General Rules for Combating Criminal Tax Evasion in Poland

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Abstract: The question of the place of tax crimes in the criminal legislation is currently debatable. The article examines the experience of Poland in the field of legal regulation of liability in the field of tax crimes, and also suggests ways to solve current problems. The authors analyze the Polish legislation and come to the conclusion that it is necessary to improve the current legislation. Especially acute at the moment is the question of taxpayers from the regulatory authorities in case of suspicion of the implementation of a tax crime. It is proposed to modernize the legislation in such a way that it would provide adequate protection for the taxpayer. The purpose of this article is to analyze the features of the application General Anti-Avoidance Rules. The conducted research can be used in the practical activities of services that provide counteraction to tax crime.

1 INTRODUCTION

From 2008 we see the growing interest of all states in the fight against the phenomenon of tax crime establishing various regulations aimed at a possible fight against this phenomenon. These provisions take the form of both general anti-tax crime clauses, which are general provisions, and the form of specific provisions by establishing anti-abusive clauses under provisions relating to individual taxes.

The aim of this article will be to present the history of the development of the general anti-tax avoidance clause under the Polish legal system and to try to answer the question whether such regulations adequately guaranteed protection of the taxpayer's rights against abuse by tax authorities of such clauses. It should be pointed out that in the case of tax avoidance, the fiscal interests of the state and the economic interests of the taxpayers themselves clash.

The tax avoidance clause should aim to reconcile the interests of both taxpayers and the State Treasury. This state of affairs is possible only if the tax authority is entitled to prevent the taxpayer from gaining the tax benefit resulting from the abuse of law by the taxpayer. On the other hand, the taxpayer should have legal instruments to protect it against arbitrary and unjustified application of the anti-tax avoidance clause (tax crime). The aim of this article is to attempt to present the history of the development of the general tax evasion clause in the Polish legal system and to find an answer to the question of the sufficiency of guarantees of such provisions to protect the rights of taxpayers from abuse by the tax authorities.

2 MATERIALS AND METHODS

The study was conducted using the following general scientific epistemological methods, in particular, logical, system-functional, situational, comparison, grouping, and monographic survey. The analysis of the Polish and Russian legislative bases regulating the issues of taxation, tax control and control over attempts to evade tax obligations is carried out, and all the changes made to the legislative and subordinate acts of both countries are evaluated on the basis of the method of retrospective analysis.

The materials for the study were the fundamental provisions, concepts and applied developments contained in the publications of leading scientists in

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the field of tax evasion and the prevention of tax crimes, data from the Internet.

3 RESULTS AND DISCUSSION

As a result of the study, the authors concluded that the current version of the provisions on countering tax crimes sufficiently protects the rights of taxpayers, despite the presence of some inaccuracies in the interpretation of the content of the article itself. Within the scope of this article, the taxpayer has the right to obtain an opinion on security that performs a guarantee and protective function.

3.1 The History of the Regulations on Counteracting Tax Avoidance in Polish Law

Initially, the provisions of the Tax Ordinance Act (so called Polish Tax Code) did not contain any regulations that would constitute a form of an anti-tax avoidance clause. The tax authorities referred to the provisions of the Civil Code Act in order to determine the possible invalidity of given legal acts undertaken by taxpayers in order to obtain a tax advantage.

Pursuant to Art. 58 § 1 of the Civil Code, an activity aimed at circumventing the act is invalid. In this provision, the legislator provided for the absolute invalidity of a legal act aimed at circumventing the act. This means that an act aimed at circumventing the act is invalid by virtue of the law itself and from the moment it was performed.

Problematic in interpreting art. 58 § 1 of the Civil Code it seems, first of all, to determine what is an activity aimed at circumventing a statute and how to understand the very concept of an act in this provision. The mere act of circumventing the Act is understood as such behavior of the parties to the legal transaction, which was aimed at violating statutory orders or prohibitions (Swierczynski, Zalucki, 2019). Such breach, however, is not committed through unlawful contractual provisions, but only by seeking the final result of the contract as contrary to statutory orders or prohibitions (Safjan, Pietrzykowski, 2020).

The dominant view in the doctrine of civil law is that an act should be understood as a catalog of written sources of law occurring in the Polish legal system, contained in Art. 87 sec. 1 and sec. 2 of the Polish Constitution (Trzaskowski, 2018). While such a view does not raise doubts at the level of civil law, it would contradict the principle of exclusivity of the act in establishing structural elements of taxes, contained in Art. 217 of the Polish Constitution. First of all, it should be pointed out here that it would be possible to declare the invalidity of an act that violates only an act of local law or a regulation, which would conflict with the impossibility of influencing the taxpayer's legal and tax situation with normative acts below the statutory rank. This means that under the tax law, a statute within the meaning of Art. 58 § 1 of the Civil Code one should understand normative acts of a rank no lower than the statutory one.

It follows from the above that the tax authorities relied on this provision to declare the absolute invalidity of a given act undertaken by the taxpayer in order to reduce the amount of the tax liability. The justification for such actions by tax authorities was to be the principle of the autonomy of tax law, which would make it possible to determine the ineffectiveness of civil law actions in tax law on the basis of whether they do not constitute activities aimed at tax evasion.

Nevertheless, the real economic goal was the limit when examining the possibility of circumventing the tax act by a given legal act. The real economic goal should be considered the striving of the parties to the contract to shape it in a typical manner, primarily within the realities of economic trading. If the contract did not lead to any uneconomic behavior by one of the parties, although its conclusion reduced the amount of the tax liability, such a contract could not be considered to evade tax law. A similar view was shared by the judgments of the time, because if the main purpose of the agreement was to obtain a tax advantage, then such an agreement is invalid as it is aimed at evading tax law.

This view was also endorsed by the doctrine of financial law, because, according to Krzysztof Radzikowski, a taxpayer is not obliged to choose such a solution in trade that would lead to the highest possible tax liability (Radzikowski, 2007). This view should be approved of, because the need for the taxpayer to choose such a legal act as it would lead to the maximization of the tax burden would be contrary to Art. 21 of the Polish Constitution which guarantees the protection of property rights and Art. 22 of the Polish Constitution, which provides for the restriction of the freedom of economic activity only due to important public interest. An indispensable element of economic activity, emphasized in its definition, is its profitability. This means that adopting the view that the taxpayer must choose such solutions that lead to the maximization of the tax burden would violate the essence of economic activity, which would constitute an unlawful violation of the constitutional freedom of economic activity.

Such reasoning of the tax authorities was supported by administrative courts, which, in their opinion, using the provisions of civil law or interpreting provisions from the point of view of civil law cannot lead to obtaining tax benefits for taxpayers. Nevertheless, the sanction of performing a legal act in order to obtain a tax advantage by the taxpayer was not the absolute invalidity of the legal act, but only the possibility of non-compliance by the tax authorities with the provisions of legal acts aimed at circumventing fiscal regulations.

The Polish legislator decided to amend the Tax Ordinance Act by adding Art. 24a and art. 24b, which regulated the tax consequences of concluding an apparent legal transaction and the tax consequences of a legal transaction concluded to circumvent tax law. As regards those provisions, P. Karwat rightly argued that those provisions could only apply in cases where the taxpayer deliberately intended to achieve, through the contract in question, primarily tax advantages and not economic objectives (Karwat, 2003). It is not always dependent on the will of the taxpayer to achieve a given goal contained in the contract, which justified the impossibility of penalizing the taxpayer to some extent under the tax law for achieving a different economic effect of the concluded contract, which was not influenced by this effect.

Art. 24a of the Tax Ordinance Act was to constitute the rules of conduct for tax authorities in a situation where the parties to the contract committed a hidden legal transaction that would lead to a tax advantage. In such a case, the tax authorities could derive the tax consequences from a hidden legal transaction, instead of from the legal transaction performed.

Art. 24b of the Tax Ordinance Act regulated the conduct of tax authorities in a situation where the parties concluded an agreement whose purpose would be mainly to reduce the amount of the tax liability, increase the loss, increase the overpayment or tax refund. In such a situation, if the parties have achieved the intended economic result for which another legal act is appropriate, the tax consequences arise from that other legal act.

However, such a solution did not gain the approval of the Constitutional Tribunal, which ruled on 11 May 2004 that Art. 24b § 1 of the Tax Ordinance Act is inconsistent with Art. 2 and art. 217 of the Polish Constitution. In the opinion of the Constitutional Tribunal, the provision of Art. 24b § 1 of the Tax Ordinance Act was inconsistent with the Constitution of the Republic of Poland in the scope enabling the tax authorities to determine the content of vague terms used in this editorial unit and to what the wording of Art. 24b § 1 of the Tax Ordinance Act does not impose on the tax authorities the need to consider blurred terms in a manner that ensures a stable line of jurisprudence. Moreover, the provision of Art. 24b § 1 of the Tax Ordinance Act did not regulate the type of settlement issued in the event of concluding a contract to circumvent tax law. Nevertheless, the judgment of the Constitutional Tribunal did not determine that any anti-tax avoidance clause would be inconsistent with the Polish Constitution. This means that the legislator was still empowered to introduce a clause preventing the simulation of legal acts that affect the possible occurrence of the tax obligation and the amount of the tax liability, as well as obtaining tax returns and reductions by means of legal actions undertaken only for this purpose (Olesiak, Pajor, 2020).

Another solution provided for by the legislator, which was to replace the existing Art. 24a and art. 24b of the Tax Ordinance Act is the introduction from 1 September 2005 of Art. 199a of the Tax Ordinance Act, which regulates the interpretation of declarations of will in tax proceedings and the tax consequences of concluding a hidden legal transaction. The wording of Art. 199a of the Tax Ordinance Act obtained the approval of the Constitutional Tribunal in the scope of § 3, which ordered the tax authorities to apply for establishing the existence or non-existence of this legal relationship or right, when, on the basis of evidence collected in the course of the proceedings, doubts arose as to the existence or non-existence of a legal relationship or the right to which they are related tax consequences. Moreover, the Constitutional Tribunal rightly pointed out that Art. 199a of the Tax Ordinance Act it does not prejudge any material and legal consequences of taxpayers' actions, and therefore does not constitute a tax evasion clause. Moreover, Art. 199a of the Tax Ordinance Act it cannot constitute an independent legal basis for recognizing a given legal transaction as circumventing tax law and the possibility of disregarding these tax consequences by tax authorities.

Art. 199a of the Tax Ordinance Act it may be used only in the course of pending tax proceedings and for its use. This means that it is not possible to adjudicate pursuant to Art. 199a Tax Ordinance Act on the general invalidity of a given legal transaction in terms of the legal and tax situation of the taxpayer. Rightly about Art. 199a Tax Ordinance Act the Provincial Administrative Court in Wrocław said that this article is of a guarantee nature, as it protects taxpayers against self-recognition by the tax authorities that a

given legal act was performed in order to avoid taxation.

3.2 Art. 6 of the ATAD Directive and Polish Regulations on Counteracting Tax Avoidance

The introduction of anti-tax avoidance regulations to the Polish order, including the introduction of a general anti-tax avoidance clause, coincided with the entry into force of the provisions of Directive 2016/1164 of the European Union Council of July 12, 2016 laying down provisions aimed at counteracting tax avoidance practices, which have a direct impact on the functioning of the internal market (ATAD directive). Pursuant to Art. 6 of the ATAD Directive, the Member States of the European Union had to implement an anti-avoidance clause in their laws on corporate income tax.

According to the EU legislator, expressed in Recital 11 of the ATAD Directive, general anti-tax avoidance provisions should apply to arrangements that are not genuine. This means that the anti-tax avoidance clause should only refer to such legal transactions that are aimed solely at tax avoidance. If a legal act is performed for any economically justified purpose, the EU legislator orders to refrain from applying the anti-tax avoidance clause.

Moreover, the EU legislator emphasized in the content of recital 11 of the ATAD Directive that the taxpayer is not obliged to choose such a form of legal transaction that would lead to the maximization of the tax burden. The taxpayer should be free to design the legal transaction that would be most effective in his business. The only condition is only the performance of a legal transaction justified by the achievement of an economic objective, and not only a tax advantage. For if the activity is real, then in such a situation the taxpayer may rightly receive a tax advantage (Jankowski, 2020). Błażej Kuźniacki spoke rightly regarding the content of recital 11 of the ATAD directive, who believes that the recital of the directive, as an element created in the course of legislative work on the directive, should be taken into account, as this is the Vienna Convention on the Law of Treaties (Kuźniacki, 2020).

The content of the GAAR clause itself is governed by Art. 6 sec. 1 of the ATAD Directive, which allows the tax authorities of Member States to disregard such agreements whose main purpose or one of the main purposes is to obtain a tax advantage that is contrary to the object or purpose of the applicable tax law. The Polish legislator chose the wording almost identically in Art. 119a § 1 of the Tax Ordinance Act, which prevents a taxpayer from obtaining a tax advantage, if the achievement of this benefit, contrary in the given circumstances to the object or purpose of the tax act or its provision, was the main or one of the main purposes of its implementation, and the method of operation was artificial.

However, the lack of identity between these definitions is indicated by Błażej Kuźniacki, who believes that the content of the Polish definition distorts the meaning of the definition from the ATAD directive, since the wording of 119a § 1 of the Tax Ordinance Act shows that any attempt to minimize the tax burden by the taxpayer is irrational (Kuźniacki, 2020). While it is impossible to disagree with the view of Błażej Kuźniacki that every taxpayer plans to undertake activities in a manner leading to maximization of profit, it should be noted that the purpose of the anti-tax avoidance clause is to counteract such activities that are mainly undertaken with the minimization of tax burdens. and not with the achievement of any equivalent performance being the subject of a given activity. The clause in Art. 119a § 1 of the Tax Ordinance Act applies to such activities, where the desire to avoid tax prevails over the aspects that are the subject of a given contract.

A similar view on the Belgian implementation of the ATAD directive is put forward by Philippe Malherbe, who believes that every entrepreneur will try to avoid taxation because it is in his economic interest (Malherbe, 2019). However, such a view is too far-reaching, as it would lead to the possibility of considering a given activity as an attempt to avoid taxation only because the activity is performed in the course of trade. Such an understanding of Art. 6 of the ATAD Directive would not be acceptable from the point of view of the principle of trust (one of the principle of tax proceeding) referred to in Art. 121 § 1 of the Tax Ordinance Act.

3.3 Guarantees to Protect the Taxpayer's Rights When Applying the Anti-tax Avoidance Clause

The provisions on counteracting tax avoidance for the first time introduced by the Act of 13 May 2016 amending the Tax Ordinance Act and certain other acts, in addition to the general anti-avoidance clause itself, also contained provisions defining the understanding of individual elements of this clause, and also contained guarantees to protect the taxpayer's rights against the unjustified use of the anti-avoidance clause by tax authorities. In the period between the loss of binding force of Art. 24b of the Tax Ordinance Act pursuant to the judgment of the

Constitutional Tribunal, and the introduction of the anti-tax avoidance clause pursuant to the Act of 13 May 2016, tax authorities were unable to apply any anti-avoidance clause. The limit of tax optimization was only for the parties to the contract to make the concluded contract effective in the light of the provisions of the Civic Code, but only within the limits of art. 199a of the Tax Ordinance Act in connection with Art. 83 of the Civil Code. The provisions of the Act - Tax Ordinance did not contain any reference to the possibility for tax authorities to recognize a legal transaction as absolutely invalid under Art. 83 of the Civil Code.

Based on Article. 119a § 1 of the Tax Ordinance Act, the activity does not result in the achievement of a tax advantage, if the achievement of this benefit, contrary in the given circumstances to the object or purpose of the tax act or its provision, was the main or one of the main purposes of its performance, and the method of operation was artificial. The Polish legislator decided to define all elements of this definition for the first time in order to ensure the potential uniformity of jurisprudence required by the Constitutional Tribunal.

Art. 119a § 3 of the Tax Ordinance Act constitutes a model of an appropriate activity as such, in which an entity could, in the given circumstances, perform if it acted reasonably and was guided by lawful purposes other than achieving a tax advantage contrary to the object or purpose of the tax act or its provision, and the manner of operation would not be artificial. Appropriate action may also consist in failure to act.

In art. 119c the Tax Ordinance Act the legislator defined the concept of an artificial activity, and also indicated examples of activities that could be considered artificial. The indication of examples of activities corresponds to the principle of providing taxpayers with the possibility of predicting the tax consequences of their actions, which was expressed by the Constitutional Tribunal. Pursuant to Art. 119c § 1 of the Tax Ordinance Act, the method of operation is not artificial if, on the basis of the existing circumstances, it should be assumed that an entity acting reasonably and guided by lawful goals would use this method of operation predominantly for justified economic reasons.

In the justification to the draft act, the legislator indicated that its aim was to counteract both the artificiality of activities in legal and economic terms. In legal terms, artificiality consists in its excessive complexity. In economic terms, an artificial transaction is considered to be a transaction in which there is no economic substance. It seems that only the fulfillment of both the legal and economic approach to artificiality determines its artificiality within the meaning of Art. 119c the Tax Ordinance an artificial activity is an activity in which the legal institutions applied lead to a distortion of the economic justification of such an activity. This means that activities are not undertaken in order to conclude a given contract and obtain equivalent benefits by its parties, but only to obtain a tax benefit.

Moreover, under the Italian legal order, it is artificial (in the case of Italian law there is the term "non-economic") "inconsistency between individual transactions and the ratio legis of the transaction as a whole or the use of legal instruments that contradict the logic that would normally apply under market" (Cannas, 2020). This approach of the Italian legislator should be appreciated, because the tax authority should only examine the legal aspects of a given activity. The sole determination of the economic sense of a given activity should be left to the will of the taxpayers as parties to the activity. The parties to the transaction know best what forms of activity are most economically beneficial for them, and the tax authority should only be authorized to investigate whether such a form leads to the abuse of tax law in order to significantly improve or even ensure the economic efficiency of a given activity only by using the abuse of tax law leading to avoidance of taxation.

Nevertheless, doubts may be raised by art. 119a § 1 of the Tax Ordinance Act reference to a tax advantage "which is, in the circumstances, contrary to the object or purpose of a tax law or a provision thereof". According to Hanna Filipczyk, the point here is that the parties to a given legal transaction do not lead to the fact that what the legislator intended to tax would not be taxed (Filipczyk, 2020). This seems to be the correct view, since the parties to a given legal transaction should not be empowered to regulate their legal relationship in such a way that would lead to a tax advantage. The economic justification for performing a legal transaction in a given way should not be solely the achievement of a tax advantage. This view justifies the introduction of a general anti-tax avoidance clause. This is without prejudice to the right of the parties to a legal transaction to shape it in the most effective manner for both parties. However, the achievement of a tax advantage cannot be the only or definitely a significant element of the effectiveness of a given legal transaction for both parties. When determining whether the achievement of a tax benefit would definitely be a significant element of the effectiveness of a given activity, it should be decided whether without this benefit the parties would have performed this activity. If not, such an activity

undoubtedly constitutes tax avoidance. Similarly, Mariusz Stefaniak believes that an activity that is contrary to the object or purpose of the tax act or its provision will not take place when "the achievement of the tax benefit was not important for the taxpayer or the significance of the achievement of such an advantage was less than the importance of other determinants of the activity" (Filipczyk, 2020).

While the very understanding of both the tax advantage and the artificial method of operation has been defined by the legislator, the legislator has not regulated what to understand as the object or purpose of the tax act or its provision. According to Andrzej Gomułowicz, this way of drafting both Art. 119a and art. 119c of the Tax Ordinance Act violates the constitutional principle of loyalty, i.e. the principle of the taxpayer's trust in the state and the law it enacts by using too frequent imprecise evaluation phrases (Gomułowicz, 2019). This view is not entirely accurate. While unquestionable tax law requires compliance with the principle of specificity of law and proper legislation, it is impossible to ensure the wording of the general clause that would allow its application in specific cases without interpreting it in the individual case of a given taxpayer. In the doctrine, Jakub Jankowski believes similarly, in his opinion, unclear evaluation phrases will enable tax authorities to take action in the event of a new, unknown form of tax avoidance (Jankowski, 2020). The legislator in Art. 119c § 2 of the Tax Ordinance Act formulated a catalog of examples of activities that may be considered artificial and, consequently, lead to the application of the anti-tax avoidance clause.

In the context of Dutch legislation, an important problem was pointed out by Federica Casano, who, in her opinion, the Dutch anti-avoidance clause refers only to the violation of the purpose or object of the tax act constituting an element of the Dutch legal order, unless a given activity violates the Dutch tax regulations as well (Casano, 2019). A similar view should also be made under the Polish Act - Tax Ordinance Act, which gives a different meaning to the concepts of the tax act and the provisions of tax law. Agreements on the avoidance of double taxation or other international agreements ratified by Poland do not fall within the scope of the tax act, but only the provisions of tax law. This means that the mere breach of a ratified international agreement does not entitle to the application of the tax avoidance clause, unless a provision of the Polish Tax Act is breached. The fact that the international agreements ratified by Poland are higher than the statutes in the hierarchy of sources of law does not mean that a breach of only a ratified international agreement could be the basis for the application of the tax avoidance clause. This is indicated by Art. 84 and art. 217 of the Constitution of the Republic of Poland, which provide that the imposition of taxes and the determination of their structural elements may only take place by statute.

In the event that in a given tax case it was possible to issue an administrative decision in which Art. 119a of the Tax Ordinance Act, then in such a case tax proceedings, tax control or customs and fiscal control may be taken over or initiated by the Head of the National Revenue Administration (KAS). Such a solution should be assessed positively from the point of view of the current Polish jurisprudence regarding the anti-avoidance clause, because then the taxpayer is aware that it is possible to apply tax sanctions referred to in art. 119a the Tax Ordinance Act.

The most important guarantee of protection of the taxpayer's rights in the proceedings taken over by the Head of KAS is the possibility for him to refer to the Council for Counteracting Tax Avoidance. Moreover, pursuant to Art. 119h § 2 of the Tax Ordinance Act, the taxpayer, in an appeal against a decision to which the anti-avoidance clause has been applied, may request the Head of KAS to apply to the Council for an opinion on a given case. Moreover, in the course of examining a given matter by the Council, both the Head of KAS and the taxpayer are entitled to provide explanations and information regarding this matter.

Moreover, pursuant to Art. 119j the Tax Ordinance Act a taxpayer other than a taxpayer against whom a decision was issued using the anti-avoidance clause is entitled to correct the declaration for the tax consequences of the decision and may apply for overpayment or tax refund.

Another guarantee for the protection of the taxpayer's rights is the possibility for the taxpayer, against whom a decision was issued using the anti-tax avoidance clause, to issue a decision specifying the conditions for withdrawing the effects of tax avoidance. The purpose of this legal institution is to provide the taxpayer with the possibility of withdrawing from the effects of tax avoidance in the event that no tax proceedings are pending that would enable the taxpayer to correct the tax return.

The decision in this matter is issued by the Head of KAS, who in the content of the decision specifies the conditions that must be met by the taxpayer in order for the decision to be withdrawn against him. Moreover, the Head of KAS may ask the interested party to clarify his position, doubts as to the data contained in the application, or the Head of KAS may organize a consultation meeting on this matter.

The last guarantee of protection of the taxpayer's rights, provided for by the legislator in the provisions on the anti-tax avoidance clause, is the possibility for the taxpayer concerned to apply to the Head of KAS for a protective opinion. If the taxpayer receives a security opinion, which shows that the activity planned by him does not constitute tax avoidance, then compliance with the protective opinion may not hurt the taxpayer before changing it. This means that if the taxpayer performs an activity marked in the protective opinion, the Head of KAS may not apply the anti-tax avoidance clause to this activity. This is also confirmed by Art. 119b § 1 point 2 of the Tax Ordinance Act.

Moreover, Maciej Ślifirczyk rightly spoke about the ratio legis, in his opinion the introduction of the protective opinion was aimed at preventing the use of individual interpretations to confirm that the facts that were used for tax avoidance were lawful (Ślifirczyk, 2018). In his opinion, taxpayers could obtain interpretations confirming the lawfulness of the planned activities by applying for individual interpretations to specific facts. However, the facts covered by the requests for individual interpretation were recognized by the Director of the National Tax Information separately from each other. Currently, such a solution is impossible. This is mainly due to Art. 119f § 1 of the Tax Ordinance Act, which allows for the recognition of tax avoidance of a set of related activities performed by both the same and different entities.

However, the legislator did not regulate what should be understood as "related activities." Most likely, it is about such grouping of activities, the performance of which, according to the intentions of taxpayers, will lead them to obtain a tax benefit. in themselves, they do not constitute a form of seeking to avoid taxation, but would serve to enable an activity constituting a form of tax avoidance - such activities would be ancillary to activities directly constituting tax avoidance. The same solution to art. 119f § 1 of the Act is found in Dutch law, which also makes it possible to consider a set of related activities as tax avoidance. Regarding the possibility of considering a set of related activities as a form of tax avoidance, the Dutch doctrine expresses the view that they constitute tax avoidance when the desire to avoid tax avoidance. taxation would be the main element determining the choice of such a method of conducting the transaction (Hemels, 2016).

In the opinion of the Supreme Administrative Court, the essence of the protective opinion is not to assess the position of the applicant whether the action taken by him constitutes tax avoidance, because it is the Head of KAS who must assess the potential admissibility of applying the anti-tax avoidance clause in a given factual state. When assessing a given activity, the Head of KAS should consider the circumstances of this activity in terms of its economic justification and the expected economic and tax benefits resulting from its performance.

It can be stated that a significant modern trend in the activities of tax administrations is the policy of ensuring the interests of the budget while respecting the economic interests of bona fide taxpayers. So, in Russian practice in 2017, Article 54.1 of the Tax Code enshrines the concept of an unjustified tax benefit, which is designed to counteract the reduction of tax liabilities by distorting economic facts and circumstances of real activity.

It should be noted that in Russia, the principle of the presumption of good faith of taxpayers operates as a fundamental principle of legislation on taxes and fees, which requires the tax authorities to substantiate the facts of violation of the law and provide appropriate evidence. Since the concept of an unjustified tax benefit is based on proof of the fact of deliberate actions of the taxpayer, technical errors in calculating tax liabilities do not entail the application of Article 54.1. At the same time, as a result of the amendments made to the tax legislation, the existing approaches to tax audits were subjected to conceptual revision by strengthening the analytical component in choosing the object of control, actively introducing digital technologies into the methodological toolkit for identifying possible evasion, and substantiating new principles for collecting evidence of aggressive tax optimization.

At the same time, the changes in the law did not formally lead to the expansion of the powers of the tax authorities, and the effectiveness of tax audits is ensured by special methods of identifying violations committed by the taxpayer. First of all, tax control is focused on identifying signs of a deliberate reduction by the taxpayer of the tax base and (or) the amount of tax payable as a result of distortion of information about the facts of economic life or objects of taxation reflected in accounting and tax reporting. Typical signs of such actions are the creation of various schemes aimed at the unjustified application of reduced tax rates, preferential taxation regimes, the terms of international treaties, and the execution of imaginary or sham transactions. Methods for distorting tax accounting data are reduced to understating revenue, reflecting deliberately inaccurate information about taxable items in tax calculations, including supposedly performed transactions (unrealistic transactions).

Russian tax legislation postulates the rule that the facts of violation of tax legislation by counterparties, doubts about the reliability of primary documents if they are signed by unidentified persons, as well as the possibility of other legal registration of transactions cannot be considered as confirmation of an unjustified tax benefit. In this regard, the tax authorities are obliged to reliably establish a sufficient amount of evidence that, in aggregate, testified to the intentionality of the taxpayer's actions. As such evidence, confirmation of such facts is used as:

— lack of economic opportunity for the disputable counterparty to fulfill its obligations;

— the absence of expenses necessary for the fulfillment of the assumed obligations under the disputable transactions;

— registration of a disputed counterparty after the conclusion of an agreement with a taxpayer;

— absence of controversial counterparties at the place of state registration and addresses declared in primary documents;

— tax returns of disputed counterparties are submitted with minimum tax amounts;

— the officials of the disputed counterparties do not appear in the tax authorities on a summons for interrogation;

— disputable counterparties use a closed settlement cycle, transferring funds to the same persons, mainly in the form of borrowed funds, which, as a rule, are returned to the beneficiaries of the applied scheme.

In this regard, tax administration in Russia is focused on concretizing in the materials of tax audits the actual actions of the taxpayer, his officials and affiliates, proving intentions to cause damage to the budget system. To this end, the tax authorities, within the framework of tax control measures, are guided by the identification of circumstances indicating the awareness of the illegal nature of the actions of specific persons, for which they are subject to research such issues as: determining the essence of the admitted distortions in the calculation of taxable indicators (tax amount), identifying causal links between the misstatements and specific actions of the taxpayer, the presence of intent to benefit from the reduction of tax liabilities, real harm to the budget system.

Collecting information to establish the above facts requires the use of a wide range of diverse information, which is ensured by the integration of modern information technologies into all business processes of tax administration. To this end, since 2012, within the framework of the large-scale state program "Public Finance Management and Regulation of Financial Markets" being implemented in Russia, tax administration procedures have been actively improved through the introduction of automated control systems and counteraction to tax evasion. The plans of the tax authorities of Russia for 2021-2023 announced testing of modern analytical tools to ensure the identification of the hidden tax base and the observance of the legal rights and interests of taxpayers, remote automated control, analysis and generalization by specialized information systems of information about the taxpayer's transactions in order to independently calculate tax liabilities small businesses. The effectiveness of automated control is illustrated by the work of an automated complex for verifying the reliability of value-added tax (VAT) calculations based on a comparison of taxpayers' information on completed transactions and issued invoices. If the mirror principle of VAT “accrual-deduction” does not coincide, tax authorities promptly identify both technical errors and potential tax frauds. Thus, the use of digital technologies increases the transparency of tax processes, ensures the rationality of planning control efforts and focus on those areas of activity where the risk of tax violations is increased.

Information systems of the Federal Tax Service of Russia use large-scale volumes of information, including data streams accumulated by various authorities and administrations, law enforcement, customs and other fiscal authorities. At the same time, a unified technological base, in addition to facilitating control procedures in order to increase the volume of tax revenues and ensure the prevention of violations of tax legislation, provides a reduction in transaction costs for taxpayers.

4 CONCLUSIONS

The wording of the anti-tax avoidance clause in the Polish legal order has gone a long way - from applying only the provisions of the Act - Civil Code to creating a separate chapter of the Act – in the Tax Ordinance Act, which regulates this matter in detail. The change in the wording of the regulations was also accompanied by the development of guarantees to protect the taxpayer's rights in the event of abuse by the tax authorities of the anti-avoidance clause. Initially, the tax authorities applied the provisions of the Act - Civil Code without any reference in the provisions of the tax law to this act. Moreover, the tax authorities arbitrarily ruled on absolute invalidity of

the transaction, although they were not entitled to do so.

The state of affairs was improved by the judgment of the Constitutional Tribunal, which significantly improved the legal standards accompanying the general clause on counteracting tax avoidance. The Constitutional Tribunal did not rule on the prohibition of regulating such an institution in the Polish legal order, but the taxpayer should be protected against its arbitrary application and should be able to use any legal means of protection against abuses of tax authorities.

It seems that the current wording of the provisions on counteracting tax crimes by taxpayers sufficiently protects the rights of taxpayers, despite some inaccuracies in the interpretation of the content of the clause itself. A taxpayer may obtain a security opinion fulfilling a guarantee and protective function. This will enable the taxpayer to obtain a guarantee that the Head of KAS will not apply to him the effects provided for in the event of tax avoidance by that taxpayer.

One should also appreciate the possibility of withdrawing the effects of the anti-tax avoidance clause against the taxpayer if the conditions indicated by the Head of KAS are met. As a result, a taxpayer who, despite losing financial benefits, will have other, non-tax benefits from such a transaction, will be able to maintain the continued effectiveness of such activities.

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