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## COMPLEXITY OF TAX LAW: THE ANGLO-SAXON POINT OF VIEW

### Abstract

*One of the main problems of modern tax law is its increasing complexity. The complexity of tax law entails so many adverse effects of the economic, psychological, and strictly legal spheres. The aim of this paper is to present the view of the Anglo-Saxon jurisprudence on the causes of the complexity of the tax law and its types.*

### Keywords

*tax law – complexity of law – tax law theory*

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## I. PRELIMINARY STATEMENTS

One of the main problems of modern tax law is its increasing complexity. This applies both to the normative content of statutes and the form in which statutory content is presented.

An analysis the development in the legislation of different countries in the twentieth century – research in this area was conducted primarily in Anglo-Saxon countries – leads to the obvious conclusion that the volume of provisions on the taxation of income is growing quite steadily. Moreover, the pace of this process is increasing over time.

The consequences of this state of affairs are obvious and well known: the uncertainty of the legal position of taxpayers and the increasing costs of operation of the tax system, paid for both by tax authorities and taxpayers. “Tax complexity crisis”<sup>1</sup> and “tax wilderness”<sup>2</sup> – these terms seem really to reflect the actual state of tax systems all over the world. “Legislative jungle” may be the proper description of contemporary tax law<sup>3</sup>.

The problem of the complexity of tax law is usually considered in the literature not as a problem *per se*, but as a starting point for efforts to simplify the tax law. The complexity of tax law entails so many adverse effects of the economic, psychological, and strictly legal spheres, that searching for ways of simplification is almost a natural social need. But the starting point for the research should be the diagnosis of the phenomenon and its causes.

The problem of the influence of the complexity of tax law on the proper operating of the tax law is so significant that you would expect a high level of interest on it in tax law jurisprudence. Meanwhile, a review of the existing literature leads to the conclusion that interest in the issues is very varied in various countries.

The greatest interest in the abovementioned issue has been raised in Anglo-Saxon countries. Studies on this matter concern not only the issue

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<sup>1</sup> D. Wallis, *The Tax Complexity Crisis*, Australian Tax Review 2006, vol. 35, p. 274 et seq.

<sup>2</sup> G. de Q. Walker, *How to Restore the Rule of Law. Perspectives on Tax Reform (1)*, The Centre for Independent Studies 2004, p. 2.

<sup>3</sup> Deane J in *Hepplles v. Commissioner of Taxation* [No. 2] 1991, 65 ALJR 650, 102 ALR 497 at 657.

of the concept and various aspects of the complexity of tax law, but are also full of search the possibilities for eliminating or reducing the causes of complexity and ultimately civilize tax law in this regard. But even in this doctrinal area the level of interest in that issue of the complexity of the tax issue is not uniformly intense. The greatest achievements in this regard are visible in the work of the New Zealand and Australian scholars. Empirical research into various aspects of the complexity of the tax law and the search for methods (especially in legislative technique) to improve the situation are noteworthy.

In the United States attention is drawn to the emphasis both on language and the conceptual sphere. Attempts to build the framework of classification or typology of the phenomena that make up the state of the complexity of tax law are observed. Therefore, further discussion will concentrate on a specific part of the achievements of these doctrines. In Canadian, Irish, and English tax law analysis the issue is not the subject of in-depth research.

As far as continental Europe is concerned, the issue of the complexity of tax law appears in a slightly wider range in Germany. In contrast, the French, Italian, and Spanish literature treat the problem as completely marginal. It is so interesting because the problems with the complexity of tax law are as intensive there as in other countries. In Poland, as a matter of fact, only one author is involved with the mentioned issues<sup>4</sup>.

The call for the simplification of tax law comes from all directions, from taxpayers themselves, from legislators, from legal scholars, and sometimes from politicians.

The extension of tax law complexity is largely explainable by the complexity of the matters to which it refers. The dynamics of relationships and economic phenomena, so characteristic of the economy of developed countries and the contemporary world economy as a whole, is reflected

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<sup>4</sup> B. Brzeziński, *O idei uproszczenia prawa podatkowego*, [in:] T. Dębowska-Romanowska, A. Jankiewicz (eds), *Konstytucja. Ustrój, system finansowy państwa. Księga pamiątkowa ku czci profesor Natalii Gajl*, Warszawa 1999; B. Brzeziński, *Prawo podatkowe między Scyllą kazuistyki i Charybdą ogólności przepisów*, [in:] A. Bulsiewicz, A. Marek, V. Kwiatkowska (eds), *Doctrina multiplex, veritas una. Księga Jubileuszowa ofiarowana Profesorowi Mariuszowi Kulickiemu*, Toruń 2004; B. Brzeziński, *Uproszczenie podatków i prawa podatkowego*, [in:] B. Brzeziński (ed.), *Prawo podatkowe. Teoria. Instytucje. Funkcjonowanie*, Toruń 2009.

in the construction of new, or modifications of previously used, forms of economic activity. The relationship between these forms and the tax system is rarely neutral. Usually it happens that a new form of economic activity allows taxpayer to use it as a tax avoidance device (or at least unjustified reduction of the tax burden) or – conversely – the tax system hinders or merely prevents the full use of the new form of economic activity.

This situation forces the legislature to adapt tax law to the economic characteristics of new forms of economic activity. It would be difficult to approve the abovementioned situation, in which a new legal form would be the straight road to tax avoidance, as well as one in which the use of new forms would be mitigated or even practically prohibited by the fact that these new legal forms would be simply “neutralized” by tax law.

The consequence of such a situation is frequent amendments of tax law statutes. Usually made in unfavourable conditions, under the overwhelming pressure of time and the pressure of parliamentary interest groups, these changes lead not only to the formation of gaps and inconsistencies of a substantive nature, but also to the destruction of the text layer of tax law. Inconsistent terminology becomes legal provisions in which it is difficult to decipher the relationship between the rule and the exception, and the objective and subjective scope of its rules ceases to be clear. Initial structure of the tax statutes is distorted by numerous changes, and their language is littered by expressions derived from the financial and accounting jargon. The result is that tax laws are becoming less understandable, not only for taxpayers, but also for specialists in the field of tax law. At the same time the concentration of the tax administration on the detection of gaps and inconsistencies in the system absorbs it to an extent that makes impossible to draw attention to a holistic view on the volume of tax law – also in the context of the needs of and possibilities for simplification.

This situation is difficult to approve of for many reasons; not the least important reason is that recently the tax collection method by self-assessment by the taxpayer has prevailed (instead of the assessment and collection by the tax administration) thus raising the need to provide a certain standard of communicability in tax laws, as is the responsibility of the State. To put it briefly, the adherence to applicable regulations

is required. This requirement is met only when the content of tax law statutes is relatively understandable.

The prevailing practice of *ad hoc* changes in tax law designed usually for closing particular loopholes in narrow areas leads to an increase in the structural and technical complexity of the tax law as a whole. Increased technical and structural complexity, in turn, put additional compliance burdens on the taxpayer and increase incentives to find new loopholes<sup>5</sup>. *Da capo al fine...*

## II. SOURCES OF COMPLEXITY

Looking for the sources of complexity has its own value because of the need to prevent the process by which tax law becomes more and more complex. In the opinion of Anglo-Saxon tax law jurisprudence there are a lot of such sources. In the simplest terms, you can say that they are seen either as related to the sphere outside the tax law (the increasing complication of socio-economic relations and the growing sophistication of legal forms of management) or associated with tax law itself – its creation and its *modus operandi*, particularly the need to prevent tax avoidance.

Looking for the sources of complexity one should turn to E. McCaffery's division on static and dynamic sources of complexity.

As far as the static sources of complexity of tax law are concerned there are four categories<sup>6</sup>. The first involves certain matters intrinsic to the choice of any tax system. For example, says McCaffery, for traditional income tax, "these will involve questions of measurement, attribution, and timing". Such issues must be addressed as a part of any meaningful embodiment of an income tax.

Another static source of complexity involves substantive policies that are not necessary in the tax system, but that lawmakers choose to draft onto the tax system once the tax base is chosen and parliament accepts it. So we can include in this category the preferential treatment of capital gains, the use of progressive marginal rates, separate entity-level taxation,

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<sup>5</sup> E. McCaffery, *The Holy Grail of Tax Simplification*, Wisconsin Law Review 1990, p. 1278.

<sup>6</sup> *Ibidem*, p. 1273 et al.

and “tax expenditures” generally. Each of these policies could disappear entirely without jeopardizing the existence of income tax. Such rules – theoretically not necessary in tax law – add structural complexity, and often technical and compliance complexity as well.

The third – according to McCaffery – category of static factors derives from the general socioeconomic complexity of contemporary society. Whatever tax law we adopt must apply to a large, multi-faceted world that has generated intricate economic arrangements. A certain amount of compliance complexity inevitably flows from this fact. The existence of social complexity also means that attempts to make distinctions in the tax statute involving socioeconomic factors will be at least technically, and probably structurally, complex.

Fourthly, and finally, the tax process itself is a source of complexity. Tax lawmaking involves the executive branch, parliament and its various staffs and committees, the president of the state in some countries, and last, but not least, lobbyists. The enforcement process, encompassing the broad expanse of tax authorities and courts also is a source of complexity.

The dynamic sources of the complexity of tax law are as below<sup>7</sup>. First, the tax law exists – in McCaffery’s words – in a state of “dynamic complexity”. It means that the ingenuity of taxpayers in manipulating their affairs to minimize their tax burden against an already complex statutory framework produces “complex variations in the tax treatment of transactions often not differing greatly in substance or form. The variations may spring from taxpayer exploitation of gaps, ambiguities, or inconsistencies in the rules themselves. They may flow from lapses in enforcement, or inconsistent rules resulting from the resolution of disputes. In response, the tax system is pressured toward greater detail in its statutes or regulations to ensure consistency, or to prevent unwanted results.

A second reason, says McCaffery, is that complexity generates further complexity stemming from the reaction of the tax process to existing complexity. Complexity, in both its structural and technical sense, causes taxpayers to lose themselves in the maze. It also creates risks that the tax process, by working in only narrowly defined areas, will make

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<sup>7</sup> Ibidem, p. 1276.

the overall maze more intricate. The more complicated the tax laws, the more tentative and stop-gap most reforms will be. *Ad hoc* legislative actions and minor adjustments to the tax base often make the law more complex.

According to J. Partlow, non-revenue-raising uses of tax law increase complexity in the tax system. Although the primary purpose of the tax system is to collect revenue, US Congress also uses the system to promote or discourage certain behaviour, attain social and economic goals, and occasionally help individual taxpayers. These non-revenue-raising uses of the tax system are made visible through the identification and reporting of tax expenditures<sup>8</sup>.

Some authors who represent a more practical point of view have pointed out that several technical elements of taxation caused complexity. For example, as far as income tax is concerned, B. Bittker talks about inherent structural complexities in tax law. In his opinion these elements are: the realization requirement, the accrual method of accounting, treating corporations as separate entities (not as a partnership), progression in the rate structure, reduced rates for capital gains, and the multi-purpose of some tax provisions<sup>9</sup>. Some of these reasons were indicated previously by S. Surrey. He additionally pointed out treatment of losses and tax expenditures as another element that complicates tax law<sup>10</sup>.

In the opinion of R. Clark, tax complexity develops in the way that the evolution of the corporate tax culture displays a recurrent pattern of particular events: when a new legal rule is prescribed, there follows a continual process of related tax-avoidance efforts by taxpayers and counter-responses by the tax administration, which leads to the formulation of more specific and more complex rules<sup>11</sup>.

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<sup>8</sup> J. Partlow, *The Necessity of Complexity in the Tax System*, Wyoming Law Review 2013, vol. 13, no. 1, pp. 316-317.

<sup>9</sup> B. Bittker, *Tax Reform and Tax Simplification*, University of Miami Law Review 1974, vol. 29, no. 1, pp. 2-5.

<sup>10</sup> S. Surrey, *Complexity and the Internal Revenue Code: The Problem of the Management of Tax Detail*, Law and Contemporary Problems 1969, vol. 34, p. 678 et seq.

<sup>11</sup> R.C. Clark, *The Morphogenesis of Subchapter C: An Essay in Statutory Evolution and Reform*, Yale Law Journal 1977, vol. 87, p. 90.

The abovementioned J. Partlow recognized generally considered sources of the complexity of tax law, adding a further three. The first is that the tax system is vast in scope and, to be applied fairly to both complex and simple transactions, it must be complex<sup>12</sup>. The second is progressivity: in his opinion complexity is a natural byproduct of progressivity<sup>13</sup>. The third is the necessity of eliminating loopholes in tax law consequently after they are discovered or devised by taxpayers. "It is no wonder then why there has been a longstanding concern about identifying and closing tax loopholes. Lawyers, taxpayers, accountants, and even the Treasury painstakingly search the Code for ways to take advantage of gaps and ambiguities in the system"<sup>14</sup>.

There is an interesting observation of M. Gammie that complexity in the tax system largely arises where taxes cannot be based on current gross cash flows, because either there is no cash transaction, as in benefits in kind, or because equity demands that tax be based on net receipts, as in the case of business profits, and from the need to protect the tax base through anti-avoidance provisions. Anti-avoidance legislation can highlight basic structural weaknesses in a tax system. It is much harder if the tax base is not founded on well-defined and robust economic concepts, such as earnings<sup>15</sup>.

In-depth analysis contained in "A Report on Complexity and the Income Tax" made by Committee on Tax Policy of New York State Bar Association shows a few organizational sources of tax complexity, and describes the role of US Congress, courts, tax administration, and members of Bar Association in making tax law complex<sup>16</sup>.

In the simplest terms, you can say that the sources of complexity are seen as either related to the sphere outside the tax law (the increasing complication of socio-economic relations and the growing sophistication of legal forms of management) or associated with the tax law itself - its

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<sup>12</sup> Partlow, *supra* note 8, pp. 309-312.

<sup>13</sup> *Ibidem*, pp. 312-315.

<sup>14</sup> *Ibidem*, pp. 315-316.

<sup>15</sup> M. Gammie, *Tax Simplification: Right Path or Dead End?*, [in:] Canadian Tax Foundation, *1995 Conference Report*, Toronto 1996, 2:1 at 2:11.

<sup>16</sup> New York State Bar Association, Tax Section, *A Report on Complexity and the Income Tax, Committee on Tax Policy (1970-1971)*, Tax Law Review 1971-1972, vol. 27, p. 325 et seq.



creation and operation, and particularly the need to prevent tax avoidance. E. McCaffery describes them in a most comprehensive way.

### III. THE NATURE AND POSSIBLE TYPES OF TAX LAW COMPLEXITY

Tax complexity has many faces. It is a subject that may be examined from many perspectives, including those of the taxpayer, the government, the return preparer, the planner, and the academics. Consequently, any attempt to characterize or categories tax complexity is likely to be arbitrary<sup>17</sup>.

There are a lot of concepts of complexity of tax law. Some of them are expressed in the form of definitions; others are more or less systematic descriptions of various aspects of the complexity of tax law sources and possible ways to reduce them.

The abovementioned E. McCaffery pointed out that there are different understandings of the term “tax complexity/simplification”<sup>18</sup>. The first and basic understanding of tax law complexity may be labeled as “technical” complexity. Such complexity refers to the pure intellectual difficulty of ascertaining the meaning of tax law provisions. This technical complexity is of a static nature, concerning the understandability of a particular section of a tax act in isolation from other sections. McCaffery is right suggesting that a reduction in technical complexity will afford a corresponding increase in taxpayers’ ability to understand a given tax law provisions.

A second understanding may be referred to as “structural complexity”. This type of complexity focuses on a functional approach, e.g. the conduciveness of the tax laws to tax planning. Structural complexity is dynamic in its nature and so involves the transactional effects of a tax rule in the context of the tax statute as a whole. Even if a taxpayer, McCaffery says, can read and understand a given tax rule, he may be unable to apply it to his or her affairs with any confidence, or to recognize the likely tax results of decisions regarding investments or other economic

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<sup>17</sup> J.A. Miller, *Indeterminacy, Complexity and Fairness: Justifying Rule Simplification in the Law of Taxation*, Washington Law Review 1993, vol. 68, no. 1, p. 12.

<sup>18</sup> McCaffery, *supra* note 5, pp. 1270-1271. Unfortunately, he speak at the beginning about “three understandings of tax simplification” what seems to be a mistake.

actions. Structural complexity involves the difficulties in interpreting and applying rules to economic transactions, the room afforded by the rules for restructuring transactions to achieve different tax treatment, and the variations in tax treatment contingent on the restructuring. Structural complexity leads to uncertainty, because the laws might be applied variously depending on the interpretation of a transaction's structure. Moreover, it leads to manipulability, because structural complexity tends to allow taxpayers to characterize a given economic event in a variety of ways<sup>19</sup>.

Finally, in McCaffery's opinion, there is "compliance complexity". This type of complexity relates to the variety of record-keeping and form-completing tasks a taxpayer must perform in order to comply with the tax laws. Even if a taxpayer understands in theory how a tax rule applies to his or her own affairs, and can plan with the rule in mind, he or she may not be able to comply with the law unless she also understands and meets certain procedural burdens<sup>20</sup>.

S.R. Johnson has a similar point of view and divides tax complexity into three categories, too, as below:

1. detail complexity. This exists when one can reach the right result, can figure out the result the law requires, but there are so many rules to wade through that it is exhausting to reach that right result;
2. outcome complexity. This exists when the law is not clear about the result it commands, i.e. when different people reading the rules can reach different conclusions. At the least, this phenomenon breeds controversy and litigation, expending scarce resources. At the worst, it leads to unpredictable and irreconcilable administrative and judicial decisions;
3. forms complexity. This is the variety of which most people complain. The complaint is that there is just too much paper that taxpayers have to generate, file, and retain<sup>21</sup>.

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<sup>19</sup> Ibidem, p. 1271.

<sup>20</sup> Ibidem.

<sup>21</sup> S.R. Johnson, *Administrability-Based Tax Simplification*, L. Wiegand Lecture, Nevada Law Journal 2003-2004, vol. 4, p. 581.

As a result of these multiple aspects, simplification sometimes involves trade-offs. A measure that reduces one aspect of complexity may increase another aspect<sup>22</sup>.

Another author, C. McLure recognized another three types of complexity. The first one is the “compliance complexity”, which is a matter of keeping records, filling out forms, and so on. The second is the “complexity of rules” which occurs when tax acts are understood – occasionally with a great difficulty – only by lawyers, accountants, tax judges, and so on. The third, i.e. “transactional complexity”, means a situation when the financial deals and economic decisions need be structured with an eye to their tax consequences (lack of economic neutrality)<sup>23</sup>.

The next author, J.A. Miller takes the position that the various divisions of complexity one might derive are likely to overlap and interrelate in a fashion that renders separate treatment difficult and of limited value. Nevertheless, he considers tax complexity as being composed of two types: elaborative complexity and judgmental complexity. Elaborative complexity relates to the level of information and education that must be absorbed in order to begin to decide a tax question. Thus, the length and detail of tax rules, along with their interconnectedness, are directly related to their elaborative complexity<sup>24</sup>.

On the other hand, judgmental complexity refers to the intellectual, moral, and philosophical burdens a tax question may pose for one who has mastered the rules.

J.A. Miller stated: “Just as elaborative complexity correlates with practical indeterminacy, judgmental complexity correlates with theoretical indeterminacy. The more judgmentally complex a legal question is, the more theoretically indeterminate is its answer. Elaborative and judgmental complexity does not describe mutually exclusive areas of law. There is no reason why they could not be found together. In fact, it seems probable that they will often occur together because as the law becomes more elaborate more opportunities for interpretive ambiguity are likely

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<sup>22</sup> Supra note 16, p. 333.

<sup>23</sup> C. McLure, C.E. McLure Jr, *The Budget Process and Tax Simplification/Complication*, Tax Law Review 1989-1990, vol. 45, p. 42.

<sup>24</sup> Miller, supra note 17, p. 12.

to arise. Even so, as a rule of thumb we may posit that those persons responsible for the elaborative complexity of tax rules justify their approach on the grounds that detailed rules render the law more theoretically certain. Thus, the use of elaborative complexity is intended to reduce judgmental complexity”<sup>25</sup>.

The Australian author, R. Krever recognizes three disparate views on the simplicity of a tax system. First, the simplicity of tax law might mean it is easy and inexpensive to comply with. Second, it may mean that the language of the legislation is simple and easy to understand. Third, and last, it may mean that the laws are simple in their effect, meaning that the laws contain a minimal number of distinctions and exemptions “so all arrangements and transactions with similar economic effect will receive the same economic treatment”<sup>26</sup>.

In the article of V. Milliron four dimensions of complexity have been identified: the nature of the topic, the quantitative nature of the presentation, the vulnerability of the tax law, and the readability of the passage<sup>27</sup>. Two other authors, S. Long and J. Swinden, provide a comprehensive definition of complexity that includes the ambiguity of tax law, the need for numerous calculations, the frequency of changes in the tax law, excessive detail in the tax statutes, the obligation of the taxpayer to keep records, filling in forms, and following instructions<sup>28</sup>.

Finally, G. Cooper divided tax complexity into three categories<sup>29</sup>:

- complexity in the choice of tax systems (e.g. income tax *versus* pool tax);
- complexity in the implementation of tax (e.g. too many rules dealing with the same thing);

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<sup>25</sup> Ibidem, p. 13.

<sup>26</sup> R. Krever, *Taming Complexity in Australian Income Tax*, Sydney Law Review 2003, vol. 25(4), p. 467.

<sup>27</sup> V. Milliron, *A Behavioural Study of the Meaning and Influence of Tax Complexity*, Journal of Accounting Research 1985, vol. 23, no. 2, p. 807.

<sup>28</sup> S. Long, J. Swingen, *The Role of Legal Complexity in Shaping Taxpayer Compliance*, [in:] P. van Koppen, D. Hessing, G. van den Heuvel, *Lawyers on Psychology and Psychologists on Law*, Amsterdam, after: C. Pau, A. Sawyer, A. Maples, *Complexity of New Zealand's Tax Laws: An Empirical Study*, Australian Tax Forum 2007, vol. 22, p. 62.

<sup>29</sup> G.S. Cooper, *Themes and Issues in Tax Simplification*, Australian Tax Forum 1993, vol. 10, p. 417 et seq.

- complexity in the expression of rules (which leads to misunderstanding or not understanding the tax law).

## IV. CLOSING REMARKS

S.J. Johnson pointed out four principal reasons why simplifying tax law is important<sup>30</sup>.

The first reason is to reduce the compliance cost for taxpayers. The more complex the tax system is, the greater burdens the taxpayer bears in complying with it. The second reason is to achieve greater transparency and fairness in the system. In his opinion the more complex the tax system is, the harder it is to fathom its outcomes. Moreover, different taxpayers have different abilities to manipulate a complex system. The third reason is to achieve more accurate tax outcomes. The current system too often is so complex that taxpayers who want to file accurate returns sometimes cannot do so because they cannot determine with confidence what the law demands of them. The fourth is to improved public support for the tax system. In his opinion it is important that there be broad public support for the tax system.

Evaluation of the possibilities of simplification given tax should be made separately with respect to its economic assumptions and separately with respect to its legal structure. The simplicity of economic assumptions allows the construction of simple legal structures. The complexity of the concept of given tax usually enforces the complexity of the legal structure. Nevertheless the simplicity of the principles of taxation does not guarantee the automatic simplicity of the law<sup>31</sup>.

As far as we are looking for some more detailed analysis there is an observation of A.J. Snoc that one big source of complication of the law relating to income taxation is capital gains/ordinary income distinctions. It creates not only complications, but economic inefficiencies and frustrations too. The inefficiencies result from taxpayers modifying their

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<sup>30</sup> Johnson, *supra* note 21, pp. 579-580.

<sup>31</sup> Brzeziński, *O idei uproszczenia...*, *supra* note 4, p. 334.

normal business operations to insure qualifying for the preferential treatment in taxation<sup>32</sup>.

While simplifying – for example – the taxation of income, however is theoretically possible, in practice it is to a large extent not realistic. The complex is in fact the very concept of income, which is after all a function of two economic phenomena – income and deductible expenses. Achieving a precise understanding of this requires considerable work and time. It is not the number of compartments of the tax scale and the possible use of incentives or tax exemptions which determines the complexity of the taxation of income<sup>33</sup>. John Prebble’s sentence is quite right: “The only real course of action to simplify the tax is by reaching out to simplifications in determining revenues and deductible expenses (e.g. by using the fixed, normative ratio income and expenses). In the latter case it is possible to employ techniques for estimating revenue (e.g. through the use of standards for the estimated income), or even replacing the income by tax revenue”<sup>34</sup>. The price of the simplification of income tax rules, however, is high, because it inevitably leads to an increased risk of randomness in the distribution of the tax burden.

Simplifying the tax legal structure is possible only within these limits, on which allows finesse accepted principles of taxation. Tax law – regardless of the complexity of the tax rules – may, however, be simplified in another sense: by organizing the structure of normative acts regulating taxation, by organizing the internal structure of the various laws and regulations, and by the use of understandable wording and reasonably precise terms of legal language, etc.<sup>35</sup>.

Observing the evolution of tax law justifies scepticism about the possibility of simplifying taxes and tax law. In particular, this applies to income tax. Simplifying the taxation of income can easily result in a violation of the constitutional principle of equal treatment of all citizens. On the other hand, the fact that taxpayers are increasingly global corporations means that even a slight imbalance in the tax

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<sup>32</sup> J.A. Snoe, *Tax Simplification and Fairness: Four Proposals for Fundamental Tax Reform*, Albany Law Review 1996-1997, vol. 60, p. 64.

<sup>33</sup> Brzeziński, *Uproszczenie podatków...*, supra note 4, p. 209.

<sup>34</sup> Ibidem.

<sup>35</sup> Ibidem.

(i.e. unintentional preferences or dispreferences in taxation) causes – owing to economies of scale – large differences in tax burdens). Both the first and the second are a sufficient basis for the search for new, more adequate and also more detailed rules for taxation, taking into account the need for the removal of existing disparities. Better perspective of success than in the case of simplifying economic assumptions of various taxes, although still with the limits, has attempt to simplification of the legal robes of taxation<sup>36</sup>.

It is also often argued that simplification cannot be achieved without the sacrifice of equity. The argument is that much complexity is injected into the law in order to respond to the needs of taxpayers who merit special treatment<sup>37</sup>. For example, J. Partlow wrote that a “simple and fair system” is not possible because simplicity conflicts with the systemic goals of certainty and fairness<sup>38</sup>.

Simplification of the tax system, understood as a set of existing taxes in the country can have two faces. Firstly, it can be achieved by reducing the number of taxes. Secondly, it can be achieved by limiting taxation variants of the same subject – either within individual taxes, or within a group of taxes having the same subject<sup>39</sup>.

Finally, it should be underlined that there is a strong nexus between the growth in complexity of a tax system and the compliance cost associated with it<sup>40</sup>. But one must admit that the estimation of this kind of cost in an accurate way is extremely difficult in a case of proper data or methodology<sup>41</sup>. This cost causes directly or indirectly taxpayer’s behaviour. Indirect costs can arise from distortion of business decisions, stifling of entrepreneurship, innovation, management being diverted

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<sup>36</sup> Ibidem, p. 210.

<sup>37</sup> Ibidem.

<sup>38</sup> Partlow, *supra* note 8, p. 305.

<sup>39</sup> Brzeziński, *Uproszczenie podatków...*, *supra* note 4, p. 211.

<sup>40</sup> Wallis, *supra* note 1, p. 281.

<sup>41</sup> In Australia in the nineties of the XX century, the operating cost of the tax system for business only was estimated as two per cent of Australia’s GDP. See: T. Oliver, S. Bartley, *Tax System Complexity and Compliance Cost – Some Theoretical Considerations*, Economic Roundup, Winter 2005, p. 54.

from their core business, prolonging the decision-making processes, and reducing flexibility<sup>42</sup>.

There are also at least two major barriers to tax simplification. Firstly, the current tax system is known to taxpayers and practitioners, so reform would result in transitional costs. Secondly, and perhaps more importantly, although taxpayers may desire simplification, this may be achievable only at the expense of other characteristics which taxpayers consider more important, such as equity or certainty<sup>43</sup>.

However there has been much less debate around whether a simpler tax system is likely to be more or less equitable and whether, if the system is less equitable, this will be acceptable to taxpayers<sup>44</sup>.

Finally, one should take into account the fact that tax complexity and its counterpart – tax simplification – means different things to different people. Taxpayers, tax administration, tax preparers, tax attorneys, and academics all view complexity differently<sup>45</sup>. To the average taxpayer, complexity is more likely to refer to the navigability of the tax instructions and forms<sup>46</sup>. To the tax attorney, complexity may mean that “[a] reasonably certain conclusion, in some instances, cannot be determined despite diligent and expert research”<sup>47</sup> or that “[a] reasonably certain conclusion can be determined in other instances only after expenditure that is excessive in time and dollars”<sup>48</sup>. It should also be noted, that not all tax statute provisions are addressed to all taxpayers. Consequently, the same tax act might be relatively simple for one group of taxpayers (e.g. workers or farmers) and relatively complicated for another (e.g. people doing business).

J.A. Snoe makes the sociological observation that many complaints concerning complexity arise from attorneys, accountants, and taxpayers

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<sup>42</sup> B. Banks, *The Good, the Bad, and the Ugly: Economic Perspectives on Regulation in Australia*, p. 4, cit. after: Wallis, supra note 1, p. 281.

<sup>43</sup> M. James, *Tax Simplification: The Impossible Dream?*, British Tax Review 2008, no. 4, p. 393.

<sup>44</sup> Ibidem, p. 398.

<sup>45</sup> L. Woodworth, *Tax Simplification and the Tax Reform Act of 1969*, Law & Contemporary Problems 1969, vol. 34, p. 711.

<sup>46</sup> Ibidem.

<sup>47</sup> S.I. Roberts, *Simplification Symposium Overview: The Viewpoint of the Tax Lawyer*, Tax Law Review 1978, vol. 34, pp. 5-6.

<sup>48</sup> Ibidem, p. 6.



seeking justifications and theories for a positive taxpayer result when the law and commentaries indicate a negative tax consequence. Most taxpayers seemingly would prefer the elimination of all taxes or at least prefer minimizing their personal tax liability. Thus in many cases relatively simple statements in statutes become “complex”<sup>49</sup>.

The idea that complexity is inevitable, but not all complexity is necessary, prevails. To achieve a greater aggregate equity in the system, a systematic effort to identify and eliminate unnecessary complexity needs to be undertaken<sup>50</sup>.

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<sup>49</sup> Snoe, *supra* note 32, p. 64.

<sup>50</sup> Partlow, *supra* note 8, p. 334.

