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SELECTED INCOME TAX RELIEFS AS INSTRUMENTS SUPPORTING SUSTAINABLE DEVELOPMENT IN POLAND

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Abstract
Measures for sustainable development may involve both increasing taxes and introducing new taxes levied on taxpayers failing to pursue this goal, and preferential treatment for entities operating in a way that implements the sustainable development concept. This original scientific article analyses two income tax preferences – thermal modernisation tax relief and research and development tax relief – to verify whether the objectives for their introduction have been achieved. Special attention has been paid to issues experienced in practice in relation to the use of the aforementioned tax reliefs by taxpayers, leading to the conclusion that due to the number of doubts arising when trying to benefit from the tax reliefs and the often restrictive approach of tax authorities, these institutions do not provide optimal support for sustainable development goals. The applied research method was the dogmatic legal method, involving the determination of content, and the analysis, interpretation and exegesis of applicable law. Primary sources examined included foreign and national generally applicable legal acts, judgments, as well as individual and general tax rulings.

Keywords: sustainable development, income tax, thermal modernisation tax relief, research and development tax relief

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INTRODUCTION

Pursuant to Article 5 of the Constitution, the Republic of Poland safeguards the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, as well as the security of citizens, safeguard the national heritage, and ensure the protection of the natural environment, guided by the principle of sustainable development. In accordance with this principle, interference with the environment should be minimised, and the social benefits resulting from such interference should outweigh the damage.[1] The principle of sustainable development goes beyond issues strictly related to environmental protection.[2] It also covers, *inter alia*, infrastructure development, the strengthening of social ties, and the shaping of spatial order.[3] The notion of 'sustainable development' originates from international documents drafted, among others, by the UN,[4] and is reflected in the legal frameworks of the European Union and the work of the Council of Europe.[5] As indicated in the Communication from the European Commission, the Europe 2020 Strategy includes three mutually reinforcing priorities: smart growth, sustainable growth and inclusive growth.[6] Sustainable growth means promoting a more resource-efficient, greener and more competitive economy.[7]

The Resolution adopted by the General Assembly on 25 September 2015 – Transforming our world: the 2030 Agenda for Sustainable Development[8] (hereinafter referred to as 'the 2030 Agenda') sets out 17 Sustainable Development Goals with 169 associated targets to be achieved worldwide by 2030. They concern achievements in five areas: people, planet, prosperity, peace and partnership. The aforementioned goals and associated targets are integrated and indivisible and ensure a balance between the three dimensions of sustainable development: economic, social and environmental. The goals of the 2030 Agenda include, *inter alia*, ensuring access to

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1 P. Tuleja, in: Czarny P., Florczak-Wątor M., Naleziński B., Radziewicz P., Tuleja P., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd ed., LEX/el., 2021.

2 See M. Supera-Markowska, *Instrumenty podatkowego wspierania założeń zrównoważonego rozwoju w prowadzeniu działalności gospodarczej*; http://www.publikat.home.amu.edu.pl (accessed: 18 March 2024).

3 M. Safjan, L. Bosek (eds), *Konstytucja RP. Komentarz*, Warszawa, 2016, p. 289.

4 This process was initiated by the conference in Rio de Janeiro in 1992.

5 A. Bałaban, 'Konstytucyjna zasada zrównoważonego rozwoju', in: Garlicki L., Szmyt A. (eds), *Sześć lat Konstytucji RP*, Warszawa, 2003, pp. 19 et seq.

6 Europe 2020 – A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final – see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52010DC2020 (accessed: 4 March 2026).

7 See A. Misztal, 'Podatki środowiskowe a zrównoważony rozwój polskich przedsiębiorstw transportowych', *Gospodarka Materiałowa i Logistyka*, 2020, No. 1, p. 32.

8 Resolution adopted by the General Assembly on 25 September 2015 – Transforming our world: the 2030 Agenda for Sustainable Development, United Nations, A/RES/70/1 of 21 October 2015. The resolution set new development goals. This process was initiated at the United Nations Conference on Sustainable Development that took place in Rio de Janeiro in June 2012, aiming at completing the Millennium Development Goals and setting the agenda for further global development after 2015 (Post-2015 Development Agenda); https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf (accessed: 18 March 2024).

affordable, reliable, sustainable and modern energy for all (Goal 7) and building resilient infrastructure, promoting inclusive and sustainable industrialisation and fostering innovation (Goal 9). As part of Goal 7, the Resolution sets out five targets, including to substantially increase the share of renewable energy in the global energy mix (Target 7.2). Enhancing scientific research and upgrading technological capabilities, including by encouraging innovation and substantially increasing the number of research and development workers and public and private research and development spending (Target 9.5), as well as supporting domestic technology development, research and innovation (Target 9.b), are examples of targets contributing to the achievement of Goal 9. The implementation of these goals and targets requires individual states to introduce appropriate institutional mechanisms and to monitor the interrelations and effects of sectoral policies.

The concept (goals) of sustainable development may also be supported by the introduction of certain tax-law institutions.[9] Such measures may include, first of all, the introduction of new taxes imposed on taxpayers who fail to pursue these goals, for example, in the field of environmental protection, often referred to as green or eco taxes.[10] Secondly, they may take the form of preferential treatment for entities that operate in a manner implementing the concept of sustainable development, through appropriate modification of the structural elements of taxes, in particular by introducing tax reliefs and tax exemptions.[11] Against this background, it is possible to identify the stimulating function of taxes, consisting in shaping tax law in such a way that it influences taxpayers to undertake or refrain from certain activities.[12] The above constitutes an example of the implementation of the 'polluter pays' principle in tax law.[13]

This article is devoted to the analysis of income tax institutions that may be regarded as an attempt by the Polish legislator to implement the concept of sustainable development. These include the thermal modernisation tax relief introduced in the Personal Income Tax Act[14] and the research and development (R&D) tax relief introduced in both the PIT Act and the Corporate Income Tax Act.[15] The primary objective of the thermal modernisation tax relief is to support

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[9] J. Głuchowski, *Podatki ekologiczne*, Warszawa, 2002, p. 109.

[10] B. Bartniczak, M. Ptak, *Opłaty i podatki ekologiczne: teoria i praktyka*, Wrocław, 2011; B. Kryk, L. Kłos, I. Łucka, *Opłaty i podatki ekologiczne po polsku*, Warszawa, 2011; P. Małecki, 'Podatki ekologiczne w Polsce na tle innych krajów Unii Europejskiej', *Optimum: Studia Ekonomiczne*, 2016, Vol. 80, pp. 3–15; P. Małecki, *Podatki i opłaty ekologiczne*, Kraków, 2006; D. Burzyńska, 'Ekopodatki podstawą reform systemu podatkowego', *Acta Universitatis Lodziensis*, 2007, No. 208, p. 25; P. Urbanek, E. Walińska (eds), *Ekonomia i nauki o zarządzaniu w warunkach integracji gospodarczej*, Vol. 9, Warszawa, 2016, p. 139.

[11] See A. Goettel, 'Wybrane proekologiczne preferencje podatkowe', *Białostockie Studia Prawnicze*, 2015, No. 18, pp. 113–128.

[12] See A. Goettel, 'Proekologiczna polityka podatkowa jednostek samorządu terytorialnego', *Samorząd Terytorialny*, 2010, No. 12, p. 67.

[13] In EU legislation, the 'polluter pays' principle is referred to in Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30.4.2004, pp. 56–75.

[14] Act of 26 July 1991 on Personal Income Tax (Journal of Laws of 2024, item 226); hereinafter referred to as 'the PIT Act'.

[15] Act of 15 February 1992 on Corporate Income Tax (Journal of Laws of 2023, item 2805); hereinafter referred to as 'the CIT Act'.

thermal modernisation projects in single-family residential buildings, while the research and development tax relief is intended to support the innovativeness of the Polish economy, both in the science sector and in enterprises, by enabling the deduction from the tax base of certain categories of expenditure (so-called eligible costs) incurred by the taxpayer for R&D activity.

In the opinion of the authors, both tax reliefs are important instruments supporting the implementation of the concept of sustainable development. This is confirmed by the report Implementation of the Sustainable Development Goals in Poland. Report 2023, adopted by the Council of Ministers on 2 June 2023,[16] which classified the aforementioned tax reliefs among the main actions contributing to the achievement of the sustainable development goals set out in the 2030 Agenda.

1. THERMAL MODERNISATION TAX RELIEF

1.1. IDEA BEHIND THE INTRODUCTION OF THE THERMAL MODERNISATION TAX RELIEF

The thermal modernisation tax relief is an example of a tax-law institution introduced to reward pro-environmental attitudes and eliminate anti-ecological practices by providing support for the implementation of thermal modernisation projects, such as the thermal modernisation of single-family residential buildings and the accompanying replacement of inefficient solid-fuel heat sources with new heat sources meeting environmental standards, as well as the use of renewable energy sources.[17] This tax preference was introduced into the Polish legal system at the beginning of 2019.[18] As indicated in the justification to the act introducing this tax relief, the idea behind its introduction was to reduce the demand for heat and consequently reduce emissions of pollutants resulting from the combustion of fuels for heating purposes, to create incentives within personal income tax for the thermal modernisation of single-family residential buildings, and to provide financial incentives for citizens to become actively involved in the process of improving air quality in Poland.

If we analyse the few years during which the tax relief has been available, it is possible to notice that taxpayers' interest in the tax relief varied. As shown in the table below, in annual settlements for 2019 it was used by 219,000 taxpayers, for 2020 – by 466,000, and for 2021 – by as many as 597,000 taxpayers.[19] There were

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[16] 2023 Report 'Implementation of the Sustainable Development Goals in Poland', adopted by the Council of Ministers on 2 June 2023, p. 93, see https://www.gov.pl/attachment/1b373b2e-43b0-4d6a-baa8-15326ec3a614 (accessed: 5 March 2026).

[17] J. Kiszka, 'Podatkowe instrumenty wsparcia przedsięwzięć termomodernizacyjnych – wybrane problemy', *Doradztwo Podatkowe. Biuletyn Instytutu Studiów Podatkowych*, 2020, No. 6, Legalis/el.

[18] Act of 9 November 2018 on amendments to the Act on Personal Income Tax and the Act on Lump-Sum Income Tax on Certain Revenues Earned by Natural Persons (Journal of Laws of 2018, item 2246).

[19] https://www.prawo.pl/podatki/popularnosc-ulgi-termomodernizacyjnej-rosnie-ale-rozbudowa-domu,520573.html (accessed: 18 March 2024).

several reasons behind this strong interest, including, in general, the energy crisis, the need to save energy, and the introduction of energy certificates for buildings. The number of taxpayers who benefited from the tax relief in settlements for 2022 decreased to 440,549, which should be attributed to the increase in prices of thermal insulation materials, windows and doors, modern heating systems, and services.

Table 1. Thermal modernisation tax relief in Poland, in the years 2016–2022

Description	2019	2020	2021	2022	Y/Y change 2019–2020	Y/Y change 2020–2021	Y/Y change 2021–2022
Number of taxpayers who used the tax relief	195,928	452,686	595,396	440,549	131%	31%	-26%
Amount of deductions in PLN thousand	2,827,970	6,982,343	10,414,411	8,232,199	147%	49%	-21%
Average amount deducted by a taxpayer in PLN	14,434	15,424	17,492	18,686	7%	13%	7%

Source: Own materials, based on: Ministry of Finance, Income Tax Department, *Information on personal income tax settlement for 2019*, Warszawa, 2021; *Information on personal income tax settlement for 2020*, Warszawa, 2022; *Information on personal income tax settlement for 2021*, Warszawa, 2023; *Information on personal income tax settlement for 2022* (https://www.podatki.gov.pl/pit/abc-pit/statystyki/ (accessed: 18 March 2024).

A single provision on the tax relief in question included in the Act does not clarify all the doubts associated with its functioning in practice. The Minister of Finance, apparently noticing several doubts arising on the basis of this provision, has already referred to them in the guidance – for the first time in 2019[20] and then in 2023.[21] The analysis of judgments and tax rulings indicates that problems arise mainly with respect to the type of costs to be deducted and the conditions that

[20] Ministry of Finance, *Objaśnienia podatkowe z dnia 9.09.2019 r. Nowe preferencje w podatku dochodowym od osób fizycznych wspierające przedsięwzięcia termomodernizacyjne*; https://www.podatki.gov.pl/media/5262/obja%C5%9Bnienia-podatkowe-z-9-wrze%C5%9Bnia-2019-r-w-sprawie-ulgi-termomodernizacyjnej.pdf (accessed: 18 October 2023); hereinafter referred to as the 'Guidance of 9 September 2019' (accessed: 18 March 2024).

[21] Ministry of Finance, *Objaśnienia podatkowe z 30.03.2023 r. Formy wsparcia przedsięwzięcia termomodernizacyjnego w podatku dochodowym od osób fizycznych*; https://www.gov.pl/attachment/8e7ad7b0-dc04-4e90-8aab-3d453b19895f (accessed: 18 October 2023); hereinafter referred to as the 'Guidance of 30 March 2023' (accessed: 18 March 2024).

must be met by a taxpayer in order to benefit from the tax preference. Pursuant to Article 26h of the PIT Act, a taxpayer who is the owner or co-owner of a single-family residential building is entitled to deduct from the tax base determined in accordance with Article 26(1) or Article 30c(2) the costs incurred during the tax year for construction materials, equipment, and services related to the implementation of a thermal modernisation project in this building, specified in regulations issued on the basis of section 10, provided that the project is completed within 3 consecutive years from the end of the tax year in which the first cost was incurred.[22] The notion of a thermal modernisation project should generally be understood to mean a project that actually reduces the demand for energy or limits energy losses, or replaces traditional energy sources with renewable sources.[23]

1.2. PERSONS ENTITLED TO THE THERMAL MODERNISATION TAX RELIEF

First of all, it is necessary to look at the persons entitled to the preference in question. In accordance with the aforementioned provision, taxpayers – owners or co-owners – whose income is subject to tax according to the tax scale or at a flat rate of 19%, as well as taxpayers paying lump-sum tax on recorded revenues, have the right to deduct the costs. This provision does not introduce a condition that in the case of co-ownership the person benefiting from the tax relief must have a specific share – any share in the co-ownership provides a basis for using the preference. However, the time of acquisition of the ownership title matters – a given person must acquire the status of an owner no later than upon applying the tax relief in the tax return submitted for the year in which the taxpayer incurred costs eligible for the tax relief.[24]

1.3. BUILDING TYPE

The tax relief in question applies only to the so-called single-family residential building, referring to the meaning of this term in the Act – Construction Law.[25] Pursuant to Article 3(2a) of the Act – Construction Law, whenever the Act mentions a single-family residential building, it should be understood to mean a detached building or a building in semi-detached, terraced or group development, serving residential needs, constituting a structurally independent whole, in which it is permitted to separate no more than two residential units or one residential unit

[22] With respect to the definition of a thermal modernisation project, Article 5a(18c) of the PIT Act refers to the Act of 21 November 2008 on Supporting Thermal Modernisation Projects and Renovation of Buildings, and on the Central Register of Building Emissivity of Buildings (consolidated text: Journal of Laws of 2023, item 2496, as amended).

[23] See T. Krywan, R. Wienconek, *Ulga termomodernizacyjna na przykładach*, LEX/el., 2024.

[24] Tax ruling of 1 July 2022 issued by the Director of the National Tax Information, 0113-KDIPT2-2.4011.354.2022.2.SR.

[25] In accordance with Article 5a(18b) of the PIT Act, a single-family residential building referred to in Article 26h(1), is a single-family residential building within the meaning of Article 3(2a) of the Act of 7 July 1994 – Construction Law Act.

and one commercial unit with a surface area not exceeding 30% of the total surface area of the building.[26]

It should be noted that the regulations governing the thermal modernisation tax relief do not refer in their wording to a newly constructed single-family residential building. In order to use the tax relief in question, the cost must be related to the implementation of a thermal modernisation project with respect to a building that already exists, is used for residential purposes and constitutes a structurally independent whole.[27] The above results from the analysis of the meaning of the notions of 'modernisation' and 'thermal modernisation project'. In accordance with the dictionary definition, modernisation means the renovation or upgrading of something, e.g. a product, or the permanent improvement of something, e.g. an existing building, resulting in an increase in its use value. It includes works aimed at increasing the aesthetic and functional qualities of a building or another product. A thermal modernisation project also means, *inter alia*, an improvement that reduces the demand for energy for water heating and space heating in residential buildings, a complete or partial replacement of energy sources with renewable sources, or the use of high-efficiency cogeneration. Thus, only something that already exists can be modified or modernised.[28] This is consistent with the linguistic meaning of the notion of modernisation, as modernisation is defined as upgrading and improving something,[29] or adding modern features by replacing old elements with new ones or introducing new technical solution.[30] This was also the intention of the initiators of the Act, because, in accordance with the justification of the bill, the programme for renovation and thermal modernisation of residential buildings was aimed at improving the technical condition of the existing housing stock.[31] The decisive factor for the possibility of benefiting from the aforementioned tax relief is incurring the costs after the actual completion of the construction of the residential building, rather than merely fulfilling the investor's formal obligations after the construction of the building.[32] The tax authorities assess compliance with this principle very strictly, indicating that even if the building has already been constructed and put into use but has not yet been finished – for example, there is no gas furnace and heating pipes have

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[26] It is worthwhile to emphasise that even if business activities are conducted in the building, this should not exclude the possibility of using the tax relief. This is because, in accordance with the definition of a residential building, the building will not lose its 'residential' character even if business activities are conducted there, provided that two parts are separated, of which only one is used for business activities and its total surface area does not exceed 30% of the total surface area of the building – see judgment of the Voivodeship Administrative Court in Wrocław of 22 September 2022, I SA/Wr 1089/21.

[27] Article 3(2a) of the Act – Construction Law.

[28] This was also indicated by the Voivodeship Administrative Court in Wrocław in the judgment of 7 September 2023, I SA/Wr 128/23.

[29] *Słownik Języka Polskiego*, PWN; https://www.sjp.pwn.pl (accessed: 18 March 2024).

[30] *Wielki Słownik Języka Polskiego*; https://www.wsjp.pl (accessed: 18 March 2024).

[31] Sejm print No. 321 of 4 March 2008.

[32] At this point, it is worthwhile to refer to the opinion of the Director of the National Tax Information expressed in the individual tax ruling of 5 March 2019, according to which the provisions of Article 26h(1) exclude the possibility of using this tax relief in the case of costs of construction materials, equipment and services related to the implementation of a thermal modernisation project in a single-family residential building under construction, 0112-KDIL3-2.4011.15.2019.2.JK.

not been installed, water and sewage pipes have not been installed, and floors have not been finished – the construction process has not actually been completed in a way that would enable moving in and using the residential building. Consequently, it cannot be concluded that the building already fulfils its function, i.e. serves residential needs.[33]

In this context, it is impossible to agree with the positions taken by the authorities, which make the admissibility of deductions dependent on the formal completion of the construction process.[34] In accordance with this position, as the Act stipulates that the use of a building whose construction requires a construction permit or a construction notification may commence (with certain reservations) after notifying the construction supervision authority of the completion of the construction process, provided that this authority does not raise an objection by way of a decision within 14 days of the date of delivery of the notification, and, in specific cases, when the investor obtains a final decision granting a permit to use the building, if the taxpayer incurred costs and completed the thermal modernisation project before obtaining the permit to use the building from the competent construction supervision authority, the taxpayer is not entitled to deduct the incurred costs under the thermal modernisation tax relief. This issue was analysed by the Voivodeship Administrative Court in Wrocław in the judgment of 7 September 2023.[35] The court found that the submission of a formal notification of the completion of construction of a single-family residential building to the construction supervision authority does not prejudge the possibility of using the thermal modernisation tax relief.[36] Moreover, it was emphasised that incurring the costs after the construction process of the residential building has actually been completed is of decisive importance in the context of benefiting from the aforementioned relief. Whether the erected building was used, or whether such use commenced after fulfilling all obligations by the user, is not covered by the hypothesis of the norm regulating the so-called thermal modernisation tax relief, in particular as a condition for using the deduction available thereunder.

1.4. TYPES OF COSTS TO BE DEDUCTED

Thermal modernisation may be commonly associated with additional thermal insulation of a building or the installation of a photovoltaic system, but the definition of a thermal modernisation project is much broader and includes, *inter alia*, 'a complete or partial replacement of energy sources with renewable sources'.[37] Based on Article 26h(10) of the PIT Act, the Minister of Investments and Development

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[33] Tax ruling of 27 October 2023 issued by the Director of the National Tax Information, 0111-KDSB2-1.4011.336.2023.3.DK; tax ruling of 24 October 2023 issued by the Director of the National Tax Information, 0113-KDIPT2-2.4011.586.2023.3.AKU.

[34] Such an opinion was expressed, *inter alia*, in the tax ruling of 14 May 2020 issued by the Director of the National Tax Information, 0115-KDIT2.4011.121.2020.3.ŁS.

[35] Judgment of the Voivodeship Administrative Court in Wrocław of 7 September 2023, I SA/Wr 128/23, LEX 3606073.

[36] Ibidem.

[37] Tax ruling of 5 March 2021 issued by the Director of the National Tax Information, 0115-KDIT2.4011.932.2020.2.KC, LEX 57939.

issued the Regulation of 21 December 2018 laying down a list of types of construction materials, equipment and services related to the implementation of thermal modernisation projects.[38] The list drawn up by the Minister in this regulation is exhaustive.[39] The regulation lists construction materials and equipment (e.g. a heat distribution centre with a temperature programmer; a gas or oil tank; a service line to the heat distribution or gas network; materials forming part of the heating system), as well as services (e.g. performance of an energy audit of the building before the implementation of the thermal modernisation project; thermographic analysis of the building; preparation of design documentation relating to thermal modernisation works; installation of a heat pump; installation of a solar collector).[40] Tax authorities interpret this list in a very rigorous manner, for example by refusing the right to use the tax relief in the case of replacing window panes, as the list of costs in the regulation includes only the replacement of window joinery, i.e. whole windows, rather than only selected window elements.[41]

In accordance with the literal interpretation of Article 26h(3), costs incurred by the taxpayer may be documented only by invoices issued by a payer of tax on goods and services who is not exempt from this tax.[42] In this context, it is worth noting the judgment that extends this literal interpretation. In the judgment of 27 June 2023,[43] the Voivodeship Administrative Court referred to a situation where the costs could have been documented only by an advance payment invoice due to the death of the entrepreneur who carried out the modernisation project. When analysing the facts of the case, the court emphasised that if the law does not provide for the possibility of issuing an invoice, and such a situation occurs in the case of the taxpayer's death, the tax authority cannot apply the literal wording of Article 26h(3) of the Act, because it pertains to a situation where obtaining an invoice is possible under applicable legal regulations. As obtaining an invoice is impossible and excluded by law (there are no grounds for issuing an invoice by potential heirs), it is impossible to require possession of such an invoice. The court also indicated that the appellant, as the taxpayer, should be treated like any other taxpayer who incurred costs for the thermal modernisation of their house. After all, citizens are equal before the law in terms of their rights and obligations, and the death of the contractor is independent of the appellant and cannot be predicted. The legislator cannot impose on the taxpayer an impossible obligation – in this case, the presentation of an invoice. This position deserves acceptance, because adopting the literal wording of Article 26h(3) of the PIT Act leads to the conclusion that in the event of the inability to obtain an invoice for

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38 Journal of Laws of 2023, item 273.

39 The taxpayer is entitled to the thermal modernisation tax relief only with respect to costs of materials, equipment and services listed in the regulation. Such an opinion was expressed by the Director of the National Tax Information, for instance in the tax ruling of 24 December 2019, 0112-KDIL3-2.4011.438.2019.2.MKA.

40 See J. Kiszka, 'Ulga termomodernizacyjna – wybrane problemy stosowania', *Doradztwo Podatkowe. Biuletyn Instytutu Studiów Podatkowych*, 2023, No. 10, Legalis/el.

41 Tax ruling of 24 October 2022 issued by the Director of the National Tax Information, 0113-KDIPT2-2.4011.738.2022.1.SR.

42 Article 26h(3) of the PIT Act.

43 I SA/Gl 1307/22, LEX 3580761.

the work performed, the taxpayer is excluded from using the tax relief referred to in this provision, which constitutes a breach of the fundamental rights of the taxpayer.

Doubts arise in a situation where the invoice is issued to one of the spouses.[44] The Director of the National Tax Information indicates that in the case of invoices issued to both spouses, for the purposes of the thermal modernisation tax relief each spouse is entitled to deduct only 50% of the incurred costs.[45] Another interpretation emphasises that there are no obstacles to deducting the entire amount of costs incurred by one spouse by the other spouse, if the former does not have sufficient income to deduct the entire amount of the costs incurred (up to the applicable limit).[46] The Director of the National Tax Information emphasised that it is irrelevant to whom the invoice was issued – the issuance of an invoice to either spouse is of secondary importance in a situation where the cost is incurred from the joint property of the spouses and intended for the joint property.[47] Such a position was also included in the Guidance of the Minister of Finance of March 2023, emphasising that issuing an invoice with the first name and surname of one spouse does not affect the possibility of using the tax relief. At the same time, this applies to the situation where the cost relates to a building belonging to the joint property and was incurred from the joint property. It should also be noted that the unused part of the limit available to one spouse does not increase the limit of the other spouse.[48]

Tax authorities confirm that spouses who are co-owners of a single-family residential building, incur costs subject to the thermal modernisation tax relief and meet the other conditions of this relief, may deduct PLN 106,000 in total. An example is the individual tax ruling of 9 January 2023,[49] which states that the limit of the thermal modernisation tax relief is not related to a single investment project or a single thermal modernisation project, but is determined for a given taxpayer, regardless of the number of thermal modernisation investment projects. This limit applies to each spouse separately, i.e. each of the spouses has the right to deduct a maximum amount of PLN 53,000 (PLN 106,000 in total). Where the costs of the project are covered from the joint property but relate to real estate belonging to the personal property of one of the spouses, the spouse who does not hold title to the property cannot benefit from the tax relief.[50]

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[44] See M. Brzostowska, P. Kubiesa, *Ustawa o podatku dochodowym od osób fizycznych. Komentarz*, LEX/el., 2024.

[45] See tax rulings of the Director of the National Tax Information: of 28 April 2020, 0115-KDIT2.4011.44.2020.3.ŁS, LEX 538302, and of 30 April 2020, 0115-KDIT1.4011.125.2020.1.MT, LEX No. 539091.

[46] Tax ruling of 7 April 2022 issued by the Director of the National Tax Information, 0115-KDIT3.4011.83.2022.2.AWO.

[47] Tax ruling of 7 April 2022 issued by the Director of the National Tax Information, 0114-KDIP3-2.4011.214.2022.3.AC, LEX No. 642470.

[48] Tax ruling of 27 February 2024 issued by the Director of the National Tax Information, 0115-KDIT2.4011.6.2024.1.ŁS.

[49] Tax ruling of 9 January 2023 issued by the Director of the National Tax Information, 0115-KDIT2.4011.704.2022.2.ŁS.

[50] Tax ruling of 28 November 2023 issued by the Director of the National Tax Information, 0112-KDIL2-1.4011.748.2023.2.AK.

With regard to the possibility of deducting the costs, the legislator decided to introduce a time limit. The taxpayer must complete the project within three years from the end of the tax year during which the first cost was incurred. Failure to meet this time limit has serious consequences – in such a case, the taxpayer must return the tax relief by adding the amounts previously deducted to the income for the year during which the time limit for completing the project expired. As the Director of the National Tax Information emphasised, the limit is not renewed every year. The deduction amount cannot exceed PLN 53,000, taking into account thermal modernisation projects already completed and deducted from the tax base in previous years.[51]

2. RESEARCH AND DEVELOPMENT TAX RELIEF

2.1. IDEA BEHIND THE INTRODUCTION OF THE RESEARCH AND DEVELOPMENT TAX RELIEF

Investing in knowledge and building a knowledge-based economy are among the major challenges of our time. As P.F. Drucker noted many years ago, knowledge will not be the only source of competitive advantage,[52] but it will certainly be the most important one. In the literature, a knowledge-based economy is defined as an innovative economy in which the share of R&D expenditure amounts to about 3% of GDP. At the same time, it is emphasised that innovation is a function of at least three variables: human creativity, demand for innovation and an appropriate pro-innovation environment created by the state.[53] The creation of conditions supporting the undertaking of R&D activity by entrepreneurs may be carried out by the state through various methods. One of them is the appropriate use of the stimulating function of taxes, through the creation of appropriate financial incentives to undertake and conduct such activities. This is the purpose of the R&D tax relief introduced into the Polish tax system in 2016.[54] This tax relief replaced the tax relief for the acquisition of new technologies[55] which, due to rather strict conditions for its use and the relatively low limit for deducting costs incurred by the taxpayer for the purchase of a new technology from the tax base – up to 50% – did not enjoy much interest among entrepreneurs. It also failed to achieve the intended objectives and, in particular, it did not encourage entrepreneurs to undertake and conduct independent R&D activity in Poland, but instead promoted the acquisition of

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[51] Tax ruling of 29 August 2022 issued by the Director of the National Tax Information, 0112-KDIL2-1.4011.632.2022.2.JK.

[52] P.F. Drucker, *Społeczeństwo pokapitalistyczne*, transl. Kranas G., Warszawa, 1999, pp. 7–8.

[53] A. Skrzypek, 'GOW – przyczyny i uwarunkowania', *Annales Universitatis Mariae Curie-Skłodowska. Sectio H, Oeconomia*, 2012, Vol. 46, No. 2; based on: J. Kleer, 'Co to jest GOW', in: Kukliński A. (ed.), *Gospodarka oparta na wiedzy*, Warszawa, 2003.

[54] The R&D tax relief was introduced based on the Act of 25 September 2015 on Amendments to Certain Acts Related to Supporting Innovation (Journal of Laws of 2015, item 1767), amending, in this respect, the Act of 26 July 1991 on Personal Income Tax and the Act of 15 February 1992 on Corporate Income Tax.

[55] The tax relief was available in the years 2006–2015.

new technologies from external entities, mainly foreign ones.[56] The R&D tax relief introduced an entirely new approach in this respect. It created the possibility of deducting the so-called eligible costs incurred within an enterprise conducting R&D activity from the tax base.[57] The structure of the R&D tax relief was based on identical solutions in both income tax acts, i.e. in the PIT Act and the CIT Act, in particular with regard to the definitions of concepts such as research and development activity, eligible costs, or the amount of costs that can be deducted. The essential elements of the R&D tax relief structure were amended several times (in 2017 and 2018), and their current form was introduced by the Act of 29 October 2021 amending the PIT and CIT Acts.[58]

The introduction of the R&D tax relief in Poland was consistent with the 'Europe 2020' strategy[59] adopted in 2010, in which the EU set the path to achieving three mutually reinforcing priorities – smart growth, sustainable growth and inclusive growth. With these priorities in mind, five headline targets were set for the EU, including one related to R&D activity. In accordance with this target, by the end of 2020, 3% of the EU's GDP should have been invested in R&D. The national target adopted for Poland was 1.7% of GDP.[60] In 2009, i.e. in the year preceding the adoption of the 'Europe 2020' strategy, these indicators reached the level of 1.97% of GDP for the EU and 0.66% of GDP for Poland, respectively, while in 2015, i.e. in the year preceding the entry into force of the R&D tax relief, these indicators reached the level of 2.12% of GDP for the EU and 1% of GDP for Poland, respectively.[61] In both instances, these indicators were quite far from the targets set for the end of 2020.

During less than a decade of the R&D tax relief being in force, it was possible to observe an increase both in domestic investments in R&D activity expressed as a share of GDP (Table 2), as well as in the number of taxpayers and the amounts of deductions from income under the tax relief (Table 3). The latest data disclosed by the Ministry of Finance (for 2022) came as a surprise, as they showed a decrease in the number of PIT taxpayers benefiting from the tax relief (with a simultaneous increase in the total amount of deductions made). It seems that this may be related to numerous interpretative doubts regarding concepts crucial for using the tax relief, in particular such as 'R&D activity' and 'eligible costs', as well as the related risk of incorrect settlement of the tax relief by taxpayers.

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[56] Justification of the bill on amending certain acts related to supporting innovation, Sejm of the 7th term, Sejm print No. 3286, pp. 6–7.

[57] The aim was to create financial incentives for entrepreneurs to undertake and conduct independent innovative activities within enterprises, which constitute the main driver of the country's economic prosperity and competitiveness, and to increase spending on R&D activity.

[58] Act of 29 October 2021 on amendments to the Act on Personal Income Tax, Act on Corporate Income Tax and Certain Other Acts (Journal of Laws of 2021, item 2105).

[59] Communication from the Commission, Europe 2020 – A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final, 3 March 2010.

[60] National Reform Programme for the implementation of the 'Europe 2020' strategy adopted by the Council of Ministers, 26 April 2011, p. 7.

[61] Eurostat, Gross domestic expenditure on R&D by sector; https://ec.europa.eu/eurostat/databrowser/view/sdg_09_10/default/table (accessed: 25 May 2024).

Table 2. R&D activity in Poland, in the years 2016–2022

Description	2016	2017	2018	2019	2020	2021	2022
Gross domestic expenditure on R&D (GERD) in PLN million	17,943	20,578	25,648	30,285	32,402	37,676	44,702
Gross domestic expenditure on R&D (GERD) to GDP in %	0.96	1.03	1.21	1.32	1.39	1.43	1.46
Internal expenditure on R&D per capita in PLN	467	536	668	789	845	992	1,182
Number of R&D entities	4,871	5,102	5,779	5,863	6,381	7,370	7,431
Internal R&D personnel per 1000 employees	6.9	7.4	8.0	8.3	8.7	9.3	9.8

Source: Own materials, based on data from Statistic Poland; https://stat.gov.pl/obszary-tematyczne/nauka-i-technika-spoleczenstwo-informacyjne/nauka-i-technika/dzialalnosc-badawcza-i-rozwojowa-w-polsce-w-2022-roku,8,12.html (accessed: 8 May 2024).

Table 3. Deductions of eligible costs from the tax base – PIT and CIT, in the years 2016–2022

Description	PIT			CIT		
Year	Number of taxpayers who made a deduction	Amount of deductions in PLN thousand	Average amount deducted by a taxpayer in PLN	Number of taxpayers who made a deduction	Amount of deductions in PLN thousand	Average amount deducted by a taxpayer in PLN thousand
2016	264	7,722	29,250	264	198,334	751
2017	524	40,606	77,492	565	543,329	962
2018	893	178,669	200,077	951	1,675,055	1,761
2019	1,195	293,121	245,290	1,434	2,621,102	1,828
2020	1,518	405,393	267,057	1,643	3,135,967	1,909
2021	1,539	395,484	256,974	2,064	4,282,904	2,075
2022	1,264	430,328	340,449	2,413	6,855,672	2,841

Source: Own materials, based on: Ministry of Finance, Income Tax Department, Information on personal income tax settlement for 2016, 2017, https://dane.gov.pl/pl/dataset/191,informacje-dotyczace-rozliczenia-podatku-dochodowego-od-osob-fizycznych (accessed: 4 September 2023); for 2018, 2019, 2020, 2021, https://www.podatki.gov.pl/pit/abc-pit/statystyki/ (accessed: 4 September 2023); for 2022, https://www.podatki.gov.pl/media/9684/informacja-cit-za-2022-r.pdf (accessed: 10 May 2024); Information on corporate income tax settlement for 2016, 2017, https://dane.gov.pl/pl/dataset/162,informacje-dotyczace-rozliczenia-podatku-dochodowego-od-osob-prawnych (accessed: 6 September 2023); for the years 2018, 2019, 2020, 2021, https://www.podatki.gov.pl/cit/abc-cit/statystyki-cit/ (accessed: 6 September 2023); for 2022, https://www.podatki.gov.pl/media/9684/informacja-cit-za-2022-r.pdf (accessed: 7 May 2024).

2.2. ESSENCE OF THE RESEARCH AND DEVELOPMENT TAX RELIEF

The essence of the R&D tax relief is that a taxpayer carrying out R&D activity may deduct from the tax base certain spending (eligible costs) incurred in relation to these activities and previously recognised as tax-deductible costs. This means that costs incurred for R&D activity may be deducted by the taxpayer twice: first, they reduce the taxpayer's income by being recognised as tax-deductible costs, and second – as a result of using the tax relief – a certain percentage of these costs also reduces the tax base forming the starting point for calculating the tax due in the annual tax return.[62] The R&D tax relief may be used by entrepreneurs who, as part of their non-agricultural business activity, conduct R&D activity and are taxpayers of personal income tax whose income is subject to taxation according to the tax scale or at a flat rate of 19%, or taxpayers of corporate income tax who earn income other than income from capital gains.

2.3. NOTION OF RESEARCH AND DEVELOPMENT ACTIVITIES

The *sine qua non* condition for an entrepreneur to use the R&D tax relief is to conduct R&D activity. Both tax acts define this notion in the same way. Research and development activities should be understood to mean creative activities comprising scientific research or development work, carried out on a systematic basis, undertaken in order to increase the stock of knowledge and to use the stock of knowledge to devise new applications. This definition is rather enigmatic, and the only clarification (also very general) is the indication that scientific research may take the form of basic research or applied research, within the meaning of the definitions of these notions included in the Act – Law on Higher Education and Science[63] (Article 4(2)(1), (2) and (3), respectively). Under the aforementioned Act, basic research means empirical or theoretical work aimed, above all, at acquiring new knowledge about the fundamentals of phenomena and observable facts, without focusing on direct commercial use. Applied research means work aimed at acquiring new knowledge and skills, focused on the development of new products, processes or services, or significant improvements thereof. At the same time, development work is defined as activities comprising the acquisition, combination, adaptation and application of currently available knowledge and skills, including IT tools or software for production planning, as well as designing and creating modified, improved or new products, processes or services, excluding activities comprising routine and periodic modifications thereto, even if such modifications demonstrate features of improvements.

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62 M. Brzostowska, P. Kubiesa, *PIT. Komentarz*, 2nd ed., LEX/el., 2023; P. Małecki, M. Mazurkiewicz, *CIT. Komentarz. Podatki i rachunkowość*, 14th ed., LEX/el., 2023.

63 Act of 20 July 2018 – Law on Higher Education and Science (consolidated text: Journal of Laws of 2023, item 742, as amended); hereinafter referred to as 'Act – Law on Higher Education and Science'.

When drafting the definition of R&D activity, the legislator did not use easily identifiable criteria. For example, the definition does not explicitly indicate that the tax relief is addressed exclusively to entities conducting activities in areas intuitively associated with characteristics such as modernity and innovation, that it is addressed exclusively to entities conducting complex scientific research rather than to taxpayers conducting only development work, or that the conducted activities must be successful. From the point of view of a taxpayer, the lack of precision of this definition can be considered both its disadvantage and its advantage. The disadvantage is the lack of certainty as to whether a given taxpayer's activity is actually R&D activity within the meaning of the Tax Act and, consequently, whether the deductions applied by the taxpayer are justified. The advantage of this ambiguous definition is the very wide group of entities that can benefit from the tax relief in question.[64] In this situation, it is not surprising that taxpayers, wishing to avoid negative consequences, increasingly decide to apply to the Director of the National Tax Information for an individual tax ruling, seeking confirmation whether their activity constitutes R&D activity within the meaning of the aforementioned regulations.[65] At this point, it is worth noting that the Director of the National Tax Information issued as many as 3,118 individual tax rulings[66] pertaining to the R&D tax relief and the related preferential taxation of income generated by intellectual property rights (so-called IP Box). A significant part of these tax rulings concerned the determination whether the R&D work described in the applications and carried out by the applicants constitutes R&D activity within the meaning of the provisions of the aforementioned acts. Somewhat surprisingly, for some time the Director of the National Tax Information took the position that the structure of the provisions of the tax acts defining R&D activity did not allow him to decide whether the activities presented in taxpayers' applications constituted R&D activity. He argued that the Director was not authorised to make a legal qualification from the point of view of a non-tax act (i.e. the Act – Law on Higher Education and Science) and the notions defined therein, because pursuant to Article 14b § 1 of the Tax Ordinance[67] the Director of the National Tax Information may issue individual tax rulings only with respect to provisions of tax law.[68] Consequently, he sent requests to the applicants

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[64] P. Małecki, M. Mazurkiewicz, in: Małecki P., Mazurkiewicz M., *CIT. Komentarz. Podatki i rachunkowość*, 14th ed., Warszawa, 2023, Article 4(a); https://sip.lex.pl/#/commentary/587279168/732954?pit=2024-06-17&tocHit=1&cm=URELATIONS (accessed: 18 April 2024).

[65] Cf. Tax Guidance of 15 July 2019 on preferential taxation of income from intellectual property rights – IP Box. In this document, the Minister of Finance included the following recommendation: 'A taxpayer intending to benefit from the IP Box preference with respect to income from copyright to a computer programme and acquire relevant tax and legal protection in this respect should file an application for an individual tax ruling with the Director of the National Tax Information' (p. 32); https://www.podatki.gov.pl/media/5137/obja%C5%9Bnienia-podatkowe-z-15-lipca-2019-r-w-sprawie-ip-box.pdf (accessed: 6 September 2023).

[66] Data from the EUREKA Customs and Tax Information System; https://eureka.mf.gov.pl/ (accessed: 25 May 2024).

[67] Act of 29 August 1997 – Tax Ordinance (consolidated text: Journal of Laws of 2023, item 2383, as amended).

[68] Individual tax ruling of 26 March 2020 issued by the Director of the National Tax Information, 0113-KDIPT2-1.4011.34.2020.2.MAP.

asking them to clarify the description of the facts or future event by indicating whether a given activity includes so-called scientific research or so-called development work within the meaning of the Act – Law on Higher Education and Science. This meant that – in the opinion of the Director of the National Tax Information – the applicant should determine on their own whether their activity meets the individual conditions to be classified as R&D activity, as part of the description of the facts of the case or future event. At the same time, the lack of an explicit assessment on the part of the applicant usually resulted in the Director of the National Tax Information issuing a decision to leave the application without consideration, because, in the opinion of the authority, this is information necessary to determine under the PIT Act and the CIT Act that the taxpayer conducts R&D activity. This practice raised certain concerns and could become a factor inhibiting the initiative of entrepreneurs in the field of undertaking R&D activity and using the R&D tax relief. However, an increasing number of decisions of the Director of the National Tax Information have been overturned by judgments issued by administrative courts. The courts point out that the obligation of the tax authority to provide a written tax ruling pertaining to the scope and manner of application of tax law cannot be limited solely to acts containing the term 'tax law' in their title, because it is not only in these acts that the elements on which taxation and its amount depend are regulated.[69] It is also necessary to agree with the position of the courts that it is impossible to require a taxpayer applying for an individual tax ruling to decide on their own whether the activities undertaken constitute R&D activity,[70] since they have doubts[71] in this respect and expect, as is their right, their resolution by the tax authority. The actions of the tax authorities refusing to issue a tax ruling were considered to be in breach of the law and to undermine the purpose of issuing tax rulings. As the Supreme Administrative Court (NSA) concluded in the judgment of 23 November 2021,[72] the authority issuing the tax ruling may request the taxpayer only to clarify the factual circumstances pertaining to the activities carried out and, based thereon, assess whether the taxpayer conducts R&D activity, while the authority's obligation is to provide the taxpayer with a response to the interpretative doubts raised. This judgment should be considered crucial, as – on the one hand – it confirms the

[69] Cf. judgments of the Voivodeship Administrative Court in Gliwice: of 5 March 2021, I SA/Gl 24/21; of 9 May 2021, I SA/Gl 544/21; of 4 November 2021, I SA/Gl 992/21; judgment of the Supreme Administrative Court of 15 January 2020, II FSK 345/18; judgments of the Voivodeship Administrative Court in Gdańsk of 9 September 2021, I SA/Gd 631/21 and of 7 September 2021, I SA/Gd 876/21; judgment of the Voivodeship Administrative Court in Rzeszów of 5 August 2021, I SA/Rz 425/21; judgment of the Voivodeship Administrative Court in Bydgoszcz of 3 August 2021, I SA/Bd 348/21; and judgment of the Voivodeship Administrative Court in Kraków of 18 March 2021, I SA/Kr 178/21.

[70] Within the meaning of Article 5a(38)–(40) of the PIT Act and Article 4(26)–(28) of the CIT Act, respectively.

[71] Cf. judgment of the Voivodeship Administrative Court in Gliwice of 23 February 2023, I SA/Gl 1506/22. The Director of the National Tax Information filed a cassation appeal against this judgment to the Supreme Administrative Court. The proceedings were discontinued as the appellant withdrew the appeal – see decision of the Supreme Administrative Court of 14 November 2023, II FSK 1208/23.

[72] Judgment of the Supreme Administrative Court of 23 November 2021, II FSK 1049/21.

taxpayers' right to obtain an individual tax ruling pertaining to the classification of a given activity as R&D activity, providing a basis for using the R&D tax relief, and – on the other hand – it imposes on tax authorities the obligation to independently assess whether the taxpayer conducts (or intends to conduct) such activity based on the facts described by the taxpayer. The individual tax ruling (in accordance with Articles 14k–14nb of the Tax Ordinance) has a protective function, provided that the taxpayer's situation complies with (is identical to) the description of the facts or future events included in the application for issuing the tax ruling, and that the taxpayer complies with the tax ruling. For this reason, the taxpayer's right to obtain an individual tax ruling on classifying a given activity as R&D activity, especially in the context of minimising the risk related to using tax preferences which, in the case of the R&D tax relief (and the related IP Box tax relief or the prototype tax relief), may be particularly significant, is very important.

2.4. ELIGIBLE COSTS

In order to use the R&D tax relief, during the tax year the entrepreneur must incur costs related to R&D activity, the so-called eligible costs, which were previously recognised as tax-deductible costs.[73] Costs of R&D activity must fall within the exhaustive list of eligible costs, and if they were incurred as part of basic research, the research must be conducted on the basis of a contract or agreement with a scientific unit within the meaning of the Act – Law on Higher Education and Science. For instance, eligible costs include:

(a) wages and salaries of employees in the part related to R&D activity, together with social insurance contributions, in the part in which the time allocated to the performance of R&D activity remains within the employee's total working time in a given month;
(b) remuneration under personal services contracts or specific task contracts in the part related to R&D activity, together with social security contributions, in the part in which the time allocated to the performance of a service related to R&D activity remains within the total time allocated to the performance of the service under a personal services contract or a specific task contract in a given month;
(c) costs incurred to purchase specialist equipment (which is not a fixed asset), as well as supplies and raw materials that are directly related to the conducted R&D activity, in particular laboratory glassware and accessories, as well as measuring instruments;
(d) costs of expert opinions, opinions, advisory services and equivalent services provided or performed on the basis of a contract, as well as costs of acquiring the results of scientific research conducted on the basis of contracts, for the purposes of R&D activity.[74]

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[73] In accordance with their definition included in the PIT Act – Article 22 or in the CIT Act – Article 15, respectively.

[74] The list of eligible costs is determined in Article 26e(2)–(3) of the PIT Act and in Article 18d(2)–(3) of the CIT Act.

Moreover, in order to use the R&D tax relief, the taxpayer must separately record the costs of R&D activity in the accounting records, in compliance with the provisions of the PIT Act[75] or the CIT Act.[76] In addition, the taxpayer must disclose eligible costs subject to deduction in the tax return, whereas the amount of costs incurred for R&D activity subject to deduction as eligible costs is limited and amounts to 100% or 200% of eligible costs, depending on the taxpayer's status and the type of costs. An entrepreneur with the status of a research and development centre (RDC), who at the same time is a micro-, small- or medium-sized enterprise, may deduct eligible costs up to 200%. Other RDCs are entitled to a deduction of 200% of eligible costs, except for the costs of obtaining and maintaining patents, rights of protection for a utility model, and rights conferred by the registration of an industrial design listed in the PIT Act and the CIT Act, where the amount of eligible costs cannot exceed 100% of costs. In the case of other taxpayers, the deduction limit is 100% of eligible costs, except for personnel-related costs, where 200% of eligible costs may be deducted.[77] The amount of the deduction for eligible costs cannot exceed the amount of income earned by the CIT taxpayer from revenues other than capital gains, and the amount of income earned by the PIT taxpayer from non-agricultural business activity in the tax year. The right to deduct eligible costs is available provided that these costs have not been refunded to the taxpayer in any form and have not been deducted from the income tax base.

The complexity of the R&D tax relief means that in order to benefit from this tax preference, the taxpayer not only needs to correctly classify the activity conducted as R&D activity, but also to exercise particular care when determining the costs of the R&D activity and the valuation of these costs.[78] The taxpayer must also correctly identify the documentation justifying the right to use the tax relief and fulfil formal obligations, including the separate recording of the costs of R&D activity in the accounting records.[79]

Several interpretative problems arise in relation to the above. They concern, for example, amounts paid as wages and salaries of employees in the part related to R&D activity together with social insurance contributions in the part in which the time allocated to the performance of R&D activity remains within the employee's total working time in a given month.[80] Issues are also related to determining whether the time of justified absence from work, in particular in connection with the employee's annual leave or illness, can be recognised as an eligible cost. In accordance with the position of the Ministry of Finance and the Director of the National Tax Information taken until February 2024, 'the employee's total working time in a given month'[81] was interpreted only as time actually worked, which excluded the possibility of

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75 In the revenue and expense ledger kept or in the accounting records kept – Article 24a(1b) of the PIT Act.

76 In the accounting records – Article 9(1b) of the CIT Act.

77 Article 26e(7) of the PIT Act and Article 18d(7) of the CIT Act.

78 By identifying costs meeting the definition of 'eligible costs' referred to in Article 26e of the PIT Act and in Article 18d of the CIT Act.

79 In accordance with Article 24a(1b) of the PIT Act and Article 9(1b) of the CIT Act.

80 Eligible costs specified in Article 26e(2)(1) of the PIT Act and Article 18d(2)(1) of the CIT Act.

81 Referred to in Article 26e(2)(1) of the PIT Act and Article 18d(2)(1) of the CIT Act, respectively.

including costs related to the employee's justified absence (e.g. annual leave or illness)[82] in the eligible costs for the purposes of the R&D tax relief. The case law issued so far also does not present a uniform position in this respect. For instance, the Voivodeship Administrative Court in Poznań stated that:

> 'If an employee devotes all of their working time to research and development activities, then the costs related to the time of the employee's justified absence from work should be included in full, or in a specified proportion when the employee devotes only part of their time to research, in relation to the total working time.'[83]

A similar opinion was expressed by the Voivodeship Administrative Court in Gliwice:

> 'The decisive factor is the performance of R&D activity by the employee, and as these activities are performed on the basis of a contract of employment, all revenues of the taxpayer related to their employment relationship and financed by the payer of contributions related to these amounts due, specified in the Act on the social insurance system, constitute eligible costs under Article 18d(2)(1) of the CIT Act.'[84]

Judgments of the Supreme Administrative Court also include the view that:

> 'The employee's justified absence is inherently related to the employment relationship, and consequently it cannot be excluded from the eligible costs for the purposes of the research and development tax relief.'[85]

A different position, however, was taken by the Voivodeship Administrative Court in Gdańsk:

> 'Wages and salaries for the period of sick leave and annual leave and contributions related thereto are not subject to deduction under the research and development tax relief, pursuant to Article 18d(1) in conjunction with Article 18d(2)(1) of the CIT Act.'[86]

It is hoped that the issue of uniform interpretation of this matter will be resolved by the general tax ruling of 13 February 2024 issued by the Ministry of Finance,[87]

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[82] Cf. e.g. individual tax rulings of 27 July 2022, No. 0111-KDIB1-3.4010.296.2022.2.IM (ID of information in the Eureka system: 502083); of 4 March 2022, No. 0111-KDIB1-3.4010.709.2021.2.PC (ID of information in the Eureka system: 483095); of 9 October 2020, No. 0111-KDIB1-3.4010.357.2020.2.MBD (ID of information in the Eureka system: 427285); of 11 February 2020, No. 0111-KDIB1-3.4010.563.2019.1.BM (ID of information in the Eureka system: 427173).

[83] Judgment of the Voivodeship Administrative Court in Poznań of 13 May 2021, I SA/Po 163/21.

[84] Judgment of the Voivodeship Administrative Court in Gliwice of 22 October 2020, I SA/Gl 422/20.

[85] Cf. judgment of the Supreme Administrative Court of 14 December 2022, II FSK 1204/20; judgment of the Supreme Administrative Court of 11 October 2022, II FSK 364/20; judgment of the Supreme Administrative Court of 11 January 2022, II FSK 1247/21.

[86] Judgment of the Voivodeship Administrative Court in Gdańsk of 18 May 2021, I SA/Gd 232/21.

[87] General tax ruling No. DD8.8203.1.2021 of 13 February 2024 issued by the Minister of Finance, on the possibility of classifying amounts paid in a given month under the titles referred to in Article 12(1) of the Act on Personal Income Tax and contributions related to these amounts

stipulating that wages and salaries for the period of annual leave or sick leave constitute an eligible cost for the purposes of the R&D tax relief. As noted by the Minister of Finance, individual components of an employee's compensation, i.e. remuneration for the period of annual leave and sick leave, should be treated as components of remuneration constituting an eligible cost for the purposes of the research and development tax relief, in the part in which the employer is obliged to cover them on the basis of separate provisions and subject to compliance with all other requirements imposed on the taxpayer by Article 26e of the PIT Act and Article 18d of the CIT Act, respectively – including, in particular, determining whether the cost in question constitutes a tax-deductible cost for the relevant tax year and determining the employee's involvement in the performance of research and development activities.

CONCLUSIONS

The purpose of tax-law institutions aimed at supporting sustainable development assumptions is to emphasise the value of the concept of respect for the environment, while ensuring the proper involvement of human resources and the development of a competitive economy. Pro-ecological tax preferences ensure the performance of the non-fiscal functions of the tax system by softening the legal regime for entities that, through taking or avoiding certain activities, contribute to broadly understood environmental protection.[88] The functional essence of tax preferences is expressed in the use of taxes to produce certain economic or social effects by the tax creditor, including in the area of environmental protection.

The thermal modernisation tax relief was introduced into the Polish tax system in order to speed up the process of improving air quality, ensuring compliance with air quality standards set by national and EU regulations on air protection. This measure is aimed at implementing low-carbon economy standards by supporting the implementation of projects pursuing sustainable development objectives. Consequently, the thermal modernisation tax relief, through its stimulating impact, is intended to encourage taxpayers who are owners of single-family residential buildings to finance thermal modernisation projects without using public funds. However, if we examine the functioning of this tax relief aimed at supporting pro-environmental attitudes over the past few years, it is difficult to conclude that this goal has been fully achieved. The number of judgments, individual tax rulings and guidance issued by the Minister of Finance on the basis of Article 26h of the PIT Act indicates that some of the restrictions imposed by the legislator, and often

financed by the taxpayer, specified in the Act on the Social Insurance System, in relation to a justified absence of an employee, as eligible costs for the purposes of the research and development tax relief (Official Journal of the Ministry of Finance of 21 February 2024, item 16).

[88] A. Krajewska, *Podatki. Unia Europejska. Polska. Kraje nadbałtyckie*, Warszawa, 2004, pp. 53–54; F. Gradalski, 'Teoretyczne podstawy proekologicznego systemu podatkowego', *Gospodarka Narodowa*, 2002, No. 10, p. 25.

additional limitations introduced by the tax authorities themselves, significantly limit the effectiveness of this support instrument.

The introduction of the research and development (R&D) tax relief into the Polish tax system undoubtedly corresponds with sustainable development goals, contributing to building a knowledge-based economy, in which the share of spending on R&D is constantly increasing. However, it should be noted that the structure of the R&D tax relief, providing the possibility to deduct from the tax base only eligible costs previously recognised as tax-deductible costs, deprives a significant group of PIT taxpayers, i.e. taxpayers using simplified forms of taxation, of the possibility of benefiting from the tax relief. For this group of taxpayers, the benefits of the R&D tax relief are not a sufficient incentive to undertake R&D activity. A different trend can be observed – a transition to simplified forms of taxation, resulting from numerous changes to the rules governing simplified taxation of the income of individuals conducting non-agricultural business activity, e.g. reducing the list of activities excluded from the flat-rate taxation of recorded revenues while simultaneously reducing tax rates in comparison with taxation settled according to general rules and flat-rate taxation.[89] These measures, although perhaps not even intended by the legislator, are considered the main reason for the recent decrease in the number of PIT taxpayers using this relief. At the same time, the complexity of the R&D tax relief and the lack of precise definitions of concepts crucial for its application, i.e. R&D activity and eligible costs, may discourage taxpayers from undertaking activities in this area for fear of the risk of incorrect settlement of the tax relief and the related adverse consequences.

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[89] This is confirmed by data of the Ministry of Finance, according to which taxpayers paying lump-sum tax on recorded revenue submitted 1,493,199 tax returns for 2021 (i.e. 105,655 more than in 2020), while the number of tax returns submitted by them for 2022 was 1,719,658 (i.e. 226,459 more than in 2021) – see Ministry of Finance, Income Tax Department, *Information on personal income tax settlement for 2021*, https://www.podatki.gov.pl/pit/abc-pit/statystyki (accessed: 4 September 2023); for 2022, https://www.podatki.gov.pl/media/9684/informacja-cit-za-2022-r.pdf (accessed: 10 May 2024).

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