

ARTICLE IN A FOREIGN LANGUAGE

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UNSTABLE AND COMPLICATED TAX SYSTEM AS AN EXTERNAL SOURCE OF TAX RISK IN THE SME SECTOR IN POLAND

Taxes are an integral part of the business environment of enterprises, and thus every activity of entrepreneurs will be connected with a particular tax risk. Polish taxpayers for years note the fact that the tax system is complicated, unstable, and some of the solutions increase the element of risk. This paper presents not only the tax system as a tax risk occurring in the business environment. It shows instability of the tax laws in Poland, which leads to the complexity on the line the taxpayer - the tax office and increases the tax risk during business activity.

Keywords: tax system, tax risk, tax barriers, costs, tax interpretations

Introduction

One of the factors determining the competitiveness of enterprises is legal security engaged in economic activities. Speaking of legal security we keep in mind that we have also created and existing tax law. This requirement should be met by the government during the process of development of the tax law, in accordance with the requirements of the rule of law [1 Rosinski 2008, p. 104]. The legislature not only should, but must provide taxpayers the opportunity to explore his powers and duties of the tax, before they become obligatory. The taxpayers need to be sure that the stability of the tax law is protected, which protects their interests at the same time. It is expressed by the requirement of maintaining the stability and consistency of taxation. The result will be the basic principle of the stability of the law, which applies not only to tax law, but also to other areas of law. The law regulating the powers and duties depend primarily on the changes of political, social and economic conditions.

It is impossible to avoid the conclusion that the tax is "the invention" that some will admire while others explicitly condemn. Regardless of who is right, the fact is that taxes will remain part of the business landscape. This means nothing like every entrepreneur activity will involve specific tax risk. That is why it is so important from the enterprises point of view, in particular SMEs, to identify, analyze and proceeding to minimize tax risk. The tax system in Poland is considered as one of the most serious obstacles both in business and everyday functioning of non-entrepreneurs. About how it should be reformed, politicians and some economists are discussing for years. Unfortunately, these discussions do not bring nothing but confusion and a feeling of instability and changes made in the tax laws introduce an additional element of uncertainty and risk. As a result, investors and entrepreneurs cannot make long-term right decisions, which affects functioning and development of the entire economy.

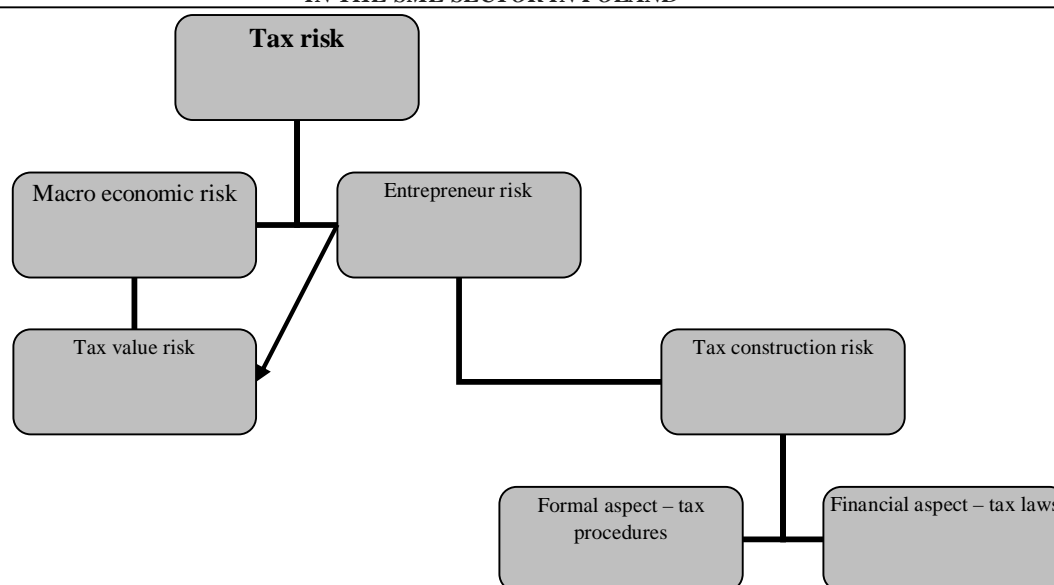
For many years a real problem for Polish entrepreneurs are complicated tax laws, differences in the interpretation and jurisprudence, which increase the risk of doing business. Even if taxpayers

take into consideration the common statements or judgments they cannot be sure that the tax authorities would not challenge their proceeding. The problem is not the amount of taxes (compared to other EU countries are quite low in Poland) but the fulfillment of tax obligations and their enforcement. For many years the unions representing business, academia and the taxpayers themselves emphasize the fact that the tax laws are changed too often and do not take into account the principles of the so-called decent legislation. Taxpayers complain that instead of focusing on the development of their businesses or expanding markets they have to learn about another tax obligations. The stability is what they need right now, in the era of economic downturn, which covered not only Europe, but a significant part of the world.

In this study it was decided to show the instability of the tax system in Poland, which leads to the complexity of the settlements on the line the taxpayer - the tax office which is a kind of tax risk. It was also pointed out that the tax system is an external source of the tax risk which should be considered when starting and running a business. It was analyzed the number of changes in tax laws and determine whether it actually constitutes a barrier to conduct business-economic activity and the development of the SME sector. The tax system is mostly known by the entrepreneurs – apart from the social security system and labor law - as the one which influences their economic decisions.

The tax system as the external source of tax risk.

A person starting a business or already running it must be aware of the fact that taxes and public burdens cause expenses and the existence of tax risk. Unfortunately, the tax risk is a particular type of business risk which is related both to the occurrence of certain sanctions and suboptimal control of spending. The essence of tax risk is, in fact, the lack of certainty to the tax consequences realized or future business operations. [2 Poszwa 2007, p. 11]. The elements that affect the tax risk from the entrepreneur point of view can be divided into several groups. Graph 1 shows the components of the tax risk.



Graph. 1 Determinants of the tax risk

Source: Own study on basics of Biernacki K., *Ryzyko podatkowe w Polsce po akcesji do UE* [w:] *Studenckie prace prawnicze, administratywistyczne i ekonomiczne*, red. Winiarski M., Wrocław 2005, p. 78

Referring to these determinants of the tax risk we can point to the source of the tax risk. The simplest division of sources of the tax risk is dividing it into:

1. External sources,

2. Internal sources [3 Furman in 2012, S.212]

Table 1 shows the factors that may influence creation of the risk.

Table 1.

Tax risk sources	
External	Internal
<ul style="list-style-type: none"> - tax law instability, - tax policy, - changes in tax law rules, - changes in the market 	<ul style="list-style-type: none"> - internal procedures, - improper chose of the taxation form, - lack of tax knowledge among employees, - lack of internal tax procedures, - poor usage of modern technology, - lack of professionalism during business agreements

Source: own study on basics of: „*Pewność czy przypadek? Raport dotyczący zarządzania ryzykiem podatkowym w Polsce*” Deloitte, Warszawa 2008, p. 4

It is clearly visible that the entrepreneurs have not got any impact on external sources (factors). However the development of internal factors is the responsibility of the trader and can have a significant impact on these factors. As emphasized by the creator of the "Raport – pewność czy przypadek?" the tax risk management is a real shaping the internal factors.[4 Deloitte, p. 4]

As already mentioned the entrepreneurs have a small opportunity to minimize the external risk. One can only hope that the Polish legislator finally understand the need to create a stable tax law. The reverse situation is observed all the time which contributes to increasing the complexity of the tax laws. Therefore the previous and the present study are the author's introduction to further studies on the tax system and tax risk in Poland. A large number of changes of the tax legislation affects the stability of the business activities. The frequency of making changes is not satisfactory as well. Therefore it is worth, if it is possible, to use the individual tax interpretations, which are, on the one hand, to protect the interests of taxpayers, on the other, to harmonize the application of existing legislation. Of course you should

keep in mind that not only the Polish tax law is severely complicated. Polish accession to the European Union has had an impact on native companies. Accession to the EU required full harmonization of taxes with the Community system.

Harmonization of the largest range covered Value Add Tax and excise tax. Change had to be made to the law regulating the duty tax. Smaller range of adjustment included income taxes which, in accordance with Community law are not subject to such regulations. This means that the greatest tax risk is related precisely to the sales taxes, which is compounded with plenty of executive regulations and directives of the European Commission.

Unstable tax system in Poland as a source of risk

The constitutional principle of the rule of law, particularly derived from the principle of certainty of law, legal security and trust in the state and the law requires that the tax relations should be created with respect for the stability of the legal order. Although the guarantee of the stability of taxation establishes article

217 of the Constitution, this principle is not respected in Poland.

Undoubtedly, the development and implementation of appropriate tax system is not easy, but certainly you cannot do it by the typical "trial and error" method. Unfortunately, it can be concluded that such tactics shows the analysis of the various changes made in the period 1989 – 2014. Frequent and not discussed concepts of the certain law regulations were subject to "improve" only during implementation and at a pace that

did not allow for a full assessment of the practical effects of taxation in the economic and legal issues.

Insufficient clarity of the tax law makes the acts and regulations "overgrown" in all kinds of internal explanations, instructions established fairly freely by the internal organs of the Ministry of Finance.

It is therefore to be expected as soon as possible the unification of tax legislation. The tax system should be stabilized, including limitations for the Ministry of Finance to issue implementing rules. Table 2 presents the barriers to doing business in Poland.

Table 2

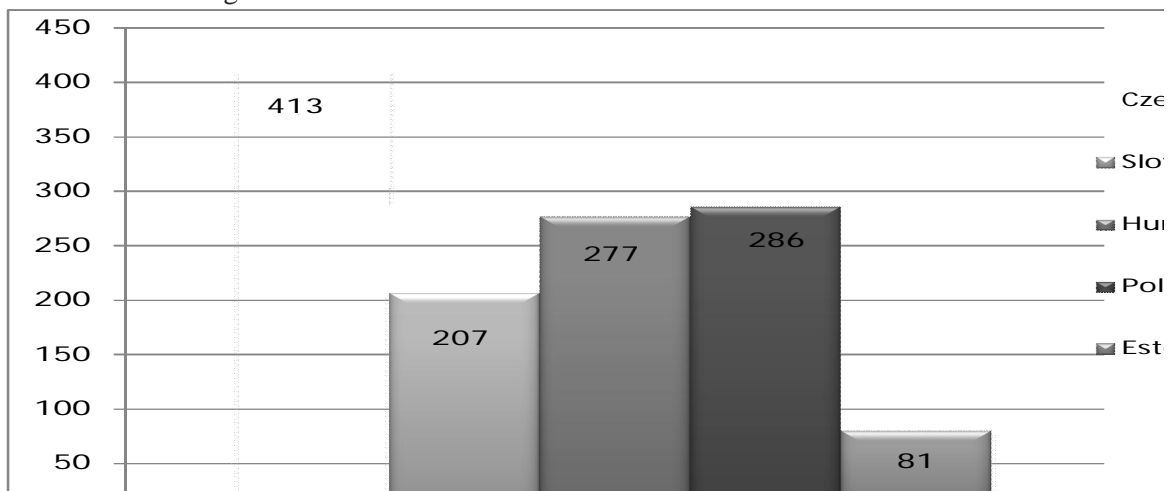
Administration barriers for business in Poland in 2013

Administration barriers	[%]
Lack of clarity of the VAT	71,8
Grey market	59,4
Administration procedures	56,9
Lack of funding possibilities	28,6
Complicated tax rules	24,4
High expenses of employees	23,4
Lack of good vindication system	9,4

Source: own study

The data presented in Table 2 clearly shows that for a large number of business owners in Poland the most important barrier is the lack of transparency of indirect taxes (VAT) and taxes on business (CIT, PIT). Owners of small and medium-sized enterprises believe that the lack of readability in a tax regulations increases the risk of economic activity and generates additional costs to their activities, thereby reducing competitiveness. This is of great importance because the rules of the taxation of business are placed in several or even a dozen acts. This causes a situation in which the taxpayer and the tax officer must read several regulations provided for responsibilities related to taxation. It is worth to point out the unprofessional actions of the Ministry of Finance. It is about rising the rate of the VAT for

a specified period of time and issues with cars used in business. Real career-making is the rule of countdown VAT on used cars and those of the "grid" behind the backseat. From the end of 2013 expired provisions prohibiting counting VAT on cars with grid. A kind of "loophole" was established for entrepreneurs but not for a long time. Intensive activities of the Ministry of Finance has led to changes in legislation in this matter since April 2014, which gave us two changes of one regulation within three months. Such actions do not affect positively the reception of created rules and do not increase the confidence in the state. Graph 2 shows the number of hours needed to complete the formalities of tax.



Graph. 2. Hours (in total) needed to fulfill all regulations to pay taxes in Poland in comparison to European countries in 2013

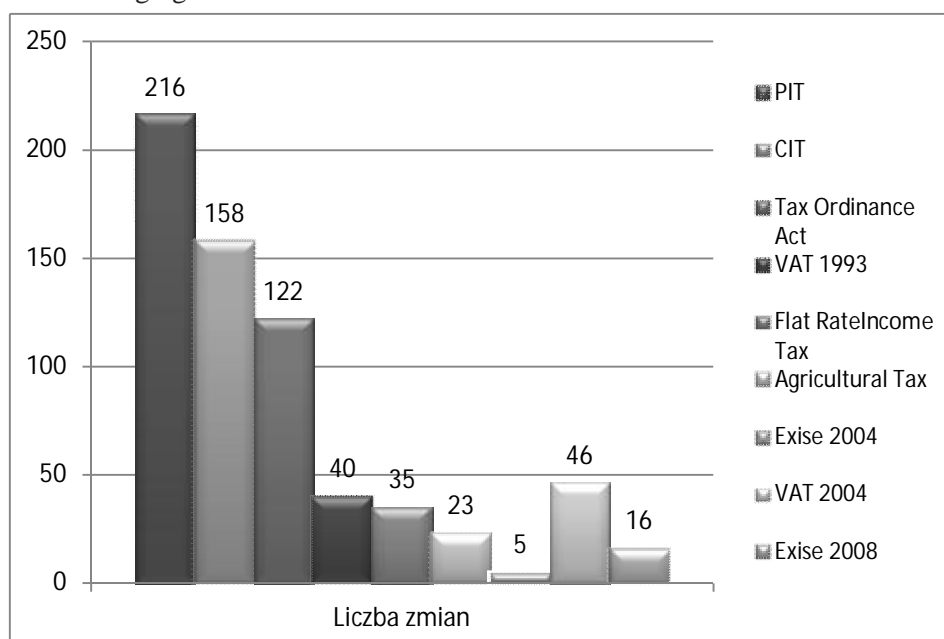
Source: own study on basics of: Paying Taxes 2012. The global picture, Bank Światowy & PricewaterhouseCoopers 2012

When analyzing the above data it can be concluded that the high degree of complicated regulations affects the time necessary to settle any formal associated with paying taxes. At the same time it contributes inhibiting the development of pre-establishment and supposedly

creates unfavorable climate for investments. As can be seen filling in the tax paperwork in Poland takes more than 280 hours per year. This may not be bad result if we look at countries such as the Czech Republic or Hungary. Often the taxpayers indicate the incompetence

of administration staff of the Ministry of Finance. However the same employees have problems with the use of constantly changing laws as well. At that point it should be noted that changes in legislation are made without consultation with the employees directly involved in the application of tax laws. The author of this article and his colleagues (former IRS officers), during their 10 year career, were only twice asked for their opinion on draft legislation concerning taxes. Unfortunately it was only a regulation and not a law. In case of law creation officials who meet the taxpayers from whom they hear repeatedly the need for change, do not participate in this process. It could be possible that collected opinions on regulations allow to create a reasonably well-functioning right.

Tax provisions contained in the statutes were changed several times. Applicable tax laws in Poland come even from 1983. Regarding the time the longest actual is the law on inheritance and donations from 1983 (31 years old) and the Agricultural Tax from 1984 (30 years). Quite shortly valid taxes are: tonnage tax from 2006 and a law established in 2004 of VAT. The Excise Duty tax was created in 2008 (6 years), which was superseded by the act from 2004 (about excise duty as well). To better illustrate to the reader the enormity of changes to the tax laws made the author estimated the number of amendments to the laws. As shown in the graph below the susceptibility of each set of changes was not uniform (Graph 3).

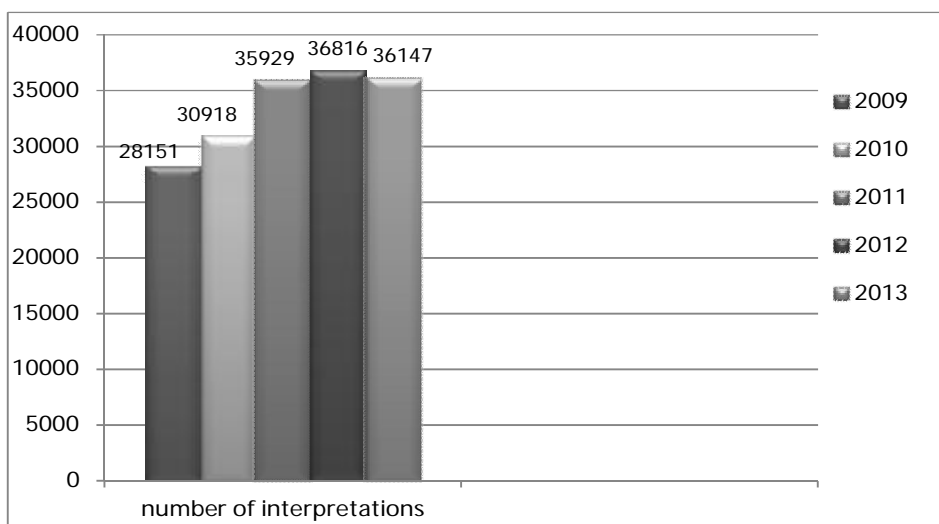


Graph. 3. Number of changes made in tax laws to 2014

Source: own study

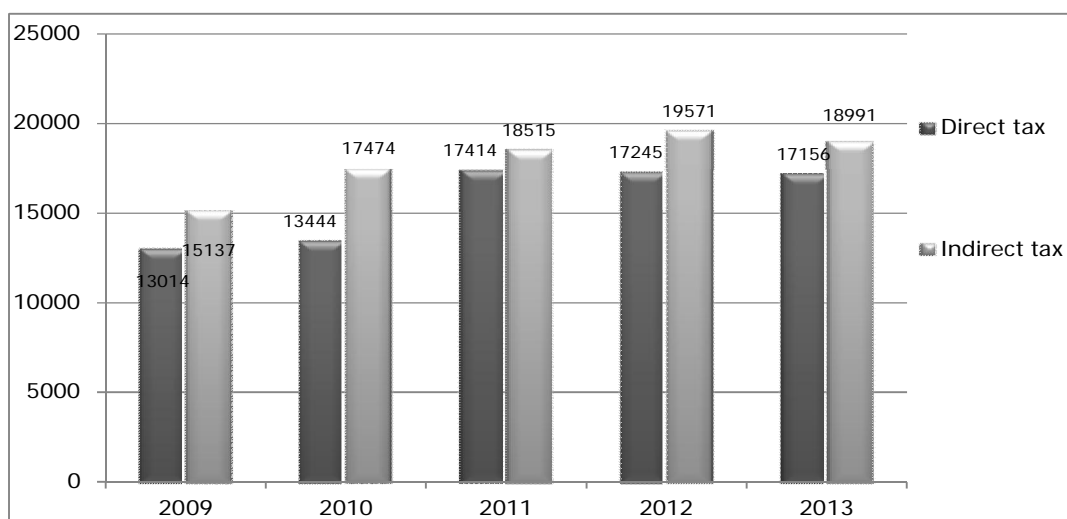
The Law on Income Tax is taking the lead because of its many changes. The Income Tax Act of individuals was changed 180 times in last 20 years, and the Law on Corporate Income Tax law was changed 137 times. [5 Kosikowski C. 2007, p. 127]. For comparison, you can point the law on agricultural tax (PROL), which was changed 23 times since the beginning. The graph shows that the first – a few prestigious in this case - place is occupied by Income Tax. The Income Tax Act of individuals was changed 216 times in over 20 years period, and the Income Tax Act tax - 158 times. Little more than 120 times, since 1997, the Tax

Ordinance Act was modified. You could say that a few changes - from one to three or four – is a symbolic performance. However, if you look at it from the side of the so-called decent legislation the results are unacceptable. Attempt to estimate the number of changes made in the regulations was made by Lewiatan. As follows from calculations made from 1 May 2004 in Poland were more than 12,400 changes to the tax laws, while adopting 378 amendments to tax laws. This situation can be shown by indicating the number of published interpretations of tax (Graph 4 and 5).



Graph. 4. Number of personal interpretations between 2009 – 2013.

Source: Report of Krajowa Informacja Podatkowa 2009–2013



Graph. 5. Number of interpretations divided into direct and indirect taxes between 2009 – 2013

Source: Report of Krajowa Informacja Podatkowa 2009–2013

As can be seen in the graphs complicated tax regulations combined with the lack of a unified interpretations and jurisprudence are a large blemish on business. Clearly it increase the risk of doing business – even if the entrepreneur proceeding will be based on commonly available positions or judgments, there is no assurance that the tax authorities would question his conduct.

Law on income taxes contain a directory of expenditures which, within the meaning of the legislature, are not deductible from the income. Articles excluding expenses as deductible costs are so complicated and obscure not only for the ordinary taxpayer, but also for specialists. It is also concerned that despite the continuous expansion of the directory there are no attempt to systematize the rules which leads to the inference of a growing number of tax interpretations. [6 Możyłowski, p. 58]

Under these conditions it can be seen the specific evolution of the tax system. The tax law was modified several times. This was to increase the stringency and integrity of the tax system, particularly in the field of

VAT and income tax of individuals. Changes made in the tax system were not to stabilize the economy neither in the middle nor in the long run. Typically they were directly connected to the electoral cycle and political promises and most of the changes made was ad hoc, rather than planned.

Summary

Speaking about the stability of taxation it should be emphasized that the simplification of tax rules will reduce the cost of their application both for the taxpayers and the tax offices. Reduce the cost of taxation will contribute to its greater effectiveness. Simplification of individual taxes reduce the tax burden and will simplify the way between taxpayer and the tax office. It is also important that a simple taxes affect the effectiveness and efficiency of the tax administration. In addition the tax officers, instead of looking at millions of declarations and tax returns, will focus on the search for taxpayers operating in the gray market. This will also lower the number of cases in administrative courts. Stability and transparency of the tax rules allow long-term planning because taxpayers are not surprised by the constant

changes in rules. Lack of clarity of the tax system manifests itself in the need to constant issue by the tax authorities interpretations and clarifications to the existing regulations. The problem is a lack of consensus as to further simplify and improve the tax system and to prepare and carry out a major reform of certain taxes [7 Z. Gilowska, 2003, p. 42; G. Szczodrowski, 2003]

Under the present conditions it should be continued to implement the already initiated arrangements for the tax system consisting of:

- modernizing and simplifying the tax system;
- reduction in the basic rate of VAT and not rising it (as the Government did since 2011);
- broadening of the tax base in a manner consistent with the tax (ie, covered with tax a new groups of taxpayers) and not with the principle that the more charged are those who are already paying;
- harmonize tax legislation together with European Union regulations;

➤ ordering of regulations referring to income tax in terms of expenditure which are not deductible from the income;

➤ cessation policy of limiting the deduction from VAT on a growing number of goods and services;

➤ ordering the purchasing company cars and deduct their use from the VAT (which was introduced partially in 2014);

Unfortunately any changes made in taxes had - and still have - ad hoc rather than planned character. This is because the needs of the state budget which reflects the political options. Political factor takes on a special dimension when you try to reform the tax system. It is worth noting that almost 24 million taxpayers, of which almost 98% pay the lowest tax rate of PIT, a huge group of voters. Any attempt of reduction in their income can be very difficult and - in effect - determine the behavior of the political status quo.

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Анотація

Петро Мозіловський

НЕСТАБІЛЬНА ТА СКЛАДНА СИСТЕМА ОПОДАТКУВАННЯ ЯК ЗОВНІШНЄ ДЖЕРЕЛО ПОДАТКОВИХ РИЗИКІВ В СЕКТОРІ МСБ В ПОЛЬЩІ

Податки є невід'ємною частиною бізнес-середовища підприємств, і з цього випливає, що будь-яка діяльність підприємців буде пов'язаною з особливим податковим ризиком. Англійські платники податків ось уже протягом багатьох років звертають увагу на те, що податкова система складна, нестабільна і пропонують одним із можливих рішень збільшити елемент ризику. Ця стаття становить собою опис не тільки податкової системи в якості податкового ризику, що має місце в бізнес-середовищі, а також показує нестабільність податкового законодавства в Польщі, що, зрештою, ускладнює саму сферу платників податків через податкову інспекцію, а відтак – збільшує податковий ризик під час ділової активності.

Ключові слова: податкова система, податковий ризик, податкові бар'єри, витрати, податкові роз'яснення.

Анотация

Петр Мозиловский

НЕСТАБИЛЬНАЯ И СЛОЖНАЯ СИСТЕМА НАЛОГООБЛОЖЕНИЯ КАК ВНЕШНИЙ ИСТОЧНИК НАЛОГОВЫХ РИСКОВ В СЕКТОРЕ МСП В ПОЛЬШЕ

Налоги являются неотъемлемой частью бизнес-среды предприятий, и, таким образом, каждый вид деятельности предпринимателей будет связан с конкретным налоговым риском. Польские налогоплательщики на протяжении многих лет обращают внимание на то, что налоговая система сложная, нестабильная и предлагают в качестве одного из решений увеличить элемент риска. Эта статья представляет собой не только налоговую систему в качестве налогового риска, что имеет место в бизнес-среде, но также показывает нестабильность налогового законодательства в Польше, что в конечном итоге приводит к сложностям в сфере налогоплательщиков из-за налоговых инспекций, и что, в свою очередь, увеличивает налоговый риск во время деловой активности.

Ключевые слова: налоговая система, налоговый риск, налоговые барьеры, расходы, налоговые интерпретации.