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The Influence of Brexit on Border Taxes in Poland

Abstract

The working paper aims to diagnose Brexit’s impact on the taxation of Polish-British commercial exchange. This research problem determined in such a way is considered from the point of view of the possible legislative consequences as well as the application of provisions regulating the structural elements of border taxes. The author formulated the thesis that the exit of the United Kingdom from the European Union will be an event that will significantly affect the changes in tax and customs qualification of the exchange of goods between Poland and that country.

Keywords: Brexit, tax law, VAT, excise, custom

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Introductory remarks

The term Brexit is undoubtedly a blend of two English words “British” and “exit”,² which means the exit of Great Britain from the European Union. The legal basis for conducting this procedure is treaty law.³ Any member state may decide to exit the European Union according to its constitutional requirements.⁴ Treaty law requires that the decision made, the content of which expresses the intention to “exit” this international organisation, be notified to the European Council.⁵ This opens up the stage of legislating guidelines by this authority, which should be followed by the European Union in negotiations with a member state that declares its will to exit the Union. Negotiation procedures are aimed at entering into an international agreement which specifies the conditions of that exit, and regulates future legal relationships between the parties after Brexit. It should be noted, however, that the lack of consent to entering into such an agreement does not create an obstacle to leaving the European Union by Great Britain. Nevertheless, this variant of separation is not beneficial because the problem of determining its legal consequences arises. EU law specifies the time of how long the exiting member state should apply the regulations of treaty law.⁶ As a rule, they cease to be applicable as of the day of the exit agreement entering into force, and if there is no such agreement, they cease to be applicable two years after notifying the European Council of the intention to separate. However, a possibility of prolonging these deadlines is an exception. This was conditioned both by the European Council’s unanimous decision on this matter and by an appropriate agreement between the exiting member state and the European Union. These reflections lead to a conclusion that treaty law may also be an element of Great Britain’s tax law scheme for some time after Brexit. Then the heritage of this law and the case-law of the CJEU will shape not only the schemes of Polish and British tax law, but also the mutual relations between Polish and British entities. The fact that the agreement specifying the

² *Oxford English Dictionary*, <http://www.oed.com/> (access: 23.04.2019).

³ See Article 50 of the Treaty on European Union, Official Journal of the EU C 326, 26/10/2012, pp. 1–390, hereinafter referred to as the TEU.

⁴ See Article 50(1) of the TEU.

⁵ See Article 50(2) of the TEU.

⁶ See Article 50(3) of the TEU.

future relationships between the European Union and Great Britain may include regulations providing for the post-Brexit application of all or some provisions of the Union law is also not less important.⁷ Such a variant of “civilised separation” which involves the incomplete separation of legal systems would also undoubtedly have direct implications for the Polish tax law⁸ which, in accordance with constitutional⁹ and treaty standards,¹⁰ is subject to a pro-EU interpretation.

It is worth noting that in foreign writings,¹¹ an opinion was formed that the exit from the European Union abolished the obligation to use VAT in Great Britain. However, such a scenario of the development of the situation that this tax will not be used by this country at all, is highly unlikely. It is supported primarily by the fiscal efficiency of the tax. It seems that basically, the technical elements of British VAT will not be changed after Brexit. The international doctrine predicts only the modification of some tax rates and exemptions. It would mean that the tax results of the Polish-British exchange of goods would still be determined according to the rules of the intra-Community system of value added taxation. This would concern both a Polish taxable person and that person’s foreign contractor. It should be emphasised, however, that despite the fact that the use of systemic solutions would be continued, great changes in taxation would still take place. This is because the same actual events would be classified differently in terms of taxes by more or less amended legal regulations.

⁷ See e.g. S. Daly, *The Taxing Consequences of Brexit*, “King’s Law Journal” 2016, 27(3), pp. 463–472; J. Cape and M. Schofield, *VAT and Brexit: The Past, Present and Future*, “EC Tax Review” 2018, 27(6), pp. 290–302; M. Olszewska, *Brexit – skutki podatkowe w podatku dochodowym od osób prawnych*, “Monitor Podatkowy” 2016, 10, p. 17.

⁸ Except for constitutional provisions. Although the relationship of the Union law with the local law is based on the assumption of its dominance, the exception is the precedence of the basic law as the supreme law which applies in Poland and is the foundation of the construction of the Polish legal system.

⁹ See Article 91 section 3 of the Constitution of the Republic of Poland.

¹⁰ The legal basis for its application is Article 291(1) of the TFEU, Official Journal of the EU C 326, 26/10/2012, pp. 1–390, hereinafter referred to as the TFEU, and as regards directives, see Article 288 paragraph 3 of the TFEU.

¹¹ See e.g. J. Freedman, *Tax and Brexit*, “Oxford Review of Economic Policy (Supplement)” 2017, 33, p. 82.

Border taxes are covered by the scope of harmonisation¹² on the basis of the provisions of EU law,¹³ the instrument of which are directives.¹⁴ These derivative legal acts play a key role in shaping the design elements of two indirect taxes, that is, excise tax and VAT, as well as the procedures of using them.¹⁵ A border tax is a form of taxing the exchange of goods by a state's border.¹⁶ In a broad sense, this concept also involves a customs duty which is considered a specific duty.¹⁷ It is worth noting that it is collected only from the import or export of goods through the border of the EU customs territory.¹⁸ The European Union is also a customs union.¹⁹ This excludes the use of tariffs and other customs duties from the movement of goods within a common market, so not only in the case of the local market, but also in the case of the movement of goods through the Polish border from or to another member state. Under the conditions of the membership of Poland in the European Union, the concept of a border tax may be viewed in the context of taxing only exports or imports, or more broadly, by considering intra-Community transactions, i.e. the intra-Community supply and intra-Community acquisition of goods, as well. Brexit will undoubtedly cause significant changes in the application of border taxes to the exchange of goods between Poland and Great Britain. The purpose of this paper is to prove the validity of this thesis. The subject matter of the discussion is limited to material aspects of taxation which are primarily viewed in the context of the design elements of border taxes in the strict sense. For this reason, the analysis of customs-related issues is only limited to the place of these issues in tax provisions and their influence on the use of VAT and excise.

¹² The harmonisation of taxes is also called the "co-ordination", "integration" and "unification" of taxes. See J. Głuchowski, *Integracja podatkowa i celna*, [in:] B. Brzeziński, J. Głuchowski, C. Kosikowski, *Harmonizacja prawa podatkowego Unii Europejskiej i Polski*, Warszawa 1998, pp. 15–16; M.A. Dausés, *Wprowadzenie*, [in:] idem (ed.), *Prawo gospodarcze Unii Europejskiej*, Warszawa 1999, pp. 159–161.

¹³ EU law refers the concept of harmonisation to local provisions which also regulate excise and other indirect taxes or turnover taxes. See Article 113 of the TFEU.

¹⁴ See Article 288 of the TFEU.

¹⁵ For more information, see M. Burzec, *Harmonizacja podatków pośrednich*, [in:] *Prawo podatkowe*, (ed.) P. Smoleń, (ed.) W. Wójtowicz, 2nd edition, Warszawa 2015, pp. 536–541.

¹⁶ K. Sawicka, *Podatki graniczne w świetle regulacji Kodeksu celnego*, [in:] B. Brzeziński, J. Głuchowski, C. Kosikowski, R. Mastalski (ed.), *Księga pamiątkowa ku czci profesora Apoloniusza Kosteckiego. Studia z dziedziny prawa podatkowego*, Toruń 1998, pp. 131–142; K. Sawicka, *Cło jako danina publiczna*, [in:] R. Mastalski, E. Fojcik-Mastalska (ed.), *Prawo finansowe*, Warszawa 2011, pp. 340–351.

¹⁷ See e.g. W. Wójtowicz, *Pojęcie, charakter i rodzaje cła*, [in:] idem (ed.), *Prawo finansowe*, Warszawa 1996, pp. 272–274.

¹⁸ Transit customs duties are not used because it is not allowed by the Barcelona Convention and Statute on Freedom of Transit, signed in Barcelona on 20 April 1921, ratified by Poland on 12 May 1925 (Dz.U. z 1925 r. Nr 34, poz. 237).

¹⁹ See Article 28 of the TEU.

Brexit and the tax liability resulting from a border tax

A tax liability in the legal and material sense is legally defined as a non-specific duty of a forced cash benefit, resulting from tax acts, in connection with the occurrence of an event specified in those acts.²⁰ In the literature, the difference between this institution and a tax liability is seen primarily in the lack of specifying the tax amount, the place and date of its payment, and in the lack of the individualisation of the subjects of a legal-tax relationship.²¹ A constitutional standard is the exclusive right to the statutory source of a tax liability and the moment in which this tax becomes chargeable, and also regulating such tax design elements as tax entities, a subject of taxation, tax rates in the tax act.²² It is worth noting that when it comes to the legal definition of a tax liability, using the plural form with reference to tax acts as the source of that liability is misleading. In practice, this obligation results only from one act, which does not exclude the fact that the said act can impose a duty to pay different taxes.²³ On the other hand, in tax law, there is no situation in which individual elements of the tax liability, the existence of which requires the application of all those acts together, are included in different acts. In the current legal situation, border taxes are regulated in separate acts.²⁴ The tax on goods and services was introduced into the Polish tax system on 5 July 1993. Initially, it was regulated together with the excise tax in one act.²⁵ Such a solution was motivated by the fact that there are features which are common for both indirect taxes, and their normalisation would mean a redundant repetition of the same legal regulations. Deviation from this model has essential practical consequences.²⁶ It excludes the application of legal definitions and other provisions on the excise tax to the tax on goods and services, and, by analogy, the application of the VAT Act to the excise tax.

The Polish-British exchange of goods is an event which results in a tax liability for VAT purposes, and when excise goods or passenger cars are the subject of that

²⁰ See Article 4 of the *ustawa z dnia 29.08.1997 r. – Ordynacja podatkowa* (consolidated text: Dz.U. z 2018 r., poz. 800, as amended), hereinafter referred to as the T.O.A.

²¹ A. Gorgol, *Pojęcie obowiązku podatkowego i zobowiązania podatkowego*, [in:] W. Wójtowicz (ed.), *Zarys finansów publicznych i prawa finansowego*, 8th edition, Warszawa 2017, pp. 177–181.

²² See Article 217 and Article 84 of the Constitution of the Republic of Poland.

²³ For instance, the Act on Taxes and Local Charges is the source of the obligation to pay property tax and VED.

²⁴ *Ustawa z dnia 11.03.2004 r. o podatku od towarów i usług* (consolidated text: Dz.U. z 2018 r., poz. 2174, as amended), hereinafter referred to as the VAT Act. *Ustawa z dnia 06.12.2009 r. o podatku akcyzowym* (consolidated text: Dz.U. z 2018 r. as amended), hereinafter referred to as the Excise Tax Act.

²⁵ *Ustawa z dnia 8.01.1993 r. o podatku od towarów i usług oraz o podatku akcyzowym* (Dz.U. 1993 Nr 11, poz. 50 as amended).

²⁶ A. Gorgol, *Podatek akcyzowy*, [in:] W. Wójtowicz (ed.), *op. cit.*, p. 259.

exchange, they are also subject to the excise tax. As mentioned above, in the current legal situation, Great Britain is a member state of the European Union, and goods exchange occurs within a common market. Border taxes thus constitute a form of taxing intra-Community transactions. Depending on the direction of the movement of goods through the border of Poland, they may take the form of an intra-Community supply of goods or an intra-Community acquisition of goods. According to the legal definition formulated in the VAT Act, an intra-Community supply of goods involves the exportation of goods from the territory of Poland, performing the activities specified as the supply of goods onto the territory of a member state other than Poland.²⁷ In turn, in the Excise Tax Act, this transaction is defined as the movement of excise goods or passenger car from the territory of Poland to the territory of a member state.²⁸ Undoubtedly, the “exportation” and “movement” of goods are factual acts which in economic terms correspond to export. On the other hand, in terms of tax, they are not classified like this because they are not accompanied by the movement of goods outside the customs territory of the European Union to a third country. If an entity provides an intra-Community supply of goods for a contractor from another member state, then from the point of view of the recipient, the same factual act is classified as an intra-Community acquisition of goods. The VAT Act defines this acquisition as the acquisition of the right to dispose of the goods as the owner, which, as the result of the supply, are dispatched or transported onto the territory of a member state other than the territory of the member state where the process of dispatching or transporting the goods by or for the supplier or by or for the recipient of these goods begins.²⁹ However, according to the provisions on excise, this is the movement of excise goods or passenger cars from the territory of a member state to the territory of Poland. Thus, it should be concluded that the essence of this intra-Community transaction is the factual act of importing goods to the territory of Poland from another member state. In economic terms, this corresponds to import, however, it is not classified like this in legal terms. This is because the importation of goods onto the EU customs territory from a third country does not take place.

The exit of Great Britain from the European Union will make the former lose its member state status and it will become a third country. Exchanging goods between Polish and British entities will no longer be an “intra” transaction, or one that is made within a common market. It will become an “extra” activity, and thus, it will be external for that market. The movement of goods will involve importing

²⁷ See Article 13 in connection with Article 7 and Article 5 section 1 point 5 of the VAT Act.

²⁸ See Article 2 section 1 point 8 of the Excise Tax Act.

²⁹ See Article 9 in connection with Article 5 section 1 point 4 of the VAT Act.

or exporting these goods through the border of the EU customs territory. Polish entrepreneurs will not have an obligation of INTRASTAT reporting about turnover from intra-Community transactions³⁰ and submitting recapitulative VAT statements.³¹ However, there will be new legal and customs obligations, including registration in order to obtain a unique EORI identification number.³² Export and import are the activities of moving goods through the border of the EU customs territory. They are subject not only to excise and VAT, but also to import and export duties.³³ The VAT Act defines the import of goods as the importation of goods from the territory of a third country onto the territory of the European Union,³⁴ whereas the provisions on excise include an analogous definition of the import of passenger cars.³⁵ The difference manifests itself in the fact that the movement occurs from a third country onto the territory of Poland and not the EU territory. When it comes to the import of excise goods, in turn, the definition is more extensive because it contains additional conditions of this legal classification. Such goods, as soon as they are entered onto the territory of Poland, cannot undergo a special procedure of: external transit, customs warehousing, customs free zone, temporary entry or inward processing, and they cannot be covered by temporary storage. In the case of ending their temporary storage or concluding a special procedure, a customs debt should occur. According to the VAT Act, the export of goods is the supply of goods dispatched or transported from the territory of Poland outside the territory of the European Union if the exportation of these goods is confirmed by the appropriate customs authority specified in customs legislation.³⁶ It may be conducted by or for the supplier or by or for the recipient, whose registered office is situated outside Poland. The provisions on excise tax define export as the exportation of excise goods or passenger cars from the territory of Poland outside the territory of the European Union, confirmed by the customs authority.³⁷ Therefore, it should be emphasised that the classification of a transaction involving goods into the category of export or import requires the completion of customs formalities, and not only the occurrence

³⁰ See Article 98 section 1 in connection with Article 97 point 1 of the *ustawa z dnia 19 marca 2004 r. – Prawo celne* (consolidated text Dz.U. z 2018 r., poz. 167, as amended).

³¹ See Article 100 of the VAT Act.

³² Economic Operators' Registration and Identification.

³³ See Article 5 point 20 and 21 of the Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, Official Journal of the EU. L of 2013, No. 269, p. 1, as amended, hereinafter referred to as the UCC.

³⁴ See Article 2 point 7 of the VAT Act.

³⁵ See Article 2 section 1 point 7 of the Excise Tax Act.

³⁶ See Article 2 point 8 of the VAT Act.

³⁷ See Article 2 section 1 point 6 of the Excise Tax Act.

of a factual act of moving the goods through the border separating the territory of the European Union from the territory of a third country. Customs duties and border taxes are declared to be paid by using the same declaration forms, particularly a customs declaration.³⁸

The influence of Brexit on the tax basis, tax rates and the tax scale in border taxes

The tax basis constitutes a concrete form of the subject of taxation which can be expressed by value or physical quantity.³⁹ A discriminant of VAT and customs duty is the fact that they are calculated by applying a proper rate to the basis that is expressed only by monetary value. The Union Customs Code enlists the customs value of a product as an item of charge of import and export duties.⁴⁰ The VAT Act introduces a rule that the tax basis is anything that constitutes a payment that was received or is supposed to be received by a supplier of goods or a service provider from a recipient, customer or a third person for the sale of these goods or services. It also covers received donations, subventions and other surcharges of a similar nature, which have a direct influence on the prices of goods or services provided by a taxable person, on taxes, customs, fees, and other charges of a similar nature, with the exception of VAT amount, as well as additional costs, such as: commissions, packing, transport and insurance costs, collected by a supplier or service provider from a recipient or customer.⁴¹ The exception to this rule is the tax basis in the case of an intra-Community acquisition of goods and importing them. In the case of the movement of goods by or for a VAT payer, and these goods belong to that person, from the territory of another member state onto the territory of Poland, the tax is calculated from the price of the acquisition of those goods or of similar goods, and when there is no price of their acquisition, the tax is calculated from the cost of the production of those goods.⁴² This applies to goods which were produced, extracted, acquired (also as part of the intra-Community acquisition of goods) or

³⁸ See e.g. Article 27 section 1, Article 28 of the Excise Tax Act and Article 33 section 1 of the VAT Act.

³⁹ For more information on taxation for excise tax purposes, see A. Gorgol, *Ustalenie podstawy opodatkowania akcyzą – wybrane zagadnienia*, [in:] T. Nowak, P. Stanisławiszyn (eds.), *Prawo celne i podatek akcyzowy. Kierunki przeobrażeń i zmian*, Warszawa 2014, pp. 66–86.

⁴⁰ This even results from the intra-systemic interpretation because chapter 3 entitled “Value of goods for customs purposes” is in title II “Factors on the basis of which import or export duty and other measures in respect of trade in goods are applied” of the UCC.

⁴¹ See Article 29a section 1 and 6 of the VAT Act.

⁴² See Article 30a section 2 in connection with Article 11 and Article 29a section 2 of the VAT Act.

imported by that taxpayer as part of that person's enterprise managed on the territory of that other member state. Those goods are supposed to serve the business activity of that taxpayer. It is also worth noting that excise tax is price-forming, so it is a tax that is included in the tax basis for VAT purposes. However, the purchaser of a product was given an opportunity to reduce this tax basis afterwards by the amount of excise which was paid in another member state and returned to that purchaser after the intra-Community acquisition of goods.⁴³ Such an advantageous correction is conditioned by proving the fact of receiving the excise tax return with appropriate documents. As for import, the tax basis for VAT purposes is the value calculated as the sum of the customs value and output customs duty, and when a product is also an excise product or a passenger car, the basis additionally includes the excise tax value.⁴⁴ It should be noted that this solution forces a specified sequence of calculating border taxes, as well as the necessity of clearing them together. In the first stage of the clearing procedure, the customs duty should be calculated, in the second one – the excise tax, and then VAT at the very end. Additional modifications to the tax basis occur on the import of goods which are subject to customs procedures. In the case of outward processing, during tax calculation, this modification concerns the inclusion of only a part of the customs value which corresponds to the customs value added abroad, that is, the difference between the customs value of processed or replacement products allowed into the economy and the customs value of temporarily exported goods.⁴⁵ On the other hand, in the case of goods which are covered by the temporary entry procedure with partial exemption from import duties, a special solution is the fact that the tax basis covers, among others, customs duties which would be chargeable if the goods were covered by the procedure of allowing them into the economy.⁴⁶

The basis for calculating the excise tax varies, depending on whether excise goods or passenger cars are taxed. Its further formal and legal disintegration occurs within individual groups of excise goods.⁴⁷ This justifies the thesis that there are different excise duties in the Polish tax system, though in formal terms, they are statutorily called by the name of one excise tax.⁴⁸ It is worth noting that as opposed

⁴³ See Article 30a section 3 of the VAT Act.

⁴⁴ See Article 30b section 1 of the VAT Act.

⁴⁵ See Article 30b section 2 of the VAT Act.

⁴⁶ See Article 30b section 3 of the VAT Act.

⁴⁷ The tax basis for excise tax on excise goods is not regulated uniformly by general provisions, but it is regulated separately by special regulations for each group of those goods. The special regulations are located in Part IV of the Excise Tax Act.

⁴⁸ This is referred to by both the title of the tax act, and its individual sectioning levels.

to the case of VAT-7 or VAT-7K declarations, a taxpayer does not disclose the data on the basis for calculating excise. In an AKC-4/AKC-4zo declaration form, the amount of that tax is declared according to the groups of goods. It shows both the distinctiveness of excise duties and the limited impact of their subject and tax basis on tax rates in comparison with the other border taxes. In the case of excise goods, the tax basis is expressed by physical quantity. Special excise regulations do not differentiate this basis, depending on whether the foreign exchange of goods takes the form of intra-Community transactions, export or import. A different solution is applied to excise tax on passenger cars.⁴⁹ In the case of an intra-Community acquisition, as a rule, the tax basis is the amount that a taxpayer is obligated to pay for that car. The exception is specifying the subject of the tax by the average market value of a passenger car, reduced by the amount of tax on goods and services, and the amount of the excise tax. This solution applies when a tax liability resulting from the intra-Community acquisition of a passenger car which has not been registered on the territory of Poland before, according to the Traffic Law, incurs as of the day in which an entity which is not the owner of the car applies for the registration of that car.⁵⁰ In turn, when a car was allowed into the economy in another member state of the European Union in accordance with the customs legislation, but is not registered there, the modification of the tax basis from the intra-Community acquisition of that car also involves the inclusion of a commission, the costs of transport and insurance if they have not been included in the price, but have already been incurred up to the place where the product was covered by a customs procedure.⁵¹ The excise legislation provides for the application of the average market value of a passenger car on the Polish market, reduced by the amounts of the tax on goods and service, and excise tax when the amount that a taxpayer is supposed to pay for that vehicle cannot be determined.⁵² When it comes to import, the tax basis is the customs duty value of a given car, increased by output customs duty.⁵³ Similarly to the case of import VAT, there are identical modifications of customs value in the case of the outward processing of a passenger car. In turn, covering the car by the temporary entry procedure with partial exemption from customs duties is accompanied by an exception to this rule. It manifests itself in the inclusion of customs which would be collected if the car was covered by the procedure of allowing it into the economy. The excise legislation requires that the tax

⁴⁹ See Article 104 of the Excise Tax Act.

⁵⁰ See Article 104 section 1 point 2 in connection with Article 101 section 2 point 3 of the Excise Tax Act.

⁵¹ See Article 104 section 6 of the Excise Tax Act.

⁵² See Article 104 section 7 of the Excise Tax Act.

⁵³ See Article 104 section 1 point 3 of the Excise Tax Act.

basis be increased by a commission, the costs of transport and insurance if they have not been included in that tax basis, and they have already been incurred up to the first destination on the territory of Poland. Fees and other charges specified in separate provisions are also added if the tax and customs offices are obligated to collect them from the import of a car.⁵⁴

Tax rates and the flat tax scale will not be changed as the result of Brexit. The zero rate is used in VAT both for the taxation of the export of goods and the intra-Community supply of goods.⁵⁵ It is worth noting, however, that its application will become conditional and more formalised than it has been so far. A taxable person should have a document that confirms the exportation of a given product outside the territory of the European Union.⁵⁶ In turn, the standard VAT rate of 23% is applied to the intra-Community acquisition of goods and importing them.⁵⁷ Such an import and intra-Community acquisition is subject to the excise on passenger cars only when the cars have not been registered on the territory of Poland before, in accordance with the Traffic Law.⁵⁸ This means that their export and intra-Community supply do not constitute a subject of excise taxation. The excise tax rate for a passenger car is not varied on the grounds of the subject of the tax, but takes the capacity of the engine into account.⁵⁹ It is 18.6% of the tax basis when that capacity exceeds 2,000 cm³. If this statutory threshold is not exceeded, a rate which is six times lower and which is 3.1% applies. In turn, separate amount rates,⁶⁰ are applied to the taxation of individual groups of excise goods, or a zero rate is used, due to the purpose of those goods.

Conclusions

It should be concluded that Brexit is a precedent which will undoubtedly have a significant impact on the taxation of goods turnover between Poland and Great Britain, which are currently subject to both to EU regulations and local ones. The results of that event may be analysed from the perspective of legislation and the

⁵⁴ See Article 104 section 4 and 5 of the Excise Tax Act.

⁵⁵ See Article 41 section 3, 4 and 5 of the VAT Act.

⁵⁶ See Article 41 section 6, 6a, 7, 8 of the VAT Act.

⁵⁷ See Article 41 section 1 of the VAT Act.

⁵⁸ See Article 100 section 1 of the Excise Tax Act.

⁵⁹ See Article 105 of the Excise Tax Act.

⁶⁰ For more information, see A. Gorgol, *Podatek akcyzowy*, [in:] P. Smoleń, W. Wójtowicz (ed.), op. cit., p. 343.

application of the law. From the point of view of its influence on the making of the Polish tax law, it is still not certain whether it will become a law-forming precedent. The applicable regulations of the structure of border taxes do not contain any legal loopholes which would cause the lack of the possibility of the taxation of goods exchange after Great Britain has left the European Union. However, one should entertain the possibility of entering into international agreements, which is required by the treaty law at the stage of negotiating the conditions of Brexit, and at later stages, which according to the constitutional standards, are a law that is generally applicable in Poland, and dominates over acts and implementing rules. Those legal acts may cause a legislative impulse and the necessity of adjusting other norms of the Polish tax law to their contents.

Regardless of how the scenario of Great Britain's exit from the European Union will play out, and regardless of the extent to which the heritage of the Union law and the case-law of the CJEU will be considered in the British law system, Brexit will significantly influence the application of border taxes collected from the goods exchange of Poland with that country. This results from the fact that the loss of the member state status is connected with its classification into the category of third party countries in tax terms. Polish-British foreign trade will no longer be conducted within a common market. Goods will be moved through the border of the EU territory. Goods transactions will lose their quality of the intra-Community supply or acquisition of goods. They will be covered by the provisions of the customs law as trade with a third party country. For this reason, import or export duties are collected which do not apply to intra-Community goods transactions. Thus, there will be additional public levies and the scope of regulation of such an exchange will be increased. Every Polish entrepreneur will have the obligation to register in order to obtain an EORI identification number without which that person will not be able to carry out the formalities related to custom and border taxes which are cleared during the same procedure as customs duties. From the perspective of the Polish tax law, the classification of goods exchange as the subject of border taxes will be changed. The intra-Community supply will be replaced by the export of goods (excise goods, cars), and the intra-Community acquisition – by its import. The modification of the subject of the tax will also cause differences in the technical element of tax, specifying the subject, which is the tax basis, in terms of its value or physical quantity. Different rules apply to determining the value from which VAT from export, import and an intra-Community transaction is calculated. In the case of this border tax, the influence of Brexit on it is larger than on the technical elements of excise. In the case of the taxation of excise goods, there is the specifying of the subject of the tax by physical quantity. The provisions on excise casuistically regulate individual tax bases which are varied, depending on assigning an excise

product to its given statutory category. When it comes to excise on passenger cars, there is a bigger similarity to changes in VAT. The aforementioned modifications will involve the replacement of intra-Community acquisition by import. Brexit will also change the tax basis of excise tax on passenger cars. In conclusion, it should be recognised that the exit of Great Britain from the European Union will be an event that will have an essential impact on the changes of the tax and customs classification of goods exchange between Poland and that country.