Teka Komisji Prawniczej PAN Oddział w Lublinie, vol. XV, 2022, no. 2, pp. 365–379
https://doi.org/10.32084/tkp.4778

TAX INSTRUMENTS FOR SUPPORTING PERSONS WITH DISABILITIES AS SEEN IN THE EXAMPLE OF THE REHABILITATION RELIEF IN THE PERSONAL INCOME TAX

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Abstract. Problems of persons with disabilities should be examined also at a legal angle. Creation of legal instruments of support for such persons is absolutely crucial. With the assumption that tax law is one of the more intrusive branches of law, which on the other hand may serve non-fiscal, including social goals, this study analyses those instruments which may be elements of such support. The author concentrates on regulations of the personal income tax and the rehabilitation relief regulated by them as a tax credit that is fundamental for this research area. Special focus is given to interpretation dilemmas that accompany the application of these regulations, which may greatly limit their efficiency. The analysis of the normative material and views of legal scholars and commentators and the judicature has allowed a number of conclusions, *de lege lata* and *de lege ferenda* alike.

Keywords: disabled persons; personal income tax; tax privileges

INTRODUCTION

Problems of persons with disabilities should be examined in various dimensions, including in the juridical aspect. Legal guarantees of particular protection of and support for persons with certain relevant features, including health deficiencies, are crucial. It needs to be emphasized, that seeing it as necessary, the legislator has formulated relevant rules related to the care of such persons in the basic law.[1] Leaving aside a global analysis of the legal system in terms of how it implements constitutional standards, it seems reasonable to analyse legal measures of one branch of law, that is the tax law. It is because this law is exceptionally intrusive and its regulations often affect peoples' living standard. This means in particular rules of taxing incomes of natural persons, which thus determine their disposable income.

[1] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

ISSN 1899-7694
e-ISSN 2719-7379

The aim of this study is to examine whether and to what degree regulations of the Personal Income Tax Act[2] may be considered a basic instrument of supporting persons with disabilities. This is why I analyse here those provisions of this act which, both theoretically and practically, may be treated as such instruments. These are provisions relating to the so-called rehabilitation relief. Special focus is given to interpretation dilemmas associated with the application of these provisions, which may greatly limit their efficiency. The composition of this study has been dictated by its subject matter – the first part refers to general requirements and rules of application of the tax preference discussed, I then move on to an analysis of the personal and material scope of the relief and of premises of its application (which determine the general structure of this privilege).

The study employs the method of investigation of the law in force; an in-depth analysis covers the normative material, views of legal scholars and commentators and the abundant judicial decisions. This paper also takes into account individual explanatory takes on tax law provisions, which play a special role in interpretation of this law.

1. REHABILITATION RELIEF – INTRODUCTION – GROUNDS FOR ITS APPLICATION

In this part of the study we must refer to the basic question, that is the validity of application of tax instruments to support specific categories of persons (including persons with disabilities). Before we move on to the main discussion, we must point out that it is one of the nodal problems of the tax law, extensively debated among legal scholars and commentators and reflected in the abundant judicial decisions. Due to space limitations of the study, we must only focus on questions that are of cardinal importance for the subject matter presented.

As has already been signalled, disabled persons should be subject to special protection which also involves support from the state. As true as this claim is, it is reasonable to consider whether the tax system too should include mechanisms that implement this postulate. While taxes are mainly intended to satisfy their fiscal function, we should agree with some views expressed in relevant literature that an optimal tax system should also serve non-fiscal purposes [Owsiak 2016, 16]. It may be used not only, in most general terms, to supply income, but also to run active economic and social policies, whereby it is possible to achieve such objectives [Zieliński 2019, 117].

[2] Act of 26 July 1991 on the Personal Income Tax, Journal of Laws of 2021, item 1128 as amended.

The personal income tax is considered a particularly predestined levy for mitigating income stratification of individual social groups due to its universal and personal character that encumbers taxpayers' personal incomes [Pomorska 2016, 55]. On the other hand, the tax's three components, that is the tax-free amount, progressive tax system and its rates, together with various tax reliefs and exemptions, are especially useful and in fact universally applied in performing the redistribution function. However, as is rightly emphasized, they are not used fully and effectively in the Polish personal income tax, which is why they also call for essential changes [Idem 2015, 152] (which will be discussed further in this study).

The construction of a tax system and its evolution are inseparably related to the tax policy in place, which in all its manifestations is also intended to serve public goals. These, in turn, are the subject of interest of a broadly understood social policy, which may be defined as a discipline of activity of the state and its organizations in shaping people's living and working conditions and social relations, which aim, i.a. to ensure social security, to satisfy higher-order needs or to ensure social governance. As a field of activity, it is put to work by means of detailed policies, e.g. social insurance policy, family policy, or policy for persons with disabilities [Grzywna, Lustig, Mitręga, et al. 2017, 12].

A comparison of objectives of the social and tax policy leads to a conclusion that their reconciliation is complicated, yet indispensable. However, this requires that consistent, long-term assumptions of both policies and a harmonization of instruments that serve the goals must be determined. Therefore, tax measures too should correspond with general social objectives and respect basic constitutional values, also those that refer to persons with disabilities.

The objective, that is integration, is crucial for the social policy applied to this group. Such integration in essence shall mean the creation of an inclusive environment and enabling persons affected by disability to carry out suitable activity to the greatest possible extent, in conditions in which this environment functions, i.e. a society free from limitations. The integration process refers to aspects of life of persons with disabilities such as family life, education, work, spending free time, life in a local community or social activity [Ogryzko-Wiewiórowska 2017, 7]. As a consequence, both the spectra of responsibilities and the corresponding implementation measures are especially wide and may be composed of both actions in fact and in law.

An assumption that the use of tax instruments, especially tax privileges, to implement non-fiscal aims of taxation is valid implicates another field for a scientific reflection that includes in particular their examination through the prism of the principle of equitable taxation. We shall not take up an in-depth analysis of understanding it, as it goes beyond the framework

of this study, but we must acknowledge its role in the law application process. First of all, we must note that it is assumed today that an equitable tax system must be individualised and differentiated and must take into account many factors that affect taxation. In other words, equitability of taxation does not mean that all subjects should pay the tax in the same amount and that they should bear equal burdens [Gomułowicz 1996, 3]. Therefore, we must give full approval to the conclusion that the principle of ability to pay, according to which a tax burden is conditioned on the capability to pay the tax, should be the cardinal rule that affects the creation of a fair tax system [Idem 1998, 86]. Respecting the rule of the ability to pay, in turn, requires respect for diversification of tax for individual payers. This rule must also apply to a certain measure – equitability of taxation. In this place it needs to be emphasized that according to the accepted line of judicial decisions of the Constitutional Tribunal,[3] the constitutional principle of equality before the law (equality in law) in the broadest approach means that all subjects of the law (addressees of legal norms) that equally bear this significant (relevant) feature must be treated equally, that is according to the same measure, without discriminatory and favouring differentiations.[4] This rule assumes the existence of a proportion between essential features of individual categories of people and their due treatment (relevance rule).[5]

In consideration of these arguments it must be inferred that the equity doctrine does not rule out tax privileges. Their application, however, requires suitable justification, understood as identifying a particular payment situation of a specific taxpayer group, while at the same time not causing a sense of discrimination among others. Therefore, we need to ensure exceptional care about the legislative quality of legal measures that standardize tax privileges [Szołno-Koguc 2016, 171]. Persons with disabilities are one of such taxpayer groups referred to above.

In conclusion, it is worth emphasizing that irrespective of these dilemmas, regulations of tax law that are compliant with the equitable taxation rule should take into account the possibility of differentiating tax burdens, which may also be a consequence of respecting the assumptions of social policies, including the one applied to persons with disabilities.

We must also add that persons with disabilities are usually burdened with additional costs of living due to their health. For these reasons, when the personal income tax entered legal transactions, the rehabilitation relief

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[3] Cf. decisions of the Polish Constitutional Tribunal of 8 May 1990, ref. no. K 1/90, OTK 1990/1/2, of 11 December 1990, ref. no. K 9/90, OTK 1990/1/6.

[4] Judgement of the Polish Constitutional Tribunal of 6 March 1990, ref. no. K 5/89, OTK 1990/1/1.

[5] Judgement of the Polish Constitutional Tribunal of 6 April 1993, ref. no. K 7/92, OTK 1993/ 1/7.

was introduced at the same time. It is intended to recompense these costs to some extent. It is regulated by Article 26 of the Act, amended many times, especially in its material scope, which is analysed in further parts of this study. In simplest terms, it means that the tax base is adjusted, i.e. decreased by the expenses made under terms stipulated in the statute. When listing general features of this relief we must point out that the legal basis of applying this institution was laid down in an editorial unit dedicated to other deductibles. From this point of view, this relief was equated with other preferences that involve reduction of the tax base. We cannot overlook the fact that up until the end of 2000 the catalogue of deductible expenses was stipulated by a regulation of the Finance Minister issued in agreement with the Minister for Labour and Social Policy.[6]

2. PERSONAL SCOPE OF THE REHABILITATION RELIEF

As a rule, natural persons are taxpayers of the personal income tax. Therefore, this relief is applied to incomes of these persons. Nevertheless, it may only be used by taxpayers who have disabilities, as understood in the tax statute. The specification of the personal scope of application of the relief takes the form of a condition that entitles one to use it. Importantly, it was formulated in a way typical to tax law: one of formal requirements specified mainly in Article 26(7d) of the Personal Income Tax Law must be met. Pursuant to this provision, the taxpayer (save for the extending exception that will be discussed further in this study), must have at least one of the following documents: a certificate of qualification by competent authorities for one of the three disability categories, specified in separate regulations, or a decision awarding a disability pension on account of complete or partial inability for work, training allowance or social allowance. Persons of up to 16 years of age must hold a certificate of disability issued under separate regulations.[7] The correlation of provisions of the act on professional and social rehabilitation and employment of persons with disabilities with, inter alia, the PIT Act is characteristic. Article 3(2) of the former stipulates that a certificate that determines the degree of disability is also a basis for the award of reliefs and rights under separate provisions (here: tax law). At the same time, it must be assumed that the tax administration authority does not have rights to question a decision that determines the degree

[6] Article 1(25) of the Act of 9 November 2000 on amending the personal income tax and certain other acts, Journal of Laws No. 104, item 1104.

[7] These provisions mainly include regulations of the Act of 27 August 1997 on professional and social rehabilitation and employment of persons with disabilities, Journal of Laws of 2021, item 573 as amended.

of disability. An administrative court does not have such power, either.[8] We must emphasize that it is rightly assumed that fulfilment of the requirement of holding a certificate that entitles one to benefit from this relief is assessed not as at the date of incurring the expense, but as at the date of making the deduction. This position, favourable to taxpayers, results from a linguistic interpretation of the provision.[9]

It is worth noting that the legislator often uses the expression "qualification to a disability group" in Article 26 of the PIT Act. At the same time, to avoid interpretation doubts, Article 26(7f) lays down that these expressions must be adequately assigned to individual degrees of disability. Thus, the tax law also takes into account the specific characteristics of social insurance law regulations. Persons who hold a disability certificate issued by a competent authority under separate regulations in force until 31 August 1997 may also benefit from this relief.

From the point of view of taxing families, the relief's specific personal extension referred to before is crucial. This means that it may be resorted to by taxpayers for whom persons with disabilities are dependants.[10] However, in order to be eligible to apply Article26(7e) of the Act, these persons must be included in the family circle referred to in this provision and they cannot receive incomes specified in this editorial unit (which refers to both the income category and amount).

We must note in this context the amendments of the regulation of the act[11] that result mainly from the ruling of the Constitutional Tribunal. In its judgment of 3 April 2019, the CT held that Article 26(7a) of the Act of 26 July 1991 on personal income tax, in the wording given by the Act of 12 November 2003 on amending the personal income tax act and certain other acts,[12] in the scope in which the income referred to in this provision induces child support[13] received by the disabled child from a parent

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[8] Cf. judgement of the Voivodship Administrative Court in Kielce of 26 April 2018, ref. no. II SA/Ke 205/18, Lex no. 2490183.

[9] Cf. judgement of the Voivodship Administrative Court in Poznań of 12 December 2012, ref. no. II SA/Po 865/12, Lex no. 1233575.

[10] To avoid unnecessary repetitions, the concept of the taxpayer's income is equated to the income of the taxpayer who provides maintenance to a person with disabilities.

[11] Article 26(7e) amended by Article 1(40)(f) of the Act of 29 October 2021 emending this act with effect of 1 January 2022, Journal of Laws of 2021, item 2105 and by Article 8(1) of the Act of 17 December 2021 amending this act with effect on 4 January 2022, Journal of Laws of 2022, item 1.

[12] Journal of Laws No. 202, item 1956.

[13] Apart from this, the amended provision of the Act removes the following from the catalogue of incomes that are calculated into the annual income: the supplementary benefit referred to in Article 21(1)(100a), the electricity allowance referred to in Article 5c of the Act of 10 April 1997, the Energy Law; the protective allowance referred to in Article 2(1) of the Act

is contrary to Article 71(1) sentence two in connection with Article 32(1) of the Constitution of the Republic of Poland.[14] The procedure for calculating the income of persons with disabilities was also amended – originally the threshold was clearly expressed in the statute. Since 2022 the incomes of persons with disabilities must not exceed 12 times the amount of a social assistance allowance specified in the Act of 27 June 2003 on the social assistance allowance,[15] in the amount valid as at December of a tax year. This amendment deserves credit as it allows for an automatic adjustment of the amounts that entitle one to the relief. When it comes to the circle of persons who may be considered the taxpayer's dependants we must note that it is upheld. It includes a spouse, taxpayer's own and adopted children, other children the taxpayer brings up, stepchildren, parents, parents of the spouse, siblings, stepfather, stepmother, sons-in-law and daughters-in-law. Exclusion of ascendants (especially grandparents) from this catalogue deserves criticism. Their presence in this typology may derive from the model of a Polish family as a multi-generational household and, moreover, for practical reasons – factual ties, including financial ties between the generations.

It needs to be emphasized that there is no additional requirement to document the financial support[16] given to a close relative, and this requirement cannot be derived from other regulations of the Act. Being a taxpayer's "dependant" is determined by the annual income of the disabled person specified in the Act, which together with incurring the expenses identified is intended to give the persons concerned the right to make the deduction.

Therefore, we must conclude that the provisions of the act discussed should be further verified in this aspect. We must note at that that ascendants are considered the closest relatives under the Gift and Inheritance Tax Act.[17] Admittedly, we cannot expect for such a solution to be copied in other acts of special tax law; however, given the above we should conclude that grandparents too could be the taxpayer's dependants.

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of 17 December 2021 on the protective allowance (Journal of Laws of 2022, item 1) and also allowances granted under separate provisions: the nursing allowance and additional annual financial allowance for old age pensioners and disability pensioners.

[14] Judgement of the Polish Constitutional Tribunal of 3 April 2019, ref. no. SK 13/16, Journal of Laws 2019, item 674.

[15] Journal of Laws of 2020, item 1300.

[16] We cannot share the view that the taxpayer has the obligation to prove that a disabled person who has an annual income that does not exceed the statutory limit is the taxpayer's dependant – judgment of the Supreme Administrative Court of 12 July 2000, ref. no. SA/Lu 535/99, Lex no. 45402.

[17] Act of 28 July 1983 on gift and inheritance tax, Journal of Laws of 2021, item 1043.

3. MATERIAL SCOPE OF THE RELIEF

The material scope of the rehabilitation relief is the part of its construction that brings most interpretation dilemmas. This is down to a few factors. The catalogue of expenses that qualify for this tax preference is rather broad and covers a dozen or so items. At that, it is a closed catalogue. The expressions used by the legislator are general, which on the one hand is intended to ensure a flexible application of this provision, on the other, though, leads to these problems. Secondly, to interpret provisions of the tax law with a focus on the application of tax preferences, it is important to highlight that thy cannot be in any way interpreted to extend them, because tax reliefs are an exception from universal taxation, which in turn is a canon of income tax.[18]

A general analysis of the material scope of the relief inspires a conclusion that is has been and still is relatively frequently modified so that it may be adjusted to the changing facts. Significant changes were introduced to legal transactions on 29 October 2021, effective on 1 January 2022. In this case the amendment of the act concerned both the catalogue of expenses and specification of previously-applied legal measures.

Besides, a general conclusion springs to mind that concerns the correlation of the material scope with the personal scope of the relief. It is because the legislator has differentiated expenses addressed to each person authorised to benefit from the relief and persons and expenses that were associated with specific kinds or degrees of disability. We can also see a certain regularity whereby in the majority of cases the amounts of expenses that are deductible are not limited. This means that the upper limit of the deduction is the taxpayer's annual taxable income. This deserves full approval – it allows for a relativisation of the amount of expenses made by taxpayers to their individual incomes.

In a review of deductible expenses, we may make a conventional and very general classification, which allows us to identify the following types of expenses: related to the purchase and possible repair of individual medical equipment and products, related to real property of a disabled person, related to transportation (travels and vehicles) and other expenses.

All these outlays have a special objective, that is to improve the functioning (also in the place of residence) and rehabilitation of a disabled person. As has been signalled, in the practice of application of the rehabilitation

[18] Cf. judgment of the Supreme Administrative Court in Warsaw of 24 November 2000, ref. no. III SA 2907/99, Lex no. 47117; judgment of the Supreme Administrative Court of 1 September 2017, ref. no. I GSK 641/17, Lex no 2373526, judgment of the Supreme Administrative Court of 28 August 2018, ref. no. II FSK 2505/16, Lex no. 2553597.

relief, it is the material scope of the relief – qualification of an expense as a deductible or not – that causes most interpretation dilemmas and discrepancies. Given the width of the subject matter, the analysis is limited to selected,[19] key interpretation problems. We must note here that the period of application of this provision has allowed for certain interpretation lines to be formed and thus, elimination, at least partial, of previously-occurring discrepancies of the application of this provision.

The first group of expenses are those made as part of adaptation and equipping of apartments or residential buildings[20] as suitable to the needs resulting from disability. An interpretation of this rule allows a conclusion that the legislator wishes to treat adaptation and equipping separately, which, nevertheless, must be related to the type of disability, as determined by the phrase "as suitable to...". It is because such expenses may be deducted as long as they are adequate to the need of a specific taxpayer. The use of such an expression on the one hand increases flexibility of the provision, on the other may contribute to excessive "discretion" of tax authorities. However, it seems that it was a good direction to move away from excessive casuistry and to not specify a closed catalogue of such expenses. Granting of the flexibility attribute, despite practical doubts, allows for the relief to be applied in a scope broader that it would result from clearly identified categories of outlays.

The terms "adaptation" and "equipment" used by the legislator are extremely crucial for the application of this regulation. The former needs to be understood as adaptation to a different use, a re-make to give something a different character. Therefore, we may talk about adaptation of an apartment or a building in cases of re-doing them for use by a disabled person. These works are to improve the disabled person's functioning in a given building or premises, not to improve their comfort of living.[21]

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[19] The choice was made on the basis of a criterion of the impact of a given expense on the standard of living/rehabilitation of a disabled person at the same time taking into account those expenses for which tax authorities issue decisions or explanations.

[20] It needs to be noted that in the light of an individual interpretation of the Director of the Tax Chamber in Warsaw of 21 May 2009, ref. no. IPPB4/415-183/09-4/JK2, www.mf.gov.pl, expenses for renovation of an outbuilding and its adaptation for the needs of residing there in the spring-summer period in order to undergo intense rehabilitation are not expenses incurred for the adaptation and equipment of a residential building as suitable to the needs resulting from disability.

[21] Cf. individual interpretation of the Director of the Tax Chamber in Bydgoszcz of 10 July 2008, ITPB2/415-536/08/IL, www. mf.gov.pl, according to which expenses incurred for building a swimming pool (to be used in rehabilitation of a person with a locomotor system disability) must be considered as expenses that improve their comfort of living and functioning, thus not deducible as the relief; individual interpretation of the Director of the Tax Chamber in Warsaw of 22 July 2009, ref. no. IPPB4/415-328/09-4/PJ, www. mf.gov.pl.; cf. judgment of the Supreme Administrative Court in Szczecin of 10 April 1997,

On the other hand, equipping an apartment/building involves giving them material elements that improve their usability and that are intended to make the performance of basic every-day activities easier.[22]

Without a doubt the ability of transportation (movement) is very important to persons with disabilities. This is why the rehabilitation relief accommodated a few types of expenses that relate to the transportation realm. They include adaptation of mechanical vehicles to the needs resulting from disability, different forms of transporting the taxpayer or him using his own vehicle. An analysis of this group of provisions of the act leads to the following conclusions: First of all, when it comes to the use of a car, the approved simplification[23] of the provision stands out, leading to a conclusion that the deduction is in fact related to the very use of the car that is owned (co-owned) by the taxpayer. At the same time, it is a limited expense, which deserves credit with today's construction of the regulation. We may only consider whether persons that spend amounts that exceed this limit should not benefit from the possibility of higher deductions which, in turn, could be linked with specific objectives of the use of the vehicle and require that the expenses made be documented.

As has been pointed out, expenses incurred on the adaptation of mechanical vehicles suitably to the needs resulting from disability fall under the category of expenses covered by this tax preference. Analogically to previously-mentioned "housing" expenses, a number of dilemmas relating to the interpretation of the provision results from establishing whether a given expense is proportionate to the needs of the taxpayer. Arguments for such a legislative solution have already been presented, whereby we need only emphasize that tax authorities should in each case examine this question in detail. We must also note that the phrase used in this provision, "adaptation of vehicles", brings difficulties in the application of this provision as it rules out the purchase of vehicles that are already adapted to given types of disability.[24] A position that one cannot deduct the expense for the purchase of an automatic car as a rehabilitation relief fits such a mainstream.[25]

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ref. no. SA/Sz 696/96, ONSA 1997, No. 4, item 193.

[22] Individual interpretation of the Director of the Tax Chamber in Warsaw of 27 May 2009, ref. no. IPPB2/415-163/09-5/AK, www.mf.gov.pl.

[23] It was decided not to link the expense with the use of the vehicle in order to get to necessary rehabilitation activities and to eliminate the obligation to document expenses – Article 1(16) of the Act of 27 October 2017 on amending the act on personal income tax, the act on corporate income tax and the act on flat-rate income tax on certain incomes obtained by natural persons (Journal of Laws 2017, item 2175 as amended).

[24] Cf. judgment of the Provincial Administrative Court in Gliwice of 4 March 2021, ref. no. I SA/Gl 1342/20, Lex no 3164333; judgment of the Provincial Administrative Court in Warsaw of 19 December 2019, ref. no. III SA/Wa 1040/19, Lex no. 3072650.

[25] Letter of 11 February 2022 from the Director of the National Tax Information Office, ref.

While a refusal to deduct a purchase of a car corresponds with the linguistic interpretation of the provision, it seems reasonable to postulate that the regulation be partially amended. It would be then possible for this tax preference to cover this part of expenses which exceeds the price of the "standard" vehicle and corresponds to the adaptation of the vehicle to a specific type of disability. Admittedly, this could mean difficulties in making such valuation, but it could contribute to a more effective use of the relief in this regard. We should also take into account the situation where a previous owner adapts the vehicle; if this deduction were allowed, it would improve in this case trading on the second-hand market, naturally upon clarification of requirements for benefiting from this tax privilege (e.g. loss of the right to the relief or its part when selling the vehicle before a certain period expires). We must add as a side note that under the current legal status such transfers result in losing this tax privilege.

One of the most specific expenses accommodated under the relief is the expense associated with the purchase of medicine under terms and conditions specified by statute. An introduction of a lower limit for expenses which, when crossed, entitles one to the relief is the most characteristic for this deduction. Pursuant to Article 26(7a) PIT Act, expenses made for medicines, in the amount that is the difference between expenses truly made in a given month and the amount of PLN 100, if a specialist doctor decides that the persons with disabilities should take specific medicines (permanently or temporarily), are also considered as expenses made for the purposes covered with the relief. This editorial unit was used to introduce three conditions whose joint satisfaction allows for the tax base to be reduced, that is:[26] the deduction concerns medicine; the medicine must be prescribed by a specialist doctor to exercise the right to the deduction; the expenses made to purchase them must exceed the minimum threshold. Stepping aside from practical problems that concern the interpretation of the term medicine[27] and certificates issued by competent doctors, we must focus on the most important flaw of this regulation. It results from the introduction of a minimum monthly limit of expenses that allows the use of the relief,

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no. 0112-KDIL2-1.4011.1183.2021.2.KF, Lex.

[26] Cf. Judgement of the Voivodship Administrative Court in Warsaw of 12 February 2014, ref. no. III SA/Wr 2401/13, www.nsa.gov.pl.

[27] The term "medicine" used, given the lack of a statutory definition under the tax law, should be interpreted in accordance with the provisions of the act of 6 September 2001, Pharmaceutical Law, consolidated text, Journal of Laws of 2020 item 1977 as amended. Pursuant to Article 2(32) of Pharmaceutical Law, a medicinal product shall mean any substance or combination of substances presented as able to prevent or treat disease in human beings or animals, or administered with a view to making a medical diagnosis or to restoring, correcting, or modifying physiological functions of an organism through pharmacological, immunological or metabolic action.

which violates the tax equity rule. Taxpayers classified under the same personal category may be treated differently depending on how these expenses are made, which, in turn, may de down to their financial standing, which evidently violates the idea of the relief. For example, a taxpayer who buys his long-term medication once a quarter, with a monthly expense of PLN 100, will be entitled in a yearly calculation to a deduction in his income by PLN 800 and a disabled person who makes the purchase once a month for the amount of PLN 100 will not have the right to deduct the expenses in a yearly tax calculation.

Therefore, another amendment is necessary to create an opportunity for persons that incur analogous expenses for the same purpose in a tax year to benefit from the relief.

It is also worth adding that a general rule was formulated in the act, which lays down that the taxpayer's expenses are deducted if they are financed (co-financed) from the corporate fund for the rehabilitation of disabled people, the corporate activity fund, the State Fund for Rehabilitation of Disabled People or from the funds of the National Health Fund, the corporate social performances fund or were not reimbursed to the taxpayer in any form. Where the expenses were partially financed (co-financed) from these funds (sources) the taxpayer does not lose the right to the relief – it is only limited to those expenses that were financed by the taxpayer independently. This solution must be unequivocally given credit as it allows stakeholders to use the tax preference even partially.

To sum up, the analysis of the material scope of the rehabilitation relief and the views of the judicature on its application allows a conclusion that it is directly associated with the fundamental objective of the relief, that is the stimulating function.[28]

4. OTHER REQUIREMENTS FOR BENEFITING FROM THE REHABILITATION RELIEF

The structure of the tax preference in question, apart from its material and personal scope, also includes formal requirements concerning documentation of these expenses. At that, application of such a legislative measure is

[28] Cf. judgment of the Provincial Administrative Court in Łódź of 10 January 2012, ref. no. I SA/Łd 1312/11, Lex no. 1120004; judgment of the Provincial Administrative Court in Szczecin of 4 June 2014, ref. no. I SA/Sz 1198/13, Lex no. 1481126; judgment of the Supreme Administrative Court of 12 June 2014, ref. no. II FSK 1723/12, Lex no. 1469208; judgment of the Provincial Administrative Court in Olsztyn of 19 November 2015, ref. no. I SA/Ol 632/15, Lex no. 1946460; judgment of the Provincial Administrative Court in Kraków of 6 December 2018, ref. no. I SA/Kr 763/18, Lex no. 2638701.

typical to and commonly used in laying laws that provide for preferential treatment of tax law entities.

Pursuant to the literal wording of Article 26(7c), for expenses referred to in subsections 7a(7), (8) and (14), it is not required to have documents that confirm their amount. However, at the request of tax authorities the taxpayer is obliged to present evidence necessary to establish the right to the deduction, in particular: 1) to provide the first and second name of the person paid for being a guide; 2) to produce an assistance dog certificate.

The above shows that the construction of Article 26 employs the method of classification into expenses that must be documented and expenses that are not required so. What is characteristic, this requirement was done away with in the case of limited expenses. This must be recognized as a specific synchronization of regulations that encourages rationalization of relevant solutions.

The rule that the amount of the expense must be documented is also a valid conclusion.

When it comes to the first category of expenses, it must be concluded that in the understanding of the provision cited, a document means a data carrier that allows one to learn of its content.[29]

Interpretation of rules that refer to the remaining expenses seemingly does not cause any dilemmas. An in-depth analysis of relevant provisions of the act, however, leads to completely different observations. This results from using the expression "evidence necessary to determine the right to the deduction, in particular". It needs to be emphasized that this phrase does not mean the obligation of documentation which refers not only to the fact of incurring an expense, but most of all to its amount. When it comes to certain categories of expenses it is indispensable to confirm one's very right to use the relief (apart from satisfying remaining formal requirements specified in Article 26 of the Act). As signalled, this provision only identifies certain evidence that confirms this entitlement. Such wording of the provision is intended to make it easier to apply it on the one hand, but on the other may also lead to unauthorised extension of competences of tax authorities in formulating evidence requests. It is because it is them that were given the authority to judge about the "indispensability" of having to prove that the expense was made. It needs to be assumed here that, both, the concept of proof referred to in the provision analysed and the very carrying out of evidentiary proceedings should comply with rules laid down

[29] Cf. Article 77^3 of the Act of 23 April 1964, the Civil Code, Journal of Laws of 2020, item 1740 as amended.

in the Tax Ordinance Act.[30] All actions of tax authorities should be rational and adequate to the needs of a specific case.

We should note in this context that these rules have become somehow simplified, which has already been mentioned in the previous part of this study and referred to categories of expenses associated with the use of the vehicle of a disabled person. Since the legislator opted not to link an expense with transportation to therapeutic and rehabilitation activities, the amendment of the provision concerning the obligation to document the fact of performing these activities was a natural consequence. Therefore, in the current legal status that obligation to prove the right to make such a deduction must be associated with the fact of owning (co-owning) a car.

To sum up, it needs to be concluded that the obligations discussed are instrumental responsibilities, where failure to meet them ultimately results in the loss of the right to deduct expenses covered under the material scope of the rehabilitation relief.

CONCLUSION

Supporting persons with disabilities has a significant social value. It should be implemented by means of all available legal instruments, including tax measures. The rehabilitation relief is one of the most significant measures here. It is one of the longest functioning tax preferences in the Polish tax system. It was introduced for non-fiscal purposes, it applies to a specific group of taxpayers and is not in conflict with the principle of tax equity; quite the contrary – it allows it to materialize.

Its position in the regulations of the personal income tax is justified in the universality of this tax and at the same time directly affects the amount of taxpayer's disposable income. Thus, it may be a significant compensation of expenses made due to a natural person's disability.

An analysis of provisions of the act that regulate this preference allows the following conclusions. First of all, a significant evolution of relevant regulations may be noted, intended most of all to streamline and simplify the terms for the application of the relief and at the same time to extend its material scope. This proves the legislator's certain sensitivity as it responds to the changing outside environment. Adjustment of regulations to this environment is undoubtedly good for the rationality and efficiency of their use.

[30] Act of 29 August 1997, the Tax Ordinance Act, Journal of Laws of 2020, item 1540 as amended.

A generally positive assessment of the relief does not mean, however, that it should not be further amended in the aspect identified in this study. *De lege ferenda* conclusions formulated in previous parts of the study that concern amendments refer most of all to the extension of the personal scope of the relief as well as changes in how deductions on account of purchase of medicines are made.

To recap, we may conclude that the rehabilitation relief in the personal income tax is an example of a rational use of tax instruments to support persons with disabilities.

REFERENCES

Gomułowicz, Andrzej. 1996. "Problemy teorii opodatkowania w Polsce." *Glosa* 4:3-5.

Gomułowicz, Andrzej. 1998. "Postulat sprawiedliwości podatkowej a prawodawstwo podatkowe." In *Księga pamiątkowa ku czci Profesora Apoloniusza Kosteckiego Studia z dziedziny prawa podatkowego*, edited by Bogumił Brzeziński, Jan Głuchowski, Cezary Kosikowski, et al., 85-91. Toruń: TNOiK.

Grzywna, Paweł, Joanna Lustig, Marian Mitręga, et al. 2017. *Polityka społeczna: rozważania o teorii i praktyce*. Katowice: Wydawnictwo Uniwersytetu Śląskiego.

Ogryzko-Wiewiórowska, Mirona. 2017. "Wprowadzenie: człowiek niepełnosprawny w życiu społecznym." In *Nowe formy wsparcia rozwoju osoby niepełnosprawnej*, edited by Marta Komorska, and Ewa Miszczak, 5-18. Lublin: WSPA.

Owsiak, Stanisław. 2016. "System podatkowy Polski w okresie transformacji – próba oceny." *Annales Universitatis Mariae Curie-Skłodowska Lublin Polonia, Sectio H* L, no. 1:15-27.

Pomorska, Alicja. 2015. "Najnowsze zmiany w konstrukcji podatku dochodowego od osób fizycznych w Polsce." *Annales Universitatis Mariae Curie-Skłodowska Lublin Polonia, Sectio H* XLIX, no. 2:151-57.

Pomorska, Alicja. 2016. "Potrzeba wzmocnienia funkcji redystrybucyjnej podatku dochodowego od osób fizycznych." In *Potrzeba i kierunki reformy podatków dochodowych w Polsce*, edited by Alicja Pomorska, 47-74. Lublin: Wydawnictwo KUL.

Szołno-Koguc, Jolanta. 2016. "Dylematy sprawiedliwości podatkowej – równość i powszechność opodatkowania a przywileje podatkowe." *Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach* 294:164-72.

Zieliński, Robert. 2019. "Funkcje podatków w doktrynie prawnofinansowej oraz ich znaczenie dla praktyki stanowienia prawa podatkowego." *Roczniki Nauk Prawnych* XXIX, no. 1:115-30.