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Digital Economy - the birthplace of permanent windfall?

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Brief overview of windfall taxation in Poland

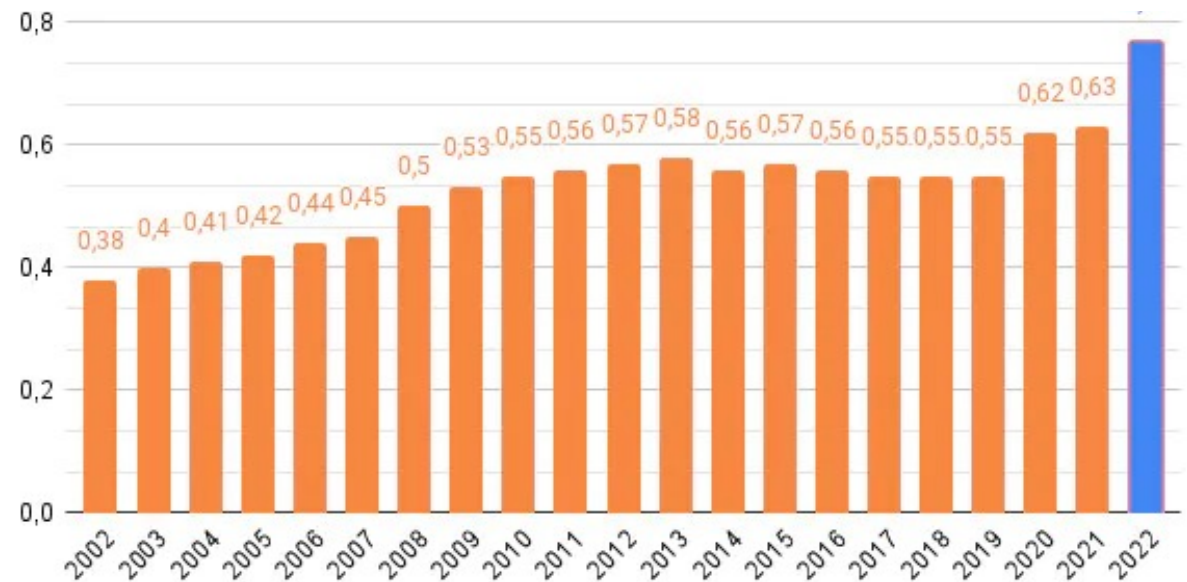
- 1945 r. - After the Second World War, a war enrichment tax was introduced. It covered the enrichment achieved by citizens between 31 August 1939 and June 1945. The tax base was the entire value of the property obtained during the war. It had two purposes:
 - to tax the often immorally acquired wealth
 - to counteract the restoration of wealth by the owning classes
- 1974 r. - a wealth tax for 1975, where increases in wealth were taxed. It covered taxpayers whose acquired wealth exceeded PLN 700,000 in value.



- 2022 r. - journalists reported that the government intends to introduce a windfall profits tax but in the end no tax was introduced.
- 2023 r. – again journalists report that a windfall tax will be adopted. It is said to cover companies that earn 75% of their revenue from selling or refining oil, coal or coke and amount to 33% on income that exceeds 20 % of the average income from 2018-2022.

Characteristics of windfall profits

- Profits that for some (political, moral) reason are considered unjustifiable.
- Influenced by the events beyond the taxpayer's control.
- Usually short lived (but can they be permanent?)





FAIR



TAX

Which model of windfall taxation is fair?

- An income tax covering only a selected industry about which the empirical evidence suggests that there will be windfall profits.
- A wealth tax covering certain types of assets (e.g. property seized during the war).
- An income or wealth tax on all excessive profits that de facto creates an additional threshold in a progressive tax scale for some period.

How to calculate excessive profit?

- Calculation of the normal return on investment (investment-based method).
- Calculation based on the average income made in previous years.





Profits in digital economy (case study)



Year	Income (in USD millions)	"Normal" income (three-year average)	"Excessive" income	Percentage of "excessive" income
2011	9700			
2012	10600			
2013	12700			
2014	14100	11000	3100	22%
2015	16300	12466,67	3833,33	24%
2016	19400	14366,67	5033,33	26%
2017	12600	16600	0	0%
2018	30700	16100	14600	48%
2019	34300	20900	13400	39%
2020	40200	25866,67	14333,33	36%
2021	76000	35066,67	40933,33	54%
2022	59900	50166,67	9733,33	16%



Year	Income (in USD millions)	"Normal" income (three-year average)	"Excessive" income	Percentage of "excessive" income
2009	0			
2010	0			
2011	1000	0	1000	100%
2012	53	333,33	0,0	0%
2013	1500	351	1149	77%
2014	2940	851	2089	71%
2015	3688	1497,67	2190,33	59%
2016	10217	2709,33	7507,67	73%
2017	15934	5615	10319	65%
2018	22112	9946,33	12165,67	55%
2019	18485	16087,67	2397,33	13%
2020	29146	18843,67	10302,33	35%
2021	39370	23247,67	16122,33	41%
2022	23200	29000,33	0,00	0%

Is windfall tax selective by design? Lessons from the Polish retail tax

- The Polish retail tax covers only the retail sector. It contains two thresholds:
 - the first at monthly revenue of PLN 17 million (approximately EUR 3,71 million – with tax rate of 0.8 percent of revenue above this amount) and
 - the second threshold at monthly revenue of PLN 170 million (approximately EUR 37,1 million – with a tax rate of 1.4 percent above the amount).





European Commission Controversy and CJEU ruling

- Effectively there was also a „zero rate” for companies below the threshold. European Commission asserted that these taxes constitute unlawful state aid within the meaning of Article 107 of TFEU, due to the progressive structure of the tax rates.
- The CJEU ruled that such construction does not yet make the measure selective within the meaning of Art. 107 TFEU. However, it allowed that in certain cases this feature could be discriminatory [CJEU, Joined Cases T-836/16 and T-624/17].



Conclusions

- In digital economy profit almost always is excessive.
- Any timeframe on windfall profit is arbitrary.
- Windfall taxes are not selective by nature.
- However, they are arbitrary by nature – and this can lead to selectivity due to factual circumstances.

Thank you for your attention

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