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# Comments on Fiscal Law and Regulations

Fiscal policy is based on the theories of British economist John Maynard Keynes, which state that increasing or decreasing government revenue (taxes) and expenditures (spending) influences inflation, employment and the flow of money through the economic system[1]. Generally, the objective of fiscal policy is to create heathy economic growth. Traditionally, the two main tools of fiscal policy are taxes and spending[2]. This may no longer be the case.

Fiscal Law is the body of law that governs the availability and use of government funds**.** It is derived from many sources including but not limited to opinion, regulations, public law, statutes and a nation's Constitution. Under U.S. law, only the legislature possesses the authority to appropriate funds to be spent by any branch of the government. That authority ultimately derives from a single sentence, the so-called Appropriations Clause found in Article I, Section 9:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law"

Fiscal law requires that appropriated funds only be spent for an authorized purpose. The United States Supreme Court underscored this principle when it said: "The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress" [3].

However, this aspect of fiscal law only applies to taxes and spending. Politically, raising taxes can be extraordinarily difficult during times of economic stress. Without taxes, the only means to spending is via deficits. Caught between the desire to affect fiscal policy when raising taxes is not possible, new economic theories are gaining popularity that deficit spending does not matter, and that the government does not need to compete with business for scarce savings by issuing bonds (modern monetary theory). Whether or not modern monetary theory is valid or not is beyond the scope of this com-

[1] A. Rivera, *What is Fiscal Policy*?, "Business News Daily", May 15, 2018.
[2] Ibid.
[3] United States v. MacCollom, 426 U.S. 317, 321 (1976), citing Reeside v. Walker, 11 How. 272, 52 U. S. 291 (1851).

ment. There is another factor, or tool, that must be considered in fiscal policy, and therefore, fiscal law. Inflation, employment and the flow of money can also be affected through regulations, which are hindered neither by the need to collect taxes nor by restrictions on appropriations. In the United States, regulations are promulgated by government agencies under a statutory delegation of authority from Congress (the legislature), which delegation is often very broad. Regulations have the effect of law unless overturned by a court, which is rare so long as they have a substantial relationship to an "intelligible principle" guiding a legitimate public purpose to protect the public health, safety, or welfare[4]. Regulations properly promulgated under legitimate authority can (and usually do) require the expenditures of other's money, i.e. money not in the treasury or required to be appropriated, to accomplish the government's objectives.

Regulations have been called hidden taxes. A tax is a mandatory (non--voluntary) charge levied on a product, income or activity to finance a government expenditure. If you accept that government expenditures can only be made to accomplish legitimate public purposes, then a mandatory regulation that transfers the cost of achieving that same legitimate public purpose to a third party is in effect a tax on that third party – but it requires neither the collection of a fee from that third party nor the appropriation of funds from the treasury once collected. Nonetheless, to the non-governmental third party that must pay the cost of achieving the public purpose, that is a distinction without a financial difference.

Regulations have assumed a greatly increasingly role in the guidance of the U. S. economy. In fact, no less a person than President of the United States Jimmy Carter observed in his 1980 Economic Report of the President:

"[A]s more goals are pursued through rules and regulations mandating private outlays rather than through direct government expenditures, the Federal budget is an increasingly inadequate measure of the resources directed by government toward social ends" [5].

I suspect that the same is true in Poland and in the European Union. Assuming that is correct, the economic effects of regulations must be included in any consideration of fiscal policy or fiscal law.

According to the Competitive Enterprise Institute[6] 2019 version of its annual study entitled *Ten Thousand Commandments,* government regu-

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[4] E.g., *J. W. Hampton, Jr. & Co. v. United States (U.S. Sup. Ct 1928); Whitman v. American Trucking Associations,* 531 U.S. 457 (U. S. Sup. Ct. 2001)

[5] *Council of Economic Advisers, Economic Report of the President*, Executive Office of the President, January 1980, p. 125, https://fraser.stlouisfed.org/files/ docs/publications/ERP/1980/ERP_1980.pdf

[6] According to Wikipedia, The Competitive Enterprise Institute is a non-profit libertarian think tank founded on March 9, 1984, in Washington, D.C., to advance principles of limited government, free enterprise, and individual liberty.

lations now have more of a financial impact on the U.S. economy than do "taxes":

"Federal environmental, safety and health, and economic regulations and interventions affect the economy by hundreds of billions - even trillions - of dollars annually. Regulatory burdens can operate as a hidden tax. Unlike on-budget spending, regulatory costs are largely obscured from public view. They are the least disciplined aspects of government activity, which can make regulation overly appealing to lawmakers. Budgetary pressures can incentivize lawmakers to impose off-budget regulations on the private sector rather than add to unpopular deficit spending. For example, a government job training or childcare initiative could involve either increasing government spending or imposing new regulations that require businesses to provide such training. Just as firms generally pass the costs of some taxes along to consumers, some regulatory compliance costs and mandates borne by businesses will percolate throughout the economy, finding their way into consumer prices and workers' wages…[This report estimates the cost] for regulatory compliance and economic effects of federal intervention of $1.9 trillion annually… The burden of regulatory intervention is equivalent to over 40 percent of the level of federal spending, projected to be $4.4 trillion in 2019. Regulatory costs of $1.9 trillion amount to 9 percent of U.S. GDP, which was estimated at $20.66 trillion in 2018 by the Commerce Department's Bureau of Economic Analysis. When regulatory costs are combined with estimated federal FY 2018 projected outlays of $4.412 trillion, the federal government's share of the entire economy reaches 30 percent (not including state and local spending and regulation). If it were a country, U.S. regulation would be the world's ninth-largest economy, ranking behind India and ahead of Canada. The regulatory hidden "tax" is equivalent to federal individual and corporate income tax receipts combined, which totaled $1.88 trillion in 2018 ($1.66 trillion in individual income tax revenues and $218 billion in corporate income tax revenues). Regulatory costs rival corporate pretax profits of $2.182 trillion."

The purpose of citing the findings of this report is neither to endorse the report nor its methodology. These numbers are challenged by other think tanks, which argue that they do not adequately consider offsetting benefits of the regulations[7]. There are several problems with that kind of response, however. First, the actual cost side of the equation is not seriously disputed. Citing offsetting benefits is more of a policy argument. It does not challenge the underlying cost calculation, which is basically arithmetic once an item is identified as a cost of compliance. There are certainly estimates of some costs included, some of which may be over estimates, but those estimates are no-

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[7] See, The Center for Progressive Reform, *The Economics of Protection,* http://progressivereform.org/RegulationEconomics.cfm.

netheless derived from actual dollars expended. Second, calculating offsetting benefits itself is much more qualitative and dependent on subjective valuations and estimates to derive a dollar value. Further, if offsetting benefits of the regulations are to be considered, then offsetting benefits of *not* having the regulations also need to be "estimated."

More importantly, whether or not the Competitive Enterprise Institute study is overstated by 20 or even 30%, or does not account for offsetting benefits, whatever is the "correct" cost number, it is patently obvious that the "off the books" cost of compliance with United States federal regulations is enormous. It bears repeating that this is just the cost of *federal* intervention and does not include regulations of the fifty separate states, the District of Columbia, or the Territories. There are probably similar studies of the costs of European Union Directives on its Member States. It would be instructive to compare them and their effects on the respective economies.

Regardless of whether the relative costs are comparable, the numbers alone teach that sound fiscal policy and fiscal law must consider the effects of cost shifting regulations on economic performance. To ignore them is to ignore the proverbial elephant in the room. Sound fiscal policy and good fiscal law must conjoin with economics.

It is also well understood that innovation is critical to the growth of both a business and an economy. Some regulations create a positive effect on innovation. For example, laws and regulations governing intellectual property (patents, trademarks, copyrights and trade secrets) protect and encourage innovation. However, it is also both intuitive based on our own experience, and well known that excessive regimentation can stifle innovation. Consider the Laffer curve[8] regarding the relationship between tax rates and the amount of tax revenue collected by governments. The basic premise is that the more a business activity is taxed, at some tipping point the less tax is generated: at 100% taxation, all business activity is stifled, and tax revenues are minimized; at 0% taxation, business activity is unhindered, but the government receives no taxation. Somewhere in between, there is a perfect balance where government tax revenues are maximized without unduly stifling the economy.

A similar observation can be made with respect to regulations. With no regulation at all, economic activity is unfettered, but this is not ideal. Monopolies arise which stifle growth and innovation, products and services are less safe, and intellectual property is not protected and cannot be fully exploited. Observe the explosion of innovation that occurred when monopolies on telecommunications were dismantled. On the other hand, at some point, regulations and directives (the "managed economy") stifle growth by adding

[8] See: www.investopedia.com/terms/l/laffercurve.asp.

costs and fighting the market, and stifle innovation by protection of the status quo. Observe the fights that have erupted to limit or kill Uber and Lyft in favor of taxi services. Theoretically, at some point over regulation kills all innovation and growth.

The problem is these concepts are qualitative. Nobody has quantified the "perfect" level of taxation, or regulation. Nonetheless, it is clear that both too much and too little are bad.

The policy of the current administration in the United States is an empirical test of whether reducing regulation enhances economic performance. Shortly taking office in 2016, President Trump froze all regulations until his new cabinet officers were confirmed, announced a policy that two regulations must be eliminated for every new one adopted[9], directed each government agency to appoint a regulatory officer to identify regulations to be eliminated, and led the outright repeal of 14 rules and delayed some 860 prospective rules being considered. Some commentators laud the effort as setting off an economic revolution[10]. Others decry that cutting regulations has had huge tradeoffs, such as reduction of environmental protections[11]. However, nobody disputes that hundreds of regulations have been cut, the U.S. economy has been stimulated to growth levels not seen in a decade, and U.S. stock markets are at historic highs. The questions are how much of that growth is attributable to deregulation, how long it will last, and whether that growth is worth the tradeoffs.

In addition to the traditional primary tools of fiscal policy, taxes and spending, fiscal policy and fiscal law must consider the cost burden of regulations, the propriety of substituting shifting public policy costs from taxes to regulations, and how regulations affect the economy, inflation, and the flow of money through the economic system.

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## Summary

## Comments on Fiscal Law and Regulations

**Key words:** fiscal law, regulations, Consitutional restrictions.

Traditionally, the two main tools of fiscal policy to create healthy economic growth are taxes and spending, both of which are subject to statutory and Consitutional restrictions. However, inflation, employment and the flow of money can also be affected through regulations, which are hindered neither by the need to collect taxes nor by restrictions on appropriations. Sound fiscal policy and fiscal law must consider the effects of regulations on economic performance, the proverbial elephant sitting in the room. Regulations, which have been called hidden taxes, play an increasingly greater role in the guidance of the U. S. economy. The recent performance of the US economy provides empirical evidence of the effects of reducing regulations as well as indications of the effects of regulation on innovation. In addition to the traditional primary tools of fiscal policy, taxes and spending, fiscal policy and fiscal law must consider the effects of regulations and the use of regulatory policy to affect the economy, inflation, and the flow of money through the economic system.

## Streszczenie

## Uwagi na temat przepisów prawa podatkowego

**Słowa kluczowe:** prawo podatkowe, regulacje prawne, ograniczenia konstytucyjne.

W celu zapewnienia prawidłowo funkcjonującego wzrostu gospodarczego tradycyjnie stosowane są podatki i wydatki jako dwa główne narzędzia polityki fiskalnej, które podlegają ograniczeniom ustawowym i konstytucyjnym. Jednakże na inflację, zatrudnienie i przepływ pieniędzy mogą mieć również wpływ regulacje prawne, które nie ograniczają środków służących do poboru

podatków. Rozsądna polityka fiskalna i prawo fiskalne muszą uwzględniać wpływ regulacji prawnych na wyniki gospodarcze, co jest „oczywisty problemem, o którym się nie mówi". Środki prawne, określane jako „ukryte podatki", odgrywają coraz większą rolę w kierowaniu gospodarką USA. Ostatnie wyniki dotyczące analizy gospodarki USA wskazują na empiryczne dowody skutków ograniczających regulacje prawne w tym zakresie, a także wpływ tych regulacji na innowacje. Oprócz tradycyjnie stosowanych podstawowych narzędzi polityki fiskalnej, podatków i wydatków, polityka fiskalna i prawo fiskalne muszą uwzględniać wpływ regulacji prawnych i stosowanej polityki regulacyjnej na gospodarkę, inflację i przepływ pieniędzy przez system gospodarczy.