

COMMENTS

ACADEMIC RESEARCHER WORK AND THE CONFUSION OF PUBLIC AUTHORITIES. A BLEAK OUTLOOK FOR THE CONSEQUENCES OF THE HIGHER EDUCATION REFORM IN POLAND – COMPARATIVE APPROACH

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From the very beginning, it was assumed that the new regulation – Law on Higher Education and Science (LHES) would mark the implementation of a ground-breaking, comprehensive reform – “Constitution for Science.” It was emphasised that the project constituted the most extensive reform implemented within the framework adopted by the EC as the model for all large-scale systemic changes since the last thirty years. Unfortunately, the efforts made to date by the Minister of Finance and Minister of Science and Higher Education in the face of the many difficulties emerging at the meeting point between copyright, tax and education laws have to be deemed ineffective. Against the background of the analysed solutions in BRICS countries, the Polish solutions are the most far-reaching in terms of protecting the interests of academic teachers. They lead to a reduction of the tax burden (by applying 50% tax deductible costs) by exactly half. While the very idea adopted on the grounds of Polish legal solutions deserves a high assessment and may constitute an interesting model to be copied in the BRICS countries (as far-reaching benefits for university researchers), the manner of its introduction deserves criticism. The adopted legal basis, as shown in the study, is not internally coherent at the junction of tax law, copyright law and higher education law. In fact, they are even mutually exclusive. For this reason, the manner of proceeding with this legitimate regulation cannot be recommended in the BRICS countries.

Keywords: academic teacher; Copyright Law; tax-deductible expenses; creative activity.

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Introduction

As of 1 October 2018, the new Law on Higher Education and Science came into force in Poland.¹ From the very beginning, it was assumed that the regulation would mark the implementation of a ground-breaking, comprehensive reform of the higher education system introduced by the Polish government under the motto of “Constitution for Science.” The new legislation was clearly identified as one the three pillars of the highly prioritised changes planned in this context.² It was emphasised that the project constituted the most extensive reform implemented within the framework adopted by the European Commission as the model for all large-scale systemic changes since 1989. The process entailed both a dialogue between the government and the academia, and a widespread debate within the academic circles themselves. Did the government reach the goal mentioned above?

The Constitution for Science replaced a number of earlier laws related to higher education and comprehensively encompassed the academic system and science in

¹ Act of 20 July 2018 – Law on Higher Education and Science (Dz. U. [Journal of Laws] of 2018, item 1668, as amended) (hereinafter the “LHES”) is applicable under the terms and conditions stipulated in the Act of 3 July 2018 – Regulations implementing the Act – Law on Higher Education and Science (Dz. U. [Journal of Laws] of 2018, item 1669) (hereinafter the “Implementing Regulations”).

² Three pillars of the government’s activity – the so-called Gowin strategy – were identified as: Constitution for Science, Innovation for the Economy, Science for You. See Website of the Republic of Poland (Aug. 2, 2022), available at <https://konstytucjadlanauki.gov.pl/co-zrobilismy-przez-4-lata-w-mnisw/>.

Poland. The goal of the regulation was to establish optimum conditions to facilitate scientific and didactic excellence, ensure sustainable development of academic centres throughout Poland, and provide universities with effective management tools.³ The reform of higher education was motivated primarily by a relatively poor evaluation of the quality of academic research in Poland. Among many reasons identified as responsible for this state of affairs, a number of systemic factors were mentioned. In the government's assessment, the same included, e.g., flawed organisation and overall system of academic institutions as well as insufficient levels of available financial support.⁴ It was emphasised that the latter necessitated not only expanding the pool of financing available to universities but also improving the efficacy of regulatory measures aimed at supporting the effective development of higher education.⁵

Inevitably, the higher education and science financing model should have been changed. Funds for maintaining the teaching potential (education of students, maintenance, professional development of the staff), and research potential (including research activity, purchase of equipment or infrastructure below PLN 500,000, doctoral studies, commercialisation) were to be granted in the form of subsidies. This meant that the money would not be arbitrarily divided into separate funds. Universities should have had greater flexibility in deciding what their funds would be spent on. Funds not spent in a given year should have been retained for the following year. Therefore, it was decided to increase the annual minimum state budget expenditure on science and higher education. In 2019 it was 1.2 percent GDP, and it is expected to grow by 0.1% per year until 2025, when it reaches 1.8 percent GDP.⁶ In comparison, South Africa is spending 0.75% of its gross domestic product (GDP) on higher education, the United States and the United Kingdom spend 0.9% of GDP on higher education and Germany spends 1.1%. It should be agreed with the recommendation that government should aim to increase the level of spending on higher education. In doctrine it was mentioned that increasing government's spending from 0.75% of GDP to 2% of GDP will relieve the burden on students to

³ Opinion of the Minister of Science and Higher Education, Website of the Republic of Poland (Aug. 2, 2022), available at <https://www.gov.pl/web/nauka/konstytucja-dla-nauki-2>.

⁴ *Id.*

⁵ Similar concerns were also voiced by Adam Szot in *Diagnoza szkolnictwa wyższego. Program rozwoju szkolnictwa wyższego do 2020 r. Część III [Diagnosis of Higher Education. Higher Education Development Program Until 2020. Part III]* 52 (Jarosław Górniak ed., 2015). See Strategy for the Development of Higher Education in Poland by 2020, partial report prepared by the consortium of Ernst & Young Business Advisory and the Institute for Market Economy Research (February 2010), at 38 (Aug. 2, 2022), available at http://cpp.amu.edu.pl/pdf/SSW2020_strategia.pdf.

⁶ Ludwika Tomala, *New version of the Constitution for Science – key solutions*, Website of the Republic of Poland, 29 January 2018 (Aug. 2, 2022), available at <https://www.archiwum.nauka.gov.pl/en/polish-science-news/new-version-of-the-constitution-for-science-key-solutions.html>.

fund their own education.⁷ As reports show, low academic teachers' salaries still are on the unsatisfactory level. It concerns BRICS countries as well.⁸

Undoubtedly, a significant role in the wide range of regulations affecting university financing is played by tax legislation. By its nature, the same directly impacts not only the organisational capacity of universities but also, to a considerable extent, the legal situation of their employees. Unfortunately, the currently employed solutions are characterised by considerable complexity and lack of consistency. This fact has a negative impact on the applicability of the government's envisioned preferential tax regulations dedicated to the group of academic teachers. It is unfortunately difficult to avoid the conclusion that although the idea of preferential treatment of researchers (taxpayers) is highly laudable as such, the manner in which it is being introduced contradicts the very purpose of the implemented reform.

1. Primary Premise of the Reform

The Constitution for Science (LHES) was to organise the entire system of higher education and science in Poland. It was assumed that it would create the conditions for scientific and didactic excellence, ensure sustainable development of academic centres across the country, introduce doctoral schools and give universities appropriate tools necessary for effective management. For a very long time it was pointed that the Polish system is not competitive enough and the new reform should strengthen the real autonomy of the university, including financial autonomy, because it enables flexible management of financial resources. It also would enable the university authorities to shape the organizational structure of the university more freely. As another crucial point, students' position on the market was mentioned. It was underlined that students should be educated coherently with the needs of employers. Some students pursue academic careers, but a vast majority of students graduate and go to work. Universities should cooperate with businesses, with the economy and the labour market. Therefore, a strict cooperation between entrepreneurs and scientists is needed. Any entrepreneur who is able to establish cooperation with scientists would pay lower taxes and at the same time build their competences in the field of technology. Such solution was pointed, e.g. in the Chinese higher education.⁹ The state follows a tax reduction policy to save universities money

⁷ Funding of public higher education institutions in South Africa, PwC South Africa (Aug. 2, 2022), available at <https://www.pwc.co.za/en/publications/funding-public-higher-education-institutions-sa.html>.

⁸ How much money teachers get paid in South Africa vs other countries, BusinessTech, 13 November 2018 (Aug. 2, 2022), available at <https://businesstech.co.za/news/finance/283768/how-much-money-teachers-get-paid-in-south-africa-vs-other-countries/>.

⁹ How Does Education in China Compare with Other Countries?, ChinaPower Project (Aug. 2, 2022), available at <https://chinapower.csis.org/education-in-china/>.

for hi-tech development.¹⁰ It is mentioned, that Chinese higher education is now in the phase of stable development, with a focus on quality, equity and rebalance between the provision of graduates and the demand from the labour market. The National Outline for Medium- and Long-term Educational Reform and Development (2010–2020) identified four strategic goals, including enhancing higher education quality, promoting innovation, and encouraging optimal structure and institutional uniqueness, and enhancing internationalization. As it has been shown, the goals, such as enhancing higher education quality, promoting innovation, encouraging optimal structure are the same for medium – higher education systems (Poland), and big structures (China). The sharp rise in student numbers indicates a major improvement in access to higher education. It is a global tendency. It concerns not only Poland higher education system. BRICS countries meet the same trends.¹¹ Nevertheless, as it is pointed in the doctrine, still higher education, e.g. in South Africa is an elite system, although the emergence of a private higher education sector has made it possible for students who could not enter public universities and colleges, to enrol in mainly small, private institutions.¹² There is wide agreement, anchored in growing evidence, that higher education matters for development. As any country's core knowledge institution, it plays a central role in the delivery of highly qualified graduates (the future "knowledge workers"), in the production of knowledge of relevance for economic growth and social development, and in the improved understanding of the nature of the major challenges confronting our societies, as well as in identifying ways for handling these challenges. Aforementioned should be underlined in governmental strategies and policies, related to the under-appreciation among scholars, policy-makers, and donor agencies of different countries, especially in Africa.

In Poland, for over two years, there were consultations and conferences organized as part of the National Congress of Science. The directions of change were discussed then. The aforementioned was the reason why numerous groups of academicians supported the Constitution for Science. Finally, three independent research teams that had received grants to develop the principles of the new LHES submitted their projects to the Ministry of Science. The Ministry of Science prepared a new bill based on the results of their work. The new regulations were prepared by three groups: the team of Prof. Marek Kwiek – associated with Adam Mickiewicz University in Poznań, the group led by Arkadiusz Radwan, Ph.D. associated professor – formed at the Allerhand Institute in Kraków; and the team of Prof. Hubert Izdebski, affiliated

¹⁰ China's Higher Education System, Encyclopedia.com (Aug. 2, 2022), available at <https://www.encyclopedia.com/international/news-and-education-magazines/chinas-higher-education-system>.

¹¹ E.g., Elling N. Tjønneland, *Crisis at South Africa's Universities – What Are the Implications for Future Cooperation with Norway?*, 16(3) Chr. Michelsen Institute Brief 1 (2017); Anna Smolentseva, *Challenges to the Russian Academic Profession*, 45(4) High. Educ. 391 (2003).

¹² See Nico Cloete, *The South African Higher Education System: Performance and Policy*, 39(8) Stud. High. Educ. 1355 (2014).

with the University of Social Sciences and Humanities in Warsaw. It was pointed unequivocally – Polish law on higher education required a comprehensive reform. The current legislation was based on principles that would only perpetuate the status quo. The reform required new guidelines, which would allow universities to introduce new solutions and to modernize the academia. Therefore, the focus was on new quality of higher education, new requirements for academics, and on modern management and financing of universities and research. It was crucial that the new statutory act (LHES) would meet the goals: creating special career path for academic teachers, raising minimum salaries for academic teachers, introducing more equitable evaluation of scientific achievements, focused on quality not on the number of scientific publications, reducing bureaucracy and increasing organisational autonomy of universities with a mechanism that increases expenditures on higher education and science (organised law in the area of higher education and science and reduces the number of executive acts).¹³

The aforementioned values are crucial for many other countries, all over the world. For example, the process of transformation of higher education in South Africa (NCHE Report and following the White Paper and Act of 1997) also sets out several principles for the new framework: equity in the allocation of resources and opportunities; redress of historical inequities; democratic, representative, and participatory governance; balanced development of material and human resources; high standards of quality; academic freedom; institutional autonomy; and increased efficiency and productivity.¹⁴

The adoption of the LHES in Poland stemmed from the premise, which its Authors believe to be justified, that “improving the efficiency of higher education and science necessitates improvement in terms of the quality of human and social capital.” It was further emphasised that the foundation of an efficient system is rooted in the “freedom of teaching, artistic activity, scientific research (and publication of the results thereof), as well as academic autonomy.”¹⁵ It was stated that the project was discussed with the academic community and it would bring development not only to large, but also to regional universities “by ensuring the diversity of the Polish academic community.” The statute would introduce the regional initiative of excellence that would provide a separate funding stream for research in the “islands of excellence,” smaller universities. Referring to the evaluation of universities, it was stated that the provisions contained in the LHES were a departure from the “scoring disease mechanisms inherited from the previous law” would allow scientists to focus

¹³ See Constitution for Science, Website of the Republic of Poland (Aug. 2, 2022), available at <https://www.gov.pl/web/science/constitution-for-science>.

¹⁴ Baken J. Lefa, *History of Higher Education in South Africa*, 1(1) Hist. Educ. 45 (2014).

¹⁵ Comment by the Minister of Science and Higher Education, Jarosław Gowin, after the adoption of the new act on higher education and science, Website of the Republic of Poland (Aug. 2, 2022), available at <https://konstytucjadlanauki.gov.pl/o-ustawie>.

on real research and realize their ambitions instead of collecting points.”¹⁶ It was clearly indicated based on expert reports that the side effects of maintaining the existing status quo would entail: increasing difficulty of any attempts to modernise universities, failure to keep up with changes taking place in science, technology and general academic milieu, and consequently further deterioration of the universities’ international significance. It was posited that the apparent autonomy of state universities is in fact limited by a variety of regulations, while the substantive freedom of the academia, particularly in terms of developing curricula, is lower in Poland than in many other EU and OECD countries.¹⁷

The LHES was drafted primarily under the premise of implementing a new model of university management with the aim of increasing its overall effectiveness.¹⁸ The role of the rector was strengthened and rectors, not faculties or institutes, would be in charge of university finances. Not only rectors will enjoy a stronger position, but universities will have greater autonomy to shape their own structures. It is now up to the university senate to decide, by adopting a statute, if the university will be divided into faculties or choose another internal structure. The reform has a strong human aspect. Academic staff falls into three categories: those who concentrate on research, a group that combines research with teaching and a group that will just do teaching. A special professorship of didactics has been created in recognition of academics who do not do research but are outstandingly talented teachers so they can progress their careers. The first results of the evaluations conducted by the Science Evaluation Committee (*Komitet Ewaluacji Nauki* in Polish) will be announced in 2022. The evaluation will mainly be based on hard bibliometric data coming from the databases of Elsevier and Clarivate Analytics. Preference will be given to publications in the leading international journals. A new model of preparing academic staff will be introduced alongside doctoral schools. At the same time, the old system of the intermediate habilitation degree between a doctorate and professorship that led to academics not getting to the top until they were much older, has been tweaked. It will now be possible to go from a doctorate directly to a professorship.¹⁹

¹⁶ Ludwika Tomala, *The Sejm passed the Law on Higher Education and Science, the so-called Law 2.0*, Science in Poland, 8 July 2018 (Aug. 2, 2022), available at <https://scienceinpoland.pap.pl/en/news/news%2C30185%2Csejm-passed-law-higher-education-and-science-so-called-law-20.html>.

¹⁷ See Strategy for the Development of Higher Education in Poland by 2020, *supra* note 5.

¹⁸ Similar observations were voiced by Jarosław Górniak in *Diagnosis of Higher Education*, *supra* note 5, at 235, where the need for institutional, organisational and managerial changes was also emphasised.

¹⁹ Waldemar Siwinski, *The Quest to Promote Quality over Mediocrity in HE*, University World News, 1 March 2019 (Aug. 2, 2022), available at <https://www.universityworldnews.com/post.php?story=20190225100517806>.

2. Key Regulations of the LHES

The introduction to the LHES stipulated that the pursuit of truth and the transmission of knowledge from generation to generation were recognised as a particularly noble human activity. What is more, the fundamental role of science in the creation of civilisation, the rules for the functioning of higher education and the conduct of scientific activities were established on the following principles:

1) It is the duty of the public authorities to create optimal conditions for the freedom of scientific research and artistic creation, freedom of teaching and autonomy of the academic community, 2) every scientist is responsible for the quality and reliability of research and for the education of the young generation, 3) higher education institutions and other research institutions carry out a mission of particular importance for the country and the nation: they make a key contribution to the innovativeness of the economy, contribute to the development of culture as well as to the establishment of moral standards in public life.

It was underlined that the basis of the system of higher education and science is the freedom of teaching, artistic creation, research and publication of its results as well as the autonomy of higher education institutions. The system of higher education and science shall respect international standards, ethical principles and good practice in education and research activities as well as take into account the particular importance of the social responsibility of science. Scientific activities include scientific research, development works and artistic creation. Specially, the scientific research is an activity that includes: 1) basic research understood as empirical or theoretical works aimed primarily at gaining new knowledge about the foundations of phenomena and observable facts without focusing on any direct commercial application; 2) applied research, understood as works aimed at acquiring new knowledge and skills, focused on developing new products, processes or services or introducing significant improvements in them. It was added that development works are an activity involving the acquisition, combining, shaping and use of existing knowledge and skills, including those relating to IT tools or software, for production planning and the design and creation of altered, improved or new products, processes or services, excluding activities involving routine or periodic changes thereto, even if such changes constitute improvements.²⁰

In the financial context, the aspect of academic autonomy was strongly emphasised. Related to the above, one should highlight the considerable substantive status of intra-academic acts adopted by the competent bodies of a given institution, e.g. the senate,

²⁰ Arts. 3–5 of the LHES.

the rector. The same are also significant to the problem of preferable fiscal treatment of academic teachers discussed in this paper.²¹ In particular, one should consider the new regulation's approach to so called *tax-deductible costs* with regard to taxation of the remunerations received by academic researchers (authors) which, if applied, would significantly reduce the level of the due personal income tax (PIT).

Under the current law, performance of the tasks of an academic teacher constitutes an individual creative activity within the meaning of copyright legislation.²² Such wording of the regulation could suggest that *all* professional duties performed by academic teachers are eligible for the preferential treatment, i.e. included in the scope of the 50% tax-deductible expenditures. Indeed, this interpretation was endorsed by the Minister of Science and Higher Education who publicly declared that, in his assessment, the ministry had been able to develop a solution that would lay to rest any doubts as to the possibility of applying the increased rate of deductible expenditures with respect to the remuneration received by university staff performing the roles of academic teachers.²³ In the minister's opinion, the LHES takes into due account the actual circumstances of universities' overall functioning and the specificity of academic teachers' work by recognising their tasks as creative activity eligible for the 50% cost deduction.²⁴

Unfortunately, upon a closer analysis of legal provisions pertaining to the creative activity of academic teachers, one inevitably arrives at considerably less optimistic conclusions. The questionable effectiveness of the regulation is in fact so apparent that it is difficult to avoid the impression of a general confusion experienced subsequently by all the actors involved: university boards, fiscal authorities, academic teachers, and even, apparently, members of the cabinet from whom we have heard a deafening silence with regard to the interpretation provided by tax authorities, which hardly bodes well for the overall success of the newly introduced legislation.²⁵

Faced with a deluge of requests for official interpretation of the LHES submitted to the Ministry of Science and Higher Education by concerned academic authorities, officials consistently replied that the 50% tax-deductible expenditures will be applicable

²¹ See the explanatory memorandum to the Act of 20 July 2018 – Law on Higher Education and Science (Dz. U. [Journal of Laws] of 2018, item 1668) (hereinafter the “Explanatory Memorandum”).

²² Art. 116.7 of the LHES in conjunction with Art. 1.1 of the Act of 4 February 1994 on Copyright and Related Rights (Dz. U. [Journal of Laws] of 2018, items 1191 and 1293) (hereinafter the “Copyright Law”).

²³ See, e.g., information provided at the website dedicated to the Constitution for Science, Website of the Republic of Poland (Aug. 2, 2022), available at <https://konstytucjadlanauki.gov.pl/sprawy-pracownicze-najczesciej-zadawane-pytania>.

²⁴ See, e.g., communication of the Ministry of Science and Higher Education of 25 May 2018 – “Koszty uzyskania przychodu – MNiSW za jednolitymi zasadami”, unpubl. and communication of 8 June 2018 – “Koszty uzyskania przychodu – stanowisko MNiSW i MF”, unpubl.

²⁵ See Letter from the Director of National Tax Information Office of 13 March 2019, no. 0112-KDIL3-3.4011.14.2019.1.MM, LEX no. 489750. See also Jarosław Ostrowski, *Nowe autorskie koszty uzyskania przychodu [New Proprietary Tax Deductible Costs]*, 6 Przegląd Podatkowy [Tax Review] 30 (2018).

to the *entire remuneration* of an academic teacher.²⁶ At the same time, however, the Ministry of Finance issued a statement about ongoing (prolonged) works on the general interpretation of tax law. Regretfully, one has to conclude that many months of consultations held between the respective ministries failed to yield satisfactory results. Given the growing uncertainty, the Minister of Science and Higher Education presented the Minister of Finance with a letter wherein he once again presented his own interpretation of the controversial law, in expectation that the same would be adopted as standard practice by tax authorities.²⁷ However, although the Minister of Finance reassured him that the general tax law interpretation long awaited by the academic circles would be promptly published, the Minister of Science and Higher Education's interpretation of the provisions was not corroborated.²⁸ In light of the above, it seems evident that the Minister of Science and Higher Education acted too rashly when confirming, in reply to the position of the Ministry of Finance, his opinion that the 50% cost deduction would apply to the entirety of an academic teacher's remuneration.²⁹ Furthermore, the statement in no way influenced the actual fiscal practice, even after the Ministry of Science and Higher Education officially voiced its concerns with regard to the interpretations provided by tax authorities and the extreme discrepancies observed in terms of the response of respective universities to the situation at hand.³⁰

When analysing the discussed problem, one should not neglect to consider the amount of controversy arising from the provisions of personal income tax law itself.³¹ What further exacerbates the situation is the fact that the same are in fact only secondary to numerous fundamental problems related to Copyright Law as such. Contrary to the claims of the Minister of Science and Higher Education, the introduced regulation is not conducive to clarity and uniformity in the application of law.³² In this context, the provisions of the LHES refer to Copyright Law and its definition of a work, rather than directly to tax-related legislation.³³

²⁶ See reply issued on 23 October 2019, unpubl.

²⁷ Letter from the Minister of Science and Higher Education of 18 January 2019, ref. no.: DBF.WFSN.5013.1.2019.KK.

²⁸ Letter from the Minister of Finance of 25 February 2019, ref. no.: DD3.8223.31.2019, unpubl.

²⁹ Notification entitled "*Nauczyciele akademicy mogą stosować 50% kosztów uzyskania przychodów od całości wynagrodzenia*," Website of the Republic of Poland (Aug. 2, 2022), available at <https://konstytucjadlanauki.gov.pl/nauczyciele-akademicy-moga-stosowac-50-kosztow-uzyskania-przychodow-od-calosci-wynagrodzenia>.

³⁰ Letter from the Minister of Science and Higher Education of 9 May 2019, University of Wrocław (Aug. 2, 2022), available at https://uni.wroc.pl/wp-content/uploads/2019/02/50proc_KUP_pismo_MNiSW_190118.pdf.

³¹ Arts. 5a.38–40, 22.9.3) and 22.9b.8) of the Act of 26 July 1991 on Personal Income Tax (consolidated text, Dz. U. [Journal of Laws] of 2021, item 1128, as amended) (hereinafter the "PIT Act").

³² Letter from the Minister of Science and Higher Education of 23 November 2018, ref. no.: DBF.WFSN.74.135.2018.HŻ.

³³ Art. 116.7 of the LHES in conjunction with Art. 1.1 of the Copyright Law.

A juxtaposition of systemic regulations pertaining to higher education, fiscal and copyright concerns reveal the full scope and considerable significance of the observed disharmony. It is therefore unsurprising that the situation lends itself to a growing confusion of both the authors of the reform themselves, tax authorities, and consequently also the respective boards of Polish universities. When attempting to unravel the complex network of relationships touched upon by the LHES, one should begin by determining the actual subjective and objective scope of the newly introduced solutions for higher education.

The importance of tax solutions in the context of academic teachers' income should be emphasised here. While attempting to illustrate the general significance of the tax institution in question, it is worth referring to the level of taxation in Poland (tax scale) – *Table 1*.

Table 1

Tax assessment basis in PLN		Tax (PIT)
Over	To	
	120 000	17% (minus tax-free amount 5100 zł)
120 000		15 300 zł + 32% over 120 000 zł

Source: Article 27 of the PIT Act.

Applying 50% tax deductible costs means that only half of the income is subject to 17% or 32% tax rate. In general, it can be stated that this solution may lead to the reduction of the amount of tax due by half. In this sense, the introduced solution has a very significant, economic meaning for academic teachers in Poland.

3. Legal Status of an Academic Teacher

The Law on Higher Education and Science distinguishes between two groups of university employees, namely academic teachers and staff members who are not academic teachers.³⁴

Academic teachers may be employed as members of the: 1) didactic staff; 2) research staff; or research and didactic staff.³⁵ The primary tasks of academic teachers entail conducting research and educating students. However, this hardly

³⁴ The new regulation retained previous dichotomic distinction between university staff members based on the specifics of their professional tasks, originally introduced in the Act – Law on Higher Education of 2005. See also Jan M. Zieliński, *Komentarz do art. 112 p.s.w.n.* [Commentary on Art. 112 p.s.w.n.] in *Prawo o szkolnictwie wyższym i nauce. Komentarz* [Law on Higher Education and Science. Comment] (Hubert Izdebski ed., 2019).

³⁵ See Arts. 112–115 of the LHES.

represents the entirety of work they perform. They are also obliged to contribute to organisational work at their universities and continuously increase their professional competences. It should be noted at this point that the remuneration received under the relevant employment relationship covers also those types of duties. Given the specific wording of the LHES, the aforementioned formula greatly hinders the applicability of the provisions on 50% tax-deductible expenses. Specifically, it simply is not compatible with the new regulation³⁶ which defines the performance of an academic teacher's tasks as individual creative activity within the meaning of Article 1.1 of the Copyright Law. Naturally, one cannot argue with the fact that, as such, the idea behind the regulation is reasonable and touches upon the very gist of the matter, however, already at this stage it becomes clearly evident that from the substantive and strictly practical perspective, the same is far from sufficient. Even though the provision includes all statutory tasks of academic teachers (i.e. members of research, didactic, or research and didactic staff) within the scope of its applicability, its actual wording does not facilitate the development of a uniform interpretation in terms of the extent to which the 50% tax-deductible expenditures are in fact applicable.

Numerous additional doubts arise from the specific structure of an academic teacher's remuneration. One has to ask whether, in light of the LHES provisions,³⁷ it is correct to assume that the basic remuneration received by a research, research and didactic, or didactic staff member should be eligible for copyright protection and therefore fall within the scope of the 50% expenditure deduction stipulated by the PIT Act?³⁸ Although we fully approve of the adopted direction of legislative changes, it is our considered opinion that without an explicit solution to the mounting unclarity, the correct application of the LHES will be burdened with a high risk of erroneous interpretation of its provisions. For even should we assume that the increased 50% cost deduction can be applied to the full basic remuneration of a faculty member, one cannot forget that the salary received by a university employee actually consists of two elements: the *basic remuneration* and the *length of service allowance*. Furthermore, a university employee may also be eligible for so-called *variable remuneration components*: 1) special duty allowance, 2) performance allowance, 3) overtime pay, 4) allowance for working in onerous or hazardous conditions, 5) bonuses – in the case of employees who are not academic teachers, 6) other allowances, if specified in the internal collective labour agreement or remuneration policy.³⁹ This leads to another problem: are variable remuneration components also eligible for inclusion in the 50% tax-deductible expenditures framework stipulated by the LHES?⁴⁰ This does not seem

³⁶ Art. 116.7 of the LHES.

³⁷ Art. 116.7 in conjunction with Art. 115.1–2 of the LHES.

³⁸ Art. 22.9b.8) in conjunction with para. 9.3) of the PIT Act.

³⁹ Art. 136 of the LHES.

⁴⁰ Art. 136.2.2)–3) and 6) in conjunction with Art. 138.3 of the LHES.

to be corroborated by the position adopted in administrative case law which concludes that such remuneration components do not constitute income from work subject to copyright as no cause-and-effect relationship can be identified in this case between the remuneration and actual creative work.⁴¹ Adopting this interpretative direction in fiscal practice, however, would stand in blatant contradiction to both the intentions of the legislators and the ministerial interpretation of the relevant regulation.⁴²

Additional limitations to the applicability of the LHES stem from the numerous doubts related to the method of taxation with regard to the remuneration of staff members on paid sabbaticals. It is difficult to explicitly determine whether the increased level of tax-deductible expenditures ought to be applied immediately (when paying the salary due to a faculty member on a sabbatical) or rather only once the relevant copyrights are transferred to the employer (the current copyright and fiscal legislation and the provisions of the LHES prove decidedly inconsistent in this respect). Notably, also identifying the correct moment of payment as such is significant in this context.

A separate problem relates to the method of *documenting* the income received in return for the work performed by an academic teacher. Should a faculty member submit a statement to declare the percentage of royalties included in their overall basic remuneration? Since the provisions of the LHES came into force, should faculty members be required to keep a register and settlement of the tasks performed to produce a creative work which, in their opinion, falls under the relevant definition stipulated by Copyright Law? Should it be necessary, at the end of the fiscal year, for the employer to take over the copyrights with respect to works to which the 50% cost deduction was applied?⁴³ Under the current legislation, it is impossible to unambiguously answer these questions based on sufficient and compelling substantive arguments.

Given the extent of the emerging dilemmas, it is impossible not to mention copyright-specific regulations that determine the perception of academic teacher's work and its character.

⁴¹ It is worth citing an excerpt from a ruling of the Voivodeship Administrative Court in Poznań of 24 January 2018, ref. no. I SA/Po 831/17, LEX no. 2446370, whose statement of reasons reads "a payer will be eligible for 50% expenditure deduction in the month when employees receive remuneration in return for the use of disposal of copyrights, but excluding statutory bonus (and other bonuses, e.g. performance bonus) and service allowance, i.e. only with respect to the given employee's basic remuneration (...), because they do not constitute revenue generated from work subject to copyright as there is no cause and effect relationship between the remuneration and creative work." It should be added that additional controversy emerges in the event of temporary suspension of basic remuneration due to receipt of financing from sources other than the subsidy.

⁴² See Letter from the Minister of Science and Higher Education of 23 November 2018 to rectors of state universities, ref. no.: DBF.WFSN.74.135.2018.HZ.

⁴³ Article 12.1 of the Copyright Law reads: "Unless this Act or a contract of employment states otherwise, the employer, whose employee has created a piece of work within the scope of his/her duties resulting from the employment relationship, shall, upon acceptance of the work, acquire the author's economic rights within the limits resulting from the purpose of the employment contract and the congruent intention of the parties."

4. Concerns Arising from Copyright Law

Under the provisions of the LHES, the performance of professional tasks by an academic teacher constitutes creative activity within the meaning of Copyright Law. But for the results of an academic teacher's research to be eligible for copyright protection, they ought to possess the specific attributes of a creative work.⁴⁴ What qualities must result of an activity possess to be classified as a creative work within the meaning of Copyright Law? Pursuant to its provisions, the object of copyright is any *manifestation of creative activity* of individual nature, established in any form, irrespective of its value, purpose or form of expression.⁴⁵ Protection may apply to the form of expression only and no protection is granted to discoveries, ideas, procedures, methods, operating principles, or mathematical concepts.⁴⁶ A work is in copyright since being established, even if its form is incomplete.⁴⁷

The provisions of Copyright Law do not specify whether a work can be established solely under a *specific work contract*. The above conclusion stems both from Copyright Law and the provisions of the civil code.⁴⁸ A work within the meaning of Copyright Law can also be established within the framework of an employment relationship⁴⁹ or a service contract.⁵⁰ This leads to the conclusion that there are no evident legal obstacles to qualifying the work of an academic teacher as creative activity.⁵¹ At this point, however, the point of gravity in the discussed problem shifts to another aspect of the same. It becomes necessary to determine the actual scope of an academic teacher's activity that is eligible for copyright protection and can therefore be subject to the increased tax-deductible expenditures.

A work is, above all, an intangible asset constituting the *result* of the author's intellectual activity. Hence, the definition of a work as a "manifestation" of a particular activity refers the same to an external result existing outside of the author's mind. As indicated in the doctrine, granting protection to a given result of human activity depends on several conditions. It must constitute a manifestation of creative activity

⁴⁴ Art. 1.1 of the Copyright Law.

⁴⁵ *Id.*

⁴⁶ *Id.* Art. 1.2¹.

⁴⁷ *Id.* Art. 1.3.

⁴⁸ Art. 1.1 of the Copyright Law in conjunction with Art. 627 of the Act of 23 April 1964 – the Civil Code (consolidated text Dz. U. [Journal of Laws] of 2019, item 1145) (hereinafter the "C.C.").

⁴⁹ Arts. 12 & 14 of the Copyright Law.

⁵⁰ Supreme Court ruling of 22 March 2018, II UK 262/17, LEX no. 2499800.

⁵¹ See also MF: nowe przepisy PIT o 50 proc. kosztach nie zmieniają sytuacji nauczycieli akademickich [MF: new PIT regulations by 50% costs do not change the situation of academic teachers], Rzeczpospolita, 18 January 2018 (Aug. 2, 2022), available at <https://www.rp.pl/podatki/art9978351-mf-nowe-przepisy-pit-o-50-proc-kosztach-nie-zmieniaja-sytuacji-nauczycieli-akademickich>.

(creativity condition), have an individual character (individuality condition), and be established in some form.⁵²

A key aspect for our present deliberations stems from the part of the definition which refers to a work as a “*manifestation of creative activity*.” The creative aspect must therefore be somehow expressed as a result of such activity.⁵³ This reference to a “manifestation (result, product) of creative activity” means that a thought or concept as such, regardless of how original, is not sufficient to warrant legal protection unless it is somehow manifested in a way that establishes its form and content. *A work must be the result of creative activity*, i.e. constitute a subjectively new product of the intellect. This quality of a work is typically referred to as “originality”⁵⁴ or “novelty.”⁵⁵ Furthermore, it must also have an “individual character,”⁵⁶ i.e. it ought to be possible to associate the work with a specific author, thus establishing a certain “bond” that is subject to legal protection.⁵⁷ One should therefore ask oneself whether the work has been created by someone else before and if it is likely for it to be created by someone else in the future with the same result. If the answer to the latter is affirmative, the work should be deemed as a repeatable, routine activity whose results are reproducible. If the answer is negative, on the other hand, this fact attests to the individual character of the work (product, result).⁵⁸

Practical concerns arising in the context of taxing the creative activity of academic teachers stem from the fact that the applicable copyright regulations do not correspond to solutions adopted in provisions pertaining to the organisation of higher education. Currently, in a situation where Article 116.7 of the LHES directly refers to the provisions of Copyright Law, we are faced with a systemic clash between statutory regulations, where the object of copyright protection is not defined by the LHES or even the PIT Act, but rather by Copyright Law. The Act – Law on Higher Education and Science does not contain provisions specifying that in the case of work performed by academic teachers and the specificity thereof, a special type of works subject to copyright protection are produced. Indeed, there is nothing to

⁵² Supreme Court ruling of 22 March 2018, *supra* note 50, LEX el.

⁵³ *Id.* LEX el.

⁵⁴ See Supreme Court ruling of 15 November 2002, II CKN 1289/00, LEX no. 78613.

⁵⁵ See, e.g., Supreme Court ruling of 22 June 2010, IV CSK 359/09, LEX no. 694269; Supreme Court ruling of 25 January 2006, I CK 281/05, LEX no. 181263. See also Janusz Barta & Ryszard Markiewicz in *Prawo autorskie i prawa pokrewne. Komentarz [Copyright and Related Rights. Comment]* 22 (Janusz Barta & Ryszard Markiewicz eds., 2011).

⁵⁶ See, e.g., Administrative Court in Warsaw ruling of 18 February 2009, I ACa 809/08, LEX no. 1120180.

⁵⁷ See Art. 16 of the Copyright Law. For more information see Maria Pożniak-Niedzielska & Adrian Niewęglowski in *System Prawa Prywatnego. T. 13: Prawo autorskie [Private Law System. Vol. 13: Copyright]* 9 (Jerzy Barta ed., 2013).

⁵⁸ Supreme Administrative Court in Warsaw ruling of 11 July 2018, II FSK 1845/16, LEX no. 2528581.

suggest any departure from the legal definition to which the LHES directly refers, i.e. the definition of a “work” provided in the Copyright Law. It is therefore justified to directly apply the legal definition contained therein to the interpretative process. Under the principles of effective legislation, should the legislator wish to depart from the same, the alternative meaning of the concept (creative work of academic teachers) ought to have been clearly stipulated and its exact scope of reference determined.⁵⁹ The legislation also does not determine whether the respective forms of academic teachers’ didactic activity can indeed be treated as works⁶⁰ or what principles should apply when determining the management of the related rights relative to the employment relationship existing between the academic teacher and the university. Consequently – and rather unsurprisingly – interpretative uncertainty continues to persist and be reflected in the practice of tax authorities and administrative courts with inevitable negative consequences for the taxpayers – academic teachers, particularly with respect to the statutorily guaranteed “legal certainty.”⁶¹

5. Tax Policy

Since the new law’s entry into force, universities have been coping with the situation by introducing internal regulations determining the percentage share of the remuneration to which the 50% expenditure deduction may be applied, e.g. 95% for research staff members, 70% for didactical staff members, 60% for librarians. Additionally, a number of various obligations were introduced (including provision of written employee statements) with regard to documenting and evidencing the extent of work subject to copyright protection. However, this practice has not been fully endorsed by either tax authorities or administrative courts. As an example, one can evoke the position of the Director of the National Tax Information Office who concluded that where the employment relationship includes both activities subject to copyright protection and not subject thereto, the value of remuneration paid specifically in consideration of the use of copyright needs to be documented. It is not sufficient to determine the percentage of the employee’s overall work hours or overall remuneration. The primary condition is for *a work within the meaning of the Copyright Law to be established. The performance of creative work assignments as such*

⁵⁹ § 147 of the Regulation of the Council of Ministers of 20 June 2002 on “Principles of Legislative Technique” (consolidated text, Dz. U. [Journal of Laws] of 2016, item 283).

⁶⁰ See Maria Poźniak-Niedzielska & Grzegorz Tylec, *Działalność naukowo-dydaktyczna na wyższej uczelni w świetle prawa autorskiego* [Research and Teaching Activities at a University in the Light of Copyright], 5 Państwo i Prawo [State and Law] 33 (2009).

⁶¹ Reply of the Minister of Finance to parliamentary interpellation no. 22980 of 30 July 2018, no. DD3. 054.43.2018, unpubl.

*does not automatically entail the establishment of a work and the transfer of the title thereto to the employer.*⁶²

The interpretation of this issue in administrative case law tends to evoke similar arguments, i.e. the need to clearly identify the proportion of the remuneration due with respect to the disposal of copyrights to a work that is actually established, and clear regulation of the same in the provisions of relevant employment contracts or other regulations applicable internally in the given place of work, e.g. remuneration policy.⁶³

Upon the introduction of the solution stipulating that the performance of professional tasks by an academic teacher constitutes creative activity of individual character, within the meaning of Article 1.1 of the Act of 4 February 1994 on Copyright and Related Rights (Dz. U. [Journal of Laws] of 2018, items 1191 and 1293),⁶⁴ the practice of tax authorities and administrative courts was not substantially affected.⁶⁵ Also the Minister of Finance continues to endorse his original interpretation.⁶⁶ He additionally explained that since tax regulations reference Copyright Law, a different authority is more competent to provide interpretation (Minister of Culture and National Heritage).⁶⁷

A comparative analysis of the interpretations and legal order applicable clearly reveals blatant shortcomings of the LHES. Furthermore, it seems that the road to effective implementation of the preferential provisions providing academic teachers with the right to apply 50% tax-deductible expenditures will necessitate adequate amendment of the LHES and Copyright Law, rather than adaptation of tax laws or issuance of different interpretations of the existing regulations.

⁶² Letter from the Director of National Tax Information Office of 31 August 2018, ref. no.: 0114-KDIP3.4011.305.2018.2.PP, unpubl., and Voivodeship Administrative Court in Poznań ruling of 24 January 2018, ref. no. I SA/Po 831/17, Central Database of Administrative Court Rulings.

⁶³ The Supreme Administrative Court emphasised on numerous occasions that it is insufficient to merely indicate in the employment contract the portion of work time devoted to creative activity. Such a distinction does not specify whether any actual work is being established or whether payment is affected in return for the use thereof. See Supreme Administrative Court ruling of 12 March 2010, II FSK 1791/08, LEX no. 745894; of 16 September 2010, II FSK 839/09, Central Database of Administrative Court Rulings, and of 29 April 2011, II FSK 2217/09, LEX no. 1081354.

⁶⁴ Art. 116.7 of the LHES.

⁶⁵ See, e.g., individual interpretation of 11 July 2018, no. 0113-KDIPT3-4011.173.2018.2.PP, and individual interpretation of 1 June 2018, no. 0115-KDIT2-1.4011.82.2018.2.MK.

⁶⁶ See Reply from the Minister of Finance, no. DD3.8223.361.2017, unpubl.; reply to parliamentary interpellation no. 18569 of 5 February 2018, and reply from 14 February 2018 to parliamentary interpellation no. 187446.

⁶⁷ See, e.g., Letter from the Minister of Finance, no. DD3.8223.361.2017, unpubl., and Letter from the Minister of Finance, no. DD3.8223.363.2017, unpubl.

6. Legal Effects of Internal University Regulations

Faced with the general confusion regarding interpretation of the LHES, Polish universities were forced to take various steps at the level of internal legislation. Their purpose was to ensure safe implementation of regulations pertaining to the eligibility for 50% tax-deductible expenditures. Given the government's failure to provide a definitive opinion, the universities had to act somewhat "in the dark." A vast majority of institutions decided to adopt internal Senate resolutions. Unfortunately, the very gist of such resolutions proved to have been based – as already discussed above – on rather questionable grounds, specifically the narration and legal argumentation provided by the Ministry of Science and Higher Education. One should emphasise at this point that the same do not constitute sources of law nor can they substantially weigh on interpretative decisions.

It is noteworthy that some universities elected to regulate the principles of applying the 50% tax deductible expenses by way of the Rector's decision rather than a resolution of the Senate.⁶⁸ There are also some universities that decided not to amend their current internal regulations until such time that a definitive statement is provided by the government or a general interpretation of tax law is issued; some have also adopted regulations that retained the former percentage division of remuneration with identification of the part thereof subject to copyright protection.⁶⁹

Already at the stage of this analysis, it becomes fairly evident that such measures fail to ensure legal certainty. Firstly, the sole fact that such initiatives stem directly from the position of the Minister of Science and Higher Education, which holds no legitimacy, may render such internal university acts legally contestable and ineffective in the event of a potential dispute between a taxpayer (academic teacher) and a tax authority. Moreover, the mentioned diversity with regard to the chosen form of intra-university regulations itself constitutes a perfect illustration of the legal chaos resulting from the implementation of the higher education reform. Under such circumstances, one can hardly speak of universality and equality of taxation or uniformity in the application of law under, let us not forget, the legal system of one and the same state. One should bear in mind that the scale of the negative legal consequences is not limited to the relatively small number of Polish universities but affects the entire social group of academic employees.

⁶⁸ See, e.g., Resolution no. 87 of the Rector of Jagiellonian University of 14 December 2018, 75.0200.82.2018 on the principles of applying 50% tax-deductible expenditures for the use of author's copyrights and Regulation no. 128 of the Rector of the University of Warsaw of 10 December 2018 on the principles of calculating revenue generated from employment relationships to which 50% tax-deductible expenditures can be applied.

⁶⁹ See, e.g., Resolution no. 78/2018 of the Rector of the University of Szczecin of 1 October 2018 on the principles and procedure in calculating tax-deductible expenditures of academic teachers employed at the University of Szczecin with respect to copyrights within the framework of personal income tax.

The activity of universities that decided, despite the above, to take certain legislative steps to remedy the situation has also been significantly varied. Some fully embraced the interpretation provided by the Minister of Science and Higher Education and adopted, in their internal regulations, the principle of applying the 50% rate of tax-deductible expenditures to the entire remuneration received by academic teachers. At the same time, one should note that even in the context of universities that adopted the Minister's interpretation, the specific method of applying the 50% rate varies from one university to another. For instance, some decided to exclude certain components of remuneration, e.g. jubilee awards, rector's and minister's awards, or retirement benefits.⁷⁰

Apart from differences in terms of the relevant exclusions, discrepancies can also be observed with regard to the effective dates of the particular regulations. In fact, these differences can reach up to one year.⁷¹ In an effort to correlate with the statutory dates, some universities adopted resolutions retroactively.⁷²

The nationwide lack of consistency and chaotic legislative measures taken internally by universities further corroborate the aforementioned thesis of the need to amend the provisions of the LHES. The current level of confusion regarding the applicability of the analysed regulations cannot be tolerated as it can lead to negative legal consequences for taxpayers (authors) in the future.

7. Main Tax Legal Solutions in BRICS Countries

While discussing the meaning and essence of Polish legal regulations, it is worthwhile to show this issue against the background of selected examples of solutions in the BRICS countries. Below is an overview of only the basic regulations on taxation of academic teachers' income in Brazil, Russia, India, China and South Africa.

⁷⁰ Resolution no. 63/19 of the Senate of the University of Gdańsk of 23 May 2019 on the amount of remuneration subject to the copyright of academic teachers employed at the University of Gdańsk, and Resolution no. 58 of the Senate of Nicolaus Copernicus University in Toruń of 30 April 2019 on the amount of remuneration subject to the copyright of academic teachers employed at the Nicolaus Copernicus University in Toruń.

⁷¹ See Resolution no. 78/2018 of the Rector of the University of Szczecin of 1 October 2018 on the principles and procedure in calculating tax-deductible expenditures of academic teachers employed at the university of Szczecin with respect to copyrights within the framework of personal income tax and Resolution no. 569 in the Statutes of the University of Zielona Góra of 30 October 2019 amending Resolution no. 316 in the Statutes of the University of Zielona Góra of 19 December 2018 on the application of 50 tax-deductible expenditures to revenues obtained under the work relationship.

⁷² Resolution no. 62/2019 of the Rector of the University of Wrocław of 19 April 2019 on the principles of applying 50% tax-deductible expenditures to revenues generated under employment relationships at the University of Wrocław, § 9 thereof stipulates that the resolution comes into force as from the day of adoption, but the provisions pertaining to academic teachers in the period of employing increased deductible costs come into force as from 1 January 2019.

Residents of *Brazil* are taxed on their worldwide income, and non-residents are taxed exclusively at source on their Brazilian-sourced income. The source of income is determined by the place where the income payer is located, irrespective of where the work is performed. Resident taxpayers who receive income from Brazilian sources are subject to withholdings. Resident taxpayers who receive income from non-Brazilian sources (e.g. through split payroll arrangement) or from individuals (e.g. rental income) are subject to mandatory monthly tax payments on amounts not subject to withholdings.

The monthly income tax will be calculated based on the following progressive tax rates (in Brazilian real or BRL) as of April 2015 (*Table 2*).⁷³

Table 2

Income at or over (BRL)	Up to (BRL)	Tax rate (%)	Deductible tax amount (BRL)
0	1,903.98	Exempt	0
1,903.99	2,826.65	7.5	142.80
2,826.66	3,751.05	15.0	354.80
3,751.06	4,664.68	22.5	636.13
4,664.68	and above	27.5	869.36

Taxable compensation includes everything that is either directly or indirectly connected with the work and/or assignment remuneration package, including salary, premiums, bonuses, allowances of any kind, tax reimbursements, club dues, and company-owned cars. For Brazilian tax legislation purposes, the items mentioned *expressis verbis* in the statute, may be deducted from an employee's annual taxable income. In lieu of the itemised deductions, taxpayers may take the benefit of a standard annual deduction (20% of gross taxable income, limited to a certain specific amount established each year by the tax authorities: BRL 16,754.34 since 2015, with no changes up to 2020). The option for a standard deduction is not allowed on exit returns or for those individuals who will offset losses from farming activities in the annual income tax return.

In Brazil, royalties from copyrights, patents, and oil, gas and mineral properties are taxable as ordinary income. The aforementioned, are reported in Part I of Schedule E (Form 1040 or Form 1040-SR), Supplemental Income and Loss. However, if the taxpayer holds an operating oil, gas, or mineral interest or is in business as a self-

⁷³ Individual – Taxes on Personal Income, PwC (Aug. 2, 2022), available at <https://taxsummaries.pwc.com/brazil/individual/taxes-on-personal-income>.

employed writer, inventor, artist, etc., reports income and expenses on Schedule C.⁷⁴ Royalties from copyrights on literary, musical, or artistic works, and similar property, or from patents on inventions, are amounts paid to you for the right to use your work over a specified period of time. Royalties are generally based on the number of units sold, such as the number of books, tickets to a performance, or machines sold.⁷⁵

In *Russia*, all income received in the course of a calendar year from employment is subject to PIT. This includes all earnings, bonuses, and other forms of payment or remuneration in cash or in kind. Royalties from the creation, publication, performance, and use of works of literature, art, and science, as well as from inventions, discoveries, and industrial prototypes are included in taxable income (subject to deductions).⁷⁶ As of 1 January 2021, progressive taxation is introduced in Russia. Generally, an annual income of up to RUB 5 million will be taxed as 13%, whereas income above this limit will be taxed at 15%.

However, there are several exceptions to this rule:

- Income from the sale and receipt of property other than securities as a gift and taxable insurance and pension payments is subject to a flat rate of 13%.

- The value of any awards and prizes received during contests, games, and other events conducted for the purpose of advertising goods, work, and services, in excess of set limits, is taxed at 35%.

- Loans taken with an interdependent entity (i.e. an entity in which the individual has direct or indirect control), with an employer, or representing the offset of a counterclaim from an individual to the lender, which are considered as “beneficial loans.” Interest rates on beneficial loans are less than 9% (for non-Russian currency loan) and less than 2/3 of refinancing rate of the Central bank of Russia (for ruble denominated loans). The difference between the actual interest paid and interest recalculated at the respective rate is taxed at 35% (*Table 3*).⁷⁷

Authors who receive income from their works and cannot confirm their expenses with documents have the opportunity to take advantage of a deduction from 20 to 40%. The percentage depends on the type of income. For example, authors of literary works or scientific works can reduce their income by 20% and sculptors — by 40%. Professional Tax Deductions were presented above.⁷⁸

⁷⁴ What Is Taxable and Nontaxable Income?, Internal Revenue Service (Aug. 2, 2022), available at <https://www.irs.gov/businesses/small-businesses-self-employed/what-is-taxable-and-nontaxable-income>.

⁷⁵ Publication 525 (2021), Taxable and Nontaxable Income, Internal Revenue Service (Aug. 2, 2022), available at https://www.irs.gov/publications/p525#en_US_2021_publink1000229289.

⁷⁶ Individual – Taxes on Personal Income, PwC (Aug. 2, 2022), available at <https://taxsummaries.pwc.com/russian-federation/individual/income-determination>.

⁷⁷ *Id.*

⁷⁸ Tax Code of the Russian Federation, Part II, Federal Law No. 117-FZ of 5 August 2000 (Ernst & Young trans.), Arts. 221–224 (Aug. 2, 2022), available at <https://data.nalog.ru/html/sites/www.eng.nalog.ru/Tax%20Code%20Part%20Two.pdf>.

Table 3

	Norms of expenditures (as a percentage of the amount of accrued income)
Creation of literary works, including for theatre, cinema, stage and circus	20
Creation of artistic graphical works, photographic works for publications, works of architecture and design	30
Creation of works of sculpture, monumental-decorative painting, decorative applied and designer art, easel painting, theatre and cinema decoration art and graphics executed using various techniques	40
Creation of audio-visual works (video, television and cinema films)	30
Creation of musical works: stage musical works (operas, ballets, musical comedies), symphonic, choral and chamber works, works for brass band, original music for cinema, television and video films and theatre productions	40
other musical works, including those prepared for publication	25
Performance of literary and artistic works	20
Creation of scientific works and designs	20
Discoveries, inventions and creation of industrial samples (for amount of income received in the first two years of use)	30

In *India*, while the Income tax department charges tax on the income under “Profit and Gains of Business or Profession” or “Other Sources” head of Income, it also provides a deduction. The deduction is covered under 80QQB of the Income-Tax Act, 1961, as amended by Finance Act, 2021.⁷⁹ Where, in the case of an individual resident in India, being an author, the gross total income includes any income, derived by him in the exercise of his profession, on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of any book being a work of literary, artistic or scientific nature, or of royalty or copyright fees (whether receivable in lump sum or otherwise) in respect of such book, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such income, computed in the manner specified in the provisions analysed (sub-section 1, 80QQB of the Income-Tax Act, 1961). The deduction under the sections mentioned shall be equal to the whole of such income referred to in sub-section 1, or an amount of three

⁷⁹ Income-Tax Act, 1961 [43 of 1961], Central Board of Direct Taxes, Government of India (Aug. 2, 2022), available at <https://www.incometaxindia.gov.in/pages/acts/index.aspx>.

lakh rupees, whichever is less. Nevertheless, no deduction shall be allowed unless the assessee furnishes a certificate in the prescribed form and in the prescribed manner, duly verified by any person responsible for making such payment to the assessee as referred to in sub-section 1, along with the return of income, setting forth such particulars as may be prescribed. Furthermore, no deduction under this section shall be allowed in respect of any income earned from any source outside India, unless the assessee furnishes a certificate, in the prescribed form from the prescribed authority, along with the return of income in the prescribed manners.

Therefore, there are certain conditions to be satisfied for income earned in India and outside India:

- 1) Individual claiming the deduction must be a resident in India or resident but not ordinarily resident in India;
- 2) Individual must have authored or co-authored a book that falls under the category of literary, artistic or scientific work;⁸⁰
- 3) Individual must file his income tax return to claim the deduction;
- 4) If an individual has not received a lump sum amount, 15% of the value of the books sold during the year (before allowing any expenses) should be ignored;
- 5) Individual must obtain FORM 10CCD from the person responsible for making the payment.

For income earned outside India, there are additional requirements. Individual is allowed deduction on income earned outside India when the income is brought to India in convertible foreign exchange within 6 months from the end of the year or within the period allotted by RBI or other competent authority for this purpose. Individual must obtain a certificate in FORM 10H.⁸¹

Residents in *China* are generally subject to China individual income tax (IIT) on their worldwide income. An individual is taxed in China on one's income by category. China's IIT law groups personal income into 9 categories. Within these categories are in particular: remuneration for labour services, author's remuneration, royalties. Each income category has its own tax rate(s), allowable deductions, etc. For residents, employment income, remuneration for labour services, author's remuneration, and royalties are combined as "comprehensive income" for aggregate tax calculation purpose on an annual basis. Income from the other categories is taxed separately by category on a monthly or transaction basis. For residents, calculation of IIT on annual comprehensive income is based on progressive tax rates using the following formula: (Annual taxable income x Tax rate) – Quick deduction (*Table 4*).⁸²

⁸⁰ Books here do not include journals, guides, newspapers, textbooks for school students, pamphlets, dairies and other publications of similar nature.

⁸¹ Section 80QBB – Royalty Income – Deductions under 80QBB, ClearTax (Aug. 2, 2022), available at <https://cleartax.in/s/section-80qqb/>.

⁸² Individual – Taxes on Personal Income, PwC (Aug. 2, 2022), available at <https://taxsummaries.pwc.com/peoples-republic-of-china/individual/taxes-on-personal-income>.

Table 4

Annual taxable income (in renminbi) (CNY)	Tax rate (%)	Quick deduction (CNY)
0 to 36,000	3	0
Over 36,000 to 144,000	10	2,520
Over 144,000 to 300,000	20	16,920
Over 300,000 to 420,000	25	31,920
Over 420,000 to 660,000	30	52,920
Over 660,000 to 960,000	35	85,920
Over 960,000	45	181,920

When calculating taxable comprehensive income for residents, IIT law allows a number of personal deductions (non-refundable and no carry back/forward provisions). As of 1 January 2019, the amount of the standard basic deduction is CNY 60,000 *per annum* (i.e. CNY 5,000 for monthly tax withholding purpose). There are also certain deductible items specifically provided by various IIT regulations. A deduction equal to 20% of the gross receipt is allowed when determining the income from labour services, author's remuneration, and royalties. A further deduction of 30% is allowable for author's remuneration.⁸³

South African residents are taxed on their worldwide income. Progressive tax rates apply for individuals. The rates for the tax year commencing on 1 March 2021 and ending on 28 February 2022 are as follows (*Table 5*):

Table 5

Income (ZAR)	Tax on column 1 (ZAR)	Tax on excess (%)
0 to 216,200	0	18
216,201 to 337,800	38,916	26
337,801 to 467,500	70,532	31
467,501 to 613,600	110,739	36
613,601 to 782,200	163,335	39
782,201 to 1,656,600	229,089	41
1,656,601 and above	587,593	45

Certain limited expenses may be deducted by employees from their employment income. Such expenses include business-related travel, automobile, and

⁸³ Individual – Deductions, PwC (Aug. 2, 2022), available at <https://taxsummaries.pwc.com/peoples-republic-of-china/individual/deductions>.

entertainment expenses, with the amount that is deductible by an employee also being limited to the amount of the relevant allowance that is granted to the employee by their employer. A capital depreciation deduction is also available for allowance assets used in the course of employment. Legal fees incurred in respect of employment income are also deductible.

Employees who earn most of their income in the form of commissions may, subject to certain requirements, deduct their home office expenses. As a general rule, allowances (subject to certain limits), granted to an employee by an employer to meet business expenditure are taxable in South Africa, but only to the extent that they are not so expended for business or exceed the maximum limit for deduction. Allowances to meet purely domestic or private expenditure, such as the cost of living, are taxable. As far as royalties are concerned, ordinary tax rates are applied (depend on the tax bracket).⁸⁴

Conclusion

Is it true that Law on Higher Education creates the implementation of a groundbreaking, comprehensive reform of the higher education system introduced by the Polish government under the motto of “Constitution for Science”? Does it establish optimum conditions to facilitate scientific and didactic excellence, ensure sustainable development of academic centres throughout Poland, and provide universities with effective management tools? Due to rapid globalisation, unfortunately, universities all over the world are competing with institutions from all corners of the world. With pressure to respond to increasingly fierce competition, higher education systems are forced to improve or risk falling behind. Therefore, the Polish government has introduced a number of changes, which it says should improve the quality of education and are a response to the rapidly changing economic and demographic situation in Poland. New rules regarding the allocation of resources and awarding grants have been implemented in an attempt to stabilise university finances. Currently Polish universities, as universities in BRICS countries, are experiencing a very big demographic change. Therefore, the system of higher education in Poland, should not be based only on the number of students as was previously done. Universities were only interested in improving their offer to recruit more students, but they should build their future on the quality of the studies. The minister of Science and Higher Education proposed a new model of financing universities. The mentioned trends are also discussed in different higher education systems, in BRICS countries.⁸⁵ If the development of the higher education is to be discussed, not only

⁸⁴ Bojan Radulovic, *Royalty Income Tax Rate for 2020*, Taxhub, 9 December 2019 (Aug. 2, 2022), available at <https://www.gettaxhub.com/royalty-income-tax-rate-for-2020/>.

⁸⁵ Poland Today (Aug. 2, 2022), available at <https://poland-today.pl/future-of-higher-education/>.

quality of the studies should be analysed. It should first be noted that financial and organisational conditions of academic teachers should be improved. For the time being, taking into consideration the lack of coherence between different Polish statutory acts, it is not practically provided. It is hard to sum up that the reform 2.0 meets the standards of clarity and transparency. The efforts made to date by the Minister of Finance and Minister of Science and Higher Education in the face of the many difficulties emerging at the meeting point between copyright, tax and education laws have to be deemed still ineffective and the employed solutions are characterised by considerable complexity and lack of consistency. This fact has a negative impact on the applicability of the government's envisioned preferential tax regulations dedicated to the group of academic teachers. It is unfortunately difficult to avoid the conclusion that although the idea of preferential treatment of researchers (taxpayers) is highly laudable as such, the manner in which it is being introduced contradicts the very purpose of the implemented reform.

A juxtaposition of the respective provisions of the Copyright Law and the LHES does not only alleviate the identified practical issues but actually adds to the already piling up problems. Unfortunately, it is difficult to find a duly justified substantive solution to the same within the framework of tax law. The formula of academic teachers' work adopted in the LHES significantly hinders the effective application of the 50% rate in terms of tax-deductible expenditures. By means of internal regulations, universities specified the percentage levels of remuneration eligible for the 50% expenditure deduction, even though such practice has not been endorsed or recognised by neither tax authorities nor administrative courts. The time during which the professional duties of academic teachers are performed cannot be treated as a determinant of the eligibility for the preferential 50% cost deduction of a given portion of remuneration, while the actual establishment and transfer of any work should entail the payment of a specifically identified amount rather than merely a percentage of total remuneration. Tax authorities are right to emphasise that only a clear distinction and due documentation of results (works in copyright) and the remuneration paid relative to the same can provide sufficient grounds for the application of 50% tax deductible expenditures.

This lack of a consistent, governmental interpretation leads to a situation where one has to question the professed preferential character of the 50% expenditure deduction principle stipulated in the act. Without questioning the premise and legal basis of the solution, one cannot but note the significant limitations to its practical reception in the academic context. Undoubtedly, the specifics of university operations and the scope (including manner of definition) of the tasks performed by academic teachers leads to a situation where determining the specific value of the work produced may prove very difficult in actual practice – indeed, even impossible in some cases. This pertains in particular to the requirement of determining the amount of payment due for each documented establishment of a work. Irrespective

of the above, it seems necessary to conclusively determine whether the respective forms of academic teachers' professional activity can be classified as creative works⁸⁶ and on what terms are the related rights to be disposed of within the framework of the employment relationship between an academic teacher and a university. Inevitably, urgent legislative changes will have to be introduced to restore systemic consistency between the LHES and Copyright Law regarding the special character of tasks performed by academic teachers.

Unfortunately, the efforts made to date by the Minister of Finance and Minister of Science and Higher Education in the face of the many difficulties emerging at the meeting point between copyright, tax and education laws have to be deemed ineffective. As a consequence, the situation has led to the misidentification of the creative process performed by the copyright subject with the result (product) of creative activity. Therefore, the negative effects thereof accumulate within the framework of tax law, preventing the possibility of consistent and substantially correct interpretations.

As in Poland, in BRICS countries, a variety of tax instruments are used to take into account the creative nature of the work of academic teachers. A full assessment of these solutions would have to include an extensive simulation tailored individually to different groups of taxpayers performing research activities. For the purposes of this article, it may be noted that the quoted solutions most often boil down to the application of tax deductions specifically dedicated to academic teachers resulting in a reduction of the tax burden. Of course, other elements of the tax structure are also important. In this respect, it is also worth noting the use in Russia of a relatively low tax rate of 13%, which in itself has a preferential character for taxpayers (on a global scale) – and thus also for academic teachers. In comparison, in Poland the minimum tax rate – 17%.

Against the background of the analysed solutions, however, it seems that the Polish solutions are the most far-reaching in terms of protecting the interests of academic teachers. They lead to a reduction of the tax burden (by applying 50% tax deductible costs) by exactly half. Importantly, this solution covers the entire income of academic teachers. It should also be emphasised that the regulations adopted in Poland in fact cover not only typical income from copyright, but also income covering the performance of other duties of teachers which are not actually creative in nature (e.g. conducting exams, consulting students). Thus, it may be assumed that these regulations are favourable for academic teachers.

While the very idea adopted on the grounds of Polish legal solutions deserves a high assessment and may constitute an interesting model to be copied in the area of BRICS countries (as far-reaching benefits for university researchers), the manner of its introduction deserves criticism. The adopted legal basis, as shown in the study, is

⁸⁶ See Poźniak-Niedzielska & Tylec 2009.

not internally coherent at the junction of tax law, copyright law and higher education law. In fact, they are even mutually exclusive. It is true that the Minister of Finance rescued the situation by issuing an interpretation favourable for academic teachers, but it also raises serious reservations from the point of view of legislative technique.⁸⁷ For this reason, the manner of proceeding with this legitimate regulation cannot be recommended in BRICS countries.

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⁸⁷ General interpretation by the Minister of Finance, no. Nr DD3.8201.1.2018 of 15 September 2020 regarding the applicability of 50% tax-deductible costs to royalty revenues (Dz. Urz. 2020, item 107).