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## **New Income Tax Reliefs for Donations Made by Taxpayers for Purposes Related to Combating the Effects of the COVID-19 Pandemic**

**Abstract:** In an effort to limit the effects of the COVID-19 epidemic determined by restrictions in economic activity and various areas of social activity, the catalogue of preventive actions was expanded by tax and legal instruments in the form of income tax reliefs inclining taxpayers to certain behaviours. The reliefs entitle taxpayers to deduct the value of donations made for the purposes of counteracting COVID-19 from the tax base. Two types of such donations have been distinguished, i.e., donations for entities participating in the treatment of infected persons and donations for educational institutions providing remote education. The aim of this article is to establish the premises justifying the claim that the tax reliefs for donations made by income tax payers are autonomous in relation to other tax preferences available to taxpayers making donations for other socially useful purposes. The hypothesis about the ad hoc and temporary nature of these tax reliefs has been verified as true, and the dominance of the motivating and stimulating function over their fiscal function has been demonstrated. Symmetrical solutions have been identified in the legal structure of the subject tax reliefs, as the donor uses a deduction from the tax base, while the recipient does not include the accepted donation in their income. The study uses the legal-dogmatic method and, in addition, the empirical analytical method to present the jurisprudence of courts in the field of applying tax reliefs due to donations made by income tax payers.

**Key words:** COVID-19 epidemic, educational institutions, healthcare entities, income tax, tax reliefs for donations

### **Introduction**

The use of tax preferences, including those in the form of tax reliefs, is aimed at shaping the behaviour of taxpayers in order for it to be consistent with the specific objectives of the state tax policy. Especially in emergency situations, certain forms

of taxpayers' activity may be of significant importance for the state and the public finance. There is no doubt that the period of the COVID-19 pandemic required extraordinary measures. The nature of such measures can also be assigned to the changes in three acts regulating income taxation. They consist in extending the objective scope of donations made by taxpayers entitling them to reduce the tax base, and thus ultimately the amount of income tax imposed. The legislator's intention was to include taxpayers, or rather part of their financial and material resources, in the process of combating the effects of the COVID-19 pandemic, carried out by statutorily designated institutions or organisational units.

The aim of this study is to analyse and evaluate the solutions shaped by the provisions of tax law that regulate the principles and procedure of applying new tax reliefs entitling to an appropriate reduction of the income tax base due to cash and in-kind donations intended for reducing the negative effects caused by the COVID-19 pandemic. The hypothesis subject to verification was that the Polish tax legislator set the objective and subjective boundaries of these tax reliefs in an ad hoc and gradual manner, depending on the development of the epidemic in the country. As a result, in only one year since they were introduced, as many as three significant changes were made to the legal structure of these reliefs. The legal structure of the tax reliefs includes a strong incentive and promotional mechanism, the essence of which boils down to the application of increased – in relation to the value of donations – limits for deduction from the income tax base. Examination of the aforementioned changes and the project initiator's motives justifying subsequent amendments to the law enabled the identification of the main directions of evolution of the structure of the tax reliefs for donations made for the most desirable purposes in view of the needs arising in this extraordinary situation. The addressees of the legal regulations specifying the principles and procedure for applying the tax reliefs are natural persons, legal persons, and organisational units without legal personality, as taxpayers of income taxes relating to revenues from the sources indicated by the legislator.

The study uses the legal-dogmatic method and the empirical method (in order to identify, on the basis of the jurisprudence of courts, the main issues related to the application of legal provisions regulating the essence of tax reliefs for donations made for socially useful purposes).

## **1. Tax Reliefs as Tax Policy Instruments**

Within the meaning of Art. 3 point 6 of the Tax Ordinance Act of 29 August 1997<sup>1</sup>, the term "tax relief" refers to exemptions, deductions, reductions or decreases provided for in the provisions of tax law, the application of which results in

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1 Consolidated text: Journal of Laws of 2020 item 1325 as amended.

a reduction of the tax base or the amount of tax, with the exception of the reduction of the amount of tax due by the amount of input tax in the field of tax on goods and services and other deductions constituting an element of the structure of this tax. In the quoted provision of the Act, the concept of tax relief is treated quite broadly and covers all kinds of deductions and reductions, the application of which in practice reduces the tax base and, in consequence, the amount of tax. From this point of view, reliefs and exemptions fulfil the same functions and purposes. The concept of tax exemption should be equated with another element of the tax structure, which is tax relief. It can be assumed that the juridical structure of the exemption belongs to the broader category of tax reliefs<sup>2</sup>.

A characteristic feature of tax reliefs that distinguishes them from tax exemptions is their complex legal structure. Reduction of the amount of the tax or the tax base requires a detailed specification of factors such as: in what procedure it is to be executed (at the taxpayer's request or *ex officio*), in what amount (percentage or amount determination of the amount of the tax base reduction or the tax), and in what form (advance payment, on a one-off basis in a tax statement or declaration). The need to precisely determine all these elements of a tax relief sometimes leads to a significant expansion of the regulations governing it. Correct shaping of the structure of a tax relief requires expansive knowledge and diligence in legislative action. In this respect, the construction of tax exemptions is less complex. Most of them can be summarised in a single sentence, stating who or what is to be exempt<sup>3</sup>.

By reducing the amount of the tax burden, tax reliefs have a *sui generis* negative fiscal function. The introduction of tax reliefs is related to various economic and social objectives determined by tax policy, the implementation of which is more important for the legislator than collecting the full amount of tax<sup>4</sup>. Tax policy is an important component of financial policy, which is a deliberate and purposeful activity of institutions and individual entities, consisting in setting goals and establishing financial instruments for their implementation<sup>5</sup>. The tax system and tax policy are closely interrelated. However, while the tax system should be relatively durable, tax policy is inherently more volatile. Tax decisions made are adjusted to a specific economic, social, and political situation. Tax policy concerns the use of various tax instruments within the applicable tax system<sup>6</sup>, which are the result of the tax authority

2 J. Witkowska, Pojęcie ulgi podatkowej jako sankcji pozytywnej, „Przegląd Prawa Publicznego” 2017, no. 1, p. 116.

3 Judgement of the Provincial Administrative Court in Gorzów Wielkopolski of 24 September 2009, I SA/Go 292/09, Legalis no. 519522.

4 W. Nykiel, Ulgi i zwolnienia w konstrukcji prawnej podatku, Warsaw 2002, p. 42.

5 E. Ruśkowski, Finanse publiczne i prawo finansowe. Instrumenty prawnofinansowe i warunki ich stosowania, Białystok 2018, p. 41.

6 S. Owsiak, System podatkowy Polski w okresie transformacji – próba oceny, „Annales UMCS – Sectio H” 2016, vol. L, no. 1, pp. 18–19.

vested in the legislator. The essence of tax authority is the creation and change of systemic tax burdens, the goals of which correspond to the assumptions of tax policy determined by responsibility for public affairs<sup>7</sup>. Implementation of various economic and social intentions is what determines the scale of the tax policy. The greater the share of public expenditure in a given country, the more significant is the importance of tax policy in the overall economic policy<sup>8</sup>. In the subject literature it has been emphasised that tax reliefs, apart from the economic effect in the form of reducing the amount of the tax burden, may fulfil important motivating and stimulating functions. Taxpayers interested in taking advantage of the economic effect of tax reliefs undertake actions beneficial from the economic or societal points of view<sup>9</sup>. Tax reliefs are usually treated as an important instrument of the authorities' active influence on the processes occurring in the economy. Their primary aim is to support or stimulate the desired behaviour of taxpayers, as well as provide protection and social assistance to specific social groups as part of the social policy led by the state<sup>10</sup>.

The use of tax reliefs in order to achieve the goals assumed in the tax policy is perceived differently by various environments. Proponents of liberal theories find that tax reliefs are only a means enabling the avoidance of paying taxes and bring harm to the development of the economy. Proponents of state intervention, in turn, consider tax reliefs an efficient tool to stimulate the behaviour of taxpayers, and thus an important element in constructing the fiscal policy of the state. It is an accurate observation that an extensive system of tax reliefs usually requires additional financial expenses related to their service, which makes it necessary to increase the taxation covering these costs. When combined with a carelessly implemented law-making process, tax reliefs create new interpretation-related problems, as well as new areas related to the general tax risk<sup>11</sup>.

## **2. Subjective and Objective Aspects of Deductions for Donations Made for Purposes Related to Counteracting COVID-19**

The catalogue of reliefs due to donations for various socially useful purposes, consisting in the application of deductions from the income tax base, has been

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7 P. Pomorski, Komplementarność krajowej i wspólnotowej polityki podatkowej, „Krytyka Prawa” 2020, t. 12, no. 1, p. 121.

8 H. Wnorowski, Oddziaływanie polityki fiskalnej na gospodarkę jako pochodna różnych doktryn ekonomicznych, (in:) H. Wnorowski (ed.), *Polityka fiskalna jako instrument poprawy efektywności gospodarczej w krajach OECD*, Białystok 2008, p. 47.

9 K. Ciuman, Ulgi a preferencje podatkowe w podatkach dochodowych w Polsce, „Zeszyty Naukowe UE w Krakowie” 2018, no. 2, p. 181.

10 M. Sosnowski, Społeczny aspekt opodatkowania dochodów osób fizycznych w Polsce, „Studia Ekonomiczne – Zeszyty Naukowe UE w Katowicach” 2015, no. 209, pp. 193–194.

11 W. Wyrzykowski, P. Kasprzak, Ulga podatkowa jako instrument realizacji pozafiskalnych funkcji podatków, „Zarządzanie Finansami i Rachunkowość” 2016, no. 4, pp. 20–21.

extended by a new type of relief, the purpose of which is to support specific entities in counteracting COVID-19. The catalogue already included reliefs in respect of donations made for purposes related to: public benefit activities<sup>12</sup>, religious worship, voluntary blood donation<sup>13</sup>, and vocational education in public schools. From 31 March 2020, it was supplemented with a new type of relief, the introduction of which is directly related to the effects of the COVID-19 pandemic. The inclusion of these regulations in the transitional and final provisions of tax acts substantiates the statement that their application is ad hoc. This conclusion also results from some of the structural elements of this new tax relief which clearly emphasise its incidental nature.

The tax relief is available to payers of the following taxes: personal income tax<sup>14</sup>, corporate income tax<sup>15</sup>, and flat-rate tax on registered income<sup>16</sup>. This, however, does not mean that such a deduction may be applied to any income or revenue of the above-mentioned taxpayers. The right to apply tax reliefs due to donations for purposes related to counteracting COVID-19 is granted to taxpayers of personal income tax whose income is taxed according to the tax scale set out in Art. 27 of the Act on Personal Income Tax, as well as taxpayers who have chosen proportional taxation of income from non-agricultural business activity or special branches of agricultural production using the 19% rate adopted in Art. 30c of the Act on Personal Income Tax. Corporate income tax payers also can use the relief, but the preference does not apply to their separately and flat-rate taxed income (i.e. certain non-resident tax income, dividend revenue, and other revenue or income from participation in the profits of legal persons with their registered office or management in the territory of the Republic of Poland, income from a foreign controlled entity, revenue from the ownership of buildings, income from qualified intellectual property rights, and income from unrealised profits). The tax relief due to donations intended for counteracting COVID-19 also applies to taxpayers of flat-rate tax on recorded revenues obtained from non-agricultural business activity, from rental, sub-rental, lease, sub-lease agreements, or other agreements of a similar nature, as well as from sales of plant and animal products processed in a non-industrial way.

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12 Act on Public Benefit and Volunteer Work of 24 April 2003 (consolidated text: Journal of Laws of 2020 item 1057 as amended).

13 Act on the Public Blood Service of 22 August 1997 (consolidated text: Journal of Laws of 2020 item 1777 as amended).

14 Act on Personal Income Tax of 26 July 1991 (consolidated text: Journal of Laws of 2020 item 1426 as amended).

15 Act on Corporate Income Tax of 15 February 1992 (consolidated text: Journal of Laws of 2020 item 1406 as amended).

16 Act on Flat Rate Income Tax on Certain Income Earned by Natural Persons of 20 November 1998 (consolidated text: Journal of Laws of 2020 item 1905 as amended).

The catalogue of entities to which taxpayers may make donations as part of counteracting COVID-19, entitling them to apply deductions from their tax base, is specified in the provisions of Art. 38g of the Act on Corporate Income Tax, Art. 52n of the Act on Personal Income Tax, and Art. 57b of the Act on Flat Rate Income Tax on Certain Income Earned by Natural Persons. The catalogue evolved with the development of the pandemic, i.e., the legislator extended it to include further subjective categories. In the period from 31 March 2020 to 23 June 2020, donations could be made to:

- entities performing medical activities, entered into the list prepared by the locally competent director of the provincial branch of the National Health Fund in consultation with the voivode<sup>17</sup>;
- Material Reserves Agency, for the purposes of performing statutory tasks<sup>18</sup>;
- Central Base of Sanitary and Anti-Epidemic Reserves, for the purposes of performing statutory activities<sup>19</sup>.

From 24 June 2020, the catalogue was supplemented<sup>20</sup> with homes for mothers with under-age children and pregnant women, night shelters, shelters for the homeless (including with care services), support centres, family welfare homes, and social welfare homes. Another amendment to the tax acts, leading to the re-extension of the catalogue to include the COVID-19 Counteracting Fund, which is a state special-purpose fund, was made on 1 December 2020<sup>21</sup>.

The framework of the tax relief in question is also determined by the goal that must be achieved in connection with the donations made by taxpayers. This goal is “counteracting COVID-19” within the meaning of Art. 2 of the Act on COVID-19 of 2 March 2020. This term covers all activities related to combating the infection,

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17 The provision of Art. 7 in conjunction with Art. 36 sec. 3 of the Act on special solutions related to the prevention, counteracting, and combating of COVID-19, other infectious diseases, and crisis situations caused thereby of 2 March 2020 (Journal of Laws of 2020 item 1842 as amended) was in force for 365 days from the date of entry into force of this act.

18 From 23 February 2021, the duties of the Material Reserves Agency were taken over by the Government Strategic Reserves Agency operating on the basis of the Act on Strategic Reserves of 17 December 2020 (Journal of Laws of 2021 item 255 as amended).

19 The Central Base of Sanitary and Anti-Epidemic Reserves is a state budgetary unit subordinate to the Minister of Health – see the Ordinance of the Minister of Health of 16 June 2010 on the Central Base of Sanitary and Anti-Epidemic Reserves (Journal of the Minister of Health No. 8, item 51, as amended).

20 Act of 19 June 2020 on subsidies to the interest on bank loans granted to entrepreneurs affected by the effects of COVID-19 and on simplified proceedings for approval of an arrangement in connection with the occurrence of COVID-19 (Journal of Laws of 2020 item 1086 as amended).

21 Act of 28 November 2020 amending the Act on personal income tax, the Act on corporate income tax, the Act on flat-rate income tax on certain income earned by natural persons and certain other acts (Journal of Laws of 2020 item 2123 as amended).

preventing the spread, as well as preventing and combating the effects, including socio-economic effects, of the infectious disease caused by SARS-CoV-2 virus (the so-called COVID-19). Although the provisions of Art. 38g of the Act on Corporate Income Tax, Art. 52n of the Act on Personal Income Tax, and Art. 57b of the Act on Flat Rate Income Tax on Certain Income Earned by Natural Persons entered into force on 31 March 2020, it was on their bases that it was made possible to deduct donations made from 1 January 2020 until the end of the month in which the epidemic state announced due to COVID-19 would be cancelled. Thus, the tax relief was also made applicable to donations made before the entry into force of the provisions constituting the legal basis for these preferences in income taxation. It was assessed that the adoption of such special solutions in income taxes was dictated primarily by the intention to stimulate socially desirable behaviours, rather than to aid taxpayers by reducing their tax burden<sup>22</sup>.

In the absence of any reservations in the content of Art. 38g of the Act on Corporate Income Tax, Art. 52n of the Act on Personal Income Tax, and Art. 57b of the Act on Flat Rate Income Tax on Certain Income Earned by Natural Persons, it can be assumed that taxpayers are entitled to apply the deduction for both cash donations and in-kind donations. When establishing the acceptable limits for deductions due to donations for the purposes of counteracting COVID-19, the legislator adopted the time aspect in the construction of the tax relief. The amount of the deduction depends on the period in which the taxpayer made the donation. In the case of donations made:

- a) until 30 April 2020 – deduction was made for an amount corresponding to 200% of the value of the donation,
- b) in May 2020 – deduction was made for an amount corresponding to 150% of the value of the donation,
- c) from 1 June 2020 to 30 September 2020 – deduction was made for the amount corresponding to the value of the donation.

The deduction was also applicable when the donation was made with the participation of a public benefit organisation – if the donation was made to this organisation by the taxpayer, and then transferred by this organisation to an appropriate entity (i.e. a medical entity, Material Reserves Agency, or the Central Base of Sanitary and Anti-Epidemic Reserves) in the period from 1 January 2020 to 31 May 2020, and the organisation provided the taxpayer with written information about the month of transferring the funds from the donation and the name of the entity to which these funds were transferred. The concept of making the amount of

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22 A. Bartosiewicz, Szczególne rozwiązania podatkowe związane z epidemią COVID-19, „Monitor Podatkowy” 2020, no. 4, p. 12.



deduction dependent on the time of making the donation was continued after the amendment of the tax acts and the extension of the period of application of the subject tax reliefs. In the case of donations made:

- a) from 1 October 2020 to 31 December 2020 – deduction was made for an amount corresponding to 200% of the value of the donation,
- b) from 1 January 2021 to 31 March 2021 – deduction was made for an amount corresponding to 150% of the value of the donation,
- c) from 1 April 2021 to the end of the month in which the state of epidemic declared due to COVID-19 would be cancelled – deduction was made for the amount corresponding to the value of the donation.

By introducing limits on these deductions higher than the actual expenses of the taxpayer, it was intended to increase the social effectiveness of the new tax reliefs. In the subject literature, it is emphasised that one of the crucial problems related to the use of tax instruments aimed at effective shaping of the taxpayers' behaviour is the issue of the impact strength of the instrument. The exponent of the strength of a tax instrument is the amount of financial benefit associated with the instrument. If it does not provide the taxpayer with sufficient benefits, it will not arouse sufficiently strong interest and the expected reactions from the addressee<sup>23</sup>.

In view of the daily reports on the epidemic situation in Poland, it can be concluded that the highest limits of deductions were set for donations made in the periods with the highest number of infections and the application of the most stringent restrictions regarding running a business. The most favourable legal solutions for taxpayers regarding the donations consist in: the possibility of also deducting donations made in the first quarter of 2020, i.e. before the entry into force of tax law regulations governing tax reliefs for such expenses; the use of a multiplier increasing the amount of the deduction in certain cases<sup>24</sup>; the right to deduction also for personal income tax payers taxed with 19% proportional tax and payers of flat-rate tax on recorded income<sup>25</sup>.

The statutory reservations concerning the possibility of making deductions for the donations are also significant. The tax base may only be reduced by donations that were not deducted by the taxpayer pursuant to Art. 26 sec. 1 point 9 of the Act on Personal Income Tax, Art. 11 of the Act on Flat Rate Income Tax on Certain Income

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23 G. Matysek, Uwarunkowania skuteczności instrumentów podatkowych, „Prace Naukowe UE we Wrocławiu” 2011, no. 173, p. 411.

24 B. Materna, Darowizna przekazana w celu przeciwdziałania chorobie zakaźnej wywołanej wirusem SARS-CoV-2, „Doradztwo Podatkowe” 2020, no. 4, p. 38.

25 D. Borzym, Darowizny dokonywane w związku z przeciwdziałaniem COVID-19, (in:) P. Tomczykowski (ed.), Jak uniknąć ryzyka odpowiedzialności podatkowej. Tax compliance, Warsaw 2021, p. 358.



Earned by Natural Persons, or Art. 18 sec. 1 of the Act on Corporate Income Tax, the taxpayer thus cannot deduct the same donation from the tax base twice. Other than that, donations for the purposes of counteracting COVID-19 are autonomous in relation to other donations entitling taxpayers to apply tax reliefs<sup>26</sup>. In particular, the amounts of deductions available in connection with donations intended for counteracting COVID-19 are not combined with the limits applicable in the case of using tax reliefs for other types of donations (amounting to 6% or 10% of the tax base, respectively).

Otherwise, donations for tasks related to counteracting COVID-19 are subject to the provisions of the tax acts regulating tax reliefs applicable to donations for other socially useful purposes. This means e.g., that it is not possible to deduct donations that have been returned to the taxpayer in any form or recognised by the taxpayer as tax deductible costs. Donations should be properly documented, i.e., donations in cash – with proof of payment to the recipient's payment account or their account in a bank or a cooperative savings and credit union, and non-cash donations – with a proof identifying the donor and the value of the donation, together with the recipient's declaration of receipt. The obligation to apply these requirements means that the legislator – by expanding the permissible catalogue of donations reducing the taxpayer's income – has preserved their integrity<sup>27</sup>.

### 3. Tax Reliefs for In-Kind Donations in the Form of Laptops

From 24 June 2020, a tax relief was introduced for taxpayers of personal income tax, corporate income tax and flat-rate tax on registered income, entitling them to reduce their tax base for donating laptops. The legal structure of this tax relief clearly indicates that deductions from the tax base may only be made in the case of in-kind donations. It has been assessed that the introduction of remote education in connection with the COVID-19 epidemic revealed the scale of the problem of digital exclusion, especially among pupils. In this extraordinary situation, approx. 1 million students in Poland experienced various effects of digital exclusion<sup>28</sup>. The introduction of these tax reliefs can be considered an example of selective use of certain instruments of tax policy in order to achieve the intended goals. In this way,

26 D.M. Malinowski, Podatkowe regulacje dotyczące darowizn związanych z przeciwdziałaniem epidemii COVID-19, cz. 1, „Przegląd Podatkowy” 2021, no. 3, p. 3.

27 Letter of the Director of the National Tax Information of 10 December 2020, 0113-KDIPT2–1.4011.751.2020.4.MAP, LEX no 569231; Letter of the Director of the National Tax Information of 8 July 2020, 0115-KDIT3.4011.323.2020.2.AWO, LEX no 547293.

28 Substantiation of the draft act on subsidies to the interest on bank loans granted to provide financial liquidity to entrepreneurs affected by the effects of COVID-19 and amending certain other acts, form no. 382 of the Sejm of the Republic of Poland of the 9th term of office, p. 20.

the tax legislator attempted to motivate taxpayers to act in a strictly defined area of social activity<sup>29</sup>.

The subjective and objective scope of this tax relief is determined by the provisions of Art. 52x of the Act on Personal Income Tax, Art. 38p of the Act on Corporate Income Tax, and Art. 57e of the Act on Flat Rate Income Tax on Certain Income Earned by Natural Persons. It can be used by taxpayers of personal income tax whose tax is determined according to the tax scale adopted in Art. 27 of the Act on Personal Income Tax and taxpayers whose income from non-agricultural economic activity or special branches of agricultural production is taxed with the 19% proportional tax in accordance with Art. 30c of the Act on Personal Income Tax. The tax relief is also available to taxpayers of corporate income tax, but excluding the possibility of applying deductions to income taxed separately with flat-rate taxes (i.e. certain non-resident tax income, dividend revenue, and other revenue or income from participation in the profits of legal persons with their registered office or management in the territory of the Republic of Poland, income from a foreign controlled entity, revenue from the ownership of buildings, income from qualified intellectual property rights, and income from unrealised profits). The catalogue of entities entitled to this tax relief also includes taxpayers of flat-rate tax on recorded revenues obtained from non-agricultural business activity, from rental, sub-rental, lease, sub-lease agreements or other agreements of a similar nature, as well as from sales of plant and animal products processed in a non-industrial way.

The condition enabling taking advantage of this tax relief is the taxpayer making an in-kind donation in the form of laptops or tablets. According to the current classification of fixed assets<sup>30</sup>, they are classified in group 487 (computer units), which includes machines and devices for the input, processing, storage, and output of digital or analogue information, with their expected lifetime exceeding one year. Deduction of the value of such in-kind donation is applied if the computers are complete, usable, and manufactured not earlier than 3 years before the date they are donated. If the taxpayer donates multiple laptops under one donation agreement, the above-mentioned conditions must be fulfilled for each donated device.

Income tax payers are entitled to deduct from their tax base the value of laptop donations made only for:

- 1) authorities in charge of educational institutions,
- 2) non-governmental organisations,
- 3) entities conducting public benefit activities:

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29 R. Zieliński, *Funkcje podatków w doktrynie prawnofinansowej oraz ich znaczenie dla praktyki stanowienia prawa podatkowego*, „Roczniki Nauk Prawnych” 2019, vol. XXIX, no. 1, p. 124.

30 Regulation of the Council of Ministers on the Classification of Fixed Assets (KŚT) of 3 October 2016 (Journal of Laws of 2016 item 1864).

- a) legal persons and organisational units operating on the basis of the provisions on the relationship of the State to the Catholic Church in the Republic of Poland, on the relationship of the State to other churches and religious associations and on the guarantees of freedom of conscience and religion – if their statutory goals include conducting public benefit activities,
- b) associations of local government units,
- c) social cooperatives,
- d) joint-stock companies and limited liability companies as well as sports clubs that are companies operating under the provisions of the Act on Sports of 25 June 2010<sup>31</sup>, which do not operate in order to generate profit and allocate all their income to the implementation of statutory objectives and do not allocate their profit to division between their partners, shareholders, and employees,
  - intended for the purposes of further transfer, free of charge, to authorities running educational institutions or to educational institutions,
- 4) the Nationwide Educational Network operator, i.e., the Scientific and Academic Computer Network – National Research Institute<sup>32</sup> – intended for the purposes of further transfer, free of charge, to authorities running educational institutions or to educational institutions.

When delineating the subjective limits of this tax relief, the legislator used the term “educational institution” to denote the final beneficiaries of the in-kind donations. It is a collective category which includes three types of organisational units, namely:

- 1) entities listed in Art. 2 points 1–4 and 7 of the Act of 14 December 2016 – Education Law<sup>33</sup>, i.e. kindergartens (including special kindergartens, integrated kindergartens, kindergartens with special or integrated groups, as well as other forms of pre-school education), primary schools (including special schools, integrated schools, schools with pre-school, integrated, special, vocational, bilingual, sports and sports championships groups, sports schools and sports championships schools), secondary schools (including special schools, integrated schools, bilingual schools, schools with integrated, special, bilingual, military preparation, sports and sports championships groups, sports schools, sports championships schools, agriculture, forestry, sea, inland navigation and fishing schools), art schools, educational

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31 Consolidated text: Journal of Laws of 2020 item 1133.

32 Act on the National Educational Network of 27 October 2017 (consolidated text: Journal of Laws of 2020 item 1334 as amended).

33 Consolidated text: Journal of Laws of 2020 item 910 as amended.

institutions (including school youth hostels enabling the development of interests and talents and the use of various forms of recreation and free time organisation), continuing education institutions and vocational training centres enabling the acquisition and supplementation of knowledge, skills and professional qualifications, as well as youth educational centres, youth sociotherapy centres, special educational centres, and special educational centres for children and adolescents requiring the use of special organisation of learning, working, and upbringing methods, as well as rehabilitation and education centres enabling children and adolescents with intellectual disabilities or children and adolescents with multiple disabilities to fulfil the obligation of completing a pre-school program and compulsory schooling;

- 2) universities within the meaning of the provisions of the Act of 20 July 2018 – Law on Higher Education and Science<sup>34</sup>,
- 3) care and educational institutions within the meaning of the provisions of the Act on Supporting the Family and the System of Foster Care of 9 June 2011<sup>35</sup>.

The legal structure of the tax reliefs due to in-kind donations of laptops uses also the time criterion. In the original version, the tax legislator limited the application of this tax relief only to donations made in the period from 1 January 2020 to 30 September 2020; however, due to the prolonged state of epidemic, the provisions of the tax acts were amended accordingly<sup>36</sup>. The amendments provided for making such donations until the end of the month in which the epidemic state announced due to COVID-19 would be cancelled. Similarly to the above-mentioned relief for donations made for purposes related to counteracting COVID-19, the possibility of increasing the deductible amount in the event of donating laptops at a specific time during the ongoing epidemic was also used. Thus, the donations made during periods of particularly intense effects of the COVID-19 epidemic were rewarded. Therefore, for non-cash donations made:

- until 30 April 2020 – deduction was made for an amount corresponding to 200% of the value of the donation;
- in May 2020 – deduction was made for an amount corresponding to 150% of the value of the donation;
- from 1 June 2020 to 30 September 2020 – deduction was made for an amount corresponding to 100% of the value of the donation;

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34 Consolidated text: Journal of Laws of 2021 item 478 as amended.

35 Consolidated text: Journal of Law of 2020 item 821 as amended.

36 A. Mariański, Ł. Porada, Zmiany w podatkach dochodowych w 2021 r., „Monitor Podatkowy” 2020, no. 12, p. 16.

- from 1 October 2020 to 31 December 2020 – deduction was made for an amount corresponding to 200% of the value of the donation;
- from 1 January 2021 to 31 March 2021 – deduction was made for an amount corresponding to 150% of the value of the donation;
- from 1 April 2021 to the end of the month in which the state of epidemic declared due to COVID-19 would be cancelled – deduction was made for an amount corresponding to 100% of the value of the donation.

The introduction of increased limits on deductions for donations of laptops was intended to additionally motivate taxpayers to make the donations in those periods when classes for pupils and students were conducted remotely. It was expected that this would supplement the equipment of educational institutions and universities with the equipment necessary for remote education.

#### **4. Deductions for Donations Intended to Reduce the Effects of the Epidemic – Technical and Procedural Aspects**

Taxpayers who have made both a cash donation and an in-kind donation for purposes related to reducing the effects of the COVID-19 epidemic have been entitled to deduct the value of the donation from their tax base or from their tax advance, but deductions from the tax advance may only be made by taxpayers who obtain income from non-agricultural business activity or from special branches of agricultural production. The application of a deduction from the tax base means that the effect of the tax relief is noticeable for the taxpayer only after the end of the tax year and the submission of their annual tax return. The deduction of such a donation from the advance on income tax or from the flat-rate tax on recorded income means that the effect of the tax relief is already noticeable for the taxpayer in the tax year in which such donation was made. It should be pointed out that the application of the latter of the above-mentioned methods of deduction is not possible in the case of donations for purposes other than reducing the effects of the COVID-19 epidemic, e.g., for other public benefit purposes or for the purposes of religious worship.

Tax reliefs for cash or in-kind donations for purposes related to counteracting COVID-19 do not have a fully autonomous tax and legal status, and are in a specific way related to the reliefs available to taxpayers making donations for other socially useful purposes. Donations made for the purposes of counteracting COVID-19 cannot be deducted if they were previously deducted from the tax base according to general rules, in particular as donations for the purposes listed in the Act on Public Benefit and Volunteer Work or donations of teaching materials and other things for public schools providing vocational education. The values of donations made

for purposes related to reducing the effects of the COVID-19 epidemic are also not deductible if they have been recognised by taxpayers as tax deductible costs.

In the scope not regulated by the provisions of transitional tax acts, the provisions of these acts regulating other types of donations entitling to income tax relief should be applied to the donations in question accordingly. This means e.g., that spouses entitled to joint taxation of the sum of their income deduct the value of such donations separately, i.e., each spouse from their own income, and the income thus reduced is only added up to determine the amount of personal income tax. If the subject of the donation are goods taxed with value added tax, then the amount of the donation is the value of the goods together with the value added tax, in the part exceeding the amount of the input tax, which the taxpayer has the right to deduct in accordance with the provisions on value added tax on account of making this donation. Taxpayers using the deduction of donations are required to include the amount of the donation made, the amount of the deduction, and the data allowing the identification of the recipient, in their annual tax return. In the event of the donation being returned, the recipient is obliged to provide the tax office with information about the donation returned to the taxpayer, within one month from the date of the return.

Making a donation for purposes related to limiting the effects of the COVID-19 epidemic should be documented with a proof of payment to the recipient's payment account or bank account (for cash donations) or a proof containing the donor's identification data and the value of the donation, together with the recipient's declaration of receipt (for in-kind donations). The requirement to properly apply the cited provision of the tax act means that the implementation of the tax relief does not take place by virtue of the law itself, due to the mere fact that the taxpayer has concluded and performed a donation agreement for the purpose indicated in the tax act. It is up to the taxpayer to assess whether, in a specific case, the calculation and declaration of the tax taking into account the tax relief satisfactorily meets all the necessary conditions of tax law in this respect, at the stage of self-calculation, which is carried out by the taxpayer on their own behalf and responsibility, without the interference of the tax authorities<sup>37</sup>.

## Conclusions

The changes in tax law determined by the effects of the COVID-19 epidemic are characterised primarily by a predetermined period of their validity, i.e., they are applicable only until the end of the month following the month in which the

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37 Judgement of the Provincial Administrative Court in Warsaw of 27 February 2018, VIII SA/Wa 936/17, LEX no 2469811; judgement of the Provincial Administrative Court in Warsaw of 29 October 2015, III SA/Wa 136/15, LEX no 1967190.

restrictions in the sphere of social and economic activity, justified by combating the epidemic phenomena, will be lifted. The above-mentioned concept also includes tax reliefs on income taxes, which entitle taxpayers to apply deductions from their tax base for making cash and in-kind donations for purposes related to counteracting COVID-19. It can be concluded that both the taxes and their individual structural elements, including reliefs or other tax preferences, may be an important element of a consciously constructed and implemented tax policy aimed not only at achieving long-term, but also short-term objectives. The achievement of these objectives may cause the desired effects in various areas, e.g., economic, social, or other (culture, health, social security)<sup>38</sup>.

In view of the research carried out on the tax legislation regulating the tax reliefs available to income tax payers due to cash and in-kind donations for the purposes of counteracting COVID-19, it can be stated unequivocally that these are tax preferences of an extraordinary and temporary nature. The extraordinary nature of the tax and legal regulations is directly determined by the uniqueness of the epidemic situation and the extensive effects of COVID-19 in all areas of human activity and the surrounding reality.

The temporariness of the analysed and assessed legal solutions has been repeatedly strongly emphasised by the legislator. First of all, it should be noted that the amendments to tax laws were made by provisions contained in special acts in the form of the Act on special solutions related to the prevention, counteracting, and combating of COVID-19, other infectious diseases, and crisis situations caused thereby, and the acts amending it. The regulation of these tax reliefs in the transitional and final provisions of individual tax acts clearly indicates that they have been assigned a temporary nature. The transitional provisions are special because their duration is predetermined, and the standards expressed in them will no longer be applicable from a certain point<sup>39</sup>. Each tax act that regulates the tax reliefs in question contains clear provisions specifying the starting point and the end point of their validity. According to these regulations, the taxpayer may deduct donations made from 1 January 2020 until the end of the month in which the state of epidemic announced due to COVID-19 will be cancelled.

In the legal structure of the reliefs for cash and in-kind donations for purposes related to counteracting COVID-19, a strong promotional accent is noticeable. The deduction limits have not been linked in a specific proportion to the tax base, as is the case with other tax reliefs, which entitle income tax payers to reduce it by no more than 6% or 10% of their income (for personal income tax, or corporate income

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38 Z. Ofiarski, *Ogólne prawo podatkowe. Zagadnienia materialnoprawne i proceduralne*, Warsaw 2013, p. 33.

39 S. Wronkowska, M. Zieliński, *Komentarz do zasad techniki prawodawczej z dnia 20 czerwca 2002 r.*, Warsaw 2012, p. 102.



tax, respectively). Deductions for donations made for the purposes of counteracting COVID-19 are made in the full value of the donation; moreover, donations made in the statutory periods entitle to an increased deduction limit of 150% or 200% of the donation value. The introduction of this additional preference is supposed to stimulate and motivate taxpayers.

The taxpayer's use of the reliefs for donations made for purposes related to counteracting COVID-19 does not exclude the possibility of applying deductions in the same accounting period justified by donations for other purposes, e.g., purposes listed in the Act on Public Benefit and Volunteer Work, religious worship, or vocational education in public schools. The two types of tax relief presented herein, i.e., tax relief due to cash and in-kind donations for counteracting COVID-19 and tax relief due to in-kind laptop donations, are also not competitive or mutually exclusive. The taxpayer may use both categories of tax reliefs introduced into the Polish tax legislation due to the epidemic within the same period, having fulfilled the necessary condition of a sufficiently high tax base.

This is justified primarily by the provisions of Art. 52y of the Act on Personal Income Tax, Art. 38q of the Act on Corporate Income Tax, and Art. 57f of the Act on Flat Rate Income Tax on Certain Income Earned by Natural Persons, according to which both categories of donations are to be included in the annual tax return with the use of deduction limits appropriate for the legal structure of each of the tax reliefs available. Simultaneously, the legal provisions regulating the tax reliefs in question do not exclude the possibility for taxpayers to use other preferences conditioned by donations for purposes not related to counteracting COVID-19. If a taxpayer makes separate donations to different beneficiaries, with their legal bases being non-identical provisions of tax acts, then for each donation they are entitled to apply a deduction from the tax base within the limit set for a specific tax relief.

Moreover, it has been demonstrated that from the point of view of substantive law, the presented tax reliefs should be treated as relatively independent from other tax reliefs the legal structure of which uses the theme of a donation made by the taxpayer. In procedural terms, the legislator did not actually apply such a separation, with the exception of allowing the possibility of using the tax relief for cash and in-kind donations for the purposes of counteracting COVID-19 not only after the end of the tax year in the form of a deduction from the tax base, but also during the tax year by a corresponding reduction of the tax advance. Otherwise, in particular with regard to the documentation of events giving entitlement to apply such reliefs, a requirement was introduced to properly apply the provisions regulating the documentation of other tax preferences in the event of donations for other socially useful purposes. The word "properly" emphasises the relativity of the reference consisting in the need to

take account of the special circumstances connected with adapting the content of the indicated provisions to those in which the reference is made<sup>40</sup>.

The tax preferences related to cash and in-kind donations provided for the purposes of counteracting COVID-19 are used not only by donors, but also by recipient entities listed in the provisions of tax acts regulating the legal structure of the subject tax reliefs, e.g., entities performing medical activities, educational institutions, or universities. Income from non-agricultural economic activity of recipient entities does not include the value of donations received from 1 January 2020 to the end of the month in which the epidemic state announced due to COVID-19 would be cancelled. This means that the entities receiving such donations do not bear the tax burden on this account. The justification for adopting such a solution was a significant strengthening of the stimulating function of the tax reliefs in counteracting the negative effects of the epidemic situation.

In conclusion, specific tax and legal instruments, which also include income tax reliefs for donations made for purposes related to counteracting COVID-19, have positively motivated taxpayers to provide more intensive support for the activities of various entities in reducing the effects of the epidemic. In addition to the material effect of this support for the beneficiaries of donations, the integration of actions in a gesture of solidarity of all entities interested in solving the problems occurring in this extraordinary situation is also of great importance.

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