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Articles

Studia Iuridica Lublinensia vol. 33, 4, 2024
DOI: 10.17951/sil.2024.33.4.87-101

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The Concept of Sustainability from the Perspective of Tax Law

Idea zrównoważonego rozwoju z perspektywy prawa podatkowego

ABSTRACT

The article addresses the systemic findings on the tax context of the concept of sustainable development. The objective of the paper is to identify and give rationale to the systemic relationships occurring between tax law and the concept of sustainability, expressed normatively in EU law. For the purposes of the research, it has been assumed that such a relationship exists. It results from the role tax law plays in shaping the internal market of the European Union. The issues centred around sustainable development are interdisciplinary and multifaceted. Their timeliness and importance (both scientific and utilitarian) have increased in connection with the first ESG reporting period, which falls in 2024. This article is based on scientific and research methodology. The analysis employs a dogmatic-legal method for the examination of EU law, a theoretical-legal method in relation to tax law and elements of the historical method in terms of the references to the genesis and evolution of the concept of sustainable development. The issues addressed in this paper, which pertain to the systemic relationships between tax law and the normative objectives of sustainable development, constitute a component of an international scientific discourse, particularly within the context of the EU.

Keywords: sustainable development; ESG; tax law; tax incentives; sustainability reporting

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INTRODUCTION

Today's world is confronted with a range of threats unknown to past generations. If one were to enumerate the factors contributing to this situation, one would have to begin with the predatory attitude of humans towards the natural environment – an attitude that has led to climate change, natural disasters and devastating weather anomalies. In the social sphere, the most pressing issues are those of demographic and migration crises. In the economic aspect, the main threats arise from the growing disparities between extreme poverty and extreme wealth experienced by different societies. The collective impact of these threats has prompted the international community to take action with the aim of safeguarding future generations.[1] This call for action encompasses a multitude of initiatives, initiated by a diverse array of actors, including international organisations, social groups and even individuals. The range of initiatives is diverse, encompassing a variety of forms, including factual actions, the formulation of demands, manifestos, visions and plans, individual legal regulations and comprehensive normative concepts. From the perspective of the EU member states, the EU's relevant legislative actions are of paramount importance. These actions are oriented towards the implementation of sustainable development, as the concept is referred to. The concept encompasses all the values associated with environmental stewardship, the well-being of future generations and the elimination of all disparities (within society and between communities situated at different latitudes), while maintaining the advancement of the internal market based on economic and technological progress. The values of sustainable development are pursued by a number of legislative initiatives across various areas of law, including, in particular, in the public space where they are identified with the European Green Deal.[2]

The 2024 year has seen the evolving concept of sustainability enter the path of accountability, understood as a mechanism for verifying the actions of businesses from the perspective of their sustainability-oriented attitudes – sustainability reporting (ESG – environment, sustainability, governance). Consequently, the business community has now been focusing on the new reporting obligations, in themselves seen as a challenge. Sustainability reporting, on the other hand, should be perceived as a starting point when the attitudes of internal market participants begin to be formed with a view to balancing the economic with the environmental and social aspects. It is therefore to be expected that the legislator will increasingly interfere in economic

[1] In a similar spirit of concern for the future of the next generations of Europeans, see W. Nykiel, *What Can I Do for Europe?*, "Kwartalnik Prawa Podatkowego" 2023, no. 4, pp. 227–230.

[2] Communication from the Commission to the European Parliament, the European Council, the Council, the Economic and Social Committee and the Committee of the Regions – European Green Deal, Brussels, 11.12.2019, COM(2019) 640 final.

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activity at its different levels and that legislative changes will be implemented across many areas of law.

In academic and public discourse, the concept of sustainable development has been predominantly situated within the context of environmental protection and climate change. Furthermore, the systemic approach predominantly concentrates on the economic dimensions of the transformation. The legal perspective, however, continues to be less considered. There are few studies dedicated to the role of tax law amid the challenges brought about by the pursuit of sustainable development.

The article is concerned with systemic findings on the tax context of the concept of sustainable development. The paper is based on scientific and research methodology. The analysis employs a dogmatic-legal method for the examination of EU law, a theoretical-legal method in relation to tax law and elements of the historical method in terms of the references to the genesis and evolution of the concept of sustainable development.

The issues centred around sustainable development are interdisciplinary and multifaceted. Although it is already the subject of academic debate, the timeliness and importance of the issue (from both a scientific and a utilitarian perspective) increases further with the first ESG reporting period falling in 2024. The issue of the interrelationship between tax law and the normative objectives of sustainable development, which is addressed in this paper, is a matter of scientific discourse at the international level, particularly within the EU.

The objective of the paper is to identify and give rationale to the systemic relationships occurring between tax law and the concept of sustainable development which finds its normative expression in the EU law. The paper puts forth the argument that such a relationship exists. This is due to the function of tax law in the formation of the internal market of the European Union. In order to prove the argument, the following assumptions were made:

1. A circumstance that makes the need for research on tax law in the context of sustainable development so valid is ESG reporting obligations. From the perspective of entrepreneurs, these obligations facilitate the integration of the concept of sustainable development and render it realistic. This is because the implementation of these regulations will affect the market position of entrepreneurs who will have to face organisational and financial challenges.
2. Sustainability reporting obligations should be analysed within the wider context of the entire concept of sustainable development and corporate social responsibility (CSR).
3. It is imperative that reporting obligations are not solely associated with the disclosure requirements, but rather they should be primarily linked to the actual activities undertaken by businesses to foster sustainable development.
4. An analysis of sustainability reporting obligations should be conducted through the lens of the specific conditions pertaining to the EU internal market.

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ESG – CONCEPT AND LEGAL FRAMEWORK

The legal framework for corporate sustainability reporting is set out in Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting[3] and Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards.[4] The CSRD entered into force on 5 January 2023. Member States were required to implement it by 6 July 2024. The Regulation entered into force on 1 January 2024. The first sustainability reporting year is 2024.[5]

The first step in the process of formalising sustainability performance is sustainability reports. The disclosure of information in a standardised format on companies' sustainability is necessary to evaluate their impact on sustainable development. Furthermore, the disclosure of information on how sustainability affects companies' growth, performance and situation is essential as well.[6] In their reporting, businesses are required to disclose information on significant impacts, risks and opportunities relevant to sustainable development in environmental protection, social policies and governance.[7]

The concept of reporting cannot be analysed in isolation disregarding the broader context of civilizational changes and how the European Union has responded to them. One should bear in mind that reporting is a component of a wider concept of sustainability.[8] This, in turn, represents a further step towards fostering CSR, i.e. an attitude in which the pursuit of business interests takes into account the impact of the enterprise on the social and natural environment. The CSR concept has been

[3] OJ L 322/15, 16.12.2022, hereinafter: CSRD.

[4] OJ L 2023/2772, 22.12.2023, hereinafter: the Regulation.

[5] Article 2 of the Regulation.

[6] Recital 1 of the Regulation preamble.

[7] Annex 1 to the Regulation, ESRS 1, Objective, paragraph 1.

[8] Recital 1 of the CSRD preamble, in which, with regard to sustainability reporting, the legislator first refers to the principles of the European Green Deal: "(1) (…) The Green Deal is a new strategy for the economic growth of the Union. It aims to transform the Union into a modern, resource-efficient and competitive economy with zero net greenhouse gas emissions by 2050. It also aims to protect, preserve and enhance the Union's natural capital and safeguard the health and well-being of the Union's citizens from environmental risks and negative impacts. The Green Deal aims to decouple economic growth from the use of natural resources and ensure that all regions and all citizens of the Union participate in a socially just transition towards a sustainable economic system in which no person and no place is left out. It will contribute to the goal of building an economy that serves people, strengthening the Union's social market economy and ensuring that it is ready for the future and provides stability, jobs, growth and sustainable investment".

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a trend-setter in contemporary business for years, calling for reconciliation between the pursuit of business objectives and the external environment – society and the natural environment. This approach was brought about by a paradigm shift in economic sciences, a shift from profit-maximising economics to the economics of sustainable development.[9] As part of the implementation of the CSR concept, entrepreneurs must engage in a range of activities that eliminate the negative while enhance the positive impacts of their businesses on the environment (society and the natural environment).

The development and formalisation of the sustainability concept will put a requirement on entrepreneurs to intensify their activities, potentially even modifying their business management strategy, in order to accommodate social and environmental aspects. Subsequently, the reporting of these activities (ESG report) will serve as a criterion for assessing and comparing businesses and thus may influence their market position (consumer choices, the ability to obtain credit, prospects for cooperation with contractors). Such competitiveness measured by companies' performance in the spirit of social responsibility is a value pursued by the EU legislator. This process should be further consolidated and fostered while its drive and guarantee should be ensured by the sustainability reporting obligation based on equal standards under the CSRD and the Regulation.

FROM REPORTING TO AGENCY

In order to define the challenges posed by the ESG obligations it is necessary to adopt a broader perspective. First of all, one should refer to the anticipated – not only by the EU legislator but also the entire international community – transformation in the economic sphere. It would be erroneous to view sustainability reporting and accountability in terms of business activities as an end in themselves. It is a means of effecting change in business standards and culture. The desired effect of reporting is not merely to disclose a range of information aggregated in a standardised form; rather the objective is an entrepreneurship (an economic development) that is in balance with the welfare of the external environment, i.e. social and natural environment. The first formal stimulus in this regard is the reporting obligation and the perspective of gaining market power contingent on whether enterprises fulfil the sustainability standards.[10] Having to report on specific topics related to the enter-

[9] See a more in-depth discussion of the topic in M. Kubala, *Koncepcja ESG jako próba odpowiedzi na potrzebę zmian w naukach ekonomicznych*, "Zeszyty Naukowe Polskiego Towarzystwa Ekonomicznego w Zielonej Górze" 2023, no. 18, pp. 98–108 and the literature cited therein.

[10] Similarly, with regard to CSR, it is emphasised that reporting cannot be an end in itself, but is to be a step towards tax transparency. See R. Knuutinen, M. Pietiläinen, *Responsible Investment: Taxes and Paradoxes*, "Nordic Tax Journal" 2017, no. 1, p. 140.

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prise's activity should foster the desired attitudes and actions in these areas among the entrepreneurs. This is the legislator's expectation as set forth in the CSDR preamble. The direction of the relevant activities is explicitly delineated in the ESG reporting standards set out in the Regulation. Giving prominence to the ESG reports across different spheres of economic circulation (e.g. in terms of consumer choices or credit availability) creates a form of self-regulatory mechanism. This is due to the actual cost-effectiveness of a business strategy which, when reported in accordance with the ESG standards, will ensure a high sustainability rating for the company. Therefore, one could argue that reporting is a means of ensuring agency (actions) in the sustainability performance. It is thus evident that this obligation should be regarded as a legal instrument that will facilitate economic transformation within the EU internal market. This transformation is supposed to bring benefits to the public (including especially future generations), as well as to the states, which, while fulfilling numerous responsibilities (e.g. environmental protection), will to some extent be relieved or supported by private initiatives. Furthermore, what constitutes a public benefit, also constitutes an expense and a burden for the private sphere, i.e. those entities that are subject to the ESG reporting obligations. The redistribution of resources driven by the sustainability mechanisms is therefore not without an impact on the internal market operations and its actors. Of particular relevance is here the fact that the transformation driven by the reporting obligations will represent a real cost affecting the company's bottom line. While there is widespread openness in the public discourse about the benefits arising from the economic transformation, the ongoing costs and burdens associated with it give rise to a legitimate concern. Overcoming resistance to change is largely dependent on systemic support for ongoing activities, with tax law playing an important role in this respect. One should not forget that tax law and its harmonisation are essential in creating and sustaining the internal market. Moreover, the concept of sustainable development should be closely linked to this market.

SUSTAINABLE DEVELOPMENT AND THE EU INTERNAL MARKET

In order to gain an accurate understanding of the idea behind the ESG reporting, it is crucial to set it against a broader context made up of the issues relating to the internal market of the European Union. The normative concept of the ESG is part of the EU legal system as a whole, including in particular the systemic relationships within the internal market regulations. In the CSRD preamble, the legislator emphasises the importance of sustainable development for the development of the EU economy. The values which the sustainability concept, being the effect of CSRD, serves are "the economic growth of the Union" and "strengthening the

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social market economy".[11] The accountability deficit of sustainability measures is assessed as a threat to the "effective functioning of the social market economy".[12] In turn, ensuring the standardisation of ESG reporting has been assessed by the EU legislator as a contribution to the "European public good".[13]

In terms of its substantive aims, the CSRD is based on the European Union's existing acquis on the subject of fostering an attitude of social responsibility among participants of the internal market. Already in the opening passages of the preamble, the EU legislator makes reference to the Communication of 11 December 2019 entitled European Green Deal. It is emphasised that the "Green Deal is a new strategy for the economic growth of the Union. It aims to transform the Union into a modern, resource-efficient competitive economy with zero net greenhouse gas emissions by 2050".[14]

The EU legislator thus projects the evolution of the internal market in a convention of economic growth, strengthening the values of the social market economy and respecting the acquis of the European Union in general, including in particular the creation of a common market based on free competition and market freedoms. Hence, it should be made quite clear that the global trend (of which the European Union is both an important participant and creator) in the field of socially responsible business and sustainable development does not displace the idea of a common market, but rather strengthens and transfers it to a new, higher level – that of sustainability.

In line with the sustainability concept, the attention of the EU legislator focuses not only on the market in general but also (if not primarily) on the situation of its participants: individual citizens, savers, investors, etc.[15] It is crucial that the legislator also acknowledges the financial burden and organisational commitment

[11] Recital 1 of the CSRD preamble.

[12] Recital 14 of the CSRD preamble.

[13] Recital 39 of the CSRD preamble.

[14] Recital 1 of the CSRD preamble.

[15] Recital 9 of the CSRD preamble: "The ultimate beneficiaries of better sustainability reporting by entities would be individual citizens and savers, including trade unions and employee representatives, who would be adequately informed and able to better participate in the social dialogue. Savers who want to invest sustainably would have the opportunity to do so, while all citizens would benefit from a stable, sustainable and inclusive economic system. To achieve such benefits, sustainability information disclosed in entities' annual reports must first reach two main user groups. The first user group is investors (…). The second group of users are civil society actors, including NGOs and social partners, who want to hold entities more accountable for their impact on people and the environment. Other stakeholders can also benefit from sustainability information disclosed in annual reports, in particular to promote comparability between and within market sectors. Business partners of entities, including customers, can rely on sustainability information to understand sustainability risks and impacts, and report them through their own value chains if necessary. Policy makers and environmental agencies can use such information, particularly in aggregate, to monitor environmental and social trends, contribute to environmental accounts and shape public policy".

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of those striving to align their operations with sustainability principles. These are the entities on which ESG reporting obligations have been imposed, thereby implicitly obligating them to undertake the actual follow-up activities, which are then disclosed as part of the reporting. The thesis that the implications of ESG reporting for businesses have been recognised is derived from the so-called double materiality perspective.

The global trends in business and the new approach in economics (which involves replacing the profit-based and profit-maximisation approach with the economics of sustainable development) have been a significant driving force behind the attitudes of socially responsible economic activity for many years. Nevertheless, the imposition of sustainability reporting obligations on a diverse range of entities (initially only on the largest ones, but in accordance with the value chain concept, essentially all entities will eventually be involved) not only determines actual actions but may even lead to changes in the company's policy at multiple levels. This, in turn, represents not only the need for mental, organisational and factual changes, but also generates additional costs. These are both direct (expenses) and indirect costs understood here as a profit lost as a result of economic choices made in favour of non-financial (environmental, social) values. However, the EU legislator does not lose sight of the essential features of entrepreneurship and expresses them through a dual materiality perspective. Referring to the reporting obligations, the legislator explains that "entities are required (…) both to report information on the impact of the entity's activities on people and the environment, and information on how sustainability issues affect the entity. Such a situation is referred to as a dual materiality perspective (…)."[16]

In light of this, it should be assumed that sustainable development already in its very name brings together two values: the economic development of the European Union's internal market and respect for the enterprise's external environment (environmental and social sphere). Accordingly, the benefits enjoyed by the external environment resulting from the entrepreneur's activity should be balanced with the costs of that activity. These costs are borne first by entrepreneurs and then by consumers, who have to bear a portion of these costs through the prices of goods and services. Managing to balance the anticipated benefits of sustainable development in the future with today's unwanted costs is a fundamental and real challenge that must be faced now. This dilemma not only stirs the discourse in the public space, but primarily poses a challenge to the legislator. Only by balancing these two aspects, or at least reducing the discrepancies between them, can the European Union achieve its economic growth objectives.

The international community's expectations, as expressed in the normative concept of sustainable development, provide a clear vision of the efforts that must be made to ensure the welfare of future generations. In contrast, the focus of the

[16] Paragraph 20 of the CSRD.

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aforementioned undertakings is on the immediate financial costs associated with the realisation of this vision. The benefits to be reaped in the future generate a burden in the present. What offers a guarantee that the initiative will be successful is a correct perception of the roles played by the policy makers (EU and Member States) and entrepreneurs, as well as all those burdened by the ESG reporting obligations. The new expectations placed on the market participants should be followed by a revision of the legal environment in which they operate. The new values (derived from the sustainability concept) will also have an impact on the application and interpretation of the law, including tax law.

THE TAX CONTEXT

Establishing a direct link between the concept of sustainable development and the internal market of the European Union raises a question as to the role of tax law in this context. The pivotal function of tax law in establishing and sustaining a viable internal market underscores its indispensable role in actualizing the sustainability concept. Therefore, the literature highlights the significance of the tax context within the framework of corporate social responsibility, while also emphasising the diversity of definitions applied to the tax context in this regard.[17] The question of how tax law relates to CSR concepts and sustainable development is undoubtedly a significant area of research and a challenge that the European Union and its Member States must confront. Given that the EU's measures in the field of sustainable development originate in global trends, it seems reasonable to posit that similar challenges and experiences apply to the entire international community involved in the concern for the sustainability of economic, environmental and social values.

The values of sustainability are, in the first place, associated with the attitude espoused by a reliable taxpayer. Hence, in the literature, the analysis of sustainability in the context of tax law focuses on the aspects involved in tax avoidance.[18] There is no question that the notion of tax transparency forms a part of ethical attitudes, broadly defined, shaping businesses, corporate culture, etc.[19] The model

[17] See, e.g., R. Knuutinen, M. Pietiläinen, *op. cit.*, p. 136. The authors also review research on the relationship between CSR and taxes. They note that academic research on this topic pursues different perspectives and approaches. These studies are most often situated at the interface between law and economics, as well as philosophy (ethical and moral issues of entrepreneurs).

[18] Such a context is emphasised, e.g., by J. Fonseca, *The Rise of ESG Investing: How Aggressive Tax Avoidance Affects Corporate Governance & ESG Analysis*, "Illinois Business Law Journal" 2020, vol. 25.

[19] On tax transparency issues in the context of CSR, see M. Karwowski, *Wymiar podatkowy społecznej odpowiedzialności biznesu, w tym koszty CSR i ich ujęcie w rozliczeniu podatku dochodowego*, "Zeszyty Teoretyczne Rachunkowości" 2023, no. 3, p. 50 ff. and the literature cited therein.

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of an entrepreneur acting in the spirit of sustainable development would, to the greatest extent, correspond to those entrepreneurs who are reliable taxpayers. Consequently, they engage with mechanisms aimed at redistributing public funds on the basis and within the limits of tax law.

While the reasoning behind the above reflection cannot be disputed, it brings to mind another question. Can actions performed in the spirit of sustainable development be equated solely with the fulfilment of obligations imposed by the law? These obligations are incumbent upon market participants irrespective of the fact that the market is entering a new stage of its development (sustainability stage). It is hard not to agree with the view that meeting tax obligations is a minimum requirement for fulfilling one's responsibility, "and any action beyond mere compliance is a bonus".[20] In light of the need to alter the entrepreneurial paradigm and have it oriented towards sustainable activities, the legislator's focus should be directed on this "bonus". So, if compliance with the law is the minimum, then by extension, what "is the 'good thing' above it? Does it mean more taxes or more information?".[21]

Two further themes crystallise around the response to this question. They correspond to two other aspects of the tax issue in the context of sustainable development. The first one is related to the demand calling for additional information obligations imposed on taxpayers. This is primarily concerned with including the tax aspect in the sustainability reporting regime. This would entail that, upon meeting one's tax obligations, this should qualify as an element of corporate governance, while the reliability of tax payment would serve as a criterion for assessing a socially responsible taxpayer. Including the tax aspect in the reporting regime is equated with maintaining social legitimacy, and this requires that actual measures be taken to communicate that the entrepreneur is paying "its fair share" of taxes.[22] This is why including a tax transparency element in the ESG reporting regime is advocated.[23]

The second issue concerns the imposition of supplementary levies. To date, the new taxes and charges have been the primary means of financing the implementation of sustainable development measures. This effective financial instrument is primarily deployed in the environmental sphere. Taxes and charges serve a variety of functions in this context. Either as a means of implementing the polluter-pays principle or as an instrument shaping consumers' environmental attitudes and choices while simultaneously discouraging economic activities that jeopardise sustainability. To a lesser extent, the new levies appear to be an adequate instrument for implementing the sustainability concept in the social and corporate governance areas.

[20] R. Knuutinen, M. Pietiläinen, *op. cit.*, p. 140.

[21] *Ibidem*.

[22] L. Menicacci, L. Simoni, *Negative Media Coverage of ESG Issues and Corporate Tax Avoidance*, "Management and Policy Journal" 2024, vol. 15(7), p. 3.

[23] *Ibidem*, p. 22.

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These aspects pertaining to the role played by the tax law in the context of sustainable development have a common denominator. Both the additional information obligations (reporting) and the additional levy burdens serve to foster the attitudes of the internal market actors by imposing additional obligations and burdens. Such instruments can be classified as negative policies, understood as restrictions or additional burdens placed on activities that are deemed undesirable. In addition to other restrictions, such as technological limitations on production processes, they serve to influence entrepreneurs' activities by implementing a system of burdens, prohibitions and regulations. These mechanisms are likely to succeed only as an instrument for eliminating activities, developments and processes that are undesirable from the point of view of sustainability. Such measures fail to provide a broader scope for entrepreneurs to pursue independent initiatives, including independent activities (agency) aimed at benefiting the external environment beyond the enterprise.

A different role is played by a variety of incentives designed for entrepreneurs to undertake independent actions with the objective to put the concept of sustainability into practice. This part of entrepreneurial activity undertaken in the spirit of sustainability is of particular significance.[24] Incentives and other forms of support can be classified as instruments of positive policy, i.e. measures designed to encourage individuals to engage in activities that extend beyond the payment of taxes and refrain from actions that have a detrimental impact on the climate, the environment and energy resources. Incentives are essentially direct financial support for entrepreneurs, as well as tax incentives (reductions, exemptions and other tax preferences). Tax incentives should take a central place in the ESG research. The argument is that the future of ESG measures centres precisely around the creation of friendly conditions for entrepreneurs, who, through the tax incentives, will be enabled to consider the socio-economic environment while maintaining or even enhancing their financial outcomes. Here the tax law solutions are perceived as giving far more of an opportunity than subsidising the entrepreneurs directly.[25]

[24] On the subject of successive information obligations imposed on taxpayers in the spirit of the idea of transparency and on far more effective tax incentives in the context of the concept of corporate social responsibility, see more extensively D. Antonów, *Koncepcja odpowiedzialności społecznej podatników podatku dochodowego od osób prawnych*, [in:] *Księga Zjazdu Katedr i Zakładów Prawa Finansowego i Prawa Podatkowego. Misja prawa finansowego – wyzwania współczesności*, eds. E. Feret, P. Majka, Rzeszów 2023, pp. 18–19.

[25] On the importance of tax solutions for the implementation of the idea of ESG are mentioned, among others, by N. Zhu, Y. Zhou, S. Zhang, J. Yan, *Tax Incentives and Environmental, Social, and Governance Performance: Empirical Evidence from China*, "Environmental Science and Pollution Research" 2023, vol. 30; S.E. De Falco, R. Montera, S. Leo, F. Laviola, P. Vito, D. Sardanelli, G. Basile, G. Nevi, R. Alaia, *Trends and Patterns in ESG Research: A Bibliometric Odyssey and Research Agenda*, "Corporate Social Responsibility and Environmental Management" 2024, vol. 31(5); A. Mar-

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Tax incentives represent an alternative to the solutions involving additional tax and administrative burdens. The failure of the latter arises largely from public resistance and negative connotations. Indeed, one could highlight a certain paradox here in that if the level of entrepreneurial responsibility is determined by higher taxation, this means less profit for entrepreneurs.[26] Moreover, a reduction in profit has the potential to undermine the rationale of running a business, while having a detrimental effect on the desired balance between economic (i.e. economic growth) and social and environmental values. It seems more appropriate to propose tax solutions that could potentially influence the goals of entrepreneurs, which in turn could lead to a shift in their ESG actions.[27] These instruments will not only encourage entrepreneurs to adopt positive attitudes towards initiatives displaying sustainable development values, but they will also prove to be the most effective in creating a new entrepreneurial culture. This additional value should be associated with activities that extend beyond the mere fulfilment of tax obligations. The tax incentive mechanism should also be seen as an instrument deployed to ensure the balance between economic development and social and environmental values. It seems probable that the financial outlay made by entrepreneurs in pursuit of social and environmental objectives will be reflected in the tax result, thereby alleviating the financial burden on the company. This corresponds to the concept of balancing the two values: respect for the environment (natural, social, economic), businesses and their profitability. This balance is intended to go hand in hand with a further growth of the internal market and enhancement of its competitiveness. The tax systems of the Member States, as well as EU tax law, should create opportunities in which the outlay on activities – voluntary – remains attractive from a tax perspective and mitigates the discrepancy between the benefits of the future and the costs of the present.

All the projected or postulated alterations to the tax law should proceed along two tracks. It is imperative that the legislative changes are accompanied by the evolution of the tax law interpretation. Appropriate standards of application and interpretation of law serve to guarantee the effectiveness of the legislative changes. The tax law-making process unfolding in the context of achieving sustainability

tiny, J. Taglialatela, F. Testa, F. Irlando, *Determinants of Environmental Social and Governance (ESG) Performance: A Systematic Literature Review*, "Journal of Cleaner Production" 2024, vol. 456.

[26] R. Knuutinen, M. Pietiläinen, *op. cit.*, p. 148.

[27] This is illustrated by an example concerning car manufacturers. Assuming that the environmental impact of a vehicle cannot be reliably measured, regulators believe that electric cars are greener than gas-powered cars. Then, instead of trying to directly regulate the environmental impact of manufactured products, regulators can indirectly improve the environmental impact by increasing (reducing) income taxes for gas (electric) car manufacturers. This example is cited by J. Bonham, A. Riggs-Cragun, *Motivating ESG Activities through Contracts, Taxes and Disclosure Regulation*, "Chicago Booth Research Paper" 2022, no. 22-05, p. 25.

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will ultimately determine the interpretation of that law. This refers to an axiological argument which takes into account these values.

CONCLUSIONS

The concept of sustainable development is present in the public discourse worldwide. The European Union is a key contributor to the development of this concept. Through sustainability reporting, a paradigm shift is taking place in businesses across the EU single market. There is an evolving discourse with respect to the ideas, demands and individual legislative actions undertaken in different areas of the legal system. Furthermore, the notion of holding entrepreneurs accountable for the tangible costs associated with economic transformation is also undergoing a process of evolution. As a new information obligation, ESG reporting implements and makes the concept of sustainable development more familiar. The obligation to report on the impact on the natural and social environment exerted by an entity has become a reality, with the information obligation determining actual actions.

The entry of the EU's internal market into a new phase of sustainable development entails a number of changes for the market participants. Tax law obligations are integral to the functioning of this market. As such, this law should be incorporated in the implementation of the concept of sustainable development. The analysis of the concept conducted from the tax law perspective corroborates the assertion that there are systemic relationships between sustainability and tax law. In order to fully comprehend the role of tax law in this context, one needs to be aware of the essential features of sustainable development (its genesis and evolution). Furthermore, it is crucial to discern accurately the function of ESG reporting (i.e. triggering specific factual activities) and accept the impact this concept has on the market and entrepreneurs (being informed as to the costs of the economic transformation).

In light of the above assumptions, one is left with no doubt as to the importance of tax law and the role it can play in the implementation of sustainability. This provides a rationale for conducting in-depth research into the tax aspects present in the internal market evolution driven by sustainability. This also defines legislative demands. The role of tax law in this respect can be discussed in terms of the burdens and constraints (negative policy), such as reporting obligations and a greater tax burden arising from the need to fulfil the non-fiscal functions of taxation (mainly in the environmental sphere). Of critical importance, however, is the use of tax law as an instrument encouraging activities that foster sustainable development. This role, perceived as the key role of tax law, is the focus of the final conclusion. Furthermore, a review of the tax systems in place with a view to creating bonus mechanisms for entrepreneurs who adopt a strategy based on sustainability appears both justified and necessary. The provision of actual support in the form of tax preferences is

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a key factor in fostering such initiatives. Their attractiveness and effectiveness result from the inclusion of real (quantifiable) financial benefits in the tax base calculation. Tax incentives have a broad spectrum of application, in any form of taxation. They are conducive to devising a long-term enterprise policy, which in turn contributes to the formation and consolidation of a new entrepreneurial culture. The effectiveness of such instruments largely depends not only on good law-making, but also on its application and interpretation. Therefore, the revision of the tax system in accordance with the principles of sustainable development must be accompanied by a transformation in the culture of tax administration. In particular, this refers to the incorporation of novel values (sustainability values) in the tax law interpretation process. These values should serve as the foundation and motivation for integrating sustainability-oriented solutions into the tax system, subsequently providing an axiological context for the appropriate interpretation of this legislation. This way of looking at tax law at a time of moving towards sustainable development should be considered one of the most pertinent instruments for mitigating the ongoing costs associated with this transformation.

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ABSTRAKT

Artykuł poświęcony jest ustaleniom systemowym na temat kontekstu podatkowego idei zrównoważonego rozwoju. Celem jest wskazanie oraz uzasadnienie relacji systemowych zachodzących pomiędzy prawem podatkowym a ideą zrównoważonego rozwoju znajdującą swój wyraz normatywny w prawie unijnym. Na potrzeby przedmiotowych badań przyjęto tezę o istnieniu takiej relacji. Wynika ona z roli prawa podatkowego w kształtowaniu rynku wewnętrznego Unii Europejskiej. Problematyka zrównoważonego rozwoju ma charakter interdyscyplinarny i wielowątkowy. Jej aktualność i waga (zarówno naukowa, jak i utylitarna) wzrasta w związku z przypadającym w 2024 r. pierwszym okresem sprawozdawczym w zakresie ESG. Artykuł ma charakter naukowo-badawczy. Zastosowano metodę dogmatyczno-prawną w zakresie analizy aktów prawa unijnego, metodę teoretyczno-prawną w zakresie, w jakim badania odnoszą się do instytucji prawa podatkowego, a także elementy metody historycznej w zakresie odniesień do genezy i ewolucji idei zrównoważonego rozwoju. Podjęta w artykule problematyka relacji systemowych prawa podatkowego z założeniami normatywnymi zrównoważonego rozwoju wpisuje się w dyskurs naukowy o charakterze międzynarodowym, w tym zwłaszcza unijnym.

Słowa kluczowe: zrównoważony rozwój; ESG; prawo podatkowe; zachęty podatkowe; sprawozdawczość w zakresie zrównoważonego rozwoju