



ISBN as a Requirement for Tax Incentives for Book Market: A Case Study of Polish VAT Law

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Abstract

From 1994 to 2018, ISBN was part of Polish VAT law, acting as a requirement for the reduced tax rate for books. In 2019, this requirement was abolished. However, the Polish Book Chamber (Polska Izba Książki), a Polish self-regulatory organization, has been lobbying for maintaining it. The organization argues that, due to the problems with defining what constitutes a book, such a solution is beneficial, as the ISBN unambiguously indicates the “book status.” This article argues that such a solution is in fact flawed and policymakers should seek other ways to improve tax law, or any other law related to books. First, an analysis of the ISBN standard is conducted, which shows that the process of ISBN assignment is arbitrary and left to the publisher’s discretion. Then, Polish case law is analyzed, demonstrating that ISBN was not considered to be a reliable aid for the tax authorities and courts. Lastly, consideration is given to the question whether such a solution violates the fiscal neutrality principle of taxation and should be applied within the EU.

Keywords Tax incentives · Polish Chamber of Books · ISBN · Value added tax · Book definition · Fiscal neutrality principle

Introduction

In many countries book production and distribution are aided by local governments through various regulations, such as tax incentives in the form of reduced value added tax rate for book sales. Books, however, have somewhat indeterminate status and share some of their characteristics and functions with other goods and services. Thus, as noted by Angus Phillips and Miha Kovač, in cases where the law addresses books, a problem of defining what is a book arises, as without such definition, these other similar goods and services could potentially be called books by their producers

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with the purpose of benefiting from laws enacted to support “true” books (Phillips and Kovač 2022, 21–26).

This notion is shared by the Polish Book Chamber [Polska Izba Książki], a major self-regulatory organization operating in Poland, which raised the issue during public consultation when the nation’s VAT law was being amended in 2019. Since 1994, Polish law has stated that only books with an assigned ISBN – International Standard Book Number – could benefit from the lowest reduced tax rate (Journal of Laws of 1993, no 11, item 50; Journal of Laws of 2004, no 54, item 535), however in 2019 the government decided to refrain from this practice in an attempt to simplify the tax law (Government bill amending the act on goods and services tax and act of tax ordinance, 2019). While Polish law did not in fact use ISBN as a method of defining a book, but as an unrelated, additional requirement – as will be evidenced by an analysis of the case-law – it appears that it has been equated with an attestation of a book status, as demonstrated by the Polish Book Chamber insistence on maintaining the requirement, and the chamber’s claim that its elimination would complicate the previously simple procedure of determining whether a product qualifies for reduced tax rate based on ISBN presence (Albin 2018; Modzelewski 2018 23–25).

Similarly, Phillips and Kovač suggest that in the past (before the advent of electronic media, which has muddled all typologies) ISBN had been sufficient solution to the problem of lacking a book definition (Phillips and Kovač 2022, 23). Though they do not refer strictly to tax matters, and acknowledge this solution left some “dilemmas surrounding the nature of published materials,” such a statement warrants further consideration in the context of book taxation.

This article argues that the solution linking tax incentives with the ISBN system is in fact flawed and may cause additional difficulties, both for the taxpayers and tax authorities. It will be demonstrated firstly by an analysis of the ISBN system itself, which will show that it is not suitable for application in that regard, and then by analysis of the Polish administrative court’s judgments issued in cases of disputes between taxpayers and tax authorities, showing their experiences with this solution. Lastly, the issue of adopting ISBN for tax purposes will be considered in the context of the fiscal neutrality principle, which the practice arguably violates, which perhaps should be the biggest concern with this solution.

Admittedly, the practice of adopting ISBN for tax purposes is rare. According to the International ISBN agency’s data from 2016, at the time only eight countries in the world applied some form of incentives for books linked with ISBN, Poland among them (International ISBN Agency 2017, 1–2). While Polish law since 2019 no longer contains the ISBN requirement, in light of the support for this practice it is worth reflecting on past experiences with it. Although the scope of this study is limited only to Poland’s law system, and its results might not apply to other countries, it might bring helpful insight in their cases as well, especially in other member states of the European Union given their shared principles of taxation.

ISBN Standard

International Standard Book Number is an identification system for books and other publications developed by the International Organization for Standardization since 1970. As of 2024, the current version of the standard is ISO 2108:2017. According to the standard, regional ISBN agencies are responsible for issuing blocks of ISBNs to publishers, who in turn are responsible for assigning individual identifiers to their publications. As identifiers are integral part of the finished product and are required to be displayed on the publication itself, the process of assignment, by necessity, can take place only before the work is published – the ISBN standard, in fact, recommends assigning the identifier as early as possible, as it might facilitate publisher's workflow. This precludes any form of supervision by the agencies and leaves the assignment to the publishers' arbitrary decision.

Despite its name, and contrary to its purported application as unambiguous indicator of “bookness,” ISBN can be assigned not only to books, but also other products, and the scope of the standard application is broad as per its creators intention – the standard lists as eligible products even educational or instructional software and films. Moreover, in practice even illegible products can have ISBN assigned by their producers, as the identifier's use is somewhat unrestrained – not only publishers assign the number at their own discretion, but the standard leaves little capacity for regional agencies to verify the procedure and does not provide penalties or other means to ensure proper implementation of the system.

This seems to be a cost-effective arrangement for the ISBN agencies, as the standard allows for a vast number of identifiers to exist (previously used 10-digit standard allowed for millions, current 13-digit standard allows for billions of them), which allows for some of them to be wasted by publishers with little consequences. It needs to be emphasized that the system was developed for commercial bibliographic purposes, such as order processing and inventory control (International ISBN Agency 2015, VIII), not for the tax law, and the system as such is sufficient in its current form from the perspective of its creators and intended users. Errors or even misuses are to be expected, but generally they do not have major consequences – some publications will inevitably have incorrect ISBN due to human error, and non-book products with needlessly assigned ISBNs will not foreseeably end in bookstores or library catalogues. In the bigger picture such isolated cases do not undermine the purpose of the ISBN, however it makes the system difficult to adopt into law.

Even if only the proper ISBN assignment (i.e. only for eligible products, and in compliance with other conditions of the standard) was valid condition for accepting it for VAT purposes, these described characteristics of the ISBN system would undermine supposed benefits of incorporating it into tax law, which is to simplify the process of assessing publications eligibility for tax incentives and prevent potential abuse, i.e. applying reduced tax rate to products that were not intended by lawmakers (Government bill amending the act on goods and services tax and act of tax ordinance 2019, 38 [117]; Modzelewski 2018, 23–25). Tax authorities not only cannot rely on the identifier or respective ISBN agencies to attest whether something is a book or not, but presumably would also have to verify the very process of

assignment, increasing the amount of work required for a tax collection. As will be demonstrated, this indeed was the case in Poland.

Polish Experiences with the Requirement

In principle, Polish taxpayers are responsible for determining the correct tax rate that is applied to goods and services they provide. Their assessment can be, however, contested by tax authorities, which are entitled to conduct their own inquiry to determine the proper tax rate in case of doubt. It should be emphasized that tax incentives are an exception to general VAT rules, and thus any proviso establishing reduction of tax rate is generally interpreted strictly (de la Feria 2016, 3–19). For this reason, Polish tax authorities and courts were always careful in their assessment if books, or similar products, were eligible for reduced tax rate, as demonstrated by these institutions' willingness to take into consideration many criteria of publications, such as their physical form, content and alleged purpose.

In fact, use of ISBN in that regard was rejected on many occasions, with tax authorities and courts maintaining it is only an additional requirement and not an indicator which automatically and unquestioningly entitles for applying for tax incentives. Most importantly, tax authorities were fully aware of the previously described issue of arbitrariness of ISBN assignment on the part of the publisher, which undermines the argument that it simplifies the procedure of determining the correct tax rate. Perhaps the decisive argument in that matter comes from a tax authorities representative quoted in one of the court judgements: "assigning ISBN has no part in determining the correct tax rate. Publishers assign ISBN on their own, with some degree of freedom" (Case No III SA/Wa 1733/04).

This caution is further exemplified by one of court disputes between publisher and tax authorities which took place as a result of Polish lawmakers' decision to exclude maps from the scope of the incentivized publications (Journal of Laws of 2000, no 105, item 1107). This proviso was interpreted by tax authorities not only as an exclusion of maps as separate products in single sheets, but also atlases, i.e. collection of maps in the book form. Publisher of such atlases argued that they have ISBN, which indicated their "book nature." This argument was disregarded by the court, which gave priority to other factors and, following the strict interpretation principle, supported tax authorities' interpretation (Case No III SA/Wa 1187/10).

Polish tax authorities and courts also adopted principle derived from general rules of interpretation of Combined Nomenclature, a European classification of goods, which states that goods consisting of different components should be classified as "component which gives them their essential character" (OJ L 256 of 7.9.1987). An example of products that fall into this category are puzzle books, i.e. books with pages in the form of empty frames to insert supplied jigsaw puzzle pieces. In cases concerning such products it was assumed by authorities that it was the puzzle pieces that accounted for their appeal to the consumer, and thus basic, non-reduced tax rate for toys should be applied – arguments pointing out that these products had ISBN were disregarded in these cases too (Case No III SA/Wa 1804/13), and in one of

such cases tax administration representative explicitly stated that “not all goods with assigned ISBN should be treated like books” (Case No III SA/Wa 2625/12).

Even assuming publishers’ good faith in applying for reduced tax rate, the assumption that they could act as undisputed experts in matters of classification of publications, on the basis they make these publications themselves, is unfounded. As practice shows, Polish tax authorities had challenged even the publisher’s differentiation between books and serials. Both types of publications were covered by tax incentives since 1993, and both since 1994 had a requirement of having assigned their relevant type of identifier – ISBN or ISSN, respectively. As these were regulated by two separate provisos – one stating that books require ISBN for tax purposes, the other that serials require ISSN – it was not possible to use these identifiers interchangeably, however. Publishers usually assign only one of the identifiers basing on their own assessment of the publication type, thus in the event that tax authorities deemed a publication was a book rather than serial, or vice versa, it would result in applying non-reduced tax rate.

It is worth noting that at the time of one of the court disputes on this issue, the tax rate for books and serials varied, but in fact the publisher attempted to apply the less favorable 7% tax rate reserved for serials rather than 5% reserved for books. Clearly this was not an attempt to abuse the law, however tax authorities deemed that these publications were books which – due to having ISSN rather than ISBN – were noneligible for reduced tax rate (Case No III SA/Wa 1142/08). In one of the other verdicts, the following tax authorities’ statement is quoted: “it should not be relevant whether the publication has assigned ISSN or ISBN. These numbers are assigned based on a request from the publisher [...]. Their assignment alone does not result in an automatic classification of products as books or press.” The court reaffirmed this notion, stating that “ISBN or ISSN alone cannot decide that a given product satisfies other criteria [required for tax reduction]” – other criteria being traits attributed to books or serials, such as completeness or periodicity, which were considered by the court instead (Case No III SA/Wa 453/07).

This not only shows that publishers sometimes lack the expertise that is attributed to them, but also shows that the requirement is only an artificial criterion which allows for unnecessary denying tax reduction to products that otherwise would be granted it. While this could be avoided by higher degree of elasticity of law, such as leaving the choice of identifier for the publisher regardless of the nature of publication, it only furthers the argument that the identifier cannot work as any form of assertion of the publication’s nature on which tax authorities or the courts could rely on. In the end, these institutions would have to conduct their own assessment – for example in case of varied tax rates for books and serials, or when in doubt if a given product even qualifies as a publication eligible for tax reduction.

As mentioned, Polish tax authorities and courts were also willing to examine the full compliance with the ISBN standard, as shown by a particular case concerning a publishing house which used ISBN issued to another entity. As the number identifies not only the publication but also its publisher, such action is not allowed by the standard and was at least once the reason to impose a basic, non-reduced tax rate. This is an interesting and important example as the court dispute was clearly a result of a mistake on publishing house owner’s part, who in good faith attempted

to transfer unused ISBN block from their company to their newly formed publishing house, and not deliberate usage of false ISBN or appropriation of ISBN assigned to other publishers. Publishing house in question was established as a separate legal entity and took over the assets and operations of the publishing department of its owner's previous company – the owner thus considered the new publishing house to be the legal successor of the previous company.

The owner was apparently aware of potential violation of the ISBN standard and applied to the National Library for a permission to continue the usage of previously issued ISBN block, however received the decision only ten months later. Assuming that National Library's prolonged lack of response indicated no objections, the new publisher had already put books with ISBN in question into circulation. National Library's decision was negative, however, and was later reaffirmed by the Supreme Administrative Court as the publishing house was deemed not a legal successor, but a separate legal entity which only took over previous company assets, which did not entitle it to claim rights to the previous company's ISBN block (Case No I SA/Ka 2203/97).

This is yet another example of the labor-intensiveness of incorporating ISBN into tax law, and another risk on the part of publishers. And while publishers should be expected to follow the standard correctly, especially if it was incorporated into law, cases like this raise the question whether such transgressions should bear consequences in tax matters, as variations in tax rates based on arbitrary requirements arguably violate fiscal neutrality principle.

Potential Violation of the Fiscal Neutrality Principle

Under European Law, member states have the right to apply reduced rates to selected goods and services within the limits of the EU VAT Directive and within the limits set by its principles of taxation. One of these principles is the principle of fiscal neutrality, which aims to ensure that taxation does not influence commercial decisions, and thus does not cause disruption of the market mechanisms. The goal of neutral treatment is achieved by, among other means, applying similar tax rates to goods and services that are similar from the point of view of the average consumer (Amand 2013, 163–167; de la Feria 2016, 3–19).

In the context of book market, the principle was examined by Emma Linklater in regard to the controversial EU VAT Directive, which for a time did not permit EU member states for applying reduced VAT for electronically supplied books, i.e. transfer of ebooks or audiobooks at a distance (in contrast to supplying the files on physical support, such as optical discs). The main cause for unequal treatment at the time was the restriction on implementing reduced tax rates for electronically supplied services in general, not only to books but also other services – in the past it was feared by EU lawmakers that reduced tax rates for services supplied at a distance could distort competition between countries, as taxpayers would be incentivized to base their operation in countries with the lowest tax rate (Linklater 2014, 300–12). Since 2015 tax is levied in the country of the consumer, however, not in the country of the taxpayer – this change eliminated the potential to abuse reduced

tax rates and allowed to amend the EU VAT directive in 2018 to include electronically supplied books among goods and services eligible for reduced tax rates within EU (OJ L 286 of 14.11.2018).

Thus, the strict rules on services supplied at a distance overruled the rule of similar treatment of similar products. Nonetheless, even after VAT directive amendment in that matter, differences in tax rates for different forms of books are still allowed at national level. As noted by Linklater, different forms of books – not only printed books and ebooks, but also audiobooks (and potentially other, as of yet hypothetical forms of books) – can be considered distinct enough by consumers so as they do not in fact compete with each other, and thus constitute different markets, which allows for disparities in tax rates without violating the neutrality principle (Linklater 2014, 307–08).

This claim later found its explicit confirmation in actual case-law, as Court of Justice of the European Union in its preliminary ruling had acknowledged the possibility for different rates for printed books and books in the form of electronic files on physical support (the only form of ebooks and audiobooks eligible for tax reduction at the time, before the amendment of VAT Directive in 2018 which broadened the scope by including also electronically supplied services). Similarity has to be assessed in each member state individually, as consumer views can vary between countries – it is assumed that audiobooks and paper books can very well be perceived as substitutes in one nation's market, but not so in another, depending on multiple factors such as the level of adoption of new technologies. EU does not intend to assume universal point of view of average consumer and impose it on all its member states, but upholds variety in that matter, as stated in the CJEU judgment:

neither the wording of Directive [...] nor the legislative history of that directive indicates that the EU legislature intended [...] to compel the Member States to apply an identical reduced rate of VAT to all books, whatever the physical support on which they are published. (CJEU Case C-219/13, K Oy, ECLI:EU:C:2014:2207)

Moreover, it should be noted that within such broad categories of forms, further divisions based on the content and purpose are also possible. A cookbook, for example, is not a conceivable substitute for a puzzle book, atlas, textbook or a novel. This allows for further disparities of tax rates – even if member states applied some form of discrimination in regards to whole market segments, this could be reasonably justified within neutrality principle. In fact, the EU itself has implemented a content criterion into VAT Directive, which states that reduced tax rate can be applied only to publications that are not “predominantly devoted to advertising” (OJ L 347 of 11.12.2006). Some member states have also introduced their own criteria, and, for example, apply tax incentives only to “books with professional, scientific, artistic, cultural or educational content” and school textbooks (Croatia) or exclude books that incite violence (France), contain pornography (Estonia, France, Portugal), “content harmful to minors” (Germany) or “content predominantly for adults” (Luxembourg) (European Commission 2021).

Fiscal neutrality principle is therefore elastic and allows for exclusions based on multiple criteria at the discretion of member states. Despite this somewhat

paradoxical capacity for seemingly unequal treatment inherent to the principle, the ISBN requirement is arguably not in conformity with it. Even though neither Polish nor European courts had yet ruled on this particular issue, it is worth considering some of its problems.

It has already been established that the ISBN in Polish VAT law was only an additional requirement, unrelated to book status, and as such it can be considered an arbitrary criterion imposed by the lawmakers. This seems to be the direct violation of the principle, as virtually identical editions could be subjected to two different tax rates depending on this single factor. Taking previously mentioned case concerning invalid ISBN as an example, a hypothetical revised edition, which would differ only in proper ISBN assignment, would be subject to different tax rates. Such disparity cannot conceivably reflect the point of view of the average consumer, and the same would be true in other law systems, as the purpose and capacity of the ISBN standard are universal.

The consumer-oriented neutrality principle is fundamentally at odds with the primary function of the ISBN system, which is to facilitate book distribution. While distributors and retailers might discriminate between books with and without ISBN, and they in fact often require ISBN assignment for a book to be included in their stock, the principle concerns itself with the preferences and experiences of the final consumers, i.e. the reader, not booksellers' convenience. Furthermore, the issue of consumer viewpoint cannot be dismissed on the grounds that books which do not enter traditional distribution channels (and therefore may not require ISBN, e.g. self-published books, or made by unprofessional or semi-professional, sometimes incidental publishers), do not merit special treatment by the law, or do not truly compete with professional publications (which generally have ISBN). This assumption is at best unfounded and implies that small or inexperienced publishers could be de facto penalized in contrast to bigger, established publishers benefitting from tax incentives. But, as indicated by the case-law, status of the publisher should be irrelevant in the light of the neutrality principle:

the identity of the manufacturer or the provider of the services and the legal form by means of which they exercise their activities are, as a rule, irrelevant in assessing whether products or services supplied are comparable. (CJEU joined cases C-453/02 and C-462/02)

Nonetheless, even reputable, professional publishers can make mistakes in regard to ISBN use (Sanderson 2005, 298–300), including repeatedly using single ISBN for multiple publications or incorrectly transcribing the identifier (Library of Congress 2013). Though Polish case-law does not include ruling on such issues, it seems that consistent treatment by tax authorities demands such a mistake would result in applying a higher tax rate, analogously to previously quoted judgment concerning invalid ISBN transfer. In such cases it could not conceivably be argued that books differentiated only by correct or incorrect ISBN constitute separate markets.

It is also worth to note that while lawmakers can expect domestic publishers to conform to the requirements regarding ISBN, they cannot impose such requirements on foreign publishers. This could result in a disruption of the local market of imported books, as they could potentially be subjected to various rates. Admittedly

it seems the scale of the disruption would be marginal – at least in the case of printed books – as ISBN is in use worldwide, and small-scale publishing initiatives that might forgo ISBN assignment presumably do not participate in international trade to a significant degree. The potential is there, however, and, as argued before, small initiatives should not be disregarded by principle.

Additional risk for both domestic and imported books comes from the fact that the accessibility of the ISBN system may vary by region. While ISBN agencies are often based within public institutions and issue ISBN free of charge, this is not the case in every country. German ISBN agency, for example, is part of a private entity and issues ISBN for a charge, which may discourage some publishers from applying for it. A comparison of International ISBN Agency data and numbers of legal deposits from Germany suggests this is indeed the case, as approximately only 66.5% of books published in Germany in 2020 had an ISBN (WIPO 2022, 24–25).

Conclusion

It was shown that the ISBN standard was not sufficient to unambiguously define a book for tax purposes in Poland. Such a solution not only complicates the procedure of tax collection, as evidenced by in-depth investigations conducted by tax authorities and courts, but can also cause interpretation errors on the publisher's part, giving them a false sense of fiscal security. While the scope of the case-law study was limited to only one country, its conclusions should be relevant to other law systems as well, as the basic ISBN rules remain unchanged across the world.

Another addressed issue was the potential violation of the fiscal neutrality principle. While not every country outside the EU might follow these rules, they nonetheless can be considered to be traits of “good taxation,” aimed at equitable treatment of business, and worth taking into consideration. Especially the potential for disruption of the imported books market should be of concern.

Thus, policymakers should seek other legislative measures for the sake of improving tax regulations. However, as evidenced by Poland's case-law, tax authorities and courts were able to successfully assess publications basing their decisions on other criteria – traits inherent to books, as they are generally understood. This suggests that additional solutions might not be necessary at all. The fact that tax incentives for books are enacted in over 80 countries in the world (IPA & FEP 2019, 7–9), and only a few of them utilized ISBN in that regard, seems to support that notion.

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