
Tax Optimization in the Context of the Grey Economy

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Abstract:

Purpose: The purpose of the publication is to verify whether tax optimization can be identified with the grey economy, which mainly comes down to tax fraud.

Design/Methodology/Approach: Achieving the goal required the use of the direct method – questionnaire. We presented the results of empirical research from 2011-2024.

Findings: The paper describes the essence and scope of the grey economy, as well as the concept of tax optimization. Fragments of own survey research from 2011-2024 on the examined issue were also presented. The obtained results of own research and data taken from the literature do not provide a clear answer to the question of whether tax optimization is identical with tax fraud as a manifestation of the grey economy. In the future, it is necessary to continue research in the designated area.

Practical Implications: In the paper we presented the essence of tax optimization in the context of the grey area, which has had a permanent place in tax practice for years. It is also an important and still relevant issue as the results of previous experience indicate the debatability of many issues, but also raise new questions.

Originality value: The publication uses original, multi-year research on the grey area in relation to tax optimization.

Keywords: Grey economy, tax fraud, tax optimization, taxes.

JEL Classification: H21, H24, H26, H83, K32, K15.

Paper type: Research article.

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1. Introduction

The concept of the grey economy is directly related to the phenomenon of tax evasion, including tax fraud. It is generally accepted that the grey economy is where untaxed trade in legal services and goods takes place. Hence, the grey economy is often considered to be an economic activity undeclared by taxpayers, which is not subject to due fiscal obligations.

Taxes are a basic tool of the state's financial system. However, they can have a negative impact on the economic situation of economic entities and households as they limit their purchasing and investment power. Hence, tax evasion reactions can be observed, which, due to the criterion of legality, can be divided into illegal, called tax fraud, and legal, commonly referred to as tax optimization, which in some cases may have features of non-compliance with the law.

This paper attempts to refer to tax optimization in the context of the grey economy phenomenon, most often reduced to tax fraud, i.e. evading fiscal obligations. The first part presents the concept of the grey economy and the essence of tax optimization. The next part compares tax fraud with optimization, and the last part of the paper presents selected fragments of own research on the phenomenon of the informal economy.

The aim of the publication is to verify whether tax optimization can be identified with the grey economy, which mainly comes down to tax fraud. The implementation of the goal required the use of the direct-questionnaire method. The results of survey studies from the years from 2011 to 2024 are presented.

2. Theoretical Foundations of the Grey Economy and its Scope

The grey economy is an important problem that occupies a significant place in both the literature on the subject and the functioning of the state. Although many countries have taken measures to prevent unofficial activities, their growth seems inevitable.

Recent estimates of the size of the grey economy have ranged on average from 28 to 43% of GDP in developing countries, 38-40% of GDP in transition countries, and 14-17% of GDP in developed countries (Imamoglu, 2021). The grey economy, often referred to as the informal economy, is an ambiguous concept, as many often similar, but also mutually exclusive definitions can be found in the literature on the subject.

The variety of definitional approaches results from the different goals of researchers of this phenomenon and the diversity of socio-economic systems subject to observation (Mróz, 2002). However, there is no consensus on the definition of the concept of the grey economy (Schneider, 2019; Koufopoulou *et al.*, 2019; Schneider

and Buehn, 2018; Williams, 2011; 2010). The most popular view is that this is an activity that is not subject to registration in national accounts. It is almost as often emphasized that this is an activity that comes down to tax evasion.

Hence, the informal economy is called "tax dexterity" or abuse of tax law by many financiers (Martin, 2001). This paper focuses on this approach. The concept of the grey economy is understood as undertaking economic activity outside the official economic circulation - the complete or partial concealment of achieved financial benefits from state administration bodies (Imamoglu, 2021).

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The most popular view is that it is an activity that is not subject to registration in national accounts. It is almost equally often emphasized that it is an activity that boils down to tax evasion. Hence, the informal economy is called "tax dexterity" or abuse of tax law by many financiers (Martin, 2001). This publication focuses on this approach.

The concept of the grey economy is understood as undertaking economic activity outside the official economic circulation - the complete or partial concealment of achieved financial benefits from state administration bodies (Szara strefa, 2019).

The literature emphasizes the fact that the grey economy includes untaxed income obtained from the production of legal goods and services. It is associated with the non-payment of taxes, although the desire to avoid them does not have to be the only motive for action (Liapis *et al.*, 2020).

This feature was drawn to by Z. Rajewski and L. Zienkowski, who emphasize that the goal of entities operating in the informal sector is to consciously avoid paying monetary benefits to the state (Rajewski, 1996).

Dzierżawski also defines the phenomenon of the grey economy as mainly consisting in tax evasion (Dzierżawski, 2006). In the Rachunki Narodowe, the grey economy includes production activities that are completely legal but hidden from public authorities in order to avoid paying taxes and social security contributions (Rachunki narodowe... 2020).

The broad definition of it includes criminal activity and unregistered profit from the production of legal goods and services and from monetary or barter transactions, i.e.,

economic activity that would be subject to taxation after being reported to the fiscal authorities (Lipczyńska, 2019).

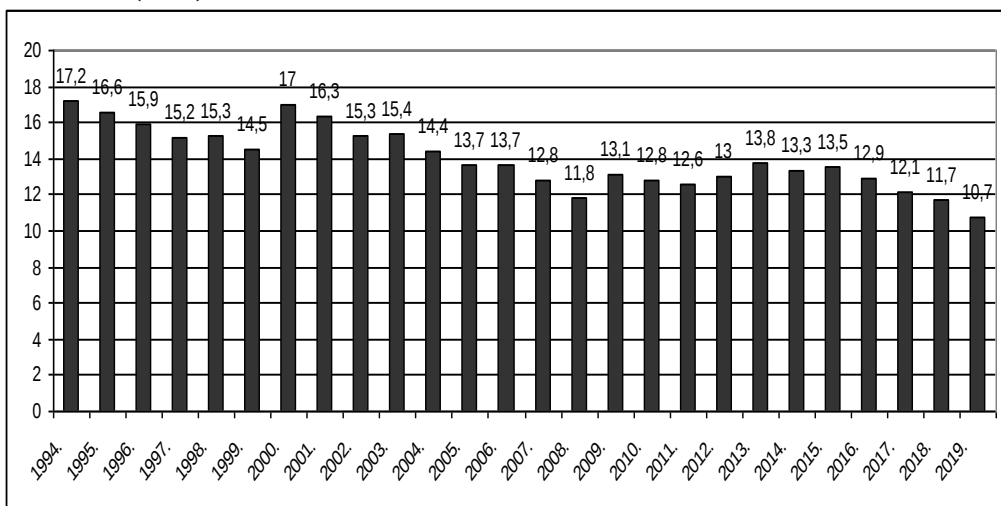
Not only is the definition of the grey or shadow economy imprecise. Similarly, estimates of this phenomenon, due to its "elusive" nature, are difficult to measure. In the longest time horizon, estimates of the size of the informal economy in Poland are made by the Central Statistical Office.

Figure 1 illustrates the share of the shadow economy in GDP creation in the years 1994-2019. In 1994, this share was at the highest level of 17.2%, after which it began to systematically decline until 2000, when it increased again to 17%. In 2008, it fell to the lowest level, estimated at 11.8% of GDP.

In the following years, along with the economic slowdown resulting from the *subprime* crisis, the indicator increased by 1-2 percentage points. In the years 2012-2015, the share of the shadow economy in the Polish economy was on average 13.4%. The lowest level was noted in 2012 (13.0%), and the highest in 2013 (13.8%) (Rachunki..., 2017).

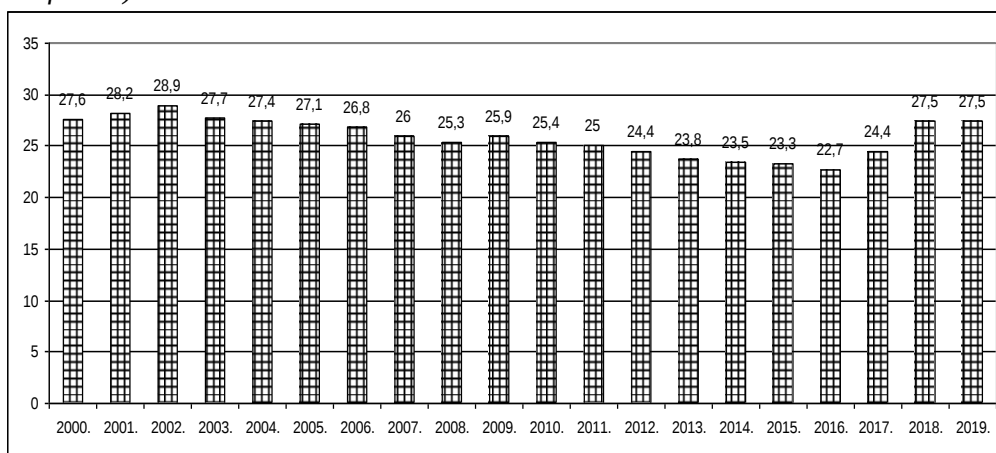
In 2019, the share of the unobservable economy was estimated at 11.1% of GDP, of which the grey economy in registered entities amounted to 9.1%, from unregistered work 1.7%, while illegal activities (pimping, drugs, cigarette smuggling) were estimated at 0.4% of GDP (Rachunki..., 2021).

Figure 1. Grey economy in Poland according to the Central Statistical Office in 1994-2019 (in %)



Source: Own study based on: National accounts by institutional sectors and subsectors, Central Statistical Office for the years 1995-2021.

Figure 2. The grey economy according to F. Schneider in Poland in 2000-2019 (in % of GDP)



Source: Own study based on: F. Schneider *The Size of the Shadow Economies of 145 Countries all over the World, First Results over the Period 1999 to 2003*, IZA, Discussion Paper No. 1431, 2004; F. Schneider, *Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2015*, www.Econ.jku.at/Schneider/foles/publications, January 20, 2015; L. Medina, F. Schneider, *Shadow Economies Around the World: What Did We Learn Over the Last 20 Years?*, WP/18/17, International Monetary Fund, Styczeń 2018, p. 18, 66 and next.; L. Medina, F. Schneider, *Shedding Light on the Shadow Economy: A Global Database and the Interaction with the Official One*, Cesifo Working Papers No 7987, December 2019, p.30; B. Kelmanson, K. Kirabaeva, L. Medina, *Europe's Shadow Economies: Estimating Size and Outlining Policy Options*, International Monetary Fund, IMF eLibrary lipiec 2021, <https://www.elibrary.imf.org/view/books/071/29292-9781513575919-en/ch003.xml>

At a slightly higher level, the grey economy is calculated by the Institute of Economic Forecasts and Analysis (IPAG), which estimates that the total value of the unobservable economy in 2020 amounted to PLN 439 billion, which was 17.4% of GDP (in 2016 – 19.0%, 2017 – 18.7% of GDP, in 2018 – 18.0%, in 2019 – 17.2%) (Fundowicz, 2019; 2020).

On the other hand, the highest indications are visible in the work by Friedrich Schneider, who specializes in research on the shadow economy based on the MIMIC (*Multiple Indicators Multiple Causes*) method. It calculates the share of the informal economy in GDP in Poland at 27.5% of GDP in 2019 (22.7% in 2016; 24.4% in 2017) (Medina, 2018; Kelmanson, 2021) - Figure 2.

From Schneider's estimates, it can be concluded that about one fifth of the economic activity conducted is hidden from the tax administration in Poland. The largest part of it is the so-called hidden activity, i.e., unregistered transactions and turnover of legally operating enterprises. In the activity in the grey economy, the most

distinctive is the understatement of income for the purposes of reducing tax liabilities.

3. The Essence of Tax Optimization

Tax optimization has no legal definition, nor is it mentioned in any of the tax law acts. The origin of the term *tax optimization* is a product of everyday language used by tax advisors offering their clients various methods of reducing the tax paid. This concept is used intuitively (Ładziński, 2008). Many definitions emphasize the achievement of an economic goal as the basic premise of tax optimization, which is to lead, as it were, "incidentally", to tax reduction.

Optimization is primarily the choice of a lawful way of achieving a specific economic result, assuming the minimization of the accompanying tax burdens (Kudert, 2013). It is a form of resistance to fiscal burdens, in which the main motive for action is the economic goal in relation to tax benefits (Jankowski, 2019).

Optimization occurs when a taxpayer who decides to link specific business processes with a simultaneous reduction of fiscal burdens strives to maximize profit after tax by minimizing the tax. It is, therefore, a set of activities aimed at shaping the amount and distribution of tax burdens in the most favorable possible way for the taxpayer (Gruzic, 2009).

It is also indicated that optimization is such a way of regulating mutual private and legal relations, which will be associated with a reduction of the tax burden, but will also lead to the originally intended economic goal (Wójtowicz-Janicka, 2012).

The concept of tax optimization is also considered from the perspective of maximizing the profit achieved by the enterprise. Therefore, this term means planning and implementing activities aimed at increasing the net result of the enterprise by minimizing tax burdens, using the standards permitted by law (Żabska, 2013; Dębniak, 2018).

Sometimes tax optimization is defined as an action leading to the minimization of fiscal liabilities through such a selection of legal actions and such a selection of tax policy instruments that ensures a reduction of the total tax burden, and thus maximization of net profit (Dymek, 2006). Knowledge of tax regulations and the related ability to create tax-effective factual situations allows taxpayers to maneuver the amount of their tax liability.

The legal nature of activities carried out as part of tax optimization is also emphasized in the literature (Szłęczak-Matusiewicz, 2019). Optimization results in reducing the amount of taxes to the level most favorable for the taxpayer and includes activities within the limits of the law (Żabska, 2013; Dębniak, 2018). A

necessary condition for qualifying specific activities aimed at minimizing tax burdens as optimization is their compliance with the law (Iwin-Garzyńska, 2016).

In this approach, optimization is the use of a variety of legally permissible forms of organizing economic turnover, for which the tax legislator has established separate taxation rules (Wójtowicz-Janicka, 2012). The concept of tax optimization can, therefore, be understood as the selection of such a form and structure of the planned transaction within the framework and limits of the applicable tax law in order to reduce the level of fiscal burdens (Jamróży, 2012).

The concept of tax optimization directly concerns the use of civil law institutions in order to achieve benefits in tax law. Optimization includes legal activities that are not intended to break or circumvent the law (Skolimowska, 2021). In practice, it is difficult to draw the line between legal and illegal tax avoidance, especially after July 15, 2016, when the general (general) clause against tax avoidance came into force (Article 119a of the Ordinance, 2016).

The aforementioned clause is a set of norms that aim to counteract behaviors that result in a reduction of the amount of tax liability through activities that, despite meeting the formal conditions established for specific transactions, are contrary to the objectives of the tax act (Clause, 2016). The clause is intended to help resolve doubtful situations. If the transaction was concluded for economic reasons, i.e. the circumvention of tax law was not accompanied by the conclusion of artificial transactions, then it can be assumed that tax optimization is legal (Kuzińska, 2018).

The literature on the subject draws attention to the periorative nature of optimization. It can be said that tax optimization is the use of loopholes in the law in order to achieve unjustified and undue tax benefits (Jankowski, 2019). On the other hand, entrepreneurs who can legally pay lower taxes take advantage of the opportunities provided by tax regulations.

Tax optimization is also often associated with the transfer of capital to tax havens (Grabowska, 2019), which activities have a clearly negative connotation and are often not considered tax optimization. At the same time, the accumulation of profits in countries with a low level of tax burden is an example of tax optimization in the cross-border aspect (Kuzińska, 2018). International tax optimization contributes to the erosion of the tax base and a decrease in budget revenues (Felis and Szymański, 2020).

Taxes cause risk and uncertainty in the functioning of the enterprise, which results from the high variability and uncertainty of tax law. In this context, optimization appears as a conscious and lawful behavior aimed at minimizing fiscal burdens and limiting tax risk (Iwin-Garzyńska, 2016). As indicated by A. Gomułowicz and D. Mączyński, optimization means not only the possibility of reducing the amount of tax liability or postponing the moment of tax liability in time, but also involves

identifying risks in connection with the application of tax law (Gomułowicz and Mączyński, 2016).

The essence of tax optimization is to use the possibilities inherent in legal regulations to minimize fiscal burdens or to most advantageously position them in time using solutions permitted by law (Wyciślik, 2014). Optimization is one of the elements of the decision-making process that has a decisive impact on the conducted business activity and consists in selecting a more advantageous option or eliminating activities that cause severe tax consequences, in accordance with the letter of the law (Wyrzykowska, 2006).

Tax optimization can be defined as a concept and a set of legal and coherent activities of an entity, taking into account the risk of these activities, aimed at fulfilling the entity's tax obligations in the correct amount, based on activities that optimize the tax burden or reduce the financial costs related to tax settlement, undertaken in order to increase the entity's profits, but also in order to improve the competitive position of the enterprise, by reducing tax burdens affecting the price or cost of manufacturing the product (Wyrzykowski, 2015).

When defining the phenomenon described, some authors identify tax optimization with the avoidance of fiscal burdens (*Unikanie opodatkowania, zwane optymalizacją podatkową...* (Szymacha, 2021)), assessing it as a socially controversial phenomenon. Optimization leads to an effect of a twofold nature. First, it is based on the literal interpretation of the law, but ignores its spirit. Second, it allows for obtaining additional, undeserved benefits (Szymacha, 2021).

The implementation of tax optimization understood as the legal shaping of fiscal burdens is related to tax avoidance (Szafoni, 2020). In a broad sense, tax avoidance will include any attempt made by legal means to reduce or avoid paying fiscal liabilities. Such an approach is also perceived as tax optimization (Klonowska, 2017).

For the purposes of this publication, it was assumed that tax optimisation would be deemed to be an action taken by a taxpayer aimed at achieving an economic effect while reducing fiscal burdens, provided that such action is in accordance with the law and does not show the characteristics of artificially undertaken operations.

4. Tax Optimization and Tax Fraud as a Form of Tax Evasion

Both the phenomenon of tax avoidance through optimization and tax evasion in the form of tax fraud have existed since public law obligations in the form of taxes appeared. Since from the taxpayer's point of view, a tax is most often a form of state interference in their subjective rights to accumulate income and property, it is, therefore, treated as an onerous obligation that creates a temptation to avoid it.

Both optimization and tax fraud result in maximization of the taxpayer's benefits (profit, income) by reducing the fiscal liability. However, in the case of optimization, we are dealing with action within the limits of the law, unlike tax fraud. It is noted that tax evasion and avoidance may in some economic situations be substitutes for each other (Slemrod and Yitzhaki, 2002), e.g., limiting the possibility of legally reducing taxes may result in increased activity in the field of tax fraud (Alstadseter, 2022).

Tax evasion is the reduction or elimination of tax burdens in violation of applicable law, most often identified with tax fraud. This action consists in not paying taxes due by concealing taxable facts from the tax administration (Brzeziński, 2003). Tax fraud is sometimes distinguished as a special category of tax evasion – direct and intentional violation of tax law consisting in the deceitful evasion of paying all or part of the tax (Jankowski, 2019).

Sometimes a distinction is made between the *fraudulent evasion* and the *fraud*. A common feature is the criminal nature of the desire to thwart taxation, while in the case of fraud we are dealing not with the intention to reduce tax, but with the intention to obtain much greater fiscal benefits (e.g., VAT refund fraud) (Cornelissen, 2009).

In the case of tax evasion, the taxpayer does not pay the tax due by using legally prohibited instruments, which essentially come down to not disclosing for taxation legal acts or factual states with which the tax law connects the creation of a tax liability. This action may take a passive or active form. In the active form, the taxpayer takes specific actions aimed at limiting or eliminating the fiscal liability. In the passive form, the taxpayer does not take actions provided for by law and does not disclose to the tax authority the factual or legal state subject to taxation (Skolimowska, 2021).

The following differences between tax optimization and tax evasion can be distinguished (Jankowski, 2019):

- The purpose of optimization is to prevent the tax liability from being specified, while tax evasion is an escape from a tax that has already arisen by operation of law and has not been paid;
- Optimization violates the meaning and purpose of the tax act, while tax evasion is a "direct" violation of the tax act;
- The taxpayer's action in the case of optimization is always overt, unlike tax evasion, which is always characterized by secrecy and covert action;
- The criterion distinguishing evasion from optimization is the punishability of such action.

Tax optimization and tax evasion are associated with the tax gap, which is created as a result of escaping fiscal obligations. The most commonly used definition of the

gap defines it as the difference between tax revenues that should theoretically be achieved and the amount of revenues actually obtained. Hence, the total tax gap is created by detected and undetected tax frauds and disclosed and undisclosed optimizations (Kuzińska, 2018).

In recent years, the highest value of the tax gap in Poland was 3.768% of GDP in 2013, which corresponded to a loss of PLN 63 billion. In 2016, the total gap decreased to 2.970% of GDP (Kuzińska, 2018). As a result of the actions taken to limit the reduction of tax revenues, both the income tax gap and the VAT gap have decreased (Luka VAT, 2021).

As a result of structural factors and tightening actions taken by the Ministry of Finance, the gap decreased by approx. PLN 6 billion, which corresponded to an over 40% increase in CIT revenues. The VAT gap in 2021 was reduced (by 6.1 percentage points) and amounted to approx. 4.3% of potential revenues (Luka VAT, CASE, 2022; Min and Finansów, 2022).

5. Tax Optimization and the Grey Economy in Empirical Research

This part of the paper presents own research concerning the described issue. The survey was conducted on a purposive sample of 1,201 households and 281 business entities (in April 2011), 1,230 households and 232 entrepreneurs (in January 2012), 1,128 households and 237 entrepreneurs (in January 2013), 857 households and 188 entrepreneurs (in January 2016), a sample of 852 households and 244 entrepreneurs (in January 2015), 1,103 households and 325 entrepreneurs (in January 2016), 1,038 households and 289 entrepreneurs (in January 2017), 883 households and 225 entrepreneurs (in January 2018); 975 households and 268 entrepreneurs (in January 2019); 758 households and 265 entrepreneurs (in January 2020) and 673 households and 225 entrepreneurs (in January 2022), 647 households and 248 entrepreneurs (in January 2023) and 810 households and 247 entrepreneurs (in January 2024).

The interviews were conducted in the Podkarpackie Province. The surveys were addressed to people over 20 years of age with various levels of income and standard of living, as well as entities from the SME sector. As part of the own research conducted in 2011-2022, respondents were asked about their opinions on the grey economy in the context of the tax system.

The grey economy is an illegal activity, consisting in misleading the tax authority and as a result illegally eliminating or reducing the tax burden. Illegal tax evasion may also be the result of the taxpayer's lack of awareness of the existence of a tax liability (so-called lack of budget discipline).

Although activity in the grey economy is associated with illegal activities, i.e. tax evasion, tax fraud, over many years the people taking part in the study have

identified the grey economy with tax optimization defined, among others, as the use of loopholes in the law or legal activities aimed at reducing fiscal burdens (Table 1).

Table 1. Structure of household responses to the question: What, in your opinion, is the grey economy?

the grey economy definitions	Percentage structure												
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2022	2023	2024
concealing income from the tax office	57.6	58.3	55.3	61.0	58.69	51.22	54.8	57.1	68.2	58.7	59.1	53.5	61.5
tax fraud	48.5	44.4	40.4	40.1	44.01	36.54	38.1	40.7	48.0	48.0	39.7	44.8	42.4
smuggling	33.8	30.8	26.2	33.4	26.76	27.38	23.5	24.5	21.9	25.1	12.5	19.5	20.6
production of illegal goods	25.0	22.4	16.9	22.4	21.13	22.21	15.9	16.2	17.7	18.0	12.2	16.7	18.5
exploiting loopholes in tax law	26.1	23.5	25.4	23.7	24.77	27.47	23.1	22.0	24.5	29.3	18.1	30.3	28.9
legal activities aimed at reducing taxes	13.5	10.2	11.8	9.9	10.92	8.88	9.6	9.1	8.4	11.0	4.2	10.8	7.9
other (illegal work)	0.2	0	0.8	0.7	0.47	0	1.1	1.3	1.6	0.5	0	1.4	0.3
no response	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL*	204.7	189.6	176.8	191.2	186.8	173.7	166.1	170.9	190.3	190.6	145.8*	177.0	180.0

Note: * The total is over 100% because respondents could choose multiple answers

Source: Own calculations based on data from surveys conducted in 2009-2024.

According to every fourth household, the grey economy involves reducing taxes by exploiting legal loopholes (26.1% in 2011, 18.1% in 2022), and according to almost every tenth person, it involves legal actions aimed at reducing tax burdens (13.5% in 2011, 4.2% in 2022).

6. Conclusion

Both the informal economy and tax optimization are not easy areas of research, as evidenced by ongoing definitional disputes and discrepancies in the manner and scope of perceiving various manifestations of this economic activity. A review of definitions shows that the grey economy is most often reduced to conducting business activities consisting in avoiding fiscal burdens, i.e. tax fraud. At the same time, this indicates the most important incentive for the activity of economic entities

in the shadow economy. Tax optimization also focuses on reducing taxes, but its manifestations and nature are consistent (or should be) with the letter of the law.

Tax optimization is an action by the taxpayer aimed at reducing fiscal burdens within the framework and limits of applicable regulations. Although this activity is not met with a favorable attitude by the tax administration, it is accepted by it. Tax evasion seems to be an action within the limits of applicable law, however, due to the fictitious (apparent, artificial) nature of the civil law transactions performed, it is an illegal action.

All European Union countries, where the informal economy averaged 17.1% of GDP, are struggling with the problem of tax evasion. In Poland, national estimates of the shadow economy show a decreasing trend of the described phenomenon. According to the Central Statistical Office, the unobservable economy in Poland decreased from 17.2% of GDP in 1994 to 10.7% of GDP in 2019.

According to F. Schneider, compared to 2000, the scale of the shadow economy shrank from 27.6% to 22.7% of GDP in 2016, to increase again to 27.5% of GDP. Similarly, the tax gap resulting from tax optimization and tax fraud has been decreasing over recent years.

The aim of the paper is to verify whether tax optimization can be identified with the grey economy, which mainly comes down to tax fraud. Therefore, the hypothesis posed in this publication will be the question of whether tax optimization is identified with the grey economy.

If we assume that it consists in legally circumventing tax law and taking advantage of loopholes in tax law, then according to almost half of entrepreneurs and almost every third household participating in the survey, the grey economy, which comes down to tax evasion, is identical or very similar to tax optimization.

Such a perception of the phenomenon under study contributes to the spread/negative connotation of tax optimization, widespread both in the literature and tax practice.

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