

TAX CODE MODELS

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1. Introduction

Tax law being in force in a given country is, most of all, established by parliaments (legislative power) of an individual country. These entities exert vital impact on the shape of adopted legal solutions. Nevertheless, tax law is affected by various factors, among others obligations resulting from international law or, in the case of the EU Member States, EU law. For this reason, tax law of a given country should embrace solutions adopted in international double tax agreements or other ratified international agreements a given country is a party to. Additionally, the EU Member States are obliged to adopt to their domestic tax system regulations resulting from the EU primary² as well as secondary legislation because the European Union, as a rule, is not competent to enact commonly binding provisions of tax law³. Although the above rule, among others, refers to legal regulations concerning individual taxes including VAT and excise tax especially, it is also applicable to direct taxes⁴. The EU Member States' tax systems should also adopt solutions which will enable the enforcement of case law concerning tax law adjudicated by the Court of Justice of the European Union⁵ on combating tax avoidance and tax

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 - 2 See, among others, Treaty on the Functioning of the European Union of 25th March, 1957 (consolidated version: Official Journal of 2009, No. 203, item 1569); hereinafter referred to as TFEU.
 - 3 D. Mączyński, *Międzynarodowe prawo podatkowe*, Warsaw 2015, p. 37.
 - 4 D. Leszczyńska, *Od odrębności do harmonizacji – podatki bezpośrednie w Unii Europejskiej*, in print.
 - 5 Hereinafter referred to as CJEU.

evasion⁶ as well as referring to harmful tax competition between the EU Member States⁷.

Non-binding proposals of legal solutions resulting from different models may affect the shape of tax law being established by individual countries. Such samples may regard specified institutions of tax law or even entire tax codes. They are drafted by various entities including international organizations. In general, their purpose is to indicate possible solutions referring to tax law which may support individual countries in establishing tax solutions they are going to introduce. The examples of such models are, *inter alia*, solutions drafted by two organizations, i.e. International Monetary Fund (IMF) and Inter-American Center of Tax Administrations (CIAT). These organizations have presented proposals of tax codes. They will be analyzed in subsequent parts of this study. The solutions to be analyzed in detail herein have not been selected at random. A presentation of different solutions has been assumed to be reasonable. On the one hand, the so called full tax code including both general and special provisions of tax law, i.e. concerning structures of individual taxes, will be studied. On the other hand, a partial code devoted only to general tax law will be presented too.

2. International Monetary Fund Code Model

International Monetary Fund (IMF) drafted a model of a hypothetical tax law in 2000 (IMF Tax Code)⁸. It may be used as assistance to draft legal acts in any country even though, in principle, it is mostly to serve countries undergoing the transition process towards a free market economy. Drafting this document, it has been assumed that each country using this model should make substantial changes thereto to satisfy the needs of a specific country, which is a certain limitation thereof. Due to this, it is suggested that the text be used as a guideline or reference

6 More: J. Szczepański, Unikanie opodatkowania dochodu w świetle orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej, *Tax Law Quarterly* of 2013, No. 4, pp. 47-63; T. Lipowski, *Międzynarodowe prawo podatkowe*, [in:], *Podstawy finansów i prawa finansowego*, ed. A. Drwiłło, Warsaw, 2014, p. 477 et seq.

7 See: D. Leszczyńska, *Od odrębności...*, op. cit.

8 The information included in this part of the study comes from the website of International Monetary Fund <https://www.imf.org/external/np/leg/tlaw/2000/eng/stan.htm> as of 23.03.2016.

material, not as a standard. It is not a recommendation from the IMF that certain specific provisions of the IMF Tax Code be directly introduced in any specific country.

The Code is based on the actual experience of IMF employees working with legislation in different countries, in particular in the Commonwealth of Independent States established after the collapse of the USSR. The model is based, for the most part, on the tax codes of Georgia (1997) and Tajikistan (November 1998), which in turn rely on the tax code of Kazakhstan (1995) and Part I of the tax code of Russia (1998). Other legislative tax documents of CIS states, among others Kyrgyz Republic and Uzbekistan, were also reviewed in the preparation of the model.

The IMF Tax Code regulates the principles of organization and operation of the tax system of a given country, the procedure for introduction, change and abolition of national and local taxes, determines the legal status of taxpayers, tax authorities, tax agents and other participants in relations regulated by the tax legislation, institutes provisions for determination of the objects of taxation, fulfillment of tax obligations and implementation of enforcement measures for national taxes and basic provisions on local taxes, tax accounting, responsibility for tax offenses and appeals against action (inaction) of tax authorities and their officials.

In the context of establishing tax law, the IMF Code introduces the rule according to which tax law may be created solely by the Code and other normative acts adopted in accordance with it. Moreover, the Code indicates a catalogue of state taxes: income tax on physical persons, income tax on legal persons, value-added tax, excise tax, social contributions, land tax, taxes on users of mineral resources, tax on enterprise property, tax on proprietors of modes of transportation, and the tax payable by small businesses. What is more, the model covers two local taxes: tax on the property of physical persons and tax on retail sales. The above mentioned catalogue of taxes should be modified and adapted to the needs of individual countries so that it is consistent with the taxes operating in them. The model does not include the issue of allocation of tax revenue between a country and local entities in connection with

differences occurring within this scope in individual CIS countries. The Code introduces a rule according to which new taxes may be introduced but solely by the change of the Code.

As far as the scope of tax law application is concerned, the following principles are introduced, among others: official publication of interpretation and explanation of the provisions by the authority which adopted a given act, application of the meanings of terms appropriate for other branches of legislation (civil law, family law and other) unless otherwise provided by this Code. In case of contradiction between the provisions of this Code and normative (normative-legal) acts pertaining to another area of legislation, the provisions of this Code shall apply and the rule saying that acts of tax legislation do not apply retroactively.

The Code envisaged taxpayers' rights and tax authorities' powers. Nevertheless, a separate catalogue of taxpayers' obligations and tax authorities' duties has not been distinguished. As far as taxpayers' rights are concerned, several basic taxpayers' rights are indicated emphasizing that the Code envisages also other rights within this scope reflected in special provisions. The Code entails that a taxpayer is entitled to: provide documents in evidence of his/her rights to tax reliefs, have access to records of audits that are performed, present explanations to a tax authority with respect to his/her computation and payment of taxes as well as the inspection results, and appeal a decision of tax authorities in the manner stipulated by this Code.

As far as tax authorities are concerned, the IMF indicates a catalogue of their powers which are applicable in every case unless it results otherwise from the Code's special provisions. Tax authorities have the following powers: to examine all financial documents, accounting books, reports, estimates, cash, securities and other assets on hand, settlements, returns and other documents relating to the calculation and payment of taxes, to receive from officials, other employees of enterprises (organizations) and physical persons information and oral and written explanations on questions arising with respect to such examinations, to exercise monetary control including examination of all production, storage, commercial and other premises of enterprises and physical persons which are used to obtain income or are connected with

the maintenance of objects of taxation, to issue mandatory instructions to taxpayers (entrepreneurs and individuals not running business activity) as well as individuals representing them to remedy identified violations of tax legislation, to apply tax sanctions and penalties provided for in this Code and fines envisaged by legislation in effect to taxpayers and their representatives for violations of tax laws, to collect, including by means of court appeal or court, from taxpayers or their representatives taxes, penalties and interest as well as administrative fines that are not paid in a timely manner, to prepare a record and issue binding orders (tax decisions) in cases of violations of tax law by taxpayers, to make test purchases of goods (commodities) and services from enterprises, to receive from banks and other financial enterprises information and documents on business activities and the financial condition of accounts of taxpayers being examined, to undertake action to reverse faulty decisions of these authorities or decisions issued by lower level authorities.

The Code is composed of two basic parts. The first one, i.e. the General Part, contains regulations common to all taxes. Whereas the second part is devoted to the structures of individual taxes. It is composed of 14 divisions, each devoted to a separate allowance. The first division, i.e. General Part, includes two chapters devoted to the tax system as well as definitions of terms used in this Model. The second division contains nine chapters, among others devoted to: contacts with taxpayers, representation and information, tax obligations, assessments, payment, collection and refund of tax, enforced collection of tax, and settlement of disputes. The third division contains provisions concerning tax authorities. It contains separate chapters devoted to the structure of tax authorities, their powers and responsibilities as well as protection of employees of tax authorities.

3. CIAT Tax Code Model

The CIAT Tax Code Model (CIAT Code) was drafted in three versions: of 1997, 2006 and 2015. It has been prepared by Inter-

American Center of Tax Administrations⁹ together with international organizations and representatives of various countries. For instance, the CIAT Model version of 2015 was drafted in cooperation with Inter-American Development Bank and the German Federal Ministry for Economic Cooperation and Development Cooperation¹⁰. Subsequent versions of this Model contain modifications of previous versions, among others resulting from the introduction of new technologies and their use in tax law, e.g. within the scope of the use of electronic communication in the activities of both taxpayers (making payments with the use of such a system) and tax authorities (tax assessment, serving decisions or issuing certificates). The last two versions of the Model adopted a slightly distinct internal structure eliminating a separate part concerning tax authorities' powers and obligations and introducing a part devoted to challenges of administrative acts of tax authorities. It does not mean that the final version of the CIAT Code does not specify authorities' powers and obligations. They are expressed in many special provisions concerning individual institutions regulated in this Code. They were just not presented separately in one part. The size of subsequent versions of the CIAT Code has not increased considerably compared to the original version. The first version of this Code was composed of 185 Articles whereas the subsequent ones – of 198 and 201 Articles respectively.

Similar to the IMF Code, solutions adopted in the CIAT Model are to serve as a general guide for legislation reforms in Member States. It means that in many cases it will be necessary to adjust regulations contained in the CIAT Code to specific legal framework, tax administration structure and tax system of a country wishing to introduce this Code. It has been assumed that the Code is to be applied to all taxes operating in a given country except customs duties, which are considered to be a part of the Customs Code. It is justified by a special nature of customs law. Distinctions of this branch of law manifest themselves in specific issues typical of customs law, among others: customs territory, the security

9 The information included in this part of the study has been based on the CIAT Tax Code Model. Inter-American Center of Tax Administrations, Panama. Executive Secretariat, 1997, p. 17 and next, as well as Jorge R Cosulich, Introduction, in: CIAT Tax Code Model/Inter-American Center of Tax Administrations, Panama. Executive Secretariat, 1997, p. 13 and next.

10 See information concerning this version in Spanish on the website: <http://www.ciat.org/index.php/en/products-and-services/ciatdata/tax-rates/145.html?task=view> as of 23.03.2016.

(deposit), dispatch of commodities, or smuggling. This specificity does not exclude the application of reference to the CIAT Code in the Customs Code within the scope which shall be useful in customs law provided these regulations will be connected with other regulations of customs law or supplement them.

The subject Code was created on the basis of the synthesis of solutions contained in many sources. It includes, among others, the existing tax law of individual countries of Latin America, general tax law of Spain, tax law operating in Germany as well as the ILADT Model¹¹ drafted by Inter-American Development Bank (IDB) which was the basis to adopt the solutions referring to tax law for many countries of this region.

The document accompanying the CIAT announcement emphasized that being based on Spanish and German law, the CIAT Code will create a suitable framework that will allow to build a connection between tax administration and taxpayers which needs to be constantly improved with regard to the activity and cooperation of taxpayers to assure the fulfillment of the constitutional principle according to which all citizens must contribute to the maintenance of public expenditure. Fulfilling this objective, it has been assumed that it is particularly important to properly determine the rights and duties of both taxpayers and tax authorities in the CIAT Code. However, drafting the CIAT Code solutions, it has been underlined that legal solutions being launched cannot focus only on strengthening taxpayers' rights as an aim in itself. It should be done with regard to two basic legal rules which are frequently emphasized as constitutional rules, i.e. the principle of equality and the principle of legal transparency. A purpose of the principle of equality in taxation is the assurance of tax justice, which means that individuals encountering the same circumstances are treated in a similar way whereas any existing differences are at the same time taken into account. It is assumed that the principle of equality is not fulfilled when differences resulting from legal provisions and a different treatment ensuing thereof cannot be rationally justified, i.e. when it is arbitrary. Within the context of this principle,

11 More: B. Brzeziński, *Problemy kodyfikacji prawa podatkowego w krajach Ameryki Łacińskiej*, *Tax Law Quarterly* of 2014, No. 3.

it is underlined that tax authorities should have any powers necessary to assure effective enforcement of taxpayers' obligations. Otherwise, it may evoke negative phenomena, among others tax evasion which, in turn, embodies a gross manifestation of tax injustice and violation of the above mentioned principle of equality. What is more, equality should involve a balance between individual interests of the parties, i.e. tax administration and taxpayers. Due to this, tax authorities should operate as an entity supervising the fulfillment of tax obligations burdening taxpayers, that is as entities counteracting tax law violation. However, these entities should also assure taxpayers service by supporting them in order to improve the relation between a taxpayer and tax authority. It will be achieved, *inter alia*, by respecting taxpayers' rights and supporting them in the fulfillment of their obligations. In consequence, the provisions should include: clear determination of the scope of operation of tax authorities by indicating, among others, their obligations and taxpayers' duties too. Introduced rules should enable administration to act efficiently while strictly observing taxpayers' rights.

As far as the principle of legal transparency is concerned, it indicates that everyone must be absolutely aware of tax obligations s/he is burdened with. Moreover, tax law should be applied in such a way as to assure consistency of a tax authority settlement with expectations resulting from the provisions of law. Implementation of the principle understood in this way will contribute to building social trust to state institutions as well as protect taxpayers against arbitrary treatment.

The CIAT Code distinguished and described in details a catalogue of taxpayers' rights and duties. Moreover, a catalogue of administration powers and obligations has been distinguished too. Taxpayers' duties include: a duty to fulfill obligations resulting from the provisions of substantive and procedural law (exemption from the obligations of substantive law does not exempt from procedural obligations unless special provisions specify otherwise), obligation of initiative (within the scope of the fulfillment of duties resulting from tax provisions), obligations concerning cooperation in the audit process, the obligation to register, the obligation to inform, obligations of public sector and representatives of other entities (cooperation with tax authorities within the scope of submitting data necessary for taxation), obligations and

formalities connected with registration, estimation and submission of information by taxpayers. As far as taxpayers' rights are concerned, the CIAT Code included the following: the right to tax refund and excess tax refund, the right to correct a tax return, the right to lodge a complaint against omission or delay in receiving an answer, and the right to formulate inquiries. Within the scope of taxpayers' rights, the right to complain about protracting tax proceedings is particularly important. This institution should be supplemented by a possibility of holding an official (clerk) liable and imposing sanctions if s/he fails to fulfill their duties. This solution aims at the assurance of balance within the scope of taxpayers' obligations which are to be fulfilled with due diligence and on time.

Among tax authorities' powers, the CIAT Code indicated the following elements authorizing them to: delegate, make settlements, collect tax, determine tax, issue interpretations, temporarily estimate tax in case of taxpayers who failed to submit tax returns, carry out audits, estimate tax base, take advantage of international administrative aid, use the support of the judiciary (e.g. to receive court writs of payment), apply security measures, apply reliefs to pay tax, remit tax cases due to petty amounts of tax arrears or lack of collection. Moreover, a tax authority has the right to access information that is necessary for the proper performance of their tasks (tax assessment and collection). If tax authorities were not entitled to this, it could result in the concealment of illegal activity and tax evasion as well as commitment of many other tax offences.

In the context of tax authorities' obligations, the following duties have been indicated: within the scope of informing and supporting taxpayers, timely arrangement of motions, the obligation to observe the finality of administrative acts (as a rule, no possibility to modify them without a taxpayer's consent), and observation of fiscal secrecy. Tax authorities' powers and obligations included in the CIAT Code are oriented at the creation of a better balance between the interests of taxpayers and tax authorities, supporting the introduction of programs that use advanced technologies. As far as tax authorities' obligations are concerned, we should pay attention to a precisely depicted obligation of providing taxpayers with information and support in order to fulfill their

tax-related duties. Fulfilling their obligations, administration should be able to enter into and use the instrument of international agreements on the exchange of information due to the growing importance of administrative international cooperation, which is a consequence of economic globalization.

The regulations contained in the CIAT Code should provide tax authorities with efficient and effective fulfillment of their obligations but, at the same time, introduce taxpayer's rights security. For this reason, they should be characterized with the following features: precision (they should not evoke doubts about the solutions resulting from them), coherence (they should be consistent with the logical layout of the act and they should not introduce repetitions), ease of application (they should not be too complex or lead to the prolonged procedure), economical effectiveness (they should bear possibly the lowest additional burden both to the taxpayer and tax authority), comprehensiveness (they should include solutions of different situations which may arise in the relation between a taxpayer and tax authority).

With regard to the rules of substantive law, the following principles have been adopted which should be obeyed during the process of shaping tax solutions on the basis of the CIAT Code. Firstly, certain flexibility elements should be adopted from the principle of legality, for instance within the scope of tax collection fulfillment. Secondly, as far as definitions and types of taxpayers are concerned, three categories thereof have been adopted, i.e. a direct taxpayer (creating events evoking tax consequences), a substantive taxpayer (taking part in the events evoking tax consequences or capable of guaranteeing tax collection on future events), as well as third parties (bearing joint and several tax liability with a taxpayer on the basis of legal provisions or in connection with activities undertaken by these entities due to the connection with the events evoking tax consequences or their scope of powers as representatives or due to their legal succession). Thirdly, substantive law provisions should be connected with the scope of rights and duties of taxpayers as well as powers and obligations of tax authorities. Provisions concerning the above rights and duties should be constructed in such a way as to create relations between the rights and duties of taxpayers and powers and obligations of tax authorities. It means that provisions

creating the rights and duties of taxpayers at the same time establish appropriate powers and obligations of tax authorities.

It has been decided, however, that it is necessary to clearly introduce the rights and duties of taxpayers in order to introduce as great as possible transparency and predictability of provisions referring to the relation between a tax payer and tax authority. It is important for both taxpayers and tax authorities. It is also significant for balancing the indication of powers and obligations of tax authorities even though it may lead to certain repetitions.

Shaping procedural provisions contained in the CIAT Code, the following issues have been found particularly important: flexibility of application of the regulation (excessive formalism should be eliminated so that the form does not prevail over the essence of a given institution, which may lead to the violation of the aim to be achieved), economics and punctuality of a tax authority (elimination of unnecessary activities which may lead to unreasonable delays and excessive formalities increasing the cost of unnecessary procedures), introduction of a proper tax procedure embracing, among others: the right of a taxpayer to submit explanations, i.e. to present explanations before the issue of a tax decision, the right to present evidence, the right to refuse submission of evidence which must be created by a taxpayer, the right to acquire information about the legal basis of tax decisions (all activities of a tax authority should be explained and justified together with the indication of provisions being the basis of their application as a condition of validity of such activities).

The CIAT Code is based on the assumption operating in Latin American countries according to which both kinds of offences and sanctions connected with the failure to fulfill tax obligations are a part of tax law not criminal law. It is connected with a unique character of tax law. In case of tax offences, a necessary element thereof is a guilt of a wrongdoer, e.g. tax frauds, but also failure to follow tax authorities' acts and summons. In case of tax misdemeanors, an objective fact of failure to fulfill a tax-like obligation is sufficient. Apart from the above mentioned violations of law, the CIAT Code distinguishes tax violations

too, which cover delays and failures to report a tax obligation as well as tax offences of tax authorities' employees.

The CIAT Model Code is composed of five parts. However, there are differences in the content of individual parts in the first and the subsequent versions thereof. The 1997 version distinguishes the following parts: preliminary provisions, rights and obligations of taxpayers and third parties, obligations and powers of tax administration, procedure as well as tax offences and penalties. Part I regulates tax principles, definitions of taxes as well as such terms as: tax domicile, tax obligation, individuals subject to tax obligation, joint and several liability, mechanisms causing tax obligation expiry, tax liabilities' extinction and priority of tax claims. Part II regulates obligations and rights of taxpayers and third parties. Part III regulates rights and obligations of tax administration. Part IV embraces general provisions of tax procedure, requirements referring to a decision, evidence, special tax procedures such as: tax audit, estimation, complaints, determining and imposing penalties, tax dues enforcement and principles of challenging tax decisions. Part V covers general provisions referring to tax offences and sanctions, the principle of liability, types of offences and misdemeanors, and sanctions. In 2006 and 2015 versions, part II is devoted to tax liabilities and substantive law tax relations, part III – tax procedures, part IV – tax law violations and sanctions whereas part V – measures to challenge administrative acts of a tax authority.

The CIAT Code has been criticized and the following objections have been raised: the fact is has been based on the archaic authoritative-oppressive model of public powers not adaptable to the contemporary times, contradictions of some legal solutions with constitutional provisions of some countries belonging to CIAT, excessive “flexibility” of the principle of legality through launching solutions favoring tax administration (blurring the system of tax law sources with a considerable participation of not precisely specified acts of a general character issued by tax administration, increasing the efficiency of tax administration operation through developing repressive instruments including penalties in the lead), lack of support for the idea of voluntary performance of

tax obligations by a taxpayer at the expense of demonstrating solutions strengthening tax authorities' powers¹².

4. Conclusions

Tax codes samples presented above may be an important model for many countries which undertake or will undertake actions aiming at changing tax law. What is more, the presented solutions are examples of different directions a country may pursue. On the one hand, it may be an activity aiming at drafting an act within the framework of the so called full codification, which will embrace both general and special tax law provisions, that is structures of individual taxes. In such a case, it is worth referring to the IMF Code. On the other hand, it may be an activity whose basic aim will be codification of general tax law stipulating individual taxes in separate acts. We deal with such a structure in the CIAT Code. Regardless of the adopted direction, both above presented models should be treated rather as a guideline indicating a direction of launched changes and not as a draft of provisions which may be enacted to the system of law in a given country. Developing their provisions, each country should include the specificity of their systems.

Abstract

This paper deals with tax code models drafted by two organizations: International Monetary Fund and Inter-American Center of Tax Administrations. Full tax code including both general and special provisions of tax law, i.e. concerning structures of individual taxes, was analyzed in this article. On the other hand, a partial code devoted only to general tax law was also presented.

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