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TAX EXEMPTIONS IN EXCISE DUTY IN THE CONTEXT OF FISCAL EFFICIENCY

EDYTA SYGUT¹

Abstract

The basic function of taxes is the fiscal function, which consists in collecting revenue by public authorities. The imposition of non-fiscal functions on taxes causes the weakening of their basic function. The purpose of the article is to present tax exemptions, as well as to assess the fiscal consequences of their application in excise duty in Poland in 2012-2016.

The Polish excise duty solutions provide for numerous tax exemptions, whereby it should be noted that a significant part are attributable to EU solutions resulting from harmonisation of this tax. In light of the conducted research, it may be concluded that the applied tax exemptions have a significant influence on fiscal efficiency (causing an average revenue decrease of approximately 7% during the examined period).

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INTRODUCTION

Taxes are the basic tool for collecting revenue by public authorities. Tax collection has a significant impact on the decisions concerning production, consumption, investments or savings taken by business entities and households. In fact, the introduction of tax exemptions means resignation from a part of tax revenue. Excise duty is a productive source of state budget revenue; moreover, its structure is to a large extent unified in all Member States of the European Union, including in the area of tax exemptions.

The purpose of the article is to present the excise duty exemptions in Poland, as well as to assess the fiscal consequences of their application. With the aim of this goal, the article will identify subjective and objective, as well as mandatory and optional, excise duty exemptions in the light of EU legal solutions, and also determine the impact of their application on the state budget revenue in 2012-2016. The research will cover only the exemptions monitored by the Ministry of Finance.

TAX EXEMPTIONS AND TAX FUNCTIONS

Taxes are intended mainly for implementation of the fiscal function, which consists in acquiring funds from various entities through coercion to the benefit of a state or another institution under public law. These funds are collected for the purpose of financing public services, i.e. making public expenditures. The ability to collect public funds through a particular tax is defined as the fiscal efficiency of such tax. In this respect, indirect taxes (including excise duty) deserve special attention, because the essence of this form of taxation lies in including tax in the price of goods sold, which therefore constitutes the basic fiscal advantage (Władza fiskalna, 2001, p. 32). From the point of view of the public authorities, indirect taxes are particularly attractive if their amount is a proportional part of the price, because the fiscal efficiency of such taxes increases without the necessity of any action on the part of authorities, as the proportional tax on sales increases along with the increase of prices (James & Nobes, 2000, p. 234). If a tax fails to deliver the fiscal function (providing either minimum or no revenue), there are grounds for eliminating such tax from the tax system (Finanse..., 2000, p. 22).

The appropriate legal structure of a tax may lead a taxpayer to a behavior expected by the public authorities, helping to implement the non-fiscal tax functions (Brzeziński, 2001, p. 67). Among the taxes whose imposition is justified by non-fiscal reasons, excise duty deserves particular attention. In consequence, excise duty collection is usually related to physical inspection (e.g. the obligation to label with excise stamps), whereas collection of other taxes is verified mainly through inspection of the relevant documentation (Cnossen, 2005, p. 2). Tax is an instrument regulated by the public authorities trying to subordinate it to the goals that they want to achieve (Famulska, 2007, p. 112). However, taxation is not a particularly ‘flexible’ tool for achieving non-fiscal objectives (Rybarski, 2015, p. 263).

One of the possibilities of implementing non-fiscal functions of a tax is to apply an additional structural element, i.e. exemption¹. Tax exemptions are exceptions from the general standard, and their non-fiscal objective is expressed by means of a relevant structure (Rybarski, 2015, p. 259). Tax exemption means definitive exclusion from taxation of a specific category of entities, or restriction of its material scope (Mastalski, 1995, p. 55). Therefore, we distinguish between subjective exemptions, related to the personal or economic situation of a taxpayer, and objective exemptions, which are either the expressions of specific economic preferences of the state, or they prevent double taxation (Dzwonkowski, 2013, p. 21). Moreover, exemptions may also have a mixed character, i.e. subjective and objective (Nykiel, 2002, p. 16).

The functions of exemptions assumed by the public authorities and those actually implemented enable us to specify various types of exemptions (Nykiel, 2002, p. 42), namely:

- 1) exemptions of an economic nature - achieve a specific condition in the economy,
- 2) exemptions of a social nature - pursue social goals, e.g. in the field of culture, education, social care or health protection,
- 3) other exemption - are usually of a technical nature and have no effects.

It is worth noting that certain exemptions may be of a socio-economic nature (Brzeziński, 2001, p. 72), because they have an impact both on the social and economic

¹ H. Dzwonkowski has listed the following structural tax elements as necessary: subject, object, tax base and tax rate. Compare: Prawo podatkowe, (red.) H. Dzwonkowski, Wydawnictwo C.H. Beck, Warszawa, p. 11-12.

sphere of any state.

Tax exemptions are among the structures which cause tax expenditures (Wyszkowski, 2010, p. 70). Tax preferences, including tax exemptions, are applied due to the redistribution and stimulation effects that they cause. Their implementation in the tax system provides support to specific groups of taxpayers, economic sectors or types of activity through reduction of the ultimate tax burden.

The consequence of tax expenditures for the public authorities is the reduction of tax revenue, whereas for the taxpayers - the reduction of tax burdens (OECD, 2010, p. 12). Therefore, reduction of revenue resulting from the application of tax preferences constitutes indirect public expenditures, the so-called tax losses (Tax expenditures..., p. 30-31). Direct expenditures are direct transfers of funds from the budget to the beneficiaries, whereas the level of expenditure is controlled and limited to the budgetary law regulations (Tax expenditures..., pp. 257-258). Unlike direct expenditures, tax expenditures are a hidden form of public expense, because they are indirectly defined in tax acts, due to which their 'spending' process is less transparent, and therefore less visible for a significant part of society (Dziemianowicz, Wyszkowski & Budlewska, 2014, p. 41).

EXCISE DUTY EXEMPTIONS UNDER EU AND POLISH LAW

Due to its price-generating nature, excise duty is a harmonized tax within the European Union territory. Excise duty harmonization in particular Member States is intended to guarantee uninterrupted competition between business units, as well as to ensure free flow of excise goods in the EU market (Sygut, 2016, p. 235).

The basic tool for harmonization of tax law are European Union Council directives. Tax exemptions in excise duty, which constitute one of the most significant elements of tax technique, have also been regulated by EU directives, i.e.:

- 1) Council Directive 2008/118/EEC on the general arrangements for excise duty, repealing Directive 92/12/EEC,
- 2) Council Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages,

- 3) Council Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products and electricity,

- 4) Council Directive 2007/74/EC on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries.

Excise duty exemptions were divided into mandatory exemptions and optional exemptions. At the same time, the EU legislature left the Member States free to decide on the method of implementation of the regulations concerning mandatory exemptions, as well as whether and to what extent optional exemptions would be applied (Akcyza. Komentarz, 2017, p. 303).

The analysis of Polish regulations on excise duty indicates that the problem of mandatory excise duty exemptions was addressed directly in Part II, Chapter 6, Art. 30-39 of the Act, whereas optional exemptions were introduced in the national legislation by regulation of the Minister of Finance.

The application of exemptions in excise duty is usually possible in two forms: in traditional form (i.e. tax is not payable), or in the form of a refund of the already paid tax. As a principle, selection of one of these methods is left for the Member States (e.g. Art. 27 of Council Directive 92/83/EU, or Art. 17 of Council Directive 2011/64/EU). Moreover, the Member States are free to decide the conditions and formal application of these tax exemptions and tax refunds (Akcyza w prawie, 2014, p. 486).

The classification of selected excise duty exemptions applicable in Poland has been presented in Table 1. A vast majority of excise duty exemptions are objective. Objective exemptions can be additionally subdivided into:

- 1) exemptions due to intended use,
- 2) exemptions for personal objectives,
- 3) exemptions due to specific economic objectives.

Subjective exemptions in excise duty are applied to a small extent. Among subjective exemptions, particular attention shall be drawn to the exemptions provided for in Art. 31 Par. 1 of the Act on excise duty, which are the consequence of Art. 12 of Directive 2008/118/EC, because the directive does not implement any new exemptions, but only refers to the exemptions provided for in the international law that is binding for the Member States and basically does not require implementation (Akcyza w prawie..., 2014, p. 115).

Table 1: Classification of excise duty exemptions selected and monitored by the Ministry of Finance

No.	Legal basis*	Type of tax exemption
Objective exemptions		
a) exemptions due to intended use		
1	Art. 30 Par. 1	Exemption for electricity obtained from renewable energy sources
2	Art. 30 Par. 6	Exemption for electricity consumption in the electricity production process
3	Art. 30 Par. 7	Exemption for electricity consumption in the combined electricity and heat production process
4	Art. 30 Par. 7a	Exemption for excise duty on electricity used for the purpose of chemical reduction and in electrolytic, metallurgical and mineralogical processes
5	Art. 31d Par. 1	Exemption for excise duty on electricity used by an energy-intensive plant
6	Art. 32 Par. 1 Item 1	Exemption for aviation gasoline used in aircrafts, gasoline-type jet fuel and jet fuel or lubricating oils for aircraft engines
7	Art. 32 Par. 1 Item 2	Exemption for energy products used for the purpose of navigation, including fishing voyages
8	Art. 32 Par. 1 Item 3	Exemption for other hydrocarbon gases used for heating purposes
9	Art. 32 Par. 4 Item 1	Exemption for energy products used in the electricity production process
10	Section 3	Exemption for kerosene intended for lighting and cosmetic purposes, or as anti-rust remover
11	Section 4	Exemption for other liquefied hydrocarbon gases filled in gas cylinders, intended for use in devices, machines and vehicles other than transport vehicles
12	Section 6 Item 1	Exemption for heating oil used in the combined power and heat generation process, as well as farm, gardening, greenhouse and forestry work
13	Section 6 Item 2	Exemption for lubricating oils, other oils intended for use for other purposes than propelling or heating
14	Section 6 Item 3	Exemption for diesel oils, used for the purposes of electro-insulating and transformer oils, as well as process and technological oils
15	Section 9 Par. 1	Excise duty exemption for alcoholic beverages used: 1) as samples for analysis, necessary production tests, or scientific purposes; 2) for scientific research; 3) for production processes, provided that the end product does not contain alcohol.
16	Section 10 Par. 1	Excise duty exemption for ethyl alcohol used for medical purposes in hospitals, pharmacies and health care units
17	Section 14	Excise duty exemption for tobacco products in case they are used for scientific research, or research related to product quality
b) exemptions for personal use		
18	Art. 35 Par. 1 Items a) and b)	Exemption for import of motor fuels transported in standard containers of motor vehicles and special containers

No.	Legal basis*	Type of tax exemption
19	Section 15	Exemption for alcoholic beverages and tobacco products upon their sale to travelers travelling outside the EC in shops located in a duty-free zone or in duty-free warehouses at the airports or seaports located at border crossing points
c) exemptions due to specific economic objectives		
20	Section 11 Item 1	Excise duty exemption for forfeited alcoholic beverages upon their sale by authorized bodies to a tax warehouse keeper with the intention to be processed into ethyl alcohol in a tax warehouse
21	Section 11 Item 2	Excise duty exemption for forfeited ethyl alcohol upon its sale by the authorized bodies to hospitals, pharmacies and health care units
22	Section 11 Item 3	Excise duty exemption for forfeited tobacco products upon their sale by authorized bodies to a tax warehouse keeper with the intention of further processing of such products in a tax warehouse
23	Section 11 Item 4	Excise duty exemption for forfeited energy products upon their sale by authorized bodies to a tax warehouse keeper with the intention of further processing of such products in a tax warehouse
24	Section 12	Excise duty exemption for ethyl alcohol remaining as waste material in a production process in which the end product does not contain ethyl alcohol, in case when ethyl alcohol is moved to a tax warehouse with the intention of further processing in this tax warehouse
25	Section 16 Par. 1	Excise duty exemption upon the sale of ethyl alcohol and intermediate products (...) delivered on board of aircrafts, ships and sea ferries, provided that they are given away for free or sold for direct consumption by travelers or crew when travelling on international voyages
26	Section 17	Excise duty exemption for excise goods which became unfit for consumption, further processing or use during the excise duty suspension procedure and were destroyed with the consent of the relevant head of the customs office.
Subjective exemptions		
27	Art. 31 Par. 1	Excise duty exemption for taxable transactions whose subject are excise goods to be used by diplomatic representations, consular offices, international organizations and European Union institutions, as well as armed forces
28	Art. 110	Exemption on import by a natural person, entering the territory of a state for permanent residence or returning from a temporary residence, for passenger vehicles, from the territory of another Member State
29	Art. 112	Exemption on import of passenger vehicles from outside the territory of Member States and EFTA Member States by a natural person, staying in the territory of a state for permanent residence or returning from a temporary residence in the territory of such Member States
30	Section 13 Par. 1	Excise duty exemption for taxpayers producing beer who sold up to 200,000 liters of beer in the calendar year preceding the fiscal year

Source: Own study based on the Act of 6 December 2008 on excise duty, i.e. Journal of Laws of 2014, Item 752 with further amendments and regulation of the Minister of Finance of 8 February 2013 on excise duty exemptions, Journal of Laws of 2013, Item 212 with further amendments.

Fiscal consequences of application of exemptions in excise duty in 2012-2016

In analyzing the amount of indirect state budget expenditures due to application of excise duty exemptions, a significant decrease in 2013-2015 was noticed in comparison with 2012 (by over 35%, i.e. PLN 1.8 billion in 2013 and 2014, as well as by almost 25%, i.e. PLN billion 1.3 in 2015), whereas in 2016 a return to the expenditure level in comparison with the base year 2012 was recorded.

Out of the total amount of indirect expenditures related to application of excise duty exemptions in 2012-2016, on average 99% are expenditures related to objective exemptions. Among them, the most largely used by taxpayers, and at the same time generating the highest indirect expenditures for the state budget, are objective exemptions applied due to the intended use of excise goods. Their share in the total amount of tax exemptions included in the analysis was at the level of approximately 65%-82%. Two types of exemptions deserve particular attention - Art. 32 Par. 1 Item 1 and Art. 32 Par. 1 Item

2. They are related to the use of energy products (such as aviation gasoline, gasoline-type jet fuel and lubricating oils) for the purpose of navigation or in aircrafts whose application in 2012-2016 overall constitutes from 30% to over 60% of the total amount of indirect expenditures in this respect.

The share of the costs of application of objective exemptions related to the use or purchase of excise goods for personal purposes was significantly lower. During the period covered by the research, it amounted from approximately 15% to approximately 28%.

The costs of objective exemptions related to the use of excise goods for specific purposes constituted on average 3.78% of the total amount of the costs of application of excise duty exemptions. The expenditures in this respect consisted to the greatest extent of the expenditures related to the exemption specified in Section 17.

Moreover, it shall be concluded that the share of indirect expenditures due to the application of subjective exemptions in the total expenditures in this respect in 2012-2016 is marginal and amounts to 1% on average.

Table 2: Volume of indirect public expenditures due to application of exemptions monitored by the Ministry of Finance in 2012-2016

Legal basis of tax exemption	Volume of indirect public expenditures due to application of excise duty exemptions (in PLN)				
	2012	2013	2014	2015	2016
Objective exemptions	5,183,951,737	3,345,620,133	3,337,716,121	3,894,790,230	5,255,838,818
a) exemptions due to intended use	4,250,805,589	2,376,918,151	2,195,230,306	2,818,068,597	4,150,856,347
Art. 30 Par. 1	126,368,018	142,047,191	229,482,487	95,452,026	212,394,581
Art. 30 Par. 6	221,708,332	214,066,811	206,683,658	221,334,871	227,163,536
Art. 30 Par. 7	98,759,165	96,611,668	89,033,841	91,986,004	77,942,641
Art. 30 Par. 7a	-	-	-	-	200,942,616
Art. 31d Par. 1	-	-	-	-	62,989
Art. 32 Par. 1 Item 1	2,791,075,082	1,057,512,658	731,138,576	1,263,000,099	2,104,826,256
Art. 32 Par. 1 Item 2	433,034,664	300,577,563	314,630,227	452,452,990	628,000,677
Art. 32 Par. 1 Item 3	151,539,735	163,738,485	182,207,044	209,148,761	244,490,054
Art. 32 Par. 4 Item 1	7,955,085	7,767,100	9,302,126	6,951,943	8,982,421
Section 3	603,267	527,135	521,365	921,500	555,044
Section 4	270,670,288	246,223,132	242,721,729	278,187,783	260,030,803
Section 6 Item 1	3,706,557	2,816,104	7,263,294	960,266	641,725
Section 6 Item 2	93,225,355	98,219,388	118,023,544	118,916,654	138,156,006
Section 6 Item 3	3,604,554	2,799,575	6,720,577	29,521,257	-
Section 9 Par. 1	44,732,671	38,309,679	53,213,791	44,463,922	41,057,200
Section 10 Par. 1	2,426,843	3,483,686	2,152,576	2,825,484	1,867,332
Section 14	1,395,973	2,217,976	2,135,471	1,945,037	3,742,466
b) exemptions for personal use	802,839,628	879,053,469	937,205,188	893,443,395	895,116,292
Art. 35 Par. 1					
Items a) and b)	788,787,415	865,340,558	922,705,330	884,296,330	866,774,330
Section 15	14,052,213	13,712,911	14,499,858	9,147,065	28,341,962
c) exemptions due to specific economic objectives	130,306,520	89,648,513	205,280,627	183,278,238	209,866,179

Legal basis of tax exemption	Volume of indirect public expenditures due to application of excise duty exemptions (in PLN)				
	2012	2013	2014	2015	2016
Section 11 Item 1	6,395,269	6,138,520	2,247,794	1,048,224	4,740,875
Section 11 Item 2	0	0	0	0	0
Section 11 Item 3	0	0	0	6,299,425	0
Section 11 Item 4	0	0	0	0	0
Section 12	542,847	377,531	313,720	63,709	1,453,506
Section 16 Par. 1	997,846	1,162,361	3,954,327	1,011,446	1,221,913
Section 17	122,370,558	81,970,101	198,764,786	174,855,434	202,449,885
Subjective exemptions	37,975,725	44,659,234	42,486,530	46,151,330	45,993,215
Art. 31 Par. 1	5,987,330	5,534,836	7,598,454	5,707,647	10,895,809
Art. 110	4,750,520	4,205,631	6,291,284	5,977,002	7,199,055
Art. 112	11,052,678	9,022,531	12,049,756	16,525,132	8,479,166
Section 13 Par. 1	16,185,197	25,896,236	16,547,036	17,941,549	19,419,185
TOTAL	5,221,927,461	3,390,279,367	3,380,202,651	3,940,941,560	5,301,832,033

Source: Own study based on data of Excise Duty Department at the Ministry of Finance (unpublished materials)

Table 3: Impact of objective and subjective tax exemptions on the fiscal efficiency of excise duties in 2012-2016

Type of tax exemption	Value of tax exemptions applied in excise duty in excise duty revenue (in %)					
	2012	2013	2014	2015	2016	average
Total exemptions in total excise duty revenue	8.64	5.59	5.49	6.27	8.06	6.81
Objective exemptions in total excise duty revenue	8.58	5.52	5.42	6.20	7.99	6.74
a) objective exemptions due to intended use in total excise duty revenue	7.03	3.92	3.57	4.49	6.31	5.06
b) objective exemptions for personal objectives in total excise duty revenue	1.33	1.45	1.52	1.42	1.36	1.42
c) objective exemptions due to specific economic objectives in total excise duty revenue	0.22	0.15	0.33	0.29	0.32	0.26
Subjective exemptions in total excise duty revenue	0.06	0.07	0.07	0.07	0.07	0.07

Source: Own study based on the data of Excise Duty Department at the Ministry of Finance (unpublished materials)

An impact of application of excise duty exemptions on the fiscal efficiency of this tax is visible in 2012-2016. In the analyzed period, this impact does not exceed 10%, whereas the losses in state budget revenue due to excise duties were between 5.49% (in 2014) and 8.64% (in 2016). This means that if the public authorities had not used their entitlements (limited due to harmonization of tax law within the European Union and the necessity of applying exemptions) related to implementation of tax exemptions, this revenue could have potentially contributed to the state budget.

In analyzing the formation of amounts of tax exemptions in total excise duty in comparison with the

excise duty revenue during the analyzed period, it shall be emphasized that the negative fiscal consequences of application of excise duty exemptions for the efficiency of this tax show a downward trend.

The application of objective exemptions had the biggest impact on the fiscal efficiency of excise duty in 2012-2016. The indirect public expenditures in this respect resulted in reduction of the budget revenue from excise duty by 6.74% on average during the analyzed period. Among these expenditures, exemptions due to intended use had the largest share (approximately 5% on the average), followed by exemptions for personal objectives (approximately 1.4% on the average), whereas

Table 4: Impact of objective and subjective tax exemptions on the fiscal efficiency of excise duties in 2012-2016

Type of tax exemption	Value of tax exemptions applied in excise duty in excise duty revenue (in %)					
	2012	2013	2014	2015	2016	average
Total exemptions in total excise duty revenue	8.64	5.59	5.49	6.27	8.06	6.81
Total mandatory exemptions in total excise duty revenue	7.68	4.73	4.40	5.18	6.99	5.80
a) mandatory subjective exemptions	7.64	4.69	4.36	5.13	6.95	5.76
b) mandatory objective exemptions	0.04	0.03	0.04	0.04	0.04	0.04
Total optional exemptions in total excise duty revenue	0.96	0.86	1.09	1.10	1.07	1.02
a) optional objective exemptions	0.93	0.82	1.06	1.07	1.04	0.98
b) optional subjective exemptions	0.03	0.04	0.03	0.03	0.03	0.03

Source: Own study based on the data of Excise Duty Department at the Ministry of Finance (unpublished materials)

exemptions due to specific economic objectives had the smallest share (0.26% on the average).

The loss of budget revenue caused by the application of subjective exemptions in excise duty has a relatively marginal impact in comparison with the fiscal effects of objective exemptions. Its impact on the fiscal efficiency of excise duty during the analyzed period was characterized by a relatively stable average level of 0.07%.

As already mentioned, the Polish legislature has a limited ability to influence the extent of applied exemptions to excise duty due to the excise duty harmonization in this respect under EU law. Therefore, it is worth performing an analysis of the impact of application of mandatory and optional exemptions on fiscal efficiency.

Based on the data presented in Table 4, it shall be concluded that the public authorities only have the power to increase the fiscal efficiency of excise duty by approximately 1% through liquidation of optional exemptions, thereby sacrificing the achievement of non-fiscal objectives.

CONCLUSIONS

The fundamental function of every tax is fiscal. Due to its selective nature (taxation of selected products only), excise duty also has non-fiscal functions. In order to achieve the non-fiscal effects of taxation with excise duty, the legislature formulated numerous tax exemptions, thus causing the exclusion of specific categories of subjects or objects from taxation. Despite the unquestionable loss of public revenue resulting from the application of tax exemptions, the public authorities continue to use them due to the non-fiscal functions of such solutions.

Excise duty is a harmonized tax in the territory of European Union, which determines the need to take into consideration in the structure of excise duty effective in Poland tax exemptions of mandatory nature under EU law.

The application of objective exemptions has a significant impact on the fiscal efficiency of excise duty. In 2012-2014, the indirect expenditures of the state budget related to tax exemptions on average amounted to approximately 7% of the total excise duty revenue in the state budget. The application of objective exemptions has the most important fiscal consequences for excise duty, whereas subjective exemptions play a marginal role in fiscal efficiency.

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