

DOI: 10.53116/pgafnr.2022.1.4

Excise Tax Reform in Poland on Electronic Cigarettes and Heated Tobacco Products and Personal Income Tax Reform

How Laws Should Not Be Amended

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Abstract: The purpose of the paper is to present the most important changes to the laws on excise tax and personal income tax (PIT) made in Poland in 2022. Due to the importance of these changes, they can be considered tax law reforms. The changes to the excise tax may not only affect the amount of taxes levied but may also influence the health-related behaviour of Poles in the coming years. The changes to the PIT may affect as many as 18 million taxpayers.

The main purpose of this paper is to verify two research hypotheses: first, that public consultations do not have any impact on the shape of the tax law being developed; and second, if the legislator adopts a tax law quickly, it will very likely contain many errors, the consequences of which may be serious.

Keywords: tax reform, public consultations, excise tax, electronic cigarettes, heated tobacco products, personal income tax

1. Introduction

An excise tax reform has been in force since 1 January 2022, based on the Act of 29 October 2021 amending the Act on excise tax and certain other acts.¹ This act concerns changes made to the taxation of traditional cigarettes and innovative products (electronic cigarettes). It is all the more important, as it defines the rules of taxation in this regard for the next few years.

Until recently, personal income tax law had not been significantly modified in Poland for a long time. A huge change was made in this respect with the adoption of the Act of 29 October 2021 amending the Act on Personal Income Tax and some other acts². In their

¹ Journal of Laws of 2021, no. 2313.

² Journal of Laws of 2021, no. 2105 (hereinafter referred to as First Act on Personal Income Tax).

essence, the changes that took effect on 1 January 2022 affect a very large group of persons. According to the Ministry of Finance, about 18 million taxpayers will benefit from the new law and about 9 million of them will not pay any personal income tax (Ministry of Finance, *Podatkowy Polski Ład w pigułce*, 2022).

The main purpose of this paper is to verify two research hypotheses. First, in the practice of the tax law-making process, public consultations are treated only as a formal obligation, and the legislators adopting a tax law do not take the results of public consultations seriously. As such, public consultations are in fact just a token procedure.

Second, tax law should not be adopted too quickly without due attention and concentration. If the legislator adopts tax law quickly, it will very likely contain many errors, the consequences of which may be serious.

The study used the dogmatic method, which involves an analysis of the new regulations related to both taxes discussed herein. The paper also contains information based on an analysis of individual hypothetical cases, which was used to evaluate the new regulations on the PIT. An assessment of the new regulations for the excise tax was carried out on the basis, among other things, of the results of empirical research conducted by representatives of various sciences (chemistry and medicine), which was necessary to assess the impact on the health of traditional and so-called innovative products. Therefore, the paper not only fits within the scope of legal science, but can also be considered interdisciplinary.

2. Excise tax reform

Excise tax reform has been in force since 1 January 2022. The main changes were made in two areas. The first area is a 10% increase in the excise tax on cigarettes, smoking tobacco and innovative products. The second area is the proposed so-called Excise Tax Map: a schedule of changes in the rates of this tax for the coming years, a 10% increase every year between 2023 and 2027 (also for cigarettes, smoking tobacco and innovative products).

Formally, public consultations were carried out for these changes. This means that representatives of science were also consulted on the bill related to these changes (Popławski & Michalak, 2021). Public consultations are a very important component of the democratic system (Woźniczko, 2019). A discourse between representatives of the public, entities representing various interests, and bodies equipped with law-making powers should be reasonably reflected in the content of adopted legislation (Bobrus-Nowińska, 2019).

Public consultation of bills is a formal requirement. There are many regulations in Poland that impose the obligation to conduct public consultations on proposed bills. The Constitution of the Republic of Poland of 2 April 1997 provides that the supreme power is vested in the Nation and is exercised either through representatives or directly. In particular, Article 61 specifies, among other things, the right to be informed of the actions taken by, *inter alia*, public authorities and their effects. The Rules of Procedure of the

Council of Ministers³ include Section III entitled *Handling Draft Government Documents*, the third Chapter of which, (*Arrangements, Public Consultations and Evaluations of Draft Government Documents*), includes provisions concerning this issue. At the same time, these consultations show a fundamental connection with the problem of the so-called assessment of expected socio-economic effects. In the Resolutions of the Sejm of the Republic of Poland of 30 July 1992 on the Rules of Procedure of the Sejm of the Republic of Poland, it is indicated that the explanatory statement for a bill should also present the results of consultations held and should inform the reader of the views and opinions presented, particularly if the obligation to obtain such opinions arises from the provisions of the law.

It should be emphasised that the bill amending the excise tax law was submitted for public consultations. This means that the following actions were taken: opinions and comments could be sent by e-mail, the proposal to change the rules of tobacco taxation was the subject of consultations with representatives of the tobacco industry as part of the Online Excise Forum (12–13 October 2021), and the forum's deliberations were publicly available on websites (Ministry of Finance, Powstanie Forum Opodatkowania Wyrobów Akcyzowych, 2022).

There are other questions that arise at this point: What do public consultations look like in practice? And were the propositions submitted as part of the above-mentioned public consultations, including those by representatives of science, taken into account? In the practice of the decision-making process, the consultation of social partners on bills is considered one of the stages of the procedure. This stage is not particularly relevant in practice from a substantive point of view. It is considered only a formal condition for assessing the legislative correctness of a normative act. In the practice of state authorities, dialogue and social discourse serve only to provide information, not to shape decisions. Unfortunately, this was the case in the development of the above-mentioned changes to the excise tax laws, as the comments made by specialists and researchers in this field were not taken into account. The latter confirmed that the use of traditional cigarettes is more harmful to health compared to electronic cigarettes (Niezgoda, 2020).

Novelty products are, generally speaking, electronic cigarettes where certain chemicals are heated but there is no combustion process. For this reason, it is assumed that innovative products are less harmful to health. The U.S. Food and Drug Administration (FDA) clearly advocates the use of tested smokeless alternatives to cigarettes by adult smokers, while maintaining a ban on their promotion and advertising (Niezgoda, 2020). Research in this area has also been carried out in Germany, among other countries. The aerosol from one of the tobacco heating systems was analysed and it was found that there was a reduction of the toxic substances analysed in the range of 80 to 99% compared to cigarette smoke (Mallock et al., 2018). The results, published in 2018, were consistent with the results previously presented by the manufacturer of this system. The final findings stated that while research is still needed in the area of reduction, the values already recorded “lead to legitimate questions about the presumed reduced health risk” (Mallock et al., 2018). A department of Japan's National Institute of Public Health (NIPH)

³ Consolidated text: Monitor Polski of 2016, no. 1006, as amended.

conducted a comparative study of aerosol concentrations of chemicals from a tobacco heating system and cigarette smoke. This study shows, among other things, that the concentration of harmful compounds in the main stream of the aerosol is much lower than in traditional cigarettes (Bekki et al., 2017). The International Association on Smoking Control and Harm Reduction (SCOHRE) is an institution established by a group of 40 scientists (including doctors) from 21 countries (Niezgoda, 2020). SCOHRE argues that advances in reducing harm from smoking can no longer be ignored. The experts of the institution emphasise that although quitting smoking remains an absolute priority for the doctor and their patient, when this goal cannot be achieved and the patient continues to smoke, tested and regulated alternative methods of nicotine delivery may prove to be “the lesser evil” for them (Niezgoda, 2020). Electronic cigarettes can be one of the tools of harm reduction policy that contribute to a positive transformation of the public health landscape. The results of 44 clinical studies on the use of e-cigarettes and tobacco heaters, published in international scientific journals, confirmed a significant reduction in exposure of users to harmful substances compared to smoking (Akiyama & Sherwood, 2021).

Smoking traditional cigarettes kills over 8 million people a year, of which 1.2 million are so-called passive smokers (WHO, 2021). Addiction to tobacco carries enormous economic costs: USD 1.4 trillion (WHO, 2021), or approximately 1.8% of the world's GDP. On the other hand, tobacco smoking remains one of the leading causes of death (approximately 67,000 cases per year) and the cost of treatment of diseases caused by tobacco smoke constitutes 15% of total medical expenses in Poland (Ministry of Finance, Wspieramy, 2021). The number of teenagers who smoke cigarettes is also alarmingly high. 15% of adolescents have smoked at least once in the last 30 days, and nearly 1 out of 3 have smoked at some point (WHO 2020).

An analysis of the Polish Constitution (Constitution, Article 5) seems to prove that the elimination of traditional cigarettes, as harmful products, is a means to achieve the goal of protecting citizens' safety and health (Popławski & Michalak, 2022a). Despite the fact that the hypothetically most emphatic method of counteracting the above-mentioned problem would be a ban, it should be stated that, currently and to a greater extent, a more socially realistic option seems to be the use of the so-called innovative products (Popławski & Michalak, 2022b). Therefore, in the short-term legislative perspective, the legislator's goal should be to “promote” the use of these alternatives, for example in the form of electronic cigarettes (Popławski & Michalak, 2022a). Innovative solutions in the field of innovative products may take the form of excise tax mechanisms, which will burden certain categories of less harmful goods to a proportionally lower degree compared to much more dangerous tobacco products (Popławski & Michalak, 2022b). That is why there should be a demand to differentiate between the increase in the taxation of traditional products, which are more harmful to health, and the increase in the taxation of innovative products (a negative attitude towards these products was adopted without referring to the accepted and known global achievements in the taxation of this category). In my opinion, it is also justified to tax innovative products at lower rates than traditional cigarettes. At the same time, we should focus primarily on a higher taxation of traditional cigarettes (Reiwer-Kaliszewska & Nowak, 2019). Moreover, increasing the price of

tobacco products is globally one of the most effective methods of motivating people to quit smoking, which significantly limits the access of young people to tobacco products.

In the light of the collected data, also with reference to the research that has been conducted, it should be concluded that one of the most effective ways to counteract addiction is to limit the economic availability of specific stimulants, e.g. by a progressive increase of the excise tax rates applicable to traditional cigarettes.

Under certain conditions, it is actually an effective legal solution when it involves a progressive, i.e. continuous, plan to increase the tax burden on specific products with proven harmful effects. Periodic and regular tax increases are thus aimed at a permanent (not one-time) increase in the price of certain goods. They are thus supposed to “accustom” the consumers of these products to a permanent increase in their retail prices, in other words, to create the upward price trend for specific goods.

3. Purpose and direction of the changes to the PIT regulations

Looking at the general direction of the changes made to the regulations, it is clear that they are driven by specific political needs (Górski, 2019; Kimla, 2017). The ruling political group (government) had concluded that changes were needed that would result in a reduction of taxes for a large group of taxpayers. From this point of view, it is fully justified for the Polish Government to adopt laws that are considered appropriate for the majority of voters supporting the political parties that form the parliamentary majority (Myl, 2021). A parliamentary majority exists to allow the government to make decisions that are considered valuable and valid from the standpoint of the largest possible segment of voters who support it.

I would like to present now some details related to these changes, starting with the new tax preferences. The first very important change is raising the annual tax-free amount. Until the end of 2021, the tax-free amount in Poland was, in principle, equal to PLN 3,000 (EUR 640). It was the amount set for each year. In order for a taxpayer not to pay the PIT, his or her income could not exceed a certain threshold, e.g. PLN 3,000 in 2021. After the analysed legal changes were introduced, this amount is 10 times higher. In 2022, a person will not pay personal income tax if his or her income is not higher than PLN 30,000 (EUR 6,380).

Another important change is an increase in the level of the first tax threshold on the tax scale. Until 2021, this amount was PLN 80,000 (EUR 17,000) and now, since January 2022, that amount has been raised to PLN 120,000 (EUR 25,500). This means that a higher income will be taxed at a lower tax rate, which is obviously more advantageous for the taxpayers.

Additionally, a lot of new tax preferences were introduced. These are important and beneficial changes for taxpayers. An additional annual tax-free amount for large families was introduced at the level of PLN 115,000 (Ministry of Finance, 2022, *Podatkowy Polski Ład w pigułce*). A family with at least four children will benefit from the tax-free amount raised to the level of (EUR 24,500). In simple terms, a family with three children will be

able to benefit from the tax-free amount of PLN 30,000 per year, while a family with four children will benefit from a tax-free amount almost four times greater.

Already in the 2022 tax year, spouses filing their returns jointly will benefit from a double tax-free amount equal to as much as PLN 60,000 (EURO 12,700) and spouses with a salary of PLN 3,010 and PLN 3,500 gross a month respectively will gain about PLN 4,000 a year from the new tax law (Ministry of Finance, 2022, *Podatkowy Polski Ład w pigułce*). If they file their tax returns separately, they will save a total of PLN 3,600 per year on taxes as a result of the new law. Parents with two children earning PLN 6,500 gross jointly will gain roughly PLN 4,000 (EUR 850) (Ministry of Finance, 2022, *Podatkowy Polski Ład w pigułce*). Not only will they not pay any tax at all, but they will also receive a refund from the government of their unused child allowance, in the amount of approximately PLN 2,000 (EUR 425) (Ministry of Finance, 2022, *Podatkowy Polski Ład w pigułce*). Parents with one child where one of the spouses earns PLN 4,000 (EUR 850) and the other PLN 3,000 (EUR 640) a month will gain PLN 3,500 (EUR 745) per year if they file their tax return jointly. Families will also benefit from the tax threshold being raised to PLN 120,000 (EUR 24,500). As a result of the raised threshold, families with three children where one of the spouses earns PLN 18,000 (EUR 3,830) and the other earns PLN 5,000 (EUR 1,060) a month will not pay a higher tax (Ministry of Finance, 2022, *Podatkowy Polski Ład w pigułce*).

Large families will benefit additionally from the new law establishing the so-called PIT-0 (zero PIT rate) for families with at least four children. According to the new law, as much as PLN 85,528 (EUR 18,200) of income for each parent is tax-free. In addition, for taxpayers paying their taxes according to the tax scale (17 and 32%), there is another tax-free amount of PLN 30,000 (EUR 6,400).

According to simulations carried out by the Ministry of Finance, over 110 thousand people will benefit from the zero PIT rate for families with four or more children and will save approximately PLN 335 million in taxes (Ministry of Finance, 2022, *Polski Ład wspiera rodzinę*). The discussed tax preference is intended to cover not only parents, but also foster parents and legal guardians with at least four children. It should be mentioned that the tax relief will be available to parents who receive income from work, contract of mandate, or a business activity taxed according to the tax scale, regardless of whether they raise children together or are single parents.

Families with at least four children where the spouses jointly earn PLN 11,500 (EUR 2,450) per month will gain as much as PLN 8,945 (EUR 1,900) per year and the spouses will not only not pay approximately PLN 2,000 (EUR 425) of the tax they paid before the reform, but will also receive approximately PLN 6,900 (EURO 1,470) from the government (reimbursement of unused child allowance) (Ministry of Finance, 2022, *Polski Ład wspiera rodziny*).

Another important tax preference applies for working seniors. It will be awarded to working seniors, i.e. people who – despite having reached retirement age – decide to continue working. In this case, the relief is similar to that for large families: the tax-free amount has been raised to PLN 115,000 (EUR 24,500). The next significant change is the preferences for selected groups of professionals. Self-employed professionals (IT specialists, physicians, architects and engineers) can opt for a flat-rate tax on registered

income and benefit from lower tax rates. Instead of 17%, which could be applied in 2021, they can pay as little as 12%. In this case, however, it is revenue, not income, that is taxed. This means that taxpayers are not able to take into account the expenses incurred in connection with their business activity.

4. Different tax satisfaction levels among different groups of PIT taxpayers

The provisions of the First Act on Personal Income Tax have resulted in different levels of tax satisfaction. On the one hand, there is certainly a group of taxpayers who are very happy with the changes (people earning up to EUR 700 per month, because they will not pay any PIT at all). However, it should be noted that there are groups of taxpayers who are less satisfied with the changes and who may even be required to pay more PIT. Less satisfaction is rather obvious for taxpayers with higher incomes, earning more than EUR 3,000 per month; most of their income will be taxed at the 32% rate. Moreover, it must be emphasised that the changes are generally disadvantageous for entrepreneurs, due to the new rules for calculating health insurance contributions. This is due to the fact that the amount of health insurance contributions generally depends on the taxpayer's income tax liability. Until January 2021, there had generally been one flat rate for calculating health insurance contributions. Moreover, health insurance contributions are no longer tax-deductible, which is very disadvantageous.

5. Lack of a systemic approach to entrepreneurs in the PIT, legislative errors and Second Act on Personal Income Tax

It should also be emphasised that the legal changes made by the First Act on Personal Income Tax contained many legislative errors, since nobody knew how to apply some of the new tax law regulations. These shortcomings were the subject of a serious discussion held, among other places, in the media, but also in legal journals (Popławski, 2022; Popławski & Michalak, 2022b). This led the government to take urgent action to change the new law. Moreover, the First Act on Personal Income Tax lacked a systemic approach to entrepreneurs, not only those who invest, but also those who want to conduct their operations in Poland and benefit from the income they generate. I hope that the Polish legislator will decide in the future on a significant reduction of the tax rates, from which Polish entrepreneurs will be able to benefit to a larger extent than at present (Popławski, 2022). We should call for a reduction of the tax rates, both in the flat-tax PIT and in the CIT, to the level of about 10%. In my opinion, this would bring enormous benefits in the long run, not only for taxpayers but also for Poland as a state.

A lot of work was carried out to eliminate the above-mentioned shortcomings and legislative errors. However, it did not change much in terms of the lack of a systemic approach to entrepreneurs. The new law, with some additional changes, took effect on 1 July 2022. The Act of 9 June 2022 amending the Act on personal income tax and certain

other laws introduced⁴ changes that relate to the following issues: a reduction of the PIT rate from 17% to 12%; allowing entrepreneurs to change the form of income taxation during the year; partial restoration of eligibility for deducting health insurance contributions from the tax for entrepreneurs; restoration of the preferential calculation of PIT for single parents; ability to take the tax-free amount into account by several payers simultaneously; elimination of tax relief for the middle class; and introduction of an equalisation mechanism.

The new law provides for a reduction of the PIT rate from 17% to 12% in the first tax threshold of the tax scale for taxpayers taxed according to the general rules. This applies both to entrepreneurs paying the PIT according to the tax scale and to persons earning revenue from contracts of employment and contracts of mandate. The lower tax rate is already applied at the time of collection of advance payments. Importantly, the 12% PIT rate is also to apply to the period from January to June 2022, with taxpayers benefiting from the change in 2023 after they file their annual tax returns for 2022 (tax offices are expected to refund the overpaid tax).

In connection with the reduction of the PIT rate for taxpayers taxed according to the tax scale, the Second Act on Personal Income Tax introduced a special possibility for those entrepreneurs who chose income taxation in the form of a general flat-rate tax or a flat-rate tax for specific professions in 2022. They may change the form of taxation to taxation according to the general rules which, in connection with the reduction of the PIT rate, may be more advantageous for them in fiscal terms.

Taxpayers will be able to change their form of income taxation for 2022 when filing their annual tax returns for that year (until the end of April 2023). In those tax returns, taxpayers will report income that was subject to the general flat-rate tax or the flat-rate tax for specific professions in 2022. In the course of 2022, entrepreneurs will be obliged to apply the principles of income taxation hitherto appropriate for the general flat-rate tax or the flat-rate tax for specific professions.

Originally, according to the First Act on Personal Income Tax, the legislator decided to eliminate the deduction of health insurance contributions from the amount of PIT due completely. The Second Act on Personal Income Tax partially restores this preference, but not for all taxpayers and up to a certain limit. According to the new law, the deduction of health insurance contributions from the tax due is possible for entrepreneurs taxed at the general flat-rate tax (at the rate of 19%) and at the flat-rate tax for specific professions. Taxpayers who have chosen to have their income taxed in the form of a lump sum will also benefit from the above preference to a limited extent (the law provides for a deduction of 19% of the health insurance contribution paid from the lump-sum tax). Moreover, the additional limit on tax-deductible health insurance contributions is to be equal to PLN 8,700 (EUR 1,850) per year. However, this amount is to be adjusted annually based on the index specified in the tax law. Entrepreneurs who pay their taxes according to the tax scale (12%, 17%, or 32%, depending on income) will not be entitled to the deduction.

The Second Act on Personal Income Tax provides for the restoration of a preferential calculation of PIT for single parents. Previously, according to the First Act on Personal

⁴ Journal of Laws of 15 June 2022, no. 1265 (hereinafter referred to as Second Act on Personal Income Tax).

Income Tax, the aforementioned mechanism was replaced by the so-called allowance of PLN 1,500, but the old mechanism, which, in connection with a significant increase in the tax-free amount as of 1 January 2022 to PLN 30,000 (EUR 6,380), may prove more advantageous for single parents.

According to the First Act on Personal Income Tax, a person earning income from an employment contract (and having other sources of income as an employee) could use the tax-free amount at the stage of calculating the tax advance by one of the remitters of the PIT. This was possible at the request of the taxpayer. The Second Act on Personal Income Tax provides that a taxpayer will be able to select up to three remitters, who may take into account the tax-reducing amount when calculating their own tax advances. However, this does not mean that each remitter selected will apply 1/12th of the tax-reducing amount. The aforementioned Act provides that a taxpayer will be able to “split” 1/12th of the tax-reducing amount into up to three amounts and to authorise up to three remitters to apply it accordingly.

The Second Act on Personal Income Tax provides for the elimination of the so-called “middle class relief” that has been in force since 1 January 2022, which consisted of a deduction from the income of an amount determined individually based on the amount of revenue. The mechanism was intended to compensate for the negative fiscal consequences for taxpayers that may have resulted from the adoption of the First Act on Personal Income Tax. Generally, the middle class tax relief was available to taxpayers whose total annual revenue was between PLN 68,412 and 133,692 (EUR 14,500–28,500). This mechanism, however, was widely criticised due to its limited subjective scope and the complicated algorithm used to calculate the amount of relief for individual taxpayers. Accordingly, the Second Act on Personal Income Tax eliminated this mechanism. According to the new law, the above change should be neutral for taxpayers, because, in a way, in exchange for the middle class relief they will receive the above-mentioned reduction of the PIT rate (from 17% to 12%).

6. Conclusions

The paper demonstrates that the legal changes introduced in Poland from 2022 in relation to the excise tax and the personal income tax deserve to be called tax reforms. The changes made to the excise tax regulations affect the amount of taxes levied not only on traditional cigarettes, but also on so-called innovative cigarettes. They may also influence the health-related behaviour of Poles in the coming years. The changes made to the PIT regulations affect a very large number of taxpayers (about 18 million).

The paper also indicates the following issues. The amendments to the excise tax regulations were made with disregard for the results of public consultations carried out in the legislative process. The new regulations also do not take into account information resulting from scientific research. This proves that public consultations are treated in Poland only as a formal requirement. In my opinion, it is a mistake to tax traditional cigarettes and electronic cigarettes with excise tax at a similar level. Due to the fact that electronic cigarettes are less harmful to health, they should be taxed at a much lower rate.

The legislature made many mistakes in introducing the amendments to the PIT regulations. They resulted mainly from the excessively fast legislative process. As a consequence, new amendments had to be made to the recently introduced regulations. After these amendments, the PIT regulations are much clearer and easier to apply. This does not mean that the PIT regulations do not require significant additional changes, e.g. in terms of reducing the taxation of entrepreneurs.

The analyses presented in the paper confirm the validity of both research hypotheses indicated at the beginning. First, the current practice of conducting public consultations does not ensure the possibility of exerting a significant influence on the final shape of the law being created. It should be demanded that public participation in decision-making be real and not limited only to formal consultation of bills by specific entities. Second, if the legislator adopts a tax law quickly, it will very likely contain many errors, the consequences of which may be serious.

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