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Streszczenie rozprawy doktorskiej
Podatek od wyjścia

Summary of Ph.D. dissertation
Exit tax

Rozprawa doktorska przygotowana
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The Ph.D. dissertation regards a regulation that was not implemented in Poland – exit tax. This tax is imposed on taxpayers in connection with a change of residence (emigration). It can be imposed both on individuals and corporations. In this case there appears a fiction that a taxpayer disposes their assets and, therefore, is obliged to pay capital gains tax.

Exit tax represents one kind of emigration taxes. It is not *de facto* a separate tax, but a special construction implemented usually to income tax systems. We can differentiate general and limited exit tax. In the first case tax is imposed on all hypothetical, but not realized capital gains before an emigration. All assets are appraised according to the market value. In case of limited exit tax, tax is imposed on unrealized capital gains with relations to only particular taxpayer's assets.

Taxpayers migrate because of different reasons – non-tax-related and tax-related. From tax point of view, it can be observed that taxpayers change their residence in order to find more tax-friendly jurisdiction. As a result, there may appear so called an artificial emigration phenomenon. From this perspective it can be noticed that exit tax becomes an anti-avoidance measure. Besides, this tax may aim to prevent the loss of budget revenues due to emigration of taxpayers. Thus, increase in value of assets that took place before emigration is taxed. Because of these two aims of exit tax it is worth considering whether this regulation should be introduced in Poland.

Exit tax is part of tax systems of many OECD countries. Nevertheless, there are many practical problems connected with this regulation. At the first place it is crucial to ascertain the aims of exit tax. It must be underlined that this tax functions mainly as a specific anti-avoidance rule. It is worth asking whether nowadays this regulation exercises this function? Secondly, the place of exit tax in tax law system must be considered. It seems that using a term “exit tax” may suggest that in this case we have a separate tax. This thesis may be, however, incorrect.

It must be mentioned that some authors believe that exit tax is contrary to EU fundamental freedoms. However, this opinion seems to be precipitous. In order to solve this problem, one should analyse European Union Court of Justice jurisprudence in this scope. The third aim of the dissertation is to establish whether exit tax provisions may be in compliance with EU law and, as a consequence, to indicate which regulations regarding this tax does not breach this law.

What is more, in literature there are disputes whether exit tax falls within a scope of tax treaties patterned on OECD and UN Model Conventions and whether introduction of this

tax in domestic tax law causes a treaty override phenomenon. It seems that it is important to present an opinion in this dispute. In the dissertation a chosen tax treaties are analysed to find specific provisions, which do not stem from OECD and UN Model Conventions, regarding exit tax. The dissertation aims on this basis to present postulates to change both conventions and tax treaty practice of countries that implemented exit tax (fourth aim).

In Poland exit tax is not implemented. In Polish tax literature there are no publications regarding this tax, there were no specific researches in this field. It is worth then consider, which conditions should be met to implement this tax in Poland. *Prima facie* it seems that hypothetical implementation of exit tax may be in contrary to constitutional values. The dissertation aims (fifth aim) to ascertain relations between exit tax and provisions of Polish Constitution.

Aforementioned aims of the dissertation lead to its main aim i.e. proposition of the implementation exit tax regulation that would realize its objectives and assumptions, be compliant with EU law and Constitution. It is worth, thus, ask a question: how provisions regarding exit tax should look like to fulfil aforementioned conditions? This task is crowned by preparation of drafts of acts amending personal income tax act and corporate income tax act. It is also crucial to present postulates concerning Poland's treaty practice in connection with introduction of exit tax.

It must be underlined that the aim of the dissertation is not to decide unequivocally whether exit tax should be introduced in Poland. A task of a dissertation is, as mentioned above, to indicate conditions, that should be fulfilled in case of implementing this regulation. The decision (which has a political character) concerning implementation of this tax should be preceded by economic research, which aim is to analyse a tax-related emigration phenomenon and generally a magnitude of a loss of budget revenues due to a change of residence by taxpayers.

The presented aims of the dissertation determine its structure. The dissertation is divided into five chapters. The first concerns an ascertainment of the exit tax nature. There was presented a term of this tax, its kinds and features. According to some authors, nowadays exit tax assumes a form of extended tax liability. Due to this fact, in the dissertation there are indicated the differences between these two kinds of emigration taxes i.e. exit tax and extended tax liability. Then, the reasons and objectives of implementation of exit tax are presented. Finally, it is established the place of exit tax in tax law system.

The second chapter includes a comparative analysis of regulations concerning exit tax implemented in five countries of European Economic Area. The provisions of following countries were researched: France, Spain, the Netherlands, Germany and Norway, taking into account a comparability criterion of legal solutions. The analysis regarded separately personal income tax and corporate income tax. This part of dissertation was summed up by comparative conclusions.

In the third chapter the problem of exit tax in the light of EU law was presented. It was indicated that this tax restricts EU fundamental freedoms. However, these restrictions may be justified. As a result, the justifying circumstances stemming from the Treaty on the Functioning of the European Union, the circumstances accepted and rejected by European Union Court of Justice were examined. Finally, the provisions concerning exit tax were assessed from the perspective of the proportionality rule.

The fourth chapter regards international tax law and is devoted mainly to the problem of double taxation (double non-taxation) in connection with the imposition of exit tax and methods to solve this issue. In this part of dissertation there are formulated postulates to modify model conventions, which are patterns of double tax treaties and to change treaty practice of countries which are parties to such treaties.

The last chapter brings answer to a question what kinds of conditions should be fulfilled by a regulation concerning exit tax to realize its objectives and be compliant with EU law. These deliberations are proceeded by the assessment of the concept of exit tax from the perspective of constitutional provisions and rules. In this chapters there are also presented postulates to modify Polish practice regarding double tax treaties.

In connection with the dissertation there were a few kinds of research conducted. Firstly, there was presented a comparative analysis concerning exit tax in five countries from the perspective of personal income tax and corporate income tax. Secondly, the European Union Court of Justice jurisprudence was searched to find conditions which should be fulfilled to make exit tax regulation compliant with EU law. Thirdly, there were analysed all of the tax treaties which parties are six counties (including Poland) in order to find special provisions concerning taxation of gains subject to exit tax.

As it was mentioned above, the main aim of the dissertation is to present a shape of regulation concerning exit tax that could be implemented in Poland. Thus, provisions regarding exit tax should have following features. When it comes to exit tax on individuals,

the tax may be imposed on long-term residents. It should be limited exit tax. Tax should be imposed on deemed income from disposal of shares. It may regards shares both in Polish and in foreign companies. Tax should be imposed only in case of possessing a substantial shareholding. The tax base should constitute a market value of shares at the time of arising tax liability minus costs. A tax rate should be 19%. A taxable event should be connected with a loss of status of resident in Poland and other events equal to emigration. A tax moment arises directly before these events.

In some cases there should be provided a possibility to defer tax. There could be two procedures – *ex officio* and on motion. The former should be available in case of emigration to EU or a country of EEA, presuming that Poland has an effective change of information and assistance with collection of taxes ensured with immigration country. The latter should be applicable in case of emigration to other country that cited above. To get such deferral it would be necessary to fulfil information obligations and to provide sufficient guarantee. The deferral may expire in case of any events indicated in provisions. Emigrating taxpayers should have some information obligations when tax is deferred. They should submit a tax declaration and every year inform tax authorities about their shares and a place of residence.

Exit tax on corporations should be imposed on companies. It should be general exit tax, which means that in case of emigration all of the assets of the company should be subject to tax. The construction of exit tax on corporations probably should depend on a draft of EU anti-avoidance directive. Thus, the tax base should constitute a market value of assets at the time of arising tax liability minus costs. A tax rate should be 19%. A taxable event should be connected with a loss of status of resident in Poland, provided that the emigration is connected with a transfer of assets abroad, and other events equal to emigration. A tax moment arises directly before these events.

Generally, tax should be paid immediately. In some cases, however, tax could be deferred. The deferral could consist in payment of five instalments and could be available only in cases indicated in provisions. The deferral should be also connected with payment of interests. What is more, under some circumstances the tax deferral may expire. Taxpayers should have some information obligations when tax is deferred. They should submit a tax declaration and every year inform tax authorities about their assets and a place of residence.

Polish domestic tax provisions should also provide a method of avoidance of double taxation. In case of the personal income tax act there should be implemented a step-up method

for immigrating taxpayers and a reverse credit for emigrating taxpayers. The corporate income tax act, taking into account the provisions of the draft of anti-avoidance directive should provide a step-up method.

In conclusion of the dissertation it was underlined that exit tax should realize mainly two objectives. It should be anti-avoidance measure and it should prevent the loss of budget revenues in connection with the loss of "hidden" tax demand. These two aims should complement one another. The main role, however, should play the second objective. This conclusion may be drawn taking into account, firstly, the nature of this regulations. The tax is imposed on the increase of value that took place in the country of emigration. Secondly, this aim is accepted by European Union Court of Justice. Thirdly, the legislation of countries which provisions were analysed suggests that exit tax realizes mainly this aim. However, what stated above does not mean that exit tax is not a specific anti-avoidance rule. This aim of exit tax is a natural consequence of the first mentioned aim. This regulation should prevent an artificial emigration phenomenon. Even the draft of anti-avoidance directive indicates the aim of this tax.

The mentioned objectives of exit tax determine its place in a tax law system. Nowadays, exit tax may be regarded as a tax (whereas provisions concerning exit tax function also as an anti-avoidance measure). It is not, however, a separate tax. It is a special construction implemented to income tax system. Construction elements of exit tax are similar to such elements of income taxes. What is important, one cannot classify exit tax as a property tax.

Implementation of exit tax may cause a conflict with provisions of Polish Constitution, i.e. the right to emigrate, the establishment freedom and the property right. However, restrictions of two first rights may be admissible. On the other hand, the proper construction of exit tax does not cause the breach of the property right. From the perspective of Constitution, the relation between exit tax and equality rule is the most important. At the first sight we can see a differentiation of two categories of taxpayers having certain assets – these that emigrate and these that stay in a country of origin. In this case one can observe an infringement of ability to pay principle. The first category of taxpayers is obliged to pay tax, although does not have finances to bear tax (because of not realizing gain), while the second category does not have to pay any taxes connected with assets. This observation will lose its actuality if a legislator adopts a deferral of exit tax till the moment of realization income. Then the situation of an emigrating taxpayer becomes similar to the taxpayer that stays in a

county. Both categories of taxpayers pay tax when the gain is realized. A more far-reaching conclusion may be drawn. Provisions that stipulate exit taxation with deferral realize the equality rule in a more complete way. Emigrating taxpayers are not in a better situation than non-emigrating ones. This better situation could stem from the fact that taxpayers after changing tax residence could be taxed in case of disposal of assets more beneficially abroad than in the emigration country.

Summing up, the provisions implementing exit tax could be in compliance with Constitution. These provisions should be, however, adopted with full respect for proper legislation rules. At the stage of legislative process the basic assumptions of exit tax should be taken into account. In this respect the draft of act amending personal income tax act and corporate income tax act may be helpful.

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