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The significance of tax risk for Polish companies based on the findings of an empirical study

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Abstract

Discussion of the problem of tax risk based on the empirical study. The paper explains the main aspects of tax risk, tax risk areas and its assessment. Critical analysis of existing literature and tax laws. Conclusions are formulated using a deductive method in the framework of tax theory and based on the analysis of tax laws and the author's survey into the problem of tax risk conducted in the Wielkopolskie voivodeship in 2020. The survey results show that managers are increasingly aware of the tax risks associated with the activities of their companies and the industries in which they operate. They also indicate that, regardless of their size, companies should use tax risk management systems aligned with their tax strategies and managed by qualified staff. The article contributes to the analysis of tax risk.

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Keywords

- tax risk
- sources of tax risk
- tax risk management
- level of tax risk
- tax law

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Introduction

Although risk is an inevitable part of business activity, monitoring and analysing its sources, structure and the potential damage it can cause can significantly reduce its impact. A good illustration of how important these activities are for companies is the increasing role of training in risk management for managers and employees. A study by Ernst and Young has found that Europe is the region where

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tax risk is highest, not only due to the pandemic but also because of legal uncertainty, tax reforms and tax collection methods (*Badanie EY*, 2021).

In this study, the author attempts to analyse the problem of tax risk, based on her own empirical research and a review of the existing literature. Source analysis and deductive and inductive reasoning are used as the research methods. Due to the importance of the issue of tax risk, the main objective of the study is to attempt to identify this process based on the survey conducted among companies located in the Wielkopolska region in various organisational forms in 2020. The research made it possible to indicate the types of risk identified by companies, their level of awareness in this area, internal and external sources of tax risk according to the respondents and the method of managing tax risk. The article consists of an Introduction, five Sections and Conclusions. Three of these sections are theoretical (The concept and classification of risk; Identification of risk areas in corporate tax management; Determination of revenue, tax and non-tax costs from the perspective of tax risk), two are empirical in nature (Legislative instruments reducing tax risk; Assessment of tax risk faced by Polish companies based on the findings of an empirical study).

1. The concept and classification of risk

Risk and uncertainty are inherent in every economic activity. Their unavoidability causes companies to develop appropriate risk management strategies to maintain their position in the competitive market. A lack of such a strategy entails increased vulnerability to risk (Ostrowska 1999, pp. 28–29).

The literature provides different definitions of risk that are more or less successful in explaining its complexity and ambiguity. Moeller (2011, p. 157) has observed that two experts investigating the same area of a company's operations may differ in interpreting the risks they involve. In the Business Lexicon, risk is defined as the probability of incurring losses as a result of a particular decision and a phenomenon where some variables cannot be estimated using probability calculus (Penc, 1997, p. 388).

Duliniec (2001, p. 3) understands risk as a situation whose outcomes may be better or worse than expected, while Rowe (1977, p. 24) defines it as the possibility of an undesirable reality, a negative consequence of a certain event. Therefore, two basic concepts of tax risk are distinguishable: a neutral concept presenting risk as the probability of achieving a result other than expected, and a negative concept identifying risk with a threat (Jajuga, 2007, p. 13)

The concept of risk describes its nature as follows (Tarczyński & Mojsiewicz, 2001, pp. 14–15):

- the heterogeneity of risk makes it difficult to define it precisely,
- risk has an objective and subjective side,
- risk is volatile.

The literature offers various criteria for classifying risks faced by companies. Because of their sources, they are divided into internal risks (associated with human resource problems such as employee failures or inappropriate personnel policies and corporate governance) and external risks (political risks, legal risks, interest rate risks, currency risks and liquidity risks) (Iwaszczuk, 2021, p. 17). There are also static and dynamic risks following from technical, economic and organisational changes (Kufel, 2007).

The risk of running a business is usually divided into business risk and financial risk (Zeliaś, 1998, p. 62). The former is related to insufficient or missing internal control measures, information system errors or damage caused by force majeure or human action (Holliwell, 2001, p. 14).

On the other hand, the source of financial risk is excessive debt financing. Over-borrowing followed by problems with repaying principal and interest may lead to a lack of liquidity or even cause a company to file for bankruptcy (Smaga, 1995, p. 14).

Financial risk consists of several specific risks, namely (Nowak, 2010, p. 15):

- currency risk,
- interest rate risk,
- inflation risk.

For some reason, none of the classifications takes account of tax risk, which should be treated as operational risk because it is directly related to business activities and entails sanctions that increase business costs.

In the literature, tax risk is defined as a potentially adverse event that may negatively affect an entrepreneur's reputation in the eyes of the tax authorities, investors, employees and the public (Wiśniewski, 2009, p. 60) or cause uncertainty as to the outcomes of the completed and future business activities (Poszwa, 2007, p. 11). There is also a definition describing tax risk as the probability of an entrepreneur misinterpreting a tax liability, especially by misjudging its amount or base, potentially entailing financial and criminal consequences for the entrepreneur (Jachira, 2018, p. 301). According to the author of this paper, tax risk can be defined as the probability that the company's tax liability will exceed the forecasted amount or that an unforeseen tax liability will occur. It is important to note that the materialisation of tax risk may have undesirable consequences, both financial and non-financial.

Researchers distinguish between broad tax risk and narrow tax risk. The former is the risk that the state will collect less taxes than it needs to finance its functions, which is an inherent feature of withholding tax collection, tax management, tax policies and tax law enforcement. The latter is the risk that taxpayers will not comply with tax laws and regulations at all, underpaying their tax liabilities or delaying their payment (Firmansyah & Muliana, 2018).

Therefore, the main focus of risk management is on creating business conditions that will minimise the probability of an unforeseen loss and improve a company's financial performance.

2. Identification of risk areas in corporate tax management

As tax risk may prevent companies from achieving their tax policy objectives, they should be aware that it has external and internal sources.

The external (exogenous) sources of tax risk are beyond the control of companies because they lie in their macro-environment. These include market volatility, frequent changes to tax regulations, fiscal orientation of tax authorities and the intricacy of tax legislation (Hajduga, 2020, p. 47).

The internal (endogenous) causes of tax risk are part of the micro-environment of companies. Their range includes employees' insufficient knowledge about taxes, unclear assignment of responsibilities to personnel, poor communication between tax and legal departments, lack of formal internal regulations and problems with IT systems (Nowak, 2010, p. 284). Companies use different IT systems to handle their tax liabilities, many of which are developed by programmers without insufficient knowledge of taxes, which increases the risk of incorrect settlement of taxes (Burchart & Bagieńska, 2019, p. 421).

It should be noted that the sources of risk presented above are interrelated. Frequent changes and inconsistencies in tax law often lead companies to file inaccurate tax returns, resulting in financial penalties. The taxability of an agreement and the applicable tax rate depend largely on its specific terms. Unfortunately, these agreements are typically drafted without the involvement of accountants, which further heightens the risk of tax-related problems (Nadolska, 2006).

The causes of tax risk can be formal, related to procedures involved in the assessment, control and collection of taxes, as well as material, arising from the very construction of individual taxes. Accordingly, in the first case, tax risk is closely related to control over entrepreneurs, and in the second case, to the construction of a tax (Biernacki, 2017, p. 21).

However, it should not be understood that the only source of tax risk is tax irregularities and the probability of penalties imposed by tax authorities. Another source is the actions taken by companies to reduce their tax liabilities and the poor management of tax costs (Sachs, 2005, C3).

Tax risks can be divided into specific risks (transactional, operational, compliance and financial accounting risks) and generic risks (portfolio, management and reputational risks).

Transactional risk is understood as the probability that some unusual or complex transactions will necessitate the structuring of commercial arrangements to avoid the payment of tax or the misapplication of tax laws.

Operational risk is explained as the risk of incurring a loss due to poor or inefficient internal processes, human resources, systems or external events. To be effective, transactional, compliance and operational risk management must be accompanied by risk awareness in financial accounting. A material source of tax risk is when transactions, events and conditions are treated differently for financial reporting and tax purposes (Segal & Maroun, 2014, p. 376)

The literature also classifies tax risk by source. Thus, there are risks arising from (Elgood et al., 2008, p. 11):

- strategic activities and atypical transactions,
- financial reporting,
- handling of tax obligations,
- business operations.

Whether occasional or regular, business operations involve tax risk. In the first case, its source is personnel's lack of knowledge and skills necessary to process them for tax purposes. In the second case, the personnel may tend to process them in a routine manner, which may result in incorrect calculation of taxes, etc.

The need for each company to have an appropriate tax strategy consistent with its overall corporate strategy and addressing all aspects relating to the payment of taxes is very obvious. Inadequate tax risk management entails many negative consequences for companies, including a decrease in financial liquidity, deterioration of the public image and the risk of management being held liable under the Financial Penal Code. According to Nadolska (2006), companies with tax risk management systems benefit from them in many ways, for instance by:

- running a lower risk of tax errors,
- staying compliant with tax regulations,
- increasing the company's value,
- eliminating areas where tax risk may occur or reducing their number,
- finding new ways to lower their tax liabilities,
- reducing the risk of prosecution under the Penal and Fiscal Code (Ustawa, 1999).

It is also important that risk managers are aware of the existence of tax risk and have the skills necessary to identify it. Compliance with the tax law and proper management of tax liabilities can significantly reduce the level of risk.

3. Determination of revenue, tax and non-tax costs from the perspective of tax risk

The level of tax risk largely depends on the correct calculation of revenues as well as tax and non-tax costs. This may be challenging for companies due to unclear, frequently amended legislation.

Tax law does not provide a definition of revenue but only indicates taxable and non-taxable sources of it. The Accounting Act describes revenues as probable economic benefits in a given reporting period, such as an increase in assets or making up for their deficiency, obtained in a way other than the contribution of funds by shareholders or owners and reliably valued (Ustawa, 1994, Article 3, Section 1, p. 30).

The analysis and determination of whether an entity has achieved economic benefits must be conducted during the financial year and reported at the balance sheet date. The process must take into account the uncertainties in the legal and market environment of the entity (Gierusz, 2005, p. 64).

Revenues in the profit and loss account are presented by type of source. In this way, a distinction is made between basic operating activities, other operating revenues and financial revenues (Kondratowicz, 2006, p. 25). A comparison of revenues reported under the balance sheet rules and tax rules points to the following groups of revenues (Poszwa, 2013, p. 141):

- accounting revenues (from the sale of products, goods and materials), which are classified as tax revenues,
- revenues indicated in the profit and loss account but excluded from tax revenues (e.g., derived from agricultural activities),
- revenues excluded from the profit and loss account but included in tax revenues (e.g., benefits received free of charge).

In addition to sales revenues, which constitute the main category of revenues in the Corporate Income Tax Act, there are also tax revenues such as positive exchange rate differences, the value of goods or rights received, including those received wholly or partially free of charge, part of liabilities that have been redeemed or written off as uncollectible, or have expired (and whose impairment

losses were previously classified as revenue costs), as well as the value of cancelled or reduced reserves.

Because of the risk of revenues being inaccurately identified or valued, every company should have procedures to keep this risk as low as possible. The amount of revenue that should be reported in the profit and loss account is determined by identifying economic operations from source evidence. The process should be performed according to the rules governing the valuation of assets for balance sheet and tax purposes.

In determining taxable revenues, one has to bear in mind that Article 12, Section 4 of the Corporate Income Tax Act (Ustawa, 1992) exempts some types of revenues from taxation. These are:

- amounts collected or received due to the delivery of goods and services in future reporting periods, as well as loans (credits) granted or returned, including those repaid in kind, except for capitalised interest on these loans (credits),
- accrued, but not received, interest on receivables, including on loans (credits) granted,
- returned shares or voting stock in cooperatives, redeemed shares or stocks in companies, including amounts from the sale of shares or stocks to their issuers for redemption, equivalent to the cost of their purchase or subscription,
- value added tax payable,
- revenues that the act on the company social fund indicates as increasing the fund.

The Corporate Income Tax Act links the moment of generating revenue with the date of delivery of the item or provision of the service or with the transfer of property rights, but states that it cannot fall later than the date of invoice issue or payment (Ustawa, 1992, Articles 12, 3a).

Tax liability is calculated based on revenues and costs determined according to the accounting law. It must be borne in mind, however, that the tax law treats some revenues and costs as tax-deductible while other revenues and costs must be taxed. It is noteworthy that tax law constitutes a separate element of the legal system governing the economy, which points to the autonomous status of the balance sheet law and tax legislation (Litwińczuk, 2000, p. 156).

There are three steps in calculating companies' tax costs: 1) identifying tax-deductible costs, 2) evaluating costs, and 3) allocating costs to the appropriate billing period (Poszwa, 2014, p. 461).

While companies are interested in having possibly large tax costs, many of them lack the knowledge to determine which costs are legitimately tax-deductible. This relevance of observation is confirmed by numerous interpretations issued on behalf of individual taxpayers and Supreme Administrative Court rulings.

The Corporate Income Tax Act defines tax-deductible costs as costs incurred to generate revenue or maintain or secure a source of revenue, other than costs listed in Article 16, Section 1 (Ustawa, 1992, Article 15, Section 1). Under the Act, an expense is a tax cost when it was necessary to generate revenue and when it is not specifically disqualified by the tax law.

It is also important to remember that only costs incurred in a given tax year in relation to the same year revenues are deductible from the tax base. An exception to this rule is costs paid in previous tax years to earn revenues in the current tax year.

Beger and Liss (2012, p. 41) point to a long-standing dispute between taxpayers and the tax administration over which costs are tax-deductible. According to the taxpayers, an expense is tax-deductible when its association with revenue can be demonstrated, whether or not the latter actually occurred. The tax authorities claim, however, that an expense is not legitimately tax-deductible unless it leads to revenue. Court rulings have shown that it is the taxpayers who are right in this matter.

The catalogue of non-taxable costs is provided in Article 16 of the Corporate Income Tax Act (Ustawa, 1992) and includes four main groups (Olchowicz, 2009, p. 123):

- expenses for the purchase and increase of the value of those non-current assets that do not constitute tax-deductible costs,
- penalties,
- cost of irregularities in settlements, e.g., such as untimely payment of public law liabilities,
- costs that are unjustified or unnecessary under the law.

Good business practice requires setting maximum limits on non-deductible costs (by type and period), because regardless of their size, they always increase the tax base and tax liability; consequently, they deteriorate the net financial result and lower dividends for the shareholders. Companies deciding to invest in land or acquire the right of perpetual usufruct of land must therefore be aware that such transactions will have an impact on their financial results.

A major group of costs is sanction fees, including (Ustawa, 1992):

- the costs of tax enforcement proceedings in cases of non-compliance with obligations (Articles 16, 17),
- fines and penalties imposed following criminal, fiscal, administrative and misdemeanour proceedings, as well as interest thereon (Articles 16, 18),
- penalties, fees and damages, as well as interest thereon, for a failure to comply with the environmental regulations in force and with the decisions of supervisory or inspection authorities in charge of health and safety at work (Articles 16, 19),

- interest on the late payment of public and other liabilities regulated by the Corporate Income Tax Act (Articles 16, 21).

There is also a category of costs that are not tax-deductible, although many of them are essential from the business perspective and unavoidable. For example, the legislature has decided that corporate expenses made on behalf of the members of supervisory boards, audit committees or the constitutive bodies of legal persons and companies are not tax costs.

A particularly controversial issue is the so-called representation costs. As the tax law does not provide a definition of “representation costs”, the tax authorities have felt free to interpret them on their own. The possibility of arbitrary interpretations of the term has recently been limited by an increasing number of court rulings that explain representation costs as expenses incurred in relation to various activities undertaken by companies to present themselves as trustworthy organisations.

In the rulings by the Voivodship Administrative Courts and individual interpretations issued to taxpayers, representation costs are defined as expenses incurred (Beger & Liss, 2012, pp. 50–51):

- to purchase gifts for contractors,
- to invite a contractor to a festive dinner,
- to provide an event for persons other than company employees,
- to provide entertainment for contractors while in training.

A sensitive issue is the tendency of companies to overstate their financial results so that they appear stable and growing organisations, with the strategy (Micherda, 2010, p. 80). By hiding their true financial situation, companies can manipulate estimates, and it should be noted that the valuation of many balance sheet items needs to be more or less estimated.

4. Legislative instruments reducing tax risk

Legal instruments reducing external and internal risks are necessary to increase taxpayers’ confidence in the interpretation and application of tax regulations. There are a number of such instruments in Poland that companies should use to protect their tax position. The author has selected and presented only the most important legal instruments of this type.

One of the major legal provisions aimed at protecting the tax base and countering aggressive tax optimisation practices is the General Anti-Avoidance Rule,

introduced in July 2016 (Ustawa, 1997, Section IIIA, Chapter I) and amended on 1 January 2019, which defines the legitimate scope of tax optimisation.

The clause applies to the actions of taxpayers whose main objective is to obtain a tax advantage, or when one of the main objectives was to achieve such an advantage, if it contradicts the substance or purpose of the Tax Ordinance Act or its provisions (Ustawa, 1997).

Such a tax advantage does not occur if the action was "artificial", i.e. if it had not been used by an entity acting reasonably and with legitimate aims for predominantly sound economic reasons. The reasons exclude attempts to gain a tax advantage challenging the substance or purpose of the Tax Ordinance Act or its provisions. It is notable that the General Anti-Avoidance Rule is criticised by some as unclear and ambiguous (Gomułowicz, 2020, p. 9).

The clause is general in the sense that it concerns all actions taken to gain a tax advantage. It applies when successive transactions are combined in such a way that their primary and common objective is to avoid paying a tax (Gomułowicz, 2020, p. 16).

It is worth noting, however, that the Tax Code does not define the concept of "tax advantage" but only provides a list of cases where such an advantage may occur (Ustawa, 1997), including:

- non-occurrence of a tax liability or its postponement in time,
- reduction of tax liability,
- excess tax payment or overstatement of its amount,
- creation of the right to a tax refund,
- overstatement of the amount of tax refund.

In the case of tax avoidance, the Head of National Revenue Administration issues a decision specifying the consequences for the taxpayer, based on a hypothetical scenario where the transaction or activity was carried out with legitimate objectives other than obtaining a tax advantage.

The applicability of the General Anti-Avoidance Rule in individual cases is assessed by the Council on Tax Avoidance. The opinion of the Council is issued at the request of the Head of NRA in the course of proceedings or at the request of a party included in an appeal against a decision issued while the General Anti-Avoidance Rule was applied.

The tax avoidance provisions contain several instruments protecting taxpayers' interests, such as:

- protective opinions issued by the Head of National Revenue Administration (NRA) at the request of the taxpayer concerned, indicating whether a given action amounts to tax avoidance. An application for the opinion involves a fee

of PLN 20,000 and should contain a detailed description of the action, its aims and economic rationale. The NRA may refuse to issue a protective opinion if the main transaction to which it relates was carried out primarily for the purpose of obtaining a tax advantage, which is contrary to the substance and purpose of the provisions of the Tax Ordinance Act;
- opinions on the applicability of the clause issued by the Council on Tax Avoidance at the request of the Head of National Revenue Administration. If the Council does not issue an opinion within three months, the clause is deemed applicable (or inapplicable, if an opinion was requested by the taxpayer);
- the suspension of immediate enforceability of decisions issued under the clause;
- the right of the taxpayer to correct the tax return within a 14-day period designated by the tax authority before the first instance decision is issued in the proceedings concerning the tax avoidance clause. All corrections to be made to the tax return should be well thought out in advance, because correcting it again after the tax proceedings have ended will not protect the taxpayer from the consequences of tax avoidance.

The Anti-Avoidance Rule does not apply to:

- entities to which a protective opinion has been issued (within the scope of the opinion and until the decision amending or repealing that opinion is delivered),
- entities that have concluded a tax agreement – within the scope of the agreement,
- goods and services tax and fees and non-tax liabilities to the budget.

The last point is very important – the Anti-Avoidance Rule does not apply to the goods and services tax, as these issues are covered by a special anti-abuse solution (pursuant to Article 5, Section 4 of the Polish VAT Act (Ustawa, 2004), the abuse of law is understood as performing activities as part of a transaction which, despite meeting the formal conditions specified in the provisions of the Act, is in fact aimed at obtaining a tax advantage, the granting of which would be contrary to the purpose of these provisions).

The amendment of 1 January 2019 has made it possible for taxpayers to apply to the HNTA to issue a decision specifying the terms of annulment of the consequences of tax avoidance, which the taxpayer may use when filing a tax return or a corrected tax return within 14 days of its reception. The decision protects the taxpayer from a punitive increase in tax liability for an attempt to avoid the payment of taxes. Another advantage of the decision is that no interest is charged on outstanding tax liability constituting an illegitimate tax advantage in the period between the filing of an application for the decision and the annulment of the consequences of tax avoidance.

Another legal solution aimed to protect the taxpayers' interests is the Individual Tax Interpretation that they may seek to make sure whether they correctly understand tax rules applying to past and projected transactions. Taxpayers may also apply for individual interpretations of laws that have been enacted and published but have not yet come into force (see the ruling of 3 June 2014 by the Provincial Administrative Court in Białystok, file no. I SA/Bk 157/14; Wyrok, 2014). There should be stressed that this tool provides protection only to the entity that requested the ruling.

Taxpayers who act in compliance with the tax interpretation they have received are protected against the adverse effects of its change, expiry, repealing by the administrative court, or omission in settlement of tax proceedings in such a way that no tax proceedings are instituted in relation to a tax crime or fiscal offense and those ongoing are terminated, and no interest is charged on overdue taxes. If the tax consequences of the event being interpreted will occur after an interpretation is served, the taxpayer who receives it is exempted from the obligation to pay tax to the extent indicated in Article 14m § 2 of the Tax Ordinance Act (Ustawa, 1997).

The Tax Ordinance Act specifies a number of situations when individual tax interpretations are not issued (Journal of Laws of 2005, No. 8, item 60, as amended, Article 14a; Ustawa, 1997). Taxpayers may not seek them in cases:

- involving binding rate information,
- resolved by the tax authority,
- covered by tax (or investment) agreements,
- involving elements that are an object of ongoing tax or control (tax, customs and fiscal) proceedings.

To encourage large organisations to comply with tax rules, new regulations have been introduced (section IIB "Cooperation" of the Tax Ordinance Act; Ustawa, 1997), which allow them to enter into the so-called Tax Cooperation Agreements with the National Revenue Administration. The agreements are civil-law contracts that offer many benefits to companies, including exemption from tax audits and limited sanctioning for VAT irregularities in some circumstances. Companies interested in such agreements are required to meet several conditions to conclude them, the most important of which is the implementation of the so-called Internal Tax Supervision Framework that Article 20u, paragraph 2, defines as "an effective and adequate set of identified and described processes and procedures governing responsibilities resulting from the tax law and ensuring the proper fulfilment thereof" (Ustawa, 1997).

The Internal Tax Supervision Framework can be seen as an extension of the Tax Compliance Management Systems used in other countries.

5. Assessment of tax risk faced by Polish companies based on the findings of an empirical study

All companies need to accurately identify tax risk areas and implement measures to reduce them. Due to the constantly changing tax law, organisations must carefully monitor for the emergence of new, previously unknown risks in order to avoid or minimise their consequences. Knowledge of the probability of an adverse event allows them to take necessary precautions (Godman, 2006, p. 4).

Tax risk studies draw on concepts such as tax risk, tax risk management, tax risk identification and tax big data. The term "big data" denotes the massive, large-scale and full-scale data that can be acquired, collected and aggregated on a unified processing platform. Big data is also a management tool for managers and users to make decisions through professional computer processing (Brojo et al., 2021).

This study on tax risk management in Polish enterprises and its ethical aspects is based on a survey conducted in 2020. Its results presented in this article utilise only a portion of the data collected but provide a solid foundation for further research into tax risk, including its psychological facets. The survey aimed to assess awareness of tax risk, identify its internal and external sources, and explore how companies manage this risk.

The survey employed a purposive sample of 48 enterprises located in the Wielkopolskie voivodeship, which was selected for having one of the best developed economies in the country and a large number of business organisations.

Because all enterprises in the survey were to be Polish owned, their ownership status was verified through the National Court Register and the Central Register and Information on Economic Activity.

The actual respondents were chief executives (CEOs) of enterprises, of which 21 were limited-liability companies, 22 were sole proprietorships, 3 were civil-law partnerships and 2 were joint-stock companies (Table 1).

Table 1. The organisational and legal form of enterprises included in the survey

Organisational and legal form	Number of enterprises	%
Total	48	100.00
Limited liability companies	21	43.75
Sole proprietorships	22	45.83
Civil law partnerships	3	6.25
Joint stock companies	2	4.17

Source: own analysis.

With regard to the business sectors of the surveyed organisations, 32 operated in the production and trade sector, 9 were trade organisations, and 7 were engaged in trade and provision of services.

The tax regime applying to a taxpayer depends above all on their organisational and legal status. Legal and natural persons fall under different tax regimes and pay different tax rates. Their tax risk is also dissimilar, because the property of a legal person is legally separated from the personal property of its stakeholders.

According to Figure 1, the surveyed companies[2] believed that the risk of escalating pandemic and the risk of increasing operating costs (indicated by almost 80% and 67% of the respondents, respectively) are greater than tax risk (more than 50% of responses). The least important factors were uncertainty about economic growth and the risk of staff shortages.

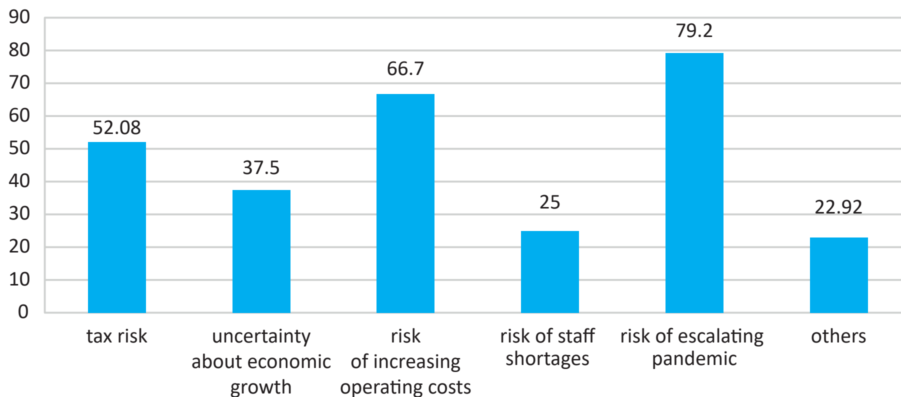

Figure 1. Types of risk indicated by companies (in %)

Source: own analysis.

Therefore, risk related to tax settlements was the third most serious business risk in the opinion of the surveyed companies.

An analysis of the frequency of tax audits initiated by the tax administration shows that although the companies' risk of being audited has markedly decreased in recent years, mainly because of tax audits concentrating on taxpayers suspected of tax irregularities, the risk of a tax audit resulting in tax proceedings has increased. The data below show the numbers of tax audits conducted in Poland in the years 2018, 2019 and 2020 (Koślicki, 2022):

- 2018: 26,102 tax audits (effective in 90% of cases),
- 2019: 22,995 tax audits (effective in 94% of cases),
- 2020: 17,337 tax audits (effective in 86% of cases).

[2] The respondents could choose a maximum of 3 types of risk.

Nonetheless, the likelihood of avoiding a tax audit is low, so every company should prepare for it and make sure that its accounting and tax department can identify tax risks and implement appropriate procedures beforehand.

The fact that more than 85% of the surveyed organisations are aware of the existence of tax risk and a risk of a dispute with the tax administration shows the importance of taxes for business operations. Currently, tax lawsuits account for the greatest proportion of cases filed with administrative courts in Poland (*Badanie EY*, 2021). There are also fears among entrepreneurs that large transfers from the budget to social and anti-crisis programs may increase their fiscal burden in the future.

When asked to indicate the main internal sources of tax risk, one in four of the surveyed managers pointed to insufficient knowledge and skills of employees. Therefore, having tax experts in the team seems to be the right way to reduce the tax risk of companies, as well as providing employees with specialist training, courses and literature to expand their knowledge, so that they can correctly interpret tax regulations and handle the financial aspects of operations. Knowledge of taxes is a prerequisite for managing company taxes (Stępień, 2015 p. 37).

Employee involvement in their responsibilities was rated as low by 16.7% of respondents (Figure 2). More than one in five pointed to a lack of formal internal rules regulating tax strategy as one of the internal sources of tax risk. This may indicate that although companies are aware that tax risk exists, they tend to manage it intuitively instead of establishing formal rules for dealing with it.

This is rather surprising, given that formal risk management procedures can ensure the proper functioning of the tax department and efficient cooperation

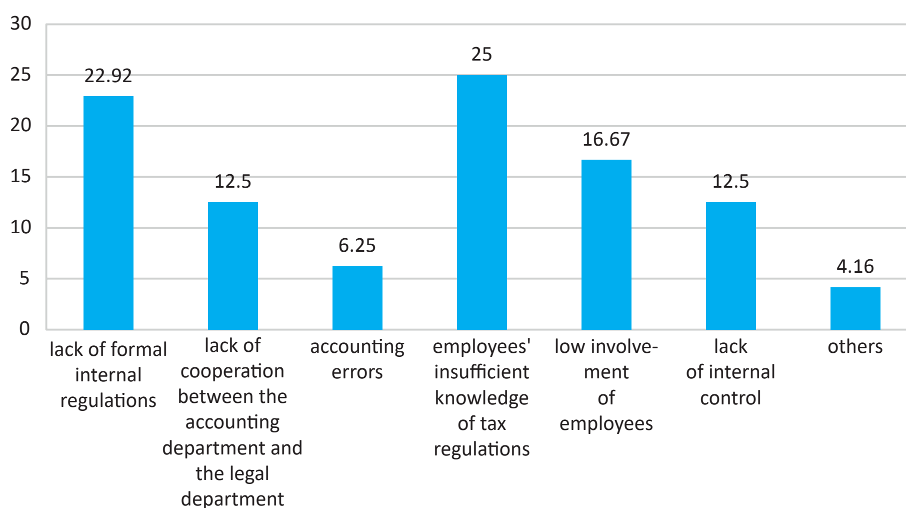

Figure 2. Internal sources of tax risk according to the respondents (in %)

Source: own analysis.

between the department and the rest of the company. Lack of internal control and co-operation between accounting and legal departments was a problem for one in eight respondents.

Internal control procedures are important in that they designate the scope and means of control, the amount of information to be made available to auditors, audit principles, control regulations, post-control regulations, and name staff members responsible for monitoring the implementation of the procedure.

For almost half of the respondents, the main source of external tax risk was the complex tax system (Figure 3). Every third respondent was critical of the frequent changes in tax regulations, which cause interpretation problems for taxpayers. A response to the variability of tax legislation rules should be systematic training of the tax accounting staff, which would ensure that the staff possess the necessary legal knowledge to minimise tax risk and understand regulations related to both tax and non-tax costs. Practice shows that most disputes between taxpayers and the tax administration concern tax costs. There seems to be a problem not only with the correct calculation of tax liabilities but also with understanding the potential consequences of tax-related decisions.

The fiscal orientation of the tax authorities was indicated by 12.5% of respondents, which emphasises the need for taxpayers to keep appropriate documentation of their key transactions and tax calculations. It is also important to foster cooperative relations between taxpayers and the tax administration. They are particularly important in the case of tax audits, during which taxpayers should carefully explain all facts and refrain from actions that might obstruct their course.

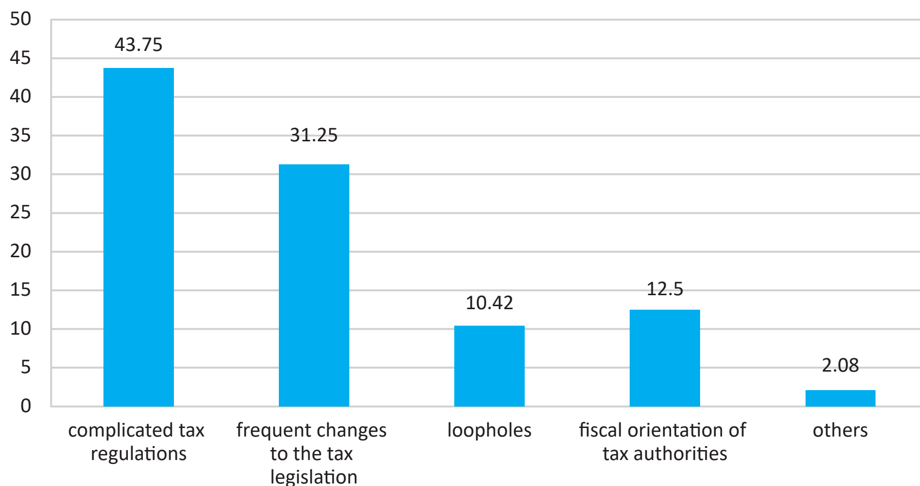

Figure 3. Major external sources of tax risk indicated by the respondents (in %)

Source: own analysis.

Proper tax risk management involves careful planning and systematic implementation of measures aimed at its minimisation.

Figure 4 shows that more than half of the respondents knew that tax risk should be managed on an ongoing basis. Systematic monitoring of potential risk areas is necessary to ensure that all tax risk control procedures in a company closely follow developments in its internal and external environments. The procedures are not only a prerequisite to efficient functioning of the risk management system and its instruments (e.g., methods for risk identification, measurement and control, etc.), but they also protect companies from irregularities in tax settlements and problems with the tax administration.

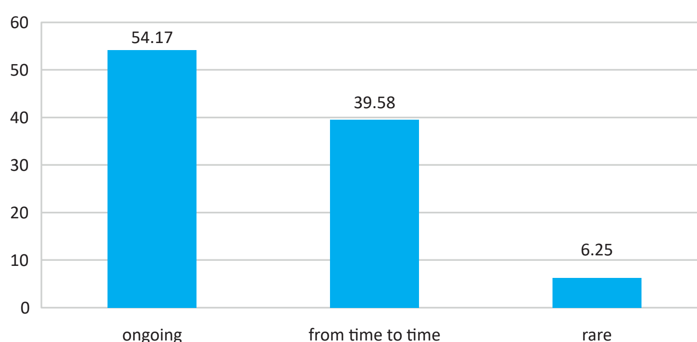

Figure 4. Tax risk management in the surveyed companies (in %)

Sources: created by the author.

Conclusions

As there are no universal tools allowing tax risk to be managed effectively and efficiently, companies should devise their own ways of managing tax risk. Accepting the existence of risk is the first step toward adopting measures that can mitigate its potential consequences. Successful tax risk management largely depends on how much a company knows of this process and tax risk itself. It also requires constant monitoring of changes in tax regulations and tax interpretations as well as providing employees with specialist training.

The presented empirical findings show that tax risk is a recognisable phenomenon. It is undoubtedly very important for the existing state of art. It is worth conducting the research in the future on a larger research sample to check the extent to which changes have occurred in the method of tax risk management in Polish companies. The surveyed companies made efforts to manage it, being aware that wrong interpretations of tax rules or employee incompetence might expose them

to financial, business or even criminal consequences. Because they may affect the entire organisation, not only the financial department personnel but also all employees influencing costs and sales should be responsible for dealing with tax risk. This approach emphasises the need for appropriate internal tax procedures and processes, including effective communication between the tax department and other departments, overseeing decision-making and ensuring the consistency of tax information circulating within the organisation.

It should be natural for organisations to have a tax risk management system underpinned by a well-thought-out tax strategy fitted to their goals and business activity. In all organisations, seeking ways to minimise their tax risk should be an essential element of corporate management.

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