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Actions of government administration focused on prevention of tax crime in Poland

Abstract

Economic crimes generates losses both for state budget and private sector. Losses for state budget are primarily reducing revenues, obtaining undue revenues, and phishing subsidies. In private sector losses are connected to lowering income and decrease of competitiveness. Honest entrepreneurs have difficulties staying on market, because prices of their products cannot compete with the prices of goods by criminal groups, which does not pay taxes allowing them to offer lower prices. Economic crime concerns not only security and public order, but also state economic safety connecting to business profitability and security. Economic crime is multifaceted, including lowering of public law crimes, capital, banking and insurance market crimes, as well as public procurement crimes, copyright law and all profit-oriented crime taking into account market mechanisms. This article presents the problems of tax crime in Poland and the results of police activities in counteracting this crime.

Keywords: tax crime, economic crime, state budget

JEL classification: G29, K49

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Introduction

Tax is defined by public law as not refunded, obligatory funding for State Budget, voivodeship, powiat or commune on tax regulation law. (Dz.U. 2021, poz. 1540 – ze zm.). Polish tax law also defines the term "tax" as "tax advances", "tax instalments if the tax law provides for the payment of tax in instalments", as well as "fees and non-taxable budgetary charges" (Dz.U. 2018, poz. 106 – ze zm.). The tax crime is situation when taxpayer is avoiding taxation, which stands in opposition to the tax law. (M.P. 2015, poz. 1069). The State has privilege of setting taxes and creating law regulations, including amount, execution and way of repressions. It allows execution, when the taxpayer is avoiding taxations or commits tax crime. Due to the obligatory system is secured by criminal and tax penalties. It secures realization of state tasks, financed by state or regional government budget income (Krzywoń, 2011).

Tax crimes are not only committed by people with specialistic knowledge of law, economy, banking or accountancy (*white collar staff*). The crimes are connected to people of different social environments, committed by individual perpetrators or organized crime groups. Cooperating on different levels crime groups are characterizing by avoiding stated by law regulations of conducting business activity aimed at obtaining economic profit (*grey area*). Due to the research conducted by GUS, the share of grey area in Poland was estimated on 12,3% in the years 2016-2019 (Fundowicz, Łapiński, Wyżnikiewicz, Wyżnikiewicz, 2022), the lost income created by the grey area and other phenomenons generating gap in the VAT taxation was estimated on 42,5 bn PLN (Raport Global Compact Network Poland). Additional difficulty in preventing the crime are connections with legal economic entities, which significantly limits the possibility of determining the nature of participation of individual in crime or even the scale of phenomenon. In crime proceeding in order to hide perpetrators economic entities are created only for performing a specific transaction or recruited person performing in transaction chains (front man). If evidence of criminal activity is presented, they impede the performance of fiscal control or investigative activities to make it more difficult to determine the actual organizers of the fraud (Nowak, 2014). Common way of fraud to reduce taxes is creating invoices, which not document actual economic events, presented inflating tax deductible costs of economic entity. The scale of the practice indicates that organized criminal groups are participating.

Taking the above into consideration, the aim of the project was to present typical methods of tax crime and activities of public administration authorities aimed at preventing and fighting this form of crime, as well as to analyse the results of police activities in this area.

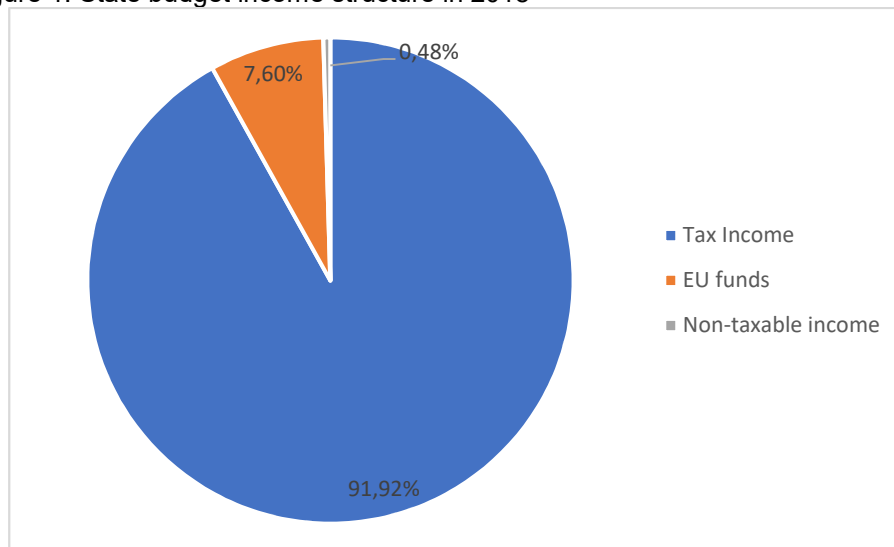
Statistical data from a period of long-term, solid economic growth was used to test the effectiveness of the implementation of the above activities. The socio-economic situation triggered by the COVID-19 pandemic and restrictions on the conduct of certain types of economic activity, as well as obstacles to control by the authorities, encouraged incentives to act aggravating the *grey area*.

Tax income of State budget

The most significant function of taxes is fiscal function, because taxes are the main source of state income. They are also important tool of economic and social policy, as they perform redistributive function in the field of GDP, stimulating economic processes and information function of their course. Polish tax system includes basic and supplementary taxes (Pach,2017). Basic taxes contains income taxes of individualities (PIT) and legal entities (CIT), goods and services tax (VAT) and excise duty. The taxes affects the widest group of taxpayers, including entrepreneurs, have the highest budget income share and have the strongest influence on entrepreneurs decisions. Supplementary taxes have the function of sealing the tax system and are connected to different events and tax situations, including inheritance and donation tax, property tax, agricultural tax, forest tax, gambling tax, tax on mean of transport, tax on civil law transaction, tonnage tax, tax on extraction of certain minerals (Wolański, 2009).

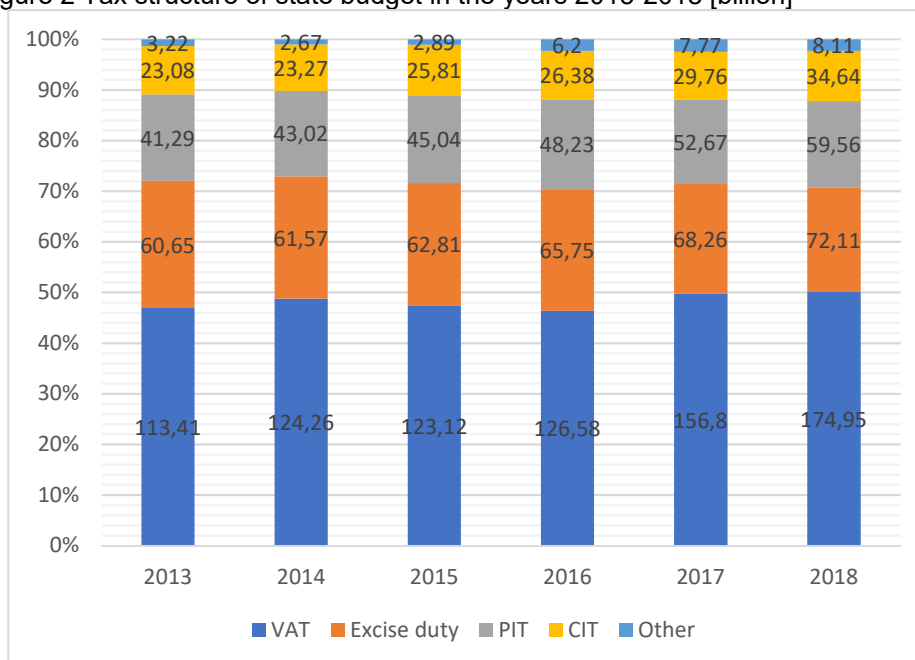
State Budget income in 2018 was estimated on 380,05 bn PLN and was stated as 92% of total income (30 bn PLN growth comparing to previous year and 65 bn PLN growth comparing to 2016). It funded 93,3% of expenses. The highest share of state budget income (90%) was tax income, estimated on 349,37 bn PLN and was 34,11 bn PLN higher comparing to 2017 and 107,72 bn PLN higher comparing to 2013. Tax income has been presented on Figure 1. (Sprawozdanie RM).

Figure 1. State budget income structure in 2018



Source: Report of state budget implementation for 1st January – 31st December 2018

Figure 2 Tax structure of state budget in the years 2013-2018 [billion]



Source: The Council of Ministers Report of state budget implementation for 1st January – 31st December 2018.

VAT tax in 2018 was estimated on 174,95 bn PLN, which states as 46,03% share of total state budget income (50,08% of total tax income). Including share of excise duty – 18,97% (20,64% of total tax income), this two taxes state as 65% share of total budget income (Informacja MF). Due to the data, interior and economic safety of the state is based on the taxes. Only flexible and tight tax system, which is taxpayer friendly and ruthless towards tax frauds is basics, necessary for creating financial and economic safety of the state (Beldzikowski, 2015).

Crimes and offences against tax obligations in polish fiscal criminal law

Tax fraud is defined as avoiding tax obligation by taxpayer, which directly and explicitly violates tax law (Kalinowski, 2001). The main legal act, protecting protecting the fiscal interests of the state is the Fiscal Penal Code (k. k. s.). In the first article have been presented terms of crime, including crime penalty for fiscal crimes and offences (Wilk, 2006). Tax crime is action penalized by threat of a fine in daily rates, or a penalty of restriction or deprivation of liberty, offence is penalized by threat of a fine only (t.j. Dz. U. 2022, poz. 859).

Fiscal crimes and offences against tax obligation are in polish Fiscal Penal Code are one of four categories of fiscal crimes and offences. First category includes crimes and offences against tax obligation due to subsidies. Another contains: customs duties and rules of foreign trade in goods and services, foreign exchange turnover, organization of gambling games.

Tax crime contains not only avoiding timely or full payment of taxes, but also obtaining undue tax refunds. Due to the scale of planned tax income, a particular threat is crime in the area of goods and services tax (VAT) and excise duty. In the field of VAT, tax crime are connected trade in products subject to excise duty (excise goods are often at the same time the subject of offenses related to non-payment of excise duty and extortion of undue VAT refund); understating VAT for payment as a result of an unjustified increase in input tax, e.g. by issuing fictitious invoices or including taxable expenses not related to the business, or lowering the tax due (Górczak, 2017); avoiding the payment of tax due e.g. not taxifying interunion goods purchases, avoiding anti-dumping prices and extorting VAT refunds connected with the fictitious performance of actions entitling to claim refunds. An increased risk of committing crimes involving the avoiding of paying excise duty is connected with illegal production of excise goods exemption or reduced rates of excise duty, and smuggling and trade of tobacco and tobacco products, spirits and motor fuels (Wolański, 2009). The most common category of tax crime

in Poland is "tax carousels", crimes connected with circulation of lubricating oils, decolorization of diesel fuel and fuel smuggling. The carousel mechanism is based on a "disappearing taxpayer", also known as a "pillar". The entity doesn't run a business and is created to be active VAT taxpayer, issuing invoices not connected to real economic events, disappearing, leaving unregulated amounts of tax due. The goods are part of transaction chain. The goods, in turn, go through subsequent transaction chains to an entity with an appropriate history of operations (buffer) in order to give credibility to invoiced transactions. The last entity (broker) is responsible for the sale of goods outside the country and as part of interunion goods delivery and applies for VAT refund (Pach, 2018).

The example of "carousel" method in Poland was electronic market in the years of 2012-2015. Due to the Association of Importers and Producers of Electrical and Electronic Equipment in the RTV and IT Industry associating main manufactures, importers and distributors the serious irregularities in the market are related to discrepancies between import and export of electronic equipment in Poland, especially mobile phones, computers and game consoles. The difference was estimated on 2,3 bn PLN in 2013. It can be said that not only phones are not sold in Poland, but that their production is at a high level. The losses were estimated on 1,8 bn PLN (Binda, Beldzikowski, 2015). The perpetrators' system of operation consisted of not settling VAT on equipment purchased outside Poland, and then selling these articles, including other entities in the price of this tax. In this way, these entities could export legally and then apply for a refund of this tax.

Tax crime of lubricating oils trade is caused by high indirect taxes (VAT, excise duty, fuel charges) included in price of the product, which can be omitted with a profit by criminal groups. The component of lubricating oil used for wetting and removing heat from friction places is diesel oil, which can constitute about 90% of the entire product. Diesel fuel is subject to an excise duty rate of PLN 1,171 / 1000 liters (MP 2018, poz 1189), whereas lubricating oils are exempt from excise duty if they are intended for purposes other than e.g. diesel oil (Dz.U. 2020, poz. 544). In European Union, these oils have 0 rate. The criminal mechanism is based on the fictitious supply of lubricating oil to one of the European Union countries, and in fact it is poured directly into the tanks of gas stations and used as diesel oil. This is done by means of a "pillar" which issued "empty invoices" and transport companies that pretend to export oil to another country, and after receiving forged documentation proving that it is diesel fuel they deliver to filling stations for sale as full-fledged fuel. By acting in this way, criminals try to bypass excise duty, VAT and the fuel charge. A great help for perpetrators acting

in this way are very similar parameters of diesel lubricating oil, which is why it was practically enough to change the documentation.

The next method of reducing the state's revenues is decolorization of heating oil. Diesel fuel which is colored red and intended for heating is a product on which a preferential tax rate of 232 PLN / 1000 liters (t.j. Dz.U. 2022, poz. 143 – ze zm.). The difference between the tax imposed between diesel used as fuel for cars and heating fuel is 939 PLN/1000 liters. For marking products, an indelible marker is used, which is a chemical substance N-ethyl-N- [2 - (- isobutoxy-ethoxy) ethyl] asbenzene-4-amine (solvent Yellow 124) (Dz.U. 2020, poz. 722 – ze zm.). Preparators of the crime taking advantage of the different tax rates for products of identical chemistry composition, discolor it and then bring it to the wholesalers or directly to the gas station with the help of "pillars" who legalize it by issuing false invoices. This method, due to the rather complicated discoloration procedure requiring large rooms that do not arouse suspicions is rarely used.

The methods of preventing tax crime in Poland

The strategic document "Program for preventing and combating economic crime", allowing identification and coordination of implementation of state policy strengthening mechanism of preventing the crime. Document is attempt of implementation of concept of integrated approach to the crime phenomenon, with is emphasized on the European Union forum. In the subjective scope, an integrated approach means strengthening cooperation between services, bodies and institutions involved into preventing crimes with central and local government administration and private sector representatives, which means on operational and reconnaissance, investigative or control activities, as well as other legal and administrative instruments that can be used in a given case (M.P. 2015, poz, 1069).

In 2017, a wide range of changes were introduced to seal tax collection, in particular including VAT sealing package, criminal law regulations preventing VAT frauds, obligation to provide tax data in the form of a uniform control file, fuel and transport packages, solutions aimed at reducing irregularities of gambling games and reducing from 15k€ to 15k PLN of value of transactions between entrepreneurs carried out without a payment account (RM report), (Modzelewski, 2018). The National Tax Administration was established, which included Tax Chambers, the Customs Service, the Tax Audit Office (t.j. Dz.U. 2022, poz. 813 – ze zm.) and penalties of economic crimes and offences have been toughened (implementation of karnego articles 270a, 271a and 277a in Crime Law Code). IT tools have been implemented allowing

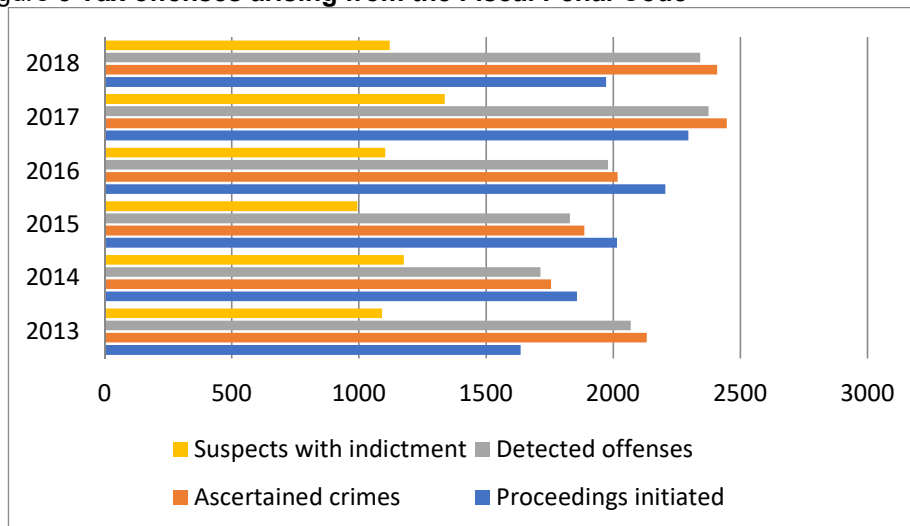
tax administration authorities more efficient verification at central and local level data provided by taxpayers in purchase and sale records and VAT declarations (Sprawozdanie RM). These changes will help law enforcement agencies, including the Police, to prosecute economic crimes by giving the opportunity to act faster against tax crimes. The police conduct activities in areas of economic crime, using offensive methods of operational work. Organization units of Police preventing economic crime, supported by Central Police Investigation Bureau have key role in the process.

Police actions preventing tax crimes

In different to casual crimes against property, most of economic crimes which size recorded in statistics depend on the detection activity of control and law enforcement agencies. Proceedings connected with specified category of economic crimes are usually initiated not on the basis of reports of victims, but on the basis of the information of the state authorities obtained as a result of their activities.

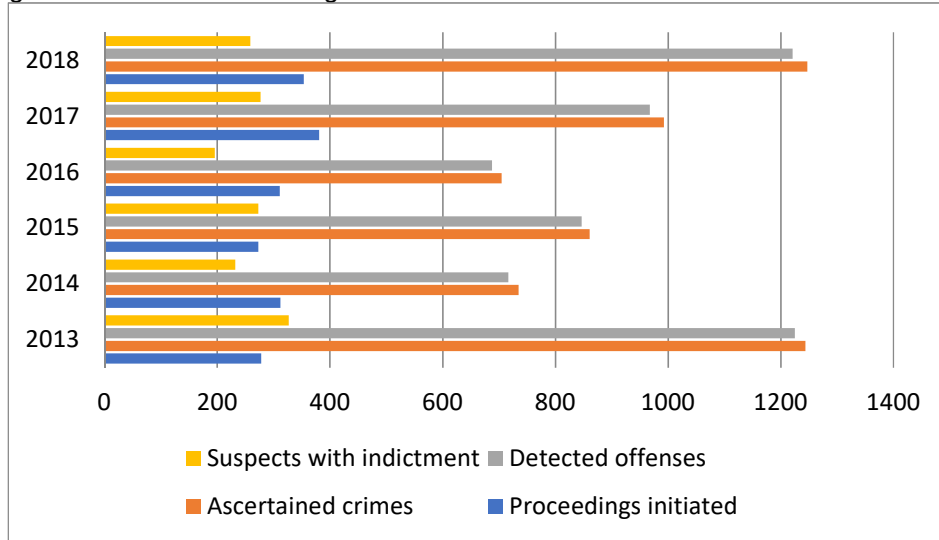
In 2018, officers of organizational units of Police to prevent Economic Crime and the Central Investigation Bureau detected 2343 crimes violating provisions of The Fiscal Penal Code (Dz. U. z 2022 r., poz. 859), almost half of which (1221) was tax crimes (figure 3 and 4). Losses resulting from this type of crime in 2018 were estimated on 262,90 mln PLN. Carried out activities secured 11,33 mln PLN and 30% (3,16 mln PLN) has been recovered (Policja).

Figure 3 Tax offenses arising from the Fiscal Penal Code



Source: Own research based on Police data

Figure 4. Tax offenses arising from the Fiscal Penal Code



Source: Own research based on Police data

The biggest losses for the state budget caused by tax crime are connected with VAT fraud, excise tax and tax on trade in fuels and alcohol products. The total value of losses due to these three categories in 2018 was PLN 578.87 million. The value of secured and recovered property in 2018 was PLN 49.3 million and PLN 6.32 million accordingly. Detailed data are presented in Table 1.

Table 1 Activities of the Police authorities in the field of recovering property from tax crime [million PLN]

Specification		2013	2014	2015	2016	2017	2018
VAT tax	Value of secured property	3,70	17,98	30,37	4,33	13,95	28,04
	Tax depletion	69,12	174,84	410,16	149,16	372,47	258,83
	Total losses	69,12	181,98	410,27	149,90	662,32	374,87
	Value of recovered property	2,26	0,27	1,80	1,04	0,86	4,21
Excise tax	Value of secured property	7,78	10,64	3,85	17,67	16,91	10,17
	Tax depletion	47,19	81,02	446,60	291,26	132,92	90,36
	Total losses	47,19	81,02	446,60	291,26	132,92	90,36
	Value of recovered property	3,50	3,89	1,62	6,88	8,53	1,05
Fuel trade tax and alcoholic products	Value of secured property	8,01	12,11	4,37	24,65	20,89	11,09
	Tax depletion	47,56	83,14	464,99	302,01	134,13	113,64
	Total losses	47,56	83,14	464,99	302,01	134,13	113,64
	Value of recovered property	3,51	4,21	1,81	11,61	8,53	1,06

Source: Own research based on Police data

Summary

Common market of European Union, allowing free transfer of people and goods, service and capital leads to life quality improvement due to facilitating the circulation or availability of goods. However, creates risk of crimes of obtaining undue tax refunds, especially tax on goods and services. Possibility of 0% tax value for interunion goods delivery allow creating fictitious transactions, and undue tax refund resulting from the difference between input and output tax. Preventing mentioned threats is difficult and requires thorough checking. It is result of specialist tax law knowledge of entities taking part in practice and creating credibility of performed actions.

With reference to the objective presented in this paper, in the part concerning the activities of state administration organs aimed at preventing

and fighting tax crime, as well as analysing the results of police activities in this area, it should be stated that since 2017 there has been a dynamic growth of state budget revenues. Between 2016 and 2018 it grew by PLN 65.37 billion to PLN 380.05 billion. Such a large increase in budget revenues was possible due to growing tax revenues. During this period, VAT revenues increased by almost 30%, and their record growth was noted in 2017, when a wide range of changes were introduced to ensure tightening of tax collection, including criminal law regulations to prevent VAT fraud.

In 2018, the value of property secured by the Police authorities was record high, amounting to 28.04 million PLN, while the value of recovered property - 4.21 million PLN.

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