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PREVENTION OF REVENUE SHIFTING TO TAX HAVENS IN POLISH ECONOMY

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Purpose: The purpose of this study is to examine the effectiveness of Poland's anti-haven regulations against global tax avoidance challenges, analyze the impacts of legislative changes on transfer pricing, and identify directions for future research and policy enhancements.
Design/methodology/approach: The analysis employs a comprehensive methodology to study revenue shifting to tax havens, focusing on the Polish economy's experience. It includes statistical data analysis, literature review, and examination of legal frameworks, especially highlighting amendments to transfer pricing regulations effective from January 1, 2021. The research offers a thorough insight into the mechanisms of income shifting and the efficacy of regulatory interventions against tax avoidance.
Findings: The findings indicate a challenging and ongoing effort against tax avoidance, with changes in transfer pricing regulations showing partial success in reducing profit shifting. Despite national and global measures, tax avoidance strategies continue to adapt, presenting persistent challenges.
Research limitations/implications: The research faces limitations, notably its dependence on public data, potentially overlooking some aspects of revenue shifting. Given the fluidity of tax avoidance tactics and regulatory actions, results may evolve with future developments. It recommends further detailed studies and case analyses to deepen understanding of tax avoidance mechanisms and assess regulation impact.
Practical implications: The research underscores significant implications for policymakers, tax authorities, and businesses. It advocates for a continuous update and refinement of tax regulations to address emerging avoidance schemes. The findings suggest that effective counteraction requires not only national but also international cooperation to close loopholes and enhance transparency.
Social implications: The research underscores the negative social impacts of tax avoidance, showing how it compromises public finance and equitable tax distribution, affecting the funding of vital services and societal welfare. It advocates for tax policy reforms that balance fairness with economic competitiveness, potentially informing public and industry policies to enhance quality of life and foster responsible corporate practices.
Originality/value: The paper adds to the tax avoidance dialogue with an in-depth look at Poland's anti-haven measures, analyzing legislative impacts and guiding future research and

policy. It benefits academics, policymakers, and tax professionals interested in global tax avoidance strategies.
Keywords: Tax Havens, Transfer Pricing, Tax Avoidance, Polish Economy, Anti-Avoidance Regulations.
Category of the paper: Research paper.

1. Introduction

Harmful tax competition in the form of escaping to tax havens is not only a local Polish problem, but has been a problem on an international scale for many years (OECD, 1998). About 15% of the world's countries are considered tax havens (Dharmapala, Hines, n.d.). For example, according to a 2017 study by the International Monetary Fund, the global loss due to tax avoidance is approximately USD 600 billion each year (Zoromé, 2007), while the Tax Justice Network estimates that the loss is USD 500 billion annually (Tax Justice Network, 2019). The lack of data makes it difficult to precisely estimate the total financial scale of jurisdictions applying unfair tax competition. There are many different methods of tax avoidance, one of the main ones being income shifting through transfer pricing (Contractor, 2016).

The concept of an offshore financial center (OFC), commonly referred to as a "tax haven", is not clearly defined (Zoromé, 2007). Benefits achieved in the OFC are not only of a tax nature (Folfas, 2008). Different approaches to the criteria for recognizing countries or territories as a tax haven have developed, in particular: zero or low taxation, creating a favorable regulatory environment, disparity between the scale of the domestic financial sector and the financial needs of the domestic economy, willingness to perform financial operations using currencies other than the domestic one (so-called multi-currency), separation (geographical/regulatory) of these centers from regulators (Wiśniewski, 2012).

The Polish legislator has created a list of countries and territories applying harmful tax competition, specified in a regulation issued by the minister responsible for public finance. The Polish list of tax havens is getting shorter and shorter (Podatki ABC, 2023). Also, the OECD monitors progress in the implementation of its recommendations on an ongoing basis and publishes a "black" list of countries that are not willing to cooperate in the field of taxation.

The main purpose of the article is to analyze and evaluate anti-haven regulations in the area of transfer pricing, in particular the changes in force from January 1, 2021.

It is hypothesized that in the dynamically changing economic environment, transfer prices are financial instruments that are increasingly used to transfer income to tax havens. These activities result in the need to constantly adjust the transfer pricing mechanism in order to ensure fair market competition and fair payment of tax liabilities by business entities.

2. Anti – paradise initiatives

Items Unfair tax competition by shifting profits to tax havens was of particular interest, especially after the 2008 financial crisis. At that time, attention was directed primarily towards international corporations, whose sometimes sophisticated activities in the area of tax avoidance have a negative impact on the budget revenues of the world's largest economies (Feust, Spengel, Finke, Heckemeyer, Nusser, 2013). Economist Gabriel Zucman presented his accounts of the scale of profit shifting by economic entities to tax havens. His calculations show that about 8% of the global national wealth of households is located in tax havens (Zucman, 2014). Since the 1980s, the use of tax havens has been steadily increasing. The author estimates that about 55% of the American national income generated by American companies abroad is located in six tax havens: the Netherlands, Bermuda, Luxembourg, Ireland, Singapore, and Switzerland (Zucman, 2014). According to Zucman, the share of capital held "abroad" in developing countries ranges from about 10% for European countries, through 20-30% for African and South American countries, to about 50% for Russia and the Gulf countries. In addition, the author points out that with the current tax system, it is impossible to determine the exact value of this type of transaction.

The most important global initiative to counteract Base Erosion and Profits Shifting (BEPS) was the project initiated at the G20 summit in Los Cabos in 2012, and then co-created by 130 countries (OECD, 2015). In 2015, an OECD report called "Action Plan on Base Erosion and Profit Shifting" was created, published over the years 2013-2015, consisting of 15 activities, e.g., regarding the exchange of information on harmful tax practices or anti-abusive activities (OECD/G20 Base Erosion and Profit Shifting Project, 2015).

In the discussion on the effects of tax avoidance by international corporations, the reduction of revenues to the budget of the countries where they conduct business and generate revenues (profits) is mentioned in particular. In order to approximate the fiscal effects and the scale of aggressive tax planning, six indicators were used (Feust et al., 2013). This was due to the fact that a single indicator, despite directing researchers to certain conclusions, was not a sufficient source of evidence for the phenomenon, but several indicators giving the same or very similar results can serve as evidence of it. As part of the BEPS activities, the OECD specified the following indicators (OECD, 2015):

- ratio of foreign direct investment in relation to Gross Domestic Product,
- ratio of differentiated profit rates to effective tax rates,
- the rate of profit differential between locations with low tax rates to the global business operations of multinational companies,
- the ratio of the effective tax rates of large affiliates of multinational enterprises to non-international enterprises with similar characteristics,

- concentration ratio of high levels of revenues from royalties in relation to expenditures on research and development (R&D),
- ratio of above-average interest-to-income ratio of affiliates of multinational enterprises in relation to the ratio of interest-to-income in countries with higher taxation.

In the European Union, in 2016, the ATAD directive and its amendment ATAD 2 were also passed. the obligation to implement the clause on combating tax avoidance and evasion (Council Directive (EU) 2016/1164; Council Directive (EU) 2017/952). The loss of tax revenue within the European Union was estimated at EUR 50-70 billion in 2013 (European Commission, 2017). Unfortunately, it is currently very difficult to conduct more thorough research on the topic of tax avoidance. This is due to the lack of available information on the finances of entire corporations and their subsidiaries. Information contained in tax returns is a particularly important source of estimating the scale and effects of this problem (OECD, 2015). According to the OECD, only eight of the thirty-seven countries surveyed were able to report the share of the tax paid by multinational corporations in the overall corporate income tax (OECD, 2015). Jost Heckemeyer and Michael Overesch, economists dealing with the problem of shifting income to tax havens or tax systems with more favorable tax rates, have empirically estimated that the elasticity of reported income (in the country where the income was generated) in relation to the difference in income tax rates (between two tax jurisdictions) is 0.8 (Heckemeyer, Overesch, 2013). This means that if the difference in the tax rate between these tax jurisdictions increases by, for example, 10%, the amount of income reported for taxation will change by 8%.

The figure 1 shows two situations. For simplicity, it has been assumed that the change in the tax difference between jurisdictions is 10% in each case. In the first case, it was assumed that in a country with a high tax rate, taxes fell from 30% to 20%. The tax difference has changed by 10% in favor of country A. Using the results of Heckemeyer and Overesch's research, this means that the company will reduce the transfer of capital to country B by 0.8 of the change value - i.e., by 8% - 8000 monetary units. Example 2 shows a similar situation, but this time the tax rate in country A increases from 10% to 20%. The difference in taxation between countries has also changed by 10%, only this time the change increases the tax competitiveness of country B. In example 2, the company, as a result of increasing the tax rate in country B, where the income is actually generated, transfers 8% more capital to the tax jurisdiction of country B.

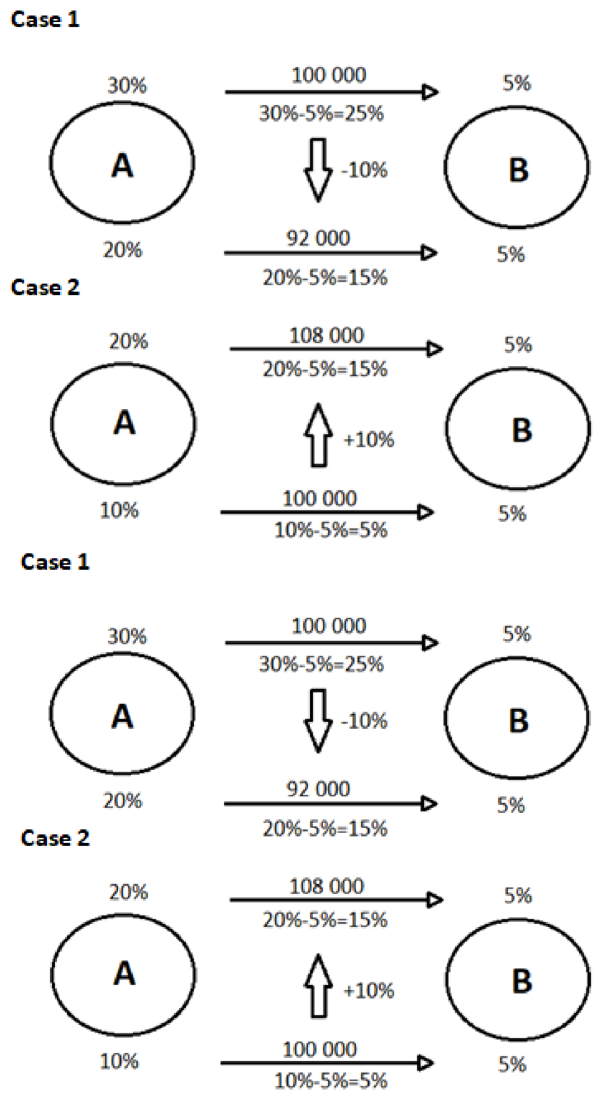

Figure 1. Elasticity of reported income (in the country where the income arose) in relation to the difference in income tax rates.

Source: own study.

Dhammika Dharmapala, an economist dealing with the problem of income shifting, in his research takes the result of Heckemeyer and Overesch elasticity (1/0.8) as a representative consensus (Dharmapala, Year). Dharmapala notes that the consensus on the elasticity of capital transfer to the difference in tax rates across tax jurisdictions has changed over the years. Previous estimations of the phenomenon indicated a higher vulnerability of income shifting. In the author's opinion, determining whether such a level of flexibility is high or low is difficult to determine, because there is no conventional "borderline" in this type of research. In the attempt to determine the nature of this phenomenon, the current economic situation as well as the nature of the transfer and the role of the (given) tax jurisdiction in the whole scheme play a huge role.

3. The background of the fight against tax avoidance in Poland

Figure 2 graphically presents the relationship between the number of CIT taxpayers and budget revenues for Poland.

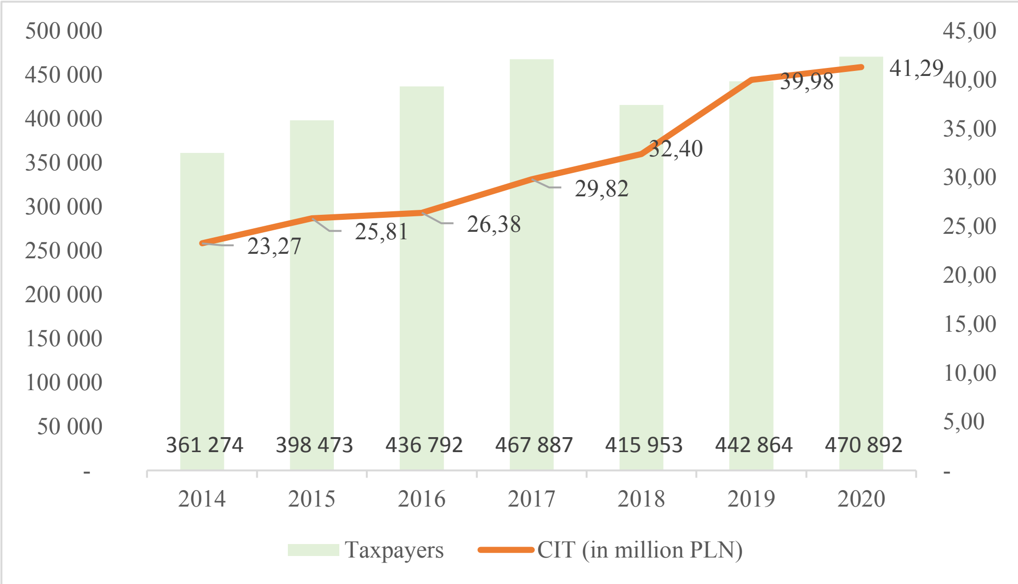

Figure 2. Number of CIT taxpayers and budget revenues in 2014-2018.

Source: own study based on: Budget Execution Reports for the years 2014, 2015, 2016, 2017, 2018, 2019, and 2020, and Structural Changes of Groups of Entities in the National Economy in the REGON Register for the years 2014, 2015, 2016, 2017, 2018, 2019, 2020. Central Statistical Office.

Figure 2 shows that in the years 2014-2020 there is an increase in budget revenues from CIT by an average of 10%. The highest increase in CIT revenues took place in 2019 - 23%. It should be noted that corporate tax revenues in the analyzed period grew faster than GDP. The increase in CIT tax revenues in 2014-2018 was undoubtedly due to the good economic situation prevailing in this (pre-pandemic) period in Poland and in the world. The steps taken to achieve the so-called tightening the tax system in Poland have contributed to this growth. The average increase in the number of CIT payers in the analyzed period was 5% (twice less than the growth rate of CIT tax revenues). The average number of CIT taxpayers in the analyzed period was 438,810. Despite the relative stabilization of CIT revenues, the level of the corporate income tax gap remains at a relatively high level. According to the Polish Economic Institute, the amount of the CIT tax gap in 2014-2018 for Poland was on average 1.6% of Polish GDP (Sawulski, Bąkowska, Gniazdowski, 2020).

It should be noted that this process is a continuous one that requires changes to meet the changing economic environment (Sawulski, Bąkowska, Gniazdowski, 2020).

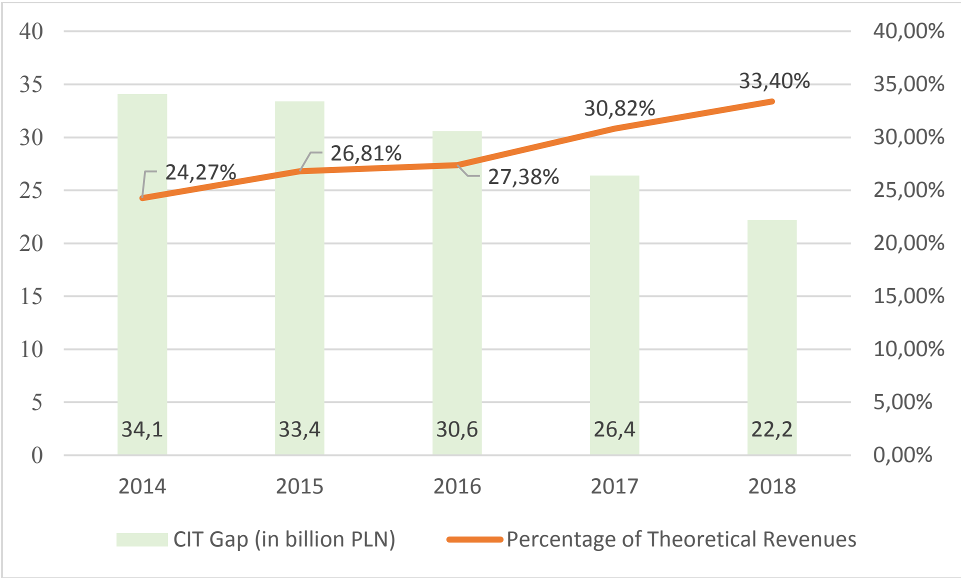

Figure 3. Corporate Tax Gap in Poland in 2014-2018.

Source: Own study based on: Sawulski, Bąkowska, Gniazdowski, 2020, p. 10; Budget Execution Reports for the years 2014, 2015, 2016, 2017, Budget Law for 2018 of January 11, 2018 - signed by the President of Poland on January 29, 2018 (Journal of Laws of 2018, item 291).

The problem of the tax gap arises in particular when BEPS (Base Erosion and Profit Shifting) is used to shift profits to other tax jurisdictions. The figure 4 presents losses of CIT revenues as a result of profit transfer as a % of total CIT revenues in 2016.

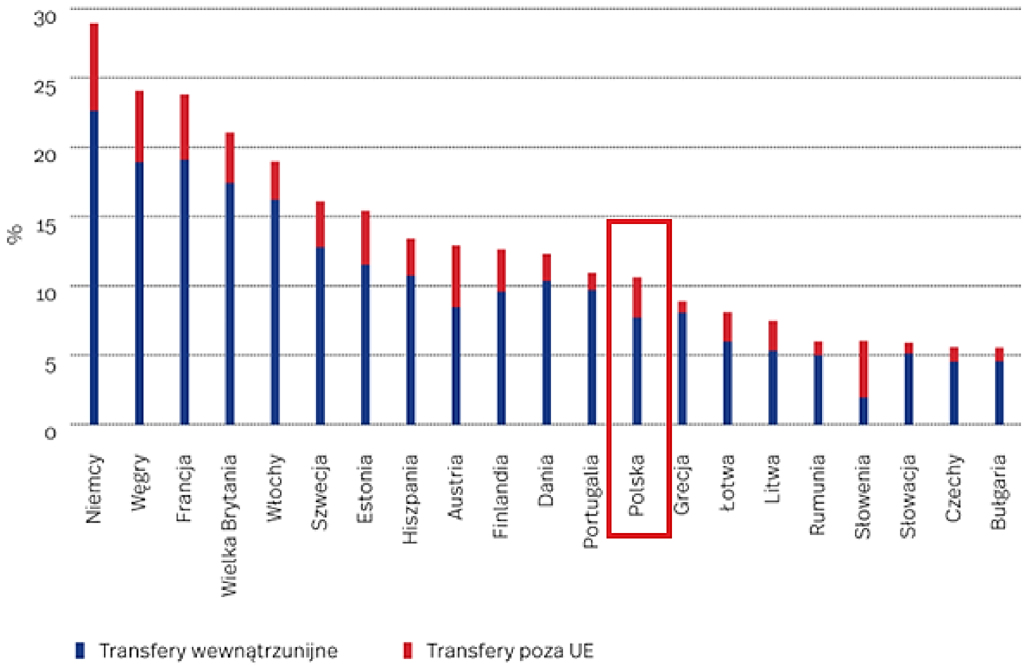

Figure 4. Losses of CIT Revenues as a Result of Profit Shifting as a Percentage of Total CIT Revenues in 2016.

Source: Sawulski, 2020, p. 16.

Data for 2016 show that the countries most affected by losses resulting from the artificial transfer of profits by corporations are Germany (around 28% CIT), France and Hungary (around 24% CIT) and the UK (around 21% CIT). According to the research of the Polish Economic Institute, in 2016 Poland lost about 11% of the CIT tax, the vast majority of which was transferred to other EU countries.

One of the indicators that the OECD specified as part of the fight against the erosion of taxation and profit transfer is the ratio of foreign direct investment in relation to Gross Domestic Product. The table below contains data for this indicator for Poland.

If the table was borrowed from a publication, the source should be provided underneath. You should not insert tables as figures, but as Microsoft Word tables. The text must contain a reference to a given table (Table 1).

Table 1.
Foreign direct investment ratio in relation to Poland's Gross Domestic Product in 2015-2020

FDI	Poland					
year	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
USD value	3 172	12 389	1 908	1 239	1 404	320
as % GDP	0,66%	2,62%	0,36%	0,21%	0,24%	0,05%

Source: own elaboration.

The table above presents the size of foreign direct investment (FDI) in the form of capital that flows out of Poland every year. The highest outflow in the analyzed period was recorded in 2016 - over USD 12 million, which accounted for nearly 3% of the Polish Gross Domestic Product (GDP). Compared to the previous year, FDI increased almost three times. The year 2016 is also the year in which FDI was the highest in the analyzed period. The highest decrease in the outflow of capital from Poland in the form of FDI was recorded in 2017 (decrease by 85% compared to the previous year) and in 2020 (decrease by nearly 77% compared to the previous year). The average share of FDI in the analyzed period amounts to approximately USD 3.5 million and constitutes approximately 0.69% of Polish GDP.

The Polish Financial Supervision Authority (KNF) is a state institution that deals with the broadly understood security of financial markets. In 2018, the Office of the Polish Financial Supervision Authority prepared (for the needs of the General Inspector of Financial Information) an analysis of the main directions of the flow of funds directed to the Polish financial system and outside, and also defined the places of origin of non-residents using this system. In the document constituting an annex to the National Money Laundering and Terrorist Financing Risk Assessment Report, the Office of the Polish Financial Supervision Authority specified a number of criteria determining financial security in the area of money laundering and terrorist financing. One of them was the criterion of foreign transfers originating from Poland in relation to countries and territories considered as tax havens (Ministry of Finance, 2019; Financial Supervision Authority, 2018). This information is presented in the table below.

Table 2.
Values of foreign transfers from Poland to countries and territories beyond tax havens

Country	Transaction value (in billions PLN)
Hongkong	10 308,08
Mauritius	475,56
Panama	172,50
Monako	133,00
Makau	112,38
British Virgin Islands	66,06
Bahrajn	61,74
Seychelles	53,10
Maledives	23,25
Curaçao	16,42
Andora	15,44
Antigua and Barbuda	14,88
Anguilla	10,24
Saint Lucia	6,56
Marshall Islands	6,32
Dominica	2,66
Nauru	2,12
Cook Islands	1,53
Vanuatu	0,85
Samoa	0,54
Liberia	0,32
Grenada	0,14
Saint Maarten	0,08
US Virgin Islands	0,04
Niue	0,04
Tonga	0,01
Isle of Sark	0,00

Source: Financial Supervision Authority (2018). Analysis of statistical information provided by entities supervised by the PFSA for the purposes of the National Risk Assessment (NRA), Warsaw, p. 19.

The table presents a list of countries recognized as countries or territories applying aggressive tax competition in the field of corporate income tax. The analysis showed that to these countries, nearly PLN 11.5 billion was transferred, which is about 0.8% of the total of all transactions outgoing from Poland in the analyzed period (Ministry of Finance, 2019). By far the largest amount of funds was transferred to Hong Kong - PLN 10.3 billion, which accounted for nearly 90% of all funds transferred. The research indicates that it is much more than the value of Poland's trade in goods with this country (Ministry of Entrepreneurship and Technology, 2017). The reason for such high cash flows to Hong Kong may be the desire to illegally hide income and take advantage of tax optimization.

The issue of foreign direct investment carried out only for the purpose of transferring income to "more friendly" tax jurisdictions is also the subject of research on the international arena.

Table 3.
Foreign direct investment FDI (receipts) in the world in 2014-2019 (in USD billion)

Lp.	Country/Year	2014	2015	2016	2017	2018	2019
1	United States	2,945	3,354	3,561	3,786	4,127	4,458
2	Netherlands	4,334	3,939	4,184	4,958	4,569	4,369
3	Luxembourg	3,230	3,697	3,775	4,217	3,632	3,495
4	China	2,331	2,579	2,534	2,688	2,814	2,938
5	United Kingdom	1,744	1,530	1,475	1,607	1,864	1,974
6	Hong Kong	1,330	1,395	1,418	1,588	1,705	1,732
7	Singapore	0,914	0,943	0,966	1,173	1,289	1,465
8	Switzerland	0,826	0,982	1,282	1,427	1,418	1,453
9	Ireland	0,416	0,888	0,840	1,057	1,048	1,152
10	Germany	0,859	0,781	0,794	0,963	0,934	1,023
	Total FDI	29,242	29,947	31,285	35,466	35,145	36,395

Source: own study based on data from the International Monetary Fund, IMF Coordinated Direct Investment Survey Guide for 2014-2019.

The table above presents FDI flows (in the form of capital inflows) in descending order for 2019 for individual countries in the world. It should be emphasized that the national economies of countries such as the Netherlands, Luxembourg, Ireland, Singapore and Switzerland have been the main centers of influence of FDI for years. Moreover, in FDI flows for the presented period, 60% of FDI beneficiary countries are European countries, among which the leader in attracting foreign direct investments is the Netherlands.

4. Counteracting the shifting of income through transfer pricing – assumptions of a new anti-abusive regulation

The growing importance of transfer pricing leads to the introduction of comprehensive regulations aimed at counteracting the erosion of tax bases and profit shifting. From the tax point of view, transactional transfer prices "divide" the income of entities participating in the transaction (as a rule: related entities, e.g., belonging to the same capital group), determining their revenues and costs, and consequently also how they are distributed territorially income and how much it will be taxed.

The criterion used in international relations to examine the terms agreed between related parties and the resulting prices is the arm's length principle. A certain decision-making freedom in the field of transfer pricing policy results from the fact that the market prices of a given good are within a certain range of values. The market level of prices (margins, etc.) determines many factors, such as individual characteristics of a given good, functional profiles of entities participating in the transaction, location and characteristics of the market, intensity of competition, or transaction conditions.

In the area of transfer pricing, the regulations on estimating and documenting transactions with so-called paradise entities concern in particular (Ministry of Finance, 2019):

- the possibility of estimating the value of the transaction when the beneficial owner is located in a so-called "tax haven",
- extending the scope of transactions subject to the obligation to prepare transfer pricing documentation,
- introduction of the so-called benefit test,
- extending the scope of transaction value estimation, in particular to non-controlled transactions, if the beneficial owner has a tax residence in a so-called tax haven.

As a consequence of extending the powers of tax authorities to assess income from transactions with paradise entities, the scope of transactions requiring documentation has been extended, in particular to (Art. 4a point 29 of the CIT Act; Ministry of Finance, 2019):

- uncontrolled sales transactions, as a result of which payment of receivables is received directly from the paradise entity, if the value of this transaction for the tax year exceeds PLN 100,000,
- controlled transactions or transactions other than controlled, if the actual owner has a tax residence in a tax haven, if the value of this transaction for the tax year exceeds PLN 500,000.

At the same time, the scope of elements required in the local tax documentation of transactions with entities from so-called tax havens includes an economic justification, including a description of expected economic and tax benefits. It is worth noting that the basic documentation requirements are the result of the implementation into the Polish legal system of the results of OECD work carried out under the BEPS project, e.g., following the recommendations contained in Action 13 BEPS, the concept of three-stage transfer pricing documentation was adopted (OECD, BEPS Actions 8-10 and 13).

It seems correct to see the fundamental problem of shifting income to havens in transactions of an indirect nature.

On the downside, one should first of all point out the nuisance in the field of compliance. There are practical difficulties in determining the "beneficial owner".

With this in mind, a presumption has been introduced that the actual owner has a place of residence, registered office or management in the territory or in a country applying harmful tax competition, if the other party to the transactions referred to in par. 1a, shall make settlements in the tax year or financial year with an entity having its registered office or management board in the territory or in a country applying harmful tax competition. As a result of determining the circumstances that the other party to the transaction is making settlements with a paradise entity, there is a presumption that the actual owner is a paradise entity. In order to challenge this presumption, it is necessary to prove the opposite circumstance, i.e. that the actual owner is not a paradise entity. As a result of challenging the presumption, there is no obligation to prepare local transfer pricing documentation.

Due diligence should be exercised in determining these circumstances. Due diligence is a certain standard of expectation from taxpayers. There should be no negative legal consequences in relation to a taxpayer who has complied with the due diligence standard. As a rule, in order to exercise due diligence when making transactions with unrelated entities, regardless of their place of residence, it is sufficient for the taxpayer to obtain a declaration of knowledge from the other party to the transaction, which shows that the other party to the transaction does not make any settlements in the tax year taxpayer, with a paradise entity.

5. Conclusion

The need to counteract tax avoidance, including tax evasion to tax havens, is rather beyond discussion. The legitimate interest of each state is to tax the income of taxpayers that have been earned in the area under its tax jurisdiction. A country in whose jurisdiction the erosion of budget revenues occurs, due to agreeing or imposing non-arm's length conditions, must introduce mechanisms to adjust income (tax due).

Artificial shifting of income may lead to an unauthorized competitive advantage on the market, causing de facto market distortion. Competition with such companies that illegally use tax schemes that result in shifting tax revenues to tax havens is difficult. Entities recognizing that they are unable to compete with companies optimizing their tax liabilities, start using the same solutions themselves. However, aggressive tax planning has many other (usually negative) effects, such as: debt market distortion; inefficient allocation of resources; intensification of tax competition between countries. In the Polish economic space, capital in the form of foreign direct investments is predominantly transferred to Hong Kong, which is recognized in Polish legislation as a jurisdiction applying aggressive tax competition. Taking into account the global directions of the flow of this type of capital, Polish FDI flows seem to be part of the global trend of using Hong Kong's tax jurisdiction to hide income. It is worth noting that not all capital flowing from Poland to Hong Kong in the form of foreign direct investment should be treated as an attempt to hide income/avoid taxation in the home country. However, trade with this country, its economic specificity, as well as the research presented in this article suggest a large size of this financial phenomenon.

The new regulations in the area of transfer pricing are an expression of the policy of tightening regulations aimed at combating the shifting of income to the so-called tax havens. An effective fight against tax avoidance requires the introduction of non-standard mechanisms to combat such phenomena, but it must also assume cooperation of taxpayers with tax authorities in the fight against tax abuses. The dynamically changing economic environment is a challenge for tax authorities. Regulatory trends are clear, the complexity and detail of information provided to tax authorities is increasing, including sensitive financial data.

However, it is not about excessive bureaucratization of tax obligations, but about making the profit generated in the economy of a given country work for the benefit of its citizens.

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