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LEGAL AND TAX INSTRUMENTS LIMITING THE DECLINE IN THE FISCAL EFFICIENCY OF THE TAX SYSTEM DURING PERIODS OF CRISIS

Abstract

The article concerns very important issue of the efficiency of the tax system, but the presented perspective focuses on crisis in that field. The historical changes in the Polish economy, which are taking place as a result of: the implementation of the new energy policy, the reconstruction of the structure of the supply of energy resources, the trade war with Russia, and, above all, the end of the era of cheap and readily available energy sources, will have (already had) a significant impact on the dynamics and amount of budget revenues, especially the state budget.

Considerations bring Polish perspective, but are universal in their nature.

Author argues that the fiscal balance of the new macroeconomic situation is already and will continue to be negative: budget revenues derived from the energy sector from direct and indirect taxes will decrease, and public spending on its maintenance will increase. The policy of high prices for energy carriers will reduce income tax revenues not only burdening business entities. This will exacerbate in a definite way the already growing (despite inflation) fiscal crisis (domino effect).

Author proves that amendments of the tax law are necessary. It has to be noted that they should promote direct settlement and payment of the most important taxes by tax law subjects, rather than on the collection of data by tax authorities for the purposes of control and public supervision, because this is the only way to increase the fiscal efficiency of these taxes as soon as possible.

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1. Introduction

The historical changes in the Polish economy, which are taking place as a result of: the implementation of the new energy policy, the reconstruction of the structure of the supply of energy resources, the trade war with Russia, and, above all, the end of the era of cheap and readily available energy sources, will have (already have) a significant impact on the dynamics and amount of budget revenues, especially the state budget. Expensive energy resources, including in particular the need to produce petroleum products from imported oil under free market conditions, and the definitive loss of existing supplies of natural gas, which is being and will be replaced by more expensive substitutes, will lead to a decline in growth dynamics and even a real decline in excise and value-added tax revenues from the sale of excise products[1] . It is not too original a discovery to think that the energy transition, also forced by the trade war with Russia, will lead to a decline in the fiscal efficiency of the tax system formed over the past several decades, and fiscal preferences for new energy sources will further reduce budget revenues. To put it simply: the fiscal balance of the new macroeconomic situation is already and will continue to be negative: budget revenues derived from the energy sector from direct and indirect taxes will decrease, and public spending on its maintenance will increase. The policy of high prices for energy carriers will reduce income tax revenues not only burdening business entities. This will exacerbate in a definite way the already growing (despite inflation) fiscal crisis (domino effect). It is therefore necessary to look for new ways to increase budget revenues in order to at least attempt to compensate for the losses created for the above reasons.

The purpose of this article is to outline some directions for changes in tax law that would respond to these challenges.

At the outset, I would like to formulate three basic general assumptions outlining the field of this search:

[1] For years, the first taxpayer of the Republic of Poland has been the largest producer of petroleum products, which relied mainly on oil imported from Russia, which gave it a competitive and cost advantage in pipeline transportation. Perhaps, thanks to a policy of high prices for these products, it will retain its position, but this will be at the expense of declining profitability and thus budget revenues from other industries.

- the fiscal efficiency of the tax system is primarily determined by the state of the tax law, especially the substantive tax law in the specific part regulating individual public tributes; the other parts of the tax law are of lesser importance,
- changes in tax law aimed at increasing budget revenues will be introduced under unfavorable conditions, especially of a macroeconomic nature (stagflation, impoverishment and even economic regression and a decline in consumption),
- the tax system created over the past several years, including, above all, the tax law - contrary to official rhetoric - is in need of deep repair and is unable to meet these challenges in its current form.

2. Preventive measures against the decline in structural fiscal efficiency of the tax system

The response to the decline in the structural fiscal efficiency of the tax system of tax law should be preventive measures, including, in particular, changes in the content of the provisions of this law[2]. In order to organize and roughly classify these measures, I allow myself to divide them into the following groups. This division is functional and praxeological in nature. Thus, these are changes:

1) in the substantive and procedural tax law constituting its general part, i.e., these are provisions addressed to the general subjects of the tax law (the so-called passive), including, in particular, taxpayers, payers and other entities with obligations under this law,
2) involving the reconstruction (repair) of existing taxes and other tax tributes (fees and non-tax budgetary dues) in such a way as to increase their fiscal efficiency,
3) involving the introduction of new tributes, i.e. the establishment of new formal sources of budget revenues,
4) systemic ones concerning the structure and competencies of tax administration bodies so as to increase the effectiveness of control of compliance with tax law and reduce the scale of tax evasion currently tolerated,

[2] Two illusions should be discarded. The first concerns the possibility of improving the fiscal efficiency of the tax law through the interpretive activities of the executive branch. The uncontrolled increase in the number of new interpretive acts issued each year, including so-called "tax clarifications," petrifies and even exacerbates the pathological quality of tax laws. These "interpretations" are a signal or confirmation to taxpayers that a provision is valid ("beneficial to taxpayers") and its meaning should be confirmed in official form. Also, I don't think anyone believes anymore that tax jurisprudence, especially community jurisprudence, can "correct an incompetent legislator". In the mainstream, it affirms the legal views of the tax authorities, including interpretations of the law that are hostile to citizens.

5) in the repressive law so that the existing system of sanctions for violations of tax law (tax torts) fulfills the basic preventive (deterrence) mission and is proportional to the magnitude of losses (and at the same time illegal benefits) incurred (obtained) as a result of illegal tax evasion.

Of course, the response to the structural decline in the fiscal efficiency of the tax system must also be non-legal measures, including, in particular:

- legal and tax education of tax law subjects, fostering not only substantive knowledge, but also respect for the law and obligations of a public law nature (and this is getting worse and worse),
- modernizing the technical service of tax law subjects, improving the organizational functioning of tax authorities, increasing their professionalism and especially their tax knowledge, ensuring staff stability and professional ethics.

These measures are necessary and their neglect may, for obvious reasons, affect the fiscal efficiency of the aforementioned reconstruction of tax law, but they cannot replace fundamental normative changes. First of all, it is necessary to stabilize not only the cadres from the tax authorities, but also from the Ministry of Finance, end the employment of people without sufficient knowledge in the field of lawmaking. A stable and well-paid corps of civil servants should be appointed, who would not treat work in the tax administration as a pass to the tax evasion business; for there is a structural and individual conflict of interest here, the familiar result of which has been a string of compromises or legislative failures, and the ineffectiveness of many (most?) of the "sealing instruments" that were introduced by inspiration or came straight out of the hands of people who had previously been involved in "tax optimization". However, this is not the main topic of this article, but this thread of fixing the tax system should not be forgotten [ex. Modzelewski et al. 2020: 248-272].

However, in order for legal and tax solutions to emerge that are characterized by a sufficiently high level of professionalism, effectively influencing or serving to increase the fiscal efficiency of the tax system, the initial conditions must be met regarding the principles and mode of tax lawmaking. It is also necessary to meet a common expectation of both tax law subjects and tax authorities: it is the stabilization of the law, which seems to be at odds with the order of the times, which justifies precisely the changes in the law. In order to resolve this antinomy, it is now necessary to focus first on the changes mentioned in point 3), since it is nevertheless easiest to improve laws that are already familiar to tax law subjects and tax authorities. Here are the best diagnosed defects and loopholes and also the implementation

period of the amended legislation will be shortened. This stage should be implemented within the first two years so as to achieve fiscal effects as soon as possible.

At the same time, government commissions should be set up to draft new laws regulating the most legislatively devastated taxes, victims of the legislative chaos of the last several years. First on this list is the value-added tax and corporate income tax. The rest must wait.

3. Categories of tax changes aimed at increasing their fiscal efficiency

The introduction of changes in individual taxes aimed at increasing their fiscal efficiency as soon as possible should be divided into three main groups:

a) the definitive removal of defective or unnecessary solutions, which, in particular, were the result of legislative lobbying: it is possible, without any risk whatsoever, to remove from these laws and executive regulations hundreds of provisions that are completely unnecessary ("littered law"), which unnecessarily convolute the state of the law, while at the same time leaving more freedom to the subjects of tax law; in fact, the latter can, with the help of internal regulations, independently solve many tax problems (reducing the normativity of tax issues), including especially those concerning optional elements of tax construction. Internal regulations or tax instructions can be used here),
b) directly improving many already existing solutions whose fiscal efficiency is declining and can be fixed by removing their known flaws: the law "ages" quickly and requires "legislative care"; e.g., it is relatively simple to improve the provisions on income and deductible expenses in income taxes and input tax in goods and services tax,
c) the introduction of completely new solutions that are part of existing taxes, including the restoration of those provisions that have been unjustifiably removed (e.g., the obligation for business entities and payers to file monthly returns in income taxes).

The list of changes to be included in group one a) is very long, and presenting it many times would exceed the scope of this article. In recent years, there has been a previously unknown phenomenon of unnecessary regulation by means of legislation of those issues that taxpayers have so far resolved on their own, including by means of internal regulations, especially tax regulations and instructions. A general pattern for the legislature to follow in this regard would be to enact repeal legislation while introducing specific orders or recommendations that tax law entities regulate these problems precisely in the form of bylaws or internal instructions. At the same time, the legislation would oblige:

- the Minister of Finance to publish model bylaws and tax instructions,
- would order tax law taxpayers to make them available upon request with the competent public authority, and in certain cases also to make them public.

The most important mission of these changes, however, is to remove loopholes and "legislative investments" that reduce fiscal efficiency in basically all relevant taxes.

The list of changes referred to in b) - the second group - is also quite long, and most of the new instruments introduced in recent years to increase the fiscal efficiency of individual taxes have grown "old" or were introduced ineptly (in bad faith?). Flaws or loopholes in existing regulations are known to professionals and should be addressed in a normative manner and not by stretching official interpretations. The latter way raises suspicions of the legislator acting in bad faith, especially when the interpreted regulations were actually created outside government structures. Taxpayers often suggest (perhaps justifiably) that the incompetence of the drafters of these laws is either intentional or well-intentioned by the drafters of these laws, because it is part of a hidden enterprise that is divided into the following stages: first, a flawed provision is "corrected" with the help of objectively flawed official interpretations, then disputes arise against this background, which bring material benefits to those who are engaged in "defending taxpayers against hostile interpretations of laws." It is also necessary to expect a counterattack from the beneficiaries of these defections, who, first of all, have a lot of influence in the political system and can be effective[3]. Therefore, the list of these amendments must be prepared by officials with the participation of independent experts with no conflict of interest, and covered by an anti-corruption shield.

Sometimes this kind of action has been successful. I will give just a few examples:

- removal from the goods and services tax of the so-called domestic reverse charge (a typical tax scheme) and subjecting goods and services previously covered by this scheme to mandatory split payment[4],
- reinstatement in the goods and services tax of the additional sanctioned tax liability.

However, these changes disappear in a sea of unnecessary amendments, which are introduced under the banner of "simplification" or "sealing" so as to maintain the appearance of zeal in fixing the tax system. What modern national and EU tax legislators are rightly suspected of is acting in bad faith. Many of the amendments to this law introduced over the

[3] For more than 20 years I have been fighting with varying luck against legislative pathologies in tax law guided by the broadest fiscal interest. On this path I have encountered organized hate, denunciations, including to the authorities of the entities where I work, and attempts at intimidation.
[4] The four-year delay in implementing these changes illustrates the power of defenders of pathologies in tax law.

past several years are objectively not dictated by the public interest, and in particular have not served to increase the fiscal efficiency of the tax law, but have been motivated mainly by:

- the influence of stakeholders who want to gain business benefits by imposing new obligations on taxpayers (supposedly) to "seal" the tax system: here it is impossible to overestimate the influence of the information technology lobby, which has made the public and the political class believe the rather ridiculous thesis that the collection of an unimaginable amount of secondary or even redundant information on tax law subjects will increase the fiscal efficiency of ongoing audits and tax proceedings. In fact, the opposite is true: the excessive, ever-increasing amount of this information gives rise to the so-called "ocean effect", in which the data objectively needed to detect tax fraud and illegal tax evasion disappear,
- legalization of tax evasion organized by entities linked overtly and covertly to the authority: shaped over the last several years the most damaging for the tax law strange relations between the public administration and the business engaged in "international" tax evasion have caused that successive amendments (supposedly) sealing the tax law on the one hand create the appearance of an increase in the repressiveness of this law and on the other hand legalize (directly or indirectly) "tax optimization".

The list of possible (necessary?) changes (ad 3) in the specific part of the substantive tax law must be created without the participation of lobbyists and against the paradigm of modern tax law. There is only one condition: it must be the subject of political decisions, and it must not arise in government structures unless there is a renewal of their personale and an effective cutting of their ties with the tax evasion business.

In order to achieve the above fiscal goals, a standing committee[5] should be formed to exercise substantive oversight to quickly and professionally throw out those changes mentioned especially in point 2) ("revised law") and point 3) (new solutions). The paradox is that a significant part of these changes have long been advocated by taxpayers themselves, who do not want to incur the costs of handling unnecessary obligations or see well the drawbacks of the solutions being introduced.

I will give only the most well-known examples:

[5] However, it cannot in any way resemble the various "councils" that were formed at one time at the Ministry of Finance. They did not contribute in any way to improving the state of tax law: on the contrary, they actually affirmed its destruction.

- abandonment of the imposition on taxpayers of the obligation to issue and accept so-called structured invoices; in addition to unnecessary expenses, the proposed model of invoicing in this form is flawed and its spread will even lead to a collapse in payments for goods and services supplied,
- limitation and partial repeal of the obligation of taxpayers to send tax records and restoration of the obligation of micro-entrepreneurs to submit only tax returns,
- abandonment of the planned introduction of an obligation to send tax records in income taxes,
- restoration of taxation of salaries paid "under the table."
- removal of gross lobbying disparities in the excise tax rate structure,
- recognition of health insurance premiums as deductible expenses (deduction from the tax base),
- reducing the unnecessary obligation to report domestic tax schemes,
- restoration of subjectivity in the goods and services tax to budget establishments and most local government budget units in the goods and services tax.

4. Conclusions

I purposely do not discuss in this article in detail all the changes mentioned in (3), which should be introduced in individual taxes in order to give rapid fiscal effects. Their opponents are effective and influential and read what I write (which I am somewhat flattered by). When the concepts of these changes are revealed prematurely, they will be effectively blocked and those who make money from the flaws in Polish tax law do not disguise the means they reach for in defense of their profits. Examples are well known: back in 2014, there was a draft of a new law on goods and services tax, which removed all the pathologies of the tax at that time. As we know, it was successfully blocked, because defenders of legislative pathologies are much more effective than those who act in the public interest.

Among the group of the most important and indisputable changes sealing existing taxes are:

- expansion of the subject scope of compulsory split payment to goods and services currently used for tax evasion and extortion of goods and services tax refunds,
- restoration of the obligation to file monthly (quarterly) declarations in income taxes by business entities and by payers of personal income tax,
- imposing specific declaration obligations on excise taxpayers for secondary tax liability,

- introduction of a lump-sum form of taxation on goods and services tax and limitation of the scope of subjective exemption in this tax.

These changes should promote direct settlement and payment of the most important taxes by tax law subjects, rather than on the collection of data by tax authorities for the purposes of control and public supervision, because this is the only way to increase the fiscal efficiency of these taxes as soon as possible.

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