

KONRAD GRACZYK

INCOME TAX FOR 1939 AND OCCUPATION OF UPPER SILESIA

INTRODUCTION

The chief obligation of an occupying state was to restore and maintain order and public life, and in accordance with the 1907 Hague Convention, the occupying state could also issue tax laws to cover expenses related to the occupation.¹

One of the issues related to the beginning of the occupation of Upper Silesia by the Third Reich, which had already been addressed in early October 1939, was income tax. The tax was not a priority issue. Under the military administration, conducted under the auspices of the competent military commanders and directly by the commander of the 3rd Section of the Border Guard, General G. Brandt and the plenipotentiary of Chief of Civil Administration O. Fitzner,² for obvious reasons, the organisation of German administration and assurance of safety and peace was a more important matter. The occupier's authorities in Upper Silesia were concerned about such issues as prisons overcrowded with prisoners of wars,³

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¹ Karol POSPIESZALSKI, *Polska pod niemieckim prawem 1939–1945 (Ziemie Zachodnie)* (Poznań: Wydawnictwo Instytutu Zachodniego, 1946), 204–5.

² Ryszard KACZMAREK, *Górny Śląsk podczas II wojny światowej* (Katowice: Wydawnictwo Uniwersytetu Śląskiego, 2004), 82.

³ Geheimes Staatsarchiv Preussischer Kulturbesitz Berlin-Dahlem [henceforth quoted as: GStAPK], XVII. HA Schlesien, Rep. 201 e Regierung zu Kattowitz (z.T. Dep.) 1927–1945, no. Ost 4 Kattowitz 3, sheet 77, *Schreiben des Landrats in Rybnik vom 9.9.1939 an den Chef der Zivilverwaltung in Kattowitz* [Letter of 9 September 1939 from the District Administrator in Rybnik to the Chief of the Civil Administration in Katowice].

criminal abuses of German soldiers,⁴ the attitude towards deserters from the Polish army,⁵ and confiscation of radios.⁶

In Fitzner's headquarters in Katowice, within the administrative department there was a financial section which in turn included a tax and customs department. The tax department had five employees and was headed by Dr Konietzko,⁷ a senior government counsellor. He was also the author of a memorandum addressed to the Chief Financial Officer (*Oberfinanzpräsident*) in Opawa (Troppau), concerning the financial administration in the eastern territories and the income tax assessment for 1939.⁸ Our analysis of the content of this document should be preceded by an introduction of the relevant solutions used by Germany during the annexation of Austria and of the Sudeten area. At that time, the issue of tax law application and collection also emerged. The example of the Sudetenland was also mentioned in the memorandum written by Dr Konietzko as a model of proposed solutions for the occupied Polish territories.

1. INTRODUCTION OF GERMAN TAX LAW IN AUSTRIA

The act on the unification of Austria with the German Reich of 1938⁹ provided for the principle whereby the existing Austrian law should be contin-

⁴ Ibid, sheet 124, *Schreiben des Oberbürgermeisters in Sosnowitz vom 12.9.1939 an den Chef der Zivilverwaltung betr. Übergriffe von Soldaten* [Letter from the High Mayor of Sosnowiec of 12 September 1939, to the Chief of the Civil Administration concerning soldiers' abuses].

⁵ Ibid., no. Ost 4 Kattowitz 4 *Einrichtung einer deutschen Verwaltung nach Besetzung Oberschlesiens durch deutsche Truppen* [Establishment of a German administration after the occupation of Upper Silesia by German troops], Bd. 2: September 21–September 30, 1939; no pagination, *Schreiben des Landrats in Lublinitz vom 20.9.1939 betr. polnische Desserteure* [Letter of the District Administrator in Lublinitz of 20 September 1939 concerning Polish deserters].

⁶ Ibid, no pagination, *Verordnung betr. Anmeldung und Abgabe von Rundfunkempfangsanlagen vom 13.10.1939* [Ordinance concerning registration and delivery of radio reception equipment of 13 October 1939].

⁷ GStAPK, XVII. HA, Rep. 201 e, no. Ost 4 Kattowitz 4, no pagination, *Schreiben des Chefs der Zivilverwaltung vom 25.9.1939 betr. Geschäftsverteilungsplan* [Letter from the Chief of Civil Administration dated 25 September 1939 concerning the operation division plan]; no pagination, *Geschäftsverteilungsplan* [Plan for division of operations].

⁸ Ibid., no. Ost 4 Kattowitz 5, no pagination, *Schreiben des Oberregierungsrats Dr. Konietzko vom 4.10.1939 an den Oberfinanzpräsidenten in Troppau betr. Finanzverwaltung in den Ostgebieten; Einkommensteuerveranlagung 1939* [Letter of the Senior Government Counsellor Dr Konietzko of 4 October 1939 to the Chief Financial Officer in Opawa concerning financial administration in the eastern territories. Income tax assessment 1939].

⁹ Law on the unification of Austria with the German Reich of 13 March 1938, *Reichsgesetzblatt* [Journal of Laws of the Reich, henceforth abbreviated as: RGBI] of 1938, p. 237.

ued. The introduction of German law proceeded gradually by way of normative acts issued by Hitler or by an minister he authorised. As a result, by means of four decrees the provisions of German tax law were introduced, such as those governing turnover tax, bill of exchange tax and freight tax. Until November 1938, no personal or corporate income tax was introduced. In accordance with the guiding principle, the Austrian legislation was therefore still in force in this area. As this led to a lower tax burden in the Austrian territory, harmonisation in this subject matter was called for from the beginning of 1939.¹⁰ The introduction of new tax regulations concerning personal and corporate income tax as of January 1, 1939 was based on the premise that the calendar year 1938 would already be accounted for. Therefore, the last tax assessment carried out by the Austrian financial authorities on the basis of Austrian law concerned the calendar year 1937.¹¹

2. INTRODUCTION OF GERMAN TAX LAW IN THE SUDETENLAND

A similar solution was adopted for the region of the Sudetes annexed to the Reich on November 21, 1938.¹² The existing law was to remain in force as long as it did not contradict the idea of incorporating this area into the Reich. German law was also introduced by means of ordinances issued by the Führer or the competent minister in agreement with the Interior Minister. Disturbances in economic life were to be avoided as far as possible. Hitler's decree of October 1938 provided for such rules.¹³

In the tax area, the first three regulations to regarding the introduction of tax legislation in the Sudeten-German area were issued between October 28 and November 30, 1938. They covered turnover tax, transport taxes, inheritance tax, sugar tax, Reich Flight Tax, general provisions of tax law and tax proceedings. At that time, the harmonisation of the tax system of the new

¹⁰ J. OERMANN, "Zur Einführung des deutschen Einkommensteuerrechts im Land Österreich," *Deutsche Steuer-Zeitung und Wirtschaftlicher Beobachter*, no. 45 (November 5, 1938), 1101–7.

¹¹ IDEM, "Einführung des Deutschen Einkommensteuerrechts im Land Österreich," *Deutsche Steuer-Zeitung und Wirtschaftlicher Beobachter*, no. 50 (December 10, 1938), 1213–18.

¹² Law on the reunification of Sudeten-German territories with the German Reich of 21 November 1938], RGBI of 1938, p. 1644.

¹³ Decree of Führer and Chancellor of the Reich on the administration of Sudeten-German areas of 1 October 1938, RGBI of 1938, p. 1331.

territory with that of the Reich still required that German personal and corporate income taxes be introduced.¹⁴

Essentially, the introduction of German income tax meant that the provisions scattered over fifteen normative acts had to be applied. In addition to the act on income tax¹⁵ and the accompanying implementing regulations, these provisions included, among others, regulation on tax on income from capital investments,¹⁶ regulation on deduction of tax from restricted taxpayers' income, regulation on agricultural accounting, regulation on tax relief for the construction of factory-owned apartments for rural workers, regulation on levying taxes on supervisory board members, regulation on deduction of tax from salaries of supervisory board members, tax relief act, defence tax act (concerning persons not conscripted to do two years' active military service) and its implementing provisions and regulations on keeping incoming goods ledger and accounting for the issue of goods.¹⁷

The state of legislation found by the Germans resulted from the Czechoslovakian law on direct taxation of 1927. The essential conclusions from the analysis of this law arrived at by German officials addressed the method and period of tax assessment, as well as the distinction between calendar and tax years. Taxable income earned in a calendar year formed the tax base for the following year (tax year), regardless of whether the person and the taxed amount still existed at the beginning of the tax year (i.e. January 1) and regardless of any changes during the tax year. The tax for each tax year was calculated in relation to the income actually earned in the previous calendar year. The distinction between the calendar year and the tax year caused that the taxable year 1938 was based on income from 1937.¹⁸

In view of the above, it was decided that tax assessment for the tax year 1938 would be the last one to be regulated under Czechoslovak law. The German tax law, including tax reliefs related to the construction of factory-owned apartments, could be applied to the tax calculated for the calendar year 1939 at the earliest. As it was argued, the adopted solution—related to the temporary continuation of tax collection under Czechoslovak law—led

¹⁴ J. OERMANN, "Einführung des deutschen Einkommensteuerrechts im Sudetenland," *Deutsche Steuer-Zeitung und Wirtschaftlicher Beobachter*, no. 51 (December 17, 1938), 1242.

¹⁵ Income Tax Act of 6 February 1938, RGBl of 1938, p. 121.

¹⁶ Ordinance on the implementation of tax deduction from capital gains of December 22, 1934, *Reichsministerialblatt* [Ministerial Journal of the Reich, henceforth referred to as RMBL] of 1935, p. 18.

¹⁷ OERMANN, *Einführung des Deutschen Einkommensteuerrechts im Sudetenland*, 1242–43.

¹⁸ *Ibid.*, 1243.

to the situation where no calendar year was taxed twice (under both Czechoslovak law and German law), and none was exempt from taxation.¹⁹ A different regulation would not have been possible due to the fact that—in contrast to Czechoslovak law—the income period and the tax assessment period coincided. In order to facilitate the collection of taxes after the introduction of German tax law, those provisions of Czechoslovak law which referred to the calculation and payment of income tax prepayments were left to be in force. The amount and time limit for advance payments were therefore determined on the basis of the existing Czechoslovak regulations also from January 1, 1939.²⁰

3. PROPOSED TAX LEGISLATION IN OCCUPIED UPPER SILESIA

The regulation of tax issues in the occupied area of Upper Silesia required, at least at a basic level, an examination of the existing provisions of Polish law. That such a study was conducted, even before the final decision was taken to seal the fate of the western lands of the Second Polish Republic, is evidenced by the above-mentioned memorial drafted by Dr Konietzko.

The memorandum consisted of five typed pages. Attached to it was a draft regulation on income tax assessment for 1939 and a judgement of the Supreme Administrative Court concerning tax matters, translated into German. The document was prepared in Katowice on October 4, 1939.²¹

First of all, the author noted that the Polish Income Tax Act²² distinguished between the calendar and financial year (*Wirtschaftsjahr*) in which income was earned, on the one hand, and the following tax year (*Steuerjahr*) in which income tax was levied, on the other. Income earned in the calendar/financial year constituted the basis for taxation in the tax year (Article 13 of the Act). In the case of natural and legal persons, as a rule, the tax

¹⁹ This in fact was not true because the income earned in the calendar year 1938 was not taxed. Being familiar with this problem, Josef Oermann, however, wrote that the income earned in the calendar year 1938 was irrelevant due to the fact that Czechoslovak law had been supplanted by German law. OERMANN, *Einführung des Deutschen Einkommensteuerrechts im Sudetenland*, 1243.

²⁰ *Ibid.*, 1243–44.

²¹ GStAPK, XVII. HA, Rep. 201 e, no. Ost 4 Kattowitz 5, no pagination, *Schreiben des Oberregierungsrats Dr. Konietzko vom 4.10.1939 an den Oberfinanzpräsidenten in Troppau betr. Finanzverwaltung in den Ostgebieten; Einkommensteuerveranlagung 1939*.

²² Act of 16 July 1920 on State income tax and property tax, Journal of Laws of 1936, No. 2, item 5.

obligation started to be due in the year following the occurrence of relations giving rise to the tax obligation (Article 30). However, the law did provide for the end date of the taxation period. Neither was this issue clarified by the provisions of the regulation on the provisions implementing the Act on State Income Tax and Property Tax,²³ since they were limited to an indication that natural and legal persons ceased to be subject to taxation at the end of the year in which circumstances justifying the extinction of tax liability occurred (§ 140 point 2 of the regulation). For this reason, German officials referred to the body of court rulings, which showed that if a taxpayer died in the calendar year, he or she was still subject to taxation in the following year, i.e. the tax year.

As the author of the memorandum noted, the income tax assessment in 1939 covered the income earned in 1938, while under Polish law the income earned in 1939 should have been taxed in 1940. Therefore, as it was considered, the introduction of German income tax as of January 1, 1940 would require that the tax should be assessed twice: in relation to the income of 1939 under Polish law and to income of 1940 under German law. In this way, the advance tax payments made under German and Polish law would converge. However, if the “German” prepayments were cancelled in 1940, leaving only those paid under Polish law, the payments for 1940 and the prepayments for 1941 under German law would converge in 1941 anyway. In order to avoid double taxation, the same procedure was recommended as in the Sudetes with regard to the introduction of German income tax. This was due to the similarity of the legal situation—Czechoslovak law and Polish law distinguished the calendar year from the tax year.²⁴

The proposal of the German official boiled down to the assessment of income tax in 1939 as the last one under Polish law and to the assessment of income tax under German law in 1940. It was necessary to determine advance tax payments in accordance with the rules provided for by German law. Only with regard to the amount of advance payments it was proposed that the tax assessment for 1939 be conducted in accordance with Polish law. Such regulation meant that the income earned in 1939 would be disregarded for taxation purposes, an idea which received positive evaluation, however. It was argued that the outbreak of the war caused such serious disruptions in

²³ Regulation of the Minister of Treasury of 14 May 1921 on provisions implementing the Act on State income tax and property tax, Journal of Laws No. 48, item 298.

²⁴ GStAPK, XVII. HA, Rep. 201 e, no. Ost 4 Kattowitz 5, no pagination, *Schreiben des Oberregierungsrats Dr. Konietzko vom 4.10.1939*.

economic life, in particular in large-scale industry, that in many cases a lack of profit was envisaged. Only people who came to Upper Silesia in 1939, especially after its seizure by the German army, were to be treated as an exception. Pursuant to Article 30 para. 2 of the Polish Income Tax Act, the tax obligation started at the beginning of the month following the month of arrival. On the basis of this provision, it was therefore possible to levy the tax for 1939 on taxpayers who arrived in the occupied area in 1939. In this way, the gap resulting from the proposed regulation²⁵ could be reduced.

As it was noted, taxpayers in the occupied area of Upper Silesia were obliged to pay by May 1, 1939 a half, and by November 1, 1939 the rest of the tax amount attributable to the amounts of income specified in tax declarations according to the tariff provided for in Article 23 of the Polish Income Tax Act. Therefore, this applied to the income earned in 1938. The aim was to include in the ordinance proposed by the Germans a provision ordering taxpayers to pay the remainder of income tax (i.e. the part paid by 1 November) also without receiving a tax decision. Against this background, difficulties were anticipated, as the vast majority of financial offices noted the lack of tax declaration, which had been transferred to Central Poland. For example, it was found out that the files of three financial offices in Katowice were loaded onto a train which as far as the vicinity of Tarnów and remained there. For this reason, former Polish officials were sent to search for the files. Quite apart from that, however, it was decided to order the re-submission of tax declarations in 1939 if they were not held by in the competent financial office. To this end, it was decided to prepare a simplified tax return form in German. The re-submitted declarations were to be compared with the found Polish declarations, and any difference in the declared income would result in a penalty.²⁶

Attached to the memorandum written by Dr Konietzko was a draft income tax assessment regulation in 1939. The ordinance was to include four paragraphs. § 1 of the ordinance provided for the obligation to re-submit tax declarations by November 1, 1939 to the competent financial office using forms available there free of charge. § 2 of the ordinance imposed an obligation on taxpayers to pay the amount of income tax together with a local government supplementary amount pursuant to Article 24 of the Polish act on income tax in cashier's offices of competent financial offices until

²⁵ Ibid.

²⁶ Ibid.

November 1, 1939.²⁷ The sums already paid towards the 1939 tax had to be deducted from that amount if a receipt was presented. According to § 3 of the Ordinance, taxpayers who had not yet been obliged to file tax declarations were to submit their decision concerning income tax for the tax year 1939 to the competent financial office and also pay the remaining amount of income tax due by November 1. § 4 provided that the ordinance was to apply in the occupied area of Upper Silesia, provided that the Polish income tax act was in force there. The final stipulation was particularly relevant for the district of the financial office Cieszyn 2 and Freystadt for they previously operated under Czechoslovak law.²⁸

Among the preserved archives there is no signed original of the ordinance. However, knowing the legislative activity of the chief of civil administration in Katowice²⁹ and the fact that according to the draft the ordinance was to be addressed to the inhabitants of the area in his charge and to facilitate the work of German financial officials, it should be assumed that it was issued.

4. INTRODUCTION OF GERMAN TAX LAW IN THE “EASTERN INCORPORATED TERRITORIES”

The military administration in occupied Poland lasted until October 26, 1939, when Hitler's decree of October 8, 1939 on the division and administration of eastern territories came into force (*Erlass des Führers und Reichskanzlers über die Gliederung und Verwaltung der Ostgebiete vom 8.10. 1939*).³⁰ Apart from Greater Poland, Pomerania and northern Mazovia, the Reich annexed Upper Silesia (and part of western Lesser Poland).³¹ In terms of law application, the decree provided that the Polish legislation would

²⁷ However, according to press releases, as early as the end of September 1939 the collection of overdue tax started. “Welche Steuern sind zu bezahlen?” *Kattowitzer Zeitung*, no. 256 (September 23, 1939), 3. I. SROKA, *Górny Śląsk i Zagłębie Dąbrowskie pod okupacyjnym zarządem wojskowym* (Katowice: Śląski Instytut Naukowy, 1975), 165.

²⁸ GStAPK, XVII. A, Rep. 201 e, no. Ost 4 Kattowitz 5, no pagination, *Entwurf der Verordnung betreffend die Einkommensteuerveranlagung für 1939* [Draft Ordinance on the Income Tax Assessment for 1939].

²⁹ I. SROKA, *Policja hitlerowska w rejencji katowickiej w latach 1939–1945* (Opole: Państwowy Instytut Naukowy Instytut Śląski w Opolu, 1997), 52.

³⁰ RGBl of 1939, p. 2042. Originally, the decree was to come into force on November 1, 1939.

³¹ C. MADAJCZYK, *Die Okkupationspolitik Nazideutschlands in Polen 1939–1945* (Berlin: Akademie-Verlag, 1987), 24.

remain in force, unless it was repealed by means of a special act or its application opposed the incorporation.³²

Provisions of German tax law were introduced in the “incorporated eastern areas” (*den eingegliederten Ostgebieten*) by way of ordinances. Two such acts were issued between November 18, 1939 and January 7, 1940. They concerned customs regulations, consumption tax, turnover tax, war supplement to beer, tobacco products and sparkling wine, tax law, tax unification, tax arrears, capital transfer tax, bill of exchange tax, insurance tax, fire protection tax, transport tax, document tax, motor vehicle tax, pools and lottery regulations. The last ordinance, dated January 10, 1940,³³ concerned the introduction of the German income tax.³⁴

As Oermann stated, the Polish income tax was in force in the incorporated eastern territories until the German tax became applicable. Since Polish law distinguished between calendar year and tax year, the last tax assessment under Polish law occurred for the tax year 1939, and the tax base was the income derived in the calendar year 1938. The new regulations, under German law, were to apply as of the spring of 1941 in relation to the tax year 1940. It was the first income tax assessment carried out according to German law in the western lands of the Second Polish Republic.

CONCLUSION

The characteristic feature of the issue addressed by the article was the unique treatment of Polish income tax and the corresponding Polish legislation by the German occupier. For example, with respect to German criminal law, the German authorities not only did not bother to examine the Polish regulations, but they also made a decision in advance to apply its own legislation to the Polish inhabitants. The conduct of German public servants with regard to income tax was radically different, since they not only thoroughly analysed the Polish regulations, both at the statutory and executive

³² K. GRABOW and R. TOYKA, *Steuerrechtlicher Leitfaden für die Ostgebiete* (Kattowitz: Kattowitzer Buchgewerbehaus G.m.b.H., 1941), 9.

³³ Dritte Verordnung zur Einführung steuerrechtlicher Vorschriften in den eingegliederten Ostgebieten vom 10. Januar 1940 [Third ordinance to the introduction of tax regulations in the incorporated Eastern Territories of 10 January 1940], RGBl of 1940, p. 211.

³⁴ J. OERMANN, “Einführung des deutschen Einkommensteuerrechts in den eingegliederten Ostgebieten,” *Deutsche Steuer-Zeitung und Wirtschaftlicher Beobachter*, no. 8 (February 24, 1940), 93–94.

level, but also the relevant judicial practice, and above all they elected to continue to apply and enforce the Polish legislation.

Both documents reflecting the conceptual work (for example, the memorandum of Dr Konietzko) and the studies discussing the ultimate regulation of income tax in 1939, did not demonstrate any discrimination against the occupied population. Rather, they were focused on the subject matter and marked by professionalism. It seems needless to demonstrate that the western lands of the Second Polish Republic did not constitute an ethnically homogeneous area. In spite of that, German public servants, when applying the Polish legislation, decided not to discriminate against Poles (e.g. by exempting German nationals from income tax), but to impose equal tax burden on all residents resulting from the previously binding regulations. No distinction was made between Poles and Jews and Germans, and the collective term *Steuerpflichtige* (tax payer) was used.

The equality aspect of the adopted regulation was also visible in the abandonment of tax collection for the calendar year 1939. As a result, the final regulation of this matter resembled the solution adopted for the population of the Sudetenland due to the distinction made by Czechoslovak law (similarly to Polish law) between calendar year and tax year. Admittedly, the decision was also based on practical considerations, the most important argument was to avoid double taxation resulting from the overlap between two tax assessments resulting from the introduction of German law. However, that situation was not used to impose a double tax burden on the Polish population, which, however, could be due to the failure to take definitive decisions concerning the fate of these lands and the occupied population. At that time, the status of taxpayers residing in the incorporated lands in the east appeared even slightly better than that of the people settling later, who were to pay the 1939 tax under the existing rules, that is according to German law. There can be no doubt that the overwhelming majority of taxpayers arriving, for example, in Upper Silesia after it had been seized by the German army came from the depths of the Reich. In practice, however, the German Finance and Interior Ministers abandoned the collection of outstanding taxes from Germans, with the exception of inheritance and donation tax, consumer and customs duties,³⁵ justifying this decision with the fact that the Polish authorities used tax assessment as a measure used in national struggle.³⁶

³⁵ POSPIESZALSKI, *Polska pod niemieckim prawem*, 101–02.

³⁶ GRABOW and TOYKA, *Steuerrechtlicher Leitfadens*, 9.

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INCOME TAX FOR 1939 AND OCCUPATION OF UPPER SILESIA

Summary

The article concerns the attitude of the occupation administration of the Third Reich introduced in Upper Silesia in September 1939 to the issue of income tax for 1939. The article discusses the analysis of Polish legislation and jurisprudence in the field of tax law carried out by German officials, the proposed regulation, its motives and the final solution. The considerations concerning Polish income tax were preceded by the presentation of analogous measures taken by Germany in connection with the incorporation of Austria and the Sudetenland.

Key words: administration during occupation; Third Reich; taxes; tax law.

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