

## Tax Incentives for Food Donations – a General Overview

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**Abstract:** The study analyses tax law regulations in force in Poland and in selected European Union countries which may influence attitudes of entrepreneurs (taxpayers) in taking actions aimed at preventing food waste. This analysis demonstrates that all countries investigated in this study have made attempts to develop and implement various measures to combat the problem of food waste. At the same time, it is worth noting that properly constructed tax preferences are an important factor in preventing food waste, which is part of the sustainable development strategy implemented by European Union countries. In this respect, actions must be long-term and they should be based on various legal measures. Further changes in this area will be determined by some key factors. These include the need to use tax law regulations or to determine economic and social trends. Directions of activities of the state, local government and non-governmental organizations for counteracting food waste will also set course for these changes. Achieving sustainable development also at the stage of using food already produced should be based on optimisation of all related processes, and thus also financial (mainly tax) processes. Therefore, attention should be paid in particular to the tax legislation in force in Poland and in selected European Union countries, i.e. the Act on tax on goods and services and the Act on corporate income tax.

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## 1. Introduction

Globalization of markets, including food markets (even in the European Union), which has been observed for many years, causes many changes in the sphere of food production and consumption. The positive aspects of globalisation are: new markets, access to new raw materials, a variety of products, access to processing technologies and increasing the availability of products. Negative changes include, above all, overconsumption and food waste<sup>1</sup>.

Food wastage is one of the negative phenomena of the modern world and is becoming a multidimensional problem. It applies to every link in the agri-food chain<sup>2</sup>. It may be seen, for example, at the stage of processing, production, transport, storage, distribution and consumption. It should be emphasized that food waste is mentioned in Sustainable Development Goals<sup>3</sup>, which were formulated by the United Nations<sup>4</sup>. Given the above, it should be stated that the problem of food waste consists of: food losses and wasting food, also referred to as food waste. Losses occur at the stage of storage, processing and primary production, while food waste occurs at the stage of trade, distribution and consumption<sup>5</sup>.

International scientific research undertaken in this area points out that food that has already been produced but not consumed in its entirety means *de facto* that a country's natural resources are wasted. This, in turn, negatively affects the environment and is seen as unethical. It is stressed that

<sup>1</sup> Anna S. Tarczyńska, "Skala marnowania żywności wśród studentów uniwersytetu warmińsko-mazurskiego w Olsztynie," *ŻYWNOSĆ. Nauka. Technologia. Jakość*, no. 28, 2(127) (2021): 121–122.

<sup>2</sup> Maria-Georgeta Moldovan, Dan-Cristian Dabija and Cristiana Bianca Pocol, "Resources Management for a Resilient World: A Literature Review of Eastern European Countries with Focus on Household Behaviour and Trends Related to Food Waste," *Sustainability*, no. 14.7.123(2022): 2–3.

<sup>3</sup> Aleksandra Bednarczuk, Jerzy Śleszyński, "Marnowanie żywności w Polsce," *Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego, Problemy Rolnictwa Światowego*, vol. 19, no. 4(2019): 19.

<sup>4</sup> United Nations, 2015; Eurostat, 2017; UN Global Compact, 2018.

<sup>5</sup> Sylwia Łaba, Krystian Szczepański, Robert Łaba, "Definicje i wytyczne w obszarze strat i marnotrawstwa żywności jako podstawa prowadzenia badań," in *Straty i marnotrawstwo żywności w Polsce. Skala i przyczyny problemu*, ed. Sylwia Łaba (Warsaw: IOŚ–PIB, 2020), 9 and 13.

food waste should be reduced at every stage in the interest of sustainable consumption<sup>6</sup>. Solutions that could mitigate adverse effects of this problem should be systemic solutions. Counteracting the phenomenon of food waste also lies in the introduction of appropriate legal regulations, including in particular in the field of tax law. It seems natural to be able to take advantage of tax preferences, which in turn may affect decisions taken by, among others, business operators when distributing produced food, which, for example, is about to expire. It is necessary to remove legal barriers that prevent the counteracting of this negative phenomenon. We can already talk about the need to form “tax food law”, based on the constructions of tax preferences provided for in the tax legislation (e.g. relief, exemptions, deductions), which should support actions intended to counteract food waste. In view of the above, the following regulations of Polish legal acts should be given consideration: the Act on tax on goods and services<sup>7</sup> and the Act on corporate income tax<sup>8</sup> and indirectly the Act on personal income tax<sup>9</sup>. The use of these mechanisms and tools at the stage of food donation is part of a number of social activities undertaken by various entities and organizations. In addition, the literature points out that by doing so it is possible to distribute surplus food to social groups affected by poverty<sup>10</sup>.

It should be emphasized that although the problem of food waste has taken on an international character, there is no single universal definition of the concept of “food waste”. The act of 19 July 2019 on counteracting

<sup>6</sup> Gerold Hafner, Jakob Barabosz, Felicitas Schneider, S. Lebersorger, Silvia Scherhauser, Heiko Schuller, Dominik Leverenz, and Martin Kranert, *Determination of discarded food and proposals for a minimization of food wastage in Germany, Report for German Federal Ministry of Food, Agriculture and Consumer Protection*, (Stuttgart, 2012): 4 and 30, accessed July 23, 2022, [https://www.researchgate.net/publication/262728113\\_Determination\\_of\\_discarded\\_food\\_and\\_proposals\\_for\\_a\\_minimization\\_of\\_food\\_wastage\\_in\\_Germanys](https://www.researchgate.net/publication/262728113_Determination_of_discarded_food_and_proposals_for_a_minimization_of_food_wastage_in_Germanys).

<sup>7</sup> Act on tax on goods and services of 11 March 2004, Journal of Laws 2022, item 931, as amended – hereinafter: the VAT Act.

<sup>8</sup> Act on corporate income tax of 15 February 1992, Journal of Laws 2021, item 1800, as amended – hereinafter CIT Act.

<sup>9</sup> Act on personal income tax of 26 July 1991, Journal of Laws 2021, item 1128, as amended – hereinafter: the PIT Act.

<sup>10</sup> Beata Biliska, Marzena Tomaszewska, Danuta Kołożyn-Krajewska, Małgorzata Piecek, “Segmentation of Polish Households Taking into Account Food Waste,” *Foods*, no. 9(379) (2020): 1.

food waste<sup>11</sup> assumes that this concept means withdrawing from the distribution stage of food that meets the requirements of food law, in particular due its approaching use-by date or the date of minimum durability or due to defects in the appearance of these foodstuffs or their packaging and destining them for disposal as waste. In turn, the European Union (hereinafter the EU) adopted a definition presented by the European Parliament in its Resolution of 19 January 2012 “How to avoid food wastage”<sup>12</sup>. Food waste should be understood as foodstuffs discarded from the agri-food chain for economic or aesthetic reasons or because of the approaching use-by date, which are still fit for consumption, but are intended for elimination and disposal, which in turn causes negative effects taking into account the impact on the environment, costs and lack of income for businesses.

It should also be noted that on 11 December 2019, the European Commission published a Communication on the European Green Deal<sup>13</sup>, creating a new EU growth strategy. Its aim is for the EU to achieve climate neutrality by 2050. In 2020, the European Commission published another strategy entitled “Farm To Fork”<sup>14</sup>, which aims to transform the EU’s food system into a more sustainable, healthier, as well as environmentally friendly one. It is worth stressing that the first of the key tasks of this strategy is to set legally binding targets for reducing food waste across the EU by 2023. The aim of this strategy is the transition of the current EU food system to a sustainable model.

## 2. Scope of Research and Methodology

The aim of the research is to identify and verify the tax law regulations in force in Poland and in selected EU countries, which can be used as tools supporting entrepreneurs (taxpayers) in taking actions to counteract food waste or as tools preventing them from doing so. Therefore, the analysis

<sup>11</sup> Consolidated text Dz. U. (Journal of Laws) of 2020 item 1645.

<sup>12</sup> European Parliament resolution of 19 January 2012 on how to avoid food wastage: strategies for a more efficient food chain in the EU (2011/2175(INI)) *OJ C 227E*, 6.8.2013, p. 25–32.

<sup>13</sup> The EU’s goal of climate neutrality by 2050, accessed July 22, 2022, <https://www.consilium.europa.eu/en/policies/green-deal/>.

<sup>14</sup> Farm to Fork Strategy. For a fair, healthy and environmentally – friendly food system, accessed July 23, 2022, [https://food.ec.europa.eu/system/files/2020-05/f2f\\_action-plan\\_2020\\_strategy-info\\_en.pdf](https://food.ec.europa.eu/system/files/2020-05/f2f_action-plan_2020_strategy-info_en.pdf).

covers the tax legislation in force, primarily in the field of value added tax and corporate income tax, as well as relevant literature. This research is a preliminary, pilot study that will allow authors to formulate *de lege ferenda* conclusions and to create - in the next stage of their research - “tax models” that fit into the policy of “tax food law”. These conclusions mainly refer to tax preferences related to the taxation of free transfer of food, both in Poland and in other, selected EU countries. The method of investigation of the law in force is used as the basic research method. It should also be pointed out that, regardless of whether the research concerned Polish legislation or the legislation of another EU country, the following terms were adopted: VAT Act for an act on value added tax and CIT Act for corporate income tax act.

### 3. Tax Concepts Relating to the Free Transfer of Food

As already indicated in the introduction, correct forming of tax law is one of the key elements limiting food waste. It should be noted that to a large extent it is tax issues that may constitute a significant barrier (or a supporting instrument) to the free transfer of food by entities producing or marketing it. This issue focuses mainly on two taxes: VAT and CIT.

The main problem in individual EU countries is that the harmonisation of VAT does not leave too wide a margin for action in terms of preferential burden on the gratuitous supply of foodstuffs. Directive 2006/112/EC<sup>15</sup> provides that the use by a taxable person of goods forming part of his business assets which are disposed of free of charge for non-business purposes where the VAT on such goods or parts thereof was wholly or partly deductible constitutes a supply of goods for consideration<sup>16</sup>. On the other hand, where a taxable person applies or disposes of goods forming part of his business assets, the taxable amount shall be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost of production, determined at the time when the disposal of those goods takes place<sup>17</sup>.

<sup>15</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, *OJ L 347*, 11.12.2006, p. 1–118 – hereinafter: *Directive 2006/112/EC*

<sup>16</sup> Article 16 Directive 2006/112/EC.

<sup>17</sup> Article 74 Directive 2006/112/EC.

It should be noted, therefore, that the provisions of EU law are already a form of a barrier to the introduction of tax-wise beneficial regulations contributing to the reduction of food waste. Admittedly, the EU VAT Committee does offer some guidelines, such as guidance from December 2012. It stipulates that the above-mentioned provisions of the directive specifically define donation of foodstuff from a tax point of view. Nevertheless, “where the donation takes place close to the best before date or where goods are not fit for sale, that value should be fairly low, even close to zero. It does not address the grey area of the value of donated food close to its ‘best before/use by’ date”<sup>18</sup>.

At the same time, it should be noted that EU Member States are introducing solutions to the value added tax construction on their own, which could neutralize tax barriers to food donations. On the basis of the legal regulations in force in EU Member States, the following concepts can be observed. The first is to maintain complete neutrality. This means that the Member State does not introduce any preference in the VAT system. This is mainly due to the fact that there is no EU delegation to apply preferential measures on the basis of VAT. In this case, the guidelines taken do not help either. One of them states that: “donation of foodstuffs to the poor, made by a taxable person free of charge, shall be treated as a supply of goods for consideration, in accordance with the first paragraph of Article 16 of the VAT Directive, unless this donation meets the conditions laid down by the Member State to be considered as a gift of small value within the meaning of the second paragraph of Article 16 of the VAT Directive”<sup>19</sup>. The main problem in this case is that food donation is carried out on a larger scale and will usually not fall within the concept of “gift of small value”. Nevertheless, Greece has taken a conciliatory path in this respect, where in the construction of VAT on the basis of changes made in 2014<sup>20</sup>, the con-

<sup>18</sup> See: Joint answer given by Mr Šemeta on behalf of the Commission. Written questions: E-003730/13, E-002939/13, accessed June 10, 2022, [https://www.europarl.europa.eu/doceo/document/E-7-2013-002939-ASW\\_EN.html?redirect](https://www.europarl.europa.eu/doceo/document/E-7-2013-002939-ASW_EN.html?redirect).

<sup>19</sup> Guidelines Resulting from the 97<sup>th</sup> Meeting of 7 September 2012. DOCUMENT C – tax-ud.c.1(2012)1701663 – 745 (1/1).

<sup>20</sup> Article 46, amendment of the regulations of law 2859/2000, law 113/2010 and law 3986/2011, accessed June 10, 2022, <https://www.e-forologia.gr/lawbank/document.aspx?digest=1BF72D34FECFF3F8.28B4F588A6A8&version=2014/02/17>.

cept of a gift (goods with a value of up to EUR 10) has been extended to include, *inter alia*, the free donation of food to a public benefit organization<sup>21</sup>. Another possible concept is the application of the VAT exemption on the food transferred with the right to deduct input tax. In this case, the condition for enjoying of this preference is that the food be donated, either directly (a public benefit organization that distributes it to those in need) or indirectly (a food bank that then donates it to specific charities for distribution). The latter is the case, for example, in Belgium, where, by way of exception, the free transfer of food to legally recognised food banks for distribution free of charge has been exempted from taxation<sup>22</sup>. However, this solution applies only to those food products to which reduced VAT rates apply. Another condition for benefiting from the exemption is that the object of the donation is such food (produced or purchased for further sale) that is unfit for sale in normal circulation, i.e. products with damaged packaging, surplus stock or food for which the use-by date is approaching. The rules relating to the exemption from VAT with the right to deduct input tax of only foodstuffs which are not placed on the market or unfit for placing on the market because of damaged packaging or defective labelling or the approaching use-by date also apply in Italy<sup>23</sup>.

Another concept that may apply to the free supply of food is the imposition of a lower VAT rate. It should be noted, however, that in most countries, a reduced tax rate is already being imposed on basic food products. Consequently, the application of a second lower reduced rate is hardly a serious instrument to stimulate the desired behaviour of the taxable person. However, a significant incentive in such a situation would be the imposition of a 0% rate. It should be noted that, from the point of view of the operator

<sup>21</sup> Article 7(2)(b) Value added tax code, accessed June 10, 2022, <https://www.taxheaven.gr/law/2859/2000>.

<sup>22</sup> Decision of TVA, no E.T. 124.417, of 31 July 2013, accessed June 10, 2022, [https://www.stradalex.com/fr/sl\\_src\\_publ\\_div\\_spffin/document/dec\\_divtva20130731.278604-fr](https://www.stradalex.com/fr/sl_src_publ_div_spffin/document/dec_divtva20130731.278604-fr).

<sup>23</sup> Article 6(15) Law of 13 May 1999, no. 133, Provisions on equalization, rationalization and fiscal federalism. See more: Marco Allena, “Circular Economy and Sustainability Among Former Foodstuff, Surplus Food and Food Waste: Fiscal Issues,” in *Circular Economy and Environmental Taxation*, ed. Antonio Felice Uricchio, Gianluca Selicato (Bari: Caccuci Editore, 2020), 65–89.

supplying food free of charge, the exemption with the right to deduct input tax has similar effects as the imposition of a zero VAT rate.

In the absence of clear legal regulations under Directive 2006/112/EC, EU member states are more willing to use appropriate instruments to encourage food donations on the basis of CIT. In a sense, they compensate for the need to pay VAT. It should be noted, however, that the introduction of tax preferences only on the basis of CIT does not constitute a full incentive to donate food free of charge to charity. It seems that in order to be able to say that the tax instruments used pass the exam, appropriate legal regulations should be introduced both on the basis of VAT and CIT. When it comes to tax preferences in CIT in the case of making a donation, the subject of which is food, it may take the form of a tax deduction or a tax credit. It should be emphasized that the legislator usually indicates in the construction of CIT that one of the two above-mentioned ways of reducing the tax burden may be used in the case of making a donation but he does not stipulate what its subject is. Thus, the legal regulations apply to in-cash and in-kind donations alike. At the same time, not only food may be the subject of an in-kind donation. Rarely does the legislator specify food as the subject of donation, with which the taxpayer acquires a specific preference. Even if this is the case, then next to food he lists other things that may be the subject of donation. Usually, legal constructions indicate entities for the benefit of which a free transaction should be carried out *inter vivos* and the purpose of this donation. Tax deduction in relation to donations made applies, for example, in Portugal. Donations, also in the form of food, made to entities enumerated in the Act, are treated as an expense and are deductible in the amount of 120%, 130% or 140% of the expenses incurred, depending on the institutions for which they were made. However, the legislator introduced a certain limit regarding the amount of deduction, which may not exceed 8/1000 of the volume of sales or services provided<sup>24</sup>.

When it comes to France, the possibility of using a tax credit is granted to French taxpayers who make donations to entities who act as broadly understood public benefit establishments. Taxpayers who make a donation can reduce the amount of tax by 60% or 40%, depending on whether the threshold of €2 million in the value of the donations made is exceeded.

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<sup>24</sup> Art. 62(1) and (2) Decree – Law no 215/89 of 1 July, Tax Benefits Statute.



It should be emphasized, however, that the French legislator introduced a limit. The amount of tax credit cannot exceed EUR 20,000 or 5/1000 of turnover. However, if the above limit is exceeded, the amount by which the limit has been exceeded can be deducted from tax in one of the next five tax years<sup>25</sup>.

#### 4. Legal Measures Provided in the Tax on Goods and Services

There are regulations in the construction of Polish VAT<sup>26</sup> on the basis of which a derogation from the main principle applies. This principle holds that the free of charge supply of goods used by a taxable person for purposes not related to his business activity, if the taxpayer had the right to deduct input tax from the output tax, is considered a taxable transaction - supply of goods for consideration.

The Polish legislator, in order to meet social expectations, introduced an exemption for the supply of goods whose subject is food<sup>27</sup>. This resulted from the desire to encourage taxpayers to donate to charity free of charge, as well as a sense of injustice among those taxpayers who donated food to charity free of charge, but had to pay VAT on this activity. The Polish literature argues that the introduction of the preference in question into the construction of the value added tax in question constitutes infringement of Directive 2006/112/EC. It is pointed out that this non-compliance was already known at the time of the work on the implementation of the exemption from taxation of the free supply of foodstuffs. The main reason given is the failure to include such supplies in the list of exempt transactions or transactions subject to the 0% rate, arguing that under the common VAT system the right to deduct is granted only in respect of acquisitions intended to carry out taxable transactions. In addition, it is argued that Poland has not been authorised to apply a special measure derogating from the provisions of Directive 2006/112/EC in this respect<sup>28</sup>.

<sup>25</sup> Art. 238a General Tax Code.

<sup>26</sup> Art. 43(1)(18) VAT Act.

<sup>27</sup> It entered into force on 1 October 2013 by an amendment of Article 43(1)(16) of the VAT Act. Since that moment, all donors, that is producers, distributors and wholesalers, are exempt from VAT on foodstuffs given as donations.

<sup>28</sup> Małgorzata Sęk, "Zwolnienie z prawem do odliczenia nieodpłatnego przekazania produktów spożywczych na rzecz organizacji pożytku publicznego z przeznaczeniem na cele

The preference adopted by the Polish legislator consists in exempting goods provided free of charge by the taxpayer, which are his business assets and in respect of which he was entitled, in whole or in part, to reduce the amount of tax due by the amount of input tax on the acquisition, import or manufacturing of those goods or their components. At the same time, it should be noted that a taxable person who transfers food free of charge is entitled to deduct input tax in respect of those goods and services which have been used to manufacture or acquire the food donated free of charge<sup>29</sup>. However, in order to benefit from this preference, certain formal conditions must be met. First, foodstuffs must be the subject of the supply. It should be remembered, however, that the exemption does not apply to a supply of alcoholic beverages with an alcohol content more than 1.2% and alcoholic beverages that are a mixture of beer and non-alcoholic beverages, in which the alcohol content exceeds 0.5%. It should be noted at this point that the provisions of Polish law do not condition the use of the exemption only to food for which its use-by date is approaching. This tax preference applies both to the free transfer of products with a long period of consumption, as well as to those whose expiry date is due in a short period of time. Secondly, in order for the foodstuffs supplied to benefit from the exemption, they must be given to a public benefit organisation for the purposes of the charitable activities carried out by that organisation. Under the regulations in force, the status of a public benefit organization may be granted to a non-governmental organization that meets the following requirements: it does not operate for profit, it does not belong to the public finance sector, it is not an enterprise, a bank, a research institution or a commercial law company that is a state or local government legal entity<sup>30</sup>. In addition, the status of a public benefit organization may be acquired by legal persons and organizational units that operate on the basis of the provisions on the relationship of the State to the Catholic Church, the relationship of the State to other

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charytatywne,” in *Polskie prawo podatkowe a prawo unijne. Katalog rozbieżności*, ed. Bogumił Brzeziński, Dagmara Dominik – Ogińska, Krzysztof Lasiński-Sulecki (Warsaw: Wolters Kluwer, 2016), 118–120; Adam Bartosiewicz, *Komentarz VAT* (Warsaw: Wolters Kluwer, 2022), 703–704.

<sup>29</sup> Article 86(8)(3) of the VAT Act.

<sup>30</sup> Article 20 of the Act on public benefit and volunteer work of 24 April 2003, *Journal of Laws* 2022, item 1327, as amended – hereinafter Public Benefit Act.

Churches and religious associations, provided that their statutory objectives include performance of public benefit activities. It should be emphasized that such a status will not be granted to these ecclesiastical legal persons and their organizational units if their public benefit activities are carried out only for the benefit of entities chosen on the basis of religious or faith-related criteria. The status of public benefit organizations is also acquired by capital companies (joint-stock company or limited liability company), as well as sports clubs that are companies that do not operate for profit and all their income is intended for the implementation of statutory objectives and that do not allocate their profit to be distributed between their shareholders and employees<sup>31</sup>. It should therefore be noted that the personal scope in this case is extremely wide and is not limited to only food banks or other charitable entities. In order to benefit from this tax preference, it is only required that the beneficiary have the status of a public benefit organization and for it to receive a donation in the form of foodstuffs.

It is worth noting that the legislator has expanded the circle of taxpayers who may enjoy the exemption in question. Until 30 September 2013, only food producers could benefit from this preference. However, in the current legal status, the exemption may be used by food producers and other entities that supply food products, including intermediaries in food trade, such as, for example, shops or wholesalers<sup>32</sup>. However, the amendment to the provisions of the VAT Act of 2013 imposed formal requirements that must be met in order to benefit from the exemption. For this purpose, a public benefit organization that obtains food as part of a free supply of goods, firstly, is obliged to keep appropriate documentation on the basis of which it will be possible to determine the purpose of the food received by it. Secondly, the goods obtained may not be used for purposes other than those of the charitable activities carried out by that organisation. Failure to meet at least one of the above conditions results in the loss of the exemption in the value added tax. It should be emphasized, however, that in such

<sup>31</sup> See Jarosław Ruszewski, "Organizacja pożytku publicznego," *Państwo i Prawo*, no 7(2005): 81–94; Katarzyna Płonka-Bielenin, "Charakter prawny podmiotowości organizacji „non-profit”," *Administracja*, no. 4(2010): 45–70; Anna Surówka, "Działalność pożytku publicznego i wolontariatu w świetle Konstytucji RP," *Przegląd Sejmowy*, no 6(2004): 63–76.

<sup>32</sup> Article (1)(a) of the Act on amending the act on tax on goods and services and certain other acts of 26 July 2013, *Journal of Laws* 2013, item 1027.

a case the obligation to pay the tax is not borne by the entrepreneur who provides food free of charge for charity, but by the public benefit organization that obtained food products free of charge. It is irrelevant in this case whether the organisation is a taxable person for the purposes of VAT or whether it is exempt (personal scope) on the ground that it does not carry out transactions subject to value added tax<sup>33</sup>.

## **5. Legal Measures Relating to Food Donation in the Construction of Income Taxes**

In the Polish tax law system, the burden of income tax is regulated by two legal acts. The principles of taxation of income obtained by legal persons are included in the CIT Act, while rules relating to natural persons are laid down in the Personal Income Tax Act. It should be emphasized that the Polish legislator includes appropriate regulations in the construction of CIT on the basis of which taxpayers may deduct donations made to charity from the tax base, which in principle is income. It should be noted, however, that the Polish tax law does not provide for specific regulations relating to food donations. Pursuant to the provisions of the Corporate Income Tax Act, the income constituting the tax base may be reduced by donations made for strictly defined purposes. This means that both in-cash gifts, which constitute the vast majority of gratuitous *inter vivos* transactions, and in-kind donations, are deductible from the tax base. However, in order for food (as well as any other donation) donated by a taxpayer who is a legal person to be deducted from the tax base in corporate income tax, two basic conditions must be met. First, the donation must be made for defined purposes. They are specified in the Public Benefit Act. These objectives include, among other things, social assistance, family support, charitable activities, activities for children and youth. Secondly, such a donation must be made to public benefit organisations, which are, similarly, entities mentioned when discussing the VAT exemption. In addition, the legislator extends the personal scope of the tax preference in question. In accordance with Polish regulations, the donation may also be made to organizations equivalent to Polish ones, specified in the regulations governing public benefit activities, in force in an EU Member State other than Poland or a country

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<sup>33</sup> According to Article 113 of the VAT Act, a sale done up to the value of PLN 200,000 is exempt from tax.

belonging to the European Economic Area. However, it is required that these organizations carry out public benefit activities in the sphere of public tasks.

Nevertheless, the enjoyment of a deduction from the tax base (income) of a donation made to charity is not unlimited. The Polish legislator has introduced a limit according to which the taxpayer may deduct the value of donations whose amount does not exceed 10% of their income<sup>34</sup>. In the case of donations of food to charity, this value is determined on the basis of either the value of the production of foodstuffs or the value of their acquisition. In this context it should be noted that on the one hand the introduction of a percentage limit on the amount of donations made, which depends on the amount of income earned by the taxpayer, is by all means justified from the point of view of the tightness of the tax system, in particular when it comes to in-cash donations (although not only). On the other, in the context of donations involving food where the beneficiaries are charitable organisations or food banks that are actually distributing it, the regulation of 10% of the income generated should be disapproved. Regulations constructed in this way may constitute a significant barrier, discouraging business operators from making food donations. This will be the case in particular in relation to those taxpayers – food producers or entities trading in food – whose activities have low margins. Consequently, this may lead to a situation in which there will be no will at all to transfer food products with a close expiry date free of charge to charitable institutions. This will obviously lead to food waste, a failure to meet basic food needs of those in need, but also additionally to excessive exploitation of the environment in order to make up for possible shortages of foodstuffs that have been wasted. In this context, decisions should be made whether to introduce a tax preference into the very structure of CIT, which would allow a deduction of a donation whose subject is only food, either without limit, or with a limit higher than 10% of income. On the other hand, however, it should be noted that in Poland the legal regulations relating to the introduced limit, which at first glance may turn out to be unattractive, are in some way neutralized by two circumstances. First, as has already been pointed out in the construction of Polish VAT, there is an exemption for the supply of foodstuffs with the possibility of deducting input tax from the output tax. Secondly,

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<sup>34</sup> Article 18(1)(1) of the CIT Act.

CIT introduced the possibility of classifying the value of a food donation as a tax-deductible cost. This measure is an exception. It should be noted that the provisions of Polish law prohibit, as a rule, deduction of donations in a situation where the taxpayer has included the value of the donation as tax-deductible costs<sup>35</sup>. In Polish tax law, in order for the expenses made by the taxpayer to be considered as a tax-deductible cost, there must be a cause-and-effect relationship between the expenditure made and the purpose for which it is incurred. This purpose should be generation of revenue, or possibly preservation or securing of a source of revenue. However, in certain circumstances the legislator stipulates that certain expenses, even if there is the above-mentioned cause-and-effect relationship, cannot be considered a tax-deductible cost. The construction of the Polish CIT includes a closed catalogue of such expenses. This includes, among other things, donations and offerings of all kinds. The legislator introduces an exception to this Polish rule, indicating that although donations and offerings of all kinds cannot be classified by the taxpayer as a tax-deductible cost, such costs are production costs or purchase price of food products to which the VAT exemption applies and which are intended exclusively for the purposes of charitable activities carried out by the recipient public benefit organizations<sup>36</sup>.

It should be emphasized that the legislator also includes similar legal regulations in the Personal Income Tax Act. This means that taxpayers who are natural persons who conduct business activity may reduce the tax base by the amount of the donation. As in the CIT Act, there are also no detailed provisions relating only to donations whose subject is food. It should be noted, however, that the main difference between CIT and personal income tax is the amount of the statutory limit. In the PIT construction, taxpayers may deduct the value of the donation within a limit not exceeding 6% of the income obtained in the tax year<sup>37</sup>. As in the Corporate Income Tax Act, the construction of the personal income tax also provides for the possibility of including in tax-deductible costs of the cost of manufacturing or purchasing food products that were donated to a charitable organization<sup>38</sup>.

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<sup>35</sup> Article 18(1k) of the CIT Act.

<sup>36</sup> Article 16(1)(14) of the CIT Act.

<sup>37</sup> Article 26(1)(9)(a) of the PIT Act.

<sup>38</sup> Article 23(1)(11) of the PIT Act.

## 6. Conclusion

Recognising the complexity of the problem of food waste, and above all its transnational dimension and its link with the sustainable development strategy implemented in EU Member States, the following conclusions can be drawn.

Firstly, it should be noted that the proper formulation of tax law regulations plays a key role. The lack of appropriate tax preferences may inhibit the activity of food producers or entities trading in it. This applies in particular to those foodstuffs which, for objective reasons, cannot be sold at all. This is due to physical damage to packaging, an approaching use-by date, or the occurrence of excessive surplus food. Therefore, it should be postulated that such changes be introduced in the Polish (and EU) legislation that will support entrepreneurs at individual links of the agri-food chain to take action to counteract food waste. Special focus should be given to the possibility of using a donation to a public benefit organisation made by entrepreneurs and granting them appropriate tax preferences in this respect.

Secondly, it should be emphasized that the issue of removing tax barriers that hinder the donation of foodstuffs is complex. Attention should also be paid here to EU regulations. The construction of the EU value added tax poses serious difficulties. EU Member States should comply with Directive 2006/112/EC in implementing tax law. Unfortunately, as already mentioned, provisions of Directive 2006/112/EC clearly indicate that the free supply of goods, in this case food, in respect of which input tax was deductible in whole or in part is treated in the same way as a supply for consideration subject to VAT. Therefore, a consensus is required between the various decision-making groups, both European bodies and EU Member States, to make appropriate changes in this regard. It seems that the abolition of this tax barrier, even in breach of the construction rules of value added tax, is necessary. Eliminating this tax barrier should significantly reduce the problem of food waste in the future.

Thirdly, in the light of the analyses carried out herein, the most sensible solution would therefore be to introduce an exemption with deductibility of input tax where the taxable person supplies food products free of charge to charitable organisations which distribute such products to those in need. The secondary issue to be resolved is whether such supply would take place indirectly – through food banks supplying charities in contact with people

in need, or directly – through charities that directly donate food to those in need. However, it remains an open question whether Directive 2006/112/EC should limit the possibility of free supply of foodstuffs only to those products that for objective reasons have been withdrawn from the market (e.g. damaged packaging, approaching expiry date) or allow the exemption to be granted unconditionally as is the case in Poland.

Fourthly, the analysis of the tax legislation of selected EU countries carried out for the purposes of this study has shown that in some countries there is a concept to compensate for the inability to introduce tax preferences on the basis of VAT by introducing appropriate income tax relief. As discussed earlier, a taxpayer who has made a donation may reduce the amount of his tax burden by applying a tax deduction or a tax credit. It should be noted, however, that this is a partial solution to the problem in question. The key to removing tax barriers, and thus introducing incentives for the free donation of food to charity, is the existence of appropriate tax preferences both in terms of VAT and income taxes. Only in this way can taxpayers be offered an appropriate, comprehensive tax instrument that will encourage them to behave in a way that is desirable from the point of view of food waste prevention policy. At this point, when the discussed issue is slowly becoming noticeable in the EU Member States, the secondary issue is whether the use of the tax deduction or the tax credit in the CIT construction is an appropriate instrument. Certainly, from the point of view of the fiscal interests of each country, a more optimal solution is to introduce a tax preference, which will manifest itself in the use of a tax deduction. However, it should be emphasized that in order for this instrument to meet the expectations placed in it, i.e. stimulation of taxpayers to a certain behaviour, additional instruments must be introduced at the level of Directive 2006/112/EC, i.e. an exemption from VAT suggested by the authors with the possibility of deducting input tax.

In conclusion, it is worth referring to the tax law regulations in force in Poland. In this context, in terms of VAT and income taxes (CIT and PIT), it should be noted that they do not constitute a serious tax barrier that would discourage taxpayers from making free food transfers to charities. When it comes to VAT, the Polish legislator has introduced a fairly wide scope of subject matter and has not limited itself only to food products that, for objective reasons, are not suitable for marketing. Of course,



the above may raise concerns whether such regulations do not pose risks of VAT fraud. However, numerous formal requirements imposed on both the donor and the beneficiary, as well as the punitive obligation to pay tax by a public benefit organization in a situation where food products are not used as intended, seem to contradict this. Another issue is that the VAT regulations discussed apply only because the Polish legislator has disregarded the provisions of Directive 2006/112/EC. When it comes to income taxes (CIT and PIT), here also legal solutions seem to be appropriate and should not limit business operators from making food transfers. Perhaps a questionable issue is the introduced limit on the possibility of deducting a donation up to 10% and 6% of income obtained by the taxpayer in CIT and in PIT, respectively. It is therefore debatable whether the legislator should not increase this level only for donations that involve food. On the other hand, it should be noted that the value of food donated, in addition to the possibility of deduction from income, may additionally be classified as a tax-deductible cost, reducing revenue and thus affecting the amount of income earned by the taxpayer. In addition, the limits contained in the CIT and PIT construction are depreciated by the possibility of applying an exemption in VAT with the possibility of deducting input tax. It seems, therefore, that the regulations applicable in Poland may be the right direction for gradually introduced changes aimed at removing tax barriers that discourage taxpayers from making free supplies of food to charity.

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