

Tax on large-format retail stores

December 7th, 2015

Agenda

- Landscape after General Election
- Social and economic context for the new taxes
- Similar regulations in other EU countries
- The legislative process
- Key characteristics of tax proposed by Law and Justice
- Alternative proposals
- Compliance with EU law
- Constitutional arguments
- Summary – conclusions



Landscape after General Election

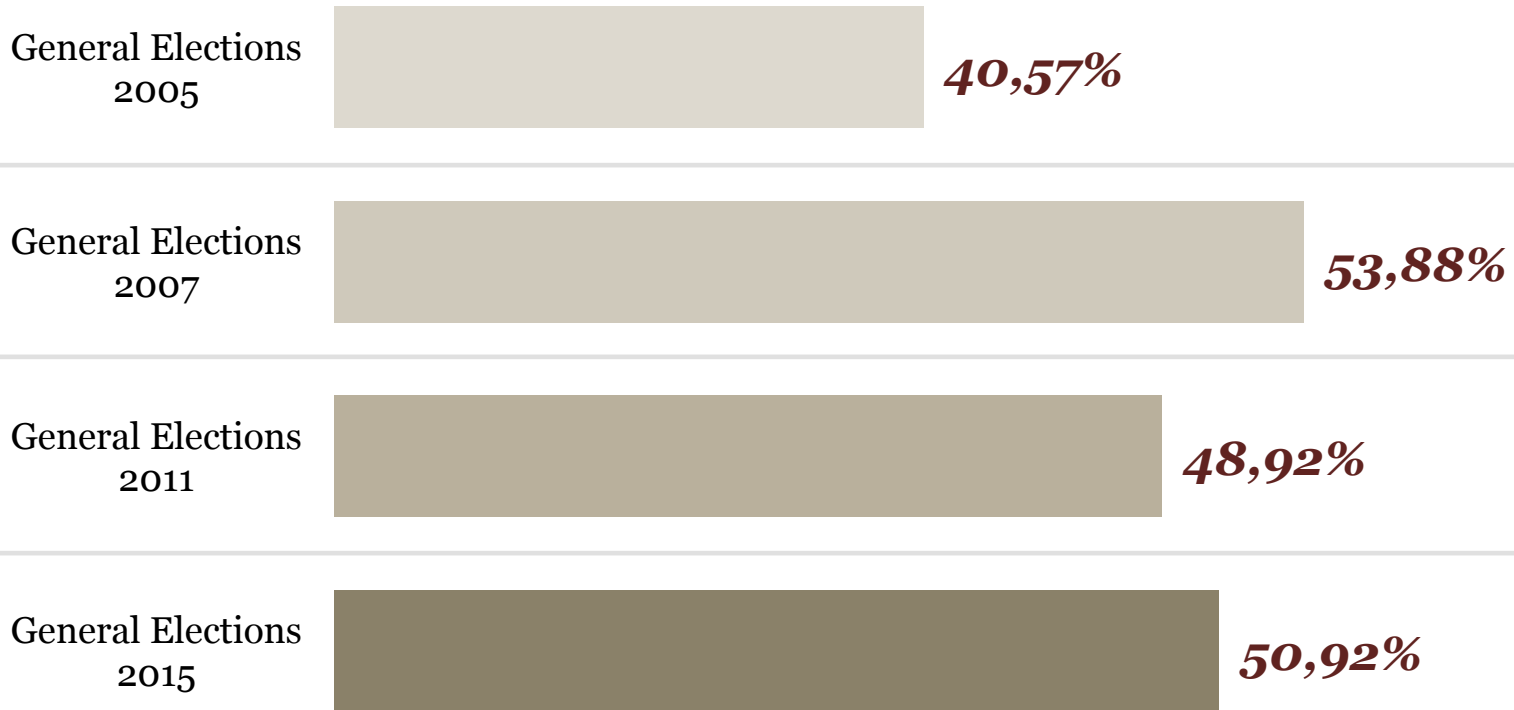


General Elections Summary

Tectonic Shift in the Political Landscape

- Defeat of the incumbent Civic Platform (PO) party opens the door for the leadership debate
- Law and Justice (PiS) to rule confidently with majority in the Sejm and Senate, and President Duda in office since August 2015
- Strong mandate for bold policy changes of the new Government
- First single-party Government: 4 years of conservative policies ahead
- New ministries in sight: Energy, Development, Maritime Economy
- PO failed to turn the tide after the Presidential vote
- Millennials decided the outcome
- Urbanites abandoned PO

Relatively High Turnout Resulting From the 'Good Change' Theme



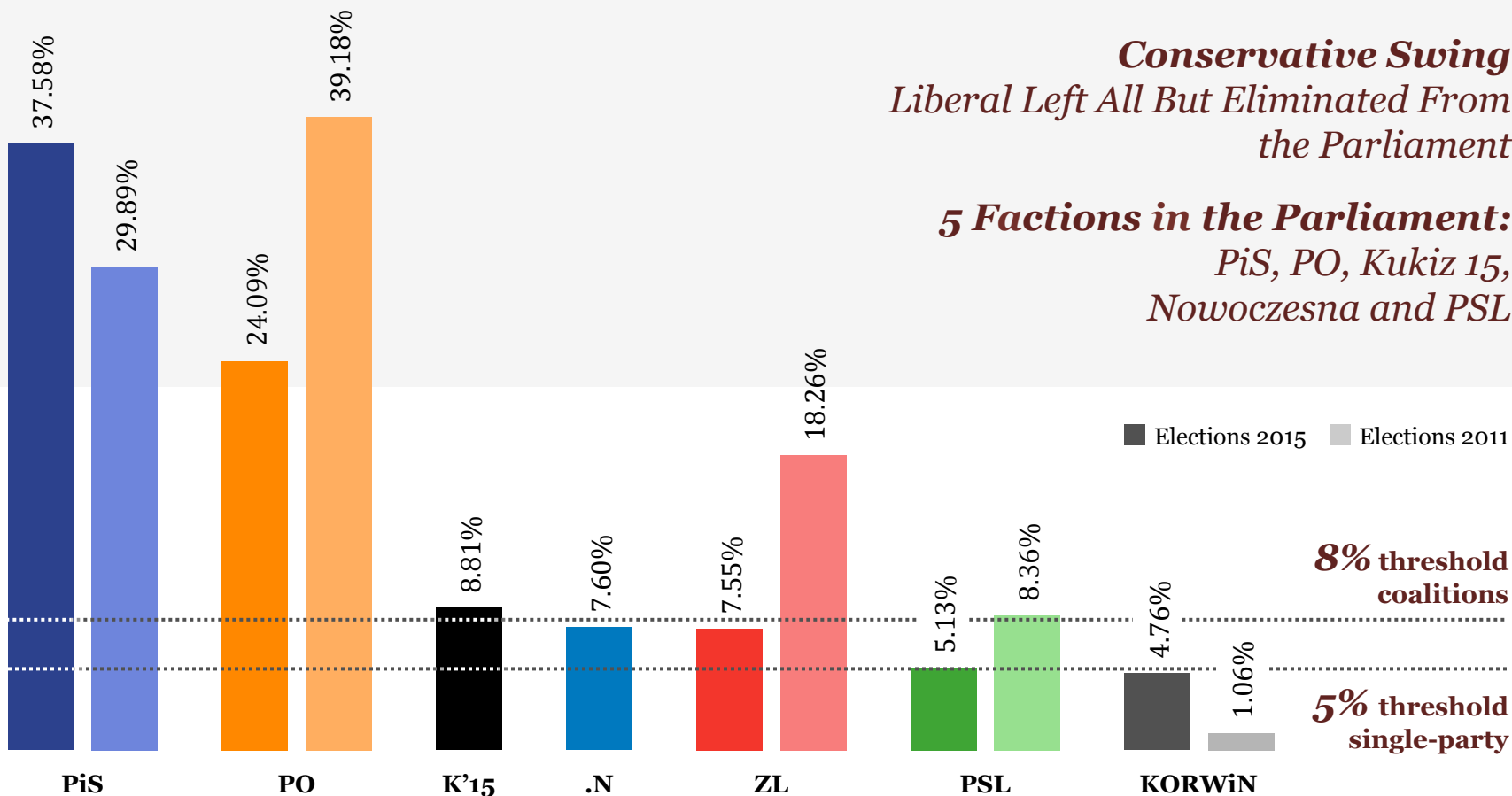
Polarisation of the political scene between two major parties since 2007 elections contributed to solid turnout.

10 Years of Status Quo Rejected by Voters

Election Results

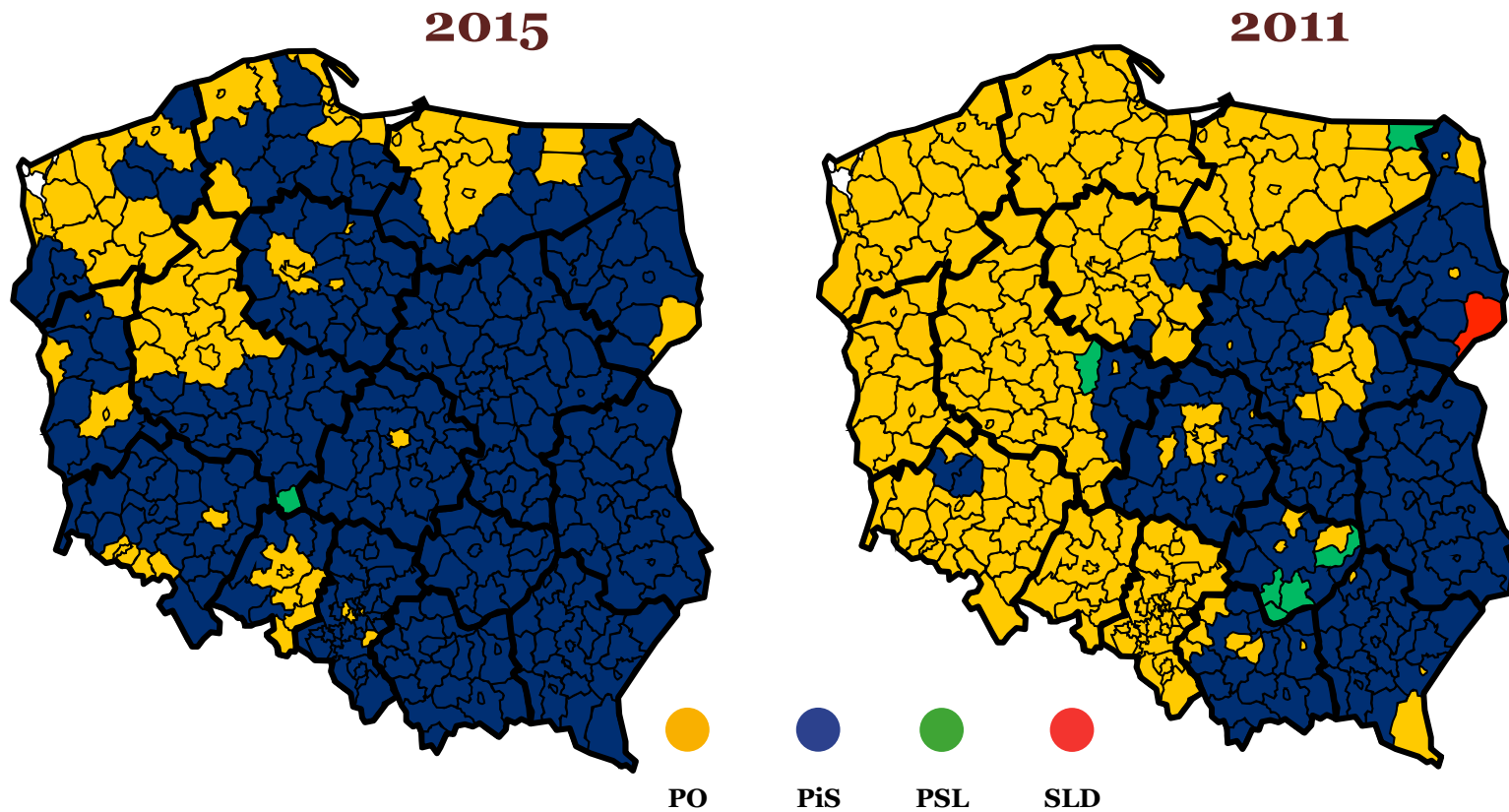
Conservative Swing
*Liberal Left All But Eliminated From
 the Parliament*

5 Factions in the Parliament:
*PiS, PO, Kukiz 15,
 Nowoczesna and PSL*

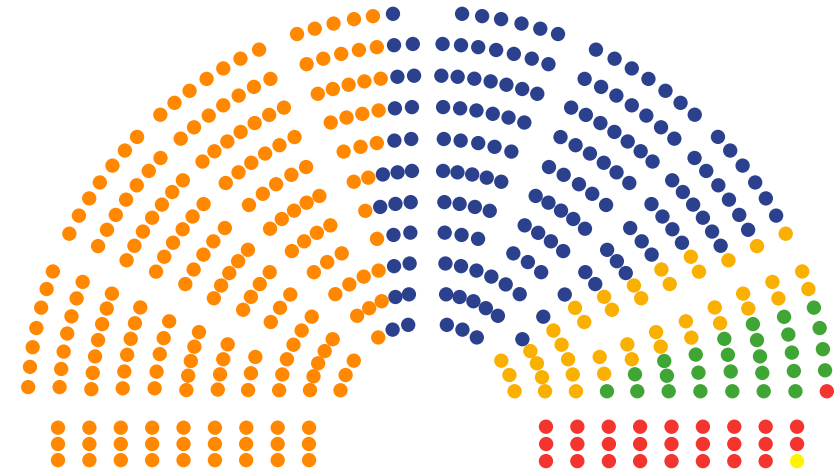
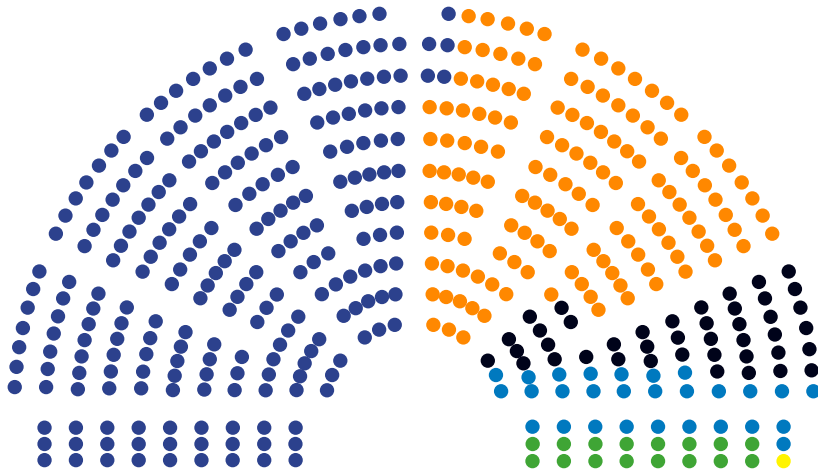


PiS Successfully Seized PO's Home Grounds

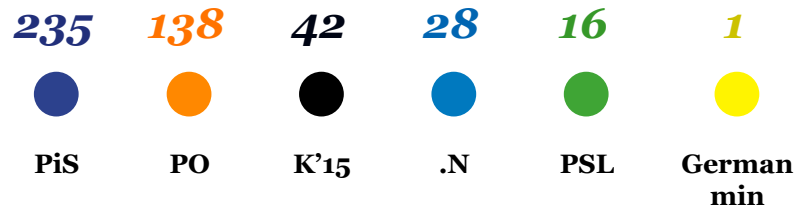
Winners in poviats



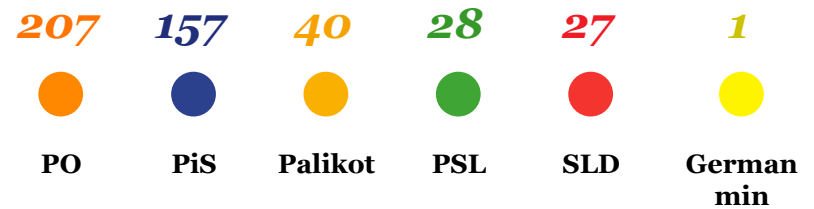
First Post-Transition Single-Party Majority Government in Poland



8th Term Sejm (2015-2019)

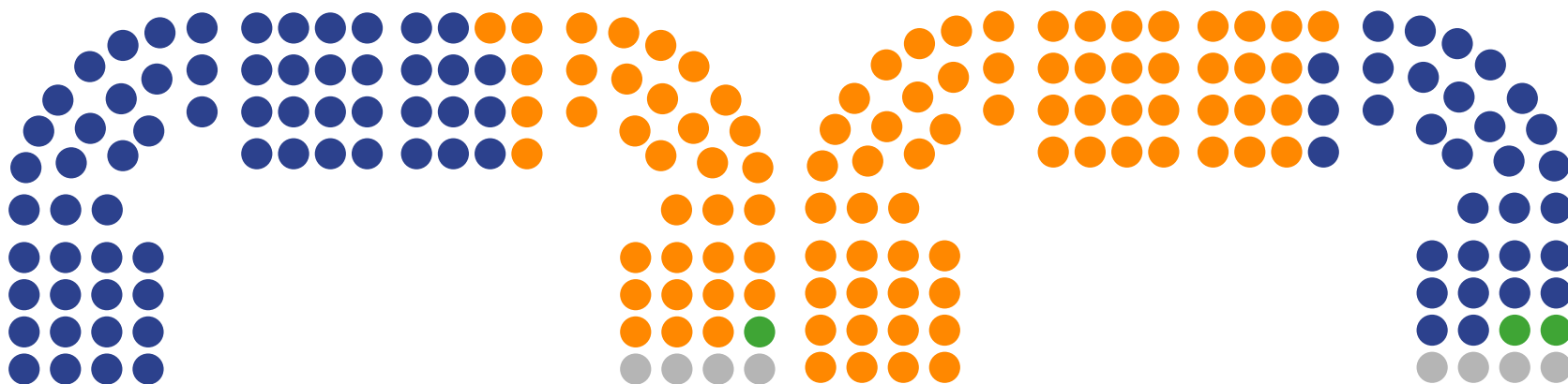


7th Term Sejm (2011-2015)

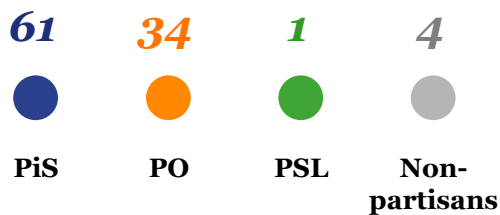


Source: National Electoral Commission (PKW)

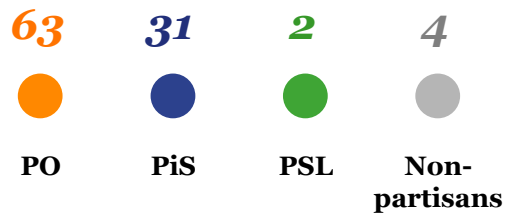
Senate Composition Exposes Features of the First-Past-the-Post System



9th Term Senate (2015-2019)



8th Term Senate (2011-2015)



Source: National Electoral Commission (PKW)

Key Outcomes

2015 General Elections brought a tectonic shift to the Polish political scene

PiS victory, while fully expected at least since the shock defeat of incumbent President Komorowski in May 2015, fetches long-lasting effects for the political life in Poland.

Origins of Discontent

Demographics

Metropolises

Government Stability

Decline of Liberal Left

Turn Right

What can we expect?

Social policy

- Increase of minimum wages or/and tax-exempted income
- New family benefits for children (500+ programme)
- Review of foreign exchange denominated mortgage loans

Fiscal policy

- Likely new VAT and CIT law, possibly also tax code
- Focus on efficient collection of fiscal duties
- Introduction of a retail tax in some form
- Banking assets tax or financial transactions tax

Industrial policy

- Support for SMEs: reduced CIT, public procurement
- Further integration of the energy industry
- Sovereign investments in strategic projects

Social and economic context for the new taxes



Social and economic context

Social and economic context in Poland...

- Shift of political sentiments after 8 years of Civic Platform in power
- General feeling of unfair allocation of costs and benefits of economic growth among the Polish society
- Fascination with V. Orban and his nationalist economic policies among the Law and Justice lawmakers
- Aiming at increasing both tax revenues and the level of income redistribution
- General public acceptance for imposing additional burdens on certain sectors – primarily banking and retail

...and the post-election perspective

- The new Law and Justice government sworn in on November 16
- The new leadership of the Ministry of Finance: P. Szałamacha and K. Raczkowski responsible for taxation, with H. Kowalczyk becoming the co-ordinator of the Government position
- Minister of Finance determined to increase budgetary revenues to cover campaign commitments
- Improvement of tax collection and fighting frauds among Government top priorities
- New tax bills to be implemented under the parliamentary initiative - accelerated procedure

General public acceptance for introduction of some form of "tax on supermarkets"

New leadership in charge of taxes

Paweł Szałamacha

Graduate of the Law and Administration Faculty at UAM in Poznan, Brugge's College d'Europe and John F. Kennedy School of Government at the Harvard University. Lawyer, legal counsel, in 1994-2004 employed at Clifford Chance in Warsaw. In 1990s affiliated with the Adam Smith's Centre, in 2003 established the new think-tank, Sobieski Institute.

After initial unsuccessful attempt in politics with the Real Politics Union, Szałamacha's career took off with Law and Justice party. He became Deputy Minister of Treasury in 2005-07, and in 2007-2015 one of the key PiS economic experts. In 2010 appointed a member of the National Development Council. After 2015 elections – Minister of Finance.

Konrad Raczkowski

Ph.D. in public governance. Professor of the SAN University of Social Sciences, director of the SAN Economic Institute and head of the Economic Security Faculty.

In 2003-13 employed at the Ministry of Finance. Expert on tax frauds, he worked with OLAF – the European Anti-Fraud Office – and Stockholm's Institute for Security and Development Policy. Since October 2015, member of the National Development Council

Henryk Kowalczyk

Mathematician and teacher, graduate of the Warsaw University. Previously Solidarity member, for 15 years Winnica town mayor.

1992-2003 member of the ZChN Christian-National Union: town mayor and member of the Mazovian Voivodship Council. Since 2005 Law and Justice's Member of Parliament. 2005-07 Secretary of State at the Ministry of Agriculture. After 2015 elections – Secretary of State and the Prime Minister's Office and Chairman of the Council of Ministers Standing Committee.



Market and economic effects

The design of tax

- „Industry” range of tax
- Tax base
- Tax rate
- Progressive and flat tax rate
- Surface thresholds
- Other intentional and unintentional exemptions
 - E-commerce
 - Franchising
 - Wholesale trade
 - Other?



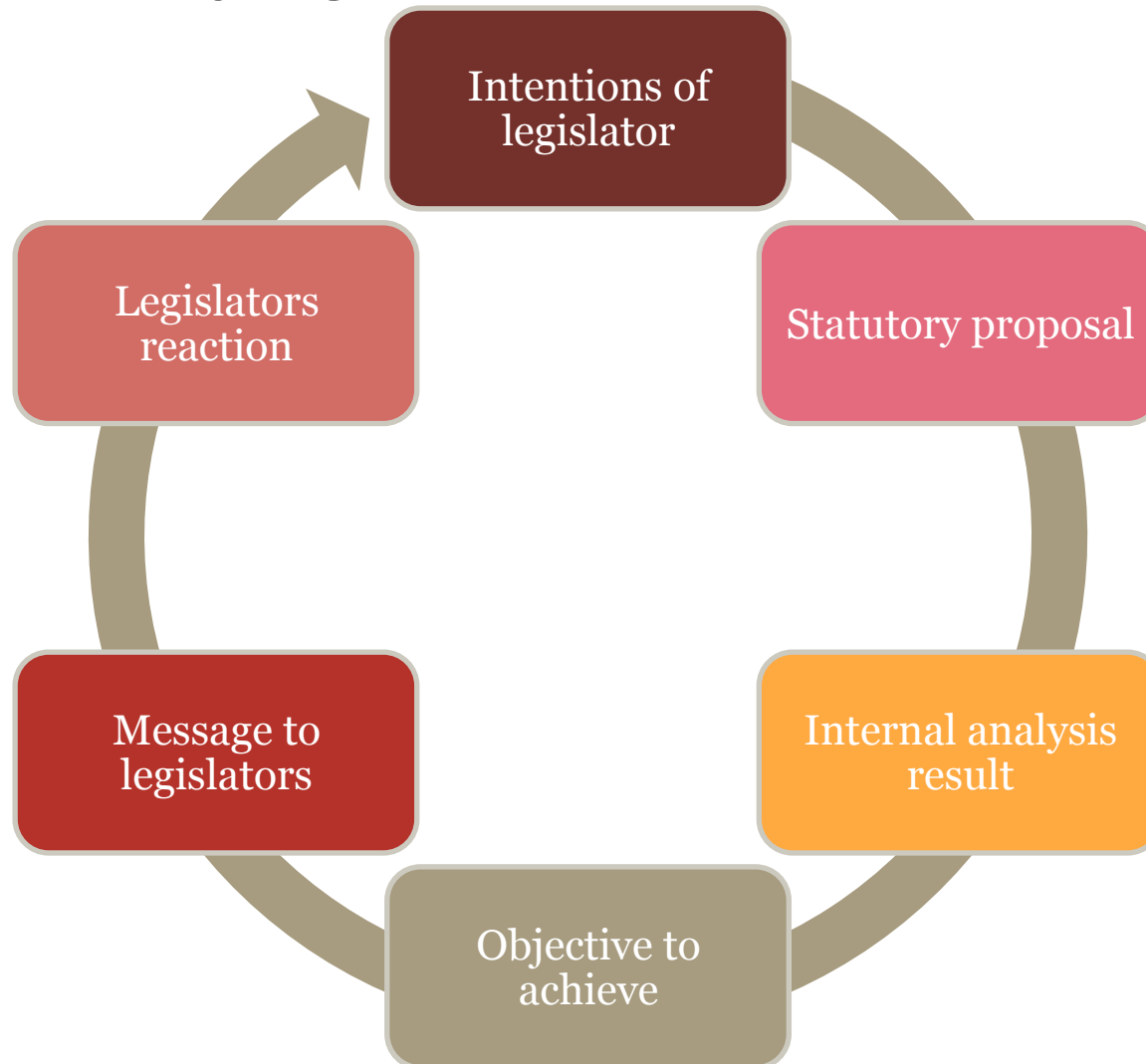
Market effects

- Impact on competitiveness of segments
- Effect on market structure
- Impact on prices
- Impact on other parameters of industry operating

Macroeconomics and social effects

- Impact on employment
- Impact on suppliers
- Households expenditures
- Diversity of market offer

The scope of analysis and criticism of the act and the reaction of legislators



Similar regulations in other EU countries



European solutions

A stylized map of Europe in a light beige tone. Four countries are highlighted with colored circles: a red circle over the UK, a yellow circle over Spain, a pink circle over France, and a dark red circle over Hungary. Each circle is connected to a corresponding text box with a matching color gradient.

UK

In Scotland and Northern Ireland similar tax to the real estate tax was in force.

In England and Wales establishment of retail tax stopped at the idea stage.

Spain

Tax on retail space exceeding 2,500 m².

Tax rate is 17,42 EUR/m²

Questioned in 2015 by the European Commission

France

Tax on stores of area of more than 400 m² with a turnover exceeding EUR460 000.

Tax rate based on the turnover for 1 m²

Hungary

In 2010-2010 crisis tax was in force, repealed by ECJ.

Since 2014 progressive fee for food control was in force. It was revoked in October 2015.

In 2015 flat-rate tax of 0,1% of net sales for all retailers was introduced anew.

The legislative process



The accelerated procedure in the Deputies initiative

Governmental initiative - approx. 6 months



Deputies initiative

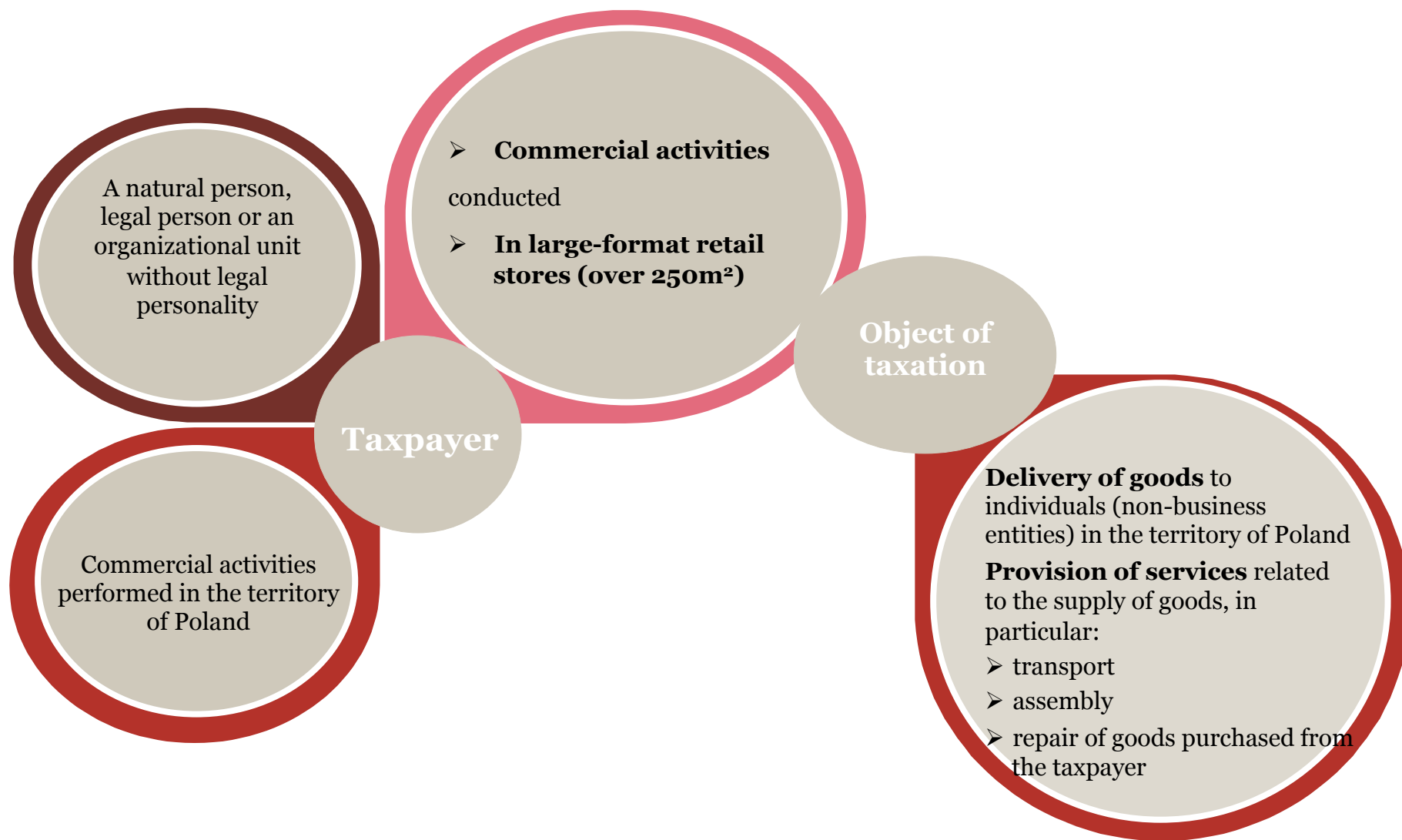


With the political support of the government it is possible to adopt the tax act during one Parliament meeting

Key characteristics



Taxpayer and the object of taxation



Tax rate – two alternative solutions

The project suggests two alternative solutions

Flat tax rate

2%

Progressive rate:

Basis for tax calculation in PLN (quarterly/monthly?)		Tax for a given period
above:	to:	
PLN 700 000	PLN 1 300 000	0,5% of surplus of more than PLN 700 000
PLN 1 300 000	PLN 3 500 000	PLN 3 000 plus 1,5% of surplus of more than PLN 1 300 000
PLN 3 500 000		PLN 36 000 plus 2% of surplus of more than PLN 3 500 000

Alternative proposals



Polish Chamber of Commerce



Polish Chamber of Commerce is industry chamber of commerce for retail trade. Currently it associates 30 thousand of stores, food and drugstores wholesalers and FMCG companies, as well as service companies.

Visiting the President resulted in a change in the bill - franchising will be exempt from tax

PCC postulates:

1 The turnover in retail trade achieved by one tax identification number should be a criterion for the tax

2 The tax rate should be progressive and based on the turnover generated by certain commercial entity

3 The tax should cover also online sales

Polish Trade Forum

- ▶ PTF, created by 11 companies (including POLOmarket, Media Expert, Stokrotka), issued a statement on the draft bill on tax on large-format retail stores presented by Law and Justice.

According to PTF:

Tax based on the surface of stores does not protect local entrepreneurs

Tax on retail should be introduced but in a different shape

A progressive tax based on the turnover generated by a given retail store

The new tax should cover all entities (domestic and foreign) and Internet sales too

Proposed progressive rate:

Basis for tax calculation in PLN
(annual net revenues in thousands)

Annual tax

from:	to:	Annual tax
-	12 000	0,1%
12 000	5 000 000	12 plus 0,5% of surplus of more than 12 000
5 000 000	10 000 000	24 952 plus 2% of surplus of more than 5 000 000
10 000 000		124 952 plus 4% of surplus of more than 10 000 000

Polish Federation of Food Industry

- ▶ PFFI members include leading companies and organizations associated with the food market in Poland

Position of the director of the Polish Federation of Food - Andrzej Gantner:

The proposed tax will hit both the suppliers and consumers

Other solution should be found to tighten up the tax system

Proposed tax should replace CIT and cover all entities

The tax will also hit the medium-sized stores due to the criterion of 250 m²

Group of Polish Furniture Traders

- ▶ The organization representing the interests of individual owners of furniture stores

GPFT:

Supports improving the collection of taxes by the State

Believes that the introduction of a 2% turnover tax is dangerous for the future of domestic entities operating as furniture stores

Postulates that interests of furniture stores owners should be considered. Furniture stores should be exempt from tax or at least the tax should be adjusted to their needs.

Parliamentary Group for the Support of Entrepreneurship and Economic Patriotism



Informal entity formed mostly by Law and Justice Deputies. Although from the legal perspective the Group does not have formal impact on legislative process, it might be a party for negotiations from the parliament side.

Main postulates:

Progressive rate should be applied

Tax should be applied based on turnover not the surface

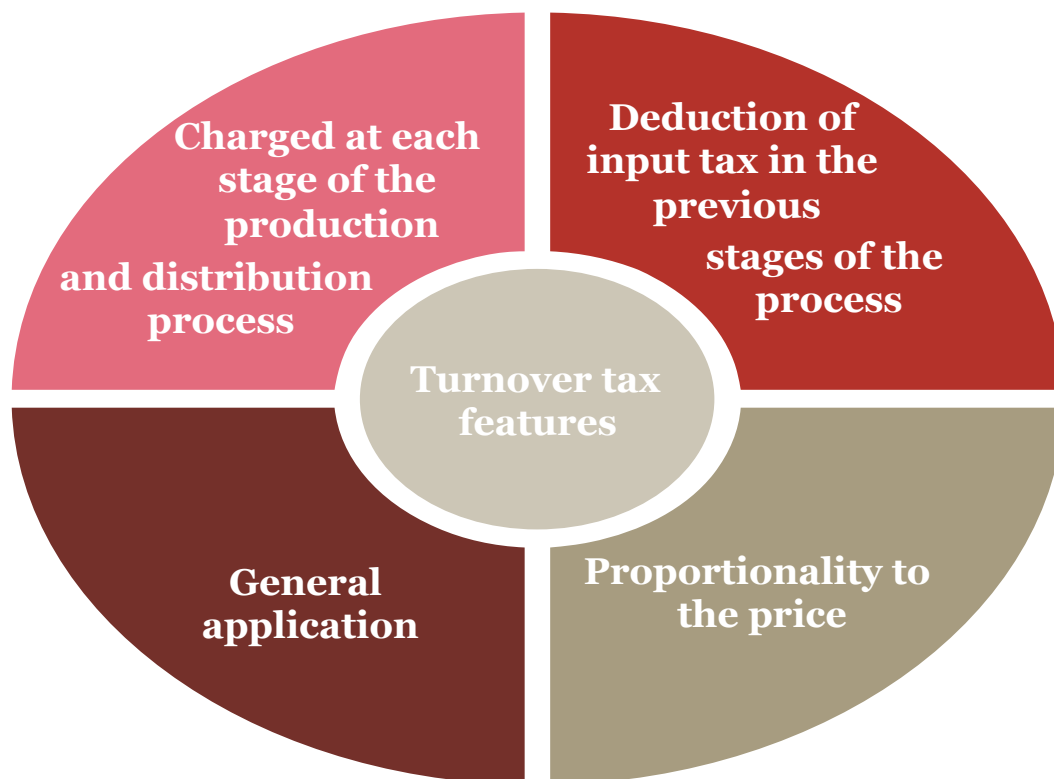
Tax should cover online sales and wholesalers such as Makro

Compliance with EU law



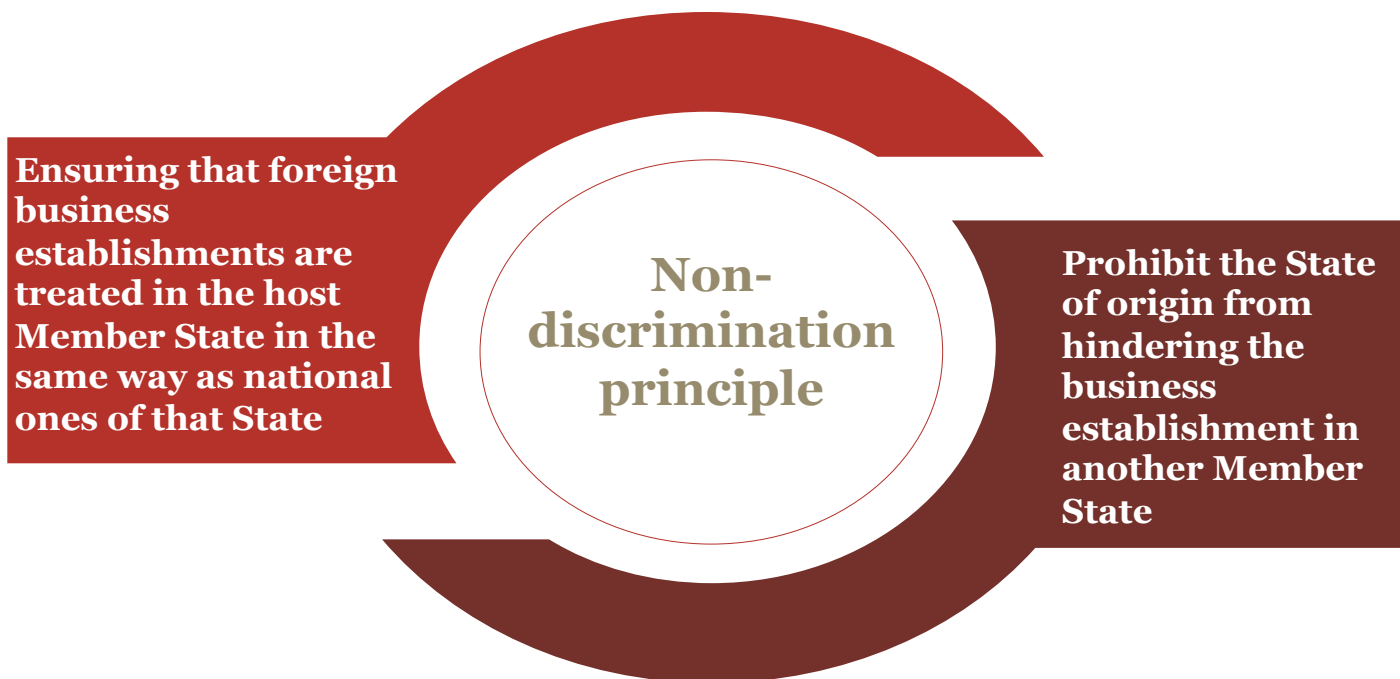
The VAT Directive (2006/112/EC)

Based on the Art. 401 of the VAT Directive Member States may introduce taxes , duties and charges other than VAT, provided that they **cannot be characterised as turnover taxes**



The Treaty on the Functioning of the European Union (TFEU)

- ▶ The Art. 18 in conjunction with Art. 49 TFEU establishes **the principle of non-discrimination** in the field of entrepreneurship . It assumes prohibition of overt or covert discrimination on the grounds of the location of the registered offices of companies (**the principle of national treatment**).



The Treaty on the Functioning of the European Union (TFEU)

▶ In accordance with Art. 107 of the TFEU **selective State aid** is prohibited. For a national measure to be categorised as selective State aid within the meaning of Art. 107 of the TFEU, it must:

**be a result of actions of the state
or the use of state resource**

**affect trade between
Member States**

**distort or threaten to
distort competition**

**bring selective advantages, i.e.
benefits to selected companies**

Constitutional arguments



Constitutional arguments



Violation of the right to property (art. 64)



Breach of the principle of proportionality (art. 31 ust.3)



Breach of the principle of equality (art. 32 ust. 1)



Violation of the Rechtsstaat principle (art. 2)

Summary - conclusions



Summary - conclusions

Very low chances of avoiding the tax implementation

Proposing technical solutions that will help to facilitate "the functioning with the tax"

The tax is expected to be adopted in the accelerated procedure

Indication of the drawbacks of the proposed solutions will not necessarily lead to its favorable emendation

Thank you for your attention



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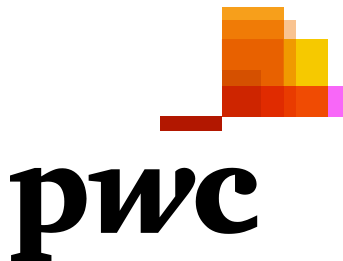
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