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ARTYKUŁY

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Countering CIT avoidance in Poland between 2016 and 2019[1]

Przeciwdziałanie unikaniu opodatkowania CIT w Polsce w latach 2016–2019

Abstract

Massive social spending programs embarked by the Government of Poland after 2015 generated pressures to improve tax collection. On top of the well-publicized campaign aimed at narrowing substantial 'VAT gap', fiscal authorities announced substantial progress in countering CIT avoidance, including international profits shifting. Indeed, over the 2016–2019 period nominal CIT revenues — stagnating for previous four years — increased by nearly 50% (from 1.4% to 1.7% of GDP). The purpose of this article is to examine the reasons for the increase in CIT revenues using the analysis of aggregated statistical data, including a set of data on 'large' CIT taxpayers (over EUR 50 million in revenues). The analysis shows that before 2019 the improvement was a micro- rather than macroeconomic effect, with just 30 companies accounting for almost 40% of the net effect. Moreover, those 30 companies were hardly the paragons of international CIT avoidance — for example, the group included the largest State Owned Enterprises (SOE). On the contrary, in 2019 improved CIT collection was achieved by the small and medium taxpayers. All in all, the obtained results suggest that there are no reasons for complacency, as the problem of CIT avoidance by multinationals remains unsolved.

Keywords: CIT, tax, tax avoidance

JEL: K22, K33, K34

Streszczenie

Programy masowych wydatków socjalnych rozpoczęte przez polski rząd po 2015 r. wytworzyły presję na poprawę ściągalności podatków. Oprócz dobrze nagłośnionej kampanii mającej na celu zmniejszenie znacznej „luki VAT" władze fiskalne ogłosiły znaczne postępy w przeciwdziałaniu unikaniu podatku CIT, w tym przerzucaniu zysków w ramach międzynarodowych korporacji. Rzeczywiście, w latach 2016–2019 nominalne dochody z CIT wzrosły o prawie 50% (z 1,4% do 1,7% PKB). Celem niniejszego artykułu jest zbadanie przyczyn wzrostu przychodów z CIT z wykorzystaniem analizy zagregowanych danych statystycznych, także zbioru danych dotyczących „dużych" podatników CIT (ponad 50 mln euro przychodów). Z analizy wynika, że przed 2019 r. poprawa była efektem „mikro", a nie „makroekonomicznym", przy czym zaledwie 30 firm odpowiadało za prawie 40% efektu netto. Co więcej, te 30 przedsiębiorstw/podatników nie odpowiadało za międzynarodowe unikanie CIT — na przykład w tej grupie znalazły się największe przedsiębiorstwa państwowe (spółki Skarbu Państwa). Wręcz przeciwnie, w 2019 r. poprawę ściągalności CIT osiągnęli mali i średni podatnicy. W sumie uzyskane wyniki sugerują, że nie ma powodów do samozadowolenia, ponieważ problem unikania CIT przez międzynarodowe koncerny pozostaje nierozwiązany.

Słowa kluczowe: CIT, podatek, unikanie opodatkowania

Introduction

The substantial shift in the Polish redistributive policies (including the introduction of universal child benefit) required — given the EU's three-percent deficit ceiling — budget revenues adjustments. At the public policy — and indeed public relations — level, efforts aimed at reducing VAT frauds gained top priority. They were informed by the estimates of the so-called tax 'gap' (the difference between theoretically collectable and actually collected tax), amounting to one-fourth of total (theoretical) VAT liabilities. On top of that campaign, wider efforts aimed at improving tax compliance were launched, including attempts to limit CIT avoidance.[2]

Some of those efforts (notably the 2016 introduction of the General Anti-Avoidance Rule, GAAR[3]) resonated with earlier OECD's Base Erosion and Profit Shifting (BEPS) initiative and EU's Anti-Tax Avoidance Directive (ATAD). Others, like separate accounting of profits on capital gains, limits on costs of intangibles (modeled on ATAD thin cap limits) and minimal income tax on commercial real estate[4] had purely domestic origins.

All in all, the frequency of legislative changes and improving revenues data created the impression of a successful anti-avoidance campaign waged by the tax authorities. Indeed, the nominal CIT revenues, fluctuating around PLN 30 billion[5] during 2012–2015, exceeded PLN 50 billion[6] in 2019. In relative terms, it represented growth from 1.4% of GDP in 2016 to 1.7% in 2019 — the last year before the COVID pandemic.

The goal of this paper is to take a closer look at the root causes of the increase in CIT revenues during 2016–2019. Specifically, it examines to what extent the phenomenon can be interpreted as a successful attempt to limit the CIT avoidance by multinational corporations — the very goal of BEPS and ATAD initiatives. The used research methods were empirical and analytical.

Tax avoidance — theoretical issues

Tax avoidance has become a particularly important issue because of the impact it has on national budgets. Avoidance of corporate income tax is of particular significance due to this tax's design as well as the possibilities offered by tax avoidance instruments. The fact that CIT has not been fully harmonized results in differences in the design of the tax in various countries, which undeniably influences tax avoidance opportunities.

There are two ways of understanding tax avoidance. In broad terms, it includes any attempt made by means of legal measures in order to avoid or reduce taxation, which would otherwise be impossible (Linderfalk & Hilling, 2015, p. 25). This means the taxpayer might display several options of behaviour and they would choose one based on the available tax advantages. If it were not for the tax advantages, the taxpayer would not choose that option in the course of normally running their personal or economic business. Tax avoidance in a narrow sense is only understood as an unacceptable reduction in the tax burden (Lang, 2013, p. 201). This means that the taxpayer takes action that does not give rise to a specific tax burden; however, analogous economic effects would be achieved by way of taking steps covered by a specific tax law.

A narrow understanding of tax avoidance is prevalent in continental legal systems, where it is often seen as a circumvention of tax law. In many legal systems, tax avoidance is also referred to as 'indirect violation of tax law'. No prohibitions or orders are directly infringed and formal action permitted by the law is taken but for an objective that is not acceptable within the applicable legal framework. As a result, standards designed to cancel the effects intended by the taxpayer may be put in motion (Miller & Oats, 2016, p. 189).

In the age of globalization, particular attention should be paid to the rapidly developing phenomenon of international tax avoidance. The international dimension of this phenomenon is broader and richer compared to tax avoidance occurring in single countries as the range of available measures and legal possibilities is greater too and, above all, the gravity of the problem is increasing as less and less public income is credited to national budgets because of it (Traversa, 2021, p. 391). The beneficiaries of international tax avoidance are international holding companies whose activities are based on transfers of profit from one country of tax residency to another (including tax havens).

Tax avoidance in international relations results from the liberalization of national economic systems and thus from progressing globalization of the economy (Peeters & Vanneste, 2020, p. 32). The erosion of barriers to trade and investment combined with the development of new technologies has affected both countries and individual players, forcing them to develop new methods and forms of action. International tax avoidance can lead to four potential situations:

- movement of persons and capital — change of residence of legal persons combined with transfer of all or part of the sources of income or assets;
- movement of persons and lack of movement of capital — taxpayers emigrate without transferring all sources of income and assets;
- lack of movement of persons but movement of capital — this is the most common option that in practice means that only income and assets are transferred;
- lack of movement of persons and lack of movement of capital — these are mostly situations in which a taxpayer does not return or transfer capital to the country of their residence, assuming that their emigration was temporary (Navarro, 2022, p. 348).

There are three basic measures for avoiding taxation in international relations. The first one comes down to the right use of the applicable tax laws that deliberately exempt certain revenues from tax or provide for certain tax reliefs based on the character of business activity or investment (Navarro, 2021, p. 815). The second way is to apply other acts of law that countries apply with respect to investors who placed funds in privileged economic areas, thereby obtaining specific tax advantages. The third measure is the exploitation of double taxation treaties for the purpose of treaty shopping (Miller *et al*., 2017, p. 225).

In view of the above, it should be concluded that the phenomenon of tax avoidance is extremely complex and its assessment essentially depends on the effects, extent, and type of activities undertaken in order to reduce tax liabilities (Kudła, 2013, p. 113). The doctrine, case law, and national tax laws present different views on that matter; however, in principle, they protect the interests of the state first and foremost.

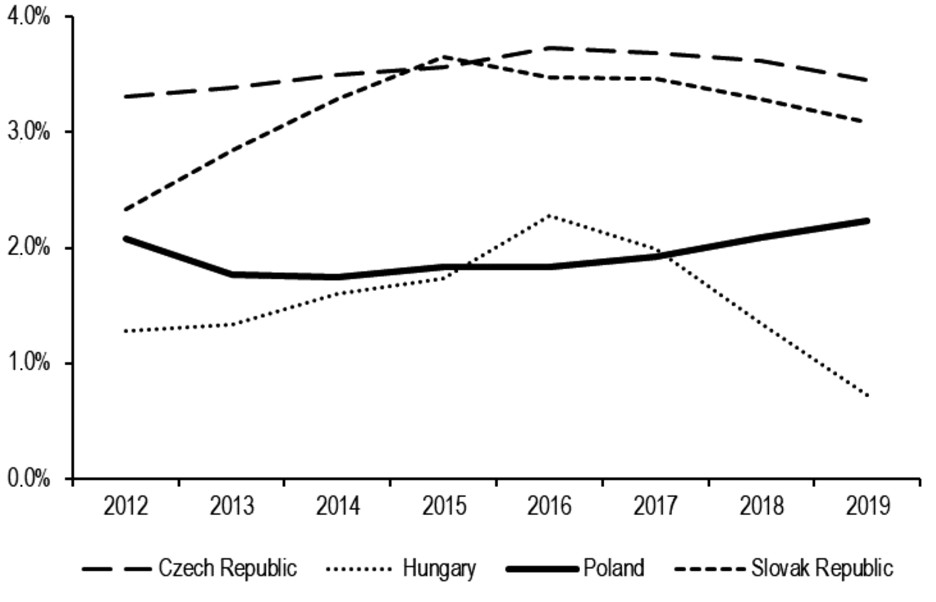
CIT-to-GDP in selected EU jurisdictions — comparative context

To set the stage for in-depth examination of the Polish CIT revenues growth observed since 2016, it is useful to begin with comparative analysis. That in turn requires selection of (i) the appropriate metrics to compare and (ii) relevant benchmarks against which Polish performance could be compared. As of the metric, CIT-to-GDP ratio seems the most suitable tool for such bird's-eye-view comparisons.[7] As of relevant benchmarks, two approaches are worth exploring.

First, it seems natural to compare Poland with its CEE (Central and Eastern Europe) peers from V4 group (Czech Republic, Hungary, and Slovakia, see Figure 1). Here Poland (i) collects substantially lower CIT compared to its neighbors, and (ii) improvement observed since 2016 is hardly impressive given observable changes in other countries.

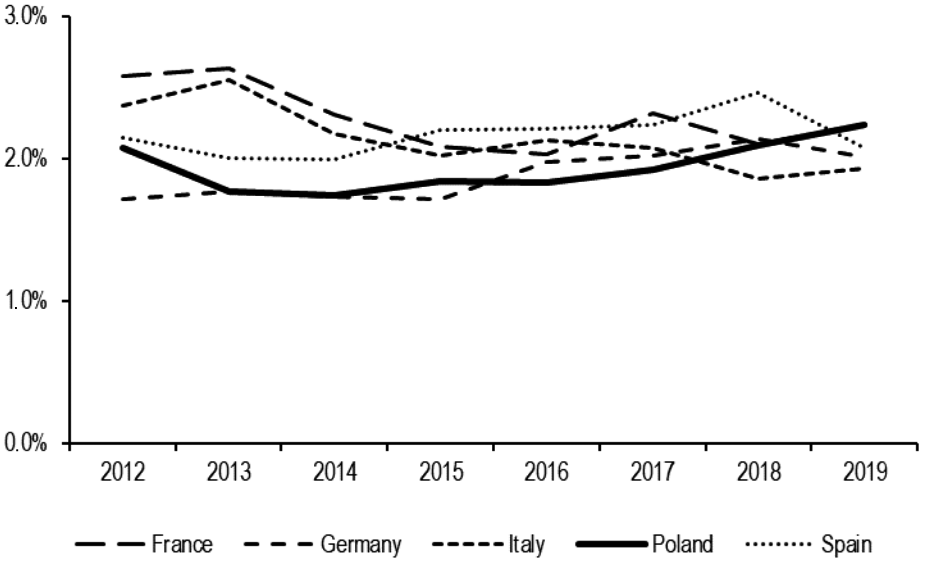
However, at first glance it is visible that CIT-to-GDP in small CEE countries are very volatile — nothing surprising in small open economies. On the contrary, Poland is among five most populous EU economies, likely adding more inertia to the economic data. Compared against this countries, Polish performance looks far more impressive, as it managed to move (slowly, but persistently) from the bottom to the top of the ranking (Figure 2).

Figure 1
V-4 CIT-to-GDP ratio over 2012–2019



Source: OECD Revenue Statistics database.

Figure 2
Five biggest EU member states CIT-to-GDP ratio over 2012–2019



Source: OECD Revenue Statistics database.

CIT revenues — overview of available data

According to the Law on CIT of 15 February 1992[8] CIT revenues finance both central and local[9] budgets. Thereby, central budget revenues constitute only a fraction of the overall revenues. The first category of available CIT revenues data comes from the public finance statistical reports. The Central Statistical Office (GUS) reports central budget CIT revenues,[10] whereas the Ministry of Finance (MoF) provides detailed data on CIT collected in behalf of the local government.[11] The data on CIT revenues, broken down by the government level, are also available in the OECD Revenue Statistics database.[12]

The second category of data refers to the accounting process of CIT calculation, namely from taxpayers' reporting of their revenues, costs, profits (or loses) and CIT due in a given year (CIT-8 forms). MoF provides aggregate data from these reports in the annual reports.[13] Figure 3 summarizes these data, illustrating (i) their general similarity and (ii) discrepancies between the two sources, visible across 2012–2013 and 2015 (as collected revenues exceeded declared CIT due, reported by taxpayers for a given year). What is relevant for the purpose of this paper, both sources agree on the scale of CIT revenues increase over 2016–2018.[14]

In-depth information on the structure of CIT revenues over the same period can be inferred from the unique dataset of 'large' taxpayers published annually by the MoF. The mechanism, designed as a kind of naming-and-shaming *a rebours*, was implemented to the CIT law[15] in article 27b (1) of the CIT law, as amended on 24 November 2017.[16] As outlined in draft law explanatory memorandum,[17] the individual data publication was expected to 'indirectly increase taxpayers' propensity to correctly fulfill their tax obligations'.

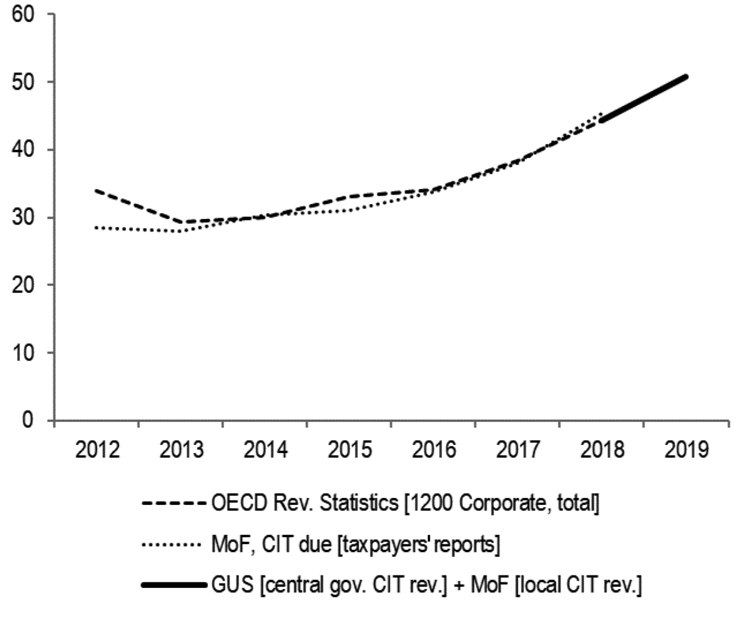
It requires MoF to publish selected accounting data (total revenues, total costs, taxable income — since 2018 broken down in accordance with separate accounting of profits on capital gains — as well as total CIT due) of taxpayers whose revenues exceeded EUR 50 million, as well as all so-called 'capital tax groups' (capital groups allowed to function as a single taxpayer, category including important SOE's).

For the first time the data were published in the second half of 2018, encompassing the 2012–2017 period (data as of 1 June 2018).[18] By law, published annual data are revised quarterly, as final amount of CIT due could differ from initial declarations (e.g. due to the corrections introduced by the taxpayer or tax audit results). The empirical results presented in this paper are based on 31 December 2020 version of the datasets.

Due to the Polish business demographics, it turned out that the 'large' taxpayers accounted for over 60% of total CIT revenues (see Table 2). Crucially, the taxpayers covered in the dataset were responsible for nearly 90% of the CIT revenues growth observed over the 2016–2018 period. Thereby, the dataset is a promising tool for empirical examination of the root causes propelling CIT revenues growth in that period.

For the sake of empirical analysis reported in this paper, the data as of 31 December 2020 were applied to assemble a balanced panel of all 1665 taxpayers covered in each year over the 2015–2019 period (using taxpayer identification number — NIP).[19] The application of the most recent data available aimed at covering plausible corrections to the initial CIT data, resulting from tax administration activities (such discrepancies could account for the differences between the data reported in the Figure 3).

Figure 3
Polish nominal CIT revenues, 2012–2019 (PLN billion)



Source: OECD Revenue Statistics database, MoF and GUS data.

Although the constructed panel covered only 40–48% of total CIT revenues, it nevertheless accounts for over 60% of increase in CIT revenues over 2016–2018 (i.e. PLN 6.4 billion out of PLN 10.1 billion). The panel was then used in order to trace the amount of CIT due in each year and to identify companies responsible for the CIT revenues growth over 2016–2018.

Empirical results — the structure of CIT revenues increase

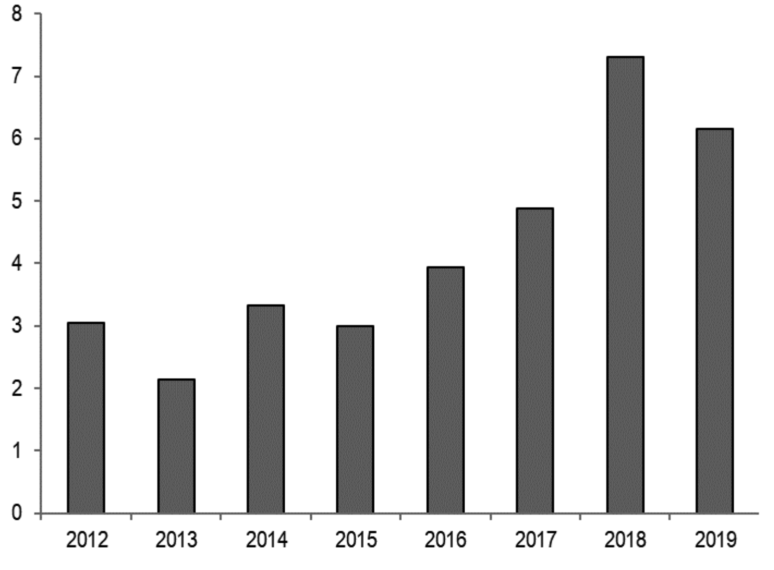
The constructed panel was used to pinpoint taxpayers exhibiting the most dynamic growth in CIT due between 2016 and 2018. For 30 of them, CIT obligations rose more than PLN 50 million. Table 1 summarizes the CIT due declared by those 30 companies over the 2015–2019 period.

Table 1
Total CIT due reported by the 30 taxpayers contributing the most to the 2016–2018 revenue growth (PLN billion)

Year	Total CIT reported by 30 taxpayers
2015	3.17
2016	4.14
2017	5.24
2018	8.04
2019	6.50

Source: own calculations.

Figure 4
Total CIT due reported by the 26 (out of selected 30) taxpayers, for whom 2012–2019 data are available (PLN billion)



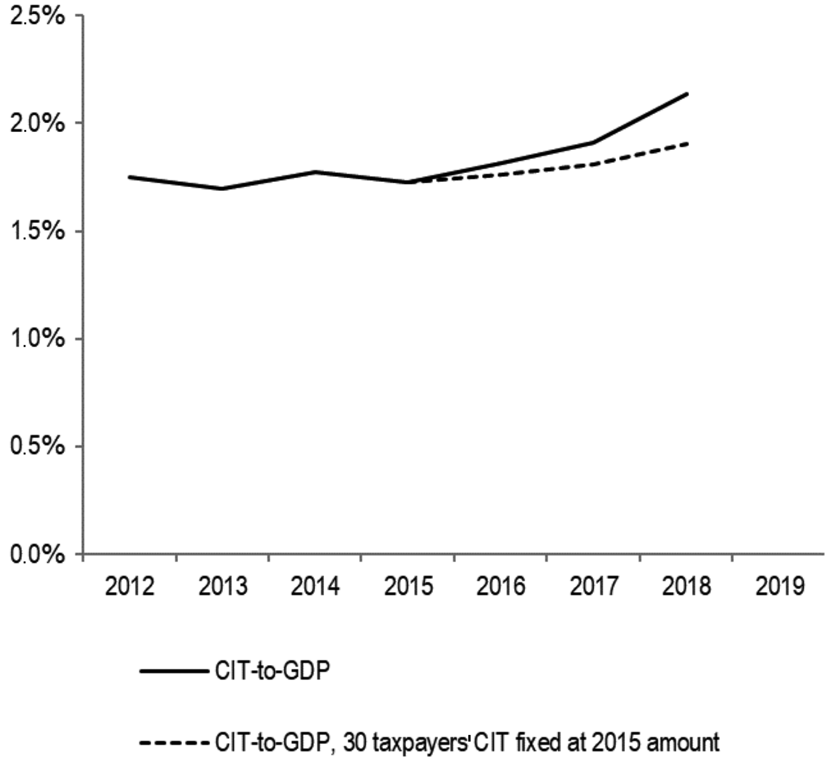
Source: own calculations.

Two observations can be made. First, those companies experienced spectacular growth in taxable profits (they almost doubled over two years, from 2016 to 2018). Second, in the absolute terms, their growth substantially affected the overall picture of CIT revenues changes — especially when related to the GDP. Just 30 taxpayers summarized in the Table 1 accounted for PLN 3.9 billion[20] of additional CIT revenues between 2016 and 2018, which means 38% of the overall growth over that period (amounting to the PLN 10.1 billion).[21] For 26 out of those 30 taxpayers, it is possible to trace CIT due back to 2012. These data plotted on the Figure 4 confirm that growth in taxable income of these enterprises observed after 2015 was rather extraordinary given their past performance.

Assuming that those 30 taxpayers CIT due would remain at their (quite typical) 2015 level of PLN 3.17 billion, the growth in CIT-to-GDP ratio over 2016–2018 would look much less impressive (Figure 5). In other words, it is fair to conclude that before 2019 the improvement was 'micro-' rather than 'macroeconomic' effect — with idiosyncrasies of just 30 enterprises consequential to the overall situation.

On its own, this 'micro–macro' conclusion could not be interpreted in terms of evidence of success or failure in countering CIT avoidance. The successful campaign waged against highly advanced tax optimization of the largest multinationals would also — by definition — be 'microeconomic' — focus on just a few key global players. However, closer inspection of those 30 taxpayers reveals that they are hardly paragons of international tax avoidance. Interestingly, the list includes key State Owned Enterprises (SOE).

Figure 5
Polish CIT-to-GDP ratio over 2012–2019: actual data and counterfactual assuming CIT due of 30 taxpayers remaining at their 2015 level



Source: own calculations.

Table 2
Total CIT due and the number of 'large'* taxpayers over 2012–2019

Details	2012	2013	2014	2015	2016	2017	2018	2019
CIT due of 'large' taxpayers (PLN billion)	17.1	17.9	19.1	19.2	21.6	25.2	30.6	29.9
Number of 'large' taxpayers	1786	2046	2177	2255	2350	2584	2783	2875

* According to the law on CIT, 'large' taxpayer was defined using EUR 50 million revenues threshold.
Source: own calculations.

Another interesting finding offered by the 'large' taxpayers' dataset is slight decline in the overall CIT due reported by these taxpayers in 2019. It is likely that this finding is not driven by the composition effect (e.g. as taxpayers drop out from the database) — the constructed panel of 1665 taxpayers covered during 2015–2019 exhibits almost identical dynamics. The decline is much more visible among 30 taxpayers contributing the most to the 2016–2018 revenue growth (see Table 1).

This dynamic contradicts substantial increase in the overall CIT revenues, plotted in the Figure 3. That in turn could imply that larger part of CIT burden shifted to small and medium companies.

Conclusions

The goal of this paper was to provide in-depth information about the structure of the CIT revenues growth observed in Poland since 2016. It documents that these results were 'micro-' rather than 'macroeconomic' effect — as the substantial part of the effect was driven by just 30 taxpayers. Assuming that those taxpayers CIT due would remain at their (quite typical) 2015 level, the CIT-to-GDP ratio over 2016–2018 would be relatively stable.

On its own, this 'micro–macro' finding is insufficient to draw conclusions on the success or failure of the anti-avoidance policies. After all, the successful campaign waged against highly advanced tax optimization of the largest multinationals would also focus on few key global players. However, closer inspection of those 30 taxpayers reveals that they are hardly paragons of international tax avoidance, as the list includes — for example — the largest State Owned Enterprises (SOE).

It seems that the dynamics behind further CIT revenues growth in 2019 followed a different trajectory. As CIT due from the 'largest' taxpayers leveled-off, the larger part of CIT burden shifted to small and medium taxpayers.

All in all, the obtained results suggest that there are no reasons for complacency, as the problem of CIT avoidance by multinationals remains unsolved. Growth in CIT revenues observed during the last five years should not distract policymakers from this reality.

Notes/Przypisy

[1] Research funded under National Science Centre, Poland grant 2021/41/B/HS5/00225.

[2] For summary of the implemented policies see D. Gajewski *et al.*, 2020.

[3] Journal of Laws of 2016, item 846.

[4] Journal of Laws of 2017, item 2175.

[5] EUR 6.6 billion (1 EUR = approximately 4.5 PLN).

[6] EUR 11 billion.

[7] For example, they are the departure point for OECD *Revenue Statistics 2020 Tax revenue trends in the OECD*, https://www.oecd.org/tax/tax-policy/revenue-statistics-highlights-brochure.pdf (access: 31.10.2022).

[8] Journal of Laws of 1992, No. 21, item 86.

[9] With varying rate at each of the three tiers of Polish territorial division — NUTS 5 *gmina*, NUTS 4 *powiat* and NUTS 3 *województwo*.

[10] They are also provided by the Supreme Audit Office (NIK) annual reports on state budget, https://www.nik.gov.pl/kontrole/analiza-budzetu-panstwa/ (access: 31.10.2022)

[11] https://www.gov.pl/web/finanse/dochody-budzetowe-na-rzecz-jst-i-udzialy-jst-w-podatku-cit (access: 31.10.2022)

[12] https://www.oecd.org/tax/tax-policy/global-revenue-statistics-database.htm, tax category: 1200 Corporate.

[13] https://www.podatki.gov.pl/cit/abc-cit/statystyki-cit/ (access: 31.10.2022)

[14] Unfortunately, as of 1 November 2022 no. 2019 data have been reported.

[15] Datasets available at: https://www.gov.pl/web/finanse/indywidualne-dane-podatnikow-cit (access: 31.10.2022).

[16] Journal of Laws of 2017, item 2369.

[17] See draft law and accompanying documents archived as Sejm document no 1930, VIII term.

[18] https://mf-arch2.mf.gov.pl/web/bip/ministerstwo-finansow/dzialalnosc/indywidualne-dane-podatnikow-cit (access: 31.10.2022).

[19] As publication requirement involves taxpayers whose revenues exceeded EUR 50 million in a given year, companies could easily enter and exit the dataset from year to year. On the other hand, the taxpayer identification number could also change, for example when 'capital tax group' is formed.

[20] EUR 0,87 billion.

[21] EUR 2.2 billion.

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