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Data: 20/11/2026 12:51:07

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The Impact of Intra-Group Relations on the Amount of the Tax on Certain Financial Institutions*

Wpływ stosunków koncernowych na wysokość podatku od niektórych instytucji finansowych

ABSTRACT

This study of a scientific and research nature concerns the structure of the tax on certain financial institutions. The essence of the subject of research as a scientific problem focuses on the assessment of the impact of intra-group relations between companies on the amount of the tax on certain financial institutions. The main objective of the paper is to analyse how intra-group relations are defined in relation to the rules for creating definitions of legal terms. A lack of proper linkage of legal and factual relations between undertakings and the tax law rules, as determined by the legal-dogmatic method and jurisprudence analysis, may lead to discriminatory or preferential differentiation. The article attempts to prove the thesis that in the light of the provisions of the Act on the tax on certain financial institutions, there is a problem of privileging groups of companies in which, in addition to a domestic entity, which is a taxpayer, members are also those having its registered office or place of management outside the territory of the Republic of Poland. The article contains legislative recommendations that should improve the provisions of the Act on the tax on certain financial institutions. Despite the fact that the article deals with a dogmatic analysis of Polish tax law, the conclusions drawn from it may be of universal importance in relation to the principle of equality understood as the obligation to treat entities in a similar situation equally, without differentiations, either discriminatory or preferential.

Keywords: tax law; financial institutions; tax on certain financial institutions, groups of companies

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Data: 20/11/2026 12:51:07

INTRODUCTION

An important role in the analysis of the regulations of the Act of 15 January 2016 on the tax on certain financial institutions[1] is played by the issue of the tax base. Particular attention should be paid to the way in which the tax base is determined for undertakings carrying out insurance, reinsurance or loan activities, provided that they are parties to an intra-group relationship. Taxpayers who are dependent or co-dependent on one entity or group of interrelated entities are required to accumulate assets when calculating the tax base and to apportion the tax-free allowance proportionately. However, the concepts of dependence, interdependence and group of interrelated entities are not defined in the provisions of the ATCFI. This gives rise to a number of doubts at the law application stage.

The study assesses the impact of intra-group relations between companies on the amount of the tax on certain financial institutions. It has therefore become necessary to analyse how intra-group relations are defined in relation to the rules for creating definitions of legal terms. A lack of proper linkage of legal and factual relations between undertakings and the tax law rules may lead to discriminatory or preferential differentiation. The study seeks to prove the assertion that in the light of the provisions of the ATCFI, there is a problem of privileging groups of companies in which, in addition to a domestic entity, which is a taxpayer, members are also those having its registered office or place of management outside the territory of the Republic of Poland. The subject of research addressed herein has not been scientifically researched and described yet, although the problem was signalled in the case law of the Polish Supreme Administrative Court.

CONSTRUCTION OF THE TAX BASE IN THE TAX ON CERTAIN FINANCIAL INSTITUTIONS

The tax base is a key element of the tax structure. As it is noted in the literature, tax base is a taxable object, specified in terms of value or quantity, which forms an element of the content of the tax factual state defined in the legislation.[2] The base as an element of the tax structure is covered by the general and abstract norm. Therefore, it is a measurable concept, which is a qualitative or quantitative

[1] Journal of Laws 2022, item 1685, as amended, hereinafter: ATCFI.

[2] See A. Hanusz, *Podatek od nieruchomości*, [in:] *Źródła finansowania samorządu terytorialnego*, ed. A. Hanusz, Warszawa 2015, p. 57; K. Cień, *Konstrukcja podatku*, [in:] *Prawo finansowe*, ed. A. Hanusz, Warszawa 2022, pp. 215–216.

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Data: 20/11/2026 12:51:07

measure applied to the taxable object.[3] By specifying the tax base, a numerical value is given to the object of taxation to which the appropriate rate can be applied, and consequently the amount of payable tax is determined. Therefore, the determination of the tax base should take into account the subjective scope of the tax determined by the legislature, as well as the specificity of a given tax.[4]

In the structure of the tax on certain financial institutions, the legislature has regulated the tax base in detail. However, the taxable object has been defined incorrectly. The taxable object of the tax on certain financial institutions pursuant to Article 3 ATCFI are the assets of entities who are taxpayers of the tax. Therefore, the ATCFI refers to the taxable object by indicating the object, and not the factual or legal state, the occurrence of which results under the legal norm in the creation of the tax obligation.[5] However, the provisions of the ATCFI do not define the concept of assets. Therefore, the legislature implicitly refers to other legal acts.[6]

As regards the concept of assets, one should refer to the definition of legal terms developed in the balance sheet law. Pursuant to the provision of Article 3 (1) (12) of the Accounting Act,[7] assets are defined as resources of a reliably estimated value, controlled by a balance sheet law entity, arising as a result of past events that will result in the inflow of economic benefits in the future. Thus, the taxable object has been defined broadly. In view of the above, the tax obligation will arise not only when the entity is the owner of property resources, but also when it exercises actual control over these resources. The definition of assets therefore focuses on whether the control is actually exercised over property resources, and not on their possession in the legal sense. This control consists in the actual holding of assets manifested in the freedom to collect and dispose of them. The objective scope of the tax on certain financial institutions covers all categories of assets, i.e. fixed and current assets, including tangible and financial assets, short-term receivables and accruals. For these reasons, the determination of the object of taxation with the tax on certain financial institutions may be considered imprecise and uncommunicative in the

[3] See H. Reniger, *Problem podstawy wymiaru w socjalistycznym podatku rolniczym okresu przejściowego*, Toruń 1963, p. 312; K. Ostrowski, *Prawo finansowe. Zarys ogólny*, Warszawa 1970, p. 149; R. Mastalski, *Ustalanie podstawy wymiaru w polskim postępowaniu podatkowym*, Wrocław 1973, pp. 58–59, 94; A. Kostecki, *Elementy konstrukcji instytucji podatku*, [in:] *System instytucji prawno-finansowych PRL*, ed. M. Weralski, vol. 3, Warszawa 1985, p. 183.

[4] Cf. P. Borszowski, Borszowski, *Pojęcie podatku i prawa podatkowego*, [in:] *Prawo podatkowe z kazusami i pytaniami*, ed. P. Borszowski, Warszawa 2020, p. 29.

[5] See K. Ostrowski, *op. cit.*, p. 146.

[6] Therefore, one should refer to the semantic element contained in the regulations referred to in the ATCFI. For implied references, see M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki*, Warszawa 2017, p. 133; A. Malinowski, *Błędy formalne w tekstach prawnych*, Warszawa 2020, p. 95, 110.

[7] Act of 29 September 1994 on accounting (Journal of Laws 2023, item 120, as amended).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:51:07

light of the provision of § 6 of the Rules of Legislative Technique.[8] Meanwhile, as emphasized in the case law, the taxable object should be clearly specified in the law so that it is possible to determine the tax base and apply the appropriate tax rate.[9]

A consequence of the imprecise determination of the object of the tax on certain financial institutions is extensive regulation of the tax base. This serves the implementation of the distribution and stimulation function typical of the tax law, which is one of the branches of financial law.[10] The tax base of the tax on certain financial institutions was expressed in a value manner. To determine the tax base, it is necessary to calculate the value of the taxpayer's assets. This value must result from the trial balance, determined on the last day of the month on the basis of entries in the general ledger accounts, in accordance with the provisions of the Accounting Act or the accounting standards applied by the taxpayer.

The comprehensiveness of regulation of the tax base in the tax on certain financial institutions is expressed in the multitude of ways of defining it. The legislature differentiated for each category of taxpayers the manner of calculation of the value of the assets and the tax-free allowance. The amount of the minimum tax-free allowance, i.e. the deduction of a certain sum of money from the tax base, depends on the type of business pursued by the taxpayer.[11] For entities providing savings-and-loan transactions, the tax base is the excess of the sum of the value of the taxpayer's assets over the amount of PLN 4 billion.[12] For entities running the insurance or reinsurance business, the tax-free allowance amounts to PLN 2 billion.[13] Lending institutions have the lowest tax minimum, which amounts to PLN 200 million.[14]

Apart from the tax minimum, the ATCFI has differentiated the way in which the value of the taxpayer's assets is calculated. The stimulus function in the provisions of the ATCFI is implemented by tax reductions. However, this function is not implemented in the same way to entities taxable with the tax on certain financial institutions.

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[8] Regulation of the Prime Minister on the "Rules of Legislative Technique" (Journal of Laws 2016, item 283). Scholars in the field rightly point out that some types of assets are taxed with multiple different kinds of property taxes, e.g. the tax on real estate and the tax on certain financial institutions. See J. Chowaniec, *Podstawa opodatkowania w podatku od niektórych instytucji finansowych*, "Co do Zasady. Studia i Analizy Prawne" 2021, no. 2, p. 56.

[9] See judgment of the Supreme Administrative Court of 17 December 2019, II FSK 183/18.

[10] See A. Hanusz, *Ogólne zagadnienia prawa finansowego*, [in:] *Prawo finansowe*..., pp. 30–31; R. Zieliński, *Selected Tax Rules in the Polish Financial Law Literature*, "Krytyka Prawa. Niezależne Studia nad Prawem" 2022, no. 3, p. 193.

[11] The tax-free minimum should be considered as a tax relief. As it is pointed out in the literature, the main purpose of the use of the construct of tax relief is to partially decrease the tax base, tax rate or amount of the tax. Cf. R. Mastalski, [in:] B. Adamiak, J. Borkowski, P. Borszowski, R. Mastalski, J. Zubrzycki, *Ordynacja podatkowa. Komentarz*, Wrocław 2017, p. 51.

[12] See Article 5 (1) in conjunction with Article 4 (1) to (4) ATCFI.

[13] See Article 5 (2) in conjunction with Article 4 (5) to (8) ATCFI.

[14] See Article 5 (3) in conjunction with Article 4 (9) ATCFI.

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Data: 20/11/2026 12:51:07

The value of the taxpayer's assets may be reduced by certain categories of balance sheet liabilities, such as equity. Entities providing savings-and-loan operations are entitled to reduce the tax base by the amount of equity determined on the last day of the month. Domestic banks, as well as branches of foreign banks and branches of credit institutions shall reduce the tax base by the value of equity within the meaning of Article 126 of the Banking Law,[15] i.e. the sum Tier 1 capital and Tier 2 capital.[16] On the other hand, credit unions are entitled to reduce the tax base by the value of equity referred to in Article 24 of the Act of 5 November 2009 on cooperative savings and credit unions.[17] These include in particular the share fund, reserve fund, revaluation reserve and unrealized gains on debt or equity instruments.[18] However, insurance and reinsurance undertakings and lending institutions have not been equipped under the currently applicable law with the right to reduce the tax base by the value of equity.[19]

In addition to the reductions in asset value by certain categories of liabilities, some entities taxable with the tax on certain financial institutions are entitled to reduce the tax base by the value of selected assets. Savings-and-loan institutions are entitled to reduce the tax base by the value of the assets enabling the deficit of public finance entities to be financed. These are primarily treasury securities within the meaning of the Public Finance Act,[20] as well as securities issued by the Bank Guarantee Fund.[21] However, the acquisition of securities issued by local authorities, public undertakings and other countries or international organisations or institutions does not give rise to a reduction in the tax base.[22] Nevertheless, from January 1, 2023,

[15] Act of 29 August 1997 – Banking Law (Journal of Laws 2022, item 2324, as amended).

[16] See Article 5 (4) ATCFI in conjunction with Article 126 of the Banking Law in conjunction with Article 4 (1) (118) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 (OJ L 176/1, 27.6.2013).

[17] Journal of Laws 2022, item 924, as amended, hereinafter: the Credit Unions Act.

[18] See Article 5 (6) ATCFI in conjunction with Article 24 (9) of the Credit Unions Act.

[19] With regard to entities running insurance and reinsurance business, it is rightly pointed out in the literature that the right to reduce the tax base by the value of equity would allow client deposits guaranteeing the solvency of these entities to remain outside the scope of taxation. See J. Głuchowski, T. Grabka, *Zasady ustalania podstawy opodatkowania podatku od niektórych instytucji finansowych w przypadku zakładów ubezpieczeń i reasekuracji*, [in:] *Problemy finansów i prawa finansowego. Księga jubileuszowa dedykowana Profesor Elżbiecie Chojna-Duch*, ed. M. Bitner, Wrocław 2021, pp. 77–78.

[20] See Article 5 (9) ATCFI in conjunction with Article 95 (1) of the Act of 27 August 2009 on public finance (Journal of Laws 2022, item 1634, as amended). Pursuant to Article 95 (1) of the Public Finance Act, treasury security should be understood as a security in which the State Treasury declares to be the debtor of the holder of such a security and undertakes a specific performance towards the latter, which may be of a monetary or non-monetary nature.

[21] See Article 5 (11) ATCFI.

[22] Individual interpretation of the Head of the National Revenue Administration of 29 March 2018, 0114-KDIP2-3.4016.1.2018.2.MS; individual interpretation of the Head of the National Revenue Administration of 21 February 2018, 0114-KDIP2-3.4016.1.2017.1.MS.

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Data: 20/11/2026 12:51:07

the tax base may be reduced by the value of securities guaranteed by the State Treasury and the value of assets resulting from the repurchase transaction referred to in Article 3 (9) of Regulation 2015/2365[23] on the transparency of securities financing transactions and reuse, involving treasury securities.[24]

On the other hand, undertakings that pursue the business in insurance or reinsurance may reduce the tax base by the value of assets accumulated under contracts for managing employee capital plans and by the value of securities issued by the Bank Guarantee Fund.[25] On the contrary, loan institutions were not granted the right to reduce the tax base by the value of selected assets.

DEFINING INTRA-GROUP RELATIONSHIPS IN THE LIGHT OF THE ACT ON THE TAX ON CERTAIN FINANCIAL INSTITUTIONS

A special method of calculating the value of assets concerns insurance or reinsurance undertakings and loan institutions, in so far as they remain a party to an intra-group relationship.[26] With regard to these entities, the legislature has decided on the accumulation of assets of taxpayers who are dependent or directly dependent on one entity or group of entities linked one with another. As has been said, these legal terms, i.e. "dependent taxpayer" or "interdependent taxpayer", are not defined in the provisions of the ATCFI. Similarly, this Act does not contain a definition of legal entities linked one with another other.

In general perspective, intra-group relationship is defined as a grouping of legally independent undertakings, actually or formally interrelated. The corporate group is a form of cooperation between undertakings who retain their legal autonomy.[27] This means that group members are independent legal entities. Group members are therefore separate, distinct form the group itself, subjects of legal relationships, including tax or balance-sheet relationships. There are two categories of corporate group structures in the literature. The first category is a grouping of undertakings related systemically, i.e. tied with equity, personal or property links.

[23] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012 (OJ L 337/1, 23.12.2015).

[24] See Article 5 (9) (2) to (3) ATCFI.

[25] See Article 5 (10) ATCFI.

[26] See Article 5 (3) and (3) ATCFI.

[27] For more detail, see B. Rieder, D. Huemer, *Gesellschaftsrecht*, Wien 2019, p. 53; J. Frąckowiak, *Jednostka organizacyjna jako substrat osoby prawnej i ustawowej*, [in:] *Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana*, eds. L. Ogiełło, W. Popiołek, M. Szpunar, Kraków 2005, pp. 906–908.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:51:07

Legal relationships between systemically related companies are actual, not formal.[28] Therefore, the groupings in question are referred to as a de facto corporation or an improper corporation.[29] The second category of business relations arises from a contract concluded between businesses. These structures are characterized by a lack of connections of a systemic nature. The legal relationship in this case does not result from factual but contractual links. In literature, such legal relationships between entrepreneurs are called contractual or formal corporations.[30]

In the ATCFI, the corporate relations between undertakings are described using the terms "dependence" and "interdependence" and "group of related entities". Therefore, in the case of those terms the legislature uses, without express reference, concepts governed by other legislative acts.[31] That legislative technique does not seem to be correct, taking into account the norm resulting from § 156 (2) of the Rules of Legislative Technique.[32] Under that provision, where the reference is made only for the sake of brevity of the text, the referring provision shall clearly mention the legal provision(s) to which the reference is made.

However, as stated above, the legislature failed to include an explicit reference in the provisions of the ATCFI. Those terms operate in different branches of law and they are defined differently.[33] This raises interpretive difficulties entailing the need to eliminate terminological ambiguity. In such a situation, the meaning of the legal term, its semantic element, must be found in the reference provisions.[34] It is therefore impossible to establish the meaning of legal terms without applying the interpretation rules, including, in particular, external systemic interpretation.

The problem of defining the concepts of dependence and interdependence and of a group of interrelated entities has been the subject of evaluation in the judicature. The case law of the Supreme Administrative Court rightly rejects the possibility

[28] Cf. M. Lutter, E. Scheffler, U.H. Schneider, *Der Konzern*, [in:] *Handbuch der Konzernfinanzierung*, eds. M. Lutter, E. Scheffler, U.H. Schneider, Köln 1998, p. 232; T. Liebscher, [in:] *Konzern- und Umwandlungsrecht. Handbuch – Mustertexte – Kommentar*, ed. W. Happ, Köln 2012, p. 277.

[29] See W. Popiołek, *Holding bankowy w świetle przepisów ustawy z 14 VI 1996 r. o łączeniu i grupowaniu niektórych banków w formie spółki akcyjnej*, [in:] *Księga pamiątkowa ku czci Profesora Leopolda Steckiego*, eds. M. Bączyk, J.A. Piszczek, E. Radomska, M. Wilke, Toruń 1997, p. 467 ff.

[30] See L. Stecki, *Koncern*, Toruń 2001, p. 243; S. Włodyka, *Prawo koncernowe*, Kraków 2003, pp. 22–23.

[31] See judgments of the Supreme Administrative Court: of 15 February 2022, III FSK 4098/21; of 24 April 2019, II FSK 285/19.

[32] It is rightly noted by scholars in the field that the multitude of legal definitions may lead to terminological inconsistency and textual and praxeological contradictions. See A. Hanusz, *Ochrona interesu publicznego w procesie stanowienia prawa finansowego*, "Przegląd Sejmowy" 2020, no. 1, p. 75.

[33] For more on the topic, see T. Gizbert-Studnicki, *Wieloznaczność leksykalna w interpretacji prawniczej*, Kraków 1978, p. 43 ff.; A. Malinowski, *Polski język prawny. Wybrane zagadnienia*, Warszawa 2006, pp. 142–143.

[34] Cf. M. Zieliński, *op. cit.*, p. 133.

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Data: 20/11/2026 12:51:07

of defining these terms on the basis of their colloquial meaning. It is assumed that the identification of taxable entities must take place according to precise normative criteria.[35] In this respect, courts refer to the principle of statutory definiteness of tax regulation resulting from Article 217 of the Polish Constitution.[36] The Supreme Administrative Court, in order to establish the meaning of terms, such as "dependence", "interdependence" and "group of interrelated entities", refers to the norms of balance sheet law. The case law indicates that when defining these terms, reference should therefore be made to the provisions of the Accounting Act. According to administrative courts, this is justified, because Article 5 (2) and (3) ATCFI refers to the Accounting Act.[37]

The provisions of the Accounting Act define such terms as a "subsidiary", a "jointly controlled entity", "interrelated entities" and "business group". It should be noted that the provisions of the Accounting Act apply to entities with their registered office or place of management in the territory of the Republic of Poland. Balance sheet law entities are collectively referred to as units. Pursuant to Article 3 (1) (39) of the Accounting Act, a subsidiary is a unit that is a commercial-law company or an entity incorporated and operating under foreign commercial law, controlled by the parent company. The parent company, together with its subsidiaries, may form a corporate group within the meaning of Article 3 (1) (44) of the Accounting Act. A jointly controlled entity, on the other hand, is a unit that is jointly controlled by shareholders under a contract, articles of association or memorandum of association concluded between them.[38] Interrelated entities, on the other hand, are two or more units forming a given corporate group.[39]

At the same time, the Supreme Administrative Court, in some rulings, emphasises important differences between tax law and balance sheet law. It is rightly noted that the objectives of the regulations of tax law and balance sheet law differ.[40] As it is known, tax law is a set of public law norms governing legal relations related to the collection and accumulation of public revenue, while tax law contains norms that allow for effective fulfillment of tax obligations, which in consequence also result

[35] See judgments of the Supreme Administrative Court: of 29 January 2019, II FSK 3243/18; of 24 April 2019, case file II FSK 285/19; of 9 December 2020, II FSK 2012/18; of 15 February 2022, III FSK 4098/21.

[36] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 10.5.2023). For more detail, see B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2012.

[37] See judgments of the Supreme Administrative Court: of 29 January 2019, II FSK 3243/18; of 29 January 2019, II FSK 3087/18; of 24 April 2019, II FSK 285/19; of 15 February 2022, III FSK 4098/21; judgment of the Voivodeship Administrative Court in Warsaw of 25 October 2019, III SA/Wa 514/19.

[38] Article 3 (1) (40) of the Accounting Act.

[39] Article 3 (1) (43) of the Accounting Act.

[40] See judgment of the Supreme Administrative Court of 9 November 2021, III FSK 127/21.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:51:07

in the stabilisation of public finance. The primary objective of tax law is therefore to protect the public interest,[41] while the essence of balance sheet law boils down to presenting the actual financial standing of an enterprise. This makes it possible to assess the profitability and liquidity of the undertaking.[42] In view of this, the case law points out that the root of the problem of defining intra-group relations involving taxpayers of the tax on certain financial institutions lies in the provisions of the Accounting Act.[43] It follows from the provisions of the Accounting Act that domestic insurance or reinsurance companies or lending institutions whose majority shareholder is a foreign company are not subsidiaries, as an entity established and operating under foreign state's laws cannot be considered a parent company.

The assumption that the ATCFI refers implicitly to the provisions of the balance sheet law in defining intra-group relations between companies also results in a breach of the directive of systemic proximity.[44] The norms of the balance sheet law are in fact classified as private law.[45] However, it should be noted that the defining norm should be applied within the branch of law in which it is placed.[46] This means that first the applicability of the concepts established in the law branch should be considered and then of those in the field of law. The use of concepts operating in the same field of law is justified by the converging methods of regulation, as well as the objectives of the norms of that field.

It is therefore necessary to search for the meaning of the terms "dependence", "interdependence" and "group of interrelated entities" in the norms of public law.[47] In relation to entities running insurance or reinsurance businesses, the relevant reference, according to the views expressed in the case law, are the provisions of the Act of 11 September 2015 on insurance and reinsurance activity.[48] The AIRA regulates the organisation and functioning of the category of entities covered by the tax on certain

[41] See A. Hanusz, *Ochrona interesu publicznego…*, p. 64, 67.

[42] In more detail on the objectives of balance sheet law, see S. Sojak, *Rachunkowość przymiotnikowa*, "Zeszyty Teoretyczne Rachunkowości" 2011, no. 62, pp. 267–268; E. Walińska, *Rachunkowość jako nauka – jej współdziałanie z dyscypliną finanse*, "Finanse, Rynki Finansowe, Ubezpieczenia" 2014, no. 66, pp. 510–513; K. Stępień, *Pojęcie i zakres polityki rachunkowości w polskich oraz w międzynarodowych regulacjach rachunkowości*, "Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie" 2019, no. 2, p. 80 ff.

[43] See judgment of the Supreme Administrative Court of 15 February 2022, III FSK 4098/21.

[44] In more detail, see P. Szczęśniak, *Stosunki zależności lub współzależności zakładu ubezpieczeń jako podmiotu podatku od niektórych instytucji finansowych. Glosa do wyroku NSA z dnia 29 stycznia 2019 r., II FSK 3243/18*, "Orzecznictwo Sądów Polskich" 2019, no. 12, p. 138.

[45] See S. Bogucki, *Komentarz do art. 5 u.p.n.i.f.*, [w:] A. Bogucki, S. Bogucki, *Podatek od niektórych instytucji finansowych. Komentarz*, Legalis 2022, side no. 13.

[46] Cf. A. Bielska-Brodziak, *Interpretacja tekstu prawnego na podstawie orzecznictwa podatkowego*, Warszawa 2009, p. 54.

[47] It is stated, both in the scholarly opinion and case law, that it would be completely wrong to assume that the taxable object is determined depending on the standards of accounting.

[48] Journal of Laws 2022, item 2283, as amended, hereinafter: AIRA.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:51:07

financial institutions.[49] Pursuant to Article 3 (1) (12) AIRA the concept of group is understood as a group of entities which includes an entity holding shares in other entities, subsidiaries of this entity, and entities in which this entity or its subsidiaries hold shares. Due to their equity links, these entities can be considered a factual corporation. The legislature allows for the creation of a group by mutual insurance companies, mutual reinsurance companies or other insurers based on the principle of mutuality, provided that they are not related by equity links, but contractually. Therefore, a group may also be established based on a contract, assuming that one of the group's entities, considered as the parent company, is entitled to manage the financial and operating policies of other entities in the group, considered as subsidiaries.

Undertakings which form a contractual corporation remaining under common management may be treated as a group of entities within the meaning of the AIRA. The legislation in question defines the concept of a subsidiary. It is an entity controlled by the parent company, i.e. an entity that exercises control over other entities within the meaning of the Accounting Act or an entity that, in the opinion of the supervisory authority, otherwise controls another entity.[50] At the same time, the AIRA does not stipulate that its provisions only apply to entities having their registered office or place of management in the territory of the Republic of Poland.[51]

DISTRIBUTION OF THE TAX-FREE ALLOWANCE BETWEEN UNDERTAKINGS LINKED WITH THE INTRA-GROUP RELATIONSHIP

The provisions of the ATCFI do not use terms that are derived directly from the Accounting Act or the AIRA. Article 5 (2) and (3) ATCFI limits intra-group relations to taxpayers only. Thus, the tax-free allowance is calculated cumulatively for all taxpayers who are dependent or interdependent, directly or indirectly, on one entity or a group of related entities. The tax bases of the taxpayers bound by an intra-group relationship are therefore aggregated and the tax-free allowance is apportioned proportionately among those entities. For example, a domestic insurance company which is not in a relationship of dependence or interdependence with other taxpayers is entitled to deduct from the value of its assets the full tax-free allowance, that is PLN 2 billion. However, the right to deduct the full amount of the tax-free allowance is not vested in a domestic insurance company which is dependent or co-dependent on other taxpayers of that tax or their group. The tax-free

[49] For more detail, see the dissenting opinion by Judge of the Supreme Administrative Court Bogusław Dauter to the judgment of the Supreme Administrative Court of 29 January 2019, II FSK 3243/18.

[50] See Article 3 (1) (15) in conjunction with Article 3 (1) (14) AIRA.

[51] The Consumer Loans Act, which is the basis for the creation and operation of lending institutions, lacks norms that define dependence, interdependence or group of interrelated entities.

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Data: 20/11/2026 12:51:07

allowance in this case depends on the ratio between the value of the assets of that company and the consolidated value of the assets of all its dependent or interdependent taxpayers.[52] This means that the tax-free allowance of PLN 2 billion is subject to a proportional allocation to taxpayers who form a corporate group structure. Such regulation was supposed to restrict the conditions for tax evasion by artificially dividing undertakings falling within the subjective scope of the tax.[53]

However, entities incorporated or having their place of management outside the territory of the Republic of Poland do not fall within the subjective scope of the tax on certain financial institutions. A foreign company which is the majority shareholder of an insurance company cannot therefore be regarded as a taxpayer of that tax.[54] An entity having its registered office or place of management abroad, as is apparent from the statutory range of taxpayers, cannot be regarded as a dependent or interdependent taxpayer.[55] The obligation to apportion the tax-free allowance thus applies only to taxpayers having their registered office or place of management in the territory of the Republic of Poland.

As rightly pointed out by scholars in the field, the relationship between legal and economic relations should have an impact on legal regulation.[56] Tax legislation may limit the dynamics of economic turnover.[57] The link between taxation and business transactions requires that the legal terminology reflects the essence of the relations between the corporate group members. However, in the provisions of the ACTFI, the relations linking undertakings are not correctly defined. This is because, as said before, a corporation involving only domestic entities is treated differently, while a corporation formed by a domestic and a foreign entity is treated differently. In the case of the latter, the tax-free allowance is not distributed between the domestic taxpayer and the foreign entity. Indeed, the domestic entity benefits from the entire tax-free allowance, despite the fact that it has a relationship of dependency or interdependency with another foreign entity or group of foreign entities.

In doing so, the assessment of the tax provisions should take into account the constitutional norms. When analysing the rules for the distribution of the tax-free

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[52] See F. Majdowski, *Podatek od niektórych instytucji finansowych – quo vadis?*, "Przegląd Podatkowy" 2016, no. 12, p. 43.

[53] For more detail, see J. Głuchowski, T. Grabka, *op. cit.*, p. 79.

[54] The case law indicates that the ATCFI is a law concerning only the entities strictly listed therein and also determining, in a special and specific way, the other elements of the tax-law relationship arising under its regulations, including the tax base for that tax. See judgment of the Supreme Administrative Court of 9 December 2020, II FSK 2012/18.

[55] In more detail, see Article 4 ATCFI.

[56] More on the topic in P. Borszowski, *Działalność gospodarcza w konstrukcji prawnej podatku*, Warszawa 2010, p. 18.

[57] Cf. idem, *An Organised Part of an Enterprise: The Legal Definition Limiting the Imprecision*, "Studia Iuridica Lublinensia" 2019, vol. 28(4), p. 9; M. do Rosário Anjos, M.J. Mimoso, *International Procedures to Resolve Dispute in Tax Law*, "Juridical Tribune" 2021, vol. 11(1), pp. 42–43.

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Data: 20/11/2026 12:51:07

allowance among taxpayers bound by an intra-group relationship, the norm arising from Article 32 (1) of the Polish Constitution should be taken into account. The principle of equality can be drawn from this provision. In the relevant literature and case law, the principle in question is perceived as an obligation to treat entities in a similar situation equally, without differentiations, either discriminatory or preferential.[58] As pointed out in the literature, tax policy serves to differentiate levies in order to achieve certain economic, political, social or demographic purposes.[59] However, the shaping of payable tax amounts should be adapted to the officially adopted value system in the state, which is reflected first of all in constitutional norms. The granting of different rights and obligations to taxpayers of the tax on certain financial institutions, in the light of the principle of equality, must be reasonably justified. This differentiation should thus result from specific constitutional norms.[60]

On the other hand, under the currently applicable legislation, a distinction is made between domestic corporate groups depending on whether their member is an entity having its registered office or place of management outside the territory of the Republic of Poland. When assessing dependence or interdependence, under the provisions of the ATCFI, only property, personal or equity relations existing between domestic entities are examined. This affects, as mentioned, the obligation to distribute the tax-free allowance among the participants in the group. The legislature thus seems to ignore the relationships linking domestic entities with foreign entities. The distinction made under the currently applicable law does not therefore appear to be justified. First of all, it is not justified by the protection of the public interest. In corporations in which, in addition to the domestic entity being a taxpayer, members are foreign entities, the tax-free allowance is not subject to distribution, which in consequence reduces the amount of tax obligation.[61] This is a significant advantage for corporations in which a foreign entity is a member.

It should also be in the public interest to ensure the free movement of goods, people, services and capital in the EU single internal market.[62] Financial markets,

[58] See judgment of the Constitutional Tribunal of 10 June 2020, K 11/18; W. Borysiak, L. Bosek, *Komentarz do art. 32*, [in:] *Konstytucja RP. Komentarz*, eds. M. Safjan, L. Bosek, vol. 1, Warszawa 2016, thesis no. 64; J. Olesiak, *Odpowiedzialność członków zarządu spółek kapitałowych za ich zaległości podatkowe jako ciężar publiczny w świetle zasady proporcjonalności z art. 31 ust. 3 Konstytucji RP*, Łódź 2020, p. 148 ff.

[59] In more detail, see A. Hanusz, *Polityka podatkowa w zakresie różnicowania obciążeń dochodów rolniczych w Polsce*, Lublin 1996, p. 264.

[60] The judgment of the Constitutional Tribunal of 3 July 2019 (SK 20/18) points to the need to assess the adopted criterion of differentiation. The criterion in question should be connected with other values, principles or constitutional norms providing a rationale for different treatment of entities in a similar factual situation.

[61] See A. Hanusz, *Ochrona interesu publicznego…*, p. 67.

[62] The internal market, pursuant to Article 26 (2) of the Treaty on the Functioning of the European Union (OJ C 326/47, 26.10.2012; hereinafter: TFEU), covers an area without internal frontiers in

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Data: 20/11/2026 12:51:07

including banking, capital and insurance markets, are also part of the internal market.[63] As provided for in Article 65 (3) TFEU, the making and application of tax legislation by a Member State of the European Union must not lead to discrimination or a disguised restriction on the free movement of capital.[64] The different treatment of corporations made of undertakings engaged in insurance, reinsurance or lending activities should therefore be criticised as not complying with EU law.[65]

CONCLUSIONS

The ATCFI treats in a special way corporations established by undertakings conducting insurance, reinsurance and loan activities. The undertakings in question are obliged under the currently applicable legislation to sum up the assets that constitute the tax base and distribute the tax-free allowance proportionally. The tax-free allowance is calculated for each of the group's participants as the quotient of the value of the taxpayer's assets and the value of assets of all dependent or co-dependent taxpayers. Pursuant to the provisions of the ATCFI, the consolidated value of assets of group members does not include the assets of members who have their registered office or place of management outside the territory of the Republic of Poland. Property, personal or equity relations existing between domestic entities are taken into account when assessing dependence or interdependence. As a consequence, corporations bringing together, apart from a domestic entity being a taxpayer, also foreign entities, are *de lege lata* privileged in the light of the provisions of the ATCFI. Favouring such corporations is unjustified. It is difficult to find rational values speaking for such differentiation of tax burdens, which in consequence should be considered as contrary to the constitutional principles of equality and free movement of capital. Therefore, *de lege ferenda* should be postulated to change the provisions of the ATCFI reckon with constitutional and EU standards. This will not be possible redefinition of relationship of dependence or interdependence in accordance with the principles of legislative technique.

which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.

[63] On the EU regulation of business regarding financial markets, see W. Srokosz, *Instytucje parabankowe w Polsce*, Warszawa 2011, p. 603 ff.

[64] More on this topic, see M. Matczyński, *Komentarz do art. 65 TFUE*, [in:] *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz*, eds. D. Miąsik, N. Półtorak, A. Wróbel, vol. 1, Warszawa 2012.

[65] According to Article 58 (2) TFEU, the liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

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REFERENCES

Literature

Banaszak B., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2012.

Bielska-Brodziak A., *Interpretacja tekstu prawnego na podstawie orzecznictwa podatkowego*, Warszawa 2009.

Bogucki S., *Komentarz do art. 5 u.p.n.i.f.*, [in:] A. Bogucki, S. Bogucki, *Podatek od niektórych instytucji finansowych. Komentarz*, Legalis 2022.

Borszowski P., *An Organised Part of an Enterprise: The Legal Definition Limiting the Imprecision*, "Studia Iuridica Lublinensia" 2019, vol. 28(4), **DOI: https://dx.doi.org/10.17951/sil.2019.28.4.9-19**.

Borszowski P., *Działalność gospodarcza w konstrukcji prawnej podatku*, Warszawa 2010.

Borszowski P., *Pojęcie podatku i prawa podatkowego*, [in:] *Prawo podatkowe z kazusami i pytaniami*, eds. P. Borszowski, Warszawa 2020.

Borysiak W., Bosek L., *Komentarz do art. 32 konstytucji*, [in:] *Konstytucja RP. Komentarz*, eds. M. Safjan, L. Bosek, vol. 1, Warszawa 2016.

Chowaniec J., *Podstawa opodatkowania w podatku od niektórych instytucji finansowych*, "Co do Zasady. Studia i Analizy Prawne" 2021, no. 2.

Cień K., *Konstrukcja podatku*, [in:] *Prawo finansowe*, ed. A. Hanusz, Warszawa 2022.

Frąckowiak J., *Jednostka organizacyjna jako substrat osoby prawnej i ustawowej*, [in:] *Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana*, eds. L. Ogiełło, W. Popiołek, M. Szpunar, Kraków 2005.

Gizbert-Studnicki T., *Wieloznaczność leksykalna w interpretacji prawniczej*, Kraków 1978.

Głuchowski J., Grabka T., *Zasady ustalania podstawy opodatkowania podatku od niektórych instytucji finansowych w przypadku zakładów ubezpieczeń i reasekuracji*, [in:] *Problemy finansów i prawa finansowego. Księga jubileuszowa dedykowana Profesor Elżbiecie Chojna-Duch*, ed. M. Bitner, Wrocław 2021.

Hanusz A., *Ochrona interesu publicznego w procesie stanowienia prawa finansowego*, "Przegląd Sejmowy" 2020, no. 1, **DOI: https://doi.org/10.31268/PS.2020.04**.

Hanusz A., *Ogólne zagadnienia prawa finansowego*, [in:] *Prawo finansowe*, ed. A. Hanusz, Warszawa 2022.

Hanusz A., *Podatek od nieruchomości*, [in:] *Źródła finansowania samorządu terytorialnego*, ed. A. Hanusz, Warszawa 2015.

Hanusz A., *Polityka podatkowa w zakresie różnicowania obciążeń dochodów rolniczych w Polsce*, Lublin 1996.

Kostecki A., *Elementy konstrukcji instytucji podatku*, [in:] *System instytucji prawno-finansowych PRL*, red. M. Weralski, vol. 3, Warszawa 1985.

Liebscher T., [in:] *Konzern- und Umwandlungsrecht. Handbuch – Mustertexte – Kommentar*, ed. W. Happ, Köln 2012.

Lutter M., Scheffler E., Schneider U.H., *Der Konzern*, [in:] *Handbuch der Konzernfinanzierung*, eds. M. Lutter, E. Scheffler, U.H. Schneider, Köln 1998.

Majdowski F., *Podatek od niektórych instytucji finansowych – quo vadis?*, "Przegląd Podatkowy" 2016, no. 12.

Malinowski A., *Błędy formalne w tekstach prawnych*, Warszawa 2020.

Malinowski A., *Polski język prawny. Wybrane zagadnienia*, Warszawa 2006.

Mastalski R., [in:] B. Adamiak, J. Borkowski, P. Borszowski, R. Mastalski, J. Zubrzycki, *Ordynacja podatkowa. Komentarz*, Wrocław 2017.

Mastalski R., *Ustalanie podstawy wymiaru w polskim postępowaniu podatkowym*, Wrocław 1973.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:51:07

Matczyński M., *Komentarz do art. 65 TFUE*, [in:] *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz*, eds. D. Miąsik, N. Półtorak, A. Wróbel, vol. 1, Warszawa 2012.
Olesiak J., *Odpowiedzialność członków zarządu spółek kapitałowych za ich zaległości podatkowe jako ciężar publiczny w świetle zasady proporcjonalności z art. 31 ust. 3 Konstytucji RP*, Łódź 2020.
Ostrowski K., *Prawo finansowe. Zarys ogólny*, Warszawa 1970.
Popiołek W., *Holding bankowy w świetle przepisów ustawy z 14 VI 1996 r. o łączeniu i grupowaniu niektórych banków w formie spółki akcyjnej*, [in:] *Księga pamiątkowa ku czci Profesora Leopolda Steckiego*, eds. M. Bączyk, J.A. Piszczek, E. Radomska, M. Wilke, Toruń 1997.
Reniger H., *Problem podstawy wymiaru w socjalistycznym podatku rolniczym okresu przejściowego*, Toruń 1963.
Rieder B., Huemer D., *Gesellschaftsrecht*, Wien 2019.
Rosário Anjos M. do, Mimoso M.J., *International Procedures to Resolve Dispute in Tax Law*, "Juridical Tribune" 2021, vol. 11(1).
Sojak S., *Rachunkowość przymiotnikowa*, "Zeszyty Teoretyczne Rachunkowości" 2011, no. 62.
Srokosz W., *Instytucje parabankowe w Polsce*, Warszawa 2011.
Stecki L., *Koncern*, Toruń 2001.
Stępień K., *Pojęcie i zakres polityki rachunkowości w polskich oraz w międzynarodowych regulacjach rachunkowości*, "Zeszyty Naukowe Uniwersytetu Ekonomicznego w Krakowie" 2019, no. 2, **DOI: https://doi.org/10.15678/ZNUEK.2019.0980.0205**.
Szczęśniak P., *Stosunki zależności lub współzależności zakładu ubezpieczeń jako podmiotu podatku od niektórych instytucji finansowych. Glosa do wyroku NSA z dnia 29 stycznia 2019 r., II FSK 3243/18*, "Orzecznictwo Sądów Polskich" 2019, no. 12.
Walińska E., *Rachunkowość jako nauka – jej współdziałanie z dyscypliną finanse*, "Finanse, Rynki Finansowe, Ubezpieczenia" 2014, no. 66.
Włodyka S., *Prawo koncernowe*, Kraków 2003.
Zieliński M., *Wykładnia prawa. Zasady – reguły – wskazówki*, Warszawa 2017.
Zieliński R., *Selected Tax Rules in the Polish Financial Law Literature*, "Krytyka Prawa. Niezależne Studia nad Prawem" 2022, no. 3, **DOI: https://doi.org/10.7206/kp.2080-1084.548**.

Legal acts

Act of 29 September 1994 on accounting (Journal of Laws 2023, item 120, as amended).
Act of 29 August 1997 – Banking Law (Journal of Laws 2022, item 2324, as amended).
Act of 27 August 2009 on public finance (Journal of Laws 2022, item 1634, as amended).
Act of 5 November 2009 on cooperative savings and credit unions (Journal of Laws 2022, item 924, as amended).
Act of 11 September 2015 on insurance and reinsurance activity (Journal of Laws 2022, item 2283, as amended).
Act of 15 January 2016 on the tax of certain financial institutions (Journal of Laws 2022, item 1685, as amended).
Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).
Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012 (OJ L 337/1, 23.12.2015).
Treaty on the Functioning of the European Union (OJ C 326/47, 26.10.2012).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 20/11/2026 12:51:07

Case law and administrative decisions

Individual interpretation of the Head of the National Revenue Administration of 29 March 2018, 0114-KDIP2-3.4016.1.2018.2.MS.
Individual interpretation of the Head of the National Revenue Administration of 21 February 2018, 0114-KDIP2-3.4016.1.2017.1.MS.
Judgment of the Constitutional Tribunal of 3 July 2019, SK 20/18.
Judgment of the Constitutional Tribunal of 10 June 2020, K 11/18.
Judgment of the Supreme Administrative Court of 29 January 2019, II FSK 3087/18.
Judgment of the Supreme Administrative Court of 29 January 2019, II FSK 3243/18.
Judgment of the Supreme Administrative Court of 24 April 2019, II FSK 285/19.
Judgment of the Supreme Administrative Court of 17 December 2019, II FSK 183/18.
Judgment of the Supreme Administrative Court of 9 December 2020, II FSK 2012/18.
Judgment of the Supreme Administrative Court of 9 November 2021, III FSK 127/21.
Judgment of the Supreme Administrative Court of 15 February 2022, III FSK 4098/21.
Judgment of the Voivodeship Administrative Court in Warsaw of 25 October 2019, III SA/Wa 514/19.

ABSTRAKT

Niniejsze opracowanie o charakterze naukowo-badawczym dotyczy konstrukcji podatku od niektórych instytucji finansowych. Istota przedmiotu badań jako problemu naukowego koncentruje się na ocenie wpływu stosunków koncernowych łączących przedsiębiorców na wysokość podatku od niektórych instytucji finansowych. Głównym celem artykułu jest analiza sposobu definiowania stosunków koncernowych na tle reguł tworzenia definicji terminów prawnych. Brak odpowiedniego powiązania stosunków prawnych i faktycznych istniejących między przedsiębiorcami z normami prawa podatkowego, jak ustalono w pracy z wykorzystaniem metody dogmatycznej oraz analizy judykatury, może prowadzić do zróżnicowań o charakterze dyskryminacyjnym lub faworyzującym. W artykule podjęto próbę udowodnienia twierdzenia, że w świetle przepisów ustawy o podatku od niektórych instytucji finansowych istnieje problem uprzywilejowania koncernów, w których oprócz podmiotu krajowego, będącego podatnikiem, uczestnikiem jest podmiot mający siedzibę lub miejsce sprawowania zarządu poza terytorium Rzeczypospolitej Polskiej. Artykuł zawiera rekomendacje normatywne, które powinny wpłynąć na poprawę przepisów ustawy o podatku od niektórych instytucji finansowych. Pomimo tego, że artykuł dotyczy analizy dogmatycznej polskich przepisów prawa podatkowego, wnioski z niego wynikające mogą mieć uniwersalne znaczenie w odniesieniu do zasady równości rozumianej jako obowiązek jednakowego traktowania podmiotów znajdujących się w zbliżonej sytuacji, bez zróżnicowań zarówno dyskryminujących, jak i faworyzujących.

Słowa kluczowe: prawo podatkowe; instytucje finansowe; podatek od niektórych instytucji finansowych; koncern