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MINIMIZATION OF TAX RISK IN TRANSFER PRICING

MINIMALIZACJA RYZYKA PODATKOWEGO W ZAKRESIE CEN TRANSFEROWYCH

Keywords: corporate income tax, double taxation, transfer pricing, capital groups
Słowa klucze: *podatek dochodowy od osób prawnych, podwójne opodatkowanie, polityka cen transferowych, grupy kapitałowe*

Abstrakt

Despite the legislator's indication in the tax regulations of the method of determining the transaction price, Polish taxpayers are not obliged to use them when determining the price of the subject of the transaction, with the exception of advance pricing arrangements. In some situations, the use of statutory methods is impossible, for example due to the lack of access to comparable data or the high degree of complexity of transactions. The article analyzes the factors that contribute to the increase in the tax risk in the area of transfer pricing in connected firms, as well as presents the action that limits or completely eliminates the risk.

Streszczenie

Pomimo wskazania przez ustawodawcę w przepisach podatkowych metod ustalania ceny transakcyjnej, polscy podatnicy nie są zobowiązani do korzystania z nich przy określaniu ceny przedmiotu transakcji, z wyłączeniem porozumień w sprawie ustalania cen transakcyjnych. W niektórych sytuacjach zastosowanie metod ustawowych jest niemożliwe, np. ze względu na brak dostępu do porównywalnych danych lub przez wysoki stopień skomplikowania transakcji. W artykule poddano analizie czynniki, które powodują podwyższenie ryzyka podatkowego w obszarze cen transferowych w przedsiębiorstwach powiązanych, jak również zaprezentowano działania, które to ryzyko ograniczają lub całkowicie eliminują.

INTRODUCTION

Transfer pricing is the price used in the transactions carried out by entities between which there is a capital and family connection, personal or in transactions carried out with entities established management or place of residence in the country or in the territory of use harmful tax competition (so-called tax haven).

Tax risk is a type of business risk associated with occurrence specific sanctions, as well as sub-optimal expenditure control. Being this risk is uncertain as to the tax consequences realized, current or future business operations.

Imprecise regulations, no case law on complex issues in the field of transfer pricing, limited experience of tax authorities in the examination and assessment of transactions concluded in capital groups, they affect increase in the risk of transfer pricing for taxpayers.

The aim of the research was to analyze the factors limiting the tax risk in the field of transfer pricing. The publication attempts to verify the thesis that transfer prices constitute a significant source of tax risk in related entities. Tax procedures and administrative and court sanctions increase the tax risk in this area, while having a transfer pricing tax manual limits this risk, and the conclusion of a price agreement completely eliminates it. The study uses the method of analyzing literature in the field of tax law, economic sciences and management sciences as well as the method of deduction and induction.

THE ESSENCE OF TAX RISK IN COMPLEX CAPITAL STRUCTURES

Concentration of economic potential is to achieve increase of economic efficiency in the frames of the activities undergone in the integrated structures. Among the basic functions of capital groups are also impact and influence on activity spheres of all internal legal and business entities. Links and dependencies in a complex capital structure create a new area of decision-making problems. As a result of enterprises merger, a single decision-making center is created, which is in charge of entire complex capital structure. On the other hand, the enterprises included in a capital group remain legal status and considerable range of economic autonomy. This is also connected to the phenomena of decision-making centers formation, as well as the problem of decision-making discretion by internal business entities. Cooperation between entities in a complex capital structures may include a diverse range of transactions. Practically speaking, all transactions carried out in a market economy can take place between related parties. Consequently, the result is to determine the optimal transfer prices taking into consideration the interests of both the individual internal decision-making centers, as well as the whole capital group [Kozłowska-Makóś, 2014].

Realization of the capital group's goals as an economic entity remains in the exposure to business risk. The changing economic environment is a source of opportunities and threats for enterprises forming a capital group, and the risk itself is generated as a result of many interdependent risk factors affecting the capital group. Depending on the type of risk, the scale of the potential control of the economic entity over its factors is different.

Risk factors from the internal environment, defined as micro factors, remain under the significant influence of the enterprise, while risk factors from the external environment are subject to control only to a minimal extent. A particular type is tax risk, which can not be unequivocally qualified according to the criterion of origin of risk factors. The origin of risk factors suggests that the source of tax risk may be equally the external and internal environment.

Tax risk is both an element of political risk and legal risk. Political risk is related to the way state institutions interact with the national and local dimension. The impact of political risk is carried out by legal regulations, thus the political risk is permeated with legal risk. Legal risk is defined as the possibility of incurring losses as a result of running the company's activity outside the framework of applicable legal provisions or regulations. The legal risk also arises when the company is unable to operate under contracts or even when the company is unable to provide documents that would confirm the compliance of business with the applicable regulations. Expo-sure to legal risk depends on the quality of the legal system. The legal risk will be the greater, the greater the volatility and ambiguity of legal regulations. The consistency in the interpretation of existing regulations by state institutions is also of significant importance.

Tax risk is treated as uncertainty of the company as to the tax consequences of realized, current or future business operations. Lack of certainty may be associated primarily with losses in the financial dimension. In addition to financial losses, the company is exposed to business and criminal losses. Business losses are primarily loss of reputation and market position. Losses in the criminal dimension are the possibility of bearing criminal and fiscal responsibility. External sources of tax risk include unstable tax law, non-uniform tax law and changing tax law interpretation. The internal sources of tax risk are, first of all, the insufficient competence of employees, the lack of effective tax knowledge management of employees, the lack of cooperation in the field of document and information circulation [Ciupek, Kaczmarzyk, Kania, 2016].

The benefits of tax optimization possibilities are one of the motives for creating complex capital structures. A particular threat to business activity conducted by a capital group may be tax risk resulting from the phenomenon of double taxation and tax risk resulting from the use of transfer pricing in related entities.

TAX AVOIDANCE TAX IN INTERNATIONAL CAPITAL GROUPS

International capital groups are the effect of running economic activities of varied scope in different countries. Regardless of whether the group of related entities was established for business or financial reasons, one of the consequences of its operation is the taxation of direct income from activities in various tax jurisdictions. In this context, income tax becomes one of the risk factors for the operations of an international capital group [Ciupek, Kaczmarzyk, Kania, 2016].

Taxation of international capital groups is associated with such phenomena as: tax optimization or international tax avoidance. These phenomena occur in varying intensity and in different forms in particular countries [Gajewski, 2016, pp. 456-457]. All activities of business entities aimed at minimizing tax burdens within the limits of applicable law are referred to as tax optimization (tax planning). Capital groups striving to minimize the tax burden have two options to choose from: tax savings and tax avoidance.

Tax savings involve the use of tax benefits, tax rebates and exemptions offered by the legislator, as well as the selection of the most favorable form of taxation.

Tax avoidance is based on the taxpayer's operation in a legal way, using the legal forms allowed. He will be looking for the most favorable way to minimize tax burdens by using gaps in the law. It is important to distinguish between avoiding taxation from tax evasion. Tax avasion means that the taxpayer violates applicable law. This is punishable.

Noteworthy is the concept of "international tax avoidance" defined as ethical tax planning, which uses legal methods to avoid excessive taxation. Typically, as part of tax optimization in the international market, capital flows through countries offering tax privileges [Kozłowska-Makóś, 2017]. The activities of international capital groups are based on at least several tax laws of individual countries, EU tax law, as well as international tax law. This diversity and multitude of regulations allow related entities to create such a strategy that will use various instruments to optimize, and thus to avoid taxation. In addition, in their tax strategies, capital groups use a number of financial instruments, which often complicate the real verification of transparency and credibility by the tax administrations of individual Member States.

It is worth noting that in today's era complex capital structures use highly advanced tax technologies, which are mainly based on multi-pass hybrid solutions using complex derivative instruments. The multiplicity and complexity of instruments, which at the same time are subject to dynamic "mutation", contributes to ineffective and helpless tax control in individual countries. Another important element of the lack of effectiveness in the fight against international tax avoidance is the lack of a modern holding tax law. The idea of a modern holding tax law should be based on tax constructions satisfying not only international groups guided by honest intentions, but also protecting the state budget interest. The lack of the concept of a modern holding tax law is one of the key reasons for the ineffective state struggle against international tax avoidance.

Undoubtedly, the situation is also complicated by the phenomenon of international harmful tax competition between countries. In intra-EU relations, tax competition should be considered a phenomenon involving the use of various taxation techniques to develop the national economy and prosperity by increasing the competitive-ness of domestic economic activity or attracting foreign investments. Tax competition is a natural consequence of globalization processes, because in the world of growing economic interdependencies taxation has an increasing impact on investment decisions of capital groups. It is an expression of a discrepancy between the interests of a single country (a member state of the European Union) and the interest of all countries (the European Un-ion). More and more often the boundary between harmful and favorable tax competition is difficult to deter-mine. This is particularly noticeable when the Member States (most often neighboring) form their tax policy, basing it on constructions that directly or indirectly influence the decisions of international capital groups regard-ing the change of their tax residence [Gajewski, 2016]. Bearing in mind the above tendencies, it is worth looking at the instruments used to avoid taxation by international capital groups.

SELECTED METHODS OF INTERNATIONAL TAX AVOIDANCE

Aggressive tax planning has been an interest of both the European Union and the OECD for several years. In the OECD report on the transfer of income to tax havens, the potential instruments of aggressive tax planning to which they belong are indicated [OECD, 2013]:

- low tax-branch of a foreign company,
- hybrid entity,
- hybrid financial instrument,
- conduit company,
- derivative.

Low tax-branch of a foreign company may be used to grant loans, sell licenses, patents or provide services to the company's registered office in a country imposing relatively high tax rates. Establishing a plant in a tax haven can be an effective tax avoidance measure when, in the country where the registered office is located, the income of the establishment is exempt from taxation under national tax law or under a double taxation agreement between the state of the registered office and plant.

A hybrid entity is recognized on the basis of the tax law of one country as a corporate income tax payer, and on the basis of another taxpayer's personal income tax.

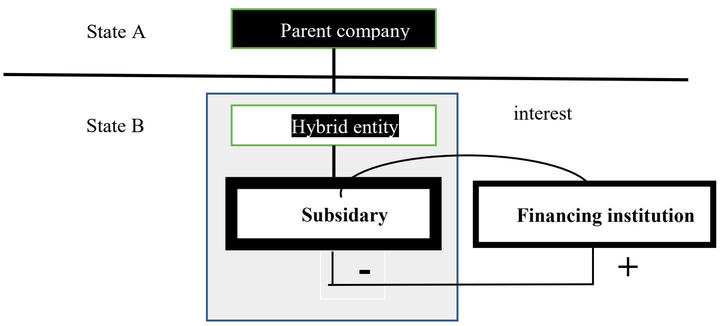
The hybrid financial instrument combines features of both equity and debt instruments. For this reason, it is classified by some countries for tax purposes as an equity instrument and by others as debt.

A conduit company allows to reduce the tax liability thanks to the benefits resulting from the tax avoidance agreements. It is located in a state that has a relatively favorable agreement on the avoidance of double taxation with the state, imposing relatively high tax rates, and being the country of origin of income of a taxpayer who has a residence for tax purposes in jurisdictions that uses harmful tax competition.

A derivative may be used, for example, as a substitute for the payment of interest (eg contracts for the exchange of interest payments) and to avoid the taxation of interest income at source. Tax avoidance is possible if income from this instrument is not classified as interest income or is exempt from taxation under domestic law or the double taxation treaty [Hybka, 2015].

It should be noted that Polish tax law does not use the term "hybrid" in relation to the instrument of financing a related entity. The classification of a financing instrument in the category of share capital or receivables exerts significant effects under tax law, in particular when it concerns the taxation of income earned by the entity financing the company. This entitles the tax authorities to determine the actual and not formal legal nature of the given financing instrument, which may lead to a change in the legal qualification of the financing instrument from the "share capital" category to the "debt" category. This entails an automatic change of the legal qualification for tax purposes of income from interest into income from participation in the company's profits, i.e. reclassification. This treatment is only aimed at limiting the erosion of the tax base of the related entity [Kozłowska-Makóś, 2017]. One of the forms of financing in the form of a hybrid instrument is an indirect loan (see Fig. 1)

Figure 1. Tax avoidance with the use of a hybrid entity. (Unikanie opodatkowania z wykorzystaniem podmiotu hybrydowego).



Source: own elaboration (opracowanie własne)

In Figure 1, the parent company holds 100% shares in a hybrid entity located in another country. A hybrid entity borrows from a financial institution. Interest on this loan can be deducted as a deductible cost in the state of the hybrid entity's location. At the same time, the right to deduct them is vested in the parent company, because a hybrid entity in the country of its location is considered to be a non-legal entity. These types of aggressive tax avoidance mechanisms can take on a more complex form and use a larger number of hybrid instruments.

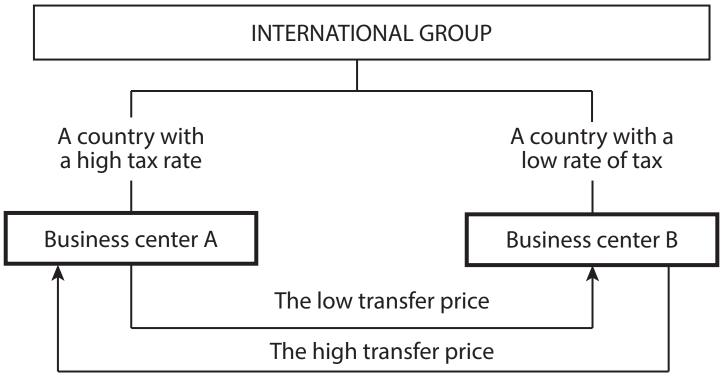
The appropriate shaping of transfer prices may also be used for tax optimization purposes. At that time, the parent company is trying to shape the costs and revenues of subordinate entities using transfer pricing so that the tax burden is as small as possible. The phenomena consisting in shifting profits between companies operating in different countries being part of the same capital group in order to reduce tax liabilities is a problem on a global scale, due to, among others, on the differentiation of tax rates in individual countries. Because unification of tax rates around the world is impossible, in order to minimize this phenomenon, an international tax consensus on related entities is required, which as of today is imperfect and raises significant problems between taxpayer and tax administration [Kozłowska-Makóś, 2017].

THE IMPACT OF CORPORATE INCOME TAX FOR TRANSFER PRICING

In the valuation of transfers between related entities there is still one very important aspect, namely a differentiated tax system in the countries in which the various responsibility centers of a capital group are located.

Complex capital structures take appropriate policy of price transfer, depending on whether they are an international group, which has subordinate companies located in countries with different tax rates. Tax effect in this case of differentiated prices in the international groups is best demonstrated by the same transfer using so-called high and low transfer price. In the country of the company-supplier, where is a higher rate of income tax it pays to fix the transfer price at a lower level. Lower transfer price means that we pay less corporate income tax. We obtain the lower profit after taxation. However, in the country of the company- recipient, where is a lower tax rate, the low transfer price means that we pay more income tax. In the end we get a higher taxable income. Graphically, this situation is shown in figure 2.

Figure 2. Preferences of transfer pricing in the international group. (Preferencje kształtowania cen transferowych w międzynarodowej grupie kapitałowej)



Source: Kozłowska-Makóś, 2016

It can be argued that the phenomena involving the income shifting between companies lying in the different countries of the same capital group to reduce tax liabilities will remain a problem on a global scale. Due to the fact that the unification of tax rates around the world is impossible, in order to minimize this phenomenon, it is required international consensus on tax law concerning related entities, which at present is imperfect and raises important issues between the taxpayer and tax administration.

Formation of income tax if there is a higher income tax rate in the supplier's country than in the recipient's country

The policy of shaping transfer prices, adopted by complex capital structures in this respect, was analyzed. In the first place, it was assumed that the subordinated company located in the country where there is a higher rate of corporate income tax is a supplier and the parent company having its registered office in a country with a lower tax rate is a recipient. It turns out that in a country that has a higher income tax rate it pays to set a transfer price at a lower level. In such a situation, the income tax will be lower, but also the lower profit after tax. However, in a country where the tax rate is lower, a lower transfer price will not be beneficial, as it will result in a higher tax, but it will not exceed the tax savings obtained in the supplier's country. There will be a higher tax in the recipient's country, but due to the lower price, there will also be a higher tax after tax. As a last resort, the entire capital group obtains a higher income after tax.

The total income tax for the entire capital group at a lower transfer price is lower. In this situation, there is compliance of the objectives of the action only between the center of responsibility, which acts as the recipient and the entire capital group. There will be a conflict of interests between the supplier's liability center and the capital group. Two of the three entities achieve a convergence of interests in determining a lower transfer price (see Table 1).

Table 2. Formation of income tax and profit after tax if there is a higher income tax rate in the supplier's country than in the recipient's country. (Kształtowanie się podatku dochodowego od osób prawnych i zysku po opodatkowaniu w przypadku występowania wyższej stopy podatku dochodowego w kraju dostawcy niż w kraju odbiorcy)

TRANSFER PRICE	INOME TAX			PROFIT AFTER TAX		
	SUPPLIER	RECIPIENT	CAPITAL GROUP	SUPPLIER	RECIPIENT	CAPITAL GROUP
Low	Low	High	Low	Low	High	High
High	High	Low	High	High	Low	Low

From the considerations, the following conclusion can be drawn: as long as the tax rate in the supplier's country is higher than the tax rate in the recipient's country, a lower transfer price will be more beneficial for the entire capital group. How will this situation affect the assessment of the effectiveness of individual responsibility centers and the entire capital group? The measures adopted for the assessment are the ones most commonly used to assess the activities of liability centers, i.e. net profit, return on investment (ROI), residual income (RI), (see Table 3).

Table 3. The ROI and RI ratio for the business centers and the entire capital group. (Kształtowanie się wskaźnika ROI i RI dla ośrodków odpowiedzialności i całej grupy kapitałowej).

TRANSFER PRICE	ROI			RI		
	SUPPLIER	RECIPIENT	CAPITAL GROUP	SUPPLIER	RECIPIENT	CAPITAL GROUP
Low	Low	High	Low	Low	High	High
High	High	Low	High	High	Low	Low

With the use of a lower transfer price, all measures are disadvantageous for a liability center operating in a country with a higher income tax rate, and favorable for a liability center operating in a country with lower income tax. Conversely, if a higher transfer price is applied, these measures are beneficial for the supplier company and less favorable for the recipient. The entire capital group gains when the transfer price is set at a lower level.

Formation of income tax if there is a higher income tax rate in the recipient's country than in the supplier's country

Will the situation change if the supplier is a company whose responsibility center will be located in a country with a lower tax rate and the company being a recipient in a country with a higher tax rate? It turns out that the recipient who pays the income tax according to the higher tax rate pays a higher tax. It also achieves a higher profit after tax. This is the following conclusion: as long as the tax rate in the supplier's country is lower than the tax rate in the recipient's country, a higher transfer price will be more beneficial for the entire capital group. In this case, there is consistency of goals between the responsibility center, which is the supplier and the entire capital group (see Table 4).

Table 4. Formation of income tax and profit after tax if there is a higher income tax rate in the recipient's country than in the supplier's country. (Kształtowanie się podatku dochodowego od osób prawnych i zysku po opodatkowaniu w przypadku występowania wyższej stopy podatku dochodowego w kraju odbiorcy niż w kraju dostawcy)

TRANSFER PRICE	INOME TAX			PROFIT AFTER TAX		
	SUPPLIER	RECIPIENT	CAPITAL GROUP	SUPPLIER	RECIPIENT	CAPITAL GROUP
Low	Low	High	Low	Low	High	Low
High	High	Low	High	High	Low	High

So how will this situation affect the measures for assessing the operations of individual centers and the entire capital group (see Tab. 5)?

Table 5. The ROI and RI ratio for the business centers and the entire capital group. (Kształtowanie się wskaźnika ROI i RI dla ośrodków odpowiedzialności i całej grupy kapitałowej)

TRANSFER PRICE	ROI			RI		
	SUPPLIER	RECIPIENT	CAPITAL GROUP	SUPPLIER	RECIPIENT	CAPITAL GROUP
Low	Low	High	Low	Low	High	Low
High	High	Low	High	High	Low	High

When using a low transfer price, all the indicators are more favorable for the recipient, and at a high transfer price – for the supplier. The entire capital group benefits when the supplier has a transfer price set at a higher level. So he will insist on the supplier to set a higher transfer price. At the same time, there will be no conflict of interest, because it is also a win-win situation for this responsibility center. However, the conflict of interest will appear in the capital group – the recipient relationship, because for him the situation is better when transfer prices are set on the lower level.

Formation of income tax if there is the same income tax rate in the recipient's country and in the supplier's country

You can also ask whether there is a situation in which it is indifferent, what price will be used and thus avoid a conflict of interest between the business centers and the entire capital group? It turns out that it is possible in the country of the supplier-company and the recipient-company, if the income tax rate is the same. In this case, the capital group does not gain or lose on the differentiation of the transfer price. Therefore, the application suggests the flooding: as long as the tax rate in the supplier's country will be equal to the income tax rate in the recipient's country, the level of the transfer pricing will be indifferent to the entire capital group. However, there is a conflict of interest between the responsibility centers, because in the case of a lower transfer price, the indicators are more favorable to the recipient, while using a higher transfer price – more advantageous for the provider (see Tables 6 and 7).

Table 6. Formation of income tax and profit after tax if there is the same income tax rate in the recipient's country and in the supplier's country. (Kształtowanie się podatku dochodowego od osób prawnych i zysku po opodatkowaniu w przypadku występowania takiej samej stopy podatku dochodowego w kraju odbiorcy i w kraju dostawcy)

TRANSFER PRICE	INOME TAX			PROFIT AFTER TAX		
	SUPPLIER	RECIPIENT	CAPITAL GROUP	SUPPLIER	RECIPIENT	CAPITAL GROUP
Low	Low	The same	Low	Low	High	The same
High	High	The same	High	High	Low	The same

Table 7. The ROI and RI ratio for the business centers and the entire capital group. (Kształtowanie się wskaźnika ROI i RI dla ośrodków odpowiedzialności i całej grupy kapitałowej)

TRANSFER PRICE	ROI			RI		
	SUPPLIER	RECIPIENT	CAPITAL GROUP	SUPPLIER	RECIPIENT	CAPITAL GROUP
Low	Low	High	The same	Low	High	The same
High	High	Low	The same	High	Low	The same

Thus, the analysis of cases allows to determine the optimal transfer price depending on the tax rate in the center of delivery responsibility as well as in the recipient, as well as from the point of view of the entire capital group (see Table 8).

Table 8. The optimal transfer price for responsibility centers and the entire capital group. (Optymalna cena transferowa dla ośrodków odpowiedzialności i całej grupy kapitałowej)

TRANSFER PRICE	SP > RP	SP < RP	SP = RP
Supplier	High	High	High
Recipient	Low	Low	Low
Capital group	Low	Low	Neutral

Sp – supplier's preferences
Rp – recipient's preferences

Case studies show that there is no situation in which the interests of all business centers occur, and the choice of the transfer price is determined by the interest of the whole capital group, and not of individual enterprises. Differentiation of transfer prices, depending on the situation, has an impact on tax payments in countries where the business centers are located. This essentially transfers profits between related entities in different countries. Thus, it has been proved that mutual financing of current and investment activities of entities belonging to a complex capital structure affects their financial results and settlements due to the corporate income tax in a diversified way.

INSTRUMENTS FOR COUNTERACTING AGGRESSIVE TAX PLANNING

Enterprises implementing the so-called aggressive tax optimization balance on the border by following the letter of the law, but not its essence. A negative moral evaluation makes it legitimate to combat the phenomenon of tax avoidance by states at the level of tax policy. Hence, tax administrations look for additional instruments that could be used in an attempt to circumvent tax law (action without an economic goal), i.e. a taxpayer's behavior consisting in shaping or transforming his interests in the manner permitted by civil law but taken only in to reduce the tax liability [Olesińska, 2013].

Various legislative solutions are applied in the OECD countries to reduce the phenomenon of aggressive tax planning. The most widespread and the most thoroughly analyzed in the Polish tax law literature solution of this type are transfer pricing regulations. Their goal is to counteract the transfer of income between related entities [OECD, 2010]. Regulations regarding transfer pricing issues are also included in the OECD Model Convention. Its content includes the basic principle relating to transfer prices, ie the arm's length principle, the essence of which consists in recommending the valuation of transfer between related entities, taking into account commercial and financial conditions in force on the free market. A less popular instrument for the prevention of tax avoidance is the provisions relating to the controlled foreign corporation. Their essence consists in adding to the income of a shareholder in the country of his tax residence the income of a subsidiary located in another country and the taxation of the sum of this income in the first country. This taxation also takes place when the income has not been paid in the form of a dividend. Their task is to counteract the phenomenon of income retention in tax havens. Many countries have developed lists of countries that use harmful tax competition and taxed the income of controlled foreign companies when these companies are located in the jurisdictions listed in the list (locational approach). Other states tax the income of controlled foreign companies when in the country where the company is located on its income an effective tax rate is imposed that is significantly lower than the income that would be the tax resident of the same country as the shareholder. In order to counteract the phenomenon of tax avoidance, also anti-abuse clauses are used, including, in particular, the General Anti-Avoidance Rules (GAAR). The introduction of a general clause against tax avoidance to Polish tax law has also been provided for in the draft Act amending the Tax Ordinance Act and certain other acts of 29 April 2013 [Draft Act amending the Act]. In the group of instruments to counteract the phenomenon of tax avoidance, there are also provisions referring to thin capitalization. The possibility of deducting from revenues as the cost of obtaining interest on the liabilities incurred on the basis of tax regulations of many countries may lead to the use of this solution in order to transfer income to tax havens or countries with relatively lower tax rates. Regulations regarding thin capitalization limit the right to deduct interest paid by the company to its non-resident shareholders in a situation where the company's debt is excessive [Hybka, 2015].

Current applicable laws and regulations will not resolve all tax avoidance problems. However, the increasing social pressure and public interest caused that some international enterprises began to perceive the discharge of taxes to the budget as part of the policy related to sustainable development and corporate social responsibility [Wasilewski, Bischoff, 2017].

ADVANCE PRICING AGREEMENTS

If non-market transactions are concluded in the group of related companies, the tax office has the right to determine the income of such entity according to market prices and to collect tax from such defined revenues. These regulations may have an adverse effect on business integration processes[1]. An attempt to solve this problem is the institution of agreements in matters of transaction prices. This regulation guarantees taxpayers security, because it ensures settlements related to affiliates in Poland, minimizing the risk of questioning the transaction price method by the tax authorities. This goal is achieved by concluding an appropriate agreement with the competent authority in this matter.

However, it should be noted here that the subject of negotiations of the taxpayer with the competent authority in matters of agreements will not be the transfer price itself, but the method of determining it, which can be accepted by the taxpayer (as fulfilling its business goals) and by the tax authorities of a given country, as consistent with the market price principle.

The starting point for understanding the role of Advance Pricing Agreements (APA) is to determine the consequences of tax authorities' questioning of prices used by the taxpayer as being inconsistent with the market price principle. The next step is to analyze the possibility of the taxpayer being protected against these consequences.

[1] Research carried out by Ernest & Young has proven that over 50% of large international companies consider transfer pricing taxation to be the most serious tax problem, even higher than the tax rates in other countries [Błażejewska-Gaczyńska, A., 2015].

Transfer pricing documentation and comparative analyzes increase taxpayer safety and are an element of proper preparation for tax audits. However, the result of such controls is uncertain for the taxpayer due to the fact that tax authorities may not share the taxpayer's arguments regarding the chosen method and the level of prices. The previous APA pricing arrangements are a tool to obtain confirmation of the correctness of the calculation methodology used by the taxpayer.

The advantage of such price agreements is:

- the possibility of intensifying the involvement of the company's resources in areas crucial for its operations,
- eliminating the risk associated with the adjustment of profit,
- improvement of enterprise profitability ratios,
- elimination of the risk of double taxation,
- selection of the transfer pricing method, which in the most correct way reflects the specific situation of the taxpayer (time, place of transaction, market conditions, functions of the parties, scope of risk, etc.

Price agreements allow related entities to eliminate the risk of tax authorities' challenging the level of transfer prices during tax audits, imposing penalties and tax sanctions for both the company and personal sanctions under the penal and fiscal code [Kozłowska-Makóś, 2017].

RESEARCH RESULTS

The income taxation solutions applied in individual countries may be a decisive factor not only shaping the territorial structure of international capital groups, but also the effectiveness of the business activities of the entire capital group. However, due to the fact that the applied solutions in individual tax jurisdictions are different, it should be pointed out that this heterogeneity determines specific forms of tax risk in the operations of international capital groups. In the context of the conducted considerations, the risk of double taxation resulting from the principle of unlimited and limited tax liability should be considered as essential and the risk of tax assessment of tax income in the case of transfer pricing, which may also result in double taxation of the same income.

The phenomenon of using hybrid structures to optimize income taxation by international capital groups is at the center of interest of tax authorities of OECD countries and the European Union for only a few years. For this reason, its scale and fiscal consequences have not been fully recognized yet [Hybka, 2015]. However, it should be noted that international tax avoidance has been used for decades. This applies in particular to hybrid solutions, commonly implemented for tax optimization purposes as early as in the 1970s. Until now, the subject of research was primarily the negative consequences of transferring revenues of corporate-owned enterprises in countries imposing high effective tax rates to entities with tax residence in countries offering tax preferences. They were rarely subject to specific instruments for international tax optimization.

So far, in relation to hybrid structures, no effective measures have been proposed by individual states or international institutions to counteract their application to avoid taxation. The use of these structures to avoid taxation is supported by complicated tax law and significant diversity of its provisions in individual countries. In addition, they make the tax classification of the entity's transaction subject to tax treatment [Hybka, 2015].

Authorities in developing countries invariably claim that access to information about the profits of multinational enterprises is the key to improving the situation regarding the phenomenon of tax avoidance.

The analysis of theoretical material and empirical studies made it possible to conclude that the financial results of the capital group can be determined by many factors, including decisions of the management board, which has a certain set of decision-making possibilities for shaping the components of the capital group. Transfer prices are subject to conflict between individual liability centers and the capital group as a whole. The audited capital groups included transactions that affected costs or revenues and income tax of related entities. The prices determined in these transactions also affected the profitability of the companies. Most often, however, transfer prices are used as an instrument to optimize the net profit of the capital group as a whole. The tax authorities of all countries are trying to counter the avoidance of tax burdens by capital groups, by applying the principle of arm's length to their income estimation.

The instrument limiting the tax risk is that the capital groups have a tax instruction regarding the transfer pricing policy that facilitates the preparation of tax documentation. Tax risk completely eliminates the conclusion of advance pricing agreements by related undertakings.

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