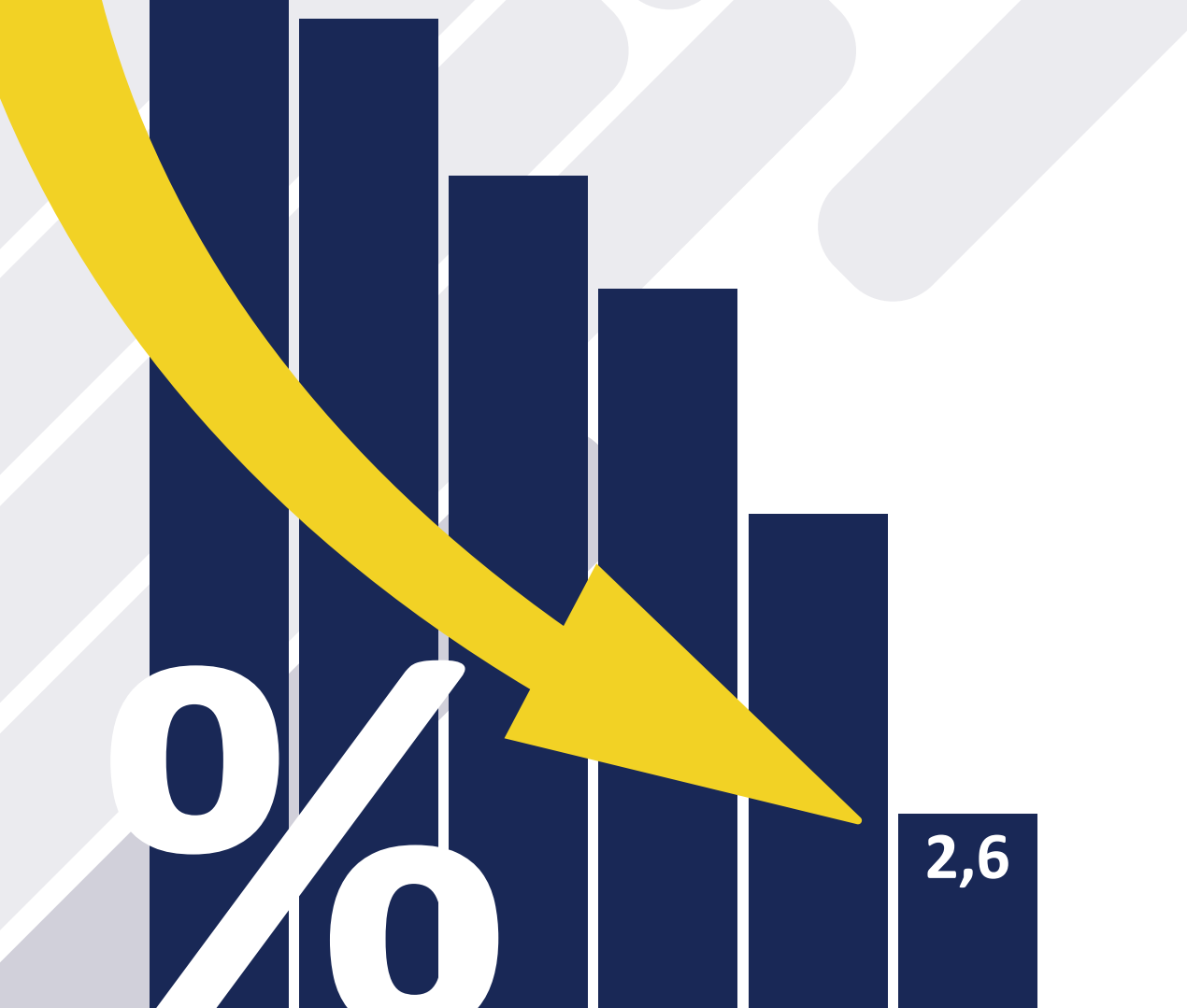
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JAN SARNOWSKI
PAWEŁ SELERA

REDUCING THE VAT GAP BETWEEN 2016 AND 2022: LESSONS FROM POLAND

Causes – Measures – Future Perspectives



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GLOSSARY OF BASIC TERMS

Administration 1.0: 'Paper-based' administration focused on traditional functions. This is the least advanced form of tax administration, where document circulation, including tax return submission, is paper-based.

Administration 2.0: E-administration, in which most functions are digitised. While the basic processes are the same as in 'paper' administration, they are faster and more efficient due to their transfer to the virtual world.

Administration 3.0: Integrates the taxpayer's and the administration's systems, resulting in fully automatic verification of taxpayer compliance, without requiring the taxpayer to submit returns or provide documentation.

An intra-EU supply of goods: Under the design of the definitive VAT system, a supply of goods made by a taxable person to a taxable person or a non-taxable legal person whereby goods are dispatched or transported by or on behalf of the supplier or the person acquiring the goods within the Union from one Member State to another Member State. Supply subject to VAT at the VAT rate of the country of destination.

Broker: An entity purchasing goods from a *buffer* in a *carousel transaction chain* with the intention of applying for an undue VAT refund.

Buffer: An entity whose involvement in a *tax carousel* is intended to lend credibility to the invoiced transactions.

Carousel fraud: A practice that exploits a cross-border trading pattern by structuring a chain of transactions so that sold goods can be returned to the taxpayer and re-circulated – actually or only on paper – within the supply chain between successive traders.

CESOP (Central Electronic System of Payment information): A Central Electronic System of Payment Information to which Member States transmit information received from payment service providers.

Contra-trading carousel: A specific, more complex form of *VAT carousel*. This pattern involves two or more parallel *tax carousels* linked by entities/firms acting as *brokers.*

CTP (Certified Taxable Person): The concept of a credible taxpayer accounting for VAT on behalf of a service provider under the definitive VAT model.

Cross-invoicing: A method of 'extending the life' of a *VAT carousel* and reducing the risk of tax audits by concealing transactions that create a tax liability.

Definitive VAT system: A 2018 proposal to settle VAT in the buyer's country, with no exemption/0% rate for transactions between EU countries.

Eurofisc: A network of liaison officials from the 27 Member States and Norway launched to combat cross-border VAT fraud.

GRCM (Generalised Reverse Charge Mechanism): A mechanism involving the generalised application of the reverse charge.

GST (Goods and Services Tax): An indirect tax levied on the domestic consumption of goods and services.

ICA (Intra-Community acquisition of goods): The acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began (first paragraph of Article 20 of Directive 2006/112).

JPK / JPK_VAT (Uniform Control File): An electronic document in two parts: the VAT register (information on purchases and sales from the trader's VAT records for a given period) and the VAT return (VAT-7 and VAT-7K declarations).

KSeF (National e-Invoicing System): A platform for issuing and receiving invoices electronically.

Missing trader: A trader registered as a taxable person for VAT purposes who, with potential fraudulent intent, acquires goods or services or simulates their acquisition. Such a trader sells the goods with VAT; however, they do not remit the VAT due to the competent government authorities.

OSS (One Stop Shop): An EU procedure allowing taxpayers supplying goods or services to EU consumers to declare and pay VAT in one Member State (the 'country of identification'); also a concept under consideration for B2B transactions in the draft definitive VAT model.

RCM (Reverse Charge Mechanism): A system involving the transfer of VAT liability from the supplier to the purchaser.

SENT (System for Electronic Surveillance of Transport): A system for monitoring road and rail transport of sensitive goods.

SLIM VAT: Legislative changes from 2020–2023 to facilitate and modernise VAT settlements.

Split payment: The split payment mechanism (SPM) in which the payment for goods or services, made by the purchaser by a special transfer – the so-called transfer message – does not go in its entirety to the recipient's account but is divided into the net amount and VAT.

STIR (Clearing House System): An analytical tool from the Ministry of Finance used to combat tax crime and help counteract the use of the financial sector for tax evasion.

The e-Commerce VAT Package: A series of amendments to the VAT Directive, introducing new procedures and regulations that modify the VAT treatment of cross-border supply of goods and services to consumers (so-called B2C sales).

***Track & Trace*:** The EU's tobacco tracking and tracing system.

***VAT compliance gap*:** The difference between the tax revenue that would be collected in the case of full compliance (assuming an unchanged tax base), referred to as VTTL (VAT Total Tax Liability), and the actual revenue.

***VAT exemption gap*:** The component of the VAT policy gap related to the application of VAT exemptions.

***VAT gap*:** The estimated difference between expected and actual VAT revenue collected.

VAT policy gap: An indicator of the additional theoretical VAT revenue that could be generated (assuming theoretical full tax compliance) if a uniform VAT rate were applied to all final consumption.

VAT rate gap: The component of the *VAT policy gap* related to the extent and amount of a country's use of reduced rates.

***VAT revenue*:** VAT actually paid/collected.

ViDA (VAT in Digital Age): The acronym for the EC's legislative package.

VIES (VAT Information Exchange System): An EU search engine for information on whether a verified entity is registered for the purposes of intra-Community transactions.

VTTL (VAT Total Tax Liability): Theoretical VAT revenue in a counterfactual situation of full tax compliance.

WIS (Binding Rate Information): Decisions that make it easier and more protective for taxpayers to apply VAT rate rules.

INTRODUCTION

Value-added tax (hereinafter: VAT) is currently one of the most significant sources of public revenue. In 2023, it accounted for over 48% of the Polish budget's tax revenues,[1] making the efficiency of its collection fundamental for the stability of public finances and, consequently, for the implementation of essential public policies and state functions. Despite the key role of state actions aimed at securing revenue from this tax, they have only relatively recently become an important part of the public debate.

The terms 'VAT gap' and 'VAT sealing' are not codified in legal or juridical terminology, and their definitions are difficult to locate within the Polish legal system. Nevertheless, these terms are widely used by various international organisations, such as the Organisation for Economic Co-operation and Development (hereinafter: OECD) and the European Commission (hereinafter: EC). Furthermore, the EC's annual reports on the VAT gap and the methods for researching it have played a significant role in popularising this issue and raising public awareness of its importance – both for the budgets of Member States and for the finances of the European Union (hereinafter: EU) as a whole. As a result, the issue of the VAT gap – particularly its size – became the focus of numerous journalistic articles and political disputes, a trend that gradually spilled over to Poland as well. With the rapid growth of the VAT gap in Poland, which reached nearly one-quarter of potential revenue in 2015, its impact on public finances and the condition of honest businesses became increasingly evident. Consequently, 'sealing the tax system' and 'sealing VAT' gradually transitioned from being a niche topic in expert tax debates to the forefront of public discussion. Since the VAT gap became a focus of investigation by the Sejm's (Polish Lower Chamber of Parliament) Investigative Committee during its eighth parliamentary term,[2] the size of the VAT gap

[1] Ministerstwo Finansów, *Szacunkowe wykonanie budżetu państwa w 2023 r.,* https://www.gov.pl/web/finanse/szacunkowe-wykonanie-budzetu-panstwa-w-2023-r [accessed: 17 July 2024].

[2] Resolution of the Sejm of the Republic of Poland of 5 July 2018 on the appointment of the Commission of Inquiry to investigate the regularity and legality of actions and the existence of negligence and omissions of public authorities and institutions in the field of ensuring state treasury revenues from the

and the effectiveness of measures to seal the tax system have remained central issues in Polish election campaigns.

Nowadays, thanks to a widely accepted EC study, there is no longer any dispute about the definition of the VAT gap. In simple terms, and in line with the EC, the authors define the VAT gap as the estimated difference between expected VAT revenue and the actual amount collected.[3] Notwithstanding EC, the VAT gap is also examined by the tax administrations of many countries, including the Polish Ministry of Finance. Nonetheless, as these analyses are derived from the same data and employ analogous metrics, their findings are broadly consistent. They point to both the record-high VAT gap in Poland between 2011 and 2015 and Poland's unprecedented reduction in its size from 2016 to 2021.

Is the subject of the VAT gap free from dispute and controversy? Certainly not. The factors influencing the observed changes in its magnitude remain a matter of debate. Two opposing perspectives dominate the public discourse on this issue. The first posits that the reduction in the VAT gap in Poland is solely attributable to a range of legislative, administrative, and analytical measures, which have curtailed the scale of tax crime – most notably, the highly detrimental 'VAT carousel' schemes. The second perspective, while not disputing the EC data or the fact of the substantial reduction in the VAT gap, attributes the primary cause to the effects of the broader economic cycle.

In the authors' view, neither of the extreme perspectives fully reflects reality. As the EC points out, a significant component of the VAT gap is attributable to irregularities – losses stemming from the activities of tax criminals. However, these are not the sole factors influencing its size. The impact of business cycles on the size of the VAT gap cannot be underestimated, although the level of this impact remains highly contested and warrants further research.[4]

The authors are convinced that Poland's proactive tax policy, including numerous VAT sealing measures implemented after 2015, has played a significant role in reducing the VAT gap. These measures constituted a multi-faceted system aimed at reducing the key components of the VAT gap through legislative, analytical, and organisational solutions, drawing on recommendations from international organisations and the practices of other countries. While the effect of specific VAT sealing tools on the size of the tax gap during this period requires detailed research, currently available macro- and micro-level data indicate a substantial effect of these sealing activities

goods and services tax (VAT) and excise tax in the period from December 2007 to November 2015, https://orka.sejm.gov.pl/proc8.nsf/uchwaly/2475_u.htm [accessed: 19 July 2024].

[3] European Commission, CASE, G. Poniatowski, M. Bonch-Osmolovskiy, A. Śmietanka, A. Sojka, *VAT Gap in the EU – Report 2023, Publications Office of the European Union,* Luxembourg, 2023, https://op.europa.eu/en/publication-detail/-/publication/84ba1bdf-7230-11ee-9220-01aa75ed71a1/language-en [accessed: 3 July 2024].

[4] An example of analyses conducted in Poland in this regard is the research by K. Konopczak. It indicates that the reduction in the VAT gap recorded between 2016 and 2018 was approximately 20% due to cyclical factors. Had it not been for the particularly favourable economic conditions, the VAT gap would have been around 12-14% at the end of the period, rather than the 10% recorded. This suggests that, in the author's view, the business cycle had a noticeable impact on the size of the VAT gap, but it was neither dominant nor decisive; see K. Konopczak, *Zmiany luki VAT w Polsce: rola czynników koniunkturalnych i strukturalnych*, https://gnpje.sgh.waw.pl/pdf-145539-73877?filename=Zmiany%20luki%20VAT%20w%20Polsce_.pdf [accessed: 19 July 2024].

within individual sectors. These measures illustrate both how tax evaders' actions distorted trade and supply chains in specific sectors of the economy and the process of rebuilding the 'tax base' observed following the introduction of 'sealing' measures. The precise impact of these measures on reducing the VAT gap, as well as the share of the gap attributable to tax fraud, remains the subject of extensive analysis; however, research confirms that the impact is substantial. The authors examine attempts at such decomposition, as indicated in the literature and based on data from the EC and the MF, though these findings should be interpreted with caution.

This study aims to **examine and evaluate the effectiveness of the legislative, administrative, and technological measures implemented in Poland between 2016 and 2022 aimed at reducing the VAT gap, and to identify the key factors influencing the effectiveness of these measures**. The analysis also seeks to identify additional perspectives for reducing the tax gap by improving the tax system and combating tax fraud.

The main research problem of this paper is to answer the question: **How did the reforms implemented in the area of tax policy and tax administration between 2016 and 2022 affect the reduction of the VAT gap in Poland**? The problem focuses on assessing the effectiveness of these reforms, identifying the tools that had the greatest impact on reducing the gap, and understanding the reasons behind the effectiveness or ineffectiveness of these measures. The authors pose the following research hypothesis: **The legislative, administrative, and technological reforms implemented in Poland between 2016 and 2022 have been effective in reducing the VAT gap, particularly by improving control mechanisms, automating settlements, and intensifying preventive measures against tax evaders**. The hypothesis suggests that, as outlined later in the paper, the measures taken have had a real impact on reducing the VAT gap, particularly through solutions such as the Single Audit File (JPK), *split payment*, the STIR system, and improvements in the new operational model of the tax administration (KAS).

The theses put forward by the authors will be supported by data from, among others, the European Commission, the Supreme Audit Office, industry associations, and the tax administration.

The publication is of a legal nature, relying on the application of a dogmatic method to the analysis of the law. The authors do not perform economic analyses, including econometric studies of the VAT gap. Given the scope and framework of the monograph, factors other than legislative, administrative, technological, and behavioural influences on the size of the VAT gap remain outside the scope of the authors' research. In particular, this excludes the effects of economic phenomena such as business cycles, supply and demand, and inflation. The authors also employ other research methods, notably the historical method, which describes the legal state and the phenomena observed in the European Union and Poland before 2015. Additionally, the legal-comparative method is employed to examine the functioning of specific legal institutions in other EU countries, and often in third countries as well. The monograph analyses acts of EU and domestic law and references foreign legal sources, including selected internal regulations of EU Member States. The authors base their analysis on data and reports from international organisations, including

the OECD and the European Commission. They also use data from domestic sources, such as reports from the Supreme Audit Office, the Ministry of Finance, and several industry and economic organisations. The authors view this paper as a comprehensive overview of the measures implemented by Polish public authorities between 2016 and 2022 to reduce the VAT gap. Throughout the argument, the authors present the key components of the VAT gap and the tools designed to address them, indicating their expected or observed impact on reducing undesirable phenomena. Other effects of the implemented solutions remain outside the scope of this analysis, particularly the issues related to the encroachment of public authorities into the sphere of civil rights, non-tax burdens imposed on taxpayers, or the costs incurred by entrepreneurs to adapt to changing regulations. These effects of the sealing measures represent an important area requiring further analysis. Conducting such analysis would allow for the determination of the impact of individual solutions implemented in Poland, both on the size of the VAT gap and on the scope of the tax base, and consequently, the amount of VAT revenue.[5]

The research methods employed, alongside the paper's conceptual framework, shape its layout.

The first part of the monograph is dedicated to presenting the reasons behind the significant increase in the VAT gap during the first decade of the 21st century. It outlines the features of the EU VAT regulations that make them particularly vulnerable to the activities of organised crime groups, as well as the patterns of crimes committed by VAT mafias that exploit their weaknesses. It also provides data on the scale of the VAT gap in EU countries and the contribution of activities by the so-called 'VAT mafias' to this gap.

The second part of the monograph presents measures to reduce the VAT gap, implemented successively at the supranational level by the European Union bodies and at the national level by individual Member States. This section also outlines directions for further 'sealing' of VAT legislation, presenting the proposals currently under debate by the European Commission and the recommendations from tax law academia addressed to both EU and national decision-makers.

The third part of the monograph examines the measures implemented by Poland between 2016 and 2022 to reduce the VAT gap.

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[5] A comprehensive analysis of the above-mentioned regulations requires separate research into not only their genesis, operating principles, purpose, and scale of application, but also the costs of their implementation, both in the short and long term. These costs should include both those incurred directly from the state budget and those borne by taxpayers. The latter may take the form of direct costs associated with the operation of a given tax solution (e.g. accounting, IT solutions, tax consultancy), as well as costs referred to in the literature as 'welfare losses' or 'unnecessary social losses' (*excess burden, dead-weight loss*), i.e. those associated with actions taken by taxpayers who reduce their current or future tax base in order to avoid tax. The latter increase in the case of unexpected legislative and administrative actions, which create uncertainty in the economic environment. See, inter alia: R. C. Bayer, M. Sutter, *The excess burden of tax evasion-An experimental detection-concealment contest*, European Economic Review, 53(5)/2009, p. 527; F. Grądalski*, System podatkowy w świetle teorii optymalnego opodatkowania*, Warsaw 2006, p. 84; S. Homburg, *Allgemeine Steuerlehre*, München 1997, p. 160; K. Raczkowski, F. Schneider, J. Węgrzyn, *System podatkowy w świetle teorii optymalnego opodatkowania*, Warsaw 2020, p. 30; K. Raczkowski, B. Mróz, *Tax gap in the global economy*, Journal of Money Laundering Control, Vol. 21, Issue: 4/2018, p. 567.

The first chapter of this part of the thesis is an analysis of the 'starting point' of the activities indicated, namely the nature of the irregularities observed in Poland and the attempts made between 2010 and 2015 to 'seal' the tax regulations. The term 'sealing' of the tax system is commonly used in public debate and journalism. It has been adopted from colloquial language to illustrate a specific phenomenon in a flexible manner. Despite its notable shortcomings, the term will also be used in this work, although the authors recognise that it is not a concept found in legal or jurisprudential language.

The second chapter presents the strategy implemented between 2016 and 2022 to combat 'carousel' fraud. It provides a functional classification of the tools implemented, categorising them into solutions that reduce the profitability of VAT extortion, accelerate the detection of tax criminals' activities, and make it more difficult for them to operate. Sanctioning measures are also discussed, aimed at increasing the inevitability and severity of punishment for those committing acts that are particularly harmful to the state's financial stability.

The third chapter of this part of the thesis is an analysis of tools designed to limit the losses suffered by honest traders due to the competitive advantages gained by those who fail to comply with and violate VAT legislation. It examines, in turn, mechanisms aimed at curbing the activities of organised criminal groups involved in the illegal trade of excise goods, preventing untaxed sales of goods online, and addressing the trading of tax-deductible costs. It also points to tools intended to increase the scale of fiscalisation in market turnover. Particular emphasis was placed on measures facilitating VAT compliance for honest taxpayers by reducing associated costs and increasing the certainty of its application.

The fourth chapter of Part 3 of this paper examines the transformation of the tax apparatus towards a digitised Tax Administration 2.0 and an automated Tax Administration 3.0. It outlines the technological revolution in tax administration, with a focus on enhancing customer service and improving the precision and efficiency of VAT controls. Finally, the chapter discusses the measures taken by the Ministry of Finance to intensify international co-operation in the VAT domain. These initiatives concern, in particular, the automation of processes for obtaining information on irregularities from partner administrations, as well as the sharing by the KAS of technological solutions for combating tax crime, which have been tested in Poland (the so-called Tax Solidarity Programme).

The study concludes with a summary and the presentation of *de lege ferenda* conclusions.

What distinguishes this monograph from other publications on the 'sealing' of the Polish value-added tax[6] is the unprecedented comprehensiveness of this study. It is the first work to address tools aimed at reducing all components of the VAT gap, from the activities of tax criminal groups, to the operations of entities fully or partially engaged in the 'black' or 'grey' economy, and unintentional errors in taxpayers' settlements. The analysis encompasses not only legislative solutions but also technological, organi-

[6] See, inter alia, M. Bełdzikowski, *Proces uszczelniania podatku VAT w Polsce*, Warsaw 2023; D. J. Gajewski (ed.), *VAT gap in Poland: Policy Problem and Policy Response*, Peter Lang, Berlin 2024.

sational, and communication measures. The description of the implemented mechanisms includes, apart from indicating their purpose, legal framework and expected functions, a presentation of the sources of inspiration behind the projects, which are unprecedented in other studies. These sources include recommendations from international organisations, examples of successful implementations outside Poland, and the use of analogous mechanisms in other sectors of the economy. The study also presents numerical data documenting the actual application of the introduced solutions by the Polish administration or taxpayers. This monograph, which summarises six years of 'sealing' the tax system, is not only a source of knowledge about the described regulations but also a summary of the development of Polish and European tax policy in the field of VAT. Due to the pragmatic presentation of the described solutions, it constitutes a practical handbook on sealing the tax system. It can serve the administrations of other countries in embarking on a proactive tax policy, focused on creating their own strategies to effectively combat tax mafias, level the playing field in market competition, and facilitate taxpayers' compliance.

The work takes into account the legal position as at 31 August 2024 and the results of the European Commission's 2023 VAT gap report, available at that time.

FROM THE ADVANTAGES OF INTEGRATION TO THE VAT GAP – A SYNTHETIC APPROACH

Advantages of integration of EU economies. The dismantling of customs barriers and the establishment of the Internal Market within the European Union (hereinafter: EU) represent one of the most significant achievements in the economic integration of the Old Continent. This development has paved the way for an unprecedented acceleration in economic growth across European countries, subsequently contributing to an improved standard of living for their citizens. With the abolition of customs borders between Member States of the Community, it became necessary to replace the system of taxing international trade in goods – previously based on border-controlled exports and imports – with new VAT rules. These rules needed to uphold the freedoms of the European Single Market by avoiding barriers to economic circulation while also preventing tax competition between countries.

EU economic turnover and VAT. A system for intra-Community transactions meeting the specified criteria was established in the 1990s. The harmonisation of VAT across Europe[7] eliminated trade barriers caused by disparities in national tax regulations.[8] This common system for taxing intra-Community transactions facilitated trade between EU Member States and improved resource allocation within the Community. As a result, intra-EU trade in goods has significantly accelerated, and burdensome customs controls – once a barrier to the free movement of goods and services – have become a thing of the past.[9]

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[7] These include, among other things, the harmonisation of taxpayer definitions and obligations, the types and principles of transaction taxation, and the establishment of common rules for the application of rates across all Member States.

[8] L. Oręziak, *Finanse Unii Europejskiej*, Warsaw, 2009, p. 257; T. Hitiris, *European Union Economics*, London, 2003, p. 106.

[9] A. Faria, *Tax Coordination and Harmonisation*, [in:] P. Shome (ed.), *Tax Policy Handbook*, Washington, 1995, p. 229; B. Makowicz, *Harmonizacja podatków pośrednich w UE*, 'Studia Europejskie,' 2004, no. 2, pp. 91-109; K. Suwalski, *Harmonizacja podatkowa w procesie integracji krajów UE – zarys problemu*, material from the international conference, Wrocław, 17-18 April 2008; P. Szymczyk, W. Szymański, *Harmonizacja podatku od towarów i usług w Polsce w świetle oceny skutków regulacji (OSR)*, BISP 7/2023, pp. 44-73.

VAT gap. While the harmonisation of VAT has brought undeniable benefits, it also has its drawbacks. A particularly significant issue is the activity of organised crime groups, as observed by the tax administrations of EU countries. The very nature of harmonised VAT facilitates their ability to commit tax offences, which ultimately reduce budget revenues for EU countries and distort competitive conditions. The most extensive of these are so-called 'VAT carousels'. Organised criminal groups deliberately exploit the international transaction system and its vulnerabilities. The activities of the 'VAT mafia' significantly impact a critical area of public finances, as VAT revenues are one of the primary sources of budget income for EU countries. According to Eurostat, in 2022, VAT revenues accounted for nearly 28% of the tax revenues of EU Member States.[10] Therefore, the level of VAT revenue is of paramount importance for EU countries, as VAT losses can jeopardise their ability to implement key public policies.[11] Since 2017, VAT losses have steadily declined; however, they remain significantly high, continuing to yield substantial profits for criminal enterprises. According to the latest edition of the European Commission's (EC) annual *VAT* gap report, EU countries lost nearly €61 billion in revenue due to *VAT compliance gap* irregularities in 2021 alone. While this represents a significant improvement over 2020, when losses from this gap amounted to nearly €100 billion, it still reflects a substantial volume of funds – much of which ends up in the hands of tax criminals rather than being used to fund public policies.[12]

The size of the overall VAT gap, which includes both the activities of criminal groups and other types of losses (such as undeclared turnover or losses due to settlement errors), was estimated at approximately €126 billion in 2017 (excluding the UK).[13] In the same year, it was estimated that EU countries were losing between €40 and €60 billion annually as a result of mafia-led carousel fraud alone. These figures were confirmed by both Eurostat and independent journalistic investigations, including the 2019 Correctiv project, in which 63 journalists from 30 countries produced a report on VAT fraud titled *Grand Theft Europe*.[14]

Tackling the VAT gap: states and the EC. The fight against tax crime is the responsibility of the administrations of individual EU states. This is a particularly challenging task, not only due to the high level of specialisation of organised crime groups but also because of their international nature. Indeed, individual 'tax carousels' often involve dozens, or even hundreds, of companies across multiple EU countries.

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[10] Eurostat, *Main National Accounts Tax Aggregates*, available at: https://ec.europa.eu/eurostat/databrowser/view/gov_10a_taxag__custom_9256669/default/table?lang=en [accessed: 3 July 2024].

[11] A. Bischoff, *Znaczenie podatku VAT jako źródła dochodów budżetowych w krajach OECD*, Zarządzanie Finansami i Rachunkowość, 2 (3) 2014, pp. 55-66; M. Bitner, *Dochody z podatku od towarów i usług oraz luka w VAT – znaczenie dla polskiego systemu fiskalnego*, BISP 9/2023, pp. 40-50; R. de Mooj, M. Keen, *Fiscal Devaluation and Fiscal Consolidation: the VAT in Troubled Times*, WP/12/85, IMF, Washington, 2012.

[12] European Commission, CASE, G. Poniatowski, M. Bonch-Osmolovskiy, A. Śmietanka, A. Sojka, *VAT Gap in the EU – Report 2023*, Publications Office of the European Union, Luxembourg, 2023, https://op.europa.eu/en/publication-detail/-/publication/84ba1bdf-7230-11ee-9220-01aa75ed71a1/language-en [accessed: 3 July 2024].

[13] Ibid.

[14] Correctiv, *Grand Theft Europe*, https://correctiv.org/en/top-stories-en/2019/05/07/grand-theft-europe/ [accessed: 3 July 2024].

For years, the European Commission has been taking steps to help EU countries' seal the VAT.' However, many of these legislative initiatives have not been successful, as they require unanimous consent under the EU legislative procedure. Despite this, the Commission has persisted and, over the years, has gradually introduced 'partial' sealing mechanisms to combat VAT fraud. These measures included, *inter alia*, the reverse charge and joint and several liability. However, tax fraudsters have found ways to circumvent them. The international nature of their activities enables them to easily transfer 'VAT carousels' between different types of goods, particularly from those whose turnover is subject to specific rules to those for which no such rules have been applied. The VAT mafia's response to the increasing effectiveness of individual countries in combating tax crime has been to shift its activities to those EU countries that have not yet introduced sealing mechanisms or those that are implementing them later. This is facilitated by differences in the technological sophistication of tax administrations and the low efficiency of the information exchange system between them.

To effectively impede the activities of tax criminals, individual states are compelled to pursue a proactive VAT sealing policy on their own. In implementing this policy, they do not limit themselves to adopting solutions recommended by the European Commission. Recognising their limited effectiveness, individual states develop and implement their own original legislative and technological solutions. Tools that have been independently developed and are successfully operating in countries committed to tightening their tax systems include the split payment mechanism (Italy and Romania), the central invoice register (Portugal, Spain, and Italy), and the monitoring system for road transport of sensitive goods (Hungary). The key to overcoming the 'tax mafias' is to identify and implement the most effective, country-proven solutions across the EU.

VAT sealing in Poland. Until 2016, Poland was among the countries with significant delays in implementing sealing measures, resulting in a record VAT revenue loss that was much higher than the EU average. By 2015, the VAT gap in Poland had been steadily growing, reaching approximately 25 %, according to the EC. This meant that almost every fourth zloty owed to the state in VAT was not reaching the public coffers. At that time, this placed Poland among the countries with the largest VAT gaps in Europe, ranking 6th.[15]

After many years of delayed responses to irregularities observed in the market, Poland embarked on a proactive tax policy in 2016, implementing a multi-faceted programme to reduce the VAT gap. In addition to reforming the tax administration and undertaking intensive co-operation with businesses, a key element in ensuring its effectiveness was the implementation of Europe's first comprehensive strategy to combat carousel fraud. It included the implementation of several technological, legislative, and operational mechanisms that significantly hindered the organisation of 'tax carousels' in Poland, reduced their profitability, accelerated their detection, and greatly limited the possibility of 'legalising' the profits derived from them. Thanks to

[15] More extensively on this topic: J. Sarnowski, P. Selera, *Zmniejszenie luki VAT w Polsce w latach 2016-2017, Przyczyny-Środki-Dalsze Perspektywy*, Polish Economic Institute, Warsaw, 2018, available at: https://pie.net.pl/wp-content/uploads/2019/01/Raport-LUKA-VAT.pdf [accessed: 10 November 2024].

the unique combination of tools tested in other EU countries and innovative solutions developed in Poland, an unprecedented 'tightening' of value-added tax regulations became possible, leading to a reduction in the VAT gap. As the latest 2023 EC report shows, in 2021, the VAT gap in Poland was reduced to just 3.3%. According to the EC's data, between 2016 and 2021, the VAT gap in Poland decreased by 16.6 %age points, placing the country first among EU members in terms of the rate at which the tax system was sealed.[16]

New field of international co-operation. Drawing on its experience in implementing modern legislative and technological solutions, Poland actively transfers knowledge and expertise to countries with higher tax gaps. At the same time, to further consolidate the sealing effect, it continues to seek new tools to reduce the scale of irregularities. A critical area of focus is increasing the current system's efficiency for exchanging information on taxpayers and the turnover they generate between EU countries. One potential solution to this issue is for countries to conclude bilateral agreements that deepen co-operation in the area of VAT, significantly exceeding the standards set by EU regulations. This paper presents the concept of basing such regional pilots on the authors' proposed Declaration on Combating VAT Fraud. The conclusion of such international agreements in the area of harmonised VAT is permissible under EU law and is also supported by the OECD. The agreements do not undermine the VAT system itself; rather, they elevate the co-operation between tax administrations by guaranteeing access to data on an unprecedented scale, while ensuring their secure processing and protection. This initiative could represent a significant and tangible contribution by Poland to reducing the scale of tax crime.

[16] European Commission, CASE, G. Poniatowski, M. Bonch-Osmolovskiy, A. Śmietanka, A. Sojka, *VAT Gap...*, Luxembourg, 2023.

1

VAT GAP IN THE EUROPEAN UNION

1. BASIC PRINCIPLES OF VAT

1.1. VAT in a Global Perspective

Significance of VAT/GST worldwide. Since the mid-1980s, *Value Added Tax*[17] (including its form as *Goods and Services Tax* (GST)) has become the primary tax levied on consumption – both in terms of revenue generated and geographical scope. In the late 1960s, fewer than 10 countries levied VAT. Today, the tax is in force in more than 170 countries, including 37 of the 38 OECD countries.[18] VAT revenues in OECD countries averaged 6.7% of GDP in 2020, up from 6.5% in 2005. Concurrently, they accounted for 20.2% of total tax revenues in 2020. In 2022, the *unweighted OECD average standard VAT rate* was 19.2% (19.3% in 2017), while the standard VAT rate among the 22 OECD countries that are also EU members averaged 21.8%.[19]

General principles of VAT according to the OECD. In its *International VAT*/GST *Guidelines*, the OECD emphasises that the basic principles of VAT are the same in all jurisdictions. In doing so, the OECD formulates a catalogue of generally accepted design principles for this tax[20] , the most significant of which are the nature of VAT as a general consumption tax and its multi-phase nature, and, in international trade, the destination principle. As emphasised by the OECD, VAT is a *broad-based tax on consumption*. From an economic perspective, VAT is therefore borne by consumers (households), while businesses do not generally bear its burden.[21] A central feature of VAT globally is that it is levied at each trade stage (multi-phase). To avoid cascading taxation – where the tax burden increases with the length of the chain of transactions involving the goods – the principle of deducting the VAT included in the price of the goods and services purchased by the trader is applied. As a result, despite VAT being fixed at each stage of trade, the economic burden of the tax is passed on to the final consumer.

[17] In this section of the study, the OECD uses the term 'VAT' (or 'value added tax') to refer to any national tax – regardless of its specific name or acronym, especially *GST* – that embodies the core characteristics of a value added tax, i.e., it is a general tax on consumption; it is levied on businesses but is ultimately borne by consumers; it is levied in stages at each phase of the distribution of a good or service; its nature is independent of the method used to determine tax liability (e.g., the invoice credit method or the deduction/withholding method).

[18] VAT does not operate in the US, although some states impose sales tax; OECD, *Consumption Tax Trends 2022*, https://www.oecd-ilibrary.org/taxation/consumption-tax-trends-2022_6525a942-en [accessed: 3 July 2024].

[19] OECD, *Consumption Tax Trends 2022*.

[20] Among the general principles of VAT, the OECD includes: 1) the principle of VAT neutrality (VAT is neutral for businesses); 2) the principle of efficiency (the costs of collecting and calculating VAT should be optimal for both administration and business); 3) the principle of certainty and simplicity of VAT; 4) the principle of effectiveness and fairness; 5) the principle of flexibility (VAT keeps pace with social development and technological progress); OECD, *The International VAT/GST Guidelines, 2017*, https://www.oecdilibrary.org/docserver/9789264271401-en.pdf?expires=1560249601&id=id&accname=guest&checksum=C8255725C85FFA1DC80E6BCA2E3B983D#_ga=2.37965539.15658236.1560244187-1786774559.1559120577 [accessed: 3 July 2024].

[21] OECD, *The International VAT/GST Guidelines, 2017*, https://www.oecd-ilibrary.org/docserver/9789264271401-en.pdf?expires=1560249601&id=id&accname=guest&checksum=C8255725C85FFA1DC80E6BCA2E3B983D#_ga=2.37965539.15658236.1560244187-1786774559.1559120577 [accessed: 18 July 2024].

Another principle emphasised by the OECD is the destination principle. When a supply of goods or services occurs in an international context – i.e., between countries with different VAT rates – the taxation principle at the supply's destination applies. In the OECD's view, this concept better reflects the nature of VAT as a tax on actual final consumption than the model of taxation in the country of origin (export). Indeed, goods and services compete where they are consumed. Differentiating taxation based on the place from which they are supplied would distort competition. As a result, VAT is not levied in the exporting country, but in the country of destination (importing country), according to the locally applicable rate matrix. This principle aligns with the rules of international trade as defined by the World Trade Organisation.[22]

1.2. VAT in the European Union

Genesis of VAT in Europe. Among current European Union members, France was the first to introduce VAT according to these principles, as early as 1954 (*taxe sur la valeur ajoutée*, TVA). The Federal Republic of Germany adopted VAT later, in 1968, although a general turnover tax in the form of a multi-phase (cascading) gross tax (*Umsatzsteuer*) had existed there half a century earlier (since 1918).[23] The emerging Community could not allow the differences resulting from the various VAT systems to adversely affect intra-Community trade, as this could lead to the risk of multiple turnover taxation or non-taxation. Therefore, the strong impact of these particularistic VAT regulations on international trade prompted the founding states of the Community to adopt a specific competence rule in the Treaties. It authorised EU bodies to establish common value-added tax (VAT) rules.[24]

VAT harmonisation. A directive harmonising VAT systems across Community countries was adopted in the 1960s. The First Council Directive (67/227/EEC) of 1967 established the foundations for a common VAT system.[25]A significant milestone in VAT harmonisation was the adoption of the Sixth Council Directive of 17 May 1977, concerning the harmonisation of Member States' laws relating to turnover taxes.[26] This directive has been amended several times, with the most significant change introduced in 1993 through the implementation of a system for taxing intra-Community

[22] F. Górski, *Zasady międzynarodowej polityki handlowej kształtowane przez WTO*, Economic, Legal and Administrative Studies, 2023, 2(1), pp. 16-29. While the application of this principle in trade in goods remains relatively transparent, the OECD highlights numerous challenges when taxing the provision of services and the supply of intangibles; see, inter alia, OECD, *Mechanisms for the Effective Collection of VAT/GST*, Paris, 2017, https://web-archive.oecd.org/temp/2017-10-24/452945-mechanisms-for-the-effective-collection-of-vat-gst.htm [accessed: 3 July 2024].

[23] P. Arak, K. Michalski, T. Piechula, J. Sarnowski, P. Selera, *Krótka historia VAT w Polsce*, Policy Paper, 3/2019, Polish Economic Institute, 2019, and the literature indicated therein, http://pie.net.pl/wp-content/uploads/2019/03/PIE-Historia-VAT.pdf [accessed: 3 July 2024].

[24] Article 99 of the Treaty of 25 March 1957 establishing the European Economic Community (consolidated version 2002) (OJ of 24 December 2002, C 325).

[25] First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of the legislation of Member States concerning turnover taxes (OJ 71, 14 April 1967, p. 1301).

[26] Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ L 145, 13 June 1977, p. 1).

transactions. As of 1 January 2007, the Sixth Directive was superseded by Directive 2006/112,[27] which remains the primary legal framework governing the EU VAT system. VAT revenue currently represents one of the most significant sources of budget income for European countries. According to the latest EC report from 2024, VAT revenues constitute approximately 7% of GDP and 18% of the total tax revenue of Member States.[28] Value-added tax is the most significant consumption tax in all Member States, contributing between 15% and 35% of total tax revenue. Following a period of VAT rate increases between 2009 and 2015, the average standard VAT rate across the EU27 has stabilised, remaining virtually unchanged from 2016 to 2023 at 21.5%.[29]

General principles of VAT. The most essential features of VAT are outlined in Article 1(2) of Directive 2006/112. According to this provision, the principle of the common VAT system requires the application of a general consumption tax to goods and services, strictl proportional to their price. This applies regardless of the number of transactions that take place in the production and distribution process before the tax is levied. At the same time, pursuant to the second subparagraph of paragraph 2, VAT – calculated on the price of the goods or services at the rate applicable to those goods or services – shall be chargeable after deducting the amount of VAT directly borne by the various cost components. The common system of VAT applies up to and including the retail stage. According to Article 1(2) of Directive 2006/112, the key characteristics of VAT are therefore: universality, multi-phase application, proportionality and neutrality for the taxpayer.[30]

Fundamental principle of neutrality. The principle of VAT neutrality, first introduced by the First Directive, ensures that the taxpayer, who is not the final consumer of a good or service, does not bear the economic burden of the tax. Its practical implementation is achieved through the input tax mechanism, which allows tax paid on the acquisition of goods and services (at an earlier stage of trade) to be deducted from the tax due on the supply of goods or services (at a subsequent stage of trade). Any restriction on the right to deduct input tax affects the neutrality of the tax and can, therefore, only arise from an explicit statutory provision.[31]

> The Court has emphasised on several occasions that the deduction system is designed to relieve the economic operator entirely of the burden of VAT payable or paid in the course of their economic activity. The common system of VAT thus ensures that any economic activity, irrespective of its purpose or result, is taxed in a completely neutral manner, provided that the activity is subject to the tax (notably the *Rompelmann* judgement[32]).

[27] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11 December 2006, p. 1).

[28] European Commission, *Annual Report on Taxation 2024*, *Directorate-General for Taxation and Customs Union, European Commission*, Publications Office of the European Union, Luxembourg, 2024, https://op.europa.eu/en/publication-detail/-/publication/154705e0-38ef-11ef-b441-01aa75ed71a1/language-en/format-PDF/source-330633463 [accessed: 6 July 2024].

[29] Ibid.

[30] K. Lewandowski, P. Fałkowski, *Dyrektywa VAT 2006/112. Komentarz*, Warsaw 2012, Legalis.

[31] T. Michalik, *VAT. Komentarz*, Warsaw 2021, p. 21.

[32] CJEU Judgment of 14 February 1985 in Case C-268/83, *D.A. Rompelman and E.A. Rompelman-Van Deelen v. Minister van Financiën*, ECR 1985, p. 655.

The literature highlights various aspects of the neutrality principle. It is also widely accepted that there are two key interpretations of this principle in the context of VAT: 1) as a taxpayer-neutral tax and 2) as a market-neutral tax, which creates a system that ensures a level playing field for market participants.[33]

2. VAT IN INTERNATIONAL TRADE

Principle of origin vs. principle of destination. The removal of customs borders between the countries of the former European Community (now the European Union) required a new VAT system for goods transactions, which had previously relied on export and import concepts. At that time, two models for taxing intra-Community supplies were considered:

1) Taxation of goods supplied between Community countries in the country of origin;

2) Taxation of goods supplied between Community countries in the country of destination.

2.1. The Principle of Origin and Its Abandonment

Principle of origin – definition. A VAT system based on the origin principle implies taxing goods and services in the country where they are produced, regardless of their final consumption location. Applying the origin principle in the classic sense also means that the resulting VAT revenue belongs to the exporting country (the country of origin or production). This deprives the country where the goods are ultimately consumed (the destination country) of the tax revenue from those imported goods.[34]

Clearing mechanism. However, such a VAT system would be incompatible with the Single European Market and would necessitate introducing a corrective tool to ensure 'compensation' for the country of consumption. This role was intended to be filled by a '*clearing mechanism*' for redistributing VAT revenue from the country of origin to the country of destination/consumption. In 1986, the European Commission presented simulations of VAT revenue distribution, assuming the implementation of an origin-based taxation system without a corresponding redistribution mechanism (Table 1).[35]

[33] M. Militz, D. Dominik-Ogińska, M. Bącal, T. Siennicki, *Zasady prawa unijnego w VAT*, Warsaw 2013, p. 65.

[34] R. Lipniewicz, *Docelowy system VAT w Unii Europejskiej. Harmonizacja opodatkowania transakcji wewnątrzwspólnotowych*, Warsaw 2010, LEX/el.

[35] European Parliament (1995), *Options for a Definitive VAT System*, Working Papers, Economic Affairs Series E-5089. Available at: http://www.europarl.europa.eu/workingpapers/econ/pdf/e5en_en.pdf [accessed: 3 July 2024].

Table 1: Simulation of the distribution of VAT revenues for taxation system in the country of origin. The dark gray color indicates the countries that gain/lose the most from this model

Member State	Increase/decrease in tax revenue in ECU million[36]	Increase/decrease in tax revenue as % of GDP
France	**-2,421**	**-0.34**
Belgium/Luxembourg	747	0.62
Netherlands	1,509	0.86
Germany	**3,534**	**0.38**
Italy	-147	-0.03
United Kingdom	-1,845	-0.33
Ireland	-52	-0.21
Denmark	-680	-0.82
Greece	-437	-1.08
Portugal	-77	-0.26
Spain	-132	-0.06

Source: own compilation based on European Commission data.

Disadvantages of the relocation mechanism. The analysis revealed a threat: significant fluctuations in the VAT revenue of individual Member States. The fact that the largest countries would be most affected by this imbalance (with Germany benefiting most and France experiencing the greatest losses) prompted the European Commission to develop several corrective mechanisms. A key challenge was the wide variation in tax rates across EU countries, which significantly complicated the design of such a mechanism. This required not only sophisticated settlements between all Member States, but also reliance on detailed data regarding cross-border flows of goods and services, as well as the structure and value of domestic consumption. This data, not always readily available to tax authorities, was sensitive, and its sharing would necessitate a high degree of trust between partner administrations. Furthermore, the need for substantial, mandatory financial transfers between Member States made the issue politically sensitive and difficult to communicate to the public.

In 1996, the European Commission presented Member States with a modified proposal for country-of-origin taxation, which envisaged the implementation of a mechanism to eliminate tax differences between intra-Community and domestic transactions.[37] However, given the difficulties indicated above, the decision was made to abandon the idea of basing the Community VAT system on the country-of-origin rule.

[36] The European Currency Unit (ECU) served as the currency unit of the European Communities from its adoption on 13 March 1979, replacing the 'European Unit of Account,' until its replacement by the euro on 1 January 1999; see: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:European_currency_unit_(ECU) [accessed: 20 September 2024].

[37] Commission of the European Communities, *A Common System of VAT – A programme for the Single Market*, COM (96) 328 final, https://op.europa.eu/en/publication-detail/-/publication/6547b7d2-47d3-4b30-956b-03e217f1a8c4/language-en [accessed: 3 July 2024].

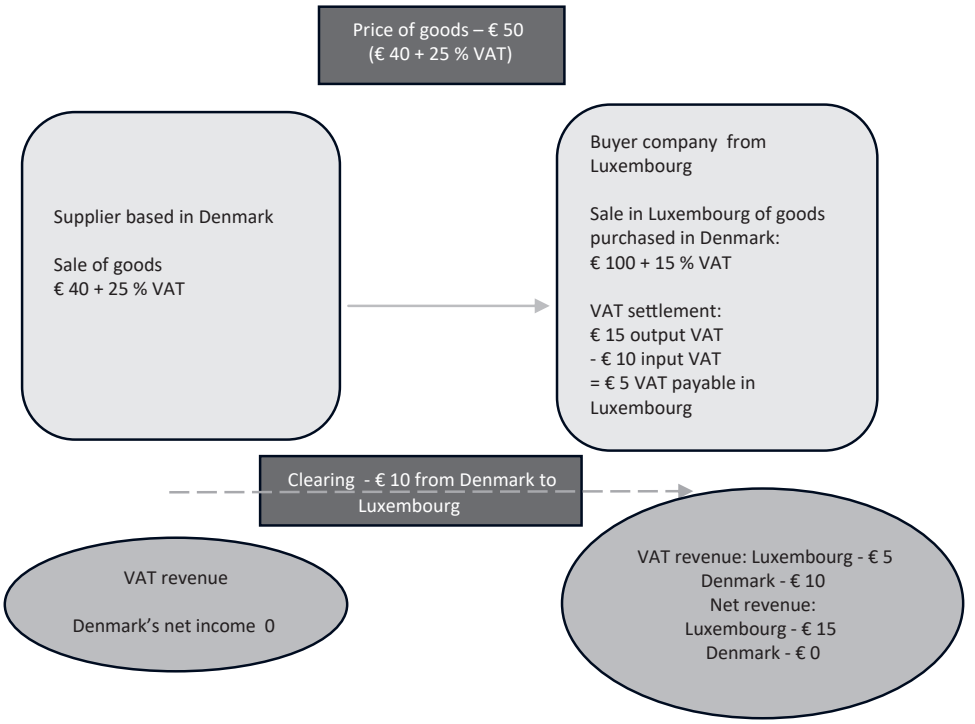


Figure 1: Operation of the *clearing* mechanism for significant differences in VAT rates

Source: M. Keen, S. Smith (1996).[38]

Rejecting the concept based on taxation in the country of origin: position of the European Commission of 7.4.2016[39]

'On this occasion, after many years of unsuccessful attempts, the Commission abandoned the objective of implementing definitive VAT arrangements based on the principle of taxing all cross-border supplies of goods in the Member State of their origin, under the same conditions that apply to domestic trade including VAT rates. The European Parliament and the Council agreed that the definitive system should be based on the principle of taxation in the Member State of the destination of the goods.'

[38] In 2024, the standard VAT rate in Luxembourg was 17%. M. Keen, S. Smith, *The Future of Value Added Tax in the European Union*, Economic Policy, October 1996; quoted in: R. Lipniewicz, *Docelowy system VAT w Unii Europejskiej. Harmonizacja opodatkowania transakcji wewnątrzwspólnotowych*, Warsaw 2010, LEX/el.

[39] EC, *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on VAT Action Plan. Towards a Single EU VAT Area – Time to Decide,* Brussels, 7 April 2016, COM(2016) 148 final, available at: https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52016DC0148&from=en [accessed: 3 July 2024].

2.2. The Principle of Destination and Its Shortcomings

Destination principle – definition. The destination principle means that VAT is levied where goods and services are ultimately consumed. This system ensures tax neutrality, as it neither favours domestic production nor imports, and exports are exempt for all businesses.[40] This exemption from VAT allows businesses to retain the right to deduct input tax. In Poland, to distinguish this from classic exemptions (which do not allow input tax deduction), a 0% VAT rate is applied to exports and intra-Community supplies, while still allowing the deduction of input VAT.

Transitional model. In 1967, the Council established the common system of value-added tax (VAT) with the adoption of the First Council Directive 67/227/EEC[41] and the Second Council Directive 67/228/EEC.[42] At that time, a commitment was made to create a definitive VAT system in the future. This system was intended to operate uniformly across all Member States of the European Community. Due to the lack of adequate political and technical conditions, introducing such a system was delayed until the end of 1992, when fiscal borders between Member States were abolished. However, the rules that were adopted remain transitional.[43] Council Directive 2006/112/EC, which is currently in force, stipulates that these transitional provisions must eventually be replaced by a *definitive system*. A key feature of the proposed definitive system, based on the concept from the last century, was the taxation of intra-Community transactions in the country of origin. However, this concept is now of historical interest only; there are no current plans to deviate from the principle of taxation based on the country of consumption for goods or services.[44] This fact has been confirmed by the EC taking into account the conclusions of the so-called Green Paper on the future of VAT.[45]

The transitional model – IC supply and IC acquisition of goods. The transitional model proved to be the most enduring by dividing intra-EU supplies of goods into two separate transactions: the supply and the corresponding intra-Community acquisition. For transactions between VAT taxpayers from different EU Member States, the concepts of export and import were replaced by the terms intra-Community supply of goods **(ICS)** and intra-Community acquisition of goods **(ICA)**. VAT is not levied in the country of origin of the goods (the exporting country). Instead, taxation occurs in the buyer's country (the destination country). Conversely, the supplier's country applies

[40] M. Keen, *Some International Issues in Commodity Taxation*, 'IMF Working Paper' 2002, no 12.

[41] First Council Directive of 11 April 1967 (67/227/EEC), OJ EU L 1967, No. 71, p. 1301, as amended.

[42] Second Council Directive of 11 April 1967 (67/228/EEC) OJ EU. L. 1967 No. 71, p. 1303 as amended.

[43] The transitional provisions on the taxation of intra-Community transactions were adopted for a four-year period, intended to remain in force until 31 December 1996. As the aforementioned Article 28i of the Sixth Directive stipulated that the application of these transitional procedures would be automatically extended until the Council reached a decision on the definitive regime, the absence of such a decision by 31 December 1995 resulted in the indefinite extension of the transitional regime. R. Lipniewicz, *Docelowy system VAT w Unii Europejskiej. Harmonizacja opodatkowania transakcji wewnątrzwspólnotowych*, Warsaw 2010, LEX/el.

[44] Proposal of 7 August 1987 for a Council Directive completing and amending Directive 77/388/EEC - Removal of fiscal frontiers, COM(87) 322, OJ C 252 (1987).

[45] EC, *Green Paper on the future of VAT Towards a simpler, more robust and efficient VAT system*, COM/2010/0695, https://op.europa.eu/en/publication-detail/-/publication/03805740-94ca-401a-8106-50e46cbd57de [accessed: 7 July 2024].

a 0% VAT rate or an exemption with the right to deduct input tax. ICS and ICA are generally 'mirror' transactions – the supplier's ICS should correspond to the buyer's ICA. This system applies to B2B supplies, and the exemption in the country of origin (or the 0% VAT rate in Poland) is contingent upon proving the intra-Community supply with the appropriate documentation, including the provision of a valid VAT-EU number of the purchaser (i.e. the purchaser registered for intra-Community transactions). Although taxation occurs in the destination country, the EU supplier is not required to register for VAT in that country, as the obligation is 'shifted' to the purchaser, who will settle the VAT in the destination country, effectively on the supplier's behalf.

Example 1

A German GmbH supplies customised furniture to a Polish Ltd. Once the order has been fulfilled and payment has been processed, the German company engages a shipping company to transport the goods from Dresden to Wroclaw. The German supplier has all the documents proving the customer's delivery and receipt of the goods in Poland. He has also verified the validity of the buyer's VAT-EU number. The supplier issues an invoice in accordance with German law, applying VAT exemption (Germany does not formally apply a 0% VAT rate for ICS like most EU countries) and documents the ICS on his side while being entitled to deduct the input VAT related to the supply. The Polish purchaser 'self-calculates' the output VAT, as taxation takes place in the country of consumption (ICA). At the same time, assuming that the purchaser has the right to deduct VAT, as he carries out taxable transactions themselves, the output VAT is deducted as input VAT. When the purchaser has a full right of deduction, the VAT declaration is *de facto* an administrative act on their part. The output VAT and input VAT 'offset' in the same return. The taxpayer does not pay VAT to the tax administration and does not expect to receive any refund.

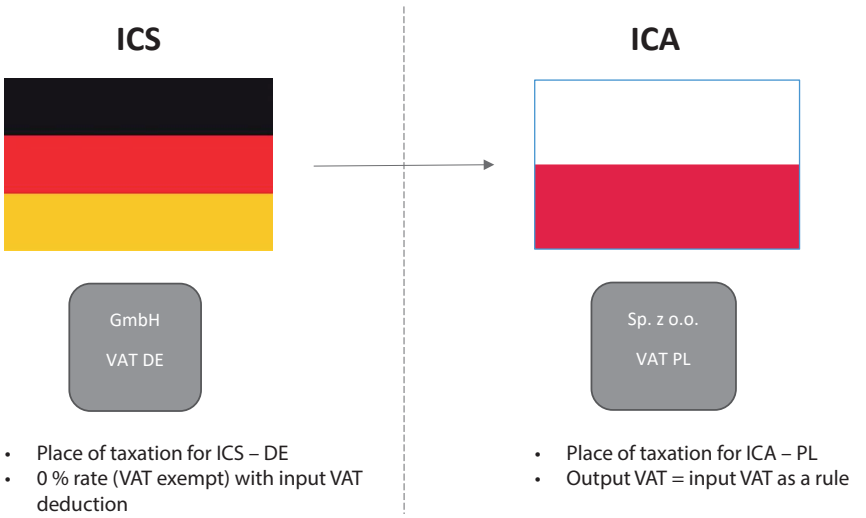


Figure 2: Illustration of Example 1

Source: own elaboration.

In the above example, the intra-Community supplier (GmbH) is in an extremely advantageous situation. His transaction is exempt from VAT in the country of origin (as an export), and he can also deduct the input VAT included in his purchase invoices. If the supplier's only activity is ICS, they will regularly receive refunds of the input VAT paid on their purchases.

The Polish company (Sp. z o.o.) pays only the net amount to the supplier, thus incurring no VAT 'cost'. Owing to the absence of customs borders, the goods enter Poland freely. However, to enable EU tax administrations to monitor these transactions, a separate reporting system was established, comprising recapitulative statements[46] and INTRASTAT reporting for statistical purposes. Within this model, the Polish tax administration can verify whether a buyer from another EU country has declared the corresponding ICA/ICS for the supply.

Incomplete data in the recapitulative statements. In practice, the expected symmetry in recapitulative statements is not always achieved. Some EU Member States do not require taxpayers to declare data on ICAs conducted within their territories. Germany is one such example.[47] Consequently, a 'preview' of a German recapitulative statement will not confirm whether the acquisitions declared in a given period from a specific taxpayer have actually occurred.

By exploiting the intra-Community transaction mechanism and involving multiple intermediaries, entities making these VAT-neutral acquisitions (i.e., not paying VAT to the supplier) can perpetrate tax fraud. These entities may sell the goods in several fraudulent ways:

(A) Under the general rules, with VAT specified, but after collecting payment from the purchaser, the supplier disappears with the unpaid VAT on the domestic supply instead of paying the amount due to the tax authority (becoming a '**missing trader**').

(B) On a reverse charge basis (without VAT), to which they are not entitled due to the nature of the goods or their status as consumers.

(C) On a 'VAT margin' basis, which they are not entitled to use. As a result, they pay VAT only on the price difference and not on the full amount of the consideration.

(D) Without VAT, posing as a 'consumer' on online portals or in the grey market, operating outside the fiscal record.

Intra-Community transactions are particularly vulnerable to various types of fraud, including: 1) simulating intra-Community supplies when the transaction is actually a domestic sale; 2) making intra-Community acquisitions without declaring them; 3) 'carousel' fraud, which involves the use of 'missing traders' (entities conducting sham transactions to perpetrate VAT fraud, such as claiming unjustified VAT refunds).

Carousel fraud in intra-Community trade is one of the most important causes, alongside the losses resulting from the shadow economy, of the loss of VAT revenue collected by the public authorities.

[46] VAT in the Digital Age (*ViDA*) involves abolishing the recapitulative statements and replacing them with a new digital reporting model.

[47] § 18a of the German VAT Act (Umsatzsteuergesetz in der Fassung der Bekanntmachung vom 21. Februar 2005 (BGBl. I S. 386), das zuletzt durch Artikel 27 des Gesetzes vom 2. Dezember 2024 (BGBl. 2024 I Nr. 387) geändert worden ist.

The European Commission (EC) has recognised the shortcomings of the current system and proposed its reform as part of the *VAT in the Digital Age (ViDA)* package:

> European Commission: Explanatory Memorandum of the 'VAT in the Digital Age' package proposal.[48]
>
> *'(...) current reporting system of intra-Community transactions (referred to in the VAT Directive as 'recapitulative statements') does not allow Member States to effectively tackle VAT fraud linked to these transactions. The current recapitulative statements date from 1993 and have not substantially changed since then. They are ill-prepared for the digital economy and can hardly be compared to the much more modern digital reporting systems implemented by some Member States for domestic transactions.'*

The recapitulative statements contain only aggregated data for each taxable person, not data on individual transactions. This prevents verification of turnover by cross-referencing seller and purchaser statements, and makes comparing overall supply and acquisition data impossible. In fact, the VAT Directive allows Member States discretion in requiring taxable persons to declare intra-Community acquisitions, and fewer than half have implemented such a requirement. Even when such data is collected, it may not be available to other Member States' tax authorities in time for auditing taxpayers' accounts. Delays can result from infrequent requests and slow data entry by local tax authorities into the IT system. These difficulties were highlighted by nearly two-thirds of informed stakeholders participating in the public consultation on the 'VAT in the digital age' package, who fully or partly agreed that recapitulative statements would be more effective in combating intra-EU fraud if data were collected on a transaction-by-transaction basis and closer to the time of the transaction.[49]

3. EXPLOITING WEAKNESSES OF INTRA-COMMUNITY TRANSACTIONS

3.1. Origins and Types of VAT Carousels

The history of modern VAT fraud by organised crime groups began in the Benelux countries. The treaty establishing the Benelux Economic Union,[50] which came into force in 1960, introduced the destination-based VAT taxation model, creating significant

[48] Justification: Proposal for a Council Directive amending Directive 2006/112/EC as regards the provisions on VAT in the digital era, Brussels, 8.12.2022, COM(2022) 701 final, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0701 [accessed: 3 July 2024].

[49] Paraphrase of the above, i.e. the document Explanatory Memorandum: Proposal for a Council Directive amending Directive 2006/112/EC as regards the provisions on VAT in the digital era, Brussels, 8.12.2022, COM(2022) 701 final, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0701 [accessed: 3 July 2024].

[50] Traité instituant l'Union économique Benelux (La Haye, 3 février 1958), https://www.cvce.eu/obj/traite_instituant_l_union_economique_benelux_la_haye_3_fevrier_1958-fr-462205c0-ef9d-4eb5-8d60-fe8107148368.html [acessed: 4 July 2024].

opportunities for VAT-related criminal activity.[51] The same destination-based solution was adopted by the EU in 1993 and, as a transitional model, remains in force today. Currently, the largest gains for fraudsters (and corresponding losses for states) arise from international crimes that exploit the peculiarities of the tax system's design and its systemic and logistical weaknesses. These are collectively known as 'carousel transactions' and VAT extortion based on the so-called 'missing trader mechanism'. These schemes occur in trade between EU countries (*Missing Trader Intra-Community, MTIC*) and in transactions involving third-country jurisdictions (*Missing Trader Extra-Community, MTEC*). They can take a number of distinct variants, including *cross-invoicing*, *contra-trading*, triangular fraud, and domestic sales falsely reported as intra-Community supplies.[52]

While the literature on cross-border VAT fraud is predominantly focused on schemes involving a missing taxpayer, this does not imply their presence is required in all such cases. A straightforward example of intra-Community transaction fraud that does not involve a missing taxable person is a fictitious intra-Community supply. In simple terms, this fraud involves fabricating an intra-Community supply (subject to a 0% VAT rate or exemption with the right to deduct input VAT), while the actual sale occurs domestically and should therefore be taxed at the applicable VAT rate.[53]

In Poland, until recently, one of the most 'popular' forms of fraud was the so-called undeclared VAT. In its simplest form, this involves entity 'A' conducting a VAT transaction that is declared in its own country, while entity 'B', managed by a straw man, pays in cash and independently takes possession of the goods without declaring VAT. The goods are then resold on the black market without VAT.[54]

3.2. Tax Carousel (MTIC Fraud)

Tax carousel – definition. A tax carousel is a network of a dozen (or sometimes dozens) of entities engaging in up to several hundred transactions per month, purchasing goods and immediately reselling them to the next entity. However, the payments made do not reflect the actual turnover of goods. These fictitious transactions do not represent genuine market activity but serve solely to facilitate tax fraud against the tax office.

Within these carousel transactions, some operators benefit in one of two ways: (i) by failing to pay the VAT owed, or (ii) by receiving a VAT refund from the tax authorities for VAT that was never actually paid at earlier stages of the trade. These benefits can occur independently or concurrently within a carousel scheme.

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[51] K. Wyszyński, Wyłudzenie karuzelowe – ogólna charakterystyka na tle wybranych zagadnień prawa karnego materialnego i procesowego, [in:] Sz. Pawelec (ed.), *Karuzele VAT. Wybrane regulacje prawa karnego materialnego i procesowego*, Warsaw 2020, pp. 66/67.

[52] G. Sobiecki, M. Szwed-Ziemichód, *Wykorzystanie technologii blockchain do eliminacji wybranych problemów systemu podatkowego*, CASP Analyses and Studies, No. 1 (7), 28 May 2019, p. 6.

[53] Ł. Pastuszka, D. Strugliński, Oszustwa związane z VAT. Ewolucja oszustwa typu MTIC, [in:] E. Małecka-Ziembińska (ed.), *Oszustwa związane z VAT w dobie pandemii*, Poznań 2023, pp. 35/36.

[54] A more elaborate variant of this scam is described by K. Wyszyński, [in:] *Karuzele VAT...*, pp. 101-102.

The concept of carousel fraud lacks a specific legal definition. However, this type of tax fraud and its characteristics are described in legal doctrine, case law, by business associations, and by individual Member State administrations. It involves exploiting cross-border trading patterns by structuring a chain of transactions so that the goods sold can be returned to the initial taxpayer and reintroduced – either physically or only on paper – into the supply chain among subsequent traders.[55] The large scale of fictitious trading reported to the treasury results in, among other effects, statistical discrepancies, including significant differences between the reported value of goods sold outside Poland and the actual value of goods reaching foreign markets.

> 'According to statistical data (mainly based on Statistics Poland and Eurostat data), between 2012 and 2017, the cumulative difference between declared exports of polymers from Poland to EU countries and declared imports of this commodity from Poland in individual EU countries exceeded €300 million.'[56]

VAT carousel: subject. Given that the turnover recorded in a VAT carousel is largely fictitious, virtually any type of goods can be involved. A VAT carousel can therefore encompass almost any economic activity involving cross-border trade. However, certain sectors are particularly targeted by criminals, including the fuel, tyre, automotive, and technology industries. The objects of fictitious trade are often small, popular goods that can be quickly liquidated.[57]

VAT carousels: entities involved. Carousel transactions typically involve four types of entities: (i) the organiser/lead entity, (ii) the missing trader, (iii) the buffer, and (iv) the broker.[58]

Organiser. The organiser's task is to make an intra-Community supply to a missing trader. The organiser is usually a foreign entity, i.e., one outside the tax and criminal jurisdiction of the country where the fraud takes place. It is, in principle, an aware participant in the carousel. In its country of establishment, i.e., the country of origin of the goods, it settles its tax obligations correctly and ensures there are no grounds for questioning the accuracy of its accounts.[59]

***Missing trader*.** A key role in the carousel procedure is played by the so-called *missing trader*. Until recently, EU rules used a related concept of a 'missing trader', which was included in Article 2 of Regulation 1925/2004 in force until 20 February

[55] W. Kotowski, *Karuzele podatkowe,* [in:] I. Ożóg (ed.), *Karuzele i inne oszustwa podatkowe*, Warsaw 2021, p. 193.

[56] Ministry of Finance, *Publication of opinions received during tax consultations regarding the prerequisites for buyer due diligence in domestic transactions*, https://mf-arch2.mf.gov.pl/web/bip/ministerstwo-finansow/dzialalnosc/konsultacje-podatkowe/-/asset_publisher/M1vU/content/publikacja-opinii-przeslanych-w-ramach-konsultacji-podatkowych-w-sprawie-listy-przeslanek-nalezytej-starannosci-po-stronie-nabywcy-w-transakcjach-krajowych [accessed: 3 July 2024].

[57] Ministerstwo Finansów, *Obrót karuzelowy. Czym jest obrót karuzelowy i na czym polega*, https://www.podatki.gov.pl/vat/bezpieczna-transakcja/wyludzenia/obrot-karuzelowy/ [accessed: 3 July 2024].

[58] Description of the operation of the VAT carousel per: J. Sarnowski, P. Selera, *Zmniejszenie luki VAT...,* Polish Economic Institute, Warsaw 2018 and the literature indicated therein.

[59] K. Wyszyński, [in:] *Karuzele VAT...*, pp. 72/73.

2012.[60] This concept referred to a trader registered for VAT purposes who, with a potential fraudulent intent, acquires or simulates the acquisition of goods (zero-rated/exempt under VAT) or services. The missing trader is characterised by, inter alia, a short period of operation, high turnover, low margins and no declared VAT refunds. Such a trader supplies goods previously acquired with VAT. However, they do not remit the VAT due to the competent authorities. A tax control of the trader reveals that tax administration is unable to recover the unpaid tax. This may be prevented by a number of circumstances, including the fact that the entity is no longer in business, or that the taxpayer is an unenforceable person – such as a victim of identity theft, often an elderly person, someone in a crisis of homelessness, a student, or a foreigner. This is most often a shell company, i.e. a 'shell' with no economic purpose, set up with the sole purpose of issuing invoices that do not document real turnover. A few months after starting to create fictitious turnover, the company is liquidated. The profit made by the organised criminal group behind the 'carousel' comes from the amounts of VAT not paid to the budget of the Member State where the missing taxpayers operate.[61] The earnings of the 'straw man', if any, are small in relation to the illegal gains made by the organisers. Most often, the 'straw man' receives a monthly 'remuneration' varying between PLN 200 and PLN 2,000, and less often a %age, depending on the value of gross purchases or the value of the tax shown on the invoices they produced, which documented non-existent turnover.[62]

Buffers. Before the goods move from the fictitious purchaser (the missing trader) to the defrauder, i.e., the claimant of the undue tax refund (the broker), they pass through a series of transactions involving a chain of domestic entities known as 'buffers'. These transactions are designed to make it difficult for the tax administration to establish a link between the missing trader and the broker. The role of the buffer is, therefore, to lend credibility to the invoiced transactions. Established entities with a seemingly reliable track record are typically chosen as buffers. Their involvement in the fraud can be accidental or deliberate. Some genuine market players knowingly co-operate with organised criminal groups, while others act as buffers unknowingly. The buffer's remuneration for the risk they incur is the profit generated from their participation. This profit is the difference between the purchase price of the goods (from the preceding trader in the fictitious supply chain) and the selling price to the next buffer. This margin or discount charged for the fictitious turnover is covered by the unpaid VAT.

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[60] According to Article 2(1) of that Regulation: 'missing trader' shall mean a trader registered as a taxable person for VAT purposes who, potentially with a fraudulent intent, acquires or purports to acquire goods or services without payment of VAT and supplies these goods or services with VAT, but does not remit the VAT due to the appropriate national authority; Commission Regulation (EC) No 1925/2004 of 29 October 2004. laying down detailed rules for implementing certain provisions of Council Regulation (EC) No 1798/2003 concerning administrative cooperation in the field of value added tax (OJ EU of 5.11.2004, L 331/13) – not applicable.

[61] Ministerstwo Finansów, *Wyłudzenia VAT. Jak działa karuzela VAT, przykłady oszustw karuzelowych*, https://www.podatki.gov.pl/vat/bezpieczna-transakcja/wyludzenia/ [accessed: 3 July 2024].

[62] K. Nowak, *Wybrane zagadnienia dotyczące działalności tzw. słupów w ramach zorganizowanych grup przestępczych dopuszczających się oszustw podatkowych w związku z obrotem wyrobami stalowymi*, Internal Security Review, 10/2014, p. 172; quoted in: K. Wyszyński, [in:] Sz. Pawelec (ed.), *Karuzele...*, p. 75.

In the event of a tax audit, buffers – i.e., traders involved in fictitious trade controlled by organised crime groups – are accused of participating in the tax extortion process. The invoices they receive lose legal force, and in cases involving sensitive goods, they may be liable for the tax arrears not paid by the dishonest counterparty. For honest entrepreneurs, unknowingly becoming involved in a carousel scheme can lead to severe financial difficulties or even bankruptcy. Fictitious purchases based on so-called 'fake invoices' also result in the loss of the right to deduct input VAT and the imposition of a VAT sanction of 100% of the arrears (for periods starting from 1 January 2017).

Broker. The task of the broker is to purchase goods within the country (in a taxable transaction) and then supply them, resulting in the export of the goods to another country. The broker purchases the goods from the buffer company and then makes either an intra-Community supply (ICS) or an export to the lead company, or to an entity that completes the circle by reselling the goods to the promoter. In both

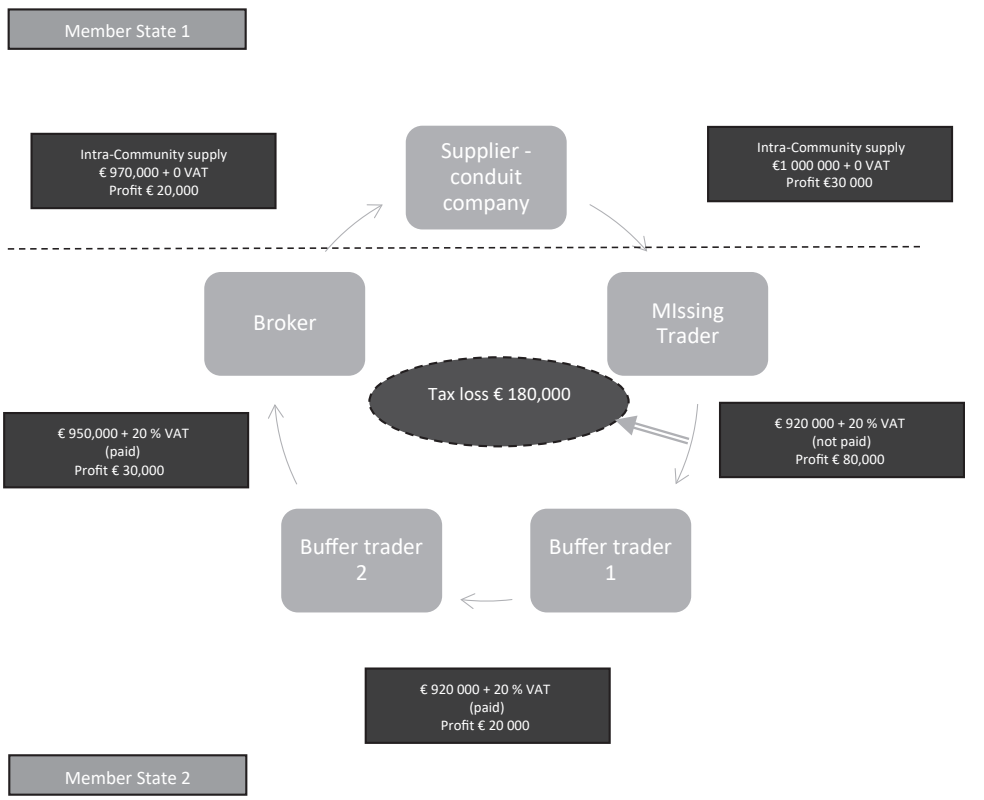


Figure 3: Carousel fraud mechanism

Source: European Court of Auditors (2016).[63]

[63] European Court of Auditors, *Tackling intra-Community VAT fraud: More action needed*, Luxembourg: Publications Office of the European Union 2016, https://www.eca.europa.eu/Lists/ECADocuments/SR15_24/SR_VAT_FRAUD_EN.pdf [accessed: 3 July 2024].

cases, a 0% VAT rate applies. Typical export destinations are countries with which the exchange of tax information is difficult. The broker is registered in the same EU country as the missing taxpayer. By applying the 0% VAT rate with the right to deduct, the broker can claim a VAT refund or reduce their tax liability by the value of the VAT included in their purchases. The core of the fraud is that the broker obtains an undue VAT refund because the missing trader did not pay the tax earlier in the chain.[64] The practice of the Polish tax authorities indicates that the broker, as an entity profiting from illegal activities, is, as a rule, aware of the criminal nature of the transactions it performs. However, such a conclusion should not be drawn automatically. Automatically considering a broker a knowing participant in a tax carousel can lead to focusing on their responsibility for a fraud of which they may, in fact, be a victim.[65]

3.3. *Contra-trading* Carousel

A *Contra-trading* carousel is a particular form of VAT carousel, with a more complex structure. This scheme involves two or more parallel tax carousels linked by entities or companies acting as brokers. In many cases, each such carousel 'trades' a slightly different type of commodity. The basic structure of this model is shown in Figure 4.[66]

Entity E plays a primary role in the presented scheme, acting as both broker and domestic supplier. This company performs the following functions:

- Domestic purchase from taxable person D (buffer), who purchased the goods from the missing trader C, who did not pay VAT. Taxable person C bought the goods (ICA) from taxable person A, the fraud organiser (operating in EU Member State 1). Following the transaction, taxable person C disappears without remitting VAT to the State.
- An intra-Community acquisition of goods from taxable person B of EU Member State 1, which is also the lead company.

Taxpayer E (broker 1), known as *the contra broker*, then makes two supplies:

- An ICS to taxable person G in EU Member State 3. This sale is linked to a chain of transactions involving, in one of the previous stages, a missing trader who has not paid the VAT due.
- A domestic supply to taxable person F (Broker 2) that is not directly linked to the chain of transactions in which the missing trader was involved. Broker 2 then makes an ICS to taxable person H in EU Member State 3.

EU Member State 2 suffers losses both as a result of VAT not paid by the missing trader and also as a result of VAT refunds claimed by E and F.

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[64] Ministerstwo Finansów: *Wyłudzenia VAT. Jak działa karuzela VAT, przykłady oszustw karuzelowych*, https://www.podatki.gov.pl/vat/bezpieczna-transakcja/wyludzenia/ [accessed: 3 July 2024].

[65] W. Kotowski, *Karuzele podatkowe,* [in:] I. Ożóg (ed.), *Karuzele...*, pp. 196/197.

[66] Scheme and description after: Ł. Pastuszka, D. Strugliński, *Oszustwa związane z VAT. Ewolucja oszustwa typu MTIC,* [in:] E. Małecka-Ziembińska (ed.), *Oszustwa...*, pp. 54/55.

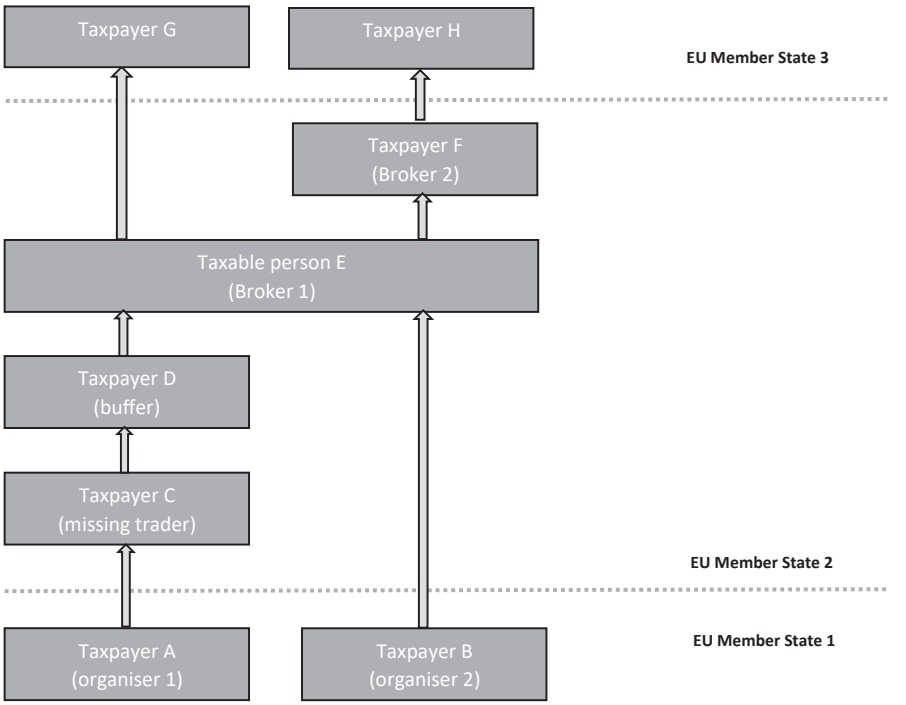


Figure 4: Contra-trading

Source: own elaboration based on Ł. Pastuszka, D. Strugliński, *Oszustwa związane z VAT. Ewolucja oszustwa typu MTIC,* [in:] E. Małecka-Ziembińska (ed.), *Oszustwa…*, pp. 54/55.

Two transaction chains within the contra-trading arrangement are noteworthy:

- Tax loss chain: In this chain, the taxpayer pays input tax on purchases and makes supplies to taxpayers in other EU Member States or exports goods to third countries (in both cases, a 0% VAT rate/exemption applies, with the right to deduct VAT on the purchase of goods and services related to the transaction).
- Opposite chain: A taxpayer typically purchases goods from another EU country and resells them domestically.

In this example, there is only one buffer; however, in practice, there are often more, making the connections more complex and consequently the carousel harder to identify, reflecting how criminals operate.[67]

3.4. *Cross-invoicing*

A 'classic' tax carousel typically operates for a short period in a particular structure, pattern, place, and 'industry'. Concealing a missing trader's failure to meet their tax

[67] Description of the example after: Ł. Pastuszka, D. Strugliński, *Oszustwa związane z VAT. Ewolucja oszustwa typu MTIC,* [in:] E. Małecka-Ziembińska (ed.), *Oszustwa...*, pp. 54/55.

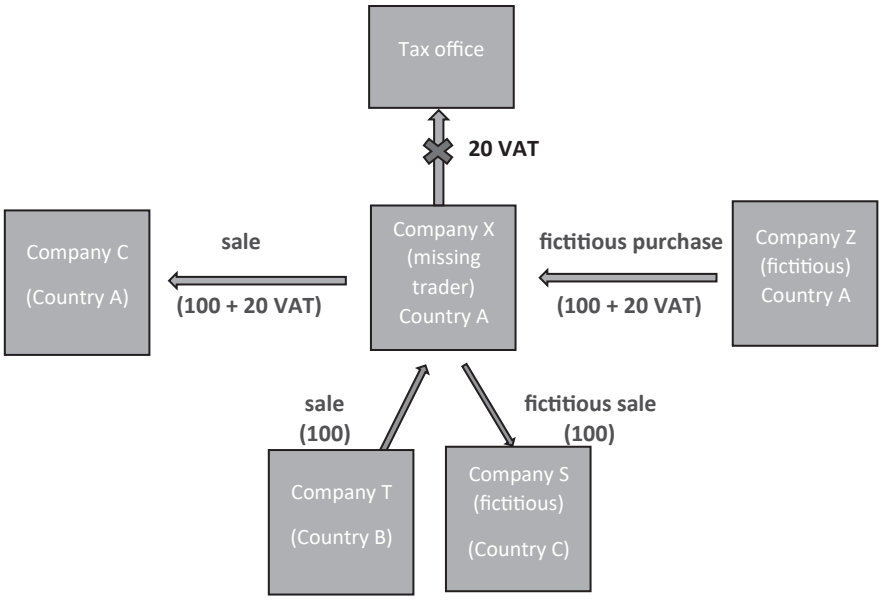


Figure 5: Cross-invoicing

Source: own compilation based on M.C. Frunza, *Value Added Tax Fraud*, Routledge Research in Finance and Banking Law, 2019, p. 9.

obligations is difficult in the long term. One way to 'extend the life' of a VAT carousel and reduce the risk of tax controls is to conceal the transactions that create the tax liability (especially ICAs and domestic supplies). This modus operandi is known as *cross-invoicing*. Perpetrators attempt to 'balance' the tax liability arising from ICAs and domestic supply with fictitious transactions – domestic acquisitions and ICSs. The missing trader attempts to reduce their tax liability to zero through this type of' 'cross-invoicing'.[68] A variant of this type of fraud is shown in the diagram below.[69]

3.5. Scale and Impact of Carousel Frauds

The 'evolution' of carousels. The physical existence of the commodity involved in a tax carousel is not essential for the fraud to succeed. However, the presence of the commodity and efforts to execute the transaction as close to market conditions as possible make it harder to identify the entire network of those involved in tax fraud. For years, certain characteristics have made some goods more susceptible to exploitation in tax carousels. This is particularly true for expensive goods (such as gold and

[68] B. Szabó Barna, *Grouping of Misconduct Types in Case of VAT Fraud*, Magyar Rendészet, 1/2019, pp. 108-109.

[69] Based on M.C. Frunza, *Value Added Tax Fraud*, Routledge Research in Finance and Banking Law, 2019, p. 9.

electronics) suitable for rapid turnover and consumption, and for goods marked by type, making subsequent identification and attribution to a specific supply more difficult (such as fuels, oils, and cereals).[70] Intangible benefits have also become the subject of tax carousels for some time. In particular, these include CO_2 emission allowances, VoIP services, and green energy certificates. As the literature rightly points out, practical observation shows that fraudsters exploit almost any commodity possible.[71] Naturally, periods of variation in the commodities used, or 'switching' to other commodity groups, are noticeable. Such 'evolutions' are often related to the introduction of effective VAT sealing measures in a given area (at EU or purely national level), or to intensified actions by control authorities, especially after they gain sufficient knowledge and experience of the *modus operandi* of carousels involving a given commodity.

States, entrepreneurs and citizens lose. Not only do states lose out from the activities of tax mafias, but so too do honest entrepreneurs. They suffer in two ways: they must compete with those profiting from carousels, and they bear the cost of ineffective remedies that add to an already heavy administrative burden. However, the problem of tax crime is not solely economic; it also concerns the safety, lives, and health of EU residents. Every year, an estimated €420 million from VAT fraud is used to fund terrorism.[72] In 2015, an Italian investigation uncovered a link between €1 billion of VAT fraud and the financing of Islamist terrorism in Pakistan. It is worth recalling that documents found in Osama Bin Laden's hideout in 2010 confirmed links to VAT fraud in Italy, Spain, the Netherlands, and Denmark.[73] The professionalism of the organisations involved and the complexity of VAT crimes is illustrated by a press release published on 29 November 2022 by the *European Public Prosecutor's Office* (EPPO), summarising its so-called 'Operation Admiral'.[74] The EPPO, in cooperation with the law enforcement agencies of 14 EU Member States,[75] carried out simultaneous investigative activities, including more than 200 searches, in connection with a complex VAT fraud involving the sale of popular electronic goods. The estimated damage (budget losses) as a result of the criminals' actions was estimated at around €2.2 billion.

> **Operation Admiral.** In April 2021, the Portuguese tax authority was conducting a routine inspection of a company trading in electronics, including mobile phones, tablets, and handsets. The case, suspected of involving VAT fraud, was reported to the EPPO. From a national perspective, based on the administrative investigation, the invoices and tax declarations appeared correct. However, by working together across borders, European Prosecutors, European Delegated Prosecutors, the EPPO's

[70] W. Kotowski, *Karuzele podatkowe,* [in:] I. Ożóg (ed.), *Karuzele..*, p. 198.

[71] Ibid.

[72] Europol, http://www.europarl.europa.eu/cmsdata/150594/20180628%20-%20Mr%20Frunza%20presentation%20VAT_TER_EP.pdf [accessed: 4 July 2024].

[73] https://www.dutchnews.nl/2016/10/dutch-companies-funding-terrorism-through-vat-fraud/ [accessed: 4 July 2024].

[74] EPPO, https://www.eppo.europa.eu/en/news/operation-admiral-eppo-uncovers-organised-crime-groups-responsible-vat-fraud-estimated-eu22 [accessed: 4 July 2024].

[75] The activities indicated were carried out in Belgium, Cyprus, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovakia and Spain.

financial fraud analysts, and representatives from Europol and national law enforcement authorities gradually established connections between the suspected company in Portugal and nearly 9,000 other legal entities, and more than 600 natural persons located in different countries. Eighteen months after receiving the initial report, the EPPO exposed what is believed to be the largest VAT carousel fraud ever investigated in the EU.

Leaving aside the scale of the above case, this is just one of many cases against 'VAT mafias' currently being pursued by the EPPO. The EPPO's Annual Activity Report 2022 indicates that one of its priorities is to investigate fraud affecting public revenue in the EU, particularly cross-border VAT fraud. By the end of 2022, the EPPO had conducted 1,117 investigations with total estimated damages of €14.1 billion, of which almost half (47%) was due to VAT fraud.[76]

Investigations carried out by the European Public Prosecutor's Office have highlighted the involvement of Polish entities on more than one occasion. For example, in November 2022, the EPPO reported a wave of searches in the Netherlands relating to an ongoing investigation into a criminal organisation that had been selling perfume and electronics online since 2017 with the intention of evading VAT. According to the investigation, the group purchased goods at a 0% VAT rate and sold them with VAT (at an average rate of 20%) but did not remit the VAT to the tax authorities. The group used the 'services' of companies and shell companies in the Netherlands, Belgium, Estonia and Poland, as well as bank accounts in Germany, the UK, Finland, Lithuania and Bulgaria. Thousands of computers, mobile phones and perfumes were confiscated in the course of the investigation, along with several cars and illegal firearms.[77] In Poland, the National Revenue Administration plays the leading role in combating organised VAT fraud, cooperating in its investigations with, among others, the police, the General Inspector of Financial Information, and the Internal Security Agency. One of the largest tax carousels operating in Poland was detected in the first months of 2017. More than 170 Polish entities and 55 foreign companies, including those from Cyprus, Slovenia, Latvia, the United Kingdom, Hungary, Belgium, Slovakia, Bulgaria, the Czech Republic, Estonia, and Germany, were involved in the VAT fraud organised by the Polish criminal group. During its operation, the criminals defrauded the Polish tax authorities of over PLN 108 million in undue VAT refunds. The value of issued invoices, documenting fictitious supplies, was estimated at approximately PLN 570 million. Operational activities resulted in the blocking of approximately PLN 4 million in PLN, EUR, and USD, and the seizure of goods (mainly electronic goods such as hard disks, toners, flash memory devices, monitors, drones, and over 8,500 TV sets) with an estimated value exceeding PLN 17 million.[78]

[76] EPPO, *Annual Report 2022*, https://www.eppo.europa.eu/sites/default/files/2023-02/EPPO_2022_Annual_Report_EN_WEB.pdf [accessed: 4 July 2024].

[77] EPPO, https://www.eppo.europa.eu/en/news/netherlands-searches-vat-fraud-investigation-concerning-online-sales-perfume-and-electronics [accessed: 4 July 2024].

[78] Ministerstwo Finansów, *Wykrycie wielkiej, międzynarodowej karuzeli VAT*, https://mf-arch2.mf.gov.pl/web/bip/ministerstwo-finansow/wiadomosci/aktualnosci/-/asset_publisher/M1vU/content/wykrycie-wielkiej-miedzynarodowej-karuzeli-vat/pop_up?_101_INSTANCE_M1vU_viewMode=print [accessed: 4 July 2024].

3.6. Fraud using Procedure 42

The EU VAT system includes certain preferences to stimulate and facilitate international trade. One such preference is the import VAT exemption under customs procedure 42. Imported goods are exempt from VAT at the point (country) of entry into the EU, provided that these goods are immediately supplied (transported) to an EU country other than the country of entry as a result of this importation. Unfortunately, this VAT exemption is exploited by tax fraudsters who sell the goods in the country of entry (import) without VAT and then declare the legitimacy of the import exemption by simulating an intra-Community movement/delivery to another EU country.[79] This procedure, similar to simplified importation under Article 33a of the Goods and Services Tax Act /VAT Act (hereinafter: uVAT[80]) (so-called importation via VAT return), which allows VAT-neutral entry of goods into the EU, is also exploited by tax fraudsters as a means of obscuring the goods' origin. Goods imported into the EU in a completely neutral manner are subsequently sold or invoiced at later stages of trade within domestic transactions where VAT is not paid at certain stage(s) – typically by using a *missing trader*.[81]

4. TAX CAROUSELS AND THE LEVEL OF THE VAT GAP IN EU COUNTRIES

4.1. Level of the VAT Gap in EU Countries

Sealing the tax system. The unfortunate term 'sealing the tax system' has been adopted from colloquial language and is not a legal or economic category.[82] It has gained particular popularity in political and media (journalistic) debates, where it is frequently linked to the tools and effectiveness of reducing the VAT gap.[83] The literature

[79] For more on this topic see: A. Krysztofiak, D. Strugliński, *Procedura celna 42 a oszustwa w zakresie VAT,* [in:] E. Małecka-Ziembińska (ed.), *Prawo i ryzyko celne,* Wydawnictwo Uniwersytetu Ekonomicznego w Poznaniu, Poznań 2024, pp. 85-109, https://doi.org/10.18559/978-83-8211-233-7/6.

[80] Act of 11 March 2004 Goods and Services Tax Act (VAT Act) (consolidated text Journal of Laws 2024 item 361, as amended).

[81] OLAF, *Operation by OLAF and Italian Customs finds 18 million euro VAT evasion*, https://anti-fraud.ec.europa.eu/media-corner/news/operation-olaf-and-italian-customs-finds-18-million-euro-vat-evasion-2024-02-06_en [accessed: 24 September 2024].

[82] J. Glumińska-Pawlic, *Klauzula przeciwko unikaniu opodatkowania jako instrument uszczelniania systemu podatkowego,* [in:] D. J. Gajewski, *Uszczelnienie systemu podatkowego w Polsce*, Warsaw 2020, p. 225.

[83] For example, K. Dybińska, *Luka w VAT 'istotnie' wzrosła. Minister finansów o dwucyfrowym poziomie,* https://biznes.interia.pl/podatki/news-luka-w-vat-istotnie-wzrosla-minister-finansow-o-dwucyfrowym-,nId,7475280 [accessed: 4 July 2024]; D. Szymanski, *Wyszła na jaw 'dziura Morawieckiego'. 'Rząd chce ją skrzętnie ukryć'*, https://www.money.pl/gospodarka/wyszla-na-jaw-dziura-morawieckiego-rzad-chce-ja-skrzetnie-ukryc-6950815890078528a.html [accessed: 4 July 2024].

highlights that the phrase refers to a set of measures – particularly those introduced by legislators – aimed at countering tax fraud and tax avoidance and, consequently, increasing tax revenues. The phrase is similarly understood by the vast majority of those who use it.[84]

Tax gap.

The tax gap is most often defined as the difference between the amount of taxes that should have been paid and the amount actually paid. During the tax application phase, a tax gap is created, referred to as the *compliance gap*. This results from taxpayers failing to comply with their tax obligations. The literature identifies the following general factors determining the tax gap: 1) macroeconomic factors – the level of development and the state of the economy, the tax burden, structural changes, the shadow economy, demographics and formal institutions (effective tax administration, the rule of law); 2) microeconomic factors – informal institutions (tax morality and culture, trust in the state).[85]

VAT gap. VAT revenue is a cornerstone of EU countries' budgetary systems. Even a relatively small %age loss of revenue from this tax is therefore significant for state finances. Poland is no exception, as many EU countries' tax systems are based on consumption taxes. A collapse in VAT revenues poses a significant threat to the implementation of many public policies, implying the abandonment or reduction of specific spending policies. The macroeconomic factors determining the VAT tax base include, in particular: 1) private consumption; 2) investment by government, local government, non-commercial institutions, and other sectors; 3) intermediate consumption by government, local government, non-commercial institutions, and other sectors.[86] To assess the influence of formal institutions on the VAT gap in Poland, one can examine attempts to decompose it. When analysing the VAT gap in Poland, the following factors are distinguished: tax extortion (tax carousels), smuggling of excise goods, overstatement of refunds, abuse of VAT exemption for small entrepreneurs, errors and other contributing elements.[87] These additional factors include the shadow economy and the cash economy.[88] The general microeconomic factors influencing the VAT gap are informal institutions, such as tax morality and culture, and trust in the state.

The concept of the VAT gap is widely used by international organisations, states and their tax authorities. It also features in the jurisprudence and practice of tax authorities. The VAT gap is the subject of numerous economic (econometric) and legal studies. Especially in recent years, largely driven by reports from the European Commission, interest in studying the VAT gap has grown rapidly in Poland and other countries.

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[84] A. Olczyk, *Instytucja indywidualnej interpretacji przepisów prawa podatkowego wobec uszczelniania systemu podatkowego,* [in:] D. J. Gajewski, *Uszczelnienie...,* p. 121.

[85] R. Piwowarski, *Czynniki determinujące występowanie luk podatkowych*, Folia Oeconomica, Acta Universitatis Lodziensis, FOE 2(359), 2022.

[86] T. Mazur, D. Bach, A. Juźwik, I. Czechowicz, J. Bieńkowska, *Raport na temat wielkości luki podatkowej w podatku VAT w Polsce w latach 2004-2017*, Ministerstwo Finansów – Opracowania i Analizy, Warsaw 2019; https://www.gov.pl/web/finanse/no-3-2019 [accessed: 11 November 2024].

[87] G. Poniatowski, *Problem nieściągalności VAT w Polsce pod lupą*, 2016. 'Zeszyty mBank – CASE', no. 142; quoted in: R. Piwowarski*, Czynniki determinujące...*, FOE 2(359) 2022.

[88] Here in particular the report: EY Economic Analysis Team, *Szara strefa w Polsce*, Warsaw 2020, https://assets.ey.com/content/dam/ey-sites/ey-com/en_pl/topics/eat/pdf/03/ey-szara-strefa-w-polsce-final.pdf [accessed: 11 November 2024].

In Poland, prior to 2015, the issue of the VAT gap, and in particular its scale, had not been properly recognised or analysed. There are many approaches and definitions of the VAT gap, as well as methods of 'measuring' it. The most common definition is that adopted by the European Commission. In its most general terms, the VAT gap is estimated difference between expected VAT revenue and the actual amount collected.[89] In its reports, the EC recognises the VAT gap in two dimensions: 1) the VAT gap in traditional terms (the *VAT compliance* gap) and 2) the gap arising from VAT policy decisions adopted, taking into account the number and extent of reduced rates and applied VAT exemptions (the *VAT policy gap*).[90]

VAT compliance gap. The *VAT gap* (understood as the *VAT compliance gap*) is calculated using the divergence method. It represents the difference between the tax revenue that would be collected under full compliance (assuming an unchanged tax base), referred to as the VTTL (*VAT Total Tax Liability*), and the actual revenue (VAT *revenue* or VAT actually paid).

VAT compliance gap = VTTL - VAT revenue

In EC reports, the VAT gap measures overall non-compliance with VAT regulations. This means that, according to the EC, the VAT gap in its reports encompasses more than just tax fraud and tax evasion. The *VAT compliance gap* also covers, among other things, insolvencies, bankruptcies, taxpayer errors, and *legal tax optimisation*.[91] An analogous definition of the VAT gap was adopted for the purposes of the work of the Sejm Investigative Committee in 2018, which defined it as the difference between theoretical tax revenues and those actually received by the state budget arising from causes in three areas: white – the effect of legal tax optimisation or bankruptcies; grey – underreporting of turnover or illegal optimisation, black – criminal activity.[92]

In this paper, the authors adopt the definition of the *VAT compliance gap* proposed in EC reports as the most authoritative and widely accepted, taking into account, within its components, not only tax fraud but also taxpayer errors and lawful actions causing VAT losses, such as tax optimisation. This in no way implies a questioning of the legality of lawful tax optimisation, understood as the use of lawful solutions such as in particular, allowances and exemptions to reduce one's (VAT) tax burden. Tax planning ('legal tax optimisation'), understood as using opportunities provided by legislators to reduce the tax burden, is fully accepted by international organisations,

[89] EC, *VAT Gap*, https://taxation-customs.ec.europa.eu/taxation/vat/fight-against-vat-fraud/vat-gap_en [accessed: 11 November 2024].

[90] European Commission, CASE, G. Poniatowski, M. Bonch-Osmolovskiy, A. Smietanka, A. Sojka, *VAT gap...,* Luxembourg 2023.

[91] Ibid.

[92] A working definition was adopted at the Commission meeting on 24 July 2018, which was established to investigate the regularity and legality of actions, and the existence of negligence and omissions, by public authorities and institutions concerning the safeguarding of state treasury revenues; quoted in K. Zblewska, *Luka podatkowa w podatku VAT w Polsce oraz innych krajów Unii Europejskiej w latach 2014-2018*, Przedsiębiorstwo we Współczesnej Gospodarce, Half-yearly published journal, No 2/2019 (29), Zielona Góra 2019; https://zie.pg.edu.pl/documents/30328766/104010810/Artyku%C5%82%202 [accessed: 8 November 2024].

including the EC.[93] Such activities are also seen in economic sciences as legitimate reduction of the tax burden, activities that have their justification in various dimensions including corporate social responsibility or behavioural activities.[94] 'For the sake of completeness' the European Commission (EC) includes the VAT *compliance gap* as a component of the overall VAT gap. In what follows, the authors refer to the VAT gap as the *VAT compliance gap*, unless there is an explicit reference to the *VAT policy gap*.

VAT *policy gap*. The VAT policy gap indicates the additional VAT revenue that could theoretically (i.e., under the assumption of perfect tax compliance) be generated if a uniform VAT rate were applied to all final consumption. This method determines the loss of VAT revenue resulting from reduced rates and VAT exemptions (VAT preferences), against the potential revenue theoretically achievable in a system with a single standard VAT rate and the broadest possible tax base. Here, therefore, the reference point is the so-called *notional ideal revenue* from VAT. In recent EC reports, *the VAT policy gap* is further divided into a gap related to the application of reduced VAT rates (*VAT rate gap*) and related to the application of VAT exemptions or exclusions (*VAT exemption gap).*[95]

Calculation method. Both the VAT compliance gap and the VAT policy gap are calculated using a *top-down consumption-side approach*. This approach estimates potential tax revenues using data from the System of National Accounts. Using disaggregated data from the supply and use tables of goods and services, the European Commission's method allows for the most accurate possible estimation of the VAT gap.[96] However, literature highlights two drawbacks of the European Commission's method from an economic policy perspective. First, the data required to calculate theoretical tax revenues are available with a significant time lag, preventing ongoing monitoring of changes in the gap's level. Second, it abstracts from the causes of the VAT gap, which can be both cyclical and structural.[97] From an economic policy perspective, identifying structural changes in tax outflows is crucial, as it allows for swift action

[93] In this area, international organisations have been focusing in recent years on identifying and countering the phenomenon of so-called 'aggressive tax planning', which goes beyond 'classical tax planning' (tax optimisation): Euroepan Commission, *Aggressive tax planning indicators*, WORKING PAPER No 71 - 2017, Luxembourg 2017, https://taxation-customs.ec.europa.eu/system/files/2018-03/taxation_papers_71_atp_.pdf [accessed: 8 November 2024].

[94] J. Alm*, Does an uncertain tax system encourage 'aggressive tax planning'?,* Economic Analysis and Policy Volume 44, Issue 1, March 2014, Pages 30-38; or perceptions of planning through the corporate social responsibility paradigm: D. Salter, L. Oats (eds.), *Contemporary Issues in Tax Research*, Birmingham 2016, pp 103-125.

[95] European Commission, CASE, G. Poniatowski, M. Bonch-Osmolovskiy, A. Smietanka, A. Sojka, *VAT gap...,* Luxembourg 2023.

[96] K. Konopczak, *Zmiany luki VAT w Polsce: rola czynników koniunkturalnych i strukturalnych*, The Polish Journal of Economics, https://gnpje.sgh.waw.pl/Zmiany-luki-VAT-w-Polsce-rola-czynnikow-koniunkturalnych-i-strukturalnych,145539,0,1.html [accessed: 4 July 2024].

[97] The significant impact of economic cycles on the VAT gap is particularly evident in the reduction observed in EU countries during periods of economic growth – irrespective of their implementation of sealing solutions. Analyses by the Institute for Economic Forecasting and Analysis indicate that the VAT gap increases during economic downturns, owing to decreased overall profitability and reduced opportunities for attractive investment in the legal economy, which can encourage activity in the 'shadow economy' or participation in schemes generating fictitious turnover, see, inter alia, IPAG, *Szara strefa 2020*, https://www.ipag.org.pl/Content/Uploaded/files/IPAG_Szara_Strefa_2020.pdf, p. 9 [accessed: 10 October 2024].

to 'seal the tax system,' especially in the event of erosion.[98] Recognising these challenges, the EC emphasises in a recent report that, to avoid potential inaccuracies, VTTL (VAT Total Tax Liability) and VAT revenues must be adjusted for timing (their allocation to a given fiscal period/year). Therefore, the revenues included in the calculation are essentially based on accrual rather than cash accounting. Consequently, if revenue figures according to ESA 2010 (European System of National and Regional Accounts) are provided without considering certain elements, such as late payments, they are adjusted accordingly using data obtained from Member States.[99]

VAT revenues and the VAT gap in the EU. VAT revenues are crucial for EU countries' public finances, representing approximately 27% of all tax receipts. They are also essential for the EU budget; in 2021, VAT-based resources totalled €17.97 billion, accounting for 11% of the EU's total own resources.[100] Between 2016 and 2021, the combined EU27 performance in terms of *VAT revenue* and VTTL volumes shows an upward trend, with the exception of the pandemic year 2020. In 2021, both *VAT revenue* and VTTL volumes increased, exceeding the values observed before the COVID-19 pandemic (chart 1).

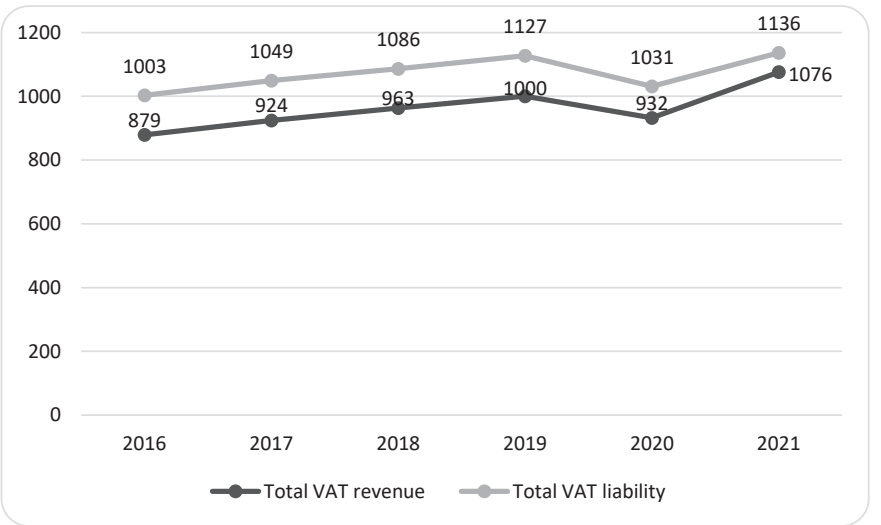


Chart 1: Evolution of *VAT Total Tax Liability* and *VAT revenue* in billion euro [EU-27]

Source: European Commission (2023).[101]

[98] K. Konopczak, *Zmiany luki VAT…*, p. 45. The author proposes an alternative method of measuring the VAT gap by combining three traditions of tax revenue modelling: 1) the divergence method, 2) the method of estimating the elasticity of tax revenue with respect to the tax base, and 3) the so-called indicator methods. The author indicates that the objectives of the proposed method are the ongoing (quarterly) monitoring of the VAT gap and the identification of structural changes.

[99] European Commission, CASE, Poniatowski, G., Bonch-Osmolovskiy, M., Śmietanka, A., Sojka, A., *VAT gap...,* Luxembourg 2023.

[100] Ibid.

[101] Ibid.

In 2016, the VAT gap in the EU averaged 12.40% (€144 billion for the EU28 – including the UK, and €124 billion for the EU27 – excluding the UK).[102] However, between 2016 and 2021[103] the EU VAT gap showed a positive and systematic downward trend. By 2021, the *VAT compliance gap* had decreased to €60.6 billion, or 5.3% of VTTL (VAT Total Tax Liability). This represents a decrease of €38.7 billion, or 4.3% of VTTL, compared to 2020 (chart 2).

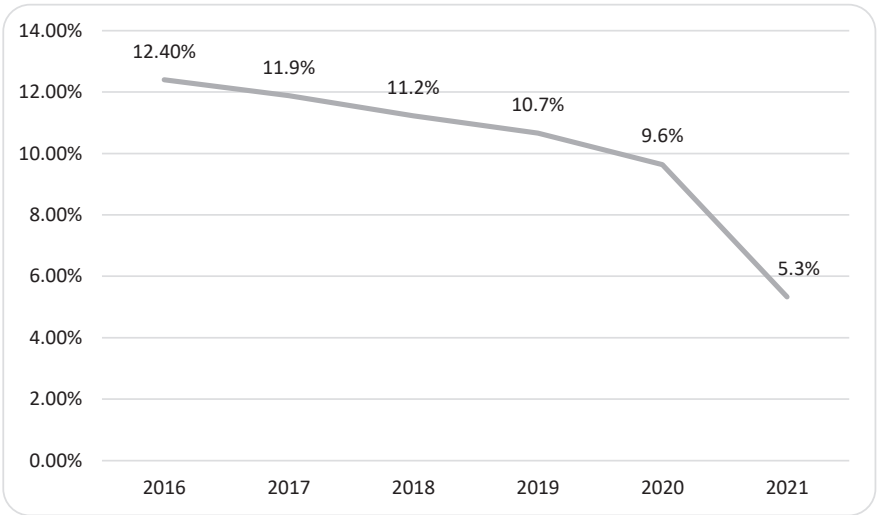


Chart 2: VAT gap in EU-27 [% VTTL]

Source: European Commission (2023).[104]

VAT gap – data from selected tax administrations. The OECD highlights that reducing losses due to VAT fraud and non-compliance remains a key challenge and priority for countries globally. Appreciating and quoting an EC report, the OECD also highlights that many tax administrations are conducting their own national surveys to estimate their country's VAT compliance gap, i.e. revenue losses due to VAT fraud, non-compliance and bankruptcies.[105] The UK is one such country, estimating its VAT gap at £8.8 billion, or approximately 5.3%, for 2022-2023. This represents a slight decrease from the 5.4% (£7.6 billion) recorded in 2021-2022.[106] The VAT gap in the UK peaked at 13.7 % in 2008-09. This was partly due to the recession, which resulted in an increase in the value of unpaid VAT amounts.[107] In Australia, the GST gap for 2021-2022

[102] Data for 2016 after the corresponding EC 2022 report.

[103] No EC data is yet available for 2022.

[104] European Commission, CASE, G. Poniatowski, M. Bonch-Osmolovskiy, A. Śmietanka, A. Sojka, *VAT gap...,* Luxembourg 2023.

[105] OECD, *Consumption Tax Trends 2022.*

[106] HMRC, *Preliminary estimate of the VAT gap (tax year 2022 to 2023)*, https://www.gov.uk/government/statistics/vat-gap-estimates/preliminary-estimate-of-the-vat-gap-tax-year-2022-to-2023 [accessed: 4 July 2024].

[107] HMRC, *Measuring tax gaps 2023 edition: tax gap estimates for 2021 to 2022*, https://www.gov.uk/government/statistics/measuring-tax-gaps/2-tax-gaps-vat [accessed: 4 July 2024].

is estimated at 11.2 % (*gross GST gap*).[108] In contrast, Canada estimates the VAT gap[109] at 9% of VTTL for 2018.[110]

***VAT policy gap*.** The VAT policy gap consists of two components: 1) the gap related to the extent and amount of a country's use of reduced rates (*VAT rate gap*) and 2) the gap related to the use of VAT exemptions (*VAT exemption gap*). Despite harmonisation, EU countries retain considerable flexibility in applying reduced rates. States' competence in this regard was extended by the 2022 VAT rate reform,[111] which gave EU countries the possibility to introduce more than two reduced rates (of no less than 5%), applied to up to 24 product groups. For the first time, countries were allowed to apply a 0% VAT rate, applied to up to seven categories of goods or services. The catalogue of product elligible for reduced rates and the 0% rate, expanded compared to the legal status before 2022, is set out in Annex III to the VAT Directive. Exercising these new powers, Poland introduced, inter alia, a 0% VAT rate on food. Both this step and the widespread application of VAT rate reductions under the so-called 'anti-inflation shield' of 2022 - 2023 imply an increase in the *VAT policy gap* observed in Poland (chart 3).

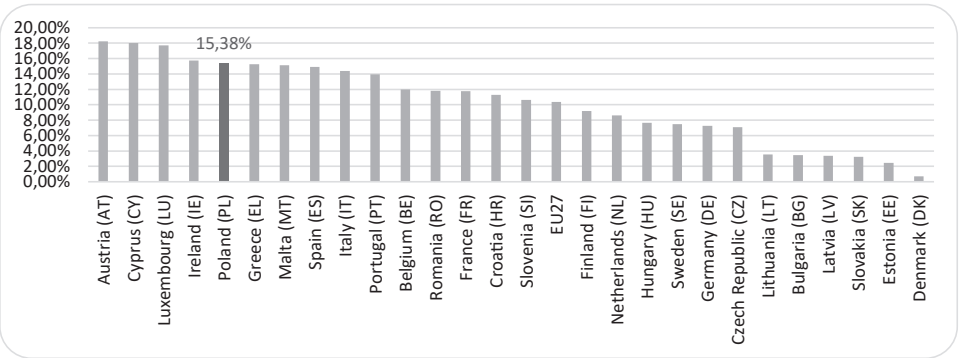


Chart 3: EU countries by scope of reduced rates [*VAT Rate Gap* %].

Source: own compilation based on EC data.

[108] Australian Taxation Office, *GST administration annual performance report 2022-23*, https://caat-p-001.sitecorecontenthub.cloud/api/public/content/ed58f5e004f64a98ba835982d1364938 [accessed: 4 July 2024].

[109] It concerns the so-called Harmonised Sales Tax, GST/HST. It concerns *the so-called Harmonised Sales Tax,* GST/HST.

[110] Canada Revenue Agency, *Overall federal tax gap report: Estimates and key findings for non-compliance, tax years 2014-2018*, https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/tax-canada-a-conceptual-study/tax-gap-brief-overview/overall-federal-tax-gap-report.html [accessed: 4 July 2024].

[111] Council Directive (EU) 2022/542 of 5 April 2022 amending Directives 2006/112/EC and (EU) 2020/285 as regards rates of value added tax (OJ EU. L. 2022 No. 107, p. 1 as amended).

4.2. Carousel Fraud as a Component of the VAT Gap

According to data from a 2016 EC report,[112] (referring to 2011 estimates), the share of the VAT gap attributable to carousel fraud ranges from 12% in Bulgaria to 39% in France. It is estimated that on average (weighted average), 24% of the overall share of the VAT gap is due to carousel fraud. According to Europol, VAT fraud related to carbon trading alone caused an estimated loss of € 5 billion in 2009-2010.[113]

Germany: Such crimes, known as 'VAT carousels' or *Missing Trader* Intra-Community Fraud (MTIC), cost Germany, with conservative estimates, between € 5 billion and up to € 14 billion per year.[114]

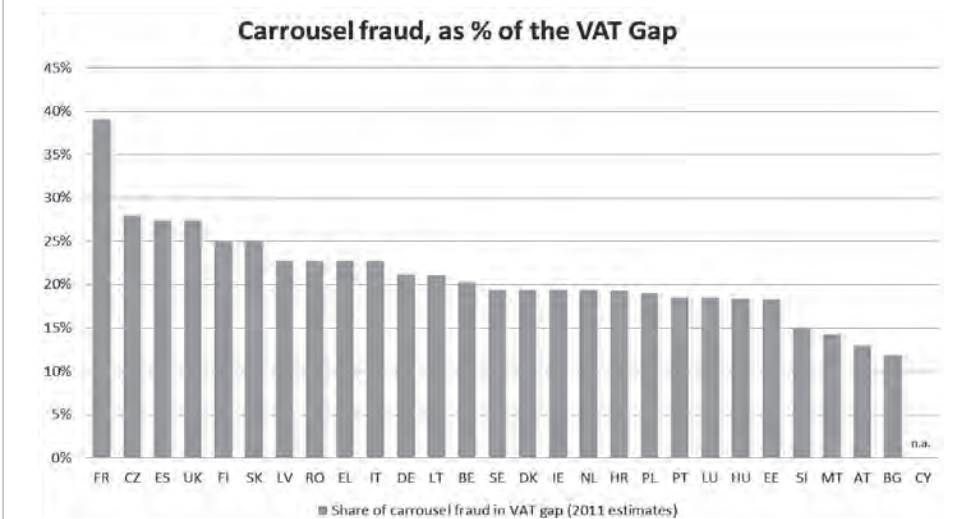


Chart 4: Carousel fraud and its contribution to the overall VAT gap (2011 estimates)

Source: EC (2016).[115]

[112] EC 2016, *Generalised reverse charge mechanism*, *Accompanying the document* Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of the generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold, SWD(2016) 457 final, https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:52016SC0457#footnoteref39 [accessed: 4 July 2024].

[113] M. Lamensch, E. Ceci, *VAT fraud: economic impact, challenges and policy issues*, European Parliament 2018, http://www.europarl.europa.eu/RegData/etudes/STUD/2018/626076/IPOL_STU(2018)626076_EN.pdf [accessed: 4 July 2024].

[114] CORRECTIV, *Grand Theft Europe*, https://correctiv.org/en/top-stories-en/2019/05/07/grand-theft-europe/ [accessed: 4 July 2024].

[115] https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:52016SC0457#footnoteref39 [accessed: 17 July 2024].

In 2016, the EC estimated that around 20% of Poland's VAT gap stemmed from carousel fraud. The part of the VAT gap not related to the activities of tax mafias (according to 2016 estimates – around 80%) is attributed to the loss of revenue due to domestic fraud and evasion, tax avoidance, bankruptcies, financial insolvency and miscalculations.[116] Anti-Carousel VAT sealing is achieved through two interacting factors. The first is the effective identification ('stopping') of tax carousels. The second is the creation of regulations which, by reducing the profitability and making it more difficult to organise carousel scams (e.g. engaging buffers, acquiring 'straw man' or legalising profits derived from carousels), ensure that once discovered, they regenerate (revive) much more slowly and on a smaller scale.

Since the fourth quarter of 2014, a decrease in VAT carousel activity has been observed in Poland. It is measured by the amount of turnover registered with the entities involved in the fraud (buffers)[117] (chart 5).

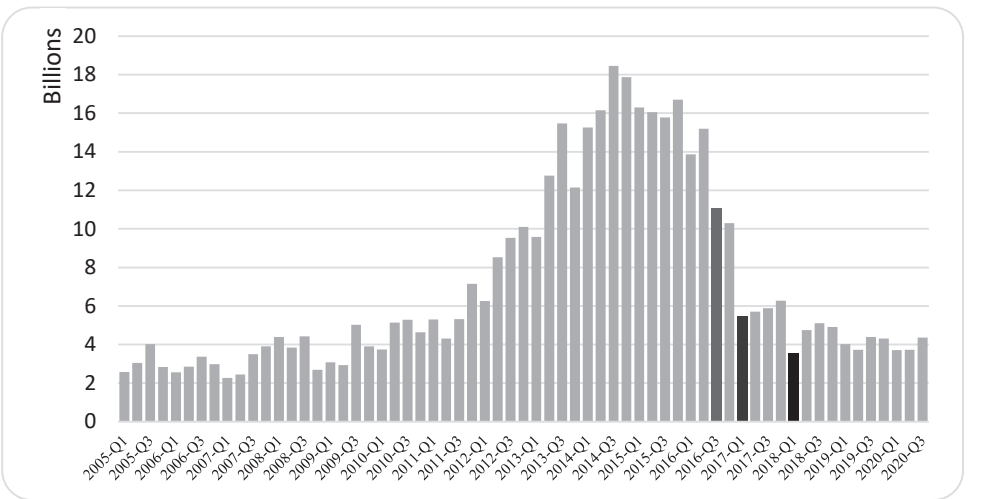


Chart 5: Quarterly turnover of buffer entities: 2005 Q1 – 2020 Q3

Source: data from the Ministry of Finance and the National Revenue Administration.

The chart highlights the strong declines occurring after the key VAT sealing changes:

- July 2016 (JPK_VAT first phase) and August 2016 (fuel package): Buffer turnover fell by 27% quarter-on-quarter.
- January 2017 (JPK_VAT second phase): Buffer turnover fell by nearly 47% quarter-on-quarter.

[116] Commission Staff Working Document Impact Assessment, *Generalised reverse charge mechanism Accompanying the document Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of the generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold*, Brussels, 21.12.2016, SWD(2016) 457 final, https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:52016SC0457#footnoteref39 [accessed: 4 July 2024].

[117] KAS identifies buffers through analysis linking disappearing taxpayers to brokers. Charts 5 and 6 illustrate the number of entities identified as 'buffers' and their total recorded turnover.

- April 2017 (SENT): Buffer turnover remained at similar levels quarter-on-quarter.
- January 2018 (JPK_VAT third phase) and April 2018 (STIR): Buffer turnover fell by more than 43% quarter-on-quarter.

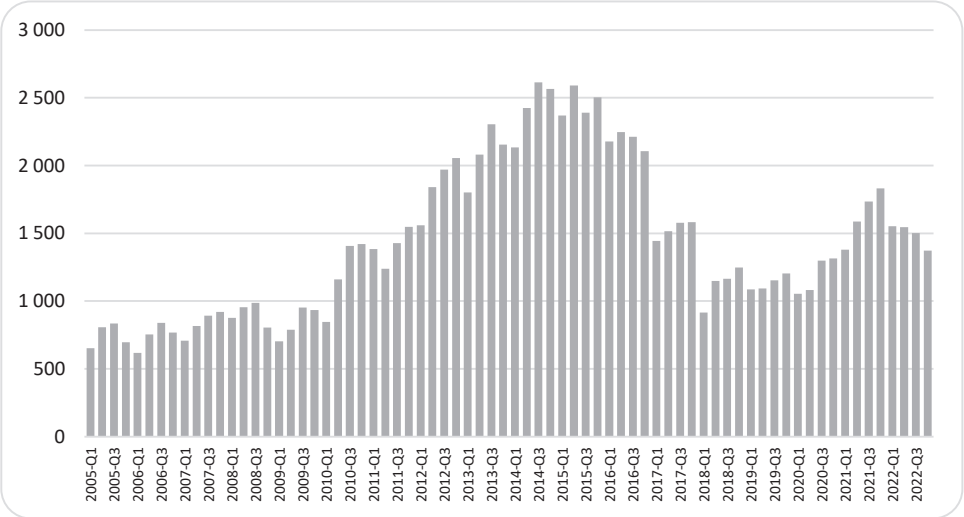


Chart 6: Number of buffer turnover entities 2005 Q1 – 2022 Q3

Source: data from the Ministry of Finance and the National Revenue Administration.

According to the Ministry of Finance, public authorities' sealing measures, particularly the implementation of solutions with a strong impact on the scale of fraud (such as JPK_VAT and STIR), have caused a significant decrease in buffer turnover – from approximately 30% to nearly 50%.[118] However, data from 2021 and 2022 indicate that the scale of buffer turnover and the number of buffer entities did not change dramatically during this period. In Q4 2020, the number of such entities was 1,315, with an estimated turnover of PLN 5,228,144,163. Data from Q4 2022 show a similar number of buffer entities (1,372), with an estimated turnover of PLN 4,354,496,005.

[118] Regulatory impact assessment (OSR) to the government draft law amending the VAT Act and certain other laws, Print No. 3242, p. 11, https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=965 [accessed: 7 July 2024].

2

VAT GAP REDUCTION IN THE EUROPEAN UNION

1. MECHANISMS TO COUNTER VAT FRAUD UNDER EU LAW AND THEIR IMPLEMENTATION IN EU COUNTRIES

1.1. Reverse Charge

Reverse charge – essence. The first recommended remedy to counter VAT fraud was the introduction of the so-called reverse charge mechanism for trade in sensitive goods between businesses (active VAT taxpayers). Reverse charge 'shifts' the obligation to report output VAT from the supplier to the purchaser. This reverses the basic principle, where the supplier declares output VAT on taxable sales. Under the reverse charge mechanism, the supplier invoices only the net amount (excluding VAT), and the purchaser declares the output VAT. Consequently, the supplier does not receive the VAT from the customer, eliminating the possibility of the supplier collecting VAT and then failing to remit it to the tax authorities. The purchaser accounts for the output VAT in their VAT return (JPK) and, assuming they have the right to deduct input VAT, also treats this VAT as input VAT. Therefore, for a purchaser who deducts input VAT, the VAT reporting becomes a purely administrative process.

Reverse charges – origins and evolution of the institution.

Reverse charge accounting already existed under the Sixth Directive,[119] although it applied to a narrow range of international supplies. EU countries wishing to implement the reverse charge in domestic transactions had to apply for approval under a derogation procedure (Article 27 of the Sixth Directive).

A key development regarding the scope of the reverse charge mechanism in EU countries occurred in 2006 with the adoption of Directive 2006/69/EC.[120] This directive granted individual EU countries the right to broaden the implementation of the reverse charge mechanism, allowing specific categories of domestic transactions between residents to be covered by this procedure, in addition to cross-border transactions. The Explanatory Memorandum to the draft Directive emphasised that

> 'Article 1(7) extends the use of an optional reverse charge mechanism for specified supplies made to taxable persons. These are in sectors of the economy which have proved particularly difficult for Member States to police, for example because of the nature of the industry or its structure. Often substantial revenue losses arise from taxable persons invoicing for supplies prior to disappearing without accounting for

[119] Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ EU. L. 1977, No. 145, p. 1, as amended).

[120] Council Directive 2006/69/EC of 24 July 2006 amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion or avoidance, and repealing certain Decisions granting derogations (OJ 2006 L. No. 221, p. 9).

> the VAT on the invoice, whilst at the same time the recipient legitimately exercises their right to deduct.'[121]

As a result, a fast-track route was introduced for Member States to obtain approval for derogations from the general EU VAT rules, which had previously been granted only on the basis of derogation decisions based on Article 27 of the Sixth Directive (now Article 395 of Directive[122]). Derogation requests submitted to the Commission before the provisions of Directive 2006/69/EC (also known as the 'Rationalisation Directive') came into force – concerning, inter alia, the supply of waste and steel – were repealed. These transactions are now covered by the general authorization regulated by Article 199 of Directive 2006/112/EC.[123]

Reverse charge – Non-resident supplier. Currently, within Directive 2006/112, the first provision to establish the reverse charge is Article 194. Under Article 194(1) of Directive 2006/112, when a taxable supply of goods or services is carried out by a taxable person who is not established in the Member State in which the VAT is due, Member States may stipulate that the person liable for payment of VAT is the recipient of the goods or services. Member States shall lay down the conditions for the application of paragraph 1 (Article 194(2) of Directive 2006/112). Furthermore, Article 196 of Directive 2006/112/EC states that VAT is payable by any taxable person or non-taxable legal person identified for VAT purposes, to whom services covered by Article 44[124] are supplied, if those services are carried out by a taxable person not established within the territory of that Member State.

It is worth pointing out at this point that a recently adopted project called *VAT in the Digital Age* (ViDA) proposes to amend Article 194 of Directive 2006/112 by extending the possible scope of application of reverse charge by Member States.[125]

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[121] Explanatory Memorandum to the Proposal for a Council Directive amending Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion and avoidance, and repealing certain Decisions granting derogations, Brussels, 16.3.2005, COM(2005) 89 final, https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:52005PC0089&from=EN [accessed: 5 July 2024].

[122] According to the first subparagraph of Article 395(1) of Directive 2006/112: The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

[123] B. Terra, J. Kajus, *Commentary on European VAT*, Amsterdam 2018, p. 3167.

[124] According to Article 44 of Directive 2006/112: The place of supply of services to a taxable person acting as such shall be the place where that taxable person has established his business. However, if those services are supplied to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such a fixed establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives the services has his permanent address or usually resides.

[125] 'In order to further minimise the need to register in a Member State where the taxation of a domestic B2B supply occurs, the modification in Article 194 renders mandatory for the Member States to accept the application of the reverse charge mechanism where a supplier, who is not established for VAT purposes in the Member State in which VAT is due supplies goods to a person who is identified for VAT in that Member State. This reform will ensure that, in such circumstances, the supplier who is not identified there, does not have to register in that Member State.' – Proposal for a Council Directive amending Directive 2006/112/EC as regards the provisions on VAT in the digital era, Brussels, 8.12.2022. COM(2022) 701 final, eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0701 [accessed: 5 July 2024].

Reverse charge – Domestic transactions. OECD countries that apply a domestic reverse charge mechanism typically limit its application to goods commonly targeted by organized crime groups for fictitious trading. This is frequently observed in trade involving consumer electronics (mobile phones, integrated circuit devices, game consoles, tablets, and laptops), cereals and industrial crops, raw metals and intermediates, gas and green electricity certificates, and the telecommunications industry. No OECD country applies a general reverse charge mechanism covering all domestic B2B transactions.[126]

National reverse charge mechanisms have been implemented for trade in selected goods by as many as 22 OECD countries that are also EU Member States. Reverse charge transactions are particularly common for the supply of CO_2 emission allowances (in all EU countries except Estonia, Latvia, Lithuania, and Poland[127]); trade in scrap metal and waste (in all EU countries except Belgium, Luxembourg and Poland[128]) and construction work (in all EU countries except Estonia, Luxembourg and Poland[129]). The national reverse charge is also applied in many EU countries for the supply of gold (14 EU countries); electronic devices such as laptops, chips or mobile phones (11 EU countries); the supply of gas and electricity to taxable intermediaries (10 EU countries).[130]

According to the current Article 199(1) of Directive 2006/112:
(1) Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:
(a) the supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property, as well as the handing over of construction works regarded as a supply of goods pursuant to Article 14(3);
(b) the supply of staff engaged in activities covered by point (a);
(c) the supply of immovable property, as referred to in Article 135(1)(j) and (k), where the supplier has opted for taxation of the supply pursuant to Article 137;
(d) the supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non-industrial waste, recyclable waste, part processed waste and certain goods and services, as listed in Annex VI;
(e) the supply of goods provided as security by one taxable person to another in execution of that security;
(f) the supply of goods following the cession of a reservation of ownership to an assignee and the exercising of this right by the assignee;
(g) the supply of immovable property sold by a judgment debtor in a compulsory sale procedure.

[126] OECD, *Consumption Tax Trends 2022*.

[127] Episodic reverse charge for exchange-traded gas, energy and CO_2 allowances introduced in 2023. The rules in this respect apply from 1 April 2023 to 28 February 2025, but are to be extended.

[128] Poland applies a split payment mechanism in this context.

[129] Ibid.

[130] OECD, *Consumption Tax Trends 2022*. Episodic reverse charge for exchange-traded gas, energy and CO_2 emission allowances introduced in Poland in 2023. The provisions in this respect are effective from 1 April 2023 until 28 February 2025.

(2) When applying the option provided for in paragraph 1, Member States may specify the supplies of goods and services covered, and the categories of suppliers or recipients to whom these measures may apply
(3) For the purposes of paragraph 1, Member States may take the following measures:
(a) provide that a taxable person who also carries out activities or transactions that are not considered to be taxable supplies of goods or services in accordance with Article 2 shall be regarded as a taxable person in respect of supplies received as referred to in paragraph 1 of this Article;
(b) provide that a non-taxable body governed by public law, shall be regarded as a taxable person in respect of supplies received as referred to in points (e), (f) and (g) of paragraph 1.
(4) Member States shall inform the VAT Committee of national legislative measures adopted pursuant to paragraph 1 in so far as these are not measures authorised by the Council prior to 13 August 2006 in accordance with Article 27(1) to (4) of Directive 77/388/EEC, and which are continued under paragraph 1 of this Article.

Optional temporary reverse charge – specific transactions. A characteristic feature of VAT mafias is the concentration of fictitious trade in specific sectors, such as electronics or metal. This is due, in part, to the fact that the object of the fictitious trade is a specific type of commodity, which requires the organisers of VAT fraud to establish contacts with entities already operating in that commodity market, who can then act as buffers. The European Commission has also observed this sectoral concentration of tax fraud. To further hinder tax evasion, another amendment to Directive 2006/112/EC was implemented, granting EU Member States the right to apply reverse charges to domestic trade in specific goods and services for a limited time (currently until 31 December 2026) (Article 199a of Directive 2006/112/EC).

With the introduction of the mechanism outlined to in Article 199a(1) of Directive 2006/112, Member States are required to notify the VAT Committee about the commencement of the mechanism's application and provide specific information. Additionally, Article 199b of Directive 2006/112/EC introduces the possibility for Member States to use a specialised 'quick reaction mechanism'. In response to a sudden and significant fraud that could cause substantial and irreparable financial losses to a Member State's budget, the state has the right to use an even faster procedure for implementing the reverse charge mechanism for certain supplies of goods and services.

Effectiveness of reverse charge – EC analysis. On 8 March 2018, the Commission presented a report[131] to the European Parliament and the Council on its assessment of the effectiveness of Articles 199a and 199b of Directive 2006/112/EC as tools to combat VAT fraud. The report emphasised that this is not a systemic solution for sealing the VAT system, but rather a measure with only temporary effects. As the Commission stated:

[131] Report from the Commission to the Council and the European Parliament on the effects of Articles 199a and 199b of Council Directive 2006/112/EC on the fight against fraud, COM/2018/0118 final, Brussels 8.3.2018, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2018%3A0118%3AFIN [accessed: 5 July 2024].

> 'A number of Member States pointed out that due to the introduction of the reverse charge mechanism, the missing trader fraud (MTIC) decreased significantly or disappeared completely in the defined sectors. (...) Some Member States pointed out that the reverse charge mechanism is not entirely fraud-proof, as it is open to other methods of VAT avoidance. At the same time, however, they indicated that it could be effective in minimising fraud in certain areas (...) A few stakeholders stressed that the reverse charge is effective only as a short-term measure but not as a long-term solution.'

Changing sectors – avoiding reverse charge. The Commission has noted the concentration of tax fraud in specific sectors. Because successful tax carousel operations require criminals to involve market players in different countries, they can easily 'adapt' to implemented tax sealing measures. This adaptation occurs in two main ways: 1) by shifting the place of extortion from countries where the reverse charge has already been implemented for a given good to those where the turnover of that good has not yet been 'sealed', and 2) by shifting their focus to related goods within the same industry, allowing the same traders who were previously engaged in extortion involving the now-reverse-charged good to continue operating within the same market, but with a different commodity. As the Commission states:

> 'A few Member States indicated that after the introduction of the reverse charge in the sectors of mobile phones, microprocessors, tablets, PCs and laptops, there was a shift of fraudulent activities to the range of similar products like cameras, play stations, monitors, printer cartridges or consumer electronic equipment and consumer electrical appliances. One Member State discovered fraud in the sector of flour, forage crops and vegetable oils which might be the effect of a shift due to the introduction of the reverse charge in the grains sector. (...) The same number of Member States identified the shift of fraud to other Member States after the introduction of the measure as the number of Member States who did not identify such shift.'[132]

The phenomenon of criminals flexibly transferring fictitious supplies between different types of electronic equipment was brought to the attention of the European Commission by, among others, the Latvian government. In the Implementing Decision authorising the country to implement the reverse charge for trade in further categories of electronic equipment, the EU Council pointed out that:

> 'According to the information provided by Latvia, VAT fraud increased in relation to the supply of game consoles following the introduction of the reverse charge mechanism for the supply of mobile phones, tablet PCs, laptops and integrated circuit devices. Game consoles are particularly susceptible to VAT fraud as they are relatively small in size, have a relatively high value and have a well-developed market on the internet.'[133] Therefore, the Latvian authorities applied for and obtained European Commission approval in 2018 to apply the reverse charge to gaming consoles.

[132] Ibid.

[133] EU Council Implementing Decision (EU) 2018/457 of 13 March 2018 authorising the Republic of Latvia to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax, OJEU 20.3.2018, L 77/14; https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018D0457 [accessed: 5 July 2024].

The scale of fictitious trading is evidenced by the number of Latvian companies involved at that time. In its request to the EU Council, the Latvian government noted, among other things, that

> '[in] 2017, 14 shell companies were found to be operating in the gaming console supply sector, representing 6.4% of all companies in the sector. In 2016, of the 219 VAT-registered taxpayers operating in the gaming console supply sector, eight declared VAT as input tax on transactions with other taxpayers classified as shell companies (3.7% of the total number of persons registered for VAT purposes).'[134]

A similar phenomenon has been observed in Lithuania, another Baltic country. As the EU Council's implementing decision on extending the application of the reverse charge mechanism in that country indicates, 'VAT fraud has been detected [there] in the sector of electronic goods such as laptops, mobile phones, tablets, and hard drives. These goods are purchased from other Member States, and before they are supplied to retailers or directly to consumers, numerous transactions take place between missing traders who do not remit VAT to the Treasury. Audits carried out in Lithuania have shown that in 2016-2017 approximately €6 million in tax may not have been paid on electronic goods, significantly reducing state budget revenue.'[135] Consequently, Lithuania applied to EU authorities for approval to apply the reverse charge mechanism to hard drives (HDDs). The Lithuanian authorities emphasized that 'the experience of other Member States demonstrates that after the introduction of the reverse charge mechanism for the listed electronic goods covered by Article 199a of the VAT Directive, other electronic goods become subject to fraud' – including, for example, hard drives.

The effect of applying the reverse charge mechanism on a limited, case-by-case basis is not only to shift fictitious trade from one commodity to another (e.g., from greenhouse gas emission certificates to gas and electricity, from mobile phones to tablets, or from cereals to metals), but also to displace fraudulent activity to EU Member States that have not yet implemented analogous tax sealing measures. As the EC pointed out in its March 2018 report to the EU Council and the European Parliament,

> '[t]here is a likelihood of fraud shifting to a Member State that has not introduced a reverse charge mechanism, as fraudsters look for new opportunities to commit fraud. Some Member States have pointed out that the risk of fraud has emerged on their territory after the introduction of reverse charge in a neighbouring Member State.'[136]

For example, the application of the reverse charge mechanism to certain cereals in Romania led to an increase in fraud involving the same commodity in Hungary. The

[134] Proposal for a Council Implementing Decision authorising the Republic of Latvia to introduce a special measure derogating from Article 193 of Council Directive 2006/112/EC on the common system of value added tax, Brussels, 9.2.2018, COM(2018) 59 final, 2018/0024(NLE), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015PC0560 [accessed: 5 July 2024].

[135] Proposal for a Council Implementing Decision authorising Lithuania to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax, Brussels, 21.1.2019, COM(2019) 9 final, https://secure.ipex.eu/IPEXL-WEB/document/COM-2019-9 [accessed: 5 July 2024].

[136] Report from the Commission to the Council and the European Parliament on the effects of Articles 199a and 199b of Council Directive 2006/112/EC on the fight against fraud, COM/2018/0118 final, Brussels 8.3.2018, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2018%3A0118%3AFIN [accessed: 5 July 2024].

introduction of the reverse charge for greenhouse gas emissions trading in France resulted in a shift of this fraud to Belgium, and the application of the reverse charge to mobile phone trading in the UK led to a shift of criminal activity to the Netherlands and Germany.[137]

Rejection of the GRCM concept by the EC in 2006. One way of addressing the problem of the spotty effectiveness of the application of the reverse *charge mechanism* to only selected categories of goods and services was the idea of introducing a system of *generalised reverse* charge (GRCM). This would apply not to the turnover of a particular good, but to the entire VAT settlements of all or certain categories of VAT taxpayers operating in a particular country. Austria (in 2005) and Germany (in 2006) respectively requested the Commission's approval to introduce this scheme as a derogation from the EU VAT system based on Article 27 of the Sixth Directive (now Article 395 of Directive 2006/112). Austria requested the introduction of a reverse charge for all business-to-business (B2B) supplies of goods or services where the invoice value exceeded €10,000. Where the value of a single invoice did not exceed €10,000, *the reverse* charge would apply when the deliveries to the customer exceeded €40,000 in the accounting period. In its proposal, the Austrian government emphasized the success of the reverse charge mechanism in the construction sector and argued that its general application would effectively counter 'missing trader' fraud. Germany, conversely, intended to introduce a reverse charge for all business-to-business (B2B) supplies of goods or services where the invoice value exceeded €5,000.[138] At that time, Austria estimated total losses due to VAT non-payment fraud at 4.4% of total VAT revenue but did not provide a precise estimate of the portion attributable to 'missing traders'. Germany, in its request, indicated that it lost 2% of its VAT revenue annually due to 'missing trader' fraud.

In rejecting the derogation requests from Germany and Austria, the Commission justified its decision by citing the disproportionate increase in obligations imposed on taxpayers, particularly concerning the verification of their buyers' status. It also pointed to the negative effect of implementing a generalised reverse charge system on the accumulation of VAT at the retailer level (the entity selling goods and services to consumers), which increases the profitability of shifting part of their activities to the grey market (i.e., not registering them and not paying VAT). The Commission emphasized that

> '[w]e expect new forms and methods of fraud to emerge following the introduction of a more widespread reverse charge system. The transfer of tax liability will make the last trader in the supply chain most interested in disappearing. It should also be made clear that the reverse charge mechanism does not provide a solution to the problem of the 'shadow economy' (i.e., not invoiced sales), which remains outside the official

[137] Commission Staff Working Document Impact Assessment, Generalised reverse charge mechanism Accompanying the document Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of the generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold, Brussels, 21.12.2016, SWD(2016) 457 final, https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:52016SC0457#footnoteref39 = [accessed: 5 July 2024].

[138] Communication from the Commission to the Council in accordance with Article 27(3) of Directive 77/388/EEC, Brussels, 19.7.2006, COM(2006) 404 final, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0404:FIN:EN:PDF [accessed: 5 July 2024].

> turnover. For the taxable person who has to pay VAT at the end of the supply chain, the incentive to use supplies from the shadow economy will increase, as he will be charged all the VAT and not just the part related to the 'value added' attributable to him.[139]With the increasing scale of carousel fraud and the resulting shortfall in VAT payments to national budgets, affected Member States have increasingly raised the issue of allowing individual countries to implement a universal reverse charge. The project to introduce a general reverse charge in domestic transactions was discussed within the European Union in 2008-2009 and again in October 2015. The EC rejected a proposal made by four Member States: Austria, Bulgaria, the Czech Republic, and Slovakia. However, Austria and the Czech Republic persisted in their efforts to obtain approval for the temporary application of the general reverse charge in domestic trade.[140] Finally, due to strong pressure from EU countries, on 21 December 2016, the European Commission presented a draft amendment to Directive 2006/112 to allow Member States to temporarily apply the general reverse charge to domestic transactions.[141]

Introduction of the GRCM option – change of approach in 2018. Finally, Directive 2018/2057 introduced the possibility for EU countries to seek European Commission approval to implement VAT settlement on a general reverse charge basis within their territory.[142] According to Article 199c(1) of Directive 2006/112:

> '(...) a Member State may, until 30 June 2022, introduce a generalised reverse charge mechanism ('GRCM') on non-cross-border supplies, providing that the person liable for payment of VAT is the taxable person to whom all supplies of goods and services are made above a threshold of €17,500 per transaction.'

Applying the GRCM mechanism was contingent on meeting: 1) the formal requirements indicated in Article 199c of Directive 2006/112, and 2) criteria related to the size of the VAT gap in the country concerned and the scale of the carousel fraud observed there. The preamble to the said Directive explicitly states that

> 'In order to limit the risk of fraud shifting between Member States, Member States that fulfil certain criteria as regards their fraud level, in particular in relation to carousel fraud, and that are able to establish that other control measures are not sufficient to combat that fraud, should be allowed to use the GRCM.'

The provision of Article 199c of Directive 2006/112 has not been amended, with the result that the Directive now (i.e. after 30 June 2022) no longer provides for the possibility of using GRCM. The Czech Republic was the first EU country to request European Commission approval to apply a general VAT reverse charge mechanism, receiving such approval in November 2019.[143] Ultimately, however, the Czech Republic did not

[139] Ibid.

[140] Outcome of the Council meeting; 3442nd Council meeting Economic and Financial Affairs Brussels, 15 January 2016, https://www.consilium.europa.eu/media/22958/st05213en16-v2.pdf [accessed: 5 July 2024].

[141] T. Michalik, *Jak Komisja Europejska i kraje europejskie walczą z oszustwami VAT*, Zeszyty mBank – CASE No. 147/2017, http://www.case-research.eu/uploads/zalacznik/2017-06-27/How_the_European_Commission_and_European_countries_fight_VAT_fraud.pdf [accessed: 5 July 2024].

[142] Council Directive (EU) 2018/2057 of 20 December 2018 amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of the general reverse charge mechanism in relation to supplies of goods and services above a certain threshold (OJ EU. L. 2018 No. 329, p. 3).

[143] Council Implementing Decision (EU) 2019/1903 of 8 November 2019 authorising the Czech Republic to apply a general reverse charge mechanism derogating from Article 193 of Directive 2006/112/EC, Official Journal of the EU of 14.11.2019, L 293/101 (not in force) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:293:FULL [accessed: 5 July 2024].

introduce the GRCM, opting, like other EU countries, to continue implementing reverse charges on a sector-by-sector basis, targeting those most vulnerable to tax fraud.

GRCM evaluation. The GRCM mechanism is viewed with skepticism in academic literature. It is emphasised that its introduction imposes additional administrative burdens on taxpayers, who must verify the recipient's status (in B2B transactions) and adhere to thresholds. Crucially, the supplier must correctly determine the customer's status, as the *reverse charge* only applies to B2B relationships. Consequently, issuing invoices without VAT to a consumer (a non-taxable person) is prohibited and results in tax arrears and further consequences, including fiscal penalties. Moreover, if the application of the reverse charge is subject to quota thresholds, there is a risk of these thresholds being set incorrectly. Furthermore, it is argued that this system effectively transforms VAT into a *de facto* tax similar to the general retail sales tax (RST), contradicting the fundamental principle of a value-added tax.[144] Under this system, the VAT invoice becomes a 'net' invoice on which the taxable person in a B2B relationship does not report any tax at all. The purchaser, with a full right of input tax deduction, also does not effectively pay the VAT but only reports it 'administratively' in their return (output VAT = input VAT). While literature highlights the disadvantage of GRCM in increasing the profitability of moving part of retailers' businesses – where output VAT will eventually appear on the invoice – into the shadow economy, the potential effectiveness of GRCM in reducing the profitability of 'missing trader' fraud is generally acknowledged. However, there is concern that GRCM, by eliminating or reducing one type of fraud, will trigger or shift VAT fraud to other sales channels. The potential threat of VAT fraud shifting from the Czech Republic to Poland as a result of the planned implementation of GRCM in the Czech Republic has also been analyzed by the Polish Ministry of Finance.[145]

1.2. Joint and Several Liability

Joint and several liability in EU countries. The purchaser*'s joint and several liability* for the VAT of the supplier (*third party joint and several liability*) is the second of the optional mechanisms listed in the VAT Directive, the implementation of which can help Member States to combat tax fraud (map 1). Under Article 205 of Directive 2006/112, Member States may, subject to certain exceptions, stipulate that a person other than the person liable for the payment of VAT will be jointly and severally liable with that person for the payment of the tax. The vast majority of EU countries (as many as 20 out of 27) have introduced this solution for domestic transactions. The only exceptions are Austria, Cyprus, Estonia, Finland, Sweden, Latvia and Lithuania.[146]

[144] R. de la Feria, *The New VAT General Reverse-Charge Mechanism*, EC Tax Review, 2019, no. 4.

[145] DGP, *W efekcie uszczelnienia VAT maleje ryzyko związane z odwróconym VAT w Czechach,* https://podatki.gazetaprawna.pl/artykuly/1398578,uszczelnienie-vat-odwrocony-vat-w-czechach.html [accessed: 5 July 2024].

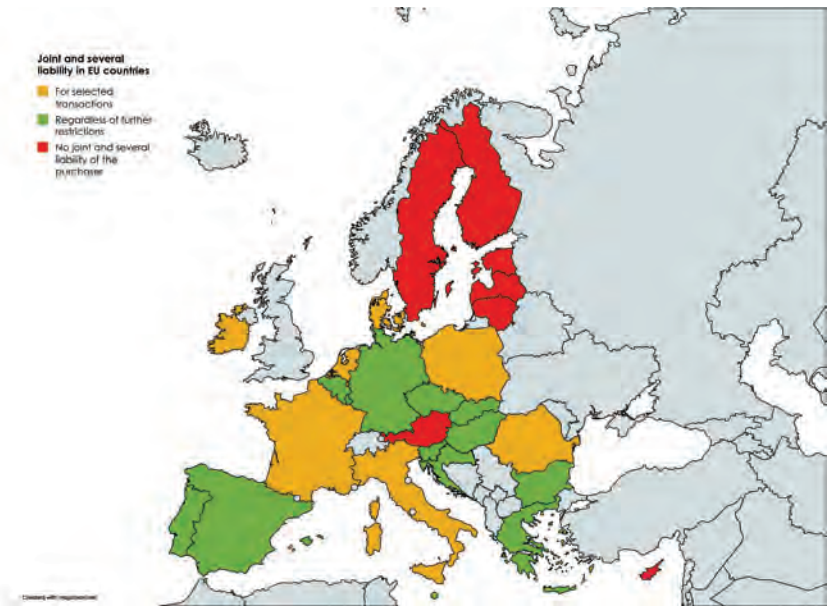
[146] In Hungary, warehouse operators are co-responsible, together with the owner of the stored goods, for any VAT on goods missing from the warehouse. F. Annacondia*, VAT Options Exercised by the Member States,* IBFD Amsterdam 2023.

The countries that have introduced joint and several liability can be divided according to its scope:[147]

1) Countries where joint and several liability applies to any type of transaction irrespective of further restrictions related, inter alia, to the purchaser's bad faith (lack of due diligence) and the amount of the transaction, i.e. Belgium, Bulgaria, Croatia, Czech Republic, Germany, Greece, Hungary, Luxembourg, Malta, Portugal, Slovakia, Slovenia and Spain.

2) Countries that apply joint and several liability only to selected types of transactions: Denmark (supply of goods), France (supply of goods),[148] the Netherlands (supply of electronic equipment), Ireland,[149] Poland,[150] Romania (tax warehouse transactions), and Italy.[151]

In 2018, the UK,[152] and in 2019, Germany,[153] extended joint and several liability to include online platforms in certain cases.



Map 1: Joint and several liability in EU countries

Source: compiled from IBFD data.

[147] Information on the legal systems of other countries obtained through IOTA and per: F. Annacondia, *VAT Options Exercised by the Member States,* IBFD Amsterdam 2023.

[148] In France, the scope of third-party liability is for all transactions that result in criminal liability.

[149] Supply of goods and services by providers of access to mobile trading platforms, organisers and entertainers' services.

[150] Originally, the joint and several liability applied to goods listed in Appendix 13 uVAT. Since November 2019, it has applied to goods and services listed in the new Appendix 15 – those subject to split payment.

[151] Especially telecommunications and computer equipment, vehicles, and tyres.

[152] HM Revenue & Customs, *Guidance: Check When Online Marketplaces Must Carry Out VAT Checks on Overseas Sellers*, https://www.gov.uk/guidance/vat-online-marketplace-seller-checks [accessed: 5 July 2024].

[153] H.M. Grambeck, *Germany – Electronic Marketplaces May Be Held Liable for German VAT – New Rules Entered into Effect on 1 January 2019*, Issue: International VAT Monitor, 2019 (Volume 30), No. 1.

Joint and several liability – VAT carousels. Some EU countries apply joint and several liability particularly widely. The United Kingdom was one such example, for which joint and several liability was an important tool in the fight against carousel crimes. In 2006, the UK estimated that the activities of tax criminals were responsible for a drop in UK government revenue of more than £1.5 billion annually. The UK legislation which initiated the dispute before the CJEU in case C-384/04[154] stipulated that joint and several liability applied if the purchaser, at the time of supply, knew or had reasonable grounds to believe that all or part of the VAT on that transaction or on any earlier or subsequent supply of those goods had not been or would not be paid.[155] The revenue authorities could also require a security deposit – both as security for future receivables in respect of the supplies made and as security for the amount of tax to be refunded (in cases of input tax exceeding output tax).[156] In Case C-384/04,the CJEU stated that it is compatible with EU law that to enact legislation '(…) such as that in issue in the main proceedings, which provides that a taxable person, to whom a supply of goods or services has been made and who knew, or had reasonable grounds to suspect, that some or all of the value added tax payable in respect of that supply, or of any previous or subsequent supply, would go unpaid, may be made jointly and severally liable, with the person who is liable, for payment of that tax. Such legislation must, however, comply with the general principles of law which form part of the Community legal order and which include, in particular, the principles of legal certainty and proportionality."[157]

1.3. Tax Information Exchange Between EU Countries – Selected Initiatives

Scope of exchange of information in the field of VAT – Regulation 904/2010. The legal basis for the exchange of tax information between EU countries in the field of VAT is primarily Regulation 904/2010.[158] It provides for many forms of cooperation between EU tax administrations, including exchange of information on request (Chapter II), exchange of information without prior request (Chapter III), and a system of *joint audits*

[154] CJEU judgment of 11.5.2006 in C-384/04 Commissioners of Customs & Excise and Attorney General v Federation of Technological Industries and Others, ECLI:EU:C:2006:309.

[155] Legislation on joint and several liability can be found in section 77A of the Value Added Tax Act 1994; HMRC, *Joint and several liability for unpaid VAT (VAT Notice 726)*, https://www.gov.uk/guidance/joint-and-several-liability-for-unpaid-vat-notice-726 [accessed: 5 July 2024].

[156] K. Sachs, R. Namysłowski (eds.), *Dyrektywa VAT. Komentarz*, Warsaw 2008, pp. 890/891. Currently: '(...) at the time of the supply the person knew or had reasonable grounds to suspect that some or all of the VAT payable in respect of that supply, or on any previous or subsequent supply of those goods, would go unpaid'. Section 77A, VAT Act 1994; https://www.gov.uk/guidance/joint-and-several-liability-for-unpaid-vat-notice-726#extracts-from-the-value-added-tax-act-1994 [accessed: 5 July 2024].

[157] Judgment of the CJEU of 11.5.2006 in Case C- C-384/04, Commissioners of Customs & Excise and Attorney General v Federation of Technological Industries and Others, EU:C:2006:309

[158] Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ EU. L. 2010, No. 268, p. 1, as amended).

(Chapter VIII). Chapter V deals with storage and exchange of information, providing the basis for accessing data from recapitulative statements. Regulation 904/2010 has been amended several times. Notably, at the end of 2018, changes were introduced to improve administrative cooperation including within Eurofisc, and a chapter was added on attendance at administrative offices and during joint administrative proceedings.[159] Significant changes have also been made to the *CESOP* (Central Electronic System of Payment information).[160] Important amendments to Regulation 904/2010 are also provided for in the ViDA package.[161] Among the implementing regulations of Regulation 904/2010, Commission Regulation No 79/2012 of 31 January 2012 is particularly relevant for the automatic exchange of information.[162] EU regulations do not require transposition into national law; they are directly applicable and binding in their entirety. National regulations in this respect are only of an ordering and clarifying technical and organisational nature.[163]

VIES system – automatic exchange and its drawbacks. Regulation 904/2010 obliges Member States to ensure that persons involved in intra-Community transactions can verify the validity of the VAT identification number of their counterparties from all EU countries. This provision therefore provides taxpayers with a tool to pre-examine the fiscal reliability of their partners. This is particularly important because the nature and validity of a counterparty's VAT-EU number also determines the right to apply the 0 % rate/exemption on ICS. The system for obtaining this information is called *VAT Information Exchange System* (VIES).

Example 1:

A German taxpayer verifying the validity of a VAT-EU number on the EC website (https://ec.europa.eu/taxation_customs/vies/#/vat-validation) in the VIES system will also confirm the address details and name of the Polish taxpayer. Below is an example of verification for the number 7740001454.

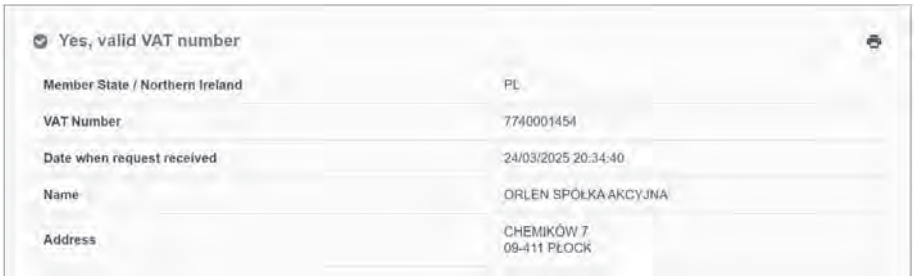
[159] Council Regulation (EU) 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax (OJ EU. L. 2018 No 259, p. 1).

[160] Commission Implementing Regulation (EU) 2022/1504 of 6 April 2022 laying down detailed rules for the application of Council Regulation (EU) No 904/2010 as regards the creation of a Central Electronic System of Payment information (CESOP) to combat VAT fraud (OJ EU. L. 2022, No. 235, p. 19).

[161] Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the administrative cooperation arrangements in the field of VAT necessary in the digital era, COM/2022/703 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0703&amp%3Bqid=1674472194063 [accessed: 5 July 2024].

[162] Commission Implementing Regulation (EU) No 79/2012 of 31 January 2012 laying down detailed rules for implementing certain provisions of Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax (recast) (OJ EU. L. 2012, No. 29, p. 13, as amended).

[163] Order of the Minister of Finance of 10 February 2012 on the designation of units responsible for the supervision and exchange of information on VAT and the method of implementing the exchange of information on VAT (Official Journal MF 2012, item 7).


Yes, valid VAT number

Member State / Northern Ireland	PL
VAT Number	7740001454
Date when request received	24/03/2025 20:34:40
Name	ORLEN SPÓŁKA AKCYJNA
Address	CHEMIKÓW 7 09-411 PŁOCK

The Polish taxpayer, on the other hand, will only verify the activity of the German taxpayer's VAT-EU number without receiving information about the number's holder or the customer's address.


Yes, valid VAT number

Member State / Northern Ireland	DE
VAT Number	813659869
Date when request received	24/03/2025 20:36:52
Name	---
Address	---

The role of the VIES database is limited by the non-uniform scope of data provided by Member States. The level of detail varies depending on the taxpayer's country of registration. The use of the VIES database is also hampered by the practice of some countries, such as Germany and the Czech Republic, of retroactively deregistering taxpayers from the database.[164]

Exchange of information on request. Detailed data on the effectiveness of the procedure of exchange of information on request is presented in the NIK (Supreme Audit Office) report of 7 June 2019. As indicated by NIK, within the framework of VAT information exchange in the period 2007-2018 (Q1-Q3), the Polish side sent 62,125 requests for information to the tax administrations of Member States. The majority of these requests were addressed to Germany, the Czech Republic, Slovakia and the United Kingdom. As part of the exchange of VAT information between 2007 and 2018 (Q1-Q3), Poland received 28,390 requests for information from other EU Member States, with the largest number originating from Germany, the Czech Republic, Slovakia and Latvia. Requests received from these four countries accounted for 61.8% of all requests received in this period.[165]

[164] See, inter alia, M. Szulc, *Bruksela nie odpowiada za błędy w wyszukiwarce VIES,* https://podatki.gazetaprawna.pl/artykuly/1046223,bruksela-nie-odpowiada-za-bledy-w-wyszukiwarce-vies.html [accessed: 5 July 2024]. On the impact of outdated data in VIES on a taxpayer's right to benefit from the 0% VAT rate, inter alia, Judgment of the Voivodship Administrative Court in Opole of 14 October 2009, case ref. no. I SA/Op 282/09 (final).

[165] NIK Report, *Informacja o wynikach kontroli, Nadzór Ministra Finansów nad poborem podatku od towarów i usług*, Warsaw 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 5 July 2024].

Between 2014 and 2016, Poland was among the countries with a high share of late responses (i.e., responses provided after the basic deadline). During this period, the average share of delayed responses for EU Member States was 39.9% in 2014, 37.3% in 2015, and 33.4% in 2016. Poland's corresponding figures were 36.9%, 38.2%, and 40.9%. Several other countries also had very high or high shares of responses given after three months during this time: Greece (75.2% in 2014, 74.6% in 2015, and 62.0% in 2016); Italy (62.8%, 66.2%, and 62.9%, respectively); Portugal (45.8%, 47.0%, and 64.4%, respectively); Slovakia (80.6%, 68.0%, and 56.6%, respectively); Hungary (77.5%, 45.0%, and 34.5%, respectively); Romania (68.4%, 57.1%, and 42.6%, respectively); Germany (30.5%, 36.5%, and 36.9%, respectively); France (34.9%, 34.1%, and 36.0%, respectively).[166]

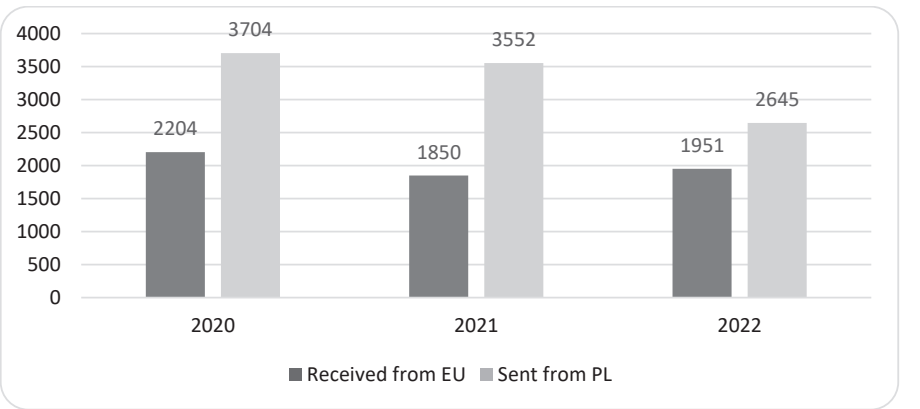


Chart 7: Exchange of information on request between 2020 and 2022

Source: IAS Poznań (2023).[167]

Both Polish and EU audit bodies point to both the potential and drawbacks of the current practice of applying the provisions on exchange of information on request. NIK points out that '[t]he problem of efficient response is present in many EU countries, although speed in receiving information on the reliability of settlements of intra-Community transactions is important for the effective identification and combating of tax fraud.'[168] The European Court of Auditors (ECA) shares a similar view, emphasizing in its report that 'electronic exchange of information upon request is a useful tool appreciated by Member States. However, there is no data on its effectiveness from the point of view of VAT collection. Moreover, late replies reduce the efficiency of VAT collection.'[169]

[166] Ibid.

[167] *Wymiana informacji o VAT w latach 2020-2022,* IAS Poznań 2023 (materiały niepublikowane) quoted in A. Krysztofiak, *Międzynarodowa pomoc administracyjna państw członkowskich UE w zapobieganiu i zwalczaniu oszustw związanych z VAT,* [in:] E. Małecka-Ziembińska (ed.), *Oszustwa związane z VAT*..., p. 178.

[168] NIK Report, *Informacja o wynikach kontroli, Nadzór Ministra Finansów nad poborem podatku od towarów i usług*, Warsaw 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 5 July 2024].

[169] European Court of Auditors, Special Report No 24/2015: *Combating intra-Community VAT fraud: further action required*, https://www.eca.europa.eu/en/publications?did=35308 [accessed: 5 July 2024].

Exchange of information without prior request (spontaneous). As the NIK report indicated above informs, between 2007 and the third quarter of 2018, the Polish administration, through spontaneous exchange, forwarded 6,613 requests to other Member States – primarily to Germany, the UK, the Netherlands, and France. This spontaneous information primarily concerned cases in which entities from EU countries declared intra-Community supplies, while the corresponding Polish entities either did not declare or denied purchasing the goods or services.[170]

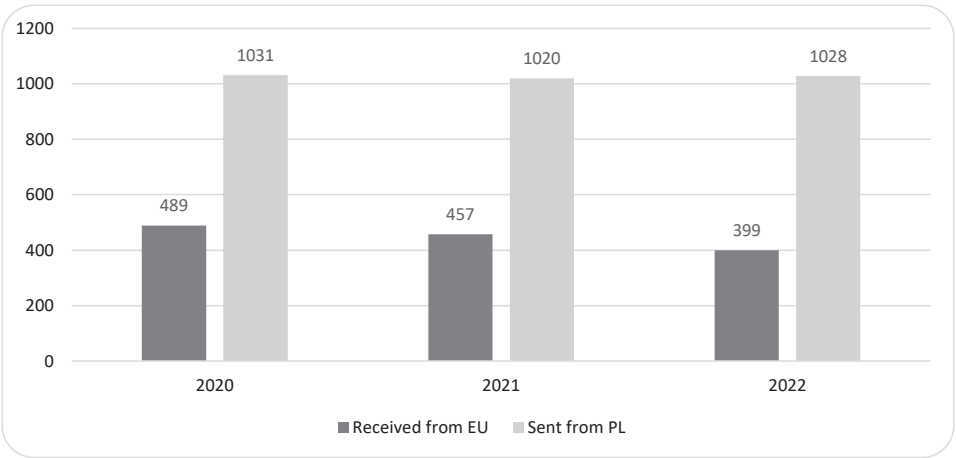


Chart 8: Spontaneous exchange of information between 2020 and 2022

Source: IAS Poznań (2023).[171]

Simultaneous controls. Between 2007 and 2018, Poland participated in 60 multilateral audits. By 30 September 2018, 41 of these audits had been completed, resulting in EU Member State tax administrations assessing tax liabilities of €1,115.3 million. This total includes €395.4 million in liabilities assessed by Polish tax administrations against Polish taxpayers as a result of these audits. Poland initiated four simultaneous controls concerning the turnover of mobile phones, scrap metal, steel products, and the recycling industry. All controls initiated by Poland were completed, with financial effects for Polish taxpayers amounting to €254.0 million (one control was completed in 2011 and three more in 2014).[172] The first simultaneous control was initiated by the Fiscal Control Office in Gdańsk, which investigated the accuracy of intra-Community mobile phone trade settlements during the audit. Seven other countries participated in the audit (Germany, Belgium, the Czech Republic, Denmark, Hungary, Slovakia, and the Netherlands). The audit lasted from August 2008 to December 2011, resulting in adjustments of €52.1

[170] NIK Report, *Nadzór Ministra Finansów nad poborem podatku od towarów i usług*, Warsaw, August 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 5 July 2024].

[171] *Wymiana informacji o VAT w latach 2020-2022*, IAS Poznań 2023 (materiały niepublikowane); quoted in A. Krysztofiak, *Międzynarodowa pomoc administracyjna państw członkowskich UE w zapobieganiu i zwalczaniu oszustw związanych z VAT,* [in:] E. Małecka-Ziembińska (ed.), *Oszustwa związane z VAT*..., p. 172.

[172] Ibid.

million, of which €44.3 million was to be paid by Polish taxpayers.[173] The Czech Republic is particularly active in simultaneous controls, being a key participant in the Eurofisc network.[174] (The network itself is discussed below). According to Czech authorities, while administrative cooperation in the field of VAT is undeniably important, it does not fully prevent fraud and is not useful for detecting purely domestic fraud.[175]

Evaluation of information exchange. The literature indicates that many requests for information are not answered promptly and that VAT Information Exchange System (VIES) data are not always available. Some Member States routinely allocate VAT numbers without adequate risk-based controls, and these numbers are often removed from the database with significant delays. Furthermore, some EU countries, such as Germany, provide the VAT numbers themselves in the EU database but do not allow verification of the specific taxpayer to whom each number is assigned. As the literature rightly emphasizes, regardless of the sophistication and comprehensiveness of the legal framework, the effectiveness of administrative cooperation ultimately depends on the willingness of individual Member States to dedicate sufficient time and resources to assisting other countries.[176]

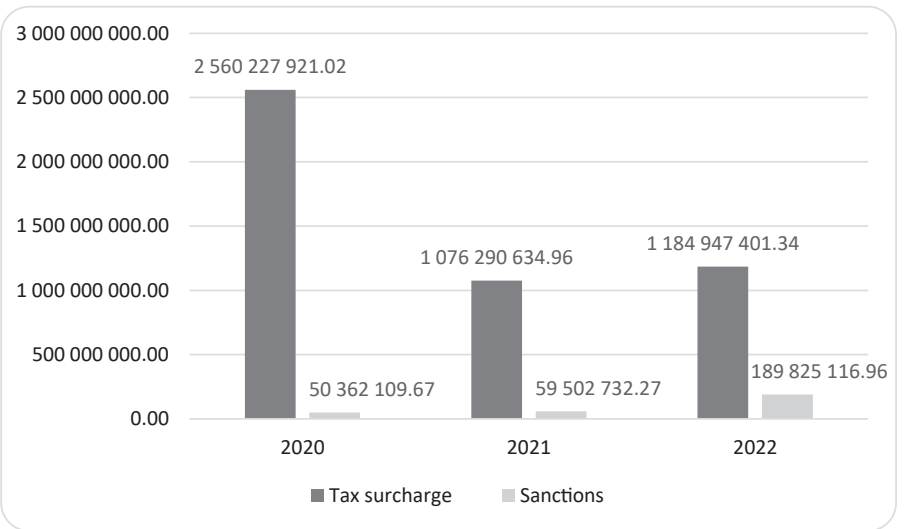


Chart 9: Financial effect of VAT information exchange in Poland [in PLN]

Source: IAS Poznań (2023).[177]

[173] Ibid.

[174] Eurofisc's work is particularly concerned with intra-Community 'missing trader' fraud, as well as customs procedures, e-commerce and transaction network analysis tools.

[175] Proposal for a Council Implementing Decision authorising the Czech Republic to apply a generalised reverse charge mechanism derogating from Article 193 of Directive 2006/112/EC, COM/2019/283 final, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2019:0283:FIN [accessed: 5 July 2024].

[176] M. Lamensch, *European Union – Trust: A Sustainable Option for the Future of the EU VAT System?*, Issue: International VAT Monitor, 2019 (Volume 30), No. 2.

[177] *Wymiana informacji o VAT w latach 2020-2022,* IAS Poznań 2023 (materiały niepublikowane); quoted in A. Krysztofiak, *Międzynarodowa pomoc administracyjna państw członkowskich UE w zapobiega-*

CESOP.

In December 2018, the European Commission, recognising the need to strengthen cooperation on the exchange of information between Member States' tax administrations to more effectively detect and eliminate VAT fraud, presented a package of proposals (drafts)[178] to amend the VAT Directive and Council Regulation (EU) No 904/2010,[179] which provided for the creation of the Central Electronic System of Payment Information (CESOP), to which certain information obtained from payment service providers in the EU will be transmitted via a standardised (EU-wide) electronic form. This single standard for information transmission ensures a more efficient flow of data within the EU and reduces burdens and costs for both tax administrations and the entities subject to this obligation. The EC has proposed that the solutions included in this legislative package take effect from 1 January 2022.

Ultimately, the scope of mandatory reporting was defined by the provisions of Directive 2020/284[180] of 18 February 2020 amending Directive 2006/112/EC as regards the introduction of certain requirements for payment service providers, which was implemented into the Polish legal order by the Act of 14 April 2023 amending the Act on Value Added Tax and certain other acts.[181] As a result, from 1 January 2024, payment service providers have new obligations to keep and make available records of selected cross-border transactions. These arise if the following conditions are cumulatively met:[182]

1) Payments made by a payment service provider will be cross-border payments, i.e. funds will be transferred from a payer located in a Member State (a European Union (EU) State of the European Economic Area (EEA)) to a payee located in another Member State or outside the EU or EEA;

2) The payment service provider makes more than 25 payments in a calendar quarter within a Member State to the same payee.

The obligation to keep and make available records applies to:

1) The payment service provider of the payee – if located in a Member State;

2) The payer's payment service provider – if none of the payee's payment service providers is located in a Member State (non-EU payment).

Payment service providers must retain these records for three years from the end of the fiscal year in which the payment occurred**.**

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niu i zwalczaniu oszustw związanych z VAT, [in:] E. Małecka-Ziembińska (ed.), *Oszustwa związane z VAT*..., p. 172.

[178] Proposal for a Council Directive amending Directive 2006/112/EC as regards the introduction of certain requirements for payment service providers (COM(2018) 812 final), eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:52018PC0812&from=HU; Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures enhancing administrative cooperation to combat VAT fraud (COM(2018) 813 final, https://orka.sejm.gov.pl/SUE8.nsf/Pliki-zal/COM%282018%29_813_1_PL_ACT_part1_v3.pdf/%24File/COM%282018%29_813_1_PL_ACT_part1_v3.pdf.

[179] Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1, as amended).

[180] Council Directive (EU) 2020/284 of 18 February 2020 amending Directive 2006/112/EC as regards the introduction of certain requirements for payment service providers (OJ EU. L. 2020 No. 62, p. 7).

[181] OJ. 2023, item 996.

[182] For details on this topic, see, inter alia, Ministerstwo Finansów, *Dostawcy usług płatniczych*, https://www.gov.pl/web/kas/dostawcy-uslug-platniczych [accessed: 5 July 2024].

The data collected is transferred to CESOP on a quarterly basis. The first transfer of records with cross-border payment data is for the period from January to March 2024 and was completed by the end of April 2024. On 10 May 2024, the collected data was transmitted to CESOP for the first time. Subsequent records are to be transmitted on a quarterly basis by the end of the month following the end of the quarter, and each subsequent transmission to CESOP will take place for the quarterly period by the 10th day of the second month following the end of the quarter to which the information relates.[183]

Eurofisc. Established in 2010, Eurofisc is an initiative designed to facilitate the exchange of tax information relating to VAT fraud, effectively providing Member States with an 'early warning system'. The Eurofisc network enables designated central liaison offices – specific organisational units within national tax/tax administrations – to exchange information to combat VAT fraud. Eurofisc operates across five key areas of action (see box below). While all EU countries participate in Eurofisc, they can choose the extent of their involvement in specific activities.[184]

Table 2: EUROFISC cooperation areas

Working field I: MTIC fraud/carousel fraud: covering all provisions relating to MTIC fraud/carousel fraud and fraud that does not fall within another working area.
Working field II: Cars, boats and planes
Working field III: CP42 fraud
Working field IV: VAT Observatory: identifies and analyses new threats, trends and developments in fraud; does not move to exchange data on specific traders.
Working field V: E-commerce

Source: own elaboration.

Poland and Eurofisc. As a result of operating within Eurofisc, Poland receives information on suspicious Polish entities from other countries and sends analogous alerts to other EU countries. Between 2011 and 2018, the Polish administration received 20,900 signals (peaking at 4,500 in 2013 and 4,000 in 2014). During this period, it sent 16,600 warnings via the *Eurofisc* network to other countries (with the highest number, 4,400, sent in 2016).[185]

ECA evaluation. In 2015. The European Court of Auditors identified the following weaknesses of Eurofisc: (i) insufficient feedback; (ii) the exchange of information is not

[183] Ministerstwo Finansów, *Dostawcy usług płatniczych*, https://www.gov.pl/web/kas/dostawcy-uslug-platniczych, https://www.gov.pl/web/kas/dostawcy-uslug-platniczych [accessed: 5 July 2024].

[184] M. Lamensch, E. Ceci, *VAT fraud: economic impact, challenges and policy issues*, Study Requested by the TAX3 Committee, Brussels 2018, http://www.europarl.europa.eu/cmsdata/156408/VAT%20Fraud%20Study%20publication.pdf [accessed: 5 July 2024].

[185] NIK, *Nadzór Ministra Finansów nad poborem podatku od towarów i usług,* Warsaw, August 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 5 July 2024].

always well targeted (iii) not all countries participate in all Eurofisc working areas, (iv) ineffective information transmission due to varying formats, (v) the flow and exchange of information is too slow.[186] Nevertheless, Eurofisc and especially the TNA is considered the most promising form of effective cooperation in combating VAT fraud.[187]

Increasing the efficiency of EUROFISC – Transactional Network Analysis (TNA). In 2019. Eurofisc has started using an electronic system – the Transactional Network Analysis (TNA) tool – for the rapid exchange and joint processing of VAT data. TNA enables Eurofisc to detect suspicious networks earlier and more effectively. It also provides a platform for cooperation and information exchange between national tax officials, enabling Eurofisc officials to compare information with criminal records, databases and information held by Europol and OLAF, the EU's anti-fraud agency, and coordinate cross-border investigations.[188] TNA is based on data mining: using an algorithm to uncover networks between different actors, it identifies transactions showing the signature characteristics of 'VAT carousels'. TNA is a tool that significantly complements the analytical efforts of most EU Member States, where, in the absence of sufficiently detailed data on business-to-business turnover, fictitious turnover is indicated by the identification of straw men (initiated by the 'disappearance' of the taxpayer). The speed of identifying 'fake invoices' increases when the flows of goods between businesses is identified by algorithms. This makes it possible to detect tax offences while they are still being committed (de facto red-handed), rather than after the fact, when the disappearing taxpayer has already withdrawn from the market and the broker has claimed or even already obtained an undue VAT refund. TNA cooperation is implemented through a separate working area 6). The success of this initiative relies heavily on the strong commitment of the Member States. A condition for TNA effectiveness is that the data feeding into it is updated and lessons are learned as part of the programme's 'self-learning' process. Liaison officers from the countries involved in its development use the information collected by the TNA, the networks established, and the evaluation carried out. Based on this information, they conduct checks on the reliability of transactions in their area identified as 'risky' by the algorithm. They then report the results of their checks to the TNA, which allows for updating the data on which the system operates. Some literature has criticised the fact that not all Member States are involved in the TNA, with particular comments concerning large countries like Germany.[189] However, countries' commitment to the TNA is evolving, as exemplified by the German Parliament (Bundestag) calling for Germany's use of the TNA in 2021. The latest Eurofisc report (based on the TNA data extract of 12 February 2024) shows an increase in the efficiency of tax information exchange through TNA. In 2023,

[186] European Court of Auditors, Special Report No 24/2015: *Combating intra-Community VAT fraud: further action required*, https://www.eca.europa.eu/en/publications?did=35308 [accessed: 5 July 2024].

[187] M. Lamensch, E. Ceci, *VAT fraud: economic impact, challenges and policy issues*, Study Requested by the TAX3 Committee, Brussels 2018, http://www.europarl.europa.eu/cmsdata/156408/VAT%20Fraud%20Study%20publication.pdf [accessed: 5 July 2024].

[188] European Commission, *Eurofisc. A Network of Liaison Officials From the 27 Member States and Norway Launched to Combat Cross-border VAT Fraud*, https://taxation-customs.ec.europa.eu/taxation/value-added-tax-vat/vat-and-administrative-cooperation/eurofisc_en [accessed: 5 July 2024].

[189] M. Lamensch, *European Union – Trust: A Sustainable Option for the Future of the EU VAT System?*, Issue: International VAT Monitor, 2019 (Volume 30), No. 2.

EU tax authorities identified 3,492 cross-border VAT fraudsters, more than 500 more than the previous year and almost 1,400 more than in 2020.[190] In 2023, 2,296 cases of a missing taxpayer were identified, up from 1953 cases in 2022.[191]

EUROJUST. The European Union Agency for Criminal Justice Cooperation (Eurojust) was established by Council Decision 2002/187/JHA.[192] Its mission is to support and strengthen cooperation and coordination between national justice authorities in the fight against cross-border crime affecting European Union countries. The new Regulation 2018/1727 comprehensively and newly regulates the status of Eurojust and its relations with third countries and with the European Public Prosecutor's Office.[193] In 2022. The Agency dealt with more than 11,500 cases covering 13 categories of serious cross-border crime, ranging from human and drug trafficking to terrorism and cybercrime. The most common type of case was fraud, including tax fraud (3,500 cases). More than 2,000 cases involved drug trafficking and a further 2,000 cases involved money laundering. As a result of the activities indicated, in 2022 alone, the Agency contributed to the arrest of more than 4,000 suspects, the seizure or freezing of criminal assets worth almost €3 billion and the seizure of drugs worth almost €12 billion.[194]

> In late 2019, Spanish authorities launched an investigation into VAT fraud and money laundering that caused a budget loss of €26 million. The criminals operated through shell companies set up in Spain, Slovakia, Romania, Belgium and the Netherlands. They fictitiously supplied goods that were never actually shipped abroad. On 13 April 2021, The Spanish Office of Eurojust began coordinating the activities of national prosecutors' offices and Europol. On 22 April 2021, a coordination meeting was held at Eurojust, during which information was exchanged, allowing the parties to gather the documentation needed to issue a number of European Investigation Orders and freezing orders. On 28 April 2021, a joint operation involving law enforcement and judicial authorities from Spain, Slovakia, Belgium and the Netherlands, along with Europol was organised through the Eurojust coordination centre. Twenty-two suspects were arrested, 13 properties and 16 vehicles were seized, and dozens of bank accounts were frozen.

Poland, through Eurojust, coordinates with the national prosecutors' offices of other Member States to combat cross-border organised crime within the EU. Poland's participation in Eurojust initiatives is confirmed by the Ministry of Justice, which states that 'For Poland, Eurojust remains the main coordinating body at EU level for investigations of the most serious cross-border crimes, including crimes affecting the

[190] These figures do not yet include information from two important areas – the transport sector and e-commerce – as these indicators are only recorded from 2023 onwards.

[191] European Commission, *Eurofisc. A Network…,* https://taxation-customs.ec.europa.eu/taxation/value-added-tax-vat/vat-and-administrative-cooperation/eurofisc_en [accessed: 5 July 2024].

[192] Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, (OJ L 63, 6.3.2002, pp. 1-13, Polish Special Edition: Chapter 19 Volume 004, pp. 197-209).

[193] Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust) and replacing and repealing Council Decision 2002/187/JHA (OJ EU. L. 2018 No. 295, p. 138, as amended).

[194] Eurojust, *Annual Report 2022*, https://www.eurojust.europa.eu/annual-report-2022 [accessed: 5 July 2024].

financial interests of the European Union, including VAT extortion (also so-called VAT carousels).[195]

> In March 2021, the Hungarian Tax and Customs Administration seized an illegal shipment of almost 23 million cigarettes that had arrived by plane from Dubai at Debrecen Airport. Hungarian authorities intercepted the cargo when it left the airport in trucks with Polish number plates. Two similar deliveries are believed to have taken place on 29 January and 26 February 2021. The loss to the budget was estimated at around €8,750,000. The case was opened at Eurojust by the Hungarian authorities in May 2021. The Agency actively facilitated cross-border judicial cooperation between the national authorities involved, including the execution of European Investigation Orders and the organisation of a day of joint operations. On 16 August, a coordinated operation was carried out through Eurojust, involving, in addition to the Hungarian authorities, and Europol, the Austrian Ministry of Finance and the prosecutor's offices in Innsbruck (Austria), Prague (Czech Republic) and Lodz and Sosnowiec (Poland). It resulted in the confiscation of more than €750,000, seven cars and 49 watches of very high value. One person was detained and international and European arrest warrants were issued against three further suspects.[196]

European Public Prosecutor's Office – legal basis. The legal basis for the establishment of the European Public Prosecutor's Office is Article 86(1) of the Treaty on the Functioning of the European Union (TFEU),[197] which stipulates that the Council may establish the European Public Prosecutor's Office by means of a regulation, acting unanimously after obtaining the consent of the European Parliament. In April 2017, 16 Member States decided to cooperate more closely **with a view to more effectively combating financial fraud in the EU**. Subsequently, through letters dated 19 April 2017, 1 June 2017, 9 June 2017, and 22 June 2017, Latvia, Estonia, Austria, and Italy indicated their desire to participate in this enhanced cooperation. They agreed to jointly establish a *European Public Prosecutor's Office* (EPPO) through the possibilities offered by the 'enhanced cooperation' procedure. The legal framework for the EPPO is Regulation 2017/1939, adopted in October 2017.[198] Currently, 22 countries participate in the activities of the European Public Prosecutor's Office.[199]

Powers. The European Public Prosecutor's Office combats **fraud affecting EU finances.** It has the power to investigate and prosecute offences affecting the Union's financial interests. Previously, only national authorities could investigate such offences. However, national authorities' jurisdiction does not extend beyond national borders,

[195] Odpowiedź na zapytanie nr 6373 w sprawie Prokuratury Europejskiej podsekretarza stanu w Ministerstwie Sprawiedliwości Ł.Piebiak, http://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=565CA1EC [accessed: 5 July 2024].

[196] Eurojust, *Eurojust supports action against large-scale VAT fraud to the EU*, https://www.eurojust.europa.eu/news/eurojust-supports-action-against-large-scale-vat-fraud-eu [accessed: 5 July 2024].

[197] Consolidated version of the Treaty on the Functioning of the European Union (TFEU) (OJ C 326/47, 26.10.2012).

[198] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of a European Public Prosecutor's Office (OJ EU. L. 2017 No. 283, p. 1 as amended).

[199] As of 1 July 2024: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain: https://www.consilium.europa.eu/pl/policies/eppo/ [accessed: 6 July 2024].

limiting their capacity to combat serious cross-border financial crime. In contrast, existing EU bodies, such as the *European Anti-Fraud Office* (OLAF) or the *European Union Agency for Criminal Justice Cooperation* (Eurojust), do not have the power to initiate criminal investigations or prosecutions in Member States.[200] The EPPO conducts cross-border preparatory proceedings into fraudulent cases involving EU funds of more than € 10,000 and cross-border VAT fraud cases that have caused damage exceeding €10 million (Article 22 of Regulation 2017/1939). In doing so, it cooperates closely with national law enforcement authorities, as well as with other bodies such as Eurojust and Europol (Articles 100 and 102 of Regulation 2017/1939). The European Public Prosecutor's Office became operational on 1 June 2021.

EPPO and VAT carousels. In 2023. The EPPO conducted 1,927 investigations with estimated damages exceeding €19.2 billion. Of these, 339 investigations (17.5% of the total) involved VAT fraud. Notably, VAT-related investigations involve significantly higher damages than other investigations. Damages in EPPO investigations specifically concerning VAT fraud were estimated at approximately €11.5 billion, representing almost 60% of all damages investigated by the EPPO.[201] Cross-border elements were present in 28% of the investigations.[202] The EPPO investigated 873 VAT fraud offences, accounting for 19.93% of all offences investigated by the office.[203] The vast majority of these were carousel frauds, often linked to money laundering.[204] The VAT fraud cases investigated by the EPPO notably included the automotive sector, motor vehicle tyre trading, trade in cars, electronics, and textiles, heavy machinery, energy and pharmaceutical products, platinum coins, electric bicycles, alcoholic and non-alcoholic beverages, and telecommunication services.[205]

Italy referred the largest number of VAT cases to the EPPO in 2023 (121), followed by Germany (112), Portugal (15), France (13), and Spain and Belgium (9 cases each). These cases varied in the severity of the infringement. In terms of estimated total loss to the budget, the most significant cases are those referred by Italy (€5.22 billion), Germany (€2.44 billion), Portugal (€848.5 million), Belgium (€482.9 million), Greece (€414.7 million) and Slovakia (€285 million). Germany stands out with the highest %age of referred cases involving VAT fraud (67.17%). VAT cases are also the most significant in relation to the EPPO for Portugal (31.31%), the Netherlands (29.72%), Malta (27.58%), Italy (23.53%) and Cyprus (22.2%).[206]

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[200] European Council, *European Public Prosecutor's Office,* https://www.consilium.europa.eu/pl/policies/eppo/ [accessed: 6 July 2024].

[201] European Public Prosecutor's Office, *EPPO Annual Report 2023*, Luxembourg: Publications Office of the European Union, 2024, https://www.eppo.europa.eu/sites/default/files/2024-03/EPPO_Annual_Report_2023.pdf [accessed: 6 July 2024].

[202] Ibid.

[203] Ibid.

[204] In addition to the cited number, the EPPO also includes VAT offences such as the falsification of declarations of origin for goods that were in fact imported from non-EU countries (to evade VAT and anti-dumping duties), and abuse of customs procedure 42 when the conditions for VAT exemption are not met and VAT is not paid in the Member State where the goods are ultimately sold to the final consumer, *EPPO Annual Report 2023*, Luxembourg: Publications Office of the European Union, 2024, https://www.eppo.europa.eu/sites/default/files/2024-03/EPPO_Annual_Report_2023.pdf [accessed: 6 July 2024].

[205] Ibid.

[206] Ibid.

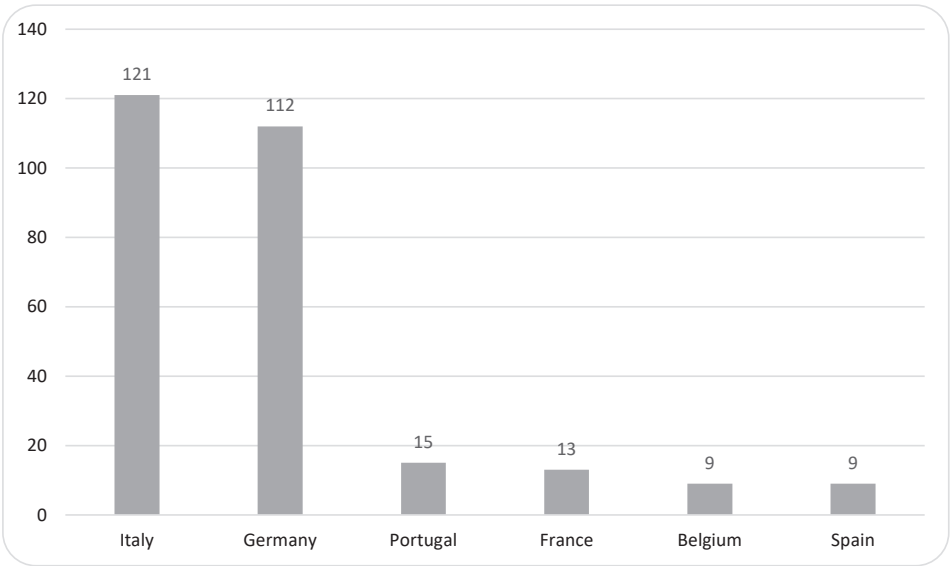


Chart 10: Number of active investigations by the EPPO into VAT fraud (data as at 31.12.2023)

Source: EPPO (2023).[207]

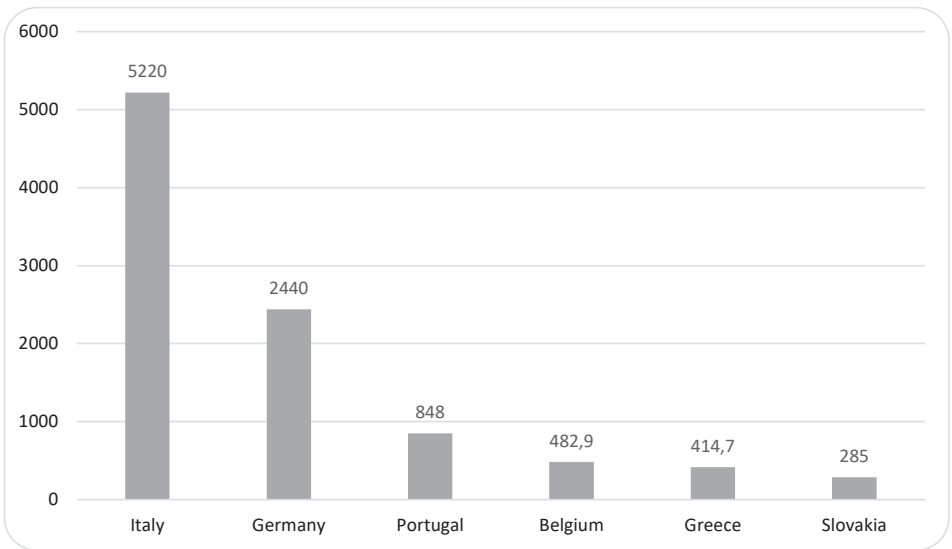


Chart 11: Estimated total losses to the budget [million EUR, data as at 31.12.2023].

Source: EPPO (2023).[208]

[207] Ibid.
[208] Ibid.

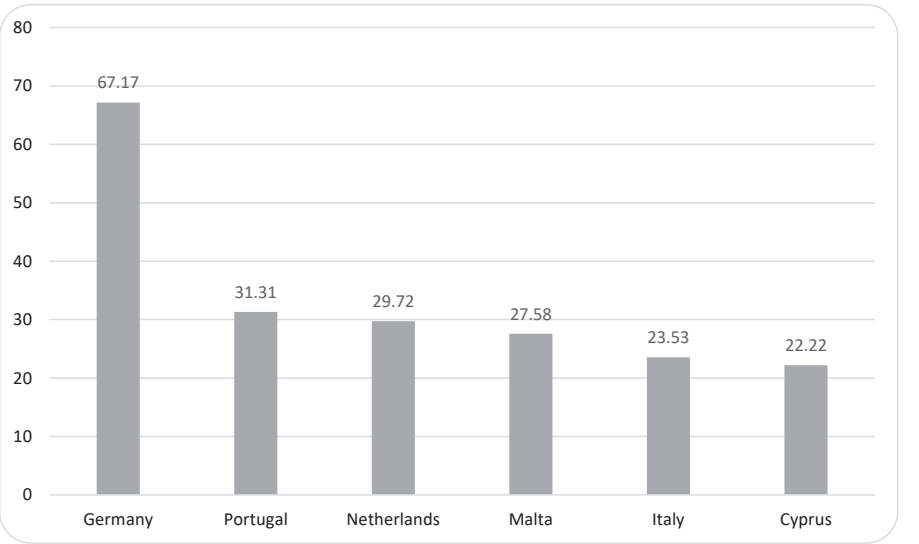


Chart 12: VAT fraud cases [% of EPPO country cases, data as at 31.12.2023]

Source: EPPO (2023).[209]

> In November 2023, at the request of the Madrid branch of the European Public Prosecutor's Office, 13 searches were carried out and 24 people were arrested as part of an investigation into a €25 million VAT fraud involving fictitious trade in electronic equipment between EU and Latin American countries. Criminals, exploiting the VAT exemption of cross-border transactions, set up a number of shell companies that disappeared from the market without fulfilling their obligations (so-called missing traders). Other companies controlled by the criminals then claimed undue VAT refunds from the national tax authorities. The suspects employed structures and security measures typical of organised crime groups, including electronic communication applications designed to evade police detection. They used the funds from their illicit profits to acquire property.[210]

Poland's position towards the European Public Prosecutor's Office. Even before the EPPO became operational, literature suggested that while the European Commission aimed for an ambitious reduction in VAT fraud, the EPPO's role in this process would be limited. Restricting the EPPO's competence to offences causing budgetary losses exceeding €10 million was expected to leave the vast majority of cases related to VAT fraud organisers in the hands of Member States.[211] The EPPO initiative also faced political criticism. The Polish Ministry of Justice, at the time, emphasised that

[209] Ibid.

[210] EPPO, 'Spain: EPPO raids criminal organisation reaching to Latin America in probe into €25 million VAT fraud' (Press release, 24 November 2023). https://www.eppo.europa.eu/en/news/spain-eppo-raids-criminal-organisation-reaching-latin-america-probe-eu25-million-vat-fraud [accessed: 6 July 2024].

[211] M. Tomczyk, *Prokuratura Europejska. Geneza ewolucja koncepcji oraz kluczowe kontrowersje w perspektywie funkcjonowania organu*, Warsaw 2018, p. 302.

> 'From the outset of negotiations on both the draft regulation establishing the European Public Prosecutor's Office and the draft EPPO Directive, the Polish government consistently maintained that it could not support any solutions that would exclude the prosecution of VAT offenses from the exclusive jurisdiction of Member States.' It further cited detailed arguments from the Ministry of Finance, stressing that VAT revenues constitute direct budgetary income for Member States and only indirectly, and to a negligible extent, the revenue of the EU budget. Therefore, it was argued that it was difficult to speak of harm caused to the EU's financial interests, as such fraud primarily affected national budgets. Given these circumstances, Poland ultimately decided not to join the enhanced cooperation mechanism for establishing the EPPO, citing unfavourable solutions that threatened the independence of national bodies dealing with crimes against the EU's financial interests, which the EPPO would have to handle. The Ministry added that 'Poland's non-participation in the enhanced cooperation mechanism for the European Public Prosecutor's Office will not negatively impact the effectiveness of efforts to combat this type of crime. As has been the practice, investigations and prosecutions will continue to be initiated and conducted at the national level by national authorities. International cooperation mechanisms will be utilised for crimes with a cross-border dimension, in accordance with EU criminal law instruments and international law.'[212]

This position changed after the 2023 parliamentary elections, leading the Council of Ministers to adopt the Minister of Justice's proposal for Poland to join the European Public Prosecutor's Office on 27 December 2023.[213]

> In February 2024, the EPPO, in cooperation with Eurojust and the Polish Public Prosecutor's Office, conducted a joint action against large-scale cross-border carousel fraud. The case concerns cross-border carousel fraud involving the trafficking of electronics and protective masks, which resulted in the defrauding of approximately €195 million. The EPPO's investigation focused on two managers and shareholders of a German distribution company that acted as an intermediary buffer in a chain of fictitious supplies. This company bought and sold mobile phones to companies in several countries, which were then sold to missing traders located in Sweden. Eurojust was responsible for coordinating the work, organising seven working meetings between the EPPO and non-participating Member States: Sweden, Denmark, Hungary, Poland, and the UK. It also played a key role in identifying ongoing related investigations in Sweden targeting the individuals behind Sweden's missing traders. Thanks to the effective exchange of information, several European Investigation Orders and European Arrest Warrants were issued. On the day of the operation, a coordination centre was established at EPPO headquarters in Luxembourg, overseeing the activities of Europol,[214] Eurojust,[215] as well as the public prosecutor's office, police

[212] Odpowiedź podsekretarza stanu w Ministerstwie Sprawiedliwości, Ł. Piebiak, dated 25.01.2018, to Question No. 6373 on the European Public Prosecutor's Office, http://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=565CA1EC [accessed: 6 July 2024].

[213] Ministerstwo Sprawiedliwości, *Rząd zaakceptował wniosek Ministra Sprawiedliwości o przystąpieniu do Prokuratury Europejskiej*, https://www.gov.pl/web/sprawiedliwosc/rzad-zaakceptowal-wniosek-ministra-sprawiedliwosci-o-przystapieniu-do-prokuratury-europejskiej [accessed: 6 July 2024].

[214] In the run-up to the day of action, Europol provided analytical support to its partners in the investigation. On the day itself, Europol facilitated operations by providing over 100 secure communication channels through Virtual Command Posts (VCPs). Eurojust, *Eurojust supports an EPPO-led operation against carousel VAT fraud for the first time*, https://www.eurojust.europa.eu/news/eurojust-supports-eppo-led-operation-against-carousel-vat-fraud-first-time [accessed: 6 July 2024].

[215] The Eurojust team was tasked with supporting the Swedish authorities in seizing funds and assets located in Malta.

and tax authorities from Germany, Malta, Sweden and Poland.[216] The joint operation involved over 680 officers who simultaneously carried out more than 180 searches in 17 countries. As a result, 14 suspects were arrested, and smartphones worth over €15.3 million were seized, along with a yacht worth €3 million and €1.2 million in cash and cryptocurrencies. Several luxury cars, jewellery, high-value watches, and 2.5 kg of gold were also seized.[217]

Summary and partial result. The EU currently has a complex system for tax information exchange and financial crime prosecution, with high hopes placed on new initiatives. The development of the TNA within Eurofisc is viewed as a system that can effectively detect and deter carousel fraud. If implemented by all countries and if it guarantees the automatic, compatible exchange of detailed information, this system could provide countries with the information needed to stop many VAT carousels before a crime is committed – before, for example, the withdrawal of a missing trader or the fraudulent claiming of an undue VAT refund by a broker.[218] Other European initiatives such as OLAF, Europol, Eurojust and the European Public Prosecutor's Office further support the States and the EC in preventing and controlling VAT fraud. While these initiatives play a vital role in cross-border proceedings to apprehend tax offenders and secure their assets, the responsibility for identifying tax offenders – that is, detecting fictitious trading – almost always lies primarily with individual Member States (except in specific cases). In their analytical work, these countries rely on the information they have collected on domestic turnover. However, data on cross-border transactions collected from partner administrations is not used with full effectiveness due to various weaknesses and deficiencies in the EU's information exchange system. The 'traditional' exchange of information itself – especially in the form of information initiated on request – is often ineffective due to the varying quality of data held by individual EU countries, the different manner and format in which it is transmitted, and the many months' delay with which the necessary material is sent from the countries holding it to the requesting foreign tax authorities.

[216] The District Prosecutor's Office in Warsaw and Zamość, the Warsaw Metropolitan Police Station and the Zamość Municipal Police Station.

[217] Eurojust, *Eurojust supports an EPPO-led operation against carousel VAT fraud for the first time*, https://www.eurojust.europa.eu/news/eurojust-supports-eppo-led-operation-against-carousel-vat-fraud-first-time [accessed: 6 July 2024].

[218] M. Lamensch, E. Ceci, *VAT fraud: economic impact, challenges and policy issues*, Study Requested by the TAX3 Committee, Brussels 2018, http://www.europarl.europa.eu/cmsdata/156408/VAT%20Fraud%20Study%20publication.pdf [accessed: 6 July 2024].

2. INNOVATIVE MECHANISMS TO COMBAT VAT FRAUD IN EU COUNTRY REGULATIONS

2.1. Digitisation of Tax Obligations

The development and use of digital tools to combat tax fraud did not originate in Poland. Southern European countries pioneered this field, and in many cases, the process began outside Europe, in Latin American countries. Today, EU countries employ diverse technological solutions to support tax compliance. According to a recent EC report,[219] these tools can be divided into two main groups, these tools can be divided into two main groups, based on the extent of data submitted by taxpayers to the authorities:

1) Information provided periodically at fixed intervals (*Periodic Transaction Controls*, PTCs);

2) Real-time data, i.e. before, during or just after the transfer of data between taxpayers (*Continuous Transaction Controls*, CTCs).

Under the first model, it is most typical to require the transfer of business transaction data between taxpayers according to a national format (*VAT listing*) or according to the SAF-T standard (*Standard Audit File for Tax*) developed by the OECD (in Poland functioning as the Single *Audit* File, JPK). Data transmission under the SAF-T standard is required in Portugal,[220] Lithuania and Poland.[221] On the other hand, Bulgaria, Croatia, the Czech Republic, Estonia, Northern Ireland, Latvia, Romania, and Slovakia require taxpayers to send business data to the tax administration according to national requirements.

Within the second model (CTCs), two types of reporting are distinguished:

1) *Real-time reporting*;

2) An electronic invoice sent in a specific format (e-Invoice).

Real-time reporting obliges taxpayers to provide transaction data as soon as a transaction is executed, without requiring them to submit the invoice itself. This

[219] European Commission, Directorate-General for Taxation and Customs Union*, Annual Report on Taxation 2023,* Luxembourg, 2023 https://taxation-customs.ec.europa.eu/document/283669ce-33aa-49dc-ba2e-fd8d669a4482_en [accessed: 6 July 2024].

[220] Portugal was one of the pioneers in implementing the OECD's SAF-T, beginning as early as 2008, although its wider adoption only began in 2013. A. Majdanska, K. Dziwinski, *The Potential of a Standard Audit File – Tax in the European Union: A Chance for Coordinated VAT Administration?*, Bulletin for International Taxation, 2018 (Volume 72), No. 10.

[221] In Poland, SAF-T was introduced in 2015 as the Single Control File, exclusively as an on-demand file (Act of 10 September 2015 amending the Tax Ordinance Act and certain other acts, Journal of Laws, item 1649). The aim was to analyse VAT taxpayer transactions and cross-reference them to verify whether input VAT claimed by purchasers was correspondingly declared as output VAT by their suppliers. Consequently, the new JPK_VAT structure includes Tax Identification Numbers in addition to standard transaction data. However, it was the 2016 amendments that mandated the automatic monthly submission of the key JPK structure – the electronic VAT record (i.e., the VAT sales and purchase register) – Act of 13 May 2016 amending the Tax Ordinance Act and certain other acts, Journal of Laws, item 846.

system is used by Greece, Spain[222] and Hungary.[223] E-invoicing, conversely, implies that the taxpayer transmits the full invoice (or some elements/extract of its content) to the tax administration in a structured format. Mandatory e-invoicing in B2B relations is currently only used in the EU by Italy.[224] In addition to Poland, France,[225] Germany[226] and Romania[227] have also obtained permission from the EU authorities (derogation decisions) to introduce mandatory e-invoicing for domestic transactions.

SAF-T. The history of SAF-T stems from the OECD's work on electronic commerce. SAF-T is an international method of electronically exchanging accounting data for audit purposes. The standard applies to data that companies and other organisations within a country are required to send to control and audit institutions. The data format is based on the XML standard. Portugal was the pioneer and catalyst for SAF-T implementation in the EU, which in turn was inspired by a system introduced in Brazil called *Sistema Público de Escrituração* (*Digital Public Digital Bookkeeping System*, SPED).[228] Although work in Portugal on SAF-T began in 2008, the system was not introduced until 2013. Austria was the first EU country to successfully introduce SAF-T, in 2009 (currently, it is only used as an on-demand file).[229] Countries currently using SAF-T include Lithuania, Poland and Portugal. Norway has been using SAF-T since 2020. In Luxembourg, SAF-T/FAIA is only sent for VAT audits and only by certain groups of taxpayers (i.e. on request when VAT officials initiate an audit).[230]

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[222] L. M. Romero Flor, *The New Spanish Immediate Information Supply System*, International VAT Monitor, 2018 (Volume 29), No. 6.

[223] Z. Szatmari, *Hungary – Value Added Tax, 11.2.8. Electronic invoicing and real-time reporting*, IBFD Amsterdam 2023.

[224] Currently based on Council Implementing Decision (EU) 2021/2251 of 13 December 2021 amending Implementing Decision (EU) 2018/593 authorising the Italian Republic to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax (OJ EU, 17.12.2021, L 454/1).

[225] Council Implementing Decision (EU) 2022/133 of 25 January 2022 authorising France to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax (OJ EU, 31.1.2022, L 20/272).

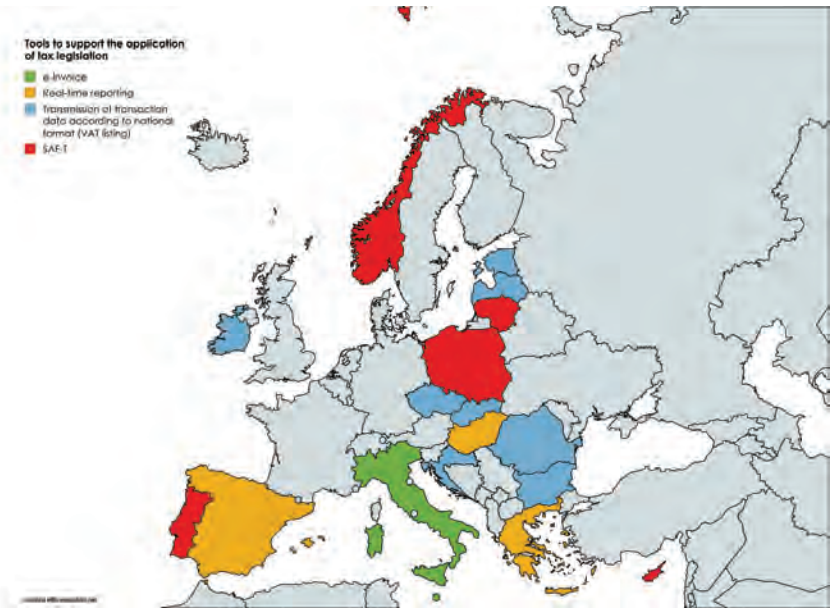
[226] Council Implementing Decision (EU) 2023/1551 of 25 July 2023 authorising Germany to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax (OJ EU, 27.7.2023, L 188/42).

[227] Council Implementing Decision (EU) 2023/1553 of 25 July 2023 authorising Romania to introduce a special measure derogating from Articles 218 and 232 of Directive 2006/112/EC on the common system of value added tax (OJ EU, 27.7.2023, L 188/48).

[228] S. Huibregtse, P. Ottoni, S. C. Muñoz Rodríguez, *OECD/International – How Technology Is Changing* Taxation *in Latin America*, Bulletin for International Taxation, 2019 (Volume 73), No. 3.

[229] A. Majdanska, K. Dziwinski, *European Union – The Potential of a Standard Audit File – Tax in the European Union: A Chance for Coordinated VAT Administration?*, Bulletin for International Taxation, 2018 (Volume 72), No. 10.

[230] F. Wersand, *Luxembourg – Value Added Tax*, IBFD 2023.



Map 2: Tools to support the application of tax legislation

Source: own compilation based on own data and IBFD Amsterdam.

Portugal. Taxpayers registered for VAT purposes in Portugal, including non-residents, are required to report transaction data in the form of a structured file based on the Portuguese version of SAF-T or by directly entering the data on the tax administration's web portal. In principle, taxpayers must report all sales transactions monthly, regardless of their value.[231]

Poland. In Poland, SAF-T, in its mandatory form, was introduced as the Standard Audit File for Tax (JPK) on 1 July 2016, initially covering the accounts of large enter-prises. The implementation of JPK was gradually expanded to include medium and small enterprises (over 100,000 taxpayers in total) from 1 January 2017, and then all other taxpayers (over 1.6 million entities in total) from January 2018. JPK_VAT has a specific layout and format (XML schema) that facilitates its processing. Furthermore, **as of 1 July 2018, all taxpayers maintaining tax records and producing accounting evidence electronically** are required to submit JPK structures **at the request of the tax authorities** during tax proceedings, verification activities, tax audits, and customs and fiscal inspections.[232]

***Real-time reporting*: the example of Spain.**

On 1 July 2017, one year after the introduction of SAF-T requirements in Poland, Spain imposed new real-time transaction reporting requirements on selected companies. These requirements applied to large companies (with a turnover exceeding €6,010,124.04 in the previous year), companies under the special VAT joint accounting regime (Spanish: *régimen especial de grupos del IVA*, REGE), and taxpayers regis-

[231] F. Annacondia, *VAT options*..., IBFD, Amsterdam 2023.

[232] Ministerstwo Finansów, *Jednolity Plik Kontrolny*, https://www.podatki.gov.pl/jednolity-plik-kontrolny/jpk_vat/ [accessed: 6 July 2024].

tered under the special monthly VAT refund regime (*régimen especial de devolución mensual*, REDEME). These companies are now required to provide information immediately to the Spanish tax authorities (Spanish: *suministro inmediato de información*, SII). The system requires the electronic submission of transaction data and certain invoice information, but not the invoices themselves. In practice, several categories of businesses, including micro-companies, are exempt from this obligation. The system requires the submission of transaction information within a maximum of four days (excluding Saturdays, Sundays, and public holidays).[233]

Transmission of transaction data according to national format (*VAT listing*).

In countries where a national format for reporting VAT transaction data has been implemented, it typically takes the form of a list of transactions (sales and/or purchases) submitted periodically (monthly or quarterly), often alongside the VAT return. Such a system is in place in Bulgaria, Croatia, the Czech Republic, Estonia, Latvia, Romania, Slovakia, and Northern Ireland (UK).

Example: Czech Republic. Taxpayers, including non-resident entrepreneurs, are required to submit a separate monthly report in electronic form detailing their sales and purchases per invoice for the specified period (known as the Statement of VAT Control, Czech: *Kontrolní hlášení DPH*).[234] Taxpayers must report all VAT-taxable transactions regardless of their value, with the exceptions of import/export of goods, intra-Community supplies reported in recapitulative statements, and supplies where the place of supply is outside the Czech Republic. Domestic transactions with a value of less than CZK 10,000 (approximately €410) do not need to be reported per invoice; only the total amount of all such transactions is reported. Information is sent in XML format via the Tax Portal using the EPO 254 web application or via a secure third-party interface.[235]

Example: Northern Ireland (UK). VAT-registered businesses in the UK must keep records digitally and submit VAT returns to the relevant local tax authority using compatible software, unless they are exempt or have applied for exemption from this requirement. The software must allow businesses to: 1) keep and maintain records in the form specified in the legislation; 2) prepare VAT returns based on the information contained in those digital records; 3) communicate (including sending the return) with HMRC (*HM Revenue & Customs*) digitally via an API. Further details of the requirements are set out in HMRC VAT Note 700/22.[236]

E-Invoice. The concept of taxpayers submitting invoices in a specific (standard) format to the tax administration in real time or shortly after the completion of a transaction is not new, having been implemented in Latin American countries for years. In Europe, work on e-invoicing has primarily concerned B2G (*business-to-government*) relationships.[237]

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[233] Agencia Tributaria, *General Information,* https://sede.agenciatributaria.gob.es/Sede/en_gb/iva/suministro-inmediato-informacion/informacion-general.html [accessed: 6 July 2024].

[234] Individuals who account for VAT on a quarterly basis may also submit this report on a quarterly basis.

[235] F. Annacondia, *VAT options*..., IBFD Amsterdam 2023.

[236] HM Revenue & Customs, *VAT Notice 700/22: Making Tax Digital for VAT*, https://www.gov.uk/government/publications/vat-notice-70022-making-tax-digital-for-vat [accessed: 6 July 2024].

[237] The system of structured invoices within the meaning of the Act of 9 November 2018 on electronic invoicing in public procurement, concessions for works or services and public-private partnership (Journal of Laws of 2020, item 1666) and the system of structured invoices issued within the KSeF in the optional version will be systems operating separately. These systems become compatible in the KSeF mandatory model.

Currently, Directive 2006/112[238] allows the optional implementation of e-Invoices in domestic transactions, subject to the purchaser's consent. Making e-invoicing mandatory (regardless of the counterparty's acceptance) requires the consent of the EU authorities through a derogation decision, as defined in Article 395 of Directive 2006/112/EC.[239]

Italy is the European pioneer of e-invoicing, having introduced the system on a voluntary basis in 2017 and making it mandatory in 2019. The Italian e-invoicing model involves sending invoices in a specific structured format (schema) to taxpayers via a national platform (Italian: *Sistema di Interscambio*, SdI).[240] However, the Italian system is not fully universal and includes several exemptions, meaning that not all invoices issued by Italian taxpayers are processed through the system.

When defining an e-Invoice, it's crucial to distinguish it from other types of electronically sent invoices. Unlike these, a true e-Invoice is created and transmitted in a specific, structured format (schema) that taxpayers must implement within their systems. Consequently, an e-Invoice issued in a particular country adheres to a defined format – the data on the invoice is structured and uniform, as prescribed by legislation. This makes an e-Invoice significantly different from an invoice simply issued electronically using software of the taxpayer's choice. This difference in format, or data presentation, is readily apparent. While electronic invoices are now widely used by taxable persons for both domestic and international transactions, these are not structured e-Invoices and are not sent to the tax administration, either at the time of transmission to the counterparty or after the transaction.

Contrary to some common assumptions, there is currently no single, unified model for e-invoicing. Different countries are implementing diverse approaches, which creates organisational challenges for businesses operating across these jurisdictions. The primary difference between e-invoicing systems implemented (or planned for implementation) in various EU countries lies in *how* and *when* the e-Invoice is transmitted to the public administration, as well as the administration's role in the process. A key distinction can be made between countries where the e-Invoice (either the full invoice or selected data from it) is transmitted to the administration *after* the invoice has been sent to the contractor. This constitutes post-transaction reporting (a similar e-Invoice approach for intra-Community transactions has been proposed by the European Commission as part of the VAT in the Digital Era legislative package, *ViDA*).[241]

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[238] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L. No. 347, p. 1, as amended).

[239] Under the first subparagraph of Article 395(1) of Directive 2006/112: *The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.*

[240] F. Borselli, C. Petroni, *Italy/European Union – Towards an Automated VAT System in Italy: Obligations and Opportunities for Taxable Persons*, International VAT Monitor, IBFD Amsterdam, 2021 (Volume 32), No. 6.

[241] According to the proposed Article 263(1) of Directive 2006/112 (its original version): *'The data referred to in Article 262(1) shall be provided in respect of each individual transaction carried out by the taxable person no later than two working days from the date on which the invoice is issued, or from the date on which the invoice should have been issued if the taxable person does not fulfil his obligation to issue an invoice.* Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules in the digital era, Brussels, 8.12.2022, COM(2022) 701 final, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0701 [accessed: 6 July 2024].

Other countries implementing e-invoicing require that invoices be forwarded to the tax administration before they reach the counterparty. This is a characteristic of Europe's first functioning e-invoicing system (Italy) as well as the KSeF, which is, to some extent, based on the Italian model. From an efficiency and tax analytics perspective, this is the more desirable model. By implementing this approach, information on turnover is provided to the public administration without any time lag – practically in real time, at the moment the invoice is issued. This system must be implemented with great care, considering: 1) the scope of data transferred; 2) the need to enhance it with the functionality of immediate access by the central system to invoices from contractors to ensure the smooth circulation of documents within the economy. A system in which the tax administration acts as the 'middleman' in invoice transmission is usually referred to as *clearance*. This term is also used by the EC services,[242] although it is not a legal and defined term and, as practice shows, this term can encompass diverse administrative roles in the transfer of invoices between counterparties. Consequently, we can distinguish two legal regimes in e-invoicing: 1) a system where, under *clearance*, the administration examines the issued invoice for content correctness and decides whether to accept and transmit it (as seen in some Latin American countries); 2) systems where the tax administration, upon receiving the invoice, only verifies its compliance with the schema (semantic verification). This second system is better described as ensuring that the invoices within the system comply with the schema, thereby ensuring the system's consistency and 'cleanliness' (this variant could be termed '*cleaning*'). Such semantic validation is carried out by KSeF.

While there are numerous differences in e-invoicing regulations, another key distinction relates to the system's design. We can differentiate between centralised and decentralised systems. In centralised systems, the structured invoice is sent to a single central (government/ministerial) 'centre', and it is not possible to transmit the invoice to the administration through other intermediaries. Poland's KSeF is based on this centralised model. In contrast, decentralised systems involve the central administration establishing intermediary entities (integrators) tasked with receiving and transmitting invoices between taxpayers and then forwarding them to the government administration. The French e-Invoice model, for example, is based on this decentralised approach.[243]

Until recently, it was anticipated that other countries would adopt mandatory e-invoicing in 2024, following Poland's lead with its optional KSeF system since 2022. Clearly, system stability and scalability must be an absolute priority in the implementation of the KSeF in Poland. However, setting 2026 as the target date for mandatory

[242] For the purposes of the ViDA package, the EC emphasises that in a *no-clearance* model, the supplier has the option to send the invoice directly to the customer without requesting any token from the tax administration. Conversely, in a *clearance* system, the supplier is obliged either to (a) obtain a verification token from the tax administration before sending the invoice, or (b) send a draft invoice to a central platform, which will then deliver (or issue and deliver) the invoice to the customer. EC, *VAT in Digital Age, Final Report, Volume 1, Digital Reporting Requirements*, March 2023, https://taxation-customs.ec.europa.eu/system/files/2022-12/VAT%20in%20the%20Digital%20Age_Final%20Report%20Volume%201.pdf [accessed: 6 July 2024].

[243] In France, the issuing, sending, and receiving of invoices between businesses will be conducted through a platform operated by the tax authorities (*Chorus Pro*) or via another platform operated by private entities, which will then transmit the data to Chorus Pro. P. Burg, *VAT E-Invoicing and E-Reporting will be Mandatory as From 1 July 2024*, Alert, IBFD Amsterdam 2023.

KSeF implementation is too far in the future, even considering the need for significant improvements to the KSeF's technical infrastructure (the system auditor's report has not been made public). Such a lengthy postponement has had a 'demobilising' effect on a significant share of taxpayers.

The announcement of the postponement of mandatory e-invoicing in Poland from 1 July 2024 to the first quarter of 2026 suggests that Poland may be overtaken in this respect by other Member States that already have EU approval for the introduction of e-invoicing (France, Germany, and Romania). Belgium recently submitted a similar derogation request to the EC, planning to introduce e-invoicing in 2026. The draft legislation was made available in January 2024). The Belgian system is to be based on a 'European standard' (EN 16931-1 and CEN/TS 16931-2) and, in terms of scope, is similar to the KSeF as it was planned for 2024; B2C invoices are to be excluded from the proposed Belgian system.[244]

2.2. Split Payment

SPM concept. The *split payment mechanism* (SPM) is a specific VAT settlement technique. It stipulates that the buyer transfers only part of the payment to the seller's settlement account, corresponding to the net price of the purchased goods or services. The VAT balance is then credited to a separate VAT account of the taxable person.[245] The funds accumulated in this VAT account are subject to restricted use; typically, they are intended solely for paying VAT due on transactions with business partners. The transfer of funds between a taxpayer's VAT sub-account and their regular account requires approval from the relevant administration. This approval is granted after verifying the accuracy of the taxpayer's reported turnover. The SPM effectively prevents 'missing trader' fraud, where a supplier collects VAT but then 'disappears' without remitting it to the tax authority, often relocating to another jurisdiction to commit further fraud. By limiting the funds available to the disappearing taxpayer, the split payment mechanism is considered by the OECD to be an effective tool in reducing the profitability of VAT fraud.[246] The *International Monetary Fund* (IMF) also views the SPM favorably. As a recommended VAT sealing solution, the IMF has pointed to the implementation of 'VAT accounts,' a system similar in design to Poland's current split payment mechanism. In a 2005 publication, the IMF cited Bulgaria as an example, which introduced such a solution in July 2002 to reduce tax fraud and expedite the tax refund process. The IMF reiterated its recommendation for implementing the SPM in 2007.[247]

The SPM concept and EU law. Various models of the split payment mechanism (SPM) were extensively studied by PwC on behalf of the European Commission (EC) in

[244] M. Govers, *Belgium Proposes Mandatory B2B E-Invoicing as of 1 January 2026*, IBFD 2024.

[245] Definition after: J. Sarnowski, P. Selera, *Zmniejszenie luki VAT*..., Polish Economic Institute, Warsaw 2018.

[246] OECD, *Consumption Tax Trends 2016. VAT/GST and excise rates, trends and policy issues*, https://www.oecd-ilibrary.org/taxation/consumption-tax-trends-2016_ctt-2016-en [accessed: 6 July 2024].

[247] M. Keen, S. Smith, *VAT Fraud and Evasion: What Do We Know, and What Can be Done?*, IMF Working Paper, WP/07/31, 2007, https://www.imf.org/en/Publications/WP/Issues/2016/12/31/VAT-Fraud-and-Evasion-What-Do-We-Know-and-What-Can-be-Done-20215 [accessed: 6 July 2024].

2010.[248] Their effectiveness as a tool to combat VAT carousels is confirmed by the EC's December 2017 report.[249] In that report, the Commission emphasised that the model involving the introduction of VAT accounts – as implemented in Poland – is more beneficial in terms of its impact on taxpayers' liquidity than other analysed models. It safeguards budget revenues against carousel fraud without generating a 'leakage' in the system through VAT accumulation at retailers (entities selling to consumers), a characteristic of the reverse charge mechanism. A report prepared for the European Commission by Deloitte indicated that implementing theSPM in all Member States could reduce the EU-wide VAT gap by 27–42%, generating an estimated increase in tax revenue of approximately €41–63 billion per year.[250] Despite these advantages, the SPM is not explicitly addressed in Directive 2006/112, which contains no specific regulations dedicated to *split payments*. EU law leaves the decision regarding SPM implementation to individual EU countries. Any Member State wishing to introduce mandatory SPM accounting within its territory for at least some taxpayers must obtain prior approval from EU authorities for this derogation under Article 395 of Directive 2006/112. The optional introduction of the SPM, however, does not require EU approval.

Pioneers of the SPM. The EU countries that decided to introduce the SPM in their area were not pioneers in this respect. They drew on the experience of countries where it had previously operated, including Azerbaijan, selected Latin American countries (Colombia, Venezuela, Chile or Mexico), as well as Turkey, in Kenya and Costa Rica.[251] Bulgaria was one of the first countries on the European continent to gain experience with the SPM, introducing the option of voluntary application of the so-called VAT account mechanism (Bulgarian: ДДС сметка)[252] in 2001. From the beginning of 2003 until the end of 2006, its application became mandatory for any payment to a registered VAT taxpayer with a value exceeding 1,000 leva. The Czech Republic uses a specific form of SPM whereby making a VAT payment directly to the supplier's tax authority relieves the purchaser of joint and several liability for any VAT not paid by the supplier. A similar version of the SPM, offering release from the purchaser's joint and several liability, was introduced in Slovakia in 2022.[253]

Italy. Italy was the first EU country to introduce split payment (Italian: *scissione dei pagamenti*).[254] During its initial application in 2015, it only applied to B2G supplies –

[248] Directorate-General for Taxation and Customs Union (European Commission), PricewaterhouseCoopers, *Study on the feasibility of alternative methods for improving and simplifying the collection of VAT through the means of modern technologies and/or financial intermediaries*, https://op.europa.eu/en/publication-detail/-/publication/e0d6a4f7-9ada-11e6-868c-01aa75ed71a1 [accessed: 6 July 2024].

[249] European Commission: Directorate-General for Taxation and Customs Union, B. Vandresse, V. Cilli, C. Walsh, T. Vanhee et al., *Analysis of the impact of the split payment mechanism as an alternative VAT collection method Final* Report https://op.europa.eu/en/publication-detail/-/publication/b87224ad-fcce-11e7-b8f5-01aa75ed71a1/language-en [accessed: 6 July 2024].

[250] Ibid.

[251] Ibid.

[252] On this topic extensively, e.g. B. Gryziak, *Mechanizm podzielonej płatności (split payment) jako narzędzie przeciwdziałania oszustwom podatkowym w zakresie VAT – podsumowanie pierwszego roku funkcjonowania w Polsce na tle doświadczeń europejskich*, BISP 8/2019, pp. 10-11.

[253] X. Yeroshenko, *Slovak Republic Approves Changes to VAT Reporting Obligations*, IBFD 2021.

[254] Council Implementing Decision (EU) 2015/1401 of 14 July 2015 authorising Italy to introduce a special measure derogating from Articles 206 and 226 of Directive 2006/112/EC on the common system of value added tax (OJ L 217, 18.8.2015, pp. 7-8).

i.e., supplies to public bodies as defined by law. In practice, the relevant public bodies had to keep the amount of VAT due (listed on the invoice) and, instead of paying it to the supplier, remit it directly to the tax authorities. In 2017, based on another derogation decision, Italy extended the scope of the SPM.[255]

Poland. Poland introduced voluntary split payment in July 2018.[256] At that time, the buyer had the right to settle the invoice receivable using SPM by completing the relevant transfer communicate. The system applied to B2B relationships and payments in PLN. Under the SPM, the VAT amount is transferred to the supplier's separate VAT account. From this designated sub-account, the taxpayer could independently pay only the tax due to the contractor and other public law liabilities, such as taxes and social security contributions. The taxpayer could also request a refund from the VAT account to their regular business account, thereby regaining full access to those funds. In 2019, Poland received approval from EU authorities to introduce mandatory split payments for fraud-sensitive goods and services with a value exceeding PLN 15,000.[257] The relevant provisions came into force in November 2019.[258]

Romania. In Romania, SPM (rum. *plată defalcată a TVA*) was implemented in 2017 as a voluntary mechanism, with the intention of making it mandatory. Special bank accounts were introduced, separate from the operational accounts, which could only be used for VAT payments, including VAT payments to other suppliers. Any other use of the funds accumulated therein required the approval of the competent head of the tax office.[259] While the Romanian system provided for an optional SPM, it became mandatory for certain B2B and B2G payments, particularly those made to taxpayers with outstanding VAT arrears or those involved in bankruptcy or reorganisation proceedings pending. A unique aspect of the Romanian system was the taxpayer's obligation to remit the VAT received on cash-paid transactions to the VAT account within 30 days of receiving payment. In November 2018, the European Commission rejected Romania's request to apply a mandatory SPM for transactions between taxpayers in sensitive industries, urging Romania to repeal the existing legislation as incompatible with the EU proportionality principle.[260] Consequently, Romania completely withdrew from the application of SPM in 2020.[261]

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[255] Council Implementing Decision (EU) 2017/784 of 25 April 2017 authorising the Italian Republic to apply a special measure derogating from Articles 206 and 226 of Directive 2006/112/EC on the common system of value added tax and repealing Implementing Decision *(*EU) 2015/1401 (OJ L 118, 6.5.2017, pp. 17-19).

[256] Act of 15.12.2017 amending the Value Added Tax Act and certain other acts (Journal of Laws 2018, item 62).

[257] Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (Official Journal of the EU of 22.2.2019, L 51/19).

[258] Act of 9 August 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1751).

[259] R. C. Prätzler, *European Union – Split Payments in VAT Systems – Is This the Future?*, Issue: International VAT Monitor, 2018 (Volume 29), No. 2.

[260] European Commission, *Communication from the Commission to the Council pursuant to Article 395 of Council Directive 2006/112/EC*, Commission, COM (2018) 666 final, 2018, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0666 [accessed: 6 July 2024].

[261] VATCalc, *VAT compliance and reporting rules in Romania 2024*, https://www.vatcalc.com/romania/romania-vat-guide/ [accessed: 6 July 2024].

2.3. Cooperation with the Banking Sector

A new trend in efforts to accelerate the detection of fictitious trading is the involvement of banking sector players in this process. Financial institutions are obliged by *anti-money laundering* (AML) regulations to use big data analysis themselves to detect suspicious trading. This practice has been adopted by the Polish National Revenue Administration (KAS), which requires financial institutions to examine their registered turnover to identify, among other things, cash flow patterns characteristic of tax carousels. If irregularities are found, the bank informs the KAS. Under a 2017 statutory amendment,[262] the Head of KAS receives information on the accounts of qualified entities within the meaning of the STIR Act (i.e. accounts other than those of natural persons used for private purposes), as well as on all transactions of these entities made through the bank accounts or accounts of a cooperative savings and credit union (SKOK) covered by this system. Based on this information, the IT system of the Head of KAS performs an analysis of the risk of fiscal extortion. All information is sent automatically and electronically through the clearing house.

2.4. Online Cash Registers

Tax crimes, including Missing Trader Intra-Community (MTIC) fraud, exploit new technologies, making new technologies a key tool in combating tax fraud. Monitoring B2C turnover is particularly important in this regard. It allows for the identification of: 1) attempts to 'launder' fraudulent money by declaring fictitious turnover by companies operating in the market; 2) attempts to 'liquidate' goods 'after the fact' at prices often significantly below market value. This latter practice typically occurs just before the tax authorities detect the missing trader, who would otherwise have their fictitiously traded goods confiscated. This liquidation occurs through the sale of these goods to consumers (in a B2C relationship), where sales are not recorded on traditional 'paper' cash registers, and where checks of these records are random rather than based on analytical models. To address these challenges, countries are adopting technology recommended by the OECD: electronic cash registers. Currently, more than a third of OECD VAT countries (16 out of 37) have implemented specific requirements for suppliers to use electronic cash registers (Austria, Belgium, Costa Rica, Czech Republic, France, Greece, Hungary, Israel, Italy, Korea, Latvia, Norway, Poland, Slovakia, Slovenia, and Sweden). Six of these countries require systematic reporting of such data to the tax authorities (Greece, Israel, South Korea, Slovakia, Slovenia, and Italy). For South Korea, Slovakia, Slovenia, and Poland, this reporting is virtually real-time.[263]

Examples of online cash register implementations. Sweden was a European pioneer in implementing online cash registers, with as many as 135,000 cash registers connected to tax inspection units by 2010. The resulting increased VAT and income

[262] Act of 24 November 2017 amending certain laws to counteract the use of the financial sector for fiscal fraud (Journal of Laws, item 2491).

[263] OECD, *Consumption Tax Trends 2022*.

tax revenue was estimated to be around SEK 3 billion (€300 million) per year.[264] In Rwanda, electronic cash registers were introduced in March 2013, resulting in a 20% increase in VAT revenues in 2015. In Hungary, businesses were made compulsory to install electronic cash registers integrated with the fiscal control unit in 2014. After the first year, VAT revenue in the compulsory sectors increased by 15%. From 1 January 2020, a similar obligation was introduced in Italy. Since this date, all retailers have been required to submit their sales records electronically to the tax authority on a daily basis via electronic cash registers or a web application offered free of charge by the fiscal authority. Retailers must also issue a receipt to the customer, but this document has only commercial value. For fiscal purposes, storing sales data in the cash register and sending the data to the tax administration daily is crucial.[265] In Poland, the implementation of online cash registers began in 2019, with the obligation to install electronic cash registers connected to the Central Repository being extended in *stages* to further groups of taxpayers.[266]

2.5. Monitoring the Transport of Sensitive Goods (EKÁER/SENT)

Another sealing tool is the monitoring system for sensitive goods, where Hungary was a precursor to the solution. The purpose of the Electronic Road Transport Control System (Hungarian: *Elektronikus Közúti Áruforgalom Ellenőrző Rendszer, EKÁER*) implemented in Hungary is to monitor the road transport of goods within Hungary. The system covers deliveries of goods into Hungary from another Member State, deliveries of goods from Hungary to another Member State and domestic B2B deliveries of goods. If the transport is not registered (i.e., if the tax authorities find that the legally required EKÁER identification number is missing), the trader faces a penalty of up to 40% of the value of the transported goods.[267] From 1 January 2021, the scope of the EKÁER reporting obligation has been significantly reduced. It now only applies to goods that have previously been identified as high-risk goods (including selected food products, clothing or fertilisers), as listed in Annexes 1 and 2 of Decree No. 51/2014 (XII.31.) of the Hungarian Ministry of National Economy.[268] The Polish SENT System, which monitors sensitive goods particularly vulnerable to fraud or that have been subject to tax fraud in previous years, was based on the EKÁER philosophy.

[264] OECD, *Technology Tools to Tackle Tax Evasion and Tax Fraud*, 2017, https://www.oecd-ilibrary.org/docserver/g2g77afa-en.pdf?expires=1720652175&id=id&accname=guest&checksum=22043E344B16EBF074827687A0F90F12 [accessed: 6 July 2024].

[265] OECD, *Consumption Tax Trends 2022*.

[266] Act of 15 March 2019 amending the Act on Value Added Tax and the Act – Law on Measures (Journal of Laws, item 675, as amended).

[267] Nemzeti Adó- és Vámhivatal (NAV), *EKAER*, https://ekaer.nav.gov.hu/ [accessed: 7 July 2024].

[268] Z. Szatmari, *Hungary – Value Added Tax*, IBFD, 2023.

3. KEY REFORM PROPOSALS ON TRADE IN GOODS – KEY INITIATIVES

3.1. Definitive system

Single European VAT Area.

In its key 2016 Communication (*Action plan on VAT*)[269] the EC proposed a path towards a single *EU VAT area*, emphasising:

> 'The current VAT system, which was intended to be a transitional system, is fragmented, complicated for an increasing number of businesses with cross-border activities and leaves the door open for fraud: domestic and cross-border transactions are treated differently, and it is possible to purchase goods or services in the single market without VAT.'

In a fully realised single European VAT area, cross-border transactions would be treated identically to domestic transactions, eliminating the current system's inherent weaknesses. VAT management and enforcement would be integrated through closer cooperation between tax administrations.

Definitive system assumptions – 2018 draft.

In mid-2018. The EC presented a draft directive on the system of taxation in the country of destination[270] (hereinafter: the 25.5.2018 draft). It proposes that a cross-border supply of goods between businesses in the Union should lead to a single transaction for VAT purposes: an intra-EU supply of goods.

Intra-EU supply of goods. According to Article 14(4)(3) of the 25.5.2018 draft, an intra-EU supply of goods means a supply of goods by a taxable person to another taxable person or a non-taxable legal person, where the goods are dispatched or transported by or on behalf of the supplier or the acquirer within the territory of the Union from one Member State to another. The draft proposes a rule whereby the place of an intra-EU supply is deemed to be where the goods are located at the time their dispatch or transport to the customer ends. Consequently, the intra-EU acquisition of goods would no longer exist as a separate VAT-taxable transaction.

One-Stop-Shop, OSS. The European Commission's proposed new system aimed to remove the 0% preferential VAT rate/exemption. The obligation to account for output tax would fall on the seller, who would be required to account for VAT according to the rules and rates applicable in the buyer's country (place of destination). This would normally mean that the supplier would have to register for VAT in the buyer's country

[269] EC, *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the VAT Action Plan. Towards a single EU VAT area – time to decide*, Brussels, 7.4.2016, COM(2016) 148 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52016DC0148 [accessed: 7 July 2024].

[270] Proposal for a Council Directive amending Directive 2006/112/EC as regards the introduction of detailed technical measures concerning the operation of the target VAT system for the taxation of trade between Member States, Brussels, 25.5.2018, COM(2018) 329 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52018PC0329 [accessed: 7 July 2024].

(place of taxation) to account for VAT there. However, the draft stipulated that registration in the buyer's country would not be required. Instead, VAT due to other EU countries would be paid by the supplier in their country of establishment through the One-Stop Shop (OSS).

CTP. The OSS system of accounting for VAT due to other EU countries in one country (the country of registration – usually the company's head office) will not apply if the customer qualifies as a *certified taxable person* (CTP). In this case, the reverse charge will apply – i.e. the obligation to declare and account for VAT is transferred to the purchaser. In short, a CTP is simply a reliable taxable person for the tax administration along the lines of an *authorised economic operator* (AEO). AEOs will obtain CTP status relatively automatically upon application, while other taxpayers applying for CTP status must demonstrate, among other things, the absence of tax arrears, a clean 'tax and economic history', and the application of transparent tax and business procedures. It has been highlighted in the literature that this approach leads to unjustified differentiation between taxpayers, partly due to the demanding criteria for achieving CTP status.[271]

Criticism of the project. In summary, the definitive system requires the transfer of VAT revenues between the tax administrations of different EU countries. It therefore relies on extensive cooperation and trust between these administrations. This is considered a weakness of the proposed model in the literature, as it is based on practices whose standards and quality are widely regarded as insufficient.[272]

Example 2:

A Romanian company supplies materials from Romania to Poland, to Polish X Ltd. The place of taxation for this transaction is exclusively Poland. Through the one-stop shop system, the Romanian company pays the tax, at the Polish VAT rate, to the Romanian tax administration, which forwards the indicated tax to the country where the transaction is taxed. As a result, the Romanian company does not have to register for VAT in Poland. The Polish tax authorities must trust that the Romanian authorities will remit the proceeds of Polish VAT paid in Romania to Poland on time and in the correct amount.

Definitive system as a test of trust. The target system is in fact an extension of the one-stop-shop system (MOSS) applicable since 2015 and developed for trade in goods

[271] G. E. Zubeldia, *European Union – Definitive VAT Regime ... Really?*, Issue: International VAT Monitor, 2018 (Volume 29), No. 4.

[272] M. Lamensch, *European Union – Trust: A Sustainable Option for the Future of the EU VAT System?* Issue: International VAT Monitor, 2019 (Volume 30), No. 2; S. Becker, *Der Zweite Teichritt zum endgültigen Mehrwertsteuersystem für den grenzüberschreitenden Handel*, MwStR 2018, 685. Widely on this topic in the Polish literature, e.g. T. Michalik, *Jak Komisja Europejska i kraje europejskie walczą z oszustwami VAT*, Zeszyty mBank – CASE Nr 147/2017, http://www.case-research.eu/uploads/zalacznik/2017-06-27/How_the_European_Commission_and_European_countries_fight_VAT_fraud.pdf [accessed: 5 July 2024].

within the VAT E-Commerce package (2021) as OSS.[273] The literature highlights that in its assumptions of the transfer of tax revenues between the tax administrations of EU countries, the target system is similar to the Commission's 1987 proposal for taxation in the country of origin. This project was rejected at the time because it required a higher level of trust between tax authorities than observed. It was also pointed out that it would have caused currency exchange problems and would have financially benefited several large exporting Member States. It is rightly pointed out that these reservations remain valid for the new EC draft in relation to the assumed requirement for a tax remittance (*clearing system*).[274]

Definitive system – state of play. As of 2018, work on the definitive system has effectively stalled. The lack of compromise and agreement among EU countries on this system casts doubt on the possibility of its implementation, even in the long term. The EC itself has recently failed to take steps to conclude the work on the proposals indicated. On the contrary, at its initiative, the 'energy' of the EU states is currently focused on a new legislative initiative of the Commission, i.e. the comprehensive and highly ambitious *VAT* in *Digital Age* (ViDA) project presented to the Member States in late 2022. Although EC representatives maintain in official statements the validity of the need to implement the definitive system and its coherence with the ViDA package, the likelihood of the EC presenting another draft (version of) the definitive system to the Member States after the implementation of the indicated package is currently assessed as very low.

3.2. VAT in the Digital Age (ViDA) – the Road to 'EU e-Invoicing'

ViDA assumptions. One of the most important developments in recent years was the presentation by the EC in December 2022 of its long-awaited VAT reform proposal, VAT in the Digital Age/Era. The package itself consists of three pillars: 1) digital reporting or the 'EU e-Invoice'; 2) the platform economy; 3) simplification in the form of a single registration. According to the EC, the result of the proposed measures is expected to generate an increase in VAT revenues of approximately €18 billion per year, including an increase of approximately €11 billion per year as a result of the implementation of the anti-fraud measures proposed in the package.[275] Of key importance for the tightening of the VAT system in international trade is the first pillar, i.e. the project introducing the obligation to report digitally by issuing an e-Invoice documenting intra-Community trade. As a result of the implementation of simplifications for businesses

[273] The EU E-Commerce VAT package is contained in Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations on the supply of services and the sale of goods at a distance (OJ. EU. L. of 2017 No. 348, p. 7 as amended) and Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards the provisions on distance selling of goods and on certain domestic supplies of goods (OJ EU. L. of 2019 No. 310, p. 1 as amended).

[274] C. Amand, *European Union – The 2016 European Commission VAT Action Plan: Weaknesses of a Clearing System and Possible Alternatives*, International VAT Monitor, 2016 (Volume 27), No. 4.

[275] EC, *VAT in the Digital Age*, https://taxation-customs.ec.europa.eu/taxation-1/value-added-tax-vat/vat-digital-age_en [accessed: 7 July 2024].

and new e-services of the administration, the implementation of the ViDA is expected to have the additional benefit of reducing administrative and compliance costs for EU businesses by more than €4.1 billion per year.[276]

ViDA – Explanatory Memorandum. The draft ViDA, amending Directive 2006/112/EC was presented on 8 December 2022.[277] Two drafts amending the Regulations, 904/2010[278] and 282/2011[279] respectively, were also presented on that date. The primary reason for submitting the draft is the need to combat the VAT gap more effectively, as emphasised: '(...) 30-year-old VAT rules for cross-border trade are not adapted to doing business in the digital age.'[280] The EC explicitly acknowledges that: 'The VAT Directive dates from the 1970s and, as such, the default reporting requirements are not digital. That said, the global trend shows a move from traditional VAT compliance towards real-time sharing of transaction-based data with tax administrations, often based on e-invoicing. The VAT Directive represents a significant barrier towards digitalisation, as Member States need to obtain a derogation for them to be able to adopt DRRs based on obligatory e-invoicing requirements.[281]

ViDA – harmonisation of digital reporting rules. Another reason for submitting the ViDA package is the need for common digital reporting rules. In doing so, the EC is responding to the practice of individual Member States introducing differing digital reporting requirements. While the indicated measures have an important sealing value, they also entail compliance costs for companies. As the EC points out: 'With an increasing number of Member States implementing different models of digital reporting obligations, the costs of fragmentation for multinational companies (companies with a presence in more than one Member State) are significant. EU-wide, they are estimated at about €1.6 billion annually, of which €1.2 billion are borne by small-scale multinational companies and €0.4 billion by large-scale multinational companies.'[282]

The new reporting system is intended to facilitate cross-border activity in the long term by unifying the invoicing process. At the same time, it is intended to meet the requirements of an effective VAT-tightening tool, i.e., it should provide tax authorities with information about transactions almost in real time and support the use of elec-

[276] Ibid.

[277] Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules in the digital era, Brussels, 8.12.2022, COM(2022) 701 final, eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0701 [accessed: 7 July 2024].

[278] Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the administrative cooperation arrangements in the field of VAT necessary in the digital era, Brussels, 8.12.2022, COM(2022) 703 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0703 [accessed: 7 July 2024].

[279] Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT procedures, Brussels, 8.12.2022, COM(2022) 704 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0704 [accessed: 7 July 2024].

[280] EC, Communication from the Commission to the European Parliament and the Council, *An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy*, COM(2020) 312 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0312 [accessed: 7 July 2024].

[281] Proposal for a Council Directive amending Directive 2006/112/EC as regards the provisions on VAT in the digital era, Brussels, 8.12.2022, COM(2022) 701 final, eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0701 [accessed: 7 July 2024].

[282] Proposal for a Council Directive amending Directive 2006/112/EC as regards the provisions on VAT in the digital era, Brussels, 8.12.2022, COM(2022) 701 final [accessed: 7 July 2024].

tronic invoices. A notable improvement in convenience is that invoices are to be issued in a standardised format (schema) defined as a European standard. However, the final shape of this standard is yet to be determined. The introduction of the structured invoice is to be mandatory only for intra-Community transactions. Therefore, Member States will retain the discretion to decide whether and to what extent they introduce structured invoicing, based on the directive's schema, for domestic transactions. Countries that have introduced or will introduce mandatory e-invoicing for domestic transactions will be obliged to ensure that taxable persons (in practice, foreign taxable persons) have the right to use invoices issued according to the European standard for domestic transactions as well.

For cross-border transactions, the original draft stipulated that invoices must be issued within two working days of the chargeable event. This provision assumes the abolition of the obligation to submit recapitulative statements for intra-Community supplies, as digital reporting using a structured invoice will cover these transactions, with the information contained in the e-Invoice being both more detailed and transmitted more quickly.

ViDA – sensitive issues. The original version of the ViDA package, published in December 2022, is now largely outdated due to extensive discussions and numerous modifications within the Council since 2023. While most countries support the digitalization of reporting obligations, the project has generated, and continues to generate, considerable controversy. This is primarily because some countries, having already independently introduced e-invoicing for domestic transactions, often hold different positions from those without such experience. Key points of contention between EU countries regarding the 'EU e-Invoice' have been:

1) The timeframe for issuing/submitting an e-Invoice: Many countries have advocated for extending the proposed two-day deadline, a change that was subsequently incorporated into later drafts.

2) The relationship between national standards (national schemas) and the European standard: Countries that have already implemented national e-invoicing systems based on their own schemas find it difficult to accept a mandatory shift to a different European schema for national transactions.

3) Invoice validation: *the clearance* model or its prohibition for domestic transactions.

4) The right for Member States to unconditionally and indefinitely maintain national sealing tools after ViDA comes into force, including reporting mechanisms such as SAF-T or *VAT listings*.

Following extensive negotiations, a compromise version of the draft was reached and adopted on 5 November 2024. The Council agreed that the EU e-invoicing system should be implemented in 2030, with all existing national systems becoming interoperable with the EU system by 2035.[283]

ViDA – an academic perspective. The EC's structured invoice initiative should be viewed positively and warrants directional support. It also coincides with the direc-

[283] European Council, *Taxation: Council agrees on VAT in the digital age package*, https://www.consilium.europa.eu/pl/press/press-releases/2024/11/05/taxation-council-agrees-on-vat-in-the-digital-age-package/ [accessed: 5 November 2024].

tions of Polish tax policy, implemented under the KSeF project. Faster access by tax administrations throughout the EU to electronic information on business turnover would enable the use of algorithms, on an unprecedented scale, for the detection of turnover characteristic of tax carousels and, consequently, for the rapid prevention of 'missing trader' crimes and attempts to defraud undue VAT refunds characteristic of carousel fraud. Academic literature rightly points out that the project was proposed too late and that the different forms of *Digital Reporting Requirements* (DRR) implemented by individual states make it difficult to find a compromise as they necessitate aligning existing obligations with ViDA.[284]

The literature also formulates many criticisms of the package. Some commentators emphasise that the concept of the e-Invoice within the ViDA package does not take into account the nature of missing trader fraud, the reasons for delays by tax authorities or the fact that, in the case of missing trader fraud, overly detailed information is useless and counterproductive. At the same time, it is stressed that the implementation of the European e-Invoice, in the event of a data leak, can cause serious losses as a result of the disclosure of confidential business data. In extreme cases, this could jeopardise the competitive advantage of European business. This paves the way for new forms of fraud and future EC legislative measures or interventions much more costly for businesses.[285]

ViDA – platform economy. The sealing value of VAT collection, albeit sector-specific, is also present in Pillar II of the ViDA package, i.e. the *platform economy*. The platform-related aspect of the project has naturally sparked less debate among EU countries compared to Pillar I. Paradoxically, however, this lack of contention contributed to the reform's failure to secure adoption during the Belgian Presidency in the first half of 2024, due to Estonian resistance. The EC justifies the implementation of this part of the ViDA package citing the need to adapt the VAT system to the model of offering services through digital platforms and the necessity of levelling the playing field. As the EC emphasises:

> 'In Europe the cost of accommodation via a platform can be, on average, some 8% to 17% cheaper than a regional hotel's average daily rate. The information provided by the 'VAT in the Digital Age' study[286] indicates (although it varies depending on the type of platform) up to 70% of the total underlying suppliers using a platform are not registered for VAT.'[287]

A kind of 'remedy' to address these problems and counteract the distortions of the competitive environment that occur, according to the EC, is to introduce the concept of the *deemed supplier*, already known from the VAT E-Commerce package, to this sector as well. The concept assumes that platforms will account for VAT on the rel-

[284] I. Lejeune, *Is ViDA a Diva Deserving a Big Applause from 37.5 Million Unpaid Tax Collectors?*, Issue: International VAT Monitor, 2023 (Volume 34), No. 6.

[285] C. Amand, *European Union – VAT in the Digital Age Proposal: Can DRR Tackle VAT Fraud?*, Issue: International VAT Monitor, 2023 (Volume 34), No. 5.

[286] European Commission, Commission Staff Working Document, Impact Assessment Report, Brussels, 8.12.2022, SWD(2022) 393 final, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022SC0393 [accessed: 7 July 2024].

[287] Proposal for a Council Directive amending Directive 2006/112/EC as regards the provisions on VAT in the digital era, Brussels, 8.12.2022, COM(2022) 701 final [accessed: 7 July 2024].

evant supply, where the supplier does not charge VAT, to ensure equal treatment of the online (platform) market and the traditional market in the short-term residential rental and passenger transport sectors. In addition, the treatment of facilitation services will be clarified to allow a uniform application of the place of supply rules.

The ViDA package will also change the rules for determining the place of supply for the facilitation services themselves. The draft assumes that such services offered by the platform, especially in the case of property rentals, will be taxed as the underlying service, i.e. at the location of the property, rather than as an electronic service. Consequently, tourist destinations, particularly those in southern Europe (e.g., Spain and Portugal), will benefit financially from this solution, while countries with less developed tourism markets, such as Germany and Poland, will experience a loss. This disparity in the budgetary impact of the changes, which depends on the specific characteristics of each Member State, is an important argument in the discussion regarding the package as a whole. The ViDA will also take steps to harmonise the transmission of information from the platform to the Member States. The indicated proposal has been negatively received by the digital platforms themselves. Due to the unprecedented nature of this initiative, its actual effectiveness as a tool for sealing the VAT system in the EU remains challenging to evaluate in advance.

Summary. In conclusion, both of the EC's key draft amendments to the VAT Directive, i.e. the regulation on the definitive system and the ViDA package, provide solutions that could effectively tighten the VAT system in EU countries in the future. Simultaneous introduction of their provisions into the legal systems of all EU states would significantly impede the organisation of offences of the 'missing trader' type, generation of fictitious turnover and extortion of undue tax refunds. However, a key obstacle to the effectiveness of these proposed changes is the uncertainty surrounding their implementation timeline, due to political considerations. As of 2018, work on the definitive system has not progressed. To date, there is no implementation roadmap, which means that the moment of entry into force of its provisions has been significantly delayed. The efforts of the EC and Member States are currently focused on negotiating the provisions of the ViDA package presented at the end of 2022. While this process reached a positive conclusion on 5 November 2024, many of the ViDA package's solutions were simultaneously postponed. Currently, especially in the short term, the only way to protect the VAT tax revenues of EU countries is for them to effectively implement unilateral sealing solutions. This practice is not entirely optimal from an EU-wide perspective. It leads to displacing the activities of organised crime groups from countries that have already implemented tax sealing measures to those whose legal regulations do not sufficiently impede the indicated practice and do not yet provide the tax administration with access to information, allowing rapid detection of fictitious turnover. On the other hand, unilateral sealing measures also have very serious positive effects, both for the implementing countries themselves and for the EU as a whole. In addition to achieving a local sealing effect, resulting in increased tax revenues and a levelling of the playing field in the implementing country or countries, the introduction of unique national solutions creates regulatory sandboxes to test the effectiveness of selected VAT sealing approaches. As knowledge of sealing successes spreads, tools deemed effective are unilaterally implemented in more countries.

This creates a valuable knowledge and experience base, which, when transferred to the EU level, will allow the implementation of proven local and regional tools across all Member States in the future.

3

POLISH SEALING MEASURES 2016-2022

1. INTRODUCTION: THE VAT GAP IN POLAND AND THE CLASSIFICATION OF SEALING TOOLS

The VAT gap problem in Poland has not been adequately investigated or analysed for years. The Ministry of Finance did not produce estimates of state budget revenue losses due to VAT fraud and abuse. Until 2013, there was also no attempt to estimate the VAT tax gap, of which fraud is a component.[288]

At the EU level, reliable analyses in this area also emerged relatively late. As the Supreme Audit Office (NIK) points out in its report:

> 'The first reports commissioned by the EC, i.e. the report published in September 2009 concerning the years 2000-2006 and the one published in July 2013 concerning the years 2000-2011, presented data according to which the VAT gap in Poland was at a lower level than the EU average. However, already in May 2013, PwC, in its report *VAT losses of the Treasury*, pointed to a much higher gap. The rather optimistic picture for Poland compared to other European countries, resulting from the first two EC reports on the VAT gap, changed in the third report, published in September 2014. The estimates for Poland for 2009-2011 were significantly increased, and data for 2012, in which a drastic increase in the level of the gap was recorded, was published.'[289]

The efficiency of VAT revenue collection first declined in 2008-2009 during the manifestation of the global financial crisis. Subsequently, the level of the VAT tax gap did not change significantly between 2010 and 2011, despite the improving economic situation. Another reduction in revenue collection, coinciding with declining macroeconomic conditions, occurred in 2012-2013. During this time, the VAT gap increased sharply and remained at its highest level in the period under review (up to around 25%).[290]

A clear trend of VAT gap reduction began in 2016 and can be observed in most EU countries, likely due in part to improved economic conditions across the EU. In contrast, the VAT gap in Poland is starting to fall sharply – the fastest of any EU country – a trend undoubtedly attributable not only to the positive economic climate but also to legislative, administrative, and technological reforms initiated at the end of 2015.

In 2021, Poland had one of the lowest VAT gaps in the EU, at 3.3%, ranking it 9th overall. This placed Poland ahead of countries such as France (4.9%) and Italy (10.8%). At the time, the highest VAT gaps in the EU were recorded in Romania (36.7%, unchanged for several years), Malta (25.7%), and Greece (17.8%).

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[288] NIK, *Nadzór Ministra Finansów nad poborem podatku VAT*, KBF.430.002.2019, KBF.430.002.2019, Warsaw 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 7 July 2024].

[289] Ibid.

[290] Ibid.

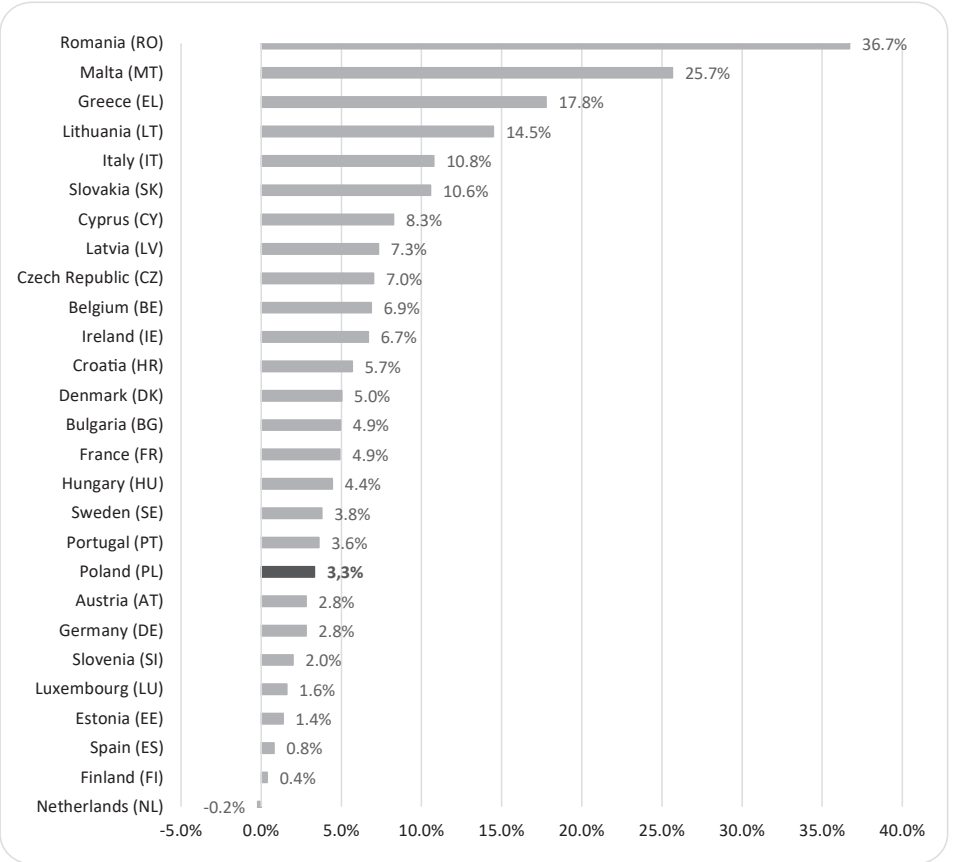


Chart 13: VAT gap in Poland in 2021 compared to EU countries [% VTTL]

Source: European Commission (2023).[291]

As the EC report shows, the VAT gap in Poland reached 3.3% in 2021. This places Poland in first place among the EU countries with the fastest reduction in the VAT gap between 2016 and 2021. Between 2016 and 2021, according to the EC's data, Poland saw a decrease in the VAT gap of more than 16.6 %age points, followed by Italy (-15.9%) and Lithuania (-11.6%). At the other end of the spectrum, Romania, Malta, Sweden, and Ireland recorded slight increases in their VAT gaps during the same period.

VAT gap in 2022. The EC has not yet published data on Poland's VAT gap for 2022. However, the Ministry of Finance has presented forecasts, albeit with numerous caveats.[292] According to the Ministry's latest forecast from April 2024, the VAT gap for 2022 has increased to 7.3%. The 2021 figure was also revised to 2.6%. The Ministry did not specify the reason for the increase, stating only that 'In assessing the revision of

[291] European Commission et al., 2023.

[292] Ministerstwo Finansów, *Wieloletni Plan Finansowy Państwa*, Warsaw 2024, https://www.gov.pl/web/finanse/wieloletni-plan-finansowy-panstwa [accessed: 4 July 2024].

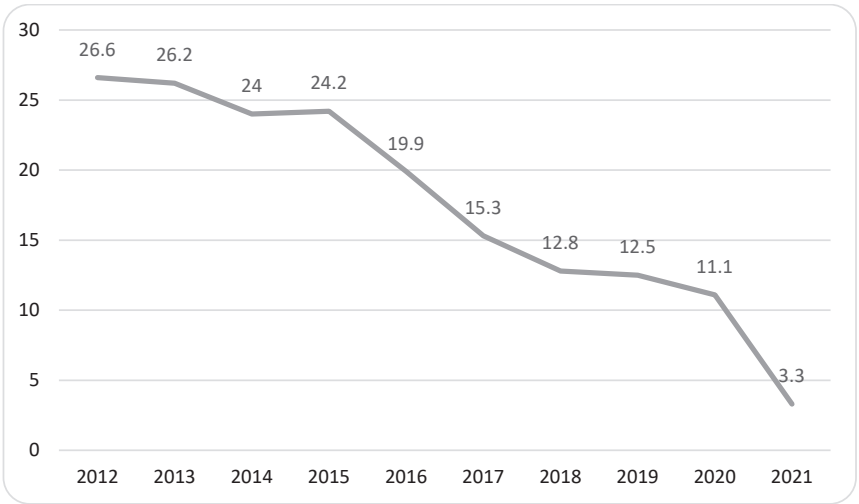


Chart 14: VAT gap in Poland as % of VTTL [EC data]

Source: European Commission (2023).[293]

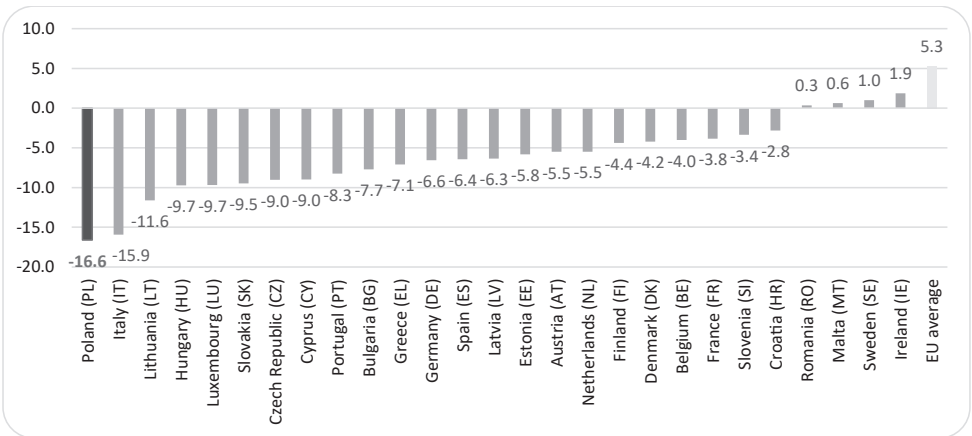


Chart 15: Change in the VAT gap between 2016 and 2021 [% age points].

Source: European Commission (2023).[294]

the VAT gap estimate for 2022-2023, it is necessary to take into account a number of factors that may have adversely affected the gap estimate itself and its accuracy.' These figures and their accuracy certainly require further revision, especially considering the effects of the Anti-Inflation Shields, the pandemic, and the conflict in Ukraine.[295]

[293] Ibid.

[294] Ibid.

[295] The observed increase in the VAT gap, despite the continued application of measures implemented in Poland to reduce it, should prompt further research into the relative contributions of cyclical and structural segments of the tax gap.

Table 3: VAT revenues 2015-2022

Year	VAT revenues [PLN billion]	Y/Y growth [PLN billion]	Dynamics [%]
2015	123.1		
2016	126.6	3.5	3%
2017	156.8	30.2	24%
2018	174.9	18.1	12%
2019	180.9	5.9	3%
2020	184.6	3.7	2%
2021	215.7	31.2	17%
2022	230.4	14.7	7%

Source: own compilation based on the implementation of state budgets for the respective years.

VAT policy gap in Poland – the effect of VAT rate reductions. Despite having a relatively high standard VAT rate (23%), Poland is currently among the top countries applying reduced rates, according to the EC's 2023 report.[296] It holds the 5th place in the EU for this practice, with a *VAT policy gap* of just over 15%. This is a result of the ongoing process of successive VAT rate reductions in Poland since 2019, as well as the frequent use of temporary VAT reductions as a response to current political and economic challenges, including the COVID-19 pandemic, as well as the migration and inflation crisis.

As of 1 November 2019, the VAT rate in Poland for e-books and e-press (including, for example, audiobooks downloaded online), as well as books not marked with an ISBN and newspapers and magazines not marked with an ISSN, was reduced from 23% to:

1) 5% for book publications and regional and local magazines in print, on discs and on similar media;
2) 8% for press publications.

From **1 July 2020**, VAT rates on several essential goods have been reduced as a result of the entry into force of the so-called new VAT rate matrix:

- **Bread** with a shelf life or minimum durability of more than 14 days from 8% to 5%;
- **Pastry products:** from 8% or 23% (depending on shelf life or minimum durability) to 5%;
- **Soups, broths, and homogenised** foods (including dietary foods for special medical purposes): from 8% to 5%;
- **Tropical and citrus fruits**, and certain nuts (e.g. almonds, pistachios); from 8% to 5%;
- **Mustard and certain processed spices** (e.g. pepper, nutmeg, thyme): from 23% to 8%;
- **Baby and child products** (i.e. **dummies, nappies and car seats**): from 8% to 5%;
- **Hygiene products** (sanitary pads, tampons, nappies) – from 8% to 5%.

Until the end of 2022, a 0% VAT rate was in effect due to the COVID-19 pandemic. This applied to the import of certain medicines (e.g., for SMA), donations of masks,

[296] European Commission, CASE, G. Poniatowski, M. Bonch-Osmolovskiy, A. Smietanka, A. Sojka, *VAT gap...,* Luxembourg 2023.

protective equipment, medicines, and computer equipment for schools (during the epidemic state in Poland), and the supply of vaccines and COVID-19 tests. An analogous measure was introduced in 2022, applying a 0% VAT rate to donations for victims of the war in Ukraine (until 31 December 2023). VAT revenue was also significantly impacted by the 'Anti-Inflation Shield' in effect between 2022 and 2023. This shield maintained a 0% VAT rate on food throughout 2023. However, this reduction was withdrawn on 1 April 2024, and replaced with a preferential 8% VAT rate for the beauty industry, a move that deviates from the VAT Directive.

Table 4: Temporary reduction in VAT rates between 2021 and 2023

product category	VAT rates before the 2021 dials	Shield I rate changes (January 2022)	Rates 1 February to 31 December 2022	Rates 1 January to 31 December 2023	Total effect of shield I and II (PLN billion)	Shield extension to 2023 (PLN billion)	Effect of all shields (PLN billion)
VAT rate reductions					Cash effect February 2022 – January 2023 (12 months)	Cash effect February 2023 – January 2024 (12 months)	Cash effect (February 2022 – January 2024)
food	5%		0%	0%	-8.5	-11.0	-19.5
fuels	23%		8%	23%	-13.3		-13.3
fertilisers	8%		0%	8%	-1.7		-1.7
natural gas	23%	8%	0%	23%	-5.8		-5.8
electricity	23%	5%	5%	23%	-6.2		-6.2
heat energy	23%	8%	5%	23%	-1.6		-1.6
Total					**-37.1**	**-11.0**	**-48.1**

Source: own elaboration.

Classification of sealing solutions. The legislative and technological (IT) tools implemented and developed in Poland between 2016 and 2022 can be classified according to several criteria. The authors propose the following division: 1) legislative solutions, which take the form of changes to existing legal provisions; 2) administrative (executive or 'implementation') solutions, concerning modifications to administrative practices and the tools used by the administration that do not require legislative changes; 3) solutions developed in cooperation with businesses, including 'soft' tools.[297] Analysing the solutions in terms of their technological context, they can be divided into two categories: 1) tools using the latest technologies, such as e-Invoices, SAF-T, or STIR; 2) measures non-reliant on technology but still important for the system's effective-

[297] J. Sarnowski, P. Selera, *Zmniejszenie luki VAT...,* Polish Economic Institute, Warsaw 2018.

ness, such as limiting tax exemptions and raising limits on non-cash payments. Analysing the implemented mechanisms by the criterion of their origin, solutions can be distinguished between: 1) recycled solutions, developed by other European countries and implemented with modifications in Poland (especially SAF-T – *Standard Audit File for Tax*, and e-Invoices)[298] and 2) original solutions used in the context of taxation only in Poland, such as STIR (Clearing House).[299] A special type of classification concerns new tools used by the administration and entrepreneurs to verify taxpayer status. This includes: 1) subject analysis tools (verifying the status of the taxpayer and examining his history, e.g. lists of taxpayers) and 2) object analysis tools (focusing on the transaction itself and its course).[300] When considering the classification of tools by subject matter, we can distinguish: 1) tools focusing on the analytics of *business-to-business* (B2B, e.g. SAF-T and STIR) transactions; 2) tools focusing on the study of *business-to-consumer* (B2C, especially online cash registers) transactions.

Classification used in this study. For clarity, and given that the main objective of this study is to present various mechanisms for reducing the VAT gap in terms of their role within the tax system, a functional division has been adopted. The groups of solutions within this framework are:

1) Tools to combat VAT carousels, among which further subcategories can be distinguished:

   a) Solutions **to reduce the profitability** of 'missing trader' fraud (in particular, implementation and widespread adoption of the split payment mechanism in Poland);

   b) Solutions **to identify fictitious trading more quickly** using big data analytics (in particular, the electronification of VAT settlements and reporting and supplying tax administration databases with data from banks and other countries);

   c) Solutions to **make organising fictitious trade more difficult**, including providing tools for businesses to verify the tax compliance of their contractors;

[298] The Ministry of Finance's emphasis on monitoring solutions implemented in other countries is demonstrated by the establishment, in April 2018, of its Legal and Comparative Analysis Team dedicated to analysing foreign tax law. In its first year alone, the Team provided over 120 analyses to the Ministry and KAS management and departments, covering topics such as the Split Payment Mechanism (Italy, Romania), Due Diligence Methodology (Germany), the EKÁER/SENT System (Hungary), and Tax Information Exchange Agreements (Spain). As of 14 December 2019, the Tax Analysis Department was established to supersede the Team, tasked with continuously monitoring existing and newly implemented tax solutions worldwide. This department contributed to the implementation of initiatives such as KSeF (Italy), VAT Groups and VAT Compositions (Germany), Interpretation 590 (Italy, Hungary, Slovakia), and the Cashless Taxpayer (Japan and South Korea). Following changes at the turn of 2023 and 2024, the department was abolished on 1 May 2024, with its responsibilities transferred to the Tax System Department. See Ordinance of the Minister of Finance of 13 December 2019 amending the Ordinance on Establishing the Organisational Regulations of the Ministry of Finance, Official Journal of the Ministry of Finance 2019, item 113; Ordinance of the Minister of Finance of 6 May 2024 amending the Ordinance on Establishing the Organisational Regulations of the Ministry of Finance, Official Journal of the Ministry of Finance 2024, item 50.

[299] J. Sarnowski, P. Selera, *Oszustwa związane z VAT z udziałem platform cyfrowych,* [in:] E. Małecka-Ziembińska (ed.), *Oszustwa związane z VAT w dobie pandemii i cyfryzacji gospodarki*, Poznań 2023, p. 74.

[300] J. Sarnowski, P. Selera, *Narzędzia informatyczne wykorzystywane w administracji skarbowej i ich wpływ na szczelność systemu podatkowego w Polsce w latach 2015–2019*, Studia BAS, 4(64), pp. 29-50. https://doi.org/10.31268/StudiaBAS.2020.29 [accessed: 10 July 2024].

d) Solutions to **make it more difficult to legalise the proceeds of crime** (in particular, mandating the use of online and virtual cash registers in sensitive industries);

e) Solutions **to deter potential criminals** by increasing the size and effectiveness of the sanctions they face (including the institution of so-called VAT sanctions, extended confiscation, and changes to criminal and penal provisions).

2) Collaboration with business, including:

a) Taking action to reduce unfair competition in the economy as a whole or in specific industries;

b) Building the administration's credibility as a partner of entrepreneurs by supporting taxpayer understanding and interpretation of regulations.

3) Transformation of revenue administration, in particular:

a) The evolution of KAS towards Tax Administration 2.0. and 3.0, realised through a technological revolution and a focus on customer expectations;

b) Expansion of the administration's analytical functions leading to fewer but more effective tax audits, as well as an acceleration of VAT refund deadlines;

c) Development of administration e-services, including their application through innovative procedures, e.g., through the GovTech Programme;

d) Involvement in international cooperation programmes with partner administrations from Poland's neighbouring countries (joint efforts to combat cross-border fictitious trading) and developing countries (transfer of legislative and technological solutions under the Tax Solidarity Programme).

The summary indicated is preceded by a chapter describing the sealing activities of 2010-2015, analysing the reasons for their insufficient effectiveness.

2. UNSUCCESSFUL SEALING ATTEMPTS: 2010-2015

Introduction – the VAT gap and an outline of activities in 2004-2009.

Following Poland's accession to the European Union and the enactment of the new Value Added Tax Act in 2004, tax inspection offices carried out tax controls on the correctness of VAT settlements in intra-Community transactions. The main threat to the effective collection of VAT, identified between 2007-2009, were organised frauds involving a 'missing taxpayer', including carousel frauds, aimed at avoiding the payment of VAT or defrauding against its refund.[301] The VAT regulations developed and implemented between 2007 and 2008 were primarily aimed at liberalising and simplifying the legislation. This involved clarifying the wording of certain legal regulations and removing formal restrictions arising from the previous regulations (including *inter*

[301] NIK, *Nadzór Ministra Finansów nad poborem podatku VAT*, KBF.430.002.2019, Warsaw 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 7 July 2024].

alia the abolition of the 30% VAT sanction in December 2008 subsequently reinstated in 2017).[302] NIK stated:

> '(...) in the period following the global financial crisis, between 2010 and 2015, Poland experienced a growing problem with VAT collectability and thereby effectively counteracting revenue losses. To some extent, the initiatives undertaken in 2007-2008 may have contributed to this phenomenon (...) in particular the promotion of quarterly VAT settlements, as well as the abolition of VAT sanctions.'[303]

Introduction for 2010-2015.

The period between 2010 and 2015 marked the beginning of the implementation of sealing solutions recommended by international organizations into the Polish legal system. This primarily involved the introduction of the reverse charge mechanism and joint and several liability for VAT. At the same time, these solutions were relatively simple to introduce. These solutions were relatively simple to implement, as they were legislative rather than technological, requiring no development of technical infrastructure. Despite the awareness of the scale of irregularities, the unprecedented level of the VAT gap and the choice of the least complex of the solutions recommended by international organisations, the Polish legislator introduced them with a delay of many years compared to the pace of their implementation by other European countries. These tools, despite posing a significant burden on honest businesses, have only marginally led to real tightening. The introduction of the reverse charge simply shifted the VAT mafia's activities to trading goods not covered by these regulations. At the same time, the accumulation of VAT payments at the retailer level increased the profitability of their undeclared sales to consumers. Joint and several liability, due to its flawed implementation, has allowed those knowingly involved in VAT carousels to avoid the burden by employing guarantee bonds. As a result, honest taxpayers, who were unwittingly used as buffers by tax criminals, were in fact affected. The makeshift nature and inadequacies of the changes implemented at the time were pointed out by, among others, the NIK in its 2019 report:

> '(...) Most of the legislative solutions introduced between 2010 and 2015 to tighten the VAT system involved applying the reverse charge mechanism and the institution of joint and several liability of the purchaser in response to identified significant irregularities in certain areas of economic activity. However, the results of fiscal and tax audits indicated the volatility of the areas in which fraud is carried out, the short timeframe in which irregularities are generated, the concealment of the benefits achieved from fraud and the difficulty in detecting the actual organisers.'[304]

[302] 'The abolition of sanctions, combined with other changes aimed at facilitating economic activity, may have contributed to a relaxation of tax discipline. During this period, the ratio of systemic VAT refunds to VAT receipts showed, in general, an upward trend: 2009 – 35.4%, 2010 – 34.6%, 2011 – 362%, 2012 – 38.4%, 2013 – 40.9%, 2014 – 40.7%, 2015 – 41.5%' – NIK, *Nadzór Ministra Finansów nad poborem podatku VAT*, KBF.430.002.2019, Warsaw 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 7 July 2024].

[303] Ibid.

[304] Ibid.

2.1. Reverse Charge Mechanism

European Commission and OECD recommend reverse charge. The European Commission recommended that countries first address the issue by including trade in so-called 'sensitive goods' in the reverse charge mechanism. As a result of its application, the supplier issues a VAT invoice for the net amount without VAT. This means that they do not receive VAT on the goods or services sold from his counterparty. As a consequence of the reverse charge mechanism, there is no accumulation of VAT payments on the part of the entity that imports or intra-Community acquires the goods. This prevents a situation that makes it particularly profitable for the importer or intra-Community acquirer to 'disappear' without paying tax, thus reducing the effectiveness of carousel fraud perpetrated by organised crime groups. This regularity has been highlighted by the European Commission. Descriptions of the reverse charge mechanism, as a tool for sealing VAT, appeared in the Commission's documents and reports created for it as early as 2004[305] and then successively in 2007,[306] 2011[307] and 2014,[308] including a 2007 report specifically dedicated to this solution.[309] The reports' authors pointed to the mechanism's effectiveness in combating carousel crime in the industries covered, presenting cases of its successful application in Austria and Germany.[310] Using similar reasoning, the OECD recommended the implementation of the reverse charge mechanism in 2011 and 2014.[311]

EC finds limited effectiveness of reverse charge. The EC's strongly positive opinion on the reverse charge mechanism began to shift gradually as it received *ex-post* analyses reported by countries. On 8 March 2018, the Commission presented a key report to the European Parliament and the Council on the effects of Articles 199a and 199b of Directive 2006/112/EC on combating VAT fraud (as cited earlier).[312] Based on dates pointed out by the States, the Commission concluded on the limited effectiveness of its previously recommended mechanism to combat VAT fraud. Experience with

[305] EC (2004), *Report from the Commission to the Council and the European Parliament on the use of administrative cooperation arrangements in the fight against VAT fraud*, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52004DC0260 [accessed: 7 July 2024].

[306] IVA (2007), *Combating VAT Fraud...*

[307] Institute for Fiscal Studies et al. (2011), *A retrospective evaluation of elements of the EU VAT system*, https://taxation-customs.ec.europa.eu/system/files/2016-09/report_evaluation_vat.pdf [accessed: 7 July 2024].

[308] EC (2014), *Assessment of the application and impact of the optional 'Reverse Charge Mechanism' within the EU VAT system*, https://taxation-customs.ec.europa.eu/system/files/2016-09/kp_07_14_060_en.pdf [accessed: 7 July 2024].

[309] PriceWaterhouseCoopers (2007), *Study in respect of introducing an optional reverse charge mechanism in the EU VAT Directive. Final Report to the European Commission*, https://taxation-customs.ec.europa.eu/document/download/b2440f2c-19c7-4aaa-b6b6-7d1609f87a62_en?filename=4209_study_en.pdf [accessed: 7 July 2024].

[310] IVA (2007), Combating VAT Fraud...

[311] OECD (2011), *Consumption Tax Trends 2010: VAT/GST and Excise Rates, Trends and Administration Issues,* OECD Publishing, https://read.oecd-ilibrary.org/taxation/consumption-tax-trends-2010_ctt-2010-en#page1 [accessed: 7 July 2024]. OECD (2014), *International VAT/GST Guidelines 2014,* https://drtp.ca/wp-content/uploads/2015/09/oecd-international-vat-gst-guidelines.pdf [accessed: 7 July 2024].

[312] EC, *Report from the Commission to the Council and the European Parliament on the effects of Articles 199a and 199b of Council Directive 2006/112/EC on the fight against fraud*, COM/2018/0118 final, Brussels 8.3.2018, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2018%3A0118%3AFIN [accessed: 7 July 2024].

the sectoral reverse charge mechanism has shown that fraudsters adapt efficiently to legislative changes, shifting their activities from one sector to another (e.g., from the supply of greenhouse gas emission certificates to the supply of gas and electricity, from mobile phones to tablets, from cereals to metals).

First reverse charge in Poland. In 2010 Poland began work on implementing a reverse charge mechanism as a remedy to the growing scale of VAT fraud. In Poland, the first reverse charge mechanism regulation was introduced on 1 April 2011 in the trade of scrap metal and greenhouse gas emission allowances.[313]

VAT carousels in the steel industry. Until 2013, the steel industry was a sector in Poland where widespread VAT fraud was well documented. Trade in steel bars, in particular, was subject to irregularities. According to Eurostat, discrepancies between EU countries' declared exports to Poland and Poland's declared imports increased from an average of €30 million per year between 2006 and 2009 to €113 million in 2010 and €332 million and €345 million in 2011 and 2012 respectively.[314] The Steel Industry and Trade Chamber (HIPH) and the Polish Union of Steel Distributors (PUDS) estimated that VAT fraud involving only ribbed bars could expose the state budget to losses of up to several hundred million PLN each year. HIPH and PUDS also estimated that up to 40% of the ribbed bars sold in Poland during this period may have originated from illegal sources.[315]

'Fraud in the market of trading in steel products, fuels and unwrought gold is primarily a peculiarity of the Polish market, not found [currently] on a similar scale in other European Union countries.'[316]

Impact of VAT carousels on the steel industry. However, the actions of tax criminals not only decreased budget revenues. This practice also resulted in the market being flooded with 'post-carousel' goods – steel bars previously traded fictitiously. These were 'liquidated', meaning they were sold by tax criminals to consumers at prices significantly deviating not only from the market price, but also from the cost of production of the goods. Consequently, producers of steel bars and legitimate traders experienced a drop in turnover, as they could not compete with the prices offered by the tax criminals.[317]

> **[ArcelorMittal Warszawa stopped production]** On 28 January 2013, the management of Poland's largest steelmaker announced that it had taken the decision to temporarily stop production at both the steelmaking and rolling mill divisions for nine and eleven days respectively. This decision followed a drastic decline in orders for ribbed bars, which account for 40% of the plant's production, that had persisted for many months. This lack of orders for a legitimate producer was attributed to market dominance by VAT-evaded goods sold by tax criminals.[318]

[313] Act of 18 March 2011 amending the Act on Value Added Tax and the Act – Law on Measures (Journal of Laws No. 64, item 332).

[314] PwC, *Straty Skarbu Państwa w VAT*, Warsaw 2013.

[315] Interpelacja nr 14830 do Prezesa Rady Ministrów w sprawie zwolnienia pracowników w Huta ArcelorMittal Warszawa, https://www.sejm.gov.pl/Sejm7.nsf/InterpelacjaTresc.xsp?key=52E9CA27 [accessed: 7 July 2024].

[316] Explanatory Memorandum to the Government Bill on Amendments to the Law on Value Added Tax and the Law – Tax Ordinance, Draft No. 1515, https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=1515 [accessed: 7 July 2024].

[317] J. Szlęzak-Matusewicz, *Odwrotne obciążenie VAT jako mechanizm przeciwdziałający oszustwom podatkowym*, Zeszyty Naukowe Uniwersytetu Szczecińskiego, No. 864 Finanse, Rynki Finansowe, Ubezpieczenia, No. 76, vol. 1 (2015), p. 272.

[318] *ArcelorMittal Warszawa czasowo wstrzymał produkcję,* https://biznes.gazetaprawna.pl/artykuly/677031,arcelormittal-warszawa-czasowo-wstrzymal-produkcje.html [accessed: 10 October 2024].

The deteriorating economic conditions for Polish businesses (in this case, steel mills) jeopardised employment stability. At just one Polish steel producer (ArcelorMittal), the crime-induced drop in demand led to approximately 1,000 job losses in 2012.[319] It is estimated that the production and sales of reinforcing bars in legally operating companies decreased year-on-year by 15% in 2012 and by a further 30% in the first half of 2013.[320]

[Germany, Spain and the US call for VAT sealing in Poland] The scale of irregularities in the steel industry during this period was so significant that it attracted the attention of foreign embassies. On 8 November 2012, the Ambassador of the Federal Republic of Germany addressed a letter concerning the issue, followed by the Ambassador of Spain on 20 December 2012, and the Ambassador of the United States of America on 15 February 2013. Diplomatic representatives from these countries observed that the extent of VAT fraud in Poland's steel trading sector was substantial enough to harm their own economic interests or those of their companies operating within the Polish market.[321]

Reverse charge in the steel industry only in 2013. Despite knowledge of the surge in fictitious trading in steel bars observed since at least 2010, reverse charges were only introduced in this area on 1 October 2013 – fully three years after the industry experienced an unprecedented, crime-induced drop in turnover.[322]

VAT offences in electronics trading. The literature indicates that Poland's spot application of the reverse charge mechanism has not reduced the scale of VAT fraud.[323] Instead, fraudulent activity has shifted to other sectors, notably the electronics trade.[324] This sector is particularly attractive to criminal organisations as it allows for high turnover with minimal infrastructure, due to the small size and high value of goods such as mobile phones, cameras, and hard drives.

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[319] M. Duszczyk*, ArcelorMittal zwolni tysiąc pracowników*, https://forsal.pl/artykuly/602917,arcelormittal-zwolni-tysiac-pracownikow.html,komentarze-najnowsze,1, [accessed: 10 October 2024]. As NSZZ Solidarność points out, '[f]or many months, steel industry trade unions and employers have [advocated] for the introduction of reverse charge VAT on steel products. This would mean the buyer, as the final entity in the transaction, would be responsible for paying the VAT. This mechanism has already been successfully applied to scrap metal trading, curbing illegal activity in that sector. The issue of reverse charge VAT was discussed by the working team for industry and the labour market, established at the initiative of the Inter-Union Protest and Strike Committee. Following joint pressure from trade unions and employers, the Ministry of Finance finally addressed the matter', see NSZZ Solidarność*, Mafia zarabia, cierpią pracownicy,* https://solidarnosckatowice.pl/mafia-zarabia-cierpia-pracownicy/ [accessed: 10 October 2024].

[320] EC, *Action Plan for a competitive and sustainable steel industry in Europe* (2013), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:190202_1 [accessed: 7 July 2024].

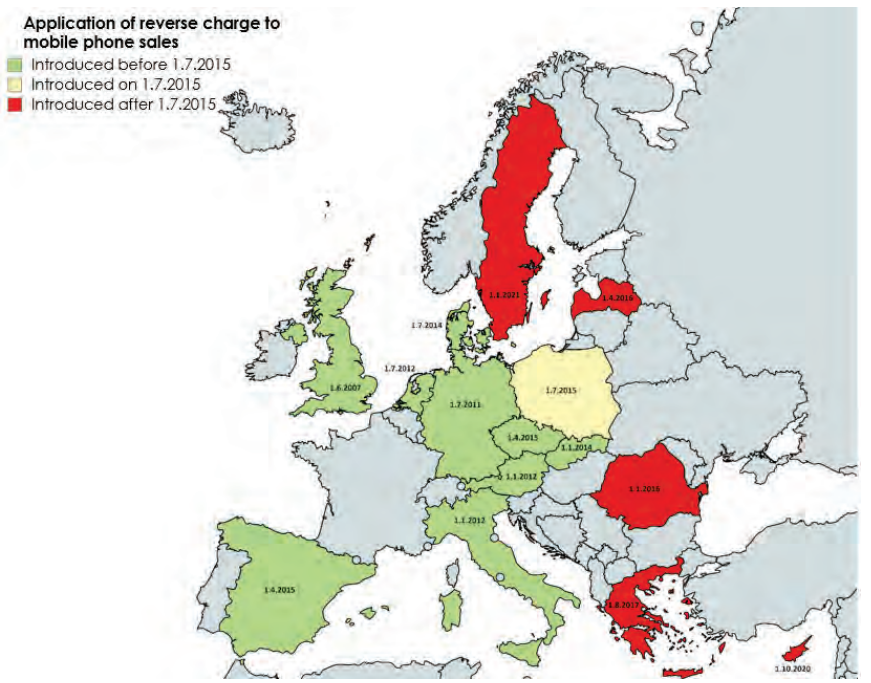
[321] Komisja Śledcza do zbadania prawidłowości i legalności działań oraz występowania zaniedbań i zaniechań organów i instytucji publicznych w zakresie zapewnienia dochodów skarbu Państwa z tytułu podatku od towarów i usług i podatku akcyzowego w okresie od grudnia 2007 r. do listopada 2015 r. /nr 83/ https://www.sejm.gov.pl/sejm8.nsf/biuletyn.xsp?documentId=0B78FF61FF155987C125846B00485184 [accessed: 7 July 2024].

[322] Act of 26 July 2013 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1027).

[323] J. Szlęzak-Matusewicz, *Odwrotne obciążenie VAT jako mechanizm przeciwdziałający oszustwom podatkowym*, Zeszyty Naukowe Uniwersytetu Szczecińskiego, No. 864 Finanse, Rynki Finansowe, Ubezpieczenia, No. 76, vol. 1 (2015), pp. 273-274.

[324] Ministerstwo Finansów*, List ostrzegawczy do przedsiębiorców*, https://tinyurl.com/yakn5s9z [accessed: 12 July 2024].

A 'shift' in extortion from Western Europe. The ease of fictitious trading in electronics made this sector particularly attractive for criminal exploitation by groups controlling or working with hundreds of companies across the EU. The operation of the VAT mafias was facilitated by the growing real demand for new technological solutions (smartphones), which helped to disguise the fictitious turnover in a mass of real transactions. In response to the growing scale of irregularities, a reverse charge mechanism for phones was introduced in 2007 in the UK and 2011 and 2012 in Italy, Germany, Austria, and the Netherlands, respectively. The commonly observed response of the tax mafias was to shift the fictitious trade in phones eastwards, to countries where the reverse charge had not yet been implemented on them, and locally to shift the focus of extortion, using the same network of related parties, to the trade in other electronics goods. This, in turn, required further legislative steps by affected states. Germany, the Western European market most closely related to Poland, provides an example. As of 1 July 2011, the reverse charge mechanism was extended to mobile phones and integrated circuits.[325] As of 1 October 2014, as a result of the observed 'shift' of fraud to further categories of electronic equipment, Germany further extended the reverse charge mechanism to gaming consoles, tablets, and laptops.[326]



Map 3: Application of reverse charge to mobile phone sales

Source: own compilation based on F. Annacondia (2023).[327]

[325] Sechstes Gesetz zur Änderung von Verbrauchsteuergesetzen vom 16. Juni 2011 (BGBl. I 2011 S. 1090).

[326] Gesetz zur Anpassung des nationalen Steuerrechts an den Beitritt Kroatiens zur EU und zur Änderung weiterer steuerlicher Vorschriften - KroatienG - vom 25. Juli 2014 (BGBl 2014 I S. 1266).

[327] F. Annacondia (ed.), *VAT Options Exercised by the Member States*, IBFD, 2023, pp. 82-84.

Reverse charge in electronics trade. In Poland, the industry signalled the problem of VAT fraud in the mobile phone market as early as 2011, due to the introduction of the reverse charge on this commodity in Germany. According to the Association of Importers and Producers of Electrical and Electronic Equipment (ZIPSEE, now Cyfrowa Polska Association) and the law firm DLA Piper Wiater, fraud involving fictitious turnover of mobile phones amounted to between PLN 420 million and PLN 1.8 billion annually.[328] Despite awareness of the scale of these irregularities, Poland implemented sealing with a four-year delay.[329] The reverse charge on mobile phones was not introduced in Poland until 1 July 2015, and the legislative process itself took 11 months.[330]

However, by implementing this solution, Poland repeated the mistake made by Germany, Austria, and Italy in 2011: the reverse charge was not extended to other electronics products. As a result, hard disk drives (HDD and SSD) and processors became an important object of fictitious trading in late 2015 and early 2016 in Poland. According to a report prepared by ZIPSEE Cyfrowa Polska, presented to the Ministry of Finance in May 2016, the estimated budget loss due to VAT extortion only in the supply of these products amounted to approximately PLN 400 million annually.[331] In response, reverse charge was extended to processors in 2017.[332]

Reverse charge – Conclusions. In conclusion, Poland's experience with the use of the reverse charge mechanism is clearly negative. As in other EU countries, a widespread phenomenon of tax evaders 'switching' to other, related goods not covered by the reverse charge has been observed in Poland. As the 2016 NIK report points out,

> '[t]he results of analyses and inspections of tax control and fiscal intelligence bodies have shown that the reverse charge does not systemically solve the problem of fraud, but only in an ad hoc manner, as the inclusion of a given group of goods in this mechanism results in the transfer of fraud to other goods remaining outside this mechanism'.[333]

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[328] ZIPSEE, *Raport uzasadniający konieczność wprowadzenia mechanizmu odwrotnego obciążenia przy rozliczaniu VAT w handlu wybranymi urządzeniami elektronicznymi*, Warsaw 2014, https://cyfrowapolska.org/wp-content/uploads/2019/06/Raport-uzasadniaj%C4%85cy-konieczno%C5%9B%C4%87-wprowadzenia-mechanizmu-odwrotnego-obci%C4%85%C5%BCenia-przy-rozliczaniu-VAT-w-handlu-wybranymi-urz%C4%85dzeniami-elektronicznymi.-Luty-2014_.pdf [accessed: 7 July 2024].

[329] NIK has particularly highlighted the delay in this regard, stating that '(...) the process of deciding on the implementation of this remedy through legislation was excessively long, potentially allowing unscrupulous businesses to increase their financial gains from fraudulent activities. This is especially true for the trading of electronics and the provision of construction services, which were identified as particularly vulnerable as early as 2006, yet were only included in the reverse charge mechanism in 2015 (electronics) and 2017 (construction services)', see NIK Report, *Nadzór Ministra Finansów nad pobieorem podatku od towarów i usług*, Warsaw 2019, p. 14, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 10 October 2024].

[330] Act of 9 April 2015 amending the Act on Value Added Tax and the Act - Public Procurement Law (Journal of Laws, item 605).

[331] ZIPSEE Cyfrowa Polska (2016), *Raport uzasadniający konieczność wprowadzenia mechanizmu odwrotnego obciążenia przy rozliczaniu VAT w handlu dyskami twardymi oraz procesorami*, https://cyfrowapolska.org/wp-content/uploads/2016/08/ZIPSEE_Raport_Wyludzenia_VAT.pdf [accessed: 7 July 2024].

[332] Act of 1 December 2016 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2024).

[333] NIK, *Przeciwdziałanie wprowadzaniu do obrotu gospodarczego faktur dokumentujących czynności fikcyjne*, KBF.410.007.00.2015, Warsaw 2016, https://www.nik.gov.pl/plik/id,10427,vp,12756.pdf [accessed: 7 July 2024].

The indicated effect is described by the Ministry of Finance itself. In the explanatory memorandum of the Government's 2019 bill on amendments to the Law on VAT and certain other laws, it emphasises, inter alia, that

> '(...) the introduction of the reverse charge has prevented the operation of tax carousels in the trade of steel goods. This has contributed to improved market competitiveness, i.e. an improvement in most financial indicators of companies in the industry and an increase in overt consumption of steel goods has been observed. At the same time, however, extortion emerged in other industries, necessitating the introduction of the reverse charge on further categories of goods, including electronic equipment (from 1 July 2015). (...) It should also be taken into account that, despite the introduction of the reverse charge, the VAT gap has not decreased, and in fact has increased in some years, e.g. in 2013 compared to 2012 it was higher, at a record high level, despite just having introduced the reverse charge on scrap, steel and waste in 2013. (...) As observed, introducing a reverse charge in a particular industry simply pushes fraudsters straight into another one. Using such a selective anti-fraud mechanism is therefore not a systemic tool that could effectively tackle VAT fraud on a global, and therefore economy-wide, scale. The application of the reverse charge means that the law will always lag behind criminal activity, which can in practice immediately spread to other industries. Introducing the reverse charge in successive industries requires a lengthy legislative process, preceded by analyses, and simply shifts criminal activity from one sector to another. An additional circumstance is that these illegal processes are concealed by those carrying out the illegal activities and are identifiable after a time lag, based on longer observations of other market segments as well.'[334]

In the same document, the Ministry described in detail the 'unsealing' effects of the reverse charge.

> 'In general, the reverse charge mechanism is geared towards eliminating carousel-type fraud, while a deeper analysis leads to the conclusion that it may itself be the cause of new types of irregularities and, as a result, the growth of the shadow economy, as the mechanism may even be used to commit fraud. This is particularly the case for those goods covered by the reverse charge, which could be consumer goods, such as mobile phones or tablets. If a fraudulent trader meets the conditions for applying the reverse charge to them, they can purchase mobile phones without paying VAT and thus has a strong incentive to sell these phones in the grey market (i.e. without accounting for output VAT). Mobile phones are a fairly tradable commodity, so such entities can readily sell them at retail e.g. via online platforms, in the grey market, gaining a strong competitive advantage over entities that account for VAT on such supplies.'[335] Consequently, with the inclusion of trade in sensitive goods in the split payment mechanism, it was decided in Poland to generally move away from the application of the reverse charge and replace it with a systemic solution: the split payment mechanism.[336]

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[334] Sejm of the Republic of Poland, Printing No. 3602, Government Bill on Amendments to the VAT Act and Certain Other Laws, Explanatory Memorandum, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=3602 [accessed: 7 July 2024].

[335] Sejm of the Republic of Poland, Printing No. 3602, Government Bill on Amendments to the VAT Act and Certain Other Laws, Explanatory Memorandum, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=3602 [accessed: 7 July 2024].

[336] While work continued on the definitive solution (SPM), which became optional on 1 July 2018 and mandatory on 1 November 2019, a decision was made to temporarily extend the reverse charge mechanism to categories of goods and services urgently requiring sealing due to widespread irregularities. As of 1 January 2017, the reverse charge applied to:

Punctual and episodic application of the reverse charge. Currently, the reverse charge is only 'symbolically' applied under the Polish VAT Act, concerning relatively narrow and specific transactions. Its introduction or 'retention' is not of a sealing nature, but is only dictated by the intention to facilitate VAT settlements or to improve the financial liquidity of selected groups of taxpayers.

The first case of application of the reverse charge currently applies to the local supply of goods in Poland if the person supplying the goods within the territory of Poland is a taxpayer who does not have a registered office or a fixed establishment in Poland (Article 17(1)(5) uVAT). This solution allows VAT to be settled by the purchaser, realising the foreign supplier from the need to register for VAT purposes in Poland. An analogous solution as a systemic one is also proposed in the ViDA package.

The second case concerns the temporary reverse charge introduced in 2023 for exchange-traded gas, energy and CO2 emission allowances. These provisions apply from 1 April 2023 until 28 February 2025,[337] were introduced based on Article 199a(1)(e) of the VAT Directive. This article allows for implementing a reverse charge until 31 December 2026 on the supply of gas and electricity to a taxable dealer, as defined in Article 38(2). In 2024, the reverse charge in this context was applied by several countries, including the Czech Republic, Denmark, Germany, Ireland, Italy, Portugal, Romania, and Poland. While the original reason for its implementation in many of these countries was to counter abuse, its current introduction (including in Poland) stems from a desire to optimise trading and increase the competitiveness of the local market by levelling the playing field for domestic and foreign entities on the exchange market.

2.2. Joint and Several Liability

EC recommendation and implementation in EU countries. Joint and several liability of the purchaser for the VAT of the supplier is, like the reverse charge, a mechanism recommended by the EC as an effective tool against tax fraud. A 2004 European Commission report already described joint and several liability for VAT debts or arrears as one

1. Certain transactions having as their object the provision of construction services;
2. Transactions involving processors;
3. Transactions involving specified gold, silver and platinum commodities.

In the case of precious metals, the reverse charge extension responded to a market shift of fraudulent activity from gold trading (already subject to reverse charge since 1 July 2015) to subsequent categories of precious metals trading, to which the mechanism had not previously applied. Consequently, the reverse charge regulation, previously limited to selected gold, silver, and platinum items, was extended to all such precious metals.

[337] Act of 9 March 2023 amending the Act on Enforcement Proceedings in Administration and certain other acts (Journal of Laws, item 556, as amended). The mechanism covers the supply of gas within the gas system, the supply of electricity within the electricity system, and the provision of services for the transfer of greenhouse gas emission allowances, when these are performed directly or through an authorised entity (authorised to conduct such transactions) on: (a) a commodity exchange within the meaning of the provisions on commodity exchanges, (b) a regulated market or an organised trading platform (OTF) within the meaning of the Act of 29 July 2005 on trading in financial instruments (consolidated text Journal of Laws of 2024, item 722, as amended).

method to combat fraud, particularly 'missing trader' fraud.[338] At that time, joint and several liability was already in place in some Member States.[339] By the end of 2023, the vast majority of EU countries (23 out of 28) had introduced this solution for domestic transactions. Joint and several liability for domestic transactions was not implemented in Austria, Cyprus, Estonia, Finland, Sweden, Lithuania, and Latvia.[340] Spain has the longest experience with this mechanism, where the indicated regulation has already been in force since the 1990s.[341] Among the larger EU countries, the joint and several liability was implemented earlier than Poland, e.g. by Greece (in 2000),[342] Germany (in 2002),[343] the UK (in 2003)[344] and France (in 2005).[345]

Joint and several liability in Poland 2013-2017. In Poland, joint and several liability in VAT was introduced in 2013.[346] As with the reverse charge, the application of joint and several liability was limited to the trade in 'sensitive' goods, i.e. those most frequently associated with fraud. These included fuels, certain steel products, among others. In 2017, the catalogue of goods was expanded to include rapeseed oil, hard disk drives (HDDs), SSDs and stretch film.[347]

Advantages and disadvantages of joint and several liability. When this institution was introduced in Poland, it was met with high expectations in terms of reducing carousel fraud.[348] Indeed, joint and several liability was supposed to force entrepreneurs to detailed verification of their business partners. This should make it considerably more difficult for them to become entangled in a VAT carousel, and thus hindering the fraud organiser's ability to create a network of 'buffers'. At the same time, it is worth emphasising that its application, in itself, did not limit the profitability of VAT carousels. It only potentially made their organisation more time-consuming. As is the case with the reverse charge, joint and several liability relating only to certain types of goods did not effectively prevent the organisation of tax carousels. Instead, the response to this measure was a shift in the type of goods being traded fictitiously.

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[338] EC (2004), *Report from the Commission to the Council and the European Parliament on the use of administrative cooperation arrangements in the fight against VAT fraud*, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52004DC0260 [accessed: 7 July 2024].

[339] Ibid.

[340] In Hungary, warehouse operators are jointly liable with the owner of stored goods for any VAT due on goods missing from the warehouse. F. Annacondia*, VAT Options Exercised by the Member States,* IBFD Amsterdam 2023.

[341] Agencia Tributaria, *Consequences of Brexit on VAT from 1 January 2021*, https://sede.agenciatributaria.gob.es/Sede/en_gb/iva/iva-operaciones-comercio-exterior/consecuencias-brexit-iva-partir-1-2021/devolucion-iva-no-establecidos.html [accessed: 7 July 2024].

[342] VAT Calc, *VAT compliance and reporting rules in Greece 2024*, https://www.vatcalc.com/greece/greece-vat-guide/ [accessed: 7 July 2024].

[343] VAT Anti-Fraud Act (Steuerverkürzungsbekämpfungsgesetz) Gesetz vom 19.12.2001 - BGBl. I 2001, S. 3922, (BStBl 2002 I S. 32).;

[344] C. Woodward, *The New UK Approach to Carousel Fraud*, International VAT Monitor, 240/2006.

[345] ITR, *France strikes back in fraud wars*, https://www.internationaltaxreview.com/article/2a69ubv50aii637va55a8/france-strikes-back-in-fraud-wars [accessed: 7 July 2024].

[346] Act of 26 July 2013 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1027).

[347] Act of 1 December 2016 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2024).

[348] Explanatory Memorandum to the Government Bill to amend the Value Added Tax Act and the Tax Ordinance Act, print 1515, 7th Sejm, http://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=1515 [accessed: 7 July 2024].

Error in implementation – guarantee deposit. A factor further limiting the effectiveness of joint and several liability in Poland was the addition of the institution of the so-called guarantee deposit to its regulation. If the seller paid the deposit, the joint and several liability of the purchaser was in principle excluded. This payment aimed to secure the interests of the State Treasury against the emergence of possible tax arrears for the paying entity.

The guarantee bond was used in practice by tax evaders who, by making the bond, obtained the status of a 'trusted entity', which had the effect of excluding the purchaser's joint and several liability. At the same time, the mere provision of a bond did not constitute sufficient financial security for the state's interest. The proceeds of extortion often significantly exceeded the value of the deposit paid. In some cases, criminals were even able to recover the deposit after committing VAT fraud, particularly if tax authorities had not yet initiated control or tax proceedings related to the transactions secured by the guarantee deposit. As a result, the effectiveness of the joint and several liability mechanism in combating VAT fraud, already limited, was further diminished.

A similar position was presented, inter alia, by the Tax Law Advisory Board, which stated in Opinion No. 8/25:

> 'In our opinion, both in its current form and taking into account the changes resulting from the amendments to uVAT to come into force from 1 July 2015, the joint and several liability mechanism is not a very effective tool for combating VAT fraud. Its main drawback in this respect is the possibility for VAT fraudsters to benefit from the advantages of being included in the list maintained by the Minister of Finance.'[349]

Similar conclusions were reached by the NIK in 2016, which stated:

> '[t]he lack of good faith in the case of the purchase of goods covered by the joint and several liability mechanism from entities listed in the list maintained by the Minister of Finance results in this solution being used in practice by tax fraudsters who submit a deposit and thus obtain the status of a 'trusted entity.'[350]

Due to its flawed implementation, joint and several liability allowed entities knowingly involved in VAT carousels to avoid liability by using guarantee bonds. By providing a guarantee bond, the tax fraudsters therefore knowingly gave up the money they deposited. They were taking much larger sums of money out of Poland, while at the same time building an image towards the administration and purchasers as a reliable taxpayer and business partner. As a result, honest taxpayers, who tax criminals unwittingly implicated as buffers,[351] were affected in real terms.

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[349] Rada Konsultacyjna Prawa Podatkowego, Opinia nr 8/25 after: J. Sarnowski, P. Selera, *Reducing the VAT gap...*, Polish Economic Institute, Warsaw 2018.

[350] NIK, *Przeciwdziałanie wprowadzaniu do obrotu gospodarczego faktur dokumentujących czynności fikcyjne*, KBF.410.007.00.2015, Warsaw 2016, https://www.nik.gov.pl/plik/id,10427,vp,12756.pdf [accessed: 7 July 2024].

[351] See, inter alia, A. Kuchta, *Nowe sankcje VAT zagrożeniem dla uczciwych podatników,* https://podatki.gazetaprawna.pl/artykuly/1000782,nowe-sankcje-vat-zagroza-uczciwym-podatnikom.html [accessed: 7 July 2024]; wPolityce.pl, *Professor Modzelewski was right. Tax offices enforcing VAT solidarity have 'finished off' some Polish companies*, https://wpolityce.pl/polityka/172260-profesor-modzelewski-mial-racje-urzedy-skarbowe-egzekwujac-solidarnosc-podatkowa-w-zakresie-vat-wykonczyly-troche-polskich-firm [accessed: 7 July 2024].

> 'It has emerged that depositing a guarantee bond is not an obstacle for entities involved in carrying out carousel fraud. Control authorities have uncovered instances of newly established entities, potentially active in VAT carousels, lodging such deposits to lend credibility to their sales of goods subject to joint and several liability. Increasing the amount of the guarantee bond was considered in order to eliminate the irregularities. However, it was considered that this solution could place too great a burden on honest operators. It also did not guarantee the elimination of dishonest operators who would be able to pay such a deposit to make their business credible. (...) [It was therefore proposed] to abolish the guarantee bond and amend the rules for the application of tax liability'].[352]

Current regulation of joint and several liability. Bearing in mind the difficulties indicated, as of 1 November 2019, the goods previously covered by joint and several liability were, in principle, subject to the mandatory split payment mechanism, which became a new primary tool to combat VAT carousels.[353] However, the institution of joint and several liability has not disappeared from the Polish legal order. It now operates in a targeted, complementary manner against other sealing solutions: *split payment* and the so-called 'white list' of VAT taxpayers.

In the case of *split payment*, joint and several liability applies where the amount due on the sale of a sensitive good has not exceeded the threshold requiring the application of the SPM. The purchaser is therefore jointly and severally liable for the unpaid VAT due by the supplier on the sale of goods from Schedule 15, with a value of less than PLN 15,000 (above this amount, the SPM applies). For joint and several liability to apply, the taxpayer must have known, or had reasonable grounds to believe, at the time of the supply, that some or all of the VAT due on that supply would not be paid to the tax office (Article 105a(1) uVAT). Joint and several liability of the purchaser depends on their good faith in the context of the assessment of the transaction made, and its nature and scope is specified in paragraph 2. It indicates under what circumstances or types of transactions the taxpayer should have reasonable grounds to believe that the entire amount of tax attributable to the supply of goods made to them or a part thereof will not be paid to the tax office. Exclusions from the scope of joint and several liability include, first and foremost, the payment under the SPM formula for goods purchased, as well as the purchase of goods documented by an invoice in which the total amount due exceeds PLN 15,000 (Article 105a(3) uVAT).

The introduction of the so-called 'white list' of VAT taxpayers, along with amendments to the Tax Ordinance,[354] created a new area for the application of joint and several liability. From 1 January 2020, for transactions exceeding PLN 15,000, taxpayers making payments for purchases confirmed by an invoice to an active VAT taxpayer

[352] Sejm of the Republic of Poland, Printing No. 3602, Government Bill on Amendments to the VAT Act and Certain Other Laws, Explanatory Memorandum, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=3602 [accessed: 7 July 2024].

[353] Act of 9 August 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1751, as amended).

[354] Act of 12 April 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1018, as amended).

should make that payment to their accounts, which are listed in the indicated List. If the payment is transferred to another account, the purchaser will be jointly and severally liable with the supplier for the VAT on that transaction (art. 117ba § 1, 2 and 3 OrdPod). A taxpayer can avoid joint and several liability if he notifies another account payment to the competent head of the tax office within seven days of the transfer order or makes the payment using the SPM.[355]

An exceptional example of the application of joint and several liability in VAT is the regulation of Article 96(4b) uVAT, in force since 1 January 2017.[356] This provision establishes joint and several liability for a taxpayer's proxy (the individual who registered them) alongside the registered taxpayer, up to PLN 500,000 for tax arrears arising from activities within six months of the taxpayer's VAT registration. According to the explanatory memorandum accompanying the introducing legislation, this measure aims to curb the practice of proxies registering so-called 'straw men'. Therefore, joint and several liability of a proxy alongside a registered taxpayer does not apply if the tax arrears are unrelated to the selling entity's involvement in unreliable tax settlements for financial gain (Article 96(4c) uVAT).[357]

2.3. JPK VAT (Standard Audit File for Tax)

In June 2012, the Fiscal Control Department of the Ministry of Finance, by decision of the General Inspector of Fiscal Control, began work on implementing Standard Audit Files for Tax (JPK) in Poland. The law was enacted on 10 September 2015,[358] i.e. three years after this work began. However, it adopted an extremely limited reporting model. The provisions introduced in the Tax Ordinance stipulated the imposition of an obligation on taxpayers, as of 1 July 2016, for taxpayers and their contractors to transfer, in part or in whole, their tax books in an established format and uniform structure. However, the transfer was not of a general nature; it was to be made **only at the request of the** tax authority. An undeniable weakness of this solution, aside from the unduly protracted implementation process and the phased introduction of the obligation based on business size, was that JPK transfers were only made upon request from the authorities. Consequently, the Polish JPK model introduced by the 2015 Act played only a marginal role in combating tax offences,[359] serving only

[355] During the declared COVID-19 epidemic emergency and state of epidemic, the deadline for filing a notification was extended to 14 days from the date of the transfer order, in accordance with Article 15zzn of the Act of 2 March 2020 (Journal of Laws 2024, item 340, as amend).

[356] Act of 1 December 2016 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2024).

[357] Explanatory Memorandum and OSR to the Government's Bill to amend the Value Added Tax Act and certain other Acts, Druk nr 965, 8th Sejm, https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=965 [accessed: 7 July 2024].

[358] Act of 10 September 2015 amending the Act – Tax Ordinance and certain other acts (Journal of Laws, item 1649, as amended).

[359] NIK has pointed out the late implementation and limited application of the JPK model, citing the extended duration of its conceptual and legislative development. NIK states that '(...) the legislation introducing on-demand JPK provisions into the Tax Ordinance was enacted four years after the project's initial planning. These provisions were incorporated into a comprehensive amendment that also con-

a supporting role in investigating entities where irregularities had already been identified.[360] Because it was not widely applied, it could not fulfil the primary function of SAF-T: enabling the use of big data analyses on electronically reported data to identify fictitious trading and simultaneously detect: 1) potential missing traders even before they abscond without paying tax; 2) potential brokers, before paying them undue VAT refunds. At the same time, the rapid identification of fictitious trading has remained the most pressing and increasingly urgent challenge for the tax administration.[361] The shortcomings of the JPK model developed between 2012 and 2015 were also pointed out by the Supreme Audit Office. In 2019, it indicated that it

> '(...) positively assesses the implementation on legislative grounds of the single control file at the request of the tax authorities, a measure aimed primarily at improving the efficiency of tax inspections at entrepreneurs keeping books using accounting software. However, this solution itself was too narrow a measure to significantly reduce irregularities in VAT collection.'[362]

tained controversial elements, as highlighted during public consultations. The Ministry of Finance did not pursue a separate legislative track for JPK, hindering its timely implementation. (...) The use of on-demand uniform control files submitted to tax authorities has been limited. Between 1 July 2016 and 30 June 2018, when large businesses were obligated to submit JPK files, tax authorities used them in only 242 tax inspections, 17 customs and fiscal inspections, 71 verification activities, and five control proceedings under the Fiscal Control Act. Although preparations for on-demand JPK had been underway since 2012, and the first group of entities was obligated to provide JPK files from mid-2016, the Ministry of Finance did not issue an order for the development of a system enabling electronic access to taxpayer-submitted files until August 2018. Before a system for accepting JPK files (other than JPK_VAT) was available, authorities could only use on-demand JPK files provided by taxpayers on physical IT storage devices during inspections'; see NIK Report, *Nadzór Ministra Finansów nad poborem podatku od towarów i usług*, Warsaw 2019, p. 50, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf; NIK, *Wykorzystanie jednolitego pliku kontrolnego w postępowaniach i kontrolach podatkowych, Warsaw 2019,* https://www.nik.gov.pl/plik/id,21147,vp,23779.pdf [accessed: 11 October 2024].

[360] KAS authorities continue to intensively use on-demand JPK structures in tax settlement audits i.e. in proceedings against entities already selected for audit using other tools. In 2021, tax and customs-fiscal office heads received 10,688 on-demand JPK structures, used in 6,559 tax audits and 1,049 customs-fiscal audits. The largest number of downloads concerned JPK_FA (3,051), JPK_PKPIR (2,988), and JPK_WB (2,011). Compared to 2020, this represented an increase of 3,452 on-demand JPK structures, including increases of 1,211 for JPK_PKPIR, 929 for JPK_FA, and 504 for JPK_WB. In the first half of 2022, tax and customs-revenue office heads received 6,309 on-demand JPK structures, used in 3,593 tax audits and 694 customs-revenue audits. As in 2021 overall, the highest number of downloads was JPK_FA (2,093), JPK_PKPIR (1,488), and JPK_WB (1,216). This was an increase of 2,292 on-demand JPK structures compared to the first half of 2021, with increases of 784 for JPK_FA, 581 for JPK_PKPIR, and 387 for JPK_WB. See: NIK, *Prawidłowość i skuteczność postępowań kontrolnych, podatkowych i egzekucyjnych organów Krajowej Administracji Skarbowej*, P/22/010, 9.2.2024, https://www.nik.gov.pl/kontrole/P/22/010/ [accessed: 12 July 2024].

[361] It is sufficient to add that tax inspection authorities, using only 'operational' (analogue) methods, discovered that, in 2013 alone, tax criminals fictitiously 'produced' invoices worth PLN 19.7 billion to defraud VAT. This figure rose to PLN 33.7 billion in 2014 and reached PLN 81.9 billion in 2015. See NIK, *Informacja o wynikach kontroli, Przeciwdziałanie wprowadzaniu do obrotu gospodarczego faktur dokumentujących czynności fikcyjne,* Warsaw 2016.

[362] NIK, Informacja o wynikach kontroli, *Nadzór Ministra Finansów nad poborem podatku od towarów i usług*, Warsaw 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 7 July 2024].

2.4. Reasons for Sealing Failure

The initial phase of combating the burgeoning VAT gap, spanning from 2010 to 2015, did not result in the implementation of systemic solutions aimed at its reduction. The Ministry of Finance had, during the period indicated, knowledge of the scale and branches of the economy in which irregularities were observed. It drew this knowledge both from the results of operational activities, as well as from reports from business organisations, information from the EC and from other Member States. Based on these inputs, an accurate diagnosis was made: the urgent need to implement measures to safeguard budget revenues and the financial health of honest entrepreneurs operating in Poland. The deteriorating situation of the latter has led, in extreme cases, to production stoppages, lay-offs of thousands of employees and, as a consequence, diplomatic interventions by other countries. The selection of sealing mechanisms, as well as the pace of their implementation, should be assessed negatively. Poland's mistakes observed between 2010 and 2015 in implementing sealing solutions can be can be categorised as follows:

1) Delays in implementing solutions recommended by the EC and OECD;
2) Delayed responses to needs signalled by the market;
3) Failure to respond to changes in the international environment;
4) Flawed implementation of sealing solutions;
5) Selective application of tax sealing measure.

Delays in implementation of solutions recommended by the EC and OECD. Between 2010 and 2015, slow implementation of sealing solutions recommended by the EC and OECD was observed in Poland. The possibility to introduce reverse charge was opened to Member States as early as 2006, with further Commission recommendations regarding its implementation published in 2007, 2011, and 2014. Nonetheless, in Poland, the indicated tool was not introduced until 2011, and subsequent phases of expanding its use were delayed until October 2013 and July 2015.[363] A similar delay can be observed in the implementation of joint and several liability in VAT, implemented into the Polish legal order in 2013 – eight years later than in France, ten years after the UK, and eleven years after Germany. The SAF-T standard was initiated in 2005 by the OECD's Committee on Fiscal Affairs. While electronic turnover reporting in the form of SAF-T was adopted in Austria in 2009 and in Portugal in 2013, Poland failed to implement it as a universal system by the end of 2015. The 'largest taxpayers' were covered in July 2016, medium and small taxpayers in January 2017, and micro-entrepreneurs only from January 2018 – nine years after Austria and five years after Portugal.

[363] As the NIK Report indicates, 'the Minister of Finance was skeptical and very cautious about introducing the reverse charge mechanism used by other EU Member States to combat VAT fraud. Between 2009 and 2015, the Minister consistently maintained that control measures should be the primary tool against fraud, with legislative measures used only when controls proved insufficient. While acknowledging the validity of prioritising control tools and the need for reliable data to justify countermeasures, NIK points out that the decision-making process for implementing legislative countermeasures was excessively long, potentially allowing unscrupulous entities to increase their financial gains from fraudulent activities'; NIK Report, *Nadzór Ministra Finansów…*, Warsaw 2019, p. 14, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 10 October 2024].

Delayed response to needs signalled by the market. In addition to EC and OECD recommendations and the actions of other Member States, the genuine needs of businesses provide an important benchmark for assessing the delays in implementing preventative measures. Despite reports of escalating extortion and the worsening situation for honest businesses, tax sealing was implemented with considerable delay. Despite the unprecedented scale of irregularities observed in steel bar trading since 2010, the reverse charge on this category of goods was introduced in October 2013 – a full three years after the need for its implementation was identified. An even longer delay occurred with the implementation of the reverse charge on mobile phones. Sealing of trade in this commodity began on 1 July 2015, four years after the reported increase in notional trade in this sector in 2011.

Failure to react to changes in the international environment. The issue of tax sealing in mobile phones and electronics also exemplifies the Ministry of Finance's failure to react promptly to changes in the international landscape. The implementation of the reverse charge on mobile phones in Germany led in 2011 to an increase in the scale of extortion in Poland related to the fictitious trading of these goods. Despite knowledge of the ways in which tax criminals adapt to the sealing of trade in selected goods, Poland has not taken any measures to protect the Polish market from the transfer of irregularities from Western Europe to its territory. The sealing measures observed in Germany were also ineffective, as they led criminals in the country to shift their focus to fraudulent trade in electronic devices other than telephones – those not yet subject to the reverse charge mechanism. Germany responded to this overly narrow application of the reverse charge by extending it to further categories of electronics in 2014. However, when implementing the reverse charge mechanism on mobile phones, Poland did not learn from the experience and practice of its western neighbours. On the contrary, the Polish Ministry of Finance repeated Germany's mistake. The very limited scope of the reverse charge in 2015 led to the transfer of VAT extortion from the trade in phones and laptops to the trade in, among others, hard drives and microprocessors, which forced the inclusion of further categories of goods in the reverse charge in 2017.

Flawed implementation of sealing solutions. In addition to implementation delays, the effectiveness of sealing solutions was further compromised by flawed implementation of these regulations within Polish law. Joint and several liability, supplemented by the guarantee bond, provides an example of an improperly implemented measure. Its broad protective scope and the relatively easy route to obtaining 'trusted taxpayer' status made it a convenient tool for criminals to circumvent a measure intended to hinder them. Another major mistake was the decision to implement the JPK in the form of a report at the request of an administrative authority. In other EU countries, data collection from all market entities allowed it to be used to identify fictitious trading *ex ante*, before criminals attempted to commit fraud. Meanwhile, due to its selective nature, the model chosen for implementation in Poland could potentially only facilitate the administration's collection of evidence against a taxpayer who had already been identified as a fictitious trader through operational methods. The Polish JPK in the 2015 model therefore did not create the early warning system that the OECD intended SAF-T to be for implementing countries. As a result of choosing an

ineffective implementation model, the JPK only started to produce real sealing effects in 2018, after mandatory reporting was extended to all VAT taxpayers.

Selectivity of sealing. The phenomenon that prevented the real sealing effect in 2010-2015 was the selectivity of the implemented solutions.[364] The Polish legislator limited itself to implementing only those solutions recommended by the EC (reverse charge, joint and several liability) and, to a limited extent, by the OECD (SAF-T). Unlike other EU countries, Poland did not take its own sealing initiatives. Its own solutions were not implemented, nor were mechanisms tested in other countries introduced. Parallel to the surge in the Polish VAT gap, other countries implemented their own effective measures: Sweden's online cash register system; Austria and Portugal's development of SAF-T analytics; Hungary's Electronic System for the Control of Road Freight Transport (EKÁER), which effectively combated irregularities in the fuel sector. The inadequacy of Polish measures against VAT mafias is exemplified by the sporadic and selective nature of the implemented regulations, which, even if enacted correctly, without errors or delays, would inherently have only limited effectiveness.

Reverse charge is a solution designed to potentially reduce the profitability of VAT fraud, as a result of eliminating the accumulation of tax payments on the part of the taxpayer making the import or ICA. Joint and several liability, in theory, aimed to encourage businesses to verify their trading partners, thereby preventing their unwitting involvement in fictitious trading as 'buffers'. However, the way in which these solutions have been implemented, both in Poland and in other EU countries, has significantly reduced their effectiveness. Because both the reverse charge and joint and several liability are linked to specific commodities, they do not protect the VAT system from criminals shifting their activities to other, often similar, goods. As a result of their implementation, the Polish legal system has obtained ineffective solutions, which can only potentially reduce the profitability of tax carousels and make their organisation more difficult. By overlooking the adaptability of tax criminals, Poland has failed to implement truly effective solutions in either of these areas of combating the VAT mafia. At the same time, a number of other spheres in which sealing should take place have been entirely neglected, in particular:

1) Accelerating crime detection using IT tools and big data analytics;
2) Making it more difficult to legalise the proceeds of extortion;
3) An information campaign for businesses on the dangers of the VAT mafia, the characteristics of missing trader and fictitious trafficking offences and building trust between the taxpayer and the administration;
4) A systemic plan to increase the efficiency of information flow between tax administration units under the Ministry of Finance.

A comprehensive strategy to reduce the VAT gap, implemented in all identified fields of action, was not implemented until late 2016 and early 2017.

[364] A similar conclusion is formulated by, inter alia, NIK, stating that '[t]he years 2010-2013 lacked a long-term vision for sealing the VAT system (based on solutions that would not be largely limited to the industries most affected by fraudulent procedures) and for improving the efficiency of the treasury apparatus', see NIK, *Nadzór Ministra Finansów…*, Warsaw 2019, p. 15, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 10 October 2024].

> 'The tax inspection authorities and tax authorities have not effectively countered VAT fraud. This is evidenced by: – increasing amounts of VAT evasion and, at the same time, low recovery levels by the State Treasury from post-control decisions issued, – increasing scale of tax fraud, – sharp increase in VAT arrears, – insufficient speed of response to emerging threats.'[365]

> '[Between 2013 and 2015], the Minister of Finance took a number of measures and initiatives to improve the effectiveness of subordinate services in combating VAT fraud, including the reduction of VAT fraud and tax evasion. However, these have not proved to be very effective. (...) The size VAT gap remained above the European Union average. According to European Commission reports, it increased – from 18% to 27% – of possible VAT revenue between 2010 and 2013. The phenomenon did not significantly decrease in subsequent years. 'The tax gap, which remains significant, demonstrates the insufficient efficiency of the Polish tax system and the need to introduce new solutions aimed at reducing tax fraud.'[366]

3. CAMPAIGN AGAINST VAT CAROUSELS

3.1. Reducing the Profitability of VAT Carousels – SPM

Definition of SPM. The split payment mechanism is a specific VAT settlement technique. It is a method of making payments for receivables documented by an invoice, implemented through bank accounts or accounts in cooperative savings and credit unions (hereinafter: SKOK).[367] The premise of SPM is to separate the payment of receivables by transfer into two streams (Article 108a(2) uVAT):

1) Payment of the amount corresponding to all or part of the amount of tax resulting from the invoice received shall be made to the VAT account.

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[365] 'In the opinion of NIK, the audit results warrant the following recommendations to the Minister of Finance:

- Accelerate the introduction of proven solutions to help combat VAT fraud from other countries, including expediting work on a VAT data warehouse model based on the Single Audit File in Poland
- Increase the use of international cooperation instruments at the stage of risk identification, entity selection for inspection, and the execution of inspections
- Intensify cooperation between services subordinate to the Minister of Finance, the Police, and the Public Prosecution Service
- Expedite data acquisition and processing using IT for planning and control purposes
- Continue training tax inspectors and tax office staff in anti-tax fraud knowledge and skills
- Improve the effectiveness of recovering amounts identified in tax controls.'

See NIK, *Zwalczanie oszustw w podatku od towarów i usług* 17/2014/P/13/042/KB, Warsaw 2014, https://www.nik.gov.pl/plik/id,6385,vp,8152.pdf [accessed: 10 July 2024].

[366] NIK, *Zwalczanie oszustw w podatku od towarów i usług*, P/15/011/KBF, Warsaw 2016, https://www.nik.gov.pl/kontrole/P/15/011/KBF/ [accessed: 10 July 2024].

[367] J. Sarnowski, P. Selera, *Dwa lata obowiązywania w Polsce mechanizmu podzielonej płatności w VAT – doświadczenia i wnioski*, 'Bulletin of the Institute of Tax Studies', no. 10, October 2020, p. 4.

2) Payment of all or part of the amount corresponding to the net sales value of the invoice received is made to a bank account or to an account in a cooperative savings and credit union for which a VAT account is maintained, or is settled by other means.

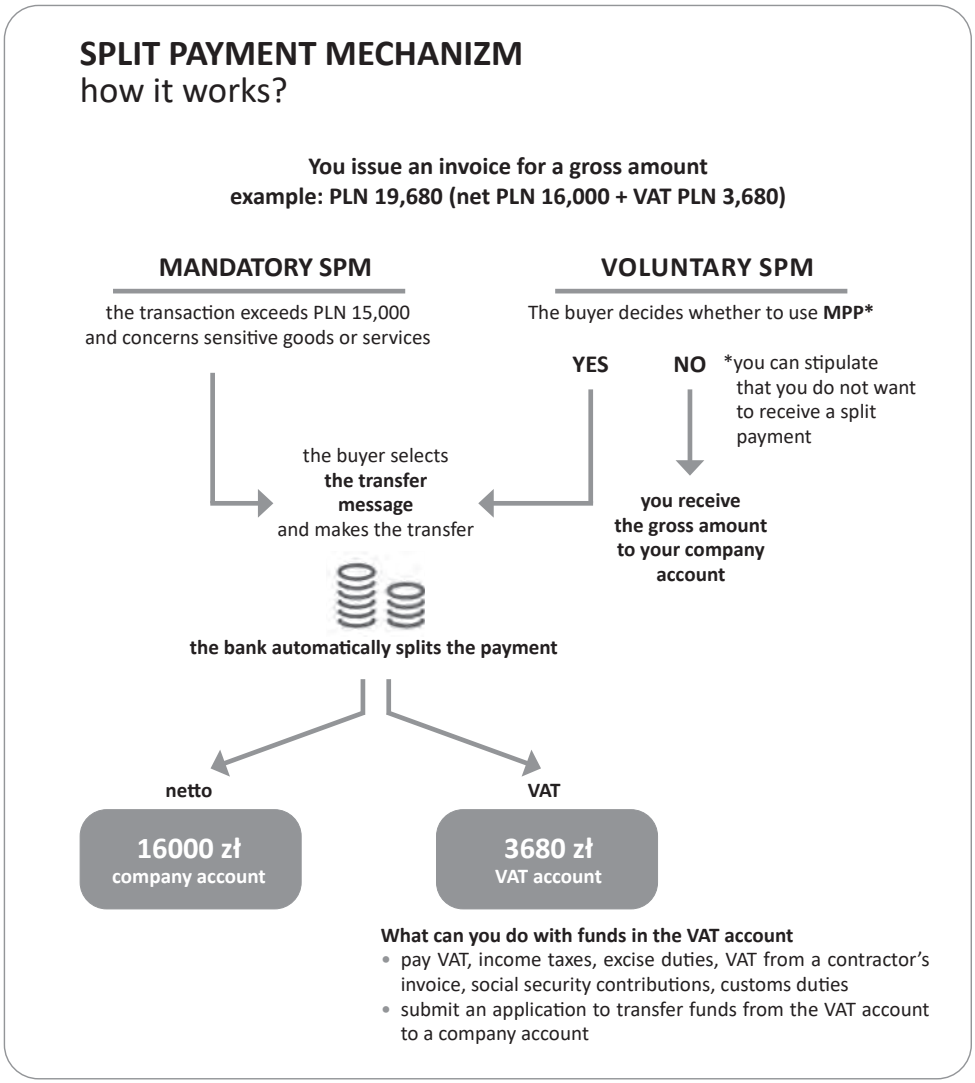


Figure 6: Split payment mechanism

Source: Biznes.gov.pl (2021).[368]

[368] Biznes.gov.pl, *Co to jest mechanizm podzielonej płatności (SPM) i jak go stosować*, https://www.biznes.gov.pl/pl/portal/00227 [accessed: 10 July 2024].

Although the funds accumulated in the VAT account are the property of the taxpayer, the taxpayer can freely dispose of them only to a limited extent – in order to pay VAT to suppliers under the SPM and to cover certain public burdens. Their transfer to the taxpayer's 'classic' bank account is subject to the 'consent' of the tax administration. As a result, funds remaining in the VAT account, including those transferred by contractors for purchases made by them, are safe from immediate removal from the banking system by a potential 'missing trader'.

Settlement technique. Transactions covered by the SPM are carried out through settlement accounts at a bank or registered accounts at a SKOK opened for business purposes.[369] A VAT account is created by the bank, as a sub-account, to each business account.[370] This process is fully automated, requires no additional agreements, and incurs no extra commissions or bank fees. The separation of the payment into net and VAT amounts is automatic, occurring within the bank or SKOK's IT system.[371] SPM payments are made in Polish zloty using a transfer message provided by the bank or SKOK. The taxpayer enters therein the basic payment option (Article 108a(3)):

1) An amount corresponding to all or part of the amount of tax resulting from the invoice to be paid under the split payment mechanism;
2) An amount corresponding to all or part of the gross sales value;
3) The invoice number for which the payment is being made;
4) The supplier's tax identification number.

The buyer initiates the use of either voluntary or mandatory SPM by making a payment using a dedicated transfer message. Based on this, the banking system transfers the VAT amount to the counterparty's VAT account. The two models of mandatory and optional SPM currently operate in parallel, complementing each other.

3.1.1. Optional and Mandatory SPM Model in Poland

Optional SPM in Poland. Since 1 July 2018[372] Polish taxpayers have been able to use the split payment mechanism (SPM) voluntarily. The voluntariness of the application of SPM therefore only applies to the buyer (paying party). The seller, as the owner of the VAT account automatically created by the bank or SKOK, is not entitled to question the choice made by the counterparty. 'As part of their freedom of contract, taxpayers may apply various contractual provisions excluding the possibility of settling under the SPM (e.g., offering rebates for non-SPM payments); the buyer should fully understand the implications of such agreements, particularly the potential risks if the supplier proves to be a dishonest taxpayer. For the purchaser, the vendor's refusal to settle a transaction using SPM should become the first indication that, for some reason, the vendor is preventing the purchaser from taking advantage of the transaction security afforded by SPM.'[373]

[369] Currently, these are business accounts or accounts listed in the VAT List (Article 108e uVAT).

[370] W. Modzelewski (ed.), *Komentarz do ustawy o podatku od towarów i usług*, Warsaw 2020, commentary to Article 108a, Legalis.

[371] D. Prokop (ed.), *Mechanizm podzielonej płatności. «Split payment»*, Warsaw 2018, LEX/el.

[372] Act of 15 December 2017 amending the Value Added Tax Act and certain other acts (Journal of Laws 2018, item 62, as amended).

[373] Odpowiedź na interpelację poselską No. 18445, 31.1.2018, https://www.sejm.gov.pl/sejm8.nsf/interpelacja.xsp?typ=INT&nr=18445 [accessed: 10 July 2024].

Obligatory SPM in Poland. Obligatory SPM, was implemented in Poland more than a year after the optional SPM model became available to taxpayers, i.e. on 1 November 2019,[374] based on Council Decision (EU) 2019/310.[375] Mandatory SPM applies when at least one item on an invoice, the total gross value of which exceeds PLN 15,000, relates to any of the 150 items in Annex 15 to uVAT. These items represent 'sensitive' goods and services considered particularly susceptible to fictitious trading and VAT extortion. The designated goods, listed in Annex 15 uVAT, include electronics, metals or energy products (e.g., coal and lignite). Trade in these goods was previously subject to the reverse charge mechanism or joint and several liability of the purchaser. The mandatory application of the SPM imposes certain obligations on both the supplier and the buyer. The supplier must annotate the invoice with 'split payment mechanism', while the buyer must make payment for the supply using the SPM. These obligations are independent of one another; if the conditions for mandatory SPM are met, the buyer is obliged to pay on the VAT account even if the invoice is not marked accordingly. Both the supplier (Article 106e(12) uVAT) and the purchaser (Article 108a(7) uVAT) are liable for a 'VAT sanction' of 30% for violating the mandatory SPM provisions. In the case of a purchaser who has paid an invoice bypassing the obligatory SPM, the expense documented with it is not a deductible cost for personal income tax (Article 22p Personal Income Tax Act, uPIT[376]) or for corporate income tax (Article 15dcorporate income tax act, uCIT).[377]

3.1.2. SPM as a VAT Sealing Tool

SPM vs. reverse charge. The purpose of the split payment mechanism is to replace the reverse charge as a tool to reduce the profitability of missing trader' frauds. The reverse charge's (limited) 'scoring' effectiveness stems from the fact that the purchaser pays only the net invoice amount, preventing the supplier from receiving and then absconding with the VAT. The SPM achieves the same effect with the existing settlement rules, blocking the funds paid by the Polish recipient of the goods or services in the taxpayer's VAT account. Furthermore, it avoids the 'unbundling' effect of accumulating VAT payments at the level of sales to non-VAT taxpayers, which increases the profitability of retail fraud. However, a disadvantage of the SPM, not present with the reverse charge, is its negative impact on the liquidity of VAT taxpayers.[378] This is

[374] Act of 9 August 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1751, as amended).

[375] Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of value added tax (OJ EU. L. 2019 No. 51, p. 19 as amended).

[376] Act of 26 July 1991 Personal Income Tax (consolidated text Journal of Laws 2025, item 163).

[377] Act of 15 February 1992 on corporate income tax (consolidated text Journal of Laws 2023, item 2805, as amended).

[378] The short- and long-term impact of restricting the use of funds accumulated in VAT accounts on the tax base, and consequently on VAT revenue levels, is a particularly interesting area for further research. On this topic, e.g. A. Kowal, *Split payment mechanism in the economy of small and medium-sized enterprises*, Zeszyty Naukowe Małopolskiej Wyższej Szkoły Ekonomicznej w Tarnowie, vol. 44, no. 4/2019, p. 39; European Commission, *Analysis of the impact of the split payment mechanism as an alternative VAT collection method Final Report*, https://op.europa.eu/en/publication-detail/-/publication/b87224ad-fcce-11e7-b8f5-01aa75ed71a1/language-en [accessed: 6 July 2024].

a consequence of the SPM's characteristic restriction on the ability to use a certain %age of payments received from counterparties, by 'freezing' them in VAT accounts. These difficulties were highlighted during the SPM's implementation by companies that support businesses in liquidity management, including Siemens Financial Services. In an October 2018 communication, they pointed out that

> '[t]he mechanism, in theory, should remain neutral from a liquidity point of view as companies are obliged to pay taxes to the tax office account regardless. However, there is a short period between the receipt of funds into the account and the payment of VAT to the office. With the split payment mechanism, the VAT funds are partially blocked, whereas previously the entrepreneur could use them freely'.[379]

Weaknesses of SPM. Like reverse charge, SPM in the mandatory model effectively combats VAT carousels only against specific 'sensitive goods' listed in the VAT Annex. This, as with the reverse charge, creates the potential for fictitious turnover to be shifted to other, often related, categories of goods. One way to mitigate this would be a broader application of SPM. However, this would require approval from EU authorities, which appears difficult to obtain, or the introduction of incentives for voluntary SPM adoption.

Strengths of SPM. Unlike reverse charge or joint and several liability, the design of SPM allows it to be applied optionally. By making the option of split payment settlement widely available to taxpayers and targeting it at businesses with concerns about their trading partners' tax compliance, it provides a beneficial compromise for the tax authorities and business between the common and incidental application of the sealing solution. The advantages of the SPM were pointed out, inter alia, by the Ministry of Finance in the explanatory memorandum to the government's draft Act amending the Value Added Tax Act and certain other acts of 9 July 2019. In it, it states that

> '[i]n view of the (...) shortcomings of the reverse charge, it was decided to abandon this solution in favour of introducing a more effective means of tax settlement, i.e. introducing a systemic solution to eliminate criminal pathologies and to tighten the tax system systemically. The split payment mechanism offers such a solution. (...) The split payment mechanism, in addition to being more effective in combating tax fraud, is also more attractive to taxpayers than the reverse charge. It significantly reduces the need to frequently apply for a refund from the tax office through traditional VAT accounting and assessment. In addition, and crucially for the taxpayer who becomes subject to this mechanism, it provides legal protection against possible exploitation by a dishonest contractor. (...)'[380]

Business organisations, particularly the Cyfrowa Polska Association, expressed similar views on the effectiveness of SPM. In an opinion published in 2017, i.e. while the legislative work on the indicated solution was still in progress, it indicated that the

[379] *Część małych i średnich firm chce stosować split payment*, 2018, https://ksiegowosc.infor.pl/podatki/vat/split-payment/2770528,Czesc-malych-i-srednich-firm-chce-stosowac-split-payment.html [accessed: 10 July 2024].

[380] Government bill on amendments to the VAT Act and certain other laws, Explanatory Memorandum, print no. 3602, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=3602 [accessed: 10 July 2024].

introduction of the split payment mechanism '(...) constitutes the first, long-awaited systemic idea to regulate the problem of VAT extortion from the state budget', and 'the systemic elimination of vat carousels generates great enthusiasm.' The introduction of this solution '(...) alligns with the expectations of entrepreneurs, aiming to seal the system and limit the freedom of fraudsters to operate in the market.'[381] The effectiveness of SPM is also generally acknowledged in academic literature, even among critics of the VAT system implemented in the EU and Poland after 2004.[382]

Conditions for the effectiveness of the SPM as a VAT sealing tool. For maximum impact on the tightness of the VAT system, SPM should be used as widely as possible in situations where a business suspects its trading partner of tax dishonesty. At the time of its introduction, several barriers hindered the widespread application of the optional SPM and its ability to achieve a 'disturbed control' effect:

1) Limited awareness among entrepreneurs regarding the operational methods of tax criminals and the risks posed to honest companies inadvertently 'implicated' in VAT mafia activities;

2) Lack of experience in correctly applying the new regulations, coupled with a lack of established interpretation of these regulations within KAS and jurisprudence;

3) Negative liquidity impacts resulting from the 'freezing' of funds in VAT accounts.

To encourage voluntary adoption, four conditions were necessary – two of a legislative nature and two of a soft nature. These include:

1) Shaping the SPM as a tool to protect businesses from the tax consequences of unreliable trading partners;

2) Mitigating the negative impact of SPM on business liquidity by legally permitting transfers from the VAT account for as broad of a range as possible of 'safe' expenses – those regularly incurred by fiscally sound businesses but typically avoided by those engaged in fictitious trading or planning to 'dissappear' from the market;

3) Simplifying SPM usage for taxpayers by:

   a) Providing reliable guidance on when the mechanism should be applied, including recognising the characteristics of fiscally unreliable counterparties and non-marketable (i.e. fictitious) transactions;

   b) Creating a secure pathway for SPM implementation by providing binding administrative guidance on interpreting the split payment provisions;

4) Promoting widespread optional use of SPM during its initial implementation phase to allow as many businesses as possible to gain practical experience.

Protective power of the SPM. The application of the SPM protects the taxpayer against the tax dishonesty of his business partner. In fact, it constitutes an important defence argument for honest taxpayers who have been unwittingly 'involved' in VAT fraud. The application of the SPM is one of the most important arguments for proving due diligence (good faith). Specifically, by using the SPM, the taxpayer in particular:

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[381] Letter from ZIPSEE 'Cyfrowa Polska', 1 June 2017, https://cyfrowapolska.org/wp-content/uploads/2017/09/Gruza-opinia-split-payment.pdf [accessed: 11 May 2024].

[382] W. Modzelewski, *Mechanizm podzielonej płatności w podatku od towarów i usług. Problematyka prawna*, Warsaw 2020, p. 182. However, the author is critical of the design of the optional *version* of the SPM and argues that *split payment* should have been implemented much sooner.

1) It is not jointly and severally liable for the contractor's arrears resulting from the contractor's failure to pay VAT on the supply of goods deemed to be 'sensitive', i.e. listed in Schedule 15 uVAT (Article 105a(3)(6) uVAT).

2) Fulfils one of the due diligence conditions assessed for the legitimacy of VAT deduction.[383]

3) No negative consequences for payments to an account outside the 'White List' (Article 117ba § 3(4) OrdPod)

4) It may reduce the amount of the tax liability by the amount of the rebate calculated in accordance with the formula set out in Article 108d(1) uVAT, if the tax liability for the tax is paid in full from the VAT account before the tax payment deadline.

In addition, funds held in a VAT account are free from court and administrative enforcement for titles other than, inter alia, VAT, income taxes, excise duties and customs duties (including related interest) and social security contributions (Article 62d(1) of the Banking Act).[384]

Mechanisms to limit negative liquidity effects. The legislator has introduced a number of solutions aimed at limiting the negative effects of SPMs on entrepreneurs' liquidity. These include, in turn:

1) Increasing the availability of funds located in the VAT account;
2) Possibility of releasing funds from the VAT account;
3) Offering expedited VAT refunds when paid into a VAT account.

Possibility of funds disposal accumulated in the VAT account. Taxpayers have the possibility to use funds from the VAT account, without time or amount restrictions, to pay VAT on invoices received from contractors under the SPM, as well as VAT due and other public and legal levies, including PIT, CIT, excise tax,[385] as well as social security contributions like ZUS and KRUS (from 2022) (Article 62b of the Banking Law). Since 1 January 2021[386] taxpayers have also been able to pay tax on the import of goods or customs duties from their VAT account, not only to the tax office's account but also to the accounts of customs agencies. From 1 October 2021,[387] it is also possible to transfer funds between the taxpayer's VAT accounts in different banks. As of 1 July 2023,[388] members of a VAT group can transfer funds from their VAT accounts to the group representative's VAT account, and VAT account funds can be used to pay additional public levies, including mining tax on certain minerals and retail sales tax.[389]

Release of funds from a VAT account. Although funds in a VAT account belong to the taxpayer, the tax administration oversees their release (transfer to the taxpayer for

[383] Ministerstwo Finansów*, Należyta staranność*, https://www.podatki.gov.pl/vat/bezpieczna-transakcja/nalezyta/ [accessed: 10 July 2024].

[384] Banking Act of 29 August 1997 (consolidated text Journal of Laws 2024, item 1646, as amended).

[385] The VAT account may also be used to cover, among other things, interest on arrears and all additional tax liabilities established in VAT, PIT, CIT and excise duties.

[386] Act of 27 November 2020 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2419) – referred to as the SLIM VAT Act.

[387] Act of 11 August 2021 amending the Act on Value Added Tax and the Act – Banking Law (Journal of Laws, item 1626), referred to as the SLIM VAT Act 2.

[388] Act of 26 May 2023 amending the Value Added Tax Act and certain other acts (Journal of Laws item 1059, as amended), referred to as the SLIM VAT Act 3.

[389] J. Sarnowski, P. Selera, *SLIM VAT 3 – w kierunku dalszego uproszczenia i unowocześnienia rozliczeń VAT*, 'Bulletin of the Institute of Tax Studies', no. 2, February 2022, p. 4.

unrestricted use). The taxpayer may apply to the head of the tax office for permission to transfer them to the main account, i.e. a settlement account of the entrepreneur in a bank or an account in a SKOK (Article 108b uVAT). The authority shall issue a decision within 60 days of receipt of the application. The refusal to grant consent to transfer funds accumulated in the VAT account is made by way of a decision and may be justified by the entrepreneur's tax arrears or a justified threat that his tax obligations will not be fulfilled. This may be the case, in particular, when the taxpayer carries out activities involving the disposal of assets that may hinder or impede the enforcement of tax obligations. Importantly, the issuance of a refusal decision by the tax authority does not result in the blocking of funds in the VAT account. Since 1 October 2021, the *SLIM VAT 2* package has limited the grounds for refusing to release funds from a VAT account based on existing tax arrears. As a result, the taxpayer's possession of arrears that have been spread in instalments or deferred is no longer an obstacle to obtaining approval for the release of funds. In such a situation, the taxpayer, despite having tax arrears, can obtain approval to release funds from the VAT account. The refusal to 'release' funds from a VAT account is not universal. In 2021, there were 1,177 decisions refusing to release approximately PLN 240 million, while in January to October 2022, 1,002 refusal decisions denying the release of approximately PLN 240 million. In 2021, the number of refusals ranged from 59 (September) to 147 (January), and from January to October 2022, the range was from 77 (February) to 116 (May) (chart 16). The highest value of funds refused for release in 2021 occurred in June (approximately PLN 70.6 million), and in the period from January to October 2022, the highest value occurred in February (approximately PLN 46.7 million) (chart 17).

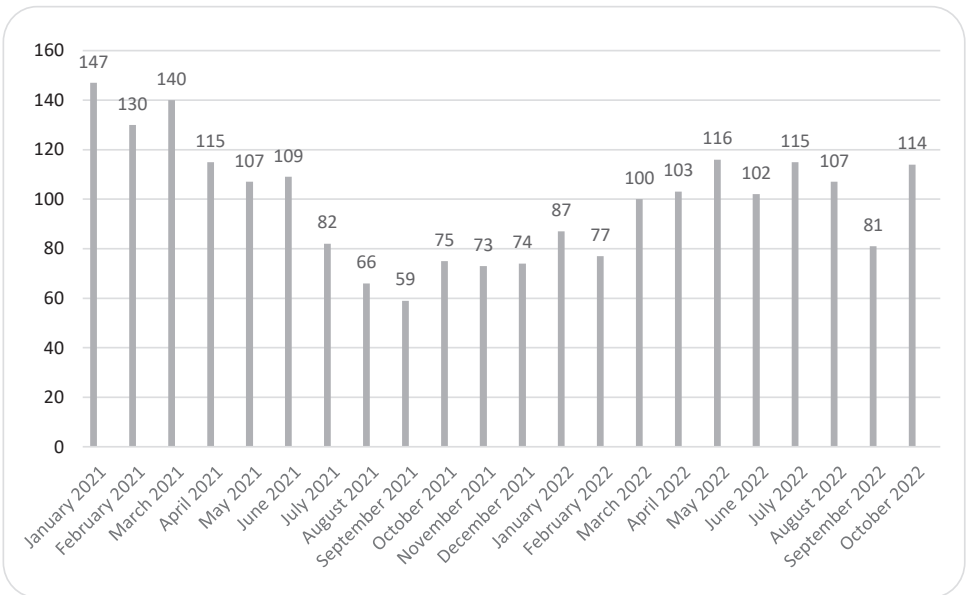


Chart 16: Number of refusals to release funds from the VAT account

Source: own compilation based on the Ministry of Finance's coverage data for SPM 2018-2022.

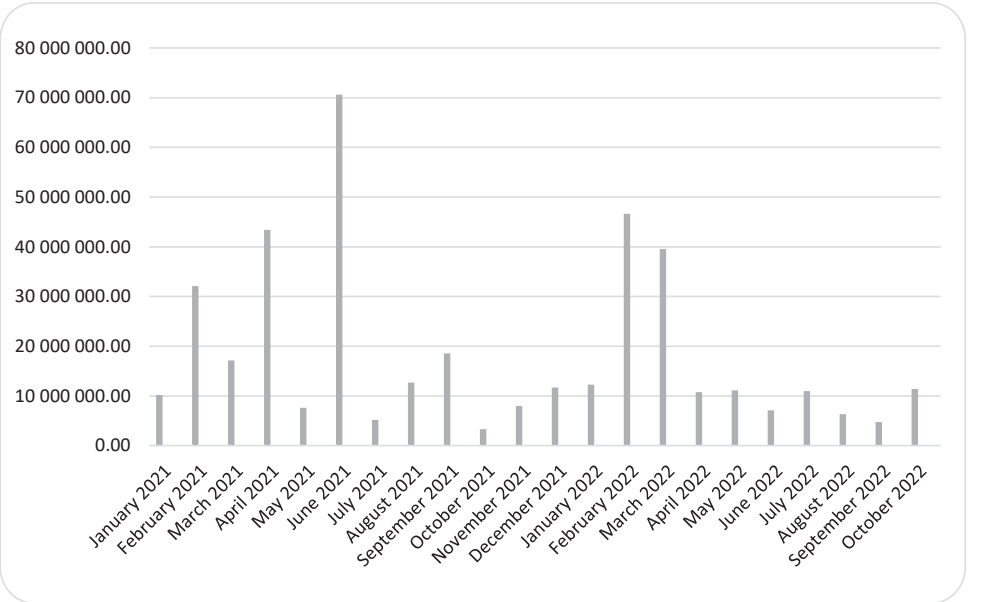


Chart 17: Amount of funds refused for release [PLN]

Source: own compilation based on the Ministry of Finance's coverage data for SPM 2018-2022.

VAT account refund.

Since the introduction of the split payment mechanism (SPM) in Poland (July 2018), the institution of VAT account refund has been in place. This refund is notable for its exceptionally short 25-day processing period (Article 87(6a) of the VAT Act). Crucially, this deadline cannot be extended by the tax authority, making it a favourable option for taxpayers seeking a refund, particularly those who regularly use the funds accumulated in their VAT account to cover their tax and social security contribution obligations. In the first month of the SPM's operation (July 2018), 927 refunds were processed, and the number grew rapidly thereafter. Between 2021 and 2022, the volume of refunds increased significantly. In January 2021, 7,160 refunds, totalling PLN 1,342 million, were made. This rose to 11,123 accepted applications in December 2022 (chart 18), resulting in refunds to VAT accounts amounting to PLN 5,288 million. Comparing January 2021 with December 2022, the number of VAT account refund applications increased by over 55% in two years, while the value of refunds nearly quadrupled. Across all of 2021, a total of 107,415 VAT account refunds, amounting to PLN 23,076 million, were made, compared to 119,369 refunds totalling PLN 38,640 million (chart 19) in 2022. This represents an approximate 10% year-on-year increase in the number of applications submitted and a substantial 67% year-on-year increase in the value of VAT refunds. This significant increase in refund volume suggests that taxpayers are increasingly willing to use this accelerated VAT refund pathway. This implies that 'freezing' designated funds in a VAT account is a lesser burden on their liquidity than waiting considerably longer for a tax refund made according to general principles – to a settlement account at the taxpayer's free disposal.

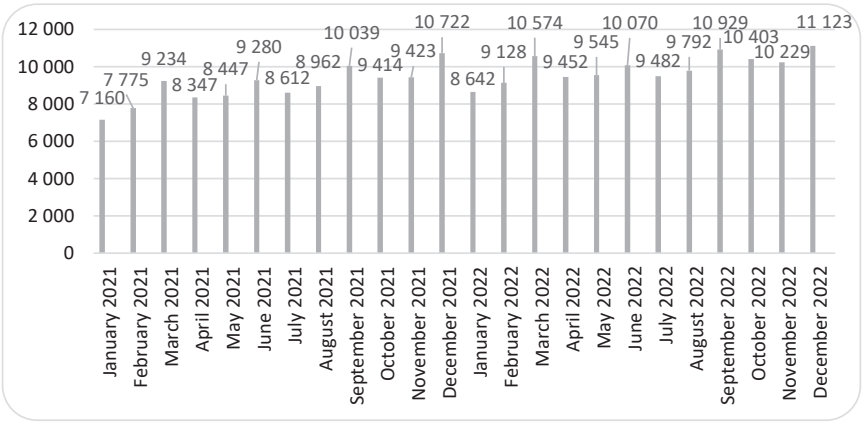


Chart 18: Number of VAT refund requests

Source: own compilation based on based on the Ministry of Finance's data.

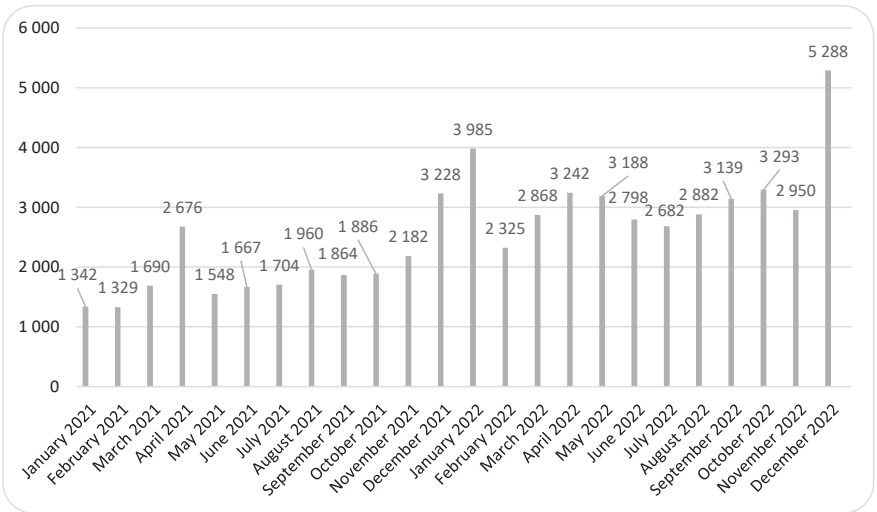


Chart 19: Value of refunds made to the VAT account [million PLN]

Source: own compilation based on data from the Ministry of Finance.

Awareness of the carousel threat. In an effort to equip entrepreneurs with knowledge of the dangers of carousel fraud and to point out to them the characteristics of entities generating fictitious turnover, the Ministry of Finance released a document called Methodology for Assessing Due Diligence by Buyers of Goods in Domestic Transactions (hereinafter: Methodology) [390] as early as April 2018. The Methodology was

[390] MF, *Metodyka w zakresie oceny dochowania należytej staranności przez nabywców towarów w transakcjach krajowych*, Warsaw 2018, https://www.podatki.gov.pl/media/7236/aktualizacja-metodyki-w-zakresie-oceny-dochowania-nalezytej-starannosci-przez-nabywcow-towarow-w-transakcjach-krajowych.pdf [accessed: 10 July 2024].

extended and updated in 2021[391]. While the addressee of the document is the tax administration, as it sets out guidance to assist tax officials in assessing the exercise of VAT due diligence by traders, it is a key resource for them, outlining relevant due diligence factors and how to avoid related disputes. The document details key circumstances businesses should consider when evaluating a trading partner's credibility, providing a comprehensive list of both formal and illustrative transactional criteria. The SPM plays an important role here, as one of the criteria for assessing due diligence: 'If a payment to a supplier of goods is made using the split payment mechanism, then the taxpayer must be deemed to have exercised due diligence if he has positively verified the formal conditions and there are no other circumstances that could clearly indicate a lack of due diligence'.[392]

Applying SPM correctly. To facilitate taxpayer compliance with SPM regulations, the Minister of Finance has issued tax explanations. The first of these, addressing the voluntary SPM mechanism, was published on 19 June 2018 – before the provisions enabling voluntary SPM settlements came into force on 1 July 2018.[393] Further explanations were issued on 23 December 2019[394] and concerned the mandatory split payment model, which became effective on 1 November 2019.

Promotion of optional SPM. Recognizing that widespread adoption of the optional SPM model is crucial for effective VAT sealing, the Ministry of Finance began promotional efforts in the summer of 2018 – even before the first SPM regulations took effect. These efforts aimed to encourage select entities to act as 'ambassadors' for the regulation by extensively using the newly implemented solution. The application of SPM by large entities operating in the market was to create conditions for the widest possible group of taxpayers – their counterparties – to become familiar with the new regulation. These 'soft' activities of the Ministry targeted two groups of entities:

1) Large state-owned entities (SEOs);

2) Members of business organizations, particularly those who had previously appealed to the Ministry of Finance to reduce the scale of VAT irregularities. These entities also had a particular interest in the successful implementation of SPM, as they themselves had been indirect victims of tax fraud in the past; the operation of the VAT mafia in their sectors posed a threat to their profitability.

The Ministry of Finance's efforts have had the quickest effect in relation to SOEs. Several entities within this category began settling all purchases using voluntary SPM in the summer of 2018. The indicated group included PKN Orlen,[395] ORLEN Paliwa

[391] Ministerstwo Finansów, *Metodyka w zakresie oceny dochowania należytej staranności przez nabywców towarów w transakcjach krajowych*, Warszawa 2021, https://www.podatki.gov.pl/media/7236/aktualizacja-metodyki-w-zakresie-oceny-dochowania-nalezytej-starannosci-przez-nabywcow-towarow-w-transakcjach-krajowych.pdf [accessed: 10 July 2024].

[392] Ibid.

[393] Ministerstwo Finansów, Objaśnienia podatkowe z 29 czerwca 2018 r., *Stosowanie mechanizmu podzielonej płatności (MPP*, https://eureka.mf.gov.pl/informacje/podglad/483015 [accessed: 10 July 2024].

[394] Ministerstwo Finansów, Objaśnienia podatkowe z 23 grudnia 2019 r. w sprawie mechanizmu podzielonej płatności, https://eureka.mf.gov.pl/informacje/podglad/507974 [accessed: 10 July 2024].

[395] PKN Orlen, *PKN ORLEN przygotowuje się do wdrożenia mechanizmu split payment*, https://www.orlen.pl/pl/o-firmie/media/komunikaty-prasowe/2018/czerwiec/PKN-ORLEN-przygotowuje-sie-do-wdrozenia-mechanizmu-split-payment [accessed: 10 July 2024].

sp. z oo.,[396] LOTOS Capital Group,[397] ENERGA Group,[398] TAURON Group,[399] KGHM Polska Miedź S.A.,[400] and Enea Group.[401]

> 'Grupa LOTOS S.A. announces that, effective 1 July 2018, all payments made by LOTOS Group companies against purchase invoices will be processed on a split payment basis,s according to a communication on the LOTOS Group S.A. website dated 4 June 2018.[402]

Exclusive application of optional settlement by means of SPM was also declared by, among others, entities from the electronic sector associated in ZIPSEE (now the Cyfrowa Polska association), as well as members of the Polish Organisation of Commerce and Distribution (POHiD) representing the largest retail chains in Poland.[403] In the case of POHiD members, the Ministry of Finance's efforts also yielded tangible results by encouraging companies to voluntarily adopt the new settlement rules. For example, the Lidl chain declared a complete transition to voluntary SPM settlements as of 1 November 2019, coinciding with the implementation of mandatory SPM in Poland.

> 'We understand and accept the new solution involving a mandatory split payment mechanism for selected industries. Introduced on 1 November 2019, this mechanism will, in our opinion, be an effective tool that both protects purchasers of goods and services and helps to systemically tighten the tax system in Poland. (...) We strive to cooperate only with verified suppliers and recipients, but we also recognize that identifying potential tax abuses can be challenging in practice. Therefore, we have decided that, starting in November 2019, split payment will be the standard form of payment for Lidl Polska.'[404]

Effectiveness of legislative and 'soft' measures. The Ministry of Finance's efforts to familiarise taxpayers with the specifics of the implemented SPM, conducted partly

[396] Orlen Paliwa, *ORLEN Paliwa Sp. z o.o. wdroży mechanizm split payment,* https://www.orlenpaliwa.com.pl/PL/DlaMediow/Aktualnosci/Strony/ORLEN-Paliwa-Sp--z-o-o--wdro%C5%BCy-mechanizm-split-payment.aspx?pageNumber=12 [accessed: 10 July 2024].

[397] Lotos, *LOTOS wprowadza mechanizm podzielonej płatności*, https://www.lotos.pl/2689/poznaj_lotos/komunikaty/lotos_wprowadza_mechanizm_podzielonej_platnosci [accessed: 10 July 2024].

[398] Energa, *Energa wprowadziła mechanizm split payment*, https://media.energa.pl/pr/395819/energa-wprowadzila-mechanizm-split-payment [accessed: 10 July 2024].

[399] Tauron, *TAURON wdraża mechanizm podzielonej płatności (split payment)*, https://media.tauron.pl/pr/394086/grupa-tauron-wdraza-mechanizm-podzielonej-platnosci-split-payment [accessed: 10 July 2024].

[400] KGHM, *Mechanizm podzielonej płatności*, https://kghm.com/es/node/19411 [accessed: 10 July 2024].

[401] Enea, *Informacja dla kontrahentów Grupy Enea*, https://www.enea.pl/pl/grupaenea/o-grupie/platnosci-split-payment [accessed: 10 July 2024].

[402] Lotos, *LOTOS wprowadza mechanizm podzielonej płatności*, https://www.lotos.pl/2689/poznaj_lotos/komunikaty/lotos_wprowadza_mechanizm_podzielonej_platnosci [accessed: 10 July 2024].

[403] Dziennik Gazeta Prawna, *Ministerstwo Finansów szuka chętnych na split payment*, https://podatki.gazetaprawna.pl/artykuly/1045097,mf-mechanizm-split-payment-vat.html [accessed: 10 July 2024].

[404] Money.pl, *Lidl zaskakuje. Chcesz z nami handlować? To tylko ze split payment*, https://www.money.pl/gospodarka/lidl-zaskakuje-chcesz-z-nami-handlowac-to-tylko-ze-split-payment-6427674892642433a.html [accessed: 10 July 2024].

through corporate 'ambassadors' of this solution, have increased companies' awareness of this new VAT settlement procedure at their disposal. To illustrate the concerns and expectations of businesses regarding the introduction of optional SPM, one can consider the results of an IBRIS survey commissioned by Siemens Financial Services in October 2018. The survey polled 500 small and medium-sized enterprises (SMEs) employing between 1 and 250 people.[405] After 3.5 months of voluntary SPM implementation in Poland, nearly 45% of surveyed entities reported using it at least once, including approximately 21% of small companies and approximately 14% of micro-enterprises. Intended future use of the mechanism was more prevalent among larger companies: 84% of medium-sized enterprises and 61% of small companies expressed this intention. Micro-enterprises showed the lowest intention to use SPM, at only 36%. Notably, half of the respondents reported improved company liquidity due to the introduction of VAT split payment, while only 29% felt it had negatively impacted their liquidity.

Snowball effect. The efforts to familiarize taxpayers with the benefits of voluntary SPM, coupled with the active participation of corporate partners in promoting the solution, resulted in 648,659 transactions worth PLN 11,288 million being processed using voluntary SPM in its first month of implementation (July 2018). This represented approximately 5% of the total VAT due. The Ministry of Finance observed a steady, gradual increase in the number of taxpayers using SPM, a trend described by the market as a 'snowball effect'.

From quantity to quality. Given the satisfactory growth in the number of entities settling under SPM and the generally positive reception of the new regulations by businesses, it was decided that partner entities would gradually shift from applying SPM to all transactions toward implementing internal policies for selective use of split payment in company settlements. This shift was fundamental due to the risk of liquidity constraints for some entities receiving SPM payments despite not exhibiting characteristics of fictitious trading, as outlined, inter alia, in the Methodology. Throughout 2019, a significant portion of the identified taxpayers implemented these internal procedures, with support from the SME Ombudsman.[406] Currently, information on their procedures for the application of the SPM is available to the public as part of the information on the implemented tax strategy published annually on the websites (obligation under Article 27c uCIT). The Ministry of Finance intended to develop and publish these internal SPM rules within the tax strategy reports to serve as a model of good practice for other entities developing their own rules of conduct in this area. However, the detail of the indicated information depends on the individual decision of the publisher. The first such information, concerning the strategy implemented in

[405] The effects of the indicated survey are summarised, among others, in Interia.pl, 37% of SMEs consider introducing split payment in the future, https://biznes.interia.pl/firma/news-37-proc-msp-rozwaza-wprowadzenie-split-payment-w-przyszlosci,nId,4143406 [accessed: 10 July 2024].

[406] These included Grupa Lotos S.A., Polska Grupa Górnicza Sp. z o.o. as well as Enea S.A., Grupa Azoty S.A., PKP Cargo S.A. and Polska Wytwórnia Papierów Wartościowych S.A. More extensively on this topic, among others, in the publication: Office of the Ombudsman for Small and Medium-Sized Enterprises, Following the recommendation of the Ombudsman for Small and Medium-Sized Enterprises – Polska Grupa Górnicza abandons the use of split payments for the smallest companies, https://rzecznikmsp.gov.pl/po-rekomendacji-rzecznika-malych-i-srednich-przedsiebiorcow-polska-grupa-gornicza-rezygnuje-ze-stosowania-podzielonej-platnosci-dla-najmniejszych-firm/ [accessed: 10 July 2024].

2020, was published by the end of December 2021. Currently, the strategies for 2021 (publication by the end of December 2022) and 2022 (published by the end of December 2023) are also available on the entrepreneurs' websites.

3.1.3. Scale of Application of SPM in Poland

Increase in SPM use Y2Y. Ministry of Finance data shows an increasing scale of SPM use among businesses. While during the period when only the optional SPM was in force (July 2018 – October 2019), SPM accounted for approximately 11% of the total VAT amount; this had already increased to almost 50% in the following year (November 2019 – December 2020). By 2022, SPM accounted for approximately 60% of VAT due, meaning almost two-thirds of the value of payments made in Poland used a VAT account. A similar trend is observed in other indicators of SPM usage. The number of SPM transactions was approximately 24.5 million between July 2018 and October 2019. In the subsequent period, which included the onset of the COVID-19 pandemic (November 2019 – December 2020), this reached a record 97.7 million. While the volume of SPM transactions stabilised around the 2020 level, reaching approximately 93 million from January to December 2021 and approximately 94 million in 2022, this stabilisation did not halt the growth in SPM usage. With similar levels of transactions using SPMs, a significant increase in their value was observed between 2020 and 2022. The gross value of SPM transactions totalled approximately PLN 400 billion during the optional SPM period (July 2018 – October 2019), subsequently increasing, after the introduction of mandatory split payment, to approximately PLN 1,580 billion (November 2019 – December 2020), approximately PLN 1,770 billion (January – December 2021), and finally, PLN 2,180 billion (January – December 2022).

Table 5: Growth in popularity of the split payment mechanism from July 2018 to December 2022

Period	Number of SPM transactions (payments)	Gross value of transactions (PLN million)	SPM's share of output VAT (%)
July 2018 – October 2019	24,582,825	399,253	11%
November 2019 – December 2020	94,698,087	1,578,947	49%
January – December 2021	93,130,585	1,769,597	56%
January – December 2022	93,914,086	2,179,063	60%

Source: own compilation based on data from the Ministry of Finance.

SPM – periodic fluctuations. Following the introduction of mandatory SPM, its usage has steadily increased, although some periodic fluctuations are apparent. The months with the lowest SPM share of VAT due are typically February (42% in 2020, 46% in 2021, and 45% in 2022) and March (39% in 2020, 46% in 2021, and 45% in 2022). While February consistently has the lowest figures for both the number of transactions (5.98 million in 2020, 6.49 million in 2021, and almost 6.9 million in 2022) and the gross value of SPM transactions (PLN 97,936 million in 2020, PLN 110,992 million in

2021, and PLN 144,044 million in 2022), January performed worse than March in each of the years reviewed, both in terms of transaction volume (6.01 million in January 2020, approximately 6.3 million in January 2021, and 7.09 million in January 2022) and transaction value (PLN 107,726 million in 2020, PLN 113,225 million in 2021, and PLN 157,834 million in 2022). While January, February, and March saw the lowest intensity of SPM use from 2020 to 2022, entrepreneurs were most likely to use split payment in October, November, and December. This trend applies to the share of SPMs in VAT due, the number of transactions, and their gross value, with all these parameters generally showing year-on-year (Y2Y) and month-on-month (M2M) increases (see charts 20 i 21). For instance, the SPM share of output tax was 62% in December 2020, 67% in December 2021, and 68% in December 2022, while the gross value of SPM transactions increased from PLN 165,290 million in December 2020 to PLN 211,236 million in December 2021 and PLN 228,959 million in December 2022.

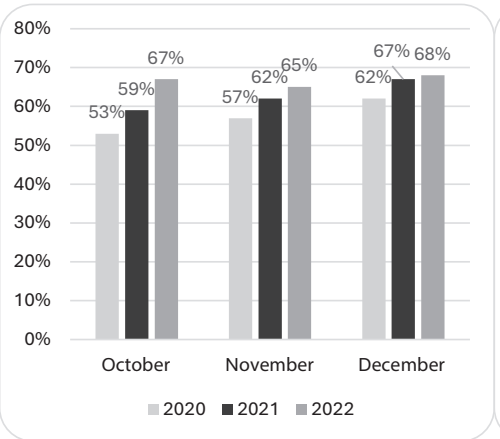


Chart 20.
Share of SPM in output VAT [%]

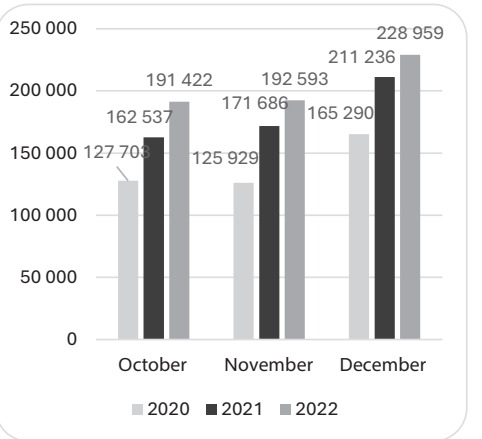


Chart 21.
Gross value of transactions using SPM [million PLN]

Source: own compilation based on data from the Ministry of Finance.

Mandatory SPM growth in the first wave of the pandemic. Since the implementation of the optional SPM model, the popularity of its application has been less than a dozen %. However, there has been a steady upward trend, both in the share of SPM in output VAT (up from 5% in July 2018 to 16% in October 2019), and the number of SPM transactions (648,659 in July 2018 compared to 2,377,704 in October 2019) and their value (from PLN 11,288 million in July 2018 to PLN 37,961 million in October 2019). The introduction of mandatory split payment for specific transactions involving 'sensitive goods' in November 2019 triggered a rapid increase in SPM usage. This change resulted in a significant month-on-month (M2M) increase across all analyzed parameters. The SPM share of VAT due doubled, rising from 16% in October to 32% in November and then to 47% in December 2019. The number of transactions covered by the SPM increased from 2,377,704 in October to 3,974,113 in November and then to 5,892,198 in December

2019. Their value increased from PLN 37,961 million in October to PLN 71,362 million in November and PLN 116,900 million in December 2019. Further growth in SPM usage occurred during the first wave of the pandemic and the associated lockdown; however, this increased share of split payments did not correspond to a rise in the number or value of SPM transactions. While SPM's share of total VAT increased from 39% in March to 52% in April 2020, the economic shock of the pandemic's first wave is evident in the fact that the gross value of SPM transactions remained almost constant (PLN 110,882 million in March 2020 and PLN 110,895 million in April 2020), and their number actually decreased (from approximately 7.03 million in March 2020 to 6.85 million in April 2020).

Summer 2020 recovery and second pandemic wave. The lifting of pandemic restrictions in the summer of 2020 spurred a record increase in SPM use. In June and July 2020, the share of SPM in VAT due jumped (from 43% in June to 63% in July), as did the number of SPM payments (from 6.8 million in June to almost 7.4 million in July) and their value (from PLN 107,356 million to PLN 120,060 million). Further significant increases in SPM use coincided with the second and third waves of the pandemic. In September and October, all SPM usage parameters increased: its share of tax due (from 44% in September 2020 to 63% in October 2020), the number of transactions (from 6.8 million in August 2020 to over 7.8 million in October 2020), and their gross value (from 106,075 million PLN in September 2020 to nearly 127,703 million PLN in October 2020).

Third pandemic wave and 2022 war. The third pandemic wave saw a significant increase in the scale of SPM settlements, coupled, even more drastically than during the first wave, with a decline in the number and value of transactions. The share of SPMs rose from 46% in March 2021 to 67% in April 2021. The number of SPM payments fell by around 400,000, from approximately 7.93 million in March 2021 to 7.53 million in April 2021. Over the same period, the gross value of SPM transactions decreased by around PLN 108 million, from PLN 136,396 million in March 2021 to PLN 136,288 million in April 2021. An analagous economic shock, linked to an unprecedented increase in SPM use, resulted from the intensification of hostilities across Poland's eastern border beginning in February/March 2022. SPM's share of tax due rose from 45% in March 2022 to 65% in April and as high as 72% in May 2022 (chart 22). Simultaneously, a decline in the number of SPM transactions was observed in subsequent months, from approximately 8.33 million in March 2022 to 7.70 million in April and 7.83 million in May 2022 (chart 23). The gross value of SPM transactions fell from PLN 180,012 million in March to PLN 175,301 million in April 2022, before rising again to PLN 178,679 million in May 2022 (chart 24).

Conclusions. Beyond periodic fluctuations, it should be noted that the scale of SPM application in Poland demonstrates sensitivity to both legislative changes and economic fluctuations during the analysed period, resulting from shocks caused by the pandemic and the escalation of military activity beyond Poland's eastern border. It is important to note that the observed changes in the volume and value of settlements under SPM rules do not exhibit a clear cyclical or countercyclical pattern. The increasing adoption of split payment correlates both with periods of economic growth (June to July 2020) and, somewhat counterintuitively, with periods of uncertainty, such as the three pandemic waves (March to April 2020, September to October 2020, and March to April 2021) and the war situation (March to May 2022).

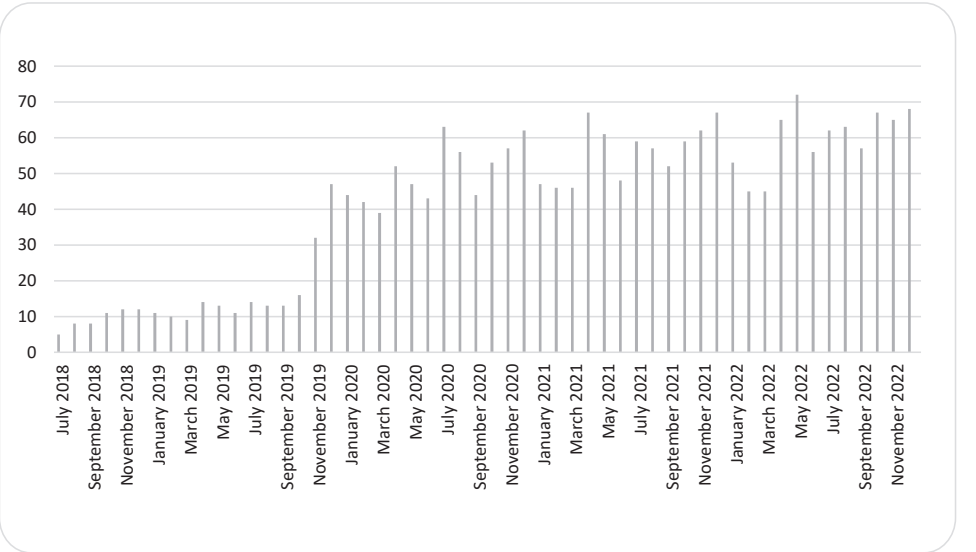


Chart 22: SPM's share of output VAT [%]

Source: own compilation based on the Ministry of Finance's coverage data for SPM 2018-2022.

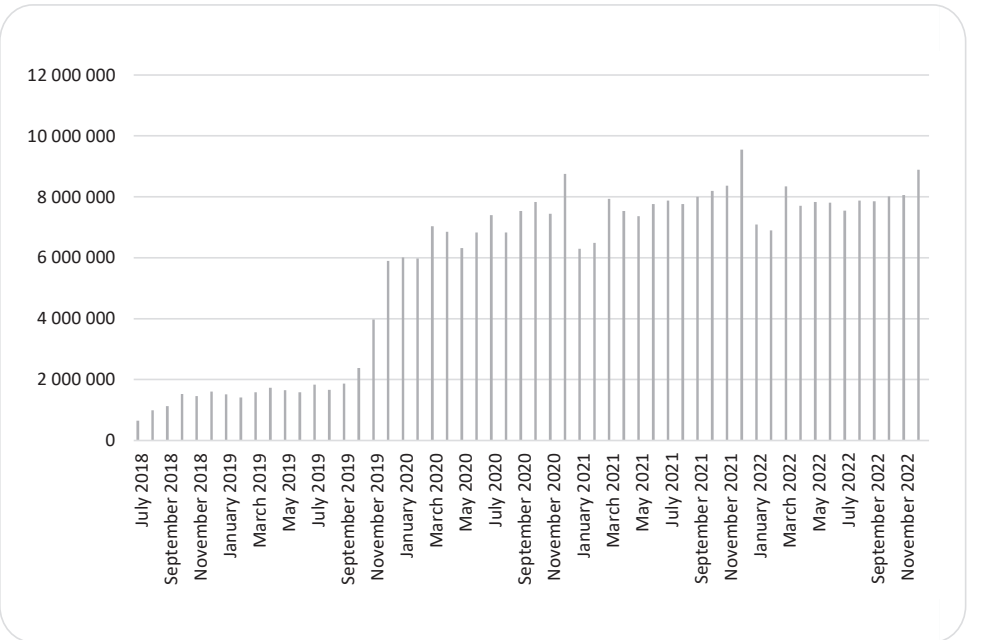


Chart 23: Number of transactions (payments) made using SPM

Source: own compilation based on the Ministry of Finance's coverage data for SPM 2018-2022.

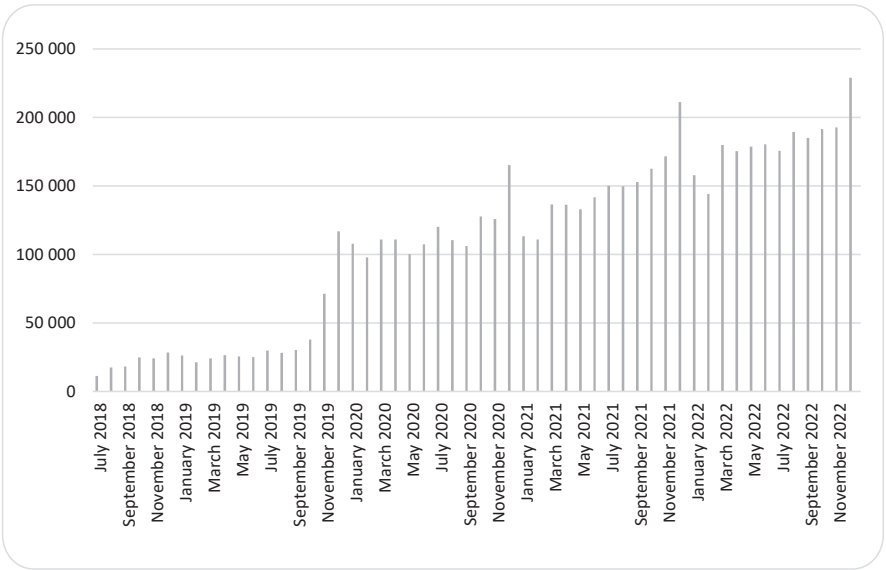


Chart 24: Gross value of transactions (in million PLN) made using SPM

Source: own compilation based on the Ministry of Finance's coverage data for SPM 2018-2022.

Despite the limited ability to use funds accumulated in the VAT account, which could potentially worsen taxpayer liquidity, periods of economic hardship did not lead to a significant reduction in SPM settlements. On the contrary, these periods saw rapid growth in this settlement method among businesses. This phenomenon can be attributed both to the gradual expansion of the range of possibilities to dispose of the money collected on the account, and to the fact that new risks – such as war, pandemics, disrupted supply chains, and business closures – naturally increase interest, where possible, in risk-mitigation tools. The split payment mechanism, therefore, is a tool readily adopted by companies, especially during times of market turbulence, to enhance the stability and security of their transactions.[407] The widespread adoption of SPM in business transactions is the strongest indicator of its effectiveness. The market has recognised it as a beneficial and effective mechanism for businesses to manage the risk of tax dishonesty by their trading partners. It is now a widely used tool in Poland, enabling taxpayers to avoid unintentional involvement in criminal transaction chains, such as tax carousels. Thanks to its widespread use, SPM, along-

[407] In the authors' view, the observed increase in the gross value of transactions made using split payment mechanism (SPM), which is disproportionately large relative to its mandatory scope, can be attributed to several overlapping factors. Besides the specific business needs arising from the pandemic (considered the most significant factor by the authors), these include: 1) a 'snowball effect' amplified by the mandatory application of SPM; 2) increased familiarity with the mechanism due to its widespread mandatory use and the availability of explanatory notes on its application provided by the Ministry of Finance. Inflationary pressures and cyclical economic factors during this period may also have played a role. The reasons behind the current scale of SPM usage in the Polish economy, and specifically the relative importance of each of these factors, warrant further investigation. For more on this topic see: J. Sarnowski, P. Selera, *Dwa lata obowiązywania w Polsce mechanizmu podzielonej płatności w VAT – doświadczenia i wnioski*, Biuletyn Instytutu Studiów Podatkowych, 2020, no. 10, pp. 8-9.

side JPK (Standard Audit File for Tax), has become a key instrument in strengthening the tax system, achieving comparable effectiveness to the general (universal) reverse charge mechanism considered in many countries, while avoiding its negative consequences.

3.2. Faster 'Stopping' of VAT Carousels

3.2.1. Electronic VAT Settlements and JPK

Changing approaches and effective implementation of JPK.
In Poland, SAF-T was introduced in the form of the Single Control File in 2015 initially available only as a file on demand.[408] This precluded its effective use as a source of data for big data analysis, hindering the immediate detection of missing traders and the discovery of fictitious goods transfer paths between companies, which ultimately led controllers to claim undue VAT refunds via brokers. In 2016, following the Ministry of Finance's decision to prioritise combating VAT carousels and implement JPK in Poland, steps were taken to 'clear the foreground' of the planned sealing tool. These measures involved legislative changes to facilitate the administration's effective use of the newly acquired data and its analytical capabilities:

1) Tightening the conditions for fiscal authorities to grant accelerated VAT refunds, giving the administration more time to analyse trader turnover data for characteristics of fictitious trading;

2) Reducing the prevalence of quarterly VAT settlements to ensure the administration could efficiently and promptly update its databases with information on taxable persons' turnover;

3) Digitalising the process of submitting tax returns and recapitulative statements, facilitating the administration's electronic analysis of taxpayer-submitted data, while simultaneously creating a pilot scheme for the target system, which was to be the implementation of reporting in the SAF-T (JPK) format in Poland.

Limitation of accelerated VAT refunds. By limiting accelerated VAT refunds, the tax administration gained more time to analyse collected data and detect irregularities. Consequently, as of 1 January 2017,[409] the possibility for taxpayers to receive VAT refunds within the accelerated 25-day period was limited. This measure was justified by the National Revenue Administration's (KAS) identification of fraudsters exploiting this provision.[410] The previous wording of the provision made it too easy to meet the conditions for a rapid VAT refund. In the Ministry of Finance's view, this prevented tax offices from effectively verifying whether a taxpayer intended to commit fraud. Furthermore, with regard to input tax amounts not settled in previous periods, both

[408] Act of 10 September 2015 amending the Act - Tax Ordinance and certain other acts (Journal of Laws, item 1649, as amended).

[409] Explanatory Memorandum and OSR from the Government's Bill to amend the Value Added Tax Act and certain other acts of 28 October 2016, Draft No. 965.

[410] Ibid.

taxpayers and tax offices faced difficulties in proving that the taxpayer had paid all invoice amounts due within such a short timeframe. Accelerated refunds (within 25 instead of 60 days) were therefore restricted to taxpayers who met specific criteria relating to both their subjective status and VAT settlement, as well as the payment method for purchase invoices (amendments to Article 87(6) uVAT).

Furthermore, the rules and scope of refund justification verification were clarified to ensure verification was not limited to checking the accounts submitted by the taxpayer. To ascertain refund legitimacy, the administration must analyse the entire supply chain, including verifying the accounts of the applicant's business partners and the direction of fund flows between companies. Other documents proving the transaction's actual execution should also be verified (Article 87(2b) uVAT). From 1 January 2017, the possibility of extending the taxpayer's VAT refund deadline by up to three months was also introduced, following a justified request by the Chief of Police, Head of the Central Anticorruption Bureau (CBA), Head of the Internal Security Agency (ABW), or the Prosecutor General, in connection with proceedings conducted by the requesting authority. If the authority's actions confirm the refund's legitimacy, the taxpayer is entitled to interest equivalent to the prolongation fee applicable to tax payment postponements or instalments (Article 87(2c) uVAT).

Restriction of quarterly settlements. To provide the administration with insight into the scale and structure of taxpayers' turnover, the range of entities eligible for quarterly VAT settlements has been significantly narrowed (Article 99 uVAT). The option of quarterly settlements for entities other than small taxpayers was introduced on 1 January 2009.[411] This provision was exploited by 'missing traders' to lengthen the time available for tax authorities to detect irregularities. In 2013, the option to settle VAT quarterly was withdrawn from taxpayers selling goods under joint and several liability.[412] Given the ease with which carousels could be shifted between goods and sectors of the economy, this restriction had limited and inconsistent effectiveness. With the law of 1 December 2016,[413] the privilege of quarterly VAT settlements remained open only to so-called 'small taxpayers', defined as those whose sales did not exceed €1.2 million in the previous year (rising to €2 million from 1 July 2023). Furthermore, the option of using quarterly settlements was restricted for certain entities with substantial turnover in 'sensitive goods'. In their first year as VAT taxpayers, these entities could only settle with tax authorities on a monthly basis. This change provided tax authorities with up-to-date information on taxpayer activities, which is particularly important when verifying settlements of new entities, among whom the risk of irregularities is considered highest by the administration. It also helped curb the practice of manipulating settlement periods for tax fraud.

[411] Act of 7 November 2008 amending the Value Added Tax Act and certain other acts (Journal of Laws No. 209, item 1320).

[412] Act of 26 July 2013 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1027).

[413] Act of 1 December 2016 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2024).

Online declarations and summary information. As of 1 January 2017, the legislator obliged selected categories of taxpayers to submit online declarations.[414] The indicated obligation covered, in particular, entrepreneurs participating in trade with other EU countries and trading in 'sensitive' goods (Article 16 of the 2016 Amending VAT Act). Since January 2018, electronic submission of VAT returns has become mandatory for all VAT taxpayers. The possibility of quarterly submission of recapitulative statements (relating to intra-Community EU VAT transactions) and domestic recapitulative statements (information submitted by suppliers of goods and services subject to reverse charge) was also removed. These were to be submitted only on a monthly basis (by the 25th day of the month following the month in which the tax obligation arose for specific transactions) and sent only electronically. These changes expedited the process of data entry into the system and, consequently, improved data analysis.

JPK implementation in Poland. A breakthrough for the efficiency of data analytics implemented in Poland was the decision to operate the JPK_VAT structure as mandatory. The changes introduced in 2016 made it mandatory for taxpayers to send the key JPK structure – electronic VAT records (VAT sales and purchase register) automatically for monthly periods.[415] Large companies began submitting JPK_VAT on 1 July 2016, small and medium-sized companies on 1 January 2017, and micro-entrepreneurs on 1 January 2018.[416] As of 1 July 2018, all taxpayers who keep their tax books and produce accounting evidence electronically are required to submit the remaining required JPK structures at the request of the tax authorities in the course of tax proceedings, verification activities, tax audits and customs and tax inspections.[417]

Preparing entrepreneurs for the implementation of JPK. With online submission of JPK-format returns becoming mandatory from the start of January 2018, requiring monthly submissions from 1.6 million companies (over 97% of VAT taxpayers), an unprecedentedly large-scale information campaign became necessary. Its most extensive element was a nationwide training campaign for entrepreneurs called 'Tuesdays with JPK'. On every Tuesday of November[418] and for the first three Tuesdays of December[419] 2017, open workshop sessions for entrepreneurs were held in every tax office in Poland, with the exception of specialised offices.[420] Importantly, entrepreneurs were able to attend training sessions in any offices, regardless of their local jurisdiction. From 14 to 23 February 2018, during the crucial period preceding the settlement deadline

[414] Ibid.

[415] Act of 13 May 2016 amending the Act - Tax Ordinance and certain other acts (Journal of Laws, item 846, as amended).

[416] Given that all taxpayer categories are subject to JPK_VAT reporting, a particularly interesting area for further research is a comparison of implementation costs for businesses against the resulting 'sealing' of the tax system. Such an analysis would allow for an assessment of whether the applied solution is proportional to the resulting impact on taxpayers' privacy.

[417] Ministry of Finance, *Jednolity Plik Kontrolny*, https://www.podatki.gov.pl/jednolity-plik-kontrolny/jpk_vat/informacje-jpk-vat/ [accessed: 10 July 2024].

[418] Ministry of Finance, *Szkolenia z JPK dla mikroprzedsiębiorców*, https://tiny.pl/d42cx [accessed: 11 July 2024].

[419] TaxFin.pl, *Wtorki z JPK również w grudniu*, https://taxfin.pl/wtorki-jpk-rowniez-grudniu/ [accessed: 11 July 2024].

[420] In total, there are seven dates: 7 November, 14 November, 21 November, 28 November, 5 December, 12 December, and 19 December.

for January (26 February 2018), dedicated officials were available at every tax office to explain JPK settlement procedures to entrepreneurs. In order to address the demand of companies, tax offices also conducted two 'Saturdays with JPK' (17 and 24 February 2018), during which substantive support was also provided to taxpayers on weekends.[421] The National Revenue Information helpline established a dedicated JPK_VAT specialization on 26 October 2017. By the end of that year alone, the National Revenue Administration Information Center (KIS) provided 14,531 answers to JPK-related inquiries through this channel.[422] Between January and the end of April 2018, JPK issues were the fourth most frequent subject of questions to the KIS (9.54%), just after PIT tax return issues (26.2%) and substantive VAT (23.23%) and PIT (22.34%) issues (chart 25).[423] In 2018, the National Revenue Information (KIS) provided 3,177 email responses and 97,632 phone consultations regarding Personal Income Tax (PIT).[424]

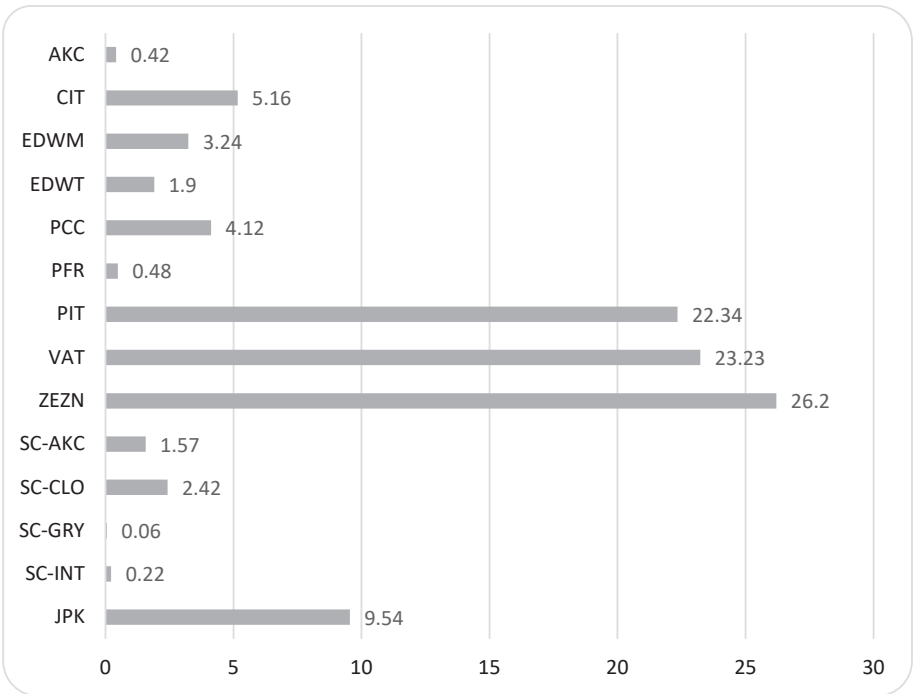


Chart 25: Thematic structure of enquiries to KIS in the period 2.1-30.4.2018

Source: KIS (2019).[425]

[421] Ministry of Finance, *Specjalne dyżury JPK_VAT dla mikroprzedsiębiorców*, https://tiny.pl/d42cm [accessed: 11 July 2024].

[422] Krajowa Administracja Skarbowa, *Informacja z działalności Krajowej Informacji Skarbowej za 2017 roku*, Bielsko-Biała 2018, p. 4, https://tiny.pl/d42cg [accessed: 11 July 2024].

[423] Krajowa Informacja Skarbowa, *Raport z działalności infolinii podatkowej i celnej od 2 stycznia do 30 kwietnia 2018 roku*, Bielsko-Biała 2018, p. 2, https://tiny.pl/d42ct [accessed: 11 July 2024].

[424] Krajowa Administracja Skarbowa, *Informacja o działalności Krajowej Informacji Skarbowej za 2018 rok*, Bielsko-Biała 2019, pp. 5-7, https://tiny.pl/d42c7 [accessed: 11 July 2024].

[425] Ibid.

As a result of an effective information and training campaign by the Ministry of Finance and the National Revenue Administration, the %age of entities failing to file JPK_VAT returns in January was very low (only 5.4%). By the end of the first half of 2018, this figure had halved again, reaching approximately 2.9% (chart 26).

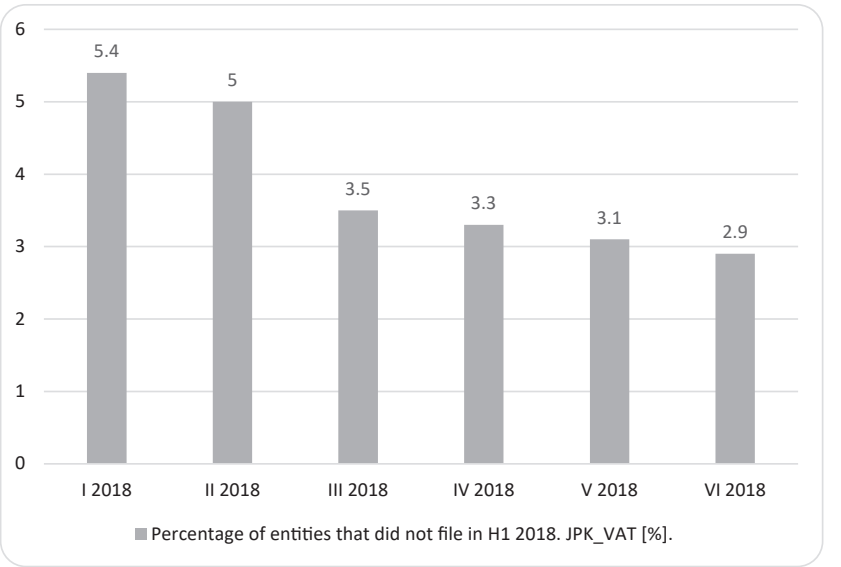


Chart 26: % age of entities that did not file in H1 2018. JPK_VAT [%].

Source: J. Sarnowski, P. Selera, *Zmniejszenie luki VAT...*, Polish Economic Institute, Warsaw 2018.[426]

New JPK_V7 schema. 2020 saw the implementation of a new JPK structure, eliminating the separate VAT return filing requirement. The JPK_VAT with a declaration is an electronic document comprising two parts: the VAT register (purchase and sales data derived from the trader's VAT records for a given period) and the VAT return (VAT-7 and VAT-7K returns). Since 1 October 2020, VAT-7 and VAT-7K returns can only be submitted via JPK_VAT. This single file streamlines tax office settlements and reduces the reporting burden for VAT taxpayers. With JPK_VAT with the declaration:

- There is no need to generate two files, provide two authorisation signatures, perform two uploads, or wait twice for the Official Receipt Confirmation (UPO). Instead of two actions, one action now suffices;
- There is a reduction in the number of tax audits and investigations and a reduction in the time taken to carry out audit activities;
- Each VAT return is automatically verified for the accuracy of the reported output and input tax amounts, without taxpayer involvement.[427]

[426] Quoted after: J. Sarnowski, P. Selera, *Zmniejszenie luki VAT...,* Polish Economic Institute, Warsaw 2018, p. 23.

[427] Ministerstwo Finansów, *JPK_VAT z deklaracją*, https://www.podatki.gov.pl/jednolity-plik-kontrolny/jpk-vat-z-deklaracja/jpk-vat-z-deklaracja-info/ [accessed: 11 July 2024].



Figure 7: JPK_V7

Source: Poradnik Przedsiębiorcy (2021).[428]

To simplify JPK settlement for businesses, the Ministry of Finance has made several tools available to facilitate the process. To prepare and submit a JPK_VAT file, businesses can use:

1) The free e-microfirma application;
2) The free Simplified Form tool;
3) The free JPK WEB Client tool, used to submit files prepared using the e-microfirma application, the Simplified Form, or commercial software; or
4) An updated accounting programme or a commercial online application to create the JPK_VAT file. If a taxpayer already uses such a programme, they should verify whether it includes a JPK_VAT submission function or if data can be directly downloaded from the programme to the JPK WEB Client application.[429]

Automated analysis of JPK files. To automate the examination of data provided by taxpayers in JPK file format, the National Revenue Administration has implemented a sophisticated analytical environment known as the 'Analysis Engine'. This system employs innovative analytical methods, including statistical-econometric modelling, machine learning techniques, and big data processing.[430] Algorithms and mechanisms are being developed to identify, among other things, carousel fraud with increasing

[428] Poradnik Przedsiębiorcy, *JPK V7 – co zawiera nowa struktura jednolitego pliku kontrolnego?* https://poradnikprzedsiebiorcy.pl/-jpk-v7-co-zawiera-nowa-struktura-jednolitego-pliku-kontrolnego [accessed: 14 July 2024].

[429] Ministry of Finance, *JPK_VAT z deklaracją*, https://www.podatki.gov.pl/jednolity-plik-kontrolny/jpk-vat-z-deklaracja/jpk-vat-z-deklaracja-info/ [accessed: 11 July 2024].

[430] Verification activities using the Analysis Engine between June and August 2019 confirmed VAT settlement irregularities of PLN 167.2 million. An additional PLN 113.2 million in irregularities was estimated for cases with ongoing tax audits and verification activities in September 2019. Ministry of Finance, *Analizy rozliczeń VAT z wykorzystaniem JPK_VAT, STIR i Silnika Analiz*, https://www.gov.pl/web/kas/analizy-rozliczen-vat-z-wykorzystaniem-jpkvat-stir-i-silnika-analiz [accessed: 12 July 2024].

precision. One of the newly developed and implemented tools within the Analysis Engine is the network analyser,[431] which was deployed in December 2019 for use by the Ministry of Finance and the tax administration chambers. This tool facilitates interactive and automated network analysis between entities, offering, for example, graphical representations of relationships, particularly focusing on transactions between businesses. Within the analysis engine, the entity fulfilling the role of the missing trader in a carousel transaction is first identified. This is an automated procedure using JPK data. In the next step, other entities involved in the VAT carousel are identified using the web analyser: buffers and brokers.

> 'Previously, we could analyse data from JPK files, but we lacked comprehensive tools to detect, for example, networks of relationships between counterparties. While this was possible, it required a 'step-by-step' approach, moving from one counterparty's JPK file to another's, and then to a third, and so on. Now, an algorithm performs this task for us. (...) If detecting a network of connections between counterparties previously took, for instance, two weeks, we can now accomplish it in a single day.'[432]

Change in JPK data acquisition and analysis model. Since January 2017, the *Centre for Analysis and Planning of the Tax Administration* (CAiPAP) has provided tax offices with JPK_VAT files upon request, submitted either by email or through the Document Management System. Since 1 February 2017, the WRO-JPK Analyser application has been introduced to manage these requests. However, the system in place until April 2017, which relied on KAS employees individually requesting access to the information held by CAiPAP, did not ensure fully efficient use.[433]

To enable free use of the data provided by taxpayers in JPK_VAT files, the Ministry of Finance made the WRO-System application available from 24 April 2017, which included the WRO-JPK Analyser and WROSkarbiec modules. The application was created by employees of the Wrocław Tax Chamber and the Ministry of Finance as part of their official duties. In the course of 2017 and 2018, further modules of the WRO-System application were introduced to enable more complete use of data from JPK_VAT files.[434]

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[431] For details on this subject, see J. Sarnowski, P. Selera, *Narzędzia informatyczne...*, p. 36.

[432] Statement by T. Strąk, Dyrektor Departamentu Poboru Podatków w Ministerstwie Finansów dla DGP: DGP, Strąk: 'hard' JPK data analytics launches in July, https://podatki.gazetaprawna.pl/artykuly/1054920,dane-jpk-analiza-danych-jpk.html [accessed: 11 May 2024].

[433] NIK, *Wykorzystanie jednolitego pliku kontrolnego w postępowaniach i kontrolach podatkowych,* https://www.nik.gov.pl/plik/id,21147,vp,23779.pdf [accessed: 11 July 2024].

[434] The WRO-System application consists of nine modules (data per NIK -2019):

1) Analyser module: Enables the generation of data from purchase and sales records contained in taxpayer-submitted JPK_VAT files;

2) Receivables module: Allows searching for invoices recorded in JPK_VAT files;

3) Deferrals module: Provides users with information on deferral requests submitted by entities for submitting VAT record information in JPK_VAT form;

4) WRO-Skarbiec module: Used to browse the Ministry of Finance Analysis Department's databases on domestic and foreign entities;

5) STIR Module – Provides users with access to, inter alia, data of qualified entities as defined in Article 119zg(4) of the Tax Ordinance Act, as well as bank account data from banks and cooperative savings and credit unions for these entities.

6) Transactions module: Enables searching for an entity within JPK_VAT files submitted by contractors.

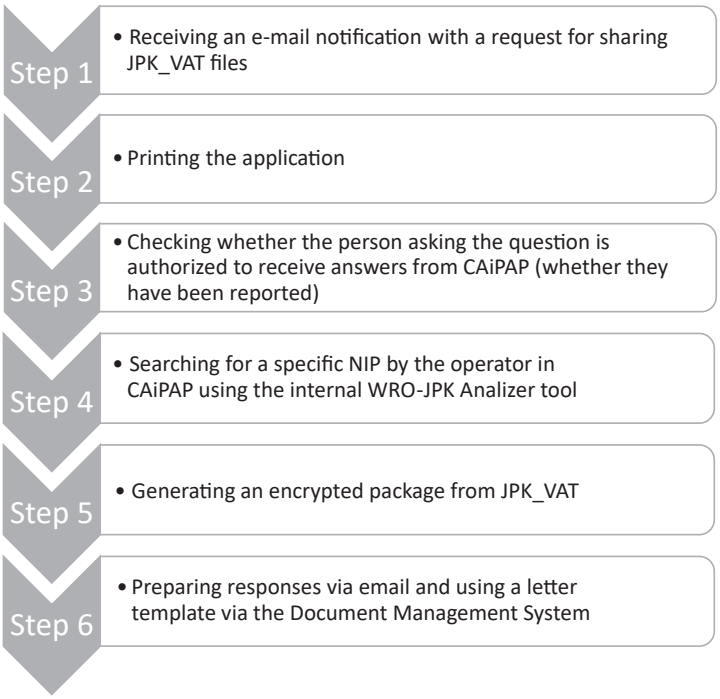


Figure 8: CAiPAP data sharing procedure

Source: NIK (2019).[435]

As of 31 August 2017, The Ministry of Finance provided KAS units with the JPK Lunetka tool, which allowed them to search, preview and download the contents of JPK_VAT files. The tool was created by Critical Applications Ltd.[436]

Since April 2017, reports generated with the ANALIZATOR_JPK tool, which enables the automatic identification of discrepancies in JPK_VAT files and in the VAT settlements of taxpayers and their counterparties, have been submitted to tax administra-

7) The Comprehensive Tax Risk Assessment System module (regarding registration): A supporting module designed to classify a given taxpayer (registering as a VAT or VAT-EU taxpayer) into a specific risk group based on criteria consistent throughout the National Revenue Administration.

8) VAT taxpayer assessment module: A supporting module designed to classify a given VAT taxpayer into a specific risk group based on criteria consistent throughout the National Revenue Administration. This risk assessment aims to identify entities with increased and high-risk levels for enhanced monitoring. The assessment uses available database resources (including databases held by the Ministry of Finance Analysis Department) and employs statistical and econometric methods;

9) Reports module: Used to manage discrepancies transmitted from automatic reports. Available reports include those: (a) identifying entities with open VAT obligations that have not submitted a JPK_VAT file, a VAT-7/VAT-7K declaration, or any of these documents despite an existing VAT obligation; (b) identifying entities declaring different input and output tax values between the VAT-7/VAT-7K declaration and the JPK_VAT file; (c) identifying entities that have recorded in their purchase register an input tax amount exceeding the output tax amount recorded by the counterparty in the sales register for individual transactions.

[435] Ibid.

[436] NIK, *Wykorzystanie jednolitego pliku kontrolnego w postępowaniach i kontrolach podatkowych*, Warsaw 2019, https://www.nik.gov.pl/plik/id,21147,vp,23779.pdf [accessed: 11 July 2024].

tion units for verification. As of 2018, reports covering entities with an open VAT obligation and who have not submitted a JPK_VAT file (Report R.0) have been generated and submitted via the ANALIZATOR_JPK tool.[437]

From 1 July 2016, tools and applications to support the use of JPK data for checks, audits, and tax investigations were made available to employees of units supervised by the tax administration chambers. These Ministry of Finance applications included: WRO-JPK Analyser (now WRO-System), JPK-LUNETKA, and, from November 2017, GeneratorSum. From 1 August 2018, the GenJPK application, which enabled the loading of JPK structures, became available in the chambers and subordinate units. This application creates checksums for downloaded electronic files, validates the correctness of JPK file structures, and analyses the internal consistency and completeness of the data within the downloaded files. Currently, WRO-System has nearly 23,000 users.[438] The application facilitates and automates JPK_VAT data work and is used by all entities within KAS. Since April 2018, comprehensive handling of JPK_VAT have been carried out by the Analysis Department of the Ministry of Finance Field Division in Wrocław.[439]

> 'The implementation of the WRO-SYSTEM application, which uses, inter alia, data provided by taxpayers in JPK_VAT files and obtained through the STIR system, has significantly increased the analytical capabilities of the revenue services'.[440]

> 'The Ministry of Finance regularly analysed the consistency of the data provided by taxpayers in the declaration and JPK_VAT, and for the period from October this year, respectively in the declaration and record part of JPK_VAT7M/JPK_VAT7K, as well as with the data shown by the taxpayer's contractors. Discrepancies in VAT settlements were automatically identified using the JPK Analyser IT tool. Reports on these discrepancies were then made available to tax office employees via the WRO-System application or transmitted as statements through the tax administration chambers (between January 2020 and June 2021, the Ministry of Finance provided 117 discrepancy reports)'.[441]

Scope and effects of the JPK cross-analysis. The administration's analysis focuses on data concerning turnover between businesses, particularly information regarding the entities to which sales were made and from which purchases were received. The most straightforward use of JPK_VAT files, when submitted by all VAT taxpayers, is cross-analysis. This process verifies that the input VAT declared as deductible by the purchaser has been correctly recorded as output VAT by their supplier.[442]

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[437] Ibid.

[438] Users of the WRO-SYSTEM are primarily employees of the National Revenue Administration, including tax offices, tax administration chambers, customs and fiscal offices, and *individual* departments of the Ministry of Finance.

[439] NIK, *Wykorzystanie jednolitego pliku kontrolnego w postępowaniach i kontrolach podatkowych, Warsaw 2019,* https://www.nik.gov.pl/plik/id,21147,vp,23779.pdf [accessed: 11 July 2024].

[440] NIK, *Nadzór Ministra Finansów nad poborem podatku od towarów i usług*, Warsaw 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 11 July 2024].

[441] NIK, *Skuteczność działań w zakresie usprawnienia poboru podatku VAT*, Warsaw 2022, https://www.nik.gov.pl/kontrole/P/21/013/ [accessed: 11 July 2024].

[442] The legitimacy of the JPK concept itself, as well as the analysis of data derived from these uploaded records, is sometimes questioned in academic literature. W. Modzelewski, *Przesyłanie ksiąg podatkowych przez podatników podatku od towarów i usług – próba oceny*, Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych, Nr 6/2023.

> 'JPK files are analysed at two levels. The first is a comprehensive, fully automated analysis of all taxpayers, which takes place at the Tax Administration Analysis and Planning Centre at the Tax Administration Chamber in Wrocław. The second type of analysis results from the ability of individual tax offices across the country to download JPK files. If, based on this information, an office identifies inconsistencies between a VAT return and the taxpayer's records, or between the records of counterparties (for example, if a taxpayer declares a purchase from a given entity, while that entity does not declare a corresponding sale), it initiates verification activities.'[443]

> 'Experts from the Lower Silesian Customs and Fiscal Office in Wrocław, during a customs and fiscal inspection, discovered that a company had misrepresented information in its tax declarations. The company had documented false transactions of purchases of transport services and fictitious sales of services. This scheme was detected through JPK analysis, which identified transactions that did not reflect actual economic activity. The entity used data from legitimate companies to deduct fraudulent VAT invoices worth over PLN 5 million, while these companies did not declare any corresponding sales. The entity also issued 'fake' invoices for over PLN 3 million, receiving payment for generating this fictitious invoice traffic. Following the inspection, the company amended some of its VAT declarations, removing the fictitious invoices. As a result of the subsequent tax proceedings, the authorities issued a decision determining the tax payable, along with interest, at over PLN 1.2 million.'[444]

In the first year of widespread use of JPK_VAT, 7.5 billion transactions were recorded using it and analysed, including 1.6 billion transactions in purchase records and 5.9 billion in sales records.[445] From year to year, the number of analysed transactions has gradually increased.[446] By 2022, this figure had reached 9.9 billion transactions, including 1.9 billion in purchase registers and 8 billion in sales registers (chart 27). The most significant discrepancies were identified in 2018, amounting to PLN 16 billion. While the administration's verification of doubtful transactions has, on the one hand, facilitated taxpayers' correct fulfilment of their duties in subsequent periods, it has also acted as a deterrent for entities knowingly engaging in irregularities. This has compelled them to cease operations, reduce their scale of activity, or, potentially, relocate outside Poland to jurisdictions lacking effective verification of reported turnover. As a result of intensive verification, the value of VAT identified as 'suspicious' using

[443] DGP, T. Strąk, *W lipcu rusza „twarda' analityka danych JPK,* https://podatki.gazetaprawna.pl/artykuly/1054920,dane-jpk-analiza-danych-jpk.html [accessed: 11 May 2024].

[444] Izba Administracji Skarbowej we Wrocławiu, *KAS wykryła fikcyjne transakcje VAT*, https://tinyurl.com/276jzu5b [accessed: 11 July 2024].

[445] Approximately 1.6 million taxpayers submit JPK_VAT files monthly. Each month, the Ministry of Finance analyzes over 100 million purchase invoices.

[446] In 2019 (based on data available at the end of November 2019), 1,620,668,908 purchase transactions and 5,907,970,369 sales transactions were analysed. Using JPK_VAT data for 2019, 804,280 discrepancies were identified and submitted for verification, totalling a net amount of PLN 7,697,203,210 and a VAT amount of PLN 1,178,017,383. Based on the 2019 JPK_VAT data, 9,803 entities were identified as having deducted VAT multiple times on the same invoice, for a total VAT amount of PLN 71,170,783. The 2019 JPK_VAT data also revealed 60,664 taxpayers who included invoices from non-VAT-registered entities in their purchase registers. Verification was initiated for 90,718 invoices issued by 42,783 non-VAT-registered entities, totalling a net amount of PLN 2,320,900,240 and a VAT amount of PLN 522,012,930. Additionally, 13,034 entities not declaring sales were identified through the 2019 JPK_VAT data, having issued 301,314 invoices for a total net amount of PLN 2,084,110,457 and a VAT amount of PLN 450,132,388. Through the use of JPK_VAT, PLN 1,267,508,137 in tax receivables was secured between 2017 and 2019, including PLN 382,965,930 in 2019.

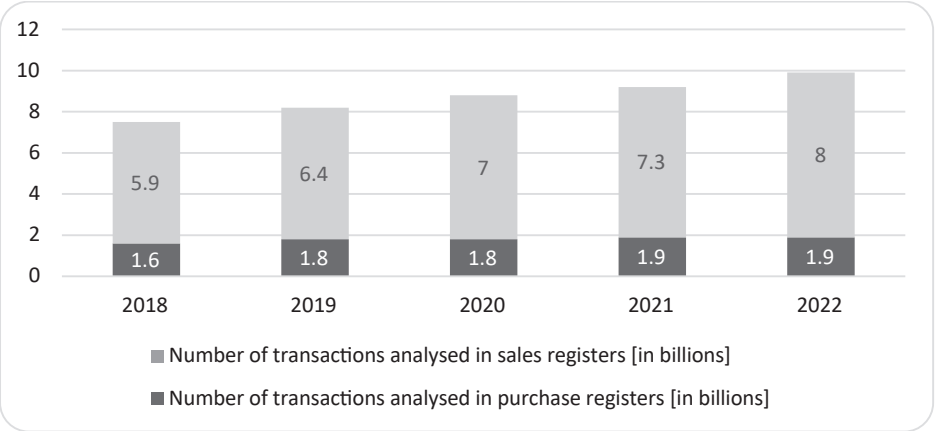


Chart 27: Number of transactions analysed [in billions]

Source: Ministry of Finance data.

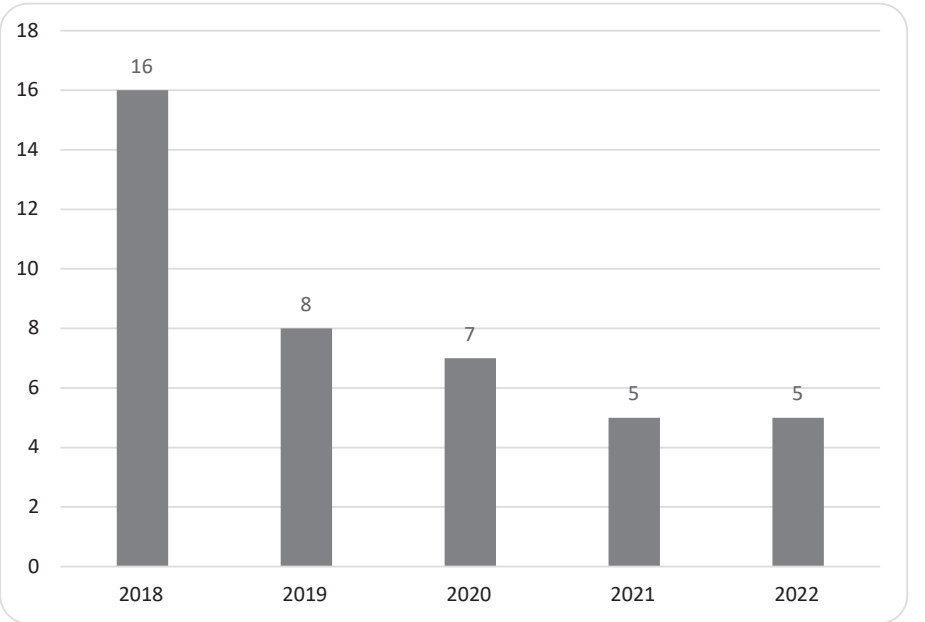


Chart 28: Amount of VAT identified from JPK_VAT and submitted for verification [billion PLN]

Source: Ministry of Finance data.

JPK_VAT information halved after the first year of the administration's application of new reporting and analysis methods – from PLN 16 billion in 2018 to PLN 8 billion in 2019. In 2020, detected irregularities amounted to PLN 7 billion, and in both 2021 and 2022, to PLN 5 billion. Consequently, through effective analysis of the electronically submitted data and verification of the documented turnover, the value of VAT on

'doubtful' transactions detected by the administration more than tripled, decreasing from PLN 16 billion in 2018 to PLN 5 billion in both 2021 and 2022 (chart 28).[447]

In 2018 alone, the verification of transactions identified as suspicious uncovered irregularities worth PLN 1.592 billion. It's important to note that this figure excludes fictitious carousel trading, encompassing only the 'simplest' irregularities detected directly through cross-analysis of taxpayer-declared data. These include instances of:

1) Multiple VAT deductions based on the same invoice;
2) Invoices issued by entities not registered for VAT;
3) Invoices issued by entities that did not subsequently declare the corresponding sales.

The anomalies in question are readily apparent through a straightforward comparison of sales and purchase records with data from the VAT active taxpayer register, without the need for complex big data analytics. These 'simple' irregularities peaked in 2019 at PLN 1.742 billion. Due to effective operational activities by the administration, the value of identified irregularities has steadily declined: reaching PLN 1.352 billion in 2020, PLN 1.284 billion in 2021, and PLN 1.160 billion in 2022.[448] The shares of VAT value represented by irregularly issued invoices within each category remained relatively consistent throughout the analysed period. The largest share consistently stemmed from VAT on invoices issued by entities that did not declare sales (approximately 63% of the total value in 2018 and 65% in 2022), while the smallest share resulted from multiple VAT deductions claimed on the same invoice (approximately 7% in 2018 and approximately 12% in 2022).

Identifying these irregularities also led to the identification of the responsible entities. In the first year of JPK_VAT implementation, approximately 127,000 such entities were identified, compared to approximately 113,000 in the final year of the examined period (2022). The peak number of identified taxpayers committing these irregularities occurred during the pandemic year of 2020, with approximately 131,000 verifications. As a result of the tax administration's actions, a significant decrease was observed in the first year of JPK_VAT operation in the number of identified taxpayers issuing invoices despite not being registered for VAT purposes – from approximately 91,000 in 2018 to approximately 58,000 in 2019. This number gradually decreased in subsequent years (to approximately 51,000 in both 2020 and 2021, and approximately 41,000 in 2022). JPK_VAT analyses have also increased the efficiency of identifying taxpayers claiming multiple VAT deductions for the same invoice. The number of identified entities more than tripled in the first two years of cross-analysis, rising from around 16,000 in 2018 to 23,000 in 2019 and then to as many as 51,000 in 2020. This number then decreased to 30,000 in 2021 and 45,000 in 2022. The number of detected entities not registering sales also increased systematically, growing by 50%

[447] Several factors explain the decrease in the value of 'doubtful' transactions detected by the administration, notably (and most importantly, in the authors' view) the 'deterrent' effect on tax offenders from attempting to fraudulently claim undue VAT refunds in Poland, the improvement of KAS's analytical tools enabling more precise identification of fictitious turnover, and the growing experience of businesses in reporting resulting in fewer errors. Determining the relative contribution of each of these factors should be the subject of a separate analysis.

[448] The share of the 'simplest' irregularities identified through JPK_VAT detection and submitted for verification represents only a small share of the total VAT amounts identified: approximately 10% in 2018, 22% in 2019, 20% in 2020, 26% in 2021, and 23% in 2022.

over four years, from approximately 20,000 in 2018 to approximately 30,000 in 2021. This number then fell to approximately 27,000 in 2022.

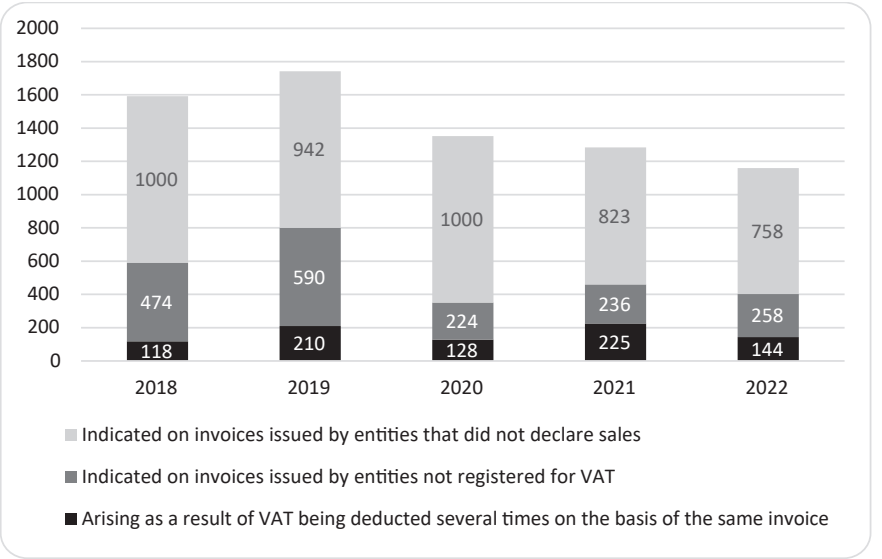


Chart 29: Amount of VAT in the area of selected irregularities [million PLN]

Source: Ministry of Finance data.

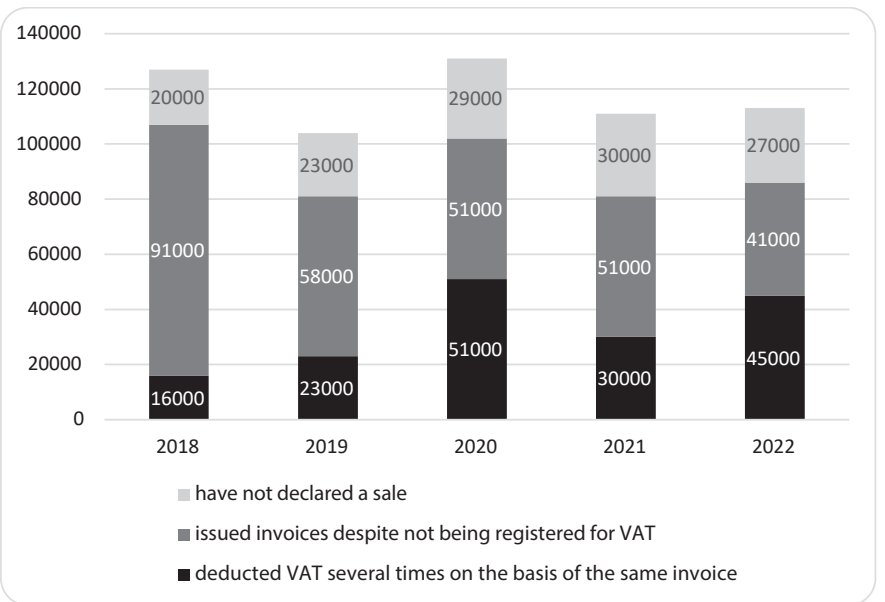


Chart 30: Number of taxpayers with selected types of irregularities

Source: Ministry of Finance data.

The settlement data also allows for the determination of the number of taxpayers victimised by their counterparties' tax non-compliance. In 2018, approximately 136,000 taxpayers included invoices from entities not registered for VAT in their purchase registers. Due to measures implemented by the tax administration, this number decreased by 40% within the first year, to approximately 81,000. Following a subsequent increase during the pandemic year of 2020 (approximately 95,000), the number of 'potentially fraudulent' taxpayers decreased to 65,000 in 2021 and 60,000 in 2022. Consequently, the number of taxpayers including invoices from non-VAT-registered entities in their purchase registers more than halved between 2018 and 2022. The number of invoices issued by non-registrants also decreased by nearly half, from approximately 132,000 in 2018 to approximately 82,000 in 2022. Importantly, the discrepancy observed in 2018 between the number of invoices issued by unregistered entities (approximately 132,000) and the number of taxpayers including invoices from non-VAT-registered entities in their purchase registers (approximately 136,000) indicates a significant number of taxpayers who 'saved' on tax by generating artificial expenses and declaring receipt of invoices from entities that not only were not registered for VAT but also did not issue the indicated invoices. This discrepancy was no longer observed in subsequent years, coinciding with the changes seen in late 2018 and early 2019 in the number of taxpayers recording invoices from unregistered entities in their purchase registers.

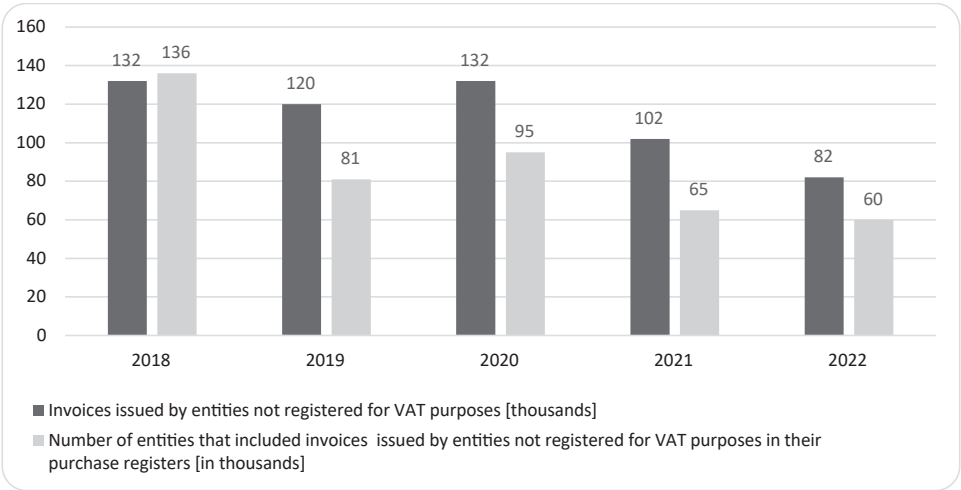


Chart 31: Invoices issued by entities not registered for VAT purposes [thousands]

Source: Ministry of Finance data.

Notifications of irregularities. The primary task of the tax administration is to safeguard the State Treasury's budget revenues. Of particular importance in its activities is encouraging taxpayers to independently correct instances where the amount of tax settled is lower than prescribed by law. Alongside 'hard' enforcement tools, the tax administration may also employ 'soft' measures, such as informing taxpayers about discovered discrepancies between their declared turnover and that of their business

partners. These actions, which do not trigger formal audits, aim to encourage taxpayers to self-correct their settlements without requiring administrative staff intervention. This self-correction, even if prompted by communication from the tax administration, is considered taxpayer-initiated, thus allowing them to avoid penal-fiscal consequences, such as the increased (150%) interest rate for late payment. Simultaneously, these behavioural communications play an important informational role, indirectly alerting honest taxpayers to the potential unreliability of their counterparties. This is because these counterparties might fail to disclose their removal from the VAT register or falsely declare transactions with an honest taxpayer that, in fact, did not occur.

Between 2018 and 2022, the tax administration extensively used the 'behavioural notifications' tool – emails and text messages informing taxpayers of observed discrepancies between their VAT returns and JPK_VAT records and advising them to correct their VAT settlements. This tool's widespread adoption was motivated by World Bank recommendations stemming from pilot studies conducted in collaboration with the Ministry of Finance (May – June 2015) (May – June 2015)[449] and with the National Revenue Administration (May – August 2016)[450] on the effectiveness of behavioural messaging for taxpayers with outstanding public levies. The research resulted in a report published on 12 June 2017,[451] which highlighted the tool's effectiveness and recommended its broad, systemic implementation within administrative practice.[452]

The greatest use of these communications occurred in 2018, the initial period of JPK_VAT implementation, which also saw the highest number of discrepancies identified. Notably, 2018 was the only year in which, alongside electronic messages (emails and text messages), official notifications were also sent via traditional correspond-

[449] As part of a study entitled 'The impact of behavioural behaviour on the improvement of voluntary tax compliance in Poland,' the Ministry of Finance, together with the Tax Chamber in Zielona Góra and the Tax Chamber in Poznań, sent behavioural letters to over 10,000 taxpayers who had not paid their due personal income tax for 2014. Based on the so-called positive results of these surveys, both representatives of the World Bank and the Ministry of Finance expressed interest in further cooperation and extending the initiative to, among other areas, value added tax and corporate income tax, see: RP.pl, *Urzędnicy mają sposób na dłużników podatkowych*, https://www.rp.pl/podatki/art4423071-urzednicy-maja-sposob-na-dluznikow-podatkowych; A. Padzik-Wołos, *Który komunikat spowodował, że podatnik uregulował zaległości? Badania empiryczne w Polsce i pisma behawioralne*, https://www.linkedin.com/pulse/kt%C3%B3ry-komunikat-spowodowa%C5%82-%C5%BCe-podatnik-uregulowa%C5%82-w-i-padzikwo%C5%82os/?originalSubdomain=pl, after: B. Brzezinski, I. Nowak, *„Pisma behawioralne' a kwestia podstaw prawnych działania Krajowej Administracji Skarbowe*, Studia Prawniczo-Ekonomiczne, 131/2024 p. 32 [accessed: 10 October 2024].

[450] The survey was conducted on a sample of 149,925 individual taxpayers from across Poland, Ministerstwo Finansów, *Podsumowanie badania Banku Światowego dotyczącego technik behawioralnych*, https://shorturl.at/7nipX [accessed: 10 October 2024].

[451] M. Hernandez et al., *Zastosowanie technik behawioralnych w celu poprawy ściągalności podatków. Wyniki badań empirycznych przeprowadzonych w Polsce*, International Bank for Reconstruction and Development / The World Bank 2017, https://mf-arch2.mf.gov.pl/c/document_library/get_file?uuid=0b69a813-fdec-4f09-86b3-171618a2a5a4&groupId=764034 [accessed: 10 October 2024].

[452] The unified framework for the issuance of 'behavioural notifications' was finally defined, based on the results of the World Bank report, by the content of the recommendations of the Head of KAS of 11 December 2023, specifying, inter alia, their structure, rules of application, recording and monitoring of their effectiveness; see: Letter of the Head of KAS of 11 December 2023, no. DNK1.8623.2.2023, after: B. Brzezinski, I. Nowak, *„Pisma behawioralne" a kwestia podstaw prawnych działania Krajowej Administracji Skarbowej*, Studia Prawniczo-Ekonomiczne, 131/2024, p. 37 [accessed: 10 October 2024].

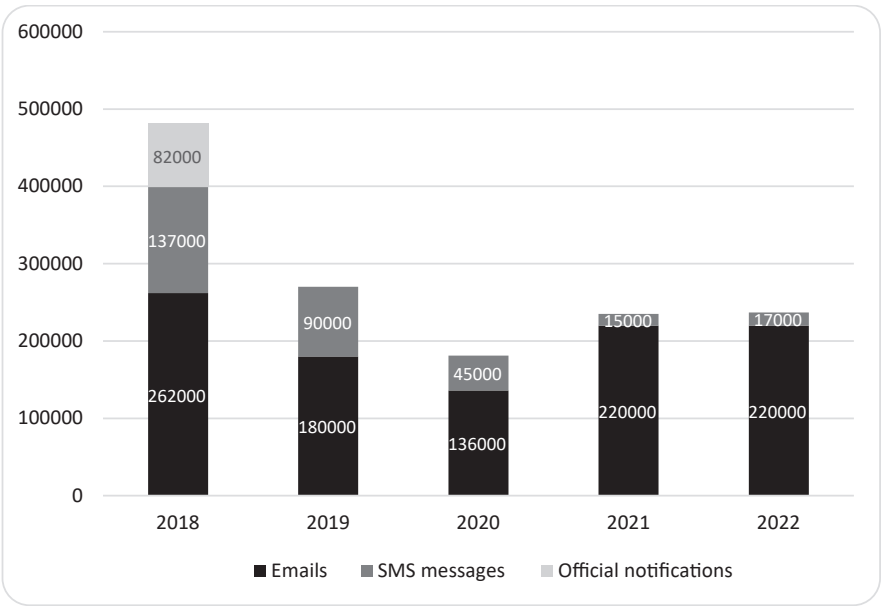


Chart 32: Number of behavioural alerts

Source: Ministry of Finance data.

ence (letters).[453] As the number of identified discrepancies decreased in the following years, so too did the number of notifications sent by the administration. These declined from a peak of 480,000 in 2018 to 270,000 in 2019, and further to 182,000 in 2020 (the pandemic year). In subsequent years, the number of notifications returned to *pre-lockdown* levels, reaching around 235,000 in 2021 and 238,000 in 2022. Email remained the administration's most frequently used communication channel with taxpayers between 2018 and 2022. In 2018, approximately 55% of communications were sent to taxpayers in this form, rising to over 92% in 2022. Conversely, the number of text messages sent by the administration decreased successively, from approximately 137,000 in 2018 (approximately 30% of messages) to just 17,000 in 2022 (approximately 7% of messages). In total, approximately 1.4 million notifications were sent to taxpayers between 2018 and 2022, informing them of the possibility of correcting their VAT settlements.

> Through analysis of JPK_VAT file data, the Lower Silesian Customs and Fiscal Office in Wrocław uncovered a mechanism for committing offences related to 'I will give costs' advertisements. The perpetrator, having stolen a VAT ID number, offered fictitious invoices using the data of unsuspecting, legally operating entities. Between September and November 2019, officers and employees of the Lower Silesian National Revenue Administration, in cooperation with police officers from the Radom-based Provincial Police Headquarters, investigated the issuance of these fictitious invoices

[453] In 2018, a total of 480,756 notifications were sent to taxpayers informing them of the possibility of correcting their VAT settlements due to discrepancies identified between their VAT returns and the JPK. These notifications comprised: 1) 261,506 emails; 2) 136,964 text messages; 3) 82,286 official notifications.

offered in 'I will give costs' advertisements. Details of approximately 1,000 entities in possession of invoices suspected of being issued as part of this scheme were established. The estimated tax evasion amounted to at least PLN 20 million. The KAS authorities implemented fund freezes on the bank accounts of entities suspected of tax extortion (using the STIR system), totalling over PLN 500,000. Bank accounts were also frozen under the provisions of the Anti-Money Laundering and Terrorist Financing Act, amounting to PLN 34,000.[454]

3.2.2. E-Invoicing

OECD/KE recommendations and first implementations. The European Commission has repeatedly referred to the potential benefits associated with the introduction of e-invoicing in its reports and policy documents. In its Green Paper of 1 December 2010 on the future of VAT,[455] the EC pointed to the benefits of e-invoicing. The EC emphasised the two key effects of e-Invoice implementation:

1) Much faster information retrieval for tax authorities, leading to an increased detection rate of tax fraud;

2) The potential abolition of several burdensome VAT settlement obligations. In addition to replacing e-invoicing with alternative reporting methods (e.g., e-declarations or SAF-T/JPK), it could enable the phasing out of solutions such as reverse charge, joint and several liability, or even the split payment mechanism.

At that time, the Commission declared its intention to work with Member States to explore the potential of e-invoicing at the EU level.[456] The OECD conducted the indicated study before the European Commission. In a 2015 report, it included a list of innovative IT tools leading to more efficient tax systems. Among the tools recommended for implementation by Member States, it listed the positively assessed measures such as e-invoicing, digitisation of correspondence, e-payments, and e-declarations.[457] The next edition of the OECD report, issued in 2017, reiterated the previous positive assessment of e-invoicing and highlighted its positive effects in Argentina.[458] The positive feedback from the OECD provided additional impetus to work on the implementation of national models of e-invoicing in EU Member States. Italy became a pioneer of e-invoicing within the EU, introducing the system on a voluntary basis in 2017 and then making it mandatory in 2019. Other EU countries, including France and

[454] Ministerstwo Finansów – Krajowa Administracja Skarbowa, *Dolnośląska KAS i Policja zlikwidowały grupę przestępczą zajmującą się sprzedażą fikcyjnych faktur*, https://www.gov.pl/web/kas/dolnoslaska-kas-i-policja-zlikwidowaly-grupe-przestepcza-zajmujaca-sie-sprzedaza-fikcyjnych-faktur [accessed: 11 July 2024].

[455] EC, *Green Paper on the future of VAT Towards a simpler, more robust and efficient VAT system*, Brussels, 1.12.2010, COM(2010) 695 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52010DC0695 [accessed: 11 July 2024].

[456] EC, *Report from the Commission to the European Parliament and the Council assessing the invoicing provisions of Directive 2006/112/EC on the common system of value added tax*, Brussels 10 February 2020. COM(2020) 47 final, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2020:0047:FIN [accessed: 11 July 2024].

[457] OECD, *Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies,* OECD Publishing, Paris 2015, https://read.oecd-ilibrary.org/taxation/tax-administration-2015_tax_admin-2015-en#page1 [accessed: 11 July 2024].

[458] OECD, *Technology Tools to Tackle Tax Evasion and Tax Fraud*, Paris 2017, https://www.oecd-ilibrary.org/docserver/g2g77afa-en.pdf?expires=1720652175&id=id&accname=guest&checksum=22043E344B16EBF074827687A0F90F12 [accessed: 11 July 2024].

Germany, are currently preparing for mandatory implementation.[459] The widespread interest in e-invoicing by Member States, including the Franco-German 'integration engine', as well as the possibility of significant divergences between national e-invoicing models hindering international trade, were the reasons for the acceleration of the work that was taking place at the EU level.

In its July 2020 Communication,[460] the EC announced that it will present a legislative proposal on the modernisation of VAT reporting obligations between 2022 and 2023. Following through on these announcements, the draft 'ViDA Directive' was finally presented on 8 December 2022.[461]

Assumptions for introducing e-invoicing in Poland. The implementation of e-invoicing in Poland (known in Polish as the Krajowy System e-Faktur, or KSeF) is considered a milestone in enhancing tax analytics. Currently, transactions are primarily verified based on data submitted in the JPK format, which is reported on a monthly basis.[462] A system enabling near real-time invoice analysis by the tax administration, even before invoices are sent from the taxpayer to their counterparty, would significantly reduce the time needed to detect fictitious turnover in VAT carousels. E-invoicing also offers several benefits for taxpayers.

Benefits of the KSeF from 1 January 2022 (synthesised) according to the Ministry of Finance [463]
Speed: Taxpayers using e-Invoices will receive VAT refunds one-third faster – the refund period will be reduced by 20 days, from 60 to 40.
Security: Invoices will be stored in the MF database, eliminating the risk of destruction or loss, and the need to issue duplicates.
Faster Turnover: Operating through the Ministry's database ensures invoices reach the counterparty promptly.
Convenience: E-invoices will adhere to a single template, making them easy to use.
Standardisation: Cross-accounting and invoice posting in financial and accounting systems will be significantly easier.
Reduced obligations: Taxpayers will no longer need to store KSeF-issued invoices, as the administration will retain them for 10 years (the standard limitation period for most tax liabilities).

[459] As recently as October 2020, the German Federal Court of Audit (*Bundesrechnungshof*) – the counterpart of the Polish NIK – highlighted the need to equip the German tax administration with new technologies, among others, citing Italy and its introduction of e-invoicing as an example: https://www.bundesrechnungshof.de/SharedDocs/Pressemitteilungen/DE/2020/umsatzsteuerbetrug-bekaempfen.html [accessed: 11 July 2024].

[460] EC, Communication from the Commission to the European Parliament and the Council, *Action Plan for Fair and Simple Taxation in Support of the Economic Recovery Strategy*, Brussels 15 July 2020, COM(2020) 312 final.

[461] Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules in the digital era, Brussels, 8.12.2022, COM(2022) 701 final.

[462] However, there has been no shortage of isolated criticism of the very idea of e-invoicing, and the KSeF concept in particular: W. Modzelewski, *KSeF odroczony. Prof. Modzelewski: faktury ustrukturyzowane nie będą fakturami handlowymi. Jest szansa na „wyrzucenie do kosza" tego pomysłu*, https://isp-modzelewski.pl/wp-content/uploads/2024/01/KSeF-odroczony.-Prof.-Modzelewski_-faktury-ustrukturyzowane-nie-beda-fakturami-handlowymi.-Jest-szansa-na-%E2%80%9Ewyrzucenie-do-kosza-tego-pomyslu-Infor.pl_.pdf [accessed: 23 September 2024].

[463] Ministry of Finance, *Polska w czołówce krajów wdrażających e-fakturę*, https://www.gov.pl/web/kas/polska-w-czolowce-krajow-wdrazajacych-e-fakture [accessed: 11 July 2024].

Reduced data transmission: Taxpayers issuing invoices in KSeF will no longer need to submit the Single Invoice Control File (JPK_FA) to tax authorities upon request. This data will be accessible to them within KSeF, eliminating the need for additional uploads.

Development of the optional KSeF model. On 17 December 2020, the Ministry of Finance presented the plans and timeline for implementing e-invoicing in Poland. The initial plan envisioned optional use of the new system from 1 October 2021 (later postponed to 1 January 2022 during legislative processes) and mandatory use from the beginning of 2023.[464] The draft amendment to uVAT, introducing the structured e-Invoice, was released for public consultation on 5 February 2021.[465] Concurrently, the Ministry of Finance initiated tax consultations on the logical structure (schema) of the structured e-Invoice.[466] In parallel to the legislative work on the indicated draft, technological solution tests were also underway. On 7 October 2021,[467] the Ministry of Finance provided a test environment for businesses, allowing them to trial the new system before its legal implementation. The provisions introducing the optional KSeF came into effect on 1 January 2022, following the amendment to uVAT of 29 October 2021.[468]

Optional KSeF in Poland. As of 1 January 2022, the structured invoice became one of three permissible invoicing methods in Poland. It operates alongside traditional paper invoices and the previously used 'classic' electronic invoices. A structured invoice is issued using the National e-Invoice System (KSeF) and has a unique identifying number within that system (Article 2(32a) uVAT). These structured invoices use an XML format compliant with the FA(1) e-Invoice logical structure published in the Central Repository of Model Electronic Documents (CRWDE) on the ePUAP platform.[469]

The National e-Invoicing System (KSeF) for structured invoices is distinct from the system for structured invoices defined in the Act of 9 November 2018 on electronic invoicing in public procurement, concessions for works or services, and public-private partnerships (Electronic Invoicing Platform, PEF).[470] Integration of these two systems is planned before the mandatory e-invoicing implementation.

A structured invoice is considered issued on the date it is sent to the National e-Invoice System (KSeF) (Article 106na(1) uVAT). The invoice is deemed received on

[464] Ministry of Finance, *E-faktura ułatwi prowadzenie biznesu*, https://www.gov.pl/web/kas/e-faktura-ulatwi-prowadzenie-biznesu [accessed: 11 July 2024].

[465] Ministry of Finance, *E-faktura w konsultacjach publicznych*, https://www.gov.pl/web/finanse/e-faktura-w-konsultacjach-publicznych [accessed: 11 May 2024].

[466] Ministry of Finance, *Konsultacje podatkowe – struktura e-Faktury*, https://www.gov.pl/web/finanse/konsultacje-podatkowe---struktura-e-faktury [accessed: 11 July 2024].

[467] Ministry of Finance, *Krajowy System e-Faktur – rozpoczynamy testy*, https://www.gov.pl/web/finanse/krajowy-system-e-faktur--rozpoczynamy-testy [accessed: 11 July 2024].

[468] Act of 29 October 2021 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2076).

[469] Pursuant to Article 106nc(3) of uVAT: The minister responsible for public finance shall make available on the electronic platform of public administration services a model of a structured invoice.

[470] Act of 9 November 2018 on electronic invoicing in public procurement, concessions for works or services and public-private partnerships (consolidated text Journal of Laws 2020, item 1666, as amended).

the date it is assigned an identifying number within the KSeF (Article 106na(3) uVAT). However, for the optional KSeF system, sending structured invoices requires the recipient's prior consent. Without this consent, even if a taxable person issues a structured invoice within the system, they are still obligated to send it to the recipient through another method agreed upon between them. In such cases, the standard legal rules for invoice receipt will apply.

To ensure the security of the use of the new solution, the need for specific authorisations to use the KSeF and the requirement for authentication and authorisation in the context of an entity have been introduced.

Invoices are prepared in entrepreneurs' financial and accounting software according to a defined logical structure in XML format. They are then transmitted to KSeF via an API by the taxpayer or an authorised entity (Figure 9). Before assigning an identification number to an invoice and making it available to the client, KSeF performs a semantic verification, checking the uploaded file's conformity with the published template. If an error is detected, the prepared invoice file is not released to the purchaser, and the supplier receives a feedback message explaining the reason for the rejection. Similarly, an e-Invoice submitted by an unauthorised entity is also rejected.

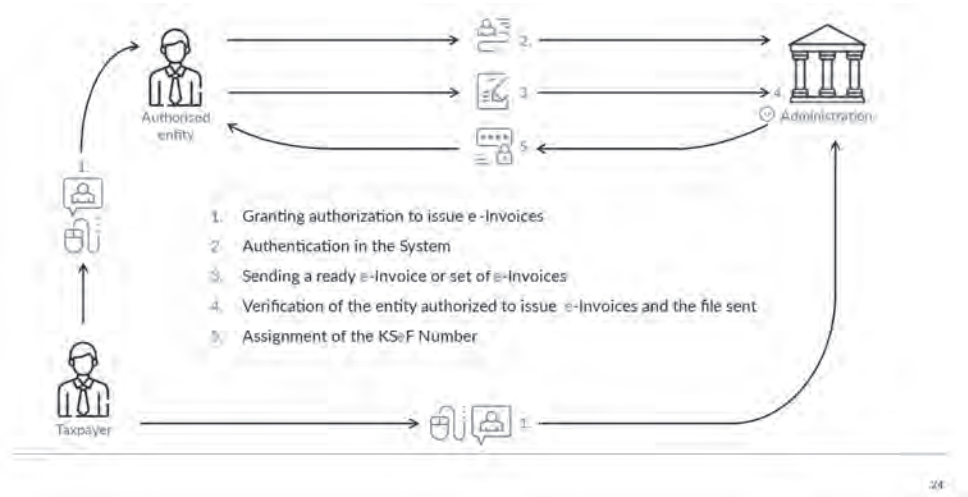


Figure 9: Issue of e-Invoices

Source: own study published in Accounting No 1/2022.[471]

Once authenticated and authorised within KSeF, the taxpayer and their authorised representatives are able to view all issued and received. The consumer is able to structured invoices. Consumers can anonymously access individual structured invoices, without KSeF authentication, through a dedicated electronic platform (Figure 10).

[471] J. Sarnowski, P. Selera, K. Rogowski, *E-Faktury w Polsce – międzynarodowe uwarunkowania prawne i wybrane aspekty technologiczne*, Accounting, No. 1/2022, p. 27.

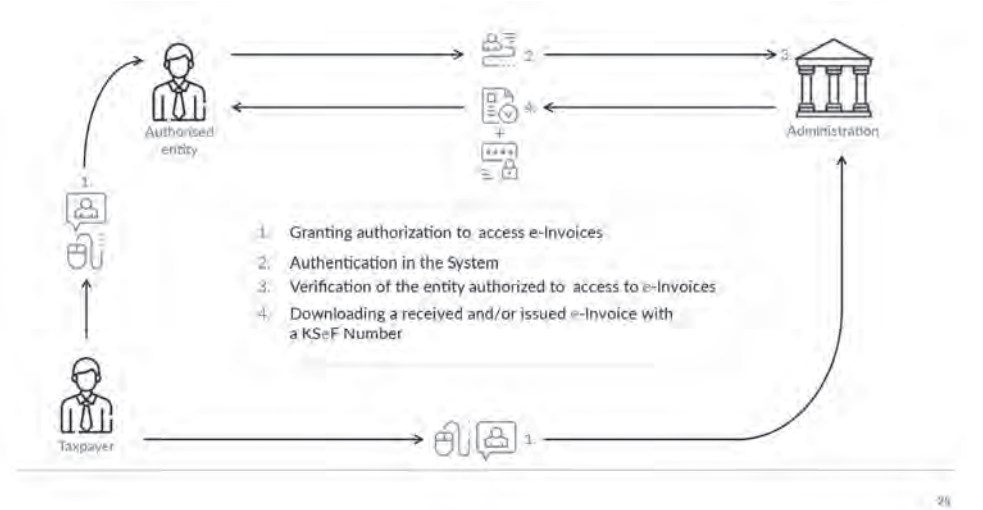


Figure 10: Access to e-Invoices

Source: own study published in Accounting No 1/2022.[472]

As of 14 March 2023, Ministry of Finance data shows that over a year after the optional e-Invoice system's implementation, the production environment recorded approximately 115,000 business authentications, resulting in approximately 28,000 issued invoices. Significantly more taxpayers utilised the test environment, with over 1.7 million authentications and more than 58 million test invoices generated.[473]

Mandatory KSeF in Poland. According to the timeline announced at the end of 2020, the implementation of an optional KSeF was intended as a preliminary step towards the definitive solution: a mandatory system. The draft legislation introducing a mandatory KSeF was released for public consultation on 1 December 2022.[474] At the same time, the Ministry of Finance made a free KSeF Taxpayer Application available to businesses. This application provides functionalities to manage the invoicing process within a company. It allows users to view invoices that have been issued or received, to download them in XML or PDF format, and to manage KSeF permissions. The release of a KSeF Mobile Application was also announced; this app will enable businesses to issue, receive, and manage e-Invoices from any location, without requiring computer access.

[472] J. Sarnowski, P. Selera, K. Rogowski, *E-Faktury w Polsce – międzynarodowe uwarunkowania prawne i wybrane aspekty technologiczne*, Accounting, No. 1/2022, p. 28.

[473] M. Malinowski, *Obowiązkowy KSeF przesunięty na 1 lipca 2024 r,* 21. April 2023, Wolters Kluwer, Sklep LEX, https://www.lex.pl/obowiazkowy-ksef-przesuniety-na-1-lipca-2024-r,24127.html [accessed: 11 May 2024].

[474] Ministry of Finance, *Krajowy System e-Faktur coraz bliżej. Projekt powszechnego fakturowania elektronicznego w konsultacjach publicznych*, https://www.gov.pl/web/finanse/krajowy-system-e-faktur-coraz-blizej-projekt-powszechnego-fakturowania-elektronicznego-w-konsultacjach-publicznych [accessed: 11 July 2024].

Mandatory e-invoicing was established by the Act of 16 June 2023[475] with implementation generally scheduled for 1 July 2024.[476] This Act mandates the use of e-invoicing for activities that previously required invoices under uVAT. This includes– with certain specific exceptions – domestic business-to-business (B2B) supplies of goods and services, as well as business-to-government (B2G) transactions. Business-to-consumer (B2C) invoices are excluded. Importantly, under the mandatory KSeF system, if a taxpayer receives an invoice outside of the KSeF system, this does not automatically prevent them from deducting input tax. In such cases, any sanctions will be directed at the invoice issuer, not the buyer. Therefore, the format or structure of a received invoice is not a condition for deducting input tax. This principle is consistent with the established jurisprudence of the CJEU, particularly as it has developed in recent years.[477] It is also important to note that 'ViDA' authorises EU countries to introduce a solution making the deduction of input tax dependent on the taxpayer receiving an invoice in a specific standard.[478] Some countries designing their solutions will certainly make use of such possibilities. At present, the Polish Ministry of Finance has not indicated any intention to use this option. However, it is possible that this provision, and its specific scope will be subject to future examination by the CJEU.

Building on the experience of the nationwide training campaigns of 2017 and 2018, which prepared businesses for reporting in the JPK format (particularly through the 'Tuesdays with JPK' training series and on-call meetings with KAS employees, known as 'Saturdays with JPK'), a nationwide series of informational meetings for micro-entrepreneurs on the National e-Invoicing System (KSeF), titled 'Wednesdays with KseF'[479] was conducted at the turn of November and December 2023. The meetings were held every Wednesday from mid-November to mid-December[480] in all provinces and were organised for local entrepreneurs by individual Tax Administration Chambers. Participation in the webinars was free of charge and no prior registration was required. They were conducted by KAS experts and covered the following problem areas:

1) New invoicing rules in Poland;
2) KSeF authentication and authorisation;
3) The difference between an electronic invoice and an e-Invoice;

[475] Act of 16 June 2023 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1598, as amended).

[476] M. Malinowski, *Obowiązkowy...,* https://www.lex.pl/obowiazkowy-ksef-przesuniety-na-1-lipca-2024-r,24127.html [accessed: 11 July 2024].

[477] Initially, in its judgment of 29 September 2022. C-235/21 (*Raiffeisen Leasing,* ECLI:EU:C:2022:739), the Court held that a contract can be considered an invoice if it contains all the information necessary for the tax authorities to determine whether the substantive conditions for the right of deduction have been met.

[478] It is worth recalling recital 5c of the Preamble to the draft Directive in full: '(5c) The effectiveness of national digital reporting systems could be compromised if taxable persons did not comply with the obligation to issue electronic invoices with respect to the transactions subject to a reporting obligation. In light of the digitalisation of transactions and economic exchanges, and of the objectives of this Directive for the digitalisation of VAT including with a view to ensuring a more effective fight against fraud, Member States should be allowed to provide that holding an electronic invoice issued in compliance with the required standard laid down in the VAT Directive becomes a substantive condition to be entitled to deduct or reclaim the VAT due or paid.'

[479] Podatki.gov.pl, *Trwają spotkania „Środy z KSeF' dla mikroprzedsiębiorców*, https://www.podatki.gov.pl/wyjasnienia/trwaja-spotkania-srody-z-ksef-dla-mikroprzedsiebiorcow-041223/ [accessed: 11 July 2024].

[480] Four dates in total: 22 and 29 November and 6 and 13 December.

4) Issuing and receiving invoices in KSeF;
5) Free KSeF tools.

The future of e-Invoicing in Poland. One of the consequences of the changes resulting from the parliamentary elections of October 2023[481] was the decision to postpone the effective date of the mandatory KSeF.[482] An external audit revealed flaws in the KSeF system's architecture, rendering it incapable of supporting a mandatory model,[483] were identified as the reason for the postponement. On 30 April 2024, the government adopted a law on the postponement of the indicated implementation until 1 February 2026. The indicated legal act was subsequently adopted by the Sejm with the law of 9 May 2024.[484] Concurrently, the Ministry of Finance is working on further simplifying KSeF implementation obligations. The Ministry intends to present proposals for a phased rollout of the mandatory KSeF in separate draft legislation. These proposals suggest that from 1 February 2026, the obligation should apply to businesses whose sales (including tax) exceeded PLN 200 million in 2025, with the remaining businesses becoming obligated from 1 April 2026. To address feedback received from businesses during the KSeF consultation conducted in February 2024,[485] the Ministry of Finance has proposed supplementing the KSeF regulations with a number of simplifications and deferrals, including:[486]

1) Deferral of the obligation to provide the KSeF number in payments, including those made under the SPM;
2) Deferral for cash register invoices and receipts with TIN recognised as invoices;
3) A transitional option to issue electronic 'offline' invoices outside KSeF with a QR code and enter them into KSeF on the following working day;
4) Allowing consumer invoices to be issued in KSeF, with anonymous access for the consumer using a QR code;
5) A transitional possibility for 'digitally excluded' taxpayers to use paper invoices, provided that no single invoice exceeds PLN 450, up to a total value of PLN 10 000 per month.

[481] Ministry of Finance, *Podsumowanie audytu KSeF*, https://www.gov.pl/web/finanse/podsumowanie-audytu-ksef [accessed: 11 July 2024].

[482] Ministry of Finance, *Rząd przyjął projekt ustawy odraczającej Krajowy System e-Faktur*, https://www.gov.pl/web/finanse/rzad-przyjal-projekt-ustawy-odraczajacej-krajowy-system-e-faktur [accessed: 11 July 2024].

[483] Despite the controversy surrounding the postponement of the mandatory KSeF implementation, the detailed results of the audit have not been made publicly available.

[484] Act of 9 May 2024 amending the Act on amending the Value Added Tax Act and certain other acts (Journal of Laws, item 852).

[485] The Ministry of Finance held nine hybrid meetings covering the following topics: 1) Security and Efficiency; 2) Consumer Invoices/Buyer Status; 3) KSeF Identifier in Payments; 4) Impact of KSeF on the Factoring Industry; 5) Impact of KSeF on the Utilities Industry; 6) Impact of KSeF on the Fuel Industry; 7) Impact of KSeF on Local Government Units; 8) Phased Implementation of KSeF; 9) Clarifications, Interpretations and Training, see KIS, *Zapraszamy na konsultacje w sprawie KSeF,* https://www.kis.gov.pl/wiadomosci/aktualnosci/-/asset_publisher/JSs9/content/id/52146045 [accessed: 11 July 2024].

[486] Ministry of Finance, *KSeF bardziej przyjazny przedsiębiorcom. Zmiany w systemie po spotkaniach konsultacyjnych*, https://www.gov.pl/web/finanse/ksef-bardziej-przyjazny-przedsiebiorcom-zmiany-w-systemie-po-spotkaniach-konsultacyjnych [accessed: 11 July 2024].

3.2.3. JPK-Bank Statement (JPK-WB) and STIR

Importance of financial analysis. Financial institutions are obliged by the AML Directives[487] to prevent money laundering themselves. *Big data* analytics play a very important role in this effort. The role of automated analysis of banking transactions is a subject of analysis conducted by international organisations on the prevention of financial crime. The OECD, in a 2015 report, highlighted the potential for applying banking sector experience to a new area: detecting crimes resulting in VAT fraud. The report recommended, among others, granting tax authorities the broadest possible access to data derived from financial analysis, while also implementing appropriate safeguards.[488]

The opportunities identified by the OECD inspired Poland to empower the Head of the National Revenue Administration (KAS) with information enabling the use of banking sector data to analyze the risk of taxpayers committing fiscal offenses. This initiative led to the Clearing House System (STIR) regulations (hereinafter: STIR Act), which have been in effect in Poland since January 2018 (fully implemented, with sanctions, from April 2018).[489] STIR's purpose is to provide the administration with up-to-date information on sales between businesses, enabling *big data* analysis to detect fictitious trading and identify tax carousels. The Polish solution's uniqueness and innovation lies in its focus: unlike JPK (SAF-T) or e-invoicing, STIR analyses the real (financial/cash) aspect of economic activity, rather than tax information (the declared/accrual side of turnover). Using algorithms to detect transactions characteristic of tax carousels based on data about monetary transfers between businesses in banking systems has an effect analgogous to, or even greater than, e-invoicing implementation. It enables real-time turnover verification, allowing for offense detection at the preparatory stage. This is further reinforced by providing the administration with information on fund location, making it easier to prevent funds from being moved out of the banking system, potentially achieving similar results to the split payment mechanism. The systems of financial analysis (STIR) and accrual analysis (from JPK reports or e-Invoices) are designed to be complementary, verifying the consistency between declared revenues/costs and bank account turnover. Together, they provide a complete picture of a taxpayer's B2B activity in Poland. This data collected is then subjected to *big data* analysis. This real-time turnover analysis can reduce the lifespan of tax carousels from years or months to mere weeks.

Accrual vs. financial analysis. Work on implementing financial flow analytics at the Ministry of Finance, focusing on characteristics of carousel trading known to the administration, began as early as 2016. This work proceeded in parallel with the

[487] Currently, inter alia, Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ EU. L. 2015 No. 141, p. 73, as amended).

[488] OECD, *Improving Co-operation Between Tax and Anti-Money Laundering Authorities in Combating Tax Crime and Corruption*, Paris 2015, https://www.calert.info/details.php?id=515 [accessed: 11 July 2024].

[489] Act of 24 November 2017 amending certain laws to counteract the use of the financial sector for fiscal fraud (Journal of Laws, item 2491).

transition from the optional 'on-demand JPK system' to the mandatory system. Both streams of work advanced concurrently, aiming to create a comprehensive analytical system fed by accrual and cash data for automated analysis of turnover recorded in Poland. Crucially, both projects leveraged existing on-demand declarations within the Polish legal system.[490] the JPK_VAT structure for accrual data,[491] and the JPK_WB structure for financial data.[492]

JPK_WB-based project. Given that the effectiveness of financial flow analytics depends on the transfer of funds between entities involved in carousel fraud within the banking system, the limit for cash transactions in business-to-business (B2B) relations was lowered from €15,000 to PLN 15,000 gross as of 1 January 2017.[493] The initial proposal for implementing the legal framework of the planned cash flow analytics system was released for public consultation as part of the Draft Act amending the Act – Tax Ordinance of 19 May 2017.[494] This draft proposed introducing, from 1 September 2017, a requirement for entrepreneurs to provide the Head of the National Revenue Administration with daily bank statements for analysis of features characteristic of carousel trading. This requirement would have applied to approximately 80,000 entrepreneurs: legal persons, organisational units without legal personality, and natural persons who are entrepreneurs as defined by the Act on Economic Freedom[495] (currently in the Act on Entrepreneurs' Law[496]), excluding micro-entrepreneurs and units of the public finance sector.[497] This obligation was to be fulfilled through the relevant bank or credit union (SKOK), and directly by the taxpayer if they held a bank account with a registered office or branch outside the Republic of Poland. Bank account statements were to be provided by banks and SKOKs via the clearing house's teleinformatics system. The bank statement transmitted to the tax office was to include, among other details, the name, address, and account number of the payment sender and recipient; the date and time of account changes; the title, description, amount, and currency of the payment order; the entrepreneur's account balance after execution. This obligation was also intended to initiate the administration's new e-services, particularly a system for quickly alerting compliant taxpayers to 'suspicious' transactions and notifying them electronically of detected irregularities – behavioural notifications analogous to those

[490] PwC, *Projekt ustawy wprowadzającej obowiązek codziennego przekazywania wyciągów z rachunków bankowych w formie JPK*, https://www.pwc.pl/pl/artykuly/nowosci-podatkowe/2017/2017-05-24-projekt-codzienne-przekazywanie-wyciagow-rachunkow-bankowych-jpk.html [accessed: 11 July 2024].

[491] A set of information on purchases and sales that results from the trader's VAT records for a given period.

[492] JPK_WB structure – bank statement, version 1.0, effective as of 1 July 2016. Detailed description of the JPK_WB structure, among others, in: Ministry of Finance, JPK na żądanie, https://www.gov.pl/web/kas/struktury-jpk [accessed: 11 July 2024].

[493] Act of 13 April 2016 amending the Personal Income Tax Act, the Corporate Income Tax Act and the Freedom of Economic Activity Act (Journal of Laws, item 780).

[494] Government Legislation Centre, Draft Act amending the Act – Tax Ordinance of 19 May 2017. https://legislacja.rcl.gov.pl/projekt/12298650/katalog/12434302#12434302 [accessed: 11 May 2024].

[495] Act of 2 July 2004 on freedom of economic activity (consolidated text Journal of Laws 2017, item 2168, as amended) – not in force.

[496] Act of 6 March 2018. – Entrepreneurs' Law (consolidated text Journal of Laws 2024, item 236, as amended).

[497] Within the meaning of Article 9 of the Public Finance Act of 27 August 2009 (consolidated text Journal of Laws 2024, item 1530, as amended).

sent to taxpayers from 2018 onwards as a result of universal accrual-based reporting (JPK_VAT).

STIR instead of JPK_WB. During the legislative process, the Ministry of Finance opted to change the planned approach to financial flow analytics. Instead of conducting analyses within the Ministry's databases, they chose a model based on analysis within the systems of the National Clearing House S.A. (KIR). KIR, an infrastructure institution of the Polish banking sector operating under Article 67 of the Banking Law Act,[498] primarily provides electronic clearing and payment services within interbank systems. KIR functions as a shared services hub within the Polish banking sector, enjoying the trust of its other entities. This approach significantly reduced the number of individuals with access to taxpayer data, thereby enhancing data security. On the other hand, this approach presented a security challenge for the tax administration itself. The administration was tasked with developing, in conjunction with KIR (presumably Krajowa Izba Rozliczeniowa, the National Clearing House), and providing to its authorized employees, appropriate sets of signature features and algorithms to identify fictitious trading based on financial data. The proposal to change JPK_WB reporting rules was removed from the draft law amending the Tax Ordinance Act before its adoption by the Council of Ministers, in early September 2017.[499] Therefore, the core of the solution implemented by the law of 24 November 2017[500] became locating the data analysis, provided by banks (including foreign bank branches) and cooperative savings and credit unions (SKOKs), within the Clearing House System (STIR).

Obligations of banks. Banks must electronically send detailed data on their customers' bank accounts to the KIR (National Clearing House) each business day. This data includes information on settlement, deposit, VAT, and savings accounts (Article 119zp Tax Ordinance, OrdPod).[501] The data provided includes, among others, information on their opening or closing, their balance, transactions made, and account proxy details. They are sent to the KIR immediately, but no later than by 12.00 a.m. on the day following the said operation.[502]

Monitored accounts. STIR monitors the company accounts of all 'qualified entities', including legal persons, natural persons conducting business activity (both those classified as entrepreneurs within the meaning of the Entrepreneurs' Law and those operating independently), and other organisational units without legal personality that have legal capacity. STIR does not monitor the financial flows or accounts of private individuals. Consequently, transactions between company accounts and private accounts belonging to natural persons are also not monitored. The data provided to STIR pertains to the accounts of qualified entities regardless of their VAT tax-

[498] Banking Act of 29 August 1997 (consolidated text Journal of Laws 2023, item 2488, as amended).

[499] Pismo Podsekretarza Stanu w Ministerstwie Finansów do Sekretarza Rady Ministrów z dnia 7 września 2017 r., DPP1.8010.2.2017, https://legislacja.rcl.gov.pl/docs//2/12298650/12434340/12434341/dokument307416.pdf [accessed: 11 May 2024].

[500] Act of 24 November 2017 amending certain laws to counteract the use of the financial sector for fiscal fraud (Journal of Laws, item 2491).

[501] Act of 29 August 1997 – Tax Ordinance (consolidated text Journal of Laws of 2025, item 111).

[502] In the case of daily statements of transactions relating to the accounts of an eligible entity, without delay, but no later than 3.00 p.m. on the day following the transaction day.

payer status, allowing KAS to use the analysis results when considering (or denying) an entity's VAT registration.

Beginning of STIR analytics. Account information began to be provided by banks (excluding co-operative banks) 30 days after the STIR Act came into force, and by co-operative banks and SKOKs after 60 days. A longer preparatory period applied to the transmission of daily transaction reports on qualified entities' accounts to KIR: six months from the STIR Act's entry into force for banks, and eight months for co-operative banks and SKOKs. The initial statements covered data from 1 January 2018 to the day before submission. Violations of STIR provisions may result in fines for financial institutions (Articles 119zzh and 119zzi of the OrdPod). These penalties can reach up to PLN 1 million (Article 119zzj OrdPod). In 2020, four decisions were issued imposing penalties on financial institutions, totalling PLN 530,000.[503]

Determination of the risk index. STIR automatically determines the risk index of a qualified entity committing tax extortion. This determination is based on data from banks and SKOKs, as well as publicly available data from the Central Register of Entities – National Register of Taxpayers (CRP – KEP). The risk index is calculated for each qualified entity using algorithms developed by KIR, incorporating best practices from the banking and SKOK sectors for preventing criminal and fiscal misuse, along with information from KAS to establish the algorithm parameters (Article 119zn § 3 OrdPod):

1) Geographical analysis, which identifies the destination countries of transfers. Trade with countries known for high levels of tax fraud is particularly relevant;

2) Entity analysis, focusing on the monitored entity's industry, with particular attention to sectors with a higher risk of tax fraud and those trading in high-value items (e.g., electronics or precious metals);

3) Relational analysis, examining the taxpayer's connections to entities already identified as being at risk of involvement in or organisation of fraudulent activities;

4) Behavioural analysis, identifying unusual and alarming behaviour of the account holder;

5) Economic analysis of the entity under observation, with particular reference to whether its banking transactions are typical for its economic environment and consistent with the purpose and nature of its business activities.

The risk indicator is calculated at least once a day (Article 119zn § 2 OrdPod) and sent immediately to the Head of KAS, as well as to banks and SKOKs to fulfil certain obligations, including those arising from the Act on counteracting money laundering and terrorist financing (Article 119zo OrdPod). This information provides banks with additional insights into their customers' reliability. KIR makes the algorithms used to determine the risk index available only to the Head of KAS, upon request (Article 119zo § 9 OrdPod). The Head of KAS also receives information from KIR – at least daily, including Saturdays, Sundays, and public holidays – on qualified entities' accounts maintained and opened by banks and SKOKs, as well as transactions involving these accounts (Article 119zq OrdPod). This data is used for internal risk analyses conducted

[503] Deloitte, *System Teleinformatyczny Izby Rozliczeniowej (STIR)*, https://www2.deloitte.com/pl/pl/pages/tax/articles/podatki-w-branzy-finansowej-komentarze-ekspertow/system-teleinformatyczny-izby-rozliczeniowej-STIR.html [accessed: 11 July 2024].

by KAS. The Head of KAS is also entitled to request additional information from banks and SKOKs through KIR (Article 119zs OrdPod), such as IP addresses used by taxpayers to access online banking. This information can help prove the simulation of economic transactions, as internet transfers within chain transactions are often sent from the same IP addresses. It also facilitates locating perpetrators, identifying and securing their mobile devices, and identifying funds to be secured against future receivables identified in tax audit findings (decisions), thus supporting the process of identifying criminal proceeds.[504]

STIR and the 'missing trader'. When a taxpayer involved in fictitious trading is detected, even before they 'disappear' from the market, it is crucial to take immediate action to secure the funds intended for tax payment before they are transferred out of the Polish banking system. Therefore, the implemented legislation provides two specific solutions: 1) a mechanism for blocking the account at the request of the Head of KAS; 2) refusal of registration and *ex officio* deletion of the entity as a VAT taxpayer without the need to notify the entity.

Blocking of an account by the Head of KAS. If it is determined that an entity is using its bank accounts to generate fictitious trading and action is required to combat the fraud, the Head of KAS may instruct the relevant bank or SKOK, via KIR, to block the account – that is, to temporarily prevent its use and the use of the funds held within it (Article 119zv OrdPod). Such blocking should last, as a rule, up to 72 hours.[505] The Head of KAS may extend this period by up to three months (Article 119zw OrdPod), but only if there is justified concern that the qualified entity will not meet an existing or impending tax liability, or a third-party tax liability exceeding the equivalent of €10,000. The account blockage will remain in place if, during later proceedings, the accounts become subject to security measures under administrative or criminal procedural law. Pursuant to an authorisation granted by the Head of KAS by way of a regulation, one of five heads of customs and fiscal offices (including the Head of the Mazovian Customs and Fiscal Office in Warsaw) may also request an account blockage. A taxpayer may appeal decisions regarding account blocking as outlined in Article 119zw OrdPod (Article 119zzb OrdPod).

Changes to STIR. In 2018, the scope of data transmitted to the[506] system was expanded. From 1 July 2019, blocking also applies to term deposits. As practice shows, these have been used by fiscal criminals to transfer funds to settlement accounts. In addition, from 1 July 2019. The Head of the National Revenue Administration can demand that a bank or a cooperative savings and credit union hand over the IP addresses from which:

a) Logins to the electronic banking services used to access the qualified entity's account occurred, including the identifier used to log in, and the date and time of each login;

[504] Explanatory Memorandum to the draft law on amending certain laws to counteract the use of the financial sector for fiscal fraud, Sejm print 1880, 8th Sejm.

[505] The indicated time period allocated to the KAS for performing the relevant operational activities does not include public holidays, see Judgment of the Supreme Administrative Court of 18 September 2020, ref. no. I FSK 30/20.

[506] Act of 5 July 2018 amending the Tax Ordinance Act and certain other acts (Journal of Laws, item 1499, as amended).

b) Instructions to carry out transactions on the qualified entity's account were given, including the identifier used to submit the instruction, and the date and time of submission – if the instructions were not submitted via electronic banking services.

The analytical power of STIR was further strengthened by the law of 12 April 2019 amending VAT Act, which significantly reduced the number of accounts used by taxpayers for tax settlements. From the beginning of September 2019, this law introduced a uniform list, maintained by the Head of KAS, of entities registered as VAT taxpayers, those unregistered, and those deleted and reinstated in the VAT register.[507] This 'white list' includes, among other information, the bank account numbers (company settlement accounts and named accounts in SKOKs) used by the business for tax settlements.

> Thanks to the STIR system, analysts at the Kujawsko-Pomorskie Customs and Fiscal Office in Toruń identified a group of construction businesses using fictitious VAT invoices in November 2019. The estimated losses to the Treasury exceeded PLN 1.5 million. To secure future liabilities, the Head of KAS secured over PLN 1.2 million in the selected entity's bank accounts.[508]

> The Podlaski Customs and Fiscal Office, working with STIR analysts in the Ministry of Finance's Control Supervision Department, identified a company involved in circulating fictitious invoices. The Head of KAS blocked approximately PLN 338,000 in the company's bank account, which operated in the mobile phone trade. The company's criminal activity is estimated to have caused losses to the State Treasury of at least PLN 765,000.[509]

Significance of STIR. The cash flow examination system established above is the cash equivalent of e-invoicing. It gives KAS the ability to respond to suspicious transactions in real time, in particular through:[510]

1) Analyses of cash flows indicative of tax evasion, enabling the identification of potential 'missing taxpayers' while preventing them from withdrawing funds from the Polish banking system;

2) Comparison of provided reports with other data held by KAS, including the accrual JPK-VAT. This allows for the projection of supply chains within the economy, thereby improving the prevention of undue VAT refunds to 'brokers'.

These activities result in eliminating entities involved in 'carousel' trading from the market, thus improving the competitive position of honest entrepreneurs and allowing them to operate more effectively.

> 'In 2020, using, among other data, the risk indicator, qualified entities' account information, and daily transaction statements provided to the Head of KAS, 102 carousel links involving approximately 647 conduit companies were identified. Additionally,

[507] Act of 12 April 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1018, as amended).

[508] Ministry of Finance, *KAS rozbiła grupę podmiotów wystawiających puste faktury*, https://www.gov.pl/web/kas/kas-rozbila-grupe-podmiotow-wystawiajacych-puste-faktury [accessed: 12 July 2024].

[509] Ministry of Finance, *Podlaska KAS dzięki STIR ujawniła kolejny proceder wyłudzania VAT*, https://www.gov.pl/web/kas/podlaska-kas-dzieki-stir-ujawnila-kolejny-proceder-wyludzania-vat [accessed: 12 July 2024].

[510] Ministry of Finance, *4 lata działalności Ministerstwa Finansów 2015-2019*, https://www.gov.pl/web/kas/podsumowujemy-4-lata-dzialalnosci-resortu-finansow-2015-2019 [accessed: 11 July 2024].

through analytical activities on STIR resources in 2020, information on 147,451 bank accounts of entities with arrears was provided to tax offices.'[511]

Use of STIR. As of 2019 STIR is supplied with data by 614 banks and SKOKs. During the first three years of the regulation, the information resources processed in the STIR analytical processes have steadily increased.[512] The number of qualified entities reported to STIR has increased by 20% in two years, from 3.44 million on 31 December 2018 to 3.95 million on 31 December 2019, and 4.17 million at the end of 2020. The reported number of individuals linked to qualified entities also increased similarly (4.61 million at the end of 2018; 5.47 million at the end of 2019; 5.57 million at the end of 2020). The number of clearing accounts reported to STIR increased by approximately 64% in two years, from 11.56 million in 2018 to 15.74 million in 2019, and 18.93 million in 2020.

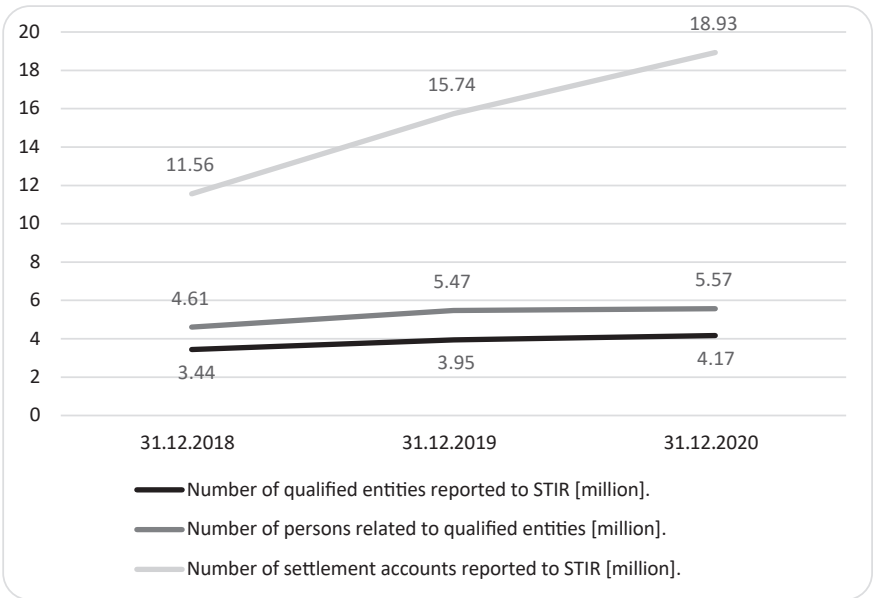


Chart 33: Scope of analyses performed using STIR

Source: Ministry of Finance data.

The number of bank transactions analysed increased by 80%, from approximately 8,525 million in 2018 to approximately 11,537 million in 2019, and approximately 15,406 million in 2020 (chart 34). As a result of STIR analytics, as many as 29,000 high-

[511] Ministry of Finance, *Sprawozdanie za 2020 r. w zakresie przeciwdziałania wykorzystywaniu działalności banków i spółdzielczych kas oszczędnościowo-kredytowych do celów mających związek z wyłudzeniami skarbowymi*, Warsaw 2021, https://www.gov.pl/web/kas/struktury-stir [accessed: 11 July 2024].

[512] Ministry of Finance, *Sprawozdanie za 2020 r. w zakresie przeciwdziałania wykorzystywaniu działalności banków i spółdzielczych kas oszczędnościowo-kredytowych do celów mających związek z wyłudzeniami skarbowymi*, Warsaw 2021, https://www.gov.pl/web/kas/struktury-stir [accessed: 11 July 2024].

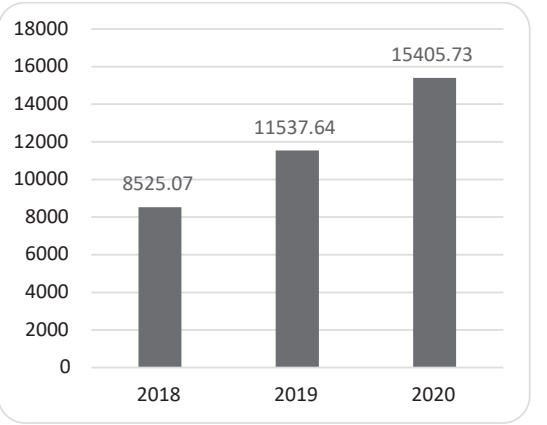


Chart 34: Transactions reported to STIR [million]

Source: Ministry of Finance data.

risk entities were detected in the first year of operation, prompting further analytical and control activities by KAS. Within two years, the number of entities STIR classified as 'risky' almost tripled, reaching 58,000 in 2019 and 81,000 in 2020[513] (chart 35).

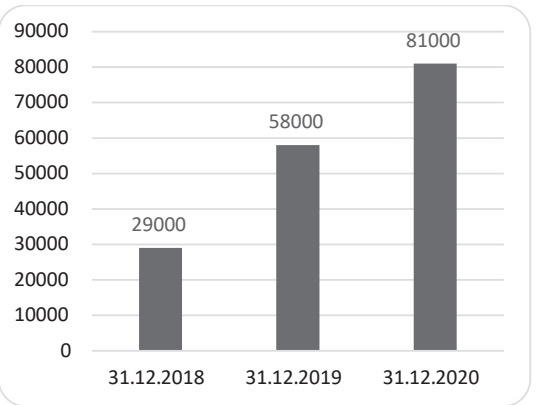


Chart 35: Number of identified higher risk entities

Source: Ministry of Finance data.

[513] As indicated above, the value of evasion detected using STIR from 2018 to 2020 increased significantly, while the VAT amount identified from JPK_VAT detection and submitted for verification decreased. The difference between STIR and JPK_VAT analyses is important to emphasise. STIR analyses concern the cash flow of transactions, are performed 'on the fly' (*de facto* in real time), and are *ex ante* in nature; they do not aim to find connections between a 'missing taxpayer' (already known to the treasury) and a broker, but rather to identify transactions exhibiting characteristics of fictitious turnover. JPK_VAT analyses, due to their *ex post* nature, are more effective. They combine information analogous to STIR research on identified fictitious turnover with knowledge gained from the prior identification of the 'missing taxpayer'. By using information on reported business relationships, it is possible to identify a 'broker' and classify as fictitious turnover that was not previously verified as such in the *ex ante* analysis, but which turned out to be so *post facto*, i.e., as a result of the finding that links the 'broker' to the 'missing taxpayer'.

Between 2018 and 2020, the Head of KAS frequently requested additional information on qualified entities from banks and SKOKs (Article 119zs OrdPod). The number of requests to banks within the STIR website (via Ognivo) reached 3,813 by the end of 2018. Within two years, this number almost tripled, reaching 8,808 by the end of 2019 and 10,005 by the end of 2020 (chart 36). During the same period, 21 banks were inspected for non-compliance with STIR obligations: one in 2018, nine in 2019, and 11 in 2020.[514]

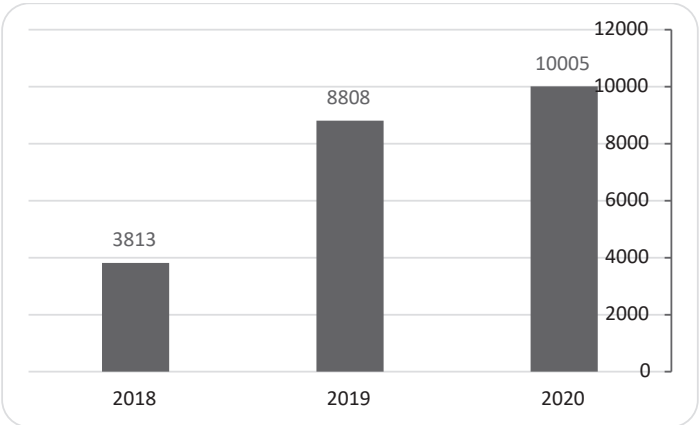


Chart 36: Number of requests to banks under the STIR website (Ognivo)

Source: Ministry of Finance data.

During STIR's first three years of operation, the number of bank account blocks increased rapidly. Between 2018 and 2020, the number of blocks nearly increased ninefold, rising from 23 in 2018 to 120 in 2019, and then to 196 in 2020. Each block typically involved several bank accounts used by the taxpayer. Consequently, the number of blocked bank accounts increased almost 25-fold in three years, growing from 41 in 2018 to 566 in 2019, and finally to 1,020 in 2020[515] (chart 37).

[514] Deloitte, *System Teleinformatyczny Izby Rozliczeniowej (STIR)*, https://www2.deloitte.com/pl/pl/pages/tax/articles/podatki-w-branzy-finansowej-komentarze-ekspertow/system-teleinformatyczny-izby-rozliczeniowej-STIR.html [accessed: 11 July 2024].

[515] The account blocking permitted by the STIR regulation is a highly invasive measure and should be used with extreme caution. As it prevents payments for debts owed to the taxpayer, the use of this tool effectively excludes the affected company from operating, which, if the block is maintained, could lead to its 'withdrawal' from the market. This tool should only be used against entities where there is a justified risk of 'disappearance' with the funds accumulated in their accounts. In cases of *carousel-type* fraud, this applies to the 'missing trader' and the 'broker' against whom an undue VAT refund has been made. As a result of STIR analytics in 2020, the administration was notified of approximately 81,000 'suspicious' entities, including potential missing traders, buffers, and brokers. This information was then cross-referenced with information held by KAS from other sources (including data from JPK_VAT and online fiscal cash registers). For approximately 10,000 entities, KAS requested additional information from banks to determine their role in the fictitious supply chains. These actions resulted in the blocking of 1,020 accounts belonging to 196 entities verified by KAS as potential 'missing traders' or 'brokers'.

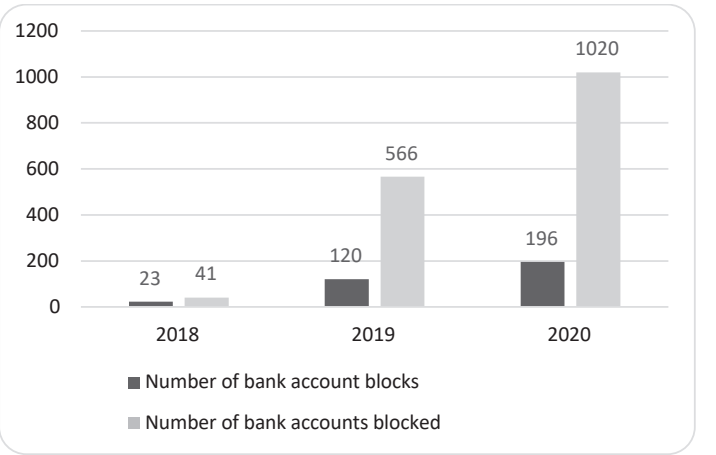


Chart 37: Bank account freezes 2018-2020 [number]

Source: Ministry of Finance data.

A total of more than PLN 176 million was 'frozen' in blocked accounts: PLN 10.23 million in 2018, PLN 69.7 million in 2019, and PLN 96.1 million in 2020. The value of losses detected using STIR (losses to the budget) increased fivefold over three years, rising from PLN 132.18 million in 2018 to PLN 591.5 million in 2019, and reaching PLN 660.9 million in 2020.[516] During STIR's first three years of operation, the amounts blocked in criminals' accounts represented only a fraction of the detected losses. However, this share grew rapidly, almost doubling over the three years from approximately 8% in 2018 to approximately 12% in 2019, and approximately 15% in 2020. In 2020 alone, 102 carousel links, involving some 647 entities, were identified using daily information provided to the Head of KAS on the risk indicator, qualified entities' accounts, and daily transaction statements. Additionally, through analytical activities on STIR resources in 2020, information on 147,451 bank accounts of entities with arrears was transmitted to tax offices.[517]

Between 2018 and 2022, STIR blocked a total of 4,035 bank accounts belonging to 865 entities, freezing PLN 354.4 million and preventing an estimated PLN 2.2 billion in budgetary losses.[518] In 2023, the number of blocked bank accounts increased by 4.4% compared to 2022.[519] The total value of blocked funds grew year-on-year by more

[516] The noted increases are attributable both to year-on-year improvements in the quality of the algorithms used for STIR analysis and to the fact that analytics began only in the second quarter of the first year. Its scale increased as more financial sector entities became obligated to report the financial flows processed through them.

[517] MF/KAS, *Sprawozdanie w zakresie przeciwdziałania wykorzystywaniu działalności banków i spółdzielczych kas oszczędnościowo-kredytowych do celów mających związek z wyłudzeniami skarbowymi za rok 2020*, Warsaw 2021, https://www.gov.pl/web/kas/struktury-stir [accessed: 11 July 2024].

[518] Ministry of Finance, *Skąd miliardy do budżetu*, https://www.podatki.gov.pl/skad-miliardy-do-budzetu/ [accessed: 11 July 2024].

[519] InteriaBusiness, *Skarbówka na łowach. W 2023 r. zablokowała blisko 1,2 tys. rachunków bankowych,* https://biznes.interia.pl/gospodarka/news-skarbowka-na-lowach-w-2023-r-zablokowala-blisko-1-2-tys-rach,nId,7313211#utm_source=paste&utm_medium=paste&utm_campaign=firefox [accessed: 11 July 2024].

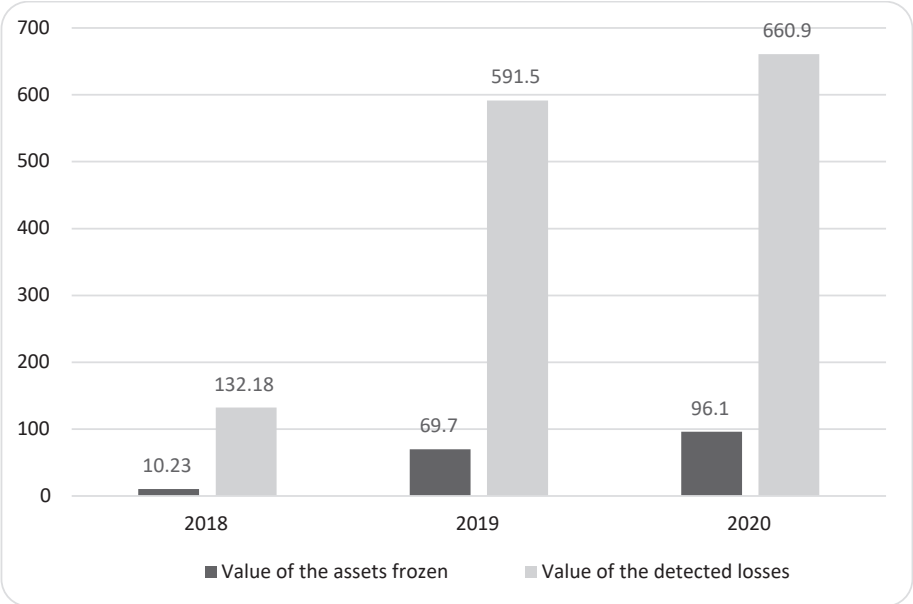


Chart 38: Bank account freezes 2018-2020 [value]

Source: Ministry of Finance data.

than 14%, reaching PLN 88.5 million in 2023 (compared to PLN 77.4 million in 2022). Estimated budgetary losses in 2023 amounted to PLN 287.6 million, a slight decrease of 1.3% compared to the PLN 291.3 million estimated for 2022.

> 'In mid-April [2024], KAS officers detained three persons connected with VAT extortion. The detainees were charged with leading and participating in an organised criminal group, and issuing and using fake VAT invoices related to the subletting of labour services involving foreign workers. The total value of the fake invoices in circulation amounts to nearly PLN 125 million. Initial findings suggest that the State Treasury may have lost over PLN 16 million as a result of this criminal activity. Under the STIR procedure, PLN 6.8 million has been blocked in the bank accounts of entities linked to the criminal group.'[520]

Challenging the blockades. Notably, STIR analytics demonstrated high accuracy in identifying accounts for blocking during its first three years. In 2020 alone, the initial justification for blocking was confirmed for all 1,020 blocked bank accounts, leading to a three-month extension in each case. Of the 196 blockages implemented in 2020, approximately one-third (68) were challenged by complaints against the extension decisions. Acting as the second-instance authority, the Head of KAS upheld the taxpayer's position and overturned the first-instance decision in only three cases (approximately 1.5% of the total blockages and 4% of the filed complaints). Following unfavourable decisions from the Head of KAS in 2020, taxpayers filed 49 complaints

[520] Poznań Regional Prosecutor's Office, *Śledztwo w sprawie wystawiania fałszywych faktur i wyłudzenia podatku*, https://www.gov.pl/web/po-poznan/falszywe-faktury-i-wyludzenie-vatu [accessed: 11 July 2024].

with administrative courts, which revoked the appealed decisions in only eight cases (approximately 4% of the total blockages and 16% of the court complaints). This indicates that court assessments deem the bank account blocking actions legitimate and correct in the vast majority of cases. In summary, of the 196 blockages implemented in 2020, the Head of KAS's decision was altered in only 11 cases (three in second-instance proceedings and eight following court rulings), meaning that over 96% of the extension decisions remained in force.

3.2.4. Online Cash Registers

Online cash registers. The online sales registration system is another tool, complementing JPK, used to tighten up the VAT system, particularly by reducing the grey market in retail sales.[521] These devices (so-called online cash registers[522]) enable the transmission of sales data recorded by the cash registers to an ICT system managed by the Head of KAS. This system receives and collects data from the online cash registers for analytical and control purposes. This data includes all information from the receipts, such as the taxpayer's inter alia NIP and address details, the tax base, the tax amount, the VAT rate, the type of goods or services sold, and the date and time of the sale. This data is transmitted directly, automatically, and in real time.[523] Receipts issued by the online cash register can be provided to the buyer in both paper and electronic formats.[524]

Online cash registers and combating the shadow economy. By reporting sales to the treasury in real time, online cash registers serve as an important tool in combating the shadow economy. Geographical reports generated from the collected data enable comparisons of turnover recorded within the same periods (days, hours) in specific locations (e.g., catering establishments on the same street). Discrepancies in the amount or frequency of recorded turnover prompt tax authorities to verify the tax compliance of businesses. These 'anomalies' may indicate that a portion of the generated turnover has not been registered.[525]

Online cash registers and the fight against tax carousels. Online cash registers are also a valuable tool in combating 'missing taxpayer' fraud. They are used to detect:

[521] Ministry of Finance, *Kasy online – informacje*, https://www.podatki.gov.pl/vat/kasy-rejestrujace/kasy-online-informacje/ [accessed: 12 July 2024].

[522] The Polish VAT Act imposes a *general obligation* on taxpayers to record sales to consumers and flat-rate farmers using cash registers (Article 111(1) uVAT). However, there are subjective and objective exemptions outlined in the Regulation of the Minister of Finance of 17 December 2024 on exemptions from the obligation to keep records of sales using cash registers (Journal of Laws, item 1902).

[523] Ministry of Finance, *Broszura informacyjna zmiany w kasach rejestrujących od 1 maja 2019 r. – Kasy on-line*, https://www.podatki.gov.pl/media/4661/broszura-kasy-on-line.pdf [accessed: 12 July 2024].

[524] An e-paragon is an electronic fiscal document that replaces the traditional paper receipt (the requirement to issue a receipt is governed by Article 111(3a)(1) of uVAT). It is issued by the online fiscal cash register and then sent to the CRK. The e-paragon has the same evidential force as a paper receipt and is recognised by the tax authorities. Importantly, if the consumer consents, there is no need to print it out (§ 22 of the Ordinance of the Minister of Development, Labour and Technology of 12 September 2021 on technical requirements for cash registers (consolidated text Journal of Laws 2024 item 1654)).

[525] An observed practice on the market is the non-fiscalisation of turnover and the issuance of 'pseudo-paragons' (e.g., so-called 'waiter's receipts') to consumers, enabling selective fiscalisation or limiting fiscalisation to tax authorities' working hours. This topic has been extensively covered, for example, by the Ministry of Finance, *Ostrzeżenie przed konsekwencjami wydawania tzw. rachunku lub paragonu kelnerskiego zamiast paragonu fiskalnego*, https://tiny.pl/d42cr [accessed: 11 July 2024].

1) 'Money laundering' through the declaration of fictitious trading by companies operating in the market;

2) Attempts to 'liquidate' *post* VAT carousel goods, i.e. their rapid sale, often at prices significantly different from market value due to time constraints, before the taxpayer 'disappears' from the market.

Detecting these practices enables tax authorities to identify the 'missing trader' before the offence is fully committed and facilitates locating where tax criminals conceal the defrauded funds. This often occurs during the fictitious turnover stage, documented by attempts to reintroduce the funds into legal circulation.

Use of online cash registers in OECD countries. The OECD recommends the use of online cash registers to identify entities linked to tax fraud. While more than a third of OECD countries[526] with VAT have implemented specific requirements for suppliers to use online cash registers (16 out of 37),[527] only six of them require the systematic transfer of such data to the tax authorities.[528] Of these, the four most advanced, including Poland, employ a technical solution enabling this transfer via an online module – virtually in real time.[529]

Recommendations for Poland. Prior to 2019, only individual tax offices held information on fiscal cash registers and their numbers. No central electronic database existed to track the types of fiscal cash registers used by businesses. Data recorded on these devices was only accessible to authorities during inspections. Inspectors could access the data by manually downloading the records from the cash register's data carrier (if the business used an electronic cash register), and often only by reviewing paper copies of receipts (if a paper-based cash register was used). Consequently, *big data* analysis of cash register data was not feasible.

This state of affairs was particularly commented on by the Global Compact Network Poland. In its cyclically published analyses on combating the shadow economy, it pointed to the urgent need for Poland to implement technological solutions enabling the tax administration to monitor turnover recorded by fiscal cash registers.[530] Online cash registers were indicated as a recommended tool. Data from all fiscal cash registers operating in the country was to be transmitted to a central unit in real time (at the point of registration on the cash register – typically, at the time of transaction). This data would then be subject to *big data* analysis to identify businesses requiring further scrutiny by the authorities.[531]

Regulation of online cash registers in Poland. To establish a system for central transaction reporting, the Minister of Finance initiated a project entitled 'Central Repository of

[526] OECD, *Consumption Tax Trends*, 2022.

[527] Austria, Belgium, Costa Rica, the Czech Republic, France, Greece, Hungary, Israel, Italy, South Korea, Latvia, Norway, Poland, Slovakia, Slovenia and Sweden.

[528] Greece, Israel, South Korea, the Slovak Republic, Slovenia and Italy.

[529] South Korea, Slovakia, Slovenia and Poland.

[530] Global Compact Network Poland, *Przeciwdziałanie Szarej Strefie w Polsce 2015/16*, https://mf-arch2.mf.gov.pl/documents/764034/5123644/20160407_GCNP_raport_szara_strefa.pdf [accessed: 12 July 2024]. The recommendations indicated in the document were repeated in subsequent editions of the study, including Global Compact Network Poland, *Przeciwdziałanie Szarej Strefie w Polsce 2018/19*, https://ungc.org.pl/wp-content/uploads/2021/04/raport-SZARA_STREFA_wwww.pdf [accessed: 12 July 2024].

[531] A summary of the multi-year '*Programu przeciwdziałania szarej strefie 2014-2020*' was presented in a report published in February 2023: Global Compact Network Poland, *Przeciwdziałanie szarej strefie w latach 2014-2022*, https://ungc.org.pl/przeciwdzialanie-szarej-strefie-w-latach-2014-2022/ [accessed: 11 May 2024].

Retail Sales (CR) Data'. The project's strategic objective was to reduce the grey economy by streamlining processes related to recording and controlling retail sales using online fiscal cash registers.[532] As early as 5 April 2018, the Council of Ministers adopted a draft law, presented by the Minister of Finance, amending the Law on Goods and Services Tax and the Law on Measures, which established a timetable for implementing online cash registers in Poland.[533] The indicated amendment entered into force on 1 May 2019.[534]

Relief for the purchase of an online cash register. The law provided for the gradual inclusion of successive categories of taxpayers in the obligation to use online cash registers, starting with entities operating in 'sensitive' industries – that is, those particularly exposed to grey economy activities and attempts at money laundering. To encourage the purchase of online cash registers, even for taxpayers not obligated to use them, an allowance for purchasing such a register was introduced (Article 111(4) uVAT). Entrepreneurs who purchase an online cash register and begin using it within six months of starting to record sales may benefit from a discount. This applies to both VAT-registered entrepreneurs (active VAT taxpayers) and those exempt from this obligation. Relief is provided by either: 1) deducting the amount spent on purchasing an online cash register in the VAT return; or 2) refunding the amount spent on purchasing an online cash register by the tax office for VAT-exempt entities. The relief for purchasing an online cash register amounts to 90% of its net price, but is capped at PLN 700. If sales records are kept using several online cash registers, relief is granted for the purchase of each one. To benefit from this relief, it is necessary to begin keeping records with each cash register at each point of sale no later than six months from the date of starting to keep sales records. To make it easier for entrepreneurs to benefit from this relief, the Ministry of Finance issued tax guidance on 11 July 2019, outlining the administration and interpretation of the new regulations.[535]

Virtual cash registers. A specific tool to reduce the cost of installing an online cash register is to allow taxpayers to use a cash register in the form of an application, installed on their own device (such as a tablet or phone). This online cash register, without the costly hardware module, was made available on a pilot basis to an initial group of taxpayers from 1 June 2020. The use of this type of cash register was then extended to taxpayers operating in the transport, hotel and catering industries, and those selling carbon products.[536] The transport industry was the fastest to benefit from the new opportunity. On 22 December 2020, the application developed for Bolt[537] was

[532] Ministry of Finance, *Kasy online – informacje*, https://www.podatki.gov.pl/vat/kasy-rejestrujace/kasy-online-informacje/ [accessed: 12 July 2024].

[533] Chancellery of the Prime Minister, *Draft Act amending the Value Added Tax Act and the Measures Act*, https://www.gov.pl/web/premier/projekt-ustawy-o-zmianie-ustawy-o-podatku-od-towarow-i-uslug-oraz-ustawy-prawo-o-miarach [accessed: 12 July 2024].

[534] Act of 15 March 2019 amending the Act on Value Added Tax and the Act - Law on Measures (Journal of Laws, item 675, as amended).

[535] Ministry of Finance, *Objaśnienia podatkowe z 11 lipca 2019 r. Ulga na zakup kas rejestrujących on-line*, https://www.podatki.gov.pl/media/5129/obja%C5%9Bnienia-podatkowe-z-11-lipca-2019-r-ulga-na-zakup-kas-rejestruj%C4%85cych-on-line.pdf [accessed: 11 July 2024].

[536] Regulation of the Minister of Finance of 29 May 2020 on groups of taxpayers or types of activities for which it is possible to use cash registers having the form of software (consolidated text Journal of Laws of 2023, item 2268).

[537] BoltBlog, *Bolt uzyskała homologację GUM jako pierwsza w Polsce. Oto, co musisz wiedzieć*, https://blog.bolt.eu/pl/ekasa-bolt-uzyskala-homologacje-gum/ [accessed: 11 July 2024].

the first to be certified by the Central Office of Measures (GUM), followed by a cash register specifically for Uber on 28 December 2020.[538]

Following the discovery of irregularities in the declared turnover of self-service (*vending*) devices at car washes, the Ministry of Finance decided to remove the exemption from using fiscal cash registers for this type of service from 1 February 2023.[539] New technologies have made it possible to introduce cash registers in this industry as well. To help businesses providing services using customer-operated (unmanned) equipment adapt to these changes, the option to use online cash registers in the form of applications (virtual cash registers) was made available. By the end of 2023, over 22,000 virtual cash registers had been registered for car washes.

Timetable for the implementation of online cash registers in Poland. The first group of taxpayers was made compulsory to use online cash registers from 1 January 2020. The obligation covered:

1) The provision of repair services for motor vehicles and mopeds, including tyre repair, fitting, retreading and reconditioning, and for the replacement of tyres or wheels for motor vehicles and mopeds;
2) The sale of motor petrol, diesel and gas for internal combustion engines.

Due to the outbreak of the pandemic, the Ministry of Finance, meeting the expectations of entrepreneurs, postponed the obligation for more industries to implement online cash registers.[540] As of 1 January 2021, the obligation to use online cash registers was extended to the catering and hotel industries, and to the sale of coal, briquettes and similar solid fuels for heating. As of 1 July 2021, it was further extended to businesses providing cosmetic and hairdressing services, medical care services provided by doctors and dentists, legal services, the construction industry, and fitness centres (admission only). While no further industries have been specified as requiring mandatory use of online fiscal cash registers, deadlines have been introduced after which it will no longer be possible to buy cash registers with electronic or paper copy recording. Taxpayers were unable to purchase cash registers with paper copy recording after 31 August 2019, and have been unable to purchase cash registers with electronic copy recording since 31 December 2022. Exceptions apply to fiscal cash registers for special use, employed, for example, in pharmacies, taxis, and vending machines. For these, businesses could obtain confirmation of compliance with the functions, criteria, and technical conditions until 31 December 2023 (Article 145a(7) uVAT).

Use of online cash registers in Poland. The number of fiscal receipts uploaded to the Central Repository of Cash Registers (CRK) has steadily increased. Between 2019 and 2021, it increased more than fifteenfold, rising from over 326 million uploads between May and December 2019, to over 2.4 billion in 2020, and then to almost

[538] My Company Poland, *Uber otrzymuje certyfikację na wirtualną kasę fiskalną*, https://mycompanypolska.pl/artykul/uber-otrzymuje-certyfikacje-na-wirtualna-kase-fiskalna/5937 [accessed: 11 July 2024].

[539] The exemption from using cash registers does not apply to services such as washing and cleaning cars, and similar services (PKWiU 45.20.30.0), even when these services are provided through unmanned, customer-operated devices that accept payment in cash (coins or banknotes) or cashless forms – § 4(1)(2)(m) of the Regulation of the Minister of Finance of 17 December 2024 on exemptions from the obligation to keep records of sales using cash registers.

[540] Regulation of the Minister of Finance of 10 June 2020 on extending the time limits for keeping records of sales using cash registers with electronic or paper copy recording (Journal of Laws, item 1059).

5 billion in 2021. The share of online cash registers in operation also grew. Between 2019 and 2022, this increased from around 6% in 2019 (approximately 147,000 online cash registers compared to almost 2.2 million of other types) to approximately 35% in 2022 (more than 885,000 online cash registers compared to over 1.6 million of other types). The number of online cash registers in operation therefore increased sixfold between 2019 and 2022, while the number of other types of cash registers decreased by around 22%. In May 2023, the one-millionth online cash register was fiscalised, nearly four years after this new type of cash register was introduced to the Polish market. In the first months of 2023, online cash registers recorded an average of 25 million transactions daily.[541]

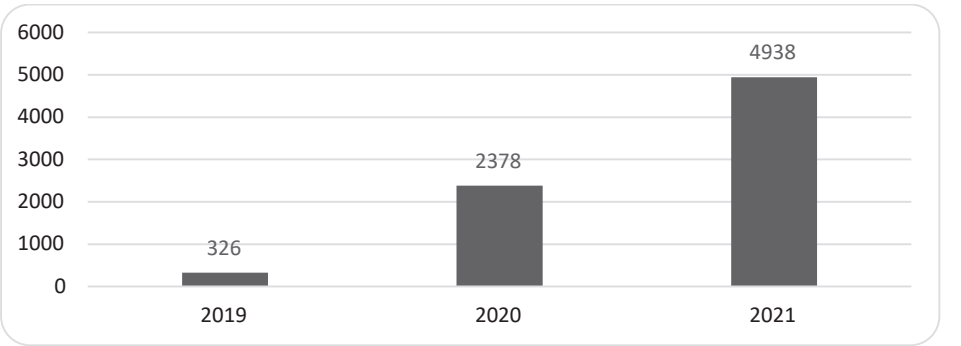


Chart 39: Number of fiscal receipts registered in the CRK [million]

Source: Ministry of Finance data.

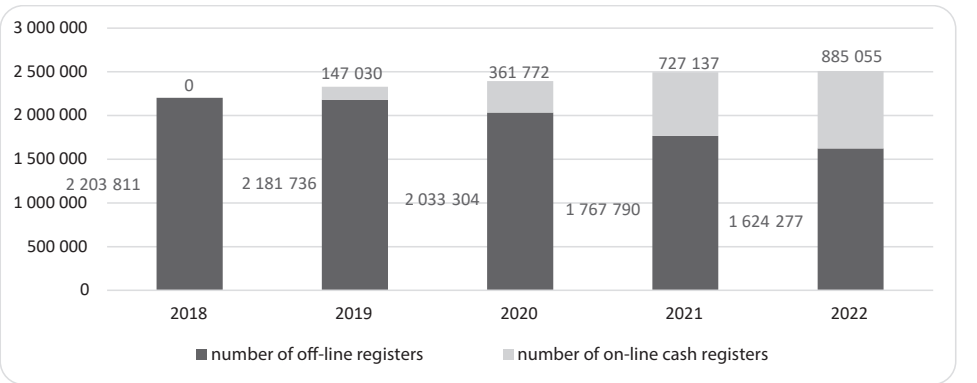


Chart 40: Share of online cash registers in the number of cash registers in operation in Poland

Source: Ministry of Finance data.

[541] DGP, *W Polsce jest już milion kas online,* https://podatki.gazetaprawna.pl/artykuly/8713095,kasa-online-kas.html [accessed: 11 July 2024].

Summary. The widespread implementation of online fiscal cash registers for businesses, and the development of real-time transmitted data, has provided the tax authorities with a tool to increase the effectiveness of their control activities. The use of algorithms, which compare the amount and intensity of turnover at locations with similar locations or business profiles, allows for the detection of anomalies that may originate from organised criminal activity. As a result, it has become more difficult not only to operate within the shadow economy, but also to 'liquidate' goods obtained through illicit means and to introduce funds from unknown, often illegal, sources into circulation. The gradual introduction of online cash registers, which avoids creating a shortage of these machines on the market, should be viewed positively. In this process, priority has been given to making the registration of turnover using online cash registers compulsory in sensitive sectors most vulnerable to unrecorded trading or attempts at 'money laundering'. Online cash registers will eventually replace all other types of machines as a result of the gradual phasing out of paper-based and electronic cash registers. A key mechanism for reducing the costs incurred by businesses in connection with the purchase of online cash registers is the gradual expansion of the range of industries permitted to use virtual cash registers, which take the form of an application and do not require an expensive hardware module.

3.2.5. The Shadow Economy and VAT Exemption

Elimination of selected entity exemptions.

In an effort to reduce the VAT gap, the Polish legislator, in addition to strategic measures, also took measures dedicated explicitly to particular types of irregularities reported by the tax administration and businesses. An example of a 'reactive' regulation, aimed at counteracting unfair practices reported by businesses, was the so-called 'Little Sealing Act' of 4 July 2019.[542] In particular, it addressed: 1) the issue of PIT and CIT tax avoidance resulting from the generation of fictitious costs through so-called 'invoice trading'; as well as 2) countering undeclared activity (grey economy) in the trade of certain types of goods.

Between 2014 and 2018, the tax authorities noticed a rise in the circulation of selected goods within the grey economy. This trend was particularly evident in the sale of mobile phones, where new phones were being passed off as second-hand and subject to margin VAT. A growing number of entities also declared sales of car and motorbike parts, with sales volumes deliberately kept just below the threshold stipulated in Article 113(1) uVAT, beyond which sales would be taxed under the standard regulations. The purchase of goods without VAT, coupled with the failure to record these purchases, was most commonly observed amongst businesses whose main source of illegal revenue stemmed from unregistered car and motorbike repair services operating within the 'grey economy'. Similar practices were adopted by an increasing number of businesses offering debt collection and factoring services. To facilitate these services, entities were established that operated solely until they reached the

[542] Act of 4 July 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1520).

exemption threshold, then liquidated, only for another to be created, thus allowing the continued exploitation of the tax exemption.

To counteract these practices, the provisions of the 'Little Sealing Act' came into force on 1 September 2019, restricting the application of the VAT subjective exemption. New categories of goods and services were added to the list of exemptions, meaning their sale became taxable 'from the first zloty', thus obliging the entrepreneur to register their turnover for VAT purposes. Primarily, the subjective exemption was removed for taxpayers supplying parts for motor vehicles and motorbikes, regardless of how they were supplied. Furthermore, the exemption was also removed for the sale of items such as cosmetic and toilet preparations, computers, electronic equipment, household appliances (including 'white goods'), and similar goods, when sold under a distance contract within an organised system, without the physical presence of both parties. This specifically applies when one or more means of distance communication are exclusively used up to and including the conclusion of the agreement, for instance, sales conducted via the Internet or telephone.

3.3. Making VAT Carousels More Difficult to Organise

3.3.1. Introduction

A crucial element in effectively combating carousel fraud is hindering the ability of tax mafias to establish networks of interconnected entities engaged in fictitious trading. A key focus of the tax authorities' efforts is targeting 'buffers', the intermediaries facilitating fictitious transactions between the 'disappearing taxpayer' and the 'broker'. The purpose of inserting numerous buffers between the entity poised to vanish from the market as part of the carousel and the defrauding entity is to 'lend credibility' the broker in the eyes of the authorities, effectively 'covering the tracks' connecting them to the criminal activity. If the authorities can effectively trace these connections, they can refuse to issue an undue VAT refund to the criminal. Entities chosen to act as buffers often have a genuine and established history of business activity within a particular industry, making them appear to be legitimate taxpayers. A buffer's involvement in tax fraud can be either unwitting or deliberate. Buffers receive remuneration for their role in the scheme, either as a separate payment or through the profit margin between the purchase and sale price of the fictitious goods. Unlike the 'missing trader' and the 'broker', buffers typically remain active in the market even after the fraud is uncovered. They continue their legitimate business operations and, in some cases, may even persist in their cooperation with the tax evaders, albeit within a different chain of transactions or dealing in a different category of goods. When approached by the tax authorities, traders who knowingly collaborate with criminals often employ a strategy of 'hiding' amongst a multitude of seemingly random buffers, claiming ignorance of the fabricated nature of the transactions they have documented. They assert their good faith, aiming to avoid sanctions for their involvement in the scheme. Recognising the pivotal role of the buffer in facilitating carousel fraud, the European Commission

has identified them as a key target in its recommended sealing measures. Through the implementation of joint and several liability, which is recommended for adoption across Member States, the Commission has shifted the risk associated with participating in *missing trader* crimes onto these buffers. This means that counterparties are now liable to cover the VAT unpaid by the missing trader. By combining this principle with increasingly stringent administrative, criminal, and fiscal penalties against entities implicated in fictitious trading, EU countries are forcing entrepreneurs to meticulously verify the tax credibility of their business partners. Entrepreneurs who understand the practices of tax evaders and are also aware of the potential sanctions they face should avoid: 1) deliberate involvement in carousel offences; 2) engaging in business with entities that offer commercially unviable or suspicious transaction terms, which could indicate the fictitious nature of their trade. The need for a systematic and consistent way of differentiating between favourable and suspicious conditions often translates into businesses developing internal procedures to demonstrate and document their good faith in dealings with counterparties. Some countries offer simplified routes for entrepreneurs to fulfil their VAT due diligence obligations. In Poland, the split payment mechanism serves this purpose. The effectiveness of sealing mechanisms aimed at potential buffers, including both the traditional ones recommended by the EC and their more modern alternatives like *split payment*, hinges on entrepreneurs having sufficient knowledge of these mechanisms:

1) The nature of the actions of tax offenders;
2) The characteristics of criminally-motivated fictitious trading;
3) The risks that participating in a tax carousel can pose to a legitimate company;
4) The tools available to honest entrepreneurs to verify the tax credibility of their trading partners.

As part of the campaign against VAT carousels launched in 2016, the Polish Ministry of Finance has undertaken to:

1) Restore the reliability of the register of active VAT taxpayers as a tool for verifying contractors;
2) Provide taxpayers with new sources of information about their business partners, in particular by making available up-to-date, verified data (e.g. account numbers used in trading with counterparties and settlements with the tax authorities), as well as information on their history of settlements with the tax authorities (including any deletion from or reinstatement to the register);
3) Allow businesses to request opinions on the tax credibility of trading partners directly from the authorities;
4) Set standards for the tax verification of the reliability of business partners, with particular emphasis on the characteristics and actions of dishonest entities. These best practices should serve as a guide for both the tax authorities and businesses when evaluating due diligence in the selection of counterparties and good faith during joint commercial ventures.

3.3.2. White List of VAT Taxpayers

VAT list and its relevance. The primary source of information for a trader regarding the tax status of their counterparty is whether that entity is included on the public VAT register. This inclusion carries two presumptions: 1) that the entity meets the legal criteria verified by the authorities for inclusion on the register and 2) that it conducts genuine business in a lawful manner, i.e. not resulting in its removal from the designated list. The credibility of the counterparty and the ability to verify this are crucial aspects of the tax security of a transaction, including the security of input tax deduction. This is confirmed by international organisations. In 2005, the IMF recommended that applications for VAT registration should undergo a basic check to prevent the registration of fictitious entities intending to commit fraud.[543] The European Commission also highlighted the need for Member States to pay particular attention to the VAT registration and taxpayer verification process in its reports for 2004[544] and 2007.[545]

Purpose of the changes. The first of the Ministry of Finance's measures to provide taxpayers with a reliable source of information about the tax status of their business partners was to ensure that the register of active VAT taxpayers was, as far as possible, up-to-date and reliable, meaning that it included only those taxpayers genuinely conducting business at any given time.[546] The tool to achieve this was to broaden the criteria for the registration of active VAT taxpayers and to introduce a statutory obligation for the authorities to verify these criteria at two stages: 1) *ex ante*, i.e. before the entry is made, and 2) *post factum*, in order to periodically confirm that taxpayers already on the register continue to meet them. The immediate effect of these measures was to 'cleanse' the VAT register of two categories of entities. The first of these were traders registered by criminals for VAT purposes, with a view to using them as a 'missing trader'. Such entities are not established to carry out genuine economic activities. They are characterised by a lack of assets and employees to carry out their operational activities. They also often do not have a real registered office or genuine board members – their roles may be performed by victims of identity theft or by foreign nationals. These businesses are not present at the address they provide as their registered office, nor is it possible to contact them via the telephone number they have given to the authorities. The second category of entities that were to lose their VAT registration were so-called *shelf companies*. These are usually companies that, although registered, including for VAT purposes, do not carry out operational activities. They were set up by professional operators with a view to their subsequent resale as 'ready-made companies', allowing the purchaser to start a business quickly, without having to go through the time-consuming formalities of incorporation and registration. These companies are often used by organised crime groups to establish 'missing taxpayers'. A disappearing taxpayer operating through a *shelf company* can: 1) rapidly transition from organisational

[543] G. Harrison, R. Krelove, *VAT Refunds: A Review of Country Experience, IMF Working Paper*, WP/05/218, 2007, https://www.imf.org/en/Publications/WP/Issues/2016/12/31/VAT-Refunds-A-Review-of-Country-Experience-18646 [accessed: 11 July 2024].

[544] EC (2004), *Report from the Commission to the Council and the European Parliament on the use of administrative cooperation arrangements*...

[545] IVA (2007), *Combating VAT Fraud*...

[546] A. Bartosiewicz, *Czarna lista podatników*, Przegląd Podatkowy, 2018, no. 4, p. 9.

to operational phases, i.e., begin issuing fraudulent invoices; 2) more easily gain the trust of contractors due to a long period of (a) market presence (in reality, passive, i.e., without operational activity) and (b) registration in the VAT register (in reality, formal, i.e., without taxable activity) when conducting business with them.

> '[A]n existing taxpayer is not merely an entity that exists formally, i.e., is registered in the National Court Register or the taxpayer register. It must also exist in reality, meaning it actually conducts business activities. Undoubtedly, in the sphere of tax law, it is a characteristic principle to link tax obligations primarily to the real, and not just formal, actions of entities.'[547]

> '(...) Companies may also register for VAT purposes whose activities are not connected with the conduct of an economic activity within the meaning of the VAT Act, but are aimed, for example, at processing 'fake' invoices or defrauding tax refunds. It is therefore necessary to identify such taxpayers and either prevent them from registering or swiftly deregister them.'[548]

Additional conditions for registration. A prelude to restoring the credibility of the VAT register was the introduction, by the law of 1 December 2016 amending the Value Added Tax Act,[549] of additional prerequisites conditioning the registration of a taxpayer in the active VAT register, confirming the real and not fictitious nature of the registered business. Specifically, these included:[550]

1) The entity genuinely operating at the declared address;
2) The possibility of contacting the entity or its appointed representative;
3) The ability of the applicant to attend the tax office upon request.

Obligation of *ex ante* verification. The newly introduced regulations, effective from 1 January 2017, obliged the head of the tax office to conduct a documented verification of the data presented in the registration application submitted by the entrepreneur before entering the taxpayer in the register (Article 94(4) uVAT). Consequently, in order to register for VAT purposes as an active taxpayer, it is no longer sufficient to simply submit the relevant registration application to the appropriate tax office. It is now necessary to successfully pass an administrative verification process regarding the accuracy of the data provided, including the actual address of the registered office and the ability to conduct the declared activity – encompassing the possession of an infrastructure appropriate to its scale and nature.

If, during the verification process, it is found that the data contained in the registration application is untrue or that the entity applying for registration does not exist, the head of the tax office will not register the taxpayer in question, without any obligation to notify the taxpayer of this decision (Article 96(4a) uVAT). Refusal of registration may also result, inter alia, from the tax authority's inability to contact the entity (or its proxy) or from the entity's (proxy's) failure to appear at requests of the head of

[547] Judgment of the WSA w Kielcach of 5 June 2014, file reference I SA/Ke 172/14.

[548] Explanatory Memorandum to the Government Bill on Amendments to the Value Added Tax Act and Certain Other Acts, Paper No. 965, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=965 [accessed: 11 July 2024].

[549] Act of 1 December 2016 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2024).

[550] Added paragraphs 4a-4c to Article 96 uVAT and new grounds for deletion (amended paragraph 9 and added paragraph 9a to Article 96 uVAT).

the tax office. In these cases, attempts by the tax authority to contact the applicant must be documented, inter alia, by an acknowledgement of receipt of the summons, or by a corresponding official note from the head of the office about the attempted telephone contact. A refusal may also be the result of a 'site visit' by an official to the business premises, for instance, if it is found that the business does not operate at the declared address. It may also be a consequence of a conversation with the taxpayer about the planned activity, such as its subject matter, the required level of employment, or the planned investments, when it is evident that the declared activity will be fictitious. The effect of this mandatory in-depth analysis of each application is an extension of the waiting time for entrepreneurs to be entered into the register, from several weeks to even several months.[551] The refusal of registration itself takes the form of an administrative decision against which an appeal may be lodged.[552]

Obligation of *ex post* verification. Under the provisions of the Act of 1 December 2016, the head of the tax office was obliged to verify the prerequisites for registration of an entity as an active VAT taxpayer also *post factum*, i.e. not only at the stage of registration of the entity but also, periodically, during its operation as a VAT taxpayer (Article 96(9) uVAT). This provision specifies that the deletion of a taxpayer from the register will take place (without the need to notify the taxpayer) if, inter alia, it transpires that such a taxpayer does not exist; if, despite documented attempts, it is not possible to contact them or their proxy; if the taxpayer or their proxy does not respond to summonses from the tax authority or the tax inspection authority; or if the data provided in the registration application proves to be untrue. Deletion will also take place if the data provided by the taxpayer in their submitted notification regarding data updates is not accurate. A taxable person who potentially exhibits the characteristics of a *shelf company* is also subject to deregistration as a VAT taxpayer. This refers to an entrepreneur who has not conducted business activity for a specified period (Article 96(9a) uVAT, subject to paragraphs 9b-9f):

1) Has suspended its economic activity for at least 6 consecutive months;

2) Being obliged to submit VAT returns (Article 99(1)-(3) uVAT), has failed to submit such returns for six consecutive months or two consecutive quarters;

3) Has submitted the aforementioned returns for six consecutive months or two consecutive quarters but did not report any sales or purchases with deductible tax amounts;

4) Has issued invoices or credit notes documenting transactions that did not take place

or

5) In the course of their business, they knew or had reasonable grounds to suspect that suppliers or purchasers involved, directly or indirectly, in the supply of the same goods or services were engaging in fraudulent tax arrangements in order to gain a financial advantage.

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[551] Infor, *Urzędy skarbowe przedłużają rejestrację na potrzeby VAT,* https://ksiegowosc.infor.pl/podatki/vat/podatnik-vat/3569090,Urzedy-skarbowe-przedluzaja-rejestracje-na-potrzeby-VAT.html [accessed: 11 July 2024].

[552] Insofar as this does not follow directly from the law, it is indicated in the jurisprudence of the administrative courts, see: Judgment of the Supreme Administrative Court (NSA) of 14 April 2023, ref. I FSK 517/20.

Similarly, the head of the tax office will remove a given entity from the register as an EU VAT taxpayer if, for three consecutive months or one quarter, it submits declarations showing no sales or purchases of goods or services with deductible tax amounts. Removal from the register will also occur if, for a period of three consecutive months, the entity fails to submit recapitulative statements, despite being obliged to do so (Article 97(15) and (15a) uVAT).

Implementation of new obligations. Starting in January 2017, with the implementation of new regulations, tax offices began verifying register entries.[553] In the first year alone, 110,372 entities were removed from the register. This number increased by approximately 7% the following year, reaching 118,315. From that point, the number of deletions gradually decreased, falling by about 30% between 2018 and 2021, to 83,852 deletions in 2021. The pandemic year of 2020 was an exception to this trend, with 122,776 taxpayers removed from the register.

Between 2017 and 2021, most deletions involved entities that had suspended their activities. While their number gradually decreased during this period, from 75,668 in 2017 to 56,435 in 2021 (a decrease of one-quarter), their share of total deletions remained relatively stable, fluctuating between 65% and 69%. The exception was 2020, when a surge in business suspension deletions occurred due to the pandemic and economic disruption. These deletions increased from 61,170 in 2019 to as many as 93,326 in 2020 (an increase of nearly 53% year-on-year). This pushed their share of total deletions to a record high of 76%. The following year, however, deletions due to business suspensions fell to 56,435, 40% lower than in the first year of the pandemic and almost 10% lower than in 2019. Consequently, their share of total deletions dropped from the record high of three-quarters to a typical pre-pandemic level of around two-thirds (chart 41).

Among other reasons for register deletion, the most significant was the failure to file declarations or the filing of "blank" declarations (i.e., declarations reporting no turnover). Between 2017 and 2021, the number of entities removed for filing 'empty' declarations gradually decreased by more than 60%, from 16,550 in 2017 to 6,292 in 2021. Conversely, the number of entities deleted for failing to file declarations increased by 20%, from 10,328 in 2017 to 12,426 in 2021. However, this category of deletions doesn't show a clear upward trend, exhibiting significant year-on-year fluctuations.

However, the number of entities deleted for being found non-existent has steadily decreased, falling by 94% from 1,324 in 2017 to just 77 in 2021. Deletions due to taxpayer non-appearance after being summoned by the tax office increased sharply from 1,230 to 3,438 (almost tripling) between late 2017 and early 2018, but then stabilised at around that level in subsequent years (3,214 deletions in 2020 and 3,302 in 2021). Deletions due to taxpayer tax evasion, while remaining very low, showed a strong upward trend, rising from 29 cases in 2018 to 194 in 2021. Deletions due to documented fraudulent activities and involvement in unreliable VAT settlements remained marginal, never exceeding 90 cases in any of the years examined.

[553] M. Szulc, DGP, *Efekt JPK: Prawie 160 tysięcy firm wykreślonych z rejestru VAT,* https://podatki.gazetaprawna.pl/artykuly/1153520,firmy-skreslone-z-rejestru-vat-na-skutek-jpk.html [accessed: 11 July 2024].

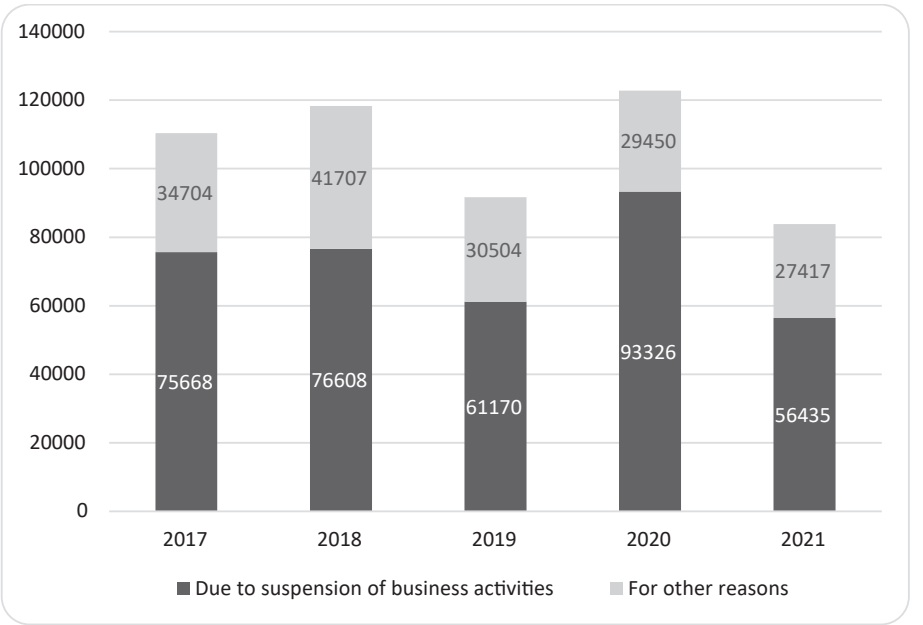


Chart 41: Number of entities removed from the register of active VAT taxable persons

Source: own compilation based on data from the Ministry of Finance.

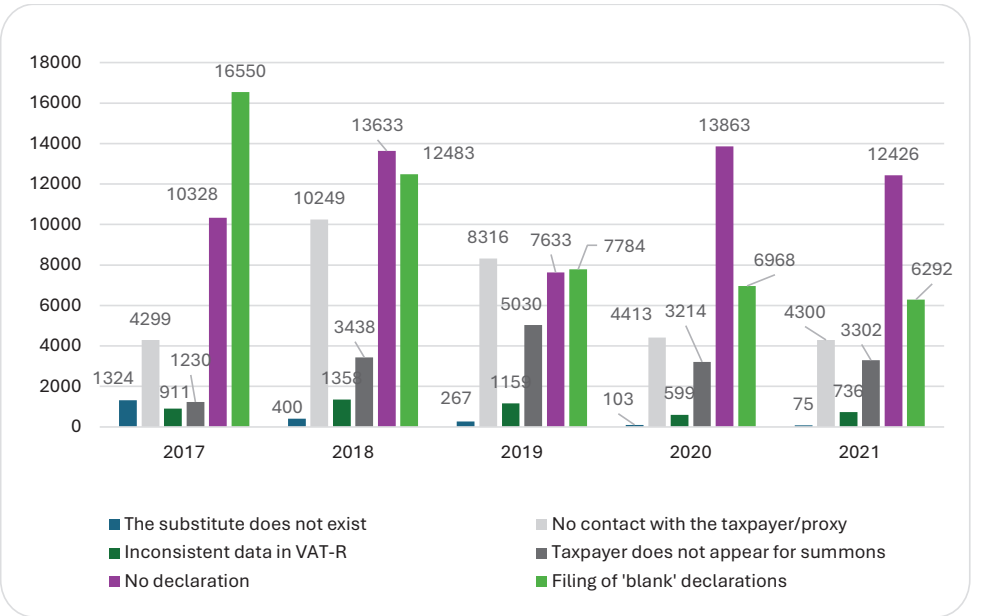


Chart 42: Deletions from the register of active VAT taxable persons [other than suspension of activity]

Source: own compilation based on data from Ministry of Finance.

Blacklist of VAT taxpayers. In 2018, the Act of 24 November 2017 entered into force,[554] introducing a new Article 96b to uVAT (effective from 13 January 2018). This provision provided a legal basis for the Head of the National Revenue Administration (KAS) to maintain, in electronic form, lists of taxpayers who were refused registration (Article 96(4a) uVAT), deleted from the register (Article 96(9) or (9a) uVAT), and reinstated to it (Article 96(9h-j) uVAT). The list of traders refused registration or removed from the register covered entities in respect of which the aforementioned circumstances occurred after 1 January 2015, while the list of reinstated entities covered entities re-registered after 1 January 2017.

The establishment of these lists complemented the information available to taxpayers in the register of active VAT taxpayers, which was being successively 'cleared' of entities not actively conducting business. While the list of active VAT taxpayers currently contains information on entities that have been positively verified by the tax authorities, the new lists (colloquially referred to as the 'blacklist' of VAT taxpayers) inform taxpayers about entities that have not successfully passed such an examination and do not appear in this register. It therefore contains important information about potentially dangerous counterparties, such as the date and legal grounds for refusal of registration or removal from the register, as well as, in addition to the trader's data (REGON, PESEL, or KRS number), identification data of persons authorised to represent the audited entity, its appointed representatives, and partners.

At the same time, it is worth remembering that taxpayers on the 'blacklist' are not always 'suspect' companies that have been, or are likely to be, used to commit tax crimes. Many are entities that were previously economically active but have temporarily suspended operations, perhaps due to difficult market conditions, such as those caused by the pandemic. This highlights the importance of careful analysis by the counterparty of the data on the list, including the reasons for deletion. Conversely, the list of entities whose VAT registration has been restored helps efficiently identify counterparties who were either incorrectly deleted or met the deletion criteria but have since demonstrated that they are, in fact, actively conducting business.

> 'The blacklist should be a helpful tool for identifying entities with questionable reputations with which trading may pose certain risks. If an entity with which one intends to trade is on the list, this should trigger a red flag.[555]

VAT taxpayer white list. In September 2019, the various 'black lists' were consolidated into a single list, which was subsequently expanded to include entities registered as VAT taxpayers, encompassing data on both active and exempt VAT taxpayer status.[556] This list includes, among other information updated daily, the tax identification number (if assigned), the dates of the taxpayer's registration, deletion, and reinstatement in the register, as well as their name, address. A key new feature is the

[554] Act of 24 November 2017 amending certain laws to counteract the use of the financial sector for fiscal fraud (Journal of Laws, item 2491).

[555] Statement by R. Namyslowski to DGP 15.1.2018, *Czarna lista podatników już działa. Będzie też biała?* https://podatki.gazetaprawna.pl/artykuly/1097731,czarna-lista-podatnikow.html [accessed: 12 July 2024].

[556] Act of 12 April 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1018, as amended).

inclusion of account numbers provided by the trader in their identification or update notifications and confirmed using STIR. Entities can be checked in the register as of a specific date, no earlier than five years prior to the year in which the check is performed (Article 96b(1) and (2) of the Value Added Tax Act).

Bearing in mind that payment to a taxpayer's account listed in the Register exempts their counterparty from a number of sanctions, it has become common practice to refer to this list as the 'white list of VAT taxpayers'. If a counterparty makes a payment to a taxpayer's account not included in the List, they will not be able to recognise the indicated expense as a deductible cost for income tax purposes.[557] This restriction applies only to payments exceeding PLN 15,000 gross (Article 22p(1)(2) uPIT and Article 15d(1)(2) uCIT). Payment to an account not registered on the white list also means that the purchaser, who is a VAT taxpayer, may be held jointly and severally liable with the supplier of the goods or service provider registered as an active VAT taxpayer for their tax arrears (Article 117ba § 1 and 2 OrdPod). Importantly, payment to an account other than the one registered on the 'white list' does not entail deprivation of the taxpayer's right to reduce the amount of output tax. In order to avoid negative consequences related to making a payment to an account not included in the list, the taxpayer must, within seven days, notify the tax office of the number of the account outside the list to which they ordered the transfer. To make it easier for taxpayers to use the new tool, the Minister of Finance issued clarifications on 20 December 2019 on the so-called white list of VAT taxpayers.[558] Furthermore, payments made under the SPM in these circumstances relieve joint and several liability.

Obtaining counterparty information from the administrative authority. Under the provisions of the Act of 27 October 2017 amending the Tax Ordinance Act,[559] entrepreneurs were enabled to obtain information on the tax reliability of their business partners directly from their competent tax office. Pursuant to Article 293 § 3 of the OrdPod, information provided by the tax office to a taxpayer regarding their counterparties is excluded from tax secrecy provisions. This information pertains to:

1) The taxpayer's failure to file returns or other documents they were obliged to file under the provisions of tax law;

2) The failure by the taxpayer to include, in their returns or other documents, activities they were obliged to include under the provisions of tax law;

3) Whether or not the taxpayer is in arrears with respect to taxes arising from a tax return or other document filed under the provisions of tax law.

The indicated information may be provided in the form of a certificate issued by the administrative authority (Article 306ia OrdPod). The applicant must be a business entity. The Act does not define the term 'counterparty'. The explanatory memorandum to the bill indicates that: 'A taxpayer's counterparty may be any entity that is a party to a financial transaction that aims to exchange goods or services'.[560]

[557] Act of 15 February 1992 on corporate income tax; Act of 26 July 1991 on personal income tax.

[558] MF, *Objaśnienia podatkowe z dnia 20 grudnia 2019 r. Wykaz podatników VAT*, https://www.gov.pl/web/finanse/objasnienia-podatkowe-z-dnia-20-grudnia-2019-r-wykaz-podatnikow-vat [accessed: 12 July 2024].

[559] Act of 27 October 2017 amending the Tax Ordinance Act (Journal of Laws, item 2169).

[560] Explanatory Memorandum to the Government's Bill to amend the Tax Ordinance Act of 15 September 2017, print no. 1836, https://orka.sejm.gov.pl/Druki8ka.nsf/0/04DDF8E02334705CC12581A2003F01E2/%24File/1836.pdf [accessed: 12 July 2024].

3.3.3. VAT Due Diligence Methodology

Warning letters. As early as the first half of 2014, the Ministry of Finance recognised the limited knowledge of entrepreneurs regarding the nature of VAT crime. To reach taxpayers at risk of becoming involved in fictitious trading organized by criminals, the Ministry, while preparing the policy document 'Measures to increase tax compliance and improve the efficiency of tax administration in 2014-2017,' [561] included action No. 11: 'Warning letter' as a new measure to reduce VAT fraud. This measure, based on the example of warnings published by the Dutch authorities,[562] was to take the form of a warning message published on the website of the Ministry of Finance.

The warning letters were to be aimed at operators in selected industries and provide them with information on:

1) The specifics of the mechanisms observed by the administration in a given tax crime market;
2) Recurring features of the transactions used in the fraud;
3) Actions to be taken by an honest businessman to verify the tax credibility of their counterparty and to avoid danger of committing a crime.

The first warning letter, issued on 25 August 2014, informed entrepreneurs about the threat of electronics trading fraud observed on the Polish market since 2011.[563] The second letter, published three months later on 13 November 2014, addressed the threat of fraud in fuel trading.[564] Despite the commitment outlined in the policy document and the significant scale of fraud observed in other industries, the Ministry of Finance discontinued these communications. The third and final letter was published on 9 May 2016, and concerned tax crime in canola oil trading.[565]

Effectiveness of warning letters. While the Ministry of Finance's initiative to inform VAT taxpayers about market threats is commendable, the effectiveness of the tools used must be considered disproportionately low compared to their potential and the actual scale of market needs. The greatest weakness of these warning letters is their sporadic nature. Given the ease with which tax evasion can shift between product categories and even economic sectors, a more pressing need was to develop universal guidelines (materials) applicable to all businesses, regardless of industry. Such a generalised warning would have had a much broader impact, reaching a larger group of tax offenders' potential victims. Industry-specific materials would be more effective as a second, more detailed stage of an information campaign. Furthermore, when deciding to dedicate warnings to specific industries, the Ministry of Finance should ensure that the materials are substantively tailored to the unique characteristics of

[561] Ministry of Finance, *Działania zwiększające stopień przestrzegania przepisów podatkowych i poprawiające efektywność administracji podatkowej w latach 2014-2017*, https://tinyurl.com/2prxub5t [accessed: 12 July 2024].

[562] RP.pl, *Wyłudzane VAT to zagrożenie dla przedsiębiorców*, https://www.rp.pl/opinie-prawne/art5023141-wyludzane-vat-to-zagrozenie-dla-przedsiebiorcow-krolikowska [accessed: 12 July 2024].

[563] Ministry of Finance, *List ostrzegawczy do przedsiębiorców*, https://tinyurl.com/yakn5s9z [accessed: 12 July 2024].

[564] Ministry of Finance, *List do podatników VAT ws. zagrożenia oszustwami w obrocie paliwami*, https://tinyurl.com/4kfzrj3m [accessed: 12 July 2024].

[565] Ministry of Finance, *List ostrzegawczy ws. wyłudzania VAT w obrocie olejem rzepakowym*, https://tinyurl.com/444nrfmc [accessed: 12 July 2024].

each branch of the economy and that materials are published for all threatened industries. The planned 2014-2017 warning letter programme, however, lacked a timetable and effectively ended just three months after its launch. Consequently, it only covered two industries – electronics and fuel –leaving a wide range of other affected industries without dedicated studies.

A significant shortcoming of the warning letters was that their content was prepared independently by the Ministry of Finance. This approach had a negative impact on both their content and their effectiveness within the target environment. The lack of consultation with entrepreneurs operating in the sector and their associations, as well as with professional legal bodies or the academic community, limited the substantive scope of the published materials to the experience of the legislative branch and control bodies. Consequently, the information was selective and did not fully reflect the real challenges of conducting business in a given market. The Ministry's limited knowledge of the specifics of particular industries is reflected in the brevity of the letters and their lack of practical examples relating to practices in selected branches of the economy. Furthermore, the lack of stakeholder involvement in developing the content of the alerts reduced the likelihood of the information reaching its intended recipients. Stakeholders involved in dialogue with the administration would not only share their experiences and needs, but also, through the collaborative nature of the process, audit their own processes.

Example of Germany. In developing a campaign strategy against VAT carousels in late 2016 and early 2017, the Ministry of Finance opted for a comprehensive approach, providing taxpayers with universal guidance on the risks posed by organised crime and how to mitigate them. The Ministry's decision was largely based on Germany's experience with similar initiatives. The Federal Ministry of Finance (German: Bundesministerium der Finanzen, BMF), tackling the increasing scale of VAT carousels, prepared a document entitled 'Manual for Precautionary Measures against Fraud in the Intra-Community Supply of Goods and Services Tax' (*German: Merkblatt zur Umsatzsteuer Beachtung des gemeinschaftsrechtlichen Missbrauchsverbots*).[566] This document, prepared by the German ministry in cooperation with the business community, provided a broad catalogue of circumstances that could indicate that a business partner of a German taxpayer was involved in generating fictitious turnover. It contained 36 detailed characteristics of turnover deemed indicative of tax dishonesty on the part of the trader, grouped into practices:

1) Of a general nature concerning all, in particular new contractors;
2) Characterising dishonest sellers, including 'missing traders';
3) indicating buyers violating tax law, including 'brokers'.

This instruction, although it specified in detail the features of fictitious trading, was not exhaustive. Compliance with the good practices listed within did not absolve the taxpayer of liability, but merely provided grounds for a stronger presumption of due diligence. The content of the instruction was eventually incorporated into the official,

[566] For extensive discussion of this topic, e.g. R. Weimann, *Neues Merkblatt zum Umsatzsteuer-Missbrauch: Mandanten vor übereilten Statements warnen!* http://www.iww.de/gstb/schwerpunktthema/umsatzsteuer-neues-merkblatt-zum-umsatzsteuer-missbrauch-mandanten-vor-uebereilten-statements-warnen-f82664 [accessed: 12 July 2024].

ministerial 'commentary' on the German VAT Act, which served as the prototype for the tax explanations known under the Polish Tax Ordinance.[567]

In addition to its publication on the BMF website, it was distributed to taxpayers by the finance offices in October 2014. These taxpayers were then required to acknowledge receipt and familiarise themselves with its contents. The letter to the taxpayer comprised:

1) Warnings about the risk of being involved in a 'VAT carousel';
2) A description of the procedure;
3) Lists of 'suspicious behaviour' observed: 1) when contacting a new contractor, 2) when buying and 3) when selling;
4) Warnings about the legal consequences of being caught up in a tax carousel, in particular the non-deductibility of tax and the risks of criminal penalties;
5) A return letter intended to be sent back to the office.

The return letter attached to the correspondence contained the following: 1) the name of the sender (the taxpayer) and their competent tax office, which had previously sent them the instruction; 2) a statement for the taxpayer's signature confirming receipt of the instruction, familiarisation with its contents, and a declaration that they would follow the instructions specified within their business activity; 3) a warning that the instruction was not exhaustive and that compliance with the conditions listed within did not guarantee that the taxpayer had exercised due diligence. In the event of irregularities, it does not guarantee the taxpayer the right to deduct input tax (§ 15 UStG), the application of the VAT exemption with the right to deduct in the case of an intra-Community supply of goods (§ 4 No. 1b in conjunction with § 6a UStG), or the absence of criminal liability for wilful failure to pay tax (§ 25d UStG).

Ministry of Finance assumptions. Drawing on the German example, the Ministry of Finance began work on universal information material to teach businesses how to avoid the dangers of VAT mafia activity. This material was to be prepared in cooperation with the market, including entrepreneurs and their associations, as well as the tax advisory community. This approach was chosen to ensure a high substantive quality of the material, addressing the real needs of the market and, equally importantly for the authorities, to facilitate a public debate lasting several months, which placed the issue of VAT crime at the forefront, thereby ensuring the involvement of a wide range of stakeholders even before the publication of the finished material.

> '[Participants in VAT carousels] can also become honest but careless traders who run the risk of having their right to deduct input tax challenged by the tax authorities (...) [i]f if it is objectively proven that the exercise of this right would involve an offence or abuse. This is the case if the tax offence is committed by the taxpayer themselves and if the taxpayer knew or should have known that, by acquiring the goods, he was involved in a transaction related to a VAT offence.'[568]

[567] Umsatzsteuer-Anwendungserlass vom 1. Oktober 2010, BStBl I S. 846 – aktuelle Version (Stand 12. Juni 2024) – nach dem Stand zum 31. Dezember 2023, https://www.bundesfinanzministerium.de/Content/DE/Downloads/BMF_Schreiben/Steuerarten/Umsatzsteuer/Umsatzsteuer-Anwendungserlass/Umsatzsteuer-Anwendungserlass-aktuell.pdf?__blob=publicationFile&v=9 [accessed: 12 July 2024].

[568] Notice of initiation of tax consultation of 30 June 2017 on the list of prerequisites for buyer due diligence in domestic transactions in the context of the right to deduct input tax, PT3.8101.9.2017, see

Work on the Methodology. Work on preparing the material began with the publication, on 30 June 2017, of a document entitled 'Notice of the launch of a tax consultation on the list of prerequisites for due diligence on the part of the purchaser in domestic transactions in the context of the right to deduct input tax'. The consultation invited all taxpayers to submit their positions by 28 July 2017. The Ministry indicated that the purpose of the consultation was to develop a list of due diligence conditions, the fulfilment of which, at the time of the transaction, would preclude any grounds for challenging taxpayers' right to deduct VAT following a determination that the taxpayers neither knew nor could have known that their supplier had committed an offence as part of a given transaction. The intended outcome was therefore to produce a clear and precise list of steps that honest taxpayers should take to avoid the risk of their right to deduct input tax being challenged by the tax authorities. In the first round of consultations,[569] which ended with a conference on 13 September 2017, dozens of entities participated and submitted as many as 69 opinions to the Ministry of Finance.[570] In the second round of consultations, a Working Team appointed by the Minister of Finance, consisting of representatives of the Ministry of Finance, the National Revenue Administration and 12 entities representing the business, developed the final version of the material.[571]

Methodology. On 25 April 2018, the Ministry of Finance published the result of the Task Force's work, which was the 'Methodology for assessing due diligence by purchasers of goods in domestic transactions' (hereinafter: Methodology).[572] The biggest change from the associated expectations was a significant shift in the purpose of its issuance. This was to increase the certainty of domestic transactions and the transparency of KAS actions by publishing a catalogue of rules common to the entire administration for assessing due diligence on the part of the taxpayer. A taxpayer may be deprived of the right to deduct input tax from output tax only if the tax authorities demonstrate, based on objective circumstances, that the taxpayer knew or should have known that their supplier was in breach of the law. In such a situation, the taxpayer should be deemed to have participated in that fraud, and the rules depriving the taxpayer of the right to deduct input tax will then apply. It is for the authority to assess whether the taxpayer has duly verified their counterparty (supplier of the goods) and the circumstances of the transaction with them. These rules outline the factors that KAS should prioritise when evaluating whether the taxpayer exercised due diligence, considering their actual capabilities.

While the Methodology itself is addressed to tax authorities, it is accessible to taxpayers. If a trader takes the actions outlined, it significantly increases the likelihood of

Ministry of Finance, *Notice of initiation of tax consultation of 30 June 2017*, https://tinyurl.com/2rxr3svb [accessed: 12 July 2024].

[569] Ministry of Finance, *Konferencja nt. należytej staranności w VAT*, https://tinyurl.com/ycy7hz3b [accessed: 12 July 2024].

[570] Letter to the Ministry of Finance of 27 July 2017, Ministry of Finance, *Publikacja opinii przesłanych w ramach konsultacji podatkowych w sprawie listy przesłanek należytej staranności po stronie nabywcy w transakcjach krajowych*, https://tinyurl.com/584h423m [accessed: 12 July 2024].

[571] Ministry of Finance, *Finał konsultacji społecznych ws. należytej staranności*, https://tinyurl.com/2bmnczmb [accessed: 12 July 2024].

[572] Ibid.

demonstrating due diligence. If they comply with its provisions, their right to deduct input tax should only be challenged if they have ignored objective circumstances indicating that the transaction may be intended to breach the law or be fraudulent. However, this protective power is only of a 'soft' nature. Despite addressing its provisions to administrative bodies, the Ministry has not given it the taxpayer-protective status of a tax clarification.

The tax authorities may also consider circumstances of the transaction or actions taken by the taxpayer other than those listed in the Methodology. If the taxpayer does not take the actions described in the Methodology, they do not automatically lose their right to deduct VAT. If the authority challenges the VAT settlements, the taxpayer may demonstrate that they exercised due diligence in entering into the transaction in any other way.

Given the greater risk of a lack of due diligence in transactions with new counterparties, a distinction has been made between the prerequisites for assessment: 1) at the commencement of cooperation with the counterparty (a riskier situation), and 2) during the course of cooperation (a safer situation). The start of cooperation with a counterparty also encompasses situations where a transaction is concluded with an entity with whom the taxpayer has previously transacted, but the new transactions involve goods outside the entity's established industry or business profile and not previously purchased from them by the taxpayer.[573]

The Methodology identifies several formal criteria for counterparty verification, including checking the taxpayer's VAT registration, National Court Register and CEiDG entries, and confirming they possess the necessary concessions and permits to legally conduct their declared business activity.[574] On the other hand, the essence of the material criteria is that the counterparty proposes non-market conditions, i.e., conditions that are 'too good to be true.[575] These include situations where the proposed commodity price deviates significantly from the market price, or where the transaction is devoid of economic risk. Other formal conditions include, among other things, a price reduction for cash payment when the transaction value exceeds PLN 15,000, payment for the goods to two separate bank accounts, a third-party account or a foreign account, or unusually short payment patterns. In the case of continued cooperation with an existing business partner, aside from the need for regular verification of their ongoing fulfilment of the aforementioned formal criteria,[576] the Methodology indicates, as a key transaction criterion,[577] any change, without economic justification, to the previous rules of cooperation between the taxpayer and their counterparty. Particular consideration is given to a taxpayer using the split payment mechanism in settlements. The document states that the tax authorities consider that due diligence has been observed if: 1) payment to the supplier of the goods has been made via SPM;

[573] Ministry of Finance, *Metodyka w zakresie oceny dochowania należytej staranności przez nabywców towarów w transakcjach krajowych*, Warsaw 2018, p. 2, https://www.podatki.gov.pl/media/4522/metodyka.pdf [accessed: 12 July 2024].

[574] Ibid.

[575] Ibid.

[576] Ibid.

[577] Ibid.

2) the taxpayer has positively verified the formal prerequisites; 3) there are no other circumstances that could clearly indicate a lack of due diligence.

In doing so, the Methodology states that it reflects the knowledge and good practices of the market and the administration, current at the time of its publication. It is therefore intended to be updated regularly, so that its content is adapted to the current needs of KAS, or should economic realities indicate such a need. The content of the Methodology was subsequently updated three years after its publication, in 2021.[578] It was expanded to include, among other things, additional transaction criteria related to the taxpayer making:

1) Payments to a bank account that is not on the white list;

2) Payment to a counterparty without applying the split payment mechanism, despite the obligation to do so;

3) The analysis of official documents provided by the contractor, in particular those containing obvious inaccuracies;

Evaluation of the Methodology. As a result of the publication of the 'Methodology for assessing due diligence by purchasers of goods in domestic transactions', Polish taxpayers received a universal (applicable to all industries) compendium of good practices for verifying the tax integrity of their contractors. Making this document a key resource for the National Revenue Administration's control activities has significantly reduced previous risks associated with interactions with the administration, which stemmed from inconsistent methods of evaluating businesses' conduct when verifying contractor tax integrity. Consequently, the Methodology has become the primary source of information for taxpayers regarding the risks of VAT crime, not only emphasizing the need for due diligence but also providing a solid foundation for companies to develop internal VAT due diligence procedures.[579]

The involvement of a wide range of stakeholders in the work on the document not only ensured its high substantive quality,[580] but also contributed to the dissemination of knowledge about the Methodology – first during its development and then upon its publication. Opening up the work to external stakeholders responded to their genuine needs, as confirmed by their numerous contributions to the consultation. Despite the complexity of the project's subject matter and the short deadline for submissions, as many as 69 entities participated in the consultations and submitted studies often running to dozens of pages. The source of the controversy surrounding the Methodology is the change of purpose of the prepared material, which occurred during the Working Group's work.[581] Consequently, entrepreneurs received useful and much-

[578] Ministry of Finance, *Metodyka w zakresie oceny dochowania należytej staranności przez nabywców towarów w transakcjach krajowych*, Warsaw 2021, https://tinyurl.com/34u9jvkj [accessed: 12 July 2024].

[579] Grant Thorton, *Jak przygotować własną procedurę należytej staranności VAT?*, https://grantthornton.pl/publikacja/jak-przygotowac-wlasna-procedure-nalezytej-starannosci-vat/ [accessed: 12 July 2024].

[580] 'As a general rule, the circumstances listed as suggesting the possibility of fraud appear to reasonably reflect real-world experience, with the caveat that the mere occurrence of some of these circumstances does not, in itself, prove fraud. (...) This methodology must be applied taking into account the rulings of the European Court of Justice', see M. Sęk, *Metodyka oceny należytej staranności: ułatwienie czy utrudnienie dla podatników?*, Tax Review, 2018, no. 10, p. 30.

[581] MDDP, *Jak dochować należytej staranności i nie zwariować*, https://www.mddp.pl/jak-dochowac-nalezytej-starannosci-i-nie-zwariowac/ [accessed: 12 July 2024].

needed material, but it differed from what they had been promised. Instead of a definitive list of precise conditions, the meticulous fulfilment of which would guarantee a taxpayer's trading security, the Ministry and its external partners developed an open catalogue of good business practices. While this is a valuable source of information for entrepreneurs regarding which counterparty and transaction circumstances should be verified to exercise due diligence,[582] performing such verification does not guarantee that the indicated risk will be mitigated. The Ministry of Finance's behaviour can be understood. The Task Force faced the task of finding a compromise so that the list of actions allowing for the assessment that a taxpayer has demonstrated due diligence: 1) is sufficiently comprehensive to protect the state budget; 2) does not constitute an instruction on how to break the law for tax offenders; 3) is a set of conditions whose fulfilment is feasible for businesses.[583] The rationale for believing that the Team's work approached a 'golden mean' is that stronger taxpayer protection could not be provided even by the German compilation that served as a model for the Methodology.

The authors of the Methodology aptly described it as a document that should be subject to modification in line with changes in legislation and observed market practices. Therefore, the fact that the Methodology was updated in 2021 should be viewed positively. To ensure the cyclical nature of work on its content, it would be advisable to require the legislator to review its content periodically, carried out in consultation with the market. The cyclical nature of the work on the document would not only ensure that it remains up-to-date, but also, thanks to the involvement of partners from outside the administration, would revive interest in the Methodology among entrepreneurs, ensuring they are aware of its continued validity. Distributing the Methodology's content directly to businesses, similar to Germany's approach in 2014, could also improve its reach. Developing more detailed, industry-specific materials would be another valuable enhancement, finally achieving the goal that the warning letters failed to accomplish a decade ago.

3.4. Sanctions

European trends. Between 2009 and 2012, during a period of a sharp increase in the scale of tax evasion, criminal regulations were seen to be tightening in many European countries. These targeted both members of organised criminal groups orchestrating VAT carousels and those cooperating with them.[584] As a rule, the changes in

[582] D. Strugliński, Dochowanie należytej starnością na gruncie VAT w dobie cyfryzacji, [in:] E. Małecka-Ziębińska (ed.), *Oszustwa związane z VAT w dobie pandemii i cyfryzacji gospodarki*, Poznań 2023, p. 136.

[583] Infor, *Metodyka dot. należytej staranności w VAT to krok w dobrym kierunku*, https://ksiegowosc.infor.pl/podatki/vat/podatnik-vat/780902,Metodyka-dot-nalezytej-starannosci-w-VAT-to-krok-w-dobrym-kierunku.html [accessed: 11 May 2024].

[584] See, inter alia, A. Argentiero, B. Chiarini, E. Marzano, *Tax Evasion and Economic Crime. Empirical Evidence for Italy*, CESifo Working Paper No. 5497, Munich 2015; ReedSmith, French Modified Finance Bill for 2012, https://www.reedsmith.com/en/perspectives/2012/02/french-modified-finance-bill-for-2012 [accessed: 12 July 2024]; Blevins&Franks, *Spain's New Anti Tax Fraud Law*, https://www.blevinsfranks.com/spains-new-anti-tax-fraud-law/ [accessed: 12 July 2024]; gov.uk, *Penalties: an overview for agents and advisers*, https://www.gov.uk/guidance/penalties-an-overview-for-agents-and-advisers#what-reasonable-care-means [accessed: 12 July 2024].

criminal law were a 'quick', 'media' reaction to the growing number of 'missing trader' frauds and preceded the implementation of systemic solutions to increase the speed of detection of irregularities, such as electronic reporting or e-invoicing. Simultaneously, their introduction often coincided with a significant increase in public interest regarding tax irregularities. This resulted in greater public awareness of the risks that cooperating with tax criminals poses to legitimate businesses, potentially making it more difficult for VAT mafias to establish networks of cooperating entities.

Situation in Poland. The period from 2016 to 2022 witnessed dynamic changes in the sanctioning provisions related to VAT regulations in Poland. While initial changes to sanctions were observed around the turn of 2015 and 2016, the core changes to penal provisions came into force in early 2017, with the implementation of solutions directly targeting the organisers of extortion schemes. Subsequent years saw the implementation of sanctions designed to enforce new reporting obligations for taxpayers and to verify the tax reliability of their counterparties. The sanctioning tools implemented in Poland can be divided into three groups:

1) Measures of a general nature, affecting all taxpayers and not specifically aimed at combating a particular type of irregularity. While their imposition did not lead to more severe punishment of entities involved in fictitious trading, it was associated with a high level of public interest, which increased business awareness of the importance of tax settlements as a key determinant of their financial security.

2) Targeted measures, aimed directly at tax offenders and those who knowingly cooperate with them. Their implementation was intended to be preventive. The deterrent effect was supposed to be particularly strong with regard to legitimate entrepreneurs operating in the market, for whom the threat of a substantial penalty was not sufficiently compensated by the benefits gained from cooperating in generating fictitious turnover.

3) Ancillary measures to support the enforcement of the new reporting obligations imposed on taxpayers and to verify the tax integrity of contractors. These measures were again addressed to taxpayers in general, but they referred directly to the sealing provisions. They were intended to guarantee, through the appropriate application of sanctions, the timely submission of taxpayers' returns and reports, as well as the reliability of documents. These documents, when analysed by the tax administration using algorithms, were intended to expedite the detection of tax offenders.

The multiplicity of sanctioning provisions, their various sources (e.g. the Penal Code, the Fiscal Penal Code, the Tax Ordinance, and uVAT), and their overlapping scopes created significant interpretation difficulties, requiring the application of separate conflict-of-law provisions for their resolution. However, the comprehensive nature of the sanction message, combined with its media coverage, increased the likelihood of reaching entrepreneurs at risk of tax extortion.

3.4.1. Penalty Interest

Regulation until 2017. A kind of prelude to the wave of changes in the sanction provisions was the 2015/2016 amendment differentiating the amount of interest for late payment of tax, depending on the scale of the taxpayer's breach. In the Polish legal order, the standard rate of interest for late payment is calculated on tax arrears at

a rate equal to the sum of 200% of the basic interest rate on a Lombard loan (as determined by regulations of the National Bank of Poland) and 2%, with the proviso that this rate cannot be lower than 8% (Article 56 §1 OrdPod). In addition to this standard rate, reduced and increased rates have been in force since 1 January 2016.[585]

Reduced rate. A reduced rate (Article 56a OrdPod), equal to 50% of the standard rate, is applied if a legally effective correction of the tax return is submitted (no later than six months after the deadline for filing the declaration), combined with payment of the resulting arrears within seven days of filing the correction. This is intended to encourage taxpayers to independently correct errors in their returns if they have underdeclared their tax liability, without waiting for action by the tax authority.[586]

Increased rate. An increased rate of interest on arrears pursuant to Article 56b OrdPod, amounting to 150% of the standard rate, shall apply to arrears of value-added tax and excise duty in the case of:

1) An understatement of tax liability or overstatement of the amount of tax overpayment or refund discovered by the tax authority during a tax audit or tax proceedings;

2) Adjustments to declarations:

   a) Filed after the service of the notice of intention to initiate a tax audit, and in cases where no notice is used, after the completion of the tax audit;

   b) Made as a result of the tax verification activities;

   c) Lodged after notification of the authorisation to carry out customs and fiscal controls;

   - If the amount of the understatement of tax liability, overpayment, or refund exceeds 25% of the amount due and is higher than five times the minimum wage,[587] in force on the day following the deadline for payment of the liability or the deadline for a refund;

3) Discovery by the tax authority in the course of tax verification activities, tax inspection or tax proceedings of failure to submit a declaration, despite the obligation to do so, and failure to pay the tax.

The aim of this change is enhanced prevention of indirect tax evasion and the fight against tax fraud.[588]

3.4.2. VAT Sanction

VAT sanction until 2008. Additional administrative sanctions, operating within the legal framework alongside interest charged for late payment and criminal and fiscal

[585] Act of 10 September 2015 amending the Act – Tax Ordinance and certain other acts (Journal of Laws, item 1649, as amended).

[586] Explanatory Memorandum to the Government Bill on Amendments to the Tax Ordinance Act and Certain Other Acts, print no. 3462, https://www.sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?nr=3462 [accessed: 12 July 2024].

[587] Within the meaning of the Minimum Wage Act of 10 October 2002 (consolidated text Journal of Laws of 2024, item 1773).

[588] Explanatory Memorandum to the Government Bill on Amendments to the Tax Ordinance Act and Certain Other Acts, print no. 3462, 7th Sejm, https://www.sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?nr=3462 [accessed: 12 July 2024].

penal provisions, have existed in Poland in the 1990s. They were provided for, among other things, in the initial versions of the laws on tax on goods and services and on excise duty.[589] Up to 2008, the Polish Value Added Tax Act still contained a regulation concerning the so-called VAT sanction (Article 109(4) to (5) of the Value Added Tax Act). This allowed the head of the tax office or tax inspection authority, in cases of understated tax due or overstated refunds, to impose an additional tax liability (the 'sanction') equal to 30% of the detected understatement or overstatement. Due to negative perceptions of this solution within the business community, its removal from the Polish legal system has been debated for a number years.[590]

TK 2007 judgment and abolition of VAT sanctions. The impetus for the indicated change came from the Constitutional Tribunal (TK) judgment of 4 September 2007.[591] The Court questioned the constitutionality of the cumulation of administrative and penal-fiscal liability. It indicated that

> '(...) art. 109(5) and 109(6) of the Act of 11 March 2004 on Goods and Services Tax (...) to the extent to which it allows for the application to the same person, for the same act, of an administrative sanction defined by the cited act as an 'additional tax liability' and liability for tax offences or fiscal offences, is inconsistent with art. 2 of the Constitution of the Republic of Poland.'

The amendment to the provisions of the VAT Act, implementing the judgment of the Constitutional Tribunal, was enacted on 7 November 2008.[592] Referring to the general objective of simplifying VAT regulations and reducing barriers which significantly impede economic activity, the Act removed the regulation of VAT sanctions from Polish law as of 1. December 2008.[593]

CJEU judgment of 15 January 2009. The historically applicable sanction in Poland was later examined by the CJEU. Due to concerns surrounding the application of the additional VAT liability, the Supreme Administrative Court (NSA) submitted a request to the CJEU for a preliminary ruling in July 2007.[594] The CJEU resolved the case by a ruling of 15 January 2009.[595] In doing so, it stated that the common system of VAT does not preclude Member States from providing in their legislation for administrative sanctions to be imposed on taxpayers of value added tax, particularly sanctions for

[589] In the year of introduction of the new taxes, they were to amount to as much as 500% of the depletion made by the taxpayer. Their constitutionality was confirmed by the judgement of the Constitutional Tribunal of 29 April 1998, ref. no. K.17/97; for details on this subject see: Explanatory Memorandum and OSR to the Government draft act on amendments to the act on tax on goods and services and some other acts of 28 October 2016, print no. 965, https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=965 [accessed: 12 July 2024].

[590] The government's legislative initiative to abolish the additional VAT liability dates back to 2006, see: Draft Act amending the Act and certain other acts - print No. 734 addressed to the Sejm of the Republic of Poland on 26 June 2006.

[591] Sygn. akt. P 43/06, Journal of Laws 2007, No. 168, item 1187.

[592] Act of 7 November 2008 amending the Value Added Tax Act and certain other acts (Journal of Laws No. 209, item 1320).

[593] Furthermore: 'The explanatory memorandum to the draft did not indicate that the change could have the effect of increasing fraud, despite the fact that such a risk existed': NIK, *Nadzór Ministra Finansów...*, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf [accessed: 11 May 2024].

[594] Order of 31 July 2007 referring a question for a preliminary ruling in Case I FSK 1062/06.

[595] Judgment of the CJEU of 15 January 2009 in Case C-502/07 *K-1 sp. z o.o. v Dyrektor Izby Skarbowej w Bydgoszczy*, ECLI:EU:C:2009:11.

identifying irregularities in the declaration of VAT due. However, any sanction introduced by a Member State must comply with the principle of proportionality. Indeed, Article 273 of the VAT Directive stipulates that Member States may impose such other obligations as they deem necessary for the correct levying and collection of the tax, provided that they do not exceed what is necessary to achieve those objectives and do not undermine the neutrality of VAT.

VAT sanction from 2017. Following public debate on the need to reduce the scale of the VAT gap, the legislator decided to reinstate the VAT sanction provisions into the Polish legal order, effective from 1 January 2017.[596] Sanctions were introduced at rates of 30%, 20%, and 100%.

If the taxpayer:

1) In the submitted tax return showed: a) the amount of tax liability lower than the amount due; b) the amount of tax difference refund or the amount of input tax refund higher than the amount due; c) the amount of the difference in tax to be carried forward to the next settlement period, higher than the amount due; d) the amount of tax difference refund, the amount of input tax refund or the amount of tax difference to be carried forward to the next settlement period, instead of showing the amount of tax liability to be paid to the tax office.

2) Failed to file a tax return and pay the amount of the tax liability

- The tax authority determines the correct amounts and establishes an additional tax liability against the taxpayer amounting to 30% of the difference (pursuant to Article 112b(1) of the VAT Act).

To encourage taxpayers to correct their settlements independently, the regulations provided for a reduced VAT sanction of 20% of the difference under certain conditions (Article 112b(2) uVAT).

In addition to these two provisions, the 2017 legislation also introduced a qualified sanction (Article 112c uVAT). If the indicated deficit resulted, wholly or partly, from a reduction of output tax by the amount of input tax arising from an invoice that:

1) Was issued by a non-existent entity;

2) States actions which have not been carried out – in the part concerning these actions;

3) States amounts that are not accurate – in the part concerning those items for which amounts are not accurate;

4) Confirms actions to which the provisions of Article 58 and Article 83 of the Civil Code apply – in the part concerning these actions;

- The amount of additional tax liability for the input tax part of the above invoice is 100%.

Importantly, this provision does not apply to the determination of an additional tax liability in relation to individuals who are liable for a fiscal offence or a fiscal crime for the same act. The explanatory memorandum to the legislation introducing VAT sanctions stated that they have a preventive purpose. Referring to the scale of VAT fraud occurring in the economy, it was considered necessary to revert to the pre-2008

[596] Act of 1 December 2016 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2024).

regulations, supplemented by specific solutions in the form of 20% and 100% sanction rates, aimed at differentiating the burden on taxpayers depending on the scale of their infringement.[597]

Reduction of the sanction to 15%. At the same time, a new reduced VAT sanction was introduced from September 2019 (Article 112b(2a) uVAT).[598] Under the previous legislation, the consequences of submitting a corrective declaration after the initiation of customs and fiscal control regarding the additional tax liability were the same as those for submitting a corrective declaration after the completion of customs and fiscal control and receipt of the control's findings (the additional tax liability in such cases was 20%). To encourage taxpayers to submit a corrective declaration after the initiation of customs and fiscal control but before its completion, a reduced sanction rate of 15% was introduced.

CJEU judgment of 15 April 2021. The VAT sanction provisions were the subject of a ruling by the CJEU in 2021, which, in its judgment of 15 April 2021 in case *Grupa Warzywna sp. z o.o. v Dyrektor Izby Administracji Skarbowej we Wrocławiu* [599] found them to be incompatible with EU law. The Court emphasised that the sanction's application went beyond what was necessary to ensure correct tax collection and prevent tax fraud. Specifically, the VAT sanction was applied automatically, and the legislation gave tax authorities no discretion to individualise the sanction imposed on taxpayers, meaning they could not adjust its level to the specific circumstances of each case.

Changes to the SLIM VAT package. In response to the CJEU ruling, the Polish legislator, as part of the SLIM VAT 3 package,[600] abolished automatism in the imposition of VAT sanctions. As a result of this change, from June 2023, VAT sanctions are imposed in accordance with the principle of proportionality, in an individualised manner, up to 30%, 20%, or 15% of the sanctioned amount, respectively. When determining the amount of the additional tax liability, the administrative body must take into account (Article 112b(2b) uVAT), as part of the sanction mitigation process:

- The circumstances of the irregularity;
- The nature and severity of the breach of the taxpayer's obligation that resulted in the irregularity;
- The type, severity, and frequency of irregularities identified to date regarding untimely tax liabilities;
- The amount of the irregularities found, including the amount of the understatement of tax liability, the amount of the overstatement of the tax difference refund, the input tax refund, or the tax difference for reducing tax due for subsequent tax periods;
- Actions taken by the taxpayer after the irregularity was identified to remedy its consequences.

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[597] Explanatory Memorandum and OSR to the Government Bill to amend the Value Added Tax Act and certain other acts, print No. 965, https://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=965 [accessed: 12 July 2024].

[598] Act of 4 July 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws item 1520, as amended).

[599] CJEU judgment of 15.4.2021 in Case C-935/19 *Grupa Warzywna Sp. z o.o. v Dyrektor Izby Administracji Skarbowej we Wrocławiu*, ECLI:EU:C:2021:287.

[600] Act of 14 April 2023 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 996).

The changes also included a sanction rate of 100%. From June 2023, this sanction can only be applied if the authority finds that the taxpayer's action resulted from a deliberate act by the taxpayer or their counterparty, of which the taxpayer was aware. Consequently, the 100% sanction does not apply to breaches resulting from a lack of due diligence.

3.4.3. Amendments to the Fiscal Penal Code

New offences. The 100% VAT sanction was not the first measure aimed at the activities of tax offenders. On 1 January 2017, amendments came into force that tightened the criminal and fiscal sanctions for those involved in tax fraud.[601] Provisions were added to the Fiscal Penal Code (hereinafter: k.k.s.),[602] penalising the issuing or use (including their inclusion in settlements) of so-called fake invoices. These changes increased the severity of the sanction provided for in Article 62 k.k.s., which, in its basic form (§1), provides for a fine of up to 180 daily rates if the taxpayer, contrary to their obligation, does not issue invoices or bills, issues them defectively, or refuses to issue them. This provision is supplemented by two special provisions. Pursuant to Article 62 §2 k.k.s., if an invoice is issued unreliably or an unreliably issued invoice is used, the maximum penalty increases to 720 daily rates, imprisonment for a term of not less than one year, or both penalties imposed concurrently. The basis for the penalty is the mere issuing of a 'fake' invoice or its use for tax deduction purposes. If the issuer of the invoice is a so-called 'straw man' – that is, an entity with virtually no assets – imposing a financial penalty on this entity is ineffective, as the sanction cannot be enforced. The effective sanction is then imposed on the recipient of the 'fake' invoice, that is, on the entrepreneur actually operating in the market.[603]

Obligatory aggravation of punishment. The January 2017 amendment added a new point 1a to the regulation of Article 37 §1 k.k.s., which stipulated as grounds for mandatory increased punishment a situation in which the perpetrator commits a fiscal offence specified in Article 62 §2 k.k.s. and the amount of tax resulting from an invoice, or the sum of tax amounts resulting from invoices, is of high value. This offence was also not subject to the condition set out in Article 37 §2 k.k.s., which excludes extraordinary increases in punishment where, in connection with a fiscal offence, a public receivable has been depleted and the full amount due has been paid before the conclusion of the court proceedings at first instance.

Reducing the positive effects of a coincidence of offences. The Act also repealed Article 50 §2 k.k.s., which stipulated that, in the event of punishment for two or more fiscal offences committed prior to the first ruling, the most severe penalty, along with any other measures imposed in each of the rulings, would be enforced. This change

[601] Act of 1 December 2016 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2024).

[602] Act of 10 September 1999 Fiscal Penal Code (consolidated text Journal of Laws of 2024, item 628, as amended).

[603] Explanatory Memorandum and OSR from the Government Draft Law on Amendments to the VAT Act and Certain Other Laws of 28 October 2016, Print No. 965, https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=965 [accessed: 6 August 2024].

was justified on the grounds that such an enforcement directive resulted in a situation where repeat offenders were not subjected to measurableliability, commensurate with the scale and frequency of their offences, thereby diminishing the deterrent effect on potential recidivism.

3.4.4. Amendments to the Criminal Code

Offences against the credibility of documents. Provisions to combat offences involving invoices are also found in the Criminal Code (hereinafter: k.k.).[604] From 1 March 2017[605] regulations concerning material falsification of an invoice (Article 270a k.k.), intellectual falsification of an invoice (Article 271a k.k.), and their aggravated form (Article 277a k.k.) were introduced.

> 'The application of such sanctions as imprisonment for up to 15 years and imprisonment for 25 years is expedient due to the extent of the damage that massive VAT fraud can cause. In relation to this practice, the protected good is no longer the state budget itself, but rather internal security and the foundations of the functioning of the state. Thus, the acts described in the proposed legislation create a threat to legal assets, such as used to be the case with regard to counterfeiting of money, which has now been reduced by the use of various technologically advanced ways of securing banknotes.'[606]

Purpose: deterrent effect. As justification for placing these provisions in the Criminal Code Act, the legislator cited: 1) the limited effectiveness of the Fiscal Penal Code (k.k.s.) regulations as a deterrent for potential criminals and 2) the limited effectiveness of enforcing the penalties provided for in the Fiscal Penal Code against the organisers of 'tax carousels'. In doing so, they referred to the fact that, between 2014 and 2016, in cases involving the fraudulent acquisition of undue VAT refunds of significant value, a total of 253 individuals were convicted, of whom only 31 received custodial sentences without suspension. This contrasted with the substantially higher penalties for tax offences imposed by UK and US courts. The potential for the application of the new legislation was demonstrated by the fact that in 2014 and 2015 alone, there were pre-trial proceedings relating to the fraudulent acquisition of undue VAT refunds of significant value – according to Article 53 § 15 k.k.s. – in 360 cases. The total amount of VAT fraudulently acquired in these cases amounted to as much as PLN 9.9 billion.[607]

In justifying the urgent need to significantly increase penalties for tax offences, the Ministry of Justice referred to recommendations on the matter made by both business representatives and expert organisations, including the Global Compact Network Poland.

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[604] Act of 6 June 1997 Criminal Code (consolidated text Journal of Laws 2024, item 17, as amended).

[605] Act of 10 February 2017 amending the Act - Criminal Code and certain other acts (Journal of Laws, item 244).

[606] Ministry of Justice, Explanatory Memorandum of the Government Bill on Amendments to the Act - Penal Code and Certain Other Acts, Print No. 888, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=888 [accessed: 17 July 2024].

[607] Ibid.

> 'It is important (...) to overhaul the Fiscal Penal Code, or to introduce a special criminal regulation (...) that would provide for severe penalties for tax offences and full restitution of the State's lost tax revenues.'[608]

Concept of extended confiscation. A legal measure aimed at the effective recovery of lost VAT revenue was the new provision of extended confiscation. As of 27 April 2017, the rules for the forfeiture of assets used to commit the offence were relaxed, among other changes. In the case of particularly serious offences, this was to allow for the forfeiture of the business itself[609] (Article 44a k.k.).

Rules for imposing extended confiscation. The court shall impose extended confiscation upon conviction. Where an offence has been committed, the court may order the forfeiture of a business owned by the offender or its equivalent. This requires that a significant material benefit has been obtained from the offence, even indirectly, and that the offence was committed using a business or to conceal the benefit obtained from it (Article 44a §1 k.k.). If the perpetrator is convicted of an offence from which they have gained, even indirectly, a substantial pecuniary benefit, the court may also order the forfeiture of a natural person's business (not owned by the perpetrator) or its equivalent if the business owner intended for the business to be used to commit the offence or to conceal the benefit gained from it or, foreseeing such a possibility, consented to it (Article 44a §2 k.k.).

In the justification, the legislator explicitly stated the informational and preventive nature of the adopted regulation. Information on its introduction was intended to raise awareness among entrepreneurs of the *modus operandi* of tax mafias and highlight the recognised *modus operandi* of entities creating networks that generate artificial, 'carousel' turnover.[610]

> **The Regional Prosecutor's Office** in Warsaw in cooperation with the CBŚP Board in Warsaw and the Mazovian UCS in Warsaw, is conducting an investigation into the operation of an organised criminal group between 2014 and 2017. This group is suspected of committing tax fraud based on carousel offences related to the trade in electronic equipment (e.g. iPhones) and money laundering. Extensive evidence gathered in the case suggests that the suspects' activities caused significant damage to the State Treasury, resulting in a real loss of VAT revenue amounting to over PLN 70 million. It has been established that 93 entities operated in various roles within particular transaction chains ('missing trader', 'buffer', 'broker'). The perpetrators' *modus operandi* involved creating a network of entities that simulated legitimate commercial transactions, while their actual aim was to introduce goods – broadly defined as electronic equipment – into Poland without paying the VAT due, using a 'missing trader.'[611]

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[608] Global Compact Network Poland, *Przeciwdziałanie Szarej Strefie w Polsce 2015/16*, p. 104, https://mf-arch2.mf.gov.pl/documents/764034/5123644/20160407_GCNP_raport_szara_strefa.pdf [accessed: 17 July 2024].

[609] Act of 23 March 2017 amending the Act – Criminal Code and certain other acts (Journal of Laws, item 768).

[610] Explanatory Memorandum to the Government Bill on Amendments to the Act - Penal Code and Certain Other Acts, Print No. 1186, https://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=1186 [accessed: 17 July 2024].

[611] National Prosecutor's Office, *Zatrzymania zorganizowanej grupy przestępczej zajmującej się popełnieniem tzw. przestępstw karuzelowych, https://www.gov.pl/web/prokuratura-krajowa/*zatrzymania-zorganizowanej-grupy-przestepczej-zajmujacej-sie-popelnieniem-tzw-przestepstw-karuzelowych [accessed: 11 May 2024].

3.4.5. Disciplinary Sanctions

As more obligations are imposed on taxpayers, the sanctioning provisions securing their fulfilment are also increasing. These sanctions vary significantly in their severity and how they operate. Typically, they act as a deterrent for taxpayers, but they can take several forms, including: 1) percentage-based penalties, similar to VAT sanctions; 2) fixed penalties; 3) the transfer of the risk of a future, uncertain event to the taxpayer. The latter include, in particular, the application of the mechanism of joint and several liability to taxpayers who have made payments to an account that is not on the "white list" (Article 117ba § 1, 2 and 3 OrdPod).

SPM sanctions. In 2018 and 2019, new sanctions were introduced alongside new legislation designed to ensure the 'tightness' of the legislation. The SPM introduced a sanction of 30% (Article 106e(12) uVAT) for a supplier who fails to include an 'SPM' endorsement on sales invoices when required to do so (Article 106e(1)(18a) uVAT).[612] However, this sanction does not apply if the purchaser nevertheless pays the invoice using split payment. A purchaser who fails to use split payment despite being required to do so is also subject to a sanction of 30% of the VAT that should have been paid using this method. This sanction against the purchaser is not applied if the supplier pays the VAT due to the tax office.

100% sanction – 'fictitious purchases'. The Amendment Act of July 2019[613] introduced, as of 1 January 2020, a VAT sanction of 100% of the amounts of output VAT in the case of invoices with the purchaser's NIP to a receipt on which the purchaser's NIP did not appear. At the same time, a 100 % VAT sanction is also applied to a purchaser who deducts input VAT from such an invoice.

JPK sanctions. Irrespective of the consequences stipulated under the Fiscal Penal Code, which may be imposed for failing to submit a declaration or submitting it late, any irregularity in the JPK_VDEK file that prevents verification of the transaction's accuracy, and which is not rectified or explained in response to a summons from the head of the tax office, is subject to a sanction (Article 109 paragraph 3h uVAT). Each such unexplained irregularity may be penalised with a fine of PLN 500.[614]

List of taxpayers vs. no deductible costs from 1 January 2020. A sanction unique to uVAT concerns the consequences of events negatively assessed by the legislator that occur in the context of other taxes.

By virtue of the Entrepreneurs' Law[615], for B2B transactions exceeding PLN 15,000, taxpayers are required to pay their counterparties by transfer to a bank account. From January 2020, such payments must be made to the counterparty's account listed on the register of VAT taxpayers (Article 96b(3) uVAT). The payment is secure in such cases, and the taxpayer does not incur negative financial consequences. If a taxpayer makes a payment after 1 January 2020 to an account not listed on the register, then:

[612] Act of 9 August 2019 amending the Act on Value Added Tax and certain other acts (Journal of Laws, item 1751, as amended).

[613] Act of 4 July 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1520, as amended).

[614] Ibid.

[615] Article 19 of the Act of 6 March 2018. – Entrepreneurs' Law.

1) Will not recognise this expense as a tax-deductible expense or will be required to reduce its costs (or increase its revenue if it cannot reduce its costs)[616] to the extent that:

- The payment has not been transferred to a payment account (e.g. a cash payment of more than PLN 15,000) or
- The payment was made to an account not listed (at the time the transfer was instructed) on the register;

2) The taxpayer will be jointly and severally liable with the vendor (if the vendor is a registered VAT taxpayer) for the vendor's tax arrears relating to the portion of VAT attributable to the payment for the transaction, where that payment was made by transfer to an account not listed on the register of VAT taxpayers at the time the transfer was instructed (Article 117ba § 1, 2 and 3 OrdPod).

3.4.6. Prosecution and Judicial Activities

A particular challenge to effectively punishing perpetrators of VAT offences, and securing and recovering funds obtained through these offences, was the limited knowledge among judges and prosecutors about the specific nature of financial and fiscal crimes. Increasing access to information on the modus operandi of tax offenders, the scale of 'VAT carousels', and the threats they posed to honest businesses and the state budget required intensified knowledge and experience sharing, along with operational cooperation between prosecutors, courts, and tax administration bodies.

Prosecutor's Office reform. In 2016, to increase the effectiveness of prosecutions in the area of tax crime, specialised financial and fiscal crime departments were established in the regional prosecutor's offices in Warsaw, Katowice, Gdańsk, Poznań, and Kraków.[617] To coordinate their activities, an Economic Crime Department was established within the National Public Prosecutor's Office. This department, among other responsibilities, oversees the prosecution of financial and fiscal crime, particularly cases involving the fraudulent acquisition of undue VAT refunds. In the first quarter of 2022 alone, its supervisory activities encompassed 960 pre-trial proceedings conducted by financial and fiscal crime departments in regional and district prosecutor's offices.[618]

Guidelines of the Prosecutor General. In an effort to increase the efficiency of the prosecution's actions against carousel crime, the Prosecutor General issued guidelines on 6 July 2016 on the principles of conducting pre-trial proceedings in cases of offences related to the procedure of extortion of undue refund of VAT and other fraudulent evasion of this tax.[619] On 10 August 2017[620] they were updated in connec-

[616] Article 22p(1)(2) uPIT and Article 15d(1)(2) uCIT.

[617] Act of 28 January 2016. Law on the Public Prosecutor's Office (consolidated text Journal of Laws of 2024, item 390); Regulation of the Minister of Justice of 7 April 2016. Rules of Procedure for the Internal Office of the Common Organisational Units of the Public Prosecutor's Office (consolidated text Journal of Laws of 2023, item 1115 as amended), hereinafter: the Rules.

[618] A. Gryszczyńska, A. Klawikowski, *Nowe wyzwania dla Prokuratury związane ze zwalczaniem przestępczości gospodarczej i cyberprzestępczości*, Prokuratura i Prawo, 7-8/2022, p. 43.

[619] Guidelines on the principles of conducting pre-trial proceedings in cases of offences related to the procedure of extorting an undue refund of VAT and other fraudulent evasion of VAT, amended on 10 August 2017 in connection with the entry into force of the provisions of the Act of 23 March 2017 amending the Criminal Code Act and certain other acts (Journal of Laws, item 768) and the Act on KAS.

[620] Guidelines of the Prosecutor General No. 5/17 of 10 August 2017 on the principles of conducting pre-trial proceedings in cases of offences related to the procedure of extortion of undue refund of value

tion with the amendments to the Penal Code Act coming into force,[621] introducing new types of invoice offences. The guidelines specifically addressed:

1) Coordination of prosecutors' activities with other authorities;
2) Specialisation of the prosecutors conducting these proceedings;
3) Classification of the perpetrators' acts, particularly in cases of concurrent application of the provisions of the Code of Criminal Procedure and the Fiscal Penal Code, as well as ordinary and aggravated forms of invoice offences;
4) Actions to be taken by prosecutors;
5) Securing the assets of offenders and proposed sentences.

Guidelines on coordination of authorities' activities. According to these guidelines, cases concerning the fraudulent acquisition of undue VAT refunds or other fraudulent evasion of VAT should be conducted in regional and district prosecutor's offices. If they resulted from the activities of organised criminal groups, the proceedings should be conducted in the Local Divisions of the Department for Organised Crime and Corruption of the National Public Prosecutor's Office. These proceedings should be handled by prosecutors specialising in combating this type of crime, working in close cooperation with the relevant management boards of the Central Bureau of Investigation of the Police, economic crime departments of Provincial Police Headquarters, delegations of the Internal Security Agency, delegations of the Central Anti-Corruption Bureau, or heads of customs and tax offices. Such proceedings should not be entrusted to lower-level police units. The guidelines particularly emphasise close coordination between prosecutors, law enforcement agencies, and National Revenue Administration services. They establish regular meetings between the officers in charge of the case and representatives of the tax services as standard practice. To provide prosecutors with a specialisation pathway in combating tax crime, the Prosecutor General, the Minister of Finance, and the Minister of Internal Affairs initiated close cooperation between the National School of Judiciary and Public Prosecution and the National Revenue Administration.[622] This cooperation focused, in particular, on training for judges and prosecutors, covering key aspects of VAT 'mafias'. These included in particular:[623]

1) VAT carousel rules;
2) Characteristics of those involved in tax fraud, particularly the individuals and entities involved in the fictitious supply chain;
3) Distinguishing features of market and non-market trading between traders, including indicators of conscious participation in the transaction chain;
4) The issue of perfect coincidence and the rules of application for the new 'invoice' offences;

added tax (VAT) and other fraudulent evasion of this tax, https://www.gov.pl/web/prokuratura-krajowa/wytyczne-prokuratora-generalnego-dotyczace-postepowan-o-wyludzanie-nienaleznego-zwrotu-podatku-vat [accessed: 11 May 2024].

[621] NIK, *Odzyskiwanie mienia pochodzącego z przestępstw*, P/18/037/KPB, Warsaw 2019, p. 5.

[622] See, inter alia, the Cooperation Agreement concluded on 16 July 2014 in Kraków between the Minister of Finance and the National School of the Judiciary and Public Prosecution, constituting an implementing document to the Agreement of 30 January 2014 concluded between the Minister of the Interior, the Minister of Finance and the Public Prosecutor General on cooperation in the field of developing systemic solutions with regard to preventing and combating economic crime.

[623] See, inter alia, the series of online training courses entitled VAT carousel extortion offences, conducted on 5 and 27 November and 11 December 2020.

5) Methods of cooperation between judges, prosecutors and KAS authorities.

Between 2016 and 2022, more than 2,200 prosecutors received training in handling complex economic crime cases, with a particular focus on cases involving the fraudulent acquisition of VAT refunds.[624]

Combating invoice crime. Since the introduction of new regulations under Article 270a k.k.(falsification of an invoice and using it as authentic), Article 271a k.k. (stating untruth in an invoice), and 277a k.k. (falsification of an invoice or using a falsified invoice with an amount specifying property of great value) into Polish law, the number of related proceedings has gradually increased. The number of established offences has increased almost sixfold since the first full year of application (2018), from 167 in 2018 to 981 in 2022. The number of detected offences (established offences with at least one identified suspect in completed pre-trial proceedings) has increased more than sixfold, from 144 in 2018 to 913 in 2022. Convictions have also increased significantly, from four people in 2017 to 161 in 2022. During this period, the highest number of findings each year concerned the basic offence of falsifying an invoice and using it as authentic (30 cases in 2018 and 147 in 2022). The second highest concerned the basic offence of providing false data on an invoice (25 cases in 2018 and 115 in 2022). The number of identified privileged offences (Article 270a § 3 and Article 271a § 3 k.k.) and qualified offences (Article 270a § 3, Article 271a § 3, and Article 277a k.k.) was much lower. For privileged offences, there were eight cases in 2018 and 56 in 2022, while for qualified offences, there were four in 2018 and 28 in 2022. The number of people convicted by courts of first instance for invoice offences was, for basic offences, 10 in 2018 and 138 in 2022, and for qualified offences, six in 2018 and 18 in 2022. In 2022 alone, there were 174 sentences for invoice offences, including 161 convictions (93%).[625] Significantly, 54 of these (36%) were issued through consensual procedures, i.e., conviction without trial (Article 335 of the Code of Criminal Procedure, k.p.k.), sentencing without taking evidence (Article 338a k.p.k.), or voluntary submission to punishment (Article 387 k.p.k.).[626] This represents a near doubling of consensual procedure use.

[624] A. Gryszczyńska, A. Klawikowski, *New challenges for the Public Prosecution Service related to combating economic crime and cybercrime*, Prokuratura i Prawo, 7-7/2022, p. 44.

[625] To comprehensively assess the effectiveness of prosecutorial and judicial activities, further research is needed, focusing not only on the number of final convictions or sentences imposed and enforced, but also on the value of recovered tax receivables. Separate studies should also explore the discrepancy between the number of established and detected offences and the number of convictions each year. The psychological impact of changes in criminal law, particularly their preventive role, also warrant further investigation. However, a positive trend can be identified in three areas: 1) specialisation within the prosecutor's office, reflected in organisational changes; 2) the flow of knowledge concerning VAT offences between the tax administration, the courts, and the prosecutor's office (through training activities); 3) the number of proceedings initiated, invoice offences established and detected, as well as the number of suspects and convictions. Due to the time lag between the commission of an offence and the initiation of proceedings, it is difficult to link the indicated figures to specific tax years and the measures of the scale of irregularities that characterise them (e.g., the level of the VAT gap and the value of buffer turnover).

[626] Ministry of Justice, S*prawozdanie w sprawie osób osądzonych w pierwszej instancji według właściwości rzeczowej za rok 2022*, MS-S6r and MS-S6o.

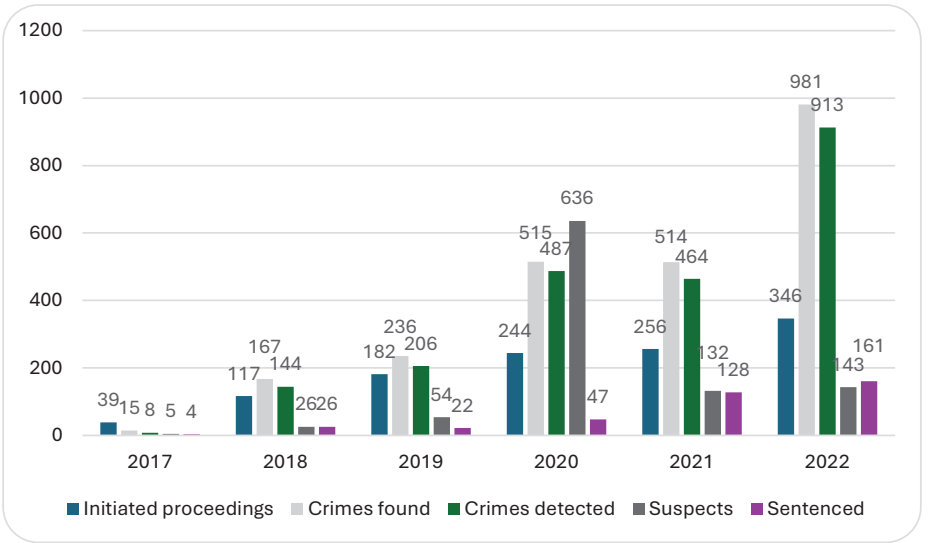


Chart 43: Invoice crime

Source: data from Police Headquarters.[627]

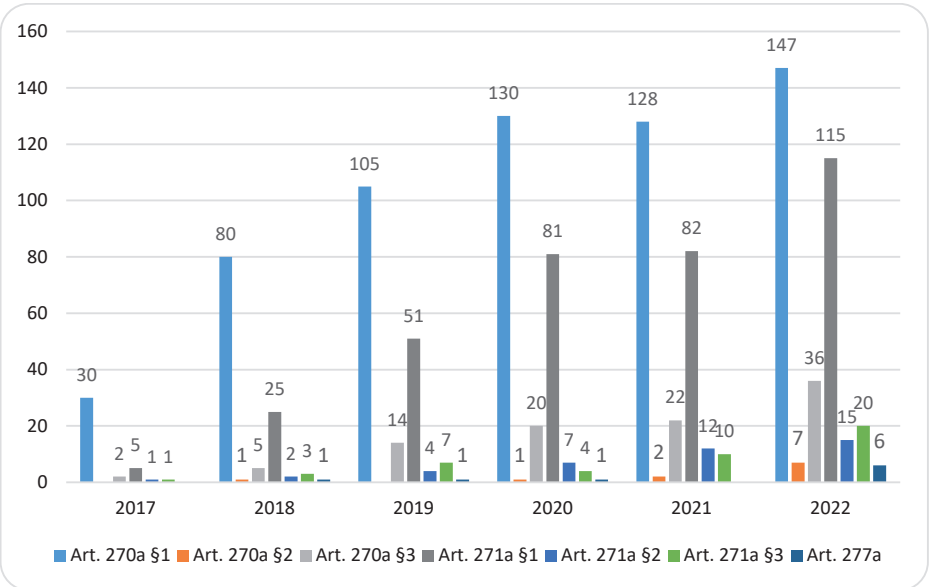


Chart 44: Proceedings initiated for invoice offences

Source: data from Police Headquarters.[628]

[627] Data quoted after: K. Buczkowski, P. Ostaszewski, Criminal Policy Response – motives for criminalisation and the statistical picture, [in:] D. J. Gajewski (ed.), *VAT gap in Poland: Policy Problem and Policy Response*, Peter Lang Berlin 2024, pp. 141-142.

[628] Ibid.

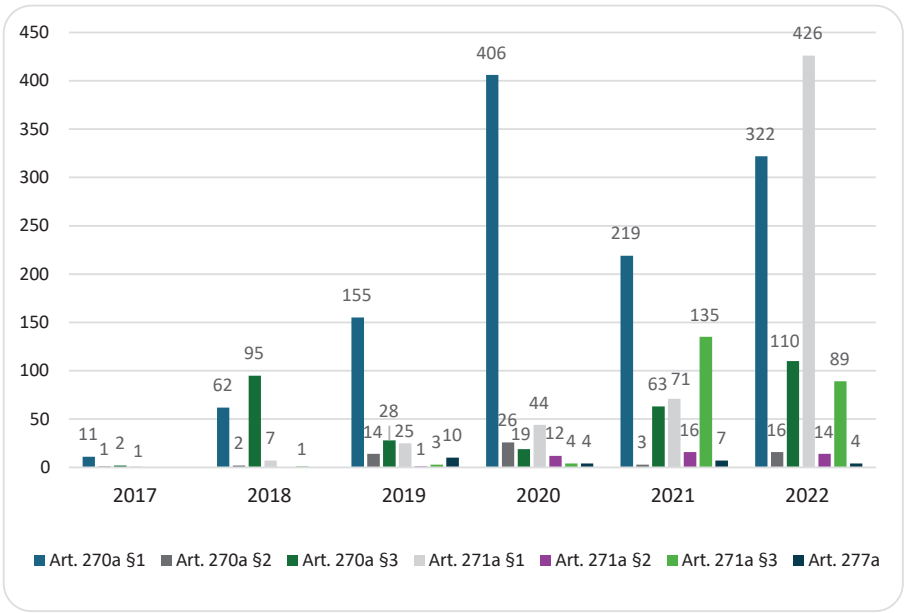


Chart 45: Established invoice offences

Source: data from Police Headquarters.[629]

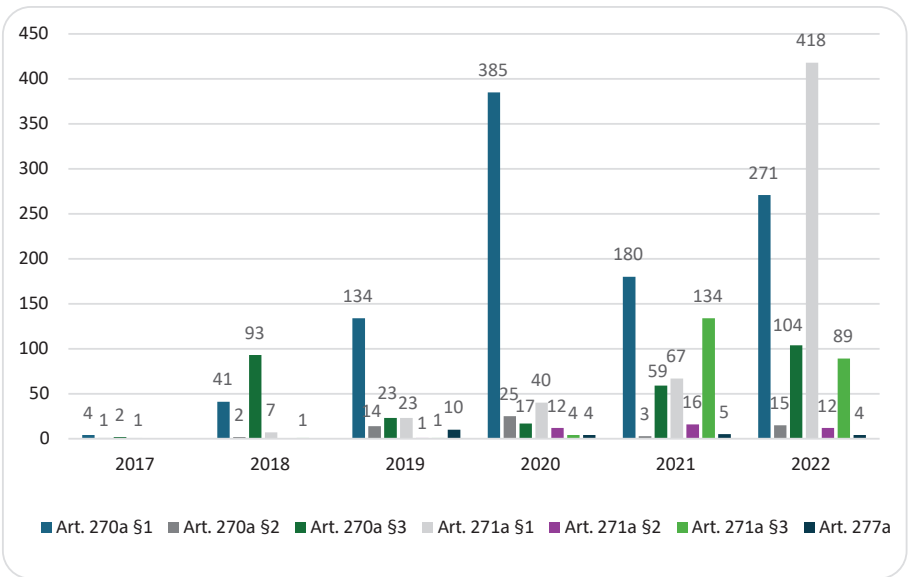


Chart 46: Detected invoice crime

Source: data from Police Headquarters.[630]

[629] Ibid.
[630] Ibid.

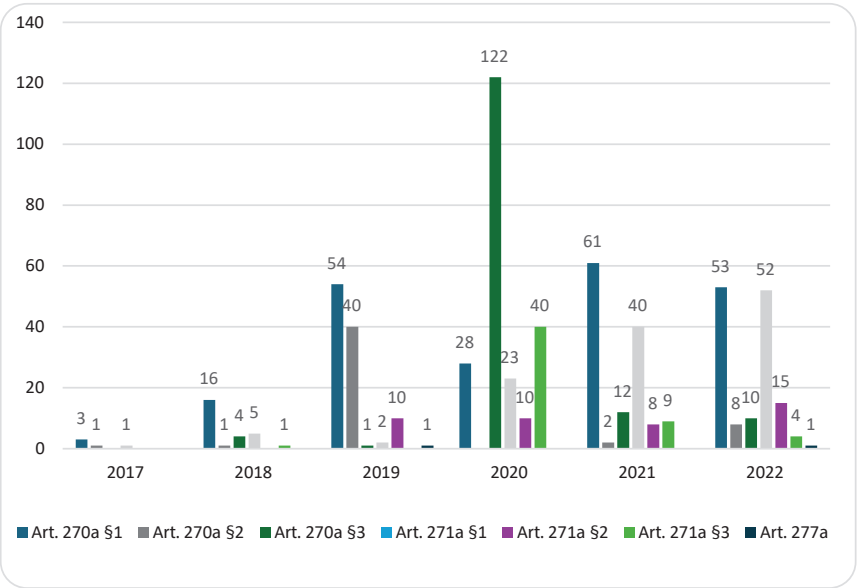


Chart 47: Suspects in invoice crime cases

Source: data from Police Headquarters.[631]

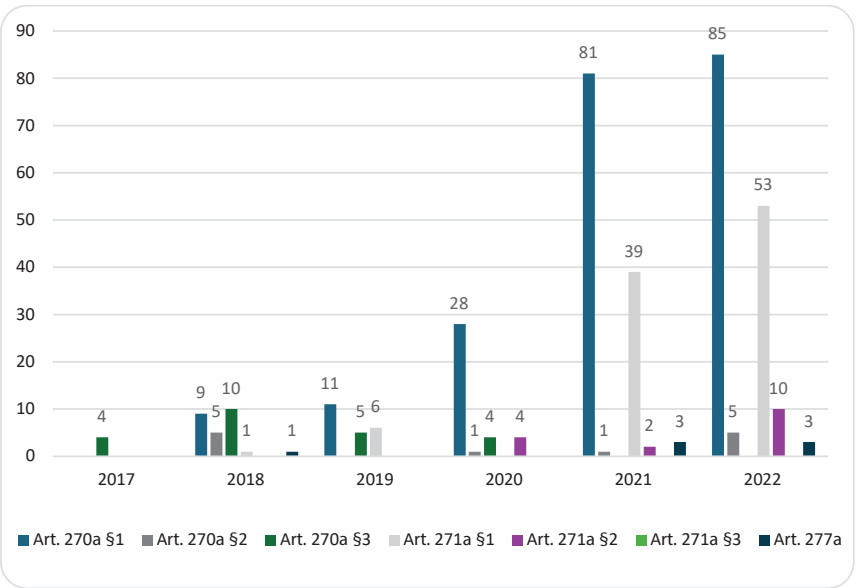


Chart 48: Number of persons convicted of invoice offences by courts of first instance

Source: data from the Ministry of Justice.[632]

[631] Ibid.
[632] Ibid., p. 143.

4. COOPERATION WITH BUSINESS

4.1. Sealing the Trade in Excise Goods

Introduction. Legislative measures taken between 2016 and 2021, along with the implementation of new technological solutions, have led to a significant 'sealing' of the illicit trade in excise goods. Thanks to the progressive electronification of turnover monitoring, reporting, and record-keeping, KAS has gained access to an unprecedented volume of data on business turnover, as well as the timing, circumstances, and routes of 'sensitive goods' between taxpayers. These data, transmitted electronically to KAS, are subject to big data analysis, which significantly accelerates the identification of irregularities and facilitates taxpayer interactions. The fuel, transport, tobacco, and excise packages introduced between 2016 and 2021 initiated a technological revolution in the administration's operations, resulting in near real-time electronic observation of the excise market. Electronic access to this large volume of data allows for faster analysis and the use of the resulting insights to improve the precision of inspections. The final stage in automating control activities related to trade in excise goods is to give the administration permanent, direct, and automatic insight into taxpayers' situations. The digitalisation of excise duty records is intended to achieve this. These records, sent to the tax authorities either analogously to JPK or supplemented in real time in the Central Excise Goods Register, would provide KAS with an advantage similar to that resulting from the implementation of e-invoicing in Poland. The rapid decline of the grey economy in the trade of fuels and cigarettes means not only higher budget revenues from improved collection of public levies, but above all, an improved market position for honest entrepreneurs, who cannot compete with entities operating within the grey economy. 'Sealing' the trade in excise goods has made it possible to re-establish fair competition in the market, which is essential for companies to continue developing their activities.

4.1.1. Fuel Package

VAT fraud mechanism in the fuel sector. Until mid-2016, tax crime related to liquid fuels primarily involved fictitious trading characteristic of tax carousels, combined with the activities of 'missing traders' and claims for undue tax refunds. The fraudulent mechanism involved ICAs of fuels by so-called registered consignees or entities operating tax warehouses under a suspended excise duty regime to entities referred to as 'missing traders'. The missing trader would purchase fuel from an entity in another Member State, place the goods on the domestic market, and issue an invoice documenting the sale. They were required to pay the VAT due on the sale but failed to fulfil this obligation and subsequently disappeared (Figure 11).

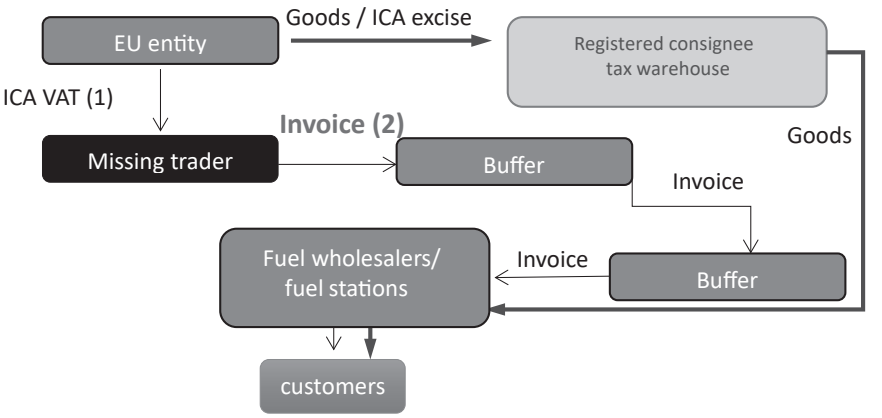


Figure 11: Simplified model of a typical fuel industry fraud [missing trader].

Source: own study.

Example – settlement model for an entity designated as a missing trader:

Before the introduction of 'fast VAT', the missing trader:
Buys fuel within ICA (transaction (1)) and makes a domestic supply (transaction (2)).
Issues an invoice for the domestic supply (invoice (2)).

They should have declared:
(1) VAT due on ICA – as a general rule, assuming full deductibility of input VAT; VAT due = input VAT. Net VAT payable: '0'.
(2) VAT due on domestic sales (shown on invoice (2)) = VAT payable on domestic sales.

The fraudster did not pay the VAT and disappeared. The VAT from invoice (2) was not effectively paid to the tax office. The budget therefore lost the amount of VAT shown on invoice (2).

Crime in the fuel sector 2012-2016. In 2013, the consultancy Ernst & Young (EY) prepared a report on crime in fuel trading, commissioned by the Polish Organisation of Oil Industry and Trade (POPiHN). According to this study, the scale of VAT fraud in 2012 amounted to at least 12.6% of estimated total diesel consumption. In 2013, estimated VAT fraud in the diesel trade increased to between 18.6% and 24.2% of the market. State budget losses ranged from PLN 4.3 billion to PLN 5.8 billion.[633] The scale of fraudulent undue VAT refunds in the fuel trade is reflected in the record number of VAT irregularities identified in previous years. In the two years before the 'sealing' measures were implemented in the fuel sector, findings in this sector accounted for

[633] POPiHN, *Raport roczny Przemysł i handel naftowy 2015*, https://popihn.pl/wp-content/uploads/2021/01/RAPORT_2016_pl.pdf, p. 6 [accessed: 18 July 2024].

almost half of all findings by the tax inspection authorities: 39.2% in 2015 and as high as 40% in 2016.[634]

Impact of illegal trade on honest business. A distinctive feature of the fuel market was the significant scale of 'liquidation' – that is, the sale to Polish consumers of goods previously imported into Poland without paying tax. This practice resulted in a substantial volume of fuel being sold later to consumers at a tax-reduced price, leading to a significant drop in turnover for legitimate market operators. Despite steady GDP growth and a decline in global oil prices, domestic fuel consumption in Poland had been falling since 2011. There were no economic factors during this period to justify the low level of consumption. POPiHN reported a noticeable increase, from the end of that year, in the activity of entities offering fuels at prices considerably lower than those offered by businesses fulfilling their tax obligations.[635] Imported fuels entered Poland untaxed or undeclared for taxation, which were cheaper than fuels from legal sources due to the absence of VAT or excise duty.[636] PKN ORLEN estimates that the grey economy in the diesel trade at its peak (in 2014–2015) exceeded 3 million tonnes, representing more than 20% of the market.[637] Domestic fuel producers increased diesel exports year on year by between 140% and 300%, as they were unable to sell their entire production in the country.[638] The first half of 2015 saw a reversal of the downward trend in official fuel consumption; however, as POPiHN notes, the primary beneficiaries of this were those involved in criminal activities. POPiHN member companies imported 17% less diesel than the previous year, while transactions by independent importers increased by 59%. In POPiHN's view, this suggested that at least some of these independent importers may have been involved in tax extortion.[639]

> 'In the summer of 2019, KAS officers, under the supervision of the Regional Prosecutor's Office in Łódź, dismantled the trade in illegal fuel from Latvia. Between June 2018 and July 2019, criminals introduced at least 9 million litres of fuel into the market, causing losses of more than PLN 20 million to the State Treasury. KAS officers from the Department for Combating Economic Crime of the Ministry of Finance and the Lubuskie, Śląskie, Warmińsko-Mazurskie, Mazowieckie, Dolnośląskie, Wielkopolskie, Podlaskie, and Lubelskie Customs and Fiscal Offices also participated in the operation. Law enforcement authorities from Germany and the Czech Republic were also involved. The operation resulted in the seizure of: 113,500 litres of illegal fuel, more than PLN 2.5 million in cash, five luxury cars and jewellery, and 55 other vehicles (trucks, tankers, and semi-trailers)).' Ministry of Finance (2019).[640]

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[634] NIK, *Przeciwdziałanie wyłudzeniom podatku VAT*, Warsaw 2018, p. 16, https://www.nik.gov.pl/kontrole/P/17/013/ [acessed: 3 October 2024].

[635] POPiHN, *Raport roczny Przemysł i handel naftowy 2015*..., p. 6.

[636] NIK, *Zapobieganie nielegalnemu obrotowi paliwami ciekłymi, Informacja o wynikach kontroli*, Warsaw 2017, p. 6, https://www.nik.gov.pl/plik/id,14386,vp,16838.pdf [accessed: 11 May 2024].

[637] PKN ORLEN, *Effective fight against grey market in fuel trading*, https://www.orlen.pl/pl/o-firmie/media/komunikaty-prasowe/2018/pazdziernik/Skuteczna-walka-z-szara-strefa-w-obrocie-paliwami (accessed: 18 July 2024).

[638] Bankier.pl, *Pakiet paliwowy demoluje szarą strefę*, https://www.bankier.pl/wiadomosc/Pakiet-paliwowy-demoluje-szara-strefe-7502051.html [accessed: 11 May 2024].

[639] POPiHN, *Raport roczny Przemysł i handel naftowy 2015*, Warsaw 2016, p. 6, https://popihn.pl/raporty-i-konferencje/ [accesssed: 11 May 2024].

[640] Ministry of Finance, *KAS zlikwidowała zorganizowaną grupę przestępczą wprowadzającą do obrotu nielegalne paliwa*, https://www.gov.pl/web/kas/kas-zlikwidowala-zorganizowana-grupe-przestepcza-wprowadzajaca-do-obrotu-nielegalne-paliwa [accessed: 18 July 2024].

Fuel Package. The response to irregularities in the trade of excise goods came in the form of the 'Fuel Package' regulations, which came into force on 1 August 2016.[641] This package was the first comprehensive and effective tool to combat VAT fraud in the designated sector. It comprised several related and complementary mechanisms covering the following areas:

1) Energy Law: the requirement to hold a concession to trade liquid fuels with foreign countries and to assign them only to entities with a registered office or branch in Poland;

2) Excise duty: a verification obligation on the part of operators of tax warehouses and so-called registered consignees;

3) VAT: a key element of the package providing for the 'accelerated' collection of VAT on supplies of motor fuels.

To limit the cumulative VAT payment exploitation by VAT mafias at the fuel importer level, an advance VAT payment obligation for ICAs was introduced upon fuel entry into Poland, with settlement occurring under general rules in the tax return. This shifted the VAT payment deadline for ICAs from the usual 25th day of the month following the tax obligation's occurrence (Article 103(1) uVAT) to just 5 days from the fuel import date (Article 103(5a) uVAT). To ensure tax payments from 'missing traders', this obligation was imposed on registered consignees and tax warehouses, as VAT payers.

What the 'fast VAT' secured and how it was achieved

A VAT taxpayer acquiring motor fuels through ICA (for VAT purposes) was required to pay the tax authority VAT as an advance payment within five days of the fuel's entry into Poland.

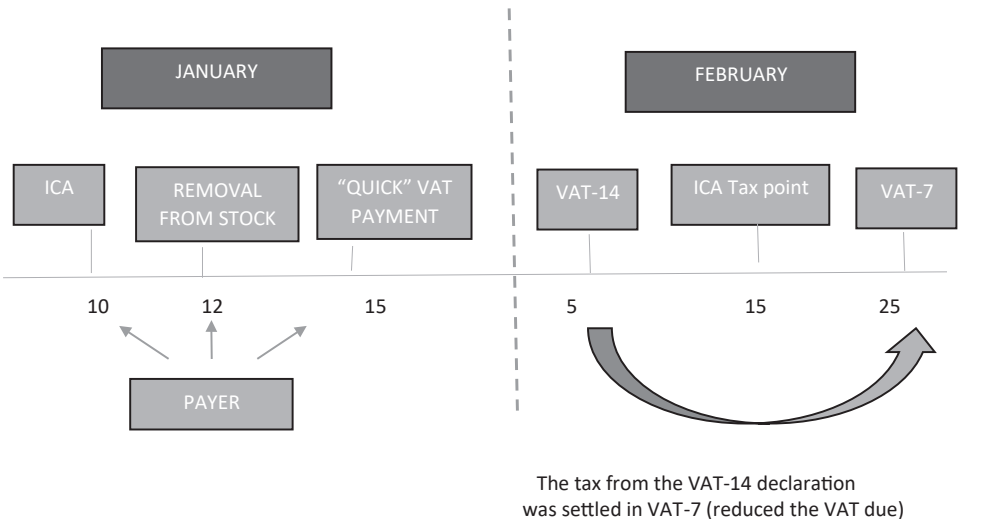


Figure 12: Operation of 'Quick VAT'

Source: own elaboration.

[641] Act of 7 July 2016 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1052, as amended).

In 2021, the provisions of the fuel package were analysed by the CJEU. In its judgment in Case C-855/19,[642] the Court held that the provisions of the VAT Directive must be interpreted as precluding a provision of national law that establishes an obligation to pay value-added tax (VAT) on intra-Community acquisitions of fuel before that tax becomes chargeable within the meaning of that Article 69 of the Directive.

To 'address' the CJEU's position, amendments were made to the Fuel Package, and Article 103(5ac) uVAT was introduced in 2021.[643] Consequently, if the tax payment deadline determined in accordance with paragraph 5a uVAT falls a day earlier than the date on which the VAT taxpayer issues an invoice documenting the supply of goods subject to intra-Community acquisition, the deadline is extended to the day following the invoice's issue date, but no later than the 16th day of the month following the month in which the intra-Community acquisition was made.

Fuel package effect: volume and structure of ICA. The introduction of the Fuel Package led to an unprecedented shift in the structure of Polish entities' intra-EU fuel acquisitions. Between August and December 2016, the volume of diesel ICAs by registered customers decreased by 63%, while petrol ICAs decreased by 56%. This suggests that registered consignees knowingly involved in illicit fuel trading ceased this practice following the Fuel Package's implementation. A significant reduction in purely fictitious 'carousel' trading is evidenced by the approximately 25% year-on-year (YOY) decrease in overall ICAs into Poland during this period. The market gap created by eliminating grey economy sales was filled by tax consignments. From August to December 2016, their ICA volumes increased by 76% YOY. Since 2017, there has also been a steady increase in diesel ICAs by registered consignees with established positions in the fuel market.[644] As recently as 2016, diesel ICAs represented 14.34% of all registered customers' ICAs. Following the Fuel Package's entry into force, this share increased to 42.61% in 2017 and as much as 70% in 2018. In 2017, official fuel imports increased by approximately 24%, reaching 11.5 million m³, which was approximately 2.2 million m³ more than in 2016.[645]

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[642] CJEU judgment of 9.9. 2021 in Case C-855/19 *G. Sp. z o.o. v Dyrektor Izby Administracji Skarbowej w Bydgoszczy*, ECLI:EU:C:2021:714.

[643] Act of 9 December 2021 amending the Excise Duty Act and certain other acts (Journal of Laws item 2427, as amended).

[644] The increase in turnover particularly concerned two multinational corporations with recognisable brand names, well established in the global fuel market and focused on maintaining high operating standards. The reasons for this increase at these entities include not only a reduction in observed market irregularities, but also market changes resulting from the implementation of solutions that the industry assessed as significantly hampering cross-border purchases by smaller market participants. The change in VAT collection rules under the fuel package required these smaller participants to maintain adequate financial reserves, which could have led to a reduction in their scale of operations. However, as an interesting area for further research, beyond the scope of this analysis, we should indicate the issue of the relative impact of these variables on the turnover reported by different categories of taxpayers, the impact of legislative changes on their competitiveness and market position, and the impact on competition within the fuel production and trading market, and consequently on fuel prices. Such studies would contribute to a comprehensive evaluation of the fuel package, encompassing not only its impact on the profitability of tax criminal groups (the subject of this monograph), but also on the breadth of the tax base and, consequently, on observed levels of budget revenue.

[645] POPiHN, *Raport roczny. Przemysł i handel naftowy 2017*, http://popihn.pl/wp-content/uploads/2021/01/Raport-POPiHN-za-2017-pl-na-strone-www-6-kwietnia.pdf, p. 17 [accessed: 11 May 2024].

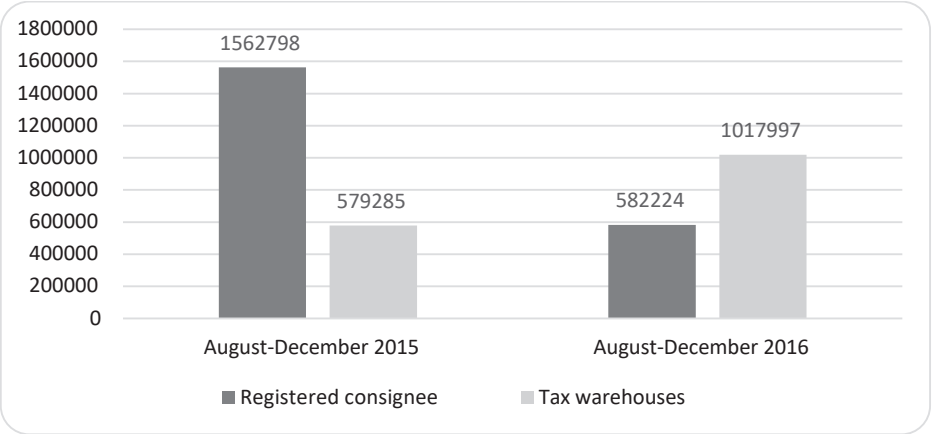


Chart 49: Volume of ICA to Poland of diesel oils [in thousand litres]

Source: own compilation based on data from the Ministry of Finance after Bankier.pl.[646]

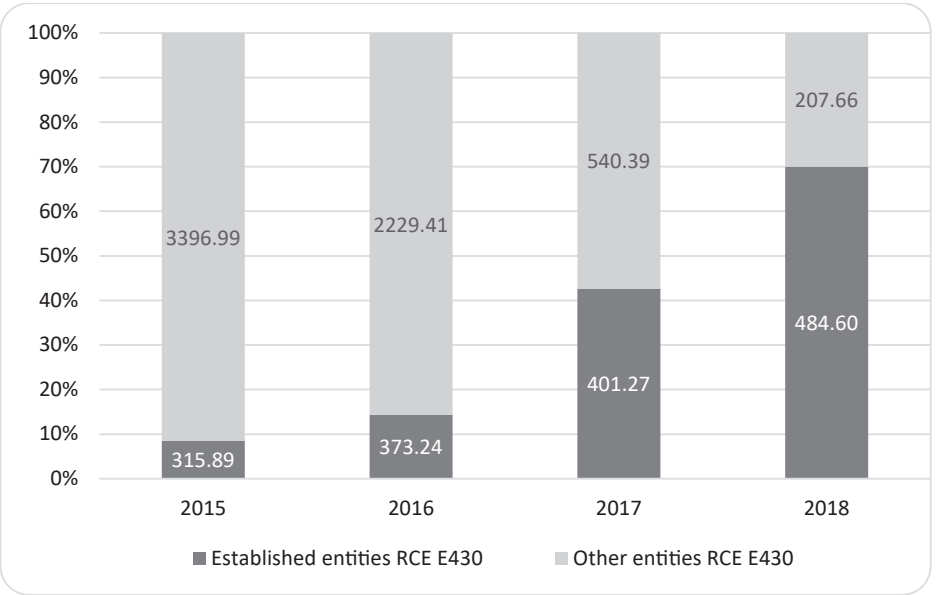


Chart 50: ICAs of E430 made by registered customers [thousand hectolitres]

Source: KAS data (2019).[647]

[646] Bankier.pl, *Pakiet paliwowy demoluje szarą strefę*, https://www.bankier.pl/wiadomosc/Pakiet-paliwowy-demoluje-szara-strefe-7502051.html [accessed: 11 May 2024].

[647] Data after: J. Sarnowski, M. Lewandowski, *Kamienie milowe poprawy ściągalności podatku akcyzowego w latach 2016-2021*, BISP, 3/2021.

Fuel package effect: sales 2016-2017. The first three months following the Fuel Package's introduction saw a sharp increase in legal sales of liquid fuels. According to POPiHN, the second half of 2016 saw a significant increase in fuel sales: 29% in August, 26% in September, and 17% in October compared with the same periods of the previous year. This was corroborated by the financial statements of state-owned companies. Lotos, in its Q3 2016 financial report, stated that fuel and diesel sales increased by 0.9% and 1.9% respectively in July. However, sales in the following month increased by 19.6% and 21.9% respectively.[648] In contrast, a report presenting PKN Orlen's financial results for Q4 2016 reported a 24% (YOY) increase in diesel consumption in Poland.[649] This trend of unprecedented growth in legal sales continued into the following year. In the first quarter of 2017, diesel fuel consumption increased by 15%, while wholesale fuel sales by the two largest producers (PKN Orlen and Lotos) increased by approximately 30% compared with the first quarter of 2016.[650] A 26% increase in diesel consumption was observed in Q2 2017.[651] As in 2014 and 2015, when domestic producers increased oil exports due to an inability to sell their entire production domestically, exports fell by 47% between August and October 2016 due to higher domestic demand for diesel.[652]

> 'The government's so-called fuel package aimed to reduce the grey economy in the fuel industry. Discounting the effect of economic growth, we estimate due to effective measures against the grey economy, the legal diesel market increased by approximately 30%, which was a key factor positively influencing the financial results of GK ORLEN over the previous two years.[653]

The effect of the Fuel Package: sales 2015-2023. According to data from the Ministry of Finance and POPiHN, legal sales of motor fuels have increased by several dozen per cent since the Fuel Package came into force.[654] Importantly, the observed market changes have been sustained. Sales levels in subsequent years have not reverted to the state or structure seen before the Fuel Package's implementation. Diesel consumption increased by approximately 16% in 2016 compared with 2015, and by a further 15% in 2017 compared with 2016.[655] In subsequent years, consumption grew steadily (by approximately 3% between 2017 and 2018, and again by 3% between 2018 and 2019).

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[648] Lotus, Raporty kwartalne, https://inwestor.lotos.pl/187/raporty_i_dane/raporty_kwartalne [accessed: 11 May 2024].

[649] Orlen, Raporty i publikacje, https://www.orlen.pl/pl/relacje-inwestorskie/raporty-i-publikacje/sprawozdania [accessed: 11 May 2024].

[650] Ministry of Finance data after J. Sarnowski, P. Selera, *Zmniejszenie luki VAT…,* Polish Economic Institute, Warsaw 2018, p. 17.

[651] PAP, *Rekordowe zyski PKN Orlen w II kwartale 2017 r.,* https://www.pap.pl/aktualnosci/news%2C1020780%2Crekordowe-zyski-pkn-orlen-w-ii-kwartale-2017-r.html [accessed: 11 May 2024].

[652] Bankier.co.uk, *Pakiet paliwowy demoluje szarą strefę*, https://www.bankier.pl/wiadomosc/Pakiet-paliwowy-demoluje-szara-strefe-7502051.html [accessed: 11 May 2024].

[653] Orlen, *Skuteczna walka z szarą strefą w obrocie paliwami*, https://www.orlen.pl/pl/o-firmie/media/komunikaty-prasowe/2018/pazdziernik/Skuteczna-walka-z-szara-strefa-w-obrocie-paliwami [accessed: 11 May 2024].

[654] K. Rutkowski, *Pakiet paliwowy – kamień milowy w uszczelnianiu systemu VAT od paliw silnikowych,* [in:] B. Brzeziński, K. Lasiński-Sulecki, W. Morawski (eds.), *Poprawa efektywności systemu podatkowego. Nowe narzędzia prawne w VAT i akcyzie*, Warsaw 2018, LEX pt. 3.

[655] KAS, *Podsumowanie pierwszego roku funkcjonowania*, https://www.kis.gov.pl/wiadomosci/aktualnosci/-/asset_publisher/JSs9/content/id/7730918 (accessed: 12 March 2021).

Overall, diesel consumption in Poland increased by a record 50% in four years, from 13,651,000 m³ in 2014 to 20,357,000 m³ in 2018. The only decline in diesel consumption occurred during the pandemic year of 2020 (a year-on-year decline of approximately 2%). From 2021 onwards, diesel consumption resumed annual increases (by approximately 7% year-on-year in 2021, by 1% in 2022 during wartime, and again by approximately 5% in 2023) (chart 51).

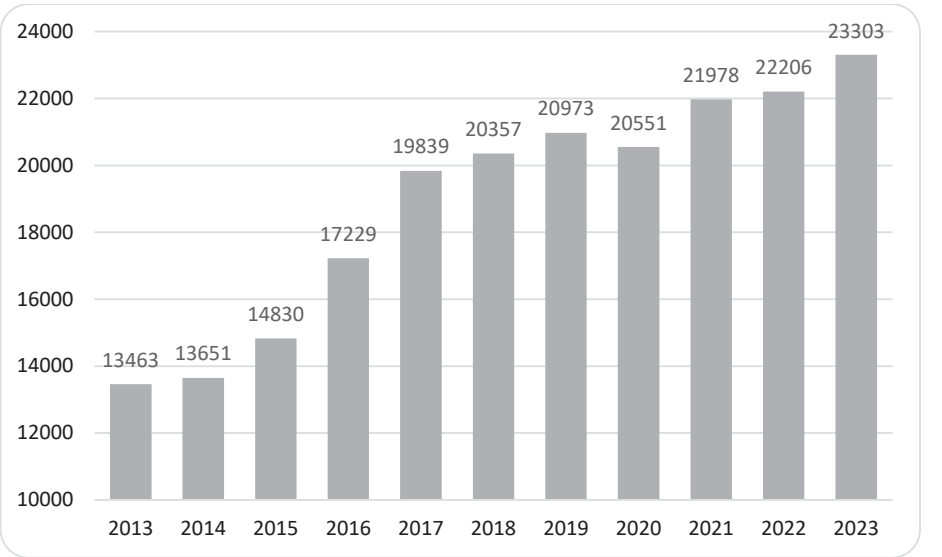


Chart 51: Diesel consumption 2013-2023 [thousand m³]

Source: own compilation based on POPiHN reports 2015-2023.[656]

Effect of the fuel package: increase in budget revenues. According to POPIHN (Polish Organisation of Independent Fuel Stations), the 2016 fuel package implementation contributed to a smaller shadow economy, reduced crime in fuel trading, and increased official fuel consumption.[657] Consequently, a significant number of fuel consumers began purchasing from legitimate traders, leading to increased production of goods previously supplied largely by those operating outside the law.[658] This directly translated into additional budget revenue. Licensed fuel traders submitting JPK VAT files paid approximately PLN 2.5 billion more in VAT in the first half of 2017 compared

[656] POPiHN, *Annual Report Oil Industry and Trade 2015*, Warsaw 2016, p. 19; POPiHN, *Annual Report Oil Industry and Trade 2016*, Warsaw 2017, p. 19; POPiHN, *Annual Report Oil Industry and Trade 2017*, Warsaw 2018, p. 21; POPiHN, *Annual Report Oil Industry and Trade 2018*, Warsaw 2019, p. 21; POPiHN, *Annual Report Oil Industry and Trade 2019*, Warsaw 2020, p. 25; POPiHN, *Annual report Industry and oil trade 2020*, Warsaw 2021, p. 17; POPiHN, *Annual report Industry and oil trade 2021*, Warsaw 2022, p. 27; POPiHN, *Annual report Industry and oil trade 2022*, Warsaw 2023, p. 29; POPiHN, *Annual report Industry and oil trade 2023*, Warsaw 2024, p. 29, https://popihn.pl/raporty-i-konferencje/ [accessed: 11 May 2024].

[657] POPiHN, *Annual Report Oil Industry and Trade 2019*, Warsaw 2020, p. 6, https://popihn.pl/raporty-i-konferencje/ [accessed: 11 May 2024].

[658] POPiHN, *Annual Report Oil Industry and Trade 2017*, Warsaw 2018, p. 15, https://popihn.pl/raporty-i-konferencje/ [accessed: 11 May 2024].

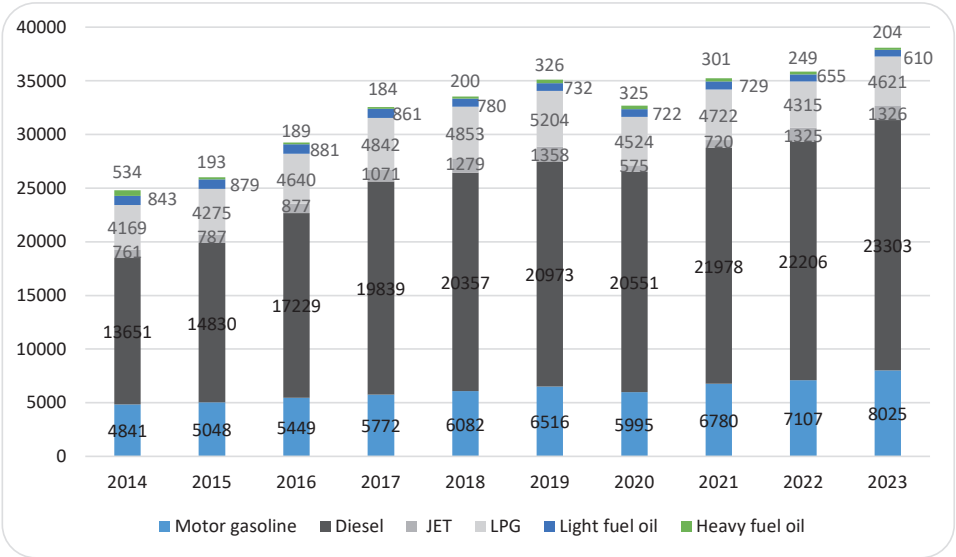


Chart 52: Domestic consumption of liquid fuels [thousand m^3]

Source: own compilation based on POPiHN reports 2015-2023.[659]

to the first half of 2016.[660] The fuel package's total fiscal impact for 2017 is estimated at around PLN 4 billion in additional VAT revenue.[661]

4.1.2. Transport Package

EKÁER system. A tool to ensure the continued sealing of the fuel trade was the introduction in Poland of strict supervision by the tax administration of the transport of 'sensitive goods', particularly motor fuels, lubricating oils, denatured alcohol, and dried tobacco. A goods transport monitoring system, based on the obligation to declare each transport in an electronic system and the installation of a geolocation device in the vehicle carrying it out, has been operating in Hungary since 2015 under the name EKÁER (Hungarian: *Elektronikus Közúti Áruforgalom Ellenőrző Rendszer*, Electronic Control System for the Carriage of Goods by Road). As a result of its implementation, transports of goods purchased within the European Union, intra-Community deliveries, and first taxable sales by purchasers who are not final consumers may only be

[659] POPiHN, *Annual Report Oil Industry and Trade 2015*, Warsaw 2016, p. 19; POPiHN, *Annual Report Oil Industry and Trade 2016*, Warsaw 2017, p. 19; POPiHN, *Annual Report Oil Industry and Trade 2017*, Warsaw 2018, p. 21; POPiHN, *Annual Report Oil Industry and Trade 2018*, Warsaw 2019, p. 21; POPiHN, *Annual Report Oil Industry and Trade 2019*, Warsaw 2020, p. 25; POPiHN, *Annual report Industry and oil trade 2020*, Warsaw 2021, p. 17; POPiHN, *Annual report Industry and oil trade 2021*, Warsaw 2022, p. 27; POPiHN, *Annual report Industry and oil trade 2022*, Warsaw 2023, p. 29; POPiHN, *Annual report Industry and oil trade 2023*, Warsaw 2024, p. 29, https://popihn.pl/raporty-i-konferencje/ [accessed: 11 May 2024].

[660] NIK, *Przeciwdziałanie wyłudzeniom podatku VAT*, Warsaw 2018, p. 16.

[661] KAS, *Podsumowanie pierwszego roku funkcjonowania,* https://mf-arch2.mf.gov.pl/c/document_library/get_file?uuid=4f94ee86-7240-4bf3-a7ed-17fd066963da&groupId=764034 [accessed: 11 May 2024].

carried out in Hungary by taxpayers with an EKÁER identification number. Failure to register the transport is punishable by a penalty of up to 40% of the value of the goods transported.[662]

Freight Package and SENT. Under the provisions of the so-called 'Freight Package', which came into force on 18 April 2017,[663] a teleinformatic System for Electronic Transport Supervision (SENT) was created in Poland, providing for the electronic registration of the carriage of 'sensitive goods'. In the SENT system, the following is monitored (Article 5 of uSENT):

1) Transfer and supply of goods commencing and terminating on the territory of Poland and outside Poland;

2) The carriage and movement of goods beginning and ending outside Poland;

3) Carriage of goods starting outside the territory of Poland and ending in the territory of Poland.

Initially, only road transport was subject to SENT notification. Following an almost doubling of the volume of fuel transported by rail between 2016 and 2017 (from approximately 368 million litres in 2016 to approximately 652 million litres in 2017[664]), rail transport was also included in SENT from 1 August 2018.[665]

This law also introduced, effective from the beginning of October 2018, a requirement to transmit geolocation data for vehicles transporting 'sensitive goods'.[666] This data includes, specifically, the vehicle's geographical coordinates, speed, the date and time the coordinates were acquired, the vehicle's azimuth, satellite data transmission error, and the locator number or external location system number.

Geolocation data enables control authorities to monitor the real-time transport route of consignments and react quickly to undeclared transport or if the consignment, its quantity, or its quality deviates from the declaration. The transporter must equip the vehicle with a device that transmits geolocation data (either a mobile application or an OBU/ZSL device) and ensure continuous transmission of up-to-date geolocation data throughout the notified goods' journey. Initially, location data could be provided in one of two ways: via a GPS transmitter installed in the vehicle or via the free SENT GEO app, available for smartphones on Google Play and the App Store.[667] As of 1 December 2021, the e-TOLL PL application is the only mobile application used to transmit geolocation data to SENT. The app enables:

1) Monitoring the transport of so-called 'sensitive goods' within the System for Electronic Surveillance of Transport (SENT);

2) Electronic toll payment for all motor vehicles and vehicle combinations with a gross vehicle weight (GVW) exceeding 3.5 tonnes and buses (regardless of their

[662] Nemzeti Adó- és Vámhivatal (NAV), *EKAER*, https://ekaer.nav.gov.hu/ [accessed: 11 May 2024].

[663] Act of 9 March 2017 on the monitoring system for road and rail transport of goods and trade in heating fuels (consolidated text Journal of Laws 2024, item 1218), hereinafter: uSENT.

[664] Explanatory Memorandum to the Government's Draft Law on Amendments to the Law on the System for Monitoring Road Freight Transport and Certain Other Laws, Printer No. 2156, https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=2156 [accessed: 8 August 2024].

[665] Act of 15 June 2018 amending the Act on the monitoring system for the carriage of goods by road and certain other acts (Journal of Laws, item 1539).

[666] Ibid.

[667] PUESC, *Aplikacje mobilne*, https://puesc.gov.pl/aplikacje-mobilne [accessed: 11 May 2024].

maximum permissible weight), including toll payments on the A2 and A4 sections of state motorways, and managing the toll account balance in prepayment mode.

The driver is required to activate the GPS locator before starting the journey and deactivate it upon completion. If the device transmitting geolocation data malfunctions for more than one hour, the journey must be halted. If an inspection reveals that the driver failed to activate the locator or failed to stop the journey during its malfunction, the driver is liable for a fine of between PLN 5,000 and PLN 7,500 (Article 32 uSENT).

> 'The SENT system resulted from consolidating three major control operations – Odra, Nysa, and Kontra – into a cohesive system that continuously monitors the trade in excise goods. SENT involves approximately 1,500 personnel; by January 2018, over 2.3 million declarations had been entered into the system. Approximately 1% of declared movements were inspected, resulting in 2,000 penalties'.[668]

In 2019, the list of goods covered by SENT was extended to include transactions involving heating oil for heating purposes. While the new regulations came into force on 1 September 2019, existing regulations could still be applied until 31 March 2020.[669] Furthermore, from 1 December 2019, LPG – propane, butane, or a mixture of these gases – was also included in SENT. This expansion of the list of notifiable goods resulted in an increase of more than 600,000 notifications in the SENT register in 2020 compared with 2019 (chart 53). The scope of goods covered by SENT continues to expand and is defined by a Regulation of the Minister of Finance.[670]

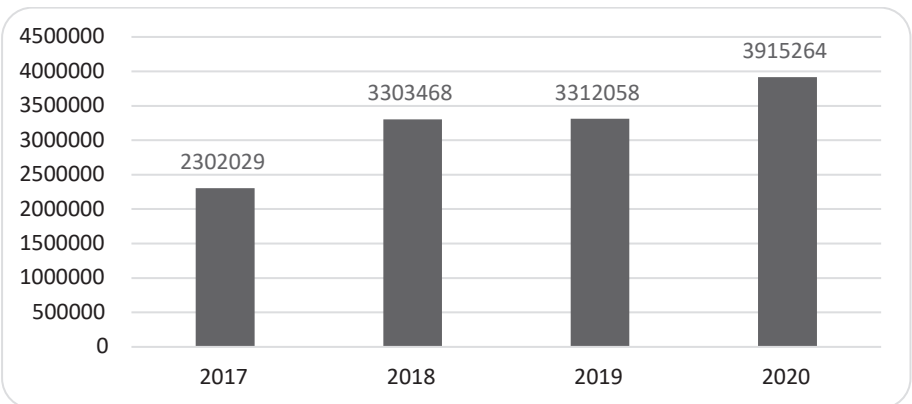


Chart 53: Number of notifications in SENT

Source: Ministry of Finance (2021).[671]

[668] Trans.iNFO, *2 tys. kar i 8 mld zł w budżecie. Tak działa system SENT*, https://trans.info/pl/2-tys-kar-nalozonych-dzieki-systemowi-sent-80543 [accessed: 11 May 2024].

[669] Act of 19 July 2019 amending the Act on the monitoring system of road and rail transport of goods and certain other acts (Journal of Laws, item 1556, as amended).

[670] Currently: Regulation of the Minister of Finance of 25 April 2022 on goods, the carriage of which is covered by the monitoring system for road and rail transport of goods and trade in heating fuels(consolidated text Journal of Laws of 2024, item 1157).

[671] Data after: J. Sarnowski, M. Lewandowski, *Kamienie milowe poprawy ściągalności podatku akcyzowego w latach 2016-2021*, BISP, 3/2021.

SENT effect. Data from the SENT system is used extensively for operational activities. In the system's first year of operation (2017), almost 262,000 SENT-related inspections were carried out, and this number almost doubled within two years (approximately 517,000 in 2019). The number of infringements detected as a result of these inspections also more than doubled, from 2,805 in 2017 to 6,589 in 2019. The SENT system is producing tangible results, contributing to the reduction of the grey economy in fuels.[672] In 2017 alone, implementing the SENT system and mobile inspections by fiscal services resulted in a nearly PLN 8 billion increase in state budget revenue compared to 2016.[673]

> A notable example is rapeseed oil, where a 70% drop in exports was observed. (...) In this case, fictitious intra-Community supplies used to defraud VAT have been eliminated. Often, goods are exported solely to claim a refund of tax paid earlier. After crossing the border, the goods are returned to Poland. Following SENT's introduction, it became apparent that there was and is no genuine demand for Polish rapeseed oil in, for example, Slovakia or the Czech Republic. As a result of SENT, these fictitious exports ceased.[674]

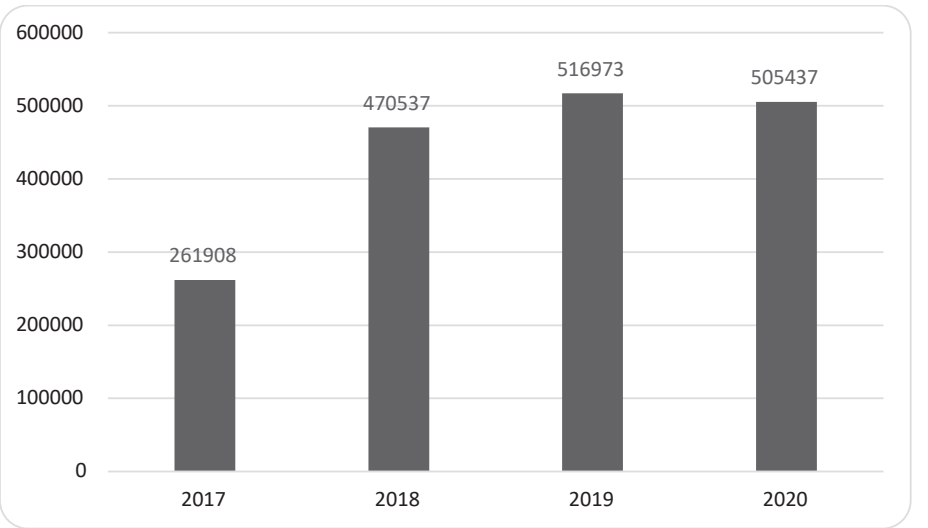


Chart 54: Number of checks using SENT

Source: Ministry of Finance (2021).[675]

[672] The *sealing* effect of SENT inspections should be considered not only in terms of the number of infringements detected, but also their preventive impact. The sheer scale of these checks discourages dishonest operators from engaging in illegal activities.

[673] The aforementioned PLN 8 billion represents, in the opinion of the Ministry of Finance, an increase in revenue from public and legal dues due to a broadening of the tax base resulting from the actions of public authorities i.e. an increase in taxed turnover among 'honest' producers, see: KAS, *Podsumowanie pierwszego roku funkcjonowania*, https://mf-arch2.mf.gov.pl/c/document_library/get_file?uuid=4f94ee86-7240-4bf3-a7ed-17fd066963da&groupId=764034 [accessed: 10 October 2021].

[674] Infor, *Przepisy o SENT skutecznie uderzyły w oszustów podatkowych*, https://ksiegowosc.infor.pl/wiadomosci/2759463,Przepisy-o-SENT-skutecznie-uderzyly-w-oszustow-podatkowych.html [accessed: 11 May 2024].

[675] Data after: J. Sarnowski, M. Lewandowski, *Kamienie milowe poprawy ściągalności podatku akcyzowego w latach 2016-2021*, BISP 3/2021.

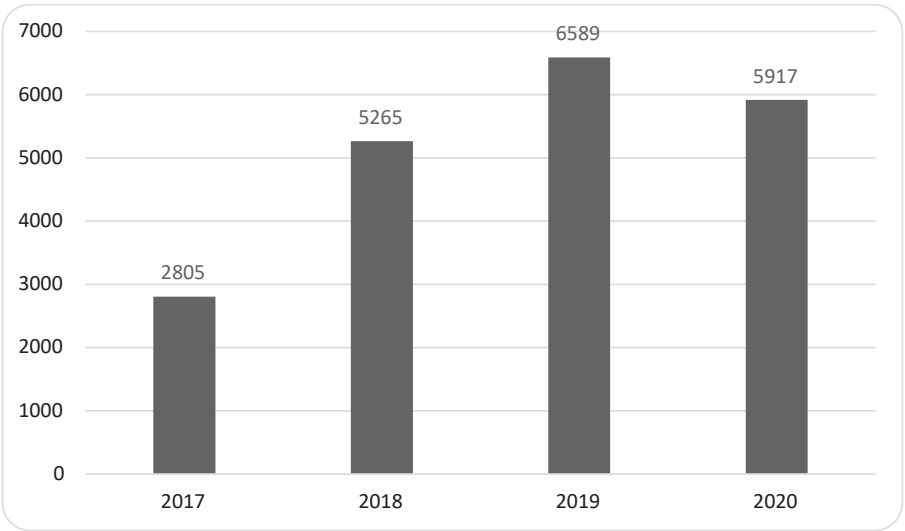


Chart 55: Irregularities identified using SENT

Source: Ministry of Finance (2021).[676]

Coverage of waste shipments with SENT. The successful application of SENT in combating tax crime has encouraged the Minister of Finance to extend the system's use to counter other undesirable activities, including the operations of organised criminal groups involved in the illegal importation, storage, and abandonment of waste in Poland.

> Illegal practices included, among other things, transporting and storing hazardous waste in barrels and 1,000-litre Mauser-type containers. The waste was stored both in built-up areas near densely populated locations and in forested areas and near bodies of water. Toxic waste was accumulated in various locations, including warehouses in city centres rented by 'straw men' – individuals used by members of the criminal group to commit these crimes. Once the warehouses were full of waste hazardous to human life and health, the suspects would cease paying rent and relocate their operations. At this point, the property owners discovered the dumped toxic waste).[677]

As of 22 February 2022, the import of waste into the territory of Poland has been subject to SENT supervision.[678] This means that all waste imports into Poland and all road and rail transport of waste across Poland must be registered in the system. This obligation applies to all types of waste,[679] including waste from the so-called 'green

[676] Ibid.

[677] National Prosecutor's Office, Kolejne zatrzymania w sprawie tzw. mafii śmieciowej, https://www.gov.pl/web/prokuratura-krajowa/kolejne-zatrzymania-w-sprawie-tzw-mafii-smieciowej [accessed: 11 May 2024].

[678] Regulation of the Minister of Finance of 25 January 2022 amending the Ordinance on goods whose carriage is covered by the monitoring system for road and rail transport of goods and trade in heating fuels, (Journal of Laws, item 178).

[679] List of goods covered by SENT in the form of an updated tabular overview: PUESC, Carriage of goods subject to monitoring (SENT), https://puesc.gov.pl/uslugi/przewoz-towarow-objety-monitorowaniem-sent [accessed: 11 May 2024].

list', the import of which does not require a permit from the Chief Inspector of Environmental Protection. An exception to the SENT registration obligation is the import or transit of green list waste intended for recovery with a mass not exceeding 20 kg.

> '[Following actions by the Inspectorate of Environmental Protection and the KAS (...), nearly 700 tonnes of post-hydrolysis lignin – a waste product generated during the hydrolysis of lignin for ethyl alcohol production – were prevented from entering Poland from Belarus and the Russian Federation. Furthermore, the unlawful incineration of this waste within Poland was prevented. In another example of effective cooperation between the Provincial Inspectorate of Environmental Protection and the KAS, an illegal shipment of nearly 80 tonnes of plastic waste sent from the UK to an unauthorised recipient in Poland was intercepted. Actions taken by the Chief Inspectorate of Environmental Protection resulted in the return of all the waste to its country of origin.'[680]

In 2022, notifications of waste shipments exceeded 130,000. The majority of notifications concerning illegal transboundary waste shipments under SENT controls related to waste imports into Poland, with only isolated cases involving transit.[681] By 31 August 2023, over 32,000 inspections of waste shipments had been conducted under SENT, revealing more than 1,200 violations.[682] As of 12 January 2024,[683] regulations came into force extending SENT monitoring to cover hazardous waste shipments, including paints, varnishes, solvents, and adhesives.

According to the Regulation of the Minister of Finance[684] from 21 April 2023 SENT covered the carriage of selected agricultural products, i.e.

1) Cereals, if the gross weight of the consignment of goods exceeds 500 kg;
2) Eggs if their number in a consignment of goods exceeds 900;
3) Poultry meat, if the gross weight of the consignment of goods exceeds 250 kg;
4) Bee products, if the gross weight of the consignment of goods exceeds 10 kg.

4.1.3. Tobacco Package

Structure of the grey market for cigarettes. The primary cause of the VAT gap in the tobacco market is the extent of the grey market, which stems primarily from:[685]

1) Smuggling cigarettes into Poland from abroad and their subsequent illegal sale within the country;

[680] Chief Inspectorate of Environmental Protection, *System SENT w odpadach. Podsumowanie rocznej działalności systemu w transgranicznym przemieszczaniu odpadów*, https://www.gov.pl/web/gios/system-sent-w-odpadach-podsumowanie-rocznej-dzialalnosci-systemu-w-transgranicznym-przemieszczaniu-odpadow [accessed: 11 May 2024].

[681] Ibid.

[682] Chief Inspectorate of Environmental Protection, *SENT – zmiany w przepisach podpisane*, https://www.gov.pl/web/gios/sent---zmiany-w-przepisach-podpisane [accessed: 11 May 2024].

[683] Regulation of the Minister of Finance of 9 October 2023 amending the Ordinance on goods whose carriage is covered by the monitoring system for road and rail transport of goods and trade in heating fuels, (Journal of Laws, item 2185).

[684] Regulation of the Minister of Finance of 20 April 2023 amending the Ordinance on goods whose carriage is covered by the monitoring system for road and rail transport of goods and trade in heating fuels, (Journal of Laws, item 750).

[685] IPAG, *Szara strefa 2023*, https://polskabezgotowkowa.pl/files/IPAG_Szara_Strefa_2020.pdf, p. 14 [accessed: 11 May 2024].

2) Illegal production of counterfeit goods and placing them on the market without the required excise marks.

Smuggled cigarettes enter Poland from countries outside the European Union where tobacco taxation, and therefore prices, are significantly lower than in Poland.[686] A significant portion of the grey cigarette market originates from the illegal manufacture of tobacco products within Poland, which are then either sold domestically or smuggled into other EU countries, particularly Germany, Sweden, and Italy.

Impact of the grey market on honest business. The impact of the grey market on the tobacco sector extends beyond budgetary losses from reduced excise duty, VAT, PIT, and CIT revenue; it also harms legitimate businesses. These businesses must compete with cheaper products sold illicitly. Intellectual property theft from tobacco manufacturers is also a significant issue, as products manufactured within the grey market are often counterfeit versions of well-known brands.

According to the European Commission, between 2002 and 2008, the number of legal cigarettes sold in Poland ranged from 75 billion to 100 billion. The legal market contracted dramatically in 2009, with cigarette sales decreasing by approximately 60% year-on-year (YOY).[687] In a 2013 report, the Institute for Market Economics Research indicated that this contraction was due, in part, to an increased tax burden on tobacco products (and consequently higher cigarette prices), the growth of the shadow economy, and a declining number of smokers. The shrinking cigarette market is also affected by the increasing popularity of 'substitute' tobacco products, such as dried and cut tobacco.[688] The grey tobacco market reached its peak in 2015. Data from Almares Institute[689] shows that in the second quarter of 2015, shows that in the second quarter of 2015, this market reached a record 19%.[690] This indicates that, during the specified period, nearly one in five cigarettes in Poland originated from smuggled goods or counterfeit products manufactured in Poland, rather than from legal manufacturers. According to IPAG's data,[691] the value of smuggled cigarettes sold in Poland in 2015 reached as much as PLN 5.2 billion, accounting for nearly 90% of the grey market in Polish tobacco. The remaining 10% was attributed to domestic grey market production, valued at approximately PLN 700 million.

Combating the grey tobacco market has involved implementing a comprehensive monitoring system for cigarette production, from crop registration and the drying process, through raw material transportation, to finished cigarette packet production,

[686] Ibid., p. 30.

[687] KE, *Releases for consumption of cigarettes 2002-2019 (in 1000 pieces)*, https://taxation-customs.ec.europa.eu/system/files/2023-12/tobacco_products_releases-consumption.pdf [accessed: 18 July 2024].

[688] Institute for Market Economics, *Podatek akcyzowy w przemyśle tytoniowym – studium efektywności systemu*, IBnGR, Warsaw 2013.

[689] Conducted since 2000 at the request of cigarette manufacturers, the surveys of the ALMARES Research Institute are carried out four times a year. They involve finding empty tobacco packs in rubbish bins as a starting point for assessing the origin of cigarettes smoked by consumers. M. R. Bodył, *Szara strefa w branży tytoniowej*, Roczniki Ekonomii i Zarządzania, vol. 10(46), 2/2018, p. 123.

[690] Almares, *Poland Market Survey Report – Empty Discarded Pack Collection,* April 2015, http://www.kspt.org.pl/img/zdjecia/Poland%20Q2%202015%20EPS%20ReportSC1_280.pdf [accessed: 18 July 2024].

[691] IPAG, *Szara strefa 2023*, https://www.ipag.org.pl/Content/Uploaded/files/IPAG_Szara_Strefa_2023.pdf, p. 14 [accessed: 11 May 2024].

retailer delivery, and consumer sale. Consequently, every cigarette packet sold can now be traced virtually all the way back to the field where the tobacco was grown.

Tobacco Package. The key legislation sealing VAT in the cigarette trade was the 'Tobacco Package', introduced by the Act of 27 October 2017 amending the Excise Tax Act and the Act on the Organisation of Certain Agricultural Markets.[692] Under the provisions of this regulation, Chapter 9ba was added to the Act of 11 March 2004 on the Organisation of Certain Agricultural Markets,[693] regulating the principles of monitoring and supervision of tobacco cultivation and the production and sale of raw tobacco.

Entities engaged in tobacco cultivation, raw tobacco production, or its sale are now required to be registered in the Register of Raw Tobacco Producers (RPST). This register is maintained by the director of the local branch of the National Centre for Agricultural Support (KOWR) competent for the producer. Consequently, KOWR possesses information enabling the identification of tobacco producers (e.g., full name, registered address, NIP, PESEL, REGON), data on the cultivated area of specific tobacco varieties, data on concluded raw tobacco sales contracts, the estimated weight of raw tobacco produced, and the weight of raw tobacco delivered to purchasers under these contracts. In addition, the RPST contains information on the stock and weight of raw tobacco destroyed. As of 17 March 2021, 4,157 entities were registered in RPST.[694] If a grower fails to comply with the registration requirement, the director of the relevant KOWR branch issues an order for the crop's destruction at the grower's expense.

The Tobacco Package added paragraph 6 to Article 9b of the Excise Duty Act, requiring tobacco intermediaries and entities representing foreign businesses purchasing dried tobacco to provide KOWR with information on the weight of raw tobacco purchased from producers. Comparing data on dried tobacco produced by producers with the volume of the commodity purchased by registered entities allows for cross-checking of declarations submitted to KOWR. Between 2017 and 2020, the registered

Table 6: KOWR activities 2017-2020 (part 1)

Year	2017	2018	2019	2020
Number of producers registered in the RPST (as at 31 December of the year concerned)	-	4,933	4,473	4,112
Cultivated area (ha)	10,194.39	10,465.49	9,904.35	10,026.81
Deliveries to Intermediate Tobacco Operators (kg)	24,968,427.02	23,687,119.2	23,834,903.3	-
Checks	-	282	313	330

Source: KOWR.[695]

[692] Act of 27 October 2017 amending the Excise Duty Act and the Act on the organisation of certain agricultural markets (Journal of Laws, item 2216).

[693] Act of 11 March 2004 on the organisation of certain agricultural markets (consolidated text Journal of Laws of 2023, item 1502, as amended).

[694] KOWR internal data, after J. Sarnowski, M. Lewandowski, *Kamienie milowe poprawy ściągalności podatku akcyzowego w latach 2016-2021*, BISP, 3/2021.

[695] Ibid.

area of tobacco cultivation remained relatively stable, fluctuating around 10,000 hectares. However, the number of producers registered in RPST decreased from 4,933 in 2018 to 4,473 in 2019 and 4,112 in 2020, representing a decline of approximately 17% over two years. Importantly, this reduction in the number of producers did not result in a corresponding decrease in the volume of their deliveries. After a decrease of 1.28 million kg (approximately 5%) at the end of 2017 and the beginning of 2018, the volume remained virtually constant at almost 24 million kg in 2019. Nevertheless, there was a steady increase in the number of compliance checks related to the package. These checks increased by 17% over two years, from 282 to 330.

Each year, KOWR inspects at least 5% of the raw tobacco producers registered in the RPST. These inspections utilise the latest technology. In 2019, a pilot project monitored tobacco cultivation in Lublin Province using satellite remote sensing data. This technology enables the observation of large areas in near real-time. The project compared tobacco crop data provided by the Department of Market Interventions with data held by the Central Statistical Office.[696]

The monitoring system and inspections conducted by KOWR resulted in the destruction of more than 13 tonnes of raw tobacco between 2018 and 2020 (Table 7). During this period, KOWR conducted 12 supervisions of raw tobacco destruction, nine supervisions of tobacco crop destruction, and four supervisions of crop destruction involving an area 10% larger than the tobacco crop declared in the annual information.

Table 7: KOWR activities 2018-2020 (part 2)

Year	2018	2019	2020	Total
Destruction on an area exceeding 10% of the tobacco crop (ha)	0	1.87	1.41	3.28
Destruction of tobacco crop (ha)	0.961	0.05	1.35	2.361
Destruction of raw tobacco (kg)	2,721.54	8,073	2,731.02	13,525.56

Source: KOWR.[697]

Track & Trace assumptions. A revolutionary tool enabling unprecedented detail in cigarette trade monitoring is the EU Track & Trace system, implemented as of 20 May 2019. The system's introduction, mandated by EU Directive 2014/40/EU,[698] aimed to eliminate illicit tobacco products from the market. It requires all pre-packaged tobacco products manufactured in, intended for, or placed on the EU market to be assigned unique identifiers. The movement of products bearing these identifiers must be recorded at each stage of the supply chain, from the manufacturer, through all intermediaries, to the final stage before the first retail outlet.[699] The Track & Trace system's

[696] Ibid.

[697] Ibid.

[698] Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States on the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ EU. L. 2014 No. 127, p. 1, as amended).

[699] EC, *Traceability and security systems for tobacco products in the EU. Handbook for stakeholders*, DG SANTE 5/23/2018, https://www.podatki.gov.pl/media/4458/podręcznik-ke_pl.pdf (accessed: 12 March 2021).

provisions were transposed into Polish law by the Act of 22 February 2019 amending the Act on health protection against the consequences of tobacco and tobacco products use.[700] From the system's launch until March 2021, the number of registered entities in Poland exceeded 98,000. For instance, in just one month (from 15 February to 15 March 2021), the Track & Trace system recorded the movement of over 1.4 billion unit packs of tobacco products from establishments located within Poland.[701]

Effect of cigarette market sealing. According to the Institute for Projections and Economic Analysis (IPAG),[702] the grey market in the domestic cigarette sector grew steadily between 2012 and 2015, reaching a record 19% in the second quarter of 2015.[703] In subsequent years, until the COVID-19 pandemic, unregistered cigarette sales declined rapidly, halving to approximately 10% of the market by 2019.[704] The implementation of further sealing measures and pandemic-related border closures resulted in a further sharp reduction in the grey market within the sector analysed. It halved again between 2019 and 2021, from 10% to approximately 5.5% of the market. Consequently, in six years, the grey cigarette market decreased by almost three-quarters, from 19% to just over 5%. Importantly, this sealing effect has been sustained, with the grey market remaining at approximately 5.5% by the end of 2022.

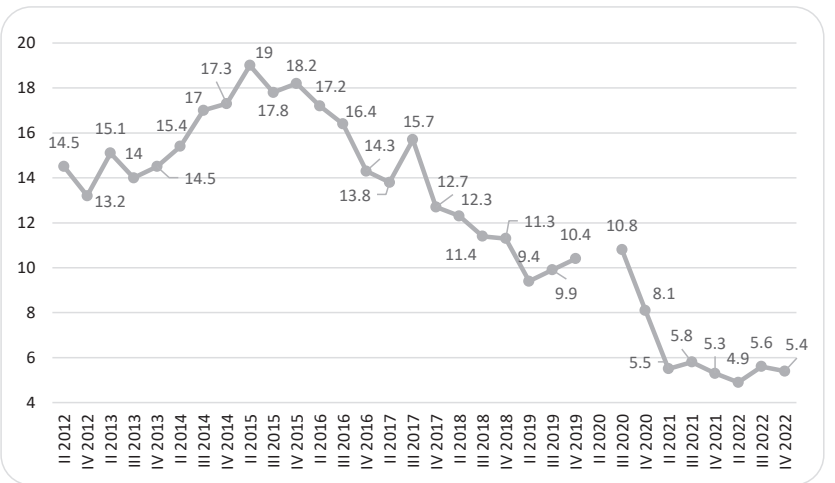


Chart 56: Estimated share of the shadow economy in the national cigarette market [%]

Source: IPAG (2023).[705]

[700] Act of 22 February 2019 amending the Act on the protection of health against the consequences of tobacco and tobacco products (Journal of Laws pos. 638).

[701] MF internal data after: J. Sarnowski, M. Lewandowski, *Kamienie milowe poprawy ściągalności podatku akcyzowego w latach 2016-2021*, BISP, 3/2021.

[702] IPAG, *Szara strefa 2023*, https://polskabezgotowkowa.pl/files/IPAG_Szara_Strefa_2020.pdf, p. 14 [accessed: 11 May 2024].

[703] Almares, *Poland Market Survey Report – Empty Discarded Pack Collection, April 2015*, http://www.kspt.org.pl/img/zdjecia/Poland%20Q2%202015%20EPS%20ReportSC1_280.pdf (accessed: 18 July 2024).

[704] Almares, *Poland Market Survey Report – Empty Discarded Pack Collection, October 2019*, http://www.kspt.org.pl/img/zdjecia/Poland%20Q4%202019%20EPS%20Report.pdf (accessed: 18 July 2024).

[705] IPAG, *Szara strefa 2023*, Warsaw 2023, p. 34, https://www.ipag.org.pl/Content/Uploaded/files/IPAG_Szara_Strefa_2023.pdf [accessed: 11 May 2024].

4.1.4. Excise Package and Electronic Settlement

The next stage in 'sealing' the circulation of excise goods was achieved through the implementation of the so-called Excise Package.[706] This package provided for, among other things, the mandatory electronic submission of excise duty declarations from 1 July 2021, and the mandatory keeping of electronic records of excise goods from 1 January 2022. These measures aimed to make data from declarations and records more readily available in the KAS electronic systems and data warehouses, facilitating automated data analysis and improved fraud detection.[707] While mandatory electronic submission for taxpayers of excise declarations via the PUESC portal came into force on 1 July 2021, the electronic record-keeping requirement was first postponed from 1 January 2022 to January 2023,[708] and then to 1 February 2024.[709] These postponements were due to concurrent development of a more advanced e-service for tax administration, designed not only to digitise records (Tax Administration 2.0[710]), but also enabling the authorities to analyse them automatically (Tax Administration 3.0[711]). Ultimately, in June 2023, the provisions mandating exclusively electronic record-keeping and other documentation relating to excise goods were repealed.[712]

Central Excise Records. A project to finalise the process of moving away from paper-based excise records and documentation is the proposal to implement a single, central ICT system, the Central Excise Records Act (CEWA). CEWA was to be made available free of charge by the National Revenue Administration to all companies required to maintain excise documentation. The draft legislation was adopted by the Council of Ministers on 4 July 2023 and submitted to the Sejm on 11 July 2023.[713] Work on the draft was

[706] Act of 30 March 2021 amending the Excise Duty Act and certain other acts (Journal of Laws, item 694 as amended).

[707] Explanatory Memorandum to the Government's Draft Law on Amendments to the Excise Tax Act and Certain Other Laws, Print No. 860, pp. 51-52, https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=860 [accessed: 5 August 2024].

[708] Act of 29 October 2021 amending the Excise Duty Act and the Act amending the Excise Duty Act and certain other acts (Journal of Laws, item 2313).

[709] Act of 1 December 2022 amending the Excise Duty Act and certain other acts (Journal of Laws, item 2707).

[710] 'Tax Administration 2.0' - is e-government in which most functions are digitised. Although the basic processes are the same as in 'paper' administration, they are faster and more efficient thanks to their transfer to the virtual world. *Taxpayers* still send in returns or reports, but they do so electronically, often using templates (schemas) developed by the administration; OECD, *Tax Administration 3.0: The Digital Transformation of Tax Administration*, Paris 2022, https://www.oecd-ilibrary.org/docserver/3ab1789a-en.pdf?expires=1720652356&id=id&accname=guest&checksum=87E2D9639D8A9C8FAFAAEF028B063405 [accessed: 11 May 2024].

[711] 'Tax administration 3.0' marks a paradigm shift. It brings with it the interconnection of the taxpayer's and the administration's systems, as a result of which the verification of the taxpayer's compliance is fully automatic, without the taxpayer having to submit returns or provide documentation. In doing so, traditional decision-making functions are carried out largely by technology; OECD, *Tax Administration 3.0: The Digital Transformation of Tax Administration*, Paris 2022, https://www.oecd-ilibrary.org/docserver/3ab1789a-en.pdf?expires=1720652356&id=id&accname=guest&checksum=87E2D9639D8A9C8FAFAAEF028B063405 [accessed: 11 May 2024].

[712] The Act of 16 June 2023 amending VAT Act and certain other acts (Journal of Laws, item 1598, as amended). The manner of keeping records and documentation in paper and electronic form is regulated in the Regulation of the Minister of Finance of 22 December 2023 on records, documentation and protocols relating to excise goods and excise stamps (Journal of Laws, item 2817).

[713] Government bill on amending certain laws to reduce irregularities in the trade in certain goods and to improve the functioning of the National Revenue Administration, Print No. 3633, https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?id=EDCE4792D5A0E4E3C1258A5300396254 [accessed: 5 August 2024].

interrupted by the end of the parliamentary term in autumn 2023. In December 2023, although the new Ministry of Finance management confirmed its commitment to implementing CEWA, it announced that implementation would be postponed until after the launch of the National e-Invoicing System, scheduled for after 1 April 2026.[714]

4.2. Trading with Fiscal Receipts

Problem. A specific practice identified by KAS among tax criminals was the collection of fiscal receipts generated by cash registers but not collected by customers. These receipts were then used to issue fictitious invoices to 'friendly companies' in exchange for a financial benefit. According to a Global Compact Network Poland report, this practice was particularly prevalent at petrol stations, where employees sold large bundles of receipts, often totalling around PLN 3,000, to various intermediaries and entities. Those engaged in fraudulent tax evasion would then select refuelling receipts from the file that matched real or fictitious routes using the same fuel type. Detecting this practice was extremely difficult because, while the invoices issued to the trader did not reflect actual transactions, all receipts held by the trader were genuine, and fuel had indeed been sold by the petrol stations.[715]

Example ad for cost invoice trading 'We offer legitimate cost invoices, we are a VAT payer, you can book the documents purchased from us and reduce the tax due. Our commission is 5% of the gross amount.'[716]

Based on issued invoices, companies deducted VAT by overstating tax costs, despite not having purchased the goods or services listed on the invoices. While this practice was particularly prevalent in the fuel sector (fuel purchases at petrol stations)[717] and construction sector (purchase of construction materials), and the construction sector

[714] EY, Taxation 23.04.2024 Topic of the day: Government is working to introduce Central Excise Records (CEWA), https://www.ey.com/pl_pl/biuletyn-podatkowy-i-prawny/taxowka/2024/04/taxowka-23-04-2024 [accessed: 11 May 2024].

[715] Global Compact Network Poland, *Counteracting the grey economy in the years 2014-2022*, https://ungc.org.pl/przeciwdzialanie-szarej-strefie-w-latach-2014-2022/ [accessed: 11 May 2024]. The report's authors appear to overlook important legislative changes in this area, seeing the solution to the problem in other actions, and stating: 'This seemingly insignificant practice of not collecting receipts at fuel stations has been resolved through consumer education and the introduction of the practice of collecting and disposing of receipts at the largest fuel stations. It is important to remember that the monitoring installed is also a practice that allows one to keep in check seemingly harmless behaviours, which in their scale may turn out to be significantly dangerous.' The described solutions have certainly contributed to reducing this phenomenon, but the authors believe they have not been crucial compared to legislative and technological changes (online cash registers).

[716] For more on this topic, see: inter alia, Prawo.pl, *Dam koszty, sprzedam faktury VAT*, https://www.prawo.pl/podatki/ogloszenia-o-sprzedazy-falszywych-faktur-kosztowych-i-ich,451129.html [accessed: 11 May 2024]; Infor, *Jakie sankcje grożą za handel faktrami kosztowymi*, https://ksiegowosc.infor.pl/podatki/vat/faktura/2903070,Jakie-sankcje-groza-za-handel-fakturami-kosztowymi.html [accessed: 11 May 2024]; as well as Ministry of Finance, *Attention to advertisements 'sprzedam koszty VAT - sprzedam faktury*', https://www.gov.pl/web/kas/uwaga-na-ogloszenia-sprzedam-koszty-vat-sprzedam-faktury [accessed: 11 May 2024].

[717] Money.pl, *Oszustwa na stacjach benzynowych. Twój paragon może zostać sprzedany*, https://www.money.pl/gospodarka/wiadomosci/artykul/paragon-pusta-faktura,195,0,2320579.html [accessed: 11 May 2024].

(purchases of construction materials), online advertisements offered fictitious services from a wide range of sectors, including IT, training, advertising, consultancy, and even accounting and auditing.[718]

> 'The Ministry of Finance and the Wielkopolska KAS detected entities defrauding VAT. The activities of companies in the renovation and construction industry, which employed foreign workers, centred on fictitious services and transactions using so-called 'fake invoices'. The fraudsters acted as intermediaries in marketing these fictitious invoices, primarily for construction services. Most of the transactions documented by the invoices never occurred; the invoices served only to generate 'costs'. Estimated losses to the State Treasury due to unpaid VAT amount to approximately PLN 1.4 million.'[719]

The Ministry of Finance had already alerted businesses to the dangers of participating in this fraudulent scheme by publishing a detailed tax warning describing the phenomenon in June 2017.[720]

Solution: receipt with NIP. Given the persistent scale of selling receipts and the issuance of 'fictitious' invoices based on them, a general regulation was introduced to prevent this practice across all market transactions potentially subject to abuse. As a result of the Small Sealing Act,[721] as of January 2020, a principle was introduced: for sales registered with a cash register, an invoice issued for a fiscal receipt in favour of a purchaser using a NIP is valid only if the entrepreneur's assigned identification number is also included on the receipt documenting the sale (the so-called 'Paragon/ Fiscal cash receipt with NIP').

4.3. Promotion of the Fiscalisation of Purchases

One of the key tools used by tax authorities to combat the shadow economy – thereby reducing the VAT gap and levelling the market playing field – has been initiatives encouraging consumers to ensure that they receive receipts from sellers, proving the fiscalisation of their purchases. The Ministry of Finance has conducted educational campaigns to this end for many years, beginning with the 'Take a Receipt' campaign launched in 2014 and continuing to the present day. The 'Paragon Lottery', which ran from 2015 to 2017, was another initiative to raise taxpayer awareness. The Ministry of Finance introduced regulations for the e-Paragon in 2020 to encourage consumers to obtain receipts. These e-Paragons are not only environmentally friendly (as they eliminate the need for printing) but also convenient and allow buyers to better track their purchases and therefore manage their household budgets.

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[718] Tax.blog, *Puste faktury albo 'koszty kupię/sprzedam'*, https://podatki.blog/puste-faktury-koszty-kupiesprzedam/ [accessed: 11 May 2024].

[719] KAS, *MF i KAS wykryły kolejne firmy wyłudzające VAT*, https://tinyurl.com/43s4fhc6 [accessed: 11 May 2024].

[720] Ministry of Finance, *Ostrzeżenie podatkowe z dnia 20.06.2017, Konsekwencje wystawiania pustych faktur np. za paliwo*, https://tinyurl.com/yhnedhp5 [accessed: 11 May 2024].

[721] Act of 4 July 2019 amending the Act on Value Added Tax and certain other acts (Journal of Laws, item 1520, as amended).

4.3.1. National Receipt Lottery

Paragon Lottery Rules. The first iteration of the Lottery ran for 12 months, from October 2015 to September 2016, while the second ran for a further six months, from 1 October 2016 to 31 March 2017.[722] The Ministry of Finance's initiative was inspired by similar successful projects in other countries, including Portugal, Brazil, and Slovakia.[723] In Slovakia alone, during the lottery's first week (16-24 September 2013), 3.215 million receipts were registered on the tax administration website.[724] To encourage participants to collect receipts from sectors most vulnerable to the 'grey economy', the lottery featured a 'bonus industry' that changed quarterly, with additional draws carried out every quarter. Over the 18 months of both lottery iterations, consumers registered more than 137 million receipts, including almost 3.5 million from the additionally rewarded industries. The Lottery had a measurable, positive impact on consumer behaviour. In 2014, only 7% of respondents reported always requesting a receipt when making purchases. By 2016, this figure had increased almost fivefold to 34%.[725]

4.3.2. E-Receipt

The concept of the e-receipt. Another initiative to encourage consumers to collect purchase receipts was the introduction of the e-receipt (e-paragon) into Polish law. This time, the incentive was not a chance to win a valuable prize, but the availability of a new administrative e-service. Unlike lotteries, e-receipts are not registered by shoppers in a dedicated application. Instead, they are automatically sent to the application by the issuer, eliminating the need for a paper receipt. The e-receipt stored in the app is never lost and is always accessible, which is particularly useful for returning goods, warranty repairs, or estimating the value of goods for insurance claims in case of theft or damage. A further incentive to use the e-Paragon app is the ability to review and categorise purchases by expense type, facilitating efficient and conscious household budget management.[726]

The issuance of e-receipts in Poland is currently limited to entities using online fiscal cash registers – a new category of fiscal equipment that communicates with the Central Repository of Cash Registers (CRK), maintained by the Head of the National Revenue Administration. Anonymised fiscal receipts are sent to the CRK in near real time in so-called 'parcels'. This simplifies the declaration and use of such cash registers. Furthermore, the implementation of online and virtual cash registers has enabled tax-

[722] Pierwszy Urząd Skarbowy w Kielcach, *1 października rusza pierwsza w Polsce loteria paragonowa*, https://tinyurl.com/5mfpsxeb [accessed: 11 May 2024].

[723] NBC News, *New 'Lucky Receipt' Lottery Aims to Defeat Portugal's Tax Cheats*, https://www.nbcnews.com/news/world/new-lucky-receipt-lottery-aims-defeat-portugals-tax-cheats-n27106 [accessed: 11 May 2024].

[724] The Slovak Spectator, *Over 3.2 million receipts registered in VAT lottery*, https://spectator.sme.sk/c/20048315/over-3-2-million-receipts-registered-in-vat-lottery.html [accessed: 11 May 2024].

[725] Ministry of Finance, *Narodowa Loteria Paragonowa*, https://www.gov.pl/web/finanse/narodowa-loteria-paragonowa [accessed: 11 May 2024].

[726] There are 18 categories to choose from, such as food, entertainment, restaurants, electronics, beauty or services.

payers, with customer consent, to provide fiscal receipts exclusively in electronic form (the e-receipt). By implementing e-receipts, businesses have been relieved of the burdensome obligation to print fiscal receipts for every sale. Receipt applications offered by both commercial entities and the Ministry of Finance make the management and monitoring of customer purchases convenient and transparent.

E-receipt regulation. As of 31 March 2020,[727] a legal framework was established in Poland to enable taxpayers recording sales on cash registers to issue fiscal receipts electronically (e-receipts) to customers, subject to their consent and agreement on the delivery method. This legislation granted e-receipts the same legal standing as their paper counterparts, ensuring their full recognition by tax authorities. Crucially, e-receipts eliminate the need for printing, offering environmental benefits. This option, however, was initially limited to taxpayers using online cash registers (including virtual cash registers). This change, partly motivated by the desire to minimise physical contact during the pandemic, was welcomed, although it was recognised that e-receipt usage would be limited initially, as most taxpayers at that time used cash registers without online functionality.[728] The legal framework necessitated further technical and legal adjustments. Consequently, from 1 June 2020, e-receipts could be issued via virtual cash registers, and from 29 September 2021, via online cash registers.[729]

Issuing an e-receipt. Issuing an e-receipt can be done via: SMS, e-mail or via a mobile application with the corresponding function. Mobile applications are made available both by commercial entities and by the Ministry of Finance itself, which, as of 15 September 2023,[730] provides taxpayers with a free application called 'e-Paragony', downloadable from the Google Play Store or the App Store.[731] Within the first month of its launch, nearly 20,000 users had already downloaded the app. Cash registers enabling the issuance and transmission of e-receipts to the app via the Receipt Hub are also emerging. Information about an e-receipt's issuance travels from the cash register in the shop or service establishment to the Receipt Hub. A customer with the app can enter or present a special barcode while shopping, and the receipt will then be sent to their phone. The use of the e-Paragony app ensures complete anonymity; only the app holder has information about what, where, when, and how much they purchased.[732]

[727] Act of 31 March 2020 amending the Act on special solutions related to the prevention, prevention and control of COVID-19, other infectious diseases and crisis situations caused by them, and some other acts (Journal of Laws, item 568, as amended).

[728] D. Alicka, M. Żurek, M. Żygadło, A. Andrzejewska, P. Cieszko, *Zmiany podatkowe wynikające z tarczy antykryzysowej*, Tax Review, 2020, no. 6, p. 7.

[729] Regulation of the Minister of Development, Labour and Technology of 12 September 2021 on technical requirements for cash registers (consolidated text Journal of Laws 2024, item 1654).

[730] Act of 26 May 2023 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1059, as amended).

[731] Taxpayers have the option, with the purchaser's consent, to issue fiscal receipts electronically. This document can be sent in a manner agreed upon with the purchaser, including through the ICT system of the Head of the National Revenue Administration, which facilitates the issuance of electronic fiscal receipts without requiring the purchaser's personal data (Article 111(3a)(1b) of uVAT).

[732] Ministry of Finance, *Dzięki aplikacji MF zgromadzisz paragony w swoim telefonie*, https://www.gov.pl/web/kas/dzieki-aplikacji-mf-zgromadzisz-paragony-w-swoim-telefonie [accessed: 11 May 2024].

4.4. VAT e-Commerce Package[733]

In recent years, there has been a sharp increase in transactions completed using electronic communication channels, a trend accelerated by the COVID-19 outbreak. The share of retail sales conducted by commercial and non-commercial traders online has risen steadily. This share was 5.6% in January 2020, 9.1% in December 2020, 10.2% in December 2021, 8.6% in June 2022, 9.5% in October 2022, and 11.9% in November 2022.[734] In 2022, PwC estimated that the value of the Polish e-commerce market would increase by over PLN 94 billion between 2021 and 2027, with more than half generated by three categories: fashion (PLN 21 billion), electronics (PLN 19 billion), and health and beauty (PLN 11 billion).[735] These market trends also have implications for taxation, as many businesses believe they are invisible or 'less visible' to online controllers. This applies both to large, foreign companies making substantial volumes of untaxed sales regionally or even globally, and to Polish small and medium-sized enterprises (SMEs) concealing information about the true scale of their online activities from the authorities.

To enhance KAS activities aimed at reducing the portion of the tax gap attributable to 'grey-zone' online trade, a specialised organisational unit was established to analyse and identify entities suspected of conducting grey market commercial transactions online – the Technical Centre for Computer Forensics, based in Opole (the 'Cybercentre'). The Cybercentre monitors the internet for breaches of laws within KAS's remit, including online sales. The Cybercentre's head manages cooperation with domestic and international institutions, services, and law enforcement agencies to combat economic crime in the digital environment. As of 30 June 2022, the Cybercentre employed or had on duty 33 officers and civil servants, including 14 in the Internet Analysis and IT Support Desk.[736] While the Cybercentre's work yields results by identifying Polish businesses operating online in the grey market for inspection, 'capturing' untaxed activities by non-resident entities requires specific regulatory and legal solutions at both national and supranational levels.[737]

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[733] Compiled on the basis of: J. Sarnowski, P. Selera, Oszustwa związane z VAT z udziałem platform cyfrowych, [in:] E. Małecka-Ziembińska, *Oszustwa związane z VAT w dobie pandemii i cyfryzacji gospodarki*, Poznań 2023.

[734] Based on CSO data; quoted in: NIK, *Działania Krajowej Administracji Skarbowej w celu ograniczenia szarej strefy w internecie*, 1.6.2023, P/22/006, https://www.nik.gov.pl/kontrole/P/22/006/ [accessed: 18 July 2024].

[735] PWC Report, *Perspektywy rozwoju rynku e-commerce w Polsce 2018-2027*, https://www.strategyand.pwc.com/pl/pl/publikacje/2022/perspektywy-rozwoju-rynku-e-commerce-w-polsce-2018-2027.html [accessed: 18 July 2024].

[736] NIK, *Działania Krajowej Administracji Skarbowej w celu ograniczenia szarej strefy w Internecie*, 1.6.2023, P/22/006, https://www.nik.gov.pl/kontrole/P/22/006/ [accessed: 18 July 2024].

[737] Despite the numerous organisational and analytical measures implemented by KAS at both the central level and by individual field authorities, NIK assessed in its report that: 'KAS activities limiting the grey market in e-commerce were inadequate to the scale and scope of entrepreneurs' activity in this area.' NIK pointed out that '(...) despite the functioning of organisational solutions within the National Revenue Administration aimed at improving the process of monitoring the electronic environment and identifying entities operating in the grey market, the number of entities selected during the audited period by the Ministry of Finance and the Cybercentre for further analysis and verification by subordinate units was relatively small'. In response, the Deputy Head of KAS highlighted that: 'the largest share of e-Commerce

4.4.1. The Grey Economy in e-Commerce

The nature of the grey market in e-commerce. A key consequence of the growth of the Polish e-commerce market is the increase in trade between entities selling via Asian shopping platforms and consumers located in Poland.[738] This has given Polish consumers access to low-cost goods, among which consumer electronics are particularly popular, available online at prices lower than those offered in Polish shops – both brick-and-mortar and online.[739] These lower prices result from both lower manufacturer margins in non-European markets and widespread avoidance of VAT and customs duties on online sales, often through the unjustified use of low-value consignment reliefs and limited customs controls.[740] Specifically, the VAT exemption for consignments valued up to €22 was widely exploited in many EU countries to achieve double non-taxation (no tax in the country of origin and no tax in the country of consumption), and simultaneously creating a significant VAT loophole in this area.[741] Abuses of this VAT exemption for low-value consignments could consist of:

1) Undervaluing goods so that the declared values fall below the thresholds for VAT or duty exemption;
2) Splitting consignments to ensure they fall below the threshold;
3) Falsely declaring commercial consignments as 'gifts' or declaring goods ineligible for exemption as exempt from VAT.[742]

Polish grey market in e-commerce. While 57% of cross-border goods deliveries in Poland occur through the three largest digital platforms, numerous other platforms exist in the online trading market, including domestic players. It is estimated that approximately two-thirds of e-commerce goods deliveries are made through digital

sales (more than 88%) is generated by entities with a turnover exceeding PLN 10 million, against which the risk of operating in the grey market online is low. Conversely, the turnover of the smallest entities, where the highest risk of tax law violations is diagnosed (online grey market activity), represents a small percentage of total e-commerce turnover, i.e., less than 1%. Therefore, the assertion that the risk posed by these entities is not significant is fully justified.' The Deputy Head of KAS further emphasised: '(...) KAS organisational units have been equipped with IT tools, solutions, and procedures to identify and monitor areas at risk of irregularities in e-commerce. In the Ministry of Finance's opinion, the audit did not demonstrate that the activities carried out by KAS units concerning entities conducting commercial transactions online were inadequate to the scale and scope of entrepreneurs' activity in this area.' Pismo Zastępcy Szefa KAS z 13.3.2023 r. do Prezesa NIK: Załącznik do raportu NIK: Działania Krajowej Administracji Skarbowej w celu ograniczenia szarej strefy w internecie, 1.6.2023, P/22/006, https://www.nik.gov.pl/kontrole/P/22/006/

[738] Rp.pl, *Temu i Aliexpress nie pomagają. Tylko co trzeci Polak kupuje za granicą*, https://www.rp.pl/handel/art39938481-temu-i-aliexpress-nie-pomagaja-tylko-co-trzeci-polak-kupuje-za-granica [accessed: 11 May 2024].

[739] eBay's internal transaction data confirms that the average purchase price of items such as mobile phones from Asia is sometimes as much as 20% lower than prices offered on the European market. See, inter alia, MMP24.pl, *eBay elektroniką stoi,* https://mmponline.pl/marketing/news/marketing-ebay-elektronika-stoi-210613 [accessed: 11 May 2024].

[740] Global Compact Network Poland, *Przeciwdziałanie szarej strefie w latach 2014-2022*, https://ungc.org.pl/przeciwdzialanie-szarej-strefie-w-latach-2014-2022/ [accessed: 18 July 2024].

[741] B. Kolodziej, *Rewolucja VAT w e-handlu. Unijny pakiet VAT e-commerce i rola platform elektronicznych*, Tax Review, 9, p. 21.

[742] European Court of Auditors, *Special Report no 12/2019: E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved,* https://www.eca.europa.eu/en/publications?did=50415 [accessed: 11 May 2024].

platforms, with only one-third made through direct sales.[743] The issue of combating the grey market in e-commerce was audited by NIK in 2020.[744]

Between 2016 and 2018, Poland experienced a surge in incoming 'small value parcels' from China. In 2016, fewer than 5 million items were sent from China to Poland. This increased to 11.5 million the following year and reached 14 million in 2018 – a threefold increase in just two years.[745] NIK estimates indicate that postal parcels (both registered and unregistered) accounted for 96% of the total turnover of declared low-value parcels, with courier parcels accounting for only 4%. Items exempt from customs duties (i.e., those with a declared value of less than €22 or declared as 'gifts') constituted 99.6% of low-value postal items and 78% of low-value courier items. Due to the simplified customs clearance procedure (presumed customs declaration), postal items exempt from customs and tax duties were not registered in the customs and tax authorities' IT systems. Customs and fiscal offices audited by NIK highlighted the difficulty posed by the unreliable data provided by senders on delivery lists, labels, and customs declarations regarding the description and declared value of goods sent from China to Poland. Consequently, verifying the legitimacy of duty and tax exemptions requires detaining consignments for inspection to determine their actual value and acquisition method. Given the volume of incoming consignments (almost 40,000 parcels per day in 2018 alone), only a small share can be inspected. Across the five customs and tax offices audited by NIK, approximately 1% of postal parcels and 4% of courier parcels were checked for duty exemption eligibility in 2017, 2018, and the first half of 2019. During this period, only 0.15% of the estimated number of parcels with a declared value of less than €22 were detained at the Mazovian Customs and Fiscal Office. While NIK's recommendation for a new customs clearance model for postal traffic is undoubtedly valid, even its implementation does not guarantee complete sealing, given the possibility of routing items to Poland via other EU countries. The only effective way to reduce the VAT gap in online trade is through EU-level action to:

1) Eliminate loopholes in national legislation that allow dedicated consignments of untaxed goods to 'leak' into the EU;

2) Provide tax administrations in countries of consumption with better quality data on shipped goods, particularly their actual type and current value.

The EU VAT e-commerce directives, ViDA and the so-called DAC-7 directive[746] were intended to achieve this.

[743] A. Skierś, Opodatkowanie towarów i usług w obliczu cyfryzacji gospodarki i społeczeństwa, [in:] E. Małecka-Ziembińska (ed.), *Podatki w ujęciu retrospektywnym i perspektywicznym* (pp. 44-61), Poznan University of Economics Publishing House 2022.

[744] NIK, *Nadzór nad przywozem spoza UE przesyłek pocztowych i kurierskich o niskich wartościach*, Warsaw 2020, https://www.nik.gov.pl/plik/id,23167,vp,25874.pdf [accessed: 11 May 2024].

[745] Business Pulse, *Podatkowa susza mimo deszczu przesyłek*, https://tinyurl.com/43xp8mtt [accessed: 11 May 2024].

[746] Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ EU. L. 2021 No. 104, p. 1).

4.4.2. VAT e-Commerce Directive

VAT e-Commerce package. The problem of a massive influx of consignments of untaxed goods into Europe was the subject of ongoing work at the European Commission. The aim was to 'tighten up' the European market against unfair competition, detrimental to domestic sellers, trading via digital platforms. This work resulted in the 'VAT e-commerce package', consisting of Council Directive (EU) 2017/2455 of 5 December 2017[747] and Council Directive (EU) 2019/1995 of 21 November 2019,[748] along with the accompanying implementing acts, was implemented on 1 July 2021.[749] To facilitate taxpayers' use of the new measures, the Minister of Finance issued tax guidance on the package on 1 September 2021.[750]

The keynote of the e-Commerce VAT package. The key aim of the EU-level measures was to close regulatory loopholes that allowed goods to enter the EU tax-free and to simplify VAT accounting for online sellers of goods and services selling to EU countries where they lack a physical presence. The measures therefore focused on:

1) Reducing opportunities for unfair advantage over other operators by tightening the VAT system for importing small consignments from third countries into the EU (by abolishing the €22 exemption);

2) Facilitating cross-border sales for businesses via digital platforms by implementing simplifications such as a 'one-stop shop'. This allows businesses to easily declare and account for output VAT to all EU countries where they sell, all through a web portal in their European country of establishment.

The 'one-stop shop' concept aims to reduce costs for e-commerce businesses associated with registering and settling VAT in each country they ship goods to. Instead, taxpayers can register in a single EU country and settle their EU-wide VAT obligations through a common online portal. A similar portal exists for non-EU traders shipping small-value goods (up to €150) to EU consumers.

Existing regulation: MOSS. It also facilitates the use of the so-called *Mini One-Stop Shop* (MOSS), a procedure that allows VAT on specific cross-border transactions to be declared and paid in the service provider's Member State of establishment (identification). This is done via the relevant online portal, eliminating the need for registration and compliance in the recipient's country. Before July 2021, this applied only to telecommunications, broadcasting, and electronically supplied services. Following the

[747] Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations on the supply of services and on the distance marketing of goods (OJ EU. L. 2017 No. 348, p. 7 as amended).

[748] Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards the provisions on distance selling of goods and on certain domestic supplies of goods (OJ EU. L. 2019 No. 310, p. 1 as amended).

[749] Act of 20 May 2021 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1163).

[750] Ministry of Finance, *Objaśnienia podatkowe z 1 września 2021 r. w zakresie tzw. pakietu VAT e-commerce wprowadzonego ustawą z dnia 20 maja 2021 r. o zmianie ustawy o podatku od towarów i usług oraz niektórych innych ustaw*, Journal of Laws item 1163, https://www.gov.pl/web/finanse/objasnienia-podatkowe-z-dnia-1-wrzesnia-2021-r-w-zakresie-tzw-pakietu-vat-e-commerce-wprowadzonego-ustawa-z-dnia-20-maja-2021-r-o-zmianie-ustawy-o-podatku-od-towarow-i-uslug-oraz-niektorych-innych-ustaw-dz-u-poz-1163 [accessed: 11 May 2024].

implementation of the VAT e-commerce package, this simplification was extended to several other B2C transactions:

1) Other services supplied to consumers where the place of supply is in another Member State;

2) Distance intra-Community sales of goods (sales of goods to consumers in other Member States);

3) Deliveries of goods within a Member State made through online platforms (electronic interfaces) facilitating such deliveries.

New OSS and IOSS. As of 1 July 2021, all of these solutions are available under the *one stop shop* (OSS). Its counterpart for the settlement on an OSS basis of distance sales of imported goods from third countries, with an actual value not exceeding €150, is the so-called import *one stop shop* (IOSS). A simplified procedure has also been introduced for declaring and deferring the payment of tax on imports of goods in consignments with a value not exceeding €150 (hereinafter: special arrangement, simplified procedure, USZ) for persons presenting goods to customs in their own name and on behalf of the recipient in the importing country.

Digital platform liability. The VAT e-commerce package introduces a revolutionary change regarding sales via digital platforms by creating a legal fiction that effectively transfers VAT liability for certain supplies of goods to taxable persons who own, operate, or manage electronic interfaces (the 'deemed supplier regime'). As the Explanatory Notes state,

> 'In general, an electronic interface means any device or software that allows contact to be established between a user who is a vendor and a user who makes a purchase. The term is broad in scope and includes, among other things, websites, web portals, electronic portals, platforms, trading platforms, and application programming interfaces (APIs). This list is not exhaustive, as the solutions included in the VAT e-commerce package are intended to cover future technological developments in the rapidly evolving field of e-commerce.'[751]

These regulations apply to operators of electronic interfaces facilitating specific supplies of goods, regardless of whether they have a business establishment or a fixed place of business in the EU or a third country. Consequently, from 1 July 2021, for these supplies, Article 7a uVAT creates a legal fiction that the platform independently:

1) Purchased the goods (a B2B supply between the platform and the seller who actually sells to the consumer);

2) Supplied those goods (a B2C supply between the platform and the consumer who actually purchases them).

[751] Ministry of Finance, *Objaśnienia podatkowe z 1 września 2021 r. w zakresie tzw. pakietu VAT e-commerce wprowadzonego ustawą z dnia 20 maja 2021 r. o zmianie ustawy o podatku od towarów i usług oraz niektórych innych ustaw* (Journal of Laws, item 1163), https://www.gov.pl/web/finanse/objasnienia-podatkowe-z-dnia-1-wrzesnia-2021-r-w-zakresie-tzw-pakietu-vat-e-commerce-wprowadzonego-ustawa-z-dnia-20-maja-2021-r-o-zmianie-ustawy-o-podatku-od-towarow-i-uslug-oraz-niektorych-innych-ustaw-dz-u-poz-1163 [accessed: 18 July 2024].

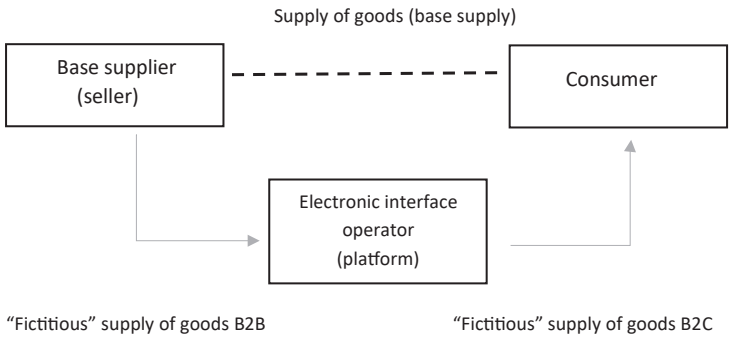


Figure 13: Implications of treating platforms as 'deemed suppliers'

Source: own compilation based on Tax Explanations (2021).[752]

The deemed supplier regime only applies if the platform facilitates certain types of B2C goods supply, namely:

1) **SOTI:** distance sales of imported goods in consignments with an actual value not exceeding the PLN equivalent of €150 (Article 7a(1) uVAT). In this case, the location of the underlying supplier's registered office or permanent place of business is irrelevant (the regulation therefore also covers SOTI by Polish taxpayers);

2) **IC sales:** distance intra-Community sales of goods by a taxable person without a fixed establishment or permanent place of business in the EU (Article 7a(2) uVAT);

3) **A supply of goods within the EU** (other than distance intra-Community sales, i.e., most often a supply within a Member State, including a domestic supply as referred to in Article 5(1)(1) uVAT) carried out by a taxpayer without a registered office or permanent place of business in the EU to non-VAT-registered entities (Article 7a(2) uVAT).

The term 'facilitating', which is used to describe the use of the electronic interface in Article 7a uVAT, is defined in Article 5b of Council Implementing Regulation (EU) 282/2011[753] (directly referenced in Article 7a(3) uVAT). As an EU regulation, this is fully binding and directly applicable in all EU Member States. According to this regulation, 'facilitation' means using an electronic interface to enable a customer and a supplier offering goods for sale via the interface to connect, resulting in a supply of goods through that interface. However, a taxable person does not facilitate the supply of goods if all of the following conditions are met:

1) Does not specify, directly or indirectly, any conditions under which the supply of goods is made;

2) Is not involved, directly or indirectly, in validating the purchaser's debit in connection with the payment;

3) Does not participate, directly or indirectly, in the ordering or delivery of goods.

[752] Ibid.

[753] Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast) (OJ EU. L. 2011, No. 77, p. 1, as amended).

Furthermore, according to the third paragraph of Article 5b of Regulation 282/2011, Article 7a(1) and (2) uVAT do not apply to an operator of an electronic interface who performs only one of the following functions:

1) Processing payments related to the supply of goods;
2) Offering or advertising goods; or
3) Redirecting or transferring buyers to other electronic interfaces where the goods are offered for sale, without further involvement in the supply.

4.4.3. Effects of the VAT e-Commerce Directive

Impact of the VAT e-commerce package: the European Union. According to the European Commission (EC), the new sales tax rules for EU consumers generated an additional €6.8 billion in VAT revenue for Member State budgets in the second half of 2021 alone.[754] Concurrently, the new rules for taxing low-value non-EU shipments (up to €150) generated a further €2 billion in tax receipts. This €2 billion in VAT revenue from changes to low-value parcel taxation comprised €1.1 billion paid through IOSS points, €700 million from abolishing the VAT exemption for goods valued at less than €22, and €270 million from more effective action against undervaluation of non-EU goods. In mid-2023, the EC reported figures for 2022,[755] indicating that Member States collected €20 billion in VAT revenue that year through the new systems introduced by the Directive. This included over €17 billion through the expanded OSS portal covering online sales within the EU. An additional €2.5 billion in VAT revenue was collected on e-commerce imports. This figure includes new VAT revenue from abolishing the VAT exemption that previously applied to imports of low-value goods not exceeding €22 and which were highly susceptible to fraud. Overall, VAT revenue collected through the new systems increased by 26% compared to 2021. Nearly 130,000 businesses have registered with the new systems to account for VAT on online sales under the new framework.

Impact of the e-Commerce VAT package: Poland. Information on the National Revenue Administration's verification of postal and courier parcels, along with data on Poland's revenue from OSS and IOSS procedures, was of particular interest to Polish parliamentarians. In response to an interpellation of 21 September 2022, the Minister of Finance stated that data on courier and postal parcels provided in customs declarations undergoes automatic formal validation, including checks on the validity of value thresholds for the type of declaration processed.[756] All declarations are subject to automatic and/or manual risk analysis by KAS officers handling e-commerce declarations. Approximately 80% of postal items are X-rayed. As some postal items are

[754] European Commission (2022, 23 May), *New EU VAT rules for e-commerce: Updated revenue figures point to a successful implementation*. https://taxation-customs.ec.europa.eu/news/new-eu-vat-rules-e-commerce-updated-revenue-figures-point-successful-implementation-2022-05-23_pl [accessed: 18 July 2024].

[755] EC, *EU VAT rules for e-commerce two years on: Updated revenue figures point again to a successful implementation*, https://taxation-customs.ec.europa.eu/news/eu-vat-rules-e-commerce-two-years-updated-revenue-figures-point-again-successful-implementation-2023-06-30_en [accessed: 11 May 2024].

[756] MF (Ministry of Finance). (2022, 26 October), *Odpowiedź na interpelację poselską nr 35951,* http://orka2.sejm.gov.pl/INT9.nsf/klucz/ATTCKLH6K/%24FILE/i35951-o1.pdf [accessed: 11 May 2024].

registered as collective declarations, the precise number of items checked cannot be directly determined. However, the number of declarations checked and the number of items declared within them can be ascertained. In the first six months following the implementation of the VAT e-commerce package into Polish law (i.e., between 1 July 2021 and 31 December 2021), 2,013 declarations were verified, covering 10,429 consignments. Between 1 January 2022 and 30 September 2022, 4,856 declarations were verified, covering 32,068 shipments.

Budget revenues resulting from the implementation of the VAT e-commerce package significantly exceeded expectations. The impact assessment projected that revenue to the state budget for the entire e-commerce package – covering the EU and non-EU OSS procedures, the IOSS procedure, and the simplified procedure – would amount to PLN 482 million between 1 July 2021 and 31 December 2021.[757] From 1 January 2022, these receipts were estimated at PLN 1,157 million per year – almost two and a half times higher. E-commerce receipts from OSS and IOSS procedures (excluding the simplified procedure) between 1 July and 31 December 2021 exceeded these projections, reaching PLN 582.7 million. A similar overperformance is expected for 2022, as receipts from the EU and non-EU OSS procedure and the IOSS procedure surpassed PLN 1 billion in the first half of the year alone (Table 8).

Table 8: VAT revenues from EU, non-EU procedure (OSS) and imports (IOSS) in PLN

Specification	Second half of 2021	First half of 2022
EU OSS procedure:	PLN 405,104,634.38	PLN 726,735,156.79
OSS non-union procedure:	PLN 85,275,501.92	PLN 122,720,721.76
IOSS procedure:	PLN 92 336 090.12	PLN 161,873,991.29
Total:	PLN 582,716,226.42	PLN 1 011 329 869.84

Source: own compilation based on response to parliamentary interpellation no 35951.[758]

4.5. Promotion of Cashless Trading

Between 2016 and 2022, the Polish government implemented several measures to reduce the VAT gap by increasing cashless payments within the Polish economy. These measures were based on recommendations from various international organisations and modelled on solutions implemented in other countries within the European Union, Asia, and the Americas. A key characteristic of this policy was its comprehensive nature. The initiatives formed a multi-faceted programme encompassing regulatory solutions (including orders and prohibitions), economic incentives, and 'soft' measures, i.e. public awareness campaigns and information dissemination. Notably, these measures were implemented in cooperation with market stakeholders, particularly

[757] OSR to print No. 1114 – Act amending the Value Added Tax Act and certain other acts, https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=1114

[758] Ministry of Finance, *Odpowiedź na interpelację poselską nr 35951*, http://orka2.sejm.gov.pl/INT9.nsf/klucz/ATTCKLH6K/%24FILE/i35951-o1.pdf [accessed: 11 May 2024].

the banking and payments sectors, who participated in initiatives to expand Poland's cashless payment acceptance network.

4.5.1. The Role of Cashless Trading in the Economy

Threats of cash circulation. As OECD reports indicate, the *cash economy* facilitates widespread tax avoidance by taxpayers.[759] This correlation is also noted by the International Monetary Fund (IMF), which identifies the widespread use of cash as one of the most significant challenges in strengthening tax systems in developing economies. This is because cash facilitates VAT fraud due to the difficulty tax authorities face in identifying parties and verifying the object and value of reported sales.[760] The European Commission[761], and, in Poland, IPAG analyses,[762] have highlighted cash's role in money laundering from illegal activities. The National Revenue Administration also emphasises cash's role in carousel fraud, particularly in paying for 'fake invoices' (i.e., documents relating to fictitious transactions). The Polish Ministry of Finance views the increase in non-cash payments as a key factor in combating: 1) *tax avoidance,* 2) concealment of business income (*tax evasion*) and (3) *tax-related crime*, including money laundering and the financing of terrorism.[763]

Positive effects of cashless settlements. According to the IMF and OECD, promoting electronic payments is a significant factor in reducing the shadow economy, increasing tax collection, and reducing VAT fraud.[764] The use of cashless settlements not only has the effect of reducing the undeclared economy, but also makes it more difficult for funds from illegal activities, including tax carousels, to enter circulation.[765] As EY points out, increasing the volume of electronic payments and reducing the use of cash in the economy is a recommended tool for reducing the so-called passive

[759] OECD, *Technology Tools to Tackle Tax Evasion and Tax Fraud*, https://www.oecd.org/tax/crime/technology-tools-to-tackle-tax-evasion-and-tax-fraud.pdf [accessed: 11 May 2024].

[760] IMF, *Explaining the Shadow Economy in Europe: Size, Causes and Policy Options*, https://www.imf.org/en/Publications/WP/Issues/2019/12/13/Explaining-the-Shadow-Economy-in-Europe-Size-Causes-and-Policy-Options-48821 [accessed: 11 May 2024].

[761] In this regard the European Commission defines 'money laundering' as '(…) the processing of these criminal proceeds to disguise their illegal origin, so that the resulting money appears legal and can be spent in the real economy.'; European Commission, *Report from the Commission to the European Parliament and the Council on restrictions on cash payments*, Brussels 2018, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0483 [accessed: 11 May 2024].

[762] IPAG, *Szara Strefa 2021*, http://www.ipag.org.pl/pl-PL/text/publikacje [accessed: 11 May 2024].

[763] Explanatory Memorandum to the Government's Bill on Amendments to the Personal Income Tax Act, the Corporate Income Tax Act and the Freedom of Economic Activity Act, Draft No. 322 of 10.3.2016, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=322 [accessed: 11 May 2024].

[764] IMF, *Explaining the Shadow Economy in Europe: Size, Causes and Policy Options*, https://www.imf.org/en/Publications/WP/Issues/2019/12/13/Explaining-the-Shadow-Economy-in-Europe-Size-Causes-and-Policy-Options-48821; OECD, *Technology Tools to Tackle Tax Evasion and Tax Fraud*, https://www.oecd-ilibrary.org/docserver/g2g77afa-en.pdf?expires=1720652175&id=id&accname=guest&checksum=22043E344B16EBF074827687A0F90F12; similarly G. Harrison, R. Krelove, *VAT Refunds: A Review of Country Experience*, WP/05/218, Working Paper, IMF 2005, https://www.imf.org/en/Publications/WP/Issues/2016/12/31/VAT-Refunds-A-Review-of-Country-Experience-18646 [accessed: 11 May 2024].

[765] IPAG, *Szara Strefa 2023*, https://www.ipag.org.pl/Content/Uploaded/files/IPAG_Szara_Strefa_2023.pdf [accessed: 11 May 2024].

shadow economy,[766] where only one party to the transaction – the seller – benefits.[767] The other party (usually the consumer) does not benefit from the lack of taxation and may not even realise that a cash payment contributes to illegal activities. Research indicates that increasing electronic payments by an average of 10% per year for at least four consecutive years can reduce the shadow economy by up to 5%.[768]

4.5.2. Promoting Cashless Transactions Worldwide

Measures supporting cashless payments. Mechanisms implemented in individual countries to support the development of non-cash transactions fall into three categories. The first comprises regulatory (command-and-control) tools, which mandate specific *business-to-business* (B2B), *business-to-government* (B2G), or *business-to-consumer* (B2C) cashless payments. The second category consists of 'soft' measures designed to influence consumer habits, such as widely enabling cashless payments with entities enjoying public trust, including central and local government bodies, 'third sector' organisations, and religious institutions. The third category of tools supporting non-cash transactions comprises stimulus solutions. These typically target businesses, creating financial incentives to offer electronic payments to customers. These incentives may involve partial or full reimbursement of terminal installation and operating costs, or linking terminal installation or usage frequency to eligibility for tax reliefs. A separate category of incentives targets consumers, potentially offering lower tax rates on purchases made via cashless payment.

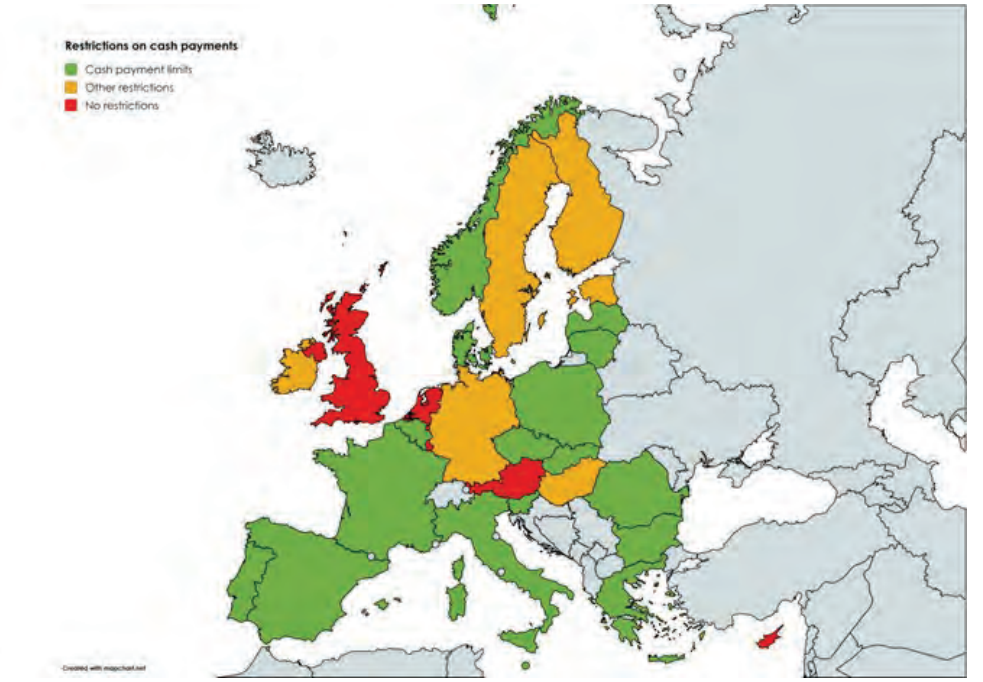
Restrictions on cash payments. Restrictions on cash payments are a tool particularly frequently used by European Union countries, currently in place in 16 Member States (map 4). These limits range from €500 in Greece to €15,000 in Slovakia. Most Member States impose limits on both business-to-business (B2B) and business-to-consumer (B2C) transactions. Poland is an exception, with limits applying only to B2B transactions. These limits are subject to change: Slovakia introduced limits on 1 July 2023, and Italy more than doubled its B2B and B2C transaction limit from €2,000 to €5,000 on 1 January 2023. Some countries apply higher thresholds to sales to non-residents (€10,000 in Spain and €5,000 in France). The European Commission also promotes implementing cash payment limits in B2B and B2C transactions. Under the AML Regulation,[769] all EU countries will be required to implement national B2B and B2C payment limits of no more than €10,000 by the beginning of 2027.

[766] EY, *Szara Strefa w Polsce*, https://assets.ey.com/content/dam/ey-sites/ey-com/en_pl/topics/eat/pdf/03/ey-szara-strefa-w-polsce-final.pdf; EY, *Reducing the Shadow Economy through Electronic* Payments, https://assets.ey.com/content/dam/ey-sites/ey-com/en_pl/topics/eat/pdf/ey-report-2016-reducing-the-shadow-economy-through-electronic-payments.pdf [accessed: 11 May 2024].

[767] A consumer may pay the regular price in cash for a service (e.g., in a restaurant) without receiving a receipt. In such cases, promoting electronic payments, while convenient for consumers who do not directly benefit from the lack of taxation (as they have no inherent interest in paying in cash), leads to a reduction of the grey market.

[768] F. Schneider, A. T. Kearney, *The shadow economy in Europe*, 2013, https://static.ecestaticos.com/file/bc4/e25/7cb/bc4e257cb0ee735c63089d46abce9f28.pdf [accessed: 11 May 2024].

[769] Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (Text with EEA relevance)



Map 4: Restrictions on cash payments

Source: own elaboration based on ECC-Net (2024).[770]

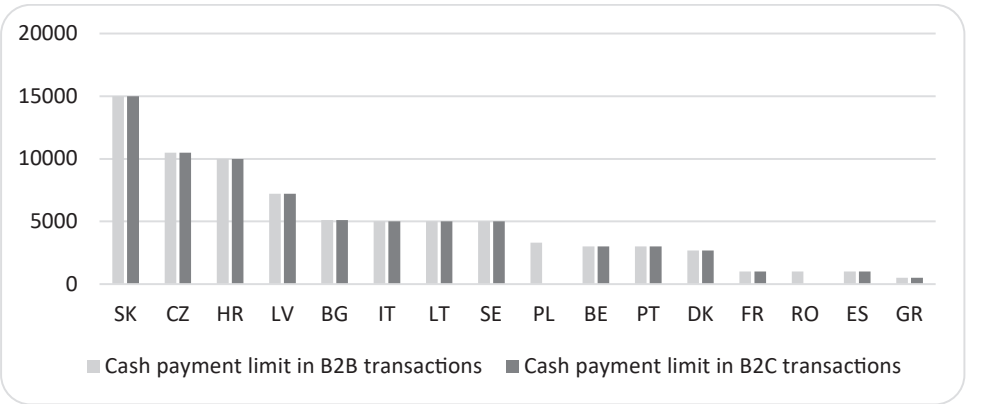


Chart 57: Cash payment limits in B2B and B2C transactions [EUR]

Source: own elaboration based on ECC-Net (2024).[771]

[770] European Consumer Centre Germany, *Cash payment: Cash limits in Europe*, https://www.evz.de/en/shopping-internet/cash-payment-limitations.html [accessed: 11 May 2024].

[771] Ibid.

Obligation to accept cashless payments in a B2G relationship. One method to 'softly' encourage citizens to use *cashless* payments more intensively is to expand the *cashless* acceptance network in public institutions. Already prior to 2017, Italy took steps to prohibit public administration units from restricting card acceptance. Similar requirements were introduced in Spain (for payments above €2,500) and Greece (for payments above €1,500). Italian businesses have been obliged to accept debit card payments for any amount above € 30 since 2014. Furthermore, in Italy, all parking meters have been required to accept cards since 1 July 2016. Bulgaria has introduced legislation requiring all budgetary institutions to encourage citizens to prioritise cashless payments and to inform them of the option to pay by card at their offices. In Germany, authorities must allow electronic payments for electronically conducted administrative procedures, and taxi firms must accept card payments.[772]

Stimulus solutions. Many countries have chosen to use economic incentives to encourage cashless settlements. Stimulus measures can be divided into non-fiscal and fiscal measures. Non-fiscal measures include state or NGO support in the form of subsidising terminal installation or usage costs. Such measures have been, or are being, implemented in Japan, India, Argentina, Mexico, Uruguay, and Nigeria, among others. In Mexico, for example, the authorities established a fund to subsidise payment terminals installed at small shops.[773] In Argentina, small entrepreneurs are exempt from the costs of using and leasing payment terminals for the first two years. On the other hand, fiscal solutions supporting cashless transactions can be further divided into incentives for merchants (used in Argentina and South Korea, among others) and reliefs for consumers. The latter are employed in Japan, South Korea, Greece, Argentina, Colombia, Mexico, and Uruguay, among others.[774]

4.5.3. Cashless Payment Support Programme

Payment terminals in administration. The strategic decision to promote cashless settlements as a tool to combat the shadow economy was taken by the Polish government as early as 2016, when it was identified as a key task of the task force 'From Paper to Digital Poland', established within the Chancellery of the Prime Minister. One of the team's key tasks was to equip all Polish offices with terminals for accepting cashless payments.[775] This goal was pursued through the 'Programme for Dissemination of

[772] Examples indicated after the OSR of the Draft Bill on amendments to certain laws in connection with the development of electronic payments of. 22 November 2017 list no. 329, https://legislacja.rcl.gov.pl/projekt/12305606/katalog/12474062#12474062 [accessed: 11 May 2024].

[773] A. Borcuch, *Wpływ rynku płatności elektronicznych na ograniczanie szarej strefy*, Finance, 1/2012, p. 67.

[774] World Bank Group, *Electronic Payments Acceptance Incentives Literature Review and Country Examples*, April 2020, http://documents1.worldbank.org/curated/en/793041588860799013/pdf/Electronic-Payments-Acceptance-Incentives-Literature-Review-and-Country-Examples.pdf [accessed: 11 May 2024].

[775] § 2(4) of Decision No. 3/2016 of the Chairman of the Committee of the Council of Ministers for Digitalisation of 13 June 2016 on the establishment of the Task Force 'From Paper to Digital Poland', https://www.gov.pl/web/krmc/decyzja-nr-32016-przewodniczacego-komitetu-rady-ministrow-do-spraw-cyfryzacji-z-dnia-13-czerwca-2016-r-w-sprawie-utworzenia-zespolu-zadaniowego-od-papierowej-do-cyfrowej-polski [accessed: 11 May 2024].

Cashless Payments in Public Administration Units', launched on 1 April 2017.[776] In the Programme's first year (April 2017 to March 2018), 1,414 offices – half of all Polish offices – joined, increasing the number of offices accepting cashless payments from 10% to over 60%.[777] In January 2018, traffic police, among others, were equipped with 2,200 terminals, which processed 72,200 electronic payments worth PLN 9.3 million from drivers in the first quarter of their use alone. From 1 September 2018, the Programme was extended to further categories of public sector bodies, including municipal offices, courts, universities, cultural, arts, and sports institutions, national parks, hospitals, clinics, and municipal enterprises.[778] By 2023, nearly 2,800 public offices and institutions had been equipped with terminals.[779] In February 2020, the National Revenue Administration joined the Programme.[780] As a result, as of April 2023, tax and fee receivables can be paid via payment terminals in all tax offices.[781]

Market need. One of the key measures to increase cashless settlements in Poland involved initiatives to expand their acceptance network – the number of commercial outlets accepting cashless settlements from customers (including consumers). An IPSOS survey conducted in 2017 identified the main reasons why businesses did not install cashless payment devices: 1) lack of knowledge of their customers' interest

[776] The programme, run by the Ministry of Entrepreneurship and Technology in cooperation with the National Clearing House (KIR), targeted voivodeship and marshal offices, city and municipal offices, district offices, and the police. It provided public administration units with free POS terminals and the WebPOS Paybynet service for accepting mobile payments via banks' applications. As a result, neither the offices nor the payers incurred charges for the payments. The KIR Foundation for the Development of Digitalisation Cyberium acted as the social partner responsible for educational support and fundraising for the programme. Funding came from donations, including those from KIR. A promotional element of the programme was a competition, organised by KIR under the auspices of the Ministry of Entrepreneurship and Technology, aimed at both offices and their customers. The awards for the most cashless offices were presented after one year of the programme's operation, on 28 May 2018. Ministry of Development and Technology, *Urzędy otwarte na płatności bezgotówkowe*, https://www.gov.pl/web/rozwoj-technologia/urzedy-otwarte-na-platnosci-bezgotowkowe; A. Magdoń, *Płatności bezgotówkowe w jednostkach administracji publicznej,* Nierówności Społeczne a Wzrost Gospodarczy, no. 56 (4/2018), p. 188; KIR, *Program upowszechniania płatności bezgotówkowych w urzędach*, https://www.kir.pl/administracja/program-bezgotowkowy-dla-urzedow/informacja-o-programie/ [accessed: 11 May 2024].

[777] MojeBankowanie.pl, *KIR i Fundacja Polska Bezgotówkowa łączą siły w upowszechnianiu płatności bezgotówkowych*, https://mojebankowanie.pl/informacje-prasowe/informacje-prasowe-bankowosc/kir-i-fundacja-polska-bezgotowkowa-lacza-sily-w-upowszechnianiu-platnosci-bezgotowkowych [accessed: 11 May 2024].

[778] As of 1 October 2018, the running of the Programme was entrusted to the Polish Cashless Foundation. One of the tools the Foundation uses to promote terminalisation within local government units is the annual ranking of the most cashless cities in Poland, 'Cashless Cities,' which has been published since 2022. Cashless.co.uk, *Ranking of the most cashless cities in Poland. Meet Cashless Cities*, https://www.cashless.pl/12568-cashless-cities-wyniki-2022; Cashless.pl, Cashless Cities*, Ranking of the most cashless cities in Poland 2023*, https://tinyurl.com/2braz7sw; Cashless.pl, *We invite you to participate in the third edition of Cashless Cities, ranking of the most cashless cities in Poland*, https://www.cashless.pl/15407-cashless-cities-2024-zaproszenie [accessed: 28 May 2024].

[779] The Foundation's actions have resulted in a progressive decrease in the number of people encountering a lack of cashless payment options in offices. This figure was approximately 30% of visitors in 2021, 25% in 2022, and only 20% in 2023. Cashless.pl, *Polska Bezgotówkowa: w urzędach przybywa terminali. Płatności cyfrowe nie stanowią tam już problemu*, https://www.cashless.pl/14594-polska-bezgotowkowa-badanie-terminale-2023 [accessed: 11 May 2024].

[780] Ministry of Finance, *Jednostki KAS objęte Programem Polska Bezgotówkowa*, https://www.gov.pl/web/kas/jednostki-kas-objete-programem-polska-bezgotowkowa [accessed: 11 May 2024].

[781] Payment via terminal is possible for PIT, CIT, VAT (excluding import VAT and VAT-14), and levies on the sale of alcohol and foodstuffs.

in this payment method; 2) a lack of understanding of the link between customer payment preferences and sales volume; 3) the costs associated with offering cashless settlements.[782] The survey concluded that there was a need to 1) inform businesses about the benefits of accepting cashless settlements and 2) lower the financial barrier to entry for businesses, specifically the cost of installing and operating the necessary equipment. Based on these findings, the Ministry of Development encouraged payment industry stakeholders to create a fund to incentivise terminal installation by Polish small and medium-sized enterprises. The Polish Cashless Foundation[783] a dedicated organisation, was established on 5 September 2017 to manage this fund.

Support Programme for Non-Cash Transactions. The Foundation's main task is to implement the Support Programme for Non-Cash Transactions, which aims to develop a network for accepting non-cash payments in Poland.[784] The Programme's core offering is a free service for SMEs, providing free terminal installation and covering operating costs for 12 months. Launched on 8 January 2018[785] the Programme installed over 100,000 terminals at Polish businesses in its first year alone.[786] In subsequent years, the Programme was extended to foundations and associations, religious organisations, and entities run by them.[787] To facilitate access for potential beneficiaries, participation through the Polish Post was made available.[788] To educate businesses and consumers about non-cash settlements, the Foundation conducts various public awareness campaigns, including the Cashless Detour Cinema[789] and educational programmes, both

[782] The survey also indicated that entrepreneurs who had installed a terminal were overwhelmingly convinced to accept cashless payments. Only 5% of companies not accepting cashless payments at the time of the survey had previously done so and then discontinued this payment method. Of this 5%, only one-third cited cost as the reason for discontinuing cashless payments. As many as 60% of respondents indicated that their company's competitiveness had increased after making cashless payments available to customers. IPSOS, *Postawy i zachowania przedsiębiorców z sektora MSP wobec obrotu bezgotówkowego*, Warsaw 2017, pp. 27, 38, http://frob.pl/wp-content/uploads/2017/06/Badanie-rynkowe-FROB_Badanie-postrzegania-p%C5%82atno%C5%9Bci-bezgot%C3%B3wkowych-przez-mikro-i-ma%C5%82ych-przedsi%C4%99biorc%C3%B3w.pdf [accessed: 11 May 2024].

[783] Within three years of its creation, the fund was to be endowed with approximately PLN 600 million. Payment organisations (Visa and MasterCard) provided half of this sum, banks contributed nearly 30%, and clearing agents provided about 20%. Bank.pl, *Powołanie Fundacji Polska Bezgotówkowa*, https://bank.pl/powolanie-fundacji-polska-bezgotowkowa/ [accessed: 11 May 2024].

[784] Cashless Trading Support Programme, Version 12.0, approved by the Foundation Board on 13 October 2022 to take effect from 1 January 2023, p. 6, https://polskabezgotowkowa.pl/files/offer/wyciag_dla_akceptanta_standardowego_pwob_zo_12.0.pdf [accessed: 11 May 2024].

[785] Cashless Poland, *Startuje Program Wsparcia Obrotu Bezgotówkowego Polska Bezgotówkowa*, https://polskabezgotowkowa.pl/aktualnosci/startuje-program-wsparcia-obrotu-bezgotowkowego-polska-bezgotowkowa/ [accessed: 11 May 2024].

[786] Cashless Poland, *Podsumowanie pierwszego roku Programu Polska Bezgotówkowa*, https://polskabezgotowkowa.pl/aktualnosci/podsumowanie-pierwszego-roku-programu-polska-bezgotowkowa/ [accessed: 11 May 2024].

[787] Cashless Poland, *Transakcje bezgotówkowe w Kościele – czy to możliwe?* https://polskabezgotowkowa.pl/aktualnosci/transakcje-bezgotowkowe-w-kosciele-czy-mozliwe/; eKAI, *Economist KEP: payment terminals for parishes*, https://www.ekai.pl/ekonom-kep-terminale-platnicze-dla-wiernych-i-dla-kosciola/m; eKAI, *In church without cash,* https://www.ekai.pl/w-kosciele-bez-gotowki/ [accessed: 11 May 2024].

[788] Poczta Polska, *Program Polska Bezgotówkowa: Poczta Polska zaoferuje dostęp do darmowych terminali płatniczych*, https://media.poczta-polska.pl/pr/385313/program-polska-bezgotowkowa-poczta-polska-zaoferuje-dostep-do-darmowyc [accessed: 11 May 2024].

[789] It organises screenings in towns and cities without daily access to a cinema. As part of this initiative, viewers purchasing tickets without cash receive a 10% discount and free popcorn, while entrepreneurs can learn about the programme's rules at the Foundation's mobile office. The campaign's pilot began

independently (e.g., *Działamy nie znikamy*,[790] *Akademia Przedsiębiorcy*,[791] *Widzimy się u Ciebie*[792]) and in partnership with other organisations, such as the Social Insurance Institution (*Bezpiecznie, Zdrowo, Bezgotówkowo*).[793]

4.5.4. Regulatory Action

Cash payment limit. From 1 January 2017, the limit on cash transactions in business-to-business (B2B) relations in Poland was reduced from €15,000 to PLN 15,000 gross.[794] Concurrently, the regulation ceased to be a 'soft' prohibition, as it was amended to include a sanction: payments made in breach of the limit are now excluded from tax-deductible expenses (Article 22p Sections 1 and 2 uPIT and Article 15d Sections 1(1) and (2) uCIT).[795] The Polish legislature planned to further reduce this limit to PLN 8,000 gross and introduce a similar limit of PLN 20,000 gross for business-to-consumer (B2C) transactions.[796] These new restrictions, incorporated into Polish law in 2021, were initially scheduled to take effect on 1 January 2023.[797] However, this deadline was postponed to 1 January 2024,[798] and the changes were ultimately abandoned in mid-

on 7 November 2022, featuring screenings in fifteen towns and cities. Its first edition, launched on 10 March 2023, covered 19 localities, while the second edition, which runs from 29 January 2024, covers nearly 50 localities; see Cashless.co.uk, Cashless, *Wkrótce startuje Bezgotówkowe Kino Objazdowe. Akcja łączy w sobie walory rozrywkowe i edukacyjne*, https://www.cashless.pl/12638-bezgotowkowe-kino-objazdowe; Cashless.pl, *Bezgotówkowe Kino Objazdowe rusza w trasę. Do jakich miejscowości zawita tym razem?,* https://www.cashless.pl/13258-bezgotowkowe-kino-objazdowe-marzec-2023; Cashless Polska, *2024 | II edycja Bezgotówkowego Kina Objazdowego*, https://polskabezgotowkowa.pl/projekty/2024-ii-edycja-bezgotowkowego-kina-objazdowego/ [accessed: 17 May 2024].

[790] Cashless Poland, *#CASHLESSMOMENT – czyli jak będzie wyglądał świat płatności po pandemii?*, https://konferencje.bank.pl/wp-content/uploads/2021/10/FUP2021-CASHLESSMOMENT-%E2%80%93-J.Erdman-Fundacja-Polska-Bezgot%C3%B3wkowa.pdf [accessed: 11 May 2024].

[791] Cashless Poland, *Akademia Przedsiębiorcy*, https://www.polskabezgotowkowa.pl/dla-firm/akademia-przedsiebiorcy/ [accessed: 11 May 2024].

[792] *Fundacja Polska Bezgotówkowa startuje z konkursem dla firm. Szymon Majewski pomaga przedsiębiorcom w akcji „Widzimy się u Ciebie!'*, https://polskabezgotowkowa.pl/aktualnosci/fundacja-polska-bezgotowkowa-startuje-z-konkursem-dla-firm-szymon-majewski-pomaga-przedsiebiorcom-w-akcji-widzimy-sie-u-ciebie/ [accessed: 3 October 2024].

[793] Implemented between 2021 and 2023, the campaign aimed to inform people aged 65 and over about the financial sector services available to them, forms of cashless payment and safety rules for online purchases; see ZUS*, Safely, healthily, cashless*, https://www.zus.pl/o-zus/o-nas/kampania-bezpieczny-zdrowy-bezgotowkowy-; Polska Bezgotówkowa*, Bezpiecznie, zdrowo, bezgotówkowo Fundacja Polska Bezgotówkowa partner of the 'Senior's Day' event at ZUS*, https://polskabezgotowkowa.pl/aktualnosci/bezpiecznie-zdrowo-bezgotowkowo-fundacja-polska-bezgotowkowa-partnerem-wydarzenia-dzien/ [accessed: 11 May 2024].

[794] Act of 13 April 2016 amending the Personal Income Tax Act, the Corporate Income Tax Act and the Freedom of Economic Activity Act (Journal of Laws 2016, item 780).

[795] The restriction was originally contained in the disposition of Article 22 of the Act of 2 July 2004 on freedom of economic activity (consolidated text Journal of Laws of 2017, item 2168, as amended), and is now contained in the content of Article 19 of the Act of 6 March 2018. Entrepreneurs' Law (consolidated text Journal of Laws of 2024, item 236).

[796] Act of 29 October 2021 amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts (Journal of Laws, item 2105, as amended).

[797] Ibid.

[798] Act of 9 December 2021 amending the Excise Duty Act and certain other acts (Journal of Laws, item 2427 as amended).

2023.[799] Consequently, a limit on cash transactions in B2C relations may be introduced in Poland only through the planned implementation of EU regulations, which will set a target limit of €10,000 across the European Union. This implementation of EU law is planned for the beginning of 2027.[800]

Duty to accept cashless payments. In May 2017, during negotiations for the agreement establishing the Polish Cashless Foundation, it was agreed that the Foundation's impact would be enhanced by introducing a statutory duty for taxpayers using fiscal cash registers to accept cashless settlements.[801] This obligation mandated the acceptance of at least one electronic payment method, i.e. an electronic transaction, payment card, mobile phone application, or BLIK. Certain categories of businesses were to be temporarily exempt, with a three-year transitional period envisaged.[802] The draft legislation underwent public consultation between 24 November and 12 December 2017, after which it was referred twice to sessions of the Standing Committee of the Council of Ministers,[803] completing its legislative process. The regulation finally came into force on 1 January 2022.[804] Pursuant to the new Article 19a(1) and (2) of the Entrepreneurs' Law, entrepreneurs are now required to provide customers with the option to make cashless payments[805] for goods or services at any location where they conduct business.[806] While no direct penalties are imposed for non-compliance, businesses that do not offer cashless payment options face restrictions on accessing certain benefits available to trusted taxpayers or small businesses.[807] The first restriction is the loss of the

[799] Act of 16 June 2023 amending the Act on Amending the Act on Personal Income Tax, the Act on Corporate Income Tax and Certain Other Acts and the Act on Lump Sum Income Tax on Certain Income Earned by Natural Persons (Journal of Laws, item 1414).

[800] European Council, *Anti-money laundering: Council adopts package of rules*, https://www.consilium.europa.eu/en/press/press-releases/2024/05/30/anti-money-laundering-council-adopts-package-of-rules/ [accessed: 31 July 2024].

[801] Cashless.pl, *'*Cashless *Poland'. To nazwa fundacji powoływanej przez ZBP*, *która będzie terminalizować kraj,* https://www.cashless.pl/2621-polska-bezgotowkowa-to-nazwa-fundacji-powolywanej-przez-zbp-ktora-bedzie-terminalizowac-kraj [accessed: 11 May 2024].

[802] Bill to amend certain laws in connection with the development of electronic payments of. 22 November 2017 list no. 329, https://legislacja.rcl.gov.pl/projekt/12305606/katalog/12474062#12474062 [accessed: 11 May 2024].

[803] The project was referred to the SKRM for consideration on two occasions, i.e. 22 February 2018 and 30 November 2018.

[804] Act of 29 October 2021 amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts (Journal of Laws 2021, item 2105).

[805] Payment by means of a payment instrument within the meaning of the Act of 19 August 2011 on payment services (consolidated text Journal of Laws 2024, item 30, as amended).

[806] In particular, on-premises, off-premises and in a vehicle used for the provision of passenger transport services.

[807] A tax administration finding of a breach of this obligation signals potential involvement in illegal activities. As stated in the Explanatory Memorandum to the draft law: '[w]here the counterparty (seller) has not ensured payment via a payment instrument, this indicates that other, more difficult-to-verify payment methods are being used. In such situations, the tax authority must conduct a detailed verification of the transactions, requiring additional time. Verification is much quicker with settlements made via payment instruments, thus facilitating VAT refunds within 25 days. Similarly, the monthly settlement obligation reduces the risk of exploiting longer settlement periods for fraudulent purposes. The introduced restrictions on VAT preferences for entities not complying with the obligations under the Enterprise Law thus serve to increase protection against potential VAT fraud.' See the Explanatory Memorandum to the Government's Draft Law on Amendments to the Law on Personal Income Tax, the Law on Corporate Income Tax and Certain Other Laws, Print No. 1532 of 08.09.2021, https://sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1532 [accessed: 11 May 2024].

right to an accelerated 25-day VAT refund for the settlement period in which the breach was identified and for the six subsequent settlement periods (Article 87 Section 6c uVAT). The second restriction is a temporary exclusion from quarterly VAT settlements, reverting to monthly tax returns starting with the first month of the quarter in which the breach occurred (if it occurred in the first or second month) or the month following that quarter (if it occurred in the third month). A return to quarterly accounting is permitted only after six months have elapsed since the end of the quarter in which the breach was identified (Article 99(3a)(4), (3e), and (4b) uVAT).

4.5.5. Stimulus Measures

15-day VAT refund. From 1 January 2022, a special preference for entities conducting the majority of their customer transactions electronically,[808] is provided for by Article 87(6d) and (6e) uVAT.[809] These taxpayers are recognised by the Polish tax administration as trusted entities and are therefore entitled to the fastest statutorily guaranteed VAT refund deadline in the European Union, set at just 15 days.[810] Taxpayers can apply for a refund within this new, shorter deadline for accounting periods falling after the Act of 29 October 2021 amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts came into force i.e. from 1 January 2022. Importantly, taxpayers are not required to provide additional data to verify their eligibility for the 15-day VAT refund. Verification is carried out automatically using the IT systems of the Head of the National Revenue Administration (KAS), specifically data from JPK and online cash registers. This analysis takes place centrally at the Ministry of Finance, with the results then passed to the tax office responsible for issuing the VAT refund to the taxpayer.

Terminal relief. To encourage businesses to install payment terminals for the first time and to continue using equipment provided under the Non-Cash Transaction Support Programme, a 'terminal relief' was introduced in income tax regulations from 1 January 2022.[811] This relief takes the form of a deduction from the tax base

[808] The Act stipulates, among other requirements for taxpayers applying for a fast VAT refund, that during the three accounting periods or quarters (for quarterly settlements) preceding the period with the VAT refund: 1) sales recorded at the taxpayer's online and virtual cash registers must account for at least 70% of total sales (80% in 2022); 2) in each month, the majority of turnover recorded on an online or virtual cash register must be cashless (65% from 1 January 2022 to June 2023, 55% from 1 July 2023 to 30 June 2025, and 80% from 1 July 2025 onwards); 3) the taxpayer must have an account declared in the list of VAT taxpayers (the 'white list').

[809] For a broader European context of this solution, see: J. Sarnowski, P. Selera, *'Cashless Taxpayer' – An Innovative Tool to Stimulate Reduction of the Shadow Economy in Poland*, International VAT Monitor, Volume 33, No. 1, IBFD 2022; on the solution itself: Sz. Obuchowski, J. Sarnowski, *Kalendarium wdrożenia podatkowej części Polskiego Ładu (cz. 3)*, BISP, 1/2022, p. 27.

[810] Taking advantage of this preference also requires the taxpayer to: 1) submit an appropriate application with the tax return; 2) ensure that the refund amount does not exceed twice the amount of VAT fiscalised on online cash registers (including virtual ones); 3) ensure timely submission of VAT returns showing the refund for the past 12 months, and that, for the six months immediately preceding the refund application period, the monthly turnover registered on online or virtual cash registers for each settlement period is not less than PLN 40,000 gross (PLN 50,000 gross in 2022).

[811] New Article 26hd uPIT (added by Article 1(45) of the Act of 29 October 2021) and Article 18ef uCIT (added by Article 2(42) of the Act of 29 October 2021).

for expenses incurred in acquiring a payment terminal and those related to processing payment transactions made via the terminal.[812] This deduction is available to PIT taxpayers using both general tax rules and the 19% flat tax rate. Taxpayers that have begun accepting cashless payments or have resumed doing so after a break of at least 12 months prior to the month of resumption are eligible. This entitlement applies in the tax year in which cashless payment acceptance begins and in the following tax year. The deduction amount is capped at PLN 2,500[813] or PLN 1,000.[814] The deduction cannot exceed the taxpayer's income from non-agricultural business activity. Taxpayers that have offered payment terminal acceptance but have participated in programmes financing the reimbursement of payment transaction processing expenses are entitled to a deduction of PLN 1,000 or PLN 2,500 in the tax year they cease using such programmes and in the following year.

Small taxpayers, as defined in Article 5a point 20 uPIT, who are entitled to a 15-day refund of excess input VAT[815] for at least seven months (monthly VAT payers[816]) or two quarters (small VAT taxpayers using the cash accounting method and settling quarterly[817] can claim this relief on preferential terms). The relief limit they can claim has been increased to 200% of the expenses incurred.[818] Their entitlement to this relief is indefinite – regardless of whether they resumed accepting cashless payments within the 12 months immediately preceding the month of resumption.[819] The preferential relief also extends to taxpayers, or a non-corporate partnership in which the taxpayer is a partner, if any entity within that partnership is entitled to a 15-day refund of excess input VAT.

The 'terminal relief' deduction is made in the tax return for the year in which the expenses are incurred. Only expenses actually incurred are deductible.[820] Any portion of the deduction not covered by the taxpayer's annual income can be carried forward and deducted in tax returns for the six consecutive tax years following the year in which the expenditure was incurred.[821]

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[812] To ensure clarity in applying the new provisions, Article 26hd(8) of uPIT introduces a definition of expenses related to handling payment transactions via payment terminals, and paragraph 9 defines 'payment terminal'. These expenditures are considered to be the fees referred to in Article 2, points 19a--19ab of the Payment Services Act of 19 August 2011 (consolidated text Journal of Laws of 2024, item 30, as amended), as well as fees for payment terminal use resulting from rental, lease, or similar agreements. A payment terminal is defined as a device enabling non-cash payments using a payment card or other payment instrument within the meaning of the provisions of the Act of 19 August 2011.

[813] For taxpayers exempted from the obligation to keep records of sales to non-business natural persons and flat-rate farmers using cash registers.

[814] For other taxpayers.

[815] Under the rules arising from the provisions of Article 87(6d) to (6l) of uVAT, as added by Article 14(10)(c) of the Act of 29 October 2021.

[816] In accordance with the rules provided for in Article 99(1) of uVAT.

[817] In accordance with the rules provided for in Article 99(2) and (3) of uVAT.

[818] However, these expenses are capped at PLN 2,000 per tax year in which they are incurred.

[819] For these taxpayers, neither the two-year time limitation on the right to deduct nor the requirement of not having accepted cashless payments in the 12 months preceding a return to accepting them applies.

[820] The new Article 26hd(11) of uPIT stipulates that expenses are not deductible to the extent that they have already been deducted from income under the Act of 20 November 1998 on Lump Sum Income Tax on Certain Income Earned by Natural Persons (consolidated text, Journal of Laws of 2024, item 776, as amended) or reimbursed to the taxpayer in any form.

[821] If the taxpayer dies before fully exercising the right to deduct, this right passes to the inherited enterprise.

Integration of cash registers with terminals. A prerequisite for recognising entities that conduct the majority of their customer transactions electronically as 'trusted taxpayers' is the ability of the Head of the KAS to compare data from accrual reports generated by online cash registers with information on cash turnover recorded via terminals during analytical activities. To obtain this data, legislators mandated that businesses synchronise their fiscal cash registers with payment terminals (Article 19a(3) of the Act on the Law on Entrepreneurs).[822] This synchronisation was initially required by 1 July 2022. Failure to ensure online cash register and payment terminal integration would have resulted in a PLN 5,000 penalty imposed on the business by the head of the tax office (Article 111(6kb) uVAT). Due to varying integration capabilities of cash register models on the market,[823] the effective date for businesses to ensure online cash register and payment terminal integration was postponed by two and a half years to 1 January 2025.[824] In the interim, while the integration was pending, the obligation to report data on businesses' electronic transactions (previously reported as non-cash settlements/payment transactions) to KAS was transferred from the businesses themselves (merchants) to the entities operating the terminals (settlement agents).[825] This information is submitted monthly by the 15th of the following month. The first data package was transmitted by 15 January 2023, covering data from July to December 2022 (Article 278b uKAS[826]). As a result of the effective implementation of this reporting obligation by payment processors, the Ministry of Finance announced in October 2023 its decision to deem the existing reporting model sufficient for KAS's analytical activities and, consequently, to definitively abandon the planned requirement for businesses to integrate terminals with online fiscal cash registers.[827]

4.5.6. Effects of Promoting Cashless Transactions

The period from 2016 to 2022 saw a leapfrogging expansion of the cashless payment acceptance network and an increase in the share of cashless payments in the Polish

[822] Act of 6 March 2018 Law on Entrepreneurs (consolidated text Journal of Laws 2024, item 236, as amended).

[823] Integration of the cash register and terminal occurs when a card payment marked on the cash register automatically transmits the amount to the payment terminal by the payment card. Payment for a product or service via a payment terminal must also trigger the automatic generation of a receipt from the cash register. This requires proper configuration of the cash register software with the payment terminal. However, this integration has presented significant challenges, as not all payment terminals can communicate with online cash registers. Many lack the necessary protocol or interface for connection, see SAiO, Obowiązek integracji kas z terminalem płatniczym, https://saio.posnet.com.pl/strefa-wiedzy/obowiazek-integracji-kas-z-terminalem-platniczym [accessed: 11 May 2024].

[824] Act of 8 June 2022 amending certain acts in order to automate the handling of certain matters by the National Revenue Administration (Journal of Laws, item 1301, as amended).

[825] Within the meaning of Article 2(1b) of the Payment Services Act of 19 August 2011 (consolidated text Journal of Laws 2024, item 30, as amended).

[826] Act of 16 November 2016 on the National Revenue Administration (consolidated text Journal of Laws 2023, item 615, as amended).

[827] Do Rzeczy, *MF: Zlikwidujemy obowiązek integracji kas rejestrujących z terminalami płatniczymi*, https://dorzeczy.pl/ekonomia/492054/mf-zlikwidujemy-obowiazek-integracji-kas-rejestrujacych-z-terminalami.html [accessed: 11 May 2024]. For legislative work, see Bill to amend the Law on Value Added Tax, the Law on Excise Tax and certain other laws of 10. September 2024, https://legislacja.rcl.gov.pl/projekt/12389253 [accessed: 13 October 2024].

economy. According to the National Bank of Poland,[828] between the first half of 2016 and the second half of 2023, the number of commercial and service outlets equipped with payment terminals in Poland increased by over 147%, from 365,000 to nearly 900,000. The number of active terminals increased by 167% during the same period, from 497,000 to almost 1.33 million. The number and value of card transactions made via terminals grew even more rapidly than the cashless payment acceptance network, more than tripling during this time.[829] While the growth rate of non-cash payments in Poland between 2016 and 2023 was similar to that of other regional countries (the Czech Republic, Slovakia, and Hungary),[830] the number of operational terminals in Poland increased at half the rate of the Czech Republic and Slovakia, and by a third more than in Hungary.[831]

Effects of the Non-Cash Trade Support Programme. A key factor driving the rapid expansion of Poland's cashless payment acceptance network was the effective implementation of the government's Non-Cash Transaction Support Programme. Over the five years of the Polish Cashless Foundation's operation (from January 2018 to the end of December 2023), it facilitated the installation of 610,000 terminals at businesses. By the end of 2023, the Programme had reached over 450,000 beneficiaries (chart 58).

The Foundation's activities have revolutionised the development of the cashless payment acceptance network in Poland. The share of terminals installed with the Foundation's support, relative to the total number of terminals operating in the Polish market, exceeded 40% in 2021 and currently stands at around 48%. This means that almost every other terminal currently operating in Poland was activated with support from the Foundation.

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[828] National Bank of Poland, *Ocena funkcjonowania polskiego systemu płatniczego w II półroczu 2023 r.* pp. 50-51, https://nbp.pl/wp-content/uploads/2024/05/Ocena-funkcjonowania-polskiego-systemu-platniczego-II-polrocze-2023_DKO.pdf [accessed: 11 May 2024].

[829] The number of card transactions rose from 1.4 billion in the first half of 2016 to 4.7 billion in the second half of 2023. The value of these transactions also increased, from PLN 92.6 billion to PLN 305.8 billion during the same period.

[830] Data from Statista shows an increase by leaps and bounds in non-cash payments using credit and debit cards in Poland, the Czech Republic, Slovakia, and Hungary between 2016 and 2023. Payments in Hungary more than tripled from 532 million to 1,789 million per year. The Czech Republic and Slovakia both experienced more than doubling, rising from 606 million to 1,558 million payments per year, respectively. Poland also saw a doubling of payments, from 3,966 million to 9,063 million per year. Statista, *Combined number of credit and debit card transactions, excluding cards with an e-money function, in Hungary from 2000 to 2023*, https://www.statista.com/statistics/1234771/purchases-with-payment-cards-hungary/; Statista, *Combined number of credit and debit card transactions at POS in Czechia from 2000 to 2023*, https://www.statista.com/statistics/445007/number-of-cashless-payments-in-czech-republic/; Statista, *Combined number of credit and debit card transactions, excluding cards with an e-money function, in Slovakia from 2001 to 2023*, https://www.statista.com/statistics/746309/purchases-with-payment-cards-slovakia/; Statista, *Quarterly number of payment card transactions in Poland from 2016 to 2023*, https://www.statista.com/statistics/867467/number-of-payment-card-transactions-poland/ [accessed: 10 October 2024].

[831] According to data from the Statista database, the number of terminals at retail outlets increased between 2016 and 2023 by 71% in the Czech Republic (from 149,000 to 254,000), 73% in Slovakia (from 59,000 to 102,000), 95% in Hungary (from 148,000 to 289,000), and a substantial 151% in Poland (from 531,000 to 1,334,000). Statista, *Total number of POS terminals reported in Slovakia from 2000 to 2023*, https://www.statista.com/statistics/746397/pos-terminals-slovakia/; Statista, *Total number of POS terminals reported in Czechia from 2004 to 2023*, https://www.statista.com/statistics/444529/number-of-pos-terminals-czech-republic/; Statista, *Total number of POS terminals reported in Hungary from 2000 to 2023*, https://www.statista.com/statistics/938674/number-of-pos-terminals-hungary/; Statista, *Total number of POS terminals reported in Poland from 2000 to 2023*, https://www.statista.com/statistics/444552/number-of-pos-terminals-in-poland/ [accessed: 10 October 2024].

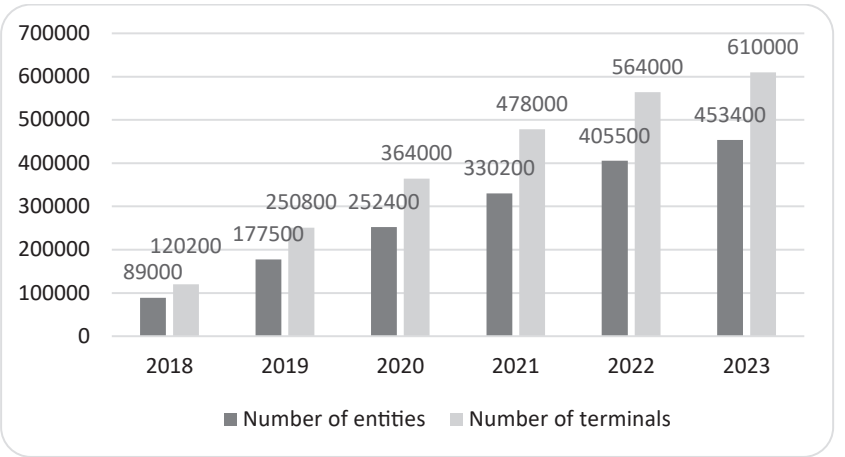


Chart 58: Number of participants and terminals in the Polish Cashless Programme

Source: Fundacja Polska Bezgotówkowa (2024).[832]

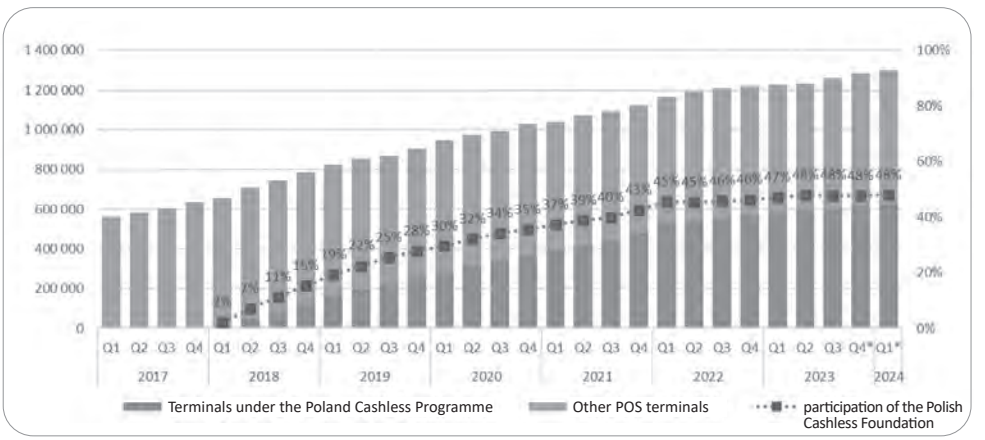


Chart 59: Cashless Poland Programme terminals compared with the market

Source: Fundacja Polska Bezgotówkowa (2024).[833]

The foundation experienced the highest demand for its support during its initial year of operation. In 2018 and 2019, the foundation installed an average of over 10,000 terminals monthly. As the market became more saturated in the following years, the number of installations decreased, averaging around 9,500 terminals per month in 2020 and 2021. This decline continued in the following years, with an average of 7,200 terminals installed monthly in 2022 and only 3,800 monthly installations in 2023 (chart 60).

[832] Cashless Poland, *Mapa Polski Bezgotówkowej I. kwartał 2024 r.,* https://api.polskabezgotowkowa.pl/uploads/Mapa_Polski_Bezgotowkowej_2024_Q1_POLASIK_Research_e7fb496870.pdf [accessed: 11 June 2024].

[833] Ibid.

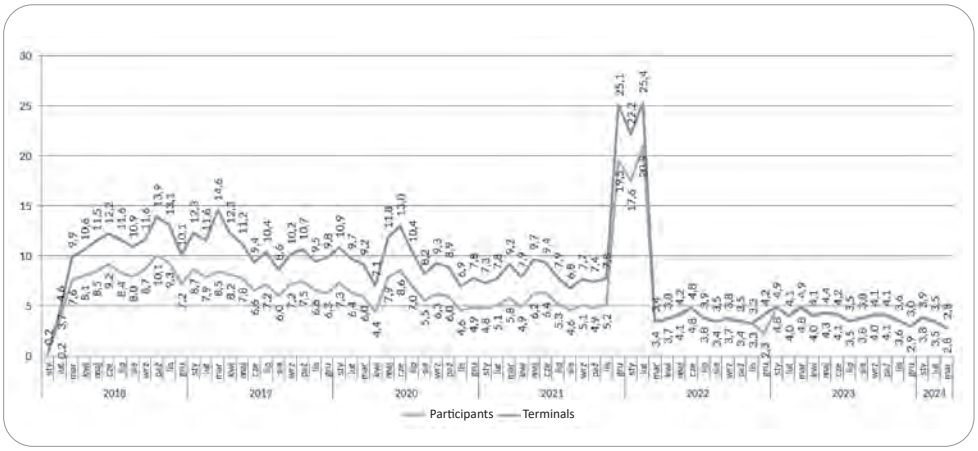


Chart 60: Number of new participants and terminals in the Polish Cashless Programme

Source: Fundacja Polska Bezgotówkowa (2024).[834]

Exceptions to this trend were periods of increased participation in the Programme, driven by economic developments or legislative changes. The first such surge occurred in May and June 2020, coinciding with businesses' responses to concerns related to the COVID-19 pandemic. During these months, the number of terminals installed reached record highs of 11,800 and approximately 13,000 units, respectively – levels not seen since the first quarter of 2019. This period, dubbed a '*cashless moment*', was characterised not only by unprecedented business interest in terminal installation but also by a significant increase in public confidence towards cashless settlements.

Another surge in the number of the Foundation's customers occurred in December 2021 (an unprecedented 25,100 terminals) and in January and February 2022 (22,200 and 25,400 terminals, respectively). This spike in terminal installations was unprecedented in the Programme's history – previously, the turn of the year had not shown such positive growth compared with earlier and later months. In the last week before Christmas 2021, the Foundation signed contracts for just under 4,000 terminals, the typical number for an entire month. For December 2021 as a whole, three times as many contracts were signed as in December 2020.[835] This increased business interest in acquiring terminals stemmed from the aforementioned legal requirement for businesses to offer customers the option of making cashless payments. Concurrently, the ratio of terminals per new Programme participant decreased from 1.5 to 1.2 in December 2021, as many new businesses opted for only one terminal to meet the minimum legal requirement.[836]

[834] Ibid.

[835] Cashless.pl*, Polska Bezgotówkowa zmienia zasady finansowania terminali. To efekt rekordowego zainteresowania nowymi POS-ami*, https://www.cashless.pl/11301-polska-bezgotowkowa-zasady-programu-marzec-2022-r [accessed: 11 May 2024].

[836] Cashless Poland, *Mapa Polski Bezgotówkowej – IV. kwartał 2021 r.,* https://api.polskabezgotowkowa.pl/uploads/Mapa_Polski_bezgotowkowej_2021_Q4_Snapshot_739294bafd.pdf [accessed: 11 May 2024].

The dynamically expanding cashless payment acceptance network, coupled with information campaigns run by public bodies and the Foundation, has led to a steady increase in the share of cashless payments made at commercial and service outlets.[837] During the Foundation's five years of operation, cash payments have decreased by a third, from approximately 57% in 2018 to 35% in 2023. This demonstrates consumers' willingness to use the expanding cashless payment network. Over this five-year period, there has been a shift in the structure of payment methods used in retail, with non-cash payments becoming increasingly dominant. The most popular non-cash payment method remains the debit card, used by around 72% of adult Poles in 2022. Concurrently, mobile solutions such as BLIK have seen rapid growth in popularity. In 2022, a leap in its use was observed, from 15% to as much as 43%. Similar growth was observed for public transport and travel apps (from 8% to 24%) and food delivery apps (from 8% to 19%).

Importantly, the progressive decrease in the share of cash payments has not resulted in a corresponding surge in payment card payments. On the contrary, their share of total payments remained virtually unchanged between 2018 and 2023, staying at around 40%. Conversely, the period from 2019 to 2023 saw an eightfold increase in the market share of mobile apps, growing from approximately 2% of transactions in 2018 to as much as 16% in 2023. Just as 2020 was considered a '*cashless moment*', 2023 was dubbed the 'year of mobile payments' by the payments industry.[838]

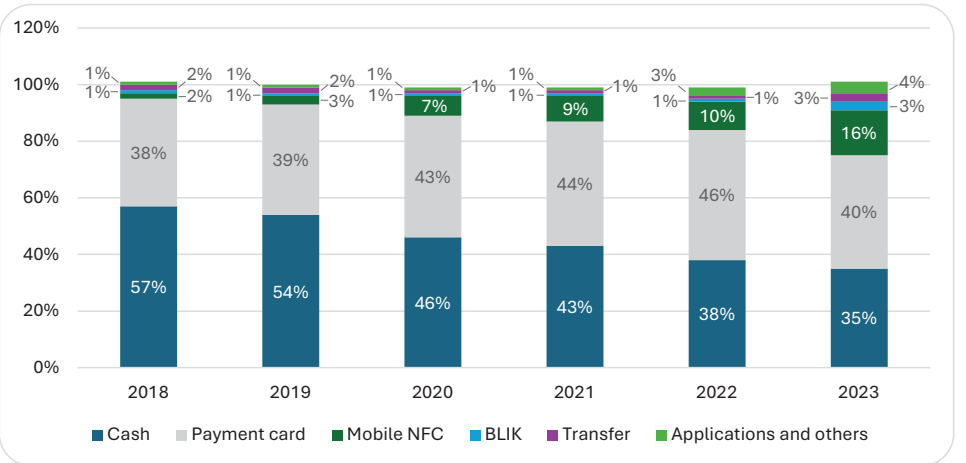


Chart 61: Share of payment methods in retail transactions [% of transactions]

Source: Cashless Poland (2023).[839]

[837] Bank.pl, *Zwyczaje płatnicze Polaków 2018–2022: po bezgotówkowej stronie,* https://bank.pl/bankowosc-i-finanse-fundacja-polska-bezgotowkowa-zwyczaje-platnicze-polakow-2018-2022-po-bezgotowkowej-stronie/ [accessed: 11 May 2024].

[838] Cashless Poland, *Zwyczaje płatnicze a rozwój sieci akceptacji kart w Polsce: badanie konsumenckie 2023*, https://api.polskabezgotowkowa.pl/uploads/Zwyczaje_platnicze_a_rozwoj_sieci_akceptacji_kart_w_Polsce_Polasik_Research_2023_20240610_8e472e288d.pdf [accessed: 11 May 2024].

[839] Ibid.

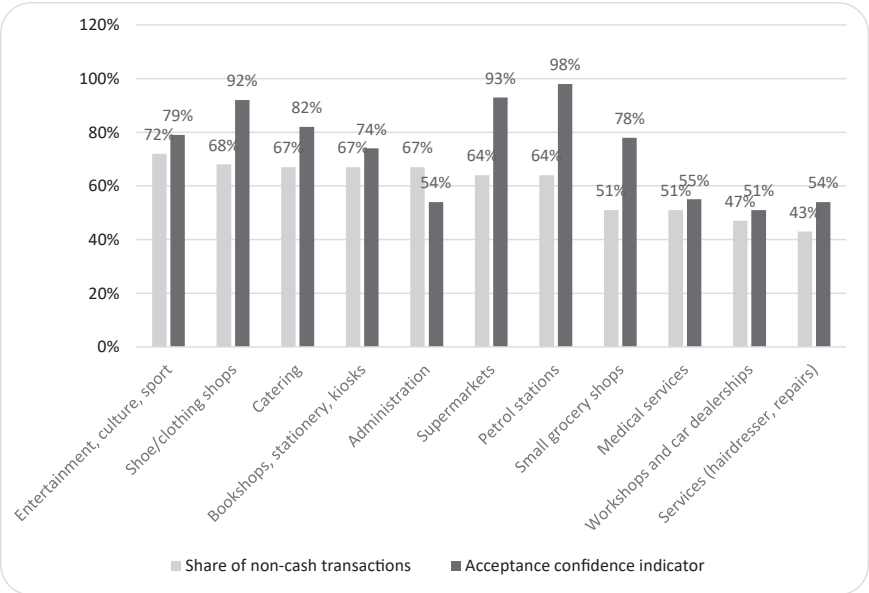


Chart 62: Share of cashless payments vs. payment acceptance confidence rate [%]

Source: own compilation based on Cashless Poland (2022).[840]

The 'terminalisation' glass ceiling is linked to the level of 'banking' within Polish society, as cashless payment methods require a bank account. Poland's share of people with bank accounts remained relatively stable between 2018 and 2022. During this period, approximately 15% of the Polish population did not have a bank account, with older and less educated individuals representing the largest share of this group.

4.6. Facilitating VAT Settlements

4.6.1. Introduction

Taxpayer errors as an element of the VAT gap. In addition to tax fraud and the shadow economy, taxpayer errors in accounting contribute to the VAT gap. Incorrectly fulfilling tax obligations, including miscalculating the taxable item, its base, or rate, can occur even when taxpayers intend to comply with legal requirements. This can be due to the complexity of tax regulations, difficulties in applying them to complex real-world situations, and inconsistencies in official interpretations. The interpretation of the law is further complicated by the specific nature of the tax on goods and services, particularly its ongoing harmonisation and the resulting need to adapt national regulations to

[840] Cashless Poland, *Zwyczaje płatnicze a rozwój sieci akceptacji kart Polsce: badanie konsumenckie 2022*, https://polasik-research.com/sites/default/files/pliki/zwyczaje_platnicze_polakow_2022_polasik_research_v20230802_07e6ddbe3c.pdf?413 [accessed: 11 May 2024].

EU-level legislation. This creates a risk of inaccurate implementation and discrepancies in how taxpayers apply the regulations. Taxpayers may find it advantageous to refer directly to the provisions of a directive, which, if not fully transposed into national law, may have direct effect as a universally binding legal instrument.[841]

Taxpayers' errors – consequences. VAT settlement errors pose a significant challenge not only for tax authorities, who face potential revenue losses, but also for businesses, as they represent a key area of tax risk management. Erroneous settlements can result in tax arrears accruing interest, along with potential tax penalties and even criminal or fiscal criminal liability. These risks have led to a high degree of professionalisation in tax accounting and the widespread use of tools that allow taxpayers to obtain official confirmation of their settlement accuracy.

Outsourcing tax settlements. The complexity of tax regulations compels businesses to engage external specialists. A 2018 European Commission study,[842] found that only 20% of Polish businesses handled their tax accounting entirely independently, without outsourcing any part of their tax settlements. This figure is close to the average for the 20 EU countries surveyed at that time,[843] but it differs significantly from leading countries such as Estonia, where over 60% of taxpayers manage their tax affairs *fully in-house*. Tax compliance is a greater burden for small businesses. While absolute tax compliance costs increase with business size, these costs represent a much higher share of turnover for smaller companies. According to 2022 data, *tax compliance* costs for micro-enterprises operating in the European Union averaged 1.9% of their turnover[844] (down from 2.6% in 2018), with indirect tax (mainly VAT) compliance accounting for only 0.35% of turnover. Poland recorded the highest tax compliance cost burden for micro-enterprises. According to the 2018 report, these costs absorbed almost 4% of their turnover (just over 3% according to the 2022 report for 2021), nearly double the European average. However, indirect taxes represented just over 0.4% of turnover. The 2022 report indicated that the weighted average cost of VAT compliance in the EU was €2,853, compared with just over €3,000 in Poland.

Summarising the 2022 report, the EC indicates that **VAT compliance has become less burdensome** in Austria, the Czech Republic, Finland, Germany, and **Poland** compared to 2018 data.[845]

Individual and general tax interpretations. A tool widely used by Polish entrepreneurs to manage tax risks is the individual interpretation of tax law (Article 14b et

[841] See, inter alia, A. Trubalski, *Prawne aspekty implementacji prawa UE do systemu prawnego RP*, C.H. Beck 2016; K. Głębocki, *Bezpośrednia skuteczność dyrektywy wspólnotowych*, Studia Europejskie, 3/1999, p. 67.

[842] European Commission, *Study on Tax Compliance Costs for SMEs, Final Report*, Brussels 2018; https://op.europa.eu/en/publication-detail/-/publication/0ed32649-fe8e-11e8-a96d-01aa75ed71a1/language-en [accessed: 30 July 2024]; the report was updated in 2022. *Tax compliance costs for SMEs - An update and a complement - Final report*, Publications Office of the European Union, 2022, https://op.europa.eu/en/publication-detail/-/publication/70a486a9-b61d-11ec-b6f4-01aa75ed71a1 [accessed: 30 July 2024].

[843] According to data from the 2022 report covering all EU countries and the UK, 74% of micro-companies had fully or partially outsourced their tax settlements; EC, *Tax compliance costs...,* Publications Office of the European Union, 2022.

[844] For small companies, the rate was 0.8%, and for medium-sized companies, it was 0.3%.

[845] EC, *Tax compliance costs...,* Publications Office of the European Union, 2022.

seq. OrdPod).[846] Individual interpretations are not a source of law; they do not create new legal norms and are not binding on either the taxpayer or the tax authority. They provide only a legal interpretation. Nevertheless, taxpayers' compliance with a provision's interpretation as outlined in an individual interpretation protects them from negative consequences related to that action (Article 14k OrdPod), provided the factual situation aligns with that described in the application. Anonymised individual tax law interpretations are published online on the National Revenue Information website.[847] This regularly updated database serves as an official commentary on tax law for taxpayers, allowing them to understand how the National Revenue Administration currently interprets applicable regulations. The Minister of Finance is responsible for ensuring the consistent application of regulations by tax authorities, including the Director of the National Revenue Information (KIS) when issuing individual rulings. General interpretations issued by the Minister (Article 14a § 1 OrdPod) aim to resolve identified inconsistencies in the official interpretation of a provision. They are general and abstract in nature, containing 1) a description of the issue prompting the interpretation of tax law provisions; 2) an explanation of the scope and application of those provisions; 3) a legal justification.

Scale of VAT interpretation activity. Due to their low cost and significant protective value, individual tax interpretations are a widely used tool for managing tax risks among Polish taxpayers (chart 63 and 64). Over the past 10 years (from 2014 to 2023), the tax administration received over 310,500 requests for their issuance. The annual number of requests ranged from 37,135 in 2014 to 25,425 in 2020. The complexity of VAT rules is evident in the frequency with which taxpayers request rulings on this tax. The share of VAT-related requests fluctuated between 55% (in 2018) and 36% (in 2022) during this period. VAT topics also constitute a significant portion of general interpretations; of the 158 general rulings issued, 49 (31%) concerned VAT.

VAT Settlement Facilitation. Between 2016 and 2022, the Ministry of Finance pursued a consistent policy aimed at reducing the VAT gap by minimising taxpayer errors in their tax settlements. This was achieved by: 1) improving taxpayer access to information on interpreting regulations; 2) expanding taxpayer access to binding information from the tax administration on key VAT settlement issues; 3) simplifying existing VAT rules through systemic changes. To achieve these aims: 1) a legal framework was established, and the issuance of tax explanations began, providing taxpayers with protection in their dealings with the tax administration similar to that offered by individual interpretations; 2) a new type of official interpretation of tax regulations, known as Binding Rate Information, was introduced, enabling taxpayers to obtain binding information from the tax authorities on the correct application of VAT rates; 3) the VAT rate matrix was simplified, halving the number of items in the VAT appendices; (4) a continuous review of VAT arrangements was initiated, resulting in the regular publication of simplification measures.

[846] For a broader discussion of the genesis and significance of the indicated institution, see, inter alia, H. Filipczyk, *Indywidualne interpretacje prawa podatkowego – prawo i praktyka*, Oficyna Prawa Polskiego 2011.

[847] https://eureka.mf.gov.pl/ [accessed: 11 May 2024].

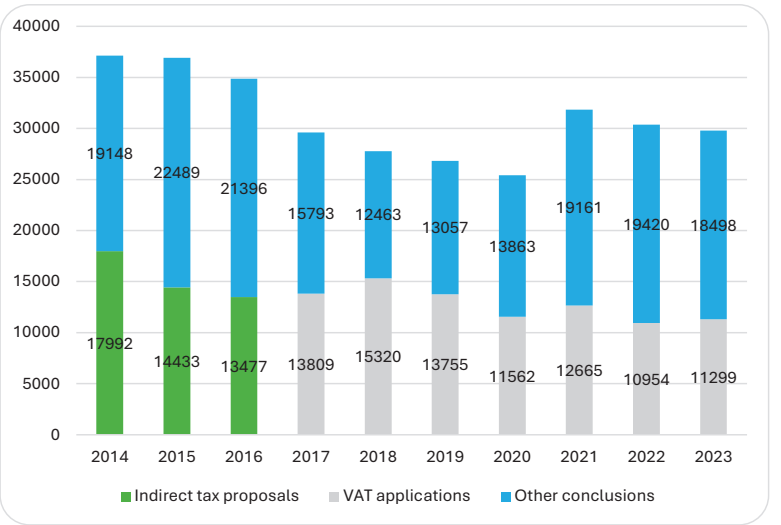


Chart 63: Requests for individual interpretations

Source: own compilation based on Tax Administration and KIS data (2015-2023).[848]

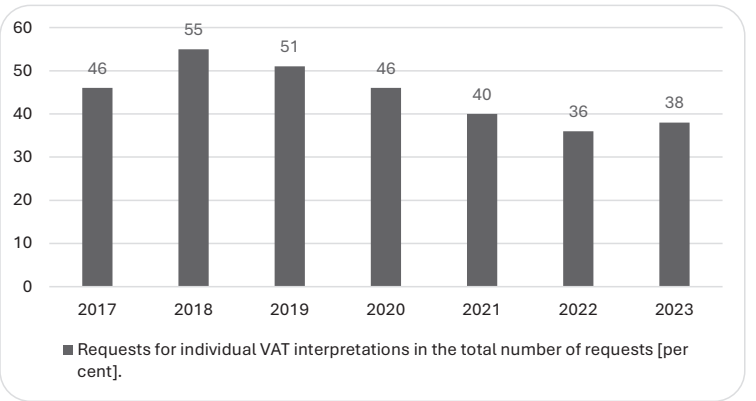


Chart 64: Requests for individual VAT interpretations in the total number of requests [%]

Source: own compilation based on KIS data (2018-2023).[849]

[848] KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2023 roku*, Bielsko-Biała 2024; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2022 roku,* Bielsko-Biała 2023; KIS, Informacja o działalności Krajowej Informacji Skarbowej w 2021 roku, Bielsko-Biała 2022; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2020 roku*, Bielsko-Biała 2021; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2019 roku*, Bielsko-Biała 2020; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2018 roku*, Bielsko-Biała 2019; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2017 roku*, Bielsko-Biała 2018; Administracja Podatkowa, *Informacja z działalności Biur Krajowej Informacji Podatkowej za 2016 rok*, Leszno 2017; Administracja Podatkowa, *Informacja z działalności Biur Krajowej Informacji Podatkowej za 2015 rok*, Leszno 2016.; Administracja Podatkowa, *Informacja z działalności Biur Krajowej Informacji Podatkowej za 2014 rok*, Leszno 2015.

[849] KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2023 roku*, Bielsko-Biała 2024; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2022 roku*, Bielsko-Biała 2023; KIS, *Informacja*

4.6.2. Tax Explanations

Among the tools used by taxpayers to manage tax risk are: 1) analysing educational materials on the websites of the Ministry of Finance and the National Revenue Administration; 2) examining the latest individual interpretations in the KIS database, if confirmation of the correct interpretation of regulations with protective effect is required, 3) obtaining an individual interpretation. However, this range of resources on administrative interpretations of tax regulations has several limitations. These include the fact that the tax administration is not bound by the content of materials published by the Ministry of Finance, KAS, or KIS. Consequently, relying on these sources does not protect taxpayers from negative consequences if the interpretation proves erroneous. Individual interpretations, published in the KIS database after anonymisation, offer protection only to the taxpayer who obtained them. Furthermore, their protective effect is contingent on the actual circumstances precisely matching the description in the ruling application. Therefore, while individual interpretations in the KIS database provide taxpayers with some insight into the administration's interpretation of regulations, they do not offer certainty. A particular challenge arises when new regulations come into force. The absence of relevant rulings in the KIS database makes their interpretation particularly risky for businesses.

To avoid these risks, in the case of optional tax provisions, businesses may choose to refrain from using them for months or even years until the tax administration establishes a clear interpretation. This process can be lengthy, depending on the frequency of individual interpretations issued within that area. In the initial period following the introduction of new regulations, when taxpayers are cautious about adopting new solutions, such rulings may be infrequent. Furthermore, the rulings issued may contradict each other, failing to establish a consistent interpretation. When interpretive discrepancies arise, the Minister of Finance must issue a general interpretation. Until this is published, the use of divergent interpretations by the tax authorities creates a risk for taxpayers. In short, the interpretation of tax regulations generally proceeds 'bottom-up'. The Minister of Finance's role can be described as 'corrective'; they do not shape the direction of interpretation of new regulations *ex ante*, confining themselves to outlining *the ratio legis of* the implemented solutions in the justification accompanying the draft regulations. They intervene only when interpretive discrepancies are identified in the interpretations made by the tax authorities. This system of interpreting tax law posed particular risks for taxpayers during periods of heightened legislative activity by the Ministry of Finance – that is, when numerous regulations came into force, including both optional provisions and mandatory measures designed to 'tighten' VAT collection and limit the activity of tax offenders. Examples of such measures include the provisions on split payment, the white list of VAT taxpayers, and the STIR system. Their precise application, consistent with the legislator's intentions, was particularly

o działalności Krajowej Informacji Skarbowej w 2021 roku, Bielsko-Biała 2022; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2020 roku*, Bielsko-Biała 2021; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2019 roku*, Bielsko-Biała 2020; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2018 roku*, Bielsko-Biała 2019; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2017 roku*, Bielsko-Biała 2018.

important for achieving their objectives quickly – namely, addressing key tax policy challenges. To facilitate taxpayers' application of the law and ensure the maximum effectiveness of these solutions, a new legal instrument, known as tax explanations, was introduced into Polish law. This allows the Minister of Finance to 'centrally shape' the interpretation of tax regulations by administrative authorities, with the power to protect taxpayers who comply with these explanations. Crucially, this can be done *ex ante*, concurrently with the introduction of new legislation.

German model. The model for the institution implemented in Poland was the German *Steuerrichtlinie* (Tax Guidelines). These are interpretative instructions prepared by the Federal Ministry of Finance that are binding on tax authorities when applying the law, effectively ensuring consistent application of the regulations they describe. Taxpayers can request that these guidelines be applied to their benefit when dealing with the tax administration. The Tax Guidelines primarily concern PIT, CIT, corporation tax, advance income tax, and property tax.[850] Due to Germany's federal system, which delegates tax administration to the *Länder*, these states have a role in shaping the content of the Guidelines. Indeed, the Guidelines are issued by the Federal Government with the consent of the *Bundesrat* (Federal Council) (Article 108(7) of the German Constitution[851]). The exceptions are the VAT and tax procedure guidelines. While their principles of validity are the same, they are created through a separate, simplified procedure and are known as *Anwendungserlasse* (interpretative decrees).[852] Due to the federal, rather than national, nature of their subject matter, these decrees are issued independently by the Federal Ministry of Finance, without involvement from the Federal Government or the chamber of parliament representing the *Länder*.[853]

Polish regulation of tax explanations. Tax explanations were introduced into Polish law on 1 January 2017.[854] These are general explanations of tax law provisions issued *ex officio* by the minister responsible for public finance to ensure uniform application of the law by tax authorities (Article 14a § 1 OrdPod). The explanations aim to clarify the practical aspects of applying the law. When issuing them, the Minister is obliged to consider court rulings, both domestic and EU. The explanations take the form of a practical guide, describing not only the principles of interpreting new provisions but also providing practical examples of their application.[855] A taxpayer's adherence to tax explanations cannot be detrimental to them (Articles 14m and 14n § 4(1) OrdPod). Nor can a taxpayer suffer negative consequences from complying with an explanation

[850] Einkommensteuer-Richtlinien (EStR), Erbschaftsteuer-Richtlinien (ErbStR), Gewerbesteuer-Richtlinien (GewStR), Körperschaftsteuer-Richtlinien (KStR), Lohnsteuer-Richtlinien (LStR), Grundsteuer-Richtlinien (GrStR).

[851] Constitution of the Federal Republic of Germany of 23 May 1949 Grundgesetz für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 1 Gesetzes vom 20. Dezember 2024 (BGBl. 2024 I Nr. 439) geändert worden ist.

[852] Umsatzsteuer-Anwendungserlass (UStAE); Anwendungserlass zur Abgabenordnung (AEAO).

[853] K. Tipke, J. Lang, *Steuerrecht*, ed. 25, Verlag Dr. Otto Schmidt Cologne 2024, p. 232.

[854] Act of 16 December 2016 amending certain laws to improve the legal environment for entrepreneurs (Journal of Laws item 2255, as amended).

[855] See, inter alia, Ministry of Finance, *Pakiet VAT e-commerce – objaśnienia podatkowe*, https://www.gov.pl/web/finanse/pakiet-vat-e-commerce--objasnienia-podatkowe [accessed: 11 May 2024].

that has been amended or not considered in the settlement of their case. Between 2017 and 2024, the Minister of Finance issued a total of 45 clarifications,[856] with 14 (approximately 31%) relating to VAT (chart 65). Significantly, in 2017 and 2018, the Minister of Finance issued clarifications solely related to VAT, which helped ensure that taxpayers could confidently apply the solutions implemented at the time to reduce the VAT gap. These covered, in particular, reverse charge in the construction sector,[857] the STIR regulation,[858] the Split Payment mechanism,[859] and the 'white list' of VAT taxpayers.[860] Explanations also addressed the complexities of implementing the VAT e-commerce package[861] and how to benefit from the simplifications introduced by the first VAT SLIM package.[862]

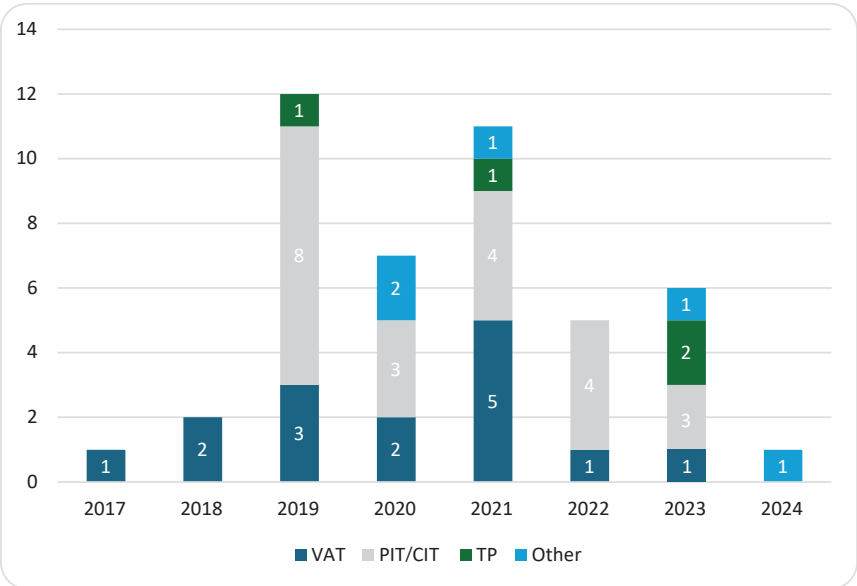


Chart 65: Legal and fiscal explanations by the Minister of Finance

Source: own study.

[856] Legal and tax explanations. Legal explanations are regulated in Article 33 of the Act of 6 March 2018 Law on Entrepreneurs.

[857] Tax clarification of 3 July 2017 on the reverse charge of VAT on transactions relating to the supply of construction services.

[858] Tax clarification of 6 April 2018 on the application of the provisions introduced by the Act of 24 November 2017 amending certain laws to counteract the use of the financial sector for tax evasion.

[859] Tax clarification of 23 December 2019 on the Split Payment Mechanism.

[860] Tax clarification of 20 December 2019 list of VAT taxpayers.

[861] Tax clarification as of 1 September 2021 with regard to the so-called e-commerce VAT package introduced by the Act of 20 May 2021 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1163).

[862] Tax clarifications of 23 April 2021 regarding the 'Slim VAT' package of solutions and selected solutions clarifying certain VAT constructions introduced by the Act of 27 November 2020 amending the Act on Value Added Tax and certain other acts (Journal of Laws, item 2419).

The Minister of Finance has established the good practice of consulting on the content of tax explanations before their publication.[863] Developing the content of these explanations in collaboration with their intended users – businesses and their representative organisations, tax law academics, and professional bodies representing legal professionals, accountants, and tax advisors – allows for the inclusion of additional issues that may generate interpretive uncertainty in practice. Consequently, the published material is better tailored to market needs, addressing numerous ambiguities that would otherwise require months or years to resolve through KIS jurisprudence practice. The consultations regarding the VAT group explanations provide an example of effective engagement. Through dialogue with the market, these explanations were expanded by over 50%, resulting in a 63-page document (compared with the initially proposed 43 pages) containing 43 practical examples (compared with the proposed 24). The scope of the VAT group explanations was broadened through these consultations to include, among other things, issues raised by taxpayers:[864]

1) Continuity of fulfilling intra-VAT group links;
2) Simplified procedures for importing goods;
3) Branches of foreign entities, including examples of transactions between a branch of a foreign entity that is part of a VAT group and the entity's head office or a branch in another country;
4) Concluding VAT group agreements electronically;
5) The coefficient and pre-factor when a former group member performed activities solely for other VAT group members.

4.6.3. Binding Tax Rate Information

Determining the correct VAT rates until 2019. One significant area of difficulty in VAT interpretation is applying the correct tax rate to a given good or service. Misclassifying goods sold or services provided can result in tax arrears, interest payments on those arrears, and potential criminal or fiscal liability. Correct classification also affects the obligation to apply reverse charges and the split payment mechanism. Due to the intrusive nature of tax law, and in particular the self-assessment system, especially with regard to the tax rate, taxpayers require legal instruments that provide clear and certain tax information. Despite this need, no such mechanism existed until 2019. Determining the appropriate tax rate for goods sold or services provided could not be addressed through individual tax law interpretations. The allocation of goods and services to the relevant statistical category, crucial for determining the appropriate VAT rate, was carried out by statistical bodies (the Central Statistical Office, or CSO), which are not tax authorities. The statistical classifications they produced were not binding on the tax authorities and did not offer taxpayers the protection of Article

[863] See, inter alia, Ministry of Finance, *Objaśnienia dotyczące SLIM VAT w konsultacjach*, https://www.gov.pl/web/finanse/objasnienia-dotyczace-slim-vat-w-konsultacjach [accessed: 19 July 2024]; Ministry of Finance, *Konsultujemy projekt objaśnień podatkowych dotyczących grup VAT*, https://www.gov.pl/web/finanse/konsultujemy-projekt-objasnien-podatkowych-dotyczacych-grup-vat [accessed: 11 May 2024].

[864] Ministry of Finance, *Objaśnienia podatkowe w zakresie grup VAT*, https://www.gov.pl/web/finanse/objasnienia-podatkowe-w-zakresie-grup-vat [accessed: 11 May 2024].

14k-14m OrdPod. In the absence of any other legal instrument, taxpayers invoked these statistical classifications when disputing matters with tax authorities or applying for individual interpretations. However, these interpretations made it clear that the CSO's opinions did not bind the tax authorities. In turn, the tax authorities, when responding to taxpayers' requests in individual cases, stated that they were not competent to decide on the classification of a given good or service. Furthermore, the classifications issued were subject to change, which resulted in VAT arrears for entities complying with them, along with the associated interest payments and potential sanctions under the provisions of the Fiscal Penal Code.[865] The urgent need to simplify and rationalise the system of VAT rates, and to provide businesses with a tool that would allow them to obtain official confirmation of the correct VAT rate applied, was also highlighted by business organisations, who called for urgent legislative action in this regard.[866]

Regulation of Binding Rate Information. To provide taxpayers with a means of obtaining official confirmation regarding the appropriateness of the VAT rates they apply, a new mechanism was introduced into Polish law on 9 August 2019: Binding Rate Information (WIS).[867] WIS are issued by the Director of the KIS in the form of a decision (Article 42a uVAT). They contain:

1) A description of the good or service that is the subject of the WIS;
2) A classification of goods according to a division, heading, subheading or code of the *Combined Nomenclature* (CN), or according to a division, group, class, category, subcategory or heading of the Polish Classification of Goods and Services, or according to a section, division, group or class of the Polish Classification of Construction Products;[868]
3) The tax rate applicable to the good or service.

The WIS serves as a protective instrument, binding on tax authorities in relation to the entity for which it was issued and concerning the specific goods or services it covers (Article 42c(1) uVAT). Although applications for a WIS could be submitted from 1 November 2019, they apply to the legal position as of 1 July 2020.[869] Initially, until 31 December 2020, a WIS could only classify goods according to the Combined Nomenclature (CN) or the Polish Classification of Construction Products (PKOB), and

[865] W. Dmoch, *Wiążąca informacja stawkowa – nowe rozwiązanie prawne w VAT*, Przegląd Podatkowy, 2019, no. 10, p. 28.

[866] See, inter alia, Związek Przedsiębiorców i Pracodawców, *Niejednoznaczne uregulowanie stawki VAT a zasada bezpieczeństwa prawnego*, Warsaw 2019, https://zpp.net.pl/wp-content/uploads/2019/06/Niejednoznacznie-uregulowane-stawki-VAT-a-zasada-bezpiecze%C5%84stwa-prawnego.pdf [accessed: 11 May 2024].

[867] Act of 9 August 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1751, as amended).

[868] This classification is necessary for: a) determining the applicable tax rate for the goods or service; b) applying the provisions of the Act and its implementing regulations – in the case referred to in Article 42b(4) of uVAT. A WIS application may also include a request to classify goods or services for the purpose of applying other provisions of the Act and its implementing regulations, beyond those concerning tax rate determination.

[869] Exceptions exist for WIS rulings concerning book publications, sheet music, maps, and press publications. These rulings reflect the legal position as of 1 November 2019.

not according to the Polish Classification of Goods and Services (PKWiU).[870] However, since January 2021[871] WIS classifications can also be based on the PKWiU.[872]

Changes to WIS regulations. The SLIM VAT simplification package 3[873] abolished fees for the issuance of WIS[874], introduced the unification of regulations concerning WIS and Binding Excise Information (WIA) and consolidated their handling. Previously, responsibility for WIS and WIA was shared between four tax authorities: the Director of National Revenue Information, the Directors of the Tax Administration Chambers in Wrocław and Warsaw, and the Head of the National Revenue Administration. As of 1 July 2023, the Director of National Revenue Information assumed sole responsibility for all WIS matters.

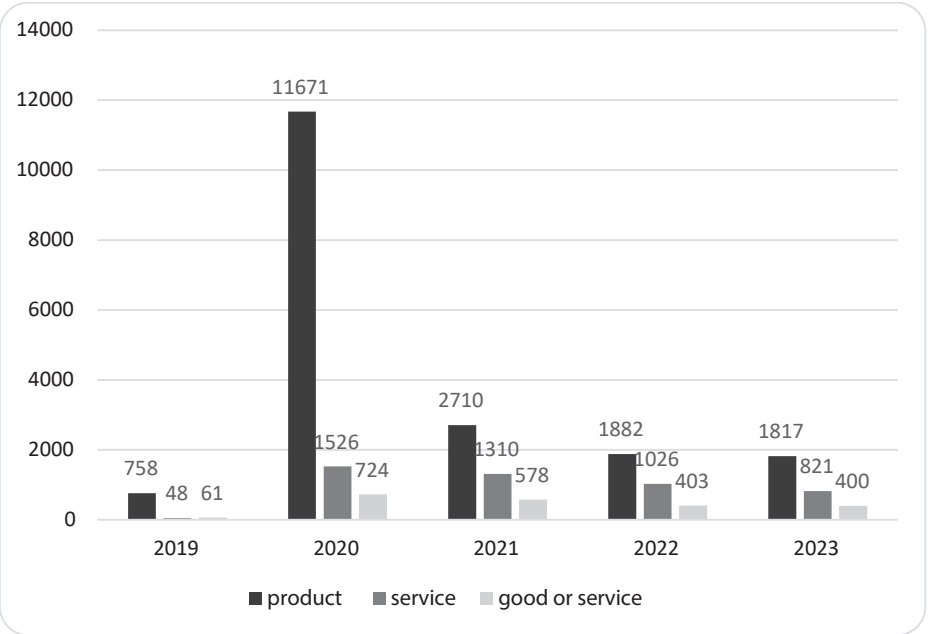


Chart 66: Requests for Binding Rate Information

Source: own compilation based on KIS data (2020-2023).[875]

[870] Polish Classification of Goods and Services, see Regulation of the Council of Ministers of 4 September 2015 on the Polish Classification of Goods and Services (PKWiU) (Journal of Laws, item 1676, as amended).

[871] Act of 27 November 2020 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2419).

[872] This is particularly relevant for the split payment mechanism, as outlined in Annex 15 to uVAT.

[873] Act of 26 May 2023 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1059).

[874] Previously, they amounted to PLN 40, analogous to an individual tax law interpretation.

[875] KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2023 roku*, Bielsko-Biała 2024; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2022 roku*, Bielsko-Biała 2023; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2021 roku*, Bielsko-Biała 2022; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2020 roku*, Bielsko-Biała 2021; KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2019 roku*, Bielsko-Biała 2020.

WIS application. Between 2019 and 2023, taxpayers submitted almost 26,000 WIS applications, with over half of these submitted in 2020.[876] After meeting the most urgent demand from the business side in 2019-2020, the number of applications stabilised at over 3,000 per year in both 2022 and 2023. The majority of WIS requests concern the classification of goods. In 2020, these accounted for nearly 85% of applications, before stabilising at around 60% between 2021 and 2023 (chart 66).

4.6.4. New VAT Rate Matrix

Assumptions of changes to the VAT rate matrix. To reduce errors in tax settlements and simplify the application of current legislation for businesses, a comprehensive reform of the VAT rate matrix was undertaken in 2020. This reform aimed to: 1) radically simplify the matrix by approximately halving the number of items it contained; 2) increase its rationality by expanding the range of essential goods and services subject to reduced tax rates. The revised VAT rate matrix was based on the following assumptions:[877]

1) Simplicity and clarity**:** achieved by adopting the same VAT rate for entire chapters of the Combined Nomenclature;[878]

2) Adoption of the general principle of reducing VAT rates;[879]

3) Partially offsetting the resulting loss of tax revenue with increases in VAT rates on a small number of goods and services.[880]

The VAT rate system in place until 1 July 2020, which was based on the 2008 Polish Classification of Goods and Services, was extensive and complex. It was characterised by a large number of items in annexes containing lists of goods subject to reduced rates and numerous exemptions from PKWiU groupings.[881] The new matrix moved away from the use of the Polish Classification of Goods and Services (PKWiU 2008) to:

[876] Due to the high volume of applications submitted in 2020 (13,921), some decisions were not issued until 2021. Consequently, the number of decisions issued in 2021 (6,233) exceeded the number of applications submitted that year (4,598), see: KIS, *Informacja o działalności Krajowej Informacji Skarbowej w 2021 roku*, Bielsko-Biała 2022; B. Rogowska-Rajda, *Konsolidacja systemu wiążących informacji*, 'Monitor Prawa Celnego i Podatkowego', 2022/9, pp. 277-287.

[877] Podatki.gov.pl, *Matryca stawek VAT*, https://www.podatki.gov.pl/vat/abc-vat/matryca-stawek-vat/ [accessed: 11 May 2024].

[878] For example, assuming reduced rates apply to food products, entire CN chapters (all goods classified within a given chapter) are subject to a 5% rate: (1) 02 – Meat and edible offal, (2) 04 – Dairy products; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included, (3) 07 – Vegetables and certain roots and tubers, edible, and (4) 08 – Edible fruit and nuts; peels of citrus fruits or melons.

[879] The VAT rate reduction affected, among other items: 1) tropical and citrus fruits, and certain nuts (e.g. almonds and pistachios) – from 8% to 5%; 2) bakery products with a shelf life or minimum durability exceeding 14 days – from 8% to 5%; 3) pastry products – from 8% or 23% (depending on shelf life or minimum durability) to 5%; 4) soups, broths, and homogenised food – from 8% to 5%; 5) mustard and certain spices (e.g. pepper, nutmeg, thyme) – from 23% to 8%; 6) products for babies and children (i.e. food for babies and young children, dummies, nappies, and car seats) – from 8% to 5%; 7) hygiene products (sanitary towels, tampons, and nappies) – from 8% to 5%.

[880] Point increases in tax rates included 1) lobsters, octopus, other shellfish, and caviar – from 5% and 8% to 23%; 2) ice used for food and refrigeration – from 8% to 23%; 3) specialist magazines (excluding regional and local magazines) – from 5% to 8%; 4) firewood – from 8% to 23%.

[881] In the explanatory memorandum to the bill, the legislator emphasised: 'The long-standing practice of applying the PKWiU has shown that the VAT rate system in Poland, based on it, is elaborate and complicated, causing significant difficulties in conducting business activity – specifically, problems with taxpayers correctly

1) The Combined Nomenclature (CN) or Polish Classification of Building Objects (PKOB) for goods;[882]

2) Current Polish Classification of Goods and Services (PKWiU 2015) for services.[883]

Effects and entry into force. As a result of the above, the number of items in the amended Annexes No. 3 and No. 10 to the VAT Act, which list goods and services taxed at 8% and 5% respectively, was significantly reduced (from 148 to 73 in Annex No. 3, and from 35 to 24 in Annex No. 10). The provisions introducing the new VAT rate matrix came into force on 1 November 2019.[884] Their implementation, originally planned for 1 April, was postponed to 1 July 2020 as a result of the pandemic.[885] Despite the challenging circumstances in which the aforementioned changes came into force, they have been positively received by businesses and legal experts.[886] Academic literature has suggested that this broad reform, encompassing both the implementation of the WIS and the simplification of the VAT rate matrix, has created a coherent system that greatly simplifies the process for taxpayers of assigning goods and services to the correct VAT rate. For the first time, it allows them to obtain binding official confirmation from an administrative authority that this assignment is correct.[887]

4.6.5. SLIM VAT

On 16 July 2020, two weeks after the new VAT rate matrix came into effect, the Ministry of Finance announced the second phase of VAT simplification.[888] This consisted of a continuous audit of tax arrangements, aimed at identifying and removing redundant

assigning goods or services to the appropriate PKWiU grouping, which is essential for applying the correct tax rates.' It further noted: 'The current system is therefore inefficient and criticised for its complexity and lack of protection for taxpayers regarding their application of VAT regulations based on PKWiU (due to the lack of binding force of classification opinions issued by the Central Statistical Office)', see: Explanatory Memorandum to the Government Bill to amend the Law on tax on goods and services and the Law - Tax Ordinance, print No. 3255, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=3255 [accessed: 11 May 2024].

[882] The advantage of the Combined Nomenclature (CN) lies in its widespread use for classifying goods in international trade, EU external trade statistics, and intra-Community trade. Supervised by the European Commission, which publishes a new version annually, the CN includes not only a list of goods but also introductory provisions, section and chapter notes, and footnotes related to CN subheadings. The Combined Nomenclature is accessible via the Tariff Browser on the Ministry of Finance website.

[883] As mentioned above, as of 1 January 2021, the Polish Classification of Goods and Services (PKWiU 2015) also applies to goods in specific cases, including for the application of the split payment mechanism.

[884] Act of 9 August 2019 amending the Act on Value Added Tax and certain other acts (Journal of Laws, item 1751, as amended).

[885] The new VAT rate matrix was initially set to apply from 1 April 2020, but this date was postponed to 1 July 2020. Effective 31 March 2020, the Act of 31 March 2020 amending the Act on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them, and some other acts (Journal of Laws, item 568, as amended) came into force, inter alia, postponing the application of the new VAT rate matrix. Consequently, the new VAT rate rules introduced by the Act of 9 August 2019, originally scheduled for 1 April 2020 implementation, took effect on 1 July 2020 (Article 63 of that law).

[886] See, inter alia, Rzeczpospolita, *Nowe stawki VAT od kwietnia 2020 r. – prostsza matryca i wyrównanie do stawki niższej*, https://www.rp.pl/podatki/art1133101-nowe-stawki-vat-od-kwietnia-2020-r-prostsza-matryca-i-wyrownanie-do-stawki-nizszej [accessed: 19 July 2024]; Podatki.biz, Taxes 2020: Podatki 2020: *Nowa matryca stawek VAT to pozytywna rewolucja systemowa?* https://www.podatki.biz/artykuly/podatki-2020-nowa-matryca-stawek-vat-to-pozytywna-rewolucja-systemowa_16_39616.htm [accessed: 11 May 2024].

[887] W. Dmoch, *VAT rate matrix*, Przegląd Podatkowy, 2020, no. 3, p. 43.

[888] https://www.gov.pl/web/finanse/slim-vat--uproszczenie-i-unowoczesnienie-rozliczen-vat [accessed: 29 July 2024].

obligations for taxpayers. The project, known as SLIM VAT[889] was to be implemented in annual cycles, during which the Ministry of Finance would: 1) Prepare a package of VAT simplifications and facilitations based on market demands; 2) Conduct pre-consultations with businesses to ensure the planned changes met their needs; 3) Implement the changes, simultaneously issuing tax guidance developed in dialogue with taxpayers to ensure tax authorities interpreted the new regulations in a business-friendly manner. The proposed changes were inspired by solutions already in place in other EU countries, particularly Germany, Italy, France, and Spain, as well as by simplification proposals submitted to the Ministry by Polish companies via the Ombudsman for Small and Medium-sized Enterprises and business organisations[890] and directly, using the *Głos Przedsiębiorcy*[891] and *Głos Podatnika*[892] applications.

First SLIM VAT package. The solutions of the first SLIM VAT package, presented to entrepreneurs in mid-July 2020, mostly entered into force on 1 January 2021.[893] Draft tax guidance for the SLIM VAT package,[894] was already released for consultation on 18 January 2021, and subsequently issued by the Minister of Finance on 23 April 2021.[895] This package introduced several simplifications for companies, including:

1) Extending the time limit for exporting goods (to retain the 0% rate when taxing advance payments on exports) from two to six months (Article 41(9a) uVAT);

2) Extending the time limit for deducting input VAT 'on an ongoing basis' from three to four months (Article 86(11) uVAT);

3) Doubling the limit for gifts of small value (Article 7(4)(2) uVAT);

4) Allowing the deduction of input tax from invoices documenting the purchase of accommodation services for resale (Article 88(1)(4)(c) uVAT);

5) Unifying the VAT and income tax rules for applying exchange rate conversion methods used to determine the tax base in foreign currency (Article 31a(1), (2) and (2a), (2d) uVAT; Article 11a(1) uPIT; Article 12(2) uCIT);

6) Removing the formal requirement of obtaining confirmation of receipt of a correcting invoice by the purchaser of goods or recipient of services (Article 29a(13) and (14) uVAT);

7) Precisely regulating the rules for recognising adjustments that increase the tax base (Article 29a(17) uVAT).

[889] SLIM VAT is an acronym derived from the words *simple*, *local* and *modern*.

[890] The SLIM VAT packages implemented into uVAT a number of demands addressed to the Ministry of Finance by business associations, in particular the Lewiatan Confederation and the Polish Organisation of Commerce and Distribution, see Ministry of Finance, SLIM VAT 2 z podpisem Prezydenta, https://www.gov.pl/web/finanse/slim-vat-2-z-podpisem-prezydenta [accessed: 11 May 2024].

[891] Biznes.gov.pl, Głos przedsiębiorcy, https://www.biznes.gov.pl/glos-przedsiebiorcy [accessed: 11 May 2024].

[892] Taxpayer.gov.pl, Głos podatnika, https://www.podatki.gov.pl/glos-podatnika/ [accessed: 11 May 2024].

[893] Act of 27 November 2020 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2419).

[894] Ministry of Finance, *Objaśnienia dotyczące SLIM VAT w konsultacjach*, https://www.gov.pl/web/finanse/objasnienia-dotyczace-slim-vat-w-konsultacjach [accessed: 11 May 2024].

[895] Objaśnienia podatkowe z dnia 23 kwietnia 2021 r. w zakresie pakietu rozwiązań „Slim VAT' oraz wybranych rozwiązań doprecyzowujących niektóre konstrukcje VAT wprowadzonych ustawą z dnia 27 listopada 2020 r. o zmianie ustawy o podatku od towarów i usług oraz niektórych innych ustaw (Journal of Laws, item 2419).

SLIM VAT package 2. The proposals for the SLIM VAT package 2 were released for pre-consultation on 18 February 2021.[896] The changes contained therein were implemented across four pieces of legislation, some of which came into force during 2021.[897] The second part of the SLIM VAT 2 package, focusing on invoice simplification, was processed in conjunction with the provisions on e-invoicing.[898] On the other hand, the provisions concerning VAT groups[899] and the option to include VAT for entities in the financial sector (Article 43(22) uVAT) were incorporated into the legislation implementing the 'Polish Deal.'[900] the simplification of rules for recognising tickets as invoices was implemented through an amendment to the relevant regulation[901] rather than requiring a change to the primary legislation. The first of the aforementioned amendment packages provided for, among other things:

1) Clarification of the place of 'movable supply' in chain transactions where the first or last operator organises the transport or dispatch (Article 22(2e) and (3) uVAT);

2) Removing the condition (in cases of intra-Community acquisition and importation of services) that made deducting input tax in the same period as reporting output tax contingent on reporting output VAT within three months of the end of the month in which the tax obligation arose (Article 86(10b)(2)(b) and (3) uVAT);

3) Allowing taxpayers who settle tax on the importation of goods directly in a tax return to correct that return if the tax was not settled correctly in the original submission (Article 33a(6a) and (7) uVAT);

4) Reducing the number of conditions for using bad debt relief and extending the period in which it can be used from two to three years (Articles 89a and 89b uVAT);

5) Providing more flexibility for deducting VAT after the deadline for 'on an ongoing basis' deduction (Article 86(13) uVAT);

6) Allowing suppliers and purchasers to make a joint declaration in the notarial deed regarding the choice of taxation for the property (Article 43(10)(2) uVAT);

7) Enabling the transfer of funds between a taxpayer's VAT accounts in different banks and the allocation of funds accumulated in the VAT account for the payment of farmers' insurance premiums (Articles 62b, 62c and 62d of the Banking Law[902]).

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[896] Ministry of Finance, *Prekonsultacje SLIM VAT 2 rozpoczęte*, https://www.gov.pl/web/kas/prekonsultacje-slim-vat-2-rozpoczete [accessed: 11 May 2024].

[897] These included, among other things, more flexible VAT deduction after the deduction deadline on an 'ongoing basis' and allowing the supplier and purchaser to make a concurring declaration in the notarial deed regarding the choice of property taxation. See the Act of 11 August 2021 amending the Act on Value Added Tax and the Act - Banking Law (Journal of Laws, item 1626).

[898] Act of 29 October 2021 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2076).

[899] For an extensive discussion of the concept of VAT Groups in Poland, see: J. Sarnowski, P. Selera, *Grupa podatkowa – analiza prawno-porównawcza oraz koncepcje reformy polskiego prawa podatkowego,* Przegląd Podatkowy, 10/2019, p. 48 and J. Sarnowski, P. Selera, *Grupy VAT – nowe narzędzie wspierania inwestycji i rozwoju*, Przegląd Podatkowy, 6/2021, p. 40. On the solution itself: J. Sarnowski, P. Selera, *Grupy VAT – tło europejskie a propozycje w ramach Polskiego Ładu*, Bulletin of the Institute of Tax Studies, 9/2021, p. 30.

[900] Act of 29 October 2021 amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts (Journal of Laws, item 2105, as amended).

[901] This change means carriers are no longer required to issue on-demand invoices for journeys under 50 kilometres. Simultaneously, purchasers retain the right to deduct VAT based on tickets, regardless of the distance travelled: Regulation of the Minister of Finance, Funds and Regional Policy of 17 June 2021 amending the regulation on issuing invoices (Journal of Laws, item 1105).

[902] Banking Act of 29 August 1997.

These simplifications took effect from 1 October 2021, except for the changes regarding adjustments to the import of goods and the neutral settlement of VAT on imported services and domestic supplies subject to reverse charge, which took effect the day after the law was published in the Journal of Laws. The possibility of paying KRUS (Farmers' Social Security Fund) contributions from the VAT account became available on 1 January 2022.

As part of the draft legislation implementing e-invoicing solutions, a number of simplifications to invoicing have been introduced, including:

1) Removing the requirement to include the word 'DUPLICATE' when the original invoice is destroyed or lost (Article 106l(2) uVAT);

2) Removing the requirement to include the words 'CORRECTING INVOICE' or 'CORRECTION' on a correcting invoice, or to state the reason for the correction (Article 106j uVAT);

3) Widening the scope for using collective adjustments (Article 106j(3) uVAT);

4) Allowing invoices to be issued earlier – up to 60 days (instead of the previous 30 days) before the supply of goods or services, or 60 days before receiving all or part of the payment prior to the supply (Article 106i uVAT).

The draft guidance on the VAT groups element of the SLIM VAT 2 package was released for consultation in mid-July 2022.[903] The final guidance was issued by the Minister of Finance on 11 October 2022,[904] i.e. more than two months before the introduction of VAT groups in Poland, which was scheduled for 1 January 2023.

SLIM VAT 3 and 4. The proposals for changes included in the SLIM VAT 3 package were submitted for pre-consultation as early as 31 January 2022.[905] They ultimately came into force on 1 July 2023.[906] This package contained a number of simplifications for taxpayers, including:

1) Increasing the sales value limit for small taxpayers from €1.2 million to €2 million, thereby increasing the number of taxpayers eligible to use the cash accounting method and quarterly VAT settlements (Article 2(25)(a) uVAT);

2) Extending the permitted use of funds in the VAT account to include payments for: the tax on the extraction of certain minerals; the retail sales tax; the so-called sugar tax; the so-called shipbuilding tax; the 'monkey' fee; the tonnage tax (amendments to Article 62b of the Banking Act);

3) Removing the requirement to hold an invoice for intra-Community acquisitions of goods (ICA) when deducting input tax on those acquisitions (amendments to Article 86 uVAT);

4) Introducing the option to submit corrections to returns outside the OSS and IOSS schemes directly to the Łódź Tax Office (Article 130ca uVAT);

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[903] Ministry of Finance, *Konsultacje podatkowe – projekt objaśnień podatkowych dotyczących grup VAT*, https://www.gov.pl/web/finanse/konsultacje-podatkowe---projekt-objasnien-podatkowych-dotyczacych-grup-vat [accessed: 11 May 2024].

[904] Objaśnienia podatkowe w zakresie grup VAT z 11 października 2022 r.

[905] Ministry of Finance, *Prekonsultacje SLIM VAT 3 rozpoczęte*, https://www.gov.pl/web/finanse/pre-konsultacje-slim-vat-3-rozpoczete [accessed: 11 May 2024].

[906] Act of 26 May 2023 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1059, as amended).

5) Clarifying the rules for reporting transactions (ICS) when the taxpayer is late in receiving export confirmation documents (Article 42 uVAT);

6) Clarifying the rules for applying the conversion rate for correcting invoices issued in a foreign currency (Article 31b uVAT);

7) Introducing the option to waive an adjustment if the difference between the initial and final shares does not exceed two percentage points, even if the final share is lower than the initial one, provided the resulting additional deduction does not exceed PLN 10,000 (Article 91(1), (1a), and (1b) uVAT);

8) Replacing the requirement to agree the input tax deduction share with the head of the tax office (via a protocol) with a requirement to notify the head of the tax office of the adopted share (Article 86(2e) and Article 90(8), 10d, and 10f uVAT);

9) Increasing the amount that allows the taxpayer's determined deduction share to be treated as 100% (where the share exceeded 98%) from PLN 500 to PLN 10,000 (Article 90(10)(1) and (12) uVAT);

10) Adapting the rules of the split payment mechanism to the specifics of the factoring industry (Article 108a(6) and Article 108c uVAT);

11) Regulating the transfer of funds between VAT accounts within a VAT group (amendments to Article 62b of the Banking Act).

Even before 1 July 2023, the effective date of the SLIM VAT 3 package regulations, the Ministry of Finance presented initial proposals for the SLIM VAT 4 package. On 10 March 2023, consultations began regarding the planned introduction of a new mechanism, the 'VAT warehouse', into Polish law.[907] The proposal was based on the German VAT warehouse model (German: *Umsatzsteuerlager*), regulated by the provision of § 4(4a) UstG.[908] This regulation has been in force in Germany since the beginning of 2004[909] and aims to simplify VAT accounting for businesses trading in imported goods intended for resale abroad, i.e., without the intention of making them available for domestic consumption.[910]

Due to changes as a consequence of the parliamentary elections in October 2023, the Ministry of Finance has not yet initiated the legislative process to introduce further simplifications that were supposed to come into force as part of the SLIM VAT 4 package – including the regulation of VAT warehouses.

[907] Ministry of Finance, *Konsultacje podatkowe – projekt objaśnień podatkowych dotyczących grup VAT*, https://www.gov.pl/web/kas/konsultacje-w-sprawie-wdrozenia-instytucji-skladu-vat [accessed: 11 May 2024].

[908] Umsatzsteuergesetz, BGBl. I S. 386.

[909] Zweites Gesetz zur Änderung steuerlicher Vorschriften vom 15. Dezember 2003, BGBl. 2003 I 2645.

[910] Bunjes/Heidner, 22. Aufl. 2023, UStG § 4 Nr. 4a.

5. TRANSFORMATION OF THE TAX ADMINISTRATION

Introduction. In examining individual tax administrations and their evolution, the OECD distinguishes three types of fiscal administration:[911]

1) 'Tax Administration 1.0' refers to a 'paper-based' system built on traditional functions. It is the least advanced form of tax administration, where document circulation, including the submission of tax returns, relies entirely on paper. New technologies are scarcely used in any processes, from taxpayer identification to reporting, analysis, and enforcement. This is the least efficient form of tax administration, both in terms of effectively combating tax crime and from the perspective of the economy and, more broadly, adding value to the functioning of the state.

2) 'Tax Administration 2.0' represents an e-government model in which most functions are digitised. While the fundamental processes remain the same as in paper-based administration, they are faster and more efficient due to their transfer to the digital realm. Taxpayers still submit declarations or reports, but do so electronically, often using templates (schemas) provided by the administration. This significantly facilitates automatic data analysis by the administration, increasing the speed of detecting irregularities and reducing the time required to handle taxpayer issues, including VAT refunds. The process of registering and recording taxpayers is typically electronic and automated, and various channels of communication between taxpayers (customers) and the tax authority utilise new technologies.

3) 'Tax Administration 3.0' marks a paradigm shift. It introduces interconnected taxpayer and administration systems, resulting in fully automated verification of taxpayer compliance, removing the need for taxpayers to submit returns or provide documentation. Consequently, traditional decision-making functions are primarily performed by technology.

The ultimate goal of administrative evolution is the creation of Tax Administration 3.0, which, as currently envisioned, will be fully digital in the future. It will be automated, functioning on data automatically streamed from the taxpayer, then received, cleaned, filtered, matched, and stored for risk assessment, audits, disputes, and other processes.[912] The 'product' and outcome of Administration 3.0 is the assumption that taxes 'just happen'. Using data automatically uploaded by the taxpayer or their employer, the administration prepares initial tax returns (declarations) for the taxpayer. The full implementation of this concept for all taxes depends on the extent to

[911] OECD, *Tax Administration 3.0: The Digital Transformation of Tax Administration*, Paris 2022, https://www.oecd-ilibrary.org/docserver/3ab1789a-en.pdf?expires=1720652356&id=id&accname=guest&checksum=87E2D9639D8A9C8FAFAAEF028B063405 [accessed: 11 May 2024].

[912] Asian Development Bank (ADB), *Launching a Digital Tax Administration Transformation: What You Need to Know*, https://www.adb.org/publications/digital-tax-administration-transformation [accessed: 29 July 2024].

which the administration utilises new technologies, especially *Application Programming Interfaces* (APIs).[913]

5.1. Creating Tax Administration 2.0

5.1.1. Assumptions of the Reform of the Polish Tax Administration

The traditional structure of the Polish tax administration, with some modifications, had been in place for over thirty years. It comprised three independent divisions: tax administration, the Customs Service, and fiscal control. The weaknesses of this traditional model included: 1) internal consolidation deficiencies, hindering the fight against tax crime; 2) a low level of digitisation, meaning that taxpayer service and crime-fighting activities relied on ineffective analogue solutions; 3) insufficient activity to support taxpayers in correctly fulfilling their obligations. The limited channels for information exchange between the administration and taxpayers, the lack of tools for evaluating taxpayer satisfaction with their interactions with the authorities, and the limited use of modern technological solutions to simplify taxpayer settlements increased the likelihood of unintentional errors by taxpayers, potentially depleting state tax revenues.[914]

Initial work on reforming the organisational structure of the government administration responsible for public levies, which had been shaped between 1983 and 1992, began at the Ministry of Finance as early as 1998. However, the implementation phase of the broader reform concept for all public levy administration bodies under the Minister of Finance commenced around 2005–2006. The reform project developed by the Ministry at that time envisaged the establishment of the National Revenue Administration (KAS) to replace the existing Customs Service and tax administration.[915] Due to political changes in Poland in 2007, renewed work on establishing the KAS was not resumed until 2015, drawing on the substantial work completed between 2005 and 2007. Furthermore, a thorough reform of the Polish tax administration was recommended by international organisations, notably the IMF in a 2015 report.[916] Specifically, the report highlighted the need for:[917]

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[913] OECD, *Unlocking the Digital Economy – A Guide to Implementing Application Programming Interfaces in Government*, Paris 2019, https://www.readkong.com/page/unlocking-the-digital-economy-a-guide-to-implementing-1725723 [accessed: 11 May 2024].

[914] NIK, *Stan organizacji Krajowej Administracji Skarbowej*, Warsaw 2019, https://www.nik.gov.pl/aktualnosci/nik-o-krajowej-administracji-skarbowej.html [accessed: 19 July 2024].

[915] The consolidation of customs and tax services was planned at both the central level, merging relevant departments within the Ministry of Finance, and at regional and local levels, merging fiscal and customs chambers and offices. This restructuring would create tax administration chambers at the regional level and tax administration offices at the local level. L. Wiatrak, *Reforma aparatu skarbowego – utworzenie Krajowej Administracji Skarbowej*, *inistration*, Prace naukowe Uniwersytetu Ekonomicznego we Wrocławiu, Wrocław 2019, no. 1 (544). Extensively on this necessity and assumptions of the KAS reform especially: Z. Gilowska, H. Izdebski, K. Raczkowski (eds.), *Efektywna administracja skarbowa,* Krajowa Administracja Skarbowa; vol. 1, Difin, Warsaw 2007.

[916] J. Toro, A. Jensen, M. Thackeray, M. Kidd, B. Russel, *Administracja podatkowa – wyzwania modernizacyjne i priorytety strategiczne*, MFW – Departament do Spraw Podatkowych, 2015; https://mf-arch2.mf.gov.pl/documents/764034/3224234/20150505_Raport_MFW_PL.pdf [accessed: 11 May 2024].

[917] NIK, *Stan organizacji...*, Warsaw 2019.

1) Correcting the situation that had developed in the years preceding the report's analysis i.e. the decline in tax collection efficiency (measured as the share of budget revenue from this source to GDP);

2) Increasing the efficiency and effectiveness of tax administration, particularly through the adoption of appropriate IT support solutions for tax calculation and collection;

3) Addressing the 'fragmentation' of tax administration at both the 'central' level (referring to the Ministry of Finance itself) and the 'operational' level (referring to the tax chambers). This 'fragmentation' prevented the Ministry of Finance from operating effectively as a 'unified headquarters', 'functioning as the overall manager of tax administration activities nationwide'. Fragmentation at the tax chamber level, due to their separate organisational status, resulted in a 'disintegration' of these activities;

4) Providing the tax administration apparatus with a clear vision and adopting a corresponding modernisation strategy.

The stated objectives of the reform were reflected in the justification for the draft act on the National Revenue Administration.[918] Increasing the effectiveness of reducing the tax gap was identified as the primary goal of the changes, specifically by: 1) reducing the scale of tax fraud; 2) increasing the efficiency of tax and customs collection; 3) increasing the level of voluntary compliance with tax obligations; 4) ensuring a high level of customer service; 5) developing professional staff.

Establishment of KAS. As of 1 March 2017, a consolidated National Revenue Administration (hereafter: KAS) was established through the merger of the tax administration, Customs Service, and fiscal control, all of which are subordinate to the minister responsible for public finance.[919] The objectives of the reform are reflected in the KAS's Strategy, Mission, and Vision, which are designed to ensure the security of public finances while guaranteeing a high level of service to taxpayers (a principle known as 'client-centricity').[920]

5.1.2. Digital Revolution in Tax Administration

European Union recommendations. The European Commission began intensively analysing the use of new technologies to improve VAT system efficiency back in the 1990s. In a report presented in 2000, the EC drew Member States' attention to new

[918] Parliamentary bill on the National Revenue Administration, Draft No. 826, https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=826 [accessed: 11 May 2024].

[919] Act of 16 November 2016 on the National Revenue Administration (consolidated text Journal of Laws 2023, item 615, as amended).

[920] Annex to the Ordinance of the Minister of Development and Finance of 25 July 2017, on the directions of action and development of the National Revenue Administration for 2017-2020, entitled 'Directions of action and development of the National Revenue Administration for 2017-2020'. Directions of action and development of the National Revenue Administration for 2017-2020 Update 2, (Official Gazette of the Minister of Finance of 2017, item 144), https://www.gov.pl/web/kas/strategia-kas [accessed: 11 May 2024]; Order of the Minister of Finance, Funds and Regional Policy of 23 December 2020. on defining the Directions of action and development of the National Revenue Administration for 2021-2024, Official Journal of the Ministry of Finance, Funds and Regional Policy of 2020, item 34; Order of the Minister of Finance of 31 October 2023 amending the Order on defining the Directions of action and development of the National Revenue Administration for 2021-2024, Official Journal of the Ministry of Finance of 2023, item 103.

technologies and the need to allocate resources to developing technical infrastructure and training officials in this field.[921] A year later, in a brochure on VAT fraud, it encouraged strengthening the analytical capacity of tax administrations, including changes in staff structure and allocation.[922] A 2007 report from the International VAT Association to the European Commission reiterated the recommendations for developing technological capacity, highlighting the benefits of effective IT use, particularly the potential of big data analytics to identify fictitious trading and thus significantly reduce response times to fraud. At the same time, the European Commission emphasised the crucial importance of implementing new e-services as a way to increase tax system efficiency, reduce the VAT gap by minimising taxpayer errors, and generally improve trust in the taxpayer-tax authority relationship, reducing the likelihood of taxpayers engaging in illegal activities.[923] A 2012 European Parliament report also highlighted the positive economic impact of e-services in terms of reducing the time and costs associated with meeting tax obligations. According to PwC data cited by the European Parliament, the time required for VAT compliance in countries using such tools was reduced by 30%.[924]

Implementation of recommendations. There is a strong trend among EU countries to increase IT spending within public administration, including tax administration. According to a 2015 OECD report, IT expenditure represented an average of 10% of total government spending in OECD countries. Among leading countries such as Austria, Finland, Norway, and Singapore, IT expenditure within total tax administration expenditure averaged 25% between 2009 and 2013.[925] In comparison, Germany ranked not only behind these leaders but also below the European average. This lower IT spending resulted in a lower level of computerisation within the German tax administration, particularly in the insufficient use of new tax technologies (e.g., *big data* analysis) to detect tax offences. This issue was criticised by the German Federal Audit Office (*Bundesrechnungshof*, BRH), which, in its October 2020 report, highlighted the urgent need to develop the technological capacity of tax services.[926] According to OECD reports, the level of digitalisation of the Polish tax services was significantly

[921] EC (2000), Report from the Commission to the Council and the European Parliament – Third article 14 report on the application of Council Regulation (EEC) No 218/92 of 27 January 1992 on administrative cooperation in the field of indirect taxation (VAT) and Fourth report under article 12 of Regulation (EEC, Euratom) No 1553/89 on VAT collection and control procedures, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000DC0028&from=en [accessed: 19 July 2024].

[922] EC (2001), *VAT fraud – frequently asked questions*, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_01_230/MEMO_01_230_EN.pdf [accessed: 19 July 2024].

[923] IVA (2007), *Combating VAT Fraud in the EU – The Way Forward*, http://www.accountingnet.ie/artman2/uploads/iva_paper_final.pdf [accessed: 19 July 2024].

[924] EP (2012), *Simplifying and Modernising VAT in the Digital Single Market for e-Commerce*, https://op.europa.eu/en/publication-detail/-/publication/2341c560-e41e-4cf5-9bc4-4ab18aeaa199 [accessed: 19 July 2024].

[925] OECD, *Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies,* OECD Publishing, Paris 2015, https://read.oecd-ilibrary.org/taxation/tax-administration-2015_tax_admin-2015-en#page1 [accessed: 15 May 2024]; OECD (2013), Tax Administration 2013, *Comparative Information on OECD and Other Advanced and Emerging Economies,* Paris 2013, https://read.oecd-ilibrary.org/taxation/tax-administration-2013_9789264200814-en#page176 [accessed: 15 May 2024].

[926] https://www.bundesrechnungshof.de/SharedDocs/Pressemitteilungen/DE/2020/umsatzsteuerbetrug-bekaempfen.html [accessed: 11 July 2024].

lower than that observed in Germany.[927] In 2011, the share of IT expenditure within total expenditure on fiscal administration placed Poland 23rd in Europe. With an indicated proportion of approximately 1.6%, IT expenditure within the tax administration represented roughly 10% of the European average and only 4% of the expenditure incurred by European leaders in tax administration IT at that time, such as Austria, Finland, or Sweden.[928] Between 2015 and 2020, however, this trend reversed, with the Ministry of Finance's IT purchases increasing twentyfold. The crucial importance of KAS informatisation as a key factor in the success of VAT sealing in Poland is indicated, amongst others, by CASE in a report for the EC.[929]

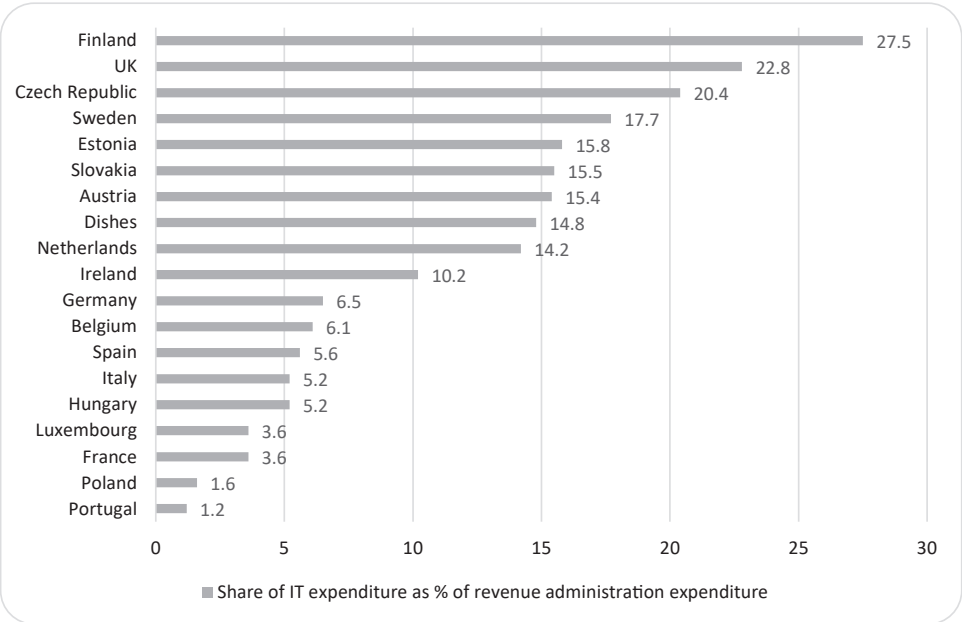


Chart 67: Share of IT expenditure in revenue administration expenditure [%]

Source: own compilation based on OECD report (2013).[930]

[927] OECD, *Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies,* OECD Publishing, Paris, https://read.oecd-ilibrary.org/taxation/tax-administration-2015_tax_admin-2015-en#page1 [accessed: 15 May 2024]; OECD (2013), *Tax Administration 2013*, https://read.oecd-ilibrary.org/taxation/tax-administration-2013_9789264200814-en#page176 [accessed: 15 May 2024].

[928] OECD, *Tax Administration 2013*, https://read.oecd-ilibrary.org/taxation/tax-administration-2013_9789264200814-en#page176 [accessed: 15 May 2024].

[929] It states that '[i]n audits of tax administrations, the share of IT expenditure has proved to be the most statistically significant in explaining the size of the VAT gap'; see European Commission, *Study and Reports on the VAT Gap in the EU-28 Member States*, 2020 Final Report, https://taxation-customs.ec.europa.eu/system/files/2020-09/vat-gap-full-report-2020_en.pdf [accessed: 19 July 2024].

[930] OECD, *Tax Administration 2013*, https://read.oecd-ilibrary.org/taxation/tax-administration-2013_9789264200814-en#page176 [accessed: 15 May 2024].

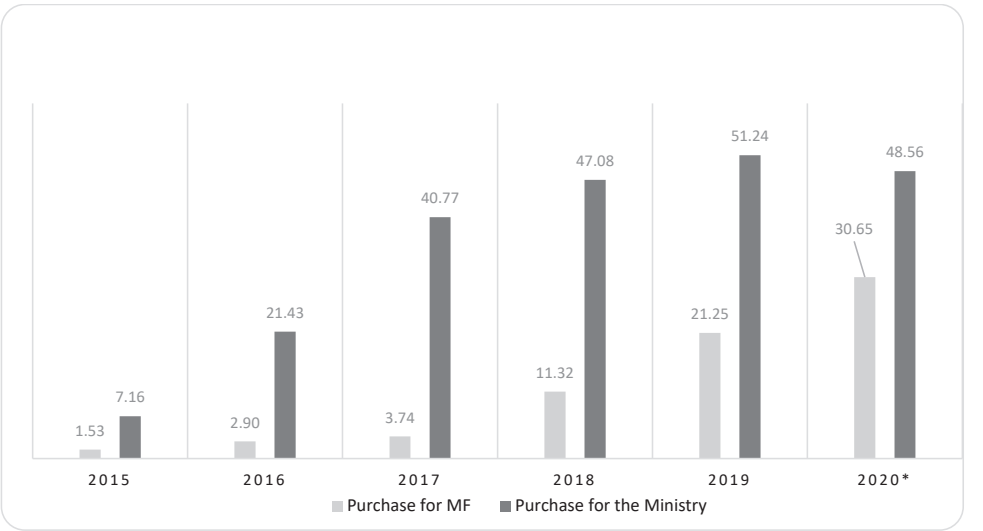


Chart 68: Gross IT expenditure by the Ministry of Finance and Resort as a whole from 2015 to 2020 [PLN million]

Source: own compilation based on J. Sarnowski, P. Selera, *Narzędzia informatyczne wykorzystywane w administracji skarbowej i ich wpływ na szczelność systemu podatkowego w Polsce w latach 2015–2019*, Studia BAS, 4(64), 2020.

5.1.3. Institutional Framework for Digitisation

A prerequisite for effectively establishing Tax Administration 2.0 in Poland is creating an institutional framework that allows for the digitisation of tax office operations and taxpayer interactions. During the period under review, the Centre for Informatics of the Ministry of Finance (CIRF) and the company Critical Applications (AK) managed the technological transformation processes of the Ministry of Finance and the National Revenue Administration.

CIRF. The Centre for Informatics of the Ministry of Finance is a state budgetary unit subordinate to the minister responsible for the budget, public finances, and financial institutions, established by the Order of the Minister of Finance, Funds, and Regional Policy of 27 November 2020, granting CIRF its statute.[931] CIRF's predecessor was the Data Processing Centre of the Ministry of Finance.[932] Although the IT Centre of the Ministry of Finance is based in Radom, it operates nationwide. Its core activities include in particular: 1) providing IT maintenance and security services for IT systems; 2) managing server and network infrastructure; 3) ensuring IT system security and

[931] Dz. Urz. Min. Fin., Fun. i Pol. Reg. item 21 as amended; CIRF, *Legal status*, https://www.cirf.gov.pl/bip/status-prawny/ [accessed: 11 May 2024].

[932] Ordinance of the Minister of Development and Finance of 27 September 2017 on changing the name of the Data Processing Centre of the Ministry of Finance to the Information Technology Centre of the Ministry of Finance and granting the statute of the Information Technology Centre of the Ministry of Finance, Official Journal of the Ministry of Finance of 2017, item 192.

cybersecurity; 4) administering IT systems; 5) managing the catalogue of IT services.[933] CIRF is Poland's largest public FinTech entity, providing approximately 800 IT services to the Ministry of Finance. It serves as the digital core of the Polish tax administration, developing and maintaining the country's public finance IT systems. Its work includes supporting the digitisation of tax and customs services, cybersecurity, and the management of the Ministry of Finance's large databases.[934]

CIRF Projects:[935]

1. **e-Tax Office: This online service allows users to manage many tax-related matters from any device, 24/7**, without needing to visit a physical office. In addition to the 'Your e-PIT' service, it includes features such as a list of criminal fines, a tax micro-account number (for PIT, CIT, and VAT payments), and an e-microfirm function (for generating and sending JPK – Standard Audit File for Tax).[936]

2. **Tax Free:** This application facilitates VAT refunds for travellers who are not permanent residents of the EU on goods purchased in Poland. The tool is used to issue and register electronic Tax Free documents, as well as to record VAT refunds paid to travellers.[937]

3. **e-TOLL:** This system collects tolls for road usage on toll road sections in Poland managed by the General Directorate for National Roads and Motorways. The system uses satellite positioning technology with virtual gantries to determine user location. Users of vehicles with a maximum permissible weight exceeding 3.5 tonnes can choose their preferred method of transmitting location data: a free mobile application, factory-fitted locating devices (ZSL), or on-board units (OBU).[938]

4. **PUESC (Customs and Excise Electronic Services Platform):** This IT system facilitates the exchange of information and customs and tax documents between the National Revenue Administration (KAS) and its clients. PUESC handles excise, gambling, transport, customs, and border documentation (including Tax Free), and provides access to applications, security features, and statistics. It also provides access to European Union e-services.[939]

5. **Ministry of Finance's Cloud Computing (HARF) Project:** This project directly continues the 'Consolidation and centralisation of customs and tax systems (KiC)' and 'Infrastructure for e-Services of the Ministry of Finance (IeU)' projects, which were implemented under the 2007–2013 EU financial perspective within the framework of

[933] The full subject of CIRF's activities is defined in § 5 of the Statutes of the Centre for Informatics of the Ministry of Finance, constituting an Appendix to the Order of the Minister of Finance of 27 December 2022 amending the Order on granting statutes to the Centre for Informatics of the Ministry of Finance, Official Journal of the Ministry of Finance of 2022, item 122.

[934] CIRF, *O CIRF*, https://www.cirf.gov.pl/o-cirf [accessed: 11 May 2024].

[935] CIRF, *Projekty*, https://www.cirf.gov.pl/projekty [accessed: 11 May 2024].

[936] Podatki.gov.pl, *Twój e-PIT*, https://www.podatki.gov.pl/pit/twoj-e-pit/ [accessed: 11 May 2024].

[937] KAS, *Czym jest system TAX FREE?*, https://granica.gov.pl/TaxFree/ [accessed: 11 May 2024].

[938] eToll, *e-TOLL System*, https://etoll.gov.pl/ [accessed: 11 May 2024].

[939] The PUESC programme was launched by a decision of the Minister of Development and Finance on 21 August 2017. The project received co-financing from the European Regional Development Fund under the Digital Poland Operational Programme 2014–2020, Priority Axis No. 2, 'E-government and open government', Measure No. 2.1, 'High availability and quality of public e-services'. The funding agreement was signed on 18 December 2017. The total project value is PLN 140,805,757.26, with eligible expenditure of PLN 140,311,471.22. Ministry of Finance, *Fiscal and Customs Electronic Services Platform (PUESC)*, https://www.gov.pl/web/kas/platforma-uslug-elektronicznych-skarbowo-celnych-puesc [accessed: 11 May 2024].

the Operational Programme Innovative Economy (OP IE). These earlier projects aimed to build a coherent, high-performance infrastructure using a private *cloud computing* architecture. The goal was to increase the number of electronic public services while ensuring operational continuity for the Ministry of Finance and its subordinate units, reducing maintenance costs and ICT infrastructure management overheads, and improving the Ministry's operational efficiency.[940]

6. **E-Taxes Programme:** This programme encompasses various organisational, legislative, and IT initiatives designed to equip the tax administration with modern information management tools. The following projects are being implemented under this programme: e-Declarations 2, e-Registration, e-Taxes, and CVP.

The CIRF is currently undergoing modernisation and expansion. A key project to strengthen its capacity, initiated in 2022, involves expanding the existing CIRF server room and constructing a backup facility. The CIRF is a data processing centre housing over 10,000 servers that support the Ministry of Finance's key and critical systems, processing data measured in tens of petabytes.[941]

Critical Applications. On 13 September 2016, Critical Applications (AK), a company established under the Act on Special Principles of Performing Certain Tasks in the Field of Informatisation of Activities of Tax Administration Bodies,[942] was registered with the National Court Register. Two days later, on **15 September 2016, the Minister of Finance and the board of directors of Critical Applications Sp. z o.o. signed a service provision contract.943 AK implements key projects for the Ministry of Finance/KAS, including KSeF, STIR, e-Toll, MDR, and the e-Paragons Application**. Since its inception, AK has developed more than 50 systems and applications for the Ministry of Finance, and this number continues to grow.[944]

> 'The implementation of a solution to create ICT systems dedicated to either sealing the VAT collection system or the entire tax collection system is an approach already adopted by numerous countries that have developed specialised ICT systems to assist tax authorities in tracking down fraud.'

Further justifying the need for such a company, it was emphasised:

> '(...) the Minister of Finance intends that certain IT projects within the public finance domain, which are particularly important for the state's financial security (designed to provide tax administration, customs, and fiscal control authorities with tools for analysing the likelihood of tax law violations), should be entrusted to a limited liability company established by the State Treasury for this purpose. This will allow – on the one hand – the application of business management solutions common in the

[940] Implementation period: 15 April 2016 to 14 April 2019; Project value: PLN 192,500,000; see Gov.pl, *HARF-Computing Cloud of the Ministry of Finance*, https://www.gov.pl/web/cppc/harf-chmura-obliczeniowa-resortu-finansow [accessed: 11 May 2024].

[941] Ministry of Finance, *Rozbudowujemy Centrum Informatyki Resortu Finansów*, https://www.gov.pl/web/finanse/rozbudowujemy-centrum-informatyki-resortu-finansow [accessed: 11 May 2024].

[942] Act of 29 April 2016 on special rules for the performance of certain tasks in the field of computerisation of the activities of the National Revenue Administration bodies (consolidated text Journal of Laws of 2021, item 186).

[943] Ministry of Finance, *Umowa ze spółką Aplikacje Krytyczne*, https://tiny.pl/d42cj [accessed: 19 July 2024].

[944] Critical Applications, *Nasze rozwiązania wspierają cyfrową transformację kraju*, https://www.akmf.pl/ [accessed: 11 May 2024].

private sector for implementing such IT projects, as well as efficient project delivery using the entity's own resources or with the participation of reputable partners; – on the other hand – ensuring information security for the concepts and solutions designed within these systems, which the Minister of Finance intends to use as analytical tools for detecting VAT evasion and fraud'.[945]

5.1.4. Innovative Procurement Paths for IT Services

Ministry of Finance at hackathons. A significant challenge facing the National Revenue Administration and the Ministry of Finance is acquiring software precisely tailored to their needs. To improve the quality of their IT services, the Ministry and the KAS have taken unprecedented steps, both within Polish administration and among similar units in other countries. Following the example of major global government agencies (such as the FBI, CIA, and NASA), KAS, as the first tax administration to do so, launched a hackathon challenge and has been using this method of software procurement regularly since 2017.[946] A hackathon is a programming competition (or 'marathon') where teams of programmers ('hackers') develop competitive applications within a 24-hour period, based on guidelines set by the contracting authority. Participants have the opportunity to compete in various challenges provided by partner organisations. This means that within the framework of hackathons, there is competition not only between the participants (based on the quality and technological advancement of their applications) but also between the organisations issuing the challenges (based on the attractiveness of the task and the prizes offered), as they aim to attract programmers to their specific challenge. The Ministry of Finance's competition procedure is based on the operating principles characteristic of GovTech programmes in the United Kingdom,[947] Canada,[948] the United States,[949] and Singapore.[950]

MinFinTech 2017. To organise the Ministry of Finance's participation in software competitions, the MinFinTech Programme was established. In its first pilot edition, a challenge prepared by the National Revenue Administration (KAS) was presented to two thousand participants at HackYeah, the largest stationary hackathon in Europe, held at Krakow's Tauron Arena on 28 and 29 October 2017. The challenge involved developing an application to assist KAS in combating tax fraud by identifying companies involved in VAT carousels based on their activity on sales portals. The winning applications were implemented in 2018. As a result of KAS activities using these appli-

[945] Explanatory Memorandum to the draft law creating a framework for the AK (2016): Government draft act on special rules for performing certain tasks in the field of computerisation of activities of tax administration bodies, customs service and fiscal control, (print no. 395), https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=395 [accessed: 29 July 2024].

[946] J. Sarnowski, P. Selera, *Zmniejszenie Luki VAT...,* Polish Economic Institute, Warsaw 2018, s. 29.

[947] See CivTech, *The Round 9 Challenges*, among others, https://www.civtech.scot/civtech-9-challenges [accessed: 11 May 2024].

[948] Government of Canada, *Challenge Stream for innovators*, https://ised-isde.canada.ca/site/innovative-solutions-canada/en/challenges [accessed: 11 May 2024].

[949] Challenge.Gov, *About Challenge.Gov*, https://www.challenge.gov/about/ [accessed: 11 May 2024].

[950] W. Jun Jie, *Singapore's Smart Nation Initiative – A Policy and Organisational Perspective*, Lee Kuan Yew School of Public Policy, National University of Singapore, https://lkyspp.nus.edu.sg/docs/default-source/case-studies/singapores_smart_nation_initiative [accessed: 11 May 2024].

cations, by August 2018, listings on Polish sales portals featuring 'post-carousel' electronics had decreased by 70%.[951] Using information gathered by the application, the Ministry of Finance issued a tax warning in January 2018, warning consumers against purchasing 'post-carousel' electronics.[952] The collaboration between the Ministry of Finance and the developers resulted in innovative software called VAT Hunter, which has been used operationally to identify tax offenders since the first quarter of 2018.[953]

GovTech Programme. Building on the Ministry of Finance's positive experience, the Polish government launched the 2018 GovTech Programme in April 2018, less than four months after the first MinFinTech competition concluded. This programme saw other ministries and local government units join the Ministry of Finance in presenting programming challenges.[954] The GovTech Programme aimed to support public entities in acquiring innovative digital solutions.[955] By 2023, seven editions of the MinFinTech Programme had been held, presenting 16 challenges to programmers with a total prize pool exceeding PLN 830,000.[956] These competitions have led to the implementation of further cutting-edge solutions to improve the KAS's effectiveness in preventing tax crime. For example, the second MinFinTech competition challenged participants to create the OKO RTG application, designed to help customs officers identify consignments potentially containing untaxed goods or illegal substances. The application performs a preliminary analysis of X-ray images of containers crossing the border, flagging only 'suspicious' images for manual review by customs officers. The programme includes a self-learning function to improve its efficiency as the number of analysed images increases. The competition's prize pool was PLN 40,500, while the budget for implementing the winning prototype was PLN 365,700.[957] One example of OKO RTG's effective use was the detection, at the end of 2019, of an attempt to smuggle cocaine and opium from Colombia into Poland, with an estimated black market value of approximately PLN 2.2 billion.[958]Subsequent editions of the competition have further

[951] J. Sarnowski, P. Selera, *Zmniejszenie Luki VAT...,* Polish Economic Institute, Warsaw 2018, s. 23.

[952] Ministry of Finance, *Procedura VAT-marża w elektronice tylko przy dostawie używanego sprzętu*, https://shorturl.at/amAzz [accessed: 11 May 2024].

[953] DGP, *'Vatmani' i ich 'VAT Hunter'. Oszuści są bez szans?* https://biznes.gazetaprawna.pl/artykuly/1101071,projekt-vatmanow-z-krakowa-pomoze-w-wykrywaniu-oszustw-podatkowych.html [accessed: 11 May 2024].

[954] Order No. 55 of the Prime Minister of 20 April 2018 on the Team for the GovTech Poland Programme, M.P. 2018, item 423.

[955] A. Łożykowski, J. Sarnowski*, GovTech, czyli nowe technologie w sektorze publicznym*, Polish Economic Institute 2019, pp. 57-58.

[956] The activities of the state cultural institution, the GovTech Centre, which operated the GovTech programme, were terminated in 2024 by the Order of the Minister of Science of 17 July 2024 on the liquidation of the state cultural institution – GovTech Centre (Dz. Urz. MN. of 2024, item 62), as amended by the Order of the Minister of Science of 27 October 2024 amending the Order on the liquidation of the state cultural institution – GovTech Centre (Dz. Urz. MN. of 2024, item 88).

[957] Ministry of Finance, *Aplikacja do ochrony polskich granic wybrana w konkursie MinFinTech*, https://www.gov.pl/web/finanse/aplikacja-do-ochrony-polskich-granic-wybrana-w-konkursie-minfintech [accessed: 11 May 2024].

[958] Ministry of Finance, *KAS i CBŚP udaremniły największą od lat próbę przemytu narkotyków w UE*, https://www.gov.pl/web/finanse/kas-i-cbsp-udaremnily-najwieksza-od-lat-probe-przemytu-narkotykow-w-ue [accessed: 12 July 2024].

developed the application, including the addition of a training module in the form of an interactive simulator for operating X-ray equipment.[959]

5.1.5. Electronic Reporting, JPK and e-Invoicing

Electronic reporting in the view of the OECD, EC and WB. A key element in establishing Tax Administration 2.0 is the digitisation of interactions with taxpayers. Several international organisations, including the OECD, the European Commission, and the World Bank, issued recommendations in this area between 2005 and 2014. A 2015 OECD report noted the increasing adoption of this approach in various countries, including Belgium, France, the Netherlands, and Romania.[960] A study commissioned by the European Commission and published in 2010 highlighted the advantages of electronic reporting.[961] A subsequent, more comprehensive study published a year later noted that, in 2010, Poland was one of six Member States where submitting electronic VAT recapitulative statements was not mandatory.[962]

Electronic reporting in Poland. In Poland, until the end of 2016, businesses could choose how they submitted their VAT returns to the tax office. They could use traditional methods – visiting the office in person or sending the return by post – or a more modern and efficient electronic method. It was only from 2017 that the mandatory electronic submission of VAT returns was introduced.[963] A general obligation for all taxpayers to submit returns electronically came into effect on 1 January 2018, although this requirement was introduced for certain taxpayers a year earlier, on 1 January 2017. Pursuant to Article 16 of the 2016 Amendment Act, the following taxpayers were required to file their returns electronically from 1 January 2017:

1) Those obliged to register as EU VAT taxpayers;

2) Suppliers of goods or services for which the taxable person is the acquirer, in accordance with Article 17(1)(7) and (8), and the acquirers of those goods or services;

3) Those obliged, under Article 45ba of the Personal Income Tax Act of 26 July 1991 or Article 27(1c) of the Corporate Income Tax Act of 15 February 1992, to submit tax returns, information, and annual tax calculations electronically.

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[959] Izba Administracji Skarbowej w Gdańsku, *Konkurs dwuetapowy – Platforma szkoleniowa dla Funkcjonariuszy Krajowej Administracji Skarbowej dokonujących kontroli celno-skarbowej z wykorzystaniem urządzeń RTG ent*, https://www.pomorskie.kas.gov.pl/web/bip-2201/izba-administracji-skarbowej-w-gdansku [accessed: 11 May 2024].

[960] OECD (2015), *Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies,* OECD Publishing, Paris, https://read.oecd-ilibrary.org/taxation/tax-administration-2015_tax_admin-2015-en#page1 [accessed: 12 July 2024].

[961] PriceWaterhouseCoopers (2010), *Study on the feasibility of alternative methods for improving and simplifying the collection of VAT through the means of modern technologies and/or financial intermediaries*, https://op.europa.eu/en/publication-detail/-/publication/e0d6a4f7-9ada-11e6-868c-01aa75ed71a1/language-en [accessed: 12 July 2024].

[962] PwC (2011), *Expert study on the issues arising from a reduced time frame and the options allowed for submitting recapitulative statements* - Application of Article 263(1) of Directive 2006/112/EC (amended by Directive 2008/117/EC), https://taxation-customs.ec.europa.eu/document/download/25092dad-a2d4-4d63-a8aa-c9b77e881fa3_en?filename=vat_time-frame_report.pdf [accessed: 12 July 2024].

[963] Act of 1 December 2016 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 2024).

At the same time, an obligation was introduced to submit summary information (regarding intra-Community transactions) electronically. A further step in the electronification of VAT settlements was implementing the new JPK_VAT structure and removing the separate requirement to submit VAT-7 returns. While the introduction of mandatory electronic reporting and the expansion of reporting using JPK files marked a symbolic transition of the KAS, in terms of VAT settlements, to the level of Tax Administration 2.0, the implementation of e-Invoicing – first in pilot form in 2022 and then in its planned mandatory form in 2026 – marks the transition to Tax Administration 3.0. It is important to note that this transformation is not progressing at the same rate across all taxes, with the greatest progress observed specifically in VAT settlements.

5.1.6. Tax Micro-account and e-Tax Office

Tax micro-account from 2020. The individual tax account, also known as a tax micro-account, is an e-service provided by the tax administration and available since January 2020. It provides taxpayers with a single, permanent account for paying taxes, especially PIT, CIT, and VAT.[964] Taxpayers also use the micro-account to pay late interest on PIT, CIT, and VAT arrears, as well as reminder costs. The current list of types of taxes, fees, and non-tax budget receivables payable through the tax micro-account is detailed in the 2023 Regulation of the Minister of Finance.[965]The introduction of this individual account means that these receivables no longer need to be paid into various accounts of different competent tax offices. If a payment for another receivable is made to the tax micro-account, the tax office reallocates it accordingly. This solution also offers the advantage that the account remains competent for these payments even if the taxpayer changes their residence or a company changes its registered office. The account number is assigned to the taxpayer or payer and does not change if the material or local jurisdiction of the tax authority changes.[966] Taxpayers can find their tax micro-account number using an online generator or by contacting any tax office.[967]

E-Fiscal Office. Launched in 2019, the e-Fiscal Office project is developing a service to provide taxpayers with online access to National Revenue Administration services. The e-Tax Office simplifies and expedites tax returns for both individuals and entrepreneurs. Since February 2021, it has been available as a web and mobile application (with English and Ukrainian language versions), facilitating easier tax filing.[968] It enhances communication between the National Revenue Administration and its customers by simplifying and expediting the fulfilment of tax obligations.

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[964] Act of 4 July 2019 amending the Value Added Tax Act and certain other acts (Journal of Laws, item 1520, as amended).

[965] Regulation of the Minister of Finance of 22 December 2023 on the types of taxes, fees or non-tax budgetary dues, the payment of which is made using a tax micro-account (Journal of Laws, item 2802).

[966] L. Etel (ed.), *Ordynacja podatkowa. Tom I. Zobowiązania podatkowe*. Art. 1-119zzk. Komentarz aktualizowany Published: LEX/el. 2023.

[967] Podatki.gov.pl, *Mikrorachunek podatkowy*, https://www.podatki.gov.pl/media/9744/mikrorachunek-podatkowy-2024.pdf [accessed: 11 May 2024].

[968] Ministry of Finance, *Startuje e-Urząd Skarbowy*, https://www.gov.pl/web/finanse/startuje-e-urzad-skarbowy [accessed: 11 May 2024].

The e-Fiscal Office, as defined in Article 35b of the uKAS, is the KAS ICT system. It is intended, along with the Fiscal and Customs Electronic Services Platform, to become a primary, and eventually mandatory, tool for taxpayer interaction with KAS authorities.[969] The e-Fiscal Office serves five key stakeholder groups: taxpayers, payers, attorneys, bailiffs, and notaries.[970] The e-Fiscal Office handles all types of cases within the jurisdiction of the National Revenue Administration, except those specifically designated for other ICT systems (e.g., PUESC, KSeF, or e-TOLL). Since its launch in February 2021, the e-Fiscal Office has been used by 16 million users. Taxpayers have sent more than 2.6 million letters via e-US, including over 800,000 certificate applications and 700,000 data update notifications (ZAP-3).[971]

The e-Fiscal Office service provides authenticated users with:[972]

1) Two-way communication with all National Revenue Administration authorities in electronic form, which can be used to the same extent by natural persons, legal entities and their authorised representatives;

2) Ongoing access to individual taxpayers' tax data collected in the National Revenue Administration systems (including identification data, returns filed, status of refunds, information on criminal fines, notarial deeds and powers of attorney granted and received);

3) Instant, free, and automatically generated certificates of income, tax status, or no arrears;[973]

4) Access to the Bailiff's Account via the e-US API, enabling communication and automated use of e-Fiscal Office services. This allows bailiffs to receive rapid responses to information requests, submit structured attachment notices, and exchange correspondence related to ongoing proceedings. Thanks to automation, information requests and debt seizures require virtually no manual handling by KAS authorities;

5) Online tax and non-tax payment options via BLIK[974] and Paybynet;[975]

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[969] B. Rogowska-Rajda, *Elektronizacja wiążących informacji – pierwszy krok w kierunku pełnej elektronizacji procedur podatkowych w działalności gospodarczej*, Tax Review, 2024, no. 2, p. 21.

[970] 'The E-Tax Office will provide citizens and entrepreneurs with a package of coherent and complementary online services for comprehensive handling of matters, mainly in the areas of VAT, PIT and CIT. They will facilitate the fulfilment of tax obligations. (...) The e-Fiscal Office guarantees simple and quick handling of the matter through e-services made available to an authenticated user (logged in to the e-office), also reducing or removing the formalism associated with handling a tax matter. The implementation of further services within the framework of the e-Fiscal Office will enable the automation of the execution of tasks by the KAS authorities and, consequently, faster settlement of a tax case by the taxpayer,' see: Explanatory Memorandum to the government bill on the amendment of certain acts in order to automate the settlement of certain cases by the National Revenue Administration print no. 2138, https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=2138 [accessed: 19 July 2024].

[971] Prawo.pl, https://www.prawo.pl/podatki/obsluga-podatnikow-ma-byc-kompleksowa-i-efektywna-wiceminister-krok,528232.html [accessed: 5 August 2024].

[972] Podatki.gov.pl, *e-Urząd Skarbowy*, https://www.podatki.gov.pl/e-urzad-skarbowy/ [accessed: 11 May 2024].

[973] As of 2023, a certificate of no tax arrears or stating the state of arrears (ZAS-W) can be obtained in a few minutes through the e-Tax Office, see Podatki.gov.pl, *Zaświadczenia*, https://www.podatki.gov.pl/e-urzad-skarbowy/konto-osoby-fizycznej/zaswiadczenia/ [accessed: 11 May 2024].

[974] Ministry of Finance, *Zapłać podatek w e-Urzędzie Skarbowym przy pomocy BLIK,* https://www.gov.pl/web/finanse/zaplac-podatek-w-e-urzedzie-skarbowym-przy-pomocy-blik [accessed: 11 May 2024].

[975] At the 11th Cashless Congress gala in 2023, the Ministry of Finance received the eDucat award in the category of 'The most important initiative of the cashless world in Poland'. The award chapter honoured the Ministry of Finance for the implementation of BLIK payments in February 2023 for selected tax

6) Online tax return filing without requiring an electronic signature;
7) Viewing of current balances and settlements in individual user accounts;
8) Generation of reports summarising the taxpayer's current situation and billing status;
9) Access to wizards that facilitate drafting letters and declarations;
10) Case status previews.

In 2022, the Ministry of Finance's implementation of the e-Fiscal Office project won an award at the *Digital Excellence Awards*, in the *Digital Strategic Perspective* category, cementing the Ministry of Finance's position as a leader, and often a pioneer, of digital transformation in public administration.[976]

5.2. Direction: Customer-Centricity

The National Revenue Administration (KAS) was created as an organisation oriented towards dialogue with businesses and cooperation with taxpayers, effectively supporting them in fulfilling their obligations. The KAS Strategy emphasises a partnership approach, referring to taxpayers as 'clients'.[977] 'Client-centricity' was identified as a key direction for KAS activities and development, with three main objectives: 1) Modern, friendly, secure, and multi-channel taxpayer service; 2) Automation and digitalisation of services; 3) Raising awareness and knowledge of citizens and entrepreneurs regarding taxes.[978] Alongside efforts to simplify tax regulations, create new e-services that streamline settlements, and provide taxpayers with tools to facilitate legal compliance, KAS has launched a system for ongoing monitoring of taxpayer satisfaction. It also established a direct contact channel between taxpayers and the Ministry of Finance, enabling prompt communication of pressing needs and challenges (the 'Taxpayer's Voice').

obligations available in the e-Fiscal Office, including the Your e-PIT service. This successful implementation of the first BLIK payments in public administration resulted from the work of a multidisciplinary team comprising staff from the Ministry of Finance and the National Revenue Administration, the IT Centre of the Ministry of Finance, Critical Applications, external IT partners, Bank Gospodarstwa Krajowego, and BLIK. For: Ministry of Finance, *Nagroda „Najważniejsza inicjatywa świata bezgotówkowego w Polsce' dla Ministerstwa Finansów*, https://www.gov.pl/web/kas/nagroda-najwazniejsza-inicjatywa-swiata-bezgotowkowego-w-polsce-dla-ministerstwa-finansow [accessed: 11 May 2024].

[976] Ministry of Finance, *Ministerstwo Finansów zwycięzcą konkursu Digital Excellence Awards 2022*, https://www.gov.pl/web/finanse/ministerstwo-finansow-zwyciezca-konkursu-digital-excellence-awards-2022 [accessed: 11 May 2024].

[977] As the KAS Strategy 2017-2020 indicates, 'The key values offered to customers are: accessibility, modernity, and usability of services, and high quality of service. Enhanced customer service will be achieved by raising awareness among employees and customs and tax service officers (KAS employees and officers) regarding their role in serving taxpayers and entrepreneurs' see: Ministry of Finance, *Kierunki działania i rozwoju Krajowej Administracji Skarbowej na lata 2017-2020*, Annex to the Order of the Minister of Development and Finance of 25 July 2017. (item 144), see Ministry of Finance, KAS Strategy, https://www.gov.pl/web/kas/strategia-kas [accessed: 11 May 2024].

[978] Ministry of Finance, *Kierunki działania i rozwoju Krajowej Administracji Skarbowej na lata 2021--2024,* Annex to the Order of the Minister of Finance of 31 October 2023 (item 10), see Ministry of Finance, *KAS Strategy*, https://www.gov.pl/web/kas/strategia-kas [accessed: 11 May 2024].

5.2.1 The Customer at the Centre of KAS Operations

KAS Customer-Centred Programme. The KAS Customer-Centred Programme, launched on 15 July 2020,[979] served as the organisational vehicle for implementing administrative changes aimed at digitalising operations, improving the quality of e-services, and enhancing taxpayer service efficiency. Its key focus was expanding electronic services, streamlining KAS operations, and facilitating customer interaction. The programme has resulted in the digitalisation or automation of several processes, including:

1) Tax arrears management in the area of issuing mass letters;
2) Risk analysis in the area of tax refunds;
3) Handling requests from bailiffs for information access and processing seizures;
4) Handling of certificates issued by tax authorities;
5) Acquisition of data affecting tax liability from notarial deeds.

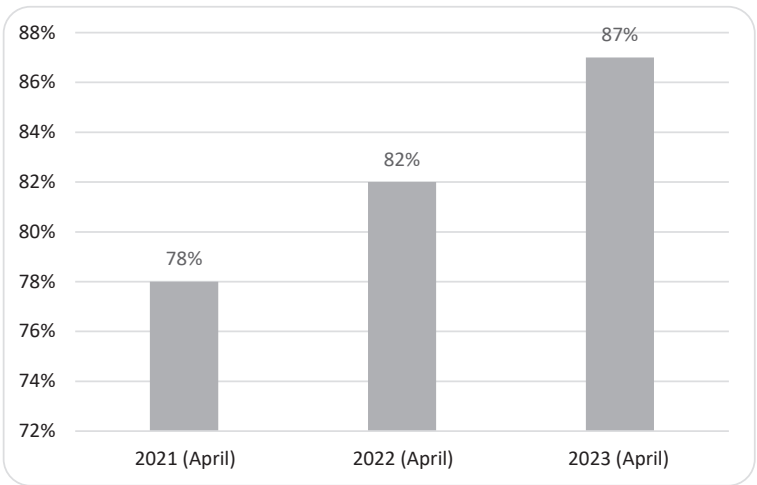


Chart 69: Taxpayers' satisfaction after a visit to the tax office

Source: Ministry of Finance (2023).[980]

Monitoring taxpayer satisfaction. The Programme also initiated ongoing monitoring of KAS customer satisfaction through surveys.[981] Between April 2021 and March 2022, KAS received over 108,000 completed surveys. Data collected during this period shows consistently high customer satisfaction metrics, ranging from 75% (no effort

[979] Letter from the Head of KAS dated 15 July 2020, see, inter alia: Skarbowcy.pl, '*Klient w centrum uwagi KAS*'', https://www.skarbowcy.pl/blaster/extarticle.php?show=article&article_id=27400 [accessed: 11 May 2024].

[980] Ibid.

[981] A link to the anonymous and voluntary survey is sent to the email address provided by the taxpayer when booking the appointment. The survey questions relate to both general satisfaction with the visit and the emotions and effort the respondent invested in resolving their matter. The survey also assesses the office staff member's performance, specifically their competence, politeness, helpfulness, efficiency, communication skills, and friendliness towards the respondent. Additionally, the questionnaire includes two open-ended questions about the best and worst aspects of the office visit.

level) to 88% (positive emotions).[982] Notably, taxpayer satisfaction with service at tax offices showed a gradual improvement (chart 69), increasing from 78% in April 2021 to 82% in April 2022 and further to 87% in April 2023.[983] The percentage of cases resolved in a single office visit also increased, from 77% in 2021 to 85% in 2023.

5.2.2 Voice of the Taxpayer

Voice of the Entrepreneur. One way to gather information on the real needs of KAS customers is to allow them to ask questions regarding not only the interpretation of tax regulations, but also the organisational, legislative, and technological changes they expect. A model for direct contact between clients and the central administration was an online service, Voice of the Entrepreneur,[984] provided to the Ministry of Finance in July 2018 by the Ministry of Development and Technology. Publicly available responses to proposals submitted through Voice of the Taxpayer are published by the administration, often detailing how the taxpayer's suggested changes have been, or will be, implemented.[985]

Voice of the Taxpayer. In December 2020, a new service based on the Voice of the Entrepreneur application, Voice of the Taxpayer, was launched on the podatki.gov.pl portal.[986] Taxpayers' comments could concern PIT, CIT and VAT taxes, including their simplification and adaptation to changing challenges and technologies. Answers to all questions addressed to the administration were published. Due to the frequent clarifying questions posed to taxpayers, in the first two years of the Taxpayer's Voice, more than 530 answers and comments were provided to 440 entries.[987] The proposals submitted by the Taxpayer's Voice were directed to the Ministry of Finance's legislative departments, where they inspired several amendments to the legislation, including as part of successive packages of changes simplifying the regulations on goods and services tax (SLIM VAT). The postulates implemented by the administration include:[988]

1) Eliminating the requirement for sellers of goods or service providers to obtain confirmation of receipt of a corrective invoice from the purchaser or recipient before deducting output VAT;

2) Allowing taxpayers, when determining the VAT taxable base in a foreign currency, to convert it to zlotys according to the rules arising from income tax regulations;

[982] Satisfaction level: 82%; recommendation level: 84%; effortlessness level: 75%; positive emotions level: 88%; first contact effectiveness: 77%, *Jak klienci oceniają wizytę w urzędzie skarbowym – wyniki badania*, https://www.gov.pl/web/finanse/jak-klienci-oceniaja-wizyte-w-urzedzie-skarbowym--wyniki-badania [accessed: 11 May 2024].

[983] Podatki.gov.pl, *Skąd miliardy do budżetu*, https://www.podatki.gov.pl/skad-miliardy-do-budzetu/ [accessed: 11 May 2024].

[984] Ministry of Development and Technology, *Rusza Głos Przedsiębiorcy. Dzięki niemu biznes zaproponuje nowe regulacje prawne*, https://www.gov.pl/web/rozwoj-technologia/rusza-glos-przedsiebiorcy-dzieki-niemu-biznes-zaproponuje-nowe-regulacje-prawne [accessed: 11 May 2024].

[985] Biznes.gov.pl, *Masz pomysł, jak ułatwić prowadzenie firmy?,* https://www.biznes.gov.pl/glos-przedsiebiorcy [accessed: 11 May 2024].

[986] Podatki.gov.pl, *Zgłoś pomysł, jak ulepszyć prawo podatkowe w Polsce. Twój głos jest ważny*, https://www.podatki.gov.pl/wyjasnienia/zglos-pomysl-jak-ulepszyc-prawo-podatkowe-w-polsce/ [accessed: 11 May 2024].

[987] Podatki.gov.pl, *2 lata Głosu Podatnika i dziesiątki zrealizowanych pomysłów*, https://www.podatki.gov.pl/wyjasnienia/2-lata-glosu-podatnika/ [accessed: 11 May 2024].

[988] Ibid.

3) Implementing the possibility to view the status of settlements in the taxpayer's settlement account;

4) Launching the proxy e-account, granting authorised individuals access to tax data related to tax matters and enabling them to fulfil their obligations via electronic communication channels.

5.3. The Tax Administration as a Partner of Entrepreneurs

Building tax administration 3.0 involves automating processes and linking taxpayer and administrative systems. This is implemented using technological solutions (e.g., e-invoicing), as well as regulatory tools and organisational decisions. Like other European Union countries, Poland is implementing this transformation by creating new areas of cooperation with business, typically beginning with pilot programmes. These include entities whose scale of operations makes them particularly important for state tax revenues. The largest taxpayers, by virtue of their size, are also most likely to encounter complex or ambiguous situations, and the potential risk to state financial interests is greatest should errors occur. On the other hand, these large taxpayers have the resources to benefit from professional tax support. While this implies greater resources involved in ensuring their correct accounting, it also makes them the primary targets of services offered by the advisory market to implement aggressive – and potentially legally risky – tax optimisation strategies, although these strategies may generate large savings. Given this, tax administrations face the challenge of balancing the disparity in knowledge and experience that may exist between their rank-and-file employees and the advisors hired by the largest companies. An alternative to a confrontational approach is a strategy of interaction with the taxpayer, where the tax administration plays a role analogous to that of an advisor, supporting the taxpayer in developing internal procedures to enhance their tax security. Common approaches to fostering closer relationships between tax administrations and large taxpayers include:

1) Organisational changes, such as dedicating specialised tax administration units to serve them;

2) Establishing procedures that facilitate close cooperation between the tax authority and the business;

3) Active involvement of the administration, not only in supporting taxpayers with day-to-day business settlements but also in partnering on the planning of future tax-relevant processes. This is particularly relevant for the design and implementation of high-value investments, which often have multifaceted consequences (and risks) regarding public taxes.

Since its inception, one of the National Revenue Administration's priorities has been improving service efficiency for key entities.[989] The tools used to achieve this objective between 2017 and 2022 include:

[989] National Revenue Administration, *Kierunki działania i rozwoju Krajowej Administracji Skarbowej na lata 2017-2020*, Annex to the Order of the Minister of Development and Finance of 25 July 2017. (item 144), p. 20; Krajowa Administracja Skarbowa, *Kierunki działania i rozwoju Krajowej Administracji Skarbowej na lata 2021–2024*, Annex to the Order of the Minister of Finance of 31 October 2023 (Dz. Urz. Min. Fin. item 103), p. 18.

1) Establishing a Key Actors Service Department and a dedicated service office (Key Actors Service Centre) within the Ministry of Finance;

2) Establishing an Investor Tax Service Centre within the Ministry of Finance;

3) Expanding the scope of official tax law interpretations to include regulations for Investment Agreements (known as Interpretation 590).

5.3.1. Key Entities Service Centre

Department of Key Entities of the Ministry of Finance. A key decision made during the establishment of the National Revenue Administration was to task the Polish tax administration with creating specialised units for servicing large economic entities. In March 2017, the Department of Customer Service and Key Entities[990] was established within the Ministry of Finance to coordinate the establishment and subsequent activities of these units (later renamed the Department of Key Entities).[991] In addition to handling matters related to transfer pricing[992] and the anti-avoidance clause, the Department's tasks include conceptual, strategic, and organisational activities. These include designing, modelling, and implementing new services for the National Revenue Administration's largest clients, as well as supervising and coordinating risk management related to key entities' fulfilment of tax obligations.[993] In 2021, the responsibilities of this unit were expanded to include tasks related to new services for the largest taxpayers, specifically the implementation of the Cooperation Programme and the operations of the Investor Tax Service Centre (COPI).[994]

OECD recommendations and the international environment. The establishment of a Key Entities Service Centre (COKP), designed to serve the largest taxpayers, was based on the long-standing experience of comparable units operating in other countries.[995] The handling of large taxpayers by dedicated, specialised offices has been recommended both by OECD reports[996] and by academic publications describing best practices of administration in the European Union and abroad. In 2016, during the initial development of the COKP concept, dedicated offices known as *Large Taxpayer Units* (LTUs) were already operating in several countries, including the Netherlands, the United Kingdom, the United States, Australia, New Zealand, and Bolivia.[997]

[990] Regulation of the Minister of Development and Finance of 3 March 2017 on the establishment of the organisational regulations of the Ministry of Finance, Official Gazette of the Minister of Development and Finance, Official Gazette of the Ministry of Finance, 2017, item 46.

[991] Regulation of the Minister of Development and Finance of 6 October 2017 amending the Ordinance on the establishment of the organisational regulations of the Ministry of Finance, Official Journal of the Ministry of Finance of 2017, item 200.

[992] Among others, conducting MAP, APA, ICAP and ETACA procedures.

[993] Ministry of Finance, *Departament Kluczowych Podmiotów*, https://tinyurl.com/2k6sakdk [accessed: 11 May 2024].

[994] Ibid.

[995] DGP, *Aleszczyk: Szykujemy więcej zmian dla dużych podatników,* https://podatki.gazetaprawna.pl/artykuly/1042499,aleszczyk-zapowiada-wiecej-zmian-dla-duzych-podatnikow.html [accessed: 11 May 2024].

[996] OECD, *Tax Administration 2015. Comparative Information on OECD and Other Advanced and Emerging Economies*, https://www.oecd-ilibrary.org/taxation/tax-administration-2015_tax_admin-2015-en [accessed: 11 May 2024].

[997] See, inter alia, K. Baer, O. P. Benon, J. R. Toro, *Improving Large Taxpayers' Compliance: A Review of Country Experience*, IMF 2002; W. Mc Carten, *Focusing on the Few: the Role of Large Taxpayer Units in the Revenue Strategies of Developing Countries*, World Bank 2004.

Establishment of COKP. COKP was finally established on 1 January 2021. It was placed in the 1st Mazovian Tax Office in Warsaw.[998] It concentrated the service of more than 3,000 entities:

1) State-owned banks and national banks operating as joint-stock companies, national insurance and reinsurance companies, tax capital groups and their constituent companies, and listed companies;

2) Other entities nationwide with annual net revenue or turnover exceeding €50 million.

The Centre serves a comparatively small number of entities compared to similar units in other EU countries. In 2021, COKP's client list represented approximately 0.5% of active corporate taxpayers, slightly more than a quarter of the European average (1.85%). However, the Centre's share of administered net tax receipts is comparable to its counterparts. This proportion averaged 41.4% in 2021. In the same year, the Polish COKP administered approximately 40% of corporate tax revenues, placing it slightly below the European average.[999]

5.3.2. Co-operation Programme

In addition to establishing a specialized entity in Poland for large taxpayers, a key factor in the KAS's transformation toward Administration 3.0 is developing modern cooperative relationships with taxpayers. This involves shifting away from the traditional controller-controlled model and adopting a process known as horizontal monitoring. Unlike traditional tax control, horizontal monitoring does not involve direct supervision of the accuracy of tax obligation fulfilment. Rather, it focuses on providing continuous support to taxpayers in the development and implementation of appropriate internal control mechanisms designed to ensure the correct fulfilment of their tax obligations.[1000] As part of the pilot phase, horizontal monitoring, known as the Co-operation Programme in Poland, is being implemented on an optional basis with selected key entities. Participating entities cooperate directly with staff from the Ministry of Finance's Department of Key Entities. The implementation of the Cooperation Programme carries a significant sealing value. This is because it offers taxpayers an alternative to aggressive tax optimisation by providing real-time administrative confirmation of correct tax law application. Close cooperation between the administration and taxpayers increases the accuracy of tax obligation fulfilment, reducing the need for corrections and, in contentious situations, administrative proceedings and court disputes. This new, non-repressive form of tax supervision both increases voluntary

[998] Krajowa Informacja Skarbowa, *Od 2021 r. obsługa największych podmiotów gospodarczych w jednym miejscu*, https://www.kis.gov.pl/wiadomosci/aktualnosci/-/asset_publisher/JSs9/content/id/10321160; Ministry of Finance, *From 1 January 2021, handling the largest businesses in one place*, https://www.gov.pl/web/kas/od-1-stycznia-2021-r-obsluga-najwiekszych-firm-w-jednym-miejscu [accessed: 11 May 2024].

[999] OECD, *Tax Administration 2023: Comparative Information on OECD and other Advanced and Emerging Economies*, https://www.oecd-ilibrary.org/taxation/tax-administration-2023_0d09309f-en [accessed: 11 May 2024].

[1000] Podatki.gov.pl, *Założenia Programu Współdziałania*, https://www.podatki.gov.pl/program-wspoldzialania/zalozenia-programu-wspoldzialania/ [accessed: 19 July 2024].

and correct tax compliance and brings significant image benefits, improving trust in the tax administration.[1001]

Co-operative compliance programmes in other countries. The first countries to implement *co-operative compliance* programmes[1002] were the Netherlands, Ireland and the United States[1003]. The OECD cites a programme called Horizontal Monitoring (Dutch: *Horizontaal Toezicht*), initiated by the Dutch Tax and Customs Administration (*Belastingdienst*) in 2005 as a pilot involving twenty large, mainly listed companies,[1004] as an exemplary model for cooperative compliance with large taxpayers. By 2020, the Dutch Tax Administration had concluded more than 2,000 agreements with taxpayers who voluntarily requested to join the Programme. In doing so, horizontal monitoring coverage became mandatory for the 100 largest companies operating in the Netherlands and for the 30 largest pension funds and non-profit organisations.[1005] The Dutch model of cooperation between the administration and large taxpayers has been adopted in countries including Italy, Austria, Slovenia, and South Korea[1006] and became the model on the basis of which an analogous cooperation model was created in Spain (Code of Good Tax Conduct, es. *Código de Buenas Prácticas Tributarias*)[1007] and in France (*Relation de Confiance* and Tax Partnership, Fr. *Relation de Confiance, Partenariat fiscal*).[1008] By 2015, 85% of OECD countries had adopted a dedicated tax compliance model for the largest taxpayers, and 32 of them had implemented or planned to implement a dedicated *co-operative compliance* programme.[1009]

Implementation of the Polish Co-Operation Programme. The provisions concerning the Polish Co-Operation Programme, regulated by the Act of 16 October 2019,[1010] entered into force on 1 July 2020. To facilitate taxpayer participation in the programme, the following documents were published in June 2020:

[1001] For a general overview of this topic: Podatki.gov.pl, *Catalogue of benefits*, https://www.podatki.gov.pl/program-wspoldzialania/katalog-korzysci/ [accessed: 11 May 2024].

[1002] Originally referred to as *enhanced relationships*, these programmes evolved into co-operative compliance programmes: OECD, *Study into the role of tax intermediaries*, Paris 2008; then OECD, *Co-operative Compliance: A Framework. From Enhanced Relationship to Co-operative Compliance*, OECD Publishing 2013.

[1003] OECD, *Co-operative Compliance: A Framework. From Enhanced Relationship to Co-operative Compliance*, OECD Publishing 2013.

[1004] L. Stevens, M. Pheijffer, H. Van den Broek, T. Keijzer, L. Van der Hel-van Dijk, *Tax supervision – Made to measure. Flexible when possible, strict where necessary*, The Hague 2012; E. Huiskers-Stoop, H. Gribnau, *Cooperative Compliance and the Dutch Horizontal Monitoring Model*, Journal of Tax Administration, Vol 5, 1/2019; more extensively on this topic: D. DeWidt, L. Oats, *Imagining cooperative tax regulation: common origins, divergent paths*, Critical Perspectives on Accounting, 99/2024.

[1005] E. Silverentand, *Dutch Horizontal Tax Monitoring: will others follow where this historic leader is heading*? https://globaltaxnews.ey.com/news/2022-5391-dutch-horizontal-tax-monitoring-will-others-follow-where-this-historic-leader-is-heading [accessed: 11 May 2024].

[1006] Government Bill on Settlement of Double Taxation Disputes and Advance Pricing Agreements, Paper No. 3788, Regulatory Impact Assessment, https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=3788 [accessed: 11 May 2024].

[1007] Agencia Tributaria, *Code of Best Tax Practices*, https://sede.agenciatributaria.gob.es/Sede/en_gb/colaborar-agencia-tributaria/relacion-cooperativa/foro-grandes-empresas/codigo-buenas-practicas-tributarias.html [accessed: 11 May 2024].

[1008] Ministère de l'Action et des Comptes Publics, *Companies and French Authorities: A new trust-based relationship*, https://www.impots.gouv.fr/sites/default/files/media/1_metier/2_professionnel/EV/4_difficultes/PME/trust-based_relationship_france_2019.pdf?l=en [accessed: 11 May 2024].

[1009] OECD,*Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies*, OECD Publishing 2015.

[1010] Act of 16 October 2019 on the settlement of double taxation disputes and advance pricing agreements (consolidated text Journal of Laws 2023, item 948).

1) Guidance on the Internal Revenue Surveillance Framework;[1011] and
2) The Co-op Participant Handbook with Annexes.[1012]

Since the Co-operation Programme provisions came into force in mid-2020 and the first cooperative agreements were established with taxpayers under these rules, the Ministry of Finance has continued to consult with businesses and develop further materials to facilitate their application of the new regulations. On 23 June 2023, a draft model for assessing the maturity of the Framework for Internal Tax Supervision (RWNP) and a draft of good practices for its operation were submitted for consultation.[1013] The Model was ultimately published in June 2024. Finalisation of the draft guidance and good practices on the RWNP, incorporating feedback from the consultation, was planned for September 2024.[1014]

Assumptions of the Polish Co-operation Programme. The Programme's core principle is to establish and maintain cooperation between the National Revenue Administration and the large entities participating in it, based on three core values: trust (the belief that the partner will adhere to agreed-upon rules), transparency (the entrepreneur's willingness and ability to engage in open cooperation), and understanding (derived from ongoing communication and knowledge of both parties' positions and interests),[1015] Participation in the Programme is voluntary and initiated by the interested party through a written application.

Benefits for taxpayers. Participation in the Cooperation Programme offers several benefits for taxpayers. The primary benefit is the assurance of correct tax law application. Already at the planning stage, the taxpayer informs KAS about potentially contentious tax issues and receives the administration's position on them. If the taxpayer agrees with the administration's position, a tax agreement on the interpretation of the tax law is concluded. This participation grants the entrepreneur the status of a trusted taxpayer in their interactions with the administration, along with the associated privileges, which include:[1016]

1) Accelerated tax overpayment refunds, priority processing of taxpayer-initiated proceedings, and faster handling of requests and applications submitted by them to the administration;

[1011] Krajowa Administracja Skarbowa, *Wytyczne w zakresie Ram Wewnętrznego Nadzoru Podatkowego*, Warsaw 2020, https://www.podatki.gov.pl/media/6197/wytyczne-w-zakresie-ram-wewn%C4%99trznego-nadzoru-podatkowego.pdf [accessed: 11 May 2024].

[1012] Krajowa Administracja Skarbowa, *Podręcznik dla uczestnika Programu Współdziałania*, Warsaw 2020, https://www.podatki.gov.pl/media/6196/podr%C4%99cznik-dla-uczestnika-programu-wsp%C3%B3%C5%82dzia%C5%82ania.pdf [accessed: 11 May 2024].

[1013] Ministry of Finance, *Konsultacje podatkowe w zakresie ram wewnętrznego nadzoru podatkowego*, https://www.gov.pl/web/finanse/konsultacje-podatkowe-w-zakresie-ram-wewnetrznego-nadzoru-podatkowego [accessed: 11 May 2024].

[1014] Podatki.gov.pl, *Projekt modelu oceny dojrzałości Ram Wewnętrznego Nadzoru Podatkowego wypracowany w ramach konsultacji podatkowych w zakresie Ram Wewnętrznego Nadzoru Podatkowego*, https://www.podatki.gov.pl/program-wspoldzialania/ogloszenia-i-informacje-biezace/projekt-modelu-oceny-dojrzalosci-rwnp/ [accessed: 11 May 2024].

[1015] Podatki.gov.pl, *Założenia Programu Współdziałania*, https://www.podatki.gov.pl/program-wspoldzialania/zalozenia-programu-wspoldzialania/ [accessed: 11 May 2024].

[1016] Podatki.gov.pl, *Katalog korzyści*, https://www.podatki.gov.pl/program-wspoldzialania/katalog-korzysci/ [accessed: 11 May 2024].

2) The option to use a simplified advance payment method for CIT (a tax agreement on the projected tax liability for a given tax year);

3) Exemption from the obligation to report domestic tax schemes (MDR);

4) The ability to conclude transfer pricing agreements and obtain opinions on the unreasonableness of applying the general anti-avoidance clause more quickly and with a 50% reduction in fees for the Advance Pricing Agreement (APA) and the hedging opinion (Article 20zc. § 4(1) OrdPod);

5) Preferential rules for interest payments on tax arrears (Article 20zm § 1(1) and (2) OrdPod), and non-initiation of proceedings for fiscal offences or petty fiscal offences during the period covered by the adjustment (Article 20zm § 3 OrdPod);

6) To consider participation in the Co-operative Programme as evidence of good faith if, during the term of the agreement, an event or activity occurs that may result in the application of the provisions on additional tax liability to the taxpayer.

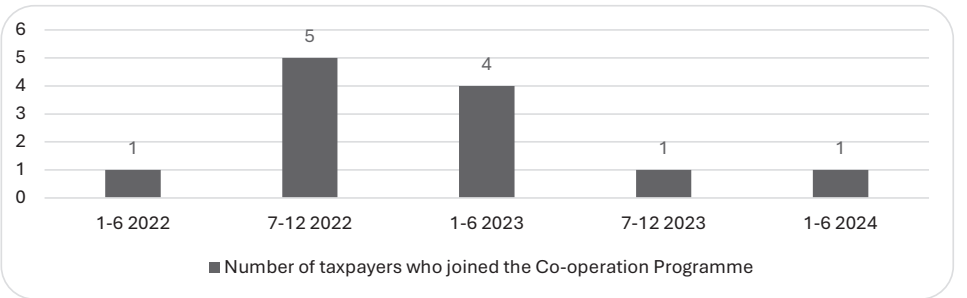


Chart 70: Number of taxpayers who have joined the Co-Operation Programme

Source: Ministry of Finance data (2024).[1017]

Interest in the Co-operation Programme. The Polish Co-operation Programme is open to taxpayers with an annual tax revenue of more than € 50 million, i.e. approximately 4,000 entrepreneurs.[1018] Since the Cooperation Programme's inception in July 2020, only 12 taxpayers have initiated cooperation under this framework. The largest number of companies (9) joined during the third year of the governing regulations, from July 2022 to July 2023. In the following year, only two additional taxpayers joined the programme (chart 70).

5.3.3 Interpretation 590 and the Investor Tax Service Centre

Investment Agreement concept. A complementary service to the Cooperation Programme for large taxpayers is the Investment Agreement (known as Interpretation

[1017] Ministry of Finance, *Program Współdziałania*, https://www.gov.pl/web/kas/program-wspoldzialania [accessed: 11 May 2024].

[1018] Business Insider, *Oni przetarli szlaki do klubu transparentnych firm. To nowość we współpracy z fiskusem*, https://businessinsider.com.pl/prawo/podatki/program-wspoldzialania-to-rewolucja-w-podatkach-i-relacji-firm-z-fiskusem/5vcsmfr [accessed: 11 May 2024].

590). Its purpose is to determine, in agreement with the Minister of Finance, the tax implications of a large investment planned by a taxpayer. This agreement is issued directly by the Ministry of Finance (without the involvement of the National Revenue Administration Information Centre) and is comprehensive, covering all tax-related aspects of the planned undertaking. Obtaining binding interpretations from the administration for such an undertaking could otherwise require submitting multiple, potentially dozens of, separate applications for individual interpretations of regulations.

Investment Agreement in EU. The proposal to implement the Investment Agreement in Poland was based on the experiences of other European Union countries seeking to attract large investment projects (such as building production plants, shared service centres, research and development centres, or headquarters of financial services providers). A global company's decision on where to locate such a project is influenced by various factors, including geographical location, economic potential, and access to infrastructure and employees, as well as regulatory matters, including tax incentives. These incentives encompass not only solutions that reduce tax liabilities but also mechanisms that provide quick access to reliable information about the tax implications of complex, often long-term projects.[1019] In order to ensure fast access of a potential investor to knowledge about the tax benefits of locating an investment in a particular country, many European countries competing for capital (e.g. Italy, Hungary and Slovakia) decided to create fast-track paths dedicated to large global players to obtain the information they need.[1020] The Polish institution was modelled on Italian regulations, where the Prior Investment Agreement (Italian: *Interpello sui nuovi investimenti*) is designed for prospective investors.[1021] A request for a tax interpretation regarding new investments can be submitted by both persons conducting business activities and those planning to establish them – also groups of companies and groups of entrepreneurs. The answer of the competent authority (Italian Tax Agency – Central Directorate for Tax Legislation – Office for the Regulation of New Investments, Italian: *Agenzia delle Entrate – Direzione Centrale Normativa – Ufficio Interpelli Nuovi Investimenti*) is binding on the Italian Tax Administration with respect to the applicant's described investment plan and remains valid unless the underlying legal or factual circumstances change.

Investment Agreement in Poland. The Investment Agreement regulation was introduced into the Polish legal order as of 1 January 2022, as part of a package of tax changes implementing the solutions of the so-called 'Polish Deal'.[1022] It allows

[1019] Difficulties in interpreting tax regulations and a lack of clear information on the tax consequences of planned investments create a significant barrier for investors considering Poland. PAIH, *Utrzymuje się dobry klimat dla biznesu*, Warsaw 2019, https://www.paih.gov.pl/wp-content/uploads/sites/2/0/135701/135766.pdf [accessed: 11 May 2024].

[1020] Government Bill to amend the Personal Income Tax Act, the Corporate Income Tax Act and certain other Acts, Paper No. 1532, Regulatory Impact Assessment.

[1021] Agenzia Entrate, *Interpello sui nuovi investimenti*, https://www.agenziaentrate.gov.it/portale/web/guest/schede/istanze/scheda-interpello/tipologie-di-interpello_/interpello-sui-nuovi-investimenti_ [accessed: 11 May 2024].

[1022] Detailed regulations concerning the investment agreement are set out in Section IIC of the OrdPod, see the Act of 29 October 2021 amending the Personal Income Tax Act, the Corporate Income Tax Act and certain other acts (Journal of Laws, item 2105, as amended).

investors to request an agreement with a tax authority regarding the tax implications of a planned investment in Poland (Article 20zs OrdPod). The process of concluding an investment agreement is based on a dialogue between the investor and the tax administration.[1023] The agreement comprehensively covers all tax consequences of the planned project, encompassing the scope of advance pricing agreements,[1024] a collateral opinion, an individual interpretation of tax law, binding excise information and binding tax rate information (Article 20zt OrdPod). An investment agreement may be drawn up simultaneously in Polish and English.[1025]

Investor Tax Service Centre. In order for the tax administration to provide support to potential investors, an Investor Tax Service Centre was established in the Ministry of Finance in December 2021, which is organisationally part of the Key Entities Department of the Ministry of Finance.[1026] In particular, its tasks include :[1027]

1) Handling enquiries and requests from investors regarding the tax consequences of planned investments in Poland;

2) Collaborating with the Polish Investment and Trade Agency and other investor-focused institutions, including, among other things, supporting these institutions in informing potential investors about available tax incentives to which they are entitled in Poland and the possibility of obtaining binding official interpretations of fiscal regulations from the administration;

3) Managing proceedings related to Investment Agreements.

The Centre serves as the primary point of contact between investors and the Ministry of Finance, assigning each investor a dedicated official, known as a custodian, who acts as a partner in the process of acquiring knowledge regarding the tax solutions and procedures in place in Poland. To date, however, no investment agreements have been formally concluded,[1028] and the Ministry of Finance announced a consultation as late as the beginning of December 2023, as it is 'reasonable to revamp this instrument'. Assumptions for a new model investment agreement have also been developed.[1029] It is certainly worth continuing to work on making this instrument more accessible to entrepreneurs. Moreover, given this context and the prolonged period of tax proceedings,[1030] it is worth revisiting the idea of tax agreements between the tax authority and the taxpayer (mediation proceedings).

[1023] Podatki.gov.pl, *Porozumienie inwestycyjne*, https://www.podatki.gov.pl/porozumienie-inwestycyjne/ [accessed: 11 May 2024].

[1024] Within the meaning of Articles 83 and 86 of the Act of 16 October 2019 on the Settlement of Disputes Concerning Double Taxation and the Conclusion of Advance Pricing Agreements, OJ. 2019 item 2200.

[1025] In the event of a discrepancy, the Polish text shall prevail.

[1026] Ministry of Finance, *W MF powstało Centrum Obsługi Podatkowej Inwestora*, https://www.gov.pl/web/finanse/w-mf-powstalo-centrum-obslugi-podatkowej-inwestora [accessed: 11 May 2024].

[1027] Podatki.gov.pl, *Centrum Obsługi Podatkowej Inwestora*, https://www.podatki.gov.pl/porozumienie-inwestycyjne/centrum-obslugi-podatkowej-inwestora/ [accessed: 11 May 2024].

[1028] https://www.gov.pl/web/finanse/ewidencja-inwestorow-i-porozumien-inwestycyjnych

[1029] https://www.gov.pl/web/finanse/konsultacje-podatkowe-w-zakresie-nowego-modelu-porozumienia-inwestycyjnego

[1030] NIK*, Prawidłowość i skuteczność postępowań kontrolnych, podatkowych i egzekucyjnych organów Krajowej Administracji Skarbowej*, Warsaw 2024, https://www.nik.gov.pl/kontrole/wyniki-kontroli-nik/kontrola,23985.html [accessed: 26 July 2024].

5.4. Control Activities in the Field of VAT

VAT cases a priority for KAS control. Between 2016 and 2022, VAT proceedings accounted for the majority of proceedings conducted by the Polish tax administration.[1031] The use of advanced technological tools by KAS allowed the share of VAT cases in total proceedings conducted by the administration to gradually decrease. In 2016, VAT cases represented 61% of tax proceedings (23,233 out of 38,251 completed proceedings). By 2020, this share had decreased to 52% (8,089 out of 15,304). A similar pattern is observed in customs and tax proceedings. The share of VAT proceedings in this category was as high as 84% in 2016 (4,851 out of 5,775 proceedings) but had fallen to 59% by 2020 (1,388 out of 2,351 proceedings). However, the trend differs for checking operations. While VAT cases accounted for only 27% of these operations in 2016 (602,486 out of approximately 2,244,000), this share had risen to nearly 40% by 2020 (approximately 1,046,368 out of approximately 2,634,000 clearance actions completed by the administration). In 2020, VAT cases represented 46% of the detected evasion resulting from verifications – approximately PLN 2.305 billion out of PLN 5.051 billion of detected evasion.

5.4.1. Reducing the Number and Increasing the Effectiveness of Tax Controls

Thanks to the application of the effects of big data analyses in the operational work of KAS, targeted inspections of algorithm-selected entities suspected of fraud have become standard practice. As a result, since 2016, the number of tax controls has been steadily decreasing, while their efficiency has been increasing. This is evidenced by the increasing proportion of audits that uncover irregularities and the rising average value of detected violations. In 2023 KAS conducted just over 20,000 controls (tax and customs and fiscal controls together). This compares with over 150,000 in 2008 and over 44,000 in 2016. From 2016 to 2023, the number of tax controls decreased by two-thirds, from 38,000 to 13,000. If KAS initiates controls, they are precisely targeted where the risk of serious irregularities has been identified. The efficiency of controls has stabilised and now stands at over 95% (97.1% in 2022 and 97.6% in 2023).[1032]

[1031] Regarding tax controls, customs and fiscal controls, and audit activities – Ministry of Finance data for: Prawo.pl, *Liczba kontroli podatkowych spada, ale także ich skuteczność,* https://www.prawo.pl/podatki/liczba-kontroli-podatkowych-i-skutecznosc,513000.html; Law.pl, *Skarbówka niemal dwukrotnie zwiększyła liczbę kontroli*; https://www.prawo.pl/podatki/liczba-kontroli-podatkowych-wzrosla-dwukrotnie,525530.html; Prawo.pl, *MF: Ponad połowa kontroli dotyczy VAT*, *są też sankcje*; https://www.prawo.pl/podatki/kontrole-podatkowe-w-2023-roku-dane-mf,526917.html; [accessed: 1 July 2024]. For the share of VAT-related inspections and checking activities, internal data of the Ministry of Finance.

[1032] Podatki.gov.pl, *Skąd miliardy do budżetu*, https://www.podatki.gov.pl/skad-miliardy-do-budzetu/; Infor.pl, *Fiskus kontroluje mniej, ale za to skuteczniej. Kto może spodziewać się kontroli?* https://ksiegowosc.infor.pl/podatki/urzad-skarbowy/kontrola-podatkowa/6589158,fiskus-kontroluje-mniej-ale-za-to-skuteczniej-kto-moze-spodziewac-si.html [accessed: 11 May 2024].

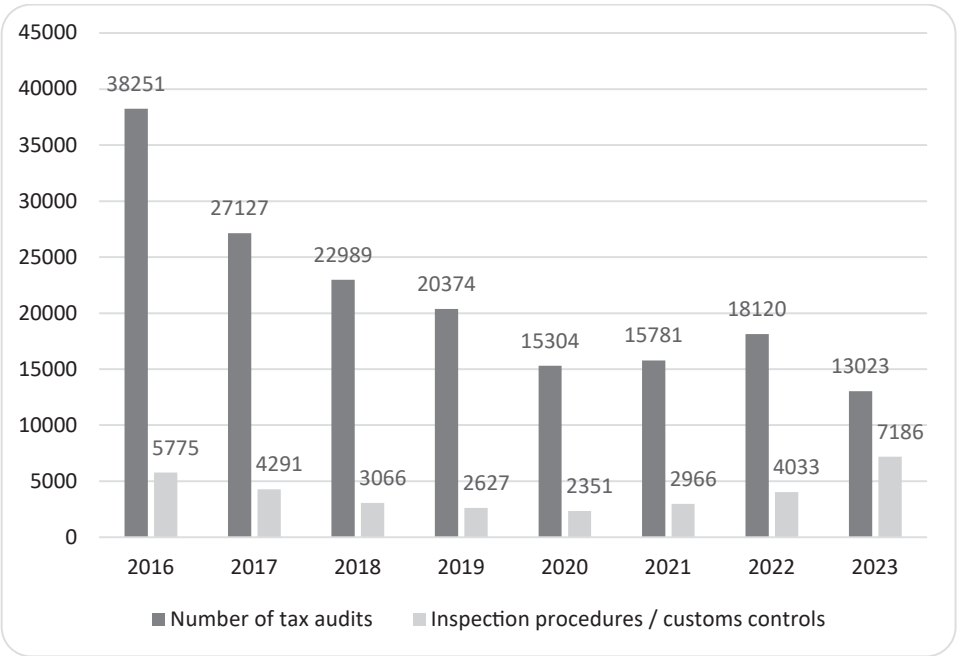


Chart 71: Number of tax controls, control proceedings and customs and fiscal controls

Source: Ministry of Finance data (2024).[1033]

Since the National Revenue Administration Act came into force, due to a change in the approach to the tax settlement verification process, more of the burden has been shifted from tax controls to verification activities. They are less time-consuming and formalised, making them a more effective form of settlement verification during the pandemic.[1034] The number of tax checks increased from 2,572,000 in 2019 and 2,634,500 in 2020 to 2,927,600 in 2021 – an 11.1% increase compared to the previous year and a 13.8% increase compared to 2019. The value of irregularities uncovered through these checks rose from PLN 3,573.8 million in 2019 and PLN 5,051.3 million in 2020 to PLN 6,663.5 million in 2021. In the first half of 2022 alone, irregularities detected through checking activities amounted to PLN 4,620.6 million, nearly 30% higher than in the whole of 2019.[1035]

[1033] MF data for: Prawo.pl, *Liczba kontroli podatkowych spada, ale także ich skuteczność,* https://www.prawo.pl/podatki/liczba-kontroli-podatkowych-i-skutecznosc,513000.html; Prawo.pl, *Skarbówka niemal dwukrotnie zwiększyła liczbę kontroli*; https://www.prawo.pl/podatki/liczba-kontroli-podatkowych-wzrosla-dwukrotnie,525530.html; Prawo.pl, *MF: Ponad połowa kontroli dotyczy VAT, są też sankcje*, https://www.prawo.pl/podatki/kontrole-podatkowe-w-2023-roku-dane-mf,526917.html [accessed: 1 July 2024].

[1034] NIK, *Wystąpienie pokontrolne P/22/010 Prawidłowość i skuteczność postępowań kontrolnych, podatkowych i egzekucyjnych organów Krajowej Administracji Skarbowej*, Warsaw 2022, https://www.nik.gov.pl/kontrole/wyniki-kontroli-nik/kontrola,23985.html [accessed: 19 July 2024].

[1035] NIK, *Wystąpienie pokontrolne P/22/010 Prawidłowość i skuteczność postępowań kontrolnych, podatkowych i egzekucyjnych organów Krajowej Administracji Skarbowej*, Warsaw 2022.

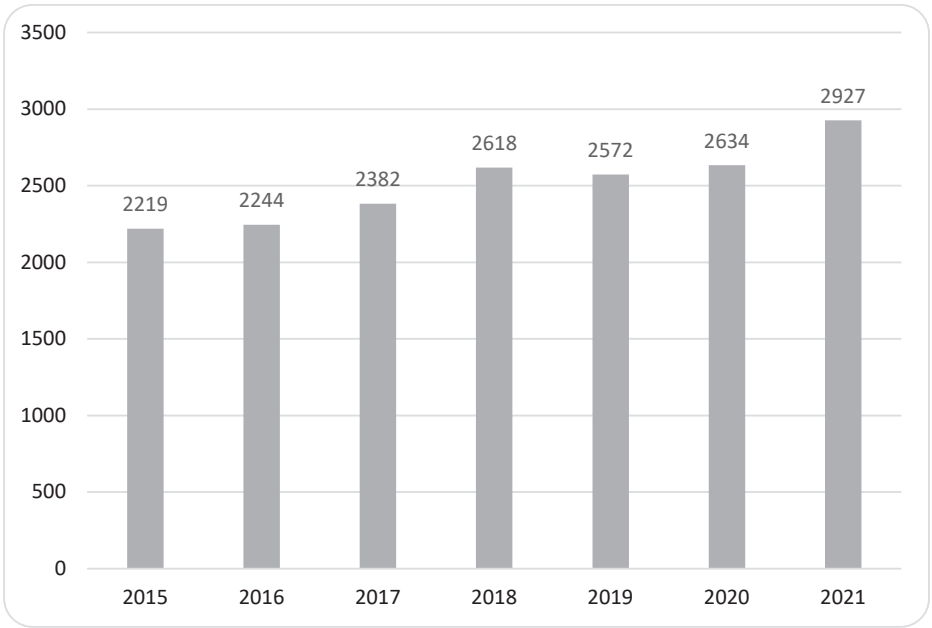


Chart 72: Number of checking activities [thousand]

Source: Ministry of Finance data (2024).[1036]

Number of VAT controls. The trend of a decrease in the number of tax controls and customs and fiscal controls, combined with an increase in their efficiency, is also observed in the field of VAT controls. In just four years, from 2016 to 2020, the number of VAT controls decreased by two-thirds, from 23,233 in 2016 to 8,089 in 2020. Concurrently, the value of findings from these controls increased by 30%, from an average of PLN 322,188 in 2016 to PLN 415,713 in 2020. A similar trend occurred with customs-fiscal controls, which decreased by approximately 71% over the same period, from 4,851 in 2016 to 1,544 in 2019 and 1,388 in 2020. The average value of findings from these controls increased by almost 20%, from approximately PLN 4.14 million in 2016 to approximately PLN 4.91 million in 2019. Between 2016 and 2020, the number of VAT verification activities (checking activities) increased by nearly three-quarters, from 600,581 in 2016 to 1,046,368 in 2020.

[1036] MF data for: Prawo.pl, *Liczba kontroli podatkowych spada, ale także ich skuteczność,* https://www.prawo.pl/podatki/liczba-kontroli-podatkowych-i-skutecznosc,513000.html; Prawo.pl, *Skarbówka niemal dwukrotnie zwiększyła liczbę kontroli*, https://www.prawo.pl/podatki/liczba-kontroli-podatkowych-wzrosla-dwukrotnie,525530.html; Prawo.pl, *MF: Ponad połowa kontroli dotyczy VAT, są też sankcje*; https://www.prawo.pl/podatki/kontrole-podatkowe-w-2023-roku-dane-mf,526917.html; Money.pl, *Skarbówka poluje w sieci. 'Nie należy nękać ludzi'*, https://www.money.pl/podatki/skarbowka-poluje-w-sieci-nie-nalezy-nekac-ludzi-6929730805242624a.html [accessed: 1 July 2024].

5.4.2. Reduction of VAT Mafia Activities (Based on Control Data)

Reduction in the number of unjustified VAT refunds. The collected data confirm that since the implementation of solutions reducing the profitability and speeding up the detection of VAT carousels (e.g. reporting in the form of JPK files, STIR solutions and the obligatory split payment mechanism for the trade in sensitive goods), the amount of budget depletions due to VAT fraud (unjustified refunds) has been successively decreasing. This is indicated by fewer initiated proceedings and a successively decreasing amount of budget depletions caused by VAT extortion. Specifically, the number of initiated proceedings concerning VAT extortion offenses was recorded as 3,507 in 2018 and 3,389 in 2019, representing a year-over-year decrease of 118 cases. In 2020, the number of such proceedings was 2,973, which was 416 fewer than in the previous year. By 2022, the number of initiated proceedings had fallen to 2,750, which represents a decrease of approximately one-quarter compared to the figures from 2018. In 2018, the amount of identified budget losses due to VAT extortion totalled PLN 5,168,779,146. In 2019, this figure decreased to PLN 4,716,202,928, representing a year-on-year reduction of PLN 452,576,218. In 2020, the total amount of such evasion was recorded as PLN 3,533,646,348, which constitutes a significant reduction of PLN 1,182,556,580 compared to the previous year's figures. This represents an approximate 32% decrease in their value between 2018 and 2020.

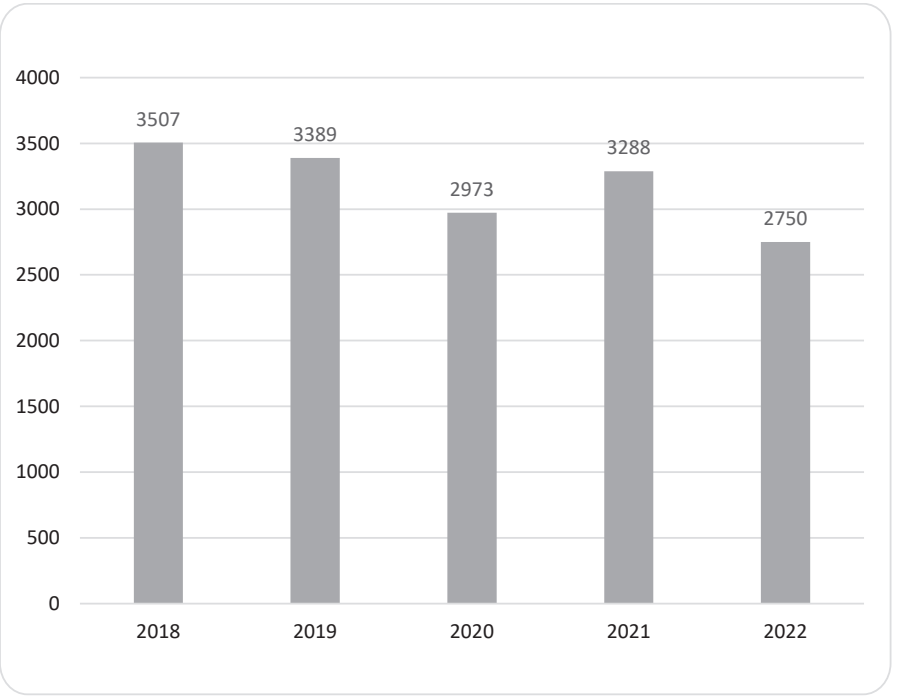


Chart 73: Number of prosecutions for unjustified VAT refunds

Source: data from the Ministry of Finance and the National Revenue Administration.

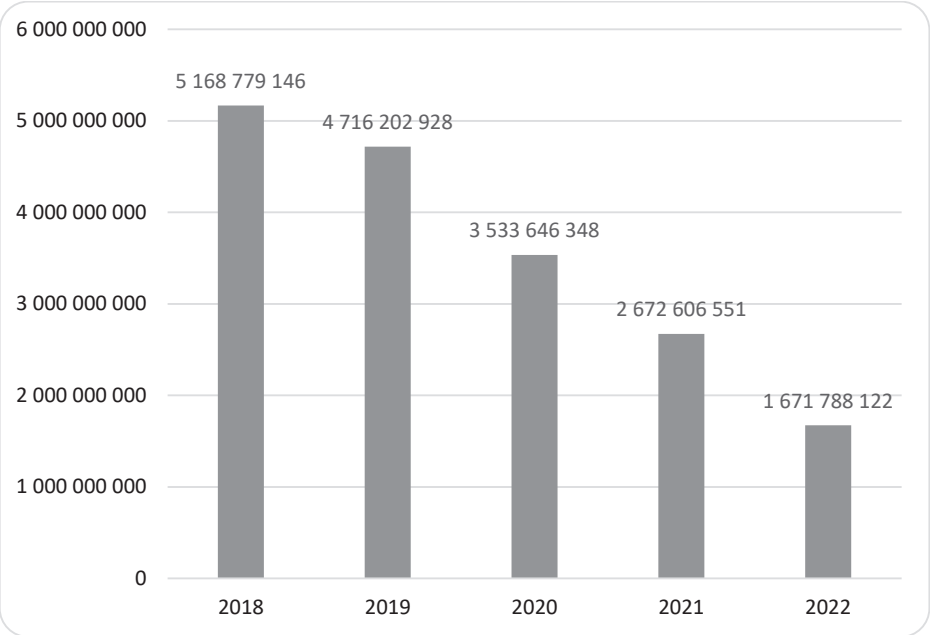


Chart 74: Fraud by initiation of VAT pre-trial proceedings [PLN]

Source: data from the Ministry of Finance and the National Revenue Administration.

The reduction in the scale of attempts to defraud VAT is also evidenced by the values of VAT refunds withheld, i.e. those whose deadline has been extended in relation to the relevant statutory deadline. Between 2018 and 2020, their value decreased from PLN 191.3 million to PLN 82.9 million, i.e. by approximately 57%. After an increase in 2021, their value reduced again in 2022, reaching PLN 107.2 million (approximately 56% of the 2018 level).

Reduction in the number of carousel frauds. The period also saw a decrease in the detection of carousel fraud. As with VAT fraud, this is evidenced by the declining number of initiated preparatory proceedings and the steadily decreasing amount of budget depletion associated with this practice. In 2018, 558 proceedings were initiated for VAT carousel fraud. This number decreased by half year-over-year to 277 in 2019. The number of such proceedings was 207 in 2020, 167 in 2021, and only 97 in 2022. This represents a decrease of almost 85% in detected VAT carousels over four years. During the analysed period, identified budget depletion related to VAT carousels also decreased successively. These losses amounted to PLN 4,496,602,940 in 2018 and PLN 2,468,437,745 in 2019, a year-over-year decrease of 45%. In 2020, these losses halved again to PLN 1,107,992,201, at which level (approximately 25% of the 2018 amount) they stabilised for the following years, amounting to PLN 1,229,821,973 in 2021 and PLN 1,111,103,219 in 2022. There was also a significant decrease in the number of customs-fiscal controls related to carousels, missing traders, buffers, and brokers. Prior to the introduction of the mandatory split payment mechanism (SPM), 67 such controls were conducted, resulting in detected evasion of PLN 213.3 million. On the other hand,

in 2022, the number of these controls decreased to 18, and the detected depletion amounted to PLN 38.9 million, a decrease of PLN 174.4 million, or almost 82%.

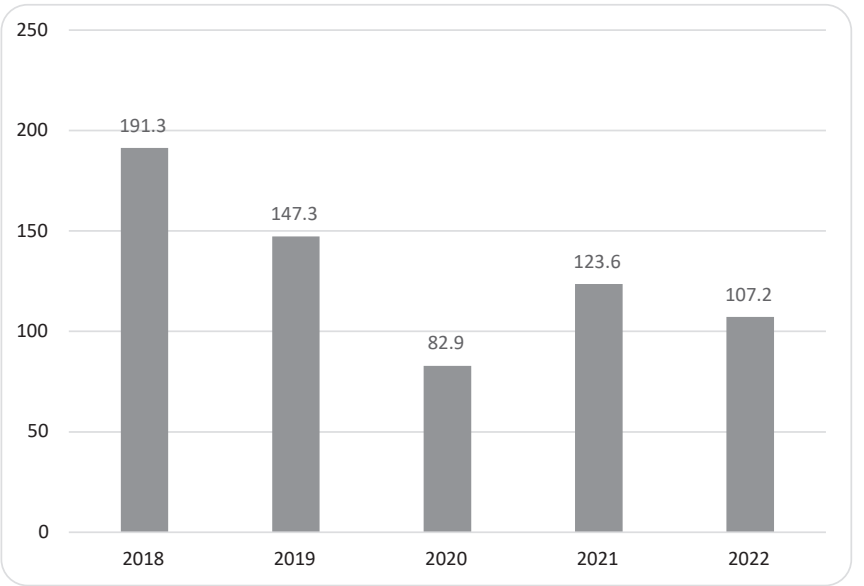


Chart 75: Value of VAT refunds withheld [million PLN]

Source: data from the Ministry of Finance and the National Revenue Administration.

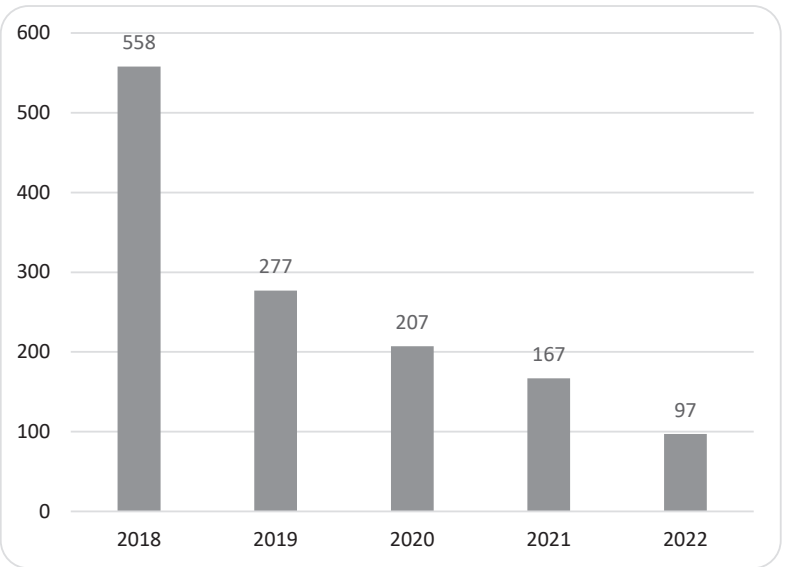


Chart 76: Number of pre-trial proceedings initiated in cases of carousel fraud

Source: data from the Ministry of Finance and the National Revenue Administration.

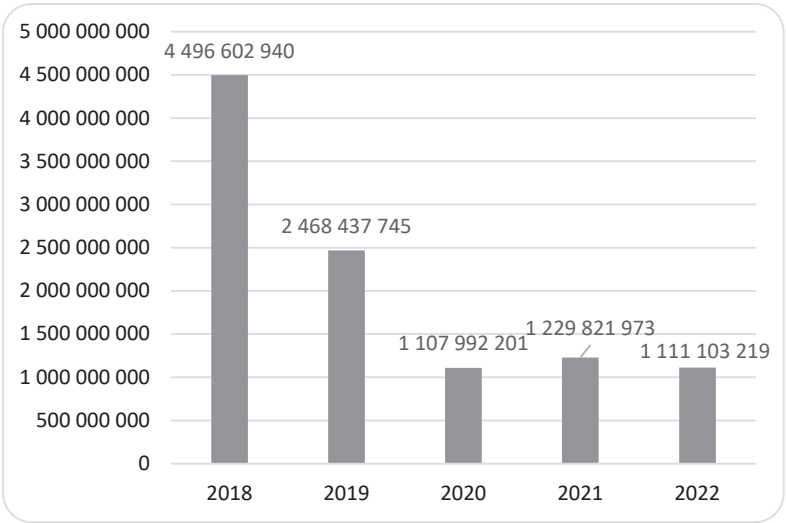


Chart 77: Fraud by initiation of preparatory proceedings in carousel fraud cases [PLN]

Source: data from the Ministry of Finance and the National Revenue Administration.

5.4.3. Accelerating VAT Refunds

VAT refunds. The refund of excess input tax over output tax is a fundamental right of the taxpayer and a manifestation of VAT neutrality. While the Directive itself does not introduce specific time limits for VAT refunds, leaving this to the discretion of individual EU countries, prompt receipt of these refunds is crucial for businesses. The tax administration, in turn, analyses refund requests from a security perspective, verifying in particular that they are not the result of fictitious trading linked to 'missing trader' activity. The decision to authorise payment is based on an examination of various factors, including the taxpayer's history, the requested refund amount, the transaction's circumstances, and the specific nature of the industry in which the taxpayer operates. The deadlines for VAT refunds provided for in the Polish Act are maximum deadlines, although in justified cases the tax authority may extend the refund deadline. Therefore, in light of the VAT act, there is no prohibition against issuing VAT refunds earlier than the statutory deadlines, provided the legitimacy of the refund has been verified and raises no concerns for the authorities. The standard refund period is 60 days (Article 87(2) uVAT). The Act also provides for a shortened 40-day deadline, introduced in 2022 for taxpayers using KSeF (Article 87(5b-5d) uVAT); a 25-day deadline for companies that have paid invoices for which they are claiming a refund and meet other statutory conditions (Article 87(6) uVAT); a 15-day deadline for so-called cashless taxpayers who conduct the majority of their transactions electronically and record their turnover using online cash registers (Article 87(6e) uVAT). An extended 180-day refund period primarily applies to situations where, in the accounting period for which the taxpayer is seeking a refund, input VAT was declared but no output VAT was declared, meaning no sales occurred within the country (Article 87(5a) uVAT).

KAS strategy towards VAT refunds. A strategic objective of the National Revenue Administration between 2017 and 2022 was to enhance the effectiveness of VAT control activities, including detecting and preventing attempts to defraud undue tax refunds. Concurrently, it was prioritised that these activities should not negatively affect the financial liquidity of compliant taxpayers – that is, they should not prolong the time taxpayers wait for tax overpayment refunds.[1037] The automation of entity selection for controls, achieved through KAS's application of big data analytics to taxpayer-submitted Standard Audit File for Tax (JPK) files, significantly reduced taxpayer waiting times for tax refunds. A key tool in accelerating refunds was the automation of low-risk refunds, implemented as part of the 'Customer at the Centre of KAS' programme. This automation covers VAT refunds up to PLN 5,000. By 18 March 2022, 1,030,085 personal income tax (PIT) overpayments and 105,907 VAT refunds had been processed automatically.[1038] Implementing this automation has resulted in an average processing time of 11 days for these VAT refunds.[1039]

VAT refunds pace. Between 2015 and 2018, the average taxpayer waiting time for a refund gradually decreased from 41 to 36 days. However, this trend reversed during the pandemic, with administrative challenges causing the average waiting time to increase again to 47 days in 2020 and 48 days in 2021. In 2022, the average waiting time for a tax refund decreased by more than a week, from 48 days in 2021 to 40 days in 2022. [1040] Comparing the refund rate figures for January to June (each representing the first half of the calendar year), the waiting time for VAT refunds decreased by nearly half in three years, from 60 days in 2014 to 36 days in 2017. Following increases in 2020 (48 days) and 2021 (49 days), the average waiting time in the first half of 2022 was again 40 days – a third shorter than in 2014. Importantly, since the beginning of intensive VAT sealing measures in 2016, the waiting time for VAT refunds, both annually and in the first half of the year, has been significantly shorter than the standard 60-day VAT refund deadline stipulated in the VAT Act. Notably, the number of VAT refunds processed within the accelerated 25-day timeframe increased significantly between 2020 and 2022. Between January and October 2020, KAS granted 53,586 requests for VAT refunds within 25 days, representing approximately 6% of VAT refunds made during that period.[1041] In the corresponding period of 2021, this number increased by more than 55%, with KAS granting 83,314 applications, accounting for 9% of all submitted applications. By 2022, the number had risen to 96,113 – almost 80% more than in 2020 – representing approximately 10% of refunds made in 2022. KAS's

[1037] National Revenue Administration, *Kierunki działania i rozwoju Krajowej Administracji Skarbowej na lata 2017-2020*, Annex to the Order of the Minister of Development and Finance of 25 July 2017. Official Journal of the Ministry of Finance, item 144, pp. 9 and 17.

[1038] Ministry of Finance, *Szybki zwrot nadpłaty PIT i VAT dzięki usłudze AUTO ZWROT*, https://www.gov.pl/web/finanse/szybki-zwrot-nadplaty-pit-i-vat-dzieki-usludze-auto-zwrot [accessed: 12 July 2024].

[1039] Parliament of the Republic of Poland, Response to interpellation No. 34276 of 8. July 2022, https://www.sejm.gov.pl/sejm9.nsf/interpelacja.xsp?typ=INT&nr=34276 [accessed: 12 July 2024].

[1040] Data from the Ministry of Finance (2022 data covers January–October) and data from NIK, *Nadzór Ministra Finansów nad poborem podatku od towarów i usług,* Warsaw 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf; NIK, *Przeciwdziałanie wyłudzeniom podatku VAT*, Warsaw 2018, https://www.nik.gov.pl/plik/id,17650,vp,20231.pdf [accessed: 11 May 2024].

[1041] Ministry of Finance data.

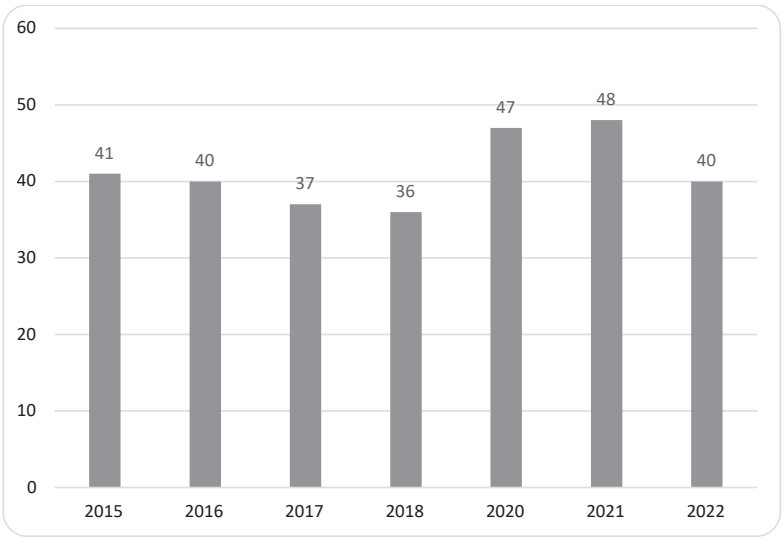


Chart 78: Average time for payment of VAT refunds on the basis of tax returns [in days]

Source: NIK (2018 and 2019), Ministry of Finance (2020-2022).[1042]

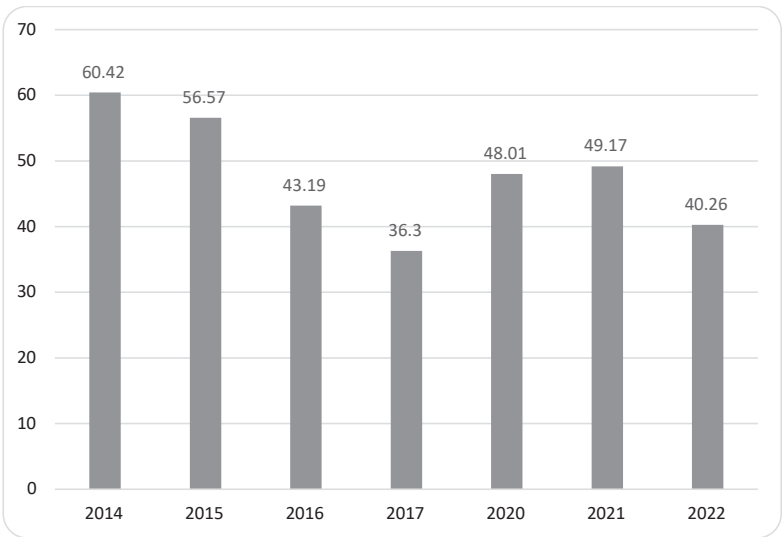


Chart 79: Average time for payment of VAT refunds on the basis of tax returns [in days] – months I-X

Source: PIE (2018), Ministry of Finance (2020-2022).[1043]

[1042] Data from the Ministry of Finance (data for 2022 refers to January-October months) and also data from NIK, *Nadzór Ministra Finansów nad poborem podatku od towarów i usług*, Warsaw 2019, https://www.nik.gov.pl/plik/id,21004,vp,23636.pdf; NIK, *Przeciwdziałanie wyłudzeniom podatku VAT*, Warsaw 2018, https://www.nik.gov.pl/plik/id,17650,vp,20231.pdf [accessed: 11 May 2024].

[1043] Ministry of Finance data (2022 data covers January–October) and data from: J. Sarnowski, P. Selera, *Zmniejszenie luki VAT...,* Polish Economic Institute, Warsaw 2018.

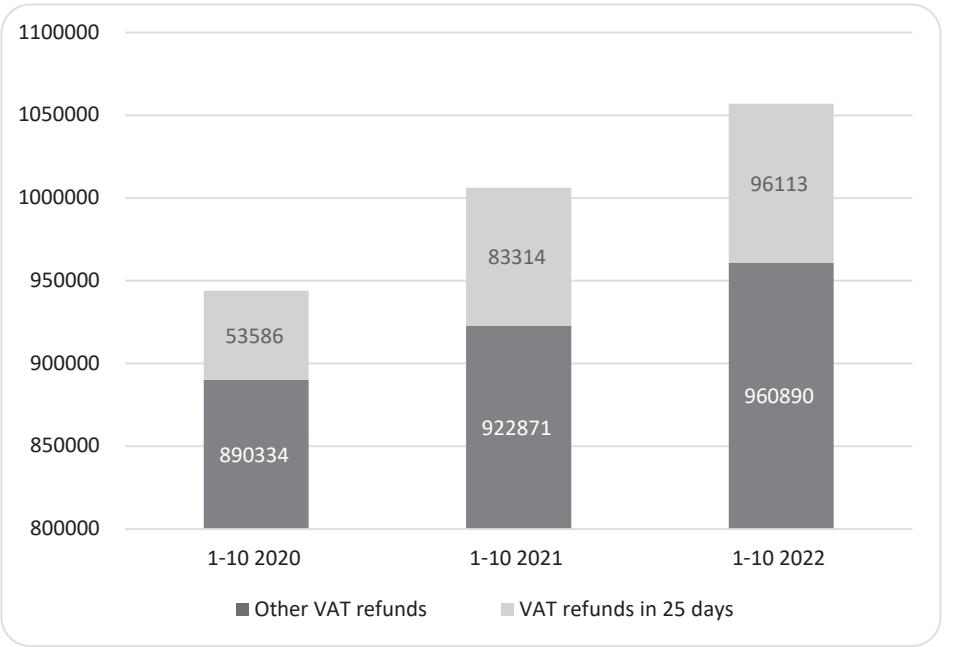


Chart 80: Share of accelerated returns [25 days] in the total number of VAT returns

Source: data from the Ministry of Finance.

use of advanced analytical methods has significantly increased the number of entities receiving refunds faster than the statutory deadlines. In 2020, taxpayers waited an average of 15.5 days for a 25-day VAT refund; in 2021, 18.8 days; in 2022, 17.6 days.[1044]

5.5. Verifying Acquisition

Purpose of verifying acquisition. Verifying acquisition is a mechanism designed to ensure effective monitoring of taxpayers' compliance with the obligation to record sales using cash registers. Verifying that businesses correctly fulfil these obligations supports the primary objective of cash register implementation, which is to combat illegal business practices within the unregistered economy (the 'grey zone') or the generation of fictitious turnover used to launder money from illicit sources. Regardless of the reasons for irregularities in sales recording, the result is always an unfair competitive advantage for the non-compliant business over those operating legally.[1045]

[1044] The comparison covers the months of January to October.

[1045] Explanatory Memorandum to the Government Bill on Amendments to the Personal Income Tax Act, the Corporate Income Tax Act and Certain Other Acts, Sejm. print no. 1532, https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=1532 [accessed: 5 August 2024].

5.5.1 Framework for KAS Operation Before 2022

While tax administration employees conducted preliminary inquiries (so-called 'mandate activities') at the operational level, their actions only gained formal legal standing upon the identification of a criminal offense.[1046] The mere monitoring of the actual space in order to identify irregularities was not properly formalised.[1047] Checks regarding taxpayers' proper fulfilment of their obligations to record sales using cash registers and issue fiscal receipts to purchasers are conducted on a significant scale. According to KAS data, from 2017 to 2019, customs and fiscal offices alone conducted approximately 25,000 checks on compliance with these obligations, with approximately 17,000 resulting in fines. In 2020, these offices conducted over 15,000 inspections, finding irregularities in more than 43% of cases.[1048]

5.5.2. Introduction of Verifying Acquisition

The impetus for regulating these activities arose in 2021 due to:

1) The urgent need to ensure the effectiveness of these controls, in conjunction with the implementation of online cash registers;

2) Public expectation of a precise framework for the administration's actions regarding the control of cash register use.[1049]

These provisions are designed to enable the verification of acquisitions with minimal formality. Tax authority employees and officers are now authorised to conduct such verifications based on a general authorisation, without needing to specify the precise location, time, or entity involved (Article 94m of the Act on Tax Administration,[1050] hereinafter: uKAS).

Pursuant to Article 94k uKAS, a verifying acquisition consists in the acquisition of goods or services for the purpose of verifying the degree of fulfilment by the verified person of obligations resulting from the provisions of the tax law with regard to recording sales with the use of a cash register and issuing a fiscal receipt to the purchaser. The key element of this new institution is the Verifying Acquisition Fund, regu-

[1046] J. Zawiejska-Rataj, J. Sekulski, *Polski Ład a ustawa o Krajowej Administracji Skarbowej w procesie zmian*, Przegląd Podatkowy, 2022, no. 1, p. 27.

[1047] P. Stolarski, *Nabycie sprawdzające jako nowy instrument weryfikacji przestrzeni rzeczywistej w praktyce organów KAS*, Tax Review, 2023, no. 8, p. 46.

[1048] Explanatory Memorandum to the Government's Bill to amend the Personal Income Tax Act, the Corporate Income Tax Act and certain other Acts, Draft No. 1532, https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1532 [accessed: 11 May 2024].

[1049] Overly aggressive actions taken by the administration in cases widely perceived as causing minimal social harm have historically eroded public trust in KAS activities. See, inter alia, Reply to the interpellation of the Member of Parliament of the Republic of Poland S. Tyszka No. 27758 of 13 December 2018, https://orka2.sejm.gov.pl/INT8.nsf/klucz/ATTB7FJX2/%24FILE/i27758-o1.pdf [accessed: 11 May 2024]. More on the indicated case, among others: DGP, *Afery skarbowej o żarówkę ciąg dalszy. KAS apeluje do urzędników o zaprzestanie prowokacji,* https://podatki.gazetaprawna.pl/artykuly/1387619,urzad-skarbowy-w-bartoszycach-afera-o-zarowke-krajowa-administracja-skarbowa.html [accessed: 11 May 2024]; DGP, *Sprawa prowokacji mechanika. Urzędniczka skarbówki stanie przed sądem za brak żarówki,* https://www.gazetaprawna.pl/wiadomosci/artykuly/1393927,sprawa-prowokacji-mechanika-urzedniczka-skarbowki-stanie-przed-sadem-za-brak-zarowki.html [accessed: 11 May 2024].

[1050] Act of 16 November 2016 on the National Revenue Administration.

lated by Article 94x uKAS. This fund is established within the state budget – specifically, the budget section managed by the minister responsible for public finance – and is earmarked for covering expenses incurred during verification of acquisition activities.

5.5.3. The Course of Verifying Acquisition

The verifying acquisition will be made at the place of sale of goods or provision of services at the verified person's premises. Immediately after the purchase of goods or services and verification of the fulfilment of the obligations to keep records of sales and issue a receipt, an employee or officer (Article 94o uKAS):

1) Present an official identification card to the person being checked;
2) Inform the person being verified of the acquisition;
3) Inform the person being verified of their rights and obligations;

At the request of the person being checked, the controller shall also present a permanent authorisation to carry out the verifying acquisition.

A verifying acquisition is not a tax or customs control and does not end with a decision. Therefore, it is less formalised, allowing for quick execution and minimising the burden on taxpayers. Depending on the outcome, it may conclude with a note or a protocol.

Typing (selection) for checks is conducted based on risk analysis, including analysis derived from data transmitted by online cash registers. The institution also plays an important preventive role, supporting other 'soft' initiatives, such as the 'Take a Receipt' campaign.[1051] In 2022, the KAS authorities carried out 56,246 verifying acquisitions, during which they imposed 13,397 fines totalling nearly PLN 18 million.[1052]

5.5. Tax Solidarity

5.6.1. Introduction

Tax crime – the cross-border aspect. With the establishment of the Internal Market and creating VAT as a system of on intra-Community transactions, new tax fraud mechanisms have emerged. The undeniable advantages of the idea of the Common Market have been seriously undermined by 1) multi-billion euro losses to national budgets generated by tax fraudsters exploiting the weaknesses of the EU VAT system and 2) breaches of fair competition between entrepreneurs by strengthening the market position of those cooperating with tax fraudsters and thus generating additional revenue unencumbered by market risk. In view of the origin of the irregularity, which is the functioning of the common market based on the principle of taxation of the goods dispatched in the country of consumption, international trade has become

[1051] Ministry of Finance, *Weź paragon – nie daj się oszukiwać i wspieraj uczciwą konkurencję*, https://www.gov.pl/web/finanse/wez-paragon--nie-daj-sie-oszukiwac-i-wspieraj-uczciwa-konkurencje [accessed: 11 May 2024].

[1052] Prawo.pl, *Kierownictwo KAS: Nie ma potrzeby, by kontroli podatkowych było więcej,* https://www.prawo.pl/podatki/kontrole-podatkow-i-paragony-wywiad-mf-kas,520166.html [accessed: 11 May 2024].

a particularly tax-sensitive sphere. Monitoring cross-border activity, particularly the volume of cross-border purchases and sales and their analysis for characteristics indicative of fictitious trading, has become crucial for the identification of entities involved in carousel frauds – even before they disappear from the market without paying tax or receive an undue refund of VAT from the administration. However, effective monitoring of international trade is not possible using data held by a single country – it requires efficient and timely information exchange between the tax administrations of different countries.

Defective EU tax information exchange system. A number of initiatives and programmes have been developed within the European Union to create a framework for cooperation between Member States in combating organised crime groups and thwarting VAT fraud, including carousel fraud. Of key importance is Regulation 904/2010, which establishes rules for the exchange of VAT information between EU countries. The VIES system plays an important role in identifying the regularity of intra-Community transactions. While the initiatives underway at EU level are yielding tangible results, the level of cooperation they require remains insufficient, allowing for the identification of only a small share of fictitious turnover. Moreover, not all countries fully participate in valuable initiatives such as Eurofisc or TNA, which further limits their effectiveness. The EC itself, in developing the ViDA package, highlights the 'obsolescence' of VIES, proposing to supplement it with e-invoicing and new reporting rules. The volume of information exchanged between countries participating in current initiatives can be assessed as high. However, owing to lengthy waiting periods for responses from partner administrations, and the lack of a standardised format for these responses, the information obtained from other countries is of limited use in the operational activities of the Polish tax administration. This results in reduced efficiency for tax administrations, which lack consistent, rapid access to up-to-date information on goods crossing borders and the entrepreneurs selling them, who may already have been identified in other countries as entities involved in generating fictitious turnover. Consequently, the analyses carried out by tax administrations are, as a rule, based on information relating to fully monitored national turnover. This limits their effectiveness and increases the time required by the administration to detect potential irregularities. As a consequence, this increases the 'lifespan' of tax carousels by prolonging the period of their undetected operation, and consequently entails greater losses for the budget and a greater scale of violations of market competition rules by the entities involved.

The future: bilateral cooperation. Further initiatives to amend Regulation 904/2010, particularly those aiming to effectively strengthen the tax information exchange framework, appear extremely challenging to implement. This is because they require unanimity among EU Member States, which is difficult to achieve in tax matters. Such changes would necessitate the transfer of sensitive data, potentially including business secrets, the disclosure of which could harm countries' market positions.[1053] An alternative approach to addressing the weaknesses of international

[1053] Certainly, there have been valuable developments regarding the scope of information exchange between taxpayers and tax administrations, as well as with EU administrations (for example, CESOP). How-

tax information exchange in the VAT area is to shift initiatives to strengthen it from supranational arrangements to bilateral relations. The positive, long-standing experience of bilateral cooperation between the tax administrations of neighbouring countries fosters a critical mass of mutual trust, creating conditions conducive to stronger bilateral integration. Successive bilateral agreements could create a close network of cooperating administrations, ultimately achieving the same effect as basing intensive cooperation on EU regulations or directives. The construction of such a network is not a new concept for Member States. In fact, Classic international agreements are widely used in income taxation, based on the OECD's Model Convention (Model Double Taxation Treaty). The idea of creating an analogous Model VAT Convention to serve as a starting point for bilateral agreements is not new and has already been the subject of academic recommendations.[1054]

Poland's Tax Solidarity Initiative. The issue of commitment to expanding the network of designated agreements became a key aspect of Polish international tax policy in 2019. For Poland, benefiting from advanced software analysing data provided to the administration on domestic accrual (JPK_VAT) and cash (STIR) turnover, the main obstacle to further increasing the efficiency of detecting fictitious turnover is the lack of access to analogous or already aggregated data on foreign entities: 1) sending goods to Poland (potential partners of 'missing traders'); or 2) receiving goods sold from Poland (entities that could cooperate with 'brokers'). The Ministry of Finance prioritised concluding bilateral cooperation agreements with the tax administrations of neighbouring countries, aimed at the automatic exchange of tax information on cross-border trade relevant to analyses conducted by the KAS. The legal basis for concluding agreements on VAT information exchange is provided by Regulation 904/2010 itself, and, more broadly, by the OECD Convention on Mutual Administrative Assistance in Tax Matters. To date, only a few EU countries have opted to conclude this type of agreement. Notable examples include agreements between Spain and Portugal, Estonia and Finland, the Czech Republic and Slovakia, and Poland and Slovakia.[1055] The priority targets of the Polish initiative were the tax administrations of the latter two countries, given their extensive experience in applying such agreements. To facilitate the participation of other countries in the region, Poland focused on 1) creating a coherent concept of bilateral agreements concerning deeper cooperation in the field of VAT and 2) extending their potential scope to include other areas of cooperation in combating tax crime, in particular a) technological cooperation and b) the exchange of knowledge and experience, both in operational terms (joint tax inspections) and training. This initiative resulted in the development, by the authors of this monograph, within the framework of work established in spring 2018 by the Legal and Comparative Analysis Team in the Income Tax Department of the Ministry of Finance, of a concept for a new European system of tax information exchange based on a network of bilat-

ever, effective efforts to change the model of direct information exchange between Member States – particularly towards more detailed or automated transfer – have been lacking. The ViDA project offers hope for more efficient data exchange.

[1054] T. Ecker, *A VAT/GST Model Convention*, Amsterdam (IBFD) 2013.

[1055] The authors do not account for the numerous bilateral agreements concluded by tax administrations, which effectively replicate selected provisions of Regulation 904/2010.

eral agreements concluded according to the Model Convention.[1056] The concept of Tax Solidarity – activities aimed at intensifying the exchange of tax information, tax sealing technology, and knowledge of its application – became a priority activity of the Ministry of Finance in the international arena from 2019 to 2023. The Polish tax administration was inspired to intensify its activities in this regard by the fact that, as a result of its successful campaign against VAT carousels since 2016, it had: 1) It has developed a broad capacity to absorb and utilise information and data provided by other tax administrations during its analyses; 2) gained unique experience in the effective implementation of legislative, technological, and organisational, often innovative and unique, mechanisms to reduce VAT; 3) demonstrated the need to establish technological cooperation with administrations that, earlier than KAS, introduced solutions implemented or planned for implementation in Poland, including e-invoicing. At the turn of 2021 and 2022, to increase the scale of using Poland's experience in reducing the VAT gap to support the tax administrations of developing countries, the scope of the Tax Solidarity initiative was expanded to include cooperation with countries from other continents, particularly Africa and the Middle East. This is being developed both within the framework of bilateral relations, established through the Ministry of Foreign Affairs and the network of Polish diplomatic missions, as well as through Poland's participation in tax support programmes funded and coordinated by international organisations: the Organisation for Economic Co-operation and Development (OECD), the International Monetary Fund (IMF), and the United Nations (UN).

5.6.2. EU Pilot Programmes

Importance of pilots for improving the quality of EU law. Given the difficulty of reforming the current VAT system due to the unanimity rule, the feasibility of implementing regional pilot schemes within the EU arises. Implementing new solutions in only a subset of Member States would allow for verification of their effectiveness and the gathering of knowledge to facilitate future decisions on their EU-wide implementation. While such initiatives may, in the short term, appear to contradict the principle of VAT harmonisation (understood as the approximation of regulations across all EU countries), the temporary operation of differing regulations in member states is often a necessary step in improving the quality of EU law, serving as a precursor to the EU-wide implementation of new and improved solutions. Pilots and regulatory sandboxes implemented within the EU represent a particular form of indirect integration. 'Sandboxes', understood as testing environments, are most often used in areas other than taxation, for example, in medicine to test experimental drugs.[1057] A particular

[1056] The concept has been extensively described in Polish in a two-part article published in the quarterly *Polish Diplomatic Review* and in English in the periodical *ERA Forum*, see: J. Sarnowski, P. Selera, *Regionalne pilotaże jako sposób usprawnienia współpracy wewnątrz UE. Część I*, Polish Diplomatic Review, 3/2020, p. 133; J. Sarnowski, P. Selera, *Regionalne pilotaże jako sposób usprawnienia współpracy wewnątrz UE. Część II*, Polish Diplomatic Review, 1/2021, p. 116; J. Sarnowski, P. Selera, *European compact against tax fraud-VAT solidarity and new dimension of effective and coherent tax data transfer*, ERA Forum, Journal of the Academy of European Law, Volume 21, No. 1, September 2020, p. 81.

[1057] K. Marchewka-Bartkowiak, *Regulacyjne środowisko testowe (regulatory sandbox) – doświadczenia i perspektywy*, BAS Studies, No. 1(57) 2019.

type, regulatory sandboxes, allows for practical testing to determine which future regulations will be optimal, balancing the need to protect the market from potential risks with the need to avoid hindering entrepreneurial development.[1058] EU-scale regulatory pilots, therefore, involve accepting deviations from generally applicable regulations in specific countries to test their safety and effectiveness, and to evaluate the tested solutions for potential EU-wide applicability.

Types of pilots within the EU. The integration of EU member states' legal systems is a key tool for achieving the Treaty objectives. This integration is not solely achieved through direct, EU-wide legislative changes. Deviations from generally applicable rules, including pilot programmes designed to test the effectiveness of specific solutions, represent an important pathway for developing future regulations. Intra-EU pilot schemes can be both 'top-down,' driven directly by the European Commission, and 'bottom-up,' initiated by individual member states. While bottom-up initiatives are rooted in EU law, some countries choose to implement them outside the framework of treaty law.

Pilots in the history of the EU. The formal basis for deeper integration is currently the so-called 'enhanced cooperation', introduced by the Treaty of Amsterdam.[1059] This is not a new phenomenon; the 'fragmentation' of the common legal and economic space, lacking a treaty framework at its inception, has existed since the beginning of the European integration process. Differentiated situations among countries during EU enlargement or subsequent stages of integration are not the exception but rather the norm. This is particularly true when striving for a specific target model that necessitates a preparatory period. Examples include the *Schengen Agreements*,[1060] which abolished controls at the EU's internal borders and in which not all EU countries participate, and the Eurozone, which had an exclusive character from its creation.[1061]

Pilot programme as a 'top-down' EU initiative. Implementing cross-border pilot projects to address identified challenges within the single market is one of the European Commission's preferred methods. This approach allows for the testing of selected regulations, intended to further deepen the single market, with the aim of EU-wide implementation if they are positively assessed. Despite the widespread use of pilot schemes in various fields of integration, 'top-down' inspired taxation programmes

[1058] EC, *Financial technology roadmap: towards a more competitive and innovative European financial sector*, Brussels, 8.3.2018.COM(2018) 109 final.

[1059] Treaty of Amsterdam amending the Treaty on European Union, the Treaty establishing the European Communities and certain related acts (OJ 2004 No. 90, item 864/31 as amended).

[1060] The Schengen Agreements were originally international agreements between certain European Union Member States aimed at ensuring free movement of persons within the territories of the signatory states (Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany, and the French Republic on the gradual abolition of checks at their common borders of 14 June 1985; Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany, and the French Republic on the gradual abolition of checks at their common borders of 19 June 1990). Based on international cooperation between states, the Schengen provisions were incorporated into the European Union's legal framework as the 'Schengen acquis' by the Treaty of Amsterdam of 1997, becoming an integral part of applicable EU law. A. Szachoń-Pszenny, *Granice strefy Schengen a granice Unii Europejskiej – uwarunkowania normatywne*, 2018, Pogranicze. Polish Borderlands Studies, TOM 6, no. 1.

[1061] T. Kubin, *Wzmocniona współpraca w Unii Europejskiej po raz trzeci. Postępujące zróżnicowanie integracji oraz rozwój wzmocnionej współpracy i jej znaczenie dla funkcjonowania UE*, Yearbook of European Integration, 2015, no. 9.

remain exceptional. They are implemented infrequently, and none has yet resulted in the effective implementation of a tested tool at the supranational level.

Failed top-down tax pilot: Home State Taxation. An example of a failed pilot project by the European Commission was the *Home State Taxation* project. Under this project, the cross-border profits of small and micro-enterprises (groups of companies) were to be taxed in the countries where they were earned, but according to the familiar tax system of their country of residence.[1062] In a 2005 communication, the EC invited countries to implement this system on a voluntary basis, but this initiative did not attract interest from EU countries and was subsequently abandoned.[1063]

Successful top-down tax pilot: Cross Border Rulings. A tax pilot initiated by the Commission, involving a number EU countries, is the project for providing taxpayers with tax interpretations on the VAT treatment of their future intended international transactions (*VAT Cross-Border Rulings*). Currently, 18 Member States participate in this project: Belgium, Denmark, Ireland, Estonia, Spain, France, Italy, Cyprus, Latvia, Lithuania, Malta, Hungary, the Netherlands, Poland, Portugal, Slovenia, Finland, and Sweden.[1064]

Top-down piloting in one country: Transaction Network Analysis. An exception to this is when a solution has been tested in only one EU country before being implemented in all countries. This was the case with the *Transaction Network Analysis* (TNA) suspicious transaction mapping system for detecting VAT fraud.[1065] Its implementation resulted in a reduction of VAT fraud from €1.1 billion in 2001 to €40 million in 2014. Building on the Belgian experience,[1066] the European Commission launched a European system operating on these tested principles on 15 May 2019.[1067]

Bottom-up piloting with EU consent: Enhanced cooperation. In response to EU Member States' 'bottom-up' interest in conducting regional pilot programs, an organizational framework was created to facilitate cooperation with the European Commission. The Treaty's 'enhanced cooperation' mechanism provides for cooperation between certain Member States (subjective dimension) to further strengthen integration ties (material dimension).[1068] Under Article 20(2) TEU,[1069] the Council adopts a decision authorizing enhanced cooperation when it determines that the coopera-

[1062] S. O. Lodin, M. Gammie, *Home State Taxation*, Amsterdam 2001.

[1063] In July 2004. The Commission presented an informal concept for a pilot programme and submitted it to the informal ECOFIN meeting in September 2004. However, there was no substantial discussion on this document: https://ec.europa.eu/taxation_customs/business/company-tax/initiatives-small-business/home-state-taxation_en

[1064] European Commission, *VAT Cross Border Rulings (CBR)*, https://taxation-customs.ec.europa.eu/taxation/value-added-tax-vat/value-added-tax-vat-directive/vat-cross-border-rulings-cbr_en [accessed: 18 July 2024].

[1065] N. Petrosino, *European Union – Are You Ready for the Tax Technology?*, International VAT Monitor, 2019 (Volume 30), No. 2.

[1066] EC, Amended proposal for a Council Regulation, Amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax, Brussels, 30.11.2017, SWD(2017) 428 final.

[1067] EC, *VAT fraud: New tool to help EU countries crack down on criminals and recover billions of euros (press report)*, https://ec.europa.eu/commission/presscorner/detail/pl/IP_19_2468 [accessed: 11 November 2024].

[1068] C. Mik, *Europejskie prawo*..., Warsaw 2000, pp. 540/541.

[1069] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ C 326/47, 26.10.2012).

tion's objectives cannot be achieved within a reasonable timeframe by the Union as a whole, and provided that at least nine Member States participate. In accordance with Article 326 TFEU, enhanced cooperation must not undermine the internal market or economic, social, and territorial cohesion. It also must not create barriers to or discrimination in trade between Member States, nor distort competition among them.

Enhanced cooperation in the implementation of tax solutions. Given the difficulty EU countries face in achieving the unanimity necessary for smooth integration, enhanced cooperation has been considered in academic literature as an alternative path to achieving at least regional harmonisation of tax regulations. Particular hope was placed on using enhanced cooperation to unify income taxes through the implementation of the *Common Consolidated Corporate Tax Base* (CCCTB) among a subset of countries.[1070] Despite calls from academia, this pilot has not yet been implemented.[1071] An initiative that progressed further – from the conceptual phase to international negotiations – was the idea of introducing a financial transaction tax in selected countries. However, to date, the interested countries have been unable to reach a common position on the on the scope of the planned pilot.[1072]

Reasons for lack of interest in enhanced cooperation. Despite functioning for more than two decades within the EU legal order, the institution of enhanced cooperation has not become a driver of fiscal integration. This is due to a number of imperfections that characterise it, among which are:[1073]

1) Its formalised nature (the need for a corresponding decision by the Union's bodies);
2) Its inflexibility (the need to adopt a single solution in all pilot countries);
3) A demanding entry threshold (at least nine pilot countries);
4) The absence of an exit procedure from enhanced cooperation in case it does not have the intended effect.

Entering into enhanced cooperation also carries a particular political cost for both the EU institutions and the pilot countries. It requires the EU institutions to undertake a cumbersome process of confirming the impossibility of implementing integration in a conventional manner. The limited ability to modify the tested solution makes participation in pilot schemes more challenging for the participating countries. This restriction significantly curtails their sovereignty and risks them becoming 'locked in' to the piloted solution, without the flexibility to respond to evolving circumstances. It is not surprising, therefore, that enhanced cooperation does not attract interest from Member States as a pathway for testing solutions that could be widely implemented in the future.

Bottom-up pilots without EU consent. Given the shortcomings of enhanced cooperation, EU Member States commonly engage in pilot initiatives outside of this

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[1070] L. Cerioni, *The Possible Introduction of Common Consolidated Base Taxation via Enhanced Cooperation: Some Open Issues*, European Taxation, 2006 (Volume 46), No. 5.

[1071] Ch. HJI Panayi, *United Kingdom – The EU's Financial Transaction Tax,* Enhanced Cooperation *and the UK's challenge*, European Taxation, 2013 (Volume 53), No. 8.

[1072] J. Piotrowski, *Podatek od transakcji finansowych. Dylematy wyboru między rozwiązaniem fiskalnym a antykryzysowym*, Unia Europejska.pl, No. 3 (244) 2017.

[1073] J. Piotrowski, *Podatek...*, Unia Europejska.pl, No. 3 (244) 2017.

framework. This is particularly the case for activities inspired by the Franco-German partnership, within the framework of the so-called 'integration core', Given the shortcomings of enhanced cooperation, EU member states commonly engage in pilot initiatives outside of this framework. Differentiated integration is often referred to as the 'Schengen method', which manifests itself in a group of Member States regulating certain matters of EU relevance outside the institutional and legal framework jointly established in the Treaties[1074] Despite being implemented outside the treaty framework, these initiatives serve to achieve the resulting objectives and are thus accepted by the EU bodies.[1075]

5.6.3. Regional Tax Information Exchange Pilots

Tax information exchange as a 'bottom-up' pilot (sandbox). When creating procedures and methods for the exchange of tax data between states, the EU legislator specifically allowed EU states to undertake their own bilateral and regional integration initiatives in this regard, outside the framework of 'enhanced cooperation'. 'Bottom-up' integration is explicitly permitted by Article 60 of Regulation 904/2010.[1076] As an alternative to the Regulation, the OECD Convention on Mutual Administrative Assistance in Tax Matters[1077] also provides a legal basis for VAT information exchange agreements. Given the criticism from the EU institutions pointing out the weaknesses of the 'top-down' designed EU tax information exchange system, a 'bottom-up' system of voluntary, in-depth cooperation, created outside the rigid 'enhanced cooperation' procedure, is the EU's recommended path for countries to compensate for the shortcomings of the existing regulations. Recognising the need to quickly obtain the data

[1074] J. Barcz, M. Górka, A. Wyrozumska, *Instytucje i Prawo Unii Europejskie*, Warsaw 2015, p. 26.

[1075] It is worth remembering that many solutions essential to contemporary Europe originated from bottom-up initiatives, not from EU institutions themselves. Notably, the EU Schengen system was inspired by international agreements initially concluded between individual EU states. The effective operation of this system at the inter-state leavel prompted the EU to 'take over' these regulations under the Amsterdam Treaty. A. Szachoń-Pszenny, *Granice strefy...,* Borderlands. Polish Borderlands Studies, TOM 6, no. 1.

[1076] According to paragraph 1 of Article 60 of Regulation 904/2010: '*1. This Regulation shall be without prejudice to the fulfilment of any wider obligations in relation to mutual assistance ensuing from other legal acts, including bilateral or multilateral agreements*'. Pursuant to paragraph 2 of Article 60, EU states need only comply with certain procedural aspects: '*Where Member States conclude bilateral agreements on matters covered by this Regulation, in particular Article 11 thereof, other than to deal with individual cases, they shall inform the Commission without delay. The Commission shall in turn inform the other Member States*'.

[1077] OECD, *Convention on Mutual Administrative Assistance in Tax Matters*, https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm; Podatki.gov.pl, *Convention on Mutual Administrative Assistance in Tax Matters*, https://www.podatki.gov.pl/media/3130/19880125_konwencja_wzajemna_pomoc_administracyjna.pdf [accessed: 13 July 2024]. The Convention in Article 2 covers a broad subject matter, including VAT. Furthermore, by virtue of Article 27(2) of the Convention: 'Notwithstanding the provisions of paragraph 1, Parties that are Member States of the European Union may apply *in* their *mutual* relations the possibilities of assistance provided by this *Convention insofar* as they afford greater cooperation than the possibilities offered by the relevant legislation of the European Union'. This means that the OECD Convention, in case of doubt, *explicitly* allows for a broader and more far-reaching exchange of tax information also in the area of VAT compared to the scope of exchange offered by Regulation 904/2010. The agreement concluded on the basis of this Convention is the Agreement between Estonia and Finland establishing an absolutely unique *real-time* exchange of tax data also in the area of VAT.

needed to identify international tax offenders, agreements on the exchange of VAT information were concluded between Spain and Portugal[1078] and between the Czech Republic and Slovakia after 2013. In 2021, an agreement was signed between Poland and Slovakia,[1079] and in February 2022 between Estonia and Finland.[1080]

Tax information exchange – a three-speed Europe. Given the urgent need to deepen cooperation between EU countries on tax information exchange, the question arises as to which path EU institutions should choose to support the observed 'bottom-up' initiatives of selected EU countries. Considering the experience to date with enhanced cooperation and 'top-down' pilot programmes coordinated by the European Commission, it seems unlikely that an EU-led process to introduce a single model for improved tax information exchange across numerous countries will fall short of expectations. This is especially true as integration is further hampered by differences in the data held by countries, their analytical capacity, and their willingness to share that data with other administrations.

EU countries vary in their technological sophistication and analytical capabilities. They differ in the volume of data they can provide and in their ability to effectively use information received from other countries. The level of digitisation within tax administrations and the use of big data analytics also varies across EU members. Some countries, such as Italy, Spain, Portugal, and Poland, extensively use the *Single Audit File for Tax* (SAF-T) reporting system, while others, like Germany, have not implemented it. Importantly, the adoption of modern tax technologies doesn't follow a simple east-west or north-south divide; the situation is more complex. Portugal, Spain, and Italy are exporters of new tax technologies, having pioneered the implementation of SAF-T and e-invoicing. Germany, conversely, has been slow to adopt modern tax technologies and is reluctant to share information about taxpayers registered within its borders.

Regarding tax information exchange and the need for such information, it is possible to envision a "Three-Speed Europe," dividing countries into three groups:

1) States that do not independently develop such systems, where the fight against tax crime is effectively carried out through other means (e.g., Germany);

2) Countries with advanced analytical systems, seeking to maximise their potential, including by increasing the volume of data analysed with information provided by other countries (e.g., Portugal, Spain, Italy, the Czech Republic, Slovakia, and Poland);

3) Countries in the early stages of developing such systems (i.e., those that have not yet mandated reporting or are not conducting advanced analysis of their reported domestic flows). At this stage, these countries do not yet require data from other countries. However, they often have a strong interest in establishing technological cooperation to accelerate their tax administration's transformation towards

[1078] TaxNotes, *Spain Welcomes Information Exchange Agreement with Portugal*, https://www.taxnotes.com/tax-notes-today-global/information-reporting/spain-welcomes-information-exchange-agreement-portugal/2013/10/23/gnhq [accessed: 13 July 2024].

[1079] Ministry of Finance, *Polska i Słowacja razem przeciwko wyłudzeniom w VAT,* https://www.gov.pl/web/finanse/polska-i-slowacja-razem-przeciwko-wyludzeniom-w-vat [accessed: 11 May 2024].

[1080] OECD, *Estonia – Finland Real-time exchange of information*, https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-administration/b.2.3-finland-real-time-exchanges-with-estonia.pdf [accessed: 13 July 2024].

Tax Administration 2.0 and 3.0, which includes the digitisation of reporting and the automation of tax settlements and analytical processes.

EU Member States also lack a unified position on the exchange of taxpayer data. They differ in their understanding of the damaging impact of VAT carousels on their economies and security. For many countries, providing information on businesses operating within their territory is particularly sensitive, especially if public disclosure of this data could jeopardise business confidentiality. For other countries, the barrier is limited confidence in the data protection and security standards that would be applied by other EU countries. It is not coincidental that, to date, tax information exchange agreements have only been concluded between countries with particularly close cultural, economic, and historical ties (Spain with Portugal, the Czech Republic with Slovakia, and Estonia with Finland), and these agreements have been preceded by many years of positive experience with bilateral cooperation in the tax field.

5.6.4. VAT Model Convention and Bilateral Agreements

Ministry of Finance Initiative 2020/2021. An example of a 'bottom-up' initiative to implement a European pilot is the Polish proposal, developed in the first half of 2019 by the Legal and Comparative Analysis Team of the Ministry of Finance, for EU countries to create a new, more effective model for the exchange of tax information and technology, as well as the exchange of experience gained from their application. The pilot scheme would be implemented voluntarily through bilateral agreements between participating countries on enhanced cooperation between tax administrations, intensifying their cooperation in combating tax crimes.[1081] The 'VAT model convention' presented by Poland was to be the starting point and model for the agreements to be concluded. It was intended to serve, analogous to the OECD Model Convention on Income and Wealth Tax, as the foundation and starting point for concluding bilateral agreements. Using the provisions of the model agreement, states would be free to determine the shape and scope of tax information exchange with individual partners according to their own needs. The model agreement would include various *cherry-picking* and reservation possibilities, respecting the differences between EU countries. The inclusive, open, yet voluntary nature of the pilot would allow the effectiveness of these enhanced forms of cooperation to be tested and provide a foundation for unanimous support for implementing the best solutions as a universally applicable standard within the EU.

Intensifying international cooperation in taxation was a key element of the Ministry of Finance's strategy for reducing the VAT gap between 2019 and 2022. This involved 'sealing' the Polish tax system, achieved through:[1082]

1) Supporting KAS analysts with data on: a) turnover by foreign entrepreneurs between Poland and partner countries, and b) entities identified in partner countries

[1081] FAZ, *Polens Koalition der Willigen: Gegen die Mehrwertsteuer-Mafias*, https://www.faz.net/aktuell/politik/ausland/wie-polen-mehrwertsteuer-mafias-in-europa-bekaempfen-will-16306896.html?premium [accessed: 11 May 2024].

[1082] See, inter alia, DGP, *Ministerstwo Finansów podpatruje zagraniczne technologie do walki z wyłudzeniami VAT,* https://podatki.gazetaprawna.pl/artykuly/1445727,wyludzenia-vat-2020-zagraniczne-rozwiazania-ue.html [accessed: 14 July 2024].

as participating in fictitious trading. Poland's priority partners for the automatic exchange of this data are its neighbours and countries through which transit occurs, namely Germany, the Visegrád Group (V4) countries, the Baltic States, and Ukraine.

2) Poland's acquisition of partners in implementing new technological solutions, particularly e-invoicing and analysing data sent by online cash registers. The target recipients of the Polish initiative were the tax administrations of southern European countries, especially Italy and Spain (for e-invoicing) and Croatia (for online cash register information analytics).

3) Sharing Poland's experience in effectively implementing pioneering solutions, not yet adopted in other countries, to reduce the VAT gap. These primarily include the mandatory split payment mechanism, the STIR system, the Non-Cash Transaction Support Programme, and modern methods of acquiring technological solutions through GovTech Poland competitions.

Improving the tightness of of VAT systems in other EU countries offers several benefits for Poland:

1) Makes it more difficult to organise extortionist VAT mafias, which in essence carry out 'carousel' trade between a number of EU countries;

2) Establishes a European 'early warning system' whereby member states, having effectively identified the actors through which VAT mafias operate, inform partner administrations about taxpayers involved in fictitious trading within their own territory, thereby inspiring monitoring of their activities and those of their affiliates in other countries;

3) Eliminates undeserved competitive advantages gained by foreign businesses as a result of their cooperation with tax offenders.

Tax Solidarity Programme. In view of the unprecedented nature of the planned cooperation, involving the transfer of sensitive data on the activities of taxpayers based on mutual trust, as well as the sharing of advanced technologies for the sealing of the tax system and the experience derived from their use, the Polish side has named this initiative the Tax Solidarity Programme. Due to the strategic importance and sensitivity of its subject matter, the involvement of the partner administrations in it is conditional on directional decisions at the political level. To encourage participation, the Chancellery of the Prime Minister and the Ministry of Foreign Affairs, at the instigation of the Ministry of Finance, have become involved in disseminating information internationally regarding the threats posed by international tax crime and the potential for intensifying international cooperation to combat it. The call for deeper cooperation among EU countries, implemented in the spirit of Tax Solidarity, was presented in foreign media in July 2019 through press publications authored by the Polish Prime Minister.[1083]

The proposal presented at a Ministry of Finance conference to EU member states and the European Commission was to establish a coalition of countries committed to effectively combating VAT carousels (*European Compact against VAT Frauds*). It was

[1083] InteriaBiznes, *Premier Mateusz Morawiecki wzywa UE do walki z mafią VAT*, https://biznes.interia.pl/gospodarka/news-premier-mateusz-morawiecki-wzywa-ue-do-walki-z-mafia-vat,nId,4205925 [accessed: 14 July 2024].

based on the concept of 'bottom-up', regional integration, implemented using bilateral international agreements or inter-ministerial arrangements.[1084] Based on this model, cooperation is implemented in three phases:

1) **Workshop phase:** This process is initiated by presenting a proposal to the potential partner country, outlining potential areas of cooperation and identifying mutual needs. This stage determines whether the cooperation will only involve exchanging information on taxpayer activities or extend to technological or legislative cooperation, training, or joint control activities. The workshop phase concludes with defining the cooperation objectives, formalised in a declaration signed by the finance ministers of both countries, initiating the transition to the negotiation phase.

2) **Negotiation phase:** This phase focuses on developing the content of the international or inter-ministerial agreement, translating the findings of the workshop phase into a legal instrument. This is also the stage for establishing detailed legal arrangements, concerning the treaty basis for its conclusion (Regulation 904/2010 or the OECD Convention on Mutual Administrative Assistance in Tax Matters) and technical arrangements, particularly the timing and format in which information on business activity will be shared with partner administrations. The negotiation phase concludes with the signing of the relevant international or inter-ministerial agreement.

3) **Implementation phase:** This phase involves carrying out the activities outlined in the agreement to seal VAT systems in the cooperating countries. This may involve a cyclical, automatic exchange of information on cross-border traders, including reports on the results of internal analytical activities conducted by the tax administrations. It may also include legislative workshops on the legal framework for sealing solutions, training in developing digital infrastructure for the Ministry of Finance and in applying relevant technological solutions to analytical work carried out for the benefit of the tax authorities, as well as sharing best practices used by the administration's control units.

In order to present the European Union countries with the full spectrum of possible cooperation with the Polish tax administration, a document describing the broad spectrum of its options and variants was drafted under the name of the VAT model convention. A proposed text for the declaration initiating the negotiation phase was also prepared. For the planned meeting of the 27 EU states, this took the form of a joint statement (letter of intent) from states interested in deeper cooperation on information exchange, declaring their readiness to conclude bilateral agreements based on the matrix (model agreement) presented by Poland. The model agreement presented by Poland ranks areas of tax cooperation according to increasing levels of involvement and required legal and system changes. It successively addresses:

1) Exchange of basic information and knowledge, i.e. tools that do not require countries to make significant legislative changes or financial outlays to implement (the so-called minimum standard for cooperation);

[1084] Ministry of Finance, *Polska proponuje Europie ściślejszą współpracę w zwalczaniu mafii VAT,* https://www.gov.pl/web/kas/polska-proponuje-europie-scislejsza-wspolprace-w-zwalczaniu-mafii-vat [accessed: 14 July 2024].

2) Advanced areas of cooperation that may require legislative changes and significant modifications to data reporting practices (the so-called extended co-operation model).

The Minimum Collaboration Standard aims to enable the automatic exchange of the least sensitive information on international trade, which, although often publicly available, cannot be subjected to big data analytics due to lack of structuring. The standard also facilitates the exchange of knowledge, experience, and technology between countries to enhance their analytical capabilities. It encompasses:

1) Exchange of knowledge and best practice in the use of advanced IT tools to combat tax fraud, including analysis of large volumes of data;

2) Access to and exchange of information from publicly available business registers held in ICT systems, along with comprehensive information on the commercial activities of company managers;

3) Access to and exchange of data and information from publicly available lists of VAT taxable persons maintained in the ICT system.

The extended cooperation model includes a broad catalogue of information on international transactions, the automatic, structured sharing of which would significantly increase the effectiveness of international tax crime prevention. This includes:

1) Access to selected data from VAT returns and recapitulative statements on records of intra-Community acquisitions

2) Establishing lists of reliable and dishonest taxable persons – an extended list of VAT taxable persons;

3) The exchange of certain data from SAF-T (Standard Audit File for Tax, i.e. the Single Audit File, JPK).

The proposal presented by Poland in autumn 2019 was to adopt an inclusive formula, open both to countries urgently needing modern tax technologies and to those already possessing advanced technologies but requiring access to larger volumes of data from other countries to enhance their analytical capabilities. The pilot project, based on the Polish model agreement, has no preconditions or formalities and remains open to countries that do not initially express interest in in-depth tax cooperation. These countries, upon observing the pilot project's effectiveness, may later wish to benefit from at least some of its outcomes or tax information exchange mechanisms.

Advantages of regional agreements. The Polish proposal avoids the drawbacks that characterise the enhanced cooperation procedure (inflexibility, formalism, high exit threshold, lack of an exit path), the shortcomings of the 'integration core' approach (exclusivity - limited access, very high entry threshold and limited spectrum) and the difficulties arising from 'top-down' piloting (imposition by the Commission of a single unifying object for all participants). Instead, Poland proposes a 'bottom-up' pilot for EU countries, which has a number of advantages:

1) It maximises the protection of state sovereignty by completely eliminating the involvement of EU bodies in determining its scope;

2) It gives cooperating states full freedom to join, choose their partner(s), and define the scope of cooperation;

3) It does not restrict the possibility of modifying the cooperation – extending or narrowing its scope, or even exiting the programme.

On the other hand, it retains all the advantages of other types of pilot programmes:

1) It provides a path to achieving regional integration, bringing together the regulations, technological capacities, and analytical capabilities of cooperating tax administrations

2) It enhances the performance of the selected countries by adapting the cooperation framework to their real needs and their demonstrated capacity to absorb and implement new solutions or apply the data provided;

3) It is intended to prepare countries for further integration steps initiated at the supranational level by the European Commission. The example of the cooperating states and their experiences will allow the EC and countries not yet involved in the pilot to evaluate the tested forms of cooperation and provide a basis for gathering political support for a regulation covering all EU states.

Moreover, thanks to its inclusiveness and flexibility, the Polish proposal allows for the parallel testing of different scopes of cooperation to determine which is most suitable for universal application. Furthermore, the absence of entry threshold conditions enables the pilot to be implemented in countries with diverse cultural, economic, and geopolitical contexts, as well as varying degrees of administrative computerisation. The pilot, implemented under this framework, is compliant with EU law, as Regulation 904/2010 provides a legal basis for it and even encourages its implementation, analogous to the OECD Convention.

First phase of the Tax Solidarity Programme (2019-2021). On 18 December 2019, the Minister of Finance presented drafts of the Declaration and the Model Convention to the heads of finance ministries of twenty-seven EU countries and to the European Commission.[1085] An international workshop on the Polish proposal was held in Warsaw on 29 January 2020, attended by 35 representatives of tax administrations from 21 EU countries.[1086] The meeting resulted in Poland initiating the workshop phase with the tax administrations of Germany, the Czech Republic, Slovakia and Hungary, as well as the Baltic States. It also established close, non-contractual cooperation with the tax administrations of Italy and Estonia, which actively supported Poland in 2020–2021 in implementing lump-sum solutions for corporate income and e-invoicing.[1087] These activities resulted in the signing of declarations initiating the process of negotiating bilateral tax cooperation agreements with Slovakia (Bratislava, 15 June 2020),[1088] with

[1085] PAP, *MF proponuje odpowiednikom z krajów UE deklarację dot. walki z wyłudzeniami VAT*, https://www.pap.pl/aktualnosci/news%2C561267%2Cmf-proponuje-odpowiednikom-z-krajow-ue-deklaracje-dot-walki-z-wyludzeniami [accessed: 14 July 2024].

[1086] Ministry of Finance, *Polska proponuje Europie ściślejszą współpracę w zwalczaniu mafii VAT*, https://www.gov.pl/web/finanse/polska-proponuje-europie-scislejsza-wspolprace-w-zwalczaniu-mafii-vat [accessed: 14 July 2024].

[1087] To coordinate the implementation of the Tax Solidarity Programme, the Ministry of Finance appointed a Plenipotentiary for International Cooperation in the field of VAT. This role is supported by the Goods and Services Tax (VAT) Department of the Ministry of Finance (responsible for legislative work), the Analysis Department of the National Tax Administration (handling technological issues), and the Tax Solidarity Team (established in May 2020 and responsible for training activities). See Order of the Minister of Finance, Investment and Development of 3 October 2019 on the appointment of the Plenipotentiary of the Minister of Finance, Investment and Development for International Cooperation in the field of VAT, Dz.Urz.MFIiR.2019.11.

[1088] Ministry of Finance, *Ministrowie finansów Polski i Słowacji popisali w Bratysławie wspólną deklarację,* https://www.gov.pl/web/slowacja/ministrowie-finansow-polski-i-slowacji-popisali-w-bratyslawie-wspolna-deklaracje [accessed: 12 July 2024].

Ukraine (Kyiv, 28 August 2020),[1089] with the Czech Republic and Hungary (Warsaw, 4. September 2020)[1090] and with Estonia (Tallinn, 1 October 2020).[1091] By the end of 2020, negotiations on the content of bilateral VAT cooperation agreements with Slovakia and the Czech Republic were completed. On 10 March 2021, the first of the executive inter-ministerial agreements – the Agreement on Automatic Exchange of Tax Information in the Field of VAT between Poland and Slovakia – was signed in Warsaw. This agreement came into force on 1 June 2020, and the automatic exchange of information began two months later, on 1 August 2021.[1092]

5.6.5. Centre for Tax Solidarity

Direction: developing countries. Due to the rapid development of tax cooperation with Poland's neighbours and the strong interest from developing countries in establishing technological cooperation with Poland,[1093] the decision was made in late 2021/early 2022 to expand the scope of the Tax Solidarity Programme to include technological and training cooperation with African and Middle Eastern countries. In doing so, the Polish administration followed the example of global leaders in tax development assistance, such as Norway (NORAD)[1094] and the United Kingdom (HMRC).[1095]

Centre for Tax Solidarity. In mid-May 2022, the Ministry of Finance established the Centre for Tax Solidarity and its Tax and Development Team, with experts participating in short- and long-term capacity-building programmes and providing training to developing countries. The Centre's mandate is to support developing countries in implementing various tax development activities tailored to each country's individual needs and regional context. These activities include workshops, training, study visits, and consultations for tax administration staff. More advanced forms of support encom-

[1089] Ministry of Finance, *Polska i Ukraina razem przeciwko oszustom podatkowym*, https://www.gov.pl/web/finanse/polska-i-ukraina-razem-przeciwko-oszustom-podatkowym [accessed: 19 July 2024].

[1090] Ministry of Finance, *Współpraca gospodarcza państw Grupy Wyszehradzkiej. Dziś podpisano wspólną deklarację,* https://www.gov.pl/web/finanse/wspolpraca-gospodarcza-w-panstw-grupy-wyszehradzkiej-dzis-podpisano-wspolna-deklaracje [accessed: 14 July 2024].

[1091] Ministry of Finance, *Estonia dołączyła do koalicji na rzecz europejskiej solidarności podatkowej*, https://www.gov.pl/web/finanse/estonia-dolaczyla-do-koalicji-na-rzecz-europejskiej-solidarnosci-podatkowej [accessed: 19 July 2024].

[1092] Ministry of Finance, *Polska i Słowacja razem przeciwko wyłudzeniom w VAT*, https://www.gov.pl/web/finanse/polska-i-slowacja-razem-przeciwko-wyludzeniom-w-vat [accessed: 14 July 2024].

[1093] Among other instances, this included appeals to Poland during bilateral and multilateral meetings in the framework of economic missions, see DGP, *Sarnowski in Dubai: Chcemy konkurować nie tylko ulgami i niskim opodatkowaniem,* https://podatki.gazetaprawna.pl/artykuly/8307870,sarnowski-w-dubaju-polski-lad-konkurencyjny-system-podatkowy.html; Ministry of Finance, *Spotkanie przedstawicieli polskiego rządu z ambasadorami krajów Afryki Subsaharyjskiej,* https://www.gov.pl/web/finanse/spotkanie-przedstawicieli-polskiego-rzadu-z-ambasadorami-krajow-afryki-subsaharyjskiej [accessed: 14 July 2024].

[1094] NORAD, *Tax for Development*, https://www.norad.no/en/front/the-knowledge-bank/programmes-in-the-knowledge-bank/tax-for-development/ [accessed: 14 July 2024]; for more on Norway's efforts, e.g. O. Lundstøl, *Tax in Development: Towards a Strategic Aid Approach 2018*, ICT Working Paper 77/2018, https://www.ictd.ac/publication/tax-in-development-towards-a-strategic-aid-approach/ [accessed: 14 July 2024].

[1095] HMRC, *HMRC Tax Capacity Building Unit and Tax Expert Unit annual evaluation for the tax year 2015 to 2016*, https://www.gov.uk/government/publications/hmrc-capacity-building-unit-and-tax-expert-unit-annual-evaluation/hmrc-tax-capacity-building-unit-and-tax-expert-unit-annual-evaluation-for-the-tax-year-2015-to-2016 [accessed: 14 July 2024].

pass cooperation in developing and implementing tax technologies, as well as legislative assistance.[1096] The framework for the Tax Solidarity Programme is outlined in the Order of the Minister of Finance of 20 June 2023 on the Tax Solidarity Programme Strategy for 2023–2025.[1097]

Second phase of the Tax Solidarity Programme (2022-2023). In the first year of the expanded Tax Solidarity Programme, formal cooperation frameworks, in the form of tax cooperation declarations, were established with three partner countries: the United Arab Emirates (Abu Dhabi, 15 May 2023),[1098] Rwanda (Kigali, 17 July 2023)[1099] and Moldova (Chisinau, 19 September 2023).[1100] In 2023, Poland joined the UN's Tax Inspectors Without Borders programme to host an outreach programme for the tax administration of the Kingdom of Bhutan. As part of the project, inaugurated on 7 September 2023, Polish experts support the partner country in tax audits of multinational companies with issues of international tax law and transfer pricing.[1101]

As a result of the changes in the Ministry of Finance resulting from the changes in its management in 2023-2024, the Ministry decided at the beginning of January 2024 to block the development of the Tax Solidarity Programme. On 5 June 2024, the Ordinance of the Minister of Finance revoking the Ordinance on the Tax Solidarity Programme Strategy for 2023-2025 entered into force, removing the implementation of assistance to developing countries from the Ministry of Finance's objectives.[1102]

[1096] Ministry of Finance, *Tax Solidarity,* https://www.gov.pl/web/finance/tax-solidarity [accessed: 14 July 2024].

[1097] Order of the Minister of Finance of 20 June 2023 on the Tax Solidarity Programme Strategy for 2023-2025, Official Journal MF.2023.65.

[1098] Ministry of Finance, *Polska i Zjednoczone Emiraty Arabskie będą współpracować w obszarze podatków*, https://www.gov.pl/web/finanse/polska-i-zjednoczone-emiraty-arabskie-beda-wspolpracowac-w-obszarze-podatkow [accessed: 14 July 2024]. Key areas of cooperation include collaboration on the electronification of tax settlements (e-invoicing) and turnover registration (online and virtual cash registers), as well as the implementation of modern border security tools (e.g., self-learning software developed under the GovTech programme that analyses X-ray images). See PAP, *Ministerstwo Finansów przedstawi w Dubaju zachęty podatkowe dla inwestorów*, https://www.pap.pl/aktualnosci/news%2C1019961%2Cministerstwo-finansow-przedstawi-w-dubaju-zachety-podatkowe-dla-inwestorow [accessed: 14 July 2024].

[1099] Ministry of Finance, *Minister Finansów Magdalena Rzeczkowska z wizytą w Kigali*, https://www.gov.pl/web/tanzania/minister-finansow-magdalena-rzeczkowska-z-wizyta-w-kigali [accessed: 14 July 2024]. Combating tax avoidance and evasion, along with the digitisation of tax administration, were identified as key areas of cooperation. See Ministry of Finance, *Udział Ministerstwa Finansów w misji gospodarczej do Rwandy*, https://www.gov.pl/web/finanse/udzial-ministerstwa-finansow-w-misji-gospodarczej-do-rwandy [accessed: 14 July 2024].

[1100] The detailed scope of the tax cooperation programme for Moldova for 2024 was to be drawn up during a scoping mission scheduled for November/December 2023. See Ministry of Finance, *Wizyta minister finansów Magdaleny Rzeczkowskiej w Mołdawii,* https://www.gov.pl/web/finanse/wizyta-minister-finansow-magdaleny-rzeczkowskiej-w-moldawii [accessed: 14 July 2024].

[1101] Ministry of Finance, *Wspólny projekt MF i Tax Inspectors Without Borders dla Bhutanu*, https://www.gov.pl/web/finanse/wspolny-projekt-mf-i-tax-inspectors-without-borders-dla-bhutanu [accessed: 14 July 2024].

[1102] Order of the Minister of Finance of 13 June 2024 revoking the Order on the Tax Solidarity Programme Strategy for 2023-2025, OJ.Urz.MF.2024.61.

SUMMARY AND CONCLUSIONS

The establishment of the Internal Market within the European Union is one of the greatest achievements of the Old Continent's economies. It has enabled a significant acceleration of economic growth in European countries, and consequently, an increase in the living standards of their inhabitants. The elimination of customs barriers between countries within the European Community necessitated replacing the existing system of VAT taxation on international trade in goods. The new rules needed to avoid creating obstacles to economic activity while preventing tax competition between countries. The current system of taxation for intra-Community transactions began as a temporary measure in 1993. It was intended to be in place for four years, after which it would be replaced by a definitive system based on the country of origin principle. However, this transitional system has become effectively permanent, and all attempts to substantially change it – including proposals put forward by the European Commission in 2018 – have not been approved by the Member States.

The harmonisation of taxation on intra-EU supplies has greatly facilitated trade and improved the optimal allocation of resources between Member States, positively impacting the development of European economies and businesses. However, the system of liberalised economic trade and VAT exemption for intra-Community supplies has also made Member States particularly vulnerable to organised crime. VAT carousels, which are constantly evolving and becoming increasingly complex, cost EU economies tens of billions of euros annually. In many European countries, including Poland, VAT revenues constitute almost half of the state budget's tax income. Securing the stability of VAT revenues, and especially protecting them from erosion and guaranteeing their steady growth, is a key aspect of state activity, of fundamental importance for effectively implementing public policies.

For years, measures organised or coordinated at the supranational level have been unable to effectively counter the phenomenon of tax crime, particularly the activities of tax mafias. Solutions recommended by the European Commission for decades proved only partially effective. They addressed issues in a fragmented way, leading to the spillover of irregularities between product categories and economic sectors, as well as between countries with varying levels of administrative technological advance-

ment. The path to effectively reducing the VAT gap has involved Member States pursuing proactive tax policies, unilaterally implementing solutions recommended by international organisations (such as the OECD) and developing their own proprietary tools to combat irregularities.

Until 2016, Poland had one of the largest VAT gaps in the EU. By 2015, this gap was steadily increasing, reaching approximately a quarter of the revenue due, placing Poland twenty-second in the EU in terms of VAT 'tightness'. The implementation of a multi-faceted VAT sealing strategy enabled a reduction of the VAT gap to a record low in 2021, estimated by the European Commission at around 3.3% and by the Ministry of Finance at around 2.6% of due revenue. In addition to these estimates, several indicators monitored by the administration during this period demonstrate the effectiveness of the sealing measures. These include a nearly 85% reduction in the annual number of proceedings initiated in cases of carousel fraud, a fivefold decrease in the value of turnover registered by entities involved in extortion (buffers), a threefold decrease in the value of losses from unjustified VAT refund requests, and a twofold decrease in the value of VAT refunds withheld by tax authorities.

The Polish tax administration shifted away from its 2010–2015 practice of solely implementing sealing solutions recommended by EU bodies. It instead adopted a proactive tax policy, implementing the most effective solutions recommended by international organisations and pioneering mechanisms developed by European leaders in VAT sealing. It also developed its own unique tools, not found in other countries. The implemented strategy was comprehensive, addressing all aspects contributing to the VAT gap: the activities of tax evaders, the 'grey' economy, and budgetary losses resulting from ambiguous regulations and taxpayer errors in settlements.

A key element of Poland's 2016–2022 VAT gap reduction strategy was the launch of a campaign against VAT carousels, targeting every aspect of tax criminals' operations. This included significantly reducing the profitability of their practices, enabling quicker detection of their activities, making it harder to reconstruct chains of companies engaged in fictitious trading, and increasing the effectiveness of sanctions against tax criminals. This was achieved by increasing penalties, facilitating the seizure of criminal assets, and improving the activities of law enforcement agencies, prosecutors, and the judiciary.

The split payment mechanism has been an effective tool for reducing the profitability of tax evasion schemes. Its protective power has led to widespread adoption by entrepreneurs to manage tax risks, currently covering around two-thirds of the value of transactions in Poland.

The rapid increase in spending on IT services for the tax administration, a distinguishing feature of Poland's approach, has enabled the development of technological tools that use big data analysis and machine learning to automatically detect fictitious turnover, flagging entities for audit by tax officials. By gradually providing the tax administration's databases with real-time transaction information, the administration's response time to tax criminals generating fictitious turnover has been significantly reduced. Consequently, the duration of VAT carousels in Poland has decreased from months or even years to just a few weeks. This change would not have been possible without supplying tax administration analysts with data on business turnover,

both on an accrual basis (through JPK_VAT and e-Invoice reporting) and on a cash basis (transaction data provided by banks via STIR), as well as information on the volume and frequency of retail sales transmitted to the ministerial repository using online cash registers. Currently, routine analyses conducted by the Polish administration encompass nearly 10 billion transactions reported annually via JPK_VAT, approximately 15.5 billion bank transfers between businesses, and around 9 billion transactions recorded by online cash registers.

In the fight against VAT fraud, particular emphasis has been placed on preventing the 're-birth' of chains of entities engaged in fictitious trading. Providing taxpayers with the knowledge to identify tax-risky transactions and a reliable source of information on the tax compliance of their business partners has become a key tool. To help businesses identify attempts to involve them in tax offences, a 'VAT due diligence methodology' was published, detailing the characteristics of fictitious trading and the modus operandi of dishonest contractors. The reliability of the VAT register as a source of information on listed entities was restored by expanding the criteria for VAT registration for taxpayers and requiring tax authorities to conduct a verification procedure before registration, as well as periodic checks to ensure taxpayers continued to meet these criteria.

Alongside efforts to combat VAT mafias, cooperation with businesses has been a key action in reducing the VAT gap. A significant aspect of this cooperation is addressing the 'grey market', including reducing the scale of untaxed trade in goods, which creates unfair competitive advantages for businesses selling goods without paying tax. An important form of support for businesses is assisting compliant taxpayers in fulfilling their tax obligations by providing them with guidance on interpreting tax law.

A key area in combating the grey market involved measures aimed at 'sealing' trade in particularly fiscally sensitive excise goods. Implementing mandatory accelerated VAT payments for fuel imports into Poland (the 'fuel package') and extending the monitoring of fuel transport via geolocation (the 'transport package') effectively reduced untaxed fuel trade, while increasing legal sales by up to 25% year-on-year. The introduction of electronic monitoring of tobacco cultivation and transport, as well as the production, transport, wholesale, and retail of cigarettes, has reduced the grey market in cigarette trade fourfold, from 19% in 2015 to just over 5% in 2022.

To limit the shadow economy in trade of other goods, the possibility of using VAT exemptions was restricted by adding several 'sensitive' sectors, where particularly high levels of irregularities were observed, to the list of exclusions. The tax administration was also given the authority to conduct 'verifying acquisitions,' a procedure allowing for effective yet transparent verification of taxpayers' compliance with their obligations.

To involve consumers in combating the 'grey economy', a number of information campaigns were conducted, including two editions of the National Paragon Lottery. Consumers were also given access to a service called e-Paragon, which facilitates the exchange or return of purchased goods and household budget planning.

With the aim of reducing the possibility of companies failing to record sales and their involvement in 'money laundering', the Ministry of Finance has been heavily involved in promoting cashless transactions, which promotes business transparency.

Between 2016 and 2022, one of the Ministry of Finance's priorities was reducing the risk of taxpayers making billing errors by simplifying regulations and abolishing cumbersome and difficult-to-justify obligations. The most extensive VAT simplification was a comprehensive reform of the VAT rate matrix. This reform halved the number of items in the matrix and made it more rational by expanding the range of essential goods and services covered by reduced tax rates. A process of continuous audit of VAT solutions was also initiated, leading to the cyclical, annual publication of simplification measures. This resulted in three VAT simplification packages under the name SLIM VAT, coming into force in 2021, 2022, and 2023 respectively, as well as several other simplification measures included in other legislation, including the regulation of VAT groups.

The third field of action on reducing the VAT gap was the transformation of the Polish tax administration. Its overriding aim was to move from the level of Tax Administration 1.0 (paper-based) to the level of Tax Administration 2.0 (digital) and to take measures aimed at reaching the level of Tax Administration 3.0 (automated) in the near future, shifting the focus from control towards closer cooperation with taxpayers. The key to this technological transformation was establishing an organisational framework and procedures for effectively acquiring state-of-the-art digital solutions designed to facilitate taxpayer settlements and streamline the activities of KAS employees and officers. Consolidating the acquisition of IT services within the National Revenue Administration led to the concentration of key tasks in the Centre for Information Technology of the Ministry of Finance (CIRF). Applications implemented by the centre include the e-Tax Office (for online interactions), the PUESC platform (for managing customs and tax documents), the e-TOLL system (for collecting motorway tolls), and the Tax Free application (for VAT refunds for travellers). In performing its tasks, CIRF is supported by Applications Critical, which is responsible for implementing more than 50 key e-services and analytical tools, including KSeF, STIR, and the e-Paragons application. To acquire software precisely tailored to the needs of the Ministry of Finance and the KAS, the Ministry systematically utilises procurement procedures that enable the application of so-called *agile* methodologies. This is facilitated by the annual MinFinTech competitions, part of the government's GovTech Poland programme since 2018. An important aspect of Administration 3.0 is its focus on dialogue with businesses and cooperation with taxpayers. The 'Customer at the Centre of KAS' programme improved the convenience of the administration's e-services and increased the efficiency of taxpayer service. This included permanent satisfaction surveys at tax offices and the Taxpayer's Voice application on the Ministry of Finance website, allowing taxpayers to ask questions about tax regulations and anticipated organisational, legislative, and technological changes.

A remaining obstacle to developing the administration's analytical capacity is the lack of access to necessary data. This applies both to the speed at which KAS analysts receive information on domestic turnover and to the strictly limited access to information on cross-border business turnover. The way to fill this gap is to create a network of bilateral agreements for in-depth technological cooperation, particularly building an automatic information exchange system. Rapid access to turnover information facilitates the detection of international irregularities and, by improving the knowledge of various administrations, prevents VAT carousels from being shifted to 'weaker' administrations.

A notable feature of the period under review was the staffing challenges related to the KAS reform, particularly staff turnover and the number of vacancies.[1103] However, in the light of the analysis presented, these challenges did not significantly impact the effectiveness of tax administration activities in combating tax crime or reducing the unregistered economy. This can be attributed to the increasing digitisation and automation of analytical and operational activities. However, staffing issues did affect the time taken to conduct tax investigations, the pace of implementing key organisational changes (e.g., the establishment of the Key Entity Service Centre), and the expansion of the Co-Operation Programme.[1104] To address these challenges, developing and implementing a long-term strategy to secure highly qualified staff for the Ministry of Finance and KAS is necessary.

As a result of the effective implementation of the VAT gap reduction strategy, Poland is now among the top European countries where the activities of tax mafias are the least profitable. VAT carousels organised in Poland, as a result of the widespread use of the split payment mechanism by taxpayers, yield lower profits than in any other European Union country. Thanks to the use of big data analysis, fictitious trading and attempts to defraud undue VAT refunds are detected very efficiently. As traders have become more aware of the risks of involvement with tax criminals, it has become more difficult for VAT mafias to rebuild chains of fictitious traders. The use of online cash registers has made it increasingly difficult to 'legalise' profits from VAT fraud, and thanks to improved knowledge and increasing specialisation, the judiciary is more effective in prosecuting and seizing the assets of tax criminals.

Due to the high level of professionalisation of VAT mafia activities and the substantial financial resources at their disposal, the KAS has observed increasingly complex extortion schemes. This necessitates continuous improvement of the tools used by the administration to detect irregularities. However, at the turn of 2023 and 2024, political changes resulting from parliamentary elections led to a significant slowdown in efforts to reduce the VAT gap in Poland. This period is characterised by postponing or abandoning further sealing measures (including mandatory e-Invoicing and the Central Register of Excise Goods). Other initiatives, such as the SLIM VAT 4 project, the Tax Solidarity Programme, and the expansion of the Ministry of Finance's catalogue of tax explanatory notes, have also been suspended or abandoned. Crucially, the Ministry of Finance has not presented alternative solutions.

Maintaining the low VAT gap requires continued action in all three areas of VAT gap reduction. The low profitability of tax carousels should be maintained by cyclically

[1103] See, inter alia, NIK, *Prawidłowość i skuteczność postępowań kontrolnych, podatkowych i egzekucyjnych organów Krajowej Administracji Skarbowej*, Warsaw 2023; NIK, *Organizacja i polityka kadrowa służby celno-skarbowej*, Warsaw 2024, https://www.nik.gov.pl/kontrole/P/23/008/ [accessed: 6 July 2024].

[1104] Remedial measures undertaken by the Ministry of Finance's management have not always been successful. For example, a proposed transformation of the National Treasury School into a university, intended to address KAS's growing staffing needs, was withdrawn in October 2022, after being presented by the Ministry in June 2021. See: DGP, *Magisterium z uszczelniania. W MF zrodził się pomysł powołania uczelni wyższej,* https://podatki.gazetaprawna.pl/artykuly/8170797,uczelnia-wyzsza-ministerstwo-finansow-kas.html; Krajowa Administracja Skarbowa, *Powstanie uczelnia kształcąca kadry resortu finansów*, https://shorturl.at/ZJKMx; Business Insider, *Fiasco of MF plans. Fiasko planów MF. Nie będzie magistrów z uszczelniania podatków*, https://businessinsider.com.pl/finanse/fiasko-planow-mf-resort-niebedzie-mial-wlasnej-uczelni-wyzszej/ct7v5ph [accessed: 19 July 2024].

reviewing and updating the list of sensitive goods and services requiring settlement via the split payment mechanism. Taxpayers using this mechanism should benefit from increased security and further simplifications, including obtaining even faster VAT refunds. The key to accelerating the detection of VAT fraud attempts depends on reducing the time between a transaction and the KAS receiving turnover information generated by the business. Therefore, implementing mandatory e-Invoicing in Poland is essential and should proceed as soon as the project's technical conditions allow. This implementation should be preceded by intensified information and training efforts, similar to those conducted when mandatory JPK_VAT reporting was introduced for micro-entrepreneurs. Measures to encourage more taxpayers to use the optional e-Invoice model should also be considered.

Replacing all cash registers with online cash registers (including virtual cash registers) is an important tool for reducing the VAT gap. While entrepreneurs can no longer install new cash registers with electronic or paper copy recording, the market penetration of modern cash register models remains below 50%. Tax legislators should consider accelerating the implementation of online cash registers by extending their mandatory use to sectors where the KAS frequently identifies irregularities. Incentives for voluntary replacement should also be considered, such as additional tax benefits and reduced installation costs for entrepreneurs. One way to achieve this is by expanding the availability of virtual cash registers (online cash registers in application form) to other categories, and ultimately all, VAT taxpayers. The MF and KAS can leverage the technological capabilities of CIRF and the Critical Applications company by providing small taxpayers with a new, free e-service: a fiscal cash register application available for download from the gov.pl website.

Given the incentives for the unregistered economy created by the current VAT exemption within the legal order, requiring selected exempt entities to register their exempt turnover should be considered. The Ministry of Finance could facilitate this process by making the aforementioned online fiscal cash register available to them as a free application. As an additional tool to reduce the costs of using this application, the state could partially or fully cover the cost of the device on which the virtual cash register is installed.

A key prerequisite for effective sanctions against VAT fraud is establishing a belief in their inevitability. This, in turn, depends on the professional training and experience of investigators, judges, and prosecutors. Ensuring they possess the high level of knowledge required to combat fiscal crime involves providing them with access to up-to-date information on how tax offenders operate. Closer cooperation should be developed between the National Fiscal School and the National School of the Judiciary and Public Prosecution, allowing key public officials to benefit from ongoing, substantive guidance from experts at the Ministry of Finance.

The e-Paragon application made available to consumers is an attractive tool for engaging them in efforts to increase market fiscalisation. Given its potential role in combating the VAT gap, using e-Paragon should offer additional benefits to taxpayers. Organising further editions of the National Paragon Lottery, specifically promoting the app, could popularise e-Paragon among consumers.

The Ministry of Finance should continue implementing projects that simplify tax regulations and facilitate their interpretation by taxpayers. The practice of regularly

auditing tax solutions for rationality and the resulting annual implementation of simplification packages and facilitations in VAT regulations, developed in consultation with taxpayers, should be considered particularly valuable.

In implementing the institution of tax explanations, based on German regulations, the Polish legislator aimed to extend the provisions of the 'ministerial commentary', which protects taxpayers in their interactions with the tax administration, to a wider range of tax regulations, including those concerning VAT. The Ministry of Finance should strongly consider resuming this project, particularly by providing a timetable for issuing further tax explanations and guaranteeing cyclical updates of existing ones. Considering the resources needed to implement this project, transferring some conceptual work outside the Ministry of Finance's legislative departments should be considered, e,g., by outsourcing it to a budgetary unit of the Ministry of Finance, such as the Institute of Finance.

With the introduction of various sealing tools, the Polish tax administration is accumulating increasing amounts of data on taxpayers and their transactions. This data should be leveraged to further reduce the burden on taxpayers.[1105] As in Italy, the introduction of mandatory e-invoicing in Poland should coincide with the development of a new administrative e-service: a pre-filled VAT return. This would mirror the pre-filled personal income tax (PIT) return service already familiar to Polish taxpayers.[1106] The Ministry of Finance announced plans for its implementation in autumn 2023.[1107]

A key aspect of building Administration 3.0 is combining the automation of tax settlements with a partnership-based relationship between taxpayers and the tax administration. An indispensable tool for achieving this is expanding participation in the Co-operation Programme, an innovative approach in Polish administration but widely used in other European countries. The National Revenue Administration should publish a roadmap for developing this programme, including a timetable for incorporating the largest taxpayers – specifically all businesses currently served by the Key Entity Service Centre – into this modern form of cooperation. Efforts should also be made to open the Co-operation Programme to interested SMEs. To ensure a high level of professionalism within the tax administration, consideration should be given to granting university status to the National School of Fiscal Affairs and creating an organisational and financial framework that facilitates greater staff mobility between the tax administration and the advisory sector.

Poland is currently one of the European pioneers of international VAT cooperation. To provide the administration with access to data that can enhance the efficiency of analytical activities, Poland's tax diplomacy should strategically aim to create a network of

[1105] The pre-filled VAT return has played a strategic role in achieving the goals set out in Italy's National Plan for Recovery and *Resilience* (Italian: *Piano Nazionale di Ripresa e Resilienza*), significantly simplifying the fulfilment of tax obligations, see Governo Italiano Presidenza del Consiglio dei Ministri, *Piano Nazionale di Ripresa e Resilienza*, https://www.governo.it/sites/governo.it/files/PNRR.pdf [accessed: 19 July 2024].

[1106] Podatki.gov.pl, *Twój e-PIT*, https://www.podatki.gov.pl/pit/twoj-e-pit/ [accessed: 19 July 2024].

[1107] Bankier.pl, *Wiceminister finansów: Deklaracja podatkowa przedsiębiorców będzie wypełniana przez skarbówkę*, https://www.bankier.pl/wiadomosc/Wiceminister-finansow-Deklaracja-podatkowa-przedsiebiorcow-bedzie-wypelniana-przed-skarbowke-8614681.html [accessed: 19 July 2024].

bilateral agreements on the automatic exchange of tax information. This would define a framework for enhanced cooperation between Poland and its neighboring countries. Priority should be given to concluding such agreements with Germany, the V4 countries, the Baltic States, Ukraine, and Moldova. The agreement between Estonia and Finland could serve as a model for *real-time* automatic information exchange.

Given its success in reducing the VAT gap, Poland should increase its involvement in programmes supporting developing countries. This includes both participating in UN, OECD, or regional projects, as well as bilateral activities supporting initiatives driven by the Ministry of Foreign Affairs (which administers Polish development aid under the Tax Solidarity programme). The experience of MF and KAS legislative and control teams, combined with the Polish administration's advanced technology, positions Poland well to expand its involvement in developing tax technologies and competencies. This also strengthens Poland's economic diplomacy with a significant tax dimension. It should be emphasised that Poland is currently pioneering the creation of an institutional framework for such cooperation.

The concept of a model agreement, along with the network of bilateral agreements built upon it, represents a pioneering approach to structuring the regional integration of states in the integration of states in the taxation field, which is currently at a very early stage of development. As such, and with the support of the European Commission, this model should be a recommended pathway for broader European integration in taxation, leading to the development of procedures that can be implemented throughout the European Union in the future.

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