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Development of VAT Sanction Regulations in Light of Polish and EU law

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The subject of the conducted research is the development of sanction regulations in light of Polish and EU law. Sanction regulations were innovative elements introduced to the Act of 8 January 1993 on the value added tax and excise duty, which, due to the high budgetary significance of both taxes, became the most important substantive Polish tax law passed in connection with the reform of the Polish tax system. In the course of the analyses, changes in VAT sanction regulations were indicated by considering the subsequent questions: 1. What was the reason for the changes made to these regulations in the period preceding Poland's accession to the EU? 2. What was the impact of EU law and case law of the EU Court of Justice on Polish sanction regulations before and after Poland's accession to the EU? 3. Were there other reasons for the implemented changes and what did they entail? As a research method, an analysis of normative material, views presented in legal doctrine and in case law of the Constitutional Tribunal (CT) and the EU Court of Justice was adopted. Development of VAT sanction regulations in the period preceding Poland's accession to the EU was caused by the scope and frequency of violations of instrumental tax obligation committed by taxpayers. The second reason for changes in the content of the examined regulations was the influence of case law of the Constitutional Tribunal which sought to designate the limits for the application of tax sanctions. The third factor contributing to the changes in sanction regulations was case law of the EU Court of Justice, which is a crucial part of acquis communautaire.

Key words: *VAT, Sanctions, Sanction regulations, Impact of EU law on Polish law.*

Introduction

As a consequence of the economic changes in Poland initiated in 1989, the Polish tax system was reformed. The importance of the problem, which is the transformation of the Polish tax system, is pointed out in science(Mliczewska, 2008). Other researchers also point out the importance of a scientific approach to tax reform (Antonenko, Katranzhy, Moiseienko, Yudina, Brezhnyeva-Yermolenko, Hanziuk, Galnaityte, Namiotko, 2019).

To this end, the Tax System Reform Team was established by the Minister of Finance, one of the main tasks of which was to prepare a draft act on the value added tax and excise duty, which was the first legal act modelled on the directives of the European Community.

Even in countries outside the European Union, measures have been taken to introduce value added tax to their tax system in order to achieve an increase in tax revenues (Andoh, Osoro, Luvanda, 2019).

The Act of 8 January 1993 introduced innovative solutions, including sanction regulations of a scope not previously seen in Polish tax law. It resulted primarily from the fact that in the interest of the Treasury as a beneficiary of value added tax, it was necessary to enact and order the application of sanction regulations aimed at counteracting the violations of instrumental tax obligations, specified in the provisions of the Act of 8 January 1993.

The provisions of the Fiscal Penal Act of 26 October 1971, which were in force at the time, seemed insufficient to counteract violations of these obligations, which is yet another important reason for enriching tax law regulations with sanction regulations. Even the entry into force of the Fiscal Penal Code on 17 October 1999 did not change the position of the Polish legislator concerning the application of fiscal penal sanctions only to counteract the violation of the tax obligations under the provisions of the Act 8 January 1993, which is the subject of the current research.

This, however, caused yet another interesting issue in the beginning of the 21st century: the admissibility of using two independent penalties for violation of the same tax obligation, namely, as a *prima ratio* of the tax sanction arising from the provisions of the Act of 8 January 1993 and as the *ultima ratio* of a fiscal penal sanction resulting from the provisions of the Fiscal Penal Code(Maruchin, 2015).

Development of the Sanction Regulations Contained in the Act of 8 January 1993

Sanction regulations Contained in Article 27 of the Act of 8 January 1993

The first group covered by the conducted research were the sanction regulations contained in art. 27 of the Act of 8 January 1993.

The development of the analysed sanction regulations lies in securing the non-violation of the obligation to correctly record: the subject of taxation, the tax base, the amount of input tax deductible from output tax, and the amount of tax not deductible from output tax, to securing the non-violation of the obligation to correctly declare the amount of tax to be paid.

This thesis is confirmed by the mechanism for imposing the tax sanction resulting from sec. 5 of art. 27 of the Act of 8 January 1993, consisting of imposing a tax sanction in the form of an additional tax liability by multiplying the tax sanction rate of 30% by the amount of understatement. This could only happen if the taxpayer violated the obligation to calculate and declare their tax liability in the correct amount. The entities authorised to impose sanctions were tax offices and tax audit authorities through administrative decisions. Whereas, in the previous legal situation, the mechanism of imposing sanctions consisted of making an estimate of the amount of unrecorded sales and multiplying it by 22%, and then increasing it by 100%.

The development of the analysed sanction regulations included sanctions imposed pursuant to art. 27, sec. 6 of the Act of 8 January 1993, which counteracted the infringement of the obligation to show in the return the correct amount of direct or indirect refund of the difference in input tax over output tax.

Violation of one of the two obligations led to the imposition of a tax sanction by the tax office or tax audit authority. In the analysed situation, both authorities determined the amount of the refund in the correct amount and imposed a tax sanction in the form of an additional tax liability by multiplying the tax sanction rate of 30% by the amount of overstatement of the direct or indirect tax refund. As in the previous case, the legislator changed the structure of the penalty in question, moving away from putting tax sanctions on violations of tax obligations related to keeping VAT records, towards putting tax sanctions on breaches of tax obligations related to the correct filing of return for the purposes of this tax.

As indicated in the literature, the tax sanctions imposed after the aforementioned changes in the sanction regulations became less burdensome for taxpayers, and the revision of the regulations stemmed from the fact that taxpayers were less likely to violate their obligations related to the correct keeping of tax records than to the filling of returns (Maruchin, 2003).

An important element of the development of VAT sanction regulations was refraining from imposing the aforementioned tax sanctions by the tax office or tax audit authority. Not imposing tax sanctions became possible if a taxpayer paid the amount of tax arrears plus interest, the amount of which resulted from an adjusted return, before a tax inspection or tax audit by the tax office. This principle could also be applied in the following two cases. The first case involved the taxpayer breaching two obligations: to show the correct amounts in the return and the proof of payment, and instead indicated the amount of direct or indirect tax refund. The second case involved the taxpayer violating both the obligation to submit a return and to pay the amount of tax (both of the analysed cases of tax obligation violations were specified in art. 27 sec 8 of the Act of 8 January 1993).

Another important principle which followed the development of the sanction regulations in VAT was an order of the legislator which made the authorised bodies impose reduced penalties on taxpayers. However, this principle was only applicable in the transitional period when the amended regulations were already in force, and breaches of tax obligations detected in the course of tax or penal fiscal audits were related to previous years, provided that the authorised bodies did not terminate tax proceedings by the end of the year.

The studied penalties were imposed regardless of whether the taxpayer's actions could be attributed to an intention to obtain financial benefits resulting from an intentional and deliberate understatement of the amount of tax to be paid shown in the return, or whether this understatement was a consequence of an error committed by the taxpayer at the stage of transferring data from the records kept for the purposes of this tax to the filled in return.

At this stage of the application of the analysed sanction regulations, there was evident automatism in the application of penalties through administrative decisions issued by authorised tax bodies and fiscal control.

Another tax sanction resulting from art. 27 of the Act of 8 January 1993 was applied to taxpayers who did not meet the conditions for being a supported employment enterprise within the meaning of the provisions of the Act on employment and vocational rehabilitation of persons with disabilities, and yet benefited from a subjective exemption independent of the amount of turnover in goods and services tax (Polish VAT). If this obligation was violated, the tax authorities were entitled to impose a tax sanction by multiplying the value of all estimated sales of the taxpayer by the penalty rate of 22%, while at the same time depriving the taxpayer of the right to reduce the amount of output tax by the amount of input tax.

The next tax sanction was imposed on the basis of studied provisions of art. 27 sec. 2 of the Act of 8 January 1993 and concerned violation of two obligations: not keeping records for the purposes of this tax or keeping them in an misleading manner. In the analysed cases, the tax authorities were entitled to estimate the value of unrecorded sales and multiply it by the penalty rate of 22%, at the same time depriving taxpayers of the right to reduce the amount of output tax by the amount of input tax.

In the period between 5 July 1993 (which is the date of entry into force of the provisions of the Act of 8 January 1993) and 30 April 2004, (which is the last day of the Act being in force), the development of the sanction regulations in VAT was significantly influenced by the case law of the Constitutional Tribunal. Thus, following the publication of the announcement of the President of the Constitutional Tribunal of 9 November 1998, the sanction regulations contained in art. 27 sections 5, 6, and 8 of the Act of 8 January 1993, as analysed above, were no longer valid.

It is worth mentioning at this point that the loss of validity of these provisions has been limited to cases in which a taxpayer who is only a natural person could be subject to both a tax sanction and a penal-fiscal sanction for breaching a specific tax obligation(Maruchin, 2003).

Summarising the above considerations and referring to the problem of the admissibility of tax and criminal penalties in the introduction to this article, the CT expressed its unequivocal support for the inadmissibility of applying two penalties independent of each other for breaching the same tax obligation, that is, as *prima ratio* of the tax sanction resulting from the provisions of the Act of 8 January 1993 and as *ultima ratio* of the fiscal penal sanction resulting from the provisions of the fiscal penal law.

Sanction Regulations Contained In Article 28 of the Law of 8 January 1993

This tax sanction was imposed under art. 28 of the Act of 8 January 1993 and concerned counteracting violations of taxpayers' obligation to declare taxable turnover for VAT purposes, despite the fact that they – in principle – performed only activities exempted from this tax, which were not subject to the obligation to keep records, specified in art. 27 sec. 4 of the aforementioned act.

If said obligation was violated and it was impossible to determine the volume of sales subject to VAT, the tax authority imposed a tax sanction by estimating the unrecorded value of sales and multiplied it by a penalty rate of 22%, while not recognising the right to reduce the amount of output tax by the amount of input tax.

The tax authorities refrained from penalising only if it was possible to determine the volume of sales subject to taxation on the basis of documentation held by those taxpayers. However, the tax authorities then calculated the amount of output tax using the tax rate applicable to a specific transaction – not the penalty rate – and the amount of interest due (Maruchin, 2003).

As indicated in the literature, interest on outstanding publiclaw liabilities cannot be treated as a separate punitive tax, nor as an element of any tax sanction, but only as an element of financial compensation paid by the taxpayer to the tax creditor in exchange for the tax debtor having “not-their-own” capital at his disposal (Dębowska-Romanowska, 2000).

Sanction regulations Contained in of Article 29 of the Act of 8 January 1993

The tax sanction imposed pursuant to art. 29 of the Act of 8 January 1993 aimed at counteracting the violation of the obligation to keep records of turnover and amounts of output tax with the use of cash register devices only in the case of sales made by VAT payers to natural persons who are not entrepreneurs or flat rate farmers. In the examined case, the mechanism of imposing this penalty consisted in the loss of the taxpayers' right to reduce the output tax by an amount equivalent to 30% of the amount of input tax paid when purchasing goods and services (Maruchin, 2003).

Changes in the Sanction Regulations in the Act on Value Added Tax of 2004 in Connection With Poland's Accession to the European Union

Sanction Regulations Contained in Article 109 of the Act of 11 March 2004

The next stage in the development of sanction regulations in VAT began in 2004 in connection with Poland's accession to the EU, which forced the classification of existing regulations contained in the Act of 8 January 1993 and the introduction, by the Polish legislator, of two new acts into the Polish tax law:

(1) the Act of 11 March 2004 on Value Added Tax,
(2) the Act of 23 January 2004 on Excise Duty.

Considering that the sanction regulations covered by the current research were applied on the basis of the Act of 8 January 1993 and concerned only the violations of tax obligations of instrumental nature defined by the relevant provisions of the VAT, the Polish legislator decided to introduce in the Act of 11 March 2004.

The equivalent of the regulations (applied at the time) contained in art. 27 of the Act of 8 January 1993 were the sanction regulations included in art. 109 of the Act of 11 March 2004. The development of the analysed sanction regulations was that the legislator included in the content of the analysed art. 109 both the measures against violations of the obligation to properly record: the subject of taxation, the tax base, the amounts of input tax deductible from output tax, and the amounts of tax not deductible from output tax, together with the obligation to correctly record the amount of tax payable.

As indicated in the literature, what changed in the sanction regulations contained in art. 27 of the Act of 8 January 1993 – and what became the subject of the previous chapter – was integrated into the new art. 109 of the Act of 11 March 2004, in which the legislator has defined the mechanisms for imposing two different tax sanctions. Thus, violating the obligation to keep proper records carried a penalty of a tax sanction imposed by the tax bodies or tax audit authorities, which was calculated by multiplying the entire estimated sales value of the taxpayer by the penalty rate of 22%, at the same time stripping the taxpayer of the right to reduce the amount of output tax by the amount of input tax (art. 109 sec. 2). On the other hand, violating the obligation to correctly disclose the amount of tax payable in the return triggered an automatic mechanism for imposing the penalty pursuant to art. 109 sec. 4 consisting of the imposition of a tax sanction on the taxpayer by the authorities in the form of an additional tax liability calculated by multiplying the 30% penalty rate by the amount of understatement of the tax liability (Kaminski, 2005).

The introduction of penalty waiver provisions regarding penalties analysed in the previous subsection of the current study, to the Act of 11 March 2004 became an important element of sanction regulations in VAT. Thus, the legislature ordered the application of the legal solution resulting from the development of the sanction regulations, on the basis of which the taxpayer’s penalty was waived when they paid the amount of tax arrears, together with interest, the amount of which resulted from the corrected return, before the tax inspection by the tax office or the tax inspection by a tax audit authority authorised to do so was initiated.

It is necessary to agree with the emergence of a new principle of penalty waiver when the understatement of the amount of tax payable or overstatement of the amount in the return resulted from the non-recognition of the output tax for a given accounting period because it was recognised in the previous accounting period (Kamiński, 2005).

Moreover, despite the repeal of the provisions of the Act of 8 January 1993, the principle of inadmissibility (which resulted from CT Case Law) of applying two independent penalties for violation of the same tax obligation, that is, as a *prima ratio* of the tax sanction resulting from the provisions of the Act of 11 March 2004 and as an *ultima ratio* of the fiscal penal sanction resulting from the provisions of the Act of 11 March 2004 and as an *ultima ratio* of the fiscal penal sanction resulting from the provisions of the Act on the Fiscal Penal Code, which replaced the fiscal penal act in force in the previous legal state.

The Constitutional Tribunal reiterated its support for the application of this principle in its judgment of 4 September 2007, file ref. no. P 43/06, considering that: “applying to the same person, for the same act, of an administrative penalty defined as ‘additional tax liability’ and ‘liability for fiscal offenses in criminal fiscal proceedings infringes the Constitution,’ ‘demonstrated a lack of proportionality and excessive fiscalism’, and ‘goes beyond what is necessary to ensure that natural persons who are taxpayers of VAT bear the burden of taxation within reasonable limits’”(Maruchin& Modzelewski, 2009).

Thus, the analysed changes in art. 109 of the Act of 11 March 2004, are a worthy element of the development of sanction regulations in VAT.

Sanction regulations Contained in Article 110 of the Act of 11 March 2004

This tax sanction – after it was introduced in 2004 – was imposed on the basis of art. 110 of the Act of 11 March 2004, whose content had been transferred from the Act of 8 January 1993 and aimed to counteract the violation of the obligation of taxpayers to declare taxable turnover for VAT purposes, despite the fact that, as a matter of principle, they were only performing activities exempt from this tax, which in the examined legal status ceased to be subject to the obligation to keep records as specified in art. 109 of the Act of 11 March 2004.

Similarly to the legal status analysed in the previous section, after 30 April 2004, in case of violation of the aforementioned obligation and due to the impossibility to determine the volume of sales subject to VAT, the tax authority imposed a tax sanction by estimating the unrecorded value of sales and multiplying it by a penalty rate of 22%, while at the same time depriving those taxpayers of the right to reduce the amount of output tax by the amount of input tax.

Therefore, the opinion presented in the literature that this penalty could be imposed only if all of the following conditions were met was correct: the taxpayer made a taxable sale, did not pay the tax on that transaction and did not have documentation determining the amount of taxable turnover (Kamiński, 2005).

Sanction Regulations Contained in Article 111 of the Act of 11 March 2004

This tax sanction – after its introduction in 2004 – was imposed pursuant to art. 111 of the Act of 11 March 2004, the content of which was transferred from art. 29 of the Act of 8 January 1993 and, as previously, aimed to prevent the violations of the obligation to keep records of turnover and amounts of output tax using cash registers only if VAT taxable persons sell to natural persons (non-businesses) or those operating as individual agricultural enterprises. In the examined tax sanction, the taxpayers lost the right to reduce the output tax by tax by the amount equivalent to 30% of the input tax when purchasing goods and services.

Impact of EU Law and Case Law of the EU Court of Justice on the Shape of Polish Sanction regulations Before and After Poland's Accession to the EU

"The aspiration of the Polish legislator" both at the stage of adopting the sanction regulations contained in the Act of 8 January 1993 and at the stage of development of these regulations dated from 5 July 1993 (entry of the regulations into force), to 30 April 2004 (the date the regulations were repealed), was to implement the EU tax regulations into Polish legislation (which was referred to as European Common Law until 29 November 2009). This was particularly important in view of Poland's aim to become a member of the EU, which involved a long-term process of the harmonising of Polish tax law with EU law, especially with regard to indirect taxation, which includes VAT.

This problem intensified in connection with Poland's accession to the EU on May 1, 2004 and then the Polish legislator faced the dilemma of matching Polish sanction regulations in VAT with EU law, which could have occurred through their development leading to a change or repeal of sanction regulations in VAT.

The research conducted on the EU law led to the conclusion that the Polish legislator, in the implementation process, was obliged to consider the legal regulations contained in:

(1) Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - a common system of value added tax: a unified tax base (Sixth Directive), which in its content details the legal provisions contained in the First Directive of 11 April 1957 on the harmonisation of the laws of the Member States relating to turnover taxes and the Second Council Directive of 11 April 1967 on the harmonisation of the laws of the Member States relating to turnover taxes;
(2) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

In addition, with regard to the analyses of the provisions of the Sixth EEC Directive and the continuation of these provisions by the Council Directive 2006/112/EC, specific regulations on the topic were indicated, which led to the formulation of problems directly related to the impact of EU law on Polish sanction regulations before and after Poland's accession to the EU:

(1) Admissibility of collecting receivables in the form of tax sanctions, which share characteristics with turnover taxes – analysis of art. 33 *of the Sixth EEC Directive and* art. 401 of the Council Directive 2006/112/EC.

As indicated in the literature, Member States may apply the regulations in force in their legislation before the date of accession or introduced by their legislators into their national law after that date only if the strict condition laid down in art. 33 sec. 1 of the Sixth Directive is met. Namely, they cannot continue to apply or introduce new regulations concerning taxes on insurance contracts and gambling, excise duties, stamp duties and, in particular, any taxes, dues or charges that could be considered as turnover taxes (Terra & Kajus, 1991).

It is necessary to agree with the literature: according to art. 401 of the Council Directive 2006/112/EC – which is a continuation of the aforementioned art. 33 sec. 1 of the Sixth Directive – Member States may collect, among others, public levies, provided that they do not fall within the scope of turnover taxes (Michalik, 2009).

As a result of the study, it was recognised that the group of public law receivables could undoubtedly include penalties, which in the doctrine are defined as non-tax budget receivables (Maruchin, 2018).

In this situation, it was necessary to show that the examined tax sanction are not taxes, and in particular, that they cannot be treated as turnover taxes, which includes VAT.

As the doctrine indicates, a tax sanction in the form of an additional tax liability is not a tax because:

(a) it does not burden consumption,
(b) its burden cannot be passed on to the buyer of the good or service,
(c) it is not measured in any proportion to the net price of the goods or services sold, but at 30% of the amount to be refunded,
(d) it cannot be regarded as a multi-phase tax characterised by a charge on value added (Maruchin, 2011).

(2) The admissibility of including tax sanctions among the so-called "special measures" – analysis of art. 27 of the *Sixth EEC Directive and* art. 395of the Council Directive 2006/112/EC.

As indicated in the literature, each Member State, acting on the basis of art. 27 of *the Sixth EEC Directive*, is entitled to introduce a special measure derogating from the provisions of the Directive. The intention of the EU legislator was to simplify the procedure for charging the tax or to prevent certain forms of tax evasion or avoidance (Terra & Kajus, 1991).

It is necessary to agree with the view which states that it is acceptable to include tax sanctions among the so-called "special measures" – in accordance with art. 395 of the Council Directive 2006/112/EC, which is a continuation of the aforementioned provisions of art. 33 sec.1 of the Sixth Directive. In the examined case, the Polish government failed to carry out the special procedure, specified in art. 88 of the Council Directive 2006/112/EC and the Commission took away the possibility for the Polish tax authorities to use the power to impose tax sanctions for the violation of tax obligations under art. 109 of the Act of 11 March 2004 as a "special measure" (Michalik, 2009).

The conducted research concluded that it could be considered a special measure, provided that the Polish government implemented the procedure indicated above – the tax sanction imposed under art. 109 sec. 2 of this Act. Primarily, one of the many reasons for the application of special measures is the existence of any derogation from the provisions of the Sixth Directive or Council Directive 2006/112/EC.

As a result of the analyses, a restriction of the right to deduct was classified as a derogation, which is a constituent element of the tax sanction imposed pursuant to art. 109 sec. 2 of the Act of 11 March 2004, in connection with tax evasion by taxpayers. Therefore, the repeal of that provision as of 1 December 2008, as part of the development of the Polish VAT penalty provisions, must be regarded as fully reasonable, since the Polish Government has not taken any action toward it to be regarded as a special measure.

On 1 December 2008, with the repeal of a part of the sanction regulation contained in paragraph 2 of art. 109 of the Act of 11 March 2004, sanction regulations contained in sec 4-8 of art. 109 (which were applicable when the Act of 8 January 1993 was in force) were also repealed. This was mainly driven by the concern that their imposition violates the VAT directive provisions, as their purpose was to counteract tax evasion resulting from the violation of tax obligations set out in art. 109 of the Act of 11 March 2004.
The literature also raises questions about the compatibility of a tax sanction in the form of an additional tax liability with the general principle of European tax law, which is the principle of proportionality (Lasiński – Sulecki, 2006).

The current study discusses the need to apply this principle when imposing a tax sanction on the basis of art. 111 of the Act of 11 March 2004 in the later chapter, in connection with the examination of a judgment of the Court of Justice.

Admissibility of Limiting a Taxpayer's Right to Deduct the Input Tax from the Output Tax as Part of the Punitive Mechanism

As indicated in the doctrine, resulting from the content of the provision of art. 17 of the Sixth Directive and its continuing provision based on art. 176 of Directive 2006/112/EC, the right for taxpayers to deduct the amount of input tax in individual phases of turnover from the amount of output tax is an integral part of VAT and is intended to immediately release taxpayers from being charged with this tax, which is confirmed by the Court of Justice jurisprudence, for example in Judgments: C-62/93 BP Soupergaz, C-110/98 to C-147/98 Gabalfris and others, 268/83 Rompelman, C 37/95 Ghent Coal Terminal (Gibasiewicz, 2004).

It is worth recalling the opinion that in connection with the application of a standstill clause, due to which the legislator is prohibited from introducing new restrictions on the right to deduct input VAT, the principle of neutrality, which should be respected by member states, is violated (Bącal, Militz, Dominik-Ogińska, Siennicki, 2014).

Considering the above, one should also positively assess the change (dated 1 December 2008) of the provision of art. 111 of the Act of 11 March 2004, on the basis of which, in the process of imposing a tax sanction, the taxpayer was deprived of the right to deduct 30% of input tax on the purchase of goods and services until the cash registers were introduced(Martini, 2009).

Concerns of the Polish legislator, which justified the necessity to repeal the articles mentioned above, which could be considered as a special measure without conducting a separate procedure resulting from the provisions of Community law or art. 33 of the *Sixth EEC Directive* has been resolved in two important judgments of the EU Court of Justice.

The first of these is the judgment of 15 January 2009, case C-502/07 K1 Sp. z o.o., stating that:

(a) the additional tax liability is not a tax but an administrative tax sanction,
(b) the provisions of art. 109 sec. 5 and 6 of the Act of 11 March 2004 cannot be recognised as special measures to prevent certain forms of tax evasion or avoidance,
(c) the provisions of art. 109 sec 5 and 6 of the Act of 11 March 2004 do not contradict art. 33 of the Sixth Directive (Lasiński - Sulecki, 2014),
(d) article 22 sec 8 of the Sixth Directive could constitute the basis for introduction by the member state of additional requirements vital for the proper settlement of this tax and the penalty imposed in case of their violation (Martini, 2009).

The second decision of the Court of Justice of the EU is the judgment of 29 July 2010, case C-188/09, "Director of the Tax Chamber in Białystok, p. Profaktor Kulesza, Frankowski, Trzaska general partnership in Białystok", which discussed imposing tax sanctions pursuant to art. 111 of the Act of 11 March 2004, stating that:

(1) a temporary restriction of the right to deduct input tax is allowed, provided the principle of proportionality is respected,
(2) the provisions of art. 111 sec. 1 and 2 of the Act of 11 March 2004 cannot be recognised as special measures to prevent certain forms of tax evasion or avoidance,
(3) the provisions of art. 111 sec. 1 and 2 of the Act of 11 March 2004 do not contradict art. 33 of the Sixth Directive (Dominik – Ogińska, 2014).

Additionally, individual EU member states historically used the possibility to introduce tax sanctions in VAT, in varied scope. For example, Ireland has introduced tax sanctions in the event of violation by taxpayers of their obligation to: submit return (including revisions), make payments, keep reliable tax records (Revenue Commissioners, 1988).

Similarly, France introduced tax sanctions in the event of violation by taxpayers of their obligation to: submit returns, which directly affects the implementation of the obligation to pay tax, as well as the reliable issuing of invoices, in particular those documenting the performance of taxable activities in intra-community trade (Paultre de Lamotte, 1999).

A separate concept was implemented by German and Swiss legislators. In the first of the examined cases, the dominant role in punitive action towards violation of tax obligations was given to fiscal penal sanctions, which results mainly from the fact that fiscal penal law has its historical roots in German tax law (Joecks, 2005).

Similar legal solutions are characteristic of the sanction provisions in force in Switzerland (Blumstein & Locher, 2002).

Development of VAT Sanction Regulations Contained in the Act of 11 March 2004

In the current legal status, a further development of tax sanctions in VAT can be observed. The conducted research allows for a conclusion, in which the tax authorities may impose tax sanctions resulting from art. 109 sec. 2 of the Act of 11 March 2004, but only in the case of violation of the obligation to properly record, by multiplying the entire estimated value of sales of the taxpayer by the penalty rate of 23% (temporarily 22% was increased to 23%). This is the case when it is not possible to determine the subject of taxation, namely, what activities were performed by the taxpayer and at what rates they should be subject to this tax (Maruchin, 2018).

The discrepancy, when compared to the mechanism of imposing this tax sanction - presented in the subsection on sanction regulations contained in the provision of art. 109 of the Act of 1 March 200 4 lies in the fact that currently taxpayers do not lose the right to reduce the amount of output tax by the amount of input tax.

The scope of the tax sanction pursuant to art. 110 of the Act of 11 March 2004 remained unchanged – in the event that an entity conducting activities covered by tax exemption from this tax makes a taxable sale and violates a tax obligation consisting in not settling the tax, without disclosing the amount of the tax liability in the return, then the head of the tax office imposes a tax sanction by way of an administrative decision.

Similarly to the legal status analysed in the subsection devoted to tax sanctions contained in art. 110 of the Act of 1 March 2004, nowadays, in the case of a violation of the obligation indicated above and in view of the impossibility to determine the volume of sales subject to VAT, the tax authorities impose a tax sanction by estimating the unrecorded value of sales by multiplying it by the penalty rate of 23% (temporarily the 22% rate was increased to 23%).

The discrepancy, when compared to the mechanism of imposing this penalty, presented in the chapter on tax sanction contained in art. 110 of the Act of 1 March 2004, lies in the fact that currently, taxpayers do not lose the right to reduce the amount of output tax by the amount of input tax.

The scope of application of the tax sanction resulting from art. 111 of the Act of 11 March 2004, whose task is still to counteract the violation of the obligation to keep records of turnover and amounts of output tax with the use of cash registers only in the case of sales by natural persons who are not entrepreneurs or flat rate farmers, has not changed. In the examined case, the penalty occurs in the form of an additional tax liability in the sum equivalent to 30% of the amount of input tax on the purchase of goods and services, which is calculated up to the point at which the records of sales are kept by means of cash registers. However, it is no longer a constituent element of the penalty imposed, the loss by taxpayers - who violate the above-mentioned tax obligation - of the right to reduce the output tax by an amount equivalent to 30% of the input tax on the purchase of goods and services.

An important part, which emerged as a result of the evolution of tax sanctions in the content of art. 111, is the need to apply the constitutional principle of inadmissibility of applying to natural persons two independent penalties for violating the same tax obligation, namely, a tax sanction resulting from the provisions of the Act of 11 March 2004 and a fiscal penal sanction resulting from the provisions of the Fiscal Penal Code.

Conclusions

The Polish legislator, concerned that the Court of Justice will declare that the Polish VAT sanction provisions are incompatible with the EU law, repealed part of the provisions analysed above as of 1 December 2008. This was particularly important given that the case law of both tribunals forms part of the *acquis communautaire*.

Those concerns were largely justified, since the Court of Justice has opted only for the temporary – and not permanent – admissibility of restricting the right to deduct input tax on the basis of the principle of proportionality of the penalties imposed. Initially, this principle was questionable in application (Maruchin, 2015).

Therefore, the repeal of the provisions concerning this issue should be considered a "pro-community change of provisions" in the development of VAT sanction regulations.

As a result of the aforementioned judgments of the Court of Justice, the assumptions of the Polish legislator concerning the violation of art. 27 and 33 of the Sixth EEC Directive by the analysed sanction regulations in VAT were unsubstantiated, although it could have been possible to repeal these provisions based on aforementioned reasoning.

The fact that the Polish legislator gave priority to the principle of inadmissibility of applying two independent penalties for violation of the same tax obligation, namely, as a prima ratio of the tax sanction and as an ultima ratio of the fiscal penal sanction should also be viewed positively. In consequence, the principle is introduced more frequently to sanction regulations. This direction of development of the analysed sanction regulations is the result of direct influence of the Constitutional Tribunal's case law on Polish law.

The second "purely Polish" aspect affecting the evolution of VAT sanction regulations in the period preceding Poland's accession to the EU was the scope and frequency of tax violations.

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