Sealing tax collection in Poland and the EU in the years 2008–2018

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Abstract: The purpose of this study is to present issues related to sealing tax collection system in Poland and European Union countries as well as OECD members in 2008–2018. The article is divided into four parts, which include: introduction, origin of the problem, implemented solutions and conclusions. It presents the results of the conducted analysis including studies of the literature and empirical data (mainly from OECD, GUS—Polish Central Statistical Office and Eurostat sources as well as professional industry reports) as well as the structure of the tax systems in Europe. The following result is a presentation of the origin of the problem, i.e. the occurrence of revenue decrease in tax collection after 2008, and actions that were undertaken to reduce the effects of this negative phenomenon. The authors also present a preliminary assessment of the actions conducted by particular countries along with their level of effectiveness in achieving the goals, which was to reduce the level of tax frauds.

Key words: tax system, sealing tax collection, tax gap

1. Introduction

The financial security of the state is based on the predictability and efficiency of its revenues, in which taxes play the most important role (Raczkowski, 2012). In recent years, the growing scale of illegal reduction of tax burdens directly affects the economy as well as behaviour of individual taxpayers. Over the past decade, as a result of the financial crisis of 2008, a number of changes have been made to the tax systems of the EU countries. First of all, special attention was paid to the phenomena of tax crimes and extortion, resulting in the extension of the already existing tax gap, which is destructive to each state's budget. Counteracting this phenomenon, individual countries (usually under the aegis of the EU and OECD) have prepared solutions aimed at sealing the mechanism of tax collection. The most important at the international level include: the introduction of directives on the so-called MDR mechanism and exit tax schemes, increasing the level

DOI: 10.25944/znmwse.2019.03.3146

of computerization, and thus exchange of information, attempts to strengthen cooperation on the basis of the tax administration, which in turn is expected to reduce the number of cases as well as those attempted on dealing with transfer pricing mechanism (EU programmes Fiscalis 2020 and Hercules III). For example, in Poland, the reform of the administration was initiated. This resulted in creating the new administrative entity of the National Tax Administration, together with revolutionary fully on-line reporting of the Unified Control File (also known as Standard Audit File for Tax) and the mechanism of the reverse charge and joint and several liability.

The following article is the review of the literature, including professional industry reports and selected statistical data. The purpose of this work is to present issues related to sealing tax collection in Poland and European Union countries as well as OECD member countries in 2008–2018. The analysis consists also of the scale and size of actions taken to seal the tax collection system in individual European Union countries. The authors focused mainly on activities undertaken in Poland. The adopted research hypothesis assumes that the described actions taken by the EU and OECD countries are the result of the financial crisis and depict a response to the growing scale of fraud and extortion in direct and indirect taxes.

2. Origin of the problem

A properly organized tax system, as part of the macroeconomic mechanism, provides security in the stable functioning of each country (Gomułowicz and Małecki, 2002). The financial crisis of 2008 forced many changes in the tax policy of individual European Union countries (Kasprzak, 2018). The first in the twenty-first century global financial crisis also proved numerous weaknesses of individual tax systems, as for the first time on such a large scale EU institutions began the discussion about tax crimes. For example, undue VAT refunds, fictitious issued invoices, so-called straw person transactions, acceptance of decreased revenues or increased tax costs. The above actions are only selected examples that cause tax depletion both in Poland and other European Union countries. This consequently reduces the so-called effectiveness of the tax system, which depends on a number of factors (Malesa, 2015).

The tax systems of the European Union countries play a special and important role in shaping the structure and level of GDP (Figure 1). For several dozen years (especially in the last decade of the twentieth century) the share of taxes in the GDP of the European Union countries increased (Wyrzykowski, 2008). Ultimately, at the beginning of this century, this figure decreased, however, public spending increased, usually much faster than GDP growth, which resulted in budget deficits and a significant increase in overall public debt[1], especially at the end of the first decade of the twenty-first century. The increase in both the level of budget deficit and public debt could be visibly noted after 2008, i.e. following the outbreak of the global financial crisis. The amount of the first indicator has been significantly reduced in recent years (Figure 2), however, the level of overall EU debt, that clearly increased after 2008, remains practically unchanged and exceeds 80% of average GDP for all EU countries (Figures 3 and 4).

[1] The EU countries in the early 1990s began to reduce excessive public finance deficits in individual countries as part of the Maastricht Treaty. It was decided that the budget deficit cannot be higher than 3% of GDP, and public debt measured in relation to GDP should not exceed 60%. For example, in 2015, 17 out of 28 EU countries recorded a public debt-to-GDP ratio of over 60%.

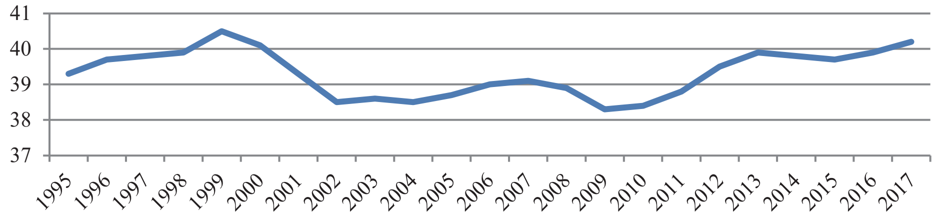

Figure 1. Tax and other compulsory social security contributions in relation to the GDP of all Europ

S o u r c e : Authors' own elaboration based on Eurostat, 2018.

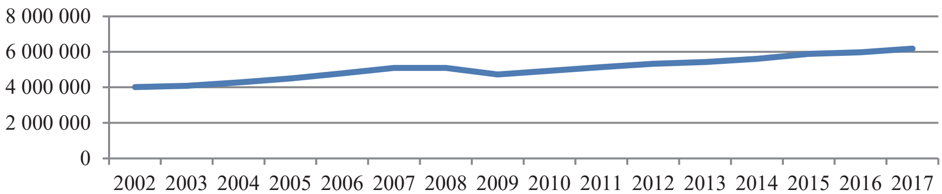

Figure 2. Tax and other compulsory social security contributions in relation to the GDP of all European Union countries (in million Euros)

S o u r c e : Authors' own elaboration based on Eurostat, 2018.

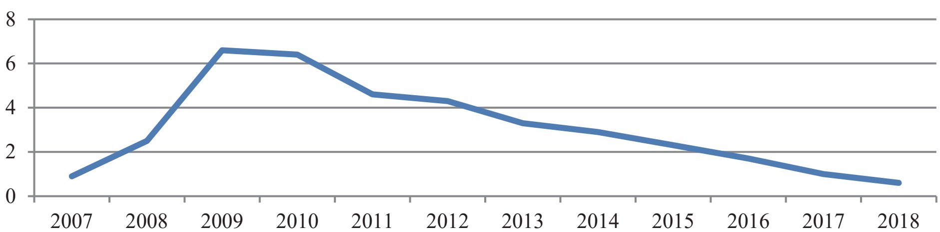

Figure 3. The level of budget deficit in relation to the GDP of all European Union countries (in %)

S o u r c e : Authors' own elaboration based on Eurostat, 2018.

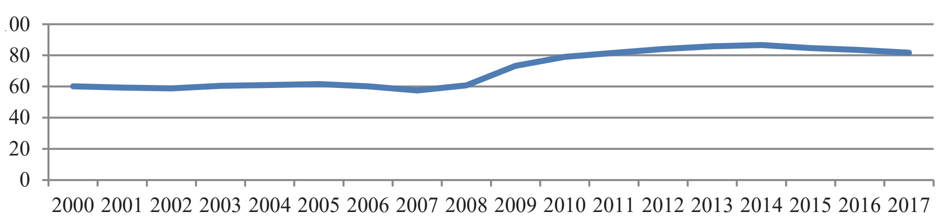

Figure 4. The level of public debt in relation to the GDP of all European Union countries (in%)

S o u r c e : Authors' own elaboration based on Eurostat, 2018.

The tax systems of the European Union countries are very similar in their general concept and structure. In all EU countries, taxes and public levies are collected primarily for the purpose of: financing public expenditure, implementing the state's redistributive policy, conducting consumption-shaping policies, and for implementing counter-cyclical and anti-inflationary policies (Wyrzykowski, 2008). The tax systems of the EU countries are very similar to the solutions applied all over the world, including in other OECD countries. Individual Member States, through their tax systems, not only implement similar assumptions, but also use similar solutions and mechanisms, which, in principle, are subject in the European Union to so-called processes of harmonization. However, harmonizing taxes within the EU is not easy and is one of the most difficult areas in the implementation of integration processes established at the threshold of forming the Union (Kosikowski, 1998). Indirect taxes are unified to the greatest extent. Under the Treaty of Rome, VAT, excise tax and other indirect taxes that could contribute to preventing the free movement of goods and services between Member States are harmonized.

As mentioned, harmonization is much more difficult than initially assumed. When introducing the harmonization, differences in the structure and level of VAT rates in individual countries were measured, while in the case of excise duty individual groups of goods that were subject to taxation in the EU countries proved to be difficult to be defined and unified (for example, Poland belongs to a small group of countries that collect excise from vehicles). What is more, this process was conducted and continued when new countries joined the Union, which resulted, *inter alia*, in the emergence of transition periods for new member states, various and numerous exceptions to the already existing rules and the need to change the already made arrangements (Wach, 2005).

So far, direct taxes, mainly PIT and CIT have been harmonized to the least extent. When unifying income taxes, special attention to the principles of corporate tax was paid. This was connected with an attempt to create a situation in which the conditions of competition between entrepreneurs in individual countries will be similar (Wyrzykowski, 2008). The result of the actions was, among others adoption of directives related to the common tax system for mergers, divisions, transfer of assets, sale and purchase of shares and elimination of double taxation.

As mentioned, the imperfection of the tax system affects its level of efficiency. One of the elements, apart from the obvious ones, such as: the cost of handling tax collection, the level of social acceptance of imposed rates or the number of tax-related administrative duties, along with the preparation of declarations, analysis of regulations and payment of the tax due (Wyrzykowski and Kasprzak, 2017), which can be taken into account when defining the effectiveness of the system, is called tax gap. The tax gap phenomenon is not clearly defined, mainly due to the specificity of tax collection in each country. For example, the American equivalent of the Polish Tax Administration, i.e. the Internal Revenue Service, described the tax gap as "the amount of tax liabilities that were not settled on time." According to the European Commission, the tax gap should be understood similarly, i.e. as "the difference between the amount of taxes that should be paid and the amount that actually goes to the state budget." An extensive definition of the concept was presented, for instance by the Ministry of Finance of Slovakia, which defined the tax gap as "the difference between the tax actually paid and the tax that should have been paid if all natural and legal persons declared their activities and transactions in a proper manner in accordance with the actual transaction and law including the intention of the legislator." The tax gap is calculated after taking into account the costs of tax control by the tax administration (Sarnowski and Selera, 2018). At this point, it should be noted that the Polish Ministry of Finance postulates even broader concept of the tax gap. It presupposes taking into account the notion of policy gap, which, apart from obvious crimes and attempts to reduce or avoid taxation, includes the use of possible reliefs, exemptions or preferences in a given tax. This approach assumes that the gap could be treated not only as a difference between the resulting liability and unpaid tax, but also as a difference between actual tax revenues received and potential inflows, which were not realized due to departures from general, generally applicable rules (e.g. the existence of reduced VAT rates for selected categories of services or goods, the possibility of joint settlement of spouses in the case of PIT, and finally giving preferences to specific social groups or types of enterprises could be included in that). Yet another concept is compliance gap, which is defined as the difference between realized tax revenues and achievable revenues, assuming that taxpayers meet their tax obligations under applicable tax law.

The tax gap is a phenomenon that adversely affects the functioning of the state, it also has a negative impact on the perception of the tax system by entrepreneurs and individuals—some of these people may not accept a situation in which the state is idle towards non-paying taxpayers (Adamczyk, 2015). What is more, insufficient tax revenues mean that the state budget has less financial resources, which results in the decreased limit of the supply of individual public goods and investments in infrastructure or other sectors of the national economy, for example defence, education or health care. The tax gap is a widespread phenomenon, i.e. it has always occurred and will always be present. When its level is low, it does not cause anxiety, it begins to worry the government only when its increase is noted or it stays at a higher level for a long period of time (Baran, 2018).

The problems of defining the tax gap are accompanied by difficulties in its accurate calculation. The most common subject of estimates is the VAT gap. In Poland, its size began to increase significantly since 2008 (Sarnowski and Selera, 2018). According to the calculations of the European Commission, in the years of 2006–2011 the VAT gap increased from 0.4% of GDP to 1.5% of GDP, while GDP itself increased. There are opinions that the occurrence of this phenomenon is conducive to Intra-Community supply of goods. The system of settling transactions within the Union, based on the fact of the reverse charge mechanism, i.e. on the independent determination of the amount of taxation by both parties, while limiting effective control methods, in conjunction with the "traditional" solution consisting in tax refund, caused the emergence of so-called tax carousels (Michalik, 2017). It should be emphasized, however, that the tax gap has both criminal foundations (tax fraud that is directly aimed at extorting undue input tax) and those of a natural nature (errors in making declarations, bankruptcy of contractors, etc.), as well as reasons arising from companies in the so-called the grey economy (PWC, 2015). An important challenge is also to eliminate the so-called empty or blank invoices, i.e. those that do not reflect actual business events (Baran, 2018).

3. Mechanisms conducted for sealing tax collection

Among the methods used by individual countries, the introduction of the following solutions should be particularly emphasized i.e. Standard Audit File for Tax, the use of the so-called exit tax, implementation of the tax avoidance clause and reporting MDR schemes.

3.1. Standard Audit File for Tax (SAF-T)

OECD has introduced a model of agreed (comparable) logical structure in which taxpayers, at the request of tax authorities, will provide their own tax books, both in full and in selected areas, and the required source of evidence. Such standardized format for the exchange of information, prepared in XML format, was proposed as the Standard Audit File for Tax (SAF-T) in 2005[2] and then in 2010. The Guidance Note[3], SAF-T file was proposed as part of the plan to increase effectiveness of tax audits.[4]

Portugal was the first to use this format in 2008. The models for introducing the Standard Audit File for Tax (JPK) in Poland were derived not only from the SAF-T structure itself, but also from the experience of the countries that introduced similar solutions earlier.

Table 1. Introduction of SAF-T in selected European countries together with applicable national names

Country	The date the format was entered/ planned to enter	The local format name
Portugal	December 2016	SAF-T (PT)
Luxembourg	March 2013	FAIA
France	January 2014	FEC
Austria	January 2009	SAF-T (AT)
Poland	July 2016	JPK
Lithuania	July 2015	SAF-T
Norway	January 2020	SAF-T
Spain	July 2017	SII
Hungary	July 2018	B2B
The United Kingdom	April 2019	API

Source: Authors' own elaboration based on materials of the ministries of finance of individual countries—synthetically presented at https://en.wikipedia.org/wiki/SAF-T.

[2] In May 2005, the OECD Committee on Taxation (CFA) published the first version of the SAF-T guidelines. Version 1.0 was based on entries found in the general ledger's chart of accounts, together with main file data for customers and suppliers, and details of invoices, orders, payments and corrections. The revised version (2.0) extended the standard with information on inventory and fixed assets.

[3] Guidance Note: Guidance for Developers of Business and Accounting Software Concerning Tax Audit Requirements.

[4] This file includes detailed information about the entity that submits it, general ledger accounts, tax codes, details of customers, suppliers, products, warehouses with their stocks and assets. In addition, it includes, in particular, all postings in the general ledger that occurred during the period for which the taxpayer submits SAF-T, as well as information on sales invoices, purchases, payments, shipments of goods within warehouses and transactions on fixed assets.

The Polish solution of the file (JPK), although created in reference to the SAF-T idea, in practice significantly deviates from the OECD standard. This applies not only to the number of files submitted by Polish taxpayers (it varies in individual countries), but also to the scope of reported information. Implementing JPK in Poland was not easy, however, it was necessary to solve emerging problems and imperfections in the design of the project (Samborska and Rodak, 2016). The JPK project was introduced to the Polish legal order in September 2015 (Act of 10 September 2015 amending the Tax Ordinance Act and some other acts, Journal of Laws of 2015, item 1649). The VAT register was subjected to the first change regulations. This tax is the largest source of budget revenues in Poland and is also the most susceptible to fraud due to a system leak. In connection with the above, planning revenues from it and implementing plans presents great difficulties (Tratkiewicz, 2014).

The introduction of JPK constituted a very important step in the process of digitizing the Polish tax system, and above all it contributed to significantly reduce the tax gap. Only in the first four months of the obligation to submit JPK, PLN 184 million of VAT refund was questioned, in the same period checking 383 million purchase invoices and questioning over 121,000 of them (Lis, 2018; Podatki.biz). It would be impossible to do such work using previous methods (prior to introduction of JPK). In 2017, revenues from VAT amounted to PLN 157 billion and were higher by 23% compared to 2016. Plans for 2017 assumed an increase in revenues to PLN 167 billion, and in fact they reached PLN 175 billion. For 2019, the assumptions reached another increase in revenues to PLN 180 billion (MF, 2019a). Therefore, the implementation of the JPK system in the field of VAT should be assessed unambiguously positively. The benefits arising from this apply to both tax administration and entrepreneurs that are presented below.

Table 2. Basic benefits of JPK implementation in Poland

Benefits for tax administration – sealing the tax system – accelerating tax enforcement – elimination of random checks – reduction of inspection time – reduction of control costs – limiting the negative effects of controls – limitation of unfair competition – identifying taxable persons unknown from the place of establishment – eliminating empty invoices and those issued by non-existent entities – deleting inactive entities from the VAT taxable persons register
Benefits for entrepreneurs – facilitating the process of submitting documents – increasing tax credibility – a chance to be excluded from the so-called VAT carousel – reducing the number of errors in company documentation – reduction of working time – faster tax refund deadline

Other economic benefits
– the ability to determine sales value in geographical areas – identification and location of recipients and suppliers of goods and services – analysis of purchases made at specific time intervals – assessment of suppliers according to tax risk – assessment of fraud by location of entities

Source: Authors' own elaboration.

In the nearest future the abovementioned benefits will be increased by eliminating the obligation to submit VAT returns.[5] Additional effects from the computerization of the tax system using JPK formats are associated with the implementation of other information catalogues and the planned extension of these systems.[6]

New control tools are constantly emerging and they will contribute to reduce the scale of tax fraud. An example of this is the Transaction Analysis Network (TNA).[7] The new guidelines are to lead and expand the scope of information on VAT transactions beyond individual countries and to cover the system of all EU countries. VAT is a growing source of income and is rated as one of the most GDP growth-friendly forms of taxation. In 2015, income in the EU countries amounted to over EUR 1 trillion and corresponded to 7% of EU GDP (EC, 2019).

In May 2019, the President of the Republic of Poland signed an amendment to the Act on tax on goods and services (Act of 12 April 2019 amending the Act on tax on goods and services and certain other acts, Journal of Laws of 2019, item 1018). Its goal is to create a single taxpayer base in Poland, and thus to allow entrepreneurs to verify contractors, which is to further tighten the tax system and minimize unconscious participation in VAT carousels.[8] It should be emphasized that the reduction of the grey economy and the VAT gap as well as increased income from CIT and PIT are the other expected advantages.[9]

[5] The VAT declarations are to be replaced by JPK VDEK in 2019.

[6] The uniform control file, next to JPK VAT, is extended by further files: PK_KR - with data from accounting books, JPK_WB—with data from bank statements, JPK_MAG—with data from warehouses, JPK_VAT—with data from VAT purchase and sale records, JPK_FA—with data on VAT invoices, JPK_PK-PIR—with data from the tax revenue and expense ledger, JPK_EWP—with data from the revenue record, JPK_SF—containing electronic financial statements.

[7] The order in this regard in Poland is contained in the Act of 1 March 2018 on counteracting money laundering and terrorist financing (i.e. Journal of Laws of 2019, item 1115). As part of the application of financial security measures, the Ministry of Finance is required to conduct ongoing monitoring of economic relations. The following include examination of transactions carried out between related entities to ensure that the conducted transactions are consistent with the knowledge of the obligated institution about the client, business profile and risk, and as far as possible, examining the sources of funds as well as related documentation.

[8] The Act enters into force on September 1, 2019 while on January 1, 2020 amendments to the Tax Ordinance Act as well as to PIT and CIT Acts adjusting to the described change in the VAT Act will come into force.

[9] In the first four months of 2019, CIT revenues were 19.4% higher compared to the same period of 2018 (revenues amounted to PLN 23.3 billion). Information from the Ministry of Finance at www.mf.gov.pl.

3.2. Exit tax

The idea of a new tax, supported by the Polish government, has its source in the EU Council Directive on Anti-Tax Avoidance Directive (ATAD).[10] It contains five legally binding anti-fraud measures that all Member States should apply for common anti-aggressive tax planning actions from January 1, 2019. The subject of the directive are taxes on unrealized capital gains, and its purpose is to ensure that if a taxpayer transfers assets or tax residence outside the tax jurisdiction of a given country, it can impose tax on the economic value of any capital gains made on its territory, although these gains have not yet been implemented at the time of the change of tax jurisdiction. The European Commission has noticed that entrepreneurs are fleeing to tax havens; however in fact they do not create new enterprises there, but transfer their existing activities. The new tax burden is to discourage them from doing so. At the same time, the European Commission recommended that the scope of this Directive should be extended to entities that are not subjected to corporation tax, i.e. natural persons, while it was stated that the application of exit tax to natural persons should be considered as a sovereign decision of a given state, not having elements from ATAD directive.

Exit tax raises a lot of controversy not only in Poland. It is already subject to the case law of the EU Court of Justice. In the issued judgments, the main are: the fear of violation of the EU's fundamental freedom, which is the freedom of movement, and hence fear of having to pay tax on the transfer of property, will resign from such a movement.[11] However, over time, the Court of Justice changed its position, liberalizing the law in the context of the right to tax unrealized gains, probably under pressure from the European Commission, which unfortunately solves in a selective manner the consequences of problems resulting from the lack of harmonization of income taxes.[12]

In Poland, although the EU regulations require a new tax by the end of 2019, the Ministry of Finance has introduced it since the beginning of 2019.[13] There were immediate doubts as far as the compliance of the introduced solution with the Directive is concerned. The main allegations are as follows:

[10] Council Directive (EU) 2016/1164 of 12 July 2016 establishing provisions to counteract tax avoidance practices that have a direct impact on the functioning of the internal market (EU Official Journal 2016, L193/1). Its tax avoidance package is part of the Commission's programme for fairer, simpler and more effective corporate taxation in the EU. The package contains specific measures to prevent aggressive tax planning, increased tax transparency and to create a common business environment in the EU.

[11] Already in 2004, this issue was raised in the context of the French taxpayer. The Court then stated that "the taxation of persons whose place of residence is in a given country for tax purposes on the basis of realized profits, and persons who transfer their place of residence abroad—on the basis of unrealized profits, constitutes unequal treatment which violates freedom of movement."

[12] In 2011, the Court changed its position by issuing a controversial judgment in which it held that "a Member State should have the right to tax profits arising under its competence before transferring capital to another country." This ruling has become an expression of the direction that the European Union has taken in terms of sealing national tax systems.

[13] Art. 30da–30di of the Act of 26 July 1991 on personal income tax (i.e. Journal of Laws of 2018, item 1509) and Art. 24f of the Act of 15 February 15 1992 on corporate income tax (i.e. Journal of Laws of 2019, item 865).

- taxation of natural persons may be considered as a violation of the EU principle of the free movement of persons and capital, and thus the intervention of the bodies of the European Union and the Court of Justice of the EU in Polish law may be needed;
- the case law of the CJEU states that Member States may impose tax on unrealized gains when leaving the country/ change of residence (exit tax), whereas immediate taxation (as disproportionate and violating certain freedoms) is not allowed in the Polish law, i.e. 7 days for payment;
- the Act adopts hypothetical profits as the tax base.[14] This may lead to the payment of tax on profits, which ultimately the taxpayer will never gain. Other EU countries apply the principle of taxing only realized and not undue profits and not hypothetical, so a significant proportion of taxpayers will not have enough money to settle taxes;
- the tax will have a significant and negative impact on the functioning of the Polish economy within the EU, which may also violate the freedom of business;
- the Polish Act incorrectly treats the change of tax residence as caused solely by the desire to avoid taxes, and the formula will lead to double taxation of income. Attention is also paid to other changes which do not correspond to the essence and spirit of the Directive.[15]

At present, due to the short period of application of the amendments to the Act, it is difficult to assess the effects of the new taxation, but they have already resulted in appropriate responses. The Polish National Chamber of Tax Advisers accused the legislator that its reservations were not taken into account in the legislative process, and thus they addressed a complaint to the European Commission, in which the Chamber indicated particular provisions of Community law. In its opinion, they were infringed by the Polish implementing act. The complaint includes allegations of the following infringements:

- extending exit tax also to natural persons—according to the Polish National Chamber of Tax Advisers, the regulations contained the directive set only in a general, minimum level of protection against aggressive tax planning and do not mean consent to the introduction of provisions in relation to these persons;
- making it difficult for citizens to move to other Member States;
- impeding taxpayers from starting a business in other Member States.

If the Commission formally deals with the complaint, it is possible for the EC to refer the complaint to the Court of Justice of the European Union. In this respect, there are already judgments creating a significant probability of repealing Polish provisions.[16]

[14] Taxes will apply to events that will not generate any revenue for the taxpayer.

[15] The Directive indicates that one of the conditions for applying the exit tax is the loss by a Member State of the right to tax the transferred assets. Meanwhile, the Act provides that the transfer of assets abroad will be subject to the exit tax also in the event of partial loss of Poland's right to tax income from the sale of transferred assets.

[16] On February 26, 2019 the Court of Justice of the European Union (CJEU) issued a ruling in case C-581/17 regarding German provisions on exit tax. The Court, assessing the obligation to pay the tax immediately, issued a ruling confirming the non-compliance of German exit tax regulations with the principle of free movement of persons set out in an international agreement concluded between the EU and Switzerland.

4. Tax avoidance clause

Tax avoidance clause occurs in more than 25 legal orders, both in countries characterized by a low level of grey economy, e.g. Germany, Sweden or Switzerland, but also in countries where its share is high, e.g. China, Brazil or Italy. Solutions in some countries are formulated in detail, in others they are very economical (not legal) in its content. In Poland, the anti-tax avoidance clause has been in force for three years (it was introduced on July 15, 2016),[17] but the history of its attempts to place it in tax legislation back dates to a much earlier period. For the first time in 2003, universally binding tax law standards were introduced.[18] The provision was not evaluated at the stage of its creation and only after two months it was referred to the Constitutional Tribunal.[19] On May 21, 2004 the Tribunal declared it unconstitutional, accusing the dissolution of:

– breach of the principles of correct legislation, by failing to comply with the principles of legal certainty and security as well as the protection of trust in the state and the law;
– no grounds for introducing a legal regulation binding negative effects on the taxpayer with its actions, provided they are lawful;
– violation of the principle of predictability of legal decisions as a result of adopting the solution and interpretation based on subjective elements, such as: impressions and opinions, failure to fill out defocused terms, content guaranteeing a uniform jurisprudence and de facto granting rights to unauthorized law introducing process. In the Court's opinion, the principles of: rule of law, legal certainty, trust in the state and law and its organs, specificity of regulations and legalism were violated.

It is worth recalling the justification mentioned above, as currently, after re-introducing the clause, these allegations may still be valid. The clause undoubtedly finds its legal and economic justification in attempts to limit the processes of aggressive or illegal tax avoidance in the world. This is due to many reasons and, above all, to the different approaches to the issue of economic freedom, the essence of tax optimization activities and the assessment of the harmfulness of such a phenomenon (see: Wyrzykowski, 2016). Proposals for solutions and appropriate actions were taken both by international organizations and within European Union institutions.[20] Finally, in 2016, the Anti-Tax Avoidance Directive (ATAD) was issued,

[17] Act of 13 May 2016 amending the Tax Ordinance Act and some other acts (Journal of Laws of 2016, item 846). Amended in the next period by the Act of November 29, 2016 amending the act on personal income tax, the act on corporate income tax and the act amending the act Tax Ordinance and some other acts.

[18] Contemporary art. 24 of the Polish Tax Code.

[19] The application to the Constitutional Tribunal was directed on 17 February 2003 by the Polish Ombudsman and the President of the Supreme Administrative Court.

[20] The basic rules have already been included in the OECD Model Convention on taxes on income and wealth. In 2013, the OECD also proposed the Base Erosion and Profit Shifting Action Plan defining 15 key tax areas (it was also supported by the G20 group). It resulted in reports published in October 2015 containing relevant recommendations. Recommendations on combating tax evasion were formulated, among others in the conclusions of the European Council meeting held on March 1 and 2, 2012. They were identified in the form of a recommendation on aggressive tax planning (document reference—C [2012] 8806). The Commission's position is also supported by the European Parliament, including in its February 2012 resolution (included in the Annual Tax Report, reference number 2011/2271 [INI]). Conclusions Parliament repeated in its resolution of April the same year (Call Number 2012/2599 [RSP]).

which is a call to take action in all EU countries.[21] The Polish legislator did not return to the issue of the tax avoidance clause for 12 years, but there were the signals and recommendations of the European Council, the European Commission and the European Parliament that caused the necessity to begin the process by the Polish government.

From 2019, the general tax avoidance clause has expanded. It was also supplemented with regulations enabling the imposition of additional financial sanctions on the taxpayer. It immediately aroused emotions and controversy, mainly through extremely vague terms used in constructing its principles, high restrictiveness and lack of predictability of the effects of its use. It is alleged that the legislator has introduced too wide changes, because the ATAD Directive does not specify exactly what the national provisions regarding the clause should include. The version from 2019, although in unity with the general intention of the Directive, in detailed however solutions went far beyond it. An argument for the above considerations is also the fact that by the end of September 2018 the head of the Polish National Tax Administration (KAS) had completed only one clause procedure. Both parties (the legislator and entrepreneurs) believe that the change should have a positive impact on market competitiveness and ensure equal treatment of taxpayers conducting business activity, counteracting unfair competition of those who earn from tax avoidance mechanism.[22] Unfortunately, after analyzing the newly introduced regulations, this is largely justified by the question whether administration will use this solution in a sufficiently professional manner, whether they will be quite prudent in its application, or whether they will prove excessively the will to reach for this tool. Discussion increased primarily as a result of the liquidation of the amount of PLN 100,000 applicable limit in 2016. The limit determines the achievement of a tax benefit and the introduction of a new criminal sanction from the Tax Penal Code.[23] It is intensified by the current opinion about the search for additional funds to secure government social programmes.[24] An example of the fulfilment of fears are the numerous refusals to issue tax rulings that have been commonly issued until now. The authorities informed that the tax rulings applications subject meets the conditions for applying the clause itself by the fact that elements of the presented fact or future event constitute of tax avoidance. According to KAS data, in 2017 the tax authorities refused the tax ruling by 650 times.[25] The tax office's position is confirmed by some court rulings,[26] although there are more and more frequent judgments

[21] Council Directive (EU) 2016/1164 of 12 July 2016 establishing provisions to counteract tax avoidance practices that have a direct impact on the functioning of the internal market (EU Official Journal 2016, L193/1).

[22] As a result, the taxpayer corrected settlements and paid over PLN 600,000 to the budget.

[23] The amount of PLN 100,000 of tax benefit for many smaller entrepreneurs constituted a sufficient boundary separating the consequences of accidental errors, thus providing a certain guarantee of security.

[24] The Ministry of Finance cautiously estimates that the clause will reduce the tax gap (from PLN 1 to 5 billion in the first year of the new regulations being in force).

[25] See answer of Paweł Cybulski, Undersecretary of State in the Ministry of Finance, to the interpellation No. 11902 of MP Izabela Leszczyna. It should be emphasized that the subject of refusal to issue interpretations were most often transformations, contributions, employee incentive programmes, trademark transfers and even family donations.

[26] In a judgment of 30 May 2017 (reference number I SA / Po 493/17), the Provincial Administrative Court in Poznań agreed with the tax authorities, stating that "A taxpayer intending to take actions that are suspected of being taken primarily to the achievement of a tax advantage, contrary to the subject and purpose of the provision of the Tax Act, cannot […] require an individual interpretation to be issued to safeguard these activities against the effects of any verification by tax authorities."

ordering justification of such position in a non-superficial way.[27] Tax authorities, by refusing to issue an interpretation, may give a reason for a tax avoidance clause only if they have duly analyzed the economic objectives and demonstrate that the reservations are indeed relevant. It should be noted that the tax benefits achieved by taxpayers would be contrary to the subject of the Act, above all by attempting to achieve an economic advantage as dominating over the remaining, in this case, not significant business and economic goals.[28] During the first two years of the tax evasion clause, 16 entities requested security opinions, two of them received opinions stating that the clause was not threatened, three received refusal to issue an opinion due to the probability of using the clause.[29] At this stage, it is difficult to assess the effects, both favourable and unfavourable of the introduction of the clause. One should wait for the practical effects of its application and consequences arising from possible sanctions. However, the clause can be judged in a general way. Polish tax law does not require the taxpayer to pay the highest taxes in any place, they have the right to use civil law transactions to reduce taxation.[30] The essence of business activity is to maximize the obtained profit as a result of conducting business by an entrepreneur with the right to use all legal constructions, which creates the applicable legal order. Already until the introduction of the clause in a revised, more sanctioned version, tax law was equipped with tools giving authorities the opportunity to combat the phenomenon of tax evasion and forms of tax avoidance, including international taxation (double taxation avoidance agreements). Proper hierarchy of law means that conflicts may arise between the provisions of the Tax Code and the provisions of international agreements. It is hard to resist the impression that the only reason for introducing changes in 2019 was the creation of sanction mechanisms, increasing the revenue of the tax authorities, and not creating solutions reducing the scale of fraud. In addition, such action is primarily contrary to the postulate of simplifying the tax system. The introduction of a tax evasion clause in practice may not bring the assumed results, leading at the same time to long-lasting disputes, which may end in the defeat of the taxpayer or tax authorities, and the effects will be borne by the budget, i.e. all taxpayers.

5. MDR diagrams

National provisions on reporting of MDR schemes entered into force at the beginning of 2019 and constitute the implementation of EU Council Directive (2018/822 of 25 May 2018 amending Directive 2011/16/EU) in the field of mandatory automatic exchange of informa-

[27] See: Judgment of the Provincial Administrative Court in Gliwice of 28 September 2017 (reference number I SA/GL 497/17). The court emphasized that the authorities, if they refuse to issue an interpretation of tax law due to a justified supposition of the application of the anti-tax avoidance clause, must base on information resulting from the facts (future event) presented in the application for the interpretation, and not only on guesses and intuition that such a clause will apply. Therefore, if the taxpayer's application for interpretation does not clearly show whether there is a justified suspicion in the given case of the application of the anti-tax avoidance clause, then—according to the court—the authority is obliged to request the taxpayer to supplement such an application and to examine the possible risk of such conditions at the stage of interpretive proceedings.

[28] Judgment of the Supreme Administrative Court of January 31, 2019 (reference number II FSK 3242/18).

[29] Data from the National Tax Administration. https://www.podatki.gov.pl/.

[30] Such a conclusion resulted from the statement that civil law transactions cannot be used to reduce taxation and that the clause will protect it.

tion in the field of taxation with respect to notifiable cross-border arrangements (EU Official Journal of 2018, L139/1). It should therefore be noted that this solution is an EU mechanism which purpose is to provide the tax administration with information that "will be used by tax authorities to improve the quality of the tax system." As noted by the Polish Ministry of Finance, the regulation is to allow quick access to information about potentially "aggressive planning or fraud related to tax planning, as well as information about promoters and those using tax schemes." However, that it is primarily about discouraging taxpayers from implementing the so-called arrangements that may lead to an understatement or even avoidance of business taxation. In the justification for introducing the obligation the Ministry of Finance also adds that "the tax scheme within the meaning of the MDRs does not mean that the agreement is covered by the scope of application of the general clause against tax avoidance, specific anti-tax avoidance regulations or other relevant regulations." At the same time, it should be noted that within the meaning of the legislator, MDR provisions have a wider scope of application than regulations on combating tax avoidance.

The obligation to provide information on the tax scheme is a reporting obligation. Therefore, it may also apply to situations where the reconciliation does not constitute a form of tax avoidance. For example, the reporting obligation may arise in connection with the use of concessions and preferences consistent with the legislator's purpose. However, this does not mean that a taxpayer using such a tax scheme should expect tax control or other negative consequences only because of submitting information about the tax scheme. Although the primary purpose of MDR is to obtain information on arrangements that have an increased risk of aggressive tax optimization or violation of other tax regulations, it is also an instrument that can provide valuable information to analyze the functioning of certain discounts or preferences in terms of their ex-post occurrence.

There is no restriction on the types of taxes covered by MDR. Therefore, tax schemes regarding direct taxes, indirect taxes (VAT, excise tax) and local taxes, e.g. real estate tax, and other arrangements regulated in the tax law will be applicable.

The tax advantage should be understood as (Article 3 point 18 of the Tax Code):
– no tax liability, deferment or reduction of its amount;
– tax loss arising or being overstated;
– an overpayment or refund right or an overpayment or refund amount;
– no obligation to pay tax by the payer.

The information obligation under MDR provisions will not arise when the criterion of the qualified beneficiary is not met, i.e. the entity's income/ costs/ assets do not exceed the equivalent of EUR 10 million in PLN and the value of the subject of the agreement does not exceed EUR 2.5 million, while at the same time the cross-border criterion is not met.

Due to the fact that the obligation to report schemas is a new solution, there is currently no statistics regarding this mechanism. However, it should be noted that in many cases the need for reporting will mean additional work for particular companies.

6. Conclusion

The above study is a presentation of the mechanisms used after 2008, which were aimed at sealing the tax systems of the European Union countries. It should be noted that most solutions were adopted at the EU level or within the OECD. However, individual countries have some freedom in implementing regulations. For example, Poland has implemented the provisions regarding exit tax to a greater extent than required. The application of the presented solutions seems necessary due to a clear deterioration of macroeconomic indicators (amount of tax receipts, size of debt and budget deficits). Therefore, in the authors' opinion, the efforts made will improve the efficiency of the tax system, which is already being observed today. It should be noted, however, that there is no ideal system and the actions of state authorities should be adapted to the changing socio-economic environment.

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Uszczelnienie poboru podatków w Polsce i UE w latach 2008–2018

Abstrakt: Celem niniejszego opracowania jest prezentacja problematyki związanej z uszczelnianiem poboru podatków w Polsce i w krajach Unii Europejskiej oraz w państwach członkowskich OECD w latach 2008–2018. Artykuł podzielony został na cztery części: wstęp, genezę problemu, wdrożone rozwiązania oraz uwagi końcowe. W artykule zaprezentowano wyniki przeprowadzonej analizy, w ramach której przedstawiono literaturę przedmiotu oraz wnioskowanie na podstawie wybranych danych empirycznych (głównie ze źródeł OECD, GUS i Eurostatu oraz profesjonalnych raportów branżowych), przybliżono także budowę systemów podatkowych krajów europejskich. Rezultatem jest prezentacja genezy problemu, tj. powstania uszczupleń w poborze podatków po roku 2008 oraz działań, które podejmowano w celu zmniejszenia skutków tego negatywnego zjawiska. Autorzy przedstawiają także wstępną ocenę podjętych przez poszczególne kraje działań wraz z poziomem ich skuteczności w zakresie osiągnięcia planowych celów, którym było zmniejszenie poziomu wyłudzeń podatkowych.

Słowa kluczowe: system podatkowy, uszczelnienie poboru podatków, luka podatkowa