while tax regulations pay attention primarily to ensuring that the basis of the tax assessment is not underestimated. The purpose of financial accounting is, above all, not to allow the profit to be shown too high in comparison with the actual one, which, inter alia, is served by the principle of prudence. On the other hand, the purpose of tax regulations is to prevent the underestimation of the tax base and the threat to the regularity of the inflow to the budget revenues (in order to fulfil the fundamental tax function, that is fiscal function[44]). This is one of the reasons why while in financial accounting, the costs or revenues resulting from the valuation can be carried over to the financial result, in tax law, as a rule, there is no such possibility. It can be pointed out that while balance sheet law and financial accounting are future-oriented (providing information for making decisions concerning a given entity, and determining its economic potential), tax regulations relate primarily to the past (taxation of income).

Because of these different functions and purposes, financial accounting principles can have very different meanings for tax purposes, ranging from some applicability – through the feasibility of modifying them – to their complete rejection. Almost any of the most important financial accounting principles may pose problems when it comes to their application for tax purposes, namely the principle of substance over form, introducing an element of discretion and uncertainty; the materiality principle, mainly due to the threat of introduction of the subjective element for assessing the significance of the event; the principle of prudence (prudent valuation of assets), which may lead in some situations to an underestimation of profit and, in others, to the reporting of unrealised profit for taxation; or the accrual-based principle, which creates similar problems. It must also be mentioned that

bilansowego od 1995 roku, ed. T. Kiziukiewicz, Wrocław 1995, pp. 12–13 and *Wprowadzenie do rachunkowości. Podręcznik z przykładami, zadaniami i testami*, ed. E. Śnieżek, Kraków 2004, pp. 16–17.

44 Compare with e.g. M. Bitner et al., *Prawo finansowe. Prawo finansów publicznych. Prawo podatkowe. Prawo bankowe*, Warszawa 2017, p. 274; A. Gomułowicz, J. Małecki, *Podatki i prawo podatkowe*, Warszawa 2013, p. 259; W. Wójtowicz, *Problem „prorodzinności" podatku dochodowego osób fizycznych*, in: *Konstytucja – ustrój, system finansowy państwa. Księga pamiątkowa ku czci prof. Natalii Gajl*, eds. T. Romanowska-Dębowska, A. Jankiewicz, Warszawa 1999, p. 408; *Wstęp do nauki polskiego prawa podatkowego*, ed. W. Modzelewski, Warszawa 2005, pp. 24–27.

it is indicated in the literature[45] that, apart from the fair value principle (and the recognition of goodwill), there is in fact no irreconcilable conflict between financial accounting principles and tax regulations.

The answer to this challenge is the elaboration of the list of adjustments necessary for the introduction of the BCT concept, i.e. the adjustment of the financial result to the assumptions and objectives of the tax law (up and down adjustments). Such a solution has been used both in Directive (EU) 2022/2523[46] and BEFIT[47] directive. To some extent, such solutions have just been introduced in the so-called Estonian CIT, indicating, among others, its advantages: the simplification of tax calculations and reduction of compliance costs.[48] The possible wide implementation of this methodology might result in that many tax provisions (e.g. most depreciation regulations[49]) could be removed from the income tax acts, which would possibly contribute to their considerable simplification and increased transparency. The introduction of such a systemic change should also encourage a review of the need to maintain very broad catalogues of non-tax-deductible costs and exempt revenues, which are currently included in the income tax acts. At least some limitation of them could result in some approximation of the tax and financial result. With such assumptions, the discussion on BTC should focus on the issues of adjustments: their justification, number and regulation.

6. Statutory act of law regulation in tax law *versus* financial accounting standards

In the case of taxes (and other public levies), the Constitution[50] reserves the exclusive right to their imposition to the statutory acts of law.[51] This applies not only

45 See *The Determination of Corporate Taxable Income in the EU Member States*, eds. D. Enders et al., Alphen aan den Rijn 2007.

46 See Article 15 (1) of the Directive (EU) 2022/2523.

47 See Article 4 (1) of the BEFIT Directive.

48 See for example https://www.podatki.gov.pl/cit/estonski-cit/ [access: 10.05.2024].

49 That is the case in the Spanish system, in which the tax rules on depreciation are primarily concerned with the determination of maximum depreciation periods. Regulations of other issues in the tax law are unnecessary due to the aforementioned reference to the provisions of the balance sheet law.

50 Constitution of Republic of Poland of 2 April 1997, Journal of Laws no. 78, item 483 as amended (hereinafter: Constitution).

51 See Article 84 of the Constitution, according to which "everyone is obliged to bear public burdens and duties, including taxes, specified by statutory tax act" and Article 217 of the Constitution, according to which taxes and other public levies may only be imposed by way of a statutory tax act.

to the imposition of these levies but also to determining their basic structural elements, including subjects and objects of taxation, tax rates, the rules for granting reliefs and redemptions, as well as the categories of entities exempt from taxes.[52] The purpose of the constitutional principle of the imposition of taxes and the determination of their basic structural elements solely by statutory acts of law (principle of legality) is to ensure that interference by public authorities in the private sphere of taxpayer property rights by imposing financial burdens occurs only in cases and to the extent justified by the public interest. The limits of permissible taxation are determined by the state's demand for public funds, which, while linked to the fundamental function of taxes: the fiscal function, also means that the tax burden should not be higher than the public budget needs.[53]

The very determination of the tax burden must implement the principle of its specificity, which applies in particular to the object of taxation.[54] The Constitutional Tribunal derived the principle of specificity and certain other principles applicable in particular to tax law from Article 2 of the Constitution, which states that the Republic of Poland is a democratic state governed by the rule of law. These are the principles of citizens' trust in the state and the rule of law; protection of acquired rights; non-retroactivity; sufficient specificity of legal regulations; making law that is clear and understandable to citizens and resolving doubts in favour of the taxpayer.[55]

The exclusivity of the statutory act of law regulation of taxes and the principle of their specificity are extremely important in the context of calculating taxable income as an object of taxation in income taxes. In particular, defining these issues by standards is therefore not permissible because it must be a statutory regulation. This has excluded the possibility of the potential direct use of IAS and IFRS for the purposes of tax result calculation[56] because of their source: they are issued by

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52 See Article 217 of the Constitution, according to which "the imposition of taxes, other public levies, determination of subjects, objects of taxation and tax rates, as well as the rules for granting reliefs and redemptions and categories of entities exempt from taxes takes place by way of a statutory tax act."

53 W. Nykiel, A. Mariański, *Finanse publiczne*, in: *Konstytucja RP*, vol. 2, eds. M. Safjan, L. Bosek, Warszawa 2016, p. 1491. This, in turn, is connected with the issue of assessing these needs, especially through the prism of constitutional values, which, however, already exceeds the established framework of this text.

54 See T. Dębowska-Romanowska, *Dylematy interpretacyjne artykułu 217 Konstytucji*, in: *Ex iniuria non oritur ius. Księga ku czci Profesora Wojciecha Łączkowskiego*, eds. A. Gomułowicz, J. Małecki, Poznań 2003, p. 220.

55 W. Nykiel, A. Mariański, *Finanse publiczne*, p. 1483.

56 See more, in the context of the Common Consolidated Corporate Tax Base (CCCTB) project (currently replaced by BEFIT project), M. Supera-Markowska, *Wspólna skonsolidowana podstawa opodatkowania*…, and also the literature referred to therein.

a private organisation and even in the case of their adoption at the EU level in the endorsement process, determining the tax result on their basis could be problematic due to the constitutional obligation of only statutory act regulation of the object of taxation.[57]

Conclusions

Analyzing the possible prospects and main problems of implementing the BTC concept in the Polish system, the first issue that would have to be solved is the inconsistency of the scope of entities obliged to keep accounting books and being subject to income taxes. In the current state of the law, the BTC concept could be introduced to apply only to some taxpayers, while equalising the situation of all taxpayers conducting economic activity, irrespective of their legal form, would contribute to implementing the principle of neutrality.[58] In this context assuming that all income tax taxpayers[59] should be obliged to keep accounting books (with some simplifications for smaller entrepreneurs), *de lege ferenda* law changes would refer not only to tax, but also accounting law regulations.

In view of the unification of the subjective scopes of the income tax acts and the AAct (while maintaining some simplifications for smaller entities) there would be a situation in which tax regulations could refer to the financial result as a starting point for determining the tax result, focusing on adjustments necessary due to different objectives and principles of financial accounting and tax law (both in view of the risk of potential tax abuse by taxpayers and over taxation). In this context, it must be kept in mind that a direct reference to accounting standards by tax law – due to the constitutional principle of statutory tax regulation exclusivity would be doubtful as regards fulfilment of the principle of legality.

As a result of BTC concept implementation, the simplification of tax calculations and reduction of compliance costs could occur (in the literature also some other advantages are mentioned, such as, for example, reduction of tax avoidance).

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57 Expressed in Article 217 of the Constitution.

58 According to it, taxes should meet the postulate of neutrality, i.e. they cannot affect the investment decisions of entrepreneurs, which are to be made only on the basis of economic factors. See Common Consolidated Corporate Tax Base Working Group, General Tax Principles, 10.12.2004, p. 4, https://taxation-customs.ec.europa.eu/system/files/2016-09/cctbwp1finalrev1_en.pdf [access: 10.05.2024]; M. Desai, J. Hines Jr., *Economic Foundations of International Tax Rules*, American Tax Policy Institute 2003.

59 In the case of natural persons, these would be, of course, entities conducting business activity.

Also the determination of tax capacity in income taxes through its natural measure in case of economic activity, which is the financial result on the conducted activity (appropriately adjusted for tax purposes), possibly would better reflect the essence of the concept of an economic source of taxation within the framework of the principle of tax capacity as well as the principles of tax equality and neutrality (among others) or – more broadly – of just taxation (principle of justice).[60]

Finally, it must be indicated that BCT concept implementation seems to be no longer only a matter of unilateral decisions taken by the national legislators on their own initiative, but an important issue in the context of the EU law harmonisation and international cooperation on tax matters in the OECD. In the context of possible further processes of income tax law harmonisation and the OECD BEPS Two-Pillar Solution implementation, in which there are references to financial result and accounting, the Polish tax system has to be prepared for BTC concept implementation, at least in some scope.

Bibliography

Bitner M. et al., *Prawo finansowe. Prawo finansów publicznych. Prawo podatkowe. Prawo bankowe*, Warszawa 2017.

Desai M., Hines J. Jr., *Economic Foundations of International Tax Rules*, American Tax Policy Institute 2003.

The Determination of Corporate Taxable Income in the EU Member States, eds. D. Enders et al., Alphen aan den Rijn 2007.

Dębowska-Romanowska T., *Dylematy interpretacyjne artykułu 217 Konstytucji*, in: *Ex iniuria non oritur ius. Księga ku czci Profesora Wojciecha Łączkowskiego*, eds. A. Gomułowicz, J. Małecki, Poznań 2003.

Fraberger F., Petrit M., Wytrzens C., *Maßgeblichkeitsprinzip*, in: *Handbuch der österreichischen Steuerlehre Band II. Steuerliche Gewinnermittlung und Steuerbilanzpolitik*, eds. R. Bertl, K. Hirschler, Wien 2016.

Gomułowicz A., Małecki J., *Podatki i prawo podatkowe*, Warszawa 2013.

Helin A., *Ustawa o rachunkowości 2009*, Warszawa 2009.

Messner Z., Pfaff J., *Podstawy rachunkowości*, Warszawa 1998.

Nykiel W., Mariański A., *Finanse publiczne*, in: *Konstytucja RP*, vol. 2, eds. M. Safjan, L. Bosek, Warszawa 2016.

OECD, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* – 8 October 2021, https://www.oecd.org/tax/beps/

[60] See more M. Supera-Markowska, *Principles and Rules for Determining the Tax Capacity of Entrepreneurs in Income Taxes*, Journal of Finance and Financial Law 2022, Special issue.

statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm [access: 10.05.2024].
Olchowicz I., *Podstawy rachunkowości. Część 1. Wykład*, Warszawa 2004.
Olchowicz I., *Rachunkowość podatkowa*, Warszawa 2004.
Rachunkowość. Zasady prowadzenia w jednostkach gospodarczych według polskiego prawa bilansowego od 1995 roku, ed. T. Kiziukiewicz, Wrocław 1995.
Supera-Markowska M., *Możliwości zbliżenia zasad ustalania wyniku podatkowego i bilansowego*, in: *Prawo podatkowe w systemie prawa. Międzygałęziowe związki norm i instytucji prawnych*, eds. A. Kaźmierczyk, A. Franczak, Warszawa 2019.
Supera-Markowska M., *Principles and Rules for Determining the Tax Capacity of Entrepreneurs in Income Taxes*, Journal of Finance and Financial Law 2022, Special issue.
Supera-Markowska M., *Projekt dyrektywy w sprawie wspólnej skonsolidowanej podstawy opodatkowania osób prawnych (CCCTB) – analiza zaproponowanych regulacji i ich znaczenie dla polskiego podatnika*, Przegląd Podatkowy 2011–2012, no. 1–5.
Supera-Markowska M., *Rachunkowość – aspekty prawne i podatkowe*, Warszawa 2022.
Supera-Markowska M., *Wspólna skonsolidowana podstawa opodatkowania jako koncepcja harmonizacji opodatkowania korporacyjnego w UE*, Warszawa 2010.
Wójtowicz W., *Problem „prorodzinności" podatku dochodowego osób fizycznych*, in: *Konstytucja – ustrój, system finansowy państwa. Księga pamiątkowa ku czci prof. Natalii Gajl*, eds. T. Romanowska-Dębowska, A. Jankiewicz, Warszawa 1999.
Wprowadzenie do rachunkowości. Podręcznik z przykładami, zadaniami i testami, ed. E. Śnieżek, Kraków 2004.
Wstęp do nauki polskiego prawa podatkowego, ed. W. Modzelewski, Warszawa 2005.