Author paper

presenting a description of an output and scientific achievements prepared in English

Attachment 4 to the application for conducting the habilitation procedure

I. Name and Surname: Rafał Aleksander Nawrot

II. Possessed diplomas, academic degrees:

a) Master of Law, Faculty of Law and Administration of the University of Warsaw, 2006, the title of the Master paper: Taxation of dividends in the light of the Polish law regulations and selected bilateral double taxation treaties, including especially the problems of tax paradises; supervisor Prof. Ph. D. Witold Modzelewski, evaluator: Prof. Ph. D. Elżbieta Chojna-Duch;

b) Doctor in law science, Faculty of Law and Administration of the University of Warsaw, 2011, the title of the doctoral dissertation: Legal problem of harmful tax competition in the scope of income taxes, supervisor: Prof. Ph. D. Witold Modzelewski, evaluators: Prof. Ph. D. Leonard Etel and Prof. Ph. D. Elżbieta Chojna-Duch;

c) tax advisor, number of entry into the list of tax advisors: 11805, date of entry: 20th of September 2011;

d) advocate, number of entry into the list of advocates of the District Advocate Chamber in Warsaw: 6164, date of entry: 13th of April 2016.

III. Information of previous employment in scientific/artistic units:

1) Faculty of Law and Administration of the University of Warsaw, Institute of Legal-Administration Sciences, Post-graduate Studies of Taxes and Tax Law, Lecture „International tax optimization" (in 2016 the title of the lecture has been changed to "International tax avoidance") - from 2012 till 2017, cooperation on the basis of an agreement to perform a specific work.

2) National Treasury School, Branch in Białobrzegi, Post-graduate Studies for Ministry of Finance, Lecture "Legal grounds of international exchange of tax information", April 2018, cooperation on the basis of an agreement to perform a specific work.

IV. Indication for academic achievement resulting from art. 16 it. 2 of the act of 16th of March 2003 on academic degrees and academic title and degrees and title in art (J. of L. of 2003, No. 65, it. 595 as amended)

As an academic achievement in the scientific discipline, the law fulfilling the requirements defined in art. 16 it. 1 of the quoted act, I would like to present the monography:

Rafał Aleksander Nawrot, International income tax avoidance and its regulations in Polish law, Difin, Warsaw 2018, second edition.

Moreover, I would like to inform that the first edition of the abovementioned monography published by Difin Publishing House in 2015 has been a subject of habilitation procedure which was proceeded at Law and Administration Faculty of Warsaw University on the basis of my application for conducting the habilitation procedure dated 12th July 2016 submitted to the Central Commission for Degrees and Titles and which was remitted based on my application in according to the resolution of Council of Law and Administration Faculty of Warsaw University dated 19th June 2017. The evaluators in the abovementioned habilitation procedure were: Prof. Ph. D. Hanna Litwińczuk, Prof. Ph. D. Dominik Mączyński and Prof. Ph. D. Mariusz Popławski.

A phenomenon of an international taxation avoidance of income constitutes one of the most current and most dynamically occurring legal topics not only in the Polish tax law. The problem is in fact important in a majority of the European countries, especially those belonging to the European Union as well as North-American. In recent years a significant increase of tax legislation aimed at counteracting international tax avoidance might be observed also in other countries (e.g. Russian Federation, China). The outflow of part of budget income of the developing countries to tax paradises was one of the underlying reasons for international financial crisis which was notices both by the particular countries affected by the crisis as well as by the associated organizations, in particular OECD and G20. The changes which were made in the recent years in the scope of the topics discussed in the paper, both in Polish tax law and legal systems of other states and international agreements have no precedent in the history of the issue. The changes gave for the problem of international avoidance of income taxation a completely new nature, changing definitely the directions of

particular methods of so called optimization of income taxation. My paper "International income tax avoidance and its regulations in Polish law" is the only publication which in a complex manner presents the above topic from the perspective of the Polish law. Other publications in the form of a monography concerning these topics which were published within the last a dozen of years when the phenomenon of using the tax paradises for avoidance of income taxation was duly noticed, are of general nature, to make the analysis from rather international than Polish perspective (e.g. J. Głuchowski, Tax oases, Warsaw, 1996, T. Lipowski, Tax paradises: characteristics and methods of using, Gdańsk 2002, T. Lipowski, Tax paradises and taxation avoidance, Warszawa 2004, M. Wotava, Tax paradises and offshore services, translation M. Łacic, Kraków 2000) or concentrate on particular issues in the field of international tax avoidance (e.g. S. Kudert, M. Jamroży, Optimization of taxation of entrepreneurs' income, Warsaw 2007, Ł. Mazur (edit.), Tax optimization, Warsaw 2012, M. Lachowicz, Tax avoidance schemes functioning in Polish practice and the effectiveness of measures used to combat them, Warsaw 2015, D. Gajewski, International tax avoidance. Selected issues, Warsaw 2017, D. Gajewski, Clause against tax avoidance. Practical commentary, Warsaw 2018). In turn, the publications other than monographies due to their nature analyse only selected and narrow aspects of the international tax avoidance of income (for example papers by T. Lipowski, D. Gajewski, G. Poleszczuk, W. Wyrzykowski, P. Felis, F. Majdakowski, R. Krasnodębski and M. Obszyńska). A separate group of publications includes monographies and articles concerning the problems of trust, especially in the Anglo-Saxon model which, not having a legal-tax nature itself, remains in a strict relation with an issue discussed (e.g. papers by A. Szpunar, K. Michałowska, A. Kędzierska-Cieślak, P. Stec and R. Rykowski). The paper presented combines particular aspects of the phenomenon of international income tax avoidance, to discuss them in a complex manner and to present all significant methods of international avoidance of taxation functioning on the basis of the applicable Polish law. From the perspective of the legislator, the meaning of the paper presented is thus high, as it points for certain legal gaps the closure of which by means of proper law provisions would result in increasing the budget income. What is more, the elimination of the possibilities, which are posed by the international avoidance of income taxation would eliminate the disorder in competition principles which should be unique for all participants of the market. The fiscal system in a larger extent would fulfill then the requirements of equality and social justice.

The importance of the topic of the presented monography results this not only from

fiscal consequences which are posed by practical usage of the possibilities of international avoidance of income taxation but also from the influence of the phenomenon on free-market competition, first o all, in internal EU market. One of the basic assumptions of the competition principles in a democratic state of law is the neutrality of taxes, whereas practical usage of possibilities which are posed by international avoidance of income taxation makes that the tax system ceases to be neutral for particular participants of the market. The competition position of these entities which avoid taxation of their income is significantly better than other entrepreneurs competing with them on the market who do not use the above possibilities. As a result, income taxes are those which decide about better competition position which is contrary to the assumptions of all legislations of developed countries, Poland included.

Noticing the importance of the problems discussed by the authorities of particular states launched the process of establishing cooperation for fiscal purposes between the developed countries and the states (territories) commonly perceived as using harmful tax competition, without precedent in the history of the phenomenon. As a result thereof and the changes in international tax law, there were many changes caused in the methods of international tax avoidance for income. Some of the methods of so called tax optimization most popular in the last years are presently of only historic value (e.g. so called director remunerations and dividends paid from Cypriot companies). At the same time, there are new solutions coming, including those based on regulations of the European law. The attention should be paid also to „new" solutions resulting from legal regulations applicable for years which somehow „came to the daylight" along with closing easier and more available channels for international avoidance of income taxation (e.g. director remunerations paid from the Lebanese company of *SAL offshore* type).

The most important goal of this work was to demonstrate the pathology and gaps of Polish tax law arising at the contact with tax law regulations of other countries which have concluded double taxation treaties with Poland and legal and tax limitations of counteracting these phenomena. In the abovementioned scope the following research theses have been posed and proved:

1) Double taxation treaties, in many cases, instead of avoiding double taxation of income, allowed and to a certain extent still allow for double non-taxation of certain categories of income, which is a consequence of the lack of correlation of their regulations with

the internal tax law regulations of countries which have concluded these treaties with Poland and what mainly concerns the treaty relations with countries that have Anglo-Saxon legal systems. Proof of this thesis determines the criticism of the current method of fixing the content of double taxation treaties, i.e. in isolation from the tax law regulation of countries which are parties to these agreements concluded with Poland;

2) Jurisdictions having Anglo-Saxon legal systems, honoring and protecting trust mechanisms, are one of the most serious obstacles in the fight against tax avoidance on a global scale. The Anglo-Saxon trust mechanisms are also the most serious limitation of international information exchange and legal assistance in tax and fiscal-criminal matters. These mechanisms addressed in the vast majority to foreign entities are subject to special protection of the national law of the countries (territories) applying them, which determines the ineffectiveness of the regulations of national law of other countries, including Poland, counteracting international tax avoidance;
3) The Anglo-Saxon EU Member States, as well as their overseas territories associated with the EU, provide a peculiar window to offshore jurisdictions, and do not impose witholding tax on transfers to these countries (territories). Due to the fact that these countries (territories) enjoy the benefits of the Community law, companies incorporated in their territories are used as intermediaries in the transfer of profits to offshore jurisdictions, what determines the fact and the scale of harmful tax competition on the EU internal market. The mechanisms of domestic law of EU Member States with Anglo-Saxon legal systems constitute a real threat to the realisation of fiscal goals of other EU Member States, including Poland;
4) Due to the different legal systems of EU Member States and the lack of their harmonization in specific areas, as well as the regulations of their national law, the treaty principles of the EU internal market are distorted primarily in terms of harmful tax competition between particular EU Member States;
5) The international exchange of information and legal assistance resulting from international agreements concluded with tax havens in practice does not work, which is a consequence of reference in the content of these agreements to the regulations of domestic law of countries (territories) applying harmful tax competition. This means that the scope of this cooperation is governed in practice by the regulations of the internal law of tax havens, and not by the provisions of international agreements

concluded by these jurisdictions. The above fact also determines the far-reaching discrepancy between the intention (goal) of the international community in the scope of tax agreements concluded with tax havens ensuring international exchange of information and legal assistance from these jurisdictions, and the practical scope of this cooperation;

6) CFC regulations functioning in Polish law (several provisions of art. 30f of the Personal Income Tax Act and art. 24a of the Corporate Income Tax Act) are inconsistent with art. 2 in connection with art. 217 of the Constitution of the Republic of Poland and art. 31 it. 1 and 2 of the Constitution of the Republic of Poland, and also violate the provisions of art. 7 of particular double taxation treaties concluded by Poland. Moreover, these regulations, despite formal legal compliance with European law, as a result of numerous legal defects and the lack of international harmonization of analogous legal solutions adopted by other countries, do not remain neutral for conducting cross-border economic activities based on considerations other than primarily fiscal considerations;
7) Regulations of the so-called the general anti-avoidance clause (art. 119a § 1 - 3, art. 119c § 1 - 2 and art. 119d of the Tax Ordinance) are inconsistent with art. 2 in connection with art. 217 of the Constitution of the Republic of Poland, as well as art. 22 and art. 31 it. 3 sentence 1 of the Constitution of the Republic of Poland. Moreover, pending the entry into force of the Paris Convention to implement tax treaty related measures to prevent base erosion and profit shifting the abovementioned regulations of the Tax Ordinance are inconsistent with the provisions of art. 7 of double taxation treaties concluded by Poland with non-EU countries that do not contain an anti-abusive clause based on the newest version of the OECD Model Convention. This inconsistency in case of application of the abovementioned provisions of the Tax Ordinance to the taxpayer who is a resident of such a state being a party to the double taxation treaty concluded with Poland will determine the violation of the provisions of art. 91 it. 2 of the Constitution of the Republic of Poland. What is more, the above provisions of the Tax Ordinance are inconsistent with the provisions of art. 18, art. 49, art. 54 and art. 63 of the Treaty on the Functioning of the European Union in the scope regarding personal income tax.

Proof of these theses means the failure of Polish legislation counteracting international tax avoidance, including probably the most important concept and regulation aimed at all tax

avoidance mechanisms, which is a general anti-avoidance clause. The consequence of realisation of the abovementioned research assumptions is the thesis about the necessity to modify the Polish tax law regarding counteracting international tax avoidance of income. In this respect, global changes in the area of contact between continental and Anglo-Saxon legal systems are mandatory, first of all regarding the use of trust mechanisms for the purpose of international income tax avoidance (and sometimes also tax evasion). Without these changes, any regulation of the internal law of one country will not be significantly effective.

The presented paper consists of three chapters and a summary. The first chapter is devoted to the analysis of general issues of international tax avoidance of income and placing it in Polish reality of law. In the scope, the scope of a definition of a notion of „tax paradise" was discusses, the issue of tax avoidance and tax evasion, problems of international cooperation in cases with tax and criminal-fiscal nature and legal limitations of the cooperation resulting from internal legislation of the contracting states (territories) using harmful tax competition. In this part of the paper, also the principles of functioning of trust structures in Anglo-Saxon jurisdictions were discussed, having the fundamental meaning for the topic of the paper.

The second chapter covers an analysis of international avoidance of income taxation. This analysis has been carried out in the broad global context, showing the current tendencies of the international community, striving to eliminate tax havens in their current shape as participants in the international legal and financial circulation. In the first place, classic methods of international avoidance of taxation were discussed, in particular whereas the usage of subsidiaries incorporated in offshore jurisdictions or states using tax preferences (United Arab Emirates, Lebanon), including also those belonging to EU (Cyprus, Malta, United Kingdom of Great Britain and Northern Ireland), treaty shopping, profits shifting and change of tax residency of natural and legal persons. The subject of further analysis is the problem of specific methods of international avoidance of income taxation concerning: passive incomes (dividends, royalties and interests), intellectual property rights (among others: in-kind contribution of a trademark to Polish capital company), securities, real estates as well as operating activity (problems of permanent establishment in case of chain of tax transparent partnerships) as well as structures of assets protection, including fiduciary transfer of assets, and private foundations, functioning some times in the separation from tax aspects and used in the processes of planning and conducting general succession. The above part of the paper has

the largest meaning both practical and theoretical-legal ones, indicating for the legislator the channels of international avoidance of income taxation, being the source of loss of part of budget inflows. From the perspective of the theory of tax law, the key meaning should be attached to the level of contact of the double taxation treaties and domestic tax law of the contracting states. In this area, in fact there is a definite majority of legal mechanisms leading to double non-taxation of defined categories of income (e.g directors' remunerations paid from the Lebanese company of SAL *offshore type* or indirect sale of real estate through the company of Cypriot law). The existence of the mechanisms constitutes an actual and multiple error of the Polish legislator, who did not notice legal-tax consequences of concluding double taxation agreements in separation from the provisions of internal tax law of the states with which the agreements were concluded. From this perspective, the analysis of mechanisms of international avoidance of income taxation carried out in the paper has a significant value for the correctness of the legislation process, in particular whereas the consistency of the established tax law with the assumptions of the legislator, being an exact *de lege ferenda* conclusion. To sum up, in this part of the paper an analysis of most actual mechanisms of international income tax avoidance has been carried out, and also of related tax law risks.

The third chapter is devoted to the analysis of the legal regulations counteracting the international avoidance of income taxation. First of all, the European law regulations counteracting tax avoidance and having fundamental significance for the issues covered by this paper were subject to analysis (EU Council Directive 2016/1164 laying down provisions against tax avoidance practices that directly affect the functioning of the internal market) and the so-called general anti-avoidance clause introduced into the Tax Ordinance as of 15th July 2016 and being a highly controversial issue, both in terms of the legislative procedure and substantive lawful compliance with the Constitution of the Republic of Poland. Then, the regulations of specific clauses counteracting international income tax avoidance and the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting were subject to analysis. This convention still requires ratification by a huge majority of signatory states, however its importance for the discussed issue is difficult to overestimate as this convention changes the content of all double taxation conventions concluded between its signatories. The next editorial units of the third chapter focus on the issues of transfer pricing, tax residency certificate, withholding tax, thin capitalization and international information exchange and legal assistance in tax and criminal-fiscal matters which may be characterized by having increasing dynamics, as well as the automatic

exchange of banking information for purposes fiscal. The above analysis was made from the perspective of Polish law, and its purpose is to define the tax-related limitations of international tax avoidance of income. In this part of my publication, also the analysis was presented of so called CFC regulations – the taxation principles of the controlled foreign companies. The issue causes numerous controversies in the literature devoted thereto, concerning both legislation procedure as well as consistency with the Constitution of the Republic of Poland and the European law and double taxation agreements. In the scope, a far-reaching inconsistency was proved of these regulations of the Polish law (i.e. art. 24a of the Corporate Income Tax Act and twin regulation of art. 30f of the Personal Income Tax Act) with the Constitution, European law and all double taxation treaties concluded by Poland. In the final part of the chapter, the legal regulations with non-tax nature werediscussed, but which may have an influence on security of functioning of mechanisms of international income tax avoidance and the related legal and tax risks. In this respect, regulations of banking law and anti-money laundering imposing on the so-called obliged entities the requirement of proper identification of the actual beneficiary of bank and brokerage accounts, in particular those belonging to commercial law companies. Identification of the actual beneficiary and international exchange of banking information for fiscal purposes and related legal assistance are one of the most important mechanisms to counteract international tax avoidance. At the same time, the functioning of trust mechanisms permanently rooted in Anglo-Saxon legal systems is the basic limitation and the most serious obstacle to the effective counteracting international tax avoidance from the perspective of the state.

The final part of the paper discussed is the summary being an attempt to present a problem of international avoidance of income taxation and harmful tax competition used to a different extent by specific countries (territories) from the perspective of two different directions of fiscal policy of the state which can be observed among EU Member States. International tax competition is not in fact an exclusive domain of the developing countries, which want to catch up with the distance to the developed countries. The above direction of the state fiscal policy, considered by other countries as harmful tax competition, can be observed in many developed countries also those belonging to the European Union (e.g. in Cyprus, in Malta, in Great Britain, Luxembourg and in Holland and Switzerland). The fiscal policy of this group of states and territories autonomic in taxes assume supporting the investment activity of the foreign entrepreneurs which constitutes a form of attracting foreign capital to a given territory, frequently within defined areas of business activity, considered as

key ones for the state (e.g. holding privileges used by Holland and Cyprus). The tax legislation of these states consider the wealth of citizens as the superior good to agree with a silent principle that for the state to be rich it must be inhabited by possible largest number of rich inhabitants. The best example of the fiscal approach is Switzerland where rich natural persons who plan to settle in Switzerland negotiate with the Swiss Inland Revenue the rate of income tax to be subject to after obtaining a Swiss tax residency. The rate is the lower the larger income is allocated by a given person in the territory of Switzerland. The second group of states should include, i.a., France, Belgium, Denmark, Norway, Sweden, Finland and Germany. These countries, having stable and fully developed economies, with few exceptions (e.g. 80% tax exemption of profits from royalties in Belgium law) do not use income taxes as the mechanism to excite the economic growth, conducting in the scope quite a passive fiscal policy. Poland seems to be definitely closer to this group of states. The purpose of the analysis made in the summary of the paper presented was to show the problem of international avoidance of income taxation in the new light as the mechanism of economic competition by the states competing with each other on the international arena, including also the internal EU market. Against the background of the above analysis the question was presented about the nature, direction and goals of the tax policy of Polish state. The tendencies and directions of development of tax legislations presented which can be observed worldwide including the neighbouring states of Poland, may be a starting point to wider discussion about purposefulness of making a certain overestimation in the scope of shaping Polish tax law in the area of income taxes.

V. Discussing other scientific-research achievements:

Other scientific-research achievements in accordance with the regulation of the Minister of Education and Higher Schools of 1st of September 2011 on criteria to assess the achievements of the person applying for being awarded the degree of a habilitated doctor (J. of L. Of 2011, No. 196, it. 1165):

1) § 4 point 1 of the regulation – authorship or co-authorship of a monography, academic publications in international or domestic magazines other than those located in bases or on the lists, referred to in § 3, for a given area of knowledge:

The list of publications is located in the attachment no. 5

The monography presented above is included in the main research course of my academic work. Within its frames, I concentrate on problem of harmful tax competition and international avoidance of income taxation. The above normative area is a cross border nature, of its essence, as it includes not only normative acts of international law but also Polish law and other states connected with Poland in terms of double taxation treaties. At the contact of these three legal planes, there are legal gaps leading to double non-taxation of a given category of income. In the previous years, numerous examples of international avoidance of income taxation also in conduct of Polish taxpayers (e.g. payments of dividends from the Cypriot companies, incorporation of subsidiaries in the states using the holding privileges or payment of the directors' remunerations from the Cypriot companies or companies incorporated in the Unites Arab Emirates) show that the wording of the double taxation treaties may not be established in separation from the provisions of the domestic law of the contracting states. The analysis of general methods of international tax avoidance (treaty shopping, profits shifting or change of tax residency of natural persons) is insufficient in present reality of international economic and legal aspects. For this reason, both in the monography presented above and in other publications with the nature of articles I focus on detailed methods of international avoidance of income taxation which allows for their identification and at the same time closing at least axiological or legal gaps within which the mechanisms function. Considering very high, even hyperinflationary dynamics of Polish legislation aimed at counteracting international tax avoidance which is enacted in a very quick pace, especially taking into consideration the complexity of the subject matters regulated by this legislation, some of my publications contains a critical study devoted to it. In these publications and partially also in the abovementioned monography an analysis of these regulations of Polish law has been done, especially from the perspective of their compatibility with the Polish Constitution and the laws of the European Union.

1. On the effective lack of international cooperation on tax issues with *offshore* jurisdictions, "Monitor of Customs and Tax Law", 2015, No. 10.

The above publication opens a cycle of articles in "Monitor of Customs and Tax Law" devoted to the most significant problems of Polish and international tax law in the scope of international income tax avoidance. The cycle of the publications presented below does not refer to detailed methods of (mechanisms) of international tax avoidance but covers with its scope key problems of the area, such as the scope of effective cooperation in tax issues with the states (territories) using harmful tax competition, the influence of using Anglo-Saxon trust on the tax residency of the companies of the foreign law or the problems of the tax residency certificate as the document confirming the tax residency of natural and legal persons.

The goal of the above publication is to show that despite concluding by Poland over ten and on a global scale over five hundred agreements of information exchange in tax issues with *offshore* jurisdictions, an actual scope of the cooperation is marginal, going far from the assumptions of the international legislator. These agreements, following the Model OECD Convention on exchange of information in tax issues, introducing a wide scope of contractual cooperation, refer to the provisions of the domestic law of the contracting states (territories). As a consequence of these regulations, this is not the international agreements, but indirectly the domestic law of tax paradises which decides about effective scope of information exchange for the tax purposes with these states (territories). At the same time, the *offshore* jurisdictions purposefully get rid of their power with reference to international companies incorporated into these territories, which is directly reflected in the scope of international cooperation with these states (territories). The analysis made leads to the thesis that the agreements on exchange of information in tax issues with the *offshore* jurisdictions do not fulfill their basic function for which they were established.

2. Problems of the tax residency certificate as a document confirming the tax residency of natural and legal persons - p. I, "Monitor of the Customs and Tax Law", 2015, No. 11.

3. Problems of the tax residency certificate as a document confirming the tax residency of natural and legal persons - p. II, "Monitor of the Customs and Tax Law", 2015, No. 12.

Due to the nature and the scope of the issue of the tax residency certificate its analysis was made in two articles. The problems are characterized by specific validity in the era of the financial crisis and intensification of legislation activities aiming at counteracting harmful tax competition. The goal of the publication is the reply to the question whether the tax residency certificate is the only document confirming the tax residency of natural and legal persons in order to provide them with treaty protection resulting from the provisions of double taxation treaties. In the scope of the above issue, the legal analysis was made of the definition "tax residency certificate" and its proper form as well as a legal-tax analysis of the contact of the Polish and international tax law and internal regulations of other states connected with Poland with the double taxation treaties in the scope of tax residency of taxpayers and its confirmation for the purposes of international legal turnover. On the basis of the analysis made and in the opposition to the dominant approach of the doctrine the thesis was put forward that in the light of provisions of double taxation agreements, the tax residency certificate should not be the only document confirming the tax residency for the purposes of application of the double taxation agreements. What is more, in some cases, concerning specific regulations of domestic law (e.g. regulations of the law of the United Arab Emirates concerning the companies of the *onshore type)* the lack of the tax residency certificate should not decide about the lack of tax residency of the these companies, which can be, in the opinion of the author, confirmed with other documents. It means that the Polish Inland Revenue should be obliged to refer to the regulations of the foreign law for assessing the tax residency of the foreign companies.

4. Using the Anglo-Saxon trust mechanisms by the Polish taxpayers and problems of tax residency of the companies of the foreign law - p. I, "Monitor of the Customs and Tax Law", 2016, No. 2.

5. Using the Anglo-Saxon trust mechanisms by the Polish taxpayers and problems of tax residency of the companies of the foreign law - p. II, "Monitor of the Customs and Tax Law", 2016, No. 3.

The above two publications are devoted to the problems of influence of using Anglo-Saxon trust mechanisms by the Polish taxpayers with reference to the companies of the foreign law on the tax residency of the companies. Due to the extent of the above issue, it was discussed in two articles. The first of them covers the comparable analysis of the institution of trust itself in the Anglo-Saxon and continental model with a historic outline and location of the trust in the system of Polish law, whereas the other is devoted *stricte* to tax consequences of using these mechanisms by Polish taxpayers in the scope of the tax residency of the companies of the foreign law, in which Polish resident appears as an equitable owner. On the basis of the analysis made the thesis was put forward that using Anglo-Saxon trust mechanisms by Polish tax residents with reference to the companies of the foreign law, including *offshore* companies, as to the principle decides about effective (actual) place of their management, in the territory of the Republic of Poland, which should be equal to covering the companies with unlimited tax obligation in Poland and in the light of the Polish regulations in the scope of income taxes and double taxation agreements. As a result of the lack of formal-legal or actual cooperation between Poland and *offshore* jurisdictions and other Anglo-Saxon states which provide the institution of trust with special protection of their domestic law, it is not possible to prove the above facts (i.e. the place of effective management of these companies). This, in turn, decides about far-reaching discrepancies between the continental (Polish) and Anglo-Saxon legal system (of the state of the seat of the foreign law company and at the same time the competent law for the trust relation) and is an obvious *de lege ferenda* signal first of all towards the European legislator.

6. Using Anglo-Saxon trust mechanisms by Polish taxpayers versus problems of transfer pricing, "Tax Advisory", 2016, No. 4.

The subject of the publication is the analysis of the consequences of using the institution of trust in the Anglo-Saxon model by Polish tax residents with reference to the companies of the foreign law for the application of the regulations of Polish tax law in the scope of transfer pricing. The analysis made proves that as a result of far-reaching discrepancies between the continental and Anglo-Saxon legal systems in the scope of international exchange of information concerning the actual (substantive law) ownership structure of the incorporated companies in the states with Anglo-Saxon legal systems and which have a full trust structure, it is not possible to establish actual affiliations of such units with Polish taxpayers making transactions with them. As a consequence, the regulations in the scope of transfer pricing are not applicable in practice to the above transactions which definitely makes it difficult to control them in tax-legal terms, infringing both axiological and normative bases of these regulations. Despite indisputable importance of the problems analyses, no actions were undertaken on the international arena to uniform the principles of international cooperation between the states with Anglos-Saxon and continental legal systems so that the subject of the effective exchange of information for the fiscal purposes could be also the data covered with trust relation. Except for the few exceptions, providing information on ultimate beneficial owners of the companies incorporated in the Anglo-Saxon states (territories) hidden behind the structure of nominee shareholders infringes local legislation and administration practice of these states (territories) which is quoted by the double taxation agreements and agreements on exchange of information for tax purposes.

7. Activity of the proxy of the Anglo-Saxon company with a full trust structure and the creation of the permanent establishment on the basis of the double taxation treaties - p. I, "Monitor of the Customs and Tax Law", 2016, No. 4.

8. Activity of the proxy of the Anglo-Saxon company with a full trust structure and the creation of the permanent establishment on the basis of the double taxation treaties - p. II, "Monitor of the Customs and Tax Law", 2016, No. 5.

The subject of the above publication is the analysis of the problem of the influence of the activity of the proxy of the Anglo-Saxon company with full trust structure on the creation of the permanent establishment of the company in the state of the activity of the proxy, which has not been tackled before in Polish literature. Due to the complexity of the issue, its analysis was made in two separate articles. Due to the fact that in a majority of structures of international tax avoidance a full trust is used, an equitable owner of such companies (their substantive owner) is not disclosed in any publicly available register. In such a case the ultimate beneficial owner of such a foreign company willing to represent it frequently beyond the state (territory) of its incorporation (where the company is represented by the trust management) must obtain a proper power of attorney from the management board of the company. In the publication, the thesis was proved saying that each case of concluding the contracts by the proxy of such a company being at the same time its equitable owner (substantive owner) should be qualified as the activity of a dependent agent constituting, as to the principle, the permanent establishment in the state of concluding the contract by this dependent agent. As a result, so that the proxy of the Anglo-Saxon company having a full trust structure could be its independent representative within the meaning of art. 5 it. 5 of the Model OECD Convention, may not be the ultimate beneficial owner of the company.

Although a different situation seems to be common in case of using the trust mechanisms within the Anglo-Saxon companies for international tax avoidance of income, the evidencing reasons decide about practical inability to tax defined profits of these foreign companies in the territory of Poland as profits of the Polish permanent establishment of the companies. The bodies of Polish Inland Revenue have in fact no possibility to obtain the information as to the identity of an ultimate beneficial owner of these companies, and the same time they are deprived of a chance to detect a fact of legal and economic interdependence of the foreign companies and their proxies. In the above scope the *de lege ferenda* conclusions were formulated, first of all, towards the international legislator. These conclusions are especially valid due to the significant dynamics of joining the international system of automatic exchange of bank information for fiscal purposes by specific states. The banks in particular whereas the banks from the Anglo-Saxon countries, possessing the information on the identity of ultimate beneficial owners of such companies, transferring this information to tax bodies of the state of tax residency of these persons, would allow for

verification of proper tax settlements of such foreign companies in the scope of due taxation of these profits on the contact of Polish law and the law of the state of their tax residency.

9. Tax consequences of fiduciary transfer of assets, "Tax Advisory", 2017, No. 12.

The subject of the publication is the analysis of the tax-law consequences of fiduciary transfer of assets under the Personal Income Tax Act and the Inheritance and Donation Tax Act. In case of a fiduciary transfer of assets on the basis of the Anglo-Saxon concept of shared ownership, the subject of such transfer of assets may be the assets of persons who are subject to unlimited tax liability in Poland. In such a case, the equitable owner changes, while the legal owner remains the same. Due to the incoherence of trust mechanisms with legal institutions of continental legal systems, especially tax regulations and institutions, the fiduciary transfer of assets may be tax-neutral on the side of the settlor under the Personal Income Tax Act, but may also - depending on the way of making such fiduciary transfer of assets - generate income. Due to the fact that Polish tax law does not always follow economic content, making two identical legal transactions in terms of economic content, but differing in terms of legal construction, may be subject to a different legal and tax qualification. In case of a direct payment for the transfer of the right of substantive ownership of assets or property rights covered by the trust, taxable income shall be generated on the side of the resigning settlor. On the other hand, the fiduciary transfer of assets under the free title will be neutral under the Personal Income Tax Act, at the same time such transfer will be subject to inheritance and donation tax as long as the law of the substantive ownership of the assets covered by the trust is exercised on the territory of Poland. By contrast, indirect asset-raising as to economic content can not be regarded as income in personal income tax due to the lack of the subjective identity between the seller of certain assets or property rights covered by the trust and the beneficiary of payments on this account. On the basis of the analysis made in the abovementioned article conclusions addressed to the international legislator have been presented regarding the necessity to unify national legislations at least among the EU and OECD Member States. Without such unification, taxpayers will still be able to shape the structure of their assets or business operations in such a way as to avoid taxation that would occur if a certain transaction was not made within the trust structure.

10. The scope of application of beneficial owner clause in Polish tax law, "Monitor of the Customs and Tax Law", 2018, No. 5.

The subject of this publication is an analysis of application of beneficial owner clause in Polish tax law as a mechanism counteracting using Anglo-saxon trust solutions in order to avoid tax burdens coming out of regulations of Polish tax law. The subject of analysis includes regulations of Polish domestic tax law as well as criminal and fiscal-criminal law, what is the consequence of wide *spectrum* of using trust mechanisms in practice. Based on the analysis carried out in this article a conclusion has been made that the scope of using beneficial owner clause in Polish tax law is definitely too narrow and insufficient from the perspective of proper protection of fiscal revenues. Moreover, several conclusions *de lege ferenda* and *de lege lata* have been presented within the scope of possible legal solutions which could counteract efficiently cases of infringements of regulations of Polish tax law by using trust mechanisms. In this respect, it has to be mentioned the necessity of introducing the definition of "real owner" into the Tax Ordinance or - as an alternative solution - modification of the general anti-avoidance clause so that it contains provisions referring directly to the use of trust mechanisms in order to gain unauthorized tax benefits as well as the postulate of introducing into the relevant regulations of international law provisions authorizing the execution of tax liabilities from the entrusted property of the trustee.

11. The tax law consequences of return of contributions in case of dissolution (liquidation) of a partnership in the light of regulations of Personal Income Tax Act, "Monitor of the Customs and Tax Law", 2018, No. 9.

This article analyses an issue of dissolution (liquidation) of commercial law partnerships as a mechanism leading to creation of profits which not only do not fall under personal income tax, but also are not recognized as profits in the meaning of Polish tax law. In this article it has been proved that art. 14 it. 3 (10) of Personal Income Tax Act is burdened by a system and functional legal loophole which comes down to incompatibility between the tax law consequences which should have been achieved in the light of *ratio legis* of this provision and tax law consequences that come out of practical use of this provision. The tax law legislator has made an assumption that the funds received by a partner of a liquidated

(dissolved) partnership have been taxed on the earlier stage (during the partnership existence). In the light of language meaning of art. 14 it. 3 (10) of Personal Income Tax Act the funds received by a partner of the partnership which does not have legal personality from liquidation (dissolution) of such partnership are excluded from the taxable revenues of such partner with no regard to any additional circumstances. The abovementioned assumption of the tax law legislator has not been expressed in Personal Income Tax Act and what is more, it is burdened by a mistake since on the grounds of tax law not every property gain of a tax transparent partnership (of its partners) is recognized as tax revenue and as a consequence of that such gain may not fall even under nominal taxation. Obtaining by the new partners of a tax-transparent partnership the right to dispose of the contributions made to this company by its former partners, who have withdrawn from it without receiving a refund of previously contributed contributions, is one of the categories of property benefits that are not considered to be a tax revenue. As a result of the analysis made *de lege ferenda* and *de lege lata* conclusions have been presented, among which it should first of all be necessary to amend the content of art. 14 it. 3 (10) of the Personal Income Tax Act by introducing the condition of prior taxation of funds due to liquidation or dissolution of a tax transparent partnership on the level of a partner who receives these funds as a condition for excluding these funds from taxable revenues under the Personal Income Tax Act, and more broadly, this means that the tax legislator should take into account the fact of prior taxation of funds to be excluded from taxation, as a condition *sine qua non* of applying such an exclusion.

12. Limitations of administrative financial fines imposed on natural persons by Commission of Financial Supervision based on Act of 29 November 2005 on public offering and conditions of entering financial instruments to organized trading system and on public companies before 1 June 2017, "Monitor of the Customs and Tax Law", 2019, No. 1.

The issue of limitation of administrative financial fines is one of the most controversial problems in administrative law doctrine, being the subject discrepant judgements, including the Supreme Administrative Court passing its judgements in different adjudicating panels. On 1st June 2017 new regulations governing limitation of administrative financial fines have been implemented to the Administrative Proceeding Code. However,

decisions issued by the Commission of Financial Supervision imposing administrative financial fines on natural persons who have not fulfilled or have fulfilled improperly their reporting obligations coming out of Act on public offering and conditions of entering financial instruments to organized trading system and on public companies before are still in a legal circulation. These decisions at least for few years will be subject of administrative courts judgements what makes this issue having still a big practical value. Before 1st June 2017 none of the provisions of the abovementioned Act either of the Administrative Proceeding Code have been regulating this issue and appropriateness of applying the relevant regulations of Tax Ordinance by way of legal analogy was the key aspect from the perspective of assessment of limitation of these fines. Based on the analysis which has been carried out in this article, taking into consideration standpoints presented in the doctrine as well as in the jurisprudence and also the evolving judicial decisions of the Constitutional Tribunal regarding necessity of expiration of all public law claims of the state against an individual, a final conclusion has been made that administrative financial fines imposed on natural persons before 1st June 2017 under the abovementioned Act of law have been expired based on art. 68 § 1 of the Tax Ordinance applicable by way of legal analogy. As a consequence these fines have been expired after a period of 3 years, counting from the end of the calendar year in which a reporting obligation towards Commission of Financial Supervision was placed on a certain natural person.

13. Is '*exit tax*' consistent with the laws of the European Union?, "Monitor of the Customs and Tax Law", 2019, No. 2.

The subject of this article is an analysis of regulations of Polish Personal Income Tax Act introducing so-called 'exit tax' from the perspective of their conformity with the laws of the European Union. New regulations of the abovementioned Act impose taxation on virtual profits, which might be, but also might not be gained from disposal of assets of a natural person, a Polish tax resident, in case of transferring such assets abroad or in case of changing tax residency by their owner, as a consequence of which Poland wholly or partially losses its right to impose a tax on these assets. Based on the analysis carried out in this article, including jurisprudence of Court of Justice of the European Union, it has been proved that the abovementioned Polish regulations constitute a significant and direct breach of the European

Treaties, especially within the scope of freedom of movement of capital and persons on the internal market of the European Union. It has been also proved that exit tax is a tax on assets, not on profits, what creates a tax law sanction aimed at well-off individuals whose fundamental rights guaranteed by the laws of the European Union are broken in such a way. In this article *de lege ferenda* and *de lege lata* conclusions have been presented, including particular legislative solutions in the analyzed area. The proposed solutions would be consistent with the EU laws and would enable to tax in Poland profits effectively derived from the sale of assets after change of tax residency of their owner or after transferring these assets out of Polish territory.

14. Holding privilege as a mechanism of counteracting international tax avoidance on the example of regulations of Russian tax law, "Monitor of the Customs and Tax Law", 2019, No. 3.

The above publication is devoted to the analysis of the latest solutions of the Russian tax law introducing a special type of holding privilege as a mechanism of counteracting international tax avoidance. This analysis was made from the perspective of legal and international conditions of these legal solutions and the possibilities of their application in Poland. The regulations of the Russian tax law analyzed in the above publication assume granting of tax exemption for certain categories of passive incomes to offshore holding companies, provided they are redomicile from the state of their former residence, having the status of an offshore jurisdiction from the perspective of Russian law regulations, to one of the two special administrative districts of the Russian Federation, i.e. *Russkaya* and *Oktyabrskaya* islands. The above legislative solutions, which have been in force since 1st January 2019, although they are characterized by the specificity typical for Russian legal and economic realities, have many features taken from other legal systems, especially from the regulations of the Republic of Cyprus. On the basis of the analysis made in the abovementioned article *de lege ferenda* conclusions were addressed to the Polish lawmaker. The legal solutions presented and analyzed may constitute an interesting legislative impulse for the Polish legislator. Poland is one of the increasingly smaller group of countries that do not use holding privileges as a mechanism of international tax competition and preventing tax avoidance with loss for budget revenues and its own economy.

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