

ALEKSY GOETTEL¹
ORCID: 0000-0003-2147-6174

INCOME TAX EXEMPTION FOR SELECTED REVENUES EARNED BY POLICE OFFICERS

Introductory remarks

Nowadays, it remains an unquestionable standard for the calculation of taxes on the income of individuals to take into account the principle of universality of entities in their legal construction. This rule implies — justified for axiological reasons — a postulate that the legislator should not restrict subjective income tax limits to selected categories of taxpayers². In other words, the universality of subjective income tax is ensured in a situation where the obligation to provide this benefit is basically the responsibility of the whole society, not of selected groups of people (e.g. due to their education, occupation, marital status, etc.). Therefore, it can be assumed that this principle is intended to prevent an asymmetric (*i.e. de facto* unjustifiably favouring certain groups of people³ and discriminating against others) distribution of the fiscal burden among the general population. The rule of subjective universality has the status of a constitutional principle⁴. According to Article 84 of the Constitution of the Republic of Poland⁵, everyone is obliged to bear public burdens and

¹ Aleksy Goettel, Ph.D. — doctor of juristic science, professor at the University of Economics and Human Sciences in Warsaw. His scientific interests focus on the law of public finance, especially tax law. In his research, he analyses selected issues of general and detailed tax law, and addresses the issue of local government finances, and the relationship between tax law and private law.

Contact with the author via the editorial office.

² Małecki J, [in:] Gomułowicz A, Małecki J (Eds), *Ustawa o podatku dochodowym od osób fizycznych. Komentarz*. Warsaw, 2003, p. 19. *See also:* Brzeziński B, Jezierski J, *Opodatkowanie gospodarki uspołecznionej w świetle zasad podatkowych. Acta Universitatis Nicolai Copernici, Nauki Humanistyczno-Społeczne, Prawo XXV 1987, Vol. 172, pp. 124–125.*

³ Bień-Kacała A, *Uczciwość ustawodawcy daninowego. Gdańskie Studia Prawnicze*, 2014, Vol. XXXI, p. 543.

⁴ *See more:* Kosikowski C, *Ustawa podatkowa*. Warsaw, 2006, pp. 70–71.

⁵ Constitution of the Republic of Poland of 2 April 1997. (DzU, 1997, No. 78, item 483 as amended).

benefits, including the taxes specified in the Act. Taking into account the abovementioned preliminary explanations, it should be stressed that the circle of personal income tax payers also includes, according to the principle of universality, police officers. However, at this point, it should be remembered that until recently, their legal tax situation was completely different. Article 99(2) (in its original version) of the Act of 6 April 1990 on the Police⁶ indicated that as a remuneration for the service, a police officer shall receive one salary and other pecuniary performances set forth in the Act, free of the payroll tax. The evolution of tax regulations, in particular with the introduction of the Act on Personal Income Tax on January 1, 1992⁷, was of crucial importance from the point of view of the principles of taxation of police officers' salaries. In the tax authorities' practice, there took hold an opinion that the newly introduced liability, which satisfied the principle of subjective universality, also covered the income of police officers (although the aforementioned Article 99(2) of the Police Act was still in force). It should be admitted that at the described time, the existing state of affairs was rather peculiar (though only seemingly so), while on the one hand, it was possible to take the position (as the tax authorities rightly did) that the introduction of the Tax Act in fact repealed Article 99(2) of the Police Act (in the part concerning the tax exemption). On the other hand, however, in view of the continuous (formally speaking) validity of the abovementioned regulation, many taxpayers (police officers) may have been convinced that it constituted a *lex specialis* in relation to the norms of tax law (all the more that Article 84 of the Constitution of the Republic of Poland, which establishes the universality of taxation, was not brought into effect until 17 October 1997). Without going into the arising controversies (which are only of historical significance)⁸, it should be mentioned that the existing doubts disappeared as a result of the amendment of the Act on Police⁹, consisting, among others, in removing from Article 99(2) the disputed phrase 'free of the payroll tax'.

⁶ DzU, 1990, No. 30, item 179; hereinafter: Act on the Police.

⁷ DzU, 2019, item 1387; hereinafter: Personal Income Tax Act.

⁸ They have been the subject of numerous decisions of the judiciary. See, e.g.: wyrok NSA w Lublinie z 26 listopada 1999 (judgement of the Supreme Administrative Court in Lublin of 26 November 1999), ref. I SA/Lu 1110/98, LEX No 1692729; wyrok NSA we Wrocławiu z 12 kwietnia 2000 (judgement of the Supreme Administrative Court in Wrocław of 12 April 2000), ref. I SA/Wr 1527/98, LEX no. 1692665; wyrok NSA w Warszawie z 17 maja 2000 (judgement of the Supreme Administrative Court in Warsaw of 17 May 2000), ref. III SA 859/99, LEX no. 1692751; wyrok NSA w Katowicach z 28 czerwca 2000 (judgement of the Supreme Administrative Court in Katowice of 28 June 2000), ref. I SA/Ka 33/99, LEX no. 1692766; wyrok NSA w Łodzi z 4 lipca 2000 (judgement of the Supreme Administrative Court in Łódź of 4 July 2000), ref. I SA/Łd 1124/98, LEX no. 1692948.

⁹ Implemented by Ustawa z 23 grudnia 1994 o kształtowaniu środków na wynagrodzenia w państwowej sferze budżetowej (Act of 23 December 1994 on the allocation of funds for remuneration in the state budget sphere) (DzU, 1995, No. 34, item 163).

However, coming back to the mainstream discussion, it should be stressed that respecting the principle of subjective universality does not contradict the idea of tax preferences. These preferences, above all tax exemptions and tax reliefs, serve to alleviate the general fiscal regime (by abolishing or reducing the tax burden) when, for various reasons, it is considered appropriate to sacrifice a part of budget revenues for the sake of protecting another, more significant good (most often for axiological reasons, often originating in the Polish Constitution)¹⁰. Further considerations will be limited to one of their forms - tax exemptions, however, only selected exemptions (those available to police officers) of a subjective nature (*i.e.* relating to certain characteristics of the subject of taxation) will be analysed; in the case of the analysed income tax, it is obviously the income of a taxpayer who is a natural person). The above measure results from the fact that within this type of tax (as opposed to corporate income tax) there are in principle no *sensu stricto* subjective exemptions (referring only to certain characteristics of the tax subject)¹¹. Moreover, it should be born in mind that tax exemptions for police officers (which is not the case with tax reliefs) can — for the purposes of this study — be classified as the following two categories. The first group includes exemptions to which all taxpayers are entitled, regardless of their membership in a particular professional group. The reasons for their application usually refer to a specific feature or set of features of a given source of income (*e.g.* the function of a given benefit or the status of the entity who pays the benefit). Although police officers are also entitled to such exemptions, the conditions for their application do not refer to the professional aspect in any way. Therefore, they will not be considered (the analysis, for obvious reasons, will also not cover exemptions to which representatives of other professions are entitled, as well as tax reliefs, as they also in principle are not connected with the taxpayer's profession and are applied because of other circumstances, *e.g.* family situation¹² or health of the taxpayer). The second category of exemptions involves those preferences which, even if being granted to representatives of various professions, for some reasons are particularly important for police officers (especially when the regulations of the Tax Act *expressis verbis* indicate the group of taxpayers in question). It is this type of tax exemp-

¹⁰ See the explanatory note to the judgement of the Constitutional Tribunal of 9 May 2005, ref. SK 14/04, OTK ZU 2005, z. 5A, item 47; Nita A, *Teoretyczne i normatywne wyznaczniki sprawiedliwego opodatkowania. Toruński Rocznik Podatkowy*, 2014, p. 23–26.

¹¹ The literature on tax law indicates that the only exceptions to the principle of subjective universality in personal income tax are — in some legal systems — subjective exemptions applying, on the basis of international law or international customs, to employees of foreign diplomatic or consular representations — see: Wójtowicz W, [in:] Wójtowicz W (Ed.), *Prawo podatkowe - część ogólna i szczegółowa*. Warsaw, 2009, p. 259.

¹² Świąch K, *Pozycja rodziny w polskim prawie podatkowym*. Warsaw, 2013, pp. 31 ff.

tions that will be discussed in the course of further deliberations. To conclude this part of the article, it is also appropriate to make another distinction between the tax exemptions to which police officers are entitled. While some of the discussed preferences are used in relation to financial benefits (which is fully understandable given the nature of income tax), some of the exemptions in question apply to benefits in kind (which, although *prima facie* may seem a bit surprising, is also justified in the formula of income tax obligation).

Exemption of benefits connected with the service uniform

The above tax exemption has not been explicitly addressed to police officers, but — which cannot raise the slightest doubt — plays an important role from the point of view of the professional group discussed. What is meant here is the solution provided in Article 21(1)(10) of the Personal Income Tax Act, according to which the value of official dress (uniforms), if its use is required from the employee, or the monetary equivalent for such dress, is free of income tax. It should be emphasised that Article 1(1) of the Police Act already indicates that the Police constitute a uniformed force. On the other hand, Article 70(1)(1) of the Police Act provides that a policeman shall receive uniforms free of charge, while Article 70(1)(2) and (3) and (4) oblige the Minister competent for internal affairs in agreement with the Minister competent for public finance to define, by way of ordinance, the amount and conditions for granting the cash equivalent for a uniform, taking into account:

- the elements of the uniform which form the basis for determining the amount of the equivalent;
- how to determine the amount of the equivalent;
- the procedure and cases for granting, reimbursing and suspending payment of the equivalent;
- the dates of payment or repayment of the equivalent.

Therefore, as can be seen, the formula of the analysed tax exemption was adjusted to the provisions of the Police Act — on the one hand, it included a free of charge contribution in kind ('value of dress'), on the other hand, it included a cash benefit (equivalent). The fact that the value of clothing provided to a police officer was exempt from tax deserves special emphasis. This procedure was necessary for axiological reasons, as according to Article 10(1)(9) of the Income Tax Act in conjunction with Article 20(1) of the Income Tax Act, gratuitous benefits not listed in Articles 12–14 of the Income Tax Act and Article 17 of the Income Tax Act are also subject to income tax. (that is, *inter alia*, benefits in kind)¹³.

¹³ For more information on the concept of gratuitous benefits in the context of personal income tax, see: wyrok WSA w Gliwicach z 15 kwietnia 2019 (judgement of the Provincial Administrative Court in Gliwice of 15 April 2019), file I SA/GI 293/18, LEX no. 2655622.

Since the clothing given to the policeman — as a benefit in kind and, which is important, free of charge — also falls within the scope of tax liability, it was necessary to exempt its value from income tax (otherwise, only the equivalent would benefit from the exemption). It should also be noted that the ‘or’ conjunction used in the wording of Article 21(1)(10) of the Income Tax Act clearly indicates that if a police officer receives only part of their official dress and the equivalent is paid to them in the remaining part, then both of the indicated allowances will remain tax-free. It also appears that the phrase ‘the value of official dress (uniform)’ must be interpreted in such a way that uniform is not so much a synonym for official dress as one of its forms. The addition of the bracketed word ‘uniform’ is merely a form of clarification of the scope of the tax exemption.

The elements of the uniform are specified in the Regulation of the Minister of Internal Affairs and Administration of 20 May 2009 on uniforms for police officers¹⁴, therefore in order to determine the scope of the term ‘uniform’ (and thus the limits of the tax exemption), reference should be made to the above act (which means that an interpretation based on common sense is prohibited)¹⁵. One cannot omit here the rule under Article 10 of the Law of 21 December 1978 on badges and uniforms¹⁶, according to which a uniform is a garment or parts of it used to indicate affiliation to a particular unit or the performance of certain functions or services. Thus, not only uniforms, but also the distinctions and identification marks of police officers remain tax-free. The phrase used in the wording of Article 21(1)(10) of the Income Tax Act — ‘if its use is required of the employee’ — also requires a certain comment. Firstly, the obligation to use a uniform by police officers is determined by Article 60(1), according to which a police officer is obliged to wear the prescribed uniform and equipment during service (except for cases specified by the National Police Chief under Article 60(2) of the Police Act). Secondly, since the obligation to use clothing is a condition for the application of the tax exemption, it should be assumed that the possible provision of clothing which the police officer is not obliged to use (or an equivalent for that clothing) will not entitle them to the tax exemption (except, of course, for the uniform, since the police officer is — as already indicated — obliged to use it). Thirdly, when looking at the full wording of Article 21(1)(10) of the Income Tax Act, it must be concluded that, although the condition relating to the use of the garment was found immediately after the phrase ‘the value of the official garment (uniform)’ and before the phrase ‘or the monetary equivalent of that garment’, the following should be noted — this obligation is valid not only when the police officer is provided with the clothes, but also when the cash equivalent is paid to them.

¹⁴ DzU, 2009, No. 90, item 738 as amended.

¹⁵ Janczukowicz K, *Ubiór dla pracownika jako przychód ze stosunku pracy*. LEX, 2017.

¹⁶ DzU, 2016, item 38.

Exemption of the monetary equivalent for lack of housing

A preferential instrument reducing the fiscal regime in relation to police officers (and the one in which explicitly points to this professional group) is the income tax exemption provided for in Article 21(1)(77) of the Income Tax Act. This provision shows that the cash equivalents for the lack of accommodation paid to officers of the Police and Penitentiary Service, the Internal Security Agency and the Foreign Intelligence Agency, the Military Counterintelligence Service, the Military Intelligence Service, the Border Guard, the Customs and Fiscal Service, the State Protection Service and the State Fire Service, up to an amount not exceeding PLN 2280, are exempt from tax. First of all, it should be noted that Article 88(1) of the Police Act clearly determines that a regular police officer shall be entitled to a flat in the locality where he/she serves or in a nearby locality, providing for the number of family members and their rights under separate provisions. At the same time, Article 92(1) of the Police Act states that a police officer shall be entitled to a cash equivalent if he/she or members of his/her family do not have any flat in the locality where such a police officer serves, or in the nearby locality, while Article 92(2) of the Police Act imposes an obligation on the minister competent for internal affairs to define, by way of an ordinance (in consultation with the minister competent for public finance), detailed rules for granting, refusing, withdrawing and returning the monetary equivalent.

A characteristic feature of the analysed tax preference is undoubtedly the fact that it does not include the full monetary equivalent for the lack of a flat, but only a certain part of it — up to PLN 2280. Income tax should be paid on the surplus above the indicated amount. Therefore, from the point of view of the legal nature, the presented construct is more like a tax relief¹⁷ than a tax exemption in the strict sense. Also, it is worth adding that there is much more of this kind of solution in personal income tax, *e.g.* Articles 21(1)(9a), 17, 19, 26(b), 78(b) of the Income Tax Act. Of course, a possible payment of the equivalent in an amount lower than PLN 2280 would result in no obligation to pay the tax, however, taking into account § 2 of the abovementioned regulation¹⁸, in particular the

¹⁷ A characteristic feature of the tax relief is the fact that as a result of its application, the tax burden is reduced (not abolished) in relation to the general tax regime. From a technical and legal point of view, tax reliefs usually take the form of deductions from the tax base or a fixed amount of tax or reductions in tax rates — see: Brzeziński B, *Prawo podatkowe. Zagadnienia teorii i praktyki*. Toruń, 2017, p. 153.

¹⁸ Rozporządzenie ministra spraw wewnętrznych i administracji z 28 czerwca 2002 w sprawie wysokości i szczegółowych zasad przyznawania, odmowy przyznania, cofania i zwracania przez policjantów równoważnika pieniężnego za brak lokalu mieszkalnego (Ordinance of the Minister of Internal Affairs and Administration of 28 June 2002 on the amount and detailed rules for granting, refusing, withdrawing and returning by police officers the monetary equivalent for lack of housing) (DzU, 2014, item 1130).

specified daily rates, such a state of affairs can only be imagined in relation to police officers without family members.

Some doubts have arisen in tax practice as regards the above limit. The subject of the judicial investigation has become a problem, which is contained in the question of how to assess, from the tax point of view, the situation when, in special circumstances (*e.g.* as a result of a court judgement), the equivalent will be paid once for a period of *e.g.* several years.¹⁹ It is worth explaining that in light of § 2(4) of the said regulation, the equivalent is paid on a monthly basis by the competent organisational unit of the Police. If the presented state of affairs is the case — in the opinion of the tax authorities, which was subsequently shared also by the administrative court — the total of equivalents for subsequent years should be reduced not by the value resulting from multiplying the amount of PLN 2280 by the number of years, but only by PLN 2280. This view — although it may seem to violate the legitimate interests of the taxpayer — must be approved of. It is supported by the mechanism of income tax calculation, in particular the method of calculating revenue. The tax authority is right when it states that '[...] both from the point of view of personal income tax taxation of a specific income and exemption of income from taxation, in accordance with the general rule expressed in Article 11(1) of the Personal Income Tax Act, the moment when the income in question is received or made available to the taxpayer is of relevance'. It is also impossible to question the view of the Regional Administrative Court in Białystok (which in fact supports the arguments of the tax authority) that *'the above interpretation does not violate the constitutional principle of equality before the law, since the exemption in question [...] concerns the amount of the exemption equal to the amount of the exemption and refers to the year of receipt of the benefit covered by the exemption'*²⁰. Another problem relating to the exemption in question, which has sometimes occurred in practice, is the incorrect legal tax qualification of the monetary equivalent for the lack of housing, classifying it as a benefit covered by the exemption under Article 21(1)(14) of the Income Tax Act. It should be clarified that although there is a certain similarity between the exemption in question and the preference provided for in the aforementioned provision (Article 21(1)(14) of the Income Tax Act abolishes the obligation to pay tax on the amount received by staff members in respect of the reimbursement of transfer costs and installation and resettlement allowances in connection with a transfer, up to a limit of 200% of the salary payable for the month in which the transfer takes place), however, there are separate constructions which apply in different situations²¹.

¹⁹ Wyrok WSA w Białymstoku z 5 marca 2008 (judgement of the Regional Administrative Court in Białystok of 5 March 2008), ref. I SA/Bk 610/07, LEX no. 466253.

²⁰ See: therein, the justification.

²¹ See: Pismo Izby Skarbowej w Katowicach z 2 marca 2009 (Note of the Katowice Tax Office of 2 March 2009), IBPBII/1/415-132/08/BJ.

Exemption from the payment of fees due to being in candidate service

Another tax exemption, addressed directly to Police officers, is the instrument provided for in Article 21(1)(80) of the Income Tax Act. The regulation states that income tax is not collected on revenues received in candidate service by officers of the Police, Border Guard, State Fire Service and Penitentiary Service. Considering the fact that this preference extends to all benefits obtained by means of an employment contract (both in cash and in kind²²), doubts may arise as to whether the structure presented is not in conflict with the principle of universality, as mentioned above. If this rule is to ensure that the circle of income tax payers will be designated in accordance with certain axiological standards, in particular by preventing the creation of unjustified tax privileges, it is hard not to notice that Article 21(1)(80) of the Income Tax Act *de facto* makes a breakthrough in the idea of general taxation. However, it should be noted straight away that a deviation from the principle of universality is difficult — in this case — to be assessed negatively. However, the specific nature of the candidate service and its consequences must be born in mind. In light of Article 30(1) of the Police Act in conjunction with Article 56(2) of the Act of 21 November 1967 on the universal obligation to defend the Republic of Poland²³, candidate service lasts only twelve months. Moreover, in accordance with Article 30(2) and (3) of the Police Act, a police officer in candidate service shall perform service in a garrisoned system and perform only administrative and order maintaining activities. The fact that a police officer performing such a service receives a small amount of salary cannot be disregarded, either. Therefore, it is impossible not to notice that the candidate service — although connected with receiving the police officer's salary — should not be treated equally (also in terms of tax law) with the preparatory service and (even more so) regular service.

Exemption from the increase in salary during parental leave

The regulation, which in a way influences the legal tax situation of police officers, results from Article 21(1)(82a) of the Income Tax Act. This provision stipulates, *inter alia*, that the amounts of salary increase referred to in Article 121a(3a) of the Act of 6 April 1990 on the Police, and the amounts of maternity benefit increase referred to in Article 31(3a) of the Act of 25 June 1999 on cash benefits from social insurance in case of sickness and maternity²⁴ are free of income tax. Thus, as can be seen, the preference in question — although being regulated in the same part of the normative act under consideration — contains in fact two tax ex-

²² Bartosiewicz A, Kubacki R, Article 21 [in:] PIT. Komentarz, LEX 2015.

²³ DzU, 2019, item 1541.

²⁴ DzU, 2019, item 645.

emptions, covering benefits paid under two different laws. However, the combined normalisation of these constructions was an accurate procedure, because these constructions have some common features. Firstly, the essence of both exemptions resulting from Article 21(1)(82a) of the Income Tax Act is to waive the obligation to pay tax only in relation to the amounts of the increase, *i.e.* benefits (elements) which are in a sense supplementary to the basic benefits (salary and maternity allowance). Secondly, the two supplementary benefits (increases) indicated essentially perform the same function. However, while the increase of the maternity benefit concerns the vast majority of employees (persons covered by the general social security system), *e.g.* in Police units they will be civil employees (therefore this issue will be omitted in the course of further considerations), the increase of the salary refers, among others, to police officers. Therefore, it can be assumed that the presented form of the tax exemption under Art. 21(1)(82a) of the Income Tax Act is a consequence of including police officers (and other services listed in the above provision) in a separate (in relation to all employees) social security system²⁵.

The juridical mechanism used in the content of the analysed regulation is an example of the so called 'floor reference' to other regulations. It contains a direct reference (to the extent referring to police officers) to Article 121a(3a) of the Police Act, which in turn also refers directly to the Act of 28 November 2003 on family benefits²⁶, and indirectly, by referring to its earlier paragraphs (1–3), to the Act of 26 June 1974 - The Labour Code²⁷. Thus, we are dealing here with quite a complicated system of references.

The provisions of the Labour Code governing the system of leaves due for the birth of a child, namely: maternity leave, as well as leave under maternity leave conditions (Article 180 *et seq.*), paternity leave (Article 182³) and parental leave (Article 182^{1a} *et seq.*), should be taken as the starting point for this complex construction. Depending on the type of leave enjoyed by a police officer, Article 121a(1) and (2) and (3) of the Police Act determine the emolument due to him/her at that time, according to the following rules:

- for the duration of maternity leave (leave on maternity leave conditions) and paternity leave, the salary is 100% of the current salary,
- for the duration of parental leave, this emolument (in cases specified in the Labour Code) is reduced, but not more than to 60% of the current salary.

If a police officer's reduced salary reaches a lower level than that provided for in the Act on Family Benefits, the parental benefit²⁸ shall, according to the provision of Article 121a(3a) of the Police Act, be increased to the amount of the parental benefit. The tax and legal consequences

²⁵ Bartoszevska M, Article 5, [in:] Wantoch-Rekowski J, (Ed.), *Ustawa o systemie ubezpieczeń społecznych. Komentarz*. LEX, 2015.

²⁶ DzU, 2018, item 2220 as amended.

²⁷ DzU, 2019, item 1040 as amended. (hereinafter: KP).

²⁸ According to Article 17c(5) of the aforementioned act on family benefits, it amounts (as a rule) to 1000 PLN.

of the increase of the emolument are specified at the beginning of this point in Article 21(1)(82a) of the Income Tax Act. It indicates that the amounts resulting from the increase of the emolument described above are free of income tax. There is no doubt, when assessing the *ratio legis* of the analysed regulations, that the exemption from tax of the presented increase in salary, similarly to the increase in maternity benefit, is to perform pro-social (non-fiscal) tax functions. However, it is worth mentioning that — taking into account the amount of the parental benefit and the fact that the minimum police officer's salary for the period of parental leave cannot be, as explained above, lower than 60% of his/ her current salary — the practical significance of the exemption in question is small.

Exemption of cash benefits for performing service abroad

Among the tax preferences, which in practice have a relatively more limited — due to their specificity — scope, is the exemption provided for in Article 21(1)(83a) of the Income Tax Act. This regulation provides for exemption from income tax in case of benefits granted under separate acts or executive regulations issued on the basis of these acts to police officers, Customs and Fiscal Service and Border Guard officers, employees of police units or organisational units of the Border Guard who perform tasks outside the borders of the country in order to participate in the following undertakings:

- (a) a peace mission, also as an observer in the peace mission of international organisations and multinational forces,
 - (b) action to prevent acts of terrorism or their effects,
 - (c) organising and controlling border traffic, organising national border surveillance or ensuring the security of international communications,
- with the exception of salaries and emoluments and other financial entitlements payable for service.

An analysis of the legislation referred to above shows that the tax legislature has determined the circle of beneficiaries of this exemption in a rather specific way. Not only does it cover (apart from police officers) officers of some other formations among those entitled to it, but also it grants the right to the exemption under discussion to employees of police units²⁹. However, while limiting further consideration to the rules of application of Article 21(1)(83a) of the Income Tax Act to police officers, it should be noted that it is not in every case that a police officer's participation in the contingent will result in a waiver of the income tax. The legislator — delimiting the scope of the above preference — has used two kinds of restrictions. First of all, when confronting the wording of Article 21(1)(83a) of the Income Tax Act with the wording of Article 145a(1)(a)

²⁹ For more information on including persons who are not police officers in the police contingent, see: Kotowski W, Article 145(c), [in:] Ustawa o Policji. Komentarz. LEX, 2012.

of the Act on Police, it is not difficult to see that while delegating a policeman to serve outside the borders of the country in a police contingent assigned to participate in a peace mission or an action to prevent acts of terrorism or their effects will justify the application of a tax exemption, this preference will not be granted to a police officer participating in a contingent assigned to participate in a search and rescue or humanitarian efforts, police training and exercises, or representative undertakings. If we assume that the intention of the tax legislator was to show special considerations to officers participating in the contingents organised in order to undertake actions for the protection of human life or participation in such actions is connected with risking the life or health of the officers themselves (and it seems that this was the intention of the legislator), then it may be questioned whether Article 21(1)(83a) of the Act should not also cover the contingents assigned to participate in search and rescue or humanitarian operations. At the same time, the will of the legislator who did not provide for an exemption for contingents relating to police training or representative undertakings should be treated with approval. Secondly, the tax legislator, when determining the negative scope of the exemption in question, decided that this preference would not be applied to salaries and emoluments and other financial entitlements payable for service. The issue of remuneration for work does not fall within the scope of this study, as the beneficiaries of this benefit are mission participants who are not police officers. On the other hand, as far as the police officer's salary and other monetary entitlements for service are concerned, it seems that the benefits that the police officer receives independently of his/ her participation in a contingent remain outside the scope of the tax exemption. The purposeful interpretation of Article 21(1)(83a) of the Income Tax Act leads to such a conclusion. Thus, free of income tax will be benefits immanently connected with participation in the contingent, specified in the regulation of the Council of Ministers of 5 November 2002 on financial emoluments received by police officers delegated to participate in contingents abroad³⁰.

Exemption of benefits for service outside the country

As a result of one of the recent amendments to the Act on Personal Income Tax³¹, there was developed a construct directly addressed, among others, to police officers. It is — resulting from Article 21(1)(90c) of the Act on Personal Income Tax — an exemption under which the benefits referred to in Article 145(2) and (6) of the Police Act are free from income tax. The fact that this article of the Police Act was introduced by the aforementioned normative act amending the Income Tax Act requires

³⁰ DzU, 2002, No. 192, item 1607 as amended.

³¹ Implemented by ustawa z 19 lipca 2019 o zmianie ustawy o weteranach działań poza granicami państwa oraz niektórych innych ustaw (the Act of 19 July 2019 amending the Act on Veterans of Activities Abroad and Certain Other Acts) (DzU, 2019, item 1726).

special emphasis. Incidentally, it is worth adding that probably the effect of failure to observe the provision of the amending act introducing tax exemption (Article 4(3) of the Act of 19 July 2019 amending the Act on Veterans of Actions Abroad and Certain Other Acts) and the regulation amending the provisions of the Police Act (Article 2(3) of the Act of 19 July 2019 amending the Act on Veterans of Actions Abroad and certain other acts) were given different dates of implementation (respectively: 30 days and 6 months from the announcement of the amending act). As a result, the discussed tax preference became effective long before the introduction of Article 145 of the Police Act, which regulates the benefit to which it relates.

According to Article 145(1) of the Police Act, a police officer delegated to perform service abroad in a police contingent mentioned in Article 145(1)(1–3) of the Police Act, after returning to the country, is subject to a free medical and psychological examination. On the other hand, paragraphs 2 and 6 of that article provide — respectively — that in the case of a wound, injury, mental trauma or illness of a police officer on duty under the conditions referred to above, or on account of his/ her psychophysical condition, the police officer may, in accordance with a doctor's instructions, be directed to a free medical/ prophylactic treatment along with his/ her closest adult family member within the meaning of Article 4(12) of the Act of 19 August 2011 on Veterans of Actions abroad³², where this period lasts 14 calendar days and includes therapeutic and rehabilitation activities and preventive healthcare, including psychological care. For the exemption in question, of vital importance should be considered the term 'free treatment'. This indicates unambiguously that a police officer, without bearing any costs of medical, rehabilitation and preventive healthcare measures towards him/ her, is in fact a beneficiary of 'other gratuitous benefit' referred to in (indicated in the considerations on the exemption of benefits related to official dress) Article 20(1) of the Act on Medical Care and Prevention. *Prima facie*, it seems not entirely understandable that the tax legislator, in the content of the provisions establishing the presented exemption, refers to Article 145(6) of the Police Act, stating at the same time that it regulates the ('tax-free') benefit. While (as has been demonstrated) Article 145ga(2) of the Police Act does indeed provide for a free of charge benefit, the content of Article 145(6) of the Act on Police only shows that the full costs of participation in a police officer's medical/prophylactic treatment and 50% of the costs of participation of an adult closest family member are covered by the State budget, from the funds at the disposal of the minister in charge of internal affairs. Therefore, the function of Article 145(6) of the Act on Police is in fact limited to indicating the source of financing of the treatment stay and participation of a family member. However, this provision indirectly indicates — and this is its significant meaning for the construction of the tax preference in question — that the beneficiary of a partly free

³² DzU, 2019, item 1569 as amended.

of charge benefit (50%) is the police officer's family member. Thus, we are dealing here with a situation in which one half of the costs of a police officer's family member's participation (as a free of charge benefit) remains free of income tax, while the other half of the costs, being covered by the family member and (as a paid benefit), is irrelevant from the point of view of the analysed liability.

Final remarks

In conclusion, it should be clarified that the consequence of using the tax exemptions presented (which, after all, refer to other tax exemptions regulated in Article 21 of the PITA) is that no tax should be paid. The mechanism of operation of the tax exemptions consists in the fact that the tax obligation (referred to in Article 4 of the Act of 29 August 1997 - Tax Ordinance³³) is not transformed into a tax obligation, regulated in Article 5 of the Ordinance³⁴. It is worth stressing that the abolition of the necessity to fulfil the basic obligation (payment of tax) directly affects — related to it — the so-called instrumental obligations, in particular the obligation to submit a tax return pursuant to Article 45(1) of the Personal Income Tax Act. It is assumed that although income tax regulations do not mention this issue, the taxpayer is either not obliged to submit an income tax return at all (if their income or revenues are fully exempt from tax) or is obliged to submit a tax return, but does not show income or revenues exempted from tax³⁵. However, special situations should be taken into account, *e.g.* when income from a particular source is subject to a subjective exemption, but not in full, up to a certain limit. This is the case with the monetary equivalent tax exemption for a lack of housing (discussed above). If the equivalent received by a police officer does not exceed PLN 2280, it should be omitted from the tax return. Payment of the equivalent which is higher than the amount indicated above will require its inclusion in the tax return, despite the application of the tax exemption.

Referring to the considerations contained in the introductory remarks, it should be noted once again that the tax legislator — in the process of constructing the personal income tax — has met the need to relax the general principles of taxation by repealing the obligation to pay the tax on selected categories of income or by reducing the fiscal burden. From the point of view of the subject matter of these investigations, it is necessary to emphasise the fact that some of the presented tax preferences (which fulfil the abovementioned objective) have been clearly addressed to police officers. The range of instruments for abolishing or reducing the tax burden on the part of police officers is not particularly wide (apart, of course, from the

³³ Nykiel W, *Ulgi i zwolnienia w konstrukcji prawnej podatku*. Warsaw, 2002, pp. 20–21.

³⁴ Consolidated text, DzU, 2019, item 900; hereinafter: the Ordinance.

³⁵ Borszowski P, *Elementy stosunku prawnego zobowiązania podatkowego*. Krakow, 2004, p. 203.

solutions available to taxpayers on the basis of non-professional criteria). However, this state of affairs cannot be particularly surprising — the legislator, taking into account the axiological conditions of tax policy, is forced to take advantage of tax reliefs and exemptions with caution. It is difficult to form an unambiguous opinion that the catalogue of tax exemptions applied to the analysed professional group is optimal. However, the tax situation of police officers cannot be assessed solely through the prism of tax preferences directly addressed to them. It should be emphasised once again that police officers are entitled to a number of reliefs and tax exemptions on account of *e.g.* being married, having children, incurring expenses justifying the benefit of the relief, etc. — on principles applicable to all taxpayers.

References

Publications

- Bień-Kacała A, *Uczciwość ustawodawcy daninowego. Gdańskie Studia Prawnicze*, 2014, Vol. XXXI.
- Borszowski P, *Elementy stosunku prawnego zobowiązania podatkowego*. Krakow, 2004.
- Brzeziński B, Jezierski J, *Opodatkowanie gospodarki uspołecznionej w świetle zasad podatkowych. Acta Universitatis Nicolai Copernici, Nauki Humanistyczno-Społeczne, Prawo XXV*, 1987, vol. 172.
- Brzeziński B, *Prawo podatkowe. Zagadnienia teorii i praktyki*. Toruń, 2017.
- Gomułowicz A, Małecki J, *Ustawa o podatku dochodowym od osób fizycznych. Komentarz*. Warsaw, 2003.
- Kosikowski C, *Ustawa podatkowa*. Warsaw, 2006.
- Nita A, *Teoretyczne i normatywne wyznaczniki sprawiedliwego opodatkowania. Toruński Rocznik Podatkowy*, 2014.
- Nykiel W, *Ulgi i zwolnienia w konstrukcji prawnej podatku*. Warsaw, 2002.
- Święch K, *Pozycja rodziny w polskim prawie podatkowym*. Warsaw, 2013.
- Wójtowicz W (Ed.), *Prawo podatkowe — część ogólna i szczegółowa*. Warsaw, 2009.

Legal Acts

- Constitution of the Republic of Poland of 2 April 1997 (DzU, 1997, No 78, item 483 as amended).
- The Act of 6 April 1990 on the Police (DzU, 1990, No. 30, item 179).
- Ustawa z 21 listopada 1967 o powszechnym obowiązku obrony Rzeczypospolitej Polskiej (DzU, 2019, item 1541).
- Ustawa z 26 czerwca 1974 — Kodeks pracy ((DzU, 2019, item 1040 as amended).
- Ustawa z 21 grudnia 1978 o odznakach i mundurach ((DzU, 2016, item 38).
- Ustawa z 26 lipca 1991 o podatku dochodowym od osób fizycznych ((DzU, 2019, item 1387).

- Ustawa z 23 grudnia 1994 o kształtowaniu środków na wynagrodzenia w państwowej sferze budżetowej (DzU, 1995, No. 34, item 163).
- Ustawa z 29 sierpnia 1997 — Ordynacja podatkowa (consolidated text, DzU, 2019, item 900).
- Ustawa z 25 czerwca 1999 o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa (consolidated text, DzU, 2019, item 645).
- Ustawa z 28 listopada 2003 o świadczeniach rodzinnych (DzU, 2018, item 2220 as amended).
- Ustawa z 19 sierpnia 2011 o weteranach działań poza granicami państwa (DzU, 2019, item 1569 as amended).
- Ustawa z 19 lipca 2019 o zmianie ustawy o weteranach działań poza granicami państwa oraz niektórych innych ustaw (DzU, 2019, item 1726).
- Rozporządzenie ministra spraw wewnętrznych i administracji z 20 maja 2009 w sprawie umundurowania policjantów (DzU, 2009, No. 90, item 738 as amended).
- Rozporządzenie ministra spraw wewnętrznych i administracji z 28 czerwca 2002 w sprawie wysokości i szczegółowych zasad przyznawania, odmowy przyznania, cofania i zwracania przez policjantów równoważnika pieniężnego za brak lokalu mieszkalnego (DzU, 2014, item 1130).
- Rozporządzenie Rady Ministrów z 5 listopada 2002 w sprawie należności pieniężnych otrzymywanych przez policjantów delegowanych do pełnienia służby poza granicami państwa w kontyngencie policyjnym (DzU, 2002, No. 192, item 1607 as amended).

Other sources

- Bartosiewicz A, Kubacki R, PIT. Komentarz. LEX, 2015.
- Janczukowicz K, Ubiór dla pracownika jako przychód ze stosunku pracy. LEX, 2017.
- Kotowski W, Ustawa o Policji. Komentarz. LEX, 2012.
- Wantoch-Rekowski J (Ed.), Ustawa o systemie ubezpieczeń społecznych. Komentarz. LEX, 2015.
- Pismo Izby Skarbowej of 2 March 2009, IBPBII/1/415-132/08/BJ.
- Uzasadnienie do wyroku TK of 9 May 2005, ref. SK 14/04, OTK ZU 2005, z. 5A, item 47.
- Wyrok NSA in Katowice z 28 czerwca 2000, ref. I SA/Ka 33/99, LEX no. 1692766.
- Wyrok NSA w Łodzi z 4 lipca 2000, ref. I SA/Łd 1124/98, LEX no. 1692948.
- Wyrok NSA w Lublinie z 26 listopada 1999, ref. I SA/Lu 1110/98, LEX no. 1692729.
- Wyrok NSA we Wrocławiu z 12 kwietnia 2000, ref. I SA/Wr 1527/98, LEX no. 1692665.
- Wyrok NSA w Warszawie z 17 maja 2000, ref. III SA 859/99, LEX no. 1692751.
- Wyrok WSA w Białymstoku z 5 marca 2008, ref. I SA/Bk 610/07, LEX

no. 466253.

Wyrok WSA w Gliwicach z 15 kwietnia 2019, ref. I SA/GI 293/18, LEX
no. 2655622.

DOI: 10.5604/01.3001.0014.2400

<http://dx.doi.org/10.5604/01.3001.0014.2400>

Keywords: Police, taxes, tax preferences, tax exemptions

Summary: Revenues of police officers obtained for their service, as in case of other professional groups, are subject to personal income tax. However, this does not change the fact that certain categories of the above benefits have been treated favourably in terms of the tax law. By means of the exemptions in question, the tax legislator waives the obligation to pay tax on benefits which, due to their specific nature (*e.g.* relating to the specific nature of the business relationship, social, family, health or other axiological considerations), should remain free of tax. The important thing is that the analysed tax preferences are differentiated in terms of their legal structure — while some of them cover only cash benefits, in some cases they concern benefits in kind. In addition, some tax exemptions for police officers do not involve waiving the obligation to pay tax of the full amount of income from a particular source, but only a certain part of it. The exemption from income tax for certain categories of benefits received by police officers has a direct impact on the performance of so-called instrumental duties, in particular the obligation to submit income tax returns.