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## **Taxes in Sustainable Development and Sustainable Development in Taxes. A Theoretical and Legal Perspective<sup>1</sup>**

Resource-efficient, closed-loop economies are key topics on the path to sustainability, and their realisation requires changes in the way we design, produce, consume, repair, reuse or recycle, among other things.<sup>2</sup> Taxes, to some extent, through their design and functions, can contribute to these tasks. However, will the use of this tool, which has strong negative connotations and is associated with state coercion, fulfill its role as an instrument for realizing sustainable development? The purpose of this article is to provide an answer to this question. I will argue that not only can taxes be seen as a useful instrument in achieving the goal of sustainable development, under certain conditions, of course, but also the concept of sustainable development should be applied to taxes. Taxes can be useful in sustainable development, however, at the same time, taxpayers should be able to expect that the sustainable development paradigm will be welcomed in taxes, which will have a positive effect on protecting their interests. This study provides a theoretical and legal perspective.

There is an increasingly strong normative link between tax law and sustainable development. Taxes are used by the legislator as a tool to influence taxpayer behaviour. Appropriately shaped scope of the tax subject matter and tax preferences, the level and nature of tax rates will induce or intensify behaviour that is beneficial from the point of view of sustainable development or can result in inhibiting or eliminating harmful and unfavourable ones. Through the tax system, it is possible to stimulate economic activity in specific spheres, influence the efficiency of the economy or the volume and structure of consumption, which will contribute to the concept of sustainable development. In this context, this article is an analysis of the possibility of the use and usefulness of taxes in the implementation of the concept of sustainable

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<sup>2</sup> Subsection 18 of Regulation (EU) 2021/783 of the European Parliament and of the Council of 29 April 2021 establishing a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EU) No 1293/2013 (OJ L 172, 17.5.2021, p. 53).

development and, at the same time, it is a record of doubts that are formulated against the background of possible forms of the instrumental use of tax law. The adoption of the paradigm of sustainable development in tax law is associated with the necessity of a new shaping of tax philosophy, legal norms, the approach to the use of legal and tax instruments and the application of law. The main thesis boils down to the fact that, since an increase in the level of use of taxes in the realisation of sustainable development must be reckoned with, this should be done in such a way that it also has the benefit of improving the culture of tax law.

## 1. The concept of sustainable development – introductory remarks

The idea of sustainable development has been developed against the background of problems of overexploitation and environmental degradation. It has been enshrined in various international documents in the field of environmental protection and eco-development.<sup>3</sup> Over time, the concept of sustainable development has appeared in international instruments on other issues, including international economic law.<sup>4</sup>

The concept of sustainable development is based on equal treatment of social, economic and ecological rationales which results in taking a broad perspective and the necessity of integrating environmental protection aspects with policies in particular areas of the economy.<sup>5</sup> It is integrative in nature, as sustainable development is such social and economic development that ensures that the needs of the present society are met without compromising the ability of future generations to meet their needs. The implementation of the idea is manifested in the search for solutions that

<sup>3</sup> A key role in shaping the doctrine of sustainable development is attributed to the World Commission on Environment and Development (1987), also known as the Brundtland Commission, which issued the report *Our Common Future*. Its central thesis is the need to link environmental policy with other sectoral policies, taking into account the needs of present and future generations. In turn, the United Nations Conference in 1992 adopted the so-called Rio Declaration on Environment and Development. It contains 27 principles, constituting a catalogue of rights and obligations, the implementation of which is necessary to achieve the main objective of sustainable development. For more on the genesis of the concept of sustainable development and on definitional issues, see e.g.: G. Dobrowolski, *Zasada czy model zrównoważonego rozwoju?* [in:] *Administracja w demokratycznym państwie prawa. Księga jubileuszowa Profesora Czesława Martysza*, ed. A. Matan, Warszawa 2022; Z.P. Korzeniowski, *Zasady prawne ochrony środowiska*, Łódź 2010, pp. 280–297; Z. Bukowski, *Zrównoważony rozwój w systemie prawa*, Toruń 2009, pp. 23–40 and 64–96; M.M. Kenig-Witkowska, *Koncepcja "sustainable development" w prawie międzynarodowym*, PiP 1998, no. 8; I. Mironowicz, R. Skrzypczyński, *Od zrównoważonego rozwoju do dewzrostu – paradygmaty krytyczne wobec wzrostu i ich implikacje dla planowania przestrzennego*, ST 2022, no. 7–8, pp. 80–86.

<sup>4</sup> M.M. Kenig-Witkowska, *Prawnomiędzynarodowa koncepcja sustainable development z perspektywy prac Stowarzyszenia Prawa Międzynarodowego* [in:] *Prawo międzynarodowe. Księga pamiątkowa prof. Renaty Szafarz*, ed. J. Menkes, Warszawa 2007, pp. 259–260.

<sup>5</sup> B. Poskrobko, *Podstawy polityki ekologicznej* [in:] *Ochrona środowiska. Problemy społeczne, ekonomiczne i prawne*, eds. K. Górka, B. Poskrobko, W. Radecki, Warszawa 2001, p. 99.

guarantee further and sustainable development. Furthermore, it is supposed to result in an improvement in people's well-being.

The idea of sustainable development in the twenty-first century has been elevated to the status of a paradigm.<sup>6</sup> Not only it is a specific scientific concept, but it has become a kind of reflection through which a wide range of research problems relating primarily to the environment, as well as economics, sociology and law, are perceived, analysed and solutions sought. It is a matter of a new perception of phenomena at every level of scientific analysis.

Sustainable development has become a scientific canon. It refers to principles, processes and objectives and actions that relate to environmental protection and socio-economic development. In law, it has moved far beyond the boundaries of environmental law. The concept of sustainable development has also become a prism through which taxes can be viewed. This statement has a strong legal foundation. The principle of sustainable development is enshrined in Article 5 of the Polish Constitution, which defines the basic objectives of the Republic. "The Republic of Poland shall safeguard the independence and inviolability of its territory, ensure the freedoms and rights of man and citizen and the security of citizens, protect the national heritage and ensure the protection of the environment, guided by the principle of sustainable development."<sup>7</sup> The constitutional norm dictates that environmental protection should be guided by the principle of sustainable development. It constitutes a principle of a programmatic character and, although it does not contain an indication of specific means and ways of its implementation, the system legislator thereby imposes an obligation on all public authorities to implement it.<sup>8</sup>

## 2. Sustainable development goals

It must be assumed that tax legislators will follow the path of making extensive use of taxes to realise the idea of sustainable development. The United Nations has encapsulated the idea of sustainable development in 17 goals.<sup>9</sup> Both the UN and the European Union recognise the need to consider and use taxes to realise sustainable development. In the UN Resolution, goal 12.c provides for "[rationalizing] inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions, in

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<sup>6</sup> See B. Poskrobko, *Paradygmat zrównoważonego rozwoju jako wiodący kanon w badaniu nowych obszarów ekonomii*, "Ekonomia i Środowisko" 2013, no. 3, p. 19 et seq.; I. Mironowicz, R. Skrzypczyński, *Od zrównoważonego rozwoju do dewzrostu...*, p. 81.

<sup>7</sup> Article 5 of the Polish Constitution.

<sup>8</sup> P. Tuleja, *Commentary to Article 5* [in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. *idem*, LEX el. 2021.

<sup>9</sup> UN Resolution: *Transforming our World: The 2030 Agenda for Sustainable Development* was adopted by the United Nations General Assembly on 25 September 2015, A/RES/70/1, <https://sdgs.un.org/2030agenda> [accessed: 2023.02.23].

accordance with national circumstances, including by restructuring taxation [...].<sup>10</sup> The role of taxation is also invoked elsewhere in the document. Under the objective called Strengthen the means of the implementation and revitalisation of the global partnership for sustainable development, it is envisaged to strengthen domestic resource mobilisation, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.<sup>11</sup>

The European approach to the problem of sustainable development is embodied in the concept of the European Green Deal, which sets out a number of specific objectives.<sup>12</sup> Achieving these requires significant investment.<sup>13</sup> The role of financial law in this respect is very significant. To get an idea of the scale of the importance, it can be pointed out first of all that the investment plan includes a dedicated financing system to support sustainable investments. Relevant provisions will appear in the budget, with the assumption that 25% of the funds under all EU programmes should be dedicated to climate change issues. At least 30% of the InvestEU Fund will be dedicated to climate change. To implement the European Green Deal, the Commission will also work with the European Investment Bank Group, national pro-development banks and other international financial institutions. National budgets will play a key role in the transition. Green public investment will be seen in the context of the quality of public finances. Greater use of green budgeting tools will help shift public investment, consumption and taxes towards environmental priorities and reduce harmful subsidies.<sup>14</sup>

In the European Union, taxation as a tool for achieving sustainable development is accorded great importance. The European Green Deal states that taxes play an essential role in achieving its objectives. They send price signals and provide appropriate incentives for producers, users and consumers to behave in a sustainable manner.<sup>15</sup>

### 3. Taxes in sustainable development

#### 3.1. Utility of taxes in the context of their functions

The usefulness of taxes in realising sustainable development is multidimensional. The problem can be analysed, for example, through the prism of the function of

<sup>10</sup> UN Resolution Goal 12.c: *Transforming our World...*, p. 23, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement> [accessed: 2023.02.23].

<sup>11</sup> UN Resolution Goal 17.1: *Transforming our World...*, p. 26, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement> [accessed: 2023.02.23].

<sup>12</sup> The European Green Deal was presented on 11.12.2019 as a Communication from the Commission to the European Parliament, the European Council, the Council of the European Economic and Social Committee and the Committee of the Regions on, COM/2019/640 final.

<sup>13</sup> According to the Commission's estimates, an additional investment of €260 billion per year, or around 1.5% of 2018 GDP, will be required to meet the climate and energy targets set for the period up to 2030 (see section 2.2.1 of the European Green Deal).

<sup>14</sup> Paragraph 2.2.2 of the European Green Deal.

<sup>15</sup> *Ibid.*

taxes.<sup>16</sup> The function of taxes is related to their effect and their objectives, since the typical and recurring effects of the establishment, assessment and collection of taxes give rise to the term function.<sup>17</sup> The function of taxes can be defined by the result of the legislator's intended objectives.<sup>18</sup>

The primary function of taxes is fiscal.<sup>19</sup> Taxes are, first and foremost, a source of revenue for a public-law association necessary for its operation, enabling it to fulfil its tasks and objectives. Thanks to the monetary resources thus collected, state and local government units are able to carry out tasks related to sustainable development. The levying and collection of taxes should be subordinated to fiscal objectives, while allowing for a lesser degree of non-fiscal functions. While the primary function of taxes is to accumulate a stock of cash, at the same time, taxes influence and have tangible effects in the social and economic spheres.

The tax legislation of developed countries commonly reaches out to the non-fiscal functions of tax, pursuing certain social and economic objectives. In the context of the problem under analysis, the intervention (stimulus) function is worthy of attention. Its essence is expressed in the possibility of using taxes for the state's impact on economic and social life.<sup>20</sup> It makes it possible to influence the structure of the economy, affect the directions and location of economic activity and shape accumulation and consumption.<sup>21</sup> Taxes are therefore a useful tool in creating the economic and social model, initiating states that are beneficial from the point of view of sustainable development and inhibiting those that are undesirable in this respect. The taxpayer also makes choices with the tax burden in mind. The low tax burden associated with taxpayers' particular choices, e.g. using bicycles or implementing thermomodernization, relative to other possible behaviours, can more or less intensely induce taxpayers to make the legislator's preferred choices.<sup>22</sup> If, on the other hand, if the tax burden in the assessment of taxpayers is too high, they will abandon certain actions, e.g. excessive consumption or using combustion cars. Taxes can have a stimulating function by supporting economic activity in industries that are perceived as pro-environmental and pursuing the idea of sustainable development or inhibiting in areas characterised by negative impacts.

The redistributive function comes down to allowing the public union to direct the redistribution of the national product. By means of taxes, money is transferred among individuals (economic entities) and the budget of a state or a local authority. The state

<sup>16</sup> The term function is not unambiguous. More on this topic: J. Gliniecka, *Oplaty publiczne w Polsce. Analiza prawna i funkcjonalna*, Bydgoszcz–Gdańsk 2007, pp. 71–73.

<sup>17</sup> Cf. J. Gliniecka, *Oplaty publiczne w Polsce...*, p. 72.

<sup>18</sup> A. Mariański, *(Nie)sprawiedliwy polski podatek dochodowy od osób fizycznych*, Warszawa 2021, p. 30.

<sup>19</sup> A. Krajewska, *Podatki w Unii Europejskiej*, Warszawa 2012, pp. 57–58; P.M. Gaudement, J. Molinier, *Finanse publiczne*, Warszawa 2000, pp. 422 and 428; B. Brzeziński, *Wstęp do nauki prawa podatkowego*, Toruń 2001, p. 67; A. Mariański, *(Nie)sprawiedliwy...*, p. 30.

<sup>20</sup> R. Zieliński, *Funkcje podatków w doktrynie prawnofinansowej oraz ich znaczenie dla praktyki stowienia prawa podatkowego*, "Rocznik Nauk Prawnych" 2019, no. 1, p. 117.

<sup>21</sup> Cf. J. Głuchowski, *Podatki ekologiczne...*, Warszawa 2002, p. 21.

<sup>22</sup> See B. Brzeziński, *Wstęp do nauki...*, p. 67.

disposes of a part of the social product and decides on the implementation of certain tasks, including environmental protection. It must be taken into account that, through taxation, the level of money at its disposal is influenced. The seizure of the public burdens through a series of taxes, both direct and indirect, affects demand and reduces the purchasing capacity of taxpayers which, in a way, influences their assets. This is directly reflected in the comfort of citizens' lives, with a particularly negative impact on low-income groups, often creating a regressive fiscal burden.<sup>23</sup>

In addition, it is worth noting that the level and structure of tax revenues provide a range of information about society and the economy, their state, phenomena and ongoing changes. Thus, the information function of taxes can also be relevant in the context of sustainable development, since, based on the data provided, it is possible to assess the state of achievement of the adopted goals and to design a possible correction when deviations from the assumptions are found. Taxes can provide information on the behaviour of taxpayers, their preferences and, finally, the effectiveness of the legal solutions adopted in the context of achieving sustainable development objectives. The resource of this information is correspondingly broader if the implementation of the tax obligation is accompanied by a number of other obligations of a technical nature, such as keeping tax records, the obligation to make payments in non-cash form and only to declared bank accounts, etc. However, additional obligations of a technical nature generally result in the complexity of the tax rules and increase the burden on the taxpayer's time, commitment and money.

Other types of public burdens may complement the legal and financial forms of influencing private actors in order to realise sustainable development. It is worth noting that levies levied in connection with the right to use natural assets generally have the character of earmarked revenues and are allocated to environmental tasks, but if they result from some form of violation of its equilibrium, a repressive and compensatory function will be attributable to them in addition to the fiscal function.<sup>24</sup>

The pursuit of fiscal and non-fiscal objectives of taxation should be balanced and aim to achieve a compromise between the fiscal objectives and the economic and social objectives of taxation.<sup>25</sup> Nowadays, some taxes pursue primarily a non-fiscal purpose, this results in the weakening of the overriding, i.e. fiscal function, or even in the deterioration of the tax system leading, for example, to its excessive complexity, breaches of stability or reduced efficiency.<sup>26</sup> Moreover, the multiplicity of functions used and objectives pursued by taxes may result in the fact that the various incentives inherent in the design of taxes may cancel each other out.<sup>27</sup> With this in mind, it must be assumed that the use of taxes for non-fiscal purposes should be carefully consid-

<sup>23</sup> For more on this topic, see J. Głuchowski, *Podatki ekologiczne...*, pp. 161–172.

<sup>24</sup> For more on this topic, see J. Gliniecka, *Oplaty publiczne...*, pp. 75–76; P.P. Małecki, *Podatki i opłaty ekologiczne*, Kraków 2006, pp. 16–40.

<sup>25</sup> R. Mastalski, *Prawo podatkowe*, Warszawa 2016, p. 35.

<sup>26</sup> A. Mariański, *(Nie)sprawiedliwy...*, p. 30; R. Mastalski, *Prawo podatkowe a gospodarka*, RPEiS 2005, no. 3, pp. 6 and 11; A. Gomułowicz, *Zasada zdolności płatniczej podatnika*, RPEiS 1990, no. 3–4, p. 31.

<sup>27</sup> B. Brzeziński, *Wstęp do nauki...*, p. 67.

ered and planned, and should be limited to only a few, specifically indicated cases, in particular when other methods are not applicable.<sup>28</sup> It should be borne in mind that, in addition to taxes, the state has other financial tools at its disposal to influence society and the economy, such as the provision of guarantees or loans or grants, subsidies or allowances, as well as penalties.<sup>29</sup>

### 3.2. Utility of taxes in the context of their construction

The issue of the usefulness of using taxes to realise sustainable development can be analysed by considering the construction of taxes. One of the possibilities of using taxes in the context of sustainable development is to introduce solutions to existing taxes that will have a pro-environmental impact. The following can be used for this purpose: a system of allowances and exemptions, the design of exemptions, accelerated or single depreciation, the level of rates and the design of the tax scale. The second possibility is the introduction of new taxes.

Tax preferences may primarily be introduced in income taxes, due to their wide-ranging impact. They will take the form of tax reductions or exemptions, granted in connection with the purchase of environmentally friendly goods (e.g. appliances with the highest energy efficiency class, low emissions of harmful substances or generating green energy<sup>30</sup>) or taking actions that are part of the idea of sustainable development (e.g. subsidies for research and development).

Another possibility to use the construction of taxes is to differentiate rates in indirect taxes (goods and services tax or excise duties). In the European Green Deal, it is planned to allow value added tax rates to be used in such a way that Member States can use them in a more targeted way, reflecting environmental ambitions, e.g. by promoting green products.<sup>31</sup> In this respect, it will be possible to influence taxpayers' behaviour by applying reduced rates to environmentally friendly or energy-efficient goods. It must be borne in mind that consumer behaviour is influenced by many determinants and, through the rate of value added tax, can only to a certain extent contribute to encouraging the desired behaviour.<sup>32</sup>

Furthermore, it is possible to use the object of the tax in the context of the implementation of sustainable development. Environmental taxes take as their object of taxation states concerning energy, natural resources, transport or pollution which

<sup>28</sup> See, for example, B. Brzeziński, *Wstęp do nauki...*, p. 67; P.M. Gaudement, J. Molinier, *Finanse publiczne...*, pp. 428–429; R. Zieliński, *Funkcje podatków...*, p. 118.

<sup>29</sup> For more on this topic, see J. Głuchowski, *Podatki ekologiczne...*, pp. 22–31.

<sup>30</sup> For example, in Spain and the United States. See M. Mazurek-Chwiejczak, *Podatki ekologiczne*, "Acta Universitatis Lodzianis. Folia Oeconomica" 2014, no. 1, p. 67.

<sup>31</sup> Paragraph 2.2.2 of the European Green Deal.

<sup>32</sup> M. Jarczuk-Guzy, *Stawki podatku VAT a zużycie środków ochrony roślin i nawozów mineralnych w krajach Unii Europejskiej w obliczu wyzwań zrównoważonego rozwoju*, "Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego w Warszawie. Problemy Rolnictwa Światowego" 2022, vol. 22(38), iss. 3, p. 31.



have a proven, specific, negative impact on the environment.<sup>33</sup> The idea behind these taxes comes down to highlighting the intervention function of the tax. The intention of the legislator is to inhibit or even eliminate phenomena negatively affecting sustainable development by imposing a tax on an object that is perceived (has been recognised) as harmful in this respect, e.g. waste tax, product taxes, harmful emissions. Against this background, the other structural elements of the tax have to be shaped and a number of legal and taxation problems have to be solved. The design of environmental taxes is more difficult than the use of, for example, the appropriate design of the tax scale, because in their design it is necessary to combine the protection of the public interest with the decision-making capacity of the individual.<sup>34</sup>

The role of so-called environmental taxes is to distort price signals. This occurs by imposing a specific financial burden per unit of pollution.<sup>35</sup> or by exempting or reducing the tax burden on environmentally positive states. Taxes of this type should be levied directly on the emitters or service providers (the polluter pays), but in practice the burden on production processes and products may be simpler to implement.<sup>36</sup> Thus, taxes can be used as an economic incentive, a stimulus or at least a price-cost guideline to induce consumers to purchase environmentally friendly goods and refrain from purchasing those with harmful effects.<sup>37</sup> The right to impose taxes is directly related to the sovereignty of states, but it is worth considering the importance and impact of green taxes in a transnational perspective.<sup>38</sup>

### 3.3. Announcement of tax reform

The announcement of tax reforms is enshrined in the European Green Deal. The programme assumes that "At national level, the European Green Deal will create the context for broad-based tax reforms, removing subsidies for fossil fuels, shifting the tax burden from labour to pollution, and taking into account social considerations."<sup>39</sup> This marks a fundamental change in the approach to taxation. It is written that the aim is not to introduce additional tax burdens.<sup>40</sup> The object of taxation is to be shifted from an event of a positive and expected nature, such as the generation of income or revenue, towards a phenomenon of a negative nature – environmental pollution. In such taxes, the focus would have to be balanced between a fiscal and an interventionist

<sup>33</sup> M. Mazurek-Chwiejczak, *Podatki ekologiczne...*, p. 64; P.P. Małecki, *Podatki i opłaty ekologiczne...*, pp. 8–13.

<sup>34</sup> J. Głuchowski, *Podatki ekologiczne...*, p. 22.

<sup>35</sup> M. Mazurek-Chwiejczak, *Podatki ekologiczne...*, p. 61.

<sup>36</sup> J. Głuchowski, *Podatki ekologiczne...*, p. 145.

<sup>37</sup> M. Mazurek-Chwiejczak, *Podatki ekologiczne...*, p. 61.

<sup>38</sup> For a more extensive discussion, see J. Głuchowski, *Podatki ekologiczne...*, pp. 145–159.

<sup>39</sup> Paragraph 2.2.2 of the European Green Deal.

<sup>40</sup> In most countries where green tax reforms have been attempted, the assumption of revenue neutrality of taxation has been adopted, and in some (Sweden, Denmark, Germany) the overall burden of public tributes has been reduced. See: M. Mazurek-Chwiejczak, *Podatki ekologiczne...*, p. 61; P.P. Małecki, *Podatki i opłaty...*, p. 63.



function. This is not a new concept, as the purchase of alcohol or cigarettes, for example, is taxed on the same basis. The main purpose of so-called environmental taxes is to have a pro-environmental effect, while the realisation of the fiscal function occurs as an additional effect.<sup>41</sup> In contrast, the novelty lies in the change of focus from the existing tax systems. Although a sustainable development impact through taxation may result in savings in environmental expenditure if the harmful effects on the environment are reduced, the administrative costs of implementing tax reforms will be high. In addition, it needs to be considered whether a tax system structured in this way will fulfil its fiscal function properly. Will revenues from a tax system structured in this way be sufficiently stable? Another problem is related to, as it is assessed, the probable low efficiency in achieving the objectives and the rather secondary role played by ecological taxes.<sup>42</sup> This is related to the presence of a number of factors and variables that have to be taken into account and incorporated into the legal aspects and design of such a tax. At the same time, their impact may increase as more countries introduce similar solutions.<sup>43</sup>

In relation to the provision included in the European Green Deal, one can conclude that the European Commission has a broad understanding of the realisation of sustainable development in the context of taxation. It expresses the belief that well-designed tax reforms<sup>44</sup> can drive economic growth, improve resilience to climate shocks and contribute to a fairer society and a just transition.<sup>45</sup>

The pro-environmental impact of taxes on consumers may come down to the fact that for taxpayers (consumers) goods become expensive and therefore less available, thus reducing demand. In this option reduced consumption and changes in habits are forced upon individuals, thus reducing the comfort of citizens' daily lives in both cities and the country. Frustration will build up due to the inability to fulfil one's needs. It is important to consider whether this approach is compatible with the concept of sustainable development, which is intended to increase social welfare. Another possibility for the use of tax regulation is the introduction of rebates and exemptions to encourage innovation with the aim of contributing to the invention of new, better, more efficient or more useful energy-saving devices (energy-efficient) or enabling new sources of energy (preferably renewable).

The use of the non-fiscal functions of taxation should be planned carefully and the real effects of regulation should be monitored. The objective must be achieved by looking after the welfare of taxpayers.

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<sup>41</sup> For more on the concept of a green correction tax and the idea of a tax by A.C. Pigou see, for example: J. Głuchowski, *Podatki ekologiczne...*, pp. 19–20; M. Mazurek-Chwiejczak, *Podatki ekologiczne...*, pp. 59–68 and the literature cited therein.

<sup>42</sup> J. Głuchowski, *Podatki ekologiczne...*, pp. 146–147.

<sup>43</sup> *Ibid.*, pp. 151–152.

<sup>44</sup> On the stages of pro-ecological tax reform, see P.P. Małecki, *Podatki i opłaty...*, pp. 62–69.

<sup>45</sup> Paragraph 2.2.2 of the European Green Deal.

#### 4. Sustainability in taxation

The principles of sustainable development include not only the protection of nature or the shaping of spatial order, but also due concern for social and civilisational development.<sup>46</sup> A tax law implementing the postulate of sustainable development should make it possible to balance individual well-being and general welfare. Therefore, the relationship between tax law and sustainable development should not be based solely on the relationship of instrumental use of taxes to realise the idea of sustainable development. The concept should enter more broadly into tax law. And certainly some of its elements are worth adapting to tax law. Identifying sustainable taxes with pro-environmental tax preferences and taxes on things and activities perceived as harmful to the environment is too narrow since it only realises the environmental aspect of sustainability. The legal and tax regulatory system should be sustainable in all aspects. This is because the concept of sustainable development is based on treating social, economic and environmental rationales equally. The concept of sustainable development establishes a framework for shaping the relationship between economic growth, care for the environment (not only natural, but also the human-made environment) and quality of life.

The ecological aspect of tax sustainability will be manifested in the initiation and encouragement of environmentally neutral and beneficial choices, as well as the inhibition of processes harmful to the environment (this aspect is discussed extensively in section 2). The economic aspect of tax sustainability should be manifested in the fiscal efficiency of taxes and the tax system and respect for taxpayers' ability to pay as well as in the introduction of pro-development structures.<sup>47</sup> Sustainable taxes from a social perspective are fair taxes, shaped with respect and care for the rights of taxpayers and their welfare.

From the perspective of legal science, the term sustainable taxes can be identified with a system of legal and tax norms in which the protection of public and private interests are balanced while achieving a state of fiscal efficiency of taxes and the realisation of pro-environmental tasks. Sustainable taxes are those that realise themselves in the material and formal spheres.

In view of the above, sustainable taxes will be manifested firstly in the reliable fulfilment of tax obligations (they then provide an adequate resource of money), secondly in the real respect of the rights of taxpayers and society as a whole and thirdly in solutions that have a positive impact on environmental protection. This means that the system of legal and tax regulations should be structured in such a way that it can achieve these objectives.

In this context, an important issue is the concept of fair share in bearing the tax burden and tax avoidance and evasion which have rightly become the leitmotif of the

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<sup>46</sup> Judgment of the Polish Constitutional Court of 6 June 2006, K 23/05.

<sup>47</sup> M. Schratzenstaller, *Sustainable Policy. Concepts and Indicators beyond Tax Ratio*, "Revue de l'OFCE" 2015, no. 5, p. 61.

tax debate. However, one cannot overlook the fact that coercion, authoritative and authoritarian action, excessive oppressiveness, surveillance, encroachment on the private sphere of the individual destroys the mutually beneficial relationship and the nature of the peculiar exchange for both parties (taxpayer and the public-law relationship represented by the tax authority). This affects taxpayers' actions and activities, the common trust and pushes them towards concern only for their own well-being and the pursuit of their own benefits at almost any cost including illegal actions. This, of course, eliminates the benefits that could accrue for both parties from the existence of a balanced tax system. When tax regulations become too repressive, complicated, burdensome and intrusive, taxpayers implement various solutions to escape their effects, which in turn introduces further restrictive, detailed legal solutions and generally leads to an increase in oppressive and burdensome solutions and an even greater stifling of taxpayers' freedom. It hampers economic development.

Sustainable taxation requires the establishment of effective and adequate tools to protect taxpayers' rights and free up space for taxpayer action and development. The tax sphere has seen a change in the approach to tax law in the twenty-first century. Tax regulations are becoming increasingly detailed and casuistic. The intrusiveness of tax law is being strengthened. Tools are changing, such as the use of new technologies. Development in tax law is supposed to correspond to the development of the state and vice versa. Sustainable tax development requires, among other things, that the protection of taxpayers' rights is adequately guaranteed, nowadays especially taxpayers' privacy in the era of the invasive technologies used by tax administrations. Unfortunately, the fundamental level of protection of taxpayers' rights remains unchanged. In order for development to be sustainable, both sides of the tax-legal relationship must be taken care of.

Not only should the tax legislator take the principle of sustainable development into account in the lawmaking process, but this principle should also be borne in mind by authorities applying the law. Sometimes the factual situation requires considering and balancing more favourable solutions by applying the principle of sustainable development.<sup>48</sup> It is perceived as an interpretation directive, playing a role similar to the principles of social co-existence or socio-economic purpose in civil law.<sup>49</sup>

## Conclusions

In line with the implementation of the concept of sustainable development, it is assumed that environmental and climate objectives need to be integrated to a greater extent into other policies and therefore also into tax policy. Public finances, including

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<sup>48</sup> Judgment of the WSA in Gorzów Wielkopolski of 25.03.2009, II SA/Go 825/08; Judgment of the NSA of 2.04.2015, II OSK 2123/13.

<sup>49</sup> Judgment of the WSA in Gorzów Wielkopolski of 25.03.2009, II SA/Go 825/08; Judgment of the NSA of 2.04.2015, II OSK 2123/13.

taxation, are sensitive to the influence of external factors, i.e. economic, political or administrative aspects, and each of these is reflected in the shape of tax regulations.<sup>50</sup> It is to be expected that over time, as the next stages of following the sustainable development path are behind us, the practical role of tax law in the implementation of sustainable development goals will increase. It will only be possible to assess these measures from the perspective of the next decade. It will then become clear how taxes have been used by national legislatures and what effect this has had because the experiences of individual countries will certainly differ significantly.

At the same time, certain postulates can already be formulated. Therefore, it should be strongly emphasised that the use of taxes to realise the idea of sustainable development should be carefully designed, both in form and content setting out the specific objectives of the tax law in such a way as to take into account socio-economic-environmental connotations. Given the past experience of tax legislation and the tendency of the legislator to make ad hoc changes to the tax system, taxpayers may feel deeply uneasy about another attempt to instrumentalise the use of taxes, this time in the field of sustainable development.

The practical importance of using taxes to realise the idea of sustainable development is determined by many factors, such as the will of the legislator, the objectives adopted, the structure of society, the state of the economy, the shape of tax regulation, the culture of the application of the law and, finally, the ability of the legislator to analyse data and accurately predict the effects of legal regulations. Taxes, as one of the fiscal instruments, are an element of sustainable finances, but one should be aware that sustainability is influenced in parallel by many more factors.<sup>51</sup>

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## Summary

*Anna Drywa*

### Taxes in Sustainable Development and Sustainable Development in Taxes.

#### A Theoretical and Legal Perspective

According to assumptions of the implementation of the concept of sustainable development, it is postulated that environmental and climate objectives should be better integrated into other policies, and therefore also into tax policy. This means that the practical role of tax law in achieving sustainable development goals will increase in the near future. In this context, the article analyses the possibilities and the usefulness of taxes in the implementation of this concept, and at the same time, it is a record of the doubts that are formulated against the background of possible forms of the instrumental use of tax law. The use of taxes to implement the idea of sustainable development should be carefully designed, both in form and content, setting the specific objectives of tax law in such a way as to take into account socio-economic and environmental connotations.

**Keywords:** green taxes, sustainable development, taxes.

## Streszczenie

*Anna Drywa*

### **Podatki w zrównoważonym rozwoju i zrównoważony rozwój w podatkach.**

#### **Ujęcie teoretycznoprawne**

Zgodnie z założeniami wprowadzania w życie koncepcji zrównoważonego rozwoju przyjmuje się, że należy w większym stopniu włączać cele środowiskowe i klimatyczne do innych polityk, a zatem także do polityki podatkowej. Oznacza to, że w bliskiej przyszłości wzrośnie praktyczna rola prawa podatkowego w zakresie realizacji celów zrównoważonego rozwoju. W tym kontekście artykuł stanowi analizę możliwości wykorzystania i przydatności podatków w realizacji tej koncepcji, a jednocześnie jest zapisem wątpliwości, które są formułowane na tle możliwych form instrumentalnego wykorzystania prawa podatkowego. Użycie podatków w celu realizacji idei zrównoważonego rozwoju powinno być starannie zaprojektowane, zarówno co do formy, jak i treści, ustalając szczegółowe cele prawa podatkowego w taki sposób, aby uwzględnić konotacje społeczno-gospodarczo-środowiskowe.

**Słowa kluczowe:** podatki, podatki ekologiczne, zrównoważony rozwój.