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Stability of Corporate Income Tax in the European Union

Abstract. *The article discusses the legal basis of corporate income tax and compares the provisions of the Polish law on corporate income tax with the draft CCCTB directive. The author analyses tax revenues and tax costs with particular emphasis on revenue not constituting tax revenue and expenses which are not considered tax deductibles. The author also presents results of a survey sent to 1,000 Polish companies required to pay corporate income tax. The sampled companies were selected at random from the entire population of businesses in Poland. Questionnaires were also sent to 500 companies in the EU, mainly in Germany, the UK, France, the Netherlands, Italy and the Czech Republic. The survey was answered by a total of 112 Polish companies and 50 foreign companies. Both the Polish and foreign businesses which responded to the survey were mainly limited liability companies and joint stock companies. The basic part of the survey was carried out in 2010–2011, but it was repeated in 2012, with an additional 200 questionnaires sent to Polish companies, of which 15 responded.*

Keywords: *finance, corporate finance, corporate income tax, tax stability, CCCTB concept*

Introduction

The financial and public finance crisis that affected the EU countries also highlighted the problem of tax systems in 27 EU states. One of the primary purposes of EU law is to eliminate obstacles to the functioning of the internal market, particularly to improve the competitiveness of businesses. Having said that, the concept of a Common Consolidated Corporate Tax Base (CCCTB), which aims to eliminate obstacles to the functioning of the internal market and increase the degree of tax harmonization in the European Union [Iwin-Garzyńska 2016: 17-51]. This article discusses the base of the corporate income tax, and compares the provisions of Polish law on corporate income tax with the draft CCCTB directive. It provides an analysis of tax revenues and tax costs with particular emphasis on revenue not constituting tax revenue and expenses not considered tax deductibles.

1. Tax revenues

The corporate income tax is based on the universal principle that the value of tax which the entrepreneur is obliged to pay depends on the tax base and tax rates. The tax base is subject to tax harmonization, i.e. the amount will be determined according to uniform rules for all companies covered by the CCCTB in individual EU countries. The tax base will therefore be the difference between taxable income, minus income exempt from taxation and deductible costs. Thus, to determine the tax base it is important to define the notion of tax revenues, income exempt from income tax and deductible costs. Definitions of these categories in the system of a common consolidated corporate tax base should include a set of common rules for calculating the corporate tax base, without prejudice to the provisions laid down in Council Directives 78/660/EEC and 83/349/EEC and Regulation of the European Parliament and of the Council 1606/2002/EC.

The analysis of the tax base for corporate income tax in the Polish legislation in the context of the CCCTB concept should start with defining the tax base, i.e. taxable income. In the simplest terms, it is defined as a difference between tax revenues and costs of obtaining them.

In accordance with the provisions of the Corporate Income Tax Act,[1] income is defined as the excess of the sum of revenues over costs of obtaining them achieved in the fiscal year, subject to special rules for determining income (revenue) from participation in profits of legal persons and transactions between related parties and entities residing in tax havens (Art. 7 § 2, Art. 10 and 11). If deductible costs exceed the amount of revenue, the difference is a loss. In certain situations, the tax base corresponds to the income without taking into account tax deductible expenses. The income indicated in the act is the basis of income taxation regardless of the source of revenue from which it was obtained.

The Corporate Income Tax Act does not explicitly define "revenue." The rules for the generation of income are defined in art. 12 of the Act. § 1 of this article only contains a catalogue of examples of revenues subject to corporate income

[1] Corporate Income Tax Act of 15 February 1992, Journal of Laws 2000, No. 54, item 654 as amended (ustawa z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych, Dz.U. 2000, nr 54, poz. 564 ze zm.).

tax. This is indicated by the legislator with the phrase "revenue particularly includes." This is an open list, and tax revenues particularly include:

– cash and cash equivalents received, including foreign exchange gains,

– the value of things, rights and benefits received free of charge or partially free of charge, as well as the value of other gratuitous or partially gratuitous benefits.

The value (subject to § 4 item 8 of the Act) of redeemed or expired:

– liabilities, including credits, loans, excluding loans amortized from the Labour Fund,

– funds in bank accounts – banks.

The literature indicates that, based on the open list provided above, revenue can be defined as any property gain that increases assets or decreases liabilities [Iwin-Garzyńska 2016]. Such a definition of tax revenue is also reflected in court decisions. In its judgment of 13 July 2010, The Supreme Administrative Court stated that "the legislature did not formulate the requirement that revenue may only cover gains mentioned in Art. 12, which are a direct result of achieving the aim of economic activity of a legal person. Therefore, any cash deposit may be considered as revenue of a legal person, provided it meets other requirements set out in section 2 herein. In particular, par. 4 of Art. 12 contains a list of benefits that are not classified as income. It is important to note that the legal norm contained in Art. 12 par. 4 of the Act on corporate income tax provides a closed list, the scope of which is not subject to extension or constriction through the use of analogy and extensive interpretation."

Essentially, whether a property gain is regarded as revenues of a legal person depends on the definitive nature of the gain in the sense that it actually increases the assets of that legal person. In its judgment dated 27 November 2003, the Supreme Administrative Court in Warsaw stated that "only those gains that increase in the taxpayer's assets can be classified as revenue can."

At the same time, the fact that a benefit is not included in the list of cash inflows not recognized as taxable revenues by the legislator does not mean it is regarded as taxable revenue. This was pointed out by the Supreme Administrative Court in its judgment of 14 May 1998, in which it stated that "the main idea of the income tax implies that it is a levy on receipts that enrich the taxpayer, therefore, only those receipts that increases the taxpayer's assets can be regarded as revenue, i.e. as a source of income. Therefore, the category of money or monetary assets received in the sense of Art. 12 par. 1 item 1 of the Act in question only includes receipts that increase the taxpayer's assets, i.e. those that become their property."

Taxation should cover all revenue, unless it is expressly exempted from tax. Tax-neutral revenues, i.e. those that are not included in the tax base are listed in Art. 12 par. 4 of the Act on corporate income tax. This paragraph provides a closed list, which is not subject to extension or narrowing through the use of analogies, or broad interpretation.

Revenue exempt from tax includes payments or accrued receivables on account of the supply of goods and services. In order for received or accrued contributions to be recognized as deferred revenue it should be possible to allocate these payments to future accounting periods. The company must prove (pointing to the provisions of the contract or the content of the invoice) that the supply of goods or services is to take place in the following accounting periods after the accounting period in which the taxpayer receives payment (advance payment). The provision in question applies in particular to services provided on a continuous basis.

According to Art. 12 § 4, item 2, assets not considered to be revenue include amounts of accrued but not yet received interest on debt, including outstanding loans (credits). This means that interest is not subject to tax until it is paid. The taxpayer receives taxable revenue from interest at the time of its actual receipt. In this case, cash accounting will apply, which means that the company which is owed interest is required to include it in their revenues only in the accounting period in which the interest is actually received. Any decision of contractors regarding e.g. changes in interest rates on loans, postponement of payments, etc. remains tax neutral until the actual payment of interest.

Other categories of assets not classified as revenue include amounts generated by redeemed shares in a company in the part constituting the cost of their purchase or acquisition. This also applies to the value of assets received by shareholders in connection with the liquidation of a legal entity. On the other hand, amounts received for redeemed shares in excess of the price paid for those shares are taxable revenue.

In accordance with the provisions of the Act, the list of assets not classified as revenues includes revenues from redistributable as well as non-redistributable capital, provided for in the Code of Commercial Companies. Such subsidies are a variety of cash benefits brought by shareholders for the company to enlarge its assets. Therefore, subsidies do not affect the size of the share capital. Taxable revenue excludes cash inflows in excess of the nominal value of shares, received at the moment of issue and transferred to the share premium account.

Monetary and non-monetary contributions brought to the capital company are regarded as tax-neutral. According to the provisions of the Corporate Income Tax Act, assets brought to cover equity (capital) are not regarded as taxable revenue, which means that the capital raised through the issue of new ordinary shares does not constitute taxable revenue. This means that expenses related to the acquisition of capital cannot be treated as tax deductible costs. After all, they are not associated with taxable revenue but with the performance of a tax-neutral operation on the share capital [Iwin-Garzyńska 2015].

The provisions of the Corporate Income Tax Act do not apply to:

– revenue from agricultural activities, with the exception of income from special branches of agricultural production,

– revenue from forestry as defined in the Forest Act,

– revenues resulting from transactions that may not be legally binding contracts,

– revenue (income) of ship-owners subject to the Law on Tonnage Tax of 24 August 2006.

The above provisions indicate that revenue derived from these activities is not subject to income tax, i.e. it is free from this tax. According to the European concept of a common consolidated corporate tax base, the tax base is calculated by deducting non-taxable revenue, deductible expenses and other deductible items. Apart from the definition, a normative interpretation of specific rules for its determination is proposed. It is stated that income is calculated according to the following general principles:

– the accrual basis,

– gains and losses are recognized only when they are effective (principle of realization),

– taxable transactions and events are measured individually (the principle of individual valuation),

– income is calculated according to uniform rules, unless exceptional circumstances justify a change (consistency).[2]

The introduction of these rules would favourably distinguish the CCCTB proposals from those used in the Corporate Income Tax Act. The Polish solutions reflect the accrual basis in relation to taxable revenue and costs. The realization principle applies to revenue from interest and expenses, but it lacks a general reference to taxable profits and losses. The principles of individual valuation and consistency are also not strongly emphasized in Polish law.

The draft directive defines the concepts of revenues, profits and losses. The term "revenues" is defined as proceeds from sales and any other transactions, net of value added tax and other taxes and duties collected on behalf of government authorities, monetary or non-monetary, including proceeds from the disposal of assets and rights, interest, dividends and other distributions, proceeds from liquidation, royalties, subsidies and grants, gifts received, compensation and *ex gratia* payments. Revenues also include in-kind donations made by the taxpayer. Reve-

[2] See Draft directive Art. 9 General principles: 1. When calculating the tax base only effective gains and losses are taken into account. 2. Transactions and taxable events are measured individually. 3. The calculation of the tax base is carried out in a uniform manner, unless exceptional circumstances justify a change in the method of calculation. 4. Unless otherwise provided, tax base is determined for each tax year. Unless otherwise provided, tax year is any period of twelve months. Also WP/066/2008, p. 2, item 5.

nues do not include equity raised by the taxpayer or debt repaid to the taxpayer. “Profit” is defined as an excess of revenues over deductible expenses and other deductible items in a tax year; “loss” means an excess of deductible expenses and other deductible items over revenues in a tax year.

It is worth emphasizing that in accordance with the draft Directive taxation applies not only to non-monetary donations collected by the recipient, but also those transferred by the recipient. As regards the donor, it is, in fact, bogus revenue, resulting from the false declaration that the donated item was donated but was sold according to its market value. In this way, the tax covers the so-called hidden reserves, i.e. income equal to the difference between the market value and the book value of a donation [Marciniuk 2010: 246-247]. In the Corporate Income Tax Act there are no solutions requiring the taxation of the donor, hence the solutions contained in the draft Directive may be considered to be less favourable for Polish enterprises. Such an approach to the valuation of monetary donations received by the recipient is based on Art. 22 of the draft directive *Valuation*, which states that:

“1. For the purposes of calculating the tax base, the value of transactions is established on the basis of: [...]

b) their market value, if all or part of the benefit from the transaction is non-monetary;

c) their market value for monetary donations received by the taxpayer;

The list of exemptions from income tax contained in the draft Directive is relatively short. Article 11 *Exempt revenues* reads:

The following revenues are exempt from corporate tax:

a) subsidies directly related to the acquisition, manufacture or improvement of fixed assets subject to depreciation in accordance with Art. 32-42;

b) proceeds from the sale of pooled assets referred to in Art. 39 § 2, including the market value of in-kind donations;

c) received profit distributions;

d) proceeds from the disposal of shares;

e) income from a permanent establishment in a third country.”

Exemption from tax should also apply to income from dividends, proceeds from the disposal of shares in the company outside the group and profits from foreign establishments. By granting relief for double taxation, the majority of Member States exempts dividends and proceeds from the disposal of shares, thus avoiding the necessity of calculating the amount to be deducted for tax paid abroad, in particular when while calculating the vested deduction, one must take into account the amount of corporate tax paid by the company paying the dividend. The exemption of income earned abroad meets the same requirement of simplifying the system.

In a survey conducted to examine the importance of the common consolidated tax base for Polish and European companies, questions were asked regarding the

Table 1. The importance of non-tax revenues for Polish businesses
(0 – insignificant; 5 very significant) (in %)

Category	0	1	2	3	4	5	No answer	Total
Revenues from forestry and agricultural activities	92.86	0.00	0.00	0.00	0.00	3.57	3.57	100.00
Accrued but not received interest on receivables, bank deposits and so on.	66.07	16.07	7.14	3.57	1.79	1.79	3.57	100.00
Foreign exchange gains established at the balance sheet date but unrealized	69.64	8.92	5.36	1.79	5.36	5.36	3.57	100.00
Dividends and other revenues from participation in profits of legal persons	80.36	1.79	3.57	8.92	0.00	1.79	3.57	100.00
Returned taxes, charges and expenses not included in KUP	69.64	17.85	5.36	1.79	1.79	0.00	3.57	100.00
Interest received on excess payment of tax	82.15	8.92	5.36	0.00	0.00	0.00	3.57	100.00
Grants, subsidies, payments received to cover the costs or as reimbursement of expenses	87.50	7.14	1.79	0.00	0.00	0.00	3.57	100.00
Income earned from foreign governments derived from non-returnable aid	92.85	1.79	0.00	0.00	1.79	0.00	3.57	100.00
Revenues generated from the economic activity of the SEZ	94.64	1.79	0.00	0.00	0.00	0.00	3.57	100.00
Income from real estate made available free of charge	94.64	1.79	0.00	0.00	0.00	0.00	3.57	100.00
Revenues established by decision of the Head of the Tax Office	94.64	1.79	0.00	0.00	0.00	0.00	3.57	100.00

Source: based on survey data.

significance of revenues other than tax income. The survey results are also very interesting from the point of view of simplifying the Polish tax system (Table 1).

The analysis of the data contained in Table 1 shows that income not regarded as tax revenues plays a highly insignificant role. This may be due to the fact that many of these exemptions are specific and relate to specific companies, e.g. in agricultural production and forestry activities in special economic zones. These entities were relatively few in the total group of companies surveyed.

2. Cost of Acquiring Revenue

The provisions of the Corporate Income Tax Act do not contain a strict list of expenses that are treated as deductible costs. [Litwińczuk 2011]. According to the Act, deductible expenses are costs incurred to generate revenue or maintaining or securing sources of income, apart from the costs which are listed in the Act as not deductible.[3] A literal interpretation of this provision leads to the conclusion that all incurred expenses, excluding those restricted by law,[4] are tax deductible costs as long as they remain in the causal link with revenues, including those aimed at maintaining or securing the functioning of the source of revenue. The provisions of the Act show that it is possible to recognize as deductible costs these expenditures, which – judging rationally – can help to create or increase the company's revenue, provided that the expenditure has not been excluded from such costs. In the jurisprudence of administrative courts and tax authorities have perpetuated the notion that costs within the meaning of the Corporate Income Tax Act may include those expenses that are in a causal relationship to the economic activity and the revenue obtained from it.

While defining deductibles for tax purposes one should not use the definitions contained in other laws, e.g. the Accounting Law. The definitions presented in the theory of economics and finance, and accounting law do not apply to tax law and for the purposes of interpretation of the texts of acts of tax law, one should only use the definition of tax expense in Art. 15 § 1 of the Corporate Income Tax Act.[5]

The wording of the provision on deductible expenses enables the company to deduct any cost provided that there is a direct or indirect connection with the activities and the expense has or may have an impact on the amount of income earned. Therefore, tax deductible costs are all rationally and economically reasonable expenses associated with running a business whose goal is to achieve the protection and preservation of sources of income.

The most important prerequisite that must be met for a certain expense to be recognized as tax deductible is that there should be a causal relationship between the expense and the revenue. This involves such a relationship that incurring the cost has an impact on the generation or increase of revenue. In its ruling, the court stated: undoubtedly the cost of revenues must be related to a specific source of revenue, i.e. the amount of income from that source is affected by the costs incurred in order to obtain revenue, i.e. there must be a causal relationship between

[3] Expenses that are not deductible for tax purposes are defined by the legislator in Art. 16 § 1 of the Corporate Income Tax Act.

[4] The basic condition for the recognition of the expense as a deductible cost is the absence of this expense in the catalog of expenditures that are not recognized by the legislature as deductible costs. A list of these expenditures is set out in the Corporate Income Tax Act.

[5] The exception is made when the lawmaker refers directly to the provisions of other acts.

expenses incurred and the actual resulting income or the possibility of obtaining that income.

Tax-deductible costs directly related to revenues include costs which directly affect the revenue acquired from that source. This includes all costs which are essential for the specified source of revenue to bring specific profits. To recognize an expense as tax deductible it is not always necessary to demonstrate a direct link between it and the revenue. It should be noted that deductible costs include all expenses incurred in order to obtain revenue, including those incurred in order to maintain and secure a source of income, so that this source of revenue brings income in the future as well. Therefore, deductible costs will also include indirect costs associated with the revenue obtained, if it is shown to have been reasonably incurred in order to obtain revenue (including expenses to ensure the functioning of the source of revenue), even if the revenue is not achieved for objective reasons.

Deductibles therefore include expenses that meet the following conditions:

– were incurred by the taxpayer, i.e., in the final analysis, it must have been covered with the taxpayer's resources,

– are definitive (actual), i.e. the value of expenses incurred has not been reimbursed to the taxpayer in any way,

– remain in connection with the economic activity of the taxpayer,

– were incurred in order to obtain revenue, or maintain or secure the sources of income,

– are properly documented,

– are not included in the list of non-deductible expenses in accordance with the provisions of the Act.

It should also be noted that the definition given by the legislator is very general. Therefore, every expense incurred by the taxpayer should be analysed separately for purposes of legal qualification, except when it is either explicitly associated with the category of deductible expenses or clearly cannot be included in this category. The Supreme Administrative Court ruled that:

In determining deductible costs, every expense – other than those expressly set out in the Act – should be individually assessed to establish a direct relationship with revenue and the rationality of action to achieve this revenue. Situations, in which this causal relationship is not clear, should therefore be solved according to the principles of rational reasoning, individually for each case.

Expenses not recognized by the legislature as tax deductible costs can be divided into three groups:

– expenses that are not included in the cost of revenues beyond defined limits or when no distinct conditions are met,

– expenses which, by their nature, are not deductible for tax purposes, but in certain circumstances are recognized as such,

– expenses which are absolutely not deductible.

Within these three groups of costs not regarded as deductible costs, one can distinguish the following groups:

a) expenditure associated with purchasing and modernizing fixed assets and intangible assets;

b) losses and penalties, including e.g.:

– loss of prepayments, advances and down payments,
– interest, contractual penalties and damages,
– enforcement costs, fines, penalties;

c) liabilities and reserves, including e.g.:

– overdue receivables,
– reserves created on the basis of the Accounting Law;

d) taxes;

e) expenditure on the operation of cars not included in fixed assets;

f) other expenses, including e.g.:

– costs associated with tax-free income,
– representation expenditure.

The definition of deductibles included in the draft CCCTB directive (on a common consolidated tax base) differs from that adopted in the corporate income tax. According to the draft directive "deductible costs include any costs incurred by the taxpayer for business purposes related to the achievement, maintaining or securing income, including costs of research and development work and the costs of increasing the capital or debt for commercial purposes" (Art. 12 of the draft directive Deductible expenses).

It follows that the deductible cost of doing business should normally include all costs related to sales and costs associated with achieving, maintaining and securing income. The deduction also covers costs of research and development and costs incurred in raising own or foreign equity for business purposes. The supplement on deductible costs in the draft directive stipulates that "tax-deductible costs also include donations to charities specified in Art. 16, established in a Member State or in another country covered by the agreement on the exchange of information on request, comparable to the provisions of Directive 2011/16/EU. The maximum amount of deductible costs related to contributions or monetary donations to charities is 0.5% of revenue in the fiscal year."

In the analysis of deductible costs in the calculation of income tax and the CCCTB concept, it is extremely important to consider the cause-and-effect relationship between income tax and the cost of its acquisition. The draft directive stipulates that deductible costs are "costs incurred by the taxpayer for commercial purposes related to the achievement, maintenance or protection of revenue." This condition, referred to as the "economic purpose test" is ambiguous [Kubacki 2012: 39] and imprecise. As indicated earlier, the Polish law requires that every cost incurred by the company should be analysed individually, especially so-called indirect costs associated with maintaining sources of income. However, even a thorough analysis does not eliminate tax risks arising from the fact that the assessment made by the tax authority may be different from the subjective assessment of the taxpayer. Consequently, questions whether a given cost can be regarded as a deductible are often decided by courts. In one of its rulings, the Supreme Administrative Court stated "To classify an expense as a deductible cost it is not enough to hope that such income will one day be achieved. Each entrepreneur acting professionally must analyse their own actions, and not just hope that they will prove to be beneficial."

The risk of an erroneous classification of a cost as a deductible is also evident in the wording contained in the draft Directive. Because the wording is imprecise it may necessary for a court to establish whether the cost incurred by a company was "economically purposeful." However, it should be emphasized that the draft Directive contains a provision that "deductible costs are considered as such if they are incurred by the taxpayer for business purposes." This wording is still more flexible than that contained in the Corporate Income Tax Act.

The draft directive also allows for pro rata write-downs due to the depreciation of fixed assets.

Article 14 of the draft directive lists the costs that are not deductible. These include e.g.:

– distributed revenues and repayments of equity or debt,

– 50% of entertainment costs,

– the transfer of retained profits to a reserve which forms part of the company's equity,

– corporate tax,

– bribes,

– fines and penalties paid to a public authority for breach of any legislation,

– costs incurred by the company in order to generate income exempt from taxation pursuant to Art. 11; such costs are fixed at a flat rate of 5% of that income, unless the taxpayer is able to demonstrate that he has incurred a lower cost;

While analysing deductible costs for income tax and the CCCTB concept, it is important to note how businesses perceive the burden of costs that are not deductible (Table 2).

The data contained in Table 2 indicate that for Polish companies costs that are not considered deductibles do not have much significance. The least important categories include fines and penalties, enforcement costs and interest expenses, commissions and foreign exchange differences on loans. In contrast, the cost of interest on loans granted by shareholders has a greater importance for taxpayers.

It is important to note the provision stating that revenue, expenses and all other deductible items shall be recognized in the tax year in which they were achieved or incurred. It follows that costs are deducted in the tax year in which

Table 2. The importance of non-deductible costs for Polish businesses in income tax (0 – insignificant; 5 very significant) (in %)

Category	0	1	2	3	4	5	No answer	Total
Expenses for the purchase of land or the right of perpetual usufruct of land	66.07	10.71	8.93	1.79	0.00	8.93	3.57	100.00
Costs related to the operation of a car to the extent determined by the value of the car exceeding the equivalent of 20,000 Euro	60.72	12.50	8.93	7.14	3.57	3.57	3.57	100.00
Repayment of loans (credits), excluding capitalized interest on these loans (credits)	46.43	21.42	8.93	8.93	1.79	7.14	5.36	100.00
Interest on liabilities accrued but not paid or written off, including loans	62.50	16.06	1.79	3.57	8.93	1.79	5.36	100.00
Interest, fees and currency exchange differences on loans (credits that increase the cost of investment in development)	73.22	7.14	3.57	1.79	3.57	7.14	3.57	100.00
Enforcement costs related to defaults	75.00	14.29	3.57	0.00	3.57	0.00	3.57	100.00
Fines and penalties	76.78	10.71	5.36	1.79	1.79	0.00	3.57	100.00
Debts written off as overdue	58.93	19.64	3.57	0.00	3.57	1.79	12.50	100.00
Interest on late payment of overdue budget payments and other	55.36	32.14	5.36	3.57	0.00	0.00	3.57	100.00
Reserves formed in accordance with the provisions of the Accounting Act	62.50	7.14	10.71	3.57	5.36	1.79	8.93	100.00
Representation costs	55.36	32.14	5.36	3.57	0.00	0.00	3.57	100.00
Depreciation write-offs calculated for tax purposes more quickly than for accounting purposes	62.50	7.14	10.71	3.57	5.36	1.79	8.93	100.00
Interest on loans granted by shareholders	44.64	25.00	16.07	1.79	3.57	3.57	5.36	100.00
Revaluation of assets in the accounting books	71.42	1.79	12.50	5.36	3.57	1.79	3.57	100.00

Source: author's own calculation based on surveys.

they are incurred. A deductible cost is incurred when the following conditions are met: firstly – there is an obligation to make payments; secondly – the amount of liability can be determined with reasonable accuracy; thirdly – in the case of trading goods, there is a transfer of significant risks and rewards of ownership of goods to the taxpayer, while in the case of services- the services are received by the taxpayer. It should be stressed that the proposed solution can be implemented in the Polish law on corporate income tax.

3. Common Consolidated Corporate Tax Base – fundamental assumptions

The document entitled "A Common Consolidated EU Corporate Tax Base"[6] published on 7 July 2004 includes the assumptions of the concept aimed at reducing costs and barriers to business activity in the European Union. On 16 March 2011[7] the European Commission submitted a proposal for the directive on a Common Consolidated Corporate Tax Base (CCCTB). According to the proposal, the main goal of the concept is to eliminate at least some major tax problems impeding economic growth in the EU single market. Due to the lack of uniform corporate tax regulations, interdependence of domestic tax systems often results in double taxation. Hence, enterprises have to deal with heavy administrative burdens and high costs associated with conforming to tax regulations. Such a state of affairs discourages companies from making investments in the EU and consequently hinders the achievement of priorities included in "Europe 2020" – a strategy for smart, sustainable and inclusive growth.[8]

The Common Consolidated Corporate Tax Base is a major initiative designed to eliminate obstacles to the creation of a single market.[9] It is believed[10] that this

[6] A Common Consolidated EU Corporate Tax Base, Commission Non-Paper to informal Ecofin Council, 10 and 11 September 2004, http://ec.europe.eu/taxation_customs.

[7] Proposal for a Council Directive on a Common Consolidated Corporate Tax Base of 16 March 2011{SEC(2011) 315}{SEC(2011) 316}.

[8] The strategy is aimed at smart, sustainable and inclusive growth. The Strategy Europe 2020 has defined the following three inter-related priorities:

– smart growth: development of the economy based on knowledge and innovation;

– sustainable growth: supporting the economy based on a more efficient use of resources, more environmentally friendly and more competitive;

– inclusive growth: supporting the economy characterized by a high employment rate, providing social and territorial cohesion.

Cf. Communication from the Commission EUROPE 2020 A strategy for smart, sustainable and inclusive growth – COM(2010) 2020 Brussels 3.3.2010.

[9] Communication from the Commission Towards a Single Market Act – For a highly competitive social market economy – 50 proposals for improving our work, business and exchanges with one another – COM(2010) 608 Brussels 27.10.2010.

[10] Communication from the Commission Annual Growth Survey: advancing the EU's comprehensive response to the crisis, COM(2011) 11 Brussels 12.01.2010.

initiative designed to stimulate growth should be undertaken in the first place in order to facilitate economic development and create new jobs. The CCCTB concept would guarantee the coherence of domestic tax systems but not the harmonisation of tax rates. According to the proposal, tax rates ought to be subject to fair competition. Different rates enable particular countries to maintain a certain level of tax competition within the internal market. Furthermore, fair competition based on tax rates provides a greater transparency and allows Member States to take account of the competitiveness of their markets and budgetary requirements while determining tax rates [Iwin-Garzyńska 2013: 208].

Supporting research and development is one of fundamental objectives included in the directive. As part of the Common Consolidated Corporate Tax Base, all costs associated with R&D are tax deductible expenses. For enterprises that decide to adopt the system, such an approach will be an incentive to continue investment in research and development. In case of economic losses which are subject to cross-border compensation, consolidation within the framework of CCCTB will contribute significantly to reducing the tax base. Nevertheless, the implementation of CCCTB will expand the average EU tax base mainly due to the option taken as far as the depreciation of assets is concerned.

The introduction of CCCTB would reduce or even eliminate barriers to conducting cross-border activity in the European Union. This is of profound importance to enterprises, regardless of their size. In the case of small and medium-sized companies, costs involved in adjusting the activity to regulations imposed in particular countries are a major barrier. Compared to the turnover of such firms, these costs are an important item. As for large enterprises, the possibility of cross-border settlement of tax losses is the main advantage of the new solution.

A system will be chosen voluntarily. Since not all enterprises conduct their activity abroad, CCCTB will not require companies which do not intend to expand their business outside their homelands to cover costs associated with adopting a new tax system. Only methods for determining tax base will be subject to harmonisation. It will not be the case with financial statements. Therefore, Member States will still apply domestic principles of financial accounting, and CCCTB will impose autonomous regulations on calculating corporate tax base. These regulations will not exert any effect on producing annual and consolidated financial reports. As for CCCTB, certain enterprises would have to follow uniform tax rules (applicable in the entire European Union) and would deal with single tax administration (one-stop shop). Having decided to apply a common consolidated corporate tax base, the company is no longer subject to the domestic corporate tax system as far as all the issues regulated by joint regulations are concerned. Enterprises conducting activity in more than one state will benefit from the possibility of cross-border loss relief and lowering costs of conforming to corporate tax regulations. The possibility of a direct consolidation of profits and losses for the purpose of calculating the EU tax base is a major step toward reducing overtaxation in a cross-border context. At the same time, it is a step toward improving the existing conditions, namely in the scope of tax neutrality of domestic and cross-border activity. This will lead to a more effective fulfilment of internal market potential.[11]

The main advantage of implementing CCCTB for enterprises is the reduction of costs associated with observing tax regulations. Data published by the European Commission indicates that the introduction of the aforementioned concept may lower such costs by circa 7%. An actual reduction of the costs under discussion may have a major impact on enterprises' potential and willingness to expand their business and enter foreign markets (especially companies that have so far operated only in regional markets).[12]

The CCCTB directive provides a complete set of corporate tax regulations. It specifies the principles of opting for the consolidated system, the method of determining the tax base, the scope of relief and methods. Furthermore, it introduces regulations to combat fraud, proposes a method for the apportionment of the consolidated base, and specifies how the CCCTB system is to be administered by the Member States in line with the "one-stop shop" principle.

Conclusions

The income tax system, both in Poland and in the European Union, is in need of repair. The need to improve the Polish system is motivated by the progressive erosion of the tax law and the poor quality of legislation. The Union requires uniformity in this respect in order to become competitive with China, Russia, and the United States. Currently, EU countries do not constitute a single entity in terms of corporate income tax, but 27 different players which compete with one another within the EU and beyond. The aim of the tax reform should be to harmonize the system of corporate income tax for all companies within the EU in order to ensure comparable working conditions in terms of income tax, and a unified system that is transparent to non-EU companies. According to the idea of the CCCTB concept, unification will include the tax base, namely the principle of determining revenues and tax deductible costs.

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[11] Calculations concerning multinational enterprises operating in the EU indicate that about 50% of multinational financial groups and 17% of multinational non-financial groups may receive direct compensation for cross-border losses.

[12] Cf. COUNCIL DIRECTIVE on a Common Consolidated Corporate Tax Base (CCCTB); Brussels, COM(2011) 121/4, 2011/0058 (CNS) {SEC(2011) 315}{SEC(2011) 316}. According to the estimates made by the European Commission, a new regulation would enable the European Union to save about 700 million euro annually in costs associated with adjusting to other fiscal systems, about 1.3 billion euro as a result of the consolidation of calculation rules, and nearly 1 billion euro in cross-border activity. Experts are inclined to believe that such a solution would increase the attractiveness of the EU as a location of large-scale investments.

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Stabilizacja podatkowa w podatku dochodowym od osób prawnych w Unii Europejskiej

Streszczenie. *W opracowaniu omówiono istotę podatku dochodowego od osób prawnych, a także streszczono przepisy polskiego prawa podatkowego w zakresie podatku dochodowego od osób prawnych oraz zestawiono je z projektem dyrektywy CCCTB. Przeprowadzono analizę przychodów podatkowych i kosztów podatkowych ze szczególnym uwzględnieniem przychodów niestanowiących przychodów podatkowych i kosztów niestanowiących kosztów uzyskania przychodu. Ponadto przedstawiono wyniki badań ankietowych. Ankiety zostały przesłane do 1000 polskich firm podlegających opodatkowaniu podatkiem dochodowym od osób prawnych. Podmioty gospodarcze wybrano losowo spośród wszystkich firm w Polsce. Ankiety przesłano również do 500 przedsiębiorstw w UE, głównie w Niemczech, Wielkiej Brytanii, Francji, Holandii, Włoszech i Czechach. Na ankietę odpowiedziało łącznie 112 polskich przedsiębiorstw i 50 zagranicznych. Zarówno wśród polskich, jak i zagranicznych podmiotów, które odpowiedziały na ankietę, dominowały spółki z ograniczoną odpowiedzialnością oraz spółki akcyjne. Zasadnicza część badania została przeprowadzona w latach 2010-2011; w 2012 r. badanie powtórzono, a kolejne 200 ankiet wysłano do polskich firm, z których odpowiedziało 15.*

Słowa kluczowe: *finanse, finanse przedsiębiorstw, podatek dochodowy od osób prawnych, stabilizacja podatkowa, koncepcja CCCTB*