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Mutual Learning for Reducing Tax Gaps in V4 Countries and Ukraine Peer Country Paper: Poland

Iakov Frizis
Krzysztof Głowacki
Katarzyna Mirecka

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CASE – Center for Social and Economic Research on behalf of CASE Network
al. Jana Pawla II 61, office 212, 01-031 Warsaw, Poland
tel.: (48 22) 206 29 00, 828 61 33, fax: (48 22) 206 29 01
e-mail: case@case-research.eu
www.case-research.eu

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Authors

Iakov Frizis is a graduate of Sciences Po Paris (Master of International Economic Policy). Iakov's academic experience focuses on Eurozone Economics, Economics of Convergence and Econometrics with a particular focus on impact evaluation and panel data analysis. His understanding of international macroeconomics is complemented by a capacity for interdisciplinary analysis drawing from Energy Economics and the Political Economy of the MENA region. He specializes in macroeconomic analyses and evaluations. Previously to CASE, Iakov worked as an External Researcher for Junior Consulting Sciences Po, where the focus of his analysis was on the Greek economy, with a thematic specialization on the financial sector and impact evaluation of taxation policy.

Krzysztof Głowacki is an economist at CASE - Center for Social and Economic Research in Warsaw, Poland, with a specialization in institutional economics. He is a member of the CASE research team, co-author of economic reports for the European Commission, and editor of CASE's official bulletin "showCASE". He studied at Bocconi University (Department of Economics), Antwerp University (Department of Applied Economic Sciences), and Tilburg University (Liberal Arts and Sciences).

Katarzyna Mirecka is an economist at CASE - Center for Social and Economic Research in Warsaw, specializing in subjects concerning social development and taxation issues. She graduated from Université Stendhal Grenoble III (France) and Poznań University of Economics (Poland). Katarzyna gained her first experience while working as a project manager for a Brussels-based NGO. At CASE she has broaden her experience in policy research, conducting interviews, data collecting and analyzing while writing applications and working in numerous projects for Polish and European institutions.

Abstract

The paper summarizes knowledge on tax gaps in Poland with respect to PIT, CIT, VAT, and excise. An introduction to the Polish tax system is given, trends in tax collect ability and estimates of the tax gaps are discussed, and methods of combating tax evasion and avoidance are reviewed. The paper has been written as part of the project "Mutual Learning for Reducing Tax Gaps in V4 Countries and Ukraine" co-financed by the Visegrad Fund in the years 2016–2017.

Remarks

Where applicable, Polish terms have been included in parentheses and italicised.

The average exchange rate PLN/EUR in 2016 was 4.36, as per the National Bank of Poland (2017).

List of abbreviations

CEE – Central and Eastern Europe
CIT – Corporate Income Tax
EFTA – European Free Trade Association
EU – European Union
MTIC – Missing Trader Intra-Community, a type of cross-border VAT fraud
PO – Civic Platform (*Platforma Obywatelska*), Polish centrist party, in government 2007– 2015
PiS – Law and Justice (*Prawo i Sprawiedliwość*),
Polish conservative party, in government 2005–2007 and 2015-present
PIT – Personal Income Tax
PLN – Polski Nowy Złoty, the Polish currency
VAT – Value Added Tax

1. Tax system in Poland

The tax system in Poland encompasses direct taxes and indirect taxes. The direct taxes include: personal income tax (PIT), corporate income tax (CIT), inheritance and gift tax, tax on civil law transactions, agricultural tax, real property tax, tax on means of transportation, tonnage tax, and severance tax. The indirect taxes include: value added tax (VAT), excise tax, and gambling tax. This paper concentrates on two direct taxes, PIT and CIT, and two indirect taxes, VAT and excise tax.

On the legal side, all substantive tax-related matters are regulated by respective parliamentary acts, while tax procedure is laid out in the Act on Tax Ordinance from 1997 (*ustawa Ordynacja podatkowa*). In fact, the obligation to regulate tax-related matters through a parliamentary act is anchored in the Constitution of the Republic of Poland.[1]

Tax administration has been improving in Poland in recent years. The country moved from a ranking of 128 to a ranking of 47 in the *Paying Taxes* indicator of the World Bank's *Doing Business* report between its 2012 and 2017 editions.[2] However, compliance with taxes still requires 271 man-hours, compared to the European Union (EU) & European Free Trade Association (EFTA) average of 173 man-hours and to the top Central and Eastern Europe (CEE) performer Estonia's 81 man-hours. Polish tax legislation has been described as complex by some observers[3] and not overly complex by other observers,[4] while many emphasise that it is improving at a good pace.[5]

1 Articles 84 and 217 of the Constitution of the Republic of Poland

2 World Bank (2011); World Bank (2017)

3 Cole, A., & Pomerleau, K. (2015)

4 Ernst & Young (2014)

5 PwC (2016a)

1.1 Personal income tax

The legal base for personal income tax (*podatek dochodowy od osób fizycznych*) is laid out in the Act on Personal Income Tax (*ustawa o podatku dochodowym od osób fizycznych*) from 1991. Taxable income includes earnings from employment, self-employment, rental income, capital gains, and other passive income. Polish residents are taxed on their worldwide income, while non-residents are taxed only on Polish-sourced income. Residency itself is established if a person's centre of economic or personal interest is located in Poland, or if the period of their stay in Poland is longer than 183 days in the tax year. The tax year is the same as the calendar year. In general, income is self-assessed, and there is an obligation to submit an annual tax return by 30 April of the following year.[6] An important exception is the advance payments of tax on employment income, which are remitted by employers on a monthly basis.

In its present form, Polish PIT comprises two rates: 18% for income under PLN 85,528 and 32% for income in excess of it.[7] Sole entrepreneurs can opt out from PIT and be taxed under the flat-rate CIT at 19%. The current PIT system follows from a tax reform of 2006 spearheaded by the then Minister of Finance Zyta Gilowska, whose effort was targeted at the reduction of the tax burden. (Gilowska hailed from PiS, and although the opposition party PO took over power in 2007, it did not revoke the reform's scheduled entry into force in 2009.) Indeed, the PIT system used to put a much higher tax burden on tax payers prior to the reform. In the years 1998–2009, the PIT rates were 19% for income below PLN 44,490, 30% for income between PLN 44,490 and PLN 85,528, and 40% for income in excess of PLN 85,528. Before 1998, these rates changed frequently and were even steeper (see *Table 1* for the evolution of PIT rates in Poland since 1992). The system was updated by indexing the threshold income amounts on a more or less regular basis before 2009, but not after it.

The Polish PIT provides for a personal allowance, which until recently was set at PLN 3,091. This amount had not been indexed since 2009,[8] and there had been recurrent voices raised during the recent years that it should eventually be adjusted. Notably, in a verdict from October 2015, the Constitutional Tribunal found that not providing for a mechanism of adjusting the personal allowance amount was unconstitutional, as it violated

6 The forms are called PIT-4R, PIT-11, PIT-28, PIT-36, PIT-37, and PIT-38.

7 To put it in context, the average salary in Poland was PLN 3,900 in 2015. Source: Komunikat Prezesa Głównego Urzędu Statystycznego z dnia 9 lutego 2016 r. w sprawie przeciętnego wynagrodzenia w gospodarce narodowej w 2015 r. http://stat.gov.pl/sygnalne/komunikaty-i-obwieszczenia/lista-komunikatow-i-obwieszczen/komunikat-w-sprawie-przeci-etnego-wynagrodzenia-w-gospodarce-narodowej-w-2015-r-,273,3.html

8 The amount of the allowance was updated on a regular basis prior to the tax reform. See: http://www.pit.pl/archiwum_ska-li_podatkowej_pit_191.php

the allowance's purpose of guaranteeing low-income payers a minimum subsistence level. Accordingly, the Tribunal gave the legislator time until 30 November 2016 to address this matter.[9] In fact, increasing the amount of the personal allowance to PLN 8,000 was one of the election promises made by PiS in its 2015 election bid.[10] The party went on to win the election, and its government replaced the existing personal allowance of PLN 3,091 with a variable amount of between PLN 0 to PLN 6,600, depending on the total amount of personal income. The personal allowance is now PLN 6,600 for persons earning up to PLN 6,600; PLN 3,091-6,600 for persons earning between PLN 6,600 and PLN 11,000; PLN 3,091 for persons earning between PLN 11,000 and PLN 85,528; PLN 0-3,091 for persons earning between PLN 85,528 and PLN 127,000; and PLN 0 for persons earning above PLN 127,000.[11] Where intervals are given, the amount of the free allowance decreases linearly as a function of earnings.

9 Sygn. akt K 21/14 http://trybunal.gov.pl/rozprawy-i-ogloszenia-orzeczen/wyroki-i-postanowienia/art/8665-podatek-dochodowy-od-osob-fizycznych-kwota-wolna-od-podatku/

10 Newsweek.pl (2016)

11 Pit.pl (2016b)

Table 1 – Evolution of PIT in Poland over the years

Period	PIT rates
2009-present	18% under PLN 85,528 32% above PLN 85,528
2008	19% under PLN 44,490 30% above PLN 44,490 and under PLN 85,528 40% above PLN 85,528
2007	19% under PLN 43,405 30% above PLN 43,405 and under PLN 85,528 40% above PLN 85,528
2001-2006	19% under PLN 37,024 30% above PLN 37,024 and under PLN 74,048 40% above PLN 74,048
2000	19% under PLN 32,736 30% above PLN 32,736 and under PLN 65,472 40% above PLN 65,472
1999	19% under PLN 29,624 30% above PLN 29,624 and under PLN 59,248 40% above PLN 59,248
1998	19% under PLN 25,252 30% above PLN 25,252 and under PLN 50,504 40% above PLN 50,504
1997	20% under PLN 20,868 32% above PLN 20,868 and under PLN 41,736 44% above PLN 41,736
1996	21% under PLN 16,380 33% above PLN 16,380 and under PLN 32,760 45% above PLN 32,760
1995	21% under PLN 12,400 33% above PLN 12,400 and under PLN 24,800 45% above PLN 24,800

Source: Pit.pl (2016b)
Note: Data are provided for the years commencing 1995, which marks the year of currency denomination and the introduction of PLN.

1.2 Corporate income tax

Corporate income tax (*podatek dochodowy od osób prawnych*) in Poland is regulated by the Act on Corporate Income Tax (*ustawa o podatku od osób prawnych*) from 1992. It applies to all legal entities, such as corporations, foundations, associations, and some other organisations.[12] Taxable income includes business income and passive income, such as capital gains or dividend income. Resident companies are taxed on their worldwide income, while nonresident companies are taxed only on Polish-sourced income. Companies are considered resident if their seat or management is located in Poland. Companies may select the calendar year or any other twelvemonth period as their tax year.

Since 2003, Polish CIT has a flat rate of 19%. The current rate is much lower than it used to be in the past. For example, the rate used to be twice as high in 1997 (38%) and even higher when CIT was first introduced in 1992 (40%; see *Table 2* for the evolution of CIT rates in Poland since 1992).

Table 2 – Evolution of CIT in Poland over the years

Period	CIT rate
2004 – present	19%
2003	27%
2002–2001	28%
2000	30%
1999	34%
1998	36%
1997	38%
1992–1996	40%

Source: Ernst & Young (2014)

1.3 Value added tax

VAT (*podatek od towarów i usług*) was first introduced in Poland in 1993, and it replaced the turnover tax. Because the tax was a complete novelty, and the economic environment of the time was rapidly evolving, the Act was amended many times between 1993 and 2004.[13] A major change came in 2004, when Poland joined the EU. A new Act on Value Added Tax (*ustawa o podatku od towarów i usług*) was introduced to facilitate the harmonisation of the national VAT legislation with the EU legislation. With respect to the EU Member States, what had previously been crossborder transactions became Single Market transactions.

12 i.e. organisational entities without legal personality (*jednostki organizacyjne nieposiadające osobowości prawnej*), including limited liability partnerships, companies in formation, and other entities.

13 Poniatowski, G. (2016a)

VAT, which yielded PLN 126,584.1 million in 2016,[14] accounts for the single largest contribution to the state budget (40% in 2016[15]), and, as such, plays a particularly important fiscal role. The basic VAT rate is 23%, and the reduced rates are 8%, 5%, and 0%. Please see *Table 3* for an overview of VAT rates along with important examples of goods and services that qualify under them.

Table 3 – VAT reduced rates with examples

VAT rate	Important examples
8%	meat products; sugar; passenger transportation.
5%	bread; fish; books.
0%	intra-Community delivery of goods; exports to non-EU countries.
Exemption	enterprises with annual turnover below PLN 200,000; services in the areas of education, cul- ture, sport, and health.

In 2012, an electronic system for filing and paying VAT was introduced, and it gained popularity by 2014.[16]

The Polish VAT system has been described as complex,[17] and it occupied the 34th position out of 35 countries in the 2016 *International Tax Competitiveness Index*.[18]

1.4 Excise tax

In Poland, excise tax is applied to tobacco products, raw tobacco, alcohol beverages, passenger cars, and energy (excise treatment of some of these products is described in more detail below). The current Act on Excise Duty (*Ustawa o podatku akcyzowym*) was

14 Ministry of Finance of Poland (2017a)

15 Główny Urząd Statystyczny (2017)

16 PwC (2016b)

17 e.g. Poniatowski, G. (2016a)

18 Pomerleau, K. (2016)

introduced in 2008, following two other acts from 1993 and 2004. In 2016, the budget revenue from excise tax in Poland amounted to PLN 65,749.3 million, being the third largest source of revenue for the budget (after VAT and PIT).[19] Exact current values of excise duties applied to the most popular alcoholic beverages in Poland are presented in *Table 4*.

Excise tax exemptions in Poland are established with view to the relevant EU directives, i.e. Directive 92/83/EWG, Directive 2003/96/WE, Directive 2007/74/WE, and Directive 2008/118/WE. Accordingly, based on the Regulation the of the Minister of Development and Finance on Exemption from Excise Duty (*Rozporządzenie Ministra Rozwoju i Finansów z dnia 24 lutego 2017 r. w sprawie zwolnień od podatku akcyzowego*), the following products are exempted from the excise tax (non-exhaustive list):[20]

- excise goods for own use, not intended for sale;
- waste from the production or destruction of excise goods;
- energy products used for sailing and electricity production;
- some types of electrical energy (for example, renewable-sources energy);
- coal products for heating purposes;
- denatured alcohol under specified conditions;
- motor fuel for use in transportation under specified conditions; and
- passenger cars under specified conditions.

Currently, exemptions for electric cars are envisaged by the government.[21]

1.4.1 Tobacco products and raw tobacco

Three types of tobacco products are subject to excise tax in Poland: cigarettes, smoking tobacco, and cigars, including cigarillos. Poland has met the EU requirements regarding the minimum excise levels applicable to manufactured tobacco before the deadline (which will expire on 31 December 2017) introduced in the Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco.

1.4.2 Alcohol beverages

According to the Act on Upbringing in Sobriety and Counteracting Alcoholism *(Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi)* from 1982, Polish authorities are obliged to take measures aimed at creating incentives for customers to choose bever-

19 Ministry of Finance of Poland (2017c-d)

20 Ministry of Finance of Poland (2016a)

21 Money.pl (2016a)

ages with a smaller quantity of alcohol. Accordingly, excise applied to alcoholic beverages in Poland is much lower for beer, wine, and cider. In accordance with the EU legislation, excise tax on beer is calculated using the Plato method by hectolitre. Moreover, Polish producers of cider and perry can benefit from lower excise rates since 2013. This change was introduced in order to support domestic apple growers, who had huge surpluses after Russia placed a boycott on Polish apples (among other products).[22] The Polish Ministry of Finance also argued that this decision is in line with the Act on Upbringing in Sobriety and Counteracting Alcoholism.[23]

There exist several tax exemptions aimed at encouraging the development of small business, for instance, a lower excise tax rate for alcohol produced in small breweries. Alcohol produced for own consumption is not subject to excise tax.

1.4.3 Passenger cars

Poland benefited from the right offered by the Directive 2008/118/EC to apply excise tax to other products than those listed in the Directive, which in this case is passenger cars (Chapter V of the Act of Excise Duty). The tax applies only to passenger cars when they are first registered on the territory of Poland.[24]

Table 4 – Excise tax rates for the most important product

Excise rate	Product
PLN 5,704/1 hectolitre	ethyl alcohol 100% volume
PLN 7.79/1 hectolitre per Plato degree	beer
PLN 158/1 hectolitre	wine
PLN 97/1 hectolitre	cider and perry below 5% volume
PLN 206.76 for 1,000 pieces and 31.41% of the maximum retail price	cigarettes
PLN 1,540 /1,000 litres	gasoline
PLN 1,171/1,000 litres	diesel fuel

Source: Ministry of Finance of Poland (2016b)

22 Polskie Radio (2014)

23 Ministry of Finance of Poland (2013)

24 Spychała, M. (2016)

2. Trends in tax collection

For the period 2003-2015, tax collection expressed in absolute values are presented in *Graph 1*, while the trends in tax collection in Poland relative to the GDP are visualised in *Graph 2*. The collection of all the types of taxes peaked in 2007–2008: PIT at 5.2% (2008), CIT at 2.7% (2007), VAT at 8.1% (2007), and excise tax at 4.1% (2007). In the years 2000–2008, VAT revenues grew at a rate substantially higher than GDP. In 2009, this trend was reversed, and VAT revenues became more volatile.[25] In 2016, VAT collection amounted to PLN 126.6 billion, which marked a 2.8% increase in relation to 2015.[26] In that year, PIT yielded PLN 89.3 billion in revenues to the state budget, and CIT-PLN 33.8 billion, while the excise tax delivered PLN 65.7 billion. Budgetary revenues from excise tax collection have grown constantly since 2004, but at a slower pace in recent years.

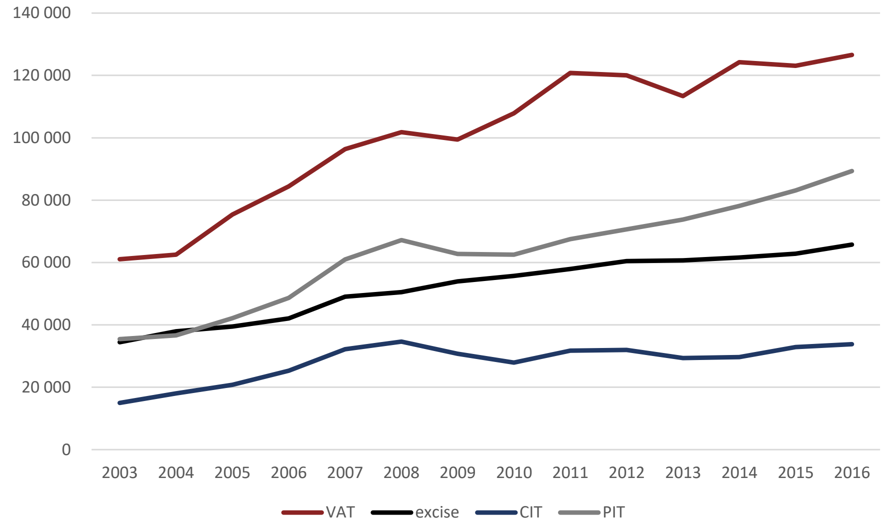
The current PiS government introduced a number of social programs (e.g. 500+ and lowering the retirement age), which drastically increased public spending. The government has indicated narrowing the tax gap as the main source of additional revenue to finance its extra expenditures. To meet this goal, it introduced a number of new measures, which are discussed in Section 4 of this report. While the results have been mixed, there appears to be improvement in tax collection. The Ministry of Finance published the results of its study, according to which the overall tax gap was reduced by PLN 5.5 billion, including PLN 3-4 billion in VAT and PLN 1 billion in excise.[27] The actual increase in VAT collection is difficult to estimate given that the timing of VAT returns to companies have become less predictable than in the past. VAT refunds are now often withheld from companies for prolonged periods; in 2016, they were paid out en masse shortly before the end of the year in December.

25 cf. Poniatowski, G. (2016a)

26 Ministry of Finance of Poland (2017c-d)

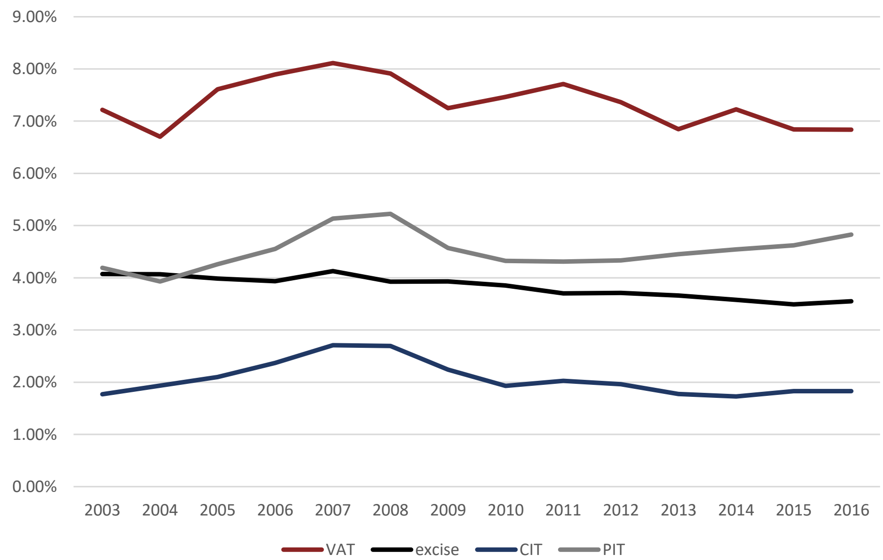
27 Rp.pl (2017a)

Graph 1 – Tax collection in Poland 2003–2016 (in thousands)



Source: Ministry of Finance of Poland (2017c-d) and Główny Urząd Statystyczny (2017)

Graph 2 – Tax collection in Poland 2003–2016 relative to GDP



Source: Ministry of Finance of Poland (2017c-d) and Główny Urząd Statystyczny (2017)

3. Magnitude of tax gaps

3.1 Personal income tax

There are currently no estimates of the PIT gap in Poland.

3.2 Corporate income tax

In a study for the European Commission, the CIT gap in Poland has been estimated as PLN 43–46 billion by Dominik Gajewski.[28] Other experts assess the increase of the CIT gap in the several years prior to 2015 as PLN 1-14 billion, but do not quote the total amount of the gap.[29] In general, the CIT gap is more difficult to estimate than the VAT gap (where data on consumption can be used to produce estimates), and some experts believe that it is nearly impossible to calculate the CIT gap with a satisfactory degree of precision.[30] Aggressive tax optimisation has been widely identified as one of the main reasons of falling CIT revenues.[31]

3.3 Value added tax

The Center for Social and Economic Research performs annual assessments of the VAT gap for all the Member States of the European Union. In 2014, the most recent year for which the necessary data is available (given the methodology used in the study), the VAT

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28 Wyborcza.biz (2015); Money.pl (2017); Rp.pl (2017b)

29 Ibidem

30 Wyborcza.biz (2015)

31 Wyborcza.biz (2015); Poniatowski, G. (2016a); Money.pl (2017); Rp.pl (2017b)

gap in Poland was 24%, one of the highest in the EU.[32] In absolute terms, the VAT gap was PLN 39 billion. Another study estimates the VAT gap in 2015 as PLN 53 billion.[33] The VAT gap is attributable to a number of sources, which include: tax avoidance, tax evasion, unregistered economic activity, smuggling, and fraud.[34]

A common method of fraud is the missing trader intra-community (MTIC). Fraudsters use the opportunity offered by the fact that the intra-community movement of goods is VAT-exempt to purchase such tax-exempt goods from another EU Member State and sell them in the domestic country without remitting the VAT due on the domestic transaction. There are often many domestic buyers and sellers, and the final one may sell the goods to the country of origin, starting the cycle anew. Because the goods may end up circulating between the domestic and the foreign country, the fraud is often called carousel fraud.

3.4 Excise duty

It is estimated that the national budget loses PLN 2 billion a year on the excise gap related to alcohol products, PLN 3 billion related to tobacco products, and PLN 1.5 billion related to fuels.[35] These losses are mainly attributable to the illegal production and importation of cigarettes and alcohol.

The illicit trade in cigarettes in Poland is estimated by various sources as between 11%[36] and 25%[37] of the market. One study finds that around 13-15 billion cigarettes are outside of the legal market.[38] In the years 2004-2014, 70 illegal cigarettes plants were discovered and raided across the country.[39] Poland, whose eastern border is the longest external land border of the EU, is also susceptible to the smuggling of alcohol and cigarettes from countries such as Belarus, Ukraine, and Russia. According to *Polska Izba Handlu*, a Polish commerce association, Belarussian factories, in particular, specialise in the production of

32 Poniatowski, G. et al. (2016)

33 PwC (2015)

34 Poniatowski, G. (2016a)

35 Gazeta Prawna (2016)

36 Instytut Badań Nad Gospodarką Rynkową (2013); Almares (2016)

37 Pracodawcy RP (2014)

38 Polityka Insight (2016)

39 Business Centre Club (2014)

the so-called “illicit white” cigarettes, which are manufactured with the intention of being smuggled to another country and circumventing its fiscal system.[40]

Illegal denatured alcohol is smuggled into Poland from the east, but also from EU Member States, e.g. recently from Hungary.[41]

40 Authors’ conversation with the General Director of Polska Izba Handlu (2017)

41 Gazeta Prawna (2016)

4. Methods used to combat tax non-compliance

In March 2017, the PiS government implemented a reform that transforms tax administration (*administracja podatkowa*), tax audit (*administracja skarbowa*), and the customs office (*służba celna*) into a new, unified administrative body: National Fiscal Administration *(Krajowa Administracja Skarbowa – KAS)*. According to the Ministry of Finance, its main goals are to improve tax collection by better identifying and eliminating situations that are likely to lead to revenue losses.[42]

Important measures to improve the collection of specific taxes (PIT, CIT, VAT, and excise) have been described below.

4.1 Personal income tax

There have been hardly any measures in recent years to reduce the PIT gap. In contrast, the social and labour market policies of the PiS government might contribute to the fall of PIT revenue due to the increase of the tax gap or the decrease of the tax base. In particular, the following policies carry such a risk:

- 500+ program – cash grants of PLN 500 for every child beginning with the second, regardless of the parents' income. By increasing the opportunity cost of employment, the program may convince some employees to leave the labour market, and, as a consequence, drive down PIT collections;
- lowering of the retirement age from 67 years to 65 years for men and 60 years for women – this, in fact, has been a reversal of an earlier reform enacted by the second PO government, which increased the retirement age from 60/65 years to 67 years. By reducing the labour force, it will have a negative impact on the labour market and will reduce PIT and social security collections;

42 Ministry of Finance of Poland (2017b)

- increasing of the minimum salary – the considerable increase of the minimum salary from gross PLN 1,850 to gross PLN 2,000 as of January 2017 might force some workers into grey employment, increasing the PIT gap;
- increasing of the minimum wage applicable to civil law contracts to gross PLN 13 per hour as of January 2017 might force some workers into grey employment, increasing the PIT gap; and
- in contrast, the modification of the free allowance (described in detail in Section 1.1) is expected to be close to fiscally neutral, because it largely consists of the redistribution of the free allowance from employees with higher incomes to employees with lower incomes.

4.2 Corporate income tax

Standard Audit File-Tax (*Jednolity Plik Kontrolny – JPK*) – SAF-T is a new IT system, which was introduced by the second PO cabinet in September 2015[43] and which is being gradually introduced in Poland. SAF-T will list data on the economic activity of all companies in Poland, which will be gathered and stored in a standardised xml format. By being a source of timely, accurate, and complete information, SAF-T is expected to reduce the number of necessary controls and help to fight tax avoidance and fraud.[44] Large enterprises have been obliged to introduce the system by January 2017, while small and medium enterprises must implement the system by July 2018.

Another instrument is the Clause Against Tax Evasion (*Klauzula przeciwko unikaniu opodatkowania*), in force since 15 June 2016, which is supposed to help the administration to identify cases of unlawful fiscal optimisation. The law is widely criticised by specialists, who describe it as being vague and leaving much room for free interpretation. The Clause might lead to a situation in which each effort at tax optimisation, including lawful efforts, runs the risk of persecution.[45, 46]

43 Podatki.biz (2015)

44 Ministry of Finance of Poland (2016a)

45 Infor (2016)

46 Kraj Podatkowy (2017)

4.3 Value added tax

Given the importance of VAT revenues to the budget, the increasing size of the VAT gap, and the substantial rise in government spending projected for the next years, improving VAT collections is of particular importance. Experts have pointed out that the ultimate solution to the problem involves the creation of an overarching system of incentives that encourage compliance and penalises criminal behaviours.[47] Such a system, while maximising the compliance rate, must at the same time not restrict the freedom of movement of goods and services in the EU, for example, by way of excessive compliance costs.

Moreover, much of VAT fraud (MTIC, or the Missing Trader Intra Community fraud, the carousel fraud) arises as a negative byproduct of the opportunities offered by the EU Single Market. To combat this inherently international crime, it is necessary for the tax authorities of the respective European Union Member States to pursue close cross-border cooperation.

Recently, the PiS government introduced a number of measures in a bid to close the VAT gap. The mechanisms being implemented by the PiS government seem to yield dividends in terms of increased VAT collections, but they also carry some risk for enterprises. For example, VAT returns are withheld for longer periods than in the past, which negatively affects cash flows of firms. According to Dominik Gajewski,[48] this is evident from the types of cases that are being registered with administrative courts, and it is signalled by enterprise associations.

The most important instruments used to tackle VAT non-compliance are described below.

4.3.1 Audits

Audits performed by Tax Audit Offices (*urzędy kontroli skarbowej*) are the brick-and-mortar mechanism of maximising compliance. It has been suggested that their efficiency could be improved by increasing the use of information technology solutions (which could also help reduce the administrative costs).[49]

The Standard Audit File-Tax (SAF-T), which is an electronic database of tax-relevant information at a firm level, is being gradually introduced in the country, and it is expected to help control the CIT and VAT obligations of companies.[50] Large enterprises have been

47 Poniatowski, G. (2016a)

48 Rp.pl (2017b)

49 Poniatowski (2016a)

50 Ministry of Finance of Poland (2016a)

obliged to electronically deliver VAT-relevant data to tax authorities on a monthly basis since July 2016, and small and medium enterprises from July 2017. The SAF-T has been described in more detail in Section 4.2 above.

4.3.2 Reverse VAT charge

The reverse VAT charge is a mechanism used to tackle cross-border VAT fraud. In the reverse VAT charge, it is the buyer rather than the seller who is responsible for the payment of the VAT due. This makes it difficult to commit the MTIC fraud, but it also puts pressure on the cash flows of the buying companies, which are obliged to pay the VAT before they can recover it from the tax authorities.

The reverse VAT charge was first introduced in Poland by the first PO government in July 2011, and the list of products it applies to was updated several times ever since (2013, 2015, and 2017). In its study, the Center for Social and Economic Research estimated that the introduction of the reverse VAT charge for steel products in 2013 helped to reduce VAT carousel fraud by PLN 1.7 billion, and one-time MTIC by PLN 0.6 billion in the first year alone.[51]

Currently, the reverse VAT charge is applied, subject to certain conditions, to the following products:[52]

- selected electronic products (wholesale of processors, phones, laptops, and consoles);
- selected steel products;
- selected construction materials (only in the case when the provider of a service is a subcontractor);
- jewellery and its detached elements;
- gold (raw and semi-products).

In 2017, when the reverse VAT charge started to apply for construction materials, it was reported that some subcontractor firms in the industry began to purchase necessary materials abroad to avoid having to pay the VAT.[53] They found that the reimbursement of the VAT from the tax authorities was a lengthy process, which negatively affected their cash flows and, as a result, their liquidity. According to one publication,[54] the reverse VAT charge on construction materials was expected to degrade the condition of the sector, with as much as PLN 8.5 billion worth of VAT collections temporarily withheld by the state.

51 Center for Social and Economic Research (2015)

52 Biznes.gov (2017)

53 Money.pl (2016b)

54 Grant Thornton (2016)

4.3.3 Fuel package

To combat the MTIC and reduce the clamp down on the black fuel market (estimated to amount to PLN 10 billion,[55] the so-called fuel package (*pakiet paliwowy*), a set of amendments to the Act on Value Added Tax, Act on Excise Duty, and acts related to energy and fuel, was introduced in August 2016. The amendments stipulate that each company which purchases fuel from European Union Member States must be a VAT payer, and VAT must be payed within five days after importing fuel to the country. Moreover, they make precise the definition of "liquid fuels", which limits the opportunities to avoid taxation by using tax-exempt fuel components.[56]

The fuel package appears to bring positive results. According to the Polish Organization of Oil Industry and Trade, monthly legal sales of fuel in 2016 increased by 29% in August, 26% in September, and 17% in October compared to the respective months in 2015.[57] A major state-controlled oil holding, Lotos, recorded a sale increase of diesel fuel in August 2016 by 21.9%, compared to the July increase (before the introduction of the fuel package) of 1.9%.[58]

4.4 Excise tax

Poland, due to its long land border with non-EU countries in which cheap tobacco and alcohol products are manufactured, is particularly vulnerable to smuggling. The main method of tackling this issue involves border controls and marketplace controls.[59] In the years 2011-2013, some tobacco sellers used to take advantage of legal loopholes by trading in semi-finalised tobacco leaves such as the so-called "wet tobacco", which was exempted from the excise tax.[60]

Poniatowski (2016a) has suggested that it is impossible to substantially increase the collectability of the excise tax on cigarettes and alcohol. Other experts and stakeholders have suggested the following measures: increased controls at all stages of the value chain, including e-commerce controls, destruction (rather than sale by way of tender) of machines

55 Polska Organizacja Przemysłu i Handlu Naftowego (2016)

56 Money.pl (2016c)

57 Polska Organizacja Przemysłu i Handlu Naftowego (2016); Bankier.pl (2017)

58 Grupa kapitałowa Lotos (2016); Bankier.pl (2017)

59 Business Centre Club (2014)

60 Gazeta Prawna (2013)

used to manufacture illicit products, and stricter criminal penalties for persons involved in illegal trade.[61]

Moreover, the effect of the excise tax rate on the legal consumption of tobacco products has been studied by experts and stakeholders. The rapidly increasing excise rate has been cited as a major cause of the decrease of the legal consumption of cigarettes in Poland and the expansion of the black market.[62] In 2015, a moratorium on the excise tax rate on cigarettes entered into force, which has stabilised the market.[63] Accordingly, many stakeholders call for a responsible and long-term-oriented excise rate policy as an important tool in limiting the black market and increasing excise tax collections.[64]

61 Business Centre Club (2014)

62 Polityka Insight (2016)

63 Authors' conversation with the General Director of Polska Izba Handlu (2017)

64 Polityka Insight (2016)

Conclusions

As becomes apparent from the previous sections, Polish tax law and the framework of tackling tax non-compliance in Poland underwent a significant evolution in previous years. Some of the changes were necessitated by the requirements of EU law (as was the case with many regulations on VAT and excise tax), while other changes were the result of the political will to improve tax collectability (e.g. the reverse VAT charge). Some of the mechanisms that emerged performed well (e.g. the fuel package), some performed less well, while others are yet to be assessed.

However, frequent legislative changes can also reduce the transparency and predictability of the tax system, which may have a negative effect on tax collection. One example is the excise tax rate on tobacco products, which increased rapidly in the years prior to 2015 and contributed to the expansion of illicit trade in those products. It has also been suggested that frequent amendments to VAT legislation, multiple exemptions, and complex legal structures have a negative effect on the VAT gap by creating loopholes that can be potentially used by fraudsters.[65] Accordingly, there are voices to reshape tax policy. For example, Poniatowski argues for longterm tax plans and moratoria and proposes the introduction of oversight of government-run fiscal frameworks by fiscal councils. Long-term perspectives are an important and desirable mechanism from the perspective of corporate planning, which follows long-term horizons.[66]

65 Poniatowski, G. (2016a)

66 Poniatowski, G. (2016b)

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