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FINANCIAL TRANSACTION TAX IN POLAND AGAINST THE BACKGROUND OF SELECTED EU MEMBER STATES' EXPERIENCES

Summary: The objective of the article is to present the scope and construction of financial transaction tax in Poland against the background of EU Member States' experiences and the planned uniform EU tax in the context of its regulatory function and the need for harmonization. The conducted comparative analysis indicates that national tax systems are extensively diversified in terms of tax construction, which justifies the need for its harmonization at EU level. The suggested FTT addressed to the EU Member States, similarly to taxes in France and Italy introduced after the occurrence of the financial crisis, take into account in their structure the possibility of regulating the functioning of the financial markets. Such a function is not present in the case of the civil law activities tax covering some financial transactions in Poland.

Keywords: tax, financial instruments, financial transaction tax, tax system.

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1. Introduction

In recent years, financial transaction tax (FTT) has become the subject of lively economic debate resulting from the financial crisis which affected markets at the end of the first decade of the 21st century. The tax's proponents emphasize its usefulness in terms of the regulations for the functioning of financial markets, mainly aimed at curbing speculative transactions, especially with regard to high-frequency trading (HFT) as well as derivatives and leverage instruments which, by assumption, is supposed to reduce markets' volatility and enhance their stability. The opponents, however, emphasize the absence of conclusive scientific evidence to confirm the effectiveness of the suggested solution and, at the same time, present the potential, negative consequences, such as lower market liquidity and higher capital acquisition costs [Wang, Yau Jot 2012, pp. 5-8].

In spite of these theoretical discrepancies, different forms of financial transaction tax are functioning in some European Union Member States, including Poland. The diversity of tax forms may, however, result in certain problems affecting operations performed on the European financial market. This issue was one of the problems which, in 2011, became the basis for the proposal of a single financial transaction tax implementation in the European Union.

The objective of the article is to present the scope and construction of financial transaction tax in Poland against the background of EU Member States' experiences and the planned uniform EU tax in the context of its regulatory function and the need for harmonization.

2. The essence and typology of financial transaction tax

Financial transaction tax represents a turnover tax which covers transactions related to financial instruments. The term FTT refers, in theory and practice, to many different taxes which can mainly be classified based on the objective criterion, i.e. types of instruments and financial transactions subject to tax. From a historical perspective, it was the securities transaction tax (STT) which was first suggested by J.M. Keynes [Keynes 2003, pp. 140-141]. However, it is J. Tobin[1] who is commonly regarded as the precursor of financial transactions taxation, since in the 1970s it was he who suggested currency transaction tax [Tobin 1978, pp. 153-159].

Among other possible forms of financial transaction tax there are also listed capital levy or registration tax, where the tax base is the increase in share capital resulting for example from the issue of shares, bonds, acquired capital contributions or granted loans. This tax can be identified with STT if accompanied by the issue of securities.

In some Latin American and Asian countries, a popular form of taxation is also represented by a bank transaction tax levied upon deposits of bank account withdrawals as a percentage of their value. Another example is the insurance premium tax levied in some countries in order to compensate for the low taxation of the insurance sector by income tax or value added tax [Matheson 2011, pp. 5-7].

A slightly different form of financial market taxation which does not interfere directly in transactions concluded at this market is financial activity tax (FAT). In simple terms, its structure can a assume tax calculation based on the amount of financial institution profits as well as the amount of remuneration paid by this institution [Dec, Masiukiewicz 2013, p. 37].

3. Financial transaction tax in Poland against the background of other EU states

In Poland, financial transaction tax does not represent any specific tax covered by a separate statutory regulation, but results from the Act dated 9th September 2000 on the civil law activities tax (CLAT). In accordance with Art. 1, par. 1, pt. 1 of the Act,

[1] Hence the tax is commonly called the Tobin tax.

the CLAT is levied, among others, on the sale of property rights. In spite of the absence of the “property right” legal definition there is no doubt that financial instruments, including securities (debt and equity) and derivatives are listed among them. In line with the doctrine of law there are two decisive reasons in this matter, i.e.: the negotiable nature of financial instruments and the determined net asset value. Due to the fact that tax can be levied only upon the transaction listed in the Act, such events as the realization or redemption of property rights incorporated in financial instruments are not subject to tax [Pyzel 2007, p. 117]. Therefore according to the Polish tax system, the discussed tax, following the typology adopted in the previous point, represents a securities transaction tax.

The example of capital levy is represented by CLAT, which refers to the deed of partnership or its amendment understood, for example, as the increase of share capital from deposits, own resources or additional payments. In the case of a joint-stock company it refers to the issue of shares and hence the tax obligation applies not only to trading on the secondary market but also their issue on the primary market. The doctrine of tax law raised doubts to whether an increased capital taxing is consistent with EU law. This problem was subject to numerous tax office interpretations and administrative court judgements which, on most occasions, were unfavourable for taxpayers. The interpretation of the Supreme Administrative Court, presented in the judgement dated 10th May 2012 (file no. II FSK 98/12), recognizes the existing status as legally binding. It should also be indicated that it is only the increase of share capital which remains subject to taxation and thus the excess over the nominal value of shares, transferred to share capital, will not be subject to taxation [Iwin-Garzyńska 2010, p. 44].

CLAT covers those transactions which refer to property rights exercisable in the territory of Poland. CLAT also applies in the case of property rights exercisable abroad if the acquirer of property rights resides in Poland or has a registered office within the territory of Poland and the civil law act was performed within this territory. If an amendment to the Article of Incorporation is made, the company seat or its headquarters should be located within Polish territory. Tax liability occurs upon the sale of the financial instrument (based on the civil law act) or upon the adoption of a resolution about the share capital increase. The liability applies respectively to the property right acquirer or the company. The tax should be paid within 14 days from the date of tax point, except in cases when the tax is collected by the payer.[2]

The tax rate applicable to the property rights sale agreements is 1%, whereas in the case of the deeds of partnership it is 0.5%. The tax base is calculated on market value of the transferred property right determined with reference to the average prices used in trading the same kind of property rights as of the date of the operation. In the case of a deed of partnership, the tax base is calculated against the share capital value or the value by which this capital was raised. However, the notary fees and

[2] A notary public can be the taxpayer if the civil law act is prepared in the form of a notarial deed.

VAT tax charged by the notary public for drawing up the deed of partnership or its amendment, the stamp duty charged for the company entry in the register of entrepreneurs or an alteration to the entry, and the charge for including the notice of entries in the Court and Economic Monitor, are all deducted from the tax base.

The vital component of the discussed tax structure having a crucial impact on its fiscal and non-fiscal (regulatory) significance, is represented by the catalogue of tax exclusions and exemptions. Civil actions, other than the deed of partnership and its amendments, if at least one of the parties in respect of the aforementioned action is subject to VAT or exempt from this tax except, however, the disposal of shares in commercial companies. The Act dated 11th March 2004 on taxing goods and services provides for VAT exemptions of for example services covering financial instruments (excluding these instruments' custody and management) and the underlying intermediary services, as well as managing investment, insurance, capital, open pension funds and occupational pension schemes. Therefore these exclusions usually apply when financial instruments are sold within the framework of the financial intermediary services provision [Pyzel 2007, p. 117].

In the case of the deed of partnership and its amendments tax excluded activities refer to the mergers of capital companies, transformations of a capital company into another one, contributions to the capital company, in exchange for its shares and stocks of the following:

- an enterprise of a capital company or its organized part,
- shares or stocks of another capital company providing the majority, or more shares and stocks if the company in receipt of these shares and stocks is already in the possession of such a majority.

The crucial financial market participants should be listed among the tax exemptions of a subjective nature, i.e. the State Treasury and local government units. The catalogue of objective tax exemptions includes, among others, the sale of Treasury bills and bonds, as well as the bills of the Polish National Bank and also the sale of property rights, as financial instruments:

- to investment companies and foreign investment companies,
- performed via investment companies or foreign investment companies,
- carried out within the framework of organized trading,
- made outside organized trading by investment companies and foreign investment companies if the rights were acquired by those companies within the framework of organized trading.

CLAT exemptions also cover some deeds of partnership and their amendments related for example to the share capital increase, reduced not earlier than within the last four years as a result of loss coverage. Another example of exemption occurs when a company's core business consists in the provision of certain public utility services and the State Treasury or a local government unit own at least half of the shares or stocks.

The civil law activities tax constitutes a source of municipal revenue. However, CLAT is collected by the State tax administration and the relevant tax authority is represented by the Head of the Revenue Office competent in terms of the taxpayer's place of residence or business address.

Apart from Poland, financial transaction tax is also present in such European Union Member States as: Belgium, Cyprus, Finland, France, Greece, Ireland, Romania, Great Britain and Italy. In the case of France and Italy, this particular tax was introduced within the last two years.

The French FTT became effective as of 1st August 2012. It is levied on transactions in shares and other financial instruments representing equity capital (e.g. ADR, GDR, convertible bonds, bonds with subscription warrants for shares) or equity rights (e.g. the right to vote, the right to participate in profit). These instruments have to be listed on French or a foreign regulated market and issued by a company officially seated in France and holding capitalizations, as of January 1st of the tax year, amounting to more than 1 billion Euro. The tax liability rests with the purchasers of such instruments regardless of their nationality and seat. The tax rate is 0.2% of the performed transactions value. There are several tax exemptions, which refer to for example. the acquisition of securities on the primary market, the acquisition of values by the clearing house, transactions performed by market makers, a purchase made under the contract of providing liquidity, intro-group transactions, securities lending, repurchase transactions, CBs purchase (however, their conversion to shares is subject to tax), the acquisition of shares by employees and employee funds. The tax exclusion of share capitalization of less than 1 billion Euro is to limit the negative effects of tax, among which the most common one is the decline of market liquidity [Becchetti, Ferrari, Trenta 2013, p. 4].

The discussed tax also covers all high-frequency trading (HFT), regardless of their issuer's capitalization or the registered office location, except for the market-making activity transactions which are exempt from tax. Only the French tax resident companies involved in high-frequency trading are subject to this tax. The tax rate is 0.01% of the amount of cancelled or modified orders exceeding the threshold to be set by Ministerial Decree.

The purchase agreements of "naked" credit default swaps for the EU Member States' debt, i.e. swaps which do not have the coverage in assets or liabilities in the buyer's portfolio, are also subject to FTT in France. Such swaps are usually entered into for speculative rather than hedging purposes. In this case both, a natural person and a legal entity can be subject to taxation under the condition of representing a French tax resident. The tax rate is 0.01% of the CDS contract nominal value.[3]

In Italy, starting from 1st March 2013, the tax on transactions in shares and other equity instruments as well as representing these instruments (e.g. ADR) and also including shares resulting from the conversion of convertible bonds (except a new

[3] See [http://www.eurexclearing.com/clearing-en/resources/faqs/235138/?frag=187982].

share issue), is being collected. A company residing in Italy has to be the issuer of such securities. The tax rates are diversified. A lower tax rate (0.1%) applies to the regulated market or multilateral trading facility (MTF) transactions, whereas a higher tax rate (0.2%) covers over-the-counter transactions[4]. The tax base is the net balance of transactions performed on the same asset by the same person, while tax liability remains with the instrument buyer. Italian regulations also provide for tax exclusions and exemptions which refer to for example the issue of shares and their redemption, transfers by way of gift or inheritance, transfers of shares issued by so-called small caps (companies with a capitalization of less than 500 mln Euro). There are also specific tax exclusions covering transactions with the EU, ECB, the central banks of the EU Member States and institutions established following international agreements concluded by Italy.

As of 2nd September 2013, Italian FTT is also levied upon derivatives trading for which shares or equity financial instruments represent the basic ones, or other securities underlying shares or equity financial instruments (e.g. warranty). The amount of tax is calculated based on the fixed rate quota ranging from 0.01875 Euro up to 200 Euro per transaction, depending on the type of contract and its notional value. For a regulated market or MTF transactions these rates are reduced to 20% of the nominal value. The tax falls on both parties of the transaction [Salvadori di Wiesenhoff, Egori 2013, pp. 48-63].

Along with the tax obligation levied upon the above-mentioned financial instruments, high-frequency trading performed on these assets were also covered by tax. The appropriate rate is 0.02% of the entered, modified or cancelled, order value determined by a computer algorithm generating the decision automatically in less than 0.5 of a second. In case of HFT, tax liability rests with the entities for which these transactions are made [Borsa Italiana – LSEGroup 2013].

The French and Italian solutions in FTT were implemented, among others, as a reaction to the financial and economic crisis in recent years. Thus, their designs refer to the post-crisis reality and assume not only fiscal but also regulatory goals, resulting from the financial crisis experiences. This is mainly visible in the tax coverage of the most significant transactions on the regulated market, the most speculative high-frequency trading and risky derivative transactions.

The remaining countries introduced taxes in previous years and their structures are highly diversified. One of such crucial differences between national tax systems in the EU is the scope of FTT application and its market transactions coverage. This takes place to a varying degree only in some countries (Belgium, Cyprus, Greece, Romania), while in other states, tax exclusions cover transactions performed on the stock exchange or other organized markets (e.g. Poland). These exclusions result in the fact that the taxation of financial instruments trading may not be regarded as the regulating mechanism for financial markets' functioning and, moreover, the objective underlying these taxes implementation was probably different. National tax systems

[4] In 2013 these rates were, respectively, 0.22% and 0.12%.

also present major differences in the scope of other tax exclusions or exemptions regarding financial transactions. For example in Belgium, tax exemption covers non-residents and the Belgian financial sector operating on its own account.

Another characteristic differentiating national FTT is the scope of the covered financial instruments and also the type of transactions performed. In several countries this tax refers to all financial instruments, i.e. equity and debt instruments, as well as derivatives (e.g. Belgium, Greece, Romania). In Finland, on the other hand, it is levied only on shares, loans with the right to participate in profits and stock options, whereas bonds, other debt securities and derivatives are not taxed. In Great Britain stamp duty reserve tax covers stocks, shares, equity call options, convertible bonds, i.e. similarly to Finland it is related to equity capital. In Cyprus, stamp duty is levied upon the issuance of securities and sales contracts of unquoted securities, whereas "titles", understood as stocks, shares, bonds or other titles of companies and legal entities listed on the Cyprus Stock Exchange, are subject to taxation. There are, however, many exemptions (e.g. corporate bonds, Treasury bills, so-called development bonds). Irish stamp duty covers shares and other stocks and the marketable securities of Irish enterprises.

In the discussed countries, taxes on financial transactions also differ in terms of tax rates and tax base criterion. The tax base can by determined by the sales prices (e.g. Finland, Greece), last market value (e.g. Cyprus), or the highest of these two values (e.g. Ireland). Tax rates are relatively low and range from 0.01% (e.g. France) to 1.6% (e.g. Finland), while some countries have additionally introduced a maximum tax rate (Belgium, Cyprus). In most countries tax rates are proportional, whereas a progressive tax rate, offering one tax threshold, is present only in Cyprus. These elements can be further varied in a given country, depending on for example the type of financial instrument, the type of transaction or the market it was performed on [European Commission 2011a, pp. 476-477].

The extensive diversification of national solutions in terms of FTT in the EU Member States, which has only been generally outlined, creates the need for national legislation harmonization which remains one of the main goals underlying the Community financial transaction tax. Such harmonization, in terms of taxation consisting in the neutralization of divergent national approaches, can result in the reduction of certain risks and problems related to tax burden non-uniformity enhanced by high capital mobility. This can consist in the possibility of double taxation or non-taxation, the possibility of tax arbitrage application, relocation of activities, or distortions in the competition between instruments, actors and markets.

4. A uniform financial transaction tax in the European Union

The first formal initiative aimed at the harmonization of financial transactions taxation in the EU, took the form of a proposal by the European Commission, dated 28th September 2011, for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC (COM/2011//594 final). Due to the lack of unanimous Member States' support for this initiative, 11 EU countries decided to continue work on this tax implementation (Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia), under the so-called enhanced cooperation, in accordance with the mandate of the EU Council[5]. This resulted in the subsequent proposal by the European Commission dated 14th February 2013 for a Council Directive implementing enhanced cooperation in the area of financial transactions tax (COM/2013/71 final), prepared based on the first proposal of 2011, which was deemed unfounded and subject to withdrawal. Initially it was assumed that the tax would be introduced at the beginning of 2014, but the underlying Directive had not been adopted by the end of 2013 and further legislative procedure was halted. This resulted from legal doubts regarding the tax compliance with particular treaties raised by the EU Council legal service. Negotiations between Member States are being continued and the next anticipated date of the tax's enactment is 2015 [Fairless 2013].

The discussed tax should be included among security transaction taxes (STT). It is supposed to cover such transactions in financial instruments as: their acquisition, sale, transfers between capital group entities regarding the rights to dispose of a given financial instrument, as well as transfers of associated risks, agreements on derivatives, exchange of financial instruments, repurchase agreements and securities lending and borrowing. The scope of financial instruments is also extensive since it covers capital market instruments (except payment instruments), derivatives, structured products (created within securitization processes), as well as share and participation units in undertakings for collective investments. The taxation will cover both the transactions on organized markets (regulated, alternative) and other markets.

Financial transaction tax is not levied upon primary market transactions and transactions relevant for citizens and enterprises, such as concluding insurance agreements, mortgages and consumer loans or payment services. These exclusions result from the possibility of the negative impact of the tax on the possibility of raising capital by businesses and governments and also on the functioning of households. Moreover, the tax does not apply to foreign currency transactions on the cash market, so that the free movement of capital is not restricted. All these exclusions, however, do not refer to such instruments and currencies trading by the developed on their basis derivatives or structured instruments.

The reduction of FTT's negative impact on the possibility of financial institutions and countries refinancing, as well as the monetary policy and public debt management, also constitutes the prerequisite for tax exclusions applying to transactions with the central banks of Member States, ECB, EFSF, ESM, the European Union (associated with some financial support granted and its assets management) and also some transactions with the European Atomic Energy Community, EBI, as well as certain

[5] See [Council Decision of 22 January 2013 authorising…].

international organizations and bodies. Apart from that the Directive excludes transactions, performed within the framework of restructuring measures, from FTT, which has been provided for in Art. 2 of the Council Directive 2008/7/EC.

The taxpayer of the discussed tax is a broadly defined, in the draft directive, financial institution, understood as: an investment enterprise, regulated market and other organized systems or multilateral trading facilities, a credit institution, an insurance and reinsurance institution, an enterprise for collective investment in transferrable securities, a pension fund, an alternative investment fund and their managing entities, special purpose entities in securitization transactions and also other entities, if the average annual value of their financial transactions represents more than 50% of their total average annual turnover.

The draft directive also provides for subjective exclusions which apply to central counterparties (CCP)[6], central securities depositories and also Member States and public bodies entrusted with public debt management, however, only to the extent in which they are involved in purely commercial operations. These exclusions are justified by the role played by the above-mentioned entities in ensuring both the efficiency and transparency of financial markets' functioning and public debt management.

Tax liability occurs in the event of a financial transaction provided that at least one of the transacting parties, represented by a financial institution, has a registered office within the territory of the participating Member State. The tax is payable to tax authorities in the country in which the financial institution, being a party to the transaction, has a registered office and acts on its own or on someone else's account, or on behalf of the transacting party. Thus the basic principle for determining tax liability is the "registered office principle". However, owing to the accompanying risk of relocation, this has been supplemented by the so-called "principle of the place of issue", which imposes tax liability also when none of the parties has a registered office in any of the participating countries, but the transaction refers to financial instruments issued in the territory of these countries.

The draft directive provides for two tax rates which constitute a given tax base percentage and represent minimum tax rates. Thus, Member States were granted certain powers to influence them. With reference to derivatives, the tax rate cannot be lower than 0,01%, whereas in the case of the remaining instruments – 0.1%. Tax rates introduced by the Member States cannot be diversified for the same category transactions.

The nominal value specified in the underlying contract in the time of transaction is taken as the tax base for derivatives. If a few values have been specified, the highest one is adopted to determine the tax base. In the case of instruments other than derivatives, the tax base is accepted as the value equal to the payment made for the

[6] "CCP" refers to a legal person who operates between the contracting parties trading on at least one financial market as a seller to every buyer and a seller to every buyer.

instrument. If it is lower than the market value the last one is applied, similarly to financial instruments transfer or risk between entities in the group.

The tax becomes chargeable at the time of the financial transaction and the date of its payment depends on how the transaction was carried out. In cases of online transactions it has to be paid immediately when it becomes chargeable, in other situations within three working days [European Commission 2013].

A construction of financial transaction tax in line with the draft directive, puts a strong emphasis on the issues of tax evasion and fighting fiscal fraud. The risk of tax evasion is minimised by the adopted extensive objective and the subjective scope of the tax (the criterion of registered office and the place of issue) and also by the precise definition of exclusion. In cases of fiscal fraud the Directive imposes an obligation on the participating countries, to adopt adequate preventive measures.

5. Final remarks

The presented study indicates that, so far, only ten EU Member States, including Poland, have been applying different forms of financial transactions tax. The analysis of national FTT structures allows for the conclusion that they are strongly diversified and, by no means, can one talk about the harmonization of tax law at European Union level. In the majority of countries these taxes were introduced ahead of the financial crisis and constitute the already well-established component of national tax systems. Therefore their constructions do not cover the growing, in recent years, need for regulating the financial markets' functioning also by means of tax instruments. Such a situation is true for Poland as well, where the taxation of financial transactions does not represent an autonomous tax, but just a part of an objectively broader civil law activities tax. In many countries the most crucial transactions in regulated markets are not subject to tax which, in practice, significantly limits their non-fiscal functions. On the other hand, such taxes do not result in negative, attributed to FTT, effects for financial markets and their role is most often limited to the fiscal function. This, however, does not refer to tax on raising capital, the maintaining of which in some countries (also in Poland) mainly for fiscal reasons, should be regarded as negative, since it can result in a capital cost increase and disturbances in both competition and capital movement between the Member States.

Supplementing regulatory tools by measures which discourage concluding risky transactions, that do not enhance financial markets efficiency (mainly high-frequency and derivatives trading) and the harmonization of tax law, represent the main goals (apart from the fiscal objective) of the European Commission's initiative aimed at the implementation of a uniform financial transaction tax within the European Union. Its construction, and especially the broad scope of transactions, markets and instruments covered by this tax, reflects its regulatory function declared in the draft directive justification. The absence of agreement between the Member States and the prolonged procedure for the EU tax implementation stimulated, however, such countries as France and Italy to undertake unilateral decisions in the discussed subject matter, in spite of their entering into enhanced cooperation. The structure of French and Italian FTT, and especially the emphasis on HFT and derivative transactions in taxation regulations, indicate the desire to meet the objectives of reduction in such transactions.

Simultaneously, the taxes in France and Italy, as well as the EU project, aim at limiting the negative results of the general financial transactions taxation which is visible in the catalogues of exemptions and exclusions, especially these referring to primary market, debt management and maintaining market liquidity.

It has to be emphasized, however, that despite the occurrence of theoretical prerequisites for the discussed tax application as the regulatory tool for market functioning, the available empirical research does not offer clear conclusions in terms of the actual occurrence of theoretical effects [Schulmeister, Schratzenstaller, Picek 2008, p. 20]. This raises doubts, in spite of the favourable tax structure, regarding the possibility of meeting some goals defined for this tax by the European Commission. Recent research results on the French tax are, however, encouraging [Becchetti, Ferrari, Trenta 2013, pp. 13-14].

References

Becchetti L., Ferrari M., Trenta U., *The Impact of the French Tobin Tax*, CEIS Research Paper 2013, no. 266.

Borsa Italiana – LSEGroup, *Equity & Derivatives Markets Workshop*: *Italian Financial Transaction Tax*, Milan, http://www.borsaitaliana.it/speciali/equitymarketsnews/presentazioneftt_pdf.htm [access: 7.01.2014].

Council Decision of 22 January 2013 authorising enhanced cooperation in the area of financial transaction tax (2013/52/EU), OJ L 22/11, 25.01.2013.

Dec P., Masiukiewicz P., *Podatek bankowy*, Wydawnictwo C.H. Beck, Warszawa 2013.

European Commission, Commission staff working paper impact assessment. Accompanying the document Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC, vol. 4, Brussels, SEC (2011) 1102 final, 2011a.

European Commission, *Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC*, COM (2011) 595 final, 2011b.

European Commission, *Proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax,* COM (2013) 71 final, 2013.

Fairless T., *EU Financial-Transactions Tax Faces More Delay*, The Wall Street Journal website, http://online.wsj.com/news/articles/SB10001424052702304579404579231730343028774, 2013 [access: 13.01.2014].

http://www.eurexclearing.com/clearing-en/resources/faqs/235138/?frag=187982 [access: 10.01.2014].

Iwin-Garzyńska J., , *Opodatkowanie kapitału*, Economicus, Szczecin 2010.

Keynes J.M., *Ogólna teoria zatrudnienia, procentu i pieniądza*, PWN, Warszawa 2003.

Matheson T., *Taxing Financial Transactions: Issues and Evidence,* Working Paper IMF 2011, no. 11/54.

Pyzel B., *Opodatkowanie instrumentów finansowych*, ODDK, Gdańsk 2007.

Salvadori di Wiesenhoff V., Egori R., *Italian financial transaction tax*, "Derivatives and Financial Instruments" 2013, vol. 15, no. 2, IBFD.

Schulmeister S., Schratzenstaller M., Picek O., *A General Financial Transaction Tax, Motives, Revenues, Feasibility and Effects*, WIFO, Vienna 2008.

Tobin J., *A Proposal for International Monetary Reform*, "Eastern Economic Journal" 1978, vol. 4(3-4).

Ustawa z dnia 11 marca 2004 r. o podatku od towarów i usług, Dz.U. 2011, nr 177, poz. 1054 (uniform text).

Ustawa z dnia 9 września 2000 r. o podatku od czynności cywilnoprawnych, Dz.U. 2010, nr 101, poz. 649 (uniform text).

Wang G.H.K., Yau Jot, *Would a financial transaction tax affect financial market activity?,* "Policy Analysis" 2012, no. 702.

OPODATKOWANIE TRANSAKCJI FINANSOWYCH W POLSCE NA TLE DOŚWIADCZEŃ WYBRANYCH PAŃSTW UNII EUROPEJSKIEJ

Streszczenie: Celem artykułu jest przedstawienie zakresu i konstrukcji opodatkowania transakcji finansowych w Polsce na tle doświadczeń państw członkowskich UE i planowanego jednolitego podatku unijnego w kontekście jego regulacyjnej funkcji i potrzeby harmonizacji. Z dokonanej analizy porównawczej wynika, że krajowe systemy podatkowe są mocno zróżnicowane pod względem konstrukcji podatku, co uzasadnia potrzebę jego harmonizacji na poziomie UE. Proponowany unijny FTT, podobnie jak podatki we Francji i Włoszech, wprowadzone już po wystąpieniu kryzysu finansowego, uwzględnia w swojej konstrukcji możliwość regulacji funkcjonowania rynków finansowych. Ta funkcja nie występuje w przypadku podatku od czynności cywilnoprawnych, obejmującego niektóre transakcje finansowe, w Polsce.

Słowa kluczowe: podatek, instrumenty finansowe, podatek od transakcji finansowych, system podatkowy.