A 'PERFECT STORM': RUFFLER, C-544/07, FILIPIAK, C-314/08 AND CASE K 18/06 REVISITED AS POLAND IS DUE TO CELEBRATE ITS FIRST DECADE IN THE EUROPEAN UNION

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Introduction

When the European Union welcomed 10 new Member States into its ranks in 2004, a new era began for the Republic of Poland. Five years after commencement of its NATO membership, seven years after its new Constitution came into force[2] and 15 years after engagement in a democratic transition following the fall of communism, Poland had some valuable lessons to learn in the taxation field. Given the circumstances, the decision makers and national judiciary had only fifteen years for a truly 'Copernican revolution'.[3] In other words, Poland had some homework to do and lessons to learn about issues arising from its accession to the European Union (hereafter, the 'EU'). Amongst others, some serious review had to be conducted in the field of taxation since some Polish regulations remained unchanged even after Poland's accession to the European Union on May 1, 2004. This homework included three key lessons. Firstly, a lesson on how to ensure the rights arising from the exercise of the EU's

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2 Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku, 78 Dziennik Ustaw Rzeczypospolitej Polskiej 1997. Accepted in constitutional referendum on 25 May 1997, signed by the President on 16 July 1997.

3 Adam Lazowski, *Half full and half empty glass: the application of the EU law in Poland (2004-2010),* Common Market Law Review 48: 503-553, 2011, p. 504. Full text available at: http://www.cesruc.org/uploads/soft/130306/1-130306154439.pdf

'fundamental freedoms'.[4] Secondly, how to deal with possible incompatibilities of Poland's domestic procedures and tax code with EC/EU law, such as the Polish Personal Income Tax Act (hereafter, the 'PIT Act') and its provisions on social security and health insurance contributions (where only these paid in Poland were allowed deduction from the tax base or income tax). Thirdly, the possible Constitutional conflicts as well as the tendency of the domestic tax authorities to adhere to the provisions of domestic tax law despite the supremacy of EU law.

Today, in the first half of 2014, it is an appropriate time to revisit some of these more memorable ECJ cases and lessons learnt by Poland during its first, nearly full decade, of membership in the EU.

This article considers some applicable basic principles underlying EU law, promptly followed by the judgement of the Polish Constitutional Tribunal in Case K 18/06[5] and will thus mainly concentrate on cases of: *Ruffler*, C-544/07[6] and *Filipiak*, C-314/08.[7]

The Background: Four 'Fundamental Freedoms' and Supremacy of EU law

In order to fully immerse ourselves in the analysis of the three above mentioned cases – a quick scene setting as to the EU's 'fundamental freedoms' and supremacy of its law proves a sensibly vital step on the path to better understanding these judgements. This is an introduction to the stories of two taxpayers, who fought the Polish tax authorities, and the Polish Ombudsman who noticed the non-compliance issue of regulations with Polish Constitution and EU law, with regard to deductibility of health insurance and social security contributions paid within non-Polish insurance schemes.

The so-called four 'fundamental freedoms' (hereafter, the 'four freedoms') are set out in Article 3 of the Treaty on European Union and Articles 45 to 66 of the Treaty on Functioning of the European Union (TFEU). Article 3 TFEU, highlights the creation of an 'internal market' where certain obstacles, such as those impacting on the free movement of goods, persons, services and capital, are

4 Discussed further in this paper under the heading of 'The Background: Four 'Fundamental Freedoms' and Supremacy of EU law'.

5 Polish Constitutional Tribunal, Case K 18/06, *Re social insurance contributions,* judgement of 7 Nov. 2007, Z.U. 2007/10A/122.

6 ECJ, 23 April 2009, C-544/07, *Uwe Ruffler v. Dyrektor Izby Skarbowej we Wroclawiu Osrodek Zamiejscowy w Walbrzychu, (Ruffler)* [2009] EUECJ.

7 ECJ, 19 November 2009, C-314/08, *Krzysztof Filipiak v. Dyrektor Izby Skarbowej w Poznaniu, (Filipiak)* [2009] ECR I-11049.

abolished between the Member States. Simply put, the Member States are able to take advantage of these free movement principles arising from the participation of the Member States in the EU internal market.

In order for the EU to function properly and for its aims to be achieved, there needs to be uniformity in the understanding and application of EU law throughout the EU. This is achieved through the notion of 'supremacy of EU law' over the Member States' domestic provisions.[8] When there are conflicts between domestic legislation and EU law, national courts are under a duty to give full effect to the provisions of EU law. Moreover, the so-called *'Simmenthal'* principle[9], dating back to case of *Simmenthal II*, C-106/77[10], comes into play, which determined that the primacy of EU law cannot be subjected to a Member State's domestic procedures, even if constitutional in nature.[11] This meant that Poland, as well as any other Member State, needed to conform to this principle. One could say that the link between the legal order of the EU and the constitutional legal orders of the Member States, referred to by some as 'European legal pluralism,'[12] or a 'multicenter legal system',[13] could be best described by the Latin phrase - already functioning in the field of international law and arguably its oldest principle - *pacta sunt servanda* meaning 'agreements must be kept' which perhaps best described the decision-making spirit expected of the countries that entered and accepted the structures and order of the EU.

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8 See: ECJ, 15 July 1964, Case 6/64, *Flaminio Costa v. ENEL, (Costa v. ENEL)*, [1964] ECR 585.

9 ECJ 9 March 1978, *Amminstrazione delle Finanze dello Stato v. Simmenthal (Simmenthal II)*, C- 106/77, ECR 1978, I-629 at para 24: "…a national court which is called upon, within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provision by legislative or other constitutional means."

10 ECJ 9 March 1978, *Amminstrazione delle Finanze dello Stato v. Simmenthal (Simmenthal II)*, C- 106/77, ECR 1978, I-629.

11 *Simmenthal II,* para 24.

12 Miguel P. Manduro, *Europe and the Constitution: what if This Is As Good As It Gets?*, in: European Constitutionalism Beyond the State, 74, 98-101 (J.H.H. Weiler & Marlene Wind, 2003); Albi & Van Elsuwege, *supra* note 18, at 742.

13 Ewa Letkowska, *Multicentrycznosc wspolczesnego systemu prawa i jej konsekwencje,* 4 Panstwo i Prawo 3 (2005).

Poland and its efforts at European integration

Although the ECJ's authority rests exclusively with the interpretation of EU law,[14] it is for the Member States' national courts to interpret domestic law having in mind the EU law obligations subscribed to upon accession.[15] In its first 12 months after accession to the EU, the Polish Constitutional Tribunal rendered two important and slightly polarised decisions with regard to the process of European integration. Firstly, with its decision in *Case K* 15/04, in a judgement of 31 May 2004, OTK-A 5/2003, item 43 (2003), the Constitutional Tribunal indicated that *'[w]hilst interpreting legislation in force, account should be taken of the constitutional principle of sympathetic predisposition towards the process of European integration and the cooperation between States'*.[16] It then, however, seemed to slightly reverse its stance in *K 18/04*, *The Accession Treaty* case of 11 May 2005[17] where the importance of the Polish Constitution was stressed as the *'supreme law of the State'*.[18] Then, two and a half years later, it finally made a decision with regard to provisions relating to social insurance contributions under the PIT Act[19] in Case *K 18/06*, in a judgement of 7 November 2007.[20]

14 See: *Jacques Damseauxv. Belgium* (C-128/08), para 20 – as an example of decision on this issue by the ECJ. See Tom O'Shea, *ECJ Upholds Belgian Dividend Tax Treatment,* Tax Notes International 2009, Volume 55, Number 5, August 3, 2009.
See: http://www.ccls.qmul.ac.uk/docs/staff/oshea/52194.pdf.

15 See: ECJ, 12 September 2006, Case C-196/04, *Cadbury Schweppes plc, Cadbury Schweppes Overseas Ltd v. Commissioners of Inland Revenue,* (*Cadbury Schweppes)* , [2006] E.C.R. 1-7995, para 72.

16 Judgement of 31st May 2004, K 15/04, *Participation of foreigners in European Parliamentary Elections,* page 3 as per:
http://trybunal.gov.pl/fileadmin/content/omowienia/K_15_04_GB.pdf.

17 Judgement of 11th May 2005, K 18/04, *Re Conformity of the Accession Treaty 2003 with the Polish Constitution*, OTK Z.U. 2005/5A/49

18 http://trybunal.gov.pl/fileadmin/content/omowienia/K_18_04_GB.pdf. Discussed at length in: Roman Kwiecien, *The Primacy of European Union Law over National Law Under the Constitutional Treaty,* German Law Journal 2005, Vol. 06 No. 11, p. 1479-1496. Full text available at:
http://www.germanlawjournal.com/pdfs/Vol06No11/PDF_Vol_06_No_11_1479-1496_Special%20Issue_Kwiecien.pdf.

19 Art 26 and Art 27b o the PIT Act.

20 Polish Constitutional Tribunal, Case K 18/06, *Re social insurance contributions,* judgement of 7 Nov. 2007, Z.U. 2007/10A/122.

The PIT Act and its provisions

The PIT Act remained unchanged in its form even after Poland's accession in the EU. Art 3(1) PIT Act provided as follows: *"individuals who are residents in the territory of the Republic of Poland are liable to tax on their total income, wherever derived."* However, the provisions of Art 26[21] and Art 27(b) of the PIT Act, read in conjunction with Art 3(1), meant that a deduction from taxable base or tax was possible only if the taxpayer's contributions were paid to Polish insurance schemes and not to a foreign insurance institution. This had the effect of putting Polish residents, who were paying their contributions in other Member States, at a clear disadvantage because under the then Polish income tax legislation they could not deduct their health insurance or social contributions from their taxable base or tax. This, in turn, put Polish residents, paying such contributions to institutions in Poland, at a clear advantage when compared with Polish residents paying such contributions in other Member States, thus, potentially led to breaches of the EC Treaty, such as Articles: 18(1), 43 and 49 which are now Articles: 21(1), 49 and 56 of the TFEU respectively.

When the decision of the Polish Constitutional Tribunal was reached, there were two cases pending in lower tier domestic courts concerning deductions refused by the tax authorities. Messrs. Ruffler and Filipiak approached their arguments from an EU perspective whereas the domestic courts stuck to the provisions of the Polish tax law, unwilling to allow for deductions despite the fact that the provisions were written prior to accession which meant that they could be in breach of the EU law. In the meantime, Articles 26(1) (2) and 27b (1) of PIT Act were being reviewed by the Polish Constitutional Tribunal. This was a response to a complaint made by Rzecznik Praw Obywatelskich, i.e. the Polish Ombudsman (hereafter the 'Ombudsman') who considered that such provisions may not have complied with Articles 2 and Article 32 of the Polish Constitution.

The Perfect Storm of 2006: two taxpayers, the Ombudsman, the Polish Constitutional Tribunal and the ECJ

At first, focusing on its domestic law, Poland started cautiously referring cases to the ECJ for a preliminary ruling. The tide picked up slowly with one reference in 2005 in the memorable second-hand car case of *Brzezinski* (C-303/05)[22], then two in 2006, and a further seven, four and ten in the following three years respectively. The first indication of the upcoming lesson from the ECJ occurred in

21 Art 26 of PIT Act defined what constitutes a taxable base.

22 ECJ, 3 May 2007, C-303/05, *Maciej Brzezinski v. Dyrektor Izy Celnej w Warszawie, (Brzezinski),* [2007] ECR1-513.

a case concerning EU citizenship and access to the special benefit for victims of war. In *Nerkowska* (C-499/06)[23], in paragraph 32, the ECJ clearly indicated that a restriction by means of national legislation that puts nationals exercising their freedom of movement at a disadvantage is a restriction on that fundamental freedom.

But, for the two Polish tax references to the ECJ that year, 2006 saw the arrival of important changes with regard to the deductions from the tax base and taxation of health insurance and social security contributions by Polish residents irrespective of which Member State they were paid in. Such cases progressed simultaneously, yet independently, though various tiers of the Polish tax authorities, courts and Constitutional Tribunal and the parties to these cases, in this 'perfect storm' were a retired German national resident in Poland, a Polish businessman who was a partner in a Dutch partnership and the Polish Ombudsman.

Ruffler, C-544/07 – the retired German national resident in Poland

In 2005, a retired German national named Uwe Ruffler, having worked and lived in Germany, decided to move to Poland with his wife. He derived income from two pensions paid out in Germany, i.e. an invalidity pension and an occupational pension, with the former taxed in Germany under Article 18(2) of the Double Taxation Agreement (hereafter, the 'DTA') signed between Poland and Germany. The occupational pension was subject to Article 18(1) of the same DTA and paid in Poland. Pursuant to Article 3(1) of the PIT Act, Mr Ruffler was subject to unlimited tax liability in Poland. The health insurance contributions were deducted in Germany but Article 28 of Regulation 1408/71 entitled him to receive healthcare benefits in his country of residence.

In 2006, Mr Ruffler applied to the Polish tax authorities asking for a reduction of his income tax by the amount paid towards his health insurance contributions in Germany. However, as Article 27b of the PIT Act stated at the time, health insurance contributions paid to a non-Polish institution[24] were non-deductible from income tax. As the taxpayer's contributions were paid in Germany, the court ruled that, based on the provision of Article 27b of the PIT Act, he was clearly not entitled to the deduction. He would only be allowed the deduction, i.e. a reduction in the amount of income tax by the amount of his health insurance contributions, if they were paid according to the provisions of the Polish Law on publicly financed healthcare. On this basis, the authorities refused his request for deduction on 28 November 2006.

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23 ECJ, 22 May 2008, C-499/06, *Halina Nerkowska v Zakład Ubezpieczeń Społecznych Oddział w Koszalinie, (Nerkowska),* [2008], I-03993.

24 As opposed to those pursuant to the Polish Act on Social Security System.

Mr Ruffler then lodged a complaint against this decision before the Director of the Tax Chamber in Wroclaw claiming that the decision of the Polish tax authorities was in violation of EU law. On 23 February 2007, the Director of the Tax Chamber issued a decision in which he upheld the previous ruling and agreed with the tax authority's interpretation of Article 27b of PIT Act. Following this unsuccessful attempt, Mr Ruffler then brought an action before Wojewodzki Sad Administracyjny (the Regional Administrative Court) in Wroclaw against that decision. He argued, amongst other things, that the Polish tax authority's interpretation of the domestic tax law was incompatible with the EU principle of free movement.

Having reviewed the facts, the Regional Administrative Court in Wroclaw decided to refer the case to the ECJ for a preliminary ruling as the court was uncertain as to whether: (i) the refusal to reduce income tax by the amount of health insurance contributions paid in Germany was wholly justified; and (ii) the interpretation of Art 27b of the PIT Act was in fact discriminatory towards the taxpayer.

The decision of Polish Constitutional Tribunal

While Uwe Ruffler was beginning his battle with Polish tax authorities in 2006, on 5 June 2006 the Polish Ombudsman filed a petition to the Constitutional Tribunal with regard to Articles 26(1)(2) and 27b (1) of PIT Act claiming their incompatibility with Constitution of the Republic of Poland, i.e. a non-compliance with Article 2 and Article 32 of the Polish Constitution. In his opinion the discriminatory treatment by Poland of the individuals working in other Member States did not adhere to EU principles, especially freedom of movement. He also observed that the Articles in question, violating the Constitutional provisions of social and tax justice, could be sufficiently persuasive elements to prompt some of the individuals to emigrate permanently. He drew a comparison between individuals residing in Poland who: (i) receive an income in a foreign country, and those who (ii) receive income only in Poland. In his opinion they shared common features; therefore, they should be treated in the same way, which the provisions of PIT Act denied them.

While the arguments of Uwe Ruffler were rejected by the tax authorities in 2007, the Polish Constitutional Court decided on 7 November 2007 that Art 27(b) of the Polish Law on Income Tax violated two articles of the Polish Constitution, namely: (i) Art 2 – the principle of social justice and (ii) Art 32 – equality before the law. Although the issue of how long a particular piece of legislation remains in force once it has been deemed to violate the provisions of the Polish Constitution will be discussed in more depth while analysing the *Filipiak* case, below, it is important to note that the Polish Constitutional Tribunal has a

discretion to decide from which date an incompatible domestic provision will no longer be binding. The Tribunal decided to exercise this discretion and set 30 November 2008 as the date the applicable provisions of the PIT Act would lose their binding force. By that time, the national court in the *Ruffler* case had already made a preliminary ruling to the ECJ.

Filipiak, C-314/08 – Polish citizen and resident, and a partner in a Dutch partnership

The third part of the 'Perfect Storm' is the case of Mr Krzysztof Filipiak, whose case also began in 2006 when Mr Filipiak applied for a ruling. The taxpayer, a Polish citizen and resident for tax purposes, paid mandatory social and health contributions in the Netherlands in respect of his income. As a partner in a Dutch partnership, he carried on an economic activity in the Netherlands. Due to his Polish residency for tax purposes, he was liable to taxation on his worldwide income. The Polish tax authorities denied him a deduction for the compulsory insurance payments he made in the Netherlands. The authorities applied a strict domestic law approach whereas the claim of the taxpayer had its arguments deeply rooted in EU law. The tax authorities decided that the Dutch contributions did not satisfy the requirements of Articles 26 and 27b of the PIT Act. Similarly to Ruffler, Filipiak unsuccessfully appealed. He appealed further to the Wojewodzki Sad Administracyjny (the Regional Administrative Court) in Poznan which decided to suspend the proceedings upon learning about the ruling of Case *K 18/06* of 7 November 2007 by the Constitutional Tribunal with regard to unconstitutionality of the previously discussed provisions of the PIT Act. It held that the provisions of the Polish income tax law dealing with the deductibility of social security and health insurance contributions infringed the equality and social justice principles embedded in the Polish Constitution, although, as discussed above, the Tribunal used its discretion and deferred the expiration date to 30 November 2008.

Uncertain as to the consequences of this decision on Mr Filipiak's appeal, the national court decided to refer the case to the ECJ for a preliminary ruling with a twofold purpose. Firstly, the ECJ was asked to determine compatibility of the Polish legislation with the freedom of establishment as guaranteed by Article 43 EC (now Article 49 of the TFEU). Secondly, the ECJ was asked to determine whether principle of primacy of EU law takes priority over the decision of the Constitutional Tribunal as to whether the domestic law would expire on the date set or rather, have immediate effect.

2009: The decisions of the ECJ

Ruffler

The *Ruffler* case was finally decided on 23 April 2009. The ECJ highlighted that with respect to EU nationals resident in the same Member State, and in comparable situations, they should have been taxed in accordance with the same principles and have had access to the same tax advantages, in this case, the right to reduction of the income tax by the amount of health insurance contributions paid. The court also ruled that it was irrelevant which Member State was in receipt of the said contributions. To put it simply, the Member States needed to treat foreign nationals who were citizens of the European Union in a non-discriminatory way. The relevant provisions of the PIT Act were deemed to be a source of discrimination and therefore unacceptable in their form. Because both taxpayers were subject to unlimited tax liability in Poland,[25] the ECJ agreed that a retired German taxpayer resident in Poland and a Polish taxpayer retired in Poland, where both individuals received pension benefits under health insurance schemes, were comparable where (i) the former received pension benefits paid into a compulsory health insurance scheme of another Member State and (ii) the latter received the same but in Poland.

The ECJ stated as follows: *"Thus, the taxation of their income in that Member State should be carried out in accordance with the same principles and, consequently, on the basis of the same tax advantages, that is, in the context of the case in the main proceedings, the right to a reduction of income taxes."*[26] Put simply, a piece of national legislation of a Member State cannot override EU law. The ECJ concluded in *Ruffler* that the Polish legislation at stake amounted to an unjustified restriction on the freedoms conferred by means of Article 18(1) of the TEC, i.e. current Article 21(1) of the TFEU (EU Citizenship).

This decision is in line with the Court's earlier judgment in *Asscher*, C-107/94[27] where, amongst other matters, the issue of protection of the social rights of individuals exercising their freedoms of movement was discussed. The ECJ ruled that the exercise of this right should not affect the right to receive social security benefits irrelevant of whether said individual was insured under particular Member

25 Article 3(1) of PIT Act.

26 *Ruffler*, para 70.

27 ECJ, 27 June 1996, C-107/94 , *P. H. Asscher v Staatssecretaris van Financien, (Asscher)*, [1996] ECR I-3089, especially para 60-64.

State social security scheme or not.[28] The ECJ emphasised in para 61 that Member States are under an obligation to comply with the binding provisions of EU law.

Filipiak

Moving on to *Filipiak*, the ECJ rendered its decision on 19 November 2009. At first, the Polish Government attempted an argument of inadmissibility, contending that the Regional Administrative Court could have dealt with this issue on the basis of national law, following the decision in Case *18/06* by the Constitutional Tribunal. However; the ECJ decided to allow the reference to the ECJ and decided that, as such, the legislation then in existence was already incompatible with EU law and in breach of Articles 43 and 49 EC Treaty. With regard to the second issue, i.e. the deferral of the expiration date, according to para 85 of *Filipiak*, the supremacy of EU law meant in practical terms that national courts were obliged to observe the supremacy of EU law and to ensure that provisions incompatible with Community law or conflicting domestic legislation were not to be applied at any time. According to the ECJ, the decision by the Constitutional Tribunal for both unconstitutional provisions of the PIT Act to lose their binding force should have been implemented with an immediate effect. Following the ECJ's judgement in *Filipiak*, the Regional Administrative Court issued its own decision[29] merely restating the conclusions reached by the ECJ which raised a question of the skills and desire of the national judges, if required, to employ the principle of proportionality in EU internal market cases.[30]

The provisions of the PIT Act which infringed the freedoms lost their binding force on 30 November 2008. The new legislation, with provisions now in line with the *acquis communautaire* entered into force on 1 December 2008, unfortunately, with no retrospective effect, which meant there was no redress available for years 2004 to 2008 for those who were refused deductions under the old national legislation found to be in breach of EU law.

Conclusions

The judgement in *Filipiak* is important for a number of reasons. It signifies the difficulties by national courts to interpret and apply EU law when dealing with

28 *Asscher,* especially para 60-64.

29 The decision was reached on 14 January 2010 in the Case I SA/Po 1006/09, *Krzysztof Filipiak v. Dyrektor Izby Skarbowej*.

30 Adam Lazowski, *Half full and half empty glass: the application of the EU law in Poland (2004-2010),* Common Market Law Review 48: 503-553, 2011, p. 550. Full text available at: http://www.cesruc.org/uploads/soft/130306/1-130306154439.pdf

cross-border EU level issues in regard to deductions of compulsory social and health contributions paid in a Member State other than one of taxpayer's residence. It reinforces the importance of the supremacy principle in spite of the decisions by national or Constitutional courts. However, there is no clarity as to what happens if a Member State decides to limit the amount of deductible contributions at the level paid domestically which could potentially result in covert discrimination.[31]

One possibility of imaginable impact of decisions such as *Ruffler* and *Filipiak* could be the potential ability of EU citizens to transfer the non-compulsory Member State limited benefits within the EU - as currently limited by Article 70 of Regulation No. 883/2004 (Implementing Regulation No 987/2009).

Although there is a vast amount of significant Polish cases ruled on by the ECJ[32] regarding the co-ordination of the social security system between the Member States, the *Ruffler* and *Filipiak* decisions are unique in that they deal with cross-border taxation and implementation issues. The pair of taxpayers fought this battle armed with a true EU citizen's spirit, expecting no less than a fair outcome in their cases. The 'perfect storm' that ensued in 2006 eventually lead to legislative changes and better treatment by Poland for its tax residents who had exercised their EU rights under the freedoms. It was achieved in no small part by the efforts of the Polish Ombudsman and the case *K 18/06* decided by the Constitutional Tribunal. The timing and relevance of the arguments presented by the Ombudsman, to those of *Ruffler* and *Filipiak*, as well as Constitutional Tribunal's judgment, delivered less than 18 months after the Ombudsman's petition was filed, were unfortunately overshadowed by the deferral of the expiration date. The uncertainty of the courts as to the correct approach in the then pending *Filipiak* case had caused unnecessary delay in the provision of justice and denied a prompt resolution of a dispute that could have been resolved without receiving guidance from the ECJ. Although it is difficult to give credit to any single individual involved in the resolution of this 'perfect storm' - given the circumstances, it would probably have taken considerably longer for this issue to have been addressed and resolved had it not been for the combined efforts of a Polish businessman, the Ombudsman and a persistent German pensioner.

Perhaps some criticism is owed to the tax authorities and lower tier courts which faithfully followed their domestic law in that they did not recognize the changed

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31 For further discussion see: Joachim Wiemann, *Deductibility of Health Insurance and Social Security Contributions,* 2011 Kluwer Law International BV, EC Tax Review 2011-2, pp. 100-102.

32 Nerkowska (C-499/06) and Tomaszewska (C-440/09). Also, non-Polish ECJ level judgements in the field of taxation of pensions such as: Danner (C-136/00), Commission v. Denmark (C-150/04) and Turpeinen (C-520/04) to list just a few.

legal and political landscape of Poland as a new EU Member State.[33]

With the issues of *Ruffler* partly resolved by the Constitutional Tribunal, the case of *Filipiak* stands out in particular as it now serves as a guiding light to both the tax authorities applying the law and the Polish tax residents trying to maneuver the myriad of both domestic and EU level tax provisions. The Polish Constitutional Tribunal is no longer omnipotent in its decision-making powers and when deciding on legislation in breach of EU law it has to accept that any such provisions are to lose its binding power with an immediate effect. The three Polish lessons on upholding the freedoms of movement and establishment, clarifying the deductibility conundrum and the supremacy of EU law over decisions of the national tax authorities, and the judgments of the Constitutional Tribunal exercising their deferral discretion, are all valuable. They have, without doubt, resulted in significant savings of time and effort, especially given the growth of intra-EUcross-border businesses and the increasing mobility of EU citizens. Quite simply, there can never be enough certainty when it comes to legal clarity and justice.

33 See Tom O'Shea, EU Tax Law & Double Tax Conventions (Avoir Fiscal, London, 2008) for an in depth analysis of the Regulatory Framework for Tax in the EU.