
Tax Compliance as an Element of the Corporate Compliance Management System

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Abstract: The aim of the paper was to identify areas of the compliance management system and assess the advisability of including tax compliance within the compliance management system. The methodology involved an analysis of relevant literature, legal acts and compliance standards. The empirical part presents the results obtained, having analysed areas of compliance management systems in a sample of ten entities listed on the WSE and included in the WIG20 index. The studied entities were found to present a variety of information on compliance management systems without taking into account the area of tax compliance. According to the author, the implementation of a coherent overall compliance management system would bring many benefits regarding the fulfillment of tax obligations – e.g. in the field of Mandatory Disclosure Rules (MDR) or transfer pricing – and also facilitate the conclusion of the so-called cooperation agreements in the area of taxes and the Advanced Pricing Agreements (APA).

Keywords: management, taxes, corporate governance, corporate social responsibility.

1. Introduction

Contemporary enterprises, apart from the necessity to achieve long-term goals such as increasing the company's value and maintaining a competitive advantage, face the challenge of meeting many regulatory requirements. Legal requirements apply to both sector-specific areas and those present in each industry, such as: accounting, taxes, labour law, organizational law, environmental protection, etc. In theory and in practice, organizational tools were created to support the process of compliance with various types of requirements regarding the functioning of the entity, such as the compliance management system. Due to the relative novelty of the concept of

compliance management, the material scope of this area is still evolving. The aim of the paper was the identification of the areas of the compliance management system, both in theoretical and practical terms, and assessment of the advisability of including tax compliance to the compliance management system. Based on the analysis of the literature and legal regulations regarding compliance and taxes, the following research questions were formulated:

- What are the main goals of implementing the compliance management system?
- Are there any reasons to include tax compliance in the compliance management system?
- Do the compliance management systems currently operating in the analysed entities contain an element of tax compliance?
- What elements in the field of tax compliance could be included in the compliance management systems?

The structure of the paper was adapted to the purpose of the research. The first part presents a review of the literature and law regulations in relation to the concept of the compliance management system. Next, the selected reasons for including tax compliance in the corporate compliance management system are explained. The second part of the article contains the results of the analysis of the compliance system components in several sample entities, listed in the WIG20 index of the Warsaw Stock Exchange, based on information published on websites or shown in integrated reports, management board's reports (hereinafter referred to as management reports), or in sustainability reports. The statements on the company's compliance with the corporate governance principles contained in Best Practice for GPW Listed Companies and information on the executed tax strategy were also verified. A content analysis of texts was the method used for the collection of relevant data and information from the literature, legal regulation, ISO standards, corporate reports and corporate web sites.

2. The importance of the compliance management system – literature review

The term 'compliance' is understood in a variety of ways, but usually means compliance with both the legal regulations and non-legal standards and practices to which the entity has committed itself (Baer, 2009). The above-defined understanding of the concept of compliance means a very wide range of legal regulations that must be complied with regardless of the existence of criminal liability or the lack of it. However, compliance with non-legal standards is associated with the need to comply with the rules of such fields as quality, ethics, and respect for the natural environment, namely factors that make up the broadly understood concept of corporate social responsibility (Tomšić, Bojnec, & Simić, 2015; Windolph, Harms, & Schaltegger, 2014). The management of such compliance is the essence of the Compliance

Management Systems created in organizations (CMS). The main assumptions of the CMS are included, among others, in the ISO 37301 (International Organization for Standardization, 2021), which replaced the standard in force since 2014 of ISO 19600 (International Organization for Standardization, 2014). It should be noted that the standard can be used by any type of organization, regardless of size, industry, or whether the entity belongs to the public, private, or non-profit sector.

The compliance management system should reflect the organization's values, objectives, strategy, and compliance risks. The ISO standard does not contain detailed guidelines indicating which areas should be covered by the compliance management system. In general, it points to such compliance requirements as: laws and regulations, permits, licenses or other forms of authorization, judgements of courts, treaties, conventions, agreements with public authorities, or customers, organizational policies or procedures, voluntary principles or codes of practice, environmental commitments, and industry standards.

According to the recommendations included in the ISO standard, compliance management in an organization should be embedded in the processes of financial management, risk, quality, environment and occupational health and safety, as well as in its requirements and operational procedures, which will allow to obtain tangible benefits by reducing the risk of fines from non-compliance. The main goal of the CMS is not only to detect inconsistencies but, above all, to prevent them.

The literature mentions two ways of CMS functioning: by implementing an ISO standard or by developing a system based on internal regulations. The variety and complexity of internal regulations can be large, especially in international corporations. The creation of these norms is of a quasi-legislative nature (Braun, 2017, p. 23; Muchliński, 2009). The literature abounds in a number of postulates regarding the scope of the CMS (Parker & Nielsen, 2009; Parker & Gilad, 2011; Wu & Liang, 2020).

For example, according to the Compliance in Poland 2021 Report, the following were the main elements of the CMS: the code of ethics (indicated by 88% of the respondents), the analysis of compliance risk (85%), training (83%), information systems on irregularities (73%), and business partner research (70%) (Wolters Kluwer, 2021).

The following areas of responsibility are also mentioned (Jurasz, Kaczała, Kamińska-Kiempa, Napiórkowski, & Paryś, 2019, pp. 11-18):

- liability related to company law – in Poland, the Code of Commercial Companies,
- responsibility for proper accounting,
- liability related to labour law,
- liability related to corruption,
- responsibility regarding the protection of personal data,
- responsibility in the field of combating unfair competition and protecting business secrets,

- liability regarding the prohibition of the use of abusive clauses in contracts with customers,
- liability relating to tax law,
- environmental responsibility.

The above-mentioned areas are generally regulated by law, and CMS is required to develop a compliance management policy. The responsibility for this rests with the management team, and above all the members of the management board. Pursuant to the provisions of law, the management board is required to exercise due diligence in complying with the legal requirements. In Poland this concept is defined in the Civil Code, according to which: “due diligence of the debtor in the scope of his economic activity is determined taking into account the professional nature of this activity” (Ustawa z dnia 23 kwietnia 1964..., art. 355 par. 1 and 2). Considering the above, it can be expected that management boards will increasingly implement CMS, which is also in line with the results of the “Compliance in Poland 2021” study, where 73% of the respondents indicated that CMS will gain importance in the future (Wolters Kluwer, 2021).

3. Selected reasons for including tax compliance in compliance management systems based on the example of Poland

Accounting and tax compliance has been the subject of a vast amount of research (Andreoni, Erard, & Feinstein, 1998; Chang, Chen, Cheng, & Chi, 2019; Lee, Gokalp, & Kim, 2021; Marandu, Mbekomize, & Ifezue, 2015; Nalukenge, Nkundabanyanga, & Ntayi, 2018). The context of the research includes, among others, compliance costs, attitudes in the field of tax avoidance, internal control, and tax management. However, tax compliance is relatively rarely the subject of research in terms of its inclusion in business processes and treatment in a systemic perspective (Bătrâncea, Nichita, Bătrâncea, & Moldovan, 2012; Randlane, 2016; Remmerbach, & Krumme, 2020; Thottoli, 2022).

The multitude of tax and balance sheet law regulations imposes on enterprises a number of supervisory and reporting obligations. For example, according to Polish accounting regulations, the management board of a commercial law company is responsible for, among others, the internal control necessary for the correct preparation of financial statements, including the correctness of tax settlements, and the supervisory board is responsible for supervising the financial reporting process (Ustawa z dnia 29 września 1994..., art. 4a and 24 ust. 4 pkt 3). In turn, in the public interest entities, i.e. listed companies, the Polish standards of the Act on statutory auditors provide for additional obligations of the supervisory board in the scope of monitoring the effectiveness of internal control systems and risk

management systems, including in the tax area (Ustawa z dnia 11 maja 2017..., art. 130 ust. 1 pkt 1).

In addition, companies listed on the Warsaw Stock Exchange should annually submit a statement on the company's compliance with the corporate governance principles contained in Best Practice for GPW listed companies (Uchwała Nr 13/1834/2021 Rady Nadzorczej...). This is in line with the EU Commission's recommendation on the quality of corporate governance reporting, where there is a rule directly related to the CMS: "Listed companies maintain efficient internal control, risk management and compliance systems and an efficient internal audit function adequate to the size of the company and the type and scale of its activity; the management board is responsible for their functioning" (EU Commission, 2014).

The cited regulations define quite generally responsibility in the field of compliance and do not contain guidelines as to how the internal control system in the field of accounting, financial reporting, and taxes, is to be constructed in practice.

Listed entities that meet certain requirements (e.g. 500 employees) are required to report on non-financial information. The number of entities subject to the obligation of non-financial reporting will expand in the reports for 2023 due to the reduction of the threshold related to employment to 250 people. In the following years, the scope of disclosure of non-financial information, including that in terms of sustainability and corporate social responsibility, will evolve and expand.

The required form of presentation of non-financial information varies and includes reports such as: sustainability report, CSR report, integrated report (including both financial and non-financial information), as well as management reports. The scope of non-financial reporting currently includes: a description of the policies applied by the entity in relation to social and labour issues, the natural environment, respect for human rights and counteracting corruption, as well as a description of the results of applying these policies; a description of due diligence procedures. It should be noted that the subjective scope of the presented non-financial information, as well as in the field of financial information, should be covered by the Compliance Management System.

As of 1 January 2021, taxpayers in Poland whose revenue value in the tax year exceeded the equivalent of EUR 50 million (according to the average NBP exchange rate, announced on the last business day of the calendar year preceding the reporting year) and tax capital groups regardless of the amount of revenues achieved are required to publish information on the executed tax strategy on their website or the website of a related entity (Ustawa z dnia 15 lutego 1992..., par. 27c). A similar obligation exists in other countries such as Great Britain, Austria, and the Netherlands. Pursuant to the regulations, the minimum scope of information on the implemented tax strategy includes:

- information on voluntary forms of cooperation used by the taxpayer with the bodies of the National Revenue Administration,

- information on transactions with related entities, the value of which exceeds 5% of the balance sheet total of assets,
- information on the restructuring activities planned or undertaken by the taxpayer,
- information on the processes and procedures for managing the performance of obligations under tax law and ensuring their proper performance,
- information on the settlements in countries applying harmful tax competition (transactions with entities based in tax havens).

The variety of reporting obligations in Poland results from the wide scope of various types of taxes functioning in the Polish tax system. Individual taxes are subject to separate legal regulations and reporting obligations. It is obvious that the tax authorities are concerned with the greatest possible tax revenues, hence instruments are implemented to capture any irregularities. For example, in the Polish tax system, a general anti-avoidance clause (GAAR) has been in place since 2016 and under it, cases are pending in the National Tax Administration (Ustawa z dnia 29 sierpnia 1997..., par. 119a).

Another exemplary instrument to prevent tax avoidance is the need to report information on tax schemes Mandatory Disclosure Rules (MDR) in a situation where the taxpayer has applied some arrangement, the main purpose of which is to achieve a tax benefit (Ustawa z dnia 29 sierpnia 1997..., par. 86a). Another example is the transfer pricing obligations relating to the need to demonstrate that related entities in their mutual settlements apply market conditions (Ustawa z dnia 15 lutego 1992, chapter 3). The subject of special reporting are all transactions concluded directly or indirectly with entities from tax havens. In the literature, one can come across demands to include the transfer pricing area in the CMS (Baldenius, Melumad, & Reichelstein, 2004; Cools, Emmanuel, & Jorissen, 2008; Cools & Slagmulder, 2009; Hummel, Pfaff, & Bisig, 2019).

A novelty in Polish regulations are the provisions of the Tax Ordinance, section IIB, entitled “Cooperation”, introduced by the Act on resolving disputes related to double taxation and concluding advance pricing agreements (Ustawa z dnia 16 października 2019...; Ustawa z dnia 29 sierpnia 1997...), enabling the conclusion of the so-called “cooperation agreements” in the field of taxes. Such a civil law contract will allow for obtaining a number of special privileges, mainly in the form of no tax inspections, no obligations in relation to the so-called “national schemes”, or (under certain conditions) limiting certain sanctions, e.g. in VAT. In order to conclude a cooperation agreement, the enterprise must meet several conditions, including showing revenues for the last tax year not lower than the equivalent of EUR 50 million and obtain a positive opinion of the National Tax Administration on the basis of a preliminary audit for the last two tax years. Above all, however, the company must implement the so-called “internal tax supervision framework”. The Ministry of Finance has published on its website a draft of the document entitled “Guidelines on the Framework for Internal Tax Supervision”, to cover and describe in detail such areas as:

- the company's tax strategy,
- tax order,
- tax risk management system,
- human resources and liability management system in terms of the tax function,
- document management and IT systems.

As a result of the implementation of the framework, the enterprise must have documented procedures related to audit and internal control, tax risk management and the performance of all functions related to tax compliance.

In view of the above, tax compliance should be defined as the correct fulfilment of tax obligations imposed on taxpayers in accordance with current tax legislation. In order to meet the examples of the above-mentioned requirements in the field of tax information reporting, it seems advisable to implement a tax compliance management system. The integration of the tax compliance area into the overall Compliance Management System should involve the development of specific policies and procedures tailored to the specifics of the organization, along with the assignment of responsibility for their observance to specific employees. This requires a thorough analysis of all the processes taking place in the company in order to identify any risks that threaten the company's tax security. Such an approach is in line with the requirements of the Tax Ordinance applicable in Poland, which is to have "an effective and adequate set of identified and described processes and procedures for managing the performance of obligations under tax law and ensuring their proper execution. Properly implemented Tax CMS allows the company to manage tax risks, limiting the liability of managers and increasing tax security. This is because due diligence is ensured, which significantly reduces criminal tax liability. The risks associated with failure to pay adequate attention to tax compliance include not only tax risks manifested in the necessity to pay taxes with interest, but also the imposition of penalties or sanctions or consequences provided for in the Fiscal Penal Code. The consequence of violating tax compliance can be the loss of a company's credibility and reputation, as well as a number of negative consequences for managers who will be held responsible in this regard.

4. Assessment of the compliance management system of exemplary entities – research results

To identify areas of compliance management in practice, a research sample was selected including ten corporate groups listed in the WIG20 index of the Warsaw Stock Exchange. The content of the CMS presented by these entities as part of the information published on corporate websites or in integrated reports, CSR reports, management reports and sustainability reports was assessed. Selected data are presented in Table 1.

Table 1. Summary of available information on Compliance Management Systems in selected entities listed in the WIG20 index of the Warsaw Stock Exchange

Entity/sector/ Source of data	Published information on Compliance Management Systems
1	2
ALLEGRO/ internet commerce/ ESG Report 2021, Management Report 2021	In the ESG report, under the heading of compliance, it refers primarily to compliance with the Code of Ethics. Moreover, such regulations in the scope are generally mentioned: Anti-corruption Rules, Gifts and Benefits Regulations, Diversity Policy, Inspection Procedure, Agreements Procedure, Tax Governance Policy Supplier Verification Procedure and Suppliers Code of Conduct, Training Policy, EU Charity, Social and Sponsoring Activities Policy, Human Rights Policy. Management Report: no reference to the compliance management system.
ASSECO/IT/ Report on non-financial information 2021, Management Report 2021	Report on non-financial information: no reference to the compliance management system. The issues presented in the report relate to the following issues: social, labour, environmental and climate, respect for human rights, anti-corruption. The Management Report is accompanied by a report on the application of corporate governance principles where there is no reference to the compliance management system.
CCC/ footwear industry/ Report on non-financial information 2021, Management Report 2021	In the introduction to the non-financial report, there is a reference to compliance with the code of ethics. Other reported information concerns: responsible product, natural environment and responsibility towards people. Management Report: no reference to the compliance management system.
CD PROJEKT/ video games/ Sustainability Report 2021, Management Report 2021	In Sustainability Report: information on the implementation of the Compliance Management Policy, which is based on the principle of continuous improvement and adjustment, both to the regulatory needs and the needs of current operations, so that the balance between compliance and the company's business goals is maintained. Management Report: no reference to the compliance management system.
CYFROWY POLSAT/TV/ CSR Report 2021, Management Report 2021	There is no reference to the management system in both reports.
DINO/ food retail/ Management Report 2021	As part of the compliance management system, the group undertakes activities in the following areas: monitoring the regulatory environment of business processes, assessing and analysing the risk of non-compliance of companies' operations with the provisions of law, guidelines, internal regulations and standards, coordination of the process of creating, implementing and updating internal regulations at the Company, monitoring compliance with the rules adopted in internal regulations in the field of compliance management, controlling the compliance of organizational units with decisions and internal regulations of the Company, conducting training courses for employees.

1	2
JSW/mining sector/ Compliance system – brochure, Management Report 2021	Pursuant to the Management Board’s Report on the activities of the Management Board, there is a Control, Risk Management and Compliance System. The process of preparing financial statements is described in detail in a separate brochure. The compliance system covers such areas as: proper handling of confidential information, proper protection of personal data, verification of compliance with internal regulations, supervision over compliance with ethical standards, verification of legal compliance, development of an educational and information programme, handling of reported irregularities (whistleblowing).
PGE/energy sector/ Report on non-financial information 2021, Management Report 2021	The compliance management system is based on the guidelines of ISO 19600, and work is underway to adapt to the new ISO 37301: 2021 standard. The compliance area focuses on: promoting the principles of fair business in the PGE Group, including the application of the provisions of the Code of Ethics, conducting preventive and preventive measures in the field of counteracting fraud, in particular in the field of counteracting corruption, money laundering and financing of terrorism. It supports activities in the following areas: shaping proper employer-employee relations, managing conflicts of interest, ensuring process transparency, in particular in the field of projects and investments, trading in energy and derivative products and purchasing, ensuring competition and consumer protection, ensuring environmental protection, and partially ensuring safety of information.
PKN ORLEN/fuel sector/Integrated Report 2021	A detailed and broad description of the Control, Risk Management and Compliance System functioning in the group. The process of preparing financial statements is described in detail.
TAURON/energy sector/ Sustainability Report 2020, WWW information, Management Report 2021	In the Sustainability Report, a direct reference to the group’s policy of compliance with the Principles of Ethics and Counteracting Mobbing and Discrimination was implemented in May 2019. More detail on the website. The task of the Group Compliance Management System is to ensure compliance of the Group’s operations with: provisions of law, provisions of internal and internal regulations, standards of ethics. The following areas are described: the code of responsible business, verification of contractors, anti-corruption policy, conflict of interest, human rights policy

Source: own work based on (ALLEGRO, 2021; ASSECO, 2021; CCC, 2021; CD PROJEKT, 2021; CYFROWY POLSAT, 2021; DINO, JSW, 2021; PGE, 2021; PKN ORLEN, 2021; TAURON, 2021).

It should be noted that the analysed entities as listed on the stock exchange are required to submit a statement on the company’s compliance with the corporate governance principles contained in Best Practice for GPW Listed Companies on an annual basis. According to the verification of declarations made by the analysed entities, all of them meet the following rule: “Listed companies maintain efficient internal control, risk management and compliance systems and an efficient internal audit function adequate to the size of the company and the type and scale of its activity; the management board is responsible for their functioning”.

However, when analysing the data included in Table 1, it should be noted that the entities achieve the fulfillment of the above-specified rule in different ways. Some,

such as JSW or Tauron, present a description of the functioning compliance management systems directly on their websites, e.g. in the form of downloadable brochures. The term 'compliance system' did not appear in the report on the activities of the management board for 2021. The company presented the scope of the corporate governance and the risk management system as well as the internal control and risk management system in relation to the process of preparing financial statements and consolidated financial statements. The corporate risk management system and the scope of application of corporate governance, without reference to the compliance system, are described in the report on the activities of the JSW Management Board. Furthermore, in the reports on the activities of the Management Board of other entities, there are no references to compliance management systems, with the exception of DINO, for which it is the only place presenting information and CMS. In some of the analysed entities (PGE, CDPROJEKT, CCC, ALLEGRO), information on CMS is included in the presented non-financial information in sustainability reports, CSR. Due to the scope of the subject matter of reports presenting non-financial information, information on the use of CMS relates only to the areas presented. At ASSECO and CYFROWY POLSAT, there is no information about CMS in any of the analysed reports. PKN ORLEN published an integrated report for 2020, in which, as part of the CMS presentation, various areas of compliance management were presented in detail, in such areas as: accounting, risk management, integrated management system, and monitoring of legal and regulatory compliance. Based on the analysed information, a coherent and comprehensive compliance management system that functions only in this entity emerged.

As part of the identification of the content of the corporate compliance management system, information on the implemented tax strategy, required by law and published on websites, was verified. For example, in the information published by PGE there are assurances about the use of several procedures and the functioning of many processes related to the management of the tax function, which is to ensure the performance of obligations under tax law and reduce tax risk, but there is no reference as to whether the tax compliance system operates in this respect. Similar data were included in the remaining analysed information on the implemented tax strategy.

5. Conclusion

The wide range of legal requirements and internal regulations that are in force in modern corporations creates the need for comprehensive supervision over compliance with these regulations. A Compliance Management System has been implemented in many organizations to support management boards in ensuring legal security. A properly implemented coherent CMS is expected to lower the risk of the allegation of improper diligence, which, in fiscal criminal law, is considered a sufficient premise of willful misconduct enabling the prosecution of fiscal offenses.

Summarising the results of the analysis of various types of documents published by selected entities, it should be stated that entities appreciate the advantages of implementing CMS and generally have some CMS elements implemented, which is in line with the postulates presented in the cited literature. There is, however, a great deal of variation in the approach to the Compliance Management System. The information is provided in fragments in reports on non-financial information, management reports and other sources. It can be noticed that the compliance services focus on non-financial information on ethics, employee matters, and environmental impact. Even though the management boards of the audited entities declare compliance with the regulations regarding accounting, internal control, reporting, and taxes in the statements on the company's compliance with the corporate governance principles contained in Best Practice for GPW Listed Companies and Information on the executed tax strategy, there is no reference to the presence of the procedures in question in the CMS.

The main limitation of the research should be emphasised, namely the lack of access to detailed internal regulations regarding compliance management systems. The analysis was based only on publicly available data, most of which originate from the lack of a comprehensive and holistic view of the CMS.

Meanwhile, including tax compliance in CMS brings several benefits for the fulfillment of obligations imposed on management boards, for example in the field of settlement of various types of taxes, the need to adapt to rapidly introduced changes in regulations (such as those resulting from the COVID-19 pandemic and the so-called "New Deal" in Poland) as well as transfer pricing reports, MDR reports and information on the executed tax strategy. In addition, the inclusion of the tax area may support the fulfillment of the conditions for the conclusion of the cooperation agreements in the area of taxation, as well as Advanced Pricing Agreements (APA) in the field of transactions within related entities, which, for many companies and their authorities, will be a desirable form of risk protection along with obtaining additional privileges. Implementing the tax area into CMS is an important tool for mitigating tax risks in the context of management liability, as well as reducing the risk of loss of company credibility and reputation as a result of tax violations.

In addition to the listed benefits of including taxation in the CMS, there are some disadvantages associated with this approach. The most important of these is the increased complexity of the CMS and the need for knowledge of the tax area by the managers responsible for the CMS. The CMS system expanded with tax compliance procedures may cause difficulties in monitoring its performance.

A further direction of research considered by the author is the exploration of the perception of the need to extend compliance management systems with elements of transfer pricing in the opinion of company managers.

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Tax compliance jako element systemu zarządzania zgodnością w przedsiębiorstwie

Streszczenie: Celem artykułu jest identyfikacja obszarów objętych systemem zarządzania zgodnością oraz ocena zasadności włączenia zgodności w zakresie podatków do systemów zarządzania zgodnością. Zastosowano metodę analizy literatury, aktów prawnych i standardów zgodności. W części empirycznej zamieszczono wyniki analizy obszarów systemów zarządzania zgodnością w przykładowych 10 podmiotach notowanych na GPW objętych indeksem WIG20. Stwierdzono, że badane podmioty prezentują zróżnicowane informacje o systemach zarządzania zgodnością bez uwzględniania obszaru zgodności podatkowej. Zdaniem autora wdrożenie spójnego całościowego systemu zarządzania zgodnością niesie za sobą wiele korzyści dla spełniania obowiązków podatkowych, np. w zakresie MDR lub cen transferowych, a także ułatwia zawieranie tzw. umów o współdziałanie w zakresie podatków oraz tzw. APA.

Słowa kluczowe: zarządzanie, podatki, ład korporacyjny, społeczna odpowiedzialność biznesu.