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GENERAL ANTI-AVOIDANCE RULE (GAAR) AND THE CIT GAP IN POLAND

Summary

Purpose | The article is an attempt to assess the impact of the anti-tax avoidance rule on the corporate income tax (CIT) gap in Poland.

Research method | The research intention was carried out using a literature review and analysis of applicable regulations and empirical data. The implementation of the goal required the use of the Spearman's rank correlation coefficient to determine the statistical relationship between the number of KAS (National Revenue Administration) proceedings using GAAR and the size of the tax gap in Poland.

Results | Based on the Spearman's rank correlation coefficient, the relationship between the number of proceedings and decisions issued using the GAAR clause and the size of the CIT gap was examined in years 2016-2023. In principle, no correlation was found between the individual variables. The exception was the correlation between the CIT gap as a percentage of GDP and the number of proceedings using the general clause. A large negative relationship was noted between both variables, which means that the increase in the number of proceedings of the Head of the National Revenue Administration using GAAR will be accompanied by a decrease in the corporate income tax gap.

Originality/value/implications/recommendations | The publication presents the essence of the anti-tax avoidance clause, which has been controversial since its intro-

duction. It is also an important and still relevant issue, because the results of previous experience indicate that many issues are debatable, but also raise new questions. One of the dilemmas is the issue of terminology, the catalogue of exclusions in relation to GAAR, as well as the systematic preparation of CIT gap estimates. In the future, it is necessary to continue research in the outlined area.

Keywords: GAAR, tax gap, tax frauds, tax avoidance

JEL classification: K34, H26, H27

1. Introduction

The article addresses the issue of tax avoidance, which has been a permanent issue in tax science and practice for years. It is also an important and still relevant issue, because the results of previous experience indicate the debatability of many issues, but also raise new questions. One of the dilemmas is the issue of the general anti-avoidance rule (GAAR).

Tax avoidance violates the subject, essence and purpose of the tax act. Although no precise and satisfactory definition of tax avoidance has been created so far, it can be assumed that it occurs when a taxpayer obtains a favorable tax result, the achievement of which is contrary to the legislator's intention.

The general anti-avoidance rule is one of the mechanisms that allow tax authorities to prevent cases of circumvention of tax law provisions in order to obtain benefits. It is currently an element of many tax systems that often uses vague concepts, owing to which the authorities applying the law enjoy significant freedom of decision. At the same time, it seems that the presence of the Rule in the legal system should lead to an increase in the degree of legal certainty and serve as a tool to prevent cases of tax avoidance.

The aim of the article is to assess the impact of the General Anti-Avoidance Rule (GAAR) on the tax gap in the CIT in Poland. The publication addresses the following research questions:

1: Is there a correlation between the number of proceedings involving the GAAR and the level of the CIT gap measured in billions of PLN and as a percentage of GDP?

2: Is there a statistical relationship between the number of first-instance assessment decisions issued by the Head of the National Revenue Administration using the general rule and the estimated CIT gap in billions of PLN and as a percentage of GDP?

The first part of the publication describes the General Anti-Avoidance Rule (GAAR) introduced to the Polish tax system on 15 July 2016. The rule was introduced to the Act of 29 August 1997 – the Tax Ordinance, under Article 119a. The next part of the article describes the changes and consequences of the application of GAAR for taxpayers. Then, the corporate income tax gap in Poland is described. Next, an attempt is made to assess the relationship between the general rule and the size of the tax gap in years 2016–2023. The article uses the Spearman's rank correlation coefficient to determine the statistical relationship between the number of the National Revenue Administration (further: KAS) proceedings using GAAR and the size of the tax gap in Poland.

2. The origin and introduction of the general anti-avoidance rule in Poland and in the selected countries

The anti-avoidance rule is quite common in the world. The oldest Rules appeared in the 19th century in New Zealand (1878) and Australia (1879), and in Germany such a legal solution was introduced in 1919, a little later in France. Among European countries, the clause is currently used by, among others, Austria, Belgium, Germany, Finland, France, Spain, Ireland, Australia, China, Canada, Hong Kong, South Africa, New Zealand, Turkey, Singapore, USA [Olesińska, 2016]. This clause does ot appear in Denmark, Greece and Slovenia. In the Netherlands it is in force, but not applied [Tarnawska, 2021].

The Dutch tax system has a provision that legal actions that do not aim to significantly change the factual circumstances or those that would not be taken, are not taken into account, if they were not related to reducing or avoiding taxation [Pastuszka, 2018]. In India, legislative work was carried out to apply

solutions that improve the effectiveness of such a legal solution that was to be applied retroactively – even 50 years back, which may indicate the level of commitment to prevention the leakiness of the tax system [*Powrót*..., 2013].

Anti-abuse regulations are controversial everywhere, and at the stage of introduction or amendment – great concerns. Sometimes government initiatives to implement them do not end in success – this was the case, for example, several times in Sweden, in Italy in 1988, twice in Great Britain, and in the USA proposals to introduce the Rule were repeated for about 10 years. Sometimes, a regulation was introduced into the legal system, then repealed and reintroduced after a few years (e.g. Sweden). In India, on the other hand, the regulations were passed, but under pressure from criticism their entry into force was postponed for several years [Olesińska, 2016].

Taking into account when and under what circumstances the anti-avoidance rule was introduced, three groups of countries can be distinguished [Olesińska, 2016]:

- countries where the clause has been in force for a long time (e.g. Austria, Finland, Germany, France – this type of norm has been in force for decades and does not raise any major controversies),
- countries where it was introduced relatively recently as a result of the increased phenomenon of tax avoidance (e.g. Ireland, Portugal, Belgium, Canada),
- countries where the clause was introduced preventively and relatively recently (e.g. Hungary, Serbia).

In continental-type countries, three concepts are indicated [Łukawska, 2020]:

- the "Belgian-French" concept – is characterised by a limited approach to the anti-abusive clause, consisting in the prohibition of an extensive interpretation of tax law provisions to the detriment of the taxpayer,
- the "Austrian" concept – consists in leaving tax authorities with limited room to maneuver when prevention tax law evasion,
- the "German" concept – recognises the use of analogy in tax law as the ultima ratio when "classical" methods of legal interpretation fail and the detailed provisions do not contain special anti-abusive clauses.

The Polish legislator has already introduced a clause against tax avoidance into the legal system in the past[1]. However, it was in force for a short time, only in the years 2003–2004. The Constitutional Tribunal, in its judgment of 11 May 2004, found the applicable regulation to be inconsistent with the Constitution, and therefore lost its binding force. The Tribunal found that this legal solution did not meet the constitutional standards of decent legislation and, consequently, violated the basic elements shaping the content of the principle of trust in the state and the law. According to the cited judgment, the rule violated the principle of freedom of economic activity expressed in the freedom to arrange one's civil law relations [Przybylski, 2021]. The repeal of Article 24b of the Tax Ordinance Act closed the work on introducing a new general clause against tax avoidance for over ten years. Until 15 July 2016 when that Section IIIa was added to the Tax Ordinance Act, which introduced a new version of the rule to the Polish tax system [Gajewski, 2024]. In 2019, the provisions of Articles 119a–119f of the Tax Ordinance were amended, enabling the clause to be applied to a wider group of cases than was possible in previous years.

3. Application and changes to the rule introduced by the amendment

The general rule against tax avoidance entered the Polish legal system on 15 July 2016, when Article 119a of the Tax Ordinance Act came into force. Its wording has been modified over the years. This provision enabled the Head of the National Revenue Administration to apply the rule. At the same time, these regulations (amended on 1 January 2019) define the limits of legal tax optimisation [*Agresywna*..., 2019].

Until December 2018, the provision of Article 119a of the Ordinance provided that an act performed primarily for the purpose of achieving a tax advantage,

[1] The clause was in force from 1 January 2003 (Article 24b t.o.) until 11 May 2004, when the Constitutional Tribunal ruled on its inconsistency with Article 2 in connection with Article 217 of the Constitution. See M. Zieniewicz, *Klauzula ogólna przeciwko unikaniu opodatkowania – ewolucja instytucji i współczesne tendencje w Polsce*, [in:] *Aktualne i wybrane problemy z zakresu bańkowości, podatków i rachunkowości*, A. Ćwikała-Małys (ed.), *Finanse i Rachunkowość*, no. 1, Wrocław, 2015, pp.165–184; https://repozytorium.uni.wroc.pl/dlibra/publication/82438 [date of access: *Przeciwdziałanie szarej strefie w Polsce 2015–2016*].

which in the given circumstances is contrary to the subject and purpose of the tax act, shall not result in achieving a tax advantage if the method of action was artificial. From 1 January 2019, in accordance with the applicable content of Article 119a of the Ordinance, „(...) an act shall not result in achieving a tax advantage if:

1. obtaining the benefit is contrary to the subject or purpose of the tax act or its provisions in the given circumstances,
2. the achievement of the benefit was the main or one of the main purposes of achieving it,
3. the method of action was artificial".

It should be noted that in the original wording of the Rule, it covered only activities performed primarily for the purpose of achieving a tax advantage that was incompatible with the tax act in the given circumstances. In order to apply GAAR, it was therefore necessary to demonstrate that obtaining a fiscal advantage was the taxpayer's key objective. In the event that the tax advantage was one of the equal objectives, it was impossible to speak of a single key objective. In addition, the amendment that came into force expanded the Rule, allowing it to be applied in a situation where the tax advantage is incompatible in the given circumstances with the subject or purpose of not only a single provision of the tax act, but also the entire tax act [Przybylski, 2021]. This premise is examined to determine whether the taxpayer's conduct was characterised by "excessive cunning" in the application of tax norms to the actual circumstances.

It seems that such an extension of the definition of tax avoidance leads to an increase in the potential scope of application of the discussed Rule. Until the entry into force of the amending act, in order to establish that an entity had avoided taxation, it was crucial for the tax purpose to be the dominant motive of its action, and not one of many purposes. The introduction of this change means that the taxpayer is deprived of freedom in pursuing economic goals, because he is forced to verify whether his actions will not lead to the achievement of an impermissible tax advantage [Tarnawska, 2021]. At the same time, there are justified doubts as to whether the taxpayer himself is obliged to apply the anti-avoidance tax rule, in the process of independently

determining and declaring the tax assessment, or whether this norm is only applicable in the course of specific proceedings: tax proceedings in the case of tax avoidance (Article 119 g-199 l of the Ordinance) and withdrawal of the effects of tax avoidance (Article 119zfa–119zfn of the Ordinance) [Kondej, 2021].

The anti-avoidance tax rule does not apply:

- to the entity that obtained the security opinion – within the scope of the opinion,
- to the entity that has concluded a tax agreement – within the scope of that agreement,
- to the goods and services tax (value added tax) and fees and non-tax budgetary dues.

It should be noted that until the end of 2018, the list of exclusions was much broader. First of all, the Rule was to be applied only in the event of a serious threat to the fiscal interest. It was therefore to apply in the event of taxpayers obtaining significant tax benefits. The provision of Article 119b §1 item 1 of the Ordinance provided for a solution according to which the clause was not to apply if the sum of the tax benefit did not exceed PLN 100,000. Currently, there is no longer any limit below which the described legal solution cannot be applied. The Supreme Audit Office negatively assessed the abolition of the limit on the amount threshold, indicating that it could manifest itself as an expression of excessive fiscalism. It was argued that the Rule was to be applied only to the largest taxpayers obtaining significant unauthorised tax benefits [*Agresywna.*., 2019; Tałasiewicz, 2020].

Therefore, the GAAR applies to an act performed primarily for the purpose of achieving a tax advantage or when one of the main goals was to achieve such an advantage, if this advantage is contrary to the subject or purpose of the tax act. Such an act does not result in achieving a tax advantage if the method of action was artificial [Jankowski, 2022], it means, if it would not have been applied by an entity acting reasonably and guided by lawful goals, to a dominant extent for justified economic reasons [Szymczyk, 2021]. When assessing whether the method of action was artificial, the Head of KAS takes into account, among others [*Klauzula*..., 2024]:

- unjustified division of operations,
- engaging intermediary entities despite the lack of economic or commercial justification,
- elements leading to achieving a state identical or similar to the state existing before the action was taken,
- elements that cancel or compensate each other out,
- the economic risk exceeds the expected non-tax benefits to such an extent that it should be assumed that the reasonably acting entity would not have chosen this course of action,
- situations in which the achieved tax benefit is not reflected in the economic risk incurred by the entity or its cash flows,
- the occurrence of a pre-tax profit that is insignificant in comparison to the tax benefit that does not directly result from the actual economic loss incurred,
- engaging an entity that does not conduct actual economic activity or does not perform a significant economic function, or which is based in a country or territory applying harmful tax competition.

4. Consequences of applying and consequences for taxpayers

The Head of the National Revenue Administration conducts proceedings on tax avoidance, either by initiating them or by taking over an ongoing tax, customs and tax audit or tax proceedings. In the course of such proceedings, he may seek the opinion of the Council for the Prevention of Tax Avoidance [Gumińska, 2023; Tarnawska, 2021] as to the justification for applying the GAAR. In the event of tax avoidance, the Head of the National Revenue Administration, by way of a decision, determines the tax consequences of such actions, based on the state of affairs that could have occurred if the action had been taken by an entity guided by lawful purposes other than achieving a tax advantage [*Klauzula*..., 2024].

A taxpayer who fails to meet their tax obligations must expect consequences, including the payment of default interest or the determination of an additional tax liability by tax authorities. The amount of the additional tax liability is generally [Przybylski, 2021]:

- 10% of the sum of the unduly disclosed or overstated tax loss and the taxable income not disclosed in whole or in part – if the decision concerns corporate income tax or personal income tax, with the exception of the flat-rate tax;
- 40% of the tax benefit amount – in terms of other taxes.

The Head of the KAS may, at the request of the interested party, issue a decision specifying the conditions for reversing the effects of tax avoidance, which the taxpayer may take into account by submitting a declaration or correction of the declaration corresponding to this decision within 14 days. Reversing the effects of tax avoidance in this way does not impose an additional fiscal liability on the interested party or the tax liability is reduced by half. In addition, from the date of submission of the application to the date of reversing the effects of tax avoidance in accordance with the received decision, no interest is charged on tax arrears related to achieving an undue tax advantage [*Klauzula*..., 2024].

Table 1 presents the number of proceedings of the Head of the National Revenue Administration conducted to issue a decision using the general anti-avoidance rule in the years 2016–2024. In the first two years of the GAAR being in force, only six proceedings were initiated. Their number increased dynamically from 2019, reaching its peak in 2021 (66 proceedings). The largest number of proceedings, both initiated ex officio and taken over as part of customs and fiscal inspections, concerned PIT (104 in the years 2016–2024), slightly fewer, 86, concerned CIT, and the remaining, in the number of 32, covered other taxes. According to data as of 30 September 2024 regarding cases conducted under the general anti-avoidance rule, the Head of the National Revenue Administration initiated a total of 222 proceedings in the period under review, most of which (194) were taken over in the course of customs and tax inspections already underway [*Statystyka*..., 2024]. They were taken over at the request of the tax administration, which indicates the important role of local tax authorities closest to the taxpayer in identifying GAAR.

TABLE 1

Number of proceedings of the Head of the National Revenue Administration to issue a decision using the general anti-avoidance rule by year of their initiation and first instance judgement decisions issued by the Head of the National Revenue Administration by tax years and taxes

Year	Number of proceedings of the Head of KAS	Number of first instance assessment decisions issued by the Head of KAS		
		CIT	PIT	others
2016	n.d.	14	35	4
2017	2	39	38	8
2018	4	11	6	6
2019	26	0	1	3
2020	22	0	0	3
2021	66	7	11	3
2022	43	17	30	9
2023	26	31	22	2
2024*	27	6	7	5

* the data concerns the first two quarters

Source: *Statystyka spraw prowadzonych w przedmiocie klauzuli ogólnej przeciwko unikaniu opodatkowania* (stan na 30 września 2024 r.), Statystyka postępowań podatkowych dot. GAAR, https://www.podatki.gov.pl/abc-podatkow/klauzula-przeciwko-unikaniu-opodatkowania/statystyka-gaar [date of access: 15.01.2025].

The information on how the initiated proceedings translate into issued decisions in the area of GAAR is also interesting, but not very optimistic. Nearly 80% of these proceedings (168) ended with a judgment decision (at the first instance level). In practice, decisions discontinuing proceedings in the area of GAAR due to a voluntary correction of settlements made by the taxpayer himself (16 such decisions) should be added to this. At the same time, most decisions are upheld in the context of an appeal (134 confirmed in the second instance).

The Rule allows fiscal authorities to determine the tax liability in a situation where they consider that the taxpayer has made a transaction without

economic justification, and its main purpose was to obtain a tax benefit, means to reduce the fiscal liability. According to the statutory assumptions, the Rule is necessary to ensure equal treatment of all taxpayers [Pastuszka, 2018; Teszner, 2024]. In its absence, the entity avoiding taxation would be in a better situation than the taxpayer paying the tax in the amount due, although both would achieve the same economic effect [Kondej, 2021].

The Rule is one of the measures recommended by the European Commission to counteract tax avoidance. In Poland, the legislator assumed that the most important function of the Rule should be prevention. Currently, it is difficult to determine whether the consequences of implementation the GAAR effectively discourage taxpayers from avoiding taxation. At the same time, the very presence of the Rule in the legal system may discourage taking actions that may be classified as tax avoidance [Olesińska, 2016]. A positive result that can be expected from the implementation of GAAR is the fiscal effect. The Rule should enable tax authorities to recover unpaid tax (KAS only provides statistics of the conducted proceedings [*Statystyka...*, 2024], and does not disclose the financial effect of applying the GAAR, so it is difficult to assess the effectiveness of this function at the moment). In addition to the positive aspects of the functioning of the Rule, it should be mentioned that due to the high degree of imprecision, it may cause many threats and the so-called traps for taxpayers and increase the costs of handling tax settlements [Wolański, 2024].

5. Corporate income tax gap in Poland – estimates and impact of the GAAR proceedings on the scope of the tax gap

The tax gap is most often defined as the difference between the amount of taxes that should be paid and the amount of taxes actually paid [Piwowarski, 2022; OECD, 2017; European Commission, 2016]. The adoption of such a general definition has the advantage that it does not impose a specific methodology for its measurement and, at the same time, it remains valid, regardless of the type of tax to which it applies [Adamczyk, 2015]. In relation to CIT, the gap is defined as the difference between the theoretical revenues from corporate income tax that the state should receive if all settlements were conducted

reliably and correctly (in accordance with the letter and spirit of the law) and the actual revenues from this tax [*Luka CIT*..., 2020]. The causes of the CIT gap can be divided into two categories: unintentional errors in settlements and intentional actions aimed at reducing the tax burden, including tax evasion and avoidance [Klonowska, 2017].

Among the methods of estimating the tax gap, two basic methods are of the greatest importance [Konopczak, 2021; *Luka CIT*..., 2020]:

- "top-down" approach – based on calculating the gap as the difference between theoretical revenues and actual CIT revenues at the level of the entire economy. Calculations are made based on macroeconomic data,
- "bottom-up" approach – respecting the effects of selected tax avoidance methods is developed on the basis of research conducted on a limited sample of companies.

The literature also indicates that the measurement of the size of the tax gap is carried out using the aforementioned econometric model describing the relationship between the tax gap in a given tax and the variables influencing its amount, as well as the induction procedure consisting in estimating the loss of tax revenue according to its causes [Jankowski, 2018].

Calculating the corporate income tax gap is an extremely complicated matter. The first estimates of this phenomenon appeared in Poland only in 2019 and were conducted by the Polish Economic Institute [*Horyzont*..., 2019]. The gap was calculated based on the publication of the International Monetary Fund and the studies by T. Torslov, L. Wier and G. Zuckman. The available estimates are presented in Table 2 and Figure 1. Estimates for the years 2014–2020 were prepared by the Polish Economic Institute [*Luka CIT*..., 2020]. Due to the lack of current calculations of the CIT gap in Poland (despite clear post-audit recommendations of the Supreme Audit Office addressed to the Minister of Finance), for the purposes of further calculations it was assumed (after PEI) that the CIT tax gap constitutes 30% of theoretical revenues from corporate income tax.

TABLE 2

Corporate income tax gap in Poland 2015–2024 (in PLN billion)

Year	CIT gap (in PLN billion)	CIT gap (% GDP)	CIT revenues (in PLN billion)	CIT revenue to GDP ratio (%)	GDP (current prices) (in PLN billion)
2015	32.2	1.8	32.9	1.8	1800.2
2016	30.3	1.6	33.8	1.8	1861.1
2017	25.9	1.3	38.1	1.9	1989.4
2018	21.6	1.0	44.3	2.1	2120.5
2019	21.5	0.9	50.9	2.24	2273.6
2020	26.0	1.1	52.6	2.23	2362.9
2021	22.5*	0.85	52.4	1.97	2661.5
2022	30.0*	0.97	70.1	2.26	3100.9
2023	29.1*	0.86	67.9	2.0	3401.6
2024	25.8*	0.74	60.2	1.72	3500.2

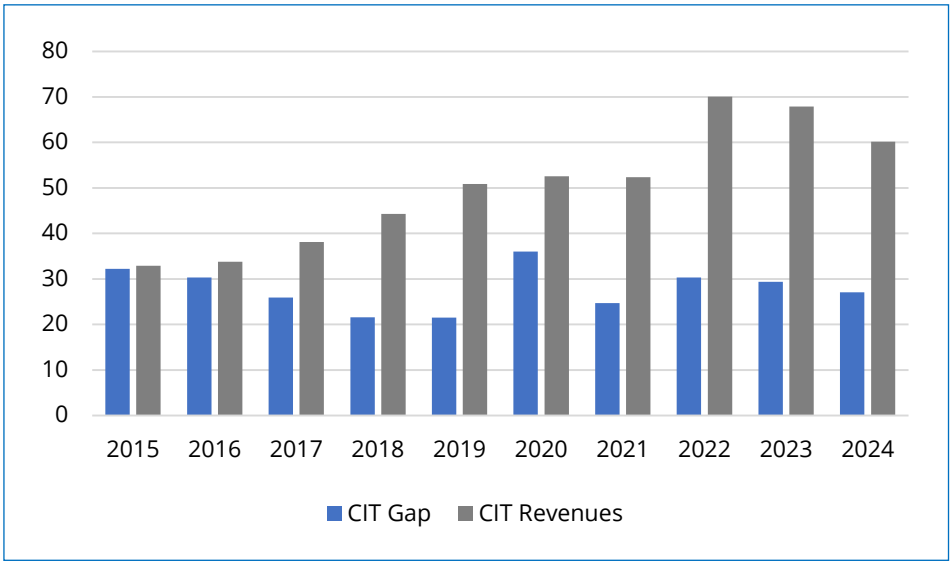
* theoretical income estimates for 2021–2024 were made based on the following formula:
INCM theoretical = (INCM actual x100%) / 70% – INCM actual
It was assumed, following PEI, that the CIT gap amounts to 30 percent of theoretical CIT revenues.

Source: *Luka CIT w Polsce w latach 2014–2018*, Polski Instytut Ekonomiczny, Warszawa, 07.2020; *Luka CIT w Polsce*, Polski Instytut Ekonomiczny, Warszawa, 08.2022; *Sprawozdanie z wykonania budżetu państwa z lat 2021–2023*, Rada Ministrów, Warszawa, 2022–2024, gov.pl; *Szacunkowe wykonanie budżetu państwa w 2024 r.*, 02.2025, www.gov.pl/web/finanse/szacunkowe-wykonanie-budzetu-panstwa-2024; Produkt Krajowy Brutto, sejm.gov.pl/sejm10nsf/BASLeksykon.xsp?id=61DD09E772FE35FFC1257A59003E303B&litera=P [date of access: 15.01.2025]; *Informacja Głównego Urzędu Statystycznego w prawie skorygowanego szacunku produktu krajowego brutto za 2023 rok*, GUS, 10 październik 2024 r., p. 4, stat.gov.pl/obszary-tematyczne/rachunki-narodowe, Produkt krajowy brutto w 2024 r. – szacunek wstępny, GUS, 30.01.2025.

CIT revenues grew faster than GDP in 2014–2022 (Figure 1). In 2014–2019, the nominal value of corporate tax revenues increased by as much as 72 percent – from PLN 30 billion to PLN 51 billion. During this time, the share of CIT revenues in GDP increased by almost one third – from 1.7 to 2.3 percent. In the following two years, a downward trend was noticeable. Despite many years of growth, CIT revenues still constitute a small part of budget revenues in Poland (approx. 5 percent), compared to EU countries, where the share of this tax is approx. 7 percent.

FIGURE 1

Corporate income tax gap and CIT revenues in Poland in 2015–2024 (in PLN billion)



Source: the authors' own study based on Table 1.

Along with the growth of CIT revenues, in the years 2015–2019, there was a noticeable downward trend in the CIT gap (from PLN 32.2 to PLN 21.5 billion). In 2020, the gap amounted to PLN 26 billion. In the years 2019–2020, the CIT gap stabilised at around 30 percent of theoretical CIT revenues. This translated into losses of PLN 20–30 billion annually. While in 2014 the CIT gap was still 52 percent and initially the decline was quite rapid, in the years 2016–2018 the gap decreased, but the dynamics of its changes slowed down. This may be the so-called "effect of picking low-hanging fruit" - numerous tightening actions taken in the years 2016–2018 – including the introduction of the GAAR – allowed for the limitation of the most frequently used tax optimisations. However, further reducing the gap is a more difficult task and requires new solutions, including reforms at the international level [*Luka CIT*..., 2022].

In 2020, the CIT gap increased for the first time in several years. This increase was small – by 2 percentage points of theoretical revenues. Actual CIT revenues also increased, but slower than theoretical revenues. As a result, the gap widened. This can be explained, among other things, by the greater propensity of

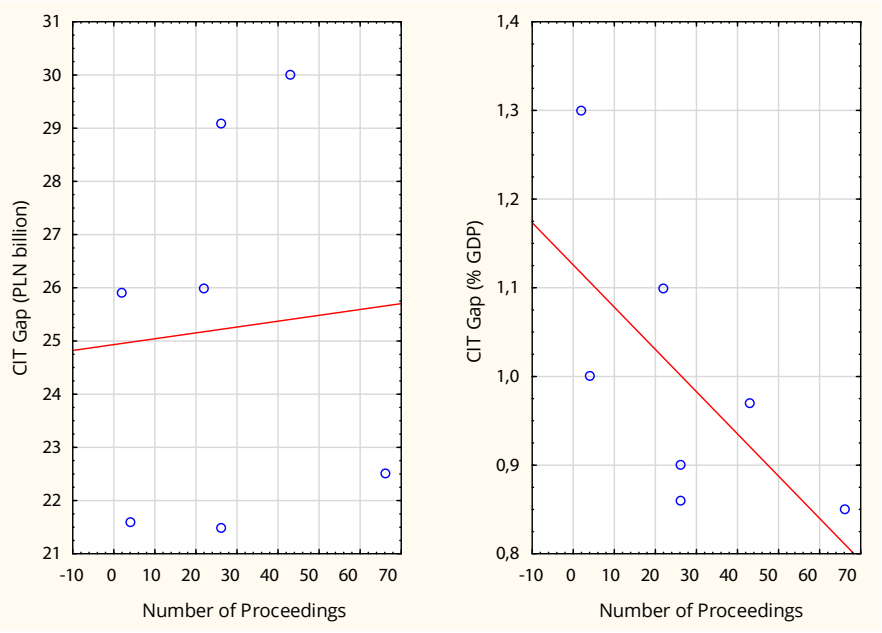
companies to avoid and evade taxes during bad economic times than during good economic times [Buehn, 2012]. In times of worse economic conditions, the shadow economy also increases. Some methods of measuring the tax gap (e.g. MIMIC – Multiple Indicators, Multiple Causes Models), especially the CIT gap, lead to the conclusion that the shadow economy is identical to this gap [Kędrzyński, 2020]. A. Buszko showed that there is a weak positive relationship between the size of the shadow economy and the tax gap in Poland, which means that the growth of the shadow economy will be accompanied by an increase in the tax gap [Buszko, 2017]. In turn, good economic conditions and an increase in the wealth of society will be a determinant limiting the size of the tax gap. It has been observed that a high value of GDP per capita is generally associated with a lower tax gap calculated as a% of GDP [*Przeciwdziałanie*…., 2017]. Low living standards in poor countries encourage undertaking activities in the shadow zone in order to avoid fiscal burdens [Karpińska-Mizielińska i in., 2018].

The publication uses the Spearman's rank correlation coefficient to examine whether there is a statistical relationship between the number of GAAR proceedings and the level of the CIT gap. Figure 2 presents a scatterplot, which is a graphical interpretation of the correlation between the number of proceedings using the GAAR and the level of the CIT gap measured in PLN billion and as a percentage of GDP. In the case of the CIT gap calculated in PLN billion, no statistically significant relationship can be noted. The correlation coefficient R was 0.1982, and the test probability $p = 0.6701$. On the other hand, in relation to the CIT gap estimated as a percentage of GDP, there is a large negative relationship between both variables ($R = -0.85$, $p = 0.0161$). A negative correlation was observed on the graph, which could prove that an increase in the number of proceedings could cause a decrease in the tax gap.

Figure 3 was prepared based on the number of the first instance court decisions issued by the Head of the National Revenue Administration using the general rule in relation to the estimates of the CIT gap in PLN billion and calculated as% of GDP. In the first case, a large positive relationship was demonstrated between the number of decisions using GAAR and the CIT gap (in PLN billion). The correlation coefficient was $R = 0.48$, but this is not a statistically significant relationship $p > \alpha$ ($p = 0.229$). In the second case, the correlation is also statistically insignificant and no relationship was demonstrated between both variables ($R = 0.20$; $p = 0.628$).

FIGURE 2

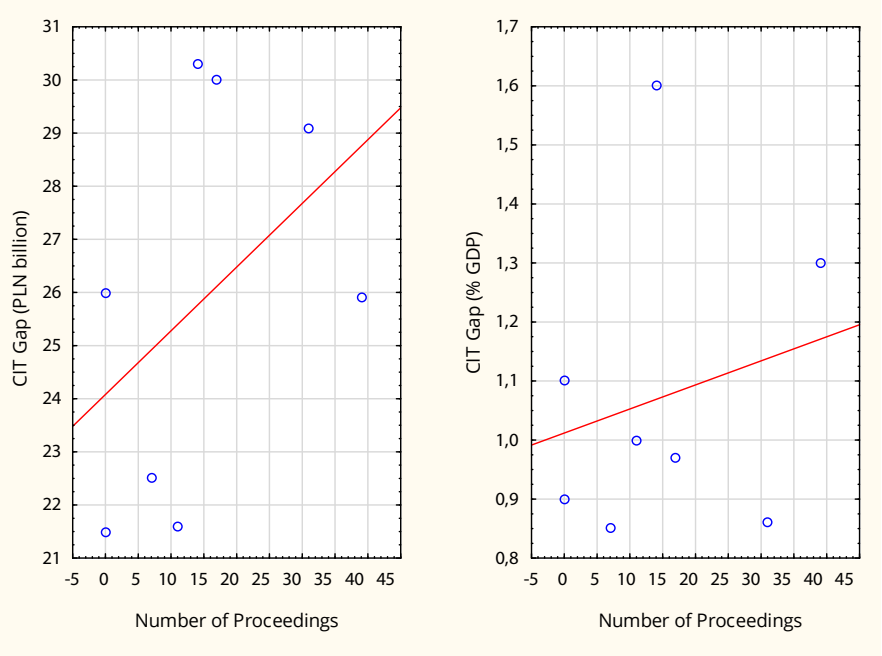
Scatter graph between the number of proceedings of the CIT Head using GAAR and the CIT tax gap in PLN billion and as a percentage of GDP in 2017–2023



Source: the authors' own study based on tables 1 and 2.

FIGURE 3

Scatter graph between the number of the first instance court decisions issued by the Head of KAS using GAAR and the CIT gap in PLN billion and as a percentage of GDP in 2016–2023.



Source: the authors' own study based on tables 1 and 2.

6. Conclusion

The General Anti-Avoidance Rule (GAAR) is a tool designed to counteract abuses in tax law, although the concept of tax avoidance itself is not unambiguous. Tax avoidance is a legal action, but undertaken solely or primarily to achieve a tax benefit. Anti-abusive clauses operate in many countries, including Poland, although their introduction is usually highly controversial.

It is assumed that it is inevitable that the general anti-avoidance clause will use vague concepts with an incompletely specified content. Its function is, in particular, to cover with a normative reaction such undesirable phenomena in the scope of tax avoidance, which at the time of designing the regulation are not yet recognised, or even – in practice do not yet occur. GAAR is to relieve the legislator of the effort of keeping up with the inventiveness of entities seeking such possibilities of using the tax system, which are inconsistent with the essence and function of individual fiscal solutions. It is indicated that it is impossible to predict the patterns of actions, which will be developed and applied by taxpayers in the future in order to artificially minimise tax burdens.

Creating the structure of the general anti-avoidance rule, it is worth bearing in mind its main function – means the preventive function. It manifests itself in the application of the discussed legal solution only as a last resort, as an extraordinary institution in situations where standard measures against tax avoidance fail. Therefore, there is a justified doubt whether the implementation of the current form of the clause in a broader scope of the subject matter, together with extensive additional regulations, will definitely be limited only to sporadic and final cases, since in the opinion of the Supreme Audit Office, for example, the elimination from 1 January 2019 of the threshold of PLN 100 thousand, previously necessary to apply GAAR, was assessed negatively. According to the Supreme Audit Office, this is a manifestation of excessive fiscalism, because in principle this regulation was to be applied only to the largest taxpayers who obtain unjustified tax benefits.

The anti-abusive clause is introduced, among other things, to reduce the tax gap. In Poland, the CIT gap is estimated at PLN 20–30 billion and constitutes a significant loss in public revenues (from 1.8 to 0.7% of GDP), despite its

significant decrease over the years 2014–2019. It seems that after numerous tightening actions by the Ministry of Finance, further reduction of the gap is becoming increasingly difficult, as it requires regulation at the international level. The crisis caused by the COVID-19 pandemic, or subsequently – the energy crisis, could have also contributed to the greater propensity of companies to aggressive optimisation. Nevertheless, the GAAR is a flexible instrument for counteracting tax avoidance, the effectiveness of which seems relatively high – unlike other anti-abusive clauses, it is also intended to counteract such activities that have not yet been identified by tax authorities. It seems that from a systemic perspective, we can observe a certain arms race, in which on the one hand we are dealing with the changing shape of legal solutions, and on the other hand – with the reaction of taxpayers to new regulations. This reaction is often aimed at new regulations and consists of taxpayers developing increasingly inventive strategies related to reducing the fiscal burden. From this perspective, the introduction of the general clause should be assessed positively.

In order to examine whether there is a statistical relationship between the range of the number of proceedings and decisions using the general rule and the size of the corporate income tax gap, the Spearman's rank correlation coefficient was used in this study. In the case of two relationships, the determination index is too low to establish a statistical fit between both variables (the number of GAAR proceedings and the CIT gap in PLN billion and the number of the first-instance judgement decisions and the CIT gap as a percent of GDP). Both variables seem to change independently of each other, according to a completely different pattern, which may suggest a negligible impact of the number of proceedings by the head of the KAS on the range of the tax gap calculated in PLN billion. In the case of the number of the first-instance judgement decisions regarding CIT and the gap calculated in PLN billion, a high relationship was noted, but it is not statistically significant.

The analysis shows that there is a relationship between the CIT gap estimated as% of GDP and the number of proceedings of the head of the National Revenue Administration, where there is a large negative relationship between both variables. This may mean that with the increase in the number of proceedings using GAAR, the level of the tax gap decreases. When analysing the impact of

the GAAR on the size of the tax gap, it is not possible to clearly state its significant impact, although it is supposed to be preventive in nature. However, it would be reasonable, when examining the aforementioned relationships, to take into account all the determinants that may affect the estimates of the tax gap, including the international environment, economic situation, the amount of the tax burden, demography (the number of companies per tax office, and therefore the probability of control), the efficiency of courts and the severity of penalties, the size of the shadow zone, the efficiency of the tax administration and other formal and informal institutions (tax morality). Moreover, when analysing the CIT gap, it should be noted that although the legislator may influence national law, tax systems differ between countries. Some countries deliberately offer much lower rates and preferential conditions to attract entities to register on their territory. However, such an extensive analysis does not fit within the limited volume of this publication. The authors recommend increasing the number of tax audits regarding CIT, particularly those concerning significant fiscal reduction, and simplifying the corporate income tax system to facilitate the enforcement of this tax.

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