

Legal Tax Optimization in Poland: An Effective Tool within the Limits of the Law

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Abstract

The article aims to present issues related to tax optimization in Poland as well as mechanisms that limit aggressive tax avoidance. The research problem focuses on the complexity of the Polish tax system and the possibilities for legally reducing tax liabilities under applicable national laws and international regulations. To address this research problem, several methods were employed: critical analysis of the literature, legal provisions (the Polish Constitution, the Tax Ordinance, tax laws, and implementing acts), as well as international and domestic reports (e.g., Tax Foundation, Warsaw Enterprise Institute), and case law at both national and European levels. Additionally, a comparative method was used to assess the Polish tax system in the context of foreign solutions. The analysis revealed that the Polish tax system has relatively moderate income tax rates compared to those of other European countries. However, its complexity and the multitude of levies reduce transparency and make it less taxpayer-friendly.

The article discusses tools for legal tax optimization, such as the choice of taxation form, business organizational and legal structures, utilization of tax reliefs, and income and expense planning, demonstrating that tax optimization is possible within the limits of the law. At the same time, mechanisms that limit aggressive tax planning are presented, including anti-abuse clauses (GAAR, MAAR), transfer pricing regulations, and international provisions (BEPS, CRS), highlighting the importance of balancing effective tax planning with compliance to safeguard the interests of both the state and taxpayers.

Keywords: tax optimization, Polish tax system, tax avoidance, GAAR, MAAR, tax law compliance, tax planning, CIT, PIT, Estonian CIT, tax reliefs, anti-abuse regulations, BEPS, CRS, tax system complexity, tax burden, transfer pricing, tax havens, international tax regulations

1. The Essence of Tax Optimization

Tax optimization involves a business entity paying the lowest possible tax by using methods compliant with applicable law (Kazarewicz, 2025, p. 12). Some authors argue that it is the utilization of the diversity of legally permissible forms of economic activity, for which the tax legislator has established separate taxation rules (Wójtowicz-Janicka, 2012, p. 16). In this understanding, tax optimization should be treated as a management model for shaping financial results. Tax optimization can be viewed as a set of actions aimed at reducing tax burdens (Skolimowska, 2021, p. 50). It may be implemented using one or more strategies simultaneously, and the choice of optimization measures is closely related to the type and form of business activity. It is also worth emphasizing that, in addition to reducing or eliminating tax liabilities, tax optimization may involve deferring tax obligations (Iwin-Garzyńska, 2016, p. 97).

At the same time, it is important to distinguish between legal tax optimization and actions aimed at tax evasion. Tax evasion refers to deliberate attempts to reduce or eliminate tax liabilities using illegal means. It involves intentional falsification of financial information, concealment of income, inflation of expenses, or the use of schemes designed to mislead tax authorities. Such actions are defined as tax fraud and are illegal. In contrast, tax minimization conducted within the framework of applicable law allows for the optimization of tax burdens without risking a violation of regulations. Figure 1 presents a summary and comparison of the differences between tax optimization and tax evasion.



Figure 1. Differences between Tax Optimization and Tax Evasion

Source: Author's own.

From the above overview, it follows that tax evasion is an illegal activity involving the concealment of income, the falsification of documents, or the maintenance of fictitious accounting records. In practice, tax evasion often manifests through recognizable patterns of concealment or deception, such as:

- underreporting cash income, particularly in financially intensive sectors such as retail, hospitality, or informal services,
- operating unregistered or partially disclosed businesses to avoid declaring taxable income,
- paying employees informally, allowing employers to evade payroll taxes and statutory contributions,
- issuing false invoices or inflating expense claims to reduce taxable profits,
- using separate entities or nominee owners to obscure the actual ownership of income-generating assets.

It is worth emphasizing that the idea of tax optimization has accompanied tax systems since the introduction of monetary taxes and more formalized legal regulations. Already in antiquity and the Middle Ages, wealthier citizens utilized privileges or property arrangements to reduce their obligations to the state. In the modern era, with the development of nation-states, the first legal instruments enabling lawful reductions in tax burdens emerged. Today, in the era of globalization and international trade, tax optimization includes, among other strategies, establishing companies in low-tax jurisdictions and making use of tax reliefs. This phenomenon remains a legal tool for financial planning, closely linked to the complexity of the tax system and the costs associated with its operation in a given country

2. Complexity of the Polish Tax System

The legal basis of the current tax system in Poland is established in the Constitution of the Republic of Poland of April 2, 1997. Article 217 stipulates that any imposition of taxes or other public levies, as well as any information regarding tax rates, identification of taxable entities, exemptions, and potential tax reliefs, must be enacted by law (Art. 217, Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.). The primary act regulating the tax system is the Tax Ordinance of August 29, 1997, along with a range of tax laws, including implementing regulations and local legal acts, such as municipal council resolutions. Tax legislation is further supplemented by ratified provisions of international agreements, for example those concerning the avoidance of double taxation (Czajor et al., 2020, p. 443-445). In academic literature, a tax is generally defined as a “mandatory, non-refundable, gratuitous, and general monetary contribution collected by the state or another public-law entity (e.g., local government) based on legal provisions that specify the conditions, amount, and deadlines for payment, aimed at covering public expenditures” (Szczodrowski, 2003). Taxes are an important instrument of state policy, serving fiscal, regulatory, and stimulative functions.

According to the latest edition of the Tax Foundation International Tax Competitiveness Index 2025, Poland ranks 35th globally in tax system complexity, with an overall score of 54.7. This represents a decline of six positions compared to the 2024 edition. The report identifies both strengths, such as a relatively low corporate income tax (CIT) rate of 19%, and weaknesses, including the large number of different taxes and levies (e.g., property taxes, transfer taxes, bank levies), which reduce the system's transparency and user-friendliness.

In terms of the burden on the average citizen, the 2025 Warsaw Enterprise Institute (WEI) report indicates that the "real tax burden" for an average Pole amounts to approximately 43% of gross income. WEI emphasizes that this figure does not fully account for additional costs, such as the time spent fulfilling formal obligations or the complexity of procedures, which makes the Polish tax system appear unfavorable compared to other European countries.

Among OECD countries, the average highest statutory personal income tax (PIT) rate in 2024 was around 42.8%. The highest rates were recorded in Denmark (55.9%), France (55.4%), and Austria (55%), while the lowest were observed in Hungary (15%), Estonia (20%), and the Czech Republic (23%). Selected European countries outside the OECD often apply lower, sometimes flat PIT rates. Bulgaria and Romania have the lowest rates (10% each), followed by Moldova (12%), Ukraine (19.5%), and Georgia (20%) (Figure 2). It should be noted that the rates mentioned refer to the highest statutory rates and do not include additional burdens, such as social security contributions or tax reliefs (Top Personal Income Tax Rates in Europe, 2024).

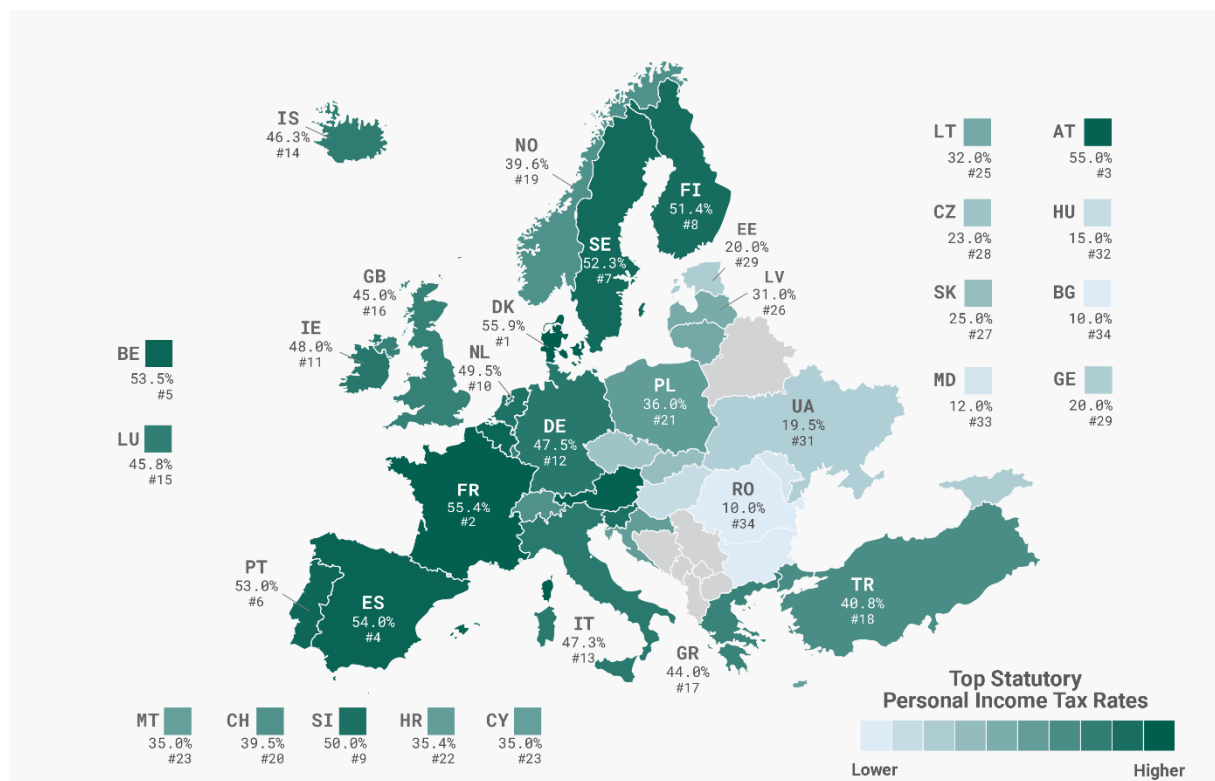


Figure 2. Top personal income tax rates in Europe (2024)

Source: Top Personal Income Tax Rates in Europe, 2024, https://taxfoundation.org/data/all/eu/top-personal-income-tax-rates-europe-2024/?utm_source=chatgpt.com. (z dnia 01.12.2025).

International reports indicate that, on the one hand, Poland has a relatively competitive corporate tax rate; on the other hand, the tax system is characterized by high complexity and numerous levies, which reduces its attractiveness and transparency for citizens and entrepreneurs. The complexity and extensive nature of the Polish tax system, resulting from the multitude of legal acts and frequent legislative changes, force taxpayers - particularly business entities - to carefully plan their tax-related activities. Consequently, there is a need to seek solutions that minimize fiscal burdens within the law, which raises the issue of tax optimization. The fundamental and, at the same time, the simplest tool for tax optimization is the choice of an appropriate form of taxation or legal form of conducting business activity.

In the Polish tax system, income taxes are divided into personal income tax (PIT) and corporate income tax (CIT). Regarding PIT, taxpayers have several options: taxation under a progressive tax scale, a flat tax, or a lump-sum tax on recorded revenues. Each of these forms features a different method of calculating tax, distinct thresholds and rates, and varying applicability of tax reliefs and deductions.

The progressive tax scale (PIT) includes two rates: 12% and 32%. The lower rate applies to income up to a certain annual threshold, while the higher rate applies to any income exceeding that threshold. This system allows for the use of the tax-free allowance, tax reliefs, and deductions from income, for example for housing purposes or charitable donations. The flat tax (19%) applies a uniform rate regardless of income level but restricts the use of most tax reliefs, including the tax-free allowance. This form may be less advantageous for lower incomes but attractive for higher or irregular incomes. The lump-sum tax on recorded revenues is based on a flat percentage of revenue, regardless of incurred costs, with rates varying by activity type (e.g., 2%, 3%, 5.5%, 8.5%, etc.). This form is beneficial for entrepreneurs with low cost structures and simplified record-keeping obligations. Ultimately, the choice of tax form should consider the expected level of income, the structure of costs, the availability of tax preferences, and the planned development of the business activity.

For legal entities, tax optimization includes, among other things, the choice between the standard CIT rate (19%) and the preferential rate for small taxpayers (9%), as well as the so-called Estonian CIT model (D. Jegorov, A. Leszczyłowska, A. Łożykowski, <https://case-research.eu>). The fundamental feature of the Estonian corporate income tax is that profits are not taxed until they are distributed. In the traditional corporate income tax (CIT) model, companies are required to pay regular tax advances, usually monthly, regardless of planned investments or actual cash flows within the enterprise. In contrast, under the Estonian model, corporate income tax becomes payable only when funds are distributed to the owner or shareholder. As long as the profits remain within the company, they are not subject to taxation, which significantly supports the company's cash flow and enables more effective investment planning. Figure 3 illustrates the difference in the effective tax burden between the traditional CIT and the Estonian CIT model.

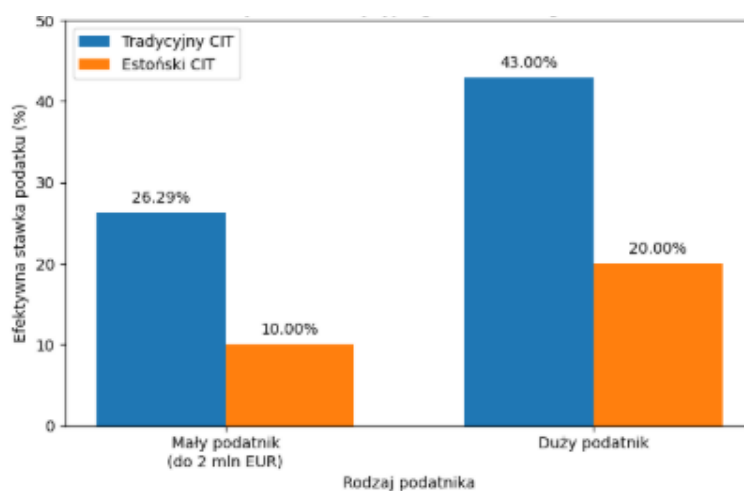


Figure 3. Differences in the effective tax burden between the traditional CIT and the Estonian CIT model

Source: Author's own.

The tax on distributed profits is therefore the most popular tax option among entrepreneurs, several times more frequently chosen than other widely available investment-supporting tools that have been in place for many years, such as the research and development (R&D) relief, IP-Box relief, or the Polish Investment Zone (Sarnowski, 2022, p. 22).

In the context of tax optimization, another important tool is the strategic planning of revenue and cost recognition, as well as the use of available tax reliefs, for instance in the areas of R&D or investments. For example, the R&D relief is a tax incentive designed to stimulate investment in innovation, allowing additional deductions for certain expenses incurred in research and development activities, thereby significantly reducing the tax burden. These expenses may include, among others, salaries of employees involved in R&D work, costs of materials and raw materials, and fees for expert opinions, advisory services, and other directly related R&D expenditures. However, such activities must have a valid economic rationale and reflect the actual course of economic events, since artificially creating them solely to gain tax advantages may be challenged by the tax authorities.

Another tool for tax optimization is the choice of an appropriate organizational and legal structure for conducting business, which constitutes one of the key instruments of legal tax optimization. The decision between a sole proprietorship and a limited liability company (LLC / sp. z o.o.) affects not only the method of income taxation but also the level of personal liability and the scope of risk assumed by the entrepreneur. A limited liability company, as a separate legal entity, allows for the limitation of shareholders' liability and the use of mechanisms such as the Estonian CIT or profit reinvestment, which can lead to temporary deferral of taxation. In contrast, a sole proprietorship offers simpler tax settlement rules and greater flexibility in choosing the form of taxation, which can be advantageous for smaller entities and service-oriented businesses. For certain business profiles, the

use of holding structures or limited partnerships enables effective tax management and risk mitigation, provided that the arrangements comply with existing tax regulations and reflect the substantive nature of the business activity. This means that such structures cannot be purely formal or used solely for income shifting purposes.

At this point, it is also worth emphasizing that tax optimization, understood as managing activities aimed at reducing tax liabilities in the form of taxes and fiscal burdens, is often carried out through aggressive planning, using methods and techniques that remain within the boundaries of the law, including so-called legal tax avoidance. Tax jurisdictions are characterized by their national economic policies and, consequently, their own tax systems. They often compete with other countries or groups of countries, such as members of the European Union. In an effort to attract an increasing number of foreign direct investments, some countries have adopted a more liberal tax system, lowering tax rates and providing substantial exemptions and deductions (Sava, Tureatca, 2017, p. 109).

In this context, one method of tax optimization that is, however, highly controversial, is the use of tax havens (Pach, 2019, p. 150). The main characteristics of tax havens typically include:

- a favorable tax system, characterized by the absence of taxes or low tax rates and beneficial legal regulations for businesses,
- ease of company registration,
- advantageous legal regulations for entrepreneurs,
- strict banking and financial secrecy,
- lack of effective exchange of tax information with other countries,
- free access to capital without foreign exchange controls, reporting obligations, or tax reporting requirements (pach, 2019, p. 151).

These jurisdictions attract individuals and corporations seeking to reduce their tax burdens while benefiting from political stability, privacy, and a strong financial infrastructure. At the same time, the use of tax havens is increasingly subject to strict international regulations, and the lack of real economic substance in such structures can result in challenges or denials of the tax benefits obtained. In Poland, the list of countries considered as tax havens has been published by the Minister of Finance in regulations concerning the determination of countries and territories engaging in harmful tax competition for PIT and CIT (Rozporządzenie Ministra Finansów z 18 grudnia 2024 r. w sprawie określenia krajów i terytoriów stosujących szkodliwą konkurencję podatkową w zakresie podatku dochodowego od osób prawnych and Rozporządzenie Ministra Finansów z 18 grudnia 2024 r. w sprawie określenia krajów i terytoriów stosujących szkodliwą konkurencję podatkową w zakresie podatku dochodowego od osób fizycznych). The list includes 25 countries and territories, such as Hong Kong, the Maldives, Monaco, Mauritius, Panama, the Seychelles, and the United States Virgin Islands. It should be emphasized that, under Polish law, the use of tax havens is not explicitly prohibited, but it is strictly regulated and monitored by anti-abuse provisions. This means that using tax havens to artificially reduce tax liabilities may be challenged by the tax authorities. Legal consequences of using tax havens may include the inclusion of income obtained in these jurisdictions in the Polish tax base, as well as additional tax obligations and interest charges if the authorities determine that the structure was artificial and constituted aggressive tax optimization.

4. Mechanisms Limiting Aggressive Tax Optimization in the Polish Tax System

Aggressive tax optimization, although formally within the bounds of the law, carries the risk of artificially reducing the tax base and engaging in activities inconsistent with the legislator's intent. In response to these threats, a range of mechanisms has been introduced in Poland and internationally to limit tax abuses while ensuring legal certainty for taxpayers who act in accordance with the law. These mechanisms include domestic regulations, such as anti-abuse clauses in Polish tax laws, as well as international rules based on OECD recommendations and current standards for tax information exchange.

The General Anti-Avoidance Rule (GAAR), also referred to as the anti-tax avoidance clause, was introduced by the amendment of July 15, 2016, to the Tax Ordinance of August 29, 1997. Under this provision, tax authorities have the right to challenge tax transactions generating annual benefits exceeding PLN 100,000. By its nature, this mechanism is intended to contest taxpayer actions aimed at reducing tax liabilities by using a tax regime inconsistent with their actual business operations. In other words, GAAR seeks to prevent abuse or circumvention of tax law.

The operation of GAAR involves tax authorities determining the effects of a taxpayer's actions based on the assumed state of affairs, i.e., the situation that would have occurred if the taxpayer's actions were devoid of artificiality. The authorities base their assessment on a hypothetical but objectively appropriate state for the taxpayer's situation. In this way, they establish the legal consequences of the facts as they should have occurred for a genuine economic purpose. If it is determined that the taxpayer acted to circumvent the law, the tax authority reverses the effects of such actions, calls upon the taxpayer to pay the correct amount of tax, and imposes additional penal tax liabilities.

Specific anti-abuse clauses (MAAR and regulations under CIT/PIT/VAT) represent an extension of the GAAR concept, tailored to specific tax regimes. Modern tax systems face the challenge of limiting aggressive tax optimization, which, while formally legal, can result in artificial reductions of the tax base and abuse. In response,

specific anti-abuse clauses have been introduced in the Polish system, encompassing both general regulations and specific provisions in income taxes (CIT, PIT) and value-added tax (VAT). These clauses require that tax planning be based on genuine economic purposes rather than merely on minimizing tax liabilities. For entrepreneurs, this entails greater diligence and proper documentation of the economic rationale behind their actions.

At the international level, tax optimization activities are subject to OECD recommendations included in the BEPS (Base Erosion and Profit Shifting) project, aimed at countering base erosion and profit shifting to low-tax jurisdictions. The introduction of tax information exchange (CRS – Common Reporting Standard) and rules regarding economic substance in holding structures limits opportunities for aggressive cross-border tax optimization.

In analyzing the boundaries of legal tax optimization, the proper application of transfer pricing regulations and intra-group transactions is also crucial. This helps avoid challenges to the tax base by authorities and ensures compliance with international tax standards. It is also important to refer to national and European case law, which sets practical limits on legal tax optimization. For instance, the Supreme Administrative Court (NSA), in its ruling of June 27, 2019, indicated that the use of legal structures solely to reduce tax liabilities, without genuine business activity, may lead to the denial of tax benefits (Supreme Administrative Court (NSA) judgment of June 27, 2019, case no. II FSK 1136/17). Similarly, the European Court of Justice in the DNB Bank case emphasized that claiming tax relief requires real economic substance, thereby limiting aggressive tax optimization (Supreme Administrative Court (NSA) judgment of June 25, 2019, case no. II FSK 2213/17). At the same time, case law can also work in favor of taxpayers. In its ruling of June 25, 2019, the NSA dismissed a cassation complaint regarding the assessment of a tax decision issued by the tax authority (Tax Chamber/Director), thereby confirming the correctness of previous decisions (Supreme Administrative Court (NSA) judgment of June 25, 2019, case no. II FSK 2213/17). Likewise, in its judgment of January 16, 2020, the NSA resolved a case concerning personal income tax (PIT), in which the authority questioned the taxpayer's ability to use available deductions and reliefs. The cassation court rejected the complaint, demonstrating protection of taxpayers' rights when using beneficial forms of taxation (Supreme Administrative Court (NSA) judgment of January 16, 2020, case no. II FSK 874/18).

Conclusion

There is a fundamental distinction between legal tax planning and attempts to circumvent tax law. Legal planning involves using the provisions of the law to minimize tax burdens while ensuring compliance with regulations. It should be noted, in line with the prevailing doctrine, that tax optimization is particularly useful in areas characterized by uncertainty, vague legal formulations, or incomplete regulation of specific issues (Wąsowski, 2009, p. 56).

An analysis of tax optimization in Poland has shown that legal tax planning is an important tool enabling businesses and taxpayers to reduce fiscal burdens within the law. The effectiveness of such measures depends on the appropriate choice of tax form, the business's organizational structure, and the use of available tax reliefs and incentives. At the same time, the complexity of the Polish tax system, numerous regulations, and anti-abuse mechanisms—both domestic (GAAR, MAAR) and international (BEPS, CRS)—set clear limits on legal optimization, requiring taxpayers to carefully document the genuine economic purposes of their actions.

The conclusions of this analysis emphasize the importance of balancing effective tax planning with compliance with the law, thereby protecting the interests of both the state and taxpayers. Tax optimization is especially valuable in areas with ambiguous or only partially regulated regulations, enabling informed financial decision-making while minimizing the risk of legal violations.

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