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Never Ending Reforms of Corporate Income Taxation – Perspective of Significant Amendments to the Corporate Income Tax Act in 2012–2017

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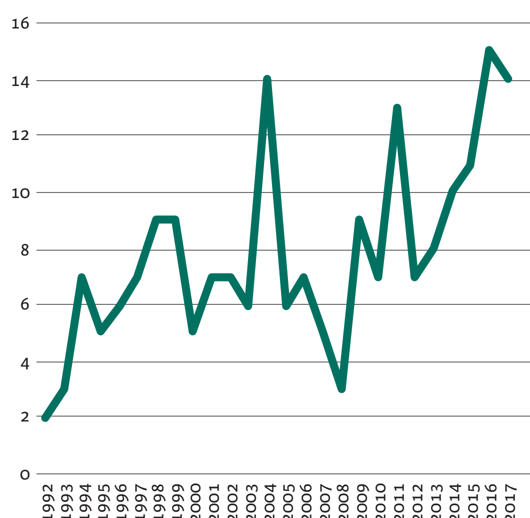
The main aim of the article is to present and assess the quality of the most significant amendments in the Corporate Income Tax Act in the period 2012-2017. Selected amendments are connected with counteracting of tax avoidance. Therefore, the text includes changes about: (a) covering partnerships limited by shares by the CIT Act; (b) axation of income from controlled foreign companies; (c) taxation of income shifted to a related entity and the obligation to document transaction prices; (d) limitation of deductibles related to the costs of generating income from interest (i.e., the interest limitation rule, earlier referred to as thin capitalisation); (e) "income" tax on commercial real estate; (f) restrictions on recognizing certain intangible services and property rights as tax deductible costs; (g) amendments to the provisions regarding groups of companies; (h) regulations regarding deductibles arising in connection with bad debt.
Słowa kluczowe: CIT, tax system, tax avoidance

1. Introduction

The number of amendments to the Corporate Income Tax Act is very considerable. Since the entry of the Corporate Income Tax Act[1] (hereinafter referred to as "the CIT Act") into force, there were 202 amending acts until the end of 2017. Between 1992 and the end of 2017, the CIT Act was amended 7.8 times on a yearly average and another nine amendments are entering into force in 2018. Such a large number of changes indicates instability of the legal provisions and gives rise to entrepreneurs' uncertainty as to their future tax obligations. At the same time, one can notice a large disparity between the number of tax acts regarding tax obligations imposed in connection with economic activity and other acts. The disproportion manifests itself in the fact that there is a clear difference between the number of amendments to tax acts regulating the rights

[1] Act of 15 February 1992 on corporate income tax (Journal of Laws of 2017, item 2343, as amended).

Table 1. Number of amendments to the CIT Act between 1992 and 2017



and obligations of taxpayers conducting business activity and other taxpayers. It can be pointed out, for instance, that agricultural and forest tax acts have been amended several times; whereas the number of amendments to the acts on taxation of income from economic activity exceeds 100 for each act (the CIT Act and the Personal Income Tax Act).

The chart below presents the number of amendments to the CIT Act from the date of entry into force of the Act until the end of 2017.

Numerical data may attest to low stability of the legal system of taxation of income from legal persons' activity. However, one must agree with the claim that a stable tax system would certainly be ideal but "this virtue should not be understood in a relentless way"[2]. There are many reasons that justify the need for change, including ineffectiveness of the system or changes in the taxation policy[3]. Lack of a model of the target tax system is one of the most often quoted reasons for this phenomenon[4]. Be that as it may, stability of tax law does not mean there can be no change. S. Owsiak advocates that proposals of changes in the rules governing the fiscal policy should be presented on the occasion of parliamentary elections, which would allow to voice the intentions of political parties, which fight for power, to the voters[5]. Undoubtedly, changes should be made according to certain rules and ought to follow a plan. The reasons for changes should be justified, rational, predictable; they should take into account both the tax principles and the principles of tax law.

Qualitative assessment of tax law can be carried out on the basis of various criteria. For instance, the following criteria for assessing tax law can be adopted: (1) compliance with the Constitution, (2) compliance with the European Union law, (3) harmony and compliance with other elements of the legal system, (4) stability, (5) communicativeness, (6) neutrality towards the economic processes, and (7) correctness of the structure of the system of tax law sources[6]. Reviews of the quality of legislation are made by various persons and institutions, including the doctrine[7], business organizations[8], and public administration[9].

[2] C. Kosikowski, Potrzeba – zakres – warunki – metody reformy polskiego systemu podatkowego [Need – Scope – Conditions – Methods of Reforming the Polish Tax System], in: Kierunki reformy polskiego systemu podatkowego [Directions of Reforms in the Polish Tax System], ed. A. Pomorska, UMCS, Lublin 2003, p. 14.

[3] Ibidem.

[4] B. Brzeziński, Legislacja podatkowa [Tax Legislation], in: Prawo podatkowe. Teoria... [Tax Law. Theory...], op. cit., pp. 148–149.

[5] Z. Owsiak, Finanse publiczne. Teoria i praktyka [Public Finance. Theory and Practice], Wydawnictwo Naukowe PWN, Warszawa 2002, p. 293.

[6] B. Brzeziński, W. Nykiel, Stan prawa podatkowego w Polsce Raport 2005 [The Condition of Tax Law in Poland. Report 2005], Centrum Dokumentacji i Studiów Podatkowych, Łódź 2005, http://cdisp.uni.lodz.pl/projekty-naukowe-i-edukacyjne, pp. 5–6.

[7] Compare with periodical reports on the condition of tax law from 2000, 2005, and 2010 by Professor B. Brzeziński and Professor W. Nykiel, http://cdisp.uni.lodz.pl/projekty-naukowe-i-edukacyjne.

[8] Compare, for example, PKPP Lewiatan publications: Raport roczny 2012. Świadomy podatnik [Yearly Report 2012. Conscious Taxpayer], Warszawa 2012; Czarna lista barier dla rozwoju przedsiębiorczości 2012 [The Blacklist of Barriers to the Development of Entrepreneurship in 2012], Warszawa 2012.

[9] Compare, for example, reports of the Ministry of the Economy: Przedsiębiorczość w Polsce, Warszawa, sierpień

The two following conclusions can be drawn from the chart.

First of all, it can be seen that a large number of changes to the CIT Act were made in 2004, which can be explained by the period of adjustment of the Polish law to the EU and Poland's accession to the European Union.

Second, from 2011 until now, the number of amendments to the provisions of the CIT Act has remained high; and year after year since 2012 an upward trend in the number of subsequent amendments to the CIT Act has been observed. There has been no such clear and obvious explanation as accession to the EU during this period. Thus, the question regarding reasons for this situation remains valid.

It is important not only to show instability in making tax law but also to make qualitative assessment. To this end, the most important amendments to the CIT Act between 2012 and 2017, whose purpose was counteracting tax avoidance, will be presented and evaluated in the subsequent part of the paper; these are the changes concerning:

- adding the provisions on partnerships limited by shares to the CIT Act;
- taxation of income from controlled foreign companies;
- taxation of income shifted to a related entity and the obligation to document transaction prices;
- limitation of deductibility of interest (i.e., the interest limitation rule, earlier referred to as thin capitalisation);
- "income" tax on commercial real estate;
- restrictions on recognizing certain intangible services and property rights as tax deductibles;
- amendments to the provisions on groups of companies;
- regulations on deductibles arising in connection with bad debt.

The common feature of all the above-mentioned changes to the CIT Act is the prevention of tax avoidance and evasion. They are considered a type of anti-abusive clauses and are intended to complement the general clause against tax avoidance. The phenomena of tax avoidance and evasion are assessed negatively. It does not only result in smaller tax revenues but also in imposing an uneven tax burden on the taxpayers. In consequence, the principle of tax universality is compromised. As a result of tax avoidance, the tax system ceases to be consistent and the tax benefits of some taxpayers who avoid taxes are borne by those who do not want to or do not have the knowledge or possibility to avoid taxes. Provisions that are intended to limit the phenomenon of tax avoidance are aimed at ensuring observance of the constitutional principle of equality before the law. On the other hand, the rule of law provides for the taxpayer's right to shape their tax obligations in a way that allows minimization of the tax burden.

2. Adding the Provisions on Partnerships Limited by Shares to the CIT Act.

As regards the personal scope of application of the CIT Act, we need to point out a quite significant change that came into force at the beginning of 2014. The amendment introduced taxation of partnerships limited by shares (PLS) and equivalent companies from other countries. Inclusion

2012 [Entrepreneurship in Poland, Warsaw, August 2012]; Reforma Regulacji 2010 – podsumowanie prac Ministerstwa Gospodarki, materiały konferencyjne [Regulation Reform 2010 – Summary of the Ministry of the Economy's Activity, conference materials]; Polska 2012. Raport o stanie gospodarki, Warszawa 2012; Lepsze regulacje [Report on the Condition of the Economy, Warsaw 2012; Better Regulations]. Raport z realizacji działań Reformy Regulacji w 2010 r., Ministerstwo Gospodarki, Departament Regulacji Gospodarczych, kwiecień 2010; Prowadzenie działalności gospodarczej w Polsce [Report on Activity Related to Regulation Reform in 2010, the Ministry of the Economy, The Department of Economic Regulation, April 2010; Conducting Business in Poland]. Memorandum regarding reforms, the Ministry of the Economy, 30 June 2010.

of these companies within the personal scope of the act was aimed at preventing tax optimization with the use of these companies. In accordance with the administrative court's interpretation of tax regulations, revenue (income) was considered to arise at the time dividend on such a company was paid out. Income tax was payable once at the shareholder's level and on top of that at the time of disinvestment (and dividend payout). As a result, a partnership limited by shares had become an interesting vehicle and was used in order to postpone the moment taxable revenue was produced.

The situations of a shareholder in a PLS and a shareholder in a public limited company were incomparable. As for the former, there was one-off taxation of investment (at shareholder level) and only at the time of disinvestment. Whereas in the case of a public limited company, the company settled corporate income tax on an ongoing basis and the shareholder was burdened with capital gains tax. It should also be noted that it is unusual for the Supreme Administrative Court to take two resolutions while working in an extended configuration in order to interpret tax provisions. This is what happened in this case[10]. As a result of amendment to the CIT Act, a partnership limited by shares (PLS) was recognized as a corporate income taxpayer. Despite the original intention to impose this tax on limited partnerships, it was decided against it. As far as these companies are concerned, financial investors – as limited partners – are liable up to the amount of their contribution, and so the selection of this legal form is still attractive in comparison to companies with share capital and PLSs that are covered by the CIT Act.

3. Taxation of Income of Controlled Foreign Companies

The essence of the legal structure of taxation imposed on income earned by Controlled Foreign Corporations or Controlled Foreign Companies (CFCs) is prevention of tax avoidance by companies with a registered office in a given country through allocation of income to subsidiaries located in low tax countries.[11] If certain conditions are met, the profits of a subsidiary are taxed differently or income of foreign subsidiaries is included in the income of the holding company that has its registered office in the country where the CFC rules apply. If these principles are to be adopted, the following criteria, among others, are applicable: appropriate control of a subsidiary, low taxation of income earned by a controlled foreign company, generation of the so-called passive income by a subsidiary (which is usually income from intellectual rights, capital, rental, and lease).

The CFC provisions are in force in most Member States of the European Union and, importantly, have also been examined as regards compliance with the EU law by the Court of Justice of the European Union (in connection with restriction of the freedom of establishment)[12]. The construction under discussion was introduced into the Polish acts of law relating to income tax imposed on natural and legal persons in January 2015. A fairly extensive change dictated by the need to adapt the CFC provisions to the EU law came into force at the beginning of 2018. The law in question is the Anti-Tax Avoidance Directive (ATAD), which is intended to counter tax avoidance practices and directly influences the operation of the internal market[13].

[10] Resolution of 16 January 2012, Case Identifier II FPS 1/11 and Resolution of 20 May 2013 20 Case Identifier II FPS 6/12.

[11] B. Kuźniacki, Skuteczność polskich ogólnych norm podatkowoprawnych jako narzędzi potencjalnie służących zwalczaniu unikania opodatkowania przez wykorzystywanie kontrolowanych spółek zagranicznych [Effectiveness of the Polish General Legal and Tax Norms as Tools Potentially Serving Countering Tax Avoidance through Exploitation of Controlled Foreign Companies], "Toruński Rocznik Podatkowy" 2009, pp. 30–59.

[12] Among others, judgement in C-196/04, Cadbury Schweppes and Order of the CJ of 23/04/2008, The Test Claimants in the CFC and Dividend Group Litigation versus Commissioners of Inland Revenue, EU:C:2008:239.

[13] Council Directive (EU) 2016/1164 of 12 July 2016 (OJ L 193, 19/07/2016, pp. 1–14); the so called ATAD II is not discussed in this paper (i.e., Council Directive (EU) 2017/952 of

The Polish construction provides for taxation of income of a controlled foreign company at the level of its controlling company, which is a Polish resident, with a 19% tax rate applied to the tax base. The CIT Act specifies the conditions that allow to recognize that there is a relationship of dependence between the holding company and the subsidiary, which simultaneously allows to recognize that the main purpose of the controlled company's existence is to avoid taxation. Therefore, in order to recognize a particular set of relationships, the following criteria are applied: a) capital ties or relationships related to the number of votes an entity has in supervisory or decision-making bodies (which is currently 50% over a continuous period of not less than 30 days and includes both direct and indirect ties), b) the nature (structure) of the controlled company's revenue (as at least 33% of the revenue should come from specific passive sources – including dividends, interest, receivables, and sureties), and c) preferential taxation of the controlled foreign company (i.e., effective taxation of the foreign company is lower than what the company would pay, if the provisions of the Polish tax act were applied).

The tax base is determined on the basis of the controlled company's income after potential deductions (such as dividends and income from disposal of the shares in this company as long as the deductions have been recognized in the tax base). The act recognizes all of the controlled company's proceeds as its income irrespective of the type of revenue source, which does not take into account the requirements of the ATAD. Income subject to taxation in accordance with the ATAD should be limited to the amounts generated through assets and risks associated with the decision-making and management functions performed by the controlling company (cf. Article 8 of the ATAD). Therefore, this partial implementation of the provisions of the Directive is not quite understandable.

Neither the Directive nor the Polish act provide for automatism as regards taxation of income from a controlled foreign company. This arises from the requirements indicated by the CJEU in the Cadbury Schweppes case cited above. Therefore, the provisions regarding the CFC do not apply, if the controlled company carries out actual substantive economic activity. In this regard, the Polish act stipulates a much broader definition of what is meant by actual economic activity compared to the ATAD. The Directive is limited to indicating that the CFC tax regulations should not apply, if the controlled foreign company carries out substantive economic activity supported by personnel, equipment, assets, and rooms, as evidenced by relevant facts and circumstances. In principle, the introductory provisions provide for transposition of the ATAD by 31 December 2018 and its application starting from 1 January 2019.[14] As far as implementation is concerned, essentially the Directive does not define individual characteristics of implementation of the regulations and leaves decisions in this respect to the Member States. Implementation is necessary for tax authorities to be able to directly invoke the provisions of individual Directives[15]. Member States may carry out implementation of provisions regarding the purpose of a particular Directive; or as part of its freedom of shaping its own tax system, a Member State may introduce general rules regarding the whole or part of the tax system.

Importantly, implementation can take place through transposition of the directive's provisions directly or in a deeper manner by way of regulating the scope in grater detail. In this context, the Polish regulations detailing what should

29 May 2017 amending directive (EU) 2016/1164 as regards hybrid mismatches with third countries – OJ L 144, 07/06/2017, pp. 1–11) due the fact that it is not covered by amendments to the CIT Act.

[14] Exceptions are concerned with, among others, exit taxation regulations (where transposition may take place up to 31 December 2019), Estonia, and the possibilities of using alternative solutions to the ones offered by Article 4 of the ATAD – concerned with the interest limitation rule.

[15] Judgement of the CJ of 05/07/2007, Case C-321/05, Hans Markus Kofoed versus Skatteministeriet, EU:C:2007:408, 48.

be understood by the actual economic activity of a controlled foreign company could be categorised as such. However, the requirements set out in the judgement on the Cadbury Schweppes case cannot be disregarded as they have established the limits of permissible interference in taxation of income from controlled foreign companies.

4. Transaction Prices

Similar as the case with the regulations on thin capitalisation, the provisions on transfer pricing have a long history in the CIT Act. The provisions on sanctioning profit shifting were included in the original text of the CIT Act. On the one hand, they were concerned with profit shifting by taxpayers to foreign entities that they have economic ties with. On the other hand, the norm included a situation where profit was shifted to an entity entitled to special tax relief and benefits were shifted to another taxpayer under much more favourable conditions that deviated from the generally applicable norms at the time and place of benefit provision.

In both situations, the authorities could determine the income of a given taxpayer without taking into account the special burdens arising from the economic link. At the beginning of 1995, which is relatively quickly, a definition of the economic link has been offered. Just as it does now, it referred to management, capital, equity, and employee links. In subsequent years, this definition had been extended and made more precise until finally the concept of the economic link was replaced with references to the concepts of management, control, and shareholding (in 2004). Likewise, the original laconic instruction as to how the authorities were to determine the amount of tax in case of profit shifting was specified in 1997. At that time, methods for determining the estimation were developed with reference to the ones offered in the OECD proposal. Since 2006, there has been an administrative arrangement on setting transaction prices.

Along with the provisions allowing to assign income to a taxpayer who wanted to shift this profit to another entity, provisions regarding the obligation to document the prices of transactions between two related parties were set out as well. Specified taxpayers were required to generate documentation starting from 2001. Interestingly, it was explained that the motive behind imposition of such obligations was the need to introduce solutions applicable in the European Union and in “industrialized countries”[16]. Along with this obligation, a sanction for failure to submit the required documentation has been introduced in the form of a 50% tax rate applied to the difference between the income declared by the taxpayer and the one determined by the authorities. The provisions regarding the obligation to document transaction prices were subject to frequent amendments (amounting to 6 changes) but those that entered into force at the beginning of 2017 were relatively the most extensive. Therefore, they will be discussed in a further part of the paper.

The changes were intended to take into account the recommendations resulting from the EU code of conduct on transfer pricing documentation for associated enterprises in the European Union (i.e., the “Transfer Pricing Code”)[17] as well as OECD guidelines on transfer prices for multinational companies and tax administrations. As far as the latter is concerned, as a result of extensive work within the framework of Action 13 of the Base Erosion and Profit Shifting (BEPS) project, the above-mentioned OECD guidelines were extensively revised in 2014. The amendments were mainly concerned with:

- introduction of three-level normalized documentation between related enterprises (group documentation – i.e., the master file, local file documentation, and country-by-country reporting);
- exclusions *ratione personae* from the obligation to document transaction prices (of

[16] Explanatory statement for the act, p. 2.

[17] Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council (OJEU C of 27/06/2006).

taxpayers generating revenues up to PLN 2 million);
- the scope of information that should be provided in the documentation, including analysis of data of independent entities and a simplified report that is attached to the tax return, which is concerned with transactions with related enterprises or in connection with other events occurring between related enterprises or for which payment of receivables is made directly or indirectly to the entity that resides or has a registered office or the management board on the territory of or in a country applying harmful tax competition.

The introduction of the three-stage reporting system serves to implement the guidelines set in the Transfer Pricing Code. This is important for companies operating globally and within the European Union since unification (standardization) of reporting requirements may reduce the costs of compliance with documentary obligations. At the same time, from the point of view of the tax administration, it will be possible to obtain more data showing information on related entities on an international scale as well as access databases, which may affect the effectiveness of tax audits and selection of taxpayers for tax audits. Taking into account the interests of both the tax authorities and the taxpayers, the Transfer Pricing Code provides for a number of facilitations for the taxpayers who are obligated to document transfer prices.

The disadvantage of the Polish regulation is the fact that is does not take into consideration the proposals of the Transfer Pricing Code, which are intended to eliminate unnecessary administrative barriers the taxpayers are faced with. In particular, the Polish CIT Act lacks the following provisions:

- stipulating exclusion from penalties in connection with defects in the documentation for taxpayers acting in good faith (as in point 30 of the Transfer Pricing Code);
- ensuring basic rights for the taxpayers preparing documentation; these provisions are concerned with prohibitions: against imposition of obligations on the taxpayers, which result in unreasonable compliance costs or administrative burdens and against documentation requirements that have no impact on the transactions subject to control (as in point 6 of the Transfer Pricing Code);
- stipulating, in principle, that the documentation may be compiled in a foreign language generally understood in the Member State in question; translations of documentation may only be required, if absolutely necessary and upon special request of the authorities (as in point 23 of the Transfer Pricing Code);
- introducing the possibility to make references to documentation from previous years in a situation where documentation prepared for one period remains valid for the subsequent periods and still constitutes proof of pricing according to the arm's-length principle (as in point 26 of the Transfer Pricing Code).

There is a similar reservation over the obligations indicated in the Transfer Pricing Code, which ensure convenient dates for the preparation of transfer pricing documentation are set for the taxpayers, taking into account the complexity of transactions (as in point 14 of the Transfer Pricing Code). It is worth noting that the CIT Act contains a very strict solution in this regard, which has been in force since the introduction of the regulations on transfer pricing documentation. As a rule, the taxpayer has 7 days to provide transaction prices documentation from the date of delivery of the request by the tax authorities. At the same time, if documentation is not submitted, the taxpayer is obliged to pay tax at the rate of 50% imposed on the difference between the income declared by the taxpayer and the one determined by the authorities. Such an approach to deadlines means that, in practice, taxpayers are obliged to compile and update their documentation on a regular basis. This is extremely

unfavourable and constitutes a fixed cost of conducting economic activity in Poland. Other countries noticed that this is a heavy burden for entrepreneurs and a general rule was introduced that there is no obligation to prepare such documentation on a regular basis. The taxpayer is obliged to prepare such documentation only if requested by tax authorities during audit and within a reasonable period of time (e.g. in Germany within 60 days).

As far as transfer pricing is concerned, the Transfer Pricing Code indicates that the obligation to prepare documentation should be limited when it comes to smaller businesses with a less complex structure (including small and medium-sized enterprises). In principle, the CIT Act provides for an exemption from this obligation of taxpayers whose revenues or costs – as defined in the accounting regulations and determined on the basis of accounts – did not exceed the equivalent of EUR 2 million in the year preceding the tax year. Therefore, the CIT Act limits documentary obligations imposed on micro-entrepreneurs. Small and medium-sized enterprises as well as other groups of entrepreneurs with a less complex structure are disregarded. Considering the recommendations put forward in the Transfer Pricing Code, the Polish equivalent regulations do not take into account the particular situation of SMEs, which requires implementation of solutions reducing administrative burdens placed on this group[18].

At the same time, it is important that the documentation obligation itself does not deprive the tax authorities of the possibility to apply a surtax when profit shifting by small and medium-sized enterprises takes place. In this case, Article 11 of the CIT Act is fully applicable. It does not provide for an exclusion of the possibility to estimate income of small and medium-sized enterprises without taking into account the conditions arising from the connections among entities, which differ from the conditions that independent entities would establish. It covers both the taxpayers who prepare transaction prices documentation as well as those who are exempt from the obligation to prepare it.

On the basis of the above, it can be concluded that the Polish implementation of the Transfer Pricing Code takes into account the scope and form of information required in the documentation. However, the broad scope of the taxpayer's rights stipulated in the Transfer Pricing Code has not been taken into account. Under such circumstances, it is evident that the Polish CIT Act introduces the recommendations from the Code in a one-way fashion. Solutions from the Transfer Pricing Code are introduced, if they are concerned with taxpayers' obligations, however, solutions concerning taxpayers' rights are implemented to a very limited extent. Such practice is incomprehensible since as indicated above the regulation concerning documentation requirements is autonomous in relation to the tax assessment procedure followed if profit shifting between related entities is discovered. Introduction of SME-friendly regulations is an objective that is broadly advocated in the EU law. Member States attach great importance to this group of companies and exempt them from documentary obligations (e.g., in the United Kingdom, small and medium-sized enterprises have been exempted from the obligation to prepare documentation). This significantly reduces administrative barriers and lowers the costs of compliance with tax obligations, which contributes to the improvement of the competitive situation of small and medium-sized enterprises in relation to the large ones.

5. Thin Capitalization Regulations

Regulations regarding the so-called thin capitalization have a relatively long history in the CIT Act. The solution regarding thin capitalization

[18] See more: Werner A., Adekwatność sytuacji prawnopodatkowej polskich przedsiębiorców do ich roli w gospodarce [Adequacy of the Legal and Tax Circumstances Surrounding Polish Companies to their Role in the Economy], Warsaw School of Economics. Oficyna Wydawnicza, Warsaw 2013.

itself was introduced into the CIT Act in 1999. It was intended to discourage permanent debt financing of investments by granting loans (credits) and to reward financing through contributions to the share capital. The solution was based on the assessment of the taxpayer's debt to the owners compared to the taxpayer's share capital. If the statutory ratio between these two variables were exceeded, the provisions of the law would deprive the taxpayer of the right to recognize interest on debt financing as tax deductibles, which was not in line with the statutory framework. Without going into detail, the original solution contained provisions that excluded the possibility of recognizing interest on loans (credits) granted to the company by its shareholder (or shareholders) holding not less than 25% of shares in the company as tax deductibles. The exclusion from the deductibles was applicable to situations in which the value of the company's debt to its shareholders holding at least 25% of shares reached three times the value of the company's share capital. Under such circumstances, the interest on the amount of the loan (credit) that exceeded the value of the debt did not qualify as deductibles. Following several amendments, this solution was in force until the end of 2017. In 2015, an alternative solution for taxpayers was introduced; it was not based on the criterion of "share capital" but on the criterion of the taxpayer's own capital (with some exclusions). The acceptable level of indebtedness was calculated not only taking into consideration related entities but also third parties.

The above solutions were replaced in January 2018 with a new regulation based, in principle, on the solutions introduced by the ATAD (i.e., the interest limitation rule). The above means that taxpayers no longer have the option to choose the method of calculating the acceptable debt limits for qualifying interest on debt financing as tax deductibles. The Directive indicates that excess borrowing costs are subject to deduction in the taxable period in which these costs were incurred only up to 30% of the taxpayer's financial result before interest, taxation, depreciation, and amortization (EBITDA). In this approach, it is not important from whom the taxpayer receives financing and whether it is an entity related to the taxpayer. In consequence, the new mechanism of the CIT Act introduces a limitation on deductibility of excess borrowing exceeding 30% of the defined EBIDTA indicator (i.e., Net Profit Before Tax, Interest, and Depreciation).[19]

The Polish CIT Act provides for safe harbours allowed by the ATAD. They are applicable to long-term projects concerned with public infrastructure and financial corporations (e.g., banks, investment companies, and domestic insurance companies). The Directive allows to introduce – within the framework of the *de minimis* rule – an exemption from deductibility restrictions imposed on interest with respect to excess borrowing costs up to EUR 3 million. The Polish legislator provided for such an exemption, subject to a reservation that the threshold for the excess borrowing costs cannot exceed PLN 3 million within a tax year.

The amended provisions of the CIT Act regarding thin capitalization have been in force since 1 January 2018. The transitional provisions indicate that credits (loans) that have actually been received shall be governed by the existing provisions until the date of entry of the Act into force (but no longer than until 31 December 2018). Therefore, it was not decided to adopt alternative solutions stipulated in the ATAD. In this case, if particular conditions are met, domestic solutions may be applied until agreement among the OECD member countries is concluded as regards the minimum standard in connection with the Action Plan on Base Erosion and Profit Shifting,

[19] In accordance with Article 15c of the CIT Act, this ratio is defined as the difference between the sum of revenues from all revenue sources less profit from interest and the sum of tax deductibles less depreciation allowances recognized as tax deductibles in the current tax year, which are enumerated in Articles 16a–16m of the CIT Act, and borrowing costs not recognized as part of the initial value of a fixed or intangible asset. The excess borrowing cost is understood as the amount of tax-deductible borrowing costs incurred by the taxpayer within the tax year exceeding taxpayer's revenue from interest, which is taxable within the same tax year.

however, it is only possible up to 1 January 2024. As far as the Polish solutions are concerned, it is important for the provisions to allow completion of undertakings that have already commenced in accordance with the provisions in force at the time they were commencing or to create other possibilities for adjustment to the altered legal regulations. It is doubtful whether the adopted transitional provisions meet this requirement. As regards enacting the law, the situation of entrepreneurs is special in comparison to other taxpayers as they exercise tax planning from different time perspectives. Differences are particularly pronounced in a situation where plans and their implementation are connected with making significant investment or creating jobs. In the first case, changes in the tax situation of an entrepreneur should be evaluated in terms of protection of the rights that have already been claimed and an entrepreneur's currently valid interest. In the second case, creation of jobs is also related to making investment but on top of that job destruction generates some costs as well. This is concerned not only with the cost of abandoned investment, including the cost of maintaining jobs or offering severance pays but also in a broader sense with the costs of ensuring protection of the unemployed people, which is covered by the state as a result of dismissal of an employee. It is the legislators' obligation to pass laws that allow completion of undertakings that have already commenced in accordance with the provisions in force at the time they were commencing or create other possibilities for adjustment to the altered legal regulations. The demand for protection of a currently valid interest is related to maintaining predictability of state authorities' activity that does not startle with new legal regulations. This applies to changes in the rules governing taxation of venture financing and so to the provisions on thin capitalization.

Changes in financing structures resulting from alteration of the rules governing taxation of investment financing obviously affects profitability of an economic venture. As indicated above, the ATAD contains provisions that make it possible to ensure protection of taxpayers' interest. The ATAD also entitles Member States to rule that the limitations are not applicable to loans granted before 17 June 2016 (which does not extend on changes to agreements concerning such loans, which are introduced later). This option has not been exercised in amending the CIT Act.

6. Tax on Commercial Real Estate

In 1 January 2018, provisions regarding taxation of property income from specified fixed assets (i.e., commercial-service buildings and office buildings) whose initial value exceeds PLN 10 million came into force in both income tax acts (regarding legal persons and natural persons). This is income tax only in name because its base is the initial value of fixed assets less PLN 10 million. The amount of PLN 10 million is a certain kind of tax allowance subject to a reservation that it is not calculated based on all taxpayer's fixed assets but on each commercial real estate. The tax is 0.0035% of the tax base. Such an approach to the components of this tax is closer to the construction of property tax. The tax that has been paid is deducted from income tax calculated in accordance with general principles. The element that links this property tax with tax based on income (or revenue) manifests itself in the above respect. The taxpayer of this tax is the owner (or co-owner) of commercial real estate.

The motive for the adoption of regulations regarding taxation of commercial real estate is to counteract vaguely described optimization activities. The justification for the amendment of the CIT Act boiled down to simply indicating that in: "many cases taxpayers do not declare taxable income or declare an amount of income that is inadequate to the scale and type of their business" and that this situation "is unacceptable" from the point of view of securing state income.

Hence numerous questions arise justifiably:

1) Is it a rule that all taxpayers who own commercial real estate exercise tax optimization and an additional property tax deduct-

ible from income tax should be imposed on them?

2) Was there reliable analysis of profitability of and returns on investments in commercial real estate, which allowed to ascertain that commercial property owners follow unfair optimization practices?
3) Are such optimizations adopted only by taxpayers who have fixed assets worth more than PLN 10 million, which is to say that those who have assets of lower value do not exercise optimization?
4) Is this limit in accordance with the regulations on admissibility of state aid; in particular, does it not provide selective support to other entrepreneurs (i.e., those who have property worth less than the statutory limit of PLN 10 million)?
5) Whether other numerous tools that are aimed at counteracting tax avoidance (such as, among other, the less and more extensive anti-abusive clauses or transfer pricing rules) cannot be used to combat abusive practices?
6) What relation does the statutory name of this tax (i.e., income tax) bear to reality where not all owners of commercial real estate earn revenue from their property and often have a large proportion of vacant space that is not leased for long periods of time?
7) Is this tax compliant with the principle of fair taxation and competition protection rules, and is it not that for the sake for fighting against dishonest taxpayers we introduce tax that shifts the risk of not earning income towards the taxpayers in defiance of the premises and construction of income taxes?
8) Is some kind of tax abolition exercised with respect to the taxpayers who avoid taxation in connection with the introduction of this tax?
9) Is it perhaps a solution that globally solves the problem of tax avoidance through the introduction of a generally applicable minimum tax on fixed (or intangible) assets?
10) Are the provisions on this tax robust enough for the taxpayers not to artificially divide their property and transfer ownership only to reduce its initial value?

There could be more and more questions as to the legitimacy of introducing this tax. The legislator's construction of this tax is failed. It can certainly be expected that the regulations will be amended at least to the extent allowing to eliminate the incompatibilities with the EU law, which are related to the prohibition of granting state aid.

7. Costs of Generating Revenues and Purchase of Intangible Services

Another change, which came into force at the beginning of 2018, is concerned with limitation of the possibility of recognizing the costs of certain types of intangible services as tax deductibles. The solution is applicable to the aforementioned services and the rights of specific groups of entities. The limitation applies when the defined threshold of significance of the value of these services in relation to the taxpayer's income is exceeded. In this respect, in order to briefly characterize the regulations in question, it can be indicated that:

Firstly, the exclusion applies to services (i.e., consulting, market research, advertising, management and control, data processing, and insurance services as well as guarantees and sureties and other similar services), fees, and receivables for the use or the rights to exercise rights or use assets (i.e., copyright or related property rights, licenses, industrial property rights, and know-how) as well as transfer of risk of debtor's insolvency due to loans (other than from banks and credit unions), including due to liabilities resulting from derivative financial instruments and similar benefits (Article 15e of the CIT Act). In

the explanatory memorandum to the Act, it was pointed out that the services and rights in question are "an ideal tool for creating «a tax shield» (which is artificial and economically unjustified generation of tax deductibles). *On the one hand, their transfer to other entities has a purely formal character and, on the other hand, there are objective difficulties in determining the market value of such rights. This also applies to certain types of intangible services, including consulting, management, and control services. These services are characterized by the lack of the possibility of actually linking their price to the "product" that is received for that price.*"

Second, the exclusion applies to expenses incurred directly or indirectly on behalf of related entities or entities located in countries using harmful tax competition. Expenses incurred indirectly are considered to be expenses incurred on behalf of an entity unrelated to the taxpayer, if the actual owner of receivables from contracts or rights covered by the regulation in question is an entity related to the taxpayer or an entity residing, having a registered office or the management board on the territory or in a country that applies harmful tax competition.

Third, the exclusion is applicable to the part of total costs (of the above-mentioned services and entities) that in the fiscal year exceed 5% of surplus revenues from all revenue sources reduced by revenue from interest over the total tax deductibles less depreciation allowances and interest recognized as tax deductibles within the tax year. Along with this limitation, rules intended to alleviate its fiscal consequences have been introduced. This limitation does not apply to the costs of the above-mentioned rights and intangible services, if their total value in the fiscal year does not exceed PLN 3 million. Moreover, the amount of costs not deducted in a given tax year is deductible within the next 5 tax years subject to conditions specified in the CIT Act.

Such mechanisms limiting recognition of specific expenses as tax deductibles are not new in the CIT Act. Such restrictions are or were imposed, for example, on representation and advertising costs that in part exceeding 0.25% of revenue were not deductible (unless advertising was carried out in mass media or otherwise publicly).

The above limitations on settlement of specific expenses as tax deductibles are introduced in order to limit generation of tax deductibles, if it bears the characteristics of the so-called aggressive tax planning. In such situations, the legislator introduces a kind of presumption that expenditures incurred by the taxpayer are not real and are artificially created by the taxpayer. Theoretically, it would be possible to examine each such activity to verify whether the taxpayer has actually performed this (e.g., advisory or advertising) activity and if its value corresponds to market prices as well as to specify (with respect to the range of costs in question) the tax base and the amount of tax anew in case of income shifting, based on, among others, transfer pricing regulations. In my opinion, it is not exactly appropriate to justify introduction of the solutions in question with difficulties in determining the market value of a given service or right.

This applies, in particular, to guarantees and sureties as discussed later in this text. Similar arguments were offered when adopting regulations introducing restrictions on advertising expenditures (apart from public advertising that was considered to be performed on an arm's length basis). However, after a long time, this limitation was removed (in 2007), and justification to the act amending this provision indicated that it constituted unnecessary restriction of business. In addition, it was argued that the change will have a positive effect on the development of specific industries (in this case – the advertising industry).

As one can see, the legislator came to a conclusion that the scale of using the activities in question in order to commit tax fraud is so considerable that prohibition of deducting certain expenses should be introduced. In the absence of instruments allowing the taxpayer to demonstrate the actual nature of certain activities, the solution is purely fiscal. This is a kind of a presumption that all taxpayers make use of instru-

ments considered illicit aggressive tax optimization.

A question also arises as to whether the solution in question will not artificially restrict the provision of services within groups of companies and, in consequence, result in their liquidation at the expense of increasing revenues of advisers unrelated to taxpayers. As a consequence, the solution may also adversely affect certain entities that provide services within the framework of the so-called Shared Services Centres (SSC). The regulation covers, among others, consulting services that are often rendered by such centres.

As far as exclusion of the costs of guarantees and sureties and similar services is concerned, it is difficult to conclude that there are real difficulties in establishing their actual market value in the course of procedures for transfer pricing. The financial market is competitive and transparent in terms of guarantees and sureties. Tax restrictions on deducting the costs of these instruments will surely affect the possibilities of providing group guarantees and warranties. The result may be higher costs of running a business. Entrepreneurs will be more often forced to use solutions proposed by financial institutions, which in turn will generate additional financial costs.

8. Tax Capital Group

A significant change in the Corporate Income Tax Act is concerned with the tax construct of a group of companies (referred to as tax capital group), which is a special taxpayer of corporate income tax. The purpose of these amendments to the provisions on Tax Capital Groups (TCGs) was to make this tool that is considered to be a mechanism of permitted tax optimization more accessible and attractive. The rules for establishing and operation of TCGs are regulated in Article 1a of the CIT Act. A tax capital group can only be created by Polish groups of companies that are directly related. To this end, companies forming a TCG conclude a contract in the form of a notarial deed, which is registered by way of a decision issued by a competent Head of Tax Office[20].

The unquestionable advantage of creating a TCG is, first of all, the possibility of jointly settling profits and losses between the companies forming the group. It is accepted that a TCG is a single taxable person but only as regards CIT (i.e., it is still not applicable to VAT). This advantage is particularly important for groups of companies if some companies are profitable and others generate losses.

Another significant benefit of the TCG used to be the possibility to arbitrarily set prices for individual products and services rendered between companies that make up a TCG. However, amendment to the CIT Act that entered into force in 2018 revoked Article 11, section 8, of the CIT Act, which stipulated that the regulations on estimations do not apply to service provision between companies forming a TCG. As a consequence, transactions carried out between related entities forming a TCG could be subject to control in terms of their compliance with the arm's length principle. They are subject to estimation according to the rules provided for in Article 11 of the CIT Act.

In line with the provisions of law applicable until the end of 2017, violation of the conditions applying to the operation of TCGs resulted in loss of a tax status of the capital group. The status was lost at the moment the violation occurred. The amended provisions have introduced a solution shifting the effect of the loss of a TCG status to the entire duration of the contract establishing a TCG. Fiction is then kept up that a TCG has never existed. Therefore, the companies forming a TCG are then burdened with the obligation to settle tax separately for the period of the TCG's existence.

Subsequent changes regarding TCGs, which should be considered significant but also beneficial, are concerned with limitation imposed on recognizing consulting services as tax deduct-

[20] See more: Gajewski D.J., Opodatkowanie holdingów i grup kapitałowych [Taxation of Holding Companies and Groups of Companies], Wyd. ABC, Warszawa 2005.

ibles (as specified in Article 15e of the CIT Act), which does not apply to companies forming a TCG.

Another significant change is related to the debt financing limit specified in Article 15c of the CIT Act. This regulation will apply to the entire group of companies and not to individual companies operating as a TCG.

The key changes in terms of the establishment of a TCG are concerned with the conditions for setting it up.

The first change is reduction of the average share capital that companies operating as TCGs are required to have from PLN 1,000,000 to 500,000.

An important change regarding TCGs is concerned with reduction of the direct share that a parent company must hold in the subsidiaries from 95% to 75%. This will make a larger number of companies eligible to establish a TCG.

An important improvement is reduction of a TCG's profitability from 3% to 2%. It is particularly important as it was often the case that tax groups could not maintain this level of profitability throughout the entire duration of the a TCG's operation.

Bearing in mind that there is currently little interest in the TCG construction, it is difficult to expect that the introduced changes will increase the attractiveness of this solution and consequently make the TCG structure, which is widely recognized as an instrument of permitted tax optimization, more attractive.

Despite the changes that have been introduced, the TCG solutions still fall short of the standards maintained in other European Union Member States. The vast majority of Member States decided on a solution that enables foreign companies whose registered office is in the EU to participate in a tax capital group. This construction becomes a standard expected by groups of companies operating on the territory of the EU. Obviously, precautionary measures preventing fictional (unauthorized) profit shifting to any company with a registered office in another Member State should be introduced along with this option.

Before the changes, the CTG construction did not stimulate much interest (as in 2016 even though there were nearly half a million CIT taxpayers, there were only 55 CTGs registered and this number had not exceed 70 in preceding years). Analysing the reasons behind such low interest in this construction, three most important reasons should be indicated: the group's profitability at a constant level of 3%; relatively high average capital per one company – not less than PLN 1 million; and the lack of a possibility to introduce related foreign companies into a CTG. Amendments to the CIT Act dealt with the first two conditions, which should be evaluated positively. It should also be noted that most of these conditions are not imposed as part of constructions available in other European Union Member States and if such conditions do apply – they are considerably less restrictive.

According to the project justification, provisions limiting "aggressive tax optimization" that the CTG was used for were also added to the Act. As indicated therein – the CTG was created "in order to perform a single restructuring operation (e.g., donation of real estate or trademarks), and then the group dissolved before three years have passed due to the loss of the CTG status."

In the justification, the Ministry of Finance suggests that the scale of these frauds can also be inferred from the number of tax interpretations regarding CTGs. There were 765 interpretations issued between 2010 and 2016 and 116 of these were concerned with donations made between group members. Hence amendments to the Act included provisions excluding the possibility of creating artificial costs arising from such donations.

The amendments also included a provision allowing tax authorities to terminate a group, if one of the companies performed transactions with a related entity outside the CTG breaching the arm's length principle (Article 1, section 2, point 3, letter b) of the CIT Act). Just as the case with transfer pricing regulations, such a company might incur a penalty rate of 50%, if the tax office questioned the comparative price analysis

presented by the company. However, in this case an additional sanction applies which consists in the dissolution of a CTG taking effect on the date of such non-arm's-length transaction.

It is understandable that regulations that used to be exploited to abuse the benefits of participating in a CTG have been revoked. However, imposing a double sanction on the entire group for the violation of the regulations by one of its members seems to be too restrictive. Following discovery of non-arm's-length prices and the lack of transfer pricing documentation, tax authorities apply a 50% tax rate to estimate income. After 1 January 2018, this situation may lead to the loss of a CTG status and, consequently, to termination of the group. One should also bear in mind that the existence of a CTG is beneficial for the tax authorities as well due to reduction of bureaucracy associated with settlement of all members of a tax group.

9. Recognition of Bad Debt as Tax Deductibles

A significant change in the Corporate Income Tax Act[21] is concerned with the possibility of recognizing bad debts as tax deductibles. Since 1 January 2018[22], it has become possible to recognize bad debt as deductibles but only for selected entities, that is, banks and credit unions. This entitlement is not available, however, to institutions offering smaller loans as defined in Article 5, point 2a, of the Act of 12 May 2011 on consumer credit[23].

Since 1 January 2018, banks and credit unions have also been in a privileged situation as they could recognize losses on disposal of securitization funds as tax deductibles. The institutions offering smaller loans could only recognize provisions for bad debts as tax deductibles provided that they were rendered credible as stipulated in the law; though even this possibility was consistently denied by tax authorities. The judicial decisions of administrative courts[24] expressed a stand that the institutions offering smaller loans had the right to recognize provisions in their tax result.

The legislator decided on a concept – described in Article 16, section 1, point 25, letter b of the CIT Act – that only entities subject to the supervision of the Polish Financial Supervision Authority will be entitled to recognize bad debts as tax deductibles. However, firms offering smaller loans – even if they enjoy the status of an institution offering smaller loans – are not subject to such supervision carried out in line with the Banking Act, Act on Credit Unions as well as the Act on Supervision of the Financial Market. There is no reasonable justification for depriving entities that grant smaller loans of this entitlement. Undoubtedly, this leads to differentiated taxation of institutions offering smaller loans compared to banks and credit unions – as in the case of the latter the principle of tax neutrality of a loan was fully maintained – and simultaneously to further privileging (i.e., strengthening the market position) of the latter, if the changes under discussion are considered comprehensively (cf. also Article 7b, section 2 and Article 15e, section 1, point 3 of the CIT Act). In consequence, the effect of these changes is an introduction of a significant deviation from the principle of tax neutrality of granting a loan.

It should be concluded that while banks and credit unions recognize loss due to bad debts as tax deductibles and so expenses due to its economic effect (in the absence of repayment) are

[21] Act of 15 February 1992 on corporate income tax (consolidated text: Journal of Laws of 2017, item 2343, as amended) hereinafter referred to as the CIT Act.

[22] Amendments introduced with the Act of 27 October 2017 amending the Personal Income Tax Act, the Corporate Income Tax Act, and the Act on Flat-Rate Income Tax on Certain Revenues Earned by Natural Persons (Journal of Laws of 2017, item 2175.

[23] Consolidated text: Journal of Laws of 2016, item 1528.

[24] See appealable judgement of the Regional Administrative Court (RAC) in Warsaw of 13/02/2018, III SA/Wa 952/17. Cf. also the following appealable judgements: of the RAC in Bialystok of 06/06/2017 and the RAC in Poznań of 10/05/2017, I SA/Po 1544/16 (the Central Database of Judgements of Administrative Courts – CBOSA).

reflected in the tax assessments, institutions operating in the sector of smaller loans cannot reflect such economic loss in their tax assessments. Therefore, the deviation from principle of tax neutrality of loans is negative in character and there should be no place for it in the tax system.

It is also worth noting that the differentiated treatment of entities in terms of recognition of bad debt as tax deductibles was introduced in defiance of the judicial decisions that are consistently made by Provincial Administrative Courts[25]. In the course of interpreting, the courts decided that subjecting the sector of smaller loans to the process of professionalization by way of imposing additional requirements does not justify differentiated treatment of institutions granting smaller loans in relation to such entities as banks or credit unions as regards the right of the former to recognize receivables (described to in Article 16, section 1, point 25, letter b of the CIT Act) as tax deductibles.

Analysing these issues from the point of view of the EU law, it should be noted that Polish regulations concerning losses due to bad debts may also be in contradiction with the principle of free movement of capital, which is stipulated in Article 63, section 1 of the TFEU. Bearing in mind the judicial decisions of the Court of Justice, there is a restriction of the free movement of capital, for example, when domestic regulations may discourage non-residents from making investments in a given Member State. If there is a restriction on the free movement of capital, it is necessary for the relevant Member State to respect the principle of proportionality. At the same time, it should be noted that the so-called grandfathering clause (stipulated in Article 64, section 1 of the TFEU) concerning restrictions on capital applicable in Member States until 31 December 1993 will not apply in this case.

[25] See appealable judgement of the Regional Administrative Court (RAC) in Warsaw of 13/02/2018, III SA/Wa 952/17. Cf. also the following appealable judgements: of the RAC in Bialystok of 06/06/2017 and the RAC in Poznań of 10/05/2017, I SA/Po 1544/16 (the Central Database of Judgements of Administrative Courts – CBOSA).

Bearing the above in mind, it should be concluded that these actions of the Polish legislator may be perceived as illicit state aid – within the meaning of Article 107, section 1 of the Treaty on the Functioning of the European Union – distorting competition among entrepreneurs, which is also integrally connected with the concept of the common market.

It should also be noted that the vast majority of European Union Member States allow institutions offering smaller loans to recognize not only special-purpose provisions (i.e., loan revaluation allowances) but also receivables recognized as bad debt as tax deductibles (or their recognition in the tax result in a different way).

Comparative analysis of deductibility of bad debts in the Member States of the European Union allows to conclude that out of all the EU Member States only Poland and Lithuania have no regulations permitting deductibility of bad debts by entities offering smaller loans. Simultaneously, it is worth noting that legislative activity is currently in progress in Lithuania, which is intended to adapt these provisions to the standards enjoyed in other Member States of the European Union.

10. Conclusions

Amendments to the CIT Act can be assigned to the following categories:

– limiting the possibility of recognizing certain expenses as tax deductibles (i.e., thin capitalization, recognizing bad debts a tax deductibles);
– concerning the category of revenues (income), for example, in the case of tax on commercial real estate or tax on income of controlled foreign companies;
– aimed at imposing tax on specific entities (e.g., adding the provisions on partnerships limited by shares to the CIT Act or the tax capital group) or specified fiscal and legal factual circumstances (such as transaction prices).

The first category is exceptionally diverse. The legislator often uses these solutions and not only as far as the provisions on thin capitalization are concerned. One can mention, for example, the provisions introduced on 1 January 2018 limiting the possibility of deducting costs related to: a) contracts for intangible services (i.e., license agreements, consulting, management, and control services) and the use of intangible assets as well as b) losses on paid disposal of receivables that have earlier been recognized as revenue due.

The above analysis of the most important amendments to the CIT Act proves that a kind of full thematic blocks referring quite hermetically to the regulations being developed are introduced into tax acts. And so, there is thin capitalization, which is an autonomous solution with its own conceptual network describing the notions related to companies' finances (i.e., the EBIDTA) through the language of the tax act. Similar is the case with taxation of income from a controlled foreign company.

In each case, it is claimed that the motive behind adoption of the provisions in question is to prevent tax avoidance or abuse of law. Will that actually be the case? Time will tell. It is evident from the history of changes in the regulations under discussion that taxpayers often find a way to "circumvent" such regulations (e.g., as far as CFCs are concerned, regulations on direct control of a foreign company were in force until the end of 2017, which made it possible to create a model that did not qualify to be taxed with the tax on CFCs, provided that appropriate changes in ownership had been introduced).

Similar is the case with tax on commercial real estate as there is a large temptation to divide real estate so that it will not be subject to this tax. These regulations may also influence decisions concerning the extent of investment, which could be made so that this tax is avoided. In any case, such an option is available when it comes to partnerships limited by shares as it is currently possible to choose limited partnerships or closed-end investment funds as an alternative. In the two latter cases, the exemption *ratione personae* of closed-end investment funds was changed to an exemption *ratione materiae*, where the exemption was limited in relation to certain incomes (e.g., as regards income from commercial partnerships). Taxpayers find ways to limit the negative consequences of these changes and the Ministry of Finance is aware of that, which is visible in the Ministry's warning against one of the ways of limiting the effects of the said change in the exemption granted by the CIT Act[26].

It should be noted that each regulation under discussion increases the number of tax obligations that a taxpayer must meet. It is not only important that these regulations impose higher taxes on business activity (in connection with fulfilment of the basic material obligation consisting in paying taxes) but also widen the scope of supplementary duties the taxpayer needs to perform. Therefore, a certain phenomenon should be noticed. While in the case of the anti-tax avoidance clauses (i.e., the general clause and special clauses), the authorities are the ones that are burdened with the obligation to demonstrate that abuse of the law has taken place; in the case of the provisions in question, which are also supposed to prevent tax avoidance, these obligations are imposed on the taxpayer. It is the taxpayer (who is a Polish resident) that is obliged to maintain a register of controlled foreign companies and record events occurring in controlled foreign companies in a register separate from the accounts. Similarly, in the case of thin capitalization the taxpayer is obliged to check the EBIDTA tax index on a current basis, and the owner of commercial real estate calculates and pays tax on their property, etc.

[26] *Vide*: The Ministry of Finance's warning against tax optimization with bonds, No. 001/17 of 08 May 2017, www.mf.gov.pl.

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