

TAXATION OF ECONOMIC ENTITIES IN POLAND

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Abstract: functions of fiscal policy are determined by the role of the state in managing economic and social processes. State participation in these processes depends on the political option that governs.

Keywords: tax, income, enterprise, investment.

Introduction

According to the liberal theory, the functions of fiscal policy, and specifically the tools of the tax and para tax system, should be constructed to provide income for public-private associations, i.e. the state and self-government budgets and the so-called budget funds, on the one hand, in relation to their small tasks, and on the other hand, to influence the behaviour of entities obliged to pay taxes and various contributions. This means that both fiscal and para-fiscal policy tools have a fiscal, regulatory and stimulus function. Otherwise, these functions are referred to as power-regulation and motivation. It can be said that the less fiscalism these tools have, the weaker their regulatory function. However, each of the tools used can cause positive or negative motivation. For example, low taxation of companies should stimulate their development and, on the contrary, high taxes may limit investments or hire new employees, or even force them to “run away” to the grey economy or finally lead to the bankruptcy of companies.

1. Legality of taxation

The phenomenon of escape from tax may be manifested by tax avoidance (without infringement of the law) or tax evasion (with infringement of the law). Tax avoidance can be defined as the reduction of the tax burden and non-taxation of measures offered by the State by exploiting gaps in tax law. Tax evasion constitutes a reduction of the budgetary liabilities due by methods and means which are illegal and prohibited by law, e.g. making false tax returns¹.

Tax amnesty - means a certain period of time during which taxpayers may voluntarily disclose to state administration authorities that they have not fulfilled their tax obligations, without being subject to administrative, civil and criminal liability.

Main reasons for tax evasion:

- moral - requires two concepts to be taken into account: tax mentality means an attitude or approach to taxes and taxation, represented by a social group, tax morality is understood as internal acceptance or obligation and recognition of the tax authority of the state,

¹ *Opodatkowanie działalności gospodarczej w Polsce*, red. Naukowa Adam Mariański, Aleksandra Krajewska, i in., Wolters Kluwer, Warszawa 2016, s. 48.

- political - resulting from the taxpayer's lack of support for public authority. Not identifying with the legislator and his social and economic policy, he treats tax evasion as a form of protest against the mismanagement of public finances.
- economic - they are connected with the tax capacity of the burdened entity and the general economic situation,
- technical - it is necessary to take into account the complexity of the tax system, i.e. complex tax regulations, the existence of numerous tax preferences and other derogations from the general rules.

The reasons for the escape from taxation, according to J. Sokolowski:

- excessive fiscalism,
- tax system and economic situation of the country,
- insufficient legal awareness and low level of citizens' ethics,
- double taxation of certain revenues,
- failure by the legislator to comply with the principle of tax equality,
- tax law gaps.

2. Grey zone

Many terms are used to describe unregistered business activities. In the literature, the definitions of the unofficial economy are very similar to each other, but sometimes they are mutually exclusive. This difference results from the position taken by researchers explaining the concept. Many terms refer to this area of the economy. Some of them include:

- shadow economy (Schneider 2004)
- informal economy (ILO 2002)
- grey economy (Alderslade, Talmage, Freeman, 2006)
- unofficial economy (Alexeev, Pyle 2003)
- hidden economy (Bhattacharyya 1999)
- black economy (Dallago 1990)
- underground economy (Feige 1989)
- parallel economy (Del Boca 1981)
- undeclared work (European Commission 1998)
- unregistered economy (Smith 1994)
- non-observed economy (OECD 2002)
- unprotected economy (ILO 2002).

It is difficult to define the well-known concept of the unofficial economy. In Poland, the most commonly used term is “grey zone”, which can be defined in two ways.

In a narrower sense, it is an unofficial economy, which includes economic activity that should be subject to registration and economic and financial control by the state, but this is bypassed. An example of such activity is “black labour” (tutoring, illegal trade, various types of transactions without an account (so-called hand in hand), tax fraud, etc.).

In a broader sense, the unofficial economy includes an economic activity which is not covered by the system of registration and measurement of the social product, without taking into account whether these activities are legal (e.g. housework, neighbourly help, cultivation of allotment gardens, etc.), semi-legal (e.g. production of goods in accordance with the law

using illegally obtained raw materials, exceeding the scope of concessions) or illegal (e.g. production and sale of alcohol)².

The grey zone refers to revenues from undisclosed sources, in the form of:

- revenues that are not covered by the disclosed sources are situations where the revenue has been taxed by the taxpayer, but the expenses incurred by the entrepreneur and the accumulated assets are higher than those declared;
- revenues that come from undisclosed sources are revenues (income) that are subject to taxation and that are earned by the taxpayer, but this is not reported to the tax authorities, i.e. the source of revenues is not registered.

Registered taxpayers who declare not all their income, as well as unregistered persons who operate outside the tax system, should be classified as the grey zone.

The black zone, which is part of the grey zone, includes activities that are criminal in nature. Sometimes the grey and black spheres intertwine so that in some cases non-payment of taxes is combined with criminal activity.

A characteristic feature of the grey zone is its wide range. Its areas of operation are usually:

- income transfer abroad,
- illegal employment,
- unrecorded trade in goods and services³.

The main factors that cause the existence of the grey zone should be considered:

- excessive financial burdens for companies due to ZUS (Social Insurance Institution) contributions, taxes and interest on loans;
- a growing demand barrier, which encourages increased competitiveness through the grey zone;
- insufficient accuracy in the legal system - legal gaps in accounting and registration of companies are exploited;
- unsatisfactory efficiency of treasury institutions, which, through bureaucracy and large control, reject some businesses into the grey zone⁴.

In many entities, entrepreneurs look for solutions that will minimise the operating costs of their enterprise. They often choose to carry out unregistered activities because the costs associated with registered activities are high compared to the expected benefits.

High labour costs, in addition to wages, also include the so-called surcharges, which are taxes and parafiscal charges (social security contributions). There are restrictions on the minimum wage, as well as health and safety costs. If these costs increase, it becomes more and more attractive for the owner of the company to work on the black market.

The situation on the labour market is of great importance for the growth of the “grey zone”. The more unemployment increases, the higher the supply of illegal workers becomes. If the probability of finding legal employment on the labour market decreases, people decide to work “on the black market”. This is most often the case in countries where the number of immigrants (illegal and legal) is significant.

It is not known how large the activity of the grey zone is currently. The literature states that illegal employment dominates in services, construction and trade, while it is less common in the processing industry. Illegal employees are usually where work is unrhhythmic

² S. Kowalski i in., *Korepetycje jako szara strefa edukacji we współczesnej gospodarce otwartej- badania własne* [w:] S. Grzywacz i in. *Przedsiębiorstwo w otoczeniu gospodarczym. Przestępczość gospodarcza.*, PWSZ, Płock 2011, s. 474-475.

³ <http://www.policja.pl/pol/zwalczaj-szara-strefe/6359,Zwalczaj-quotszara-strefequot.html>, [28.03.2020].

⁴ T. Wojciechowski, *Szara strefa gospodarcza w dobie globalizacji. Materiały z konferencji ekonomicznej organizowanej przez Prywatną Wyższą Szkołę Businessu i Administracji w Warszawie*, Wydawnictwo Prywatnej Wyższej Szkoły Businessu i Administracji, Warszawa 2006, s. 26.

and seasonal. It can be assumed that employment in the “grey zone” is much more likely in traditional areas that are based on simple technologies.

Sometimes the macroeconomic environment encourages illegal activities and the creation of unofficial jobs. An excellent example is services that are related to the import of used cars, but this is not a criminal activity. Another activity created by macroeconomic conditions is the so-called work of “ants”, consisting of moving (usually on foot) small quantities of goods across the border on behalf of employers. In a broader sense, this phenomenon is called “shuttle trading”. A large share of this trade was in imports to Russia⁵.

The effects of the “grey zone” are noticeable in the social, domestic and economical aspects of the country as well as in the life of every citizen. The area of the grey zone is a non-profit-making activity which is not of a criminal nature and is carried out without paying the applicable fees, paying taxes and without regard to the generally applicable legal standards⁶.

According to A. Skowronek-Mielczarek, there are many effects of the grey zone in the economy, namely:

1. Loss of budgetary revenue from taxes and social security contributions.
2. People working “on the black market” do not have social security (in the form of health, accident, pension insurance, etc.), which after some time results in increased government spending, social stratification and personal dramas and conflicts.
3. Tolerating illegal work results in the acceptance of corrupt behaviour, disturbs social morals and destroys the ethical structure of doing business.
4. Illegal employment gives dishonest entrepreneurs an advantage in the marketplace through reduced production costs, so that legitimate and lawful employers may try to compete with them by reducing costs in other ways or act as unfair competition by hiring employees from “the black economy”. The “grey zone” will increase when the second option is selected.
5. In macroeconomic terms, the development of “black labour” results in an unreasonable distribution of the company according to size (abandonment of the institutional structure of balance), as well as does not create conditions that are conducive to technological progress. Illegal employment predominates in micro, non-innovative companies and traditional sectors.
6. The ability to control the economy through macroeconomic (fiscal, monetary) and social policies is reduced through illegal employment⁷.

3. Tax Havens

In view of the very high tax burden in Poland, an interesting solution seems to be moving part of the taxed activity to countries with very low taxes and extensive legal regulations on banking secrecy - the so-called “tax havens”. Some tax havens offer full exemption from income tax and value-added tax levied at the place where the company is based (which unfortunately does not exclude taxation at the place of income/turnover).

At the same time, with regard to certain types of legal persons registered in certain tax havens: there is no obligation to keep accounts, there is no obligation to submit financial statements to state administration authorities, there is a possibility to appoint legal persons to the management board, there is a possibility to hold management board meetings outside the home country, there is no obligation to disclose shareholders in an official register.

⁵ A. Skowronek- Mielczarek, *Małe i średnie przedsiębiorstwa. Źródła finansowania.*, C. H. Beck, Warszawa 2005, s. 170-172.

⁶ <http://www.policja.pl/pol/zwalczaj-szara-strefe/6359,Zwalczaj-quotaszara-strefequot.html>, [28.03.2020].

⁷ A. Skowronek- Mielczarek, *Małe...*, s. 173.

Despite its very flexible structure, such a company can normally appear in economic turnover (also in Poland): enter into commitments, acquire rights, sue and be sued. Such a company may also set up a bank account and make cash payments through it.

On the other hand, when using in domestic trade entities established in a tax haven, one should take into account the negative consequences that local tax law may entail (in the case of Poland, such consequences occur in the case of countries and territories indicated in the Ordinances of the Minister of Finance of 16 May 2005 on the definition of countries and territories applying harmful tax competition for the purposes of corporate income tax and personal income tax).

However, in addition to cooperation with classical tax havens, there is also the possibility of creating favourable taxes on “corporate vehicles” in countries that do not have the opinion of territories applying harmful tax competition. These include the United States (Delaware and Wyoming states), Portugal (Madeira island), Cyprus, Luxembourg.

The operation of transferring part of the activity to a tax haven can take place in a completely “remote” way and does not even require physical leaving of the Polish borders. Moreover, it is not necessary to change the residence or location of the production facility.

What benefits do tax havens offer?

1. Protection of assets against creditors

The laws of some countries offer the possibility of creating specialised legal entities whose primary purpose is to protect the assets stored in such a corporate “vehicle” from the risk of third-party claims. At the same time, these entities are obliged to manage their assets for the benefit of specific beneficiaries - persons indicated in corporate documents. Thanks to such a solution, a certain mass of assets is separated, which is not burdened with the risk related to current business activity.

Thus, the beneficiaries of such a structure may use the assets accumulated in the “vehicle” without being its owners. It is a perfect solution for people who want to permanently secure their future against unexpected turns of fate.

2. Minimising the tax burden

The old saying is that two things are certain in life - death and taxes. However, it seems that the juxtaposition of death and taxes is not entirely accurate, since death is subject to inheritance and gift tax, and taxes are not subject to death. Tax havens are not a miraculous panacea for tax burdens, however, there are a number of constructions that allow the involvement of offshore companies to reduce tax burdens or even remove them. Some of these structures are very complex others are surprisingly simple. In some cases, the tax implications of the agreement can be radically changed by changing a few words in the content. Therefore, it is always worth verifying whether a profitable transaction cannot be tax optimised.

3. Maximum confidentiality

Boasting about your property is the easiest way to lose it. Therefore, it is worth looking for solutions that ensure the protection of information about our property status against unauthorised access by third parties⁸.

Conclusion

The vast majority of people involved in business activity are dissatisfied with the current tax system - it results from a survey prepared by PBS DGA on behalf of Gazeta Prawna, presenting the opinions on taxes of people conducting business activity.

⁸ Ibidem.

There are several possible ways of accounting for business activity in Poland. Therefore, the surveyed respondents were a diverse group in terms of fiscal experience. However, they should be a much more competent group in terms of the tax burden on companies in comparison to all Poles. However, it appears that a small part of the respondents knew specific tax solutions. Only 32% of them declare knowledge of the applicable CIT rate. However, it is worth noting that this is an unpopular form of taxation.

General taxation prevails in the SME sector, which covers the vast majority of companies. Tax revenue and expense ledger is chosen as a form of record by nearly 2/3 of entrepreneurs. Thus, one can say that those surveyed have little knowledge of regulations that do not directly affect them, which is also confirmed by the fact that almost 60% of entrepreneurs are unable to express their opinion on the corporate tax rates applicable in the European Union. The survey seems to be a barometer of moods among the surveyed entrepreneurs, reflecting their dissatisfaction with the existing tax system.

Only one in a hundred entrepreneurs consider the system in force in Poland to be definitely conducive to doing business, and the rest of the respondents were divided almost equally into moderately and very dissatisfied with the current state of affairs. Since taxes by their nature are a burden on the functioning of an enterprise, the negative attitude of entrepreneurs to them is not surprising. However, while some reluctance to the tax system can be regarded as the norm, the percentage of respondents who consider the current solutions to be a serious impediment to business (45% of respondents) raises concerns.

Despite the generally negative attitude to the conditions in which Polish companies have to operate, the respondents expressed their willingness to expand their business, and only 16% of them would use the money gained from rate reductions for purposes not related to company development.

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