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DISCRETIONARY TAX LIABILITY RELIEFS IN GERMANY AND POLAND

ULGI W SPŁACIE ZOBOWIĄZAŃ PODATKOWYCH W NIEMCZECH I W POLSCE

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Abstract: One of the consequences of the economic crisis is the increase in tax arrears. It is mostly the result of the worsening of taxpayers' financial situation. This phenomenon was also reported during the last world financial crisis. In the OECD member states, in the years 2005–2011, tax arrears increased by on average 28.7%. At the same time, in 2009, the average relation of undisputed tax arrears to net revenue collection for all OECD member states reached the record value of 14.3%. The scale of the increase in tax arrears varied significantly from one member state to another and was determined by different factors. Tax liability reliefs may have a significant influence on the stock of tax arrears. This article compares the provisions of the law governing such reliefs in Germany and in Poland. Moreover, it analyses the stock and structure of tax arrears in these countries in the years 2007–2011.

Keywords: tax liability relief, tax arrears, Germany, Poland.

Streszczenie: Jednym z następstw kryzysów gospodarczych jest wzrost zaległości podatkowych. Wynika on przede wszystkim z pogorszenia sytuacji finansowej podatników. Zjawisko wystąpiło również w trakcie ostatniego światowego kryzysu finansowego. W państwach członkowskich OECD zaległości podatkowe w latach 2005–2011 zwiększyły się średnio o ok. 28,7%. Jednocześnie średni udział bezspornych zaległości podatkowych w dochodach podatkowych netto osiągnął w 2009 r. rekordową wysokość – 14,3%. Skala wzrostu zaległości podatkowych była znacznie zróżnicowana w państwach członkowskich i determinowana w tych państwach odmiennymi czynnikami. Istotny wpływ na stan zaległości podatkowych mają ulgi w spłacie zobowiązań podatkowych. Celem artykułu jest porównanie zasad przyznawania prawa do tych ulg w Niemczech i w Polsce. Ponadto w jego treści zanalizowano stan i strukturę zaległości podatkowych w tych państwach w latach 2007–2011.

Słowa kluczowe: ulgi podatkowe, zaległości podatkowe, umorzenie zaległości, Niemcy, Polska.

1. Introduction

In order to perform public tasks, governments need to collect enough resources to finance them. In the case of the state budget, these resources come mostly from taxes. The tax administration is responsible for the collection of taxes and its performance in this regard is evaluated according to several criteria. One of them is related to the stock of tax arrears and the efficiency of their recovery. An important measure taking into account this criterion, applied by the OECD, is the relation of undisputed tax arrears to net revenue collection. The value of this measure varies from one member state to another. Tax collection is considered efficient if this relation does not exceed 8%. Germany and Austria are among the countries in which this relation is the lowest [OECD 2013, p. 195]. In countries such as Poland, Hungary, Portugal or Latvia, this relation in the years 2005–2011 did not significantly exceed the average value for all the OECD countries and in countries like Greece and Slovakia it exceeded the value of 50%.

The stock of tax arrears depends not only on the efficiency of their recovery but also on tax liability reliefs granted on discretion by tax authorities to the taxpayers. Taxpayers are usually entitled to such reliefs when it is impossible for them to fulfil their tax obligations, for reasons such as bankruptcy, loss of wage earning capacity or illness. This article deals with tax liability reliefs, as they are granted to taxpayers in two OECD countries – Germany and Poland. The author aims to compare regulations concerning tax liability reliefs in these countries. Moreover, the article includes a detailed analysis of the stock and structure of tax arrears.

2. Tax arrears in Germany and Poland in the years 2007–2011

Both in Germany and in Poland, the chargeable event is statutorily specified in acts regulating the design of particular taxes. For example, pursuant to Art. 20 (1) of the Act on the value added tax (VAT) in Poland, in the case of intra-community acquisition of goods, the chargeable event occurs on the date of the issue of the invoice, not later however than on the 15th day of the month following the month of the acquisition [Ustawa z 11 marca 2004]. In Germany, pursuant to § 13 (1) 6 of the Act on the value added tax (VAT), in the case of intra-community acquisition the chargeable event occurs and VAT becomes chargeable on the day of the issue of the invoice, not later than by the end of the month following the month in which the acquisition took place [Umsatzsteuergesetz 2005].

The obligation to pay the tax arises in relation with the chargeable event. As soon as tax liability is imposed, the taxpayer is obliged to pay tax to the state or a local self-government unit in the amount, period and time specified in the provisions of the tax law. For example, in Poland, pursuant to Art. 103(1) of the Act on the value added tax, taxpayers are obliged, without notice from the head of the tax office, to calculate and pay tax (for monthly periods) by the 25th day of the month following

the month in which the chargeable event occurred, to the account of the tax office. In Germany, pursuant to § 18 of the Act on the value added tax, the taxpayer is obliged to pay tax to the account of the fiscal office within ten days from the date of the end of the settlement period.

Taxes unpaid by the taxpayer until the due date become tax arrears and they, in turn, give rise to the accrual of interest on account of late payment. The provisions of the Tax Ordinance Act in Poland state that the interest rate equals 200% of the basic lombard rate plus additional 2% [Ustawa z 29 sierpnia 1997, Art. 56 § 1]. Since October 9, 2014, the rate has equalled 8% per annum. In Poland the interest is calculated independently by the taxpayer from the date following the payment deadline and must be paid without a demand for payment from the tax authority to the bank account of the respective tax authority [Adamiak et al. 2014, p. 319]. In Germany, pursuant to § 240 of the Tax Ordinance Act [Abgabenordnung 2002], default interest equals 1% of the tax arrears amount for every commenced month of default.

In Germany and Poland the structure of tax arrears is diversified (Tables 1 and 2) and corresponds more or less with the structure of tax revenue. Differences may also be observed when comparing the ratios of tax arrears to tax revenue collection

Table 1. Stock and structure of tax arrears in Germany in the years 2007–2011

Type of tax	2007		2008		2009		2010		2011	
	million EUR	%	Million €	%	Million €	%	million €	%	million €	%
Wage withholding tax	474	2.8	492	2.9	457	2.6	480	2.5	613	3.5
Assessed income tax	7178	42.2	6935	41.1	7448	43.1	7548	38.6	7005	40.5
Corporate income tax	2576	15.2	3019	17.9	2999	17.4	2016	10.3	2087	12.1
Value added tax	4377	25.8	4108	24.3	3720	21.5	4341	22.2	4157	24.0
Other taxes	2388	14.0	2326	13.8	2658	15.4	5193	26.4	3425	19.9
Total	16 993	100.0	16 880	100.0	17 282	100.0	19 578	100.0	17 287	100.0

Source: [Bundesministerium der Finanzen 2012, pp. 5–9].

Table 2. Stock and structure of tax arrears in Poland in the years 2007–2011

Type of tax	2007		2008		2009		2010		2011	
	million PLN	%	million PLN	%	million PLN	%	million PLN	%	million PLN	%
Personal income tax	2864	15.6	3284	16.6	3722	18.0	4072	18.0	4530	17.9
Corporate income tax	1119	6.1	1205	6.1	1125	5.4	1112	4.9	1257	5.0
Value added tax	10 279	55.9	10 512	53.1	10 717	51.9	11 609	51.4	13 309	52.5
Excise duties	3998	21.7	4688	23.7	4981	24.1	5695	25.2	6157	24.3
Other taxes	130	0.7	111	0.5	113	0.6	89	0.5	107	0.3
Total	18 390	100.0	19 800	100.0	20 658	100.0	22 577	100.0	25 360	100.0

Source: [Ministerstwo Finansów 2007–2014a, pp. 2–6].

(Figure 1, Figure 2 and Figure 3) and the ratios of tax debt written off to the value of tax debt (Table 3). The Federal Ministry of Finance in Germany and the Ministry of Finance in Poland collect and publish reports on the stock and structure of tax arrears.

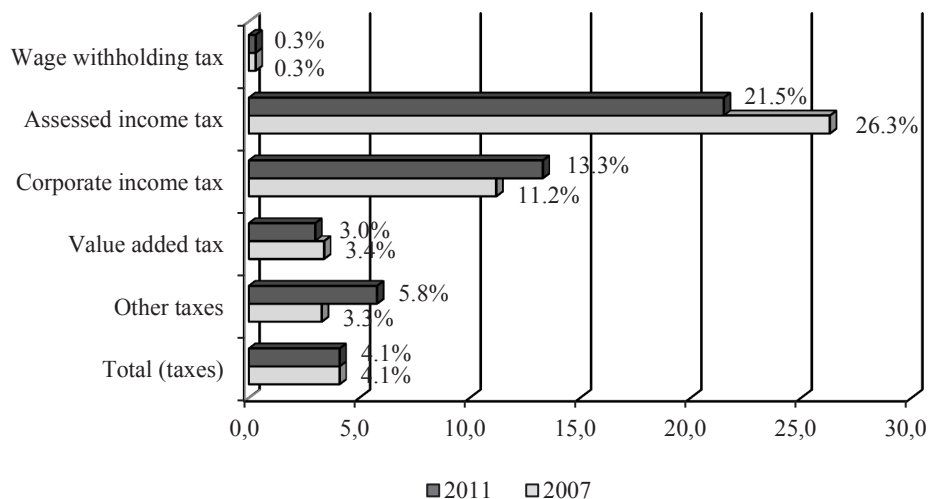


Figure 1. Tax arrears as a share of tax revenue collection in Germany in the years 2007 and 2011

Source: [Bundesministerium der Finanzen 2012, pp. 5–9].

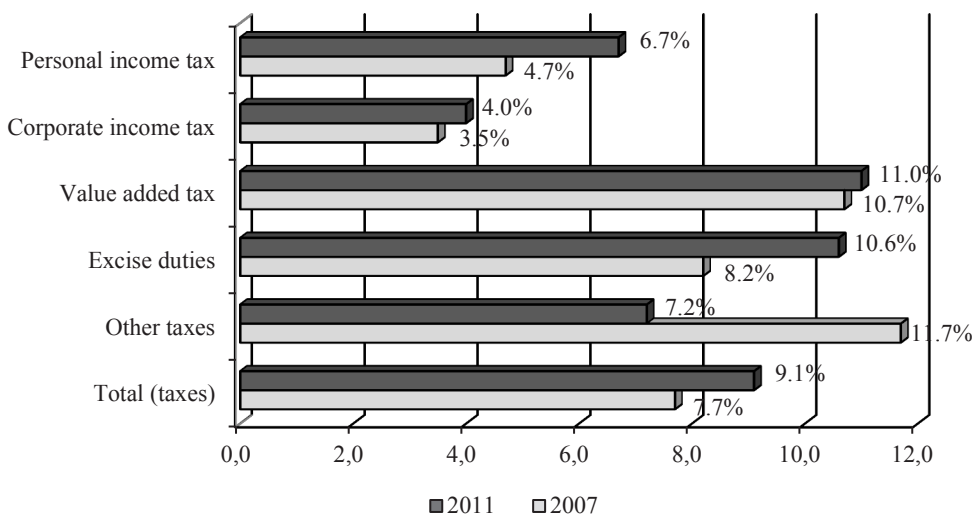


Figure 2. Tax arrears as a share of tax revenue collection in Poland in the years 2007 and 2011

Source: [Ministerstwo Finansów 2007–2014a, pp. 2–6, 2007–2014b, pp. 1–4].

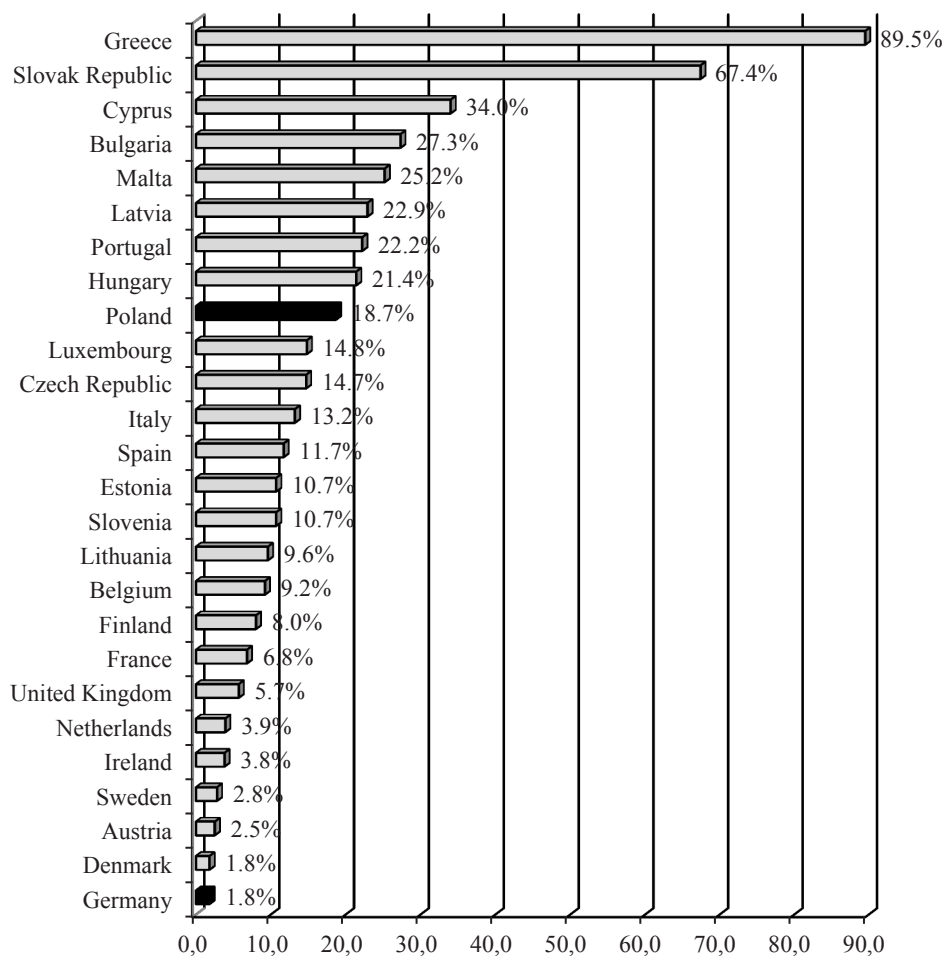


Figure 3. Undisputed tax debt as share of net revenue collections in 2011 (%)

Source: [OECD 2015].

The data in Table 1 show that in Germany in the years 2007–2010 there was an increase in total tax arrears. They increased by about 15.2%. In 2011, however, the arrears decreased in comparison to the previous year. It must be added that the data presented in the table take into account arrears from federal taxes, state taxes and shared taxes (the revenue from these taxes accounts for 75% of total tax revenue in Germany). They do not take into account arrears from the value added tax on imported goods, the excise tax and municipal taxes.

The most important sources of tax revenue in Germany are: the wage withholding tax and the value added tax. In 2011 the revenue from these taxes constituted 72.7%

of the total tax revenue. Due to the retention at source of the wage withholding tax, the amount in arrears from this tax is insignificant. In the analysed years, the average share of total wage withholding tax arrears in total tax arrears equalled 2.9%. The largest share is that of the assessed income tax. In 2011 it reached 40.5%.

The structure of tax arrears in Poland is different. According to the data presented in Table 2 in the years 2007–2011 the arrears in total grew year after year. They increased by as much as 37.9%. The data do not include the arrears from municipal taxes. The most important source of state budget revenue in Poland are the value added tax and the personal income tax. Their share in the tax revenue of the state in 2011 equalled 67.4%. It must be emphasized that for years the structure of tax arrears in Poland has corresponded – to some extent – with the fiscal significance of particular taxes [Szymanek 2011, p. 298]. The share of the total value added tax arrears in total tax arrears exceed 50%. The share of the personal income tax arrears is slightly lower than in the case of the excise tax arrears.

The relation of tax arrears to tax revenue collection makes it possible to evaluate the efficiency of tax collection in a given country. This ratio is presented in Figures 1 and 2 for particular taxes in Germany and in Poland. In the case of Germany, this relation is relatively high for the assessed income tax. In Poland it is the highest for the value added tax. International comparisons are possible thanks to the OECD publications which take into account the ratio of undisputed tax arrears (debt) to net revenue collection. In 2011 this relation was the lowest among all the OECD member states in Germany (Figure 3). In Poland, this relation was higher than the OECD average. Countries in which this relation was the highest were Greece and Slovakia.

3. Tax liability reliefs in Germany

The provisions of the Tax Ordinance Act in Germany envisage a number of tax liability reliefs [Abgabenordnung 2002]. One of them is a waiver of tax collection (*Steuerniederschlagung*), specified in § 261 of the Tax Ordinance Act. A tax authority may waive its right to collect tax receivables, in circumstances in which further tax collection attempts are aimless [Dickertmann 2007, p. 4]. This can take place, for example, if current efforts to recover tax receivables proved ineffectual (e.g. due to insufficient assets of the taxpayer), another public administration body has already waived to claim receivables from this taxpayer (if the reason for this waiver was insufficient assets of the taxpayer) or the enforcement proceedings did not bring amounts exceeding the costs of the enforcement. Moreover, a tax authority may waive to collect tax if enforcement proceedings are likely to be inefficient, because the taxpayer has left the country and his or her place of residence remains unknown, bankruptcy proceedings have been initiated in relation to the taxpayer, or the taxpayer died and the tax liability was directly related to him or her. Although in the case of this relief, the state loses tax revenue, the tax liability does not expire.

Another form of relief is a remission of a part or the whole of a tax liability (*Steuererlass*). Pursuant to § 227 of the Tax Ordinance Act, a tax authority may, at the request of the taxpayer, remit a tax claim. The reasons for it may be related to personal grounds of the taxpayer, including considerable hardship or taxpayer's difficult financial situation. A decision to remit tax claim may be issued when the collection of the tax would jeopardize the existence of the taxpayer. A tax authority may also remit a tax claim ex officio. The reason for it may be the civil law principle of equity (*Billigkeitsprinzip*). The remission of a tax claim ex officio may take place, for example, when with the proper interpretation of the law, it may be assumed that taxation would have consequences unintended by the legislators. The relevant decision is made by a competent fiscal office.

Table 3. Tax debt and tax debt written off in selected OECD member states (in millions of local currency)

European Union Member States	1			2			3 = 1/2		
	Value of tax debt outstanding (and not disputed) at the year-end			Value of tax debt written off			Value of tax debt written off/value of tax debt		
	2007	2009	2011	2007	2009	2011	2007	2009	2011
Austria	1691	1816	1724	516	585	451	30.5	32.2	26.2
Belgium	4206	12 195	8654	n.a.	n.a.	2155	n.a.	n.a.	24.9
Czech Republic	n.a.	98 400	83 367	13 734	13 786	8900	n.a.	14.0	10.7
Denmark	8995	15 324	14 225	1528	3330	n.a.	17.0	21.7	n.a.
Estonia	5427	8584	1191	333	498	56	6.1	5.8	4.7
Finland	3076	3575	3898	280	216	208	9.1	6.0	5.3
France	28 101	23 592	25 682	6002	3960	2738	21.4	16.8	10.7
Germany	8237	8162	9368	4157	5626	5148	50.5	68.9	55.0
Greece	25 932	32 564	n.a.	n.a.	280	n.a.	n.a.	0.9	n.a.
Hungary	1 328 451	2 029 973	1 998 129	355 966	542 876	1 034 106	26.8	26.7	51.8
Ireland	895	1443	1317	118	222	302	13.2	15.4	22.9
Luxembourg	n.a.	1785	1659	n.a.	64	98	n.a.	3.6	5.9
Netherlands	7616	7582	8001	2421	1762	2627	31.8	23.2	32.8
Poland	17 284	20 276	25 775	118	85	101	0.7	0.4	0.4
Portugal	12 890	7338	7093	2585	2761	3472	20.1	37.6	48.9
Slovak Republic	65 114	2387	2768	5410	413	436	8.3	17.3	15.8
Slovenia	397	482	1191	7	2	62	1.8	0.4	5.2
Spain	8825	13 580	18 891	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Sweden	32 200	n.a.	42 079	n.a.	n.a.	5083	n.a.	n.a.	12.1
United Kingdom	24 600	27 700	24 900	4285	4171	4214	17.4	15.1	16.9

* n.a. – data not available.

Source: [OECD 2015].

Pursuant to § 222 of the Tax Ordinance Act, a tax authority, at the request of the taxpayer, has also the right to postpone (defer) the tax (tax debt) payment (*Steuerstundung*). A tax authority may decide to postpone the tax payment if the taxpayer is struggling with severe financial difficulties caused by circumstances which could not have been avoided even if all reasonable measures had been taken and which are outside of taxpayer's control (e.g. his or her illness). The law envisages also a possibility to postpone the tax payment until the taxpayer has received a tax refund from the tax authority [Farr 2008, p. 56]. The least likely basis for a tax authority to give a positive decision on this issue is the imposition of tax obligations whose extent the taxpayer could not have foreseen, taken into account the circumstances accompanying this imposition. Apart from having the obligation to pay tax, the taxpayer is also obliged to settle the relevant statutory interest.

The provisions of § 361 (2) of the Tax Ordinance Act and § 69 (2) of the Code of Procedure for Fiscal Courts [Finanzgerichtsordnung 2001] envisage a possibility to suspend tax collection (*Steueraussetzung*). It is possible if the decision of the tax authority was challenged by the taxpayer. The suspension is arbitrary and may take place only if there is a justified doubt as for the legitimacy of the previous decision of the fiscal office and when the execution of this decision involves serious difficulties for the taxpayer, unless it is justified by important public interest. The value of statutory interest in a situation of tax suspension is the same as in the case of postponing the tax payment.

International comparisons with the use of statistical data are only possible with relation to tax debt write-offs (waivers and remissions), as the OECD publishes relevant statistics. However, it must be added that there are significant differences between the OECD data and the relevant national statistics. The value of tax arrears in Germany in Table 3 does not include tax claims in the case of which the payment has been postponed or suspended. These liabilities are included in Table 1. The total amount of write-offs presented in Table 3 covers claims waived and remitted under the German law. From the data presented in Table 3 it can be concluded that Germany is a country in which significant amounts of tax debt are written off. The tax debt written off as a share of tax debt in total exceeds 50%.

4. Tax liability reliefs in Poland

Unlike Germany, Poland is one of these countries in which the ratio of tax debt written off to total tax debt is insignificant (Table 3). In accordance with the statistics published by the OECD, it does not exceed 1%. The provisions concerning tax liability reliefs, including tax debt write-offs (remissions) are specified in Art. 67a (1) of the Tax Ordinance Act. In cases justified by important personal grounds of the taxpayer or the public interest, a tax authority may grant a tax liability relief in one of the following forms [Dowgier 2013, p. 174]:

- it can postpone the tax (tax debt) payment or divide it into instalments,
- it can remit a part or the whole of the tax debt, default interest or extension fee.

Tax liability relief may be requested by the taxpayer. A basis for granting it may be significant personal grounds of the taxpayer. The analysis of the decisions of the Polish Supreme Administrative Court shows that this relief may be granted in case of deterioration of the taxpayer's ability to pay the tax as a result of unforeseeable circumstances.

The legislator has ruled out the possibility of taking advantage of these reliefs if the taxpayer is responsible for his or her deterioration of the ability to pay the tax (e.g. as a result of imprudent use of his or her resources). A taxpayer may be granted the right to a tax liability relief in the case of his or her residual disability or prolong illness. A tax authority is not entitled to give the right to a tax liability relief if the taxpayer's material difficulties relate to conducted business activity (e.g. are the result of inappropriate choice of contractors or decline in the business's profitability) [Pomorski 2008, p. 26]. At the same time, the public interest is a certain practical doctrine which requires that in the process of law application certain values which are shared by the whole society – including social justice, security, trust in authorities, and efficiency of the public administration – are taken into account [Guzek 2002, p. 25].

Granting the right to a tax liability relief in the form of postponing the tax or tax debt payment, and dividing due tax or tax debt into instalments obliges the taxpayer to pay an extension fee, which is a form of interest on a tax loan. In the case of taxes constituting state budget revenue, the rate of this fee is 50% of the current default interest rate.

The best option for the taxpayer is to have his or her tax debt, default interest or extension fee written off (remitted), which leads to inefficient expiry of the tax liability. A tax authority may write off a tax debt not only at the request of the taxpayer but also *ex officio*. One of the bases for such a write-off is a justified assumption that the enforcement proceedings would not bring the amount exceeding the enforcement costs.

Other situations in which a tax authority can write off the tax claims are [Wolański 2009, p. 245]:

- when the amount of the tax debt was not satisfied in the course of liquidation or bankruptcy proceedings,
- when the amount of the tax debt does not exceed five times the cost of a reminder in liquidation proceedings,
- if the taxpayer died and left no assets or left chattels which cannot be subject to enforcement under separate regulations, or left everyday household items of total value not exceeding PLN 5000 and at the same time there are not any heirs other than the State Treasury or a local self-government unit, and it is impossible to indicate a third party liable to pay the debt.

5. Conclusions

In Germany and in Poland, in 2007–2011 there were significant differences with respect to the dynamics and structure of tax arrears. In Poland, for years, a systematic increase in these arrears can be observed. This concerns particularly the personal income tax and the excise tax arrears which in the analyzed period increased by 58.2 and 54.0%, respectively. In Germany, tax arrears increased slightly in 2007–2010, and in 2011 decreased by about 11.9%. As a result, in 2011 in Germany the relation of undisputed tax arrears to net tax revenue collection was the lowest among all the OECD states, whereas in Poland it was higher than the average for these countries. The basic source of tax arrears in Poland are the value added tax arrears. In Germany, the dominant arrears are those from the assessed income tax.

Significant differences concern also the provisions of the law related to the tax liability reliefs in Germany and Poland. In Poland the legislator envisaged the possibility to grant the tax liability relief if the condition of important personal ground of the taxpayer or the public interest is fulfilled. This concerns both the remitting tax debts, default interest and extension fees, and postponing the tax (tax debt) payment or dividing it into instalments. The premises for these tax liability reliefs are arbitrary and the definition of the public interest is very imprecise. In Germany, for each category of tax liability reliefs the legislator envisaged separate bases, which adds to the complexity of the law. In Poland, tax debt may be remitted ex officio in the case of inefficient enforcement, whereas in Germany inefficient enforcement may be the basis of a waiver to claim tax liabilities, but the waiver – unlike the Polish remission – is not one of possible ways in which a tax obligation can expire.

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