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Taxation of Academic Teachers' Royalties. Controversies in the context of the general interpretation by the Minister of Finance

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Abstract: The Act on Personal Income Tax stipulates a number of methods for calculating costs, which unfortunately often leads to disputes between taxpayers and tax authorities. The same also concerns the rules applicable specifically to academic teachers performing their duties under an employment relationship. Problems emerge both in the context of the manner and scope of eligibility for flat-rate 50% tax-deductible expenses. Notably, the interpretative problems stem not only from the provisions of tax law as such. They also emerge in the context of higher education reform. But even though the observed legal inconsistencies require urgent legislative action, the necessary amendment to the provisions of the Act of 20 July 2018 – Law on Higher Education and Science has yet to be introduced. Nearly two years after the Act's entry into force, the Minister of Finance finally decided to issue a general interpretation. Therein, it is stated that in terms of the applicability of 50% tax-deductible expenses, the Act of 20 July 2018 – Law on Higher Education and Science constitutes *lex specialis*, i.e. ultimately, the 50% cost deduction is applicable to the entirety of an academic teacher's remuneration. The following paper provides a critical analysis of the present regulations as well as possible solutions

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to the current fiscal and legal stalemate. In the authors' opinion, the general interpretation by the Minister of Finance fails to substantially amend the quality of the law whose provisions remain largely unclear. At the same time, its practical value for academia cannot be denied. Undoubtedly, the fact that the same was issued by the direct superior of tax authorities will make this opinion difficult to ignore in the context of individual cases.

1. Introduction

In general, personal income tax applies to all income understood as the difference between the total revenues and total tax-deductible expenses in the given fiscal year.[1] However, the Act provides a number of various methods for calculating said costs, which in practical application unavoidably leads to frequent disputes between taxpayers and tax authorities. The same also applies to academic teachers performing their tasks as part of an employment relationship. Problems arise both in terms of the manner and the scope of applicability of the so-called flat 50% costs. It is usually rightly assumed that the Act introduced the 50% tax-deductible costs as a preferential measure. However, one would be hard pressed to evidence such preferential treatment with regard to this group of taxpayers given that the actual application of said 50% costs becomes virtually impossible at times. It is noteworthy that the emerging interpretative difficulties stem not only from the provisions of tax law, but also from the implementation of the higher education reform and adoption of new regulations under the so-called Constitution for Science[2].

The current legal situation results in significant discrepancies that require urgent legislative correction. Unfortunately – to date – no adequate amendment to the provisions of the LHES has been introduced. Nearly two years after the Act's entry into force, the Minister of Finance elected

1 Art. 9 and Art. 22 of the Act of 26 July 1991 on Personal Income Tax, consolidated text Journal of Laws 2020, item 1426, as amended, hereinafter referred to as the PIT Act.

2 Act of 20 July 2018 – Law on Higher Education and Science, Journal of Laws 2018, item 1668, as amended, hereinafter referred to as the LHES, is applicable under the terms and conditions stipulated in the Act of 3 July 2018 – Regulations implementing the Act – Law on Higher Education and Science, Journal of Laws 2018, item 1669, hereinafter referred to as the Implementing Regulations.

to publish a general interpretation. Therein, it was posited that in terms of eligibility for 50% tax-deductible expenses, the LHES constitutes *lex specialis*, and consequently the cost deduction can be applied to the entirety of an academic teacher's remuneration. It seems that while in itself, this fiscal and legal direction is highly commendable, the general interpretation by the Minister of Finance fails to actually yield clearer and more ordered legislation. Indeed, the law remains inconsistent and still urgently requires suitable amendment – primarily in the context of copyright law as well as the specificity of academic teachers' work.

2. Preferential tax treatment. Overview of a global trend

Preferential taxation of royalties is relatively common in many countries in the world. Various variants thereof can be identified in both West and East European (former Eastern Bloc) countries, as well as on other continents, e.g. Asia and Central America. That is not to say that a single fiscal model is followed universally. Different tax instruments are adopted in different countries, but the underlying goal is always to facilitate preferential taxation of royalty revenues[3].

For instance in France, since 1 January 2008, under the Impatriate Tax Regime the favourable tax regime (Article 155 B) was extended to local hires (including French nationals) who relocate to France and meet the above residency criteria. Employees hired directly by a French company (excluding intra-company transfers) may elect to have 30% of their net remuneration treated as an impatriate premium and thereby exempted from French income tax up to the limit of the French reference net taxable salary (compensation received by other employees with respect to equivalent positions). Taxpayers who satisfy Article 155 B conditions benefit from a 50% tax exemption with respect to their foreign-source dividends, interest, royalties and capital gains (resulting from sale of securities) for a period of five years (subject to certain conditions concerning the source of such income).

Such solutions are also not unheard of in the former Eastern Bloc countries. For example in Belarus, individuals who receive royalties or fees for

[3] Examples cited after: "EY Organisation, Worldwide Personal Tax and Immigration Guide 2020–21," accessed April 14, 2021, https://www.ey.com/en_gl/tax-guides/worldwide-personal-tax-and-immigration-guide.

the creation, performance or other use of the results of intellectual activity may deduct associated expenses in accordance with the Belarusian tax law. All expenses must be supported by the relevant documents made in the established format. Explicit regulations contain descriptions of deductible expenses. Instead of claiming professional tax deductions based on documented expenses, certain individuals involved in creating intellectual property may claim tax deductions equal to 20%, 30% or 40% (depending on the type of activity) of the income derived. A professional tax deduction is provided to the taxpayer based on the annual tax return submitted to the tax authorities by the taxpayer. The tax authorities allow a deduction at the payer's choice in the amount of actually incurred and documented expenses or in the amount of an established percentage of taxable income. Instead of claiming professional tax deductions based on documented expenses, such individuals may claim tax deductions equal to 20% of the income derived. This professional tax deduction is provided to the taxpayer based on the annual tax return submitted to the tax authorities[4].

Meanwhile in Serbia, withholding tax is imposed at a rate of 20% on royalties from copyrights, rights related to copyrights and industrial property rights. Deductions from royalty income may vary between 34%, 43% and 50% of the total royalty income, depending on the source of income. Actual expenses incurred by an author are deductible if they are properly documented[5].

Preferential taxation of royalties has also been introduced in exotic (from the European perspective) countries such as China or Barbados. A China resident can enjoy a CNY60,000 deduction each year in computing his or her net taxable consolidated income, which is an aggregate of employment income, labour services income, copyright income and royalties. A non-resident foreign employee can enjoy a deduction of CNY5,000 per month on his or her employment income. Qualified charitable donations

4 Unlike in e.g. Hungary, where royalty income is included in ordinary taxable income, and is taxed, after the deduction of expenses, at the normal rate (15%).

5 "EY Organisation, Worldwide Personal Tax and Immigration Guide 2020–21," accessed April 14, 2021, https://www.ey.com/en_gl/tax-guides/worldwide-personal-tax-and-immigration-guide.

are also deductible. Business deductions. Independent personal services income and royalties can have a deduction of 20% of income.

In the case of the Barbados tax system, for resident "authors," 50% of royalties received in Barbados is exempt from tax. Section 2 of the Barbados Copyright Act provides that an "author" in relation to a work is the person who creates it. Section 7 of the act states that a work qualifies for copyright protection if the author was a citizen of or habitually resides in Barbados at the time the work was created. All other royalties received are aggregated with other income and subject to tax at the rates set forth in Rates.

Upon analysing the relevant tax and legal instruments, it becomes evident that Polish law also stipulates a preferential tax treatment of academic authors, but the recently introduced changes seem to (at least in principle) go much further than the aforementioned mechanisms operating in other countries. Moreover, the actual method of approaching this particular tax and legal problem also seems somewhat dubious.

3. New tax rules

In the financial context, the aspect of academic autonomy was strongly emphasised. Related to the above, one should highlight the considerable substantive status of intra-academic acts adopted by the competent bodies of a given institution, e.g. the senate, the rector. The same are also significant to the problem of preferable fiscal treatment of academic teachers discussed in this paper[6]. In particular, one should consider the new regulation's approach to so called tax-deductible costs with regard to taxation of the remunerations received by academic researchers (authors) which, if applied, would significantly reduce the level of the due personal income tax (PIT).

Under the current law, performance of the tasks of an academic teacher constitutes an individual creative activity within the meaning of copyright legislation[7]. Such wording of the regulation could suggest that all professional duties performed by academic teachers are eligible for the preferential

[6] See the explanatory memorandum to the Act of 20 July 2018 – Law on Higher Education and Science, Journal of Laws 2018, item 1668, hereinafter referred to as Explanatory Memorandum.

[7] Art. 116.7 of the LHES in conjunction with Art. 1.1. of the Act of 4 February 1994 on Copyright and Related Rights, Journal of Laws 2018, item 1293, as amended, hereinafter referred to as the Copyright Law.

treatment, i.e. included in the scope of the 50% tax-deductible expenditures. Indeed, this interpretation was endorsed by the Minister of Science and Higher Education who publicly declared that, in his assessment, the ministry had been able to develop a solution that would lay to rest any doubts as to the possibility of applying the increased rate of deductible expenditures with respect to the remuneration received by university staff performing the roles of academic teachers.[8] In the minister's opinion, the LHES takes into due account the actual circumstances of universities' overall functioning and the specificity of academic teachers' work by recognising their tasks as creative activity eligible for the 50% cost deduction[9].

Unfortunately, upon a closer analysis of legal provisions pertaining to the creative activity of academic teachers, one inevitably arrives at considerably less optimistic conclusions. The questionable effectiveness of the regulation is in fact so apparent that it is difficult to avoid the impression of a general confusion experienced subsequently by all the actors involved: university boards, fiscal authorities, academic teachers, and even, apparently, members of the cabinet from whom we have heard a deafening silence with regard to the interpretation provided by tax authorities, which hardly bodes well for the overall success of the newly introduced legislation[10].

Faced with a deluge of requests for official interpretation of the LHES submitted to the Ministry of Science and Higher Education by concerned academic authorities, officials consistently replied that the 50% tax-deductible expenditures will be applicable to the entire remuneration of an academic teacher[11]. At the same time, however, the Ministry of Finance issued a statement about ongoing (prolonged) works on the general interpretation

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8 See e.g.: information provided at the website dedicated to the Constitution for Science, accessed January 6, 2020, https://konstytucjadlanauki.gov.pl/sprawy-pracownicze-najczesciej-zadawane-pytania.

9 See e.g. communication of the Ministry of Science and Higher Education of 25 May 2018 "Koszty uzyskania przychodu – MNiSW za jednolitymi zasadami," unpubl. and communication of 8 June 2018 "Koszty uzyskania przychodu – stanowisko MNiSW i MF," unpubl.

10 See the letter from the Director of National Tax Information Office of 13 March 2019, no. 0112-KDIL3-3.4011.14.2019.1.MM, LEX no. 489750); See also: Jarosław Ostrowski, "Nowe autorskie koszty uzyskania przychodu," *Przegląd Podatkowy* no. 6 (2018): 30–35.

11 See: reply issued on 23 October 2019, unpubl.

of tax law. Regretfully, one has to conclude that the many months of consultations held between the respective ministries failed to yield satisfactory results. Given the growing uncertainty, the Minister of Science and Higher Education presented the Minister of Finance with a letter wherein he once again presented his own interpretation of the controversial law, in expectation that the same would be adopted as standard practice by tax authorities[12]. However, although the Minister of Finance reassured him that the general tax law interpretation long awaited by the academic circles would be promptly published, the Minister of Science and Higher Education's interpretation of the provisions was not corroborated[13]. In light of the above, it seems evident that the Minister of Science and Higher Education acted too rashly when confirming, in reply to the position of the Ministry of Finance, his opinion that the 50% cost deduction would apply to the entirety of an academic teacher's remuneration[14]. Furthermore, the statement in no way influenced the actual fiscal practice, even after the Ministry of Science and Higher Education officially voiced its concerns with regard to the interpretations provided by tax authorities and the extreme discrepancies observed in terms of the response of respective universities to the situation at hand[15].

When analysing the discussed problem, one should not neglect to consider the amount of controversy arising from the provisions of personal income tax law itself[16]. What further exacerbates the situation is the fact that the same are in fact only secondary to numerous fundamental problems related to Copyright Law as such. Contrary to the claims of the Minister of Science and Higher Education, the introduced regulation is not conducive

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12 Letter from the Minister of Science and Higher Education of 18 January 2019, ref. no.: DBF.WFSN.5013.1.2019.KK.

13 Letter from the Minister of Finance of 25 February 2019, ref.no.: DD3.8223.31.2019, unpubl.

14 Notification entitled "Nauczyciele akademiccy mogą stosować 50% kosztów uzyskania przychodów od całości wynagrodzenia," accessed January 6, 2020, https://konstytucjadlanauki.gov.pl/nauczyciele-akademiccy-moga-stosowac-50-kosztow-uzyskania-przychodow-od-calosci-wynagrodzenia.

15 Letter from the Minister of Science and Higher Educations of 9 May 2019 accessed July 27, 2019, https://uni.wroc.pl/wp-content/uploads/2019/02/50proc_KUP_pismo_MNiSW_190118.pdf.

16 Art. 5a. 38 – 40 and Art. 22.9. 3) and 22.9b.8) of the PIT Act.

to clarity and uniformity in the application of law[17]. In this context, the provisions of the LHES refer to Copyright Law and its definition of a work, rather than directly to tax-related legislation[18].

A juxtaposition of systemic regulations pertaining to higher education, fiscal and copyright concerns reveals the full scope and considerable significance of the observed disharmony. It is therefore unsurprising that the situation lends itself to a growing confusion of both the authors of the reform themselves, tax authorities, and consequently also the respective boards of Polish universities. When attempting to unravel the complex network of relationships touched upon by the LHES, one should begin by determining the actual subjective and objective scope of the newly introduced solutions for higher education.

4. Academic Teachers' Royalties and university activities

There are two groups of university employees, (academic teachers and staff members who are not academic teachers)[19] who may be employed as members of the: 1) didactic staff; 2) research staff; or research and didactic staff[20]. The primary tasks of academic teachers entail conducting research and educating students. However, this hardly represents the entirety of work they perform. They are also obliged to contribute to organisational work at their universities and continuously increase their professional competences. It should be noted at this point that the remuneration received under the relevant employment relationship covers also those types of duties. Given the specific wording of the LHES, the aforementioned formula greatly hinders the applicability of the provisions on 50% tax-deductible expenses. Specifically, it simply is not compatible with the new regulation[21] which de-

17 Letter from the Minister of Science and Higher Education of 23 November 2018, ref. no.: DBF.WFSN.74.135.2018.HŻ.

18 Art. 116.7 of the LHES in conjunction with Ar. 1.1. of the Copyright Law.

19 The new regulation retained previous dichotomic distinction between university staff members based on the specifics of their professional tasks, originally introduced in the Act – Law on Higher Education of 2005 (see also: and Michał Zieliński, Komentarz do art. 112 p.s.w.n., in *Prawo o szkolnictwie wyższym i nauce. Komentarz,* ed. Hubert Izdebski (Warszawa: Wolters Kluwer, 2019), LEX el.

20 See Art. 112 - 115 of the LHES.

21 Art. 116.7 of the LHES.

fines the performance of an academic teacher's tasks as individual creative activity within the meaning of art. 1.1 of the Copyright Law. Naturally, one cannot argue with the fact that, as such, the idea behind the regulation is reasonable and touches upon the very gist of the matter, however, already at this stage it becomes clearly evident that from the substantive and strictly practical perspective, the same is far from sufficient. Even though the provision includes all statutory tasks of academic teachers (i.e. members of research, didactic, or research and didactic staff) within the scope of its applicability, its actual wording does not facilitate the development of a uniform interpretation in terms of the extent to which the 50% tax-deductible expenditures are in fact applicable.

Numerous additional doubts arise from the specific structure of an academic teacher's remuneration. One has to ask whether, in light of the LHES provisions[22], it is correct to assume that the basic remuneration received by a research, research and didactic, or didactic staff member should be eligible for copyright protection and therefore fall within the scope of the 50% expenditure deduction stipulated by the PIT Act[23]? Although we fully approve of the adopted direction of legislative changes, it is our considered opinion that without an explicit solution to the mounting unclarity, the correct application of the LHES will be burdened with a high risk of erroneous interpretation of its provisions. For even should we assume that the increased 50% cost deduction can be applied to the full basic remuneration of a faculty member, one cannot forget that the salary received by a university employee actually consists of two elements: the basic remuneration and the length of service allowance. Furthermore, a university employee may also be eligible for so-called variable remuneration components: 1) special duty allowance, 2) performance allowance, 3) overtime pay, 4) allowance for working in onerous or hazardous conditions, 5) bonuses – in the case of employees who are not academic teachers, 6) other allowances, if specified in the internal collective labour agreement or remuneration policy[24]. This leads to another problem: are variable remuneration components also eligible for inclusion in the 50% tax-deductible expenditures framework

22 Art. 116.7 in conjunction with Art. 115.1–2 of the LHES.

23 Art. 22.9b.8) in conjunction with para 9.3) of the PIT Act.

24 Art. 136 of the LHES.

stipulated by the LHES[25]? This does not seem to be corroborated by the position adopted in administrative case law which concludes that such remuneration components do not constitute income from work subject to copyright as no cause and effect relationship can be identified in this case between the remuneration and actual creative work[26]. Adopting this interpretative direction in fiscal practice, however, would stand in blatant contradiction to both the intentions of the legislators and the ministerial interpretation of the relevant regulation[27].

Additional limitations to the applicability of the LHES stem from the numerous doubts related to the method of taxation with regard to the remuneration of staff members on paid sabbaticals. It is difficult to explicitly determine whether the increased level of tax-deductible expenditures ought to be applied immediately (when paying the salary due to a faculty member on a sabbatical) or rather only once the relevant copyrights are transferred to the employer (the current copyright and fiscal legislation and the provisions of the LHES prove decidedly inconsistent in this respect). Notably, also identifying the correct moment of payment as such is significant in this context.

Under the provisions of the LHES, the performance of professional tasks by an academic teacher constitutes creative activity within the meaning of Copyright Law. But for the results of an academic teacher's research to be eligible for copyright protection, they ought possess the specific attributes of a creative work[28]. What qualities must a result of an activity pos-

25 Art. 136.2.2)–3), and 6) in conjunction with Art. 138.3 of the LHES.

26 It is worth citing an excerpt from a Provincial Administrative Court in Poznań, Judgment of 24 January 2018, Ref. No. I SA/Po 831/17, LEX no. 2446370, whose statement of reasons reads "a payer will be eligible for 50% expenditure deduction in the month when employees receive remuneration in return for the use of disposal of copyrights, but excluding statutory bonus (and other bonuses, e.g. performance bonus) and service allowance, i.e. only with respect to the given employee's basic remuneration (…), because they do not constitute revenue generated from work subject to copyright as there is no cause and effect relationship between the remuneration and creative work. It should be added that additional controversy emerges in the event of temporary suspension of basic remuneration due to receipt of financing from sources other than the subsidy.

27 See: Letter from the Minister of Science and Higher Education of 23 November 2018 to rectors of state universities, ref. no.: DBF.WFSN.74.135.2018.HŻ.

28 Art. 1.1 of the Copyright Law.

sess to be classified as a creative work within the meaning of Copyright Law? Pursuant to its provisions, the object of copyright is any manifestation of creative activity of individual nature, established in any form, irrespective of its value, purpose or form of expression[29]. Protection may apply to the form of expression only and no protection is granted to discoveries, ideas, procedures, methods, operating principles, or mathematical concepts[30]. A work is in copyright since being established, even if its form is incomplete[31].

The provisions of Copyright Law do not specify whether a work can be established solely under a specific work contract. The above conclusion stems both from Copyright Law and the provisions of the civil code.[32] A work within the meaning of Copyright Law can also be established within the framework of an employment relationship[33] or a service contract[34]. This leads to the conclusion that there are no evident legal obstacles to qualifying the work of an academic teacher as creative activity. At this point, however, the point of gravity in the discussed problem shifts to another aspect of the same. It becomes necessary to determine the actual scope of an academic teacher's activity that is eligible for copyright protection and can therefore be subject to the increased tax-deductible expenditures.

A work is, above all, an intangible asset constituting the result of the author's intellectual activity. Hence, the definition of a work as a "manifestation" of a particular activity refers the same to an external result existing outside of the author's mind. As indicated in the doctrine, granting protection to a given result of human activity depends on several conditions. It must constitute an manifestation of creative activity (creativity condition), have an individual character (individuality condition), and be established in some form.

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29 Art. 1.1 of the Copyright Law.

30 Art. 1.2 [1] of the Copyright Law.

31 Art. 1.3 of the Copyright Law.

32 Art. 1.1 of the Copyright Law in conjunction with Art. 627 of the Act of 23 April 1964 – the Civil Code, consolidated text Journal of Laws 2019, item 1145, hereinafter referred to as the C.C.

33 Art. 12 and Art. 14 of the Copyright Law.

34 Polish Supreme Court, Judgment of 22 March 2018, Ref. No. II UK 262/17, LEX no. 2499800.

A key aspect for our present deliberations stems from the part of the definition which refers to a work as a "manifestation of creative activity"[35]. The creative aspect must therefore be somehow expressed as a result of such activity. This reference to a "manifestation (result, product) of creative activity" means that a thought or concept as such, regardless of how original, is not sufficient to warrant legal protection unless it is somehow manifested in a way that establishes its form and content. A work must be the result of creative activity, i.e. constitute a subjectively new product of the intellect. This quality of a work is typically referred to as "originality"[36] or "novelty"[37]. Furthermore, it must also have an "individual character"[38], i.e. it ought to be possible to associate the work with a specific author, thus establishing a certain "bond" that is subject to legal protection[39]. One should therefore ask oneself whether the work has been created by someone else before and if it is likely for it to be created by someone else in the future with the same result. If the answer to the later is affirmative, the work should be deemed as a repeatable, routine activity whose results

35 Aleksandra Nowak-Gruca, "Nauczanie i dzieła naukowe jako przedmiot prawa autorskiego. Uwagi na tle wybranych poglądów judykatury," *Przegląd Sądowy* no. 6 (2018): 92–104.

36 See Polish Supreme Court, Judgment of 15 November 2002, Ref. No. II CKN 1289/00, LEX no. 78613.

37 See e.g. Polish Supreme Court, Judgment of 22 June 2010, Ref. No. IV CSK 359/09, LEX no. 694269; Polish Supreme Court, Judgment of 25 January 2006, Ref. No. I CK 281/05, LEX no. 181263. See also: Janusz Barta and Ryszard Markiewicz, Komentarz do art. 1 ustawy o prawie autorskim i prawach pokrewnych, in *Prawo autorskie i prawa pokrewne. Komentarz*, ed. Janusz Barta and Ryszard Markiewicz (Warszawa: Wolters Kluwer, 2011), 22; Ewa Laskowska-Litak, Komentarz do art. 1 ustawy o prawie autorskim i prawach pokrewnych, in LEX el.; Rafał Marcin Sarbiński, "Komentarz do art. 1 ustawy o prawie autorskim i prawach pokrewnych," in *Prawo autorskie i prawa pokrewne. Komentarz*, ed. Wojciech Machała (Warszawa: Wolters Kluwer S. A., 2019), LEX el. *Ustawy autorskie. Komentarze. Tom I*, ed. Ryszard Markiewicz (Warszawa: Wolters Kluwer S. A., 2021),

38 See e.g. Provincial Administrative Court in Warsaw, Judgment of 18 February 2009, Ref. No. I ACa 809/08, LEX no. 1120180.

39 See Art. 16 of the Copyright Law; For more information see Maria Poźniak-Niedzielska and Adrian Niewęgłowski in *System Prawa Prywatnego, vol. 13, Prawo autorskie*, ed. Jerzy Barta (Warszawa: C. H. Beck, 2013), 9.

are reproducible. If the answer is negative, on the other hand, this fact attests to the individual character of the work (product, result)[40].

Practical concerns arising in the context of taxing the creative activity of academic teachers stem from the fact that the applicable copyright regulations do not correspond to solutions adopted in provisions pertaining to the organisation of higher education. Currently, in a situation where Art. 116.7 of the LHES directly refers to the provisions of Copyright Law, we are faced with a systemic clash between statutory regulations, where the object of copyright protection is not defined by the LHES or even the PIT Act, but rather by Copyright Law. The LHES does not contain provisions specifying that in the case of work performed by academic teachers and the specificity thereof, special types of works subject to copyright protection are produced. Indeed, there is nothing to suggest any departure from the legal definition to which the LHES directly refers – i.e. the definition of a "work" provided in the Copyright Law. It is therefore justified to directly apply the legal definition contained therein to the interpretative process. Under the principles of effective legislation, should the legislator wish to depart from the same, the alternative meaning of the concept (creative work of academic teachers) ought to have been clearly stipulated and its exact scope of reference determined.

5. Content and scope of the general interpretation by the Minister of Finance

The observed inconsistencies required swift legislative correction but the provisions of the LHES have not been amended. Nearly two years after its entry into force, the Minister of Finance finally decided to issue a general interpretation related thereto.[41] It was stated that in terms of the applicability of the 50% tax-deductible costs, the provisions of the LHES constitute *lex specialis*. The conclusion was that pursuant to the PIT Act, 50% tax-deductible costs should apply to the entirety of an academic teacher's remuneration.

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40 Supreme Administrative Court, Judgment of 11 July 2018, Ref. No. II FSK 1845/16, LEX no. 2528581.

41 General interpretation by the Minister of Finance, no. Nr DD3.8201.1.2018 of 15 September 2020 regarding the applicability of 50% tax-deductible costs to royalty revenues (Dz. Urz. 2020, item 107).

The Minister further underlined that in order for remuneration to be classified as a royalty, which justifies the application of 50% tax-deductible costs, it is necessary that: 1) a work subject to copyright be created, which conditions the author's entitlement to copyright protection and enables them to dispose of their copyrights to their work, 2) objective evidence exists to corroborate the creation of a work subject to copyright. It was further stated that with respect to works created as part of academic teachers' professional activity, the condition of clearly distinguishing authorship fees does not apply.

With regard to documenting the creation of works, it was suggested that the employer and employee may maintain a register of works created, including works with respect to which down payment on authorship fees is affected, as well as independently created professional works. In the register, the employer may confirm acceptance of the particular works or specify another time when the relevant copyrights are transferred thereto. The employer and employee may also document the creation of works in the form of statements. The obligation to submit relevant statements may be included as the provisions of the employment contract or the institution's internal regulations. Said statements should specify the work created (or being created) because simply declaring the performance of creative work shall not be deemed as sufficient.

It was also stressed in the interpretation that the provisions of the LHES are a separate regulation taking into account the actual circumstances of universities constituting the primary entities of the higher education system as well as the specificity of an academic teacher's work. The Minister of Finance observed that despite certain legal frameworks applicable thereto, the profession of academic teacher is not far-removed from so-called liberal professions. A significant part of tasks typically performed by academic teachers and considered in the evaluation of their work are a product of creative inventiveness and freely conducted creative and publication activity. No substantiation was provided, however, regarding the specific regulations on which this limitation to the fundamental rules of the employment relationship is based. The LHES nor the Labour Code do not account for the same. Neither was a more thorough justification provided to support the presented opinion regarding the legal position of an academic teacher which was classified as a liberal profession. Moreover, the interpretation

indirectly equates the authorship of an original publication, a lecture, or a seminar (which does not seem intentional). The Minister of Finance argued that the statutory scope of obligations bearing upon academic teachers requires taking independent actions in all areas of their professional activity with a view to creating works within the meaning of Copyright Law, and mentioned in this context: teaching materials, syllabuses, lectures, seminars, papers, monographic studies, etc. It seems that this wording may be misleading and may result in contradicting regulations other than the PIT Act: specifically the Copyright Law and the LHES.

With regard to the provisions pertaining to various forms of leave available to academic teachers, it is argued in the interpretation that during the period in which an employee does not perform the tasks of an academic teacher and therefore does not perform individual creative activity, the 50% cost deduction cannot be applied. It was simultaneously stated that the rules apply as of 31 August 2018 (date of entry into force of the discussed provision of the LHES), whereas the remuneration received before that date is subject to the previously applicable university policies regulating the calculation of an academic teacher's salary.

Although important from the practical perspective, the general interpretation by the Minister of Finance does not seem to solve many of the relevant legal problems. Specific reservations will be listed in the conclusions. At this point, however, we should consider its practical consequences relative to the aforementioned specificity of an academic teacher's work. In this context, it would be helpful to cite individual interpretations issued shortly before the discussed general interpretation by the Minister of Finance, which additionally emphasise its legal effects.

Specifically, this pertains to the types of remuneration received in relation to the scope of one's professional duties. Academic teachers employed by universities can generate income from:

- base salary,
- complementary base salary,
- pro-quality base salary,
- overtime allowance,
- special duty allowance,
- seniority allowance,
- additional remuneration for thesis supervisors,

- pay for reviewing scientific degree candidates,
- pay for participation in recruitment processes,
- other salary supplements,
- awards,
- severance pay (retirement, lay-offs, disability),
- reimbursement of the costs of work-related travel (lump sum compensation for using a personal vehicle on university business, reimbursement of business travel costs),
- remuneration for periods of authorised absence at work (holiday leaves, sick leaves),
- payments in lieu of leave not taken,
- holiday subsidies.

In light of numerous individual interpretations issued, 50% tax-deductible expenses can be applied to revenues paid to an academic teacher under an employment contract.[42] At the same time, it should be observed that the 50% tax-deductible expenses do not apply to all income received during periods of authorised absence from work. Notably, the Law on Higher Education and Science provides every academic teacher under the age of 65, employed full time, with the right to take a paid leave to recuperate.[43] The leave is granted in order to undergo recommended treatment in a situation where one's health effectively hinders one's ability to perform work duties. Recuperation leaves are granted based on a doctor's certificate stating that the condition of one's health requires a break from work and indicating the recommended treatment as well as the period of time necessary to effectively undergo the same. In other words, when an academic teacher's health deteriorates necessitating a break from work, he or she can nonetheless receive remuneration for the period of such professional hiatus. But this, in turn, means that the teacher no longer performs individual creative activity within the meaning of Art. 1.1 of the Copyright

[42] See, individual interpretation issued by the Director of the National Treasury Information of 13 July 2020, no. 0113-KDWPT.4011.20.2020.3.MG, LEX no. LEX 548424; individual interpretation issued by the Director of the National Treasury Information of 8 July 2020, no. 0112-KDIL2-1.4011.373.2020.2.KF, LEX no. 547949; individual interpretation issued by the Director of the National Treasury Information of 10 July 2020, no. 0114-KDIP3-2.4011.359.2020.1.JK3, LEX no. 548325.

[43] Art. 131 of the LHES.

Law. Hence, such academic teacher's eligibility for the 50% cost deduction is ceased during the recuperation leave. Notably, this exclusion does not apply to other forms of leave, e.g. research or holiday leaves. In such cases, the university is still able to apply 50% tax-deductible expenses when calculating one's remuneration and withholding personal income tax.[44]

6. Conclusion

In Poland, similarly to many other countries, the law stipulates a preferential approach to the taxation of royalties. However, as the LHES came into force, it introduced new, dedicated tax rules applicable specifically to academic teachers. Unfortunately, this was done rather sloppily, in a way that failed to guarantee cohesion between the provisions of tax law, the LHES, and copyright legislation. The general interpretation by the Minister of Finance aimed to "remedy" this situation, but failed to provide a viable permanent solution.

In the new general interpretation, the Minister of Finance stipulated that in order for an academic teacher's remuneration to be considered a royalty, a work must be created. In principle, this position has to be commended. However, given the above one might be taken somewhat aback by the subsequent part of the Minister's argumentation, the underlying premise being that the "*specificity of academic teachers' work*" must be taken into account as well as the similarities between an academic career and so-called liberal professions. Naturally, one can hardly disagree with the efforts aimed at emphasising the prestige and significance of academic teachers, particularly in the context of the current erosion of the academic ethos. But the direction of the narration itself does raise certain serious normative reservations. For what exactly is the significance of said factors – i.e. work conditions of specificity of liberal professions – in terms of actual provisions of copyright legislation or tax law? Indeed, in normative terms the interpretation seems inherently inconsistent. On the one hand, the authority correctly refers to the constitutive qualities of the result (work) that ought to be created as the outcome of an academic teacher's activity. But on the other, it evokes non-statutory arguments that have no normative significance to the issue at hand.

44 Art. 22.9. 3) of the PIT Act.

It should be underlined that sampled (and mixed) evaluations of the outcomes (not necessarily results) of academic teachers' work somewhat undermine the relevance of the previous arguments concerning the necessity of creating a work within the meaning of copyright laws. This is not only misleading for the readers of the interpretation but downright materially incorrect. The names of respective manifestations of activity (be it related to research or teaching) that cannot be classified as works within the meaning of applicable law, will have no constitutive significance. In the legal sense, they in no way guarantee the eligibility for preferential fiscal treatment. Hence, they in fact pose a risk for the taxpayer given the potential negative tax consequences related thereto. Naturally, one has to recognise the interpretation's positive practical implications for the academia, only strengthened by the fact that it was issued by the superior tax authority. For this reason alone, tax offices will be hard pressed to ignore the same in the context of individual cases.

In truth, however, it fails to significantly amend the official interpretation of the law that remains unchanged (and unclear). Instead, it endorses a certain (possibly only temporary) practice regarding the classification of academic teachers' professional activity. Unfortunately, in the presented configuration, the legislative negligence and interpretative irregularities observed at the meeting point between the LHES, copyright legislation and tax law, continue to prevail.

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