



Challenges of Contemporary Tax Law

Jubilee Book Dedicated to
Professor Włodzimierz Nykiel



volume II

edited by
Ziemowit Kukulski
Małgorzata Sęk





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WYDAWNICTWO
UNIWERSYTETU
ŁÓDZKIEGO

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Łódź 2024

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Preface

Professor Włodzimierz Nykiel celebrated his seventieth birthday in 2021. This is a perfect opportunity to thank the Jubilarian for his scientific and academic activities to date. The Editors of this jubilee book – Professor's long-term associates at the Tax Law Department of the Faculty of Law and Administration of the University of Lodz, the Centre of Tax Documentation and Studies and the Foundation Centre of Tax Documentation and Studies – also have their own personal reasons to be grateful to the Jubilarian.

The scientific and academic biography of Professor Włodzimierz Nykiel is very rich, and international cooperation is an extremely important element thereof. The Jubilarian has always highly valued contacts with other centers and scientific circles, which allowed to build an international reputation of the Lodz school of tax law including the Tax Law Department and the Centre. For these reasons, as the Editors of the book, we decided that it should be divided into two volumes. The authors of the first part are eminent representatives of the Polish tax and financial law academia and practice. The second volume consists of studies prepared by foreign friends and colleagues of the Jubilarian – outstanding representatives of tax law academia and practice from other countries.

The book was born in turbulent times: of the COVID-19 pandemic and the war in Ukraine, just beyond Poland's eastern border. Although most of the texts were submitted in 2021, editorial and publishing works could not be completed before the Professor's seventieth birthday, therefore some of the observations made by the Authors may have slightly lost their topicality. In the meantime, the Professor's seventieth birthday (December 2021) coincided with the twenty-fifth anniversary of the Centre of Tax Documentation and Studies, founded and headed by the Professor

(December 2022), and the fiftieth scientific work anniversary of the Professor (October 2023).

We hope that this book, finally submitted for printing in 2023 and thus associated with three jubilees important for Professor Nykiel, will be a source of scientific inspirations for its Readers.

Editors

**Prof. Hab. Dr. Włodzimierz Nykiel,
Dr. h.c.**

Włodzimierz Nykiel was born in 1951 in Lodz, Poland. His parents: Mieczysław i Klara, were entrepreneurs. In 1969 he graduated from XXVI High School in Lodz and undertook legal studies at the Faculty of Law and Administration of the University of Lodz. In 1973, after receiving a Master of Law degree, he started working as an assistant at the Financial Law Department of the Faculty of Law and Administration of the University of Lodz. In the years 1978–1981 he studied comparative law at the International Faculty of Comparative Law (Faculté Internationale de Droit Comparé) in Strasbourg, France and received *Diplôme Supérieur de Droit Comparé*. In 1980 he received a Doctor of Law degree. His doctoral thesis *Budgetary act in socialist countries* was prepared under the supervision of Prof. Natalia Gajl. Based on the assessment of scientific achievements and the dissertation on the role of revenue in balancing local budgets (*Rola dochodów w równoważeniu budżetów lokalnych* [The role of income in balancing local budgets]) in 1993 he received a Habilitated Doctor of Law degree. In 1996 he was granted the position of Associate University Professor (*Professor Extraordinarius*). In 2002 he received the academic title of Professor of Law (State Professor) and in 2006 – the post of Full Professor of Law (*Professor Ordinarius*).

In 2016, he received an honorary doctorate from the University of Wrocław. The reviewers in the procedure for granting this title were Prof. Bogumił Brzeziński, Prof. Jerzy Małecki and Prof. Antonio Uricchio, Rector of the University of Bari Aldo Moro (Università degli Studi di Bari Aldo Moro) in Italy. In his review, Prof. Bogumił Brzeziński wrote that “[...] it will not be an exaggeration to say that Prof. Włodzimierz Nykiel is currently the most recognizable figure of the Polish tax law academia in the world”. Similarly, Prof. Jerzy Małecki called Prof. W. Nykiel “a real ambassador of

the Polish tax legal science". Also Prof. Antonio Uricchio wrote about the international activity and recognition enjoyed by Prof. Nykiel.

During over 50 years of work, Prof. Nykiel held various administrative functions at the University of Lodz. In the years 1994–1996 he was the Vice-Dean, and in the years 1996–2002 – the Dean of the Faculty of Law and Administration. In 2008 and 2012 he was elected Rector of the University of Lodz. He held this position until 2016.

In 2008 and 2012 he was elected Chairman of the Conference of Rectors of Public Universities in Lodz. From 2012, he was the Vice-Chairman of the Conference of Rectors of Polish Universities, a member of the Presidium of the Conference of Rectors of Academic Schools in Poland (CRASP) and the Chairman of the Committee for International Cooperation of CRASP.

In the years 2007–2022, he headed the Department of Substantive Tax Law, renamed in 2017 to the Department of Tax Law, at the Faculty of Law and Administration of the University of Lodz. Previously, he was the Head of the Substantive Tax Law Sub-Department at the Department of Financial Law. He also heads the Postgraduate Tax Law Studies, run continuously since 1995. In the years 2011–2019 he also headed the E-learning Postgraduate Tax Law Studies, and in the years 2003–2006 three editions of the Postgraduate European Union Tax Law Studies.

12 Włodzimierz Nykiel is the creator (1997) and long-term head (until 2022) of the Centre of Tax Documentation and Studies at the University of Lodz – the only research institution of this kind in Poland, cooperating with leading foreign centers, especially the International Bureau of Fiscal Documentation in Amsterdam (Netherlands). During the period when he headed the Centre, 154 nationwide tax conferences and seminars as well as several international conferences were organized, including: "Corporate Income Tax" (Cracow, 2007), "Taxpayer Protection. Tax Policy" (Lodz, 2008), "Tax Aspects of Research and Development – Towards More Sustainable Development in the EU" (Lodz, 2011), "Banking System – Current Issues at the Interface of Economy, Finance and Taxation" (Lodz, 2012), "Tax Treaties Application in Norway, Poland and Sweden" (Lodz, 2013), "Tax Legislation: Legal Standards, Trends, Challenges" (Lodz, 2013), "The Transformation of Tax Systems in the CEE and BRICS Countries – 25 Years of Experience and Future Challenges" (Lodz, 2015), "Informality, Taxation and Economic Development" (Tirana, Albania, 2016), "Tax Treaties Application Recent Developments in the Czech Republic, Hungary, Poland and Slovakia" (Lodz, 2016), "EATLP 2017 Congress: Corporate Tax Residence and Mobility" (Lodz, 2017), "The Third International Tax Seminar on Special Tax Zones" (Lodz, 2018), "The First Polish-Chinese Conference on the Recent Developments in Public Finance, Economy and Taxation in Poland and China" (Lodz, 2018), and "The Second

Chinese-Polish Conference on the Challenges of the Digital Economy and Possible Solutions” (Shanghai, China, 2019).

The achievements of the Centre of Tax Documentation and Studies, headed by Him, include the publication of over 70 issues of the only strictly scientific journal on the Polish publishing market devoted to tax law – “Kwartalnik Prawa Podatkowego” [“Tax Law Quarterly”], numerous tax scientific monographs supported or promoted by the Centre, three international research projects initiated and lead by the Centre, seven international research projects with the participation of the Centre, three research projects financed under grants from the State Committee for Scientific Research, numerous expert opinions on planned legislation, research projects on tax problems of local governments and three branches of the economy, a series of three reports on the state of tax law in Poland (2000, 2005, 2010), twenty four editions of the student competition in the field of tax law, two editions of doctoral workshops (2010, 2015), one edition of the competition for the best doctoral thesis in the field of tax law (2013), twenty eight editions of Postgraduate Tax Law Studies, eight editions of E-learning Postgraduate Tax Law Studies, three editions of Postgraduate European Union Tax Law Studies, participation in three international educational projects, including one cyclical, four cycles of trainings for foreign tax administrations.

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Thanks to Prof. Nykiel’s efforts the Centre’s tax library was created, being the largest specialist tax library in Central and Eastern Europe with a book collection of over 5,000 items, a significant part of which are foreign publications.

Over 25 years of its existence, the Centre of Tax Documentation and Studies has become a leading academic center in Poland and Central Europe specializing in Polish, international, EU and comparative tax law. The undoubted international success of the Centre led by Prof. Nykiel was the organization in 2017 at the Faculty of Law and Administration of the University of Lodz of the Annual Congress of the European Association of Tax Law Professors (EATLP) – the most prestigious cyclical event in the world of tax law science. The Lodz EATLP Congress was not only the most important scientific tax event in Europe in 2017, but also the largest international tax event organized in Poland so far.

Another equally important event on an international scale was the organization in 2012 of the jubilee 20th EUCOTAX seminar at the Faculty of Law and Administration of the University of Lodz. EUCOTAX (European Universities COoperating on TAXes) is a joint initiative of renowned European universities and Georgetown University in Washington (United States), established in 1993 by an agreement between professors of tax law and aimed at conducting joint educational activities and research

in the field of international, European, and comparative aspects of tax law. In 2009, Prof. Włodzimierz Nykiel was invited to join the initiative, and thereby students of the University of Lodz gained the opportunity to participate in the unique, internationally prestigious project Eucotax Wintercourse. Currently the following institutions participate in this initiative: Tilburg University (Netherlands) as coordinating institution, Vienna University of Economics and Business (Austria), Catholic University of Leuven (Belgium), Paris 1 Panthéon-Sorbonne University in Paris (France), University of Valencia (Spain), Osnabrück University (Germany), Georgetown University in Washington (United States), University of Zurich (Switzerland), University of St. Gallen (Switzerland), Uppsala University (Sweden), Loránd Eötvös University in Budapest (Hungary), Guido Carli Free International University of Social Studies in Rome (Italy), and the University of Lodz and the University of Warsaw. Since 2010, thirty-five students of the Faculty of Law and Administration of the University of Lodz have participated in thirteen editions of the project. This contributed to building the reputation of the University of Lodz and the Faculty of Law and Administration as a leading Polish center of research and teaching of tax law, cooperating with leading foreign centers.

14 In 2003, the Foundation Centre of Tax Documentation and Studies was established, the aim of which is to stimulate the development of tax law research, as well as to disseminate knowledge about taxes and tax law. The Foundation supports the activities of the Centre and other organizational units of the Faculty of Law and Administration of the University of Lodz. Its founders include i.a. the University of Lodz, Bank PEKAO S.A. and the International Bureau of Fiscal Documentation in Amsterdam, and Professor Nykiel is its president.

Professor Nykiel's scientific interests lie mainly in the issues of tax law, including its international, EU and comparative aspects, and initially also budgetary law and finances of local government units. He is a sole author of three books (*Ustawa budżetowa [Budgetary act]*, Lodz 1987; *Rola dochodów w równoważeniu budżetów lokalnych [The role of income in balancing local budgets]*, Lodz 1993; *Ulgi i zwolnienia w konstrukcji prawnej podatku [Reliefs and exemptions as elements of the legal structure of tax]*, Warsaw 2002) and four editions of a commentary (*Ustawa o podatku dochodowym od osób fizycznych – Komentarz [Personal Income Tax Act – Commentary]*, Warsaw 1997, 1998, 1999 and 2001), co-author of five books and four commentaries (two published once, one published twice, and one published nine times), as well as editor and co-editor of twenty six books, commentaries and academic textbooks, including five books in English and one in Chinese. He has written or co-authored more than 140 articles, chapters, and other studies, including several in English, and also in French, Spanish, Russian and Italian.

Several research areas of Prof. Nykiel can be identified. Both before and after obtaining the academic degree of habilitated doctor of law (1993), his research focused on the issues of budgetary law, banking law and local government finance. The results were presented in the monograph *Ustawa budżetowa* [Budgetary act] (Lodz 1987) based on the doctoral dissertation defended in 1980 and entitled *Ustawa budżetowa w krajach socjalistycznych* [Budgetary act in socialist countries], and numerous articles. During this period, Prof. Nykiel also undertook legal and comparative studies on the finances of local government units, with particular emphasis on the importance of local taxes in the context of the financial independence of municipalities. They resulted in numerous publications, including i.a. *Zakres samodzielności budżetowej gmin w świetle rozwiązań prawnych w latach 1973–1981* [The scope of budgetary independence of municipalities in the light of legal solutions in the years 1973–1981], "Problemy Rad Narodowych" 1981, No. 51 (co-author T. Austyniak-Górna); *Gospodarka finansowa w systemie rad terenowych* [Financial management in the system of local councils], [in:] *System terenowych organów władzy i administracji państwowej w europejskich państwach socjalistycznych*, ed. B. Zawadzka, Wrocław-Warszawa-Kraków-Gdańsk-Lodz 1985 (co-authors: N. Gajl, F. Sochacka-Krysiak); *Les dépenses des budgets territoriaux* [Expenditure of territorial budgets], "Acta Universitatis Lodzensis. Folia Iuridica" 1985, No. 20 (co-author: T. Augustyniak-Górna); *Dochody budżetów terenowych* [Income of local budgets], Lodz 1990; *Podatki lokalne – aspekty prawnoporównawcze* [Local taxes – legal and comparative aspects], "Acta Universitatis Lodzensis. Folia Iuridica" 1992, No. 54; *Dochody samorządu terytorialnego* [Income of local government], "Zeszyty Naukowe Akademii Ekonomicznej w Poznaniu" 1992, No. 203; *Budget and Taxes in Poland* 1993, "European Taxation" 1993, No. 9. The crowning achievement of the scientific work on the issues of finances of local government units is the habilitation thesis on the role of income in balancing local budgets (*Rola dochodów w równoważeniu budżetów lokalnych* [The role of income in balancing local budgets], Lodz 1993), which still remains a key position in Polish literature on the subject.

The second area of scientific interests of Prof. Nykiel is certainly the issue of tax reliefs and exemptions. The research on the construction of the tax conducted in this area resulted in numerous studies, both in the form of articles and chapters in monographs, as well as the monograph on reliefs and exemptions in the construction of tax (*Ulgi i zwolnienia w konstrukcji podatku* [Reliefs and exemptions in the construction of tax], Warsaw 2002). This monograph became the basis for conferring the academic title of professor of legal sciences on 18 November 2002 by the President of the Republic of Poland.

The third area of the Professor's scientific research concerns selected issues in the field of specific, as well as general tax law. Professor Nykiel is the author (co-author) and editor of many editions of commentaries on tax acts: the Personal Income Tax Act, the Corporate Income Tax Act, the Inheritance and Donation Tax Act, as well as the Tax Advisory Act. His scientific achievements in this area also include monographs on the issue of tax deductible costs prepared in co-authorship or under his editorship (*Leksykon kosztów uzyskania przychodów w podatku dochodowym od osób prawnych z uwzględnieniem regulacji prawa bilansowego* [Lexicon of tax deductible costs in corporate income tax, taking into account the regulations of the balance sheet law], Gdańsk 2007, co-authors: A. Mariański, D. Strzelec, E. Walińska, W. Bojanowski, A. Wencel) and related entities and transfer pricing (*Podmioty powiązane. Ceny transferowe. Dokumentacja podatkowa* [Related entities. Transfer pricing. Tax documentation], Warsaw 2014, co-editor D. Strzelec, co-authors: D. Strzelec, Z. Kukulski, A. Nowak-Piechota, S. Rzymkowska, M. Sęk, M. Wilk, T. Wojdał, Z. Wójcik), as well as chapters in monographs and articles on the issues of value added tax (with particular emphasis on the right to deduct input tax and the issue of good faith). His scientific achievements also include a multi-author monograph on general issues of tax law (*Zagadnienia ogólne prawa podatkowego* [General issues of tax law], Łódź 2014, co-edited with M. Wilk and co-authored) and a monograph prepared in co-authorship with Wojciech Chróścielewski on tax proceedings in the light of the Tax Ordinance (*Postępowanie podatkowe w świetle Ordynacji podatkowej* [Tax proceedings in the light of the Tax Ordinance], Warsaw 2000). His achievements also include numerous chapters and articles on tax principles, autonomy and the interpretation of tax law and the general anti avoidance clause.

Research on international, EU and comparative tax law holds a special place in the scientific research of Prof. Nykiel. Together with Hubert Hamaekers, Kevin Holmes, Jan Głuchowski and Tomasz Kardach, Prof. Nykiel is the co-author of the first study on international tax law published in Poland and entitled *Wprowadzenie do międzynarodowego prawa podatkowego* [Introduction to International Tax Law] (Warsaw 2006). Together with Adam Zalański, he co-edited a multi-author commentary on the jurisprudence of the Court of Justice of the European Union, which is publication still very unique in Poland (*Orzecznictwo Trybunału Sprawiedliwości Unii Europejskiej. Komentarz* [Judicial practice of the Court of Justice of the European Union. Commentary], Warsaw 2014). He is the co-author and co-editor of several internationally recognized monographs, including *Protection of Taxpayers' Rights. European, International and Domestic Tax Law Perspective* (Warsaw 2009, co-edited with Małgorzata Sęk and co-authored), *Tax Aspects of Research and Development within the European Union* (Warsaw 2014, co-edited with

Adam Zalasinski), *Tax Legislation. Standards, Trends and Challenges* (Warsaw 2015, co-edited with Małgorzata Sęk and co-authored) and *Transformation of Tax Systems in the CEE and BRICS Countries – 25 Years of Experience and Future Challenges* (Lodz 2018, co-edited with Ziemowit Kukulski and co-authored). Professor Nykiel also co-edited with Michał Wilk a multi-author monograph entitled *Polish Tax System. Business Opportunities and Challenges* (Warsaw 2017), which was also published in Chinese translated by Dr. Tan Yusen: 波兰税制 商业机会和挑战=Polish Tax System. Business Opportunities and Challenges (Shanghai 2019).

Professor Nykiel is also the author and co-author of several national and general reports presented at international scientific conferences or resulting from comparative tax law research and published in collective works and journals. These are: *Confidentiality and the Law of Taxation*, [in:] *Rapports polonais présentés au quinzième Congrès International de Droit Comparé* (Lodz 1998); *Budgetary Decentralization: Balance of Interests and Contradictions*, [in:] *Rapports polonais présentés au seizième Congrès International de Droit Comparé* (Lodz 2002); *Restricting the Legislative Power to Taxes*, [in:] *Rapports polonais présentés au XVIIe Congrès International de Droit Comparé* (Lodz 2006; co-author Z. Kukulski); *Poland-National Report. 17th Congress of the International Academy of Comparative Law Utrecht 2006. Tax Law Session*, "Michigan State Journal of International Law" 2007, No. 15, (co-author Z. Kukulski); *Raport generalny dotyczący ochrony praw podatnika [General report on the protection of taxpayer's rights]*, "Kwartalnik Prawa Podatkowego" 2008, No. 2, (co-author M. Sęk); *Polish equity and debt financing regime in the light of neutrality principle, EC tax law and ECJ case-law*, "European Tax Studies" 2010, No. 1 (co-authors Z. Kukulski, M. Wilk)¹; *Standardy, trendy i wyzwania legislacji podatkowej. Raport generalny konferencji „Tax Legislation: Legal Standards, Trends and Challenges”* [Standards, trends and challenges of tax legislation. General report of the conference "Tax Legislation: Legal Standards, Trends and Challenges"], "Kwartalnik Prawa Podatkowego" 2013, No. 4 (co-author M. Sęk); *Raport generalny – transformacja systemów podatkowych w państwach BRICS – 25 lat doświadczeń oraz wyzwania na przyszłość – cz. I* [General report – transformation of tax systems in the BRICS countries – 25 years of experience and future challenges – part I], "Kwartalnik Prawa Podatkowego" 2017, No. 2 (co-author Z. Kukulski); *Raport generalny – Transformacja systemów podatkowych w państwach Europy Środkowo-Wschodniej – 25 lat doświadczeń oraz wyzwania*

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¹ This text has also been published in Italian and Spanish: *Il regime polacco dei finanziamenti a debito ed in conto capitale alla luce del principio di neutralità, normative fiscale comunitaria e giurisprudenza della Corte di Giustizia*, "Studi Tributari Europei" 2010, No. 1 (co-authors Z. Kukulski, M. Wilk); *Regimen polaco de financiación por deudas y por acciones a la luz del principio de neutralidad y la jurisprudencia comunitarios*, "Estudios Tributarios Europeos" 2010, No. 1 (co-authors Z. Kukulski, M. Wilk).

na przyszłość cz. II [General Report – Transformation of tax systems in Central and Eastern Europe – 25 years of experience and future challenges – part II], “Kwartalnik Prawa Podatkowego” 2017, No. 3 (co-author Z. Kukulski).

Research on the protection of taxpayers’ rights, initiated in 2008, has been an important and currently is the main area of the Professor’s scientific interests. An international research project *Protection of Taxpayers’ Rights, European, International and Domestic Tax Law Perspective* initiated and led by Prof. Nykiel and Dr. Sęk played a major role in the development of the worldwide scientific discourse on the protection of taxpayers’ rights. The monograph presenting the results of the research (*Protection of Taxpayers’ Rights, European, International and Domestic Tax Law Perspective*, Warsaw 2009, co-edited with M. Sęk and co-authored) has become an important position in the international literature on the protection of taxpayers’ rights, as evidenced by numerous references by eminent members of the global tax academia. An international research project devoted to standards, trends and challenges of tax legislation, including the issues of protection of taxpayers’ rights, also played an important role at the international level (see *Tax Legislation, Standards, Trends and Challenges*, Warsaw 2015, co-edited with M. Sęk and co-authored). The results of research in this area are also included in numerous articles and chapters in monographs, but above all the draft *Taxpayer’s Rights Charter* must be mentioned, developed in co-authorship with Małgorzata Sęk, twice submitted to the Sejm as a parliamentary bill, and the monograph entitled *Karta Praw Podatnika. Nowy instrument ochrony prawa polskiego podatnika* [*Taxpayer’s Rights Charter. A new instrument to protect the rights of the Polish taxpayer*] (Łódź 2022), co-authored with Małgorzata Sęk.

Professor Nykiel also published reviews of monographs by: Hanna Litwińczuk: *Prawo podatkowe przedsiębiorców* [*Tax Law of Entrepreneurs*] (Warsaw 2001), Antoni Hanusz: *Podstawa faktyczna rozstrzygnięcia podatkowego* [*The factual basis of a tax settlement*] (Cracow 2006), Bogumił Brzeziński (ed.), Marek Kalinowski (ed.), Adam Zalasinski, Ewa Prejs, Krzysztof Lasiński-Sulecki: *Prawo podatkowe Wspólnoty Europejskiej* [*European Community tax law*] (Gdańsk 2006), Adam Zalasinski: *Zakaz dyskryminacji w sferze podatków bezpośrednich w prawie podatkowym Wspólnoty Europejskiej* [*Prohibition of direct tax discrimination in the European Community tax law*] (Warsaw 2006), and Bogumił Brzeziński: *Zasady wykładni prawa podatkowego w krajach anglosaskich* [*Principles of interpretation of tax law in Anglo-Saxon countries*] (Warsaw 2007).

He has participated as a speaker and discussant in many domestic and international conferences. In 1985 he was a visiting researcher in Vienna and Salzburg (Austria). Since 1992 he has regularly held study visits at the International Bureau of Fiscal Documentation (IBFD) in Amsterdam (the Netherlands).