

# Taxation of Clergymen Revenues from Pastoral Services – an Attempt of Estimation<sup>1</sup>

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## Abstract

**Purpose:** The purpose of this paper is to attempt a comprehensive evaluation of the legal regulations within the Polish tax system regarding taxation of clergymen revenues from pastoral services<sup>3</sup>.

**Methodology:** Undertaking and accomplishing the purpose of this paper has been possible by analyzing the Polish literature on the subject as well as the relevant legal acts. For the purpose of this paper also empirical materials have been used, in the form of a report on the finances of the Catholic Church, the contents of which were used to formulate the conclusions *de lege ferenda*. The main research method used in the present study was the legal dogmatic method, which involves an analysis of the applicable regulations within the Polish legal system in the field of taxation of clergymen revenues from pastoral services. Additionally, the basic methods of statistical data presentation were used in the form of tables.

**Findings:** The applicable legal regulations within the Polish tax system regarding taxation of clergymen revenues obtained from performing their pastoral services require an urgent and comprehensive reform. For these are normative solutions that contradict the basic principles of taxation (especially the postulated for more than two centuries principles of equality and justice in taxation), which should form the basis for a properly determined object of taxation, and therefore they do not fulfill the by the legislature assigned functions.

**Research implications:** Presented ideas for changes in the currently in Poland adopted lump-sum taxation system of clergymen revenues could constitute a starting point for the developers of the tax reform for further discussion on the desirable directions of reform in the field of personal income taxation in Poland.

**Originality:** In the paper the Author points out that in the ongoing public discussion on the optimal method of taxation of personal income relatively little attention is given to issues concerning the taxation of personal income obtained from pastoral services. Thus, the present study, summarizing the existing achievements of the Polish doctrine of financial law in this field, constitutes a voice in the discussion on this subject and at the same time puts forward concrete proposals for changes in the current legal regulation of taxation of the clergy, which could serve as an inspiration for the developers of the tax reform in Poland.

**Keywords:** income tax, lump sum, clergy, revenue, simplified tax forms

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<sup>3</sup> It needs to be emphasized that the in this paper presented considerations, as well as the formulated conclusions *de lege ferenda*, refer to the taxation of clergymen of the Catholic Church, despite the fact that these normative regulations also apply to the taxation of clergymen of other Christian Churches as well as religious communities that are legally recognized by the State.

## Introduction

In recent months, there is an ongoing public debate on the need for and directions of a reform of the principles of personal income tax that are applicable within the Polish tax system. However, in this discussion there is little room for or attention paid to the legal regulations governing the principles of taxation of clergymen revenues obtained from performing their pastoral functions, for which the basic form of taxation is lump-sum taxation of clergymen revenues<sup>4</sup>. Meanwhile – as it seems – these regulations require an urgent and thorough revision, because, among other things, they are in conflict with the fundamental tax principles, such as equality and justice in taxation, as well as with the so-called principle of social justice (for more information on tax rules and regulations see, for example: Gomułowicz (2001); Gomułowicz (2010, p. 99–130); Kosek-Wojnar (2012)).

## The Nature and Circumstances of Applying Lump-Sum Forms of Taxation

Even though lump-sum tax is an institution that has long been applied in the Polish tax law system, it does not have a uniform nature (see, for example: Babiarz et al. (2012); Dębowska-Romanowska (1992), Zieliński (2009)).

In the literature on the subject attention is drawn to the fact that it can be an institution of both material and formal tax law (Mastalski and Zubrzycki, 1998, p. 27). Lump-sum tax – as an institution of formal tax law – constitutes one of the forms of assessing the amount of tax provision, based on which the amount of tax due is determined without establishing an individual tax base for each taxpayer (see: Ostrowski, 1970, p. 152). Within the framework of this type of lump-sum tax, the tax base is determined in a general and approximate way, according to uniform criteria for all taxpayers, laid down in the provisions of the material tax law. Consequently, the characteristic feature of lump-sum tax is the fact that it is not intended to determine all the elements necessary to calculate the amount of the actual financial burden. Determining a lump sum means determining the amount of a given provision (e.g. salary, payment, tax) without calculating it into detail and without determining the actual revenues and expenditures (*Słownik...*, 1989, p. 151). Therefore, in procedural terms, lump-sum tax is a special technique and form of imposing the amount of tax receivable within the framework of the existing tax or a number of taxes together, where the calculation of the tax receivable is performed without determining the tax base in accordance with

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<sup>4</sup> See chapter four of the Act of 20 November 1998 on Lump-Sum Income Tax on Certain Incomes Earned by Natural Persons (Journal of Laws No. 144, item 930, as amended), hereinafter abbreviated as “LSIT”. It should be added here that, based on choice, the income of clergymen obtained from performing their pastoral functions can also be subject to income tax on the so-called general principles of the progressive tax scale, together with income obtained from other sources, such as employment contracts, civil law contracts, etc. (see the Act of 26 July 1991 on Personal Income Tax, consolidated text – Journal of Laws from 2012, item 361, as amended, hereinafter abbreviated as “PIT”), but given the limited size of this study as well as the nature of these normative solutions, including the generally applicable regulations in the field of progressive income taxation of individuals, these have been omitted.

its structure laid down in the laws governing taxes (income, turnover, assets, etc.), and based on the adopted basis for calculating the lump-sum tax base (Mastalski, 2009, p. 468). Whereas the essence of lump-sum tax, as an element of the material tax law, consists in the fact that the legislature predetermines certain components of the legal and tax situation, referring to them in terms of “lump sum” (Zieliński, 2012, p. 88). In terms of personal income tax, an example of this practice is establishing a lump sum for tax costs that are deductible from the tax base, the amount of which is either fixed or based on their percentage share of the revenues earned by the taxpayer<sup>5</sup>.

In view of the foregoing considerations the statement that lump-sum tax on the revenues of clergymen belongs to the category of case-based lump sum and represents a particular and simplified form of taxation does not raise any doubts. In the literature on the subject it is pointed out that the simplified nature of lump-sum tax consists in ignoring, for the purpose of assessing the amount of income tax, some of the elements of taxation resulting from the so-called general principles of taxation, and, consequently, in the use of a different method of calculating income tax due (see: Koperkiewicz-Mordel, Chróścielewski and Nykiel, 2006, p. 172). In typical (i.e. classic) lump-sum tax, which includes lump-sum taxation of clergymen revenues, this comes down to predetermining in the provisions of the law the amount of tax provision to be paid, the level of which depends on the external characteristics of the object of taxation (in this case the function of the member of the clergy – parish priest, vicar – the population of the parish and the number of residents of the municipality or city where the parish seat is located). Consequently, the use of lump-sum tax leads to exempting taxpayers from the obligation to document their revenues and costs of obtaining them with the use of a ledger or tax books, or to a significant reduction of the existing obligations in this field, as well as to exempting taxpayers from the obligation to file tax returns. That is why, among other things, in the literature on the subject, the institution of lump-sum tax is considered to be a less labor-intensive method of assessing the amount of tax provision to be paid compared to taxation based on the progressive or proportional tax systems. Due to the minimization of the tax registration requirements and due to the fact that the amount of tax to be paid depends on the so-called external characteristics of the object of taxation – lump-sum tax is also considered to be one of the concessional forms of taxation, which does not mean that applying it in practice will in each case lead to a reduction in the tax burden (see: Zieliński, 2012, p. 91). It should also be noted that lump-sum tax can be used only by a certain category of taxpayers (Dębowska, 1992, p. 71). It is usually applied in relation to smaller and generally economically weaker forms of manufacturing or service businesses, run by craftsmen or other small establishments (Gajl, 1992, p. 163). Whereas applying lump-sum tax to clergymen revenues obtained from pastoral services is justified by the

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<sup>5</sup> This method of determining the tax costs in terms of personal income tax has been adopted, among others, for entities with revenues from independently performed artistic, literary and scientific activities as well as entities with revenues from services provided under a commission contract or a contract for performing a specified task. In the latter cases (commission contract or a contract for performing a specified task), the costs of revenues represent 20% of the income earned less the amount of social security contributions, which are based on the revenue achieved. Lump-sum tax is also applied to, among other things, revenue from copyright (in the amount of 50% of the earned income) and to income earned from employment. In the latter case, the amount of the tax has been determined by the legislature in quota terms. (see Article 22, items 2 and 9 of the PIT).

fact that their main source are the voluntary donations (offerings) of the members of the parish, and keeping a complicated tax registry in relation to them would have no substantive justification. Moreover, as emphasized in the law-and-finance literature, introducing a simplified and at the same time more favorable way of taxation of clergymen revenues compared to taxation on the so-called general principles is justified based on the activities of the Church for the benefit of the entire society (see: Patyk, 2009, p. 35).

It should also be noted that the use of lump-sum forms of taxation has its advantages, as well as disadvantages. One of the main advantages of these forms of taxation is their simplicity, which in practice allows to implement the propagated for more than two centuries postulates of certitude, cheapness and convenience of taxation (see: Smith, 1954, p. 584 ff). This is particularly important given the casuistic nature of taxation on the so-called general principles, the difficulties in its application by the taxpayer, as well as the high costs of assessment and collection of this tax (see: Kosikowski and Tomaka, 1982, p. 141). However, on the other hand, lump-sum forms of taxation are an exception to the principle of equality and justice in taxation. Adopting the principle according to which the legislature does not calculate the tax base and determines the amount of the tax due based on the so-called external characteristics of the object of taxation, means that in the process of calculating the amount of tax the so-called taxpayer's ability to pay is not taken into account. As a result, this leads to a situation where a taxpayer that does not have any income (or not much), i.e. does not have the ability to pay, is obliged to pay tax, and vice versa – an increase in the ability to pay (i.e. an increase in income/revenue) does not in any way correspond to the amount of tax burden that the taxpayer is required to pay.

## | Rules of Taxation of Clergymen Revenues From Pastoral Services

Lump-sum taxation of clergymen revenues is a classic lump-sum tax, in the sense that in order to calculate the amount of tax provision to be paid the taxpayer is not required to determine the tax base. The taxpayer knows in advance how much tax he has to pay, based on a decision that determines this amount, issued by the tax office separately for each tax year<sup>6</sup>. The characteristic feature of this taxation method is the fact that it is an optional form of taxation. In fact, in order to make use of this form of paying income tax the taxpayer has to notify the competent tax office about the start of performing pastoral functions 14 days in advance<sup>7</sup>.

Lump-sum taxation of clergymen revenues is applied to clergymen that perform pastoral functions. Determining the legal status of clergymen is a challenge, because the Polish law does not provide

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<sup>6</sup> In case a clergyman commences his pastoral functions within the quarter, the amount of the discussed lump sum tax rate for the period starting from the day of commencing the pastoral functions until the end of the quarter the tax office determines for each day in the amount of 1/90 of the quarterly rate.

<sup>7</sup> Pursuant to Article 46 item 1 of the LSIT the jurisdiction of the tax office is determined based on the place of performance of the pastoral functions.

for a legal definition of this term (see: Patyk, 2008, p. 211). Consequently, both in doctrine and in jurisprudence it is assumed that a clergyman can only be a person who is a cleric of a Church or a religious association with legal-entity status<sup>8</sup>. It must therefore be concluded that the object scope of the discussed form of taxation includes clergymen of the Catholic Church and other Christian Churches, as well as religious communities that are legally recognized by the state<sup>9</sup>.

In the Roman Catholic Church, on account of the performed pastoral functions, income tax in the form of the discussed lump-sum tax is mainly paid by parish priests and vicars. On account of the fact that pastoral functions are performed also by other clergymen, such as clerics that manage ecclesiastical entities that run their administration in separated parts of the parish, clergymen that temporarily perform the function of parish priests, rectors and other clergymen managing ecclesiastical entities that have their own administration without separated parts of the parish, they can also pay income tax in this form.

When analyzing the object scope of the discussed lump-sum taxation, it is worth noting that when formulating the directory of clergymen that are subject to taxation in this form, the legislature has not included such members of the clergy as: monks, nuns, so-called residents<sup>10</sup>, or members of the clergy that are retired but still receive income on account of performing pastoral services. This directory also does not contain the top hierarchy of the Catholic Church. i.e. bishops, archbishops and cardinals (Patyk, 2008, p. 222). A gap in the law has formed in this respect and this means that in reality the above-listed categories of entities are excluded from this form of taxation. As a result, the adopted solution, consisting in the legislature including one group of clergy in the tax system and leaving out another group that has the same formal and legal status, leads to a violation of the chief principles of taxation, namely universality, equality, and justice (Patyk, 2008, p. 226).

Taxation in the form of the discussed lump-sum tax applies only to revenue generated from payments received for performing pastoral functions<sup>11</sup>. At the outset, it should be noted that describing this form of taxation in such a way does raise some doubts. As rightly noted in the literature on the subject, these doubts mainly concern the lack of a legal definition of the term “pastoral functions” and no definition of what these “payments” received for performing those pastoral functions really are (Patyk, 2008, p. 226–231). While defining the term “pastoral functions” or “ministry” is not such

<sup>8</sup> See Resolution of the Supreme Court of 6 May 1992, reference number: I KZP 1/92, *LexPolonica No. 308579*.

<sup>9</sup> At present, the status of churches and religious associations includes about 160 entities; see *Registry of churches and other religious associations*, the Ministry of Internal Affairs and Administration, [www.mswia.gov.pl](http://www.mswia.gov.pl) (date of access: 30.06.2012).

<sup>10</sup> A resident is a priest that lives in a given parish, but who performs other tasks within the diocese and is therefore not obligated to perform the duties of a vicar – e.g. he works for the Curia, the Metropolitan Court, seminary. A resident can also be a retired priest, a pensioner or a bishop who does not work in the given diocese, but does reside in its territory.

<sup>11</sup> Pursuant to Canon 281 § 1 of the Code of Canon Law (*Codex Iuris Canonici auctoritate Joannis Pauli PP. II promulgatus* promulgated on 25 January 1983 by John Paul II, with the Apostolic Constitution *Sacrae disciplinae leges*, in *Acta Apostolicae Sedes*, vol. LXXV, Pars II, Polish translation approved by the Conference of the Polish Episcopate, Pallotinum, Poznan 1984), for performing the ministry of the church, clergymen deserve remuneration that corresponds to their position and that takes into account the nature of their tasks as well as the circumstances of time and place necessary to meet their vital needs.

a problem, it is defining the scope of the notion “payments received for performing pastoral functions” that seems to be difficult. According to the definition of the PWN Encyclopedia, pastoral ministry includes all the activities undertaken by the Church the aim of which is salvation of the faithful and traditionally comes down to activities such as: the celebration of the Mass, preaching the Word of God, administration of the sacraments, teaching the faith (Catechesis) and charitable activities (see: *Encyclopedia...*, http). However, the use of the term “payments” received for performing pastoral functions seems to be rather imprecise. This is due to the fact that, in accordance with the rules of cultivating faith and religious practice in Poland, supporting any religion and its clergy is associated with making offerings and donations by members and followers of the respective religions for this purpose (Patyk, 2008, p. 228). This means that clergymen that perform pastoral functions do not actually receive payments but all kinds of offerings that are made on a voluntary basis. Therefore, it should be assumed that the discussed lump-sum tax only applies to those revenues of clergymen of which the main source are the offerings of the faithful made on account of received pastoral services, i.e. the so-called *iura stolae* (voluntary payments for baptisms, weddings, funerals) as well as Mass stipends for requests to have Holy Masses celebrated (Patyk, 2008, p. 217–218; Matjasiuk, 2012, p. 12). Revenue that clergymen obtain from other sources, e.g. based on employment contracts, commission contracts or contracts for performing a specified task, are subject to income tax on the so-called general principles of the progressive tax scale.

The lump-sum tax on clergymen revenues is collected in the form of fixed tax rates, which are determined on a quarterly basis<sup>12</sup>. Due to inflationary trends, as well as because of the desire to increase revenues to the state budget, these rates are subject to annual indexation based on increases in the consumer price index of goods and services and are announced by the Minister of Finance in the form of a decree no later than on November 30<sup>th</sup> of the year preceding the fiscal year<sup>13</sup>.

The rates of the discussed tax do not depend on the amount of actually earned income and neither on the amount of obtained revenue. The rate of taxation of clergymen revenues largely depends on the function that they perform within the Church as well as:

- in the case of clergymen performing the function of parish priest – the population of the parish, and;
- in the case of clergymen performing the function of vicar – the population of the parish and the number of residents of the municipality or city where the parish seat is located<sup>14</sup>.

The current rates of the lump-sum tax on clergymen revenues are presented in the tables below.

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<sup>12</sup> The tax rates are set out in Annex No. 5 (for parish priests and persons holding comparable positions in religious associations) and Annex No. 6 (for vicars and persons holding comparable positions in religious associations) of the LSIT.

<sup>13</sup> See the Decree of the Minister of Finance of 4 November 2011 on the amounts of fixed tax rates, the amount to which provisions are allowed in performing certain services with the exception of provisions to the population, and the quarterly lump-sum tax rates on the revenues of parish priests and vicars, applicable in 2012, M.P. of 2011, No. 102, item 1028.

<sup>14</sup> The number of residents is assumed to be as on December 31<sup>st</sup> of the year preceding the fiscal year for which the lump sum has been paid, according to the data of the competent administration authorities of the cities and municipalities that keep the records.

Table 1 | Quarterly lump-sum tax rates on the revenues of parish priests in 2012

| In parishes with a population of |        | Tax rates in PLN |
|----------------------------------|--------|------------------|
| above                            | up to  |                  |
|                                  | 1000   | 400              |
| 1000                             | 2000   | 455              |
| 2000                             | 3000   | 490              |
| 3000                             | 4000   | 537              |
| 4000                             | 5000   | 583              |
| 5000                             | 6000   | 638              |
| 6000                             | 7000   | 695              |
| 7000                             | 8000   | 750              |
| 8000                             | 9000   | 808              |
| 9000                             | 10,000 | 877              |
| 10,000                           | 12,000 | 955              |
| 12,000                           | 14,000 | 1036             |
| 14,000                           | 16,000 | 1127             |
| 16,000                           | 18,000 | 1221             |
| 18,000                           | 20,000 | 1321             |
| 20,000                           |        | 1431             |

Source: Annex No. 2 to the Decree of the Minister of Finance of 4 November 2011 (item 1028).

Table 2 | Quarterly lump-sum tax rates on the revenues of vicars in 2012

| In parishes with a population of |        | If the parish seat is located                                   |                                |              |
|----------------------------------|--------|---|--------------------------------|--------------|
| above                            | up to  | in a municipality or city<br>with a population of<br>up to 5000 | in a city with a population of |              |
|                                  |        |   | above 5000<br>up to 50 000     | above 50 000 |
| tax rates in PLN                 |        |   |                                |              |
|                                  | 1000   | 122   | 252                            | 363          |
| 1000                             | 3000   | 363   | 381                            | 381          |
| 3000                             | 5000   | 381   | 403                            | 420          |
| 5000                             | 8000   | 389   | 420                            | 431          |
| 8000                             | 10,000 | 403   | 441                            | 453          |
| 10,000                           |        | 420   | 453                            | 464          |

Source: Annex No. 3 to the Decree of the Minister of Finance of 4 November 2011 (item 1028).

The in the discussed lump-sum system adopted structure of tax rates does have its substantive justification.

Firstly, according to the Code of Canon Law and the implementing rules and regulations, which are the rulings of the diocesan Synods, the parish priest, being a person with a higher function within the hierarchy of the Church, on account of the so-called *iura stolae* and other religious services, receives twice as much compared to what a vicar is entitled to (Patyk, 2008, p. 218; Matjasiuk, 2012, p. 12). Therefore, a parish priest has a higher income than a vicar and should pay a higher income tax accordingly.

In passing, it should be added that different rules from the ones presented here apply in the Archdiocese of Gniezno and the Diocese of Opole, where the offerings on account of the so-called *iura stolae* do not go directly into the pockets of the priests, but go to the budget of the parish and subsequently are used to cover the costs of their food and maintenance as well as the maintenance of the parish (Matjasiuk, 2012, p. 12). Pursuant to the rulings of the diocesan Synods in the Diocese of Opole, the income of priests that they obtain from pastoral services has been set at a lump sum, regardless of the actual amount of offerings and donations received on account of the so-called *iura stolae*. For vicars this amount is equal to the minimum wage (i.e. PLN 1600 gross in 2013), and for parish priests it is 150% of that amount (Matjasiuk, 2012, p. 18). Furthermore, in this diocese, during their annual pastoral visits at the homes of parishioners at Christmas time, the priests do not accept any offerings or donations and those parishioners that wish to financially support their parish can do so by making a donation during a special Christmas fundraising at the church (Matjasiuk, 2012, p. 18).

Similar rules have been adopted in the Archdiocese of Gniezno, where the monthly income of the priests that they can receive on account of the so-called *iura stolae* has been set by the Archbishop of Gniezno, and is as follows: for a parish priest approximately PLN 800, for a vicar PLN 600; and it should be emphasized here that priests who work in schools or as chaplains do not receive this income (Matjasiuk, 2012, p. 19).

Secondly, the size of the parish, as well as the size of the city where the parish seat is located, indirectly determine the amount of revenue (and thus income) earned by the members of the clergy. Therefore, it seems reasonable to say that working in a pastoral center that is located in a larger city, both the parish priest and the vicar will have higher revenues (income) than a parish priest or vicar exercising their ministry in a parish located in a smaller municipality or a smaller town. Therefore, the parish priests and vicars that work in pastoral centers located in larger towns or cities should pay higher income taxes than parish priests and vicars that exercise their ministry in small parishes located in smaller towns.

The in the provisions of the law determined quarterly lump-sum tax rates on the revenues of clergymen are reduced by the health insurance premium paid by these persons in the given quarter, in the amount of 7.75% of the basis of assessment of the insurance premium. This reduction is



applied if the premium in question has not been previously deducted from the income tax paid on the so-called general principles, and the amount of the expenditure made for this purpose is determined on the basis of documents confirming these costs (e.g. copies of bank transfers)<sup>15</sup>. Members of the clergy that benefit from the above deduction are required to submit an annual declaration on the amount of health insurance premiums paid and deducted from the lump sum payment in each quarter to the competent tax office by January 31<sup>st</sup> of the following fiscal year<sup>16</sup>.

In special cases, associated with a permanent termination of exercising pastoral functions (e.g. as a result of delegating a cleric to doctoral studies), the rates of the discussed lump sum tax are reduced by 1/90 for each day that these persons do not perform pastoral functions. A condition for this reduction is reporting this fact to the competent tax office. A similar situation occurs when a member of the clergy reports that he wants to take a break from performing pastoral functions. If this break lasts longer than a month and is reported to the competent tax office within three days of its start, the quarterly lump-sum tax rate is reduced by 1/90 of its amount for each day of this intermission.

Lump-sum taxation of clergymen revenues is paid without being called once per quarter. Tax payments are made to the account of the competent tax office until the 20<sup>th</sup> of the following month after the end of the quarter, and for the last quarter – by December 28<sup>th</sup>.

Members of the clergy that pay income tax in this form are required to notify the competent tax offices (the current and new one) within 7 days about changes of location where they perform their pastoral functions in case they are delegated to do their pastoral work in another parish (so-called relocations)<sup>17</sup>. This requirement also applies to clergymen who in a given year have received a so-called appointment, i.e. the nature of their pastoral functions has changed, e.g. from vicar to parish priest. These changes have a direct impact on the amount of tax that they have to pay. In case of an appointment the previous vicar will be required to pay higher income tax. Whereas in case of a relocation the clergyman (both parish priest and vicar) can end up paying higher income tax (if relocated to work in a parish with a greater population, located in a larger town/city) or lower income tax (if delegated to work in a parish with a smaller population and that is located in a smaller town/city than the former one).

Every clergyman has the right to choose not to pay their taxes in the discussed form and to pay income tax on the so-called general principles of the progressive tax scale<sup>18</sup>. In this case the

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<sup>15</sup> Since 1 December 2008, members of the clergy can also deduct from the predetermined lump-sum payment the expenditure on health insurance made in a given year in accordance with the legislation in force in a different than the Republic of Poland Member State of the European Union or another country of the European Economic Area or the Swiss Confederation.

<sup>16</sup> This annual declaration is the PIT-19A form.

<sup>17</sup> Delegation occurs by a decree of the local Diocesan Bishop and according to commonly accepted time frames. In the case of vicars these relocations (change of parish) usually occur every 3–4 years and are conducted in June or in September.

<sup>18</sup> For more information on the reasons for opting not to pay lump-sum tax on registered income see: M. Tyrakowski (2005, p. 159).

competent tax office has to be notified about this until January 20<sup>th</sup> of the given fiscal year in the form of a written statement. The decision not to pay tax in the form of the discussed lump sum may also occur in case of a change of the amount of tax due resulting from the annual indexation. In that case the notification must be submitted within 14 days of receipt of the decision determining the amount of tax due, in the form of a written statement to the relevant tax authority. Members of the clergy may also opt not to pay income tax in this form until the day before the start of their pastoral ministry. If members of the clergy choose the option not to pay lump-sum tax, they must pay their income tax on the so-called general principles, they must keep proper tax records, pay monthly advance payments for income tax and file any tax returns required by law.

## | Lump-Sum Taxation of Clergymen Revenues in View of Tax Fairness

The in the previous section described principles of lump-sum taxation of clergymen revenues give rise to a few essential reflections. In the first place, taxation of clergymen in the form of the discussed lump-sum tax does not depend on the actual number of parishioners in a given parish, and therefore does not in any way take into account the since long put forward postulates by members of the clergy to base the amount of the discussed tax on the actual number of parishioners (i.e. practicing believers), and therefore it retains its fiscal nature and in the future will certainly often be the subject of fierce debate (see: Tyrakowski, 2005, p. 167). The adopted solution means that in some cases – particularly when the members of a certain religion are a minority in the total population residing within the administrative borders of a given parish – the lump-sum tax rates can turn out to be too high in relation to the revenues (income) that members of the clergy obtain for performing pastoral functions. This phenomenon may be partially compensated for based on the in the LSIT provided for possibility of reducing the adopted tax rates. In case the number of people with different religions or with no religion at all constitutes a minority of the total population of a given municipality or city, based on a request submitted by a member of the clergy, the tax office may decide to reduce the quarterly rate of income tax on the revenues of parish priests and vicars. According to the settled case-law of the Supreme Administrative Court (NSA), this minority occurs in case the number of members of a given religion is less than half the number of residents of the given parish<sup>19</sup>. The condition for implementing the mentioned reduction is a statement regarding the actual number of parishioners submitted by a member of the clergy.

In the second place, it is noteworthy that in one parish a number of clergymen can work that perform various pastoral functions, which influences the distribution of their tax burden, but this is not taken into account by the legislature when determining the amount of tax due. Consequently, making the amount of tax provision to be paid depend on the total population of a given parish, rather than on the number of practicing believers who are the ones that actually determine the level of revenues (income) of the clergy, or on the number of clergymen that work in a given parish,

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<sup>19</sup> See the judgment of the Supreme Administrative Court (NSA) of 31 August 1999 r., reference number: I SA/Ld 1365/97, "OSNA", No. 3/2000, item 119.

means that a relatively higher tax must be paid by a parish priest and vicar that work in a parish where numerous clergymen perform pastoral functions compared to if they would work in a parish where less clergymen provide pastoral services. For example, if we assume that in a parish with a population between 1000–3000 the revenue received for the provided pastoral services amounts to PLN 50,000 for the given quarter and one parish priest and three vicars work in this parish, then the distribution of the tax burden is as follows: the parish priest must pay an income tax of PLN 455 up to PLN 490 (depending on the population of the given parish), and each of the vicars must pay PLN 381, provided that the seat of the parish is located in a town with a population numbering between 5,000–50,000 residents. Whereas if one parish priest and only two vicars work in this parish, these tax rates will be exactly the same (the parish priest will have to pay between PLN 455 and PLN 490, while the vicar will have to pay PLN 381 per quarter), but based on different revenues. In the first case (1 parish priest and 3 vicars work in the parish) the total amount of revenues generated from pastoral services, in accordance with the in the documents of the Church adopted principles, is divided into five equal parts, because the parish priest receives double the amount compared to what the vicars are entitled to (except for the Diocese of Opole and the Archdiocese of Gniezno). This means that the parish priest has to pay tax on PLN 20,000 at a rate amounting to between PLN 455 and PLN 490, while every vicar has to pay tax on PLN 10,000 at a rate amounting to PLN 381. The tax burden of the parish priest in this case amounts to between 2.28% and 2.45%, and the tax burden of each of the vicars is 3.81% (on a quarterly basis). Whereas in the second case (1 parish priest and 2 vicars perform the pastoral functions in the parish), the total amount of revenues generated from pastoral services is divided into four equal parts (except for the Diocese of Opole and the Archdiocese of Gniezno). This means that the parish priest working in that parish pays the exact same tax rate but on revenues of PLN 25,000 (which is PLN 5,000 more than in the first case), and each of the vicars working in that parish pays the exact same tax rate on revenues of PLN 12,500 (which is PLN 2,500 more than in the first case). The illustrated example shows that in this case the level of tax burden of the parish priest is 1.82%–1.96%, which is lower by 0.46%–0.49% respectively, while the tax burden of the vicars is 3.05% and is 0.76% lower than the tax burden of the vicars described in the first case.

In the third place, it is worth noting that the size intervals of the population of parishes, which determine the tax burden of parish priests, have been adopted contrary to the principle of proportionality in taxation (see: Patyk, 2008, p. 218; 2009, p. 24–35). The lowest lump-sum tax rate has been established for parishes with a population of up to 1,000 people and currently amounts to PLN 400 per quarter. This means that a parish priest performing pastoral functions in a parish with a population of 500 people will pay the same tax as a parish priest performing the same functions in a parish that is twice as big and therefore generates higher revenues. The adopted solution contradicts the in the doctrine of tax law postulated for more than two centuries idea of justice in taxation and the so-called principle of social justice.

In the fourth place, a review of the rates of the lump-sum tax paid by parish priests and vicars shows that the size intervals of the population of parishes, which determine the tax burden of

parish priests, increase at different rates for these groups of taxpayers. In the case of tax rates established for parish priests, the size intervals of the parish populations go up per 1,000 residents in the range between 0 and 10,000 residents, while in the range between 10,000 and 20,000 residents the intervals go up per 2,000 residents. Whereas in the case of tax rates established for vicars the size intervals of parish populations go up per 2,000 residents. Also the quarterly tax rates that parish priests and vicars have to pay increase at different rates, which is shown in the tables below.

The data presented in the tables show that the highest increase in tax rates, both for parish priests and vicars, is caused by an increase in the number of residents living in the parish where the clergymen provide pastoral services. For parish priests the tax rate increases by almost 14% if the population of the parish exceeds 1,000 residents, but only up to 2,000. Whereas any increases in the population above 2,000 up to 20,000 and more residents have less impact on the growth of the tax rates – on average by about 8.5%. For vicars the largest increases in tax rates occur when the population of the parish exceeds 1,000 people, but only up to 3,000. These increases amount to 197.5% when the seat of the parish is located in a municipality or town with a population of

**Table 3 | Growth of the quarterly lump-sum tax rates on the revenues of parish priests determined by the increasing number of residents of parishes**

| In parishes with a population of |        | Growth of tax rates |
|----------------------------------|--------|---------------------|
| above                            | up to  |                     |
|                                  | 1000   | -                   |
| 1000                             | 2000   | 13.8%               |
| 2000                             | 3000   | 7.7%                |
| 3000                             | 4000   | 9.6%                |
| 4000                             | 5000   | 8.6%                |
| 5000                             | 6000   | 9.4%                |
| 6000                             | 7000   | 8.9%                |
| 7000                             | 8000   | 7.9%                |
| 8000                             | 9000   | 7.7%                |
| 9000                             | 10,000 | 8.5%                |
| 10,000                           | 12,000 | 8.9%                |
| 12,000                           | 14,000 | 8.5%                |
| 14,000                           | 16,000 | 8.8%                |
| 16,000                           | 18,000 | 8.3%                |
| 18,000                           | 20,000 | 8.2%                |
| 20,000                           |        | 8.3%                |

Source: own elaboration based on the data in Table 1.

5,000 residents, 51.2% – if the parish is located in a city with a population of 5,000 up to 50,000 residents and 5.0% if the parish seat is located in a city with more than 50,000 inhabitants.

In the fifth place, in the case of taxation of vicars, the factor that has the greatest impact on the increase in their tax rates is the population of the given parish, as opposed to the number of people living in the city where the seat of the parish is located. This fact is confirmed by the data shown in Tables 4 and 5.

**Table 4 | Growth of the quarterly lump-sum tax rates on the revenues of vicars determined by the increasing number of residents of parishes**

| In parishes with a population of |        | If the parish seat is located                             |                                |              |
|----------------------------------|--------|---|--------------------------------|--------------|
| above                            | up to  | in a municipality or city with a population of up to 5000 | in a city with a population of |              |
|                                  |        |   | above 5000 up to 50 000        | above 50 000 |
| tax rates in PLN                 |        |   |                                |              |
|                                  | 1000   | -   | -                              | -            |
| 1000                             | 3000   | 197.5%  | 51.2%                          | 5.0%         |
| 3000                             | 5000   | 5.0%  | 5.8%                           | 10.2%        |
| 5000                             | 8000   | 2.1%  | 4.2%                           | 2.6%         |
| 8000                             | 10,000 | 3.6%  | 5.0%                           | 5.1%         |
| 10,000                           |        | 4.2%  | 2.7%                           | 2.4%         |

Source: own elaboration based on the data in Table 2.

**Table 5 | Growth of the lump-sum tax rates on the revenues of vicars determined by the increasing number of residents of the municipality or city where the seat of the parish is located**

| In parishes with a population of |        | If the parish seat is located                             |                                |              |
|----------------------------------|--------|---|--------------------------------|--------------|
| above                            | up to  | in a municipality or city with a population of up to 5000 | in a city with a population of |              |
|                                  |        |   | above 5000 up to 50,000        | above 50,000 |
| tax rates in PLN                 |        |   |                                |              |
|                                  | 1000   | -   | 106.6%                         | 44.0%        |
| 1000                             | 3000   | -   | 5.0%                           | 0.0%         |
| 3000                             | 5000   | -   | 5.8%                           | 4.2%         |
| 5000                             | 8000   | -   | 8.0%                           | 2.6%         |
| 8000                             | 10,000 | -   | 9.4%                           | 2.7%         |
| 10,000                           |        | -   | 7.9%                           | 2.4%         |

Source: own elaboration based on the data in Table 2.

The data presented in these tables show that the lump-sum tax rate on the revenues of vicars increases from 2.1% to 197.5% in case of an increase of the population residing within the administrative borders of the given parish. While increases in tax rates as a result of an increase of the number of residents of the municipality or city where the seat of the parish is located are smaller and are at the level of 0.0% to 106.6%.

In view of the above, it is a striking and at the same time difficult to justify fact that when it comes to taxation of vicars that perform pastoral duties in parishes with a population of 1,000–3,000 people the legislature has not provided for an increase of their tax burden in the situation when the number of residents of the municipality or city where the seat of the parish is located goes above 50,000 people. Perhaps this solution is used deliberately in view of the fact that, in accordance with the provisions of the LSIT, tax rates at this level also burden the income of other members of the clergy, including those clergymen that do not perform the functions of parish priests, vicars or rectors, and who receive revenues from missions, retreats and other religious services.

In the sixth place, it should be noted that taxation of the top hierarchy of the Catholic Church, i.e. bishops, archbishops and cardinals, has been regulated in a rather vague way. This is due to the fact that the provisions of the mentioned act do not expressly mention them as entities subject to taxation in the discussed lump-sum form. However, since there is no doubt about the fact that these persons derive revenues from performing pastoral functions (e.g. for giving the Sacrament of Confirmation, etc.), in the law-and-finance literature it is rightly assumed that for the purposes of the discussed lump-sum taxation, bishops, archbishops and cardinals should be included in the directory of clergymen that do not perform the functions of parish priests, vicars or rectors, and who derive revenues from payments for the pastoral services that they provide, such as missions, retreats and other religious services (Patyk, 1998, p. 17–18). Consequently, in accordance with the currently adopted regulations, these persons pay income tax according to the tax rates established for vicars that perform pastoral functions in parishes with a population of 1,000–3,000 people. In practice, this means that the quarterly tax burden of the top hierarchy of the Catholic Church on account of revenues derived from performing pastoral functions is at the level of PLN 363 up to PLN 381. This solution should be considered rather controversial. After all, it is a well-known fact that bishops, as well as archbishops and cardinals, perform higher (and therefore more important) functions within the hierarchy of the Church than parish priests or vicars, and therefore they obtain higher revenues from pastoral services and should consequently pay a higher income tax accordingly. Meanwhile, it is not difficult to notice that the lowest lump-sum tax rate that is paid by parish priests (i.e. PLN 400 per quarter) is higher than the tax rate established for the revenues of the top hierarchy of the Catholic Church in Poland.

In the seventh place, the present analysis shows that a considerable part of vicars – this particularly applies to those that derive revenues from the performed pastoral functions in parishes with a population of more than 3,000 people – pay a higher income tax than members of the

clergy exercising some of the most important functions within the hierarchy of the Church. The adopted solution has, it seems, a demoralizing nature and is a subject of criticism, both in the science of financial law and in the clerical environment, and it also contradicts two fundamental canons of taxation, namely equality and justice in taxation, both in external and internal terms.

## Summary

In view of the foregoing considerations, it is clear that the currently applicable regulations for the taxation of the revenues (income) of the clergy derived from performing pastoral functions require an urgent and comprehensive reform. For these are solutions that contradict the basic principles of taxation that should form the basis for a properly determined object of taxation, and therefore they do not fulfill the by the legislature assigned functions (tasks). That being said, a reasonable solution could be progressive taxation of this income, along with the income that clergymen obtain from other sources (e.g. based on employment contracts or their own business activity). However, in order to apply this solution in practice, it appears to be necessary to change the principles of “remuneration” of members of the clergy. Here one can take inspiration from the principles adopted by the Diocese of Opole, according to which, for performing their pastoral functions, priests receive an adequate income (salaries) from the diocese, the amount of which is determined based on the functions that they exercise. It seems that implementing such a solution would benefit both the public authorities (i.e. the state budget) and the Church itself, as it would, among other things, help solve the financial problems of small and therefore usually poorer parishes, where the level of income of the clergy obtained from providing pastoral services is far from the national average.

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