

THE ISSUE OF DIGITAL TAX IN POLAND AND IN THE WORLD. WILL ONLY RICH DIGITAL GIANTS PAY?

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Abstract: The COVID-19 pandemic has highlighted the importance of digitization. The globalization of contemporary economic processes, in particular the technological transformation of the world economy, indicates a number of related challenges for tax legislation. The problem of avoiding the payment of corporate taxes by multinational corporations is well-known. Tax base erosion and the transfer of profits to tax havens are a real problem for world economies. Appropriate adaptation of tax law provisions to the new conditions mentioned above, from the point of view of the development of digital solutions and progressing globalization, is a great challenge. The aim of the article is to present the essence and premises of introducing digital tax issues at the OECD forum. The study presents the genesis of developing new taxation rules, in particular large international companies, the so-called "Digital giants" such as Facebook, Amazon, Apple, Netflix, Google and Microsoft. Moreover, it was indicated that the issue concerning the abuse of optimization possibilities and the fact that "digital" enterprises do not pay income tax rates that are effectively lower than "traditional" ones, requires undertaking new, additional research. In order to achieve the goal, the Internet resources were explored and research methods were used, such as: literature query, study of legal acts and comparative analysis.

Keywords: digital tax, digital giants, tech giants, digital services taxes, tax heaven.

1. Introduction

Taxes, as a special kind of public levy shaped over the centuries, constitute the most important source of income in the budgets of nation states. Although they perform a fiscal function, producing socio-economic effects, they should not be characterized by excessive fiscalism. By influencing the formation of taxpayers' income and wealth, they should simultaneously fulfill a regulatory function and stimulate entrepreneurship and innovation.

Although they differ from each other in the subject of taxation, i.e. the indication of who the tax relates to, the object of what and to what extent is subject to taxation, as well as the method of tax collection related to the direct or indirect mode and terms of payment, all types of taxes should create a tax system that is consistent both legally and economically.

Currently, on the basis of tax regulations, it can be observed that activities are focused on the separation and taxation of the "digital economy". The specificity of the digital economy, which is based on the Internet economy, is defined by the intangible flow of data and information, data integration, the blurring of boundaries between goods, production factors and services, the progressive automation taking place in the conditions of autonomy of machines and processes thanks to the use of artificial intelligence (Śledziwska, Włoch 2020, p. 9). Due to the COVID-19 pandemic, digitization processes have become universal and global, and modern Internet tools used in many sectors of the economy are a sine qua non condition to survive in the demanding and competitive international business market. The technological transformation, virtualization and digitization that the global economy has undergone have their consequences both for direct market participants and for the rules governing it.

It is known that taxpayers do not always notice the relationship between the obligation to pay taxes, which are the source of income for the state budget or local budget, and the financing of public goods, such as: health care, education, security, the judiciary or others. Moreover, they may perceive taxes as a reduction of private revenues for the benefit of public revenues, the spending of which by the state does not necessarily correspond to their preferences. Taxpayers have "always" been looking for solutions that will reduce their fiscal burdens. One of the commonly known methods in this respect may be the use of tax advantages offered by selected countries and territories recognized as tax havens, i.e. those countries where the proposed fiscal burden is lower than the tax burden in the home country. According to M. Hampton, a jurisdiction with no taxes or low taxation, as compared to the legal orders of other countries, is considered a tax haven (Hampton 1996, p. 10). On the other hand, Desai, Foley, and Hines believe that a tax haven is a country or area characterized by low taxation, while offering advanced communication technology and other amenities for entrepreneurs, also an area that promotes itself as an offshore hub which often uses not only legislation supporting such activities, but also guarantees banking secrecy (Desai, Foley, & Hines, 2005, p. 519). Although the existing phenomenon of tax havens is based not only on the desire to attract foreign capital investors by a given tax haven, but also to prevent its outflow, the key assumption underlying the proposals related to the introduction of digital tax for companies operating in the digital space is the fact that some of them, by locating their businesses in tax havens, do not fulfill their tax obligation. Many nation-state governments assume that there is a substantial source of untaxed profits waiting to be taxed. They assume

that giving a systemic and transnational character to activities aimed at counteracting practices related to the transfer of capital to a tax haven increases the chances of their success. Therefore, both the European Union and the OCED countries have undertaken to work on a common model of a tax approach to the digital economy.

2. Work on digital tax at the level of international organizations

The implementation of digital tax for technology corporations, paid in all countries in which they actually run their business, was initiated on June 4, 2021 at Lancaster House in London, as a result of the agreement of the group of seven richest countries in the world - G7 - on closing cross-border tax loopholes used by some of the largest corporations in the world (Milliken, Holton 2021). The aforementioned agreement enables the governments of states to increase the current tax rate to the amount of the minimum rate specified in the agreement, i.e. each state independently determines the local corporate income tax rate, provided that it is not lower than the specified minimum rate. According to the OECD, this should eliminate the practices of most large technology companies that shift income to tax havens and curtail the benefits of corporate profit transfers when paying a lower rate in another country. The intention of the members of the G7 group (which includes: France, Japan, Germany, the United States, Great Britain, Italy and Canada), was to impose a digital tax of at least 15 percent, provided that it applies to companies with at least a 10 percent margin. As Ursula von der Leyen, President of the European Commission, emphasized in April 2020, "It cannot be that commercial giants benefit enormously from our unified market, but fail to pay taxes where they should" (Burchard 2020). The purpose of the above-mentioned agreement is not only to fight the monopoly of digital enterprises by increasing revenues from large international corporations such as Google, Amazon, Facebook, Microsoft, Apple or Netflix which, due to the possibility of establishing local branches, have a relatively low corporate tax rate, transfer and declare profits, paying the tax due at local rates and accounting of profits in countries where they may pay little or no taxes, but also providing an additional source of revenue for the European Union budget.

The signed G7 agreement, according to the German Finance Minister Olaf Scholz, is good news, as it will prevent companies from being able to avoid their tax liabilities by accounting their profits in the lowest tax countries, which is essential for tax fairness and solidarity . It is also bad news for tax havens (Nienaber 2021). In turn, the British Minister of Finance, Rishi Sunak, emphasized that after years of discussions, the G7 finance ministers had achieved a

"truly historic agreement" and "the G7 has shown collective leadership at this crucial time in our global economic recovery" (G7 Finance... 2021, Inman, Savage 2021).

The amount of the tax in question reflects the proposal of the US government which requested the imposition of a minimum 15 percent rate to end the practice of shifting profits to tax havens. US Treasury Minister Janet Yellen said that the "historic" global minimum tax deal will "end the damaging race to the bottom on corporate taxation" and that "The global minimum tax would also help the global economy thrive, by leveling the playing field for businesses and encouraging countries to compete on positive bases" (Niedziński 2021).

The agreement concluded between the USA, Great Britain, France, Germany, Canada, Italy and Japan, and the European Union may have an effect aimed at influencing the governments of countries with tens of billions of dollars from taxes, which, according to the governments of the above-mentioned countries, may enable faster repayment of debts incurred during the crisis caused by the COVID-19 pandemic. According to experts' calculations, the new regulations may bring from 50 to 80 billion dollars in additional tax revenues in the future (Lobb, Shipley 2021). The adopted solutions also provide for governments to be empowered to increase the hitherto applicable rate to the minimum rate, as specified in the agreement, i.e. to independently determine the local corporate income tax rate, provided that it is not lower than the specified minimum rate, which - as indicated by the above-mentioned governments - in particular, should eliminate the practice of most large tech companies shifting income to tax havens and curtail the benefits of a corporation shifting profits in order to pay a lower rate in another country.

2.1. Analysis of the Silicon Six tax proceedings

The conclusion of the agreement of the group of the world's seven richest countries on June 4, 2021 on closing cross-border tax loopholes used by some of the world's largest corporations was accelerated by the publication on May 31, 2021 of the Fair Tax Foundation Report (Silicon Six ... 2021), stating that in 2011-2020 the technological giants of the so-called Silicon Six underpaid USD 96 billion in taxes. The Report data show that, for example, the Irish subsidiary of Microsoft is resident in Bermuda for tax purposes and paid zero CIT on profits in the amount of USD 315 billion last year. And Facebook has paid only USD 16.8 billion of income tax in the last decade, despite its profits of USD 133 billion and revenues of USD 328 billion. The ratio of tax paid to profit was 12.7%, which is the second lowest result of the so-called "Silicon Six" group, right after Amazon.

Paul Monaghan, CEO of the Fair Tax Foundation, said the analysis had provided solid evidence that significant tax avoidance was still practiced and entrenched in many large multinational corporations and that the situation could only be resolved by a fundamental reform of international tax law. In addition, he added that the largest multinationals should be

taxed not only based on where subsidiary profits are accounted for but also to where the real economic value was derived. Companies such as Amazon, Apple, Facebook, Google or Microsoft, according to Paul Monaghan, with billions of additional taxes paid around the world, incorporate tax evasion in their organizational structure. Paul Monaghan supported the US government's proposals to impose a minimum 15% tax rate as, in his opinion, this could help end the practice of shifting profits to tax havens (Silicon Six ... 2021).

In response to the above-mentioned Report, the Facebook spokesman stated that all companies paid tax on their profits and not on their revenues. He added that the previous year Facebook had paid USD 4.23 billion of income tax with an average rate over the last 10 years of 20.71%, which is roughly in line with the OECD average (Neate 2021). The Amazon spokesman also commented negatively on the Fair Tax Foundation Report. According to him, the suggestions contained in the Report were very confusing and misleading because Amazon was first and foremost a retailer operating in the retail industry with a low margin, therefore a comparison to technology companies with retail margins at 50% was irrational. He also mentioned that: "governments create tax laws, and Amazon does exactly what companies are encouraged to do - pays all the taxes it owes, while investing many billions in creating jobs and infrastructure. Combined with low margins, such investments naturally result in a lower tax rate" (Silicon six ... 2021). In addition, the Amazon spokesman pointed out that from 2010 the company had invested over EUR 78 billion in Europe alone.

The thesis that digital enterprises or even "digital giants" abuse optimization opportunities and pay significantly lower effective income tax rates than "traditional" enterprises was challenged by M. Bauer, an expert from the European Center for International Political Economy (ECIPE), who selected and calculated the effective corporate tax rates for three groups of companies (Bauer 2018). First of all, traditional companies, less digital or not digital at all, which include 49 corporations from the EuroStoxx50 index. Secondly, a group of companies including the 50 largest companies in the euro area. And thirdly, large and well-founded digital corporations (12 companies, including Amazon, Facebook, Google and Microsoft) and other, less known digital corporations (79 companies). Research conducted by M. Bauer showed that in the five-year period the differences between the average effective tax rate of companies from particular groups were small, but in total digital companies paid even more taxes than "traditional" corporations. Taking this idea further, "hypothetical" estimates of effective corporate tax rates (ECTR), according to Bauer, may not reflect the realities of the digital economy and the profit levels of different, often very diverse companies, and thus the high effective corporate tax rates of most corporations operating in the EU and outside its member states, including the world's largest digital enterprises. According to the financial data collected by M. Bauer, the average corporate tax rates of many digital companies

actually exceed the "hypothetical" estimates of the European Commission by around 20 to 50 percentage points (Bauer 2018).

Interestingly, in the first half of 2020, when the digital tax was seriously considered by European Union countries, and talks on specific actions took place at the EU level, the described solutions were criticized by the United States. Although the governments of European countries in which American IT giants that provide their services via the Internet (i.e. Facebook, Apple, Amazon, Netflix, Google, Microsoft) operate and earn, have made attempts to introduce a digital tax, ordering local payment of tax on revenues from services provided in a given country, at that time the taxation of IT giants was negatively perceived by the United States, which initiated an investigation into "unfair" fiscal solutions. In view of the US opposition, the implementation deadlines for ready-made solutions, developed by, among others, France, Great Britain and Austria were postponed. In a situation where the arguments and suggestions of the US government did not convince everyone to abandon the digital tax, formal proceedings were initiated in the US to introduce the digital tax in Austria, Brazil, the Czech Republic, Spain, Italy and the European Union as a whole, as well as in the United Kingdom and India, Turkey and Indonesia. The countries under investigation were given a deadline of July 15, 2020 by the US to comment on the matter, with the US threatening that it could impose tariffs or other trade sanctions on countries using the digital tax to compensate for the resulting revenue loss. Deciding to withdraw from digital tax negotiations, Robert Lighthizer of the US Department of the Treasury said that the situation "could lead to the U.S. imposing tariffs or trade restrictions" (Shalal 2020). Undoubtedly, it was an attempt to defend the revenues of American companies against taxation in places where they actually generate revenues and profits. The end of Donald Trump's term in office changed the position of the United States and President Joe Biden and the administration began to promote the implementation of current solutions.

2.2. Digital tax in European countries

Despite the fact that both within the European Union and the OECD there were attempts to work out a uniform shape of the "digital tax", some countries decided to introduce it on their own. For example, in the UK, from April 2020, a 2% tax on revenues generated by search engines, social media platforms and digital marketplaces applies to the provision of services to users located in that country (Introduction of the new ... 2019). Online businesses in the UK are taxed if their global digital revenues exceed GBP 500 million (and more than GBP 25 million of this revenue comes from UK users). At the time the tax was introduced, it was estimated that in its peak period, i.e. from 2023 to 2024, the levy should bring in about GBP 440 million. The introduction of the tax was decided in Italy (Italy introduces ... 2019) and France (Schulze 2019), and it is expected that it will bring up to EUR 500 million in

budget revenues annually. Estimates also predict that the burden of the digital tax will be largely, i.e. in 57 percent, borne by consumers. In turn, 39 percent of the total burden will rest on taxpayers' direct contractors, and only 4 percent on the taxpayers themselves (Pellefigure 2019, pp. 4-5).

2.3. Common principles on the OECD forum

A result of the G7 agreement and the above-mentioned actions was the issuance of a joint declaration on the OECD forum on July 1, 2021 by 130 countries, including Poland, on the willingness to develop new rules for taxing large international enterprises, the so-called "digital giants". The declaration was signed by countries representing a total of over 90 percent of the world economy (GDP criterion), including the USA, China and Russia, as well as Estonia, Hungary and Ireland. The statement is the starting point for further negotiations regarding the work on the project. The envisaged reform is based on two pillars, namely The First Pillar and the Second Pillar, the assumptions of which were formulated by the G7 agreement. The First Pillar comprises the "new income allocation rules" and applies to multinational corporations with a turnover of EUR 20 billion and a profitability of at least 10 percent. These companies will have to tax profits in the countries where they sell goods or provide services. The Second Pillar is a "global minimum tax" that will prevent all companies generating at least EUR 750 million in annual revenues from settling profits in tax havens. The above will be achieved by introducing the global minimum CIT rate of 15 percent, as mentioned in the G7 agreement. It should be noted that in the G7 countries the average corporate tax rate is 27 percent, and in the European Union it is 21 percent. Determining the minimum CIT rate at this level is in line with the concept developed at the G7 summit and constitutes an act of acceptance by the international community as part of joining the concept developed by the group of the richest countries in the world. The implementation of ready-made solutions is planned for 2023, when solutions of both the First Pillar and the Second Pillar are to enter into force, which will probably coincide with the elimination of the 9% preferential CIT rate for small and medium-sized legal entities. The above, according to Janet Yellen, should lead to a real change in the rules applicable in the world economy, as the owners of capital will start to cover a fair part of the costs of meeting the needs of society (Wierciszewski 2021).

3. The issue of digital tax in Poland

The issue of digital tax also appeared in the announcements of the Polish government (Podatek cyfrowy ... 2020). The conducted analysis of the data for the last 2 years, provided by the Ministry of Finance, shows how the introduction of the digital tax in Poland may affect the taxation of companies from the ICT industry (Indywidualne dane ... 2019). The data analysis shows that the differentiated tax amounts for 2019 were characteristic of telecommunications companies, e.g. P4, Spółka z o.o. on revenues of PLN 7.34 billion paid almost PLN 0.27 billion in CIT. In turn, T-Mobile Polska S.A., with revenues of PLN 9.2 billion, paid a token rate of PLN 20,000. Orange Polska S.A. on revenues of PLN 12.44 billion contributed by PLN 1 million, and Polkomtel Spółka z o.o. on revenues of PLN 7.41 billion paid almost PLN 0.18 billion. The above data show that the two telecommunications companies with the highest revenues were charged a rather moderate tax.

Among suppliers of IT equipment and solutions, Samsung Electronics Polska Spółka z o.o. with revenues of PLN 6.93 billion, paid tax in the amount of PLN 38.9 million, and the second one in terms of revenues in this segment, Huawei Polska Spółka z o.o., paid PLN 1.4 million in tax on revenues of PLN 3.75 billion. In the group of suppliers of IT equipment and solutions, IBM Polska Spółka z o.o. with revenues of PLN 988 million, transferred the tax amount of PLN 13.9 million to the tax office, Microsoft Spółka z o.o. calculated PLN 14.5 million in CIT on its revenues of PLN 402 million, Dell Spółka z o.o. with revenues of PLN 2.03 billion paid PLN 11.2 million, and HP Inc Polska Spółka z o.o. with revenues of PLN 519 million paid PLN 5.8 million on account of CIT. Against this background, the branches of Internet giants did not fare the worst, because in 2019 Google Poland Spółka z o.o. on revenues in the amount of PLN 445 million, paid PLN 13.6 million of due CIT, and Facebook Poland Spółka z o.o. paid CIT in the amount of PLN 4.2 million on revenues of PLN 520 million.

The data analysis also shows that Samsung Electronics Polska Spółka z o.o. is a company that achieves the highest revenues among IT producers operating in the country. Having PLN 6.81 billion in revenues for 2020, it paid PLN 58.4 million CIT (Indywidualne dane... 2019). In turn, the production company of Samsung Electronics Poland Manufacturing Spółka z o.o. paid PLN 25.8 million tax with revenues of PLN 3.51 billion. For comparison, LG Electronics Polska Spółka z o.o. with revenues of PLN 3.03 billion paid CIT in the amount of PLN 11.6 million. On the other hand, Huawei Polska Spółka z o.o. having revenues at the same level (almost PLN 3 billion), it paid a levy to the budget three times higher (PLN 30.6 million). Dell Spółka z o.o. ranked 4th among producers in terms of revenues (2.06 billion PLN), paid the CIT amount of PLN 12.1 million. A similar tax (PLN 12.1 million) was paid by IBM Polska Spółka z o.o., however, achieving more than twice lower revenues than Dell (PLN 975 million), and the IBM service center in Wrocław - IBM Global Services Delivery Center Polska Spółka z o.o. reached PLN 885 million of revenue and declared PLN 19.4 million of

tax payable. The tax of Cisco Systems Poland Spółka z o.o. amounted to PLN 17.6 million, despite the fact that the company generated significantly lower revenues (PLN 632 million) than LG, Huawei, Dell and IBM. Among companies dealing with retail sales, the highest CIT was paid by Terg S.A. (owner of Media Expert), i.e. PLN 76 million on revenues of PLN 7.71 billion. For comparison, Euro Net Spółka z o.o., the owner of RTV Euro AGD, paid PLN 45.6 million CIT on the highest revenues among retailers (PLN 10.06 billion), while Media Saturn Holding Polska Spółka z o.o. with PLN 4.54 billion of revenues, showed a loss of PLN 56 million. In turn, the highest tax in the e-commerce industry was paid by Allegro.pl Spółka z ograniczoną odpowiedzialnością - with revenues of PLN 4.1 billion, it was PLN 233 million. Allegro took 10th place in the "TOP 10 CIT" Laureates competition - that is, the 10 largest individual CIT payers in Poland. For comparison, Amazon Fulfillment Poland Spółka z o.o. with PLN 3.69 billion of revenues, declared PLN 44.5 million of tax payable. Among telecommunications operators, in 2020, the highest CIT tax of PLN 296.2 million was once again paid by P4 Spółka z o.o. (owner of the Play brand), despite the fact that it had lower revenues (PLN 7.53 billion) than two other companies in this segment. The amount of tax paid resulted in the 6th place in the "TOP 10 CIT" competition - 10 largest individual CIT payers in Poland. Again, the highest revenues in the ICT industry (PLN 11.84 billion PLN) were reported by Orange Polska S.A., from which it paid PLN 147,000 income tax, which is again symbolically for such sales dynamics. Similarly, T-Mobile Polska S.A. provided only PLN 10,000 CIT, with revenues reaching PLN 9.11 billion. This is different from the results of Polkomtel Spółka z o.o., which paid as much as PLN 196.6 million CIT with revenues of PLN 7.37 billion. For comparison, the branches of Internet giants declared: Facebook Poland Spółka z o.o. PLN 721 million of revenue and PLN 5.7 million of CIT and Google Poland Spółka z o.o. PLN 18 million CIT with PLN 553 million revenue. Finally, the results of hardware, software and IT service distributors should be mentioned. Among the distributors, Also Polska Spółka z o.o. paid the highest CIT for 2020 - PLN 42.6 million, reaching PLN 6.38 PLN billion of revenue. The remaining companies calculated significantly lower income tax. For example, CIT from another company - AB S.A. turned out to be almost three times lower (PLN 14.8 million) with slightly lower revenues (PLN 5.8 billion).

As a result of the analysis of the data presented by the Ministry of Finance, it should be stated that compared to global trends, some technology companies in Poland pay CIT in the amount of up to several percent of their revenues. This is confirmed by the data for 2020, which was positively influenced by the COVID-19 pandemic, as the need for remote work led to an acceleration in the IT industry, which translated into an increase in corporate revenues and a consequent increase in the amount of CIT tax. The largest technology companies paid approx. 50 percent more than in the previous year for 2020. The analysis of the data presented by the Ministry of Finance shows that technology companies in Poland do not avoid taxation

with income tax. In addition, the fact that two of them were placed in the top ten of the "TOP 10 CIT" competition - the 10 largest individual CIT payers in Poland, may prove that they are key taxpayers for the tax office. The introduction of the minimum income tax next year, the digital tax in 2023, will most likely be associated with the liquidation of the 9% standard CIT rate and may result in the liquidation of other reliefs or solutions such as the Estonian CIT in the coming years. These are not factors positively influencing innovation or creating a higher level of corporate investment.

On the one hand, according to the "Paying Taxes 2020" ranking (Paying Taxes 2020 Report), prepared by the consulting company PricewaterhouseCoopers and based on data from the World Bank, Poland was ranked 77th among 190 countries in the ranking regarding the calculation of all mandatory taxes and contributions that a medium-sized company had to pay in 2018 in the country¹. On the other hand, it should be borne in mind that in 2016 the Act amending certain acts in order to improve the legal environment of innovative activity entered into force (Act of 9 November 2017 on amending some acts to improve the legal environment for innovative activities Dz. U. 2017 item 2201), i.e. the so-called Small Innovation Act, which allowed small and medium-sized enterprises to deduct 50 percent, and large ones - 30 percent of eligible costs related to research and development, and from 2018, 100 percent of eligible costs, regardless of the organization size. In the case of units with the status of research and development centers, it was up to 150 percent, and the status of such a center has, for example, the Polish publisher and producer of computer games CD Projekt (publisher of "The Witcher" or "Cyberpunk").

A feature of developing countries, including Poland, is a greater need for fiscal incentives in order to stimulate innovation. Poland is at the stage of development which, in order to stimulate innovation, forces the need to create favorable solutions for investors. Therefore, there is a need for some reliefs and preferences, such as: economic zones, reliefs for research and development, robotization or the Estonian CIT, which are used to attract and retain investors in the country, while the Estonian CIT is perceived as the most modern and pro-investment method of taxing business. Its implementation in 2000 brought Estonia higher-than-expected economic effects, including an almost twofold acceleration of the pace of economic growth and private investment. It consists in deferring the payment of tax until the payment of profit, i.e. the payment of dividends to shareholders (although the payment of profits itself is understood broadly - it will be e.g. a loan granted to a partner by the

¹ The ranking measures not only the administrative burdens related to filing and paying taxes, but also the procedures that take place after the filing of the declaration. The taxes and contributions included in the Report include profit tax (i.e. corporate income tax), social security contributions and payroll taxes paid by the employer, real estate taxes, taxes on civil law transactions, dividend tax, profit tax capital, financial transaction tax, waste disposal taxes, vehicle and road taxes, and other small taxes and fees.

Company). The essence here is the principle that the company decides when and in what amount it will pay the profit to shareholders, which is the same as determining the time and amount of tax to be paid. Therefore, there are no tax advances in the Estonian CIT. It is beneficial for the company because it has more funds for the current business activity, it can invest or keep them to improve liquidity. Tax obligations are simplified because all settlements and documentation are based only on the principles included in the accounting regulations. However, the rates in Estonian CIT are respectively 15 percent (small taxpayer and business start-up) and 20 percent for other taxpayers. Currently, in classic CIT it is 9 percent (small taxpayer and business start-up) and 19 percent (other taxpayers), respectively. Therefore, an important issue is to determine the consequences of the concluded agreement and the dates of validity of specific solutions. In the most negative scenario, it should be expected that there will be no preferences in CIT, which will certainly be unfavorable to Polish small and medium-sized legal entities that have 9% income tax, moreover, all reliefs or solutions such as Estonian CIT, where we have a deferment payment of tax until the profit is redistributed.

3.1. Correlations with the Polish Order, minimum income tax

Guidance on the direction of changes to the Polish legislation in this area is provided by the draft act on the amendment to the act on personal income tax, the act on corporate income tax and some other acts, the so-called Polish Order (Projekt ustawy... 2021), which provides for the introduction of a new income tax into the legal system, perceived as an introduction to the establishment of an appropriate digital tax. The minimum income tax established under the Polish Order is to impose a certain minimum level of taxation, regardless of the income earned by the taxpayer, i.e. even when the company achieves low income or even no profit, it will be burdened with this levy. The basic feature of the structure of the income tax is the fact that the basis for calculating the tax amount is the company's revenues and, when determining it, no costs are taken into account. In other words, the amount of tax is not influenced by the size of any investments. The above may be a negative stimulus for the development of entrepreneurship and running a business.

According to the Ministry of Finance, the aim is to tighten the tax system in Poland and counteract the budget gap, therefore it intends to introduce a tax applicable also to entrepreneurs who have made a loss or showed low income. The published draft shows that the income tax will be calculated on an annual basis, and Polish companies and establishments of foreign entities that incur losses from a source of income other than capital gains or show a low (up to 1%) profitability ratio will be required to pay. The assumption was to apply this tax to the largest entities that performed tax optimization, and as a result did not pay corporate income tax in Poland. The presented regulations show that the proposed tax will

apply in Poland to all taxpayers who meet the above condition, as it will apply to all taxpayers who have suffered a loss or whose income is below 1 percent of operating income. Importantly, the tax under consideration will apply not only to international corporations, but also to Polish entrepreneurs, including small and medium-sized ones. The act does not make taxation with the tax in question dependent on the size of the taxpayer, its legal form, level of income or employment.

In the justification to the draft act, the Ministry of Finance indicated that the need to introduce a minimum income tax is dictated by the necessity to counteract the CIT budget gap by implementing the demands submitted by the business community (including the Association of Entrepreneurs and Employers) regarding a new form of taxation (Draft Act ... 2021). It also argues that this reflects the OECD's line of thinking for ensuring supranational minimum income taxation. According to the Ministry of Finance, tax solidarity within the European Union is of key importance, as the vast majority of corporate profits are transferred to other member states. According to the announcements of the Ministry of Finance, this tax is not to be charged to investors. The Ministry declares that it will not apply to companies that incur real investment expenditures because the CIT paid in Poland will be deducted from the minimum tax, so those companies that actually pay taxes in Poland will not pay it. According to the Ministry, such regulations guarantee that it will not be a double tax.

In the presented draft of the "Polish Order", after consultations, a provision was introduced that the tax base may be reduced by deductions that reduce the tax base (the exception is bad debt relief) and income exempted in Special Economic Zones or on the basis of a decision to support investment. The legislator also provided for exemptions that will apply to the following entities:

- 1) those which started running their business, then they will not be subject to income tax for the first 3 tax years,
- 2) those which achieved a 30% decrease in revenues from the previous year,
- 3) financial companies,
- 4) enterprises whose shareholders are only natural persons and if the taxpayer does not have shares (stocks) in the capital of another company.
- 5) specific entities from the maritime and air transport and mineral extraction industries.

The above-mentioned enterprises will not be subject to the new levy.

According to the assumptions, the new income tax would amount to 10 percent of the tax base, which consists of the sum of:

- + 4% of the value of revenues from a source of revenue other than from capital gains;
- + debt financing costs that exceed 30% of EBITDA and are incurred for related entities

+ values of deferred income tax; resulting from the disclosure of non-depreciable intangible assets in tax settlements to the extent that it results in an increase in gross profit or a decrease in gross loss, (e.g. disclosure of a trademark)

+ expenses incurred for the benefit of related entities related to the purchase of specific services or intangible rights, exceeding PLN 3 million + 5% EBITDA. It concerns certain intangible services, fees and charges for the use of copyrights, licenses, industrial rights and know-how, as well as costs resulting from the transfer of the risk of the debtor's insolvency due to loans, incurred (even indirectly) to related entities and entities with countries applying harmful tax competition in part exceeding the amount calculated according to a special formula.

The amount of the annual settled minimum tax paid can be deducted from CIT for the same year or for the consecutive 3 tax years immediately following the year in which the taxpayer paid the minimum income tax.

According to the assumptions, the provisions defining income tax in Poland will most likely enter into force on January 1, 2022, as an attempt to counteract the prospective budget gap that may arise in the face of the threat of stagflation. The likely consequence of the above-mentioned actions may be an increase in tax burdens the costs of which will be passed on to consumers and entrepreneurs, through an increase in the prices of goods and services, which will result in the observed global increase in inflation. These factors may lead to the phenomenon of stagflation, consisting in the simultaneous occurrence of significant inflation and economic stagnation. The emerging first signs of a negative supply shock, which is determined by an increase in the prices of raw materials, energy or food (crude oil prices at 3-year highs, and natural gas prices have reached and improved 7-year highs), have a double effect, affecting both inflation and production because they contribute to an increase in all costs related to the process of producing goods and services, which in turn may result in both price increases, as well as reducing production and employment. This is due to the fact that the response to the rise in product prices is cuts in consumer spending and then a decline in domestic demand. As a consequence, enterprises reduce production and limit employment. In such a situation, the stock exchange boom goes down in history, the speculative trends in the real estate market burst and the economy suddenly cools down, which signals that it is not the optimal time to introduce new burdens for entrepreneurs. Especially that the consequences of these solutions, despite the original assumptions, will affect not only the largest technology corporations but also small and medium-sized enterprises, and these were not the assumptions.

Conclusion

The genesis of projects on the digital tax, including the premises and factors leading to its introduction, is justified by the situation in which companies use tax advantages offered by selected countries and territories recognized as tax havens. The conditions in which an increasing number of digital services and platforms also offer local services through global applications and sites that are subject to the jurisdiction of the home country, taking into account the legal location, i.e. the seat of the corporation concerned, rather than the purely technical location of the sites on servers, means that, as a consequence, the platforms realise profits in the home country and, using, for example, the infrastructure and social network in the local country, do not incur any tax costs as a result. In practice, the services of digital giants are provided all over the world and the difficult issue is the actual possibility of enforcing the payment of tax on an entity that is not physically present in a given country, the more so as the development of technology has made it possible to centrally manage the company's presence in many countries and in such a case, determining the place of achieving revenues from digital activity may often become a very big challenge (Addressing the Tax ... 2015). Given that the sectoral approach to taxation can serve to increase the complexity of the already poorly comprehensible tax law and the economy as such is increasingly becoming a digital economy, the introduction of the digital tax is a process in which it would be very difficult if not impossible, isolating only the digital sector from the entire economy for tax purposes and "to make such an attempt would require the creation of arbitrary boundaries separating what is digital from what is not digital" (Addressing the Tax ... 2015). According to national governments, measures aimed at applying a form of digital taxation are designed to adapt the tax system to the contemporary realities of the business world, to make the largest global corporations such as Google, Amazon, Facebook, Apple, Netflix and Microsoft more accountable in terms of tax liability, to bring their obligations closer to what they should actually be paying, and thus to address the challenges of globalization and digitalization and to tighten CIT collection. On the other hand, the conclusions from the research conducted in the Polish realities show that digital enterprises do not necessarily abuse optimization possibilities and pay significantly lower effective income tax rates than "traditional" enterprises. The main limitations of the activities carried out, including the fact that the analyses take into account the observations made before the introduction of the digital tax may exclude the possibility of a broader generalization of the results, however, they set the directions for further analyses.

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Footnotes

¹ The ranking measures not only the administrative burdens related to filing and paying taxes, but also the procedures that take place after the filing of a declaration. The taxes and contributions included in the Report cover profit tax (i.e. corporate income tax), social security contributions and payroll taxes paid by the employer, real estate taxes, taxes on civil law transactions, dividend tax, capital gains tax, financial transaction tax, waste disposal taxes, vehicle and road taxes, and other minor taxes and fees.