

TAX STRATEGIES OF POLISH COMPANIES IN THE LIGHT OF CHANGES IN TAXATION SINCE 2017

Magdalena S. Jarczok-Guzy

University of Economics in Katowice, 1 Maja Street 50 Katowice 40-287, Poland

Abstract

Tax strategy can be implemented by any entrepreneur within several taxes. The most popular are Value Added Tax, Personal Income Tax and Corporate Income Tax. For years, Polish companies have been using privileges given them by tax legislation to pursue beneficial tax strategies in their economic activities. At present, recent changes in the regulations have made it impossible for Polish companies to implement this form of strategy in an unlimited way. This article describes and compares the strategies in use until the end of 2016 with the 2017 regulatory options available.

Keywords: Value Added Tax, Personal Income Tax, Corporate Income Tax, tax strategy

1. INTRODUCTION

In the case of business enterprises in Poland the use of tax strategies is necessary for functioning in economic reality on a daily basis. With regards to several types of taxes, tax legislation offers real and legal tools for tax optimisation. The most widely used strategies involve value added tax, personal income tax and corporate income tax. Until the year 2016 the scope of available tax privileges and alternative solutions was relatively broad. Unfortunately, since January 2017 this scope has been changed and somewhat limited. This article examines the methods implemented in present and past tax strategies, and the hypothesis it advances may be formulated as follows: the changes introduced in tax law in 2017 to a certain extent have made it more challenging for Polish entrepreneurs to use tax strategies.

2. MATERIALS AND METHODS

2.1. Tax strategy

In Polish economic reality taxation constitutes the basic and primary element comprising the tax system. To a substantial extent taxation regulates the amount of disposable income and carries a real influence on the degree of financial liquidity, especially for microenterprises. The state influences the level of entrepreneurship in society through taxation, giving a motivating impulse for private business undertakings (Jarczok-Guzy, 2016, p. 110). A tax strategy influences the direction and scope of activities a given enterprise is planning to do in the long run in order to achieve its targets and gain a competitive advantage. More and more often business enterprises make taxation strategies a vital part of their overall strategy to reduce their tax burden and to cut the costs of record keeping and accounting services. This strategy consists only of legal and long term actions and it is being implemented from the moment when a business activity is launched until the moment of its cessation (Jarczok- Guzy, 2016, p.68). The key factor that determines the increase in competitiveness of particular economies is the creation of stable conditions for the development of entrepreneurship. The possession of competitive advantage translates onto the macroeconomic as well as microeconomic strength of given countries, and microenterprises constitute the foundation of modern economy. This fact has been noted by the Commission of the European Communities in the "Small Business Act" programme for Europe. And it is precisely microenterprises that make use of the regulations introduced in tax law that allow for the implementation of a tax strategy (Samborski, 2017, p. 198).

2.2. Taxes within the scope of tax strategies

Apart from the costs of economic activity, including remuneration, every entrepreneur faces non-remuneration costs. These costs include the personal income tax or the obligatory social security contributions covered by the employer (Mazurek-Chwiejczak, 2016, p. 166). Within this financial burden a taxpayer is required to comply with legal regulations currently in force and thus has no possibility to implement a tax strategy. In Poland the corporate income tax and the value added tax remain those areas of taxation where tax strategies apply most readily.

The choice of the form of income tax is an important element for the preparation of a tax strategy. Natural persons who carry out non-agricultural business activity in Poland may be taxed in accordance with general tax regulations or in accordance with one of the forms of lump sum taxation. Among the general income tax regulations the options available for a taxpayer are progressive taxation or flat rate taxation. In cases when the taxpayer opts for simplified forms of income taxation, the available options are a lump tax on recorded income or the tax card. While formulating a tax strategy, and one of its elements is the choice of the form of taxation, the tax payer ought to consider all the advantages and disadvantages of each of these forms (Ciupek & Famulska, 2013, p. 81). Therefore, if it is possible to choose from one of the four forms of taxation, then, in practice, only one of these forms will constitute an optimal choice, taking under consideration the specificity of context characterizing each small or typical enterprise. The consequences of choosing a disadvantageous form of personal income taxation while conducting a business activity are serious and may lead to the imposition of excessive tax burdens (Podstawka & Deresz, 2013, p. 376).

In the case of value added tax, the taxpayer also may choose among taxation variants. One of these variants concerns the period of taxation. This is only an example of what may form a tax strategy (The Polish Law on the Tax on Goods and Services of 11 March 2004, Art. 99). Subchapter 2.3.1. discusses in more detail the tools used within this particular tax.

2.3. The research method – the comparison of taxation regulations

2.3.1. Regulations in force till the end of the year 2016

What ensues in the first place, in the light of the changes in tax regulations, is a discussion of personal income tax while conducting business activity. The harmonization of income taxes is far more difficult than that of indirect taxes from a political, technical and legal point of view. This is the reason why each country possesses its own rules concerning such taxation (Wołowiec, 2016, p.97). Three elements play a crucial role in the design of income tax: the tax-free amount, the income tax scale and tax rates as well as tax exemptions (Pomorska, 2015, p. 152). The progressive form of income tax often plays a key role in automatic stabilization of the economy (Krajewski & Piłat, 2017, p. 22).

Within the frames of this form of taxation, the entrepreneur has at his or her disposal a tax-free amount. In the past the tax-free amount was subjected to valorization. The Polish legislator assumed that this amount was to be raised by a sum equal to the growth rate of an average monthly gross remuneration in the country's economy within the period of three quarters of the year preceding the tax year. This mechanisms of tax-free amount valorization was annulled by the act of 12 November 2003. As a result, since that time, the tax-free amount has only been raised once to the amount of 556.02 PLN. Until the end of the year 2016 the tax-free income had been 3091 PLN (Augustyński, 2016, p. 57). The idea behind the tax-free amount assumes the existence of a minimal income necessary for survival of a worker and his family. This minimal amount should be tax-free because it suffices only to cover the expenses of the basic necessities of life (Szczepańska, 2013, p. 68). The tax rates in the progressive tax have been fixed for some time now on 18% and 32%. The 18% rate is applicable to the yearly income not exceeding 85,528 PLN, whereas, when the yearly income exceeds this amount, the tax payable on the surplus amount (the income beyond 85,528 PLN) equals 32%. Regardless of the tax rate, the entrepreneur may use the fixed tax-free amount, that is 556.02 PLN (<http://www.finance.mf.gov.pl/pit/stawki-podatkowe>).

Another important aspect in the devising of a tax strategy in the case of income tax is the possibility of using a one-time depreciation (amortization) write-off on the value of fixed assets. This method can be

used by beginner enterprises or small taxpayers. The one-time depreciation write-off is applicable to 3-8 groups of assets included in the classification of fixed assets, with the sole exception of passenger cars. The one-time depreciation write-off is limited. The value of fixed assets that may be written off by way of amortization cannot exceed 50000 euros. The application of the one-time depreciation write-off results in the immediate increase in the burden of tax costs by the sum of the cost of purchase of the fixed asset in question, which means that the tax base is lower and, so the tax burden decreases as well (Ciupek & Famulska, 2013, p. 91).

The value added tax is the second type of taxation which is frequently the subject of tax optimization. Tax exemptions constitute an important element of the design of this form of taxation. According to Article 287 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, the member states joining the EU after 1 January 1978 hold the right to give tax exemption to these taxpayers whose annual turnover has not exceeded the equivalent in the local currency of the levels of annual turnover specified by the Directive. Article 287 was included in the Directive so that the member states would be able to take into account the limits of annual turnover which qualifies for tax exemption (Zwierzyńska, 2014, p. 114). Till the end of 2016 the limit of such an exemption in Poland was 150,000 PLN (Ciupek & Famulska, 2013, p. 148).

The VAT reverse charge is another issue which has been the subject of amendment within tax regulations in recent years. Until April 2011, when the mechanism of revers charge was applied to scrap metal trading, it had been scrap metal trading that was the most frequent area of enforcement actions because the design of VAT had been used to gain financial benefits to the detriment of the Treasury. In the years that followed, electronics (tablets, phones, computers) were objects of continued tax fraud. As a result, on 1 July the Ministry of Finance listed electronics under the application of VAT reverse charge regulations (Kozub-Skalska, 2016, p. 101). This has substantially complicated the clearance of transactions in this sphere.

The period of VAT settlement is the final element of choice available to the VAT taxpayer. The basic period is a calendar month, but the taxpayer may also choose to settle VAT once in a quarter. The tax declaration must be submitted to the Tax Office no later than the 25th of the month following the full settlement period. Every taxpayer was able make use of this right till the end of 2016 (Ciupek & Famulska, 2013, p. 157).

2.3.2. Regulations in force since 2017

The first issue that merits attention in the light of changes in taxation regulations since 2017 is the tax-free amount.

Annual income	Tax-free income
up to 6600 PLN	6600 PLN
6601-11000 PLN	from 6600 PLN to 3091 PLN
11001-85528 PLN	3091 PLN
85529-127000 PLN	3091 PLN to 0 PLN
from 127001 PLN	No tax-free income applicable

Table 1. The amount of tax-free income since 2017

Source: http://www.mf.gov.pl/fr/ministerstwo-finansow/wiadomosci/aktualnosci/-/asset_publisher/M1vU/content/id/5842909.

The tax-free amount of income of 3,091 PLN for both tax rates has been substituted by different amounts applicable in correlation with the total amount of annual income. The method of calculating the tax-free amount has been strictly formulated by law. The amount of tax-free income will be

calculated according to the ranges presented in Table 1. The following section demonstrates these changes on specific example.

New possibilities have been added to the income tax as regards the possibilities of settling the depreciation (amortization) write-off on fixed assets. The right to a one-time write-off is still in force; however, a new right has been introduced available for all taxpayers. Since July 2017 the taxpayers purchasing brand new fixed assets belonging to the groups 3-6 and 8 of fixed assets classification, have had the right to depreciate the initial value of such assets up to the amount of 100,000 PLN in the tax year in which they are recorded. The overall value of such a fixed asset has to be greater than 10,000 PLN and lower than 100,000 PLN. This additional regulation will definitely allow a greater number of taxpayers to realize a tax strategy in this regard. (The Act of 7 July 2017 amending the Personal Income Tax Act and Corporate Income Tax Act, Art. 2).

When it comes to changes in VAT taxation, the update of the amount of subjective exemption from VAT undoubtedly has turned out beneficial. The limit of annual income from sales has been raised from 150,000 PLN, which was in force till the end of 2016, to 200,000 PLN (The Polish Law on the Tax on Goods and Services of 11 March 2004, Art. 113).

The broadening of the range of goods to which the reverse charge may be applied constitutes another updated element. The results of the amendment has been the introduction of a new principle which gives rise to VAT in building and construction services (Brzyska, 2016, p. 165). From January 2017 building services (enumerated in the register) are subject to the reverse charge mechanism if and only if the following conditions are fulfilled (Balicka, 2017, p. 14):

- The service provider is an active VAT taxpayer who may not conduct sale with the exemption from taxation according to Art. 113 and who provides services as a subcontractor.
- The service recipient is an active VAT taxpayer.

In the sphere of building and construction there are three basic groups of entities: the investor, the general contractor, and the subcontractor. Regulations have not changed for general contractors who continue to issue invoices for investors burdened with VAT. Invoices issued by subcontractors, however, are net invoices, without VAT. The basic problem for small enterprises is the lack of a legal definition of subcontractor and the lack of practical knowledge in settling such transactions (Kaczmarczyk, 2017, p. 92).

There have also been changes with regards to the choice of the period of VAT settlement. Since January 2017 not every taxpayer has the right to choose between a monthly or quarterly period of settlement. This choice is allowed only for small taxpaying entities; all the remaining entities obligatorily settle their VAT monthly. A small taxpayer is defined as a taxpayer who has not exceeded in its sales in the preceding tax year, together with the amount of tax due, the equivalent of 1,200,000 euros. This definition includes all micro entrepreneurs who have thus kept their privilege. (The Polish Law on the Tax on Goods and Services of 11 March 2004, Art. 99, Sect. 3).

The final change requiring mention as regards small enterprises is the introduction of the controversial duty to send in to the tax offices the monthly electronic register of sales and purchases together with the amounts of VAT due. This duty applied only to large enterprises till the end of 2016. At the beginning of 2017 this duty was extended to typical and small enterprises, and in 2018 it will be further extended to microenterprises, which will have to send in the standard audit file (SAF) (<http://www.finanse.mf.gov.pl/web/wp/pp/jpk>).

3. RESULTS

The selected abovementioned changes in Polish tax regulations have been put together in Table 2.

Type of regulation	In force until the end of 2016	In force from 2017
Income tax-free amount	Unified	Differentiated depending on income
One-time depreciation write-off	50,000 euros only for small taxpayer and taxpayers starting a business activity	50,000 euros preserved, The introduction of an additional privilege of one-time depreciation write-off on fixed assets between the value of 10,000 PLN and 100,000 PLN
Subjective VAT exemption	limited to 150,000 PLN	limited to 200,000 PLN
The period of VAT settlement	Monthly or quarterly for all taxpayers	Quarterly only for small taxpayers
Reverse charge	Scrap metal, steel, electronics	Extended to building and construction services provided by subcontractors
The obligation of sending SAF	Large, typical, and small enterprises	microenterprises

Table 2. Tax regulations in force till the end 2016 and since 2017

Source: own elaboration

4. DISCUSSION

Analyzing Table 2, which juxtaposes all the selected changes in tax regulations, it is possible to notice that some of these changes are beneficial for enterprises and some generate additional burden. The changes that, with certainty, limit the creation of a tax strategy is the withdrawal of the availability for all taxpaying entities of the right to choose the quarterly period of tax settlement. In the same tax, changes have been introduced to the rules of VAT calculation applicable to the transactions involving building services. The entity that functions as a subcontractor has fewer formal duties, whereas the recipient of services has been burdened with a greater dose of bureaucracy as regards the settlement of reverse charge. Additionally, the obligation to send in electronic registers creates an obstacle in the functioning of Polish microenterprises. It is often individuals who conduct a microbusiness activity and take the tasks of accountancy upon themselves. This additional obligation must necessarily increase the amount of their work. The remaining updates in tax regulations will decidedly have a positive influence on the possibilities of designing a tax strategy by Polish enterprises. A larger amount of subjective VAT exemption, the possibility of additional one-time depreciation write-offs for everybody, a larger tax-free amount, undoubtedly constitute positive changes. However, it seems to be the case that, after careful calculations, the new tax-free amount is disadvantageous for some entities. The two hypothetical examples of income earned will offer a simulation of the amount of tax due.

Table 3 shows a juxtaposition of tax for a yearly income in the amount of 128,000 PLN, whereas Table 4 for a yearly income in the amount of 90,000 PLN. For the sake of clarity, it has been assumed that the obligatory social security contributions are calculated into the costs of income. The deduction of the health insurance contribution has been omitted due to its insignificance for the overall results.

Tax calculation	2016	2017
Yearly income	128,000 PLN	128,000 PLN
First tax rate dues	15,395.04 PLN	15,395.04 PLN
Second tax rate dues	13,591.04 PLN	13,591.04 PLN
Tax-free amount	556.02 PLN	0 PLN*
Tax	28,430.06 PLN	28,986.08 PLN

Table 3. A projection of the economic consequences for the income in the amount of 128,000 PLN in 2016 and 2017

Source: own elaboration

Tax calculation	2016	2017
Yearly income	90,000 PLN	90,000 PLN
First tax rate dues	15,395.04 PLN	15,395.04 PLN
Second tax rate dues	1431.04 PLN	1431.04 PLN
Tax-free amount	556.02 PLN	496.06* PLN
Tax	16,270.06 PLN	16,330.02 PLN

Table 4. A projection of the economic consequences for the income in the amount of 90,000 PLN in 2016 and 2017

Source: own elaboration

*In Table 4. the tax-free amount has been calculated with the application of the formula described in Art. 27b of the Personal Income Tax Act. According to the above Table, the tax-free amount for an income exceeding 127,000 PLN is 0 PLN, whereas for an income between 85,529 PLN and 127,000 PLN the formula of calculating the tax-free amount runs as follows: $556.02 \text{ PLN} - 556.02 \text{ PLN} \times (90,000 \text{ PLN} - 85,528 \text{ PLN}) : 41,472 \text{ PLN} = 496.06 \text{ PLN}$. In both of the cases discussed, the tax burden has increased. In the first case, the amount of tax due increased by 556.02 PLN, whereas in the second case by 59.96 PLN.

5. CONCLUSIONS

The above analysis has shown that, when it comes to enterprises, the introduction of the new tax regulations may either limit the possibilities of conducting a tax strategy or enable it, depending on particular aspects. It is difficult to conclude which results will prevail. However, it is possible to state that among these changes, on the one hand, there are those that have broadened the scope of possibilities for Polish enterprises to introduce a tax strategy; on the other hand, there are also those which have limited the options for such a strategy. To return to the hypothesis put forward at the beginning of this article, it is possible to state that the aim of the discussion has been achieved and the thesis demonstrated. It is interesting to notice that the increase of the tax-free amount is perceived by some taxpayers as a privilege because their tax dues will be reduced. Nevertheless, for those taxpayers whose income will exceed the second tax rate limit, this change is not beneficial as it will generate losses.

REFERENCES

1. Augustyński I 2016, "Skutki podniesienia kwoty wolnej od podatku od dochodów osobistych", *Gospodarka Narodowa*, vol. 1(281), rok LXXXVI/XXVII styczeń/luty 2016, pp. 55-71.
2. Balicka A 2017, "Zmiany ustawy podatku od towarów i usług w 2017 roku i ich wpływ na małe przedsiębiorstwa branży budowlanej", *Finanse, Rynki Finansowe, Ubezpieczenia*, nr 4/2017 (88), cz. 1, pp. 11-19.
3. Brzyska E 2016, "Aktualne problemy rozliczania podatku od wartości dodanej przez przedsiębiorstwa budowlane", *Finanse, Rynki Finansowe, Ubezpieczenia*, nr 5/2016, cz. 2, pp. 165-175.
4. Ciupek B & Famulska F 2013, „Strategie podatkowe przedsiębiorstw”, Wydawnictwo Uniwersytetu Ekonomicznego w Katowicach, p. 81.
5. Jarczok-Guzy M 2016, "Kategoria małego podatnika w strategii podatkowej przedsiębiorstwa", *Finanse. Rynki finansowe. Ubezpieczenia*, vol. 5/2016 no. 83, Wydawnictwo Naukowe Uniwersytetu w Szczecinie, p. 109-118.
6. Jarczok-Guzy M 2016, "Preferencje podmiotowe w podatku od towarów i usług jako instrument strategii podatkowej w zarządzaniu przedsiębiorstwem", *Studia i Prace Wydziału Ekonomicznego nr 10. Nauka w praktyce biznesowej część 2.*, Wydawnictwo Naukowe Akademii im. Jakuba z Paradyża, p. 67-76.
7. Kaczmarczyk A 2017, "Odwrotne obciążenie podatkiem VAT w aspekcie płynności małych podmiotów z branży budowlanej", *Finanse, Rynki Finansowe, Ubezpieczenia*, nr 4/2017 (88), cz. 1, pp. 87-95.
8. Krajewski P & Piłat K 2017, "Does a progressive PIT stabilize the Economy? Comparison of progressive and flat taxes, *Comparative Economic Research*, Vol. 20, nr 1, pp. 21-34.
9. Kozub-Skalska S 2016, "Mechanizm odwrotnego obciążenia w VAT jako nieefektywne narzędzie w zmniejszeniu luki podatkowej w VAT", *Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach*, nr 275/2016, pp. 92-106.
10. Mazurek-Chwiejczak M 2016, "Opodatkowanie dochodów z pracy w państwach OECD – studium porównawcze", *Przedsiębiorstwo i region*, nr 8/2016, pp. 166-185.
11. Podstawka M & Deresz A 2013, "Wybór efektywnej formy opodatkowania podatkiem dochodowym od osób fizycznych małych i średnich przedsiębiorców", *Nierówności Społeczne a Wzrost Gospodarczy*, nr 30, pp. 376-387.
12. Pomorska A 2015, "Najnowsze zmiany w konstrukcji podatku dochodowego od osób fizycznych w Polsce", *Annales Universitatis Mariae Curie-Skłodowska. Lublin-Polonia*, Sectio H vol. XLIX, 2, <http://oeconomia.annalep.umcp.pl>, pp. 151-157.
13. Samborski A 2017, "Działalność gospodarcza w Polsce i Republice Czeskiej – obciążenia fiskalne", *Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach*, Wydawnictwo Uniwersytetu Ekonomicznego w Katowicach, pp. 197-212.
14. Szczepańska I 2013, "Wybrane elementy konstrukcji podatku od dochodów osobistych i ich znaczenie w realizacji polityki podatkowej", *Mysł Ekonomiczna i Polityczna*, nr 2(41), pp. 60-85.
15. Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych, Dz. U. z 2016r., poz. 2032 i 2048.
16. Ustawa z dnia 11 marca 2004r. o podatku od towarów i usług, Dz. U. z 2016r. poz. 1948 i 2024.
17. Ustawa z dnia 7 lipca 2017r. o zmianie ustawy o podatku dochodowym od osób fizycznych i podatku dochodowym od osób prawnych, Dz. U. z 2017r. poz. 1448.

18. Wołowiec T 2016, "Dilemmas and Confines with Personal Income Taxation Harmonization Process", *Studia Europejskie*, nr 4/2016, Centrum Europejskie Uniwersytetu Warszawskiego, pp. 95-115.
19. Zwierzyńska A 2014, „Zwolnienia z podatku od towarów i usług drobnych przedsiębiorców w świetle rozwiązań unijnych”, *Zeszyty Naukowe Wyższej Szkoły Bankowej w Poznaniu. Financial Regional Development – Challenges, Perspectives and Tools*, Poznań, pp. 113-122.
20. Strona Ministerstwa Finansów <http://www.mf.gov.pl/fr/ministerstwo-finansow/wiadomosci/aktualnosci/-/asset_publisher/M1vU/content/id/5842909>, accessed 25.11.2017.
21. <<http://www.finance.mf.gov.pl/web/wp/pp/jpk>>, accessed 25.11.2017.