

THE ABILITY-TO-PAY PRINCIPLE AND THE POLISH TAX SYSTEM

SUMMARY

The aim of this work is to present and describe the normative character of the ability-to-pay principle in the Polish tax system. The work comprises four chapters, an introduction and a summary. The legal doctrine research method was the principal one used for verifying the hypotheses put forward. How the ability-to-pay principle appears in other legal orders was analyzed using the comparative legal method, while the historical method was used to analyze the evolution of the ability-to-pay principle.

The first, second and third chapters provide an introduction to the subject. Chapter One discusses how the ability-to-pay principle evolved – from idea, to implemented law, to the modern-day legal order. Chapter Two presents the ability-to-pay principle in the law of other countries, with particular emphasis being placed on German and Spanish law. By means of a comparative study, countries are divided into those where the ability to pay is regulated *expressis verbis* in the constitution and those where it is the product of the interpretation of the constitutional regulations. Chapter Three presents this principle in terms of European Union and international tax law.

Chapter Four verifies the accuracy of the theses put forward regarding the normative character and the characteristics of the ability-to-pay principle in the Polish legal order. In this work, it is noted that ability-to-pay has two dimensions: broad and narrow. The ability-to-pay principle in its broad dimension assumes that each order must refer to manifestations of ability-to-pay, such as the economic roots of taxation. This is a logical consequence of the obligation to contribute to public expenditure. Defining the obligation to pay taxes on the basis of parameters not associated with the economic roots of taxation would significantly impair tax collection, and in some cases render it impossible. Typical economic roots of taxation are: revenue, income, property and consumption. The ability-to-pay principle in its narrow dimension requires the individualization of the tax burden.

The ability-to-pay principle can be based on two normative models: solely on the principle of equality (art. 84 in conjunction with art. 2 and art. 32 of the Constitution of the Republic of Poland), or on the principle of equality and additional individuals' constitutional rights (art. 18, 20, 21, 22, 30, 64 and 71 of the Constitution of the Republic of Poland). The former is more appropriate, as it introduces a clearer distinction between the ability to pay and constitutional rights. As an example, it may be indicated that the same rights can impose the obligation to individualize taxation on the tax legislator, and justify tax interventionism.

Article 84 of the Constitution of the Republic of Poland also includes the obligation to individualize taxation. It allows for the possibility of imposing the tax burden only on a taxpayer who is able to bear such a burden. Not every taxpayer is in a position to bear such a tax burden, and some are unable to. This means that art. 84 of the Constitution of the Republic of Poland constitutes the basis for the legally binding nature of the ability-to-pay.

The distribution of the tax burden is regulated by the notions of horizontal and vertical equity. The principle of equality expressed in art. 32 of the Constitution of the Republic of Poland in conjunction with art. 84 of the Constitution takes on a material character. The essential feature selected by the legislator cannot assume a free character, and must refer either directly or indirectly to the root of taxation. The principle of vertical equity is expressed in art. 2 in conjunction with art. 84 of the Constitution of the Republic of Poland. An object of taxation determined by the principles of horizontal equity should be subject to a tax burden according to the principle of vertical equity. Horizontal equity leads to the selection of the appropriate tax burden and its possible diversification. The principle of vertical equity (understood exclusively as the diversification of the tax burden) may take on an optional or mandatory character, depending on the case.

The ability-to-pay principle applies only to tax rules that impose a tax burden on a taxpayer, as it is itself a measure of the imposition of this tax burden. In its narrow dimension, the ability-to-pay principle may be introduced only through direct taxation. In its broad dimension, the ability-to-pay principle may be introduced through direct and indirect taxation. The legislator is free to choose adequate measures in order to individualize the tax obligation in congruence with the ability-to-pay principle in its narrow dimension. The ability-to-pay principle also relates to the total tax burden imposed on the taxpayer (tax system equity), which must also correspond to the individual's ability to pay.

Translated by Rob Pagett