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**Article**

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# Taxation of Revenue Derived from Activities Carried out by Farmers in Poland

Wojciech Maruchin 

## ABSTRACT

The main aim of this study is to present the basic principles of taxing revenue derived from activities carried out by farmers in Poland, resulting from the regulations of tax law in Poland, and propose solutions concerning that law as it should stand. These are revenues derived from agricultural activities as defined in the provisions of the Polish Act on Agricultural Tax as well as in the provisions of the Polish Act on Goods and Services Tax, regardless of whether they are carried out by farmers acting as individuals or utilizing agricultural cooperatives with legal personality or commercial law companies without legal personality for their activities. This revenue is not subject to either forestry tax or income tax (only revenue from special sections of agricultural production may be subject to income tax, but this is treated as revenue generated by farmers). The rationale for the study stems from the scarcity of scientific publications on the subject - probably due to low interest among the entities conducting this type of activity. The method adopted involved the analysis of legal material and the views presented in the legal scholarship and in the case-law of administrative courts. Comparative analysis of Polish and EU law was applied. Moreover, currently applicable law was analyzed by employing a method of interpretation of both Polish and EU regulations, to the extent necessary to conduct comparative legal investigation. The particular nature of agricultural activity in Poland, dating back to the previous economic system, has influenced the decision to perform research on two levels. The first consists of the provisions of the agricultural tax law in Poland, dating back to 1984. The second level is the EU *acquis*, consisting in both EU legislation and Court of Justice of the European Union case-law relating to this type of activity in connection with its inclusion in the scope of value-added tax regulations. Each Member State, including Poland, is obliged to harmonize its law with the EU law in the examined scope. The results of the conducted comparative analyses indicate that identified deficiencies in the construction of the agricultural tax need to be amended.

## KEY WORDS:

agricultural activity, agricultural tax, value added tax, tax on goods and services, harmonization of Polish tax law with EU law, Polish tax law, EU tax law.

**JEL Classification:** K34, Q14, H20.

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## 1. Introduction

The study analyzes the taxation of revenue derived from activities of farmers in Poland, on two independent levels. The first level demonstrates the principles of revenue taxation via the agricultural tax, as it is the most important revenue tax for farmers in Polish tax law.

This is a specific legal solution due to the fact that these revenues are not subject to either forestry tax

or income tax. This tax is the main source of own revenue in many rural *gminas* (municipalities), thus becoming their best source of revenue (Felis et al., 2018).

As it is argued in the legal scholarship, the specific nature of agricultural activity motivated the legislators in Poland to introduce a separate agricultural tax, which in essence replaces income taxation (Brzeziński, 2000). As a consequence, the provisions of the Polish Act on Personal Income

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Tax cannot be applied to farmers' revenue. The only exception in this matter are separate rules for taxation of special divisions of agricultural production (Polish Act on Personal Income Tax of 26 July 1991, Journal of Laws of 2021, items 1128, 1163, 1243, 1551, 1574, and 1834). As properly indicated in the legal scholarship, this leads to a very low taxation of income obtained through agricultural activity (Podstawka & Podstawka, 2021).

As part of the research conducted in relation to the first tax, applicable statutory provisions will be analyzed along with the views presented in the legal scholarship.

The second level of research involves the presentation of the principles of taxation of farmers' revenue by means of the value-added tax, which is the most important tax under Polish tax law, whose collection in the territory of Poland must be carried out in accordance with the principles arising from the EU tax law. A comparative study will be carried out with regard to this tax in the context of the harmonization of Polish tax law with EU law.

## 2. Analysis of the Concept of Agricultural Activity Within Agricultural Tax

In the Polish legal system, the term *agricultural activity* does not – as a rule – fall within the definition of the term economic activity. In order to define the term agricultural activity, it is necessary to use the definition of this concept contained in Art. 2, sec. 2 of the Polish Act on Agricultural Tax. Thus, under this provision, below items are considered agricultural activity:

- production of plants and animals, including seed, nursery stock, breeding and reproductive material,
- production of vegetables, ornamental plants, cultivated fungi; orcharding; breeding and production of breeding material of animals, including birds and commercial insects,
- industrial farm type animal husbandry and fish farming.

Placing the definition of the term agricultural activity in the Polish Act on Agricultural Tax, together with a precise description of the conditions

of its taxation in the provisions of this Act, indicates that the agricultural tax is the most important tax in the Polish tax system applicable to this very activity. This confirms the appropriateness of the choice for the purpose of the research.

## 3. Analysis of the Objective and Subjective Scope of Taxation with Agricultural Tax

In accordance with Art. 1 of the Act of 15 November 1984, the objective scope of the agricultural tax encompasses land that is classified in the register of land and buildings as agricultural land, with the exception of the land seized for the pursuit of economic activities other than agricultural activities (Borszowski, 2013).

Moreover, on the basis of Art. 2 of the Polish Act of 15 November 1984 on the Agricultural Tax, the Polish legislator deemed that the above-mentioned land be treated as agricultural, provided that its total area exceeds one hectare or one comparative fiscal hectare and it is owned or possessed by a natural person, a legal person such as a limited liability company, or an organizational unit without legal personality, which can be any commercial law company without legal personality.

To analyze the subjective scope of agricultural taxation, let us consider Art. 3, sec. 1 of the above Act, which lists applicable agricultural tax taxpayers, namely:

- natural persons,
- legal persons such as limited liability companies,
- organizational units without legal personality, such as commercial law companies without legal personality (Majchrzycka-Guzowska, 1996).

The mere fact that a particular entity is classified in one of the above groups is not a sufficient premise for considering it a taxpayer of agricultural tax. This is because each of these entities must have a status of:

- a landowner, or
- an autonomous possessor, or
- a perpetual lessee, or
- a possessor of land owned by the State Treasury or a local government unit, such as gmina (municipality), if that possession:

- is the result from an agreement concluded with either the landowner, with the National Support Centre for Agriculture or other legal title, or would concern real estate located in the Resource defined in Art. 2 of the Polish Act on the National Property Resource of 20 July 2017 (in Polish: Krajowy Zasób Nieruchomości), or

- is titleless, with the exception of land that would be included in Agricultural Property Stock of the State Treasury or managed by the State Forests. In the case at hand, the Polish legislator mandated that organizational units of the National Support Center for Agriculture and the State Forests be recognized as taxpayers.

The legislator has also specified, in the provisions, groups of taxpayers other than those mentioned above who may conduct taxed agricultural activity in Poland. The first group includes lessees who are parties to a lease agreement under which they have leased all or part of the land of an agricultural holding, and the agreement was concluded in accordance with the provisions of social insurance of farmers or the provisions on obtaining structural pensions.

The second group involves production cooperatives – legal persons – to which farmland has been incorporated in the form of contributions.

The third group are the co-owners or co-possessors, who are jointly and severally liable. However, in the case of land constituting an agricultural holding, the tax obligation is borne by the co-owner who fully manages the holding.

The above-mentioned rule on joint and several tax liability does not apply if at least one of the co-owners or co-possessors is exempt or excluded from this particular tax.

#### 4. The Principle of Determining the Tax Base and the Tax Due

According to Art. 4 of the Polish Act of 15 November 1984 on the Agricultural Tax, when determining the amount of the tax base in relation to the land of agricultural holdings, the number of comparative fiscal hectares determined on the basis of the area, types and classes of agricultural land according to the land and building register, and the inclusion in the tax district should be taken into

account (Felis & Gołebowski, 2021). With respect to other land, the tax base is the physical area in hectares as stated in the land and building register. In the examined regulations, four tax districts were defined, which include gminas and cities dependent on economic conditions (Mastalski, 2000).

The rules of calculating the amount of the agricultural tax due for the period of one calendar year result from Art. 6, sec. 1 of the Polish Act of 15 November 1984 on the Agricultural Tax. Thus, according to this provision, the agricultural tax for the tax year on one hectare of lands of the farmlands indicated in Art. 4, sec. 1, point 1 of the Act is a cash equivalent of 2,5 quintals of rye. However, the tax on one ha of the remaining land indicated above is the cash equivalent of five quintals of rye. The average purchase price of rye for the 11 quarters preceding the quarter preceding the tax year should be used when calculating the tax amount.

The Polish legislator has determined that the average purchase price of rye shall be determined based on a statement issued by the President of Statistics Poland and published in the Journal of Laws of the Republic of Poland Monitor Polski, no later than on October 20 of the year preceding the tax year.

In view of the placement of the agricultural tax in the group of local government taxes, the examined regulations empower gmina councils to reduce the purchase prices of rye used for determining the basis for calculation of this tax in the gmina territory.

Pursuant to the provision of Art. 6a, sec. 1 of the analyzed Polish Act on Agricultural Tax, tax obligation arises on the first day of the month following the month in which the circumstances justifying its emergence occurred. However, this obligation expires on the last day of the month in which the circumstances justifying the obligation already exist. This circumstance, which justifies the tax liability, is when the taxpayer takes ownership of the land in either autonomous or dependent possession or in perpetual usufruct.

Additionally, in a case in which tax obligation arose or expired during the year, the legislator ordered that the agricultural tax for that year be determined proportionally to the number of months in which the obligation existed.

It is also worth paying attention to a special rule, which applies in the case when during a tax year an agricultural holding's land was occupied for carrying out an economic activity other than agricultural activity, or after it was abandoned, agricultural activity was restored on this land or for other reasons the land area was expanded or reduced. The consequence is that the amount of agricultural tax due will then be reduced or increased, starting on the first day of the month following the month in which the change occurred.

According to the analyzed regulations, the competent tax authority for settling the agricultural tax in the Polish tax system is the highest representative of the local government – the wójt, mayor, or president.

At the same time the legislator deemed it necessary that natural persons report to the competent tax authority information concerning land. This should be realized via forms provided by the legislator, no later than within 14 days from the date when the tax obligation arises or expires, or when there are changes in this regard.

A natural person's obligation to pay agricultural tax for each tax year arises upon delivery to that person of a decision issued by the competent tax authority for the location of the land. That decision provides that the tax is to be paid in instalments in proportion to the duration of the tax liability on up to four dates falling no later than 15 March, 15 May, 15 September, and 15 November of the tax year in question. At the same time the legislator introduced a principle that if an agricultural tax obligation expired during a tax year, or any changes to its rates were introduced, then the tax authority is obliged to change the decision which created the tax obligation in the first place (Etel, 2009).

Tax obligation emergence differed in the case of taxpayers being legal persons, organizational units – including commercial law companies – without legal personality, or organizational units of the National Support Center for Agriculture and the State Forests. These taxpayers self-assess their tax liability, which they report on their tax returns, by January 15 of each tax year. The competent tax authority for those taxpayers is the one that is responsible for the

area the agricultural lands are located. According to the studied law, the tax returns for the purpose of this tax should be filed on a form conforming to the model given by the legislator. The satisfaction of this obligation should always be made within a maximum period of 14 days from the date of occurrence of the circumstances justifying the creation of each new tax obligation. This deadline should also be used when making a correction to the return. As a rule, the tax indicated in the tax return should be paid to the account of the budget of the relevant gmina, no later than on March 15, May 15, September 15, and November 15, or as a one-off payment if the tax amount does not exceed 100 Polish zlotys.

Obligations to file these declarations and pay tax also apply to individuals who are co-owners or co-possessors, also when it is a co-ownership or co-possession of individuals with legal persons, organizational units, including companies, which do not have legal personality.

The legislator allowed gmina councils in Poland to order the collection of agricultural tax from individuals by way of collection. This collection may also apply to natural persons for the collection of both agricultural tax and real estate or forestry tax in respect of taxables located within the same gmina. For the sake of completeness, it should be added that the assessment of agricultural tax from several co-owners who are natural persons is made in a separate decision which is de facto a payment order issued to any of the co-owners or co-possessors, unless the agricultural holding is run only by one of them, in which case the order is issued to that person.

## 5. The Principle of Applying Tax Reliefs and Exemptions

When analyzing the taxation of agricultural activities, it is important to pay attention to examples of application of the tax exemptions in question, which may concern, among others: lands located in the wide strip along the border path, arable lands, meadows, and pastures subject to land reclamation – in the year in which crops were destroyed as a result of drainage works, or lands of agricultural holdings resulting from the development of wastelands – for the period of 5 years, counting from

the year following the completion of development (Wójtowicz, 1997). There are also tax exemptions of subjective nature, such as the exemption concerning universities or research institutes. With regard to research institutes, the exemption constitutes de minimis aid in agriculture as referred to in Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector.

However, with regard to entrepreneurs that have a status of a research and development center, the exemption constitutes de minimis aid referred to in Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.

On the basis of the provision of Art. 13 of the Polish Act of 15 November 1984 on the Agricultural Tax, taxpayers engaged in agricultural activity subject to agricultural tax are entitled to an investment relief for expenses incurred in connection with the construction or modernization of buildings used for raising, breeding, and keeping livestock, as well as facilities for environmental protection. The relief is also applicable to the purchase and installation of sprinklers, drainage equipment (Brzeziński, 1996) and farm water supply equipment, natural energy production equipment (wind, biogas, sun, water). However, this is only possible if such expenditures are not financed in whole or in part with public funds.

According to the law, taxpayers may take advantage of this investment relief only after the completion of those investments. In practice, they are entitled to make a deduction from their agricultural tax due on land located in the municipality in which the investment was made. This deduction amounts to 25% of the investment expenditures incurred, provided that they were documented with receipts.

The examined law suggests that relief for the same investment is not deductible for more than 15 years, which is done ex officio, in the decision determining amount of tax liability. At the same time, taxpayers are required to file an agricultural tax return in which the amount of relief granted

to them in an administrative decision is deducted from the agricultural tax due. In addition, it is worth mentioning that the taxpayer loses the right to deduct the unused amount of the investment tax relief from the agricultural tax if they sold the facilities and equipment for which the relief was granted or changed their purpose to other than indicated above.

Also, it is important to note that the taxpayers are obliged to attach to the application for the relief, granted under the procedure specified in the above-mentioned provision in Art. 13 of the analyzed Polish Act on Agricultural Tax, a statement of investment expenses incurred together with receipts or certified copies thereof, stating the amount of such expenses.

In addition, both the exemptions and reliefs granted following an application procedure initiated by the taxpayer may be applied as of the first day of the month following the month in which they filed their applications. The examined provisions also imply the principle that the amount of the investment tax relief unused by the taxpayer passes to their successors if the agricultural holding was acquired pursuant to the provisions of the social insurance of farmers or by inheritance.

Moreover, according to Art. 13f, sec. 1 of the analyzed Polish Act on Agricultural Tax, the relief in question should be regarded as aid for investment in tangible or intangible assets in agricultural holdings linked to the primary production of agricultural products under the conditions laid down in Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union. It may also be regarded as aid under European Commission's aid programme.

It is also important to note that the two reliefs indicated constitute de minimis aid in agriculture, as referred to in Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agricultural sector.

According to the provisions of Art. 13c of this regulation, in a situation where a state of natural disaster as defined in the provisions of the Polish Act on the State of Natural Disaster of 18 April 2002 would occur, then the tax authority is entitled to grant taxpayers an agricultural tax relief, consisting in the abandonment of its determination or collection in whole or in part, in an amount depending on the extent of losses caused by the disaster.

At the same time, the law dictates that the amount of compensation received for statutory insurance be taken into account in granting this relief and in determining the amount of the relief. The examined regulations state that relief may be granted for the tax year in which the state of natural disaster was declared. In contrast, introducing a disaster state only after the tax has been paid for the year will result in the eligibility to the relief only in the next tax year.

In turn, on the basis of the provision of Article 13e of the examined Act, the legislator gave gmina councils in Poland the possibility to introduce subjective reliefs other than those specified in the provisions of the examined Act, taking into account the provisions on public aid.

## 6. Analysis of the Concept of Agricultural Activity in Value-added Tax

The 1992 reform of the tax system in Poland opted for the introduction of own definitions of many concepts contained in the provisions concerning value-added tax. This was reflected in the provisions of the Polish Act on Value-added Tax and Excise Tax of 8 January 1993. At that time, the provisions contained in the Sixth Council Directive 77/388/EEC of 17 May 1977 became a model for Polish law. At that time, these EU regulations were already applied by individual Member States of the European Community, which - as a rule - introduced regulations in their domestic legislation on a separate scheme for taxing agricultural activity or applying a tax exemption to it (Cnossen, 1992). Following Poland's accession to the EU in 2004, it became necessary to harmonize Polish tax regulations with the EU tax law. In the process of harmonization, the Polish legislator had to consider not only the above-mentioned provisions of the Directive of 17 May 1977, but also the provisions contained in

Council Directive 112/2006.

Thus, according to the current legislation, the definition of the term agricultural activity contained in Art. 2, point 15 of the Polish Act on Value-added Tax includes several types of production. These concern primarily crop and livestock activities, including production of:

- nursery stock, breeding, and reproductive material;
- vegetables, ground, greenhouse, and under plastic film;
- ornamental plants, cultivated fungi; orcharding; breeding and production of breeding material of animals, including birds and commercial insects;
- industrial or factory-farmed livestock and breeding of fish and other aquatic organisms, as well as greenhouse and heated-film crops, fungi and mycelium crops, in vitro crops, farmed breeding and rearing of poultry for fattening and laying, poultry hatcheries, breeding and rearing of fur-bearing and laboratory animals, rearing and rearing of earthworms, entomophages and silkworms, beekeeping and the breeding and rearing of other non-farmed animals and the sale of forestry and hunting products, with the exception of tropical roundwood (CN 4403 41 00 and 4403 49) and bamboo (CN 1401 10 00) and the provision of agricultural services.

Moreover, pursuant to Art. 2, point 16 of the Polish Act on Value-added Tax, when referring to the notion of an agricultural holding, the legislator ordered to apply the definition resulting from the provision of Art. 2 of the Polish Act of 15 November 1984. However, according to the provision of Art. 2, point 21 of the Polish Act on Value-added Tax, the term *agricultural services* covers a range of independent services related to:

- agriculture and animal husbandry, except veterinary services (PKWiU ex 01.6), excluding services of shoeing horses and running shelters for farm animals (PKWiU ex 01.62.10.0);
- forestry (PKWiU ex 02.40.10), excluding forest patrolling performed by contracted units other than state forestry units (PKWiU ex 02.40.10.3).

As a supplementary note, it should be added that this term also includes support services for fishing (PKWiU ex 03.00.7), excluding services related to

sea fishing (PKWiU 03.00.71.0), as well as renting and leasing of agricultural machinery and equipment without operator (PKWiU 77.31.10.0).

To find out which regulations concerning agricultural activity are included in the EU tax law, it is necessary to refer to the regulations included in the Council Directive 112/2006. The analysis of these provisions has led to the conclusion that the EU legislator has not defined the term agricultural activity. Thus, in order to make an analysis for this issue, it is necessary to refer to the definition of the term *economic activity* contained in the provisions of Council Directive 112/2006.

Therefore, in accordance with the provisions of EU law – Art. 9, sec. 1 of Council Directive 112/2006 – the scope of this concept covers all activities carried out by producers, traders, or service providers, including mining, agricultural activities, and liberal professions or professions recognized as such. In addition, the EU legislator has also imposed that the use, in a continuous manner, of tangible or intangible assets in order to obtain income therefrom shall be considered an economic activity. However, the taxable person pursuant to Art. 9, sec. 1 of Council Directive 112/2006, is any person who independently carries out in any place any economic activity, regardless of the purpose or results of such activity (Maruchin, 2013).

An analysis of the above definitions leads to the conclusion that a person carrying out agricultural activity is included among the taxpayers of value-added tax.

The analysis of the provisions of the Directive leads to the conclusion that it is permissible to define the term agricultural activity using of Art. 295, sec. 1, points 1-2, 4 and 5 of Council Directive 112/2006. Thus, pursuant to these provisions, a farmer is any taxable person whose activity is carried out in an agricultural, forestry, or fishing undertaking which is recognized as such by each Member State in the context of a production activity listed in Council Directive 112/2006 Annex VII, which is a list of agricultural production activities (Maruchin, 2013).

It is worth noting here that the scope Annex VII includes: general agriculture, including viticulture; growing of fruit (including olives) and of vegeta-

bles, flowers, and ornamental plants, both in the open and under glass; production of mushrooms, spices, seeds, and propagating materials, as well as running of nurseries.

Its scope also includes animal farming in addition to land farming, including: general stock, poultry, rabbit, and fish farming; beekeeping; silkworm, and frog and snail farming, breeding of mussels, oysters, and other molluscs and crustaceans; freshwater fishing. (Maruchin, 2013).

The EU legislator also refers to Annex VII when defining the term *agricultural products*, describing it as goods produced on agricultural, forestry or fishing holdings in individual Member States as part of the activities listed in that Annex.

In addition, in line with the intention of the EU legislator, the term agricultural services covers services provided by farmers, using their labor, or using equipment normally employed in their agricultural, forestry, or fishing activities, and which normally play a role in agricultural production.

At the same time, the EU legislator indicated in Annex VIII to the analyzed Directive examples of agricultural services, such as: field work, reaping and mowing, threshing, baling, collecting, harvesting, sowing, and planting; packing and preparation for market, such as drying, cleaning, grinding, disinfecting and ensilage of agricultural products (Council Directive 2006/112/EC of 28 November 2006). Moreover, the following activities were also included: storage of agricultural products; stock minding, rearing, and fattening; hiring out, for agricultural purposes, of equipment normally used in agricultural, forestry or fisheries undertakings; technical assistance; destruction of weeds and pests, dusting and spraying of crops and land; operation of irrigation and drainage equipment; lopping, tree felling and other forestry services (Maruchin, 2013).

## 7. Flat-rate Tax Refund Rules

Law in Poland includes special procedure for flat-rate farmers in the Act on Value-added Tax. Pursuant to Art. 115 of the Polish Act on Value-added Tax, flat-rate farmers who supply agricultural products to those taxpayers in Poland who account for the value-added tax are entitled to a flat-rate



tax refund for the purchase of certain agricultural means of production subject to that tax. The provisions state that the amount of flat-rate tax refund is paid to each flat-rate farmer by the purchaser of their agricultural products (Maruchin, 2006). The above mechanism of flat-rate tax refund is also applied by other EU Member States (Cnossen, 2018).

The legislator set the amount of the flat-rate tax refund at 7% of the amount due for the supply of agricultural products, reduced by the flat tax refund amount, although a future reduction to 6.5% is not ruled out.

The literature on the subject presents a view that has to be shared. Flat-rate tax refunds to farmers who - in principle - enjoy a tax exemption cannot be equated with ordinary taxation of sales made by flat-rate farmers who do not benefit from tax exemption. This is primarily due to the fact that the flat-rate farmer does not exercise the right to deduct input tax as a component of the price of purchased goods and services, and the refund they receive is completely disconnected from the actual input tax paid. In addition, the flat-rate repaid does not remain in connection with, for example, goods for business purposes and input tax, the latter of which is added to the purchase price (Michalik, 2021).

Thus, the analyzed regulation is the effect of the implementation into Polish law of the provisions contained in Art. 296 of Council Directive 112/2006 (Maruchin, 2013) being the equivalent of the previously applicable provision of Art. 25, sec. 1 of the Council Directive.

As indicated in the literature, the EU legislator, through the abovementioned provision of the Sixth Council Directive 77/388/EEC, authorized the Member States to apply flat-rate schemes in cases where the application to agricultural activities of the general taxation rules would give rise to difficulties, thereby ensuring compensation for tax included in the price of goods and services purchased by flat-rate farmers (Kajus & Terra, 1991).

The Polish legislator, by introducing a flat rate refund of 6.5%, acted in accordance with the principles arising from the case-law of the Court of Justice of the European Union on value-added tax.

In support of this proposition, it is worth recalling the opinion of Advocate General J. Kokott

delivered on 22 September 2011 in Case C-524/10 *European Commission v Portuguese Republic*, according to which: "It must therefore be concluded that, by fixing the flat-rate refund (compensation) percentage at a nil rate, even though the input VAT payable by the flat-rate farmers is neither zero nor close to zero, Portugal has infringed the common flat-rate scheme for farmers" (Bartosiewicz, 2019).

Acting on the basis of the provision of Article 116 of the Polish Act on Value-added Tax, a taxpayer registered as an active VAT taxpayer purchasing agricultural products from a flat-rate farmer is obliged to issue an invoice documenting the purchase of these products in two copies, with the original of the invoice being handed over by him to the supplier. (Maruchin, 2006).

According to the examined regulations, an invoice documenting the purchase of agricultural products should be marked as VAT RR Invoice (in Polish: Faktura VAT RR) and its content should specify as a minimum:

- name and surname of the flat-rate farmer's contractor and their addresses;
- tax identification number or PESEL number of the flat-rate farmer's contractor;
- sale date, invoice date, and invoice sequential number;
- names of the agricultural products sold;
- unit of measure and quantity of agricultural products sold and the designation or description of the class or quality of those products;
- unit price of the agricultural product sold without the amount of the flat-tax refund;
- value of agricultural products sold without the amount of the flat tax refund;
- flat-tax refund rate;
- amount of the flat-rate tax refund on the value of agricultural products sold;
- value of agricultural products sold together with the amount of the flat-rate tax refund;
- total amount due, including the amount of the flat tax refund, expressed in numbers and in words;
- legible signatures of the persons authorized to issue and receive the invoice or signatures and names of such persons.

At this point, reference must be made to Art. 229 of Council Directive 112/2006, under which

Member States do not require invoices to be signed. (Maruchin, 2013).

The subject literature is correct in this regard as well. The EU legislator allowed for the signature on this type of invoices, but the content of the analyzed provision does not imply the possibility for the legislator of each Member State to impose on the recipients and issuers of VAT invoices the obligation to sign. (Lewandowski & Falkowski, 2012),

The inconsistency of this provision with Art. 229 of Council Directive 112/2006 has also been noticed by Michalik (2021).

Additionally, the Polish legislator ordered that the VAT RR invoice must include in its content a declaration from the supplier of agricultural products, stating that they are a flat-rate farmer exempt from VAT on the basis of Art. 43, sec. 1, point 3 of the Polish Act on Value-added Tax.

In addition, the VAT RR invoice, with the consent of the supplier, may be issued, signed, and sent electronically. In this case, instead of legible signatures or signatures of the persons authorized to issue and receive the VAT RR invoice in electronic form, as specified in Art. 116, sec. 2 point 13, the invoice should be signed with qualified electronic signature by the supplier and the purchaser respectively. The original VAT invoice should be sent to the supplier in electronic form.

It is also important to note that in the case of contract farming or other contracts of a similar nature, the declaration referred to above may be made only once during the term of the contract. Then, it constitutes a separate document drawn up in duplicate, the original of which is given to the purchaser.

For the purpose of the procedure under review, there is also an important rule stating that the flat-rate tax refund increases the amount of input tax for the purchaser of agricultural products in the settlement for the settlement period in which the payment was made. However, this is only possible if the following conditions are met:

- The acquisition of agricultural products was in connection with a taxable supply;
- A payment made of the amount due for the agricultural products, which included the amount of the flat-rate tax refund within its scope, to the bank

account of the flat-rate farmer or to their account in a cooperative savings and credit union of which they are a member.

It is worth mentioning that the analyzed condition concerns the part of payment which is the difference between the receivable for delivered agricultural products and the receivable for goods and services delivered to the flat-rate farmer by the purchaser of these products.

Legal scholarship correctly identifies, referring to Polish VAT case-law (Judgment of the Supreme Administrative Court in Poland of 9 May 2013, no. I FSK 709/12), that past due receivable to a flat-rate farmer do not deprive the purchaser of agricultural products of the right to recover the amount of refund, because it would violate two fundamental principles for the VAT system, namely: the principles of neutrality and proportionality (Bartosiewicz, 2019). Legal scholarship also points to the importance of respecting the neutrality principle for the effective functioning of VAT across the EU (David & Nerudova, 2008).

The objective scope of the term *receivable* for goods and services supplied to a flat-rate farmer also includes deductions made for repayment of loan instalments and advances granted to a flat-rate farmer supplying agricultural products, made by the taxpayer purchasing these products, after fulfilling statutorily defined conditions. The first of them refers to an advance payment made to the bank account of a flat-rate farmer or to their account in a cooperative savings and credit union of which they are a member, where the invoice confirming the purchase of agricultural products should specify the identification data of the document confirming the payment. In addition, installments and loans resulting from written agreements are also covered, as well as deductions resulting from other laws, EU Council regulations, or writs of execution.

- Invoice number and date of issue confirming the purchase of agricultural products, or the invoice confirming the purchase of agricultural products shows the identification data of the document confirming the payment. The above rule does not apply to advances covering the entire amount of receivables from the purchase of agricultural products, provided that the taxpayer, after purchasing agri-

cultural products, issued and delivered to the flat-rate farmer a document confirming the purchase of agricultural products, which shows the identification data of documents confirming payment of an advance to the bank account of the flat-rate farmer or to their account in the cooperative savings and credit union, of which they are a member.

The analysis of Art. 304 of Council Directive 112/2006, led to the conclusion that this provision imposes an obligation on Member States to take all necessary measures to effectively control the payment of flat-rate refund (compensation) to flat-rate farmers (Maruchin, 2013).

Legal scholarship also confirms that all control measures introduced by Poland as a Member State should comply with the principle of proportionality, that is, not go beyond what would be necessary to achieve the objective of the regulations analyzed in the current study (Lewandowski & Fałkowski, 2012).

In other words:

- The condition described above can be considered as exceeding the scope of necessary control of legitimacy of VAT deduction and being in conflict with the principle of proportionality.

- Interpretation of the aforementioned regulations in light of their harmonization with Council Directive 112/2006 leads to the conclusion that taxpayers may not be deprived of the right to deduct input VAT in a situation in which bank transfers do not indicate invoice numbers and dates of issuance, provided that there was another way of linking payments with deliveries made and invoices issued, which is also confirmed by the rulings of the Supreme Administrative Court of Poland, for example in the judgment of 30 August 2011 I FSK 1272/10, CBOSA (Lewandowski & Fałkowski, 2012).

The following statement also correctly assesses the issue: “the fact that a payment to a flat-rate farmer is delayed should not deprive the taxable person of the right to deduct input VAT if the documents relating to the transaction confirm that the transaction with the flat-rate farmer was completed and make it possible to link the supply of agricultural products to the later payment to the flat-rate farmer” (Lewandowski & Fałkowski, 2012).”

In addition, Polish law states that it is necessary

to consider the date of issuing a payment order to the bank account of the flat-rate farmer or to their account in a cooperative savings and credit union of which they are a member, as the date of payment, provided that the order was executed.

Flat-rate farmers are also required to keep the originals of their VAT RR invoices and copies of the previously mentioned declarations for a period of 5 years, starting from the end of the year in which they were issued. It also applies to VAT RR invoices and declarations issued electronically.

It is also important to note that pursuant to Art. 117 of the Polish Act on Value-added Tax, flat-rate farmers in agricultural activities in which they supplied agricultural products were exempted from the following obligations: issuing invoices, keeping records of purchases and sales of goods and services, filing tax returns, and reporting VAT registration (Maruchin, 2006).

## 8. Discussion and Conclusion

The above deliberations are the result of research on taxation of revenue derived from activities of farmers in Poland. The scope of the analysis included the two most important taxes on their revenue, namely: agricultural tax and value-added tax. This is in view of the fact that their revenue is not - in principle - subject to income tax and forestry tax.

The current law on agricultural tax dates back to the 1980s, that is, the period when the regulations of the Polish tax law were adjusted to the then prevailing economic system and, although they have been applied for almost 40 years, they have not undergone any significant systemic changes. Furthermore, the law concerning agricultural tax is not - in principle - subject to harmonization with EU law.

The Polish legislator currently refers to the EU law only with respect to the application of certain exemptions or reliefs in this tax, stating that:

- The exemptions indicated by it constitute de minimis aid in agriculture, as referred to in Commission Regulations (EU) No 1407/2013 and No. 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union.

- Relief indicated by the Polish legislator should be treated as aid for investment in tangible or in-

tangible assets on farms linked to the primary production of agricultural products under the conditions laid down in Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agriculture and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union.

In turn, the law concerning value-added tax is subject to harmonization with EU law. Introduction of this tax to the newly-created Polish tax system in 1993 resulted from the efforts of the Polish Tax Law Reform Team created by the Minister of Finance in 1992. The Team's goal was to design fundamental changes to Polish tax law in order to adapt its regulations to the requirements of the new market economy in the short term and to secure the harmonization of Polish tax law with EU law in the long term, in view of Poland's efforts to join the EU in the future.

The subject literature correctly identifies certain caveats concerning some elements of the construction of the agricultural tax charged on agricultural activity in Poland, namely (Etel, 2009; this reference concerns the entirety of the list below):

- Mutual incompatibility of two basic elements of this tax construction, that is: (a) the land constituting an agricultural holding covered by the objective scope of taxation; and (b) the amount of hectares, used to measure profitability of a holding, which the legislator ordered to be treated as the basis for taxation.
- A tax structure that is difficult to accept, in which the basis for taxation is the profitability of an agricultural holding and not the value of the land constituting it.
- The law analyzed in the current study provides no unambiguous answer to the following question: has the measure of comparative fiscal hectares been introduced in order to establish the tax base for the land constituting an agricultural holding or to establish the average income of this holding? As correctly identified, it is a consequence of combining measures characteristic of both agricultural activity taxation and agricultural property taxation.
- Income and wealth, which are traditionally – as a rule – separate objects of taxation, should not

be combined within one tax construction.

- The structure of the tax base should be adjusted to the objective scope of taxation in this tax.
- Determining the value of the land of an agricultural holding should not be done using the comparative fiscal hectare, which is based on the area and type of agricultural land, but its actual market value expressed in money.

The above-mentioned deficiencies in the construction of this tax lead some legal scholars to the conclusion that the agricultural tax has both a limited revenue function and low fiscal effectiveness (Felis, 2015).

In the subsection dedicated to value added tax some discrepancies between Polish and EU regulations were indicated, resulting in a conclusion that there are some shortcomings in respecting the EU *acquis* by the Polish legislator. The *acquis* contains both rules arising from the provisions of the analyzed directive and the case-law of the European Court of Justice on value-added tax. Below are the above-mentioned discrepancies:

1. Incompatibility of Art. 116 of the Polish Act on Value-added Tax of 11 March 2014 with the provisions of Art. 229 of Council Directive 112/2007 in so far as the Polish legislature imposed on the recipients and issuers of VAT invoices the obligation to sign them.

2. Incompatibility of Art. 116 of the Polish Act on Value-added Tax of 11 March 2014 with the provisions of Art. 304 of Council Directive 112/2006, arising from infringement of the fundamental principles of the VAT system, neutrality or proportionality, by

- depriving purchasers of agricultural products of the right to recover the amount of the refund, in the event of past due payment of receivables to the flat-rate farmer;
- taking measures to effectively control the payment of flat-rate refunds (compensation) to flat-rate farmers, going beyond what is necessary to control the legitimacy of VAT deduction, such as the obligation to indicate
  - the number and date of the invoice confirming the purchase of agricultural products;
  - the identification data of the document confirming payment in the text of the invoice for purchase of agricultural products;

- depriving taxpayers of the right to deduct input tax in cases where they have failed to indicate, in bank transfers, the reference numbers and issue dates of invoices, provided that there was another way of linking payments to supplies made and invoices issued documenting the purchase of agricultural products.

Therefore, the removal of the above-mentioned discrepancies is a proposition of changes to be introduced, which can be used both in the process of harmonization of the Polish tax law with the EU law and in the process of amending the Polish Act on Agricultural Tax.

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