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Poland economy briefing:

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The matter of introducing a digital tax in Poland

In recent months, there has been a discussion about the introduction of a digital tax in Poland. All European Union countries want to introduce it, because technology giants who offer their services in Europe and profit from it, for years have been avoiding paying taxes or have been choosing solutions that make them pay much less. As interpreted by the Polish authorities, by taxing digital giants it is about fair taxation of profits that global companies generate in Poland, offering digital services such as online advertising, VOD and music streaming. Thus, for the Polish administration, the digital tax - one of the flagship slogans and a planned mine of money for the implementation of numerous social programs - turns out to be a real political problem in relations with the Americans. This is due to the fact that the tax is to cover mainly by American technology companies, such as Google, Amazon, Facebook, Apple (GAFA), Netflix and Uber.

The meaning of digital tax

In 2017, as part of the "Paradise Papers" campaign, the world media revealed that American companies operating internationally pay very low income taxes, due to the fact that they have complicated corporate structures that they build with the help of elite tax advisers. Since then the tax avoidance began to be discussed within the European Union, because it was mainly one of the member states - Ireland - that turned out to be a tax haven for digital giants. However, the Community could not agree on a digital tax. Smaller EU countries were not favourable to the introduction of such a solution at EU level, because international corporations set up branches and used their friendly tax systems, while large member states were in favour of a determined solution to this pressing problem. Shortly thereafter, the Commission ordered one of the GAFA giants - Apple - to pay taxes for the years in which Ireland granted it special tax breaks. As the EC ruled - they were granted unduly. Apple finally paid Ireland EUR 14.3 billion in tax and interest of EUR 1.2 billion.

In March 2018, the European Commission issued a draft of a directive on a common system of tax on digital services. EC proposed a 3% tax to be charged by countries to companies with annual revenues of EUR 750 million worldwide and EUR 50 million in the EU. So far, global corporations settled accounts with the tax office in the country where their European branch was based – in fact usually in Ireland, where they could count on extremely preferential tax rates.

Thus, when signing contracts, e.g. for advertising with Facebook or Amazon, recipients from various EU countries entered into a relevant contract with the Irish branches of companies that booked payments and paid tax on profits only in Ireland. Many countries lost huge budget revenues. In the case of Poland, as pointed out by the Polish Minister of Entrepreneurship and Digitization Jadwiga Emilewicz, in recent years digital giants have paid almost no taxes. As it was revealed by the EC, traditional international companies pay an average of 23.2% tax whereas digital companies only 9.5%. However, due to various tax mechanisms and tricks, the biggest players manage to drop significantly below this level.

History of digital tax in Poland

For this reason, European politicians have been debating for a long time how to effectively adapt tax law to digital reality. As mentioned, in March 2018, the European Commission prepared a draft directive on the tax on digital services. The Polish government has supported this idea all the time. Polish Prime Minister Mateusz Morawiecki adopted a very sharp tone towards digital giants. He spoke roughly at the press conference in Brussels on March 18, saying “enough with tax havens, let’s tax digital giants”. According to Morawiecki, Poland was to react hard to previous inertia of the European Community in that matter. He stated “we want to do this together with all European Union countries, but if there is no consensus, then member states will have to make these decisions themselves.” What’s more, the Prime Minister not only advocated solutions at the EU level, but also - like France or Italy - expressed his readiness to introduce the appropriate tax in Poland.

Soon after the Polish Ministry of Finance announced that it was working on the preparation of a draft taxation for certain digital services, the starting point of which would be the plan of European Commission’s directive. In May, the Ministry of Finance officially confirmed that, in parallel with effort on international OECD and EU forums, it works on the implementation of the Polish digital tax.

The Ministry’s declaration was not a special surprise – already at the beginning of March, when the government was explaining how it intends to finance election promises (the so called “Kaczyński’s five”, meaning: payment of financial support for every child, additional pension over the next year for each pensioner, tax exemption for persons under 26 years of age, reduction of Personal Income Tax for employees, and restoration of previously reduced bus connections), the Prime Minister’s office has mentioned the taxation of digital concerns among main financing sources. The value of tax revenues was estimated at PLN 1 billion yearly (EUR 233 million).

Yet in May, the Ministry of Finance cut off the announcement that the budget would receive so much money from the new tax. In the Multiannual Financial Plan of the State for 2019-2022, it was assumed that the tax would bring yearly PLN 217.5 million to the budget (EUR 50.5 million). The tax was to come into force from January 1, 2020.

Starting from August, however, the matter of introducing a digital tax in Poland gained new dynamics, because the draft budget for the next year has already lacked a record, that it will be fed through a digital tax. The matter became clearer at the beginning of September, when the US Vice President Mike Pence came to Poland with an official appointment. His visit was focused around the 80th anniversary of the outbreak of World War II in Poland (September 1), and Pence himself replaced President Donald Trump at the last minute who, in connection with hurricane Dorian approaching the US coast, resigned from coming to Warsaw. However, the day after the solemn celebration, the American politician held talks on business matters with President Andrzej Duda, after which he announced at a press conference that the US “gratefully accepted the rejection of Poland’s proposal for a digital tax, which hindered trade between our countries”. This aroused a huge surprise of public opinion, because none of the Polish offices had previously informed about such a decision.

The surprising statement by Mike Pence was then confirmed by the head of the Chancellery of the Prime Minister Michał Dworczyk. He stated that “at present, no work is being carried out in Poland regarding the tax on certain digital services”. He noted that there was an attempt to prepare an EU directive on such a tax, but ultimately such a project was not implemented. Prime Minister Morawiecki himself also emphasized that currently “at the political and implementation level, work on the tax was somehow assigned to the EU level”.

In practice, conversely, complete information chaos has arisen because the Ministry of Finance still claims to be working on such a tax. In an announcement, the Ministry stated that “in the draft budget act for 2020, no receipts from the so-called digital tax were recorded. But in this respect we are continuing discussions at the EU and OECD forum. Internal analytical work is also ongoing”. The Ministry has not responded to statements that Mike Pence issued in Warsaw though.

Conclusion

The events of recent weeks show an interesting dynamics of changes in Polish politics and economy. More and more often it turns out that decisions concerning Polish economic development (i.e. purchases for the army or tax changes) are not solely made in Warsaw, but to some extent - in Washington. The issue of (not) introduction of a digital tax is a perfect example of this case.

The tax, which - as announced by the Prime Minister in spring 2019 - was to be "certainly introduced" in Poland, of which Mateusz Morawiecki was a great advocate at the international forum, in particular within the European Union, and demanded that the European Commission take steps as soon as possible, and was ready to cooperate in this dimension with the leaders of Germany and France, a few months later turns out to be completely redundant.

On the one hand, this is a very surprising turn - for several months, the politicians of the ruling party agreed that its introduction is necessary for the implementation of the flagship idea for the next term of the Law and Justice government (after possibly winning the parliamentary elections in October 2019), namely the "Kaczyński's five". This social program, whose functioning costs are huge (about PLN 40 billion yearly – EUR 9.3 billion), also requires an increase in budget revenues. And the digital tax seemed to be a fair burden on the richest companies that have been running their businesses for years inter alia in Poland.

On the other hand, the renouncement from the idea of its introduction shows Poland's great dependence on the United States. This is all the more evident since the slowdown in work on the tax project was announced not by the Polish President or head of government, but (in their presence) by the American Vice President.

Even if the statement by Mike Pence about "gratitude for the rejection of the proposal for a tax on digital services" was not previously consulted with the Polish side and was also surprising for the highest state authorities in Warsaw, it shows that the American administration is trying to exert more and more pressure on Polish politics and economy. It turns out that the introduction of one of the most revolutionary tax changes in Poland depends on the country in which the economic giants have their headquarters.