



## **INTERNATIONAL TAX AVOIDANCE - ATTEMPT TO DEFINE THE CONCEPT AND TO DISTINGUISH IT FROM INTERNATIONAL TAX EVASION AND INTERNATIONAL TAX PLANNING**

**Anna Chylak**

### **Abstract:**

The article makes an attempt to define 'international tax avoidance' and systematize the terminology often used when referring to reduction of tax burden like tax optimization or aggressive tax planning by presenting the terminological triad: tax evasion – tax avoidance – tax planning, which should be applied when qualifying taxpayer's actions leading to payment of less taxes. Particular attention is given to where the boundaries among those terms should be crossed.

**Keywords:** tax, law, international tax avoidance, tax avoidance, tax evasion, tax planning

**DOI:** 10.19197/tbr.v17i4.307

### **1. Introduction**

International tax avoidance is a key issue that concerns states and international organizations like OECD and EU. Due to globalization processes its spreads rapidly and leads to the decrease of budget revenues from taxes as Multinational Enterprises (MNEs) take advantage of inconsistencies among countries' tax systems and shift profits from high-tax rate jurisdictions

to the low-tax rate ones or apply the schemes thanks to which they ultimately pay effectively less taxes.

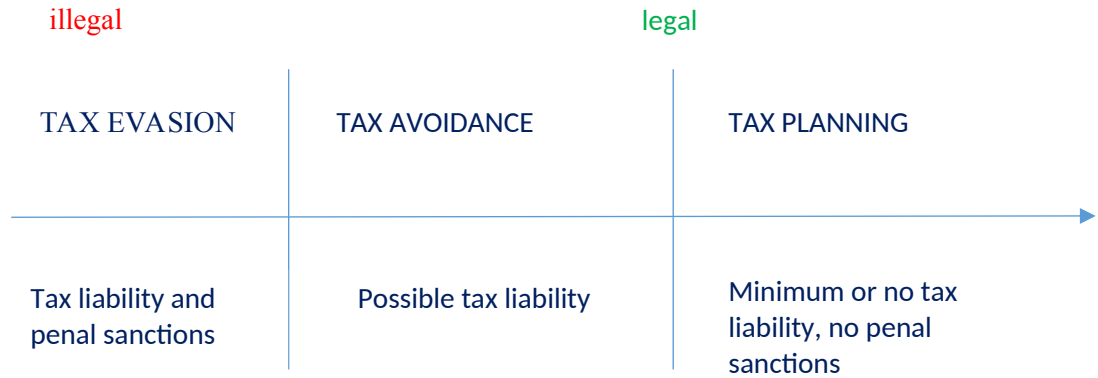
In order to fully understand what 'international tax avoidance' is, it is necessary to make an attempt to define 'tax avoidance' itself first and to draw boundaries between 'tax avoidance' and 'tax evasion' and secondly to give guidance how to distinguish it from 'tax planning'. Finally, to present where the international aspect of 'tax avoidance' appears and how it leads to creation of a separate concept, which is 'international tax avoidance'.

## **2. Terminological triad: tax evasion – tax avoidance – tax planning**

'Tax avoidance' is a phenomenon that is as old as the taxes themselves and that is subject to broad analyses in the light of its legal, economic and moral aspects. However, so far, a universal definition of tax avoidance has not been agreed. One of the main reasons to this is the fact that usually the definition of 'tax avoidance' is developed in opposition to the notion of 'tax evasion' basing on the criterion of legality or illegality of the actions taken not to pay taxes, which is the issue of the legal systems of the particular countries and their domestic laws and therefore should not be the sole criterion (Kalinowski, 2001, pp. 23-24).

In order to systematize the actions leading to reduction or even elimination of tax burden, the following distinction has been adopted by tax law doctrine in which the actions can be categorized from the most aggressive and illegal to the legal ones.

**Diagram 1** (Russo, 2007, p. 58):



### Tax evasion

'Tax evasion' (*uchylanie się od opodatkowania*) is as a rule described as an illegal activity undertaken by a taxpayer to reduce its tax liability or a situation in which taxpayer does not settle tax liability due or achieves undue tax benefits. Certain representatives of tax law doctrine present the opinion that tax evasion can be committed both by conscious (intentional) and unconscious (unintentional) behavior such as e.g. lack of information that a tax liability arises in a given situation. They also state that motives leading to tax evasion are not relevant, i.e. failure to pay tax, which is both motivated by will to illegally achieve saving on not paying taxes or not paying them due to difficult financial condition of a taxpayer are still one and the same tax evasion (Sowiński, 2009, p. 15). This point of view is generally shared in Polish jurisprudence (the Supreme Administrative Court, II FSK 2702/12). Such approach seems justified as long as it is further differently penalized in criminal law regulations considering the motivation and guilt (*wina*) of the perpetrator. Polish Fiscal Penal Code penalizes the actions taken by a taxpayer only if taxpayer was found guilty and its intentionality or unintentionality influences the qualification of an action as a crime (*przestępstwo*) or

a delict (*wykroczenie*) and the penalty itself (*wymiar kary*) (Fiscal Penal Code, art. 46 and further).

It is generally accepted point of view that tax evasion can be committed both by taking action e.g. claiming undue tax benefit or undue tax refund or by not taking any action, e.g. not disclosing the activity, which is subject to tax (Niedojadło, 2016, 7-8, p. 243). However, there are opposite approaches presented by certain representatives of tax law doctrine (Kurzac, 2017, CV, p. 20). It should be though noted that in case of tax evasion not taking any action does not imply the situation that tax liability does not arise at all like in case of tax saving (*oszczędzanie podatkowe*).

As a rule '*Tax evasion can be carried out by the omission of taxable income or transactions from tax declarations, over-reporting of deductible expenses, failure to file a return, sham transactions, or reduction of the amount properly due by fraudulent misstatement or misrepresentation.*' (Lyons, 1996, p. 115).

The most common examples of tax evasion include *inter alia* the failure to notify to tax authorities of the given country the entity's/person's presence in case it is carrying out taxable activities in this country, not reporting the entire amount of income, deductions of false expenses, claiming undue tax relief, the failure to pay the amount of tax due, the failure to report sources of taxable income, gains or profits or facts leading to crystallization of tax liability in case one is legally obliged to do so (Note on the Revision of the Manual for Negotiation of Bilateral Treaties, 2011). Tax evasion is sometimes referred to as tax fraud (*oszustwo podatkowe*) (Nieborak, 2017, p. 201).

It is generally a consensus in tax law doctrine and jurisprudence that tax evasion is a harmful practice that should be commonly countered.

### **Tax avoidance**

Tax avoidance is usually defined in contrast to tax evasion. However, opposite to tax evasion, the tax avoidance concept is less precise than tax evasion. When analyzing tax doctrine representatives' approaches to tax avoidance, the following attempts of defining this notion can be found.

Hanna Filipczyk, when seeking for a definition of 'tax avoidance' refers to provisions countering tax avoidance, including general anti-avoidance rules (GAARs) and defines it *'as a course of action - constituted by a transaction or a series of transactions - which:*

- *defeats "object and purpose" of the applicable tax law ("spirit", ratio legis, etc.);*
- *is artificial (non-genuine, not-reflecting business reality, contrived, convoluted, overly complicated, etc.);*
- *is carried out for the purpose of obtaining a tax advantage (the purpose is usually qualified, e.g. as "sole", "main", "principal", etc.)*(Filipczyk, 2017, p. 29).

Marcin Lachowicz characterizes 'tax avoidance' as overall activities taken by an entity, which are in line with the wording of the law, the given taxpayer refers to and which activities are taken solely or mainly in order to achieve tax benefit in a broad sense. The activities taken are open, however, are not typical activities to reach the business purpose assumed by this entity. In a case, when in the given country the anti-avoidance regulations are in force, such activities will be breaching these regulations (Lachowicz, 2018).

A. Hensel defines it as *'obtaining a certain economic position aimed at avoiding a legal occurrence that the legislator has considered ordinary and normal in economic relations and which he has consequently established as a prerequisite for the creation of tax obligation. Different definition was created by S. Rosmarin according to which tax avoidance is to create*

*intentionally the economic relations that there is no obligation to pay the tax, even though the taxpayer had achieved the same results as in the situation connected with tax burden* (as cited in Niedojadło, 2016, (2), pp. 171-171).

Marco Greggi describes avoidance of tax provisions as *'an outcome of the infinite struggle between the principles of legal certainty on one side and freedom of business activity on the other: between the legal form of the commercial operations and the substance of the aims pursued by the taxpayers'* (Greggi, 2008, 6 (1), pp. 23-24).

The International Bureau of Fiscal Documentation's international tax glossary provides for the following guidance when characterizing tax avoidance: *'For tax purposes, avoidance is a term used to describe a legal arrangement of a taxpayer's affairs so as to reduce his tax liability. It often has pejorative overtones, where for example it is used to describe avoidance achieved by artificial arrangements or personal or business affairs to take advantage of loopholes, ambiguities, anomalies or other deficiencies of tax law'* (Lyons, 1996, p. 24).

Please note that each of the presented definitions has the following elements in common, which can be regarded as characteristic features of the 'tax avoidance' term:

- the sole or main purpose of taxpayer's activities is to lower its tax liability (Głuchowski, 2006, p. 155), which can be performed applying different means, including not only elimination or reduction of tax payable but also higher tax loss to be deducted in future tax years from tax income, deferring in time the moment of tax liability arising;
- the artificiality of taxpayer's actions, which are not business but tax-driven and a rational entity would not take such actions for other than tax-avoiding reasons;
- still in accordance with the law although not in accordance with its object and purpose (*ratio legis*);

- it is negatively assessed from ethical point of view as immoral *inter alia* due to the fact that by decreasing tax burden it contributes to deterioration of financial input to the state's budget and therefore can be perceived as a refusal to build social solidarity (Woźniak, 2018, (11), p. 91) as well as it acts against the principle of equality in taxation (*zasada równości opodatkowania*) (Filipczyk, 2017, (8), p. 26).

In author's opinion the term 'tax avoidance' shall be understood in line with the above listing. It should be added, however, as Marek Kalinowski correctly noted that legal analysis of the notion 'tax avoidance' cannot be performed *in abstracto*, in isolation from a tax law system of a given country (Kalinowski, 2001, p. 11). Therefore taking into account that legal and tax systems in the countries are not compatible, the understanding of 'tax avoidance' may differ as well.

Tax avoidance as a rule concentrates on achieving the following effects:

- elimination or minimization of tax liability;
- deferral in time the moment of arising tax liability;

Polish academics and practitioners sometimes use the term 'circumvention of tax law' (*obejście prawa podatkowego*) as a synonym of 'tax avoidance' (Maj, 2014, p. 387). It should be therefore explained what is the relation between these two terms.

The 'circumvention of law' itself is defined as the legal activity formally in line with the law, however, materially aiming to achieve the purpose prohibited by the law (*in fraudem legis*). It should be noted that it is an institution typical for the countries with continental law system. The countries of common law system do not have such institution but apply judicial doctrines, including the business purpose doctrine also referred to as the economic way of interpretation of law.

As regards the tax law, 'the circumvention of tax law' is referred to as making use of civil law institutions and freedom of contract principle (*zasada swobody umów*) in order to achieve the intended business effect without triggering tax consequences envisaged by the legislator (Kujawski, 2017, p. 19). The abuse of tax law is not a specific kind of abuse of law in civil law, since the tax law is autonomic from the civil law.

On the grounds of civil law legal activities taken *in fraudem legis* are considered as invalid *ex lege* and do not bring any legal consequences. On the grounds of tax law the activities taken as the abuse of tax law are not automatically invalid but the tax implications are not derived from the activities taken by the taxpayer but from the civil law activities which a rational entity would have performed to achieve the intended business effect. Therefore only tax implications from the civil law activities taken by the taxpayer are considered invalid and disregarded and the validity of the civil law activity itself on the grounds of civil law still remains valid (Maj, 2014, p. 114). An example of the circumvention of tax law would be an exchange of shares transaction (*wymiana udziałów*) on the grounds of Polish tax law exploited to increase the cost to be recognized as tax-deductible at the moment of the sale of shares. This mechanism was considered 'circumvention of tax law' in the cases where the shareholder instead of selling the shares in its subsidiary with low share capital directly to the purchaser, first contributed the shares in this subsidiary to another limited liability company in exchange for that limited liability company's shares, which allowed to increase the acquisition cost of the shares to be sold ultimately to the purchaser and to avoid or decrease the corporate income tax on such sale.

Regarding the above, the relation between the tax avoidance and the circumvention of tax law is very close



and therefore these terms can be used interchangeably (Bogucki, Romanowicz [in:] Gajewski, 2017, p. 11).

Practitioners, including tax advisors sometimes use the term 'tax optimization' (*optymalizacja podatkowa*), which similarly as 'tax avoidance' involves achieving legally the desired business effect with minimizing the tax burden, however, without pejorative tone associated with 'tax avoidance' notion. 'Tax optimization' is not commonly used by tax law doctrine who adopted and consequently use the terminological triad encompassing: tax evasion, tax avoidance and tax planning. Nevertheless some academics happen to apply it (Wyścilok, 2013; Jamroży Kudert, 2007; Mazur, 2012). The other terms that are sometimes used as well are: an aggressive tax optimization or an aggressive tax planning (Brodzka, 2013, p. 365; Wyrzykowski, Dębniak, 2017). Even though they are outside the terminological triad applied by tax law doctrine, international organizations like the European Union and OECD (OECD, Tackling aggressive tax planning through improved transparency and disclosure. Report on disclosure initiatives, 2011) apply them in their official recommendations and reports as well as provide the guidance on taxpayer's behavior that will be covered by the scope of aggressive tax planning. In the EU's Recommendation of 06.12.2012, the European Commission defined 'aggressing tax planning' in the following way: '*Aggressive tax planning consists in taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability. Aggressive tax planning can take a multitude of forms. Its consequences include double deductions (e.g. the same loss is deducted both in the state of source and residence) and double non-taxation (e.g. income which is not taxed in the source state is exempt in the state of residence)*' (C(2012) 8806 final, 6.12.2012: Commission Recommendation of 6.12.2012 on aggressive tax planning).

In the author's opinion the terminological triad applicable in the Anglo-Saxon states doctrine adopting the three-element classification of taxpayers' behavior and encompassing: **tax evasion, tax avoidance and tax planning** should be the base for the study (Brzeziński, 1996, p. 9) since, as Krzysztof R. Woźniak correctly stated: '*Polish literature often introduces terms like: illegal tax evasion, aggressive tax optimization or circumvention of [tax] law, however, these terms "cloud" the term of tax avoidance...*' and therefore may cause unnecessary misunderstandings in tax law doctrine.

### **The criteria to distinguish tax evasion and tax avoidance**

It is commonly approved in tax law doctrine that the element of illegality distinguishes tax evasion from tax avoidance. The reduction or elimination of tax burden within tax avoidance is achieved by legal means, i.e. does not violate tax law, whereas in case of tax evasion, the actions taken are illegal and fraudulent. However, as Marek Kalinowski and Hanna Filipczyk noted the legality of tax avoidance is conditioned by strict approach to the issue of tax law interpretation (*wykładnia prawa podatkowego*), which is manifested by inadmissibility of extensive interpretation (*wykładnia rozszerzająca*) and sticking to the priority of linguistic interpretation (*wykładnia językowa*). (Kalinowski, 2001, pp. 23-28; Filipczk, 2017, No. 7, p. 25) The inadmissibility would encompass as well the application of *per analogiam* interpretation of tax law, form-over-substance and economic interpretation of law applied in the common law systems, especially in the United Kingdom and the USA. Substance-over-form doctrine involves giving the priority to the substance of the legal activities over their form. The rationale of this doctrine is the assumption that economic effect of a legal activity is its essence and its form is of secondary importance and in this spirit the

legal activities should be interpreted (Brzeziński, 1996, p. 24).

Even though it is difficult to cross the boundary between tax avoidance and tax evasion, factors such as taxpayer's motives, fictional actions taken, the scale of tax benefit achieved and the qualification/assessment of taxpayer's actions by tax authorities should be involved when making such distinction (Głuchowski, 1996, p. 52).

Summing up, the aspect of the most significant differences between the concept of tax avoidance and tax evasion - the following distinguishing elements should be considered when making the distinction:

- first and foremost legality vs. illegality of the actions taken,
- concealing vs. non-concealing the relevant information regarding the object of tax obligation.

The element being in common for tax avoidance and tax evasion is its consequence of minimization or even elimination of tax burden and negative effect on the state's budget (Gomułowicz, Małecki, 2011, p. 293).

Some authors categorize benefitting from tax incentives and tax exemptions (*ulgi i zwolnienia podatkowe*) as being in the scope of tax avoidance (Żabska, 2013, p. 263), whereas other allocate them to tax planning (Zieniewicz [in:] Ćwiąkała-Matys, Rutkowska-Tomaszeska, 2015, p. 167; Gordon 2013, p. 176), which is more justified approach since they are the elements of constructions of a given tax that legislator wanted to grant to taxpayer under the conditions provided in respective tax Act.

It is however, commonly agreed that an assessment whether taxpayer's behavior should be qualified as tax avoidance or tax evasion should be made *in casu* taking into account all the circumstances.

### **Tax planning**

It is not questioned in tax law doctrine that a taxpayer has the right to choose the way to achieve its business purposes with the least tax burden. *'If there exist two different methods to allow the taxpayers to achieve the economic purpose, he is not obliged to choose the one that will be the least profitable for him but the most profitable for the state. Thus, the taxpayer using various forms of civil law transactions may choose which will provide him the least taxation. From the economic point of view this choice is a specific type of planning which aims to create tax optimal structures of economic activities to make some savings and to improve the financial result.'* (Niedojadło, 2016, (7-8), p. 240)

Tax planning is entirely legal and accepted by tax authorities method of tax burden minimization or elimination consisting of active taxpayer's behavior. It is not questioned as regards its ethical side and therefore tax planning contrary to tax avoidance is considered as moral and thus not violating the spirit of law – *ratio legis* (Filipczyk, 2017, pp. 57-58).

An example of tax planning would be conducting business activity with the maximum use of tax reliefs, tax exemptions and tax incentives (e.g. establishment of business activity in special economic zones in Poland (*specjalne strefy ekonomiczne w Polsce*) or starting business activity in a chosen legal form like partnership not subject to corporate income tax instead of limited liability company or the choice of the flat rate taxation (*opodatkowanie ryczałtowe*) instead of taxed with progressive rates). Within Polish corporate income tax, it would as well involve the ability to choose the accelerated depreciation method, the quarterly instead of monthly advances (*zaliczki*) or simplified advances (*zaliczki uproszczone*) as well as to lower taxable income with tax losses (*straty podatkowe*) incurred in the previous tax years.

In its ultimate form it appears as refraining from activities that involve creation of tax obligation and is commonly referred to as 'tax saving' (*oszczędzanie podatkowe*), which is understood as '*an abstention from an act which would have triggered a tax obligation*'. (Filipczyk, 2017, p. 58). What differs tax saving from other forms of tax planning is its passive character. Due to that in standard circumstances '*tax avoidance and tax saving are unlikely to be confounded or confused*.' (Karwat, 2003, pp. 16-18). The examples of tax saving would be the entrepreneur not enlarging the scale and revenue from its business activity that would lead to taxation with a higher rate (e.g. not exceeding the limitation of revenues provided in Polish CIT Act to be able to apply 9% CIT rate) or an individual refraining from buying exclusive goods subject to excise duty (*akcyza*).

### **The criteria to distinguish tax avoidance and tax planning**

Taking into account that both tax avoidance and tax planning are considered as legal taxpayer's behavior, when making distinction between those two, tax avoidance will be a situation in which:

- the spirit of the law – *ratio legis* – is violated,
- the main or the sole purpose of taxpayer's activity will be achieving tax benefit,
- the character of his activities will be artificial, too complicated and not common for the specifics of his business activity,
- taxpayer's activities are not supported with business justification or serious economic reasons.

This is a very vague borderline and therefore the cases on the edge of tax avoidance and tax planning should be carefully analyzed applying all the given circumstances and in result tax law doctrine, courts and practitioners often have problems when qualifying such cases to tax avoidance or tax planning respectively.

## International tax avoidance

There is no established legal definition of 'international tax avoidance', however, its meaning can be derived from the understanding of the term 'tax avoidance' supplemented with an 'international factor'. Tax law doctrine makes attempts to define or describe 'international tax avoidance'.

According to International Monetary Fund it is defined as '*international reallocation of profits by an MNC* [multinational corporation – Author's postscript] *in response to tax differences between countries, with the aim to minimize the global tax bill* (Beer, de Mooij, Liu, 2018, p. 4)'.

Alicja Brodzka describes 'international tax avoidance' as implementation of series of transactions (usually among the subsidiaries located in different countries) each of them having just and fair character, nevertheless their sum bringing the taxpayer the benefits not envisaged by law. Within the term 'international tax avoidance' both Alicja Brodzka (2013, p. 6) and Dominik Gajewski (2015, p. 2) distinguish 'international tax planning' applied by multinational corporations

Dominik Gajewski makes also an attempt to provide a comprehensive definition of 'international tax avoidance' as reduction of tax liabilities achieved by application of legal methods which results from transfer of people/entities and capital across the tax boundary or from its absence and is manifested in the following situations:

- **transfer of people/entities and capital** – in case of change of the registered office of legal person together with the transfer of the entire source of income of that legal person and its property;
- **transfer of people/entities with the absence of transfer of capital** – in case of emigration of an

individual without the transfer of all sources of his income and his property;

- **transfer of capital with the absence of transfer of people/entities** – the most frequent case when only income and property is transferred;
- **the absence of transfer of people/entities and capital** – making use of temporary character of emigration where place of residence remains the same and therefore the capital is not transferred either (2017, p. 38).

Józef Wyścilok depicts ‘international tax planning’ as the activities based on making use of the legislation of the low-tax regime countries (mainly offshore companies) or taking advantage of treaties for the avoidance of double taxation (treaty abuse, treaty shopping) (2013, p. 64).

Marcin Lachowicz perceives ‘international tax avoidance’ as entirety of the activities taken by a given entity, which are in line with the wording of the law (letter of law), this entity points to and if these activities are taken by that entity solely or mainly in order to achieve tax benefit in a broad sense. The entity avoiding the tax law as a rule acts explicitly and actively performs the activities, which in given circumstances are not typical to achieve the intended business purpose. Such activities, even if in line with the letter of law of one or both states or the bilateral tax treaty they are parties to, will not be in accordance with the intention of these states and the object, and purpose of these regulations (2018).

Ilona Maj presents ‘international tax avoidance’ as shaping the structure and legal form of activity in particular countries and transfer of capital and goods in such way that income earned by multinational corporation would be taxed at possibly lowest rate or not taxed at all (2014, p. 387).

For the purposes of this thesis and the further study ‘international tax avoidance’ will be understood as active

behavior of a taxpayer or future taxpayer consisting of an action (or transaction) or a series of actions (or transactions), which are in line with the wording of tax law (letter of law) performed in order to eliminate or minimize tax burden by using *inter alia* the inconsistency between the tax law systems of given countries, making the undue benefit from tax treaties on elimination of double tax avoidance, transferring the residence to tax havens or making advantage on loopholes in international tax law, but which are not in line with the spirit of law, i.e. with the purpose of this law.

There are various methods of international tax avoidance, the main and the most harmful of them will be presented in the next chapter of this thesis. Among them the below ones can be listed as an example:

- minimization of taxations in residence or source countries by exploiting the weakness of arm's length principle in terms of transfer pricing;
- avoidance of creation of permanent establishment status;
- location of intellectual property (IP) rights to low-tax countries in order to minimize taxes on IP rights' generated income;
- shifting of intercompany debt via lending to companies located in low-tax countries and borrowing from companies located in high-tax countries;
- treaty shopping, which is making use of the networks of treaties to reduce or eliminate income tax;
- performing the sales of assets in low-tax countries to reduce or eliminate tax on capital gains (Beer, de Mooij, Liu, 2018, p. 7).

Taking into account the above characteristics of 'international tax avoidance', it is a complicated phenomenon of great importance, especially considering the fact that applied range of measures is much wider and



its scale much broader than in case of local (domestic) tax avoidance.

### **International tax planning**

As regards 'international tax planning' that can be distinguished within 'international tax avoidance', it encompasses the situations in which analogically as in 'tax planning' the spirit of tax law (*ratio legis*) is not violated. The following behaviors of taxpayers are usually listed as exemplary ones within the scope of international tax planning:

- the selection between conducting business activity in a form of permanent establishment instead of subsidiary company;
- establishment of a holding company in a state with low-tax-rate regime, however not qualifying as so called tax haven (*oaza podatkowa, raj podatkowy*) or other countries of harmful tax competition (*kraje szkodliwej konkurencji podatkowej*) or providing selected exemptions as e.g. participation exemption (*zwolnienie dla dochodów kapitałowych*) (Hamaekers [in:] Hamaekers, Holmes, Głuchowski, Kardach, Nykiel, 2006, p. 65).

### **Summary**

Even though tax evasion, tax planning and tax avoidance lead to the same economic effect of decreasing the budgetary revenues from taxes, distinguishing these terms is crucial as they meet with different reactions of countries and international organizations as some of them are accepted as the measure of decreasing tax burden, whereas other are considered as harmful and to be countered both at the state and at the international level. Therefore, finding a clear guidance where to draw boundaries among these terms and trying to achieve a common definition, which would allow to apply the same understanding of these terms in international tax law

would be one of the challenges that need to be faced to be able to effectively counteract international tax avoidance, which is more complicated than domestic tax avoidance taking into account the measures and structures applied and its scale.

## References

Beer S., de Mooij R., Liu L. (2018). IMF Working Paper, International Corporate Tax Avoidance: A Review of the Channels, Magnitudes and Blind Spots, International Monetary Fund, 4.

Bogucki S., Romanowicz M. (2017). Niedopuszczalność kwestionowania skutków podatkowych czynności prawnej w ramach instytucji art. 199a § 2 ordynacji podatkowej w przypadku nadużycia prawa [ in:] Gajewski D. (ed.) *Międzynarodowe unikania opodatkowania. Wybrane zagadnienia*, Warszawa, Wyd. C.H. Beck, 11.

Brodzka A. (2013). Agresywne planowanie podatkowe – przyszłość czy przeszłość dla ponadnarodowych korporacji, Retrieved from [https://www.researchgate.net/publication/309415198\\_Agresywne\\_planowanie\\_podatkowe\\_-\\_przyszlosc\\_czy\\_przeszlosc\\_dla\\_ponadnarodowych\\_korporacji](https://www.researchgate.net/publication/309415198_Agresywne_planowanie_podatkowe_-_przyszlosc_czy_przeszlosc_dla_ponadnarodowych_korporacji).

Brodzka A. (2013), Inicjatywy międzynarodowe w kierunku poprawy przejrzystości i bezpieczeństwa obrotu finansowego, *Nauki o Finansach. Financial Sciences*, 4 (17), Wrocław: Wyd. Uniwersytet Ekonomiczny we Wrocławiu, 6.

Brzeziński B. (1996), *Anglosaskie doktryny orzecznicze dotyczące unikania opodatkowania*, Toruń, 9.

Dymek M., Błaszczak E. (2004), Optymalizacja obciążeń podatkowych w zakresie podatku dochodowego od osób prawnych – wybrane aspekty, *Monitor Podatkowy* (9), Wyd. C.H. Beck.

Filipczyk H. (2017). Status etyczny unikania opodatkowania i jego znaczenie prawne, *Przeгляд Podatkowy* (8), 26.

Filipczyk H. (2017). *Tax avoidance and rationality of law*, Warszawa: Wyd. Wolters Kluwer Polska, 29.

Gajewski D. (2015). Polityka Unii Europejskiej Przeciwdziałająca szkodliwej międzynarodowej optymalizacji opodatkowania, *Studia z Polityki Publicznej*, 3(7), p. Wyd. Oficyna Wydawnicza SGH, 2.

Gajewski D. (2017), Przyczyny międzynarodowego unikania opodatkowania - zarys problemu [in:] Gajewski D. (ed.) *Międzynarodowe unikanie opodatkowania. Wybrane zagadnienia*, Warszawa: Wyd. C.H. Beck, 38.

Głuchowski J. (1996). *Oazy podatkowe*, Warszawa: Dom Wydawniczy ABC, 52.

Głuchowski J. (2006). *Polskie prawo podatkowe*, Warszawa: Wydawnictwo Prawnicze Lexis Nexis, 155.

Gomułowicz A., Małecki J. (2011). *Podatki i prawo podatkowe*, Warszawa: Wydawnictwo Prawnicze Lexis Nexis, 293.

Gordon M. (2013) Obejście prawa czy unikanie opodatkowania. Uwagi terminologiczne, *Toruński Rocznik Podatkowy*, 176.

Greggi M. (2008). Avoidance and abus de droit. The European Approach in Tax Law, *eJournal of Tax Research*, 6 (1) 23-24.

Hamaekers H. (2006). Międzynarodowe prawo podatkowe - zagadnienia ogólne [in:] Hamaekers H., Holmes K., Głuchowski J., Kardach t., Nykiel W., *Wprowadzenie do międzynarodowego prawa podatkowego*, Warszawa: Wydawnictwo Prawnicze Lexis Nexis, 65.

Kalinowski M. (2001). *Granice legalności unikania opodatkowania w polskim systemie podatkowym*, Toruń, TNOiK, 23-24.

Karwat P. (2003), *Obejście prawa podatkowego*, Warszawa: Dom Wydawniczy ABC, 16-18.

Kudert S., Jamroży M. (2007). *Optymalizacja opodatkowania przedsiębiorców*, Warszawa: Wolters Kluwer Business.

Kujawski G. (2017). *Klauzula generalna unikania opodatkowania. Komentarz do zmian w ordynacji podatkowej. Granice regulacji*, Warszawa: Wolters Kluwer Polska, 19.

Kurzac M. (2017). Unikanie opodatkowania a uchylanie się od opodatkowania - o kryteriach rozróżniających, *Studia Prawno-Ekonomiczne, CV*, 20.

Lachowicz M. (2018). *Schematy unikania opodatkowania funkcjonujące w polskiej praktyce i skuteczność środków stosowanych do ich zwalczania*, Warszawa: Wyd. Ridero.

Lyons S.M. (1996). *International Tax Glossary*, Amsterdam: IBFD Publications BV, 115.

Maj I. (2011). Polityka organów podatkowych w zakresie obejścia prawa podatkowego, *Studia Finansowopravne*, (2), Wrocław: E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 114.

Maj I. (2014). Unikanie opodatkowania w korporacjach międzynarodowych, *Acta Erasiana VI, Ze studiów nad prawem, administracją i ekonomią*, Wrocław: Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, 387.

Mazur Ł. (ed.) (2012). *Optymalizacja podatkowa*, Warszawa: Wolters Kluwer Polska.

Nieborak T. (2017). The tax avoidance clause: Do we want it, do we need it?, *Adam Mickiewicz University Law Review*, DOI 10.14746/ppuam.2017.7.12, 201.

Niedojadło J. (2016). A comparative look at tax avoidance and its distinction from tax saving and tax planning in

continental and common law system, *Administrative law and process*, (2), Retrieved from <http://aplaw.knu.ua/index.php/arkhiv-nomeriv/2-16-2016>, 171-172.

Niedojadło J. (2016). Legal and illegal methods of tax burden reduction. The negative effect of tax avoidance and tax evasion, *Przegląd Prawa Publicznego*, (7-8), 243.

Russo R. (ed.), Finnerty C.J., Merks P., Petriccione M. (2007). *Fundamentals of international tax planning*, Amsterdam, IBFD, 58.

Sowiński R. (2009). *Uchylenie się od opodatkowania. Przyczyny, skutki i sposoby zapobiegania zjawisku*, Poznań: Wydawnictwo naukowe UAM, 15.

Woźniak K.R. (2018). Tax avoidance and the ethical status of state's actions in the fight against it, *Financial Law Review*, 11 (3), Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 91.

Wyrzykowski W., Dębniak P. (2017). Agresywne planowanie podatkowe a klauzula obejścia prawa podatkowego, *Quarterly Journal* - 4 (23), DOI: 10.19253/rem.2017.04.013.

Wyścilok J. (2013). *Optymalizacja podatkowa. Legalne zmniejszanie obciążeń podatkowych*, Warszawa: Wyd. C.H. Beck, 64.

Zieniewicz M. (2015). Klauzula ogólna przeciwko unikaniu opodatkowania - ewolucja instytucji i współczesne tendencje w Polsce [in:] Cwiąkała-Małys A. (ed.), Rutkowska-Tomaszewska E., *Aktualne i wybrane problemy z zakresu bankowości, podatków i rachunkowości*, Wrocław, 167.

Żabska M. (2013). Optymalizacja podatkowa a oszustwa podatkowe, *Zeszyty Naukowe Uniwersytetu Szczecińskiego*, 2 (61), 263.

Committee of Experts on International Cooperation in Tax Matters, Seventh Session, Geneva, 24-28 October 2011, Note on the Revision of the Manual for Negotiation of Bilateral Treaties.

OECD, Tackling aggressive tax planning through improved transparency and disclosure. Report on disclosure initiatives, February 2011, Retrieved from: <http://www.oecd.org/ctp/exchange-of-tax-information/48322860.pdf>

C(2012) 8806 final, 6.12.2012: Commission Recommendation of 6.12.2012 on aggressive tax planning, Retrieved from: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/tax\\_fraud\\_evasion/c\\_2012\\_8806\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/tax_fraud_evasion/c_2012_8806_en.pdf)

Supreme Administrative Court, December 9, 2015, II FSK 2702/12.

The Act of September 10, 1999, Polish Fiscal Penal Code (art. 46 and further), unified text of the act – Dz. U. 2018, item 1958 with changes.