ASEJ ISSN: 2543-9103 ISSN: 2543-411X (online)

Tax benefits as a key motive for creating a tax capital group in Poland

Joanna Toborek-Mazur

Department of Accounting, Cracow University of Economics
Poland

***Abstract*— The paper addresses the issues of factors determining the functioning of tax capital groups in Poland. The author points out the most important motivators from the point of view of organizing group of companies, but also the reasons for establishing and legal basis for forming tax capital groups. Based on the tax capital group of one of the largest insurance companies in Poland - PZU. Additionally, the author analyzed the method of creating a tax capital group and presented the most important benefits obtained by the tax entity. The validity of the decision taken within the capital group can be assessed in the areas of:accounting, tax settlements, fulfilling other tax duties and principles of cooperating in PGK PZU. As a result of the analysis, a new trend was identified related to the creation of tax unity in Poland.**

Keywords — tax benefits, tax capital group, holding, taxation, management.

I. INTRODUCTION

„Little else is requisite to carry a state to the highest degree of opulence from the lowest barbarism, but peace, easy taxes, and a tolerable administration of justice" (Smith, 2020). These words are still valid today and fully reflect reality, even though they were spoken by an outstanding economist already in the 18th century.

The existence and functioning of a state "which by its nature is a taxing state" requires obtaining financial resources necessary to implement public expenditure incurred in order to perform its functions (Macieja, 1998). The state should ensure the conditions for the functioning of the market while maintaining the principle of competition. The state should create conditions for the functioning of a market economy by establishing legal principles for conducting business activities and economic transactions. It should ensure the health, energy and economic security of citizens. To cover many of these necessary expenses, money is needed, which the state obtains from direct and indirect taxes imposed on both natural and legal persons.

The principle of allowing the taxpayer to choose the least taxed route, leading to a reduction in the tax burden, is supported by two principles (Kalinowski, 2001, p. 49): the freedom to contract and the statutory nature of the tax. A taxpayer cannot be accused of abusing the principle of free contracting when, using this freedom, he performs an activity that leads to the least taxation. The principle of the statutory nature of the tax protects the taxpayer by preventing executive bodies from shaping the structure of the tax by means of basic acts. The Act has the exclusive right to determine the components of the tax structure. Therefore, legal tax avoidance is permissible and cannot be denied.

Choosing the least taxed route, which is one of the forms of legal tax avoidance, is one of the main reasons for the creation of holding companies. Their fulfillment of a number of conditions required to create a tax capital group enables them to settle corporate income tax together, which results in tax benefits for the business entities forming the group, as they pay lower taxes than those they would pay if they settled their taxes separately.

The aim of the article is to analyze the benefits that the holding company achieves after establishing a tax capital group. Therefore, the author will answer the following questions:

1) What goals and motives accompany the creation of the

ASEJ - Scientific Journal of Bielsko-Biala School of Finance and Law
Volume 27, No 4 (2023), pages 10
https://doi.org/10.19192/wsfip.sj4.2023.4
Received: November 2023 Accepted: December 2023
Published: December 2023

Copyright: © 2023 by the authors. This is an open access article distributed under the terms and conditions of the Creative Commons Attribution CC-BY-NC 4.0 License (https://creativecommons.org/licenses/by/4.0/)
Publisher's Note: WSFiP stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.

holding structure?

2) How have the conditions that tax group of companies meet under Polish law changed?
3) What benefits can be achieved by creating a tax capital group?
4) Did the analyzed tax groups realize the expected benefits?

The author analyzed and assessed the entire period of tax regulations in this regard. Assessing evolutionary changes is an additional goal of this article.

II. Sources and reasons for the creation of holding structures in Poland

Changes in the political system, entailing restructuring and capital changes in domestic and foreign companies, resulted in the rapid development of conditions in Poland at the end of the 1980s for the creation of integrated structures aimed at achieving the highest level of economic efficiency.

Since 1989, holding structures began to emerge rapidly in Poland. In the years 1989–1990, approximately 600 group of companies with varying economic strength and strategies were established in Poland (UOKiK, 1996-1997). Groups of companies created in Poland are the response of enterprises to the rapid change in operating conditions and the freedom to make economic decisions (Romanowska, Trocki, Wawrzyniak, 2000, p. 205-209). In Poland, holding companies were not created for decades as a result of capital accumulation and its gradual concentration, as was the case in Western Europe. As a result of political changes, they began to appear with great dynamics and various varieties began to appear (Toborek-Mazur, 2022a).

There are many reasons influencing the establishment of a holding company. Establishing an organization with a holding structure creates prospects for faster development by entering new markets, expanding its own product range, as well as using the experience and assistance of a professional analytical and research center established by the group. One of the important attributes of the holding structure, apart from increasing operational efficiency, is the concentration of capital or, more categorically, the integration of legal and economic power (Toborek-Mazur, 2022b).

The development of holding structures is closely related to the main goal of creating and operating a business organization, which is its continuous development. Strengthening the enterprise may be the result of two independent or co-occurring developments in activities: internal growth and external growth. Similarly, the economic goals that led to the creation of holding companies may be internal or external (Romanowska, Trocki, 1998, p. 62).

In the first case, development takes place through investing such as: purchasing new real estate and machinery, i.e. creating new production and service capabilities, improving efficiency, rationalizing and harmonizing existing activities or improving the organizational structure and management organization. In the second case, the company's development takes place through the purchase of a set of assets in the form of an established enterprise and is often manifested in relationships and cooperation with other business entities (Toborek-Mazur, 2005a).

In such a case, the merger of enterprises takes place by gaining control of one economic entity over another, with or without the consent of its management board. The manifestation of economic growth is, among others, increase in production, services, fixed assets and employment as a result of undertaken material investments and rationalization activities. In connection with the implementation of these intentions, certain activities may lead to the separation of new units, including subsidiaries, thus creating a holding company. External growth guarantees faster, rapid development of the enterprise, which is burdened with a much greater risk of failure (Remlein, 2023).

However, the internal motives for creating holding companies also include the pursuit of economization of the activities of internal units in excessively developed state-owned enterprises and financial consequences of various nature, both for subsidiaries and associated entities, as well as for parent entities. The internal reasons for creating holding companies focus on improving the effectiveness and efficiency of operations and management of entities included in the group, and they are implemented primarily through increasing the specialization of activities in individual units of the holding company (Toborek-Mazur, Partacz, 2022).

The symptoms of external growth are primarily various types of relationships with other economic entities. External reasons for creating holding companies are all factors that cause the entities creating the holding to gain a certain advantage over other "non-affiliated participants" of trading. The concentration of potential within the holding company allows for entry into new industries by expanding the scope of specific activities (this applies mainly to parent entities). This facilitates both the objective development of the activities of a "large economic entity" and increases its territorial scope. By taking control over entities from other industries, parent entities gain the opportunity to expand into new areas of activity and expand sales markets without the need to create a production or service base "from scratch" (Toborek-Mazur, 2010). The parent company directly reaches sales and supply markets through controlled entities. Thanks to this relationship, costs are significantly reduced. This allows you to significantly reduce economic risk, diversify your business and disperse capital by taking over entities operating in various industries. However, by establishing a relationship with a stronger partner, the controlled entity enables itself to develop its own business by using the technological or personal resources of the parent entity. Holding is therefore a structure that ensures greater operational efficiency. An important aspect of the external motives for establishing holding companies is the desire to strengthen the competitive position in relation to other enterprises, both the parent company and the controlled entities (Toborek-Mazur, 2005b).

Cooperation with other entities may be more loose (e.g. cooperation agreements) or permanent in the form of capital relationships. In the latter case, when integration links take the form of a holding structure, a significant (jump) increase in the

technical and economic potential of the entire capital group can be observed. Therefore, development, regardless of whether it is implemented through internal or external growth, can be considered the primary and direct cause of the creation and development of holding companies (Toborek-Mazur, Partacz, 2022b).

Table 1 summarizes the benefits and motives that constitute the goals pursued within the operation of holding structures in the short and long term.

TABLE 1. OBJECTIVES OF OPERATION OF HOLDING COMPANIES.

Long-term goals	Short-term goals
Concentration of capital and economic potential (capital goal)	Cost reduction through cooperation
Possibility of taking first place in turnover on a given market (quality goal)	Mastering the markets for sales and raw materials
Possibility to influence the process in a specific economic zone through majority acquisition of shares (material purpose)	Cooperation in the field of research and development
Improving return on capital (value goal)	Reducing employment costs
Achieved greater profits	Increasing employee motivation thanks to higher wages (social goal)
Coordination of activities aimed at reducing control expenses	Increasing market share
Achieving optimal economic efficiency aimed at increasing operational effectiveness and at the same time quick adaptation to the requirements of the environment	Possibility of conducting a flexible and diversified capital policy
	Reducing the risk of your own business

Source: author own studies.

III. MOTIVES FOR CREATING HOLDINGS IN ECONOMIC LITERATURE

Many specialists dealing with the creation and operation of complex structures mention various motives for the creation and operation of group of companies. A brief review of the literature will outline the problem and present the main reasons for creating holdings.

M. Remlein presents the most common motives for creating group of companies, and according to her they are:

- benefits resulting from operational and financial synergy,
- economies of scale and scope of activity,
- integrating transactions vertically or horizontally,
- increasing market share or conquering a new market,
- tax benefits.

L. Stecki draws attention to subjective motives (related to the mental sphere) and objective motives for creating holdings. Subjective motives are all kinds of positive mental motives that encourage a person, especially an entrepreneur, to constantly strive to shape his or her social, legal and economic position in an increasingly favorable manner (Stecki, 1995).

The objective motives include a number of individual or general (universal) causes occurring in the following areas: social, economic, legal and organizational.

In the conditions of the Polish economy, the following needs are considered important reasons for the establishment of holding companies:

- reconstruction of rigid management structures formed in the previous economic system,
- debt conversion,
- creating favorable conditions for "attracting" capital and modern technical thought.

H. Jagoda and B. Haus, when considering the motives for creating holding companies, take into account the ways in which holding structures are created, namely: by purchasing shares in foreign entities and by separating part of the enterprise from the structure of the parent entity (Jagoda, Haus, 1995). On this basis, they distinguish, among others, the following motives:

- risk reduction,
- cost minimization,
- sales maximization,
- strategic strengthening of the competitive position,
- increasing management efficiency,
- increasing the transparency of the organizational structure and business profile.

Each of the above motives is associated with expected benefits, including:in the cost minimization motive: specialization of individual entities in selected sections of the production/service process, and therefore lower production costs.

The mentioned reasons for creating holding structures in practice are:

- willingness to start a new activity,
- striving to economize internal units by creating profit centers,
- disinvestments, i.e. the company withdrawing from certain areas of activity and investing in other more effective ones,
- limitation of liability in the event of undertaking a new activity involving high risk,
- cash flow control (stimulating the management board to maximize cash flow).

In practice, the reasons for establishing holding companies are generally complex, i.e. there may be several reasons for creating such a structure at the same time. When raising this issue, it should be noted that depending on the size, type of enterprise and business activity, the importance of individual motives will vary. Even the creation of holding companies similar in structure and type of activity could have been influenced by various motives. The general premise for creating group of companies is the expectation of an increase in the profitability of invested capital, but in practice there are other reasons generally outlined above (Karolak, 2001b).

A particularly important motive for merging companies into group of companies are tax benefits (tax considerations). However, the extent to which they constitute the basis for their creation depends primarily on the legal regulations in given countries. The essence of the problem comes down to deciding

whether a loss incurred by an enterprise from a given group can be used to reduce the profit of another enterprise of the same group, which in turn would lead to a reduction in the tax base of the entire holding company. This situation is related to the possibility of joint taxation of the entire group. The use of this tax management strategy was called Unused Tax Shields in the literature. The purpose of a company merger may also be to use tax reliefs and deductions and other tax reductions by entities that do not meet the conditions to benefit from them. For example, an entity is unable to use its tax relief or loss deduction because it does not generate sufficient income (to cover them). After merging with another entity, it will be able to use its deductions. Through joint taxation, a tax loss or accelerated depreciation method or other tax opportunities will be used. This will thus allow for tax benefits for the merged entities (Chadam, 2012, p. 34).

Therefore, international corporations often incorporated entities operating in another country to take advantage of tax breaks. Typically, countries that are interested in attracting foreign capital offer many tax exemptions and reliefs. Most often, these are the so-called "tax holidays" or tax oases. Special Economic Zones have been playing a similar role in Poland for many years, including:in: Mielec, Łódź and Silesia. The above motive is also related to other reasons for creating holding structures. The possibility of cash flow to support the development of selected units sometimes leads to a reduction in taxes paid, but is also a way to effectively allocate surplus cash at the holding's disposal. There was even a "proverb" that defined holding as a means by which one can legally do what is prohibited.

Establishing a holding company is a better solution for capital concentration than the possibilities of merging companies provided for in commercial codes or concluding agreements between companies, e.g. a civil partnership, due to the flexibility of this form (Karolak, 2001c). Holding is a convenient form of running a business with a diversified profile and facilitates organizational changes forced by market and technological trends. A less convenient form of conducting joint ventures due to the transparency of its existence resulting from the mandatory registration and publication of a lot of information is a commercial company. The functioning of companies, especially capital ones, is regulated by relatively many mandatory provisions, which contributes to this fact. This limits the possibility of freely shaping mutual economic relations. Comparing this form of business activity with a holding company, it is worth noting that in this case the flexibility of its structure is much greater. The reversibility of holding mergers is also easier than those made on the basis of the Code's regulation of company mergers, if such an arrangement does not bring the expected results. Based on the literature analysis, the basic motives for establishing holdings were summarized (Table 2).

TABLE 2. REASONS FOR CREATING HOLDING STRUCTURES

Source	Purpose
Synergy	- increased profitability -the value of the group higher than the sum of the value of shares of individual enterprises before the merger (2+2>4)
Elimination or reduction of competition	- achieving first place in turnover on a given market - possibility of increasing prices and thus increasing profits - mastering sales markets and raw materials
Reducing business risk	- in the case of a company merger, the profit stream is less volatile than separate streams, which leads to an increase in the value of the share and its market position
Economies of scale and scope	- increase in production level - conducting sales on a larger scale (diversification of activities) - reducing overall costs and unit costs

Source: author own studies.

IV. TAXATION OF HOLDING

The structure of income tax in each country may significantly influence the decisions made by economic entities. Most often, the method of determining income subject to income tax influences the directions of decisions made. The income that is considered the tax base generally differs from the income understood as the difference between sales revenues and the costs of obtaining them. The difference between financial profit and tax income, which is the tax base, results from not including all costs incurred in the latter or from a change resulting in an increase or decrease in the tax assessment base. The presence in tax law of elements of costs considered by the legislator to be necessary in order to obtain revenue, as well as costs the incurring of which is not necessary or revenues, and the non-recognition of certain sources of revenue or their different treatment for tax purposes creates a wide scope for maneuver in terms of decisions made.

In determining taxable income, tax law also introduces a number of reliefs, exemptions and deductions that modify it, but the use of these privileges is only possible after certain conditions are met by an economic entity.

Tax management decisions in a holding company are significantly influenced by the form of taxation. At the tax level, two theories of taxation of group of companies have been developed: the theory of separation and the theory of economic unity.

The essence of the separation theory is the separate taxation of individual enterprises forming the holding (separate economic entities) and the holding group's lack of tax personality, despite the unified management and subordination of the subsidiaries to the parent company of the holding. The enterprises within the holding are characterized by economic unity, but in the tax aspect, each of them is an independent tax law entity (taxpayer), treated separately in both legal and economic terms. The main reason for using this theory is legal

considerations, as the companies forming the holding are legal persons, and the holding itself does not have legal personality. An enterprise, not a group, is a party to legal transactions that have tax consequences. With respect to property taxes, it is also an enterprise, in the legal sense, and not a group, that is the owner (possessor) of taxable property. This theory is also justified by the tax income theory (Kluzek, 1998, p. 95).

In the legal aspect, this income is obtained by a specific natural or legal person (in Poland also some entities without legal personality), and not by any structure separated on the basis of economic and organizational criteria.

The tax result according to the distribution theory is determined assuming that each of the entities forming the group is a tax entity operating independently. This aspect has many unfavorable consequences for capital-related enterprises. The scope of freedom for economic decisions is limited, especially within the group. The scale of these restrictions depends on the level of fiscalization in individual countries and relates primarily to income taxation. Tax restrictions mainly concern transfers of profits and losses between enterprises forming a group by:eliminating or limiting the scope of application of internal (transfer) prices in turnover between these enterprises, different from market prices, double economic taxation of gratuitous property transfers, multiple taxation of dividends transferred within the group (Toborek-Mazur, Kuchmacz, 2003).

In conclusion, the application of the allocation theory, which does not take into account the tax income of the holding company as a whole, may mean that the sum of taxes paid by individual enterprises forming this group will be higher than the taxes due from the group treated as a tax entity. Currently, in many European countries, in order to eliminate double taxation of dividends, the following methods are used: the tax credit method or the method of exempting the parent company from tax on dividends paid to it by its daughter companies (Litwińczuk, 1995).

The theory of tax unity is the opposite of the one previously described. Its essence boils down to the exclusion of companies forming a holding company from tax subjectivity. These companies are no longer separate taxpayers. This group, as a whole, is a taxpayer of corporate income tax. This means that the effects of all economic operations carried out by individual enterprises are included in the group account. All economic operations are credited directly to the holding company's account, and internal turnover (as between plants of one enterprise) has no legal effect. The application of this theory in the tax system gives primacy to economic aspects over legal aspects. It is possible to avoid the fiscalism inherent in the distribution theory. In terms of taxation, turnover between capital-related entities is neutral in the sense that it does not give rise to the risk of double economic taxation. From a tax point of view, the settlements also do not affect the tax base. The result of the entire group is taxed as the sum of the profits and losses of the units within it. It is established in the common tax balance sheet of the entire group, which is prepared on the basis of consolidated financial statements (Toborek-Mazur, 2014). This form of taxation has several advantages. One of them is to avoid multiple taxation of dividends paid to the parent company by daughter companies. Elimination of taxation of unrealized profits resulting from turnover within an economic group. Transferring a share of profit is treated as an internal transfer of capital, not subject to taxation (Matysek, 2009). Tax unity also creates the possibility of covering the loss incurred by members of the group in a given tax year. In the case of the separation concept, the loss of a group participant cannot be cumulated with the profit of the other entities forming the group, and dividends are subject to multiple taxation within the group. For the first time when the dividend is transferred from the subsidiary (daughter) to the parent company (mother). The parent company then pays dividends to entities holding shares in it. Taxation in accordance with the concept of economic unity often entitles individuals to apply internal prices among the participants of the holding company. However, it is not possible to use internal prices in groups in which each company settles accounts separately. A comparison of both presented is presented in table no. 3.

TABLE 3. THE THEORY OF UNITY AND THE THEORY OF SEPARATION IN TAX LAW

Tax unity theory	Separation theory
The need to establish a tax capital group (PGK) in a notarial form and to meet very strict conditions throughout the duration of this agreement	No need to conclude any additional contract
The taxpayer is the group as a whole, and the individual units included in it do not have tax personality	Each company is a separate tax entity
The result of the entire group is taxed as the sum of the profits and losses of the units within it	Separate taxation of income (losses) of individual companies forming a holding company
Settlements may be based on internal (transfer) prices	Elimination of the use of groups of internal prices different from market prices in trade between enterprises
Elimination of taxation on unrealized profits resulting from intra-group turnover (share in profits is treated as an internal capital transfer not subject to taxation)	Double economic taxation of free property transfers
Avoiding multiple taxation of dividends	There is taxation on dividends
Possibility to cover the loss incurred by group members in a given tax year	The loss of a group participant cannot be cumulated with the profit of the other units forming the group

Source: author own studies.

V. TAX UNITY IN POLAND IN POLISH TAX LAW

The Act of October 13, 1995 amending the Corporate Income Tax Act and amending certain other acts was an important amendment to this legal act, introducing into Polish tax law - in relation to holding companies, a new legal and tax entity: Tax Capital Group (in polish - podatkowa grupa kapitałowa). This Act recognized tax capital groups as separate tax entities for income tax purposes. It was then that the possibility of tax cumulation was introduced for the first time in the case of enterprises belonging to a holding group. The previous

Corporate Income Tax Act of 1993 did not allow for any relief of this type.

"Tax capital group" (Art. 1a of the Corporate Income Tax Act of 1992, Art. 1 of the Act amending the Corporate Income Tax Act of 1995), despite the similar terminology with: "capital group" (Art. 55-63 of the Accounting Act of 1994) and with a "bank capital group" (Art. 117 of the Banking Law Act of 1997, Art. 2 of the Act on Merger and Grouping of Banks in the Form of a Joint Stock Company of 1996) used in statutes, are established only to enable group members to settle jointly solely for corporate income tax. These concepts are fundamentally different from each other. Tax regulations are independent of European company law, which is why each EU country creates native names to tax entities that are part of corporation and holding structures (Warchoł, 2001).

The regulations regarding the conditions for establishing a tax capital group have been subject to numerous changes since the very beginning of the operation of this corporate income tax entity. The first change was introduced by the amendment to the Corporate Income Tax Act of November 21, 1996 (Journal of Laws No. 137, item 639), effective from January 1, 1997. The next change was introduced on June 9, 2000 (Journal of Laws . No. 60, items 700 and 703) is effective from January 1, 2001, further changes took place in the years.

These subsequent amendments did not change the essence of their functioning, but only modified the requirements that must be met by the entities creating them.

Tax capital group may be established by at least two capital companies, i.e. joint-stock companies and/or limited liability companies, based in Poland, which meet all of the following conditions:

a. average share capital, determined in the manner referred to in section 2b, attributable to each of these companies, is not less than PLN 250,000,
b. one of the companies, hereinafter referred to as the "parent company", holds a direct 75% share in the share capital or in that part of the share capital of the other companies, hereinafter referred to as "subsidiaries", which, pursuant to the provisions on commercialization and privatization, was not transferred free of charge or acquired on preferential terms by employees, farmers or fishermen or which does not constitute a reserve of State Treasury property for reprivatization purposes,
c. these companies have no arrears in the payment of taxes constituting the income of the state budget;
d. should conclude an agreement on the establishment of a tax capital group in writing, for a period of at least 3 tax years, and it should be registered by the head of the tax office.

Analyzing the basic condition, it is worth emphasizing that initially the average share capital of the company creating tax capital group should be PLN 1 million. However, this regulation has changed and the current threshold is PLN 250,000.

The second condition that has undergone significant changes and is necessary for the establishment of a PGK is the obligation to exist specific relations between the companies forming the group. PGK is created by the parent company, which must have a direct share of at least 75% in the share capital of other entities, called subsidiaries.

Until December 31, 2000, the condition of 100% dependence was in force. Only from 2001 was the parent company, which must have a direct share of at least 95% in the share capital of other entities, called subsidiaries. The current requirement has significantly increased interest in creating group of companies.

The third necessary condition for the establishment of a tax capital group is that its companies must not be in arrears in paying taxes constituting the state budget's revenues.

Following the history of this condition, until the end of 2000, companies before the creation of tax capital group could not have overdue liabilities to which the tax ordinance applies. This condition has been significantly relaxed. Currently, it applies only to arrears in taxes constituting the income of the state budget (i.e. VAT and corporate income tax), and not - as before - to all overdue liabilities to which the provisions of the Tax Ordinance apply (e.g. contributions to social security or real estate tax arrears). Therefore, waiving some arrears may make it easier for companies that have problems with paying benefits, especially to ZUS (The Social Insurance Institution in Poland).

Tax profitability regulations no longer apply. The profitability condition (also called the profitability condition) replaced the originally existing investment condition, which was in force from the date of entry into force of the provisions on the tax capital group. It resulted in the obligation for PGK to make investment expenditures in each tax year in the amount constituting at least 50% of the group's income up to taxed, not less than 20% of the total taxable income of individual companies, without reducing it by the losses of other companies forming the group.

Since 1996, tax capital group was obliged to generate an income of at least 8% for each tax year, calculated on general principles (Article 7a(1) of the Corporate Income Tax Act). The amendment in 2001 lowered the profitability threshold to 6%, from 2004 to 3%, and from 2018 to 2%., and the entire procedure for its calculation is based on the formula:

$$\frac{Income}{\Sigma Revenue} x\ 100\% > 2\%$$

However, the disadvantage of the investment condition, intended to eliminate the situation in which the group would never show any income, was that it excessively limited PGK's freedom to decide what part of its income it would allocate in a given year to investments as part of its own economic strategy. Mainly for this reason, it was changed to the group profitability condition discussed above (Gwarda-Gruszczyńska, 1997).

Returning to the reason for introducing the profitability condition, the main reason for its introduction was to protect the interest of the State Treasury against uncontrolled loss of budget revenues on the part of the companies forming the group. The basic privilege of tax capital group is the right to accumulate losses and income in companies and tax exemption from dividends and other income from shares in profits of legal persons. These privileges pose a risk that PGK will pursue a policy of total abolition of income tax payments in the form of balancing losses incurred by companies forming the group (the so-called zero tax balance policy) (Helin, Zorde, Bernaziuk,

Kowalski, 2019, p. 45). The profitability condition was intended to eliminate or at least limit this practice, as it was supposed to ensure that the tax group had taxable income.

Another condition that has changed, but only very slightly, since the beginning of the tax capital group regulations is the condition that the parent company and subsidiaries must conclude an agreement on the establishment of the group. In order to create a tax capital group, the parent company and subsidiaries conclude a notarially confirmed agreement for a period of at least 3 tax years, which must be registered by the competent tax office. The Head of the Tax Office issues appropriate decisions in this regard (Głuchowski, 1996).

Poland is the only country in Europe where the contract must be concluded for a period of at least three tax years, in other countries this period is at least 5 years.

The contract should include:

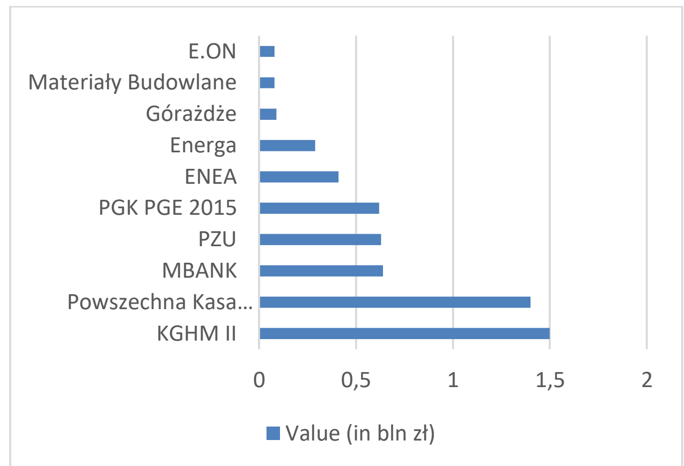
1) list of companies constituting tax capital group and the amount of their share capital;
2) a list of companies forming a tax capital group and the amount of their share capital;
3) information about the shareholders (shareholders) and the amount of their share in the share capital in the parent company and in the subsidiaries forming the tax capital group, holding at least 5% of the shares (shares) of these companies;
4) determination of the duration of the contract;
5) specification of the adopted tax year.

Failure to meet the conditions necessary for the existence of a tax capital group means that the contract becomes invalid by operation of law. It is worth emphasizing that as a result of establishing a tax capital group, the income and losses of individual companies are combined. Companies do not pay income tax separately, but collectively, which is an advantage for them (lower tax amount) (Karolak, 2001a).

Therefore, the basic benefits of creating a tax capital group are:

a. exemption from income tax on dividends and other revenues related to the profits of legal persons based in the territory of the Republic of Poland,
b. acceleration of the possibility of covering the losses of companies included in the pgk with the income of other companies of this group for the same year,
c. simplification of tax settlements,
d. avoiding the risk of double economic taxation in the event of gratuitous transfer of ownership of assets between companies forming a group (donations),
e. using internal prices within the group.
f. Continuing, it is worth noting that obtaining the opportunity for the parent company to actively influence the level of revenues and costs in individual companies of the group by using internal prices in their transactions is an important element of the group's tax policy (Wiankowski, Bogusławski, Borzęcki, Karmańska, 2000).

FIGURE 1. VALUE OF CALCULATED CIT TAX FROM THE LARGEST TAX CAPITAL GROUPS IN POLAND IN 2021



Source: author own studies based on R. Kilewicz, Lista największych podatników Trójmiasta i Pomorza. Kto płaci wysokie podatki? https://biznes.trojmiasto.pl/Lista-najwiekszych-podatnikow-Trojmiasta-i-Pomorza-n171313.html?strona=3 (dostęp: 13.12.2023).

VI. ANALYSIS OF FUNCTIONING OF SELECTED TAX CAPITAL GROUPS

Starting the analysis of selected companies forming tax capital groups, it is worth noting that their number has increased significantly. Currently, their tax results are a source of significant revenues to the state budget. Chart No. 1 shows the 10 largest tax capital groups in terms of the value of corporate income transferred to the taxpayer (CIT) in PLN billion in 2021.

As shown in the above chart, in 2021 the largest income tax payer was the PGK separated within KGHM. This group provided PLN 1,5 bln zł to the state budget. The next group is Powszechna Kasa Oszczędności BP SA, which transferred PLN 1.4 billion. Large taxpayers operating as tax capital groups also include MBANK, PZU, PGK PGE 2015, ENEA, Energa, Górażdże, Materialy Budowlane and E.ON.

The author analyzed the tax group created within PZU, based on a notarial agreement concluded on September 20, 2017. It was registered by the Head of the First Masovian Tax Office on November 21, 2017 and is expected to operate in the years 2018-2020. The parent company and representative of PGK PZU is PZU SA. It is responsible for fulfilling the obligations arising from the provisions of tax law. It consisted of the following 12 subsidiaries:

- Powszechny Zakład Ubezpieczeń na Życie Spółka Akcyjna (PZU Życie),
- PZU Centrum Operacji Spółka Akcyjna (PZU Centrum Operacji),
- PZU Pomoc Spółka Akcyjna (PZU Pomoc),
- Ogrodowa-Inwestycje sp. z o. o. (Ogrodowa-Inwestycje),
- Ipsilon Spółka z ograniczoną odpowiedzialnością (Ipsilon),
- PZU Zdrowie Spółka Akcyjna (PZU Zdrowie),
- PZU Finanse sp. z o. o. (dalej: PZU Finanse),
- PZU LAB Spółka Akcyjna (PZU LAB),
- Omicron BIS Spółka Akcyjna (Omicron Bis),
- LINK4 Towarzystwo Ubezpieczeń Spółka Akcyjna

(LINK4),
- Tulare Investments sp. z o. o. (Tulare Investments),
- PZU Cash Spółka Akcyjna (PZU Cash),
- m. PZU Projekt 01 Spółka Akcyjna (PZU Projekt).

The activities of the above-mentioned companies were mainly conducted in the area of insurance services, and included, among others: financial services, claims settlement and medical services. These activities are regulated by many legal regulations, including: regarding insurance activities and regulations regarding listed companies. Additionally, they are subject to supervision of the financial market and the Polish Financial Supervision Authority. When analyzing the documents prepared by the parent company and its subsidiaries, it is worth emphasizing that they met all the conditions for establishing a tax capital group. In particular years, they exercised due diligence in order to fulfill their obligations as income tax payers. No situation has arisen that could lead to a violation of tax law. Business decisions within PGK PZU were made based on the assessment of the impact of tax risk. The tax strategy developed over the three years of operation of PGK PZU was correct. The guiding principles for the consistent implementation of tax obligations and tax risk management include punctuality, transparency and openness to cooperation with tax authorities. The main principle followed by the parent company of the PZU tax group was the lack of acceptance of conscious taking of tax risk, both in the context of tax and business activities. The activities resulted from internal agreements concluded between the parent company and its subsidiaries, which allowed for:

- transparent division of roles and responsibilities of individual units within the structure of PGK PZU and the companies constituting PGK PZU,
- application of internal procedures regulating the conduct and implementation of tax obligations,
- use of appropriate IT tools to support proper tax settlements,
- cooperation with external experts,
- cooperation with tax authorities.

One of the most important areas of the implemented tax strategy is the planning of transactions and events, their tax analysis and the identification of areas of particular sensitivity that could give rise to risks under tax law. To ensure effective tax risk management, on August 6, 2018, the companies forming the tax group concluded an Agreement on the principles of operation of the PZU Tax Capital Group and implemented a number of internal procedures and processes to improve the identification, assessment and monitoring of tax risks, in the areas of: accounting, settlements tax, fulfillment of other tax obligations, rules of cooperation of entities belonging to PGK PZU. Table 4 presents the characteristics of the areas covered by these agreements.

TABLE 4. CHARACTERISTICS OF THE SCOPE OF INTERNAL CONTRACTS IN PGK PZU.

No	Area	Short description
1	Accounting	Procedures have been implemented to ensure the reliability of accounting books and the unification of the process of document circulation, invoicing and identification of entities responsible for the reliability of issued invoices.
2	Tax settlements	Ensuring the correct calculation and settlement of individual taxes (such as tax on goods and services, corporate income tax and real estate tax) as well as the security and timeliness of payments and financial settlements.
3	Fullfilling other tax duties	It concerns counteracting failure to fulfill the obligation to provide information on tax schemes and monitoring transactions and settlements with related entities.
4	Principles of cooperating in PGK PZU	The agreement ensures compliance of activities undertaken by PGK PZU with applicable law.

Source: author own studies.

Additionally, to ensure proper performance of obligations arising from tax law provisions, PGK PZU companies monitored changes in the legal environment, interpretation of law and lines of interpretation developed in case law and by tax authorities, and, if necessary, updated internally implemented processes and procedures on an ongoing basis in order to adapt the undertaken actions. actions and decisions to the applicable legal provisions and the needs of the surveyed group.

To fulfill the obligation arising from Art. 27c section 2 point 3 letter a of the CIT Act, information on transactions with related entities within the meaning of Art. 11a section 1 point 4 of the CIT Act, the value of which exceeds 5% of the balance sheet total of assets within the meaning of the provisions of the Accounting Act, determined on the basis of the last approved financial statements, including entities that are not tax residents of the Republic of Poland. The parent company did not enter into any transactions with related entities. Only other entities belonging to PGK PZU were parties to these transactions. In accordance with the obligations arising from Chapter 1a of the CIT Act, companies belonging to PGK analyzed relations and transactions with related entities in terms of their compliance with tax law regulations. In the case of concluding transactions with entities that do not have their registered office in Poland, companies belonging to PGK PZU verified the compliance of these transactions in terms of their specific scope of documentation. Table 5 Presents a list of transactions along with the indication and name of the related entity with which the transaction was carried out within PZU companies.

TABLE 5. LIST OF SELECTED TRANSACTIONS BETWEEN ENTITIES RELATED TO PZU GROUP COMPANIES

Company	Number of transactions	Source of transaction	Affiliated companies
PZU SA	1	financial services	Bank Polska Kasa Opieki SA
PZU Życie	1	financial services	Bank Polska Kasa Opieki SA
PZU Centrum Operacji	6	insurance brokerage services, IT services, contact center, mass printing services, HR and payroll services, administrative and office services and cost re-invoices	PZU SA, PZU Życie, PZU Zdrowie, PZU Pomoc, TFI PZU SA, PEKAO Financial Service Sp. z o.o.
PZU Pomoc	4	claims handling services administrative and office services	PZU SA, PZU Życie, LINK4,

Company	Number of transactions	Source of transaction	Affiliated companies
			PZU Centrum Operacji
Ogrodowa-Inwestycje	3	services in the field of purchase and redemption of investment subfund units,	TFI PZU SA
Ipsilo	2	bookkeeping services, office space rental services,	PZU Finanse, Ogrodowa – Inwestycje
PZU Finanse	15	bookkeeping services, office space rental services, IT and HR and payroll services, occupational medicine services,	PZU SA, PZU Zdrowie, PZU Centrum Operacji, PZU Pomoc, PZU Cash, Ogrodowa – Inwestycje, TFI PZU SA, PH 3 Sp. z o.o. SKA, PH 2 Sp. z o.o., Alior Services Sp. z o.o.,
Tulare Investments	3	bookkeeping services, office space rental services,	PZU SA, PZU Życie, PZU Finanse
PZU Cash	2	financial services	PZU SA, PZU Życie

Source: author own studies based on https://www.pzu.pl/grupa-pzu/o-nas/informacja-o-realizowanej-strategii-podatkowej/pgk-pzu-2021 (dostęp 23.11.2023)

Transactions presented in Table 5 may have been based on internal prices, which may have differed from market prices. The number of transactions whose value exceeds 5% of the balance sheet total of assets in the capital group exceeds 30. They could definitely bring further economic benefits for the entire group. Internal pricing is used by moving individual assets within a tax group. The value of the asset transferred in this way is a tax deductible expense for the current owner, while for the recipient it is tax revenue and is tax neutral. Operations between individual companies forming tax capital group are neutral from the point of view of tax law. Only turnover made outside the tax group is taxed.

An example of a holding company within which a group of companies was separated to create a tax capital group is Tauron. In 2011, Tauron Polska Energia completed the registration process of the tax capital group (PGK), which included 11 companies from the Tauron Group. The agreement to establish PGK was signed for three years (2012-2014) and registered by the Head of the First Silesian Tax Office in Sosnowiec. Then, on September 22, 2014, another agreement of the Tax Capital Group ("PGK") for the years 2015–2017 was signed. PGK is composed of Tauron Polska Energia S.A., Tauron Wytwarzanie S.A., Tauron Dystrybucja S.A., Tauron Sprzedaż Sp. z o.o., Tauron Obsługa Klienta Sp. z o.o., Tauron Ekoenergia Sp. z o.o., Tauron Cieplo Sp. z o.o. oraz Tauron Wydobycie S.A.

Tauron Polska Energia S.A., as the company representing PGK, is the entity responsible for paying advances on PGK's corporate income tax in accordance with the provisions of the Corporate Income Tax Act. In the following years, the shape of the functioning of the tax group changed. On December 14, 2020, another agreement of the tax capital group for the years 2021-2023 was registered.

Companies forming the tax capital group as of January 1, 2021: TAURON Polska Energia S.A., Tauron Wytwarzanie S.A., Nowe Jaworzno Grupa Tauron Sp. z o. o., Tauron Dystrybucja S.A., Tauron Głos Sp. z o. o., Tauron Głos GZE Sp. z o. o., Tauron Obsługa Klienta Sp. z o. o., Tauron Ekoenergia Sp. z o. o., TEC1 Sp. z o. o., TEC2 Sp. z o. o., TEC3 Sp. z o. o. and Kopalnia Wapienia Czatkowice Sp. z o.o. Thus, the functional group was expanded to include additional companies.

Analyzing selected examples, it is worth emphasizing that a tax capital group can be separated from a capital group and is always registered for 3 years. It is worth considering whether this period can be extended. Due to the long-term functioning of both selected groups, it can be confirmed that they achieve a tax advantage. Otherwise, their duration under the PGK would not be extended. Poland is the only country in Europe where the contract must be concluded for a period of at least three tax years, in other countries this period is at least 5 years.

VII. Conclusions

An interesting example of achieving tax benefits is the separation of a tax group, thanks to which you can obtain measurable financial benefits in the form of retaining part of the profits. It is worth emphasizing that a tax group may be separated from a capital group for companies that fully meet the conditions for its establishment. Tax unity is one of the tools for reorganizing the capital group. Thanks to it, the group will pay lower tax. When analyzing the structures of tax groups, it is worth noting that they do not always consist of entities having the same organizational and legal form.

In accordance with the group's operating conditions, they may be an important element of the group's tax policy by using internal prices in their transactions. Internal prices may differ from market prices (they may: increase or decrease prices, make services free of charge). Mutual payments within the tax capital group neutralize each other, as increasing costs in one company results in an increase in the revenues of the other. This excludes the possibility for tax authorities to estimate the "lost" income due to its transfer between companies forming tax capital group (Stefanowski, 2018).

The advantage of operating a tax group is the advantage of faster obtaining sources of financing. This is possible by granting mutual loans on preferential terms, much more favorable than those used by banks. Additionally, in each capital group there is mutual cooperation and assistance. This results in a stronger market position and increases competitiveness. The most important benefit for enterprises in tax capital group is the reduction of tax liabilities, or the possibility of reducing tax liabilities within the capital group, thanks to the calculation of tax capital group income as the sum of the income and losses of the parent company and subsidiaries.

The author analyzed the method of creating groups of companies from the beginning of their operation. She noted that initially tax regulations were incorrectly interpreted and

therefore not many tax forms were created. Only in the last few years has the structure of tax unity been separated within the holding and an entity has been created that provides many benefits for the entire group of companies.

The paper presents the results of scientific research conducted within WAP project financed by a subsidy granted to the Cracow University of Economics.

VIII. References

Chadam J., Synergia i wartość w strukturach kapitałowych, Difin, Warszawa 2012.

Głuchowski J., Oazy podatkowe, Dom Wydawniczy ABC, Warszawa 1996.

Grupy kapitałowe w Polsce; red M. Romanowska, M. Trocki, B. Wawrzyniak, , Difin, Warszawa 2000 r.,

Helin A., Zorde K., Bernaziuk A., Kowalski R. (2019), Fuzje i przejęcia spółek kapitałowych. Zagadnienia rachunkowe i podatkowe, Wydawnictwo C.H. Beck, Warszawa.

Grupa Kapitałowa Powszechnego Zakładu Ubezpieczeń Spółki Akcyjnej: https://www.pzu.pl/_fileserver/item/1536714 (access date: 17.12.2023).

Gwarda – Gruszczyńska E., Dlaczego holding, Businessman, październik 1997.

Jagoda H., Haus B, Holding, Organizacja i funkcjonowanie, PWE, Warszawa, 1995.

Kalinowski M., Granice legalności unikania opodatkowania w polskim systemie podatkowym, TNOiK „Dom Organizatora", Toruń 2001 r.

Karolak A., Instytucja holdingu; Przegląd Ustawodawstwa Gospodarczego, nr 3, 2001.

Karolak A., Koegzystencja podmiotów powiązanych stosunkami zależności i dominacji, Stosunki wewnątrzholdingowe, Prawo spółek 2001 r. nr 6

Karolak A., Podstawy prawne tworzenia i funkcjonowania holdingów; Przegląd ustawodawstwa gospodarczego, nr 5, 2001.

Kondrakiewicz, T., Żuk K., Wykorzystanie struktur holdingowych w procesie restrukturyzacji przedsiębiorstw komunalnych, Annales Universitatis Mariae Curie-Skłodowska. Sectio H, Oeconomia 38, Lublin 2004.

Kluzek M., Podatkowe konsekwencje powstawania i rozwoju grup kapitałowych w Polsce, Zeszyty Naukowe AE Poznań, 1998 r., nr 264, str. 95.

Macieja J., Im niższe publiczne wydatki tym szybsze tempo wzrostu gospodarczego, „Rzeczpospolita" 1998 r., nr 121, str. 6.

Matysek G., Założenia modelowe opodatkowania dochodów, Annales Universitatis Mariae Curie-Skłodowska. Sectio H, Oeconomia 43, 55-69, Lublin 2009

Litwińczuk H., Opodatkowanie koncernów, Przegląd Podatkowy nr 2/1995.

Remlein M., Rachunkowość grup kapitałowych, PWN, Warszawa 2023.

Romanowska M.,. Trocki M., Grupy kapitałowe, Home & Market nr 8, 1998 r.

Stecki L. Holding, TNOiK ,Toruń 1995.

Smith A., Badania nad naturą i przyczynami bogactwa narodów. PWN, Warszawa 2020.

Strategia podatkowa PGK PZU https://www.pzu.pl/grupa-pzu/o-nas/informacja-o-realizowanej-strategii-podatkowej/pgk-pzu-2021

Sprawozdanie finansowe grupy kapitałowej Tauron https://media.Tauron.pl/pr/199358/Tauron-zostal-podatkowa-grupa-kapitalowa (access date: 17.12.2023).

Toborek –Mazur J., Kuchmacz J.; Rachunkowość w zarządzaniu holdingiem , Zakamycze 2003.

Toborek –Mazur J, Holding w aspekcie prawnym, bilansowym i podatkowym, Oficyna Ekonomiczna , Kraków 2005.

Toborek-Mazur J., Podatkowe podstawy powstawania holdingów, Wydawnictwo AE w Krakowie, Kraków 2005.

Toborek-Mazur J., Holding jako podmiot rachunkowości, Oficyna a Wolters Kluwer, Warszawa 2010.

Toborek-Mazur J., Wykorzystanie potencjału podatkowej grupy kapitałowej w regionie świętokrzyskim; R. 18, nr 1, s. 289-297, Czasopismo: Studia i Materiały. Miscellanea Oeconomicae: 2014.

Toborek-Mazur J., Partacz K. (2022a), Ewaluacja efektu synergii w transakcjach fuzji I przejęć w czasie pandemii COVID-19, Zeszyty Teoretyczne Rachunkowości, Vol. 46, Nr 1, Warszawa, pp. 101-118.

Toborek-Mazur J., Partacz K. (2022b), Impact of the COVID-19 on creating business strategies in mergers and acquisitions, ASEJ - Scientific Journal Bielsko Biała School of Finance and Law, Vol. 26 No 1 (2022), Bielsko-Biała, pp. 25-32.

Wiankowski S., Bogusławski Z., Borzęcki J., Karmańska A., Praktyka funkcjonowania krajowych grup kapitałowych, Instytut Organizacji i Zarządzania w Przemyśle „ORGMASZ", Warszawa 2000 r.

Warchoł J., Umowy koncernowe w prawie niemieckim i polskim, Dom Wydawniczy „Ostoja", Kraków 2001.

Ustawa z dnia 15 lutego 1992 r. o podatku dochodowym od osób prawnych, Dz.U. 1992 nr 21 poz. 86 z późn. zm. Dz. U. z 2022 r. poz. 2587.

Sprawozdanie z działalności Urzędu Ochrony Konkurencji i Konsumentów w 1996 i 1997 roku.

Stefanowski R., Material Adverse Change. Lessons from Failed M&As, John Wiley & Sons, Inc., Hoboken, New Jersey 2018

https://isp-modzelewski.pl/serwis/podatkowa-grupa-kapitalowa-niektore-problemy-tworzenia-i-funkcjonowania/ (access date: 29.11.2023).

https://www.ey.com/pl_pl/tax/sa-rozwiazania-ktore-pozwola-uproscic-rozliczenia-w-grupach-kapitalowych (access date: 29.11.2023

https://media.Tauron.pl/pr/199358/Tauron-zostal-podatkowa-grupa-kapitalowa (access date: 29.11.2023)