

Anna Popik

Faculty of Economics

Marie Curie–Sklodowska University in Lublin

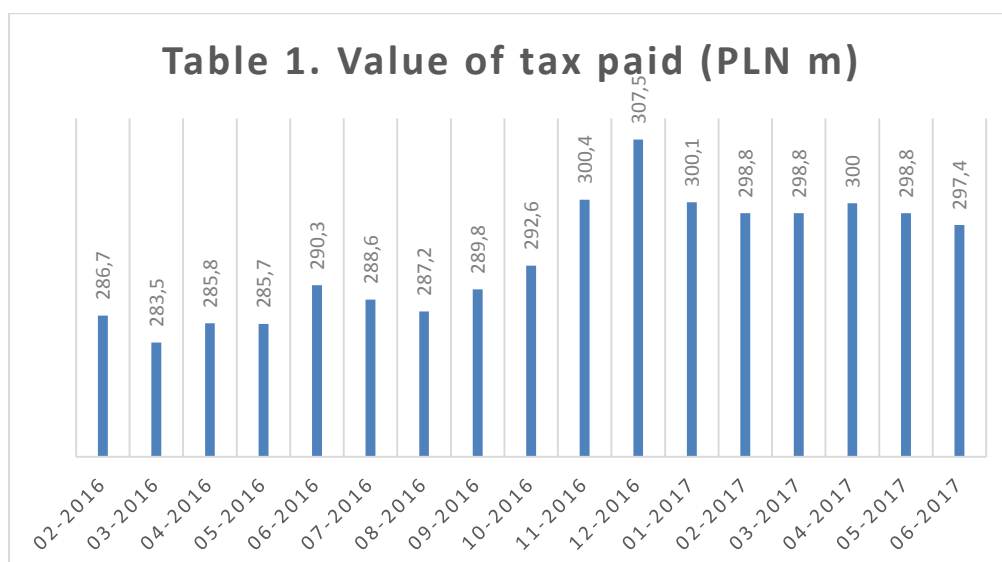
Income tax is the economic and legal category which is a source of financing for economic and social goods. Polish law defines tax as "public, unpaid, compulsory and non–returnable cash benefit to the State Treasury, province, county or commune, resulting from the tax act"[1, art. 6]. The tax system must function in such a way as to reconcile two opposing interests: taxpayers striving to minimize tax burdens and expectations from the State Treasury of the highest possible inflows.

In recent years, there has been a tendency to increase the financial burden on banks. This refers primarily an increase in contributions to the Bank Guarantee Fund, payments for a support fund for housing borrowers managed by BGF, as well as potential benefits due to the restructuring of Swiss franc loans and the negative effects of the introduction of EU directives in the field of payments [2]. Another strain was imposed on banks in accordance with the Act on Tax on Certain Financial Institutions of 15 January 2016 [3], hereinafter referred to as a bank tax. It has begun to apply in Poland from February 1, 2016. The regulations apply not only to banks, but also to insurance and reinsurance companies, cooperative savings and credit unions and loan institutions. The provisions of this Act apply to institutions having their registered office or branch in the territory of the Republic of Poland. Pursuant to the Act, the above–mentioned entities are obliged to pay 0.0366% of the tax base value monthly. However, the methods of calculating the tax base differ between themselves. For banks, the basis is the surplus of the sum of the value of assets, resulting from a statement of turnover and balances on the last day of the month, over PLN 4 billion. The base calculated in this way is reduced by the value of own funds, determined as of the last day of the month and the value of Treasury securities and assets purchased from the National Bank of Poland, being a security for the refinancing loan granted.

The introduction of that tribute was associated with a number of tumultuous voices of both supporters and opponents.

The idea of introducing a bank tax in Poland appeared several years ago. The desire to implement this tax should be combined with decreasing income tax receipts from financial institutions, which is a consequence of commonly used tax optimization. Another reason for the introduction of the tribute was discussed economic crisis, which caused the need to co–finance these entities. The Tax on Certain Financial Institutions aimed not only at counteracting the negative effects of tax optimization on the State Budget, but also to provide some kind of compensation for the banking sector's help from governing institutions in times of crisis[4, p.6]. According to the European Central Bank, this tax should have been introduced primarily due to the allocation of costs related to potential bankruptcies of the institution operating in the banking sector between the financial sector and taxpayers, as well as to reduce the risk generated by financial institutions. For cooperative savings and clearing houses, the surplus is calculated from PLN 4 billion, with the exception of own funds and the value of Treasury securities. There is also a tax–free amount for insurance and reinsurance undertakings set at PLN 2 billion, and for loan institutions in the amount of PLN 200 million.

In 2017, banks paid a total of PLN 3.6 billion in bank tax – according to information on the impact of tax on certain financial institutions on the situation of commercial banks in 2017– available on the website of the Polish Financial Supervision Authority.



Source: Own study based on: [5, p.4]

In the period from February 2016 to June 2017, the value of the bank tax fluctuated between PLN 283.5 million and PLN 307.5 million per month. This means relatively small fluctuations. In total, banks paid PLN 4,991.8 million during this period.

One of the ways of tax optimization is the appearance of bank tax shifting for other entities[6, p. 137–138] This undesirable phenomenon of transferability is based on: „spontaneous, often against the will of the active entity (state or self–government), disconnecting a formal and real taxpayer[7, p. 9–10]

This phenomenon can be manifested through the shifting:

- "forward" – the economic burden of the tax is reflected in the consumer (purchaser of the goods/services) as a result of the increase in selling prices,
- "backwards" – the tax burden is transferred to the supplier of the raw material (as a result of a price reduction for the raw materials he / she supplies) or the employee (by reducing the amount of the pay)[8, p. 348–349].

In the case of a bank tax, the tax burden is transferred from a taxable entity to a customer in the mechanism of raising commissions (fees) in order to offset the imposed tax. In the period from October 2015 to February 2016, it was possible to observe the general increase of commissions and fees by financial institutions for their clients, which can be firmly identified with the occurrence of the phenomenon of shifting the bank tax forward.[9, p.17]

Another aggressive manifestation of tax avoidance is the activities of financial institutions described as: "artificially flipping credit portfolio between bank branches". This practice can be used by banks that have branches in their structure, or within a group – capital related companies. The tax optimization policy is reflected in the reduction of assets for tax purposes. Financial institutions can sign loan agreements between customers of the bank and the branch office (or related company) bank established in a country where there is no bank tax, either is lower or it will not be charged because the tax base is different. [9, p.18]

The next method of tax optimization is to lower the tax base by the value of assets in the form of Treasury securities. In the event that the bank on the last day of the month decides to purchase treasury securities, which value will lower the tax base of the bank tax in an appropriate amount and on the second day it will sell the same bonds, it is easy to spot in this a way to optimize the tax. [9, p.18]

The remedial program is another way introduced by banks, which can be used to avoid taxation with a bank tax. Pursuant to the Act on tax on certain financial institutions, its implementation would completely relieve banking institution of the obligation to pay a mentioned tax. Of course, the Banking Law requires the preparation and implementation of a recovery program in the event of a balance sheet loss or even a threat thereof. [9, p.19]

To sum up, introduced in 2016 a tax on certain financial institutions had have a significant impact on the financial position of banks. Further effects of introducing a new burden may also be noted as a result of tax optimization conducted by banking institutions. There are many legal options used by banks to reduce tax burdens, for example: tax shifting, artificially flipping credit portfolio between bank branches, lowering the tax base by the value of assets in the form of Treasury securities or remedial program.

Depending on the method used, it raises more or less controversies. However, it is understandable, that taxpayers will always try to reduce their tax liability. The Government's task is to create a tax system, which would not encourage formal taxpayers to pass on liabilities to third parties.

Literature

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