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**TAX PLANNING FOR SMALL AND MEDIUM
ENTERPRISES (SMEs)**

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INTRODUCTION

Every business entity operating within a specific market and its environment is obliged to observe applicable provisions of tax law. Nevertheless, it is only when the enterprise possesses complete information and knowledge that it can properly diagnose, analyse, plan and develop its business activity, thus increasing its income. This study discusses skilled differentiation among tax optimisation, tax savings, tax evasion and tax avoidance. The aim is to indicate criteria for SME sector entities (SMEs) not classified as legal entities (in other words, they are run by natural persons and they pay personal income tax) to choose the form of taxation that is best for them. This aim is supported by a case study based on actual economic data, taking into account applicable tax regulations.

The result of the study is recommendations for entrepreneurs facing the dilemma of choosing the form of income taxation that is most suitable for them, keeping in mind that tax planning is an element of the entity's operating strategy.

ECONOMIC INTERPRETATION OF TAX OPTIMISATION

Entrepreneurs may pay lower taxes and remain in compliance with tax regulations. Applying tax optimisation allows the company to reduce its tax burden and thus improve its financial results. However, it is vital to conduct an appropriate analysis that can be used in the creation of a tax strategy enabling the entrepreneur's burden imposed by the State Treasury or other public law entities to be legally minimised. Tax optimisation promises not only a lower tax burden and better financial result but, first and foremost, an opportunity to find additional resources for the rapid development of the enterprise.

The specialist literature defines tax optimisation as tax planning aimed at creating the most beneficial structures and solutions in respect of tax burdens and quasi-fiscal charges related to specific economic actions taken by taxpayers [Wyciślok 2013]. By reducing the tax burden an entity faces, tax optimisation can be treated as a source of savings. The starting point for such a strategy is the analysis of applicable tax regulations as interpreted and employed by tax authorities and administrative courts as well as the Constitutional Tribunal judicature. On 10 July 1996 the Supreme Administrative Court (SAC) issued a judgment stating that provisions of the tax law do not prohibit the taxpayer from choosing the most beneficial solution, so long as it complies with the law. As the SAC pointed out in its judgment, the choice of the least taxed route is an independent decision of every taxpayer and may not be controlled by tax authorities [The Judgment of the SAC in Katowice of 10 July 1996].

The concept of tax optimisation (also referred to as tax planning) means such a choice of the structure of a planned legal act so that the total tax burden can be reduced to a minimum. Tax optimisation should, however, be distinguished from tax evasion. That means that tax planning takes place within the limits of the applicable legal regulations. As Wyciślok has emphasised, the term tax savings is not tantamount to tax optimisation [Wyciślok 2013] as the former consists in refraining from actions that result in creating a tax liability. On the other hand, tax planning is aimed at creating optimal structures and solutions related to specific economic actions taken by the taxpayer (egospodarka.pl, accessed: 02.06.2011).

Tax optimisation strategy (Fig. 1) requires resolutions in respect of the objective for which the state introduces and modifies the system of taxation, the criterion that determines the importance of the assumed objectives and conditions limiting the set of feasible solutions. The main indicator of optimisation is presumed to be the minimisation of adverse effects of the redistribution of incomes by public authorities, with the limiting condition being the available set of taxation instruments. The gist of tax planning is to choose expenses all or part of which are tax-deductible. Therefore, the essence is to generate such expenses that are regarded as tax deductible costs and thus reduce one's taxable base.

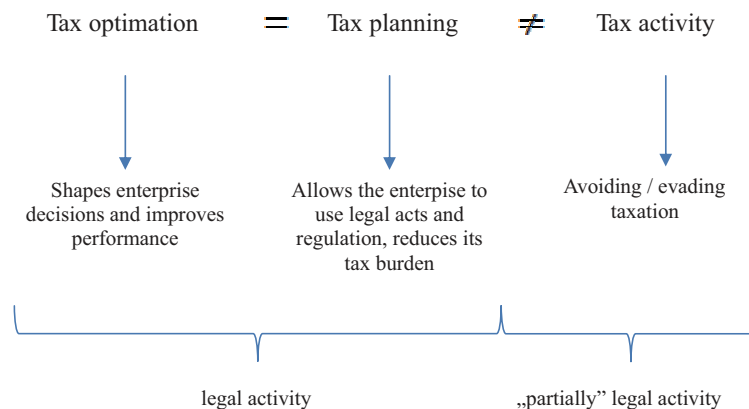


FIG. 1. Tax optimisation, planning and resistance

Source: the author's own work based on Rudnicki and Blak [2007].

For entrepreneurs, tax planning is becoming increasingly important, although rather in its supranational sense. Entities are set up in certain countries so that taxable revenues can be revealed where there are low effective tax rates. A principal objective of entrepreneurs is to reduce tax burdens to a minimum, a process referred to as tax resistance. The literature distinguishes between two forms of tax resistance: tax avoidance and tax evasion [Filip 2009]. Tax avoidance consists in the lessening of tax burdens using methods and means permitted by tax law, and aimed at taking advantage of those opportunities which, within the framework and limits of applicable regulations, relieve the burden of taxation. Tax evasion, on the other hand, involves taking actions that lead to the minimisation of tax burdens or their complete elimination but which are prohibited by tax law.

Market conditions in Poland should be carefully observed because economic realities in the country do not guarantee business operations will be stable. The constantly changing law and never-ending reforms take a serious toll on SMEs, which are often unable to cope with changes in the law because new statutory obligations bring high costs with them. Therefore, in order to operate effectively, it is worth adapting one's business model to market realities, in which tax optimisation may be of use.

It is worth emphasising that there is no such legal norm in the Polish legislature that would impose on the taxpayer an obligation to bear the highest possible tax burdens in a given situation or to plan a course of activity in such a way that tax liabilities would be maximised [Krasnodębski 2009]. Thus, there is no prohibition against taxpayers optimising their tax liabilities. Hence, tax optimisation involves adopting appropriate tax strategies that enable a reduction in tax burdens and postponing the obligation to pay tax liabilities. Tax strategies can be classified as follows:

- strategies aimed at reducing tax liabilities (choice of how the activity is carried out, choice of tax settlement method, cost strategies, income strategies, strategies taking advantage of agreements for the avoidance of double taxation);
- strategies aimed at postponing the payment of tax liabilities (the cash method of VAT settlement, quarterly settlement of tax and advance payments, strategy of simplified advance payments).

OPTIMISATION IN THE CONTEXT OF CHOOSING ONE'S FORM OF INCOME TAXATION – A CASE STUDY

In the case of SMEs, choosing the legal structure under which to operate also entails choosing a tax settlement method, concerning, in particular, income tax. Therefore, the latter part of the study focuses solely on the impact of the form of taxation chosen on lessening tax burdens. Small- and medium-sized enterprises in Poland can choose from among several forms of taxation in respect of income and goods and services taxes. The largest array of tax settlement choices is available to natural persons running individual business activity and partnerships formed by such persons. A decision on the settlement form entails financial consequences in the form of tax liabilities. Failure to properly analyse the available solutions for an enterprise carrying out specific activity may lead to large tax liabilities, resulting in lost or decreased liquidity [Stolarski 2014].

One of the taxes which arouses the greatest controversy among entrepreneurs is the income tax. From the point of view of SMEs' financing abilities, it is the tax burden imposed on their income that is of crucial importance because it deprives them of money that could constitute their own capital. Thus, the amount enterprises would be able to allocate to developmental objectives is decreased. That is vitally important for SMEs due to their limited access to outside capital [Gołębiowski 2003]. Every natural person carrying out business activity in Poland, irrespective of the legal form, may choose both the form and principles of taxation pursuant to the legal regulations. The exception is such entities which, due to their type or, mainly, size, are obliged to make settlements according to general principles based on accounting books.

The most common organisational and legal form among small firms is the individual business activity of a natural person. Its key feature is the unlimited liability for debts the entrepreneur bears with all of his or her assets. Civil law partnerships and commercial partnerships (that have no legal personality) are also common in the SME sector, with a smaller share of legal entities, including, in particular, joint-stock companies. Differentiating between companies with a legal personality and partnerships without is of vital importance in respect of tax regulations as civil law partnerships and commercial partnerships are subject to neither personal nor corporate income taxes [Matejun, Kaczmarek 2010]. The tax is levied on the incomes of their partners. Depending on whether the partner is a natural or legal person, the income is subject to personal or corporate income tax. In consequence, the functioning of small and medium enterprises of natural persons is to a large extent dependent on personal income tax regulations, as opposed to larger commercial companies, which are subject to corporate income tax. Small- and medium-sized enterprises often face a tax dilemma – natural persons may choose the organisational and legal form of carrying out activity as well as the form of income tax settlement. Currently, natural persons' incomes (revenues) from business activity are taxed in one of the following forms:

- taxation according to general principles:
 - according to the tax scale,
 - linear tax;
- flat-rate taxation forms:
 - flat-rate taxation on recorded revenue,
 - tax card¹.

It should be kept in mind that the possibility to choose the form of taxation is contingent on many detailed conditions being fulfilled, the choice being finalised by submitting an appropriate declaration to the tax office competent for the taxpayer's place of residence.

¹ The case study does not take into account that form of taxation because its consideration would *ad vocem* require more detailed assumptions as to the enterprise understood as a subject and object. The amount of the tax is the outcome of the kind of activity and two figures: the number of employees and the number of residents of the place where the activity is carried out (the more there are, the higher the tax). The tax payment based on the tax card is made monthly without a call in the form of a fixed lump sum specified in the decision issued by the head of the tax office. The tax card is a good solution for those who earn high income (with a relatively small business). That form of taxation is limited to revenues derived from some precisely specified kinds of activity [Bartoszewicz, Kubacki 2008].

TABLE. Income taxation forms for SMEs and income levels

Income variant (in PLN)	Flat-rate income tax	General principles (tax scale)	Linear tax
	PLN		
50,000	$50,000 - 9,275.52 = 40,724.48$ $40,724.48 \times 8.5\% = 3,461.58$ $3,461.58 - 3,467.40 < 0$ (no tax)	$50,000 - 9,275.52 = 40,724.48$ $40,724.48 \times 18\% - 556.02 =$ $= 6,774.39$ $6,774.39 - 3,467.40 = 3,307$	$50,000 - 9,275.52 = 40,724.48$ $40,724.48 \times 19\% = 7,737.65$ $7,737.65 - 3,467.40 = 4,270$
100,000	$100,000 - 9,275.52 =$ $= 90,724.48$ $90,724.48 \times 8.5\% = 7,711.58$ $7,711.58 - 3,467.40 = 4,244$	$100,000 - 9,275.52 =$ $= 90,724.48$ $14,839.02 + 32\% \times (90,724.48 -$ $- 85,528) = 16,501.89$ $16,501.89 - 3,467.40 = 13,034$	$100,000 - 9,275.52 =$ $= 90,724.48$ $90,724.48 \times 19\% = 17,237.65$ $17,237.65 - 3,467.40 = 13,770$
150,000	$150,000 - 9,275.52 =$ $= 140,724.48$ $140,724.48 \times 8.5\% =$ $= 11,961.58$ $11,961.58 - 3,467.40 = 8,494$	$150,000 - 9,275.52 =$ $= 140,724.48$ $14,839.02 + 32\% \times$ $\times (140,724.48 - 85,528) =$ $= 32,501.89$ $32,501.89 - 3,467.40 = 29,034$	$150,000 - 9,275.52 =$ $= 140,724.48$ $140,724.48 \times 19\% = 26,737.65$ $26,737.65 - 3,467.40 = 23,270$

Note: It is assumed that the entity is a service enterprise (for the 8.5% flat rate); moreover, income is considered the taxable base. In the case of the flat-rate tax, the levy is paid on the amount of revenues but that could not be compared with the other forms of taxation where the base is the level of income (profit). It is assumed that income variants concern the whole financial year and, pursuant to the applicable regulations, the entrepreneur is obliged to pay Social Insurance Institution contributions, which for 2016 are as follow: social insurance 772.96×12 months = 9,275.52 PLN; health insurance 288.95×12 months = 3,467.40 PLN. In turn, the Labour Fund was considered a taxable expense.

Source: the author's own elaboration based on: The Act of 23 January 2003 on general insurance in the National Health Fund, The Act of 13 October 1998 on the social insurance system, The Act of 26 July 1991 on personal income tax, The Act of 20 November 1998 on flat-rate income tax on certain revenue earned by natural persons.

The subjective scope of taxation in the form of a flat-rate tax on recorded revenue includes natural persons and civil law partnerships of natural persons as well as registered partnerships of natural persons deriving revenue from business activity if, in the year preceding the tax year, they earned revenue from business activity not exceeding 150,000 EUR. The base for setting the flat-rate is monthly revenue. Tax rates vary depending on the type of activity conducted and are: 20, 17, 8.5, 5.5 and 3% [The Act of 20 November 1998 on flat-rate income tax...].

Taxation according to the tax scale (general principles) consists in paying tax on income according to a progressive tax scale. Tax may be paid in that form regardless of the legal form and type of business activity carried out [Kosacka-Łędzewicz, Olszewski 2007].

In turn, linear tax is always 19% of the taxable base and may be paid solely on income derived from business activity [The Act of July 1991 on personal income tax]. In order to use the linear tax, the individual has to meet several conditions. One is that, in the tax year or the year preceding it, he or she may not perform, in the framework of the employment relationship, services for a former or current employer in the same scope in which he or she intends to carry out business activity subject to the linear tax.

The case study used in this paper (Table) allows several conclusions to be drawn, and which indicate that choosing carefully the form of taxation is an important manifestation

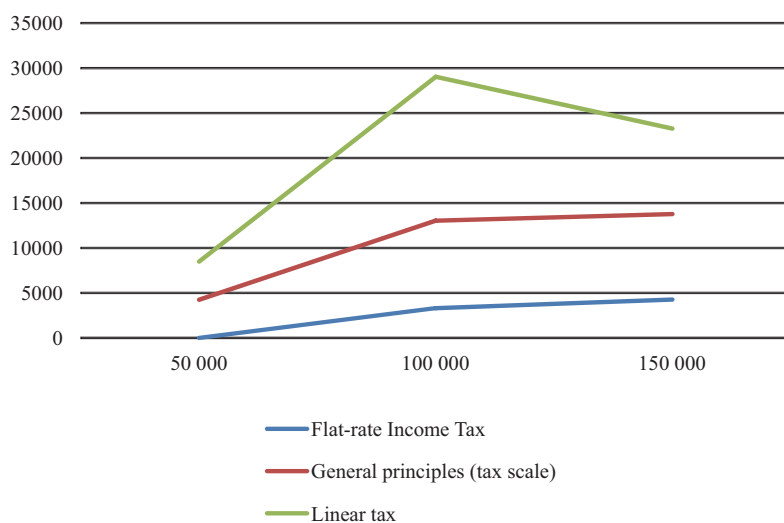


FIG. 2. Income tax liability and form of taxation in the SME sector – case study

Source: the author's own work, based on Table 1.

of tax optimisation. As far as the amount of income tax is concerned, the lowest liability occurs for the flat-rate income tax, irrespective of the income assumed in the case study. According to general principles, income taxation means that the dynamics of tax liability decrease along with the rise in the taxable base. For a relatively high income, there is a relatively low income tax, which means that a further rise in income would result in a significant fall in tax liability in the above case study.

CONCLUSIONS

The forms of personal income taxation SMEs choose determine to a large extent how the companies function and develop. The quickly changing economic reality motivates entities to constantly look for new sources of savings. In the process of managing a small and/or medium enterprise, the importance of tax as an element of management must be considered if the company is to gain competitive advantage. One source of savings may be tax optimisation, which enables the firm to lessen its tax burden and improve its financial result.

Tax optimisation may also be called tax management, i.e. exerting an impact on the amount of burdens an enterprise faces. Optimising solutions are most commonly used in respect of income tax. Striving to reduce fiscal burdens is an element of tax strategy that affects survival in the competitive market and is taken into account in creating the enterprise's mission. Through tax optimisation, entrepreneurs may obtain better financial results, hence increasing the enterprise's assets. That is the fundamental objective of tax optimisation. Striving to minimise income tax motivates micro-entrepreneurs to choose the form of taxation that will be the most beneficial for them.

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Summary. This study points to the essence of appropriate differentiation among tax optimisation, tax savings, tax evasion and tax avoidance. It discusses criteria for choosing taxation forms for entities in the small and medium enterprise sector that do not have a legal personality (in other words, they are run by natural persons and pay personal income tax). It uses a case study based on actual economic data, taking into account applicable tax regulations. The study concludes with recommendations for entrepreneurs facing the dilemma of choosing the form of income taxation that is most appropriate for them, keeping in mind that tax planning is an element of the entity's operating strategy.

Key words: tax optimisation, corporate sector, income tax

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